



## **INVESTMENT FINANCING SERVICE TERMS AND CONDITIONS**

### **IMPORTANT PLEASE NOTE:**

**Before you use the Investment Financing Service, please read carefully these Terms and Conditions. We draw your particular attention to the Risk Disclosure Statement signed by you at the time of application for the Service.**

### **1. Definitions and Interpretation**

Appendix 1 sets out:

- (a) the definitions of the terms and expressions used in these Terms and Conditions; and
- (b) the rules of interpretation of these Terms and Conditions.

### **2. Applicability and Scope of these Terms and Conditions**

2.01 The Service includes the Investment Financing Trading Account and the Investment Financing Settlement Account. The following documents together form the integral part of the agreement between the Customer and the Bank that governs the availability and use of the Service and the rights and obligations of the Customer and the Bank respectively in connection with the Service:

- (a) these Terms and Conditions in effect from time to time;
- (b) the Investment Financing Service Risk Disclosure Statement;
- (c) the parts of the Application Form about the terms of the Facility and the declarations of the Customer;
- (d) the Instructions for subscribing Eligible Securities; and
- (e) the Bank's Account Rules and Terms and Conditions for Securities Account respectively in effect from time to time to the extent the provisions are applicable to the Service or the handling of securities and transactions under the Service. Where there is any inconsistency between the provisions of these Terms and Conditions and the provisions of the Bank's Account Rules or Terms and Conditions for Securities Account, the provisions of these Terms and Conditions shall prevail.

2.02 By signing and submitting the Application Form, the Customer is taken to have agreed to the terms of the documents set out in Clause 2.01 and shall be bound by them.

### **3. Investment Financing Service**

3.01 The Service and the Facility

- (a) The Bank may (but is not obliged to) provide or continue to provide the Service or the Facility or make any advance under the Facility.

- (b) The Service may include:
  - (i) the Facility;
  - (ii) services relating to the subscription of Eligible Securities by the Customer using the Facility, the holding, redemption or disposal of the Customer's Eligible Securities, and related matters; and
  - (iii) any other services agreed by the Bank from time to time.
- (c) The Bank has sole discretion in setting and revising the eligibility criteria and details of the Service and the Facility from time to time.

### 3.02 Use of the Facility

The Facility is intended for investing in Eligible Securities only. **The Customer shall be solely responsible for using the Facility for investing in Eligible Securities and not for any other purpose.** The Bank is under no duty to monitor or verify whether the Customer has used the Facility in accordance with this clause.

### 3.03 Availability and review of the Facility

- (a) The Facility is subject to the Bank's annual review. The Bank may, but is not obliged to, renew the Facility. The Customer may continue to use the Facility unless the Bank notifies the Customer that the Facility is not renewed.
- (b) The Customer shall no longer be allowed to use the Facility to subscribe for securities when the Customer reaches the age of 65, or the Customer's risk tolerance level drops below level 4 (or such other level as the Bank may consider appropriate from time to time), or the Customer becomes a vulnerable customer as defined by the Bank, and the Bank may not notify the Customer of the occurrence of such events. The Customer may continue to use the Service to perform redemptions of the Eligible Securities held in the Investment Financing Trading Account and maintain the Facility until the Bank demands repayment.

### 3.04 Customary overriding right to demand payment

Notwithstanding any other provision of these Terms and Conditions, the Facility is subject to the customary overriding right of the Bank to:

- (a) review the Facility at any time (if applicable, prior to any regular review) and demand immediate payment of all amounts in full (whether principal, interest or otherwise) due or owing from the Customer to the Bank under the Facility or these Terms and Conditions; and
- (b) increase, reduce, modify, terminate and/or cancel the Facility in whole or in part at any time with immediate effect by giving notice to the Customer.

### 3.05 Investment Financing Trading Account and Investment Financing Settlement Account

- (a) **The Customer shall maintain the Investment Financing Trading Account and the Investment Financing Settlement Account in order to use the Service and the Facility.**
- (b) **The Investment Financing Trading Account and the Investment Financing Settlement Account shall be used for the exclusive purpose of the Service. All Eligible Securities subscribed by or on behalf of the Customer and all additions,**

**accruals, allotments, dividends, interests, income, payments and distributions (if any) arising from or attributable to such Eligible Securities shall be held in the Investment Financing Trading Account and the Investment Financing Settlement Account and handled in accordance with these Terms and Conditions.**

- (c) The Investment Financing Settlement Account does not provide certain functions or arrangements which are offered by a current account, including cheques, direct debit arrangements, autopay or other standing instructions.
- (d) The Customer irrevocably authorises and instructs the Bank:
  - (i) to debit the Investment Financing Settlement Account with the Investment Amounts, the Subscription Expenses, all advances made by the Bank to the Customer under the Facility, and all other amounts payable by the Customer to the Bank in connection with the Service (including interest accruing on the Facility, commissions, brokerages, fees, charges and expenses of any nature); and
  - (ii) to credit the Investment Financing Settlement Account with all amounts payable to the Customer or to which the Customer is entitled from time to time, including any proceeds from the redemption or disposal of any Eligible Securities by the Customer, and any additions, accruals, allotments, dividends, interests, income, payments and distributions arising from or attributable to the Eligible Securities held in the Investment Financing Trading Account.
- (e) For the avoidance of doubt, only cleared funds deposited into and available in the Investment Financing Settlement Account shall be taken into account in determining the Available Balance or whether a Margin Call has been satisfied.

3.06 Various limits, ratios, standards and thresholds relating to the Facility

- (a) For the purposes of granting, maintaining and using the Facility, the Bank has sole discretion in setting and varying, without prior notice to the Customer, the applicable limits, ratios, standards and thresholds, and any methodology or formula for calculating or determining them from time to time having regard to the prevailing market conditions and other factors and circumstances as the Bank considers appropriate.
- (b) The relevant limits, ratios, standards and thresholds include the Ceiling Limit, the Available Limit, the Loan Ratio, the Applicable Margin Call Ratio, the Margin Call Threshold and the Force Liquidation Threshold. These limits, ratios, standards and thresholds affect the availability and use of the Facility. In particular, a variation of the Loan Ratio may:
  - (i) vary the Available Limit, and a reduction of the Available Limit may affect the PMR and/or Effective Loan Ratio and trigger the enforcement of the Bank's security interest and other rights under these Terms and Conditions; and/or
  - (ii) cause the Loan Amount to exceed the Available Limit.
- (c) **The Customer is solely responsible for checking with the Bank from time to time the relevant limits, ratios, standards and thresholds that are applicable to the Customer.**

3.07 Using the Facility to subscribe for Eligible Securities

- (a) The Customer's use of the Facility to subscribe for Eligible Securities shall be subject to the following conditions:
- (i) The account balance in credit position of the Investment Financing Settlement Account must be used up in full before drawing on the Facility.
  - (ii) Subject to (i) above, the Available Limit.
- (b) In addition to the Bank's general right whether or not to make an advance under the Facility, the Bank has the right to refuse any instruction of the Customer to use the Facility or to refuse to provide the Service in any one or more of the following cases:
- (i) if the transaction involves Ineligible Securities; or
  - (ii) if there is insufficient Available Balance and/or Available Limit to pay for the Investment Amount of the relevant Eligible Securities and the Subscription Expenses; or
  - (iii) if the Bank considers it appropriate to refuse having regard to any Applicable Regulations or any other factors or circumstances, even if neither (i) nor (ii) above applies.
- (c) The Bank has the right to prescribe the form and means by which the Customer shall give instructions in relation to the Service and to prescribe any applicable minimum and/or maximum amounts or quantities which may be dealt with in an instruction. The Bank has the right not to act on any instruction given by the Customer that does not meet the Bank's prescriptions.
- (d) The Bank will inform the Customer as soon as reasonably practicable after receiving an Instruction if the securities specified in the Instruction are Ineligible Securities, in which case the Bank has the right to refuse to make an advance under the Facility in relation to such subscription. Where the securities specified in an Instruction are Eligible Securities, the Bank will inform the Customer of the Loan Ratio as soon as reasonably practicable after receiving the Instruction. The Bank has the right not to act on an Instruction if at the time of executing the Instruction:
- (i) the Loan Amount exceeds the Available Limit; and/or
  - (ii) the Available Balance is less than the amount calculated in accordance with the following formula:
- $$\text{Investment Amount} \times (1 - \text{Loan Ratio}) + \text{Subscription Expenses}$$
- (e) If the account balance in credit position of the Investment Financing Settlement Account is insufficient to pay for the Investment Amount and the Subscription Expenses as at the Settlement Date, the Bank may make an advance under the Facility to the Customer in the amount of the shortfall provided that such advance will not cause the Loan Amount to exceed the Available Limit.
- (f) The Bank may (but is not obliged to) make an advance to the Customer under the Facility to enable the Customer to take up any rights, interests or entitlements relating to any Eligible Securities subscribed by the Customer pursuant to merger, reposition or other event or arrangement.

- (g) The Bank may (but is not obliged to) allow the Customer to re-borrow any part of the Loan Amount that has been repaid to the Bank if:
  - (i) the amount to be re-borrowed does not cause the Loan Amount to exceed the Available Limit;
  - (ii) the Facility has not been cancelled or terminated by the Bank; and
  - (iii) the Customer has performed its obligations under these Terms and Conditions.
- (h) All Instructions and Transactions are subject to the offering documents, constitutive documents, information memoranda, prospectuses, product specifications, annual reports and accounts, and other documents issued by the issuer or offeror of the relevant Eligible Securities.

### 3.08 Unauthorized overdraft

The actual Investment Amount will be confirmed only on the Settlement Date. If due to any reason, an Instruction and the resulting Transaction cause the Loan Amount to exceed the Available Limit as at the Settlement Date and there is insufficient Available Balance as at the Settlement Date to cover the difference, effecting such Instruction would result in an unauthorized overdraft of the Investment Financing Settlement Account. In this case, the Bank may at its discretion effect or reject such Instruction. If the Bank effects such Instruction:

- (a) the Customer shall pay unauthorized overdraft fee (if any) and interest;** and
- (b) at any time when the Loan Amount exceeds the Available Limit, any subsequent deposit(s) or transfer(s) of cash or funds into the Investment Financing Settlement Account, whether for subscription of Eligible Securities or any other purpose, shall first be applied to repay and reduce the Loan Amount until the Loan Amount no longer exceeds the Available Limit.

### 3.09 Interest and unauthorized overdraft fee and interest

- (a) The Customer shall pay interest on the Loan Amount at such interest rate(s) prescribed by the Bank from time to time. Interest on an advance made by the Bank under the Facility to the Customer will accrue from the date of the advance (being the Settlement Date of the relevant subscription of Eligible Securities) until and up to the date on which the Bank actually receives repayment of all amounts outstanding in connection with the Facility in full.**
- (b) Where an Instruction and the resulting Transaction results in an unauthorized overdraft of the Investment Financing Settlement Account, the Customer shall pay the following additional fee and interest in such amount or at such rate(s) prescribed by the Bank from time to time:**
  - (i) an unauthorized overdraft fee (if any); and**
  - (ii) interest on any amount outstanding under the Facility which exceeds the Available Limit, such interest will accrue from the date on which such excess was incurred until and up to the date on which the Bank actually receives repayment of the excess amount (as well after as before judgment).**

- (c) **All interest amounts shall be debited to the Investment Financing Settlement Account and shall form part of the principal amount due to the Bank under the Facility and bear interest accordingly.**

3.10 Repayment

- (a) **The Customer shall repay, on demand of the Bank, the Loan Amount and any other amount owing by the Customer to the Bank in connection with the Service in Hong Kong dollar or, if agreed by the Bank, in a different currency.** In that case, the conversion of one currency into another currency shall be calculated at the Exchange Rate(s).
- (b) Where a subscription of Eligible Securities by the Customer is financed by the Facility, any refund of the subscription amount or fees (in whole or in part) whether received by the Customer or the Bank (or the Bank's nominee) shall be deposited into the Investment Financing Settlement Account as soon as reasonably practicable upon receipt.
- (c) The proceeds of sale or disposal of any Eligible Securities pursuant to an Instruction shall, after deducting all fees and reasonable expenses in connection with such sale or disposal (including redemption fees, brokerages and commissions), be credited into the Investment Financing Settlement Account.
- (d) Subject to the repayment of any unauthorized overdraft amount first, all moneys credited to the Investment Financing Settlement Account shall be applied by the Bank in or towards repayment of amounts owing by the Customer to the Bank in the following order:
- (i) all sums other than principal or interest in respect of the Facility;
  - (ii) outstanding principal and interest under the Facility (whether the same is due and payable or not); and
  - (iii) the Indebtedness or any other amounts owing by the Customer to the Bank in connection with any other transactions or services.

**4. Security to the Bank**

4.01 The Security

- (a) **In consideration of the Bank granting or continuing to make available the Facility to the Customer, the Customer, as beneficial owner charges, pledges and assigns to the Bank all of the Customer's present and future rights, title and interest in or to the Investment Financing Trading Account (the "Charged Account") and all and any investments, securities and assets held in the Investment Financing Trading Account from time to time (including any further investments, securities and assets deposited with the Bank pursuant to any Margin Call or for any other reason), whether registered in the name of the Customer or any nominee of the Bank or any central clearing system or depository, together with all rights and benefits attaching or accruing to such investments, securities and assets (collectively, the "Charged Securities"), as a continuing security for the punctual payment to the Bank of all amounts due or owing from the Customer to the Bank in respect of the Facility from time to time and/or the Indebtedness, and for the performance of all obligations of the Customer from time to time in relation to the Service.**

- (b) The Customer irrevocably authorizes the Bank to hold the Charged Securities in the name of the Bank's nominee and to do and execute any and all acts or things and documents necessary to transfer, complete and/or vest the title to any of the Charged Securities to the Bank's nominee and to perfect the security over the Charged Securities.
- (c) All additions, accruals, allotments, dividends, interests, income, payments and distributions that are received by the Bank or its nominee in respect of the Charged Securities shall be credited into the Charged Account (where they are received in the form of securities) and into the Investment Financing Settlement Account (where they are received in the form of cash or funds). Notwithstanding any instruction of the Customer to withdraw or dispose of any assets in the Charged Account or the Investment Financing Settlement Account, the Bank is entitled to reject such instruction and to withhold and apply any assets standing to the credit of the Charged Account and the Investment Financing Settlement Account in accordance with these Terms and Conditions.
- (d) The security given by the Customer to the Bank over the Charged Securities shall be in addition to, shall not be affected by and may be enforced by the Bank without prejudice to any guarantee, indemnity or other collateral security or any other power, right or remedy at any time held by or available to the Bank in respect of the Facility or the Indebtedness or the obligations of the Customer under these Terms and Conditions. Such security shall be a continuing security notwithstanding the death, bankruptcy or incapacity of the Customer, or any intermediate or partial payment or settlement of account or satisfaction in whole or in part of all or any amounts outstanding in respect of the Facility or the Indebtedness. Any restriction on the right of consolidating securities shall not apply to the security given by the Customer to the Bank over the Charged Securities.
- (e) If the Customer creates or purports to create any security (whether fixed or floating) over all or any of the Charged Securities or if any person levies or attempts to levy any form of process against all or any of the Charged Securities, the charge created by the security over the Charged Securities in favour of the Bank, to the extent that it may be a floating charge, shall automatically and without notice operate as a fixed charge instantly such event occurs.
- (f) The Customer irrevocably appoints the Bank and any person appointed by the Bank severally to be the Customer's attorney and in the Customer's name and on the Customer's behalf and as the Customer's act or deed or otherwise, without any reference to or consent from the Customer, to execute all documents and to do all acts and things as the Bank may consider appropriate or expedient to enable it to preserve, perfect or exercise its interests, rights and powers in connection with any security over the Charged Securities. The Customer undertakes to ratify and confirm all documents, acts and things and all transactions entered into by the Bank in the exercise of its power under this clause.
- (g) The Customer confirms that the above power of attorney is given to secure the performance of the obligations and liabilities of the Customer under these Terms and Conditions.

#### 4.02 Enforcement of the security

- (a) If the Customer has failed to pay any of the Loan Amount or the Indebtedness when due, or failed to comply with any of the Customer's obligations under these Terms and Conditions, or is unable or admits to being unable to pay the debts of the Customer as they become due, or is subject to any proceedings in or analogous to insolvency, bankruptcy or liquidation, or if legal process is applied for, levied or enforced against the Charged

Securities or any other assets of the Customer, the Bank shall be entitled to enforce the security over the Charged Securities and may, without demand, notice, legal process or any other action with respect to the Customer, retain or apply any cash or funds held in the Investment Financing Settlement Account and realise, sell or otherwise dispose of all or some of the Charged Securities in or towards repayment of the Loan Amount or the Indebtedness at any time and in any way it deems expedient, free from any restrictions and claims and the Bank shall not be liable for any loss arising out of such retention, application, realisation, sale or disposal.

- (b) A certificate of balance signed by any duly authorized officer of the Bank shall be conclusive evidence against the Customer of the amount of the Loan Amount or the Indebtedness owing by the Customer to the Bank at any time.
- (c) If any moneys paid to the Bank in respect of any of the Loan Amount or the Indebtedness are required to be repaid by the Bank by virtue of any law relating to insolvency, bankruptcy or dissolution or for any other reason, the Bank shall be entitled to enforce the above security as if such moneys had not been paid to the Bank.
- (d) The Bank may, at any time, continue any existing account and open any new account in the name of the Customer and no subsequent transactions, receipts or payments involving such new accounts shall affect the liability of the Customer in connection with the Facility.

## 5. Margin Requirements

5.01 The Customer's duty to comply with margin requirements

- (a) **The Customer is solely responsible for monitoring its investments and the use of the Facility to ensure that at all relevant times:**
  - (i) **the Loan Amount does not exceed the Available Limit;**
  - (ii) **the Applicable Margin Call Ratio is maintained at a level satisfactory to the Bank; and**
  - (iii) **the margin requirements prescribed by the Bank (including the Margin Calls) are complied with.**
- (b) **The Customer shall contact the Bank from time to time to check the Loan Ratio, the Available Limit, and the margin requirements (including the Applicable Margin Call Ratio, the Margin Call Threshold and the Force Liquidation Threshold) that are applicable to the Customer from time to time.**
- (c) The Customer acknowledges and accepts that the Applicable Margin Call Ratio may reach or exceed the Margin Call Threshold or the Force Liquidation Threshold at any time as a result of circumstances or events even if the Customer is not aware of such circumstances or events. These circumstances or events may include fluctuation in the exchange rates of currencies, changes in the market value of the Charged Securities, any Charged Securities becoming Ineligible Securities, or the Bank varying the Loan Ratio, the Ceiling Limit or the Available Limit. The Bank shall not be liable to the Customer for any loss arising from or in connection with any sale, realisation, redemption, liquidation or disposal of the Charged Securities due to the Customer's failure to satisfy any margin requirement, unless caused by the negligence or willful default of the Bank, its officers or employees and only to the

extent of direct and reasonably foreseeable loss and damage (if any) arising directly and solely therefrom.

## 5.02 Margin Call

- (a) The Bank will calculate and determine the Security Value on a daily basis by reference to the information from appropriate sources at the relevant time in the Bank's discretion and update the status and balance of the Investment Financing Trading Account and the Investment Financing Settlement Account at such time of a day as the Bank considers appropriate.
- (b) If at any time the Bank determines that the Loan Amount exceeds the Available Limit and/or the Applicable Margin Call Ratio reaches or exceeds the Margin Call Threshold, the Bank has the right (but is not obliged) to give the Customer notice of a margin call ("Margin Call") and to refuse to act on any Instruction to subscribe for Eligible Securities. **The Customer shall satisfy the Margin Call as soon as reasonably practicable (and no later than the timeline which the Bank may prescribe in the Margin Call notice) to reduce the Loan Amount to an amount below the Available Limit.** The Customer may satisfy the Margin Call by (i) depositing cash or immediately available funds into the Investment Financing Settlement Account; (ii) instructing the Bank to sell or dispose of the necessary quantity of Charged Securities in the Investment Financing Trading Account; and/or (iii) any other arrangement prescribed or accepted by the Bank as it considers appropriate in the circumstances.
- (c) The Bank will usually make a Margin Call by sending a Margin Call notice to the Customer by SMS to the mobile phone number registered by the Customer with the Bank for receiving Margin Calls and related notifications and messages. The Bank may also send a Margin Call to the Customer by such other means as the Bank considers appropriate in the circumstances. The Customer shall be deemed to have received a Margin Call sent by the Bank to the Customer pursuant to this clause.
- (d) The Customer acknowledges that the Bank's records may not reflect the latest transactions or entries relating to the Investment Financing Trading Account or the Investment Financing Settlement Account due to the time required for processing the transactions and updating the records. The Customer agrees that all Margin Calls made by the Bank are valid, including any Margin Call based on the Bank's records that have not been updated.
- (e) Where additional Eligible Securities are deposited into the Investment Financing Trading Account to satisfy a Margin Call, the Security Value of such Eligible Securities shall be taken into account upon successful electronic transfer of such Eligible Securities to the Bank or its nominee.
- (f) After a Margin Call is made and until the Margin Call is satisfied by the Customer to the Bank's satisfaction, the Bank is not required to act on any Instruction and the Bank is entitled to exercise any of its security, rights, powers and interests under these Terms and Conditions without notice to the Customer.
- (g) For the avoidance of doubt:
  - (i) a Margin Call does not constitute a demand on the Customer for repayment of the Loan Amount or the Indebtedness but the Bank's reminder to the Customer to take the necessary actions in order to avoid or minimize the Customer's position being

liquidated by the Bank. If the Customer fails to satisfy a Margin Call, the Customer has to bear the risk of its position being liquidated by the Bank; and

- (ii) the Bank may send more than one Margin Call to the Customer in one day if necessary.

### 5.03 Force liquidation

- (a) The Bank has the right (but is not obliged) to effect a force liquidation if any one or more of the following circumstance or event occurs, without giving the Customer any Margin Call or taking any legal process or other action:
  - (i) the Bank determines that the Applicable Margin Call Ratio reaches or exceeds the Force Liquidation Threshold (notwithstanding that such determination is based on the Bank's records that have not been updated to reflect the latest transactions or entries relating to the Investment Financing Trading Account, the Investment Financing Settlement Account or the satisfaction of Margin Calls due to the time required for processing the transactions and updating the records); or
  - (ii) the Loan Amount has continuously exceeded the Available Limit for over 15 consecutive Business Days or such other period as may be prescribed by the Bank from time to time; or
  - (iii) the Bank in good faith considers that the market conditions are unstable, unfavourable, abnormal or are likely to expose investors to unacceptable risk or heavy losses.
- (b) Upon exercise of the right of force liquidation:
  - (i) the Bank may cancel or modify any outstanding Instructions and/or sell, realise, redeem, liquidate and/or otherwise dispose of all or any of the Charged Securities in the relevant market or by private contract, and on such terms as the Bank considers appropriate, free from all trusts, claims, rights of redemption, equities or other rights or interests of the Customer;
  - (ii) the Bank has the right to select and decide which or the quantity of the Charged Securities to be sold, realised, redeemed, liquidated or disposed of which quantity may be more than is necessary for reducing the Loan Amount to below the Available Limit; and
  - (iii) all proceeds from such sale, realisation, redemption, liquidation or disposal shall, at the discretion of the Bank, be deposited in the Investment Financing Settlement Account to repay and reduce the Loan Amount to below the Available Limit.
- (c) The Bank's right of force liquidation shall not be affected by any fluctuations in the Security Value prior to the time of actual force liquidation and the Bank has the right to alter or cancel any proposed force liquidation at any time having regard to the prevailing circumstances. The Customer does not have any right or claim against the Bank in respect of any loss, damage or expense of any kind which the Customer or any other person may incur or suffer arising from any actual or proposed force liquidation or the timing of any actual force liquidation.

- (d) The Bank shall notify the Customer as soon as reasonably practicable after effecting a force liquidation.

#### 5.04 Margin Call Threshold and Force Liquidation Threshold

The following Margin Call Threshold and Force Liquidation Threshold apply, which is classified into two tiers depending on the Effective Loan Ratio:

Tier	Effective Loan Ratio	Margin Call Threshold	Force Liquidation Threshold
1	>= 70%	105% < PMR <= 110%	PMR > 110%
2	< 70%	108% < PMR <= 115%	PMR > 115%

## 6. Instant Order Confirmation Service

- 6.01 A Customer subscribing for the Instant Order Confirmation Service may request the Bank to arrange for messages to be displayed on his telecommunication equipment notifying the Customer of information and details relating to securities transactions effected by the Customer and such other information as the Bank may make available. The Bank will from time to time specify the scope of the Instant Order Confirmation Service and the types of telecommunication equipment normally acceptable for the purposes of providing the Instant Order Confirmation Service. The Bank reserves the right to modify, expand or reduce the scope of the Instant Order Confirmation Service from time to time in view of changing circumstances.
- 6.02 The Instant Order Confirmation Service is only available to customer who has the appropriate telecommunication equipment which is provided or serviced by telecommunication companies designated or accepted by the Bank from time to time.
- 6.03 The Bank reserves the right to restrict the number of pieces of telecommunication equipment which may be registered by the Customer for receiving the Instant Order Confirmation Service from time to time.
- 6.04 The Bank may without notice to the Customer suspend the Instant Order Confirmation Service for any reason beyond its reasonable control including any breakdown, maintenance, modification, expansion and/or enhancement work initiated by the telecommunication company(ies) concerned in relation to their network. The Bank does not assume any liability or responsibility for any such suspension.
- 6.05 Without prejudice to the generality of the provisions of the Circular to Customers relating to the Personal Data (Privacy) Ordinance, the Customer expressly authorises the Bank to disclose and transfer to the subsidiaries and agents of the Bank and the telecommunication companies concerned (whether within or outside Hong Kong) such personal data and other information relating to the Customer, the Customer's accounts, transactions and dealings which the Bank may consider appropriate for the purposes of providing the Instant Order Confirmation Service.
- 6.06 The Customer acknowledges that any information received by the Customer via the Customer's telecommunication equipment pursuant to the Instant Order Confirmation Service is for information only, and shall not be taken as conclusive evidence of the matters to which it relates.
- 6.07 **The Customer shall notify the Bank, in such manner as the Bank may reasonably prescribe, of any change in the particulars registered with the Bank for the purposes of the Instant Order Confirmation Service including the contact details of his telecommunication equipment and the telecommunication company providing or servicing it, and shall notify the Bank upon its disconnection or suspension.** The Bank

does not assume any liability or responsibility for providing the Instant Order Confirmation Service according to the particulars registered with the Bank from time to time.

- 6.08 Neither the Bank nor any of the telecommunication companies designated by the Bank for the purposes of providing the Instant Order Confirmation Service assumes any liability or responsibility for any failure or delay in transmitting information to the Customer or for any error or inaccuracy in such information unless it results from any negligence or wilful default on the part of the Bank or such telecommunication company. In particular, neither the Bank nor any such telecommunication company shall assume any liability or responsibility for consequences arising from any cause beyond its reasonable control including failure of the Customer's telecommunication equipment to receive information for any reason, any telecommunication breakdown, mechanical failure, power failure, malfunction, breakdown, interruption or inadequacy of equipment or installation, Act of God (including flood and tsunami), government act, fire, civil commotion, strike, war, military action, unrest, political insurrection, riot, public demonstration or terrorist activity of any kind.
- 6.09 Apart from any fees and charges imposed by the Bank for providing the Instant Order Confirmation Service, the Customer shall bear any fees, charges and expenses which may be imposed by the telecommunication company providing or servicing the Customer's telecommunication equipment.

## 7. Representations, Warranties and Undertakings

The Customer represents, warrants and undertakes to the Bank that, throughout the period when the Service is provided by the Bank to the Customer:

- (a) **the Customer is and will be the sole beneficial owner (or where the Customer comprises more than one person, such persons are the sole beneficial owners) of all Charged Securities held in the Investment Financing Trading Account from time to time, and the Customer acts as principal in relation to the Investment Financing Trading Account and the Investment Financing Settlement Account and has good title to all funds and assets deposited with the Bank or which the Customer instructs the Bank to deal on the Customer's behalf, in each case free from any encumbrance or third party interest;**
- (b) **the Customer has and shall maintain beneficial ownership of the Charged Securities free from any encumbrance or third party interest (except in favour of the Bank);**
- (c) the security created by Clause 4 in favour of the Bank constitutes and shall remain valid and legally binding obligations of the Customer enforceable in accordance with the provisions of Clause 4 and other applicable provisions of these Terms and Conditions;
- (d) the Customer's use of the Service and performance of the transactions and activities contemplated by these Terms and Conditions do not and will not conflict with any Applicable Regulations or sanction regime applicable to the Customer;
- (e) **at any time during which any part of the Loan Amount is outstanding, the Customer shall not (i) engage any other person to sell, dispose or handle in any way the Charged Securities in the Investment Financing Trading Account; or (ii) create or permit to arise any encumbrance or third party interest over any funds or assets in the Investment Financing Settlement Account or the Investment Financing Trading Account; or (iii) withdraw or dispose of any funds or assets in the Investment Financing Settlement Account or the Investment Financing**

**Trading Account, unless in favour of the Bank or with the Bank's prior written consent in each case** and the Bank may grant or refuse consent at its discretion having regard to whether the Customer has satisfied the margin requirements and other factors as the Bank considers appropriate;

- (f) the Customer shall give written notice to the Bank in advance if the Customer intends to change the Customer's address to an address outside of Hong Kong, or intends to leave Hong Kong for a total period of 180 days or longer in any twelve-month period or, if the Customer has resided outside of Hong Kong for a cumulative total of 180 days or longer in any twelve-month period;
- (g) the Customer is fully aware of the nature, terms and risks involved in investing in Eligible Securities and of the contents of the up-to-date versions of the offering documents, constitutive documents, information memoranda, prospectuses, product specifications, annual reports and accounts, and other documents issued by the issuer or offeror of the relevant Eligible Securities prior to giving any Instruction;
- (h) at any time and from time to time, the Customer shall execute and deliver such further charges, authorities and other instruments or documents as the Bank may reasonably require for perfecting or preserving its title to or for enjoying the full benefit of the security created by Clause 4 in favour of the Bank; and
- (i) the Customer shall obtain and maintain in full force and effect all governmental and other approvals, authorities, licences and consents required by the Customer for providing the security under Clause 4 in favour of the Bank and shall do or cause to be done all other acts and things necessary or desirable for the performance of the obligations of the Customer under these Terms and Conditions.

## **8. Sale of Financial Products**

8.01 In relation to the sale of any Financial Product (as defined below) to the Customer by the Bank:

- (a) the Bank may solicit the sale of or recommend Financial Products to the Customer based on the Customer's risk tolerance, financial situation, investment experience, investment objectives and investment period and in accordance with Clause 8.02;
- (b) the Customer may enter into Transactions for Financial Products with the Bank without or inconsistent with any solicitation or recommendation from the Bank in accordance with Clause 8.03; and
- (c) subject to Clauses 8.02 (a) and 8.03, and unless otherwise agreed between the Bank and the Customer, the Bank does not provide advisory services or assume any advisory duty of care or obligation in the sale of any Financial Products.

"Financial Product" means any securities or futures contracts as defined under the Securities and Futures Ordinance.

8.02 Suitability of Financial Products (Applicable to Financial Products entered into with the Bank with solicitation or recommendation from the Bank)

- (a) If the Bank solicits the sale of or recommends any Financial Products to the Customer, the Financial Product must be reasonably suitable for the Customer having regard to (amongst

other things) the Customer's financial situation, investment experience and investment objectives.

- (b) No other provision under these Terms and Conditions or any other document the Bank may ask the Customer to sign and no statement the Bank may ask the Customer to make derogates from Clause 8.02(a).
- (c) For the Bank to discharge the Bank's duty in respect of the Transaction of a Financial Product the Customer entered into with the Bank under Clause 8.02(a), the Customer agrees and confirms that any information (including the Customer's financial situation, investment experience and investment objective) the Customer provides to the Bank is complete, accurate and up-to-date, and the Bank relies on the Customer's agreement and confirmation of the same.
- (d) Before the Customer enters into a transaction of a Financial Product, the Customer should consider the following:
  - (i) the nature, terms and risks of the Financial Product that the Customer enters into;
  - (ii) the Customer's own circumstances;
  - (iii) if circumstances relating to the Customer or the Financial Product change, the Financial Product which the Bank solicited the sale of or recommended may no longer be suitable for the Customer, and the Bank has no on-going responsibility to ensure that any Financial Products the Bank has solicited or recommended to the Customer remain suitable for the Customer; and
  - (iv) if necessary, the Customer will seek independent professional (including legal, tax, financial, investment or accounting) advice about the Financial Product that the Customer enters into.
- (e) Clauses 8.02(a) to 8.02(d) shall not apply to any customer who is a Professional Investor (defined below). Unless otherwise agreed in writing:
  - (i) the Bank owes and assumes no obligation to any Professional Investor to provide any financial or investment advice or recommendation, or to ensure the suitability of any recommendation or solicitation; and
  - (ii) a Professional Investor shall exercise its own independent judgment, having regard to its own financial situations, investment experiences and investment objectives, and seek independent professional advice, about any investments or products it may transact in.

"Professional Investors" means a customer to whom the Bank is not required to assume or discharge any obligation for ensuring the suitability of any financial or other products or their recommendation or solicitation, by reason of: (i) the Bank's compliance with the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission ("Code of Conduct"), and (ii) the customer, as the case may be, being classified by the Bank as "Institutional Professional Investors" or "Corporate Professional Investors", or some other types of professional investors, as those terms are, or may from time to time be, defined in the Code of Conduct.

8.03 Subject to clauses 2.13 and 2.14 of the Terms and Conditions of Securities Account, in relation to transactions entered into with the Bank without or inconsistent with any solicitation, recommendation, or advice from the Bank

- (a) For any transactions, including those involving Financial Products or any Complex Product (as defined below), that the Customer enters into with the Bank without or inconsistent with any solicitation or recommendation from the Bank, before entering into such transactions, the Customer agrees and confirms to ensure the following, and the Bank will rely on the Customer's agreement and confirmation of the following:
- (i) they are entered into by the Customer solely at the Customer's own request and based on the Customer's judgment;
  - (ii) the Customer fully understands the nature, terms and risks of the transactions that the Customer enters into;
  - (iii) the Customer has considered the Customer's own circumstances;
  - (iv) if necessary, the Customer will seek independent professional (including legal, tax, financial, investment or accounting) advice about the transactions that the Customer enters into;
  - (v) the Bank does not provide any advisory services and therefore do not assume any advisory duty of care or obligation in relation to such transactions; and
  - (vi) except as set out in clause 11.5 of the Terms and Conditions for Securities Account, the Bank is not liable for any loss (including indirect or consequential loss), cost or damage of any kind incurred or suffered by the Customer or any other person with respect to any such transactions.
- (b) In respect of any transaction in Complex Products (as defined below) which the Bank has not solicited or recommended to the Customer, in addition to the representations made in Clause 8.03(a), the Customer agrees and confirms that:
- (i) (any information (including the Customer's financial situation, investment experience and investment objective) the Customer provides to the Bank is complete, accurate and up-to-date, and the Bank relies on the Customer's agreement and confirmation of the same;
  - (ii) if circumstances relating to the Customer or the Complex Product change, the Complex Product may no longer be suitable for the Customer, and the Bank has no on-going responsibility to ensure that any Complex Product the Customer has transacted in remains suitable for the Customer; and
  - (iii) the Bank owes and assumes no obligation to Professional Investors (as defined in Clause 8.02(e)) to ensure that any transaction in Complex Products are suitable. A Professional Investor shall exercise its own independent judgment, having regard to its own financial situation, investment experience and investment objectives, and seek independent professional advice, about any investments or products it may transact in.

"Complex Product" means an investment product (including, for the avoidance of doubt, any structured investment product that is not regulated under the Securities and Futures Ordinance) whose terms, features and risks are not reasonably likely to be understood by

a retail investor because of its complex structure, as determined from time to time by the Bank in its sole discretion.

- (c) For the avoidance of doubt, no provision under these Terms and Conditions or any other document the Bank may ask the Customer to sign and no statement the Bank may ask the Customer to make is meant to limit and shall not be treated as limiting the Bank's duties and obligations relating to Complex Products, which are imposed on the Bank under the Code of Conduct or by any regulatory authority from time to time.

## **9. Suspension or termination of the Service**

### **9.01 Either party may terminate by notice**

Either the Customer or the Bank may terminate the Service by giving not less than 30 days' prior written notice to the other party.

### **9.02 The Bank's right to terminate**

Without limiting or reducing the effect of Clause 9.01, the Bank has the right to suspend or terminate the Service with immediate effect upon giving notice to the Customer, if any one or more of the following cases occur:

- (a) the Customer fails to pay to the Bank the Loan Amount or any other amount payable by the Customer under these Terms and Conditions;
- (b) the Customer commits any breach of or fails to observe any obligations of the Customer in connection with the Service which, in the reasonable opinion of the Bank, amounts to a material breach by the Customer;
- (c) any of the representations, warranties or undertakings or any information or document provided by the Customer to the Bank is or becomes untrue, incorrect, incomplete or misleading in any material respect;
- (d) the Bank's books and records show a zero balance on each of the Investment Financing Trading Account and the Investment Financing Settlement Account for a period of six continuous months or for such shorter period as the Bank may prescribe;
- (e) the Customer (being a natural person) dies or becomes bankrupt;
- (f) a petition is made or proceedings are initiated or an order is made for the bankruptcy, winding-up or similar relief of the Customer, or for the appointment of a liquidator, receiver, trustee, official administrator or similar officer in respect of the Customer or all or a material part of the Customer's undertaking, property or assets, whether the petition or proceedings are made or initiated by or against the Customer;
- (g) an encumbrancer takes possession of, or a distress, execution or other process is levied or enforced against, all or a material part of the Customer's undertaking, property or assets;
- (h) the Customer is unable or admits inability to pay the Customer's debts as they fall due; or
- (i) there is any change of Applicable Regulations which prohibits or renders illegal the maintenance or operation of the Service in whole or in part.

### 9.03 Consequences of termination

- (a) Upon termination of the Service for any reason (whether by the Customer or by the Bank):
- (i) All amounts (including principal and interest) due or owing by the Customer to the Bank in respect of the Facility shall, without any demand or notice, become immediately due and payable by the Customer and the Facility shall be terminated with immediate effect. The Bank shall cease to have any obligation to provide the Service or the Facility. The unauthorized overdraft interest rate shall apply to the outstanding amount due or owing by the Customer to the Bank from the date on which the Service is terminated until and up to the date on which the Bank actually receives repayment of the outstanding amount in full.
  - (ii) The Bank is authorised by the Customer to sell, realise, redeem, liquidate or otherwise dispose of all or part of the Charged Securities on such terms and in such manner as the Bank considers appropriate to repay the outstanding amount due or owing by the Customer to the Bank, at the Customer's sole risk and cost. The Bank shall not be liable for any loss howsoever arising unless caused by the negligence or willful default of the Bank, its officers or employees and only to the extent of direct and reasonably foreseeable loss and damage (if any) arising directly and solely therefrom.
  - (iii) All proceeds from such sale, realisation, redemption, liquidation or disposal shall be credited to the Investment Financing Settlement Account and shall be handled and applied in accordance with Clause 3.10(d). Thereafter, any amount remaining shall be returned to the Customer. Where appropriate, any Charged Securities that have not been realised or disposed of shall be returned to the Customer at the Customer's sole risk and expense.
  - (iv) **If any debit balance remains on the Investment Financing Settlement Account after application of the proceeds, the Customer shall forthwith pay to the Bank an amount equal to such debit balance together with the Bank's cost of funding such amount and interest on such amount at the rate applicable to unauthorized overdraft of the Investment Financing Settlement Account until and up to the date on which the Bank actually receives repayment of such amount in full (after as well as before any judgment).**
- (b) Notwithstanding the suspension or termination of the Service in whole or in part, the Customer shall continue to be bound by the provisions of these Terms and Conditions to the extent that they relate to any obligations or liabilities of the Customer which remain to be performed or discharged.
- (c) The Bank has the right to close the Investment Financing Trading Account and the Investment Financing Settlement Account after termination of the Service (whether by the Customer or the Bank).

### 10. Variation of these Terms and Conditions

The Bank has the right to revise these Terms and Conditions and/or introduce additional terms and conditions at any time and from time to time and any variation shall become effective subject to the Bank's notice (for a period of 30 days for any variation affecting fees and charges of the

Bank and liabilities or obligations of the Customer, and for such reasonable period as the Bank may prescribe in the case of any other variations) and shall be binding on the Customer if the Customer continue to use the Service or if any amount remains outstanding in connection with the Service after the effective date of variation.

## **11. Limitation on Liability**

11.01 Without prejudice to any other provisions in these Terms and Conditions, unless due to the negligence or willful default of the Bank, its officers or employees and only to the extent of direct and reasonably foreseeable loss and damage (if any) arising directly and solely therefrom, the Bank does not assume any liability or responsibility to the Customer or any other person for the consequences arising out of or in connection with the following (or any of them):

- (a) any change in the Security Value or the Loan Ratio made by the Bank from time to time leading to any change in the Available Limit or the Applicable Margin Call Ratio which may trigger the Bank's exercise of any of its rights under these Terms and Conditions;
- (b) any change in the margin requirements, including the Margin Call Threshold and Force Liquidation Threshold made by the Bank from time to time which may trigger or change the circumstances for triggering the Bank's exercise of any of its rights under these Terms and Conditions; and
- (c) use of the Service by the Customer.

11.02 The provision of the Service by the Bank to the Customer does not constitute the Bank a trustee of the Customer or any of the securities save and except the Eligible Securities handled by the Bank for the Customer and registered in the name of a nominee of the Bank and in the capacity of a bare trustee only. The Bank shall have no other obligations in respect of any funds or assets of the Customer except expressly specified in these Terms and Conditions.

11.03 The Bank is under no duty to examine or verify the validity of the ownership of or title to any Eligible Securities handled by the Bank for the Customer and shall not be liable in respect of any defect in ownership or title.

## **12. The Customer's Indemnity**

**The Customer shall indemnify the Bank, its officers and employees against all liabilities, claims, demand, losses, damages, taxes, costs, fees, charges and expenses of any kind (including legal fees on a full indemnity basis and fees, charges and expenses of reasonable amount and reasonably incurred by the Bank, and any claims by any relevant authorities on the Bank for tax in respect of any profits or gains attributable to the Customer) which may be incurred by any of them and all actions or proceedings which may be brought by or against any of them in connection with the provision of the Service to the Customer or the exercise or preservation of the Bank's powers and rights under these Term and Conditions, unless due to the negligence or wilful default of the Bank, its officers or employees and only to the extent of direct and reasonably foreseeable loss and damage (if any) arising directly and solely therefrom. The Bank is entitled to withhold, retain or deduct such portion from the Customer's assets in the possession or control of the Bank or such amount from any of the Customer's accounts with the Bank as it reasonably determines to be sufficient to cover any amount which may be owed by the Customer under this clause. This indemnity shall continue to have effect and survive the termination of the Service for any reason.**

### 13. Right of Set-off

The Bank have the right at any time and without prior notice, to apply any credit balance in any currency on any of the Customer's accounts with the Bank, whether in the Customer's sole name or in the joint names of the Customer and any other person(s), in or towards satisfaction of any indebtedness owing by the Customer to the Bank in any capacity and whether actual or contingent or whether owing solely by the Customer or owing by the Customer jointly with any other person(s). In the case of a joint account, the Bank may exercise this set-off right and apply any credit balance on such joint account in or towards satisfaction of any indebtedness owing to the Bank by one or more of the holders of such joint account.

### 14. The Bank's Records

The books and records of the Bank shall be final and conclusive evidence concerning the liabilities and indebtedness owing by the Customer to the Bank from time to time in the absence of manifest error.

### 15. Taxes

- 15.01 All payments to be made by the Customer to the Bank in respect of the Service (whether contemplated by these Terms and Conditions or any other documents relating to the Service) shall be made to the Bank without any set-off, counterclaim or condition and free and clear of all present and future taxes, deductions or withholdings of any nature. If at any time the Customer is required to make any deduction or withholding for or on account of tax or otherwise from any payment to the Bank, the sum due from the Customer in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Bank receives on the due date for such payment (and retains, free from any liability in respect of such deduction or withholding) a net sum equal to the sum which the Bank would have received had no such deduction or withholding been made or required to be made. **The Customer is solely responsible for paying such deduction or withholding to the relevant authority within the applicable time limit. The Customer shall indemnify the Bank against any losses, liabilities, interest, penalties, or costs and expenses payable or incurred by reason of any failure of the Customer to make any such deduction or withholding or to effect payment of such deduction or withholding to the relevant authority within the applicable time limit or by reason of any increased payment not being made on the due date for such payment. Upon request of the Bank, the Customer shall promptly deliver to the Bank evidence satisfactory to the Bank that such deduction or withholding has been made or (as applicable) any appropriate payment paid to the relevant authority.**
- 15.02 Any fee or charge contemplated by these Term and Conditions is exclusive of any value added tax, goods and services tax or any other tax which might be chargeable in connection with that fee or charge. If any value added tax, goods and services tax or other tax is so chargeable, it shall be paid by the Customer at the same time as it pays the relevant fee or charge.

## **16. Personal Data**

- 16.01 The Customer acknowledges and agrees that all personal data and information relating to the Customer which are provided by the Customer at the request of the Bank or collected in the course of dealings between the Customer and the Bank (the "Data") may be held, used, processed and disclosed by the Bank for such purposes and to such persons in accordance with the Bank's policies on use and disclosure of personal data as set out in statements, circulars, notices or terms and conditions made available by the Bank to customers and other individuals from time to time. The Customer also acknowledges and agrees that the Data may be disclosed to, or held, used and processed by any debt collection agency, credit reference agencies or similar service provider for purpose of verifying such Data or enabling them to provide such Data to other institutions: (a) in order that they may carry out credit and other status checks; and (b) to assist them to collect debts. The Customer further acknowledges and agrees that the Bank may transfer the Data outside Hong Kong, conduct matching procedures (as defined in the Personal Data (Privacy) Ordinance) using the Data and such other personal data and information relating to the Customer, and provide banker's or credit references in respect of the Customer.
- 16.02 The Customer expressly consents that, where the Bank considers it necessary or appropriate, the Bank may transfer any such Data, details or information to any service provider (whether situated in or outside Hong Kong) for the purpose of data processing or providing any service on behalf of the Bank to the Customer. The Bank will remain responsible for the confidentiality of such Data, details and information.

## **17. Third Party Rights**

No person other than the Customer and the Bank will have any right under the Contracts (Rights of Third Parties) Ordinance to enforce or enjoy the benefit of any of the provisions of the Terms and Conditions.

## **18. Binding Effect**

- 18.01 These Terms and Conditions and the other documents specified in Clause 2.01 shall be binding on the Customer and the Customer's personal representatives, lawful successors or permitted assigns.
- 18.02 Where the account holder of the Investment Financing Trading Account and the Investment Financing Settlement Account comprises more than one person, these Terms and Conditions and the other documents specified in Clause 2.01 shall be binding on all and each of them jointly and severally notwithstanding that any of them may be released from any obligation by the Bank or may not be effectively bound due to any reason.

## **19. Miscellaneous**

- 19.01 The Bank is a bank licensed under the Banking Ordinance and is registered under the Securities and Futures Ordinance to conduct various types of regulated activities (CE Number: AAH297).
- 19.02 The Bank shall notify the Customer of any material change to the information specified in Clause 19.01 or to its address, or to the Service, or to the fees, charges and other remuneration to be paid by the Customer to the Bank for the Service, or to the margin requirements (including interest charges, margin calls and the circumstances under which the Bank may liquidate the Customer's positions without the Customer's consent).

- 19.03 The Customer acknowledges and agrees that:
- (a) the Bank's other customers may from time to time have a position in investments similar to the Eligible Securities or other assets dealt with for the account of the Customer;
  - (b) the Bank may deal in the Eligible Securities for its own account or for the account of its other customers;
  - (c) the Bank may have banking or other financial relationships with any company or party which is the issuer or offeror of the Eligible Securities or other investments dealt with for the account of the Customer;
  - (d) the Bank's officers, directors and/or employees may be officers, directors and/or employees of the company or party referred to in Clause 19.03(c);
  - (e) the Customer irrevocably authorizes the Bank to enter into any transaction for the account of the Customer with any other member of the Bank's group and/or any agent of the Bank, and the Bank may be interested in any such transaction and shall not be accountable to the Customer for any profit or benefit arising therefrom;
  - (f) the actual Investment Amount of an Transaction will be confirmed only as at the Settlement Date. Any figures which may have been quoted by the Bank or its representatives at any time for the purpose of such Transaction are for indication and reference only;
  - (g) the Bank acts as the agent of the Customer in effecting Transactions on the Customer's behalf under the Service unless otherwise specified in the contract note of the relevant Transaction; and
  - (h) in executing Instructions, the Bank and any other company in the Bank's group may effect the relevant Transactions as principal with the Customer and may effect the Transaction in which the Bank or any other company in the Bank's group has directly or indirectly, a material interest or a potential conflict with its duty to the Customer. The Bank shall ensure that such Transactions are effected on terms which are not less favourable in substance to the Customer than if the Bank or any other company in the Bank's group had not traded as principal or if the material interest or potential conflict had not existed. The Bank and any other company in the Bank's group shall be entitled to retain for their benefit any profit, commission, remuneration and/or other benefit made or received from or by reason of such Transactions and/or any connected transactions and shall not be liable to account for them to the Customer.

## **20. Governing Law and Jurisdiction**

The Customer and the Bank each submits to the non-exclusive jurisdiction of the Hong Kong Courts but these Terms and Conditions and the other documents specified in Clause 2.01 may be enforced in any court of competent jurisdiction.

## **21. Governing Version**

If there is any inconsistency between the English and Chinese versions of these Terms and Conditions, the English version shall prevail.

## APPENDIX 1

### DEFINITIONS

"Applicable Margin Call Ratio" means either the PMR or the LTV Ratio, as the Bank may in its discretion decide to be applicable at any relevant time and notified to the Customer. The Bank may from time to time switch from the PMR to the LTV Ratio and vice versa by giving a reasonable period of advance notice to the Customer.

"Applicable Regulations" means any law, regulation or order, or any rule, direction, guideline, code, notice or restriction (whether or not having the force of law) issued by any regulatory authority, government agency, judicial body, exchange or professional body applicable from time to time.

"Application Form" means the form prescribed by the Bank from time to time for making application for the Service.

"Authorised Person(s)" means the person(s) authorised by the Customer to give Instructions as notified (together with specimen signatures) to the Bank from time to time in such manner as the Bank may reasonably require.

"Available Balance" means the sum of the Available Limit plus the account balance of the Investment Financing Settlement Account, such account balance being the credit balance (amount of cleared and immediately available funds) or debit balance of the Investment Financing Settlement Account from time to time; and Available Balance shall not be less than zero at any time.

"Available Limit" means the principal amount which may be advanced by the Bank under the Facility to the Customer from time to time being the lesser of:

- (a) the total of (i) the Security Value multiplied by the Loan Ratio of all Charged Securities held in the Investment Financing Trading Account and (ii) the market value at the relevant time of the Eligible Securities to be subscribed by the Customer multiplied by the Loan Ratio; and
- (b) the Ceiling Limit.

"Bank" means Hang Seng Bank Limited of 83 Des Voeux Road Central, Hong Kong and its successors and assigns and, where the context permits, includes any person appointed by the Bank as its nominee or agent to perform the Service on its behalf.

"Business Day" means Mondays to Fridays (except public holidays) which the Bank is open to the general public for business in Hong Kong.

"Ceiling Limit" means the ultimate principal amount that is permitted to be outstanding in relation to the Facility at any time as prescribed and approved by the Bank at its discretion.

"Charged Account" and "Charged Securities" is each defined in Clause 4.01(a).

"Customer" means the person or, as the case may be, each person to whom the Bank provides the Service and includes any personal representative or lawful successor of such person and, where the context permits, includes any Authorised Person(s).

"Effective Loan Ratio" means the blended portfolio level loan ratio calculated in accordance with the following formula:

$$\frac{\text{Available Limit}}{\text{Security Value}} \times 100\%$$

"Eligible Securities" means securities that are not listed on any stock exchange (whether in Hong Kong or overseas), including investment funds, bonds and other investment products which the Bank may at its discretion prescribe or accept for handling under the Service from time to time.

"Exchange Rate" means the rate for converting one currency into another currency which the Bank determines to be prevailing in the relevant foreign exchange market at the relevant time, such determination to be conclusive and binding on the Customer.

"Facility" means the revolving overdraft facility which the Bank may provide under the Service and, where the context requires or permits, includes all amounts debited to the Investment Financing Settlement Account from time to time.

"Force Liquidation Threshold" means such percentage in respect of the PMR or LTV Ratio from time to time prescribed by the Bank at its discretion (which will be notified to the Customer upon the Customer's enquiry) for the purpose of determining when the Bank may exercise its right of force liquidation under Clause 5.03.

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

"Indebtedness" means all moneys, in any currency, other than the Facility which are now or may at any time hereafter be or become from time to time due or owing to the Bank by the Customer, or in respect of which the Customer may be or become liable to the Bank, on any account or otherwise in any manner (in all cases whether alone or jointly with any other person, and in whatever style, name or form, and whether as principal or surety), together with interest up to date of payment at such rates and upon such terms as may from time to time be payable by the Customer, fees and other charges, all disbursements and expenses of reasonable amount and reasonably incurred by the Bank in relation to the recovery of the Indebtedness or related matters.

"Ineligible Securities" means securities that are not Eligible Securities at any relevant time.

"Instant Order Confirmation Service" means the order confirmation service which the Bank may provide to the Customer under Clause 6.

"Instruction" means an instruction of the Customer for subscribing Eligible Securities received by the Bank in form and substance satisfactory to the Bank.

"Investment Amount" means, in respect of an instruction to subscribe for Eligible Securities, the subscription price or settlement amount payable for the relevant Eligible Securities, based on their current market price as determined by the Bank.

"Investment Financing Settlement Account" means the current account in the name of the Customer and designated by the Customer and accepted by the Bank for the purposes of settling Transactions and other payments under the Service.

"Investment Financing Trading Account" means the securities account in the name of the Customer and designated by the Customer and accepted by the Bank for the purposes of holding the securities subscribed by or on behalf of the Customer using the Service or otherwise handled by the Bank under the Service.

"Loan Amount" means the total of all amounts of principal and interest outstanding under the Facility at any relevant time.

"Loan Ratio" means, in respect of each Eligible Securities subscribed or to be subscribed by the Customer, the portion of the subscription price of the relevant Eligible Securities which may be financed by the Facility as prescribed by the Bank at its discretion from time to time.

"LTV Ratio" means the loan-to-value ratio calculated in accordance with the following formula:

$$\frac{\text{Loan Amount}}{\text{Security Value}} \times 100\%$$

"Margin Call" is defined in Clause 5.02.

"Margin Call Threshold" means such percentage in respect of the PMR or LTV Ratio from time to time specified by the Bank at its discretion (which will be notified to the Customer upon the Customer's enquiry) for the purpose of determining when a Margin Call may be made by the Bank.

"person" includes an individual, firm, company, corporation and an unincorporated body of persons.

"PMR" means the portfolio margin ratio being the loan-to-lending limit ratio calculated in accordance with the formula:

$$\frac{\text{Loan Amount}}{\text{Available Limit}} \times 100\%$$

"Service" means the Investment Financing Service which the Bank may provide from time to time for the purpose of investing in Eligible Securities and, where the context requires or permits, include the Facility, the Investment Financing Trading Account, the Investment Financing Settlement Account and all related services and arrangements contemplated by these Terms and Conditions.

"Security Value" means, in respect of any Charged Securities (excluding Ineligible Securities) at any given time, the market price (net of expenses) which the Bank determines in its discretion could be obtained on a sale of such Charged Securities at such time and in such market on which securities of the same type are normally traded (for the avoidance of doubt, certain Charged Securities may be valued by the Bank at zero or no value, for example, Charged Securities which are frozen or under restrictions for whatever reasons).

"Settlement Date" in respect of a Transaction, means the settlement date for that Transaction.

"subscribe", in respect of Eligible Securities, includes purchase or acquire by any method.

"Subscription Expenses" means, in respect of a subscription of Eligible Securities, all commissions, brokerages, fees, charges and expenses of any nature payable in connection with that subscription.

"Transaction" means a transaction effected by the Bank pursuant to or as a result of an Instruction or otherwise in accordance with these Terms and Conditions.

## **INTERPRETATION**

1. Unless the context otherwise requires:
  - (a) words importing the singular include the plural and vice versa and words importing a gender include every gender;
  - (b) references to these Terms and Conditions or any other agreement or document shall be construed as references to the same as amended, varied or supplemented from time to time; and
  - (c) “including” is not a word of limitation and will be interpreted to mean including, without limitation.
2. Unless otherwise stated, reference to a Clause or Appendix means the clause of or the appendix to these Terms and Conditions. The Appendix forms part of these Terms and Conditions. Clause headings are for reference only and shall not affect the interpretation of these Terms and Conditions.



## 投資融資服務條款及細則

### 重要提示：

在閣下使用投資融資服務前，請詳閱本「條款及細則」。請特別注意閣下在申請「服務」時簽署的風險披露聲明。

### 1. 定義及詮釋

附錄一列出了：

- (a) 本「條款及細則」中使用的詞語及詞句的定義；及
- (b) 本「條款及細則」的詮釋規則。

### 2. 本「條款及細則」的適用範圍

2.01 「服務」包括「投資融資交易戶口」及「投資融資結算戶口」。下列文件整體構成「客戶」和「本行」之間規管提供及使用「服務」的協議，並規管「客戶」和「本行」各自有關「服務」的權利及責任：

- (a) 本「條款及細則」，以不時有效的版本為準；
- (b) 投資融資服務風險披露聲明；
- (c) 「申請表」中關於「投資融資」條款及「客戶」聲明的部份；
- (d) 認購「合資格證券」的「指示」；及
- (e) 在適用於「服務」或「服務」下處理的證券及交易的範圍內，「本行」不時有效的戶口章則和證券戶口章則。本「條款及細則」的條文與「本行」的戶口章則或證券戶口章則的條文如有任何不一致，概以本「條款及細則」的條文為準。

2.02 「客戶」簽署及提交「申請表」即被視為已同意第2.01條列出的文件中的條文，並受其約束。

### 3. 投資融資服務

3.01 「服務」及「投資融資」

- (a) 「本行」可以（但無責任）提供或繼續提供「服務」或「投資融資」或就「投資融資」提供任何貸款。

- (b) 「服務」可包括：
  - (i) 「投資融資」；
  - (ii) 就「客戶」使用「投資融資」認購「合資格證券」，及持有、贖回或處置「客戶」的「合資格證券」的相關服務及事宜；及
  - (iii) 「本行」不時同意提供的其他服務。
- (c) 「本行」可全權酌情不時設定及修訂「服務」及「投資融資」的資格條件及詳情。

### 3.02 「投資融資」的使用

「投資融資」僅擬用於投資「合資格證券」。「客戶」須自行負責將「投資融資」用於投資「合資格證券」而非其他用途。「本行」無責任監察或核實「客戶」有否按本條文的規定使用「投資融資」。

### 3.03 提供及檢討「投資融資」

- (a) 「投資融資」須受限於「本行」的年度檢討。「本行」可以（但無責任）為「投資融資」續期。「客戶」可繼續使用「投資融資」直至「本行」通知「客戶」「投資融資」不獲續期。
- (b) 當「客戶」年滿65歲時，或「客戶」之風險承受能力降至4級以下(或「本行」不時認為適合之其他級別)，或「客戶」符合「本行」定義的特定客戶時，「客戶」再不可使用「投資融資」認購證券，而「本行」在該等情況出現時或不會通知「客戶」。「客戶」可繼續使用「服務」贖回「投資融資交易戶口」中的「合資格證券」及維持「投資融資」直至「本行」要求還款。

### 3.04 要求立即還款的凌駕性權利

儘管本「條款及細則」的任何其他條文，「投資融資」受限於「本行」要求立即還款的凌駕性權利，「本行」有權：

- (a) 於任何時間檢討「投資融資」（如適用，可在定期檢討之前），並要求即時全數償還「客戶」就「投資融資」或根據本「條款及細則」到期欠付「本行」的所有款項（不論為本金、利息或其他款項）；及
- (b) 於任何時間向「客戶」發出通知即時增加、減少、修訂、終止及/或取消全部或部份「投資融資」。

### 3.05 「投資融資交易戶口」及「投資融資結算戶口」

- (a) 「客戶」須維持「投資融資交易戶口」及「投資融資結算戶口」，方可使用「服務」及「投資融資」。
- (b) 「投資融資交易戶口」及「投資融資結算戶口」應僅被用作「服務」相關用途。所有由「客戶」認購或代「客戶」認購的「合資格證券」，以及所有由該等「合資格證券」產生或歸因於該等「合資格證券」的增長、累計、分配、派息、利息、收入、款項及其他分派

(如有)，均應透過「投資融資交易戶口」及「投資融資結算戶口」持有，並按照本「條款及細則」處理。

- (c) 「投資融資結算戶口」不提供往來戶口提供的某些功能或安排，包括支票、直接扣賬安排、自動轉賬或其他持續適用指示。
- (d) 「客戶」不可撤回地授權並指示「本行」：
  - (i) 從「投資融資結算戶口」中扣取「投資金額」、「認購費用」、「本行」就「投資融資」向「客戶」提供的所有貸款，以及「客戶」就「服務」應向「本行」支付的所有其他金額（包括「投資融資」的累計利息、佣金、經紀費、費用、收費和任何性質的開支）；及
  - (ii) 將所有不時應付給「客戶」的或「客戶」不時有權獲得的款項，包括「客戶」贖回或處置任何「合資格證券」的收益，以及「投資融資交易戶口」中持有的「合資格證券」所產生或歸因於該等「合資格證券」的任何增長、累計、分配、派息、利息、收入、款項及其他分派，存入「投資融資結算戶口」。
- (e) 為免疑慮，「本行」僅會以已經存入「投資融資結算戶口」並且可用的款項釐定「可用結餘」，以及釐定是否已符合「補倉提示」的要求。

### 3.06 與「投資融資」有關的各種限額、比率、標準和門檻

- (a) 就授予、維持和使用「投資融資」而言，「本行」經考慮當時的市場情況和「本行」認為適當的其他因素和情況後，可不時全權酌情設定和更改適用的限額、比率、標準和門檻，以及任何用作計算或釐定這些限額、比率、標準和門檻的方法或公式，而無需事先通知「客戶」。
- (b) 有關的限額、比率、標準和門檻包括「額度上限」、「可用額度」、「抵押成數」、「適用補倉比率」、「補倉門檻」和「強制出售門檻」。這些限額、比率、標準和門檻會影響「客戶」是否獲提供或可使用「投資融資」。尤其是，更改「抵押成數」可能會：
  - (i) 改變「可用額度」，而減少「可用額度」可能會影響「戶口孖展比率」及/或「實際抵押成數」，並觸發「本行」執行其在本「條款及細則」下的抵押權益及其他權利；及/或
  - (ii) 導致「貸款金額」超出「可用額度」。
- (c) 「客戶」須自行負責不時向「本行」查詢適用於「客戶」的相關限額、比率、標準和門檻。

### 3.07 使用「投資融資」認購「合資格證券」

- (a) 「客戶」使用「投資融資」認購「合資格證券」須受下列條件限制：
  - (i) 必須先用盡「投資融資結算戶口」的正數結餘方可提取「投資融資」下的貸款。
  - (ii) 在符合上述 (i) 段的前提下的「可用額度」。
- (b) 「本行」除有一般權利決定是否在「投資融資」下提供貸款外，在下列任何一種或多種情況下，「本行」有權拒絕「客戶」使用「投資融資」的指示或拒絕提供「服務」：
  - (i) 如交易涉及「不合資格證券」；或
  - (ii) 如「可用結餘」及/或「可用額度」不足以支付相關「合資格證券」的「投資金額」及「認購費用」；或

- (iii) 如「本行」經考慮任何「適用規例」或任何其他因素或情況後認為應拒絕，即使上述(i)段或(ii)段都不適用。
- (c) 「本行」有權指定「客戶」發出與「服務」有關的指示的形式和方法，並指定一項指示可以處理的金額或數量的適用最低及/或最高限額。「本行」有權不執行「客戶」發出不符合「本行」指定的任何指示。
- (d) 如「指示」中指明的證券是「不合資格證券」，「本行」收到「指示」後會在合理切實可行範圍內盡快通知「客戶」。在此情況下，「本行」有權拒絕就該項認購在「投資融資」下提供貸款。如「指示」中指明的證券是「合資格證券」，「本行」收到「指示」後會在合理切實可行範圍內盡快通知「客戶」「抵押成數」。如在執行「指示」時出現下列情況，「本行」有權不執行該「指示」：
- (i) 「貸款金額」超出「可用額度」；及/或
- (ii) 「可用結餘」低於按照下列公式計算的金額：
- $$\text{「投資金額」} \times (1 - \text{「抵押成數」}) + \text{「認購費用」}$$
- (e) 如在「結算日」，「投資融資結算戶口」中的正數結餘不足以支付「投資金額」及「認購費用」，「本行」可以在「投資融資」下向「客戶」提供相等於該差額的貸款，但前提是該筆貸款不會導致「貸款金額」超出「可用額度」。
- (f) 「本行」可以（但無責任）在「投資融資」下為「客戶」提供貸款，讓「客戶」就已認購的「合資格證券」按合併、重置或其他事件或安排，獲取權利、利益或權益。
- (g) 在下列情況下，「本行」可以(但無責任)允許「客戶」再借入已經償還「本行」的「貸款金額」的任何部份：
- (i) 再借入的金額不會導致「貸款金額」超出「可用額度」；
- (ii) 「投資融資」未曾被「本行」取消或終止；及
- (iii) 「客戶」已履行其在本「條款及細則」下的責任。
- (h) 所有「指示」及「交易」均受限於相關「合資格證券」的發行人或要約人發出的要約文件、組織文件、資料備忘錄、招股章程、產品規格、年度報告及賬目及其他文件。

### 3.08 未授權透支

實際的「投資金額」只會在「結算日」確定。如由於任何原因，一項「指示」和由此產生的「交易」在「結算日」導致「貸款金額」超出「可用額度」，且在「結算日」的「可用結餘」不足以支付差額，執行該項「指示」將導致「投資融資結算戶口」出現未授權透支。在此情況下，「本行」可酌情執行或拒絕該項「指示」。如「本行」執行該項「指示」：

- (a) 「客戶」須支付未授權透支費用（如有）及利息；及
- (b) 在「貸款金額」超出「可用額度」的期間，其後存入或轉賬至「投資融資結算戶口」之現金或資金（不論是否用於認購「合資格證券」或其他用途），須首先被用作償還及減低「貸款金額」，直至「貸款金額」不再超出「可用額度」為止。

### 3.09 利息及未授權透支費用和利息

- (a) 「客戶」須按「本行」不時指定的利率支付「貸款金額」的利息。「本行」在「投資融資」下向「客戶」提供的貸款的利息會從貸款發出當日（即相關「合資格證券」認購的「結算日」）開始累計，直至「本行」實際收到與「投資融資」有關的所有欠款金額的全數還款當日為止。
- (b) 如一項「指示」及由此產生的「交易」導致「投資融資結算戶口」出現未授權透支，「客戶」須支付下列額外的費用和利息，其金額或比率由「本行」不時指定：
  - (i) 未授權透支費用（如有）；及
  - (ii) 在「投資融資」下超出「可用額度」的欠款金額的利息，該利息會從出現超額當日開始累計，直至「本行」實際收到超額金額的還款（不論判決之前及之後）當日為止。
- (c) 所有利息金額會從「投資融資結算戶口」支取，並會成為在「投資融資」下欠付「本行」的本金金額及須按此繳付利息。

### 3.10 還款

- (a) 「客戶」須在「本行」要求時，以港元或如「本行」同意以其他貨幣償還「貸款金額」及「客戶」就「服務」欠付「本行」的任何其他款項。如以其他貨幣償還欠款，須按「匯率」兌換貨幣。
- (b) 如「客戶」認購「合資格證券」之資金來自「投資融資」，任何認購金額或費用的退款(全部或部份)，不論是由「客戶」或「本行」或「本行」的代理人收取，都應在收取退款後於合理切實可行的範圍內盡快將退款存入「投資融資結算戶口」。
- (c) 根據「指示」出售或處置的「合資格證券」的收益，於扣除有關該等出售或處置的所有費用及合理開支（包括贖回費用、經紀費及佣金）後，須存入「投資融資結算戶口」。
- (d) 在首先償還任何未授權透支金額的前提下，所有存入「投資融資結算戶口」的資金會由「本行」以下列還款次序清償「客戶」的欠款：
  - (i) 「投資融資」的本金或利息以外的欠款；
  - (ii) 「投資融資」下未償還的本金及利息（不論是否已到期應付）；及
  - (iii) 「客戶」因其他交易或服務而欠付「本行」之「債項」或任何其他款項。

## 4. 「本行」的抵押權益

### 4.01 抵押權益

- (a) 鑑於「本行」向「客戶」提供或持續提供「投資融資」，「客戶」作為實益擁有人向「本行」抵押、質押及轉讓「客戶」就「投資融資交易戶口」（「抵押戶口」）及不時存放於「投資融資交易戶口」內所有及任何投資產品、證券及資產的所有現有及將來的權利、所有權及權益（包括根據任何「補倉提示」或因任何其他原因而存入「本行」的其他投資產品、證券及資產），不論是以「客戶」、「本行」代名人或任何中央結算系統或存管處代名人的名義登記，連同該等投資產品、證券及資產所附帶或產生之所有權利及利益（合稱「抵押證券」），作為持續抵押以保證「客戶」準時向「本行」支付「客戶」就「投資融

資」不時的欠款及／或「債項」，以及保證「客戶」履行就「服務」不時須履行的所有責任。

- (b) 「客戶」不可撤回地授權「本行」以「本行」代理人名義持有「抵押證券」，並作出及簽立任何及所有所需行為、事情及文件，以轉讓、完成及／或將任何「抵押證券」之擁有權轉歸予「本行」之代理人，以完善就「抵押證券」的抵押權益。
- (c) 「本行」或「本行」代理人就「抵押證券」獲得之所有增長、累計、分配、派息、利息、收入、款項及分派，均應存入「抵押戶口」（如以證券形式收取）及「投資融資結算戶口」（如以現金或資金形式收取）。儘管「客戶」就提取或處置「抵押戶口」或「投資融資結算戶口」內之任何資產發出任何指示，「本行」有權拒絕該指示，並按本「條款及細則」扣起及應用存於「抵押戶口」及「投資融資結算戶口」內之任何資產。
- (d) 「客戶」就「抵押證券」提供予「本行」的抵押權益乃「本行」就「投資融資」或「債項」或「客戶」根據本「條款及細則」內所述之責任於任何時間所持有之任何擔保、彌償或其他抵押權益或其他權力、權利或補償以外之額外抵押，並可由「本行」執行而不上述各項影響亦不影響上述各項，並屬於一項持續抵押，儘管「客戶」身故、破產或喪失能力，或就「投資融資」或「債項」全部或任何未清償部份已作出中期或部份還款或已結算或清付賬項。任何合併抵押權益之限制將不適用於「客戶」就「抵押證券」提供予「本行」的抵押權益。
- (e) 如「客戶」向任何「人士」抵押或意圖抵押所有或任何「抵押證券」（不論該抵押為固定或浮動），或任何「人士」對所有或任何「抵押證券」進行任何形式之訴訟或扣押程序，就「抵押證券」以「本行」為受益人之抵押權益產生之抵押若屬浮動抵押則應即時自動變為固定抵押，而無需通知。
- (f) 「客戶」不可撤回地委任「本行」及任何「本行」委任的人士各別地為「客戶」的受權人，以「客戶」名義及代表「客戶」及作為「客戶」的行為或契約或以其他方式，而在無需知會或獲得「客戶」同意的情況下，簽立「本行」認為適宜的文件及完成「本行」認為適宜的所有事宜，以便「本行」保留、完善或行使「本行」就「抵押證券」的抵押權益的任何利益、權利和權力。「客戶」承諾追認和確認「本行」按本條文行使其權力時訂立的所有文件、行為和事項以及所有交易。
- (g) 「客戶」確認上述授權乃為保證「客戶」會履行其在本「條款及細則」項下的責任和債務而授予。

#### 4.02 強制執行抵押權益

- (a) 如「客戶」在任何「貸款金額」或「債項」到期時未能償還，或未有遵守本「條款及細則」項下「客戶」的任何責任，或無力或承認無力償還到期欠款，或涉及任何清盤、破產或清算或同類訴訟，或「抵押證券」或「客戶」的其他資產遭扣押或有關訴訟程序經展開或執行，「本行」即有權執行就「抵押證券」的抵押權益。「本行」無需預先對「客戶」提出還款要求、通知、或法律程序或其他法律行動，即可扣留或動用在「投資融資結算戶口」中的任何現金或資金及自行酌情隨時以任何方式按需要將所有或部份「抵押證券」變賣、出售或以其他方式處置以抵償「貸款金額」或「債項」，而不受任何限制或索償影響。對任何因有關之扣留、動用、變賣、出售或處置而引致之損失，「本行」概不負責。

- (b) 由「本行」任何正式授權之職員簽署之欠款證明書，對「客戶」而言是在任何時候「客戶」欠付「本行」的「貸款金額」或「債項」金額之最終及決定性證據。
- (c) 就任何「貸款金額」或「債項」而付給「本行」之款項，如因清盤、破產或解散相關的法律或任何其他原因而須由「本行」退回，「本行」有權執行上述抵押權益，猶如有關款項未曾支付給「本行」一樣。
- (d) 「本行」可隨時繼續維持已以「客戶」名義開立之戶口及以「客戶」名義開立新戶口，該等新戶口其後產生之交易、收款或付款均不影響「客戶」有關「投資融資」之債務。

## 5. 保證金要求

### 5.01 「客戶」遵守保證金要求的責任

- (a) 「客戶」須自行負責監察其進行的投資和使用「投資融資」的情況，以確保在所有相關時間：
  - (i) 「貸款金額」均不超出「可用額度」；
  - (ii) 「適用補倉比率」維持於「本行」滿意之水平；及
  - (iii) 均遵守「本行」指定的保證金要求（包括「補倉提示」）。
- (b) 「客戶」有責任不時與「本行」聯絡，以查明不時適用於「客戶」之「抵押成數」、「可用額度」及保證金要求（包括「適用補倉比率」、「補倉門檻」及「強制出售門檻」）。
- (c) 「客戶」承認及接受可能因某些情況或事件（即使「客戶」不知道出現這些情況或事件）而隨時導致「適用補倉比率」到達或超出「補倉門檻」或「強制出售門檻」。這些情況或事件可能包括貨幣匯率波動、「抵押證券」市值變化、任何「抵押證券」變成「不合資格證券」、或「本行」更改「抵押成數」、「額度上限」或「可用額度」。因「客戶」未能符合任何保證金要求而出售、變現、贖回、結清或處置「抵押證券」導致或相關的任何損失，「本行」無需向「客戶」負責，除非因「本行」或其僱員或職員的疏忽或故意失責及純因此直接造成的直接及可合理預見之損失或損害（如有）。

### 5.02 「補倉提示」

- (a) 「本行」會每天參考「本行」酌情認為合適來源在相關時間的資訊以計算和釐定「抵押品價值」，並在「本行」認為一天中合適的時間更新「投資融資交易戶口」和「投資融資結算戶口」的狀況和結餘。
- (b) 如果在任何時候「本行」認為「貸款金額」超出「可用額度」及/或「適用補倉比率」達到或超出「補倉門檻」，「本行」有權（但無責任）向「客戶」發出追繳保證金通知（「補倉提示」）並拒絕執行任何認購「合資格證券」的「指示」。「客戶」須在合理切實可行的範圍內盡快（但不遲於「本行」在「補倉提示」中提及的時限）符合「補倉提示」的要求，以減少「貸款金額」至低於「可用額度」。「客戶」可以用下列方式符合「補倉提示」的要求：(i) 把現金或即時可用資金存入「投資融資結算戶口」；(ii) 指示「本行」出售或處

置「投資融資交易戶口」中所需數量的「抵押證券」；及/或 (iii) 由「本行」指定或接受其並認為在相關情況下合適的任何其他安排。

- (c) 「本行」通常會通過向「客戶」在「本行」登記用於接收「補倉提示」和相關通知及訊息的手機號碼發送短訊，向「客戶」發出「補倉提示」。「本行」也可以用「本行」認為在相關情況下合適的其他方式向「客戶」發出「補倉提示」。「客戶」應被視為已收到「本行」按本條文向「客戶」發出的「補倉提示」。
- (d) 「客戶」承認，由於處理交易和更新記錄需時，「本行」之記錄未必反映「投資融資交易戶口」和「投資融資結算戶口」之最新交易或賬項。「客戶」同意，「本行」作出的所有「補倉提示」都是有效的，包括基於「本行」尚未更新的記錄作出的任何「補倉提示」。
- (e) 如存入額外的「合資格證券」到「投資融資交易戶口」以符合「補倉提示」的要求，應在該等「合資格證券」成功以電子方式轉讓予「本行」或其代名人時，方計入該等「合資格證券」的「抵押品價值」。
- (f) 在發出「補倉提示」後，直到「本行」滿意「客戶」已符合「補倉提示」的要求為止，「本行」無需執行任何「指示」，且「本行」有權行使其在本「條款及細則」項下的任何抵押權益、權利、權力和利益，而無需通知「客戶」。
- (g) 為免疑慮：
  - (i) 「補倉提示」並不構成「本行」對「客戶」償還「貸款金額」或「債項」之付款要求，而是作為「本行」提醒「客戶」採取所需行動來避免或減低被「本行」結清「客戶」持倉量之通知。如「客戶」未能符合「補倉提示」的要求，「客戶」須承擔被「本行」結清「客戶」持倉量之風險；及
  - (ii) 如有需要，「本行」可於同一日內向「客戶」發出超過一次「補倉提示」。

### 5.03 強制出售

- (a) 如發生下列任何一項或多項情況或事件，「本行」有權(但無責任) 強制出售，而無需向「客戶」發出任何「補倉提示」或採取任何法律程序或其他行動：
  - (i) 「本行」認為「適用補倉比率」已達到或超出「強制出售門檻」（儘管由於處理交易和更新記錄需時，此乃基於「本行」尚未更新及反映「投資融資交易戶口」及「投資融資結算戶口」之最新交易及賬項的，或已符合「補倉提示」要求的記錄）；或
  - (ii) 「貸款金額」已持續超出「可用額度」多於15個工作日或其他「本行」不時指定之其他時段；或
  - (iii) 「本行」真誠地認為市況不穩定或不利或不正常，或可能導致投資者承擔不能接受之風險或重大虧損。

- (b) 「本行」一經行使強制出售的權利：
- (i) 「本行」即可取消或修改任何尚未執行之「指示」及／或於有關市場或以私人合約方式，按「本行」認為合適之條款及不受「客戶」之所有信託、索償、贖回權及衡平法上之權益或其他權利或利益影響的情況下出售、變現、贖回、結清及／或以其他方式處置所有或任何「抵押證券」；
  - (ii) 「本行」即有權選擇和決定將那些「抵押證券」出售、變現、贖回、結清或處置及其數量，而該等數量可能較需要用作減少「貸款金額」至低於「可用額度」之數量為多；及
  - (iii) 「本行」即有完全酌情權將出售、變現、贖回、結清或處置「抵押證券」所得款項，存入「投資融資結算戶口」以償還及減少「貸款金額」至低於「可用額度」。
- (c) 「本行」強制出售之權利並不受實際強制出售前之「抵押品價值」波動所影響。「本行」可因應當時情況在任何時間更改或取消任何擬進行的強制出售。對於「客戶」或任何其他人士因任何實際或擬進行的強制出售或任何實際強制出售的時間而可能產生或遭受任何種類的損失、損害或開支，「客戶」對「本行」不享有任何權利或申索。
- (d) 「本行」會在強制出售後，在合理切實可行的範圍內盡快通知「客戶」。

#### 5.04 「補倉門檻」及「強制出售門檻」

下列「補倉門檻」及「強制出售門檻」適用，並根據「實際抵押成數」分為兩級：

等級	「實際抵押成數」	「補倉門檻」	「強制出售門檻」
1	$\geq 70\%$	$105\% < \text{「戶口孖展比率」} \leq 110\%$	$\text{「戶口孖展比率」} > 110\%$
2	$< 70\%$	$108\% < \text{「戶口孖展比率」} \leq 115\%$	$\text{「戶口孖展比率」} > 115\%$

#### 6. 「即時覆盤服務」

- 6.01 使用「即時覆盤服務」之「客戶」可要求「本行」安排於「客戶」之通訊設備顯示訊息，以通知「客戶」有關其進行之證券交易情況，及其他由「本行」提供之訊息。「本行」可不時指定「即時覆盤服務」之服務範圍以及通常接受作為提供「即時覆盤服務」之通訊設備種類。「本行」有權按情況不時對「即時覆盤服務」之服務範圍作出修改、擴展或縮減。
- 6.02 「即時覆盤服務」只提供予擁有合適之通訊設備之客戶，且有關之通訊設備或服務須由「本行」不時指定或接受之電訊公司提供。
- 6.03 「本行」保留權利不時限制「客戶」登記作為使用「即時覆盤服務」之通訊設備數目。
- 6.04 在未有預先通知「客戶」的情況下，「本行」可因其合理控制範圍以外的任何原因，包括電訊公司的網絡故障，或因進行任何與其網絡有關之維修保養、修改、擴充及／或改良而暫停「即時覆盤服務」。「本行」對此等暫停服務無需負責。

- 6.05 在不影響「本行」就「個人資料」（私隱）條例致「客戶」通告之條文概括性原則下，「客戶」明確授權「本行」可為了提供「即時覆盤服務」的目的，而將「本行」認為合適的，與「客戶」有關之「個人資料」及其他與「客戶」、「客戶」之戶口、交易及買賣有關之其他資料移交或披露予「本行」之附屬公司及代理人，以及相關電訊公司（不論上述彼等位於香港境內或境外）。
- 6.06 「客戶」承認任何根據「即時覆盤服務」通過其電訊設備接收之訊息純屬資料性質，並不能視為有關事項之確證。
- 6.07 如「客戶」為使用「即時覆盤服務」而於「本行」登記之資料有任何更改，包括更改其通訊設備之聯絡資料或更改提供該等通訊設備及服務之電訊公司，或電訊公司中斷或暫停服務，「客戶」應以「本行」不時合理指定之方式通知「本行」。「本行」無需為根據不時登記於「本行」之資料提供「即時覆盤服務」負責。
- 6.08 除非由「本行」及「本行」為提供「即時覆盤服務」而指定之電訊公司之疏忽或故意失責所引致，否則傳送予「客戶」之訊息如有任何失敗或延誤，或該等訊息有任何錯誤或不確，「本行」及此等電訊公司均無需負責。尤其是，對「本行」及此等電訊公司合理控制範圍以外的任何原因造成的後果，包括「客戶」之通訊設備因任何原因而未能接收訊息、任何電訊故障、機器故障、停電、機件或裝置失靈、損壞、中斷或不足、天災（包括水災及海嘯）、政府行為、火災、國內動亂、罷工、戰爭、軍事行動、動盪、政治叛亂、暴動、公眾示威或任何形式之恐怖活動而造成之影響，「本行」及此等電訊公司均無需負責。
- 6.09 除「本行」就提供「即時覆盤服務」而徵收之任何收費及費用外，向「客戶」提供通訊設備及服務之電訊公司如徵收任何費用、收費及開支，概由「客戶」自行承擔。

## 7. 聲明、保證及承諾

「客戶」向「本行」聲明、保證及承諾，在「本行」向「客戶」提供「服務」的整個期間內：

- (a) 「客戶」是並會一直是「投資融資交易戶口」中不時持有之「抵押證券」之唯一實益權擁有人（或如「客戶」由多於一位人士組成，則該等人士皆為唯一實益權擁有人），而「客戶」以當事人身份就「投資融資交易戶口」和「投資融資結算戶口」行事，並對存於「本行」或「客戶」指示「本行」代其處理之所有資金及資產享有妥善之所有權，且在各情況下均不受任何產權負擔或任何第三者權益影響；
- (b) 「客戶」對「抵押證券」享有並應維持實益擁有權，使其不受任何產權負擔或任何第三者權益影響（惟惠及「本行」者除外）；
- (c) 根據第4條向「本行」提供之抵押權益構成並應繼續屬對「客戶」有效及具法律約束力之責任，「本行」並可根據第4條條文及本「條款及細則」中其他適用條文強制執行；
- (d) 「客戶」使用「服務」及進行本「條款及細則」預期的交易和活動，均沒有也不會與適用於「客戶」的任何「適用規例」或制裁制度出現衝突；

- (e) 於仍未全數償還「貸款金額」的期間內任何時間，「客戶」不得 (i) 委派任何其他人士以任何方式出售、處置或處理存於「投資融資交易戶口」內之「抵押證券」；或 (ii) 對「投資融資結算戶口」或「投資融資交易戶口」中的任何資金或資產製造或容許產生任何產權負擔或第三者權益；或 (iii) 提取或處置「投資融資結算戶口」或「投資融資交易戶口」中的任何資金或資產，除非在惠及「本行」或獲「本行」的事先書面同意的情況，而「本行」可在考慮「客戶」有否符合「補倉提示」的要求及「本行」認為合適的其他因素後酌情授予或拒絕同意；
- (f) 「客戶」承諾如擬將其地址更改為香港境外地區的地址，或擬在任何十二個月內，離開香港180天或更長時間，或在任何十二個月內曾在香港境外地區居住累計180天或更長時間，須預先以書面通知「本行」；
- (g) 「客戶」完全知悉投資「合資格證券」的性質、條款以及所涉及之風險，並在發出任何「指示」前完全知悉由相關「合資格證券」的發行人或要約人發出的要約文件、組織文件、資料備忘錄、招股章程、產品規格、年度報告及賬目及其他文件之最新版本內容；
- (h) 「客戶」須於任何時間及不時簽立及向「本行」交付「本行」為完善或保存其就第4條的抵押權益或讓其享有該抵押權益的全面利益可合理要求的其他押記、授權書及其他文書或文件；及
- (i) 「客戶」須就按第4條向「本行」提供抵押權益取得及維持所有所需十足效力之政府及其他批准、授權、許可及同意，並且作出或促成所有所需或適宜之其他行為及事情，從而履行「客戶」按本「條款及細則」之所有責任。

## 8. 銷售金融產品

8.01 就「本行」向「客戶」銷售任何「金融產品」（定義如下）而言：

- (a) 「本行」可根據「客戶」的風險承受能力、財政狀況、投資經驗、投資目標及投資期，按第8.02條的條文，向「客戶」招攬銷售或建議「金融產品」；
- (b) 「客戶」可按第8.03條的條文與「本行」就任何「本行」沒有作出招攬或建議或有別於「本行」作出的招攬或建議的「金融產品」進行「交易」；及
- (c) 在受限於第8.02(a)條及8.03條的前提下及除非「本行」與「客戶」另有協議，「本行」不會提供投資顧問服務，亦不會承擔任何財務顧問謹慎責任或就銷售任何「金融產品」承擔任何責任。

「金融產品」指《證券及期貨條例》所界定的任何證券或期貨合約。

8.02 「金融產品」的適合性（適用於「客戶」與「本行」交易經「本行」招攬或建議的「金融產品」）

- (a) 假如「本行」向「客戶」招攬銷售或建議任何「金融產品」，該「金融產品」必須是「本行」經考慮（包括其他事宜外）「客戶」的財政狀況、投資經驗及投資目標後而認為合理地適合「客戶」的。

- (b) 本「條款及細則」的其他條文或任何其他「本行」可能要求「客戶」簽署的文件及「本行」可能要求「客戶」作出的聲明概不會減損第8.02(a)條的效力。
- (c) 為使「本行」履行其於第8.02(a)條項下有關「金融產品」「交易」的責任，「客戶」同意及確認其向「本行」提供的任何資料（包括「客戶」之財政狀況、投資經驗及投資目標）均屬完整、準確及最新，「本行」會依賴「客戶」所作出的該同意及確認。
- (d) 「客戶」進行「金融產品」交易前，應考慮：
- (i) 「客戶」交易的「金融產品」的性質、條款及所涉及之風險；
  - (ii) 「客戶」本身的情況；
  - (iii) 假如有關「客戶」或「金融產品」的情況之後有所改變，「本行」已招攬銷售或建議的「金融產品」可能不再適合「客戶」，「本行」無持續責任確保「本行」已招攬銷售或建議的「金融產品」持續適合「客戶」；及
  - (iv) 如有需要，「客戶」會就其交易的「金融產品」尋求獨立專業顧問意見（包括法律、稅務、財務、投資或會計意見）。
- (e) 第8.02(a)條至8.02(d)條不適用於任何為「專業投資者」（定義如下）的客戶。除另以書面同意外：
- (i) 「本行」無需對「專業投資者」負上或承擔提供任何金融或投資意見或建議，或確保任何招攬或建議的合適性的責任；及
  - (ii) 「專業投資者」應根據其財政狀況、投資經驗及投資目標去行使其獨立判斷，並就其可能交易的任何投資或產品尋求獨立專業顧問意見。

「專業投資者」定義為因下述原因，「本行」沒有責任對其承擔或履行確保任何金融或其他產品或招攬或建議該等產品的合適性的客戶：(i) 「本行」符合證券及期貨事務監察委員會持牌人或註冊人操守準則（「操守準則」）的規定；及(ii) 客戶被「本行」分類為“機構專業投資者”或“法團專業投資者”或其他類別的專業投資者（視情況而定），按「操守準則」不時之定義。

8.03 受證券戶口章則第2.13條和第2.14條規限的前提下，在「本行」沒有作出招攬、建議或意見有別於「本行」作出的招攬、建議或意見的情況下與「本行」進行的「交易」

- (a) 就「客戶」在「本行」沒有作出招攬或建議或有別於「本行」作出的招攬或建議的情況下與「本行」進行的任何交易（包括涉及任何「金融產品」或任何「複雜產品」（定義如下）的交易）而言，在進行該等交易前，「客戶」同意及確認會確保以下列事項，「本行」會依賴「客戶」就下列的同意及確認：
- (i) 該等交易純按「客戶」本身的要求及基於其判斷而進行；
  - (ii) 「客戶」完全明白該等交易的性質、條款及所涉及之風險；
  - (iii) 「客戶」已考慮其本身的情況；
  - (iv) 如有需要，「客戶」會就其進行的交易尋求獨立專業顧問意見（包括法律、稅務、財務、投資或會計意見）；

- (v) 「本行」不會提供投資顧問服務，亦不會承擔任何投資顧問謹慎責任或就該等交易承擔任何責任；及
  - (vi) 除證券戶口章則第 11.5 條所述外，「本行」無需對「客戶」或任何其他人士就有關交易招致或蒙受的任何種類的損失（包括間接或相應而生的損失）、成本或損害負責。
- (b) 就任何「本行」沒有向「客戶」作出招攬或建議的「複雜產品」（定義如下）的交易而言，除於第8.03(a)條所述之保證外，「客戶」亦同意及確認：
- (i) 「客戶」向「本行」提供的任何資料（包括「客戶」之財政狀況、投資經驗及投資目標）均屬完整、準確及最新，「本行」會依賴「客戶」所作出的該同意及確認；
  - (ii) 假如有關「客戶」或「複雜產品」的情況之後有所改變，該「複雜產品」可能不再適合「客戶」，「本行」無持續責任確保任何「客戶」已交易之「複雜產品」持續適合「客戶」；及
  - (iii) 「本行」無需對「專業投資者」（定義見第8.02(e)條）負上或承擔確保任何「複雜產品」的交易的合適性的責任。「專業投資者」應根據其財政狀況、投資經驗及投資目標去行使其獨立判斷，並就其可能交易的任何投資或產品尋求獨立專業顧問意見。

「複雜產品」指一項由於結構複雜，致令其條款、特點及風險在合理情況下不大可能會被零售投資者理解的投資產品(包括，為免疑慮，任何不受證券及期貨交易條例監管之結構性投資產品)，「本行」有完全酌情權不時決定產品是否「複雜產品」。

- (c) 為免疑慮，本「條款及細則」的其他條文或任何其他「本行」可能要求「客戶」簽署的文件及「本行」可能要求「客戶」作出的聲明概不會亦不應被視為減損於「操守準則」下或任何監管機構不時規定「本行」就「複雜產品」負有的責任及義務。

## 9. 暫停或終止「服務」

### 9.01 任何一方可發終止通知

「客戶」或「本行」均可向對方發出不少於 30 天的事先書面通知以終止「服務」。

### 9.02 「本行」的終止權利

在不限制或減損第9.01條的效力的情況下，如出現下列任何一種或多種情況，「本行」有權向「客戶」發出通知後立即暫停或終止「服務」：

- (a) 「客戶」未能向「本行」支付「貸款金額」或按本「條款及細則」規定應付之任何其他款項；
- (b) 「客戶」違反或未能遵守有關「服務」之任何責任而「本行」合理認為此乃屬「客戶」之重大失責；

- (c) 「客戶」向「本行」提供的任何陳述、保證或承諾或任何資訊或文件在任何重要方面是或變成不真實、不正確、不完整或有誤導性；
- (d) 「本行」之賬冊及記錄中，顯示「投資融資交易戶口」及「投資融資結算戶口」均連續六個月或「本行」所指定之較短期間出現零結餘；
- (e) 「客戶」（作為自然人）身故或破產；
- (f) 就「客戶」的破產、清盤或類似的救濟，或者就「客戶」或「客戶」的全部業務、財產或資產或其中重大部份委任清盤人、破產管理人、受託人、遺產管理人或類似人員而提出申請、提起訴訟或作出命令，無論該申請或訴訟是由「客戶」提出還是針對「客戶」提出；
- (g) 「客戶」所有或重大部份業務、財產或資產因承受產權負擔而被接管，或「客戶」之所有或重大部份業務、財產或資產被扣押令、執行令或其他法律程序影響或查押；
- (h) 「客戶」未能或承認無能力於債務到期時清償；或
- (i) 任何「適用規例」改變導致維持或運作「服務」或其任何部份被禁止或使維持或運作該「服務」變成非法。

### 9.03 終止的後果

- (a) 當「服務」因任何原因終止（不論是由「客戶」或「本行」終止）：
  - (i) 「客戶」就「投資融資」欠付「本行」之所有款項（包括本金及利息）在無需任何要求或通知下即時到期及須清繳，而「投資融資」亦應即時終止。「本行」亦再無責任提供「服務」或「投資融資」。未授權透支的利率應適用於從「服務」終止當日到「本行」實際收到全部未償還款項當日為止「客戶」到期應付予「本行」的欠款。
  - (ii) 「本行」獲「客戶」授權，按「本行」認為合適之條款及方式出售、變現、贖回、結清或以其他方式處置全部或部份「抵押證券」，從而向「本行」清償「客戶」到期應付之欠款，而相關之風險及成本由「客戶」獨自承擔。除非「本行」或其職員或僱員的疏忽或故意失責及純因此直接造成的直接及可合理預見之損失及損害（如有）的情況，「本行」無需承擔因任何原因所引致之任何損失。
  - (iii) 上述出售、變現、贖回、結清或處置所得之任何款項應存入「投資融資結算戶口」並按第3.10（d）條處理及應用。其後如有任何餘額應歸還「客戶」。在適當情況

下，任何未變現或處置之「抵押證券」應交付予「客戶」，相關風險及開支由「客戶」獨自承擔。

- (iv) 如動用所得款項後，在「投資融資結算戶口」仍出現結欠，「客戶」須立即向「本行」支付一筆款項，而金額相等於該結欠金額連同直至（於任何判決前或後）「本行」實際收到全額還款當日「本行」就提供相關資金的成本及按適用於「投資融資結算戶口」未授權透支的利率累計的利息。
- (b) 儘管已暫停或終止所有或部份「服務」，本「條款及細則」中有關任何仍然須由「客戶」履行或承擔之任何義務或責任對「客戶」繼續具約束力。
- (c) 在「服務」終止後（不論由「客戶」或「本行」終止），「本行」有權結束「投資融資交易戶口」及「投資融資結算戶口」。

#### 10. 修改本「條款及細則」

「本行」有權隨時及不時修改本「條款及細則」及／或增補新條文。本「條款及細則」之任何修訂一經「本行」通知（如任何修訂影響「本行」的收費及費用，或「客戶」之責任或義務，需於30天前發出通知。至於其他修訂，則需發出由「本行」指定的合理通知）即屬生效。如「客戶」於修訂的生效日期後仍繼續使用「服務」或仍未償還有關「服務」的任何欠款，修訂即對「客戶」具有約束力。

#### 11. 責任之限制

- 11.01 在不限制本「條款及細則」其他條文的前提下，除因「本行」、其職員或僱員疏忽或故意失責並直接及純粹因此而引起之直接及合理可預見損失及損害（如有）外，「本行」無需就由下列任何一種或多種情況引起或與之有關的後果向「客戶」或任何第三者承擔任何責任：
  - (a) 因「本行」不時更改「抵押品價值」或「抵押成數」而導致「可用額度」或「適用補倉比率」出現變更，因而可能觸發「本行」行使本「條款及細則」賦予之任何權利；
  - (b) 因「本行」不時更改保證金要求，包括「補倉門檻」和「強制出售門檻」，因而可能觸發「本行」行使本「條款及細則」賦予之任何權利或改變觸發「本行」行使該等權利的情況；及
  - (c) 「客戶」使用「服務」。
- 11.02 「本行」向「客戶」提供「服務」並不構成「本行」成為「客戶」或任何證券之受託人，但「本行」代「客戶」處理及以「本行」代名人義登記的「合資格證券」但僅屬被動受託人的身份除外。除本「條款及細則」所列明之責任外，「本行」就「客戶」的任何資金或資產均不承擔其他責任。
- 11.03 「本行」並無責任審查或核對任何「本行」代「客戶」處理的「合資格證券」之所有權或產權是否有效，亦不會就有關所有權或產權之任何疑點負責。

## 12. 「客戶」的彌償

除因「本行」或其職員或僱員之疏忽或故意失責外，並只限於直接及純粹由此而引致之直接及可合理地預見之損失及損害（如有），「客戶」須承擔賠償「本行」及其職員或僱員因向「客戶」提供「服務」或行使或維護本「條款及細則」賦予「本行」之權力及權利，而可能招致之任何債務、索償、要求、損失、損害賠償、稅項、訟費、費用及任何開支（包括按全部補償基準支付之合理法律費用及合理地產生之其他合理費用及開支，以及任何有關當局向「本行」收取涉及「客戶」所得溢利或收益之任何稅項）及一切法律行動及法律程序。「本行」有權從並由「本行」保管或控制的「客戶」資產中扣繳、保留或扣除「本行」合理認為合適的數額，或從「客戶」在「本行」之任何戶口扣繳、保留或扣除「本行」合理認為合適的金額，以支付本條文下「客戶」須向「本行」支付的欠款。此項彌償在「服務」不論任何原因終止後仍繼續維持有效。

## 13. 抵銷權利

「本行」有權隨時及無需給予事先通知，而將「客戶」在「本行」開立之任何戶口（不論是以「客戶」的個人名義或以「客戶」及任何其他人士聯名開立）內任何貨幣的正數結餘用作償還「客戶」欠付「本行」之任何債務（不論以任何身份欠付，亦不論是實際債務、或有債務、共同或個別債務）。如屬聯名戶口，「本行」可行使此抵銷權利，將該等聯名戶口內之任何正數結餘，用作償還該等一名或多名聯名戶口持有人欠付「本行」之任何債務。

## 14. 「本行」的記錄

「本行」的簿冊和記錄應是就「客戶」不時對「本行」的責任和債務的最終確證（明顯錯誤除外）。

## 15. 稅項

15.01 「客戶」就「服務」向「本行」支付的所有款項（不論是本「條款及細則」或與「服務」有關的任何其他文件預期的），均不得附帶任何形式之抵銷、反索償或條件，及須不含任何性質的現在或將來之稅款、扣除或預扣。如「客戶」在任何時候被要求從支付給「本行」的任何款項中扣除或預扣稅款或其他金額，則須增加「客戶」向「本行」應繳之金額，以確保在扣除或預扣所需金額後，「本行」在該項付款的到期日會收到並保留的淨額金額相當於無需作出該扣除或預扣的情況下會收到的金額。「客戶」須自行負責在適用的時限內向有關當局支付該等扣減或預扣款項。對於「本行」因「客戶」未能作出任何此類扣除或預扣，或未能在適用的時限內向有關當局支付此類扣除或預扣，或因未在相關付款的到期日增加付款金額而招致或蒙受的任何損失、責任、利息、罰金或成本和開支，「客戶」應彌償「本行」。在「本行」的要求下，「客戶」須從速向「本行」提供「本行」信納的證據，證明「客戶」已經作出了上述扣除或預扣，或（如適用）已經向有關當局支付了任何適當的款項。

15.02 本「條款及細則」預期的任何費用或收費均不包括任何增值稅、商品及服務稅或任何其他可能與該費用或收費有關的稅項。如須徵收任何增值稅、商品及服務稅或其他稅項，「客戶」應在支付相關費用或收費時同時支付所需稅款。

## 16. 個人資料

16.01 「客戶」確認並同意，所有由「客戶」應「本行」要求提供的或在「客戶」與「本行」交易過程中收集的有關客戶的個人資料及資訊（「資料」），可由「本行」根據「本行」不時向「客戶」

及其他人士提供的聲明、通函、通知或條款及細則所載的有關使用及披露個人資料的政策，為該等目的而持有、使用、處理及向該等人士透露。「客戶」亦確認並同意，「資料」可向任何債務追收代理、信貸資料服務機構或類似服務提供者披露，或由其持有、使用及處理，以核實該等「資料」或使其能夠向其他機構提供該等「資料」：(a) 以便其進行信貸及其他狀況檢查；及 (b) 協助其追收債務。「客戶」進一步確認並同意，「本行」可將該等「資料」轉移至香港境外地方，利用該等「資料」及與「客戶」有關的其他個人資料及資訊進行核對程序（如《個人資料（私隱）條例》所界定），以及提供有關「客戶」的銀行或信用證明。

- 16.02 「客戶」明確同意，在「本行」認為必要或適當的情況下，「本行」可將任何該等「資料」、詳情或資訊轉移給任何服務供應商（不論位於香港或香港境外），以便代表「本行」向「客戶」進行資料處理或提供任何服務。「本行」將繼續為保密該等「資料」、詳情及資訊負責。

## 17. 第三者權利

除「客戶」及「本行」以外，並無其他人士有權按《合約（第三者權利）條例》強制執行本「條款及細則」的任何條文，或享有本「條款及細則」的任何條文下的利益。

## 18. 約束效力

- 18.01 本「條款及細則」及於第 2.01 條列明的其他文件對「客戶」及「客戶」之遺產代理人、合法繼承人及受本「條款及細則」允許的受讓人均具有約束力。
- 18.02 如「投資融資交易戶口」和「投資融資結算戶口」的持有人多於一人者，本「條款及細則」及於第 2.01 條列明的其他文件對所有及每名戶口持有人均共同及各別具有約束力，儘管任何戶口持有人獲「本行」解除任何責任或因任何原因未受有效約束。

## 19. 雜項

- 19.01 「本行」乃根據《銀行業條例》註冊之持牌銀行，並已根據《證券及期貨條例》註冊，而獲許進行多項受規管活動（CE編號：AAH297）。
- 19.02 如下列事項有任何重大變動，則「本行」須通知「客戶」：第19.01條所述之資料或「本行」地址；「服務」；「客戶」就「服務」將支付予「本行」之收費、費用及其他報酬；或保證金要求（包括利息、催繳保證金通知以及「本行」無需「客戶」同意而可結清「客戶」倉盤之情況）。
- 19.03 「客戶」承認及同意：
- (a) 「本行」之其他客戶可不時持有類似「本行」可代「客戶」交易之「合資格證券」或其他資產的投資；
  - (b) 「本行」可為其本身或為其他「本行」客戶買賣「合資格證券」；
  - (c) 「本行」可與「本行」代「客戶」處理之「合資格證券」或其他投資產品之發行方或要約方存在銀行業務往來或其他財務關係；
  - (d) 「本行」職員、董事及／或僱員可同時出任第19.03(c)條所指發行方或要約方之職員、董事及／或僱員；

- (e) 「客戶」不可撤回地授權「本行」代「客戶」與「本行」集團任何其他成員及／或「本行」任何代理人進行任何交易，而「本行」可在任何該等交易享有利益，無需向「客戶」交待由該等交易而產生之任何利潤或利益；
- (f) 一項「交易」之實際「投資金額」只會在「結算日」當日決定。「本行」或其代表在任何時候就有關「交易」之報價均只供參考之用；
- (g) 除相關「交易」之買賣單據另有指明者外，「本行」乃作為「客戶」之代理代其在「服務」下進行該項「交易」；及
- (h) 於執行「指示」時，「本行」及其集團內之其他公司均可以主事人身份與「客戶」進行相關「交易」，以及進行與「本行」或其集團內之其他公司有直接或間接重大利益，或與其對「客戶」之責任有潛在衝突之「交易」。「本行」將確保該等「交易」不會以在實質上對「客戶」不利之條款進行，如同「本行」及其集團內之其他公司並未以主事人身份進行交易，或該等重大利益或潛在衝突未曾出現一樣。「本行」及其集團內之其他公司有權保留從該等「交易」及／或任何關連之交易所得之利潤、佣金、報酬及／或其他利益而無需向「客戶」作出交待。

## 20. 管轄法律及司法權管轄

「客戶」及「本行」均接受香港法院行使非專屬司法管轄權。然而，本「條款及細則」及於第2.01條列明的其他文件可在任何擁有管轄權之法院強制執行。

## 21. 有效文本

本「條款及細則」之英文本與中文譯本如有任何不一致，概以英文本為準。

## 附錄一

### 定義

「適用補倉比率」指由「本行」完全酌情釐定於任何有關時間適用並通知「客戶」之「戶口孖展比率」或「貸款市值比率」。「本行」可向「客戶」發出一段合理時間之事先通知後不時由「戶口孖展比率」轉為「貸款市值比率」，或由「貸款市值比率」轉為「戶口孖展比率」。

「適用規例」指任何適用法律、規例或法令，或任何監管機構、政府機關、司法機構、交易所或專業團體不時頒佈之規則、指示、指引、守則、通知或限制（不論是否具法律效力）。

「申請表」指「本行」不時指定用作申請「服務」的表格。

「授權人士」指獲「客戶」授權（連同簽署式樣）並按「本行」合理規定之方式不時知會「本行」可向「本行」發出「指示」之「人士」。

「可用結餘」指「可用額度」加上「投資融資結算戶口」中不時的戶口結餘（不論正數結餘（已結算即時可用資金的金額）或負數結餘）；而「可用結餘」在任何時候均不得低於零。

「可用額度」指「本行」可不時向「客戶」提供的「投資融資」本金金額，即下列兩項中較少者：

- (a) 下列兩項的總和：*(i)* 「抵押品價值」乘以「投資融資交易戶口」中持有的所有「抵押證券」的「抵押成數」及*(ii)* 「客戶」將會認購的「合資格證券」在相關時間的市值乘以「抵押成數」；及
- (b) 「額度上限」。

「本行」指恒生銀行有限公司（地址為香港德輔道中83號）、其繼承人及受讓人，及如文義允許，亦包括「本行」所委任作為其代名人或代理人以代表「本行」提供「服務」之任何人士。

「工作日」是指「本行」在香港向公眾開放營業的星期一至星期五（公眾假期除外）。

「額度上限」指「本行」不時酌情指定及批准的就「投資融資」在任何時候允許未償還的最終本金金額。

「抵押戶口」和「抵押證券」各在第4.01(a)條中定義。

「客戶」指「本行」向其提供「服務」之「人士」或每一名「人士」，並包括該等「人士」之任何遺產代理人或合法繼承人，及如文義允許，亦包括任何「授權人士」。

「實際抵押成數」指按下列公式計算的混合投資組合抵押成數：

$$\frac{\text{「可用額度」}}{\text{「抵押品價值」}} \times 100\%$$

「合資格證券」指未在任何證券交易所（不論在香港或海外）上市的證券，包括「本行」不時酌情指定或接受可在「服務」下處理的投資基金、債券和其他投資產品。

「匯率」指由一種貨幣兌換至另一種貨幣之兌換率。此兌換率乃「本行」根據有關外匯市場當時通行之兌換率決定。該兌換率是決定性的，並對「客戶」具有約束力。

「投資融資」指「本行」在「服務」下提供之循環透支服務，及如文義需要或允許，包括不時從「投資融資結算戶口」扣取的所有款項。

「強制出售門檻」指「本行」不時酌情就「戶口孖展比率」或「貸款市值比率」指定之百分比（將於「客戶」垂詢時知會「客戶」），用作決定「本行」何時可行使其根據第5.03條的強制出售權利。

「香港」指中華人民共和國香港特別行政區。

「債項」指「客戶」除了就「投資融資」外，以任何貨幣於現時或隨後任何時間到期或欠付「本行」之所有款項，或以任何形式不論是否就任何賬戶而可能或將會以任何貨幣欠付「本行」之所有款項（在每一種情況下，不論單獨或與任何其他人士共同或以任何形式、名義或方式，以及不論作為主要債務人或擔保人的欠債），連同截至繳款當日「客戶」按不時有效之利率及條款須支付之利息、費用及其他收費以及「本行」因追收「債項」或相關事宜而招致之所有代墊付費用及開支。

「不合資格證券」指在任何相關時間不屬於「合資格證券」的證券。

「即時覆盤服務」指「本行」根據第6條向「客戶」提供之覆盤服務。

「指示」指「本行」收到並且形式和實質均令「本行」滿意的「客戶」認購「合資格證券」的指示。

「投資金額」指，就認購「合資格證券」的指示而言，根據「本行」認為是「合資格證券」的現行市場價格，就相關「合資格證券」應付的認購價或結算金額。

「投資融資結算戶口」指以「客戶」的名義開立的往來戶口，該戶口由「客戶」指定並獲「本行」接受用作結算「交易」和「服務」項下的付款。

「投資融資交易戶口」指以「客戶」的名義開立的證券戶口，該戶口由「客戶」指定並獲「本行」接受用作持有「客戶」使用「服務」認購或代表「客戶」認購的證券，或由「本行」在「服務」下以其他方式處理的證券。

「貸款金額」指在任何相關時間就「投資融資」的欠款，即未償還的本金和利息的總和。

「抵押成數」就「客戶」認購或將認購的每項「合資格證券」而言，指就有關「合資格證券」的認購價金額可獲「投資融資」貸款的部份，成數由「本行」不時酌情指定。

「貸款市值比率」指按下列公式計算之貸款市值比率：

$$\frac{\text{「貸款金額」}}{\text{「抵押品價值」}} \times 100\%$$

「補倉提示」在第5.02條中定義。

「補倉門檻」指「本行」不時酌情就「戶口孖展比率」或「貸款市值比率」指定之百分比（將於「客戶」垂詢時知會「客戶」），用作決定「本行」何時可發出「補倉提示」。

「人士」包括個人、商號、公司、法團及非法團性質之組織。

「戶口孖展比率」指按下列公式計算之貸款與借貸限額比率：

$$\frac{\text{「貸款金額」}}{\text{「可用額度」}} \times 100\%$$

「服務」指「本行」為投資「合資格證券」可不時提供的投資融資服務，及如文義需要或允許，包括「投資融資」、「投資融資交易戶口」、「投資融資結算戶口」以及本「條款及細則」預期的所有相關服務及安排。

「抵押品價值」就於任何指定時間之任何「抵押證券」（不包括「不合資格證券」）而言，指由「本行」酌情釐定於有關時間於同類證券正常買賣之有關市場出售該項「抵押證券」可獲取之市價（扣除開支）。為免疑慮，「本行」可將某些「抵押證券」之價值評估為零或無價值，例如因任何原因而被凍結或受限制之「抵押證券」。

「結算日」就一項「交易」而言，指該「交易」的結算日。

「認購」就「合資格證券」而言，包括以任何方式購買或獲取。

「認購費用」就一項認購「合資格證券」而言，指與該項認購相關的所有佣金、經紀費和任何性質的費用、收費和開支。

「交易」指「本行」依據或由於一項「指示」或以其他方式根據本「條款及細則」而完成之交易。

## 詮釋

1. 除文義另有需要外，否則：
  - (a) 單數詞之含義包括複數詞，反之亦然；而單一性別之詞語亦包含所有性別；
  - (b) 所提述之本「條款及細則」或任何其他協議或文件，將詮釋為經不時修訂、修改或補充者；及
  - (c) 「包括」不是一個限制性的詞語，應被詮釋為包括，但不限於。
2. 除非另有說明，否則本「條款及細則」所指之條文或附件均指本「條款及細則」內之條文及附件。附件屬本「條款及細則」一部份。條文標題只供參考，不應影響本「條款及細則」的詮釋。