

**Sumitomo Mitsui Banking Corporation**

**Private Wealth Terms and Conditions**

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## Private Wealth Terms and Conditions

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### Important Notice

#### YOU NEED TO READ THIS DOCUMENT.

These Private Wealth Terms and Conditions apply where we, the Bank, maintain an Account for you, and apply in relation to the Services that we offer you. They also apply to each Product or Service we agree to provide to you from time to time, in addition to other documents such as the Product Terms, Service Terms and the Fee Schedule.

Unless we notify you otherwise, these Private Wealth Terms and Conditions will apply to any Product or Service offered by us which you may apply for in the future. We may ask you to enter into a separate agreement relating to that Product or Service. An up-to-date copy of these Private Wealth Terms and Conditions is available at all times on our website at <https://www.smbc.co.jp/asia/singapore/forms/index.html>.

The Private Wealth Terms and Conditions take effect on the earlier of (a) the date you enter into a Facility Agreement with us which refers to or incorporates the Private Wealth Terms and Conditions and (b) the date you provide to us a signed letter of acceptance agreeing that these Private Wealth Terms and Conditions will govern your relationship with us.

These Private Wealth Terms and Conditions are supplied in English. Any communications between you and us under these Private Wealth Terms and Conditions will be in English. If you are in any doubt as to the meaning or effect of any of these Private Wealth Terms and Conditions, we recommend that you seek independent legal advice.

### Key words

Capitalised expressions and words shall have the meanings given to them in Section 3.

## **Section 1 – General Terms**

### **Part A – Our Private Wealth Relationship**

#### **1. The terms of our relationship**

- 1.1 Welcome to Sumitomo Mitsui Banking Corporation. We welcome this opportunity to provide private wealth services to you.
- 1.2 To open a private wealth Account with us, you should complete an appropriate Account Opening Application and submit it to us together with the supporting documents that may be required. We reserve the right to decline to accept any such Account Opening Application.
- 1.3 You may request us to open and maintain a private wealth Account in your name, and to request for Services in connection with the Account(s) we maintain for you. We may exercise our independent discretion to decline to act on any request or instruction given to us.

#### **Product Agreements and Service Agreements**

- 1.4 While our employees or Agents are authorised to give you information about Products or Services offered by us, they have no authority to make representations or agree to terms that are not already set out in a Product Agreement or Service Agreement.
- 1.5 In the course of our private wealth relationship, if you want to use or purchase a Product or Service, you may need to complete an Application to ask us to approve your use or purchase of it. Different eligibility criteria may apply to different Products or Services. Some Products or Services may not be available to you depending on your location, domicile or nationality. We may refuse an Application for any reason and, unless required by Applicable Law, we do not need to give you a reason for doing so.
- 1.6 If we agree to provide a Product or Service to you the terms and conditions on which you may purchase or use the Product or Service will form our Product Agreement or Service Agreement, as the case may be. Each Product Agreement or Service Agreement is made up of the following documents, as may be applicable:
  - any Application;
  - the Product Terms or Service Terms;
  - any Letter of Offer;
  - any Approval, confirmation or transaction record;
  - the Fee Schedule;
  - these Private Wealth Terms and Conditions read together with the Account Opening Application;

- any risk disclosure statements or guidelines we issue in connection with the use of a Product or Service (for example, guidelines for use of Electronic Banking Services); and
- any other terms and conditions that form part of or are designated by us to form part of the terms and conditions for that Product or Service as varied or replaced from time to time.

In these Private Wealth Terms and Conditions, where we use the words "Product" or "Service", we do so interchangeably for convenience. If the context allows, a reference to a Product includes a Service, a reference to Product Terms includes Service Terms, and a reference to a Product Agreement includes a Service Agreement. The reverse also applies.

- 1.7 The terms of our Product Agreement or Service Agreement apply to each purchase or use of a Product or Service by you, including any Authorised Person. If you do not agree with or understand the terms of our Product Agreement or Service Agreement, you should not carry out the transaction or access any Account we maintain for you.
- 1.8 If you have any concerns about these Private Wealth Terms and Conditions, any Product or Service, or any Product Agreement, Service Agreement or Facility Documentation, we recommend you seek assistance from independent financial, Tax or legal advisers as may be appropriate.
- 1.9 We may require additional information or documents or impose additional conditions in order to process any deposits, instructions or requests. You agree to give us any information we may ask for, relating to such deposits, instructions or requests, or pursuant to any enquiries we may make pursuant to any Applicable Law or to fulfil our statutory and regulatory obligations.
- 1.10 In relation to any Products distributed or referred by us which originate from third party service providers, we may or may not act as your agent. Any dispute over the contractual terms or performance of such Products should be resolved between you and the third party service providers. You agree that we owe you no liability with respect to the Products except as otherwise explicitly indicated in the applicable Product Agreement or herein.

## **Interpretation**

- 1.11 If there is any inconsistency between:
  - these Private Wealth Terms and Conditions and any specific terms (such as Product Terms, Service Terms or any Letter of Offer or Collateral Document), the specific terms prevail; and
  - Section 1 of these Private Wealth Terms and Conditions and Section 2 to Section 3 of these Private Wealth Terms and Conditions, Section 2 to Section 3 will prevail.
- 1.12 The Account(s) we maintain for you, other than the Custodian Account referred to in Part G below, are subject to our Terms and Conditions Governing Accounts (including the

relevant country addendum) referred to in clause 23.55. To the extent that there is any inconsistency with these Private Wealth Terms and Conditions, our Terms and Conditions Governing Accounts (including the relevant country addendum) will prevail.

- 1.13 Bankers' Guarantee(s) or SBLC(s) that we issue upon your request are subject to our Terms and Conditions for Bankers' Guarantee/Indemnity/SBLC (including the relevant country addendum) referred to in clause 23.55 and to the extent that there is any inconsistency with these Private Wealth Terms and Conditions, our Terms and Conditions for Bankers' Guarantee/Indemnity/SBLC (including the relevant country addendum) will prevail.
- 1.14 These Private Wealth Terms and Conditions and the Account(s) we maintain for you are subject to Applicable Law. If and to the extent that any provision of Applicable Law conflicts with any provision of these Private Wealth Terms and Conditions and such provision of Applicable Law cannot be varied contractually, such provision of Applicable Law shall prevail.
- 1.15 Unless we agree otherwise in the applicable Product Terms or Service Terms, we need not provide any funds to you or otherwise allow you to use the Product or Service if, in our absolute discretion, we decide not to do so.

**You remain responsible for your decisions**

- 1.16 You remain responsible for all decisions on whether to enter into any Product Agreement or Service Agreement. We will only enter into transactions you instruct.
- 1.17 You should consider if the features and risks of any Product or Service are consistent with your risk tolerance, objectives, experience or sophistication, financial condition, financial needs, personal circumstances and other considerations that may be relevant to you.
- 1.18 There may be risks which attach to particular Products; please see the Product specific terms for the relevant Product.

**It is important that you read carefully and understand all risk disclosure statements we provide you to familiarise yourself with the risks of any Product.**

## **Part B – Instructions, Notifications and Communications**

### **2. Instructions**

#### **Form of instructions**

- 2.1 You may provide instructions to us through various channels including any Electronic Banking Service. Unless we tell you that instructions must be given in a particular way, we may also accept instructions by telephone, fax, email or any other Electronic Means, subject to the execution and provision of any documents we may require. All instructions must be received within the prescribed timelines and to the address, telephone or fax number, or email address designated by us to receive such instructions. We may designate different addresses, telephone or fax numbers, or email addresses, for different types of instructions. We reserve the right to act on any instructions only after we have verified them. You are responsible for ensuring the accuracy and completeness of instructions. You should also see clauses 4 and 9.
- 2.2 All instructions you deliver to us in relation to an Account we maintain for you, are irrevocable and binding on you.

#### **How we may act**

- 2.3 You authorise us to act on instructions from you (including any instructions we reasonably believe to have been given by you).
- 2.4 You authorise us to debit or credit (as appropriate) the Account(s) we maintain for you:
- whenever you give us, or your investment adviser acceptable to us, any instruction to buy or sell any financial product or Securities or any other instruction to process or effect any other transaction which may involve a debit or credit of such Account(s); and
  - whenever there is any corporate or other action, step or event relating to your financial products, Securities or transactions which may involve a debit or credit of such Account(s).

We may debit or credit the Account(s) we maintain for you in such circumstances without requiring a separate debit or credit instruction from you. You should also see clause 15.5.

- 2.5 We may at our absolute discretion:
- act on any incomplete or unclear instructions if we reasonably believe we can complete, clarify or correct the information without referring to you. Notwithstanding this discretion, we may refuse to act on incomplete or unclear instructions;
  - refuse to act or act on one or more instructions which conflict with each other;
  - determine the order of acting if multiple instructions are received;
  - specify conditions on which we accept any instructions, including the execution or provision of additional documents;

- act or refuse to act if we have suspended an Account we maintain for you or if we placed limits on a sub-Account for a particular Product which would otherwise be breached;
- require verification of any instruction we receive before acting on it;
- act on instructions which we reasonably believe to be authentic as long as we have acted in good faith and in accordance with our usual business practice and procedure in verifying the authenticity of the instructions;
- act as otherwise set out in the Product Terms or Service Terms;
- refuse to act if we reasonably believe that you have no legal or mental capacity to give instructions;
- act in accordance with our usual business practice and procedure and we need only accept instructions if we consider it reasonable and practicable to do so. For example, we may refuse to act if (i) an instruction may involve a breach of our policy, any security procedure or any Applicable Law or any Sanction or (ii) an instruction is inconsistent with prudent banking practice or (iii) an instruction would result in an Overdraft on an Account we maintain for you or (iv) we believe or suspect the instruction is unauthorised; or
- upon your death or incapacity, act on instructions from a person whom we reasonably believe to be the legally appointed executor, administrator or similar officer of your estate.

2.6 We will not be liable for any Loss you incur as a result of us acting or not acting (as the case may be) on the instruction for any of the above reasons or as a result of your instructions being late, inaccurate, inadequate or incomplete, unless such Loss is directly caused by our gross negligence, wilful default or fraud.

### **Inability to process**

2.7 If we cannot process instructions, we will attempt to notify you within a reasonable period of time.

2.8 We do our best to process instructions within a reasonable period of time, but processing times may vary. We will not be liable for any Loss you incur as a result of a delay in processing your instructions, unless such Loss is directly caused by our gross negligence, wilful default or fraud.

2.9 If we receive an instruction on a non-Business Day or on a Business Day after our "cut-off time" for a Product, we may treat it as having been received on the next Business Day. You should also see clause 23.27.

2.10 Please contact us if you need to confirm that an instruction has reached us and, subject to clause 2.9, that it will be carried out by a particular time.

### **Stopping a transaction**

2.11 If we are instructed in writing to stop a transaction, we will attempt to do so. However, we are not liable for any Loss you incur if we cannot do so.

2.12 You acknowledge and agree that any Agent or third party that receives your instruction from us may not accept such instruction in whole or in part or may decline such instruction for Circumstances Beyond our Control. We will not be liable or responsible for any Loss you may suffer as a result of a refusal or delay in the execution of your instruction and our responsibility is limited to passing your instruction to the Agent or third party.

### **Instructions from us**

2.13 You must follow our instructions in connection with a Product and comply with all Applicable Law. For example, we may require you to open a further Account, to execute documents or provide express consent in connection with a transaction or Product Agreement.

## **3. Notices and communications**

### **When notices and communications to you are effective**

3.1 Unless otherwise agreed, our notices and communications to you under these Private Wealth Terms and Conditions or any other agreement are effective:

- if sent by fax, at the time shown on the transmission report as being successfully sent;
- if delivered personally, at the time of delivery;
- if sent by post, on the second Business Day after posting; and
- if sent by email or other Electronic Means, at the time of transmission, unless we receive a delivery failure receipt.

3.2 In some cases, our notices and communications may be made as public announcements in daily newspapers, posted at any of our branches, automatic teller machines or our website. In such cases, they are effective at the time of publication or posting, or such other time that we may state in the communication.

3.3 All notices and communications sent to you by any other method or medium shall be deemed received when delivered according to our usual processes (and whether or not actually received by you).

### **Notices and communications to Joint Account Holders**

3.4 If you are a Joint Account Holder, notices and communications (including notice of any variation to these Private Wealth Terms and Conditions or a Product Agreement, or any confirmations, advices or statements) sent to the address or Contact Information you have provided to us for receipt of notices and other communications in connection with an Account we maintain for you are deemed to be received by each Account Holder.

## Notices and communications to us

- 3.5 Your notices and communications to us should be addressed to and are effective when received in legible form by the relevant department designated to receive them or act on them.

## 4. Instructions and communications by post, telephone, fax or other Electronic Means etc.

- 4.1 In consideration of us agreeing to accept your instructions via telephone, fax, email or electronic signatures, or other than on our prevailing standard forms for financial transactions pursuant to any of your Accounts with us or facilities made available to you, you hereby agree to the provisions of this Part B (*Instructions, Notifications and Communications*) of Section 1.
- 4.2 You confirm that each document that is signed electronically is permitted to be signed in that manner by all laws and regulations applicable to you and by your constitutive documents.

### Telephone

- 4.3 Your instructions by telephone shall be made to our authorised persons by your Authorised Person(s), whose names and titles have been notified to us in the form of Annex A to the Indemnity for Authorisation to Engage in Financial Transactions for Private Wealth (available on our website at [https://www.smbc.co.jp/asia/singapore/forms/Indemnity\\_Authorisation\\_Engage\\_Financial\\_Transactions\\_WealthManagement.pdf](https://www.smbc.co.jp/asia/singapore/forms/Indemnity_Authorisation_Engage_Financial_Transactions_WealthManagement.pdf)).
- 4.4 You undertake to inform us of any changes to the list of your Authorised Person(s) to transact with us on the telephone and such notification shall be in writing and shall only be effective upon actual receipt by us of such notification. We shall be entitled to assume that there are no changes until we have actually received the written notice of any changes. We may, from time to time, notify you of the names of our authorised persons with whom you can transact over the telephone by sending a list of such authorised persons' names to you.
- 4.5 You agree (a) that we may record all telephonic conversations, oral communications or instructions between you and us; (b) to obtain any necessary consent of, and give any necessary notice of such recording to, your personnel or representatives communicating with us; and (c) that any such recordings may be submitted in evidence in any dispute between you and us. If you submit any written confirmation in respect of any instruction given by you via telephone, you agree that we shall not be liable for any duplication of transactions that may arise from your failure to indicate such written confirmation as a confirmation of such telephone instruction.
- 4.6 Telephone instructions shall **not** be given in relation to the following: (i) report of any loss, (ii) application for Bankers' Guarantees, SBLCs, remittances or funds transfer, (iii) application for Credit Facility, or (iv) request for certificate of balance.

## **Fax**

- 4.7 You shall immediately (and in any event within two (2) Business Days) submit to us a duly signed original document in respect of each instruction given by you via fax marking the original as "**Confirmation of Fax**".
- 4.8 You agree that we shall not be liable for any duplication of transactions that may arise from your failure to indicate so on each original document. You also agree that any failure by you to provide any original document shall not invalidate any transaction nor the indemnities contained herein.

## **Email**

- 4.9 Your email instructions to us shall be sent from the email addresses notified to us in the form of Annex A to the Indemnity for Authorisation to Engage in Financial Transactions for Private Wealth and will be sent in a format that prevents alterations to the data in transmission (e.g. PDF), with no content of the communication or instruction included in the body of the email. Email instructions to us shall be sent to such email address as we may inform you from time to time.
- 4.10 You shall immediately (and in any event within two (2) Business Days) submit to us the original document / application form sent via email, marking the same with "**Confirmation of Email Instruction**". You agree that we shall not be liable for any duplication of transactions that may arise from your failure to indicate so on each original document / application form. You also agree that any failure by you to provide the original document / application form shall not invalidate any transactions or the indemnities contained herein.
- 4.11 You acknowledge that transmissions by email or other Electronic Means may involve transmissions via servers and/or systems that are not under our control and email transmissions may not be secure and are subjected to risks. Accordingly, you agree that we will not be liable or responsible for, and you shall indemnify us for and against, the consequences of the transmissions or non-transmissions whether direct or indirect. Without prejudice to the generality of the foregoing, we shall not be liable or responsible and you shall accept full responsibility for
- any system or server error, omission, interruption or delay in transmission or failure to perform;
  - any computer virus or corruption or sending of the email to the wrong address;
  - any Security Breaches or unauthorised access to the contents of the email; or
  - the inability to send or receive email as a result of malfunction or failure (total or partial) of any server or system or any other circumstances.
- 4.12 You undertake to inform us of any changes to the email addresses provided to us from which email communications or instructions are to be sent and such notification shall be in writing and shall only be effective upon actual receipt by us of such notification.

We shall be entitled to assume that there are no changes until we have actually received the written notice of any changes. Any email communication or instruction to us shall only be deemed to be delivered upon actual receipt by us.

- 4.13 We shall not be liable if any communication from you or to you is delayed, intercepted or lost during delivery or transmission or if the content of such communication is disclosed to third parties during transit. If any communication to you is returned undelivered, we will not be obliged to send any further communications until you update your account contact details.

### **Electronic signatures**

- 4.14 Electronic signatures may only be used for signing such documents as agreed by us in our sole discretion. We do not need to provide any reason for rejecting the use of electronic signatures and may amend the types of documents for which electronic signatures are accepted at our sole discretion.
- 4.15 Notwithstanding the foregoing, we may, in our sole discretion, require that an original document be submitted in lieu of, or in addition to, any document executed by way of electronic signatures.
- 4.16 You shall use electronic signatures in a manner that complies with and meets all our processes, procedures, requirements and/or any law or regulation that may be in place from time to time.
- 4.17 Upon our request, you will provide us with evidence of electronic signing in the form of the relevant activity or transaction log, or any other form of computer or electronic records.
- 4.18 You shall ensure that persons you authorise to sign documents via electronic signatures are the same persons as indicated in your signing mandate to us for wet ink signatures.
- 4.19 For authentication or verification of the authorised signatories, the details set out in in the form of Annex B to the Indemnity for Authorisation to Engage in Financial Transactions for Private Wealth shall be provided and you shall keep us informed promptly of any changes. We shall be entitled to assume that there are no changes until we have actually received the written notice of any changes. Any email communication or instruction shall only be deemed to be delivered upon actual receipt by us.
- 4.20 You confirm that the electronic signature is the signature of the person to whom it correlates and the electronic signature will be affixed by that person with the intention of signing or approving the electronic record and will be deemed the equivalent of your and your authorised signatories' signatures in hard copy, in ink or in original form for all purposes and have similar effect and can be used as evidence in any court, tribunal or in any legal or administrative, proceedings and any investigation or inquiry.
- 4.21 You will not, and you will procure that your authorised persons will not, dispute the validity, accuracy or authenticity of any document signed by electronic signature or claim not to have consented to the use of electronic signatures.

- 4.22 You confirm that each document that is signed electronically is permitted to be signed in that manner by all applicable laws and (where applicable) your constitutive documents.
- 4.23 You acknowledge that Electronic Communications and services for electronic signatures are not error free or interruption free and may involve transmission, hosting, processing, publication and distribution of your information via servers and/or systems that are not under our control and may not be secure and are subjected to risks. Accordingly, you agree that we will not be liable or responsible for, and you shall indemnify us for and against, all liabilities and consequences of the transmissions or non-transmissions whether direct or indirect. Without prejudice to the generality of the foregoing, we shall not be liable or responsible and you shall accept full responsibility for:
- any system or server error, omission, interruption or delay in transmission or failure to perform;
  - any computer virus or corruption or erroneous transmission (including, without limitation, sending of an email to the wrong address);
  - any Security Breaches or unauthorised access to the contents of the transmission; or
  - the inability to provide or receive the transmission as a result of malfunction or failure (total or partial) of any server or system or any other circumstances.

#### **No duties/ obligations and risks**

- 4.24 In the event that a call back confirmation is required according to our procedures, for the confirmation of information, we will refer to the list of authorised persons to receive call back confirmations notified to us in the form of Annex A to the Indemnity for Authorisation to Engage in Financial Transactions for Private Wealth. You agree that there is no obligation on us to perform any call back verification and that we shall not be liable for, nor shall any transaction be invalidated by, the absence of a call back verification.
- 4.25 We shall not be under any duty to enquire into the authenticity, completeness or accuracy of any communication or instruction given by you and may treat all instruction given or purported to be given by or on your behalf as fully authorised and binding on you as genuine, complete and accurate regardless of the circumstances, the nature and/or amount of the transaction and notwithstanding any conflict with other instructions, error or misunderstanding. We may at our sole discretion without having to provide any reason refuse to act, or delay acting, upon any instructions or such part thereof as we deem appropriate.
- 4.26 You understand and acknowledge the risks involved in sending your instructions to us via the means indicated above or otherwise than on our standard forms and hereby agree that all risks shall be fully borne by you and we shall not be responsible or liable for any consequences that may arise from acting on your instructions as aforesaid, you shall indemnify us in full against any and all Losses, taxes, duties and other sums incurred or suffered by us as result of acting on your instructions as aforesaid. Each indemnity given in this Part B (*Instructions, Notifications and Communications*) of

Section 1 survives the cancellation or revocation of any authority given by you in relation to communications and instructions provided by any of the means indicated above.

- 4.27 In the event that we agree to permit you to submit any application for any Service which we may provide (and transactions relating thereto) by the means indicated above or otherwise than on our standard forms, you agree to be bound by the applicable terms and conditions relating to those Services as though your applications had been made on our standard forms.
- 4.28 You further agree that where we have agreed to accept any instruction or application form other than on our prevailing standard forms, you shall not, without our prior written consent, make any change to any agreed instruction or application form; and our processing of any such instruction or application shall not be deemed to be consent to any change to the agreed instruction or application form.
- 4.29 Where you have agreed with us on any Audit Confirmation Service, communications and/or instructions by fax, telephone, email and/or scanned or electronic signature or other electronic means, or other than on our prevailing standard forms (collectively, the **"Electronic Communications"**), the following provisions shall apply in the absence of a separate agreement on such communications and/or instructions between you and us:
- a) As a separate and independent obligation, you shall fully indemnify us from and against any and all liabilities which we may incur, sustain or suffer as a consequence of accepting and acting on any Electronic Communication other than on the Bank's standard forms.
  - b) We shall not be under any duty to enquire into the authenticity, completeness or accuracy of any Electronic Communication and may treat all Electronic Communications given or purported to be given by you or on your behalf as duly authorised, irrevocable and binding on you and genuine, complete and accurate regardless of the circumstances, the nature and/or amount of the transaction and notwithstanding any conflict with other instructions, error, misunderstanding. We may at our discretion without having to provide any reason refuse to act, or delay acting, upon any Electronic Communications or such part thereof as we deem appropriate.
  - c) Save for any Audit Confirmation Service, or as otherwise agreed by us, you agree to deliver to us without delay (and in any event within two (2) business days) the original, or a duly signed written confirmation, of any such Electronic Communication (each a **"Relevant Confirmation"**) and to indicate clearly that it is in confirmation of the fax, telephone, email, scanned or electronically signed or delivered communication or instruction. You agree that we shall not be liable for any duplication or liabilities that may arise from your failure so to indicate on each original communication or instruction or Relevant Confirmation as aforesaid.
  - d) Other than Audit Confirmation Service where instructions may be received from your auditors, all other Electronic Communication shall be made by your Authorised Persons whose names and titles you have prior to such

communication or instruction provided to us in such form as agreed by us. We shall be entitled to assume that there are no changes until we have actually received the written notice of any changes. We may, from time to time, notify you of the names of our authorised persons with whom you can transact over the telephone by sending a list of such authorised persons' names to you.

- e) In the event that a call-back confirmation is required according to our procedures, we agree that the persons authorised to receive such call backs shall be the persons authorised pursuant to paragraph (d) above.
- f) You agree that we have no obligation to perform any call-back confirmation.

- 4.30 Without prejudice to any other terms and conditions herein, we may at any time, at our absolute discretion amend or vary our policies or procedures in relation to the acceptance of instructions by the means indicated above or otherwise than on our standard forms, and withdraw, restrict, suspend or terminate the acceptance of your instructions by such means or otherwise than on our standard forms.
- 4.31 Each indemnity given in this Part B (*Instructions, Notifications and Communications*) of Section 1 supersedes **all existing indemnity letters** relating to giving instructions by telephone, fax, email, with electronic signatures and/or otherwise than on our prevailing forms, all of which are deemed terminated by these indemnities.
- 4.32 Failure by you to deliver a Relevant Confirmation, indicate a Relevant Confirmation or the absence of a call-back confirmation shall not invalidate any transaction or indemnity herein.
- 4.33 You undertake to notify us in writing of any change to the list(s) of your authorised persons to transact with us through Electronic Communications or receive call backs, and of any change to the email addresses provided to us from which Electronic Communications are to be sent. Any such notice shall only be effective upon actual receipt by us.
- 4.34 Each indemnity given in this clause 4 survives the cancellation or revocation of any authority given by you in relation to Electronic Communications.
- 4.35 Without prejudice to any of the foregoing, we may at any time, at our discretion, amend or vary its policies or procedures in relation to the acceptance of Electronic Communications and withdraw, restrict, suspend or terminate the acceptance of instructions delivered by any such means or otherwise than on our standard forms.

## **Part C – Information, Statements and Records**

### **5. Information you give**

#### **Information must be correct**

- 5.1 Each time we offer a Product to you or you use a Product, we rely on the information you give to us. Any information you give to us must be correct, complete and not misleading. You must ensure that all of your Assets are and will remain beneficially owned by you (unless you are entering these Private Wealth Terms and Conditions in your capacity as trustee of a trust).
- 5.2 You undertake to notify us as soon as possible, but in any event within thirty (30) days, if you become aware that any information you have given (including your name, address and identification or constitutional document, as the case may be) has changed, or is incorrect, incomplete or misleading. We will not be responsible for any Loss incurred by you due to your failure to notify and/or update us promptly and correctly of any change to the information you have given us.
- 5.3 If you are a corporate entity, partnership or trust, you must notify us if there is any change in your ownership or the persons having control of you (for example, Beneficial Owners, directors, partners or trust managers) immediately upon the change.

#### **What you must give us**

- 5.4 If we ask you to, you will give us any information or documents about you, your financial affairs, your Tax affairs or any other information we reasonably require. This is likely to include information to enable us to verify your business and wealth, your identity, such as your passport and driving licence or any other official form of identification and information that will enable us to assess your ability to meet your obligations in respect of the Credit Facilities. If you are a corporate entity, partnership or trust, you also agree to give us any information about, or documents in connection with, your affairs. This includes information such as constitutional documents, company accounts, partnership agreements or trust deeds. You must tell us of, and give us all information we ask for, relating to any Beneficial Owner or Authorised Person. All information or documents must be in the form we require and certified by a person acceptable to us to be true. We will make such enquiries as we consider appropriate to protect against fraud and misuse of the banking system, and to fulfil our statutory and regulatory obligations and you authorise us to make such enquiries.
- 5.5 If you are in Default or think you may become in Default, you must immediately tell us.
- 5.6 If there is any material change to the information you provide to us under these Private Wealth Terms and Conditions, you must immediately tell us.

#### **Representations and warranties**

- 5.7 You represent and warrant that:

- a) (if you are not a natural person) you are duly established or incorporated, are validly existing and (if applicable) are in good standing under the law of the jurisdiction of your incorporation;
- b) you have the power to sue and be sued in your own name and to own your Assets and carry on your business as it is now being conducted;
- c) each Collateral Provider has the power to sue and be sued in its own name, to own any Assets given to us as Collateral, and to carry on any business it conducts with the Bank Group;
- d) you have the power to enter into, perform and deliver, and have taken or obtained all necessary corporate and other action and consents to authorise your entry into, performance and delivery of, these Private Wealth Terms and Conditions, each Product Agreement, Service Agreement and the Facility Documentation and the transactions contemplated under them, and to comply with your obligations and exercise your rights under them;
- e) your obligations under these Private Wealth Terms and Conditions, each Product Agreement, Service Agreement and the Facility Documentation (and the obligations of any Collateral Provider) are valid, binding and enforceable and neither you nor any Collateral Provider will be in breach of any Applicable Law, authorisation, document or agreement by entering into or complying with obligations or exercising rights under them;
- f) you are able to make, have made or will make your own assessments and decisions on the merits and risks of the transactions you enter into, Products and Services;
- g) you have read, understood and agreed to the prevailing terms and conditions for the use or issuance of the applicable Product or Service;
- h) all information and each representation given by you or any Collateral Provider (or on your or their behalf) is correct, complete and not misleading;
- i) since the date information was given there has been no change in your or a Collateral Provider's financial circumstances which may have a material adverse effect on your or the Collateral Provider's ability to meet any of your or their obligations to us or any other member of the Bank Group;
- j) neither you nor any Collateral Provider has withheld any information (including information about Assets you or they own) that might have caused us or any member of the Bank Group not to enter into any Product Agreement, Service Agreement or the Facility Documentation or provide any Product or Service to you;
- k) any Collateral you or a Collateral Provider provide to us is unencumbered and free from any selling restrictions. This means it is not subject to any mortgage, charge, pledge, lien, other security interest or selling restrictions. This is except for those that (i) are in our favour, (ii) have been disclosed to us, or (iii) for which our prior written consent has been obtained;

- l) unless otherwise stated in the Account Opening Application, you are not transacting with us or entering into a Product Agreement as a trustee, executor, agent, nominee or sub-custodian. This means you are liable as principal. If we agree to your transacting with us or entering into a Product Agreement with us as a trustee, executor, Agent, nominee or sub-custodian, you represent and warrant that you are authorised to do so and you are not directly or indirectly acting in breach of your constitutional documents, partnership agreements or trust deeds (whichever applicable);
- m) neither you nor any Collateral Provider or any Assets you or they own has immunity from the jurisdiction of a court or from legal process (and if you, they or the Assets do have such immunity, it is hereby waived);
- n) no litigation (including, without limitation, bankruptcy or Insolvency proceedings), arbitration, administrative proceedings or investigations are current, pending or threatened against you or any Collateral Provider, and no steps have been taken to appoint a receiver, receiver and manager, liquidator, administrator, judicial manager, trustee in bankruptcy or similar officer in respect of your or any Collateral Provider's Assets;
- o) you and any Collateral Provider are and will be fully compliant with all Applicable Laws, including Tax laws, and that the Assets in the Account(s) we maintain for you, or used in connection with any Product Agreement or Service Agreement, are not in any way derived from activities in breach of any Tax law that applies to you, money laundering or other criminal activities;
- p) neither you nor any Collateral Provider have committed, nor have you ever been convicted of any Tax offences in any jurisdiction;
- q) neither you nor any Collateral Provider are, nor shall you or any Collateral Provider become, resident for tax purposes in the United States of America and your and any Collateral Provider's payments (or any part thereof) under any Product Agreement, Service Agreement or the Facility Documentation are not from sources within the United States for US federal income Tax purposes (including without limitation the United States Foreign Account Tax Compliance Act (as may be amended, re-enacted or replaced from time to time));
- r) neither the signing and delivery of each Product Agreement, Service Agreement and the Facility Documentation nor the performance of any of the transactions contemplated under them will:
  - contravene or constitute a Default under any provision contained in any agreement, instrument, law, judgment, order, licence, permit or consent by which you or any of your Assets are bound or affected; or
  - cause any limitation on you or the powers of your directors, whether imposed by or contained in any document which contains or establishes your constitution or in any law, order, judgment, agreement, instrument or otherwise, to be exceeded;

- s) neither you nor any Collateral Provider is in Default and no event has occurred which may, with the giving of notice or lapse of time or fulfilment of any condition, become a Default; and
  - t) you have read and understand all risk disclosure statements we have provided to you.
- 5.8 You repeat these representations and warranties every time you apply for or use a Product or effect any transaction on a Product or Account(s) we maintain for you. You must notify us whenever anything happens which would mean you could not repeat these representations and warranties.
- 5.9 Each of the above representations and warranties will be correct and complied with for so long as any Product Agreement, Service Agreement or the Facility Documentation remains in effect as if repeated by reference to the then existing circumstances.

## 6. Personal Data

- 6.1 (Where you are an individual) You consent to the collection, use, disclosure, transfer and retention of your personal data by us pursuant to laws, regulations and/or regulatory requests (including "know your customer" and other similar procedures), the promotion and provision of any Service or Product to you (including evaluation on eligibility or suitability), in accordance with or incidental to the purposes in our personal data protection policy and data privacy statement (the "**Data Privacy Statement**") (copies of which are available at: <https://www.smbc.co.jp/asia/singapore/forms/pdpp/>).
- 6.2 In respect of any personal data of any individual provided by you to us, you confirm you have obtained, and undertake to maintain, the consent of such individual for the disclosure to us of such personal data, and the collection, use, disclosure, transfer and retention of personal data by us pursuant to laws, regulations and/or regulatory requests (including "know your customer" and other similar procedures), the promotion and provision of any Service or Product to such individual (including evaluation on eligibility or suitability), in accordance with or incidental to the purposes in the Data Privacy Statement.
- 6.3 Without limiting the foregoing, you agree that in relation to Japanese firewall regulations, we and SMBC Nikko Securities (Singapore) Pte. Ltd. ("**Nikko**") may provide, receive, and share with each other any personal data referred to in clauses 6.1 and 6.2 ("**Customer Information**") that we and/or Nikko have or will become aware of, and may utilize such information. In such a case you may request in writing for specific treatment as to Customer Information (namely that (i) Customer Information is shared between us and Nikko only unless required or requested by law or (ii) any particular Customer Information is not to be shared between us and Nikko or (iii) we and Nikko terminate the sharing of information after receipt of written notice from you).
- 6.4 Your consent would enable us to provide and/or propose various financial products and/or services to you that would more accurately reflect your needs. Your information will also be shared for risk management purposes as well as the purposes mentioned in the Data Privacy Statement. Most of our customers recognize the benefits of having their

information shared in the form of receiving collaborative services across the Bank Group. As we view the confidentiality of your information as important, we will treat your information appropriately and will only disclose it to our affiliates on a need to know basis for legitimate business purposes.

- 6.5 If you fail to provide personal data reasonably requested by us and/or withhold consent for the use, disclosure, transfer or retention of personal data, we may be unable to provide all or part of our Products or Services.

## 7. Disclosure of information

- 7.1 It is our policy to treat an Account we maintain for you and information (in paper, electronic or other form) relating to you and such Account as confidential even when you are no longer a customer, and we do so in accordance with Applicable Law.
- 7.2 Without prejudice to our rights to disclose information relating to you (including personal data of yourself or, where applicable, your shareholders, Beneficial Owners, authorized persons or contact persons), your Account(s), the Facility Documentation, any security document, any transactions and facilities with us and any other information in connection with your transactions with us whether under the Banking Act or otherwise, you consent to us and to each member of the Bank Group, including our or its officers (as defined in the Banking Act), employees, Agents, advisers and any other person who by reason of his capacity, office or scope of work has access to our records, documents or registers or that of any member of the Bank Group, disclosing such information to:
- a) the Bank Group, associates, joint ventures or related entities in any jurisdiction (including without limitation Sumitomo Mitsui Banking Corporation Malaysia Berhad) (collectively, the "**Permitted Parties**") and each of the Permitted Parties' officers, employees, agents and any other person who by reason of capacity, office or scope of work has access to the Permitted Parties' records, documents and/or registers (each of whom shall have the same authority to disclose as us and any other member of the Bank Group under this paragraph (a));
  - b) any person to whom we are under a duty to disclose or to whom such disclosure is required or permitted under any law or regulation or required by any court, tribunal, regulator or government authority in any jurisdiction;
  - c) any person in connection with a Transfer or proposed Transfer;
  - d) any trade repository, clearing house or person that has provided security or credit support or assurance for your obligations;
  - e) to our stationery printer and storage provider (including, without limitation, any provider of microfilm service, archival service or other storage facility) (and any others to whom they may make further disclosure) for the purpose of making, printing, mailing, storing, archiving, microfilming and/or filing cheques, statements of account, advices, transaction records and other documents, data or records on which your name or other particulars or particulars of transactions appear;

- f) any person in connection with any legal action taken or contemplated against you or any security or credit support providers or in connection with the Products, Services or Credit Facilities;
- g) any insurers, reinsurers, insurance brokers and their respective related entities, auditors, advisers and service providers , in each case arising from or in connection with the provision of credit support collateral and/ or insurance;
- h) any person (including any sub-contractor or agent of that person) in connection with the provision of services or insurance (including credit support or protection) to meet the Bank Group's technology, operational, administrative or risk management requirements (and any others to whom such person may make further disclosure);
- i) any provider of credit protection in relation to our rights and/or obligations under any Product Agreement or Service Agreement and to any Permitted Parties;
- j) any other banks, financial institutions, credit agencies, credit bureaus, industry bodies, trade finance registries or your external auditors or the external auditors of any party that has provided security or credit support or assurance for your obligations to the Bank for the purposes of: (1) assessing your financial condition or the financial condition of any such credit support provider; (2) verifying information provided by you; (3) where you propose to have dealings with such entities; or (4) detection, prevention, investigation or reporting of financial crime (including, without limitation, money laundering, terrorism financing, fraud and government sanctions or embargoes) in any jurisdiction;
- k) any person (and any others to whom such person may make further disclosure) for the purpose of giving effect to your instructions or the transactions contemplated in any Product Agreement, Service Agreement or the Facility Documentation or in connection with the provision of Products or Services (including via electronic platforms) (including, without limitation, such information as is requested or required by any person for the purpose of effecting payment or transfers of funds);
- l) any person to whom we may introduce or refer you;
- m) any financial institution for the purpose of securitisation of your or our assets;
- n) any person for the purpose of maintaining effective communication during a market disruption or business contingency event (including, without limitation, market counterparties, clients, settlement agents, clearing platforms, industry bodies and regulatory authorities);
- o) any trading venue, regulatory authority or agency, Exchange, clearing house, depository, depository agent, payment clearing or settlement system, trade repository, fund registrar, fund manager, nominee, custodian, sub-custodian, broker, issuer, manager market association, clearing house, futures commission,

relevant merchant body or underwriter of Securities, or provider of reporting or publication services, through or in which you deal (or any member of the Bank Group deals on your behalf) with, where such disclosure is incidental to providing you with a Product or Service, and/or is in our opinion required by Applicable Law;

- p) any actual or proposed assignee of all or any part of the business and/or asset of the Bank Group;
- q) any person whom you, by your conduct or otherwise consent to such disclosure (for example, if you ask that person to accompany you to a meeting with us);
- r) anyone we in good faith consider necessary in order to provide you with a Product or Service in connection with an Account, regardless of where they are located;
- s) any Authorised Person, Collateral Provider or any person holding a power of attorney or signatory authority;
- t) any holder of a joint account with you, any person we believe in good faith to be your director, officer, employee, shareholder, partner (in the case of a partnership), account signatory, legal adviser or anyone acting on your behalf;
- u) any person for the purposes of enforcing or protecting the Bank's rights or interests; and/or
- v) any other person to whom you have given your consent to such disclosure.

- 7.3 You further irrevocably and unconditionally authorise us to furnish all information requested from time to time by your auditors using such platforms as agreed with us (including the receipt, transmission, hosting, processing, publication and distribution of your information by the platform provider) ("the **Audit Confirmation Service**"). You agree to pay to us all charges, fees and expenses arising from our acting on any instruction received from you whether in respect of the Audit Confirmation Service or otherwise.
- 7.4 You consent to the recipients of the information to whom we disclose, using and transferring the information where it is necessary to provide you with Products and Services in connection with any of the Account(s), to monitor the Bank Group's compliance with Applicable Law, agreements with any regulator or authority and any relevant policies or procedures of the Bank Group, or to support the Bank Group's business, financial and risk monitoring, planning and decision making or in such manner allowed or required under Applicable Law.
- 7.5 You acknowledge that we may destroy, erase or otherwise cease to maintain any records (whether in paper, electronic data or other form) as we consider appropriate after such time as permitted by Applicable Law.
- 7.6 The confirmations in clauses 6 and 7 are not meant to affect or limit any previous consent provided to us for disclosure of customer information to any third parties. In addition, unless otherwise specifically agreed in writing, the consents in clauses 6 and 7 will

remain effective notwithstanding that we may subsequently sign specific agreements which include provisions dealing with disclosure of Customer Information.

## **8. Confirmation of Transactions**

- 8.1 You acknowledge and agree that you are under a duty to examine and verify all entries in any confirmations, statements of account, summaries of dealings and any other documents given to you by us (each a "**Confirmation**").
- 8.2 You shall be deemed to have agreed to each such Confirmation and to any and all our acts and any and all transactions shown or implied therein and the contents of each Confirmation shall be deemed accurate and shall be conclusive and binding against you unless we have actually received a written objection from you within seven (7) days (or such other times as may be specified in the documents) of the delivery of such Confirmation to you.
- 8.3 All documents signed and returned to us by you shall be deemed to be signed by your duly authorised representative. The list of authorised signatories provided by you shall be deemed to be correct until seven (7) days after written notice of any changes is given to and actually received by us.

## **9. Statements and Certificates**

- 9.1 Notwithstanding any other provision in these Private Wealth Terms and Conditions, all statements, certificates and other documents by us as to the amount owing by you or the price at which a sale or purchase of currency is executed shall, in the absence of manifest error, be conclusive and binding on you. You agree that such records shall be admissible in evidence and you will not dispute the accuracy or authenticity of the contents of such records merely on the basis that such records were produced by or are the output of a computer system or are scanned records or images of any record.
- 9.2 Unless you have requested that we do not do so, we will deliver monthly portfolio statements of account to you. You shall examine all entries in each statement and inform the Bank immediately in writing of any errors in or omissions from or unauthorised transactions in the statements. The contents of each statement shall be deemed accurate and shall be conclusive and binding against you and we shall be free from all claims in respect of the statements unless you inform us in writing of any errors, omissions or unauthorised transactions within the period specified on the statement for such notification or, in the absence of such specification, within seven (7) days of the date of the statements.
- 9.3 We reserve the right upon notice to you to add to and/or amend the entries in a statement in the event of errors in or omissions from or unauthorised entries in such statement. A statement so amended shall be binding on you and we may demand a refund of and/or debit the Account(s) and/or set off any credit balance in the Account(s) for any overpayment to you arising from any such error, omission or unauthorised transaction.

## 10. Security Requirements

- 10.1 When providing Products and/or Services to you, we want to reduce the risk of fraud against you and us. We will, therefore ask you to comply with certain Security Requirements.
- 10.2 The form that these Security Requirements will take will depend on the Products and/or Services which we provide to you. When we contact you or you contact us, we will need to check your identity before you can give us instructions or before we can disclose or discuss confidential information about the Products and/or Services which we provide to you. In order to help us with this:
- you must sign instructions which you give to us in writing;
  - if you are permitted to give us instructions about an Account we maintain for you, any Products and/or Services over the telephone, we will require you to identify yourself by means of a series of security questions;
  - we may apply customer authentication where you access an Account we maintain for you online or use certain Electronic Banking Services; and
  - we may require call back confirmations.
- Any security procedure which is described in this clause 10.2 is referred to in these Private Wealth Terms and Conditions as your "**Security Information**".
- 10.3 If we have checked your identity in one of the ways set out above, we are entitled to assume that we are dealing with you.
- 10.4 We will provide you with further details about the Security Requirements. We may introduce new or different Security Requirements in the future.
- 10.5 Except as otherwise provided in these Private Wealth Terms and Conditions, you must keep all your Security Information secret and not disclose it to anyone. You must also take all reasonable care to prevent unauthorised or fraudulent use by others of your Security Information. If you know or suspect that someone knows your Security Information or is impersonating you, you must contact us without undue delay. If you fail to do so, you may be liable for all transactions arising since the time when you should have contacted us.
- 10.6 You must also tell us immediately if:
- you become aware of or believe there is an Error or other irregularity in relation to the operation of any Account(s) we maintain for you; or
  - you become aware of any unauthorised use of your Security Information and / or any other Security Breach.
- 10.7 You agree to take any action that we reasonably require you to take in order to:
- investigate any incorrect statement of Account and / or any Error or other irregularity in relation to the operation of the Account(s) we maintain for you (whether such incorrect statement, Error or other irregularity has been identified by you or us);

- comply with the Security Requirements; and / or
- rectify any unauthorised use of your Security Information and / or any other Security Breach identified by us or you (including those you notify to us in accordance with clause 10.6).

10.8 You agree to provide us with any documents, information or other assistance we require in connection with clause 10.7 above.

## **11. Information we give**

### **Prices**

11.1 We may from time to time provide you with prices quoted from a price quoting agency or third party source, or from a market that changes rapidly or where prices are delayed. Such prices we provide are indicative and for information only.

### **Information over the telephone or other Electronic Means**

11.2 If we provide Account information or other information to you over the telephone or other Electronic Means, its accuracy is not guaranteed. Unless other specified form(s) of communication are designated by us or are requested by you and agreed to be provided by us, the statements, confirmations and transaction records sent to you in written (including electronic) format represent the formal and official record of an Account we maintain for you or Product Agreement with us. You are advised to refer to them. You should also see clauses 4 and 8.

### **Third party reports**

11.3 Any report we obtain from any third party, valuer or consultant is for our use only. Even if we give you a copy of the report, it is for your reference only.

## **Part D – Charges, Interest and Payments**

### **12. Commissions**

- 12.1 When conducting business for you, we may receive commissions or other benefits from third parties, such as brokers or third parties if you are introduced to us or by us, in relation to that business to the extent permitted by Applicable Law. We may also pay out commissions or other benefits to third parties when conducting business for you.
- 12.2 Unless required by Applicable Law, we do not have to account to you for such commission, nor will we set off the commission against any fees you owe us.

### **13. Interest, fees and Costs**

- 13.1 You need to ensure you are aware of and understand the commissions, interest (including negative interest), fees and Costs referred to in these Private Wealth Terms and Conditions or that may be payable by you in connection with a Product Agreement. These are set out in our Fee Schedule, Facility Agreement or are available by contacting us.
- 13.2 Our Fee Schedule is revised periodically and you must pay the commissions, interest, fees and Costs applying at the relevant time.
- 13.3 You must pay the commissions, interest, fees and Costs applying to a Product from time to time. Commission, interest rates (including our base lending rates), fees and Costs are revised periodically. We will periodically notify you in writing of our commissions, interest rates, fees and Costs from time to time, alternatively you can find out our current commissions, interest rates, fees and Costs by contacting us at any time.
- 13.4 If a Product Agreement tracks a reference interest rate, such as a central bank base rate, that rate will change automatically on a change in the reference interest rate. This will happen immediately after the reference rate has changed. You can contact us to find out the current reference rate.

#### **Service fees**

- 13.5 Additional fees and Costs may apply in the case of Services provided in connection with a Product.

#### **Default interest**

- 13.6 If any amount under a Product Agreement, Service Agreement or the Facility Documentation is not paid by you when due, you shall from the due date until payment is received by us (both before and after judgment) pay interest on such amount at a rate of two per cent. (2%) per annum above our effective cost of funds or two per cent. (2%) per annum above the rate that is applicable immediately prior to such non-payment (whichever is higher), as conclusively determined by us, or at any other rate of interest determined by us from time to time.

## Calculation

13.7 Any interest or fee payable under a Product Agreement, Service Agreement or the Facility Documentation accrues, and is calculated, in accordance with our usual practice. If we agree to capitalise interest (or if default interest is charged under clause 13.6), we may add to the outstanding principal amount any interest under this clause which has not been paid. You are then liable for interest under this clause on the total amount.

13.8 Unless otherwise stated, interest we charge accrues daily and on the basis of a 365 day year (for GBP, SGD and any other currency we may designate from time to time) or a 360 day year (for other currencies), in both ordinary and leap years. Interest continues to be charged, and we shall be entitled to capitalise interest in relation to any outstanding amount notwithstanding the termination of any Account or Credit Facility or your relationship with us, until payment in full of all amounts owing by you to us before as well as after any judgment we obtain.

## Base rates

13.9 Interest rates applicable to a Product may be based on or may reference a base rate. If, in each case in our reasonable opinion: (i) a base rate has or will be permanently or indefinitely discontinued; (ii) the methodology, formula or other means of determining a base rate has materially changed; (iii) a base rate is otherwise no longer appropriate for the purposes of calculating interest under any Product Agreement or (iv) we are unable to determine a base rate for any other reason, we may substitute such base rate with a standard market interest rate generally accepted, in our reasonable opinion, in the international or domestic markets for such Product as the appropriate successor to such base rate or we may calculate such base rate with reference to any appropriate source or method as determined by us.

## No refund

13.10 Subject to Applicable Law you are not entitled to any refund of any interest, fees or Costs you have paid including where you do not use a Product, a Product Agreement or Service Agreement ends, or the Services end, or where a Credit Facility is terminated, cancelled or prepaid prior to the date on which it shall expire or fall due for repayment in accordance with the terms detailed in the Facility Agreement.

## Costs on cancellation

13.11 If you end a Product Agreement or Service Agreement or cancel a Product or Service before using it, we may, subject to Applicable Law, require you to pay interest, fees and Costs incurred in connection with the Product Agreement, Service Agreement, Product or Service. This includes any legal fees (on a full indemnity basis) and Costs in connection with preparation of documents even if these documents have not been signed.

## **14. You indemnify us**

- 14.1 Subject to Applicable Law, you indemnify the Bank Group and any director, officer, employee or Agent of any of them against, and must pay to any member of the Bank Group on demand for, any Loss it reasonably incurs in connection with:
- a) any Account, the establishment and provision of any Product or Service or any other transaction contemplated by a Product Agreement or Service Agreement;
  - b) searches and enquiries we make in connection with you or a Collateral Provider (including checking for Insolvency);
  - c) instructions you give us;
  - d) any Product or Service provided by a third party for your benefit (including legal fees (on a full indemnity basis) and Costs);
  - e) any Tax payable by us on, or calculated by reference to, any amount paid or payable by you to us (excluding any Tax payable by us by reference to our net income);
  - f) us acting on, delaying or refusing to act on instructions from you or taking action against you;
  - g) a Default;
  - h) any amount payable by you under a Product Agreement or Service Agreement being repaid, discharged or made payable before its due date (the Loss we incur includes our Loss in connection with unwinding, terminating or changing arrangements we have made to fund or maintain our funding of any Product);
  - i) any person exercising, or not exercising, rights under a Product Agreement or Service Agreement or against any Collateral (including enforcement action and debt collection Costs, such as valuation fees and auctioneer's charges); and
  - j) any litigation brought by you or any third party about any Account, Product or Service where we are joined as a party to the proceedings.
- 14.2 If we ask, you must appear and defend at your own cost and expense any action which may be brought against us in connection with a Product Agreement or Service Agreement. If you ask us to commence legal action on your behalf in connection with a Product Agreement or Service Agreement, you must indemnify us fully for all Losses that may arise.
- 14.3 You must sign any document we reasonably require to give effect to this clause 14.

## **15. Payments - generally**

### **No deduction or withholding**

- 15.1 Subject to clause 21.5, all payments to be made by you to us under a Product Agreement, Service Agreement or the Facility Documentation shall be made free and clear of, and

without deduction or withholding (whether in respect of set off, counter claim, duties, Taxes, charges or otherwise whatsoever).

### **Independent payment obligations**

- 15.2 Your obligation to pay any amount under a Product Agreement or Service Agreement is separate from each other obligation to pay.

### **Right to withhold**

- 15.3 Any member of the Bank Group may withhold payment of any amount due to you until it is satisfied that it has received or will receive payment of any amount due from you to any member of the Bank Group.

### **Business Days**

- 15.4 Unless otherwise stated in the Product Terms or Service Terms, if an amount is due on a day which is not a Business Day, you must pay it on or before the next Business Day unless that day falls in the next calendar month, in which case you must pay it to us on or before the preceding Business Day.

### **Debiting Accounts**

- 15.5 We may debit (without prior notice to you) from any Account(s) we maintain for you:
- a) any interest, fees, Costs or any other amount you owe us in connection with a Product or Service; and
  - b) any fees you owe the investment adviser acceptable to us as specified in any invoice of the investment adviser, and pay such fees (on your behalf) to the investment adviser,

even if such debiting may result in any Account(s) being overdrawn.

- 15.6 If there is insufficient cash in the required currency in the Account(s) we maintain for you, we may convert the cash balance in the Account(s) from any other currency at our discretion using our prevailing rate determined by us.

### **Allowing a payment despite a lack of funds**

- 15.7 If you have a lack of funds in any Account(s) we maintain for you in respect of which we are entitled to debit amounts you owe us, yet we still decide to allow a payment despite the lack of funds, our action does not constitute a waiver or otherwise affect our rights under a Product Agreement.

### **Honouring payments**

- 15.8 You must ensure that any payment instrument or payment instruction for a payment to us is honoured. For example, you must:
- a) ensure that you have sufficient funds in the relevant Account(s) we maintain for you to allow a payment (including any account with another financial institution);
  - b) not stop payments to us; and

- c) not cancel or vary any payment arrangement (unless we ask you to do so to reflect a change in the instalments).

15.9 If we think that any payment obligation may not be honoured (for example, if there is a lack of funds in the Account(s) we maintain for you to be debited to process the payment) or if you instruct us to make a payment from an Account we maintain for you that would result in a negative balance in such Account or the Facility Amount on a Credit Facility to be exceeded, we may at our discretion:

- a) refuse a payment due to a lack of funds by declining to act further on any instruction or cancelling any transaction;
- b) if you have given us multiple instructions, act on some instructions and decline the others, without reference to the order in which we receive those instructions;
- c) allow a payment despite a lack of funds on one Account we maintain for you by transferring funds from any other Account we maintain for you to the Account to be debited;
- d) allow a payment despite a lack of funds by lending you funds on our usual terms; or
- e) suspend the Account we maintain for you or any Product.

#### **How we apply payments**

15.10 Payments are taken to be made when we credit them to an Account we maintain for you. We do this as soon as practicable after receipt.

15.11 Unless set out in the Product Terms, we may use amounts we receive to pay amounts you owe us in any order we choose.

#### **Payments into suspense account**

15.12 We may place in a suspense account any payment we receive for so long as we consider appropriate. This is to protect our rights against other amounts you or a Collateral Provider may owe to any member of the Bank Group.

#### **Insolvent payments**

15.13 Under Insolvency law, a person may demand a refund of a payment which we have received under a Product Agreement. To the extent we are obliged to do so or we agree to make a refund, we may treat the original payment as if it had not been made. We are then entitled to our rights against you under the Product Agreement as if the payment had never been made.

#### **Time of the essence**

15.14 Time is of the essence in respect of your obligations to pay any money.

#### **Payment by us to you**

15.15 All payments we must make to you under a Product Agreement or Service Agreement will be made to an Account of yours or a sub-account of your Account as we deem

appropriate. If, on any date, amounts are due and payable by us to you and another amount in the same currency is due and payable by you to us in respect of any one or more Products, such amounts shall be automatically satisfied and discharged and only the net amount owing on that day shall be paid by the party owing the larger amount to the other party.

- 15.16 You agree that any sum that may be payable by us to you shall be subject to all applicable laws, including without limitation any withholding tax requirement, foreign exchange restriction or control and we may withhold any monies payable to you, deposit any such monies into a suspense or other account, and/or retain such monies or take such other action as may be required pending determination of the applicability of such withholding tax requirement, foreign exchange restriction or control or other laws. We shall not be liable for any losses that may be incurred or shortfall that may arise by reason of such withholding, retention, deposit or other action pursuant to this clause.

## 16. Currency

### Currency conversion and indemnity

- 16.1 We may make currency conversions in respect of any money received for you or money sent by you at a rate we reasonably consider appropriate. You shall indemnify us for any shortfall, Costs or Loss arising from the conversion.
- 16.2 If any sum due from you (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:
- making or filing a claim or proof against you; or
  - obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

you shall as an independent obligation, within three (3) Business Days of demand, indemnify each Bank Group member to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

### Payment in other currency

- 16.3 You waive any right you have in any jurisdiction to pay any amount other than in the currency in which it is due. If we receive from you or from a third party on your behalf an amount in a currency other than that in which it is due:
- we may convert the amount into the due currency on the date and at rates we reasonably consider appropriate. We may deduct our fees and Costs incurred in the conversion; and

- you satisfy your obligations to pay in the due currency only to the extent of the amount of the due currency obtained from the conversion after deducting the fees and Costs of the conversion.

### **Conversion after Default**

- 16.4 Notwithstanding any other provision of a Product Agreement, at any time after you are in Default, we may convert to the Base Currency (at an exchange rate determined by us) any part of the Balance Owing that is due to us in any other currency.
- 16.5 Such part of the Balance Owing is then taken to be replaced with an obligation to pay us the amount of the Base Currency after conversion, plus the fees and Costs of the conversion.

### **Currency restrictions**

- 16.6 If a country restricts the availability or transfer of its currency, we may designate that any payment to us be made in another currency we reasonably consider appropriate. We shall not be obliged to substitute an eligible currency for another eligible currency whose transferability, convertibility or availability has been affected in whole or in part by capital control measures or freeze orders or any other legislation. Similarly, if we cannot pay you for this reason, or because of government restrictions beyond our control, we may discharge our obligations by paying you or paying to your order such funds at any time (whether before, on or after maturity), in any currency and in such manner as we may determine in our absolute discretion. We may use any exchange rate we choose for this purpose. All Foreign Currency transactions are subject to applicable exchange control laws. We shall not be liable for any loss or damage to you arising therefrom or for any costs, expenses or charges applicable in connection with the transferability, convertibility or availability of any eligible currency.

## **Part E – Termination, Suspension and Enforcement**

### **17. Termination and suspension**

#### **What happens on closure of an Account**

- 17.1 Unless we agree or determine otherwise, after an Account we maintain for you has been closed:
- all Product Agreements come to an end. You should also see clause 18.4;
  - you must not use the Account we maintain for you or any benefits in connection with the Account we maintain for you; and
  - we will pay to you the amounts owing to you less all amounts owing by you to us, including the Balance Owing for all Account(s) we maintain for you and for all Products with us. We may do so by sending you a cheque to your last known address at the time of closure of the Account(s) we maintain for you.
- 17.2 These Private Wealth Terms and Conditions will continue to apply to an Account we maintain for you until all amounts you owe on the Account we maintain for you and any other amounts which you owe us have been paid, any documentation relating to that Account we maintain for you have been returned to us, and all obligations under a Product Agreement have been fully complied with.

#### **No effect on rights and liabilities**

- 17.3 Terminating these Private Wealth Terms and Conditions or suspending an Account we maintain for you does not affect any of the rights and obligations of any of us which arose before it terminated or was suspended. Subject to Applicable Law, you are not entitled to any refund of any fee or amount paid or subsidy received in connection with any Product or Service we provide to you in connection with these Private Wealth Terms and Conditions. All provisions in these Private Wealth Terms and Conditions in connection with claw-backs, indemnities, limitation of liability, disclosure of information, set-off, currency conversion, Tax, and the provisions in clause 42 (*Collateral*) and Part F (*General*) of Section 1 survive termination of a banking relationship or suspension of an Account we maintain for you.

### **18. Termination or suspension of a Product Agreement or your use of a Product or Service**

#### **How a Product Agreement or your use of a Product ends**

- 18.1 Either you or we may end your use of a Product, a Product Agreement, a Service or a Service Agreement in accordance with the terms of the relevant Product Agreement or Service Agreement. Unless otherwise provided for in a Product Agreement or Service Agreement, we will usually give you not less than fourteen (14) days' written notice of termination.
- 18.2 In addition, we may, subject to Applicable Law, end these Private Wealth Terms and Conditions, any (or all) of our Product Agreements or Service Agreements, without prior notice to you, if:

- you or any Collateral Provider does not comply with or are in breach of these Private Wealth Terms and Conditions, a Product Agreement, Service Agreement, any Facility Documentation and/or any other undertaking with any member of the Bank Group;
- you do not pay, or make any delivery to any member of the Bank Group on the due date or on demand (as the case may be) any sums of money, or of any Asset, outstanding under any Product Agreement, Service Agreement, Facility Documentation or any other arrangement you have entered into with a member of the Bank Group (including if you have not ensured there are sufficient funds available in an Account which has been nominated for debiting payment);
- you do not furnish any member of the Bank Group with adequate Collateral acceptable to it promptly on our demand or we determine at any time that you have insufficient Collateral;
- any Product Agreement, Service Agreement or Facility Documentation ceases to be in full force and effect;
- you or a Collateral Provider have given us incorrect, incomplete or misleading information or made a representation or warranty that is incorrect or misleading in any material respect;
- the investment adviser appointed by you or any Collateral Provider in accordance with clause 39.1 resigns or is removed by you or such Collateral Provider (as the case may be) and a replacement investment adviser is not appointed under terms acceptable to us within the timeframe stipulated in the custodian account control deed entered into by you or such Collateral Provider (as the case may be) as a condition precedent to funding under clause 41.2;
- we or the custodian with which your or any Collateral Provider's account is held as referred to in clause 39.1 terminates or gives notice of its intention to terminate the custodian account control deed entered into by you or such Collateral Provider (as the case may be) as a condition precedent to funding under clause 41.2 or we or such custodian terminates, suspends or closes or gives notice of its intention to terminate, suspend or close the custodian account opened by you or such Collateral Provider (as the case may be) and maintained with such custodian;
- you have breached any term of any arrangement you have with another financial institution or another financial institution has exercised its right to suspend or terminate your use of any banking facility or enforce on any security interest you give it;
- legal proceedings to recover debts are commenced against you or any Collateral Provider, or any of your or any Collateral Provider's property is subject to enforcement of a judgment by any party;
- you or a Collateral Provider becomes insolvent or bankrupt, is unable or admits inability to pay your or its debts as they fall due, is deemed to or is declared to be

unable to pay its debts under applicable law, is declared insolvent or bankrupt, suspends or threatens to suspend making payments on any of your or its debts, or by reason of actual or anticipated financial difficulties, commences negotiations with one or more of your or its creditors with a view to rescheduling any of your or its indebtedness;

- the value of your assets or the assets of a Collateral Provider is less than your or its liabilities (taking into account contingent and prospective liabilities);
- you or a Collateral Provider makes or attempts to make any composition or arrangement with any of your or its creditors or a moratorium is declared in respect of any of your indebtedness or the indebtedness of any Collateral Provider;
- any step is taken towards your or any Collateral Provider's suspension of payments, moratorium of any indebtedness, bankruptcy or liquidation, provisional liquidation, dissolution, insolvency, winding-up, administration, provisional supervision, reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) or having a liquidator, provisional liquidator, provisional supervisor, receiver, receiver and manager, judicial manager, trustee, administrator or similar officer appointed in respect of you or any Collateral Provider or over the whole or any part of their undertaking or assets;
- a petition for administration, judicial management or winding-up or any analogous procedure is presented against you or any Collateral Provider;
- your or a Collateral Provider's credit standing or financial position becomes, in our opinion, materially weaker;
- we reasonably believe that you or any Collateral Provider have died, suffers from any mental incapacity or ceases to be of sound mind (where you or the Collateral Provider are natural persons);
- you or any Collateral Provider acts fraudulently or dishonestly or behaves in a manner that makes it inappropriate or illegal for us to continue to provide you with a Product or Service;
- criminal investigations or proceedings are commenced against you or a Collateral Provider or you or a Collateral Provider are convicted of a crime;
- any business you or a Collateral Provider own or operate is not carried on in a proper manner or you or a Collateral Provider cease to own or operate it or a substantial part of it, or change it significantly without our consent;
- we consider that a Product or Service is being used in an irregular, illegal or improper manner;
- you or any Collateral Provider are a corporate entity, and there is, in our opinion, any change of control of you or any Collateral Provider without our prior written consent;
- a material adverse circumstance occurs which in our opinion gives reasonable grounds to believe that you or a Collateral Provider may not or may be unable to

perform your or its obligations under these Private Wealth Terms and Conditions, a Product Agreement, Service Agreement, the Facility Documentation or a Collateral Document;

- at any time, as a result of or as a result of any changes to your domicile, nationality, residency status, Tax status, or any other relevant status, the provision or continued provision of any Product or Service, or part of any Product or Service, would or might in our reasonable opinion constitute a breach of our policy or any Applicable Law or requirement of any authority, or is not in accordance with our usual business practice and procedure;
- we in good faith, and in our absolute discretion, consider that the performance of any obligation by either you or us under these Private Wealth Terms and Conditions, a Product Agreement, Service Agreement, the Facility Documentation or any Collateral Document is likely to breach any Applicable Law, or would be inconsistent with prudent banking practice, or may damage our reputation;
- a right to suspend or terminate these Private Wealth Terms and Conditions, a Product Agreement, Service Agreement, the Facility Documentation or any Collateral Document has arisen; or
- any default or event of default (howsoever described) in any Facility Documentation or other document evidencing the terms and conditions of the grant of any Credit Facilities to you has occurred.

18.3 Our rights under this clause are in addition to and do not affect any of our other rights under any Product Agreements.

#### **What happens on termination**

18.4 After a Product Agreement for a Product or Service Agreement for a Service terminates, you must:

- not use the Product or Service or any benefits in connection with the Product or Service;
- immediately repay all amounts owing to us under the Product Agreement including the Balance Owing for the Account(s) we maintain for you for the Product as well as any unwinding Costs, termination Costs and any Costs, expenses, Taxes, duties, fees, commission, Losses incurred or suffered by any member of the Bank Group as a result of and/or in connection with unwinding any hedge relating to the Product; and/or
- do any other thing which the Product Agreement or Service Agreement requires to be done when your right to use the Product or Service terminates.

#### **No effect on rights and liabilities**

18.5 Terminating a Product Agreement or the right to use a Product does not affect any of your or our rights and obligations which arose before such termination. Subject to Applicable Law, you are not entitled to any refund of any fee or amount paid or subsidy

received in connection with the Product. All provisions in the Product Agreement in connection with claw-backs, indemnities, limitation of liability, disclosure of information, set-off, currency conversion, Tax, and the provisions in clause 42 (*Collateral*) and Part F (*General*) of Section 1 survive termination of the Product Agreement.

- 18.6 Any of our obligations to make payment of or deliver Assets to you is subject to you not being in Default.

### **Suspension**

- 18.7 We may suspend providing a Product or Service at any time for any reason (even if there is no Default). If we do, and if permitted by Applicable Law, we will notify you as soon as practicable. We agree to suspend provision of a Product or Service if you ask us to do so in writing. We will not be liable for such suspension.

## **19. Enforcement action**

- 19.1 Any member of the Bank Group may take any action it considers appropriate to recover any amount owing to it or to enforce these Private Wealth Terms and Conditions, a Product Agreement or Service Agreement or any Collateral Document including:
- employing any third-party Agent to collect any amount owing to any member of the Bank Group;
  - disposing of all or any part of the Collateral to pay any amount owing to any member of the Bank Group, or setting off any amount owing to any member of the Bank Group, against all or part of the Collateral;
  - subject to Applicable Law, attaching the amount owing to any member of the Bank Group to your or a Collateral Provider's Assets;
  - taking steps to enforce the rights of any member of the Bank Group against your or a Collateral Provider's Assets such as by lodging caveats; and/or
  - commencing legal proceedings against you or a Collateral Provider.
- 19.2 When enforcing our rights on or against any Collateral, we are entitled to do so at the prevailing market price, or where one is not available, reasonably attribute a nominal value to the Collateral. You should also see clauses 23.18 to 23.24 and clause 42 in Section 2.

## Part F – General

### 20. Banker's lien and right of set-off

- 20.1 In addition to any Collateral we require, all Assets we hold for you are subject to a banker's lien to us. Without limiting our other rights, we may set-off any such Asset against, or apply the lien as Collateral for, or in or towards satisfaction of any amount you owe us, including any amount you may owe us in the future, or for the performance of your obligations, including any future obligations. We may sell or deal with the Assets to pay such amounts or satisfy such obligations, and may do so without notifying you. You may not be able to withdraw the Assets until these amounts are paid or obligations satisfied. You should also see clauses 15.3 and 20.2.
- 20.2 We may without notice to you combine, consolidate or merge all or any of your Accounts with, and liabilities to, us and may set off or transfer any sum standing to the credit of any such Accounts (whether matured or not) or any other amount which we may owe you in or towards the satisfaction of any of your liabilities (actual or contingent, primary or otherwise, several or joint) to us under these Private Wealth Terms and Conditions, any Facility Documentation, any Product Agreement and any Service Agreement. We may do so notwithstanding that the balances on such Accounts, any amounts we owe you and the liabilities may not be expressed in the same currency and we are hereby authorised to effect any necessary conversions at our own rate of exchange then prevailing. We shall not be obliged to exercise any right given to us under this clause 20. In this clause 20, any reference to us includes our head office and any branch in any jurisdiction.
- 20.3 Our rights under this clause 20 are in addition to and without prejudice to any security, any rights of set-off and any other rights we may have under any other agreement, by law or otherwise.

#### Our rights to sell your Assets

- 20.4 We may sell, liquidate, transfer or otherwise dispose of any of your or any Collateral Provider's Assets or Collateral or close out your or any Collateral Provider's positions (in each case, in full or in part):
- at any time after the LTV Ratio (Collateral) (determined in our absolute discretion) is exceeded; or
  - so far as is necessary to enable us to settle any transaction entered into on your behalf under these Private Wealth Terms and Conditions and to pay any outstanding liabilities arising under or in connection with these Private Wealth Terms and Conditions, including any liability you owe to us.

### 21. Taxation

#### Government charges

- 21.1 You must pay us an amount equal to any government charges and Taxes (however described) on or in connection with Account(s) we maintain for you, a Product

Agreement or a Service Agreement. These are payable whether or not you are primarily liable for those charges and Taxes.

### **Your Tax affairs**

- 21.2 You are responsible for all Taxes on Account(s) we maintain for you. We may require you to provide us information to help us ascertain your Tax status. You must provide us with complete, accurate and up to date information. If information relating to you changes, if you withhold information from us or if you give us incorrect or misleading information relating to you, you may become subject to charges or penalties, or you may be liable for an increased amount in Taxes, or we may be required to withhold a higher amount of Tax from you. You should seek independent professional Tax advice. We may report a Tax in cases where, we consider that we are or may be obliged to do so by an Applicable Law. If we ask you to do so, you must, on our request, accurately complete any relevant declarations of non- residence and other documents to enable us to determine whether we are obliged to report Tax.
- 21.3 You are responsible for your own Tax affairs. You understand that we take a firm stance on tax-illicit activities. This includes income tax, capital gains tax, inheritance tax, property or wealth tax, value-added tax, goods and services tax or stamp duty, regardless of where they apply. Our Products and Services are provided to you on the basis that you are fully Tax compliant and that you have not committed nor have you ever been convicted of any serious Tax offences in any jurisdiction. At all times, you must confirm that, to the best of your knowledge, you have not committed nor have you ever been convicted of any serious Tax offences in any jurisdiction.

### **Tax advice**

- 21.4 We do not offer you Tax advice of any nature. If you are in doubt as to the Tax implications of any Product or in relation to the Accounts we maintain for you, you should seek independent professional advice. You should remember that any Tax treatment depends on your individual circumstances and may be subject to change.

### **Withholding tax**

- 21.5 If you are required by law to make a deduction or withholding for or on account of any Tax, you shall pay to us such additional amount which after deduction or withholding shall ensure that the net amount received by us will equal the amount which would have been received by us had no such deduction or withholding been required.
- 21.6 Interest or other income (such as dividend payments) earned by you for a Product may be subject to withholding tax in accordance with Applicable Law.

### **Value added Tax**

- 21.7 All payments to be made by you in connection with a Product Agreement are calculated without regard to any goods and services tax, consumption tax, value added tax or any Tax of a similar nature. If any of these types of Taxes is payable in connection with the payment, you must pay us an additional amount equal to the payment multiplied by the appropriate rate of tax. You must do so at the same time as making the payment.

## 22. Increased Costs

22.1 If we determine that:

- the introduction or variation of any law, regulation or directive (whether or not having the force of law), or any change in the interpretation or application thereof; or
- compliance with any law, regulation or directive (whether or not having the force of law) from any central bank or other fiscal, monetary or other authority,

increases the cost to us of providing any Product or Service or making or maintaining any Credit Facilities or reduces the amount of any sum received or receivable by us in respect of such Product, Service or Credit Facilities or obliges us to make any payment on, or calculated by reference to, the amount of any sum received or receivable by us from you under a Product Agreement, Service Agreement or the Facility Documentation, then we will notify you of such determination and you will on demand pay to us such amount as we from time to time and at any time (including after the termination of the Product Agreement, Service Agreement or Facility Documentation) may notify you to be necessary to compensate us for such additional cost, reduction or payment.

## 23. General

### Exclusion of liability

23.1 Unless Applicable Law prohibits us from excluding or limiting our liability, we (and any member of the Bank Group, and our or its directors and employees) are not liable for any Loss you incur in connection with these Private Wealth Terms and Conditions or a Product Agreement or a Service Agreement (including in connection with (i) the provision of any Product, (ii) unavailability or improper functioning of an Electronic Banking Service, (iii) delay or Error in sending money, (iv) delay in receiving money, (v) delay in providing you funds under a Product Agreement, (vi) misrepresentation, (vii) your or an Authorised Person's instructions or any unauthorised instructions, (viii) suspension or termination of an Account we maintain for you or Product Agreement, (ix) our refusal to act on any instruction, or (x) any other thing we do or do not do), or the provision of any Service (including us acting or refusing to act in connection with any telegraphic or electronic transfer service, or any act or omission of any member of the Bank Group, any clearing house, payment, clearing or settlement system or payment intermediary arising out of or in connection with any telegraphic or electronic transfer service).

23.2 This applies where the Loss arises for any reason, including:

- your own failure to comply with your obligations under these Private Wealth Terms and Conditions;
- your own negligence, fraud or wilful default;
- failure of any Agent or third party to fulfil its obligations;

- any Error, failure, interruption delay or non-availability of Services, Products, software, communication and other networks or communication supplied to you or to us by a third party (including the Bank Group's Agents, correspondents and independent contractors) or employed or controlled by a third party (including trading, dealing, transmission and communication systems); or
- our taking an action, or failing to take an action, where in our reasonable opinion our taking or failing to take such an action (as the case may be) is necessary to avoid a breach of any Applicable Law,

and even if the Loss was reasonably foreseeable or where we had been advised of the possibility of the Loss.

23.3 This further applies to any Losses you suffer that:

- were not, at the time you entered into these Private Wealth Terms and Conditions, a foreseeable consequence of our breaching these Private Wealth Terms and Conditions;
- arise from any act or omission caused by Circumstances Beyond our Control;
- are caused by any other person, system, institution or payment infrastructure beyond our control or the control of anyone working for us or on our behalf;
- are a result of the suspension of a Service or the operation of an Account we maintain for you; or
- are business Losses, as opposed to your personal Losses.

23.4 We are liable for your direct Loss only to the extent it is directly caused by our gross negligence, fraud or wilful misconduct.

23.5 You acknowledge that if any representation made by us to you with respect to a Product or Service is not set out in, or is inconsistent with, a Product Agreement or Service Agreement, you will notify us and provide us with the relevant details so that we can verify such representation, and you may only rely on such representation following our confirmation. We are not liable for any Loss if any of our employees or Agents, acts without authority.

23.6 You will reimburse us for any Loss which we may suffer, directly or indirectly, as a result of your breaching these Private Wealth Terms and Conditions and/or any other agreement, obligation or undertaking with any member of the Bank Group.

### **Circumstances Beyond our Control**

23.7 If any Circumstances Beyond our Control occur, we may take any action we consider appropriate in connection with an Account we maintain for you or any Product.

### **No knowledge of trust**

23.8 Where you act in the capacity of a trustee (whether or not you tell us), we shall not be deemed to have knowledge (whether actual, constructive or otherwise) of the terms of

the trust, and you shall be solely responsible for any fiduciary duties and for maintaining the terms of the trust.

### **Conflicting claims**

- 23.9 If we consider any funds in any Account(s) we maintain for you may be subject to conflicting claims, we may take action (including getting legal advice or taking legal proceedings) to determine the matter. We may act in accordance with any determination and we are not liable to you for any Loss you incur.

### **Variation**

- 23.10 We reserve the right at any time and from time to time to add to, amend, modify, supplement or vary these Private Wealth Terms and Conditions, the Product Terms, the Service Terms and the terms of any Product Agreement or Service Agreement for any reason whatsoever, including but not limited to the following:

- where we reasonably consider that the change would make the terms easier to understand;
- to cover the improvement of any Service or Product we supply in connection with an Account we maintain for you or the introduction of a new Service or Product or the replacement of an existing Service or Product with a new one;
- the withdrawal of a Service or Product which has become obsolete, or has ceased to be widely used, or has not been used by you at any time in the previous two (2) years;
- to make changes in the features of a Product or Service from time to time, including the term, commissions, fees and charges, exchange rates, interest rates, the basis for calculating interest rates and the Loan or Overdraft margin;
- to enable us to make reasonable changes to the way we look after an Account we maintain for you as a result of changes in the banking or financial system, technology or the systems we use to run our business; or
- as a result of a requirement under Applicable Law (or where we reasonably expect that there will be a change in the requirements under Applicable Law).

- 23.11 We may also, subject to Applicable Law:

- terminate any banking relationship without giving reasons; and/or
- ask you to place additional Assets with us in order for us to continue to provide you with any Product or Service or continue our banking relationship with you.

- 23.12 Any additions, amendments, modifications, supplements and variations made by us shall be deemed to have effect as soon as notified to you. If you do not request that we cease to provide you with the Product or Service after such notification, you shall be deemed to have agreed to such additions, amendments, modifications, supplements and variations without reservation.

- 23.13 We will provide you with any notice required under clause 23.12 in writing to the most recent address which we hold for you.
- 23.14 Without limiting the generality of clause 23.10:
- if we provide a new Service in connection with an Account we maintain for you or expand the scope of the Services which we provide to you, we may, subject to clause 23.12, introduce a new fee and/or charge for providing you with any new Services; or
  - we may change our fees and/or charges or introduce a new fee and/or charge if, subject to clause 23.12, there is a change in (or we reasonably expect there to be a change in) the Costs we incur in carrying out the activity for which the fee and/or charge is or will be made or regulatory requirements.
- 23.15 We may provide you with an updated copy of these Private Wealth Terms and Conditions, as amended, or a summary of the changes as we consider appropriate and/or required under Applicable Law.

#### **Waiver**

- 23.16 A provision of these Private Wealth Terms and Conditions, a Product Agreement or the Facility Documentation, or right created under it, may not be waived except in writing signed by the party or parties to be bound and is only effective for the purpose for which it is given. Such waiver shall be without prejudice to our right to enforce compliance with any such provision on any other occasion.
- 23.17 If we fail to exercise any right, power or remedy under these Private Wealth Terms and Conditions, a Product Agreement or the Facility Documentation or delay our exercise of such right, power or remedy, that shall not amount to a waiver of such right, power or remedy. That means that we can still exercise that right or power against you even if we have not done so previously. Any single or partial exercise of any right, power or remedy shall not preclude the further exercise thereof and no course of dealing between us nor any waiver by us in any one or more instances shall be deemed a waiver in any other instance. Each of our rights, powers and remedies shall continue in full force and effect until such rights, powers or remedies are specifically amended or waived by an instrument in writing executed by us.

#### **How we may exercise our rights**

- 23.18 We may exercise a right or remedy, give or refuse our consent or approval in connection with these Private Wealth Terms and Conditions, a Product Agreement or a Collateral Document in any way we consider appropriate, including by imposing conditions. We need not give you reasons for any decision we make.
- 23.19 If we do not exercise a right or remedy fully or at a given time, we can still exercise it later.

- 23.20 Except for a variation or waiver in accordance with clauses 23.10 to 23.17, nothing we do suspends, varies or prevents us from exercising our rights under these Private Wealth Terms and Conditions, a Product Agreement or a Collateral Document.
- 23.21 If we waive a right against one Joint Account Holder or release one Joint Account Holder from his obligations under these Private Wealth Terms and Conditions, a Product Agreement or a Collateral Document, our rights against the other Joint Account Holder(s) are not affected.
- 23.22 We are not liable for any Loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy.
- 23.23 Our rights and remedies under these Private Wealth Terms and Conditions, a Product Agreement or a Collateral Document:
- are in addition to other rights and remedies given by Applicable Law independently of these Private Wealth Terms and Conditions, Product Agreement or Collateral Document;
  - do not merge with and are not adversely affected by any other Collateral and may be executed independently or together with any rights or remedies including our holding of any other Collateral;
  - may be exercised even if this involves a conflict of duty or we have a personal interest in their exercise; and
  - are not affected by any payment, settlement or anything which might otherwise affect them under Applicable Law including:
    - us varying our Product Agreement such as by providing you with additional Products or replacing existing Products;
    - us releasing you or a Collateral Provider or giving them a concession, such as more time to pay;
    - the fact that we release or lose the benefit of any Collateral; or
    - the death, mental or physical disability or Insolvency of any person (including you or a Collateral Provider).
- 23.24 Our rights and remedies under these Private Wealth Terms and Conditions, a Product Agreement or a Collateral Document may be exercised by any of our authorised employees or any other persons we authorise.

### **Further steps**

- 23.25 You agree to do all necessary acts (such as obtaining consents, signing and producing documents and getting documents completed, signed, stamped, filed or registered):
- to bind you and any other person intended to be bound by these Private Wealth Terms and Conditions, a Product Agreement or a Collateral Document;

- to show whether you are complying with these Private Wealth Terms and Conditions, a Product Agreement or a Collateral Document; and
- to confirm anything done by us in the proper exercise of our rights under these Private Wealth Terms and Conditions, a Product Agreement or a Collateral Document.

### **Indemnities**

23.26 The indemnities in these Private Wealth Terms and Conditions are continuing obligations, independent of your other obligations under them. It is not necessary for us to incur expense or make payment before enforcing a right of indemnity.

### **We act on Business Days**

23.27 We may act on or execute instructions or provide a Product only on a Business Day and during our working hours.

### **Prompt performance**

23.28 If these Private Wealth Terms and Conditions or a Product Agreement specify when you must perform an obligation, you must perform it by the time specified. You must perform all other obligations promptly.

### **Our other dealings**

23.29 Subject to any obligations which we may have in relation to rules on conflicts of interest, and unless required by Applicable Law, where we or any other member of the Bank Group have an interest in a Product or act in another capacity in relation to a Product which we provide to you:

- a) we do not have to specifically disclose this to you; and
- b) we do not have to inform you of anything or any information that comes to our notice in the course of us providing services to any other person in any other capacity.

### **Outsourcing**

23.30 We may employ independent contractors and Agents (including correspondents) to perform any of our obligations under these Private Wealth Terms and Conditions or a Product Agreement or provide a Product on terms we consider appropriate. In particular, we may appoint any Agent to take delivery and to be registered as nominee or sub-custodian of any of your Assets in any part of the world.

### **Incentive programmes and additional Services**

23.31 From time to time we may offer incentive programmes or value added services in connection with a Product offered by us or a third party. We may vary or withdraw the programmes or value added services at any time. We do not guarantee or warrant their quality and, if they are provided by a third party, they are provided on the terms offered by the third party (including the third party's privacy policies). Please contact us if you want to find out more information about the terms of the programmes or services.

### **Hyperlinked sites**

- 23.32 We are not responsible for, do not endorse, and make no representation or warranty in connection with, any hyperlinked internet sites on our website. We are not responsible for any Loss you incur in connection with those hyperlinked sites.

### **Sumitomo Mitsui intellectual property**

- 23.33 You will not use any name, logo or trademark or any other intellectual property belonging to the Bank Group without our prior written consent.

### **Assignments and transfers**

- 23.34 These Private Wealth Terms and Conditions are personal to you. You must not in any way encumber, charge, pledge, dispose of, declare a trust over, assign or transfer your rights and obligations under these Private Wealth Terms and Conditions, a Product Agreement, a Service Agreement or the Facility Documentation or any part thereof to anyone unless our prior written consent has been obtained.
- 23.35 We may assign or transfer or otherwise deal with our rights under these Private Wealth Terms and Conditions, a Product Agreement (including any particular Product or Account(s) we maintain for you), a Service Agreement or the Facility Documentation or any part thereof in any way we consider appropriate. You may not claim against any assignee or transferee (or any other person who has an interest in the Product or Account(s) we maintain for you) any right of set-off or other rights you have against us.
- 23.36 If we ask, you must execute and give us or any other person we specify any document we reasonably require for the purposes set out in clause 23.35 above.

### **Change in constitution**

- 23.37 You must not change your constitution by amalgamation, consolidation, reconstruction, admission of any new partner or otherwise, without informing us. You must also ensure that each Collateral Provider does not do so without informing us. All Collateral Documents, agreements, obligations given or undertaken by you or a Collateral Provider remain valid and binding despite any change in our, your or a Collateral Provider's constitution by amalgamation, consolidation, reconstruction, death, retirement, admission of any new partner or otherwise.

### **Complying with a court order or regulatory request**

- 23.38 If we (or any other member of the Bank Group) are served with a court order or a regulatory request from a governmental or regulatory authority, we may act in accordance with the court order or regulatory request and you must not commence proceedings against us in relation to our actions under the court order or regulatory request.
- 23.39 You also agree to do all necessary acts to allow us to act in accordance with the court order or regulatory request.

## **Compliance with Applicable Laws**

- 23.40 We need not do anything required of us in these Private Wealth Terms and Conditions, a Product Agreement, Service Agreement or the Facility Documentation if doing so would or might in our reasonable opinion constitute a breach of our policy or any Applicable Law or Sanction. You agree that we may take any action that we determine is required or desirable to comply with any Applicable Law, Sanction or our policies.
- 23.41 You agree that you are solely responsible for, and that neither we, nor the Bank Group has any responsibility for, your compliance with any Applicable Law including any laws, regulations or rules, in your or any other jurisdiction, relating to Tax, foreign exchange and capital control, and for reporting or filing requirements that may apply as a result of your country of citizenship, domicile, residence or tax-paying status.

## **Severability**

- 23.42 If and to the extent that an Applicable Law is inconsistent with these Private Wealth Terms and Conditions in a way that would otherwise have the effect of making:
- a provision illegal, void or unenforceable; or
  - a provision contravene a requirement of Applicable Law or impose an obligation or liability which is prohibited by Applicable Law,
- then the Applicable Law overrides these Private Wealth Terms and Conditions to the extent of the inconsistency, and these Private Wealth Terms and Conditions are to be read as if that provision were varied to the extent necessary to comply with that Applicable Law and avoid that effect (or, if necessary, omitted) and the remainder of these Private Wealth Terms and Conditions will stand and be read as if that part were not included.
- 23.43 If any provision of these Private Wealth Terms and Conditions, a Product Agreement, Service Agreement or the Facility Documentation is invalid, unenforceable or illegal, such invalidity, unenforceability or illegality shall not invalidate the remaining provisions therein or affect the validity, enforceability or legality of such provisions.

## **Anti-money laundering and counter terrorism financing**

- 23.44 In order to comply with anti-money laundering laws, counter terrorism financing laws, Sanctions, regulations and policies, including our policies, reporting requirements under financial transactions legislation and requests of authorities, a member of the Bank Group may intercept and investigate any payment messages and other information or communications sent to or by you or on your behalf. The relevant member of the Bank Group is not required to inform you or give reasons for doing so unless required by Applicable Law. Payment screening may cause a delay in processing certain information.

## **Counterparts**

- 23.45 Any agreement with us, including any Product Agreement, Service Agreement or Facility Agreement, may be signed in any number of counterparts, all of which taken together shall constitute one and the same document notwithstanding the counterparts are

delivered by fax, electronic mail or other Electronic Means (such as DocuSign) or any other method or combination of methods. The parties agree that they may rely upon and accept as an original for all purposes any counterpart signed and delivered by facsimile, pdf, e-mail or other electronic transmission which the receiving party in good faith believes has been signed by the other party, including by electronic signature, and such document shall have the same force and effect as an original signature. Without limitation, "electronic signature" includes versions of an original signature on a document electronically scanned, transmitted versions (e.g. via pdf) of an original signature and e-signatures included on documents accessed from electronic and/or mobile devices via e-signature Services such as DocuSign. Notwithstanding the foregoing, we may, in our discretion, require that an original document be submitted to us in lieu of, or in addition to, any such e-signed document.

### **Governing law**

- 23.46 These Private Wealth Terms and Conditions are governed by and shall be construed in accordance with the laws of Singapore.
- 23.47 Except as otherwise provided in the relevant Product Terms, each Product Agreement entered into with us is governed by the laws of Singapore.

### **Jurisdiction**

- 23.48 The courts of Singapore have exclusive jurisdiction to settle any dispute arising out of or in connection with these Private Wealth Terms and Conditions, any Product Agreement, Service Agreement or the Facility Documentation (including any dispute regarding the existence, validity or termination thereof) (a "**Dispute**").
- 23.49 The parties agree that the courts of Singapore are the most appropriate and convenient courts to settle Disputes and accordingly, no party will argue to the contrary.
- 23.50 Clauses 23.48 and 23.49 are for our benefit only. As a result, we shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, we may take concurrent proceedings in any number of jurisdictions.

### **Serving documents**

- 23.51 Without preventing any other method of service, any document may be served, or court order may be initiated on a party by being delivered to or left at that party's last notified address.
- 23.52 You (if not resident or incorporated in Singapore) shall at all times maintain an agent for the service of process in Singapore. Any writ, judgment or other notice of legal process shall be sufficiently served on you if delivered to such agent at its address for the time being. You undertake not to revoke the authority of the above agent and if, for any reason, such agent no longer serves as your agent to receive service, you shall advise us thereof and shall deliver promptly to us the acceptance by such other agent as appointed by you of its appointment. Nothing herein shall prohibit us from serving any legal process on you by any other method allowed by law.

### **Waiver of immunity**

23.53 You irrevocably agree to waive all immunity you or your Assets may enjoy in any jurisdiction.

### **Products and Services**

23.54 Section 2 sets out the Credit Terms relating to the Credit Facilities.

23.55 Without prejudice to any terms and conditions set out in these Private Wealth Terms and Conditions, the Product Terms or Service Terms relating to our other Products and Services are generally set out elsewhere. For example, please refer to:

- a) the Terms and Conditions Governing Accounts available on our website at <https://www.smbc.co.jp/asia/singapore/forms/Deposits-Accounts-Governance-Terms.pdf> for Product Terms or Service Terms relating to Accounts; and
- b) the Terms and Conditions for Bankers' Guarantee/Indemnity/SBLC available on our website at <https://www.smbc.co.jp/asia/singapore/forms/BG-SBLC-non-trade-finance-terms.pdf> for Product Terms or Service Terms relating to Bankers' Guarantees or SBLCs.

## Part G – Custody Services

### 24. Custody Services

24.1 We may serve as your custodian for Securities you may acquire, deposit with us from time to time, or we may approve a third party custodian for this purpose. The account which we use to hold Securities as your custodian (the “**Custodian Account**”) shall be governed by these Private Wealth Terms and Conditions and not our Terms and Conditions Governing Accounts (including the relevant country addendum) referred to in clause 23.55. You hereby consent that if we serve as your custodian, this constitutes a Service and we may do so in accounts with us, our nominee or sub-custodian, another member of the Bank Group or with third party sub-custodians we appoint. The Securities may also be deposited with or held by a central securities depository. How and where the Securities are held may depend on where:

- the principal trading market for the Securities is located, which may be overseas;
- the Securities may be presented for payment; or
- the Securities were acquired.

If we hold Securities through a nominee or sub-custodian, references to “we”, “our” or “us” in this Part G shall include the nominee or sub-custodian (as the case may be).

24.2 We will use reasonable skill and care in the selection of a sub-custodian. We are not otherwise responsible for the acts or omissions or insolvency of the sub-custodian, or if it ceases to carry on business. Our custody services are subject to the terms and conditions of our agreements with the sub-custodians, the customary terms of any securities depository, and the applicable law (including insolvency law) of the jurisdiction in which the Securities are held.

24.3 Subject to applicable law, Securities may, in our discretion, be held (i) in our name or the name of our nominee, (ii) in the name of the sub-custodian, or (iii) in your name. You agree to complete all instruments of transfer or other document we require to enable us to hold and deal in the Securities. We may delay registering the Securities in our name or in the name of our nominee or sub-custodian, at our reasonable discretion. We may not be in a position to carry out all our obligations prior to such registration. We will not be liable for any loss you may suffer as a result.

24.4 If Securities are held in our name or in the name of our nominee or the sub-custodian, they may be commingled with Securities belonging to other customers. This means that we may not be able to attribute specific Securities to you. We also have no obligation to deliver to you Securities in their present form, but rather only Securities of the same number, class, denomination and issue as original deposited with us.

24.5 We will, or we will procure that our nominee or the sub-custodians will, identify in our/their books that the Securities belong to you or our customers generally, as the case may be. We will, or we will procure that our nominee or sub-custodian will, keep a separate record of all Securities you hold with us. The purpose of this is to make it clear that you own the

Securities, so that if the nominee or the sub-custodian becomes insolvent, your Securities will not be available to the creditors of the nominee or sub-custodian.

- 24.6 We hold the Securities as bare trustee and owe no fiduciary duties to you. You bear all risks associated with the Securities.
- 24.7 We may provide individual segregated accounts to hold your Securities at central securities depositaries, upon your request.
- 24.8 We will not investigate ownership or title to the Securities. We will not be liable for any defect in ownership or title.

## **25. Overseas custody**

- 25.1 Where we arrange for one or more of your Securities to be held in safe custody outside the country from which we provide services to you, there may be different or additional legal requirements which apply to your Securities. This may affect the way in which your Securities may be used and administered and your rights relating to your Securities may differ. We are entitled to take or refrain from taking any action to comply with such local laws and legal requirements.
- 25.2 There may also be different practices for the identification of Securities from those of other of our customers or the other customers of nominees or sub-custodians.
- 25.3 Securities which are traded exclusively or primarily outside of Singapore will as a general rule, also be held abroad. Should local legislation make it impossible for us or if we would be allocated unreasonable costs or period of time to return the Securities (or the consideration for such Securities) held abroad, we are obligated only to ensure you a proportionate restitution claim at the place of deposit at the sub-custodian or securities system, provided that such claim exists and is assignable.

## **26. Statements relating to your Securities**

- 26.1 We will send you a statement detailing all of your Securities that we hold for you as custodian at least once a month. You should also see clause 9.1.
- 26.2 Your statement will show your Securities that we hold for you as custodian at their most recent market value, being the nominal value we attribute to such Securities or, in the case of Securities quoted on a regulated market or otherwise valued by a method acceptable to us, the latest quotation or valuation available to us in respect of such Securities. In preparing your statement, we will only use up-to-date information obtained from sources we reasonably believe to be reliable.

## **27. Confirmations**

- 27.1 You represent and warrant that the Securities that we hold for you as custodian are authentic, valid and correct and are and will remain, save for any security interest in our favour, free from any claims and any lien, pledge, mortgage, charge, security or proprietary interest or other encumbrance. You agree to indemnify us on demand against any Losses that we may suffer if the above warranties and representations are untrue in any respect.

- 27.2 We do not and are not under any duty to: (a) supervise or monitor your investments or (b) subject to Applicable Laws, advise or make any recommendations for the sale, purchase or disposal of the Securities held by us as custodian. You have not relied and will not rely on any oral or written representation made by us or any person on our behalf in entering into any sale, purchase or disposal of the Securities held by us as custodian.

## **28. Scope of authority**

28.1 You authorise us (but we are not obliged) to do the following in respect of your Securities:

- to surrender or deliver your Securities against receipt of monies payable at maturity, redemption or sale or against any other Securities upon any exchange of your Securities;
- where interest, dividends, distributions, income or other payments (whether in cash or in kind) are payable in respect of any Securities, including at maturity, redemption or sale, to collect them, convert them into the currency of the relevant account we maintain for you at our prevailing rates and deposit them into your account;
- to make any withholding or deduction, and pay the same, as may be required by applicable law;
- to do any administrative act in relation to the Securities (for example, consolidating or splitting Securities into marketable lots, exchanging Securities in temporary form for Securities in definitive form, or delivering Securities in scrip form to a central depository (or similar system) for the purposes of scripless trading);
- to disclose your interests in the Securities as may be required by applicable law or rules of the relevant exchange or regulatory authority;
- to satisfy any liabilities arising from or in respect of the holding of the Securities, by debiting any of your Accounts with the costs involved, and we shall not be under any liability to account for any Loss occasioned by the satisfaction of such liabilities or the failure to do so;
- to deal with the Securities or to do any administrative act on your behalf for the purposes of carrying out your instructions (such as completing or submitting any document); and
- to take any action as we think necessary to preserve the integrity of the Securities or to protect your interests or our interests.

### **Rights issues, takeovers, voting etc.**

28.2 Subject to clause 28.3, unless we receive instructions from you before the cut-off time we set for receipt of such instructions from time to time, we will not be responsible for investigating or exercising any of the rights which you may have in your capacity as owner of particular Securities, such as (without limitation):

- exercising any rights to convert your Securities into any other kind of Securities or any rights to subscribe for further Securities;

- dealing with the consequences of a takeover, merger or other reorganisation of the issuer; or
- exercising any rights which you may have to vote on the actions of the issuer.

28.3 If we do not receive instructions from you in accordance with clause 28.2:

- where you have been provided by the issuer with a default option in respect of how you may vote, we will act on that default option; or
- where there is no default option, we will not exercise your rights.

28.4 Where any of your Securities are registered in our name or in the name of a nominee or sub-custodian we will endeavour to procure that:

- all material notices, reports, circulars and other documents, which relate to your Securities, received by us from a sub-custodian or securities depository, are forwarded to you as soon as reasonably practicable, if you have requested them or if we in our discretion think it is expedient to do so. Except in the case of our gross negligence, wilful default or fraud, we are not liable to you if we do not receive such communications or if by the time we receive them and forward them to you, you do not have sufficient time to act on them;
- if it becomes possible (for example, under the terms of your Securities or as a result of a takeover, merger or other reorganisation of the issuer) to convert your Securities into any other kind of Securities or to exchange or cash in your Securities, your Securities are converted, exchanged or cashed in; and
- all voting and other rights and powers which may be exercisable by you in relation to your Securities shall only be exercised in the way you direct us in writing (subject to our discretion to act on such direction), provided that in each case:
  - where the action you direct us to take means that we must make a payment or accept liability on your behalf, we have received sufficient funds from you to make such a payment or to cover the cost of accepting such liability; and
  - in the event that an action you direct us to take is not taken within the relevant time limits or at all, we will not be liable to you for any loss or damage caused, except where such a loss or damage is caused as a result of our breach of these Private Wealth Terms and Conditions or our gross negligence, wilful default or fraud.

28.5 If you do not receive a communication under clause 28.4 in time for you to take action upon it, we shall not be liable to you for any loss or damage caused, except where such a loss or damage is as a result of our gross negligence, wilful default or fraud.

### **Dividends, interest payments and other entitlements**

28.6 Unless we receive instructions from you, we may in our discretion act on your behalf without your instructions with regard to:

- the collection and cashing in of income, interest or other payments which you receive as a result of owning Securities;
- the recovery of and exchange of Securities, provided that such action does not require the exercise of business discretion; and
- taking the default option of any corporate actions in relation to your Securities.

28.7 You authorise us to:

- where your Securities include bonds or other debt instruments, deal as your agent with the administrative procedures with regard to the payment to you of interest;
- hand over your Securities upon their maturity once we have received any money which you are due on their maturity; and
- deduct or withhold any sum on account of any tax:
  - which, acting reasonably, we consider that we are required to do by applicable law; or
  - which, acting reasonably, we consider that you are liable or accountable to pay under applicable law.

## **Discrepancies**

28.8 If there are discrepancies between monies or Securities due and monies or Securities actually received, we may withhold payment or delivery to the relevant account(s) we maintain for you until such discrepancies are resolved.

28.9 If an issuer, exchange or operator of a clearing system requests the return of monies or Securities already paid or delivered to an account we maintain for you, we are authorised to debit the same from that account.

## **29. Commingled Securities**

29.1 In some cases, we and our nominees or sub-custodians may pool your Securities with those of one or more other clients. This means that your individual entitlements under those Securities may not be clearly identifiable.

29.2 In these circumstances, the following provisions apply:

- if an investment fails, and there is an irreconcilable shortfall, you may have to share in that shortfall proportionately with other clients who have their Securities pooled with yours. This may mean that you do not receive your full entitlement or that you lose your entitlement to particular Securities;
- if there is an event which affects some but not all of the Securities pooled together, we will allocate the Securities affected to our customers in a way that we reasonably believe to be fair and appropriate. We may use, amongst other things, a proportionate method of distribution or random lottery, for this purpose; and
- we will distribute all other entitlements and benefits on a pro-rata basis.

### 30. Individual/Joint Accounts

- 30.1 If you are a natural person, your executor or administrator will be the only person recognised by us as your successor in the event of your death or incapacity. Upon notice of your death or incapacity, we are entitled to freeze the Custodian Account until your successor produces a grant of probate or letter of administration.
- 30.2 If you are a Joint Account Holder:
- we may, if we receive contrary instructions from your other Joint Account Holders, immediately thereafter act on the instructions of all Account Holders or signatories notwithstanding that the Custodian Account requires single or joint signatories;
  - where the Custodian Account is operated with a single signing authority, upon notice of the death of any one of the joint Account Holders, we shall be entitled to transfer the Securities in the Custodian Account to the survivor and if more than one survivor, in their joint names provided that prior to such transfer, the indebtedness of any of the joint Account Holders to us shall first be set-off from the said Securities;
  - where the Custodian Account is operated with joint signing authority, upon notice of the death of any one of the joint Account Holders, we are entitled to freeze the Custodian Account and to retain the Securities in the Custodian Account until such time that joint Account Holder's successor produces a grant of probate or letters of administration;
  - we shall be entitled upon the death of any Account Holder to suspend or close the Custodian Account without notice, and shall be released from all demands, claims, suits and actions whatsoever by the heirs, executors and administrators of the deceased; and
  - where the Custodian Account is in the name of 2 or more persons, these Private Wealth Terms and Conditions and all obligations relating to the Custodian Account shall be binding on them jointly and severally.

### 31. Liability

- 31.1 Our liability is in all cases limited to the market value of the assets concerned at the time such loss or damage occurred. We are not liable to you for any direct loss, damage or liability incurred with respect to the Securities, unless such loss, damage or liability results from any gross negligence, fraud or wilful misconduct on our part.
- 31.2 Our liability with respect to Securities held with a sub-custodian is strictly limited to any failure on our part to exercise the care and diligence customary in the business in the selection and instruction of such sub-custodian and our continued monitoring of such selection over time. We have no liability for the acts or omissions of, and the performance or non-performance of such sub-custodian. For the avoidance of doubt, we have no liability for any loss or diminution in respect of the Securities resulting from the bankruptcy or insolvency of any sub-custodian.

- 31.3 Applicable laws relating to insolvency differ between countries and so your Securities held in custody may not always be protected in this way if they are held by a nominee or sub-custodian in a jurisdiction where the principles of insolvency law are different.
- 31.4 Unless we are in breach of these Private Wealth Terms and Conditions, or we have been grossly negligent, in wilful default or fraudulent, we shall not be liable to repay to you the whole or part of any Securities which is held by a sub-custodian who becomes insolvent. In the event of such insolvency, you may lose all or part of the Securities held by that sub-custodian.

## 32. Termination

- 32.1 We may decline to provide, or continue providing, custody services in relation to particular Securities at our discretion. If we do so, or if our custody services are terminated altogether, you shall make arrangements for the transfer of the Securities to you or another custodian of your choice. You agree to complete all documents required to effect such a transfer.
- 32.2 If you fail to make such arrangements, we may (at your expense) transfer, redeem or sell the Securities at our discretion and pay the proceeds into an account we maintain for you. We may take any action and complete all documents on your behalf in order to do so. We will not be liable for any losses you suffer, unless such loss is directly caused by our gross negligence, wilful default or fraud.

## 33. Security interest

- 33.1 For the avoidance of doubt, you agree and acknowledge that any Securities we hold as custodian may be subject to a security interest in our favour. We may, without prior notice to you, sell such Securities or otherwise realise the value of such Securities and apply the proceeds towards payment, discharge or reduction of liabilities owed to us in accordance with the terms of any Collateral Document.
- 33.2 You agree and acknowledge that we may create (or allow to be created) a security interest, lien or right of set-off in favour of a third party (including a custodian or depository) (a **“third party security interest”**) over or in respect of any Securities we hold for you as custodian where either:
- a) the third party security interest arises to facilitate the clearing or settlement of transactions that refer only to you or our other clients; or
  - b) we are reasonably satisfied that the creation of such third party security interest is required by the applicable law.
- 33.3 Where third party security interests are created there is the risk that where we (or any other person whose obligations are secured by, or set-off against pursuant to, such third party security interests) default on our obligations towards the relevant third party, or in other circumstances, including where the third party anticipates that such obligor may default on its obligations (including due to the onset or potential onset of insolvency proceedings), then such third party may enforce its rights over (or set-off its obligations against) your Securities and, as a consequence, you may lose and not be able to recover

such Securities from us or from the third party, regardless of whether you are in actual or potential default of your obligations to us or any other person.

- 33.4 You agree that a third party security interest may be created (or may already have been created) and that a person, entity or undertaking other than us may therefore have a security interest, lien or (if applicable) right of set-off over your Securities where allowed under applicable law.

## Section 2 – Credit Facility Terms

### 34. General

- 34.1 If we agree to make a Credit Facility available to you incorporating these Credit Terms, we will enter into a Facility Agreement with you. The Facility Agreement (and any amendment or supplement from time to time) and these Credit Terms shall constitute the relevant Product Terms and together with the documents set out in clause 1.6 of these Private Wealth Terms and Conditions shall constitute an agreement between us regarding the provision of Credit Facilities. Where Credit Facilities are made available as a temporary Overdraft, these Credit Terms will also apply, irrespective of whether the arrangement is documented in a Facility Agreement.
- 34.2 Credit Facilities may be available to you by way of:
- Overdrafts;
  - Loans, which are advances for a fixed period of time; and
  - Issuance of Bankers' Guarantees or SBLCs on your behalf or on behalf of named parties.
- 34.3 Credit Facilities are uncommitted and are available to you at our absolute discretion. This means that we may review the Credit Facilities at any time and may terminate or (subject to these Credit Terms) amend the terms of any Credit Facility at our absolute discretion. We do not have to make or continue to make any Credit Facility or any part of any Credit Facility or any utilisation of any Credit Facility available to you. We will give you notice of such termination or amendment, such amendment or termination shall take effect on the date stated in the notification from us to you or as otherwise notified by us to you.
- 34.4 No amendment, waiver, change or modification of any of the terms of the Facility Documentation shall be effective unless made in writing and with our consent.

### 35. Facility Amount

- 35.1 The total aggregate amount you can utilise under any Credit Facility is limited to the Facility Amount stated in the relevant Facility Agreement. We may review the Facility Amount at any time at our absolute discretion. The Facility Amount is subject to us holding sufficient Collateral. You should see clause 42 of these Credit Terms.

### 36. Interest, fees and Costs

- 36.1 You must pay the interest, fees and Costs applying to the Credit Facilities. These will be at the rates or in the amounts specified in the Facility Agreement or our prevailing Fee Schedule, or informed to you from time to time. Subject to Applicable Law, we may change the rates and/or amounts at any time at our absolute discretion.
- 36.2 Interest we charge under any Facility Documentation will accrue daily and on the basis of a 365 day year (for GBP, SGD and such other currency we may designate from time

to time), or a 360 day year (for other currencies), in both ordinary or leap years on which interest is charged. Commission, fees and other Costs are payable in accordance with the Facility Agreement.

### **37. Overdrafts**

- 37.1 Overdrafts are repayable on demand. Any Overdraft amount advanced by us to you shall be payable by you immediately on demand by us, together with all unpaid interest, fees and Costs on such Overdraft amount. We shall have the right at any time to refuse to advance any Overdraft amount to you whether or not the applicable facility limit has been fully utilised.
- 37.2 The interest rate for any Overdraft shall be applicable both before and after judgment. The interest on Overdrafts shall be calculated and compounded in accordance with our usual practice on the daily balances as shown in our records.
- 37.3 Interest on Overdrafts is payable monthly on the first day of each month (or such other day as we may specify from time to time), or at our option, the amount thereof may be debited from your account. Interest debited from your account shall thereupon become part of the principal due from you and shall bear interest at the rate provided in the Facility Documentation or our prevailing rate for such Overdrafts if no such rate is provided. It is understood and agreed, however, that we may at any time upon written notice to you, and at its sole discretion, vary the rate of interest to be paid by you and the date on which interest shall be payable to us.

### **38. Loans**

- 38.1 If for any reason a Loan is prepaid (i.e. to make full or partial repayment of a Loan before its maturity date), either at your request or in accordance with the terms of any Facility Documentation, you may be required to pay additional Costs (including an administrative fee) incurred, whether directly or indirectly, in connection with such prepayment. We may require you to give us a period of prior notice in writing of your intention to prepay a Loan, and you may be required to pay interest or additional Costs in lieu of such notice.

### **39. Appointment of custodian and investment adviser**

- 39.1 You agree and undertake that, at all times:
- any account(s) opened and maintained and which balance is or is intended to be Collateral shall be opened and maintained with us or a custodian approved by us; and
  - an investment adviser acceptable to us from time to time shall be appointed in connection with the operation of such account(s) on terms which shall be in form and substance acceptable to us (including, if we deem applicable, the granting of a power of attorney in favour of the investment adviser or other terms authorising the

investment adviser to act for and on behalf of you in connection with the operation of such account(s)).

- 39.2 You consent (and shall obtain any Collateral Provider's consent) to the disclosure of information and/or documents relating to you, any Collateral Provider or any such account(s) by us to the custodian, investment adviser, your attorney and any attorney of a Collateral Provider pursuant to any custodian account control deed required to be entered into as a condition precedent to funding under clause 41.2.

#### **40. Currencies**

- 40.1 If you utilise a Credit Facility in an Alternative Currency, and that Alternative Currency subsequently appreciates in value against the Base Currency such that your Total Outstandings when converted into the Base Currency exceed any Facility Amount, we may ask you to repay the Credit Facility in such amount as to reduce the Total Outstandings (in Base Currency) to less than the Facility Amount. Alternatively, we may increase the Facility Amount and you agree to such increase.
- 40.2 Utilisations in any currency are subject to applicable legal and regulatory restrictions relating to that currency.
- 40.3 For the purposes of calculating or assessing the amount of Credit Facilities available for utilisation, the Total Outstandings, any Lending Value, or for any other purpose, we may make notional conversions between the Base Currency, the Alternative Currency and any other currency at our discretion, at any rate and at any time we reasonably consider to be appropriate.

#### **41. Conditions precedent**

- 41.1 A utilisation request must be made in such form and manner, and must be received by us at such time prior to the utilisation date, as we require. All utilisations are subject to our prior approval.
- 41.2 The availability of Credit Facilities is subject to us having received to our satisfaction:
- a duplicate copy of the Facility Agreement, duly signed;
  - a duplicate copy of a custodian account control deed, duly signed by you;
  - (if applicable) a duplicate copy of a custodian account control deed, duly signed by each other Collateral Provider;
  - a duplicate copy of a spousal consent, duly signed, as we may require;
  - all duly signed or executed Collateral Documents or Guarantees we require;
  - payment of our fees and charges;
  - such information as we may require on your affairs and financial condition, or that of any other Collateral Provider;
  - where you are a corporate entity, such corporate resolutions and authorities, certified as true copies by one of your directors, as we may require;

- any other authorisation, document, information, legal opinion or other assurance we may consider necessary or desirable in connection with the entry into and performance of the transactions envisaged by the Facility Documentation, or for the validity or enforceability of the same; and
- any additional items as detailed in the Facility Agreement.

41.3 In addition, you may only utilise a Credit Facility if:

- all terms of the Facility Documentation have been satisfied;
- all representations, warranties and undertakings in the Facility Documentation are complied with and correct as at the date of each utilisation;
- no Default is continuing or in our opinion is likely to occur; and
- we are satisfied we hold sufficient Collateral. You should refer to clause 42.

## **42. Collateral**

### **Adequate Collateral**

42.1 You agree to provide us with Collateral we consider adequate to secure any amount you owe us at any time, including any amount you may owe us in the future. From time to time, we review the Collateral required and may require you to provide further or alternative Collateral. We may at any time change the manner in which we decide if Collateral is adequate or inadequate.

42.2 Without prejudice to any other provision of these Private Wealth Terms and Conditions, you will ensure that you and any other Collateral Provider hold sufficient Collateral in an Account you or such Collateral Provider maintain with us and/or an account you or such Collateral Provider maintain with a custodian that is approved by us and that such Collateral is validly secured in favour of us in accordance with our requirements. This means that you must at all times ensure that such Collateral is at least the amount we require. For a Credit Facility this means that the Total Lending Value of such Collateral needs to be equal to or more than your Total Outstandings.

42.3 You may only utilise a Credit Facility up to (i) the Total Lending Value of such Collateral which is held and secured in accordance with our requirements or (ii) the Facility Amount, whichever is lower.

42.4 Collateral must be in the form of cash or other Assets acceptable to us or, in certain cases, specified by us.

### **Further Collateral**

42.5 In addition to any other Collateral we may require, you agree to do all necessary acts (such as obtaining consents, signing and delivering documents (including any Collateral Documents) and getting such documents completed and signed) to:

- provide further or alternative Collateral to us to secure any amount you owe us, including any amount you may owe us in the future; and

- allow us to exercise our rights in connection with your Assets.

42.6 We may also, without prior notice to you, move any Asset you may have in any Account with any member of the Bank Group to an Account we maintain for you and hold the same as Collateral. We may also transfer any Assets you may have in any Account held with us to any Account you may hold with any other member of the Bank Group. We may do so in our reasonable discretion, in order to avoid a Default under any agreement with any member of the Bank Group.

### **Rights of the Bank**

42.7 If at any time the Collateral we hold is less than the amount we require, we may at our discretion at any time thereafter (and notwithstanding any delay on our part in doing so or any intervening fluctuation in the Total Lending Value of the Collateral or the Facility Amount):

- demand (in writing or orally and confirmed in writing) that you promptly furnish us with additional Collateral acceptable to us together with such Collateral Documents as we may require, and/or repay all or part of the Credit Facilities, such that the Total Lending Value of the Collateral we hold is equal to or more than your Total Outstandings. You must comply with our demand within the time period we give you in the demand; and/or
- declare that any Credit Facility shall immediately terminate; and/or
- immediately enforce all or any of our rights under the Facility Documentation. We may do so unilaterally. This means that we do not have to give you notice (either in advance or at the time) or make a demand on you. We may also exercise this right even if we have given you a time period within which to furnish us with additional Collateral and/or repay the Credit Facility, and that time period has yet to expire. We will notify you promptly after we have exercised any such right.

In addition and without limiting the foregoing, if you fail to comply with any demand by us to provide additional Collateral and/or to repay the Credit Facilities as mentioned above, we may also, without prior notice or demand on you, enforce all or any of the rights to the extent we consider necessary to put us in the position we would have been in had you complied with our demand.

Any breach of this clause 42 is a Default.

We do the above acts without prejudice to any of our other rights under the Facility Documentation. For the avoidance of doubt, we do not have to terminate a Credit Facility in order to enforce all or any of our rights under the relevant Facility Documentation. If we choose not to terminate a Credit Facility, we may at our discretion enforce our rights under the relevant Facility Documentation until the Total Lending Value of the remaining Collateral is equal to your Total Outstandings.

- 42.8 Notwithstanding any other term in the Facility Documentation whether express or implied, in writing or otherwise, we may determine or at any time review or change the LTV Ratio (Collateral) and/or the Lending Value of any item of Collateral at our absolute discretion.
- 42.9 In doing so, we may, acting reasonably and in good faith:
- in determining the market value of any item of Collateral, treat all items of Collateral representing rights against the same company or group of companies as Collateral of the same company; or
  - attribute lower or no Lending Value to any item of Collateral (or reduce or set to zero the LTV Ratio (Collateral) of such item of Collateral) at our sole discretion:
    - if it forms a significant proportion of the Collateral you furnish us, and we determine it to be in excess of an amount we can accept;
    - if we already hold a significant amount of such item as Collateral for our other customers;
    - if you already directly or indirectly control significant voting rights in connection with such item of Collateral;
    - if we consider such item of Collateral illiquid;
    - if we consider such item of Collateral volatile;
    - if we consider the enforcement risk in respect of the value of such item of Collateral has become or will become higher;
    - if we consider market conditions to warrant such a determination; or
    - for any other reason.
- 42.10 For the avoidance of doubt, even if we do not attribute any Lending Value to an item of Collateral, such item continues to be Collateral held by us on the terms of the Collateral Documents.

#### **No dealing or encumbrance**

- 42.11 You must not (and you must procure that each Collateral Provider does not) create or allow to exist any security interest in favour of any other party, or otherwise deal with any Collateral without our prior written consent.
- 42.12 You must not (and you must procure that each Collateral Provider does not) create or allow to exist any security interest over any Account we maintain for you in favour of any other party without our prior written consent.

#### **Ensure compliance by Collateral Provider**

- 42.13 You must ensure that each Collateral Provider complies with their obligations under the Collateral they have provided to us.

#### **Collateral continues until release**

- 42.14 Any security under any Collateral Document continues until we have released it.

### **Appointment as attorney**

- 42.15 You irrevocably appoint us and any other person we nominate as your attorney to execute documents (including any Collateral Document) and take other action that we consider necessary to create, enhance, perfect and enforce our security under any Collateral Document (including dealing with any Collateral).

### **Valuations**

- 42.16 If we ask, you must arrange, pay for and provide us with a valuation report in connection with any Assets that are the subject of our Collateral. Any valuation report must be in accordance with any requirements we specify. Alternatively, we may obtain a valuation report at your cost.
- 42.17 We may arrange for further valuation reports in connection with any Asset which is the subject of our Collateral at any time. We debit the cost of the valuation report from your Account we maintain for you.
- 42.18 If as a result of the further valuation report, we consider that the Collateral is inadequate, you must provide us with further Collateral in form and substance we specify and is satisfactory to us.

### **43. Undertakings**

- 43.1 In addition to your obligations under these Private Wealth Terms and Conditions, you undertake that, you shall:
- a) at all times obtain and comply with the terms, renew and do all that is necessary to maintain in full force and effect all authorisations, approvals, licences, registrations and consents required to enable you to lawfully perform your obligations under the Facility Documentation;
  - b) promptly make such reports and filings as required by law, regulation or directive in relation to the Facility Documentation and the Credit Facilities;
  - c) (if you are not a natural person) ensure that at all times, your obligations under the Facility Documentation rank and will at all times rank at least equally and rateably with your other unsecured indebtedness except for such indebtedness mandatorily preferred by law;
  - d) from time to time upon our request, do or procure the doing of all such acts and execute or procure the execution of all such documents as we consider necessary for giving full effect to the Facility Documentation or the rights, powers and remedies conferred on us under the Facility Documentation;
  - e) not use any Credit Facilities (or any part of it) directly or indirectly in connection with or make any payment to us from a source connected directly or indirectly with any entity or country sanctioned by any law, governmental or regulatory authority in any jurisdiction, or the United Nations (including any of its related organisations);
  - f) (i) cooperate fully in respect of any enquiry that we may make for the purposes of compliance with any Applicable Law or regulation (including without limitation the

United States Foreign Account Tax Compliance Act (as may be amended, re-enacted or replaced from time to time)) including but not limited to promptly providing all relevant information, details and/or documents as may be necessary to enable us to comply with the same and (ii) promptly upon our request, provide us with such information, documentation and other evidence as requested by us in order for us to carry out and be satisfied that we have complied with all "know your customer" and other similar procedures that we require (or deem desirable) to conduct;

- g) duly and punctually pay and discharge all Taxes imposed upon you or your Assets within such time period as may be allowed by law without incurring penalties;
- h) comply in all respects with all Applicable Laws to which you may be subject;
- i) at all times maintain a positive networth;
- j) (if you are not a natural person) not enter into any amalgamation, demerger, merger or corporate reconstruction; and
- k) (if you are not a natural person) not make any substantial change to the general nature of your business from that carried on at the date of the Facility Agreement.

#### 44. Sanctions

- 44.1 You confirm that you understand that the US and other government and/or regulatory authorities impose, from time to time, specific Sanctions against certain countries, regions, vessels, entities and individuals and we may refuse, block or be unable to process a transaction or act on an instruction that involves a breach of Sanctions. Further authorities may require the disclosure of information; you confirm (unless otherwise notified to us) that any Bankers' Guarantee, SBLC, letter of indemnity, letter of credit, bill of exchange, promissory note, cheque, receipt, shipping guarantee or any other document related to the Credit Facilities, and any utilisation made or requested under the Credit Facilities (each a "**Transaction**") is not and will not be directly or indirectly connected with any sanctioned country, region, vessel, entity or individual. You agree that if we are required to disclose any information or if any payment or transfer of funds in connection with any Transaction is blocked, frozen, delayed, refused or cancelled because it is claimed to be sanctions-related, we shall not be liable for any information disclosed or for any Losses in connection with any such Transaction you or your servants or Agents may incur and you shall promptly indemnify us on demand against any Losses we may incur. You further agree that any transaction that involves goods, transactions or business relationships directly or indirectly related to a sanctioned country or region but is permissible under applicable sanctions, shall be on such terms and conditions as agreed by the Bank. Without limiting or reducing the effect of the foregoing, the Bank may refuse to act on your instruction or delay, block or refuse to process any transaction without incurring any liability if the Bank has reason to suspect that: (i) the instruction or transaction (including carrying out such instruction or transaction by the Bank) may breach any law or regulation (including the Japanese Foreign Exchange and Foreign Trade Act); and/or (ii) the instruction or transaction may

directly or indirectly involve the proceeds of, or be applied for the purposes of, any unlawful conduct.

44.2 You confirm that each Transaction does not involve: (i) any goods, transaction or business relationship directly or indirectly related to North Korea (including, without limitation, transactions through intermediaries or relating or contributing to nuclear or ballistic-related activities or involving North Korean persons, entities or vessels or goods of North Korean origin), or (ii) any goods which are regulated as strategic or dual use goods and for which you have not obtained the necessary approvals or permits from all relevant authorities.

44.3 Any Transaction or payment or transfer of funds that involves any goods, transaction or business relationship directly or indirectly related to a sanctioned country or region, but which is permissible under the applicable sanctions, shall be on such terms and conditions as agreed by us.

#### **45. Illegality**

45.1 If it becomes unlawful or contrary to any directive or notice or guideline of any government agency or regulatory authority for us to give effect to any of our obligations under the Facility Documentation, we may notify you accordingly and you shall forthwith pay all amounts outstanding and payable to us. Our certificate as to the amount payable shall, in the absence of manifest error, be conclusive and binding on you.

#### **46. Indemnity**

46.1 As a separate and independent obligation, you shall fully indemnify us from and against any and all Costs (including break funding and unwinding Costs, Costs of funding the Credit Facilities or a utilisation, liabilities and loss of margin or profit), in each case, as to the amount of which our certificate shall, in the absence of manifest error, be conclusive, which we may incur as a consequence of your default or otherwise in connection with the Facility Documentation and/or in connection with any of the Credit Facilities.

#### **47. Rights Cumulative**

47.1 The rights, powers and privileges provided under the Facility Documentation are cumulative and in addition to those provided by law.

#### **48. Notices**

48.1 Any notice or communication under or in connection with the Facility Documentation shall be in writing and shall be delivered personally, or by post, facsimile or by telephone (confirmed by post or facsimile) to the addresses given in the Facility Documentation or at such other address as the recipient may have notified to the other parties in writing. Proof of posting or despatch of any notice or communication to you shall be deemed to be proof of receipt:

- in the case of a letter, on the second Business Day after posting;

- in the case of any notice or communication made by facsimile or telephone, on the Business Day immediately following the date of despatch of the relevant facsimile.

#### **49. Cost and Expenses**

- 49.1 You shall reimburse us for all expenses incurred in the negotiation and execution of the transactions under the Facility Documentation, including but not limited to, travel, telecommunication, printing, signing and other out-of-pocket expenses.

#### **50. Payments**

- 50.1 All amounts due to us in US dollars shall be paid in same day funds (or such other funds as we may specify) not later than 10:00 a.m. New York time on the due date to such account of ours as we may notify you. All amounts due to us in other currencies shall be paid in same day funds (or such other funds as we may specify) to such account and place and by such time on the due date as we may notify you. You hereby instruct and authorise us to debit such of your account(s) (as you may from time to time notify us in writing) to pay all amounts due to us on the due date to our account.
- 50.2 If the amount we receive from you is less than the amount due to us, we may apply the amount we receive towards the payment of interests, fees, Costs or principal in any order or proportion we choose.

#### **51. More than one borrower**

- 51.1 Where there is more than one borrower, the borrowers shall be irrevocably and unconditionally jointly and severally liable for all monies and liabilities owing to us.

#### **52. Disruption to payment systems**

- 52.1 If either we determine (in our absolute discretion) that a Disruption Event has occurred or we are notified by you that a Disruption Event has occurred, we may make such changes to the operation or administration of the Credit Facilities (including those relating to the order and timing of payments) as we may deem necessary in the circumstances without liability to any person.
- 52.2 Without limiting clause 52.3 below (and without prejudice to any other provision of the Facility Documentation excluding or limiting our liability), we will not be liable for:
- a) any Losses to any person or any liability whatsoever arising as a result of taking or not taking any action under or in connection with the Facility Documentation, unless directly caused by our gross negligence or wilful misconduct;
  - b) exercising, or not exercising, any right, power, authority or discretion given to us by, or in connection with, the Facility Documentation or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, the Facility Documentation, other than by reason of our gross negligence or wilful misconduct; or

- c) without prejudice to the generality of paragraphs (a) and (b) above, any Losses to any person or any liability whatsoever (including for negligence or any other category of liability whatsoever but not including any claim based on our fraud) arising as a result of:

- any act, event or circumstance not reasonably within our control; or
- the general risks of holding of Assets in any jurisdiction,

including (in each case) such Losses or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; pandemic, epidemic, war, terrorism, insurrection or revolution; or strikes or industrial action.

- 52.3 Without prejudice to any provision of the Facility Documentation excluding or limiting our liability, any liability of ours arising under or in connection with the Facility Documentation shall be limited to the amount of actual loss which has been suffered (as determined by reference to the date of our default or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to us at any time which increase the amount of that loss. In no event shall we be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not we have been advised of the possibility of such loss or damages.

52.4 In this clause, "**Disruption Event**" means either or both of:

- a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Credit Facilities (or otherwise in order for the transactions contemplated by the Facility Documentation to be carried out) which disruption is not caused by, and is beyond the control of, you or us; and
- b) the occurrence of any other event which results in a disruption to the treasury or payments operations of a party preventing that, or any other party:
  - from performing its payment obligations under the Facility Documentation; or
  - from communicating with the other party to the Facility Documentation in accordance with the terms of the Facility Documentation,and which (in either such case) is not caused by, and is beyond the control of, the party whose operations are disrupted.

### 53. Indonesian Language

53.1 Where you are a state institution, government authority or private entity in Indonesia or an Indonesian national:

- a) in compliance with Indonesian laws and regulations, you agree, at your own cost, to execute a sworn Bahasa Indonesia version of the Facility Agreement (and procure the execution of a sworn Bahasa Indonesia version of any security document in connection with the Facility Agreement), in a form acceptable to us (and any security document, as the case may be) on the date of the Facility Agreement or any other date as may be decided by us;
- b) you further agree:
  - to do any other act as reasonably required by us to the extent necessary to comply with the Law of Indonesia No. 24 of 2009 regarding Flag, Language, National Emblem and National Anthem, as implemented by Presidential Regulation No. 63 of 2019 on the Use of Indonesian Language ("**Law No. 24**");
  - that the Bahasa Indonesia version of the Facility Agreement (and any security document), if executed, will be deemed to be effective from the date the English language version was executed; and
  - in the event of inconsistency between the Bahasa Indonesia version and the English version, the relevant Bahasa Indonesia text will be deemed to be amended to conform with and to make the relevant Indonesian text consistent with the relevant English text; and
- c) You further agree with us that the Bahasa Indonesia translation of each document as referred to in paragraph (a) above is solely for the purpose of compliance with Law No. 24, and the Bahasa Indonesia translation of each document shall not be construed in any manner whatsoever as superseding or replacing or amending

the English version thereof. In the event of any inconsistency or difference in interpretation between the Bahasa Indonesia translation and the English version, the English version shall prevail.

#### **54. Termination and enforcement**

- 54.1 We may terminate any Credit Facility and demand repayment of any Total Outstandings at any time. Without prejudice to that right, any Credit Facility may also be terminated by us in accordance with clause 18 of these Private Wealth Terms and Conditions or if any event listed in clause 18.2 of these Private Wealth Terms and Conditions occurs in relation to any Collateral Provider. Any termination shall be without prejudice to any of our other rights under or in respect of the Facility Documentation or the Collateral.
- 54.2 In addition to our rights under clause 18 of these Private Wealth Terms and Conditions and your obligations to repay the Credit Facilities, if for any reason, any Credit Facility is terminated:
- You shall procure the release of any Bankers' Guarantee or SBLC we may have issued on your behalf but we may in any event demand that you immediately provide us with cash cover for the Bankers' Guarantee or SBLC (as the case may be) by paying us an amount in the currency of the Bankers' Guarantee or SBLC (as the case may be) to an Account with us and subject to such security interest in our favour as we may require;
  - You shall procure the discharge or release of all liabilities we incur on your behalf that are contingent or have yet to mature; and
  - We may enforce all or any of our rights under the Facility Documentation.
- 54.3 We may take any action we consider appropriate to recover any amount owing to us or to enforce the Facility Documentation. You should also see clause 19 of these Private Wealth Terms and Conditions.
- 54.4 To the extent allowed by Applicable Law, we may apply the proceeds from the enforcement of our security interest in Collateral, or of the Collateral Documents or any Guarantee, towards payment of interest, fees, Costs or principal in any order or proportion we choose.
- 54.5 You may terminate all or any part of a Credit Facility by giving written notice to us, and you shall bear all Costs and fees that may arise (directly or indirectly) as a consequence of such termination. Termination will not affect your liabilities in respect of any outstanding Bankers' Guarantee or SBLC.

#### **55. Miscellaneous**

- 55.1 The Collateral Documents and any Guarantee apply to all transactions under the Facility Agreement and the Credit Terms. We may hold all Collateral, Collateral Documents and Guarantees in our possession and not discharge or release them until we are satisfied that the Total Outstandings have been unconditionally and irrevocably repaid, all Bankers' Guarantees and SBLCs we may have issued on your behalf have been

released, all liabilities we incur on your behalf have been discharged or released, and no further liabilities are capable of becoming outstanding.

- 55.2 Our calculation of the amount of Collateral, market value, Lending Value, and Total Outstandings shall be made in such manner and at such times as we in our absolute discretion determine and shall, in the absence of manifest error, be conclusive and binding on you.
- 55.3 You will reimburse us (regardless of whether any Credit Facility becomes available) for all reasonable Costs and expenses, including legal fees (on a full indemnity basis), valuation fees, bank charges, custody fees, stamp duty and other duties and Taxes, incurred by us in the negotiation, preparation, execution, perfection and performance, of the Facility Documentation and in relation to the Collateral, and for all Costs and expenses incurred by us in the preservation and enforcement of the Facility Documentation or the Collateral.

We may in our discretion meet any such Costs and expenses by debiting an Account we maintain for you and shall be reimbursed by you in accordance with the preceding sentence.

- 55.4 Time is of the essence under the Facility Agreement and these Credit Terms. It is fundamental that you perform your obligations on time. Otherwise, we may exercise our rights without the need to give further notice to you.
- 55.5 You certify that all information and particulars given to us in relation to the Credit Facilities is true and accurate and that we are authorised to conduct all necessary due diligence for the purposes of anti-money laundering controls and credit evaluation, and you agree to submit such further information, details and documentation as we may require for such purposes.
- 55.6 To the extent that there is any inconsistency with these Private Wealth Terms and Conditions, the Facility Agreement will prevail.
- 55.7 The Facility Documentation executed by you shall remain our property at any time (including such time after relevant Credit Facilities are terminated or matured). We may provide you with copies of the Facility Documentation upon request for records.

## **56. Lending risk disclosure**

- 56.1 We offer Credit Facilities and other services to you on the basis that you understand, accept and acknowledge the risks involved.
- 56.2 You confirm that you understand, accept and acknowledge that:
- If the Securities securing a Loan fall in value or if there are changes in the LTV Ratio (Collateral), you may be required to provide additional cash or Collateral or repay part of the Loan outstanding as directed by us. If you fail to do so, we may, without prior notice, transfer other monies held by you with any member of the Bank Group to satisfy any such requirements.

- You must ensure that at all times the Total Lending Value of the Collateral we hold on your account is equal to or more than your Total Outstandings. In the event the Total Lending Value of the Collateral is less than your Total Outstandings, we may, at our discretion, act according to these Private Wealth Terms and Conditions and the Facility Documentation.
- If there is a Default or if you fail to provide additional Collateral or repay part of the Total Outstandings within the period notified to you by us, we may liquidate the Securities, at the prevailing market value, even if the Securities securing the Loan is structured to return principal at maturity. This may result in the liquidation proceeds being less than the principal sum.
- If the Securities securing a Loan default or otherwise become of no value, you will remain liable to service and repay the Loan in full. You understand that, amongst other things, investment maturity dates may be extended or that issuers may compulsorily redeem Securities prior to the end of the Loan term, and in such events the Loan will continue for its full term in accordance with the terms of the Credit Facility.
- The return on Securities securing a Loan may be less than the amount needed to service interest on the Loan and you are responsible for paying interest on the Loan irrespective of any return on the Securities.
- If you intend to use the Credit Facilities to enter into or make further Securities, the resultant use of leverage exposes you to higher risks than if you were to enter into the same Securities without such leverage. Losses as well as gains on the Securities will be magnified.
- The risk associated with investing using leverage is higher than that associated with borrowing against Collateral, and is suitable only for investors with higher risk tolerance.
- Due to the nature of leverage, the repayment amount may exceed the original investment amount had it been made without leverage.
- If a Loan is utilised in a currency different from the underlying Securities, you will be exposed to cross-currency risk.

## **57. The Bank**

- 57.1 Sumitomo Mitsui Banking Corporation Singapore Branch is licensed to conduct banking business in Singapore under the Banking Act. The registered office address of Sumitomo Mitsui Banking Corporation Singapore Branch is 88 Market Street, #33-01 CapitaSpring, Singapore 048948.

## **58. Banking confidentiality**

- 58.1 Clause 7.2 is not, and shall not be deemed to constitute, an express or implied agreement by us with you for a higher degree of confidentiality than that prescribed in Section 47 of the Banking Act and in the Third Schedule to the Banking Act. Nothing in

Clause 7 shall limit or restrict any other consent to disclosure of information provided by you.

## **59. Third party rights**

- 59.1 A person who is not a party to these Private Wealth Terms and Conditions or the relevant Product Agreement has no right under the Contracts (Rights of Third Parties) Act 2001 of Singapore to enforce or to enjoy the benefit of any term of these Private Wealth Terms and Conditions. Neither these Private Wealth Terms and Conditions nor any Product Agreement creates or confers any rights or benefits enforceable by any person not a party to it except:
- a) any person (including the members of the Bank Group) may enforce any rights or benefits, or any indemnity, limitation or exclusion of liability, which are expressly conferred on or extended to them in these Private Wealth Terms and Conditions or any Product Agreement; and
  - b) a person who is a permitted successor or assignee of the rights or benefits of these Private Wealth Terms and Conditions or any Product Agreement may enforce those rights or benefits.
- 59.2 No consent from the persons referred to in clause 59.1 is required for the parties to vary or rescind these Private Wealth Terms and Conditions or any Product Agreement (whether or not in a way that varies or extinguishes rights or benefits in favour of those third parties).

## **60. Suggestions, enquiries or complaints**

We strive to continuously improve our client experience and the Products and Services that we offer. If you have any suggestions, enquiries or complaints, you can:

- contact us through such email address as we may provide to you from time to time for this purpose; or
- write to us at:

Sumitomo Mitsui Banking Corporation Singapore Branch  
88 Market Street  
#33-01 CapitaSpring  
Singapore 048948.

## Section 3 – Meaning of Words

### 61. Meaning of words

The following words used in these Private Wealth Terms and Conditions have the meaning set out below. You also need to refer to the Product Terms (including any Facility Agreement) which also define key words specifically applicable to the Product. If a word defined in these Private Wealth Terms and Conditions is also defined in any Product Terms, the definition in the Product Terms applies for the purposes of the applicable Product.

**"Account"** means each private wealth account we maintain for you and includes any sub-account opened and maintained in respect of a Product.

**"Account Holder"** means the person(s) named as the "Account Holder" in the Account Opening Application for an Account, and if there is more than one, it means each person separately as well as every two or more persons jointly.

**"Account Opening Application"** means any form of authority or request under which an Account is opened or maintained for you.

**"Agent"** means any agent, broker, dealer, counterparty, advisor, banker, attorney, custodian, sub-custodian, depository, manager, service provider, nominee or sub-custodian selected or used by us in connection with an Account we maintain for you or any of the Services.

**"Alternative Currency"** means such currency as agreed by us, other than the Base Currency, in which any Credit Facility is utilised.

**"Applicable Law"** means in any jurisdiction, the laws, regulations, orders, rules, rulings, notices, judicial decisions, directions, requirements, requests, guidelines, circulars, FAQs and/or codes (whether or not having the force of law, and as amended, modified or re-enacted from time to time) issued by any governmental, regulatory or quasi-governmental authority, court or tribunal having jurisdiction over the relevant member of the Bank Group or affecting or relating to any matter including any matter covered by these Private Wealth Terms and Conditions or your banking relationship with any other member of the Bank Group.

**"Application"** means any application form signed by you together with all related forms and consents signed by you in connection with your application for the Product or Service.

**"Approval"** means, for a Product, our confirmation to you that use of the Product is approved by us.

**"Asset"** means property or assets of any nature and includes any credit balance, money, documents, instruments, other property deposited or held with us, all or part of any present and future business, undertaking, real property, personal property, uncalled capital, revenues and any rights of every description (whether actual or contingent, present or future) to receive, or require delivery of, any of the foregoing.

**"Authorised Person"** means:

- if you are a corporate entity, any person you appoint (either alone or collectively) to deal with us on your behalf in relation to an Account, as if such person was the Account Holder, or in relation to any Product or Service; or

- if you are a natural person, any person you authorise (either alone or collectively) and we approve to operate an Account we maintain for you, to act on your behalf to give instructions to us, to make requests from us, or to perform any other acts under a Product Agreement or Service Agreement or to use any Product or Service.

**"Balance Owning"** means the difference between all amounts you owe us (whether or not due) and all amounts we owe you at a particular time. When this amount is to be calculated for the end of a day, it includes all debits and credits to an Account assigned to that day.

**"Bank"** means Sumitomo Mitsui Banking Corporation Singapore Branch, a company incorporated in Japan with limited liability and a foreign company registered in Singapore with UEN T03FC6366F (and includes its successors, assigns and transferees).

**"Bank Group"** means the Bank and any of its affiliates, related entities, head office, branches and representative offices in any jurisdiction.

**"Bankers' Guarantee"** means a bank guarantee or any other instrument of a similar nature, in each case, issued by us on your behalf.

**"Banking Act"** means the Banking Act 1970 of Singapore (as amended or re-enacted from time to time).

**"Base Currency"** means, for a Product:

- in the case of a Credit Facility, the currency in which the limit is expressed; or
- in any other case, the currency of the place where the Product is provided to you, unless otherwise set out in the Product Agreement.

**"Beneficial Owner"** means any person who beneficially owns or has control over an Account or the Assets in that Account, whether through ownership or other means (as determined in accordance with the processes and procedures of the Bank Group, in accordance with Applicable Laws).

**"Business Day"** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in Singapore, and:

- (in relation to any date for payment or purchase of a currency other than euro) the principal financial centre of the country of that currency; or
- (in relation to any date for payment or purchase of euro) any Target Day.

**"Circumstances Beyond our Control"** means circumstances determined by us to be beyond our reasonable control including any act of God, government or state, natural events, natural disasters, acts and regulations of any public, regulatory or governmental authorities or clearing houses or settlement systems, adverse market or trading conditions, failure by any third party for any reason to perform its obligations, any failure of power supplies, computer systems or communication lines, Exchange closure, war or other hostilities, act of terrorism, industrial action, strike and civil disturbances.

**"Collateral"** means any Asset held by us, or for our benefit, as security for the payment of any amount you owe to any member of the Bank Group, including any amount you may owe to the

Bank Group in the future, or for the performance of your obligations, including any future obligations. It includes any Asset which is subject to a security interest agreement, a mortgage, charge, pledge, lien, Guarantee, indemnity or similar instrument.

**"Collateral Document"** means a document creating or evidencing a security interest in Collateral.

**"Collateral Provider"** means each person who provides Collateral and all Guarantors.

**"Contact Information"** means telephone number, mobile phone number, fax number and/or email address.

**"Costs"** means costs, charges and expenses (including those in connection with legal advisers (on a full indemnity basis)).

**"Credit Facility"** means the secured credit line or any other credit accommodation or banking facility we may make available to you from time to time (including any credit facilities by way of Overdrafts or Loans, banking facilities for the issuance of Bankers' Guarantee or SBLCs, or banking facilities for or in relation to derivatives or other treasury products) pursuant to a Facility Agreement and **"Credit Facilities"** has a corresponding meaning.

**"Credit Terms"** means Section 2 of these Private Wealth Terms and Conditions.

**"Default"** means any of the events or circumstances described or referred to in clause 18.2.

**"Disruption Event"** has the meaning given in clause 52.4.

**"Electronic Banking Services"** means any Service provided by us which enables you to obtain information from us or give instructions to us through Electronic Means.

**"Electronic Means"** in relation to the receipt or provision of information or instructions, means the sending of such information or instructions electronically or by use of any electronic equipment or device and (without limiting the generality of the foregoing) includes the use of email or short messaging Services (SMS).

**"Error"** includes any omissions, discrepancies or irregularities.

**"Exchange"** means any exchange, trading system, platform or organised market on which purchasers and sellers of Securities are brought together and through which orders may be transmitted including stock exchanges and alternative trading systems.

**"Facility Agreement"** means the facility agreement, facility letter or letter of offer between us with regard to Credit Facilities we make available to you. It also includes any supplement or amendment of such facility agreement, facility letter or letter of offer.

**"Facility Amount"** means in relation to each Facility Agreement the maximum aggregate amount of any Credit Facility or Credit Facilities we agree to make available to you pursuant to that Facility Agreement.

**"Facility Documentation"** means, in relation to any Credit Facility, the Facility Agreement, the Credit Terms, any Collateral Document (including any security terms), any Guarantee, any custodian account control deed and any document supplemental to any of the foregoing, and

any other document which is designated as such by us from time to time (and, where the context admits, includes any of it).

**"Fee Schedule"** means a document (which may not necessarily be called a "fee schedule") setting out the fees and Costs that apply to a Product.

**"Foreign Currency"** means any currency other than the lawful currency of the jurisdiction where the Bank is located.

**"Guarantee"** means any guarantee or indemnity executed by a Guarantor in our favour for the payment of any amount you owe to any member of the Bank Group, including any amount you may owe to the Bank Group in the future, or for the performance of your obligations, including any future obligations.

**"Guarantor"** means any guarantor specified in the Facility Documentation.

**"Insolvency"** or **"Insolvent"** means, for a person (whether natural or corporate), the occurrence of any corporate action, legal proceedings or other step in relation to:

- suspension of payments, moratorium of indebtedness, bankruptcy, liquidation, judicial management, winding up or composition or arrangement with creditors;
- the appointment of a receiver, receiver and manager, liquidator, judicial manager, trustee in bankruptcy or administrator in respect of that person or any of its Assets;
- expropriation, compulsory acquisition or resumption of any of its Assets;
- attachment, sequestration, distress or execution affecting any of its property or the enforcement of any security interest over its Assets; or
- anything having a substantially similar effect to any of these things happening in any jurisdiction.

**"Joint Account"** means an account which you have entered into jointly with another person or other persons.

**"Joint Account Holder"** means where you have entered into these Private Wealth Terms and Conditions jointly with another person or other persons, you and each of those other persons.

**"Law No. 24"** has the meaning given in clause 53.1.

**"Lending Value"** means, in relation to an item of Collateral, the amount we may agree to lend to you or the amount we may agree to issue a Bankers' Guarantee or SBLC for. This is calculated by multiplying the market value of such Collateral (as determined by us in our absolute discretion) by the LTV Ratio (Collateral).

**"Letter of Offer"** means, for a Product, any letter of offer or any other document from us offering to provide you with the Product.

**"Loan"** means an advance for a proposed period of time.

**"Loss"** and **"Losses"** includes losses, damages, Costs (including legal Costs on a full indemnity basis), fines, expenses, fees, charges, actions, suits, proceedings, claims, claims for an account or equitable compensation or equitable lien, any other demands or remedy

whatsoever, or any diminution in the value of or loss or damage to any property or security or any lost opportunity whereby the value of the same could have been increased or otherwise.

**"LTV Ratio (Collateral)"** means, in relation to an item of Collateral, its approved loan-to-value percentage from time to time, as calculated and determined by us in our absolute discretion.

**"Overdraft"** means an advance on current Account(s) we maintain for you.

**"Permitted Parties"** has the meaning given in clause 7.2.

**"Private Wealth Terms and Conditions"** means these Private Wealth Terms and Conditions and any Private Wealth Terms and Conditions issued by us from time to time.

**"Product"** means each facility or product we may from time to time make available to you under a Product Agreement. In these Private Wealth Terms and Conditions, a reference to a Product includes a Service and vice versa.

**"Product Agreement"** means, for a Product, the agreement(s) between you and us made up of the applicable documents set out in clause 1.6. In these Private Wealth Terms and Conditions, a reference to a Product Agreement includes a Service Agreement and vice versa.

**"Product Terms"** means, for a Product, the specific terms and conditions that apply to it, in addition to these Private Wealth Terms and Conditions. These are available to you by contacting us.

**"Sanction"** includes any economic and/or trade sanctions imposed by any regulator in any jurisdiction where we or any member of the Bank Group operate in, any supranational organisation, official body, or by any other country or governmental authority.

**"SBLC"** means a standby letter of credit or any other instrument of a similar nature, in each case, issued by us on your behalf.

**"Securities"** means equities, bonds, debentures, debenture stocks, certificates of deposit, treasury bills, bills of exchange, units or interests in unit trusts or mutual funds or any other kind of collective investment schemes, warrants, options or rights over the same, securitised structured products such as notes, warrants or certificates, annuities, or other similar types of instrument relating to investments, debt certificates which may be drawn by lot for redemption, mortgage bonds and any other interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities in the jurisdiction in which they are created or issued.

**"Security Breach"** means any (i) fraud or attempted fraud against you or us and / or (ii) any other operational and / or security incident affecting you, us and / or any other market participants (including a cyber-security attack).

**"Security Information"** has the meaning given in clause 10.2.

**"Security Requirements"** means any steps required to reduce, manage or report (i) fraud or the risk of fraud against you or us or (ii) any other actual or potential operational and / or security risks or incidents that may affect you, us and / or any other market participants (including a cyber-security attack).

**"Service"** means each service we designate or consider as a private wealth service (whether or not it is also a Service for other customer segments) and which we may from time to time make available to you under a Service Agreement. In these Private Wealth Terms and Conditions, a reference to Service includes a Product. You should also see the definition of Product.

**"Service Agreement"** means, for a Service, the agreement(s) between you and us made up of the applicable documents set out in clause 1.6. In these Private Wealth Terms and Conditions, a reference to Service Agreement includes a Product Agreement. You should also see the definition of Product Agreement.

**"Service Terms"** means, for a Service, the specific terms and conditions that apply to it, in addition to these Private Wealth Terms and Conditions. These are available to you by contacting us.

**"Target Day"** means any day on which T2 (being the real time gross settlement system operated by the Eurosystem or any successor system) is open for the settlement of payments in euro.

**"Tax"** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of it).

**"Total Lending Value"** means the sum total of the Lending Values of all items of Collateral we hold, as applicable, in respect of an Account we maintain for you or a Credit Facility you request or have requested for us to make available to you.

**"Total Outstandings"** means the total amount you owe us pursuant to any Credit Facility and, if there is more than one Credit Facility then in aggregate under all such Credit Facilities.

**"Transaction"** has the meaning given in clause 44.1.

Headings in these Private Wealth Terms and Conditions are for convenience only and do not affect their interpretation. Where the context admits words in the singular, include the plural and vice versa, and words in one gender include any other gender.

A reference to:

- "we", "our" or "us" means the Bank or a member of the Bank Group, as the context requires;
- "you" means the Account Holder(s), and in relation to any dealing with an Authorised Person (if any), "you" includes such person;
- "person" includes an individual, a partnership, a corporate entity, an unincorporated association, a government, a state, an agency of a state and a trust;
- "corporate entity" includes a partnership, a corporate entity, an unincorporated association, a government, a state, an agency of a state, a trust and any other non-personal entity;

- a person (including you) includes that person's executors, administrators, personal representatives and his estate and successors, substitutes (including by novation), permitted assigns and permitted transferees and these Private Wealth Terms and Conditions and our Product Agreement and Facility Documentation binds those persons;
  - the words "including", "such as", "for example" or words of similar effect when introducing an example does not limit the meaning or general effect of words that precede them or to which the example relates, to that example or examples of a similar kind;
  - a "law" or "laws" includes any regulation, rule, order, notice, direction, requirement, request or guideline (whether or not having the force of law, and as amended, modified or re-enacted from time to time) of any governmental, regulatory or quasi-governmental authority, court or tribunal having jurisdiction over the Bank Group;
  - a document includes any variation or replacement of it and any reference to any details set out in a document (for example, limits, fees, interest rates or repayment arrangements) is a reference to those details as varied in accordance with a Product Agreement or as otherwise agreed; and
  - anything includes any part of it.
- **“Transfer”** includes any assignment, transfer, sale, participation or other contractual arrangement of any of our rights, obligations, risks and/or benefits under or in connection with these Private Wealth Terms and Conditions or any Product Agreement or any Facility Documentation.