

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY AND MAKE SURE YOU UNDERSTAND THEM.

## GENERAL CUSTOMER AGREEMENT

TO: **MIZUHO BANK, LTD.**  
(Incorporated in Japan with Limited Liability)  
Hong Kong Branch

Dated.....

In consideration of **Mizuho Bank, Ltd.** (the "**Bank**", which expression shall include its successors and assigns) providing or continuing banking facilities or other accommodation or services to us for so long as the Bank may think fit, we, the undersigned .....  
agree as follows :

1. **Indebtedness owed to the Bank**

(a) We shall pay to the Bank on demand or on their respective due dates all sums from time to time paid or advanced by the Bank to or for our account or for the account of any other person at our request and all interest, commissions, fees, charges and other sums of whatever nature for which we may be indebted or liable to the Bank on any account or in any manner whatever (including, without limitation, under any FX Transaction (as defined in Clause 10)), whether actually or contingently and whether alone or jointly with any other person from time to time (all such sums collectively "**Liabilities**").

(b) If we overdraw any current account with the Bank we shall be obliged to repay on demand the amount so advanced by the Bank and to pay interest, monthly or on earlier demand, on the daily debit balance, and interest not paid when due may be debited to the account.

(c) We shall indemnify and hold the Bank harmless from and against any loss or damage which may result, or which the Bank may sustain, suffer or incur in connection with or arising out of any payment of the Liabilities, whether in whole or in part, being received otherwise than on their relevant due dates.

(d) We shall advise the Bank as soon as possible if we have difficulty in repaying or servicing any borrowings under the Bank's credit facilities.

2. **Documentary Credits**

(a) The following provisions shall apply to each documentary credit opened by the Bank at our request (a "**Credit**"). Each Credit shall be deemed to be the subject of a separate contract between the Bank and us incorporating the following provisions and any other terms and conditions which may be agreed in respect of any individual Credit. The Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce as revised or substituted from time to time shall also apply to each Credit. For the purposes of this Agreement, "**goods**" shall mean all goods and produce the purchase, storage, preparation, sale or shipment of which is financed pursuant to a Credit or any other credit facility or arrangement made available by the Bank of which otherwise are being acquired by us.

(b) The Bank may restrict negotiations under any Credit to its own offices or to any correspondents or agents of its choice. We authorise the Bank to pay or accept for our account all bills of exchange, promissory notes, cheques, drafts, demands and other negotiable instruments (collectively, "**drafts**"; each a "**draft**") drawn or made or purporting to be drawn or made under any Credit.

(c) We shall (i) in the case of each sight draft, reimburse to the Bank on demand the amount paid on such draft or, if so required by the Bank, pay to the Bank or as the Bank may direct in advance the amount which is or may be payable on such draft; (ii) in the case of each acceptance, pay to the Bank or as the Bank may direct on demand, but in any event not later than one business day before maturity at the place for payment, the amount payable by reason of such acceptance; and (iii) otherwise pay to the Bank on demand all amounts which the Bank is or will be liable to pay under any Credit. We shall make payment and reimbursement to the Bank

notwithstanding that the draft is drawn without recourse or there is any irregularity in it. We shall make payment in the currency in which the relevant Credit or draft is denominated or in such other currency as the Bank may specify. If payment is to be made in another currency, the amount to be paid in such other currency shall be determined by the Bank based on its prevailing rates of exchange for value on the date when such payment is required to be made or, at the Bank's option, when the relevant Credit or draft will be payable and we agree to pay on demand the Bank's usual commissions and charges in connection with such conversion. Details of the rates of exchange, commissions and charges used or charged by the Bank shall be provided by the Bank upon request by us. In any event, we shall indemnify the Bank against any exchange loss or difference between the amount paid by us and the amount payable on the relevant Credit or draft. If a draft is drawn by us on the Bank in order to refinance any obligation as aforesaid and such draft is accepted by the Bank, the foregoing provisions shall apply as if such draft was drawn and accepted under a Credit.

(d) Without limiting the preceding paragraph and the other provisions of this Agreement, we shall indemnify the Bank and hold the Bank harmless from and against all claims, demands, actions, damages, costs, losses, expenses and other sums which the Bank may reasonably incur or pay by reason of or in connection with any Credit, including, but not limited to (i) any liability or sum as aforesaid which the Bank may incur or pay to any confirming, advising or negotiating bank or any other correspondent or agent or to any other person with whom the Bank or any of its correspondents or agents may have dealings in connection with any Credit and (ii) any liability incurred or sum paid or liable to be incurred or paid by the Bank under or in connection with any draft drawn or made under any Credit notwithstanding that the draft is forged, altered or unauthorized. We shall provide the Bank on demand with funds to meet any liability or sum as aforesaid.

(e) Our obligations to reimburse or otherwise make payments to the Bank or as the Bank may direct and to indemnify the Bank shall be absolute and unconditional. It shall not be a defence to any demand hereunder, and our obligations to the Bank shall not otherwise be affected by the fact, that the Bank was or might have been or might be justified in refusing to make a payment or otherwise incur a liability in connection with a Credit. As between the Bank and us any draft negotiated under any Credit shall be conclusive evidence that the Bank was or will be liable to pay the same.

(f) We shall pay to the Bank on demand or when otherwise due the Bank's commissions and other charges in connection with each Credit, any amendment or modification thereof and interest when applicable. Such commissions, charges and interest shall be at such rates as may be prescribed by the Bank from time to time, details of which the Bank will provide upon our request. We shall also pay to the Bank the cost of compliance with any reserve or similar requirement which may be imposed on or in connection with any Credit or any draft related thereto.

(g) Without limiting Clause 2(d), neither the Bank nor any of its correspondents or agents shall be responsible for, and the Bank's rights and our obligations hereunder shall not be affected by (i) the existence, character, quality, quantity, condition, packing, value or delivery of the goods purporting to be represented by documents, deterioration or change of condition of such goods, or any difference in description, character, quality, quantity, condition, packing or value of the goods from that expressed in documents or any, or the validity, sufficiency, correctness or genuineness of documents or any endorsements thereon even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged; (ii) the time, place, manner or order in which shipment is made, partial or incomplete shipment, or omission to ship any or all of the goods referred to in any Credit or in any document; (iii) the character, adequacy, validity or genuineness of any insurance, the solvency or responsibility of any insurer or any other risk connected with insurance; (iv) the solvency, responsibility or relationship to the goods of any party issuing any documents relating thereto; (v) any deviation from instructions, delay, default or fraud by the shipper or any other person in connection with goods or the shipping or carriage thereof; (vi) any other delay in arrival or failure to arrive of goods or any documents relating thereto or delay in giving or failure to give notice of arrival or any other notice; (vii) any breach of contract between us and any shipper, seller or other person; (viii) compliance with or circumstances resulting from any laws, regulations, customs or usages which may apply in countries of negotiation or payment under any Credit; (ix) failure of any draft to bear any or adequate reference to the related Credit or failure of any person to note the amount of any draft on the reverse of the related Credit or to surrender such Credit or to submit documents together with drafts or to forward documents apart from drafts, as may be required by the related Credit, and the Bank may agree to waive any such requirement contained in any Credit; (x) any delay or omission in connection with the acceptance or payment of any draft; (xi) any error, omission, mutilation, interruption or delay in transmission or delivery of any message by mail, telex, cable, facsimile, email or otherwise or any loss in transit of any such message or any error in translation or interpretation of such message; (xii) any act, omission, error, neglect, default, insolvency or failure in business of any of the Bank's correspondents or agents, or any refusal by the Bank or any of its correspondents or agents to pay or honour drafts drawn or purportedly drawn under any Credit because of

any applicable law or regulation of any governmental or regulatory authority or for any other matter beyond the Bank's control; or (xiii) any forgery or alteration of any draft or document purporting to be signed by us or any draft or document not being duly authorised by us.

(h) In relation to the tender of documents under any Credit, it shall be a sufficient and proper compliance with the terms thereof, and we shall accept relevant documents, if the documents (i) purport to be in order, (ii) taken as a whole contain the description of the goods as given in the Credit and (iii) appear complete and regular on their face under general scrutiny. Subject to any written instructions from us to the contrary, the Bank and any of its correspondents or agents may in relation to any Credit (01) receive and accept as bills of lading any documents issued or purporting to be issued by or on behalf of any carrier which acknowledges receipt of goods for shipment or otherwise, whatever the specific provisions of such documents, and the on board date of any such document shall be deemed the date of shipment of the goods mentioned therein; (02) receive and accept as documents of insurance either insurance policies or insurance certificates or cover notes; (03) accept as sufficient and controlling the description of goods contained in the invoice, and receive and accept bills of lading, insurance policies and certificates, invoices and other documents however variant in description they are from that contained in the invoice; (04) receive and accept bills of lading containing stamped, written or typewritten provisions whether or not signed or initialled, and assume conclusively that the same were placed with authority on any bill of lading at the time of issuance; and (05) accept documents of any character which comply with the laws and regulations or the customs or usages of the place of shipment or negotiation.

(i) Subject to any written instructions from us to the contrary (i) part shipments may be made under any Credit and the Bank and any of its correspondents or agents may accept or pay any draft in respect thereof; (ii) the Bank and any of its correspondents or agents may accept or pay any draft dated on or before the expiration of any time limit expressed in any Credit, regardless of when drawn and whether or when negotiated, provided that the other required documents are dated on or before the expiration date of such Credit; and (iii) if any Credit specifies shipments in instalments within stated periods and the shipper fails to ship in any such designated period, shipments of subsequent instalments may nevertheless be made in their respective designated periods and the Bank and any of its correspondents or agents may accept or pay the relevant drafts. The Bank may terminate any Credit other than an irrevocable Credit at any time before the expiration date of such Credit.

(j) If the Bank receives some but not all of the documents required under any Credit and at our request delivers such documents to us, against a trust receipt or otherwise, before presentation of the relevant draft, we shall indemnify the Bank against any claim made against the Bank by reason thereof and we authorise the Bank to pay or accept such draft.

(k) We will comply with all applicable exchange control laws and regulations of any competent authority or government and will promptly procure or cause to be procured any necessary import or export licence or other permit, certificate or document. We will indemnify the Bank against any failure to do so and against any defect in or absence of any such licence, permit, certificate or other document. We warrant that no shipments will be made or other transactions undertaken in connection with any Credit in violation of the laws and regulations of Hong Kong or any other applicable jurisdiction. If at any time circumstances allow the release of import bonds and collateral required to be deposited by us with the Bank under any laws or regulations, the Bank is authorised to apply the same towards discharge of the Liabilities at any time after release at its discretion, provided that written notice of such application is provided to us as soon as practicable thereafter.

(l) Until we pay to the Bank in full the amount of each Credit and all liabilities, commissions, charges and interest in respect thereof and until all our obligations to the Bank in respect of such Credit and the goods to which it relates have been discharged in full, the Bank may, but shall not be bound to, give such orders as to shipment, destination and delivery of any such goods as we could give and make such direct arrangements with the sellers or shippers or others, including the variation or discharge of any contract, as the Bank at its discretion may think fit without any liability on the Bank's part for any loss arising out of any such order or arrangement. Any such direct intervention by the Bank shall not affect our obligations to the Bank and we shall reimburse the Bank for all payments made or liability incurred by it pursuant to any such intervention. We will submit to the Bank periodic reports and other particulars concerning the goods as the Bank may from time to time require.

(m) Any action taken or omitted by the Bank or by any of its correspondents or agents under or in connection with any Credit or the relevant drafts, documents or goods, if taken or omitted in good faith, shall be binding on us and shall not place the Bank or its correspondents or agents under any liability to us. The users/beneficiaries of each Credit shall be deemed to be our agents and we assume all risks of their acts and omissions.

(n) References in this Agreement to shipment include transportation by sea or air or on land; references to bills of lading include bills of lading and airway bills of whatever form; and related provisions shall be construed accordingly. References herein to a Credit shall include any Credit as increased, extended or otherwise modified.

### 3. Pledge - Documentary Credits

(a) As a continuing security for the payment and discharge of the Liabilities, we agree that the Bank shall have a pledge over (i) all goods which are now or which shall hereafter be delivered (actually, constructively or otherwise) by us or by any person for our account or on our instructions into the possession of the Bank or its agents or any other person on its behalf; and (ii) all drafts and all shipping documents, bills of lading, transport documents, insurance policies, warrants, delivery orders, certificates or receipts issued by wharfingers, godown or warehouse keepers, invoices and other documents of title or other documents representing or relating to goods (collectively "**shipping documents**") which are now or which shall hereafter be deposited with the Bank or its agents or any other person on its behalf whether for safekeeping, custody or otherwise by us or by any person for our account or on our instructions, and the goods to which any such documents relate.

(b) We further agree that all drafts drawn, accepted or endorsed by us and all shipping documents against which the Bank may make advances or provide other accommodation to us shall be held by the Bank as a continuing security for the payment and discharge of the Liabilities. We undertake to cause such documents to be promptly endorsed in favour of the Bank, if applicable and delivered to the Bank.

(c) The Bank may at its absolute discretion land, transport and store any of the goods the subject of the aforesaid security, re-ship such goods to any other port, pay any freight, warehouse, dock and other charges for our account and exercise all our rights (if any) as unpaid sellers of goods.

### 4. Running Trust Receipt Agreement

(a) If goods have been pledged to the Bank as provided herein, and the shipping documents in respect of such goods have been handed over to us, we will at our own expense take delivery of, land, store and hold such goods in the name and on behalf of the Bank. The Bank will retain a security interest in such goods as long as such goods, or the shipping documents relating to such goods are in our possession, and we shall hold such goods and shipping documents and their proceeds of sale on trust for the Bank as security for the Liabilities. We acknowledge that we shall have no authority to incur any liability on behalf of the Bank.

(b) We shall dispose of such goods only to bona fide buyers for full value and on normal commercial terms and shall not dispose of them to purchasers to whom we are indebted or owe any other liability (and who may seek to exercise set-off rights against us in respect of their purchase price). We undertake (i) to keep such goods at all times separate from any other personal property whether belonging to ourselves or to any other person; (ii) to advise the Bank of any change in the state, condition, quality or quantity of such goods; (iii) to advise the Bank of the whereabouts of such goods at all times and not to permit the same to be processed or altered without the Bank's prior written consent; (iv) to forward to the Bank copies of our sales invoices for such goods forthwith on the same being issued showing the name of the buyers and the total sale price in each case; (v) to be responsible to the Bank for the sale price of any goods sold.

(c) The proceeds of any sale or other disposal shall be received and held by us on trust for the Bank and we shall pay such proceeds to the Bank as and when received by us. If the proceeds of any sale or other disposal are paid into our account with any bank other than the Bank, we undertake forthwith to transfer such proceeds to the Bank. We shall assign to, and hold for the benefit of, the Bank all claims against any purchaser to whom goods are delivered without previous payment.

(d) The Bank or its servants or agents may at any time inspect such goods and take possession or custody of them. For these purposes, the Bank may at any time on reasonable notice enter any of our premises and take such steps as it may consider desirable or necessary to protect its interest in the goods. We shall forthwith upon request by the Bank and at our own expense return to the Bank such goods or the unsold portion thereof and the shipping documents relating to such goods in respect of which the Bank has not then received the proceeds of sale or other disposal.

(e) In addition to the provisions contained in this Clause, we acknowledge that we shall be bound by the provisions contained in Clause 3 and in each trust receipt signed by us in respect of shipping documents handed over to us.

5. **Charge - Invoice Financing**

(a) As a continuing security for the payment and discharge of the Liabilities, we charge to the Bank by way of first floating charge or, if we are not a company, by way of first fixed charge all goods purchased by us using credit facilities or with the assistance of guarantee facilities made available by the Bank and the shipping documents relating thereto other than those goods and shipping documents pledged to the Bank pursuant to Clause 3(a).

(b) As a continuing security for the payment and discharge of the Liabilities, we assign absolutely to the Bank (and agree to assign to the Bank) all sums of money payable to us in respect of the sale or any other disposal of the goods and shipping documents which are the subject of the charge created by Clause 5(a).

(c) The floating charge created over the goods and shipping documents pursuant to Clause 5(a) shall automatically crystallize:

(i) instantly and immediately upon the Bank giving us notice, in respect of the goods and shipping documents specified in such notice;

(ii) instantly and immediately upon the Bank giving us notice and issuing a demand for any reason pursuant to Clause 11;

(iii) instantly and immediately in respect of any goods and shipping documents which (01) are affected by any distress, attachment, execution or other legal process, (02) are seized or expropriated or (03) are or become subject to any other encumbrance, lien or security interest and such other encumbrance, lien or security interest becomes enforceable or any step is taken to enforce the same.

(d) We undertake not to, sell or otherwise dispose of any goods or shipping documents subject to the security interests created under Clause 5(a), except in the ordinary course of business and then only on full commercial terms, or, if we are not a company, except with the prior consent of the Bank.

6. **Provisions relating to Bank's security interests**

(a) We shall, at the Bank's request, whenever made, deposit with, or transfer to the Bank or otherwise place to the Bank's order or at its disposal or under its control all shipping documents relating to or representing goods covered by any security constituted by this Agreement. We authorise the Bank as our attorney to demand the delivery and endorsement to the Bank of any such documents.

(b) We undertake that no goods, drafts or shipping documents pledged, charged or otherwise provided to the Bank as security under this Agreement (such goods, drafts and documents, in this Agreement, collectively "**Secured Items**") are or shall be subject to any encumbrance, lien or other security interest in favour of any other person and all such documents shall be duly endorsed (if necessary) and delivered to the Bank as soon as they are received.

(c) We shall maintain all Secured Items covered by any security constituted by this Agreement in good and marketable condition and shall ensure that they are not dealt with except with the Bank's prior consent. The Bank or its servants or agents may at any time without notice enter any building or place where any Secured Items may be, and may take possession or custody of such Secured Items or remove them to such place as the Bank may think fit, or lock up such building or place, or affix a notice indicating the Bank's control of such Secured Items, or take such other steps to protect the Bank's interest in such Secured Items as the Bank may think fit.

(d) We undertake to pay to the Bank on demand all freight, landing, dock, transit, warehousing, insurance, storage and other charges and expenses incurred by the Bank in connection with the Secured Items whilst in transit and when landed and stored by the Bank together with all expenses reasonably incurred by the Bank in taking or retaking possession of the Secured Items and storing of them.

(e) The risk in the Secured Items shall be and remain with us at all times and the Bank shall not be responsible for any loss or damage or depreciation in value of any Secured Items howsoever arising, whether or not such Secured Items are in the Bank's possession, custody or control. We shall indemnify the Bank against all claims, demands, damages, costs, losses and expenses which may arise out of anything done by the Bank pursuant to the foregoing provisions.

(f) Unless otherwise permitted by the Bank, we will get in and realize all sums of money payable to us in respect of sales or other disposals of Secured Items promptly in the ordinary course of our business and, if so requested by the Bank, pay all such money which we may from time to time receive in respect thereof forthwith upon receipt directly into an account opened by us with the Bank specially for this purpose and (if appropriate) procure that such money is paid into this account direct by the relevant debtor and pending such payment hold such money on trust for the Bank.

(g) If so requested by the Bank and without prejudice to Clause 6(c), we will give notice to any relevant third party of the security and assignments contained in Clauses 3, 4 and 5 (if appropriate by making a note of the Bank's interest on any invoices) and procure that such third party shall acknowledge such notice, such notice and acknowledgement to be in such form as the Bank shall require.

#### 7. **Insurance**

We shall at our own expense keep all Secured Items insured against all usual risks and such other risks as the Bank may require from time to time, to the extent of at least the full market value of such Secured Items, under a policy or policies, and with insurance companies acceptable to the Bank. We agree that the Bank shall be deemed to hold an interest in all such policies and we shall procure that the Bank's interest shall be duly noted on the policies or other documents evidencing such insurances. In case of loss, we shall procure that all money recoverable under such insurances shall be payable to the Bank. If so required, we shall lodge the policies or other documents evidencing such insurances with the Bank. We authorise the Bank to recover or collect the money due under any such insurances and assign the policies absolutely to the Bank for that purpose. If we default in effecting or keeping up any such insurances or in producing any policies to the Bank, or if in the Bank's opinion any insurance effected by us is insufficient, the Bank may (but is not obliged to) effect insurance in such amount as it may think fit, and we shall reimburse to the Bank on demand all moneys expended by the Bank for such purpose. The Bank may apply the proceeds of any insurances in or towards satisfaction of any Liabilities in such manner as it may see fit.

#### 8. **Negotiation and Collection**

(a) We agree that the terms and conditions included or referred to in a collection order delivered or communicated to the Bank shall apply to all transactions where the Bank purchases or negotiates any draft accompanied by shipping documents, or purchases or negotiates any drafts and/or shipping documents relating to letters of credit or other authorities to pay, or collects any drafts and/or shipping documents on our behalf.

(b) Each collection shall be subject to the Uniform Rules for Collections of the International Chamber of Commerce as revised from time to time.

(c) In receiving any items for deposit or collection, the Bank assumes no responsibility beyond the duty of reasonable care.

(d) In effecting any collection for us or for our account, the Bank may in its absolute discretion select and appoint one or more correspondents or agents to present any drafts and/or shipping documents for payment or acceptance and in relation to any other matter arising out of the process of collection. The Bank shall not be responsible for any delay in remittance, non-delivery or loss of any drafts and/or shipping documents or their proceeds in the course of collection.

(e) If the Bank advances pre-export loans to us, we shall present to the Bank the relevant drafts and/or shipping documents for negotiation properly drawn and conforming to the terms of the relevant documentary credit or confirmed order as soon as the same are available and in any case not later than the date approved by the Bank.

(f) In relation to any drafts drawn under any documentary credit (whether or not opened by the Bank), the Bank may do any or all of the following:

(i) take conditional acceptance thereof (including acceptances for honour) and/or extend the due date for payment thereof;

(ii) accept payment from the drawees or acceptors before maturity under rebate or discount;

(iii) accept part payment before maturity and deliver a proportionate part of the goods to the drawees or acceptors of the drafts or the consignees of the goods;

(iv) deliver up the shipping documents relating to any draft only upon payment in full or part payment of such draft, notwithstanding that such procedure may be contrary to our previous instructions, if the Bank, its correspondents or agents deem it advisable;

(v) at the request of the drawees, delay presentation of any draft for payment or acceptance, without prejudicing or affecting our liability to the Bank in respect of such draft, unless the Bank has accepted explicit instructions from us to the contrary;

(vi) debit our account with the amount of the unaccepted or unpaid drafts or of advances made against shipping documents for which we are liable to the Bank or any deficiency arising after realization of the goods represented by such shipping documents but without prejudice to any of the Bank's rights against any endorser of the bills or other third parties;

(vii) protest any draft which is dishonoured and take any other steps which the Bank may consider necessary or desirable to protect its rights and interest in such draft;

(viii) commence and continue any proceedings and take any steps for the recovery from the acceptors or endorsees of any draft of any amount due in respect thereof, notwithstanding that the Bank may have debited our account with the amount of such draft.

(g) If the Bank discounts any draft drawn or indorsed by us and if any such draft is dishonoured for any reason, we shall upon demand pay to the Bank the face value of the draft and interest thereon calculated from the due date of the draft, whether or not we have had notice of such dishonour. We waive all rights of protest, receipt of notice of protest or notice of dishonour of any such draft, whether upon inception, maturity, acceleration or otherwise, and any and all other notices and demands whatsoever, whether or not related to such draft. Any such draft shall be treated as dishonoured if cleared funds have not been put at the Bank's disposal for the whole sum due or if payment is not made in the currency in which it is drawn or if currency regulations or other circumstances prohibit or restrict remittance to the Bank in Hong Kong of the proceeds thereof. Our liability to the Bank shall not be affected by and the Bank shall not be responsible for any default or delay in presentment or the dishonour of any such draft.

#### 9. **Bank Guarantees**

(a) We unconditionally and irrevocably agree to indemnify the Bank and keep the Bank indemnified against all claims, demands, actions, liabilities, damages, costs, losses and expenses (including, without limitation, reasonable legal fees) of whatever nature which the Bank may in any way incur as a consequence of the Bank at our request or on our behalf (i)(01)giving or countersigning any guarantee or indemnity, (02) issuing any performance bond, (03) opening any standby letter of credit or other payment undertaking, (04) guaranteeing our performance of the terms of any guarantee or indemnity or (05) otherwise incurring or assuming any obligation, including, without limitation, shipping guarantees and guarantees/indemnities covering discrepancies between documents actually presented under a Credit and the precise terms of such Credit, (each a "**guarantee**") or (ii) negotiating any draft notwithstanding any discrepancies between the documents presented under a Credit and the precise terms of the Credit (for the purposes of this Agreement, a "**negotiation**"). Without limiting the foregoing, we shall pay to the Bank on demand all sums which may be claimed from the Bank or which the Bank may pay or become liable to pay under or by reason of or in connection with any guarantee or any negotiation.

(b) The Bank may, without making prior demand, debit to our account all sums which may be paid by it or any of its correspondents or agents under or by reason of or in connection with each guarantee and each negotiation and any other amounts payable hereunder and charge interest, commission and charges thereon calculated from the date on which the Bank paid or incurred the relevant sum or other liability. Details of such interest, commissions and charges will be provided by the Bank upon request.

(c) The Bank may pay immediately any and all amounts claimed from it or which the Bank may become liable to pay under or in connection with any guarantee or negotiation without any reference to or further authority from us and without being under any duty to enquire whether any claims on the Bank are properly made, even if we dispute the validity of any such claim, and we shall accept any claim on the Bank and any payment which the Bank makes purporting to be in accordance with any guarantee or negotiation as binding on us.

(d) We undertake to deposit with the Bank immediately on demand any amounts for which the Bank may consider it or any of its correspondents or agents may be liable in connection with any guarantee or negotiation until such time as such guarantee is released and returned to the Bank or during the time any liability or other exposure thereunder otherwise remains.

(e) Any action taken by the Bank in good faith under or in connection with any guarantee or negotiation shall be binding on us and shall not place the Bank under any liability to us. The Bank may at any time terminate any guarantee or reduce its liability thereunder or decline to negotiate any draft pursuant to a negotiation. The Bank shall notify us as soon as practicable after taking any such action.

(f) We undertake to obtain and maintain in full force, validity and effect all governmental and other approvals, authorities, licences and consents required in connection with the counter-indemnity contained in this Clause 9, and to do or cause to be done all other acts and things necessary or desirable for the performance of all of our obligations pursuant to this counter-indemnity.

(g) All payments under this Clause 9 shall be made, at the Bank's option, either in the currency in which payments are made or liabilities incurred by the Bank under the guarantee or negotiation are denominated ("**denominated currency**") or in Hong Kong Dollars. The rates of exchange applicable for all payments by us in a currency other than the denominated currency shall be the Bank's then prevailing rates of exchange for value on the date when such payment is required to be made. Details of the rates of exchange used by the Bank shall be provided at our request.

(h) Our obligations under this counter-indemnity shall not be discharged, diminished or affected in any way by reason of (i) any other indemnity, assurance, guarantee, security, payment or other rights held by the Bank in respect of a guarantee or negotiation (collectively "**counter-security**") being or becoming wholly or in part invalid, defective or unenforceable or otherwise not being perfected or enforced or being avoided on any ground whatsoever, or (ii) the Bank from time to time without our knowledge or consent varying, realizing or releasing any of the same or granting any time, indulgence or concession or compounding with any person or accepting any compromise, arrangement or settlement or omitting to claim or enforce payment or terminating, varying, reducing or extending the terms of any counter-security or by anything done or omitted which but for this provision might operate to exonerate us.

(i) We waive all rights of subrogation and agree not to claim any set-off or counterclaim against any other person liable or to claim or prove in competition with the Bank in the event of the insolvency of any such person or to have the benefit of or share in any counter-security now or hereafter held by the Bank until the Bank has been fully indemnified in accordance with Clause 9. Moneys received by virtue of this counter-indemnity may be placed to the credit of a suspense account with a view to preserving the Bank's rights to prove for the whole of the Bank's claims against any other person liable.

(j) Whenever the Bank at our request issues or countersigns any guarantee in favour of shipping companies or forwarding agents enabling us or our nominees to obtain delivery of goods without production of any relevant shipping document : (i) we will use our best endeavours to obtain each shipping document relating to the goods concerned bearing all necessary endorsements, to produce the same to each relevant shipping company or forwarding agent or to the Bank as may be necessary, and to procure that the Bank's guarantee is promptly released and returned to the Bank duly cancelled; (ii) the Bank may endorse in our name any relevant shipping document, so that the same may be delivered direct by the Bank to each relevant shipping company or forwarding agent; (iii) we will, on the due date, honour by acceptance and/or by payment and discharge all drafts relevant to the goods concerned, whether presented to us by the Bank or by any other party, notwithstanding any discrepancies which may appear in the accompanying or relevant documents, and even if the goods concerned, or any part thereof, are unacceptable to us for whatever reason; (iv) in the case of shipment under Credits we undertake to disregard all discrepancies (if any) between the shipping documents received and those called for by the relevant Credit and to accept such shipping documents as if they were the only shipping documents called for by the relevant Credit; and (v) until the Bank's release from the relevant guarantee and the due honour and discharge by us of all drafts relevant to the goods concerned, the shipping documents shall, on their receipt by us if made out to us or to our order, be indorsed to the Bank or as the Bank may direct and no other person, and such goods and the proceeds of any sale or other disposal thereof shall be held by us on trust for the Bank.

#### 10. Foreign Exchange Transactions

(a) The following definitions shall apply to foreign exchange transactions governed by this Agreement:-



**"Base Currency"** means Hong Kong Dollars or, if otherwise agreed in respect of a particular FX Transaction, United States Dollars.

**"Base Currency Equivalent"** means (i) in relation to any amount in the Base Currency, that amount in the Base Currency or (ii) in relation to any amount in any Currency other than the Base Currency, the amount in the Base Currency converted from that amount in such Currency at the Bank's then prevailing exchange rate, as determined by it, between the Base Currency and such other Currency.

**"Business Day"** means a day (other than a Saturday) on which the Bank is open for business in Hong Kong and, if a payment is to be made under this Agreement, also a day on which banks are open for business in the principal financial centre of the country or territory of which the relevant Currency is the official currency.

**"Close-Out Date"** means a day on which, pursuant to the provisions of Clause 10, the Bank closes-out and liquidates Currency Obligations or such a close-out and liquidation occurs automatically.

**"Currency"** means money denominated in the lawful currency of any country or territory and the euro and includes, for the avoidance of doubt, the Base Currency.

**"Currency Obligation"** means any obligation of a party to deliver, or make a payment in, any Currency pursuant to an FX Transaction governed by this Agreement.

**"FX Transaction"** means any transaction between us and the Bank for the purchase by one party of an agreed amount in one Currency against the sale by it to the other of an agreed amount in another Currency, on the Value Date, and in respect of which transaction we and the Bank have agreed (whether orally, electronically or in writing), inter alia: (i) the Currencies involved, (ii) the amounts of such Currencies to be purchased and sold, (iii) which party will purchase which Currency and (iv) the Value Date; and **"Delivery Transaction"** means an FX Transaction pursuant to which settlement is to be by way of delivery by each party of the amount of the relevant Currency to the other party in full, save as otherwise provided in this Agreement; and **"Net Transaction"** means an FX Transaction designated by the Bank as a **"Non-Deliverable Cash Settled Forward Currency Transaction"** and pursuant to which settlement is to be by way of netting payments and in respect of which an appropriate confirmation in the Bank's standard form has been executed.

**"Value Date"** means, with respect to any FX Transaction, the Business Day or, where market practice in the relevant foreign exchange market in relation to the two Currencies involved provides for settlement on one date which is a local banking day in relation to one Currency but not to the other Currency and for delivery of the other Currency on the next local banking day in relation to that other Currency (**"Split Settlement"**), the two local banking days in accordance with that market practice agreed by the parties for delivery of the Currencies to be purchased and sold pursuant to such FX Transaction, and, with respect to any Currency Obligation, the Business Day (or, in the case of Split Settlement, local banking day) upon which the obligation to deliver Currency pursuant to such Currency Obligation is to be performed.

(b) The specific terms of an FX Transaction shall be deemed agreed when we have completed the Bank's application procedures and the Bank has accepted our application. All FX Transactions shall be promptly confirmed by a confirmation issued by the Bank which shall be acknowledged by us. Failure by the Bank to issue a confirmation or by us to acknowledge such confirmation shall not prejudice or invalidate the terms of any such FX Transaction. If the terms of this Agreement are inconsistent with those contained in a confirmation, the confirmation shall prevail.

(c) Each FX Transaction shall be governed by (i) the terms of this Agreement, (ii) the particular terms agreed in relation to that FX Transaction (as evidenced by a confirmation issued pursuant to paragraph (b) above, as the case may be) and (iii) the rules, regulations or practices (if any) from time to time in force in the relevant foreign exchange market(s) in which the Currencies the subject of the FX Transaction are traded. The terms of this Agreement, any particular terms agreed between ourselves and the Bank in relation to each such FX Transaction and the aforesaid rules, regulations, practices shall together constitute a single agreement between ourselves and the Bank. All payments and deliveries of Currency made by either us or the Bank in respect of any FX Transaction are made in consideration of all payments and deliveries of Currency made in respect of all other FX Transactions. We acknowledge and agree, however, that performance of the Bank's obligations in respect of each FX Transaction shall at all times also be subject to compliance in such manner as the Bank thinks fit with the rules, regulations and/or practices (if any) of the relevant foreign exchange market(s) as aforesaid and any applicable exchange control or other restrictions (if any) from time to time in force.

(d) Each party to a Delivery Transaction shall deliver to the other the amount of the Currency to be delivered by it under that Delivery Transaction on the Value Date therefor. Delivery of any Currency due to be made on that Value Date shall be settled by gross payments between the parties, unless the Bank decides otherwise and notifies us in advance that settlement is to be by means of netting payments or any other means.

(e) If (i) the Bank notifies us that settlement is to be by way of netting payments pursuant to paragraph (d) above, or (ii) on any Value Date more than one delivery of a particular Currency is to be made, then each party shall aggregate the amounts of such Currency deliverable by it and only the difference between these aggregate amounts shall be delivered, by the party owing the larger aggregate amount to the other party, and, if the aggregate amounts are equal, no delivery of that Currency shall be made. If more than one Currency is involved, the Bank is entitled at its discretion to convert any one Currency into another Currency at such rate or rates of exchange as it may determine on the relevant Value Date.

(f) If an FX Transaction is a Net Transaction, settlement shall be by way of netting payments in the Currency specified in the relevant confirmation issued by the Bank by the party owing the larger amount or as otherwise provided in such confirmation.

(g) The provisions of paragraphs (d), (e) and (f) shall not apply if an Acceleration Event (as defined in Clause 11) occurs. If an Acceleration Event occurs then the Bank shall have the right to close-out and liquidate in the manner described below all outstanding Currency Obligations, by notice to us. Notwithstanding the previous sentence, unless otherwise agreed in writing by the parties, such close-out and liquidation shall be automatic as to all outstanding Currency Obligations. Where such close-out and liquidation is to be effected, it shall be effected by:

- (i) closing-out each outstanding Currency Obligation so that each such Currency Obligation is cancelled and the Bank shall calculate in good faith with respect to each such cancelled Currency Obligation the amount due to or from it as follows:
  - (01) (where the Value Date for a Currency Obligation is before the Close-Out Date) by taking that Currency Obligation and adding interest thereon from the Value Date to the Close-Out Date at the rate of interest equivalent to the Bank's cost of funds for the relevant Currency (as determined by the Bank in its sole discretion);
  - (02) (where the Value Date for a Currency Obligation is after the Close-Out Date) by taking that Currency Obligation and discounting it from the Value Date to the Close-Out Date based on a discount rate calculated by reference to the Bank's cost of funds for the relevant Currency (as determined by the Bank in its sole discretion);
  - (03) by converting the amount of the Currency Obligations (as adjusted pursuant to paragraphs (i)(01) or (02) above) to the extent necessary into the Base Currency at the rate of exchange quoted by the Bank for the purchase of the Base Currency on the Close-Out Date;
  - (04) by aggregating all of the relevant amounts in the Base Currency calculated as mentioned above due (i) from us to the Bank and (ii) by the Bank to us; and
  - (05) by offsetting the smaller amount against the larger amount thereby producing a net sum in the Base Currency payable by one party to the other;
- (ii) the party owing the larger amount calculated in accordance with paragraph (g)(i) above, shall pay to the party owing the smaller amount the amount of the difference as calculated pursuant to sub-paragraph (i)(05) above.

(h) Any addition of interest or discounting required under paragraph (g)(i) above shall be calculated on the basis of the actual number of days and of a year of such number of days as is customary for transactions involving the relevant Currency in the relevant foreign exchange market. Where close-out and liquidation occurs in accordance with paragraph (g)(i) the Bank shall also be entitled to close-out and liquidate any other FX Transactions entered into between us and the Bank which are then outstanding.

The amount payable by one party to an FX Transaction to the other party pursuant to the provisions of this paragraph and paragraph (g) shall be paid by the close of business on the Business Day following such close-

out and liquidation. Any amounts required to be paid to the Bank under this paragraph and/or paragraph (g) and not paid on the due date therefor shall bear default interest as provided in Clause 13.

(i) We shall reimburse the Bank in respect of all commissions, expenses, losses and claims that arise out of FX Transactions and all out-of-pocket expenses incurred by the Bank (including fees and disbursements of counsel, including solicitors who may be employees of the Bank) in connection with any reasonable collection or other enforcement proceedings related to the payments required in relation to closing out and liquidation under this Clause 10.

(j) It is agreed that the amounts recoverable under this Agreement are a reasonable pre-estimate of loss and not a penalty. Such amounts are payable for the loss of bargain and the loss of protection against future risks and, except as otherwise provided in this Agreement, neither party will be entitled to recover any additional losses, claims and damages as a consequence of such losses.

(k) We shall enter into each FX Transaction in reliance only upon our own judgment. The Bank does not hold itself out as advising, or any of its employees or agents as having the authority to advise, us as to whether or not we should enter into any such FX Transaction or as to any subsequent actions relating thereto or on any other commercial matters concerned with any FX Transaction governed by this Agreement. Any observations, statements, views or comments by any Bank officers or employees whether at our request or otherwise shall not constitute advice of any nature and shall not be relied on by us. The Bank shall have no responsibility or liability whatsoever in respect of any such observations, statements, views or comments given or expressed by it or any of such persons to us, whether or not the same are given or expressed at our request.

(l) Every payment or delivery of a Currency to be made by a party under any FX Transaction shall be made in same day (or immediately available) and freely transferable funds to the bank account designated by the other party for such purpose. For the avoidance of doubt, the guidelines issued by the Hong Kong Association of Banks from time to time with regard to settlement procedures for foreign exchange transactions during the hoisting of a No. 8 (or higher) typhoon signal or black rainstorm warning shall apply in respect of settlement of FX Transactions. In addition, the Bank shall not be liable for any failure to perform or observe any of its obligations under any FX Transaction if the Bank is prohibited from doing so by any laws, regulations, rules or practices of any governmental or other authority in any jurisdiction or any foreign exchange market or market conditions relevant to such FX Transaction.

(m) Notwithstanding any other provision in this Clause, any amount required to be paid or delivered by the Bank to us in respect of any FX Transaction may at the Bank's discretion be held by the Bank as continuing security for any or all of our Liabilities.

(n) Nothing in this Agreement shall oblige the Bank to give or continue to give credit to us or to perform or continue to perform any service for us. Without limiting the generality of the foregoing, the Bank may at any time in its absolute discretion refuse to enter into any FX Transaction with us without stating any reason therefor and without being liable for any consequences thereof.

(o) We hereby warrant that we will enter into all FX Transactions as principal only and not as agent or trustee for any other person.

(p) The Bank may from time to time stipulate a time prior to which instructions given under and in accordance with Clause 22 must be received by the Bank prior to the Value Date of each FX Transaction in accordance with market practice. If the Bank does not receive our instructions by the stipulated time, it shall have the absolute discretion without reference to us either to continue such FX Transaction as a spot FX Transaction from day to day until the Bank receives our instructions, or to close out such FX Transaction at any time and we shall be liable for all consequences thereby arising.

(q) For each FX Transaction, the Value Date shall not be extended unless the Bank (in its absolute discretion) consents to such extension and on the condition that the new exchange rate for the extended FX Transaction shall be a market rate determined by the Bank and agreed by us.

(r) We declare and acknowledge that we are familiar with the mechanics and risks of trading in FX Transactions, and we are fully aware of the following:

(01) we may sustain losses exceeding the aggregate amount or amounts which we may from time to time be required to maintain with the Bank whether pursuant to this Agreement or otherwise;

(02) placing "stop loss" order(s) with the Bank (whereby the Bank is to close out FX Transactions immediately without further reference to us when the prevailing market rate(s) of the relevant currency or currencies reach(es) the rate(s) we have specified) will not necessarily limit our losses since market conditions may make it impossible to execute such order(s);

(03) due to the unpredictable volatility of foreign exchange market, FX Transactions may be closed out without prior notice to us even though prevailing market conditions may be against us and all consequential losses will be borne by us solely.

#### 11. **Acceleration**

All Liabilities shall become immediately due and payable, and we shall, if requested, immediately provide cash cover or other collateral satisfactory to the Bank in respect of any outstanding future or contingent liabilities, upon demand by the Bank, and without in any way limiting the Bank's right to make a demand at any time, we acknowledge that the Bank may also do so if any of the following events occurs : (i) we fail to observe or perform any of the terms of this Agreement or any other agreement with the Bank; (ii) any other indebtedness owing by us to the Bank or any other person becomes payable or capable of being declared payable prior to its stated maturity or is not paid when due; (iii) any guarantee, indemnity or other contingent liability given or owing by us in respect of any other person is not honoured when due and called, or steps are taken to enforce any security given by us in respect of the liabilities of any other person; (iv) any security provided by us to the Bank ceases to be in full force and effect or there is in the Bank's reasonable opinion any material depreciation in the value thereof whether actually or reasonably anticipated; (v) any attachment, execution or other process is levied against us or any of our goods or other assets or they are otherwise seized or if a receiver is appointed of the whole or any part of our undertaking, property or assets; (vi) we become insolvent or otherwise unable to pay our debts as they become due, or a petition in bankruptcy or for winding-up (whether voluntary, compulsory or otherwise) is filed by or against us; (vii) any representation, warranty or undertaking made by us in or in connection with this Agreement or any other agreement with the Bank is incorrect or breached in any material respect; (viii) our death or any assignment or arrangement with or for the benefit of any of our creditors; (ix) any of the events mentioned above occurs in respect of any surety or guarantor of any of our obligations to the Bank or any endorser of any note or other document evidencing any such obligation or any of our subsidiaries (as defined in Clause 14); or (x) we are prevented from or hindered or delayed by reason of force majeure or act of state in the delivery of any Currency in respect of a Currency Obligation or if it becomes or, in the good faith judgment of the Bank, may become unlawful or impossible for us to deliver or receive any Currency which is the subject of a Currency Obligation. Any aforesaid demand or any such event shall be referred to in this Agreement as an "**Acceleration Event**".

#### 12. **Power of Sale**

The Bank may sell or otherwise dispose of all or any Secured Items and all other assets and other property provided to the Bank as security under this Agreement in such manner and for such consideration (which expression shall include both nature and amount) as the Bank may in its absolute discretion think fit (i) if the Bank makes demand for payment of Liabilities as provided under Clause 11 or (ii) at any other time if the Bank considers it desirable to do so having regard to the then realisable value of the Secured Items and such other assets and property whether or not any contingent or other liability owing by us to the Bank shall have actually matured. The Bank shall not be liable in any way (iii) for any loss which may arise in exercising the aforesaid power of sale or disposal, however such loss may have been caused, and whether or not a better price could or might have been obtained on such a sale or disposal by either deferring or advancing the date of such sale or disposal or otherwise howsoever or (iv) for the default or negligence of any broker, auctioneer or other person employed by the Bank in or in connection with any such sale or disposal, save in the case of the Bank's own wilful default, fraud or gross negligence. The net proceeds of any sale or disposal, after payment of all expenses and other disbursements in connection therewith and any prior claims, shall be applied towards payment of Liabilities then owing or to become owing by us to the Bank in such manner as the Bank may see fit. A statutory declaration made by any of the Bank's officers that the aforesaid power of sale or disposal has become exercisable shall be conclusive evidence of that fact in favour of any purchaser or other persons to whom any Secured Items or other assets and property may be transferred and we shall indemnify the Bank against any claim which may be made against the Bank by such purchaser or other person by reason of any defect in our title to any Secured Items or other assets and property.

#### 13. **Interest**

All Liabilities shall include interest payable thereon. We shall pay interest on such money at such rate or rates as shall from time to time be agreed with the Bank or, in the absence of such agreement, specified by the Bank, and we agree to pay interest at the rate or rates so specified as if expressly agreed by us. Details of such interest rates shall be provided by the Bank on request. Interest shall accrue from day to day and shall be calculated on such basis and be payable at such times as the Bank may determine in accordance with its usual practice or upon demand by the Bank. We acknowledge that a higher rate of interest may be charged on amounts in default or on accounts which the Bank has permitted to become overdrawn where we have not agreed any specific arrangement with the Bank regarding rates of interest to be charged. Such interest shall be payable by us both before and after judgment and, in the absence of any agreement to the contrary, may be compounded at the end of each funding period as selected by the Bank. A certificate issued by any of the Bank's officers as to the rates of interest payable on any such money shall, in the absence of manifest error, be conclusive and binding on us.

14. **Set-Off and Lien**

(a) Without limiting any general or banker's lien, right of set-off or other right to which the Bank may be entitled:

(i) the Bank shall have the right and is authorised to the fullest extent permitted by law at any time, to set off and appropriate and apply :

(01) any credit balance in any currency on any account (whether subject to notice or not, whether or not matured or due and whether held jointly or singly) of us or of any other person with the Bank in Hong Kong or elsewhere in the world to which we may be beneficially entitled; and

(02) any other amounts due to us from the Bank

against any Liabilities {and any other amount whatsoever owing to (xx) the Bank in Hong Kong or elsewhere in the world and/or (yy) any other member of the group of companies of which the Bank is also a member whether in Hong Kong or elsewhere in the world, by us and/or any company (aa) which company at the relevant time is a member of the same group of companies as us or (bb) of which at the relevant time we own at least 20% of the issued share capital, or any holding company or subsidiary of such a company, (whether such amount is due or not)}\*, and

(ii) the Bank is authorised to purchase with the money standing to the credit of any such account such other currencies as may be necessary for this purpose.

(b) The Bank shall have a lien on all our property which may now or hereafter be in its possession or custody whether for safekeeping or otherwise.

(c) For the purposes of this Clause 14 and Clause 11, the expressions "**group of companies**", "**holding company**" and "**subsidiary**" shall have the meanings ascribed thereto in the Companies Ordinance (Cap.622).

15. **Payments**

(a) All sums payable to the Bank by us shall be paid without set-off, counterclaim or any other restriction or condition and free and clear of any tax or other deduction or withholdings of any nature. If we or any other person shall at any time be required by any law or regulation to make any deduction or withholding on account of tax or otherwise from any payment, we shall, together with such payment, pay such additional amount as will ensure that the Bank receives free and clear of any tax or other deductions or withholdings the full amount which the Bank would have received if no such deduction or withholding had been required. All taxes, deductions or withholdings required by law or regulation to be made by us from any payment shall be paid by us when due and we shall, within 14 days of the payment being made, deliver to the Bank evidence satisfactory to the Bank (including all relevant tax receipts) that the payment has been duly made to the appropriate authority. Any penalties which are payable as a result of our failure to pay such taxes, deductions or withholdings when due shall be for our account and we shall indemnify the Bank for all liabilities arising from such late payment.

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\* delete as appropriate

(b) Any money received by the Bank in respect of Liabilities may be applied to such of the Liabilities as the Bank may in its absolute discretion determine or be paid into and held in a suspense account for so long as the Bank thinks fit, and in the event of any proceedings in or analogous to bankruptcy, winding-up, liquidation, composition or arrangement, the Bank may prove for and agree to accept any dividend or composition in respect of our outstanding obligations as if there had been no suspense account or no credit therein.

(c) If any court gives a judgment in the Bank's favour for any amounts owing by us and such judgment is expressed in a currency (the "**judgment currency**") other than the currency in which such amounts are owing to the Bank (the "**currency of account**"), we shall fully indemnify the Bank in respect of all losses which it may at any time suffer as a result of any difference between (i) the rate or rates of exchange used for such purpose to convert the sum in question from the currency of account into the judgment currency and (ii) the rate or rates of exchange at which the Bank may purchase the currency of account with the judgment currency upon receipt of a sum paid to it in satisfaction, in whole or in part, of any such judgment.

(d) For all purposes hereof, including any legal proceedings, a certificate by any of the Bank's officers as to the sums and liabilities for the time being owing by us to the Bank and any applicable interest rates shall, in the absence of manifest error, be conclusive evidence thereof. The Bank may debit our account with any sum which we are liable to pay to the Bank whether or not a demand has first been served on us.

(e) The Bank shall have the right at all times to reverse any erroneous entries in any of our accounts with effect back-valued to the date upon which the correct entry or no entry (as the case may be) should have been made.

#### 16. **Expenses**

(a) We shall indemnify and hold the Bank harmless from and against any and all consequences which may result from giving credit to us or performing any banking service for us and shall reimburse the Bank upon demand for any reasonable payment, loss or damage which the Bank may make or incur by reason thereof. We shall also upon request appear at, and defend, at our own expense any action which may be brought against the Bank in connection therewith.

(b) We shall pay or reimburse to the Bank immediately upon demand, and/or the Bank shall be entitled to debit any of our accounts, with:

(i) all reasonable commissions, fees and other charges usually charged by the Bank, its agents and/or correspondents whether or not previously notified to us;

(ii) any stamp, registration or other duties, fees or taxes which the Bank pays or becomes liable to pay in connection with the entry into, performance or enforcement of this Agreement, any transaction contemplated by this Agreement and any other agreement entered into between us and the Bank; and

(iii) all other costs, fees, charges and expenses reasonably incurred by the Bank, its agents and/or correspondents in connection with the establishment, exercise, enforcement or preservation of any of its rights under any banking facilities and services, this Agreement or any other agreements (or any attempt to do so) including, but not limited to, the reasonable fees and expenses of any legal advisers on a full indemnity basis.

#### 17. **Power of Attorney**

We irrevocably and by way of security appoint the Bank to be our attorney, with full power of substitution, and in our name or otherwise on our behalf and as our act and deed to sign, seal, execute, deliver, perfect and do all deeds, instruments, acts and things which may be required or which the Bank shall reasonably think necessary for carrying out any of our obligations under this Agreement or for effecting any sale, disposal or other dealing by the Bank or for giving to the Bank the full benefit of this Agreement and of the security granted hereunder. We ratify and confirm and agree to ratify and confirm any deed, instrument, act and thing which such attorney may lawfully execute or do.

#### 18. **Security/Protective Clauses**

(a) This is a continuing agreement and the security evidenced shall be a continuing security for the Liabilities and all the rights, powers and remedies hereunder shall apply to all our past, present, future and contingent obligations to the Bank and notwithstanding any intermediate payment or settlement of account.

(b) We shall immediately upon demand by the Bank and at our own expense make, execute, do and perform all such further assurances, instruments, acts or things as the Bank shall from time to time require to perfect this Agreement and the Bank's title to the security constituted or intended to be constituted by this Agreement, including, without limitation, executing such documents as may be necessary to vest title to Secured Items or other assets or property provided as security to the Bank, in the Bank or its nominee.

(c) Without prejudice to Clause 18(b), we shall confer in favour of the Bank, or shall procure that there be conferred by a third party in favour of the Bank, such agreements, guarantees, indemnities and/or security as the Bank may require, from time to time, in respect of our obligations and the Liabilities and we shall execute and do and procure to be executed and done all such documents and things as may be desirable for such purposes at our expense.

(d) Each of the rights, powers and remedies given to the Bank under this Agreement or pursuant to any facility, services or accommodation governed by this Agreement, shall be cumulative and in addition and without prejudice to all other rights, powers and remedies from time to time given to, or held by, the Bank by virtue of any other security, statute or rule of law or equity. Where from time to time any specific agreement is concluded between us and the Bank and is intended by its terms to govern a particular transaction, such other agreement shall apply to such transaction in conjunction with this Agreement. If there is any conflict between such other agreement and this Agreement, the terms of such other agreement to the extent that they are valid and enforceable shall prevail in respect of such transaction.

(e) Any forbearance or delay by the Bank in exercising any right or remedy shall not be deemed to be a waiver of such right or remedy, and any single or partial exercise of any right or remedy shall not preclude the further exercise thereof. No course of dealing between us nor any waiver in any one or more instances shall be deemed a waiver in any other instance. Each of the Bank's rights and remedies shall continue in full force and effect until such rights or remedies are specifically amended or waived by an instrument in writing executed by the Bank.

(f) Any provision in this Agreement which is invalid for any reason in any jurisdiction shall be ineffective only to the extent of such invalidity and shall not affect the validity of the remaining provisions hereof or the validity of such provision in any other jurisdiction. Nothing in this Agreement shall operate so as to exclude or restrict any liability, the exclusion or restriction of which is prohibited by laws of Hong Kong.

(g) Nothing herein shall impose any obligation on the Bank to provide or continue any banking facilities or other accommodation or services to us and this Agreement and any Credit (or the unused balance thereof) may, without liability on the part of the Bank, be terminated or discontinued forthwith by the Bank at its absolute discretion by reasonable notice to us. The Bank shall not be obliged, however, to give notice to us of termination, discontinuation or closure if there are exceptional circumstances (such as use of an account for criminal activities).

#### 19. Anti-Money Laundering, Counter-Terrorist Financing and Sanctions

(a) Under this Clause 19 and Clause 21:-

(i) “**AML/CTF Law**” means any applicable law relating to money laundering, terrorist-related activities, terrorism financing, identity theft, drug trafficking, fraud, other money laundering or financial crimes, or sanctions made by an authority, and any applicable rule, regulation, guideline or other instruments issued, administered or enforced for the purposes of any such law, including without limitation any applicable financial record keeping and reporting requirements and applicable anti-money laundering or counter-terrorism financing or sanctions statutes made by an authority in all jurisdictions in which the Bank, we or any of the Bank's or our subsidiaries, affiliates or agents conduct business or operations.

(ii) “**authority**” means any nation, state, government (in fact or according to the law), any province or other political subdivision thereof, any body, agency, department or ministry, any taxing, monetary, foreign exchange or other authority, court, tribunal, administrative, instrumentality or other governmental authority or any other entity (private or public) charged with the regulation of the financial

markets (including the central bank) and any other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

(iii) “**EAR**” means the Export Administration Regulations (15 C.F.R. 730 et. seq.) (as supplemented and amended from time to time) administered or enforced by the US Bureau of Industry and Security.

(iv) “**sanction**” includes any economic, financial, commercial or trade sanction or other restrictive measures or prohibition (including without limitation any sanctions or measures relating to an embargo, freezing of funds and economic resources, restrictions on transactions with natural or legal persons or relating to goods or specified territories) issued, imposed, administered or enforced from time to time by any competent authority in any jurisdiction where the Bank or we operate(s), any supranational organization, official body, or by any other country.

(v) “**SDN List**” means the Specially Designed Nationals List maintained by the Office of Foreign Assets Control of the US Department of the Treasury, or any similar list of sanctioned persons or entities maintained by any authority.

(vi) “**subject of sanctions**” means any person or entity that is:

(A) listed, or is owned or controlled, directly or indirectly, by a person or entity which is listed, on an SDN List;

(B) listed, or is owned or controlled, directly or indirectly, by a person or entity (01) which is listed, on an entity list under the EAR or (02) the export, re-export or transfer of any general or specific item(s) to which is subject to any license requirement under the EAR unless all such requisite licenses(s) is/are exempted or excepted under the EAR or approved by the US Government;

(C) located, organized or resident in a country (01) which is the subject of sanctions by any authority or (02) to which the export, re-export or transfer of any general or specific item(s) is subject to any license requirement under the EAR unless all such requisite licenses(s) is/are exempted or excepted under the EAR or approved by the US Government;

(D) a government or governmental agency, semi-governmental or judicial entity or authority (including any stock exchange or any self-regulatory body organized or established under statute) or a state-owned enterprise (or any entity owned or controlled by any of the foregoing) of any country which is the subject of sanctions by an authority, even if located outside such country;

(E) otherwise a target of sanctions by any authority such that the Bank cannot deal or otherwise engage in a transaction contemplated by this Agreement with such person or entity; or

(F) a country (01) which is the subject of sanctions by any authority or (02) to which the export, re-export or transfer of any general or specific item(s) is subject to any license requirement under the EAR unless all such requisite licenses(s) is/are exempted or excepted under the EAR or approved by the US Government.

(b) Notwithstanding any other Clauses of this Agreement to the contrary, in order to comply with AMI /CTF Laws, and related regulations and policies (including without limitation the related policies of the Bank), reporting requirements under financing or financial transactions legislation, requests or requirements of authorities, including without limitation any sanctions, the Bank may:-

(i) be prohibited from entering into or concluding transactions involving certain persons or entities; and/or

(ii) investigate any messages, instructions, transactions or other information provided to or passed through the Bank; and/or



(iii) be required to report suspicious transactions or activities to an authority without reference or notice to us or our knowledge. The transactions or activities impacted include without limitation those that may:

- (A) involve the provision of finance to any person or entity involved or suspected of involvement in any act or inaction (as the case may be) that may breach any AML/CTF Laws;
- (B) be relevant to investigation of an actual or attempted evasion of a tax law, or investigation or prosecution of a person for an offence against any applicable law;
- (C) involve any person or entity which may be the subject of sanctions; or
- (D) involve any attempt by us to evade any other applicable laws, regulations, policies, reporting requirements, requests or requirements of any authority.

(c) Without prejudice to the generality of Clause 18(g), the Bank may at its absolute sole discretion act in accordance with its usual business practice and procedures and need only to accept or execute our instructions or transactions with us or provide or continue credit or banking facilities or other accommodation or services to us under this Agreement if the Bank considers it reasonable, practicable, prudent and legal to do so.

(d) Without limiting the generality of Clause 19(c), the Bank has the absolute sole discretion to suspend, cancel or reject a payment or instruction, or refuse to act or execute pursuant to or in connection with an instruction, transaction, the provision or continuing of credit or banking facilities or accommodation or services, if the conclusion or execution of such payment, instruction, transaction or provision, or any document presented to the Bank concerning any of the foregoing, may involve a breach of the policies or procedures of the Bank or any laws, regulations, rules or sanctions, or is inconsistent with the prudent banking practice of the Bank.

(e) The Bank shall not be liable for any loss we incur or suffer:-

(i) arising out of any action taken or any delay or failure by the Bank in performing any of its duties or other obligations to us caused in whole or in part by any steps taken as set out in this Clause 19;

(ii) as a result of the Bank (01) acting on, processing, handling, concluding, executing, delaying or not acting on, processing, handling, concluding, executing, or continuing or not continuing to act on, process, handle, conclude or execute (as the case may be) an instruction, transaction or payment, or (02) providing or continuing, or not providing or continuing (as the case may be) any credit or banking facilities or accommodation or services under this Agreement, for any of the reasons stated in this Clause 19; or

(iii) as a result of such instruction, payment, transaction, provision of credit or banking facilities or accommodation or services contemplated by this Agreement being late, inaccurate, inadequate or incomplete,

unless such loss is caused by the willful default, fraud or gross negligence of the Bank.

(f) We represent and undertake that, during the term of this Agreement, neither we nor any of our subsidiaries, the directors or officers of us or our subsidiaries, or, to the best of our knowledge, any of our respective affiliates, agents or employees, have engaged or will engage in any activity or conduct which would violate any applicable anti-corruption laws, regulations, rules or other instruments in any applicable jurisdiction or any AML/CTF Laws, and we have instituted and maintained policies and procedures to prevent violation of such laws, regulations, rules, other instruments and AML/CTF Laws.

(g) We further represent that neither we nor any of our subsidiaries, the directors or officers of us or our subsidiaries, nor, to the best of our knowledge, any of our respective affiliates, agents or employees:-

(A) is a subject of sanctions or in breach of any AML/CTF Laws or anti-corruption laws or regulations; or

(B) is subject to any actual or threatened action, suit or proceeding by or before any court or authority or any arbitrator with respect to any AML/CTF Laws or anti-corruption laws or regulations.

(h) We specifically represent and undertake that we do not and will not:-

(A) engage in, directly or indirectly, any activity or transaction with or related to (01) any subject of sanctions, (02) any person that we know or have reasonable cause to suspect is acting on behalf of any subject of sanctions, or (03) any person who is or may reasonably be suspected to be in breach of any applicable AML/CTF Laws or anti-corruption laws, regulations, rules or other instruments;

(B) engage in any conduct which might reasonably be expected to cause us to become a subject of sanctions or in breach of any applicable AML/CTF Laws or anti-corruption laws, regulations, rules or other instruments;

(C) without limiting any of the foregoing paragraphs, use or apply directly or indirectly the proceeds of any sale, disposal, collection, payment, credit, banking facilities or other financial accommodation contemplated by this Agreement or lend (including on-lend), contribute or otherwise make available any monies to any of our subsidiaries, joint venture partners or any other persons or entities: (01) to fund or facilitate any activity, business or relationship with or in relation to a subject of sanctions, (02) to fund or facilitate any activity, business or operation that is or may reasonably be suspected to be in breach of any applicable AML/CTF Laws or anti-corruption laws, regulations, rules or other instruments, or (03) in any other manner that would result in a violation of any law, regulation or sanctions by such subsidiary, joint venture partner or other person or entity; and

(D) use any income, funds, proceeds or profits from any activity, transaction or operation carried out with or in relation to (01) a subject of sanctions or (02) a person or entity that is or may reasonably be suspected to be in breach of any AML/CTF Laws or anti-corruption laws or regulations, in order to repay or pay any Liabilities.

20. **Miscellaneous**

(a) (i) Any release, settlement, assignment, payment or discharge between ourselves and the Bank shall be conditional upon no security, disposition or payment to the Bank in respect of the Liabilities being avoided or set aside or ordered to be surrendered, paid away, refunded or reduced by virtue of any law relating to dissolution, insolvency, composition or arrangement for the time being in force or for any other reason whatsoever and the Bank shall be entitled to recover from us or any other relevant person the value which the Bank placed upon such security or disposition or the amount of such payment as if such release, settlement, assignment, payment or discharge had not occurred.

(ii) The Bank shall be entitled to retain this security for a period of six months and 1 day after the payment, discharge or satisfaction of all Liabilities or, in the event of the commencement of bankruptcy or winding-up of the person making such payment, discharge or satisfaction, for such further period as the Bank may determine and to enforce this security subsequently as if such release, discharge or settlement had not occurred.

(b) The Bank may at its discretion amend, delete or substitute any of the terms of this Agreement or add new terms to this Agreement by sending to us a notice in writing setting out such amendment, deletion, substitution or addition 30 days prior to such change taking effect (unless any such change is not within the Bank's control) and such changes shall (save as aforesaid) be deemed incorporated herein (and shall form part of this Agreement) unless objected to in writing by us within 30 days from the date of such notice.

(c) This Agreement shall operate for the benefit of the Bank and its successors and assignees, notwithstanding any change by way of merger, amalgamation, consolidation or otherwise in the constitution of the Bank or of any such successor or assignee. The Bank may assign or otherwise transfer all or any of its (i) rights and interests and/or (ii) obligations under this Agreement and any transactions to which this Agreement relates and/or the goods, drafts, shipping documents and other documents and properties in respect of which the Bank has a security interest and may deliver the same to the transferee(s), who shall thereupon become vested with all the rights and powers in respect thereof which were formerly vested in the Bank. The Bank shall be released and discharged from any liability or responsibility in respect of the goods, drafts, shipping documents or other documents and properties so transferred, but shall retain all its rights and powers in respect of goods, drafts, shipping documents or other documents and properties not so transferred. We may not transfer or assign all or any of our rights and obligations under this Agreement without the Bank's prior written consent.

(d) The Bank is authorized, if it so wishes, to obtain references in respect of us from any person, including (if we are an individual(s)) an employer, and to obtain credit reports on us, when considering whether to grant or continue credit or banking facilities or other financial accommodation to us or otherwise to issue Credits or guarantees or enter into FX Transactions. The Bank shall not approach any proposed referee for us unless we have first confirmed to the Bank that we have obtained the consent of such referee for his/her/its name to be used.

(e) The undersigned (if an individual) agrees that from time to time, I/we may (on request of the Bank or otherwise) provide to the Bank personal data as defined in the Personal Data (Privacy) Ordinance ("PDPO") and any other information. I/We further agree to be bound by the Bank's Circular to Customers relating to Data Protection Policy ("**Circular**") issued to me/us from time to time.

(f) We (if a corporation) agree to be bound by the Circular issued to us from time to time and to the use of customer data in the manner specified in the Circular, and agree that the provisions of the Circular shall apply generally to the Bank's treatment of customer data. If, in the course of our dealings with the Bank, it is necessary for the Bank to have access to any data of any of our group companies (including our holding company, subsidiary and affiliated company), we represent that we already have the authorization of such company for disclosing such data to the Bank and we agree to ensure that such company have read and understood the Circular. We further agree to ensure that all individual agents and staff members who, in the course of their dealings with the Bank, are or may be obliged to provide their personal data to the Bank, have read and understood the Circular."

(g) Time shall be the essence of any transaction entered into pursuant to, or which is otherwise governed by, this Agreement.

## 21. **Information**

(a) We undertake to deliver promptly to the Bank such financial or other information concerning our affairs, audited by auditors satisfactory to the Bank if required, as the Bank may from time to time reasonably require, and, in particular, but without limiting the generality of the foregoing, we undertake to notify the Bank forthwith of any change in the character, nature or extent of our business, undertaking, property or assets.

(b) We shall notify the Bank of the occurrence of any Acceleration Event without delay as soon as we become aware of it.

(c) We undertake forthwith to (01) provide the Bank upon request with all documents and information as may be reasonably required by the Bank from time to time, and (02) cooperate fully in respect of any enquiry that the Bank may make from time to time, in order, in each such case, for the Bank to comply with any AML/CTF Laws, anti-corruption laws, regulations and policies (including, without limitation, any related policies of the Bank), reporting requirements under financing or financial transactions legislation, requests or requirements of authorities, including any sanctions.

## 22. **Notices**

(a) Any notice required to be given by the Bank to us shall be deemed to have been so given if addressed to us at our address specified above or to such other address as may be notified to the Bank in writing by us or appear in the Bank's records as our last known address. Any notice delivered personally shall be deemed to have been given at the time of delivery. Any notice despatched by letter postage prepaid shall be deemed to have been given immediately after posting. Any notice sent by telex with answer back or by facsimile shall be deemed to have been given at the time of transmission. We will promptly notify the Bank in writing of any change of address to which statements and notices must be sent. Such changes shall not be effective until duly entered in the Bank's records.

(b) It is agreed between the parties that digital records, microfilms, books and other records kept by the Bank shall constitute conclusive evidence of our dealings with the Bank unless (i) the Bank failed to exercise reasonable skill and care in respect of any such digital records, microfilms, books and other records, (ii) the contents of any such digital records, microfilms, books and other records resulted from forgery or fraud of any employee, agent or servant of the Bank or (iii) the contents of any such digital records, microfilms, books and other records resulted from the wilful default or gross negligence of the Bank or any of its employees, agents or servants.

(c) With respect to telephone instructions given by us, we agree that the Bank shall be entitled in any event to record electronically any such telephone instructions given or telephone conversations conducted with the

Bank's staff (whether in respect of FX Transactions or otherwise) and retain such recordings for as long as the Bank thinks fit and use such recordings in such manner as the Bank shall deem appropriate. It is also agreed that other than in instances of manifest error on the part of the Bank or the Bank's staff, such telephone recordings kept by the Bank shall constitute conclusive evidence of our dealings with the Bank.

23. **Interpretation**

(a) The terms and conditions contained in this Agreement have been arranged into separate clauses and paragraphs for convenience only. References to Clauses or paragraphs are references to clauses and paragraphs in this Agreement. Any of the terms and conditions in any clause or paragraph shall, where the context permits or requires, apply equally to transactions dealt with under other clauses or paragraphs. Clause headings are for ease of reference only and shall have no legal effect.

(b) In this Agreement, unless the context otherwise requires, references to us shall if the undersigned is a sole proprietorship firm include the sole proprietor and his successors in the business and, if the undersigned is a partnership firm, include the partners as at the date of this Agreement and any other persons who shall at any time hereafter be or have been a partner of the firm and the successors to such partnership business and each of them. This Agreement shall be binding on us and our successors notwithstanding any change in the constitution of us or of any such successor and, without limiting the foregoing, shall not be terminated or affected by the death or retirement of any parties or by any other change in the composition of any firm as aforesaid.

(c) Where the undersigned consist of more than one person or where the undersigned is a firm consisting of two or more persons, the liabilities of the undersigned shall be joint and several liabilities of each such person and references to us shall be construed as references to each and/or any such persons and none of the undersigned shall be entitled to any rights, powers or remedies, legal or equitable, of a surety as regards the indebtedness, obligations or liabilities of any others of the undersigned. In particular, but without prejudice to the generality of the foregoing, the liabilities of any of the undersigned shall not be affected by the death, bankruptcy, liquidation (as the case may be) or the release or discharge of any of the others of them or the invalidity of execution by, or the unenforceability of this Agreement against any of the others of them.

(d) References herein to any person shall include a firm or corporation, words importing the singular shall include the plural and vice versa and words importing a gender shall include every gender.

(e) If there shall be any conflict between this Agreement and any other terms and conditions governing services, facilities and products of the Bank which specifically concern the Code of Banking Practice endorsed by the Hong Kong Monetary Authority (as amended from time to time) or any explanatory notes or other general descriptive information about the Bank's services, the terms of this Agreement shall prevail.

24. **Rights of Third Parties**

Unless expressly provided to the contrary in this Agreement, a person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) to enforce or to enjoy the benefit of any term or condition of this Agreement. Notwithstanding any provision of this Agreement to the contrary or otherwise, the consent of any person who is not a party to this Agreement is not required to rescind or vary any provision of this Agreement at any time.

25. **Governing Law and Jurisdiction**

This Agreement and all agreements, security documents and other transactions arising out of this Agreement and our banking relationship with the Bank in Hong Kong shall be governed by and construed in accordance with the laws of the Hong Kong Special Administrative Region of the People's Republic of China ("**Hong Kong**"), unless otherwise expressly provided. We irrevocably submit to the non-exclusive jurisdiction of the Hong Kong courts. We appoint the person named below (if any) as our agent to accept service of any legal process in Hong Kong in connection with this Agreement and all agreements, security documents and other transactions arising out of this Agreement and our banking relationship with the Bank in Hong Kong unless otherwise expressly provided. We agree that any writ, summons, order, judgment or other document shall be deemed duly and sufficiently served on us if addressed to us or to the said agent and left at or sent by post to the address of the said agent last known to the Bank. The foregoing shall not limit the Bank's right to serve process on us in any manner permitted by law in any jurisdiction or to enforce this Agreement and all agreements, security documents and other transactions arising out of this Agreement and our banking relationship with the Bank in Hong Kong in the courts of any other competent jurisdiction.

This Agreement has been executed and delivered by us as a deed:-

Name of Process Agent (if any) : \_\_\_\_\_

Address of Process Agent : \_\_\_\_\_

\_\_\_\_\_

*[Remainder of this page is intentionally left blank]*

**Corporate Signatory**

**Execution Clause for Company executing under Common Seal**

Sealed with the Common Seal of

C.S.

\_\_\_\_\_  
(Name of Company in Block Letters)

and signed by :

\_\_\_\_\_  
(Name of Signatory in Block Letters)  
Capacity :

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name of Signatory in Block Letters)  
Capacity :

\_\_\_\_\_  
(Signature)

in the presence of :

Name of Witness :

I.D. Card No.  
(or equivalent)  
of Witness :

\_\_\_\_\_  
Signature of Witness

FOR BANK USE ONLY
Signature Verification

Execution Clause for Company with one (1) Director executing pursuant to s127(3)(a) of the Companies Ordinance (Cap. 622)

EXECUTED and DELIVERED as  
a DEED and SIGNED by

, director  
for and on behalf of

\_\_\_\_\_  
Signature

in the presence of :

Name of Witness :

I/D Card No. (or equivalent) :

Execution Clause for Company with two (2) Directors or one (1) Director and one (1) company secretary executing pursuant to s127(3)(b) of the Companies Ordinance (Cap. 622)

EXECUTED and DELIVERED as  
a DEED and SIGNED by

, director and  
,[director/company secretary]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

for and on behalf of

in the presence of :

Name of Witness :

I/D Card No. (or equivalent) :

**Individual Signatory**

Signed Sealed and Delivered by

L.S.

\_\_\_\_\_  
(Name of Signatory in Block Letters)

\_\_\_\_\_  
(Signature)

I.D. Card No.  
(or equivalent)  
of Signatory :

in the presence of :

Name of Witness :

I.D. Card No.  
(or equivalent)  
of Witness :

\_\_\_\_\_  
Signature of Witness

**Individual Signatory**

Signed Sealed and Delivered by

L.S.

\_\_\_\_\_  
(Name of Signatory in Block Letters)

\_\_\_\_\_  
(Signature)

I.D. Card No.  
(or equivalent)  
of Signatory :

in the presence of :

Name of Witness :

I.D. Card No.  
(or equivalent)  
of Witness :

\_\_\_\_\_  
Signature of Witness

FOR BANK USE ONLY
Signature Verification