

## LICENCE AGREEMENT AND TERMS OF USE FOR THE ECUSTODY SERVICES

### IMPORTANT NOTICE:

- (i) This Licence Agreement and Terms of Use for the eCustody Services (this “**Agreement**”) governs the provision by China Construction Bank (Asia) Corporation Limited (the “**Bank**”, “**us**” “**we**” or “**our**”, which includes our successors and assigns) and your use of the eCustody Services and the Portal (each as defined below) and other related matters, which applies in conjunction with:
  - (a) the Terms and Conditions for Online Enterprise Banking Services,
  - (b) the Custody Agreement,
  - (c) the Service Level Memorandum (as defined below), where applicable,
  - (d) the eCustody Services Application Form, and
  - (e) all other applicable terms and conditions for accounts and related services in respect of the accounts and/or services concerned

(each as amended and/or supplemented from time to time) ((a) to (e) collectively the “**Applicable Terms**”). The Applicable Terms shall continue to govern your relationship with the Bank to the extent they are applicable.
- (ii) The Portal (as defined below) is provided by the Bank to you (“**you**” or “**your**” in this Agreement means the Client (as defined below)) as an e-channel and it constitutes part of the “Online Enterprise Banking Services” as defined under the Terms and Conditions for Online Enterprise Banking Services.
- (iii) Although the use of the Portal does not affect your access to and use of the Bank’s other services through the Bank’s usual channels (including but without limitation to the Bank’s “**Website**”) and the corresponding services maintained with and/or offered by the Bank under the Terms and Conditions for Online Enterprise Banking Services and the Custody Agreement, for the avoidance of doubts, all references to the terms “Website” under the Terms and Conditions for Online Enterprise Banking Services shall, to the extent applicable, be construed to include the “**Portal**”.
- (iv) Notwithstanding anything in this Agreement to the contrary, your use of the other services under the Applicable Terms which is not part of eCustody Services shall be governed by the Applicable Terms and not by this Agreement.
- (v) In case of any inconsistency between this Agreement and the Applicable Terms, the terms of this Agreement shall prevail in relation to your use of the eCustody Services under the Portal.

By accessing and using the Portal, you acknowledge and agree to the terms of this Agreement (and for the avoidance of doubt, includes this section titled “Important Notice”) as the same may be amended, supplemented and modified from time to time. If you do not agree to the terms in this Agreement, you shall not use the Portal.

### 1. DEFINITIONS

- 1.1. Unless otherwise defined herein, the capitalised terms used herein shall have the same meaning as defined in the Terms and Conditions for Online Enterprise Banking Services. In this Agreement, the following expressions shall have the following meanings:

**"Authorised Representative"** means any Master, Maker, Authoriser (each of which are defined in the Term and Conditions for Online Enterprise Banking Services), Manager (as defined in the Custody Agreement, if applicable), authorized person(s) of the Manager, or other officers, employees or agents of yours, who are authorised by you and accepted by us from time to time to use the eCustody Services and the Portal for and on your behalf, with different level of authority that you may grant to each such person through the eCustody Services Application Forms or such other means as prescribed by the Bank from time to time.

**"Client"** or **"you"** shall mean the entity who has entered into Custody Agreement with the Bank and shall, where the context permits, include your Authorised Representatives.

**"Confirmation"** means, in respect of an Instruction that you have made, an electronic confirmation issued by the Bank through the Portal confirming that your Instruction is received or completed as the case may be.

**"Custody Agreement"** means agreement (as amended and/or supplemented from time to time) made between the Bank and you (whether in your own capacity or in your capacity as an investment fund vehicle, investment manager, investment management company, trustee of a unit trust or other fund, custodian, sub-custodian or delegate of a custodian, securities company or broker, banks or foreign banks, any other types of financial institution or otherwise) pursuant to which the Bank provides certain custodial services in relation to your assets or the assets of your underlying clients.

**"Customer Number"** means the unique user short name designated by the Bank for the Customer to access the Portal / eCustody Services (which may be the same for accessing Online Enterprise Banking Services).

**"eCustody Service(s)"** means the "Services" (as defined in the Custody Agreement) to the extent that they are provided by us to you through the Portal.

**"eCustody Services Application Form"** means any application or maintenance form submitted by you to the Bank in a form prescribed by the Bank from time to time, for the purpose of applying for and/or amending access to the eCustody Services including providing and amending details of any Authorised Representative(s).

**"Instruction"** shall have the same meaning as defined in the Custody Agreement except that for the purpose of this Agreement and the eCustody Service, the Instructions are those that can be made through and are given to the Bank via the Portal.

**"Online Enterprise Banking Services"** has the meaning ascribed to it in the Terms and Conditions for Online Enterprise Banking Services.

**"Password"** means any confidential password, phrase, code or number or any other identification whether issued to you by the Bank or adopted by you (including any Security Code) which is used to access the eCustody Services and/or the Portal (which may be the same set of password, phrase, code or number or any other identification for accessing the Online Enterprise Banking Services).

**"Portal"** means the eCustody Services Portal that is developed and provided by the Bank to you to access the eCustody Services.

**"Security Code"** means the one-time Password generated by the Security Device for your use to access the eCustody Services and/or the Portal.

**"Security Device"** means an electronic device designated and provided by the Bank for your use to generate the Security Code to access the eCustody Services / the Portal.

**"Service Level Memorandum"** means the service level procedures/memorandum or document (in whatever title) which sets out the operational arrangements acceptable to the Bank as communicated to you in respect of the Services provided or to be provided by the Bank under the Custody Agreement which may include the Bank's cut-off time for giving certain instructions by you.

**"User Name"** means the user short name used by an Authorised Representative, that is either a Master, an Authoriser or a Maker (as the case may be) to access the eCustody Services / the Portal. Once such a Use Name has been nominated by the Authorised Representative, such User Name cannot be changed.

**"Website"** means <https://www.asia.ccb.com> or any other website which the Bank may advise you of from time to time.

- 1.2. Words importing the singular will include the plural and vice versa, words importing the masculine gender will include the feminine and neuter genders and vice versa, and words importing persons will include, without limitation, partnerships, trusts and bodies corporate and vice versa.
- 1.3. Whenever the word "including" is used, it is deemed to be followed by the words "without limitation".

## **2. GRANT AND SCOPE OF LICENCE**

- 2.1. We grant you a limited, non-transferable, non-exclusive, non-assignable and non-sublicensable licence to access and use the Portal and the right to use the eCustody Services via the Portal, subject to the terms of this Agreement and the Applicable Terms (as applicable).
- 2.2. We do not sell the Portal to you and we reserve all title and full ownership rights under the Portal. We and/or our licensors and/or third party information providers remain the owners of the Portal, the information and the services thereunder at all times. You shall not sell, transfer or sublicense the Portal to anyone. Except as expressly licensed herein, you shall not use, access, integrate with, modify, translate, create derivative works of, reverse engineer or otherwise exploit the Portal or any aspect thereof.
- 2.3. Installing and using the Portal is at your own risk and we neither assume nor accept liability for any loss or damage (whether direct or indirect) arising out of or in connection with your use of the Portal or the eCustody Services.

## **3. USE, MAINTENANCE AND UPDATES**

- 3.1. You may use the Portal to place Instructions with the Bank and access the eCustody Services.
- 3.2. The Portal may include certain open source components that are subject to open source licences ("**Open Source Software**"), in which case, the embedded Open Source Software is owned by a third party. The Open Source Software is not subject to the terms of this Agreement. Instead, each

item of Open Source Software is licensed under its applicable licence terms which accompanies such Open Source Software. Nothing in this Agreement grants you rights that supersede, the terms and conditions of any applicable licence terms for the Open Source Software.

- 3.3. Any part of the eCustody Services may be withdrawn or amended by the Bank at any time without advance notice. We may at our absolute discretion decide whether you are eligible to use any of the eCustody Services and suspend, modify, limit, or cancel your access or use (including the access or use by your Authorised Representatives) of the Portal or any part of it, or suspend, modify, limit, or cancel your access to the eCustody Services without prior notice. The Bank will not be responsible for any loss or damage suffered by you arising from such decisions.
- 3.4. The Portal may not be available at certain times. In particular, there will be a daily downtime period (as posted on the Portal) when you will not be able to access the Portal. We may also periodically shut down the Portal and interrupt any automatic functions for any of the following reasons:
  - (a) system and software maintenance;
  - (b) seasonal holidays; and
  - (c) any other event that we consider requires suspension of the Portal.

There are other events that may interrupt or prevent your access to the Portal. The Bank will not be responsible for any loss or damage suffered by you arising from such events.

- 3.5. You acknowledge that the Portal has not been developed to meet your specific requirements, and that it is therefore your responsibility to make your own assessment and ensure that the functions of the Portal meet your requirements.

#### **4. INSTRUCTIONS**

- 4.1. Any communications between you and the Bank in the course of your use of the Portal and the eCustody Services, including any Instructions, whether submitted manually or electronically, are subject to this Agreement and the Applicable Terms. All actions to be taken by the Bank pursuant to your Instructions shall also be subject to the terms under the Custody Agreement and the constitution, rules, regulations, by-laws, customs and usages of the relevant stock exchange, recognized exchange, quotation system and/or clearing house.
- 4.2. You acknowledge that you give Instructions to the Bank through the Portal at your own risk. You are solely responsible for accurately placing, submitting and monitoring Instructions conveyed through the Portal. You shall not place a duplicate Instruction with the Bank if you have already placed the same instruction through other means. The Bank has no obligation to verify whether any Instruction is a duplicate of another, and may, subject to the other terms of this Agreement, comply and execute all Instructions the Bank receives. The Bank is not responsible or liable for errors resulting from the submission of any inaccurate or duplicate Instructions.
- 4.3. You shall maintain appropriate segregation of functions among your personnel and Authorised Representative, and will ensure that proper authorization and access levels to the eCustody Services are kept current at all times. You warrant that you will establish commercially reasonable security procedures and controls to limit access to the eCustody Services only to the Authorised

Representatives and in accordance with their level of authority. Such procedures and controls include, at a minimum:

- (a) checking for validation of Instructions and/or the accuracy of Instructions given via the Portal;
  - (b) establishing limits and/or control to prevent invalid and/or unauthorised Instructions from being transmitted for execution/settlement;
  - (c) monitoring for duplication/retransmission of Instructions previously transmitted for execution/settlement; and
  - (d) restricting Authorised Representatives from accessing or utilizing the Portal in a manner for which they are not authorised.
- 4.4. You acknowledge that the Bank has the right to set limits and parameters to control your use of the eCustody Services at the Bank's absolute discretion if the Bank considers such limits and parameters are necessary to protect its interests and you undertake to comply with those limits and parameters. Such limits and/or parameters may be amended, increased, decreased, removed or added by the Bank in its absolute discretion.
- 4.5. The Bank shall be entitled to treat all Instructions, notice or communication given or provided in the Portal as fully authorised by and binding upon you (or your entity).
- 4.6. All Instructions submitted by you through the Portal, and our execution of such Instructions, are subject to:
- (a) compliance with all applicable laws and regulations (including the applicable anti-bribery, corruption and money laundering laws and regulations in all relevant jurisdictions;
  - (b) the terms of the Custody Agreement; and
  - (c) our decision as to whether to accept such Instructions, which decision shall be made in our sole discretion.
- 4.7. You will notify us immediately either in writing or through other means acceptable by the Bank of any changes in any information that is relevant to any Instruction, your Authorised Representative(s), or any actions or proposed actions, including:
- (a) any amendments to your Instructions, though you acknowledge that the Bank is under no obligation to comply with any such amendments, and will in any event be unable to comply with any such amendments where the relevant Instructions are already executed by the Bank;
  - (b) any account details as set out in the eCustody Services Application Form;
  - (c) any changes to your Authorised Representative(s) and/or the particulars of your Authorised Representative(s);
  - (d) your tax status in any relevant jurisdiction as set out in the eCustody Services Application Form and/or such other forms of the Bank; and
  - (e) any representations or warranties given by you to the Bank in connection with this Agreement and/or your use of the eCustody Services ceases to be true, complete, up-to-date or accurate in any respect.

- 4.8. You are responsible for checking the accuracy of any Instruction that you place via the Portal. The Bank will not verify the accuracy of any Instructions placed through the Portal and will not be liable for any losses or damages suffered by you arising from or in connection with such inaccurate Instruction, unless such inaccuracy is caused by the fraud, gross negligence or wilful misconduct of the Bank. There is no assurance that any Instruction will be carried out at any particular price or time, or that it will be carried out at all. If you are uncertain as to whether your Instructions or any other notice has been received by us, you will make all reasonable attempts to verify whether the Instruction or notice has been received, approved or effected before taking any further action.
- 4.9. The Bank will provide you with a Confirmation upon execution of an Instruction. You agree and acknowledge that each Confirmation shall be conclusive evidence of the action taken by the Bank pursuant to your Instruction in the absence of manifest error. If there is any conflict between this Agreement and the provisions in any relevant Confirmation, the provisions of the Confirmation will prevail. The Bank shall not be liable for any delay or failure to perform, execute or comply with Instructions.
- 4.10. Certain types of Instructions may not be processed outside of normal service hours, and there may be a delay in its execution. In circumstances where the placing of certain types of Instructions requires your provision of additional information or supporting documents, the relevant Instruction will not be processed until the Bank has received all of the requested information or supporting documents in such form and substance to the satisfaction of the Bank.
- 4.11. Subject to the Bank's approval, you may, through such means as are specified by the Bank from time to time, assign certain access, usage and other rights in connection with the eCustody Services to each Authorised Representative. Clauses 21 and 22 of the Terms and Conditions for Online Enterprise Banking Services will apply to such assignment and shall be deemed incorporated herein, save that (i) references to "Online Enterprise Banking Services" therein shall mean the eCustody Services, and (ii) the level of authority that can be granted to the different categories of Authorised Representative in relation to the eCustody Services may be subject to further limits or parameters set in the Portal and/or prescribed by the Bank through the Portal from time to time. You must ensure that all Authorised Representatives will (i) observe and comply with the terms of this Agreement as if references to "Client" or "you" were to them, and (ii) only act within the limits of their assigned access, usage and other rights, and you shall be liable for the actions and things done by your Authorised Representatives through the Portal, including any Instructions placed by your Authorised Representatives, notwithstanding that any Authorised Representative is acting without authority or with fraud, gross negligence or wilful misconduct.
- 4.12. Clause 24 of the Terms and Conditions for Online Enterprise Banking Services are incorporated herein, save that references to "Online Enterprise Banking Services" therein shall mean the eCustody Services herein.

## **5. CORPORATE ACTION**

- 5.1. In addition to the Bank's duties in respect of Corporate Actions under the Custody Agreement, the Bank may also notify and provide you with information in respect of such Corporate Actions via the Portal.

- 5.2. In the absence of or if delay is experienced in receiving an Instruction from you in response to a notification in relation to any Corporate Action, the Bank shall be authorised, at its discretion, to take such steps as it may consider expedient to enable it to provide the eCustody Services including the right to act or refrain from acting in accordance with the “default option” as specified in such notification. The Bank shall not be held liable for any losses suffered or incurred by you as a result of the Bank acting or refrain from acting in accordance with the "default option" due to the absence of delay in your Instruction to the Bank.
- 5.3. Certain functions, such as the "Import Function", may allow you to upload information to the Portal to automatically capture certain data without the need to manually enter the same (the "**Imported Data**"). You are fully responsible for ensuring that the Imported Data you submitted via the Portal is accurate and complete. The Bank is not responsible for any error contained in the Imported Data and makes no representation or guarantee of any kind as to the functionality of such eCustody Services.

## **6. FEE AND CHARGES**

- 6.1. The Bank may impose fees and charges for your access and use of the Portal and any of the eCustody Services. Details of any fees chargeable by the Bank will be set out in a fee letter to you or a fee schedule that the Bank will make available from time to time through such means as the Bank deems fit. The Bank shall be entitled to revise any such fees and charges from time to time by giving reasonable notice to you.
- 6.2. There may be taxes and/or charges payable to relevant authorities in respect of any Instruction given, and you agree to pay such taxes and/or charges as applicable. Your access to and use of the eCustody Services shall also be subject to all other applicable fees, charges and taxes. You hereby authorise the Bank to deduct any fees and charges under this Agreement or under the Custody Agreement when such fees and charges become payable.

## **7. RESTRICTIONS AND YOUR RESPONSIBILITIES**

- 7.1. Except as expressly set out in this Agreement, you agree:
- (a) not to use the Portal and the eCustody Services in any way that may breach any applicable local, national or international law or regulation, including all technology control or export laws and regulations that apply to the technology used or supported by the Portal or any eCustody Services;
  - (b) not to copy the Portal or the eCustody Services for any purposes;
  - (c) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Portal or the eCustody Services;
  - (d) not to make alterations to, or modifications of, the whole or any part of the Portal, or permit the Portal or any part of it to be combined with, or become incorporated in, any other programs;
  - (e) not to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the Portal;
  - (f) not to sell, vary, display, modify, reproduce, store in a retrieval system, transmit, copy or distribute (in any form or by any means), or use as materials for creative work or otherwise

- use for public purposes, the whole or any part of the Portal and the eCustody Services without our prior written consent, and where relevant, that of our licensors;
- (g) not to provide or otherwise make available the Portal in whole or in part (including object and source code), in any form to any person without prior written consent from us;
  - (h) not to use the Portal or the eCustody Services in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with this Agreement, or act fraudulently or maliciously, for example, by hacking into the Portal or any operating system;
  - (i) not to infringe our intellectual property rights or those of any third party in relation to your use of the Portal or any eCustody Services (to the extent that such use is not licensed by this Agreement);
  - (j) not to transmit any material that is defamatory, offensive or otherwise objectionable in relation to your use of the Portal or any eCustody Services;
  - (k) not to knowingly transmit any data, send or upload any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer codes designed to adversely affect the operation of the Portal, any eCustody Services or any operating system;
  - (l) not to use the Portal or any eCustody Services in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users;
  - (m) not to collect or harvest any information or data from the Portal or our systems or attempt to decipher any transmissions to or from the servers running the Portal; and
  - (n) not to access without authority, interfere with, manipulate, damage or disrupt:
    - (i) any part of the Portal;
    - (ii) any device or network on which the Portal is stored;
    - (iii) any software used in the provision of the Portal; or
    - (iv) any device or network or software owned or used by any third party.

7.2. You further agree that:

- (a) you are responsible for all claims, liabilities, fees, charges, costs and expenses of any kind arising from your use of the Portal and the eCustody Services, the Bank's reliance on the information provided by you, any breach by you of this Agreement, the Custody Agreement and/or the Applicable Terms, or any violation of any intellectual property right or other right of the Bank or any other person arising from or in connection with your use of the Portal and the eCustody Services;
- (b) the Bank may assume the authenticity, completeness and correctness of any information provided by you or deemed to have been provided by you, and/or assume that such information is not misleading, and the Bank may rely on that information unless and until the Bank receives notice to the contrary;
- (c) any record maintained by the Bank relating to your use of the Portal and the eCustody Services will be binding and conclusive on you for all purposes whatsoever and will be conclusive evidence of any information and/or data transmitted using the Portal and the eCustody Services;
- (d) all such records are admissible in evidence and that you will not challenge or dispute the admissibility, reliability, accuracy or the authenticity of the contents of such records merely on the basis that such records were incorporated and/or set out in electronic form or are produced by or were the output of a computer system, and you hereby waive any of your rights (if any) to so object; and



- (e) you will comply with any reasonable direction that the Bank may give to you in relation to your compliance with this Agreement and the Applicable Terms and any other terms and conditions in connection with the use of the Portal and the eCustody Services.

## **8. REPRESENTATION AND WARRANTIES**

8.1. By accessing and using the eCustody Services, you hereby represent and warrant to the Bank that:

- (a) you have and will continue to have all requisite legal and corporate power and authority to enter into this Agreement, and to exercise your rights and perform your obligations under this Agreement;
- (b) all Authorised Representatives of yours are fully authorised to use the eCustody Services and the Portal on your behalf;
- (c) this Agreement constitutes your legal, valid and binding obligations, enforceable in accordance with the terms of this Agreement;
- (d) you have acted and will continue to act in accordance with Service Level Memorandum that are communicated to you by the Bank from time to time;
- (e) the entering into, delivery or performance of this Agreement and the giving of Instructions does not and will not contravene or constitute a default under any of the following:
  - (i) any law or regulation by which you are bound or affected; and
  - (ii) any agreement to which you are a party to.

8.2. The representations and warranties set out in this Clause 8 shall survive the termination of this Agreement and you will be deemed to have repeated each representation and warranty on each day when you continue to use the eCustody Services and whenever you give any Instructions.

8.3. By accessing and using the eCustody Services, you acknowledge that:

- (a) you use the Portal at your own risk and you are aware of any limitations and risk relating to such use; and
- (b) the Bank may require further information from you on request from time to time and you undertake to provide such requested information upon being requested.

## **9. SECURITY**

9.1. The Bank takes commercially reasonable measures to ensure the security of your data transmitted via the Portal by the use of encryption technology. However, you acknowledge and agree that internet transmissions are never completely private or secure. You understand that any message or information you send using the Portal or any of the eCustody Services may be read or intercepted by others, even if there is a special notice that a particular transmission is encrypted.

9.2. Internet may not be secure and communications through the internet may not be confidential. You accept all risks associated with using the internet to communicate with the Bank. The Bank assumes no responsibility for message or information communicated through the internet or to read, process, act upon or respond to any such message or information in a timely manner.

- 9.3. You agree that you are responsible for the security, confidentiality and use of your or each of your Authorised Representative's User Name and/or any User Name, Password, Customer Number and Security Device assigned to any Authorised Representatives, and any other passwords or access or security codes that are provided by us or which you may use to access the Portal.
- 9.4. You agree that you shall be solely responsible for adopting the appropriate safeguards and precaution measures as detailed in the Terms and Conditions for Online Enterprise Banking Services to avoid unauthorised use of or access to the Portal and shall be liable for any loss that results from any unauthorised use of the Portal.
- 9.5. If you:
- (a) reasonably suspect that your or any of your Authorised Representative's User Names, Passwords or Security Devices or any of the other authentication factors (such as biometric details, soft token devices and other devices) that are used to access the Portal may be lost, stolen, damaged, altered, unduly disclosed, known in a manner inconsistent with their purposes or compromised;
  - (b) revoke your authorization to your Authorised Representative for using the eCustody Services for and on your behalf; or
  - (c) reasonably suspect there being any technical or security failure relating to your access to the eCustody Services (whether due to a default in the device or hardware you use to access or failure in your internet service provider),

you shall promptly notify us of the same, and immediately cease using the eCustody Services (or immediately cease your current or former Authorised Representative from using the eCustody Services, if applicable) until we specify otherwise.

- 9.6. If you do not notify us in accordance with Clause 9.5, or if you do not comply with this Agreement, all risk and liability for any unauthorised Instructions or fraud lies with you alone, and we will not be liable for any loss, costs and expenses that you may suffer arising from or incurred in connection with such unauthorised Instruction or fraud. You further agree to indemnify us on demand against all claims, suits, actions, proceedings, losses, damages, obligations and/or liabilities that we may incur or suffer as a result or in connection with your failure to notify us in accordance with Clause 9.5 or your failure to comply with this Clause 9. In the absence of any gross negligence, fraud or wilful misconduct on the Bank's part, you are responsible for all acts or omissions in connection with your use of the Portal whether or not such acts or omissions are or were authorised by you.

## **10. INTELLECTUAL PROPERTY RIGHTS AND INFORMATION OWNERSHIP**

- 10.1. You acknowledge that all the contents, information, trademarks, logos and service marks in the Portal and the eCustody Services (including but not limited to the trademark of the Bank) are protected by copyright or other intellectual property rights of the Bank, or of a third party who has licensed such copyright or intellectual property rights to the Bank, and are the properties of the Bank or such third party licensors. You are prohibited from tampering with the same, including without limitation, the use, publication, copying, distribution or exploitation thereof without the written consent of the Bank or the relevant licensor (as the case may be).

- 10.2. Also, you acknowledge that the rights in the Portal are only licensed (not sold) to you, and that you have no rights in, or to, the Portal, the eCustody Services or the technology other than the right to use each of them in accordance with the terms of this Agreement.
- 10.3. You acknowledge that you have no right to have access to the Portal in source-code form.
- 10.4. You acknowledge that all information submitted to the Bank via the Portal and all electronic records and documents in connection with any communication between the Bank and you via the Portal shall be deemed to be and shall remain the property of the Bank.

## **11. LIMITATION ON USE OF SERVICES**

- 11.1. The eCustody Services are only intended to be available in jurisdictions in which such eCustody Services can be legally provided by the Bank. The eCustody Services are not intended for persons in or residents of any jurisdictions where such distribution to or use by any persons or residents would be contrary to local laws or regulations. The Portal and the eCustody Services shall not be deemed to constitute an offer, solicitation or recommendation to any person for the purchase or sale of any Securities (as defined in the Custody Agreement) or financial instruments, or to make any other investment or deposits.
- 11.2. None of the eCustody Services shall be deemed to constitute any investment advice.

## **12. THIRD PARTY INFORMATION**

- 12.1. The Portal may contain hyperlinks to content and sites that may be hosted and maintained by third parties. You agree to enter such sites at your own risk. To the greatest extent permitted by applicable law, the Bank disclaims responsibility for, liability arising from, and in no way endorses, any information, content or materials that may be posted at any of the sites linked through the Portal.
- 12.2. Information may appear in various forms, mediums and means on the Portal, while we make reasonable efforts to ensure that any such information is accurate and, where applicable, take reasonable steps when selecting such third parties and service providers, you acknowledge that such information has not been investigated, verified, monitored or endorsed by the Bank.
- 12.3. We do not warrant the accuracy, reliability, timeliness, completeness or correct sequencing of the information nor bear any legal liability for loss arising from any inaccuracy, omissions or incompleteness of the information displayed on the Portal, regardless of whether the information is provided by us or a third party. The Bank expressly disclaims any responsibility for the contents, availability, errors or omission contained in any content in the Portal and on any third party websites that link to or from the Portal.
- 12.4. In no event shall the Bank be liable for any use, decision made, action taken, or inaction by, any person in reliance on the information contained on the Portal or for any inaccuracies or omissions arising from such information. You must independently assess the information and make your own decision in relation to any applicable security and your own determination as to any legal, tax or accounting considerations applicable to you.

### **13. DISCLAIMER AND LIMITATION OF LIABILITY**

- 13.1. You acknowledge that the Portal may not be available for use at all times, and is also subject to (and may suffer from failure or delay in processing and/or transmitting information as a result of) interruption, failure of hardware or software, errors, transmission blackout, delayed transmission due to internet traffic or incorrect data transmission due to the public nature of the internet, market volume or volatility, system failure or upgrades or maintenance or for other reasons.
- 13.2. You acknowledge that the Bank is not acting as your investment advisor in respect of any Instruction, action, transaction effected through the Portal, and you must not regard it or us as acting in that capacity. You should consult your own independent legal, tax and investment advisors before submitting any Instruction via the Portal.
- 13.3. You also acknowledge that the eCustody Services may not meet all of your requirements or expectations, and that the features and functionality of the Portal may from time to time be varied by the Bank. The eCustody Services may also be restricted by the type, specification and/or configuration of your device. The Bank will not be responsible for any consequences arising from any inaccuracy, delay or interruption in the transmission of information and transactions due to any telecommunication failures occurred beyond its control.
- 13.4. The Portal may only be used on compatible devices as specified by the Bank from time to time. The Bank makes no representations or warranties as to the accuracy, functionality or performance of any third party software used in connection with the Portal and does not guarantee that any particular device or model is compatible with the Portal. You acknowledge that you are responsible to ensure your device meets the specified system requirements. Failure to do so may result in the Portal malfunctioning.
- 13.5. The Portal will not run on any devices which are compromised (e.g. "rooted"). The Bank shall not be responsible for any problems or loss suffered by you if you attempt to use the Portal on such devices.
- 13.6. Your use of the Portal and the eCustody Services is wholly at your own risk. The Portal, the information in the Portal and the eCustody Services are provided on an "as is" or "as available" basis. To the extent permitted by laws and regulatory requirements applicable to the Bank, the Bank disclaims all conditions, warranties and representations of any kind regarding security, merchantability, fitness for particular purpose(s), accuracy, non-infringement of third party rights, freedom from computer viruses and otherwise, which may apply to the Portal and the eCustody Services, whether express or implied.
- 13.7. We do not represent or warrant that viruses or other destructive properties will not be transmitted, or that your device will not be damaged, during your use of the Portal. You are solely responsible for ensuring adequate protection and back-up of data and/or device, for taking reasonable and appropriate precautions to scan for computer viruses and other destructive properties, and for preventing (and guaranteeing and ensuring the prevention of) the transmission of any computer viruses and other destructive properties to your device.

- 13.8. To the maximum extent permitted by law, the Bank will not be liable for any error, omission, failure, delay, interception, corruption, deletion, loss or inaccuracy in/of the eCustody Services or for any person's use of, reliance on or inability to use such eCustody Services, or for any loss or damage (including loss or leakage of data) arising in connection with the Portal, any interruption or hindrance of or delay in the operation of the Portal, any incomplete transmission, any circuit or system failure or any computer virus.
- 13.9. Without prejudice to and/or without undermining any existing rights and remedies of the Bank under any provision of the Custody Agreement (including but not limited to the liability of the custodian clause, indemnification of the custodian clause, exemption clause, indemnification clause and other similar clauses in the Custody Agreement), if the Bank is found liable for any act or omission, negligence or default, its liability shall be limited (to the maximum extent permitted by law) to the lesser of the amount of the direct loss or damage that was reasonably foreseeable suffered by you as a result and the amount of the relevant transaction that the Bank settled, completed or acted upon for you. The Bank shall not be responsible for any loss of profit, sales, business, revenue, business or investment opportunity, goodwill or reputation, or any special, consequential, incidental, indirect or punitive loss or damage (whether or not they were foreseeable or likely to occur) arising out of such act, omission, negligence or default with respect to the Portal or the eCustody Services. In case of any inconsistency between liability provisions under the Custody Agreement and this Agreement, the Bank shall be entitled to adopt the provision that grants the Bank the larger limitation and/or reduction to the Bank's liability at the Bank's sole discretion.

#### **14. INDEMNITY**

- 14.1. Without prejudice to any other right of indemnity to which the Bank is entitled under applicable law, you shall hold harmless and indemnify the Bank, its directors, officers, employees, servants, agents, delegates and any other persons appointed by the Bank against any and all claims, suits, actions, proceedings, losses, damages, obligations and/or liabilities which any of them may incur or suffer, and all costs and/or expenses of reasonable amount and reasonably incurred by any of them as a result of or in connection with:
- (a) your failure to comply with this Agreement and any Applicable Terms;
  - (b) your use of (or inability to use) the eCustody Services; or
  - (c) your fraud, gross negligence or wilful misconduct in your usage of the Portal and the eCustody Services.
- 14.2. For the avoidance of doubt, it is hereby agreed and declared that the indemnity given in favour of the Bank in this Clause 14 shall be deemed to also benefit its directors, officers, employees, servants, agents and delegates. Any such person, not being a party to this Agreement, may enforce any rights granted to it pursuant to this Clause in its own right as if it were a party to this Agreement.
- 14.3. The term "**delegate**" in this Clause, shall mean a person to whom the obligation of the Bank may be delegated including (without limitation) agents, service providers, sub-contractors, nominees, the cash custodian, sub-custodians and any sub-delegate.

#### **15. REPORTS AND RECORDS**

- 15.1. You may use and have access to any data, reports, statements, or Confirmations related to your use of the eCustody Services made available to you on the Portal, subject to the terms and condition under this Clause 15. The Bank may only make such data, reports, statements, or Confirmations available for access for a period of time to be determined by the Bank from time the time and in accordance with applicable laws. You are advised to keep copies of such data, reports, statements, or Confirmations as soon as they are made available for your record keeping purposes.
- 15.2. Customized reports, statements, and other information provided through the eCustody Services ("**eCustody Documents**") by any means are indicative and provided for information purposes only. You consent to receiving the eCustody Documents through electronic means. The eCustody Documents are subject to correction without notice, may not be accurate or complete, and are not to be relied upon. You undertake to perform periodic reviews to ensure that information on the eCustody Documents is current and correct.
- 15.3. You agree to only access the eCustody Documents available on the Portal manually and you warrant and covenant that you will not access or allow or cause any third party to access or allow any access to eCustody Documents by any automated means, whether by or through any script, robot, spider, remote software or any other retrieval means, and you will not attempt to upload, intercept, extract or otherwise collect and/or record the eCustody Documents through any automated means.
- 15.4. If you have access to any eCustody Documents which you are not entitled to or are no longer entitled to, become aware of any data displayed in the Portal or provided to you through the eCustody Services pertaining to another person or client, or become aware of any unauthorised use, access to, storage or redistribution of any eCustody Documents, you shall immediately cease accessing such data and immediately notify the Bank.
- 15.5. Your will upon the Bank's reasonable written notice, promptly respond to any and all requests by the Bank for information concerning, and provide the Bank with reasonable access during normal business hours to your premises to allow us and our authorised representatives to inspect your use of the eCustody Services and records of persons and entities that then or currently have or have had access to the eCustody Services, including all contracts, books and records relating to the eCustody Services, and the Bank will have the right to make copies of all of the foregoing as applicable.

## **16. COLLECTION AND USE OF INFORMATION**

- 16.1. You agree and consent to the use, including the recording and retention, by the Bank of all data that you input, communicate or that is otherwise created, including transaction data, in connection with your use of any eCustody Services for purposes related thereto, risk management, operations, and the development or improvements of services. ECustody Services are subject to monitoring, review and disclosure, which may result in a copy of all conversations being stored and made available across multiple devices, clusters, networks or platforms. You shall provide the Bank with any and all consents, information and assistance necessary for the Bank to comply with all applicable laws, respond satisfactorily to and cooperate with any applicable authority regarding your activities and transactions through the eCustody Services.

- 16.2. In providing the eCustody Services, the Bank, its affiliates and/or its licensees (as applicable) may collect personal data relating to your Authorised Representatives and/or your directors, officers, employees, authorised persons (collectively the “**Relevant Persons**”) for various purposes, including but not limited to facilitating the Bank’s provision of the eCustody Services and promotion of the Bank’s other products and services. The collection, use, transfer, processing, retention, maintenance and handling of any such personal data by the Bank, its affiliates and/or its licensees, are subject to the Bank’s Personal Information Collection and Privacy Policy Statement (the “**Privacy Policy**”) and the Bank’s Notice to Customers relating to the Personal Data (Privacy) Ordinance (the “**PDPO Notice**”), as the same may be amended from time to time. You acknowledge that you have read the terms of the Privacy Policy and PDPO Notice and confirm that you have provided a copy of the Privacy Policy and PDPO Notice to the Relevant Persons and obtained their consent regarding the use of their personal data in the manner stated therein.
- 16.3. You consent to the Bank, its affiliates and/or its licensees’ collecting, transmitting, storing and using the location of your device and/or any other electronic device and technical information such as IP address, unique device identifier, and device type, information about the operating system and application software used on your device and/or any other electronic device and other non-personal information, related software, hardware and peripherals for the Portal, the Online Enterprise Banking Services in the Website that are internet-based or wireless to facilitate the Bank, its affiliates and/or its licensees in improving its products and services to you.
- 16.4. Also, the Bank may use technology such as cookies to monitor and analyse the information provided by you and the communications through the eCustody Services, and the Bank may use such information and content for the purposes of the eCustody Services training or enhancement, or the provision of products or services by us.

## **17. TERMINATION**

- 17.1. We may at any time without prior notice or reason and at our discretion terminate the provision of the Portal or any part of the eCustody Services to you, and shall have no liability whatsoever to you for doing so.

## **18. GENERAL**

- 18.1. The rights and remedies of the Bank under this Agreement are cumulative and in addition to the Bank’s rights and remedies under the Applicable Terms and any other agreement between you and the Bank.
- 18.2. We may assign and transfer our rights and obligations under this Agreement to another organisation, but this will not affect your rights or our obligations under this Agreement.
- 18.3. Without the Bank's consent, you may not assign or transfer your rights or obligations under this Agreement to another person.
- 18.4. This Agreement, the Applicable Terms and any document expressly referred to therein constitute the entire agreement between us relating to your use of the Portal. You agree that you shall have no remedies in respect of any statement, representation, assurance or warranty (whether made

innocently or negligently) that is not set out in this Agreement, the Applicable Terms or any document expressly referred to therein.

- 18.5. No consent will be required from any third party to amend or vary the terms of this Agreement. Unless we are required to provide you with prior notice concerning any change of fees or charges, we may change, vary, amend, modify or alter any terms of this Agreement at any time with prior notice through any means as we think fit, including but not limited to posting the amended Agreement on the Portal or on the Website. By continuing to use the eCustody Services and the Portal after the posting of the amended Agreement, you will be deemed to have agreed to the amended Agreement.
- 18.6. If we fail to insist that you perform any of your obligations under this Agreement, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any prior or subsequent default by you.
- 18.7. Each provision of this Agreement operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining clauses will remain in full force and effect.

## **19. GOVERNING LAW AND GOVERNING VERSION**

- 19.1. This Agreement shall be governed by and construed in accordance with Hong Kong law. Disputes arising in connection with this Agreement shall be subject to the exclusive jurisdiction of the Hong Kong courts.
- 19.2. Except as expressly provided in Clause 14 above, this Agreement shall not create or give rise to, nor shall it be intended to create or give rise to, any third party rights and no third party shall have any right to enforce or rely on any provisions of this Agreement. Subject to the foregoing, the application of any law (whether of Hong Kong or elsewhere and whether current or to be enacted or come into effect in the future) giving to or conferring on third parties contractual or other rights in connection with this Agreement shall be excluded.
- 19.3. Notwithstanding any term of this Agreement, the consent of or notice to any person who is not a party to this Agreement shall not be required for any termination, rescission or agreement to any variation, waiver, assignment, novation, release or settlement under this Agreement at any time.
- 19.4. In the event of any conflict or discrepancy between the English version and Chinese version of the terms of this Agreement, the English version shall prevail.