

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]<sup>1</sup>*

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<sup>1</sup> 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]<sup>2</sup>*

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