



# **Terms and Conditions of Currency Switch**

**(Supplement to Terms and Conditions of Investment Account)**



## **Schedule VI : Currency Switch**

This Schedule VI contains specific terms and conditions governing Transactions of Forward Exchange Contracts through the Service of currency switch. The Service is provided on the basis that the Customer has read, understood and agreed to these Terms and Conditions, in particular, this Schedule VI, and the Important Facts Statement.

### **1. Definitions and Interpretation**

1.1 Terms defined and references construed in these Terms and Conditions have the same meaning and construction under this Schedule VI, unless the context otherwise requires. In this Schedule VI:

**“Application”** means the application form as prescribed by the Bank from time to time for application by the Customer to engage the Bank for the Service;

**“Business Day”** means a day on which the Bank is open to the general public for normal business in Hong Kong (but excluding Saturdays, Sundays, public holidays and any period of time between (1) the hoisting of typhoon signal number 8 or above or a black rainstorm warning and (2) such time after the lowering of such signal or warning as the Bank may in its absolute discretion determine);

**“Charge over Deposit”** means the form of charge over deposits prescribed by the Bank pursuant to which the Deposit(s) are charged in favour of the Bank by way of first fixed charge to secure the Customer’s own obligations and liabilities due or owing to the Bank under the Forward Exchange Contract(s) and the Transaction Documents;

**“Currency”** means the lawful currency of such countries as the Bank may in its absolute discretion specify from time to time;

**“Deposit”** means the time deposit(s) which the Customer has from time to time made with the Bank in a Currency with a remaining tenor not exceeding 12 months or such other period as specified by the Bank. The time deposit(s) and any accounts associated with such time deposit(s) shall, in addition to this Schedule VI, be governed by the Terms and Conditions for all Accounts and Related Services of the Bank (including their amendments, revisions and replacements from time to time), and in case of inconsistency between the two, this Schedule VI shall prevail. Solely for the operation of Clause 2 but without affecting the generality of the other terms and conditions, the amount of a Deposit shall:

(a) be in such minimum principal amount as from time to time determined and specified by the Bank at its absolute discretion;



- (b) include the interest payable on the Deposit upon the Maturity Date; and
- (c) be reduced from time to time by the amount that has been covered by the relevant Forward Exchange Contract(s) entered into between the Bank and the Customer;

**"Event of Default"** in relation to the Customer means the occurrence of any of the following events: -

- (i) the Customer fails to pay any amount due under any Forward Exchange Contract or this Schedule VI at the time, in the currency and in the manner specified by the Bank;
- (ii) the Customer fails to perform or comply with any obligation under any Forward Exchange Contract or this Schedule VI;
- (iii) the Customer disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, this Schedule VI or any transaction evidenced by a confirmation of a Forward Exchange Contract;
- (iv) the Customer fails to maintain the required Charge over Deposit or any additional security as required by the Bank to secure the Customer's obligations and liabilities due or owing to the Bank under the Forward Exchange Contract and this Schedule VI;
- (v) any representation or warranty made or deemed to be made by the Customer herein or any document delivered hereunder or in relation to these Terms and Conditions is not complied with or proves to be untrue in any material respect;
- (vi) there is a loss of or impairment to the first priority status of any security or the Charge over Deposit given by the Customer to the Bank for the purposes of the Service and/or any Forward Exchange Contract;
- (vii) any indebtedness of the Customer is declared to be due and payable (other than by regularly scheduled payment) prior to the stated maturity thereof or the Customer fails to pay any of its indebtedness when due (whether such indebtedness is owing to the Bank or any other person);
- (viii) any step is taken by any person for the bankruptcy or winding up of the Customer;
- (ix) the Customer stops or suspends payment of its/his debts or is unable or admits its/his inability to pay its/his debts as they fall due, or commences negotiations with its/his creditors for the rescheduling of its/his debts or proposes or enters into any composition with its/his creditors;

- (x) an encumbrancer takes possession of, or a trustee, receiver, judicial manager, manager or similar officer is appointed for, or a distress, execution, attachment or other process is levied or enforced upon any account of the Customer with the Bank or upon any part of the Customer's assets;
- (xi) a suit, arbitration or administrative proceeding or any other step under any foreign or domestic law relating to adjustment of debts, bankruptcy, winding up or insolvency of the Customer is commenced, filed or applied for against the Customer, or action is taken by the Customer to effect any of the foregoing;
- (xii) a petition is presented for a declaration of bankruptcy or winding up to be made against the Customer or the Customer declares itself or himself bankrupt or wound up;
- (xiii) the Customer suffers, in the opinion of the Bank, a material adverse change in its/his financial condition, or the Customer fails to give adequate assurance satisfactory to the Bank of its/his ability to perform its/his obligations under this Schedule VI or any Forward Exchange Contract within forty-eight (48) hours (or such other period as specified by the Bank) of a request by the Bank to do so;
- (xiv) Customer ceases or threatens to cease to carry on all or a substantial part of its/his business;
- (xv) there is a material adverse change in the Customer's financial position which the Bank, in its sole and absolute discretion, has determined may affect the Customer's ability to comply with its/his obligations under this Schedule VI or any Forward Exchange Contract;
- (xvi) it becomes unlawful for the Bank or the Customer to perform any Forward Exchange Contract or the obligations hereunder;
- (xvii) if the Customer is a company : the Customer consolidates or amalgamates with, or merges into or with, or transfers all or substantially all of its assets to, or reorganizes, reincorporates or reconstitutes into or as, another entity and at the time of such consolidation, amalgamation, merger, transfer reorganisation, reincorporation or reconstitution (a) the resulting, surviving or transferee entity fails to assume all the Customer's obligations under this Schedule VI; (b) the creditworthiness of the resulting, surviving or transferee entity is, in the Bank's opinion, materially weaker than that of the Customer immediately before such action;

- (xviii) if the Customer is an individual : if the Customer dies or if, in the Bank's reasonable judgment, the Customer becomes incapable of managing his affair by reason of mental incapacity or for any other reason whatsoever;
- (xix) if the Customer is a partnership or a partner or group of partners acting for a partnership : (a) there occurs any event or circumstance in relation to the partnership or any partner thereof which, in reasonable judgment of the Bank, may cause or allow it to be dissolved, wound up, or terminated by operation of law or by any action of any person, including, without limitation, by application to any court; (b) any amendment is made to or there is any breach of any partnership agreement if in the opinion of the Bank such amendment or breach may adversely affect the Customer's ability to perform its obligations under this Schedule VI; (c) any partner of the partnership is convicted of any criminal offence in any jurisdiction whatsoever; (d) the death of any partner of the partnership who is a natural person or, in the reasonable judgement of the Bank, any partner of the partnership who is a natural person becomes incapable in law of managing its/his affairs (whether by reason of mental incapacity or for any other reason whatsoever);
- (xx) any event occurs or circumstances arise which the Bank determines give(s) reasonable grounds for believing that the Customer may not be able to perform or comply with any one or more of its/his obligations under this Schedule VI or any Forward Exchange Contract;
- (xxi) either the Bank or the Customer is prevented from or hindered or delayed by reason of any force majeure or act of state in the delivery of any asset or payment of any currency in respect of any Forward Exchange Contract;
- (xxii) any event occurs, which under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events mentioned above; or
- (xxiii) any event which, with the giving of notice or the lapse of time or both, would constitute an event specified in (i) to (xxii) above.

**“Forward Exchange Contract”** means, in relation to a Deposit, the forward exchange contract(s) entered into between the Bank and the Customer in accordance with the conditions specified in Clause 2 and as confirmed in the confirmation issued pursuant to Clause 11;

**“Forward Exchange Rate”** means, for the purpose of any Forward Exchange Contract, the forward exchange rate quoted and agreed to by the Bank at its absolute discretion having regard to the prevailing forward foreign exchange market conditions for the exchange of the Specified Currencies on the Settlement Date;



**“Important Facts Statement”** means the statement(s) including any important facts statement given by the Bank setting out or disclosing the risks associated with the placing of the Deposit and entering into the Forward Exchange Contract;

**“Instruction”** in this Schedule VI, means an offer by the Customer to enter into a Forward Exchange Contract or an instruction given to the Bank by the Customer relating or incidental to the Deposit. For the avoidance of doubt, references to “Instruction” in other provisions of these Terms and Conditions shall, if the context permits, include the meaning of Instruction as defined in this Schedule VI;

**“Maturity Date”** means the maturity date of a Deposit;

**“Service”** in this Schedule VI, means the Currency Switch service which the Bank offers to the Customer pursuant to this Schedule VI. For the avoidance of doubt, the Service provided under this Schedule VI forms part of the Services as stated in Clause 2.1 of Part A of these Terms and Conditions;

**“Settlement Date”** means the maturity date of a Forward Exchange Contract, being the date on which the parties shall be obliged to settle the transaction which is the subject of the Forward Exchange Contract. If due to market closure or for any other reason the Settlement Date is not a Business Day, the Settlement Date shall be deemed to be changed to the next Business Day;

**“Specified Currency”** means, in respect of a payment obligation under a Forward Exchange Contract, the Currency of such payment obligation (ignoring the application of Clause 17);

**“Standing Instruction”** means an offer by the Customer to the Bank (in a specified form designated by or acceptable to the Bank) to enter into a Forward Exchange Contract with the Bank at a forward exchange rate specified by the Customer in such instructions which is open for acceptance by the Bank at its absolute discretion without further instruction from or prior notification to the Customer;

**“Trading Day”** means a day on which the Bank is open to the general public for foreign currency dealings in Hong Kong (but excluding any period between (a) the hoisting of typhoon signal number 8 or above or a black rainstorm warning and (b) such time after the lowering of such signal or warning as the Bank may in its absolute discretion determine);

**“Termination Currency”** means, with respect to the determination of the Early Termination Amount as defined in Clause 19.1, the currency in which the Early Termination Amount is to be denominated as agreed between the Bank and the Customer in writing or, in the absence of such agreement means, the original Currency of the Deposit;



**“Termination Currency Equivalent”** means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency, such amount converted by the Bank to an equivalent amount expressed in the Termination Currency at what the Bank reasonably regards to be the best available spot rate;

**“Transaction Documents”** means these Terms and Conditions (in particular, this Schedule VI), together with the Application(s) and the confirmation(s) of the Forward Exchange Contract(s).

1.2 In these Transaction Documents, words and expressions importing the singular number only shall include the plural and vice versa and references to one gender shall include references to all other genders.

1.3 Clause headings have been inserted for convenience of reference only and shall not affect the construction of this Schedule VI.

## **2. Deposits and Forward Exchange Contracts**

2.1 Subject to the acceptance by the Bank at its absolute discretion and pursuant to this Schedule VI, the Customer may prior to the Maturity Date of a Deposit request or offer to the Bank by way of an Instruction to enter into one or many Forward Exchange Contract(s) with the Settlement Date falling on the Maturity Date to:

(a) in relation to a Deposit, sell to the Bank an amount same as the amount of the Deposit for value on the Maturity Date in exchange for an amount in another Currency at a Forward Exchange Rate (the **“contract amount”**) so that the Bank’s obligations under that Deposit shall automatically and without further action be cancelled and simultaneously replaced by a new obligation to deliver the contract amount on the Maturity Date; and

(b) in relation to each Forward Exchange Contract that the Customer has already entered into with the Bank (the **“preceding Forward Exchange Contract”**), sell to the Bank for value on the Settlement Date an amount same as the amount long under the preceding Forward Exchange Contract in exchange for an amount in another Currency at a Forward Exchange Rate (the **“contract amount”**) so that the Bank’s obligations under the preceding Forward Exchange Contract shall automatically and without further action be cancelled and simultaneously replaced by a new obligation to deliver the contract amount on the Settlement Date,

provided that the contract amount shall be not less than such amount as from time to time determined and specified by the Bank at its absolute discretion.



2.2 On Maturity Date, the Bank shall exercise all Forward Exchange Contract(s) on behalf of the Customer subject to Clause 2.1 of this Schedule VI. Unless the Customer shall have on or before the Maturity Date by way of an Instruction specified a maturity disposal instruction for the contract amount and such Instruction has been accepted by the Bank, the contract amount will be deposited in the Specified Currency into the settlement account under the name of the Customer. In the case where the Customer does not already have such account(s) with the Bank, the Customer authorizes the Bank to open and maintain in the name of the Customer such account(s) as the Bank deems necessary to effect the Forward Exchange Contract(s) without further notification to the Customer.

### **3. Single Agreement**

All Forward Exchange Contracts are entered into in reliance on the fact that this Schedule VI and all confirmations to the Forward Exchange Contracts form a single agreement between the Bank and the Customer, and the Bank and the Customer would not otherwise enter into any Forward Exchange Contracts.

### **4. Instructions**

4.1 The provisions of these Terms and Conditions relating to instructions (including without limitation Clause 6 of Section I of Schedule I of Part B of these Terms and Conditions (*Instruction*) together with any indemnities provided in these Terms and Conditions) shall apply in respect of any Instructions given by the Customer for the Service.

4.2 The Customer understands and accepts that the Bank shall have the absolute discretion to decide whether to enter into any Forward Exchange Contract with the Customer prior to the Maturity Date of a Deposit. The Bank shall also have the absolute discretion in quoting and agreeing to any forward exchange rate for the purpose of each Forward Exchange Contract.

4.3 The Bank shall be entitled in its absolute discretion to refuse to take any Instructions which in the Bank's opinion are unclear or ambiguous or which would or might cause the Bank to contravene any law or regulation (whether or not having legal and binding effect) and the Bank shall not incur any liability to the Customer as a result of the Bank's refusal to act in such circumstances.

### **5. Standing Instructions**

5.1 The Customer acknowledges and agrees that subject to Clause 4:

(a) Standing Instructions may be placed by the Customer with the Bank by Instructions given in accordance with Clause 4;





(b) the Bank may at any time, at its sole and absolute discretion, refuse to accept a Standing Instruction in light of prevailing market conditions or any other grounds and the Bank shall not be liable for any loss or other consequence arising as a result thereof; and

(c) the Bank may from time to time, at its sole and absolute discretion, prescribe, adopt and/or amend the procedures for the placement and/or acceptance of a Standing Instruction. Details of such procedures from time to time in force can be made available to the Customer upon request.

5.2 If the Instructions consist of more than one Standing Instruction, each of such Standing Instructions shall be treated as an independent Instruction and the Bank's acceptance of one or some of the Standing Instructions is not conditional on other remaining Standing Instructions being accepted by the Bank.

5.3 Subject to Clause 4, Standing Instructions shall remain open for the Bank's acceptance (i) until the close of the last Trading Day in the relevant week (or such other time as the Bank may from time to time in its absolute discretion determine), or (ii) until expressly cancelled by the Customer by notice to the Bank, whichever is earlier.

## **6. Offer Binding**

6.1 Notwithstanding anything contained in the Transaction Documents, the Bank reserves the right at any time at its absolute discretion to refuse to provide the Service or accept any Instruction by the Customer to enter into a Forward Exchange Contract.

6.2 An Instruction by the Customer to enter into a Forward Exchange Contract, once accepted by the Bank, shall be irrevocable and binding upon the Customer.

## **7. Bank acting as Principal only**

7.1 The Bank shall enter into Forward Exchange Contracts as principal only.

7.2 The Customer's rights and obligations under the Transaction Documents, in respect of the Deposit and every Forward Exchange Contract, shall be personal to the Customer and shall not without the Bank's prior written consent be assigned (whether absolutely, by way of security or otherwise) by the Customer or subject to any third party's rights or encumbrances, other than as created under the Transaction Documents.

## **8. Correspondents**



The Customer agrees that the Bank may engage any correspondent, broker or agent on such terms and conditions as the Bank may at its absolute discretion deem fit.

## **9. Information**

The Bank may make available to the Customer various information which may include indicative exchange rates and commentaries on currency trends and such information shall be provided for the Customer's reference only when it is not accompanied by a solicitation or recommendation.

The Customer understands that the Bank does not assume any responsibility for the accuracy, completeness or timeliness of any information provided, where such information is independently prepared by a third party ("**Third Party Information**"). The Bank is not responsible for any decision made by the Customer, or any action or omission by the Customer, as a result of any Third Party Information provided by the Bank.

The mere provision of marketing or promotional materials relating to the Service for general information purposes does not constitute an offer, recommendation or solicitation by the Bank to the Customer.

## **10. Indication of Rates**

Where the Bank provides any indicative forward exchange rate at the request of the Customer, such rates will be provided for the Customer's reference only and shall not be taken as the Forward Exchange Rate at which the Bank will enter into Forward Exchange Contracts. The Bank shall not be under any obligation to enter into any Forward Exchange Contract or accept any Instruction at such indicative rates.

## **11. Confirmations / Statement**

The Bank shall within two (2) Business Days after the day on which the Bank and the Customer have concluded the Forward Exchange Contract provide or make available to the Customer in whatever form and by whatever means as determined by the Bank from time to time a confirmation of the Forward Exchange Contract that has been entered into. The Customer shall have a duty to examine the same and to give immediate notice to the Bank if the Customer considers that any details stated therein are incorrect in any respect. If the Bank does not receive any notice from the Customer within the period stipulated in the confirmation for this purpose, the Customer shall be deemed to have accepted all the transaction details therein contained as true and accurate in all respects and the same shall be conclusive and binding upon the Customer; provided always that the aforesaid shall be subject



to the Bank's right to correct any errors contained therein at any time, and the Bank shall be free from all claims in respect of the Service.

## **12. The Bank's position**

The Customer understands that the Bank or the Bank's employees may take an opposite position to the Customer in any Forward Exchange Contract.

## **13. Representations and Warranties**

13.1 The Customer represents and warrants to the Bank that:

(a) if the Customer is an individual : the Customer is of sound mind and at least 18 years old and not a U.S. citizen or resident;

(b) if the Customer is a company : the Customer is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, it is in good standing;

(c) if the Customer is a partnership : the Customer is a partner (i) by entering into each Forward Exchange Contract, the Customer is not in breach of any of its express or implied duties under the relevant agreement, deed, instrument or other document in respect of the relevant partnership and it is acting in accordance with the terms, express or implied, and conditions and purpose of the partnership with full and absolute and irrevocable power and authority; and (ii) during the life of the Forward Exchange Contracts, it will remain a partner of the partnership;

(d) the Customer is dealing with the Deposit and entering into the Forward Exchange Contract(s) as a principal on the Customer's own behalf and not as trustee or agent;

(e) the Customer understands the nature of the types of currency transactions to be made under the Transaction Documents and is able to assume the risk of loss involved in them;

(f) the Customer enters into the Forward Exchange Contract(s) at its/his sole risk, based on its/his own judgement and not in reliance of any statements or representation of the Bank;

(g) the Customer has made its/his own independent decisions to enter into the Forward Exchange Contract(s) and whether the Forward Exchange Contract(s) is/are appropriate or proper for the Customer is based upon the Customer's own judgment and upon advice from such advisers as the Customer deems necessary;

(h) the Customer has full power, capacity and authority to enter into the agreement constituted by the Transaction Documents and to exercise the Customer's rights and perform the Customer's obligations thereunder, and have obtained all authorisations and consents necessary for the Customer to do so, and such authorisations and consents are in full force and effect and this Schedule VI are binding on the Customer;

(i) the Customer is not relying on any communication (written or oral) of the Bank as investment advice or as a recommendation to enter into any Forward Exchange Contract, and understands that information and explanations related to the terms and conditions of a Forward Exchange Contract shall not be considered as investment advice or a recommendation to enter into any Forward Exchange Contract;

(j) the Customer has not received from the Bank any assurance or guarantee as to the expected results of any Forward Exchange Contract;

(k) the Bank is not acting as a fiduciary or an adviser for the Customer in respect of any Forward Exchange Contract;

(l) no proceedings have been commenced or threatened, and no order or declaration has been made, against the Customer for the Customer's bankruptcy, liquidation or winding up, or for the appointment of a judicial manager, administrator, receiver or similar officer to administer any or all of its/his assets and it/he has not declared itself or himself bankrupt or insolvent;

(m) no Event of Default, or event which, with notice or lapse of time or both, would constitute an Event of Default, with respect to the Customer has occurred and is continuing and no such event or circumstance would occur as a result of the Customer entering into or performing its obligations under this Schedule VI or any Forward Exchange Contract;

(n) the Charge over Deposit or any additional security given to the Bank for the purposes of the Service, any Forward Exchange Contract and/or this Schedule VI is free and clear of any mortgage, charge, pledge, lien, attachment, encumbrances or other security interest; and

(o) all the representations and warranties made by the Customer remain true and accurate at all times. If any of the representation(s) and warranty(ies) herein change(s) or appear(s) likely to change, the Customer shall notify the Bank in writing promptly.

13.2 Each of the representations and warranties contained in this Clause 13 shall be deemed to be repeated at each time an Instruction is given to the Bank and



upon each Forward Exchange Contract is being entered into and shall survive the termination of the Service.

#### **14. Fees and Expenses**

14.1 The Bank reserves the right to impose fees and charges from time to time as the Bank in its absolute discretion thinks fit. The Bank will notify the Customer of any fees or charges (and any changes to them) imposed which may be applicable from time to time. Any applicable amount of tax shall be borne by the Customer absolutely and be deducted from the Deposit or any accounts of the Customer. The Customer will be informed of such deduction.

14.2 The Customer will on demand indemnify and hold harmless the Bank for and against all out-of-pocket expenses, including legal fees, execution fees, stamp duties, tax, levies, charges, debt collection charges, costs of uplifting the Deposit before the Maturity Date, hedging and unwinding costs and expenses, costs of terminating any or all of the Forward Exchange Contracts and any other costs and expenses incidental thereto, incurred by the Bank by reason of the enforcement and protection of its rights under this Schedule VI, the Charge over Deposits or any security documents to which the Customer is a party or by reason of early termination of any Forward Exchange Contract.

#### **15. Indemnities and Disclaimer of Liabilities**

15.1 The Customer undertakes to indemnify and keep the Bank indemnified at all times and hold harmless the Bank against any actions, proceedings, losses, liabilities, expenses or costs (including but not limited to legal costs and expenses, reasonable amount of debt collection agent charges and other expenses on a full indemnity basis) which the Bank may incur and against any claims, actions or demands which may be taken out against the Bank or suffered or incurred (or to be suffered or incurred) by the Bank arising either directly or indirectly out of or in connection with (a) any misrepresentation in or breach of, or failure to perform, the representations, warranties and agreements by the Customer contained in this Schedule VI, (b) the Bank's accepting Instructions given in electronic, verbal, facsimile, telex or by any means whatsoever as permitted by the Bank from time to time and acting thereupon, (c) the Bank's acting, refusing to act or exercising any of its rights in accordance with this Schedule VI or any Forward Exchange Contract, and/or (d) a breach of any provisions of this Schedule VI or any Forward Exchange Contract by the Customer. The Customer shall assume all risks and particularly those arising from error in transmission or in comprehension resulting from placing order by telephone, telex, facsimile or electronic means.

15.2 The Customer agrees that the Bank shall not be liable to the Customer for any liabilities, claims, costs, expenses, losses or damages which may be incurred or sustained by the Customer directly or indirectly as a result of or in connection



with : (a) the Bank acting in reliance upon or compliance with the Instructions; (b) the Bank acting in good faith in accordance with applicable laws, regulations, rules or regulatory requirements, and likewise the terms of the Bank's agreements with other banks or financial institutions even though the acts may be detrimental to the Customer's interests; (c) the termination of any Forward Exchange Contract or uplift of any Deposit, except insofar as the same is caused by the Bank's negligence or wilful misconduct; or (d) the Bank's failure to exercise the Bank's right to terminate any Forward Exchange Contract when the Bank is entitled to do so.

### 15.3 Force Majeure

(a) The Bank shall not be liable for any loss, damage, injury or delay due to : (i) acts of government, acts of war, strikes, lockouts, fire, lightning, flooding, explosion, riots, civil commotion, acts of God, epidemic, pandemic, black-out, or other such emergencies; or (ii) any change in exchange control, laws and regulations or any moratorium or restrictions on currency exchange or remittance; or (iii) any other act or circumstances beyond its control preventing any Forward Exchange Contract from being carried out, in which circumstances none of its branches, subsidiaries, or affiliates shall be responsible therefor and the Customer shall indemnify the Bank and hold the Bank harmless against any loss suffered by the Bank by reason thereof.

(b) In the event of any of the circumstances listed in Clause 15.3(a) above, the Bank shall be entitled (but not obliged) to follow the market practice of other banks in resolving the difficulty caused by such circumstances notwithstanding any provisions in this Schedule VI to the contrary.

### 15.4 Currency Indemnity

Each payment by the Customer to the Bank under this Schedule VI and any Forward Exchange Contract will be made in the Specified Currency(ies). If for any reason the amount received by the Bank (converted to the Specified Currency(ies) as determined by the Bank in its sole and absolute discretion) falls short of the amount in the Specified Currency(ies) payable to the Bank, the Customer will, to the extent permitted by applicable law, immediately pay such additional amount in the Specified Currency(ies) (as determined by the Bank in its sole and absolute discretion) as may be necessary to compensate for the shortfall.

## 16. Payment provisions

16.1 (a) All payments by the Customer under the Transaction Documents and all the settlement payments by the Customer under the Forward Exchange Contracts shall be made in full without set off or counterclaim or any restriction or condition and free from and clear of any (local or foreign) tax or other

deductions and withholdings whatsoever and unless otherwise expressly agreed to the contrary, shall only be deemed made upon the crediting of the same in the agreed currency into such account as the Bank may designate (whether in Hong Kong or abroad) in freely disposable immediately available funds.

(b) If any payment to be made is subject to any tax, deductions or other withholdings, the Customer undertakes to pay to the Bank such additional amounts as may be necessary to ensure the receipt by the Bank is equivalent to the amount which the Bank would otherwise have received had there been no such tax, deductions or other withholdings.

(c) The Customer irrevocably and unconditionally authorizes the Bank to apply amounts in the Customer's name in whatever currency on deposit or account with the Bank or with any of the Bank's branches (whether or not matured or contingent) in reduction of amounts due by the Customer under this Schedule VI.

16.2 All payments or settlement by the Bank to the Customer under the Transaction Documents shall be made by crediting the same in the agreed currency into such accounts as the Customer may designate subject to the payment by the Customer of such fees, other charges and/or commissions as the Bank may impose, provided that the Bank's obligation to pay or settle is subject to the condition precedent that no Event of Default with respect to the Customer has occurred or is continuing and any other conditions precedent as specified by the Bank from time to time.

16.3 No payment to the Bank hereunder (whether under any judgement or court order or otherwise) shall discharge the Customer's obligation or liability in respect of which it was made unless and until the Bank shall have received payment in full in the currency in which such obligation or liability was to be discharged by the Customer.

16.4 If any money paid to the Bank is required to be repaid by virtue of any law relating to insolvency, bankruptcy, dissolution or for any other reason, the Bank shall be entitled to enforce its rights pursuant hereto as if such money had never been paid.

## **17. Payment Disruption**

17.1 Without prejudice to the Bank's other rights under these Terms and Conditions (including this Schedule VI), if by reason of Inconvertibility, Non-transferability or Illiquidity, the Bank is not able, or it would be impracticable for it, to satisfy any payment obligation in respect of any Forward Exchange Contract (in whole or in part) when due in the Specified Currency, the Bank may but is not



obliged to, on giving irrevocable notice to the Customer prior to the due date for payment, settle any such payment (in whole or in part) in U.S. dollar on the due date at the USD Equivalent of any such Specified Currency denominated amount.

17.2 Payments of the USD Equivalent of the relevant Specified Currency amount, determined in accordance with Clause 17.1, will be made in such manner as the Bank may deem fit in its sole and absolute discretion.

17.3 For the purposes of this Clause 17:

**"Governmental Authority"** means any de facto or de jure government (or any agency or instrumentality thereof), court, tribunal, administrative or other governmental authority or any other entity (private or public) charged with the regulation of the financial markets (including the central bank) of the Specified Currency Jurisdiction.

**"Illiquidity"** means the general exchange market in connection with the Specified Currency becomes illiquid as a result of which the Bank cannot obtain sufficient Specified Currency in order to satisfy its payment obligation (in whole or in part) in respect of any Forward Exchange Contract as determined by the Bank in good faith and in a commercially reasonable manner.

**"Inconvertibility"** means the occurrence of any event that makes it impossible for the Bank to convert any amount due in respect of a Forward Exchange Contract in the general exchange market in connection with the Specified Currency, other than where such impossibility is due solely to the failure of the Bank to comply with any law, rule or regulation enacted by any Governmental Authority (unless such law, rule or regulation is enacted after the trade date of the Forward Exchange Contract and it is impossible for the Bank, due to an event beyond its control, to comply with such law, rule or regulation).

**"Non-transferability"** means the occurrence of any event that makes it impossible for the Bank to deliver Specified Currency between accounts inside the Specified Currency Jurisdiction or from an account inside the Specified Currency Jurisdiction to an account outside the Specified Currency Jurisdiction or from an account outside the Specified Currency Jurisdiction to an account inside the Specified Currency Jurisdiction, other than where such impossibility is due solely to the failure of the Bank to comply with any law, rule or regulation enacted by any Governmental Authority (unless such law, rule or regulation is enacted after the trade date of the Forward Exchange Contract and it is impossible for the Bank, due to an event beyond its control, to comply with such law, rule or regulation).



**"Rate Calculation Business Day"** means a day (other than a Saturday, Sunday or public holiday) on which commercial banks are open for general business (including dealings in foreign exchange) in the Specified Currency Jurisdiction and in New York City.

**"Rate Calculation Date"** means the day which is two Rate Calculation Business Days before the due date of the relevant amount under the Forward Exchange Contract.

**"Specified Currency Jurisdiction"** means, in respect of a Specified Currency, the principal financial centre for the Specified Currency provided, however, that:

- (a) in relation to Euro, it means the principal financial centre of such member state of the European Union as is selected by the Bank; and
- (b) in relation to New Zealand dollars, it means either Wellington or Auckland as is selected by the Bank.

**"Spot Rate"** means the spot exchange rate for the purchase of U.S. dollar with the Specified Currency, as selected by the Bank.

**"USD Equivalent"** means the Specified Currency denominated amount converted into U.S. dollar using the Spot Rate for the relevant Rate Calculation Date.

17.4 All notifications, opinions, determinations, certificates, calculations, quotations and decisions given, expressed, made or obtained for the purposes of the provisions of this Clause 17 by the Bank, will (in the absence of gross negligence or wilful default) be conclusive and binding on the Customer.

## **18. Consequences of an Event of Default**

18.1 If an Event of Default occurs, the Bank may uplift the Deposit before the Maturity Date without having any obligation to pay any interest on the Deposit notwithstanding any previously agreed terms, and declare all or any Forward Exchange Contracts terminated as of a date it may in its sole and absolute discretion select (the "**Early Termination Date**"), and the Forward Exchange Contracts and the obligations of the Bank in connection with such Forward Exchange Contracts shall terminate as of such Early Termination Date (whether or not such Event of Default is continuing on that date).

18.2 Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Clause 16.1 and 16.2 in respect of the terminated Forward Exchange Contracts will be required to be made, but without



prejudice to the other provisions of this Schedule VI. The amount, if any, payable in respect of an Early Termination Date will be determined pursuant to Clause 19.

18.3 On or as soon as reasonably practicable following the occurrence or designation of an Early Termination Date, the Bank will make the calculations contemplated by Clause 19 and will provide or make available to the Customer a statement showing information of such calculations, in such form and manner as the Bank in its sole and absolute discretion deems appropriate.

18.4 An Early Termination Amount (as defined below) due in respect of any designated Early Termination Date will be payable on the day on which the Bank shall by notice specify such amount is to be payable.

### **19. Calculation of Early Termination Amount**

19.1 If an Early Termination Date has been designated, the amount, if any, payable in respect of that Early Termination Date (the "**Early Termination Amount**") will be determined by the Bank under this Clause 19 and the provision of Clause 16.1(c) shall apply.

#### 19.2 Close-out Amount

- (1) With respect to each terminated Forward Exchange Contracts or each group of terminated Forward Exchange Contracts, the Bank will calculate, in its sole and absolute discretion, the amount of losses or costs that are or would be incurred by the Bank under then prevailing circumstances (expressed as a positive number) or the amount of gains by the Bank that are or would be realized by the Bank under the then prevailing circumstances (expressed as a negative number) in replacing, or in providing for the Bank the economic equivalent of the material terms of that Forward Exchange Contracts or group of Forward Exchange Contracts, including the payments and deliveries (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Clause 16 in respect of that terminated Forward Exchange Contract or group of terminated Forward Exchange Contracts that would, but for the occurrence of the relevant Early Termination Date, have been required after that date (the "**Close-out Amount**").
- (2) Any Close-out Amount will be determined by the Bank in good faith and the Bank will use commercially reasonable procedures in order to produce a commercially reasonable result. The Bank may determine a Close-out Amount for any group of terminated Forward Exchange Contracts or individual terminated Forward Exchange Contracts but, in the aggregate, for not less than all terminated Forward Exchange Contracts. The Bank will determine each Close-out Amount as of the Early Termination Date

or, if this would not be commercially reasonable, as of the date or dates following the Early Termination Date as would, in the Bank's sole opinion be commercially reasonable.

- (3) Unpaid Amounts in respect of a terminated Forward Exchange Contract or group of terminated Forward Exchange Contracts are to be excluded in all determinations of Close-out Amounts.

### 19.3 Unpaid Amounts

With respect to each terminated Forward Exchange Contract, the Bank will calculate in its sole and absolute discretion, the amounts owing to each party with respect to an Early Termination Date, being the aggregate of (i) in respect of all terminated Forward Exchange Contracts, the amounts that became payable (or would have become payable but for the proviso of Clause 16.2) to such party under Clause 16 on or before such Early Termination Date and which remain unpaid as at such Early Termination Date, and (ii) in respect of each Forward Exchange Contract, for each obligation under Clause 16 which was (or would have been but for the proviso of Clause 16.2) required to be settled by delivery to such party on or before such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered in respect of the relevant Forward Exchange Contract (the "**Unpaid Amount**").

### 19.4 Early Termination Amount

- (1) The Early Termination Amount will be an amount equal to (i) the sum of (A) the Termination Currency Equivalent of the Close-out Amount or Close-out Amounts (whether positive or negative) determined by the Bank for each terminated Forward Exchange Contract or group of terminated Forward Exchange Contract, as the case may be, and (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Bank and less (ii) the Termination Currency Equivalent of the Unpaid Amounts owing to the Customer.
- (2) The Bank may also take into account the cost to uplift the Deposit before the Maturity Date and any other fees and charges remain due by the Customer under this Schedule VI when calculating the Early Termination Amount. If the Early Termination Amount is a positive number, the Customer will pay it to the Bank; if it is a negative number, the Bank will pay the absolute value of the Early Termination Amount to the Customer.

19.5 The parties agree that the amounts recoverable under this Clause 19 are a reasonable pre-estimate of loss and not a penalty. Such amounts are payable for the loss of bargain and the loss of protection against future risks and, except as



otherwise provided in this Schedule VI, neither party will be entitled to recover any additional damages as a consequence of such losses.

## **20. Early withdrawal or settlement by the Customer**

20.1 Early withdrawal of the Deposit or settlement of the Forward Exchange Contract(s) by the Customer before the Maturity Date or Settlement Date is not allowed under the Service. It will be at the sole and absolute discretion of the Bank to allow such withdrawal or settlement in very exceptional circumstances and on such terms and conditions as the Bank may think fit.

20.2 Should the Bank agree to such early withdrawal or settlement by the Customer, the Bank reserves the right not to pay any interest on the Deposit. The Bank shall be entitled to determine conclusively an amount covering any costs, charges, fees, expenses, losses, hedging and unwinding costs and expenses, liabilities and damages suffered or incurred by the Bank to uplift the Deposit or terminate any or all of the Forward Exchange Contract(s) before the Maturity Date or Settlement Date and any other costs and expenses incidental thereto (collectively, the "**Loss Amount**"), and to deduct the Loss Amount from the principal of the Deposit or other amounts (if any) in relation to the Deposit or Forward Exchange Contract(s) which are otherwise payable to the Customer. In the event that the principal of the Deposit or other amount (if any) are insufficient to indemnify or reimburse the Bank the Loss Amount in full, the Bank shall be entitled at any time to claim and recover from the Customer any amount of the shortfall and without notice to the Customer, to exercise its rights of set-off under these Terms and Conditions.

20.3 Partial early withdrawal of the Deposit will not be allowed at any time.

20.4 This Clause 20 shall not in any way prejudice the Bank's other rights under these Terms and Conditions (including this Schedule VI), in particular, the operation of Clauses 17, 18 and 19 in this Schedule VI.

## **21. Full Indemnity**

21.1 Without prejudice to the rights of the Bank hereunder, the Customer shall pay all costs, losses, damages, charges and expenses (including legal fees **on a full indemnity basis**) whatsoever and howsoever incurred by the Bank in connection with or arising out of or in any way consequential upon the termination of the Forward Exchange Contracts as aforesaid, and in the enforcement and preservation of the Bank's rights under this Schedule VI or any Forward Exchange Contracts.

21.2 The Customer shall immediately upon the Bank's request execute and sign all such documents and do or procure the doing of all such other acts and things



as the Bank may deem necessary or appropriate to secure to the Bank the full benefits of all of its rights to the Account or any part or parts thereof and shall pay all legal fees (**on a full indemnity basis**) and other costs and disbursements (and any goods and services tax payable in connection therewith) incurred in connection with demanding and enforcing the payment of moneys due or owing to the Bank or otherwise howsoever in enforcing any of its rights under this Schedule VI and any Forward Exchange Contract.

## **22. Set-off and Restrictions**

22.1 For the avoidance of doubt, the Bank's rights to retain, set-off, appropriate or apply any obligations owed by the Bank to the Customer under Clause 3.4 of Part A of these Terms and Conditions (*Set-off and Lien*) shall include any collateral held by the Bank or any deposits placed in the Bank (whether fixed or term deposits, whether matured or not, whether subject to any special conditions, regardless of the currency, place of payment or booking office of the obligation).

22.2 If an obligation is unascertained, the Bank may estimate that obligation and set off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

22.3 For so long as any obligations are outstanding or owing or unpaid to the Bank by the Customer:

(a) the Bank shall be entitled without prior notice to the Customer, to withhold (including by way of earmarking any amount in any account), and to refuse to accept or honour any orders for or payment or withdrawal of the whole or any part of the account. The Customer undertakes that so long as any obligations are outstanding or owing or unpaid to the Bank by the Customer, the Customer shall not revoke or alter the Customer's Instructions with respect to any account designated by the Customer or the Bank for the purpose of this Schedule VI; and

(b) the Customer shall not withdraw or in any way cause or permit to be withdrawn, or assign, deal with or create (or agree, conditionally or unconditionally, to assign, deal with or create) or have outstanding any mortgage, lien, charge, or other security on or over all or any part of the account (other than as created under the Transaction Documents) without the Bank's prior consent in writing.

22.4 The Customer agrees that in the event any of the Customer's creditors should seek to attach the account by any proceedings or otherwise or in the event that a liquidator, receiver, administrator, judicial manager or other similar officer should be appointed by the Customer or over any of the Customer's assets or properties, the Bank's right of set-off shall be deemed to have arisen immediately before the



commencement of such proceedings or before such appointment (as the case may be).

### **23. Collateral**

23.1 The Customer undertakes to provide or deliver to the Bank a Charge over Deposit or such other collateral (including but not limited to cash, bonds and any other assets or property which are acceptable to the Bank) as the Bank may from time to time require to secure, collateralize or otherwise support the Customer's obligations to the Bank under this Schedule VI, on such terms or under such arrangements as the Bank may request. For the avoidance of doubt, (a) the acceptability of any asset or property as collateral, and (b) the valuation of such collateral shall be determined at the sole discretion of the Bank and may be subject to changes from time to time at the sole and absolute discretion of the Bank.

23.2 The Customer shall not withdraw from the Bank any collateral except to the extent that the Bank confirms in writing that such asset or property which forms part of the collateral is not required in respect of any outstanding liabilities under this Schedule VI. The Bank is entitled at any time, without prior notice or restriction, to appropriate the whole or any part of the collateral held in the discharge of any indebtedness of the Customer to the Bank under this Schedule VI or otherwise, and for the purposes of so doing, may convert such sums (or any part thereof) into any currency other than that in which they are held. The rates used will be at the sole discretion of the Bank but will be the market rates for the amounts so converted.

### **24. No Deposit Protection**

**The Customer understands and acknowledges that: notwithstanding anything to the contrary which may be contained in this Schedule VI or any other related documents,**

**(i) any deposit in respect of the Currency Switch service mentioned in this Schedule VI or any other related documents; or**

**(ii) any other terms used in this Schedule VI or any other related documents which may be commonly or legally referred to as deposits (including, without limitation, any principal, proceeds, cash, fund, money, amount, sum or credit balance in or on any account of whatsoever nature or howsoever and wheresoever held as margin or collateral or for whatsoever purpose)**

**is/are not protected deposit(s) as defined in the Deposit Protection Scheme Ordinance as amended from time to time ("DPS Ordinance") and is/are not protected by the Deposit Protection Scheme established under the DPS Ordinance. If any related document also applies to other services of the Bank,**



subject to applicable laws, the Bank shall, in its absolute discretion, determine whether and to what extent such related document should apply to any matter contemplated hereunder or under any other related documents, and the Customer agrees that such determination shall be final, conclusive and binding on the Customer. The Customer understands and confirms that the foregoing is not and shall not, in any way, affect any of the Bank's rights and the Customer's obligations hereunder or under any other related documents or at law. Deposit includes any part and any kind of it.

## 25. Miscellaneous

25.1 A certificate by the Bank's officer as to:

- (a) the amount at any time owing by the Customer to the Bank whether under the Transaction Documents or otherwise;
- (b) the amount of settlement payment due or owing by the Customer to the Bank under any Forward Exchange Contract;
- (c) the Forward Exchange Rate; or
- (d) the amount of fees, expenses and balances payable or applicable under or in respect of the Transaction Documents,

shall in the absence of manifest error be final, conclusive and binding against the Customer.

25.2 The Bank shall have the right to amend any provisions of this Schedule VI or introduce additional terms and conditions from time to time. The provisions of these Terms and Conditions relating to amendment (including the methodology adopted and the deemed acceptance thereof) shall apply in respect of such amendment.

25.3 All provisions of this Schedule VI, which by their nature should survive, including, without limitation, warranty, disclaimers, limitations of liability, indemnities, governing law will survive termination of the Service.



### Customer Acknowledgement and Consent

*(only applicable for customer with Investment Account whereas the Currency Switch service has not been activated)*

1. I/We understand and confirm that this “Schedule VI: Currency Switch” shall be read in conjunction with and form an integral part of “OCBC Bank (Hong Kong) Limited Terms and Conditions of Investment Account”. The term “these Terms and Conditions” in this Schedule VI shall refer to the “OCBC Bank (Hong Kong) Limited Terms and Conditions of Investment Account” and this “Schedule VI: Currency Switch”.
2. I/We have read and understood all the terms and conditions in “OCBC Bank (Hong Kong) Limited Terms and Conditions of Investment Account” and “Schedule VI: Currency Switch”, and agree that the service of Currency Switch shall be governed by the same (together with all of their amendments, revisions, replacements or supplements from time to time) which shall be binding on me/us. Should there be any inconsistency between the English and Chinese version, the English version shall always prevail.
3. I/We agree to add the service of the Currency Switch to my/our investment account(s) no(s): \_\_\_\_\_ of the Bank.
4. I/We acknowledge receipt of Copy of this “Schedule VI: Currency Switch” duly signed by me/us.

*\*Specimen signature(s) & signing arrangement follow the “Account Opening Form (Individual Customer)” / resolution (for company or entity) in the Bank’s latest record of the above-mentioned investment account(s).*

*(\*for Individual Customer)*

Signature(s): \_\_\_\_\_



Investment Account Holder Name:

HKID/ Passport No.:

Contact Phone No.:

Date:





(\*where customer is a limited company)

[For and on behalf of

.....]

\_\_\_\_\_  
\*Authorised Signature(s) :

Date:

(\*where customer is a sole proprietor)

\_\_\_\_\_  
Name : (\*Sole Proprietor)

Hong Kong Identity Card No.:

Trading under the Name of: .....

(chop).....

Date :

(\*where customer is a partnership)

\_\_\_\_\_  
Name: (\*Partner)

Hong Kong Identity Card No.:

Trading under the Name of : .....

\_\_\_\_\_  
Name: (\*Partner)

Hong Kong Identity Card No.:

(chop).....

Date :

**For Bank use Only**

Name of Handling Staff		Name of Non-sales Staff (Checked & S.V. )	
HKMA Reg. No.		HKMA Reg. No.	
Signed by Handling Staff		Signed by Non-sales Staff	