



**Maybank Kim Eng Securities Pte Ltd  
Terms and Conditions**

**for**

**Trading in Contracts for Difference**

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## Part II. TERMS AND CONDITIONS FOR TRADING IN CONTRACTS FOR DIFFERENCE

This Part II of these T&C shall govern all CFDs (as hereinafter defined) entered into between Maybank Kim Eng and the Client. In the event of any conflict between this Part II of these T&C and Part I of these T&C, this Part II of these T&C shall prevail.

### 1. INTERPRETATION

#### 1.1 Definitions

In this Part II of these T&C:

“**Account**” means the account established under Clause 4.1;

“**Account balance**” is the balance of the Client’s Account with Maybank Kim Eng (whether a credit or debit balance) taking into account credits and debits to the Account including commission charges, credit/debit of financing charges and any payments made under Clause 11;

“**Business Close**” means the time at which the market of the Exchange on which the Contract Security is quoted normally closes on a Local Business Day;

“**Business Day**” means a day (other than a Saturday or Sunday or public holiday) on which banks and foreign exchange markets are or will be open for business in Singapore;

“**Calculation Agent**” means Maybank Kim Eng. For the purpose of these Terms, any reference to Maybank Kim Eng shall be deemed to include a reference to Calculation Agent unless otherwise specified;

“**CFD**” means an over-the-counter (“OTC”) contract for difference, from time to time, branded and traded by Maybank Kim Eng under the name “contracts for difference” or “CFDs”. A CFD transaction allows the Client to make a profit or loss from fluctuations in the price of a Contract Security without actually owning the Contract Security;

“**Closing Date**” means, in relation to a CFD, the date on which the Client accepts the Closing Price of the Contract Security, or on which a Closing Date is deemed to have occurred in accordance with these Terms, or on which Maybank Kim Eng elects to close the CFD in accordance with these Terms;

“**Closing Price**” means the Contract Security Price as determined by the Calculation Agent at the time Maybank Kim Eng receives, issues, or is deemed to issue, the Closing Notice;

“**Closing Notice**” means the notice given by one party to the other to close any CFD under Clause 10;

“**Closing Value**” means the Closing Price multiplied by the Contract Quantity or as otherwise notified to the Client by the Calculation Agent in its sole and absolute discretion;

“**Confirmation**” means, in relation to any CFD, one or more documents or other confirming evidence exchanged between Maybank Kim Eng and the Client, confirming all of the terms of the CFD;

“**Contract**” means a Transaction identified in the Confirmation or contract note as a “Contract for Difference” or “CFD”;

“**Contract Quantity**” means the number of Contract Securities to which the CFD relates;

“**Contract Security**” means the underlying reference security that forms the subject of the CFD;

“**Contract Security Price**” means the last traded price of the Contract Security or as determined by the Calculation Agent in its sole and absolute discretion;

“**Contract Value**” means the Contract Security Price multiplied by the Contract Quantity or as otherwise notified to the Client by the Calculation Agent in its sole and absolute discretion;

“**Corporate Event**” means the occurrence of any of the following in relation to the issuer of the Contract Security to which the Client’s CFD directly or indirectly relates:

- (a) any rights scrip bonus or other issue of shares/equities of whatever nature;
- (b) acquisition by the issuer of its issued shares/equities;
- (c) any reduction of share/equity capital;
- (d) any amalgamation or reconstruction affecting the shares/equities concerned; or
- (e) any other event which in Maybank Kim Eng’s reasonable opinion has a diluting or concentrating effect on

the market value of the Contract Security;

“**Client’s information**” means any data regarding the Client; and includes any information obtained at the time of account opening, Client trading details, funds, and any other information available to Maybank Kim Eng;

“**Excess Margin**” means the amount of Margin plus any amount payable by Maybank Kim Eng to the Client at that time and less any amount payable by the Client to Maybank Kim Eng at that time;

“**Exchange**” means, in relation to a Contract Security, any financial market on which the Contract Security is able to be traded on the following equities markets: SGX-ST, LIFFE, Eurex, LME, IPE, OMLX, Euronext, LSE, ASX, CBOT, CME, OM-Stockholm, MIT, and any other market added by Maybank Kim Eng from time to time;

“**Force Majeure Event**” refers to any cause preventing Maybank Kim Eng from performing any or all of its obligations hereunder which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of Maybank Kim Eng including but without limitation to events such as fire, earthquake, flood, lightning, riots, strikes, lockouts, government actions, war, telecommunication disruption, computer or system malfunctions or similar or other events;

“**Free Equity**” means the GLV of the Client’s Account less any Margin and any amounts payable by the Client to Maybank Kim Eng in connection with a CFD, calculated by Maybank Kim Eng on an aggregate basis across all the Client’s open CFDs;

“**GLV**” means the balance of the Client’s Account if the Client were to close out all CFDs at the current market price (less any transaction charges or adjustments), calculated by Maybank Kim Eng on an aggregate basis across all open CFDs;

“**Initial Margin**” means an amount required to be deposited by the Client with Maybank Kim Eng, in accordance with Clause 16;

“**ITP**” has the meaning set out in Clause 7.1;

“**Local Business Day**” means, in relation to a CFD, a day (other than a Saturday or Sunday or public holiday) on which banks and foreign exchange markets are or will be open for business in the jurisdiction of the market of the Exchange on which the relevant Contract Security is quoted;

“**Long Party**” means the party identified as having notionally bought the Contract Security;

“**Margin**” means Initial Margin or Variation Margin or both;

“**Manifest Error**”, means any error, omission or misquote (whether an error of Maybank Kim Eng or any third party) which is manifest or palpable including a misquote by the Maybank Kim Eng dealer taking into account the current market and currently advertised quotes, or any error or lack of clarity of any information, source, commentator, official, official result or pronunciation. The fact that the Client may have entered into, or refrained from entering into, a corresponding financial commitment, contract or trade in reliance on a CFD entered into with Maybank Kim Eng (or that the Client has suffered or may suffer any loss whether direct, indirect consequential or otherwise) is deemed irrelevant as a factor and shall not be taken into account in determining whether a situation amounts to a Manifest Error;

“**Margin call**” is Maybank Kim Eng’s issue of request to the Client, to top up any shortfall of funds in the Client’s Account;

“**Market Disruption Event**” means, (A) in respect of any Contract Security, (i) any reclassification or change of such Contract Security that results in a transfer of or an irrevocable commitment to transfer all of such Contract Security outstanding to another entity or person, (ii) any consolidation, amalgamation, merger or binding share exchange of the issuer of the Contract Security with or into another entity or person (other than a consolidation, amalgamation, merger or binding share exchange in which such issuer is the continuing entity and which does not result in a reclassification or change of all of such Contract Securities outstanding), (iii) any takeover offer, tender offer, exchange offer, solicitation, proposal or other event by any entity or person to purchase or otherwise obtain 100% of the outstanding Contract Securities of the issuer that results in a transfer of or an irrevocable commitment to transfer all such Contract Securities (other than such Contract Securities owned or controlled by such other entity or person), (iv) if trading in respect thereof or in respect of the relevant Exchange on which Maybank Kim Eng’s CFD prices are based is suspended or limited for any reason whatsoever, (v) an unusual movement in the level of, or the unusual loss of liquidity in respect thereof or Maybank Kim Eng’s reasonable anticipation of the occurrence of the same, (B) in respect of the issuer of any Contract Security, if it has entered into or is the subject of insolvency or liquidation proceedings or (C) any event which causes a material market disruption in respect of the underlying Contract Security or relevant Exchange on which Maybank Kim Eng’s CFD prices are based;

“**Market Information Sheet**” means the document issued by Maybank Kim Eng, clarifying the terms of business. Where applicable the Market Information Sheet includes information such as product specifics, commission charges, finance charges, software fees, data fees and any other information deemed necessary;

“**SFA**” means the Securities and Futures Act, Chapter 289 of Singapore;

“**SGX-ST**” means the Singapore Exchange Securities Trading Limited;

“**Short Party**” means the party identified as having notionally sold the Contract Security;

“**Transaction**” means a CFD made between the Client and Maybank Kim Eng and any other transaction which both parties agree shall be a Transaction;

“**Variation Margin**” means an amount deposited by the Client with Maybank Kim Eng under Clause 16 including any increase or reduction therein arising under Clause 11.

1.2 The parties agree that a CFD is closed out by way of cash settlement and without a physical exchange of the Contract Security.

1.3 The parties agree that the term of each CFD continues until the Closing Date.

## **2. GENERAL**

2.1 The Client acknowledges, recognises and understands the risks associated with CFDs, and has read and understood the risks described in Maybank Kim Eng’s Risk Disclosure Statement.

2.2 The Client acknowledges that:

(a) entering in CFDs involves trading on the outcome of the price of the relevant Contract Security and, without prejudice to Clause 1.2, the Client will not be entitled to delivery of, or be required to deliver, the underlying Contract Security, the ownership thereof, interest or any other rights in respect of the underlying Contract Security; and

(b) all CFDs entered into are open-ended margined products that require Margin payments, funding or financing on a daily basis.

2.3 If the Client comprises more than one person this Part II of these T&C binds each of them jointly and severally.

2.4 Anything permitted to be done by Maybank Kim Eng in accordance with this Part II of these T&C may be done in its sole and absolute discretion, and any opinion or view required to be formed by Maybank Kim Eng may be formed in its sole and absolute discretion.

## **3. CAPACITY IN WHICH PARTIES ACT**

3.1 Each of Maybank Kim Eng and the Client shall act as principal in entering into a CFD and exercising its rights and performing its obligations under or pursuant to that CFD or this Part II of these T&C.

## **4. ESTABLISHMENT OF ACCOUNT AND MANAGEMENT OF CLIENT DATA**

4.1 Upon acceptance of an Account Application Form, Maybank Kim Eng may at its discretion and in accordance with its general operating procedures open an Account in the name of the Client, through which the Client may effect Transactions in CFDs.

4.2 The Client is responsible for ensuring that monies sent to Maybank Kim Eng are correctly designated, including where applicable, that the monies are by way of Margin.

4.3 All monies credited to the Client’s Account shall, unless permitted by any applicable law or regulatory rules, be paid into a segregated bank account established and maintained by Maybank Kim Eng for its clients and the Client acknowledges that where monies are so paid into a segregated bank account, such monies may be commingled with the monies deposited into the same bank account on account of Maybank Kim Eng’s other clients.

4.4 Maybank Kim Eng reserves the right to close or suspend the Client’s Account at any time for any reason, with or without notice to the Client including, without limitation, if:

(a) Maybank Kim Eng has reasonable concerns in relation to credit worthiness or financial status of the Client, verification of the Client’s identity, money laundering or any breach of applicable laws or regulatory rules;

(b) the Client breaches any of these T&C or any other terms of any agreement between the Client and Maybank Kim Eng;

- (c) the Client fails to meet any payment obligation to Maybank Kim Eng under these T&C or any other terms with Maybank Kim Eng;
  - (d) Maybank Kim Eng has reasonable concerns that the Client does not have a sufficient understanding of the nature of, or the risks of, CFD trading;
  - (e) the Client has made any misrepresentation to Maybank Kim Eng;
  - (f) the Client acts in an abusive manner, as determined by Maybank Kim Eng in its sole and absolute discretion, to any representative of Maybank Kim Eng;
  - (g) the Client fails to provide any information requested by Maybank Kim Eng in relation to any credit checks undertaken by Maybank Kim Eng; or
  - (h) the existence or operation of the Account is or may, in the determination of Maybank Kim Eng in its sole and absolute discretion, be in contravention of any applicable law.
- 4.5 In addition, the Client specifically and unconditionally agrees that Maybank Kim Eng has the right to close or suspend the Account by notice to the Client if for any reason whatsoever Maybank Kim Eng no longer wishes to enter into CFDs with the Client.
- 4.6 The Client authorises Maybank Kim Eng to use the Client's information to perform credit and identity checks in relation to the Client at any time as it thinks fit including but not limited to obtaining bankers' references, making enquiries from credit reference agencies and fraud prevention agencies and any other enquiries Maybank Kim Eng reasonably sees fit. The Client understands that credit reference agencies will maintain a record of any enquiry made to them and the information given to them. Maybank Kim Eng may refuse to carry out an instruction or transaction as a result of any credit reference check.
- 4.7 The Client agrees that Maybank Kim Eng and/or its affiliates may store and process the Client's information on their computers and in any other manner which Maybank Kim Eng and/or its affiliates think fit.
- 4.8 The Client agrees that Maybank Kim Eng and/or its affiliates may use the Client's information to provide services under these T&C, manage the Client's Account, provide statements and related services, for assessment and analysis (including market and product analysis) and to develop, improve or market Maybank Kim Eng's and/or its affiliates' services.
- 4.9 Maybank Kim Eng and/or its affiliates shall be entitled to disclose the Client's information without prior reference to or consent from the Client (including information as to late payments) to:
- (a) comply with any law, order, judgment, decree, or any rule, regulation, request or inquiry of or by any government, court, administrative or regulatory agency or commission, other governmental or regulatory authority or any self-regulatory body, including but not limited to any regulator of Maybank Kim Eng's business or in any legal or regulatory proceedings in which Maybank Kim Eng or such affiliate is involved;
  - (b) credit reference agencies, fraud prevention agencies or to any other person Maybank Kim Eng reasonably believes to be seeking a reference or credit reference in good faith. In particular, Maybank Kim Eng shall be entitled to do so if the Client fails to make any payment when due, is in breach of these T&C, provides Maybank Kim Eng with false or inaccurate information or if Maybank Kim Eng suspects fraud on the part of the Client; and
  - (c) any person who provides a service to Maybank Kim Eng or its affiliates or acts as its or its affiliates' agent or sub-contractor (including in connection with legal proceedings), on the understanding that such person will keep the information confidential.
- 4.10 The Client agrees an account limit will be set by Maybank Kim Eng which may be varied from time to time according to the Client's credit status and the amount of funds credited in its Account. The Client agrees that Maybank Kim Eng may, in its sole and absolute discretion, apply a limit to:
- (a) the Contract Value of a CFD which the Client may enter into; or
  - (b) without prejudice to Clause 18.2 the amount of any loss or liability to which the Client may be exposed.

## 5. OPENING A CONTRACT

- 5.1 On any Local Business Day, the Client may request Maybank Kim Eng (through the ITP (as defined below), by telephone or otherwise) to quote the price at which Maybank Kim Eng may be prepared to enter into a CFD. The Client acknowledges that a price quotation given by Maybank Kim Eng in accordance with these T&C does not constitute an offer to enter into or close a CFD.

- 5.2 Immediately upon receiving the quote and in every case during the trading hours of the relevant Exchange, the Client may (through the ITP, by telephone or otherwise) offer to enter into a CFD with Maybank Kim Eng at the quoted price. If, under the rules of the relevant Exchange, the Contract Security can only be purchased in a specified amount or in multiples of a specified amount, the Client must ensure that the Contract Quantity of the CFD set out in the offer by the Client is in the specified amount or a multiple of the specified amount, as applicable. All CFDs must be entered into in accordance with any applicable rules of the relevant Exchange.
- 5.3 Once an offer is received by Maybank Kim Eng, such offer is binding on the Client provided that the Client may give an instruction to withdraw, cancel, revoke or vary a previous offer in the manner set out in Clause 5.4.
- 5.4 Where a Client gives Maybank Kim Eng an instruction to withdraw, cancel, revoke or vary a previous offer, Maybank Kim Eng shall not be obliged to execute such withdrawal, cancellation, revocation or variation unless the previous offer has not yet been executed, and provided that the withdrawal, cancellation, revocation or variation, as the case may be, will not prejudice Maybank Kim Eng's position.
- 5.5 Maybank Kim Eng is under no obligation to accept the Client's offer to enter into a CFD, and without limitation, Maybank Kim Eng's acceptance of the Client's offer to enter into a CFD may be subject to:
- (a) the Client having, at Maybank Kim Eng's determination and at its sole and absolute discretion, available and sufficient Free Equity in the Account;
  - (b) Maybank Kim Eng's receipt of an amount of Margin satisfying Maybank Kim Eng's margin requirements in respect of that CFD, if such amount was not already credited in the Account; and
  - (c) the Client not exceeding any limit applying to the Client under Clause 4.10 and/or Clause 5.10.
- 5.6 A CFD shall be deemed executed at Maybank Kim Eng's quoted price upon Maybank Kim Eng's acceptance of the Client's offer.
- 5.7 For the avoidance of doubt, nothing in these T&C obliges Maybank Kim Eng to enter into any CFD with or to act on any instruction by the Client, and Maybank Kim Eng may refuse to enter into any CFD or otherwise act on any instruction in respect of a CFD without giving any reason.
- 5.8 If Maybank Kim Eng accepts the Client's offer to enter into a CFD, Maybank Kim Eng will issue to the Client a Confirmation of that CFD promptly after it has been entered into, but failure by Maybank Kim Eng to issue a Confirmation will not prejudice or affect that CFD. Maybank Kim Eng will not have any liability as a result of a failure to issue a Confirmation. If Maybank Kim Eng decides not to accept the Client's offer to enter into a CFD, Maybank Kim Eng will advise the Client of that decision promptly.
- 5.9 The Client undertakes to examine the terms of each Confirmation in respect of a CFD immediately upon receipt and to notify Maybank Kim Eng within 24 hours of receipt of the Confirmation of any disputed detail in the Confirmation. Upon receipt of notice as to a disputed detail, Maybank Kim Eng will investigate the matters disputed and the Client will cooperate with Maybank Kim Eng in good faith to resolve the dispute. The Client will, notwithstanding any such dispute, continue to satisfy the Client's obligation to pay Margin calls made by Maybank Kim Eng in respect of the relevant CFD as if the details contained in the Confirmation were correct and not the subject of dispute. For the avoidance of doubt, unless the Client so notifies Maybank Kim Eng within 24 hours of receipt of the Confirmation, the Client agrees that the contents of the Confirmation, in the absence of Manifest Error, will be conclusive evidence of the CFD.
- 5.10 Maybank Kim Eng may, in its sole and absolute discretion, limit the value of CFDs the Client may have outstanding by prior written notice to the Client:
- (a) beyond which if the Client wishes to enter into any further CFDs, the Client must seek and obtain risk approval from Maybank Kim Eng; and
  - (b) beyond which the Client may not enter into any further CFDs whatsoever.
- Maybank Kim Eng may vary this limit at any time by prior written notice to the Client.
- 5.11 The Client acknowledges that if the Client gives Maybank Kim Eng standing instructions to enter into a CFD when a particular price level is reached in the market for the Contract Security, the price at which the CFD is entered into might not be that exact price because Maybank Kim Eng has the discretion not to enter into the CFD until it has satisfied itself that it can hedge its exposure.
- 6. PRICING**
- 6.1 Maybank Kim Eng will quote prices at which it is prepared to enter into CFDs with the Client. The Client acknowledges that it is possible that errors may occur in the prices of CFDs quoted by Maybank Kim Eng, which

may be due to errors in the prices of the underlying Contract Securities. In such circumstances, without prejudice to any rights it may have under statute or common law, Maybank Kim Eng reserves the right to cancel any CFD which purports to have been made (whether or not confirmed by Maybank Kim Eng) at a price which was, or ought reasonably to have been known to either party to be, materially incorrect at the time of the CFD.

- 6.2 Without limiting the generality of Clause 26, except in the case of fraud by Maybank Kim Eng, Maybank Kim Eng does not accept any liability for any loss or damage suffered by the Client as a result of the Client's reliance on a price which the Client knew, or ought reasonably to have known, to be materially incorrect.
- 6.3 Maybank Kim Eng's current quotes will be quoted on request and are usually available on the ITP. The Client can only offer to enter into a CFD at Maybank Kim Eng's currently quoted price for the relevant Contract Security and within any applicable minimum/maximum trade size (unless otherwise agreed by Maybank Kim Eng). The quote will be given for the Contract Security the Client requests.
- 6.4 A quoted price may change at any time after it has been quoted and prior to the use thereof by the Client in making an offer to enter into a CFD based on such quoted price. If a quote is made to the Client over the telephone, the Client may only offer to enter into a CFD on that quote during the same telephone conversation in which the quote was given. Quotes, which are given as 'indication only' or which have been communicated to the Client as being no longer valid cannot be used by the Client as a basis for making an offer to enter into a CFD. For the avoidance of doubt, where the Client offers to enter into a CFD on a current valid quote, such offer is always subject to acceptance by Maybank Kim Eng in accordance with this Part II of these T&C.

## **7. INSTRUCTIONS**

- 7.1 The Client may only enter into CFDs with or otherwise give instructions to Maybank Kim Eng using the telephone or via an Internet Trading Platform ("ITP"), unless Maybank Kim Eng agrees to accept other forms of communication. Maybank Kim Eng is not obliged to provide ITP access to the Client. If Maybank Kim Eng provides the Client with access to an ITP, a password will also be provided to the Client.
- 7.2 The Client should assume that Maybank Kim Eng's telephone lines are recorded (although Maybank Kim Eng is not obliged to so record) and the Client hereby agrees to the recording of all conversations between the Client or the Client's Agents (as hereinafter defined) and Maybank Kim Eng. All such recordings shall be Maybank Kim Eng's exclusive property and may be used for any purpose by Maybank Kim Eng, including as evidence in any dispute. Notwithstanding the foregoing the Client should keep the Client's own timed and dated written records of the Client's Transactions and dealings with Maybank Kim Eng.
- 7.3 When placing an offer to trade using the telephone, the Client will be required to give the Client's name and account number. The Client is not permitted to make an offer to trade, and Maybank Kim Eng reserves the right not to accept any such offer to trade, without this information.
- 7.4 Maybank Kim Eng will treat the Client as having entered into a CFD using the telephone if it accepts an offer in good faith from a person providing the Client's name and account number. The Client acknowledges and agrees that Maybank Kim Eng's personnel cannot be expected to recognise the Client's voice (or that of the Client's Agent (as hereinafter defined)) in any circumstances and Maybank Kim Eng is under no duty to enquire about the identity of any person who gives the Client's name and account number.
- 7.5 When making an offer to enter into a CFD via the ITP, the Client will be given access to the Account upon inputting the account number and relevant password.
- 7.6 Offers to enter into CFDs made via the ITP will be confirmed electronically via the ITP, which will be followed by the issuance by Maybank Kim Eng of a Confirmation.
- 7.7 If the Client is in any doubt whatsoever as to the validity of any CFD entered into for any reason, including (but not limited to) by reason of a breakdown in communication leading to a cessation of connection between Maybank Kim Eng and the Client, it is the Client's sole responsibility to contact Maybank Kim Eng immediately by telephone in order to obtain clarification as to the validity of the CFD.
- 7.8 The Client must not disclose the Client's password to any person other than the Client's Agent (if any). The Client should not keep records of both together in any location or records of the Client's account number with anything that identifies the Client's name. If Maybank Kim Eng has provided the Client a card or any similar device bearing the Client's account number and/or password, the Client must keep the same safe and confidential and separate from any other items that identify the Client's name. The Client must immediately inform Maybank Kim Eng and apply for a new account number and/or password if the Client is aware or suspects that a third party has ascertained the Client's account number or password or that any person other than the Client (or the Client's Agent) is transacting using the Client's account.

- 7.9 In the case of offers to enter into CFDs made via the ITP, Maybank Kim Eng is under no obligation to recognise the domain or address from which the Client's order or instruction emanates.
- 7.10 The Client will be fully responsible for (a) in the case of communication by telephone, all acts and omissions of any person giving the Client's name and account number, and (b) in the case of communication via the ITP, all acts and omissions using the Client's account number and password, including (in both cases) all CFDs entered into and instructions given as if such acts, omissions, entry into the CFDs and instructions were done, made or given by the Client and as if the person using the Client's name, account number and/or password (as the case may be) were the Client.
- 7.11 Maybank Kim Eng recognises that in some circumstances it may be necessary for the Client to authorise a third party to operate the Account. If the Client wishes to do this, Maybank Kim Eng's prior consent is required, such consent to be given or withheld at Maybank Kim Eng's sole and absolute discretion, and Maybank Kim Eng will require the same information, including that relating to the verification of identity, from the person the Client proposes as is required from the Client in order to open the Account. In addition both the Client and the person the Client wishes to authorise to operate the account will be required to execute and deliver to Maybank Kim Eng an agency agreement in the form required by Maybank Kim Eng authorising and appointing such person (an "Agent") to operate the Client's Account. The Client will be fully responsible for all acts and omissions of the Agent including all CFDs entered into and instructions given by such Agent as if such acts, omissions, entry into CFDs and instructions were done, made or given by the Client and as if the Agent were the Client. Maybank Kim Eng shall be entitled to accept instructions from such Agent until the expiration of five (5) Business Days upon receipt (including the Business Day of receipt) of a written notice from the Client stating that the authority of the Agent is revoked. Such written notice (to be effective) must be sent to Maybank Kim Eng's Client Services Department by post or by personal delivery.
- 7.12 Notwithstanding the above, Maybank Kim Eng shall be entitled (by giving reasonable notice) to refuse to accept instructions from any Agent for any reason whatsoever and to treat the appointment of any such Agent as terminated. For the avoidance of doubt, if the Client appoints any Agent, the Client will still be treated as Maybank Kim Eng's customer for the purpose of the SFA.
- 7.13 Maybank Kim Eng shall bear no liability whatsoever for failing to comply with any instruction of the Client or for exercising or failing to exercise any discretion, right, power or authority conferred upon Maybank Kim Eng by this Part II of these T&C.
- 7.14 Maybank Kim Eng shall be entitled (but not be obliged) to verify and be satisfied with respect to the identity of the person purporting to give instruction or the source and origin of such instruction and Maybank Kim Eng may elect not to rely or act upon any such instruction unless and until Maybank Kim Eng is satisfied as to the matters on which Maybank Kim Eng seeks verification.
- 7.15 In the event that Maybank Kim Eng decides to act on any instruction or is otherwise under an obligation to act on any instruction, Maybank Kim Eng shall be allowed such amount of time to act and execute the instruction as may be reasonable, having regard to the systems and operations of Maybank Kim Eng and the other circumstances then prevailing, and shall not be liable for any loss arising from any delay on the part of Maybank Kim Eng in acting on or executing the instruction.

## **8. PAYMENTS FOR DIFFERENCE**

- 8.1 Following Business Close on each Local Business Day during the term of a CFD, the Calculation Agent will determine the Contract Value of the CFD at Business Close.
- 8.2 If the Contract Value determined under Clause 8.1 is higher than the Contract Value determined by the Calculation Agent in respect of the previous Business Close, then the Short Party must pay to the Long Party the difference.
- 8.3 If the Contract Value determined under Clause 8.1 is lower than the Contract Value determined by the Calculation Agent in respect of the previous Business Close, then the Long Party must pay to the Short Party the difference.
- 8.4 For the purposes of determining under Clauses 8.2 or 8.3 the Contract Value at Business Close on the Local Business Day on which the CFD is entered into, the Contract Value "in respect of the previous Business Close" is determined using the Contract Security Price at which Maybank Kim Eng and the Client agreed to enter into the CFD.
- 8.5 Where the Calculation Agent determines that the Contract Value of a CFD at Business Close cannot be determined under Clause 8.1 for any reason, the Contract Value at Business Close will be the value determined by the Calculation Agent in its sole and absolute discretion.



- 8.6 All payments to be made by a party in respect of any CFD shall be made in accordance with the account details specified in the relevant Confirmations or as otherwise agreed between the parties.
- 8.7 Maybank Kim Eng reserves the right to amend the list of available tradable CFDs, which, in some instances, may change on a daily basis. Maybank Kim Eng will endeavour to make this information available to the Client, either through updated CFD Market Information Sheets, or, in instances where changes are more frequent, through general postings on the Maybank Kim Eng website or via the ITP. In instances where the list of available CFDs has to be amended or reduced (including but not limited to non-availability of stock borrow), the only trading activity permissible in those CFDs is the closing of an open position.
- 8.8 Maybank Kim Eng may from time to time introduce special markets (e.g. Grey Markets). Maybank Kim Eng reserves the right to create (and thereafter vary or replace) specifications, rules/terms and conditions in respect of CFDs in respect of Contract Securities on any particular market. Such specifications, rules/terms and conditions (and any variation and/or replacement of the same) will be notified to the Client by any of the methods referred in Clause 30. The Client should ensure that it is aware of the market specifications, rules and terms and conditions relating to any particular market before entering into any CFD in relation to that market.

## **9. Dividends**

- 9.1 If the Client is a Long Party, the Client's Account will be credited with an amount equal to the amount Maybank Kim Eng actually receives from the Hedge Counterparty in respect of any dividend payable to the holder of the Contract Security less any applicable withholding tax obligation imposed on Maybank Kim Eng (as determined by the Calculation Agent in its sole and absolute discretion) multiplied by the Contract Quantity as soon as practicable following the ex-dividend date. Maybank Kim Eng reserves the right to make any further adjustment to the amount credited to the Long Party to take into account any exchange rate risks arising from the price of the Contract Security. In this Clause, "Hedge Counterparty" means Maybank Kim Eng's counterparty on any Hedge Position and "Hedge Position" means any CFD or other instrument, which Maybank Kim Eng enters into with a third party to hedge its exposure under a CFD between the Client and Maybank Kim Eng.
- 9.2 If the Client is a Short Party, the Client's Account will be debited with an amount equal to the gross dividend payable to the holder of the Contract Security (as determined by the Calculation Agent in its sole and absolute discretion) multiplied by the Contract Quantity as soon as practicable following the ex-dividend date. Maybank Kim Eng reserves the right to make any further adjustment to amount debited from the Short Party to take into account any exchange rate risks arising from the price of the Contract Security.

## **10. CLOSING A CONTRACT**

- 10.1 Subject to Clause 10.8, the Client may at any time give Maybank Kim Eng through the ITP, by telephone or otherwise notice of the Client's wish to close any CFD (whether in whole or in part) specifying the Contract Security and the proportion of the CFD that the Client wishes to close. Maybank Kim Eng will use its reasonable endeavours to accept such request.
- 10.2 Following receipt of a Closing Notice, Maybank Kim Eng shall give a quote for the Closing Price on the basis of live prices on the relevant Exchange and notify the Client of that quote (through the ITP, or by telephone or otherwise). The Client must immediately notify Maybank Kim Eng (through the ITP or by telephone or otherwise) whether or not the Client is willing to accept the Closing Price. If the Client accepts the Closing Price, the CFD (or if applicable, the relevant portion of the CFD) will be closed on the Closing Date. Any amounts payable by either Maybank Kim Eng or the Client shall be paid on the Closing Date.
- 10.3 At Business Close on the Closing Date, the difference (if any) between the Closing Value and the Contract Value of the CFD (or that part of it closed under Clause 10.2) must be accounted for as follows:
- (a) if the Closing Value is greater than the Contract Value determined at the last Business Close pursuant to Clause 8.1, the Short Party must pay to the Long Party the difference; and
  - (b) if the Closing Value is less than the Contract Value determined at the last Business Close pursuant to Clause 8.1, the Long Party must pay to the Short Party the difference.

For the purposes of this Clause 10.3, if the Closing Date is also the Local Business Day on which the CFD is entered into, the Contract Value shall be determined using the Contract Security Price at which the Client and Maybank Kim Eng entered into the CFD.

- 10.4 If a company, whose security represents all or part of the subject matter of a CFD, becomes subject to any receivership or judicial management proceedings as described in Part VIII or Part VIIIA of the Companies Act, Chapter 50 of Singapore or, in the case of a company incorporated outside Singapore, any proceedings analogous or similar to the proceedings set out in the aforementioned Parts of the Companies Act, Chapter 50 of Singapore,

the CFD is taken to have been closed at that time. The Closing Price shall be determined by the Calculation Agent who may have regard to any factors it, in its sole and absolute discretion, considers appropriate.

10.5 Without limiting Clause 10.6, if any of the Contract Securities cease to be listed for quotation on an Exchange, or are suspended from quotation for two or more consecutive Local Business Days, Maybank Kim Eng may, in its sole and absolute discretion, elect to terminate the relevant CFD by notice to the Client in writing. If Maybank Kim Eng elects to do so then:

- (a) the Closing Date will be the date on which Maybank Kim Eng notifies the Client of its election (the “Early Closing Date”); and
- (b) the Client will be treated as having given notice under Clause 10.1 on the Early Closing Date at the time Maybank Kim Eng notifies the Client of its election to terminate the CFD.

10.6 Where the Calculation Agent determines that the Closing Value of a CFD cannot be calculated on the Closing Date for any reason, the Closing Value will be the value determined by the Calculation Agent in its sole and absolute discretion.

10.7 Without limiting Clause 10.6, if at any time trading on an Exchange is suspended or halted in any Contract Security, the Calculation Agent will, in determining the Closing Value of a CFD, at its sole and absolute discretion have regard to the last traded price before the time of suspension or halt.

10.8 Without prejudice to any provision in these T&C, a CFD may be terminated by Maybank Kim Eng in its sole and absolute discretion on the 365th day following the Local Business Day on which the CFD is entered (the “Termination Date”) if it has not been terminated by either party. Where the CFD is deemed terminated under this Clause, then:

- (a) the Closing Date will be the Termination Date; and
- (b) the Client will be treated as having given notice under Clause 10.1 on the Termination Date.

Notwithstanding the foregoing, Maybank Kim Eng may at its sole and absolute discretion elect to rollover a CFD which is expiring pursuant to this Clause 10.8 by giving the Client notice of such rollover on or before the Termination Date. In the event that Maybank Kim Eng elects to rollover a CFD, the existing CFD shall terminate on the Termination Date pursuant to this Clause 10.8, but shall be deemed to be replaced immediately with a new CFD which will be deemed to have been entered into between Maybank Kim Eng and the Client on the Termination Date but otherwise on the same terms, such that the parties' rights and obligations thereunder are identical to their rights and obligations under the expiring CFD immediately before its expiry.

10.9 All determinations and calculations made by the Calculation Agent pursuant to this Part II of these T&C will be binding on the Client in the absence of Manifest Error.

## 11. SETTLEMENT OF POSITIONS

11.1 All payments to be made by a party in respect of any CFD must be made in accordance with this Clause 11.

11.2 When a payment for difference is made in accordance with Clause 8 or a CFD is closed out in accordance with Clause 10:

- (a) Maybank Kim Eng will credit to the Client's Account any amount payable by Maybank Kim Eng to the Client; or
- (b) the Client must (subject to Clause 11.3) pay to Maybank Kim Eng any amount payable by the Client to Maybank Kim Eng in such currency as Maybank Kim Eng may require in cleared funds within 2 Business Days of being advised of the amount so payable.

11.3 If there is then sufficient Excess Margin any amount owing by the Client under Clause 11.2 may be settled in whole or in part by debiting the Client's Account.

11.4 If the Client has requested payment of any money owed to the Client under this Clause 11, Maybank Kim Eng will deduct that money from the Client's Account and pay it to the Client by cheque or in such other manner as may be agreed between Maybank Kim Eng and the Client. If the Client has not requested payment of any money so owed to the Client it will be retained in the Client's Account.

11.5 In respect of any payments due under Clause 8 or Clause 10, if on any date amounts would otherwise be payable in the same currency by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the

other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

## **12. LIMIT, STOP AND OTHER ORDERS**

- 12.1 On certain markets the Client may be able to place limit, stop or other orders.
- 12.2 No orders are guaranteed, and orders may be filled by Maybank Kim Eng when it is reasonably able to do so unless:
- (a) Maybank Kim Eng has accepted alternative instructions from the Client; or
  - (b) a market has been traded through the level of an order outside Maybank Kim Eng's trading hours but has been restored by the opening of Maybank Kim Eng's trading hours such that the order level has not been exceeded, in which case Maybank Kim Eng will not execute that order at the opening of Maybank Kim Eng's trading hours.
- 12.3 All terms and conditions relevant to the Client entering into any CFD (which includes entering into or terminating any CFD) must be complied with both at the time any order under this Clause is placed and on its execution. Maybank Kim Eng is entitled to refuse to accept or fulfill any order if such terms and conditions are not complied with.
- 12.4 The provisions in relation to maximum and minimum trade sizes apply to all orders both on acceptance and on execution, without prejudice to the foregoing. In particular orders will be subject to the maximum trade size applicable at the time of execution of the order irrespective of the maximum trade size applicable at the time of placing the order. Orders which on execution would be in excess of the maximum trade size applicable on execution will be executed in tranches of up to the maximum trade size until the order is fulfilled. Where this is the case, the Client acknowledges and agrees that the price applicable for each tranche may vary considerably.
- 12.5 It is the Client's responsibility specifically and expressly to cancel any order placed which, unless the Client has done so, may be filled by Maybank Kim Eng in accordance with this Clause (irrespective of whether the Client has closed any of the Client's positions or opened any new positions).
- 12.6 Maybank Kim Eng is not obliged to inform the Client of the fulfilment of any order, except via a Confirmation.
- 12.7 Maybank Kim Eng reserves the right to limit any orders or positions, as it deems necessary, to minimise concentration risk, or in keeping with the Client's financial position or history, or any other reason Maybank Kim Eng may deem appropriate.

## **13. ERRORS**

- 13.1 Subject to the provisions of this Clause, a Confirmation which does not accurately reflect the relevant Transaction entered using the telephone or via the ITP:
- (a) does not affect the validity of the Transaction which the Confirmation evidences; and
  - (b) where there is Manifest Error, does not entitle the Client to enforce whatever is inaccurately recorded in the Confirmation.
- 13.2 Maybank Kim Eng reserves the right to void from the outset any CFD involving or deriving from a Manifest Error or to amend the details of such a CFD to reflect that which Maybank Kim Eng considers in its sole and absolute discretion acting in good faith to be the correct or fair details of such a CFD absent Manifest Error.
- 13.3 Without prejudice to the generality of the other terms mentioned herein, and in the absence of fraud or bad faith, Maybank Kim Eng shall in no circumstances be liable to the Client for any loss, cost, claim, damage, demand or expense of whatsoever nature the Client may suffer or incur in connection with any Manifest Error and howsoever arising whether direct or indirect, special, consequential or arising otherwise howsoever including loss of profit and loss of opportunity and even if Maybank Kim Eng had been advised of the possibility of the same arising or the same were reasonably foreseeable. The Client's attention is drawn in particular to Clause 26 in relation to the limitations on liability contained in this Part II of these T&C.

## **14. ADJUSTMENTS, CORPORATE EVENTS, MARKET DISRUPTION EVENTS AND FORCE MAJEURE EVENTS**

- 14.1 Without prejudice to the generality of Clause 14.5, if any Contract Security becomes subject to possible adjustment as the result of any of the events set out in Clause 14.2, the Calculation Agent shall determine the appropriate adjustment, if any, to be made to the Contract Value of that Contract Security and/or the related Contract Quantity to place the parties in substantially the same economic position they would have been in had the event not occurred. The adjustment will take effect as at a time reasonably determined by the Calculation Agent to be the time at which the event referred to in Clause 14.2 takes place or comes into force. The Calculation Agent shall give notice of any adjustment or amendment under this Clause to the other party as soon

as reasonably practicable after the determination and such adjustment or amendment shall be conclusive and binding on the parties in the absence of Manifest Error. In this respect, it shall be the Client's responsibility to ensure that all communications sent by the Calculation Agent in accordance with Clause 30 will be reviewed and examined.

14.2 The events to which Clause 14.1 refers are the declaration by the issuer of the Contract Security of the terms of any of the following:

- (a) a subdivision, consolidation or reclassification of shares (other than a Market Disruption Event as defined in Clause 14.3), or a free distribution of shares to existing holders by way of bonus, capitalisation or similar issue;
- (b) a distribution to existing holders of the underlying shares of additional shares, other share capital or Securities granting the right to payment of dividends and/or proceeds of liquidation of the issuer equally proportionately with such payments to holders of the underlying shares, or Securities, rights or warrants granting the right to a distribution of shares or to purchase, subscribe, or receive shares, in any case for payment (in money cash or money's worth) at less than the prevailing market price per share as determined by the Calculation Agent;
- (c) any event in respect of the shares analogous to any of the foregoing events or otherwise having a dilutive or concentrative effect on the market value of the shares; and
- (d) any other event in respect of which the Calculation Agent (in its absolute discretion) decides an adjustment is appropriate.

Notwithstanding the foregoing, Maybank Kim Eng reserves the right to close all open positions relating to the Contract Security before the occurrence of the abovementioned adjustments.

14.3 If at any time a take-over offer is made in respect of a Contract Security, then at any time prior to the closing date of such offer, Maybank Kim Eng may give notice to the Client of its intention to close the CFD and the Client is taken to have given a Closing Notice under Clause 10. The date of such notice shall be the Closing Date and the provisions herein relating to the closing of CFDs shall apply and the Closing Price shall be such price as is notified to the Client by Maybank Kim Eng. For the purposes of this Clause, references to "offer", "take-over" and "closing date" shall have the same meaning as given to them in the Singapore Code on Take-overs and Mergers issued by the Monetary Authority of Singapore pursuant to section 321 of the SFA, as amended from time to time.

14.4 If Maybank Kim Eng determines in its reasonable opinion that a Force Majeure Event exists then Maybank Kim Eng may in its absolute discretion (and without prejudice to any other rights Maybank Kim Eng may have):

- (a) cease or suspend trading and/or alter trading times for all or any markets;
- (b) vary commission rates, the financing charge, any buying or selling spreads or any other applicable fees or charges;
- (c) close any or all open trades, refuse any trades, cancel and/or fill any orders, in each case at such level as Maybank Kim Eng considers in good faith to be appropriate in all the circumstances;
- (d) immediately require payment of Margin and/or any other amounts the Client may owe Maybank Kim Eng;
- (e) vary maximum and/or minimum trade size;
- (f) suspend or modify the application of any or all of this Part II of these T&C to the extent that it is impossible or not reasonably practicable for Maybank Kim Eng to comply with them; and
- (g) take or omit to take all such other actions as Maybank Kim Eng deems appropriate in the circumstances to protect itself and its clients as a whole.

14.5 If a Corporate Event occurs, Maybank Kim Eng shall be entitled in its absolute discretion to make adjustments to the price and/or size of any open CFD trades and/or any orders (whether stop, limit guaranteed or otherwise) that relate to the relevant underlying equities and which were open/in place at the close of Maybank Kim Eng's business on the day preceding occurrence of the relevant Corporate Event. Such adjustment shall be as Maybank Kim Eng in good faith considers reasonably necessary to endeavour to preserve the economic value of such trade and/or order immediately prior to occurrence of the Corporate Event.

14.6 If at any time a Market Disruption Event (as defined below) occurs in respect of a Contract Security, Maybank Kim Eng may at its absolute discretion (and without prejudice to any other rights it may have), exercise any or all of the rights referred to in Clauses 14.4(a) to 14.4(g). In addition, if any trades in relation to any financial instruments on which Maybank Kim Eng's CFD prices are based are for any reason cancelled by the relevant

exchange on which they are traded, Maybank Kim Eng shall be entitled (without prejudice to any other rights it may have) to cancel the CFD trades relating thereto.

- 14.7 Without limiting the provisions of this Clause 14, if at any time an event occurs and the Calculation Agent determines (in its sole and absolute discretion) that it is not reasonably practicable to make an adjustment under Clause 14, Maybank Kim Eng may at any time after it becomes aware of the event give the Client notice of Maybank Kim Eng's intention to close any or all the affected CFDs. If that happens, the Client is taken to have given a Closing Notice under Clause 10. For the purposes of Clause 10 the Closing Price is the price reasonably determined by the Calculation Agent to be the market value of the Contract Security as at the date on which the Closing Notice is deemed to have been given.
- 14.8 Unless otherwise expressly provided above, Maybank Kim Eng shall be entitled to do any act or thing permitted by this Clause 14 either with or without notice to the Client. If Maybank Kim Eng gives any such notice it may be given by any of the methods referred to in Clause 30.
- 14.9 Except in the case of fraud or bad faith, Maybank Kim Eng shall not be liable to the Client for any loss cost claim damage demand or expense of whatsoever nature suffered or incurred in connection with the exercise by Maybank Kim Eng of any of its rights under this Clause 14 and howsoever arising, whether direct indirect special consequential or arising otherwise howsoever including loss of profit and loss of opportunity and even if Maybank Kim Eng had been advised of the possibility of the same arising or the same were reasonably foreseeable. The provisions of Clause 26 (Limitation of Liability) shall also apply to any loss or damage referred to therein arising by reason of the negligence of Maybank Kim Eng.
- 14.10 Without prejudice to Clause 10.5, the Client acknowledges that in the event of a suspension of trading in the Contract Security, Maybank Kim Eng reserves the right and sole and absolute discretion, to:
- (a) require open CFD long positions to be settled in full from the date of suspension or such dates which Maybank Kim Eng shall determine in its sole and absolute discretion;
  - (b) require the Client to pay additional Variation Margin; and/or
  - (c) suspend or close the Client's Account as if upon the occurrence of a Default Event in accordance with Clause 18 below.

## **15. INTEREST CHARGES ON OPEN CONTRACTS**

- 15.1 Interest (if any) in respect of a notional amount equal to the Contract Value, as calculated by the Calculation Agent in accordance with the Fee Schedule (as defined in Clause 21.2), shall accrue on a daily basis and be payable daily from the date the CFD is entered into until the Closing Date and for this purpose, the Contract Value on a day that is a Local Business Day shall be determined as at the close of trading of that Local Business Day, and the Contract Value on a day that is not a Local Business Day shall be determined as at the close of trading on the last preceding Local Business Day.
- 15.2 Interest payments shall be settled by Maybank Kim Eng on each day by debiting or crediting the Client's Account with the daily interest rate differential between the amount of interest payable by the Client and the amount of interest payable by Maybank Kim Eng. In the event that there are insufficient cleared funds in the Client's Account, the Client acknowledges that any amount due under this Clause is a debt due and owing by the Client to Maybank Kim Eng.

## **16. MARGIN REQUIREMENTS**

- 16.1 The Client acknowledges that before it is permitted to enter into a CFD, Maybank Kim Eng may require the Client to have deposited cleared funds to the Client's Account as Initial Margin. The amount of Initial Margin and the time for its call shall be within the sole and absolute discretion of Maybank Kim Eng. Maybank Kim Eng shall be under no obligation to allow any offset of Initial Margin.
- 16.2 Maybank Kim Eng may at any time at its sole and absolute discretion, increase the Initial Margin requirements applicable in respect of any CFD and require the Client to deposit funds equal to such increase.
- 16.3 Maybank Kim Eng may, during the term of any CFD, require the Client to pay Variation Margin in respect of such CFD by depositing to the Client's Account cleared funds in such amount as Maybank Kim Eng in its sole and absolute discretion may determine, including, without limitation, if Maybank Kim Eng determines that the GLV of the Client's Account has fallen below S\$1,000 or its foreign currency equivalent.
- 16.4 If Maybank Kim Eng makes a Margin call the Client must pay the amount of Margin called within 24 hours of the giving of such notice by Maybank Kim Eng. In all respects, time shall be of the essence for all payment obligations of the Client.

- 16.5 Maybank Kim Eng shall have sole and absolute discretion as to the exercise of its rights under this Clause to call for Margin and such exercise of rights shall be binding on the Client.
- 16.6 Upon Maybank Kim Eng making a Margin call, the Client acknowledges that Maybank Kim Eng may refuse any request by the Client to enter into any further CFD until Maybank Kim Eng has confirmed receipt of the called Margin in cleared funds.
- 16.7 Maybank Kim Eng may allow the Client to withdraw from the Client's Account any Excess Margin. Otherwise, Margin deposited by the Client to the Client's Account will not fall due for repayment until the Client's obligations under these Terms are satisfied in full. Until such time, this Margin will not constitute a debt due from Maybank Kim Eng to the Client nor will the Client have any right to receive repayment of these funds.
- 16.8 The Client's liability in respect of Margin calls is not limited to the amount, if any, in the Client's Account with Maybank Kim Eng.
- 16.9 All Margin shall be in such form as Maybank Kim Eng may stipulate and the value of any such Margin shall be determined by Maybank Kim Eng in its sole and absolute discretion. Maybank Kim Eng shall be entitled to deposit, pledge, repledge or loan any Margin in whatever form provided to Maybank Kim Eng and shall not be under any obligation to account to the Client for any interest, income or benefit that may be derived therefrom. Subject to the provisions of this Part II of these T&C, no interest shall be paid on any type of Margin credited to the Client's Account and the Client acknowledges and consents that any interest earned on the Margin credited under this Part II of these T&C may be retained by Maybank Kim Eng for its own account and benefit.
- 16.10 Maybank Kim Eng is not obliged to make Margin Calls of the Client at all or within any specific time period. Maybank Kim Eng shall not be liable to the Client for any failure by Maybank Kim Eng to contact the Client or attempt to contact the Client. It is the Client's responsibility to monitor any open CFD positions and all other relevant factors used to calculate Margin payable.
- 16.11 Without prejudice to the Client's obligation to pay Margin immediately the same becomes due, the Client must notify Maybank Kim Eng immediately if the Client cannot, or believes it would not be able to, meet a Margin call when due.
- 16.12 Margin calls may be made at any time by any method of communication including telephone, telephone answering machine message, voice mail, pager, letter, fax, e-mail or any other means of communication. Maybank Kim Eng shall be deemed to have made a Margin call on the Client if Maybank Kim Eng has left a message (via any of the foregoing methods of communication) requesting the Client to contact Maybank Kim Eng. Such Margin call will be deemed to have been made notwithstanding that the Client has not returned any message Maybank Kim Eng may have left requesting the Client to contact Maybank Kim Eng. If a Margin call is made by more than one method of communication it shall be deemed to have been made at the earliest time such communication is deemed served. A Margin call shall also be deemed to have been made if Maybank Kim Eng is unable to leave a message for the Client and has used reasonable endeavours to contact the Client. All references in this Part II of these T&C to a Margin call shall be deemed to include reference to a deemed Margin call. Any message Maybank Kim Eng leaves for the Client requesting the Client to contact Maybank Kim Eng should be regarded as extremely urgent. If Maybank Kim Eng leaves a message, it will (to avoid potential embarrassment to the Client) usually not reveal its company name or the nature of the call; however, it may, without liability to the Client, do so, if Maybank Kim Eng in its sole and absolute discretion so decides and in particular Maybank Kim Eng may leave its company name if the Client does not return any previous messages.

## **17. REPRESENTATIONS**

- 17.1 The Client represents and warrants to Maybank Kim Eng that:
- (a) (if a corporation) the Client is not insolvent, no resolution has been passed and no petition has been presented or order made for the Client's winding up or liquidation or the appointment of an administrator or judicial manager or other insolvency official;
  - (b) (if a corporation) the Client has been and is duly formed under the laws of the place of the Client's formation;
  - (c) (if a natural person) the Client is not insolvent or bankrupt and no encumbrancer has taken possession of or sold all or any part of the Client's business or assets, no bankruptcy order, arrangement or composition with the Client's creditors has been made;
  - (d) the Client has the power and authority to enter into and perform the Client's obligations under these T&C and to enter into CFDs;

- (e) the Client is entering into this Part II of these T&C and all CFDs as principal and not as agent or trustee or otherwise on behalf of any other person;
  - (f) in executing and in giving effect to these T&C the Client does not, and in entering into CFDs, the Client will not infringe:
    - (i) any provision of any deed or other document or agreement to which it is a party; or
    - (ii) any law or treaty or any judgment, ruling, order or decree of any governmental agency binding on it;
  - (g) the Client will not enter into a CFD as or by way of a wager;
  - (h) all information provided by the Client to Maybank Kim Eng, whether in the Account Application Form or otherwise, was true and accurate in all material respects as at the date when the information was provided and remains so and there are no facts or circumstances known to it after proper inquiry which have not been disclosed to Maybank Kim Eng and which, if disclosed, might reasonably be expected adversely to affect the decision of a reasonably prudent financial services licensee whether to enter into this Part II of these T&C;
  - (i) the Client has read and fully understood these T&C and Maybank Kim Eng's Risk Disclosure Statement;
  - (j) these T&C are binding and enforceable upon the Client;
  - (k) (if a natural person) all trades are entered into and every instruction given in person, subject to the clause relating to the appointment of an Agent; and
  - (l) if the Client has appointed an Agent, such Agent has read and understood these T&C and Maybank Kim Eng's Risk Disclosure Statement and fully understands the nature of CFD trading and the jargon used.
- 17.2 The Client acknowledges that Maybank Kim Eng agrees to provide the services under this Part II of these T&C in reliance on these representations and warranties and these representations and warranties shall be deemed to be repeated on each day when these T&C remain in force.

## 18. DEFAULT EVENTS

18.1 Whether or not it is within the Client's control, a Default Event occurs if:

- (a) the Client is in breach of any of these T&C;
- (b) the Client (if not a natural person) passes a resolution for winding up (otherwise than for the purpose of a solvent amalgamation or reconstruction where the resulting entity assumes all of the other party's obligations under these T&C) or if a court makes an order to that effect;
- (c) the Client (if a natural person) dies or becomes a patient under or any court order is made in respect of the Client under relevant mental health legislation or Maybank Kim Eng believes or suspects the same to be true;
- (d) the Client (if not a natural person) becomes or is declared insolvent or convenes a meeting of or makes or commences negotiations with a view to making, a general rescheduling of its indebtedness, a general assignment scheme of arrangement or composition with its creditors;
- (e) the Client (if a natural person) is insolvent or bankrupt or if an encumbrancer has taken possession of or sold all or any part of the Client's business or assets, or if a bankruptcy order, arrangement or composition with the Client's creditors has been made;
- (f) the Client ceases to carry on its business or substantially the whole of its business;
- (g) the Client fails to meet a payment obligation to Maybank Kim Eng under these T&C;
- (h) the Client has a liquidator, receiver, judicial manager, administrator, trustee, manager or similar officer appointed in respect of any of its assets or if any analogous step is taken in connection with its insolvency, bankruptcy or dissolution;
- (i) the Client commits an act or undertakes a course of conduct which Maybank Kim Eng reasonably considers may harm its reputation or may otherwise detrimentally affect it;
- (j) the Client (1) commits an act, or circumstances have occurred in respect of the Client, amounting to a default, event of default or other similar condition or event (however described) in respect of the Client under one or more agreements or instruments relating to any payment obligation of any of them

(individually or collectively) which has resulted in such payment obligation becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) defaults in making one or more payments on the due date thereof under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

- (k) Maybank Kim Eng is of the opinion that the financial condition of the Client or of any person guaranteeing the Account of the Client has materially or adversely changed since the date of these T&C or the date on which the Account was opened (whichever is earlier) or that events with respect to the Contract Security (other than market price movements) has altered the economics of the CFD materially so as to have changed the material terms of the CFD;
- (l) Maybank Kim Eng has, for 24 hours, been unable to establish direct contact with the Client or any of its designated representatives or Agents; or
- (m) Maybank Kim Eng forms the view, in good faith, that it should take action in order to preserve its rights or interests under the Account or under its relationship with the Client.

#### **Limit on Exposure**

- 18.2 If on a mark-to-market basis, the amount of funds that the Client holds at anytime with Maybank Kim Eng as Margin falls to less than 75% of the Margin that would be required to support all open CFD positions calculated at such time, Maybank Kim Eng reserves the right, but is not obliged to liquidate some or all of those CFDs in accordance with Clause 19.1(b) as if the event were a Default Event.

#### **19. ACTION FOLLOWING A DEFAULT EVENT**

- 19.1 Upon or at any time after a Default Event occurs and is continuing, Maybank Kim Eng, without prejudice to any other rights it may have, has the right and power (but not the obligation) in its sole and absolute discretion and upon written notice to the Client to:

- (a) terminate this Part II of these T&C;
- (b) close out all or any CFDs as if the Client had given a Closing Notice under Clause 10 and as if the Client had accepted the Closing Price determined by Maybank Kim Eng under Clause 10 (the "Affected CFDs");
- (c) cancel any outstanding orders in order to close the Client's Account; and/or
- (d) satisfy any obligation the Client may have to Maybank Kim Eng out of any property, money or security belonging to the Client in Maybank Kim Eng's custody or control including, without limitation, by selling any Securities lodged by the Client with Maybank Kim Eng and for such purpose to enforce at the Client's expense any asset or security held by Maybank Kim Eng in such manner as Maybank Kim Eng deems fit.

- 19.2 Upon the close out of the Affected CFDs, the amounts payable under Clause 10.3 in respect of such Affected CFDs shall be set off and the net amount shall be payable by the relevant party to the other. Where the net amount is payable by the Client to Maybank Kim Eng, Maybank Kim Eng may satisfy such obligation out of any Margin or any other amount standing to the credit of the Client's Account, and shall pay any remaining balance in the Client's Account to the Client and if insufficient, the Client shall pay such amount immediately. Where the net amount is payable by Maybank Kim Eng to the Client, Maybank Kim Eng shall pay such amount immediately and, if there are no further outstanding CFDs, at the same time pay to the Client all Margin and all other amounts standing to the credit of the Client's Account.

- 19.3 Any action by Maybank Kim Eng under this Clause shall be without prejudice to any of its rights to damages or any other remedy, and shall not limit any other term under this Part II of these T&C including without limitation Clause 25.

- 19.4 Maybank Kim Eng will not lose its rights under this Clause by reason of any delay in exercise of the rights.

#### **20. ILLEGALITY**

- 20.1 If any event occurs (including the introduction, implementation, operation or taking effect of, any law, regulation, treaty, order, official directive or ruling, or any change in any such law, regulation, treaty, order, official directive or ruling or in their interpretation or application by any governmental authority or agent) which makes or declares it unlawful or impracticable for either Maybank Kim Eng or the Client to exercise its rights or perform its obligations under these T&C, Maybank Kim Eng shall in good faith determine if these T&C may be amended or the trading arrangements restructured in a manner which is lawful. If Maybank Kim Eng determines in good faith that this is not reasonably practicable, Maybank Kim Eng may terminate the Account by notice to the Client and close out all CFDs in accordance with Clause 19.1 as if a Default Event had occurred for the purpose of that Clause.



## **21. COMMISSIONS AND CHARGES**

- 21.1 Commission will be payable on the entry into and termination of each CFD. On the Business Day on which the parties have entered into or terminated a CFD, the Client shall pay to Maybank Kim Eng the commission fees at the applicable rates then in force, as set out in the contract note or Confirmation thereof and/or the Fee Schedule (as defined in Clause 21.2 below). This fee is in addition to any and all other payment obligations in relation to a CFD Transaction and will be rounded up to the nearest dollar.
- 21.2 Maybank Kim Eng reserves the right from time to time in its sole and absolute discretion (including during the lifetime of any CFD and especially in but not limited to volatile market conditions and/or in the circumstances referred to earlier) and by notice to the Client to vary commission rates, impose other fees and/or vary the rates of interest payable under Clause 15 (and/or the type of CFD in respect of which it is payable, so that, for example, commission might be imposed in respect of equity indices). Commission fees, interest, and other charges which are not set out in the CFD Market Information Sheets or which have changed since the date of issue will be quoted on request, posted as part of the fee schedule via the [www.kecf.com](http://www.kecf.com) website (the "Fee Schedule") or individually notified via post. It is the Client's responsibility to ensure that it is aware of current applicable commission and financing charges and rates.
- 21.3 Where access to an ITP is provided to the Client by Maybank Kim Eng, the Client shall pay to Maybank Kim Eng such access fees as may from time to time be applicable. The access fees shall be payable by the Client to Maybank Kim Eng at the end of every calendar month.
- 21.4 The Client shall promptly pay all interest, commissions, fees and charges at such rates and in such manner as Maybank Kim Eng may in its sole and absolute discretion impose and stipulate from time to time with respect to the execution, performance and/or settlement of any contract or otherwise for the maintenance of the Account. All fees shall be settled by Maybank Kim Eng on the day they fall due by debiting the Client's Account with the relevant amount payable by the Client. In the event that there is insufficient cleared funds in the Client's Account, the Client acknowledges that any amount due under this Clause is a debt due and owing by the Client to Maybank Kim Eng.
- 21.5 The Client agrees that Maybank Kim Eng may share all fees and charges with other persons without being required to disclose that fact to the Client (unless that disclosure is required by law).

## **22. NETTING PROVISIONS AND CURRENCY CONVERSION**

- 22.1 All Transactions between the Client and Maybank Kim Eng will be entered into in consideration of each other and constitute a single contract between Maybank Kim Eng and the Client. If Maybank Kim Eng exercises any rights of combination, consolidation and/or set off pursuant to Clause 22.2 or any other term in any other applicable agreement, it may also, at the same time, without notice to the Client and in its sole and absolute discretion, close, combine, consolidate and/or set off any or all open positions which shall be or shall be deemed to be immediately closed as Maybank Kim Eng reasonably sees fit and accordingly the rights contained in Clause 22.2 shall apply to all open positions.
- 22.2 Without prejudice to any other rights and remedies available to Maybank Kim Eng (at law or under these T&C), Maybank Kim Eng reserves the right, at any time, from time to time, without notice to the Client and in its sole and absolute discretion, to combine and consolidate any or all of the Client's accounts (of whatever nature or type the Client holds with Maybank Kim Eng) and positive and negative exposures and/or to set off some or all of the Client's Account balances and any other amounts of whatsoever nature which may be due or payable from Maybank Kim Eng to the Client (of whatsoever nature and howsoever and whenever arising) against all interest, costs, expenses, charges, realised losses, Margin, negative positions and any and all other liabilities and amounts (of whatsoever nature and howsoever and whenever arising) owed by the Client to Maybank Kim Eng under these T&C or any other terms agreed between the Client and Maybank Kim Eng. If Maybank Kim Eng exercises such rights of combination consolidation and/or set-off, all obligations for payment in respect of all the foregoing will be cancelled and simultaneously replaced by a single obligation to pay a net sum of cash to Maybank Kim Eng or (if a net amount is payable to the Client) to the Client.
- 22.3 Maybank Kim Eng may apply the above rights regardless of the currency of any amount payable by Maybank Kim Eng to the Client or by the Client to Maybank Kim Eng as referred to in Clause 22.2.
- 22.4 Without prejudice to clause 25, Maybank Kim Eng may (whether in connection with the exercise of any rights under Clause 22.2 or otherwise) convert money standing to the Client's credit in any of the Client's accounts with Maybank Kim Eng or any other profit, loss, exposure or liability or any money received from the Client or due to be paid by the Client to Maybank Kim Eng or by Maybank Kim Eng to the Client from one currency to another at prevailing market rates available to Maybank Kim Eng. Maybank Kim Eng shall be entitled to charge the Client all commission costs and charges incurred in connection with the foregoing. All references in this Part II of these T&C

to any foreign currency equivalent to Singapore dollars or conversion of any currency into Singapore dollars or any other currency shall be construed accordingly.

### **23. INTEREST ON CLIENT MONEY**

23.1 Subject to Clause 23.2, the Client shall not be paid interest on Client money or any other amounts Maybank Kim Eng may from time to time hold in respect of the Client.

23.2 Maybank Kim Eng may by express agreement in writing with the Client agree to pay interest on any cleared Client money it may from time to time hold in respect of the Client (in excess of any amounts payable to Maybank Kim Eng of whatsoever nature, including Margin that is not Excess Margin). If Maybank Kim Eng does so:

(a) the rate of interest shall be as from time to time determined by Maybank Kim Eng in its sole and absolute discretion; and

(b) Maybank Kim Eng may by notice to the Client cease payment of such interest at any time.

### **24. QUERY OF ACCOUNT AND COMPLAINTS**

24.1 If a Confirmation is received by the Client for a CFD not entered into by or for the Client (or which the Client alleges was not transacted by or for itself), the Client must notify Maybank Kim Eng immediately. If the Client does not receive a Confirmation for a CFD entered into (or believe to have been entered into) the Client must notify Maybank Kim Eng immediately; likewise the Client must notify Maybank Kim Eng immediately if the Client has not received a Confirmation for an order the Client believes Maybank Kim Eng has filled for the Client.

24.2 Any query or dispute in respect of any CFD/alleged CFD or conversation/alleged conversation (together with details of the time and date the CFD/alleged CFD was entered or the conversation/alleged conversation took place) must be raised with Maybank Kim Eng (as provided in Clause 24.4) as soon as the Client becomes aware of the same and in any event within 24 hours of the date of the CFD/alleged CFD or conversation/alleged conversation (inclusive of the date of the CFD/alleged CFD or conversation/alleged conversation).

24.3 The Client acknowledges that Maybank Kim Eng is only able to effectively investigate any CFD/conversation or alleged CFD/conversation if the Client is able to give the time and date of the relevant matter. If the Client is unable to do so, Maybank Kim Eng will take reasonable steps to investigate, but the Client should be aware that Maybank Kim Eng may not be able to locate relevant records and/or tapes of CFDs/conversations in the absence of reasonable time and date details.

24.4 Any disputes or complaints (with all relevant details) must be in writing and may be referred in the first instance to Maybank Kim Eng's Client Services or Compliance Department.

### **25. ADDITIONAL RIGHTS OF MAYBANK KIM ENG**

25.1 Maybank Kim Eng may at any time without prior notice to the Client, in order to discharge the Client's obligations (actual or contingent) under this Part II of these T&C:

(a) apply all or part of any currency held by Maybank Kim Eng in the Client's Account and any currency held by Maybank Kim Eng for the purpose of the Client's dealings in such order or manner as Maybank Kim Eng thinks fit, whether the liabilities are actual or contingent, primary or collateral, joint or several; and

(b) convert, at a commercial rate, any currency held by Maybank Kim Eng in the Client's Account into a currency or currencies in which payments are due from the Client to Maybank Kim Eng and without Maybank Kim Eng being responsible to the Client for any loss resulting from such conversion.

### **26. LIMITATION OF LIABILITY**

26.1 Unless otherwise agreed by Maybank Kim Eng in writing or otherwise stated in this Agreement, the Client agrees that in entering into each CFD the Client will rely only upon the Client's judgment and, to the extent permitted by law, in the absence of gross negligence, fraud or wilful default by Maybank Kim Eng or any of its employees, agents and representatives, in relation to Maybank Kim Eng's activities as a capital markets services licence holder, Maybank Kim Eng shall have no responsibility or liability of any kind in respect of any advice or recommendation given or views expressed to the Client on such matters, whether or not the advice or recommendation is given or views are expressed at their volition or upon the Client's request, nor will they be liable in respect of any loss incurred by the Client in connection with any CFD.

26.2 In the absence of gross negligence, fraud or bad faith by Maybank Kim Eng or any of its employees, agents and representatives, Maybank Kim Eng shall have no responsibility or liability of any kind for any loss or damage whatsoever incurred by the Client as a result of any delay in transmitting or failure to transmit funds as a result of

Maybank Kim Eng's failure to timely execute orders placed with it or transact business or otherwise perform its obligations under this Part II of these T&C in the manner contemplated by this Part II of these T&C.

- 26.3 Subject to all other provisions of this Part II of these T&C (and the payment by the Client to Maybank Kim Eng of all amounts due and payable by the Client to Maybank Kim Eng) Maybank Kim Eng is liable to the Client to pay the Client its realised profits from closed CFDs (if any) which are still available after deduction by Maybank Kim Eng of all amounts due and payable by the Client to Maybank Kim Eng. The foregoing shall constitute Maybank Kim Eng's entire liability to the Client. Subject as aforesaid, Maybank Kim Eng shall in no circumstances be liable to the Client for any consequential special or indirect losses, loss of profits, loss of opportunity (including in relation to subsequent market movements) or other consequential costs, expenses or damages the Client suffers in relation to this Part II of these T&C, arising from any inaccuracy or mistake (not amounting to Manifest Error) in any information given to the Client or in relation to any CFDs, alleged CFDs or other Transactions the Client makes or refrains from making with Maybank Kim Eng or any other person, or in relation to the exercise by Maybank Kim Eng of any of its rights hereunder or at law and even if Maybank Kim Eng had been advised of the possibility of the Client incurring the same or the same were reasonably foreseeable.
- 26.4 If at any time the Client is unable to communicate with Maybank Kim Eng (including without limitation because, for example, all the lines of Maybank Kim Eng are busy or there is a breakdown in communication leading to a cessation of connection between Maybank Kim Eng and the Client (whether over the ITP, telephone or any other communication) or, due to an event beyond Maybank Kim Eng's reasonable control, Maybank Kim Eng is unable to communicate with the Client, Maybank Kim Eng shall not be responsible or liable to the Client for any loss, damage, cost or expense the Client suffers in consequence of the same, including without limitation because the Client is unable to enter into or terminate a CFD or give any other instruction. This includes any temporary or permanent loss of internet or telephone connection. In the event of a loss of internet communication, the Client should contact Maybank Kim Eng immediately via telephone.
- 26.5 The exclusions and limitations of liability contained in this Clause shall also apply to any loss or damage referred to therein arising by reason of the negligence of Maybank Kim Eng, provided however that nothing in this Part II of these T&C shall limit or exclude any liability for death or injury arising by reason of Maybank Kim Eng's negligence.

## **27. PAYMENTS IN GROSS**

- 27.1 All payments by each party under this Part II of these T&C are to be made without any setoff (other than as expressly permitted under this Part II of these T&C), counter claim or condition and without any deduction or withholding for any tax or any other reason unless the deduction or withholding is required by applicable law. If the Client is required to make a deduction or withholding in respect of tax from any payment to be made, the Client shall pay to Maybank Kim Eng an additional amount to ensure that Maybank Kim Eng receives a net amount (after payment of any tax in respect of each additional amount) that is equal to the full amount it would have received had a deduction or withholding or payment of tax not been made. If Maybank Kim Eng is required to make a deduction or withholding in respect of tax from any payment to be made, it shall only be obliged to pay to the Client an amount that is equal to the net amount after such deduction or withholding or payment of tax has been made.

## **28. CURRENCY OF PAYMENTS**

- 28.1 All amounts due to or payable by either party under this Part II of these T&C are payable in Singapore Dollars or in such other currencies as the parties may agree.

## **29. ADDITIONAL TERMS ON THE ITP**

- 29.1 The ITP and any and all materials that Maybank Kim Eng provides to the Client in connection with the ITP are (1) provided on a non-exclusive, non-transferable, revocable basis; (2) the property of Maybank Kim Eng and/or its ITP providers, licensors or other service providers; and (3) intended for the Client's use only. The Client shall not (a) in whole or in part resell, sub-licence, supply or otherwise transfer or permit access to or make available the ITP to others; (b) copy in whole or in part materials broadcast over the ITP for resale or other supply to others or otherwise make the same available to others; (c) copy the ITP and/or any software forming part thereof in whole or in part; or (d) delete obscure or otherwise tamper with in whole or in part any copyright notices or other indications of protected intellectual property rights and/or ownership from the ITP, any software forming part thereof and/or any materials supplied to the Client by Maybank Kim Eng and/or that the Client prints or downloads from the ITP. The Client shall not obtain any intellectual property rights in or any right or licence to use the ITP, the software forming part thereof or such materials or to conduct trades via the ITP other than as expressly set out herein. The Client shall immediately on demand by Maybank Kim Eng return to Maybank Kim Eng, in good repair and condition, all media, documents and other physical items relating to the ITP that have been supplied to the Client. In the case of software supplied to the Client, the Client shall if so requested by Maybank

Kim Eng return the same to Maybank Kim Eng and/or permanently delete and uninstall the same from any computers or other equipment upon which the Client has installed the same and the Client shall not keep any copies of the same.

- 29.2 Maybank Kim Eng warrants that it has the right to permit the Client to use the ITP and that it will take reasonable steps to ensure that the ITP is virus-free, but Maybank Kim Eng cannot guarantee that the ITP will be free from any virus. The Client is responsible for configuring the Client's information technology, computer programs and platforms to ensure compatibility with the ITP and the Client must use the Client's own virus protection software. Maybank Kim Eng does not warrant that the ITP will always be available or accessible or that access to it will be uninterrupted nor that it will be free from errors. Maybank Kim Eng reserves the right to close or suspend provision of the ITP and/or any of the services on the ITP for any purposes including repair, maintenance or development and either with or without notice to the Client. Access to the ITP and/or operation of any of the services on the ITP may be interrupted by circumstances beyond Maybank Kim Eng's reasonable control. Maybank Kim Eng will not be liable if, for any reason, the ITP and/or any of the services thereon are unavailable for any period of time. Maybank Kim Eng disclaims and excludes unless expressly prohibited by applicable mandatory law, all terms conditions and warranties implied by statute or common law in relation to the ITP including but not limited to merchantability, satisfactory quality, suitability or fitness for any particular purpose. Technical difficulties may be encountered in connection with the ITP. Such difficulties may include, but not be limited to, malfunctions, failures, delays, hardware damage or software erosion. Such difficulties could be the result of hardware, software or communication link inadequacies or any other cause and such difficulties could lead to possible economic and/or data loss. In the absence of fraud or bad faith in no event will Maybank Kim Eng, any of its affiliates or employees be liable for any loss, cost, claim, demand expense or damage including, without limitation, loss of profit, loss of revenue, loss of opportunity, consequential, unforeseeable, special or indirect damages or expenses ("ITP Loss") which arise directly or indirectly as a result of accessing or using, the ITP and even if Maybank Kim Eng had been advised of the possibility of the same arising or the same were reasonably foreseeable.
- 29.3 The Client acknowledges and agrees that Maybank Kim Eng shall not be liable to the Client for any ITP Loss which may be suffered by the Client as a result of or referable to Maybank Kim Eng's decision to impose any restriction, suspend, disallow or terminate the Client's use of the ITP to effect Transactions; provided that Maybank Kim Eng shall, to the extent reasonably practicable in its opinion, give prior notice to the Client of such restriction, suspension, disallowance or termination.
- 29.4 All instructions placed via the ITP for the Client's Account are also subject to the terms of such other procedures and instructions as may be the subject of prior notification in writing by Maybank Kim Eng to Client from time to time in relation to the use of the ITP (the "Procedures"). In the event and to the extent of any conflict or inconsistency between this Part II of these T&C and the Procedures, this Part II of these T&C shall prevail.
- 29.5 The Client acknowledges, agrees and accepts that:
- (a) Maybank Kim Eng undertakes no liability and is to have no liability whatsoever in relation to any ITP or any part thereof that is provided and/or maintained by a third party and with whom the Client has entered into an agreement or otherwise secured consent/approval for the Client's use for the purposes of effecting Transactions with Maybank Kim Eng. The choice of using such third party ITP or part thereof is agreed by the Client to be wholly the choice of the Client. The provision of the ITP (insofar as it is provided by and/or maintained by Maybank Kim Eng) is on the basis that, in Maybank Kim Eng's good faith opinion, it will deliver such functionality and performance as may be reasonably expected and necessary in delivering a service within the scope of this Agreement to enable the Client to effect Transactions electronically. Maybank Kim Eng does not make or give any warranty or representation that such expectation will be realised with respect to any specific Transaction or will always be realised; and
  - (b) instructions placed via the ITP are placed at the Client's sole risk. The Client agrees to check and ensure that such instructions have been properly transmitted as well as received and acted on by the party intended.
- 29.6 Without limitation to Clause 7:
- (a) the Client may transmit instructions to Maybank Kim Eng through the use of the ITP and in accordance with all relevant Procedures; and
  - (b) the Client shall be fully responsible and liable for any instructions placed with Maybank Kim Eng, and Transactions entered into, through the use of the ITP accessed using the Client's account number and password. In particular (but without limitation) the Client shall be bound by such instructions notwithstanding any typographical or keystroke errors made when such instructions are placed, any corruption or distortion of instructions which may occur when such instructions are transmitted through the ITP, or that such instructions may exceed any position or transaction limits or restrictions (whether

imposed by the relevant Exchange, Maybank Kim Eng or otherwise). Maybank Kim Eng shall, notwithstanding that any of such instructions may be deemed as being that of Maybank Kim Eng vis-à-vis any relevant Exchange, not be obliged to review, detect, correct or stop any of such instructions in any way.

#### 29.7 Representations And Warranties By The Client

- (a) The Client hereby represents and declares that the Client understands and accepts that trading through an electronic trading or order routing system exposes the Client to risks mentioned and set out under this Clause including risks associated with system or component failure. Such system or component failure may result in the inability to enter new instructions, execute existing instructions, modify or cancel instructions previously entered, or stop erroneous instructions, as well as a loss of instructions or order priority.
- (b) The Client represents, warrants and undertakes that:
  - (i) the Client has satisfied the Client, and will continue to satisfy the Client, of the capability of Maybank Kim Eng to deal in the Transactions via the ITP;
  - (ii) the Client has the right, power and authority to use and/or access the ITP and to trade and/or communicate instructions in relation to the Transactions;
  - (iii) the Client has received adequate instructions in respect of the operation and access of the ITP and is fully conversant with the Procedures and will ensure that all users of the ITP using the Client's account number and password are equally conversant and will abide with the same; and
  - (iv) each of the above representations and warranties will be correct and complied with in all material aspects so long as this Part II of these T&C remain in force as if repeated on each day.

#### 29.8 Further Disclaimers And Exclusion Of Liability

- (a) Maybank Kim Eng shall not be responsible in any way whatsoever for the content, accuracy, timeliness or completeness of any information, data or other services provided through the ITP.
- (b) Without prejudice to any of this Part II of these T&C, including but not limited to Clause 26, Maybank Kim Eng shall not be liable to the Client for any ITP Loss suffered or incurred by the Client due to:
  - (i) the use or inability to use or the availability or non-availability of the ITP;
  - (ii) any errors, defect, malfunction or failure (whether total or partial) of the ITP (or any part thereof) or interruption or delay in response time of the ITP whether resulting or arising from any repair or servicing of the ITP;
  - (iii) any damage, destruction, breakdown, mechanical or other defect, howsoever caused, to the ITP (or any part thereof);
  - (iv) any corruption or data transmitted through the ITP being incomplete, omitted, inaccurate or corrupted;
  - (v) any unauthorised use, access to or alteration of any ITP;
  - (vi) any failure or Maybank Kim Eng, its officers, employees, agents or servants to receive the Client's instructions or instructions notwithstanding that the instruction or instruction has been received by the ITP or to execute an invalid, incomplete or inaccurate instruction; or
  - (vii) any other cause whatsoever relating to the ITP.
- (c) Without prejudice to any of this Part II of these T&C, including but not limited to Clause 26, the Client agrees and accepts that Maybank Kim Eng shall not be liable or responsible, for and in relation to any and all ITP Loss incurred or suffered by the Client or any person as a result of any action or omission, advice, representation, failure or default attributable to a service provider.

29.9 Without prejudice to Clauses 5.8, 5.9 and 7.6, the Client acknowledges and agrees that Maybank Kim Eng's and the service providers' electronic records and logs of transmissions, transactions and communications sent or made by the Client to or via the ITP (including but not limited to instructions) shall be final, conclusive and binding evidence for all purposes whatsoever, save for manifest error. The Client further acknowledges and agrees that in the event and to the extent of any inconsistency between Maybank Kim Eng's and the service providers' electronic records and logs, Maybank Kim Eng's electronic records and logs shall prevail, save for manifest error.

### **30. COMMUNICATIONS**

- 30.1 Save for any statement of account (which may only be sent via e-mail or any method as determined by Maybank Kim Eng) or Confirmation (which may only be sent by e-mail or any method as determined by Maybank Kim Eng) or as expressly set out in this Part II of these T&C, any notice from Maybank Kim Eng to the Client (including without limitation any demand or Margin call) or other communication under or in connection with this Part II of these T&C may be verbal, in writing or by electronic means and may be delivered personally, sent by post, airmail, fax, telex or telephone answering machine message, voice mail message, pager, e-mail or via the ITP. Notices or other communications to the Client may be made to the Client's last known home address, place of work, telephone number (including a telephone answering machine), fax number, telex number, pager number, via the ITP, e-mail address or other contact details.
- 30.2 Any such communication shall be deemed received by the Client immediately upon transmission by Maybank Kim Eng, save for communication sent via post or airmail, in which case such communication shall be deemed received by the Client one (1) Business Day after the communication was dispatched by Maybank Kim Eng (in the case of a Client having a Singapore address) or three (3) Business Days after the communication was dispatched by Maybank Kim Eng (in the case of a Client having a non-Singapore address).
- 30.3 In the case of daily or monthly statements of account, Maybank Kim Eng will send to the Client's e-mail address as set out in the Account Application Form (as may be amended from time to time) such statements of account as may be issued from time to time. The Client agrees that it is the Client's responsibility to ensure that all relevant statements of account are received and undertakes to make enquiries with Maybank Kim Eng and obtain such statements of account if the Client has not received the same following (i) in the case of a daily statement of account, 7 days after the date, and (ii) in the case of a monthly statement of account, 7 days after the end of the statement cycle as applicable to the Client.
- 30.4 The risk of loss or damage to, and the costs of delivery of, any articles or items sent to the Client shall be borne by the Client.
- 30.5 Any communication from the Client to Maybank Kim Eng whether they be instructions relating to the Account or any of the Client Accounts which it now has or may hereafter open with Maybank Kim Eng or otherwise shall be given in accordance with Maybank Kim Eng general operating procedures.
- 30.6 The Client acknowledges and agrees that Maybank Kim Eng's representatives may carry out dealing activities or otherwise operate outside Maybank Kim Eng's office premises and, in this respect, the Client acknowledges and agrees that:
- (a) it is in the Client's own interest not to use the representative's address as the Client's mailing address for contract notes and statements;
  - (b) the Client may only enter into CFDs with or otherwise give instructions to Maybank Kim Eng using the telephone or via the ITP, unless Maybank Kim Eng agrees to accept other forms of communication, and such orders are subject to this Part II of these T&C;
  - (c) the Client is responsible for and aware of the attendant risk attached to Transactions executed off-premises;
  - (d) the Client understands that there might be limitations that may potentially affect the Client's customer service experience, including, but not limited to delays in responding to or executing an instruction or entering into a Transaction; and
  - (e) the Client agrees to communicate, give instructions and/or place orders only with the representative assigned by Maybank Kim Eng to the Client.

### **31. ASSIGNMENT**

- 31.1 The Client shall not assign, transfer, charge, sub-contract or deal in any manner with all or any of its rights or liabilities hereunder (including any interest in balances, open positions or Margin) or purport to do any of the same.
- 31.2 Maybank Kim Eng shall be entitled to assign, transfer, charge, sub-contract or deal in any manner with all or any of its rights and/or liabilities hereunder.

### **32. INDEMNITY**

The Client will indemnify Maybank Kim Eng and keep Maybank Kim Eng indemnified on demand in respect of all liabilities, costs (including legal costs on a full indemnity basis), claims, demands and expenses of any nature

whatsoever which Maybank Kim Eng suffers or incurs as a direct or indirect result of any failure by the Client to perform any of the Client's obligations under this Part II of these T&C, including under any CFD.

**33. MULTIPLE DEALS**

33.1 The Client acknowledges that the Client shall not hold opposing CFD positions in the same underlying financial instrument. For example, if the Client originally placed a sell order and subsequently placed a buy order for a CFD in the same underlying instrument, this will close all or part of the Client's original sell trade. If the Client has more than one open CFD position in the same Contract Security, such trades (or part thereof) will be closed in the order "First In, First Out" (commonly known as "FIFO").

33.2 FIFO does not apply to CFDs which are subject to orders subject to that CFD, such as a stop order. Those CFDs will be closed in accordance with the relevant order, unless the Client specifically closes the CFD before the relevant order is executed.

**34. CONSENTS**

34.1 Where this Part II of these T&C contemplates that a party may agree or consent to something (however it is described), that party may:

- (a) agree or consent, or not agree or consent, in its sole and absolute discretion; and
- (b) agree or consent subject to conditions,

unless this Part II of these T&C expressly contemplates otherwise.

34.2 Notwithstanding that any provision of this Part II of these T&C may be or become enforceable by a person who is not a party to it, this Part II of these T&C or any of them may be varied, amended or modified, or this Part II of these T&C may be suspended, cancelled or terminated by agreement in writing between Maybank Kim Eng and the Client or as otherwise provided in this Part II of these T&C or rescinded, in each case without the consent of any such third party.

#### Appendix. LETTER OF AUTHORISATION FOR CFD ACCOUNT

1. With reference to the Client's Account for trading contracts for difference ("CFD") (the "Account"), the Client hereby authorises the Trading Representative stated in the Account Application Form as the Client's attorney with respect to the Account (the "Attorney") to act on the Client's behalf and as the Client's acts and deeds to do all things which the Client is empowered to do as holder of the Account, including but not limited to:
  - (a) taking delivery from Maybank Kim Eng of crossed cheques made payable to the Client or to others on the Client's written instructions;
  - (b) giving instruction to accept or reject or otherwise deal with share offers, rights issues or any other matters relating to CFD corporate actions that may require the Client's election;
  - (c) taking delivery from Maybank Kim Eng of any duplicate copy of the statements of account and/or confirmation notes which may be issued in respect of the Client's CFD transactions with Maybank Kim Eng on the Client's behalf and to give Maybank Kim Eng instructions accordingly;
  - (d) offering, on the Client's behalf to enter into CFDs with Maybank Kim Eng or to terminate any CFDs which the Client may have entered into with Maybank Kim Eng from time to time and to give Maybank Kim Eng all and any instructions in relation thereto;
  - (e) giving Maybank Kim Eng instructions to withdraw any funds constituting Excess Margin (as defined in Part II of these T&C) which may be credited into the Account from time to time;
  - (f) giving Maybank Kim Eng instructions to make any payment order in respect of the Account in connection with Maybank Kim Eng and its associated companies/related corporations;
2. The Client acknowledges and agrees that whatever may be the relationship between the Attorney and Maybank Kim Eng, that the Attorney is appointed by the Client to act on the Client's behalf and is neither, in respect of the Client's dealings with Maybank Kim Eng or in any of the Client's Attorney's actions as contemplated by this letter read together with the Account Application Form, to be regarded as Maybank Kim Eng's servant nor Maybank Kim Eng's employee and all instructions of purchase or sale given by the Attorney, so long as it is not expressly stated by the Attorney to be otherwise than pursuant to his empowerment in this letter read together with the Account Application Form, if given or purportedly given on the Client's behalf shall be deemed to be instructions given by the Client which Maybank Kim Eng can act in accordance with and look to the Client for responsibility thereof whether or not the Attorney is also jointly, severally or distinctly liable.
3. The authorisation given to the Attorney in this letter read together with the Account Application Form shall apply to all acts and things done by the Attorney before the Client revokes the Client's authorisation. Revocation of the Client's authorisation in this letter read together with the Account Application Form shall only take effect and be valid upon written notice from the Client to Maybank Kim Eng of such revocation and Maybank Kim Eng's acknowledgement in writing that Maybank Kim Eng has received such notice of revocation.
4. All acts and things done by the Attorney whether prior to or after the receipt by the Client of Maybank Kim Eng's said acknowledgement but in reliance on the authority given by the Client to the Attorney hereunder shall be valid and binding on the Client and the Client undertakes to ratify the same. The Client further and alternatively agrees and confirms that Maybank Kim Eng shall be indemnified by the Client against all losses, damages, costs, charges and expenses of whatsoever nature (including legal costs on a full indemnity basis) and howsoever incurred by Maybank Kim Eng arising directly or indirectly from any act and thing done by the Attorney.
5. This authorisation is given by the Client to the Attorney of the Client's own initiative and judgment and after the Client having decided that it serves the Client's best interests and after having taken independent advice on the effect and consequences to the Client on giving the authorities above to the Attorney.