



**J. SAFRA SARASIN**



Sustainable Swiss Private Banking since 1841

**Bank J. Safra Sarasin Ltd,  
Singapore Branch (the “Bank”)**

**Account Application – Terms & Conditions**

Note: The enclosed Terms & Conditions form an integral part of the Account Application and govern the relationship between the Bank and our clients and the services made, or to be made available, by The Bank.

### III. Terms and Conditions - Definitions and Interpretation

These Terms and Conditions (as defined below) shall, together with the Account Application and the Account Documents, constitute the contract governing the relationship between the Bank and the Account Holder.

#### DEFINITIONS

1. Unless the context otherwise requires, terms used in the Terms and Conditions shall have the meanings as are herein ascribed to them:

**“Acceptable Currency”** means, subject to availability, one of the acceptable currencies listed and set out in the relevant Facility Document (as the same may be amended, modified, varied or supplemented by the Bank from time to time);

**“Account”** means every account maintained in the name or on behalf of the Account Holder in any jurisdiction by the Group (and by any agent, nominee, custodian or depository by arrangement with the Bank) whether such account is maintained in one or more names of the Account Holder or any Associate of the Account Holder and regardless of the currency of the account, and **“Accounts”** means every one of them;

**“Account Agreement”** means any document (other than the Terms and Conditions) entered or to be entered into by the Account Holder in relation to his relationship with the Bank and includes the terms set out in the Account Application and any Confirmation;

**“Account Application”** means any application on forms prescribed by the Bank for any of the Banking Service(s);

**“Account Documents”** means these Terms and Conditions and all Account Agreements (and any reference to any Account Document includes that Account Document as from time to time amended, modified, varied or supplemented and any document which amends, modifies, varies or supplements that Account Document);

**“Account Holder”** means any person who has opened one or more Accounts;

**“Adjustment Event”** shall have the meaning ascribed to it in Clause 12.2 of the Conditions for Financial Transactions;

**“American Style Option”** means an option which may be exercised on any Business Day up to and including the Expiration Day;

**“Applicable Laws”** means all relevant or applicable statutes, laws, rules, regulations, notices, guidelines, directives and circulars (whether or not having the force of law) of any governmental body, authority, relevant exchange, self-regulatory organization or other authority or organization (whether in Singapore or otherwise), as may be amended, varied, supplemented or replaced from time-to-time;

**“Assets”** means all Securities, bank notes, time deposits, fiduciary deposits, credit balances, Precious Metals, contracts, documents, options, claims, rights, objects of value or other assets as may be delivered and transferred by the Account Holder to or to the order of the Bank for management or safe-custody in accordance with the Terms and Conditions and which or the certificates or other documents of title for which are at any time held or possessed by, or in the control of, the Bank, its agents or nominees or by third parties at the disposal of the Bank. Where the Account Holder is/are a trustee(s) opening and maintaining an Account for the purposes of a trust, as expressly known to and acknowledged by the Bank, references to Assets shall be construed to include references to the Assets of such trust, notwithstanding that beneficial ownership thereof may vest in the beneficiaries of the trust;

**“Associate”** in relation to a person, means:

- (a) the person's spouse or reputed spouse, any person cohabiting with the person as a spouse, the person's brother, sister, parent, step-parent, child (natural or adopted) or step-child;
- (b) any corporation of which the person is a director;
- (c) any employee or partner of the person;
- (d) where the person is a corporation, each of its directors and its

related corporations and each director or employee of any of its related corporations; and

- (e) without limiting the circumstances in which sub-clauses (a) to (d) above apply, in circumstances concerning the Securities of or other interest in a corporation, or rights arising out of the holding of such Securities or such interest, any other person with whom the person has an agreement or arrangement:
  - (i) with respect to the acquisition, holding or disposal of such Securities or such interest; or
  - (ii) under which they undertake to act together in exercising their voting power at general meetings of the corporation;

**“Authorized Signatory”** means, at any particular time in relation to the Account Holder, a person appointed by the Account Holder under the Account Application or under any power of attorney or other letter, document or instrument to give Instructions with respect to the operation of any Account or any Transaction, in such form as may be acceptable to the Bank, which has been validly executed by the Account Holder and received by the Bank and in respect of which person the Bank has not received from the Account Holder any written notice of revocation or termination of such person's appointment, powers or authority (such revocation or termination to be effective upon the Bank's physical receipt of written notice);

**“Available Collateral”** means such portion of the Collateral which the Bank deems to be available for use as security or credit support for all Transactions or any of them;

**“Bank”** means Bank J. Safra Sarasin Ltd acting through its Singapore branch, its permitted successors and assigns;

**“Banking Service(s)”** means the financial, banking or other services, products, information, functions and Facilities which may be offered or made available by the Bank and/or entered into pursuant to the terms hereunder (as may be withdrawn, added to or modified by the Bank from time to time in its discretion), and includes any Transaction entered into under the Terms and Conditions;

**“Borrower”** means any person (including the Account Holder) to whom the Bank may, at the Account Holder's request, grant or continue to grant such Facilities as the Bank may agree, and shall in each case include any personal representatives, permitted assignees and successors thereof;

**“Break Costs”** means the amount (if any) by which:

- (a) the interest which the Bank should have received pursuant to the terms of the relevant Facility for the period from the date of its receipt of all or any part of the principal amount of a loan or advances or sums (“Unpaid Sum”) to the last day of the current interest period or maturity (whichever is the earlier) in respect of that Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that current interest period or maturity;

exceeds:

- (b) the amount of interest which the Bank would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with the interbank market equivalent to the relevant currency for a period starting on the Business Day following such receipt and ending on the last day of the current interest period or maturity;

**“Business Day”** means any day other than a Saturday or Sunday on which commercial banks are generally open for business, and excludes any bank holiday, in the jurisdiction where the relevant Account is opened and, as the case may be, in the principal financial centre for the currency in which payment is required or, where the relevant Banking Services are provided (or where any part of such Banking Services is carried out by an agent of the Bank), or as otherwise specified in a Confirmation;

**“Call Option”** means the right but not the obligation (except upon exercise) of the buyer to purchase from the seller at the Exercise Price a specified quantity of the Underlying;

An amount payable on **“Cash Settlement”** shall be computed as follows:

- (a) **Call Options for Underlyings:** The last transacted price (or such other price as may be otherwise agreed by the parties to the Call Options) in respect of the Underlying at the Reference Market at the close of business on the Exercise Day minus the Exercise Price, multiplied by the number of Underlyings for which an option has been exercised; and
- (b) **Put Options on Underlyings:** The Exercise Price minus, the last transacted price (or such other price as may be otherwise agreed by the parties to the Put Options) in respect of the Underlying at the Reference Market at the close of business on the Exercise Day, multiplied by the number of Underlyings for which an option has been exercised;

**“Clearing System”** shall include Clearstream Banking, société anonyme, the Euroclear system and any other clearing or safekeeping systems which are at any time used in connection with securities transactions, custody or deposit;

**“Collateral”** means any currencies, cash, and at the Bank's sole discretion, Assets, Precious Metals, Commodities, guarantees, letters of credit and/or indemnity or other property (including, without limitation, funds, bonds, notes and other financial instruments or other interests of the Account Holder or in the case of a Facility, any Security Party) acceptable to the Bank and deposited with or held by the Bank or its nominees or otherwise taken as security or credit support for any Transaction, any Facility or any of the Account Holder's or any Security Party's (as the case may be) obligations under the Terms and Conditions and/or any agreement(s) between the Bank and the Account Holder, and includes any other Collateral which the Bank may from time to time, in its absolute discretion, accept from the Account Holder;

**“Commodities”** means (a non-exhaustive list herein below):

- (a) energy (including but not limited to natural gas, crude oil, heating oil etc.);
- (b) industrial raw materials (including but not limited to: copper, nickel, zinc, lead, tin, aluminium etc.) and Precious Metals; and/or
- (c) **“soft commodities”** that are grown, rather than mined (including but not limited to agriculture crops such as corn, soybean, wheat, ethanol, sugar, coffee, etc.)

and any other produce, item, goods or article as stipulated by the Bank from time to time to be a Commodity;

**“Conditions for Accounts”** means the terms and conditions relating to the opening of and maintenance of Accounts and set out at Section IV below;

**“Conditions for Credit Facilities”** means the terms and conditions relating to the Facilities (if any) and set out at Section VI below;

**“Conditions for Financial Transactions”** means the terms and conditions relating to any Transaction entered into by the Bank with or for and on behalf of the Account Holder and set out at Section V below;

**“Confirmation”** means the written notice (including a notice given by telex, facsimile or other electronic means from which it is possible to produce a hard copy), which contains the specific terms and conditions of a Transaction confirming the agreement entered into between the parties (whether oral or otherwise) and whether or not it refers to the Terms and Conditions. All ancillary agreements, if any, referred to in a Confirmation are part of such Confirmation;

**“Countervalue”** means, in relation to a Notional Quantity of a Precious Metal or Commodities, the amount which the Bank determines, in its absolute discretion, to be the amount in the agreed Reference Currency which would have been required to be paid to purchase that Notional Quantity (in the case of a purchase) of such Precious Metal or Commodities from the market or the amount which would have been realizable from the market upon the sale of that Notional Quantity (in the case of a sale) of such Precious Metal or Commodities, in each

case net of all expenses of sale;

**“Custody Account”** means an Account opened and operated by the Bank for the holding of Securities including where such Securities are held with a Sub-Custodian and for which the Bank shall or shall procure the provision of Custody Services as the case may be;

**“Custody Securities”** shall have the meaning given to it under Clause 12.1 of the Conditions for Accounts;

**“Custody Services”** shall have the meaning given to it under Clause 12.2 of the Conditions for Accounts;

**“Dormant Account”** has the meaning ascribed to it in Clause 15.5 of the Conditions for Accounts;

**“Drawing”** means a drawing made or to be made by the Account Holder on the Overdraft Account or, as the case may be, the amount of such drawing for the time being outstanding;

**“Early Close-out Amount”** means, in relation to terminated Transactions, the amount determined as the Early Close-Out Amount in respect of those Transactions as calculated in accordance with Clause 15 of the Conditions for Financial Transactions;

**“Early Termination Date”** means, in relation to all Transactions, the date determined as the Early Termination Date in accordance with Clause 2.2 of the Conditions for Financial Transactions;

**“Equivalent Amount”** (in the context of any Facilities) means in relation to a sum expressed in a currency other than the Reference Currency, the value of that sum in the Reference Currency, as determined by the Bank in its absolute discretion and (in the context of financial Transactions) **“Equivalent Value”** or **“Equivalent Amount”** of any thing, means its value in the agreed Reference Currency as determined by the Bank in its absolute discretion;

**“Euro”** or **“€”** means the single currency of the participating Member States of the European Union;

**“European Style Option”** means an option which may only be exercised on the Expiration Day;

**“Event of Default”** means any one of the following:

- (1) the Borrower does not pay in the manner provided in the Facility Documents to which it is a party, any sum payable under the Facility Documents when due;
- (2) any Security Party defaults in the due performance of or compliance with, or breaches, any undertaking, condition or obligation on its part to be performed and observed under any Facility Document or Account Document to which it is party (other than the payment of any sum due as aforesaid);
- (3) any representation or warranty made or given to the Bank at any time by any Security Party whether in relation to any Facility, Account or otherwise is or becomes incorrect or is breached;
- (4) any other indebtedness of any nature (whether owed to the Bank or not) of any Security Party is not paid when due or becomes capable of being rendered due and payable before its normal maturity;
- (5) any default or event of default, however described, occurs under any document (including, without limitation, any Facility Document or Account Document), security, guarantee, indemnity or otherwise executed pursuant to any Facility granted by the Bank;
- (6) a creditor takes possession of all or any part of the business or assets of any Security Party;
- (7) any distress of execution or seizure is levied or enforced upon or threatened against any of the property or assets of any Security Party;
- (8) any legal proceedings, suit or action of any kind whatsoever (whether criminal or civil) is instituted against any Security Party and the Bank is of the opinion that it will or could materially and adversely affect any Security Party's ability to perform and observe its obligations under any of the Facility Documents to which it is a party;
- (9) any Security Party (i) enters, or takes any step with a view to enter, into any scheme of arrangement or compromise with such

- Security Party's creditors or such a scheme of arrangement or compromise is proposed; (ii) stops, suspends or threatens to stop or suspend all or substantially all of its business or the payment of all or substantially all of its debts or commences negotiations or takes proceedings or any other steps with a view to rescheduling or deferring all or substantially all of its indebtedness; (iii) is unable or under Applicable Law is deemed to be unable or admits its inability to pay its debts as they fall due; or (iv) is declared or becomes insolvent or bankrupt;
- (10) any step (other than one which is, in the opinion of the Bank, frivolous or vexatious or which is discharged within 7 days) is taken by any person:
- (a) where a Security Party is an individual, with a view to the bankruptcy of such Security Party or for the appointment of a receiver, trustee, administrator or similar officer of such Security Party or over any part of the assets of such Security Party or any analogous proceeding is taken against such Security Party in any other jurisdiction or such Security Party dies, becomes of unsound mind or is placed under custody;
- (b) where a Security Party is a corporation or limited liability partnership, with a view to the winding-up or liquidation of such Security Party or for the appointment of a liquidator, receiver, judicial manager, trustee, administrator or similar officer of such Security Party or over any part of the assets of such Security Party or any analogous proceeding is taken against such Security Party in any other jurisdiction;
- (c) where a Security Party is a partnership, with the view to the dissolution of the Security Party or for the appointment of a receiver, receiver and manager, trustee or similar officer of such Security Party or over any part of the assets of such Security Party or any analogous proceeding is taken against such Security Party in any other jurisdiction or any partner of the Security Party dies or with a view to the bankruptcy of any partner of the Security Party;
- (11) any event occurs or circumstances arise (including, where a Security Party is a corporation, a partnership or a limited partnership, changes in the financial condition, operating environment, management or directorship or (as the case may be) partners of such Security Party) which, in the opinion of the Bank, would materially affect the ability of such Security Party to perform or comply with any one or more of its obligations to the Bank, including its obligations under any document, security, guarantee, indemnity or otherwise executed pursuant to any Facility granted by the Bank;
- (12) any governmental or other authority (whether de jure or de facto) nationalises, compulsorily acquires, expropriates or seizes all or a material part of the business or assets of any Security Party;
- (13) any security furnished to secure any of the obligations or liabilities of any Security Party to the Bank is materially adversely affected or is or becomes invalid or unenforceable in any respect or in the opinion of the Bank is in jeopardy and that Security Party fails to remedy the same or provide alternative security to the Bank's satisfaction within 2 days of notice by the Bank requiring it to do so;
- (14) any Security Party or its affairs become(s) for whatever reason the subject of investigation by any governmental or regulatory department or authority in a relevant jurisdiction, or any other jurisdiction, or legal proceedings, suits or actions of any kind whatsoever (civil or criminal) are instituted against any Security Party which the Bank determines would materially and adversely affect that Security Party's ability to perform and observe its obligations to the Bank;
- (15) it is or will become unlawful for any Security Party to perform or comply with any one or more of its obligations under any Facility Document to which it is a party or for the Bank to exercise all or any of its rights and remedies under any Facility Document;
- (16) any consents, authorizations, licences or approvals referred to in Clause 14.1(a)(iv) of the Conditions for Credit Facilities: (i) is modified in a manner unacceptable to the Bank; (ii) is wholly or partly revoked, withdrawn, suspended or terminated; (iii) expires and is not renewed; or (iv) otherwise fails to remain in full force and effect, and to the Bank, such circumstances may have a material adverse effect on the ability of a Security Party to perform its obligations under any Facility Document to which it is a party or on the ability of the Bank to exercise or enforce any of its rights under a Facility Document;
- (17) any situation arises (including any political, financial or economic condition in a country in which an Acceptable Currency is located or traded), which in the opinion of the Bank gives grounds for believing that the ability of any Security Party to perform or comply with its obligations under a Facility Document could be materially and adversely affected, or that its businesses could (in the opinion of the Bank) be in jeopardy if there is any other material adverse change in the operations or financial condition or business of the Security Party and/or any material adverse change in the international capital and/or money markets;
- (18) any Security Party rescinds or purports to rescind or repudiates or purports to repudiate any Facility Document or evidences an intention to rescind or repudiate any Facility Document;
- (19) any event or circumstance occurs which the Bank reasonably believes has or is reasonably likely to have a material adverse effect on the validity or enforceability of, or the effectiveness or ranking of any security granted or purporting to be granted pursuant to any Facility Document or the rights or remedies of the Bank under any Facility Document;
- (20) any of the security coverage or other security maintenance obligations contained in the Facility Letter falls below the level prescribed therein or is breached and/or Security Party fails or refuses to rectify the same within any time period specified by the Bank;
- (21) any law, regulation or order, or any change in any law or regulation, does or purports to vary, suspend, terminate, or excuse performance by any Security Party of any of its obligations under any Facility Document;
- (22) if required to do so, the Account Holder fails to deliver the Underlying in respect of any Transaction;
- (23) the Account Holder moves, transfers or converts or attempts to move, transfer or convert any Collateral without the consent of the Bank;
- (24) a material obligation of the Account Holder ceases to be binding and enforceable against the Account Holder in accordance with the Terms and Conditions;
- (25) an Extraordinary Event, Adjustment Event or Price Disruption Event occurs and in the Bank's opinion it is not possible and/or desirable to deal with the occurrence of that event under Clause 12.2 of the Conditions for Financial Transactions;
- (26) if the Account Holder is a natural person, the Account Holder dies, becomes insane or is declared incapable of administering its affairs;
- (27) if the Account Holder is a partnership, any of the partners thereof dies, becomes insane or is declared incapable of administering its affairs;
- (28) any term of the Account Documents is or becomes, wholly or partly void, voidable or unenforceable or is claimed to be so, by either the Account Holder or anyone on the Account Holder's behalf;
- (29) the Account Holder creates, attempts to create or allows to exist any mortgage, security interest, lien, charge (or similar interest) over any of the cash or assets provided to the Bank as security without obtaining the Bank's prior consent;
- (30) in the Bank's reasonable opinion, it appears that the Account Holder has engaged in fraud, theft or other similar illegal activities; or
- (31) any event occurs which with the giving of notice, lapse of time or fulfillment of any condition would be likely to become an Event of Default;
- "Exercise Day"** means the Business Day on which the exercise of the related option becomes effective;
- "Exercise Price"** or **"Strike Price"** means the price per unit of the Underlying specified in the Confirmation, at which the Underlying may be purchased or sold upon exercise of the related option. In the case of debt instruments, any accrued interest shall be added in accordance with the calculation rules applicable for the Underlying, unless otherwise specified in the Confirmation;
- "Expiration Day"** means the last day on which an option can be exercised. If the agreed Expiration Day is not a Business Day, the Expiration Day shall be the following Business Day;

**“Extraordinary Event”** shall have the meaning ascribed to it in Clause 12.2 of the Conditions for Financial Transactions;

**“Facilities”** means overdraft, credit, banking, trade finance facilities and accommodation and margin trading facilities in its widest sense (including such facilities as from time to time amended, modified or supplemented) made available by the Bank to the Borrower and reference to **“Facility”** shall mean any one of them;

**“Facility Documents”** means any or all of the Facility Letters, the Terms and Conditions, any documents specified as such in the relevant Facility Letter (including any Security Document) and any other documents which the Bank may from time to time require to be completed, executed and/or delivered in connection with the Facilities (and any reference to any Facility Document includes that Facility Document as from time to time amended, modified, varied or supplemented and any document which amends, modifies, varies or supplements that Facility Document);

**“Facility Letter”** has the meaning ascribed to it in Clause 1.1 of the Conditions for Credit Facilities and **“Facility Letters”** means any and all of them;

**“Fixed Advance”** means a fixed advance made or to be made available, under the terms of the Facility Documents, by the Bank to the Borrower, in such Acceptable Currency, of such amount and for such period as may be agreed to and accepted by the Bank;

**“Group”** means the Bank and its parent company, and includes all corporations which by virtue of the relevant legislation regulating companies in the relevant jurisdiction in which the Account is opened/ maintained (as may be amended, substituted, renamed or replaced from time to time) which are deemed to be related corporations of the Bank and/or its parent company, and are otherwise associated or affiliated corporations, as well as branches, offices, subsidiaries and member banks of the Bank wherever they are situated and each such entity shall be referred to as a **“Group Entity”**;

**“Guarantee”** means any guarantee, SBLC or any other credit or any other instrument whatsoever from time to time issued or entered into by the Bank for or at the request of the Borrower pursuant to the Facilities under which the Bank incurs a liability to a third party (including, without limitation to, another branch of the Bank);

**“In-the-Money”** in relation to an option means an option which has a positive Intrinsic Value;

**“Instructions”** shall mean any request, application, authorization or instruction, in whatever form and howsoever sent, given or transmitted (whether through any telecommunications, computer or other electronic terminal, system or otherwise) to the Bank and accepted by the Bank:

- (a) of the Account Holder or, where applicable, any one or more persons constituting the Account Holder; or
- (b) which the Bank or an officer reasonably believes to be the request, application or instruction of the Account Holder or, where applicable, any one or more of the persons constituting the Account Holder,

and includes any request, application, authorization or instruction to revoke, ignore or vary any previous request, application, authorization or instruction of the Account Holder. Any reference in the Terms and Conditions to Instructions from or signatures of the Account Holder, however expressed, shall include Instructions from or signatures of the Account Holder's Authorized Signatory(ies), save where otherwise expressly indicated and in the context of a Facility, all references to “Account Holder” above will be to **“Borrower”** instead;

**“Intrinsic Value”** of an option is the amount by which the value of the Underlying, as determined by the Bank, exceeds (in the case of a Call Option) or falls short of (in the case of a Put Option) the Exercise Price;

**“Loss”** means any and all losses, claims, liability, costs, damages and expenses (including, without limitation, foreign exchange losses, all duties, taxes and other levies, interest, service charges and legal costs on a full indemnity basis) and any and all other liabilities of whatsoever nature or description;

**“Material Adverse Effect”** includes a material adverse effect on:

- (a) where a Security Party is company or corporation, its business, operations, property, condition (financial or otherwise) or prospects of the group taken as a whole;
- (b) the ability of any Security Party to perform any of its obligations under the relevant Facility Document; or
- (c) the validity or enforceability of any Account Document or Facility Document or the rights or remedies of the Bank or any Group Entity under the Account Documents or the Facility Documents;

**“Nominee Custodians”** shall have the meaning given to it under Clause 12.6 of the Conditions for Accounts;

**“Notional Quantity”** means, in respect of a Commodities Transaction or a Precious Metal Transaction, the quantity designated as such in the relevant Confirmation as the quantity of the relevant Commodities or Precious Metal by reference to which the amount due to be paid under such Commodities Transaction or Precious Metal Transaction is calculated;

**“Order”** means any offer to enter into a Transaction, or any request, application or order (in a form and manner acceptable to the Bank) of the Account Holder to the Bank (or which the Bank reasonably believes to be the request, application or order of the Account Holder to enter into a Transaction) and includes any request or order to revoke, ignore or vary any previous request or order received and acknowledged by the Bank;

**“Overdraft Account”** means a current Account of the Account Holder with the Bank which the Bank agrees may be overdrawn under the terms of the Facility Documents;

**“Overdraft Advance”** means an overdraft advance on the Overdraft Account made or to be made available to the Account Holder or, as the case may be, the amount of such overdraft advances for the time being outstanding;

**“Potential Termination Event”** means any event which, with the giving of any notice and/or the passing of time and/or the making of any determination by the Bank, would become a Termination Event;

**“Precious Metal”** means gold, silver, platinum, palladium and any other commodities stipulated by the Bank from time to time to be a Precious Metal;

**“Price Disruption Event”** shall have the meaning ascribed to it in Clause 12.2 of the Conditions for Financial Transactions;

**“Put Option”** means the right but not the obligation (except upon exercise) of the buyer to sell to the seller of the Put Option at the Exercise Price a specified quantity of the Underlying;

**“Referee”** has the meaning ascribed to it in Clause 27.2 of the Conditions for Accounts;

**“Reference Currency”** means, in relation to any Facility or provision of Banking Services, the Acceptable Currency specified as such in the relevant Facility Document in relation to that Facility or relevant document for such Banking Services;

**“Reference Market”** means:

- (a) the principal market the rules of which in respect of trading in Underlyings or the computation and publication of the index shall apply pursuant to the agreement by the parties in the Confirmation. In the case of unlisted Underlyings, the applicable rules (settlement, calculation of closing price etc.) shall be specified in the Confirmation; and/or
- (b) the principal market the rules of which in the case of adjustments (e.g. dilution, share split, merger, capital restructuring, market disruption etc.) shall apply pursuant to the agreement of the parties in the Confirmation;

**“Relevant Jurisdiction”** has the meaning ascribed to it in Clause 1.8 of the Conditions for Financial Transactions;

**“Required Collateral”** means such portion of the Collateral which the Bank deems to be required for use as security or credit support for Transactions or the Account Holder's and/or any Security Party's obligations under the Facility Documents, and includes any other

Collateral which the Bank may from time to time, in its absolute discretion, accept from the Account Holder and/or any Security Party;

**"Risk Disclosure Statement"** means the risk disclosures contained in the Terms and Conditions under Section IX below;

**"SBLC"** means standby letter of credit;

**"Secured Indebtedness"** means all present or future, actual or contingent, primary or collateral, joint or several, liabilities of any Security Party and/or the Account Holder to the Bank (whether in its capacity as bank, investment manager, Bank or otherwise) for which the Security Party and/or the Account Holder now are or may at any time be indebted or liable to the Bank on any account and in any currency or currencies whether on account of moneys advanced, bills of exchange, promissory notes, guarantees, indemnities, interest, commission, financing charges or otherwise and whether incurred solely, severally or jointly and including interest thereon to the date of payment and all interest, costs, commissions, financing and other charges and expenses (including legal and other professional fees) howsoever incurred by the Bank in connection with enforcing or obtaining payment of moneys due or liabilities owing to the Bank from the Security Party and/or the Account Holder or in connection with this or any other security held by or offered to the Bank for the same indebtedness or any part thereof or the enforcement of any such security (and where the Security Party is not the Account Holder, further comprises all sums which are or may become payable by the Security Party in connection with any security arrangement relating to the Accounts to which it is a party and all sums hereby secured);

**"Securities"** means bonds, debentures, warrants, certificates of deposit, negotiable instruments, notes, stocks, shares, book-entry securities, other securities (whether marketable or otherwise) and all derivatives thereto and all moneys, rights or properties which may at any time accrue or be offered (by way of dividend, bonus, accretion, redemption, preference, conversion, consolidation, subdivision, option, distribution or otherwise) in respect of the above items; they shall also include any of the above items which are not constituted, evidenced or represented by a certificate or other document but by an entry in the books or other permanent records (including records maintained by electronic means) of the issuer, depository, trustee or other fiduciary, or a Clearing System;

**"Security Documents"** means each and every security document creating or evidencing a security, guarantee or other assurance granted in favour of the Bank in connection with the Facilities or otherwise to ensure the performance by the Account Holder and/or any Security Party of its obligations under any of the Facility Documents and any and every other document from time to time executed to guarantee, secure or otherwise assume the performance of the obligations of the Account Holder and/or any Security Party under or in connection with the Facilities and each of the Facility Documents;

**"Security Party"** means the Borrower and/or any other persons or entities furnishing security for a Facility and/or any party to any Security Document and "Security Parties" means all or any two or more of them;

**"Short Term Facility"** means a short term facility not exceeding 12 months or such other term acceptable to the Bank, granted by the Bank to the Borrower under the Facility Documents;

**"Sub-Custodian"** shall have the meaning given to it under Clause 13.1 of the Conditions for Accounts;

**"Surety Instrument"** means a Guarantee, SBLC or other similar instrument, issued by a bank or other financial institution acceptable to and approved by the Bank, to secure or as subject of security for the repayment of the Total Outstandings;

**"Termination Currency"** means the currency nominated at the relevant time for that purpose by the Bank in its sole discretion;

**"Termination Currency Equivalent"** means, in respect of any amount denominated in the Termination Currency, that Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency ("**Other Currency**"), the amount in the Termination Currency determined by the Bank in a manner consistent with the ordinary conduct of its business as being

required to purchase that amount of the Other Currency as at the relevant Early Termination Date (or if the Early Close-Out Amount is determined at a later date, that later date) and applying such rates of exchange as the Bank determines in a manner consistent with the ordinary course of its business;

**"Termination Event"** means any one of the following:

- (a) the Account Holder fails to pay any sum outstanding under the Account Documents or otherwise to the Bank when due or on demand, or the Account Holder is in breach of any of his obligations under the Account Documents, or any representation or warranty by or on behalf of the Account Holder proves to have been incorrect in any material respect when made or deemed repeated;
- (b) any other indebtedness of the Account Holder is or is declared to be or is capable of being declared due and payable before its normal maturity, or is not paid when due;
- (c) any provision of any Account Document is or becomes, or is alleged to be, for any reason, invalid or unenforceable, or it is or will become unlawful for any party to perform or comply with any of his obligations under such Account Document;
- (d) distress, attachment or any form of execution is levied on or affects any of the Account Holder's assets;
- (e) the Account Holder ceases or suspends, or threatens to cease or suspend all or a substantial part of his business, or transfers or disposes of, or threatens to transfer or dispose of all or a substantial part of his assets, or any governmental or other authority (whether de jure or de facto) takes any step to expropriate, nationalize or compulsorily acquire all or a substantial part of his business or assets;
- (f) the Account Holder (or if the Account Holder is a partnership, any of the partners) is, or is deemed to be, bankrupt or unable to pay his debts under prevailing bankruptcy laws, or stops or suspends, or threatens to stop or suspend, payment of all or a material part of his indebtedness, or begins negotiations or takes any other step with a view to the deferral, rescheduling or other adjustment of all or a material part of his indebtedness;
- (g) a petition is presented, a notice is issued, an order is made or any other step is taken for the bankruptcy of the Account Holder;
- (h) any event occurs which in the Bank's opinion may affect the solvency of the Account Holder or his ability to perform or comply with any of his obligations, including, where the Account Holder is a partnership, any action commenced to dissolve and/or alter the partners or constitution of the Account Holder;
- (i) any security under the Security Agreement or provided by the Account Holder to the Bank is in the Bank's opinion in jeopardy;
- (j) any event occurs which in the Bank's opinion makes it unlawful or impossible or impractical for any party to perform or comply with any of its obligations under the Account Documents, including without limitation, (A) the introduction, imposition or variation of any applicable law, regulation, directive or guideline (whether or not having the force of law) or any change in the interpretation or application thereof, or any acts by a governmental or other authority (whether de jure or de facto) or body relating to, without limitation, best practices guides, exchange controls, restrictions on availability, convertibility or transferability of the relevant currency, or changes in such country's currency (whether for reasons of monetary union or otherwise), freezes, moratoria, expropriations, requisitions, or other involuntary restraints; (B) force majeure, natural or man-made disaster, armed conflict, terrorism, civil unrest, industrial action or other political, economic or social chaos; and (C) any other circumstance beyond the Bank's control; or
- (k) any event occurs which under the laws of any relevant jurisdiction has any analogous or equivalent effect to Clauses (d), (f) or (g) above;

**"Terms and Conditions"** means the terms and conditions set out in this booklet and any others notified to the Account Holder by the Bank as governing the relationship between the Bank and the Account Holder;

**"Total Outstandings"** means at any time (i) all sums (whether principal, interest, fees, costs, charges, expenses, commissions or otherwise) which are or at any time may be or become due from or

owing by the Account Holder and/or any Security Party to the Bank or which the Account Holder has covenanted to pay or discharge, whether actually or contingently, under or in connection with any of the Facilities; and (ii) all other liabilities and moneys which now are or at any time hereafter may be or become due from or owing by, or be incurred by, the Account Holder and/or the Security Party to the Bank, in whatever currency the same shall be denominated or owing, whether alone or jointly with any other person and on any account whatsoever, whether current or otherwise, and whether present, future, actual or contingent and whether as principal debtor, guarantor, surety or otherwise howsoever, including (without limitation) interest and all liabilities in connection with paying, accepting, endorsing or discounting any cheques, notes or bills, or under any Guarantee or SBLC (whether a claim or demand has been made on the Bank under or in connection therewith);

**“Transaction”** means any (a) Securities transaction; (b) foreign exchange transaction; (c) over-the-counter derivative transaction (including a swap, option, cap, collar or floor) relating to an Underlying; (d) forward or futures transaction, (e) Precious Metal transaction; (f) Commodities transaction; (g) combination of one or more of any of the foregoing including any structured products incorporating any or any combination of any of the same; and (h) other transaction as the Bank may from time to time permit;

**“Underlying”** means any (a) currency; (b) interest rates; (c) financial product (including any share, stock, unit trust, mutual fund, debenture, bond, note, bill or other security); (d) Precious Metal; (e) Commodities; (f) indices on any of the foregoing or a group thereof or other benchmark; (g) combination of one or more of any of the foregoing; and (h) other item, instrument or thing as the Bank may from time to time permit;

**“US Dollar(s)” or “USD”** means the lawful currency of the United States of America; and

**“Value Day” or “Settlement Day”** means a date specified in the relevant Confirmation for payment or delivery under a Transaction.

## 2. Interpretation

In the Account Documents,

- 2.1 words importing the singular shall include the plural and vice versa and words importing a gender shall include every gender;
- 2.2 references to the Account Documents shall be construed as references to such documents as amended, modified, varied or supplemented from time to time;
- 2.3 headings are for ease of reference only and shall not be deemed to form part of any context or be taken into consideration in the interpretation thereof or of the Terms and Conditions;
- 2.4 **“including”** means including without limitation (and related expressions shall be interpreted accordingly);
- 2.5 **“person”** includes any individual, company, corporation, firm, partnership, limited liability partnership, joint venture, association, organization, trustee, trust, state or agency of a state (in each case, whether or not having a separate legal personality);
- 2.6 **“affiliate”** means in relation to any person, a subsidiary of that person or a holding company of that person or any other subsidiary of that holding company;
- 2.7 the expression **“Account Holder”**, **“Bank”**, **“Borrower”** and **“Security Party”** shall, where the context permits, include their respective successors and permitted assigns and any persons deriving title under them. The provisions of the Facility Documents shall remain binding on all Security Parties notwithstanding any amalgamation that may be effected by the Bank with any other company or companies and notwithstanding any reconstruction by the Bank involving/ by the formation of and transfer of, all or any of the Bank's assets to a new company and notwithstanding the sale of all or any part of the Bank's undertaking and assets to another company to the extent that the undertakings and agreement herein contained shall remain valid and effectual in all respects and the benefit hereof and all rights hereby conferred upon the Bank may be assigned to and enforced by any such company or companies as if such company or companies had been named herein instead of the Bank and the terms and conditions of the Facility Documents shall apply to all credit

facilities and other accommodation extended to any Security Party by any amalgamated company as aforesaid or the Bank as reconstructed or any company to which the Bank shall have sold all the Bank's undertaking and assets in like manner as if such amalgamated company or the Bank as reconstructed or such company were named herein instead of the Bank;

- 2.8 where the Account Holder or a Security Party (as the case may be) comprises more than one person, the undertakings and obligations of such party set out in the Account Documents or in any Facility Documents or otherwise shall be construed as the joint and several undertakings and obligations of each such person, and all references to such party shall where the context so admits also be construed as a reference to any one or more of the persons constituting the Account Holder or such Security Party (as the case may be);
- 2.9 where the Account Holder is/are a trustee(s) opening and maintaining an Account for the purposes of a trust, as expressly known to and acknowledged by the Bank, any liability of or indemnity given by or any other obligation of the Account Holder shall be on the basis that the Bank has full recourse to all the Assets of such trust as well as any and all amounts standing to the credit of the Accounts;
- 2.10 where the Account Holder is a partnership (other than a partnership that has separate legal personality), references to the **“Account Holder”** shall include all of the person or persons from time to time and at any time carrying on business in the name of such partnership jointly and severally and notwithstanding any changes in the name of the partnership or any change or changes in the numbers of such partnership by death, retirement or introduction of a partner or partners or any other change in the constitution of such partnership and the liabilities of all such persons shall continue and be binding on the Account Holder notwithstanding any such change; and
- 2.11 no person constituting the Account Holder shall be discharged, nor shall such person's liability be affected, by any discharge, release, time, indulgence, concession, waiver or consent at any time given or effected in relation to any one or more of the other persons constituting the Account Holder.

## IV. Conditions for Account Opening and Maintenance

### 1. Mandate

- 1.1 The Account Holder authorizes the Bank at its absolute discretion to open/continue an Account/Accounts in the Account Holder's name and at any time subsequently to open such additional Accounts as the Account Holder may direct or as the Bank may in its absolute discretion deem fit.
- 1.2 The Account Holder authorizes the Bank, in its absolute discretion and until the Bank receives from the Account Holder notice in writing to the contrary:
  - (a) to honour and comply with:
    - (i) all cheques, drafts, orders to pay, bills of exchange, promissory notes and all other orders for payment expressed to be drawn, signed, accepted, endorsed or made by the Account Holder or on behalf of the Account Holder drawn upon or addressed to or made payable at the Bank whether the relevant Account is in credit or debit or may become overdrawn in consequence or otherwise (but without prejudice to the Bank's right to refuse to allow any overdraft or increase of overdraft beyond any specified overdraft limit from time to time); and
    - (ii) any Instructions to withdraw any or all money on any Account or with Instructions to deliver, dispose of or deal with any Securities, deeds or documents or other property whatsoever from time to time in the Bank's possession for the Account whether by way of security or safe custody or otherwise;
  - (b) to act on any Instructions with regard to the purchase or sale of or other dealings in financial products (including Securities) or documents or any foreign currency, to accept and act on any application or request for the issue of any letter of credit, guarantee, indemnity or counter-indemnity and any Instructions in relation to any letter of credit, guarantee, indemnity or counter-indemnity and to act on any Instructions with regard to any other Transactions of any kind or with regard to any of the Accounts in every case whether any of the Accounts is or are in credit or in debit or may in consequence become overdrawn or otherwise (but without prejudice to the Bank's right to refuse to allow any overdraft or increase of overdraft beyond any specified overdraft limit from time to time);
  - (c) to grant overdraft, loan or other Facilities or accommodation for the Accounts or any of them, and by way of security to accept as duly signed or executed on behalf of the Account Holder, any document creating or evidencing any charge, mortgage, pledge or other security interests whatsoever over or in respect of any Securities, deeds, documents or other property whatsoever from time to time in the Bank's possession for the Account or Accounts whether by way of security or safe custody or otherwise, provided that each of the same is signed by or, in the determination of the Bank, appears to be signed by, the Account Holder or the Account Holder's Authorized Signatory(ies); and
  - (d) to accept and act upon monies deposited with or owing by the Bank on the Account at any time or times kept or to be kept in the name of the Account Holder and to repay monies now or hereafter to be deposited with the Bank on the Account together with interest thereon.
- 1.3 Without in any way limiting the foregoing general authority, the Bank is authorized at its absolute discretion and until the Bank receives from the Account Holder notice in writing to the contrary:
  - (a) to carry out Instructions countermanning payment of or to revoke cheques, bills of exchange, promissory notes or Orders or Instructions authorizing payment before it is effected when such Instructions are given and signed by the Account Holder or the Account Holder's Authorized Signatory(ies), or in the determination of the Bank, appear to be signed by, the Account Holder or the Account Holder's Authorized Signatory(ies);
  - (b) to deliver to the Account Holder or a third party, on the Instructions of the Account Holder or the Account

Holder's Authorized Signatory(ies), any financial products, Securities, deeds, proxies and parcels and their contents and property of any description held in the Account Holder's name; and

- (c) to place to the credit of the Account(s) all amounts, including dividends, interest and capital sums arising from financial products (including Securities) received or collected by the Bank for the credit of the Account Holder.

### 1.4 The Account Holder hereby agrees:

- (a) that if the Account Holder gives any Instruction, or several Instructions, the total amount of which exceeds its credit balance or the limit of Facilities granted to it, the Bank may at its absolute discretion, determine whether to execute the Instructions and if so, it may (but shall not be obliged to) carry out any of the Instructions at its absolute discretion, in whole or in part, irrespective of the date they bear or the date of their receipt by the Bank;
  - (b) that the Account Holder shall be liable for all withdrawals from any Account and shall be responsible for the repayment of all Facilities or accommodation which may be granted on any Account with all interest, goods and services tax, commission and other banking charges and expenses (including, without limitation, legal costs on a full indemnity basis) and to assume full responsibility for the genuineness and lawfulness of all Instructions given in connection therewith; and
  - (c) that nothing in the arrangements between the Bank and the Account Holder shall be treated as constituting an implied agreement restricting or negating or in any way prejudicing any lien, charge, pledge, right of set-off or other right that the Bank may have existing or implied by law.
- 1.5 Unless otherwise agreed expressly in writing, the Terms and Conditions shall apply to each and every Account of whatever nature opened with, and all Banking Services made available by, the Bank. Certain categories of business will also be subject to addition terms and conditions imposed by the Bank as well as established rules of banking usage.
  - 1.6 The Account Holder agrees to furnish to the Bank at all times with an up-to-date copy of the Account Holder's Memorandum and Articles of Association, Certificate of Incorporation (or any other constitutional documents) in the case of a company, and the partnership agreement (or any other constitutional documents) in the case of a partnership, and the trust deed (or any other constitutional documents) in the case of a trust, and copies of any relevant resolutions that may from time to time be passed and such other documents as may be requested by the Bank from time to time.
  - 1.7 The Account Holder agrees to furnish to the Bank a list of the names of the directors, shareholders, secretary (where relevant) and/or the authorized signatories of the Account Holder's account(s) with the Bank and with specimens of their signatures and that the Bank be notified immediately in writing and be authorized to act on any information given by any director, the secretary or an authorized signatory as to any changes therein which may from time to time take place and be entitled to act on any such notice and that until receipt of such notice the Bank may continue to treat the last list received as correct.

### 2. Joint Account, Partnership Accounts and Trust Accounts

- 2.1 If an Account is opened in the joint names of more than one Account Holder (whether in their own respective capacities or in their capacities as trustees for a beneficiary), each such Account Holder jointly and severally agrees to the Terms and Conditions and shall be jointly and severally liable for all obligations and liabilities incurred on or in respect of such Account and the Bank shall be entitled to debit that Account at any time in respect of any sum howsoever due or owed to the Bank by any of the persons in whose name the Account is opened or maintained.
- 2.2 Where such Account is operated on the Instructions of one or more Authorized Signatory/Signatories, Instructions from, and documents executed by such Authorized Signatory/Signatories

in accordance with the Specimen Signature(s) Card, may in the Bank's absolute discretion be accepted by the Bank and will be binding on the Account Holders.

2.3 In the event of the death or incapacity of an Account Holder under a joint Account (and the Bank is fully satisfied in its sole and absolute discretion that such death or incapacity has duly been proved by the party relying on it), the moneys for the time being standing to the credit of such Account and all Securities, deeds, documents and other property whatsoever held by the Bank, shall be held in accordance with the nature of the Account Holders' interest in the Account as indicated in the Account Application as amended from time to time.

(a) **Joint-tenants Account:** In the event the Account is held as a joint-tenants Account with right of survivorship, on the death of one joint Account Holder, the surviving Account Holder(s) will, subject to the Bank's right as set out herein and under general law, be entitled to the Account absolutely in equal proportions notwithstanding what the will of the deceased Account Holder (if any) might provide. The Bank is in its sole and absolute discretion entitled to freeze such Account and other property in relation to such Account held by the Bank for such period as the Bank may determine.

(b) **Joint-tenants-in-common Account:** In the event the Account is held as a joint-tenants-in-common Account without any right of survivorship, on the death of one joint Account Holder, his/her allocated proportion of the undivided interest in the Account shall pass to his/her estate in accordance with Singapore's laws of succession. The Bank is in its sole and absolute discretion entitled to freeze such Account and other property in relation to such Account held by the Bank for such period as the Bank may determine.

The foregoing shall be subject to the full and satisfactory production of all requisite evidentiary documentation and performance of such deeds and actions by the surviving joint Account Holder(s) or the deceased Account Holder's legal personal representative(s)/estate as the case may be, as determined by the Bank in its sole and absolute discretion. This shall be without prejudice to any right the Bank may have in respect of such property arising out of any lien, charge, pledge, set-off, counter-claim or otherwise whatsoever or to any step the Bank may deem desirable to take in view of any claim by any person other than the surviving joint Account Holder(s). The liability of each joint Account Holder shall not be discharged or affected in any way by the death, incapacity, bankruptcy or liquidation of any other person.

2.4 Unless otherwise agreed by the Bank, (a) the Orders, Instructions or agreement of any one Account Holder shall be deemed to be the Orders, Instructions or agreement of all the persons constituting the Account Holder; and (b) any statement of account, notice or communication addressed and sent by the Bank to any one person constituting the Account Holder or to the specified mailing address set out in the Account Application shall be deemed to have been addressed and sent to all the persons constituting the Account Holder. Where any such person shall have received or is deemed to have received any such statement, notice or communication, all the persons constituting the Account Holder shall be deemed to have received the same. The Bank shall, in the event of the death of one or more signatories on a joint Account and notwithstanding any agreement between the signatories, regard the surviving signatory or signatories as being fully entitled to operate the Account solely or jointly (as the case may be).

2.5 Payments received or assets delivered in favour of a joint Account Holder alone may be credited to the joint Account unless the Bank has received contrary Instructions in writing.

2.6 The Bank may, without prejudice to any rights and remedies against any other joint Account Holder, settle or vary the liability of or grant time or other indulgence to any of them.

2.7 If the Account Holder is, and an Account is opened in the name of, a partnership (other than a partnership having separate legal personality), any change in the members or constitution of the partnership shall not affect the liabilities of the Account

Holder or any partner signing (or who has signed) the Account Application, all of which shall continue and be binding on the Account Holder and all such partners from time to time constituting the partnership which is the Account Holder. The Bank shall be entitled to debit that Account at any time in respect of any sum howsoever due or owed to the Bank by any of the persons in whose name the Account is opened or maintained or from time to time constituting the partnership which is the Account Holder.

2.8 Where the Account Holder is acting as trustee of a trust:

(a) the Bank will deal with the Account Holder and will be entitled to deal with the Account Holder as a customer as if there were no trust constituted or subsisting and without prejudice to the foregoing, the Bank is not obliged to:

(i) accept cheques or payment orders for clearing or collection for credit to an Account other than those drawn or made in the Account Holder's favour;

(ii) act on any Instructions relating to an Account or any Banking Service other than from the Account Holder; or

(iii) obtain any consent from or see to the execution of any trust for any person;

(b) the Bank may require the Account Holder to provide it with, and the Account Holder will provide the Bank with such information on any settlor, beneficiary or any other person under the trust ("persons under the trust") as may be required by the Bank. If the Account Holder cannot disclose such information due to the Account Holder having entered into any confidentiality agreement in respect thereof, the Account Holder must:

(i) provide the Bank with undertakings in form and substance satisfactory to it and in relation to such matters as the Bank may from time to time require; and

(ii) upon the Bank's request, promptly provide the Bank with information and documents relating to all such persons under the trust;

(c) the Account Holder must observe anti-money laundering legislation of the country where the Account Holder is resident/registered/incorporated and where an Account is located. The Account Holder understands that the Bank may be requested to provide information about an Account or all persons under the trust by any relevant agency or authority, and the Bank has no obligation to ascertain or enquire into the purpose for which such information is requested;

(d) the Account Holder represents and warrants to the Bank (which representations and warranties are deemed repeated on a continuous basis for so long as the Account Holder has any Account or any outstanding Services or transactions with the Bank) that:

(i) the trust is validly constituted in accordance with all Applicable Laws;

(ii) all necessary steps have been taken, all discretions have been properly exercised and the Account Holder has the power to:

(1) open and operate each Account and apply for all relevant Banking Services;

(2) enter into every Transaction, provide any Collateral and enter into the Account Documents, any Security Document and any other document, agreement, instrument or arrangement with the Bank from time to time, under the constitution and under the trust deed or instrument constituting the trust (the "**Trust Deed**");

(iii) the Account Holder is the sole trustee(s) of the trust and no new trustees have been appointed, and no steps have been taken for the Account Holder to resign or be replaced as the trustee(s) and the Account Holder shall forthwith notify the Bank if any such steps are taken;

(iv) there have been no amendments to the Trust Deed which have not been disclosed in writing to the Bank;

- (v) there are no restrictions on the Account Holder's right to be indemnified from the assets of the trust, other than in the express written terms of the Trust Deed or at law. Nothing has occurred to affect that right and the Account Holder is not in default under any provision of the Trust Deed. The Account Holder agrees that any right which the Account Holder may have in respect of reimbursement and/ or recoupment from the assets of the trust shall be fully subordinated to the right of the Bank to repayment of any sums owing by the Account Holder to the Bank and the Account Holder agrees not to exercise such right except with the consent of the Bank and, where the Account Holder exercises such right for any reason whatsoever, the Account Holder agrees and undertakes to pay to the Bank an amount equal to that which is received by the Account Holder from the assets of the trust up to an aggregate amount equal to the Account Holder's liabilities then outstanding;
- (vi) where there is more than one trustee, the Account Holder as trustee(s) shall be jointly and severally liable to the Bank for any of the trust's obligations to the Bank under the Account Documents and any of the Security Documents and any other agreement, document, instrument or arrangement between the Bank and the Account Holder;
- (vii) entering into and performing the terms of the Account Documents and any Security Documents involves no breach of any duty by the Account Holder in relation to the Trust Deed; and
- (viii) no steps or proceedings have been taken for the winding up or termination of the trust;
- (e) if required by the Bank, the Account Holder will provide the Bank with a certified true copy of the Trust Deed and a legal opinion (in form and substance acceptable to the Bank) that confirms the above;
- (f) notwithstanding the provision by the Account Holder to the Bank of any document under sub-clause (e), the Bank shall be deemed not to have knowledge, whether actual or constructive or otherwise, of any provisions in the Trust Deed save and except where the Bank has actual knowledge, in which case such actual knowledge shall be deemed to be limited only to provisions relating to the identity of the settlor, the beneficiaries and trustees and provisions relevant in order for the Bank to determine that the trust has been constituted, the general signing powers of the trustee and its representatives, the purposes of the trust, the reasons for opening an Account and anticipated Banking Services which may be requested for the trust. In particular, the Bank has no duty or obligation to review the terms of the Trust Deed or the powers and duties of the trustee nor to determine whether the trustee(s) is in breach of the provisions of the trust or the Trust Deed and shall be deemed not to have any such knowledge, whether actual or constructive, thereof;
- (g) the Account Holder will not do, or fail to do, any act whereby the Account Holder's right of indemnity out of the assets of the trust, or the Account Holder's right to be subrogated to that right of indemnity, would be prejudiced or diminished in any way;
- (h) any liability of or indemnity given by the Account Holder or any of the Account Holder's other obligations under the Terms and Conditions shall be on the basis that the Bank has full recourse to all the assets of such trust as well as any and all assets and amounts standing to the credit of an Account;
- (i) the Account Holder agrees that, even though the Account Holder is acting as trustee, the Account Holder will personally liable in respect of any liabilities for which Account Holder has no right to be indemnified from assets of the trust or where the Account Holder have right to be subrogated to such right of indemnity, or respect of any breach by the Account Holder of any of its representations or warranties or undertakings above or any of the provisions of the Account Documents or any of the Security Documents;
- (j) the Bank will not be liable to the Account Holder for any Loss arising from or in connection with its having executed or otherwise relied on Instructions that were given by the Account Holder or the Account Holder's Authorized Signatories, whether in breach of trust, duty or any lack of capacity, authority or power; and
- (k) the Bank may treat the Account Holder as trustee of a trust and to treat an Account as a trust Account to be governed by this Clause 2.8 even if the Account Holder has not opened an Account on that basis, or expressly instructed or informed the Bank, that an Account is held in trust. The Bank may refuse to provide the Account Holder with any Banking Service or refuse to enter into any investment or Transaction for an Account if the Account Holder has not provided the Bank with information which it requires or for any other reason whatsoever. The Bank will not be liable or responsible for any Loss which the Account Holder or any persons under the trust may incur as a result of or arising from such treatment or refusal.

### 3. Communications to and from the Bank

#### General Communications

- 3.1 The Account Holder shall direct all communications to the Bank to the latest mailing address, facsimile number or e-mail address notified to him by the Bank for this purpose. The Bank shall (except where hold mail arrangements are in place) direct all communications to the Account Holder to the mailing address or facsimile number or e-mail address stated in the Account Application, as may be updated from time to time. The Account Holder undertakes to keep the Bank informed promptly of any change in any or all of those contact details.
- 3.2 Communications sent by the Bank shall be deemed to be delivered to the Account Holder (or its trustee in bankruptcy or legal personal representative or liquidator or Authorized Signatory(ies)):
- (a) if sent by post: 2 Business Days from the date of posting if addressed to a local mailing address and 5 Business Days from the date of posting if addressed to an overseas address (the date appearing on such communication shall be presumed to be the date of posting);
- (b) if sent by facsimile: at the time of transmission; and
- (c) if sent by e-mail: at the time the communication was sent, and shall be effective on and from the date of, or the date (if any) specified by the Bank in, such notice or demand, notwithstanding the fact that such notice or demand, if sent by post, may be returned through the post office undelivered or, if sent by email, results in non-delivery or any "returned mail" reply message or any error message indicating that the email was not successfully sent to the Account Holder's mailbox.
- 3.3 Any communication from the Account Holder to the Bank shall be deemed to be delivered only on the date it is actually received by the Bank.
- 3.4 The Account Holder hereby agrees to promptly review and examine all statements of account, bank statements or any other statements, printed forms, deposit slips, credit advice notes, Confirmations, Transaction advices and other documents (hereinafter in this Clause referred to collectively as "statement") supplied by the Bank setting out or recording any Transactions on any of the Accounts. The Account Holder agrees that, unless the Account Holder objects in writing to any of the matters contained in such statement within 30 days (or, in the case of a statement of account or bank statement, 90 days) of the date of such statement (or such other period specified or agreed by the Bank), the Account Holder shall be deemed conclusively to have approved and accepted, as true and accurate in all respects, all the matters contained in such statement (including, without limitation, all the entries contained, as well as any reservations mentioned, in the statement supplied by the Bank) which shall, in the absence of manifest error, be conclusive and binding on the Account Holder. The Bank may at any time and in its sole and absolute discretion correct any statement to rectify any error therein which has been proved to its satisfaction or otherwise.
- 3.5 Unless otherwise agreed with the Bank, the Bank's advice verifying the Bank's receipt of any Instructions shall (in favour of the Bank) constitute conclusive evidence of such Instructions unless disputed by the Account Holder within 30

- days of the date of such advice (or such other period specified or agreed by the Bank), save that the Bank may, in its sole and absolute discretion, correct any error.
- 3.6 The Account Holder acknowledges and agrees that the Bank is subject to various regulatory, anti-money laundering, suppression of terrorist financing, suspicious transaction reporting laws and regulations of various jurisdictions (including the jurisdiction in which the Account is opened), as well as the internal policies of the Bank. The Account Holder agrees to provide promptly within such period as the Bank may specify any information requested by the Bank (whether such information is in the Account Holder's control or possession or held by a third party) and deliver within such period as requested by the Bank for the purposes of complying with any such laws, regulations and policies in respect of any of the Transactions, the Accounts and/or the Banking Services.
- 3.7 The Account Holder specifically agrees that:
- (a) where Instructions are given which, in the Bank's reasonable opinion, are contradictory, incomplete or inconsistent, or may be unlawful or contrary to applicable rules and/or regulations, the Bank may, in its sole and absolute discretion, choose not to act on any of such Instructions until fresh, clear and lawful Instructions are given and the Bank shall not be responsible in any manner for the delay or failure to act on such unclear, inconsistent or inappropriate Instructions;
  - (b) any Instructions relating to Transactions, the acquisition or subscription of any Securities or other investment products may not be acted upon by the Bank if, in the reasonable opinion of the Bank, the implementation of such Instructions would contravene or otherwise be inconsistent with any selling or other restrictions imposed in relation to such Transactions, Securities or investment products;
  - (c) unless the Bank has acted with gross negligence, it shall not be held liable for the execution of Instructions (whether given through telephone, facsimile, e-mail or otherwise) which are claimed or subsequently claimed by the Account Holder to be unauthorized;
  - (d) the Bank shall not be responsible for any inaccuracies, omissions, incompleteness of/in the Instructions transmitted via the aforementioned methods; and will not be liable in any manner for any breakdown, disruption or failure of any telecommunications, computer or other electronic equipment or system (whether operated or maintained by the Bank or otherwise) which may result in the Instructions being incomplete or being unable to be transmitted/received or any transmission errors, technical defects, data corruption, viruses, interruptions or delays in transmission, faults, unlawful access, network overload, malicious blockage of electronic access by third parties or other shortcomings on the part of network operators, or any industrial action or dispute;
  - (e) the Bank's duty to verify Instructions issued by facsimile is confined to comparing with reasonable care the signatures of the Account Holder and his Authorized Signatory with the specimens in its records, and it may act on signatures appearing to conform with the specimens. The Account Holder shall bear any Loss arising from the Bank relying upon any forged, altered or unauthorized Instructions or documentation as long as the Bank has not acted with gross negligence;
  - (f) the Bank may at the time, without any liability and without giving any reasons to the Account Holder, refuse to carry out any Instructions. Without prejudice to the generality of the foregoing, the Bank may refuse to so act where the Bank suspects that any fraud and/or illegality and/or impropriety may be involved;
  - (g) the Account Holder hereby consents to the Bank accepting and acting on all Instructions given by him but relayed to the Bank on his behalf through any branch, subsidiary, representative office(s), affiliate or associate of the Group or any related corporation thereof as may be notified to the Bank by the Account Holder from time to time, and hereby agrees that the Bank shall not be in any way responsible for any omissions, misrepresentations and/or other consequences as a result of the Bank acting on those Instructions;
  - (h) any Instruction given to the Bank may not be cancelled, withdrawn or amended unless the Bank, in its absolute discretion, decides otherwise. The Bank has no liability if it does not or is unable to stop or prevent the implementation of the initial instruction; and
  - (i) the Bank may require Instructions to be encrypted and/or to contain such identifying code, test, or digital signature as it may from time to time specify, and the Account Holder shall be responsible for any improper use or misappropriation of such tests, codes or digital signatures or failure to encrypt.
- 3.8 Any standing Instructions in respect of the operation of any Account shall cease to have any effect upon the Bank receiving actual notice of the death, incapacity, bankruptcy or liquidation of the Account Holder or, in the case of joint Accounts, the last surviving joint Account Holder.
- 3.9 Unless the Bank has acted with gross negligence, the Account Holder shall bear fully any consequences of any miscommunication, breakdown in communication, unauthorized entry into e-mail or electronic post boxes, delay, forgery, mutilation or duplication in connection with the use of postal services, telegraph, telephone, facsimile, telex, e-mail, internet or other means of communication or transportation in relation to communications between the parties.
- 3.10 The Bank enters into this Clause 3 for itself and as agent for all offices, other branches, subsidiaries, affiliates and associate companies of the Group. The terms of this Clause 3 and all of the rights of the Bank hereunder shall apply to, and be conferred on, any of the offices or other branches or subsidiaries or affiliate or associate companies of the Group which receives any oral, facsimile or e-mail Instructions, in any part of the world with which the Account Holder maintains an Account, all of which shall be entitled to enforce and enjoy the benefit of this Clause 3 to the fullest extent permitted by law. Nothing in the foregoing shall affect the Bank's right to amend the Terms and Conditions pursuant to Clause 20 of the Conditions for Accounts.
- Hold mail*
- 3.11 The Account Holder may from time to time, instead of receiving correspondence from the Bank pursuant to Clause 3.1 of the Conditions for Accounts give Instructions to the Bank for such correspondence from the Bank to be retained by the Bank or otherwise sent to him (at his risk and cost) in such lawful manner as may be specified or otherwise held by the Bank on the Account Holder's behalf ("**hold mail instructions**").
- 3.12 The Account Holder agrees that a handling charge shall be payable at the Bank's usual rates for holding of mail services and the Bank is further authorized to debit any of the Account Holder's Accounts for all charges relating to such Banking Service and any failure by the Account Holder to make the necessary payment for the aforesaid charges will give the Bank the right to cancel such Banking Service forthwith and the Bank's liability hereunder shall be fully discharged by the Bank destroying or sending to the Account Holder all the correspondence as aforesaid. The Bank is under no obligation whatsoever to administer the Account Holder's funds unless the Account Holder (or an Authorized Signatory) has given, and the Bank has accepted, specific Instructions to that effect.
- 3.13 Any correspondence held by the Bank at the Account Holder's request shall be deemed to be delivered to the Account Holder on the date it bears.
- 3.14 The Account Holder agrees that he must take appropriate measures to keep himself promptly informed of all information contained in the Bank's correspondence to him. The Account Holder takes full responsibility for ensuring that he is advised of such information and releases the Bank from any and all consequences which he may suffer by virtue of the Bank complying with hold mail instructions. The Account Holder agrees that he must collect from the Bank any correspondence retained by the Bank on its behalf within 3 months of the date of such correspondence, failing which the Bank may, at its sole discretion, terminate or continue to provide subject to such conditions as it may determine, such hold mail services. Notwithstanding the foregoing, the Bank may at any time at its sole discretion terminate the hold mail service by giving 7 days' notice to the Account Holder to the address or facsimile number last provided by the Account Holder to the Bank. The Account

Holder agrees that, if such services are terminated, the Bank may, at its sole discretion, send any correspondence it retains on the Account Holder's behalf to the Account Holder to his residential address (where the Account Holder is an individual) or registered address (where the Account Holder is not an individual) or facsimile number or e-mail address stated in the Account Application, as may be updated from time to time or deal with such correspondence in accordance with Clause 3.15 of the Conditions for Accounts. The Account Holder undertakes to indemnify the Bank against any and all Losses, damages, costs, expenses incurred by the Bank (directly or indirectly) as a result of the Bank complying with hold mail instructions or terminating hold mail services.

- 3.15 Notwithstanding any provision herein contained or contained in the Terms and Conditions, the Account Holder agrees that the Bank may in its absolute discretion choose not to retain certain mail for the Account Holder pursuant to these conditions (in particular but without limitation, notices of demands or notices for margin calls regarding the Account(s)), but shall dispatch such mail to the Account Holder in the manner it deems appropriate and expedient, and the Account Holder shall not hold the Bank liable for any consequences which may arise as a result thereof.
- 3.16 The Bank may in its absolute discretion destroy any correspondence held by the Bank, including, without limitation, any instruments or drafts returned or unpaid, or, if so requested by the Account Holder, despatch to the Account Holder such correspondence to the Account Holder's residential address (where the Account Holder is an individual) or registered address (where the Account Holder is not an individual) or facsimile number or e-mail address stated in the Account Application, as may be updated from time to time in accordance with such request or if otherwise not so requested, destroy all such correspondence 1 year after the date of its issue or at any time thereafter. The Bank accepts no responsibility or liability arising out of or in connection with the retention of correspondence for the Account Holder or such destruction or despatch.

#### *Telephone, Facsimile and E-mail Instructions*

- 3.17 All fax Instructions signed by the Account Holder or any of its Authorized Signatories, attorney(ies) or agent(s) must bear signature(s) which, in the Bank's sole and absolute opinion, correspond or, in the Bank's reasonable opinion, appear to correspond to that of the Authorized Signatory(ies) as provided in the signature card(s) and is/are acceptable to the Bank.
- 3.18 The Bank shall be under no duty to enquire into, and may treat as valid (a) all Instructions bearing the signature of the Account Holder, or any of his Authorized Signatories, attorney(ies) or agent(s) given or purportedly given in accordance with the Account Documents and (b) all Instructions given or purportedly given by the Account Holder or any of his Authorized Signatories, attorney(ies) or agent(s) in accordance with the Account Documents notwithstanding any error, misunderstanding, lack of clarity, fraud, forgery or lack of authority (the risks of all of which the Account Holder hereby accepts and acknowledges). The Account Holder agrees that he is under an express duty to the Bank to prevent any fraudulent, forged or unauthorized Instructions being given.
- 3.19 Without prejudice to the above, the Bank may, in its sole and absolute discretion, without having to state the grounds of such refusal and without any liability whatsoever, refuse to act upon any Instructions given by facsimile, telephone or e-mail or such part thereof as the Bank deems appropriate and may, but shall not be obliged to, require the Account Holder or any Authorized Signatory to verify the authenticity of such Instructions or issue written confirmations in respect thereof to the satisfaction of the Bank, prior to the Bank executing such Instructions or any part thereof. In so doing, the Bank shall not be liable or responsible for any Losses, damages, claims, costs or expenses incurred by the Account Holder.
- 3.20 The Account Holder hereby authorizes the Bank (but the Bank shall not be obliged) to record oral Instructions from the Account Holder and/or communications (through any medium, including telephone conversations) between the Bank and the Account Holder and/or any callbacks to the Account Holder made by the Bank by audio recording devices and/or any other recording apparatus and/or in writing, without prior notification to the Account Holder and any such records of the

Bank shall be the property of the Bank and shall constitute conclusive evidence as against the Account Holder of the fact and content of the Instructions or communications. Subject to the preceding sentence, the Account Holder further agrees that any note made by any of the Bank's officers (or, as the case may be, any of the officers of any of the Group's offices in any part of the world) of any oral Instructions or communications with the Account Holder (or its Authorized Signatory(ies)), shall be conclusive and binding evidence of such oral Instructions or communications. The Bank shall not be obliged to cause any of its officers or such officers of such offices or affiliated or associated companies to make any note of any oral Instructions or communications.

- 3.21 Any action the Bank takes or does not take in connection with any Instructions, given by telephone or sent by facsimile or e-mail shall be solely for the account and risk of the Account Holder. The Account Holder undertakes to keep the Bank and its Group Entities, branches, offices, subsidiaries, affiliates, associates, nominees or agents and its and their directors, officers, or agents fully indemnified against any and all Losses, damages, costs, expenses, charges, actions, suits, proceedings, claims or demands (including, without limitation to, legal costs on a full indemnity basis) which may be sustained, incurred or brought against the Bank and/or any of them as a result of or otherwise in connection with acting upon such Instructions given or purportedly given by the Account Holder.

#### *E-mail Instructions*

- 3.22 The Account Holder hereby authorizes the Bank to communicate and exchange information and data via unsecured e-mail, even though he knows that the Bank offers secure communication channels. The Account Holder expressly acknowledges and agrees that:
- (a) the Account Holder shall not send to the Bank any communications from e-mail addresses other than the e-mail address(es) provided to the Bank in writing (as amended from time to time). Any Instructions to change an authorized e-mail address will be processed within a reasonable period and will be effective upon confirmation of receipt of processing by the Bank. The Account Holder acknowledges and accepts that any e-mail from the said e-mail address(es) shall be deemed by the Bank to have been written and sent by the Account Holder regardless of whether the e-mail was actually written and sent by the Account Holder or received by the Bank with its contents unchanged. The Bank does not generally accept any Orders, Instructions, revocations, blocking of Banking Services or changes to the Account Holder's personal particulars or other account information via unsecured e-mail;
- (b) e-mail may be sent across border(s) via open networks which may be accessed by anyone and the following risks (among others) are, therefore, inherent: (i) risks to confidentiality (e-mails and their attachments may be viewed and monitored, unnoticed); (ii) manipulation of sender address and/or content (the content of an e-mail, any attachments and sender details (e-mail address) may be tampered with or falsified, unnoticed); (iii) transmission errors/failures/interruptions may cause e-mails and their attachments to be delayed, misrouted, altered or deleted, etc.; (iv) appearance of viruses, which can be spread (unnoticed) by third parties and cause considerable damage. The Account Holder understands and accepts these and other associated security risks; and
- (c) the Account Holder acknowledges his obligation to, amongst others and shall: (i) be aware of risks and to apply due care in relation to incoming e-mails from the Bank (in case of doubt, the sender of the e-mail must be consulted by telephone); (ii) re-enter in any response e-mail to the Bank the recipient's address (and not use reply-buttons or links); (iii) take appropriate measures if irregularities are detected or suspected (e.g. if there is reason to suspect that another person is misusing the indicated e-mail address or is intercepting, tampering with or falsifying an e-mail purportedly sent by the Bank), and inform the Bank without delay (if there is any doubt about the origin of an e-mail, it should be verified before it is opened or should be deleted unopened); (iv) use and update the Account Holder's own security and system software on a regular

basis (for example, by keeping the operating system and browser(s) up to date, install and update recommended security patches and taking any other standard technical security precautions, such as installation of a continually updated firewall and use of a continually updated anti-virus program).

- 3.23 E-mails received by the Bank are generally handled in the ordinary course of business and during regular business hours of the recipient(s) to whom the e-mail(s) is/are addressed. E-mails are not allotted any priority as to time. The Account Holder acknowledges and accepts the risks of using unsecured e-mail, namely the security risks mentioned above and the risk that the Account Holder's business relationship with the Bank and confidential information pertaining to him may not be secure. As far as is permitted by law, the Bank shall not be responsible for any Losses resulting from the use of unsecured e-mail including any Losses arising from breaches of confidentiality or interference with e-mail. Likewise, the Bank shall not be responsible for any Losses resulting from interruptions in or overloading or failure of IT systems. The Bank accepts no responsibility for (i) prompt handling of e-mails (even if they are time critical or subject to a deadline), (ii) their correctness, completeness or (iii) for any risks in connection with their receipt, sending or transmission. The Bank may refuse to receive e-mail at any time without prior notice, or make the receipt or handling of e-mail subject to additional clarifications or conditions if the Bank considers such actions appropriate to ensure the Bank receives proper and clear Instructions from the Account Holder.
- 3.24 Both parties shall be entitled to revoke this authorization by written notice at any time.
- 3.25 The Account Holder agrees that e-mail addresses provided to the Bank for correspondence may be used for marketing purposes and the Account Holder consents to and authorizes the use by the Bank of any information relating to the Account Holder for the purposes of determining whether to send electronic commercial messages, research reports and other information about products and Banking Services to the Account Holder. The provisions herein shall constitute the Account Holder's consent for the purposes of the provisions of any spam control laws in any jurisdiction. The Account Holder acknowledges that he may opt out of such use at any time in accordance with the relevant laws.

#### 4. Availability of Banking Services

- 4.1 All requests for Banking Services will be subject to the Bank's acceptance of such requests, which will be deemed to occur upon the opening of the relevant Accounts for the requested Banking Services whereupon the Account Holder shall be bound by the Terms and Conditions.
- 4.2 The continued availability of any Banking Services shall be subject to the Bank's consent, in its sole discretion, and to the Account Holder's full compliance with the Terms and Conditions, any other applicable requirements and the fulfillment of such conditions (including the execution of further agreements or documents) as the Bank may require.
- 4.3 The Bank may, in its sole and absolute discretion and without any responsibility or liability to the Account Holder, suspend operations of the Account or any Transaction or Banking Service relating to the Account at any time for any reason whatsoever including but not limited to any circumstances caused by force majeure, acts of God, calamity, natural disasters, industrial actions, power failure, computer errors/breakdown, war, acts of terrorism, civil strife or sabotage or the occurrence of any Extraordinary Event.
- 4.4 Without prejudice to the foregoing, upon the occurrence of an Extraordinary Event, the Bank shall have the sole and absolute discretion to determine any adjustments or action necessary in relation to an Account or the relevant Banking Services or Facilities or the Transactions for or in respect of the Account. This may include (without limitation) (a) altering or varying the quantities of currencies, Securities, Commodities, Precious Metal or instruments or (b) altering or varying the exchange rates or specifications (including prices, spread, expiry dates or any other relevant terms and conditions) of currencies, Securities, Commodities or Precious Metal or instruments bought or sold in respect of such Transactions, or (c) terminating some or all of the relevant Transactions or Banking

Services or otherwise. The Account Holder agrees to be bound by any such adjustment(s) or action.

- 4.5 The Bank shall be entitled at its absolute discretion to round up or round down to two decimal places (if applicable) when calculating any amount to be credited or debited into the Account Holder's Account or when calculating any amount in connection with a Transaction.

#### 5. Deposits and Withdrawals

- 5.1 Deposits and withdrawals can be made by the Account Holder only in such manner as the Bank may prescribe from time to time. Notwithstanding the foregoing, the Bank may, in its absolute discretion and at any time, without liability or disclosing any reasons to the Account Holder, refuse to accept any deposit for or, as the case may be, allow any withdrawal from, the Account, limit the amount that may be deposited or, as the case may be, withdrawn, or return all or any part of the deposit.
- 5.2 Cash deposits (if accepted by the Bank) which are not verified immediately by the Bank are subject to count and verification by the Bank. In the event that the amount on the deposit ticket or receipt ticket differs from that of the Bank's cash count, the Bank's count shall be final and conclusive. Receipts for deposits, and deposit slips, are not valid receipts unless they are validated by the Bank's machine stamp or computer terminal or signed by the Bank's authorized signatory(ies).
- 5.3 The Account Holder shall only be entitled to draw on the Account, subject to the Terms and Conditions, if the Account has a credit balance or the Bank has granted pre-approved Facilities to the Account Holder (subject to the Bank's pre-approved limit). The Account Holder shall not be entitled to draw on another branch, subsidiary, office, affiliate or associate of the Group. Unless otherwise agreed by the Bank, no deposit (in any currency) into the Account, howsoever made, shall be available for withdrawal until the Bank has received actual payment(s) of funds into such Account sufficient for such withdrawal.
- 5.4 If the Account Holder instructs the Bank to credit an Account with the equivalent in the currency in which that Account is maintained (the "**currency of the Account**") of any foreign currency deposits, the Bank will have the right to use such rate of exchange for conversion as the Bank may conclusively determine. The Bank shall be entitled to recover from the Account Holder any Losses (including exchange Losses, funding costs and interest) if the Bank fails to receive the requisite payment subsequently or if the payment in foreign currency deposits received by the Bank is less than the Equivalent Amount in the currency of the Account credited by the Bank.
- 5.5 Withdrawals from any Account shall be made only by the Bank's drafts, cheques (if agreed by the Bank) or telegraphic or other transfers in the currency of the Account. The Bank may, at its absolute discretion, pay the Account Holder in any other currency as may then be in local circulation generally or, upon the occurrence of an Extraordinary Event, any currency which the Bank deems fit. The conversion of the currency of the Account to the currency of payment shall be at such rate of conversion as the Bank, at its absolute discretion, deems appropriate. For the avoidance of doubt, this may be the rate of conversion quoted by financial institutions in any financial centre selected by the Bank in its absolute discretion.
- 5.6 The Bank's assets corresponding to the Account Holder's total credit balance in any foreign currency may be deposited with the Bank's correspondents, affiliates, and/ or associates established either in the country of origin of the relevant currency or in another country. The Account Holder shall bear, in proportion to his interest, all the economic and legal risks and consequences (if any) which may affect all or any of the Bank's assets in the country of origin of the relevant currency or in another country where the funds are invested, which result from (a) measures adopted by these countries or by other countries or (b) any event beyond the reasonable control of the Bank, including events of force majeure, exchange controls, moratorium, insurrection, war, acts of terrorism or other acts beyond the Bank's control.
- 5.7 The Bank shall validly fulfill its obligations arising from Accounts in foreign currencies by crediting or debiting accounts held with the Bank, a correspondent bank or a bank named by

the Account Holder. The Account Holder shall bear the risk of insolvency of any such bank named by the Account Holder.

## 6. Security

- 6.1 Subject to the terms of any other security arrangement entered into by the Account Holder in favour of the Bank, the Bank shall, pursuant to these Terms and Conditions have, as a continuing security, a security interest by way of pledge only (and not by way of charge) over all the Account Holder's Assets which are capable of being pledged for all the Account Holder's liabilities to any office or branch of the Bank on any account or in any respect, whether such liabilities are actual or contingent, primary or collateral, several or joint.
- 6.2 Collateral may be required by the Bank for certain Banking Services.
- 6.3 As security for the Account Holder's obligations to the Bank and the Total Outstandings, the Account Holder and/ or Security Party shall maintain with the Bank at all times sufficient Collateral as determined by the Bank.
- 6.4 Collateral acceptable to the Bank may be a combination of deposits and/or marketable Securities and/or other assets at margins acceptable to the Bank in its sole and absolute discretion.
- 6.5 Any Collateral provided by the Account Holder to the Bank may, at the Bank's sole discretion, be regarded as constituting the Required Collateral for more than one Banking Service at any time.
- 6.6 If any Collateral provided is, in the sole opinion of the Bank, no longer sufficient to meet the Required Collateral, the Bank may take such action as the Bank in its sole and absolute discretion deems fit, including without limitation, realizing such part or all of the Collateral as the Bank deems necessary to satisfy the liabilities of the Account Holder without notice to, or consent from, the Account Holder and or any Security Party.
- 6.7 The Bank also has the unrestricted right (but not the obligation) to conclude or close out such Transactions as it considers appropriate and offset all proceeds net of expenses against any outstanding amount, Losses and costs resulting from such close out. The Account Holder is solely responsible for and shall bear all Losses and costs, whatsoever and howsoever, in respect of such close out and/or actions referred to above. The Account Holder undertakes to remit immediately to the Bank an amount to cover any and all shortfall.
- 6.8 Without prejudice to the foregoing, if the Bank in its sole and absolute discretion deems appropriate, the Bank may require the Account Holder, any Security Party or each of them to deposit additional Collateral acceptable to the Bank to restore the Required Collateral.
- 6.9 The Account Holder shall, and shall procure that the Security Party shall, immediately upon demand by the Bank and at the Account Holder's expense (including, without limitation, the payment of costs, expenses, fees and all charges, including any legal charges and fees incurred by the Bank, and all goods and services and similar taxes payable on such costs, expenses, fees and charges), make, execute, do and perform all such further assurances, instruments, acts or things as the Bank shall from time to time require to perfect, protect or enforce the Collateral or any part thereof and the Bank's title to the security thereby constituted or intended to be constituted by the Collateral, and to give effect to any of the rights conferred on the Bank, including but not limited to any assignments and rights of subrogation.
- 6.10 The Account Holder shall not, and shall procure the Security Party not to, sell, transfer, assign, encumber, pledge, create any further mortgage or charge over, dispose of or otherwise deal with the Collateral or any part thereof or any interest therein.

## 7. Obligation of Parties to Pay

- 7.1 All payments by the Account Holder shall be made promptly to, or to the order of, the Bank on the due date or on demand in the agreed currency in which such payments are due and in immediately available funds without set-off or counterclaim or any restriction or condition and free and clear of and without deduction or withholding for whatever reason. If any deduction or withholding is required by law, the Account Holder shall pay such additional amount so that the net amount received and

held (free from any liability other than tax on his own overall net income) by the Bank shall equal the full amount which would have been received and held had no such deduction or withholding been required to be made. Notwithstanding the foregoing, if at any time any deduction or withholding is made or required to be made from any payment due from the Account Holder to the Bank, the Account Holder shall pay to the Bank such amount as may be necessary to ensure that the Bank receives a net amount equal to the amount which it would have received had no deduction or withholding been required to be made.

- 7.2 If any payment falls due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and all calculations of interest, commission and fees shall be adjusted accordingly, provided that in the case of payment of any Fixed Advance and/or the interest accruing thereon only, if such next succeeding Business Day falls in another month of the year, such payment shall be made on the immediately preceding Business Day and all calculations of interest, commission and fees shall be adjusted accordingly.
- 7.3 The Account Holder shall pay all taxes and levies imposed by law in any jurisdiction on any of his Assets and any of his gains, profits and income to the relevant tax authority(ies).
- 7.4 The Bank may impose such service charge(s) and/or service fee(s) for any Banking Service provided by the Bank or action taken by the Bank in carrying out Instructions relating to the Account, at such rate and on such basis and interval as prescribed by the Bank from time to time.
- 7.5 The Bank may impose a charge if the Account is closed at such time or the Account is designated by the Bank as a Dormant Account or if the Account has a balance below the minimum amount from time to time prescribed by the Bank.
- 7.6 The Account Holder shall pay to the Bank on demand and in accordance with any other applicable terms and conditions, interest, commission, charges, costs and expenses on such overdraft or other Facilities or accommodation granted to the Account Holder and any of its advances outstanding or sums overdrawn on the Account from time to time calculated at such rate and on such periodic rests as the Bank may prescribe.
- 7.7 The Bank shall have the right to alter its interest and commission rates at any time and the Bank may advise the Account Holder thereof by way of a general notice (such as a circular) or in any other form which the Bank's sole and absolute discretion considers appropriate and the Account Holder shall be bound by such rates with effect from the date of such alteration, as determined by the Bank (regardless of whether the Bank has advised the Account Holder thereof) which shall be at least 30 days or more from the date of the Notice.
- 7.8 Any stamp duty, disbursements, taxes, charges, costs and expenses and any liability of any nature, in respect of the Account, any Banking Service or any Transaction shall be borne by the Account Holder.
- 7.9 The Bank may also levy a special service charge from time to time for any extraordinary work performed. Further, if the Account Holder chooses to terminate the Account, the Bank may demand reimbursement of any costs or charges which the Bank had originally agreed to absorb and/or levy a charge for such termination. All such payments shall be made in the same currencies as those in which such costs, charges, expenses and taxes were incurred or charged by the Bank.
- 7.10 The Account Holder will pay to the Bank on demand all costs, expenses, fees and charges (including, without limitation to, legal fees on a full indemnity basis and all goods and services and similar taxes and all other duties payable on such costs, expenses, fees and charges) incurred in or incidental to or in contemplation of the enforcement or protection of any of the Bank's rights or resolution of any dispute relating to the Accounts (whether by judicial proceedings or otherwise).
- 7.11 Unless otherwise specifically agreed, interest on any money due and owing to the Bank including capitalized interest shall at the end of each calendar month be capitalized and added for all purposes to the principal sum then due and owing and shall thenceforth bear interest at the rate stipulated by the Bank and be secured, if security has been provided, and payable accordingly notwithstanding the relationship of the Bank and the Account Holder may have ceased by a demand for moneys

and/or interest herein by the Bank or otherwise until the date full payment is received by the Bank (after as well as before judgment) and all the covenants and conditions expressed or implied herein and in any other applicable terms and conditions and all the powers and remedies conferred by law or hereby or otherwise and all rules of law or equity in relation to the said money due and owing and interest shall equally apply to such capitalized interest and to interest on such arrears.

7.12 Income and/or profit derived from trading in any products, investments and Transactions with or through the Bank may be subject to withholding tax, capital gains tax and/or any other form of taxes of the country of the provider of such products, investments and Transactions or the country in which such products, investments and Transactions are traded. In such event, the Account Holder shall only receive the income and/or profit less any applicable withholding tax, capital gains tax and/or any other form of taxes unless the provider of such products, investments and Transactions agrees to gross-up the income and/or profit received by the Account Holder.

7.13 Except as otherwise agreed to in writing between the Account Holder and the Bank, every payment received by the Bank (whether for credit into any Account or in payment of any sum due to the Bank) in a currency other than that of such Account may be converted by the Bank at the Bank's sole and absolute discretion at such rate of exchange as the Bank may conclusively determine into the currency of the Account for credit to such Account or the currency in which the payment is to be made, as the case may be, and the Account Holder shall bear the cost of such conversion. The Bank is authorized to debit from the Account all costs, charges or exchange Losses incurred by the Bank in connection with such conversion.

7.14 Upon the occurrence of an Extraordinary Event affecting or which may affect the currency of the Account, the Bank may, at the Bank's sole and absolute discretion, convert the currency of the Account to another currency, which is a freely transferable currency at the time, selected by the Bank in its sole and absolute discretion (the "new currency") and every payment for the Account shall be in the new currency.

7.15 The obligation of the Bank to make any payment in respect of any amount owing or due to the Account Holder in a particular currency (including but not limited to repayment of time or other deposits) is subject to such currency being available to the Bank and if the Bank determines that such currency is not available to it for any reason whatsoever (including but not limited to exchange controls, restrictions on availability, convertibility or transferability of the relevant currency, or changes in such country's currency (whether for reasons of monetary union or otherwise), freezes, moratoria, expropriations, requisitions, or other involuntary restraints), the payment obligation of the Bank in respect of such amount will be satisfied by payment of an amount in such other currency selected by the Bank at its sole and absolute discretion and at the Bank's prevailing exchange rate.

7.16 Any discharge of the Account Holder or any Security Party by the Bank shall be deemed to be made subject to the condition that it will be void to the extent that any security, disposition or payment to the Bank by the Account Holder, such Security Party or any other person is set aside, avoided or reduced pursuant to any provision or enactment relating to the bankruptcy, liquidation, reorganization or otherwise of the Account Holder, such Security Party or such other person (whether as a fraudulent preference or otherwise) or proves otherwise to have been invalid, in which event, the Account Holder and such Security Party shall make good to the Bank upon demand such amount as shall have been set aside, avoided or invalidated as aforesaid, and the Bank shall be entitled to enforce these indemnities against the Account Holder or such Security Party subsequently as if such discharge to the extent aforesaid had not occurred.

#### 7.17 **Default in payment of expenses**

If the Account Holder fails or refuses to pay any costs, charges and expenses which he is liable to pay under the Account Documents (including expenses incurred by the Bank's agent/ third parties after the termination of the Account(s)), the Bank may (but shall not be obliged to) pay the same and if such payment is made by the Bank, it shall constitute a debt owed by the Account Holder to the Bank and shall form part of the sum owing to the Bank and be secured on the same basis and be payable immediately on demand.

7.18 Upon any default in payment of principal, interest, fees, costs, charges, expenses or other amounts whatsoever (including, without limitation to, any sum payable under the Terms and Conditions), interest shall be payable thereon (both before and after judgment and subject to the applicable insolvency laws of the Account Holder) from the due date until payment of such overdue amounts at the Bank's prevailing default interest rate. Default interest shall accrue on a daily basis and a 360-day or 365-day year (whichever is applicable depending on the currency concerned in accordance with general banking practice) and shall be due and payable immediately on the Bank's demand but if not previously demanded, shall be paid at the end of each month or period as determined by the Bank from time to time, and if not paid shall itself bear interest accordingly.

## **8. Indemnity**

8.1 The Account Holder agrees to hold the Bank and all of its officers, servants, employees, correspondents, nominees and agents harmless, and shall indemnify each of them promptly on demand on a full indemnity basis, from and against any and all Losses (direct or consequential), claims, demands, actions, suits, proceedings, orders, damages, costs and expenses (including, without limitation to, foreign exchange Losses, all duties, taxes and other levies, interest, service charges and legal costs on a full indemnity basis) and any and all other liabilities of whatsoever nature or description howsoever arising, unless (and only to the extent not inconsistent with any other provision of the Terms and Conditions) arising solely from the Bank's gross negligence or wilful default, which the Bank may incur or sustain from or by reason of the Bank providing any Banking Service including but not limited to:

- (a) the Bank acting upon or carrying out any Instructions purportedly given to the Bank pursuant to the Terms and Conditions or any Facility Documents;
- (b) the Bank using any system or means of transmission, communication, transportation or otherwise in carrying out such Instructions (including, without limitation to, by reason of Loss, delay, misunderstandings, mistakes, distortions or duplications);
- (c) the Bank's provision of Banking Services to the Account Holder (including, without limitation, the Transactions contemplated hereunder and in connection with all or any matters or Transactions in respect of the Account);
- (d) any default in repayment of any advances upon demand or interest accrued thereon or any sum payable under the Terms and Conditions, the Facility Documents, the Security Documents or under any other agreement, security document or any other document whatsoever entered into pursuant to the Terms and Conditions or the Facility Documents or otherwise entered into by the Account Holder in relation to its obligations in favour of the Bank (including but not limited to any Loss or expense sustained or incurred by the Bank in liquidating any of the Bank's time deposits or any foreign exchange contracts, or in taking proceedings hereunder or under any such agreement or security document or other document);
- (e) any change in any existing law, rule, regulation or official directive, circular or guideline relating to the Account or any of the Terms and Conditions;
- (f) the collection of any cheque, bill, note, draft, dividend, warrant, or other instrument presented by the Account Holder for collection or the guaranteeing of any endorsement or discharge of the same and in connection with all or any of the matters or Transactions in respect of the Account;
- (g) the Bank acting hereunder prior to its receipt of written notice of the termination or revocation of the Terms and Conditions by operation of law applicable to the Account Holder;
- (h) the Bank protecting or enforcing or attempting to protect or enforce any rights it may have against the Account Holder pursuant to the Terms and Conditions; and/or
- (i) any breach by the Account Holder of any of the Facility Documents or such other terms and conditions as are applicable to the Banking Services provided or to be provided by the Bank to the Account Holder or Transactions between the Bank and the Account Holder.

- 8.2 The terms of this Clause 8 and all of the rights of the Bank hereunder have been entered into by the Bank for itself and as agent for each of the Bank's servants, employees, correspondents, nominees and agents, all of whom shall be entitled to enforce and enjoy the benefit of this Clause 8 to the fullest extent permitted by Applicable Laws. Nothing in the foregoing sentence shall affect the Bank's right to amend the Terms and Conditions in its sole and absolute discretion pursuant to Clause 20 of the Conditions for Accounts.
- 8.3 If, for whatever reason, any payment under or in connection with the Account Documents is made or recovered in a currency other than the currency in which the sum is expressed to be due under the Account Documents, then, to the extent that the payment to the Bank (when converted at the Bank's own rate of exchange on the date of payment or, in the case of a liquidation, the latest date for the determination of liabilities permitted by Applicable Laws) falls short of the amount unpaid under the Account Documents, the Account Holder shall, as a separate and independent obligation, immediately on demand by the Bank, fully indemnify the Bank against the amount of shortfall and against the cost of such exchange.
- 8.4 Each indemnity constitutes a separate and independent obligation from the other obligations in the Account Documents, and shall give rise to a separate and independent cause of action and shall apply irrespective of any indulgence granted by the Bank and shall continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any sum due under the Account Documents or any other judgment or order.

## 9. Exclusion From Liability

- 9.1 Neither the Bank nor its affiliates, nominees, agents or any director, officer, employee or agent of the foregoing shall be responsible for or liable to the Account Holder for any Loss or damage which may be suffered by the Account Holder in any way in relation to any Account, any Banking Service provided by the Bank or any Transaction covered or contemplated under the Terms and Conditions (including any Transaction undertaken by the Bank pursuant to Clause 12 of the Conditions for Accounts) or for any lost opportunity whereby the value of the same could have been increased or otherwise in connection therewith or for the acts of any broker, custodian, nominee or correspondent appointed by the Bank in good faith or any other persons through whom Instructions are effected, howsoever caused, except for any such Loss or damage which is due to the Bank's own gross negligence or wilful default.
- 9.2 Without limitation to the generality of the foregoing, the Bank shall not be responsible for or liable to the Account Holder for:
- any Drawings made under any lost cheques or cheques on which fraudulent alterations or forgeries have been made or any Loss which the Account Holder may suffer relating thereto; or
  - any delay or Loss or diminution in the value of any funds (including but not limited to any funds credited to the Account) due to any reason whatsoever (including, without limitation, the occurrence of any Extraordinary Event) and whether arising in the jurisdiction in which the Account was opened or in any place in which the Bank has deposited such funds or otherwise.
- 9.3 No delay on the Bank's part in exercising any power of sale or any other rights or options hereunder and no notice or demand which may be given to or made upon the Account Holder by the Bank with respect to any power of sale or other rights or options hereunder, shall constitute a waiver thereof, or limit or impair the Bank's right to take any action or to exercise any power of sale or any other rights or options hereunder without notice or demand, or prejudice the Bank's rights as against the Account Holder in any respect or render the Bank responsible for any Loss or damage arising therefrom.
- 9.4 The Bank may grant time or other indulgence to the Account Holder or the Borrower or any of them or any other persons, without impairing or affecting in any way any of the Bank's rights as against the Account Holder or the Borrower or any such other persons.
- 9.5 Without limitation to the generality of the foregoing, the Bank shall not be liable to the Account Holder for the unavailability of funds credited to the Account(s) or for any Loss, damage, delay

or failure to perform any obligations arising from or in connection with the occurrence of any Extraordinary Event which restricts or controls the availability, convertibility or transfer of any funds of the Account Holder or any other person, whether before, on or after maturity and whether in the jurisdiction in which the Account was opened, in the country of origin of the currency of such funds or elsewhere. On the occurrence of any such Extraordinary Event, the Bank may in its sole discretion (but shall not be obliged to) discharge its obligations with respect to such funds by paying to the Account Holder or to the Account Holder's order such funds at any time (whether before, on or after maturity), in any currency, at any rate and in any manner (whether by way of draft or cash or by applying such funds towards satisfaction of any of the obligations of the Account Holder or any person to the Bank), in each case as the Bank may determine in its sole and absolute discretion. The Account Holder agrees that any such payment or application of such funds by the Bank in accordance with this Clause shall constitute good and valid discharge of the Bank's obligations to the Account Holder with respect to such funds.

- 9.6 No other subsidiary or affiliate or associate or member of the Group shall be responsible or liable for any of the liabilities or obligations of the Bank hereunder or for the Bank's failure to meet the Account Holder's demand for the withdrawal of any amounts from the Account arising from any cause whatsoever whether or not beyond the control of the Bank. Without limitation to the generality of the foregoing, the Bank shall not be liable for any acts, errors, neglect or defaults, actions or omissions, insolvency or failure in business of any of the Bank's correspondents, contractors, sub-agents or other agents or of their employees.
- 9.7 The Bank shall not be liable for any Loss or damage suffered by the Account Holder or any other party should a cheque, in respect of which: (a) Instructions to stop or countermand payment had been given by the Account Holder; and (b) the Bank had in good faith followed the usual procedures for handling such Instructions, nevertheless, for any reason whatsoever, be paid or certified by the Bank. The Bank shall be entitled to debit from the Account Holder's Account the full amount of any such cheque paid notwithstanding such Instructions.
- 9.8 All obligations of the Bank and the performance thereof by the Bank shall be exercised by, without limitation to the generality of the foregoing, the Bank and its correspondents and agents. The Bank, its correspondents and agents shall not be liable for mutilation, interruptions, omissions, errors or delays in the issue or remittance of drafts, occurring as a result of events beyond the control of the Bank (including, without limitation to, circumstances caused by force majeure, acts of God, calamity, natural disaster, industrial actions, power failure, computer errors/breakdown, war, acts of terrorism, civil strike, sabotage or the occurrence of any Extraordinary Event).
- 9.9 The Account Holder shall be responsible and liable for any Loss(es) suffered by the Bank and/or any damage resulting from the legal incapacity of himself or of a third party. The Account Holder shall also be liable in all cases for any damage or Loss resulting from the disability or incapacity of whatever nature on the part of the Account Holder's Authorized Signatory(ies) or representative(s) or other third party(ies).
- 9.10 In the event of damage resulting from the non-execution or late execution of Instructions (with the exception of Instructions relating to transactions on a Reference Market by the Bank due to the Bank's own fault), the Bank's liability shall be limited to an amount equal to the loss of interest.

## 10. Right Of Set-Off and Consolidation

- 10.1 The Account Holder agrees that without prejudice to and in addition to any rights the Bank may be entitled to by law or otherwise and to the extent permitted by law:
- the Bank may at its discretion at any time and from time to time without notice to the Account Holder, combine, consolidate or merge the balances on all or any of the Accounts of the Account Holder with the Group or any account with any Group Entity held at any branch of the Group or with any Group Entity (notwithstanding that any fixed deposit has not matured or any of the conditions applicable to any Account have not been satisfied);

- (b) the Bank may at any time and without any prior notice or demand forthwith transfer and/or debit all or any part of any balance standing to the credit of any Account (including non-currency Accounts) in the name of the Account Holder or any Associate of it (whether such Accounts are held by the Account Holder or the Associate, as the case may be, individually or jointly (whether as joint-tenants or joint-tenants-in-common)) with any branch of the Bank or any account with any Group Entity (the “**Deposits**”) and apply or set-off the same against indebtedness and liabilities, whether actual, contingent, present or future (including, without limitation to, any Early Close-Out Amount, margin calls, all costs, charges, fees and expenses incurred by the Bank and all goods and services tax and other duties and taxes payable thereon) of the Account Holder, and/or the Borrower or any of their Associate(s) to the Bank or any Group Entity and/or of any Borrower to the Bank or any Group Entity for which the Account Holder, the Borrower or any of their Associate(s) is/are liable, whether as surety or otherwise, whether owing individually, jointly or jointly and severally, present or future, actual or contingent on any current or other account and all interest and bank charges (hereinafter collectively referred to as the “**Liabilities**”);
- (c) the authorization given in this Clause is irrevocable so long as any Liabilities are due from the Account Holder, the Borrower or any of their Associate(s) to the Bank or any Group Entity. Such debiting shall not be deemed to be a payment of the amount due (except to the extent of any amount standing to the credit of the relevant account of the Account Holder or Associate) or a waiver of any Event of Default relating to the Facilities;
- (d) if such debiting causes an Account of the Account Holder to be overdrawn, interest shall be payable by the Account Holder accordingly on the overdrawn amounts;
- (e) if any Liabilities are unascertained, the Bank may in good faith estimate them and set-off in respect of that estimate; and
- (f) none of the Account Holder, the Borrower, any other Security Party or any Associate may set-off any amount owed by it to the Bank or any Group Entity against any indebtedness or liabilities owed to it by the Bank or any Group Entity.
- 10.2 If any of the Liabilities is in a different currency from the amounts standing to the credit of such Accounts of the Account Holder or any Associate over which the Bank may exercise a right of set-off, the Bank is hereby authorized to effect any necessary conversion and/or convert either currency, at such rate of exchange as it may conclusively determine, in order to exercise such right of set-off.
- 10.3 The Account Holder and each Associate hereby authorizes the Bank (including on behalf of any Group Entity) to extend or renew any of the Deposits from time to time at the Bank's sole discretion and without reference to the Account Holder or any Associate and, for the avoidance of doubt, the Account Holder and each Associate confirms that in the event of the extension or renewal of the Deposits any renewed deposit advice or other renewed evidence of deposit shall continue to be held by the Bank or any Group Entity on the same terms as the original advice or other original evidence of deposit.
- 10.4 Where the Account Holder is a partnership, each partner hereby authorizes the Bank at any time and without notice to combine or consolidate all or any accounts whether in any partner's individual name or in the name of the partnership with any liabilities of the Account Holder to the Bank and set-off or transfer any sums standing to the credit of any one or more such accounts in or towards satisfaction of any liabilities of the Account Holder to the Bank.
- 10.5 In addition and without prejudice to the Bank's general right of set-off under law, herein or otherwise, the Bank and each Group Entity is deemed to have exercised its right of set-off upon the happening of any of the following events:
- (a) the crystallization of any floating charge created by the Account Holder and/or any Associate and/or the Borrower over his property, assets or undertaking;
- (b) the presentation of a bankruptcy or winding-up petition, a petition for the appointment of a judicial manager or similar officer in relation to the Account Holder or any Associate, or other similar process, or the passing of a resolution to effect the same; and
- (c) any execution is issued against or levied upon any of the Accounts or any account held with any Group Entity.
- 10.6 The Bank has the right of lien on all assets it may hold from time to time for any Account of the Account Holder, whether in the Bank's own custody or placed elsewhere in the name of and/or under the control of a third person, in respect of all claims which the Bank may have against such Account Holder, regardless of the due dates of such claims or the currencies in which they are expressed and whether or not the Facilities have been granted unsecured or against security.
- 10.7 If any security or payment to the Bank or any Group Entity is avoided or reduced by virtue of any law relating to bankruptcy, insolvency or liquidation for the time being in force, any settlement, assignment, payment, release or discharge between the Bank and/or any Group Entity and the Account Holder shall be wholly void and the Bank and any Group Entity shall be entitled to exercise all its rights against the Account Holder and/or Associate as if such settlement, assignment, payment, release or discharge had never been granted, given or made.
- 10.8 The Bank enters into this Clause 10 for itself and as agent for each Group Entity, and the terms of this Clause 10 and all of the rights of the Bank hereunder shall apply to, and be conferred on, those offices, and affiliate or associate companies of the Group, all of which shall be entitled to enforce and enjoy the benefit of this Clause 10 to the fullest extent permitted by law. Nothing in the foregoing sentence shall affect the Bank's right to amend the Terms and Conditions in its sole discretion.
- 10.9 The Account Holder enters into this Clause 10 for itself and as agent for all its Associates, and the terms of this Clause 10 and all of the obligations on, the Account Holder hereunder shall apply to, and be binding on, any of those Associates, all of which shall be bound by this Clause 10 to the fullest extent permitted by law.
- 11. Account Holder's Undertakings**
- 11.1 So long as the Account(s) is/are maintained with the Bank, the Account Holder undertakes:
- (a) to pay on demand to the Bank the balance which in any manner whatsoever shall for the time being be owing in respect of money advanced or paid to the Account Holder or for the Account Holder's use or charge incurred on any Account either actually or contingently or in respect of negotiable instruments drawn, accepted or endorsed by or on the Account Holder's behalf and discounted or paid or held by the Bank either at the Account Holder's request or in the course of business or otherwise or in respect of moneys which the Account Holder shall become liable to pay to the Bank in any manner whatsoever, including, without limitation, moneys owing or liabilities incurred by the Account Holder on contracts for the sale or purchase of currency notes and coins and whether any such moneys or liabilities shall be owing or incurred by the Account Holder alone or jointly with any other person, corporation or company, together with interest at such rate as the Bank may from time to time notify the Account Holder in writing or in such other manner as the Bank may deem fit with such periodical rests as the Bank may decide based on the number of days elapsed and a 365-or 360-day year (as may be decided by the Bank), fees, commission, usual or customary bank charges and all other costs and expenses in connection therewith;
- (b) to conduct his business in accordance, and comply at his/her/its own cost, with all Applicable Laws binding upon him and his operations and/or assets and shall promptly pay all taxes assessed against him and/or any of his assets;
- (c) where applicable, to provide the Bank with the Account Holder's financial statements (including the Account Holder's last audited balance sheet and profit and loss account) and all other information and documents, as may reasonably be required by the Bank promptly after any request by the Bank for the same;
- (d) to promptly give notice to the Bank of the occurrence of any Event of Default, Termination Event and/or Potential

Termination Event or any event which may potentially constitute an Event of Default;

- (e) to execute such documents, provide such security to the Bank and do such acts or deeds at the Account Holder's own cost as may be required by the Bank at any time in connection with any Banking Service and/or Transaction between the Account Holder and the Bank; and
- (f) to promptly notify the Bank in writing of any change in the Account Holder's particulars (including, without limitation, the Account Holder's address and telephone, facsimile and telex numbers and the Account Holder's specified e-mail address, if any).

11.2 The Account Holder agrees that:

- (a) the Bank shall have sole and absolute discretion to use such agents or correspondents as the Bank deems fit to carry out or procure or implement the Transactions which arise in the course of providing the Banking Services to the Account Holder; and
- (b) any action, or omission taken or suffered, and any delay in acting, by the Bank, or by any of the Bank's agents, employees, servants or correspondents, under or in connection with any relevant credit or instruments, documents or property, if in good faith, and in conformity with such foreign or domestic laws, customs or regulations as the Bank or any of the Bank's agents or correspondents may deem to be applicable thereto, shall be binding upon the Account Holder.

11.3 Each of the employees and servants of the Bank shall be entitled to enforce and enjoy the benefit of this Clause 11 to the fullest extent permitted by Applicable Laws. Nothing in the foregoing sentence shall affect the Bank's right to amend the Terms and Conditions in its sole discretion.

## 12. Securities Custody Account

12.1 In relation to any Custody Account of the Account Holder the Bank will receive and hold in the Custody Account such Securities which the Account Holder may request to be deposited into the Custody Account by the Account Holder with the Bank and accepted by the Bank for custody in the Custody Account. For the avoidance of doubt, the Bank shall have the absolute discretion not to accept any or all of the Securities requested by the Account Holder for deposit in the Custody Account. Securities held in the Account Holder's Custody Account shall be referred to herein as "**Custody Securities**".

12.2 In relation to the Custody Securities, the Bank shall provide the following custody services (the "Custody Services"):

- (a) the physical care of the Custody Securities, where applicable;
- (b) the collection of interest, dividends and principal amounts on maturity or sale of the Custody Securities;
- (c) the payment of moneys so collected to such account as may be designated by the Account Holder in accordance with the Account Holder's instruction, but the Bank shall not be responsible for claiming any other distribution or entitlement or benefit the Account Holder may have on the Account Holder's behalf, or for taking up or exercising any conversion rights, subscription rights or other rights of any nature, dealing with take-over or other offers or capital re-organizations, unless otherwise instructed by the Account Holder and where such instructions are received within the relevant time frame pertaining to such conversion rights, subscription rights or other rights of any nature, dealing with take-over or other offers or capital re-organizations. In the absence of express instructions from the Account Holder, the Bank may at its discretion undertake the foregoing actions, provided that it shall not be under any obligation to do so. The Bank may execute in the Account Holder's name whenever the Bank deems it appropriate such documents and other certificates as may be required to obtain the payment of income from the Custody Securities or the sale thereof;
- (d) the furnishing of periodic statements in respect of the Custody Securities;
- (e) the notification to the Account Holder of redemptions, right issues, bonus issues and matters in relation to corporate changes; and

- (f) the provision of such other Custody Services as the Bank and the Account Holder may from time to time agree.

12.3 The Bank is hereby authorized to take such steps it may consider in its absolute discretion expedient to enable it to provide the Custody Services in accordance herewith and, without limitation; the Bank is authorized (but not obliged) to exercise the following powers:

- (a) to open and maintain one or more Accounts in the name of the Account Holder;
- (b) to exercise any voting and other rights pursuant to the Account Holder's Instructions attaching to or derived from the Custody Securities (provided that the Bank shall be under no obligation to attend any meeting or exercise any voting rights);
- (c) to comply with all Applicable Laws including the constitution, rules, regulations and by-laws of any stock exchanges, clearing houses, securities trading or central depository systems or regulatory authorities affecting any dealing functions or which impose or purport to impose on a holder of any Custody Securities a duty to take or refrain from taking any action in connection with any such Custody Securities or with any payment or distribution in respect of any Custody Securities;
- (d) to use the services of any agent of the Bank's choice (including the appointment of a sub-custodian on such terms as the Bank considers appropriate, including terms which allow the sub-custodian to sub-delegate the performance of some or all of the sub-custodian's duties);
- (e) to register documents of title and other instruments relating to such Custody Securities in such name(s) and to keep the same in such location(s) including overseas location(s), and/or to deliver the Custody Securities to any authority as now or hereafter required by law or the rules and regulations of the exchange or market or clearing house in question on the Account Holder's behalf as the Bank shall think fit. The Bank may delay in procuring any such registration or delivery for such period as the Bank shall think fit. The Account Holder acknowledges that prior to the Bank becoming the registered owner of the Custody Securities, the Bank may not be in a position to carry out all of its obligations as custodian under these Terms and Conditions, and the Bank shall not be liable for any loss that the Account Holder may suffer or incur as a result of the Bank (or such person whose name the Custody Securities are to be registered in) not being the registered owner;
- (f) to return to the Account Holder such Securities being securities or other documents which may not have the same serial number or identification as those Custody Securities originally delivered to or acquired by the Bank;
- (g) to commingle such Custody Securities with the Securities of other persons;
- (h) to request payment of, collect and receive all interest, dividends, payments or other distributions in respect of any Custody Securities and, in connection therewith, the Account Holder shall provide such indemnities as the Bank may in its absolute discretion require;
- (i) to surrender any Custody Securities against receipt of moneys payable at maturity or on redemption if called prior to maturity or against other Custody Securities or such other form of investments delivered upon any exchange of the aforementioned Custody Securities;
- (j) where moneys are payable in respect of any Custody Securities in more than one currency, to collect them in such currency as the Bank may in its absolute discretion determine;
- (k) to exchange any Custody Securities in interim or temporary form for other Securities or such other form of investments in definitive form and (where applicable) to deliver physical scrips to any central depository or other similar system set up for the purpose of scripless trading;
- (l) in the case of Custody Securities in scripless form, to effect the acquisition or disposal of such Securities through the Account Holder's account or sub account maintained with any central depository or other similar system set up for the purpose of scripless trading;

- (m) to deliver the documents of title and any other instruments relating to such Custody Securities to the Account Holder at the risk of the Account Holder;
- (n) to comply with any Applicable Laws which imposes a duty to take or refrain from taking action in connection with such Custody Securities; and
- (o) in relation to any distributions in respect of a Custody Security in the Custody Account of the Account Holder which provides a right to elect such distributions to be received either in the form of cash or in kind, to elect at the Bank's absolute discretion, unless the Account Holder has otherwise expressly instructed the Bank in writing prior to the Bank's election, whether to receive such distributions in cash or in kind on the Account Holder's behalf.
- The Bank shall be entitled to deduct from payments received on behalf of the Account Holder all retrocessions received from any Custody Securities in accordance with market practice, and all present or future direct and indirect taxes and other fiscal charges levied in Singapore or elsewhere prior to the payment of such amounts to the Account Holder.
- 12.4 The Account Holder hereby represents and warrants that the Custody Securities or any applicable title or other documents submitted to the Bank for deposit in the Custody Account are authentic, valid and/or correct in every respect at the time of deposit and at all times whilst such Custody Securities are held in the Custody Account, and (without limitation to the generality of this Clause 12 of these Conditions for Accounts) the Account Holder hereby agrees to indemnify the Bank against any liabilities, Losses, damages, costs and expenses (including legal expenses) that the Bank may incur or suffer in reliance due to or arising out of the above warranties and representations being untrue or incorrect in any respect.
- 12.5 The Account Holder acknowledges and agrees that the Bank is not at any time under any duty, obligation or responsibility to supervise the investment of or to advise or make any recommendations for the sale, purchase or other disposition of any Custody Security unless specifically provided for by way of a separate mandate and agreement with the Account Holder.
- 12.6 The Account Holder acknowledges and agrees that the Custody Securities may at the Bank's absolute discretion consider appropriate be at any time registered in the name of the Account Holder, the Bank or such person as the Bank may direct, including without limitation the Bank's appointed nominee company or any securities exchange, depository or depository agent (the "**Nominee Custodians**").
- 12.7 The Bank will endeavour to forward, as soon as practicable after its receipt thereof, notices or other communications received in respect of the Custody Securities to the Account Holder at the address registered in the Bank's books unless otherwise instructed by the Account Holder in writing. Except in the case of wilful default, neither the Bank nor the Nominee Custodian shall be under any responsibility for any failure to forward such notices or communications correctly or promptly or in sufficient time for instructions to be given with regard to any matters referred to in such notice or communication.
- 12.8 In the absence of prior contrary Instructions from the Account Holder, the Bank is hereby authorized with full liberty for and on behalf of the Account Holder to exercise all rights or satisfy any liabilities arising from or in respect of the holding of Custody Securities as the Bank may think fit, debiting any of the Account Holder's Accounts with the costs involved, and the Bank shall not be under any liability to account for any Loss occasioned by the exercise of such rights or the satisfaction of such liabilities or the failure to do so.
- 12.9 All Instructions with respect to the Custody Account will be signed by the Account Holder or an Authorized Signatory provided that the Bank may at its absolute discretion (but shall not be obliged to) rely upon and act in accordance with any oral instructions (and for the avoidance of doubt and without limitation to the generality thereof, the provisions of Clause 3 (Communications to and from the Bank) of these Conditions for Accounts shall apply in respect of such oral instructions). The Bank's liability will only extend to wilful default or gross negligence (a) in executing, (b) in failing to execute, or (c) the making of any mistakes in the execution of any Instructions or purported Instructions.
- 12.10 In relation to the Custody Services provided or to be provided by the Bank, the Account Holder agrees to pay to the Bank the fees in accordance with the Bank's published scale of fees in force at the relevant time and the Terms and Conditions (or such other terms and conditions applicable to Custody Accounts as the Bank may specify from time to time). Without prejudice and in addition to the foregoing, separate custodian or safe-keeping fees may be charged by the Bank to the Account Holder for the Bank's handling of Custody Securities which are in physical scrip form.
- 12.11 The Bank is hereby authorized by the Account Holder to execute, as custodian, any necessary declarations or certificates of ownership under any tax laws now or hereafter in effect. Without limitation to the generality of this Clause 12 of these Conditions for Accounts, the Account Holder agrees to be responsible for and indemnify the Bank from and against all Losses, liabilities, claims and demands arising and against any expenses, taxes and other charges which the Bank is required to pay in connection therewith.
- 12.12 Without limitation to the generality of Clause 9 (Exclusion from Liability) of these Conditions for Accounts, where the Bank holds in the Account Holder's Custody Account Custody Securities registered in the name of the Bank, the Nominee or agents, the Account Holder agrees and undertakes to indemnify and hold the Bank, the Nominee and/or agents (as the case may be) harmless from any liability or penalty whatsoever as holder of record.
- 12.13 The Bank is hereby authorized at the Bank's discretion, in relation to Custody Securities deposited with the Bank, to re-deposit with correspondent banks or in any central clearing facility or securities depository, Sub-Custodian, Nominee or agent (including but not limited to any depository agent) selected by the Bank in the name of the Bank or such person as the Bank may direct, but for the Account Holder's account and at the Account Holder's sole risk. The Bank shall not be liable or responsible for any act or omission of, or for the insolvency, fraud, default, negligence or dissolution of such correspondent banks, any central clearing facility, securities depository, Sub-Custodian, Nominee or agent (including but not limited to any depository agent) or any of its officers, employees, servants or agents in connection with the Custody Securities and any losses which the Account Holder may suffer or incur arising from or in connection therewith. Custody Securities deposited with the Bank or held by any third party in the name of the Bank or such person as the Bank may direct may be held on a fungible and/or tangible basis or commingled with securities belonging to other parties and will not be identified with any beneficial owner. The Account Holder understands and agrees that identification by distinctive numbers of Securities owned by the Account Holder may not be possible and that the Account Holder's interests in such Securities may not be identifiable by separate certificates or other physical documents or equivalent electronic records. In any such case the Bank shall maintain its own account(s) recording the Account Holder's interests in such Securities.
- 12.14 The Account Holder acknowledges and agrees to the Custody Securities being held on a fungible basis and agrees to accept Securities of the same class or denomination as the Securities in place of the Custody Securities deposited with the Bank. The Bank shall keep a separate record in its books of all Custody Securities received and held by it from time to time for the Account Holder's account and shall arrange for all Custody Securities to be held in safe custody in such manner and in such name as the Bank may in its absolute discretion determine. Custody of the Custody Securities may be held on the basis that they are capable of being separately identified as belonging to or being attributed to the relevant client or otherwise (as solely determined by the Bank). If custody is held on the basis that it is not capable of so separately identified, the Custody Securities will be pooled with securities held by the Bank (or the relevant Sub-Custodian or Nominee) for other customers, such that those Custody Securities which in the opinion of the Bank are of the same nature or category are held together on a commingled basis. In this situation, the Account Holder's interest in the Custody Securities may not be identifiable by separate certificates, or other physical documents or equivalent electronic records, but the Bank shall maintain a record of the Account Holder's interest in the Custody Securities.
- 12.15 The Account Holder acknowledges the risk that, as the Custody Securities may also be held with a Sub-Custodian outside

Singapore (as provided in Clause 13 of these Conditions for Accounts), the Custody Securities would be subject to the laws and regulations of the jurisdiction in which such Custody Securities are custodied.

- 12.16 To the extent that the Bank or Sub-Custodian has settlement obligations for its respective Account Holders on an aggregate or amalgamated basis, the Account Holder acknowledges an inherent risk of the Account Holder's Custody Securities being applied for some other of such Account Holder's settlement obligations and vice versa where settlement default would otherwise have arisen if the Custody Securities were held on a discrete basis. The Account Holder correspondingly (i) undertakes to indemnify and hold the Bank harmless against any and all costs, expenses, losses and damages as a result of Securities which are held fungibly being used to settle delivery obligations ultimately of the Account Holder when the Account Holder in fact did not have the required or required quantities of such Securities to its credit with the Bank; and (ii) irrevocably authorizes the Bank, at the Account Holder's cost, to borrow Securities (if necessary) and to effect settlement of any transaction in Securities on behalf of the Account Holder to cover any transaction in Securities which the Account Holder may have a shortfall in Custody Securities to effect full settlement, by reason of its own Custody Securities having been prior applied in favour of some other Account Holder or Account Holder's settlement obligations as aforesaid, but subject to the benefit of any indemnity ultimately from such other Account Holder or Account Holders of the Bank.
- 12.17 The Account Holder agrees that any and all Custody Securities held by or deposited with the Bank or its Sub-custodians, Nominees or agents are at the Account Holder's own risk. Unless expressly provided in these Terms and Conditions, the Bank's duty in respect of the custody of Custody Securities under this Clause 12 shall be limited to acting as bare trustee and to exercise good faith in respect of any action or inaction in relation to such custody. The Bank is under no duty to examine or verify the validity of the ownership of or title to any Custody Securities and shall not be liable in respect of any defect in ownership or title. The Bank need not maintain any insurance for the Account Holder's benefit. All collections of funds or other property paid or distributed in respect of Custody Securities will be made at the Account Holder's own risk. The Bank will not be responsible for any act or omission, or for the solvency of any broker or agent selected by the Bank to effect any transaction for or in relation to the Custody Account. The Account Holder represents and warrants his authority to deposit in the Custody Account all Securities received by the Bank hereunder and to give Instructions relative thereto.
- 12.18 Either the Bank or the Account Holder may terminate the Custody Account at any time by giving 14 days' prior written notice or such longer period as required by the relevant correspondent bank or in any central clearing facility or securities depository, Sub-Custodian, Nominee or agent (including but not limited to any depository agent) selected by the Bank in respect of which the Account Holder's Custody Securities have been redeposited.
- 12.19 Upon termination of the Custody Account, the Bank will, subject to the release and discharge of any security created by the Account Holder over any of such Custody Securities in favour of the Bank, deliver directly to the Account Holder in the manner as directed by the Account Holder and notified to the Bank within 3 days of the relevant termination date, at the Account Holder's own risk and cost all Custody Securities then in the Custodian Account forthwith upon the Account Holder satisfying all amounts due and payable to the Bank under or in connection therewith. In this connection, the Account Holder acknowledges the Bank's right to exercise its lien in respect of the Custody Securities until payment in full is made to the Bank. In the event the Account Holder fails to provide clear and feasible delivery instructions within 3 days of the relevant termination date, the Bank shall have the right, exercisable in its sole discretion to realize the Custody Securities and return the proceeds of sale (net of any fees and charges) to the Account Holder.
- 12.20 The Bank shall not be bound to return Custody Securities bearing serial numbers or identification marks corresponding to those deposited or transferred so long as the Custody Securities returned

are of the same class, denomination, and nominal amount and rank *pari passu* with those originally deposited or transferred (subject always to any capital reorganization which may have occurred in the meantime).

- 12.21 The Account Holder acknowledges and agrees that withholding and/or other tax may have to be deducted from payments or income on Custody Securities under the Applicable Laws. The Account Holder undertakes to inform the Bank forthwith regarding the Account Holder's tax status or change thereof that has an impact on whether tax has to be deducted from any payments or income due to the Account Holder or in such other circumstances as may be required by the Bank.
- 12.22 The Bank shall not be required to inform the Account Holder of the dates on which any shareholders' or bondholders' meetings of the companies whose securities it holds for the Account Holder's account will be held, nor of the items on the agendas of such meetings, nor of any notices, proxies or proxy soliciting materials in relation to such securities. The Bank shall not exercise any voting rights attached to securities, either directly or through a proxy designated by the Account Holder, unless the Account Holder has given, and the Bank has accepted, Instructions to this effect.
- 12.23 Any Custody Securities shall be subject to the Bank's rights of charge, lien and set-off as set out in Clause 16.5, and may also be subject to other similar rights or security interests of the Bank under other agreements between the Bank and the Account Holder. The Account Holder agrees and acknowledges that Nominee or Sub-Custodian may also claim a lien or security interest over any property of the Account Holder held by it.
- 12.24 In this Clause 12 and Clause 13 of these Conditions for Accounts, references to the "Bank" include, where the context so permits, the Nominee Custodian (in addition to the Bank's successors and assigns).

### **13. Use of Sub-Custodians**

- 13.1 The Account Holder acknowledges, agrees and consents that the Bank may, from time to time, hold the Custody Securities with a sub-custodian (a "Sub-Custodian") outside Singapore.
- 13.2 Custody Securities deposited with a Sub-Custodian shall be held subject to the rules and operating procedures of such Sub-Custodian and any Applicable Laws.

### **14. Cash/Money Rebates and Soft Dollar Commission**

The Account Holder understands, consents and agrees that the Bank and any agent appointed by the Bank shall be entitled and are authorized, without having to make prior or any disclosure to the Account Holder, to solicit, accept, receive and retain, for its or their own account (to the extent not prohibited by any Applicable Law) soft dollars and/or cash rebates from any broker, intermediary or any other sub-agent in respect of any business conducted with such broker, intermediary or sub-agent by the Bank on behalf of the Account Holder. For the purposes of this condition, "soft dollars" include research and advisory services, economic and political analysis, portfolio analysis including valuation and performance measurement; market analysis; data and quotation services; computer hardware and software incidental to the above goods and services; clearing and custodian services and/or investment related publications. Such goods and services do not however, include travel, accommodation, entertainment, general administrative goods or services, general office equipment or premises, membership fees, employee salaries or direct money payments.

### **15. Termination of the Business Relationship**

- 15.1 Subject to the terms of any other agreement between the Bank and the Account Holder, and without prejudice to any rights of the Bank which are exercisable upon the occurrence of a Termination Event or Potential Termination Event or Event of Default, the Bank reserves the right to terminate the relationship, and any Accounts, Facilities or Banking Services at any time by giving 14 calendar days written notice to the Account Holder. In such event, upon expiry of such notice, all the indebtedness of the Account Holder (including indebtedness arising from claims which are contingent) to the Bank shall immediately fall due for repayment and any security conferred on the Bank shall become immediately enforceable. The Account Holder agrees that the Bank is not obliged to continue the relationship or any Accounts, Facilities or Banking Services at law, in equity or under any agreement but may terminate the same according to the provisions above.

- 15.2 Upon the occurrence of any Termination Event or Potential Termination Event or Event of Default, the Bank may at any time thereafter, at its sole and absolute discretion, elect to terminate the relationship, or any Accounts, Facilities or Banking Services. In such event, all the indebtedness of the Account Holder (including indebtedness arising from claims which are contingent) to the Bank shall immediately fall due for repayment and any security conferred on the Bank shall become immediately enforceable.
- 15.3 Upon termination of all or any of the Accounts and/or Banking Services or upon the occurrence of any Termination Event or Potential Termination Event or Event of Default or in the event of any dispute between the Account Holder and the Bank, and without prejudice to any other right of the Bank hereunder and/or under any of the Terms and Conditions and/or otherwise at law, any sums due and payable to the Bank in respect of the relevant Accounts and/or Banking Service(s), including the whole or part of any fees or any other sums which are periodically payable (such amounts being correspondingly proportionate to the period which has elapsed prior to the date of termination), shall immediately be paid to the Bank and the Bank shall immediately or at any time thereafter, at the Bank's sole and absolute discretion and without any responsibility or liability by the Bank, have the right to close out, without notice or further liability to the Account Holder, all or part of any Transaction or any other commitments made on behalf of the Account Holder or with the Account Holder by determining its/their value in good faith as of the date of the close out or as soon as practicable after the close out.
- 15.4 Without prejudice to any other right of the Bank under the Terms and Conditions and/or any agreement between the Bank and the Account Holder, the Bank may deduct the termination fee and reimbursement sum from any money standing to the credit of any Account or set-off such amount against any sum payable to the Account Holder.
- 15.5 If the Bank determines that there have been no Transactions conducted by the Account Holder in connection with the Account **for a period of 2 years**, or other such period to be determined by the Bank from time to time in its sole discretion, the Bank may designate such Account as a dormant account ("**Dormant Account**"), which designation shall be communicated to the Account Holder pursuant to Clause 3 of the Conditions for Accounts.
- 15.6 Upon the designation by the Bank of any Account as a Dormant Account, the Account Holder acknowledges and accepts that the Bank shall:-
- be entitled to impose charges in accordance with the Conditions for Accounts, which charges the Bank is entitled to deduct from the Account Holder's Account;
  - do such acts as the Bank in its sole discretion deems appropriate in respect of the Dormant Account, which acts are deemed to be duly authorized by the Account Holder to be done for and on behalf of such Account Holder; and
  - be entitled to close such Dormant Account and return any balance in such Dormant Account by bank draft or cheque to the Account Holder's designated address and the sending of such bank draft or cheque shall be deemed to be a full discharge of the Bank's obligation to account to the Account Holder on termination of the Account.
- 15.7 Without limitation to the generality of the foregoing, the Bank may, at any time and from time to time, close any of the Accounts and discharge the Bank's entire liability with respect to the Account(s) by notice in writing to the Account Holder (at the address of the Account Holder for correspondence last known to the Bank) giving, together with such notice a draft or cheque in the currency of the Account (subject to the Terms and Conditions) without recourse to the Bank as drawer, payable to the Account Holder's order, in the amount of the credit balance in the Account as at the date of such notice together with such other documents (if any) as may be necessary to transfer to the Account Holder such claims as the Bank may have on such funds. The Bank shall thereafter be released from any further obligations to the Account Holder in relation to that Account. Notwithstanding the foregoing, closure of the Account(s) or termination of all of the Banking Services shall not affect the provisions relating to indemnities and the rights, powers and benefits of the Bank set out in the Terms

and Conditions. No interest will accrue or be paid by the Bank on unclaimed balances from a closed account.

## 16. Assignment/Transfer

- 16.1 The Terms and Conditions shall be binding and inure to the benefit of the Bank and the Account Holder and their respective successors and assigns, except that the Account Holder's rights and obligations under the Terms and Conditions (including, without limitation to, the credit balance of the Account) cannot in any way be assigned, transferred or charged to any third party whether by way of security or otherwise without the prior written consent of the Bank.
- 16.2 The Bank may at any time and from time to time change the office or branch from or through which any Banking Service is provided or made available or at which any Transaction is booked, recorded or affected, or through which it makes or receives payments or deliveries for the purpose of any Banking Service or Transaction.
- 16.3 The Account Holder undertakes to execute all such instruments or documents and do all such acts or deeds (at the Account Holder's own cost) as may be required by the Bank in connection with any such assignment, transfer or change referred to in this Clause 16 of the Conditions for Accounts.
- 16.4 The Bank may at any time assign and transfer all or part of its rights and obligations under the Account Documents to any persons in the Bank in its sole and absolute discretion thinks fit without the consent of the Account Holder. Any such assignee or transferee shall be, and be treated as, a party for all purposes of such Account Documents and shall be entitled to the full benefit of the same to the same extent as if he were an original party in respect of the rights or obligations assigned or transferred to him and the Bank shall thereafter be relieved and fully discharged from any liability or responsibility with respect thereto. For the avoidance of doubt, the Bank shall retain all rights and powers hereby given with respect to any and all instrument(s), rights or property not so transferred. The Bank may also make any Facilities or Banking Services available from and receive the benefit of any payment due to him at any of its other offices or branches.
- 16.5 The Account Holder shall not assign, transfer, create, attempt to create or permit to arise any mortgage, pledge, charge, lien or other form of encumbrances or securities whatsoever on or over any of its right and interest under any Account Documents or any contracts or transactions effected or concluded pursuant to the Account Documents without the prior written consent of the Bank.

## 17. Death/Disability/Bankruptcy/Incapacity of the Account Holder

- 17.1 Notwithstanding the death, disability, liquidation bankruptcy or incapacity of the Account Holder, until the Bank receives actual notice satisfactory to it of the death/disability/ liquidation/ bankruptcy/incapacity of the Account Holder, the Bank shall be entitled to continue to operate the Account in accordance with its then existing terms and conditions and to conclude Transactions that were made prior to the Bank receiving such notice (including, without limitation, (i) delivering and paying for Securities pursuant to contracts and agreements entered into on behalf of the Account Holder before such time; and (ii) delivering, paying for, agreeing to acquire or agreeing to sell Securities in pursuance of, or to match, contracts and agreements entered into on behalf of the Account Holder before such time).
- 17.2 In the event of the death of a single Account Holder, the Bank may act upon the Instructions of his lawful executor, administrator or legitimate heir, pursuant to the Account Documents. In the event of the incapacity of a single Account Holder, the Bank may act upon the Instructions of the court or any committee(s) or person appointed by the court, pursuant to the Account Documents.
- 17.3 In the event of the death of a joint Account Holder, the Bank shall act in accordance with Clause 2.3 of the Conditions for Accounts.

## 18. Change in Circumstances

If the Bank in its sole and absolute discretion determines that the introduction, imposition or variation of any law, order, regulation or directive or any change in the interpretation or application thereof

(i) makes it unlawful or impractical for the Bank to maintain, fund or give effect to its obligations under the Account Documents; or (ii) increases the cost to the Bank of such maintenance or funding; or (iii) reduces any sum received or receivable by the Bank or the effective return to it under the Account Documents or the overall return on its capital; or (iv) requires the Bank to make any payment or forego any interest or other return on or calculated by reference to the amount of any sum received or receivable by the Bank under the Account Documents (the "Adverse Changes"), the Bank may suspend its obligations under the Account Documents and the Bank will notify the Account Holder of the nature of the circumstances and use all reasonable efforts to avoid the effects of the Adverse Changes. The Account Documents shall be deemed cancelled upon such notification. Notwithstanding cancellation of the Account Documents, however, if the Bank is unable, within any period which the relevant circumstances may allow, to avoid the said effects, the Account Holder shall upon being so notified, pay the principal, all accrued interest, fees, costs, charges, expenses and all other amounts whatsoever outstanding in respect of the Account Documents.

## 19. Illegality and Invalidity, Severability

19.1 If any provisions of any of the Terms and Conditions and Account Documents become invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of such provisions under any other law or of the remaining provisions shall not in any way be affected or impaired.

19.2 Notwithstanding any other provision herein, if, by reason of any applicable law or regulation or regulatory requirement (whether or not having the force of law) or any change therein or judicial decision relating thereto or the interpretation or administration or application thereof, it shall become (or it shall appear to the Bank that it has or will become) unlawful or otherwise prohibited for the Bank to maintain or give effect to any of its obligations herein, the Bank shall thereupon notify the Account Holder to that effect, whereafter, the Account Holder shall immediately, upon receipt of such notification from the Bank, pay the whole of all moneys owing to the Bank by the Account Holder at such time.

## 20. Amendments

The Bank shall have the right, by notice in writing, to add to, alter, vary, supplement or modify all or any of the Terms and Conditions or any specific terms relating to any Transaction at any time at the Bank's absolute discretion, and such additions, alterations, variations, supplements or modifications shall be effective on and from the date specified by the Bank in its notice to Account Holders (such notice by the Bank includes but is not limited to notifications by way of e-mail or posting the changes online on the Bank's website(s)) or, if no such date is specified, on and from the date of such notice regardless of whether or not the Account Holder has received actual notice and whether failure to receive actual notice is as a result of employing a hold mail service or otherwise. Without prejudice to the foregoing, the use of the Banking Services after such additions, alterations, variations, supplements or modifications shall also be deemed as the Account Holder's acceptance of and agreement to the same.

## 21. No Waiver

No failure to exercise or enforce and no delay in exercising or enforcing on the part of the Bank its rights under any of the Terms and Conditions or any other applicable terms and conditions shall operate as a waiver thereof nor shall it in any way prejudice or affect the right of the Bank afterwards to act strictly in accordance with the powers conferred on the Bank under the Terms and Conditions or such other applicable terms and conditions.

## 22. Euro Continuity

22.1 The Account Holder confirms that neither the fixing of the conversion rate of any currency against the Euro as a single currency in accordance with article 109L (4) of the Treaty Establishing the European Economic Community, as amended by the Treaty on the European Union (the "**Maastricht Treaty**"), nor the conversion of the obligations under any agreements and Transactions between the Bank and the Account Holder from such currency into Euro will by any means be a reason for early termination or revision of any agreements and Transactions between the Bank and the Account Holder or prepayment of any amount due under any agreements and Transactions between the Bank and the Account Holder unless expressly agreed by the Bank with the Account Holder.

22.2 As of the moment that a currency is no longer the lawful currency (legal tender) of a relevant European Economic and Monetary Union member, all payment obligations under such agreements and Transactions must be satisfied in Euro.

22.3 In the event of modification affecting the composition and/or the definition of a rate or index to which reference is made in such agreements and Transactions or in the event of disappearance of such rate or index and the substitution of a rate or index of the same or an equivalent nature as well as modifications affecting the organization publishing it, consequent on the fixing of the conversion rate of the relevant currency against the Euro as a single currency, in accordance with article 109L (4) of the Maastricht Treaty, the rate or index resulting from these modifications or the substitution shall apply automatically.

## 23. Order of Distribution

If the amount received by the Bank on any date is less than the sum then due, then regardless of any appropriation of all or part of that amount by any person, the Bank may apply that amount in or towards payment of whichever part(s) of that sum as it deems appropriate, and/or credit the amount to a suspense account, and such application shall override any such purported appropriation. Where the Bank decides to put the money into a suspense account, the money will not be used to reduce the Account Holder's liabilities. In the event of any proceedings in or analogous to bankruptcy, winding up, liquidation, judicial management, composition or arrangement of the Account Holder, the Bank may prove for the whole outstanding sum and liabilities (absolute or contingent) in addition to costs, charges, interest and expenses and agree to accept any dividend or composition, as if there had been no suspense account or money credited into the suspense account.

## 24. Authority to Debit Account

The Account Holder irrevocably authorizes the Bank to debit any of his Accounts for all principal, interest, fees, costs, charges, expenses and other amounts whatsoever in connection with any of the Account Documents (including, without limitation, any contingent liabilities, any notes or bills accepted, endorsed or discounted and any bonds, guarantees and indemnities, documentary or other credits or instruments and the Bank's charges). Such debiting shall not constitute nor be deemed to be payment of any sums to which it relates except to the extent of any amount in credit in such Account, nor shall it be deemed to be a waiver of any default by the Account Holder. If such debiting causes such Account to be overdrawn, default interest shall be payable by the Account Holder accordingly.

## 25. Rights Cumulative and Waivers

The Bank's rights under the Account Documents are cumulative, and may be exercised as often as it considers appropriate and are in addition to its rights under general law. The Bank's rights (whether arising under the Account Documents or under general law) shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing; and in particular any failure to exercise or any delay in exercising any such rights shall not operate as a waiver or variation of that or any other right; any defective or partial exercise of any such rights shall not preclude any other or further exercise of that or any other right; and no act or course of conduct or negotiation on the Bank's part shall in any way preclude the Bank from exercising any such right or constitute a suspension or variation of any such right.

## 26. Risks in the Opening and Operations of Accounts

The Account Holder accepts all risks arising from his opening and operation of the Accounts and utilization of any of the Banking Services provided by the Bank, including without limitation to any risk of loss suffered as a result of entering into any investment, trading or other Transaction. The Account Holder confirms that he has read and understood the Risk Disclosure Statement. The Account Holder further confirms that (other than in relation to discretionary investment management services) he makes his own assessment and relies on his own judgment in making use of any of the Banking Services provided by the Bank. Other than in relation to the investment advisory services provided herein, the Bank is not obliged to give advice or make recommendations, and notwithstanding that it may do so on request by the Account Holder or otherwise, such advice or recommendations are given or made (and the Account Holder acknowledges and agrees that they are so given or made) without any liability on the part of the Bank and on the basis that the

Account Holder will nonetheless make his own assessment and rely on his own judgment. For the avoidance of doubt, the Account Holder is responsible for his own investment decisions and the Bank is under no obligation to monitor and report on the suitability of the Account Holder's continued holding of his investments in his Accounts.

## 27. Consent to Disclosure

27.1 The Account Holder agrees that the Bank and any officer (as defined in the Banking Act, Chapter 19 of Singapore) of the Bank may disclose information about the Account Holder and particulars of the Accounts (including, without limitation, such information in relation to the beneficial owners of the Account Holders or the Accounts as may have been disclosed to the Bank) and the Account Holder's Transactions or any other information whatsoever relating to the Account Holder at any time the Bank deems necessary to:

- (a) any affiliate of the Bank, other Group Entities, nominated brokers, regulatory, fiscal or other authorities, any relevant stock exchanges, any guarantors, third party pledgors or chargors to the Bank, any share registrars, any listed companies or any of their agents in respect of the Account Holder's beneficial ownership of shares in such listed companies and the Bank's agents, trustees, administrators, custodians, other parties providing trustee, administrative and/or custodian functions, correspondent banks, auditors, legal and other professional advisers and service producers; and
- (b) any other person, whether situated in Singapore or elsewhere:
  - (i) to (or through) whom the Bank assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations pursuant to any of the Banking Services or proposed Banking Services, or under the Account Documents or any Transaction;
  - (ii) with (or through) whom the Bank enters into (or may potentially enter into) any participation or sub-participation in relation to, or any other Transaction under which payments are to be made by reference to, any facility or proposed facility granted by the Bank;
  - (iii) with (or through) whom the Bank enters into (or may potentially enter into) any Transaction in connection with the purchase or sale of any credit insurance or any other contractual protection or hedging with respect to the Account Holder's obligations under any of the Banking Services or proposed Banking Services or any Transaction;
  - (iv) with whom the Bank enters into (or may potentially enter into) any contractual or other arrangement in relation to any of the Banking Services or proposed Banking Services or any facility or proposed facility (including, without limitation, any guarantors, sureties and/or third party security providers);
  - (v) to whom the Bank out-sources the performance of operational functions of the Bank;
  - (vi) pursuant to the procuring or management of data relating to any of the Services or proposed Services or any facility or proposed facility or any customer;
  - (vii) who is a person, or who belongs to a class of persons, specified in the second column of the Third Schedule to the Banking Act;
  - (viii) to whom (including, without limitation, all government agencies and authorities, regulators, exchanges, clearing houses, markets or depositories) such disclosure is required by law or pursuant to the directives of such entities;
  - (ix) who is an external asset manager providing services to the Account Holder;
  - (x) who is a credit bureau. The Account Holder also agrees to such credit bureau making disclosure of such information to parties to whom such credit bureau is permitted to disclose the same for the purpose of the assessment of the creditworthiness of any persons;
  - (xi) to whom the Bank, its nominees or agents are required to do so by any Applicable Laws or pursuant to any order or direction of a competent court or tribunal in any relevant jurisdiction (including any directive,

guideline or recommendation of any authority or supervisory committee or body relating to anti-money laundering); and

- (xii) to whom such disclosure is considered by the Bank to be in the Bank's interests,

and the Account Holder acknowledges and agrees that such recipients may then disclose such information to third parties. The Bank, its nominees and agents shall not be responsible for any liabilities or damages suffered by the Account Holder from information having been disclosed under this Clause.

This Clause 27.1 is not, and shall not be deemed to constitute, an express or implied agreement by the Bank with the Account Holder for a higher degree of confidentiality than that prescribed in Section 47 of the Banking Act and in the Third Schedule to the Banking Act. The rights conferred on the Bank in this Section shall be in addition to and shall not be in any way prejudiced or affected by any other agreement, expressed or implied, between the Account Holder and the Bank in relation to any Customer Information nor shall any such other agreement be in any way prejudiced or affected by this Clause 27.1. Without prejudice to the foregoing the Account Holder consents to the Bank making disclosure to any person to whom any fees, commissions or other amounts may be payable, for the purpose only of determining the quantum of such fees, commissions or other amounts, such Customer Information as may be necessary in order to properly calculate such quantum. The Account Holder acknowledges that the Bank or a Service Provider may, in certain circumstances, be required to, and the Account Holder agrees that it may, disclose information (including Customer Information) to third parties. Such circumstances include, but are not limited to, the Bank or that Service Provider being compelled to disclose such information pursuant to a court order, police investigations and commercial prosecutions for tax and other offences.

The provisions of and the authorities and permissions given in and under this Clause 27.1 shall continue in effect notwithstanding the termination of the contract constituted by the Terms and Conditions.

27.2 The Account Holder acknowledges the understanding and agreement that:

- (a) the Bank shall have the unconditional right, but not the obligation, to introduce and/or cross refer the Account Holder from time to time to any of its affiliated divisions, companies and/or other business units within the Group, wherever situated (the "Referee"). The Bank shall not be under any obligation to make introductions and/or cross referrals that may conflict with any contract, arrangement or understanding with third parties or which may result in a violation of the Applicable Laws. Any such introduction and/or cross referral of the Account Holder shall at all times, be made at the sole and absolute discretion of the Bank;
- (b) the Account Holder may elect to engage the Referee to provide any form of Banking Services at its sole discretion and that the Account Holder is personally and solely responsible for complying with the Referee's licensing, legal, regulatory, compliance and business requirements (including but not limited to any contractual arrangements) as determined by the Applicable Laws;
- (c) in introducing and/or cross referring the Account Holder to the Referee, the Bank has acted in its capacity as an independent contractor. The Bank is not and is not to be deemed at any time as an agent, employee, trustee and/or representative of the Referee and the Bank is not responsible for the Referee's actions and/or omissions whatsoever;
- (d) the Referee does not have, at any time, the authority to make any commitments and/or enter into any obligations for and on behalf of the Bank;
- (e) any prevailing and/or potential conflicts of interest pursuant to the introduction and/or cross referral arrangements between the Bank and the Referee shall be unconditionally waived by the Account Holder in favor of the Bank and the Referee;
- (f) the Bank is fully authorized to disclose such of the Account Holder to the Referee concerning the Account Holder's Account, solely in connection with and pursuant

to facilitating the introduction and/or cross referral arrangements between the Bank and the Referee without any further reference and/or consent from the Account Holder; and

- (g) the Bank, the relationship manager and/or any other member or staff of the Bank effecting the introduction and/or cross referral may be entitled to receive payments, fees and/or commissions from the Referee in connection with the introduction and/or cross referral without further reference to the Account Holder. The Account Holder acknowledges and agrees to such arrangements and that the interests of the Bank and such relationship manager and staff might be in conflict with the Account Holder's interests. The Account Holder hereby consents to such conflict (if any) and the Bank and its relationship managers/staff effecting the introduction and/or cross referral.

#### **28. Outsourcing**

The Bank reserves the right to outsource certain of its operational activities, if it deems it appropriate or necessary, to affiliates of the Bank or other third parties, subject to applicable laws and regulations. Such outsourced activities may include (without limitation) the trading and administration of securities and other assets, computer media and programming, the booking of transactions and other back-office tasks. The Bank shall be not liable for any acts or omissions of any service provider appointed by the Bank in relation to such outsourced activities or for any Losses suffered by the Account Holder as a result of or in connection with such acts or omissions, except to the extent that such Losses are caused directly by the Bank's gross negligence, willful misconduct or fraud.

#### **29. Substantial Shareholding**

The Account Holder hereby undertakes to abide by and comply with all Applicable Laws in respect of any requirement(s) to disclose substantial shareholdings in a company.

#### **30. Power of Attorney**

The Bank shall be entitled to rely and act on the Instructions of any power of attorney until it is in actual receipt of a duly authorized written notice of the revocation of or any variation in the power of attorney given to the attorney.

#### **31. SeparateAccounts**

If the Account Holder shall create any further or subsequent security or otherwise deal with any of its Assets in favour of any other person in breach of its obligations under the Account Documents, the Bank may, on receiving notice of the same, immediately open a new or separate account with the Account Holder in the Bank's books and if the Bank does not in fact open such new or separate account it shall nevertheless be deemed to have done so at the time when the Bank received or was deemed to have received such notice and as from such time, all payments received for account of the Account Holder shall be placed or deemed placed to the credit of the new or separate account and shall not go in reduction of the total amount owing by the Account Holder to the Bank, provided always that nothing herein shall prejudice any security which the Bank otherwise has, including in respect of moneys that may become due or owing from, or incurred by, the Account Holder to the Bank after the time of such notice.

#### **32. Complaints of the Account Holder**

Any complaint or dispute by the Account Holder, in relation to the Bank's method of execution or non-execution of the Account Holder's Instructions or in relation to any advice or communication from the Bank, must be delivered in writing to the Bank either within 30 days of the date of the advice or communication to the Account Holder or within the period of response specified by the Bank. Where no complaint is received by the Bank within the time specified above, the Bank may regard the Account Holder as having fully and unconditionally approved and confirmed each execution or non-execution of Instructions (as the case may be) and all other Transactions recorded in the relevant advice or communication, which shall be binding on the Account Holder.

#### **33. Translations**

These conditions may, at the Bank's discretion upon the Account

Holder's request and at the Account Holder's expense, be translated into a language other than English. Any translation shall be provided for information and reference purposes only and the Bank has not in any manner whatsoever provided any guarantee or express or implied warranty in respect of the accuracy of the relevant translation. The Account Holder agrees that the English text shall prevail in the event of any doubt, inconsistency, exceptions, errors, ambiguity, discrepancy or omission. The Account Holder undertakes and agrees that it will be wholly responsible for seeking its own independent legal and/or other professional advice and/or making such enquiries on its own and has taken or will take such care so as to satisfy itself of the accuracy and correctness of any translation that is provided by the Bank of the Account Documents.

#### **34. Retention and Destruction of Documents**

The Bank may at its discretion destroy any cheques or other records and documents relating to any Account maintained with the Bank after the same have been processed by microfilm or any other form of electronic media and that production of the microfilm or such any other form of electronic media shall be binding on and as conclusive evidence against the Account Holder. The Bank may destroy any records after the retention period required by law.

#### **35. Certificate**

For all purposes, including without limitation, any legal proceedings against the Account Holder and/or any Security Party, a certificate by any of the Bank's officers as to any amount due from the Account Holder to the Bank or as to any other determination, notification or opinion or the like of the Bank shall, in the absence of manifest error, be binding and conclusive evidence.

#### **36. Governing Law and Jurisdiction**

36.1 Any Terms and Conditions, Accounts, Banking Services provided, the Account Documents and all relations between the Account Holder and the Bank (including any dispute arising out of or in connection with the foregoing) shall be governed by and construed in accordance with the laws of Singapore and the Account Holder irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Singapore in all matters pertaining thereto (except matters relating to leveraged foreign exchange contracts) but nothing shall limit the right of the Bank to take any suit, action or proceeding arising out of or in connection with the Terms and Conditions, Accounts, Banking Services provided, the Account Documents and the relations between the Account Holder and the Bank in any other courts or competent jurisdiction nor preclude the taking of such suit, action or proceeding in any other jurisdiction, whether concurrent or not.

36.2 All deposits and their payment are governed by and subject to the laws in effect from time to time at the Bank that shall be the sole place of payment, which in this case, shall be the Singapore Branch of Bank J. Safra Sarasin Ltd No other branch, subsidiary or affiliate of Bank J. Safra Sarasin Ltd shall be liable to repay any deposits. Instructions for the remittance or transfer of funds to or through correspondent banks shall not affect or be construed to affect the foregoing term.

36.3 The Banking Services, Accounts and the sale, purchase, or replacement of the Account Holder's Assets and any investments and trading or other Transactions are subject to all Applicable Laws, customs and usages and the sovereign risk of the location or market where any such Banking Services and investments and trading or other Transactions are effected or executed and also subject to all rules, conditions, practices or determinations as may from time to time be prescribed by any body or association (whether governmental, quasi governmental or otherwise and whether or not having the force of law) to be applicable to and binding on and to be observed by the Bank or any party with, through or in whom any investment or trading or other transaction is executed and in the event of any conflict between any of the foregoing and any provision of the Account Documents or any Facility Document, the former shall prevail. To ensure due compliance with the same, the Bank may from time to time impose additional requirements for compliance by the Account Holder or perform such act on the Account Holder's behalf without prior notice.

36.4 Subject as aforesaid, the Terms and Conditions and all the Account Holder's and the Bank's rights and obligations hereunder shall also be subject to any laws, rules, regulations, directives or sanctions which may from time to time be issued and/or imposed by the Government of Switzerland on the Bank, or in any way in relation to its operations and assets in any part of the world.

### 37. Contracts (Rights of Third Parties) Act

Unless specifically provided otherwise in these Terms and Conditions or any of the Account Documents, a person who is not a party to the Terms and Conditions or any Transaction shall have no rights under the Contracts (Rights of Third Parties) Act, Chapter 53B of Singapore (as may be amended from time to time) to enforce any of the Terms and Conditions or any Transaction.

### 38. Applicable Laws

The Account Holder's relationship with the Bank, the operation of all Accounts and the implementation of all Orders shall be subject at all times to all Applicable Laws. The Bank may take or refrain from taking any action whatsoever, and the Account Holder shall do all things required by the Bank, in order to procure or ensure compliance with all Applicable Laws.

### 39. Exempt Status of the Bank In Respect Of The Provision Of Financial Advisory Services

The Account Holder acknowledges that the Bank has obtained an exemption under Section 100(2) of the Financial Advisers Act, Chapter 110 of Singapore (the "FAA") in respect of the provision of financial advisory services to its clients who are "high net worth individuals" as defined in the Guidelines on Exemption for Specialised Units Serving High Net Worth Individuals Under Section 100(2) of the Financial Advisers Act. The Account Holder acknowledges that the Bank hereby notifies the Account Holder that it is exempt from complying with certain compliance requirements under the FAA, the Financial Advisers Regulations and the relevant Notices and Guidelines issued thereunder, in respect of any financial advisory service which the Bank may provide to the Account Holder. In particular, when providing financial advisory services to the Account Holder, the Bank will be exempt from the following requirements of the FAA and Notices issued thereunder:

(a) Section 25 of the FAA and MAS Notice on Information to Clients and Product Information Disclosure [Notice No. FAA-N03]. Section 25 of the FAA imposes an obligation on a financial adviser to disclose to its clients and prospective clients all material information relating to any designated investment product recommended by the financial adviser, including the form and manner in which the information shall be disclosed. "Material information" includes the terms and conditions of the designated investment product and the benefits and risks that may arise from the designated investment product.

The MAS Notice on Information to Clients and Product Information Disclosure [Notice No. FAA-N03] sets out the standards to be maintained by a financial adviser and its representatives with respect to the information they disclose to clients. The Notice also sets out the general principles that apply to all disclosures by a financial adviser to its clients and the specific requirements as to the form and manner of disclosure that the financial adviser has to comply with in relation to, among others, section 25 of the FAA. As a result of the Bank's exemption from compliance with these requirements, the Bank is not under any statutory obligation to (and therefore it is not a criminal offence for the Bank if it does not) provide the Account Holder with all material information on any designated investment product recommended by the Bank in the prescribed form and manner, e.g. the benefits and risks of the designated investment product and the illustration of past and future performance of the designated investment product. The Account Holder acknowledges that he is therefore not protected by the disclosure requirements in section 25 of the FAA and MAS Notice on Information to Clients and Product Information Disclosure [Notice No. FAA-N03];

(b) Section 27 of the FAA and MAS Notice on Recommendations on Investment Products [Notice No. FAA-N16]. Section 27 of the FAA requires a financial adviser to have a reasonable basis for any recommendation; on an investment product that is made to a client. The financial adviser is required to give consideration to the investment objectives, financial situation and particular needs of the client. Failure to do so could, if

certain conditions are satisfied, give the client a statutory cause of action to file a civil claim against the financial adviser for investment losses suffered by the client. The MAS Notice on Recommendations on Investment Products [Notice No. FAA-N16] sets out requirements which apply to a financial adviser when it makes recommendations on investment products to its clients. In particular, the Notice sets out: (i) the type of information the financial adviser needs to gather from its client as part of the "know your client" process; (ii) the manner in which the financial adviser should conduct its analysis of the client's financial needs and how it should present its investment recommendations; and (iii) documentation and record keeping requirements relating to this process. In this connection, a financial adviser is required to ensure that, before it makes any recommendation on an investment product which is neither listed nor quoted on a securities market or futures market, it has been informed by the product manufacturer of the investment product as to whether the investment product is a "Specified Investment Product" ("SIP"). The financial adviser is required to keep proper records of such information and accordingly convey this information to a client who intends to transact in the investment product. SIPs include unlisted or unquoted shares, collective investment schemes, and structured notes. If an investment product is an unlisted or unquoted SIP, prior to making a recommendation on such investment product, a financial adviser is required to conduct an assessment of the client's knowledge and experience in unlisted and unquoted SIPs ("Customer Knowledge Assessment"), taking into account information on the client's educational qualifications, investment experience and work experience. The financial adviser is required to comply with various procedures ("Procedures") depending on whether the client has the requisite knowledge and experience in the unlisted or unquoted SIP, including the provision of financial advice and/ or obtaining senior management approvals. As a result of the Bank's exemption from compliance with these requirements, the Bank is not under any statutory obligation to (and therefore it is not a criminal offence for the Bank if it does not) ensure that it has regard to the information possessed by it concerning the Account Holder's investment objectives, financial situation and particular needs and has given consideration to and conducted investigation of the subject matter of the recommendation, and that the recommendation is based on such consideration and investigation. The Bank is also not required to conduct a Customer Knowledge Assessment to determine the Account Holder's investment experience and knowledge, nor is the Bank required to comply with the Procedures. Further, the Account Holder will not be able to rely on section 27 of the FAA to file a civil claim against the Bank in the event that the Account Holder alleges that he has suffered a loss as a result of a recommendation made by us. The Account Holder acknowledges that he is therefore not protected by the requirements of section 27 of the FAA and MAS Notice on Recommendations on Investment Products [Notice No. FAA-N16].

(c) Section 28 of the FAA. Section 28 of the FAA provides that the MAS may by regulations determine the manner in which a financial adviser may receive or deal with client's money or property or prohibit a financial adviser from receiving or dealing with client's money or property in specified circumstances or in relation to specified activities. In particular, where a financial adviser or its representatives receives client's money in the marketing of collective investment schemes, the financial adviser or its representatives would have to hand over the money received no later than the next business day to any of the following persons: (i) the provider of the collective investment schemes; or (ii) a capital markets services licence holder to provide custodial services for securities, or a person exempt from holding such a licence, and who has been authorised by the client in this respect. As a result of the Bank's exemption from compliance with section 28 of the FAA, the Bank is not under any statutory obligation to (and therefore it is not a criminal offence for the Bank if it does not) ensure that it hands over any of the Account Holder's moneys which the Bank receives in the marketing of collective investment schemes to the persons stated above within any prescribed time frame. The Account Holder acknowledges that he is therefore not protected by the requirements of section 28 of the FAA.

(d) Section 36 of the FAA. Section 36 of the FAA provides that

when sending a circular or other written communication in which a recommendation is made in respect of securities, a financial adviser is required to include a concise statement, in equally legible type, of the nature of any interest in, or any interest in the acquisition or disposal of, those securities that it or any associated or connected person has at the date on which the circular or other communication is sent. Such circular or written communication must be retained by the financial adviser for five years. As a result of the Bank's exemption from compliance with section 36 of the FAA, the Bank is not under any statutory obligation to (and therefore it is not a criminal offence for the Bank if it does not) include such a statement of interest in securities in any written recommendation or document that the Bank may send to the Account Holder. The Account Holder acknowledges that he is therefore not protected by the requirements of section 36 of the FAA if no disclosure is made of any interest that the Bank or any associated or connected person may have in the securities that the Bank may recommend in such document.

- (e) MAS Notice on Appointment and Use of Introducers by Financial Advisers [Notice No. FAA-N02]. The Notice requires a financial adviser to meet certain standards in respect of the appointment and use of persons carrying out "introducing activities" (as defined in regulation 31 of the FAR). In particular, a financial adviser would have to establish adequate control systems and procedures to ensure the proper conduct of the introducer including complying with the requirements set out in paragraph 7 of the Notice. Such requirements include: (i) entering into a written agreement with the introducer setting out the scope of the introducing activities, and monitoring the conduct of the introducer; (ii) ensuring that the introducer discloses to clients that it is carrying out introducing activities for the financial adviser, and providing to clients certain prescribed information relating to the relationship between the introducer and the financial adviser and the remuneration paid to the introducer by the financial adviser; (iii) providing a script to the introducer to guide the introducer in relation to its introducing activities; (iv) ensuring that the introducer does not receive or deal with client's money or property in relation to its carrying out of introducing activities; (v) maintaining a register containing certain particulars of introducers appointed by the financial adviser, and ensuring that such introducers maintain a register of their representatives as well; and (vi) ensuring that the introducer's sole business does not comprise the introducing activities. As a result of the Bank's exemption from compliance with the Notice, the Bank is not under any statutory obligation to (and therefore it is not a criminal offence for the Bank if it does not) comply with any of the foregoing requirements, and the Account Holder acknowledges that he is therefore not protected by the requirements of this Notice.
- (f) MAS Notice on Minimum Entry and Examination Requirements for Representatives of Licensed Financial Advisers and Exempt Financial Advisers [Notice No. FAA-N13]. The Notice sets out examination and other entry requirements for representatives of a financial adviser and the requirement for the representatives to undergo continuing education in relation to the provision of any financial advisory service. The Notice also imposes an obligation on the financial adviser to maintain a register of its representatives, which must set out certain prescribed information, including whether its representative is subject to the examination requirements, or the non-examinable courses (where applicable), under the Notice relevant to the regulated activities of the representative. As a result of the Bank's exemption from compliance with the Notice, the Bank's representatives are not under any statutory obligation to (and therefore it is not a criminal offence for the Bank's representatives if they do not) fulfill any formal examination or other minimum entry requirements before providing any financial advisory service to the Account Holder.

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## V. Conditions for Financial Transactions

### 1. General

- 1.1 Except as provided to the contrary in any Confirmation, these Conditions for Financial Transactions shall apply to any Transaction entered into by the Bank with or for and on behalf of the Account Holder. Each such Transaction is entered into by the Bank on the terms set out in the Terms and Conditions and the Confirmation in respect of the relevant Order and shall constitute a single agreement.
  - 1.2 In the event of any inconsistency between:
    - (i) this Section and any other part of the Terms and Conditions, this Section shall prevail;
    - (ii) this Section and any Confirmation, the Confirmation shall prevail.
  - 1.3 All Transactions entered into by the Bank with or for and on behalf of the Account Holder shall be subject to the Applicable Laws, including those relating to position limits and other limits. The Account Holder hereby undertakes to observe these limits. The contract specifications, if any, published by the Reference Market where the Transactions are executed are also binding on the Account Holder.
  - 1.4 Unless otherwise notified by the Bank to the Account Holder or provided for in the relevant Confirmation, the Bank shall assume the role of **agent of the Account Holder (and not principal)** in any Transaction which the Bank has been instructed to effect.
  - 1.5 Where the Bank and/or any Group Entity acts as agent on behalf of the Account Holder, the Account Holder acknowledges and accepts that:
    - (i) the Bank and/or Group Entity may at its sole discretion decide whether or not to disclose the existence of the Account Holder to any counterparty and/or (if applicable) the fact that it is acting as agent;
    - (ii) such Transaction shall be entered into at the Account Holder's risk;
    - (iii) if such Transaction is entered into by the Bank with or through a counterparty (including a counterparty that is a subsidiary or affiliate company of the Bank), the Account Holder shall indemnify the Bank and hold the Bank harmless from any and all losses, liabilities, costs and expenses that the Bank may incur or suffer arising from or otherwise in connection with entering such Transaction; and
    - (iv) notwithstanding any netting, offsetting, exchange, liquidation or closing out of obligations as may be applicable, the Account Holder shall pay to the Bank upon its demand and indemnify the Bank for any amount which may arise in connection with any position which would have been offset under the foregoing provisions, but for any act or omission or insolvency on the part of any counterparty to or broker or agent in respect of, any of the relevant contracts.
  - 1.6 Where the Bank and/or any Group Entity effects a Transaction as principal with the Account Holder, the Account Holder understands and agrees that such Transaction may involve the Bank or any other company in the Group having, directly or indirectly, a material interest in the Transaction and/or a potential conflict with its duty to the Account Holder. The Bank shall ensure, to the extent that it reasonably can, that such Transactions are effected on terms which are no less favourable in substance to the Account Holder than if the Bank or Group Entity had no traded as principal or if the material interest or potential conflict had not existed. The Bank shall be absolutely entitled to all gains, profits and benefits derived from any such Transaction of the Account Holder with the Bank and shall not be liable to account for them to the Account Holder.
  - 1.7 The Bank may engage or appoint any person (who is not an officer or related to the Bank or any Group Entity) to carry out any Order or to exercise any authority granted to the Bank by the Account Holder (whether under these terms or otherwise) and provided the Bank has engaged or appointed such person in good faith, the Bank shall not be liable to the Account Holder for any and all Loss suffered or incurred by the Account Holder as a result of any act or omission of such person or entity.
  - 1.8 Without prejudice to Clause 1.7 above, the Bank may undertake Transactions through or introduce the Account Holder to intermediate brokers, settlement agents and other third parties outside the jurisdiction in which the Account was opened (the "**Relevant Jurisdiction**") and the Account Holder may also deal with affiliates of the Bank outside the Relevant Jurisdiction. In such cases, the Transactions or Banking Services undertaken may not be covered by Applicable Laws of the Relevant Jurisdiction and the Account Holder acknowledges that he understands that he may not necessarily be protected as effectively as a result. If there is a shortfall arising on the money available to meet the claims of the Account Holder against such intermediate brokers, settlement agents and/or other third parties outside the Relevant Jurisdiction, the Account Holder's claim against the Bank (if any) in respect of this will be restricted to the money held by the Bank in respect of Transactions carried out through the broker, settlement agent or third party, and to any money received from the broker, settlement agent or third party relating to those Transactions.
  - 1.9 The Account Holder confirms that he is aware of the risks, the mechanism and structure of each Transaction, and that the Account Holder has carefully considered whether entering into each Transaction (individually or cumulatively with other Transactions) is compatible with his financial status, ability and circumstances. The Account Holder confirms that he has received, read and understood the Risk Disclosure Statements and the risk factors involved in each Transaction.
  - 1.10 Various Transactions entered into between the Account Holder and the Bank may be governed by the Terms and Conditions, Confirmations, specific agreements between the Bank and the Account Holder, various terms and conditions contained in industry standard documents, or a combination of any or all of the foregoing. This may include but are not limited to terms and conditions published by the International Swaps and Derivatives Association, the Emerging Markets Trade Association, or other similar bodies. In particular, over-the-counter Transactions entered into between the Bank and the Account Holder may incorporate by reference terms contained in the 1997 ISDA Bullion Definitions, the 1998 FX and Currency Option Definitions, 2002 ISDA Equity Derivatives Definitions, 2003 ISDA Credit Derivatives Definitions, 2005 ISDA Commodity Definitions, 2006 ISDA Fund Derivatives Definitions, 2006 ISDA Definitions, and any related supplements, annexes, and amendments, all as published by the International Swaps and Derivatives Association and the relevant bodies.
- ### 2. General Payment and Delivery Obligation
- 2.1 Each party will make each payment or delivery required of him and specified in each Confirmation, subject to the other provisions of the Terms and Conditions including but not limited to the relevant provisions in the Conditions for Accounts. Payments shall be made on each relevant Value Day or Settlement Day for value on that date specified in the relevant Confirmation or otherwise pursuant to the Terms and Conditions. Where settlement is by delivery, such delivery will be made for receipt on the Value Day or Settlement Day in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in the Terms and Conditions.
  - 2.2 Unless the Bank otherwise agrees in writing with the Account Holder, each obligation of the Bank to make any payment or delivery to the Account Holder under the Conditions for Financial Transactions is subject to the condition precedent that there is no Event of Default subsisting and no Early Termination Date has occurred or been effectively designated. The terms "**Event of Default**" and "**Early Termination Date**" are that as defined or specified in the relevant Confirmation.
  - 2.3 Notwithstanding anything contained in the Terms and Conditions and except where the Bank otherwise agrees in writing:-
    - (i) in respect of any Transactions relating to Commodities, other than gold and such other Precious Metals as the Bank may (in its discretion) from time to time determine are available for physical delivery ("**Deliverable Metals**"), the Bank shall only enter into Transactions that provide for cash settlement;

- (ii) in respect of a purchase of Deliverable Metals by the Account Holder, the Bank shall credit the amount of Precious Metal purchased by a Account Holder in the Bank's records as a Notional Quantity bought and held for the Account Holder and debit the Account of the Account Holder the Countervalue;
- (iii) in respect of a sale of Deliverable Metals by the Account Holder, the Bank shall credit to the Account of the Account Holder the Countervalue, and debit from the Bank's records the Notional Quantity of Precious Metal sold on behalf of the Account Holder.

The Account Holder agrees that:

- (a) The Bank may at its discretion act as custodian for the Account Holder of Deliverable Metals but not of any other Commodities. The Account Holder acknowledges that the Bank presently has no facilities for physical storage of Deliverable Metals. Where the Account Holder has instructed the Bank to act as custodian of Deliverable Metals, the Account Holder authorizes the Bank, at the Account Holder's own risk and cost, to arrange for the Account Holder's Deliverable Metals to be held by agents or sub-custodians appointed by the Bank. The Deliverable Metals held by the agents or sub-custodians shall be subject to laws, rules, customs and established practices of the place of custody. The agents and sub-custodians may co-mingle the Deliverable Metals with those of their other customers. The Bank accepts no liability whatsoever for loss or damage to any Deliverable Metals stored on the Account Holder's behalf, howsoever such loss or damage may be caused (including, without limitation, the insolvency, liquidation, failure, default or negligence of any agent holding the Precious Metals) unless due to gross negligence or wilful default of the Bank. The Bank shall charge the Account Holder a fee for custody of Deliverable Metals. The Bank shall have no responsibility for the adequacy or efficacy of any insurance arranged by the Bank or any agent in respect of Deliverable Metals. Any credit balance in a custody account for Deliverable Metals will not bear interest.
- (b) In the event the Account Holder wishes to withdraw Deliverable Metals in its custody account or otherwise to receive physical delivery of Deliverable Metals (in connection with a Transaction or otherwise), the Account Holder must notify the Bank 14 days in advance in order to enable the Bank to deliver the Deliverable Metals to the Account Holder. Delivery shall be made by the Bank at a destination specified by the Bank, or at an alternative destination agreed between the Bank and the Account Holder and at the sole cost and risk of the Account Holder.
- (c) Unless otherwise agreed in writing with the Account Holder, the Bank is entitled to deliver Deliverable Metals of the usual minimal standard of fineness (as determined by the Bank). The Account Holder shall bear all costs and expenses incurred by the Bank, its agents and sub-custodians in connection with arranging delivery, including (without limitation) fabrication costs and the costs of shipping, warehousing and insurance.
- (d) The Bank and its agents do not accept any responsibility whatsoever if any legislation, transfer restraints, events of war, force majeure events or any other events outside the reasonable control of the Bank or its agents or sub-custodians make it impossible or difficult for the Bank or the agents or sub-custodians to arrange for delivery of the Deliverable Metals to the Account Holder. In such circumstances the Bank has the right to deliver the Deliverable Metals to the Account Holder at the cost and risk of the Account Holder to such extent, and in such manner, as may be practicable and appropriate as determined by the Bank in its discretion. The Bank reserves the right to discharge its delivery obligation by assigning to or conferring on the Account Holder a claim for the delivery of the Deliverable Metals against an agent or sub-custodian or depository.
- (e) The Account Holder shall indemnify the Bank for any and all losses, liabilities, claims, damages, taxes and levies suffered by the Bank or any agents or sub-custodians of the Bank, and all costs, expenses and charges reasonably incurred or sustained by the Bank or such agents or sub-

custodians, in connection with the custody or any delivery of Deliverable Metals (under a Transaction or otherwise).

- 2.4 If, at any time, the Account Holder fails to deliver to the Bank any property previously sold by the Bank on the Account Holder's behalf, or fails to deliver any property in compliance with any Transaction; or in cases where the Bank shall be required or shall deem it advisable (whether by reason of the requirements of any exchange, clearing organization or otherwise) to replace any property theretofore delivered by the Bank for the Account Holder's Account with other property of like or equivalent kind or amount, the Account Holder hereby authorizes the Bank in its sole and absolute discretion to borrow or to buy any property necessary to make delivery thereof or to replace any such property previously delivered and deliver the same to such purchaser or other party to whom delivery is to be made and the Bank to subsequently repay any borrowing thereof with property purchased or otherwise acquired for the Account Holder's Account. The Account Holder shall reimburse the Bank for any costs, Loss and damages which the Bank may incur or be required to pay thereon and for any costs, Loss and damages (including consequential costs, Loss, penalties, fines and damages) which the Bank may sustain from its inability to borrow or buy such property, and without prejudice to the Bank's rights in this regard, the Bank is hereby authorized to debit such amount from the Account of the Account Holder.
- 2.5 The Bank may, in its sole and absolute discretion, and without prior notice to the Account Holder, arrange for any Transaction to be effected in whole or in part by the sale to, or the purchase from, the Account Holder of relevant investments by another customer, either of the Bank or of an affiliate of the Bank. If the Bank does so, the Bank and/or any of its affiliates may charge, or otherwise take remuneration from, both the Account Holder and such customer and retain the charges or other remuneration for its own account. The Bank and its affiliates shall not be bound to account to either the Account Holder or such customer in this regard.
- 2.6 The Bank may at any time convert any amounts in any Account or standing to the credit of the Account Holder to any other currency for the purposes of carrying out Orders and/or Instructions or exercising the Bank's rights under the Terms and Conditions, the Facility Documents or under any Account. Exchange rate Losses and the costs of conversion shall be borne by the Account Holder. The Account Holder also acknowledges and consents to the Bank having the right and discretion where it deems appropriate to deposit moneys received on account of the Account Holder which are denominated in a foreign currency in a trust account (whether maintained within or outside of Singapore) with a bank licensed, registered or authorised to conduct banking business in the relevant jurisdiction.

### 3. Orders

- 3.1 The Account Holder may instruct the Bank to execute any Transaction by placing an Order with the Bank. The Bank shall only act on Orders in respect of any Account or any part of all the Securities, moneys or other property held in any Account. The Bank shall not be required to act in accordance with any Order which purports to dispose of or deal with any Securities, moneys or other assets which are not held in any Account.
- 3.2 Nothing in these Terms and Conditions obliges the Bank, and the Bank is entitled to refuse without giving any reason, to provide a Banking Service or to enter into any Transaction or act on any Order with or on behalf of the Account Holder.
- 3.3 The Bank shall be entitled to take whatever steps it considers necessary to verify and to be satisfied with respect to: (a) the identity of the person purporting to give the Order or (b) the source and origin of the Order, and the Bank may refuse to rely or act upon any such Order unless and until the Bank is satisfied as to the matters on which it sought verification.
- 3.4 If the Bank decides to act on any Order or is otherwise under an obligation to do so, the Bank shall take all reasonable steps to implement such Order promptly and, where possible, on the best available terms. The Account Holder acknowledges that the Bank may require such amount of time as may be necessary to act and implement any Order having regard to the systems and operations of the Bank and the other circumstances then prevailing. The Bank shall not be liable

for any Loss arising from any delay on the part of the Bank in acting on any such Order provided that the Bank has taken all reasonable steps to execute and implement such Order in a timely manner.

- 3.5 Without prejudice to the generality of any other provision of the Terms and Conditions, where any Order is ambiguous or inconsistent with any other Order, the Bank shall be entitled (but shall not be obliged) to rely and act upon any Order in accordance with any reasonable interpretation thereof which any officer or employee of the Bank believes in good faith to be the correct interpretation.
- 3.6 Without prejudice to the generality of any other provision of the Terms and Conditions, the Bank shall not be liable to the Account Holder for any and all Losses incurred by the Account Holder arising from any loss, delay in the transmission or wrongful interception of any Order through any equipment or system, including any equipment or system owned and/or operated by or for the Bank.
- 3.7 Subject to the Applicable Laws, the Bank may aggregate an Account Holder's Orders with the orders of other clients. Such aggregation may on some occasions operate to the Account Holder's advantage and on other occasions to the Account Holder's disadvantage. If the aggregation results in the Account Holder or any other investors involved in the aggregation obtaining a less favourable price than would otherwise be the case, the Bank may (but shall not be obliged to) allocate and apportion the elements and pricing of the trade between the Account Holder and such other investors, at the Bank's sole and absolute discretion. Market conditions may not permit the Account Holder's aggregated Order to be executed at once or in a single Transaction. In such circumstances, the Bank may, therefore, execute it over such period and in such manner as the Bank deems appropriate and may report to the Account Holder a volume weighted average price for a series of Transactions so executed instead of the actual price of each Transaction and the Account Holder authorizes the Bank to do so accordingly.
- 3.8 The Account Holder acknowledges that, in respect of dealings in financial products, the Bank will generally execute all Transactions in the sequence in which they are received and recorded. Other than Transactions involving clients' orders, which shall be dealt with in priority over orders (if any) for the account of the Bank itself, if the Bank considers it would be fair and equitable to allocate the execution of Transactions on a different basis, the Bank shall be entitled to execute such Transactions in the sequence in which the Bank considers in its sole and absolute discretion appropriate.

#### **4. Transacting in Options Generally**

To purchase or sell (write) Call Options and Put Options, the Account Holder must have, in the sole opinion of the Bank, sufficient Available Collateral pursuant to Clause 9 of the Conditions for Financial Transactions to pay the corresponding premiums or option prices or otherwise settle any obligations under such Call Options or Put Options.

#### **5. Sale of Options**

- 5.1 Subject to Clauses 4 and 5.2 of the Conditions for Financial Transactions, if Call Options (other than cash-settled only Call Options), whether covered or uncovered, are sold (written) by the Account Holder in agreement with the Bank without the Underlyings in respect of the Call Options being deposited at the same time, these must be transferred to the Bank immediately after the Call Options are exercised. If this is not done at the latest by close of business on the second Business Day after the Call Options are exercised, the Bank shall be entitled to make the corresponding covering purchases at the expense of the Account Holder and/or pass all costs incurred due to the late delivery on to the Account Holder. The Bank shall be entitled to deduct the amount of such costs from the relevant Account of the Account Holder.
- 5.2 In addition to the requirement to provide Collateral to the Bank pursuant to Clause 9 of the Conditions for Financial Transactions, the Bank shall only execute Orders for the sale of covered Call Options where the Account Holder has a sufficient number of Underlyings in his custody account at the Bank to cover the exercise in full of such Call Options to be sold under such Orders. With every specific Order for the writing of

covered Call Options, the Account Holder hereby instructs and authorizes the Bank to deliver the Underlyings pursuant to the terms of the Call Options in the event of the Call Options being exercised.

#### **6. Risk of Loss in Purchasing and Selling Options**

- 6.1 The Account Holder confirms that he is aware in particular that, (i) as a seller of Call Options, he assumes risks that can lead to theoretically unlimited losses, whilst as a seller of Put Options, he bears the risk of having to pay the whole of the contract price regardless of the price of the Underlyings on the day; and/or (ii) as a buyer of Call Options or Put Options, he may lose the costs of buying such options if the price of the Underlyings go against the options.

#### **7. Exercise of Options**

- 7.1 A European Style Option can only be exercised on the Expiration Day agreed in advance, until two hours prior to the regular close of business on the Expiration Day at the Reference Market.
- 7.2 An American Style Option can be exercised at any time during the exercise period specified in the Confirmation, until two hours prior to the regular close of business on the Expiration Day at the Reference Market; notices of exercise coming in less than two hours prior to the close of business are deemed to be exercised on the following Business Day.
- 7.3 In the case of unlisted Underlyings, the applicable rules for exercise of the option shall be agreed upon and set out in the Confirmation.
- 7.4 The Account Holder confirms that he is aware that making a physical delivery can carry a far greater risk (procurement or sale of the Underlyings) than closing out a financial futures position and that such risk will be borne by him.
- 7.5 Underlyings shall be delivered upon the exercise of a Call Option or Put Option as the case may be, in accordance with the Conditions for Financial Transactions unless the parties to the option agree on Cash Settlement pursuant to the terms of the Confirmation. The Underlyings to be delivered upon the exercise of a Call Option or Put Option as the case may be shall be delivered to the party entitled thereto on the Value Day or Settlement Day specified in the relevant Confirmation or, if no day is specified, on the day for settlement following the Exercise Day customarily applicable at the Reference Market.
- 7.6 Transactions providing for Cash Settlement which are In-the-Money based on the prices at the close of business on the Expiration Day are deemed to be automatically exercised on the Expiration Date.
- 7.7 If the Bank does not receive the Account Holder's order to exercise or close out the Account Holder's Call or Put Options by 4:00 p.m. (Singapore time) on the Business Day preceding the Expiration Day, the Bank shall be authorized though not obliged to close out or exercise the Call or Put Options in the Account Holder's best interests ahead of expiry, provided this is in line with the usual practices of the relevant Reference Market for options of such similar type.

#### **8. Security**

In addition to the requirements set out in Clause 9 of the Conditions for Financial Transactions, as further security for the exercise of Call Options or Put Options entered into by the Account Holder, the Account Holder hereby authorizes and grants the Bank a power of attorney to charge and assign such Underlyings as requested by the Bank and all rights attached to them to the Bank. The Account Holder hereby expressly and continually authorizes and grants the Bank a power of attorney to further pledge such Underlyings and all rights attached to them which have been pledged to the Bank, to the Bank's and the Account Holder's counterparties, the options exchange or its clearing house. If the options are not exercised by the time they expire or when the position is closed out, this pledge and/or charge and assignment lapses and is discharged automatically.

#### **9. Collateral**

- 9.1 The Account Holder shall deposit and/or maintain in an Account, or otherwise as the Bank directs, Collateral in compliance with Clause 6 of the Conditions for Accounts and with all margin levels imposed by the Bank in its discretion from time to time. No previous margin levels shall set a precedent or

bind the Bank thereto. The Account Holder shall not be entitled at any time to the return of any Collateral without the prior consent of the Bank.

- 9.2 The Bank is at all times entitled to change its requirements in this regard. In particular, it has the right to demand additional Collateral, even during the term of an option or Transaction.
- 9.3 Subject to Applicable Laws, the Bank may deposit Collateral provided by the Account Holder with third parties or pledge, charge or grant security arrangements over such Collateral to third parties, as necessary to facilitate the Transactions contemplated in the Terms and Conditions and the Facility Documents. Where the Bank wishes to use Collateral for the purposes referred to above, the Collateral in question shall be simultaneously released from the security created by or pursuant to the Terms and Conditions and transferred by the Account Holder to the Bank in accordance with the provisions of this Clause. The Account Holder authorizes the Bank to take such steps to deliver or credit the relevant Collateral to itself (or, as appropriate, the third party in question) and authorizes the Bank (for and on behalf of the Account Holder) to execute, and agrees to the Bank so executing, such instruments of transfer or the like as the Bank considers necessary or desirable to vest the full legal and beneficial right, title and interest in and to the Collateral in the Bank (or, as the case may be, the third party).
- 9.4 If the Collateral is considered by the Bank to be insufficient, the Account Holder agrees to deposit additional Collateral with the Bank forthwith upon demand and, in any event, within such time limit as the Bank may specify. If the funds required to meet the margin call are not provided to the Bank within the time so specified, the Bank is immediately entitled, but not obliged, to set off its margin call with other funds or assets credited to the Account Holder's Accounts and/or to close out the position without prior notice and charge the Account Holder for any Losses thereby incurred.
- 9.5 Save as otherwise expressly stated in this Clause 9 of the Conditions for Financial Transactions, all Collateral shall be subject to the Bank's general rights in respect of the Account Holder's Collateral as provided in the Conditions for Accounts.
- 9.6 The Bank is hereby authorized by the Account Holder, at any time and from time to time, without prior notice to the Account Holder, to transfer or cause to be transferred any of the Account Holder's funds, Securities and/or other property to, between or among any Accounts which the Account Holder has with the Bank or any of its affiliates, if in the Bank's reasonable judgment such transfer may be required to avoid or reduce a margin call, eliminate or reduce any debit balance or otherwise satisfy any obligation owing to the Bank or its affiliates. The Bank shall give notice to the Account Holder following any transfer made pursuant to this Clause.
- 9.7 The Account Holder acknowledges his acceptance of the following: where a Transaction involves a financial futures contract and the variation margin results in the case of open contracts from the revaluation of the futures position (comparison with the corresponding price on the previous trading day) carried out each day after the close of trading, the variation margin may be credited to the Account Holders' Account in the event of a profit, or debited (additional margin call) in the event of a loss daily, without separate notification. The amount of the additional margin call is normally calculated at the end of each day of trading. If the Bank does not receive the called margin by noon on the next Business Day, the Bank shall be automatically entitled, though not obliged, to charge its margin call to other assets of the Account Holder and/or to close out the position. If, at the start of the last day of trading, the Account Holder does not have sufficient Collateral at the Bank to meet the contracts, the Bank shall be entitled, though not obliged, to close out positions without having previously demanded an additional payment. The Bank enjoys this right in emergency situations (such as extreme price volatility) throughout the term of a contract and particularly where contracts are concluded on foreign stock exchanges, where additional payments often cannot be requested in good time because of the time difference.
- 9.8 When Collateral, in the sole opinion of the Bank, is no longer required, the Bank is authorized to and may re-assign the Underlyings back to the Account Holder.

## 10. Transactions and Limits

- 10.1 The Account Holder shall not exceed any position or Transaction limits or margin levels imposed by the Bank, the rules of any relevant Reference Market or by Applicable Laws. Such limits may include minimum number of and/or sizes for Transactions.
- 10.2 The Bank may vary any position or Transaction limits or margin levels at any time in its absolute discretion. The Account Holder acknowledges, in certain circumstances, the effect thereof may be an immediate change in limits or levels and/or require additional margin to be deposited immediately or within a specified period of time, which period may be less than 24 hours, and the Account Holder waives any right to object on the grounds that such variation of Transaction limits or margin levels are or were unreasonable.

## 11. Fees and Payments

The Account Holders shall observe the same obligations to pay in respect of these Transactions as are set out in Clause 7 of the Conditions for Accounts.

## 12. Default

- 12.1 It is a condition of the Terms and Conditions that a Termination Event, a Potential Termination Event and/or an Event of Default (as set out in the relevant Confirmation) does not occur. Without prejudice to any other right of the Bank hereunder or otherwise at law, on the occurrence of a Termination Event, a Potential Termination Event and/or an Event of Default, the Bank may (but is not obliged to) immediately or at any time thereafter do any one or more of the following:
- (a) suspend (indefinitely or otherwise) or terminate any Account, or the Bank's relationship with the Account Holder and accelerate any and all liabilities of the Account Holder to the Bank so that they shall become immediately due and payable;
  - (b) terminate all outstanding Transactions (including any Transaction which has yet to be settled on the day on which the Bank terminates such Transaction) and (without limitation) the provisions of Clauses 14 and 15 of the Conditions for Financial Transactions below apply;
  - (c) close-out or exercise (or abandon, in the case of options) any one or more Transactions by whatever means the Bank considers appropriate;
  - (d) cover positions by trading or entering into further Transactions on behalf of the Account Holder as it deems necessary (regardless of whether an Order or Instruction has been given for such Transaction);
  - (e) take such other action as a reasonably prudent person would take in the circumstances to protect the Bank's position;
  - (f) liquidate the Collateral or part thereof at a price which the Bank deems appropriate in the circumstances;
  - (g) exercise any other power or right which the Bank may have under Applicable Laws, the rules of any relevant Reference Market or the Terms and Conditions;
  - (h) apply any amounts of whatsoever nature standing to the credit of the Account Holder (including any Collateral) against any amounts which the Account Holder owes to the Bank (of whatsoever nature and howsoever arising, including any amounts due and unpaid under any Transaction and any contingent amounts), and/or generally to exercise the Bank's right of set-off against the Account Holder (howsoever arising); and/or
  - (i) after any amounts standing to the credit of the Account Holder are applied against any amounts which the Account Holder owes to the Bank or generally after the exercise of the Bank's right of set-off against the Account Holder, demand any shortfall from the Account Holder, hold any excess pending full settlement of any other obligations of the Account Holder, or pay any excess to the Account Holder by way of cheques to the Account Holder's last known address notified to the Bank or otherwise in such manner as the Bank considers appropriate to return such amounts to the Account Holder.
- 12.2 If an Extraordinary Event, Adjustment Event or a Price Disruption Event (each as defined below), occurs in relation to any Transaction or otherwise in relation to an Account, the Bank

shall have the sole discretion to determine any adjustments or action necessary in relation to such Transaction or any or all Transactions or otherwise to an Account or Accounts in view of the Extraordinary Event, Adjustment Event or Price Disruption Event. Such adjustments or actions may include determining, altering or varying the quantities of currencies, Securities or Commodities or Precious Metal or instruments or the exchange rates or specifications (including price, expiry date and any other terms and conditions) of currencies, Securities or Commodities or Precious Metal or instruments bought or sold in respect of such Transaction or some or all Transactions, or terminating the Transaction in question or some or all Transactions, or the terms of a Transaction or an Account or Accounts or otherwise, provided the Bank undertakes such action in good faith, any such adjustment or action shall be binding on the Account Holder who shall be liable for any additional Loss, damages, costs, charges and/or expenses incurred by the Bank on the account of the Account Holder or for which the Account Holder is consequently liable as a result of such adjustment or action, where:

12.2.1 **"Extraordinary Event"** means, in relation to any Transaction, any event which the Bank in good faith believes to have a Material Adverse Effect on that Transaction and/or which the Bank determines, in its sole and absolute discretion, is beyond the reasonable control of the Bank and shall include without limitation any form of exchange control restriction or requirement of whatsoever nature affecting availability, convertibility, credit or transfers of currencies, Commodities, Precious Metals, Securities, financial instruments or funds, any form of debt or other moratorium on jurisdictions, individuals or entities, any devaluation, redenomination or demonetization of the underlying currencies, Commodities, Precious Metal, Securities or instruments of that Transaction and/or any form of restriction or requirement which in the Bank's good faith opinion adversely alters or changes the rights or obligations which the Bank undertook upon the establishment of that Transaction.

12.2.2 **"Adjustment Event"** means any event occurring in respect of an Underlying:

- (a) which would ordinarily give rise to any adjustment of the strike price (including, but not limited to, any adjustment or change to any hedge arrangement entered into by the Bank);
- (b) which would ordinarily give rise to any adjustment of the total number of Underlyings of the subject of the Transaction; the total number of Underlyings of the subject of the Transaction;
- (c) if relevant, which would require the Bank to make an adjustment under the rules of that exchange as if the Transaction was traded through the Reference Market;
- (d) where the relevant Underlying is subdivided, consolidated, or reconstructed;
- (e) where the entity that issued the Underlying makes a bonus issue, a distribution by way of return of capital or a rights issue or a special distribution (such as a special dividend) or otherwise alters its capital structure;
- (f) where the entity that issued the Underlying is the subject of a takeover or is to merge or consolidate with another entity or enters into a scheme of arrangement or transfers all or substantially all of its assets to another entity;
- (g) where the Underlying consists of partly paid shares and a call is made on the partly paid shares;
- (h) where the Bank is unable to, or unable to continue to, hedge its exposure (or the Bank will incur a materially increased amount of tax, duty, expense, fee or cost as a result of holding or continuing to hold a hedge arrangement); or (i) which the Bank, in its discretion (acting reasonably), determines is an Adjustment Event.

12.2.3 **"Price Disruption Event"** means any event which the Bank in good faith believes to have affected

the calculation or determination of the settlement amount for any Transaction and shall include, without limitation, any suspension of or limitation imposed on trading by the Reference Market, the splitting of currency exchange rates into dual or multiple currency exchange rates, unavailability of currency exchange rates and/or any form of price disruption which in the Bank's reasonable opinion adversely alters or changes the rights or obligations which the Bank undertook at the time of entering into such Transaction.

12.3 The Bank or the Account Holder may terminate any Account in accordance with any right given to the Bank under the Terms and Conditions. Before the termination of any Account, the Account Holder shall instruct the Bank as to the proper disposal or transfer of money and other properties of the Account Holder. If the Account Holder fails to do so, the Bank may exercise any of its rights under Clauses 12.1 and 12.2 above, as if Default had occurred.

12.4 Any settlement or discharge between the Bank and the Account Holder shall be subject to the conditions that none of any security provided to or any payment made to the Bank becomes or will become avoided or reduced or required to be paid away by virtue of any requirement (whether or not having the force of law) or enactment (whether relating to bankruptcy, insolvency, liquidation, judicial management or administration or otherwise, at any time in force or by virtue of any obligation to give any preference or priority).

### 13. Confirmations

13.1 Where a Confirmation contains terms contrary to the Terms and Conditions and the Facility Documents, the terms of the relevant Confirmation will prevail.

13.2 After agreeing to accept an Order, the Bank shall send to the Account Holder a Confirmation confirming the terms of the Transaction relating to that Order, which on the Bank's request shall be immediately signed and returned by the Account Holder. The contents of any Confirmation unless objected to by the Account Holder by notice in writing to the Bank within 30 days (or such other period specified by the Bank) shall be conclusive evidence of the terms of the Transaction whether initialled by the Account Holder or not. The risks inherent in any retention of correspondence arrangement (if any) shall be borne by the Account Holder.

### 14. Close-Out Netting

14.1 If the Bank wishes to exercise its discretion under the Terms and Conditions for Financial Transactions to terminate and/or close out all Transactions, then:-

(a) it may by notice to the Account Holder designate a day as the Early Termination Date in respect of all Transactions, whether or not the Event of Default on which basis that designation was made is then continuing; and

(b) the amount (if any) payable in respect of that Early Termination Date will be determined pursuant to this Clause 14 and Clause 15 below.

14.2 Without prejudice to the other provisions of the Terms and Conditions (including the obligation to pay any Early Close-Out Amount and any provisions of the Terms and Conditions applying to that Early Close-Out Amount), on the occurrence of the Early Termination Date in relation to the Transactions, those Transactions will be terminated and no further scheduled payment or delivery in respect of those terminated Transactions (or any default interest in respect of those scheduled payments or deliveries) will be required to be made by any party.

14.3 For all terminated Transactions, the Bank will calculate the Early Close-Out Amount (whether positive or negative) in accordance with Clause 15 below of the Conditions for Financial Transactions, and give the Account Holder written notice of that Early Close-Out Amount and date for payment of that amount.

14.4 If:

(a) the Early Close-Out Amount is a positive number, the Account Holder must pay that amount to the Bank; or

(b) the Early Close-Out Amount is a negative number, the Bank must pay the absolute value of that amount to the Account Holder,

and that payment must be made in the Termination Currency on the date for payment identified in the notice of the Early Close-Out Amount given under Clause 14.3 of the Conditions for Financial Transactions, together with interest on that amount for the period from and including the Early Termination Date up to (but excluding) the date of payment at the interest rate notified to the Account Holder by the Bank for that purpose and calculated by the Bank in a manner consistent with the ordinary course of its business.

- 14.5 If for any reason either the Bank or the Account Holder cannot effect payment or repayment in respect of any Transaction in a particular currency in which payment or repayment is due, such payment or repayment will be effected in the equivalent in any other currency selected by the Bank at its sole and absolute discretion based on the rate of exchange quoted by the Bank in respect thereof at the relevant time and any resulting foreign exchange loss shall be for the account of the Account Holder.

## 15. Early Close-Out Amount

15.1 The Early Close-Out Amount in respect of terminated Transactions is, as determined by the Bank in a manner consistent with the ordinary conduct of its business:

- (a) the Termination Currency Equivalent of the net amount of Losses or costs of the Bank that are or would be incurred (expressed as a positive number) or net gains of the Bank (expressed as a negative number), in each case as determined by the Bank in its discretion, in relation to those terminated Transactions, and including any loss of bargain, cost of funding, Loss or cost incurred as a result of the Bank terminating, liquidating, obtaining or re-establishing any hedge or related trading position (or any gain resulting from any of them), and any Losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of any applicable condition precedent) on or before the Early Termination Date and not made; less
- (b) if the amount determined under Clause 15.1(a) of the Conditions for Financial Transactions above is a positive number, the Termination Currency Equivalent of any Collateral which the Bank wishes to apply against such Losses or costs to the Bank.

15.2 The Bank will calculate any Early Close-Out Amount as at the Early Termination Date or, if not practicable to do so, at the earliest date after the Early Termination Date.

15.3 The Bank and the Account Holder agree that any Early Close-Out Amount is a reasonable pre-estimate of loss and not a penalty, and such amount is payable for the loss of bargain and the loss of protection against future risks and, except as otherwise provided in the Terms and Conditions, the Account Holder will not be entitled to recover any additional damages as a consequence of such Losses.

## 16. Payment Netting

If, on any date, amounts would otherwise be payable in the same currency in respect of two or more Transactions entered into under the Terms and Conditions, then, on such date:

- (a) each party's obligation to make payment of such an amount may at the Bank's discretion be discharged and satisfied; and
- (b) if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, the discharged obligations may at the Bank's discretion be replaced by an obligation upon the party by which the larger aggregate amount would have been payable to pay to the other party the amount by which the larger aggregate amount exceeds the smaller aggregate amount.

## 17. General Lien

In addition and without prejudice to any right which the Bank may have under law or otherwise, all properties of the Account Holder in the possession of the Bank shall be subject to a general lien in favour of the Bank which properties the Bank may sell at any time to satisfy any moneys or obligations owing by the Account Holder to the Bank in any manner whatsoever, in any currency, whether actual or contingent, joint or several.

## 18. General Power of Attorney

18.1 The Account Holder by trading with or through the Bank with respect to the Account(s) confirms its irrevocable appointment of each and every director and officer of the Bank (on a several basis) for so long as they are a director/ officer (as the case may be) or the Bank as his attorney for each and all the purposes of the Conditions for Financial Transactions and with power on the occurrence of any Event of Default to sign and execute all documents and perform all acts in the name of and on behalf of the Account Holder whether in respect of anything required to facilitate or give effect and/or substance to the rights conferred on the Bank under the Conditions for Financial Transactions and anything reasonably ancillary thereto.

18.2 Registration of this power of attorney in any jurisdiction may be effected on the Account Holder's behalf by the Bank at the Account Holder's expense.

18.3 The Account Holder undertakes to ratify and confirm, and hereby ratifies and confirms, all and whatsoever the Bank may do pursuant to this power of attorney.

18.4 The Account Holder shall take such further actions and execute and deliver such further documents and instruments as are, in each case, within its power to give, provide or take so as to give full effect to the provisions of this Clause.

## 19. General Indemnity

19.1 In addition and without prejudice to any other right or remedy which the Bank may have (at law or otherwise) the Account Holder shall indemnify and hold the Bank harmless from and against any and all Loss suffered or incurred by the Bank as a result of:

- (a) any failure by the Account Holder to comply with the Conditions for Financial Transactions and/or the Facility Documents;
- (b) the Bank acting in accordance with the Account Holder's Orders or Instructions or in any manner permitted under the Conditions for Financial Transactions;
- (c) any change in Applicable Laws; and/or
- (d) any act or thing done or caused to be done by the Bank in connection with or referable to the Conditions for Financial Transactions or any Account.

19.2 In addition and without prejudice to any other right or remedy which the Bank may have (at law or otherwise) so long as the Bank acts in good faith, it shall not be liable to the Account Holder for any and all Loss suffered or incurred by the Account Holder. The Bank shall only be liable to the Account Holder if the Bank has been fraudulent or in wilful default of the Terms and Conditions or any duty it owes to the Account Holder under the Applicable Laws.

19.3 Without prejudice to the generality of the foregoing, the Bank shall not in any event be liable to the Account Holder for any Loss, or for punitive damages.

## 20. Relationship of the Bank with the Account Holder

Unless otherwise agreed by the Bank in writing and subject to the Applicable Laws, the Account Holder acknowledges and agrees that the Bank has not assumed and does not assume any advisory, fiduciary or similar or other duties to the Account Holder. The Account Holder hereby confirms that he has taken separate independent legal, tax and other advice in relation to any Account or Transaction between the Bank and the Account Holder.

## 21. Communications

21.1 Communications from the Bank to the Account Holder are set out in Clause 3 of the Conditions for Accounts in all other cases.

21.2 The Account Holder shall verify all entries, statements, Confirmations and advice sent by the Bank to the Account Holder. If no objection is raised within the time specified in Clause 13 of the Conditions for Financial Transaction and/ or Clause 3 of the Conditions for Accounts, such entry, statement, Confirmation or advice shall be deemed conclusive and binding against the Account Holder, who shall not be entitled to object thereto. However, the Bank may at any time rectify any error on any entry, statement, Confirmation or advice which has been proved to its satisfaction or otherwise.

## **22. Unclaimed Moneys and Assets**

If there are any moneys or Securities standing to the credit of any Account (including a trust account) which are unclaimed by the Account Holder six (6) years after the Account Holder's last transaction with or through the Bank and the Bank determines in good faith that it is not able to trace the Account Holder, the Account Holder agrees that all such assets including any and all accretions and accruals thereon (which in the case of moneys shall include all interest earned thereon and all investments and all their respective accretions and accruals thereon), shall be deemed to have been abandoned by the Account Holder in favour of the Bank and may be appropriated by the Bank to and for itself. The Account Holder thereafter shall have no right to claim such assets or their accretions and accruals.

## **23. Introductions/Sharing of Fees, Commissions and/or other Charges**

The Account Holder may have been introduced to the Bank by a third party. The Bank has and will accept no responsibility for any conduct, action, representation or statement of such third party. The Bank may share its fees, commissions and/or other charges with such third party or any other third party.

## **24. Reports, summaries and analysis by the Bank**

Other than reports or statements of fact, any reports, summaries or analyses by the Bank of whatsoever nature (whether oral, published as research or otherwise) supplied to the Account Holder by or on behalf of the Bank are merely expressions of the Bank's views or opinions. Although the Bank will take reasonable care to ensure that no such report, summary or analysis is untrue or misleading at the time of production thereof:

- (a) any such reports, summaries or analyses are for reference only and do not constitute an offer to the Account Holder or any person to purchase such investments, nor investment advice regarding such investments;
- (b) the Bank shall be under no liability for the accuracy or completeness of any such reports, summary, analyses or other materials and information, the performance or outcome of any investment made by the Account Holder after receipt thereof nor any advice or recommendation provided by the Bank or any of its employees or agents, irrespective of whether or not such reports, summaries, analyses or other materials and information, or advice or recommendation, was provided at the Account Holder's request. Accordingly, any risks associated with and any losses suffered as a result of the Account Holder entering into any investments are for the Account Holder's own account;
- (c) as such reports, summaries or analyses are not prepared with individual Account Holders or classes of Account Holders in mind, they are to be treated as general views and opinions only and are not suitable for use by Account Holders or classes of Account Holders without independent verification and advice;
- (d) each such view or opinion is subject to change without notice; and
- (e) the Bank is not obliged to provide the Account Holder with any such reports, summaries, analyses or other materials and information or any advice or recommendation and all the Account Holder's investments are made solely upon the Account Holder's judgment and at the Account Holder's discretion notwithstanding any such materials, information or recommendation the Bank may have provided to the Account Holder.

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## VI. Conditions for Credit Facilities

### 1. Facilities

- 1.1 The Terms and Conditions shall form a part of and be deemed to be incorporated in the provisions of each letter of offer from the Bank to the Borrower (as amended, modified, supplemented and varied from time to time) (each a “**Facility Letter**”) and in each agreement entered into between the Bank and the Borrower pursuant to a Facility Letter. The terms and conditions on which the Facilities may be made available to the Borrower are subject to the Facility Documents.
- 1.2 The Facilities are uncommitted and, accordingly, the availability of the Facilities or any part thereof is subject to the Bank's absolute discretion. The Facilities are established on the basis that the Bank has no obligation whatsoever to make or continue to make available to the Borrower all or any part of the Facilities or to allow any particular utilization thereof.
- 1.3 The Bank may, at its sole and absolute discretion, review the Facilities at any time and from time to time and may, pursuant to such review, vary, amend or extend the availability or repayment period, or terminate the Facilities or any part thereof by giving notice. Any variation or amendment to the Terms and Conditions which affects fees and charges and the liabilities or obligations of the Account Holder shall be notified to the Account Holder by not less than thirty (30) days' prior notice (or such shorter notice as any exceptional circumstances may require acting reasonably) thereof. Upon any such termination the Facilities shall cease to be available for utilization and, upon notice of such termination being given by the Bank: (a) the Total Outstandings shall become immediately due and payable (unless the Bank gives notice otherwise) and the Bank shall have the right to require immediate repayment of all sums then owing to it; and (b) the Borrower shall procure the release and discharge of the Bank from all Guarantees and other contingent and/ or unmatured liabilities owing, sustained or incurred by the Bank pursuant to the utilization by the Borrower of any of the Facilities, and pending such release or discharge, shall place funds in the Bank by paying to the Bank, for credit to a suspense or other account or accounts as the Bank may decide, the amount required by the Bank to satisfy in full each of such Guarantees and other contingent and/or unmatured liabilities, and any costs and expenses in relation thereto.
- 1.4 In respect of the Facilities, subject to Clause 7 of the Conditions for Credit Facilities, the Borrower shall maintain Collateral with the Bank in accordance with the provisions of Clause 6 of the Conditions for Accounts as if the references to “Account Holder” were to “Borrower” instead.
- 1.5 Notwithstanding any specified maximum facility amount which may be designated for any Facilities, the facility amount available for drawdown or utilization is determined by reference to the value of the Collateral held with the Bank (which must satisfy the Required Collateral for such Facilities), and accordingly may exceed any specified maximum facility amount notified to the Borrower from time to time. The Bank shall give prior notice to the Borrower of any change in the maximum facility amount available for drawdown or utilization.
- 1.6 If, at any time, any deduction or withholding is made or required to be made from any payment due from the Borrower to the Bank, the Borrower shall pay to the Bank such amount as may be necessary to ensure that the Bank receives a net amount equal to the amount which it would have received had no such deduction or withholding been required or made.

### 2. Utilization Conditions

- 2.1 Any utilization by the Borrower of any of the Facilities shall be subject to the prior approval of the Bank and shall be on the terms of the relevant Facility Document(s). Each such utilization shall also be subject to the completion, execution and delivery of such documents as the Bank may require, whether prior to or subsequent to the utilization of any of the Facilities, including but not limited to legal opinions, corporate documents, consents, approvals, evidence of the registration of any Security Documents required to perfect the security created thereunder.
- 2.2 The proceeds of any utilization shall be subject to all Applicable Laws in force from time to time issued by the

relevant authorities in the relevant jurisdictions and such other restrictions that the Bank may at its absolute discretion impose from time to time.

- 2.3 Each utilization of the Facilities shall be subject to the following additional conditions (and such other conditions as the Bank may, at its sole discretion, specify from time to time) and:
  - (i) each request for utilization shall be made in such form and manner, and must be received by the Bank at such time before such utilization as the Bank may prescribe from time to time;
  - (ii) the representations and warranties in each Facility Document (including the Terms and Conditions) shall be in compliance and correct as if repeated on the date of such utilization;
  - (iii) no breach of or default (however described including the Events of Default or otherwise) under any of the terms and conditions of any of the Facility Documents shall have occurred and no breach or default will be caused by, or result from, such utilization; and
  - (iv) there shall have been no material adverse change in the condition (financial or otherwise), prospects or assets of any Security Party.

### 3. Fixed Advances

- 3.1 The Borrower may, subject to receiving the prior approval of the Bank, request a Fixed Advance by executing and delivering to the Bank a notice in such form as the Bank may specify or in such manner as the Bank may otherwise agree (whether in any Facility Document or otherwise), not later than 10:00 a.m. Singapore time on the second Business Day (or such later time agreed to by the Bank) prior to the drawdown date specified in such request or in such other manner as may be agreed by the Bank. The Bank shall, at any time, have the right to refuse to make any Fixed Advance requested by the Borrower; or where a Fixed Advance has been made, the right to terminate or cancel the Borrower with immediate effect and demand the repayment of all amounts drawn and outstanding under the Fixed Advance upon notice to the Borrower.
- 3.2 Each Fixed Advance shall be repaid in full by the Borrower on the date of its maturity, together with interest accrued thereon in arrears. Interest on any Fixed Advance having a tenure of twelve (12) months or more shall be payable in arrears at such intervals as may be determined by the Bank.

### 4. Short Term Facility

- 4.1 A Short Term Facility is available for a loan for a term not exceeding 12 months or such other term acceptable by the Bank, in major currencies acceptable to the Bank. The Bank may impose such Required Collateral as it may, in its sole discretion, think fit before making any Short Term Facility available and the provisions of this Clause and Clause 13 of the Conditions for Credit Facilities shall apply accordingly.
- 4.2 The amount of any Short Term Facility and accrued interest will be repayable by the Borrower on the Bank's demand, the demand to be in such form as the Bank may in its sole discretion think fit.
- 4.3 Notwithstanding any other provision herein, the Bank reserves the right to cancel part or all of a Short Term Facility at any time as the Bank may see fit, without assigning any reason or giving any prior notice to or obtaining any consent from the Borrower, whereupon all amounts outstanding (principal, interest or otherwise) in respect of the cancelled Short Term Facility will be due and repayable immediately. The Bank shall give notice to the Borrower upon any cancellation.

### 5. Overdraft Facility

- 5.1 The Borrower may, subject to receiving the prior approval of the Bank, draw on the relevant Overdraft Account(s) in accordance with the terms of the Facility Documents. The Bank shall, at any time, have the right to refuse to allow any Overdraft Advances of any amount from any Overdraft Account.
- 5.2 Interest on Overdraft Advances shall be payable monthly, at the end of the calendar month, in arrears (unless otherwise

provided in the relevant Facility Letter). All Overdraft Advances together with any unpaid interest thereon, commission, discount and other bank charges (if any) are repayable, and shall be repaid in full by the Borrower, on the Bank's demand.

- 5.3 Notwithstanding any other provision herein, the Bank reserves the right to cancel part or all of the Overdraft Advances at any time as the Bank may see fit, without assigning any reason or giving any prior notice to or obtaining any consent from the Borrower, whereupon all amounts outstanding (principal, interest or otherwise) in respect of the cancelled Overdraft Advances will be due and repayable immediately. The Bank shall give notice to the Borrower upon any cancellation.
- 5.4 In addition to any rights the Bank may be entitled to by law or otherwise, the Bank may at its discretion at any time and from time to time without prior notice to the Borrower, combine, consolidate or merge the balances on any Overdraft Account with any Accounts of the Account Holder and the Bank's right of set-off shall extend to include a continuing right at any time and without any prior notice or demand to sell, convert, realize, transfer, debit and setoff all or any part of any balance standing to the credit of any Account in the name of the Account Holder and to apply the same in or towards payment or satisfaction of all indebtedness and liabilities (including all costs, charges and expenses incurred by the Bank and all goods and services tax and other duties and taxes payable thereon) of the Borrower to the Bank under the Overdraft Advances. The Account Holder agrees that the authorization given in this Clause is irrevocable so long as any Overdraft Advance is outstanding from the Borrower to the Bank. The Bank shall give notice to the Account Holder upon the exercise of the Bank's set-off rights.
- 5.5 If any Overdraft Advance is in a different currency from the amount standing to the credit of such Account over which the Bank may exercise a right of set-off, the Bank is hereby authorized to effect any necessary conversion, at the spot buying rate of exchange (as the Bank may conclusively determine), in order to exercise such right of set-off.

## 6. Issue of Guarantees and SBLCs

- 6.1 The Borrower may, subject to receiving the prior approval of the Bank (including, without limitation, prior approval of the Bank to the terms and conditions and the form and duration of the relevant Guarantee), request for the issuance of a Guarantee (including a SBLC) by executing and delivering to the Bank, not later than three (3) Business Days before the proposed date of issue of the Guarantee under the Facilities, such documents, including such application (and any related undertaking to indemnify and reimburse the Bank) and any approvals and consents which the Bank may require in connection with such issue.
- 6.2 The Borrower agrees to pay the Bank a minimum upfront fee for the issuance of each Guarantee, such fee to be determined by the Bank and agreed with the Borrower and be payable no later than the date of issuance of each such Guarantee.
- 6.3 In consideration of the Bank issuing, at the Borrower's request, Guarantees from time to time (whether as surety, principal debtor, primary obligor or otherwise), the Borrower hereby agrees:
- that the Bank need not check or verify the use or purpose of any Guarantee which the Borrower requests to be issued under the Facilities;
  - if the Bank notifies the Borrower that a beneficiary or any other person entitled to receive payment under a Guarantee (the "Beneficiary") has made a claim or demand on the Bank to pay any sum under that Guarantee, the Borrower shall immediately upon receipt of such notice (unless otherwise specified in that notice), pay to the Bank all amounts payable by the Bank under or in connection with that Guarantee (whether or not the Bank has already paid such sum), notwithstanding that at the time of such claim or demand the Bank is not liable or required by law to make any payment under or in connection with that Guarantee and notwithstanding any fact or circumstance which may constitute a defence or discharge to the Bank in respect of the claim or demand made against it under or in connection with that Guarantee;
  - that the Bank may at all times immediately pay, discharge
- and satisfy any amounts claimed or demanded by the Beneficiary under or in connection with any Guarantee without reference to or further authority from the Borrower and without further investigation or enquiry and, notwithstanding that the Borrower disputes the validity of any such demand or payments (whether or not such dispute is disclosed or known to the Bank). The Bank need not concern itself with the propriety of any claim made or purported to be made under or in connection with any Guarantee and it shall not be a defence to any demand made by the Bank of the Borrower in relation to any Guarantee, nor shall any of the Borrower's obligations hereunder be affected or impaired by, the fact that the Bank was or might have been or be justified in refusing payment, in whole or in part, of any such amounts claimed or demanded; and
- unless the Bank consents otherwise, upon expiry, discharge, release or cancellation, for any reason whatsoever, of any Guarantee, to return, or procure the return, of the original Guarantee to the Bank within 3 Business Days of expiry, discharge, release or cancellation. For the avoidance of doubt, the Bank's obligations under the Guarantee shall be discharged and released absolutely upon such expiry, discharge, release or cancellation, notwithstanding any failure to return the original Guarantee to the Bank.
- 6.4 Without prejudice to the indemnities given by the Account Holder pursuant to the Conditions for Accounts, the Borrower further undertakes to indemnify and hold harmless the Bank, its parent, affiliates, Group Entities, subsidiaries and correspondents and their respective directors, officers, employees and agents (each, including the Bank, an "Indemnified Person") from and against any and all claims, suits, judgements, costs, Losses, fines, penalties, damages, liabilities and expenses, including expert witness fees and fees, charges and disbursements of any counsel for any Indemnified Person (including any goods and services tax and other similar taxes thereon) (together, "Costs"), arising out of, in connection with, or as a result of, any Guarantee, including, without limitation, any Costs arising out of any action for injunctive relief or other judicial or administrative relief or arbitration arising out of or in connection with any Guarantee.
- 6.5 Unless otherwise expressly agreed by the Bank in writing, and notwithstanding any automatic reduction clause in any Guarantee, the obligation of the Borrower to indemnify the Bank for the full amount of the Bank's liability under any Guarantee shall not be reduced by reason of any partial performance of the contract between the Beneficiary of that Guarantee and the Borrower.
- 6.6 In the event that, at the request of the Borrower, the Bank agrees to amend any Guarantee so as to extend the expiry of that Guarantee or the time for presentation of claims under that Guarantee, or to modify any other terms of that Guarantee or to increase the amount of that Guarantee, the obligations of the Borrower under the Facility Documents shall, notwithstanding any such amendment, be binding on the Borrower with regard to that Guarantee as so amended and to any action taken by the Bank or any of the Bank's agents or correspondents pursuant to such amendment.
- 6.7 Each Guarantee issued under the Facility Documents as a SBLC shall be subject to the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce Publication No. 600 or the International Standby Practices 1998, (incorporating all amendments made in subsequent revisions thereof), as specified in the relevant Guarantee and to the extent not inconsistent therewith, shall be governed by and construed in accordance with the law of the country in the relevant jurisdiction. Pursuant to this Clause 6.7:
- The Bank is authorized to accept or, as the case may be, to pay all drafts or documents purporting to be drawn or presented under any SBLC.
  - The Borrower shall, as applicable, accept and pay, or accept upon presentation and pay at maturity, all documents presented or drafts drawn in accordance with the terms of any SBLC.
  - The Bank may restrict negotiations under any SBLC to a Group Entity or to any correspondents or agents of its choice and the Bank is authorized to accept and/or

pay for the account of the Borrower all drafts purporting to be drawn upon the Bank, any Group Entity, or any correspondents or agents of the Bank (as the case may be) under such SBLC.

- (d) In relation to the tender of documents under any SBLC, it shall be a sufficient and proper compliance with the terms thereof if the documents purport to be in order and, taken as a whole, contain the description of the obligations as given in the SBLC and appear complete and regular on their face under general scrutiny and none of the Bank, the Group Entity or any correspondents and agents of the Bank shall be responsible for the genuineness, correctness or form of documents or any endorsements thereon or any misrepresentation therein as to any matter.
- (e) The Borrower shall hold the Bank, the Group or any correspondents and agents of the Bank free from any liability or responsibility for the consequences (which shall not, in any way, affect the rights of the Bank hereunder) arising from delay or loss in transit, transmission or otherwise of any message, letter, document, draft or the proceeds thereof or the delay, interruption, mutilation, omission or other error in the transmission or delivery of any messages, by mail, e-mail, facsimile, telex or otherwise, or any error in translation or interpretation of technical terms or arising from any ambiguity in Instructions and the Bank shall have the right to transmit the terms of any SBLC without translating them.
- (f) The Borrower shall indemnify the Bank, the Group or any correspondents and agents of the Bank in respect of any claim, Loss, liability or expense howsoever arising from or in connection with any SBLC or the related documents, property or proceeds.
- (g) None of the Bank, the Group or any correspondents and agents of the Bank shall be responsible for the following and none of the following shall, in any way, affect the rights of the Bank hereunder:
  - (i) the form, legal effect, correctness, validity, sufficiency or genuineness of documents even if such documents should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged;
  - (ii) failure of any draft to bear any reference or adequate reference to the relevant SBLC, or failure of documents to accompany any draft at negotiation, or failure of any person to send documents apart from drafts as required by the terms of the SBLC or failure of any person to note the amount of any draft on the reverse of a SBLC or to surrender or take up a SBLC; or
  - (iii) any consequences arising from causes beyond the control of the Bank.

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

## 7. Trading Facilities

- 7.1 Where the Bank in its sole discretion provides to the Account Holder a trading facility for any Transaction, the Conditions for Financial Transactions shall also apply, including but not limited to Clauses 11 and 12 thereof.
- 7.2 Where the Bank in its sole discretion provides to the Account Holder an exchange-traded option trading facility for the purpose of financing the Account Holder's trades through the Bank in exchange-traded options which are listed or quoted for trading on such exchanges as the Bank may agree from time to time, the Conditions for Financial Transactions shall also apply, including but not limited to Clauses 11 and 12 thereof.
- 7.3 Without prejudice to Clauses 7.1 and 7.2 above, the Account Holder may only utilize a trading facility for such trades, in such form, on such Underlying and for such tenure as the Bank may in its absolute discretion approve.

## 8. Interest and Service Charges

- 8.1 Interest shall be charged in respect of any Facility at such rate and calculated and compounded on such basis as the Bank may in the Bank's absolute discretion determine from time to time provided always that the Bank shall be entitled, at any time and from time to time, by prior notice (other than those interest rate which it is agreed will change on a daily basis) to the Borrower to vary the rate of interest (including default interest) at its absolute discretion. That variation shall take effect and be binding on the Borrower from the date specified in the notice to the Borrower.
- 8.2 Guarantee commission shall not be refundable in respect of any period following the discharge, release or cancellation, for any reason whatsoever, of the relevant Guarantee.
- 8.3 The Bank shall be entitled to charge default interest at such rate as the Bank may determine in its absolute discretion from time to time above the interest rate then applicable to the relevant Facility which default interest shall be calculated on a monthly compounded basis or, at such rate or rates and calculated on such basis as the Bank may determine at its sole discretion from time to time, on any moneys (whether principal, interest, default interest, fees, charges, expenses, commissions or otherwise) not paid by the Borrower when due from the due date(s) until payment of such moneys after as well as before judgment.
- 8.4 Both interest and default interest (as applicable) shall continue to be charged, and the Bank shall be entitled to continue to capitalise interest in relation to outstanding amounts owed in respect of any Facility or on other moneys (as applicable), notwithstanding the termination of any account or Facility or the Account Holder's relationship with the Bank, until payment in full of all sums owing by the Account Holder and/or the Borrower to the Bank.
- 8.5 Interest (including default interest) charged in respect of any Facility (where applicable) shall be calculated on the basis of the actual number of days elapsed and a 365-day year (for such currency as the Bank may elect and notify the Borrower) or a 360-day year (for other currencies which are Acceptable Currencies).
- 8.6 A service charge may be charged by the Bank in respect of any Facility granted to the Borrower in such quantum or at such rate as the Bank may in the Bank's absolute discretion determine from time to time. The Bank reserves the right to charge for any excess Overdraft Advances above the stipulated limit (if any) at rates to be determined by the Bank at its sole discretion.

## 9. Payment Provisions

- 9.1 Without prejudice to the Account Holder's obligations to make payments in accordance with Clause 7 of the Conditions for Accounts in relation to payments other than pursuant to this Facility, the Borrower shall pay to the Bank on demand all fees, charges, interest and all other expenses whatsoever due to or incurred by the Bank or any Group Entity, or any agents and/or correspondents of the Bank or any Group Entity in relation to the Facilities or relevant Banking Services provided by the Bank or any Group Entity to the Borrower. In connection with the issuance of any Guarantee and the provisions of any Facilities and any relevant Banking Services by the Bank, the Borrower shall pay to the Bank, on demand, any increased costs resulting from the application of any Applicable Law at any time applicable in connection with such Guarantee, Facilities and relevant Banking Services.
- 9.2 All principal amounts together with any outstanding amount (including interest) shall be repayable at maturity of such Facilities and in US Dollar or such currency as otherwise specified by the Bank ("**Base Currency**").
- 9.3 All payments to be made to the Bank shall be made on the dates on which they are due or, as the case may be, immediately on demand, in the Base Currency and in immediately available freely transferable funds to such account as the Bank may from time to time designate.
- 9.4 If any Facility is terminated under any provision of a Facility Document, any sum advanced and outstanding under or fees, expenses and charges incurred in relation to that Facility and interest accrued thereon (including default interest) shall immediately become due and payable.

9.5 Save as otherwise expressly provided in this Clause 9, the provisions of Clause 7 of the Conditions for Accounts shall apply to the Borrower's payment obligations under each of the Facility Documents.

9.6 The Borrower shall in any such case indemnify the Bank for any costs (including but not limited to Break Costs) sustained or incurred by the Bank as a result of each such prepayment whether made pursuant to the Bank's demand or as a result of the Borrower's election.

## 10. Application of Moneys

If any sum paid or recovered in respect of any part of the Total Outstandings is less than the Total Outstandings at such time, the Bank may apply that sum to expenses, interest, fees, commission, principal or any amount due in such proportions and order and generally in such manner as the Bank thinks fit or may credit the same or part thereof to a suspense account if the Bank thinks fit. Where the Bank decides to put the money into a suspense account, the money will not be used to reduce the Borrower's liabilities. In the event of any proceedings in or analogous to bankruptcy, winding up, liquidation, judicial management, composition or arrangement of the Borrower, the Bank may prove for the whole outstanding sum and liabilities (absolute or contingent) in addition to costs, charges, interest and expenses and agree to accept any dividend or composition, as if there had been no suspense account or money credited into the suspense account.

## 11. Events of Default and Termination

11.1 Without prejudice to the rights of the Bank to, at its absolute discretion, terminate the Facilities or any part thereof at any time, the Bank may, upon the occurrence of an Event of Default, a Termination Event and/or a Potential Termination Event, by notice (whether written or otherwise) to the Borrower:

- (a) declare the whole or any part of the Total Outstandings, whether accrued or contingent, to be immediately due and payable whereupon they shall become immediately due and payable;
- (b) declare the Bank's obligations under the Facilities to be terminated whereupon they shall forthwith terminate; and/or
- (c) require the Borrower to procure the release and discharge of the Bank from all Guarantees and other contingent and/or unmatured liabilities owing, sustained or incurred by the Bank pursuant to the utilization by the Borrower of any of the Facilities, whereupon the Borrower shall be obliged to immediately do so and, pending such release or discharge, shall provide cash collateral to the Bank in such amounts as shall be sufficient to fully satisfy all such liabilities and any costs and expenses in relation thereto and or place funds in the Bank by paying to the Bank, for credit to a suspense or other account or accounts as the Bank may decide, such amounts as shall be sufficient to fully satisfy all such liabilities and any costs and expenses in relation thereto (which cash collateral and/or amounts shall only be released to the Borrower if and to the extent that all such liabilities of the Bank are fully and irrevocably released and discharged and all such costs and expenses are paid in full).

11.2 Upon the giving of any notice under Clause 11.1 above, the Bank shall (without limitation to all its other rights and remedies) and without reference to the Borrower, any Security Party or any other person, be entitled to:-

- (a) sell, assign, transfer, realize, redeem, negotiate, liquidate or dispose of all or any Collateral at any time, in any manner and for any consideration (both payable immediately or by instalments spread over any period) that it thinks fit (including without limitation for such purpose converting the whole or any part or parts of such Collateral, at the Borrower's expense, into any currency other than the currency in which the same are then held by the Bank);
- (b) exercise all its rights, powers and remedies under any of the Security Documents or other Facility Documents, in such manner and order as the Bank may, in its absolute discretion, deem fit;
- (c) enforce its security interest in or in relation to, or realize its security, in such manner as the Bank may, in its absolute discretion, deem fit and apply all proceeds from such

enforcement and realization in such manner and order as the Bank may in its absolute discretion deem fit towards the full or partial discharge of the Total Outstandings and all other liabilities of the Account Holder and/or the Borrower under the Facility Documents; and

- (d) combine or consolidate the Account Holder's and/or the Borrower's accounts and liabilities with or to any Group Entity anywhere in the world or transfer any sum or sums standing to the credit of one or more of such accounts in or towards satisfaction of any of the liabilities of the Account Holder and/or the Borrower to the Bank or any Group Entity on any other account or accounts anywhere in the world or in any other respect whether such liabilities be actual or contingent, primary or collateral, several or joint, notwithstanding that the credit balances on such Accounts and liabilities on any Accounts may not be expressed in the same currency and the Bank is hereby authorized to effect any conversions at the Bank's spot buying rate of exchange (as the Bank may conclusively determine).

11.3 Upon termination of the Facility or a demand of repayment is made by the Bank, the Bank, its nominees or agents may without further notice to the Account Holder (i) exercise the voting and other rights in connection with any or all of the assets in any Account as it deems fit; (ii) exercise any right of set-off or consolidation pursuant to Clause 10 of the Conditions for Accounts; (iii) terminate and unwind any and all Transactions entered into by the Account Holder; and (iv) sell, assign, transfer, realize, redeem, negotiate, liquidate or dispose of all or any of the assets and/or marketable Securities in any Account at any time, in any manner and for any consideration (both payable immediately or by instalments spread over any period) that it thinks fit. The Bank may apply the net proceeds (after deducting any expenses incurred) towards satisfaction of the Total Outstandings in the order, proportion or manner that the Bank thinks fit (including without limitation for such purpose converting the whole or any part or parts of the net proceeds, at the Account Holder's expense, into any currency other than the currency in which the same are then held by the Bank). The Bank may also apply the dividends, interest or other distribution in cash received by the Bank in respect of the Accounts in a similar manner to the net proceeds. The Account Holder agrees not to hold the Bank liable for any Loss, damage or expense which he may incur or suffer arising from, in connection with or related to the price and the time at which the assets and/or marketable securities in any Account are realized even if a better price could have been obtained if the Bank had deferred or advanced the date of the sale, the manner and mode in which such assets and/or marketable securities in any Account are realized and the time, mode and manner in which the consideration is paid. No purchaser or other person shall be bound or concerned to see or enquire whether the right of the Bank to exercise any of the powers hereby conferred has arisen or not be concerned with notice to the contrary or with the propriety of the exercise of such powers.

11.4 The Borrower confers a power of attorney jointly and severally on the Bank and any person to whom the Bank has delegated the exercise of the power of attorney conferred by this Clause (the Bank and the delegate(s) collectively, the "**attorney(s)**"). The Borrower agrees that the Bank may delegate the power of attorney conferred by this Clause to any number of persons while itself continuing to exercise the power of attorney. The Bank may revoke the delegation at any time. The attorney(s) is authorized to execute documents and do anything that is considered necessary by the Bank in the name of the Borrower or on its behalf in order to (i) carry out any obligation imposed on the Borrower pursuant to this Clause, (ii) effect any dealings by the Bank, (iii) realize the security under the Facility Documents, and (iv) enable the Bank to exercise the powers conferred under this Section or by law. The Borrower acknowledges that this power of attorney is granted irrevocably and for value as part of the security constituted by this Section to secure the Borrower's performance of its obligations to the Bank.

11.5 Neither the security constituted by or pursuant hereto nor the rights, powers and remedies conferred upon the Bank or its delegates by the Conditions for Credit Facilities or by law shall be discharged, impaired or otherwise affected by any act, event or omission which, but for this Clause might operate

to discharge, impair or otherwise affect the security hereby constituted, or any of the rights, powers or remedies conferred upon the Bank or any of its delegates by this Clause or by law.

- 11.6 The Borrower shall pay the Bank on demand all costs, charges and expenses (including stamp duty, registration fees and other duties and taxes) incurred by the Bank in or about the perfection, enforcement or attempted enforcement, preservation or attempted preservation of the security under the Facility Documents on a full indemnity basis. The Borrower agrees to fully indemnify and hold the Bank and all its servants, employees, correspondents, nominees and agents harmless from and against all Losses, actions, claims, demands and expenses in respect of calls or other payments relating to the security under the Facility Documents, for anything done or omitted in the exercise or purported exercise of their powers herein contained, or by any breach by the Borrower of any of its obligations to the Bank. Any third party referred to in this Clause 11.6 may enjoy the benefit or enforce the terms of this Clause in accordance with the provisions of the Contracts (Rights of Third Parties Act), Chapter 53B of Singapore.
- 11.7 The Borrower acknowledges and will procure all other Security Parties to acknowledge that the Bank shall not be called to account as mortgagee in possession in respect of all or any of the security under the Facility Documents and shall not be liable for any Loss upon realization or for any neglect or default in presenting any interest coupon or any bond or stock drawn for repayment or failure to accept any offer or advantage or for not notifying such party of the same.

## 12. Costs and Expenses

- 12.1 Without prejudice to the generality of any other provision in the Terms and Conditions, all costs and expenses incurred by the Bank (including without limitation, fees and expenses of the Bank's legal and other professional advisors and any goods and services and similar taxes on such costs and expenses) arising in relation to any Facility granted or extended to the Borrower (whether or not such Facility is cancelled prior to drawing or utilization thereof), and all charges, costs and expenses, including legal costs (on a full indemnity basis), incurred or paid by the Bank in preserving, protecting, exercising or enforcing any security furnished to secure any part of the Total Outstandings or any right, power or remedy of the Bank for the recovery of any sum due or owed by the Account Holder to the Bank or by any Security Party to the Bank, shall be paid forthwith on demand to the Bank by the Borrower and until payment in full shall bear interest at such rate and on such basis as the Bank may stipulate from time to time. In addition, where the Borrower is in default of payment of taxes, duties, levies, charges or obligations whatsoever charged or falling due, or is in default of payment of any insurance premium, legal or inspection or valuation fees, stamp duty or out-of-pocket expenses of any kind whatsoever, the Bank may in its discretion meet such expenses and shall be reimbursed by the Borrower in accordance with the preceding sentence.
- 12.2 In the event of prepayment of a Facility, whether pursuant to the Bank's demand or as a result of the Borrower's election, Break Costs may be incurred. These Break Costs incurred in respect of any relevant Facility are to be borne fully by the Borrower.
- 12.3 The Borrower shall bear the cost of doing or refraining from doing any act, matter or thing which it is required to do or refrain from doing under or in connection with any Facility Document.
- 12.4 The Borrower must pay all taxes or duties or registration fees imposed, levied, to be remitted to or collected, withheld or assessed by or otherwise arising in relation to the execution, delivery, registration, performance, release, discharge, variation, enforcement or attempted enforcement of or otherwise in respect of the Facility Documents (other than a tax imposed on the overall net income of the Bank), and including any related interest, expense, fine, penalty or other charge on those amounts. The Bank is hereby authorized to debit the relevant Account(s) and the Borrower shall indemnify the Bank against all claims, Losses, liabilities, damages, costs and expenses in respect of any amount payable under this Clause.

## 13. General Security

- 13.1 Where any Facilities or Guarantees are required to be secured by any Collateral, the Borrower agrees to execute or to procure

that the owner(s) of the property(ies) or the appropriate parties execute and deliver the mortgage(s), debentures, marketable Securities and/or Surety Instruments or other guarantees in such form containing such terms, covenants and conditions as shall be required by the Bank. If required by the Bank, the Borrower shall deliver legal opinions and supporting documents certifying the legality and enforceability of any security or Surety Instruments or other guarantee, together with any necessary consents, licenses, approvals or authorization, in form and substance satisfactory to the Bank. The title of mortgages or property must be good and in order and the acceptability of any Collateral offered as security is to be determined by the Bank at its absolute discretion.

- 13.2 Any security (including, without limitation, any Surety Instrument) taken by or given to the Bank or money deposited at the Bank shall continue to be held by the Bank and not released or withdrawn until the Total Outstandings and/or Secured Indebtedness have been fully repaid to the Bank and unless the Bank consents otherwise, any expired Guarantees or any instruments whatsoever from time to time issued by the Bank for the Borrower's account have been returned to the Bank for cancellation.
- 13.3 The Borrower shall furnish, and where applicable or if required by the Bank, procure, upon demand, the delivery of such security or additional security in such form and value (including cash collateral) as may be required by the Bank from time to time in amounts and/or values sufficient at all times in the opinion of the Bank to secure all or any part of the Total Outstandings whether contingent, future or otherwise and, unless not required to do so by the Bank in its absolute discretion, shall and where applicable, will procure that every Security Party does, register or procure the registration thereof with the appropriate authority at the expense of the Borrower.
- 13.4 The Borrower shall maintain at all times, any ratios (including security margin and any other financial ratio(s)) as determined and/or adjusted by the Bank from time to time at its absolute discretion. No previously agreed ratio or margin level shall set a precedent or bind the Bank thereto.
- 13.5 Without prejudice to Clause 13.3 above but subject to Clause 13.6 below, if any ratios (including any other financial ratio(s)) as determined by the Bank from time to time is exceeded or if the market value of any security falls below the stipulated security margin and/or what the Bank considers to be an adequate security margin, the Bank may (at its absolute discretion) require the Borrower or, if applicable, the relevant Security Party, to furnish the Bank with further security acceptable to it and subject to such terms and conditions as the Bank may stipulate, and/or to reduce or prepay the outstanding loan or indebtedness as the Bank may notify the Borrower and, if applicable, the relevant Security Party, from time to time (in writing or otherwise). Such further security must be provided and/or prepayment must be made within such time limit (which in certain circumstances may be less than 24 hours) as may be specified by the Bank in its said notification of such requirement. All expenses and charges incurred thereby (including those incurred as a result of the prepayment of any advance(s) and those incurred in any currency conversions) shall be borne by the Borrower on a full indemnity basis.
- 13.6 The Bank may monitor the maintenance of any ratio (including security margin (including its valuation of the Collateral) or other financial ratio(s)), as determined by the Bank from time to time at such intervals as it sees fit at its absolute discretion. The Bank reserves the right (at its absolute discretion and at any time) to vary any such ratio (including loan to Collateral ratio or loan to value ratio) or security margin.
- 13.7 The Bank's determination of any ratios (including security margin (including its valuation of the Collateral) or other financial ratio(s)) as determined by the Bank from time to time at any time shall be final and conclusive on the Borrower. All costs incurred in valuing the Collateral shall be borne by the Borrower.
- 13.8 The Borrower agrees that the Bank may disclose information about the Borrower, particulars of the Accounts and the Facilities (including without limitation statement of accounts and demand for overdue payment in respect of the Borrower) at any time the Bank deems it necessary in its absolute discretion to any Security Party.

13.9 Without prejudice to any other indemnities given by the Borrower in the Conditions for Credit Facilities and/or by the Account Holder under the Account Documents, the Borrower agrees to hold the Bank and all of its officers, servants, employees, correspondents, nominees and agents harmless, and shall indemnify each of them promptly on demand on a full indemnity basis, from and against any and all Losses (direct or consequential), claims, demands, actions, suits, proceedings, orders, damages, costs and expenses (including foreign exchange Losses, all duties, taxes and other levies, interest, service charges and legal costs on a full indemnity basis) and any and all other liabilities of whatsoever nature or description howsoever arising, unless arising solely from the Bank's gross negligence or wilful default, which the Bank may incur or sustain from or by reason of imposing a time limit pursuant to Clause 13.5 above or failing to notify the Borrower where the Borrower is not contactable.

#### 14. Representations and Warranties

14.1 The Borrower represents and warrants, at all times during the availability of the Facilities and/or so long as any sum remains payable by the Borrower under or in connection with any of the Facility Documents or by the Bank under any Guarantee or any contingent and/or unmatured liability, by reference to the facts then existing, that:

(a) where the Borrower is an individual:

- (i) he has full power and capacity to enter into the Facility Documents and perform the Transactions contemplated by such Facility Documents to which he is a party;
- (ii) each Facility Document when executed in accordance with its terms will constitute, the Borrower's legal, valid and binding obligations enforceable in accordance with its terms;
- (iii) his entry into and performance of, and the Transaction contemplated by, the Facility Documents to which he is a party do not and will not conflict with any law or regulation or judicial or official order;
- (iv) each consent, licence, approval, authorization and notice of/to any governmental authority, office, agency or any third parties which are required in connection with the performance, validity or enforceability of the Facility Documents have been obtained and a copy of which have been provided to the Bank;
- (v) he is not in default under any agreement to which he is a party or by which it may be bound, and no litigation, arbitration or administrative proceedings are presently current or pending, or, to his knowledge, threatened, which default or litigation, as applicable, would have a Material Adverse Effect on him or could affect his ability to fulfil his obligations under the Facility Documents or these Conditions for Credit Facilities;
- (vi) he is and will be compliant with all current and future Applicable Laws and regulations, rules, Securities, derivatives or other public disclosure, reporting and/or financial statement disclosure requirements (including but not limited to disclosure of interests under applicable listing rules and/or legislation) applicable to the provisions of the Facility Documents and any Transactions entered into pursuant to the terms of the Facility Documents and he will not hold the Bank liable in this respect; and
- (vii) the entry into and performance by him of, and the Transactions contemplated in the Facility Documents do not and will not conflict with any agreement or instrument binding upon him, including without limitation any financial covenant or negative pledge which may be applicable.

(b) where the Borrower is a company or corporation:

- (i) it is duly registered or (as the case may be) incorporated and validly existing under the laws of its country of registration or incorporation and has the power to own its assets and carry on its business as it is being conducted and to enter into and deliver, and perform the Transactions contemplated by, each of the Facility Documents to which it is a party;

(ii) its Memorandum and Articles of Association as delivered to the Bank are in full force and effect without amendment, and the execution and performance of any obligation under the Facility Documents will not contravene any provisions of its Memorandum and Articles of Association or any other relevant constitutional or organizational documents;

(iii) it has obtained all necessary resolution(s) of its board of directors and/or shareholders for the purpose of the execution and performance of its obligations under the Facility Documents, which resolutions as delivered to the Bank is/are valid, binding and in full force and effect;

(iv) each consent, licence, approval, authorization and notice of/to any governmental authority, office, agency, its shareholders or any third parties which is required in connection with the performance, validity or enforceability of the Facility Documents has been obtained and a copy of which has been provided to the Bank;

(v) it is not in default under any agreement to which it is a party or by which it may be bound, and no litigation, arbitration or administrative proceedings are presently current or pending, or, to its knowledge, threatened, which default or litigation, as applicable, would have a Material Adverse Effect on the Borrower or could affect its ability to fulfil its obligations under the Facility Documents;

(vi) it is and will be compliant with all current and future Applicable Laws and regulations, rules, Securities, derivatives or other public disclosure, reporting and/or financial statement disclosure requirements (including but not limited to disclosure of interests under applicable listing rules and/or legislation) applicable to the provisions of Facility Documents and any Transactions entered into pursuant to the terms of the Facility Documents and the Borrower will not hold the Bank liable in this respect; and

(vii) the entry into and performance by it of, and the Transactions contemplated in the Facility Documents do not and will not conflict with any agreement or instrument binding upon it or any of its subsidiaries, including without limitation any financial covenant or negative pledge which may be applicable.

(c) where the Borrower is a trustee:

- (i) the trust has been validly created and is in existence;
- (ii) the Borrower is empowered under the relevant trust deed to enter into, perform and comply with all the obligations, and to carry out the Transactions contemplated by, the Facility Documents and there are no restrictions or conditions upon such activity;
- (iii) the entry into and performance of the Borrower's obligations under the Facility Documents do not and will not constitute a breach of any terms of the relevant trust deed;
- (iv) all necessary resolutions have been passed and all consents, approvals and other procedural matters have been obtained or attended to as required by the relevant trust deed;
- (v) no assets of the trust have been resettled or set aside or transferred to any other trust or trusts;
- (vi) the trust has not been terminated nor has the date or any event for vesting of the assets of the trust occurred; and
- (vii) the Borrower has a right of indemnity out of, and lien over, the assets of the trust for any liability under the Facility Documents and that right of indemnity and lien have not been restricted or limited in any way.

(d) where the Borrower is a charity/foundation/non-profit association:

- (i) the Borrower has been validly created and is in existence;
- (ii) the Borrower is empowered to enter into, perform and comply with all the obligations, and to carry out the Transactions contemplated by, the Facility Documents

- and there are no restrictions or conditions upon such activity;
- (iii) the entry into and performance of the Borrower's obligations under the Facility Documents do not and will not constitute a breach of any terms of its constitutional or organizational documents;
- (iv) all necessary resolutions have been passed and all consents, approvals and other procedural matters have been obtained or attended to as required by its constitutional or organizational documents; and
- (v) the Borrower is in continuous operation, there is no change in the Borrower's status and the date or event for vesting of the Borrower's assets has not occurred.
- (e) its execution and delivery of, and performance of the Transactions contemplated by, the Facility Documents do not and will not conflict with or constitute a default or exceed any limitation under any law, judgment, order, license, concession, permit, consent or regulation applicable to it, any provision or any powers granted under its constitutive documents or any agreement or instrument binding upon it or any of its assets, nor (except for any security created under any of the Security Documents) result in the existence of, or oblige it to create, any security over any of its assets;
- (f) there are no charges, mortgages, pledges, liens or other security interests in respect of any of its property or assets except those which have been previously disclosed to the Bank in writing prior to its entry into the Facility Documents or for which the prior written consent of the Bank has been obtained;
- (g) no litigation, arbitration or administrative proceedings of or before any court, tribunal, arbitral or administrative body or government agency has been started or threatened against or otherwise affecting it;
- (h) no legal or other proceedings have been initiated or threatened and no meeting has been convened for the bankruptcy, dissolution, liquidation, winding-up, judicial management, termination of existence or reorganization of, or for the appointment of a receiver, manager (judicial or otherwise), trustee or similar officer of it or in respect of any or all of its assets; and
- (i) there is no material adverse change in the condition (financial or otherwise), prospects or assets of any Security Party which may affect its ability to perform its obligations under any Facility Document to which it is a party.

## 15. Undertakings

- 15.1 The Borrower repeats the undertakings set out in Clause 11 of the Conditions for Accounts (as if the references had been to the "Borrower" instead of the "Account Holder") for as long as the Facilities remain available and/or any sum remains payable by the Borrower under or in connection with any of the Facility Documents or by the Bank under any Guarantee or contingent and/or unmatured liability.
- 15.2 The Borrower further undertakes as follows, except to the extent that the Bank otherwise consents in writing:
- (a) to ensure that its payment obligations under the Facility Documents rank and continue to rank at least pari passu with the claims of all of its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally;
  - (b) to ensure that it shall not enter into any amalgamation, demerger, merger or corporate reconstruction or establish any joint venture or cooperation with other third parties;
  - (c) where the Borrower is a company or corporation:
    - (i) to promptly and in any event within three (3) Business Days inform the Bank of any changes to its directors or shareholders, or of any amendments to its Memorandum and Articles of Association or any other relevant constitutional or organizational documents;
    - (ii) to ensure that it shall procure that no substantial change is made to the general nature of the business of its group from that carried on the date of its entry into the first Account Document.

- (iii) to ensure that it shall not create or permit to subsist any security over any of its assets and that it shall not:
  - (1) encumber, sell, transfer or otherwise dispose of any of its assets;
  - (2) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (3) enter into or permit to subsist any security over or restriction on the ability to transfer or realize its assets;
  - (4) enter into or permit to subsist any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
  - (5) enter into or permit to subsist any other preferential arrangement having a similar effect, in circumstances where the arrangement or transaction is entered into primarily as a method of raising indebtedness (other than with the Bank) or of financing the acquisition of an asset;
- (d) where the Borrower is a trustee:
  - (i) to ensure that the relevant trust deed is not amended or revoked without prior notification to the Bank;
  - (ii) to ensure that there is no resettlement, setting aside or transfer to any other trust or person of any of the assets of the trust other than in accordance with the relevant trust deed;
  - (iii) to duly and punctually comply with its obligations and duties under the relevant trust deed and at law;
  - (iv) to ensure that the Terms and Conditions apply to the new trustee when another person is appointed trustee of the trust;
  - (v) not to do anything which will cause or enable its removal nor will it retire as trustee of the trust;
  - (vi) to ensure that the vesting date of the trust is not determined and the Borrower will not otherwise alter, shorten or fix the vesting date under the relevant trust deed;
  - (vii) to ensure that there is no restriction or limitation or derogation from its right of subrogation or indemnity (whether or not arising under the relevant trust deed) and that the Bank's lien over the assets of the trust has priority over the rights of the beneficiaries of the trust; and
  - (viii) to inform the Bank immediately if any of the representations and warranties set out in subclauses (i) to (vii) above becomes untrue or inaccurate at any time with respect to the facts and circumstances then existing.

Notwithstanding any withdrawal of authorization to the Borrower to give this undertaking or the Borrower for whatever reasons ceasing to act as trustee of the trust, the Borrower's liability will cease only upon the full repayment of the Total Outstandings; and

- (e) where the Borrower is a charity/foundation/non-profit organization, to immediately inform the Bank of any change to its board members or beneficiary shareholders or of amendments to its organizational documents.

- 15.3 The Borrower agrees that the Borrower will make arrangements with the Bank to sign and return the initial Facility Letter from the Bank regarding the extension of any Facilities or Banking Services by the Bank to the Borrower as well as any amendments thereto.

## 16. General

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

- 16.2 Each of the rights, powers, and remedies conferred on the Bank by the Terms and Conditions shall be in addition to and not in derogation of all other rights, powers and remedies conferred on the Bank by virtue of any agreement, security, statute or rule of law or equity.
- 16.3 Time shall in all respects be of the essence in the performance of all of the Borrower's obligations.
- 16.4 A certificate signed by any of the Bank's officers as to any amount at any time payable by the Borrower to the Bank on any Account or in respect of any Facility or hereunder and any other certificate, determination, notification or opinion of the Bank shall be conclusive and binding on the Borrower and the Security Parties (as the case may be) save for manifest errors.

**17. Application of Clauses 27 to 38 of the Conditions for Accounts**

Clauses 27 to 38 of the Conditions for Accounts shall apply to the Facility as if the references to "Account Holder" had been to "Borrower" instead.

## VII. Conditions for Discretionary Asset Management Service

### 1. The Discretionary Asset Management Service

- 1.1 Subject to Clause 16, the Account Holder instructs the Bank at the Account Holder's risk, and for a fee, to manage the Account Holder's assets under his account or accounts opened with the Bank (each a "**Managed Account**"), and to invest all such assets at the Bank's discretion, upon execution of all relevant documentation requested by the Bank and performance of such other actions by the Account Holder (including but not limited to the deposit by the Account Holder of the minimum required sum and provision of sufficient Collateral as required by the Bank) pursuant to the terms and conditions in this Section, as amended by the Bank from time to time, and the terms of the programme specification to be completed by the Account Holder and agreed with the Bank (the "**Discretionary Management Programme Specifications**") and any Specific Investment Instructions as defined in Clause 2.2 below. The Bank is also specifically entitled to close related accounts and to open additional accounts in the Account Holder's name as deemed appropriate for the discretionary asset management service (the "**Discretionary Asset Management Service**") under this Section.
- 1.2 Taking into consideration the Account Holder's Discretionary Management Programme Specifications agreed for each Managed Account, the Bank will at its absolute discretion construct a portfolio for the Account Holder by selecting the portfolio structure, asset classes and investment instruments for that Managed Account (the "**Managed Portfolio**"). The Managed Portfolio will be reviewed by the Bank on an ongoing basis and may be adjusted without prior reference to the Account Holder.
- 1.3 The Bank is hereby authorized (but shall not be obliged) to exercise the following powers and act either by itself or through its nominees or agents in the following manner in its sole discretion without prior reference or notice to the Account Holder:
  - (a) buy and sell in cash or on a forward basis, but for the Account Holder's account and at the Account Holder's risk, any time deposits, Precious Metals, currencies, money and capital market investments (e.g. shares, bonds, notes, certificates, structured products, credit derivatives, loan stock rights), any instruments derived therefrom and its combinations (derivatives, hybrids, etc.), and any other listed and unlisted investment instruments;
  - (b) buy and sell in cash or on a forward basis but for the Account Holder's account and at the Account Holder's risk any investments in domestic and offshore investment companies, investment funds, any other collective investment and fund-like instruments (such as funds of funds, stock-exchange traded funds, the Bank's own in-house funds, institutional funds, unit trusts, limited liability partnerships, etc.), non-traditional investment instruments (hedge funds, fund of hedge funds, private equity, etc.), collective investments and investment company instruments investing in real estate, any real estate related investment instruments, money and capital market investment instruments, and any investment instruments derived therefrom and its combinations (the "**Funds and similar or related investment instruments**");
  - (c) carry out investments on a fiduciary basis in all countries and currencies in its own name, for the Account Holder's account and at the Account Holder's risk;
  - (d) execute all types of transactions on any futures and options market;
  - (e) borrow securities from the Account Holder's custody account(s) itself, whereby the Account Holder shall receive a commission for any securities actually lent, subject to separate agreement;
  - (f) decide on investment timing;
  - (g) decide to use or refrain from using measures to hedge against price, currency or interest risks, and choose investment instruments which appear appropriate for hedging, as well as use any other measures to optimize return on existing investments;

- (h) exercise or realize all preferential subscription rights in the best manner;
- (i) negotiate and execute counterparty and account opening documentation on the Account Holder's behalf;
- (j) carry out all and any other transactions for the Account Holder's account as it may from time to time determine; and
- (k) otherwise act as the Bank considers appropriate in managing the Account Holder's portfolio.

1.4 The Bank will maintain custody of all the Account Holder's assets in the Managed Portfolio in accordance with the relevant provisions of the Bank's Terms and Conditions (as amended from time to time).

1.5 The Bank may debit each Managed Account with any sums required to pay and/or supplement any deposit and/or margin in support of any Transaction, may pledge, mortgage, charge or otherwise encumber all or any part of the Managed Account or may subject all or any part of the Managed Account to liens to third parties, and the Account Holder acknowledges that in such circumstances there is a risk of loss to the Managed Account.

1.6 The Bank may but is not under any obligation to represent the Account Holder at the general meetings of companies or unit trusts in which the Account Holder holds securities, regardless of the agenda of said meetings.

### 2. Discretionary Management Programme Specifications

- 2.1 The Account Holder confirms that his Discretionary Management Programme Specifications take into account his financial and personal circumstances as well as his ability to take risks. The Account Holder represents that the Account Holder has disclosed, in full detail and in writing, all information about the Account Holder's circumstances (both financial and otherwise) which may be relevant to the Discretionary Asset Management Service, in particular the Account Holder's investment objective, experience, time horizon and risk tolerance and is not aware of any other information which may be relevant (including any information which the Bank is aware about or should reasonably be aware about as a result of any prior dealing with the Account Holder or otherwise). The Bank shall be entitled to assume that there is no additional information which would be relevant to these matters. The Account Holder acknowledges and understands that any failure to disclose any or all such information may adversely affect the Discretionary Asset Management Service, including the level of risk to which the Account Holder may be exposed. The Account Holder acknowledges and agrees that the Bank shall not assume any liability for the Account Holder's selection of the Discretionary Management Programme Specifications. Where the Account Holder selects the Discretionary Management Programme Specifications, the Account Holder represents that (i) it understands the risks associated with the investments made in accordance with the Discretionary Management Programme Specifications, and (ii) based on the Account Holder's personal experience, the Account Holder believes this best suits its investment objectives, experience, time horizon and risk tolerance.
- 2.2 The Account Holder may give specific investment instructions to the Bank by stating the same in his Discretionary Management Programme Specifications or by giving the Bank instructions in writing from time to time (the "**Specific Investment Instructions**"). Specific Investment Instructions will not become effective until accepted by the Bank and the Bank reserves the right not to accept any Specific Investment Instruction in its absolute discretion. Without limiting the generality of the above, Specific Investment Instructions will not be accepted by the Bank when they are inconsistent with or otherwise outside the Account Holder's selected Reference Currency or investment strategy or investment parameter(s) set out in the Discretionary Management Programme Specifications as amended from time to time.
- 2.3 The Account Holder represents, warrants and undertakes that the Specific Investment Instructions will not be given at any time the Account Holder is in possession of nonpublic price-sensitive information, or will otherwise result in the Bank

being in breach of any Applicable Laws upon performing such Specific Investment Instructions.

- 2.4 If an investment instrument that is not in the investment universe of the Bank (as amended from time to time) is the subject of the Account Holder's Specific Investment Instructions or subject to a delivery of investment instruments (approved by the Bank at its sole and absolute discretion), the Account Holder acknowledges that it is aware that no ongoing monitoring will be conducted by the Bank in respect of these investment instruments, and that such investment instruments may not be included in the Managed Portfolio.
- 2.5 The Account Holder shall provide the Bank written notice of any changes the Account Holder wishes to make to his Discretionary Management Programme Specifications with at least 30 calendar days' prior notice.
- 2.6 The Bank will from time to time review the investment parameter(s) in the Discretionary Management Programme Specifications and the Account Holder agrees that the Bank has the sole and absolute discretion to consider adjustments in the Account Holder's best interest and as deemed appropriate without prior notice to the Account Holder.
- 2.7 After each calendar quarter, the Bank will provide the Account Holder with a quarterly portfolio review of the Managed Account(s) (the "**Review**"). The Review will contain an analysis and evaluation by the Bank of the Managed Portfolio. The value of assets held in the Managed Portfolio will be calculated by using the latest available bid, average, mid or closing price, as determined conclusively by the Bank, depending on the type of asset, and as such prices are quoted by a reputable market data supplier (such as Reuters or Bloomberg) as at the date of valuation. Where the assets are not readily marketable, the Bank will obtain a market valuation from such price source as may be available, the Account Holder's original investment cost or the last traded price of that particular asset. No representation or guarantee however is given by the Bank that any asset in, or the whole of the Managed Portfolio, would be sold at the same amount of such valuation(s).
- 2.8 The Account Holder is not entitled to create any type or form of security interest (other than in favour of the Bank) over all or any part of a Managed Account.

### 3. Risk Disclosure

- 3.1 The Account Holder confirms that he has received, read and understood the Risk Disclosure Statement, and acknowledges and understands the special risks mentioned therein.
- 3.2 Further the Account Holder expressly confirms that he is familiar with and understands the types of investment instruments and asset classes mentioned in Clause 1.3 above and understands and accepts the risks inherent in the same. Therefore the Account Holder agrees that the Bank shall not provide him with any additional information or copy of any documentation setting out the key features of any such investment instruments or asset classes.
- 3.3 If the Account Holder has issued Specific Investment Instructions regarding specific investment instruments or asset classes, the Account Holder confirms that he is aware of the risks of these types of transactions and that he understands and accepts their risks and characteristics. Therefore the Account Holder agrees that the Bank shall not provide the Account Holder with any additional information or copy of any documentation setting out the key features of these types of transactions and that no ongoing monitoring will be conducted by the Bank in respect of these investment instruments.
- 3.4 The Account Holder acknowledges and understands that depending on the Account Holder's Specific Investment Instructions, a special emphasis on or a special exposure to certain investments may potentially result in certain investments constituting a substantial portion of the Account Holder's Managed Portfolio deviating from the diversified asset allocation policy otherwise applied. Therefore, the Account Holder agrees that the Bank will not notify the Account Holder of the existence of any such circumstances.

### 4. Documentation

- 4.1 Except as provided to the Contrary in the Discretionary Management Programme Specifications, this Section shall apply to the Managed Accounts managed by the Bank for the Account Holder.

- 4.2 The relevant provisions of the other Terms and Conditions (as amended from time to time) shall be incorporated into and form part of this Section. If there are any inconsistencies between the Terms and Conditions (excluding this Section) and this Section, this Section shall prevail.
- 4.3 The Account Holder understands that the Bank issues regulations for its own in-house funds and that these are available upon the Account Holder's request. The Bank may change these regulations at any time and the Account Holder acknowledges that the Bank is not obliged to notify the Account Holder of any such amendments.
- 4.4 Any reference in this Section to Instructions/notifications which must be given by the Account Holder to the Bank in writing may, at the Bank's absolute discretion, be accepted orally (the same should be subsequently confirmed in writing). Notwithstanding the foregoing, the Bank is authorized to act on such oral instructions prior to receipt of the Confirmation/Instruction, and the Bank shall not be liable for so acting even if such written Confirmation/Instruction is not subsequently received by the Bank.

### 5. Account Holder

The Account Holder has provided all of the information relevant for this Discretionary Asset Management Service and confirms that the information is true and correct. The Account Holder shall notify the Bank (confirmed in writing) about any changes regarding the Account Holder's country of residence/domicile or any other circumstances which might have an impact on the Bank regulatory obligations, this Discretionary Asset Management Service, the Managed Portfolio or any other significant legal and financial aspects under this Section.

### 6. Delivery of Investment Instruments

At its absolute discretion, the Bank may be prepared to accept investment instruments that are owned and held by the Account Holder under other agreements with the Bank or third parties for delivery into the Managed Account(s) under this Section. In the event that the Bank agrees to take delivery of such investment instruments, the Bank will notify the Account Holder of any additional costs involved.

### 7. Fees

- 7.1 The Bank shall charge a fee quarterly and in arrears for the Discretionary Asset Management Service provided to a Managed Account under this Section; the rate(s) and the time period applicable to the rate(s) at which such fee is charged is indicated in the Discretionary Management Programme Specifications. The applicable fee rate will be applied to the average month-end value of the Managed Portfolio in that Managed Account, as indicated in the statement of account for the relevant quarter, divided by four for each complete quarter or adjusted by the actual days in that quarter over 360 for incomplete quarter. The amount of the fee will be debited to the Managed Account or such other account which the Account Holder may have with the Bank at such time as may be determined by the Bank. The fee covers only the services described in the selected Discretionary Management Programme Specifications.
- 7.2 The Bank will provide the Account Holder with the most current fee schedule from time to time (the "**Fee Schedule**"). The Account Holder agrees that the Bank may amend the fee rate(s) in the Fee Schedule and/or the method of calculating the fee amount at any time by serving the Account Holder 30 days' prior notice.
- 7.3 Additionally the Account Holder agrees that any fee, rebate, remuneration or compensation such as issuing commission or distribution channel compensation received by the Bank from related parties, the investment instrument's providers or managers, companies associated with the Bank or third parties may be retained by the Bank and considered as additional compensation provided transactions in respect of the Managed Portfolio are conducted in good faith and on normal market terms.

### 8. Third-party Investment Instruments and Proprietary Investments

Investments which may be conducted in connection with this Section may be made both in investment instruments from third party providers as well as in investment instruments that are issued,

advised, managed, set-up and/or controlled by the Bank or any Group Entity. Neither the Bank or such Group Entity shall be liable to account for any gains, profits or benefits from such issue, advice, management, set-up and/or control of such Investment Instruments.

## 9. Performance of Investment Instruments

- 9.1 The Account Holder acknowledges that the Bank shall have no responsibility for the performance of the investment instruments in which the Managed Portfolio is invested. The Bank shall not be responsible for any compliance with rules generally in effect of the investment instruments, such as conformity of the transaction and portfolio inventory with the Account Holder's investment strategy and policy. Furthermore, with regard to third-party investment instruments the Bank shall not be liable for incorrect or omitted information in any prospectus or other material provided (e.g. pricing information) for an investment instrument, nor shall the Bank have any liability for losses of any kind that are attributable to such incorrect or omitted information. In allocating investment instruments to the individual asset classes, the Bank may rely upon generally available information or information provided to the Bank by third parties.
- 9.2 The Account Holder understands that past performance of any investment instrument, asset class, investment strategy, Reference Currency or investment parameter(s) is not an indicator of future performance. No representative or agent of the Bank is authorized, now or in the future, to provide any assurances or guarantees orally or in writing with respect to the performance of any investment instrument, asset class, an investment strategy, Reference Currency, investment parameter(s) or Specific Investment Instructions for the purpose of encouraging the Account Holder to make a corresponding application.

## 10. Liquidity and Marketability

The Account Holder is aware of the long-term nature of some investment instruments which may be used in connection with this Discretionary Asset Management Service. In particular, the Account Holder understands and accepts that some of these investment instruments are non-public and not listed on a stock exchange or other organized market, and some of these investment instruments may only be terminated periodically or on certain dates (e.g. on specific dates four times a year). Additionally, the relevant provisions may also require a notice period to be observed possibly of several weeks and also provide for deferred payment and payment subject to bid/ask spreads compared to the net asset value of such investment instruments. All of the above can delay the availability of any sale proceeds.

## 11. Advice and Taxes

- 11.1 The Account Holder is aware that the Bank does not provide advice in respect of any legal and tax ramifications of the investments conducted within this Section, and that the Account Holder should obtain appropriate advice from an independent tax or legal advisor.
- 11.2 The Account Holder agrees that he is responsible for all tax liability incurred as a result of transactions conducted in the Managed Portfolio, including any resulting tax liability upon redemption or liquidation of any investment instrument within the Managed Portfolio or upon termination of this Discretionary Asset Management Service. The Account Holder also acknowledges and agrees that the Bank may collect or withhold taxes in the amount required by the Applicable Laws, and may pay any such taxes to the appropriate government agencies.

## 12. Due Diligence and Liability

- 12.1 In performing this Discretionary Asset Management Service, the Bank shall exercise the customary degree of due diligence.
- 12.2 For any investment decisions made under this Section, the Bank shall be liable only for gross negligence or wilful misconduct.
- 12.3 Under no circumstances shall the Bank be liable for any consequential or special damages or Losses (such as, for example, any loss due to an unexecuted transaction, loss of profit, loss of data, damaged or unreadable data,

damage to goodwill, damage to reputation or waste of management time), which are triggered or occur as a result of the Bank providing, delegating, terminating or suspending the Discretionary Asset Management Service.

- 12.4 If any claims are made by or against the Bank, or by or against third parties that are related to this Discretionary Asset Management Service, the Account Holder agrees to provide the Bank with the required and appropriate assistance in respect of the parties involved.

## 13. Potential Conflicts of Interest

- 13.1 The Account Holder acknowledges and agrees that the Bank and any Group Entity (or their employees) shall be entitled at any time to hold long or short positions in the investment instruments covered by this Section, carry out transactions involving relevant investment instruments in the capacity of principal or agent, or provide advisory or any other services or have officers, who serve as directors either to/for the issuer of such investment instruments or to/for any company commercially or financially affiliated to such issuers. Neither the Bank, such Group Entity or their employees shall be liable to account for any gains, profits or benefits from holding such positions, carrying out such transactions or holding such office.
- 13.2 The Bank shall under no circumstances be obliged to obtain non-public ("**insider**") information about any investment instruments and its issuer or, on the basis of such information, of which it may potentially gain knowledge, buy or sell these investment instruments for the Account Holder's Account.
- 13.3 Under this Section, the Bank shall not be obliged to notify the Account Holder of the existence of any potential conflicts of interest.

## 14. Right of Lien

- 14.1 The Bank shall have a right of lien on all assets that the Bank holds for the Account Holder in custody at its premises or at any other location, and in particular, in respect of all claims to which the Account Holder is entitled against the Bank or, through the intermediary of the Bank, against third parties, in respect of all claims resulting from the banking relationship between the Account Holder and the Bank, including those to secure forward, option and futures transactions, regardless of their maturity or currency; however, the right of lien shall only arise with the claim by the Bank or with the requirement to provide security and at any such time, the Account Holder undertakes to immediately carry out any act required such as, for example, endorsing securities to validate the Bank's right of lien.
- 14.2 At its absolute discretion, the Bank shall have the right to realize such assets either by way of forced or private sale as soon as the Account Holder fails to meet any obligation. In the event that there is a Security Document in existence, or one to be signed, the same shall prevail.

## 15. Delegation

The Account Holder agrees that the Bank may, in its absolute discretion (and without prior reference or notification to the Account Holder), delegate to any agent the performance of all or any part of the duties of the Bank in connection with the Discretionary Asset Management Service herein, upon such terms as the Bank shall consider fit and may disclose any information on or related to the Account Holder or the Managed Portfolio to any such agent. The Bank may grant to such agent the authority to further sub-delegate, in its absolute discretion.

## 16. Commencement and Termination of the Discretionary Asset Management Service

- 16.1 This Section shall apply to the Discretionary Asset Management Service on the date on which the Account Holder's request for the Discretionary Asset Management Service is accepted (with or without conditions) by the Bank. Acceptance by the Bank may be delayed due to various reasons, including, but not limited to insufficient documentation or financing (e.g. if a minimum investment amount for the Account Holder's Managed Portfolio is requested). The Bank shall bear no liability for any losses incurred due to such delays.
- 16.2 The Discretionary Asset Management Service may be terminated by either party at any time by giving written notice to

the other party. If the Account Holder terminates his agreement to the subscription of the Discretionary Asset Management Service, it shall be terminated upon receipt of the Account Holder's written notice of termination by the Bank. If the Bank terminates this Discretionary Asset Management Service in writing, termination of it shall be effective with the Account Holder's receipt of the written notice of termination, but latest 30 days after the Bank's communication of the termination of this Discretionary Asset Management Service to the Account Holder.

- 16.3 Such termination, however, shall not interrupt any Transactions which are currently in progress. As a result, the Account Holder agrees that the Account Holder will assume full responsibilities under any such Transactions and the Account Holder will sign any relevant agreements or other documentation necessary to complete such Transactions.
- 16.4 In case of termination, fees shall be billed on a pro-rata basis. Any fees paid in advance shall be reimbursed to the Account Holder on a pro-rata basis. Any portion of fees to be billed or reimbursed shall be due immediately upon the related invoice being sent following termination and such fees may be deducted from the Managed Account. On termination of the Discretionary Asset Management Service or change of the Specific Investment Instructions, the Bank shall be entitled to return to the issuer or otherwise liquidate or dispose of any investment instruments which were invested exclusively within this Section and/or which are non-transferable. Furthermore, the Account Holder undertakes to have any investment instruments as may be designated by the Bank held in custody exclusively with the Bank, and not to transfer them to any other institution.

#### **17. Death or Incapacity to Act**

Without prejudice to the obligations to notify the Bank of Account Holder's death or incapacity to act in accordance with the Conditions for Accounts, in the event of the Account Holder's death or incapacity to act, the Discretionary Asset Management Service shall remain in effect. However, the Bank shall be entitled, to suspend or refuse the execution of the Discretionary Asset Management Service or any written or verbal instructions if it becomes aware of the Account Holder's death or incapacity to act.

## VIII. Conditions for Non-discretionary Portfolio Advisory Service

### 1. Mandate Service

- 1.1 Subject to Clause 17, the Account Holder instructs the Bank, for a fee, to provide direct access to an investment specialist of the Bank for investment advice for a portfolio (“**Portfolio**”) of assets booked under his account or accounts opened with the Bank to receive these services (each a “**Mandated Account**”) taking into account the Advisory Programme Specifications (as defined below) (the “**Non-Discretionary Portfolio Advisory Service**”). The Account Holder shall decide whether to adopt the advice provided and is free to make his own investment decisions.
- 1.2 Except as provided to the contrary, this Section shall apply to the Mandated Account managed by the Non-Discretionary Portfolio Advisory Service provided by the Bank for/to the Account Holder.
- 1.3 The relevant provisions of the other Terms and Conditions (as amended from time to time) shall be incorporated into and form part of this Section. If there are any inconsistencies between the other Terms and Conditions and this Section, this Section shall prevail.

### 2. Advisory Programme Specifications

- 2.1 The Account Holder’s programme specifications consist of the programme specifications to be completed by the Account Holder and agreed with the Bank in the Investment Questionnaire contained in Section II of the Terms and Conditions (“**Advisory Programme Specifications**”).
- 2.2 The Account Holder confirms that the Advisory Programme Specifications take into account the Account Holder’s financial and personal circumstances as well as his ability to take risks. The Account Holder acknowledges and agrees that the Bank shall not assume any liability for the Account Holder’s selection of the Advisory Programme Specifications.
- 2.3 The Account Holder shall provide the Bank in writing with the changes he wishes to make to its Advisory Programme Specifications. However, the Bank may carry out such changes at its absolute discretion as soon as it is notified by the Account Holder without the need to wait for receipt of the Account Holder’s written instructions.
- 2.4 The Bank will provide Investment Advice solely on the basis of the information provided by the Account Holder to the Bank. The Account Holder should contact the Bank immediately if the Account Holder wishes to discuss or change the Advisory Programme Specifications. The Account Holder is aware, acknowledges and agrees that if the Account Holder does not provide the Bank to the best of its ability with accurate and complete information relating to its investment profile, investment objectives and any other information which is relevant to the Non-Discretionary Portfolio Advisory Service, or inform the Bank promptly upon any changes or potential changes to this information, the Bank will not be able to evaluate the Account Holder’s specific circumstances. This may adversely affect the provision of the Non-Discretionary Portfolio Advisory Service, for which the Bank shall take no responsibility or liability.

### 3. Investment Advice

- 3.1 The Account Holder will receive direct access to the Bank’s team of investment specialist for investment advice. Based on the Advisory Programme Specifications, the structure of the Portfolio and the Bank’s investment analysis and research, the Bank will advise the Account Holder on how to meet the Account Holder’s investment objectives.
- 3.2 The Account Holder may contact the Bank’s team of investment specialists at any time during normal office hours (9:00-17:00 hours) on days that banks are generally open for business in Singapore, and the Bank may also contact the Account Holder directly.
- 3.3 The Account Holder may place buy and sell orders, as well as any other transaction orders and instructions, directly with the team of investment specialists and request any product specific and research related information directly from them. These transactions will be at the Account Holder’s own risk

and for the Account Holder’s own account. The Bank shall be under no obligation to exercise discretion to enter into any transactions for the account of the Account Holder and the Account Holder will make investment decisions and provide instructions to the Bank to execute any orders for transactions for the Account.

- 3.4 The Account Holder acknowledges that the Bank’s advice (if any) is based on information from sources believed to be reliable and in good faith. However, no representation or warranty, express or implied, is made by the Bank as to its accuracy or completeness. The Account Holder is aware that any recommendations or advice provided may quickly become outdated due to activity or volatility in the market and may therefore only be of temporary relevance. Any investment decisions made on the basis of the Bank’s recommendations should therefore be implemented immediately or within any time frame recommended from time to time by the Bank.

### 4. Reviewing of Investment Instruments

- 4.1 The Bank will review the Portfolio, and identify and recommend transactions or arrangements in the types of investments and in accordance with the investment objectives and any investment restrictions set out in the Advisory Programme Specifications or as subsequently agreed between the Account Holder and the Bank, provided that the Bank shall not be under any obligation to monitor or follow-up on the status of the assets in the Portfolio or to provide investment advice except when specifically requested to do so by the Account Holder. For the avoidance of doubt, investments in the Portfolio which are outside the investment universe of the Bank (as modified by the Bank at its discretion from time to time) will not be monitored by the Bank.
- 4.2 Further the Bank will inform the Account Holder from time to time if the structure of the Portfolio deviates from the prevailing Advisory Programme Specifications. The Account Holder understands that the Bank continues to provide its advice based upon the prevailing Advisory Programme Specifications agreed upon and as the same may be amended from time to time in accordance with the process described in Clause 2 above.

### 5. Communication

- 5.1 Subject to Clause 3 of the Conditions for Accounts, the communication between the Account Holder and the Bank shall take place in writing, by fax, by telephone or by e-mail (where specifically authorized by the Account Holder in writing and agreed to by the Bank). The Account Holder shall supply an address, a telephone, an e-mail address or facsimile number to the Bank at which the Account Holder may be contacted for the purpose of receiving information and investment advice. The Bank shall only use the most recent address, telephone, e-mail address or fax number supplied to it.
- 5.2 If the Bank, based on its reasonable efforts, is unable to contact the Account Holder over a selected communication channel (because e.g. the Account Holder did not leave a valid contact address), so long as the recommendations and messages are prepared in accordance with this Section, made available to the Account Holder as agreed herein and can be retrieved by the Account Holder then such advice shall be regarded as received by the Account Holder and the Bank shall be deemed to have fulfilled its obligation.
- 5.3 The parties agree that all telephone conversations and e-mail communications may be recorded electronically. The Account Holder is obliged to register any complaints regarding telephone or e-mail instructions immediately, but no later than one month after such instructions have been issued. Moreover, the Bank shall retain the right to erase recorded telephone conversations or e-mail communications in accordance with internal policy.

### 6. Risk Disclosure

- 6.1 The Account Holder confirms that he has received, read and understood the content of the Risk Disclosure Statement and the special risks mentioned therein.

6.2 The Account Holder agrees that investments inherently involve risks, and confirms that by making a decision to invest in a product or transaction, the Account Holder has done so after having read and fully understood the documentation and risks associated with such product or transaction, such as private placement memorandum, prospectus, subscription form, term sheet, product description, marketing documentation. Furthermore, the Account Holder undertakes only to carry out transactions of which he has experience and is in full knowledge of the risks involved so that the Bank shall be under no obligation to provide any additional product and or transaction specific information unless expressly requested by the Account Holder. However, the Account Holder acknowledges that he must request any information relating to a product issued by a third party from that third party and the Bank is under no obligation whatsoever to provide such third party related information to the Account Holder.

6.3 The Account Holder acknowledges and agrees that certain structured products and investment may be illiquid. As such, it would be difficult, if not impossible, to obtain updated market price or valuation for such products and investment on a regular basis. In such circumstances, it will not be possible for the Bank to monitor such products and investment and the Bank shall not be liable for any failure on its part to monitor such structured products or investment notwithstanding that the same may form part of the Portfolio.

6.4 The Account Holder acknowledges that he is bound by the terms in this Section when investing in derivative products; and that he must sign or execute such further documents as required by the Bank when investing in certain products.

#### **7. Fee Schedule**

The Account Holder confirms that he has received, understood and accepted as binding upon the Account Holder the "Schedule of Fees" which shall form part of this Section.

#### **8. Account Holder Information**

The Account Holder has provided the Bank with all information relevant for this Section and confirms that the information is true and correct. The Account Holder shall notify the Bank (confirming in writing) about any changes regarding the Account Holder's country of residence/domicile or any other circumstances that might have an impact on the Bank's regulatory obligations or the service offered under this Section.

#### **9. Fees**

9.1 The Bank shall charge a fee as notified to the Account Holder from time to time for the services provided under this Section. The fee structures and the scope of services covered by each fee structure are indicated in the most current "Schedule of Fees" published by the Bank from time to time.

9.2 The Account Holder agrees that the Bank may change the fee rate applicable to the Portfolio, amend the "Schedule of Fees" and/or change the method of calculating any fee amount at any time by serving 30 days' prior notice.

9.3 The amount of the fee will be debited to the Mandated Account or such other account which the Account Holder may have with the Bank at such time as may be determined by the Bank.

9.4 The gross value of assets held in the Portfolio will be calculated by using the latest available bid, average, mid or closing price, as determined conclusively by the Bank, depending on the type of asset, and as such prices are quoted by a reputable market data supplier (such as Reuters or Bloomberg) as at the date of valuation. Where the assets are not readily marketable, the Bank will obtain a market valuation from such price source as may be available, the Account Holder's original investment cost or the last traded price of that particular asset. No representation however is given by the Bank that any asset in the Portfolio could or would be sold at the same amount of such valuation.

9.5 Additionally the Account Holder agrees that any fee, remuneration or compensation such as issuing commission or distribution channel compensation received by the Bank from related parties, the investment's providers or managers, companies associated with the Bank or third parties may be retained by the Bank and considered as additional compensation.

#### **10. Advice and Taxes**

10.1 The Account Holder is aware that the Bank does not provide advice with respect to any legal and tax ramifications of the investments conducted within this Section, and that the Account Holder should obtain appropriate advice from an independent tax or legal advisor.

10.2 The Account Holder agrees that he is responsible for all tax liability incurred as a result of transactions conducted within this Section, including any resulting tax liability upon redemption or liquidation of Non-Discretionary Portfolio Advisory investment within the Portfolio or upon termination of this Service. The Account Holder also acknowledges and agrees that the Bank may withhold taxes in the amount required by applicable law or regulations, and may pay any such taxes to the appropriate government agencies.

#### **11. Due Diligence and Liability**

11.1 In performing its obligations hereunder, the Bank shall exercise the customary degree of due diligence and it shall be exempted from all liability unless it has acted with wilful misconduct or with gross negligence. If any claims are made by the Bank or against the Bank, or against third parties or by third parties that are related to this Section, the Account Holder agrees to provide the Bank with the required assistance.

11.2 The Bank is not liable for Losses occurring due to the fact that the Account Holder cannot reach the Bank (in time), the Account Holder cannot be reached by the Bank or cannot be reached by the Bank in time or because the Account Holder fails to react to the Bank's recommendations or messages in time. Further, the Bank shall not have any liability with respect to any investment decision that has not been based on its advice, or has been made contrary to such recommendations.

#### **12. Performance of Investment Instruments**

12.1 The Bank shall have no responsibility in respect of the performance of investments recommended by it. The Account Holder understands that past performance, e.g. of an investment instrument and asset class, is no indicator of future performance. No representative or agent of the Bank is authorized, now or in the future, to provide any assurances or guarantees orally or in writing with respect to the performance of e.g. the investment instrument or asset class for the purpose of encouraging the Account Holder to make an application for Non-Discretionary Portfolio Advisory Service.

12.2 The Bank shall not be responsible for any compliance with rules generally in effect of the investments such as conformity of the transaction and portfolio inventory with their investment strategy and policy. Furthermore, with regard to third-party investments, the Bank shall not be liable for incorrect or omitted information in any prospectus or other material provided (e.g. pricing information) for an investment instrument, nor shall the Bank have any liability for losses of any kind that are attributable to such incorrect or omitted information. All information or views given and prices quoted are subject to change without notice.

#### **13. Right of Lien**

13.1 The Bank shall have a right of lien with respect to all assets that the Bank holds for the Account Holder in safe custody at its premises or at any other location, and in particular, with respect to all claims to which the Account Holder is entitled against the Bank or, through the intermediary of the Bank, against third parties, for all claims resulting under the banking relationship between the Account Holder and the Bank, including those to secure forward, option and futures transactions, regardless of their maturity or currencies. However, the right of lien shall only arise with the claim by the Bank or with the requirement to provide security.

13.2 At its absolute discretion, the Bank shall have the right to realize such assets either by way of forced or private sale as soon as the Account Holder fails to meet any obligation. In the event that there is a Security Document in place, the same shall prevail.

#### **14. Potential Conflict of Interest**

14.1 The Account Holder acknowledges that the Bank or any Group

Entity (or their respective employees) shall be entitled at any time to hold long or short positions, deal in relevant securities in the capacity of principal or agent, or provide advisory services or any other service either to the issuer of such securities or to any company affiliated with such issuer. Neither the Bank, such Group Entity or their respective employees shall be liable to account for any gains, profits or benefits from holding such positions, carrying out such transactions or holding such office.

14.2 The Bank shall under no circumstances be obliged to obtain non-public (“insider”) information about any investment instrument and its issuer, or on the basis of such information of which it may potentially gain knowledge, buy or sell these investment instruments for the Account Holder’s account.

14.3 Under this Section, the Bank shall not be obliged (except where required by Applicable Law) to notify the Account Holder about the existence of any potential conflict of interest. Additionally there may be periods during which the Bank may decide not to initiate or recommend certain types of transactions involving specific securities of companies to which the Bank or any affiliate supplies investment banking services, in which event the Account Holder shall not be informed of such decision.

## 15. Provisions in relation to Fund Subscription

15.1 The Bank is authorized to:

- (a) debit the investment amount, the placement fee (if any), any recalls of capital, additional capital contributions and all other fees, commissions, charges that may arise out of Account Holder’s instruction to subscribe to or investment in any fund (the “**Fund**”) from any of the Account Holder’s Account(s) as the Bank considers appropriate; and
- (b) execute such documents and/or take such actions as necessary to subscribe to the Fund in the Account Holder’s name or in the name of the Account Holder’s nominees on the Account Holder’s behalf.

15.2 The Bank is not liable for any inability to accommodate the Account Holder’s investment in part or full.

15.3 The Account Holder is aware and acknowledges that:

- (a) he will read and ensure he understands the information memorandum in connection with the Fund (the “**Information Memorandum**”), in particular and where applicable, the sections of the Information Memorandum on risk factors, conflicts of interests, transfer restrictions, redemption, compulsory redemption, suitability requirements, eligibility of investors and limitations on transferability;
- (b) his investment in the Fund may not be principal protected and is further subject to the risk factors as described in the Information Memorandum and the Account Holder is willing to accept such risks;
- (c) the Fund will be investing in the assets as described in the Information Memorandum;
- (d) there may be limited liquidity to an investment in the Fund. Interests in the Fund may not be freely transferable and the Fund may suspend the redemption rights of interest holders. Interests in the Fund may only be redeemed subject to restrictions, procedures and notice requirements (if any) as set out in the Information Memorandum;
- (e) the Fund and/or the investment manager of the Fund may have the power to compulsorily redeem any or all of an interest holder’s holding under certain circumstances; and
- (f) prior to the date of acceptance by the Fund of the subscription made by the Bank and/or its nominees on the Account Holder’s behalf, any valuation of the Account Holder’s beneficial holding in the Fund advised to the Account Holder by the Bank (whether in any account statement or otherwise) is indicative only and should not be construed as confirmation by the Bank of acceptance by the Fund of the investment amount in whole or in part.

15.4 The Account Holder agrees, confirms, represents and/or warrants on an on-going basis that:

- (a) he will comply with all the declarations, undertakings, indemnity, representations and warranties set out in the relevant subscription document, and he agrees to be

bound by the terms thereof, as if he were subscribing to the Fund directly, and as if they are set out in full in this Section. The Account Holder understands that the Bank and/or its nominee will be relying upon this confirmation and such other information that the Account Holder has provided in order to subscribe to the Fund on the Account Holder’s behalf and the Account Holder further agrees to inform the Bank immediately if such confirmation or information is no longer accurate;

- (b) he has sufficient knowledge and experience to make his own evaluation of the merits and risks of entering into the relevant transactions, including the tax implications and suitability of the Fund, and are not relying on any representation and/or advice of the Bank or any of its affiliates or any employee or agents of any of them and any view expressed by them (if any) shall not become a contractual term of any contract between the Account Holder and the Bank in connection with a transaction. The Account Holder acknowledges the Account Holder is capable of assuming such risks and has taken/will take advice from independent professional advisers as the Account Holder deems necessary;
- (c) he will comply with the sale and/or transfer restrictions as set out in the Information Memorandum;
- (d) he is an eligible investor of the Fund;
- (e) he agrees to waive all “Most Favored Nations” provisions, if any, in respect of his subscription of the Fund and agree that the Bank has not given any assurance and/ or commitment whatsoever to the Account Holder not to provide preferential terms to other investors;
- (f) he has/will have full power, authority and legal right to purchase an interest in the Fund and such purchase and/ or beneficial holding does not contravene any Applicable Laws;
- (g) the Bank may rely upon valuations from the Fund and/ or other third parties for the purposes of reporting to the Account Holder the value of the Account Holder’s beneficial interest in the Fund and under no circumstances shall the Bank be under any duty to seek to verify the accuracy or otherwise of such valuations;
- (h) any and all representations made by the Bank and/or its nominee in relation to the Account Holder (if any, relying on information provided by the Account Holder) are accurate and correct and the Account Holder shall not do any act which may as a consequence cause a breach of such representations;
- (i) the agreement, confirmation, representations and warranties in this Section shall apply and shall be deemed to be repeated by the Account Holder in relation to each subscription to the Fund which the Bank and/ or its nominees may make on the Account Holder’s instruction;
- (j) he shall indemnify the Bank and/or its nominees for any losses, damages and/or costs (including but not limited to legal fees) that it/they may incur as a consequence of subscribing to or otherwise acquiring an interest in the Fund on the Account Holder’s behalf;
- (k) he releases the Bank and/or its nominees from any monitoring obligations and responsibilities with respect to the Account Holder’s investment in the Fund and the Bank and/or its nominees shall have no responsibility for the performance of the Account Holder’s investment in the Fund;
- (l) in the event that the Bank and/or its nominees acquire or have acquired an interest in the Fund for other clients of the Bank and/or any Group Entity, the Fund may treat such interests of the Bank and/or its nominees on an aggregate basis which may affect certain of the Account Holder’s rights and/or obligations in respect of the Account Holder’s beneficial interest in the Fund (including but not limited to voting rights (if any) and the timing of repayment of redemption proceeds). The Bank and/or its nominees shall be entitled to act or not to act as it/they in its/their sole discretion deem appropriate and shall not be liable to the Account Holder for any loss and/or damage suffered by the Account Holder as a consequence; and

(m) whilst the Bank has read documentation in relation to the Fund to satisfy its own requirements in relation to subscribing to the Fund as nominee, it has not necessarily read all the documentation which may be referred to in the Information Memorandum and accordingly the Account Holder should make his own enquiries for any further documentation.

#### **16. Delegation**

The Account Holder agrees that the Bank may, in its absolute discretion (and without prior reference, notification or consent of the Account Holder), delegate to any agent (which may include any branch of the Bank) the performance of all or any part of the duties of the Bank in connection with the Non-Discretionary Portfolio Advisory Service herein, upon such terms as the Bank shall consider fit and may disclose any information on or related to the Account Holder or the portfolio to any delegate. The Bank may grant to such agent the authority to further sub-delegate, in its absolute discretion.

#### **17. Commencement and Termination of this Section**

17.1 This Section will apply with effect from the date on which the Account Holder's application for Non-Discretionary Portfolio Advisory Service is accepted (with or without conditions) by the Bank. Acceptance may be delayed due to various reasons, including, but not limited to insufficient documentation or financing. The Bank shall bear no liability for any losses incurred due to such delays.

17.2 The Non-Discretionary Portfolio Advisory Service may be terminated by either party at any time by giving written notice to the other party.

17.3 In the event that one of the parties terminates the Non-Discretionary Portfolio Advisory Service prior to the end of the billing period, the fees for the billing period in question shall be billed on a pro-rata basis. Any fees paid in advance shall be reimbursed to the Account Holder on a pro-rata basis. Any portion of fees to be billed or reimbursed shall be due immediately upon the related invoice being sent following termination of the Non-Discretionary Portfolio Advisory Service.

#### **18. Death or Incapacity to Act**

In the event of the Bank being notified of the Account Holder's death or incapacity to act in accordance with the Conditions for Accounts, the Non-Discretionary Portfolio Advisory Service shall be terminated immediately subject to Clause 18 of the Conditions for Accounts. In addition, where there are Transactions in progress at the time such termination becomes effective, such Transactions will not be interrupted and the Account Holder (or his estate or legal guardian) assumes responsibility for such Transactions.

## IX. Risk Disclosure Statement

This Risk Disclosure Statement forms an integral part of the Terms and Conditions. It is an important Section which you should read carefully. The objective of this Risk Disclosure Statement is to explain to the Account Holder, briefly, certain risks related to Transactions prior to the Account Holder entering into such Transactions. In particular, the Account Holder must be aware that the associated risk of loss arising from the Transactions, including but not limited to trading in securities, currency and financial derivatives, can be substantial.

**HOWEVER, THIS SECTION DOES NOT PURPORT TO DISCLOSE OR DISCUSS ALL OF THE RISKS AND OTHER SIGNIFICANT ASPECTS OF ANY TRANSACTION.**

Prior to entering into any transaction, the Account Holder should:

- (a) understand fully the nature and economic fundamentals of the relevant Transaction and the market or investment underlying such a Transaction;
- (b) understand fully the legal terms and conditions set out in the documentation for such Transaction, including, without limitation:
  - (i) the terms as to price, tenor, expiration dates, restrictions on exercising an option and other terms material to the transaction;
  - (ii) any terms describing risk factors, such as volatility, liquidity, the inability to exit the transaction before its scheduled maturity or expiry date and so on; and
  - (iii) the circumstances under which the Account Holder may become obliged to make or take delivery of the underlying interest of a derivatives contract;
- (c) understand fully its rights and obligations under any documentation for such transaction;
- (d) understand fully the extent of the economic and associated risks to which the Account Holder is exposed as a result of the transaction;
- (e) determine that the transaction is suitable for the Account Holder, its operations, business and organisation in light of the Account Holder's experience of similar transactions, the Account Holder's financial situation, objectives and needs and all other relevant circumstances;
- (f) understand fully the regulatory and tax treatment of the transaction (which can be complex); and
- (g) seek his own full and independent financial, tax, legal and/or other professional advice.

**IT IS IMPORTANT FOR THE ACCOUNT HOLDER TO DETERMINE WHETHER ANY TRANSACTION IS SUITABLE FOR HIMSELF OR HIS OPERATIONS, BUSINESS AND ORGANISATION, AND THE ACCOUNT HOLDER SHOULD BE AWARE THAT THIS IS HIS RESPONSIBILITY.**

### 1. General

- 1.1 The contents of this Section are applicable to Transactions.
- 1.2 The Account Holder accepts that, when the Bank undertakes a Transaction for the Account Holder, the Bank or some other person connected with it may have an interest, relationship or arrangement that is material in relation to the Transaction concerned. The Account Holder further acknowledges and agrees that when the Bank undertakes a Transaction for the Account Holder, the Bank or a person connected with it could be dealing as principal for its own account or as agent for the account of another Account Holder or customer of the Bank or a person connected with it.
- 1.3 The Account Holder further undertakes to read and fully understand the following prior to entering into any Transaction:
  - (a) the term sheets and all annexes and supplements pertaining to the Transaction;
  - (b) the nature of the Transaction and the terms and conditions governing the said Transaction; and
  - (c) the margin requirements, if applicable.
- 1.4 By entering into any Transaction with the Bank, the Account Holder confirms that he has read and fully understood this Risk Disclosure Statement, and all product term sheets, annexures and supplements pertaining to the Transaction, and that he fully understands the nature of the Transaction and the terms and conditions governing the said Transaction, including the Bank's margin requirements (if applicable).
- 1.5 By entering into any Transaction with the Bank, the Account Holder acknowledges that he makes his own assessment and relies on his own judgment in relation to any and all investment or trading or other decisions in respect of such Transaction and accepts any and all risks associated therewith and any losses suffered as a result of entering into any Transaction.
- 1.6 The Bank is not obliged to give advice or make recommendations and notwithstanding that it may do so on request by the Account Holder or otherwise, such advice or recommendations are given or made (and the Account Holder acknowledges and agrees that they are so given or made) without any responsibility on the part of the Bank (unless otherwise indicated by the Bank that the Account Holder may rely on such advice or recommendations) and, in any event, on the basis that the Account Holder will nevertheless make his own assessment and rely on his own judgement.

### 2. Trading OTC

Non-listed Securities and Securities not available on organized exchanges may be traded over-the-counter ("**OTC**"). OTC trading refers to direct negotiation between a buyer and a seller. Since

there is no central market, the positions may only be unwound with the agreement of the counterparty. OTC traded products entail more risk than exchange traded products in terms of liquidity risk, credit (counterparty) risk and pricing transparency. Please refer to the "Other risks" section for more information on counterparty risk.

### 3. Risks Associated with Exotic Financial Derivatives having Multiplier Effect

Certain exotic financial derivatives impose an obligation on one party to deliver a certain number of underlying instruments or pay certain amounts to the counter-party upon the occurrence of a trigger event (such as on maturity or when the value or price of the underlying instrument reaches a certain floor or ceiling, or upon one party exercising its right to request delivery or payment) based upon a pre-agreed formula. The formula may have a multiplier effect resulting in an exponential number of underlying instruments required to be delivered or a large amount of money required to be paid. Entering into such financial derivatives may therefore result in the risk of substantial losses over and above the Account Holder's initial outlay. If the Account Holder financed the obligations under these financial derivatives by borrowings, the risk associated with this activity is compounded to a greater degree. The Account Holder is advised to ensure that he is fully aware of the extent of the losses and the limited gains that may result in trading in these financial derivatives and seek independent professional advice before entering into these financial derivatives.

### 4. Risks may be Cumulative

The Account Holder must not just assess each risk associated with a particular Transaction (or series of Transactions) separately. While the risks for each aspect of a particular Transaction (or series of Transactions) may be small or minor, the sum of all such risks taken as a whole may be significant.

### 5. Limited and Unlimited Risks

Investments can have limited or unlimited risk. For example, the purchase of equities or options involves limited risk. At worst, the entire amount of the purchase price (or in the case of the purchase of an option, the premium) is lost. However, other derivatives can require an additional outlay of capital over and above the original investment. This obligation to make such additional payments can amount to many times the original investment. Unlimited risk is particularly associated with:

- Writing an uncovered call option
- Forwards
- Swaps
- Any other investments traded on a leveraged basis (Please refer to the paragraph 7 "Margin Requirements" below).

At the time the Account Holder makes the investment, the Account Holder can take steps to limit or reduce the level of risk (in particular, by hedging against potential losses).

small margin requirement can work against the Account Holder as well as in the Account Holder's favour. The use of leverage may result in large losses as well as gains.

## 6. Unwinding Risk

There may be certain financial products which pursuant to their terms or otherwise in accordance with the Applicable Laws, prohibit the parties to the financial product from unwinding, terminating, exercising any rights contained under the financial product, until a specific time or within a certain period of time or otherwise. The Account Holder acknowledges and agrees that the Bank is not obliged to buy out the Account Holder in these circumstances. There is therefore a risk that the prohibition on unwinding, terminating or exercising such rights may result in substantial loss to the Account Holder.

## 7. Margin Requirements

7.1 The degree of leverage and/or arbitrage which is obtainable in connection with the Transactions can work against as well as for the Account Holder. The Account Holder accepts and acknowledges that the use of leverage and/or arbitrage can lead to large losses as well as gains. Such leveraging may be by way of a loan, trading on a margin, or may be embedded within an instrument such as a structured note. Losses may exceed the amount of margin deposited by the Account Holder with the Bank and the Account Holder will be liable to the Bank for any shortfall between the margin deposited and the loss incurred.

7.2 Where the Account Holder transacts with the Bank on a margin basis:

- (a) the Account Holder must provide the Bank with an initial margin cover before entering into any of the Transactions. The required amount of initial margin varies with each type of Transaction and the amount is determined by the Bank, from time to time, in its absolute discretion. Notwithstanding the entry into the Transaction, the margin required may be changed at any time and from time to time by the Bank at its sole discretion;
- (b) the margin cover shall be provided by pledging or assigning or charging Collateral acceptable to the Bank. The valuation of Collateral is made according to the Bank's prevailing practices from time to time;
- (c) the margin cover provided by the Account Holder may fall below the amount required by the Bank from time to time due to various reasons such as book losses arising from mark-to-market valuation of outstanding Transactions or losses arising from closed-out Transactions or a fall in the value of the collateral;
- (d) if the Bank, in its absolute discretion, determines that the margin cover is inadequate at any time, the Bank may take such actions as the Bank in its sole discretion deems fit, including without limitation:
  - (i) calling upon the Account Holder at short notice to provide such additional Collateral as determined by the Bank in its sole discretion. This amount may be substantial and may exceed the amount originally committed as initial margin;
  - (ii) realizing such part or all of the Collateral as the Bank deems necessary to satisfy the liabilities of the Account Holder without notice to or consent from the Account Holder or the party providing the Collateral;
  - (iii) in the event that the required additional Collateral is not provided within the prescribed time, liquidating the outstanding Transactions and/or any part or all of that collateral as the Bank deems necessary; and/or
  - (iv) closing out, liquidating, setting off (notwithstanding that any of the same has not yet matured), realizing or otherwise dealing with any or all outstanding Transactions (whether or not any additional loss may thereby arise) at such time and by such means or in such manner as the Bank in its sole discretion thinks appropriate without notice to or consent from the Account Holder. In the event the Transactions are liquidated at a loss and the loss exceeds the aggregate margin deposited, the Account Holder will be liable for any shortfall; and
- (e) the high degree of leverage resulting from a relatively

## 8. Risk of Margin Trading and Leveraged Foreign Exchange Trading

The high degree of leverage due to the small margin requirement that is often obtainable in currency, options and futures trading means that the risk of loss in leveraged foreign exchange trading or in financing a transaction by deposit of Collateral is significant. The Account Holder may sustain losses in excess of his cash and any other assets deposited as Collateral with the Bank. Market conditions may make it impossible to execute contingent orders, such as "stop-loss" or "stop-limit" orders. The Account Holder may be called upon at short notice to make additional margin deposits or interest payments. If the required margin deposits or interest payments are not made within the prescribed time, the Account Holder's position or Collateral may be liquidated without his consent. Moreover, the Account Holder will remain liable for any resulting deficit in his account and interest charged on his Account. The Account Holder should therefore carefully consider whether such a financing arrangement is suitable in light of his own financial position

## 9. Value Changes

- 9.1 The prices of securities and other investment products may fluctuate, sometimes dramatically, so the risk of loss to the Account Holder can be substantial. The price of a security or investment product may move up or down, and may become valueless. Specific market movements of the underlying instruments, e.g. fluctuations in foreign exchange rates, interest rates, movements in Commodities prices and securities prices and indices, etc., cannot be predicted accurately as they can be affected by economic, financial, political and other factors. It is as likely that losses will be incurred rather than profits made as a result of buying or selling securities and other investment products.
- 9.2 Interest rate fluctuations may have an adverse impact on the value of certain investments for example, debt instruments, such as bonds or money market instruments.
- 9.3 Past or simulated performance of the Transactions or related Transactions is not indicative of future results. Unless specifically agreed, in certain circumstances, the principal amount invested is not assured and the Account Holder may end up receiving either (i) amounts less than the principal amount invested e.g. in deposits transactions whereby the Bank has the right to return the deposit in a currency which is different from the original deposit currency, or (ii) securities with a value substantially below that of the principal amount invested. The Account Holder may sustain a total loss in excess of the committed amount and any margin or additional margin deposited with the Bank.
- 9.4 In respect of principal protected structured products whereby a fixed amount of the principal will be returned by the issuer to the Account Holder if the product is maintained till maturity or upon early redemption by the issuer, the Account Holder is advised to maintain sufficient liquid assets during the maximum investment period of the product. Early withdrawal by the Account Holder may result in the Account Holder receiving less than the principal amount invested.

## 10. "Stop-loss" Limits and Orders

- 10.1 The Account Holder may place a "stop-loss" order with the Bank, whereby the Bank is instructed and authorized to close out the relevant open positions of the Account Holder without further notice as and when the mark-to-market loss on such open positions exceeds the pre-agreed levels (the "stop-loss" limit). However, placing "stop-loss" orders will not necessarily limit the Account Holder's losses to the intended amounts as market conditions may make it difficult or even impossible to execute such orders. Accordingly, the Account Holder hereby releases and discharges the Bank from all liability arising from the non-execution of a "stop-loss" order and hereby authorizes the Bank, in such circumstances, to execute such order at such rate and in such manner as the Bank may deem appropriate.
- 10.2 Strategies using combinations of positions, such as "spread" or "straddle" positions, may be as risky as taking simple "long" or "short" positions.

## 11. Risks of Futures and Options (Foreign Exchange, Precious Metal, Commodities, Interest Rates, Shares, Bonds, and Indices on any of the Preceding)

Transactions involving options and futures carry a high degree of risk. In light of the risks, the Account Holder should undertake such Transactions only if he understands the nature of the contracts (and contractual relationships) into which he is entering and the extent of his exposure to risk. Trading in futures and options is not suitable for many members of the public. The Account Holder should carefully consider whether trading is appropriate for him in light of his experience, objectives, financial resources and other relevant circumstances. The Account Holder is solely responsible for ensuring that the Bank receives adequate and timely Instructions as to the exercise or abandonment of any options or futures.

### 12.1 Effect of “leverage” or “gearing”

Transactions in futures carry a high degree of risk. The amount of initial margin is small relative to the value of the futures contract so that transactions are “leveraged” or “geared”. A relatively small market movement will have a proportionately larger impact on the funds the Account Holder has deposited or will have to deposit: this may work against the Account Holder as well as for the Account Holder. The Account Holder may sustain a total loss of initial margin funds and any additional funds deposited with the Bank to maintain the Account Holder's position. If the market moves against the Account Holder's position or margin levels are increased, he may be called upon to pay substantial additional funds on short notice to maintain his position.

### 12.2 Futures: risk-reducing orders or strategies

The placing of certain orders (e.g. “stop-loss” orders, or “stop-limit” orders) which are intended to limit losses to certain amounts may not be effective because market conditions may make it impossible to execute such orders. Strategies using combinations of positions, such as “spread” and “straddle” positions may be as risky as taking simple “long” or “short” positions.

## 13. Options

### 13.1 Definition of options

#### (a) The Call Option

A Call Option gives the buyer - against payment of the option price (premium) - the right to purchase, at any time during a specified period (in the case of an American option), or at the end of that period (in the case of an European option), and at a specified price (exercise price), the underlying instrument from the seller (writer) of the option in a quantity predetermined pursuant to the terms of the option concerned. Should the buyer exercise the option, the seller (writer) of the option must deliver the underlying instrument to the option buyer (or otherwise settle in cash if allowed or required pursuant to the terms of the option concerned) at the exercise price.

#### (b) The Put Option

A Put Option gives the buyer - against payment of the option price (premium) - the right to sell, at any time during a specified period (American option), or at the end of that period (European option) and at the exercise price, the underlying instrument to the seller (writer) of the option in a quantity predetermined pursuant to the terms of the option Transaction concerned. Should the buyer exercise the option, the seller (writer) of the option must purchase the underlying instrument from the option buyer (or otherwise settle in cash if allowed or required pursuant to the terms of the option concerned) at the exercise price.

### 13.2 Options: variable degree of risk

(a) Buyers and sellers of options should familiarize themselves with the type of option (i.e. put or call) which they contemplate trading and the associated risks. The Account Holder should calculate the extent to which the value of the options must increase for his position to become profitable, taking into account the premium and all transaction costs.

(b) The buyer of options may offset or exercise the options or allow the options to expire. The exercise of an option results either in a cash settlement or in the buyer acquiring

or delivering the underlying interest. If the option is on a futures contract, the buyer will acquire a futures position with associated liabilities for margin (see paragraph 12 of this section). If the purchased options expire worthless, the Account Holder will suffer a total loss of his investment which will consist of the option premium plus transaction costs. If the Account Holder is contemplating purchasing deep-out-of-the-money options, he should be aware that the chance of such options becoming profitable ordinarily is remote.

(c) Selling (“writing” or “granting”) an option generally entails considerably greater risk than purchasing options. Although the premium received by the seller is fixed, the seller may sustain a loss well in excess of that amount. The seller will be liable for additional margin to maintain the position if the market moves unfavorably. The seller will also be exposed to the risk of the purchaser exercising the option and the seller will be obligated to either settle the option in cash or to acquire or deliver the underlying interest. If the option is on a futures contract, the seller will acquire a position in a futures contract with associated liabilities for margin (see the section on Futures above). If the option is “covered” by the seller holding a corresponding position in the underlying interest or a futures contract or another option, the risk may be reduced. If the option is not covered, the risk of loss can be unlimited.

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

### 13.3 Risk involved in buying options

The buyer of any option risks losing some or all of the premium paid and any other incidental costs in relation to purchasing the option. This could occur due to the unfavourable price performance of the underlying instrument or due to expiry of the option without the buyer giving any Instructions to the Bank in respect of the exercise of the option. As the value of an option is partly dependent on the remaining tenure of the option prior to its expiry date (time value), an option may decline in value over time even if the value of the underlying instrument remains constant or performs favourably. The value of the call option can drop even when the value of the underlying remains unchanged or rises. This can happen as the time value of the option falls or if supply and demand factors are unfavourable. Put options behave in precisely the opposite manner. The shorter the time remaining until the date of expiration, and the larger the unfavourable price difference between the exercise price and the market price, the greater is the option buyer's risk of losing the premium paid. The Account Holder must therefore be prepared for a potential loss in the value of his option, or for the option to expire entirely without value. In such a scenario, the Account Holder risks losing the whole of the premium he paid.

### 13.4 Risk involved in selling options

The risks associated with selling (“writing” or “granting”) an option is generally greater than purchasing an option. It is important for the Account Holder to understand the risks to which the Account Holder, as an option seller, would be exposed if the buyer exercises the option and the Account Holder is obliged to either settle the option in cash, or acquire or deliver the underlying contract. If the option is on a futures contract or leveraged foreign exchange transaction, the Account Holder, as the option seller, will acquire a futures or leveraged foreign exchange position, as the case may be, with associated liabilities for margin. The risk of selling options may be mitigated (to a greater or lesser degree, depending on the facts) if the option is “covered” by a corresponding position in the underlying contract or another option. Conversely, if the option seller is not covered, then the potential loss may be unlimited.

### 13.5 Risk of selling (writing) covered Call Options

The writer of a covered Call Option sells (writes) the Call Option for an underlying instrument which he already has available. If the option is exercised by the buyer, the writer does not profit from the price growth of the underlying

instrument in excess of the exercise price. Thus a profit is missed by the writer of a covered Call Option. The profit missed is reduced only by the premium received. If the Call Option is not exercised by the buyer, the writer bears the full risk of a decline in the price of the underlying instrument. The decline in the price of the underlying instrument is reduced only by the amount of the premium received.

### 13.6 Risk of selling (writing) uncovered Call Options

The writer of an uncovered Call Option sells (writes) the Call Option without already having the underlying instrument available in the event it has to be delivered. The writer of an uncovered Call Option is required to deposit a security margin. If the price of the underlying instrument rises, the security margin increases. The writer firstly bears the risk of having to provide additional Collateral to the Bank at any time in order to meet the higher margin demands. If the Call Option is exercised by the buyer, the writer bears the risk of having to buy the underlying instrument to be delivered at a market price which is higher than the exercise price. Since there is no limit to the amount by which the market price of the underlying instrument may exceed the exercise price, the writer of an uncovered Call Option runs the risk of incurring an unlimited loss. The loss thus arising is reduced only by the amount of the premium received.

### 13.7 Risk of selling (writing) Put Options

The writer of a Put Option is required to deposit a security margin. If the price of the underlying instrument falls, then the security margin to be provided will increase. The writer runs the risk of being called upon at any time by the Bank to furnish additional collateral to satisfy the increased margin requirements. If the buyer exercises the Put Option, the writer runs the risk of having to purchase the underlying instrument offered to him at the exercise price which is higher than the market price of the underlying instrument. The exercise price may be considerably higher than the market price of the underlying instrument. The risk to the writer of a Put Option lies in the difference between the exercise price of the Put Option and the market price of the underlying instrument and is therefore limited to the amount of the exercise price. Any loss thus arising is reduced only by the amount of the premium received. If the buyer does not exercise the Put Option before its expiry, the security margin provided by the writer is released and the writer of the Put Option no longer faces the risk of having to purchase the underlying instrument at a price exceeding the market price. The writer of the Put Option retains the premium received.

### 13.8 Combining options

If the Account Holder acquires two or more options, based on the same underlying, which differ in either the option type (Call or Put), the quantity, the strike price, the expiration date or the type of position (long or short), this is referred to as an option strategy. Given the large number of possible combinations, it is impossible to go into detail here about the risks involved in any particular case. Before entering into any such transaction, the Account Holder should seek full and independent professional advice so as to understand and be familiar with the particular risks involved.

### 13.9 Exotic options

Unlike the "plain vanilla" Put Options and Call Options described above, exotic options are linked to additional conditions and agreements. Exotic options come in the form of tailor-made OTC options or as warrants. Given the special composition of exotic options, their price movements can vary markedly from those of their "plain vanilla" cousins. The Account Holder should be aware that larger Transactions can trigger price movements even shortly before expiration and that these movements can render an option worthless. Before buying or selling any exotic options, the Account Holder should seek full and independent advice so as to understand and be familiar with the particular risks involved. There is no limit to the possible structures for exotic options. This Risk Disclosure Statement is not an exhaustive guide on the risks involved in any particular Transaction. The examples of exotic options listed below can be broadly divided into two categories: (a) path-dependent options and (b) options on more than one underlying.

(a) For path-dependent options, it is not just when the

option expires or is exercised that the market value of the underlying is important. The Account Holder also needs to take into account fluctuations in the market value of the underlying during the life of the option when contemplating such an investment. Examples of path-dependent options are barrier options, payout options, Asian options, lookback options, contingent options, cliquet options and ladder options.

(b) For options with more than one Underlying, even if the Underlying performs positively, the difference between the Underlyings may be equal or lower in absolute as well as relative terms, thus having a negative impact on the value of the option. Examples of options on more than one Underlying are spread options and outperformance options. Both spread and outperformance options are based on two Underlyings. With a spread option, the absolute difference in movement between the two Underlyings forms the basis for calculating the option's value. By contrast, the value of an outperformance option is based on the relative difference, i.e. the percentage outperformance of one Underlying compared to the other.

## 14. Additional Risks Common to Futures and Options

### 14.1 Terms and conditions of contracts

The Account Holder should enquire about the terms and conditions of the specific futures or options which he is trading and the associated obligations (e.g. the circumstances under which he may become obliged to make or take delivery of the underlying interest of a futures contract and, in respect of options, expiration dates and restrictions on the time for exercise). Under certain circumstances, the specifications of outstanding contracts (including the exercise price of an option) may be modified by the exchange or clearing house to reflect changes in the underlying interest.

### 14.2 Suspension or restriction of trading and pricing relationships.

Market conditions (e.g. illiquidity) and/or the operation of the rules of certain markets (e.g. the suspension of trading in any contract or contract month because of price limits or "circuit breakers") may increase the risk of loss by making it difficult or impossible to effect transactions or liquidate/ offset positions. If the Account Holder has sold options, this may increase the risk of loss. Further, normal pricing relationships between the underlying interest and the futures, and the underlying interest and the option may not exist. This can occur when, for example, the futures contract underlying the option is subject to price limits while the option is not. The absence of an underlying reference price may make it difficult to judge "fair value".

### 14.3 Trading facilities

Electronic trading facilities are supported by computer based component systems for the order - routing, execution, matching, registration or clearing of trades. As with all facilities and systems, they are vulnerable to temporary disruption or failure. The Account Holder's ability to recover certain losses may be subject to limits on liability imposed by the system provider, the market, the clearing house and/or participant firms. Such limits may vary; the Account Holder should enquire about details in this respect.

### 14.4 Electronic trading

Trading on an electronic trading system may differ from trading on other electronic trading systems. If the Account Holder undertakes transactions on an electronic trading system, he will be exposed to risks associated with the system including the failure of hardware and software. The result of any system failure may be that the Account Holder's order is either not executed according to his instructions or is not executed at all.

### 14.5 Off-exchange transactions

In some jurisdictions, and only then in restricted circumstances, the Bank may be permitted to effect off-exchange transactions. The Bank may be acting as the Account Holder's counterparty to the transaction. It may be difficult or impossible to liquidate an existing position, to assess the value, to determine a fair price or to assess the exposure to risk. For these reasons, these transactions may involve increased risks. Off-exchange transactions may be less regulated or subject to a separate

regulatory regime. Before the Account Holder undertakes such Transactions, he should familiarize himself with applicable rules and attendant risks.

#### **15. Risks of Forward Contracts**

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

#### **16. Risks of FRAs**

An Account Holder may enter into Forward Rate Agreement (FRA) contracts to pay or receive interest at an agreed rate over a period commencing at a future date regardless of the level of interest rates prevailing at that future date. For uncovered contracts, there is an unlimited interest rate risk, computed on the full amount(s) contracted.

#### **17. Risks of Interest Rate Swaps**

An interest rate swap is an agreement between two parties to make reciprocal payments over a specific period of time. The payments are determined by reference to a notional principal amount and fixed or floating rates of interest. Floating rates are typically based on some published index of market rates. The Account Holder may be a receiver of fixed rate and payer of floating rate, or vice versa. In either case, movements in the referenced rates could have a significant impact on the Account Holder's cash flow as well as the cost of unwinding the swap position. For uncovered contracts, there is an unlimited interest rate risk, computed on the full amount(s) contracted.

#### **18. Risks of Swaps**

Different instruments may be swapped, resulting in an exchange of the source of future payment streams, and occasionally also an exchange of principal on commencement and/or maturity date (more frequently if the Transaction is an amortising swap). The risk that one of the parties to the swap will default or otherwise fail to perform its obligations is typically greater in swaps where both principal and income streams are exchanged. For uncovered contracts, there is risk which is directly related to the risks of the different instruments swapped. It is important to note that these risks may not be offsetting in effect, and should be viewed instead in aggregate.

#### **19. Combinations**

Combinations are referred to when at least two different instruments - either in identical or different classes - are bought and/or sold (written) at the same time. Where a Transaction is "structured" or made up of several instruments, the Account Holder should be aware that there is a risk associated with each instrument evaluated separately and the risk of the transaction evaluated as a whole. By closing or exercising individual parts of a combination Transaction, the risks involved can materially change. Therefore the Account Holder should assess the risk associated with the individual instruments and the transaction as a whole. On account of the broad range of possible Transactions and combinations thereof, before executing such Transactions or putting combination strategies into operation, the Account Holder should ensure that he obtains independent professional advice and becomes thoroughly familiar with the product term sheets, annexures and supplements pertaining to such Transactions or combinations thereof and the specific risks involved. The Account Holder should seek full and independent advice so as to understand and be familiar with the particular risks involved.

#### **20. Pricing Relationship**

For financial derivatives Transactions, e.g. futures and options, the normal pricing relationships between the underlying instruments and the financial derivatives may not exist in certain circumstances, in particular in "combined" or "structured" Transactions. The absence of a "common" or "market" reference price may make it difficult, if not impossible, for the "fair" value of the Transaction to be assessed independently. Whilst the Bank will provide periodic mark-to-market

valuations to the Account Holder, the Account Holder acknowledges and agrees that the Bank's determination of the value of the Transaction in accordance with its normal practices from time to time shall be conclusive and binding. The Account Holder further acknowledges and agrees that the Account Holder shall not have any access to and shall not query or require further particulars of the mode of calculation adopted by the Bank.

#### **21. Exchange Traded Instruments and the Impact of Electronic Trading**

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

The Account Holder shall also note that under certain circumstances, the specifications of outstanding contracts (excluding the exercise price of an option) may be modified by the exchange or clearing house to reflect changes in the underlying interest.

In addition, normal pricing relationships between the underlying interest and the futures contract, and the underlying interest and the option, may not exist. This can occur when, for example, the futures contract underlying the option is subject to price limits while the option is not. The absences of an underlying reference price may make it difficult to judge 'fair' value.

Trading on an electronic trading system may differ not only from trading in an open-outcry market but also from trading on other electronic trading systems. For Transactions in which the underlying contracts or instruments are supported by electronic trading facilities at the exchanges, e.g. computer-based component systems for order-routing, execution, matching, registration, or clearing of trades, any temporary disruption or power/system failure of such electronic trading facilities could result in a disruption in the trading activities at the exchange and an unavailability of reference prices for the relevant Transaction. In such circumstances, the Account Holder's order may not be executed according to the Account Holder's Instructions or at all, which may lead to losses to the Account Holder. It is likely that such losses will not be recoverable from the relevant exchange as the rules thereof invariably exempt them from such liabilities. The Account Holder should ask the Bank for details when conducting Transactions in this respect.

#### **22. Risk of Securities Trading on Alternative Stock Markets**

Alternative stock markets may have been established in a jurisdiction as a market designed to accommodate companies with higher investment risk. In particular, companies may list on an alternative stock market with neither a track record of profitability nor any obligation to forecast future profitability. There may be risks arising out of the emerging nature of companies listed on an alternative stock market and the business sectors or countries in which the companies operate. Such securities may be susceptible to higher market volatility and/or a lack of liquidity, as compared with main board listed securities.

The higher risk profile and the other characteristics of an alternative stock market mean that it is a market more suited to professional and other sophisticated investors. The principal means of information dissemination on an alternative stock market is generally publication on an internet website. Accordingly, the Account Holder needs to have access to up-to-date information on the companies listed on an alternative stock market as published on the relevant internet website.

#### **23. Risk of Trading in Commodities**

Commodities may be traded in many forms, including futures contracts, forward contracts, leveraged trading contracts, contracts made pursuant to trading in differences, spot trading contracts, swaps, options and other derivative transactions including any structured products, indices, rights and interests involving any combination of one or more of any of the foregoing trading arrangements as well as any other investments or Transactions which the Bank and Account Holder may from time to time agree.

The market for trading in Commodities is speculative and may be highly volatile. Prices for Commodities are affected by a variety of

factors, including changes in supply and demand relationships, governmental programmes and policies, national and international political and economic events, wars and acts of terror, changes in interest and exchange rates, trading activities in Commodities and related contracts, weather and agricultural harvest, trade, fiscal, monetary and exchange control policies.

The price volatility of each Commodity also affects the value of the futures, options and forward contracts related to that Commodity and therefore its price at any such time. The volatility of Commodity prices is significant and often higher than for equity portfolios. The Commodity markets are in most cases less liquid as compared to the markets for equities, interest or currency-related products.

Commodities positions, Transactions or trades carry a high degree of risk and may not be suitable for many members of the public. The extent of loss due to market movements can be substantial or even result in a total loss.

#### **24. Risk of Leveraging**

The degree of leverage and/or arbitrage which is obtained in connection with the Transactions can work against as well as for the Account Holder. The use of leverage and/or arbitrage can lead to large losses as well as gains. Such leveraging may be by way of a loan, trading on a margin, or embedded within an instrument such as a structured note. Placing contingent orders, such as "stop loss" or "stop limit" orders will not necessarily limit losses to the intended amounts. Market conditions may make it impossible to execute such orders. The Account Holder acknowledges and agrees that the Account Holder may be called upon at short notice to deposit additional Collateral. If the required funds are not provided within the prescribed time, Account Holder's position may be liquidated and the Account Holder will be liable for any resulting deficit in the Account.

#### **25. Risks of Providing an Authority to Hold Mail or to Direct Mail to Third Parties**

If the Account Holder provides the Bank or any Group Entity with the authority to hold mail or to direct mail to third parties, it is important for the Account Holder to promptly collect in person all confirmations, statements and/or contract notes of the Account and review them in detail to ensure that any anomalies or mistakes can be detected in a timely manner.

#### **26. Country Risks**

A country risk can arise if a country restricts securities trading, for instance by imposing economic sanctions or currency restrictions.

#### **27. Currency Risks**

Where the Account Holder engages in a Transaction involving one currency to hedge an original investment in another currency or where the Transaction entered into by the Account Holder references two different currencies (whether such Transaction is traded in the Account Holder's jurisdiction or another jurisdiction), the Account Holder should be aware that fluctuations of the currencies against each other or against the other underlying elements of the Transaction may affect the Account Holder's net profit on the Transaction or increase the Account Holder's loss.

#### **28. Liquidity and Marketability Risks**

The Account Holder acknowledges and agrees that at certain times or under certain market conditions, the Account Holder may find it difficult or impossible to liquidate a position, to assess value, to assess risk exposure or to determine a fair price. Certain equity or debt securities and money market instruments and, in particular, structured notes or customized products may not be readily realizable or marketable. There can be no certainty that market traders will be prepared to deal in them, and the Account Holder should be aware that proper information for determining their current value may not be available. This can happen, for example, where the market for a transaction is illiquid or where there is a failure in electronic or telecommunication systems, and where there is the occurrence of an event commonly known as "force majeure".

#### **29. Counterparty, Issuer and Credit Risk**

The Account Holder should ensure that it is aware of the identity of, and finds acceptable, the contractual counterparty with whom the Account Holder may be matched. For products in securitized form such as notes, the Account Holder will be purchasing an unsecured

obligation of the counterparty (as opposed to an obligation of a central clearing corporation in the case with exchange traded futures and options) and the Account Holder should evaluate, and find acceptable, the issuer and credit risk associated with such securitized products. Where the Account Holder purchases a debt instrument, such as a note or a bond or a money market instrument, the Account Holder takes the credit risk of both its contractual counterparty as well as the issuer of the debt instrument. For real products, the Account Holder bears the risk that the fund may not fulfil its obligations including the obligation to redeem the Account Holder's interest in the fund.

The Account Holder should be aware that, depending on the product, the capital protection component of a product can be well under 100% of the capital invested and that capital protection does not mean 100% repayment of the purchase price for every product. Where the redemption price of a product is indicated at 100% (100% capital protection), it should be noted that this represents no guarantee by the issuer or the Bank that 100% of the purchase price of the product will be paid out at maturity. Capital protection only protects the Account Holder from the downside-risk of the Transaction itself but not from the credit risk of the counterparty and the issuer.

#### **30. Market Risk**

The Account Holder's payments or receipts under a Transaction will be linked to changes in the particular financial market or markets to which the Transaction is linked, and the Account Holder will be exposed to price volatility in that market or markets. The Account Holder may sustain substantial losses on the contract, trade, product, or financial investment if the market conditions move against the Account Holder's positions. It is in the Account Holder's interest to understand fully the impact of market movements, in particular the extent of profit/loss the Account Holder would be exposed to when there is an upward or downward movement in the relevant rates, and the extent of the loss if the Account Holder has to sell the securities or liquidate a currency or financial derivatives position if market conditions move against the Account Holder. The Account Holder's position may be liquidated at a loss, and the Account Holder will be liable for any resulting deficit in the Account Holder's account with the Bank.

#### **31. Deposited Property and Cash**

The Account Holder should also familiarize himself with the protections accorded to money or other property that the Account Holder deposits for domestic and foreign Transactions, particularly in the event of an insolvency or bankruptcy of the issuer, custodian or intermediary. The extent to which the Account Holder may recover his money or property may be governed by local rules and regulations and may result in the Account Holder failing to recover all of such property or cash. In some jurisdictions, property which had been specifically identifiable as that of the Account Holder will be prorated in the same manner as cash for purposes of distribution in the event of a shortfall.

#### **32. Transaction Costs**

Before making any Transaction or investment, the Account Holder should obtain a clear explanation of all commissions, fees and other charges for which the Account Holder will be liable. These charges will affect the Account Holder's net profit (if any) or increase his loss. The Account Holder's net returns from any Transaction or investment would also be affected by the Transaction costs (i.e. commission, fees and other charges) charged by the Bank or third parties and any relevant tax liabilities. These costs must be considered in any risk assessment made by the Account Holder. In some cases, managed accounts may be subject to substantial charges for management and advisory fees. It may be necessary for those accounts that are subject to these charges to make substantial trading profits to avoid depletion or exhaustion of their assets.

#### **33. Tax Risks**

Before entering into any Transaction, the Account Holder should understand the tax implications (including the implications of any applicable income tax, goods and services or value added taxes, stamp duties and other taxes) of acquiring, entering into, holding and disposing of the relevant investment or Transaction. Different Transactions may have different tax implications. The tax implications of any Transaction are dependent upon the nature of the Account Holder's business activities and the Transaction in

question. The Account Holder should, therefore, consult the Account Holder's independent tax advisor to understand the relevant tax considerations.

#### **34. Non-transferability and Non-marketability**

A structured or over-the-counter Transaction generally cannot be assigned or transferred without the consent of the other party. The Bank is not obliged to repurchase a Transaction from the Account Holder or terminate a Transaction at the Account Holder's request. Because Transactions are customized and not fungible, engaging in a Transaction with another dealer to offset a Transaction the Account Holder has entered into with the Bank will not automatically close out those positions (unlike the case of equivalent exchange-traded futures and options) and will not necessarily function as a perfect hedge. Off-exchange Transactions may also be less regulated or subject to a separate regulatory regime. Before undertaking such Transactions, the Account Holder should familiarize himself with the applicable rules and attendant risks.

#### **35. Price Indications in Statements for Derivative Transactions and Non-listed Instruments in General**

For financial derivative Transactions and non-listed financial instruments, in particular in "combined" or "structured" Transactions, the absence of a "market" or "common" reference price may make it impossible for the Bank to provide the precise value of the Transaction. Therefore the Account Holder should be aware that price indications by the Bank are always based on the latest available market prices of the underlying instrument or have arrived from sources believed to be reliable. Consequently, price indications might only reflect historic prices and may not reflect the final proceedings where the Transaction is terminated or assigned immediately, if this is possible at all. The Bank does not make any representation as to the accuracy or completeness of price indications for Transactions and does not accept liability for any loss arising from the use thereof. Because the prices and characteristics of over-the-counter Transactions are individually negotiated and as there is no central source for obtaining prices, there are inefficiencies in Transaction pricing. The Bank consequently cannot and does not warrant that the Bank's prices or the prices the Bank secures for the Account Holder are or will at any time be the best price available to the Account Holder. The Bank may make a profit from a transaction with the Account Holder whatever the result of the transaction from the Account Holder's point of view.

#### **36. Transactions in other Jurisdictions**

Transactions on markets in other jurisdictions, including markets formally linked to the Account Holder's domestic market, may expose the Account Holder to additional risks. Such markets may be subject to rules which may offer different or diminished investor protection. Before entering into any Transaction or investment, the Account Holder should enquire about any rules relevant to the Account Holder's particular Transaction or investment. The Account Holder's local regulatory authority will be unable to compel the enforcement of rules of the regulatory authorities or markets in other jurisdictions where the Account Holder's Transactions have been effected. The Account Holder should enquire about the types of redress available in both the Account Holder's home jurisdiction and other relevant jurisdictions before the Account Holder enters into a Transaction or investment.

#### **37. Emerging Markets Financial Instruments**

Emerging markets are defined as markets in countries with moderate to low per capita national income. While investments in emerging markets can yield large gains, they can also be highly risky as they could be unpredictable and there may be inadequate regulations and safeguards available to investors. For instance, investments may not be readily saleable and information to determine their current value may not be available in emerging markets. Besides the risks inherent in all investments, those associated with emerging markets include, but are not limited to, country risk where government intervention in markets, perhaps in the form of exchange control laws or restrictions in the repatriation of profits, may affect the value of an investment or the Account Holder's ability to enjoy his benefits. In addition, events (for instance, natural disasters, fluctuations in commodity prices and/ or exchange rates and political upheavals) which may have a minor or limited effect in more mature markets could affect emerging markets profoundly.

In these circumstances, investments by the Account Holder in emerging markets financial instruments (for instance, bank

certificates of deposit, debt or equity securities issued by public or private sector institutions available in emerging markets) need careful and independent assessment of each investment and the risks in relation thereto (including, without limitation, sovereign risk, issuer risk, price risk, political risk and liquidity risk).

The Account Holder should make a full and independent appraisal of, and investigations into, and should, from time to time, review the financial condition and creditworthiness of the relevant issuer of the emerging market financial instruments. The Account Holder should be aware of and be able to weigh the diverse risks, some of which are identified above, before investing in emerging market financial instruments.

#### **38. Non-traditional Funds (Hedge Funds and Offshore Funds)**

Non-traditional funds are investment companies which differ from traditional equity and bond investments on account of their investment style. The most common form of a non-traditional fund is the hedge fund, which, despite its name, does not necessarily have anything to do with hedging. Many hedge funds aim to make a profit and sometimes take on very high levels of risk. Hedge funds include all types of investment funds, investment companies, partnerships and limited liability partnerships which use derivatives for investment rather than hedging purposes, which can carry out short sales or which can attain significant leverage from the investment of borrowed capital. Additional features of hedge funds are their free choice of investment categories, markets (including emerging markets) and trading methods. Hedge funds generally demand high minimum investments. They offer no more than limited subscription and redemption rights with lengthy notice periods. Portfolio managers of hedge funds receive performance-linked bonuses and often have a personal stake in the fund. The Account Holder acknowledges that performance fees may be charged in relation to an investment in a non-traditional fund, and this may be effected by way of deduction of securities held by the Bank on behalf of the Account Holder, which will reduce the holdings of the Account Holder accordingly. Investment strategies are often high-risk. Due to leverage, a small movement in the market can lead to a major gain, but any losses will also be magnified sharply. The Account Holder acknowledges and accepts that for such investments the entire amount of the Account Holder's investment can, under certain circumstances, be lost. It is not uncommon for there to be little information available concerning a non-traditional investment. Moreover, many investment strategies are highly complex and very difficult to understand. The Account Holder should be aware that changes in strategy which can lead to a substantial increase in the level of risk are often overlooked, accorded too little attention or noticed too late. The liquidity and tradability of non-traditional investments can vary a great deal. Hedge fund issues and redemptions are often only monthly, quarterly or annually. Fixed holding periods lasting many years are not unusual. Provisions regarding trading frequency and holding periods may change frequently and rapidly. Liquidations can stretch over many years. Many funds in this category have an offshore domicile which earns them the name offshore funds. They are subject to less stringent legislation and supervision, which in turn offers poorer investor protection. Problems or delays may also arise in the settlement of buy and sell orders for units in such funds. There is no guarantee that an investor's legal rights will be enforceable.

Non-traditional investments can take countless different forms and involve a high degree of risk. Before making any such investments, the Account Holder should seek independent advice about the particular risks involved and carefully study the Information Memorandum and relevant subscription agreement and other information on the relevant investments. The Account Holder should fully understand and agree to assume the risks involved and the exposure to potential loss (which could involve the complete loss of the investments).

#### **39. Structured Products**

Structured products are formed by combining two or more financial instruments, including one or more derivatives. Structured products may carry a high degree of risk and may not be suitable for many members of the public, as the risks associated with the financial instruments may be interconnected. As such, the extent of loss due to market movements can be substantial. Prior to engaging in structured product Transactions, the Account Holder should understand the inherent risks involved. In particular, the various risks associated with each financial instrument should be evaluated separately as well as taking the structured product as a whole. Each structured product has its own risk profile and given the unlimited

number of possible combinations, it is not possible to detail in this Risk Disclosure Statement all the risks which may arise in any particular case. Nonetheless, this Risk Disclosure Statement attempts to provide a general description of the features and some of the risks applicable to a few common types of structured products. The Account Holder should note that with structured products, buyers can only assert their rights against the issuer. Hence, particular attention needs to be paid to issuer risk. The Account Holder should therefore be aware that a total loss of his investment is possible if the issuer should default.

#### 39.1 Capital protected products

Capital protected products. Structured products with a capital protection component often consist of an option combined with a fixed income instrument (e.g. a bond). The capital protection component is provided by the bond and determines how much is paid out as a fixed sum when the structured product matures. The Account Holder should note that the capital protection can be well under 100 per cent of the capital invested, depending on the product. The capital protection is also linked to the nominal value rather than the issue price or the secondary market price. Capital protection does not therefore mean 100 per cent repayment of the purchase price for all products. The option component determines how and to what extent the buyer benefits from price movements in the underlying asset. In other words, it establishes the buyer's potential return above the capital protection component. The risks this component entails correspond to those of other options or option combinations. Depending on the underlying asset's market value, it can expire without value. The market value of a structured product can fall below the level of its capital protection, which can increase the potential loss on a sale before maturity. In other words, capital protection is only available if the buyer holds the structured product until maturity.

#### 39.2 Dual currency investments

Dual currency investments ("DCI") (also known as dual currency deposits) are exchange-rate-related instruments that enable the buyer to obtain a higher return than on a money market instrument. When a DCI matures, the buyer will receive payment of principal and interest either in the primary or the alternative currency. If payment is in the alternative currency, the strike rate will be used for conversion. A DCI can be viewed as a bond combined with grant of a short call option on the reference currency. If on maturity, the option is out-of-the-money, the buyer will receive the principal plus interest in the primary currency. On the other hand, if the option is in-the-money, the issuer of the DCI will exercise the call option and pay the holder of the DCI in the alternative currency. DCIs are suitable for buyers who wish to see a high return on their investments and accept the risk of repayment in the alternative currency at the strike rate. The higher the potential earnings, the greater the risk that payment will be made in the alternative currency at the strike price which results in a loss on the principal sum in comparison with the principal amount initially invested. DCIs cannot be terminated early without the Bank's consent. By entering into a DCI, you are giving the Bank, as the issuer of the product an option to repay you at a future date in either the base currency or an alternate currency that is different from the currency in which your initial investment was made, regardless of whether you wish to be repaid in this currency at that time. Part or all of the interest earned on the DCI represents the premium on this option.

DCIs are subject to foreign exchange fluctuations which may affect the return of your investment. Exchange controls may also be applicable to the currencies your investment is linked to. You may incur a loss on your principal sum in comparison with the amount in the base currency initially invested.

You may wish to seek advice from a licensed or an exempt financial adviser before making a commitment to enter into a DCI. In the event that you choose not to seek advice from a licensed or exempt financial adviser, you should carefully consider whether this product is suitable for you.

If the principal amount of a DCI is withdrawn before its maturity date, the Bank may deduct such amount as it determines is required to reimburse the Bank for any costs, losses or expenses (including any funding costs and the costs of closing out any transactions hedging its position in relation to the deposit) which the Bank may incur as a result of the early withdrawal.

DCIs are not insured deposits for the purposes of the Deposit Insurance Act, Chapter 77A of Singapore.

#### 39.3 Equity-linked notes

Equity-linked notes ("ELNs") may be viewed as combining a debt instrument with an option that allows a bull (rising), bear (falling) or range bet. The return on an ELN is usually determined by the performance of a single security, a basket of securities or an index. A bull ELN combines a traditional deposit with the premium received from writing a put option on the chosen securities. If the value of these securities falls to a level less than the strike price minus the premium received, the buyer will suffer a loss. The maximum potential loss could be the entire capital sum. A bear ELN combines a deposit with the premium received by selling a call option on the chosen securities. Upon maturity, the amount that the issuer of a bear ELN will repay the investor depends on the strike price and the market value of the securities at maturity. Buyers of a bear ELN must feel comfortable with the risk of losing the entire capital invested, in the event that the market value of the securities is above the strike price. A range ELN combines a traditional deposit with the premium received by selling both a put option and a call option on the chosen securities. The Account Holder should also note that the return on investment of an ELN is predetermined, so that even if the Account Holder's view of the direction of the underlying market is correct, it will not gain more than the specified amount. The Account Holder should also note that there is no guarantee that the Account Holder will derive any return on his investment in an ELN. In addition, there is a limited secondary market for outstanding ELN issues.

#### 40. Credit-linked Products ("CLPs")

The Account Holder understands that CLPs may carry a high degree of risk. The Account Holder undertakes to understand fully all the features associated with CLPs which include but are not limited to the credit events, reference obligations, settlement mechanics and deliverable obligations referred to in the documentation of the issuers of the CLPs (which contains the definitive terms of the CLPs) and any related documentation as may be provided by the Bank before investing in CLPs.

The Account Holder acknowledges that if it invests in CLPs, it is fully capable of assuming all risks generally associated with CLPs. These risks include and are not limited to the occurrence of a credit event, the issuer of the CLPs not fulfilling their obligations under the terms of the CLPs for any reason, or becoming insolvent. The Account Holder further agrees that the Bank will not be liable to fulfil the obligations of the issuers of the CLPs.

The Account Holder acknowledges that CLPs are generally not principal protected products and the Client may lose part or all of the amounts which the Account Holder invests in the CLPs. The Account Holder further acknowledges that CLPs may not be transferrable and/or there may not be a secondary market for the CLPs; and that even if there is a secondary market, there can be no guarantee as regards the value of the CLPs in such a market.

The Account Holder acknowledges that it will make its own independent decision whether to invest in CLPs and as to whether CLPs are appropriate for it based upon its own judgment and upon advice from its professional advisers. The Account Holder will not be relying on any communication (written or oral) of the Bank as investment advice or as a recommendation to invest in CLPs; it is being understood that information and explanations related to the terms and conditions of the CLPs shall not be considered investment advice or a recommendation to invest in CLPs. No communication (written or oral) received from the Bank shall be deemed to be an assurance or guarantee as to the expected results of the CLPs.

#### 41. Private Equities

Private equities ("PE") are participations into private companies and/or funds. The purpose of such participations is to provide such companies with capital in order to finance projects that are expected to generate higher returns involving higher risks ("Projects"). The PE participations are made either by a single payment or in other cases, by several payments over a certain period of time, known generally as "capital calls" by the private companies involved. PE is less liquid than other securities and in certain cases, fund holdings of PE cannot be sold and/or transferred freely. If transferred, this might take place at a discount. Returns on private equity generally occur in several ways such as: (i) a sale of the participations through eventual public listings on Stock Exchanges, (ii) mergers with other companies, sale to another interested party or (iii) a recapitalization amongst others.

Considerable losses, or even a total loss over the investments into PE might take place, when such private companies and/or funds are either wound up or declared insolvent, should the Projects fail and/or should commercial interest in the business of the private companies or Projects cease to exist.

#### 42. Exchange Traded Funds (“ETFs”)

- 42.1 Market Risk: The net asset value (“NAV”) of ETFs will change with changes in the market value of the securities it holds. The price of units and income from the units may go down as well as up. ETFs are not principal protected products and the Account Holder may not get back his original investment. The Account Holder should note the ETFs may not make any dividend distributions, even if the securities it holds do so.
- 42.2 Concentration Risk: An ETF may concentrate its investments in issuers of one or more particular industries/geographical regions to the same extent that its underlying index is so concentrated and to the extent permitted by applicable regulations. If the particular industry or geographic location in which the ETF’s investments are concentrated performs poorly, this will magnify the negative impact on the value of the ETF.
- 42.3 Passive Investments: Most ETFs are not actively managed. The ETF manager does not attempt to select securities individually or to take defensive positions in declining markets. Accordingly, ETFs may be adversely affected by a decline in the market segments relating to its underlying index.
- 42.4 Correlation Risk: A number of factors may affect an ETF’s ability to achieve a high degree of correlation with its underlying index, and there can be no guarantee that an ETF will achieve a high degree of correlation. A failure to achieve high degree of correlation may prevent an ETF from achieving its investment objective. The factors include fees, expenses, transaction costs, costs associated with the use of leveraged investment techniques, income items, accounting standards and disruptions or illiquidity in the markets for the securities or financial instruments in which an ETF invests. An ETF may not have investment exposure to all securities in its underlying index, or its weighing of investment exposure to such securities may be different from that of the index. In addition, an ETF may invest in securities or financial instruments not included in the underlying index. An ETF may be subject to large movements of assets into and out of the ETF, potentially resulting in the ETF being overexposed or underexposed to its benchmark. Activities surrounding annual index reconstitutions and other index rebalancing or reconstitution events may prevent an ETF from achieving a high degree of correlation with the underlying index.
- 42.5 Risk of investing in Futures, Options and other Derivatives: ETFs may invest in stock index future contracts and other derivatives. Compared to traditional securities, derivatives may be more sensitive to sudden fluctuations in market prices or changes in interest rates. This is due to both the low margin deposits required and the extremely high degree of leverage involved in future pricing. As a result, a relatively small price movement in a futures contract may result in immediate and substantial gain/loss to an ETF. Thus there is the risk that an ETF’s losses may be greater if a substantial portion of its investments is in derivatives and the market moves against the ETF.
- 42.6 Counterparty (Credit) Risk: Counterparty (credit) risk arises when an ETF purchases financial instruments from and/or enters into agreements with other counterparties, and these counterparties becomes bankrupt or otherwise fail to perform their obligations for any reason. The value of an ETF may decline as a result of such counterparty (credit) risk.
- 42.7 Debt Instruments Risk: ETFs may invest in, or seek exposure to, debt instruments. Debt instruments may have varying levels of sensitivity to changes in interest rates, credit risk and other factors. Typically, the value of outstanding debt instruments falls when interest rates rise. Debt instruments with longer maturities may fluctuate more in response to interest rate changes than instruments with shorter maturities. Many types of debt instruments are subject to prepayment risk, which is the risk that the issuer of the security will repay principal prior to the maturity date. Debt instruments allowing prepayment may offer less potential for gains during a period of declining interest rates. In addition, changes in the credit quality of the issuer of a debt instrument can also affect the price of a debt instrument, as can an issuer’s default on its payment

obligations. Such factors may cause the value of an ETF who invests in such debt instruments to decrease.

- 42.8 Equity Risk: Equity markets are generally volatile, and the value of securities, futures, options contracts and other instruments correlated with equity markets may fluctuate dramatically from day-to-day. This volatility may cause the value of an ETF to decrease.
- 42.9 Early Close/Trading Halt Risk: An exchange or market may close early or issue trading halts on specific securities, or the ability to buy or sell certain securities or financial instruments may be restricted, which may result in an ETF being unable to buy or sell certain securities or financial instruments. In such circumstances, an ETF may be unable to rebalance its portfolio, may be unable to accurately price its investments and/or may incur substantial trading losses.
- 42.10 Foreign Investments Risk: ETFs may invest in securities of foreign issuers (i.e. issuers outside the jurisdiction in which the ETF is established) or other investments that provide ETFs with exposure to foreign issuers (collectively, “foreign investments”). Certain factors related to foreign investments may prevent an ETF from achieving its goals. These factors include the effect of (i) foreign currency fluctuations and the uncertainty associated with the cost of converting between various currencies, particularly when currency hedging techniques are unavailable; (ii) lack of market liquidity, differences in settlement practices, or delayed settlements in some foreign markets; (iii) the uncertainty associated with evidence of ownership of investments in some foreign countries; (iv) brokerage commissions and fees and other investment related costs that may be higher than those applicable to domestic investments; (v) the possibility that a foreign government may withhold portions of interest and dividends at the source; (vi) taxation of income earned in foreign nations or other taxes imposed with respect to investments in foreign nations; and (vii) foreign exchange controls, which may include suspension of the ability to transfer currency from a given country. In some foreign countries, the availability of publicly available information about issuers may vary widely. The degree of government supervision and regulation may also vary widely for some of these foreign markets. Foreign issuers may not be subject to uniform accounting, auditing and financial reporting standards. Furthermore, the issuers of foreign investments may be closely controlled by a small number of families, institutional investors or foreign governments whose investment decisions might be difficult to predict. An ETF may encounter difficulties or be unable to pursue legal remedies and obtain judgments in foreign courts. In some countries, information about decisions of the judiciary, other government branches, regulatory agencies and tax authorities may be less transparent. Moreover, enforcement of such decisions may be inconsistent or uncertain. Foreign investments also may be more susceptible to political, social, economic and regional factors.
- 42.11 Foreign Currency Exchange Risks: ETFs may be exposed to foreign currency exchange risk if the ETFs make foreign investments in a currency other than the currency in which the ETF is denominated.
- 42.12 Liquidity Risk: In certain circumstances, such as the disruption of the orderly markets for the securities or financial instruments in which an ETF invests, an ETF might not be able to dispose of certain holdings quickly or at market value prices. Such a situation may prevent an ETF from limiting losses, realizing gains or achieving a high correlation or inverse correlation with its underlying index. Separately, there can also be no assurance that an active trading market will exist for units of ETFs and it may not be possible to sell or dispose of units of ETFs in such circumstances.
- 42.13 Market Price Variance Risk: Individual units of ETFs will be listed for trading on the exchange and can be bought and sold in the secondary market at market prices. The market prices of units will fluctuate in response to changes in NAV and supply and demand for units. Difference between secondary markets prices and the NAV of the units may be due largely to supply and demand forces in the secondary market, which may not be the same forces as those influencing prices for securities or instruments held by an ETF at a particular time. There may, however, be times when the market price and the NAV vary significantly and the Account Holder may pay more than NAV

when buying units on the secondary market, and may receive less than NAV when selling those units. The market price of units like the price of any exchange-traded security, includes a "bid-ask spread" charged by the exchange specialist, market makers or other participants that trade the particular security. In times of severe market disruption, the bid-ask spread often increases significantly. This means that units may trade at a discount to NAV, and the discount is likely to be greatest when the price of units is falling fastest, which may be the time the Account Holder needs to sell its units.

42.14 Fund Management Risk: This is the risk that the ETF manager's strategy, the implementation of which is subject to a number of constraints, may not produce the intended results. This risk is especially pertinent when the ETF does not fully replicate its underlying index, but instead holds non-index stocks or other financial instruments.

Inverse/Leveraged/Inverse Leveraged ETFs (collectively, "Non-traditional ETFs")

42.15 Short Selling Risk: Selling short is a technique that may be employed by certain Non-traditional ETFs to achieve investment exposure consistent with its investment objective. Short selling involves borrowing a security and then selling it. If such an ETF buys back the security at a price lower than the price at which it sold the security plus accrued interest, that ETF will earn a positive return (profit) on the difference. If the current market price is greater when the time comes to buy back the security plus accrued interest, that ETF will incur a negative return (loss) on the transaction. The use of short sales may involve additional transaction costs and other expenses. As a result, the cost of maintaining a short position may exceed the return on the position, which may cause the ETF to lose money. Under certain market conditions, short sales can increase the volatility and decrease the liquidity of certain securities or positions and may lower the ETF's return or result in a loss. Entering into short positions through financial instruments such as futures, options and swap agreements may also cause an ETF to be exposed to short sale risk. Separately, ETFs that employ short selling strategies may also face the risk of securities regulators prohibiting short sales of publicly traded securities. Such orders by regulators may severely limit the ability of managers of ETFs to employ certain portfolio techniques, including the use of certain short selling financial instruments. This may prevent such ETFs from realizing their investment objectives.

42.16 Daily Rebalancing and Market Volatility Risk: Non-traditional ETFs seek to provide a return which is either a multiple and/or an inverse of the daily performance of its underlying index. Non-traditional ETFs do not attempt to, and Non-traditional ETFs should not be expected to, provide returns which are a multiple and/or an inverse of the return of the benchmark for periods other than a single day. A Non-traditional ETF rebalances its portfolio on a daily basis, increasing exposure in response to that day's gains or reducing exposure in response to that day's losses. An index's volatility rate is a statistical measure of the magnitude of fluctuations in the returns of an index. At higher ranges of volatility, there is a chance of a near complete loss of the value of the ETF even if the performance of the underlying index is flat. Non-traditional ETFs are designed as short term trading vehicles for Account Holders who intend to actively monitor and manage their portfolios. They are not intended to be used by, and are not appropriate for, Account Holders who do not intend to actively monitor and manage their portfolio.

42.17 Leverage Risk: If the Account Holder invests in Leveraged ETFs, the Account Holder is exposed to the risk that any adverse daily performance of an ETF's underlying index will be leveraged. This means that, if a 3X Leveraged ETF's underlying index experiences adverse daily performance, the Account Holder's investment in the 3X Leveraged ETF will be reduced by an amount equal to 3% for every 1% of adverse performance, not including the cost of financing the portfolio and the impact of operating expenses, which would further lower the Account Holder's investment (if compounding over time is taken into account, it could be greater than 3X index losses).

42.18 Inverse Correlation Risk: Inverse ETFs are negatively correlated to their underlying indices and should lose money when their indices risk - a result that is the opposite from conventional ETFs. Because each inverse ETF seeks daily returns which are inverted to the performance of its underlying index, the

difference between an inverse ETF's daily return and the price performance of its underlying index may be negatively compounded during periods in which the markets move adversely over that period.

#### 43. Risk of Potential Conflicts of Interest

Where the Account Holder's counterparty is the Bank, the Account Holder acknowledges that the Bank deals with the Account Holder at arm's length as the Account Holder's counterparty. In such a case, the Bank is not the Account Holder's fiduciary, nor does it accept any fiduciary obligations to the Account Holder. The Account Holder should be aware that any dealing, trading or engagement or transaction with the Bank by the Account Holder could result in a loss to the Account Holder and a gain to the Bank. The Bank does not and will not give the Account Holder any advice or recommendation, whether written or oral, other than the representations which will be expressly set forth in the relevant agreement, and any confirmation which may be signed or executed by the Account Holder after negotiations with the Bank as the Account Holder's counterparty. The Bank may make a profit from any Transaction with the Account Holder, regardless of whether the Account Holder or any third party makes a profit or a loss from the Transaction.

The Bank is not obliged to give advice or make recommendations and notwithstanding that it may do so on request by the Account Holder or otherwise, such advice or recommendations are given or made (and the Account Holder acknowledges and agrees that such advice or recommendation is so given or made) without any responsibility on the part of the Bank and on the basis that the Account Holder will nevertheless make the Account Holder's own assessment and rely on the Account Holder's own judgment.

The Bank is part of a large international financial group and acts simultaneously for a large number of clients, as well as for its own account. Accordingly, conflicts of interest cannot be completely avoided. Accordingly, the Account Holder acknowledges that the Bank and its affiliates may (a) be the issuer of any investments, (b) combine the Account Holder's orders with its/their own orders or the orders of other clients, (c) make investments or effect Transactions for the Account Holder through the agency of and/or with a counterparty which is a related organization or a person otherwise associated with it/them, (d) have a position or a direct or indirect interest in any investments or Transactions even if the position is opposite to that taken by the Account Holder, (e) have bought or sold any investments or entered into any Transactions as principal or for its/their other clients, or (f) have other banking, advisory or any other corporate relationships with companies whose investments are held for the Account Holder's account or are purchased and sold for the Account Holder and its/their officers and directors may be officers and directors of such companies. The Bank and its affiliates shall not be liable to account or specifically disclose to the Account Holder any profit, charge or remuneration made or received from any such transaction or other connected transactions.

The Services provided by the Bank to the Account Holder are non-exclusive and the Bank shall be under no obligation to account to the Account Holder for any benefit received for providing service to others or to disclose to the Account Holder any fact or thing which may come to the notice of the Bank in the course of providing services to others or in any other capacity or in any manner whatsoever otherwise than in the course of providing services to the Account Holder under the Terms and Conditions.

#### 44. Risk of providing an Authority to Repledge your Securities Collateral, etc.

There are risks if the Account Holder provides the Bank with an authority that allows the Bank to apply the Account Holder's Securities or Securities collateral pursuant to a Securities borrowing and lending agreement, repledge the Account Holder's Securities collateral for financial accommodation or deposit the Account Holder's Securities collateral as collateral for the discharge and satisfaction of his settlement obligations and liabilities.

If the Account Holder's Securities or Securities collateral are received or held by the Bank in Singapore, the above arrangement is allowed only if the Account Holder consents in writing. Additionally, the Account Holder's authority may be deemed to be renewed (i.e. without his written consent) if the Bank issues the Account Holder a reminder at least 14 days prior to the expiry of the authority, and the Account Holder does not object to such deemed renewal before the expiry date of his then existing authority.

The Account Holder is not required by any law to sign these authorities. But an authority may be required by the Bank, for example, to facilitate margin lending to the Account Holder or to allow the Account Holder's Securities or Securities collateral to be lent to or deposited as collateral with third parties. The Bank will explain to the Account Holder the purposes for which one of these authorities is to be used.

If the Account Holder signs one of these authorities and his Securities or Securities collateral are lent to or deposited with third parties, those third parties will have a lien or charge on the Account Holder's Securities or Securities collateral. Although the Bank is responsible to the Account Holder for Securities or Securities collateral lent or deposited under the Account Holder's authority, a default by the Bank could result in the loss of the Account Holder's Securities or Securities collateral. A cash account not involving securities borrowing and lending is available from the Bank. If the Account Holder does not require margin facilities or does not wish his Securities or Securities collateral to be lent or pledged, he should not sign the above authorities and should instead ask to open this type of cash account.

**45. Risks of Account Holder Assets Received or Held outside of Singapore**

Account Holder assets received or held by the Bank outside Singapore are subject to the applicable laws and regulations of the relevant overseas jurisdiction which may be different from the Securities and Futures Act, Chapter 289 of Singapore and the rules made thereunder. Consequently, such client assets may not enjoy the same protection as that conferred on client assets received or held in Singapore.

**46. Risk of Not Adequately Monitoring Investments Regularly or in a Timely Manner**

As summarized in the paragraphs above, there are a number of risks associated with entering into a Transaction. Accordingly, where an Account Holder holds or invests in Securities, the Account Holder acknowledges and agrees that there is a risk that if the investments are not adequately monitored regularly or in a timely manner so that appropriate decisions can be made about those investments, the value of such investments could be negatively affected.

**47. Risk of Providing an Authority to Hold Mail or Direct Mail to Third Parties**

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

**48. Other Related Documentation**

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

The term sheets and all annexures and supplements hereto or thereto from time to time shall together be incorporated into and form a part of this Risk Disclosure Statement. The Account Holder is advised to contact the Bank if any part of this Risk Disclosure Statement is omitted or incomplete.

**This Risk Disclosure Statement Does Not Disclose All the Risks and Other Significant Aspects of the Transactions. The Account Holder is Advised to Carefully Study the Terms and Conditions of the Relevant Transaction and Seek Independent Professional Advice, as Appropriate Including Advice on Any Applicable Exchange Control Regulation, Before Entering into any Transaction.**

## FORM 13 SECURITIES AND FUTURES ACT (Cap. 289)

### SECURITIES AND FUTURES (LICENSING AND CONDUCT OF BUSINESS) REGULATIONS (Rg 10)

#### RISK DISCLOSURE STATEMENT REQUIRED TO BE FURNISHED UNDER SECTION 128(1) AND TO BE KEPT UNDER REGULATION 39(2)(c) BY THE HOLDER OF A CAPITAL MARKETS SERVICE LICENCE TO TRADE IN FUTURES CONTRACTS OR LEVERAGED FOREIGN EXCHANGE TRADING

1. This statement is provided to you in accordance with section 128(1) of the Securities and Futures Act (Cap. 289) (the “Act”).
2. This statement does not disclose all the risks and other significant aspects of trading in futures, options and leveraged foreign exchange. In light of the risks, you should undertake such transactions only if you understand the nature of the contracts (and contractual relationships) into which you are entering and the extent of your exposure to the risks. Trading in futures, options and leveraged foreign exchange may not be suitable for many members of the public. You should carefully consider whether such trading is appropriate for you in the light of your experience, objectives, financial resources and other relevant circumstances. In considering whether to trade, you should be aware of the following:

#### (a) Futures and Leveraged Foreign Exchange Trading

##### (i) Effect of ‘Leverage’ or ‘Gearing’

Transactions in futures and leveraged foreign exchange carry a high degree of risk. The amount of initial margin is small relative to the value of the futures contract or leveraged foreign exchange transaction so that the transaction is highly ‘leveraged’ or ‘geared’. A relatively small market movement will have a proportionately larger impact on the funds you have deposited or will have to deposit; this may work against you as well as for you. You may sustain a total loss of the initial margin funds and any additional funds deposited with the firm to maintain your position. If the market moves against your position or margin levels are increased, you may be called upon to pay substantial additional funds on short notice in order to maintain your position. If you fail to comply with a request for additional funds within the specified time, your position may be liquidated at a loss and you will be liable for any resulting deficit in your account.

##### (ii) Risk-Reducing Orders or Strategies

The placing of certain orders (e.g. ‘stop-loss’ orders, where permitted under local law, or ‘stop-limit’ orders) which are intended to limit losses to certain amounts may not be effective because market conditions may make it impossible to execute such orders. At times, it is also difficult or impossible to liquidate a position without incurring substantial losses. Strategies using combinations of positions, such as ‘spread’ and ‘straddle’ positions may be as risky as taking simple ‘long’ or ‘short’ positions.

#### (b) Options

##### (i) Variable Degree of Risk

Transactions in options carry a high degree of risk. Purchasers and sellers of options should familiarise themselves with the type of options (i.e. put or call) which they contemplate trading and the associated risks. You should calculate the extent to which the value of the options would have to increase for your position to become profitable, taking into account the premium paid and all transaction costs. The purchaser of options may offset its position by trading in the market or exercise the options or allow the options to expire. The exercise of an option results either in a cash settlement or in the purchaser acquiring or delivering the underlying interest. If the option is on a futures contract or leveraged foreign exchange transaction, the purchaser will have to acquire a futures or leveraged foreign exchange position, as the case may be, with associated liabilities for margin (see the section on Futures and Leveraged Foreign Exchange Trading above). If the purchased options expire worthless, you will suffer a total loss of your investment which will consist of the option premium paid plus transaction costs. If you are contemplating purchasing deep-out-of-the-money options, you should be aware that, ordinarily, the chance of such options becoming profitable is remote.

Selling (‘writing’ or ‘granting’) an option generally entails considerably greater risk than purchasing options. Although the premium received by the seller is fixed, the seller may sustain a loss well in excess of the amount of premium received. The seller will be liable to deposit additional margin to maintain the position if the market moves unfavourably. The seller will also be exposed to the risk of the purchaser exercising the option and the seller will be obligated to either settle the option in cash or to acquire or deliver the underlying interest. If the option is on a futures contract or a leveraged foreign exchange transaction, the seller will acquire a futures or leveraged foreign exchange position, as the case may be, with associated liabilities for margin (see the section on Futures and Leveraged Foreign Exchange Trading above). If the option is ‘covered’ by the seller holding a corresponding position in the underlying futures contract, leveraged foreign exchange transaction or another option, the risk may be reduced. If the option is not covered, the risk of loss can be unlimited.

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

#### (c) Additional Risks Common to Futures, Options and Leveraged Foreign Exchange Trading

##### (i) Terms and Conditions of Contracts

You should ask the corporation with which you conduct your transactions for the terms and conditions of the specific futures contract, option or leveraged foreign exchange transaction which you are trading and the associated obligations (e.g. the circumstances under which you may become obligated to make or take delivery of the underlying interest of a futures contract or a leveraged foreign exchange transaction and, in respect of options, expiration dates and restrictions on the time for exercise). Under certain circumstances, the specifications of outstanding contracts (including the exercise price of an option) may be modified by the exchange or clearing house to reflect changes in the underlying interest.

##### (ii) Suspension or Restriction of Trading and Pricing Relationships

Market conditions (e.g. illiquidity) or the operation of the rules of certain markets (e.g. the suspension of trading in any contract or contract month because of price limits or ‘circuit breakers’) may increase the risk of loss by making it difficult or impossible to effect transactions or liquidate/offset positions. If you have sold options, this may increase the risk of loss.

Further, normal pricing relationships between the underlying interest and the futures contract, and the underlying interest and the option may not exist. This can occur when, e.g., the futures contract underlying the option is subject to price limits while the option is not. The absence of an underlying reference price may make it difficult to judge ‘fair’ value.

(iii) Deposited Cash and Property

You should familiarise yourself with the protection accorded to any money or other property which you deposit for domestic and foreign transactions, particularly in a firm's insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specific legislation or local rules. In some jurisdictions, property which had been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

**(d) Commission and Other Charges**

Before you begin to trade, you should obtain a clear explanation of all commissions, fees and other charges for which you will be liable. These charges will affect your net profit (if any) or increase your loss.

**(e) Transactions in Other Jurisdictions**

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to a rule which may offer different or diminished investor protection. Before you trade, you should enquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of the regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you conduct your transactions for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

**(f) Currency Risks**

The profit or loss in transactions in foreign currency-denominated futures and options contracts (whether they are traded in your own or another jurisdiction) will be affected by fluctuations in currency rates where there is a need to convert from the currency denomination of the contract to another currency.

**(g) Trading Facilities**

Most open-outcry and electronic trading facilities are supported by computer-based component systems for the order-routing, execution, matching, registration or clearing of trades. As with all facilities and systems, they are vulnerable to temporary disruption or failure. Your ability to recover certain losses may be subject to limits on liability imposed by the one or more parties, namely the system provider, the market, the clearing house or member firms. Such limits may vary. You should ask the firm with which you conduct your transactions for details in this respect.

**(h) Electronic Trading**

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

**(i) Off-Exchange Transactions**

In some jurisdictions, firms are permitted to effect off-exchange transactions. The firm with which you conduct your transactions may be acting as your counterparty to the transaction. It may be difficult or impossible to liquidate an existing position, to assess the value, to determine a fair price or to assess the exposure to risk. For these reasons, these transactions may involve increased risks. Off-exchange transactions may be less regulated or subject to a separate regulatory regime. Before you undertake such transactions, you should familiarise yourself with the applicable rules and attendant risks.

Note:

**"Margin"** means an amount of money, securities, property or other collateral, representing a part of the value of the contract or agreement to be entered into, which is deposited by the buyer or the seller of a futures contract or in a leveraged foreign exchange transaction to ensure performance of the terms of the futures contract or leveraged foreign exchange transaction.

**FORM 14 SECURITIES AND FUTURES ACT (Cap. 289)**

**SECURITIES AND FUTURES (LICENSING AND CONDUCT OF BUSINESS) REGULATIONS (Rg 10)**

**RISK DISCLOSURE STATEMENT REQUIRED TO BE FURNISHED UNDER SECTION 128(2) AND TO BE KEPT UNDER REGULATION 39(2)(d) BY THE HOLDER OF A CAPITAL MARKETS SERVICES LICENCE FOR FUND MANAGEMENT RELATING TO MANAGEMENT OF PORTFOLIO OF FUTURES CONTRACTS, AND FOREIGN EXCHANGE**

1. This statement is provided to you in accordance with section 128(2) of the Securities and Futures Act (Cap. 289) (the “Act”).
2. This statement does not disclose all the risks and other significant aspects of the futures or leveraged foreign exchange markets. You should therefore carefully study futures and leveraged foreign exchange trading before you trade.
3. The intention of this statement is to inform you that the risk of loss in trading futures contracts, options, foreign exchange and leveraged foreign exchange transactions can be substantial. You should therefore carefully consider whether such trading is suitable for you in the light of your experience, objectives, financial condition and other relevant circumstances. In considering whether to trade or to authorise someone else to trade for you, you should be aware of the following:
  - (a) If you purchase or sell a futures contract or leveraged foreign exchange transaction, you may sustain a total loss of the initial margin funds and any additional funds that you deposit with the holder of a capital markets services licence to establish or maintain your position. If the market moves against your position, you may be called upon by the holder to deposit a substantial amount of additional margin funds on short notice in order to maintain your position. If you do not provide the required funds within the specified time, your position may be liquidated at a loss, and you will be liable for any resulting deficit in your account.
  - (b) Under certain market conditions, you may find it difficult or impossible to liquidate a position.
  - (c) The placement of contingent orders by you or the holder of a capital markets services licence authorised by you, such as a ‘stop-loss’ or ‘stop-limit’ order, will not necessarily limit your losses to the intended amounts, since market conditions may make it difficult or impossible to execute such orders.
  - (d) A ‘spread’ position may not be less risky than a simple ‘long’ or ‘short’ position.
  - (e) The high degree of leverage that is often obtainable in futures and leveraged foreign exchange trading can work against you as well as for you. The use of leverage can lead to large losses as well as gains.
  - (f) In some cases, managed accounts, such as yours, are subject to substantial charges for management and advisory fees. It may be necessary for those accounts that are subject to these charges to make substantial trading profits to avoid depletion or exhaustion of their assets.

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