

香港場外結算有限公司
(香港交易及結算所有限公司附屬公司)

OTC CLEARING HONG KONG LIMITED
(A subsidiary of Hong Kong Exchanges and Clearing Limited)

通告 CIRCULAR

Subject: Amendments to the Clearing Rules and Clearing Procedures of OTC Clearing Hong Kong Limited (“**OTC Clear**”)

Enquiry: Hotline 2211 6508

Clearing Members of OTC Clear are requested to note that the Securities and Futures Commission has approved amendments to the Clearing Rules and Clearing Procedures in connection with the offering of client clearing services by clearing members incorporated in the People’s Republic of China (excluding Hong Kong, Macao Special Administrative Region, and the Taiwan area) (“**PRC**”) through their Hong Kong branch (each a “**PRC Clearing Member**”) and the acceptance of non-cash collateral from PRC Clearing Members.

The amendments, as set out in Appendix 1, will come into effect on Monday, 29 April 2019.

The amendments can be downloaded from the HKEX website at:

https://www.hkex.com.hk/Services/Rules-and-Forms-and-Fees/Rules/OTCClear/Rules?sc_lang=en

PRC Clearing Members must, prior to offering client clearing services to their clients, execute a Security Deed in the form prescribed in Appendix 2 and submit a copy of the Form NM1 with a copy of the executed Security Deed to OTC Clear to demonstrate compliance with the perfection requirements set out in section 334 of the Companies Ordinance (Cap. 622 of the Laws of Hong Kong) (the “**Companies Ordinance**”).

The prescribed form of Security Deed can be downloaded from the HKEX website at:

https://www.hkex.com.hk/Services/Rules-and-Forms-and-Fees/Forms/OTCDerivatives/Clearing/Operations--a--Technical?sc_lang=en

When executing the Security Deed for the first time (such Security Deed being the “**Original Security Deed**”), PRC Clearing Members must list in Schedule 2 of the Security Deed all the clients that they wish to offer client clearing services to.

If a relevant PRC Clearing Member wishes to offer client clearing services to additional clients after it has executed the Original Security Deed, it must execute an “Additional Security Deed” in order

to ensure that these additional clients are also covered and submit a copy of the Form NM1 to OTC Clear to demonstrate compliance with the perfection requirements set out in section 334 of the Companies Ordinance. Further Additional Security Deeds will also need to be executed each time further additional clients are on-boarded after the execution of an Additional Security Deed. Each Additional Security Deed has an Annex in which PRC Clearing Members should list all those clients to which such Additional Security Deed relates. Each Additional Security Deed should be in the prescribed form set out in Schedule 3 to the Original Security Deed.

Florence Leung
Head of Legal

Appendix 1

Amendments to OTC Clear's Clearing Rules and Clearing Procedures

OTC Clear Rates and FX Derivatives Clearing Rules

101. In these Clearing Rules, unless the context otherwise requires:

<p><u>“Affected AET Contract”</u></p>	<p><u>means any Contract automatically terminated in accordance with Clearing Rule 1303 that was registered in the name of the relevant Defaulting Clearing Member in relation to its Client Clearing Services immediately prior to the occurrence of the relevant Automatic Early Termination Event;</u></p>
<p>“Affected Contract”</p>	<p>means:</p> <p><u>(1) if the relevant DMP Event with respect to the Defaulting Clearing Member is not an Automatic Early Termination Event, any Contract registered in the name of the Defaulting Clearing Member in relation to its Client Clearing Services; or</u></p> <p><u>(2) if the relevant DMP Event with respect to the Defaulting Clearing Member is an Automatic Early Termination Event, any Affected AET Contract;</u></p>
<p><u>“Non-Porting AET Contract”</u></p>	<p><u>means, in respect of a Porting Client of a Defaulting Clearing Member in respect of which an Automatic Early Termination Event has occurred, any Affected AET Contract that was recorded in the relevant Client Position Account immediately prior to the occurrence of that Automatic Early Termination Event and which had a scheduled Termination Date or Settlement Date, as the case may be, that would have fallen prior to the relevant porting being completed;</u></p>
<p><u>“Porting AET Contract”</u></p>	<p><u>means, in respect of a Porting Client of a Defaulting Clearing Member in respect of which an Automatic Early Termination Event has occurred, any Affected AET Contract that was recorded in the relevant Client Position Account immediately prior to the occurrence of that Automatic Early Termination Event and which had a scheduled Termination Date or Settlement Date that would have fallen on or after the relevant porting being completed;</u></p>
<p>“Porting Instruction”</p>	<p>means the instructions to OTC Clear, in such form as OTC Clear may require from time to time, provided by a Client, its original Clearing Member and the Replacement Clearing Member appointed by such Client, which evidence the consent of all parties thereto to:</p> <p><u>(1) if a DMP Event (other than an Automatic Early Termination Event) occurs with respect to the original Clearing Member, terminate all Affected Contracts registered in the name of the original Clearing Member in respect of the Client Position Account relating to such Client and re-establishing the same with the Replacement Clearing Member—should an Event of Default occur with respect to the original Clearing Member; or</u></p> <p><u>(2) if an Automatic Early Termination Event occurs with respect to</u></p>

	<p><u>the original Clearing Member, enter into new Contracts with the Replacement Clearing Member on the same terms as the Porting AET Contracts for such Client.</u></p>
<p>“Security Assignment Deed” “Security Deed”</p>	<p>means a security assignment deed or similar instrument under which <u>security deed or similar instrument (that is in form and substance satisfactory to OTC Clear) entered into by a Non Rule-Based Clearing Member in favour of its Clients(s) in respect of any relevant Client Entitlements under which such Clearing Member;</u> charges, assigns and agrees to assign absolutely to its Client(s) its rights, title and interest (present and future) in and to the Contracts booked in its Client Position Account(s) designated by the Clearing Member for such Client(s) and the Collateral standing to the credit of the corresponding Client Collateral Account(s) to such Client(s) as security for the amounts owing to such Client(s) under the relevant Client Clearing Agreement(s);</p>

108. In the event of any conflict between:

- (1) any definition or provision contained in these Clearing Rules, the Clearing Procedures or any Clearing Notices, unless OTC Clear otherwise determines, the document first listed shall have precedence and shall prevail over the documents listed later, in descending order, as follows:
 - (a) these Clearing Rules;
 - (b) the Clearing Procedures; and
 - (c) the Clearing Notices.
- (2) the Clearing Rules or the Membership Agreement on the one hand and the Client Clearing Agreement, the ~~Security Assignment Deed~~Security Deed or any Deed of Charge on the other, the Clearing Rules or the Membership Agreement shall prevail.
- (3) the Client Clearing Agreement and the ~~Security Assignment Deed~~Security Deed, the ~~Security Assignment Deed~~Security Deed will prevail over the Client Clearing Agreement.

407. Save and except for, in the case of a Clearing Member who is a Rule-Based Clearing Member, the right of its Client to receive any Client Entitlement from OTC Clear under Clearing Rules 1308A, 1308B, 1309 and 1309A and, in the case of a Non Rule-Based Clearing Member, ~~the assignment to its Client in respect of the right to receive any Client Entitlement from OTC Clear under the Security Assignment Deed~~any Encumbrance created pursuant to a Security Deed, a Clearing Member shall not assign any of its rights, benefits, privileges or obligations as a Clearing Member and such rights, benefits and privileges shall be incapable of assignment.

815. Save and except for, in the case of a Clearing Member who is a Rule-Based Clearing Member, the right of its Client to receive any Client Entitlement from OTC Clear under Clearing Rules 1308A, 1308B, 1309 and 1309A and, in the case of a Non Rule-Based Clearing Member, ~~the assignment to its Client in respect of the right to receive any Client~~

~~Entitlement from OTC Clear under the Security Assignment Deed~~ any Encumbrance created pursuant to a Security Deed, a Clearing Member shall not assign, novate, transfer or create any Encumbrance whatsoever in relation to any of its rights, liabilities or obligations under a Contract.

817. A Clearing Member providing Client Clearing Services to its Clients shall be liable to OTC Clear and be responsible for all its obligations as principal in respect of the Contracts and Client Accounts registered in its name. Each Clearing Member acknowledges that, save and except for the Client's right to receive any Client Entitlement directly from OTC Clear under Clearing Rules 1309 or 1309A (in the case of a Clearing Member who is a Rule-Based Clearing Member) or ~~under the Security Assignment Deed~~ pursuant to a Security Deed ~~pursuant to the terms therein~~ (in the case of a Clearing Member who is a Non Rule-Based Clearing Member), OTC Clear owes no obligation towards any Client or any other Person that is not a Clearing Member whatsoever in respect of the Contracts or any Client Accounts. It is the responsibility of the Clearing Member (and not OTC Clear) to ensure its own compliance with Applicable Laws relating to conduct of business, client money and segregation of client assets. Subject to the provisions of these Clearing Rules, Client Clearing Services may be provided by a Clearing Member to its Clients on whatever terms the Clearing Member decides should apply, provided that each Clearing Member must, prior to providing Client Clearing Services to a Client:

- (1) in the case of a Clearing Member who is a Non Rule-Based Clearing Member, enter into a ~~Security Assignment Deed in respect~~ Security Deed in favour of that Client which is legal, valid, binding and enforceable, in accordance with its terms, and in relation to amounts due to it from OTC Clear pursuant to the Default Management Process and provide written confirmation to OTC Clear that it has complied with Clearing Rule 818 in respect of that Security Deed;
- (2) provide written confirmation to OTC Clear showing that it has delivered the Client Clearing Services Notice to such Client, and has undertaken to do all such things as OTC Clear may from time to time reasonably require to ensure that such Client is informed of the nature, costs and risks of the Client Clearing Services (including each Client Clearing Category);
- (3) enter into a Client Clearing Agreement with that Client that incorporates provisions with the following effect:
 - (a) in the case of a Clearing Member who is a Rule-Based Clearing Member, the Clearing Member confirms that the positions and Collateral held in the relevant Client Account(s) by the Clearing Member as well as any Client Entitlement calculated by OTC Clear in respect thereto each relate to the corresponding positions between the Client and the Clearing Member and that, pursuant to the power of OTC Clear to make rules under section 40(2A) of the SFO, following an Event of Default of the Clearing Member, in the case of a Non-Porting Client such Client Entitlement shall be returned by OTC Clear directly to that Client pursuant to Clearing Rules 1308A and 1309 and in the case of a Porting Client such Client Entitlement shall be returned by OTC Clear directly to that Client pursuant to Clearing Rules 1308B and 1309A;
 - (b) in the case of a Clearing Member who is a Non Rule-Based Clearing Member, each of the Clearing Member and the Client confirms that the positions and

Collateral held in the relevant Client Account(s) by the Clearing Member as well as any Client Entitlement calculated by OTC Clear in respect thereto each relate to the corresponding positions between the Client and the Clearing Member and, following an Event of Default of the Clearing Member, in the case of a Non-Porting Client such Client Entitlement shall be returned by OTC Clear to that Client pursuant to Clearing Rule 1309 and the terms of the ~~Security Assignment Deed~~Security Deed between entered into by the Defaulting Clearing Member ~~and in~~favour of such Client and in the case of a Porting Client such Client Entitlement shall be returned by OTC Clear to that Client pursuant to Clearing Rule 1309A and the terms of the ~~Security Assignment Deed~~Security Deed between entered into by the Defaulting Clearing Member ~~and in~~favour of such Client;

- (c) Corresponding Client Transactions shall be transacted pursuant to the terms of the Client Clearing Agreement and be segregated (contractually or otherwise) from any other transactions entered into between the Clearing Member and the Client;
- (d) upon the occurrence or designation of an Early Termination Date in respect of the Clearing Member following an Event of Default, any Corresponding Client Transaction with the Defaulting Clearing Member must either (i) be automatically terminated and re-established with, transferred or novated to a Replacement Clearing Member or (ii) the Client must have the right to terminate such transaction and re-establish, transfer or novate such transaction to a Replacement Clearing Member;
- (e) if a Corresponding Client Transaction is terminated following such Early Termination Date, the net replacement value of the Corresponding Client Transaction shall be equal to the value attributed by OTC Clear to the Contract to which the Corresponding Client Transaction relates following such Early Termination Date;
- (f) any non-cash collateral in respect of Corresponding Client Transactions shall be provided by way of full title transfer from the Client to the Clearing Member;
- (g) that "two way payments" arise in the event of a termination of all Corresponding Client Transactions, the substantive effect of which is that either a Clearing Member or a Client will be entitled to receive payment under the relevant termination provisions if the net replacement value of all terminated Corresponding Client Transactions effected under the Client Clearing Agreement is in its favour;
- (h) an acknowledgement from the Client that the provision of Client Clearing Service by the Clearing Member to it will not give rise to any liability owed by OTC Clear to the Client;
- (i) the Clearing Member shall have the right in the event of a Rates and FX Clearing Termination Event relating to OTC Clear, to terminate the Corresponding Client Transaction;
- (j) upon the request of a Transferee Clearing Member to OTC Clear to port to the Transferee Clearing Member a Client's portfolio of Contracts registered with the

Transferor Clearing Member in the relevant Client Position Account in full pursuant to Clearing Rule 830 or in part pursuant to Clearing Rule 831 from the Transferor Clearing Member to the Transferee Clearing Member, the Transferor Clearing Member shall have the right to (i) terminate the relevant Corresponding Client Transaction with such Client and/or (ii) have the relevant Corresponding Client Transaction re-established with, transferred or novated to the Transferee Clearing Member;

- (k) in the event that OTC Clear exercises its right under section 3.19 of the Clearing Procedures to vary the Economic Terms of a Standard Cross-currency Rates Derivatives Contract, the relevant Affected Clearing Member shall have the right to vary the terms and conditions of the relevant Corresponding Client Transaction to reflect such variation;
- (l) the Clearing Member shall only accept from the Client, as collateral for the Corresponding Client Transactions, the same types of Collateral which OTC Clear accepts from the Clearing Member in respect of the relevant Client Position Account to which Contracts relating to such Corresponding Client Transactions are recorded; and
- (m) no margin financing or collateral transformation services shall be provided by the Clearing Member to the Client under the Client Clearing Agreement,

and to the extent there is no Client Clearing Agreement in full force and effect or there is any deficiency in the Client Clearing Agreement, the Clearing Member and the Client will be deemed to have entered into a binding agreement into which the terms set out in this Clearing Rule 817(3) shall be deemed to have been incorporated. Any changes made to the terms of a Contract by OTC Clear shall be deemed to be reflected in the Corresponding Client Transaction.

818. Where any formalities or registration requirements apply in respect of ~~the Security Assignment Deed~~ Security Deed (and any other document which OTC Clear may from time to time determine), a Clearing Member is required to comply with such obligations or to procure by agreement that such requirements are to be complied with.

824. Each Clearing Member represents that it has duly informed each of its Clients that any amounts or monies provided by a Clearing Member to OTC Clear for Margin purposes in respect of its Client Position Account(s) (whether such amounts or monies are provided by the Client or not) are transferred on an outright basis with the effect that, except for the Client's right to receive any Client Entitlement directly from OTC Clear under Clearing Rules 1308A, 1308B, 1309 and 1309A (in the case of a Clearing Member who is a Rule-Based Clearing Member) or ~~under the Security Assignment Deed pursuant to a Security Deed pursuant to the terms therein~~ (in the case of a Clearing Member who is a Non Rule-Based Clearing Member) following the default of such Clearing Member, OTC Clear shall have full legal and equitable interest in the amounts or monies so transferred.

833. In addition to the requirements set out in the Clearing Procedures, a full portfolio porting and a partial portfolio porting must each satisfy the following conditions precedent:

- (1) such porting would not violate or result in the violation of any Applicable Laws;
- (2) the porting would not cause the Position Limits applicable to either the Transferee Clearing Member or the Client to be exceeded;
- (3) the relevant Client(s), the Transferor Clearing Member and the Transferee Clearing Member have each executed all documents necessary or required by OTC Clear in order to effect such porting (including, where applicable, a ~~Security Assignment Deed~~Security Deed or Deed of Charge); and
- (4) in the event that the porting will lead to a requirement for the Transferor Clearing Member to post additional Collateral to OTC Clear, the Transferor Clearing Member posts sufficient Collateral to OTC Clear.

By making a full portfolio porting or partial portfolio porting request, both the Transferor Clearing Member and the Transferee Clearing Member shall be deemed to have represented to OTC Clear that all of the relevant conditions to such porting set forth herein and all the requirements set forth in the Clearing Procedures have been satisfied.

1220. Each Clearing Member represents and warrants to OTC Clear that:

- (1) immediately prior to delivery of the Collateral to OTC Clear, the Clearing Member is the sole legal and beneficial owner of all Collateral delivered to OTC Clear;
- (2) any Collateral delivered to OTC Clear pursuant to these Clearing Rules is not subject to any Encumbrance whatsoever save for:
 - (a) any Encumbrance in favour of OTC Clear;
 - (b) any liens granted to the clearing systems through which the Collateral is being transferred;
 - (c) in the case of a Clearing Member who is a Rule-Based Clearing Member, the right of its Client to receive any Client Entitlement from OTC Clear under Clearing Rules 1308A and 1309; and
 - (d) in the case of a Clearing Member who is a Non Rule-Based Clearing Member, any Encumbrance created pursuant to a Security Deed~~the assignment of right to the Client to receive any Client Entitlement from OTC Clear under the Security Assignment~~
- (3) in delivering the Collateral to OTC Clear pursuant to these Clearing Rules, the Clearing Member is not in breach of any of its contractual obligations towards any third party or under any Applicable Laws;
- (4) all filings and registrations necessary for the purpose of the creation, perfection, protection and maintenance of any security conferred or intended to be conferred on OTC Clear by or pursuant to any Deed of Charge between OTC Clear and the Clearing Member have been effected and are in full force and effect; and
- (5) any Deed of Charge between OTC Clear and the Clearing Member creates in favour of OTC Clear the security which it is expressed to create with the ranking and priority it is expressed to have;

The representations and warranties made by a Clearing Member pursuant to this Clearing Rule 1220 shall be deemed to be repeated by such Clearing Member on each day Collateral is delivered to OTC Clear pursuant to these Clearing Rules.

1220A. Each Non Rule-Based Clearing Member represents and warrants to OTC Clear that:

- (1) all filings and registrations necessary for the purpose of the creation, perfection, protection and maintenance of any security conferred or intended to be conferred on each Client by or pursuant to any Security Deed have been effected and are in full force and effect; and
- (2) any Security Deed creates in favour of each Client identified therein security over the relevant Client Entitlement in respect of such Client that is legal, valid, binding and enforceable, in accordance with the terms of such deed.

The representations and warranties made by a Non Rule-Based Clearing Member pursuant to this Clearing Rule 1220A shall be deemed to be repeated by such Clearing Member on each day on which an Original Transaction is submitted for registration as part of such Clearing Member's Client Clearing Services and each day on which Collateral is delivered to OTC Clear pursuant to these Clearing Rules and in connection with such Clearing Member's Client Clearing Services.

1305. Upon the occurrence of an Automatic Early Termination Event or delivery of a Notice of Default with respect to a Defaulting Clearing Member, OTC Clear may take such steps with respect to such Defaulting Clearing Member as in the circumstances appear to it, in its absolute discretion, best calculated:

- (1) to discharge the Defaulting Clearing Member's rights, obligations and liabilities under or in respect of one or more or all Contracts to which the Defaulting Clearing Member is party;
- (2) to minimize losses or the potential for losses to OTC Clear as a result of the default of the Defaulting Clearing Member; or
- (3) without the need for any prior notice to or consent of such Defaulting Clearing Member:
 - (a) (where an Automatic Early Termination Event has not occurred) to terminate any Contract of the Defaulting Clearing Member by designating an Early Termination Date in respect of such Contract;
 - (b) to apply any Collateral in the form of cash, and arranging for the liquidation of any non-cash Collateral and applying the proceeds of the realization of non-cash Collateral, for the absorption of losses incurred by OTC Clear as a result of the default of the Defaulting Clearing Member;
 - (c) to obtain any advice or assistance from the Defaulting Clearing Member and/or any third party as OTC Clear may deem necessary for any matter arising out of or in connection with an Event of Default and at the expense of the Defaulting Clearing Member, and/or

- (d) to complete the process set out in Clearing Rules 1306, 1306A, 1306B, 1306C and 1307 in relation to such Defaulting Clearing Member,

in each case, acting in consultation with the Default Management Group and in accordance with the Default Management Process. ~~Subject to Applicable Laws, OTC Clear agrees to exercise its default powers in such a manner as to comply with its obligations under any relevant Security Deedthe Security Assignment Deed.~~

Upon the occurrence of an Automatic Early Termination Event or delivery of a Notice of Default in respect of a Clearing Member, OTC Clear shall not be obliged to: (a) pay any Notional Exchange Failure Adjustment Amount payable by it in respect of such Clearing Member; or (b) make any further payments or deliveries in respect of any Contract registered in the name of such Clearing Member, in either case which would otherwise have fallen due on or after such time, and upon the occurrence of an Early Termination Date in respect of such Contracts, any obligations to pay such Notional Exchange Failure Adjustment Amount or to make such further payments or deliveries and any amounts that are due but unpaid in respect of such Contracts shall be satisfied by the payment by, or to, the Defaulting Clearing Member of a single net sum to be determined in accordance with Clearing Rules 1306, 1306A, 1306B, 1306C and 1307, provided that if a Rates and FX Clearing Termination Event occurs at any time prior to the completion of the Default Management Process with respect to a Defaulting Clearing Member, no net sum shall be payable in accordance with Clearing Rules 1306, 1306A, 1306B, 1306C and 1307 and the applicable termination amounts shall instead be determined in accordance with Clearing Rules 1531 to 1540.

1309. OTC Clear will determine the Client Entitlement in respect of each Non-Porting Client in accordance with the following:

(1) the Client Entitlement relating to each Client Clearing Category 1 Position Account to which Contracts relating to a Non-Porting Client are recorded shall be an amount equal to (i) the Non-Porting Client Credit in respect of such Client Position Account to which Contracts relating to such Non-Porting Client is recorded (if any) as determined in accordance with Clearing Rule 1306A or (ii) (following the occurrence of a Rates and FX Clearing Termination Event) the Limited Recourse Applicable Percentage of the Limited Recourse CM Receivable in respect of such Client Position Account as determined in accordance with Clearing Rule 1538.

(1A) the Client Entitlement relating to each Client Clearing Category 2 Position Account to which Contracts relating to a Non-Porting Client are recorded shall be the greater of zero and an amount equal to the product of:

(a) the hypothetical Initial Margin with respect to the Affected Contracts of such Non-Porting Client (calculated on a portfolio margining basis assuming that all Affected Contracts of such Non-Porting Client were booked into a single separate hypothetical position account assigned solely to such Non-Porting Client) divided by the aggregate of the hypothetical Initial Margin with respect to the Affected Contracts relating to all Non-Porting Clients of such Client Clearing Category 2 Position Account (each such hypothetical Initial Margin for each individual Non-Porting Client being calculated on a portfolio margining basis assuming that the Affected Contracts of each individual Non-Porting Client were booked into a single separate hypothetical position account assigned solely to such individual Non-

Porting Client), in each case, such Initial Margin being calculated during the Portfolio Novation Cycle immediately preceding the occurrence of the relevant DMP Event; and

- (b) (i) the Non-Porting Client Credit in respect of such Client Position Account to which Contracts relating to such Non-Porting Clients are recorded (if any) as determined in accordance with Clearing Rule 1306A or (ii) (following the occurrence of a Rates and FX Clearing Termination Event) the Limited Recourse Applicable Percentage of the Limited Recourse CM Receivable in respect of such Client Position Account as determined in accordance with Clearing Rule 1538.
- (2) OTC Clear will make any determination pursuant to Clearing Rules 1308A and 1309 using its own records based on the information provided to it by the Defaulting Clearing Member. OTC Clear shall be entitled to rely on such records without conducting any independent verification in respect of the same. Notwithstanding the immediately foregoing, OTC Clear may, in its absolute discretion (i) adjust such records to reflect any factors reasonably taken into consideration when performing such valuation and/or (ii) withhold delivery of any Client Entitlement until such time as the Defaulting Clearing Member or its representative provides to OTC Clear any information requested by OTC Clear.
- (3) Following the calculation of a Client Entitlement, where the relevant Client instructs OTC Clear to pay an amount to it equal to the Client Entitlement due to be returned in respect of it to the Defaulting Clearing Member, then subject to entering into relevant documentation between OTC Clear and the relevant Client (which may, without limitation, include an indemnity (secured or otherwise) to OTC Clear in respect of any loss or liability arising from the legal invalidity of any payment of the Client Entitlement to the Client), OTC Clear shall:
- ~~(a) in the case of a Clearing Member who is a Rule-Based Clearing Member, determine, in the its sole and absolute discretion, of OTC Clear the period of time during which it will give effect to instructions received from its Client pursuant to Clearing Rule 1309(3) and, within such period of time, pay the Client Entitlement directly to the Client instead of returning the same to the Defaulting Clearing Member; or~~
- ~~(b) in the case of a Clearing Member who is a Non Rule-Based Clearing Member, pay the Client Entitlement directly to the Client instead of returning the same to the Defaulting Clearing Member pursuant to the terms of the Security Deed entered by the Defaulting Clearing Member in favour of such Client. Security Assignment Deed between the Defaulting Clearing Member and such Client.~~

If the relevant Client fails to enter into relevant documentation with OTC Clear and/or, if applicable, provide OTC Clear with appropriate documentation, each as required under this Clearing Rule 1309(3), OTC Clear shall reserve the right to withhold the delivery of any Client Entitlement until such time such relevant documentation has been properly entered into with OTC Clear and/or, if applicable, such appropriate documentation has been properly provided to OTC Clear.

1309A. OTC Clear will determine the Client Entitlement in respect of each Porting Client in accordance with the following:

(1) if the relevant DMP Event with respect to the Defaulting Clearing Member is not an Automatic Early Termination Event:

(a) the Client Entitlement relating to each Client Clearing Category 1 Position Account to which Contracts (including, for the avoidance of doubt, any Non-Porting Contracts) relating to a Porting Client are (or, immediately prior to the relevant scheduled Termination Date or Settlement Date, as the case may be, were) recorded shall be the aggregate of all amounts that have become due and payable by OTC Clear to the Defaulting Clearing Member on or after the date the relevant DMP Event in respect of any Contracts (including, for the avoidance of doubt, any Non-Porting Contracts) recorded in the relevant Client Position Account which have not already been paid (without prejudice to, and after giving effect to, any rights of set-off, netting and/or currency conversion under the Clearing Rules); and

~~(1A)~~(b) the Client Entitlement relating to each Client Clearing Category 2 Position Account to which Contracts (including, for the avoidance of doubt, any Non-Porting Contracts) relating to a Porting Client are (or, immediately prior to the relevant scheduled Termination Date or Settlement Date, as the case may be, were) recorded shall be the greater of zero and an amount equal to the product of:

~~(a)~~ (i) an amount equal to:

(iA) the hypothetical net amount payable by OTC Clear to the Defaulting Clearing Member in respect of all amounts that have become due and payable by OTC Clear to the Defaulting Clearing Member or by the Defaulting Clearing Member to OTC Clear, in each case on or after the date the relevant DMP Event occurs in respect of any Contracts (including, for the avoidance of doubt, any Non-Porting Contracts) relating to such Porting Client recorded in the relevant Client Position Account which have not already been paid (calculated on a hypothetical basis after giving effect to any rights of set-off or netting under the Clearing Rules and after converting any amounts denominated in other currencies into the Base Currency at such rate prevailing at the time of the calculation as OTC Clear shall reasonably select) (to the extent such hypothetical net sum is a positive number, such amount a **“Porting Client Hypothetical Net Receivable”**); divided by

(iB) the sum of all Porting Client Hypothetical Net Receivables for each of the Porting Clients sharing the relevant Client Clearing Category 2 Position Account; and

~~(b)~~(ii) the aggregate of all amounts that have become due and payable by OTC Clear to the Defaulting Clearing Member on or after the date the relevant DMP Event occurs in respect of any Contracts (including, for the avoidance of doubt, any Non-Porting Contracts) recorded in the relevant Client Position Account which have not already been paid (without prejudice to, and after giving effect to, any rights of set-off, netting and/or currency conversion under the Clearing Rules).

(1A) if the relevant DMP Event with respect to the Defaulting Clearing Member is an Automatic Early Termination Event:

(a) the Client Entitlement relating to relating to a Porting Client which is a Client Clearing Category 1 Client shall be the positive net sum (if any) determined in accordance with Clearing Rule 1703(1A)(a)(ii) in respect of that Porting Client; and

(b) the Client Entitlement relating to a Porting Client which is a Client Clearing Category 2 Client shall be the greater of zero and an amount equal to the product of:

(i) the hypothetical Initial Margin with respect to the Non-Porting AET Contracts of such Porting Client (calculated on a portfolio margining basis assuming that all Non-Porting AET Contracts of such Porting Client had not terminated and were booked into a single separate hypothetical position account assigned solely to such Porting Client) divided by the aggregate of the hypothetical Initial Margin with respect to the Non-Porting AET Contracts relating to all Porting Clients of the relevant Client Clearing Category 2 Position Account (each such hypothetical Initial Margin for each individual Porting Client being calculated on a portfolio margining basis assuming that the Non-Porting AET Contracts of each individual Porting Client were not terminated and were booked into a single separate hypothetical position account assigned solely to such individual Porting Client), in each case, such Initial Margin being calculated during the Portfolio Novation Cycle immediately preceding the occurrence of the relevant DMP Event; and

(ii) the positive net sum (if any) determined in accordance with Clearing Rule 1704(1A)(a)(ii) in respect of the relevant Client Clearing Category 2 Position Account.

(2) OTC Clear will make any determination pursuant to Clearing Rules 1308B and 1309A using its own records based on the information provided to it by the Defaulting Clearing Member. OTC Clear shall be entitled to rely on such records without conducting any independent verification in respect of the same. Notwithstanding the immediately foregoing, OTC Clear may, in its absolute discretion (i) adjust such records to reflect any factors reasonably taken into consideration when performing such valuation and/or (ii) withhold delivery of any Client Entitlement until such time as the Defaulting Clearing Member or its representative provides to OTC Clear any information requested by OTC Clear.

(3) Following the calculation of a Client Entitlement, where the relevant Client instructs OTC Clear to pay an amount to it equal to the Client Entitlement due to be returned in respect of it to the Defaulting Clearing Member, then subject to entering into relevant documentation between OTC Clear and the relevant Client (which may, without limitation, include an indemnity (secured or otherwise) to OTC Clear in respect of any loss or liability arising from the legal invalidity of any payment of the Client Entitlement to the Client), OTC Clear shall:

~~(a) in the case of a Clearing Member who is a Rule-Based Clearing Member, determine, in the-its sole and absolute discretion, of OTC Clear the period of time during which it will give effect to instructions received from its Client pursuant to Clearing Rule~~

1309A(3) and, within such period of time, pay the Client Entitlement directly to the Client instead of returning the same to the Defaulting Clearing Member; ~~or~~

~~(b) in the case of a Clearing Member who is a Non-Rule-Based Clearing Member, pay the Client Entitlement directly to the Client instead of returning the same to the Defaulting Clearing Member pursuant to the terms of the Security Deed entered into by the Defaulting Clearing Member in favour of such Client. Security Assignment Deed between the Defaulting Clearing Member and such Client.~~

If the relevant Client fails to enter into relevant documentation with OTC Clear and/or, if applicable, provide OTC Clear with appropriate documentation, each as required under this Clearing Rule 1309A(3), OTC Clear shall reserve the right to withhold the delivery of any Client Entitlement until such time such relevant documentation has been properly entered into with OTC Clear and/or, if applicable, such appropriate documentation has been properly provided to OTC Clear.

1310. For the purpose of the processes set out in Clearing Rule 1306 to 1309, OTC Clear may take into account any Client's interest in any Collateral or proceeds thereof forming part of its Client Entitlement pursuant to Clearing Rules 1308A and 1309 and, if applicable, ~~the any~~ relevant ~~Security Assignment Deed~~ Security Deed, and the operations of section 56(1) shall be modified by this Clearing Rule 1310, as permitted under section 56(2) of the SFO.

1539. Where a Limited Recourse CM Receivable relates to a Client Position Account of one or more Non-Porting Clients of a Defaulting Clearing Member, and subject to entering into relevant documentation between OTC Clear and the relevant Non-Porting Client(s) (which may, without limitation, include an indemnity (secured or otherwise) to OTC Clear in respect of any loss or liability arising from the legal invalidity of any payment of the relevant Limited Recourse CM Receivable to the Client(s)), OTC Clear shall pay any amount payable by it under Clearing Rule 1538(3) in relation to such Limited Recourse CM Receivable directly to the relevant Non-Porting Client(s) as Client Entitlement in accordance with Clearing Rules 1308A and 1309. For the purpose of this Clearing Rule 1539, OTC Clear may take into account any Non-Porting Client's interest in any Collateral or proceeds thereof pursuant to Clearing Rules 1308A and 1309 and, if applicable, ~~the any~~ relevant ~~Security Assignment Deed~~ Security Deed, and the operations of section 56(1) of the SFO shall be modified by this Clearing Rule 1539, as permitted under section 56(2) of the SFO.

1703. In respect of all Affected Contracts registered in the name of a Defaulting Clearing Member in respect of a Client Clearing Category 1 Position Account relating to a Client, provided that OTC Clear is reasonably satisfied that (i) the Replacement Clearing Member has been appointed prior to the occurrence of the relevant DMP Event, (ii) it has received completed Porting Instructions by 5:00pm (Hong Kong time) on the OTC Clear Clearing Day immediately following the occurrence of such DMP Event, (iii) it has further received the consent of the appointed Replacement Clearing Member to accept the porting of all such Affected Contracts by 5:00pm (Hong Kong time) on the OTC Clear Clearing Day immediately following the occurrence of such DMP Event, (iv) no DMP Event has occurred with respect to the Replacement Clearing Member at the time of purported porting, and (v) the relevant margin and credit check relevant to the purported porting is successfully passed:

(1) if the relevant DMP Event with respect to the Defaulting Clearing Member is not an Automatic Early Termination Event, OTC Clear shall terminate and close-out such

Affected Contracts at their market value (as determined by OTC Clear in its discretion) and enter into new Contracts on the same terms to such Affected Contracts with the appointed Replacement Clearing Member;

(1A) if the relevant DMP Event with respect to the Defaulting Clearing Member is an Automatic Early Termination Event:

(a) in respect of all such Affected Contracts that are Non-Porting AET Contracts:

(i) OTC Clear will determine the aggregate trade value in respect of all such Non-Porting AET Contracts as at the relevant Early Termination Date. Such aggregate trade value may be zero, positive or negative. A positive aggregate trade value indicates a net sum being payable by OTC Clear to the Defaulting Clearing Member in respect of such Non-Porting AET Contracts; and a negative aggregate trade value indicates a net sum being payable by the Defaulting Clearing Member to OTC Clear in respect of such Non-Porting AET Contracts;

(ii) if the aggregate trade value determined pursuant to sub-paragraph (i) above is a positive number, such value shall be netted against any losses incurred by OTC Clear relating to such Non-Porting AET Contracts as a result of the default of the Defaulting Clearing Member. If the aggregate trade value determined pursuant to sub-paragraph (i) above is zero or a negative number, such value shall be aggregated with any such losses;

(iii) if the net sum determined pursuant to sub-paragraph (ii) is a negative number, the Outright Transfer Margin Balance, if any, relating to the relevant Client Clearing Category 1 Position Account and, if necessary, any proceeds of enforcement of any non-cash Collateral comprising the Margin Balance of the corresponding Collateral Account (and any income and redemption proceeds thereon that have not already been paid to or withdrawn by the Defaulting Clearing Member) shall be reduced by an amount equal to the absolute value of such net sum; and

(iv) if the net sum determined pursuant to sub-paragraph (ii) is a positive number, such net sum shall form part of the Client Entitlement to be returned to the relevant Client pursuant to Clearing Rule 1309A; and

(b) in respect of all such Affected Contracts that are Porting AET Contracts, OTC Clear shall enter into new Contracts with the appointed Replacement Clearing Member on the same terms as such Porting AET Contracts;

(2) pursuant to the terms of the Client Clearing Agreement between the Defaulting Clearing Member and such Client, OTC Clear shall transfer, on account of such Client, the Client Clearing Category 1 Account Balance relating to such Client (excluding any Collateral recorded in the Client Clearing Category 1 Collateral Account relating to such Client that is subject to a Deed of Charge between the Defaulting Clearing Member and OTC Clear

in respect of the Client Collateral Account(s)) to the appointed Replacement Clearing Member;

- (3) the amount due to be returned to the Defaulting Clearing Member in respect of such Client Clearing Category 1 Position Account and related Client Clearing Category 1 Collateral Account shall be reduced by an amount equal to the Client Clearing Category 1 Account Balance referred to in sub-paragraph (2) above; and
- (4) in respect of any Collateral recorded in the Client Clearing Category 1 Collateral Account relating to such Client that is subject to a Deed of Charge between the Defaulting Clearing Member and OTC Clear in respect of the Client Collateral Account(s), porting shall be effected as follows:
 - (a) any equities of redemption held by the Defaulting Clearing Member in respect of that Collateral shall be assigned absolutely to the Replacement Clearing Member, such that those equities of redemption become subject to the security interests granted in favour of OTC Clear pursuant to the Deed of Charge between the Replacement Clearing Member and OTC Clear; and
 - (b) OTC Clear shall release that Collateral from the security interests granted in favour of OTC Clear pursuant to the relevant Deed of Charge between the Defaulting Clearing Member and OTC Clear, such that the Replacement Clearing Member becomes entitled to redeem that Collateral pursuant to any equities of redemption assigned to it pursuant to sub-paragraph (a) above.

1704. In respect of all Affected Contracts registered in the name of a Defaulting Clearing Member in respect of a Client Clearing Category 2 Position Account, provided that OTC Clear is reasonably satisfied that (i) the Replacement Clearing Member has been appointed by all Clients identified as sharing such Client Clearing Category 2 Position Account prior to the occurrence of the relevant DMP Event, (ii) all such Clients have appointed the same Replacement Clearing Member, (iii) it has received completed Porting Instructions from all of the Clients identified as sharing such Client Clearing Category 2 Position Account by 5:00pm (Hong Kong time) on the OTC Clear Clearing Day immediately following the occurrence of such DMP Event, (iv) OTC Clear has further received the consent of the appointed Replacement Clearing Member to accept the porting of all such Affected Contracts by 5:00pm (Hong Kong time) on the OTC Clear Clearing Day immediately following the occurrence of such DMP Event, (v) no DMP Event has occurred with respect to the Replacement Clearing Member at the time of purported porting, and (vi) the relevant margin and credit check relevant to the purported porting is successfully passed:

- (1) if the relevant DMP Event with respect to the Defaulting Clearing Member is not an Automatic Early Termination Event, OTC Clear shall terminate and close-out such Affected Contracts at their market value (as determined by OTC Clear in its discretion) and enter into new Contracts on the same terms to such Affected Contracts with the appointed Replacement Clearing Member;

(1A) if the relevant DMP Event with respect to the Defaulting Clearing Member is an Automatic Early Termination Event:

- (a) in respect of all such Affected Contracts that are Non-Porting AET Contracts:
- (i) OTC Clear will determine the aggregate trade value in respect of all such Non-Porting AET Contracts as at the relevant Early Termination Date. Such aggregate trade value may be zero, positive or negative. A positive aggregate trade value indicates a net sum being payable by OTC Clear to the Defaulting Clearing Member in respect of such Non-Porting AET Contracts; and a negative aggregate trade value indicates a net sum being payable by the Defaulting Clearing Member to OTC Clear in respect of such Non-Porting AET Contracts;
 - (ii) if the aggregate trade value determined pursuant to sub-paragraph (i) above is a positive number, such value shall be netted against any losses incurred by OTC Clear relating to such Non-Porting AET Contracts as a result of the default of the Defaulting Clearing Member. If the aggregate trade value determined pursuant to sub-paragraph (i) above is zero or a negative number, such value shall be aggregated with any such losses;
 - (iii) if the net sum determined pursuant to sub-paragraph (ii) is a negative number, the Outright Transfer Margin Balance, if any, relating to the relevant Client Clearing Category 2 Position Account and, if necessary, any proceeds of enforcement of any non-cash Collateral comprising the Margin Balance of the corresponding Collateral Account (and any income and redemption proceeds thereon that have not already been paid to or withdrawn by the Defaulting Clearing Member) shall be reduced by an amount equal to the absolute value of such net sum; and
 - (iv) if the net sum determined pursuant to sub-paragraph (ii) is a positive number, such net sum shall form part of the Client Entitlement to be returned to the relevant Client pursuant to Clearing Rule 1309A; and
- (b) in respect of all such Affected Contracts that are Porting AET Contracts, OTC Clear shall enter into new Contracts with the appointed Replacement Clearing Member on the same terms as such Porting AET Contracts;
- (2) pursuant to the terms of the Client Clearing Agreement between the Defaulting Clearing Member and each such Client, OTC Clear shall transfer, on account of all such Clients sharing the same Client Clearing Category 2 Position Account, the aggregate Client Clearing Category 2 Account Balances of such Clients (excluding any Collateral recorded in the Client Clearing Category 2 Collateral Account relating to that Client Clearing Category 2 Position Account that is subject to a Deed of Charge between the Defaulting Clearing Member and OTC Clear in respect of the Client Collateral Account(s)) to the appointed Replacement Clearing Member;
 - (3) the amount due to be returned to the Defaulting Clearing Member in respect of such Client Clearing Category 2 Position Account and such Client Clearing Category 2 Collateral Account shall be reduced by an amount equal to the Client Clearing Category 2 Account Balances referred to in sub-paragraph (2) above; and

(4) In respect of any Collateral recorded in such Client Clearing Category 2 Collateral Account that is subject to a Deed of Charge between the Defaulting Clearing Member and OTC Clear in respect of the Client Collateral Account(s), porting shall be effected as follows:

(a) any equities of redemption held by the Defaulting Clearing Member in respect of that Collateral shall be assigned absolutely to the Replacement Clearing Member, such that those equities of redemption become subject to the security interests granted in favour of OTC Clear pursuant to the Deed of Charge between the Replacement Clearing Member and OTC Clear; and

(b) OTC Clear shall release that Collateral from the security interests granted in favour of OTC Clear pursuant to the relevant Deed of Charge between the Defaulting Clearing Member and OTC Clear, such that the Replacement Clearing Member becomes entitled to redeem that Collateral pursuant to any equities of redemption assigned to it pursuant to sub-paragraph (a) above.

1704A. A Defaulting Clearing Member agrees to waive any of its rights or entitlements to object to the Affected Contracts registered in its name to be ported. In respect of each Affected Contract being ported at a Client's request and pursuant to these Clearing Rules, the Defaulting Clearing Member and the relevant Replacement Clearing Member shall co-operate with OTC Clear and the Client(s) and facilitate such porting arrangement, including:

(1) if the relevant DMP Event with respect to the Defaulting Clearing Member is not an Automatic Early Termination Event, closing-out each Affected Contract and re-establishing a new Contract on the same terms as the relevant Affected Contract with the relevant Replacement Clearing Member; or

(2) if the relevant DMP Event with respect to the Defaulting Clearing Member is an Automatic Early Termination Event, OTC Clear entering into new Contracts with the relevant Replacement Clearing Member on the same terms as such Affected Contracts that are Porting AET Contracts,

and any associated movement of Collateral relating to such Affected Contracts.

1710. References to Affected Contracts being "ported" pursuant to this Chapter 17 shall mean:

(1) in respect of Affected Contracts other than Affected AET Contracts, such Affected Contracts being terminated and OTC Clear entering into new Contracts on the same terms as such Affected Contracts with the relevant Replacement Clearing Member pursuant to Clearing Rule 1703(1) or Clearing Rule 1704(1); or

(2) in respect of Porting AET Contracts, OTC Clear entering into new Contracts with the relevant Replacement Clearing Member on the same terms as Porting AET Contracts pursuant to Clearing Rule 1703(1A)(b) or Clearing Rule 1704(1A)(b).

PRC Clearing Member Schedule

This Schedule sets out certain amendments to the Clearing Rules and Clearing Procedures that are applicable to Clearing Members incorporated in the People's Republic of China (excluding¹ Hong Kong, Macao Special Administrative Region, and the Taiwan area) (“**PRC**”). For the avoidance of doubt, this Schedule shall only apply to Clearing Members who are incorporated in the PRC.

Amendments to the Clearing Rules

1. The definition of “Affiliates” in Clearing Rule 101 shall be replaced in its entirety with the following:

“means, with respect to any specified Person, any other Person that Controls, is Controlled by, or is under common Control with, such specified Person, provided that, two Persons both of which are controlled, directly or indirectly, by the PRC government will not become Affiliates of each other merely because the PRC government directly or indirectly controls both of them.”

2. Paragraph (4) of the definition of “Insolvency Proceedings” in Clearing Rule 101 shall be replaced in its entirety with the following:

“(4) institutes or has instituted against it a proceeding outside of the PRC seeking judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights or a petition is presented for its winding-up or liquidation outside of the PRC and in the case of any such proceeding or petition instituted or presented against it outside of the PRC, such proceeding or petition: (a) results in a judgment of insolvency or bankruptcy, or the entry of an order for relief, or the making of an order for winding-up or liquidation; or (b) is not dismissed, discharged, stayed or restrained in each case within 30 calendar days of the institution or presentation thereof;

(4A) institutes or has instituted against it a proceeding in the PRC seeking judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights or a petition is presented for its winding-up or liquidation in the PRC;”

3. The following definition of “PRC” shall be included in Clearing Rule 101:

““**PRC**” means the People’s Republic of China (excluding Hong Kong, Macao Special Administrative Region, and the Taiwan area);”

4. Clearing Rule 216 shall be replaced in its entirety with the following:

216. “The courts of Hong Kong shall have exclusive jurisdiction to hear and determine any action or dispute which may arise out of or in connection with these Clearing Rules. OTC Clear and each Clearing Member irrevocably submit to the exclusive jurisdiction of Hong Kong courts and agrees to waive any objection it might otherwise have to such jurisdiction.”

- ~~4.5.~~ Clearing Rule 1303 shall be replaced in its entirety with the following:

1303. “The occurrence of an event described in paragraph (4A) under the definition of Insolvency Proceedings with respect to a Clearing Member will constitute an “**Automatic Early Termination Event**” in respect of such Clearing Member. Where an Automatic Early Termination Event has occurred with respect to a Clearing

Member, an Early Termination Date in respect of all Contracts then registered in the name of such Clearing Member shall occur immediately upon the occurrence of the relevant event; and in each case, without the need for any other or prior notice or determination by OTC Clear. With effect from, and including, the date on which an Early Termination Date occurs with respect to all Contracts registered in a name of a Clearing Member as a result of an Automatic Early Termination Event, such Clearing Member shall become a Defaulting Clearing Member.”

5-6. The following shall be inserted after Clearing Rule 1316(3):

“(4) If any Early Termination Date is deemed to have occurred under Clearing Rule 1303 as a result of the occurrence of an Automatic Early Termination Event, the Defaulting Clearing Member shall fully indemnify OTC Clear on demand against all expense, loss, damage or liability that OTC Clear may incur in respect of each Contract as a consequence of the movements in interest rates, currency exchange rates or market quotations between the Early Termination Date and the date upon which OTC Clear first becomes aware that the Early Termination Date has occurred under Clearing Rule 1303.”

7. Clearing Rule 2227 shall be replaced in its entirety with the following:

2227. “Each Standard Rates Derivatives Contract shall be governed by and construed in accordance with the laws of Hong Kong and the courts of Hong Kong shall have exclusive jurisdiction to hear and determine any action or dispute which may arise here from. OTC Clear and each Clearing Member hereto irrevocably submit to such jurisdiction and agrees to waive any objection it might otherwise have to such jurisdiction.”

8. Clearing Rule 2322 shall be replaced in its entirety with the following:

2322. “Each Non Deliverable Rates Derivatives Contract shall be governed by and construed in accordance with the laws of Hong Kong and the courts of Hong Kong shall have exclusive jurisdiction to hear and determine any action or dispute which may arise here from. OTC Clear and each Clearing Member hereto irrevocably submit to such jurisdiction and agrees to waive any objection it might otherwise have to such jurisdiction.”

9. Clearing Rule 2422 shall be replaced in its entirety with the following:

2422. “Each FX Derivatives Contract shall be governed by and construed in accordance with the laws of Hong Kong and the courts of Hong Kong shall have exclusive jurisdiction to hear and determine any action or dispute which may arise here from. OTC Clear and each Clearing Member hereto irrevocably submit to such jurisdiction and agrees to waive any objection it might otherwise have to such jurisdiction.”

10. Clearing Rule 2522 shall be replaced in its entirety with the following:

2522. “Each Standard Cross-currency Rates Derivatives Contract shall be governed by and construed in accordance with the laws of Hong Kong and the courts of Hong Kong shall have exclusive jurisdiction to hear and determine any action or dispute which may arise here from. OTC Clear and each Clearing Member hereto irrevocably submit to such jurisdiction and agrees to waive any objection it might otherwise have to such jurisdiction.”

Amendments to the Clearing Procedures

6-11. The first paragraph of paragraph 8.6.1 of the Clearing Procedures shall be replaced in its entirety with the following:

“The entire Auction process may take a number of days, but is expected to be completed (i) as soon as reasonably practicable and (ii) no later than 30 calendar days from the commencement of the Auction process. Auction Portfolios may be auctioned at different times. Each Auction Portfolio shall be subject to its own Auction.”

DEED OF CHARGE – HOUSE COLLATERAL ACCOUNT

dated [_____]

created by

[CLEARING MEMBER]

(Registered No. [_____])

as a Clearing Member
in favour of

OTC CLEARING HONG KONG LIMITED

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THIS DEED is dated [] and made between:

- (1) [] a company incorporated in [] having company number [] and its [registered] / [principal] office at [] (the "**Clearing Member**"); and
- (2) OTC Clearing Hong Kong Limited of 12/F, One International Finance Centre, 1 Harbour View Street, Central, Hong Kong ("**OTC Clear**").

Background

- (A) The Clearing Member is entering into this Deed in connection with the Clearing Documentation.
- (B) The Board of Directors of the Clearing Member is satisfied that entering into this Deed is for the purposes and to the benefit of the Clearing Member and its business.

This DEED witnesses the following:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

"**Authorisation**" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"**Charged Assets**" means the assets from time to time subject, or expressed to be subject, to the Charges or any part of those assets.

"**Charges**" means all or any of the Security created or expressed to be created by or pursuant to this Deed.

"**Clearing Procedures**" means the practices, procedures and administrative requirements prescribed by OTC Clear from time to time in effect.

"**Clearing Rules**" means the clearing rules of OTC Clear as from time to time in effect and shall include the Clearing Procedures.

"**Clearing System**" means each of (i) the Hong Kong Monetary Authority acting as operator of the Central Moneymarkets Unit Service and (ii) any other clearing system agreed by the Clearing Member and OTC Clear.

"**Companies Ordinance**" means the Companies Ordinance (Cap. 622) of the Laws of Hong Kong.

"**Companies (Winding Up and Miscellaneous Provisions) Ordinance**" means the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) of the Laws of Hong Kong.

"**CPO**" means the Conveyancing and Property Ordinance (Cap. 219) of the Laws of Hong Kong.

"**Delegate**" means a delegate or sub-delegate appointed under Clause 10.2 (*Delegation*).

"**Interest**" means all present and future:

- (a) interest and distributions of any kind and any other cash or securities or investments received or receivable in respect of any of the Charged Assets; and

- (b) all other rights attaching to, deriving from, relating to or exercisable by virtue of the ownership of any of the Charged Assets.

"Liabilities" means all present and future moneys, debts, liabilities and obligations due, owing or incurred by the Clearing Member to OTC Clear under or in connection with any Contract or Clearing Documentation (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently and whether as principal, surety or otherwise).

"Mainland China" means the People's Republic of China (excluding, for this purpose, Hong Kong, the Macau Special Administrative Region, and the Taiwan area).

"Party" means a party to this Deed.

"Receiver" means a receiver and manager or other receiver appointed in respect of the Charged Assets.

"Repeating Representations" means each of the representations set out in paragraphs (i), (ii), (iii), (iv), (v) and (vii) of Clause 7(a).

"Securities" means:

- (a) securities and investments of any kind (other than cash and balances in respect of cash) from time to time recorded in the Clearing Member's House Collateral Account; and
- (b) all rights relating to those securities and investments referred to in paragraph (a) above which are deposited with, or registered in the name of, any depository, custodian, nominee, clearing house or system, investment manager, chargee or other similar person or their nominee, in each case whether or not on a fungible basis (including rights against any such person).

"Security" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"SFO" means the Securities and Futures Ordinance (Cap. 571) of the Laws of Hong Kong.

"Winding-up" means winding up, amalgamation, reconstruction, administration, dissolution, liquidation, merger or consolidation or any analogous procedure or step in any jurisdiction.

1.2 **Incorporation of defined terms**

Unless a contrary indication appears, terms used in the Clearing Rules have the same meaning in this Deed.

1.3 **Construction**

- (c) Unless a contrary indication appears, any reference in this Deed to:
- (i) **"OTC Clear"**, the **"Clearing Member"** or any **"Party"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Clearing Documentation;
- (ii) any **"Contract"**, any **"Clearing Documentation"** or any other agreement or instrument is a reference to that Contract, Clearing Documentation or other agreement or instrument as amended, novated, supplemented, extended,

restated (however fundamentally and whether or not more onerous) or replaced;
and

- (iii) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality).
- (d) The provisions in Clearing Rules 102 to 108 apply to this Deed with all necessary changes.
- (e) In the context of the rights, powers, privileges, discretions and immunities conferred on OTC Clear, a Receiver or a Delegate, references to charge or mortgage in any provision of the CPO shall, for the purposes of this Deed, be deemed to be references to the Charges and references to mortgaged land in any provision of the CPO shall, for the purposes of this Deed, be deemed to be references to the Charged Assets.

1.4 **Third Party Rights**

- (a) Unless expressly provided to the contrary in the Clearing Documentation, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) to enforce or to enjoy the benefit of any term of this Deed.
- (b) Notwithstanding any term of any Clearing Documentation, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time.

2. **UNDERTAKING TO PAY**

The Clearing Member shall pay each of its Liabilities when due in accordance with its terms or, if they do not specify a time for payment, immediately on demand by OTC Clear.

3. **SECURITY**

The Clearing Member, as beneficial owner of the Securities and as continuing security for the due and punctual payment and discharge of all Liabilities charges in favour of OTC Clear:

- (a) by way of first mortgage, all its present and future Securities and Interest; and
- (b) by way of first fixed charge, to the extent not validly and effectively mortgaged under paragraph (a) above, all its present and future Securities and Interest and all its present and future rights relating to any of the Securities, including without limitation:
 - (i) rights (contractually or otherwise) to give instructions relating to the Securities;
and
 - (ii) all claims for damages and rights to receive moneys due or to become due for any reason whatsoever in respect of any of the Securities.

4. **RESTRICTIONS AND FURTHER ASSURANCE**

4.1 **Negative pledge**

The Clearing Member shall not create or permit to subsist any Security over any Charged Assets except for the Charges.

4.2 **Disposal**

The Clearing Member shall not (nor agree to) enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, withdraw, transfer or otherwise dispose of any Charged Asset except as permitted by the Clearing Rules and Clearing Procedures.

4.3 **Delivery of documents**

The Clearing Member shall deliver or procure that there shall be delivered to OTC Clear such documents relating to the Securities as OTC Clear requires.

4.4 **Further assurance**

(a) The Clearing Member shall promptly do whatever OTC Clear requires:

- (i) to perfect or protect the Charges or the priority of the Charges; or
- (ii) to facilitate the realisation of the Charged Assets or the exercise of any rights vested in OTC Clear or any Receiver,

including, without limitation, making any registration and giving any notice, order or direction.

(b) The Clearing Member shall take all such action as is available to it (including making all filings and registrations) as may from time to time be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on OTC Clear by or pursuant to this Deed.

5. **MORTGAGED SECURITIES**

5.1 **Voting before enforcement**

Subject to Clause 5.2 (*Voting after enforcement*), the Clearing Member shall not be entitled to exercise, and shall not be entitled to direct the exercise of, the voting and other rights attached to any Securities.

5.2 **Voting after enforcement**

At any time after the occurrence of a DMP Event with respect to the Clearing Member:

- (a) OTC Clear or the Receiver shall be entitled to exercise or direct the exercise of the voting and other rights attached to any Securities in such manner as it or he sees fit; and
- (b) the Clearing Member shall comply or procure the compliance with any directions of OTC Clear or the Receiver in respect of the exercise of those rights and shall promptly execute and/or deliver to OTC Clear or the Receiver such forms of proxy as it or he requires with a view to enabling such person as it or he selects to exercise those rights.

5.3 **Interest before enforcement**

Subject to Clause 5.4 (*Interest after enforcement*), the Clearing Member shall be entitled to receive, and OTC Clear shall pay, such amounts in respect of cash income derived from the Securities as are specified in the Clearing Rules and Clearing Procedures.

5.4 **Interest after enforcement**

At any time after the occurrence of a DMP Event with respect to the Clearing Member, OTC Clear (or, as the case may be, its nominee) shall be entitled to retain any such cash income

derived from the Securities received by it and apply the same in such manner as OTC Clear sees fit.

5.5 Communications

The Clearing Member shall promptly deliver to OTC Clear a copy of every circular, notice, report, set of accounts or other documents received by it or its nominee in connection with the Securities or in connection with or from the issuer of any of the Securities.

5.6 Payment of calls etc.

The Clearing Member will promptly pay or procure the payment of all calls, instalments or other payments which may at any time become due in respect of any of the Charged Assets.

6. GENERAL UNDERTAKINGS

6.1 Information

The Clearing Member shall supply to OTC Clear promptly such information regarding the Charged Assets and its compliance with this Deed as OTC Clear may reasonably request.

6.2 No prejudicial conduct

The Clearing Member shall not do, or permit to be done, anything which could prejudice the Charges.

7. REPRESENTATIONS AND WARRANTIES

(a) The Clearing Member makes the representations and warranties set out in this paragraph (a) to OTC Clear on the date of this Deed:

- (i) It is a corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.
- (ii) It has the power to own its assets and carry on its business as it is being conducted.
- (iii) The obligations expressed to be assumed by it in this Deed are legal, valid, binding and enforceable, subject to:
 - (A) any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered to OTC Clear in respect of this Deed; or
 - (B) any registrations to be made after the date of this Deed which are specifically referred to in any legal opinion delivered to OTC Clear in respect of this Deed.
- (iv) Its entry into, performance and delivery of this Deed, and the transactions contemplated by this Deed, do not and will not conflict with:
 - (A) any law or regulation applicable to it;
 - (B) its constitutional documents; or
 - (C) any agreement or instrument binding upon it or any of its assets,nor (except for the Charges) result in the existence of, or oblige it to create, any Security (or any other Encumbrance) over any of its assets.

- (v) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed and the transactions contemplated this Deed.
- (vi) All Authorisations required or desirable:
 - (A) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Deed;
 - (B) to make this Deed admissible in evidence in its jurisdiction of incorporation; and
 - (C) to enable it to create the Charges and to ensure that the Charges have the priority and ranking the Charges are expressed to have,

have been obtained or effected and are in full force and effect, subject to any registrations specifically referred to in any legal opinion delivered to OTC Clear in respect of this Deed.
- (vii) Subject to any qualifications specifically referred to in any legal opinion delivered to OTC Clear in respect of this Deed:
 - (A) the choice of Hong Kong law as the governing law of this Deed will be recognised and enforced in its jurisdiction of incorporation; and
 - (B) any judgment obtained in Hong Kong in relation to this Deed will be recognised and enforced in its jurisdiction of incorporation.
- (b) The Repeating Representations are deemed to be made by the Clearing Member by reference to the facts and circumstances then existing on each day additional Securities become Charged Assets.
- (c) In addition, the Clearing Member makes the representations and warranties set out in Clearing Rule 1220 to OTC Clear:
 - (i) on the date of this Deed; and
 - (ii) pursuant to Clearing Rule 1220, on each day Collateral is delivered to OTC Clear pursuant to the Clearing Rules.

8. ENFORCEMENT

8.1 When enforceable

The Charges shall be immediately enforceable on and at any time after the occurrence of a DMP Event with respect to the Clearing Member, and OTC Clear:

- (a) may enforce all or any part of any Charges (at the times, in the manner and on the terms it thinks fit) and take possession and hold or dispose of all or any part of the Charged Assets; and
- (b) whether or not it has appointed a Receiver, may exercise all or any of the powers, authorities and discretions given to mortgagees and receivers by the CPO as varied or extended by this Deed or otherwise conferred by law.

8.2 **Power of sale**

The statutory power of sale, of appointing a Receiver and the other statutory powers conferred on mortgagees by Section 51 (*Powers of mortgagee and receiver*) and Section 53 (*Sale by Mortgagee*) of the CPO and the Fourth Schedule (*Powers of mortgagee and receiver*) to the CPO as varied and extended by this Deed shall arise on the date of this Deed and no restriction imposed by any ordinance or other statutory provision in relation to the exercise of any power of sale shall apply to this Deed.

8.3 **No requirement of notice period**

OTC Clear is not required to give any prior notice of non-payment or default to the Clearing Member before enforcing the Charges, there is no minimum period for which Liabilities must remain due and unpaid before the Charges can be enforced and Paragraph 11 of the Fourth Schedule (*Powers of mortgagee and receiver*) to the CPO (and any similar provision under other laws) does not apply to this Deed.

8.4 **No Liability as mortgagee in possession**

Nothing done by or on behalf of OTC Clear pursuant to this Deed shall render it liable to account as a mortgagee in possession for any sums other than actual receipts.

8.5 **Wide construction of enforcement powers**

The powers of OTC Clear under this Deed shall be construed in the widest possible sense and all Parties intend that OTC Clear shall have as wide and flexible a range of powers as may be conferred (or, if not expressly conferred, as is not restricted) by any applicable law.

9. **APPOINTMENT AND RIGHTS OF RECEIVERS**

9.1 **Appointment of Receivers**

If:

- (a) requested by the Clearing Member; or
- (b) the Charges become enforceable (whether or not OTC Clear has taken possession of the Charged Assets),

without any notice or further notice, OTC Clear may, by deed, or otherwise in writing signed by any officer or manager of OTC Clear or any person authorised for this purpose by OTC Clear, appoint one or more persons to be a Receiver. OTC Clear may similarly remove any Receiver and appoint any person instead of any Receiver. If OTC Clear appoints more than one person as Receiver, OTC Clear may give those persons power to act either jointly or severally. The provisions of section 50 (*Power to appoint a receiver*) of the CPO (as varied and/or extended by this Deed) shall apply to any appointment made pursuant to this Deed.

9.2 **Scope of appointment**

Any Receiver may be appointed Receiver of all of the Charged Assets or Receiver of a part of the Charged Assets specified in the appointment. In the latter case, the rights conferred on a Receiver as set out in the Schedule to this Deed shall have effect as though every reference in the Schedule to this Deed to any Charged Assets were a reference to the part of those assets so specified or any part of those assets.

9.3 **Rights of Receivers**

Any Receiver appointed pursuant to this Clause 9 shall have the rights, powers, discretions, privileges and immunities conferred on receivers by the CPO (as varied and/or extended by this Deed), all powers (if any) conferred on receivers by law or otherwise and shall also have the powers and rights set out in the Schedule to this Deed, all of which powers and rights are exercisable without further notice.

9.4 **Agent of Clearing Member**

Any Receiver shall be the agent of the Clearing Member for all purposes. The Clearing Member alone shall be responsible for the Receiver's contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by the Receiver.

9.5 **Remuneration**

OTC Clear may determine the remuneration of any Receiver and direct payment of that remuneration out of moneys he receives as Receiver. The Clearing Member alone shall be liable for the remuneration and all other costs, losses, liabilities and expenses of the Receiver.

10. **OTC CLEAR'S RIGHTS**

10.1 **Rights of OTC Clear**

Any rights conferred by this Deed upon a Receiver may be exercised by OTC Clear after the Charges become enforceable, whether or not OTC Clear shall have taken possession or appointed a Receiver of the Charged Assets.

10.2 **Delegation**

OTC Clear may delegate in any manner to any person any rights exercisable by OTC Clear under this Deed. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) as OTC Clear thinks fit.

11. **ORDER OF DISTRIBUTIONS**

All amounts received or recovered by OTC Clear or any Receiver or any Delegate in exercise of their rights under this Deed shall be applied in the following order of priority (subject to Clause 15.5 (*Appropriations*)), in each case in accordance with the terms of the Clearing Rules and Clearing Procedures:

- (a) in or towards the payment of all costs, losses, liabilities and expenses of and incidental to the appointment of any Receiver or Delegate and the exercise of any of his rights, including his remuneration and all outgoings paid by him (to the extent that, in OTC Clear's opinion, such costs, losses, liabilities and expenses relate to the amount received or recovered);
- (b) in or towards the payment of Liabilities; and
- (c) in payment of any surplus to the Clearing Member or other person entitled to it.

12. **LIABILITY OF OTC CLEAR, RECEIVERS AND DELEGATES**

12.1 **Possession**

If OTC Clear, any Receiver or any Delegate takes possession of the Charged Assets, it or he may at any time relinquish possession.

12.2 **OTC Clear's liability**

- (a) Neither OTC Clear nor any Receiver or Delegate shall (either by reason of taking possession of the Charged Assets or for any other reason and whether as mortgagee in possession or otherwise) be liable to the Clearing Member or any other person for any costs, losses, liabilities or expenses relating to the realisation of any Charged Assets or from any act, default, omission or misconduct of OTC Clear, any Receiver, any Delegate or their respective officers, employees or agents in relation to the Charged Assets or in connection with any Contract or Clearing Documentation provided that the relevant realisation, act, default, omission or misconduct is done or made, as the case may be, in good faith.
- (b) Nothing in this Deed shall be construed as placing on OTC Clear any liability whatsoever in respect of any calls, instalments or other payments relating to any of the Charged Assets or any rights, shares or other securities accruing, offered or arising as aforesaid, and the Clearing Member shall indemnify OTC Clear in respect of all calls, instalments or other payments relating to any of the Charged Assets owned by it and to any rights, shares and other securities accruing, offered or arising as aforesaid in respect of any of the Charged Assets.

13. **POWER OF ATTORNEY**

13.1 **Appointment**

The Clearing Member by way of security irrevocably appoints OTC Clear, every Receiver and every Delegate severally as its attorney (with full power of substitution), on its behalf and in its name or otherwise, at such time and in such manner as the attorney thinks fit:

- (a) to do anything which the Clearing Member is obliged to do (but has not done) under any Clearing Documentation (including to execute charges over, transfers, conveyances, assignments and assurances of, and other instruments, notices, orders and directions relating to, the Charged Assets); and
- (b) to exercise any of the rights conferred on OTC Clear, any Receiver or any Delegate in relation to the Charged Assets, under or in connection with any Clearing Documentation or under the CPO, the Companies Ordinance, the Companies (Winding Up and Miscellaneous Provisions) Ordinance, the SFO or generally under Hong Kong law.

13.2 **Ratification**

The Clearing Member ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do in the exercise or purported exercise of the power of attorney granted by it in Clause 13.1 (*Appointment*).

14. **PROTECTION OF THIRD PARTIES**

14.1 **No duty to enquire**

No person dealing with OTC Clear, any Receiver or any Delegate shall be concerned to enquire:

- (a) whether the power or rights conferred under or in connection with this Deed are exercisable;
- (b) whether any consents, regulations, restrictions or directions relating to such rights have been obtained or complied with;
- (c) otherwise as to the propriety or regularity of acts purporting or intended to be in exercise of any such rights; or
- (d) as to the application of any money borrowed or raised.

14.2 **Protection to purchasers**

Subject to the provisions of this Deed, all the protection to purchasers contained in Sections 52 (*Protection of purchaser*), 53 (*Sale by mortgagee*) and 55 (*Mortgagee's receipt*) of the CPO or in any other applicable legislation shall apply to any person purchasing from or dealing with OTC Clear, any Receiver or any Delegate.

15. **SAVING PROVISIONS**

15.1 **Continuing Security**

Subject to Clause 16 (*Discharge of Security*), the Charges are continuing Security and will extend to the ultimate balance of the Liabilities, regardless of any intermediate payment or discharge in whole or in part.

15.2 **Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of the Clearing Member or any security for those obligations or otherwise) is made by OTC Clear in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Clearing Member and the Charges shall continue or be reinstated as if the discharge, release or arrangement had not occurred.

15.3 **Waiver of defences**

Neither the obligations of the Clearing Member under this Deed nor the Charges will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under any Contract or Clearing Documentation or any of the Charges (without limitation and whether or not known to it or OTC Clear) including:

- (a) any time, waiver or consent granted to, or composition with, the Clearing Member or other person;
- (b) the release of the Clearing Member or other person under the terms of any composition or arrangement with any creditor of the Clearing Member;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce any rights against, or security over assets of, the Clearing Member or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Clearing Member or other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Contract or Clearing Documentation or any other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Contract or Clearing Documentation or any other document or security; or
- (g) any insolvency or similar proceedings.

15.4 **Immediate recourse**

The Clearing Member waives any right it may have of first requiring OTC Clear (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Clearing Member under this Deed. This waiver applies irrespective of any law or any provision of any Contract or Clearing Documentation to the contrary.

15.5 **Appropriations**

Until all the Liabilities have been irrevocably paid in full and the Membership of the Clearing Member has been terminated in accordance with the Clearing Rules, OTC Clear (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by OTC Clear (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Clearing Member shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from the Clearing Member or on account of the Clearing Member's liability under this Deed.

15.6 **Additional Security**

The Charges are in addition to and are not in any way prejudiced by any other guarantees or security now or subsequently held OTC Clear.

16. **DISCHARGE OF SECURITY**

16.1 **Final redemption**

Subject to Clause 16.2 (*Retention of security*), if OTC Clear is satisfied that all the Liabilities have been irrevocably paid in full and that the Membership of the Clearing Member has been terminated in accordance with the Clearing Rules, OTC Clear shall at the request and cost of the Clearing Member release, reassign or discharge (as appropriate) the Charged Assets from the Charges.

16.2 **Retention of security**

If OTC Clear considers that any amount paid or credited to OTC Clear under any Contract or Clearing Documentation is capable of being avoided or otherwise set aside, that amount shall

not be considered to have been paid for the purposes of determining whether all the Liabilities have been irrevocably paid.

16.3 **Consolidation**

Any restrictions on the consolidation of Security shall be excluded to the fullest extent permitted by law and OTC Clear shall, so far as it is lawful and subject to other provisions of this Deed, be entitled to consolidate all or any of the Charges with any other Security whether in existence on the date of this Deed or in the future.

17. **PAYMENTS**

17.1 **Demands**

Any demand for payment made by OTC Clear shall be valid and effective even if it contains no statement of the relevant Liabilities or an inaccurate or incomplete statement of them.

17.2 **Payments**

All payments by the Clearing Member under this Deed (including damages for its breach) shall be made to such account, with such financial institution and in such other manner as OTC Clear may direct.

17.3 **Continuation of accounts**

At any time after:

- (a) the receipt by OTC Clear of notice (either actual or otherwise) of any subsequent Security affecting the Charged Assets; or
- (b) the presentation of a petition or the passing of a resolution in relation to the Winding-up of the Clearing Member,

OTC Clear may open a new account in the name of the Clearing Member (whether or not it permits any existing account to continue). If OTC Clear does not open such a new account, it shall nevertheless be treated as if it had done so when the relevant event occurred. No moneys paid into any account, whether new or continuing, after that event shall discharge or reduce the Liabilities as at the time the relevant event occurred.

18. **RIGHTS, WAIVERS AND DETERMINATIONS**

18.1 **Ambiguity**

Where there is any ambiguity or conflict between the rights conferred by law and those conferred by or pursuant to this Deed, the terms of this Deed shall prevail.

18.2 **Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of OTC Clear, any Receiver or any Delegate any right or remedy under this Deed shall operate as a waiver of any such right or remedy or constitute an election to affirm this Deed. No waiver or election to affirm this Deed on the part of OTC Clear, any Receiver or any Delegate shall be effective unless in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

18.3 Determinations

Any determination by or certificate of OTC Clear, any Receiver or any Delegate under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

19. SEPARATE AND INDEPENDENT OBLIGATIONS

The Security created by the Clearing Member by or in connection with any Contract or Clearing Documentation is separate from and independent of the Security created or intended to be created by any other person by or in connection with any Contract or Clearing Documentation.

20. COUNTERPARTS

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

21. GOVERNING LAW

This Deed is governed by Hong Kong law.

22. JURISDICTION

- (a) The courts of Hong Kong have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed) (a "**Dispute**").
- (b) The Parties agree that the courts of Hong Kong are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) ~~This Clause 22 is for the benefit of OTC Clear only. As a result, if the Clearing Member is incorporated in a jurisdiction other than Mainland China~~ (i) OTC Clear shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. ~~To~~ and (ii) to the extent allowed by law, OTC Clear may take concurrent proceedings in any number of jurisdictions.

SCHEDULE
RIGHTS OF RECEIVERS

Any Receiver appointed pursuant to Clause 9 (*Appointment and rights of Receivers*) shall have the right, either in its own name or in the name of the Clearing Member or otherwise and in such manner and upon such terms and conditions as the Receiver thinks fit, and either alone or jointly with any other person:

(a) **Take possession**

to take possession of, get in and collect the Charged Assets, and to require payment to it of all Interest including without limitation, to complete any instruments of transfer and to procure the transfer of the Charged Assets into the name of the Receiver or its nominee and, if necessary, take possession of and collect any documents of title relating to the Charged Assets and/or cause physical documents of title to be withdrawn from any Clearing System and/or cause the Charged Assets to be deposited into any relevant Clearing System, in each case, at the cost and risk of the Clearing Member;

(b) **Deal with Charged Assets**

to sell, transfer, assign, exchange, lend or otherwise dispose of or realise the Charged Assets to any person either by public offer or auction, tender or private contract and for a consideration of any kind (which may be payable or delivered in one amount or by instalments spread over a period or deferred);

(c) **Borrow money**

to borrow or raise money either unsecured or on the security of the Charged Assets (either in priority to the Charges or otherwise);

(d) **Rights of ownership**

to exercise and do (or permit the Clearing Member or any nominee of it to exercise and do) all such rights and things as OTC Clear would be capable of exercising or doing if it were the absolute beneficial owner of the Charged Assets;

(e) **Claims**

to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person relating to the Charged Assets;

(f) **Legal actions**

to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Charged Assets or any business of the Clearing Member;

(g) **Redemption of Security**

to redeem any Security (whether or not having priority to the Charges) over the Charged Assets and to settle the accounts of any person with an interest in the Charged Assets; and

(h) **Other powers**

to do anything else it may think fit for the realisation of the Charged Assets or incidental to the exercise of any of the rights conferred on the Receiver under or by virtue of any Contract, any Clearing Documentation, the CPO, the Companies Ordinance, the Companies (Winding Up and Miscellaneous Provisions) Ordinance, the SFO and other applicable statutory provisions and common law.

In witness whereof this Deed has been [signed/executed/sealed]¹ [and delivered] as a deed on the date stated at the beginning.

Clearing Member

[Note: For use by a Hong Kong company executing by seal]

[[THE [COMMON SEAL] of]
[CLEARING MEMBER]

[COMMON SEAL OF CLEARING
MEMBER]

was affixed in the presence of:

.....
[Signature of Director]

Director

.....
[Signature of Director/Secretary]

[Director/Secretary]]

OR

[Note: For use by a Hong Kong company executing under hand (subject to requirements in Articles)]

[EXECUTED AND DELIVERED as
a **DEED** by and in the name of
[CLEARING MEMBER] acting by [its sole director]/[two
directors]/[a director and its company secretary]:

.....
[Signature of Director]

Director

.....
[Signature of Director/Secretary]

[Director/Secretary]

¹ Ensure that this is consistent with the words used in the relevant signature block – in particular whether “signed”, “executed” and/or “sealed” has been used.

[Signature of witness]

Name

Address

Occupation]

OTC Clear

EXECUTED by [name of authorised signatory] for and on behalf of **OTC CLEARING HONG KONG LIMITED** in the presence of

[Signature of authorised signatory]

.....

.....

[Signature of witness]

Name

Address

Occupation

Address:

Fax No:

Attention:

DEED OF CHARGE – CLIENT COLLATERAL ACCOUNTS

dated [_____]

created by

[CLEARING MEMBER]

(Registered No. [_____])

as a Clearing Member
in favour of

OTC CLEARING HONG KONG LIMITED

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THIS DEED is dated [] and made between:

- (1) [] a company incorporated in [] having company number [] and its [registered] / [principal] office at [] (the "**Clearing Member**"); and
- (2) OTC Clearing Hong Kong Limited of 12/F, One International Finance Centre, 1 Harbour View Street, Central, Hong Kong ("**OTC Clear**").

Background

- (A) The Clearing Member is entering into this Deed in connection with the Clearing Documentation.
- (B) The Board of Directors of the Clearing Member is satisfied that entering into this Deed is for the purposes and to the benefit of the Clearing Member and its business.

This DEED witnesses the following:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

"Authorisation" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"Charged Assets" means the assets from time to time subject, or expressed to be subject, to the Charges or any part of those assets.

"Charges" means all or any of the Security created or expressed to be created by or pursuant to this Deed.

"Clearing Procedures" means the practices, procedures and administrative requirements prescribed by OTC Clear from time to time in effect.

"Clearing Rules" means the clearing rules of OTC Clear as from time to time in effect and shall include the Clearing Procedures.

"Clearing System" means each of (i) the Hong Kong Monetary Authority acting as operator of the Central Moneymarkets Unit Service and (ii) any other clearing system agreed by the Clearing Member and OTC Clear.

"Companies Ordinance" means the Companies Ordinance (Cap. 622) of the Laws of Hong Kong.

"Companies (Winding Up and Miscellaneous Provisions) Ordinance" means the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) of the Laws of Hong Kong.

"CPO" means the Conveyancing and Property Ordinance (Cap. 219) of the Laws of Hong Kong.

"Delegate" means a delegate or sub-delegate appointed under Clause 10.2 (*Delegation*).

"Interest" means all present and future:

- (a) interest and distributions of any kind and any other cash or securities or investments received or receivable in respect of any of the Charged Assets; and

- (b) all other rights attaching to, deriving from, relating to or exercisable by virtue of the ownership of any of the Charged Assets.

"Liabilities" means all present and future moneys, debts, liabilities and obligations due, owing or incurred by the Clearing Member to OTC Clear under or in connection with any Contract or Clearing Documentation (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently and whether as principal, surety or otherwise), other than moneys, debts, liabilities and obligations relating to the Clearing Member's House Position Account.

"Mainland China" means the People's Republic of China (excluding, for this purpose, Hong Kong, the Macau Special Administrative Region, and the Taiwan area).

"Party" means a party to this Deed.

"Receiver" means a receiver and manager or other receiver appointed in respect of the Charged Assets.

"Relevant Charged Assets" means, in relation to an amount received or recovered by OTC Clear, any Receiver or any Delegate in exercise of their rights under this Deed, the Charged Assets in respect of which the amount is received or recovered.

"Repeating Representations" means each of the representations set out in paragraphs (i), (ii), (iii), (iv), (v) and (vii) of Clause 7(a).

"Securities" means:

- (a) securities and investments of any kind (other than cash and balances in respect of cash) from time to time recorded in any Client Collateral Account from time to time maintained for the Clearing Member; and
- (b) all rights relating to those securities and investments referred to in paragraph (a) above which are deposited with, or registered in the name of, any depositary, custodian, nominee, clearing house or system, investment manager, chargee or other similar person or their nominee, in each case whether or not on a fungible basis (including rights against any such person).

"Security" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"SFO" means the Securities and Futures Ordinance (Cap. 571) of the Laws of Hong Kong.

"Winding-up" means winding up, amalgamation, reconstruction, administration, dissolution, liquidation, merger or consolidation or any analogous procedure or step in any jurisdiction.

1.2 Incorporation of defined terms

Unless a contrary indication appears, terms used in the Clearing Rules have the same meaning in this Deed.

1.3 Construction

- (a) Unless a contrary indication appears, any reference in this Deed to:

- (i) "OTC Clear", the "Clearing Member" or any "Party" shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Clearing Documentation;
 - (ii) any "Contract", any "Clearing Documentation" or any other agreement or instrument is a reference to that Contract, Clearing Documentation or other agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerous) or replaced; and
 - (iii) a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality).
- (b) The provisions in Clearing Rules 102 to 108 apply to this Deed with all necessary changes.
- (c) In the context of the rights, powers, privileges, discretions and immunities conferred on OTC Clear, a Receiver or a Delegate, references to charge or mortgage in any provision of the CPO shall, for the purposes of this Deed, be deemed to be references to the Charges and references to mortgaged land in any provision of the CPO shall, for the purposes of this Deed, be deemed to be references to the Charged Assets.

1.4 Third Party Rights

- (a) Unless expressly provided to the contrary in the Clearing Documentation, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) to enforce or to enjoy the benefit of any term of this Deed.
- (b) Notwithstanding any term of any Clearing Documentation, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time.

2. UNDERTAKING TO PAY

The Clearing Member shall pay each of its Liabilities when due in accordance with its terms or, if they do not specify a time for payment, immediately on demand by OTC Clear.

3. SECURITY

The Clearing Member, as beneficial owner of the Securities and as continuing security for the due and punctual payment and discharge of all Liabilities charges in favour of OTC Clear:

- (a) by way of first mortgage, all its present and future Securities and Interest;
- (b) by way of first fixed charge, all present and future equities of redemption assigned to the Clearing Member as Transferee Clearing Member or Replacement Clearing Member from time to time in connection with the porting of Collateral pursuant to the Clearing Rules and Clearing Procedures; and
- (c) by way of first fixed charge, to the extent not validly and effectively mortgaged under paragraph (a) above, all its present and future Securities and Interest and all its present and future rights relating to any of the Securities, including without limitation:

- (i) rights (contractually or otherwise) to give instructions relating to the Securities; and
- (ii) all claims for damages and rights to receive moneys due or to become due for any reason whatsoever in respect of any of the Securities.

4. **RESTRICTIONS AND FURTHER ASSURANCE**

4.1 **Negative pledge**

The Clearing Member shall not create or permit to subsist any Security over any Charged Assets except for the Charges.

4.2 **Disposal**

The Clearing Member shall not (nor agree to) enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, withdraw, transfer or otherwise dispose of any Charged Asset except as permitted by the Clearing Rules and Clearing Procedures.

4.3 **Delivery of documents**

The Clearing Member shall deliver or procure that there shall be delivered to OTC Clear such documents relating to the Securities as OTC Clear requires.

4.4 **Further assurance**

(a) The Clearing Member shall promptly do whatever OTC Clear requires:

- (i) to perfect or protect the Charges or the priority of the Charges; or
- (ii) to facilitate the realisation of the Charged Assets or the exercise of any rights vested in OTC Clear or any Receiver,

including, without limitation, making any registration and giving any notice, order or direction.

(b) The Clearing Member shall take all such action as is available to it (including making all filings and registrations) as may from time to time be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on OTC Clear by or pursuant to this Deed.

4.5 **Assignment of equities of redemption**

The Clearing Member shall not assign any equities of redemption held by it in respect of Collateral that is subject to a Deed of Charge in respect of Client Collateral Account(s) other than pursuant to Clearing Rule 835, 1703 or 1704.

4.6 **BAU Porting Supplemental Assignment Letter**

In respect of any non-cash Collateral that is to be ported pursuant to Clearing Rule 835 either from the Clearing Member as Transferor Clearing Member or to the Clearing Member as Transferee Clearing Member, the Clearing Member shall, upon request by OTC Clear, promptly (and in any event within any timeframe specified by OTC Clear) execute (as Transferor Clearing Member or Transferee Clearing Member, as the case may be) and deliver to OTC Clear a letter in the form of Schedule 2 (*Form of BAU Porting Supplemental Assignment Letter*) to this Deed in respect of that Collateral.

4.7 Default Porting Supplemental Assignment Letter

In respect of any non-cash Collateral that is to be ported pursuant to Clearing Rule 1703 or 1704 either from the Clearing Member as Defaulting Clearing Member or to the Clearing Member as Replacement Clearing Member, the Clearing Member shall, upon request by OTC Clear, promptly (and in any event within any timeframe specified by OTC Clear) execute (as Defaulting Clearing Member or Replacement Clearing Member, as the case may be) and deliver to OTC Clear a letter in the form of Schedule 3 (*Form of Default Porting Supplemental Assignment Letter*) to this Deed in respect of that Collateral.

5. MORTGAGED SECURITIES

5.1 Voting before enforcement

Subject to Clause 5.2 (*Voting after enforcement*), the Clearing Member shall not be entitled to exercise, and shall not be entitled to direct the exercise of, the voting and other rights attached to any Securities.

5.2 Voting after enforcement

At any time after the occurrence of a DMP Event with respect to the Clearing Member:

- (a) OTC Clear or the Receiver shall be entitled to exercise or direct the exercise of the voting and other rights attached to any Securities in such manner as it or he sees fit; and
- (b) the Clearing Member shall comply or procure the compliance with any directions of OTC Clear or the Receiver in respect of the exercise of those rights and shall promptly execute and/or deliver to OTC Clear or the Receiver such forms of proxy as it or he requires with a view to enabling such person as it or he selects to exercise those rights.

5.3 Interest before enforcement

Subject to Clause 5.4 (*Interest after enforcement*), the Clearing Member shall be entitled to receive, and OTC Clear shall pay, such amounts in respect of cash income derived from the Securities as are specified in the Clearing Rules and Clearing Procedures.

5.4 Interest after enforcement

At any time after the occurrence of a DMP Event with respect to the Clearing Member, OTC Clear (or, as the case may be, its nominee) shall be entitled to retain any such cash income derived from the Securities received by it and apply the same in such manner as OTC Clear sees fit.

5.5 Communications

The Clearing Member shall promptly deliver to OTC Clear a copy of every circular, notice, report, set of accounts or other documents received by it or its nominee in connection with the Securities or in connection with or from the issuer of any of the Securities.

5.6 Payment of calls etc.

The Clearing Member will promptly pay or procure the payment of all calls, instalments or other payments which may at any time become due in respect of any of the Charged Assets.

6. GENERAL UNDERTAKINGS

6.1 Information

The Clearing Member shall supply to OTC Clear promptly such information regarding the Charged Assets and its compliance with this Deed as OTC Clear may reasonably request.

6.2 No prejudicial conduct

The Clearing Member shall not do, or permit to be done, anything which could prejudice the Charges.

7. REPRESENTATIONS AND WARRANTIES

(a) The Clearing Member makes the representations and warranties set out in this paragraph (a) to OTC Clear on the date of this Deed:

- (i) It is a corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.
- (ii) It has the power to own its assets and carry on its business as it is being conducted.
- (iii) The obligations expressed to be assumed by it in this Deed are legal, valid, binding and enforceable, subject to:
 - (A) any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered to OTC Clear in respect of this Deed; or
 - (B) any registrations to be made after the date of this Deed which are specifically referred to in any legal opinion delivered to OTC Clear in respect of this Deed.
- (iv) Its entry into , performance and delivery of this Deed, and the transactions contemplated by this Deed, do not and will not conflict with:
 - (A) any law or regulation applicable to it;
 - (B) its constitutional documents; or
 - (C) any agreement or instrument binding upon it or any of its assets,nor (except for the Charges) result in the existence of, or oblige it to create, any Security (or any other Encumbrance) over any of its assets.
- (v) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed and the transactions contemplated this Deed.
- (vi) All Authorisations required or desirable:
 - (A) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Deed;
 - (B) to make this Deed admissible in evidence in its jurisdiction of incorporation; and
 - (C) to enable it to create the Charges and to ensure that the Charges have the priority and ranking the Charges are expressed to have,

have been obtained or effected and are in full force and effect, subject to any registrations specifically referred to in any legal opinion delivered to OTC Clear in respect of this Deed.

- (vii) Subject to any qualifications specifically referred to in any legal opinion delivered to OTC Clear in respect of this Deed:
 - (A) the choice of Hong Kong law as the governing law of this Deed will be recognised and enforced in its jurisdiction of incorporation; and
 - (B) any judgment obtained in Hong Kong in relation to this Deed will be recognised and enforced in its jurisdiction of incorporation.
- (b) The Repeating Representations are deemed to be made by the Clearing Member by reference to the facts and circumstances then existing on each day additional Securities become Charged Assets.
- (c) In addition, the Clearing Member makes the representations and warranties set out in Clearing Rule 1220 to OTC Clear:
 - (i) on the date of this Deed; and
 - (ii) pursuant to Clearing Rule 1220, on each day Collateral is delivered to OTC Clear pursuant to the Clearing Rules.

8. ENFORCEMENT

8.1 When enforceable

The Charges shall be immediately enforceable on and at any time after the occurrence of a DMP Event with respect to the Clearing Member, and OTC Clear:

- (a) may enforce all or any part of any Charges (at the times, in the manner and on the terms it thinks fit) and take possession and hold or dispose of all or any part of the Charged Assets; and
- (b) whether or not it has appointed a Receiver, may exercise all or any of the powers, authorities and discretions given to mortgagees and receivers by the CPO as varied or extended by this Deed or otherwise conferred by law.

8.2 Power of sale

The statutory power of sale, of appointing a Receiver and the other statutory powers conferred on mortgagees by Section 51 (*Powers of mortgagee and receiver*) and Section 53 (*Sale by Mortgagee*) of the CPO and the Fourth Schedule (*Powers of mortgagee and receiver*) to the CPO as varied and extended by this Deed shall arise on the date of this Deed and no restriction imposed by any ordinance or other statutory provision in relation to the exercise of any power of sale shall apply to this Deed.

8.3 No requirement of notice period

OTC Clear is not required to give any prior notice of non-payment or default to the Clearing Member before enforcing the Charges, there is no minimum period for which Liabilities must remain due and unpaid before the Charges can be enforced and Paragraph 11 of the Fourth

Schedule (*Powers of mortgagee and receiver*) to the CPO (and any similar provision under other laws) does not apply to this Deed.

8.4 No Liability as mortgagee in possession

Nothing done by or on behalf of OTC Clear pursuant to this Deed shall render it liable to account as a mortgagee in possession for any sums other than actual receipts.

8.5 Wide construction of enforcement powers

The powers of OTC Clear under this Deed shall be construed in the widest possible sense and all Parties intend that OTC Clear shall have as wide and flexible a range of powers as may be conferred (or, if not expressly conferred, as is not restricted) by any applicable law.

9. APPOINTMENT AND RIGHTS OF RECEIVERS

9.1 Appointment of Receivers

If:

- (a) requested by the Clearing Member; or
- (b) the Charges become enforceable (whether or not OTC Clear has taken possession of the Charged Assets),

without any notice or further notice, OTC Clear may, by deed, or otherwise in writing signed by any officer or manager of OTC Clear or any person authorised for this purpose by OTC Clear, appoint one or more persons to be a Receiver. OTC Clear may similarly remove any Receiver and appoint any person instead of any Receiver. If OTC Clear appoints more than one person as Receiver, OTC Clear may give those persons power to act either jointly or severally. The provisions of section 50 (*Power to appoint a receiver*) of the CPO (as varied and/or extended by this Deed) shall apply to any appointment made pursuant to this Deed.

9.2 Scope of appointment

Any Receiver may be appointed Receiver of all of the Charged Assets or Receiver of a part of the Charged Assets specified in the appointment. In the latter case, the rights conferred on a Receiver as set out in Schedule 1 (*Rights of Receivers*) to this Deed shall have effect as though every reference in that Schedule to any Charged Assets were a reference to the part of those assets so specified or any part of those assets.

9.3 Rights of Receivers

Any Receiver appointed pursuant to this Clause 9 shall have the rights, powers, discretions, privileges and immunities conferred on receivers by the CPO (as varied and/or extended by this Deed), all powers (if any) conferred on receivers by law or otherwise and shall also have the powers and rights set out in Schedule 1 (*Rights of Receivers*) to this Deed, all of which powers and rights are exercisable without further notice.

9.4 Agent of Clearing Member

Any Receiver shall be the agent of the Clearing Member for all purposes. The Clearing Member alone shall be responsible for the Receiver's contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by the Receiver.

9.5 **Remuneration**

OTC Clear may determine the remuneration of any Receiver and direct payment of that remuneration out of moneys he receives as Receiver. The Clearing Member alone shall be liable for the remuneration and all other costs, losses, liabilities and expenses of the Receiver.

10. **OTC CLEAR'S RIGHTS**

10.1 **Rights of OTC Clear**

Any rights conferred by this Deed upon a Receiver may be exercised by OTC Clear after the Charges become enforceable, whether or not OTC Clear shall have taken possession or appointed a Receiver of the Charged Assets.

10.2 **Delegation**

OTC Clear may delegate in any manner to any person any rights exercisable by OTC Clear under this Deed. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) as OTC Clear thinks fit.

11. **ORDER OF DISTRIBUTIONS**

All amounts received or recovered by OTC Clear or any Receiver or any Delegate in exercise of their rights under this Deed shall be applied in the following order of priority (subject to Clause 15.5 (*Appropriations*)), in each case in accordance with the terms of the Clearing Rules and Clearing Procedures:

- (a) in or towards the payment of all costs, losses, liabilities and expenses of and incidental to the appointment of any Receiver or Delegate and the exercise of any of his rights, including his remuneration and all outgoings paid by him (to the extent that, in OTC Clear's opinion, such costs, losses, liabilities and expenses relate to the amount received or recovered);
- (b) in or towards the payment of Liabilities relating to the Client Position Account to which the Relevant Charged Assets are or were attributed by OTC Clear in accordance with the Clearing Rules and Clearing Procedures; and
- (c) in payment of any surplus to the Clearing Member or other person entitled to it.

12. **LIABILITY OF OTC CLEAR, RECEIVERS AND DELEGATES**

12.1 **Possession**

If OTC Clear, any Receiver or any Delegate takes possession of the Charged Assets, it or he may at any time relinquish possession.

12.2 **OTC Clear's liability**

- (a) Neither OTC Clear nor any Receiver or Delegate shall (either by reason of taking possession of the Charged Assets or for any other reason and whether as mortgagee in possession or otherwise) be liable to the Clearing Member or any other person for any costs, losses, liabilities or expenses relating to the realisation of any Charged Assets or from any act, default, omission or misconduct of OTC Clear, any Receiver, any Delegate or their respective officers, employees or agents in relation to the Charged Assets or in connection with any Contract or Clearing

Documentation provided that the relevant realisation, act, default, omission or misconduct is done or made, as the case may be, in good faith.

- (b) Nothing in this Deed shall be construed as placing on OTC Clear any liability whatsoever in respect of any calls, instalments or other payments relating to any of the Charged Assets or any rights, shares or other securities accruing, offered or arising as aforesaid, and the Clearing Member shall indemnify OTC Clear in respect of all calls, instalments or other payments relating to any of the Charged Assets owned by it and to any rights, shares and other securities accruing, offered or arising as aforesaid in respect of any of the Charged Assets.

13. **POWER OF ATTORNEY**

13.1 **Appointment**

The Clearing Member by way of security irrevocably appoints OTC Clear, every Receiver and every Delegate severally as its attorney (with full power of substitution), on its behalf and in its name or otherwise, at such time and in such manner as the attorney thinks fit:

- (a) to do anything which the Clearing Member is obliged to do (but has not done) under any Clearing Documentation (including to execute charges over, transfers, conveyances, assignments and assurances of, and other instruments, notices, orders and directions relating to, the Charged Assets); and
- (b) to exercise any of the rights conferred on OTC Clear, any Receiver or any Delegate in relation to the Charged Assets or under or in connection with any Clearing Documentation or under the CPO, the Companies Ordinance, the Companies (Winding Up and Miscellaneous Provisions) Ordinance, the SFO or generally under Hong Kong law.

13.2 **Ratification**

The Clearing Member ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do in the exercise or purported exercise of the power of attorney granted by it in Clause 13.1 (*Appointment*).

14. **PROTECTION OF THIRD PARTIES**

14.1 **No duty to enquire**

No person dealing with OTC Clear, any Receiver or any Delegate shall be concerned to enquire:

- (a) whether the power or rights conferred under or in connection with this Deed are exercisable;
- (b) whether any consents, regulations, restrictions or directions relating to such rights have been obtained or complied with;
- (c) otherwise as to the propriety or regularity of acts purporting or intended to be in exercise of any such rights; or
- (d) as to the application of any money borrowed or raised.

14.2 **Protection to purchasers**

Subject to the provisions of this Deed, all the protection to purchasers contained in Sections 52 (*Protection of purchaser*), 53 (*Sale by mortgagee*) and 55 (*Mortgagee's receipt*) of the CPO or in any other applicable legislation shall apply to any person purchasing from or dealing with OTC Clear, any Receiver or any Delegate.

15. **SAVING PROVISIONS**

15.1 **Continuing Security**

Subject to Clause 16 (*Discharge of Security*), the Charges are continuing Security and will extend to the ultimate balance of the Liabilities, regardless of any intermediate payment or discharge in whole or in part.

15.2 **Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of the Clearing Member or any security for those obligations or otherwise) is made by OTC Clear in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Clearing Member and the Charges shall continue or be reinstated as if the discharge, release or arrangement had not occurred.

15.3 **Waiver of defences**

Neither the obligations of the Clearing Member under this Deed nor the Charges will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under any Contract or Clearing Documentation or any of the Charges (without limitation and whether or not known to it or OTC Clear) including:

- (a) any time, waiver or consent granted to, or composition with, the Clearing Member or other person;
- (b) the release of the Clearing Member or other person under the terms of any composition or arrangement with any creditor of the Clearing Member;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce any rights against, or security over assets of, the Clearing Member or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Clearing Member or other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Contract or Clearing Documentation or any other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Contract or Clearing Documentation or any other document or security; or
- (g) any insolvency or similar proceedings.

15.4 **Immediate recourse**

The Clearing Member waives any right it may have of first requiring OTC Clear (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Clearing Member under this Deed. This waiver applies irrespective of any law or any provision of any Contract or Clearing Documentation to the contrary.

15.5 **Appropriations**

Until all the Liabilities have been irrevocably paid in full and the Membership of the Clearing Member has been terminated in accordance with the Clearing Rules, OTC Clear (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by OTC Clear (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Clearing Member shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from the Clearing Member or on account of the Clearing Member's liability under this Deed.

15.6 **Additional Security**

The Charges are in addition to and are not in any way prejudiced by any other guarantees or security now or subsequently held OTC Clear.

16. **DISCHARGE OF SECURITY**

16.1 **Final redemption**

Subject to Clause 16.2 (*Retention of security*), if OTC Clear is satisfied that all the Liabilities have been irrevocably paid in full and that the Membership of the Clearing Member has been terminated in accordance with the Clearing Rules, OTC Clear shall at the request and cost of the Clearing Member release, reassign or discharge (as appropriate) the Charged Assets from the Charges.

16.2 **Retention of security**

If OTC Clear considers that any amount paid or credited to OTC Clear under any Contract or Clearing Documentation is capable of being avoided or otherwise set aside, that amount shall not be considered to have been paid for the purposes of determining whether all the Liabilities have been irrevocably paid.

16.3 **Consolidation**

Any restrictions on the consolidation of Security shall be excluded to the fullest extent permitted by law and OTC Clear shall, so far as it is lawful and subject to other provisions of this Deed, be entitled to consolidate all or any of the Charges with any other Security whether in existence on the date of this Deed or in the future.

17. **PAYMENTS**

17.1 **Demands**

Any demand for payment made by OTC Clear shall be valid and effective even if it contains no statement of the relevant Liabilities or an inaccurate or incomplete statement of them.

17.2 **Payments**

All payments by the Clearing Member under this Deed (including damages for its breach) shall be made to such account, with such financial institution and in such other manner as OTC Clear may direct.

17.3 **Continuation of accounts**

At any time after:

- (a) the receipt by OTC Clear of notice (either actual or otherwise) of any subsequent Security affecting the Charged Assets; or
- (b) the presentation of a petition or the passing of a resolution in relation to the Winding-up of the Clearing Member,

OTC Clear may open a new account in the name of the Clearing Member (whether or not it permits any existing account to continue). If OTC Clear does not open such a new account, it shall nevertheless be treated as if it had done so when the relevant event occurred. No moneys paid into any account, whether new or continuing, after that event shall discharge or reduce the Liabilities as at the time the relevant event occurred.

18. **RIGHTS, WAIVERS AND DETERMINATIONS**

18.1 **Ambiguity**

Where there is any ambiguity or conflict between the rights conferred by law and those conferred by or pursuant to this Deed, the terms of this Deed shall prevail.

18.2 **Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of OTC Clear, any Receiver or any Delegate any right or remedy under this Deed shall operate as a waiver of any such right or remedy or constitute an election to affirm this Deed. No waiver or election to affirm this Deed on the part of OTC Clear, any Receiver or any Delegate shall be effective unless in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

18.3 **Determinations**

Any determination by or certificate of OTC Clear, any Receiver or any Delegate under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

19. **SEPARATE AND INDEPENDENT OBLIGATIONS**

The Security created by the Clearing Member by or in connection with any Contract or Clearing Documentation is separate from and independent of the Security created or intended to be created by any other person by or in connection with any Contract or Clearing Documentation.

20. **COUNTERPARTS**

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

21. **GOVERNING LAW**

This Deed is governed by Hong Kong law.

22. **JURISDICTION**

- (a) The courts of Hong Kong have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed) (a "**Dispute**").
- (b) The Parties agree that the courts of Hong Kong are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) ~~This Clause 22 is for the benefit of OTC Clear only. As a result, if the Clearing Member is incorporated in a jurisdiction other than Mainland China (i)~~ OTC Clear shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. ~~To~~ and (ii) to the extent allowed by law, OTC Clear may take concurrent proceedings in any number of jurisdictions.

SCHEDULE 1
RIGHTS OF RECEIVERS

Any Receiver appointed pursuant to Clause 9 (*Appointment and rights of Receivers*) shall have the right, either in its own name or in the name of the Clearing Member or otherwise and in such manner and upon such terms and conditions as the Receiver thinks fit, and either alone or jointly with any other person:

(a) **Take possession**

to take possession of, get in and collect the Charged Assets, and to require payment to it of all Interest including without limitation, to complete any instruments of transfer and to procure the transfer of the Charged Assets into the name of the Receiver or its nominee and, if necessary, take possession of and collect any documents of title relating to the Charged Assets and/or cause physical documents of title to be withdrawn from any Clearing System and/or cause the Charged Assets to be deposited into any relevant Clearing System, in each case, at the cost and risk of the Clearing Member;

(b) **Deal with Charged Assets**

to sell, transfer, assign, exchange, lend or otherwise dispose of or realise the Charged Assets to any person either by public offer or auction, tender or private contract and for a consideration of any kind (which may be payable or delivered in one amount or by instalments spread over a period or deferred);

(c) **Borrow money**

to borrow or raise money either unsecured or on the security of the Charged Assets (either in priority to the Charges or otherwise);

(d) **Rights of ownership**

to exercise and do (or permit the Clearing Member or any nominee of it to exercise and do) all such rights and things as OTC Clear would be capable of exercising or doing if it were the absolute beneficial owner of the Charged Assets;

(e) **Claims**

to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person relating to the Charged Assets;

(f) **Legal actions**

to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Charged Assets or any business of the Clearing Member;

(g) **Redemption of Security**

to redeem any Security (whether or not having priority to the Charges) over the Charged Assets and to settle the accounts of any person with an interest in the Charged Assets; and

(h) **Other powers**

to do anything else it may think fit for the realisation of the Charged Assets or incidental to the exercise of any of the rights conferred on the Receiver under or by virtue of any Contract, any Clearing Documentation, the CPO, the Companies Ordinance, the Companies (Winding Up and Miscellaneous Provisions) Ordinance, the SFO and other applicable statutory provisions and common law.

SCHEDULE 2

FORM OF BAU PORTING SUPPLEMENTAL ASSIGNMENT LETTER

To: [●] (the “**Transferee Clearing Member**”)
Cc: OTC Clearing Hong Kong Limited (“**OTC Clear**”)
From: [●] (the “**Transferor Clearing Member**”)

[Insert date]

Dear Sirs

1. We refer to:
 - a. the clearing membership agreement between the Transferor Clearing Member and OTC Clear dated [●] (the “**Membership Agreement**”); and
 - b. the porting request made by the Transferee Clearing Member pursuant to Clearing Rule 830 with reference number [●] and dated [●] (the “**Porting Request**”).
2. Terms used and not defined in this letter have the meanings that such terms have for the purposes of the Membership Agreement.
3. To the extent not already assigned pursuant to the Clearing Rules, the Transferor Clearing Member hereby assigns absolutely, on the terms of Clearing Rule 835, to the Transferee Clearing Member any equities of redemption held by the Transferor Clearing Member in respect of Collateral that is:
 - a. subject to a Deed of Charge between the Transferor Clearing Member and OTC Clear in respect of Client Collateral Account(s) (as defined in the Clearing Rules); and
 - b. to be ported from the Transferor Clearing Member to the Transferee Clearing Member pursuant to the Porting Request.
4. This letter shall be governed by and construed in accordance with the laws of Hong Kong.
5. The Transferor Clearing Member and Transferee Clearing Member intend this letter to take effect as a deed even if the Transferee Clearing Member only executes it under hand. This letter has been delivered as a deed on the date stated at the beginning of this letter.

Signature page to the BAU Porting Supplemental Assignment Letter

Transferor Clearing Member

[Note: For use by a Hong Kong company executing by seal]

[THE [COMMON SEAL] of]
[TRANSFEROR CLEARING MEMBER]

[COMMON SEAL OF TRANSFEROR
CLEARING MEMBER]

was affixed in the presence of:

.....
[Signature of Director]

Director

.....
[Signature of Director/Secretary]

[Director/Secretary]

OR

[Note: For use by a Hong Kong company executing under hand (subject to requirements in Articles)]

[EXECUTED AND DELIVERED as
a DEED by and in the name of

[TRANSFEROR CLEARING MEMBER] acting by [its sole director]/[two
directors]/[a director and its company secretary]:

.....

[Signature of Director]

Director

.....

[Signature of Director/Secretary]

[Director/Secretary]

[Signature of witness]

Name

Address

Occupation

Transferee Clearing Member

**[INSERT NAME OF TRANSFEREE CLEARING
MEMBER]**

By:

SCHEDULE 3

FORM OF DEFAULT PORTING SUPPLEMENTAL ASSIGNMENT LETTER

To: [●] (the “**Replacement Clearing Member**”)
Cc: OTC Clearing Hong Kong Limited (“**OTC Clear**”)
From: [●] (the “**Defaulting Clearing Member**”)

[Insert date]

Dear Sirs

1. We refer to:
 - a. the clearing membership agreement between the Defaulting Clearing Member and OTC Clear dated [●] (the “**Membership Agreement**”); and
 - b. the Porting Instructions submitted to OTC Clear pursuant to Clearing Rule 822 with reference number[s] [●] and dated [●] (the “**Porting Instructions**”).
2. Terms used and not defined in this letter have the meanings that such terms have for the purposes of the Membership Agreement.
3. To the extent not already assigned pursuant to the Clearing Rules, the Defaulting Clearing Member hereby assigns absolutely, on the terms of Clearing Rule 1703, to the Replacement Clearing Member any equities of redemption held by the Defaulting Clearing Member in respect of Collateral that is:
 - a. subject to a Deed of Charge between the Defaulting Clearing Member and OTC Clear in respect of Client Collateral Account(s) (as defined in the Clearing Rules);
 - b. recorded in the Client Clearing Category 1 Collateral Account (as defined in the Clearing Rules) relating to the Client referred to in the Porting Instructions; and
 - c. to be ported from the Defaulting Clearing Member to the Replacement Clearing Member pursuant to Clearing Rule 1703.
4. To the extent not already assigned pursuant to the Clearing Rules, the Defaulting Clearing Member hereby assigns absolutely, on the terms of Clearing Rule 1704, to the Replacement Clearing Member any equities of redemption held by the Defaulting Clearing Member in respect of Collateral that is:
 - a. subject to a Deed of Charge between the Defaulting Clearing Member and OTC Clear in respect of Client Collateral Account(s) (as defined in the Clearing Rules);
 - b. recorded in the Client Clearing Category 2 Collateral Account (as defined in the Clearing Rules) relating to (amongst others) the Client referred to in the Porting Instructions; and
 - c. to be ported from the Defaulting Clearing Member to the Replacement Clearing Member pursuant to Clearing Rule 1704.
5. This letter shall be governed by and construed in accordance with the laws of Hong Kong.
6. The Defaulting Clearing Member and Replacement Clearing Member intend this letter to take effect as a deed even if the Replacement Clearing Member only executes it under hand. This letter has been delivered as a deed on the date stated at the beginning of this letter.

Signature page to the Default Porting Supplemental Assignment Letter

Defaulting Clearing Member

[Note: For use by a Hong Kong company executing by seal]

**[[THE [COMMON SEAL] of]
[DEFAULTING CLEARING MEMBER]**

**[COMMON SEAL OF DEFAULTING
CLEARING MEMBER]**

was affixed in the presence of:

.....
[Signature of Director]

Director

.....
[Signature of Director/Secretary]

[Director/Secretary]

OR

[Note: For use by a Hong Kong company executing under hand (subject to requirements in Articles)]

[EXECUTED AND DELIVERED as

a **DEED** by and in the name of

[DEFAULTING CLEARING MEMBER] acting by [its sole director]/[two directors]/[a director and its company secretary]:

.....
[Signature of Director]

Director

.....
[Signature of Director/Secretary]

[Director/Secretary]

[Signature of witness]

Name

Address

Occupation]

Replacement Clearing Member

**[INSERT NAME OF REPLACEMENT CLEARING
MEMBER]**

By:

Signature page to the Deed of Charge

In witness whereof this Deed has been [signed/executed/sealed]¹ [and delivered] as a deed on the date stated at the beginning.

Clearing Member

[Note: For use by a Hong Kong company executing by seal]

[[THE [COMMON SEAL] of]
[CLEARING MEMBER]

[COMMON SEAL OF CLEARING
MEMBER]

was affixed in the presence of:

.....
[Signature of Director]

Director

.....
[Signature of Director/Secretary]

[Director/Secretary]]

OR

[Note: For use by a Hong Kong company executing under hand (subject to requirements in Articles)]

[EXECUTED AND DELIVERED as
a **DEED** by and in the name of

[CLEARING MEMBER] acting by [its sole director]/[two
directors]/[a director and its company secretary]:

.....

[Signature of Director]

Director

.....

[Signature of Director/Secretary]

¹ Ensure that this is consistent with the words used in the relevant signature block – in particular whether “signed”, “executed” and/or “sealed” has been used.

[Director/Secretary]

[Signature of witness]

Name

Address

Occupation]

OTC Clear

EXECUTED by [name of authorised signatory] for and on behalf of **OTC CLEARING HONG KONG LIMITED** in the presence of

[Signature of authorised signatory]

.....

.....

[Signature of witness]

Name

Address

Occupation

Address:

Fax No:

Attention:

Appendix 2

Security Deed

SECURITY DEED

dated [_____]

[CLEARING MEMBER]

as a Clearing Member of

OTC CLEARING HONG KONG LIMITED

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THIS DEED is dated [] and made by way of deed poll by [] a company incorporated in [] having company number [] and its [registered] / [principal] office at [] (the "**Clearing Member**").

Background

- (A) In order to facilitate the clearing of certain transactions with OTC Clear (defined below), the Clearing Member has entered into, and/or will enter into, one or more agreements with one or more of its clients that govern the terms upon which the Clearing Member will act as a Clearing Member (as defined in the Clearing Rules) in respect of Client Clearing Services provided to that client (each such agreement, a "**Client Clearing Agreement**").
- (B) The Clearing Member is executing this Deed in order to maximise the ability to move positions corresponding to transactions under the Client Clearing Agreements to Replacement Clearing Members upon the occurrence of an Enforcement Event (defined below) and to deliver certain receivables from OTC Clear to the Clients directly.
- (C) The Board of Directors of the Clearing Member is satisfied that entering into this Deed is for the purposes and to the benefit of the Clearing Member and its business.

This DEED witnesses the following:

1 Definitions and interpretation

1.1 Definitions

In this Deed:

"**Additional Security Deed**" means a deed substantially in the form set out in Schedule 3 (*Additional Security Deed*) to this Deed.

"**Charged Assets**" means the assets from time to time subject, or expressed to be subject, to the Charges or any part of those assets.

"**Charges**" means all or any of the Security created or expressed to be created by or pursuant to this Deed.

"**Clearing Procedures**" means the practices, procedures and administrative requirements prescribed by OTC Clear from time to time in effect.

"**Clearing Rules**" means the clearing rules of OTC Clear as from time to time in effect and shall include the Clearing Procedures.

"**Client**" means each of the clients listed in Schedule 2 (*Clients*) to this Deed being, in each case, a Client (as defined in the Clearing Rules) which is party to a Client Clearing Agreement.

"**Client Clearing Agreement**" has the meaning given to it in Recital (A) to this Deed.

"**Companies Ordinance**" means the Companies Ordinance (Cap. 622) of the Laws of Hong Kong.

"**Companies (Winding Up and Miscellaneous Provisions) Ordinance**" means the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) of the Laws of Hong Kong.

"**CPO**" means the Conveyancing and Property Ordinance (Cap. 219) of the Laws of Hong Kong.

“Enforcement Event” means the occurrence of a DMP Event with respect to the Clearing Member.

“Liabilities” means all present and future obligations, moneys, debts and liabilities due, owing or incurred by the Clearing Member to a Client under or in connection with the Transaction Documents.

“OTC Clear” means OTC Clearing Hong Kong Limited.

“Relevant Client Entitlement” means, in respect of a Client, the Client Entitlement relating to that Client, as determined by OTC Clear in accordance with the Clearing Rules following the occurrence of an Enforcement Event.

“Security” means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

“Transaction Documents” means, in respect of a Client, this Deed and the Client Clearing Agreement to which that Client is a party.

1.2 Incorporation of defined terms

Unless a contrary indication appears, terms used in the Clearing Rules have the same meaning in this Deed.

1.3 Construction

1.3.1 Unless a contrary indication appears, any reference in this Deed to:

- (i) **“assets”** includes present and future properties, revenues and rights of every description;
- (ii) the **“Clearing Member”**, a **“Client”** or any **“party”** shall be construed so as to include its successors in title and permitted transferees;
- (iii) an agreement, confirmation or instrument is to a reference to that agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerous) or replaced; and
- (iv) a **“person”** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality).

1.3.2 The provisions in Clearing Rules 102 to 108 apply to this Deed with all necessary changes. Without prejudice to the generality of the preceding sentence, this Deed is subject to the Clearing Rules and in the event of any conflict between this Deed and the Clearing Rules, the Clearing Rules shall prevail.

1.3.3 For the purpose of conferring rights, powers, privileges, authorities, discretions and immunities contained in the CPO on a Client, references to charge (including legal charge and equitable charge) or mortgage (including legal mortgage and equitable mortgage) in any provision of the CPO shall, for the purposes of this Deed, be deemed to be references to the Charges, references to mortgaged land in any provision of the CPO shall, for the purposes of this Deed, be deemed to be references to the Charged Assets, references to mortgage money in any provision of the CPO shall, for the purposes of this Deed, be deemed to be references to all

or any part of the Liabilities, references to mortgagee in any provision of the CPO shall, for the purposes of this Deed, be deemed to be references to the Client, and references to mortgagor in any provision of the CPO shall, for the purposes of this Deed, be deemed to be references to the Clearing Member.

2 Undertaking to pay

The Clearing Member undertakes to pay each of its Liabilities when due in accordance with its terms.

3 Security

The Clearing Member, as legal and beneficial owner and as continuing security for the due and punctual payment and discharge of all Liabilities, charges in favour of each Client by way of first fixed charge all its present and future right, title and interest in and to the Relevant Client Entitlement (without prejudice to the completion of the Default Management Process and any netting provisions contained in the Clearing Rules).

4 Multiple deeds

This Deed shall be treated as if it were a separate deed in favour of each Client, as if the Clearing Member had executed a separate deed in favour of each such Client so that this Deed confers rights severally in favour of each Client, and references in this Deed to “**the Client**” and “**that Client**” shall be construed accordingly.

5 Restrictions and further assurance

5.1 Negative pledge

The Clearing Member shall not create or permit to subsist any Security over any Charged Assets except for the Charges or as permitted by the Clearing Rules.

5.2 Distribution of Charged Assets

The Clearing Member hereby acknowledges and agrees that, following the occurrence of an Enforcement Event, OTC Clear shall act in accordance with the Clearing Rules and any other laws and regulations applicable to it in determining how the Charged Assets are to be distributed and such action by OTC Clear shall be without prejudice to any protections afforded to it pursuant to the Clearing Rules and any other laws and regulations applicable to it.

6 Payments

6.1 Payments before enforcement

Subject as otherwise provided in this Deed, and for so long as no Enforcement Event has occurred, the Clearing Member shall be entitled to receive and retain all payments or transfers made to it in respect of the relevant Client Account in accordance with the Clearing Rules.

6.2 Payments after enforcement

Following the occurrence of an Enforcement Event, the Client shall be entitled to receive directly from OTC Clear the Relevant Client Entitlement and any other payments or

transfers made in respect of a Charged Asset, in each case in accordance with the Clearing Rules.

7 Enforcement and remedies

7.1 When enforceable

The Charges shall be immediately enforceable on and at any time after the occurrence of an Enforcement Event, and the Client:

- (a) may enforce all or any part of any Charges (at the times, in the manner and on the terms it thinks fit) and take possession and hold or dispose of all or any part of the Charged Assets; and
- (b) may exercise all or any of the rights, powers, authorities and discretions given to mortgagees and receivers by the CPO as varied or extended by this Deed or otherwise conferred by law.

7.2 Power of sale

The statutory power of sale and the other statutory powers conferred on mortgagees by Sections 50 (*Power to appoint a receiver*), 51 (*Powers of mortgagee and receiver*) and 53 (*Sale by mortgagee*) of the CPO and the Fourth Schedule (*Powers of mortgagee and receiver*) to the CPO as varied and extended by this Deed shall arise on the date of this Deed and no restriction imposed by any ordinance or other statutory provision in relation to the exercise of any power of sale shall apply to this Deed.

7.3 No requirement of notice period

The Client is not required to give any prior notice of non-payment or default to the Clearing Member before enforcing the Charges, there is no minimum period for which Liabilities must remain due and unpaid before the Charges can be enforced and Paragraph 11 of the Fourth Schedule (*Powers of mortgagee and receiver*) to the CPO (and any similar provision under other laws) does not apply to this Deed.

7.4 No liability as mortgagee in possession

Nothing done by or on behalf of the Client pursuant to this Deed shall render it liable to account as a mortgagee in possession for any sums other than actual receipts.

7.5 Wide construction of enforcement powers

The powers of the Client under this Deed shall be construed in the widest possible sense and all parties intend that the Client shall have as wide and flexible a range of powers as may be conferred (or, if not expressly conferred, as is not restricted) by any applicable law.

8 Provisions relating to the Client

8.1 Client's rights

At any time after the occurrence of an Enforcement Event, the Client shall have the rights, powers, discretions, privileges and immunities conferred on mortgagees and receivers by the CPO (as varied and/or extended by this Deed) or otherwise conferred by law, and shall also have the powers and rights set out in Schedule 1 (*Rights of the Client*) to this Deed.

8.2 Application of proceeds

Subject to Clause 12.1 (*Final redemption*), all amounts or assets received or recovered by the Client in the exercise of its rights under this Deed shall be applied in the following order: (i) in or towards the payment of the Liabilities in such order as the Client thinks fit, but in any case acting in good faith and in a commercially reasonable manner, and (ii) in payment of any surplus to the Clearing Member.

8.3 Power of attorney

The Clearing Member by way of security irrevocably appoints the Client as its attorney (with full power of substitution), on its behalf and in its name or otherwise, in such manner as the attorney thinks fit, but in any case acting in good faith and in a commercially reasonable manner, to exercise (following the occurrence of an Enforcement Event only) any of the rights conferred on the Client in relation to the Charged Assets or under the CPO, the Companies Ordinance, the Companies (Winding Up and Miscellaneous Provisions) Ordinance or generally under Hong Kong law. The Clearing Member ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do in the exercise or purported exercise of the power of attorney granted by it in this Clause 8.3.

9 Amendments

The Clearing Member may from time to time amend or revoke the terms of this Deed without the Client's consent, provided, however, that the Clearing Member undertakes:

- (i) not to amend or revoke this Deed without the prior written consent of OTC Clear; and
- (ii) to amend this Deed from time to time in order to reflect such changes as may be prescribed by OTC Clear to the Security Deed (as defined in the Clearing Rules, and upon which this Deed is based) from time to time in accordance with the Clearing Rules.

10 Additional Clients

The Clearing Member may, after the date of this Deed, grant a charge on the terms of this Deed to one or more additional clients. On each occasion when the Clearing Member wishes to exercise this right, it will execute an Additional Security Deed and will deliver to OTC Clear a copy of such Additional Security Deed, including an annex which sets out the details of the relevant client(s). For the avoidance of doubt, an Additional Security Deed may be given in respect of one or more clients.

11 Saving provisions

11.1 Continuing Security

Subject to Clause 12 (*Discharge of Security*), the Charges are continuing Security and will extend to the ultimate balance of the Liabilities, regardless of any intermediate payment or discharge in whole or in part.

11.2 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of the Clearing Member or any security for those obligations or otherwise) is made by the Client in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation or otherwise, without limitation, then

the liability of the Clearing Member and the Charges shall continue or be reinstated as if the discharge, release or arrangement had not occurred.

11.3 Waiver of defences

Neither the obligations of the Clearing Member under this Deed nor the Charges will be affected by an act, omission, matter or thing which, but for this Clause 11, would reduce, release or prejudice any of its obligations under any Transaction Document or any of the Charges (without limitation and whether or not known to the Clearing Member or the Client) including:

- 11.3.1 any time, waiver or consent granted to, or composition with, the Clearing Member or other person;
- 11.3.2 the release of the Clearing Member or other person under the terms of any composition or arrangement with any creditor of the Clearing Member;
- 11.3.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Clearing Member or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- 11.3.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Clearing Member or other person;
- 11.3.5 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Transaction Document or any other document or security;
- 11.3.6 any unenforceability, illegality or invalidity of any obligation of any person under any Transaction Document or any other document or security; or
- 11.3.7 any insolvency or similar proceedings.

11.4 Immediate recourse

The Clearing Member waives any right it may have of first requiring the Client (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Clearing Member under this Deed. This waiver applies irrespective of any law or any provision of a Transaction Document to the contrary.

11.5 Additional security

The Charges are in addition to and are not in any way prejudiced by any other guarantees or security now or subsequently held by the Client.

12 Discharge of Security

12.1 Final redemption

Immediately upon there no longer being any Liabilities remaining (or, if earlier, immediately upon it no longer being possible for an Enforcement Event to occur), the Client shall be deemed to have immediately released, reassigned or discharged (as appropriate) the Charged Assets from the Charges and therefore:

12.1.1 the Clearing Member may retain for its own account; and

12.1.2 the Client shall therefore promptly pay or transfer to the Clearing Member,

any amounts or other assets received by such party from OTC Clear in respect of the Charged Assets. For the avoidance of doubt, it is acknowledged that the Clearing Member's rights under this Clause 12 shall constitute an equity of redemption (and therefore a proprietary interest to the extent of such equity of redemption) in the Charged Assets and any amounts or other assets the subject of such rights shall be returned by the Client to the Clearing Member.

12.2 Consolidation

Any restrictions on the consolidation of the Security shall be excluded to the fullest extent permitted by law and the Client shall, so far as it is lawful and subject to other provisions of this Deed, be entitled to consolidate all or any of the Charges with any other security whether in existence on the date of this Deed or in the future.

13 Miscellaneous provisions

13.1 Payments

All payments by the Clearing Member under this Deed (including damages for its breach) shall be made to such account, with such financial institution and in such other manner as the Client may direct.

13.2 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of the Client any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

13.3 Partial invalidity

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

14 Governing law

This Deed is governed by Hong Kong law.

15 Enforcement

15.1 Jurisdiction

15.1.1 The courts of Hong Kong have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed) (a "**Dispute**").

15.1.2 The Clearing Member agrees that the courts of Hong Kong are the most appropriate and convenient courts to settle Disputes and accordingly the Clearing Member will not argue to the contrary.

15.2 [Service of process]

Without prejudice to any other mode of service allowed under any relevant law, the Clearing Member:

- 15.2.1 hereby irrevocably appoints [●] as its agent for service of process in relation to any proceedings before the Hong Kong courts in connection with this Deed; and
- 15.2.2 agrees that failure by a process agent to notify the Clearing Member of the process will not invalidate the proceedings concerned.]

IN WITNESS whereof this Deed has been executed by the Clearing Member as a deed poll and has been delivered on the date stated at the beginning of this Deed.

Schedule 1

Rights of the Client

Following the occurrence of an Enforcement Event, the Client shall have the right, either in its own name or in the name of the Clearing Member or otherwise and in such manner and upon such terms and conditions as the Client thinks fit, but in any case, acting in good faith and in a commercially reasonable manner, and either alone or jointly with any other person:

1 Take possession

to take possession of, get in and collect the Charged Assets and to require payment to it of revenues deriving therefrom;

2 Deal with Charged Assets

to sell, transfer, assign, exchange or otherwise dispose of or realise the Charged Assets to any person either by public offer or auction, tender or private contract and for a consideration of any kind (which may be payable or delivered in one amount or by instalments spread over a period or deferred);

3 Claims

to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person relating to the Charged Assets;

4 Legal actions

to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Charged Assets; and

5 Other powers

to do anything else it may think fit for the realisation of the Charged Assets or incidental to the exercise of any of the rights conferred on the Client under or by virtue of any Transaction Document, the CPO, the Companies Ordinance, the Companies (Winding Up and Miscellaneous Provisions) Ordinance and other applicable statutory provisions and common law.

**Schedule 2
Clients**

Client Legal Name

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

Schedule 3 Additional Security Deed

THIS DEED is dated [_____] and made by way of deed poll by [_____] a company incorporated in [_____] having company number [_____] and its [registered] / [principal] office at [_____] (the “**Clearing Member**”);

Background

- (A) In order to facilitate the clearing of certain transactions with OTC Clear, the Clearing Member has entered into, and/or will enter into, one or more agreements with one or more of its clients that govern the terms upon which the Clearing Member will act as a Clearing Member (as defined in the Clearing Rules) in respect of Client Clearing Services provided to that client (each such agreement, a “**Client Clearing Agreement**”).
- (B) The Clearing Member is executing this Deed pursuant to clause 10 (*Additional Clients*) of the Original Security Deed (as defined below).
- (C) The Board of Directors of the Clearing Member is satisfied that entering into this Deed is for the purposes and to the benefit of the Clearing Member and its business.

THIS DEED witnesses the following:

1 Definitions and interpretation

1.1 Definitions

In this Deed:

“**Client**” means each of the additional client(s) listed in the Annex to this Deed being, in each case, a Client (as defined in the Clearing Rules) which is party to a Client Clearing Agreement.

“**Client Clearing Agreement**” has the meaning given to it in Recital (A) to this Deed.

“**Original Security Deed**” means the security deed dated [●] and made by way of deed poll by the Clearing Member in favour of certain of its clearing clients, as amended from time to time.

1.2 Incorporation of defined terms

Unless a contrary indication appears, terms used in the Original Security Deed have the same meaning in this Deed, except that references to a “Client” shall be construed as references to a Client, reference to a “Client Clearing Agreement” shall be construed as references to a Client Clearing Agreement and references to the Original Security Deed shall be construed as references to this Deed.

1.3 Construction

The provisions of clause 1.3 (*Construction*) of the Original Security Deed apply to this Deed with all necessary changes.

2 Undertaking to pay

The Clearing Member undertakes to pay each of its Liabilities when due in accordance with its terms.

3 Security

The Clearing Member, as legal and beneficial owner and as continuing security for the due and punctual payment and discharge of all Liabilities, charges in favour of each Client by way of first fixed charge all its present and future right, title and interest in and to the Relevant Client Entitlement (without prejudice to any netting provisions contained in the Clearing Rules).

4 Multiple deeds

This Deed shall be treated as if it were a separate deed in favour of each Client, as if the Clearing Member had executed a separate deed in favour of each such Client so that this Deed confers rights severally in favour of each Client, and references in this Deed to “the Client” and “that Client” shall be construed accordingly.

5 Incorporation of provisions

Clause 5 (*Restrictions and further assurance*) to clause 9 (*Amendments*), clause 11 (*Savings provisions*) to clause 13 (*Miscellaneous provisions*) and clause 15 (*Enforcement*) of the Original Security Deed shall apply as if such clauses were set out in full in this Deed.

6 Governing law

This Deed is governed by Hong Kong law.

IN WITNESS whereof this Deed has been executed by the Clearing Member as a deed poll and has been delivered on the date stated at the beginning of this Deed.

Annex Clients

Client Legal Name

- 1.
- 2.
- 3.
- 4.
- 5.

Signature page to the Additional Security Deed

[CLEARING MEMBER]

[INSERT APPROPRIATE SIGNATURE BLOCK]¹

¹ This will depend on the legal identity, jurisdiction of incorporation and constitutional documents of the Clearing Member.

Signature page to the Security Deed

[CLEARING MEMBER]

[INSERT APPROPRIATE SIGNATURE BLOCK]²

² This will depend on the legal identity, jurisdiction of incorporation and constitutional documents of the Clearing Member.