

**Asia Securities Industry & Financial Markets Association**

***Placing Agreement for Hong Kong***

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# Placing Agreement

**[Note: This Form assumes that (1) the Company is a "foreign private issuer" (as defined in Rule 405 under the Securities Act); (2) there is no substantial U.S. market interest (as defined in Regulation S) in the equity securities of the Company; and (3) the Company will either (i) issue the Placing Shares, (ii) resell the Placing Shares held in treasury, or (iii) combine an issue of Placing Shares and a resale of Placing Shares held in treasury, in each case under an existing general mandate. The Form caters for these three scenarios and should be amended as appropriate based on the deal structure. If any of the above assumptions does not apply to the transaction at hand, appropriate modifications should be made in preparing the draft Placing Agreement.]**

**In addition, this Form is tailored for shares of issuers listed on the Hong Kong Stock Exchange; appropriate modifications will need to be made to the Form for issuers listed in other jurisdictions.**

**This Form does not cater for the US Outbound Investment Rule, the application of which (and any additional representations and warranties) should be discussed with deal counsel pending further clarification from the US Department of Treasury.]**

**PLACING AGREEMENT**, made on [●]

## AMONG

- (1) [Full legal name] (the "**Company**", together with its subsidiaries, the "**Group**"), a company registered in [jurisdiction] and having its registered address at [●];
- (3) [Full legal name] (the "**Manager**"), a [company] registered in [jurisdiction] and having its registered address at [●].<sup>1 2</sup>

## WHEREAS

- (A) As at the date hereof, the Company has an aggregate of [ ] [ordinary shares]<sup>3</sup> [of [par value] each] (the "**Shares**") in issue and fully paid up [, comprising [ ] [ordinary shares in the Company's share capital, [which include [ ] treasury shares that are held by or on behalf of the Company (the "**Treasury Shares**")]] [, with a nominal value of [ ] each], all of which have been allotted and issued and are listed on the [main board] of the Hong Kong Stock Exchange with a stock code of "[●]".
- (B) Subject to the terms and conditions set out in this placing agreement (the "**Agreement**"), the Company agrees to [issue and allot up to an aggregate of [ ] new Shares]/[resell up to an aggregate of [ ] Treasury Shares]/[issue and allot up to an aggregate of [ ] new Shares (the

<sup>1</sup> While in most cases the Manager would be independent of and not a connected person (as defined meaning of the Listing Rules) of the Company, the Company should nevertheless consider carefully and confirm that it is the case. For example, it may be possible that a connected person or his immediate family member's interest is held by a trust and the trustee of which is a business arm of the Manager.

<sup>2</sup> Pursuant to the SFC Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission effective from 5 August 2022 (the "**Code of Conduct**"), a licensed or registered person that conducts bookbuilding and placing activities in Hong Kong (including an offering of new shares of class already listed under a general mandate or special mandate) is referred to as a capital market intermediary ("**CMI**"). A CMI which is engaged by the issuer is referred to as a syndicate CMI ("**syndicate CMI**"). A syndicate CMI which, solely or jointly, conducts activities such as overall management of the offering, coordinating the bookbuilding or placing activities conducted by other CMIs, exercising control over bookbuilding or placing activities and making allocation recommendations to the issuer, is referred to as an overall coordinator ("**OC**"). According to the Manager's scope of work under this Agreement, the Manager falls within the definitions of a syndicate CMI and an OC. The Manager is expected to comply with the standards of conduct requirements set out in paragraph 21 of the Code of Conduct when discharging its functions in the offering.

<sup>3</sup> To be amended as appropriate to tailor for applicable concepts such as the authorised or registered share capital, existence of domestic shares, H shares, preference shares, etc.

"New Placing Shares") and resell up to an aggregate of [ ] Treasury Shares (the "**Treasury Placing Shares**")<sup>4</sup> ([together, ]the "**Placing Shares**") [in each case] pursuant to the [unconditional general mandate] granted by the shareholders of the Company at the last annual general meeting of the Company held on [ ] 20[ ] (the "**General Mandate**").

- (C) Subject to the terms and conditions set out in this Agreement, the Manager agrees, as agent of the Company, to procure [on a best effort basis] [not less than six]<sup>5</sup> placees [to subscribe for[, or failing which, to subscribe itself for]]/[to purchase[, or failing which, to purchase itself]]/[to subscribe for or purchase (as the case may be)[, or failing which, to subscribe for or purchase itself,] the Placing Shares (the "**Placing**").
- (D) On [date], the Company and the Manager entered into a written engagement (the "**Written Engagement**") pursuant to which for the purpose of effecting the Placing, the Company has appointed the Manager to act as the capital market intermediary (as defined under Rule 1.01 of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the "**Listing Rules**") (the "**CMI**") and as the overall coordinator (as defined under Rule 1.01 of the Listing Rules) (the "**OC**").<sup>6 7</sup>

## THE PARTIES AGREE AS FOLLOWS

### 1. APPOINTMENT OF PLACING AGENT AND PLACING

- (a) The Company has appointed the Manager to act as the CMI and the OC in relation to the Placing pursuant to the Written Engagement.<sup>8 9</sup> The Company and the Manager, relying on the representations, warranties and undertakings given in this Agreement, hereby confirm such appointment subject to the terms and conditions of this Agreement, pursuant to which the Manager, as the CMI and the OC, shall (i) conduct one or more of the specified activities specified under paragraphs 21.1.1 and 21.2.3 of the Code of Conduct for Persons Licensed by or Registered with the Securities and

<sup>4</sup> To be amended as appropriate based on the deal structure. Use the first option for a new share issue only, the second option for the resale of treasury shares only and the third option for a hybrid transaction involving both a new issue and the resale of treasury shares. Corresponding amendments should be made throughout the document to the equivalent square bracketed language.

<sup>5</sup> If the number of placees is less than six, the names of all placees will be required to be disclosed in the Company's announcement in accordance with Rule 13.28(7) of the Listing Rules.

<sup>6</sup> Pursuant to paragraphs 21.3.2 and 21.4.1 of the Code of Conduct and Listing Rules 3A.33 and 3A.35, before a syndicate CMI or an OC conducts any bookbuilding or placing activities, it should ensure that it has been formally appointed under a written agreement to conduct such activities by the issuer client. The agreement should specify the roles and responsibilities of the CMI, the fee arrangements (including fixed fees as a percentage of the total fees to be paid to all syndicate CMIs participating in the offering) and the fee payment schedule. This Agreement is prepared on the basis that a written engagement, which has fully complied with all the relevant Code of Conduct and Listing Rules requirements, has been entered into between the Company and the Manager, before the parties enter into this Agreement. The Written Engagement should be entered into before the Manager (a) collate investors' orders (including indications of interest) ("**bookbuilding activities**") or (b) market or distribute shares to investors pursuant to those bookbuilding activities ("**placing activities**").

<sup>7</sup> This clause should be consistent with the terms of the Written Engagement.

<sup>8</sup> If more than one Manager is appointed as the CMI or the OC, this Agreement should be modified as appropriate, including (a) Details of the written engagement entered into by each of the Managers. (b) The specification that the Company has appointed the Managers to act severally and not jointly and severally. In particular, the following clause should be added: "The obligations of the Managers under this Agreement (and, in particular, each of their obligations in relation to procuring Placees for [, and [purchasing/subscribing for] themselves,] the Placing Shares) shall be several only (and not jointly nor on a joint and several basis). For the avoidance of doubt, each of the Managers will be responsible under this Agreement on a several (and not joint nor joint and several) basis only for its own actions and omissions and will not be responsible in any manner for any actions or omissions of the other Manager[s]. [Neither/None] of the Managers will be liable for any failure on the part of the other Manager[s] to perform its obligations in this Agreement. Notwithstanding the foregoing, (i) each of the Managers shall be entitled to enforce any or all of its rights under this Agreement either alone or jointly with the other Manager[s]; and (ii) in relation to Rule 3A.38 of the Listing Rules and paragraph 21.4.8 of the Code of Conduct, each Manager, as an OC, will be jointly and severally liable for ensuring that the information set out in those paragraphs is complete and accurate and is provided to the Hong Kong Stock Exchange and the SFC within the timeframes stipulated thereto." (c) See also note 11 for suggested modification to Clause 1(b) setting out the Manager's allocation proportions. (d) See also note 52 for suggested modification to Clause 8 to specify that the Managers' representations are given by each Manager in respect of itself only.

(e) Other drafting amendments as appropriate, such as changing "Manager" to "Managers", "each of the Managers" or "any of the Managers" etc.

<sup>9</sup> This clause should be consistent with the terms of the Written Engagement.

Futures Commission (the "**Code of Conduct**") ; and (ii) discharge the relevant roles and obligations under paragraphs 21.3 and 21.4 of the Code of Conduct.

- (b) [Subject to the terms and conditions of this Agreement, the Company agrees to [issue and allot]/[resell]/[issue and allot and (as the case may be) resell], and the Manager agrees, as agent of the Company, to procure [on a best effort basis] [not less than six] placees [to subscribe for]/[to purchase]/[to subscribe for or purchase (as the case may be)] [●] <sup>10</sup> Placing Shares [or, failing which, to [subscribe for]/[or]/[purchase] [(as the case may be)] the Placing Shares,] at a price of HK\$[●] per Placing Share (the "**Placing Price**").<sup>11</sup>

***[Alternative: use the following alternative language if this Agreement is to be signed before completion of bookbuild]***

[Subject to the terms and conditions of this Agreement, the Company agrees to [issue and allot][ and (as the case may be)] [resell], and the Manager agrees, as agent of the Company, to procure [on a best effort basis] placees to [subscribe for][and (as the case may be)][purchase] the Placing Shares [or, failing which, to [subscribe for][ or ][purchase][ (as the case may be)] the Placing Shares,] at a price per Share (the "**Placing Price**") to be determined pursuant to an accelerated bookbuilding process. The number of Placing Shares to be [issued][ or (as the case may be) ][resold] and the Placing Price will be subject to agreement between the Company and the Manager following completion of the bookbuilding process and shall be set forth in an executed version of the terms of placing (the "**Terms of Placing**"), which shall be substantially in the form set forth in Schedule 1 hereto. The date of execution of the Terms of Placing shall be the "**Pricing Date**". [It is agreed that if the Manager fails to procure placees for [*minimum number of backstop Shares*] Placing Shares (the "**Backstop Shares**") at or above the price of HK\$[●] per Share (the "**Backstop Price**"), the Manager will, at its option, either (i) [subscribe for][ or (as the case may be) ][purchase] the Backstop Shares at the Backstop Price; or (ii) procure placees for the Backstop Shares at the Placing Price and in the event of (ii) occurring, the commission due to be paid to the Manager pursuant to Clause 4(a) will be reduced by an amount equal to the difference between the Backstop Price and the Placing Price multiplied by the number of Backstop Shares, provided that the commission shall not be reduced to below zero.]<sup>12</sup>

- (c) The Company hereby acknowledges that the Manager is authorised to appoint one or more sub-placing [or sub-underwriting] agents or selling agents in the United States and/or elsewhere and that such agents shall be agents of the Company relating to the Placing, and the Company hereby authorises and confirms that it will ratify and approve all actions lawfully, properly and reasonably taken or to be taken by the Manager and such agents in connection with the Placing in accordance with the terms of this Agreement, and the Manager shall appoint such agent(s) as non-syndicate CMI(s) in accordance to the Code of Conduct.
- (d) Any transaction carried out by the Manager (and any agents referred to in Clause 1(c)) in accordance with this Agreement on behalf of the Company shall constitute a

<sup>10</sup> Insert the number of Placing Shares.

<sup>11</sup> If more than one Manager is appointed as the CMI or the OC, further specification on each Manager's role under the Code of Conduct (i.e. whether such Manager shall act as both CMI and OC, or CMI only) shall be made. In addition, the following may be added: "The number of Shares for which each of the Managers shall be appointed as agent to procure [on a best effort basis] placees [to purchase][to subscribe for] [or, failing which to [purchase][subscribe for] the Shares themselves] under this Agreement shall be several only, and shall be in the following proportions:

	Manager A	Manager B
Number of Placing Shares	[●]	[●]"

To also consider spelling out appointment of Settlement Agent if more than one Manager is appointed.

<sup>12</sup> To be included if the trade will include a backstop arrangement.

transaction carried out at the request of the Company, as its agent, and not in respect of or for the benefit of the Manager's own account.

- (e) In discharging its obligations in Clause 1(b) above, the Manager or its nominees may elect to [subscribe for][ and (as the case may be) ][purchase] some or all of the Placing Shares as principal from the Company at the Placing Price and, in that event, these Placing Shares may be on sold to purchasers at any prices as the Manager may determine (subject to the applicable requirements under the Code of Conduct)<sup>13</sup>, without any obligation to notify the Company of such election or of the number of Placing Shares so purchased or of the prices at which those Placing Shares are sold to purchasers.
- (f) The Placing Price does not include, and the placees are responsible for and shall pay brokerage (if any), The Stock Exchange of Hong Kong Limited ("**Hong Kong Stock Exchange**") trading fee of [0.00565]%, the Securities and Futures Commission of Hong Kong (the "**SFC**") transaction levy of [0.0027]%, [and] Accounting and Financial Reporting Council ("**AFRC**") transaction levy of [0.00015]% [and Hong Kong ad valorem stamp duty at the rate of [0.1]%)<sup>14</sup> as may be payable by placees. [The Company shall be responsible for, and shall pay, all Hong Kong ad valorem stamp duty payable on the transfer of the Treasury Placing Shares.]<sup>15</sup>
- (g) The Company agrees to [issue and allot][and (as the case may be) ][transfer] the Placing Shares free from all pledges, liens, charges and encumbrances, equities, security interests or other claims on the terms and subject to the constitutional documents of the Company and the conditions set out in this Agreement.
- (h) The Company agrees that the Placing Shares shall[, when fully paid[ (in the case of the issue of New Placing Shares)],]<sup>16</sup> rank *pari passu* in all respects with the other Shares in issue or to be issued by the Company on or prior to the date of completion of the Placing including the rights to all dividends and other distributions declared, made or paid on or after the date of completion of the Placing.

## 2. **CONDITIONS PRECEDENT TO THE CLOSING OF PLACING**

- (a) Closing of the Placing is conditional upon the fulfilment[, or waiver by the Manager in its sole discretion in accordance with Clause 2(b) below, of the following conditions (the "**Conditions**"):
  - (i) [in the case of the issue of New Placing Shares, ]<sup>17</sup>[the Listing Committee of the Hong Kong Stock Exchange (the "**Listing Committee**") granting listing of and permission to deal in the [New] Placing Shares (the "**Listing Approval**") and such listing and permission not subsequently revoked prior to the deposit of the [New] Placing Shares in CCASS under Clause 3(b) hereof;]<sup>18</sup>
  - (ii) [in relation to the Treasury Placing Shares, the Hong Kong Stock Exchange having confirmed by email (or in such other manner as is agreed between the

<sup>13</sup> Pursuant to paragraph 21.3.10(b) of the Code of Conduct, a CMI should always give priority to satisfying investor clients' orders over its own proprietary orders and those of its group companies.

<sup>14</sup> Only applicable to a transaction only involving the resale of treasury shares.

<sup>15</sup> In the case of a combined new issue and resale of treasury shares, check with the issuer on whether it will bear the stamp duty to avoid any potential impact on investor interest, issues with consistent costs for all shares sold and additional disclosure requirements. This language should be added where the Company agrees to be responsible for the stamp duty.

<sup>16</sup> Only applicable to new issues.

<sup>17</sup> This square bracketed language and references to [New] are only applicable to combined transactions involving both new issues and the resale of treasury shares.

<sup>18</sup> New issue only as listing approval is not required for treasury shares. Use 2(ii) for the resale of treasury shares.

Manager and the Hong Kong Stock Exchange) that it has no additional comments on the placees];<sup>19</sup>

- (iii) [all necessary approvals and clearances from all relevant PRC regulatory authorities in connection with the Placing having been obtained to the reasonable satisfaction of the Manager, such approvals and clearances not materially conflicting with or altering the terms of this Agreement and not imposing any material adverse conditions on any party of this Agreement;]
- (iv) [the Manager having received on the Closing Date the final draft or substantially complete draft of the CSRC Filings (as defined in Clause 6 below) and (where applicable) the opinion of [*name of counsel*], counsel for the Company as to the PRC laws in relation to the CSRC Filings, such drafts to be in form and substance reasonably satisfactory to the Manager;]<sup>20</sup>
- (v) the Manager having received on the Closing Date an opinion of [*name of counsel*], counsel for the Company as to [*place of incorporation*] laws, relating to the matters set forth in paragraphs [(a)-(f)] of Schedule 2 and such other matters as the Manager shall reasonably request, such opinion to be in form and substance reasonably satisfactory to the Manager;<sup>21 22</sup>
- (vi) the Manager having received on the Closing Date an opinion of [*name of counsel*], counsel for the Company as to Hong Kong laws, relating to the matters set forth in paragraphs [(a)-(d) and (f)] of Schedule 2 and such other matters as the Manager shall reasonably request, such opinion to be in form and substance reasonably satisfactory to the Manager;<sup>21</sup> [and]
- (vii) the Manager having received on the Closing Date an opinion of [*name of counsel*], U.S. counsel to the [Company][Manager], to the effect that the offer and sale of the Placing Shares by the Manager as set forth in this Agreement are not required to be registered under the U.S. Securities Act of 1933, as amended (the "**Securities Act**"), and such other matters as the Manager shall reasonably request, such opinion to be in form and substance reasonably satisfactory to the Manager[; and]
- (viii) before the Closing of the Placing, there shall not have occurred:<sup>23</sup>
  - (A) any material adverse change, or any development reasonably likely to involve a material adverse change, in the condition, financial or otherwise, or in the earnings, assets, business, operations or prospects of the Company, or the Company and its subsidiaries taken as a whole; or
  - (B) any suspension or limitation of trading (a) in any of the Company's securities by the Hong Kong Stock Exchange [*or any other exchange or over the counter market on which the Company's securities are admitted or listed for trading*] [(save and except for any trading halt in relation to the Placing)], or (b) generally on the Hong Kong Stock Exchange[, the Shanghai Stock Exchange, the Shenzhen Stock Exchange, the Tokyo

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<sup>19</sup> Only applicable to the resale of treasury shares. See 2(i) for the condition for new issues.

<sup>20</sup> Include where relevant (see Clause 6).

<sup>21</sup> No form opinion is provided as an annex as the necessity of an opinion, and its contents, will depend on the particular jurisdiction and other relevant circumstances.

<sup>22</sup> Where appropriate, counsel for the Company may be asked to produce a United States Investment Company Act of 1940 opinion if there are sales into the U.S..

<sup>23</sup> The following additional condition may be required in certain circumstances: "any downgrading in the rating accorded the debt securities of the Company or any of its subsidiaries by any internationally recognised rating agency, and no such agency has publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the debt securities of the Company or any of its subsidiaries."

Stock Exchange, the London Stock Exchange, the New York Stock Exchange, the Nasdaq National Market] [or] [*other relevant exchanges*]; or

- (C) any outbreak or escalation of hostilities, act of terrorism, the declaration by Hong Kong, [*the place of incorporation of the Company*] the PRC, Japan, Singapore, the United States, the United Kingdom [or] any other member of the European Economic Area ("**EEA**") [*or other applicable jurisdiction(s)*] of a national emergency or war or other calamity or crisis; or
- (D) any material disruption in commercial banking or securities settlement or clearance services in Hong Kong, [*the place of incorporation of the Company*] the PRC, Japan, Singapore, the United States, the United Kingdom [or] any other member of the EEA [*or other applicable jurisdiction(s)*] and/or a general moratorium on commercial banking activities having been declared by the relevant authorities in Hong Kong, [*the place of incorporation of the Company*] the PRC, Japan, Singapore, the United States, the United Kingdom [or] any member of the EEA [*or other applicable jurisdiction(s)*]; or
- (E) any material adverse change or development involving a prospective material adverse change in or affecting the financial markets in Hong Kong, [*the place of incorporation of the Company*] the PRC, Japan, Singapore, the United States, the United Kingdom [or] any member of the EEA [*or other applicable jurisdiction(s)*] or in international financial, political or economic conditions, currency exchange rates, exchange controls or taxation,

that, in the sole judgment of the Manager, would make the placement of the Placing Shares or the enforcement of contracts to purchase the Placing Shares impracticable or inadvisable, or would materially prejudice trading of the Placing Shares in the secondary market;

- (ix) the representations and warranties made by the Company pursuant to this Agreement being true and accurate and not misleading as of the date of this Agreement[, the Pricing Date]<sup>24</sup> and the Closing Date; and
  - (x) the Company having complied with all of the agreements and undertakings and satisfied all of the conditions on its part to be complied with or satisfied under this Agreement on or before the Closing Date;
- (b) The Company shall use its reasonable endeavours to procure the fulfilment of the Conditions on or before the Closing Date. The Manager in its sole discretion may waive any of the Conditions (except for 2(a)[(i), (ii) and (iii)]), in whole or in part and with or without conditions, by notice to the Company.
  - (c) [The Company shall, as soon as is reasonably practicable, apply to the Hong Kong Stock Exchange for the granting of Listing Approval after the signing of this Agreement and the Company shall promptly inform the Manager following the receipt of the Listing Approval.]<sup>25</sup> The Company shall furnish such information, supply such documents, pay such fees and do all such acts and things as may reasonably be

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<sup>24</sup> Delete as appropriate depending on whether the parties will execute the Terms of Placing.

<sup>25</sup> Only applicable to a transaction involving a new issue.



required by the Manager, the Hong Kong Stock Exchange and/or the SFC in connection with the fulfilment of the Conditions.

- (d) The Manager shall submit to the Hong Kong Stock Exchange in the prescribed form a list of the placees procured by it under the Placing (the "**Placees**").<sup>26</sup>
- (e) In the event that (i) any of the events set out in Clause 2(a)(viii) occurs at any time between the date of this Agreement and the Closing Date, or (ii) the Company does not deliver the Placing Shares on the Closing Date, or (iii) any of Conditions has not been satisfied or waived in writing at or prior to 8:00 a.m. (Hong Kong time) on the [fifth]<sup>27</sup> business day after the date of this Agreement, or such later date as may be agreed among the Company and the Manager in writing, the Manager may elect, in its sole discretion, to terminate this Agreement forthwith, provided that Clauses [5, 11, 12, 13, 14 and 15] shall survive such termination and remain in full force and effect, and provided further that if the Company shall have delivered some but not all of the Placing Shares on the Closing Date, the Manager shall have the option to effect the Placing with respect to such Placing Shares as have been delivered, but such partial Placing shall not relieve the Company from liability for its default with respect to the Placing Shares not delivered.

### 3. **CLOSING OF PLACING**

- (a) The closing of the Placing (the "**Closing of the Placing**") shall take place on the [●] business day after the date upon which the last of the Conditions shall have been satisfied[, provided that it shall take place on a date no later than [5 days] after the date of this Agreement,] or at such other time and/or date as the Company and the Manager agree in writing and in compliance with the Listing Rules (the "**Closing Date**").
- (b) <sup>28</sup> [(i) ]<sup>29</sup> [At Closing of the Placing[, in respect of the [New Placing Shares], the Company shall forthwith allot and issue to the HKSCC Nominees Limited the [New] Placing Shares and shall (A) deliver to the Manager (i) copies of the resolution(s) by the board of directors of the Company (the "**Board**") or a committee or person authorised by the Board authorising the issue and allotment of the [New] Placing Shares, and (ii) copies of irrevocable instruction letters, placement forms and other documents issued by the Company to its share registrar required for the deposit by the Manager of the respective [New] Placing Shares in CCASS; (B) deliver to the Manager a copy of its written instructions to its share registrar(s) to update the register of members to reflect the issue of the [New] Placing Shares; and (C) deliver to the Manager a copy of [each of the [approvals]<sup>30</sup> and] the Listing Approval. The Company shall procure satisfaction of the events set out in this Clause 3(b)[(i)] at or prior to [8:00 a.m. (Hong Kong time)] on the Closing Date.]

#### **AND/ OR**

- (b) [(ii) ]<sup>31</sup>[Closing of the Placing [in respect of the Treasury Placing Shares] shall take place in the Central Clearing and Settlement System operated by HKSCC on a [free

<sup>26</sup> The Hong Kong Stock Exchange has confirmed that it would accept a combined placee list for a combined deal including both new shares and treasury shares.

<sup>27</sup> To the extent that treasury shares are used as Placing Shares, a shorter settlement timeframe may be agreed by the Company and the Manager, subject to confirmation with the share registrar.

<sup>28</sup> Applicable to new issue.

<sup>29</sup> The number reference to [(i)] and to [New] Placing Shares in this clause are only required for hybrid deals involving both a new issue of shares and the transfer of treasury shares.

<sup>30</sup> To spell out any other deal specific approvals, if any, required.

<sup>31</sup> The number reference to [(ii)] and to [Treasury] Placing Shares in this clause are only required for hybrid deals involving both a new issue of shares and the transfer of treasury shares.

of payment/delivery versus payment] basis.<sup>32</sup> By no later than [8:00 a.m. (Hong Kong time)] on the Closing Date, the Company shall (A) deliver to the Manager (i) copies of the resolution(s) by the board of directors of the Company (the "**Board**") or a committee or person authorised by the Board authorising the Placing and the resale of the [Treasury] Placing Shares, and (B) procure its designated CCASS participant(s) to give an irrevocable delivery instruction to effect a book-entry settlement of the [Treasury] Placing Shares in accordance with this Agreement and the General Rules and the Operational Procedures of HKSCC to the credit of the stock account of the CCASS participant(s) specified by the Manager before the Closing Date.]<sup>33</sup>

- (c) Against delivery of the Placing Shares as set out in Clause 3(b)[(i) and (ii)]<sup>34</sup> above, the Manager shall pay or procure there to be paid an amount equal to the number of Placing Shares multiplied by the Placing Price, less any amount authorised to be deducted pursuant to Clauses 4 and 5. Such payment shall be made for value on the Closing Date to such bank account held with a bank in Hong Kong as may be notified by the Company to the Manager at least two business days before the Closing Date. Such payment shall constitute complete discharge of the obligations of the Manager under this Agreement.<sup>35</sup>

#### 4. **COMMISSIONS AND FEES**<sup>36</sup>

In consideration of the services provided by the Manager under this Agreement, the Company and the Manager agree as follows:<sup>37</sup>

- (a) the Company shall pay the Manager on the Closing Date (i) a commission equal to [●]% of the aggregate value of the Placing Shares at the Placing Price[, provided that if the Placing Price is lower than the Backstop Price, then the commission shall be equal to [●]% of the aggregate value of the Placing Shares at the Backstop Price,

<sup>32</sup> Applicable to treasury shares. Issuers which are holding the treasury shares in their own name (such as issuers with a place of incorporation such as Bermuda or the Cayman Islands which require this as a matter of law) may re-deposit such treasury shares into CCASS only if it has imminent plan to resell them on the Exchange and such resale should be completed as soon as possible. Issuers are advised to discuss with their share registrar on deposit arrangement in advance of the Placing. For further details, please refer to GL119-24 which provides guidance on the arrangements for listed issuers to hold or deposit treasury shares in CCASS.

To be included if the Placing Shares are not already deposited and held in CCASS: "To the extent that the Placing Shares are not already deposited and held in CCASS, the Company shall, at its own expense, deliver share certificates in respect of such Placing Shares, together with an instrument of transfer in respect of such Placing Shares and such other necessary documentation to effect the deposit of such Placing Shares into CCASS, to the Manager (or to such settlement agent (the "**Settlement Agent**") as the Manager may direct) on or before 10:00 a.m. on the business day immediately following the date of this Agreement (or such other time and date as may be agreed between the Company and the Manager). The Company shall complete and sign all necessary forms and documentation to effect the opening of a nominee account with the Manager or the Settlement Agent (as the case may be). The Company shall authorise the Manager or the Settlement Agent (as the case may be) to deposit the Placing Shares into CCASS and shall appoint the Manager or the Settlement Agent (as the case may be) to act as the Company's nominee to hold the Placing Shares pending Closing."

<sup>33</sup> Applicable to treasury shares.

<sup>34</sup> The language in square brackets is only required for hybrid deals involving both a new issue of shares and the transfer of treasury shares.

<sup>35</sup> To the extent there are more than one Managers, or if a settlement agent is appointed, to consider adding arrangements between Managers, for example "The [Company/Managers] agree[s] to nominate [●] as the settlement agent for the Placing (the "**Settlement Agent**"). Each of the Managers (or its nominee(s) or agent(s)) shall prior to 10:00 a.m. (Hong Kong time) on the Closing Date make or procure the making of payment in Hong Kong dollars in immediately available funds of an amount equivalent to the gross proceeds of the Placing that it receives from Placees (the "**Gross Amount**") to the bank account designated by the Settlement Agent. After receipt of such Gross Amount, the Settlement Agent shall (for and on behalf of the Managers) at or around 10:00 a.m. (Hong Kong time) on the Closing Date make payment in Hong Kong dollars in immediately available funds of the total net amount, which is calculated based on the Gross Amount and after deducting and withholding by the Settlement Agent of the amounts payable to the Placing Agents referred to in Clauses 4 and 5, to the bank account of the Company, the details of which shall be notified by the Company to the Settlement Agent [two] business day prior to the Closing Date."

<sup>36</sup> To be modified as necessary if the trade will include a backstop arrangement.

<sup>37</sup> Pursuant to paragraphs 21.3.2 and 21.4.1 of the Code of Conduct, the written agreement for the appointment of a CMI and an OC should specify, among other things, the fee arrangements (including fixed fees as a percentage of the total fees to be paid to all syndicate CMIs participating in the offering) and the fee payment schedule. This Clause 4 of this Agreement is expected to be consistent with the terms of the Written Engagement.

subject to adjustment in accordance with Clause 1(b)]; and (ii) [brokerage],<sup>38</sup> Hong Kong Stock Exchange trading fee of [0.00565]%, SFC transaction levy of [0.0027]%, AFRC transaction levy of [0.00015]% [and ad valorem stamp duty at the rate of [0.1]%]<sup>39</sup>, as may be payable by the Company [and, if applicable, the Manager,]<sup>40</sup> in respect of the offering and sale of the Placing Shares; and

- (b) the Manager shall be entitled to deduct the commissions, fees and other amounts payable under this Clause 4 from the amounts payable to the Company pursuant to Clause 3.

## 5. **EXPENSES**

- (a) The Company shall be responsible for its own expenses, including legal fees and fees of other advisers, in connection with this Agreement and the Placing.
- (b) [The Company shall, promptly upon request and irrespective of whether the Placing is completed, reimburse the Manager for all travel and other out-of-pocket expenses properly incurred by it in connection with the execution of its obligations under this Agreement (including, without limitation, printing, postage and telecommunications costs, and fees and expenses of the Manager's lawyers and other advisers).]<sup>41</sup>
- (c) If this Agreement is terminated or if for any reason the Placing is not completed, the Company shall remain liable to the Manager for the payment as referred to in (b) above and for any stamp duty, Hong Kong Stock Exchange trading fee, SFC transaction levy or AFRC transaction levy to the extent already incurred.
- (d) The Company shall bear and pay, or indemnify the Manager or any Relevant Person (as defined in Clause 11) in respect of, any stamp, withholding, documentary, transfer or other duties or taxes payable or incurred (together with any interest and penalties) by [the Company] or the Manager (or Placees procured by the Manager) or otherwise imposed on any person on or in connection with the Placing and the execution and delivery of this Agreement [(including the ad valorem stamp duty payable on the Treasury Placing Shares by the Company in accordance with Clause 1(f))]<sup>42</sup> and any other tax payable in connection with the consummation of the transactions contemplated and the services rendered or duties performed by any Relevant Person (as defined in Clause 11) pursuant to this Agreement.
- (e) The Manager shall be entitled to deduct the relevant amounts mentioned in this Clause 5 from the amounts payable to the Company pursuant to Clause 3. The Manager shall also be entitled to retain for its own account any brokerage fees and commissions that it may receive from the Placees.

## 6. **POST-CLOSING FILINGS**<sup>43 44</sup>

The Company shall prepare and submit the filing report in relation to the Placing and any transactions contemplated by this Agreement (the "**CSRC Filing Report**") and any relevant supporting materials (including, but not limited to, the PRC legal opinion to be issued by

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<sup>38</sup> To be modified or removed as necessary to reflect the commercial terms of the trade.

<sup>39</sup> Applicable to treasury shares. Where the Company has agreed to cover the stamp duty in full in a combined new issue and resale transaction, the full amount of stamp duty at the rate of 0.2% should be used here.

<sup>40</sup> To be added if the trade will include a backstop arrangement. This is designed to cover stamp duty payable by the Manager on the purchase by it of the shares as underwriter and the subsequent on-sale by it of the shares to investors.

<sup>41</sup> To be modified or removed as necessary to reflect the commercial terms of the trade.

<sup>42</sup> Applicable to treasury shares in a hybrid transaction where the Company has agreed to pay the stamp duty.

<sup>43</sup> This clause is applicable if the Company falls within the scope of "domestic company" under the CSRC Filing Rules and if this Placing is subject to the CSRC Filing Rules.

<sup>44</sup> Currently there is no clear interpretative guidance on whether a CSRC Filing Report is required for the sale of treasury shares. This should be discussed with PRC counsel.

the counsel for the Company on the PRC laws, where applicable) (together with the CSRC Filing Report and including any amendments, supplements and/or modifications thereof, the "**CSRC Filings**")<sup>45</sup> to the China Securities Regulatory Commission (the "**CSRC**") pursuant to the applicable requirements under the Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic Companies (境内企业境外发行证券和上市管理试行办法) and supporting guidelines issued by the CSRC on 17 February 2023 (as amended, supplemented or otherwise modified from time to time, the "**CSRC Filing Rules**").

The Company acknowledges and undertakes that in connection with the CSRC Filings to be made to the CSRC for the Placing, it and its directors shall:

- (a) comply with the requirements under the CSRC Filing Rules in the preparation and submission of the CSRC Filings;
- (b) ensure that all information and statements included in the CSRC Filings (including the CSRC Filing Report) are and will remain true, accurate and complete and not misleading, and that no material information or facts have been omitted or withheld;
- (c) ensure that (i) there are not and will not be any conflicting, inconsistent or materially different descriptions of facts contained in the CSRC Filings, (ii) the CSRC Filings contain and will contain detailed analysis on the fulfillment of Article 15 of the CSRC Filing Rules and descriptions of all material events as required to be reported pursuant to the CSRC Filing Rules or other applicable laws, regulations and rules, and (iii) the CSRC Filings and all other documents filed with the CSRC or issued by or on behalf of the Company in connection with the Placing and any transactions contemplated by this Agreement do not and will not contain any statement or commentary that in any manner misrepresents or disparages laws, policies, business environment and judicial system of the PRC;
- (d) provide the Manager with a written confirmation duly signed by a director or authorized representative of the Company, immediately before submission of the CSRC Filings, to confirm that (i) the Company has complied with all relevant requirements under the applicable laws, regulations and regulatory requirements (including, without limitation, the CSRC Filing Rules and the Provisions on Strengthening Confidentiality and Archives Administration of Overseas Securities Offering and Listing by Domestic Companies (关于加强境内企业境外发行证券和上市相关保密和档案管理工作的规定) issued by the CSRC on 24 February 2023 (as amended, supplemented or otherwise modified from time to time, the "**CSRC Archive Rules**", together with the CSRC Filing Rules, the "**CSRC Rules**")) and all relevant disclosure requirements in respect of the CSRC Filings pursuant to the CSRC Filing Rules; (ii) all information and statements included in the CSRC Filings are and will remain true, accurate and complete and not misleading, and that no material information or facts have been omitted or withheld; (iii) the CSRC Filings and all other documents filed with the CSRC or issued by or on behalf of the Company in connection with the Placing do not contain any statement or commentary that in any manner misrepresents or disparages laws, policies, business environment and judicial system of the PRC; and (iv) the Company is not aware that any of the circumstances in connection of the CSRC Filings set forth in Article 20 of the CSRC Filing Rules has occurred, and

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Item 6 in the template of the CSRC Filing Report requires disclosure of "previous undertaking(s) and the compliance status thereof". Currently there is no clear interpretative guidance as to whether the Manager involved in a post-listing placing would be required to make confirmation on any such previous undertaking(s). In case of a post-listing placing (particularly if the Manager did not participate in the Company's initial public offering or its other previous offerings for which CSRC Filings were required), you are advised to seek your PRC legal advisor's view on the interpretation of this item and consider whether any further amendments to the scope of "CSRC Filings" and/or "CSRC Filing Report" in this Agreement should be made and/or any additional due diligence work should be undertaken.

undertake to promptly notify the Manager if any of such circumstances occurs or is expected to occur; and

- (e) shall not make any amendment, supplement or modification to the final draft or substantially complete draft of the CSRC Filings and (where applicable) the related PRC legal opinion delivered to the Manager under Clause 2(a)(iv) above unless prior approval from the Manager of any such amendment, supplement or modification is obtained.

## 7. **REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS OF THE COMPANY**

- (a) The Company hereby makes the representations, warranties and undertakings set out in Schedule 2 to the Manager on and as of the date of this Agreement[, the Pricing Date] and the Closing Date.
- (b) The Company acknowledges that the Manager is entering into this Agreement in reliance upon each of the representations, warranties and undertakings set out in Schedule 2. The Company shall promptly notify the Manager if at any time on or before the Closing Date any of the representations or warranties set out in Schedule 2 ceases to be true and accurate or has become misleading in any respect or in the event that the Company breaches any undertaking or fails to comply with any obligation under this Agreement in any respect.
- (c) The Company shall not, and shall procure that no member of the Group shall, prior to or on the Closing Date do or omit to do anything which may cause any of the representations, warranties and undertakings given by any of the Company under this Agreement to be untrue.
- (d) The Company undertakes, at its own expense, to execute or procure to be executed all such documents and do all such acts and things as is necessary in order to give effect to the terms of the Written Engagement and this Agreement and to enable the Placing to be carried out and given full force and effect.
- (e) The Company undertakes to cooperate with and fully assist in a timely manner the Manager, to facilitate its performance of its duties, as the case may be, as the CMI and the OC and to meet its obligations and responsibilities under all applicable laws, regulations, rules and regulatory requirements (whether having the force of law or otherwise) from time to time in force, including, without limitation, the Code of Conduct[, / and] the Listing Rules[, and the CSRC Rules]<sup>46</sup>.
- (f) The Company undertakes, at its own expense, to give every assistance to the Manager to meet its obligations and responsibilities under the Code of Conduct[, /and] the Listing Rules[, and the CSRC Rules] to provide relevant information to the Hong Kong Stock Exchange, the SFC[, the CSRC] and other regulators (including but not limited to the information under paragraph 21.4.8(a) of the Code of Conduct, where applicable)<sup>47</sup>.
- (g) The Company undertakes, except to the extent required by applicable law and save as permitted by this Agreement, not to disclose to any third party or publicly refer to the contents of this Agreement or the transactions contemplated by it before the Closing Date without the prior written consent of the Manager, except that the Company may disclose such information to their advisers as necessary in connection with the Placing.

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<sup>46</sup> The bracketed portion should be included if the CSRC Filing Rules apply.

<sup>47</sup> The bracketed portion should be included if the CSRC Filing Rules apply.

- (h) All payments to be made by the Company to any Relevant Person (as defined in Clause 11) shall be made without withholding or deduction for or on account of any present or future tax unless the Company is compelled by law to deduct or withhold such tax. In that event, the Company shall pay such additional amounts as may be necessary in order that the net amounts received after such withholding or deduction shall equal the amounts that would have been received if no withholding or deduction had been made.
- (i) The Company shall make appropriate disclosures pursuant to, and shall comply with all applicable laws, rules and regulations (including but not limited to the Listing Rules, the Takeovers Code, the Securities and Futures Ordinance ("**SFO**")[, /and] the Code of Conduct [and the CSRC Rules]) and all applicable requirements of Hong Kong Stock Exchange, the SFC[, the CSRC] and any other applicable regulatory body (including all applicable filing, announcement and notice requirements) in connection with the transactions contemplated by this Agreement (including the Company shall document the rationale behind their decision on allocation and pricing, in particular where the decision is contrary to the advice, recommendation(s) and/or guidance of the Manager)<sup>48</sup>.
- (j) The Company shall promptly provide the Manager upon request, with all such information known to it or which on reasonable enquiry ought to be known to it relating to the Company and/or any other member of the Group or otherwise as may be required by the Manager in connection with the transactions contemplated by this Agreement for the purpose of complying with any applicable laws, rules, regulations or directions (including the establishment of any defence to any action under any of the same, whether relating to due diligence or otherwise) or any requirement of Hong Kong Stock Exchange, the SFC[, the CSRC] or any other applicable regulatory body<sup>49</sup>.
- (k) The Company shall procure that particulars of every significant new factor known to it which is capable of materially and adversely affecting any of the Placing and which arises between the date hereof and the Closing of the Subscription shall be promptly provided to the Manager.
- (l) [The Company undertakes to notify the CSRC or the relevant PRC governmental authority of any material events that are required to be reported under the applicable laws, rules and regulations (including, without limitation, the CSRC Rules), and to notify the Manager of any such material information to the extent permitted by applicable laws, rules and regulations<sup>50</sup>.]
- (m) [The Company shall comply with all applicable laws, rules and regulations (including, without limitation, the CSRC Archive Rules) in connection with (A) the establishment and maintenance of adequate and effective internal control measures and internal systems for maintenance of data protection, confidentiality and archive administration; (B) the relevant requirements and approval and filing procedures in connection with its handling, disclosure, transfer and retention of transfer of state secrets and working secrets of government agencies or any other documents or materials that would otherwise be detrimental to national securities or public interest (the "**Relevant Information**"); and (C) maintenance of confidentiality of any Relevant Information<sup>51</sup>.]
- (n) Without prejudice to the foregoing obligations, the Company undertakes with the Manager that it shall do all such other acts and things as may be reasonably required

<sup>48</sup> Pursuant to paragraph 19 of the Placing Guidelines for Equity Securities (Appendix F1 to the Listing Rules), an issuer should document the rationale behind its decision on allocation and pricing, in particular where the decision is contrary to the advice, recommendation(s) and/or guidance of the OC. The bracketed portion should be included if the CSRC Filing Rules apply.

<sup>49</sup> The bracketed portion should be included if the CSRC Filing Rules apply.

<sup>50</sup> The bracketed portion should be included if the CSRC Filing Rules apply.

<sup>51</sup> The bracketed portion should be included if the CSRC Filing Rules apply.

to be done by it to carry into effect the transactions contemplated by this Agreement in accordance with the terms of this Agreement.

## 8. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS OF THE MANAGER

[The Manager]<sup>52</sup> hereby makes the representations, warranties and undertakings set out in Schedule 2 to the Company on and as of the date of this Agreement[, the Pricing Date] and the Closing Date.

## 9. ANNOUNCEMENT

The Company shall release or cause to be released for publication, as soon as possible upon the execution of this Agreement, an announcement in relation to the transactions contemplated by this Agreement and pursuant to the applicable requirements under the Listing Rules (the "**Post-signing Announcement**"), provided that prior approval of the content and the release of the Post-signing Announcement has been obtained from the Manager (such approval not to be unreasonably withheld or delayed).<sup>53</sup>

## 10. LOCK-UP AND PURCHASE RESTRICTION

- (a) The Company shall not, without the prior written consent of the Manager, (i) effect or arrange or procure placement of, allot or issue or transfer out of treasury or offer to allot or issue or transfer out of treasury or grant any option, right or warrant to subscribe for, or enter into any transaction which is designed to, or might reasonably be expected to, result in any of the aforesaid (whether by actual disposition or effective economic disposition due to cash settlement or otherwise), directly or indirectly, any equity securities of the Company or any securities convertible into, or exercisable, or exchangeable for, equity securities of the Company, or (ii) enter into any swap or similar agreement that transfers, in whole or in part, the economic risk of ownership of such Shares, whether any such transaction described in (i) or (ii) above is to be settled by delivery of Shares or such other securities, in cash or otherwise, or (iii) publicly announce an intention to effect any such transaction, for a period beginning on the date of this Agreement and ending on the date which is [●] days after the Closing Date. The foregoing shall not apply to the [issue[ and/or ]/resale] of the Placing Shares under this Agreement.
- (b) [The Company shall not, and shall procure each of its subsidiaries shall not, purchase any of the Company's Shares, directly or indirectly, whether on the Hong Kong Stock Exchange or otherwise, at any time during the period from the date of this Agreement until the expiry of 30 days after the Closing Date without the prior written consent of the Manager and the Hong Kong Stock Exchange.]<sup>54</sup>

## 11. INDEMNITY

- (a) The Company agrees to indemnify and hold harmless the Manager (for itself and on trust for each Relevant Person (as defined below)) and its Affiliates (as defined below), and their respective directors, officers, agents and employees and each other person, if any, controlling the Manager [(whether within the meaning of Section 15 of the

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<sup>52</sup> If there is more than one Manager appointed as the CMI or the OC, amendments should be made to "Each of the Managers, in respect of itself only,"

<sup>53</sup> Please also refer to the "*ASIFMA Accelerated Bookbuild Offerings: Suggested techniques to assist with continuous disclosure obligations and to coverage practice in light of the EU Market Abuse Regulation*" in relation to the recommendation for the Company to make a launch announcement in relation to the potential launch of the Placing. In any event, the Company should publish a Post-signing Announcement after the signing of this Agreement according to Rule 13.28 of the Listing Rules for the issue of the Placing Shares pursuant to the general mandate/the resale or transfer of treasury shares (Rule 13.27A).

<sup>54</sup> This should be included where relevant to address Rule 10.06(3)(b) which provides that an issuer may not purchase its own shares for 30 days after any sale or transfer of treasury shares without the Hong Kong Stock Exchange's approval.

Securities Act or Section 20 of the U.S. Securities Exchange Act of 1934, as amended, or otherwise)]<sup>55</sup> or any of its Affiliates (each a "**Relevant Person**") from and against any and all losses, claims, damages, liabilities or expenses which any Relevant Person may suffer or incur or, in each case, actions in respect thereof, related to or arising out of (i) any breach or alleged breach of any of the representations and warranties of the Company contained in this Agreement, (ii) any failure or alleged failure of any of the Company to perform its obligations under this Agreement or its subject matter or (iii) any Relevant Person's obligations and roles in connection herewith, including but not limiting to its respective roles and responsibilities under the Code of Conduct as the OC, the CMI or otherwise (including, in each case, actions arising out of any of the Placing contemplated by this Agreement but excluding, in the case of (iii) only, any losses, claims, damages, liabilities or expenses finally judicially determined by a court of competent jurisdiction or a duly constituted arbitral tribunal to have resulted from (and then only to the extent of) such Relevant Person's gross negligence, wilful default or fraud), or (iv) any breach or alleged breach by the Company of any applicable laws, regulations and regulatory requirements (including, without limitation, the Listing Rules[, / and] the Code [and the CSRC Rules]); or (v) the Placing or any transactions contemplated hereby failing or being alleged to fail to comply with the requirements of applicable laws, regulations and regulatory requirements (including, without limitation, the Listing Rules [and the CSRC Rules]); [or] (vi) the activities and services undertaken by any Relevant Person pursuant to this Agreement and/or applicable laws and regulations (including, without limitation, the Listing Rules[, / and] the Code [and the CSRC Rules]<sup>56</sup>); or (vii) any incomplete, untrue, inaccurate or misleading statement or alleged incomplete, untrue, inaccurate or misleading statement of a fact contained in the CSRC Filings, or any amendment or supplement thereto, or the omission or alleged omission of any information which would make the statements made therein misleading in any respect]<sup>57</sup>, and the Company shall reimburse any Relevant Person for all properly incurred expenses (including legal fees and any applicable taxes) as they are incurred by such Relevant Person in connection with investigating, preparing or defending any such action or claim, whether or not in connection with a pending or threatened litigation in which such Relevant Person is a party. If a Relevant Person is subject to tax in respect of any indemnity payable under this Clause 11, the sum payable shall be increased to such amount as will ensure that after payment of such tax such Relevant Person shall be left with a sum equal to the amount that it would have received in the absence of such charge to tax (after giving credit for any tax relief available in respect of the matter giving rise to the indemnity). The obligations of the Company under this Clause 11 shall be in addition to any liability that the Company may otherwise have. As used in this Agreement, "Affiliate" shall have the meaning specified in Rule 501(b) of Regulation D under the Securities Act ("**Regulation D**").

- (b) The Company agrees that none of the Relevant Persons shall have any liability (save for the obligations imposed on the Manager under this Agreement and to the extent any liability resulted directly from any matter finally judicially determined by a court of competent jurisdiction or a duly constituted arbitral tribunal to be solely and directly caused by the gross negligence, wilful default or fraud on the part of the Relevant Person) to the Company or any other person, directly or indirectly, arising out of or in connection with any of the Placing or any transactions contemplated hereby.
- (c) The indemnities contained in Clause 11 shall remain in full force and effect notwithstanding completion of the Placing in accordance with the terms and conditions herein contained, shall be in addition to any liability which the Company may have and shall extend to include all costs, charges and expenses which the Manager and/or

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<sup>55</sup> The bracketed portion can be deleted if there will be no U.S. sales.

<sup>56</sup> The bracketed portion should be included if the CSRC Filing Rules apply.

<sup>57</sup> The bracketed portion should be included if the CSRC Filing Rules apply.



any of the Relevant Persons may reasonably incur or pay in disputing, settling or compromising any matter to which the indemnity might relate and in establishing the right to indemnification pursuant to this clause in respect of any matter. The Company shall not, without the prior written consent of the Manager, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the Relevant Persons are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each Relevant Person from all liability arising out of such claim, action, suit or proceeding.

12. **SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon, and inure solely to the benefit of, the Manager and the Company and, to the extent provided herein, any other Relevant Person and their respective heirs, executors, administrators, successors and assigns.

13. **[NO] THIRD PARTY RIGHTS**

[No person shall have any rights under the Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the Laws of Hong Kong) to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Ordinance, including, for the avoidance of doubt, any such right or remedy of any Relevant Person (as defined in Clause 11).]<sup>58</sup>

14. **LAW, JURISDICTION[ AND PROCESS AGENT]<sup>59</sup>**

- (a) This Agreement (and any dispute, controversy or claim of whatever nature arising out of or in any way relating to this Agreement or its formation) shall be governed by and construed in accordance with the laws of Hong Kong. [The Company agrees for the benefit of the Manager that the courts of Hong Kong will have exclusive jurisdiction in relation to this Agreement and the Company irrevocably submits to the jurisdiction of such courts provided that this submission shall not limit the right of the Manager to take proceedings in any other court of competent jurisdiction.]<sup>60</sup>
- (b) If a third party, not being a party to this Agreement, commences proceedings against any Relevant Person in any court of competent jurisdiction, arising out of or in connection with this Agreement or the transactions contemplated hereby (the "**Third Party Proceedings**"), nothing in this Clause 14 shall limit the rights of such Relevant Person to join the Company as a party to such Third Party Proceedings or to otherwise bring proceedings against any of the Company in connection with the Third Party Proceedings under this Agreement or otherwise in such courts in the jurisdiction in question, regardless of whether proceedings have been initiated or are ongoing in another jurisdiction. The Company irrevocably waives any objection to any such court as is referred to in the foregoing sentence on grounds of inconvenient forum or

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<sup>58</sup> Certain Managers may elect to disapply the Ordinance in its entirety in the manner set forth in Clause 13. In the alternative, Managers may elect to use the Ordinance to grant third party rights to Relevant Persons in respect of Clause 11 but otherwise disapply the Ordinance in respect of any other potential third party beneficiaries; appropriate changes should be made to Clause 11 and Clause 13 in order to implement this approach.

<sup>59</sup> Delete "And Process Agent" if Clause 14(c) below is excluded.

<sup>60</sup> In certain trades and/or jurisdictions, an arbitration clause may be appropriate, such as when the counterparty is a sovereign or is from the PRC, Indonesia or other jurisdiction where arbitration may be the preferred method of dispute resolution: [All disputes, controversies or claims arising out of or in connection with this Agreement shall be **[Note: include if the counterparty is from the PRC:** submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be] finally settled under the Rules of Arbitration of the International Chamber of Commerce, which rules are deemed to be incorporated by reference into this Clause. The seat of the arbitration shall be Hong Kong **[Note: if the counterparty is a sovereign, consider choosing an alternative seat, e.g. Singapore or London]**. The arbitral tribunal shall consist of three arbitrators. The language of the arbitration shall be English. The award shall be final and binding on the parties, and the parties waive irrevocably their right to any form of appeal, review or recourse to any state court or other judicial authority, insofar as such waiver may validly be made. The award may be enforced in any court of competent jurisdiction.]

otherwise with respect to the relevant proceedings and irrevocably agrees that a judgment or order of any such court in connection with such proceedings shall be conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction.

- (c) To the extent that any of the Company may in any proceedings in any jurisdiction arising out of or in connection with this Agreement or in any proceedings in any jurisdiction taken for the enforcement of any determination, decision, order or award made in such proceedings claim for itself or its assets, properties or revenues any immunity, sovereign or otherwise, from suit or other legal process including, without limitation, arbitration proceedings and all forms of execution, attachment or enforcement or to the extent that in any such proceedings there may be attributed to itself or its assets, properties or revenues any such immunity (whether or not claimed), each of the Company hereby irrevocably waives and agrees not to plead or claim any such immunity in relation to any such proceedings.

## 15. MISCELLANEOUS

- (a) Time shall be of the essence of this Agreement.
- (b) The heading to each Clause is included for convenience only and shall not affect the construction of this Agreement.
- (c) In the event any provision of this Agreement is found to be or becomes invalid or unenforceable, no other provision of this Agreement shall thereby be affected and this Agreement shall remain valid and enforceable in respect of all remaining provisions, and any invalid or unenforceable provision will be deemed to be replaced by a provision which as nearly as possible accomplishes the commercial purpose of the original.
- (d) This Agreement together with the Written Engagement constitute the entire agreement among the parties and supersedes all prior agreements and understandings (whether written or oral) among the Company and the Manager with respect to the subject matter of this Agreement. In case of inconsistency between this Agreement and the Written Engagement, this Agreement shall prevail.
- (e) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.
- (f) No variation or waiver to this Agreement shall be effective unless it is in writing and signed by or on behalf of the Company and the Manager.
- (g) [This Agreement shall automatically terminate if the Terms of Placing are not executed by the parties hereto by [●], provided however that notwithstanding any such termination Clauses [5, 11, 12, 13, 14 and 15] shall continue in full force and effect.]<sup>61</sup>
- (h) The indemnities, agreements, undertakings, representations, warranties and other statements of the Company, as set forth in this Agreement or made by or on its behalf, shall remain in full force and effect and shall survive delivery of and payment for the Placing Shares.
- (i) [The terms of this Agreement do not constitute, and shall not be construed as, an agreement or commitment among the Company and the Manager relative to

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<sup>61</sup> To be removed if there are no Terms of Sale.

underwriting or the Manager making any principal commitment[, before the Pricing Date,] to [subscribe for][or (as the case may be)] [purchase] the Placing Shares.]<sup>62</sup>

- (j) [Notwithstanding any other term of this Agreement or any other agreements, arrangements or understanding between the Manager and the Company, the Company acknowledges, accepts, and agrees to be bound by:
- (i) the effect of the exercise of any Write-down and Conversion Powers ("**Bail-in Powers**") as defined in any present or future laws, regulations, or requirements of [*Member State*] ("**Bail-in Legislation**") implementing Directive 2014/59/EU by any resolution authority with the ability to exercise any such Bail-in Powers in relation to the Manager (a "**Relevant Resolution Authority**") in relation to any BRRD Liability (as defined in such Bail-in Legislation) of the Manager to the Company under this Agreement, that (without limitation) may include and result in any of the following, or some combination thereof:
    - (A) the reduction of all, or a portion, of the BRRD Liability or outstanding amounts due thereon;
    - (B) the conversion of all, or a portion, of the BRRD Liability into shares, other securities or other obligations of the Manager or another person (and the issue to or conferral on the Company of such shares, securities or obligations);
    - (C) the cancellation of the BRRD Liability; and
    - (D) the amendment or alteration of any interest, if applicable, thereon, the maturity or the dates on which any payments are due, including by suspending payment for a temporary period;
  - (ii) the variation of the terms of this Agreement, as deemed necessary by the Relevant Resolution Authority, to give effect to the exercise of Bail-in Powers by the Relevant Resolution Authority.]<sup>63, 64</sup>
- (k) The Company acknowledges and agrees that the Manager is acting solely pursuant to a contractual relationship with the Company on an arm's length basis with respect to the Placing (including in connection with determining the terms thereof) and that in connection with the Placing and the process leading to such transactions, the Manager has not acted as and is not a financial adviser or a fiduciary of the Company or the stockholders, creditors, employees, Affiliates of the Company or any other party. The Manager has not assumed and will not assume an advisory or fiduciary responsibility in favour of the Company with respect to the Placing or the process leading to such transactions (irrespective of whether the Manager has advised or is currently advising any of the Company on other matters) and the Manager has no obligation to the Company with respect to the Placing except the obligations expressly set out in this Agreement. The Company further acknowledges and agrees that the Manager and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company and that the Manager has not provided any legal, accounting, regulatory or tax advice with respect to any of the Placing. The Company confirms that it has consulted its own legal, accounting, regulatory and tax advisers to the extent it deemed appropriate. The Company waives to the fullest extent permitted by applicable law any claims it may have against the Manager and

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<sup>62</sup> This paragraph should be deleted if the trade is on an underwritten basis or will include a backstop arrangement.

<sup>63</sup> If the Manager is an EU regulated entity, this provision may be required to comply with applicable Bail-in Legislation. Appropriate amendments should be made if the Company is an EU regulated entity, there are multiple Managers.

<sup>64</sup> Bail-in provision to be reviewed following the end of the Brexit transitional period which is currently scheduled to expire on 31 December 2020.

its Affiliates arising from any alleged breach of fiduciary duty in connection with the Placing.

16. **[RECOGNITION OF THE U.S. SPECIAL RESOLUTION REGIMES**

- (a) In the event that the Manager that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from the Manager of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.
- (b) In the event that the Manager that is a Covered Entity or a BHC Act Affiliate of the Manager becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against the Manager are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

In this Clause 16:

**"BHC Act Affiliate"** has the meaning assigned to the term "affiliate" in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

**"Covered Entity"** means any of the following:

- (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

**"Default Right"** has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

**"U.S. Special Resolution Regime"** means each of (i) the U.S. Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.]<sup>65</sup>

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<sup>65</sup> Include if, for U.S. Special Resolution Regimes purposes: (i) the Manager is a Covered Entity; and (ii) this Agreement is considered an "in-scope" qualified financial contract (QFC), or the Manager otherwise wishes to do so.

**IN WITNESS** WHEREOF this Agreement has been duly executed as of the day and year first before written.

For and on behalf of

*[Full legal name of Company]*

By: \_\_\_\_\_

Name:

Title:

For and on behalf of

*[Full legal name of Manager]*

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

**SCHEDULE 1**

**Terms of Placing**

Further to the provisions of the PLACING AGREEMENT DATED [●] among [●], [●] and [●] (the "**Agreement**"), the following terms of [issue][and (as the case may be)][resale] are agreed:

Number of Placing Shares: [●] [comprising [●] New Placing Shares and [●] Treasury Shares]<sup>66</sup>

Placing Price per Placing Share: [●]

Commission: [●]%

Closing Date: [●]

The Company confirms the accuracy of the representations and warranties set out in Schedule 2 to the Agreement, and the Company and the Manager confirm the provisions of the Agreement and acknowledge and agree that these Terms of Placing form part of and shall be read in conjunction with the Agreement.

Terms defined in the Agreement shall have the same meanings herein.

IN WITNESS WHEREOF these Terms of Placing have been duly executed as of [●]

For and on behalf of

[Full legal name of Company]

By: \_\_\_\_\_

Name:

Title:

For and on behalf of

[Full legal name of Manager]

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name:

Title:

Title:

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<sup>66</sup> The language in square brackets is only required for hybrid deals involving both a new issue of shares and the transfer of treasury shares.

## SCHEDULE 2

### Representations, Warranties and Undertakings of the Company

- (a) The Company has taken all necessary corporate and other actions to authorise the execution, delivery and performance of this Agreement. Without limitation to the generality of the aforesaid, the Company has obtained the requisite shareholders' approval by way of a general mandate for the [issue and allotment][of the New Placing Shares and the][resale] of the [Treasury] Placing Shares. [The [Treasury] Placing Shares are held by the Company as treasury shares having complied with all applicable laws, rules and requirements in relation to the relevant shares' status as treasury shares]. This Agreement has been duly executed and delivered by the duly authorised representatives of the Company, and constitutes a legal, valid, binding agreement, enforceable against the Company in accordance with its terms.
- (b) The Company and each member of the Group has been duly incorporated and is validly existing under the laws of its place of incorporation and each member of the Group has power to own its assets and to conduct its business in the manner presently conducted.
- (c) The execution, delivery and performance of this Agreement by the Company does not contravene:
- (i) its constitutional documents;
  - (ii) any agreement, contract or undertaking to which it (or any of its Affiliates) is a party, or by which it (or any of its Affiliates) or any of its (or its Affiliates') assets is bound; or
  - (iii) any statute, law, rule, regulation, judgment, order or decree of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over it (including but not limited to the Listing Rules[ and the CSRC Rules]<sup>67</sup>) or the Placing Shares.

Without limitation to the generality of the aforesaid, none of the Company or other members of the Group is subject to any undertakings or obligations (whether regulatory, contractual or otherwise and whether given or undertaken during the course of, or in connection with, the application for listing of the Shares on Hong Kong Stock Exchange or otherwise) which prohibits or restricts the Company from entering into this Agreement, or otherwise prohibits or restricts any of the transactions contemplated hereunder.

- (d) All regulatory, judicial or other consents, approvals, authorisations, orders and qualifications required to be obtained for the execution, delivery and performance of this Agreement by the Company have been obtained and are in full force and effect, except for [(i) ][the Listing Approval that will be obtained by the Company before completion of the Placing]/[and (ii) ][the confirmation from the Hong Kong Stock Exchange that it has no further comments on the Places which will be obtained by the Company before completion of the Placing].<sup>68</sup>
- (e) [The Company's constitutional documents do not contain any restrictions on the Company holding shares in treasury. The Company has good and valid title to, and the necessary right and power to resell and transfer the [Treasury] Placing Shares, free and clear of all pledges, liens and encumbrances, equities, security interests or other claims (including any non-disposal undertakings or similar obligations) binding upon the Company; and upon the delivery of the [Treasury] Placing Shares to the Manager (or places procured by the Manager) and except for such restrictions which were applicable to the [Treasury] Placing Shares solely

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<sup>67</sup> The bracketed portion should be included if the CSRC Filing Rules apply.

<sup>68</sup> The first option bracketed portion applies to a new issue and should be deleted if the transaction only involves Treasury Shares. The second option applies for a resale of treasury shares. Both options should be included for a hybrid transaction involving both new shares and treasury shares.

by virtue of their status as treasury shares prior to Closing Date, good and valid title to the [Treasury] Placing Shares, free and clear of all pledges, liens and encumbrances, equities, security interests or other claims, will pass to the Manager (or placees procured by the Manager). The [Treasury] Placing Shares are validly allotted and issued (and have been allotted and issued more than six months before the date of this Agreement), are fully paid and non-assessable and when delivered to the Manager (or Placees procured by the Manager or its Affiliates) in accordance with this Agreement will have the same rights as, and rank *pari passu* with, all of the other Shares of the Company of the same class.]<sup>69</sup>

- (f) [Other than Hong Kong stamp duty[ payable in respect of the Treasury Placing Shares],]<sup>70</sup> [N/no] stamp duty, withholding tax, transfer tax, registration, VAT or any other similar taxes or duties are payable in any Relevant Jurisdictions (defined below) by or on behalf of the Manager or any Placees of the Placing Shares procured by the Manager in connection with (i) the Placing to the Manager or such placees of the Placing Shares, in the manner contemplated in this Agreement or (ii) the execution and delivery of this Agreement. For the purposes of this paragraph (f), "Relevant Jurisdictions" shall mean Hong Kong and [*jurisdiction of incorporation of the Company*].
- (g) The[[ Treasury] Placing Shares are listed/quoted on the Hong Kong Stock Exchange[ and the New]] [Placing Shares will, when issued pursuant to this Agreement, be duly listed/quoted on the Hong Kong Stock Exchange].<sup>71</sup>
- (h) Neither the Company nor any of its subsidiaries has purchased any of the Company's Shares, whether on the Hong Kong Stock Exchange or otherwise, at any time during the period commencing 30 days prior to the date of this Agreement.<sup>72</sup>
- (i) Since [*date of the latest published financials of the Company*], there has not occurred any material adverse change, or any development reasonably likely to involve a material adverse change, in the condition, financial or otherwise, or in the earnings, assets, business, operations or prospects of the Company, or the Group taken as a whole.
- (j) (i) The Company has made public all information required to be made public by all applicable laws, rules and regulations including the Listing Rules and the SFO, (ii) the information released publicly in Hong Kong, [*country of incorporation of the Company*] or elsewhere by any member of the Group, [including without limitation the [prospectus/annual report] filed with the Hong Kong Stock Exchange on [●]], in each case as amended or supplemented (together, the "**Company Disclosure**"), does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading and does not otherwise omit any information which is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the Group, (iii) except for the Post-signing Announcement, no announcement or disclosure is anticipated to be made by the Company within [●] days after the date of this Agreement, (iv) the financial statements included in the Company Disclosure (a) present fairly the financial position of the Company and its consolidated subsidiaries as of the dates shown and the results of operations for the periods shown, (b) have been prepared on a recognised and consistent basis and in conformity with generally

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69 This bracketed paragraph should be included for the resale of treasury shares.

70 To include carve out on Hong Kong Stamp duty for the resale of treasury shares.

71 The first option should be used for treasury shares and the second option used for new issue.

72 This reflects the restriction in Rule 10.06(3) of the Listing Rules. In addition, consider whether to include the following language to address Listing Rule 10.06A which restricts the sale of treasury shares on the Exchange. "*The Company is not in possession of any inside information that has not been made publicly available. In particular, the Closing Date will not occur during the period of 30 days immediately preceding the earlier of: (i) the date of the board meeting (as such date is first notified to the Hong Kong Stock Exchange in accordance with the Listing Rules) for the approval of the Company's results for any year, half-year, quarterly or any other interim period (whether or not required under the Listing Rules); and (ii) the deadline for the Company to announce its results for any year or half-year under the Listing Rules, or quarterly or any other interim period (whether or not required under the Listing Rules), and ending on the date of the results announcement.*"



accepted accounting principles, standards and practice in Hong Kong and other relevant jurisdiction applied on a consistent basis, (c) comply with the Companies Ordinance (Chapter 622 of the Laws of Hong Kong) and all other applicable ordinances, statutes and regulations and show a true and fair view of the state of affairs of the Group and of its results for the period in question, and (v) neither the Company nor any member of the Group is in breach of any laws, rules and regulations or requirements of the Hong Kong Stock Exchange or the SFC (including the Listing Rules[, / and] the SFO[ and the CSRC Rules]<sup>73</sup>).

- (k) All information (whether oral, written, electronic or in any other form) supplied by or on behalf of the Company, any other member of the Group or any of their respective officers, directors, employees or advisers, for the purpose of or in connection with the Placing, is and was, when supplied, true and accurate and not misleading.
- (l) There is no claim, litigation, arbitration, prosecution or other legal proceedings or investigation or enquiry in progress or pending or threatened against any member of the Group, or any of their respective directors and officers nor is there any claim or any facts or circumstances of a material nature which would give rise to a claim against any member of the Group or any of their respective directors and officers, which in any such case would have or have had a material adverse effect on the condition, financial or otherwise, or in the earnings, net assets, business, operations or prospects (whether or not arising in the ordinary course of business) of any member of the Group or which is material for disclosure in the context of any of the Placing.
- (m) Each member of the Group has obtained all authorisations and licences under any applicable law and regulation that are material in connection with the operation of its business and there is no reason why any such authorisation or licence should be withdrawn or cancelled nor is there any breach by any member of the Group of the provisions of any law or regulation governing such authorisations or licences or otherwise (save for any breach that would not have any material adverse effect on the condition, financial or otherwise, or in the earnings, net assets, business, operations or prospects of the Company or the Group taken as a whole).
- (n) There is no order, decree or judgement of any court or governmental agency or regulatory body outstanding or, to the best knowledge of the Company, anticipated against any member of the Group which may have or has had a material adverse effect on the condition, financial or otherwise, or in the earnings, net assets, business, operations or prospects of the Company or the Group taken as a whole.
- (o) There has been no petition filed, order made or effective resolution passed for the liquidation or winding up of (i) the Company, or (ii) any other member of the Group.
- (p) No material outstanding indebtedness of any member of the Group has become payable or repayable by reason of any default of any member of the Group and no event has occurred or is impending which may result in such indebtedness becoming payable or repayable prior to its maturity date, in a demand being made for such indebtedness to be paid or repaid or in any step being taken to enforce any security for any such indebtedness of any member of the Group.
- (q) No member of the Group is a party to or under any obligation which is material and which is of an unusual or unduly onerous nature; no member of the Group is in breach of or in default of its constitutional documents or any contract or agreement which may have or has had a material adverse effect upon the condition, financial or otherwise, or in the earnings, net assets, business, operations or prospects (whether or not arising in the ordinary course of business) of any member of the Group or which is material for disclosure in the context of the Placing; neither this Agreement nor the transactions contemplated herein will constitute or give rise to a breach of or default under the constitutional documents or any agreement

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<sup>73</sup>

The bracketed portion should be included if the CSRC Filing Rules apply.

or other arrangement to which any member of the Group is a party or will give rise to any rights of any third party in respect of any assets of the Group.

- (r) There are no material outstanding guarantees or contingent payment obligations of any member of the Group in respect of indebtedness of third parties except as disclosed in the financial statements referred to in paragraph [(j)] which are material in the context of the Placing; and each member of the Group is in compliance with all of its obligations under any outstanding guarantees or contingent payment obligations as described in such financial statements.
- (s) [The Company and its subsidiaries own or possess, or can acquire on reasonable terms, adequate patents, patent rights, licences, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks, trade names or other intellectual property (collectively, "**Intellectual Property**") necessary to carry on the business now operated by them, and neither the Company nor any of its subsidiaries has received any notice or is otherwise aware of any infringement of or conflict with asserted rights of others with respect to any Intellectual Property or of any facts or circumstances which would render any Intellectual Property invalid or inadequate to protect the interest of the Company or any of its subsidiaries therein, and which infringement or conflict (if the subject of any unfavorable decision, ruling or finding) or invalidity or inadequacy, singly or in the aggregate, would result in a material adverse effect on the condition, financial or otherwise, or in the earnings, net assets, business, operations or prospects of the Company or the Group taken as a whole.]
- (t) [(i) There has been no security breach or incident, unauthorised access or disclosure, or other compromise of or relating to the Company or its subsidiaries information technology and computer systems, networks, hardware, software, data and databases (including the data and information of their respective customers, employees, suppliers, vendors and any third party data maintained, processed or stored by the Company and its subsidiaries, and any such data processed or stored by third parties on behalf of the Company and its subsidiaries or any such data that may constitute trade secrets and working secrets of any governmental authority or any other data that would otherwise be detrimental to national security or public interest pursuant to the applicable laws, rules and regulations), equipment or technology (collectively, "**IT Systems and Data**"); (ii) neither the Company nor its subsidiaries have been notified of, and each of them has no knowledge of any event or condition that could result in, any security breach or incident, leakage, unauthorised access or disclosure or other compromise to their IT Systems and Data; and (iii) the Company and its subsidiaries have implemented appropriate controls, policies, procedures, and technological safeguards to maintain and protect the integrity, continuous operation, redundancy and security of their IT Systems and Data reasonably consistent with industry standards and practices, or as required by applicable regulatory standards. The Company and its subsidiaries are presently in material compliance with all applicable laws, statutes, rules or regulations [(including, without limitation, the CSRC Rules)<sup>74</sup>] and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Data and to the protection of such IT Systems and Data from leakage, unauthorised use, access, misappropriation or modification.]
- (u) [(A) Each of the Company and other members of the Group has complied with all applicable Laws concerning cybersecurity, data protection, confidentiality and archive administration (collectively, the "**Data Protection Laws**"); (B) neither the Company nor any other member of the Group is, or is expected to be classified as, a "critical information infrastructure operator" under the Cybersecurity Law of the PRC ; (C) neither the Company nor any other member of the Group is subject to any investigation, inquiry or sanction relating to cybersecurity, data privacy, confidentiality or archive administration, or any cybersecurity

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<sup>74</sup>

The bracketed portion should be included if the CSRC Filing Rules apply.

review by the Cyberspace Administration of the PRC (the “CAC”), the CSRC, or any other relevant governmental authority; (D) neither the Company nor any other member of the Group has received any notice (including, without limitation, any enforcement notice, de-registration notice or transfer prohibition notice), letter, complaint or allegation from the relevant cybersecurity, data privacy, confidentiality or archive administration governmental authority alleging any breach or non-compliance by it of the applicable Data Protection Laws or prohibiting the transfer of data to a place outside the relevant jurisdiction; (E) neither the Company nor any other member of the Group has received any claim for compensation from any person in respect of its business under the applicable Data Protection Laws and industry standards in respect of inaccuracy, loss, unauthorized destruction or unauthorized disclosure of data and there is no outstanding order against the Company or any other member of the Group in respect of the rectification or erasure of data; (F) no warrant has been issued authorizing the cybersecurity, data privacy, confidentiality or archive administration governmental authority (or any of its officers, employees or agents) to enter any of the premises of the Company or any members of the Group for the purposes of, inter alia, searching them or seizing any documents or other materials found there; (G) neither the Company nor any other member of the Group has received any communication, enquiry, notice, warning or sanctions with respect to the Cybersecurity Law of the PRC or from the CAC or pursuant to the Data Protection Laws (including, without limitation, the CSRC Archive Rules); (H) the Company is not aware of any pending or threatened investigation, inquiry or sanction relating to cybersecurity, data privacy, confidentiality or archive administration, or any cybersecurity review, by the CAC, the CSRC, or any other relevant governmental authority on the Company or any other member of the Group or any of their respective directors, officers and employees; (I) the Company is not aware of any pending or threatened actions, suits, claims, demands, investigations, judgments, awards and proceedings on the Company or any other member of the Group or any of their respective directors, officers and employees pursuant to the Data Protection Laws (including, without limitation, the CSRC Archive Rules); and (J) neither the Company nor any other member of the Group has received any objection to this Placing or the transactions contemplated under this Agreement from the CSRC, the CAC or any other relevant governmental authority.]

- (v) [The Company and its subsidiaries have good and marketable title to all real property owned by them and good title to all other properties owned by them, in each case, free and clear of all mortgages, pledges, liens, charges and encumbrances, equities, security interests or other claims except such as (i) are disclosed by the Company on the website of the Hong Kong Stock Exchange or (ii) do not, singly or in the aggregate, materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company or any of its subsidiaries; and all of the leases and subleases material to the business of the Group taken as a whole are in full force and effect, and neither the Company nor any such subsidiary has any notice of any material claim of any sort that has been asserted by anyone adverse to the rights of the Company or any subsidiary under any of the leases or subleases mentioned above.]
- (w) None of the Company, any of its subsidiaries and Affiliates, any of their respective directors, officers or employees and any other persons acting for or on behalf of any of them, has (i) used any funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made or taken an act in furtherance of an offer, promise or authorization of any direct or indirect unlawful payment or benefit to any foreign or domestic government or regulatory official or employee, including of any government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office; (iii) made, offered, agreed, requested or taken an act in furtherance of any unlawful bribe or other unlawful benefit, including, without limitation, any rebate, payoff, influence payment, kickback or other unlawful or improper payment or benefit; or (iv) engaged in any activity or conduct that would constitute an offence under any Anti-Corruption Law (as defined below). Each of the Company and its subsidiaries and Affiliates has instituted, and maintains and enforces, policies and procedures designed to promote and

ensure compliance with all Anti-Corruption Laws. "**Anti-Corruption Laws**" means (i) the OECD Convention of Combating Bribery of Foreign Public Officials in International Business Transactions, 1997, (ii) the Foreign Corrupt Practice Act of 1977 of the United States of America, as amended, and the rules and regulations thereunder, (iii) the Bribery Act 2010 of the United Kingdom, and (iv) any similar applicable laws or regulations in any jurisdiction.

- (x) The operations of each of the Company and its subsidiaries and Affiliates are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements, including those of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the Organised and Serious Crimes Ordinance (Chapter 455 of the Laws of Hong Kong), the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Chapter 615 of the Laws of Hong Kong), and any other applicable anti-money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines issued, administered or enforced by any governmental or regulatory agency (collectively, the "**Anti-Money Laundering Laws**") and no action, suit or proceeding by or before any court or governmental or regulatory agency, authority or body or any arbitrator involving the Company or any of its subsidiaries and Affiliates with respect to the Anti-Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.
- (y) None of (the Company, any of its subsidiaries and Affiliates, any of their respective directors, officers or employees and any other persons acting for or on behalf of any of them is or is owned or controlled by a person (including, for the avoidance of doubt, an individual or an entity) ("**Person**") which is (A) the subject or the target of any sanctions administered or enforced by the U.S. Government, (including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**") or the U.S. Department of State and including, without limitation, the designation as a "specially designated national" or "blocked person"), the United Nations Security Council ("**UNSC**"), the European Union, His Majesty's Treasury ("**HMT**"), or other relevant sanctions authority (collectively, "**Sanctions**"); or (B) operating, located, organized or resident in a country, region or territory that is the subject or the target of Sanctions, including, without limitation, [Cuba, Iran, North Korea, the Crimea, the Donetsk People's Republic and the Luhansk People's Republic regions of Ukraine and Syria]<sup>75</sup> (each, a "**Sanctioned Country**"). For the past ten (10) years, no member of the Group, their respective directors, officers, employees or other person acting for or on their behalf, nor (to the best knowledge of the Company and any other member of the Group) any of their respective agents, Affiliates or representatives (except for the Manager, as to which no representation is made) has knowingly engaged in or is now knowingly engaged in any dealings or transactions with any person that at the time of the dealing or transaction is or was the subject or the target of Sanctions or with any Sanctioned Country.<sup>76</sup>
- (z) No member of the Group will, directly or indirectly, use the proceeds from the [sale of the [Treasury ]Placing Shares[or the]/issue of the [New ]Placing Shares], or lend, contribute or otherwise make available such proceeds to any subsidiaries, joint venture partner or other Person (i) to fund or facilitate any activities or business of or with any Person or in any country or territory, that, at the time of such funding or facilitation, is, or whose government is, the subject of Sanctions, or (ii) in any other manner that would result in a violation of Sanctions

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<sup>75</sup> The bracketed portion should be updated pursuant to the latest sanctions programmes.

<sup>76</sup> In relation to the representations, warranties and undertakings on sanctions, certain Managers may prefer to include a clause on blocking regulation in the Agreement, which will also depend on each Manager's internal requirements. The following paragraph may be added in Clause 15 (Miscellaneous) of the Agreement: "The sanctions representations, warranties and undertaking in paragraph [(y)] in Schedule 2 of this Agreement will not apply to any party hereto to which Council Regulation (EC) No 2271/96 of 22 November 1996 as amended by Commission Delegated Regulation 2018/1100 of 6 June 2018 (or any law or regulation implementing such Regulation in any member state of the European Union or the United Kingdom) (the "**Blocking Regulation**") applies, if and to the extent that they are or would be a violation of any provision of the Blocking Regulation, and references in this Agreement to the representations, warranties, undertakings and agreements shall (insofar as they relate to paragraph [(y)] in Schedule 2 of this Agreement only) be construed accordingly."

by any Person (including any Person participating in the Placing, whether as underwriter, placing agent, adviser, investor or otherwise).

- (aa) The Placing will not constitute a violation by any of the Company and its subsidiaries and Affiliates (including, without limitation, their respective direct and indirect owners) or any of their respective directors, officers and employees, or other person acting for or on behalf of any of them (together, the "**Company Parties**") of any applicable "insider dealing", "insider trading" or similar legislation, including the provisions under Part XIII of the SFO; none of the Company Parties is aware of any non-public fact or circumstance that could reasonably be deemed to be material or, if made public, would or might reasonably be expected to have a significant effect upon the market price or trading volume, or both, of the Shares or other securities of the Company.
- (bb) The Company is a "foreign issuer" (as defined in Regulation S under the Securities Act ("**Regulation S**")).
- (cc) The Company reasonably believes that there is no "substantial U.S. market interest" (as defined in Regulation S) in the Placing Shares or securities of the Company of the same class as the Placing Shares.
- (dd) [None of the Company, any of its Affiliates or any person acting on its or their behalf (except for the Manager, as to which no representation is made), directly or indirectly, has made or will make any offers or sales of any security, or has solicited or will solicit offers to buy, or otherwise has negotiated or will negotiate in respect of, any security, under circumstances that would require the registration of the Placing Shares under the Securities Act.]<sup>77</sup>
- (ee) None of the Company, any of its Affiliates or any person acting on its or their behalf (except for the Manager, as to which no representation is made) has engaged or will engage in any "directed selling efforts" (as defined in Regulation S) [or any form of "general solicitation or general advertising" (within the meaning of Regulation D), with respect to the Placing Shares].<sup>78</sup>
- (ff) None of the Company, , any of its Affiliates or any person acting on its or their behalf (except for the Manager, as to which no representation is made) has taken or will take, directly or indirectly, any action designed to cause or to result in, or that has constituted or which might reasonably be expected to cause or result in, the stabilisation or manipulation of the price of any securities of the Company, or which otherwise constitutes or might reasonably be expected to constitute "market misconduct" under Part XIII of the SFO or similar laws and regulations, or which otherwise constitutes or might reasonably be expected to constitute non-compliance with the rules, regulations and requirements of the Hong Kong Stock Exchange, the SFC[, the CSRC<sup>79</sup>] and any other authority including those in relation to bookbuilding and placing activities<sup>80</sup>; and by entering into this Agreement, the Company is not seeking or intending to create, or expecting there to be created, or will otherwise create, a false, disorderly or misleading market in, or the price or trading volume of, the Shares or any other securities of the Company.
- (gg) None of the Company, any of its Affiliates or any person acting on its or their behalf has, directly or indirectly, provided or offered (nor will, directly or indirectly, provide or offer) any

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<sup>77</sup> This representation can be deleted if there will be no U.S. sales.

<sup>78</sup> The bracketed portion can be deleted if there will be no U.S. sales.

<sup>79</sup> The bracketed portion should be included if the CSRC Filing Rules apply.

<sup>80</sup> Pursuant to paragraph 21.4.8 of the Code of Conduct, an OC should report and provide certain information to the SFC in a timely manner, including but not limiting to, any instances of material non-compliance with the Stock Exchange requirements related to, for example, the placing activities conducted by itself or the issuer client.

rebates or preferential treatment to any person in connection with the Placing or the consummation of the transactions contemplated hereby.<sup>81</sup>

- (hh) None of the Company, any of its Affiliates or any person acting on its or their behalf (except for the Manager, as to which no representation is made) has distributed and, prior to the later to occur of (i) the Closing Date and (ii) completion of the distribution of the Placing Shares, none of the Company, any of its Affiliates or any person acting on its or their behalf (except for the Manager, as to which no representation is made) shall distribute, any offering or sales materials in connection with the offering and sale of the Placing Shares.
- (ii) [The Placing Shares satisfy the eligibility requirements of Rule 144A(d)(3) under the Securities Act.]<sup>82</sup>
- (jj) [For so long as any Placing Shares are "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, the Company will, during any period in which it is neither subject to Section 13 or 15(d) of the U.S. Securities Exchange Act of 1934, as amended, nor exempt from reporting pursuant to Rule 12g3-2(b) thereunder, provide to any holder or beneficial owner of such restricted securities or to any prospective purchaser of such restricted securities designated by such holder or beneficial owner, upon the request of such holder, beneficial owner or prospective purchaser, the information required to be provided by Rule 144A(d)(4) under the Securities Act.]<sup>77</sup>
- (kk) [For so long as the Placing Shares are "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, the Company will not become an "open-end company", "unit investment trust" or "face-amount certificate company", as such terms are defined in, and that is or is required to be registered under Section 8 of, the Investment Company Act.]<sup>77</sup>
- (ll) [For so long as the Placing Shares are "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, the Company agrees not to, and will cause its "affiliates" (as defined in Rule 144 under the Securities Act) not to, resell any Placing Shares acquired by it or them in the United States.]<sup>77</sup>
- (mm) [The Company is exempt from the reporting requirements of the U.S. Securities Exchange Act of 1934, as amended, pursuant to the exception afforded by Rule 12g3-2(b) thereunder.]<sup>83, 84</sup>
- (nn) [The Company is not required to be registered as an "investment company" under, and as such term is defined in, the United States Investment Company Act of 1940, as amended, and the rules and regulations promulgated thereunder.]<sup>85</sup>
- (oo) [The Company is not a "covered fund" for purposes of the "Volcker Rule" under section 619 of the U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.]<sup>85</sup>

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<sup>81</sup> Pursuant to paragraph 21.3.7 of the Code of Conduct, a CMI should not offer any rebate to an investor client or pass on any rebates provided by the issuer client to an investor client.

<sup>82</sup> This representation can be deleted if there will be no U.S. sales. While the form is drafted to allow the Placing Shares to be sold in the United States either in reliance on Rule 144A or under the so-called "Section 4(a)(1½)" exemption, certain additional procedures may need to be included depending on the characteristics of the Company in the case of reliance on the latter exemption.

<sup>83</sup> Alternatives to this representation are (1) that the Company is a reporting company in the United States or (2) that the Company undertakes to fulfil the Rule 144A information delivery requirements.

<sup>84</sup> This representation is required if the trade is being executed in reliance on Rule 144A. If the representation cannot be made by the Company, the form is otherwise drafted to allow the Placing Shares to be sold under the so-called "Section 4(a) (1½)" exemption. It can be deleted if there will be no U.S. sales.

<sup>85</sup> This representation can be deleted if there will be no U.S. sales. The necessity of this representation will also depend on the nature of the business of the Company.

- (pp) [The Company is not and does not expect to become a "passive foreign investment company" as defined in Section 1297 of the U.S. Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.]<sup>85</sup>
- (qq) The Company is a professional investor within a category of person described in [paragraphs (a) to (i) of the definition of "professional investor" set out in section 1 of Part 1 of Schedule 1 to the SFO (an "**Institutional Professional Investor**") [section 3(a), (c) and (d) of the Securities and Futures (Professional Investor) Rules under the SFO and has been notified by the Manager that it has been assessed as satisfying the criteria in paragraph 15.3A(b) of the Code of Conduct (an "**Eligible Corporate Professional Investor**") [section 3(a), (c) and (d) of the Securities and Futures (Professional Investor) Rules under the SFO and has been notified by the Manager that it has been assessed as not satisfying the criteria in paragraph 15.3A(b) of the Code of Conduct (an "**Excluded Corporate Professional Investor**") [section 3(b) of the Securities and Futures (Professional Investor) Rules (an "**Individual Professional Investor**")]<sup>86</sup>, and has read and understood the Professional Investor Treatment Notice (in the form set out in Schedule 4 to this Agreement) and acknowledges and agrees to the representations, waivers and consents contained in the Professional Investor Treatment Notice, in which the expressions "you" or "your" shall mean the Company, and "us" or "our" shall mean the Manager.
- (rr) All statements of fact contained in the Post-Signing Announcement and any announcements published or to be published by the Company in relation to the transactions contemplated under this Agreement are true and accurate and not misleading, and all statements of opinion, intention, expectation or estimates of the Directors in relation to the Company and/or any other member(s) of the Group contained therein (if any) are truly and honestly held and have been made on reasonable grounds after due and careful consideration, and there is no other fact or matter omitted therefrom the omission of which would make any statement therein untrue, inaccurate or misleading, or which is otherwise material in the context of any of the Placing.
- (ss) No unissued share capital of any member of the Group is under any option or agreed conditionally or unconditionally to be put under any option and no person has an outstanding warrant, pre-emptive right or any other right of any description to require shares to be allotted or issued by any member of the Group.
- (tt) (i) The Company has not sought any Placees for the Placing or sought to influence or control who might be a Placee, and that, as far as the Company is aware and having reviewed the proposed allocations of Shares, none of the Placees and their respective beneficial owners is or will be (A) a substantial shareholder (within the meaning of the Listing Rules) of the Company, (B) otherwise a core connected persons or a connected person (each within the meaning of the Listing Rules) of the Company, (C) acting in concert (within the meaning of the Takeovers Code) with any of the Company's core connected persons or connected persons, and the Placees and their respective beneficial owners are independent of, and not connected with the Company or any of the above persons; (ii) None of the Company nor any of its core connected persons or connected persons has funded or backed (directly or indirectly) the purchase of the Placing Shares by any Placee nor have the Company or any of its core connected persons or connected persons instructed any Placee in relation to the acquisition, disposal, voting or other disposition of securities of the Company; (iii) None of the Company nor any of its directors, officers and employees is or has been participating in introducing, screening, selecting or identifying placees for the Placing; and (iv) The Company shall promptly provide, and procure the provision of, all information to the Manager necessary or desirable to enable it to confirm the independence of the Placees. Without limitation to the generality of the aforesaid, the Company shall promptly inform the Manager in writing if it is

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<sup>86</sup> The content of this representation will depend on the identity of the Company and, in the case of a corporate, the outcome of the Manager's assessment in accordance with paragraph 15.3(b) of the Code.

aware of any intention of any of the persons falling within any of (i)(A) to (D) to purchase, directly or indirectly, any of the Placing Shares in the Placing.



### SCHEDULE 3

#### Representations, Warranties and Undertakings of the Manager

- (a) It has not offered or sold, and will not offer or sell, any Placing Shares as part of their distribution at any time except[:
- (i) to those persons it reasonably believes to be "qualified institutional buyers" (as defined in Rule 144A under the Securities Act) within the United States; or
  - (ii) ]<sup>87</sup> outside the United States in accordance with Rule 903 of Regulation S.
- (b) [Neither it nor any person acting on its behalf has made or will make offers or sales of the Placing Shares in the United States by means of any form of "general solicitation or general advertising" (within the meaning of Regulation D) in the United States.]<sup>88</sup>
- (c) Neither it, nor any of its Affiliates nor any person acting on its or their behalf has engaged or will engage in any "directed selling efforts" (as defined in Regulation S) with respect to the Placing Shares.

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<sup>87</sup> The bracketed portion can be deleted if there will be no U.S. sales.  
<sup>88</sup> This representation can be deleted if there will be no U.S. sales.

## SCHEDULE 4

### Professional Investor Treatment Notice

***[Note: Alternative forms of Professional Investor Treatment Notice are provided. FORM ONE is suitable for Institutional Professional Investors and Eligible Corporate Professional Investors. FORM TWO is suitable for Excluded Corporate Professional Investors and Individual Professional Investors. These forms assume that: (1) For Corporate Professional Investors the assessment in paragraph 15.3A of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (the "Code") has separately been undertaken in order to identify whether the Company (as appropriate) is "Eligible" or "Excluded"; (2) For Corporate Professional Investors (whether "Eligible" or "Excluded") and Individual Professional Investors, the steps set out in paragraph 15.3B of the Code have or, as the case may be, will separately be completed; and (3) For Excluded Corporate Professional Investors and Individual Professional Investors, applicable requirements imposed under the Code have separately been satisfied (including, but not limited to, satisfying the Suitability Requirement, the need to establish a client's financial situation, investment experience and investment objectives, the need to disclose certain transaction-related information and the need to enter into a written agreement and to provide relevant risk disclosure statements).]***

#### ***[FORM ONE:]***

1. You are a Professional Investor by virtue of being either an Institutional Professional Investor or having been assessed by us as an Eligible Corporate Professional Investor.
2. An "Institutional Professional Investor" is a person described in paragraphs (a) to (i) of the definition of "professional Investors" set out in section 1 of Part 1 of Schedule 1 to the SFO, as follows:
  - (a) any recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, or any person authorized to provide automated trading services under section 95(2) of the SFO;
  - (b) any intermediary, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong;
  - (c) any authorized financial institution, or any bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;
  - (d) any insurer authorized under the Insurance Companies Ordinance (Cap 41), or any other person carrying on insurance business and regulated under the law of any place outside Hong Kong;
  - (e) any scheme which-
    - (i) is a collective investment scheme authorized under section 104 of this Ordinance; or
    - (ii) is similarly constituted under the law of any place outside Hong Kong and, if it is regulated under the law of such place, is permitted to be operated under the law of such place,or any person by whom any such scheme is operated;
  - (f) any registered scheme as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap 485), or its constituent fund as defined in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap 485 sub. leg. A), or any person who, in relation to any such registered scheme, is an approved trustee

or service provider as defined in section 2(1) of that Ordinance or who is an investment manager of any such registered scheme or constituent fund;

- (g) any scheme which-
  - (i) is a registered scheme as defined in section 2(1) of the Occupational Retirement Schemes Ordinance (Cap 426); or
  - (ii) is an offshore scheme as defined in section 2(1) of that Ordinance and, if it is regulated under the law of the place in which it is domiciled, is permitted to be operated under the law of such place,or any person who, in relation to any such scheme, is an administrator as defined in section 2(1) of that Ordinance;
- (h) any government (other than a municipal government authority), any institution which performs the functions of a central bank, or any multilateral agency; and
- (i) except for the purposes of Schedule 5 to the SFO, any corporation which is-
  - (i) a wholly owned subsidiary of-
    - (A) an intermediary, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong; or
    - (B) an authorized financial institution, or any bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;
  - (ii) a holding company which holds all the issued share capital of-
    - (A) an intermediary, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong; or
    - (B) an authorized financial institution, or any bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong; or
  - (iii) any other wholly owned subsidiary of a holding company referred to in subparagraph (ii).

3. An "Eligible Corporate Professional Investor" is a trust corporation, corporation or partnership which is assessed by us as satisfying the criteria in paragraph 15.3A(b) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission and which falls under section 3(a), (c) and (d) of the Securities and Futures (Professional Investor) Rules, as follows:

- (a) a trust corporation having been entrusted with total assets of not less than HK\$40 million (or equivalent) as stated in its latest audited financial statements prepared within the last 16 months, or in the latest audited financial statements prepared within the last 16 months of the relevant trust or trusts of which it is trustee, or in custodian statements issued to the trust corporation in respect of the trust(s) within the last 12 months;
- (b) a high net worth corporation or partnership having total assets of at least HK\$40 million (or equivalent) or a portfolio of at least HK\$8 million (or equivalent) in securities and/or currency deposits, as stated in its latest audited financial

statements prepared within the last 16 months or in custodian statements issued to the corporation or partnership within the last 12 months; and

- (c) a corporation the sole business of which is to hold investments and which is wholly owned by any one or more of the following persons (i) a trust corporation that falls within paragraph (a) above; (ii) a high net worth individual having, alone or with associates on a joint account, a portfolio of at least HK\$8 million (or equivalent) in securities and/or currency deposits, as stated in a certificate from an auditor or professional accountant or in custodian statements issued to the individual within the last 12 months; and (iii) a corporation or partnership that falls within paragraph (b) above.

We have categorised you as a Professional Investor based on information you have given us. You will inform us promptly in the event any such information ceases to be true and accurate.

- 4. As a consequence of your categorisation as a Professional Investor, certain requirements may not be applicable (or may be waived or may be agreed otherwise) under the Code and other Hong Kong regulations. While we may in fact do some or all of the following in providing services to you, we have no regulatory responsibility to do so:

- 4.1 Client agreement

We are not required to enter into a written agreement complying with the Code relating to the services that are to be provided to you.

- 4.2 Risk disclosures

We are not required to provide you with written risk warnings in respect of the risks involved in any transactions entered into with you, or to bring those risks to your attention.

- 4.3 Information about us

We are not required to provide you with information about our business or the identity and status of employees and others acting on our behalf with whom you will have contact.

- 4.4 Prompt confirmation

We are not required to promptly confirm with you the essential features of a transaction after effecting a transaction for you.

- 4.5 Information about clients

We are not required to establish your financial situation, investment experience or investment objectives, except where we are providing advice on corporate finance work.

- 4.6 Nasdaq-Amex Pilot Program

If you wish to deal through the Hong Kong Stock Exchange in securities admitted to trading on the Hong Kong Stock Exchange under the Nasdaq-Amex Pilot Program, we shall not provide you with documentation on that program.

- 4.7 Suitability

We are not required to ensure that a recommendation or solicitation is suitable for you in the light of your financial situation, investment experience and investment objectives.

- 4.8 Investor characterisation/disclosure of sales related information

We shall not be subject to the requirements of paragraph 5.1A of the Code relating to know your client investor characterisation and paragraph 8.3A of the Code relating to disclosure of sales related information.

5. You have the right to withdraw from being treated as a Professional Investor at any time in respect of all or any investment products or markets on giving written notice to us.
6. By entering into this Agreement, you represent and warrant to us that you are knowledgeable and have sufficient expertise in the products and markets that you are dealing in and are aware of the risks in trading in the products and markets that you are dealing in.
7. By entering into this Agreement, you hereby agree and acknowledge that you have read and understood and have been explained the consequences of consenting to being treated as a Professional Investor and the right to withdraw from being treated as such as set out herein and that you hereby consent to being treated as a Professional Investor.
8. By entering into this Agreement, you hereby agree and acknowledge that we [and the Settlement Agent] will not provide you with any contract notes, statements of account or receipts under the Hong Kong Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules where such would otherwise be required.

**[FORM TWO:]**

1. You are a Professional Investor by virtue of being either an Individual Professional Investor or having been assessed as an Excluded Corporate Professional Investor.
2. An "Individual Professional Investor" is a category of person falling within section 3(b) of the Securities and Futures (Professional Investor) Rules: a high net worth individual having, alone or with associates on a joint account, a portfolio of at least HK\$8 million (or equivalent) in securities and/or currency deposits, as stated in a certificate from an auditor or professional accountant or in custodian statements issued to the individual with the last 12 months.
3. An "Excluded Corporate Professional Investor" is a trust corporation, corporation or partnership which is assessed by us as not satisfying the criteria in paragraph 15.3A(b) of the Code and which falls under section 3(a), (c) and (d) of the Securities and Futures (Professional Investor) Rules, as follows:
  - (a) a trust corporation having been entrusted with total assets of not less than HK\$40 million (or equivalent) as stated in its latest audited financial statements prepared within the last 16 months, or in the latest audited financial statements prepared within the last 16 months of the relevant trust or trusts of which it is trustee, or in custodian statements issued to the trust corporation in respect of the trust(s) within the last 12 months;
  - (b) a high net worth corporation or partnership having total assets of at least HK\$40 million (or equivalent) or a portfolio of at least HK\$8 million (or equivalent) in securities and/or currency deposits, as stated in its latest audited financial statements prepared within the last 16 months or in custodian statements issued to the corporation or partnership within the last 12 months; and
  - (c) a corporation the sole business of which is to hold investments and which is wholly owned by any one or more of the following persons (i) a trust corporation that falls within paragraph (a) above; (ii) an Individual Professional Investor; and (iii) a corporation or partnership that falls within paragraph (b) above.

We have categorised you as a Professional Investor, based on information you have given us. You will inform us promptly in the event any such information ceases to be true and accurate.

4. As a consequence of your categorisation as a Professional Investor, certain requirements may not be applicable (or may be waived or may be agreed otherwise) under the Code and other Hong Kong regulations. While we may in fact do some or all of the following in providing services to you, we have no regulatory responsibility to do so:

- 4.1 Information about us

We are not required to provide you with information about our business or the identity and status of employees and others acting on our behalf with whom you will have contact.

- 4.2 Prompt confirmation

We are not required to promptly confirm with you the essential features of a transaction after effecting a transaction for you.

- 4.3 Nasdaq-Amex Pilot Program

If you wish to deal through the Hong Kong Stock Exchange in securities admitted to trading on the Hong Kong Stock Exchange under the Nasdaq-Amex Pilot Program, we are not required to provide you with documentation on that program.

5. You have the right to withdraw from being treated as a Professional Investor at any time in respect of all or any investment products or markets on giving written notice to us.
6. By entering into this Agreement, you hereby agree and acknowledge that you have read and understood and have been explained the consequences of consenting to being treated as a Professional Investor and the right to withdraw from being treated as such as set out herein and that you hereby consent to being treated as a Professional Investor.
7. By entering into this Agreement, you hereby agree and acknowledge that we [and the Settlement Agent] will not provide you with any contract notes, statements of account or receipts under the Hong Kong Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules where such would otherwise be required.