

Appendix IV
Template Hong Kong law Deed of Charge – Client Collateral
Accounts

DEED OF CHARGE – CLIENT COLLATERAL ACCOUNTS

dated [_____]

created by

[CLEARING MEMBER]

([Business Registration] [Company] 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 [business registration] [company] number [] and its [registered] / [principal] office at [] (the "**Clearing Member**"); and
- (2) OTC Clearing Hong Kong Limited of 8/F, Two Exchange Square, 8 Connaught Place, 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.

"**Bond Connect**" means the mutual market access mechanism between the China Interbank Bond Market and Hong Kong bond market infrastructures, which enables eligible investors outside of Mainland China to directly trade bonds in the China Interbank Bond Market.

"**Bond Connect Securities**" means bonds in the China Interbank Bond Market which are traded via Bond Connect.

"**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*).

"**equities of redemption**" means any equities of redemption of a Clearing Member against OTC Clear in respect of its non-cash Collateral held by OTC Clear and any other rights of such Clearing Member against OTC Clear in respect of its non-cash Collateral, including rights (if any) against OTC Clear as custodian of such non-Cash Collateral.

"**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, including without limitation, Bond Connect Securities (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, which shall include OTC Clear and its sub-custodians).

"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.

1A. **HOLDING OF SECURITIES**

- (a) OTC Clear shall hold Securities for the account of the Clearing Member, subject to the terms of (including the security constituted by) this Deed.
- (b) From time to time, in accordance with the Clearing Rules and Clearing Procedures and in the context of porting of all Contracts in a Client Position Account and the Collateral in respect of the corresponding Client Collateral Account from one Clearing Member ("**Clearing Member A**") to the Clearing Member, OTC Clear may designate that certain non-cash Collateral which it previously held for Clearing Member A are instead held by OTC Clear for the Clearing Member and form part of the Collateral provided by the Clearing Member in satisfaction of its applicable Margin requirements under the Clearing Documentation. Upon such designation, OTC Clear shall hold any such Securities for the Clearing Member, subject to the terms of this Deed.
- (c) OTC Clear will identify in its own books that any Securities are held by it for the account of the Clearing Member (subject to the terms of this Deed) and shall be recorded in a Client Collateral Account, which shall be subject to the Security created or expressed to be created by or pursuant to this Deed. Where OTC Clear holds any such Securities in an account with its sub-custodian(s) (which expression shall include depositories) with any other securities, OTC Clear will take all actions within its control to ensure that such Securities are recorded in accounts with its sub-custodian(s) in which OTC Clear's own assets are not recorded.
- (d) OTC Clear may hold any Securities pursuant to this Clause 2 in one or more omnibus accounts with its sub-custodian(s), together with other securities which it holds for other third parties which have granted a charge over such assets in favour of OTC Clear in a form substantially the same as this Deed, but no other securities. OTC Clear shall ensure that any such omnibus account with its sub-custodian(s) is clearly identified as an account relating to securities held by OTC Clear on behalf of third parties.

[1B. **PRIOR DEED OF CHARGE**

1B.1 **Release**

OTC Clear hereby unconditionally and irrevocably:

- (a) releases and discharges the Released Charged Assets from the Prior Charges constituted, created, evidenced or conferred by or pursuant to the Prior Deed of Charge; and
- (b) releases, discharges, waives, terminates, reassigns and re-transfers to the Clearing Member all its rights, title and interest in the Released Charged Assets, present or future that were assigned, charged or otherwise provided as Prior Charges to OTC Clear by or pursuant to the Prior Deed of Charge.

1B.2 **New security**

Immediately upon the release pursuant to Clause 1B.1 (*Release*), the Released Charged Assets shall immediately be deemed to be held by OTC Clear in accordance with Clause 1A (*Holding of Securities*) and be subject to the Charges created or expressed to be created by or pursuant to this Deed.

1B.3 **Definitions**

For the purposes of this Clause 1B:

“Prior Charges” means all or any of the Security created or expressed to be created by or pursuant to the Prior Deed of Charge.

“Prior Deed of Charge” means the Deed of Charge – Client Collateral Accounts between the Parties dated [●].

“Released Charged Assets” means the assets from time to time subject, or expressed to be subject, to the Prior Charges or any part of those assets.]¹

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 fixed charge, 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) its rights relating to or against any custodian, sub-custodian, depository or clearing system, with whom any of the Securities (or rights relating to any of the Securities) may be deposited to the extent of those Securities and/or related rights;
 - (ii) rights it may have against any person to require delivery by that person of any of the Securities or any other applicable assets to it or to its order;
 - (iii) rights (contractually or otherwise) to give instructions relating to the Securities; and
 - (iv) 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; and

¹ Applicable only to Clearing Members who have previously executed a Deed of Charge with OTC Clear.

- (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.

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. **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*), OTC Clear may, in its sole and absolute discretion, 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, including without limitation, instructing Hong Kong Securities Clearing Company Limited to liquidate any Bond Connect Securities that are Securities as its agent via Bond Connect; 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, including without limitation, to Hong Kong Securities Clearing Company Limited in respect of the liquidation of any Bond Connect Securities that are Securities at the instruction of OTC Clear. 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 15.3, 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 by 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) 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 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 (as defined in the Deed of Charge between the Transferor Clearing Member and OTC Clear in respect of Client Collateral Account(s) (as defined in the Clearing Rules)) 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 (as defined in the Deed of Charge between the Defaulting Clearing Member and OTC Clear in respect of Client Collateral Account(s) (as defined in the Clearing Rules)) 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 (as defined in the Deed of Charge between the Defaulting Clearing Member and OTC Clear in respect of Client Collateral Account(s) (as defined in the Clearing Rules)) 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: