

# Terms and Conditions of ECP

Last updated: April 2022

## 1 Interpretation

1.1 Unless otherwise expressly stated to the contrary, capitalised terms used herein shall bear the meanings as follows:

**“Access Credentials”** means any user name, registered email address(es), password(s), identifiers and access keys required to access the ECP and any other details necessary to access (i.e., log in) or use the ECP, as may be prescribed by HKEX from time to time;

**“Authorised User”** means a human user or machine user who or which is designated and authorised by an ECP User (through a Delegated Administrator or otherwise) to access and use the ECP on its behalf;

**“Data Privacy Legislation”** means the Personal Data (Privacy) Ordinance (Cap. 486 of the Laws of Hong Kong) and any other similar laws or regulations relating to data protection in any jurisdiction that are applicable to an ECP User or its use of ECP, as such laws are amended from time to time;

**“Event of Default”** has the meaning given to it in Clause 12.1;

**“Event of Force Majeure”** has the meaning given to it in Clause 15.1;

**“Delegated Administrators”** means an Authorised User assigned by an ECP User to administer and manage the access profile of the ECP User’s Authorised Users in the ECP;

**“ECP”** has the meaning given to it in Clause 2;

**“ECP Application Form”** means the application form and any associated forms prescribed by HKEX and published on the HKEX Website from time to time through which an ECP User can, amongst other things, (i) subscribe for the access to and use of the ECP, (ii) subscribe to become the relevant user type at on-boarding stage, and (iii) notify HKEX of the appointment, change or removal of its Delegated Administrators;

**“ECP User”** means a subscriber accepted by HKEX to access and use the ECP (in the capacity of a user type it opted for in the ECP Application Form), and where the context so requires, includes its Authorised Users;

**“ECP User Guide”** means the guide in respect of the access to and use of the ECP (including details such as user functions), as may be amended from time to time by HKEX, and made available on HKEX Website by HKEX to ECP Users;

**“HKCAS”** means HK Conversion Agency Services Limited, a subsidiary of HKEX;

**“HKCC”** means HKFE Clearing Corporation Limited, a subsidiary of HKEX;

**“HKEX”** means Hong Kong Exchanges and Clearing Limited; and where the context requires, or where it is specified in the relevant document on ECP, includes SEHK, HKFE, HKEX-IS, HKSCC, HKCC, SEOCH, HKCAS and/or OTC Clear;

**“HKEX-IS”** means HKEX Information Services Limited, a subsidiary of HKEX;

**“HKEX Website”** means the official website of HKEX at <http://www.hkex.com.hk> or at such other website address specified by HKEX from time to time;

**“HKFE”** means Hong Kong Futures Exchange Limited, a subsidiary of HKEX;

**“HKSCC”** means Hong Kong Securities Clearing Company Limited, a subsidiary of HKEX;

**“Insolvency Event”** has the meaning given to it in Clause 12.1.2;

**“OTC Clear”** means OTC Clearing Hong Kong Limited, a subsidiary of HKEX;

**“Personal Data”** means any information which relates to a living individual and can be used to identify that individual, or equivalent concept in a relevant Data Privacy Legislation;

**“Purposes”** has the meaning given to it in Clause 6.1;

**“Relevant Parties”** means HKEX and the subsidiaries, associated companies and affiliates of HKEX from time to time and the respective directors, officers, employees, agents and other representatives of HKEX or any companies aforementioned;

**“Relevant Persons”** has the meaning given to it in Clause 11.1;

**“SEHK”** means The Stock Exchange of Hong Kong Limited, a subsidiary of HKEX;

**“SEOCH”** means The SEHK Options Clearing House Limited, a subsidiary of HKEX;

**“Services”** has the meaning given to it in Clause 2;

**“Specified Purpose”** has the meaning given to it in Clause 6.2;

**“Submission”** means the input, transmission or otherwise making available of any forms, filings, reports, documents, files, information, communications or other material through ECP by an ECP User; and

**“Terms and Conditions”** means these terms and conditions as from time to time amended and in force.

- 1.2 Headings are for ease of reference only and do not form part of these Terms and Conditions.
- 1.3 Words denoting the singular include the plural and vice versa, words denoting one gender include all genders and words denoting persons include corporations and vice versa.
- 1.4 References herein and in the ECP to times and days are, unless otherwise stated, references to Hong Kong times and days.

## **2 Services**

ECP is an electronic communications platform operated by HKEX which provides a channel for ECP Users to submit and download information, forms, files, returns or such other documents to or from HKEX and/or its subsidiaries, and for such other purposes as may be prescribed or permitted by HKEX from time to time (the “Services”).

## **3 Acknowledgement of the Terms and Conditions and Use of Access Credentials**

- 3.1 Access to and use of ECP is granted to each ECP User subject to and in accordance with these Terms and Conditions.

- 3.2 Each of the following constitutes acceptance by the ECP User of these Terms and Conditions (including any variations made pursuant to Clause 3.3 herein), and the ECP User shall be deemed to have read and accepted these Terms and Conditions:
- 3.2.1 submission of a duly signed and completed Application Form for the access to and use of ECP;
  - 3.2.2 use of the ECP User's Access Credentials to access ECP; or
  - 3.2.3 any continued use of ECP via the ECP User's Access Credentials.
- 3.3 HKEX reserves the absolute right, in its sole discretion, to unilaterally vary these Terms and Conditions in any way and at any time, by publishing the updated version on the HKEX Website. The updated version will also be provided to ECP Users upon their first log-in to ECP following the updated version being published on the HKEX Website. If an ECP User continues to use ECP subsequent to publication on the HKEX Website of the updated Terms and Conditions, it will be deemed to have accepted those Terms and Conditions.
- 3.4 Each ECP User acknowledges and agrees that the use of Access Credentials, and all acts and omissions on ECP by its Authorised Users are duly authorised, made on behalf of, and legally binding upon the ECP User as if such acts or omissions were its own.
- 3.5 An ECP User agrees to always keep confidential its Access Credentials and shall not permit any person or entity other than its Authorised Users (if applicable) to access and use ECP.
- 3.6 An ECP User shall be fully liable and responsible for any access and use of ECP by its Authorised Users including any accidental or unauthorised disclosure of its Access Credentials, any damage and liability (including costs, legal costs, and expenses) caused to HKEX and the Relevant Parties in connection with or arising from such unauthorised access and use.
- 3.7 If an ECP User becomes aware of or has reasonable grounds to suspect any actual or possible unauthorised use of Access Credentials or breach of the Terms, it shall notify HKEX by phone at such phone number as HKEX may from time to time prescribe and shall confirm the same in writing as soon as practicable immediately afterwards to HKEX. Where HKEX has been notified of any actual or possible unauthorised use of the Access Credentials of the ECP User or where the ECP User is no longer a user of ECP for any reason, HKEX will forthwith take steps to cancel or invalidate the applicable ECP User and its Access Credentials and notify the ECP User but, until such notification, the ECP User remains fully responsible and liable for any Submission made and any breach of these Terms and Conditions committed by any person gaining access to ECP (whether authorised by the ECP User or not) by means of the ECP User's Access Credentials..

#### **4 Terms of Access to ECP**

##### **4.1 Appointment of Authorised Users**

- 4.1.1 Subject to Clause 4.1.2, each ECP User may access and use ECP and the Services through its Authorised Users and shall not assign, allow access, use, or disclose Access Credentials to any other unauthorised third party which is not an Authorised User.
- 4.1.2 Each ECP User agrees to (and each ECP User will procure that its Authorised Users will) abide by, and be bound by, all the provisions in the Terms as amended and in force from time to time.

## 4.2 **Appointment of Delegated Administrators**

- 4.2.1 Each ECP User shall promptly complete and submit a prescribed form to HKEX to effect any appointment, change and/or removal of any Delegated Administrator.
- 4.2.2 Each ECP User will procure that its Delegated Administrators will promptly update the information in the ECP User's profile to reflect any appointment, change and/or removal of any Authorised User.

## 4.3 **Access to ECP**

- 4.3.1 To access ECP, each ECP User shall log in in accordance with the procedures set out in the ECP User Guide using the Access Credentials. Access Credentials shall be set up through channels prescribed by HKEX or otherwise provided under the ECP User Guide.
- 4.3.2 In addition, access to ECP may require use of one-time passwords generated by third party applications, which may have their own governing terms and conditions to which ECP Users may be subject. Each ECP User acknowledges the risks of using such third party applications and agrees that HKEX is not liable for any security risks arising from such use and features including the generation of the one-time passwords.
- 4.3.3 A reference to an ECP User logging into, continuing to use, or otherwise accessing ECP, shall include any such act done by any person using the Access Credentials of the ECP User. A reference to the ECP User's Access Credentials shall be deemed to refer to the Authorised Users' Access Credentials.

## 4.4 **User Types**

- 4.4.1 HKEX shall assign to each ECP User a user type based on the subscription opted for by each ECP User in the ECP Application Form.
- 4.4.2 Each ECP User agrees to adhere to the functions and roles of the prescribed user type as set out in the ECP User Guide as amended from time to time and/or notified on the HKEX Website.
- 4.4.3 Each ECP User agrees to follow the onboarding procedures as described in the ECP User Guide, or any other procedures as prescribed by HKEX from time to time.

## 5 **Access to and Submission of Information**

### 5.1 **General**

- 5.1.1 HKEX has the sole right and discretion to grant or restrict access to information accessible by each ECP User, in accordance with the user type of the ECP User and the information required for the ECP User to perform its functions. Without limiting HKEX's rights, an ECP User may refer to the ECP User Guide for details on access rights pertaining to each ECP User type.
- 5.1.2 Without limiting the above and notwithstanding what is provided under the ECP User Guide, HKEX may vary, suspend, or restrict any ECP User's access to any information on ECP, and shall not be required to give any reasons for the exercise of its powers and its decision shall be final and binding on the ECP User.

## 5.2 Submissions made on ECP

- 5.2.1 An ECP User may provide Submissions or authorise Submissions to be provided through ECP from time to time, in accordance with the ECP User Guide. Where the context requires, any Submission constitutes agreement by such ECP User to permit HKEX to transmit such Submission to such other systems that interfaces with ECP.
- 5.2.2 Any Submission made by an ECP User pursuant to any rules of a Relevant Party or any notice, circular or guidance issued by a Relevant Party shall be considered to be made by the ECP User (for itself or for and on behalf of the relevant participant of the Relevant Party if the ECP User is not itself such relevant participant) to the Relevant Party.
- 5.2.3 Each ECP User represents, warrants, and undertakes, by making any Submission that:
- (i) it has obtained all necessary consents and authorisations prior to making any Submission; and
  - (ii) to the extent that such Submission contains any information provided on behalf of another ECP User, it has obtained that other ECP User's full and valid authorisation to provide the Submission and on such purposes on behalf of the other ECP User.
- 5.2.4 Each ECP User acknowledges and agrees that any failure to provide a timely Submission may result in the delay of workflows and processing schedules which HKEX shall have no liability or responsibility for.

## 6 Personal Data

- 6.1 The Privacy Policy Statement on the HKEX Website forms part of these Terms and Conditions and references to 'HKEX Website' therein shall be construed as references to ECP and 'Purpose(s)' specified therein shall be considered "Specified Purposes" under these Terms and Conditions.
- 6.2 Without limiting the Privacy Policy Statement, each ECP User acknowledges and agrees that HKEX may lawfully collect, hold, process, use, or disclose to the Recipients any Personal Data provided by the ECP User and pursuant to the ECP User's access to and use of ECP for the following additional purposes (each a "**Specified Purpose**"):
- 6.2.1 to perform or discharge the functions of HKEX and Relevant Parties for the operations related to ECP;
  - 6.2.2 to administer accounts of ECP Users and their access rights to ECP;
  - 6.2.3 to enable ECP Users to perform their user functions to facilitate workflows and processes in ECP;
  - 6.2.4 to conduct research and statistical analysis for the evaluation, improvement, and development of ECP and the Services;
  - 6.2.5 the monitoring and enforcement of compliance with the Terms;
  - 6.2.6 complying with applicable laws and disclosure to law enforcement agencies or relevant regulators; and
  - 6.2.7 any other purposes directly relating to any of the above.

- 6.3 Each ECP User represents, warrants, and undertakes that it (or its Authorised Users) has obtained valid written consents from each data subject regarding the collection, storage, use, disclosure, and transfer of Personal Data in relation to such use for the Specified Purposes and in accordance with the requirements of Data Privacy Legislations. To the maximum extent permissible under Data Privacy Legislations, the ECP User undertakes to ensure that the consents shall enable HKEX and the Relevant Parties to continue to store, use, disclose and transfer Personal Data for the Specified Purposes if there is a withdrawal of the data subject's consent.
- 6.4 Without limiting the Privacy Policy Statement, each ECP User acknowledges and agrees that HKEX and Relevant Parties may provide or disclose any information relating to the ECP User, the ECP User's use of ECP and information regarding settlement workflows and processes in ECP, including Personal Data:
- 6.4.1 to any Relevant Parties in connection with the Specified Purposes;
  - 6.4.2 to any prospective or actual successor, assignee, or transferee of, or participant in, any of HKEX's rights or obligations under these Terms and Conditions; and
  - 6.4.3 to any person to the extent necessary for complying with applicable laws or with any order, directive, or request in any jurisdiction which HKEX or Relevant Parties is required to, or which HKEX or Relevant Parties in good faith believes that it should, comply with, including in relation to alleged money laundering, terrorism, or other illegal activities,
- (collectively, the "**Recipients**"), each who may be situated in jurisdictions outside Hong Kong or the jurisdiction in which the Personal Data was collected.
- 6.5 The authority and consent given by each ECP User pursuant to this Clause will survive the termination of these Terms and Conditions.

## **7 Representations and Warranties**

### **7.1 ECP User Representations**

Each ECP User represents, warrants, and undertakes to HKEX on each date that it accesses ECP that:

- 7.1.1 it is duly incorporated and validly existing and in good standing under the laws of its jurisdiction of incorporation (if applicable as a corporate entity);
- 7.1.2 its registration for use of ECP and the acceptance and performance of its obligations under these Terms and Conditions has been duly authorised with all necessary corporate or third party approvals obtained and do not violate the constitutive documents of the ECP User or any law, regulation or other agreement binding on the ECP User;
- 7.1.3 these Terms and Conditions constitute a legally binding and enforceable contract;
- 7.1.4 the ECP User has full power, authorisation and authority (including from the authorising ECP User) to execute, deliver and perform its obligations under, and provide Submissions through ECP;
- 7.1.5 all information provided by it in relation to its registration for the use of ECP (including information contained in the ECP Application Form and onboarding procedures) and any subsequent Submission which may be provided for the maintenance of its status as an ECP

User from time to time, is and shall be true, complete and accurate. It shall inform HKEX promptly if any previous Submissions made regarding account registration and maintenance become incomplete, inaccurate, or not up to date for any reason;

- 7.1.6 all Submissions provided will not subject HKEX or Relevant Parties to any liability or additional regulatory obligations whether in Hong Kong or any other jurisdiction;
  - 7.1.7 all Submissions made through ECP will not infringe any third party's copyrights, patents, trademarks, trade secrets or other intellectual property rights;
  - 7.1.8 all Submissions have and shall be provided through ECP in a virus-free electronic format according to applicable regulatory requirements or such timing and procedures specified by HKEX or in any other manner as may be determined by HKEX. In addition, it will use its best efforts to ensure that any system or means that it uses to access ECP is free from all viruses, trojan horses, worms, logic bombs or other software routine or hardware components designed to permit unauthorised access, to disable, erase or otherwise harm software, hardware, or data or to perform any such actions;
  - 7.1.9 for the purposes of its participation on ECP, making any Submissions and performing any of its obligations including acting on information received from ECP, it has and will maintain the requisite licenses, qualifications, and approvals in Hong Kong and/or, as applicable, its home jurisdictions;
  - 7.1.10 there are no actions, suits, proceedings, or regulatory investigations pending or threatened against it or any of its affiliates that might adversely affect its ability to meet and carry out its functions on ECP;
  - 7.1.11 no Insolvency Event has occurred; and
  - 7.1.12 it has complied with all applicable laws and regulations including, without limitation, Data Protection Legislation and all rules, regulations, procedures, and directions of HKEX and Relevant Parties as may be prescribed and notified to it from time to time.
- 7.2 For the avoidance of doubt, each ECP User acknowledges and agrees that performance of functions available on ECP and use of the Services do not guarantee or represent compliance with any required regulatory requirements. Each ECP User is required to ensure compliance with all applicable regulatory requirements and responsibilities.

### 7.3 **Additional ECP User Representations**

In addition to Clause 7.1, each ECP User which has directly submitted an ECP Application Form and been accepted by HKEX as a subscriber to ECP represents, warrants, and undertakes to HKEX on the date of submitting the ECP Application Form and on each date that it or its Authorised User accesses and/or uses ECP that:

- 7.3.1 to the extent that it has delegated an Authorised User to perform any functions on ECP or provide any Submission to ECP, it has and shall:
  - (i) ensure that it has proper controls to monitor activities conducted on its behalf;
  - (ii) provide the full and due authorisations to such Authorised User to enable such Authorised User to perform the functions or update the information or instruction on its behalf; and

- (iii) be responsible for all Submissions (including its veracity, accuracy, and completeness), actions and omissions, by the Authorised User as if it was an action or omission of its own; and

7.3.2 it shall be responsible for:

- (i) establishing relevant arrangements or agreements with any other ECP Users relating to the transmission and receipt of information through ECP;
- (ii) having in place contingency measures to ensure the timely submission of information or documents to HKEX in case there is any unavailability, disruption, suspension, or delay in the operation of ECP, which HKEX and Relevant Parties disclaim all liability for in accordance with Clause 10.

## **8 Confidentiality**

8.1 Each ECP User agrees to keep confidential all information received from ECP and HKEX concerning ECP, HKEX and Relevant Parties unless:

8.1.1 such disclosure is only made to the extent reasonably necessary for the achievement of the objectives of the Terms and Conditions and effecting the workflows and processes in ECP;

8.1.2 the person to whom the information is disclosed has a business-related need to have access to the Confidential Information, and

8.1.3 such person is made aware of the confidential nature of such information and is required to comply with the confidentiality obligations in this Clause.

8.2 Each ECP User agrees not to use the confidential information of ECP, HKEX and the Relevant Parties for any purpose other than to exercise its rights, obligations and performing user functions and facilitating workflows and processes in ECP.

8.3 Each ECP User acknowledges and agrees that HKEX may disclose the ECP User's confidential information to:

8.3.1 the Relevant Parties;

8.3.2 each of its and the Relevant Parties' employees, officers, representatives, contractors, subcontractors, or advisers who need to know such information for the purposes of exercising HKEX's rights or carrying out its obligations under or in connection with these Terms and Conditions; on the condition that it shall ensure that its employees, officers, representatives, contractors, subcontractors, or advisers to whom it discloses the ECP User's confidential information comply with this Clause; and

8.3.3 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority,

each for purposes relating to the facilitation, operation, maintenance and improvement of ECP and the Services.

## **9 Intellectual Property Rights**

- 9.1 Save for any intellectual property rights which an ECP User may have in relation to any information submitted through ECP, each ECP User acknowledges and agrees that the contents and materials of the web pages of ECP (including the organisation and layout of the web pages) or other information not on the web pages of ECP provided by HKEX are proprietary to HKEX or its licensors and the copyright and other intellectual property rights in them belong to HKEX or its licensors.
- 9.2 It is expressly acknowledged that ECP, and the related systems and software and documentation, and Services are proprietary to HKEX, the Relevant Parties or its licensors. Each ECP User shall not, directly or indirectly, tamper with, modify, decompile, reverse engineer, or otherwise alter ECP or any of the related software systems, web pages or documentation and the ECP User shall not attempt to gain unauthorised access to any part of ECP or related software or systems, web pages or documentation. HKEX is entitled to deny each ECP User's access to all or any part of ECP or any of the Services if the ECP User performs any of the above acts or if HKEX or Relevant Parties at any time reasonably suspects that the ECP User has performed or attempted to perform any of them.

## **10 Disclaimer of Liability**

- 10.1 Each ECP User acknowledges and agrees that any use of or reliance upon any part of ECP shall be at its sole risk and that use of ECP and the Services is provided on an "AS IS, AS AVAILABLE" basis and without warranty or condition of any kind, either express or implied.
- 10.2 Without prejudice to any additional disclaimers made on ECP or the Services, HKEX and all Relevant Parties shall not be liable or responsible (whether in tort, contract or otherwise) for any claim for any losses or damages of any kind, including loss of profits or revenue, loss of savings, consequential, indirect loss or damage or loss of use (whether direct or indirect) whatsoever and howsoever arising from:
- 10.2.1 the truthfulness, accuracy and completeness of all Submissions made to ECP or any information obtained from ECP which shall not be deemed verified or confirmed by HKEX or the Relevant Parties;
  - 10.2.2 the use of or reliance upon ECP, or any related system or software, or the Services, including any mishandling, omission, non-delivery, delay, negligent or unauthorised access or use of an ECP User's account or of the ECP Users' Access Credentials;
  - 10.2.3 any inaccuracy or omission or from any decision, action or non-action based on or in reliance upon information contained on ECP;
  - 10.2.4 use of any hyperlinks to any external website or web page contained on ECP, which will be accessed at the ECP User's own risk. Each ECP User acknowledges and agrees that HKEX and the Relevant Parties are not responsible for the contents of or any of the information on or any broken link to any website linked with ECP. The inclusion of any link in ECP does not imply endorsement by HKEX and the Relevant Parties of the linked sites and HKEX and the Relevant Parties are not liable for any loss or damage incurred or suffered by the ECP User or any third party arising out of, in connection with or because of any access to or interaction with any other websites via ECP;

- 10.2.5 occasional delays and suspensions of ECP which may be caused by the unpredictable and inherently unreliable medium of the Internet, ethernet network and evolving technology, which each ECP User acknowledges is beyond the ECP User, HKEX and the Relevant Parties' reasonable control. The ECP User acknowledges that, because of such unreliability, there may be occasional delays in the transmission and receipt of its information, communication or other material resulting in delays in the processing of such Submissions submitted through ECP which HKEX will endeavour to remediate but accepts no liability for; and
- 10.2.6 any action taken or for any failure, hindrance or delay in the performance in whole or in part of HKEX's obligations under these Terms if caused in part or in whole by an Event of Force Majeure.
- 10.3 Each ECP User agrees and acknowledges that the exclusion or limitation of liability in these Terms is reasonable for the protection of HKEX and Relevant Parties but, if for any reason under any applicable laws that the exclusion or limitation of certain types of liability may not be permitted, the liability of HKEX and other Relevant Parties will be excluded or limited to the maximum extent permissible by the applicable laws.

## 11 Indemnity

- 11.1 To the maximum extent permitted under applicable law, each ECP User (and each ECP User on behalf of each of its Authorised Users) hereby agrees to indemnify HKEX and the Relevant Parties and each of its related corporations, its affiliates, and their respective agents, nominees, representatives, directors, officers and employees (collectively, the "**Relevant Persons**") and hold each of them harmless against all costs (including legal costs), fees, expenses, liabilities, taxes and damages of any nature whatsoever (including the interest accrued to any such amount) suffered or incurred by any of them directly or indirectly arising from or in connection with the following matters:
- (a) any breach (alleged or otherwise) or non-compliance by the ECP User of its obligations under the Terms and Conditions;
  - (b) any wilful, unlawful, or negligent act or omission by the ECP User;
  - (c) any viruses which have been introduced by the ECP User, which affects or causes ECP or HKEX's hardware, software and/or other automated systems to fail or malfunction;
  - (d) any Submission which is or proves to have been incorrect, incomplete, or misleading in any material respect when provided;
  - (e) any legal proceedings or dispute resolution proceedings of any nature which the ECP User is a party to or required to take part in, and which requires the Relevant Persons' involvement, including production of information or documents, whether at the request of the ECP User or otherwise;
  - (f) any actions or omissions by the Relevant Persons in reliance on instructions or communications from or on behalf of the ECP User,

unless such costs, fees, expenses, liabilities, taxes, assessments, losses, fines, penalties, or damages are determined by a court of final jurisdiction to have arisen due to the fraud, gross negligence, or wilful misconduct of such Relevant Person.

## 12 Events of Default

- 12.1 Each of the following shall constitute an event of default (each an “**Event of Default**”) in respect of an ECP User:
- 12.1.1 a material breach of these Terms and Conditions;
  - 12.1.2 a proceeding, procedure or arrangement under any applicable bankruptcy, corporate or insolvency law, a judicial composition, an assignment or arrangement for the benefit of creditors or an application for a receiver, custodian, conservator, administrator, judicial manager, liquidator or trustee has been filed or applied for, by or against an ECP User other than such proceeding that is disputed in good faith and which is discharged or dismissed within 21 days of commencement, or an order has been made or a resolution has been passed for an ECP User’s bankruptcy, winding up, liquidation, administration, scheme, compromise, arrangement or judicial management (an “**Insolvency Event**”);
  - 12.1.3 an ECP User, which is also a participant or member of any trading or clearing and settlement system operated by HKEX or any Relevant Party, (i) breaches the rules of any market or the rules or terms of participation or membership of such system or (ii) a declaration of default by, or suspension or expulsion from participation or membership of such system occurs;
  - 12.1.4 an ECP User ceases to carry the permits, licenses, and/or registrations necessary for its business operation related to its eligibility for or use of ECP; and
  - 12.1.5 an ECP User defaults, or threatens or proposes to default, in payment of any sum payable, or fails to meet any obligation owed by it, to HKEX or any Relevant Parties.

## 13 Modification, Discontinuance and Termination

- 13.1 HKEX may, in its sole discretion, temporarily or permanently restrict, suspend or discontinue all or part of ECP and/or any of the Services (including to restrict each or certain ECP User’s access to and use of any part of ECP and/or the Services) in connection with any of the following:
- 13.1.1 to upgrade or modify ECP, or any related systems or software, and/or the HKEX Website;
  - 13.1.2 where HKEX considers it reasonably necessary for the operation or maintenance of ECP, or any related systems or software, and/or or the HKEX Website;
  - 13.1.3 where HKEX considers it reasonably necessary for the security, integrity or performance of ECP, or any related systems or software, and/or or the HKEX Website; or
  - 13.1.4 for any other reason HKEX deems appropriate.
- HKEX and all other Relevant Parties shall not be liable to the ECP User or any third party for any claims, loss or damage of any kind related to such termination, restriction, or suspension of any or all of ECP and/or the Services.
- 13.2 HKEX may terminate or suspend each ECP User’s access to all or part of ECP with effect immediately as it considers appropriate for any reason including, without limitation, an Event of Default or breach or failure to abide by these Terms and Conditions, the ECP User Guide or any other terms or conditions as prescribed by HKEX from time to time.

- 13.3 If ECP cannot be accessed by an ECP User during normal operational hours of ECP (whether, as announced by HKEX or due to a technical default, malfunction, or breakdown in ECP), the ECP User may use alternative means to provide documents and information to HKEX.
- 13.4 Where applicable, an ECP User may terminate its subscription to ECP by giving notification to HKEX in accordance with the procedures as prescribed by HKEX from time to time.

#### **14 Operational Hours of ECP**

HKEX may determine the operational hours of ECP and the times the corresponding technical and operational support services are provided in its sole discretion.

#### **15 Force Majeure**

- 15.1 HKEX and the Related Parties shall not be liable for any action taken or for any failure, hindrance or delay in the provision of ECP, the Services or for any failure to give effect to or delay in giving effect to any requests from an ECP User if such action, failure, hindrance or delay arises out of causes beyond its control (an “**Event of Force Majeure**”).
- 15.2 Such causes may include, but shall not be limited to, acts of God or the public enemy, acts of a civil or military authority, embargoes, fires, floods, explosions, accidents, pandemics, labour disputes, mechanical breakdowns, computer or system failures or other failures of equipment, failures of or defects in computer or system software, failures caused by any system that interfaces with ECP, unavailability of or restrictions on any communication media for whatever reason (whether or not such media is used by the ECP Users), interruptions (whether in whole or in part) of power supplies or other utility or service, any law, decree, regulation or order of any government, competent authority or any court or tribunal, and any other causes beyond HKEX’s control including, without limitation to the foregoing, any similar causes affecting the Related Parties or HKEX.

#### **16 General**

- 16.1 **Amendments:** HKEX reserves the right to modify and amend these Terms and Conditions from time to time in its sole discretion, binding upon the ECP Users and effective upon the publication of such amended Terms and Conditions on HKEX Website.
- 16.2 **Notices:** All notices, requests, demands or other communications from HKEX to the ECP User may be given orally or in writing and delivered in person, by post, by electronic or wire transmission, by telephone, by fax or by any means of computer data transmission based on the information about the contact details of the ECP User as maintained by HKEX.
- 16.3 **No Assignment:** The rights and obligations of an ECP User under these Terms and Conditions may not be assigned or transferred.
- 16.4 **No Partnership:** Nothing in these Terms and Conditions shall be deemed to constitute a partnership between HKEX and an ECP User or constitute either party the agent of the other party for any purpose.
- 16.5 **Languages:** In the case of any inconsistency between the English and Chinese version of a provision in the Terms and Conditions or versions of a document available on ECP, the English version of such Term and Condition or provision shall prevail. In respect of any form or document

submitted for and on behalf of the ECP User, whether the English or Chinese version is used in the process of completing the form or document, the English version (as shown in PDF format) shall be deemed as the final form or document submitted by the ECP User.

- 16.6 **No Waiver:** No failure or delay by HKEX or the Relevant Parties in exercising any right or remedy pursuant to these Terms and Conditions shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy.
- 16.7 **Severability:** If and to the extent that any provision in these Terms and Conditions is held to be illegal, void, or unenforceable, such provision shall be given no effect and shall be deemed not to be included in these Terms and Conditions but without invalidating any of the remaining provisions of these Terms and Conditions, which shall remain in full force and effect.
- 16.8 **Survival of Obligations:** The rights and obligations of HKEX and the Relevant Parties and the ECP User to these Terms and Conditions, which, by their nature would continue beyond the termination, cancellation, or expiration of these Terms and Conditions, shall survive termination, cancellation, or expiration of these Terms and Conditions.
- 16.9 **Third Party Rights:** A person who is not a party to these Terms and Conditions has no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the Laws of Hong Kong) to enforce any term of these Terms and Conditions.
- 16.10 **Governing Law:** These Terms and Conditions shall be governed by and construed in accordance with the laws of Hong Kong.
- 16.11 **Dispute resolution:** Any dispute, controversy, difference or claim arising out of or relating to these Terms and Conditions, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to these Terms and Conditions shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre (HKIAC) under the HKIAC Administered Arbitration Rules in force when the notice of arbitration is submitted.
- 16.11.1 The seat of arbitration shall be Hong Kong.
- 16.11.2 The number of arbitrators shall be one to be appointed pursuant to the HKIAC Administered Arbitration Rules.
- 16.11.3 The arbitration proceedings shall be conducted in English.