

**KIM ENG SECURITIES PTE. LTD. TERMS AND CONDITIONS**  
**(KES T&C)**

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## Part I. GENERAL TERMS & CONDITIONS

This Part I of these Terms and Conditions (“**T&C**”) of Kim Eng Securities Pte. Ltd. (“**KES**”) shall govern the general relationship between KES and the client (hereafter the “**Client**”) and apply to all types of accounts opened or to be opened from time to time by the Client with KES (the “**Account**”) and all types of services to be provided by KES from time to time.

In the event of a conflict between this Part I of these T&C and any other Part of these T&C, the other Part shall prevail.

THE CLIENT SHOULD NOT UTILISE ANY OF THE SERVICES PROVIDED BY KES UNLESS THE CLIENT AGREES AND IS IN A POSITION TO COMPLY WITH ALL THE TERMS AND CONDITIONS HEREIN AND IN THE ACCOUNT APPLICATION FORM AND IN ANY PART OF THESE T & C, WHERE APPLICABLE.

### 1. GENERAL

#### Definitions and Interpretation

- 1.1 In this document and in any other agreements entered into between KES and the Client, unless the context otherwise requires, the following terms shall have the meanings set out hereunder:

‘**Account Application Form**’ means KES’ account application form (whether in hard copy or any on-line application form) executed by the Client or on the Client’s behalf;

‘**Authorised Person**’ means any officer, employee or agent of the Client duly authorised by the Client in writing from time to time;

‘**Client’s Property**’ means all monies, Securities and/or other property of the Client in KES’ custody or control held from time to time;

‘**Confirmation**’ means the written notice (including telex, facsimile or other electronic means from which it is possible to produce a hard copy) which contains the specific terms of a transaction entered into between KES and the Client and includes a contract note. Ancillary agreements referred to in the Confirmation are part of such Confirmation; and

“**Securities**” shall include (but are not limited to) debentures, stocks, shares, bonds, notes or certificates of deposit (whether listed or non-listed or traded in Singapore or elsewhere) issued by a government, a body corporate or unincorporate, or international body, or any right or any derivative instrument (including any warrant, option, transferable subscription right, loan stock and convertible right) in respect of any such debentures, stocks or shares.

Any reference to a statute, statutory provision or subsidiary legislation (“**legislation**”) and the rules of any regulator (“**regulatory rules**”) shall (except where the context otherwise requires) be construed as referring to such legislation and regulatory rules as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation.

Any phrase introduced by the terms “including”, “include”, “in particular”, “for example” or the letters “eg” or any similar expression shall be construed as illustrative and shall not limit the sense of the words that precede it.

Words incorporating the singular shall also include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

The headings contained in these T&C are for purposes of convenience only and shall not affect the construction of the provisions. For the avoidance of doubt the contents under the headings “General”, “Trading”, “Custodial Service”, “Securities Lending” and “Electronic Payment for Shares (“EPS”) Service” are not intended to be mutually exclusive; the provisions in each section are without prejudice to the generality and application of these T&C and should be read as a whole.

#### Account Opening

- 1.2 Upon its acceptance of an application by the Client to open an Account, KES shall, in accordance with its general operating procedures, open an Account in the name of the Client upon which the Client may effect transactions in Securities or other permitted financial products. KES shall be entitled to treat all information provided by the Client in the Account Application Form as accurate. KES will not be responsible for any error in the information provided by the Client.

#### Single Agreement

- 1.3 All transactions on any Account are entered into in reliance on the fact that these T&C, all outstanding transactions (and to the extent recorded in a Confirmation, and each such Confirmation) shall form a single agreement between KES and the Client and KES would not otherwise enter into these T&C and any such transactions.

### **No Right to Encumber Account**

- 1.4 The Client shall not without the prior written consent of KES assign, charge or encumber any Account or the Client's rights therein, or create or permit to create, in favour of any person (other than KES) any interest in any Account (by way of trust or otherwise). KES shall not be required to recognise any person other than the Client as having any interest in any Account.

### **Instructions and Orders**

- 1.5 (a) The Client authorises KES to rely and act on, and treat as fully authorised by and binding upon the Client, any order instruction or communication (by whatever means transmitted and whether or not in writing) which purports to have been given and which is reasonably accepted by KES in good faith as having been given by the Client or on the Client's behalf by any person, without further enquiry on the part of KES as to the genuineness of authority or identity of the person giving or purporting to give such instructions and regardless of the circumstances prevailing at the time. Without prejudice to the foregoing, KES shall be entitled (but not obliged) to verify and be satisfied with respect to the identity of the person purporting to give such order or the source and origin of such order and KES may not rely or act upon any such order unless and until KES is satisfied as to the matters on which KES sought verification. The Client agrees that it shall be responsible to KES for all engagements, indebtedness and any obligations made or entered into in the Client's name whether in writing or orally, and howsoever communicated or purported to be given in the manner above. KES shall not be liable for any loss, damage, cost and expense incurred by the Client as a result of KES so acting. KES shall have the discretion to refuse to accept or act on any orders, instructions or requests of the Client without having to assign any reason for such refusal and KES shall bear no liability whatsoever for failing to comply with any orders, instructions or requests of the Client or for exercising or failing to exercise any discretion, power or authority conferred upon KES by these T&C. The record or recollection of any of KES' officers, employees or agents receiving oral instructions from the Client is conclusive against the Client as to the contents of such oral instructions.
- (b) Once an order is received by KES, such order is binding on the Client provided that the Client may give an order to withdraw, cancel, revoke or vary a previous order in the manner set out in Clause 1.5(c).
- (c) Where the Client gives KES an instruction to withdraw, cancel, revoke or vary a previous order, KES shall not be obliged to execute such withdrawal, cancellation, revocation or variation unless the previous order has not yet been executed, and provided that the withdrawal, cancellation, revocation or variation, as the case may be, will not prejudice KES' position. The Client acknowledges that subsequent orders given to one of KES' representatives may not be sufficient to revoke an earlier order given to another of KES' representatives, or to cancel an order made with the relevant KES representative implementing such order.
- (d) For the avoidance of doubt, the Client shall not assume that its orders have been executed until KES confirms the same orally or in writing. However, nothing in this Clause implies that the Client's orders have not been executed if the Client, for whatever reason, does not receive confirmations of such orders.
- (e) In the event that KES decides to act on any order or is otherwise under an obligation to act on any order, KES shall be allowed such amount of time to act upon and implement the order as may be reasonable, having regard to the systems and operations of KES and the other circumstances then prevailing, and shall not be liable for any loss arising from any delay on the part of KES in acting on the order.
- (f) KES shall send to the Client a Confirmation after its receipt of an order. The Client shall be responsible for reviewing the Confirmation to ensure that an order has been transmitted, received, processed and duly executed, and shall immediately notify KES of any failure to receive an appropriate Confirmation that the order has been received and executed.
- (g) The Client acknowledges and consents to the right of KES to aggregate the Client's orders with the orders of KES' other clients (whether for execution on other jurisdictions or otherwise). The allotment or distribution of any Securities, monies or other property pursuant to such order aggregation to or amongst the Client and KES' other clients shall be at KES' sole and absolute discretion, and KES may also effect such transactions as principal to the counterparty in such jurisdiction. If KES so acts, KES may also take such actions as KES may require in order to avoid liability to its counterparty. The Client accepts that such allotment or distribution or actions by KES may result in inequities and/or loss to the Client and accepts the risk thereof as being for the Client's account.
- (h) The Client acknowledges and agrees that KES' representatives may carry out dealing activities or otherwise operate outside KES' office premises and, in this respect, the Client acknowledges and agrees that:
- (i) it is in the Client's own interest not to use the representative's address as the Client's mailing address for contract notes and statements;
- (ii) the Client may only enter into transactions with or otherwise give instructions to KES using the telephone or via an internet trading platform, unless KES agrees to accept other forms of communication, and such orders are subject to these T&C;

- (iii) the Client is responsible for and aware of the attendant risk attached to transactions executed off-premises;
- (iv) the Client understands that there might be limitations that may potentially affect the Client's customer service experience, including, but not limited to delays in responding to or executing an instruction or entering into a transaction; and
- (v) the Client agrees to communicate, give instructions and/or place orders only with the representative assigned by KES to the Client.

**Commissions, Fees & Other Charges**

- 1.6 The Client agrees to pay all fees commissions brokerage stamp duties clearing fees goods and services tax and other charges which may be payable in relation to any of the services provided or transactions effected for the Client by KES and at such rate(s) as may be determined by KES. All payments shall be made without deductions or withholding for or on account of any tax duty or levy. If KES is obliged to so deduct or withhold, the Client shall pay such additional sums to KES in order to ensure that the net amount received by KES shall be the full amount properly due to KES had the deduction or withholding not applied.

**Agents**

- 1.7 KES is authorised to employ agents who may or may not be any of its affiliated companies, to perform all or part of its services or duties, and to provide to such agents information relating to the Client and/or to transactions requested by the Client. The Client acknowledges and consents to KES delegating to and/or using foreign brokers in other jurisdictions for the execution of the Client's orders with respect to Securities listed and traded in those jurisdictions. So long as KES uses reasonable care in the selection of such brokers, KES shall have no liability or responsibility referable to any default or negligence of such foreign brokers. Notwithstanding that as between the Client and KES, KES is in fact the agent of the Client in using the foreign broker to carry out the Client's orders, KES may have to accept sole and principal responsibility to the foreign broker for the executed order. Accordingly the Client shall indemnify KES against any and all loss, damage, cost or expense suffered or incurred by KES arising from or in connection with carrying out the Client's orders, and actions which KES deems in good faith necessary to ensure that KES will not be in default of its principal obligation or responsibility or to contain or minimize its loss.

**Payment/Handling of Securities/Monies**

- 1.8 Trading representatives are not authorised to collect payment or handle Securities on behalf of KES. The Client acknowledges that if the Client chooses to effect payment or to deposit Securities by delivering a cheque or Securities to his trading representative, payment or deposit of the Securities shall be deemed to be made only when KES receives the cheque or Securities from the trading representative and not when the cheque or Securities are delivered to the trading representative. The Client agrees that in the event where payments are made prior to the date for settlement of purchases, KES shall deposit such amounts into the Client's trust account and shall not withdraw any monies from such trust account except for the purposes stipulated in Regulation 21 of the Securities and Futures (Licensing and Conduct of Business) Regulations.
- 1.9 KES may, for the purpose of depositing monies or Securities received on account of the Client which are denominated in a foreign currency in a trust account, maintain a trust account with a custodian outside Singapore which is licensed, registered or authorised to conduct banking business in the country or territory where the account is maintained.
- 1.10 The Client acknowledges that KES may place monies received on account of the Client in an omnibus customer trust account together with monies that KES holds for other clients. As such the Client further acknowledges that it would be administratively and operationally difficult, if not impossible (in view of the constant fluctuation of the aggregate balance in such account), to account separately for each of KES' clients the interest due on their cash balance in the omnibus account as interest will be received on an aggregated basis. In any event, it is also acknowledged and accepted that such an exercise would be likely to cost more than any interest earned. In these circumstances, it is a condition that the Client waives and relinquishes in KES' favour all claims for interest that may otherwise accrue with respect to the Client's said monies received by KES on the Client's account.
- 1.11 The Client consents that KES may hold monies received on account of the Client on trust in the forms of investment stipulated in Regulation 20 of the Securities and Futures (Licensing and Conduct of Business) Regulations.
- 1.12 The Client acknowledges that any Securities belonging to the Client which are deposited with KES may be held with securities held by KES for other clients on an aggregate or omnibus basis. This may in some instances result in prejudice to the Client and the Client accepts and consents to this.

**Excess Funds**

- 1.13 The Client acknowledges that as a general rule excess funds of the Client unless title transferred in favour of KES will be held commingled with excess funds of other clients (also not title transferred in favour of KES) of KES in a trust account in accordance with the provisions of the Securities and Futures (Licensing and Conduct of Business) Regulations. The Client hereby grants KES the authority at its discretion to pool any excess funds in the Client's trust account with those of other clients of KES and at its further discretion to place such funds with either an interest-paying institution or with a fund manager for management with intent to enhance returns on such excess funds by way of investing the same in money market funds. The Client acknowledges that such placement is at KES' discretion and KES shall have no liability or responsibility if no such

placement is made and so long as a placement is made in good faith. As the returns from the funds placed will be returns on a fluctuating amount, it is neither practical nor feasible to calculate the amount pro rata due to the Client and thus the Client accordingly agrees to waive entitlement to claim the returns actually due to the Client's amount of excess funds in return for KES paying the Client out of the overall returns from the funds, of which the Client's excess funds is a part of, the returns as KES in good faith deems appropriate. It is KES' objective to try and ensure that the Client receives a return that is at least equivalent to the average interest payable on savings accounts at local banks in Singapore or any other rates as may be decided by KES from time to time but KES shall not be liable if for any reason the said overall returns is not, in KES' good faith determination, sufficient for KES to pay each of its clients (including the Client) the minimum interest that it is KES' said objective to try to pay to the Client out of the same and KES only pays out to the Client a lesser sum or no sum at all by way of interest.

#### **Interest**

- 1.14 The Client agrees to pay interest on all sums due to KES after as well as before judgment at such rate(s) of interest as may be determined from time to time by KES, and whether or not prior notification thereof has been given to the Client. Foreign currency denominated accounts (e.g. M\$ or HK\$) are charged different interest rates. Interest shall be settled in S\$ at an exchange rate to be determined by KES. Interest shall accrue on a daily basis on a 365-day year or 366-day leap year for all outstanding sums due from the due date to the date of full payment.

#### **Set-off**

- 1.15 KES shall be entitled, without prior notice to the Client, to set-off any debts, liabilities or amounts owing by the Client against any amounts due to the Client or any monies held on behalf of the Client or to which the Client is beneficially entitled including any monies held on trust or as collateral or in the trust account for the Client whether the debts are actual or contingent and irrespective of any differences in currency. KES shall be entitled to effect such currency conversions and at such rates of exchange as KES may in its absolute discretion deem necessary or appropriate in order to effect such set-off.

#### **Lien**

- 1.16 The Client agrees that all of the Client's property shall be subject to a general lien in favour of KES for the discharge of all or any indebtedness and other obligations of the Client to KES. The Client shall not be entitled to withdraw any monies or Securities held by KES pending the repayment in full to KES of any indebtedness of the Client to KES. KES shall be entitled at any time and without prior notice to the Client to retain apply sell or dispose of all or any of the Client's property if any such obligation or liability is not discharged in full by the Client when due or on demand in or towards the payment and discharge of such obligation or liability, and KES shall be under no duty to the Client as to the price obtained or any losses or liabilities incurred or arising in respect of any such sale or disposal.

#### **Charge**

- 1.17 (a) As a continuing security for the payment and satisfaction on demand of all monies and liabilities and the performance of all obligations hereunder which are now or any time hereafter may be due, owing or incurred by the Client to KES, the Client hereby charges to KES, free of all encumbrances and adverse interests, by way of first fixed and equitable charge of all Securities which are or have been deposited with or are held by KES or its nominee, by way of a first fixed legal mortgage all Securities, the title to which has been transferred by the Client or the Client's nominee to KES or KES' nominee, in each case, including dividends, rights, monies or property accruing in respect thereof.
- (b) The Client shall, upon request by KES, forthwith execute all such transfers and other documents as may be necessary to enable KES or KES' nominee to perfect the charge, to be registered as owner of, or otherwise to obtain legal title to, any Securities deposited with or held by it and which are charged to KES pursuant to Clause 1.17(a) above.
- (c) Subject to KES being satisfied that all obligations and liabilities of the Client under the Account have been duly performed or observed, KES may re-transfer or re-deliver any Securities charged to KES at any time and shall do so upon request by the Client.
- (d) Nothing in this Clause shall restrict the operation of any general lien or other rights or lien whatsoever which KES may be entitled to under the general law.

#### **Power of Attorney**

- 1.18 The Client hereby irrevocably appoints KES, through any of its directors or officers as the attorney of the Client for each and all of the purposes of these T&C and with the power to sign and execute all documents and perform all acts in the name and on behalf of the Client to facilitate any transactions under or pursuant to the Account or to implement or perform any of the Client's duties or responsibilities herein or the enforcement of these T&C or to give effect or substance thereto.

#### **Ratification**

- 1.19 The Client agrees to ratify and confirm any and all acts and things done or caused to be done by KES for and on behalf of the Client or otherwise in relation to the Account, or any of the services provided by KES or any thing done pursuant to these T&C.

### **Representations, Warranties and Undertakings**

1.20 The Client represents and warrants to KES as follows (which representations and warranties shall be deemed to be repeated on a continuous basis for so long as the Client has any Account with, receives any services from, or has any outstanding transaction with, KES):

- (a) the Client has full capacity and authority to accept and agree to these T&C, to open, maintain and/or continue to maintain all Account(s) from time to time opened and/or maintained and/or continued to be maintained with KES, and to give KES orders thereon;
- (b) the Client has read, understood and accepted the terms of the Risk Disclosure Statement (Appendix I to these T&C), that the Risk Disclosure Statement is not a substitute for taking independent advice, and that no transaction will be entered into in reliance on any statement, advice or information by KES;
- (c) the Client has all authorisations, consents, licences or approvals (whether under applicable laws or otherwise) required to accept and agree to these terms and conditions, to open, maintain and/or continue to maintain all Account(s) from time to time opened and/or maintained and/or continued to be maintained with KES, and to give KES orders thereon;
- (d) the Client is not an employee of any governmental or self-regulatory organisation in any jurisdiction, including any exchange or a member firm thereof, or engaged in the business of dealing (either as agent or principal) in any of the property traded under the Account(s), and the Client shall promptly notify KES if it becomes so employed;
- (e) unless agreed by KES, no person other than the Client has an interest in any Account;
- (f) except with the express written consent of KES, and except for any security or encumbrance created hereunder, no person has or will have any security or other encumbrance over any Account and/or over any cash or property in any Account;
- (g) any orders placed or any other dealings in the Account(s) is solely and exclusively based on the Client's own judgment and after the Client's own independent appraisal and investigation into the risks associated with such orders or dealings;
- (h) KES shall not be under any duty or obligation to inquire into the purpose or propriety of any order and shall be under no obligation to see to the application of any funds delivered by the Client in respect of any Account;
- (i) any person(s) empowered to act on the Client's behalf has been duly authorised; and
- (j) all information provided by the Client to KES in connection with these T&C, the Account Application Form and each transaction is true, complete and accurate in all respects and shall remain true, complete and accurate unless and until the Client notifies KES to the contrary.

1.21 The Client agrees and undertakes with KES as follows (which undertakings shall be deemed to be repeated on a continuous basis for so long as the Client has any Account with, receives any services from, or has any outstanding transaction with, KES):

- (a) to immediately inform KES of any changes to the representations and warranties provided by the Client in these T&C or the Account Application Form, or in the event that such representations or warranties are no longer accurate or correct;
- (b) to immediately notify KES in writing in the event of any change to the personal information or circumstances or any other relevant information the Client provided or is required to provide to KES;
- (c) to effect all stamping, filing or registration of all documents which may be required under the laws of any relevant jurisdiction;
- (d) to forthwith furnish such financial information to KES as it may request from time to time; and
- (e) to assume responsibility for any disclosure of any shareholding or other interest required under any applicable law, rules and regulations.

### **Service of Documents and Notices**

1.22 Any documents and notices served on the Client by KES may be in writing and addressed to the Client's address stated in the Account Application Form or any agreements entered into between the Client and KES or any other address as the Client may notify KES in writing from time to time and shall be deemed to have been duly served and effective 48 hours after posting or, if sent by telex facsimile or any other electronic means, upon dispatch or, if served by hand, upon delivery. Whenever the Client receives any statements of account contract notes or any document in connection with the Account, the Client agrees that he will inform KES of any mistake omission or disagreement within seven (7) days from the date the same was posted/delivered or such other duration as may be stipulated in the said document. If the Client fails to do this, he agrees he no longer has the right to dispute the accuracy of the statement note or document. Accordingly, KES has the right to treat the Client's silence as the

Client's representation that the statement note or document is accurate. However, should KES discover at any time that the statement note or document is inaccurate, KES can still amend the same.

#### **Waiver**

- 1.23 No act omission or forbearance by KES or any of its employees or agents shall constitute a waiver of any of KES' rights.

#### **Indemnity**

- 1.24 The Client agrees to indemnify KES, its employees and agents against all liabilities claims losses and expenses of any nature including legal costs (on a full indemnity basis) arising from or in connection with any transaction or instruction that may be carried out by KES on behalf of the Client or at the Client's request or the Client's access/use of the internet trading platform or any breach of these T&C or the provisions of any agreement entered into between the parties or any action taken to enforce the same.

#### **Force Majeure**

- 1.25 KES shall not be held liable to the Client for any partial performance delay in performance or non-performance of any of its obligations under any agreement with the Client by reason of any cause beyond KES' control, including but not limited to any act of force majeure, any breakdown or failure of transmission communication or computer facilities postal strikes or other industrial actions the failure of any exchange market or clearing house or failure of any relevant correspondent or other agent for any reason to perform its obligations war hostility riot civil commotion requisition by any government or any regional or local authority, or any agency thereof, or any law, regulation, edict, executive order or mandate of any such body or any act of God fire flood frost storm or explosion. The Client agrees that any and all Securities documents and/or other personal property heretofore or hereafter deposited, whether held by KES or its agents, are at the Client's sole risk as regards any loss or destruction of or any damage to the same.

#### **Limitation of Liability**

- 1.26 KES shall not be liable for any loss or damage whatsoever (including indirect or consequential loss, anticipated profits or punitive damages) that the Client may suffer or incur due to any act or omission of KES or any of its appointed agents or servants in the execution or performance of any transaction which it is authorised to do pursuant to the conditions herein or otherwise requested by the Client except for any act, omission or default caused by the willful default, gross negligence or fraud of KES its officers or employees. Provided always that KES shall not be liable for any economic or consequential loss whatsoever that may be suffered by the Client.

#### **Disclosure**

- 1.27 The Client agrees and consents to the disclosure by KES of any information and transactions, personal or relating to the Account to any exchange, regulatory body, department or agency of any government in charge of any exchange on which the Client had traded/will trade or to the issuer of any of the Securities purchased/sold by the Client, or to any other person as may be reasonably required to administer implement or facilitate any transaction carried out for and on behalf of the Client.

#### **Joint Accounts**

- 1.28 In the event that the Account is a joint account, the joint account holders agree as follows:
- (a) all duties obligations and liabilities owed by anyone of the joint account holders shall be owed by all the joint account holders jointly and severally;
  - (b) all joint account holders agree to be bound by the instructions given to KES by any one of the joint account holders;
  - (c) delivery of share certificates to any joint account holder shall be sufficient delivery to all joint account holders;
  - (d) payment made to any joint account holder shall constitute good discharge for KES; and
  - (e) in the event of the death of any joint account holder, the other joint account holder(s) will have the right of survivorship and KES is instructed to pay all monies or deliver Securities to any one of the survivor(s).

#### **Change of Particulars**

- 1.29 Without prejudice to Clause 1.21(b) above, the Client acknowledges and agrees that until notification in writing of any change to the personal information or circumstances or any other relevant information the Client provided or is required to provide to KES is received by KES, the Client shall absolve KES of any responsibility or liability resulting from KES' acting on the basis of the original particulars.

#### **Terms to Govern once Service or Facility is Used**

- 1.30 Regardless of whether the Client has signed the required documentation, the Client will be deemed to have agreed to these T&C if the Client commences to trade through KES or to use or continue to use any of the services or facilities provided by KES, and



the Client confirms that all transactions executed on the Client's instructions will be governed by these T&C.

#### **Amendment of T&C**

- 1.31 KES may at any time give to the Client notice of any amendment, variation, revision, supplement or any other change to these T&C by post, e-mail or such other means as KES shall think fit. Changes shall take place on and from the date specified in the notice or if no such date is specified, on and from the date of such notice. Without prejudice to the foregoing, the entry into or continued entry into transactions by the Client after such change shall be deemed as its acceptance and agreement to the same. No trading representative or remisier may waive or vary any of KES' rights under these T&C nor may they accept any liability on KES' behalf.

#### **Termination by Notice**

- 1.32 The Account may be terminated by either party giving the other seven (7) business days' notice in writing (without having to give any reason). Upon termination, any and all indebtedness whatsoever owing to KES shall fall due and be immediately payable to KES by the Client, and KES shall be entitled to exercise all such rights and powers under these T&C including the liquidation and sale in such manner as KES deems fit all or any of the Client's Securities collateral or property (whether charged/secured to KES or otherwise in KES' custody and control) and to use the proceeds thereof to pay and satisfy the Client's indebtedness. KES is also authorised to deliver (as soon as is practicable thereafter) any Securities held by it to the Client or the Client's successors in title after repayment of any debt balance and after deduction of KES's outstanding fees and expenses, if any. Such notice to terminate shall not be a waiver of any obligations already accrued to each party and these obligations shall continue to be governed by these T&C until such obligations are fulfilled and concluded.

#### **Successors in Title and Assigns**

- 1.33 These T&C shall be binding on KES and the Client and their respective successors in title and assigns. These T&C shall also continue to be binding on the Client notwithstanding any change in the name or constitution of KES or the Client, or the consolidation or amalgamation of KES or the Client into or with any other entity (in which case these T&C shall be binding on the successor entity).

#### **Assignment by Client**

- 1.34 The Client shall not assign, transfer, charge, sub-contract or deal in any manner with all or any of its rights or liabilities under these T&C or purport to do any of the same without the express written consent of KES.

#### **Assignment by KES**

- 1.35 KES may assign any or all of its rights or liabilities under these T&C to any person KES deems fit, or change the office through which any transaction is booked, or through which it makes or receives payments or deliveries for the purpose of any transaction.

#### **Service of Writ**

- 1.36 In the event of any legal action being commenced against the Client, the writ may be served on the Client by sending a copy thereof by pre-paid registered post to the address of the Client stated in the Account Application Form or such other address as may be notified in writing by the Client to KES.

#### **Invalidity of Any Provision**

- 1.37 If any of the provisions herein or any part thereof shall be adjudged invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions or any part thereof shall not in any way be affected.

#### **Laws and Jurisdiction**

- 1.38 The Client submits to the non-exclusive jurisdiction of the courts of Singapore, but KES will be at liberty to proceed against the Client in any court in any jurisdiction. All transactions and agreements between the Client and KES shall unless otherwise agreed be governed by and interpreted in accordance with laws of Singapore.

#### **Third party rights**

- 1.39 Any affiliate of KES may enforce all of these T&C. A person who is a permitted successor to or assignee of the rights of KES is deemed a party to these T&C and the rights of such successor or assignee shall, subject to and upon any succession or assignment permitted by these T&C, be regulated by these T&C.
- 1.40 Except as provided in this Clause, no provision of these T&C shall be enforceable under the Contracts (Rights of Third Parties) Act, Chapter 53B of Singapore by a person who is not a party, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

### **Waiver of rights**

- 1.41 KES is entitled to waive or relax any of these T&C from time to time with or without notice to the Client. In particular but without limitation, where these Terms specify certain limits or parameters to the Client's trading activities and margin requirements, KES shall be entitled from time to time and with or without notice to the Client to allow the Client to breach such limits.
- 1.42 No single or partial exercise of, or failure or delay in exercising any right, power or remedy (under these T&C or at law) by KES shall constitute a waiver by KES of, or impair or preclude any exercise or further exercise of, that or any other right, power or remedy arising under these T&C or at law.
- 1.43 Any liability of the Client to KES under these T&C may in whole or in part be released, compounded, compromised or postponed by KES in its sole and absolute discretion, without in any way prejudicing or affecting any rights in respect of that or any liability not so waived, released, compounded, compromised or postponed. A waiver by KES of a breach of any of these T&C or of a default under these T&C does not constitute a waiver of any other breach or default and shall not affect the other provisions of these T&C. A waiver by KES of a breach of any of these T&C or of a default under these T&C will not prevent KES from subsequently requiring compliance with the waived obligation.

### **Operation of these T&C**

- 1.44 The rights and remedies provided to KES under these T&C are cumulative and are without prejudice to and not exclusive of any rights or remedies provided by law.
- 1.45 If any provision (or part of any provision) of these T&C shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of these T&C (or the remaining part of the affected provision as the case may be) which shall remain in full force and effect. If any provision of these T&C is so found to be invalid or unenforceable but would be valid and enforceable if some part of the provision were deleted, the provision shall apply with such deletions as may be necessary to make it valid and enforceable. Each provision and part of a provision in these T&C is separate and severable and enforceable accordingly.

### **Conflicts of Interest**

- 1.46 KES is part of an international group of businesses and acts simultaneously for a large number of clients, as well as for its own account. As such, conflicts of interest cannot be completely avoided, although KES shall ensure that its internal organisation is structured as to avoid conflicts of interest or to ensure that the Client's interests will be taken into account in an equitable manner when conflicts of interest do arise. The Client acknowledges that KES and/or any affiliate and/or their respective clients and agents may:
- (a) combine the Client's orders with its/their own orders or the orders of other clients;
  - (b) effect Transactions for the Client through the agency of and/or with a counterparty which is a related organisation or a person otherwise associated with it/them;
  - (c) have a position or a direct or indirect interest in any investments;
  - (d) have bought or sold any investments as principal or for its/their other clients;
  - (e) have other banking, advisory or any other business relationships with companies whose investments are held for the Client's Account or are purchased and sold for the Client and its/their officers and directors may be officers and directors of such companies;
  - (f) be the market maker of any investments; or
  - (g) be the issuer of any investments.

### **Scope of Services By and From KES - No investment advice recommendation**

- 1.47 **Execution only:** KES will deal with the Client as a client on an execution-only basis. KES is not willing to and assumes no responsibility and shall have no liability whatsoever to the Client:
- (a) for advising or giving any recommendation to the Client as to whether or not to enter into any transaction regardless of whether information has been provided by KES; and
  - (b) for any loss suffered or incurred by the Client as a result of, or in connection with any transaction made or omitted to be made by the Client regardless of whether information has been provided by KES .

For the avoidance of doubt, KES does not and is not willing to assume any advisory, fiduciary or similar or other duties to the Client. KES assumes, and relies on the assumption, that the Client has taken or will take independent legal, tax, financial and other advice in relation to a transaction effected or to be effected by the Client with or through KES.

1.48 All decisions on whether to invest in, hold or dispose of any investment or to enter into any transaction are therefore solely the Client's. The Client does not rely on KES or any of its agents, nominees, directors, officers or employees, any information, representation (whether written or oral), advice, recommendation, view, opinion or other statement provided by KES, or any of its affiliates, agents and nominees and every director, officer, employee or agent of the foregoing or any research produced by KES or its affiliates, agents or nominees in making any investment decision, and in asking KES to enter into any transaction or execute any order for any transaction, the Client represents that the Client is solely responsible and accepts sole responsibility for making the Client's own independent appraisal and investigations into the risks of the transaction. KES will only enter into transactions as the Client instructs. Where this includes the entry into of transactions on a margined basis, KES will, upon request, provide the Client with product specifications and any prospectus or other offering document covering such products and a full explanation of the collateral requirements and the circumstances under which the Client's positions may be closed without the Client's consent. The Client has sources of research, information and recommendations other than those provided by KES and its employees that the Client uses in evaluating investments. The Client has made and will make the Client's own assessment of any investments.

1.49 Without prejudice to the generality of Clause 1.47, if KES provides any information on investments, transactions or markets such as brochures, research, reports, market trends, investment analysis or commentary upon the performance of selected companies, the Client represents, warrants and fully understands and agrees that this should not be construed as:

- (a) any endorsement of the investment or transaction;
- (b) a representation that KES has performed any due diligence on the investment or transaction;
- (c) a recommendation or the provision of advice as a service;
- (d) KES' acting as the Client's adviser or fiduciary; or
- (e) information which the Client can or may rely on in connection with its investment decision,

and the Client should seek the Client's own advice as to the suitability of any investment or transaction mentioned. The use or reliance on any such information is at the Client's own risk and any losses which may be suffered as a result of the Client entering into any investment are for the Client's account and KES shall not be liable for any losses arising from or incurred by the Client in connection therewith. KES is not responsible or liable for the accuracy and completeness of any such information, the performance or outcome of any investment made by the Client after receipt of such information provided by KES irrespective of whether such information was provided at the Client's request.

1.50 Without prejudice to any provision of Clauses 1.47 to 1.49, the Client acknowledges and agrees that the Client is deemed to have made an independent analysis and decision with respect to all transactions and dealings in any investment and every investment and transaction shall be deemed to be undertaken by the Client in reliance only upon the Client's own judgment and not in reliance upon any views, representations (whether written or oral), advice, recommendation, opinion, report, analysis, materials, information or other statement by KES or any of its agents, nominees, directors, officers or employees. The Client acknowledges and agrees that the Client is aware that KES does not hold out any of its agents, nominees, directors, officers or employees as having any authority to advise the Client and KES does not purport to advise the Client on the terms of, or any other matters connected with, any investment or transaction.

**Construction not against drafter**

1.51 No rule of law or interpretation to the effect that an ambiguity in a document is to be construed against the party drafting or preparing a document shall apply in respect of these T&C.

**2. TRADING**

**Rules Governing Transactions**

2.1 The Client agrees that all transactions instructed by the Client shall be governed by the rules bye-laws customs directives and practices of Singapore Exchange Securities Trading Limited ("SGX-ST") and/or such other exchange or market where the transactions are effected and/or any relevant regulatory authorities. Further, all such transactions shall be subject to these T&C (as amended or varied from time to time) and restrictions as KES shall determine at its sole discretion.

**Settlement**

2.2 (a) In respect of Securities not issued by KES, KES acts only as a seller of such Securities and shall only be responsible to the Client for due execution of the Client's order and delivery of such Securities in accordance with the terms of the transaction. KES shall not be responsible for the underlying obligations of such Securities and shall not be responsible for payment of any amounts due in respect of such Securities in the event of default by the relevant issuer of such Securities (the "Issuer"), or any calculations, determinations or adjustments made by the Issuer in respect of such Securities. The Client shall look solely to the Issuer of such Securities for settlement of the underlying obligations.

- (b) KES shall act as the Client's agent in respect of any settlement amounts due payable and received from an Issuer in respect of the relevant Securities, and shall pay such sums to the Client or any other person, or use such sums for further purchases or transactions, as instructed by the Client from time to time.

**Investment Decisions/Non-advisory Nature of Relationship**

- 2.3 (a) The Client confirms and accepts that KES provides no investment tax or legal advice nor does KES give advice, offer any opinion or recommendation regarding any Securities or orders. The Client is solely responsible for all investment decisions made by the Client and for determining the nature potential value and suitability of any particular Securities transaction or investment strategy. The Client does not rely on anything said or written by KES (including sources by electronic form or otherwise) when the Client transacts in Securities. The Client accepts that all instructions or orders to KES are placed upon the Client's own independent judgment and without any reliance on any investment advice or comments from KES or its trading representatives. The Client is aware that trading representatives do not have the authority to give any investment advice or make any recommendation with respect to any Securities or markets on behalf of KES. If trading representatives give advice incidental to their dealings in securities, the Client acknowledges that such advice is given in the trading representatives' personal capacities.
- (b) Without prejudice to or detracting from Clause 2.3(a), the recommendation or advice the Client may receive from any of KES's representatives or officers may be general or specific and the Client needs to understand and take note of the different implications of each type of advice received. In no event should Client assume that KES has performed any due diligence on the respective advice or recommendation.
- (c) It is a material part of the Client being allowed to open and maintain an account with KES that the Client agrees that while the Client has the option to decide whether the Client wishes to provide KES with the information and answers KES requests of the Client in the Client Investment Profile and such supplemental information and answers as KES may ask the Client as are reasonably relevant in the circumstances, the Client has the obligation if the Client chooses to do so to provide KES answers in full and not in part. The Client therefore agrees that partial or incomplete provision of information and answers may be disregarded by KES and he may be treated as having refused and provided no answers or information. Where the Client has provided KES full information and answers, it shall also be the Client's obligation to keep such information current and accurate, failing which KES is entitled to assume that the information and answers provided remain complete and accurate. Where the Client has failed or refused or deemed to have failed or refused to provide KES with any information or answers as requested then the Client will also be taken as having acknowledged (and KES will be regarding and materially relying on the Client having acknowledged) that KES cannot identify with any certainty the Client's investment objectives, financial circumstances and particular needs and therefore the Client agrees that any advice or recommendation provided in respect to the Client's account with KES by any of KES, its duly authorized representatives or officers shall be treated as at best only as general advice or recommendation and it is acknowledged and agreed that such advice does not take into account and may not be suitable for the Client's investment objectives, financial situation and particular needs.
- (d) The Client also acknowledges and agrees that a distinction should be made with respect to any advice or recommendation that is given on a solicited basis from one given on an unsolicited basis. An advice or recommendation is to be regarded as having been given on an unsolicited basis if it is given otherwise than in response to the Client's query or request.
- (e) Except if given pursuant to a specific advisory services agreement (and for the payment of an agreed and additional fee for such advice or recommendation), the Client must and should regard any advice or recommendation given in response to his request or question as in the nature of general advice or recommendation and again it is acknowledged and agreed that such advice may not be suitable for the Client's investment objectives, financial situation and particular needs.
- (f) Only if the Client has provided full information and answers as requested by KES in the Client Investment Profile and KES' supplementary questions and requests and then only in respect of unsolicited advice and recommendations from a duly authorized representative or officer duly authorized to give such advice and recommendations is the Client entitled to regard the advice and recommendation given as specific advice given after having taken into account his investment objectives, financial situation and particular needs as may be reasonably inferred from his answers. Please note in relation to the preceding that no trading representative has any authority to give any advice or make any recommendation on KES' behalf or on KES' account unless specifically authorized to do so by a duly authorized officer of KES. In any other case, the trading representative if he gives any advice or recommendation to the Client must be assumed and accepted as having given the same without authority from KES in his own personal capacity.

**Foreign Exchange Risks**

- 2.4 The Client hereby agrees and acknowledges that in the event the Client directs or instructs KES to carry out any transactions on the Client's behalf on an exchange or market on which such transactions are effected in a foreign currency, unless the Client indicates to the contrary at the time of the giving of instructions to carry out any such transactions, all such transactions shall as between KES and the Client be settled in Singapore Dollars at a rate of exchange determined by KES in its sole discretion on the

basis of the then prevailing money market rates of exchange between such currencies. If KES agrees, transactions in the Account may be settled in any other currency requested by the Client, but at a rate of exchange decided by KES. The Client shall bear any losses damages costs or expenses that may result from any currency conversion effected as aforesaid.

#### **Margin Financing with Other Institution**

- 2.5 In the event that the Client concurrently maintains another trading account through a financial institution for the purpose of providing share margin financing to the Client, the Client authorises KES to transfer any transactions the Client may have effected as agent for the said financial institution in that account to this Account should the said financial institution so request. In the event that the Client obtains financing from a bank or other institution on an ad-hoc basis, the Client authorises KES to deliver Securities to such financing bank or institution as the Client's trading representative may from time to time instruct.

#### **Delinquent/Disputed Account**

- 2.6 The Client understands that KES may report all delinquent and disputed accounts. The Client further consents to the reporting of the pertinent particulars relating to the Client's account, including but not limited to, the Client's name, address and NRIC/Passport number, unique entity number and claim amount and such other appropriate information, in the event that the Client's account is classified by KES at its sole discretion as delinquent or disputed.

#### **Events of Default**

- 2.7 A 'Default' shall be deemed to occur if:
- (a) the Client has failed to comply with any of its obligations hereunder or under any Account or transaction;
  - (b) (in the event the Client is an individual) the Client shall die, become bankrupt or insane, commit an act of bankruptcy, or have action to place the Client in bankruptcy commenced against it;
  - (c) (in the event the Client is a partnership) any of the partners thereof shall die, become bankrupt or insane, commit an act of bankruptcy, or have action to place him/her in bankruptcy commenced, or if action is commenced to dissolve and/or alter the partners or the constitution of the Client;
  - (d) (in the event the Client is a corporation) the Client shall be unable to pay its debts as and when they are due, or action is commenced to place the Client in insolvency, judicial management, receivership, administrative management, or any similar or analogous proceedings;
  - (e) any claim, action or proceeding of any nature is commenced against the Client, or steps are taken by any person to enforce any security against the Client;
  - (f) the Client makes any compromise or arrangement with its creditors; or
  - (g) KES forms the view, in good faith, that it should take action in order to preserve its rights or interests under any Account or under its relationship with the Client,

Provided that in the case of transactions effected otherwise than on an exchange, in the event of a Default under Clause 2.7(b), (c) or (d), all outstanding transactions (including any transaction which has not been performed and in respect of which the value date as determined by KES is on or precedes the date on which KES terminates such transaction) entered between the Client and KES shall be deemed immediately liquidated or at such other time as KES may determine at prevailing prices (or, if not available, at such prices KES deems fit) and the amounts resulting converted into Singapore dollars or such other currency as KES may from time to time use as the principal currency of its business (together with all margin duly converted into Singapore dollars or such other currency as KES may from time to time use as the principal currency of its business) at KES' prevailing rates and set-off against each other and the margin prior to KES resorting to its rights under Clause 2.8 and/or payment or repayment to the Client (if applicable).

#### **Rights on Occurrence of an Event of Default**

- 2.8 Without prejudice to any other right of KES hereunder or otherwise at law, in the event of Default, KES may (but is not obliged to) immediately or at any time thereafter, do any one or more of the following:
- (a) suspend (indefinitely or otherwise) or terminate any Account, or KES' relationship with the Client and accelerate any and all liabilities of the Client to KES so that they shall become immediately due and payable;
  - (b) hedge and/or close out any outstanding transaction (including any transaction which has yet to be settled on the date on which KES terminates such transaction) by determining its value in good faith as of the date of the close-out as soon as practicable after the close-out;
  - (c) liquidate the margin or part thereof at a price which KES deems appropriate in the circumstances;
  - (d) call upon any security including but not limited to any guarantees and letters of credit which may have been issued to or in favour of KES as security for the Account(s);

- (e) apply any amounts of whatsoever nature standing to the credit of the Client against any amounts which the Client owes to KES (of whatsoever nature and howsoever arising, including any contingent amounts), or generally to exercise KES' right of set-off against the Client;
- (f) demand any shortfall after (e) above from the Client, hold any excess pending full settlement of any other obligations of the Client, or pay any excess to the Client by way of cheque to the last known address of the Client; and
- (g) exercise such other authority and powers that may have been conferred upon KES by these T&C.

#### **Extraordinary Event**

- 2.9 If there occurs in relation to any transaction (otherwise than on an exchange) or otherwise in relation to an Account or Accounts an Extraordinary Event (as defined below), KES shall have the sole discretion to determine any adjustments or action necessary in relation to such transaction or any or all transactions or otherwise to an Account or Accounts in view of the Extraordinary Event. Such adjustments or actions may include altering or varying the quantities of currencies or financial instruments or the exchange rates or specifications of currencies or instruments bought or sold in respect of such transaction or some or all transactions, or terminating the transaction in question or some or all transactions, or an Account or Accounts or otherwise. Provided KES undertakes such action in good faith, any such adjustment or action shall be binding on the Client who shall be liable for any additional loss incurred by KES on the account of the Client or which the Client is consequently liable for as a result of such adjustment or action.

An 'Extraordinary Event' shall mean any event which KES in good faith believes to have a material adverse effect on any transaction and shall include without limitation any form of exchange control restriction or requirement of whatsoever nature affecting availability, convertibility, credit or transfers of currencies, financial instruments or funds, any form of debt or other moratorium on jurisdictions, individuals or entities, any devaluation, redenomination or demonetisation of the underlying currencies or financial instruments of any transaction and/or any form of restriction or requirement which in KES' good faith opinion adversely alters or changes the rights or obligations which KES in good faith undertook upon the establishment of such transaction.

#### **Right to Force Sell**

- 2.10 The Client understands that if he does not pay for any Securities purchased by the due date, KES shall have the right to force sell any or all of these Securities in such manner as it deems fit. KES may (but need not) exercise this right on any day after the day on which the right to force sell first arose. KES will not be liable to the Client for any losses suffered by the Client as a result of any fall in the market price of the security between the first day the right to force sell arose and the day it actually sells the Securities or as a result of any failure to force sell.

#### **Buying-In**

- 2.11 Before placing an order for the sale of shares, the Client shall ensure that the relevant shares are available for delivery and will constitute good delivery thereof on the settlement date of the transaction. If delivery of shares is not made on the settlement date, KES shall have the right to buy-in immediately and bill the Client for the difference. KES will not be liable to the Client for any loss suffered by the Client as a result of any rise in the market price of the Securities between the time the right to buy-in arose and the time it actually buys the Securities.

### **3. CUSTODIAL SERVICE**

#### **General**

- 3.1 The Client hereby requests KES to provide custodial services (the "**Custodial Services**") in respect of such Securities of the Client as KES may in its sole discretion accept and receive (the "**Custody Securities**"), in accordance with the terms and conditions set out in this Clause 3. In doing so, the Client acknowledges and accepts that nothing in this Clause 3 shall have the effect of constituting KES as a fiduciary of the Client or otherwise with respect to the Custody Securities, any relationship of trustee and beneficiary between KES and the Client, or any further relationship other than as expressly contemplated in this Clause 3.

#### **Bare Custodial Services**

- 3.2 Unless otherwise agreed, KES shall receive and hold in custody the Custody Securities. Subject to the Client's acknowledgement in any event that KES as custodian is not a fiduciary to the Client or otherwise with respect to the Custody Securities but shall be regarded generally only as a bare custodian and not trustee of the Custody Securities, the duties of KES hereunder shall be:
- (a) to hold or procure to be held to its order all documents evidencing ownership of the Custody Securities and identify in its books that all Custody Securities belong to the Client;
  - (b) to procure that all Custody Securities other than bearer Securities are registered in the name of KES, or such other nominee or nominees as KES or any sub-custodian (as the case may be) may appoint in accordance with Clause 3.4 or, where due to the nature of the law or market practice of any relevant jurisdiction, it is in the Client's best interests

or it is not feasible to do otherwise, any sub-custodian. In these circumstances, the Custody Securities will still be held in such a way that it is readily apparent that the Custody Securities are not the property of KES, any sub-custodian or any nominee appointed by KES or any sub-custodian (as the case may be). The Custody Securities may be registered collectively with other Securities both of KES and/or other clients of KES in the same name and where so registered, the Client's entitlements under the Custody Securities may not be identifiable by separate certificates or other physical documents of title or equivalent electronic records (although KES and/or its delegate(s) will maintain records such that it will be readily apparent the degree of the Client's interest in the commingled Securities so collectively held but on the express understanding and agreement of the Client that where such commingling and aggregation of the Custody Securities of the Client and the Securities of other persons result in entitlements to any dividends, interest and other monies payable in respect of the Custody Securities and all other rights, benefits and proceeds in respect of or derived from the same (whether by way of redemption, bonus, preference, option, substitution, conversion or otherwise) (the "**Related Assets**") which otherwise without such commingling or aggregation would not have accrued to the Custody Securities (the "**Bonus Related Assets**"), KES has full discretion as to the allotment of such Bonus Related Assets as amongst its clients, including the Client as it deems fit). Should KES, any sub-custodian or, as the case may be, its nominee default, any shortfall in the Securities registered in that name may be shared pro rata among all clients of KES or sub-custodian whose Securities are so registered;

- (c) to hold or procure that there are held in safe custody all Custody Securities that are bearer Securities and ensure that such Custody Securities are held in such a manner that it is readily apparent that they are not the property of KES or any sub-custodian. Such Custody Securities shall be segregated by KES or any sub-custodian (as the case may be) from all property of KES or sub-custodian and shall be identified as held by KES or sub-custodian for the account of the Client. Where any Custody Securities are in uncertificated form, or otherwise transferable by book-entry transfer, KES may use the services of any securities depository, on such terms as it may think fit, for the purpose of the holding and transfer of such Custody Securities (or entitlements thereto);
- (d) except to the extent permitted or not prohibited by the Securities and Futures Act, Chapter 289 of Singapore or its regulations (including but not limited to Regulation 26 of the Securities and Futures (Licensing and Conduct of Business) Regulations), to hold and/or procure that any sub-custodian holds Securities, if registered in the same name as investments of KES or the sub-custodian, in an account designated separately from that used for investments of KES or sub-custodian (as the case may be);
- (e) on receipt of the Client's instructions or with the Client's authority to make or accept delivery of the Custody Securities which have been sold, purchased, transferred or otherwise acquired or lent or disposed of by the Client or its agent, such acceptance or delivery to be made in accordance with the normal practice for transactions of the type concerned;
- (f) to use its reasonable endeavours to collect and receive Related Assets including income and other payments due with respect to the Custody Securities provided that the Client acknowledges and accepts that KES (whether directly or through any delegate or agent) shall have no duty or responsibility but is entitled, if so chooses to:
  - (i) exercise or discharge any obligations conferred or imposed by reason of KES' holding of the Custody Securities or to investigate, participate or take any affirmative action in connection therewith or otherwise;
  - (ii) send or give notice of any proxy form or other document which KES may receive in respect of the Custody Securities;
  - (iii) recognise any claim in the nature of a trust or equitable claim by anyone other than the Client in respect of the Custody Securities or any part thereof; or
  - (iv) otherwise make any notification to the Client in respect of the Custody Securities, or take any other action in relation to the Custody Securities;
- (g) to credit, in such manner as the Client shall instruct, all income and other payments received by KES under paragraph (f) of this Clause 3.2;
- (h) to sign, execute and/or complete such documents, certificates or forms from time to time required for fiscal and taxation purposes in connection with the collection of income from the Custody Securities including bonds and note coupons; and
- (i) to keep or (to the extent reasonably practicable) procure there to be kept by any sub-custodian, or any nominee appointed by KES or any sub-custodian (as the case may be), such books, records and statements, in retrievable form, as may be necessary to provide an adequate record of all Custody Securities held and transactions carried out by or on behalf of the Client.

3.3 KES may refuse to act as custodian in relation to any Securities it deems unsuitable to be held hereunder without giving any reason or being liable for any loss thereby occasioned.

### **Nominees/Delegates**

3.4 KES is authorised to utilise one or more nominee(s) or sub-custodians for the purpose of providing the Custodial Services. In the event that a nominee is being used, the Client is deemed to have contracted as principal with such nominee. KES may utilise the services of a foreign custodian as nominee or sub-custodian where it deems this to be necessary, and the Client hereby expressly consents to such utilisation. Where the Custody Securities are held by a nominee or sub-custodian, KES shall separately agree in writing the requirements specified in Regulation 32 of the Securities and Futures (Licensing and Conduct of Business) Regulations but otherwise the Client acknowledges and accepts that different settlement, legal and regulatory requirements and different practices relating to the segregation of those Custody Securities may apply. In addition, KES and any nominee, sub-custodian, agent or delegate may deposit the Custody Securities with, and hold the Custody Securities in, any centralised securities depository, clearing house or securities depository agencies on such terms as such systems customarily operate. The Client agrees that where the context permits, any reference to KES herein shall also include a reference to its nominee, sub-custodian and/or any other person appointed by KES in accordance with this Clause.

### **3.5 Fees and Charges**

- (a) In consideration of KES' provision of the Custodial Services, the Client hereby agrees to pay to KES such fees (exclusive of any goods and services tax or other relevant tax) as may be determined by KES and notified by KES to the Client.
- (b) The Client shall, on demand, pay to or reimburse (or shall procure payment to or reimbursement of) KES for all expenses (including without limitation, management or supervisory fees, agents' and other adviser's fees, disbursements and operating expenses) incurred by KES, its nominees, sub-custodians or agents in connection with:
  - (i) the performance by KES of its obligations hereunder; and
  - (ii) the enforcement or preservation by KES of its rights hereunder,together with any applicable goods and services tax or other relevant tax.
- (c) The Client hereby authorises KES with a pre-advice of 10 calendar days to debit any of the Client's Account(s) with, and/or (without prejudice to the generality of Clause 3.17) to set-off against any Related Assets, all amounts due or which may become owing by the Client to KES hereunder, together with any applicable goods and services tax or other relevant tax.

### **Delivery of Custody Securities**

3.6 All Custody Securities delivered or to be delivered to KES from time to time for the purposes of this Clause 3 must be in the required or regular form in board lots and in good delivery order, or must be transferred and deposited into such account as KES shall direct. Where applicable, all non-matured coupons and duly executed transfers must be attached thereto.

### **Representations and Warranties**

3.7 The Client hereby warrants and undertakes to KES that:

- (a) the Client is the beneficial owner of the Custody Securities or has authority from the true owner to deal with such Custody Securities;
- (b) the Custody Securities are fully paid for, in the required or regular form and in good delivery order; and
- (c) there is no defect in title, security interest or encumbrance affecting the Custody Securities.

### **Custodial Duties and Powers**

3.8 KES shall in addition to the powers set out in Clause 3.2(f) be entitled to do, subject and on receipt of the Client's instructions to the contrary, any other act or refrain from doing any other act unless (as the case may be) prohibited or required by law or regulation, in relation to any Custody Securities, which under the terms of the Client's agreement with KES, KES is not specifically (as the case may be) either prohibited or required to do. Without prejudice to the foregoing the Client hereby specifically instructs KES that, until it receives written instructions to the contrary, whenever the Client purchases Securities through it, and the sums standing to the credit of the Account in which the Custody Securities are held are sufficient to satisfy the purchase price of the Custody Securities purchased, KES is to withdraw from such Account such sum as is equal to the purchase price and appropriate such sum to KES in satisfaction of the Client's obligation to pay the purchase price, or where the shares are contra sold, to use such sums for any contra losses incurred (if any). Also without prejudice to any of the foregoing, any amount payable by the Client in respect of the Custodial Services shall be payable to KES or its nominees, sub-custodians or agents (as the case may be) on demand and may be deducted from the Custody Securities or the said Account.



### 3.9 **Exclusion of Liability**

- (a) KES shall not be liable for any loss, claim, damage, expense or liability suffered or incurred by the Client, or profit or advantage of which the Client may be deprived, which arises from or in connection with:
- (i) the manner in which KES holds the Custody Securities hereunder or deals with monies received or intended to be received in connection herewith;
  - (ii) the loss, theft or destruction of, or any damage to, any of the Custody Securities or certificates relating thereto; or
  - (iii) the performance or non-performance of KES' duties hereunder,
- except insofar as the same arises as a result of the negligence, fraud and/or willful default of KES.
- (b) While KES will use reasonable care in the selection of any nominee, sub-custodian, agent or delegate, KES shall not be liable for any loss, claim, damage, expense or liability suffered or incurred by the Client or profit or advantage of which the Client may be deprived, which arises from or in connection with:
- (i) the insolvency of any sub-custodian or nominee; or
  - (ii) any act or omission of any sub-custodian or nominee,
- unless in the case of (i), the relevant sub-custodian or nominee is a branch or subsidiary of KES and, in the case of (ii) above, only to the extent that the same arises as a result of the negligence, fraud or willful default of the relevant sub-custodian or nominee.
- (c) KES shall not be liable for any act, omission or insolvency of any entity providing central depository, clearing and/or settlement facilities.
- (d) The Client acknowledges and agrees that KES shall be under no duty to supervise compliance by the Client with any restrictions on the investment powers of the Client.
- (e) KES shall not be liable or have any responsibility to the Client for any loss or damage incurred or suffered by the Client if the performance of KES' obligations is interrupted, delayed or prevented by circumstances, acts or events beyond its control. These shall include but not be limited to industrial disputes, acts or regulations or any governmental or supranational bodies or authorities and breakdown, failure or malfunction of telecommunications or computer service or systems.

### 3.10 **Statements and Information**

- (a) KES shall provide or procure the provision to the Client of such reports and statements concerning the Custody Securities and at such intervals as agreed between them from time to time.
- (b) KES may, on the request of the Client and subject to payment by the Client of such fee as may be determined by KES and notified by KES to the Client, furnish to the Client such information in respect of the Custody Securities as the Client may reasonably request.

#### **Return of Custody Securities**

- 3.11 The Client shall not have any right to specific Securities custodised with or through KES, but will be entitled, subject to these T&C, to delivery by KES of Securities of the same class, denomination and nominal amount, and which rank *pari passu* with those accepted by KES as being the Custody Securities, subject always to any capital reorganisation or share exchange which may have occurred. Such delivery may be to the Client or any specified third party.

#### **Authorisations**

- 3.12 In addition and without prejudice to the foregoing, KES is authorised (but not obliged), either by itself, through a nominee (if so, subject to Clause 3.4 above) or otherwise, and whether in Singapore or elsewhere to do any lawful act or thing which in the discretion of KES is necessary to preserve the integrity of the Custody Securities and/or any Account and/or to protect the reasonable interests of the Client and/or KES.

#### **Client Primarily Liable**

- 3.13 Notwithstanding that the Client may as between the Client and a third party be effecting transactions on and/or in respect of any part or all of the Custody Securities for and on behalf of such third party, as between the Client and KES, the Client shall be deemed to be, and is, transacting as sole principal. The Client acknowledges, undertakes and agrees to be always primarily liable for such transactions in all or part of the Custody Securities.

### 3.14 **Orders/Instructions**

- (a) KES need only act on instructions (oral or otherwise) from the Client in respect of any Account or any part or all of the Custody Securities. KES shall not be required to act in accordance with any instruction from the Client which purports to dispose of or deal with any Securities or other property which are in fact not held in any Account and/or which are not in fact the Custody Securities.
- (b) KES shall only be required to act on or effect any instruction from the Client within a reasonable time. For the avoidance of doubt, in the event that the Client wishes to withdraw any part or all of the Custody Securities, the Client shall give at least seven (7) days' notice to KES prior to such withdrawal.
- (c) Any instructions (oral or otherwise) purported to be given by any person other than the Client, need not be acted on by KES but KES is authorised to act on any and all such instructions which KES in good faith has reason to believe is from the Client as soon as such instructions have been received by KES without requiring written confirmation thereof. KES shall not be liable for any loss, damage, cost, charge and expense incurred by the Client as a result of KES so acting.

### **Security**

3.15 In addition and without prejudice to the foregoing, all Custody Securities are hereby charged by way of first fixed charge to KES as continuing security for all of the Client's liabilities to KES whether the same accrue under or pursuant to any Account or otherwise. Clause 1.17 will apply *mutatis mutandis* to the security created under this Clause. Save for the charge mentioned in this Clause, the Client will not create nor will he allow to be created any security interest of whatsoever nature over any part or all of the Custody Securities without the prior consent in writing of KES.

### 3.16 **Creation of Further Security and Use Rights**

- (a) Notwithstanding any provision to the contrary in any terms governing the Account(s) or the Custodial Services or Custody Securities, the Client agrees that with respect to all the Client's Securities and other property that now or in the future is in KES' possession and/or control (whether posted as collateral to KES or otherwise), KES may:
  - (i) create over the said Securities and other property any encumbrance in favour of a third party by way of security, re-security, charge, re-charge, pledge, re-pledge, hypothecation, re-hypothecation or otherwise to secure KES' obligations to a third party account (if mortgaged, pledged or hypothecated otherwise than on a pool basis and otherwise for an amount that does not exceed the aggregate amounts owed by all clients collectively in the pool to KES); and/or
  - (ii) assign, invest, use or otherwise dispose of the said Securities and other property for KES' own benefit either separately or together with identical property provided by other clients/parties.
- (b) The Client also agrees in connection with the foregoing that no compensation will be payable to the Client in connection with the exercise of KES' rights under this Clause 3.16 and that KES is the sole beneficiary of any fee or commission that KES may earn from any exercise of KES' rights under this Clause 3.16.
- (c) For the avoidance of doubt, KES reiterates that KES shall not be obliged with respect to any of the Client's Securities or other property to retain the same in its possession or control (being entitled to treat all of the same as fungibles) or to retain for the duration of the Client's account with KES like Securities or other property of equivalent amount.
- (d) KES' only obligation is, subject to the Client having discharged all the Client's existing obligations and properly terminated the Account(s) with KES and subject otherwise to KES' rights under these T&C (including any right of interim liquidation or sale of the Client's Securities and other property) as the Client may be entitled to demand of KES, to return to the Client like Securities and other property (as relevant) of equivalent amount.
- (e) The Client also agrees that notwithstanding any contrary provision elsewhere in these T&C that in the event of the Client's insolvency:
  - (i) KES has the right at KES' option to convert any obligation KES may otherwise have to return the Client Securities and/or other property (other than cash) into an obligation instead to pay the aggregate market value for the same;
  - (ii) subject such converted payment obligation to KES' general right of set-off (in addition to any other rights of set-off and/or consolidation of accounts or obligations KES may have at law or in contract); and/or
  - (iii) KES shall be further entitled to immediately enforce the security created pursuant to this Clause 3.16 by way of disposing or otherwise dealing with any part or all of the Custody Securities using or employing any and all powers granted hereunder or otherwise to a mortgagee or chargee under the laws of Singapore.

### **Set-Off Rights**

- 3.17 Without prejudice to any other right which KES may have whether under law by these T&C or otherwise, KES is expressly conferred by the Client a right to effect a set-off against the Client's obligations to KES whether referable to the Client's Account(s), any money or credit balance in any Account(s) or any other account(s) maintained by KES for the Client's benefit (including the trust account KES is obliged to maintain for the Client pursuant to KES' obligations under the Securities and Futures Act, Chapter 289 of Singapore and including such sum as KES may otherwise be obliged to pay to the Client as a consequence of exercising KES' right of conversion under Clause 3.16 above effecting, as KES deems necessary or appropriate any currency conversion.

### **Contra Losses**

- 3.18 The Client agrees that:
- (a) no Custody Securities may be withdrawn if there are any contra losses outstanding; and
  - (b) if any contra loss is not paid within such time as KES may specify, KES is entitled to sell such of the Custody Securities as may be necessary to reimburse KES of such contra loss.

### **Unclaimed Property**

- 3.19 In the event there remain any monies and/or property of the Client in the Account or otherwise held by KES or its nominee sub-custodian or agent for and on behalf of the Client (hereafter referred to in this Clause as "**Property**") which is unclaimed by the Client six (6) years after KES received such Property and KES determines in good faith that it is not able to trace the Client, the Client agrees that all Property then standing to the credit of the said Account or otherwise held by KES, its nominee, sub-custodian or agent (as the case may be) together with any property as may from time to time continue to accrue to that Property (whether by way of dividends, interest or otherwise) may forthwith be appropriated by KES to itself to utilise in any manner KES so wishes for its own benefit. The Client thereafter shall have no right whatsoever to claim such Property (or any other property as may accrue to it), the Client being deemed to have waived and abandoned all its rights to such Property (and any other property as may accrue to it) in favour of KES.

### **Applicable Laws**

- 3.20 KES's provision of the Custodial Services shall be subject at all times to all relevant or applicable statutes, laws, rules, regulations, directives and circulars (whether of governmental bodies or authorities or self-regulatory organisations in relation to which KES or any person or entity related to or associated with it is a member of) or otherwise. KES may take or refrain from taking any action whatsoever, and the Client shall do all things required by KES, in order to procure or ensure compliance with the applicable laws.

## **4. SECURITIES LENDING**

- 4.1 Notwithstanding any provision to the contrary in these T&C as may be revised from time to time or the terms of any collateral or charge documentation with respect to the Client's Securities and other property, including Custody Securities, the Client agrees that with respect to all the Client's Securities and other property (including Custody Securities) that now or in the future is in KES' possession and/or control (whether posted as collateral to KES or otherwise) KES may:
- (a) on a title transfer basis borrow for itself or to on-lend and/or directly on-lend the said Securities and other property as principal as if it were the owner thereof to third parties in return (where Regulation 45 of the Securities and Futures (Licensing and Conduct of Business) Regulations so obliges KES) for KES holding (as between the Client and KES) for the duration of such on-lending any collateral KES may receive from KES' borrower(s) (and which KES will ensure will be of such amount as is required of KES to provide under the said Regulation) for the Client's benefit as security (whether singly or collectively with other clients of KES) for the return of the borrowed Securities;
  - (b) create over the said Securities and other property any encumbrance in favour of a third party by way of security, re-security, charge, re-charge, pledge, re-pledge hypothecation, re-hypothecation or otherwise to secure KES' obligations to a third party account (if mortgaged, pledged or hypothecated otherwise than on a pool basis and otherwise for an amount that does not exceed the aggregate amounts owed by all clients collectively in the pool to KES); and/or
  - (c) assign, invest, use and otherwise dispose of the said Securities and other property for KES' own benefit either separately or together with identical property provided by other clients/parties.
- 4.2 The Client also agrees in connection with the foregoing that no compensation will be payable to the Client in connection with the exercise of KES' rights hereunder and that KES is the sole beneficiary of any fee or commission that KES may earn from any exercise of KES' rights under Clauses 4.1(a) and 4.1(c) above.
- 4.3 For the avoidance of doubt, KES reiterates that KES shall not be obliged with respect to any of the Client's Securities or other property to retain the same in its possession or control (being entitled to treat all of the same as fungibles) or to retain for the

duration of the Client's account with KES like Securities or other property of equivalent amount. KES' only obligation is, subject to the Client having discharged all the Client's existing obligations and properly terminated the Client's margin account with KES and subject otherwise to KES' rights under these T&C (including any right of interim liquidation or sale of the Client's Securities and other property) as the Client may be entitled to demand of KES to return to the Client like Securities and other property (as relevant) of equivalent amount.

4.4 The Client agrees that notwithstanding any contrary provision elsewhere in these T&C that in the event of the Client's insolvency:

- (a) KES has the right at KES' option to convert any obligation KES may otherwise have to return the Client Securities and/or other property (other than cash) into an obligation instead to pay the aggregate market value for the same; and
- (b) subject such converted payment obligation to KES' general right of set-off (in addition to any other rights of set-off and/or consolidation of accounts or obligations KES may have at law or in contract).

4.5 The Client acknowledges and confirms that it has read and understood the terms set out in this Clause 4 and also that the risks involved in agreeing to this Clause 4 had first been explained to the Client which risks include but is not limited to:

- (a) that borrowing and on-lending of the Client's Securities will necessarily mean that the Client loses ownership rights to the said Securities. In its place the Client has a right to claim for equivalent Securities from KES; and
- (b) that in so far as the Client will receive manufactured dividends the Client may be required to treat the entire amount as income for tax purposes.

4.6 The Client confirms and consents that KES' right to lend or on-lend the Client's Securities include also the right on identical terms to arrange for a custodian to effect such lending or on-lending for the benefit of KES as if KES had effected such lending or on-lending.

## 5. ELECTRONIC PAYMENT FOR SHARES ("EPS") SERVICE

5.1 KES shall be entitled, but not bound, from time to time to pay the sales proceeds and contra gains (the "**sales proceeds**") arising from the transactions effected through the Account to the bank account designated in the Account Application Form (the "**designated Bank Account**"). KES may, at its discretion, elect to pay the Client the sale proceeds by cheque and such election shall be binding on the Client.

5.2 No payments shall be made by KES to the designated Bank Account through the EPS service (the "**service**") on non-business days or half business days of the bank operating the designated Bank Account (the "**Participating Bank**") or KES.

5.3 KES shall be entitled, but not bound, from time to time to:

- (a) deem and treat any payments made by the Client from time to time through the service (the "**electronic payment**") as being paid on the market day following the date of the electronic payment;
- (b) apply all or any amounts received pursuant to the electronic payment in payment of the outstanding purchases or contra losses (the "**outstanding contracts**") made through the Account in chronological order so that the outstanding contract for which payment is due first will be settled first, notwithstanding any instructions from the Client as to how the electronic payment is to be applied; and
- (c) set-off all or any amounts received pursuant to the electronic payment against all or any amounts due by the Client to KES before applying the said electronic payment to settle any outstanding contracts, notwithstanding any instructions from the Client as to which outstanding contract the electronic payment is to be applied.

5.4 KES and the Participating Bank are not responsible for any errors, inaccuracies or omissions (the "**omissions**") in the information that may be displayed or transmitted by the Participating Bank to the Client for the purpose of making electronic payments through the service such as the contract or contra statement numbers and the amounts due thereunder. The Client's liability to KES for all and any amounts owing to KES shall be unaffected by the omissions.

5.5 (a) The Client shall remain liable to KES for all and any amounts owing to KES howsoever arising from transactions effected through the Account until full payment is received by KES.

(b) An electronic payment shall be deemed to be received by KES if KES' bank account is credited with the electronic payment. An instruction to the Participating Bank to debit the designated Bank Account and/or to transfer any amount from the designated Bank Account to KES shall not constitute payment to KES.

(c) Nothing herein shall prejudice or preclude KES from exercising its rights to recover any amounts due and owing to KES howsoever arising from transactions effected through the Account, including the right to force-sell Securities purchased under outstanding contracts, until KES has received full payment thereof.

- (d) Where KES has exercised its rights to force-sell any Securities, KES shall be entitled to apply all or any amounts received pursuant to the electronic payment in accordance with Clause 5.3(c) above.
- 5.6 Neither KES, the Participating Bank nor their respective agents shall be liable for any loss, consequential loss, damages, costs and charges suffered by the Client or any other party as a result of any failure by the Participating Bank to credit payment of the sales proceeds into the designated Bank Account or as a result of any failure by the Participating Bank to transfer any electronic payment from the designated Bank Account to KES or as a result of any malfunction, partial or total failure of any machine, data processing system, electronic transmission or communications system or arising from causes or circumstances beyond the control of KES, the Participating Bank or their respective agents.
- 5.7 KES and/or its agent's records of the instructions, operations or transactions made or performed, processed or effected through the service of KES and/or its agent or by or purported to be by the Client or by the Participating Bank shall be binding and conclusive on the Client for all purposes whatsoever and shall be conclusive evidence of the instructions, operations or transactions.

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

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

### 1. INTERPRETATION

#### 1.1 Definitions

In this Part II of these T&C:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1.2 The parties agree that a CFD is closed out by way of cash settlement and without a physical exchange of the Contract Security.
- 1.3 The parties agree that the term of each CFD continues until the Closing Date.

## **2. GENERAL**

- 2.1 The Client acknowledges, recognises and understands the risks associated with CFDs, and has read and understood the risks described in KES' Risk Disclosure Statement.
- 2.2 The Client acknowledges that:
- (a) entering in CFDs involves trading on the outcome of the price of the relevant Contract Security and, without prejudice to Clause 1.2, the Client will not be entitled to delivery of, or be required to deliver, the underlying Contract Security, the ownership thereof, interest or any other rights in respect of the underlying Contract Security; and
  - (b) all CFDs entered into are open-ended margined products that require Margin payments, funding or financing on a daily basis.
- 2.3 If the Client comprises more than one person this Part II of these T&C binds each of them jointly and severally.
- 2.4 Anything permitted to be done by KES in accordance with this Part II of these T&C may be done in its sole and absolute discretion, and any opinion or view required to be formed by KES may be formed in its sole and absolute discretion.

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

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

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

- 4.1 Upon acceptance of an Account Application Form, KES may at its discretion and in accordance with its general operating procedures open an Account in the name of the Client, through which the Client may effect Transactions in CFDs.
- 4.2 The Client is responsible for ensuring that monies sent to KES are correctly designated, including where applicable, that the monies are by way of Margin.
- 4.3 All monies credited to the Client's Account shall, unless permitted by any applicable law or regulatory rules, be paid into a segregated bank account established and maintained by KES for its clients and the Client acknowledges that where monies are so paid into a segregated bank account, such monies may be commingled with the monies deposited into the same bank account on account of KES' other clients.
- 4.4 KES reserves the right to close or suspend the Client's Account at any time for any reason, with or without notice to the Client including, without limitation, if:
- (a) KES has reasonable concerns in relation to credit worthiness or financial status of the Client, verification of the Client's identity, money laundering or any breach of applicable laws or regulatory rules;
  - (b) the Client breaches any of these T&C or any other terms of any agreement between the Client and KES;
  - (c) the Client fails to meet any payment obligation to KES under these T&C or any other terms with KES;
  - (d) KES has reasonable concerns that the Client does not have a sufficient understanding of the nature of, or the risks of, CFD trading;
  - (e) the Client has made any misrepresentation to KES;
  - (f) the Client acts in an abusive manner, as determined by KES in its sole and absolute discretion, to any representative of KES;
  - (g) the Client fails to provide any information requested by KES in relation to any credit checks undertaken by KES; or
  - (h) the existence or operation of the Account is or may, in the determination of KES in its sole and absolute discretion, be in contravention of any applicable law.
- 4.5 In addition, the Client specifically and unconditionally agrees that KES has the right to close or suspend the Account by notice to the Client if for any reason whatsoever KES no longer wishes to enter into CFDs with the Client.
- 4.6 The Client authorises KES to use the Client's information to perform credit and identity checks in relation to the Client at any time as it thinks fit including but not limited to obtaining bankers' references, making enquiries from credit reference agencies



and fraud prevention agencies and any other enquiries KES reasonably sees fit. The Client understands that credit reference agencies will maintain a record of any enquiry made to them and the information given to them. KES may refuse to carry out an instruction or transaction as a result of any credit reference check.

- 4.7 The Client agrees that KES and/or its affiliates may store and process the Client's information on their computers and in any other manner which KES and/or its affiliates think fit.
- 4.8 The Client agrees that KES and/or its affiliates may use the Client's information to provide services under these T&C, manage the Client's Account, provide statements and related services, for assessment and analysis (including market and product analysis) and to develop, improve or market KES' and/or its affiliates' services.
- 4.9 KES and/or its affiliates shall be entitled to disclose the Client's information without prior reference to or consent from the Client (including information as to late payments) to:
- (a) comply with any law, order, judgment, decree, or any rule, regulation, request or inquiry of or by any government, court, administrative or regulatory agency or commission, other governmental or regulatory authority or any self-regulatory body, including but not limited to any regulator of KES' business or in any legal or regulatory proceedings in which KES or such affiliate is involved;
  - (b) credit reference agencies, fraud prevention agencies or to any other person KES reasonably believes to be seeking a reference or credit reference in good faith. In particular, KES shall be entitled to do so if the Client fails to make any payment when due, is in breach of these T&C, provides KES with false or inaccurate information or if KES suspects fraud on the part of the Client; and
  - (c) any person who provides a service to KES or its affiliates or acts as its or its affiliates' agent or sub-contractor (including in connection with legal proceedings), on the understanding that such person will keep the information confidential.
- 4.10 The Client agrees an account limit will be set by KES which may be varied from time to time according to the Client's credit status and the amount of funds credited in its Account. The Client agrees that KES may, in its sole and absolute discretion, apply a limit to:
- (a) the Contract Value of a CFD which the Client may enter into; or
  - (b) without prejudice to Clause 18.2 the amount of any loss or liability to which the Client may be exposed.

## **5. OPENING A CONTRACT**

- 5.1 On any Local Business Day, the Client may request KES (through the ITP (as defined below), by telephone or otherwise) to quote the price at which KES may be prepared to enter into a CFD. The Client acknowledges that a price quotation given by KES in accordance with these T&C does not constitute an offer to enter into or close a CFD.
- 5.2 Immediately upon receiving the quote and in every case during the trading hours of the relevant Exchange, the Client may (through the ITP, by telephone or otherwise) offer to enter into a CFD with KES at the quoted price. If, under the rules of the relevant Exchange, the Contract Security can only be purchased in a specified amount or in multiples of a specified amount, the Client must ensure that the Contract Quantity of the CFD set out in the offer by the Client is in the specified amount or a multiple of the specified amount, as applicable. All CFDs must be entered into in accordance with any applicable rules of the relevant Exchange.
- 5.3 Once an offer is received by KES, such offer is binding on the Client provided that the Client may give an instruction to withdraw, cancel, revoke or vary a previous offer in the manner set out in Clause 5.4.
- 5.4 Where a Client gives KES an instruction to withdraw, cancel, revoke or vary a previous offer, KES shall not be obliged to execute such withdrawal, cancellation, revocation or variation unless the previous offer has not yet been executed, and provided that the withdrawal, cancellation, revocation or variation, as the case may be, will not prejudice KES' position.
- 5.5 KES is under no obligation to accept the Client's offer to enter into a CFD, and without limitation, KES' acceptance of the Client's offer to enter into a CFD may be subject to:
- (a) the Client having, at KES' determination and at its sole and absolute discretion, available and sufficient Free Equity in the Account;
  - (b) KES' receipt of an amount of Margin satisfying KES' margin requirements in respect of that CFD, if such amount was not already credited in the Account; and
  - (c) the Client not exceeding any limit applying to the Client under Clause 4.10 and/or Clause 5.10.
- 5.6 A CFD shall be deemed executed at KES' quoted price upon KES' acceptance of the Client's offer.

- 5.7 For the avoidance of doubt, nothing in these T&C obliges KES to enter into any CFD with or to act on any instruction by the Client, and KES may refuse to enter into any CFD or otherwise act on any instruction in respect of a CFD without giving any reason.
- 5.8 If KES accepts the Client's offer to enter into a CFD, KES will issue to the Client a Confirmation of that CFD promptly after it has been entered into, but failure by KES to issue a Confirmation will not prejudice or affect that CFD. KES will not have any liability as a result of a failure to issue a Confirmation. If KES decides not to accept the Client's offer to enter into a CFD, KES will advise the Client of that decision promptly.
- 5.9 The Client undertakes to examine the terms of each Confirmation in respect of a CFD immediately upon receipt and to notify KES within 24 hours of receipt of the Confirmation of any disputed detail in the Confirmation. Upon receipt of notice as to a disputed detail, KES will investigate the matters disputed and the Client will cooperate with KES in good faith to resolve the dispute. The Client will, notwithstanding any such dispute, continue to satisfy the Client's obligation to pay Margin calls made by KES in respect of the relevant CFD as if the details contained in the Confirmation were correct and not the subject of dispute. For the avoidance of doubt, unless the Client so notifies KES within 24 hours of receipt of the Confirmation, the Client agrees that the contents of the Confirmation, in the absence of Manifest Error, will be conclusive evidence of the CFD.
- 5.10 KES may, in its sole and absolute discretion, limit the value of CFDs the Client may have outstanding by prior written notice to the Client:
- (a) beyond which if the Client wishes to enter into any further CFDs, the Client must seek and obtain risk approval from KES; and
  - (b) beyond which the Client may not enter into any further CFDs whatsoever.
- KES may vary this limit at any time by prior written notice to the Client.
- 5.11 The Client acknowledges that if the Client gives KES standing instructions to enter into a CFD when a particular price level is reached in the market for the Contract Security, the price at which the CFD is entered into might not be that exact price because KES has the discretion not to enter into the CFD until it has satisfied itself that it can hedge its exposure.

## **6. PRICING**

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

## **7. INSTRUCTIONS**

- 7.1 The Client may only enter into CFDs with or otherwise give instructions to KES using the telephone or via an Internet Trading Platform ("ITP"), unless KES agrees to accept other forms of communication. KES is not obliged to provide ITP access to the Client. If KES provides the Client with access to an ITP, a password will also be provided to the Client.
- 7.2 The Client should assume that KES' telephone lines are recorded (although KES is not obliged to so record) and the Client hereby agrees to the recording of all conversations between the Client or the Client's Agents (as hereinafter defined) and KES. All such recordings shall be KES' exclusive property and may be used for any purpose by KES, including as evidence in any dispute. Notwithstanding the foregoing the Client should keep the Client's own timed and dated written records of the Client's Transactions and dealings with KES.

- 7.3 When placing an offer to trade using the telephone, the Client will be required to give the Client's name and account number. The Client is not permitted to make an offer to trade, and KES reserves the right not to accept any such offer to trade, without this information.
- 7.4 KES will treat the Client as having entered into a CFD using the telephone if it accepts an offer in good faith from a person providing the Client's name and account number. The Client acknowledges and agrees that KES' personnel cannot be expected to recognise the Client's voice (or that of the Client's Agent (as hereinafter defined)) in any circumstances and KES is under no duty to enquire about the identity of any person who gives the Client's name and account number.
- 7.5 When making an offer to enter into a CFD via the ITP, the Client will be given access to the Account upon inputting the account number and relevant password.
- 7.6 Offers to enter into CFDs made via the ITP will be confirmed electronically via the ITP, which will be followed by the issuance by KES of a Confirmation.
- 7.7 If the Client is in any doubt whatsoever as to the validity of any CFD entered into for any reason, including (but not limited to) by reason of a breakdown in communication leading to a cessation of connection between KES and the Client, it is the Client's sole responsibility to contact KES immediately by telephone in order to obtain clarification as to the validity of the CFD.
- 7.8 The Client must not disclose the Client's password to any person other than the Client's Agent (if any). The Client should not keep records of both together in any location or records of the Client's account number with anything that identifies the Client's name. If KES has provided the Client a card or any similar device bearing the Client's account number and/or password, the Client must keep the same safe and confidential and separate from any other items that identify the Client's name. The Client must immediately inform KES and apply for a new account number and/or password if the Client is aware or suspects that a third party has ascertained the Client's account number or password or that any person other than the Client (or the Client's Agent) is transacting using the Client's account.
- 7.9 In the case of offers to enter into CFDs made via the ITP, KES is under no obligation to recognise the domain or address from which the Client's order or instruction emanates.
- 7.10 The Client will be fully responsible for (a) in the case of communication by telephone, all acts and omissions of any person giving the Client's name and account number, and (b) in the case of communication via the ITP, all acts and omissions using the Client's account number and password, including (in both cases) all CFDs entered into and instructions given as if such acts, omissions, entry into the CFDs and instructions were done, made or given by the Client and as if the person using the Client's name, account number and/or password (as the case may be) were the Client.
- 7.11 KES recognises that in some circumstances it may be necessary for the Client to authorise a third party to operate the Account. If the Client wishes to do this, KES' prior consent is required, such consent to be given or withheld at KES' sole and absolute discretion, and KES will require the same information, including that relating to the verification of identity, from the person the Client proposes as is required from the Client in order to open the Account. In addition both the Client and the person the Client wishes to authorise to operate the account will be required to execute and deliver to KES an agency agreement in the form required by KES authorising and appointing such person (an "Agent") to operate the Client's Account. The Client will be fully responsible for all acts and omissions of the Agent including all CFDs entered into and instructions given by such Agent as if such acts, omissions, entry into CFDs and instructions were done, made or given by the Client and as if the Agent were the Client. KES shall be entitled to accept instructions from such Agent until the expiration of five (5) Business Days upon receipt (including the Business Day of receipt) of a written notice from the Client stating that the authority of the Agent is revoked. Such written notice (to be effective) must be sent to KES' Client Services Department by post or by personal delivery.
- 7.12 Notwithstanding the above, KES shall be entitled (by giving reasonable notice) to refuse to accept instructions from any Agent for any reason whatsoever and to treat the appointment of any such Agent as terminated. For the avoidance of doubt, if the Client appoints any Agent, the Client will still be treated as KES' customer for the purpose of the SFA.
- 7.13 KES shall bear no liability whatsoever for failing to comply with any instruction of the Client or for exercising or failing to exercise any discretion, right, power or authority conferred upon KES by this Part II of these T&C.
- 7.14 KES shall be entitled (but not be obliged) to verify and be satisfied with respect to the identity of the person purporting to give instruction or the source and origin of such instruction and KES may elect not to rely or act upon any such instruction unless and until KES is satisfied as to the matters on which KES seeks verification.
- 7.15 In the event that KES decides to act on any instruction or is otherwise under an obligation to act on any instruction, KES shall be allowed such amount of time to act and execute the instruction as may be reasonable, having regard to the systems and operations of KES and the other circumstances then prevailing, and shall not be liable for any loss arising from any delay on the part of KES in acting on or executing the instruction.
- 8. PAYMENTS FOR DIFFERENCES**
- 8.1 Following Business Close on each Local Business Day during the term of a CFD, the Calculation Agent will determine the Contract Value of the CFD at Business Close.

- 8.2 If the Contract Value determined under Clause 8.1 is higher than the Contract Value determined by the Calculation Agent in respect of the previous Business Close, then the Short Party must pay to the Long Party the difference.
- 8.3 If the Contract Value determined under Clause 8.1 is lower than the Contract Value determined by the Calculation Agent in respect of the previous Business Close, then the Long Party must pay to the Short Party the difference.
- 8.4 For the purposes of determining under Clauses 8.2 or 8.3 the Contract Value at Business Close on the Local Business Day on which the CFD is entered into, the Contract Value “in respect of the previous Business Close” is determined using the Contract Security Price at which KES and the Client agreed to enter into the CFD.
- 8.5 Where the Calculation Agent determines that the Contract Value of a CFD at Business Close cannot be determined under Clause 8.1 for any reason, the Contract Value at Business Close will be the value determined by the Calculation Agent in its sole and absolute discretion.
- 8.6 All payments to be made by a party in respect of any CFD shall be made in accordance with the account details specified in the relevant Confirmations or as otherwise agreed between the parties.
- 8.7 KES reserves the right to amend the list of available tradable CFDs, which, in some instances, may change on a daily basis. KES will endeavour to make this information available to the Client, either through updated CFD Market Information Sheets, or, in instances where changes are more frequent, through general postings on the KES website or via the ITP. In instances where the list of available CFDs has to be amended or reduced (including but not limited to non-availability of stock borrow), the only trading activity permissible in those CFDs is the closing of an open position.
- 8.8 KES may from time to time introduce special markets (e.g. Grey Markets). KES reserves the right to create (and thereafter vary or replace) specifications, rules/terms and conditions in respect of CFDs in respect of Contract Securities on any particular market. Such specifications, rules/terms and conditions (and any variation and/or replacement of the same) will be notified to the Client by any of the methods referred in Clause 30. The Client should ensure that it is aware of the market specifications, rules and terms and conditions relating to any particular market before entering into any CFD in relation to that market.

## 9. Dividends

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

## 10. CLOSING A CONTRACT

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

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

- 10.4 If a company, whose security represents all or part of the subject matter of a CFD, becomes subject to any receivership or judicial management proceedings as described in Part VIII or Part VIIIA of the Companies Act, Chapter 50 of Singapore or, in the case of a company incorporated outside Singapore, any proceedings analogous or similar to the proceedings set out in the aforementioned Parts of the Companies Act, Chapter 50 of Singapore, the CFD is taken to have been closed at that time. The Closing Price shall be determined by the Calculation Agent who may have regard to any factors it, in its sole and absolute discretion, considers appropriate.
- 10.5 Without limiting Clause 10.6, if any of the Contract Securities cease to be listed for quotation on an Exchange, or are suspended from quotation for two or more consecutive Local Business Days, KES may, in its sole and absolute discretion, elect to terminate the relevant CFD by notice to the Client in writing. If KES elects to do so then:
- (a) the Closing Date will be the date on which KES notifies the Client of its election (the “**Early Closing Date**”); and
  - (b) the Client will be treated as having given notice under Clause 10.1 on the Early Closing Date at the time KES notifies the Client of its election to terminate the CFD.
- 10.6 Where the Calculation Agent determines that the Closing Value of a CFD cannot be calculated on the Closing Date for any reason, the Closing Value will be the value determined by the Calculation Agent in its sole and absolute discretion.
- 10.7 Without limiting Clause 10.6, if at any time trading on an Exchange is suspended or halted in any Contract Security, the Calculation Agent will, in determining the Closing Value of a CFD, at its sole and absolute discretion have regard to the last traded price before the time of suspension or halt.
- 10.8 Without prejudice to any provision in these T&C, a CFD may be terminated by KES in its sole and absolute discretion on the 365th day following the Local Business Day on which the CFD is entered (the “**Termination Date**”) if it has not been terminated by either party. Where the CFD is deemed terminated under this Clause, then:
- (a) the Closing Date will be the Termination Date; and
  - (b) the Client will be treated as having given notice under Clause 10.1 on the Termination Date.

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

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

## **11. SETTLEMENT OF POSITIONS**

- 11.1 All payments to be made by a party in respect of any CFD must be made in accordance with this Clause 11.
- 11.2 When a payment for differences is made in accordance with Clause 8 or a CFD is closed out in accordance with Clause 10:
- (a) KES will credit to the Client's Account any amount payable by KES to the Client; or
  - (b) the Client must (subject to Clause 11.3) pay to KES any amount payable by the Client to KES in such currency as KES may require in cleared funds within 2 Business Days of being advised of the amount so payable.
- 11.3 If there is then sufficient Excess Margin any amount owing by the Client under Clause 11.2 may be settled in whole or in part by debiting the Client's Account.
- 11.4 If the Client has requested payment of any money owed to the Client under this Clause 11, KES will deduct that money from the Client's Account and pay it to the Client by cheque or in such other manner as may be agreed between KES and the Client. If the Client has not requested payment of any money so owed to the Client it will be retained in the Client's Account.
- 11.5 In respect of any payments due under Clause 8 or Clause 10, if on any date amounts would otherwise be payable in the same currency by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

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

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

## **13. ERRORS**

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

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

- 14.1 Without prejudice to the generality of Clause 14.5, if any Contract Security becomes subject to possible adjustment as the result of any of the events set out in Clause 14.2, the Calculation Agent shall determine the appropriate adjustment, if any, to be made to the Contract Value of that Contract Security and/or the related Contract Quantity to place the parties in substantially the same economic position they would have been in had the event not occurred. The adjustment will take effect as at a time reasonably determined by the Calculation Agent to be the time at which the event referred to in Clause 14.2 takes place or comes into force. The Calculation Agent shall give notice of any adjustment or amendment under this Clause to the other party as soon as reasonably practicable after the determination and such adjustment or amendment shall be conclusive and binding on the parties in the absence of Manifest Error. In this respect, it shall be the Client's responsibility to ensure that all communications sent by the Calculation Agent in accordance with Clause 30 will be reviewed and examined.
- 14.2 The events to which Clause 14.1 refers are the declaration by the issuer of the Contract Security of the terms of any of the following:

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

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

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

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

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

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

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

14.7 Without limiting the provisions of this Clause 14, if at any time an event occurs and the Calculation Agent determines (in its sole and absolute discretion) that it is not reasonably practicable to make an adjustment under Clause 14, KES may at any time after it becomes aware of the event give the Client notice of KES' intention to close any or all the affected CFDs. If that happens, the Client is taken to have given a Closing Notice under Clause 10. For the purposes of Clause 10 the Closing Price is the price reasonably determined by the Calculation Agent to be the market value of the Contract Security as at the date on which the Closing Notice is deemed to have been given.

14.8 Unless otherwise expressly provided above, KES shall be entitled to do any act or thing permitted by this Clause 14 either with or without notice to the Client. If KES gives any such notice it may be given by any of the methods referred to in Clause 30.

14.9 Except in the case of fraud or bad faith, KES shall not be liable to the Client for any loss cost claim damage demand or expense of whatsoever nature suffered or incurred in connection with the exercise by KES of any of its rights under this Clause 14 and

howsoever arising, whether direct indirect special consequential or arising otherwise howsoever including loss of profit and loss of opportunity and even if KES had been advised of the possibility of the same arising or the same were reasonably foreseeable. The provisions of Clause 26 (Limitation of Liability) shall also apply to any loss or damage referred to therein arising by reason of the negligence of KES.

- 14.10 Without prejudice to Clause 10.5, the Client acknowledges that in the event of a suspension of trading in the Contract Security, KES reserves the right and sole and absolute discretion, to:
- (a) require open CFD long positions to be settled in full from the date of suspension or such dates which KES shall determine in its sole and absolute discretion;
  - (b) require the Client to pay additional Variation Margin; and/or
  - (c) suspend or close the Client's Account as if upon the occurrence of a Default Event in accordance with Clause 18 below.

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

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

## **16. MARGIN REQUIREMENTS**

- 16.1 The Client acknowledges that before it is permitted to enter into a CFD, KES may require the Client to have deposited cleared funds to the Client's Account as Initial Margin. The amount of Initial Margin and the time for its call shall be within the sole and absolute discretion of KES. KES shall be under no obligation to allow any offset of Initial Margin.
- 16.2 KES may at any time at its sole and absolute discretion, increase the Initial Margin requirements applicable in respect of any CFD and require the Client to deposit funds equal to such increase.
- 16.3 KES may, during the term of any CFD, require the Client to pay Variation Margin in respect of such CFD by depositing to the Client's Account cleared funds in such amount as KES in its sole and absolute discretion may determine, including, without limitation, if KES determines that the GLV of the Client's Account has fallen below \$1,000 or its foreign currency equivalent.
- 16.4 If KES makes a Margin call the Client must pay the amount of Margin called within 24 hours of the giving of such notice by KES. In all respects, time shall be of the essence for all payment obligations of the Client.
- 16.5 KES shall have sole and absolute discretion as to the exercise of its rights under this Clause to call for Margin and such exercise of rights shall be binding on the Client.
- 16.6 Upon KES making a Margin call, the Client acknowledges that KES may refuse any request by the Client to enter into any further CFD until KES has confirmed receipt of the called Margin in cleared funds.
- 16.7 KES may allow the Client to withdraw from the Client's Account any Excess Margin. Otherwise, Margin deposited by the Client to the Client's Account will not fall due for repayment until the Client's obligations under these Terms are satisfied in full. Until such time, this Margin will not constitute a debt due from KES to the Client nor will the Client have any right to receive repayment of these funds.
- 16.8 The Client's liability in respect of Margin calls is not limited to the amount, if any, in the Client's Account with KES.
- 16.9 All Margin shall be in such form as KES may stipulate and the value of any such Margin shall be determined by KES in its sole and absolute discretion. KES shall be entitled to deposit, pledge, repledge or loan any Margin in whatever form provided to KES and shall not be under any obligation to account to the Client for any interest, income or benefit that may be derived therefrom. Subject to the provisions of this Part II of these T&C, no interest shall be paid on any type of Margin credited to the Client's Account and the Client acknowledges and consents that any interest earned on the Margin credited under this Part II of these T&C may be retained by KES for its own account and benefit.
- 16.10 KES is not obliged to make Margin Calls of the Client at all or within any specific time period. KES shall not be liable to the Client for any failure by KES to contact the Client or attempt to contact the Client. It is the Client's responsibility to monitor any open CFD positions and all other relevant factors used to calculate Margin payable.



- 16.11 Without prejudice to the Client's obligation to pay Margin immediately the same becomes due, the Client must notify KES immediately if the Client cannot, or believes it would not be able to, meet a Margin call when due.
- 16.12 Margin calls may be made at any time by any method of communication including telephone, telephone answering machine message, voice mail, pager, letter, fax, e-mail or any other means of communication. KES shall be deemed to have made a Margin call on the Client if KES has left a message (via any of the foregoing methods of communication) requesting the Client to contact KES. Such Margin call will be deemed to have been made notwithstanding that the Client has not returned any message KES may have left requesting the Client to contact KES. If a Margin call is made by more than one method of communication it shall be deemed to have been made at the earliest time such communication is deemed served. A Margin call shall also be deemed to have been made if KES is unable to leave a message for the Client and has used reasonable endeavours to contact the Client. All references in this Part II of these T&C to a Margin call shall be deemed to include reference to a deemed Margin call. Any message KES leaves for the Client requesting the Client to contact KES should be regarded as extremely urgent. If KES leaves a message, it will (to avoid potential embarrassment to the Client) usually not reveal its company name or the nature of the call; however, it may, without liability to the Client, do so, if KES in its sole and absolute discretion so decides and in particular KES may leave its company name if the Client does not return any previous messages.

## **17. REPRESENTATIONS**

- 17.1 The Client represents and warrants to KES that:
- (a) (if a corporation) the Client is not insolvent, no resolution has been passed and no petition has been presented or order made for the Client's winding up or liquidation or the appointment of an administrator or judicial manager or other insolvency official;
  - (b) (if a corporation) the Client has been and is duly formed under the laws of the place of the Client's formation;
  - (c) (if a natural person) the Client is not insolvent or bankrupt and no encumbrancer has taken possession of or sold all or any part of the Client's business or assets, no bankruptcy order, arrangement or composition with the Client's creditors has been made;
  - (d) the Client has the power and authority to enter into and perform the Client's obligations under these T&C and to enter into CFDs;
  - (e) the Client is entering into this Part II of these T&C and all CFDs as principal and not as agent or trustee or otherwise on behalf of any other person;
  - (f) in executing and in giving effect to these T&C the Client does not, and in entering into CFDs, the Client will not infringe:
    - (i) any provision of any deed or other document or agreement to which it is a party; or
    - (ii) any law or treaty or any judgment, ruling, order or decree of any governmental agency binding on it;
  - (g) the Client will not enter into a CFD as or by way of a wager;
  - (h) all information provided by the Client to KES, whether in the Account Application Form or otherwise, was true and accurate in all material respects as at the date when the information was provided and remains so and there are no facts or circumstances known to it after proper inquiry which have not been disclosed to KES and which, if disclosed, might reasonably be expected adversely to affect the decision of a reasonably prudent financial services licensee whether to enter into this Part II of these T&C;
  - (i) the Client has read and fully understood these T&C and KES' Risk Disclosure Statement;
  - (j) these T&C are binding and enforceable upon the Client;
  - (k) (if a natural person) all trades are entered into and every instruction given in person, subject to the clause relating to the appointment of an Agent; and
  - (l) if the Client has appointed an Agent, such Agent has read and understood these T&C and KES' Risk Disclosure Statement and fully understands the nature of CFD trading and the jargon used.
- 17.2 The Client acknowledges that KES agrees to provide the services under this Part II of these T&C in reliance on these representations and warranties and these representations and warranties shall be deemed to be repeated on each day when these T&C remain in force.

## **18. DEFAULT EVENTS**

- 18.1 Whether or not it is within the Client's control, a Default Event occurs if:
- (a) the Client is in breach of any of these T&C;

- (b) the Client (if not a natural person) passes a resolution for winding up (otherwise than for the purpose of a solvent amalgamation or reconstruction where the resulting entity assumes all of the other party's obligations under these T&C) or if a court makes an order to that effect;
- (c) the Client (if a natural person) dies or becomes a patient under or any court order is made in respect of the Client under relevant mental health legislation or KES believes or suspects the same to be true;
- (d) the Client (if not a natural person) becomes or is declared insolvent or convenes a meeting of or makes or commences negotiations with a view to making, a general rescheduling of its indebtedness, a general assignment scheme of arrangement or composition with its creditors;
- (e) the Client (if a natural person) is insolvent or bankrupt or if an encumbrancer has taken possession of or sold all or any part of the Client's business or assets, or if a bankruptcy order, arrangement or composition with the Client's creditors has been made;
- (f) the Client ceases to carry on its business or substantially the whole of its business;
- (g) the Client fails to meet a payment obligation to KES under these T&C;
- (h) the Client has a liquidator, receiver, judicial manager, administrator, trustee, manager or similar officer appointed in respect of any of its assets or if any analogous step is taken in connection with its insolvency, bankruptcy or dissolution;
- (i) the Client commits an act or undertakes a course of conduct which KES reasonably considers may harm its reputation or may otherwise detrimentally affect it;
- (j) the Client (1) commits an act, or circumstances have occurred in respect of the Client, amounting to a default, event of default or other similar condition or event (however described) in respect of the Client under one or more agreements or instruments relating to any payment obligation of any of them (individually or collectively) which has resulted in such payment obligation becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) defaults in making one or more payments on the due date thereof under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);
- (k) KES is of the opinion that the financial condition of the Client or of any person guaranteeing the Account of the Client has materially or adversely changed since the date of these T&C or the date on which the Account was opened (whichever is earlier) or that events with respect to the Contract Security (other than market price movements) has altered the economics of the CFD materially so as to have changed the material terms of the CFD;
- (l) KES has, for 24 hours, been unable to establish direct contact with the Client or any of its designated representatives or Agents; or
- (m) KES forms the view, in good faith, that it should take action in order to preserve its rights or interests under the Account or under its relationship with the Client.

#### **Limit on Exposure**

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

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

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

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

19.2 Upon the close out of the Affected CFDs, the amounts payable under Clause 10.3 in respect of such Affected CFDs shall be set off and the net amount shall be payable by the relevant party to the other. Where the net amount is payable by the Client to KES,

KES may satisfy such obligation out of any Margin or any other amount standing to the credit of the Client's Account, and shall pay any remaining balance in the Client's Account to the Client and if insufficient, the Client shall pay such amount immediately. Where the net amount is payable by KES to the Client, KES shall pay such amount immediately and, if there are no further outstanding CFDs, at the same time pay to the Client all Margin and all other amounts standing to the credit of the Client's Account.

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

19.4 KES will not lose its rights under this Clause by reason of any delay in exercise of the rights.

## **20. ILLEGALITY**

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

## **21. COMMISSIONS AND CHARGES**

21.1 Commission will be payable on the entry into and termination of each CFD. On the Business Day on which the parties have entered into or terminated a CFD, the Client shall pay to KES the commission fees at the applicable rates then in force, as set out in the contract note or Confirmation thereof and/or the Fee Schedule (as defined in Clause 21.2 below). This fee is in addition to any and all other payment obligations in relation to a CFD Transaction and will be rounded up to the nearest dollar.

21.2 KES reserves the right from time to time in its sole and absolute discretion (including during the lifetime of any CFD and especially in but not limited to volatile market conditions and/or in the circumstances referred to earlier) and by notice to the Client to vary commission rates, impose other fees and/or vary the rates of interest payable under Clause 15 (and/or the type of CFD in respect of which it is payable, so that, for example, commission might be imposed in respect of equity indices). Commission fees, interest, and other charges which are not set out in the CFD Market Information Sheets or which have changed since the date of issue will be quoted on request, posted as part of the fee schedule via the [www.kecfd.com](http://www.kecfd.com) website (the "Fee Schedule") or individually notified via post. It is the Client's responsibility to ensure that it is aware of current applicable commission and financing charges and rates.

21.3 Where access to an ITP is provided to the Client by KES, the Client shall pay to KES such access fees as may from time to time be applicable. The access fees shall be payable by the Client to KES at the end of every calendar month.

21.4 The Client shall promptly pay all interest, commissions, fees and charges at such rates and in such manner as KES may in its sole and absolute discretion impose and stipulate from time to time with respect to the execution, performance and/or settlement of any contract or otherwise for the maintenance of the Account. All fees shall be settled by KES on the day they fall due by debiting the Client's Account with the relevant amount payable by the Client. In the event that there is insufficient cleared funds in the Client's Account, the Client acknowledges that any amount due under this Clause is a debt due and owing by the Client to KES.

21.5 The Client agrees that KES may share all fees and charges with other persons without being required to disclose that fact to the Client (unless that disclosure is required by law).

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

22.1 All Transactions between the Client and KES will be entered into in consideration of each other and constitute a single contract between KES and the Client. If KES exercises any rights of combination, consolidation and/or set off pursuant to Clause 22.2 or any other term in any other applicable agreement, it may also, at the same time, without notice to the Client and in its sole and absolute discretion, close, combine, consolidate and/or set off any or all open positions which shall be or shall be deemed to be immediately closed as KES reasonably sees fit and accordingly the rights contained in Clause 22.2 shall apply to all open positions.

22.2 Without prejudice to any other rights and remedies available to KES (at law or under these T&C), KES reserves the right, at any time, from time to time, without notice to the Client and in its sole and absolute discretion, to combine and consolidate any or all of the Client's accounts (of whatever nature or type the Client holds with KES) and positive and negative exposures and/or to set off some or all of the Client's Account balances and any other amounts of whatsoever nature which may be due or payable from KES to the Client (of whatsoever nature and howsoever and whenever arising) against all interest, costs, expenses, charges, realised losses, Margin, negative positions and any and all other liabilities and amounts (of whatsoever nature and howsoever and whenever arising) owed by the Client to KES under these T&C or any other terms agreed between the Client and KES. If KES exercises such rights of combination consolidation and/or set-off, all obligations for payment in respect of all the foregoing will

be cancelled and simultaneously replaced by a single obligation to pay a net sum of cash to KES or (if a net amount is payable to the Client) to the Client.

22.3 KES may apply the above rights regardless of the currency of any amount payable by KES to the Client or by the Client to KES as referred to in Clause 22.2.

22.4 Without prejudice to clause 25, KES may (whether in connection with the exercise of any rights under Clause 22.2 or otherwise) convert money standing to the Client's credit in any of the Client's accounts with KES or any other profit, loss, exposure or liability or any money received from the Client or due to be paid by the Client to KES or by KES to the Client from one currency to another at prevailing market rates available to KES. KES shall be entitled to charge the Client all commission costs and charges incurred in connection with the foregoing. All references in this Part II of these T&C to any foreign currency equivalent to Singapore dollars or conversion of any currency into Singapore dollars or any other currency shall be construed accordingly.

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

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

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

- (a) the rate of interest shall be as from time to time determined by KES in its sole and absolute discretion; and
- (b) KES may by notice to the Client cease payment of such interest at any time.

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

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

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

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

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

### **25. ADDITIONAL RIGHTS OF KES**

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

- (a) apply all or part of any currency held by KES in the Client's Account and any currency held by KES for the purpose of the Client's dealings in such order or manner as KES thinks fit, whether the liabilities are actual or contingent, primary or collateral, joint or several; and
- (b) convert, at a commercial rate, any currency held by KES in the Client's Account into a currency or currencies in which payments are due from the Client to KES and without KES being responsible to the Client for any loss resulting from such conversion.

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

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

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

## **27. PAYMENTS IN GROSS**

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

## **28. CURRENCY OF PAYMENTS**

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

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

- 29.1 The ITP and any and all materials that KES provides to the Client in connection with the ITP are (1) provided on a non-exclusive, non-transferable, revocable basis; (2) the property of KES and/or its ITP providers, licensors or other service providers; and (3) intended for the Client's use only. The Client shall not (a) in whole or in part resell, sub-licence, supply or otherwise transfer or permit access to or make available the ITP to others; (b) copy in whole or in part materials broadcast over the ITP for resale or other supply to others or otherwise make the same available to others; (c) copy the ITP and/or any software forming part thereof in whole or in part; or (d) delete obscure or otherwise tamper with in whole or in part any copyright notices or other indications of protected intellectual property rights and/or ownership from the ITP, any software forming part thereof and/or any materials supplied to the Client by KES and/or that the Client prints or downloads from the ITP. The Client shall not obtain any intellectual property rights in or any right or licence to use the ITP, the software forming part thereof or such materials or to conduct trades via the ITP other than as expressly set out herein. The Client shall immediately on demand by KES return to KES, in good repair and condition, all media, documents and other physical items relating to the ITP that have been supplied to the Client. In the case of software supplied to the Client, the Client shall if so requested by KES return the same to KES and/or permanently delete and uninstall the same from any computers or other equipment upon which the Client has installed the same and the Client shall not keep any copies of the same.
- 29.2 KES warrants that it has the right to permit the Client to use the ITP and that it will take reasonable steps to ensure that the ITP is virus-free, but KES cannot guarantee that the ITP will be free from any virus. The Client is responsible for configuring the Client's information technology, computer programs and platforms to ensure compatibility with the ITP and the Client must use the Client's own virus protection software. KES does not warrant that the ITP will always be available or accessible or that access to it will be uninterrupted nor that it will be free from errors. KES reserves the right to close or suspend provision of the

ITP and/or any of the services on the ITP for any purposes including repair, maintenance or development and either with or without notice to the Client. Access to the ITP and/or operation of any of the services on the ITP may be interrupted by circumstances beyond KES' reasonable control. KES will not be liable if, for any reason, the ITP and/or any of the services thereon are unavailable for any period of time. KES disclaims and excludes unless expressly prohibited by applicable mandatory law, all terms conditions and warranties implied by statute or common law in relation to the ITP including but not limited to merchantability, satisfactory quality, suitability or fitness for any particular purpose. Technical difficulties may be encountered in connection with the ITP. Such difficulties may include, but not be limited to, malfunctions, failures, delays, hardware damage or software erosion. Such difficulties could be the result of hardware, software or communication link inadequacies or any other cause and such difficulties could lead to possible economic and/or data loss. In the absence of fraud or bad faith in no event will KES, any of its affiliates or employees be liable for any loss, cost, claim, demand expense or damage including, without limitation, loss of profit, loss of revenue, loss of opportunity, consequential, unforeseeable, special or indirect damages or expenses ("**ITP Loss**") which arise directly or indirectly as a result of accessing or using, the ITP and even if KES had been advised of the possibility of the same arising or the same were reasonably foreseeable.

29.3 The Client acknowledges and agrees that KES shall not be liable to the Client for any ITP Loss which may be suffered by the Client as a result or referable to KES' decision to impose any restriction, suspend, disallow or terminate the Client's use of the ITP to effect Transactions; provided that KES shall, to the extent reasonably practicable in its opinion, give prior notice to the Client of such restriction, suspension, disallowance or termination.

29.4 All instructions placed via the ITP for the Client's Account are also subject to the terms of such other procedures and instructions as may be the subject of prior notification in writing by KES to Client from time to time in relation to the use of the ITP (the "**Procedures**"). In the event and to the extent of any conflict or inconsistency between this Part II of these T&C and the Procedures, this Part II of these T&C shall prevail.

29.5 The Client acknowledges, agrees and accepts that:

- (a) KES undertakes no liability and is to have no liability whatsoever in relation to any ITP or any part thereof that is provided and/or maintained by a third party and with whom the Client has entered into an agreement or otherwise secured consent/approval for the Client's use for the purposes of effecting Transactions with KES. The choice of using such third party ITP or part thereof is agreed by the Client to be wholly the choice of the Client. The provision of the ITP (insofar as it is provided by and/or maintained by KES) is on the basis that, in KES' good faith opinion, it will deliver such functionality and performance as may be reasonably expected and necessary in delivering a service within the scope of this Agreement to enable the Client to effect Transactions electronically. KES does not make or give any warranty or representation that such expectation will be realised with respect to any specific Transaction or will always be realised; and
- (b) instructions placed via the ITP are placed at the Client's sole risk. The Client agrees to check and ensure that such instructions have been properly transmitted as well as received and acted on by the party intended.

29.6 Without limitation to Clause 7:

- (a) the Client may transmit instructions to KES through the use of the ITP and in accordance with all relevant Procedures; and
- (b) the Client shall be fully responsible and liable for any instructions placed with KES, and Transactions entered into, through the use of the ITP accessed using the Client's account number and password. In particular (but without limitation) the Client shall be bound by such instructions notwithstanding any typographical or keystroke errors made when such instructions are placed, any corruption or distortion of instructions which may occur when such instructions are transmitted through the ITP, or that such instructions may exceed any position or transaction limits or restrictions (whether imposed by the relevant Exchange, KES or otherwise). KES shall, notwithstanding that any of such instructions may be deemed as being that of KES vis-à-vis any relevant Exchange, not be obliged to review, detect, correct or stop any of such instructions in any way.

29.7 **Representations And Warranties By The Client**

- (a) The Client hereby represents and declares that the Client understands and accepts that trading through an electronic trading or order routing system exposes the Client to risks mentioned and set out under this Clause including risks associated with system or component failure. Such system or component failure may result in the inability to enter new instructions, execute existing instructions, modify or cancel instructions previously entered, or stop erroneous instructions, as well as a loss of instructions or order priority.
- (b) The Client represents, warrants and undertakes that:
  - (i) the Client has satisfied the Client, and will continue to satisfy the Client, of the capability of KES to deal in the Transactions via the ITP;

- (ii) the Client has the right, power and authority to use and/or access the ITP and to trade and/or communicate instructions in relation to the Transactions;
- (iii) the Client has received adequate instructions in respect of the operation and access of the ITP and is fully conversant with the Procedures and will ensure that all users of the ITP using the Client's account number and password are equally conversant and will abide with the same; and
- (iv) each of the above representations and warranties will be correct and complied with in all material aspects so long as this Part II of these T&C remain in force as if repeated on each day.

**29.8 Further Disclaimers And Exclusion Of Liability**

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

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

**30. COMMUNICATIONS**

30.1 Save for any statement of account (which may only be sent via e-mail or any method as determined by KES) or Confirmation (which may only be sent by e-mail or any method as determined by KES) or as expressly set out in this Part II of these T&C, any notice from KES to the Client (including without limitation any demand or Margin call) or other communication under or in connection with this Part II of these T&C may be verbal, in writing or by electronic means and may be delivered personally, sent by post, airmail, fax, telex or telephone answering machine message, voice mail message, pager, e-mail or via the ITP. Notices or other communications to the Client may be made to the Client's last known home address, place of work, telephone number (including a telephone answering machine), fax number, telex number, pager number, via the ITP, e-mail address or other contact details.

30.2 Any such communication shall be deemed received by the Client immediately upon transmission by KES, save for communication sent via post or airmail, in which case such communication shall be deemed received by the Client one (1) Business Day after the communication was dispatched by KES (in the case of a Client having a Singapore address) or three (3) Business Days after the communication was dispatched by KES (in the case of a Client having a non-Singapore address).

30.3 In the case of daily or monthly statements of account, KES will send to the Client's e-mail address as set out in the Account Application Form (as may be amended from time to time) such statements of account as may be issued from time to time. The Client agrees that it is the Client's responsibility to ensure that all relevant statements of account are received and undertakes to make enquiries with KES and obtain such statements of account if the Client has not received the same following (i) in the case

of a daily statement of account, 7 days after the date, and (ii) in the case of a monthly statement of account, 7 days after the end of the statement cycle as applicable to the Client.

- 30.4 The risk of loss or damage to, and the costs of delivery of, any articles or items sent to the Client shall be borne by the Client.
- 30.5 Any communication from the Client to KES whether they be instructions relating to the Account or any of the Client Accounts which it now has or may hereafter open with KES or otherwise shall be given in accordance with KES general operating procedures.
- 30.6 The Client acknowledges and agrees that KES' representatives may carry out dealing activities or otherwise operate outside KES' office premises and, in this respect, the Client acknowledges and agrees that:
- (a) it is in the Client's own interest not to use the representative's address as the Client's mailing address for contract notes and statements;
  - (b) the Client may only enter into CFDs with or otherwise give instructions to KES using the telephone or via the ITP, unless KES agrees to accept other forms of communication, and such orders are subject to this Part II of these T&C;
  - (c) the Client is responsible for and aware of the attendant risk attached to Transactions executed off-premises;
  - (d) the Client understands that there might be limitations that may potentially affect the Client's customer service experience, including, but not limited to delays in responding to or executing an instruction or entering into a Transaction; and
  - (e) the Client agrees to communicate, give instructions and/or place orders only with the representative assigned by KES to the Client.

### **31. ASSIGNMENT**

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

### **32. DISPUTE RESOLUTION**

- 32.1 If a dispute arises between the parties (a "**Dispute**"), any party seeking to resolve the Dispute must do so strictly in accordance with the provisions of this Clause.
- 32.2 A party seeking to resolve a Dispute must notify to the other party in writing of the existence and nature of the Dispute (a "**Dispute Notice**"). The Dispute Notice must set out full details of the Dispute.
- 32.3 Upon receipt of a Dispute Notice the parties must immediately refer the Dispute to a senior representative of each party who must together attempt to resolve the Dispute in good faith within 5 Business Days of receipt of the Dispute Notice.
- 32.4 If the Dispute has not been resolved within 20 Business Days of the receipt of the Dispute Notice, the parties agree to submit the matters as set out in the Dispute Notice to arbitration which shall be settled by arbitration in Singapore in accordance with the UNCITRAL Arbitration Rules as at present in force.
- 32.5 The arbitration shall be administered by SIAC in accordance with its practice rules and regulations. The appointing authority shall be the Chairman or Deputy Chairman of SIAC. The number of arbitrators shall be three; KES and the Client shall appoint one arbitrator respectively and the third shall be appointed by the Chairman or Deputy Chairman of SIAC. The language to be used in the arbitral proceedings shall be English.
- 32.6 The party in receipt of the Dispute Notice shall appoint an arbitrator within 28 days or such longer time as may be agreed between the parties or directed by the Chairman or Deputy Chairman of SIAC. In default of such appointment by any party that arbitrator shall also be appointed by the Chairman or Deputy Chairman of SIAC within 14 days after such time period. The third arbitrator shall be appointed by the Chairman or Deputy Chairman of SIAC within 28 days of the receipt of such Notice of Dispute.
- 32.7 The prevailing party in the arbitration shall be awarded the costs and expenses (excluding legal fees and expenses) reasonably incurred in connection with any such arbitration.

### **33. INDEMNITY**

- 33.1 The Client will indemnify KES and keep KES indemnified on demand in respect of all liabilities, costs (including legal costs on a full indemnity basis), claims, demands and expenses of any nature whatsoever which KES suffers or incurs as a direct or indirect result of any failure by the Client to perform any of the Client's obligations under this Part II of these T&C, including under any CFD.



**34. MULTIPLE DEALS**

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

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

**35. CONSENTS**

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

(a) agree or consent, or not agree or consent, in its sole and absolute discretion; and

(b) agree or consent subject to conditions,

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

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

### Part III. TERMS AND CONDITIONS FOR MARGIN ACCOUNTS

#### 1. MARGIN FACILITIES

- 1.1 This Part III of these T&C shall govern all margin facilities granted by KES to the Client at the request of the Trading Representative (as identified in the Account Application Form) and the Client to extend margin facilities under a margin account opened or to be opened by the Client with KES for the sale and purchase of stocks shares and other Securities upon the terms and conditions this Part III of these T&C and subject to these T&C. In the event of any conflict between this Part III of these T&C and Part I of these T&C, this Part III of these T&C shall prevail.

#### 2. AVAILABILITY OF FACILITIES

- 2.1 Notwithstanding anything in these T&C to the contrary express or implied, the margin facilities hereby agreed to be made available and granted to the Client shall at the absolute discretion of KES be reviewed from time to time and at any time and may be subject to such terms conditions limits variations or cancellations as KES shall think fit without prior notice to the Client or the Trading Representative, and nothing contained in these T&C shall be deemed to impose on KES any obligation either at law or in equity to make or continue to make the margin facilities available to the Client.
- 2.2 Pursuant to Clause 2.1 above, should KES decide to cancel the margin facilities (for whatever reason it deems fit and which KES is not obliged to notify the reason whereof to the Client or the Trading Representative), then without prejudice to any other rights powers and remedies which the Company may have (howsoever arising), the rights and remedies available to KES under Clause 3.11 shall immediately apply.
- 2.3 The margin facilities shall become available to the Client after KES has received all such documents including a Memorandum of Charge and Power of Attorney in favour of KES, and any other security as KES may require, all of which shall be duly executed and in such form and substance as is satisfactory to KES.
- 2.4 The margin facilities offered under this Part III of these T&C shall be withdrawn or be deemed terminated or expired, if the same is not activated by the Client within 30 days from the date of the grant of the margin facilities, that is if the Client does not commence trading under the margin account.

#### 3. MARGIN ACCOUNT REQUIREMENTS

- 3.1 The operation of the margin account granted hereunder shall at all times be in accordance with the Securities and Futures Act, Chapter 289 of Singapore, any regulations promulgated thereunder and/or any legislation and/or regulations, the Rules and Bye-Laws of the Singapore Exchange Securities Trading Limited (“SGX-ST”) (or as may be supplemented by directives or circulars from the same) (hereinafter called the “SGX-ST Rules and Bye-Laws”), and any subsequent amendments or variations thereto/hereto.
- 3.2 Where any term(s) of this Part III of these T&C (and/or any subsequent amendment or variation hereto) is inconsistent with any of the above laws, regulations or SGX-ST Rules and Bye-laws, the affected term(s) of this Part III of these T&C shall be deemed modified or superseded as the case may be by the same to the extent that conformity with the same is achieved and all the other term(s) of this Part III of these T&C and the term(s) so modified shall in all respects continue in full force and effect.
- 3.3 (a) The expressions "debit balance", "equity" and "margin exposure" shall bear the meanings respectively ascribed thereto in Rule 5.6 of the SGX-ST Rules and Bye-Laws or as may be amended, varied or renumbered from time to time).
- (b) Notwithstanding any provision to the contrary contained herein or in the SGX-ST Rules and Bye-Laws, the expression "marginable securities" in this Part III of these T&C shall mean (i) Securities quoted on SGX-ST (ii) Securities quoted on CLOB International (iii) Securities quoted on the main board of a recognised stock exchange where the securities are issued by companies with shareholders' funds of not less than \$200m or its equivalent in foreign currencies and (iv) any other Securities that SGX-ST may approve from time to time, Provided Always that such Securities or any one thereof shall be acceptable at all times to KES as marginable securities at its sole discretion and shall include any amendment, revision, deletion or additions made thereto from time to time as determined by KES and accordingly notified by KES.
- (c) Valuation of collateral provided under the margin account and/or marginable securities shall be determined at the sole discretion of KES and such valuation may be made revised or varied in such manner and on such terms as KES shall deem fit.
- (d) The expression "Person" shall include any individual, firm, company, corporation, society or association.
- 3.4 At no time shall the Client transact or cause to transact any Securities transaction whereby the aggregate principal amount of the credit extended or to be extended as a consequence thereof to the Client under the Client's margin account exceeds such sum as KES may at its discretion notify to the Client from time to time (irrespective of the value of the margin deposited). For the

avoidance of doubt, it is hereby expressly agreed that the Client and Trading Representative are solely responsible to ensure compliance with the aforesaid transaction limit (or as may be varied from time to time by KES).

- 3.5 Margin calls will be made whenever the equity in the margin account falls below 140% of the debit balance (i.e. when the total value of the collateral over the total amount financed in the margin account is less than 140%). KES shall have the absolute discretion to liquidate all the shares held in/under the margin account if the equity in the margin account falls below 130% of the debit balance.
- 3.6 Any additional margin or topping up of margin as may be required by KES to be provided by the Client, shall be provided by the Client within such period as KES shall specify provided always that the aforesaid shall be without prejudice to any other rights remedies and powers available to or of KES.
- 3.7 Any right deemed to be exercisable by KES without notice to the Client whether under this Part III of these T&C or otherwise, shall in addition be exercisable without notice to the Trading Representative. Similarly any right deemed to be exercisable by KES without notice to the Trading Representative whether under this Part III of these T&C or otherwise (in so far as the same is relevant to the margin account hereby granted) shall also be exercisable without notice to the Client.
- 3.8 The Client agrees to be responsible to KES for interest on the debit balance net of any cash collateral, if any, at such rate per annum as KES may determine from time to time. The Client agrees to reimburse KES directly for interest so payable to KES forthwith upon receipt of KES' monthly statement of the same in accordance with the provisions hereafter appearing.
- 3.9 The following shall constitute an Event of Default:
- (a) if the Client shall fail or default in any of the Client's obligations to KES or be in breach of any terms and conditions whether under this Part III of these T&C or elsewhere under any other agreement or undertaking entered into between the Client and KES;
  - (b) if for any reason whatsoever, the Client is unable or unwilling to fulfill or continue to fulfill any of the Client's obligations hereunder or under any other agreement or undertaking entered into between the Client and KES;
  - (c) if a petition for bankruptcy winding up liquidation for the appointment of a receiver and/or manager including a judicial manager is filed by or against the Client;
  - (d) if any attachment or execution process is levied against any asset or property of the Client;
  - (e) if the Client (if an individual and whether he/she be one of two or more joint account holders) dies;
  - (f) if the Client stops or threatens to stop payment, ceases or threatens to cease to carry on the Client's business or occupation, or is deemed or is declared by any competent body or authority to be or declares itself to be insolvent or unable to pay its debts as they fall due;
  - (g) if any indebtedness of the Client becomes due and payable, or capable of being declared due and payable prior to its stated date of payment is so declared or is not paid when due;
  - (h) if there shall occur a material adverse change in the financial assets or business condition of the Client or any situation shall have arisen, which in the bona fide opinion of KES shall make it improbable that the Client will be able to perform its obligation under this Part III of these T&C;
  - (i) if the Client shall fail to provide the required margin or any security within the time stipulated when called upon to do so; or
  - (j) if KES shall decide, pursuant to Clause 2.2, to cancel the margin facilities or any part thereof as it deems fit.
- 3.10 Without prejudice to any other right or remedy which KES may have (howsoever arising), if any Event of Default shall occur, KES is authorised, in its absolute discretion, to take one or more of the following actions:
- (a) satisfy any obligation or liability the Client may have to KES out of any money property Securities equities and/or interest held by KES under any account whether in the margin deposited pursuant to this Part III of these T&C, the Memorandum of Charge in favour of KES, the Client's trust account held by KES or otherwise;
  - (b) to liquidate in such manner as KES deems fit the margin account including cash marginable securities and/or Securities issued by the Government or its agents or other instruments comprised in the margin and/or the Securities bought and carried in the Client's margin account and without prejudice to the generality of (a) above, to apply or allocate the proceeds thereof in such proportion and manner as KES deems fit to pay/settle all outstanding liabilities or monies due from the Client to KES whether under the Client's margin or other accounts including the debit balance due thereunder, accrued interest thereon and any costs and expenses incurred by KES in enforcing or attempting to enforce the Client's and/or Trading Representative obligations hereunder or under any other agreement or obligation of the Client and KES including KES' legal cost and expenses on an indemnity basis;

- (c) in addition to any lien right of set-off or other right which KES may have, KES shall be entitled at any time without notice to the Client or the Trading Representative to combine or consolidate all or any of the accounts of the Client whether alone or jointly with any other person and set-off or transfer any sum standing to the credit of any one or more such accounts in or towards satisfaction of any monetary obligations and liabilities of the Client to KES arising under the margin or other accounts and whether such liabilities be actual contingent primary collateral several or joint; and
  - (d) terminate the margin account forthwith and the whole of the monies outstanding and unpaid together with all interest thereon under the margin facilities and all monies owing and liabilities accruing to KES under this Part III of these T&C shall immediately become due and payable without demand or notice which is hereby expressly waived.
- 3.11 Any of the actions mentioned in Clause 3.10 hereof may be taken without demand for margin or additional margin without prior notice to the Client whatsoever.
- 3.12 In addition to any other right KES may have hereunder or otherwise against the Client and/or the Trading Representative, the Trading Representative shall indemnify KES against all costs, expenses, losses and liabilities contingent or otherwise arising or related to the margin account granted hereunder and shall pay forthwith on KES' demand without condition or protest for the same or any one or some or all of the same. For the avoidance of doubt, the Trading Representative indemnity obligation to KES is to be regarded as an independent and distinct obligation owing to KES and is no way to be affected by KES' action or omission vis-a-vis the Client whether the same leads to a discharge release or varying of the liability of or the granting of any time indulgence or concession to the Client.
- 3.13 No act or omission or forbearance by KES whether in favour of the Client and/or the Trading Representative and/or any other person shall prejudice the rights of KES hereunder and without prejudice to the generality of the foregoing and in greater particularity the same shall not constitute a waiver of KES' rights unless the waiver is specified in writing by a director of KES.
- 3.14 A written certificate or statement by any of KES' authorised officers on the debit balance or on any monies due or payable by the Client to KES and/or the amount for which the Trading Representative is to indemnify KES under Clause 3.13 above shall be conclusive evidence of the matter or fact stated therein.
- 3.15 Any written notice demand request certificate statement or written communication from one party to any or both of the others under this Part III of these T&C shall be deemed to be duly served if left at or sent by registered post to the address herein provided of the party to be served, or such other address as may have been last notified in writing by or on behalf of the party to be served, and shall be deemed to have been served at the time (not being a Sunday or Singapore public holiday, in which case it shall be deemed the day after) when the same is left at or posted to the aforesaid address of the party to be served, notwithstanding that the same may be returned undelivered. Nothing herein shall prohibit any other mode of service and any of the above to be given by a party may be given by its solicitors.
- 3.16 Outstanding positions remaining as at the termination of the margin account hereby granted may be closed at KES' discretion. On termination of the margin account hereby granted, KES shall also be entitled to the right of liquidation and application of proceeds set out in Clause 3.10(b) above.
- 3.17 The margin facility cannot be used for subscribing in new share issues and unless otherwise permitted by KES, single counter exposure is prohibited to prevent over reliance on too narrow a range of stocks as security.
- 3.18 The Singapore Dollar ("S\$") is the sole currency of account and payment for all sums payable by the Client under or in connection with this Part III of these T&C. Any amount received or recovered in a currency other than the S\$ by KES in respect of any sum expressed to be due to it from the Client under this Part III of these T&C shall only constitute a discharge to the Client to the extent of the S\$ amount which KES is able, in accordance with its usual practice, to purchase with the amount so received or recovered in that other currency on the date of that receipt or recovery (or if it is not practicable to make a purchase on that date, on the first date on which it is practicable to do so). All such currency exchange losses shall be at the Client's risk and for the Client's account. Therefore if the S\$ amount so purchased is less than the S\$ amount expressed to be due to KES under this Part III of these T&C, the Client shall indemnify KES against any loss sustained by it as a result thereof. In any event, the Client shall indemnify KES against the cost of making any such purchase referred to above.
- 3.19 The Client hereby authorises KES to mortgage, pledge or hypothecate the Client's Securities or property deposited with or otherwise in the possession and/or control of KES for a sum either not exceeding the debit balance in the Client's margin account and if so mortgaged, pledged or hypothecated together with Securities and/or property of other clients of KES for a sum not exceeding the aggregate debit balance of all the clients of KES and in any event without KES having any obligation to retain in our possession or control Securities or property of like character.
- 3.20 Unless otherwise agreed by KES, the Client shall not be entitled to interest on any cash deposited with KES whether as collateral or otherwise.

#### **4. EXCLUDED LIABILITY**

- 4.1 KES shall incur no liability whatsoever to the Client or the Trading Representative in the exercise of any some or all of its rights under this Part III of these T&C or the Memorandum of Charge or Power of Attorney or in respect of any other security given in favour of KES (if KES acted in good faith) for taking or not taking any action in connection therewith or with the margin account granted hereunder or any transaction through or under the same.
- 4.2 Any transaction and all contracts to be pursued or concluded under or through the margin account granted hereunder should be made and is to be deemed to be made solely in reliance of the Client's own judgment and not in reliance of any representation, advice, view, opinion or other statement which may have been expressed by KES or any of its employees, agents or representatives and neither KES nor its employees, agents or representatives shall have any liability in respect of the same if expressed at all.
- 4.3 The Client and the Trading Representative also confirm having read familiarised and otherwise understood the relevant SGX-ST Rules and Bye-Laws and further confirm that the Client will be solely responsible for keeping the Client informed of any amendments thereto.
- 4.4 Notwithstanding anything to the contrary provided herein, KES shall not be liable or responsible howsoever for any act omission or default whatsoever or for the insolvency of any depository agent sub-custodian delegate broker central depository register or any other institution authorised by any relevant stock exchange through whom or with whom KES deals or transacts with in connection with any Securities transaction under the margin account or otherwise in the course of KES performing any of its obligations or enforcing any of its rights hereunder or otherwise pursuant to any security documents.

#### **5. WARRANTIES AND UNDERTAKINGS**

- 5.1 The Client hereby warrants to KES that:
- (a) the Client possesses the necessary powers and authority to enter into and comply with the terms of this Part III of these T&C and any other agreement entered into between them and to perform the obligations envisaged herein/therein;
  - (b) no rule, regulation, law or other legal limitation in any way restricts or prevents the Client from entering into or complying with this Part III of these T&C or any other agreement entered into between them or performing the obligation envisaged herein/therein;
  - (c) all necessary authorising action has been taken by the Client to enter into this Part III of these T&C and the transactions executed or contemplated under this Part III of these T&C or margin account and any other agreement entered into between them;
  - (d) the Client has obtained and will maintain in effect all necessary consents of any governmental or other regulatory body or authority applicable to this Part III of these T&C and any other agreement entered into between them and that it will comply with the terms of the same and all applicable laws, regulations and directives of such bodies and authorities and will, forthwith on demand by KES, deliver to KES copies of all such consents or such other evidence of compliance with such consents and with any such laws, regulations and directives as KES may reasonably require;
  - (e) no person other than the Client has or will have any interest in the Client's margin or margin account or the transactions executed or to be executed in connection therewith; and
  - (f) no Events of Default as listed in Clauses s 3.10 (a) to (i) have occurred or are likely to occur.
- 5.2 In addition to and without prejudice to Clause 5.1 above, in the case of the Client being a corporation, the Client represents, warrants and agrees that:
- (a) the Client is a corporation duly organised and validly existing under the laws of the country/state of its incorporation and every country/state in which it does business;
  - (b) all necessary corporate or other authorising action has been taken by the Client to enter into this Part III of these T&C and the transactions executed or contemplated under this Part III of these T&C or margin account, and any other agreement entered into between them; and
  - (c) the actions of the persons empowered to act on behalf of the Client have been duly authorised by all necessary and appropriate action whether corporate or otherwise.
- 5.3 Without prejudice to Clause 5.1 above, in the case of the Client being an individual, the Client represents, warrants and agrees that the Client is legally capable of validly entering into and performing the obligations of these T&C and any other agreement entered into between them and that the Client has attained the age of 21 years and is of sound mind and legal competence and is not a bankrupt or otherwise financially insolvent.

- 5.4 Without prejudice to Clause 5.1 above, in the case of the Client being joint account holders, the Client (jointly and severally) represents, warrants and agrees that:
- (a) all joint account holders are legally capable of validly entering into and performing the obligations of this Part III of these T&C and that the same have all attained the age of 21 years and are of sound mind and legal competence and neither is a bankrupt or otherwise financially insolvent;
  - (b) any one of the Client shall have full authority to give any and all instructions with respect to any and all accounts opened pursuant to this Part III of these T&C;
  - (c) KES shall be under no duty or obligation to enquire into the purpose or propriety of any instructions given and shall be under no obligation to see to the application of any funds delivered by the Client or paid out pursuant to this Part III of these T&C in respect of the account or accounts aforementioned;
  - (d) the Client's liability hereunder and for all the accounts aforementioned shall be joint and several; and
  - (e) it is the Client's intention that the rule of survivorship shall apply to the Client's joint account hereunder.
- 5.5 The Client warrants and undertakes to KES that the collateral or margin it deposits and all account or accounts (including the margin account) established pursuant to this Part III of these T&C are and will remain free of any charge lien encumbrance or security interest of any kind other than as created by or pursuant to this Part III of these T&C or the Memorandum of Charge or any other security document provided to KES.

## **6. INSTRUCTIONS**

- 6.1 The Client authorises KES to act on any instructions or other communication given by its authorised signatory or signatories as provided to KES and/or the Trading Representative, and such persons (or any one of them) may in like manner deliver or transfer or cause to be delivered or transferred money, Securities or other properties to or from the Client's margin or other account (as the case may be) and give a valid receipt and discharge to KES when in receipt of the same; in such case until receipt by KES of prior written notification of at least fourteen (14) days' notice of a change or cancellation of such authority.
- 6.2 All instructions and communications to KES in connection with this Part III of these T&C shall be irrevocable and effective only on receipt by KES' authorised representatives.
- 6.3 KES is authorised to act on any instruction or communication in writing or given by telex, telegraph, cable, facsimile transmission, telephone or in person and signed, given or otherwise made, or purported to be signed, given or otherwise made by the Client or on its behalf by the authorised signatory or signatories aforementioned and/or the Trading Representative, if believed by KES to be genuine. Except in the case of its own wilful default or neglect, KES shall not be liable for any loss or damage whatsoever resulting from reliance on any invalid instructions or communications given or purported to be given or made by or on behalf of the Client.
- 6.4 KES may at its discretion refuse to accept or act on any instructions or requests of the Client without having to assign any reason for such refusal but shall notify the Client of such refusal. KES shall not be liable for any loss damage cost charge or expense whatsoever and howsoever incurred by the Client as a result of KES' refusal so to act.
- 6.5 KES may act by any of its officers or employees and may delegate the performance and its powers, duties and discretion hereunder to, and may effect any transaction through, any agent or representative it thinks fit.
- 6.6 KES is authorised to sell purchase deal with transfer register by electronic means stock shares and other Securities in respect of any transaction under the margin account, where applicable with any account or sub-account of KES with any depository agent sub-custodian delegate broker central depository register or any other institution authorised by any stock exchange for the purpose of or in connection with any Securities transaction under the margin account or otherwise in the course of KES performing its obligations or enforcing its rights hereunder.

## **7. DURATION**

Subject to Clauses 2 and 3.10 in this Part III of these T&C, the margin account granted by KES to the Client under this Part III of these T&C shall continue unless and until terminated by either party serving immediate written notice to the other, whereupon the whole of the monies outstanding and unpaid together with any interest thereon due or to become due and payable by the Client to KES under this Part III of these T&C shall immediately become due and payable without any demand or notice which is hereby expressly waived and KES shall forthwith be entitled to exercise all rights, powers or remedies under this Part III of these T&C or otherwise against the Client.

## Part IV. TERMS AND CONDITIONS FOR MARGINABLE FUTURES CONTRACTS

This Part IV of these T&C shall govern all Marginable Futures Contracts (as hereinafter defined) entered into by the Client through KES. In the event of any conflict between this Part IV of these T&C and Part I of these T&C, this Part IV of these T&C shall prevail.

### 1. DEFINITIONS

In this Part IV of these T&C:

“**Account**” means the account opened with KES in the name of the Client, through which the Client may effect transactions in Marginable Futures Contracts upon KES’ acceptance of an Account Application Form at its sole and absolute discretion and in accordance with its general operating procedures;

“**CDP**” means the Central Depository (Pte) Limited;

“**Futures Contract**” means a futures contract (as defined under the Securities and Futures Act, Chapter 289 of Singapore) that is approved for listing on the SGX-ST;

“**Last Trading Day**” means the last day on which a Marginable Futures Contract may be traded on SGX-ST prior to its expiration;

“**Marginable Futures Contract**” means a Futures Contract approved for listing on the SGX-ST and which is subject to margin requirements; and

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

### 2. MARKET REQUIREMENTS

2.1 Without limitation to the Client’s obligations under Part I of these T&C and this Part IV of these T&C, the Client will comply at all times with the Securities and Futures Act, Chapter 289 of Singapore and the applicable rules and regulations of the SGX-ST and the CDP.

2.2 The Client agrees that KES may:

- (a) do all such acts and things, including (without limitation) the provision of information to the relevant authorities and regulators, closing out any of the Client’s positions and advising or assisting such authorities and regulators in respect of any buying-in of Securities in a short sale, in each case in order to comply with obligations imposed on KES by applicable laws, market requirements and legal process; and
- (b) in the provision of services by KES hereunder (including as to entering into and terminating transactions) deal with the Client’s Account and assets in a manner so as to comply with applicable laws, market requirements and trading and clearing rules in all relevant jurisdictions (including in a manner consistent with market industry practice) from time to time.

### 3. TRANSACTIONS LIMIT AND RESTRICTIONS

3.1 KES may, at any time in its sole and absolute discretion, impose upon the Client any position or transaction limits, or any trading or transaction restrictions. Such limits may include minimum sizes for transactions, specified times or procedures for communicating orders to KES or otherwise.

3.2 KES may, at any time in its sole and absolute discretion, vary the position or transaction limits, or any trading or transaction restrictions. No previous limit or restriction shall set a precedent or bind KES.

3.3 The Client acknowledges that the limits referred to in Clause 3.1 may also be set by the SGX-ST or the CDP and that the limits set by KES may be more stringent than those set by the SGX-ST or the CDP. In placing orders with KES, the Client shall not exceed any position or transaction limits, or breach any trading or transaction restrictions whether imposed by KES, the SGX-ST or the CDP.

### 4. MARGIN

4.1 The Client agrees to provide immediately upon demand such initial margin or variation margin or maintenance margin (in such form and howsoever described as may be required by KES in its sole and absolute discretion) as may be required by KES from time to time (either orally or in writing) in its sole and absolute discretion. Such demand may require the margin to be deposited within one hour of the demand. Notwithstanding the foregoing, KES reserves the right at any time and at its sole discretion to close out any or all of the Client’s positions and/or exercise its other rights as set out in Clause 7.1 below without making any demand for margin. KES may from time to time set and/or revise margin requirements in respect of an Account and such requirements may be more stringent than the margin requirements of the SGX-ST or the CDP. No previous margin requirements shall establish any precedent and margin requirements once established may in KES’ sole and absolute discretion apply to existing positions as well as new positions in the transactions and contracts affected by such change.

- 4.2 Unless KES otherwise agrees, margin deposits from the Client shall be in cash and/or such Securities as may be acceptable to KES. The value of any such margin shall be determined by KES in its sole and absolute discretion, taking into account any haircuts prescribed by KES in its sole and absolute discretion (and which may be more stringent than haircuts prescribed by the SGX-ST or the CDP). In the event that Securities deposited as margin are delisted or are the subject of corporate actions, takeovers or other corporate events, KES may require the Client to substitute those Securities with other margin and/or deposit additional margin as may be acceptable to KES in its sole and absolute discretion.
- 4.3 KES shall be entitled to deposit, invest, loan, mortgage, charge, pledge, repledge, hypothecate or otherwise deal with any margin in whatever form provided to KES in such manner as may be permitted under the applicable laws, and shall not be under any obligation to account to the Client for any interest, income or benefit that may be derived therefrom. No interest shall be paid on any type of margin deposited by the Client with KES and the Client acknowledges and consents that interest earned on the margin deposited under this Part IV of these T&C may be retained by KES for its own account and benefit. KES shall at no time be required to deliver to the Client the identical property delivered to or purchased by KES as margin for the Account(s) but only property of substantially the same kind and amount, subject to adjustments for quantity and quality variations at the market price prevailing at the time of such delivery. KES shall not be liable to the Client for any losses in respect of the margin so pledged or deposited, resulting directly or indirectly from the closure, default, bankruptcy, insolvency, liquidation or receivership of an institution with which the margin is placed.
- 4.4 The Client shall at its own cost and at KES' request, execute and do all such deeds, acts and things (including without limitation, the performance of such further acts or the execution and delivery of any additional instruments or documents) as KES may require for the purposes of these T&C, including but not limited to perfecting KES' rights to the margin provided by the Client.
- 4.5 For so long as the Client owes monies or obligations (of whatsoever nature and howsoever arising) to KES, the Client shall only withdraw margin from KES with KES' consent. KES may at any time withhold any margin of the Client pending full settlement of all such monies or obligation of the Client.
- 4.6 In addition and without prejudice to any right which KES may have under law or otherwise, KES may in its sole and absolute discretion at any time and from time to time without notice to the Client apply, realise and/or set off any margin standing to the credit of the Client (whether on any Account held with KES, or otherwise) against all monies and/or other liabilities of the Client due, owing or incurred on any Account, whether held with KES, or otherwise, in any manner and whether actual or contingent, joint or several.
- 4.7 All margin shall be held by KES, notwithstanding any provision or instructions to the contrary, as continuing security and shall be subject to a general lien and right of set off in favour of KES for any and all of the Client's liabilities to KES, whether contingent or actual, under this Part IV of these T&C or otherwise, and KES may realise any of the margin of the Client as provided for under this Part IV of these T&C.
- 4.8 If the Client fails to provide KES with the necessary margins following a margin call by the end of the period specified by KES for the provision of the margin, and/or KES has reason to believe that the margin will not be forthcoming within such period, KES:
- (a) may refuse to accept orders for new trades from the Client. However, orders which would result in the margins required from the Client being reduced may be accepted by KES at its sole and absolute discretion; and
  - (b) may take such actions as KES deems appropriate, without giving notice to the Client, to reduce its exposure to the Client. Such actions may include liquidating all or part of the Client's collateral deposited with KES, or taking action to close out all or part of the Client's positions.

Without prejudice to the foregoing, any failure by the Client to provide KES with the necessary margins following a margin call by the end of the period specified by KES for the provision of the margin shall be a Default by the Client and KES may exercise any of the rights set out in Clause 2.8 of Part I of these T&C. The Client acknowledges that the Client shall be solely responsible for monitoring the Client's outstanding margins and positions, and the Client agrees that KES shall not be liable for any losses resulting from any exercise by KES of its rights under this Clause.

- 4.9 If KES is unable to contact the Client to call for margins, a written notice sent to the Client at the most recent address furnished by the Client to KES shall be deemed sufficient.
- 4.10 For the avoidance of doubt, the Client shall comply with all margin requirements imposed by KES even if the Client has entered into an arrangement to meet its delivery obligations in connection with Marginable Futures Contracts.

## 5. CORPORATE ACTIONS

- 5.1 Where the underlying security of the Marginable Futures Contract is the subject matter of any corporate action or such other action which the SGX-ST considers relevant, the SGX-ST may adjustments to the Marginable Futures Contract, including the following:
- (a) bring forward the last trading day of the Marginable Futures Contract;



- (b) amend the quantity of underlying security to be delivered and the price of the Marginable Futures Contract (for example, an issue of bonus shares, stock split);
- (c) amend the price of the Marginable Futures Contract (for example, a special cash dividend);
- (d) amend the underlying Securities to be delivered (for example, if the underlying is subject to a merger and acquisition); and
- (e) where applicable, amend the contract on such other terms as the relevant Marginable Futures Contract specifications provide.

5.2 Any such adjustment made by the SGX-ST shall be binding on the Client.

## **6. LIQUIDATION OF POSITIONS**

6.1 The Client shall, before the Last Trading Day, give KES instructions to close out each open position in a Marginable Futures Contract.

6.2 Notwithstanding Clause 6.1, KES may at its sole and absolute discretion at any time close out any or all open positions of the Client in any Marginable Futures Contract, as provided below in Clause 7.1. In addition, the Client acknowledges that KES will generally exercise such discretion to close out a Marginable Futures Contract when it is nearing its Last Trading Day in order to avoid the need to physically settle the Marginable Futures Contracts, even if the Client has not given instructions to close out. In the event that any Marginable Futures Contract is not closed out before maturity, KES may make or receive delivery of the underlying security of the Marginable Futures Contract on the Client's behalf upon such terms and by such methods which KES deems fit.

6.3 If the Client fails to deliver to KES by the stipulated delivery date any security which the Client is obliged to sell under a Marginable Futures Contract, KES may, in its sole and absolute discretion, without giving notice to the Client and at the Client's sole expense and risk, take such measures in such manner as it deems fit in relation to the Account (including but not limited to liquidating any of the positions in the Account by entering into an off-setting transaction or in any other manner as KES deems fit, taking or making delivery of Securities under any of the positions in the Account, hedge and/or enter into off-setting or other transactions in order to establish a spread or straddle to protect against any risk of loss in respect of such positions, sell all or any part of the margin and/or cancel or complete any open orders or other commitments made on behalf of the Client for the purchase or sale of any Securities, borrow or purchase or otherwise procure any such Securities being the subject matter of any sale and make delivery under such sale on terms and conditions deemed appropriate by KES). The Client shall indemnify KES against any losses, damages, costs, fines, expenses, fees or charges which KES may sustain in taking or omitting to take any measure under this Clause 6.3 and shall indemnify KES for such losses, damages, costs, fines, expenses, fees or charges upon KES' demand. For the avoidance of doubt, KES shall not be responsible to the Client for any losses, damages, costs, fines, expenses, fees or charges which the Client may sustain as result of KES taking or omitting to take any measure under this Clause 6.3.

## **7. KES' RIGHTS AND REMEDIES**

7.1 KES may, in its sole and absolute discretion, at any time and from time to time if it deems necessary for the protection of its interests, without giving notice to the Client and at the Client's sole expense and risk, take such measures in such manner as it deems fit in relation to the Account (including but not limited to liquidating any of the positions in the Account by entering into an off-setting transaction or in any other manner as KES deems fit, taking or making delivery of Securities under any of the positions in the Account, hedge and/or enter into off-setting or other transactions in order to establish a spread or straddle to protect against any risk of loss in respect of such positions, sell all or any part of the margin and/or cancel or complete any open orders or other commitments made on behalf of the Client for the purchase or sale of any Securities, borrow or purchase or otherwise procure any such Securities being the subject matter of any sale and make delivery under such sale on terms and conditions deemed appropriate by KES). In exercising any of its rights under this Clause, KES shall not be obliged to furnish any reason to the Client.

7.2 Without prejudice to the generality of Clause 7.1, KES may, in the event of a Default (as set out under Clause 2.7 of Part I of these T&C), and in addition to its rights and remedies under Clause 2.8 of Part I of these T&C, exercise such other rights and remedies as provided under this Clause.

## **8. FEES AND PAYMENTS**

8.1 The Client shall promptly pay all of KES' fees, commissions and/or other charges at such rates and in such manner as KES may in its sole and absolute impose and stipulate from time to time with respect to the execution, performance and/or settlement of any transaction or otherwise for the maintenance of any Account(s) or the provision of any service or facility to the Client in connection with any Account(s).

8.2 The Client shall make payment to KES' order promptly of any outstanding sum on the due date of the relevant transaction, or upon demand by KES as provided for in this Part IV of these T&C regardless of any right of equity, set-off or counterclaim which the Client may have against KES.

- 8.3 KES shall be entitled to charge interest on any sum or payment due to KES from the Client at such rate and calculated and/or compounded in such manner as KES may, in its sole and absolute discretion, impose and determine from time to time and to debit any Account(s) in respect of the interest due.
- 8.4 All payments to KES shall be in the currency in which they are due (unless otherwise notified by KES), in free and clear funds and free of deductions or withholdings. If the Client is obliged by law to make such deduction, the Client shall pay to KES such greater amount which after deduction shall ensure that the net amount actually received by KES will equal the amount which would have been received by KES had no such deduction been required. If any payment is not made to KES as and when due, the Client will fully indemnify KES from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever (including costs of enforcement) which may be suffered by, imposed on, incurred by or asserted against KES (or any person connected KES) as a direct or indirect result of such failure.
- 8.5 Any taxes, duties, disbursements, costs and/or other expenses incurred by KES in connection with the Account(s) or otherwise in connection with the Client shall be reimbursed by the Client.
- 8.6 All interest, fees, commissions and other charges of KES are exclusive of any goods and services tax or any other applicable sales tax which shall be borne by and separately charged to the Client.
- 8.7 Unless KES otherwise agrees with the Client, each obligation of KES to make any payment to the Client under these T&C is subject to the condition precedent that there is no Default subsisting.
- 8.8 If for any reason KES cannot effect payment or repayment to the Client in a particular currency in which payment or repayment is due, KES may effect payment or repayment in the equivalent of any other currency selected by KES based on such reasonable rates of exchange as KES may determine in its sole and absolute.

## **9. LIMITATION OF LIABILITY**

- 9.1 The Client agrees that in entering into each Marginable Futures Contract the Client will rely only upon its judgment and, to the extent permitted by law, in the absence of gross negligence, fraud or willful default by KES or any of its employees, agents and representatives, in relation to KES' activities as a capital markets services licence holder, KES shall have no responsibility or liability of any kind in respect of any advice or recommendation given or views expressed to the Client on such matters, whether or not the advice or recommendation is given or views are expressed at their volition or upon the Client's request, nor will KES be liable in respect of any loss incurred by the Client in connection with any Marginable Futures Contract.
- 9.2 In the absence of gross negligence, fraud or bad faith by KES or any of its employees, agents and representatives, KES shall have no responsibility or liability of any kind for any loss or damage whatsoever incurred by the Client as a result of any delay by KES in transmitting or failure to transmit funds or to timely execute orders placed with it or otherwise to perform its obligations hereunder.
- 9.3 Subject to all other provisions of this Part IV of these T&C (and the payment by the Client to KES of all amounts due and payable by the Client to KES), KES is liable to the Client to pay the Client its realised profits from closed Marginable Futures Contracts (if any) which are still available after deduction by KES of all amounts due and payable by the Client to KES. Such profits shall be payable after the relevant Marginable Futures Contracts have been settled between CDP and KES after the Last Trading Day, provided that KES may at its sole and absolute discretion pay profits to the Client earlier than such settlement date. The foregoing shall constitute KES' entire liability to the Client. Subject as aforesaid, KES shall in no circumstances be liable to the Client for any consequential special or indirect losses, loss of profits, loss of opportunity (including in relation to subsequent market movements) or other consequential costs, expenses or damages the Client suffers in relation to this Part IV of these T&C, arising from any inaccuracy or mistake in any information given to the Client or in relation to any Marginable Futures Contracts, alleged Marginable Futures Contracts or other transactions the Client makes or refrains from making with KES or any other person, or in relation to the exercise by KES of any of its rights hereunder or at law and even if KES had been advised of the possibility of the Client incurring the same or the same were reasonably foreseeable.
- 9.4 If at any time the Client is unable to communicate with KES (including without limitation because, for example, all the lines of KES are busy or there is a breakdown in communication leading to a cessation of connection between KES and the Client (whether over the telephone or any other communication) or, due to an event beyond KES' reasonable control, KES is unable to communicate with the Client, KES shall not be responsible or liable to the Client for any loss, damage, cost or expense the Client suffers in consequence of the same, including without limitation because the Client is unable to enter into or terminate a Marginable Futures Contract or give any other instruction. This includes any temporary or permanent loss of telephone connection.
- 9.5 The exclusions and limitations of liability contained in this Clause shall also apply to any loss or damage referred to therein arising by reason of the negligence of KES, provided however that nothing in this Part IV of these T&C shall limit or exclude any liability for death or injury arising by reason of KES' negligence.

## Part V. TERMS AND CONDITIONS FOR INTERNET TRADING

This Part V of these T&C shall govern all trades in Securities or other products entered into between KES and the Client through KE Trade (as hereinafter defined).

### 1. INTERNET TRADING SYSTEM

1.1 The Client agrees that for trading in Securities or other products through the Internet, the Client shall access and use the system provided by KES and/or any other relevant party, at the website designated by KES (hereinafter called "**KE Trade**"). The Client shall be issued a unique User Name and unique Password by KES or such other form of approved user identification (the "**ID**") to provide access and use by the Client to KE Trade for the purpose of trading in Securities. The Client shall be the sole authorised and exclusive person using the ID and shall be **fully responsible for the use protection and confidentiality of the ID as well as all transactions executed through the ID**. KES shall not be responsible for any loss, damage, cost and expense in respect of or in connection with the Client's failure to maintain the confidentiality of the ID or arising from any unauthorised access of KE Trade. Any use of KE Trade by the Client shall be in accordance with and subject to these T&C. KES reserves the right to amend, modify, suspend or terminate the operation of KE Trade at any time for any reason whatsoever and in any manner it deems fit, without giving any prior notice thereof to the Client and without being responsible in any way for any loss or damage whatsoever resulting therefrom.

### 2. ACCESS AND USE

2.1 The Client agrees that for the purpose of trading in Securities through KE Trade, the Client (if so required by KES) shall **maintain at all times a deposit** (which shall not bear interest) with KES, the quantum of which shall be determined by KES from time to time at KES' discretion. Without prejudice to KES' other rights and powers, KES shall be entitled to apply the said deposit or any part thereof towards payment of any indebtedness owing by the Client to KES. The trading in Securities through KE Trade shall be subject to:

- (a) such conditions requirements trading limits or other restrictions as may be imposed by KES from time to time and whether or not prior notification thereof has been given to the Client;
- (b) rules and regulations of the Singapore Exchange Securities Trading Ltd ("**SGX-ST**") or any other relevant securities exchange in Singapore or elsewhere for the time being in force and as may be modified or amended from time to time (including but not limited to the Rules and Bye-laws of the SGX-ST); and
- (c) these T&C (as may be modified or amended from time to time).

2.2 **KES reserves the right to suspend or terminate the Client's access and use of KE Trade** and/or impose such conditions or directions in relation thereto from time to time as it deems fit without giving any reasons or prior notice to the Client and without being responsible in any way for any loss or damage whatsoever resulting therefrom. The Client accepts that access and use of KE Trade will not necessarily be free from faults, errors, delays or defects in KE Trade's applications systems design and engineering.

2.3 The Client shall use KE Trade strictly in accordance with these T&C, and **shall not in any way permit, enable or cause any person (including the Client) to:-**

- (a) gain unauthorised access or use of KE Trade;
- (b) make any modifications, adjustments or alterations to any information or services available on KE Trade;
- (c) tamper, restrict or otherwise interfere with any part, function or operation of KE Trade;
- (d) use the ID or any equipment/software in a manner inconsistent with these T&C or detrimental to the functions of KE Trade;
- (e) access, use, store, modify or redistribute in any manner any information material or data obtained from KE Trade whether through any other system equipment or software linked to the Client's computer or otherwise; or
- (f) cause any failure, interruption, error, defect in, misuse of, impairment or corruption any part of KE Trade or any information or services provided therein;

and the Client shall be liable for and fully indemnify KES from and against any and all actions, charges, losses, damages, demands, liability, claims, costs (including legal costs on a full indemnity basis), expenses and/or consequences in respect of or in connection with any breach of the foregoing.

2.4 If in the sole opinion of KES, any failure, interruption, error, defect in, misuse of, impairment or corruption of KE Trade is or has been or is likely to be caused by any equipment or software of the Client, KES may:

- (a) check and inspect the Client's equipment and software, and
- (b) require the Client to disconnect, cease the use of, upgrade and/or modify the same at the Client's own cost.

- 2.5 The Client recognises that the use of KE Trade may involve the electronic transmission of information that may be considered personal financial information, including but not limited to the identity, the number of shares traded and the net price for such shares. The Client hereby consents to the transmission by electronic means of such information through KE Trade; such consent shall be effective at all times that the Client accesses and/or uses KE Trade.

### 3. INSTRUCTIONS AND VERIFICATION

- 3.1 The Client is fully responsible for any **instructions received through KE Trade by KES under the Client's ID and the instructions shall be deemed to have been given by the Client** notwithstanding that it may have been given by a third party with or without the Client's authority. KES shall be under no obligation to effect any such instructions and is entitled to refuse to carry out the same without giving a reason for such refusal. KES shall not be responsible for any order not being executed through KE Trade for whatever reason. The Client accepts that quoted prices may change prior to the trade's execution and **not all orders will be executed in chronological sequence with the orders being placed**. Any instructions or orders given by the Client shall be deemed to be given or made at the time and in the format received by KES (regardless of the circumstances prevailing at the relevant time and without further enquiry by KE Trade as to the genuity of instructions and/or the authority or identity of the person giving the same), and may be carried out by KES without further verification from the Client. **Any acknowledgment or notification given by KES on KE Trade shall be deemed to have been received by the Client and the Client shall be bound thereby notwithstanding that such acknowledgment or notification may not have actually been received by the Client for any reason whatsoever**. If any instruction received by KES is, or is regarded by KES in good faith to be, ambiguous, contradictory or conflicting, KES may either disregard such instruction (in whole or in part) or carry out or execute such instruction (in whole or in part) in accordance to KES's interpretation of such instruction in good faith without further reference or consultation with the Client.

### 4. ORDER ROUTING AND EXECUTION

- 4.1 The Client may transmit orders to KES through the use of KE Trade and in accordance with all relevant procedures.
- 4.2 Without prejudice to Clause 3, the Client shall be fully responsible and liable for any orders placed with KES, and transactions entered into, through the use of KE Trade accessed using the ID. In particular (but without limitation) the Client shall be bound by such orders notwithstanding any typographical or keystroke errors made when such orders are placed, any corruption or distortion of orders which may occur when such orders are transmitted through KE Trade, or that such orders may exceed any position or transaction limits or restrictions (whether imposed by the relevant exchange, KES or otherwise). KES shall, notwithstanding that any of such orders may be deemed as being that of KES vis-à-vis any relevant exchange, not be obliged to review, detect, correct or stop any of such orders in any way.
- 4.3 The Client acknowledges that the placement of an order through KE Trade, including a market order, does not guarantee receipt, acceptance or execution of the order.
- 4.4 Without prejudice to Clause 3, the cancellation or modification of an order pursuant to the Client's request is not guaranteed. The order will be cancelled or modified only if the Client's request for cancellation or modification is duly received and the order is successfully cancelled or modified before it is executed.
- 4.5 The Client accepts that quoted prices may change prior to the trade's execution and not all orders will be executed in chronological sequence with the orders being placed. Any instructions or orders given by the Client shall be deemed to be given or made at the time and in the format received by KES. The Client shall not be entitled to presume an order as having been executed, cancelled or modified until it has received a notification from KES confirming the same. Any such notification shall be deemed to have been received by the Client when the same is issued by KES and the Client shall be bound thereby.

### 5. INFORMATION PROVIDERS AND INTELLECTUAL PROPERTY

- 5.1 The Client **shall on demand pay such fees and other costs as may be prescribed by KES or the Information Provider ("IP")** for subscribing to or use of any information data or other services provided on any IP's website through KE Trade. KES shall not be responsible in any way for any act **omission default breach or neglect of the IP**, nor for the content accuracy timeliness or completeness of any information data or other services provided by the IP through KE Trade.
- 5.2 KES shall **not be responsible in the event the Client is unable to access or use any information data** or other services of the IP on KE Trade, or if the same is in any manner delayed suspended terminated corrupted or faulty.
- 5.3 The Client may only download and print the information or data or other services provided by KES or the IP (the "**Content**") for the Client's personal use provided that the Client also retains unaltered all copyright and other proprietary notices contained in the Content. The Client **shall not reproduce, retransmit, disseminate**, sell distribute publish broadcast circulate or commercially exploit the Content in any manner without the consent of KES or the IP as the case may be, or use the same for any unlawful or unauthorised purpose. The Client shall fully indemnify KES against all loss, damage, cost and expense in respect of or in connection with any breach of the foregoing. The Client agrees to comply with any request by KES or the IP to protect their respective copyrights, other intellectual property rights or moral rights, whether statutory or otherwise howsoever arising in the Content.

- 5.4 The trade and service marks of KES displayed on KE Trade are the sole and exclusive property of KES and/or other relevant parties, including any IP. No right or licence is given for any reproduction or use of any such trade and service marks.
- 5.5 The information provided on KE Trade **shall not constitute professional advice** from KES nor should it be relied upon as such in relation to any investment decision trading activities of or orders placed by the Client who shall at all times rely on his own assessment and judgment in respect of any investment decision or proposed transaction. KES makes no warranty or representation, express or implied, as to the information on KE Trade, or as to its content accuracy completeness timeliness or otherwise. The availability of information on KE Trade should not be taken in any way as an inducement to trade or a solicitation for orders.

## 6. INDEMNITY

- 6.1 For the avoidance of doubt, KES shall not be liable in any way, and the Client agrees to indemnify and hold harmless KES from and against any and all claims, demands, actions, losses, damages, liability, or costs, charges, counsel fees, and expenses of any nature (“**Losses**”) arising from or occasioned by or in relation to (a) any inaccuracy, error, or delay in, or omission of, (i) any such data, information, or message or (ii) the transmission or delivery of any such data, information, or message, or (b) any Losses arising from or occasioned by or in relation to (i) any such inaccuracy, error, delay, or omission, (ii) the non-performance of, or (iii) interruption of any such data, information, or message, due either to any negligent act or omission by any disseminating party or to any “force majeure” event (i.e. events beyond the reasonable control of any disseminating party including but not limited to floods, extraordinary weather conditions, earthquakes, or other acts of God, fire, war, acts of terrorism, insurrections, riots, labor disputes, accidents, actions of government, communications, power failures, the malfunction of any equipment or software) or any other cause beyond the reasonable control of any disseminating party.

## EXCLUSION OF LIABILITY

- 7.1 Without prejudice to the generality of the other Clauses in these T&C and in addition to the same, **KES shall not be liable to the Client or to any third party for any loss damage liability claim cost or** expense whatsoever and howsoever caused or arising from the following (including any act default or omission of any of KES’s or IP’s servants, agents or independent contractors):-
- (a) the **reliance or use of the information** or trading and other services provided through KE Trade;
  - (b) any **interruption, interference**, delay, suspension, malfunction, breakdown, operator error, bugs, virus or loss of use of any of the services provided through KE Trade;
  - (c) **any failure of any computer hardware, application software** or other software utilized in relation to the provision of the services on KE Trade whether of KES, SGX-ST, the Central Depository (Pte) Limited, or any IP;
  - (d) **any cause over which KES does not have control including** but not limited to any government restriction, exchange ruling, suspension of trading, war, strike, industrial action, civil commotion, the failure of any electronic or mechanical equipment, Internet service provider, telephone or other communication systems lines or devices, public utility systems, unauthorised access or theft (including theft of passwords, codes or log-in sequences);
  - (e) **any direct indirect consequential or incidental loss or damage of** whatever nature and howsoever arising from or in connection with any delay failure neglect or omission to carry out or execute any orders or **instructions given by the Client through KE Trade notwithstanding that the orders or instructions were received by KE Trade**;
  - (f) any inaccuracy, error, delay in or omission of any information or transmission or delivery of information;
  - (g) any delay, failure, error, omission which may ensue from the maintenance of the KE Trade system infrastructure from time to time; and
  - (h) the failure of any electronic protective measures, including filters and anti-virus software, whether for the protection of the integrity of the KE Trade system or the filtering out of inappropriate orders for execution or howsoever otherwise.

## 8. SERVICES PROVIDED BY THIRD PARTIES

- 8.1 KES may from time to time provide Internet hyperlinks in KE Trade to Internet webpages or services provided by third parties. KES may also from time to time permit third parties to make available their services to the Client through KE Trade. The Client hereby acknowledges that such webpages or services provided by third parties are beyond the control of KES and that KES neither endorses nor recommends to the Client any such webpages or services and accordingly, the Client agrees that any access or use of such websites or services by the Client shall be wholly at the Client’s own risk.

## 9. EQUIPMENT REQUIREMENTS

- 9.1 If new or different versions of the web browser or other software necessary for the operation of KE Trade are available, KES reserves the right not to support any prior version of the web browser or other software. If the Client fails to upgrade the web

browser, obtain a supported web browser or to use a supported version of any other software as required by the KES, KES may reject instructions sent by the Client.

- 9.2 KES reserves the right to change the type or versions or specifications of any hardware or equipment that the Client may be required to use for the use of KE Trade, and in the event the Client fails to obtain the necessary hardware or equipment to use KE Trade, KES may reject instructions sent by the Client.

## **10. TERMINATION**

- 10.1 The provision of KE Trade to the Client may be terminated by KES in its sole and absolute discretion without giving any reason at any time and without giving prior notice to the Client and without incurring any liability whatsoever. Without prejudice to the generality of the foregoing, KES shall be entitled (but shall not be obliged) to terminate the provision of KE Trade based on any grounds or reasons which will justify the termination or closing of any of the Client's accounts with KES.
- 10.2 For the avoidance of doubt, the Client's obligation to pay all fees, costs, charges, expenses and amounts accrued up to (and including) the date of termination shall survive the termination of the use of KE Trade.

## **11. DISCLOSURE OF INFORMATION**

- 11.1 The Client agrees that KES may without incurring any liability whatsoever, divulge or reveal to third parties any information whatsoever regarding the Client or any of the Client's account(s) maintained with KES for such purposes as KES may deem fit, including:
- (a) in order to link any of the Client's accounts maintained with KES;
  - (b) where KES has entered into an agreement with another party, whether in Singapore or otherwise, to provide any service (including services available via KE Trade). In this case, KES will provide that party with information about the Client's accounts, transactions, transfers or bill payments, and the Client's communications with KES in order to carry out instructions;
  - (c) where it is necessary for completing transactions, transfers or bill payments or otherwise carrying out instructions;
  - (d) in order to market or promote any services or products of KES;
  - (e) in order to verify the existence and conditions of an account for a third party, such as a credit bureau, a payee, or any holder of a check issued by the Client or on the Client's behalf through KE Trade; or
  - (f) in order to comply with laws, government agency rules or orders, court orders, subpoenas or other legal process or in order to give information to any government agency or official having legal authority to request such information.
- 11.2 For the avoidance of doubt, the Client agrees that KES shall not be liable for any loss or damage that the Client may incur as a result of the negligence, act or omission of any third party referred to in Clause 9.1 above.

## **12. NOTIFICATION BY CLIENT**

- 12.1 The Client shall promptly notify KES and in any event within forty-eight (48) hours:-
- (a) of any failure to receive an appropriate response that an instruction initiated by the Client through KE Trade has been received and/or executed;
  - (b) of any receipt of a confirmation of an instruction that the Client did not place or an inaccurate or conflicting report, account statement or information relating to the Client's account;
  - (c) of any discrepancy between any information or report produced or made available to the Client by KE Trade on any medium (including but not limited to electronic means), or in the Client's portfolio, or an information source, and any other such report or confirmation of a trade or order;
  - (d) if there is a discrepancy in the account balance, security positions or order status reported to the Client through KE Trade;
  - (e) if there is any other type of discrepancy or suspicious or unexplained occurrence relating to the Client's KE Trade account.

## **13. FEES AND EXPENSES**

- 13.1 Without prejudice to Clause 5.1 above, the Client shall pay KES such subscription fees and other costs, charges, expenses and interest for the use of KE Trade at such rate as may be determined by KES from time to time and notified to the Client. KES further reserves the right to recover from the Client any additional, special or out-of-pocket expenses incurred on the Client's behalf pursuant to any instructions.

- 13.2 All other agreements between the Client and KES for the payment of fees, costs, charges, expenses and interest shall continue to be in force and shall be in addition to and shall not be affected by this Part V of these T&C for the payment of fees, costs, charges, expenses and interest in connection with the use of KE Trade.

## Part VI. TERMS AND CONDITIONS FOR LEVERAGED FOREIGN EXCHANGE TRADING

This Part VI of these T&C shall govern all Leveraged Foreign Exchange Trading (as hereinafter defined) entered into by the Client through KES. In the event of any conflict between this Part VI of these T&C and Part I of these T&C, this Part VI of these T&C shall prevail.

**Please read this Part VI of these T&C carefully as they contain important information concerning the Client's and KES' rights and obligations in relation to the services KES agrees to provide the Client. The Client should inform KES as soon as possible if there is anything which the Client does not understand.**

### INTRODUCTION

This Part VI of these T&C, together with any appendices and/or schedules and accompanying documents, as amended from time to time ("Part VI of these T&C") apply to the Client.

This Part VI of these T&C set out the terms of the contract between KES and the Client. This Part VI of these T&C are legally binding and shall take effect and be deemed accepted when the Client acknowledges and signs on the Account Application Form.

KES will deal with the Client on an execution only basis at all times. Please note that KES shall not provide the Client with any advice on the merits of the Client entering into this Part VI of these T&C or any Transaction. KES shall not provide the Client with any tax advice on the same. The Client should seek independent advice before entering this Part VI of these T&C and/or any Transaction.

This Part VI of these T&C sets out important aspects of the relationship between KES and the Client.

The Client is asked to confirm their acceptance of these terms and conditions by signing and returning the signature page of **Section 6** (for new clients) / **Section 4** (for existing clients) of the respective Account Application Forms.

### 1. GENERAL INFORMATION

- 1.1 **KES' capacity:** KES will deal with the Client as principal unless KES informs the Client that KES is dealing with the Client as agent generally or with respect to any Transaction or class of Transactions and every order which KES may take is accepted and executed on the basis that KES acts on its own account as principal and not as the Client's agent.
- 1.2 **Client's capacity:** The Client will enter into Transactions as principal unless otherwise agreed in writing by KES. The Client acknowledges and agrees that in no event will the Client utilise the tradable prices ("Prices") in any manner not expressly permitted hereunder. The Client also acknowledges and agrees that the Client will not use the Prices in any manner that would cause any party to be party to any unlawful act or transaction.
- 1.3 **Language of Communications:** The Client shall communicate with KES in English. All KES standard documents will be available in English. If a document is translated into another language this will be for information purposes only and the English version will prevail.
- 1.4 **Commencement:** This Part VI of these T&C supersedes any previous agreement between KES and the Client on the same subject matter and takes effect when the Client signifies the Client's acceptance of this Part VI of these T&C by signing and returning the signature page of Section 6 or Section 4 (as the case may be) of Account Application Forms. By completing and signing Section 6 or Section 4 (as the case may be) of Account Application Forms, the Client confirms that the Client has read, understood and agrees to be bound by Part VI of these T&C with KES.
- 1.5 **Amendments:** This Part VI of these T&C may be amended from time to time as set out in Clause 28.1. Any changes to this Part VI of these T&C will not apply to Transactions entered into prior to the date on which the changes become effective unless specifically agreed otherwise. Any amendments to this Part VI of these T&C shall be deemed accepted if and when the Client places an order with KES after the date on which the changes become effective.
- 1.6 The Client authorizes, consents and agrees to the disclosure by KES, and/or any Officer or agent of KES at any time and from time to time of any or all information in respect of any particulars or Transactions of the Client or in respect of any Account to any person in KES, any Relevant Body, or any other person which KES or any Officer considers to be appropriate for the purpose or to be in the interest of KES. The consent and authority granted by this Clause shall constitute consent and authority for the purposes of the provisions of any Applicable Regulations.
- 1.7 The Client hereby ratifies all Transactions effected by KES on its behalf prior to the date of this Part VI of these T&C and agrees that such Transactions shall also be governed by this Part VI of these T&C.

### 2. WARNINGS

- 2.1 Margined trading carries a high risk. Please note:
  - (a) the Client may sustain a total loss of initial margin funds and any additional funds deposited with KES to maintain the Client's position, in addition to any liability detailed in Clause 27.7;
  - (b) the Client shall be responsible for debit balances directly resulting from trading activity;
  - (c) if the market moves against the Client's position or margin levels are increased, the Client may be called upon to pay substantial additional funds on short notice to maintain the Client's position;
  - (d) if the Client fails to comply with a request for additional funds within the time prescribed, KES in its sole discretion



may liquidate any or all of the Client's positions at a loss;

- (e) whether the Client makes a profit or a loss will depend on fluctuations in the underlying security or commodity which are outside KES' control; and
- (f) the Client transfers full title in and/or ownership of a portion or all of the money the Client deposits with KES and such money shall be transferred to KES to the extent it represents an amount necessary to secure the Client's open positions or cover the Client's actual or future contingent or prospective obligations (which will be calculated daily in KES' sole discretion based on the Client's daily open positions and trading and which may be greater than the Margin required to maintain the Client's open positions, as market conditions may dictate) such that the Client will not have a proprietary claim over that portion or any of the Client's money deposited with KES and KES can deal with it on its own right. When money received by KES from the Client is no longer required to secure the Client's open positions or cover the Client's actual or future contingent or prospective obligations to KES, full title and ownership of the money will be transferred back to the Client.

2.2 The Client acknowledges, recognizes and understands the risks associated with Leveraged Foreign Exchange Trading and has read, understood and accepted the terms of the Risk Disclosure Statement.

2.3 The Client must make an independent decision as to whether or not to enter into Margined Transactions with KES on this Part VI of these T&C without prejudice to Clauses 1.47 to 1.50 and Clause 2.3 of Part I of these T&C, the Client agrees and acknowledges that:

- (a) KES does not provide advice, KES will not advise on the merits or otherwise of the Client's Margined Transactions;
- (b) the decision to place a Margined Transaction is the Client's alone. The Client (and not KES) is responsible for the effect that a Margined Transaction might have on any open positions;
- (c) KES deals with the Client on an execution only basis at all times;
- (d) KES does not execute orders on the Client's behalf. KES simply provides a quote for a particular product and then deals as principal, and therefore does not offer best execution, as detailed in Clause 18.8 of this Part VI of these T&C.

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

### 3. INTERPRETATION

3.1 In this Part VI of these T&C, the following words and phrases have the following meanings:

Account means an account of the Client opened with KES for purposes of entering into Forex Contract(s) with KES;

Account Application Form means the applications forms supplied by KES to open the Client's Account;

Affiliate means any company or partnership controlled by, or controlling, or in common control with another person. A person, company or partnership shall be deemed to control another person, company or partnership if the former person, company or partnership possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the other person, company or partnership whether through the ownership of voting securities or partnership interests, representation on its board of directors or similar governing body, by contract or otherwise;

Applicable Regulations means all relevant or applicable statutes, laws, rules, regulations, directives and circulars (whether of governmental bodies or authorities or self-regulatory organisations in relation to which KES or any person within KES is a member of, or otherwise);

Business Day means a day (other than a Saturday or Sunday) on which: in relation to a date for the payment of any sum denominated in

(a) any Currency (other than Euro), banks generally are open for business in the principal financial centre of the country of such Currency; or

(b) Euros, settlement of payments denominated in Euros is generally possible in London or any other financial centre in Europe selected by us; and

in relation to a date for the delivery of any property, property of such type is capable of being delivered in satisfaction of obligations incurred in the market in which the obligation to in relation to a date for the delivery of any property, property of such type is capable of being delivered in satisfaction of obligations incurred in the market in which the obligation to deliver such first property was incurred; and for all other purposes, is not a bank holiday or public holiday in London;

Clearing House	(in relation to a Market) includes a body corporate, an association or organization, whether distinct from or forming part of a Market, that clears, settles and/or guarantees contracts and/or options whether on a net or gross basis and/or makes adjustments to the contractual obligations arising out of such contracts and/or options;
Closing Date	means the date on which a Margined Transaction is closed in accordance with this Part VI of these T&C;
Closing Notice	means a notice given by the Client or KES to close all or any part of any Margined Transaction;
Closing Price	means with respect to any time in which an open Transaction is to be closed, the exchange rate at such time at which the Client can (a) buy if the Forex Contract the Client wishes to close was a sell and (b) sell if the Forex Contract the Client wishes to close was a buy;
Commission	means the commission, charges or other remuneration for the conduct of the business by KES as disclosed and as notified to the Client from time to time;
Credit Support Provider	means any person who has entered into any guarantee, hypothecation agreement, margin or security agreement in KES' favour in respect of the Client's obligations under this Part VI of these T&C;
Currency	means money denominated in the lawful currency of any jurisdiction;
Event of Default	means any of the events of default as listed in paragraphs (a) to (l) of Clause 23.1 of this Part VI of these T&C;
Exchange	means, in relation to a Forex Contract any financial market on which the Forex Contract is able to be traded on;
Exceptional Market Event	means the suspension, closure, liquidation, imposition of limits, special or unusual terms, excessive movement, volatility or loss of liquidity in any relevant market for the relevant Currency or Currencies, or where KES reasonably anticipates any of the above circumstances are about to occur;
Expiry Date	means the expiry date and time of a Margined Transaction as determined by KES;
Forex Contract	means any over the counter contract which is a purchase or sale of foreign currency entered into between the Client and KES, excluding forward contracts;
Initial Margin	has the meaning given in Clause 16.1 of this Part VI of these T&C;
Interest Rate	means SIBOR (the Singapore Interbank Offered Rate) plus a markup not to exceed 4%, or such other benchmark interest rate as may be applicable and as selected by KES depending upon the currency of a Forex Contract, plus a mark up not to exceed 4%;
Investment	means a Forex Contract available for trade on the KE Forex Online Facility;
KE Forex Online Facility	means the online leveraged foreign exchange trading platform of KES;
Leveraged Foreign Exchange Trading	means (a) foreign exchange trading on a margin basis whereby a person undertakes, as determined by the terms and conditions of the foreign exchange trading contract or arrangement <ul style="list-style-type: none"> <li>(i) to make an adjustment between himself and another person according to whether a currency is worth more or less, as the case may be, in relation to another currency, or according to whether a currency index rises or falls in value, as the case may be, in relation to an agreed value;</li> <li>(ii) to pay an amount of money determined or to be determined by reference to the change in value of a currency in relation to another currency, or by reference to the change in value of a currency index in relation to an agreed value; or</li> <li>(iii) to deliver to another person at an agreed future time an agreed amount of currency at an agreed price;</li> </ul> <p>(b) the provision by any person referred to in paragraph (a) of any advance, credit facility or loan, directly or indirectly, to facilitate an act of the description referred to in that paragraph; or</p>

- (c) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into, an arrangement with another person (whether on a discretionary basis or otherwise) to enter into any contract to facilitate an act of the description mentioned in paragraph (a) or (b),

but does not include any act performed for or in connection with a contract or an arrangement -

- (i) arranged by a bank that is licensed under the Banking Act (Cap. 19) or a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186);

- (ii) by any person belonging to such class of persons, or carrying on such class or description of business, as may be prescribed by the MAS; or

- (iii) which is a futures contract,

or such a proposed contract or arrangement;

Loss	means any and all loss, damage, costs, charges, and/or expenses of whatsoever nature and howsoever arising including legal fees on a full indemnity basis, cost of funding and loss or cost incurred as a result of the terminating, liquidating or re-establishing of any hedge or related trading position;
Margin	has the meaning set out in Clause 16.3 of this Part VI of these T&C;
Margin Call Warnings	means a demand for such sums by way of Margin as KES may reasonably require for the purpose of protecting itself against loss or risk of loss on present, future or contemplated Transactions under this Part VI of these T&C;
Margined Transaction	means any Forex Contract;
Market	means a market, an exchange or any other place at which Forex Contracts or contracts for, or in relation to currency trading for or in relation to commodities are regularly made, whether within Singapore or otherwise, and including any entity that provides or proposes to provide the physical facilities necessary for executing the Transactions;
MAS	means the Monetary Authority of Singapore or any successor organisation or authority for the time being responsible for the regulation of financial products in Singapore;
Officer	means any officer or employee of KES;
Order	means an instruction to purchase or sell a Forex Contract at a price quoted by KES as appropriate or which KES or an Officer reasonably believes to be the authorization, request, instruction or order of the Client and includes any authorization, request, instruction or order to revoke, ignore or vary any previous authorization, request, instruction or order;
Relevant Bodies	means any Market, Clearing House and/or governmental body or authority or self-regulatory organization in relation to which KES or any person in KES is a member or otherwise;
Relevant Currency	shall have the meaning ascribed to it in Clause 8.4;
Rules	means articles, rules, regulations, procedures and customs, as in force from time to time;
Secured Obligation	has the meaning given in Clause 16.12;
SFA	means the Securities and Futures Act, Chapter 289 of Singapore;
Transaction	means a contract in an Investment or any other contractual arrangement entered into between the Client and KES including Forex Contract as defined in this Part VI of these T&C;
Variation Margin	has the meaning given in Clause 16.3 of this Part VI of these T&C;
S\$ or Singapore Dollars	means the lawful currency of Singapore; and
US\$ or US Dollars	means the lawful currency of the United States.

- 3.2 **General interpretation:** A reference in this Part VI of these T&C to a “Clause” shall be construed as a reference to, respectively, a Clause of this Part VI of these T&C and a reference to a “Section” shall be construed as a reference to, respectively, a Section

in the Schedule of this Part VI of these T&C, unless the context requires otherwise. References in this Part VI of these T&C to any statute or statutory instrument or Applicable Regulations include any modification, amendment, extension or re-enactment thereof. A reference in this Part VI of these T&C to "document" shall be construed to include any electronic document. References to "Person" include bodies corporate, unincorporated associations and partnerships/persons, firms, companies, corporations, governments, states or agencies of a state or any associations or partnerships (whether or not having separate legal personality) of two or more of the foregoing. The masculine includes the feminine and the neuter and the singular includes the plural and vice versa as the context admits or requires. The Schedules form part of this Part VI of these T&C and have the same force and effect as if expressly set out in the body of this Part VI of these T&C. In the event of any conflict between the Schedule and this Part VI of these T&C, the Schedule shall prevail.

3.3 **Part VI of these T&C:** KES may from time to time send to the Client further schedules with respect to a specific Market or classes of Investments which will also form part of this Part VI of these T&C. All orders placed via the KE Forex Online Facility or otherwise for the Client's trading accounts (each an "Account") shall be subject to this Part VI of these T&C as - supplemented by the terms of such other procedures and instructions as may be notified by KES to the Client from time to time in relation to the use of the KE Forex Online Facility (the "Procedures"). In the event and to the extent of any conflict or inconsistency between these T&C and the Procedures, [these Terms shall prevail.]

3.4 **Headings:** Headings are for ease of reference only and do not form part of this Part VI of these T&C.

4. **[RESERVED]**

## 5. **RISK OF INVESTMENT**

5.1 The Client has been provided with the Risk Disclosure Statement in Appendix I of the T&C in compliance with the SFA. The Risk Disclosure Statement sets out some of the risks and other significant aspects of trading in futures, options and leveraged foreign exchange. **The Client's execution of the Risk Disclosure Statement will be treated as the Client's informed acknowledgment that the Client has carefully read and accepted the risks outlined in the Risk Disclosure Statement.** If there is anything the Client does not understand it is recommended that the Client seeks specialist independent financial and/or legal advice, in particular, regarding the suitability of complex financial instrument trading.

## 6. **Applicable Regulations AND Market Requirements**

6.1 **Subject to Applicable Regulations:** This Part VI of these T&C and all Transactions are subject to Applicable Regulations so that: (i) if there is any conflict between this Part VI of these T&C and any Applicable Regulations, the latter will prevail; and (ii) KES may take or omit to take any action KES considers necessary to ensure compliance with any Applicable Regulations and whatever KES does or fails to do in order to comply with them will be binding on the Client.

6.2 **Market and Price Providing Bank action:** If a Market, price providing bank (or intermediate broker or agent, acting at the direction of, or as a result of action taken by a Market) take any action which affects a Transaction, then KES may take any action which KES, at KES' discretion, consider desirable to correspond with such action or to mitigate any loss incurred as a result of such action. Any such action shall be binding on the Client.

## 7. **EXECUTION AND ADVICE**

7.1 **Execution only:** Without prejudice to Clauses 1.47 to 1.50 and Clause 2.3 of Part I of these T&C, KES deals with the Client on an execution-only basis and will not make personal recommendations or advise on the merits of purchasing, selling or otherwise dealing in Forex Contracts or executing particular Transactions, their taxation consequences or the composition of any account or any other rights or obligations attaching to such Investments or Transactions. The Client should bear in mind that merely explaining the terms of a Transaction or Investments or its performance characteristics does not itself amount to advice on the merits of the Transaction or Investment (as the case may be). KES gives no representation, warranty or guarantee as to the accuracy or completeness of such information or as to the legal, tax or accountancy consequences of any Transaction; where information is in the form of a document containing a restriction on the person or category of persons for whom that document is intended or to whom it is distributed, the Client agree that the Client will not pass it on contrary to that restriction;

## 8. **CHARGES AND PAYMENTS**

8.1 **Charges:** The Client will pay KES' charges as agreed with the Client from time to time or KES may deduct such charges from any funds held by KES on the Client's behalf.

8.2 **Currency indemnity:** If KES receives or recovers any amount in respect of an obligation of the Client in a Currency other than that in which such amount was payable, whether pursuant to a judgment of any court or otherwise, the Client shall indemnify KES and hold KES harmless from and against any cost (including costs of conversion) and loss suffered by KES as a result of receiving such amount in a Currency other than the Currency in which it was due.

8.3 If for any reason KES cannot effect payment or repayment to the Client in a particular Currency in which payment or repayment is due, KES may effect payment or repayment in the equivalent of any other Currency selected by KES based on the rate of exchange quoted by KES in respect of the relevant Currencies at the time the payment or repayment is due.

8.4 If the Client directs KES to enter into any Currency Transaction and such Transaction is effected in a foreign currency:

- (a) any profit or loss arising as a result of a fluctuation in the exchange rate affecting such Currency will be entirely for the Client's account and risk;
- (b) KES is authorised to convert funds in the Client's Account for Margin into and from such foreign currency at a rate of exchange determined by KES on the basis of the then prevailing money market rates. In such circumstances, KES

will not be liable to the Client for any loss suffered by the Client as a result of such action (although, KES will use reasonable endeavours to only convert such funds as may prudently be required to cover the position in respect of the relevant transaction).

- (c) all initial and subsequent deposits for Margin purposes shall, unless KES otherwise stipulates, be made in such Currency (the “**Relevant Currency**”) and in such amounts as KES may, in its sole and absolute discretion require; and
- (d) KES may debit or credit the Account in the Relevant Currency when such Transaction is liquidated, and the rate of exchange of any foreign Currency required to be converted to the Relevant Currency shall be determined by KES in its sole and absolute discretion on the basis of the money market rates of exchange prevailing at the time of the debit or credit.

8.5 Without prejudice to Clause 8.2, KES may, at any time in its sole and absolute discretion, convert any amounts in any Account(s) of the Client’s or standing to the credit of the Client to any other Currency for the purposes of carrying out Orders of the Client or exercising KES’ rights under these terms and conditions or under any Account. Exchange rate losses and the costs of conversion shall be borne by the Client.

8.6 **Payments and deliveries net:** Unless KES gives the Client written notice to the contrary, all payments and deliveries between KES and the Client shall be made on a net basis and KES shall not be obliged to deliver or make payment to the Client or both (as the case may be) unless and until KES has received from the Client the appropriate documents or cleared funds.

## 9. TAXES

9.1 The Client is responsible for all taxes (local or foreign) that may arise in relation to a Transaction, whether under current law or practice or otherwise. KES shall have no responsibility for any of the Client’s tax liabilities, or for providing information or advice in respect of such liabilities and shall not be responsible for notifying the Client of a change in tax law or practice.

9.2 In the event that KES becomes liable to pay any tax on the Client’s behalf arising from or incidental to Transactions executed by the Client with KES, the Client shall reimburse KES on demand in full for the amount of such tax paid by KES. In the event that KES becomes liable to pay any stamp duty, stamp duty reserve tax or any other similar documentary tax or duty in any jurisdiction (collectively “**Stamp Duty**”) in respect of any shares purchased or otherwise acquired by KES or any other tax or duty or an Affiliate in order to hedge any Margined Transaction between KES and the Client, the Client shall reimburse KES on demand in full for the amount of such Stamp Duty paid by KES.

9.3 The Client shall indemnify KES, its Affiliates and their respective directors, officers, employees and agents (each an “**Indemnified Party**”) and keep each Indemnified Party indemnified from and against all costs, claims, demands and expenses arising in connection with (i) any failure by the Client to reimburse the Indemnified Party in accordance with Clauses 9.1 and 9.2 of these this Part VI of these T&C and (ii) any late payment or non-payment of any tax or Stamp Duty payable by the Client in respect of Transaction executed by the Client with the Indemnified Party.

## 10. MATERIAL INTEREST AND CONFIDENTIALITY

10.1 **Material interests:** The Client’s attention is drawn to the fact that when KES deals with the Client or for the Client, KES or an Affiliate or some other person connected with KES may have an interest, relationship or arrangement that is material. Without limiting the nature of such interests, examples include where KES or an Affiliate could be:

- (a) dealing in the investment, a related investment or an asset underlying the investment, as principal for KES’ own account or that of someone else. This could include selling to the Client or buying from the Client and also dealing with or using the services of an intermediate broker or other agent who may be an Affiliate;
- (b) matching (e.g. by way of a cross) the Client’s Transaction with that of another customer by acting on his behalf as well as the Client’s;
- (c) buying from the Client and selling immediately to another customer, or vice versa;
- (d) holding a position (including a short position) in the Investment concerned, a related Investment or asset underlying the Investment;
- (e) quoting prices to the market in the Investment, a related Investment or asset underlying the Investment;
- (f) advising and providing other services to Affiliates or other customers who may have interests in Investments or underlying assets which conflict with the Client’s own.

10.2 The Client accepts that KES and its Affiliates may have interests which conflict with the Client’s interests and may owe duties which conflict with duties which would otherwise be owed to the Client, and consents to KES acting in any manner which KES considers appropriate in such cases subject to Applicable Regulations.

10.3 **No liability to disclose or account:** Except as provided in the Applicable Regulations binding on KES, KES shall be under no further duty to disclose any interest to the Client, including any benefit, profit, commission or other remuneration made or received by reason of any Transaction or any matching Transaction.

10.4 **Information Barriers:** KES maintains arrangements which restrict access by KES’ employees to information relating to areas of KES’ business (and that of Affiliates) with which, and the affairs of clients with whom, they are not directly concerned.

Accordingly, KES shall not be required to have regard to or disclose to the Client or make use of any information which belongs to or is confidential to another client or to KES or any Affiliate, and KES may be unable to advise or deal with the Client in relation to particular investments and KES shall not be required to disclose the reason for this.

10.5 **Deals using a connected broker:** Where a connection exists between KES and a connected broker, the Client hereby agrees that KES shall not be required to give the Client notice of that connection.

## 11. CONFLICTS OF INTERESTS

11.1 **Disclosure to the Client:** KES shall not be obliged to disclose to the Client or take into consideration any fact, matter or finding which might involve a breach of duty or confidence to any other person, or which comes to the notice of KES or any of its Affiliates or their respective directors, officers, employees or agents but which does not come to the actual notice of the individual or individuals from KES dealing with the Client.

## 12. [RESERVED]

## 13. ACCOUNT OPENING

13.1 An Account must be opened prior to entering into any Forex Contract with KES. No Orders can be placed until an Account has been opened and cleared funds received. Without prejudice to the foregoing, if KES permits the Client to place an Order notwithstanding that an Account has not been opened, or cleared funds received, this shall not limit the Client's liability to KES pursuant to this Part VI of these T&C in respect of the Order placed. KES may, at its absolute discretion, refuse to accept the Client as a client for whatever reason but will notify the Client of any such refusal, without giving any reasons, promptly following the Client's application.

13.2 To assess the Client's credit worthiness, manage credit risk and to prevent fraud (or other criminal activity), the Client acknowledges and agrees that KES may:

- (a) make periodic searches and enquiries about the Client and at credit reference agencies, and the Client's employers, if applicable;
- (b) disclose information to organisations involved in fraud prevention; and
- (c) obtain information from and disclose information to other broker-dealers or investment managers which deal in or manage investments for the Client concerning any payment or security default or concerning any investment which is related to or connected with Margined Transactions which the Client seek to open with us.

13.3 Any limits for the Client's Account (including any credit limits) will be set and varied from time to time with regard to the Client's credit status and, where applicable, the amount of funds deposited by the Client with KES which may, in KES' sole discretion apply a limit to:

- (a) the size of any Forex Contract or series of Forex Contract that the Client may enter into; and
- (b) the amount of any loss or liability to which you may be exposed;

provided for the avoidance of doubt that nothing herein shall prevent KES from withdrawing, reducing or otherwise modifying any such limits in its sole unfettered discretion.

13.4 Account limits do not limit or represent the Client's liability for losses to KES, and the funds the Client may have from time to time on deposit with KES as Margin or otherwise do not represent any limit upon the Client's financial liability to KES.

13.5 If an Account is opened or maintained in the name of more than one Person or a partnership:

- (a) the term "Client" shall refer to each Person or partner jointly and severally, and the liability of each such Person or partner to KES shall be joint and several; and
- (b) KES shall be entitled to debit that Account at any time in respect of any sum howsoever due or owed to KES by any of the Persons in whose name the Account is opened or maintained or constituting the Client.

No Person constituting the Client shall be discharged, nor shall his liability be affected by, any discharge, release, time, indulgence, concession, waiver or consent given at any time in relation to any one or more of the other such Persons constituting the Client.

13.6 Unless otherwise agreed by KES, the Orders of any one Person constituting the Client shall be deemed to be the Orders of all the Persons constituting the Client and any notice or communication addressed and sent by KES to any one Person constituting the Client shall be deemed to have been addressed and sent to all the Persons constituting the Client and where any such Person shall have received or is deemed to have received any such notice of communication, all the Persons constituting the Client shall be deemed to have received the same.

13.7 The doctrine of survivorship shall apply to any Account opened in the joint names of more than one Person or in the name of a partnership. Accordingly, in the event of death of such Person or any partner constituting the Client, the Account shall immediately vest in the surviving Person(s) or partner(s) (as the case may be).

#### 14. ACCOUNT PAYMENTS

- 14.1 **Payment:** KES will only accept deposits from the Client by an approved crossed cheque, electronic fund transfer, internal funds transfer or cash. Payments may be denominated in, US Dollars, Singapore Dollars, or any other Currency agreed in advance with KES.
- 14.2 **Payment Terms:** The Client agrees to make payments due to KES under this Part VI of these T&C in accordance with the following terms:
- (a) all electronic or telegraphic transfer or other bank fees in respect of payment by the Client shall be the Client's sole responsibility;
  - (b) if any payment is not received by KES on the due date for payment then, without limitation of any other rights which KES may have, KES will be entitled to charge interest on the overdue amount (both before and after judgment) at the Interest Rate from the date payment was due until the actual date of payment;
  - (c) the Client shall pay to KES on demand in a full indemnity basis all costs, charges, and expenses incurred by KES in relation to any overdue payment (including any referral fees);
  - (d) any payment made to KES will only be deemed to have been received when KES receives cleared funds;
  - (e) it is the Client's responsibility to ensure that payments made to KES are correctly designated in all respects; and
  - (f) any payment made to KES must be made in the currency designated by KES and shall be free from any withholding or deduction as may be required by law or otherwise.
- 14.3 **Payment Withheld:** If the statement of the Client's Account shows a credit balance, the Client may request KES to send the Client a cheque or effect payment by alternative means in respect of such amount. However, KES may at its sole discretion elect to withhold (or if applicable, deduct) any payment requested (in whole or in part) due to the Client if:
- (a) open Margined Transactions on the Account show notional losses;
  - (b) KES reasonably considers that funds may be required to meet any current or future margin requirement on open Margined Transactions due to underlying market conditions;
  - (c) the Client has any contingent liability to KES or to any of its Affiliates (as determined by KES in its sole discretion) in respect of any other account the Client has opened with any of them; and/or
  - (d) KES reasonably determines that there is an unresolved dispute between KES in connection with this Part VI of these T&C or any related contract.
- 14.4 **Base currency:** The Client shall designate a base currency of the Client's Account which shall either be US Dollars, Singapore Dollars or any other currency agreed in advance with KES (the "**Base Currency**"). Any sums deposited in the Client's Account, if in a Currency other than the Base Currency of the Account, may be converted to that Base Currency at the prevailing conversion rate as designated by KES unless alternative instructions from the Client are accepted by KES. If any interest costs, commission and other charges to be debited to the Client's Account are in a currency other than the Base Currency they may be converted to that Base Currency at the prevailing conversion rate as designated by KES.
- 14.5 All payments from the Client's Account will be made on the Client's request in the Base Currency of that Account unless another Currency is agreed in advance between the Client and KES and may be made in the form of a return payment to a crossed cheque drawn in the name of the Client.
- 14.6 No instructions to pay a third party from the Client's Account will be accepted by KES unless otherwise agreed in writing by KES in its sole discretion.
- 14.7 In the event the applicable paying agent declines to transfer funds from the Client to KES for any reason then KES may treat any Margined Transaction placed or entered into in reliance upon receipt of the funds as void and of no further effect and KES shall be entitled to recover any losses arising from any such Margined Transaction from the Client.
- 14.8 The Client's cash balance:
- (a) will be credited from time to time with the amount of each payment of Margin and any other payment received by KES from the Client pursuant to this Part VI of these T&C; and
  - (b) will be debited by:
    - (i) the amount of each payment made by KES to the Client at the Client's request pursuant to Clause 14 of this Part VI of these T&C; and
    - (ii) realised losses payable.
- 14.9 The Client hereby indemnifies and holds KES harmless against any costs or expenses (including all legal costs on a full indemnity basis) which KES may incur, either before or after the commencement of any legal action, to recover the requisite payment as a result of the Client's failure to make payment within the stipulated period. KES may convert money standing to the Client's credit on the Client's Account or paid by the Client to KES or due to be paid by KES from one currency to

another at prevailing market rates designated by KES (after accounting for commissions or charges).

## 15. TRANSACTION LIMITS AND RESTRICTIONS

- 15.1 KES may, at any time in its sole discretion, impose upon the Client any position or Transaction limits, or any trading or Transaction restrictions. Such limits may include minimum sizes for Transactions, specified times or procedures for communicating Orders to KES or otherwise.
- 15.2 KES may, at any time in its sole and absolute discretion, vary the position or Transaction limits, or any Trading or Transaction restrictions. No previous limit or restriction shall set a precedent or bind KES.
- 15.3 The Client acknowledges that the limits referred to in Clause 15.1 may also be set by a Relevant Body and that the limits set by KES may exceed those set by the Relevant Body. In placing Orders with KES, the Client shall not exceed any position or Transaction limits, or breach any trading or Transaction restrictions whether imposed by KES or any Relevant Body.

## 16. MARGIN

- 16.1 **Margin Arrangements:** As a condition of entering into a Margined Transaction, KES may in KES' sole discretion require the deposit of funds or other collateral acceptable to KES as security for payment of any losses incurred by the Client in respect of the Transaction ("**Initial Margin**"). Initial Margin is due and payable immediately as a condition to opening the relevant Margined Transaction and KES may decline to open any Margined Transaction if the Client does not have sufficient available cash in the Client's Account to satisfy the Initial Margin required for that Transaction at the time the relevant Order is placed.
- 16.2 The Client acknowledges that the Margin referred to in Clause 16.1 may also be set by a Relevant Body or a counterparty broker and that the limits set by KES may exceed those set by the Relevant Body or counterparty broker. KES may, in its sole and absolute discretion, charge interest as well as interest-related fees on any Margin requirements set by KES that are above that set by a Relevant Body or counterparty broker.
- 16.3 Margin requirements may be set and varied without prior notice from time to time, and by any level at KES' discretion including without limitation subsequent variation of any Margin rates set at the time that a Margined Transaction is opened ("**Variation Margin**" and together with Initial Margin, "**Margin**") and may also stipulate that such Margin requirements shall apply to existing positions as well as to new positions in the Transactions affected by such change. The Client acknowledges that KES may, in certain market conditions, effect an immediate change in limits or levels and/or require additional Margin to be deposited immediately or within a specified period of time, which period may, in certain circumstances, be less than 24 hours, and waives any right to object on the grounds that such requirement is or was unreasonable. No previous Margin levels shall set a precedent or bind KES.
- 16.4 **Form of Margin:** Margin shall be provided by or on behalf of the Client in cash or collateral acceptable to KES as determined by KES in KES' absolute discretion. The Client must inform KES immediately if the Client cannot, or believe the Client will not be able to, meet a Margin payment when due. The Client is obligated to maintain in the Client's account, at all times, sufficient funds to meet all Margin requirements. KES is not obliged to make Margin Call Warnings on the Client at all or within any specific time period. The Client may by agreement with KES satisfy a Margin Call Warning by providing collateral in a form acceptable to KES. In addition KES shall be entitled to treat any assets deposited with KES by the Client from time to time (other than assets deposited for safe custody only) as collateral against the Client's Margin requirements. In all cases KES shall be entitled in KES' sole discretion to determine the value of any collateral deposited with KES.
- 16.5 KES is entitled to require payment of Margin of the Client (whether resident in the Singapore or in another jurisdiction) by telegraphic transfer or any other method of immediate/electronic funds transfer acceptable to KES. Only funds received net of any bank charges, which relate to the transfer, will be credited as paid.
- 16.6 **Close-out:** In the event that there is insufficient Margin in the Client's Account or in the event that the deposited Margin is not sufficient to meet the required Margin rates, as determined by KES in accordance with Clause 16.3 of this Part VI of these T&C, KES may in KES' sole discretion choose to close or terminate the Client's Margined Transactions immediately, without notice to the Client. Subject to Clauses 16.7 and 16.9 of this Part VI of these T&C, this will not constitute an Event of Default. If KES chooses not to close or terminate the Client's Margined Transactions, KES may make a Margin Call Warning in accordance with Clause 16.8 of Part VI of these T&C.
- 16.7 Without prejudice to the foregoing, any Transaction entered into by the Client or on the Client's behalf which results in there being insufficient Margin to cover any actual or anticipated losses or liabilities in connection with the Client's Account will constitute an Event of Default and KES may in KES' discretion exercise KES' rights in Clause 23 of this Part VI of these T&C, whether there has been a Margin Call Warning or not.
- 16.8 **Margin Call Warnings:** Notwithstanding the fact that KES is not obliged to make any Margin Call Warning, Margin Call Warnings may be made at any time by telephone, telephone answering machine message, voice mail, letter, fax, e-mail or any other means of electronic communication. Therefore the Client must notify KES immediately and provide alternative contact details to ensure Margin Call Warnings can be made if the Client will not be contactable at the Client's usual contact details provided, e.g. when the Client is traveling or on holiday. Any Margin Call Warnings KES makes may be made by any method of communication listed above. KES shall be deemed to have made a Margin Call Warning if KES notifies the Client electronically via the KES' Online Facility. KES shall not be liable for any failure by KES to contact the Client or attempt to contact the Client. Should KES decide to make a Margin Call Warning, the terms and conditions of the Margin Call Warning will be detailed within the Margin Call Warning and KES reserves the right to change the terms and conditions of any Margin Call Warning based on market conditions, without notice to the Client. If KES makes a Margin Call Warning, in no way does this waive KES' right to liquidate the Client's Margined Transactions as detailed in Clause 16.6.



- 16.9 Any payment made by or on the Client's behalf in satisfaction of a Margin Call Warning must be received by KES within the time specified within the Margin Call Warning. KES may in its sole discretion close or terminate the Client's Margined Transactions without notice to the Client immediately and decline to enter into any further Margined Transactions with the Client if the Client fails to honour any Margin Call Warning and this shall constitute an Event of Default and KES may exercise its rights in Clause 23 of this Part VI of these T&C.
- 16.10 The Client acknowledges that KES has absolute discretion, in the absence of formal arrangements to the contrary, to (i) automatically roll over the Client's open positions in order to allow the Client to hold his/its position indefinitely provided no Margin Call Warnings or auto-liquidation has taken place; and/or (ii) close the Client's opened Margined Transaction and/or any or all of the Client's positions in the event that a Margin Call Warning remains unsatisfied after a period of three (3) Business Days and the Client acknowledges and agrees that every loss sustained by the Client as a result shall be for the Client's sole account and without recourse to KES.
- 16.11 **Title Transfer:** The Client acknowledges and agrees that title in and/or ownership of a portion or all of the money the Client deposits with KES shall be transferred to KES to the extent it represents an amount necessary to secure the Client's open positions or cover the Client's actual or future contingent or prospective obligations (which will be calculated daily in KES' sole discretion based on the Client's daily open positions and trading and which may be greater than the Margin required to maintain the Client's open positions, as market conditions may dictate) such that the Client will not have a proprietary claim over that portion or any of the Client money deposited and KES can deal with it on its own right. When money received by KES from the Client is no longer required to secure the Client's open positions or cover the Client's actual or future contingent or prospective obligations to KES, full title and ownership of the money will be transferred back to the Client.
- 16.12 **Security interest:** As a continuing security for the performance of all the Client's obligations (whether actual or contingent, present or future) to KES under or pursuant to this Part VI of these T&C ("**Secured Obligations**") the Client grants to KES, with full title guarantee, a first fixed security interest in all non-cash Margin now or in the future provided by the Client to KES or to KES' order or under KES' direction or control or that of an Exchange or Market or otherwise standing to the credit of the Client's account under this Part VI of these T&C or otherwise held by KES or KES' Affiliated Companies or KES' nominees on the Client's behalf.
- 16.13 **KES shall be entitled to deposit, invest, loan, mortgage, charge, pledge, repledge, hypothecate or otherwise deal with any Margin in whatsoever form provided to KES or any Relevant Body in such manner as may be permitted under the Applicable Regulations, and shall not be under any obligation to account to the Client for any interest, income or benefit that may be derived therefrom. No interest shall be paid on any type of Margin deposited with KES and the Client acknowledges and consents that interest earned on the Margin deposited under this Part VI of these T&C may be retained by KES for its own account and benefit. KES shall at no time be required to deliver to the Client the identical property delivered to or purchased by KES as Margin for the Account(s) but only property of substantially the same kind and amount, subject to adjustments for quantity and quality variations at the market price prevailing at the time of such delivery.**
- 16.14 Without prejudice to the generality of Clause 16.13, the Client hereby expressly agrees that KES may deposit any Margin of the Client in any of the following ways:
- (a) with such custodian as KES may, in its sole and absolute discretion, appoint including, where such Margin is denominated in a foreign currency, a custodian outside Singapore, and on such terms as shall be notified to the Client. Where such Margin is so deposited, KES shall separately agree in writing the requirements specified in Regulation 32 of the Securities and Futures (Licensing and Conduct of Business) Regulations 2002 (if applicable) but otherwise the Client acknowledges and accepts that different settlement, legal and regulatory requirements and different practices relating to the segregation of the Margin may apply. The Client further agrees that KES may co-mingle such Margin with the cash and properties of its other customers; and/or
- (b) with a Clearing House, a member of a futures exchange (whether overseas or otherwise) for such purposes as may be permitted under the Applicable Regulations or the business rules and practices of the Clearing House or futures exchange (as the case may be).
- 16.15 For so long as the Client owes moneys or obligations (of whatsoever nature and howsoever arising) to KES, the Client shall only withdraw Margin from KES with KES' consent. KES may at any time withhold any Margin of the Client pending full settlement of all such moneys or obligations of the Client.
- 16.16 In addition and without prejudice to any right which KES may have under law or otherwise, KES may in its sole and absolute discretion at any time and from time to time without notice to the Client apply and/or set-off any Margin standing to the credit of the Client (whether on any Account held with KES or any of its Affiliates, or otherwise) against all moneys and/or other liabilities of the Client due, owing or incurred on any Account, whether held with KES or any of its Affiliates, or otherwise, in any manner and whether actual or contingent, joint or several.
- 16.17 The Client hereby authorises each of KES' Affiliates to act on any instructions as may be issued by KES at any time and from time to time to withhold payment, or to deliver, transfer, withdraw or otherwise dispose of any Margin held by the Affiliates, for the Client. Each Affiliate is under no duty to enquire about the purpose or propriety of KES' instructions given pursuant to this Clause. The Client also agrees to ratify all instructions given by KES under this Clause, and to waive any claims it may have against the Affiliate resulting from their compliance with this Clause.
- 16.18 **Further assurance:** The Client agrees to execute such further documents and to take such further steps as KES may reasonably require to perfect KES' security interest over, be registered as owner of or obtain legal title to the Margin, secure further the Secured Obligations, enable KES to exercise KES' rights, or to satisfy any market requirement.
- 16.19 **Substitution:** The Client may not withdraw or substitute any property subject to KES' security interest without KES' consent.

- 16.20 **Negative pledge:** The Client undertakes neither to create nor to have outstanding any security interest whatsoever over, nor to agree to assign or transfer, any of the Margin transferred to KES, except a lien routinely imposed on all Securities in a clearing system in which such Securities may be held.
- 16.21 **Power to charge:** The Client agrees that KES may, free of any adverse interest of the Client or any other person, grant a security interest over Margin provided by the Client to cover any of KES' obligations to an intermediate broker Market or Exchange, including obligations owed by virtue of the positions held by KES or another of KES' customers.
- 16.22 **Power of sale:** If an Event of Default occurs, KES may exercise the power to sell all or any part of the Margin. KES shall be entitled to apply the proceeds of sale or other disposal in paying the costs of such sale or other disposal and in or towards satisfaction of the Secured Obligations.
- 16.23 **General lien:** In addition and without prejudice to any rights to which KES may be entitled under this Part VI of these T&C or any Applicable Regulations, KES shall have a general lien on all property held by KES or KES' Affiliates or KES' nominees on the Client's behalf until the satisfaction of the Secured Obligations.
- 16.24 Any action taken by KES in connection with or pursuant to a Margined Transaction by KES at a time at which any Event of Default specified in Clause 23 of this Part VI of these T&C has occurred (whether or not KES have knowledge thereof) shall be entirely without prejudice to KES' right to refuse any further performance thereafter, and shall not in any circumstances be considered as a waiver of that right or as a waiver of any other rights of KES should any such Event of Default have occurred.

## 17. ONLINE ACCESS

- 17.1 **Access Code:** In order to use the KE Forex Online Facility the Client will need to request a username and password ("Access Code") from KES. The Client will need to provide the Access Code each time the Client wishes to use the KE Forex Online Facility.
- 17.2 In relation to the Access Code the Client acknowledges and undertakes that:
- (a) the Client will be responsible for the confidentiality and use of the Client's Access Code;
  - (b) other than with KES' prior written consent, the Client will not disclose the Client's Access Code to persons other than the Client's Authorised Representatives for any purpose whatsoever;
  - (c) KES may rely on all instructions, orders and other communications entered using the Client's Access Code, and the Client will be bound by any Transaction entered into or expense incurred on the Client's behalf in reliance on such instructions, orders and other communications; and
  - (d) the Client will immediately notify KES if the Client becomes aware of the loss, theft or disclosure to any third party or of any unauthorised use of the Client's Access Code.
- 17.3 If KES believes that the Client's Access Code is being used without the Client's knowledge by unauthorised persons, KES may without prior notice suspend the Client's rights to use the KE Forex Online Facility. Further, if KES believes that the Client has supplied the Client's Access Code to other persons in breach of Clause 17.2(b) of this Part VI of these T&C, then KES may terminate this Part VI of these T&C forthwith.

## 18. INSTRUCTIONS AND BASIS OF DEALINGS

- 18.1 **Placing of instructions:** Unless otherwise agreed by KES, all Orders for execution of Transactions between the Client and KES must be given to KES electronically through the KE Forex Online Facility or by telephoning KES.
- 18.2 **Communication of Orders:** Orders by telephone will only be accepted by KES during specified hours which will be notified to the Client from time to time. KES may impose more restrictive time limits on when orders may be placed. When the Client places an order by telephone, the Client can do so only by talking directly to a leveraged foreign exchange broker of KES. No messages may be left, and no orders may be placed using answer phone or voicemail facilities or by facsimile. Telephone calls may be recorded for the purposes of fraud prevention and quality control and by agreeing to these terms and conditions the Client agrees to the recording of such telephone conversations.
- 18.3 Any Order to execute a Transaction shall not take effect unless actually received by KES. KES shall be entitled to rely upon any instruction given or purporting to be given by the Client or any other person on the Client's behalf without further enquiry as to the genuineness, authority or identity of any such person giving or purporting to give such instructions.
- 18.4 Nothing in the Forex Contract obliges KES to enter into Transactions with the Client and KES may, at its discretion refuse to accept any Order from the Client but will notify the Client of any such refusal, without needing to give any reasons, promptly following receipt of the Client's instructions.

KES shall be entitled (but not obliged) to act on any Orders which KES in good faith has reason to believe is from the Client. Without prejudice to the foregoing:-

- a. in the event that KES decides to act on any Order or is otherwise under an obligation to act on any Order, KES shall be allowed such amount of time to act and implement any Order as may be reasonable having regard to the systems and operations of KES and the other circumstances then prevailing and shall not be liable for any Loss arising from any delay on the part of KES in acting on any such Order;

- b. KES need only act on Orders from the Client in respect of any Account or any part of all of the securities, commodities, monies or other property held in any Account. KES shall not be required to act in accordance with any Order from the Client which purports to dispose of or deal with securities, commodities, monies or other property which are in fact not held in any Account.

KES may cancel any instructions previously given by the Client provided that KES has not acted on the Client's instructions. Acceptance of the Client's Order will be evidenced by KES's confirmation of that Order. The validity of any Order shall not, however, be affected by the Client not receiving confirmation of an Order. Acceptance of any Order does not constitute any agreement or representation that the Client's initial Margin or Margin requirement in respect of the Order or the Client's existing Order is satisfied.

- 18.5 **Regulated Market:** The Client acknowledges and agrees that by executing the signature page of the Account Application Form that the Client has given KES, the Client's prior express consent to execute all Orders outside a regulated market or multi-lateral trading facility.
- 18.6 **Confirmations:** KES may email to the Client and/or post confirmations on-line, which the Client will be able to access using the KE Forex Online Facility. KES will post details of the Client's Account activity on-line and the Client will be able to generate daily, monthly and yearly reports of Account activity as well as reports of each executed trade. Updated Account information will be available no more than twenty-four hours after any activity takes place on the Client's Account. Account information will include trade confirmations with ticket numbers, purchase and sale rates, used Margin, amount available for Margin trading, statements of profits and losses, as well as current open or pending positions and any other information as required by the SFA. Confirmations shall, in the absence of manifest error, be conclusive and binding on the Client, unless KES receives from the Client objection in writing within 24 hours of dispatch to the Client or KES notifies the Client of an error in the confirmation within the same period.
- 18.7 **Intermediate brokers and other agents:** KES may, at KES' entire discretion, arrange for any Transaction to be effected with or through the agency of an intermediate broker, who may be an Affiliate of KES, and may not be in Singapore. Neither KES nor its respective directors, officers, employees or agents will be liable to the Client for any act or omission of an intermediate broker or agent.
- 18.8 **No Best Execution:** KES will deal with the Client as principal in relation to any Orders and KES will not act as the Client's agent or act on the Client's behalf in relation to any Orders. Rather, KES will provide the Client with a price quote and the Client may place an Order on the basis of that price quote. Accordingly, KES does not owe the Client any obligation of best execution and does not agree to obtain the best possible price for the Client.
- 18.9 **Execution Errors:** All orders executed by KES should be displayed on KES's Online Facility. Any failure or delay in any order being displayed on KES's Online Facility shall not affect the validity of the order. If KES has executed an order, but it is not displayed, it is solely the Client's responsibility to make further inquiry of the KE Forex Online Facility to obtain confirmation of the execution of the order. Any failure or delay by the Client in contacting KES shall not affect the validity of any order. Once an order has been executed, the Client should be deemed to have entered into a corresponding contract with KES whether or not the corresponding order is displayed on the KE Forex Online Facility.
- 18.10 If the Client incorrectly or erroneously submits an order, which is executed, the Client shall notify KES of the error immediately upon becoming aware of the error. The Client shall also notify KES at the same time whether the Client wishes KES in respect of the error trade to either:
- (a) maintain the contract in the Client's name with KES in the same size and at the same price as the executed order; or
  - (b) reverse the executed order.
- 18.11 Once an Order is received by KES, such Order is binding on the Client provided that, subject to Clause 18.13, the Client may give an Order to withdraw, cancel, revoke or vary a previous Order.
- 18.12 Where a Client gives KES an Order to withdraw, cancel, revoke or vary a previous Order, KES shall not be obliged to execute such Order until after the Client confirms with KES both that the previous Order has not been executed, and that the withdrawal, cancellation, revocation or variation as the case may be, will not prejudice KES' position (where relevant) with a counterparty broker.
- 18.13 The Client acknowledges that subsequent Orders given to one of KES' representatives may not be sufficient to revoke an earlier Order given to another of KES representatives, or to cancel an Order made with the relevant KES representative implementing such Order. The Client also acknowledges that in the event that the Client is physically unable to communicate any Order to KES, KES shall not be liable to the Client.
- 18.14 KES shall bear no liability whatsoever for failing to comply with any Order of the Client or for exercising or failing to exercise any discretion, power or authority conferred upon KES by this Part VI of these T&C.
- 18.15 KES shall be entitled (but not obliged) to verify and be satisfied with respect to the identity of the Person Purporting to give such Order or the source and origin of such Order and KES may not rely or act upon any such Order unless and until KES is satisfied as to the matters on which KES sought verification.
- 18.16 In the event that KES decides to act on any order or is otherwise under an obligation to act on any Order, KES shall be allowed such amount of time to act upon and implement the Order as may be reasonable, having regard to the systems and operations of KES and the other circumstances then prevailing, and shall not be liable for any Loss arising from any delay on the part of KES

in acting on the Order.

- 18.17 Where any Order is ambiguous or inconsistent with any other Order, KES shall be entitled to rely and act upon any Order in accordance with any reasonable interpretation thereof which any Officer, or any Person who has been engaged or appointed by KES pursuant to Clause 1.1, believes in good faith to be the correct interpretation .

## 19. [RESERVED]

## 20. CLIENT TRUST MONIES

- 20.1 Any money received by KES in respect of the Client's Account with KES shall be treated as "Client Trust Monies" in accordance with SFA except where the Client transfers full ownership of money to KES for, amongst other things, the purpose of security or otherwise covering present or future, actual or contingent or prospective obligations, such as margin, in which circumstances such money will not be regarded as Client Trust Monies.

- 20.2 A portion or all of the money the Client deposits with KES shall be transferred to KES to the extent it represents an amount necessary to secure the Client's open positions or cover the Client's actual or future contingent or prospective obligations (which will be calculated daily in KES's sole discretion based on the Client's daily open positions and trading and which may be greater than the Margin required to maintain the Client's open position, as market conditions may dictate) is taken by KES on terms that the Client transfer full ownership and title to that money to KES for the purposes of securing the Client's present, future, actual, contingent or prospective obligations to KES and such that the Client will not have a proprietary claim over that portion or any of the Client's money and that portion will not be segregated. The Client will not have a proprietary claim on the above described portion or any of the Client's money and KES can deal with the above described portion or any of the Client's money on its own account.

- 20.3 Subject to Applicable Regulations, KES may allow another person, such as an exchange, a clearing house or an intermediate broker, to hold or control Client Trust Monies where KES transfers the Client Trust Monies (a) for the purposes of a Transaction for the Client through or with that person; or (b) to meet the Client's obligations to provide collateral for a Transaction (e.g. an Initial margin requirement for a derivative Transaction).

- 20.4 If there are any monies or securities standing to the credit of any Account (including a trust account) which are unclaimed by the Client six (6) years after the Client's last Transaction with or through KES and KES determines in good faith that it is not able to trace the Client, the Client agrees that all such assets including any and all accretions and accruals thereon (which in the case of monies shall include all interests earned thereon and all investments and their respective accretions and accruals which may have been made with such monies; and in the case of securities shall include all accretions and accruals thereon), the same shall be deemed to have been abandoned by the Client in favour of KES and may be appropriated by KES to and for itself. The Client thereafter shall have no right to claim such assets or their accretions and accruals. **Without prejudice to the foregoing, the Client acknowledges and agrees that KES may impose fees and charges from time to time on any Account and the Client shall be liable for such fees and charges and such fees and charges may be deducted from any monies or securities standing to the credit of such Account for credit to KES.**

- 20.5 Unless specifically agreed to the contrary, KES will not pay the Client any interest on Client Trust Monies or any unencumbered funds.

## 21. NET PAYMENT

- 21.1 KES may at any time set off any liabilities to make payment owed by KES to the Client against any liability of the Client's to make payment to KES.

## 22. REPRESENTATIONS, WARRANTIES AND COVENANTS

- 22.1 **Representations and warranties:** In addition to the representations and warranties in Part I of these T&C, the Client represents and warrants to KES on the date this Part VI of these T&C come into effect and as of the date of each Transaction that:

- (a) [For individuals] The Client is of sound mind, legal age and legal competence;  
[For corporation] The Client is duly organized and validly existing under the laws of the country of its incorporation;
- (b) regardless of any subsequent determination to the contrary, the Client is suitable to trade Margined Transactions and that the Client is aware of the risks involved with such Transactions;
- (c) The Client has all necessary authority, powers, consents, licences and authorisations and has taken all necessary action to enable the Client lawfully to enter into and perform this Part VI of these T&C and such Transaction and to grant the security interests and powers referred to in this Part VI of these T&C;
- (d) any change to the details supplied on the Client's Account Opening Forms has been and will be immediately notified to KES in writing;
- (e) the persons entering into this Part VI of these T&C and each Transaction on the Client's behalf have been duly authorised to do so;
- (f) this Part VI of these T&C, each Transaction and the obligations created under them both are binding upon the Client and enforceable against the Client in accordance with their terms (subject to applicable principles of equity) and do not and will not violate the terms of any regulation, Order, charge or agreement by which the Client is bound;
- (g) no Event of Default or any event which may become (with the passage of time, the giving of notice, the making of

any determination or any combination of the above) an Event of default (a “Potential Event of Default”) has occurred and is continuing with respect to the Client or any Credit Support Provider;

- (h) unless the Client has informed KES otherwise the Client acts as principal and sole beneficial owner (but not as trustee) in entering into this Part VI of these T&C and each Transaction;
- (i) any information which the Client provides or has provided to KES in respect of the Client’s financial position or other matters is accurate and not misleading in any material respect;
- (j) the Client is willing and financially able to sustain a total loss of funds resulting from Transactions;
- (k) the Client has consistent and uninterrupted access to internet service and the e-mail address provided on the Client’s Account Application Form;
- (l) except as otherwise agreed by KES, the Client is the sole beneficial owner of all Margin the Client transfer under this Part VI of these T&C, free and clear of any security interest whatsoever;
- (m) if the Client is not a resident in Singapore, the Client is solely responsible for ascertaining whether any Transaction entered into under this Part VI of these T&C is lawful under applicable laws of the jurisdiction of the Client’s residence;
- (n) the Client understands that using the prices exposes the Client to risks associated with the use of computers and data feed systems relied upon by KES. The Client agrees to accept such risks, which may include, without limitation, failure of hardware, software or communication lines or systems (“**Technical Problems**”);
- (o) The KE Forex Trading Facility is provided on an “As Is” and “As Available” basis, without warranty of any kind. Without limitation to the foregoing, KES makes no warranty that the prices will be uninterrupted, error free or available at all times, nor does KES warrant that the prices will remain compatible with, or operate without interruption on, any equipment of platform provider. Notwithstanding anything in this Part VI of these T&C to the contrary, the Client acknowledges and agrees that technical problems may prevent KES from providing all or part of the Prices. In no event shall KES be liable hereunder to the Client or any third party for any damages or loss resulting from technical problems and/or other problems or failures beyond KES’ direct control; and
- (p) Except as expressly provided in this Clause 22, KES makes no warranties, express, implied or statutory, regarding or relating to the subject matter hereof. Without limitation to the foregoing, KES specifically disclaims, to the fullest extent permitted by law, all implied warranties of merchantability and fitness for a particular purpose with respect to the subject matter hereto, including, without limitation, the prices.

22.2 **Covenants:** The Client covenant to KES that:

- (a) the Client will at all times obtain and comply, and do all that is necessary to maintain in full force and effect, all authority, powers, consents, licences and authorisations referred to in this Clause;
- (b) the Client will promptly notify KES of the occurrence of any Event of Default or Potential Event of Default with respect to the Client or any Credit Support Provider;
- (c) the Client will use all reasonable steps to comply with all Applicable Regulations in relation to this Part VI of these T&C and any Transaction, so far as they are applicable to the Client or KES;
- (d) upon demand, the Client will provide KES with such information as KES may reasonably require to evidence the matters referred to in this Clause or to comply with any Applicable Regulations; and
- (e) the information disclosed by the Client in the Account Application Forms (including any financial information) is true, accurate, and complete in all material respects. The Client must notify KES immediately of any changes to any information the Client has provided to KES.

## 23. EVENTS OF DEFAULT

23.1 In addition to any Event of Default in Part I of these T&C, if at any time:

- (a) the Client fails to comply fully and immediately with any obligation to make any payment when due under this Part VI of these T&C or to make or take delivery of any property when due under this Part VI of these T&C;
- (b) KES has reasonable grounds to believe that the Client is in breach of any material provision of this Part VI of these T&C;
- (c) KES consider it necessary or desirable for KES’ own protection or any action is taken or event occurs which KES consider might have a material adverse effect upon the Client’s ability to perform any of the Client’s obligations under this Part VI of these T&C;
- (d) consider it necessary or desirable to prevent what is considered to be or might be a violation of any laws, Applicable Regulations, or good standard of market practice;
- (e) the Client dies, becomes of unsound mind, is unable to pay the Client’s debts as they fall due or is bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to the Client, or any indebtedness of

the Client's is not paid on the due date therefore or becomes capable at any time of being declared due and payable under agreements or instruments evidencing such indebtedness before it would otherwise have been due and payable, or any suit, action or other proceedings relating to this Part VI of these T&C ("**Proceedings**") is commenced for any execution, any attachment or garnishment, or distress against, or an encumbrancer takes possession of, the whole or any part of the Client's property, undertaking or assets (tangible and intangible);

- (f) the Client commences a voluntary case or other procedure seeking or proposing liquidation, re-organisation, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to the Client or the Client's debts under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to the Client, if insolvent), or seeking the appointment of a trustee, receiver, liquidator, conservator, administrator, insolvency officer or other similar official (each an "Insolvency Officer") of the Client or any substantial part of the Client's assets, or if the Client takes any corporate action to authorise any of the foregoing;
- (g) an involuntary case or other procedure is commenced against the Client seeking or proposing liquidation, reorganisation, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to the Client or the Client's debts under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to the Client, if insolvent) or seeking the appointment of an Insolvency Officer of the Client or any substantial part of the Client's assets;
- (h) the Client or any Credit Support Provider (or any Insolvency Officer acting on behalf of either of the Client) disaffirms, disclaims or repudiates any obligation under this Part VI of these T&C or any guarantee, hypothecation agreement, margin or security agreement or document, or any other document containing an obligation of a third party, or of the Client, in favour of KES supporting any of the Client's obligations under this Part VI of these T&C (individually a "Credit Support Document");
- (i) any representation or warranty made or given or deemed made or given by the Client under this Part VI of these T&C or any Credit Support Document proves to have been untrue, false or misleading in any material respect as at the time it was made or given or deemed made or given;
- (j) any Credit Support Provider fails to comply with or perform any agreement or obligation to be complied with or performed by the Client or it in accordance with the applicable Credit Support Document;
  - (i) any Credit Support Document expires or ceases to be in full force and effect prior to the satisfaction of all the Client's obligations under this Part VI of these T&C, unless otherwise agreed in writing by KES;
  - (ii) any representation or warranty made or given or deemed made or given by any Credit Support Provider pursuant to any Credit Support Document proves to have been false or misleading in any material respect as at the time it was made or given or deemed made or given;
  - (iii) any event referred to in paragraphs (d) to (g) or (j) of this Clause occurs in respect of any Credit Support Provider; or
- (k) where the Client or the Client's Credit Support Provider is a partnership, any of the events referred to in paragraphs (d) to (g) or (j) of this Clause occurs in respect of one or more of the Client's or its partners;
- (l) an Event of Default (however described) occurs in relation to the Client under any other agreement between us; then KES may exercise its rights under Clause 23.2 of this Part VI of these T&C.

23.2 Upon occurrence of an Event of Default, KES may by notice specify a date for the termination of any outstanding Transactions entered into between the Client and KES except that the occurrence of an Event of Default under paragraphs (d) to (g) or (j) of Clause 23.1 shall result in the automatic termination of any outstanding Transaction. KES shall not be obliged to make any further payments or deliveries under any Transactions which would but for this Clause, have fallen due for performance on or after the termination of any outstanding Transactions. KES shall be entitled without prior notice to the Client:

- (a) instead of returning to the Client investments equivalent to those credited to the Client's account, to pay to the Client the fair Market value of such investments at the time KES exercise such right;
- (b) to sell the Client's investments in KES' possession or in the possession of any nominee or third party appointed under or pursuant to this Part VI of these T&C, in each case as KES may in its absolute discretion select or and upon such terms as KES may in KES' absolute discretion think fit (without being responsible for any loss or diminution in price) in order to realise funds sufficient to cover any amount due by the Client hereunder;
- (c) to close out, replace or reverse any Transaction, buy, sell, borrow or lend or enter into any other Transaction or take, or refrain from taking, such other action at such time or times and in such manner as, at KES' sole discretion, KES consider necessary or appropriate to cover, reduce or eliminate its loss or liability under or in respect of any of the Client's contracts, positions or commitments;
- (d) to realise in accordance with this Clause or to sub-pledge any securities or other assets of the Client's held by KES;
- (e) to call any guarantee or indemnity provided by or on behalf of the Client;
- (f) to exercise KES' rights of set-off pursuant to this Clause;

- (g) to close any and all of the Client's Accounts; and/or
  - (h) to treat any or all Transactions then outstanding as having been repudiated by the Client, in which event KES' obligations under such Transaction or Transactions shall thereupon be cancelled and terminated.
- 23.3 KES shall not lose any of its rights under this Clause by reason of any delay on KES' part in the exercise thereof, but in no circumstance shall KES be under any obligation under these Clauses to exercise any such right or, if KES does exercise any such right, to do so at a time or in a manner beneficial to the Client. KES may at its absolute discretion close out Transactions either on a single or collective basis.
- 23.4 Where KES exercises its right under this Clause to close out a Transaction the closing out shall be effected by KES in whole or in part at such time or times and at such price or prices as determined by KES at KES' reasonable discretion. The amounts payable under the Transaction being closed out shall then be immediately due.
- 23.5 Where KES exercises its right under this Clause to realise any Investments or other assets of the Client's held by KES, KES shall be entitled to sell those Investments or assets at the market price (as determined by KES in its reasonable discretion) at the time the sale takes place. KES shall have the right to choose the time, place and method of such sale at KES' discretion. Any costs of sale shall be borne by the Client.
- 23.6 If any Event of Default specified in this Clause occurs, KES may by notice in writing to the Client require settlement of all open Transactions to take place in accordance with this Clause on the settlement date which for this purpose shall be the date on which notice is given.
- 23.7 Where settlement of all Transactions are to be made under this Clause no further payments shall be made in respect of any open Transaction after the settlement date and each open Transaction shall immediately be settled by the Client's payment of the settlement amount.
- 23.8 The Client shall give KES notice of an event specified in Clause 23.1 as soon as the Client becomes aware of its occurrence.
- 23.9 KES shall be entitled, following any of the events specified in Clause 23.1 to set-off (i) any obligation to make payment to the Client against any obligation owed by the Client to make payment to any Affiliate and (ii) any obligation of the Client's to make payment to KES against any obligation of any Affiliate to make payment to the Client.
- 23.10 Any obligation shall be satisfied by the net settlement (whether by payment, set-off or otherwise) of the amounts due between KES and the Client with respect to all the outstanding terminated Transactions. With respect to each outstanding terminated Transaction KES shall determine its total cost, loss or gain (including, if appropriate, any loss of bargain, cost of funding or other loss or gain as a result of the termination) and any net amount for all the outstanding terminated Transactions determined by KES in accordance with the foregoing due either from the Client to KES or from KES to the Client shall be immediately payable upon its calculation. KES shall not be obliged to make any payment or delivery scheduled to be made by KES under a Transaction or this Part VI of these T&C for as long as an Event of Default has occurred and is continuing.
- 24. TERMINATION**
- 24.1 The Client may terminate this Part VI of these T&C immediately by giving written notice to KES.
- 24.2 KES may terminate this Part VI of these T&C with the Client by giving the Client seven (7) Business Days notice, except that KES may terminate this Part VI of these T&C immediately if the Client fails to observe or perform any provision of this Part VI of these T&C, or upon the occurrence of any Event of Default, or if the Client has no open Transactions in the Client's Account at the time when the notice of termination is sent. At any time after the termination of this Part VI of these T&C, KES may, without notice, close out any of the Client's open Transactions at the end of day Closing Price.
- 24.3 Termination shall be without prejudice to accrued rights and remedies and the existence and enforceability of any open Transaction, which shall continue until closed in accordance with this Part VI of these T&C, unless otherwise specified.
- 24.4 Upon terminating this Part VI of these T&C, all amounts payable by the Client to KES pursuant to Forex Contracts entered into by the Client will become immediately due and payable including (but without limitation):
- (a) all outstanding fees, charges and commissions;
  - (b) any dealing expenses incurred by terminating this Part VI of these T&C; and
  - (c) any losses and expenses realised in closing out any Transactions or settling or concluding outstanding obligations incurred by KES on the Client's behalf.
- 24.5 Termination shall not affect then outstanding rights and obligations (in particular those in Clause 27 (Exclusions, Limitations and Indemnity) and Clause 28 (Miscellaneous) to this Part VI of these T&C) and Transactions which shall continue to be governed by this Part VI of these T&C and the particular clauses agreed between KES and the Client in relation to such Transactions until all obligations have been fully performed.
- 24.6 If KES determines, in its sole discretion, that the Account shows abnormal trading activity or shows that the Client have adopted trading strategies aimed at exploiting price misquotes or are otherwise deemed to be acting in bad faith, KES will be entitled to: (i) terminate this Agreement, effective immediately, without giving prior notice to the Client; or (ii) take any other action KES deems necessary to avoid abnormal trading or abuse.

## 25. MANIFEST ERRORS

- 25.1 A “**Manifest Error**” means a manifest or obvious misquote by KES, or any Market, price providing bank, information source, commentator or official on whom KES reasonably relies, having regard to the current market conditions at the time an Order is placed. When determining whether a situation amounts to a Manifest Error, KES may take into account all information in KES’ possession including, without limitation, information concerning all relevant market conditions and any error in, or lack of clarity of, any information source or announcement.
- 25.2 KES will, when making a determination as to whether a situation amounts to a Manifest Error, act fairly towards the Client but the fact that the Client may have entered into, or refrained from entering into, a corresponding financial commitment, contract or Transaction in reliance on an Order placed with KES (or that the Client have suffered or may suffer any loss of profit, consequential or indirect loss) shall not be taken into account by KES in determining whether there has been a Manifest Error. KES reserves the right, without prior notice, to:
- (a) amend the details of such a Transaction to reflect what KES considers in KES’ discretion, acting in good faith, to be the correct or fair terms of such Transaction absent such Manifest Error/s;
  - (b) if the Client does not promptly agree to any amendment made under (a) herein KES may void from its inception any Transaction resulting from or deriving from a Manifest Error; and /or
  - (c) refrain from taking any action at all to amend the details of such a Transaction or void such Transaction.
- 25.3 KES shall not be liable to the Client for any loss, cost, claim, demand or expense the Client suffers (including loss of profits or any indirect or consequential losses) resulting from a Manifest Error or KES’ decision to enforce the details of a Transaction notwithstanding any Manifest Error, except to the extent caused by KES’ own fraud, willful default or gross negligence. In the event that a Manifest Error is made by any Market, price providing bank, information source, commentator or official on whom KES reasonably relies, KES will not be liable to the Client for any loss, cost, claim, demand, or expense, except to the extent caused by KES’ own fraud, willful default or negligence.

## 26. ARBITRAGE

- 26.1 Internet, connectivity delays, and price feed errors sometimes create a situation where the price displayed on the KE Forex Online Facility do not accurately reflect the market rates. The concept of arbitrage and “scalping”, or taking advantage of these internet delays, cannot exist in an OTC market where the client is buying or selling directly from the principal. KES does not permit the practice of arbitrage on the KE Forex Online Facility. Transactions that rely on price latency arbitrage opportunities may be revoked, without prior notice. KES reserves the right to make the necessary corrections or adjustments on the Account involved, without prior notice. Accounts that rely on arbitrage strategies may at KES’ sole discretion be subject to KES’ intervention and KES’ approval of any Orders. Any dispute arising from such quoting or execution errors will be resolved by KES in KES’ sole and absolute discretion.
- 26.2 KES shall have no obligation to contact the Client to advise upon appropriate action in light of changes in market conditions or otherwise.

## 27. EXCLUSIONS, LIMITATIONS AND INDEMNITY

- 27.1 Nothing in this Part VI of these T&C shall exclude or restrict any duty or liability owed by KES to the Client under the SFA (as may be amended or replaced from time to time).
- 27.2 **General exclusion:** Except as set out in Clause 27.1 above neither KES nor KES’ directors, officers, employees, or agents shall be liable for any losses, damages, costs or expenses (including direct, indirect, incidental, punitive, or consequential loss, loss of profits, lost data, loss of use of the KE Forex Online Facility, business interruption, costs of substitute, services or downtime costs), whether arising out of negligence, breach of contract, misrepresentation or otherwise, incurred or suffered by the Client under this Part VI of these T&C (including any Transaction or where KES have declined to enter into a proposed Transaction) unless such loss arises directly from KES’ respective gross negligence, willful default or fraud. Provided always that KES shall not be liable for any economic or consequential loss whatsoever that may be suffered by the Client. In no circumstance shall KES’ liability include losses suffered by the Client or any third party for any special damage, or loss of profits or loss of goodwill or reputation or loss of business opportunity arising under or in connection with this Part VI of these T&C, whether arising out of negligence, breach of contract, misrepresentation or otherwise.
- 27.3 **Trading Losses:** For the avoidance of doubt, in no circumstances shall KES be liable to the Client, or responsible, for any losses or other costs or expenses of any kind arising out of or in connection with the placement of Orders by the Client, or the execution of Transactions with KES.
- 27.4 **Tax implications:** Without limitation, KES does not accept liability for any adverse tax implications of any Transaction whatsoever.
- 27.5 **Changes in the market:** Without limitation, KES does not accept any liability by reason of any delay or change in market conditions before any particular Transaction is effected.
- 27.6 **Force majeure:** Since KES does not control signal power, its reception or routing via Internet configuration of the Client’s equipment or reliability of its connections, KES shall not be liable for any claims, losses, damages, costs or expenses, including attorney’s fees, caused directly or indirectly, by any breakdown or failure of any transmission or communication system or equipment or computer facility or trading software whether belonging to KES, KES’ Affiliates, the Client, any market, or any settlement or clearing system when the Client trades online (via Internet) or for any cause preventing KES from performing any or all KES’ obligations, any act of God, war, terrorism, malicious damage, civil commotion, industrial acts, any



Exceptional Market Event, or acts and regulations of any governmental or supra national bodies or authorities which in KES' opinion prevent an orderly market in relation to the Client's Orders (a "**Force Majeure Event**"). Upon the occurrence of a Force Majeure Event, KES shall use commercially reasonable efforts to resume performance and KES may give the Client written notice. Upon occurrence of a Force Majeure Event, all of KES' obligations under this Part VI of these T&C shall be immediately suspended for the duration of such Force Majeure Event. Additionally, KES may take any one or more of the following steps:

- (a) alter normal trading times;
- (b) alter the Margin requirements;
- (c) amend or vary this Part VI of these T&C and any Transaction contemplated by this Part VI of these T&C, insofar as it is impractical or impossible for KES to comply with KES' obligations;
- (d) close any or all open Transactions, cancel instructions and orders as KES deem to be appropriate in the circumstances; and/or
- (e) take or omit to take all such other actions as KES deem to be reasonably appropriate in the circumstances having regard to the positions of the Client, KES, and other customers.

27.7 **Indemnity:** Without prejudice to KES' rights in Clause 16 of this Part VI of these T&C, the Client shall pay to KES such sums as KES may from time to time require in any of the Client's Accounts with KES and, on a full indemnity basis, any losses, liabilities, costs or expenses (including legal fees), taxes, imposts and levies which KES may incur or be subjected to with respect to any of the Client's Accounts or any Transaction or any matching Transaction on a Market or with an intermediate broker or as a result of any misrepresentation by the Client or any violation by the Client of the Client's obligations under this Part VI of these T&C (including any Transaction) or by the enforcement of KES' rights. Notwithstanding anything to the contrary, the Client will be liable for any and all debit balances not directly resulting from trading activity.

27.8 The Client agrees to indemnify and hold KES, KES' Affiliates, employees, agents, successors and assigns harmless from and against all Losses resulting from use of programmable trading systems, whether built by the Client or by any third party and executed on or using the KE Forex Online Facility or any other trading platform offered by KES.

27.9 In addition and without prejudice to any other right or remedy of KES (at law or otherwise) the Client shall indemnify and hold KES harmless from and against any and all Loss suffered or incurred by KES as a result of:

- (a) any failure by the Client to comply with this Part VI of these T&C;
- (b) KES acting in accordance with the Orders or in any manner permitted under this Part VI of these T&C;
- (c) any change in any Applicable Regulations; and/or
- (d) any act or thing done or caused to be done by KES in connection with or referable to this Part VI of these T&C or any Account.

27.10 **Claims from the Client's customers:** To the extent the Client has entered Orders for the account of the Client's customers, the Client shall on demand indemnify, protect and hold KES harmless from and against all Losses resulting from or arising out of claims raised by the Client's customers, in so far as such Losses are not the result of any negligence, willful misconduct or default by KES. This Clause shall not be affected by the termination of this Part VI of these T&C.

27.11 **KE Forex Online Facility:** Access to the KE Forex Online Facility is provided "as is". KES makes no warranties, express or implied, representations, or guarantees as to the merchantability, fitness for any particular purpose or otherwise with respect to the KE Forex Online Facility, its content, any documentation or any hardware or software provided. Technical difficulties could be encountered in connection with the KE Forex Online Facility. These difficulties could involve, among others, failures, delays, malfunction, software erosion or hardware damage, which difficulties could be the result of hardware, software or communication link inadequacies or other causes. Such difficulties could lead to possible economic and/or data loss. In no event will KES or KES' Affiliates or any of KES' employees be liable for any possible loss (including loss of profit or revenue whether direct or indirect), cost or damage including, without limitation, consequential, unforeseeable, special or indirect damages or expense which might occur as a result of or arising out of using, accessing, installing, maintaining, modifying, deactivating or attempting to access the KE Forex Online Facility or otherwise.

27.12 **Internet Failures:** Since KES does not control signal power, its reception or routing via Internet, configuration of the Client's equipment or reliability of its connection, KES cannot be responsible for communication failures, distortions or delays when using the KE Forex Online Facility.

## 28. MISCELLANEOUS

28.1 **Amendments:** KES reserves the right to amend, vary, revise or supplement the terms and conditions relating to any Account or of this Part VI of these T&C from time to time, with or without notice to the Client, by posting such changes on the KE Forex website or such other means as KES deems fit. The Client is responsible for regularly reviewing this Part VI of these T&C for any modifications and agree to be bound by the same. The Client may not amend this Part VI of these T&C unless such amendment is in writing and signed by an authorised officer of KES. Unless otherwise agreed, an amendment will not affect any outstanding Order or Transaction. If the Client does not wish to accept any amendment made by KES to this Part VI of these T&C and KES T&C the Client may by notice to KES close the Client's open Margin Transactions and the Client's Account in accordance with this Part VI of these T&C.

- 28.2 **Notices:** Unless otherwise agreed, all notices, instructions and other communications to be given by KES to the Client under this Part VI of these T&C may be verbal or in writing and shall be given to the Client's last known home address, place of work, telephone number (including a telephone answering machine), fax number, e-mail address or other contact details. All notices, instructions and other communications to be given to KES by the Client under this Part VI of these T&C should be sent to KES' Customer Service department [Address: 63 Market Street #08-01 Singapore 048942, Contact Number: (65) 6231 6688, Fax Number: (65) 6532 5408, Email Address: helpdesk@kimeng.com.]
- 28.3 Each notice, instruction or other communication to the Client (except confirmation of trade, statements of account, and Margin Call Warnings) shall be conclusive 48 hours after posting unless written notice of objection is received by KES within five (5) Business Days of the date on which such document was deemed to have been received. If the Client fails to object within the stipulated time, he agrees he no longer has the right to dispute the accuracy of notice, instruction or communication sent (as the case may be). Accordingly, KES has the right to treat the Client's silence as the Client's representation that the document is accurate. However, should KES discover at any time that the document is inaccurate, KES can still amend the same. Any notice, instruction or other communication shall be deemed to have been duly given or given as follows, whichever is the earlier:
- (a) when left at the Client's last known home or work address at the date and time of such delivery;
  - (b) if given by leaving a telephone answering machine message or voice mail message, one hour after the message being left on the relevant medium upon transmission;
  - (c) if sent by first class post, in the ordinary course of the post and in any event on the next day (or third in the case of air mail) after posting (excluding Sundays and public holidays); and/or
  - (d) if sent by e-mail, one hour after sending, provided no "not sent" or "not received" message is received from the relevant e-mail provider/s upon transmission.
- 28.4 The Client will notify KES in writing of any change of the Client's address or other contact details in accordance with this Clause. The risk of loss or damage to, and the costs of delivery of, any articles or items sent to the Client shall be borne by the Client.
- 28.5 **Assignment:** The Client hereby instructs KES that upon any such assignment as provided in Part I of these T&C, any monies held as Client Trust Monies be transferred to the Assignee to be held as Client Trust Monies on the Client's behalf.
- 28.6 **Disclosures:** In order to comply with any Applicable Regulations, KES may be required to make certain disclosures relating to the Client's Transactions, which may or may not include disclosing the Client's identity. In addition to complying with its obligations under Applicable Regulations, KES may comply with any request for information regarding any Transaction from any relevant regulatory or governmental authority. The Client agrees that such compliance does not cause KES to breach any obligation of confidentiality which KES owes to the Client pursuant to this Part VI of these T&C.
- 28.7 **Time of essence:** Time shall be of the essence in respect of all obligations of the Client's under this Part VI of these T&C (including any Transaction).
- 28.8 **Rights and remedies:** The rights and remedies provided under this Part VI of these T&C are cumulative and not exclusive of those provided by law. KES shall be under no obligation to exercise any right or remedy either at all or in a manner or at a time beneficial to the Client. No failure by KES to exercise or delay by KES in exercising any of KES' rights under this Part VI of these T&C (including any Transaction) or otherwise shall operate as a waiver of those or any other rights or remedies. No single or partial exercise of a right or remedy shall prevent further exercise of that right or remedy or the exercise of another right or remedy.
- 28.9 **Recording of calls:** KES may record telephone conversations without use of a warning tone to ensure that the material terms of the Transaction, and any other material information relating to the Transaction is promptly and accurately recorded. Such records will be KES' sole property and accepted by the Client as evidence of the Orders or instructions given.
- 28.10 **Electronic communications:** Subject to Applicable Regulations, any communications between KES and the Client using electronic signatures shall be binding as if it were in writing. By execution of this Part VI of these T&C the Client gives the Client's consent to the receipt of communications by electronic means which but for the Client's consent must be made using a durable medium under Applicable Regulations. Orders or instructions given to the Client by electronic means will constitute evidence of the Orders or instructions given. The Client will be able to access this information using the Client's Access Code. Updated information will be available no more than 24 hours after any activity takes place on the Client's account, absent any Force Majeure Event or service interruption.
- 28.11 **KES' records:** KES' and/or its agents' records of, amongst others, the instructions, operations or transactions made or performed, processed or effected, shall be binding and conclusive on the Client for all purposes whatsoever and shall be conclusive evidence of the Client's dealings with KES in connection with KES' and/or its agents' services. The Client will not object to the admission of KES' records as evidence in any legal proceedings because such records are not originals, are not in writing or are documents produced by a computer. The Client will not rely on KES to comply with the Client's record keeping obligations, although records may be made available to the Client on request at KES' absolute discretion.
- 28.12 **The Client's records:** The Client agrees to keep adequate records in accordance with Applicable Regulations to demonstrate the nature of Orders submitted and the time at which such Orders are submitted.

- 28.13 **Co-operation for proceedings:** If any action or proceeding is brought by or against KES in relation to this Part VI of these T&C or arising out of any act or omission by KES required or permitted under this Part VI of these T&C, the Client agrees to co-operate with KES to the fullest extent possible in the defence or prosecution of such action or proceeding.
- 28.14 **Information and Intellectual Property:** The Client acknowledges and agrees that KES is the sole owner (except to the extent owned by third party licensors and except to the limited extent licensed by KES to any other financial institutions and their clients) of all right, title and interest (collectively the “**IP Rights**”) in and to the KE Forex Online Facility, the data and other information generated by the KE Online Facility (“**Data**”) produced by and distributed by or through the KE Forex Online Facility and each component thereof and all intellectual property and propriety rights with respect thereto, including, without limitation, patent, copyright, trade secret, trademark and other proprietary rights in and to the KE Forex Online Facility and each component thereof, and to all modifications, including custom modifications, to the KE Forex Online Facility and each component thereof, whether made by or with the assistance of the Client and any other person and any know how, techniques, methodologies, equipment or processes used by KES, the look and feel of the KE Forex Online Facility and each component thereof and all of KES’ software (front and back end) all registered trademark applications, trademarks and service marks, trade names, URL registrations and all pricing information and other Data.
- 28.15 The Client shall not obtain any intellectual property rights in or to the IP Rights.

## SCHEDULE 1

### TERMS APPLICABLE TO CLIENTS WHO ENTER INTO FOREX CONTRACTS

#### **1. Closing a Forex Contract**

- 1.1 For accounts using the “Non-Hedging” setting: To close a Forex Contract, the Client must enter into a Forex Contract in relation to two currencies as the first Forex Contract, but if the first Forex Contract was a buy, the second Forex Contract must be a sell, and vice versa. The first Forex contract will be closed to the extent of the contract size of the second Forex Contract. The Client should advise KES of the Forex Contract the Client wishes to close out giving the two currencies, identifying the Base Currency and the Contract Size.
- 1.2 For accounts using the “Hedging” setting: To close a position the Client must provide KES with an Order identifying the position, currency, and Contract Size of the position the Client wishes to close.
- 1.3 Realised profit or loss in respect of a Forex Contract closed will be calculated by reference to the difference between (i) the product of the Contract Size and Contract Rate of the opening Transaction and (ii) the product of the Contract Size and Contract Rate of the closing Forex Contract and shall be denominated in the second named currency for Forex Contract.
- 1.4 In addition to KES’ rights at Clause 23 of this Part VI of these T&C, KES may close any Forex Contract in its sole discretion at any time without notice in the event that:
- (a) the Client fails to honour a Margin Call Warning in accordance with Clause 16 of this Part VI of these T&C;
  - (b) a Force Majeure Event occurs; or
  - (c) this Part VI of these T&C is terminated.

#### **2. Settlement Date, Rollover and Offset Instructions**

- 2.1 KES will automatically rollover all open positions on the Client’s Account to the following business day unless the Client notifies KES to close the Client’s position(s) prior to 17.00 EST. KES will charge the Client a fee in respect of each such position that is rolled over.
- 2.2 Offset instructions on open positions must be given to KES at least one (1) business day prior to rollover of open positions.
- 2.3 In the absence of timely instructions from the Client, KES is authorised, at their absolute discretion, to rollover or offset all or any portion of the positions in the Client’s Accounts or to make or receive delivery on the Client’s behalf upon such terms and by such methods deemed reasonable by KES.
- 2.4 For the avoidance of doubt, KES will not arrange delivery of currencies unless KES deems necessary or if it otherwise agree in writing with the Client.

## SCHEDULE 2

### ADDITIONAL KES LEVERAGED FOREIGN EXCHANGE TRADING TERMS

*Unless otherwise defined in this Schedule 2 or unless the context otherwise requires, terms and expressions defined in or construed for the purposes of the Part VI of these T&C shall bear the same meanings when used herein.*

**1. Gearing**

The margin requirement for Forex Contracts is 2% or leverage of 50 times or any other percentage as decided by KES in its sole discretion, from time to time.

**2. Initial Deposit**

The minimum initial deposit required to open an Account is S\$3,000 or any other amount as decided by KES in its sole discretion, from time to time.

**3. Margin Maintenance Ratio**

The margin requirement of a position is 2% or leverage of 50 times or any other percentage as decided by KES in its sole discretion, from time to time. Margin call is triggered when the total equity of an account is less than the margin requirement of all open positions.

**4. Auto-liquidation of Open Positions**

The forex market is a 24-hour market and can be very volatile. If there is an extreme market move, the client's account may go into overloss, that is, the equity in the account may not be sufficient to absorb the loss sustained by the client's position as a result of the extreme market move. For the protection of clients from overloss, our trading platform has an auto liquidation feature. Auto-liquidation of all open positions in the client's account will be triggered when the total equity in the account is less than 30% of the total required margin of all open positions. However, please note that while KE Forex's auto-liquidation mechanism serves to reduce the chances of client's equity from going into an overloss situation, overloss is still possible if there are big fluctuations or swings in the foreign exchange market.

**5. Minimum Size of Contract**

The minimum size of Forex Contracts is 10,000 units ("Mini-Lot"). A Standard Lot refers to a Forex Contract with 100,000 units.

**6. Settlement Currency (Referred to in Clause 14.4 as the Base Currency)**

All realized profit or loss will be converted to S\$, unless otherwise agreed to in advance with KES as provided in Clause 14.4.

**7. Commission, Swaps and Other Charges**

7.1 Leveraged foreign exchange trading with KE Forex is commission-free.

7.2 The trading cost refers to the spread and the interest rates applicable when buying and selling foreign exchange (if any).

7.3 KES will automatically roll over the Client's open position allowing the Client to hold his/its position indefinitely, provided no Margin Call Warnings or auto-liquidation has taken place.

**8. Monthly Data Feeds**

No fees are payable by the Client for monthly data feeds.

**9. Depositing Funds into the Account**

9.1 **Cash** - Funds received before 12 p.m. will be credited to the Client's account by 2 p.m. and funds received after 12 p.m. but before 5 p.m. will be credited by 7 p.m. on the same day.

**9.2 Electronic Fund Transfer**

(a) Internet Banking:

Step 1—Select 'Bill Payment' option.

Step 2—Select '*Kim Eng Securities Pte Ltd*' from the default list of payees.

Step 3—When prompted for Reference Code/Number, State the Client Code appearing in your trading platform (Portfolio Window).

(b) Telegraphic Transfer (TT)

Please state the Client's Account number and name along with the telegraphic transfer.

<b>Currency</b>	<b>Singapore Dollars</b>
Bank Name	Hong Kong & Shanghai Banking Corporation, Singapore
Address	21 Collyer Quay, #03-01 HSBC Building, Singapore 049320
Account Name	Kim Eng Securities Pte Ltd
Account Number	141-112789-001
<b>Currency</b>	<b>Hong Kong Dollars</b>
Bank Name	Hong Kong & Shanghai Banking Corporation, Singapore
Swift Code	HSBCHKHHHKH
Account Name	Kim Eng Securities Pte Ltd
Account Number	111-180238-001
<b>Currency</b>	<b>US Dollars</b>
Corresponding Bank	Standard Chartered Bank, New York CHIPS UID 057220 (ABA# 026002561)
Account number	3582-088503-001
Beneficiary Bank	Standard Chartered Bank, Singapore
Swift Code	SCBLSGSGXXX
Beneficiary	Kim Eng Securities Pte Ltd
Beneficiary Account Number	0174090064
<b>Currency</b>	<b>Australian Dollars</b>
Bank Name	Hong Kong Bank of Australia HKBA Sydney Office Branch
BSB Code	342011
Account Name	Kim Eng Securities Pte Ltd
Account Number	011-038551-001

Please drop us an email at [marginfinance@kimeng.com](mailto:marginfinance@kimeng.com) after the telegraphic transfer with the email used for the Account application with the following details:

- (a) Client's name;
- (b) Trading Account number; and
- (c) Deposit Amount.

### 9.3 Cheque

All cheques should be crossed and made payable to “**Kim Eng Securities Pte Ltd**”. The Client's Account number, name and contact number should be indicted on the back of the cheque with a statement that this payment is for “KE Forex”.

SS cheque clearance will usually take two (2) Business Days while foreign cheque clearance may take up to a month. Charges incurred for clearing foreign cheques will be borne by the Client.

## 10. Withdrawal of Funds from the Account

10.1 Withdrawal request received by KES before 12pm on a working day will be processed within two (2) working days.

10.2 Funds may be returned by way of cheque (by post or quick cheque deposit) or telegraphic transfer into the Client's bank account. The Client should provide the following details via email to [marginfinance@kimeng.com](mailto:marginfinance@kimeng.com) with the email used for the Account application:

- (a) Client's Name;
- (b) Trading Account number;
- (c) Withdrawal Amount;
- (d) Bank and Account number (for telegraphic transfer / quick cheque deposit). Note: Applicable charges apply for telegraphic transfer.

10.3 Return of funds by way of cheque issued to the Client or telegraphic transfer will only be made to the account bearing the Client's name unless agreed to in writing by KES' sole discretion, in accordance with Clause 14.6.

## Appendix I. RISK DISCLOSURE STATEMENT

### Part I. GENERAL RISK DISCLOSURES

#### Introduction

Clients who trade or transact (in equities, equity linked instruments, contracts for differences and/or other financial instruments, and/or structured transactions involving financial instruments) with or through Kim Eng Securities Pte. Ltd. (“KES”) should be aware of the risks which may be involved in such trading.

The objective of this document is to provide you with some basic information concerning the types of trading and investments which can involve special risks in order for you to make an informed assessment of the risks and uncertainties associated with investing or trading in securities, derivatives and structured products before you undertake such transactions through KES.

The associated risk of loss in entering into such transactions can be substantial.

Your need to know and understand the risks involved in any transaction you may undertake is particularly important for you because of the limited scope of our services to you. **Please be reminded:**

1. **Execution only:** We will deal with you as a client on an execution-only basis and do not advise on the merits or suitability of particular financial instruments / transactions.
2. **Own judgement and suitability:** In asking us to enter into any transaction or execute any order you will be representing that you are solely responsible for making your own independent appraisal and investigations into the risks of the transaction. You will be representing that you have sufficient knowledge and experience to make your own evaluation of the merits and risks of any transaction you may choose to effect with or through us. **Please therefore do not ask us to enter into any such transaction unless you are willing and able to give such representation.**
3. We give you no warranty as to the merits or suitability of transaction you effect or with respect to any investment product and assume no fiduciary duty in our relations with you. For avoidance of doubt no advice or recommendation is given as to the suitability of any product or services for your particular circumstances and you cannot and should not rely on anything, whether in writing or orally we may provide you as being advice or recommendation unless we expressly agree in writing that you can do so.

**This document cannot be and is not sufficient to explain all the risks and other significant aspects of entering into the various types of transactions discussed in this document. You should therefore fully understand the nature and fundamentals of the transactions and the markets underlying such transactions, the nature and scope of the contractual relationship between yourself and KES, the legal terms and conditions of the documents for the transactions, the extent of your exposure to risk and the potential losses that can be incurred, the income tax treatment and the accounting treatment of the transactions (which can be complex), the regulatory treatment of the transactions and, as appropriate, consult your financial and tax advisers or other professional advisers before entering into such transactions. In particular, derivatives transactions and structured products are not suitable for many members of the public. You should carefully consider whether such transactions are suitable for you in light of your financial resources, experience, objectives for engaging in the transactions, ability to bear risks and other relevant circumstances.**

Unless you have a specific agreement with KES for the provision of advisory services or fund management services, you should note and accept that KES’ relationship with you in relation to your securities and securities related transactions is purely as execution only broker/dealer or as a counterparty to you. In either case, while you are entitled to expect KES and/or its employees or representatives to answer your queries, the obligation in so answering is only to be honest. Such answers should not be assumed to be backed by any reasonable due diligence or specifically suitable for reliance by yourself without you first independently confirming that the answer is intended as specific advice to and is suitable for or to your specific financial needs and objectives or verifying the same with your independent advisers on its specific suitability for your specific financial needs and objectives. You should also note Clauses 1.47 to 1.50 of Part I of these T&C, and ensure that you understand and accept the same as a condition to your relationship with KES.

Section A of this document sets out some general investment risks relating to most transactions generally. Section B explains the risks surrounding certain investments and derivatives. Section C discusses non-traditional investments (such as hedge funds) and investments in the emerging markets.

Please read through this document carefully and consult KES if you have any questions.

#### Section A – General Investment Risks

There are various risks of a general nature associated with investing and transacting in securities, derivatives and structured products. These include but are not limited to the following.



### ***Potential losses***

Your payments or receipts under a transaction will be linked to changes in the particular financial market or markets to which the transaction is linked, and you will be exposed to price, currency exchange, interest rate or other volatility in that market or markets. You may sustain substantial losses on the transactions if market conditions move against your positions. It is in your interest to understand fully the impact of market movements, in particular the extent of profit or loss you would be exposed to when there is an upward or downward movement in the relevant rates. Your position on various transactions may be liquidated at a loss and you will then be liable for any resulting deficit in your account with KES. Under certain circumstances, it may be difficult to liquidate an existing position, assess the value, determine a fair price or assess your exposure to risk.

KES may supply you with a sensitivity analysis, and if this is supplied, you would be well advised to familiarise yourself with it. However, KES is not obliged, nor will it be obliged, to supply you with such a sensitivity analysis.

### ***Risk of securities trading***

The prices of securities can and do fluctuate, sometimes dramatically, and may become valueless. It is as likely that losses will be incurred rather than profit made as a result of buying and selling securities. In addition, securities regulations and investor protection rules vary with different exchanges. Some may expose investors in securities listed on those exchanges to high investment risk. In particular, certain exchanges allow companies to list with neither a track record of profitability nor any obligation to forecast future profitability. Such securities may be very volatile and illiquid and their greater risk profiles mean that trading on such exchanges or in such securities may be more suited to professional or sophisticated investors. You should seek independent professional advice if you are uncertain of or have not understood any aspect of the nature of the exchange or the risks involved in trading such securities.

In the case of shares of smaller companies (sometimes known as "penny shares"), there may be a greater risk of loss because there may proportionately be a large difference between the buying price and the selling price of these shares. If they have to be sold immediately, you may get back much less than the amount that you paid for them.

### ***Liquidation of positions***

Under certain market conditions you may find it difficult or impossible to liquidate a position. This may arise from the rules in certain markets (for example, the rules of a particular exchange may provide for "circuit breakers" where trading is suspended or restricted at times of rapid price movements).

Placing contingent orders, such as "stop-loss" or "stop-limit" orders, will not necessarily limit your losses to the intended amounts, as it may be difficult or impossible to execute such orders without incurring substantial losses under certain market conditions. Strategies using combinations of positions, such as "spread" or "straddle" positions may be as risky as taking simple "long" or "short" positions.

### ***Risk of margin trading and trading in leveraged foreign exchange contracts***

The risk of loss in leveraged trading or financing a transaction by deposit of collateral is significant. The high degree of leverage that is often obtainable in margin trading can work against you as well as for you due to fluctuating market conditions. You may sustain large losses as well as gains in response to a small market movement. While the amount of the initial margin required to enter into a transaction may be small relative to the value of the transaction, a relatively small market movement would have a proportionately larger impact. You may sustain losses in excess of your cash and any other assets deposited as collateral with KES. You may be called upon at short notice to make additional substantial margin deposits or interest payments. You should be aware that you may not be entitled to an extension of time when a margin call is made. If the required margin deposits or interest payments are not made within the prescribed time, your position may be liquidated without your consent. Moreover you will remain liable for any resulting deficit in your account and interest charged on your account. Furthermore, you should be aware that KES may liquidate your collateral and/or positions without contacting you in certain instances but not limited to if there has been a drastic drop in the value of your collateral and/or positions. Further, KES may be entitled to decide which collateral to liquidate in order to best protect its interests. You should therefore carefully consider whether such trading or financing arrangement is suitable in light of your financial position and investment objectives.

### ***Securities borrowing***

When you borrow securities, you should be aware that failure to return the borrowed securities to KES on its demand could lead to KES effecting a buy in without further consultation with you, and you may then be liable for the total costs and expenses incurred by KES arising from such buy in.

### ***Pricing relationships***

The normal pricing relationships between a derivative and its underlying assets may not exist in certain circumstances. The absence of an underlying reference price may make it difficult to assess the "fair" value of a derivative position. Under certain circumstances, the specifications of outstanding contracts (including the exercise price of an option or a warrant) may be modified by an exchange or clearing house to reflect changes in the underlying asset.

### ***Tax risks***

Before entering into any transaction you should understand the tax implications of doing so, e.g. income tax. Different transactions may have different tax implications. The tax implications are dependent upon the nature of your business activities and the transactions in question. You should therefore consult your tax adviser to understand the relevant tax considerations.

### ***Currency risks***

The profit and loss in transactions denominated or settled in a different currency from the currency which you carry on your ordinary business or keep your accounts (whether they are traded in your own or another jurisdiction) will be affected by fluctuations in currency rates and the difference between the buying price and the selling price of a currency where there is a need to convert from the currency denomination of the contract to another currency.

### ***Counterparty risks***

All transactions that are executed upon your instructions with counterparties and brokers are dependent on their due performance of their obligations. The insolvency or default of such counterparties and brokers may lead to positions being liquidated or closed out without your consent.

Please ensure that you are aware of the identity of the contractual counterparty you are or may be matched with. Often, you will be buying an unsecured obligation of such counterparty (as opposed to an obligation of a central clearing corporation as would be the case with exchange traded futures and options) and you should evaluate the comparative credit risk. If your counterparty is KES, you must note that KES deals with you at arm's length as your counterparty. Unless it agrees in writing or unless otherwise required by law, KES is not your fiduciary, nor is it willing to accept any fiduciary obligations towards you. Any dealing, trading, engagement or transaction with KES by you could result in a loss to you and a gain to KES. KES does not and will not give you any advice whether written or oral other than the representations which will be expressly set forth in the relevant agreement, and any confirmation which may be signed or executed by you after negotiations with KES as your counterparty.

You should be aware that KES is engaged in certain customer driven and proprietary activities in many markets. These general activities, as well as KES' hedging activities which may be related to certain transactions entered into with you, may adversely affect the value of such transactions.

### ***Commission and other charges***

Your net returns from a transaction would also be affected by the transaction costs (i.e. commission, fees and other charges) including but not limited to those charged by KES, the clearing house and the securities exchange. These costs must be considered in any risk assessment made by you.

### ***Custodial Services***

You acknowledge that there may be risks in leaving securities and assets in KES' safekeeping. Such risks could involve the loss of all your securities and assets, leading to diminished investor protection. You should be prepared to assume these risks if you decide to leave your securities and assets in KES' safekeeping. You should also understand that in relation to securities and assets held in other jurisdictions, KES may appoint foreign custodians to safekeep your foreign securities and assets. In this respect, there may be additional risks in relation to such foreign custodians arising from the operation of foreign law, rules and regulations. You should therefore be prepared to assume these further risks before you engage KES to provide such foreign custodial services. You should also be aware that you may incur additional costs for utilising custodial services.

While every attempt will be made to segregate your securities and KES' securities held with custodians, there may be instances when some custodians may not recognise such segregation. Consequently, your ability to withdraw these securities may be affected if KES defaults.

### ***Transactions in foreign jurisdictions***

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may involve additional risk. In particular, securities that are foreign listed securities and are held outside Singapore are subject to the applicable laws and regulations of the relevant overseas jurisdiction that may be different from the Securities and Futures Act (Cap. 289) and the rules made thereunder in Singapore. Consequently, such securities may not enjoy the same protection as that conferred on securities received or held in Singapore. Before you trade, you should enquire about any rules relevant to your particular transactions. The Monetary Authority of Singapore will be unable to compel the enforcement of the rules of foreign regulatory authorities or markets in other jurisdictions where the transactions have been effected. You should understand the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade. There may be restrictions for foreigners, repatriation of capital investments and profits and there may be withholding or additional forms of taxes.

### ***Trading facilities and electronic trading***

Most trading facilities are supported by computer-based component systems for the order-routing, execution, matching, registration or clearing of trades. As with all facilities and systems, they are vulnerable to temporary disruption or failure. Your ability to recover certain losses may be subject to limits on liability imposed by the system provider, the market, the clearing house and/or member firms. Such limits may vary. Before you conduct any transactions through such facilities or systems, you should understand the details in this respect. Further, trading on an

electronic trading system may differ not only from trading in an open-outcry market but also from trading on other electronic trading systems. If you undertake transactions on an electronic trading system, you will be exposed to risks associated with the system including the failure of hardware and software. The result of any system failure may be that your order is either not executed according to your instructions or not executed at all.

### ***Off-exchange transactions***

In some jurisdictions and only in restricted circumstances, firms are permitted to effect off-exchange transactions. In addition to the issues concerning the liquidation of positions and pricing relationships generally set out above, off-exchange transactions may be less regulated or subject to a separate regulatory regime. Because prices and characteristics of over-the-counter financial instruments are often individually negotiated, there may be no central source for obtaining prices and there can be inefficiencies in the pricing of such instruments. KES consequently cannot and does not warrant that its prices or the prices it secures for you for such transactions are or will at any time be the best price available to you. KES may make a profit from a transaction with you no matter what result the transaction has from your point of view. Off-exchange transactions may also involve greater risk than dealing in exchange traded products because there is no exchange market through which to liquidate your position, to assess the value of the product or the exposure to risk. Bid and offer prices need not be quoted, and even where they are, they will be established by dealers in these products and consequently, it may be difficult to establish what a fair price is. An over-the-counter transaction generally cannot be assigned or transferred without the consent of the other party. KES is not obliged to repurchase a transaction from you. Because transactions are customised and not fungible, engaging in a transaction with another dealer to offset a transaction you have entered into with KES will not automatically close out those positions (as would be true in the case of equivalent exchange-traded futures and options) and will not necessarily function as a perfect hedge. Before you undertake such transactions, you should familiarise yourself with the applicable rules and attendant risks.

### ***Terms and conditions***

It is important that you fully understand the terms and conditions of any transaction that you propose to undertake, including (a) the terms as to price, term, expiration dates, restrictions on exercising an option and other terms material to the transaction; (b) any terms describing risk factors, such as volatility, liquidity, and so on; (c) the circumstances under which you may become obliged to make or take delivery of an underlying asset upon settlement of a derivatives transaction; (d) the legal risks surrounding the transaction, including but not limited to the circumstances under which the transaction may be illegal, resulting in it being void and unenforceable; and (e) the commissions, fees and other charges for which you will be liable. KES may expect you to bear such risks.

You should therefore familiarise yourself with the terms and conditions of any agreement, contract or confirmation that you may enter into with KES. You must fully understand your rights and obligations under that agreement, contract or confirmation, and carefully study the trading mechanism and understand the potential risks involved before you trade. You should not sign any agreement, contract or confirmation unless you are familiar with the contents or effects or your professional advisers have explained the contents and effects.

## **Section B – Transactions involving special risks**

### ***Unit Trusts***

Before investing in any unit trust, you are advised to read and understand the contents of the prospectus or any information memorandum. The prospectus or information memorandum may, but need not always contain, a statement of the risks specific to a particular unit trust. You should carefully assess the nature, characteristics and mandate of a unit trust and, amongst other things, consider the fees and charges involved. You should be aware that an investment in unit trusts is subject to various risks such as those highlighted in Section A of this document and there can be no assurance that a unit trust's investment objectives will be realised. In particular, the price of units in a unit trust is subject to both upwards and downwards movements. In this respect, the past performance of a unit trust should not be taken as an indication of its future performance. You should also understand that the issue, subscription and redemption price of units in respect of any unit trust is usually only indicative and not final and binding.

### ***Options***

#### ***What are options?***

An option is a right granted by a person (the seller or writer) to another (the buyer or holder) to buy (call option) or to sell (put option) a specified amount of an underlying share or other asset at a predefined price (strike price) at or until a certain time (expiration date). The price you pay for this right is called the "premium". American-style options are exercisable on any trading day up until the expiration date. European-style options may only be exercised on their expiration date. This does not however limit their tradability on the secondary market.

The following can underlie an option:

- assets such as equities, bonds, commodities and precious metals;
- benchmarks such as currencies, interest rates and indices;
- derivatives; or
- any combination of the above.

During the life of an option, the writer must often provide margin. The margin is determined by the counterparty or, in the case of exchange traded options, the exchange may determine the required margin. If the deposited margin proves insufficient, the writer may have to provide additional collateral or be faced with his position being closed-out. Certain exchanges in some jurisdictions permit deferred payment of the option premium, limiting the liability of the buyer to margin payments not exceeding the amount of the premium. The buyer is still subject to the risk of losing the premium and transaction costs. When the option is exercised or expires, the buyer is responsible for any unpaid premium outstanding at that time.

A call option is in-the-money if the current market value of the underlying is higher than the strike price. A put option is in-the-money if the current market value of the underlying is lower than the strike price. An option which is in-the-money is said to have an intrinsic value. A call option is out-of-the-money if the current market value of the underlying is lower than the strike price. A put option is out-of-the-money if the current market value of the underlying is higher than the strike price, meaning it has no intrinsic value. If the current market value of the underlying is equal to its strike price, the option is at-the-money.

The price of an option depends on its intrinsic value and on its time value. The latter depends on a variety of factors, including the remaining life of the option and the volatility of the underlying asset. The time value of an option reflects the chance that it will be in-the-money. Generally, the value of a call option decreases, and the value of a put option increases, as the value of the underlying asset falls. The less an option is in-the-money, the larger the decrease in value. This decrease also generally accelerates as the life of the option expires, and is proportionally larger than the decrease in value of the underlying asset. However, in certain cases, the value of an option may decrease even if the value of the underlying asset remains unchanged or moves in favour of the buyer.

#### *Risks of options trading*

Transactions in options carry a higher degree of risk. Buyers and sellers of options should familiarise themselves with the type of options (i.e. put or call) which they contemplate trading, the style of exercise, the nature and extent of rights and obligations and the associated risks. You should calculate the extent to which the value of the options would have to increase for your position to become profitable, taking into account the premium paid and all transaction costs. You should also inform yourself of the exercise and expiration procedures and your rights and obligations upon exercise or expiry.

A person should not buy any option unless he is able to sustain a total loss of the premium and transaction costs of buying the option. The buyer of options may offset its position by trading in the market or exercise the options or allow the options to expire. A person who buys an option should be aware that in order to realise any value from the option, it will be necessary either to offset the option position or to exercise the option. The buyer of an option should be aware that some option contracts may provide only a limited period of time for exercise of the option (e.g. an American-style option), and some option contracts may provide for the exercise of the option on a specified or stipulated date (e.g. a European-style option). The exercise of an option results either in a cash settlement or in the buyer acquiring or delivering the underlying interest. If the option is on a futures contract or leveraged foreign exchange transaction, the buyer will have to acquire a futures or leveraged foreign exchange position, as the case may be, with associated liabilities for margin. If the purchased options expire worthless, you will suffer a total loss of your investment which will consist of the option premium paid plus transaction costs. If you are contemplating buying deep-out-of-the-money options, you should be aware that, ordinarily, the chance of such options becoming profitable is remote. It may sometimes even be impossible to acquire the necessary underlying asset.

**Selling (writing or granting) an option generally entails considerably greater risk than buying options.** Although the premium received by the seller is fixed, the seller may sustain a loss well in excess of the amount of the premium received. The seller will be liable to deposit additional margin to maintain the position if the market moves unfavourably. The seller will also be exposed to the risk of the buyer exercising the option and the seller will be obligated to either settle the option in cash or to acquire or deliver the underlying interest. If the option is on a futures contract or a leveraged foreign exchange transaction, the seller of a put option will acquire a futures contract or leveraged foreign exchange position, as the case may be, with associated liabilities for margin. If the option is "covered" by the seller holding a corresponding position in the underlying futures contract, leveraged foreign exchange transaction or another option, the risk may be reduced. If the option is not covered, the risk of loss can be unlimited.

#### *Additional risks common to options trading*

Terms and conditions of contracts: Before you conduct your transactions, you should understand the terms and conditions of the specific option which you are trading and the associated obligations (e.g. the expiration dates and restrictions on the time of exercise). Under certain circumstances, the specifications of outstanding contracts (including the exercise price of an option) may be modified by the exchange or clearing house to reflect changes in the underlying interest.

Commodity options: Before entering into any transaction involving a commodity option, you should thoroughly understand the nature and type of option involved and the underlying physical commodity. In addition to the risks set out above and in Section A, you should note that specific market movements of the underlying physical commodity cannot be predicted accurately. The prices of commodities can and do fluctuate, and may experience up and down movements which would affect the value of the option.

Exotic options: Unlike "plain vanilla" put and call options, exotic options are subject to additional conditions and agreements. Exotic options come in the form of tailor-made over-the-counter options or as warrants (see section on warrants below). Given the special composition of exotic options, their price movements can vary markedly from those of their "plain vanilla" cousins. You must also be aware that larger transactions can trigger price movements even shortly before expiration and that these can render an option worthless. There is no limit to

the structures exotic options may take. We cannot go into detail here about the risks involved in any particular case. Before buying any exotic options, be sure to seek comprehensive advice about the particular risks involved.

## **Warrants**

### *What are warrants?*

A warrant is a right to subscribe for shares, debentures or other securities, and is exercisable against the original issuer of the securities. As in the case of options, warrants often involve a high degree of gearing, so that a relatively small movement in the price of the underlying security results in a disproportionately large movement in the price of the warrant. The prices of warrants can therefore be very volatile and may fall in value as rapidly as it may rise due to, including but not limited to, variations in the frequency and magnitude of the changes in the price of the underlying security, the time remaining to expiry and the creditworthiness of the issuer.

A “covered warrant” refers to a right to acquire shares or other securities which is exercisable against someone other than the original issuer of the securities.

### *Risks of trading in warrants*

As in the case of options, the buyer of a warrant is subject to the risk of losing the premium and transaction costs. Investments in warrants involve substantial risks including market risk, liquidity risk and the risk that the issuer will be unable to satisfy its obligations under the warrants. You should not buy a warrant unless you are prepared to sustain a total loss of the money you have invested plus the commission or other transaction costs.

An investment in warrants involves valuation risks in relation to the underlying asset, which may vary over time and may increase or decrease by reference to various factors, which may include corporate actions (where the underlying asset is a share or a basket of shares), changes in computation or composition (where the underlying asset is an index), macro economic factors and market trends. Although the issuer may be required or permitted to adjust or amend the conditions of the warrants under certain circumstances, if an event occurs which does not require the issuer to make such adjustments, the price of the warrants and the return upon the exercise of the warrants may be affected.

In the case of exchange-traded warrants, it is not possible to predict the price at which the warrants will trade in the secondary market or whether such market will be liquid or illiquid. To the extent that warrants of a particular issue are exercised, the number of warrants of such issue outstanding will decrease, resulting in a diminished liquidity for the remaining warrants of such issue. A decrease in the liquidity of an issue of warrants may in turn cause an increase in the volatility associated with the price of such issue of warrants. To the extent that an issue of warrants becomes illiquid, the buyer may have to exercise such warrant to realise value. In respect of European-style warrants, as they are only exercisable on the expiration date, you will not be able to exercise your warrants to realise value in the event that the relevant issue becomes illiquid.

## **Forwards and futures**

### *What are forwards and futures?*

Forwards and futures entail the obligation to deliver or take delivery on a specified expiration date of a defined quantity of an underlying at a price agreed on the contract date. Forwards and futures can involve special risks and are therefore only suitable for investors who are familiar with this type of instrument, have sufficient liquid assets and are able to absorb any losses that may arise.

Futures are traded on an exchange. They take the form of contracts in which the quantity of the underlying and the expiration date are standardised. Forwards are not traded on an exchange; hence they are referred to as OTC (over-the-counter) forwards. Their specifications may also be standardised; otherwise they may be agreed between the buyer and the seller. Underlyings for forwards and futures include assets such as equities, currencies, bonds, commodities and precious metals, and benchmarks such as interest rates and indices.

### *Risks of trading in forwards and futures*

**Margin requirements:** On buying or (short) selling an underlying asset on the futures market, you must supply a specified initial margin on agreement of the contract. This is usually a percentage of the total value of the contracted instruments. In addition, a variation margin is calculated periodically during the life of the contract. This corresponds to the book profit or loss arising from any change in value in the contract or underlying instrument. In the event of a book loss, the variation margin can be several times as large as the initial margin. The terms for calculating the variation margin are laid down in the applicable exchange regulations or contract provisions. You will be obliged to deposit the required initial or variation margin cover with KES for the entire life of the contract.

**Forward sales and purchases:** For forward sales, the underlying must be delivered at the price originally agreed even if its market value has since risen above the agreed price. In such a case, you risk losing the difference between these two amounts. Theoretically, there is no limit to how far the market value of the underlying can rise. Hence, potential losses are similarly unlimited and can substantially exceed the margin requirements. For forward purchases, you must take delivery of the underlying at the price originally agreed even if its market value has since fallen below the agreed price. Your potential loss corresponds to the difference between these two values. Your maximum loss corresponds to the originally agreed price. Potential losses can substantially exceed the margin requirements. In order to limit price fluctuations, an exchange may set price limits for certain contracts. You should find out what price limits are in place before effecting forward or futures transactions. This is important since closing out a contract can otherwise be much more difficult or even impossible. If

you sell forward an underlying which you do not hold at the outset of the contract, this is referred to as a short sale. In this case, you risk having to acquire the underlying at an unfavourable market price in order to fulfill your obligation to effect delivery on the contract's expiration date.

Extended Settlement Contracts Listed on the Singapore Exchange Securities Trading Limited: While these contracts are listed for trading by the Singapore Exchange Securities Trading Limited, they are actually futures contracts and not securities for the purposes of Singapore law. The Singapore Exchange Securities Trading Limited requires us specifically to inform you of a specific contingency with respect to trading in such contracts:- (i) In the event of a broker's default, the Central Depository Pte. Ltd. (the "CDP") will not step into the shoes of the broker to settle the broker's obligation under any outstanding Extended Settlement Contract and there will be no re-novation of Extended Settlement Contracts to the CDP; and (ii) that (i) is a standard practice in the futures market which applies both before and after the last trading day of Extended Settlement Contracts and is different from current ready market securities trades (i.e. not futures exchange based securities transactions) re-novated to CDP

OTC forwards: There is no actual market for OTC forwards agreed individually, and hence such positions may only be closed out with the agreement of the counterparty.

Combinations: Since combinations comprise various elements, the closing out of individual elements can considerably alter the risks inherent in the overall position. Before entering into any such transaction, be sure to consult KES about the particular risks involved. Given the many possible combinations, it is impossible to go into detail in this document the risks involved in any particular case.

### ***Contracts for differences***

Certain futures, forward or option contracts are contracts for differences which provide for adjustment between the parties based on the respective values or levels of certain assets or reference indices at the time of the contracts and at an agreed future time. Such assets or reference indices can be shares as well as commodities, securities, currencies, interest rate swaps, etc (collectively referred to herein as the "Underlying Asset"). There is no delivery on these contracts which can only be settled in cash.

Further, the relevant Underlying Asset may not have a ready market. Consequently, these contracts for differences may be very illiquid and in such event, you may sustain substantial losses as the bid/offer spreads may be very wide if the market moves against your position.

Essentially, contracts for differences carry the same risks as investing in a futures contract, forward or an option and you should be aware of these as set out above.

In particular, transactions in contracts for differences have margin requirements and you should be aware of the implications of this as set out above (as described in the section above entitled "Risk of margin trading and trading in leveraged foreign exchange contracts"). You should familiarise yourself with the margin requirements (which can vary with the underlying share or other underlying asset or reference index) and you will be responsible for monitoring your positions and knowing when you will be required to deposit additional margin.

Unless otherwise notified to you, all contracts for differences will be entered into with KES transacting as principal. They are not transacted on a regulated exchange, and the terms and conditions of contracts for differences will be established solely by KES. Your rights and obligations under a contract for differences are not assignable or transferable to any person, and the transaction can only be closed out with KES during KES' normal trading hours in accordance with the CFD Agreement (a copy of which can be found via the following link [www.kecfd.com](http://www.kecfd.com)).

Before you trade, you should familiarise yourself with the details of all commissions and other charges for which you will be liable. In particular, if you enter into a long position in a contract for differences, you will be liable to pay a financing fee to KES. Financing fees are based on prevailing market interest rates and will vary over time. Details of the prevailing financing fees are available from KES.

Under certain trading conditions it may be difficult or impossible to liquidate a position, even if the reference asset or index for a contract for difference is the price on an exchange. For example, this may occur if the price of a security on an exchange rises or falls so rapidly that trading on the exchange is restricted or suspended. A "stop loss" order therefore cannot guarantee that your loss will be limited.

You should familiarise yourself with the protection accorded to any money or other property which you deposit as margin for such trades. KES may onward deposit these with its hedging counterparty to cover margin requirement on your trades. While every attempt will be made to segregate your securities and KES' securities held with the counterparty, there may be instances when such segregation will not be recognized. In the unlikely event that KES becomes insolvent, your ability to withdraw the deposit may be affected and you may be an unsecured creditor of KES with respect to any shortfall.

To the extent that the reference asset or index is traded on a foreign market, this may expose you to risks that are greater than those in local markets, as described above in the section entitled "Transactions in Foreign Jurisdictions".

### ***Structured Products***

#### *What are structured products?*

Structured products are combinations of two or more financial instruments. At least one of them will typically be a derivative. Together, they form a new investment product. Structured products can be traded either on-exchange or over-the-counter. Every structured product has its own risk profile since the risks of its individual components may be reduced, eliminated or increased. You should be aware that there is risk associated with each instrument evaluated separately and the risk of the structured product evaluated as a whole. Therefore your

assessment of the transaction should consider the individual instruments and the structured product as a whole. Hence it is particularly important that you are fully aware of the risks involved before acquiring any such product. Such information can be found in the relevant product literature or the contractual terms for the product.

#### *What are structured products with capital protection?*

Structured products with capital protection consist of two elements: a fixed-income investment (usually a bond or a money market investment) and an option. This combination enables the holder to participate in the price movements of one or more underlying assets (via the option or participation component) while at the same time limiting potential losses (via the bond or capital protection component). The capital protection component may only cover a portion of the capital invested and can be well under 100% of the capital invested, depending on the product. Capital protection therefore does not mean 100% repayment of the purchase price for all products. The option component usually comprises one option or a combination of options. The risks this component entails therefore correspond to those of the corresponding option or option combination. Depending on the underlying's market value, it can expire without value. The participation and protection elements can be separated, depending on the product in question. This allows you to retain or dispose of each individual component separately.

#### *Risks of structured products*

Every structured product has its own risk profile resulting from the interaction of its component risks. Since there is almost limitless potential to combine product elements, we cannot go into detail here about the risks involved in any particular case. Before effecting any such transaction, be sure that you are fully aware of the risks involved. Such information can be found, for example, in the relevant product literature.

Certain transactions may be high risk transactions and the net outcome will depend on the performance of underlying reference obligations, assets and/or certain other financial instruments or indices (the "**Underlying Indicator**"), regardless of whether the Underlying Indicator forms part of the security under the transactions. You should therefore ensure that you fully understand the risks involved in the Underlying Indicator and satisfy yourself that you are willing to accept such risks.

Issuer's credit risk and liquidity risk: With structured products, buyers can only assert their rights against the issuer. Hence, alongside the market risk, particular attention needs to be paid to issuer risk. You therefore need to be aware that, as well as any potential loss you may incur due to a fall in the market value of the underlying, a total loss of your investment is possible if the issuer should default. KES may not always be your contractual counterparty or the issuer under certain transactions. Where KES is not your contractual counterparty or the issuer, your contractual counterparty or a third party issuer, and not KES, will be liable to you under the transaction or otherwise in respect of a product purchased by you. Accordingly, in considering whether to enter into such a transaction, you should take into account all risks associated with such counterparty or third party issuer, including the counterparty's or issuer's financial standing. Certain transactions also involve the assumption by you of credit risks which you should ensure that you are able to evaluate.

You should also note that while market makers, who in most cases are the issuers themselves, normally guarantee that structured products are tradable, liquidity risks cannot be excluded. As these structured transactions are usually executed over-the-counter, you should be aware that it may accordingly be difficult for you to liquidate an existing position, assess the value of, determine a fair price for or assess your exposure to risks under such transaction. This uncertainty should be factored in by you in the overall consideration of the potential impact of your investment in the transaction.

Risks arising from equity and commodity linked notes and other structured securities: Certain notes and securities may be linked to the performance of equities, currencies, commodities or other underlying references. You should study the terms of such products carefully and understand the risks involved. Such instruments may not be capital guaranteed and you may sustain a total or partial loss of your investment. Moreover, the share purchase mechanism embedded in equity linked notes could result in the holder being required to take delivery of the underlying reference shares at maturity instead of a cash amount. In relation to structured notes ("Notes") where the returns on the Notes are linked directly or indirectly (such as via options) to changes in the market of the underlying instrument, you will be exposed to price volatility in that market. You should therefore make your own assessment of the relevant market concerned. You should note that the underlying instrument may be traded in different jurisdictions and on different markets. The market on which the Notes may be traded may be different from the market on which the underlying instrument is traded. Accordingly, the nature of the risks a holder of the Notes is subject to may be very complex.

The Notes may provide that the issuer may discharge its obligations by delivery of the underlying instrument to you on the maturity of the Notes. If the underlying instrument is a basket of shares, these shares which are delivered to you may be traded in a foreign stock market. You should be aware of the implications in relation to this method of settlement; in particular, you may have to open and maintain accounts with a custodian for the purpose of settlement, and pay related costs and expenses in relation to the settlement. By holding the shares or the basket of shares, you may also be subject to the regulatory and disclosure requirements of the jurisdictions in which the issuer of each of the shares is incorporated or carries on business and the shares are traded. There may also be restrictions relating to the trading of the shares and holding of the shares and you are strongly advised to seek independent advice on these issues. You should also note that once you receive shares traded in a foreign jurisdiction, you will be subject to all risks relating to making an investment in shares in that jurisdiction. Accordingly, you have to be aware of risks such as exchange control risks, currency risks, transactional risks which include suspension of trading, extreme market conditions, failure of telecommunications or electronic systems, and events commonly known as "force majeure".

You are subject to exchange rate risks as the Notes may not be denominated in the same currency as the currency in which the underlying instrument is traded and settled. As the underlying instrument may be traded in different jurisdictions, the currency in which the reference underlying instrument for the Notes is traded may differ from the currency in which the same underlying instrument is traded in a different jurisdiction. Therefore, your returns on the Notes depend not only on the value of the underlying instrument but on the exchange rate between the two currencies on the maturity of the Notes. If settlement is effected by the delivery of the underlying instrument, your returns in the form of proceeds from the sale of the underlying instrument may be in a currency different from the currency in which the Notes are denominated.

If the underlying instrument is a stock or commodity index, you should note that the value of the underlying instrument may change if the method of calculating the index is changed notwithstanding that the market for the underlying component stocks or commodities remains unchanged.

Although the Notes may be listed on a stock exchange, there may not be a secondary market for the Notes. Accordingly you may not be able to find a purchaser for the Notes should you wish to dispose of the Notes and the Notes may not have any market value. You should expect that you are required to hold the Notes until its maturity.

You should also note that the tax implications of the Notes may be different from the underlying instrument.

### ***Synthetic products***

#### *What are synthetic products?*

Synthetic products are essentially covered options and certificates and are characterised by their identical or similar profit and loss structures when compared with specific traditional financial instruments such as equities or bonds. Basket certificates are on example. These are based on a specified number of selected stocks.

Synthetic products can be traded either on-exchange or over-the-counter. Note that the risks associated with synthetic products need not be the same as the risks associated with the financial instruments they contain. Hence, it is particularly important that you are fully aware of the risks involved before acquiring any such product. Such information can be found, for example, in the relevant product literature. Two examples of synthetic products are synthetic covered options and certificates.

#### *What is a synthetic covered option?*

A covered option involves the purchase of an underlying asset (equity, bond or currency) and the writing of a call option on that same asset. In return, you are paid a premium, which limits your loss in the event of a fall in the market value of the underlying asset. By the same token, however, your potential return from any increased in the asset's market value is limited to gains up to the option's strike price. Traditional covered options require that the underlying asset be lodged as collateral.

Synthetic covered options are based on the idea of duplicating traditional covered options. This can only be achieved by means of a transaction. Both the purchase of the underlying asset and the writing of the call option are carried out synthetically using derivatives. The purchase price of such a product is identical to that of the underlying, less the premium received for the sale of the call option. Hence, the synthetic product is sold more cheaply than its underlying.

#### *Risks associated with synthetic covered options*

Unlike structured products with capital protection, synthetic covered options do not contain a hedge against losses in the market value of the underlying. However, by writing a call option (traditional covered option) or by calculating the return from the sale of a call option into the product price (synthetic covered option), any loss in market value of the underlying is lower than it would be in the case of a direct investment. The option premium thereby limits any loss in market value of the underlying.

Either cash settlement or physical delivery of the underlying takes place on the expiration date: if the market value of the underlying on expiration is higher than the strike price, you are paid a specified cash amount as settlement. If however, it is lower than the strike price, you receive physical delivery of the underlying asset. In this case, you carry the full risk associated with the underlying.

#### *What are certificates?*

A certificate accords a right that is either based on several underlyings or has a value derived from several indicators. This allows you, even for a low capital investment, to achieve diversification over a broad range of investment opportunities or risk factors and so reduce the level of your risk. The main types of certificates are:

- Index certificates. These reflect a whole market, being based on an official index (e.g. Straits Times Index or STI).
- Region certificates. These are derived from a series of indices or companies from a certain region (e.g. Eastern Europe, Pacific, etc.).
- Basket certificates. These are derived from a selection of national or international companies active in a certain sector (e.g. biotechnology, telecoms, mechanical engineering), indices, bonds or other underlyings.

Certificates are securitised and have a limited duration. Redemption occurs on expiration and equals:

- A set amount per index point for an index certificate.



- The difference between the market value on expiration and the strike price for a region or basket certificate.

#### *Risks associated with certificates*

Investments in index, region or basket certificates basically involve the same level of potential loss as a direct investment in the corresponding equities themselves. Compared with a direct investment, certificates offer greater risk diversification. However, this does not mean the risk is eliminated – it may simply be transposed onto the market and sector risks. In contrast to a direct investment in equities, certificates do not confer any voting rights nor do they entitle the holder to a dividend payment. Certificates also carry an issuer risk i.e. the credit risk associated with the issuing bank.

### **Section C – Additional information**

#### ***Investments in non-traditional funds (hedge funds and offshore funds)***

##### *What are non-traditional funds?*

Non-traditional funds are funds or investment companies that differ from traditional equity and bond investments on account of their investment style. The most common form of non-traditional fund is the hedge fund, which - in spite of its name - does not necessarily have anything to do with hedging. Many hedge funds aim to make a profit and sometimes take on very high levels of risk. Hedge funds include all types of investment funds, investment companies and partnerships that use derivatives for investment rather than hedging purposes, that can carry out short sales or that can attain significant leverages from the investment of borrowed capital. Additional features of hedge funds are their free choice of investment categories, markets (including emerging markets) and trading methods. Hedge funds generally demand high minimum investments. They offer no more than limited subscription and redemption rights with lengthy notice periods. Portfolio managers of hedge funds receive performance-linked bonuses and often have a personal stake in the fund.

##### *What risks do you need to be aware of?*

Non-traditional investments can take countless different forms. Hence we cannot go into detail here about the risks involved in any particular case. Before making any such investments, be sure to seek comprehensive advice about the particular risks involved and to study carefully any offers.

Investment strategies are often high-risk. Due to leverage, a small movement in the market can lead to a major gain, but any losses will also be magnified sharply. The entire amount of your investment can, under certain circumstances, be lost.

It is not uncommon for there to be little information available concerning a non-traditional investment. Moreover, many investment strategies are highly complex and very difficult to understand. Changes in strategy that can lead to a substantial increase in the level of risk are often virtually overlooked, accorded too little attention or noticed too late.

The liquidity and tradability of non-traditional investments can vary a great deal. Hedge fund issues and redemptions are often only monthly, quarterly or annually. Fixed holding periods lasting many years are not unusual. Provisions regarding trading frequency and holding periods may change frequently and rapidly. Liquidations can stretch over many years.

##### *What are offshore funds?*

Many funds in this category have an offshore domicile which earns them the name offshore funds. They are subject to less stringent legislation and supervision, which in turn offers poorer investor protection. Problems or delays may also arise in the settlement of buy and sell orders for units in such funds. There is no guarantee that an investor's legal rights will be enforceable.

#### ***Investments in emerging markets***

##### *What are the emerging markets?*

Emerging markets are the markets for securities trading in countries that possess one or more of the following characteristics:

- A certain degree of political instability
- Relatively unpredictable financial markets and economic growth patterns
- A financial market that is still at the development stage
- A weak economy

According to the Organisation for Economic Co-operation and Development (OECD) criteria, the emerging markets are all countries except: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Hong Kong, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, the UK and the US. These countries' markets are described as the established markets.

##### *Risks to be borne in mind*

There are risks linked to investments in emerging markets that are not encountered in their more established counterparts. This is also the case when the issuer or provider of a product has its headquarters or primary focus of activity in an emerging nation. Such risks include

(without limitation) sovereign risk, issuer risk, price risk and liquidity risk. Investing in the products of such issuers or providers is therefore often speculative.

Although investments in emerging markets related instruments can yield high gains, they can also be highly risky as the markets are unpredictable and there may be inadequate regulation and safeguards available to investors. Before investing in emerging markets, you should form an impression of them that allows you to assess the risks involved.

**We strongly suggest that you review all materials (as supplied by us and as supplemented with independent advice which you have been encouraged to take) pertaining to the risks associated with any transaction.**

Part II. FORM 13

SECURITIES AND FUTURES ACT  
(Cap. 289)

SECURITIES AND FUTURES  
(LICENSING AND CONDUCT OF BUSINESS)  
REGULATIONS (Rg 10)

**RISK DISCLOSURE STATEMENT REQUIRED TO BE  
FURNISHED UNDER REGULATION 47E(1) AND TO BE KEPT  
UNDER REGULATION 39(2)(c) BY THE HOLDER OF A CAPITAL  
MARKETS SERVICES LICENCE TO TRADE IN FUTURES  
CONTRACTS OR LEVERAGED FOREIGN EXCHANGE  
CONTRACTS**

**FORM  
13**

1. This statement is provided to you in accordance with regulation 47E(1) of the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg 10).
2. This statement does not disclose all the risks and other significant aspects of trading in futures, options and leveraged foreign exchange. In light of the risks, you should undertake such transactions only if you understand the nature of the contracts (and contractual relationships) into which you are entering and the extent of your exposure to the risks. Trading in futures, options and leveraged foreign exchange may not be suitable for many members of the public. You should carefully consider whether such trading is appropriate for you in the light of your experience, objectives, financial resources and other relevant circumstances. In considering whether to trade, you should be aware of the following:

**(a) Futures and Leveraged Foreign Exchange Trading**

*(i) Effect of 'Leverage' or 'Gearing'*

Transactions in futures and leveraged foreign exchange carry a high degree of risk. The amount of initial margin is small relative to the value of the futures contract or leveraged foreign exchange transaction so that the transaction is highly 'leveraged' or 'geared'. A relatively small market movement will have a proportionately larger impact on the funds you have deposited or will have to deposit; this may work against you as well as for you. You may sustain a total loss of the initial margin funds and any additional funds deposited with the firm to maintain your position. If the market moves against your position or margin levels are increased, you may be called upon to pay substantial additional funds on short notice in order to maintain your position. If you fail to comply with a request for additional funds within the specified time, your position may be liquidated at a loss and you will be liable for any resulting deficit in your account.

*(ii) Risk-Reducing Orders or Strategies*

The placing of certain orders (e.g. 'stop-loss' orders, where permitted under local law, or 'stop-limit' orders) which are intended to limit losses to certain amounts may not be effective because market conditions may make it impossible to execute such orders. At times, it is also difficult or impossible to liquidate a position without incurring substantial losses. Strategies using combinations of positions, such as 'spread' and 'straddle' positions may be as risky as taking simple 'long' or 'short' positions.

**(b) Options**

*(i) Variable Degree of Risk*

Transactions in options carry a high degree of risk. Purchasers and sellers of options should familiarise themselves with the type of options (i.e. put or call) which they contemplate trading and the associated risks. You should calculate the extent to which the value of the options would have to increase for your position to become profitable, taking into account the premium paid and all transaction costs. The purchaser of options may offset its position by trading in the market or exercise the options or allow the options to expire. The exercise of an option results either in a cash settlement or in the purchaser acquiring or delivering the underlying interest. If the option is on a futures contract or leveraged foreign exchange transaction, the purchaser will have to acquire a futures or leveraged foreign exchange position, as the case may be, with associated liabilities for margin (see the section on Futures and Leveraged Foreign Exchange Trading above). If the purchased options expire worthless, you will suffer a total loss of your investment which will consist of the option premium paid plus transaction costs. If you are contemplating purchasing deep-out-of-the-money options, you should be aware that, ordinarily, the chance of such options becoming profitable is remote.

Selling ('writing' or 'granting') an option generally entails considerably greater risk than purchasing options. Although the premium received by the seller is fixed, the seller may sustain a loss well in excess of the amount of premium received. The seller will be liable to deposit additional margin to maintain the position if the market moves unfavourably. The seller will also be exposed to the risk of the purchaser exercising the option and the seller will be obligated to either settle the option in cash or to acquire or deliver the underlying interest. If the option is on a futures contract or a leveraged foreign exchange transaction, the seller will acquire a futures or leveraged foreign exchange position, as the case may be, with associated liabilities for margin (see the section on Futures and Leveraged Foreign Exchange Trading above). If the option is 'covered' by the seller holding a corresponding position in the underlying futures contract, leveraged foreign exchange transaction or another option, the risk may be reduced. If the option is not covered, the risk of loss can be unlimited.

Certain exchanges in some jurisdictions permit deferred payment of the option premium, limiting the liability of the purchaser to margin payments not exceeding the amount of the premium. The purchaser is still subject to the risk of losing the premium and transaction costs. When the option is exercised or expires, the purchaser is responsible for any unpaid premium outstanding at that time.

**(c) Additional Risks Common to Futures, Options and Leveraged Foreign Exchange Trading**

**(i) *Terms and Conditions of Contracts***

You should ask the corporation with which you conduct your transactions for the terms and conditions of the specific futures contract, option or leveraged foreign exchange transaction which you are trading and the associated obligations (e.g. the circumstances under which you may become obligated to make or take delivery of the underlying interest of a futures contract or a leveraged foreign exchange transaction and, in respect of options, expiration dates and restrictions on the time for exercise). Under certain circumstances, the specifications of outstanding contracts (including the exercise price of an option) may be modified by the exchange or clearing house to reflect changes in the underlying interest.

**(ii) *Suspension or Restriction of Trading and Pricing Relationships***

Market conditions (e.g. illiquidity) or the operation of the rules of certain markets (e.g. the suspension of trading in any contract or contract month because of price limits or 'circuit breakers') may increase the risk of loss by making it difficult or impossible to effect transactions or liquidate/offset positions. If you have sold options, this may increase the risk of loss.

Further, normal pricing relationships between the underlying interest and the futures contract, and the underlying interest and the option may not exist. This can occur when, e.g., the futures contract underlying the option is subject to price limits while the option is not. The absence of an underlying reference price may make it difficult to judge 'fair' value.

**(iii) *Deposited Cash and Property***

You should familiarise yourself with the protection accorded to any money or other property which you deposit for domestic and foreign transactions, particularly in a firm's insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specific legislation or local rules. In some jurisdictions, property which had been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

**(d) Commission and Other Charges**

Before you begin to trade, you should obtain a clear explanation of all commissions, fees and other charges for which you will be liable. These charges will affect your net profit (if any) or increase your loss.

**(e) Transactions in Other Jurisdictions**

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to a rule which may offer different or diminished investor protection. Before you trade, you should enquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of the regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you conduct your transactions for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

**(f) Currency Risks**

The profit or loss in transactions in foreign currency-denominated futures and options contracts (whether they are traded in your own or another jurisdiction) will be affected by fluctuations in currency rates where there is a need to convert from the currency denomination of the contract to another currency.

**(g) Trading Facilities**

Most open-outcry and electronic trading facilities are supported by computer-based component systems for the order-routing, execution, matching, registration or clearing of trades. As with all facilities and systems, they are vulnerable to temporary disruption or failure. Your ability to recover certain losses may be subject to limits on liability imposed by the one or more parties, namely the system provider, the market, the clearing house or member firms. Such limits may vary. You should ask the firm with which you conduct your transactions for details in this respect.

**(h) Electronic Trading**

Trading on an electronic trading system may differ not only from trading in an open-outcry market but also from trading on other electronic trading systems. If you undertake transactions on an electronic trading system, you will be exposed to risks associated with the system including the failure of hardware and software. The result of any system failure may be that your order is either not executed according to your instructions or not executed at all.

**(i) Off-Exchange Transactions**

In some jurisdictions, firms are permitted to effect off-exchange transactions. The firm with which you conduct your transactions may be acting as your counterparty to the transaction. It may be difficult or impossible to liquidate an existing position, to assess the value, to determine a fair price or to assess the exposure to risk. For these reasons, these transactions may involve increased risks. Off-exchange transactions may be less regulated or subject to a separate regulatory regime. Before you undertake such transactions, you should familiarise yourself with the applicable rules and attendant risks.

**ACKNOWLEDGEMENT OF RECEIPT OF THIS RISK DISCLOSURE STATEMENT**

This acknowledges that I/we have received a copy of this RISK DISCLOSURE STATEMENT and understand its contents.

Signature of customer: \_\_\_\_\_

Name of customer: \_\_\_\_\_

Designation\*: \_\_\_\_\_

Corporation name\*: \_\_\_\_\_

Signature of witness: \_\_\_\_\_

Name of witness: \_\_\_\_\_

Date: \_\_\_\_\_

\*For corporations only.

*Note:*

“Margin” means an amount of money, securities, property or other collateral, representing a part of the value of the contract or agreement to be entered into, which is deposited by the buyer or the seller of a futures contract or in a leveraged foreign exchange transaction to ensure performance of the terms of the futures contract or leveraged foreign exchange transaction.

## Appendix II. LETTER OF AUTHORISATION FOR CFD ACCOUNT

1. With reference to the Client's Account for trading contracts for differences ("CFD") (the "Account"), the Client hereby authorises the Trading Representative stated in the Account Application Form as the Client's attorney with respect to the Account (the "Attorney") to act on the Client's behalf and as the Client's acts and deeds to do all things which the Client is empowered to do as holder of the Account, including but not limited to:
  - (a) taking delivery from KES of crossed cheques made payable to the Client\_or to others on the Client's\_written instructions;
  - (b) taking delivery from KES of share certificates and the duly executed transfer forms thereof even though the name of the transferee may not have been inserted therein;
  - (c) depositing either with KES or a third party share certificates and the duly executed transfer forms thereof to the intent that KES is consequent thereto to have a security interest over such shares as are evidenced by such certificates;
  - (d) giving instruction to accept or reject or otherwise deal with share offers, rights issues or any other matters relating to CFD corporate actions that may require the Client's election;
  - (e) executing all forms and documents and doing or causing to be done all acts and things as may be required by KES to attach and/or perfect any and every security interest which is intended by the Client to be and/or is and/or has been granted to and/or taken by KES over the Client's assets;
  - (f) taking delivery from KES of any duplicate copy of the statements of account and/or confirmation notes which may be issued in respect of the Client's CFD transactions with KES on the Client's behalf and to give KES instructions accordingly;
  - (g) offering, on the Client's behalf to enter into CFDs with KES or to terminate any CFDs which the Client may have entered into with KES from time to time and to give KES all and any instructions in relation thereto;
  - (h) giving KES instructions to withdraw any funds constituting Excess Margin (as defined in Part II of these T&C) which may be credited into the Account from time to time;
  - (i) giving KES instructions to make any payment order in respect of the Account in connection with KES and its associated companies/related corporations;
  - (j) giving good receipts and discharges for all documents of whatsoever nature which the Attorney is authorised to receive by this letter read together with the Account Application Form; and/or
  - (k) generally taking all any and all further steps which the Attorney may in the Attorney's sole and absolute discretion deem to be necessary or desirable to accomplish the purposes herein specified.
2. The Client acknowledges and agrees that whatever may be the relationship between the Attorney and KES, that the Attorney is appointed by the Client to act on the Client's behalf and is neither, in respect of the Client's dealings with KES or in any of the Client's Attorney's actions as contemplated by this letter read together with the Account Application Form, to be regarded as KES' servant nor KES' employee and all instructions of purchase or sale given by the Attorney, so long as it is not expressly stated by the Attorney to be otherwise than pursuant to his empowerment in this letter read together with the Account Application Form, if given or purportedly given on the Client's behalf shall be deemed to be instructions given by the Client which KES can act in accordance with and look to the Client for responsibility thereof whether or not the Attorney is also jointly, severally or distinctly liable.
3. The authorisation given to the Attorney in this letter read together with the Account Application Form shall apply to all acts and things done by the Attorney before the Client revokes the Client's authorisation. Revocation of the Client's authorisation in this letter read together with the Account Application Form shall only take effect and be valid upon written notice from the Client to KES of such revocation and KES' acknowledgement in writing that KES has received such notice of revocation.
4. All acts and things done by the Attorney whether prior to or after the receipt by the Client of KES' said acknowledgement but in reliance on the authority given by the Client to the Attorney hereunder shall be valid and binding on the Client and the Client undertakes to ratify the same. The Client further and alternatively agrees and confirms that KES shall be indemnified by the Client against all losses, damages, costs, charges and expenses of whatsoever nature (including legal costs on a full indemnity basis) and howsoever incurred by KES arising directly or indirectly from any act and thing done by the Attorney.
5. This authorisation is given by the Client to the Attorney of the Client's own initiative and judgment and after the Client having decided that it serves the Client's best interests and after having taken independent advice on the effect and consequences to the Client on giving the authorities above to the Attorney.

### Appendix III. CONSENT TO RECEIVE STATEMENTS BY ELECTRONIC MAIL

#### IMPORTANT

1. The Client hereby agrees and consents to KES' account(s) opening documents, daily and/or monthly statements, tax invoices, confirmation notes and all other correspondence or communications from KES being provided and notified to the Client via electronic mail only in substitution of KES sending hard copies of such statements, tax invoices, notes, other correspondence or communications to the Client by mail or fax (the "**Consent**").
2. For the avoidance of doubt and without prejudice to the generality of the preceding paragraph, the Client specifically agrees, consents to, and authorises KES account opening documentation, contract notes, tax invoices, confirmation notes, daily statements, monthly statements and other advices, correspondence or communications by KES (the "**Statements**") to be made and notified by KES to the Client in the form of electronic records, statements and messages delivered to the Client's electronic mail address as the Client may notify KES or KES may have on record the Client's electronic mail address. The Client acknowledges that the Client understands and agrees to the manner of delivery and retrieval of such Statements via electronic mail.
3. The Client further acknowledges and agrees that:
  - (a) Statements and other communications sent through electronic mail, though in electronic form, are original, valid and legally binding written documents. The Client shall not dispute or challenge the validity, enforceability or admissibility of any such Statement on the grounds that it is not a written document or not an original or valid document and the Client hereby waives any such right the Client may have at law in relation thereto;
  - (b) a successful response received by KES on the delivery of an electronic mail notification to the Client's electronic mail address shall be deemed by KES as a notification that the relevant Statements have been received and read by the Client;
  - (c) the Client may only effectively revoke this Consent by giving KES **20** Business Days' prior written notice (the "**Notice**") of such intended revocation; and upon the expiration of such period of Notice, the Consent will no longer have legal effect and KES will cease to send electronic copies of the Statements by post or fax; and
  - (d) notwithstanding the provisions in (c), KES reserves the right to close the Client's KES Account(s) upon the Client's revocation of his/its Consent to receive Statements only through electronic mail.

The Client also understands and agrees that:

- (a) KES shall have no responsibility or liability for the non-performance of KES' obligations hereunder by reason of any cause beyond KES' control, including, without limitation, any breakdown or failure in transmission or communication or computer facilities, postal or other strikes or similar industrial action and the failure of any agent to perform its obligations or in relation to any transaction or any default by any such person;
- (b) the Client shall comply with and observe all other provisions in the KES T&C (however, where there is any conflict between the provisions in this Appendix and another provision in the KES T&C relating to the transmission of Statements or other KES communications to Clients, the provisions in this Appendix shall prevail;
- (c) KES may in its sole and absolute discretion impose any additional terms and conditions, including requiring the Client to give instructions in a form acceptable to KES, as a condition precedent to KES acting on the Client's instructions, whether written or oral and KES shall not be liable to the Client in any way by reason of its acting or omitting to act on any such instructions; and
- (d) the Client shall fully indemnify and at all times keep KES fully indemnified on demand from and against all claims and demands, actions and proceedings, loss, expenses, and costs (including legal costs on a full indemnity basis) and all other liabilities of whatsoever nature of description resulting directly or indirectly from KES' reliance on any of the above instructions or communications.



#### Appendix IV. LETTER OF AUTHORISATION FOR MARGIN ACCOUNT

1. With reference to the Client's Margin Account with KES (the "Account"), the Client hereby authorises the Trading Representative stated in the Account Application Form as the Client's attorney with respect to the Account (the "Attorney") to act on the Client's behalf and as the Client's acts and deeds to do all things which the Client is empowered to do as holder of the Account, including but not limited to:
  - (a) taking delivery from KES of crossed cheques made payable to the Client\_or to others on the Client's\_written instructions;
  - (b) taking delivery from KES of share certificates and the duly executed transfer forms thereof even though the name of the transferee may not have been inserted therein;
  - (c) depositing either with KES or a third party share certificates and the duly executed transfer forms thereof to the intent that KES is consequent thereto to have a security interest over such shares as are evidenced by such certificates;
  - (d) executing all forms and documents and doing or causing to be done all acts and things as may be required by KES to attach and/or perfect any and every security interest which is intended by the Client to be and/or is and/or has been granted to and/or taken by KES over the Client's assets;
  - (e) taking delivery from KES of any credit or debit notes or duplicate copy of the statements of accounts and/or provisional letters of allotment which may be due in respect of the Client's shareholdings on the Client's behalf and to give KES instructions accordingly;
  - (f) giving KES instructions to accept or reject or otherwise deal with share offers and/or rights issues or any other matter in respect of the Client's shareholdings;
  - (g) giving KES instructions to make or withdraw any payment order in respect of the Client's Account in connection with KES and its associate companies/related corporations;
  - (h) giving good receipts and discharges for all documents of whatsoever nature which the Attorney is authorised to receive by this letter read together with the Account Application Form; and/or
  - (i) generally taking all any and all further steps which the Attorney may in the Attorney's sole and absolute discretion deem to be necessary or desirable to accomplish the purposes herein specified.
2. The Client acknowledges and agrees that whatever may be the relationship between the Attorney and KES, that the Attorney is appointed by the Client to act on the Client's behalf and is neither, in respect of the Client's dealings with KES or in any of the Attorney's actions as contemplated by this letter read together with the Account Application Form, to be regarded as KES' servant nor KES' employee and all instructions of purchase or sale given by the Attorney, so long as it is not expressly stated by the Attorney to be otherwise than pursuant to his empowerment in this letter read together with the Account Application Form, if given or purportedly given on the Client's behalf shall be deemed to be instructions given by the Client which KES can act in accordance with and look to the Client for responsibility thereof whether or not the Attorney is also jointly, severally or distinctly liable.
3. The authorisation given to the Attorney in this letter read together with the Account Application Form shall apply to all acts and things done by the Attorney before the Client revokes the Client's authorisation. Revocation of the Client's authorisation in this letter read together with the Account Application Form shall only take effect and be valid upon written notice from the Client to KES of such revocation and KES' acknowledgement in writing that KES has received such notice of revocation.
4. All acts and things done by the Attorney whether prior to or after the receipt by the Client of KES' said acknowledgement but in reliance on the authority given by the Client to the Attorney hereunder shall be valid and binding on the Client and the Client undertakes to ratify the same. The Client further and alternatively agrees and confirms that KES shall be indemnified by the Client against all losses, damages, costs, charges and expenses of whatsoever nature (including legal costs on a fully indemnified basis) and howsoever incurred by KES arising directly or indirectly from any act and thing done by the Attorney.
5. This authorisation is given by the Client to the Attorney of the Client's own initiative and judgment and after the Client having decided that it serves the Client's best interests and after having taken independent advice on the effect and consequences to the Client on giving the authorities above to the Attorney.

#### **Appendix V. LETTER OF AUTHORISATION FOR MARGINABLE FUTURES CONTRACTS ACCOUNT**

1. With reference to the Client's Account for trading Marginable Futures Contracts with KES (the "**Account**"), the Client hereby authorises the Trading Representative stated in the Account Application Form as the Client's attorney with respect to the Account (the "**Attorney**") to act on the Client's behalf and as the Client's acts and deeds to do all things which the Client is empowered to do as holder of the Account, including but not limited to:
  - (a) taking delivery from KES of crossed cheques made payable to the Client or to others on the Client's\_written instructions;
  - (b) taking delivery from KES of share certificates and the duly executed transfer forms thereof even though the name of the transferee may not have been inserted therein;
  - (c) depositing either with KES or a third party share certificates and the duly executed transfer forms thereof to the intent that KES is consequent thereto to have a security interest over such shares as are evidenced by such certificates;
  - (d) executing all forms and documents and doing or causing to be done all acts and things as may be required by KES to attach and/or perfect any and every security interest which is intended by the Client to be and/or is and/or has been granted to and/or taken by KES over the Client's assets;
  - (e) taking delivery from KES of any credit or debit notes or duplicate copy of the statements of accounts and/or provisional letters of allotment which may be issued in respect of the Account on the Client's behalf and to give KES instructions accordingly;
  - (f) giving KES instructions to accept or reject or otherwise deal with share offers and/or rights issues or any other matter in respect of the Client's Account;
  - (g) giving KES instructions to make or withdraw any payment order in respect of the Client's Account in connection with KES and its associated companies/related corporations; and/or
  - (h) giving good receipts and discharges for all documents of whatsoever nature which the Attorney is authorised to receive by this letter read together with the Account Application Form; and/or
  - (i) generally taking all any and all further steps which the Attorney may in the Attorney's sole and absolute discretion deem to be necessary or desirable to accomplish the purposes herein specified.
2. The Client acknowledges and agrees that whatever may be the relationship between the Attorney and KES, that the Attorney is appointed by the Client to act on the Client's behalf and is neither, in respect of the Client's dealings with KES or in any of the Attorney's actions as contemplated by this letter read together with the Account Application Form, to be regarded as KES' servant nor KES' employee and all instructions of purchase or sale given by the Attorney, so long as it is not expressly stated by the Attorney to be otherwise than pursuant to his empowerment in this letter read together with the Account Application Form, if given or purportedly given on the Client's behalf shall be deemed to be instructions given by the Client which KES can act in accordance with and look to the Client for responsibility thereof whether or not the Attorney is also jointly, severally or distinctly liable.
3. The authorisation given to the Attorney in this letter read together with the Account Application Form shall apply to all acts and things done by the Attorney before the Client revokes the Client's authorisation. Revocation of the Client's authorisation in this letter read together with the Account Application Form shall only take effect and be valid upon written notice from the Client to KES of such revocation and KES' acknowledgement in writing that KES have received such notice of revocation.
4. All acts and things done by the Attorney whether prior to or after the receipt by the Client of KES' said acknowledgement but in reliance on the authority given by the Client to the Attorney hereunder shall be valid and binding on the Client and the Client undertakes to ratify the same. The Client further and alternatively agrees and confirms that KES shall be indemnified by the Client against all losses, damages, costs, charges and expenses of whatsoever nature (including legal costs on a fully indemnified basis) and howsoever incurred by KES arising directly or indirectly from any act and thing done by the Attorney.
5. This authorisation is given by the Client to the Attorney of the Client's own initiative and judgment and after the Client having decided that it serves the Client's best interests and after having taken independent advice on the effect and consequences to the Client on giving the authorities above to the Attorney.

## Appendix VI. LETTER OF AUTHORISATION FOR LEVERAGED FOREIGN EXCHANGE TRADING ACCOUNT

1. With reference to the Client's Account for trading Leveraged Foreign Exchange ( "LFX") with KES ( the "Account" ), the Client hereby authorises the Trading Representative ( "TR" ) stated in the Account Application Form as the Client's attorney with respect to the Account (the "Attorney ") to act or do on the Client's behalf and as the Client's acts and deeds to do the following administrative acts and deeds which the Client is empowered to do as holder of the Account ( but **excluding** any act, deed or thing of trading in LFX or which is ancillary or related to or part of any conduct or activity of trading in LFX ):
  - (a) taking delivery from KES of crossed cheques made payable to the Client or to others on the Client's written instructions;
  - (b) taking delivery from KES of share certificates and the duly executed transfer forms thereof even though the name of the transferee may not have been inserted therein;
  - (c) depositing either with KES or a third party share certificates and the duly executed transfer forms thereof with the intent that KES is consequently to have a security interest over such shares as are evidenced by such certificates;
  - (d) executing all forms and documents and doing or causing to be done all acts and things as may be required by KES to attach and/or perfect any and every security interest which is intended by the Client to be and/or is and/or has been granted to and/or taken by KES over the Client's assets;
  - (e) taking delivery from KES of any credit or debit notes or duplicate copies of the statements of accounts and/or provisional letters of allotment which may be issued in respect of the Account on the Client's behalf as instructed previously by the Client and to give KES instructions accordingly;
  - (f) giving KES instructions as instructed by the Client to accept or reject or otherwise deal with share offers and/or rights issues or any other matter in respect of the Client's Account where such instructions do *not* constitute any trading in LFX or are ancillary or related to such LFX trading;
  - (g) giving KES instructions to make or withdraw any payment order in respect of the Client's Account as instructed by the Client in connection with KES and its associated companies/related corporations;
  - (h) giving good receipts and discharges for documents which the Attorney is authorised to receive hereunder read together with the Account Application Form; and/or
  - (i) doing any such necessary act or deed ancillary or incidental to the above authorised acts or deeds ( provided such act or deed does not constitute trading in LFX or is not related to or does not form part of the conduct or activity of trading in LFX ) .
2. The Client acknowledges and agrees that whatever may be the relationship between the Attorney and KES, the Attorney is appointed by the Client to act on the Client's behalf and is neither, in respect of the Client's dealings with KES or in any of the Attorney's actions as contemplated hereunder read together with the Account Application Form, to be regarded as KES' servant nor KES' employee and all instructions of purchase or sale given by the Attorney, so long as it is not expressly stated by the Attorney to be otherwise than pursuant to his empowerment in this letter read together with the Account Application Form, if given or purportedly given on the Client's behalf shall be deemed to be instructions given by the Client which KES can act in accordance with and look to the Client for responsibility thereof whether or not the Attorney is also jointly, severally or independently liable.
3. The authorisation given to the Attorney hereunder read together with the Account Application Form shall remain valid and binding and shall apply to all acts and things done by the Attorney hereunder unless and until the Attorney and/or KES receive written notification of the revocation ( "**Revocation**" ) of the Client's authorisation hereunder ( "**Authorisation**" ). Revocation of the Authorisation ( as read together with the Account Application Form ) shall only be effective and binding upon receipt by KES of such written notice of Revocation from the Client to KES and KES' acknowledgement in writing to the Client that KES has received such notice of Revocation.
4. All acts and things done by the Attorney whether prior to or after the receipt by the Client of KES'said acknowledgement but in reliance on the authority given by the Client to the Attorney hereunder shall be valid and binding on the Client and the Client undertakes to ratify the same. The Client further and alternatively agrees and confirms that KES shall be indemnified by the Client against all losses, damages, costs, charges and expenses of whatsoever nature (including legal costs on a fully indemnified basis) and howsoever incurred by KES arising directly or indirectly from any act and thing done by the Attorney.
5. This Authorisation is given by the Client to the Attorney on the Client's own initiative and judgment and after having taken independent legal advice on the effect and consequences to the Client of giving the Authorisation to the Attorney.