

HONG KONG MONETARY AUTHORITY

AND

[*MEMBER*]

REPORTING SERVICE AGREEMENT

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THIS AGREEMENT is made on the [●] day of [*insert month and year*]

BETWEEN:

- (1) **THE MONETARY AUTHORITY**, appointed pursuant to section 5A(1) of the Exchange Fund Ordinance (Chapter 66 of the Laws of Hong Kong) of 55th Floor, Two International Finance Centre, 8 Finance Street, Central, Hong Kong ("**HKMA**"); and
- (2) [[●], a company incorporated in [●] (registered no. [●]), whose registered office is at [●]] (the "**Member**").

WHEREAS:

- (A) The Member has requested, and HKMA has agreed to provide to the Member, the Reporting Service (as defined below).
- (B) This Agreement sets out the terms and conditions on which HKMA agrees to provide the Reporting Service to the Member.

THE PARTIES AGREE as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement:

"**Affected Party**" has the meaning given to it in Clause 17.1 (*Force Majeure*);

"**Agency Arrangement**" has the meaning given to it in Clause 7.1 (*Submitting Agency Arrangements*);

"**Agency Request Forms**" means the "Agent Nomination Form" and the "Agent Profile Maintenance Form for Reporting Service" as set out in Appendix TR.8 and TR.9A respectively to the Reference Manual;

"**Agency Reporting Service**" means the agency reporting service provided by HKMA to a Submitting Agent as set out in the Agency Terms between HKMA and such Submitting Agent;

"**Agency Terms**" mean any "Agent Nomination Form" (including the "Approval Confirmation") set out in Appendix TR.8 to the Reference Manual and the "Agency Terms" appended to such "Agent Nomination Form" and any "Annexes" incorporated therein, as executed and submitted by the Member and the relevant Submitting Agent to HKMA;

"**Agreement**" means these Substantive Provisions and any Annexes, as amended, restated, revised, updated or supplemented from time to time;

"**Annex**" means each of the following, as amended, restated, revised, updated or supplemented from time to time (whether in accordance with Clause 20 (*General*) or otherwise):

- (a) Reference Manual;

- (b) Hong Kong Trade Repository Administration and Interface Development Guide (Reporting Service) ; and
- (c) any other material or document (whether in electronic or physical form), including any operational procedure, guide, instruction or manual, which is, by prior written notice to the Member, designated by HKMA to be an Annex;

"**Authority**" means any governmental, regulatory, administrative or law enforcement body and/or court or tribunal of competent jurisdiction;

"**Breaching Party**" has the meaning given to it in Clause 15.1 (*Termination*);

"**Business Day**" means a day other than a Saturday, a Sunday or a day which is a general holiday as specified in the General Holidays Ordinance (Chapter 149 of the Laws of Hong Kong);

"**Charges**" means any fees or charges which are determined from time to time by HKMA in HKMA's sole and absolute discretion, to be payable by the Member to HKMA for subscribing to, or using, the Reporting Service and notified to the Member in accordance with the Reference Manual;

"**Clause**" has the meaning given to it in Clause 1.2.13 (*Definitions and Interpretation*);

"**Confirming Member**" has the meaning given to it in Schedule 3;

"**Confidential Information**" has the meaning given to it in Clause 10.1 (*Confidentiality*);

"**Consent Confirmation**" means a document substantially in the form set out in Schedule 3 (*Form of Consent Confirmation*);

"**Data Subject**" has the meaning given to the expression "data subject" in the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong);

"**Direction**" has the meaning given to it in Clause 2.3.2 (*Using the Reporting Service*);

"**Disclosing Party**" has the meaning given to it in Clause 10.1 (*Confidentiality*);

"**Dispute**" has the meaning given to it in Clause 21.2 (*Governing Law and Jurisdiction*);

"**Eligibility Criteria**" means the eligibility criteria applicable to any entity that subscribes to and/or uses the Reporting Service as determined, published and revised by HKMA in HKMA's sole and absolute discretion from time to time;

"**Eligible Entity**" means an entity which, at any time and from time to time, HKMA determines in HKMA's sole and absolute discretion satisfies the Eligibility Criteria;

"**Force Majeure Event**" means an event beyond the reasonable control of the Affected Party and unknown to the Affected Party at the date of this Agreement including, without limitation, strike, lock-out, labour dispute, (but excluding strikes, lockouts and labour disputes involving employees of the Affected Party or its

subcontractors), act of God, war, riot, civil commotion, malicious damage (but excluding malicious damage involving the employees of the Affected Party or its subcontractors), compliance with any Law, accident, breakdown of plant or machinery, fire, flood and storm;

"Hong Kong" means the Hong Kong Special Administrative Region of the People's Republic of China;

"Initiating Party" has the meaning given to it in Clause 15.1 (*Termination*);

"Intellectual Property Rights" means:

- (a) patents, trademarks, service marks, registered designs, applications and rights to apply for any of those rights, trade, business and company names, internet domain names and email addresses, unregistered trademarks and service marks, copyrights, database rights, rights in software, algorithms, source code, object code, know-how, rights in designs and inventions and other intellectual or industrial property rights;
- (b) rights under licences, consents, orders, statutes or otherwise in relation to a right in sub-Clause (a) above;
- (c) rights of the same or similar effect or nature as or to those in sub-Clauses (a) and (b) which now or in the future may subsist in any jurisdiction; and
- (d) the right to sue for any infringement of any of the foregoing rights;

"ISDA" means the International Swaps and Derivatives Association, Inc.;

"ISDA Master Agreement" means the standard form ISDA 2002 Master Agreement or the standard form 1992 ISDA Master Agreement (Multicurrency – Cross Border), as applicable, as published by ISDA;

"Law" means any and all:

- (a) treaties, acts, ordinances, regulations, by laws, orders, awards, proclamations, directions and practice notes (whether civil, criminal or administrative) of any country, state, territory or Authority concerning any matters, including but not limited to, capital adequacy, prudential limits, liquidity, reserve assets or Tax;
- (b) authorisations, certifications, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of this Agreement;
- (c) laws governing any contract or any other relationship;
- (d) other laws from which legal rights or obligations may arise (including without limitation, by way of decisions or judgments of any Authority); and
- (e) official directives, requests, guidelines, or policies (whether or not having the force of law) with which responsible banks generally comply in carrying on their business;

"Maintenance Period" means any period of time that HKMA determines, in HKMA's sole and absolute discretion, as a period during which HKMA's hardware or software systems relating to the Reporting Service are non-operational, restricted or hampered in any manner which will, or potentially will, affect any aspect of HKMA's provision of the Reporting Service, due to any maintenance, upgrade, modification or repair of such systems (whether scheduled or otherwise) or other similar event;

"Officer" means an officer, employee, agent, nominee, custodian or professional adviser (including auditor, accountant and legal adviser) or any other person acting in any (duly authorised) representative capacity;

"Member Group" means the Member and all other persons whom HKMA has for the time being agreed are to be provided with the "Reporting Service" (each as a "Member" under the terms of a separate reporting service agreement, in each case between such person and HKMA);

"Nominated Agent Group" means all persons whom HKMA has for the time being agreed are to be provided with the "Agency Reporting Service" (each as a "Nominated Agent" under the terms of a separate set of Agency Terms, in each case between such person and HKMA);

"Party" means each of HKMA and the Member, and **"Parties"** means both of them;

"Personal Code" means each private and unique reference code created (or to be created) by:

- (a) the Member; or
- (b) where authorised by the Member, a Submitting Agent on behalf of the Member,

to reference a counterparty to a Transaction who is an individual, in accordance with paragraph 8.4 of the Reference Manual;

"Personal Data" means any data or information in any form:

- (a) constituting "personal data" as defined in the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong); and/or
- (b) which may allow or assist (or potentially allow or assist) HKMA to ascertain the identity of any counterparty to a Transaction who is an individual (including without limitation, any data or information which in any way links or connects the Personal Code of an individual to any other data or information which allows or assists HKMA to ascertain the identity of such individual);

"Receiving Party" has the meaning given to it in Clause 10.1 (*Confidentiality*);

"Reference Manual" means the OTC Derivatives Trade Repository – Reporting Service Reference Manual, as revised by HKMA from time to time;

"Reporting Requirements" means at any time:

- (a) the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) and any subsidiary legislation made under the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) in effect (or, as the case may be, expected to come into effect); and/or
- (b) any other Law,

in each case which obliges certain persons to report certain over-the-counter derivatives transactions to HKMA;

"Reporting Service" means the service to be provided by HKMA to the Member (or as the context requires, to a member of the Member Group) to enable the Member (or as the context requires, to a member of the Member Group) to, among other things:

- (a) submit Transaction Records to HKMA for the purposes of fulfilling its obligations under the Reporting Requirements (which will be validated and (where relevant) linked by HKMA for the purposes of verifying the accuracy of such Transaction Records);
- (b) where a Transaction Record has been submitted under the Reporting Service and the Transaction specified in such Transaction Record has been amended or terminated, submit an updated Transaction Record reflecting the relevant amendment(s) or termination; and
- (c) request reports and receive notifications of, among other things, Transaction Records,

through the Reporting System, in accordance with, and as further described in, this Agreement;

"Reporting System" means the internet-based system which allows the Member to access and use the Reporting Service;

"Schedule" has the meaning given to it in Clause 1.2.13 (*Definitions and Interpretation*);

"Substantive Provisions" means the terms and conditions of this Agreement (including any Schedules to this Agreement), but excluding any Annexes, as amended, restated, revised, updated or supplemented from time to time (whether in accordance with Clause 20 (*General*) or otherwise);

"Submitting Agent" has the meaning given to it in Clause 7.1 (*Submitting Agency Arrangements*);

"Submitting Agent User" has the meaning given to it in Clause 7.5 (*Submitting Agency Arrangements*);

"Submitting Member" has the meaning given to it in Clause 10.5 (*Confidentiality*);

"Taxes" of an entity means taxes (including profit, capital gain, goods and services and value added or indirect taxes), levies, imposts, charges and duties (including stamp and transaction duties) imposed by any Authority together with any related

interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, such entity's overall net income;

"**Termination Event**" has the meaning given to it in Clause 15.1 (*Termination*);

"**Transaction**" means any transaction specified in a Transaction Record;

"**Transaction Record**" means the record specifying the details (in the format specified under the relevant Annexes, or otherwise as specified in writing by HKMA) of any over-the-counter derivative transaction submitted by the Member to HKMA in accordance with this Agreement, regardless of the status of such Transaction Record as indicated in the Reporting System; and

"**User**" means any individual which the Member has nominated under the Reporting System as being authorised by the Member to access and use the Reporting System on behalf of the Member under the terms of, and in accordance with, this Agreement.

1.2 In this Agreement, a reference to:

1.2.1 Clause and Schedule headings are for ease of reference only;

1.2.2 a statutory provision includes a reference to the statutory provision as modified or re-enacted or both from time to time and any subordinate legislation made or other thing done under the statutory provision from time to time;

1.2.3 a document is a reference to that document as modified or replaced from time to time;

1.2.4 any words following the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;

1.2.5 "such as" or "for example" when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

1.2.6 a person includes a reference to any individual, company, corporation, unincorporated association or body (including a partnership, trust, fund, joint venture or consortium), government, state, agency, organisation or other entity whether or not having a separate legal entity;

1.2.7 "Member" is a term of reference only and shall not grant or imply any rights to any party other than those expressly set out in this Agreement;

1.2.8 a person includes a reference to that person's legal personal representatives, successors and permitted assigns;

1.2.9 the singular includes the plural and vice versa (unless the context otherwise requires);

1.2.10 the masculine gender shall include the feminine and neuter and vice versa

(unless the context otherwise requires);

1.2.11 a time of day is a reference to the time in Hong Kong, unless expressly provided to the contrary;

1.2.12 if any provision (or any part of a provision) of this Agreement may be or becomes invalid, illegal or unenforceable in any respect, that shall not affect or prejudice the validity, legality and enforceability of the remaining provisions (or the remaining parts of the relevant provision, as the case may be); and

1.2.13 a "**Clause**" or "**Schedule**", unless the context otherwise requires, is a reference to a clause of or schedule to this Agreement.

1.3 This Agreement is constituted by these Substantive Provisions and any Annexes, as amended, restated, revised, updated or supplemented from time to time, and together they form a single agreement between HKMA and the Member.

1.4 Except where expressly stated otherwise, time shall not be of the essence for the supply of the Reporting Service by HKMA to the Member.

2. USING THE REPORTING SERVICE

2.1 In consideration for the agreement by the Member to pay any and all applicable Charges to HKMA, HKMA will provide the Reporting Service to the Member.

2.2 The Member understands, acknowledges and agrees that:

2.2.1 the Reporting System is provided to the Member on an "as-is" basis;

2.2.2 HKMA shall retain exclusive control over the Reporting System;

2.2.3 the Member shall be responsible for obtaining and using any software, hardware and any other equipment necessary or desirable for it to access and use the Reporting System; and

2.2.4 the Member shall be solely responsible for complying with the obligations of the Member under the Reporting Requirements and all or any other applicable Laws with respect to the reporting of transactions, record-keeping and the maintenance of records.

2.3 Notwithstanding any other term of this Agreement, HKMA may, in HKMA's sole and absolute discretion, without incurring any liability to the Member whatsoever:

2.3.1 vary, suspend or terminate the Reporting Service by giving prior written notice to the Member; or

2.3.2 refuse to act or refrain from acting on any instruction or information (including any instruction or information in connection with any Transaction Record or disclosure of Confidential Information) submitted by the Member (including any User) (each instruction or information, a "**Direction**"),

in each case, including without limitation, where HKMA, in HKMA's sole and

absolute discretion, determines or believes that:

- (a) a Direction is not given or received in the manner specified by HKMA;
- (b) HKMA otherwise would or would likely be in breach of, or non-compliance with, any applicable Law;
- (c) it would not be reasonable or practicable to act on a Direction or provide the Reporting Service;
- (d) a Direction or a set of Directions constitute(s) an abuse or misuse of the Reporting Service, including without limitation, where HKMA, in HKMA's sole and absolute discretion, considers that such Direction or set of Directions is or are given by the Member for any reason(s) other than to fulfil its obligations under the Reporting Requirements;
- (e) a Direction or the provision of the Reporting Service requires any action by, or information from, HKMA:
 - (i) otherwise than on a Business Day;
 - (ii) during a Maintenance Period;
 - (iii) at a time when a Black Rainstorm Warning is issued or may be issued or a typhoon signal No. 8 or greater is hoisted or may be hoisted;
 - (iv) at a time when the Reporting System is, according to the Reference Manual, not scheduled to be in operation;
 - (v) at a time when a Force Majeure Event exists or has occurred in respect of which HKMA is the Affected Party; or
 - (vi) when any other event or circumstance exists or occurs and/or may exist or occur which HKMA determines may have a similar effect to one or more of the events or circumstances set out in paragraphs (i) to (v) above;
- (f) a Direction or the provision of the Reporting Service would cause a breach of this Agreement and/or any other agreement between HKMA and the Member and/or any agreement between HKMA and one or more members of the Member Group;
- (g) a Direction or the provision of the Reporting Service is not in accordance with HKMA's usual business practices and procedures or any of HKMA's internal policies;
- (h) such variation, suspension, termination or refusal is necessary for HKMA to continue to provide (i) the Reporting Service to any member of the Member Group, or (ii) the "Agency Reporting Service" (as defined in the relevant Agency Terms) to any person within the Nominated Agent Group; and/or
- (i) a Direction (or purported Direction) has not been properly authorised by the

Member or a User.

3. LEGAL STATUS OF TRANSACTION RECORDS

3.1 The Member understands, acknowledges and agrees that:

3.1.1 a Transaction Record does not constitute a confirmation or a binding agreement between the Member and its counterparty, regardless of the status of such Transaction Record as indicated in the Reporting System; and

3.1.2 any reports generated by the Reporting System shall in no way affect whether any Transaction Record or Transaction is legal, valid, binding or enforceable.

4. CHARGES, PAYMENT AND TAX

4.1 The Member shall pay HKMA the Charges, without any deduction or withholding for or on account of any Tax, in accordance with the Reference Manual or otherwise in the manner specified by HKMA from time to time.

4.2 HKMA shall have the right to charge interest at such rate as HKMA may specify from time to time, from the due date for payment to the date of actual payment in full (whether before or after judgment) on any unpaid sum due from the Member under this Agreement.

5. MEMBER'S OBLIGATIONS

5.1 The Member agrees and undertakes to HKMA that it shall at all times:

5.1.1 comply with all applicable Laws and this Agreement;

5.1.2 notify HKMA promptly in writing of any:

(a) changes to information previously provided to HKMA, including any change to its name and, if applicable, its shareholders, directors or any material provision of its constitutive documents;

(b) error, dispute, breach of any privacy, confidentiality or secrecy obligation or suspicion of fraud or illegality in connection with the Reporting Service;

(c) issue, event or circumstance which may cause, or the Member reasonably believes may cause, the Member to cease being an Eligible Entity; and

(d) circumstance in which the Member ceases to be an Eligible Entity.

For the avoidance of doubt, this Clause 5.1.2 is in addition, and without prejudice, to any other notification obligations of the Member as set out in the Reference Manual;

5.1.3 ensure that each User is adequately experienced, trained, qualified and skilled for the purpose of accessing and using the Reporting System;

- 5.1.4 ensure that access to the Reporting System will be limited to one or more Users, each of whom shall use the Reporting System within the scope of his/her employment and solely for the Member's business purposes;
- 5.1.5 put in place and maintain effective security measures to safeguard the Reporting Service (including the Reporting System) from:
 - (a) any access or use by an unauthorised person; and
 - (b) any computer virus, worm, Trojan horse, malware or other harmful computer code;
- 5.1.6 perform all acts (including without limitation, maintaining its systems and participating in any drill exercises or tests in accordance with any contingency arrangements) as required by and in accordance with this Agreement (including any Annex);
- 5.1.7 at HKMA's request, do all things and execute all instruments and documents and provide HKMA with all materials, evidence and information as HKMA may in HKMA's sole and absolute discretion consider necessary or desirable for giving full effect to this Agreement or for securing to HKMA the full benefit of all rights, powers and remedies conferred on HKMA under this Agreement;
- 5.1.8 use the latest templates for submitting Transaction Records as notified to the Member by HKMA in accordance with Clause 23 (*Notices*) from time to time;
- 5.1.9 to the extent permitted under applicable Law, supply HKMA with all information concerning the Member that is reasonably requested by HKMA and is:
 - (a) related to the Member's use of the Reporting Service or Reporting System; or
 - (b) reasonably and in good faith deemed by HKMA to be necessary in connection with any obligation of HKMA under any agreement relating to the Reporting Service or any applicable Law;
- 5.1.10 not provide, transfer or submit any Personal Data to HKMA except where, and to the extent, necessary for the Member to fulfil its obligations under the Reporting Requirements; and
- 5.1.11 where the Member provides, transfers or submits any Personal Data to HKMA (whether in accordance with this Agreement or otherwise), to:
 - (a) perform all acts; and
 - (b) provide HKMA with all information and assistance,in each case which is necessary for HKMA to fulfil HKMA's obligations under any applicable Law in connection with such Personal Data.

6. INSTRUCTIONS AND USERS

- 6.1 The Member may, in accordance with the relevant Annexes, nominate one or more individuals, who shall be Officers of the Member, as authorised to access and use the Reporting System as Users.
- 6.2 The Member understands, acknowledges and agrees that:
- 6.2.1 all Users may be able to access all the data under the Transaction Records of the Member under the Reporting System;
 - 6.2.2 it shall ensure that all Users act (or refrain from acting) so as to ensure compliance by the Member with all its obligations set forth in this Agreement;
 - 6.2.3 HKMA shall be entitled, without further enquiry, to execute or otherwise act upon instructions or information (including without limitation, Transaction Records) or purported instructions or information (including without limitation, Transaction Records) received from each User or any person HKMA believes in good faith to be a User;
 - 6.2.4 all instructions received by HKMA from a User or any person HKMA believes in good faith to be a User shall be binding on the Member; and
 - 6.2.5 the Member shall be solely and fully responsible for the acts and omissions of each User.

7. SUBMITTING AGENCY ARRANGEMENTS

- 7.1 The Member is entitled to appoint one or more entities (which may or may not be a member of the Member Group) approved by HKMA in accordance with Clauses 7.2 and 7.3 and the Reference Manual (each, a "**Submitting Agent**") to submit Transaction Records under the Reporting Service on behalf of and as agent of the Member (each such arrangement, an "**Agency Arrangement**").
- 7.2 For each entity which the Member wishes to appoint under Clause 7.1:
- 7.2.1 it shall request that such entity be approved by HKMA by submitting to HKMA the Agency Request Forms in accordance with the Reference Manual; and
 - 7.2.2 it shall further provide any other details of such proposed Agency Arrangement or corresponding Submitting Agent or Submitting Agent User(s) as HKMA may request from time to time (whether under the Reference Manual or otherwise).
- 7.3 HKMA may, but shall not be obliged to, approve the nominated entity to be a Submitting Agent to act for and on behalf of the Member.
- 7.4 There shall be no time limit within which the HKMA must notify the Member whether it approves such entity to be appointed by the Member as a Submitting Agent to act on behalf of the Member and, if HKMA does not give its approval to such appointment, there shall be no obligation on HKMA to give reasons for not giving

such approval.

- 7.5 Each Submitting Agent may grant one or more of its Officers (each, a "**Submitting Agent User**") the access and usage rights to the Reporting System for the purpose of effecting the relevant Agency Arrangement on behalf of the Member. For the avoidance of doubt, each Submitting Agent and Submitting Agent User shall not be restricted from submitting transaction records:
- 7.5.1 of any other member of the Member Group in its capacity as agent for such member of the Member Group; or
 - 7.5.2 for itself as principal in respect of any transactions it has entered into as principal.
- 7.6 Any amendment, modification, variation or termination of an Agency Arrangement may only be effected in accordance with the procedures set out in the Reference Manual and the relevant Agency Terms.
- 7.7 The Member shall be fully responsible and liable for:
- 7.7.1 any act and/or omission of any Submitting Agent when effecting any Agency Arrangement or Agency Terms; and
 - 7.7.2 any breach of any of the Member's obligations under this Agreement, whether or not such obligation should have been performed by a Submitting Agent on behalf of the Member in accordance with any Agency Arrangement or Agency Terms.

8. **REPRESENTATIONS AND WARRANTIES**

- 8.1 The Member represents and warrants to HKMA at all times that:
- 8.1.1 it has the capacity, power and authority to enter into and perform its obligations under this Agreement;
 - 8.1.2 this Agreement constitutes the legal, valid, binding and enforceable obligations of the Member;
 - 8.1.3 any act or omission of the Member (including any User) in connection with the Reporting Service or the Reporting System (including without limitation, the access to and use of the Reporting Service or Reporting System) does not and will not breach any applicable Laws;
 - 8.1.4 it is an Eligible Entity;
 - 8.1.5 it is not aware of any matter which might or will adversely affect its ability to perform its contractual obligations under this Agreement;
 - 8.1.6 the execution of this Agreement by it, the performance by it of its obligations and duties under this Agreement and its use of the Reporting Service (including without limitation any submission of any data by it to HKMA under the terms of this Agreement) do not and will not breach the terms of any

agreement to which it is a party, or by which it is otherwise bound or any privacy, confidentiality or secrecy obligations which it owes to any party;

8.1.7 it is entering into this Agreement as principal for its own benefit and not for the benefit of another person;

8.1.8 it has all licences, authorisations, consents, approvals and permits required by all applicable Laws in order to perform its obligations under this Agreement, including without limitation, all consents required for:

- (a) any transfer or disclosure (whether or not in accordance with this Agreement) of Personal Data by the Member to HKMA;
- (b) any use, handling or storage of such Personal Data by HKMA in accordance with this Agreement; and
- (c) any transfer or disclosure of such Personal Data by HKMA to:
 - (i) any Authority in Hong Kong or otherwise;
 - (ii) any person in connection with HKMA's provision of the Reporting Service to the Member;
 - (iii) any person in connection with HKMA's compliance with any Law (including, without limitation, any Reporting Requirements) or any order, judgment, decision, directive or request of any Authority, for any purpose whatsoever (including without limitation, the prevention of money laundering, terrorist financing and other criminal activities); and
 - (iv) otherwise in accordance with this Agreement (including, without limitation in accordance with the terms of Clause 10 (*Confidentiality*));

8.1.9 it has not provided, transferred or submitted any Personal Data to HKMA except where, and to the extent, necessary for the Member to fulfil its Reporting Requirements;

8.1.10 any Personal Data provided by the Member to HKMA (whether in accordance with this Agreement or otherwise):

- (a) has been collected by lawful means; and
- (b) is accurate in all material respects so far as the Member is aware; and

8.1.11 there is no:

- (a) publicly available information; or
- (b) information provided directly or indirectly by the Member to HKMA (save for information provided to HKMA at the request of

HKMA in accordance with Clause 12.4 (*Personal Data*)),

which would allow HKMA to be able to ascertain from the Personal Codes the identity of any counterparty to a Transaction who is an individual.

8.2 HKMA does not make, and hereby expressly disclaims, any representation, warranty or undertaking:

8.2.1 in respect of the Reporting Service or the Reporting System;

8.2.2 that any method of accessing the Reporting System is secure;

8.2.3 that any Transaction or Transaction Record:

(a) will constitute enforceable, legal, valid and binding obligations, or will otherwise give rise to any duly-formed and legally binding contract under any Laws;

(b) will evidence any Transaction in accordance with any applicable documentation or master document;

(c) is accurate or complete; or

(d) will be successfully completed or performed;

8.2.4 that any Transaction Record or any other data held by HKMA will be admissible in a court of Law or other proceeding;

8.2.5 that any Transaction is:

(a) required to be reported to HKMA under the Reporting Requirements or otherwise in accordance with any applicable Law; or

(b) compliant with any and all applicable Laws and does not breach or violate any applicable Law;

8.2.6 that any party to a Transaction will fulfil its obligations under such Transaction to the other party; or

8.2.7 in respect of the creditworthiness or financial position of any member of the Member Group or any other party to a Transaction.

9. **LIABILITY**

9.1 HKMA and HKMA's Officers shall not be liable to the Member for any liability, claim, loss, damage, action, proceeding, demand, cost, fee or expense of any kind or nature whatsoever and howsoever caused in connection with the operation by HKMA of the Reporting Service or the Reporting System or any part thereof (whether or not resulting from a failure to satisfy the Member's obligations under the Reporting Requirements), including, without limitation, any liability, claim, loss, damage, action, proceeding, demand, cost, fee or expense (whether or not resulting from a failure to satisfy the Member's obligations under the Reporting Requirements) arising directly

or indirectly from or as a result of:

- 9.1.1 any inadequacy, deficiency, defect or error of the Reporting Service, the Reporting System or any linking or validation of Transaction Records in relation to the Reporting Service;
- 9.1.2 any discrepancy between any Transaction Record and the corresponding actual trade data or any other relevant document or data (including without limitation, any confirmation or evidence of the relevant Transaction);
- 9.1.3 any delay in providing or failure to provide the Reporting Service or the Reporting System;
- 9.1.4 any interruption, variation, suspension or termination of the Reporting Service or the Reporting System (including, without limitation, arising directly or indirectly from HKMA exercising HKMA's rights under Clause 2.3 (*Using the Reporting Service*) or otherwise);
- 9.1.5 where HKMA relied, acted or refused to act or refrained from acting on any instruction (or purported instruction) from a User or any person HKMA believes in good faith to be a User (including in circumstances where such instruction or purported instruction is unauthorised or given by an unauthorised person) or any person HKMA suspects may not be a User, including, without limitation, any reliance by HKMA in good faith on any instructions or other communication in person or by telephone, facsimile, email or other electronic means;
- 9.1.6 any information howsoever provided to HKMA or any of HKMA's Officers in any form, including any Transaction Record, that is incomplete, erroneous or inaccurate;
- 9.1.7 any Transaction or Transaction Record not being legal, valid, binding and/or enforceable (including, without limitation, where a Transaction is not capable of being enforced);
- 9.1.8 any Transaction Record:
 - (a) not complying with the Reporting Requirements or any other applicable Law;
 - (b) not complying with and/or being consistent with the relevant ISDA Master Agreement or any other master agreement and/or any relevant ISDA-published or other definitions or protocols;
 - (c) not being admissible in a court of law or other proceedings; and/or
 - (d) being incorrect, including where it has been incorrectly submitted, recorded or stored;
- 9.1.9 any virus, default, defect, deficiency or malfunction in or any breakdown, disruption or failure of any telecommunications, computer or other electronic equipment or system (whether or not owned, operated or maintained by

HKMA or for the purpose of, or in connection with, the Reporting Service or the Reporting System);

- 9.1.10 the security, confidentiality, accuracy and reliability (or lack thereof) of any document, email, transaction record and any other information transferred through or using the Reporting System;
- 9.1.11 the transfer and/or disclosure of any information by HKMA to any party in compliance with and/or under the terms of this Agreement, including without limitation under Clause 10 (*Confidentiality*) of this Agreement;
- 9.1.12 the transmission or quality of the data, the quality and availability of any data transmission network or any service interruption, blockage, suspension or interruption in any method of transmission or means of telecommunication (including SWIFT), any communication line, modem connection or other transmission facility, including without limitation as a result of the connection or lack thereof to any website or any internet and/or browser-based system used in relation to the Reporting Service or the Reporting System;
- 9.1.13 the failure by the Member to follow the most current version of this Agreement or any notice, guideline or other document communicated to it in accordance with Clause 23 (*Notices*);
- 9.1.14 requiring or, as the case may be, not requiring, the Member or any Submitting Member to provide a Consent Confirmation under Clause 10.6 (*Confidentiality*) (or the equivalent of such clause in the reporting service agreement entered into by a Submitting Member);
- 9.1.15 the occurrence of any Force Majeure Event;
- 9.1.16 any act or omission of any third party including, without limitation, any other Authority;
- 9.1.17 any act and/or omission of any Submitting Agent when effecting any Agency Arrangement or Agency Terms;
- 9.1.18 any breach of any of the Member's obligations under this Agreement, whether or not such obligation should have been performed by a Submitting Agent on behalf of the Member in accordance with any Agency Arrangement or Agency Terms;
- 9.1.19 HKMA's compliance with any applicable Law in connection with this Agreement, the Reporting Service, any other Member of the Member Group, any person within the Nominated Agent Group and/or any Transaction Record; and/or
- 9.1.20 any act or omission of any User (including without limitation, such User's use or disclosure of any data it has obtained from, or in connection with, the Reporting Service (including any Transaction Record data)),

unless incurred directly due to the wilful default or reckless disregard of HKMA in

respect of HKMA's obligations under this Agreement.

- 9.2 Notwithstanding any other term of this Agreement, HKMA shall not be liable for any indirect, incidental, consequential or punitive damages, losses or costs including any economic loss, loss of business, loss of profit, loss of reputation, loss of opportunity or for any claim made against the Member by any other party, even if advised of the possibility of the Member incurring such damages, losses or costs.
- 9.3 The Member shall indemnify HKMA and HKMA's Officers against any liability, claim, loss, damage, action, proceeding, demand, cost, fee or expense of any kind or nature whatsoever and howsoever arising directly or indirectly from:
- 9.3.1 HKMA's provision of the Reporting Service to the Member;
- 9.3.2 any act or omission of the Member, its Officers and/or its Users (or any person HKMA reasonably believes to be the Member, its Officer or its User) in connection with the Reporting Service; and
- 9.3.3 any failure of the Member (including any User) to comply with this Agreement, any other obligations applicable to the Member, any of its obligations under the Reporting Requirements or any other applicable Law.
- 9.4 Nothing in this Agreement shall limit or exclude HKMA's liability for death or personal injury caused by (i) HKMA's negligence or (ii) the negligence of HKMA's Officers, except as permitted by Law.
- 9.5 The invalidity, illegality or unenforceability of a provision of this Clause 9 (*Liability*) does not affect or impair the continuation in force of the remainder of this Clause.

10. **CONFIDENTIALITY**

- 10.1 In this Clause, "**Confidential Information**" means all information from time to time disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**") whether before, on or after the date of this Agreement including, without limitation:

10.1.1 any Transaction Record;

10.1.2 any data (including without limitation, any report or analysis) which may be produced as a result of processing any such Transaction Record;

10.1.3 any details of the Reporting System (including without limitation, the technical information and specifications of the Reporting System); and

10.1.4 any information relating to any product, service, operation, process, plan or intention, product information, know-how, design right, trade secret, market opportunity or business affairs of the Disclosing Party,

but does not include information which:

- (a) is or becomes public information other than as a direct or indirect result of any

breach of this Agreement by the Receiving Party;

- (b) is identified in writing at the time of delivery as non-confidential by the Disclosing Party or any of its Officers; and/or
- (c) is known by the Receiving Party before the date such information is disclosed to it by the Disclosing Party or is lawfully obtained by the Receiving Party after that date from a third party source which is, as far as the Receiving Party is aware, unconnected with the Disclosing Party and which, in either case, as far as the Receiving Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality in relation to such information.

10.2 The Receiving Party shall not transfer or disclose Confidential Information to any third party or use Confidential Information for any reason except as expressly contemplated in this Agreement, save that:

10.2.1 the Receiving Party may disclose Confidential Information with the prior written consent of the Disclosing Party in the manner consented to;

10.2.2 the Receiving Party may disclose Confidential Information to any of its Officers to the extent that such disclosure is necessary for the purposes of this Agreement and each Officer is made aware of, and complies with, the Receiving Party's obligations of confidentiality under this Agreement as if the Officer was a party to this Agreement;

10.2.3 the Receiving Party may disclose Confidential Information to the extent required by any applicable Law;

10.2.4 HKMA may publicly disclose anonymous data, including without limitation, aggregate positions, transaction activity or statistical data, so long as:

- (a) individual persons of the Member Group cannot be identified from such data; and
- (b) such data does not reveal, directly or indirectly, any confidential, proprietary, financial, operational or trading data of the Member; and

10.2.5 HKMA may use and/or disclose any Confidential Information to the extent necessary and/or desirable for HKMA to carry out any of HKMA's functions and duties.

10.3 Without prejudice to any other term of this Agreement and to the fullest extent permitted by Law, the Receiving Party shall promptly, and in any event within 14 Business Days, inform the Disclosing Party in writing of any disclosure of any Confidential Information of the Disclosing Party to any other entity besides the Receiving Party, in particular specifying:

10.3.1 the Confidential Information which was disclosed;

10.3.2 the method by which the Confidential Information was disclosed; and

10.3.3 the identity of the entity to which the Confidential Information was disclosed, unless such disclosure is made by:

- (a) HKMA and is:
 - (i) necessary for the purposes of HKMA providing the (1) Reporting Service to the Member or any other member of the Member Group or (2) Agency Reporting Service to any person within the Nominated Agent Group; or
 - (ii) made under the terms of Clauses 10.2.1 (*Confidentiality*) to 10.2.5 (*Confidentiality*); or
- (b) the Member under the terms of Clause 10.2.2 (*Confidentiality*).

10.4 The Member consents to, and agrees to obtain any necessary consent of, and give any necessary notice to, the relevant persons (including any of its relevant Users or Officers) of, the monitoring and recording of:

10.4.1 any telephone conversation between any Officer or User of the Member and HKMA and/or any Officer of HKMA in connection with this Agreement; and

10.4.2 the Member's use of the Reporting Service,

and agrees, to the extent permitted by applicable Law, that any data obtained from such monitoring or recording may be submitted as evidence in any proceeding.

10.5 Without prejudice to any other term of this Agreement and to the fullest extent permitted by Law, the Member consents and agrees to:

10.5.1 each other member of the Member Group, each person within the Nominated Agent Group or any agent, Officer or other person acting on their behalf (the "**Submitting Member**") submitting any Transaction Record (including without limitation, in respect of any amendment, variation and/or termination of any Transaction Record) to HKMA in respect of any Transaction to which the Member is a counterparty in connection with the Reporting Service, the Agency Reporting Service and/or the Reporting Requirements;

10.5.2 HKMA disclosing the Transaction Record in respect of any Transaction to:

- (a) the Member's counterparty to such Transaction, or any agent, Officer or other person (including any Submitting Agent) acting on its behalf in relation to such Transaction Record; and/or
- (b) any entity which HKMA believes in good faith to be (i) the Member's counterparty to such Transaction, according to the information specified in the Transaction Record or (ii) any agent, Officer or other person (including any Submitting Agent) acting on the Member's behalf in relation to such Transaction Record (as determined by HKMA in HKMA's sole and absolute discretion).

10.6 The Member shall promptly, and in any event within 14 Business Days, complete, execute and deliver a Consent Confirmation to the Submitting Member, if directed to do so by HKMA (which HKMA may do at any time and from time to time). The Member agrees that HKMA shall have no obligation or duty to, and there shall be no expectation (legitimate or otherwise) of the Member or any Submitting Member that HKMA shall, require the Member or any Submitting Member to complete, execute and/or deliver a Consent Confirmation under this Clause 10.6 (or under the equivalent of such clause in any reporting service agreement between HKMA and a Submitting Member).

10.7 The Member acknowledges, agrees and confirms that:

10.7.1 each consent under Clauses 10.2 (*Confidentiality*) and 10.5 (*Confidentiality*) and/or given under Clause 10.6 (*Confidentiality*) supersedes and overrides any privacy, confidentiality or secrecy obligation owed by HKMA or by the Member or (as the case may be) the Submitting Member making the disclosure or submitting the Transaction Record to HKMA (whether such obligation arises by Law (including without limitation Section 120 of the Banking Ordinance (Chapter 155 of the Laws of Hong Kong)), contract or otherwise) and is for the benefit of HKMA and each such Submitting Member;

10.7.2 to the extent (a) the Member owes or may owe any privacy, confidentiality or secrecy obligations to any person to whom the information in a Transaction Record relates and (b) any such privacy, confidentiality or secrecy obligations are not effectively excluded, waived or disapplied under all relevant applicable Laws (including without limitation, the Law governing any contract which creates any such privacy, confidentiality or secrecy obligations) as a result of the Reporting Requirements or otherwise, the Member has obtained any and all necessary consents and approvals required for it to transfer and/or disclose any such information to HKMA under the terms of this Agreement, which may include without limitation, consents on similar terms to those set out in this Clause 10 (*Confidentiality*);

10.7.3 it shall not:

- (a) take any action;
- (b) seek any judgment in any court; or
- (c) exercise any right or remedy,

against any Submitting Member in connection with any disclosure by such Submitting Member to HKMA of any Transaction Record in respect of a Transaction to which the Member is a counterparty in connection with the Reporting Service and/or the Reporting Requirements; and

10.7.4 nothing in this Clause 10 shall:

- (a) constitute HKMA as; or
- (b) create any obligation on HKMA to act as,

an agent of the Member or a Submitting Member or any other member of the Member Group for the purposes of granting or accepting any consent given under this Clause 10.

10.8 HKMA makes no representation or warranty that:

10.8.1 any consent given under this Clause 10 by the Member is effective, valid, binding and/or enforceable by or against any other member of the Member Group; or

10.8.2 any consent given by a member of the Member Group under the "Reporting Service Agreement" between HKMA and such member of the Member Group in form and/or substance similar to any consent given by the Member under this Clause 10 is effective, valid, binding and/or enforceable by or against the Member,

and HKMA shall not be responsible or liable in any way to the Member for, any consent described in Clauses 10.8.1 and 10.8.2 above not being effective, valid, binding and/or enforceable in any way.

11. OFFICES AND BRANCHES

11.1 If the Member is entering into this Agreement through an office or branch other than its head or home office, it represents at all times to, and agrees with, HKMA that:

11.1.1 notwithstanding the place of booking or branch or its jurisdiction of incorporation or organisation, its obligations (including any consent and agreement given by the Member under Clause 10 (*Confidentiality*)) are the same in terms of recourse against it as if it had entered into this Agreement through its head or home office; and

11.1.2 any consent and agreement given by the Member under Clause 10 (*Confidentiality*) are effective and binding against any and all offices and branches of the Member.

12. PERSONAL DATA

12.1 If the Member provides any Personal Data to HKMA (whether in breach of this Agreement or otherwise), the Member shall promptly notify HKMA of, and take all necessary and/or desirable actions to identify, such Personal Data to HKMA and, where such Personal Data is provided by the Member to HKMA in breach of this Agreement, immediately remove such Personal Data from the Reporting System.

12.2 HKMA is not responsible for the management or handling of any Personal Data which is provided to HKMA by the Member in breach of this Agreement.

12.3 Personal Data disclosed from time to time by the Member to HKMA (whether or not in breach of this Agreement) may, notwithstanding such breach, be used, transferred or disclosed by HKMA:

12.3.1 to any Authority in Hong Kong or otherwise;

- 12.3.2 to any person in connection with HKMA's provision of the Reporting Service, the Agency Reporting Service or the Reporting System;
 - 12.3.3 to any person in connection with HKMA's compliance with any Law (including without limitation, the prevention of money laundering, terrorist financing and other criminal activities); and/or
 - 12.3.4 otherwise in accordance with this Agreement (including, without limitation in accordance with the terms of Clause 10 (*Confidentiality*)).
- 12.4 Notwithstanding any other term of this Agreement, the Member acknowledges and agrees that, in no circumstance shall the Member disclose to HKMA or make public any information which may allow or assist (or potentially allow or assist) HKMA to ascertain the identity of any counterparty to a Transaction who is an individual (including without limitation, any data or information which in any way links or connects the Personal Code of an individual to any other data or information which allows or assists HKMA to ascertain the identity of such individual), unless specifically requested to do so by HKMA.

13. **OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS**

- 13.1 For the duration of this Agreement, HKMA grants the Member a personal, limited, revocable, non-transferable, non-sub-licensable and non-exclusive licence to access and use the Reporting System subject to the terms and conditions of this Agreement.
- 13.2 Except as provided in this Agreement, the Member shall not, without the prior written consent of HKMA:
- 13.2.1 market, exploit or make the Reporting System available to another person or permit another person to use the Reporting System;
 - 13.2.2 use the Reporting System on behalf of or for the benefit of another person (including for the provision of commercial timesharing, rental or bureau services);
 - 13.2.3 reverse engineer, decompile, disassemble, translate or adapt the program code or any other part of the Reporting System;
 - 13.2.4 make any copy, modify or create any derivative work of the Reporting System; or
 - 13.2.5 assign, charge or otherwise dispose of any interest or right in its licence to use the Reporting System.
- 13.3 All Intellectual Property Rights subsisting in, created, generated or used by HKMA or HKMA's Officers (or on their behalves) in connection with this Agreement (including without limitation, the text of this Agreement), the Reporting Service, the Reporting System (as modified from time to time) or any other material or document (whether in electronic or physical form), including any operational procedure, guide, instruction or manual, report (including any request reports), notifications, any Transaction Record and/or template thereof, or the Reference Manual provided in connection with this Agreement, are and shall remain the exclusive property of HKMA. The Member

shall not acquire any right in the Reporting System or any of the foregoing except the limited use rights specified in this Agreement. HKMA shall own all rights in any copy, translation, modification, adaptation or derivative work of the Reporting System or based on any of the foregoing, including any improvement or development thereof.

14. **TERM**

This Agreement shall remain in force until terminated by either Party giving to the other Party not less than 30 calendar days' notice of termination in writing, unless terminated earlier pursuant to Clause 15 (*Termination*).

15. **TERMINATION**

15.1 A Party (the "**Initiating Party**") can terminate this Agreement with immediate effect by notice to the other Party (the "**Breaching Party**") if any event specified in Clause 15.2 (*Termination*) (a "**Termination Event**") has occurred and is continuing in respect of the other Party.

15.2 The Termination Events are:

15.2.1 the Breaching Party being in material breach (whether or not a repudiatory breach) of an obligation under this Agreement and, if the breach is capable of remedy, failing to remedy the breach within 3 Business Days starting on the day after receipt of notice from the Initiating Party:

- (a) giving full details of the breach;
- (b) requiring the Breaching Party to remedy the breach; and
- (c) stating that a failure to remedy the breach may give rise to termination under Clause 15.1 (*Termination*).

For the purposes of this Clause 15.2.1 (*Termination*), a breach is capable of remedy if time is not of the essence in performance of the obligation and if the breach is capable of being remedied within the 3 Business Day period;

15.2.2 a breach by the Breaching Party of an obligation under this Agreement (whether or not it is capable of remedy) which is persistent. In this Clause 15.2.2 (*Termination*):

- (a) a breach is deemed to be "persistent" if it is repeated (and notice of it is given to the Breaching Party) sufficiently often to have a material impact on the conduct of the Initiating Party's businesses (or, where the Member is the Initiating Party, the use or enjoyment of the Reporting Service); and
- (b) similar breaches are deemed to be instances of the same breach;

15.2.3 the Breaching Party:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);

- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) (i) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (ii) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in sub-Clause (i) above and either (I) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (II) is not dismissed, discharged, stayed or restrained in each case within 15 calendar days of the institution or presentation thereof;
- (e) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
- (g) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 calendar days thereafter;
- (h) causes or is subject to any event with respect to it which, under the applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in sub-Clauses (a) to (g) above (inclusive); or
- (i) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;

15.2.4 HKMA determines at any time, in HKMA's sole and absolute discretion, that the Member is not, or ceases to be, an Eligible Entity; and

15.2.5 due to an event or circumstance (other than an action taken by a Party):

- (a) it is or becomes unlawful for a Party to perform any of its obligations under this Agreement; or
- (b) any obligation of any Party under this Agreement is not or ceases to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the other Party.

16. CONSEQUENCES OF TERMINATION

16.1 Expiry or termination of this Agreement does not affect a Party's accrued rights and obligations at the date of expiry or termination.

16.2 Subject to Clause 16.1 (*Consequences of Termination*) above, each Party shall be released and discharged from any further rights and obligations immediately on the expiry or termination of this Agreement, except that any right or obligation (whether accrued or not) under or pursuant to any of Clauses 9 (*Liability*), 10 (*Confidentiality*), 12 (*Personal Data*), 13 (*Ownership of Intellectual Property Rights*), 16 (*Consequences of Termination*), 18 (*Assignment and Subcontracting*), 19 (*Entire Agreement*), 20 (*General*), 21 (*Governing Law and Jurisdiction*), 22 (*Service of Process*) and 23 (*Notices*), together with those Clauses the survival of which is necessary for the interpretation or enforcement of this Agreement, shall survive expiry or termination of this Agreement and shall continue in full force and effect.

16.3 Upon the expiry or termination of this Agreement, the Member shall:

16.3.1 use all reasonable efforts to promptly return to HKMA, or destroy, all copies of this Agreement and all other documents in connection with the Reporting Service then in its possession, including any copies held in any format in any electronic media, provided that the Member shall not be obliged to take such action if doing so would be inconsistent with any applicable Law or its reasonable internal record retention policies; and

16.3.2 cease to access or use, and give up all its rights in connection with the access and use of:

- (a) the Reporting System;
- (b) the Reporting Service; and
- (c) any document in connection with the Reporting System and/or the Reporting Service.

17. FORCE MAJEURE

17.1 Without prejudice to any other term of this Agreement, if a Party (the "**Affected Party**") is prevented, hindered or delayed by a Force Majeure Event from or in performing any of its obligations under this Agreement other than a payment obligation:

17.1.1 the Affected Party's obligations under this Agreement are suspended only for so long as the Force Majeure Event continues and only to the extent that it is

so prevented, hindered or delayed;

17.1.2 as soon as reasonably possible after the start of the Force Majeure Event the Affected Party will notify the other Party of the Force Majeure Event, the date on which the Force Majeure Event started and the effects of the Force Majeure Event on its ability to perform its obligations under this Agreement;

17.1.3 the Affected Party will make reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement; and

17.1.4 as soon as reasonably possible after the end of the Force Majeure Event the Affected Party will notify the other Party that the Force Majeure Event has ended and resume performance of its obligations under this Agreement.

17.2 Without prejudice to Clause 14 (*Term*), if the Force Majeure Event continues for more than 30 consecutive calendar days commencing on the day the Force Majeure Event starts, either Party may terminate this Agreement by giving not less than 14 calendar days' notice to the other Party.

18. **ASSIGNMENT AND SUBCONTRACTING**

18.1 The Member may not:

18.1.1 assign, transfer, charge or otherwise dispose of any interest or right in or in respect of, or purport to assign, transfer, charge or otherwise dispose of any interest or right in or in respect of, any right or obligation under this Agreement; or

18.1.2 subcontract the performance of any of its obligations under this Agreement, without the prior written consent of HKMA.

18.2 HKMA may from time to time assign or transfer HKMA's rights and/or obligations in respect of this Agreement, in whole or in part, in each case without the consent of the Member.

19. **ENTIRE AGREEMENT**

19.1 This Agreement, including the schedules to this Agreement and the Annexes, constitutes the entire agreement between the Parties to this Agreement and supersedes all previous agreements between the Parties relating to the subject matter of this Agreement.

19.2 Each Party acknowledges that it has not relied on or been induced to enter into this Agreement by a representation, warranty or undertaking (whether contractual or otherwise) other than those expressly set out in this Agreement.

19.3 A Party is not liable to the other Party (in equity, contract or tort (including negligence) or in any other way) for a representation, warranty or undertaking that is not set out in this Agreement.

19.4 Nothing in this Clause 19 (*Entire Agreement*) has the effect of limiting or restricting any liability of a Party arising as a result of any fraud.

20. GENERAL

20.1 In the event of any inconsistency between any provision of the Substantive Provisions and any Annex, the Substantive Provisions shall prevail.

20.2 HKMA may, at any time, amend, restate or supplement the Substantive Provisions or any Annex by giving the Member no less than 5 Business Days' written notice of such amendment, restatement or supplement.

20.3 A failure to exercise or delay in exercising a right or remedy provided by this Agreement or by any applicable Law does not constitute a waiver of the right or remedy or a waiver of any other right or remedy. No single or partial exercise of a right or remedy provided by this Agreement or by Law prevents further exercise of the right or remedy or the exercise of another right or remedy.

20.4 Except where this Agreement provides otherwise, the rights and remedies contained in this Agreement are cumulative and not exclusive of rights or remedies provided by any applicable Law.

20.5 Except where this Agreement provides otherwise, each Party shall pay its own costs relating to the negotiation, preparation, execution and implementation by it of this Agreement and of each document referred to in it.

20.6 No provision of this Agreement creates a partnership between the Parties or makes a Party the agent of the other Party for any purpose. A Party has no authority or power to bind, to contract in the name of, or to create a liability for the other Party in any way or for any purpose.

21. GOVERNING LAW AND JURISDICTION

21.1 This Agreement and all matters arising from or connected with it are governed by Hong Kong law.

21.2 The courts of Hong Kong have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or the consequences of its nullity) (a "**Dispute**").

21.3 The Parties agree that the courts of Hong Kong are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

21.4 Nothing in this Clause 21 (*Governing Law and Jurisdiction*) has the effect of limiting or preventing HKMA from taking proceedings relating to a dispute in connection with this Agreement in any other courts with jurisdiction. To the extent allowed by any applicable Law, HKMA may take concurrent proceedings in any number of jurisdictions.

22. SERVICE OF PROCESS

22.1 If the Member is not resident, incorporated or registered in Hong Kong:

22.1.1 the Member represents and warrants that it has irrevocably appointed the entity whose details are set out in Schedule 2 (*Details of Process Agent*) as the process agent to receive, for it and on its behalf, service of process in any dispute arising out of or in connection with this Agreement; and

22.1.2 if for any reason the process agent (or the substitute process agent, as the case may be) is unable to, or will not, act as such, the Member shall promptly notify HKMA and within 30 calendar days appoint a substitute process agent acceptable to HKMA.

22.2 The Parties irrevocably consent to receive service of process in the manner provided for notices in Clauses 23.1.1 (*Notices*), 23.1.2 (*Notices*) and 23.1.3 (*Notices*). Nothing in this Agreement shall affect the right of HKMA to serve process in any other manner permitted by any applicable Law.

23. NOTICES

23.1 Any notice or other communication in respect of this Agreement may be given in any manner described below to the address or number or in accordance with the relevant details as set out in Schedule 1 (*Notice Details*) and will be deemed effective as indicated:

23.1.1 if in writing and delivered in person or by courier, on the date and time it is delivered;

23.1.2 if sent by facsimile transmission, on the date and time it is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

23.1.3 if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date and time it is delivered or its delivery is attempted;

23.1.4 if sent by the notification and announcement system in the Reporting System, on the date and time it is sent; or

23.1.5 if sent by e-mail, on the date and time it is delivered,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Business Day, in which case that communication will be deemed given and effective on the open of business on the first following day that is a Business Day.

23.2 Any notice or announcement may be sent or announced to the Member via the notification and announcement system in the Reporting System from time to time in accordance with Clause 23.1.4 (*Notices*). The Member undertakes therefore to check

the notification and announcement system in the Reporting System regularly, and in any event no less than once each Business Day, for any such notices or announcements.

- 23.3 Either Party may by no less than 10 Business Days' prior written notice to the other change the address, facsimile number or e-mail details at which notices or other communications are to be given to it.
- 23.4 Notwithstanding anything else in this Agreement, a notice or other communication under Clause 14 (*Term*) or Clause 15 (*Termination*) may not be given by any method specified in Clause 23.1.2 (*Notices*), Clause 23.1.4 (*Notices*) or Clause 23.1.5 (*Notices*).

IN WITNESS WHEREOF the Parties hereto have executed this Agreement on the date and the year first hereinabove written.

**SCHEDULE 1
NOTICE DETAILS**

Contact details for notices or communications to HKMA:

Address: 55/F, Two International Finance Centre, 8 Finance Street, Central, Hong Kong

Attention: Trade Repository, Hong Kong Monetary Authority

Facsimile No.: (852) 2878 1679

Telephone No.: (852) 8100 3115

Email: hktr@hkma.gov.hk

[Specific Instructions: [•]]

Contact details for notices or communications to the Member:

Address: [•]

Attention: [•]

Facsimile No.: [•]

Telephone No.: [•]

Email: [•]

[Specific Instructions: [•]]

SCHEDULE 2
DETAILS OF PROCESS AGENT

[If the Member is not resident, incorporated or registered in Hong Kong]

Name: [•]

Address: [•]

Telephone: [•]

Fax: [•]

Date appointed: [•]

SCHEDULE 3
FORM OF CONSENT CONFIRMATION

To: [insert name of the relevant Submitting Member] ("**Submitting Member**")

From: [insert name of the Member] ("**Confirming Member**")

Dear Sir/Madam

**Reporting service agreement dated [•] between the Monetary Authority and [insert
name of Confirming Member]
(the "Reporting Service Agreement")**

1. We refer to Clause 10.6 (*Confidentiality*) of the Reporting Service Agreement. This is a Consent Confirmation. Terms used in the Reporting Service Agreement shall have the same meaning in this Consent Confirmation.
2. This Consent Confirmation takes effect on and from the date of the Reporting Service Agreement.
3. To the fullest extent permitted by Law, the Confirming Member consents and agrees to the Submitting Member submitting any Transaction Record (including, without limitation, in respect of any amendment variation and/or termination of any Transaction Record) to HKMA (including, without limitation, any third party service provider engaged by HKMA for the purpose of providing the Reporting Service) in respect of any Transaction to which the Confirming Member is a counterparty in connection with the Reporting Service and/or the Reporting Requirements.
4. The Confirming Member acknowledges and agrees that:
 - 4.1 each consent under paragraph 3 above and Clauses 10.2 (*Confidentiality*) and 10.5 (*Confidentiality*) of the Reporting Service Agreement supersedes and overrides any privacy, confidentiality or secrecy obligation owed by the Submitting Member making the disclosure or submitting the Transaction Record to HKMA (whether such obligation arises by Law including without limitation Section 120 of the Banking Ordinance (Chapter 155 of the Laws of Hong Kong), contract or otherwise) and is for the benefit of the Submitting Member; and
 - 4.2 the Confirming Member shall not:
 - 4.2.1 take any action;
 - 4.2.2 seek any judgment in any court; or
 - 4.2.3 exercise any right or remedy,against any Submitting Member in connection with any disclosure by such Submitting Member to HKMA of any Transaction Record in respect of a Transaction to which the

Confirming Member is a counterparty in connection with the Reporting Service and/or the Reporting Requirements.

5. This Consent Confirmation and all matters arising from or connected with it are governed by Hong Kong law. The courts of Hong Kong have exclusive jurisdiction to settle any dispute arising out of or in connection with this Consent Confirmation (including a dispute relating to the existence, validity or termination of this Consent Confirmation or the consequences of its nullity).

Yours faithfully

authorised signatory for
[insert name of Confirming Member]
Date:

SIGNATURES

EXECUTED by the Parties

HKMA

Signed by [])
for and on behalf of)
the Monetary Authority:)

_____ Signature of Signing Officer

In the presence of:

_____ Signature of Witness

MEMBER

Signed by [])
[a duly authorised)
representative of/for and)
on behalf of])
[]:)

_____ Signature of Authorised Signatory

In the presence of:

_____ Signature of Witness