

MODEL TWO-PARTY MORTGAGE (2003 Edition)

The Steering Committee has updated and revised the Model Mortgage Deed (2-party form) launched in 2001. The updated version is referred to as the Model Two-party Mortgage (2003 Edition).

It is recommended that mortgage lender and other person proposing to adopt the model mortgage origination documents developed by the Steering Committee should adopt the Model Two-party Mortgage (2003 Edition) for future two-party mortgage transactions.

**Prepared by
The Steering Committee of the Project on
Standardization of Mortgage Origination Documents in Hong Kong**

**Convened by
The Hong Kong Mortgage Corporation Limited**



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**Project on Standardization of Mortgage Origination Documents in Hong Kong
(the “Project”)**

Guidance Notes to the Two-party Mortgage

1. **The Steering Committee of the Project, and each member of the Steering Committee, expressly disclaims any liability to the fullest extent possible for the contents of the Two-party Mortgage, or for any loss, damage or claim suffered or incurred by any mortgage lender or any other person in connection with, or in reliance on, the whole or any part of the Two-party Mortgage. Any mortgage lender or any other person proposing to use the Two-party Mortgage must seek its own legal advice as to the suitability of the Two-party Mortgage for its intended purposes.**
2. The Steering Committee of the Project has prepared a Two-party Mortgage as a standard two-party form of mortgage.
3. The Two-party Mortgage is only a recommended form of mortgage. In deciding whether to adopt the Two-party Mortgage, the mortgage lender should consider whether the Two-party Mortgage is compatible with its operational procedures and the requirements of the loan transaction. The use of the Two-party Mortgage for any mortgage transaction is entirely voluntary by the mortgage lender and the mortgagor.
4. Where any mortgage lender intends to use the Two-party Mortgage, it should adopt the Two-party Mortgage in whole without modification. Any modification or amendment made to the Two-party Mortgage should be drawn to the attention of the mortgagor, and it should be made clear to the mortgagor that the modified or amended form used is not the standard form of the Two-party Mortgage as approved by the Steering Committee.
5. The Two-party Mortgage creates an assignment of or a legal charge over (so far as the property involved is a legal estate) completed residential property to secure repayments of any type of banking facilities and loans granted to the mortgagor and performance of the mortgagor’s obligations under the Two-party Mortgage. The Two-party Mortgage is not appropriate for use in connection with uncompleted properties, which require the use of a separate form of equitable mortgage deed. The Two-party Mortgage is in a two-party form which can be executed by an individual or corporate mortgagor.
6. The Two-party Mortgage consists of two parts: (a) the blank form Mortgage Deed and (b) the Mortgage Conditions (Two-party Version) (2003 Edition).
7. The **blank form Mortgage Deed** contains (a) a number of blank spaces for filling in the details of the mortgaged property, the mortgage lender, the mortgagor, the interest rate and the default interest rate in connection with the mortgage and (b) a number of boxes relating to the responsibility for costs associated with the production of certified copies. The parties should ensure that all details are correctly filled in as failure to provide any required information or to tick in the boxes correctly may lead to additional costs for rectification or make the mortgage unenforceable.

8. The **Mortgage Conditions (Two-party Version) (2003 Edition)** contains the standard terms and conditions of the Mortgage. The mortgage lender and the mortgagor should note the following:
- (a) the Two-party Mortgage does not contain a “**repayable on demand**” clause as this is not compatible with the concept of a term loan;
 - (b) in a departure from current market practice, in cases where there is more than one mortgagor, the Two-party Mortgage secures only the joint liabilities of the co-mortgagors and does not contain a cross-guarantee(s) by a co-mortgagor of the separate debts of the other co-mortgagor(s) owing to the mortgage lender. The Steering Committee is of the view that if the mortgage lender requires a co-mortgagor to assume liability for the other co-mortgagor(s)’ other debts, this should be done in a transparent manner and specifically brought to the attention of the co-mortgagors so that they can make an informed consent; and
 - (c) in relation to the obligation of the mortgagor to insure the Property in clause 7 of the Two-party Mortgage, the **Code of Banking Practice** recommends that the amount and the nature of the risks insured should be reasonable and should be a matter of mutual agreement between institutions and their customers. Institutions should provide an option for the customer to choose whether the insured amount should be based on the loan value or the cost of reinstating the Property.
9. In order to comply with the **Personal Data (Privacy) Ordinance** (Chapter 486 of the Laws of Hong Kong), the mortgage lender should (to the extent it has not already done so):
- (a) supply the mortgagor with a leaflet containing the latest data privacy statement adopted by the mortgage lender before the mortgagor signs the mortgage loan application form; **and**
 - (b)
 - (i) ensure that the mortgage loan application form contains a provision referring to the latest data privacy statement adopted by the mortgage lender and advise the mortgagor to read through the data privacy statement before the mortgagor signs the mortgage loan application form; **or**
 - (ii) take the mortgagor through the latest data privacy statement adopted by the mortgage lender before the mortgagor signs the mortgage loan application form.
10. Under the **Code of Banking Practice**, mortgage lenders should obtain the consent of the borrower (who is the same person as the mortgagor) to provide a surety with a copy or summary of the contract evidencing the obligations to be guaranteed or secured. Nevertheless, provisions have been incorporated in the Mortgage Conditions (Two-party Version) (2003 Edition) authorizing the mortgage lenders to disclose such information to the surety.
11. **Before the mortgagor signs the Two-party Mortgage**, the mortgage lender or its solicitors should advise the mortgagor to read through the Two-party Mortgage and the **Important Notices** on the first page of both the blank form Mortgage Deed and the Mortgage Conditions (Two-party Version) (2003 Edition). The mortgage lender should advise the mortgagor that it is entitled to seek separate independent legal advice from

- solicitors of its choice if it wishes to understand the legal commitments which it will assume by signing the Two-party Mortgage.
12. The mortgagor should only sign the execution page of the English version of the completed blank form Mortgage Deed, and not on the Chinese translation, which is only intended to provide the mortgagor with a translation of the contents of the Two-party Mortgage.
 13. To register the Two-party Mortgage with the Land Registry, the mortgage lender's solicitors should submit the signed and completed blank form Mortgage Deed with the Mortgage Conditions (Two-party Version) (2003 Edition) attached.

**The Steering Committee of the Project on
Standardization of Mortgage Origination Documents in Hong Kong**

November 2003

TWO-PARTY MORTGAGE DEED

Important Notice

This Mortgage is an important legal document. It is legally binding on you when signed.

The Mortgage Conditions form part of this Mortgage.

Before signing this Mortgage, you should obtain separate independent legal advice from your solicitors of your own choice. If you sign this document, you will be liable for:

- (a) all amounts owing by you to us under the facilities which we have made available to you; or
(where there is more than one mortgagor) all amounts owing by all of you to us under the facilities which we have made available to you **jointly**;
- (b) any unpaid interest;
- (c) the Expenses and other amounts payable by you under this Mortgage; and
- (d) all other obligations assumed by you under this Mortgage.

IF YOU DO NOT KEEP UP PAYMENTS ON THIS MORTGAGE OR OTHER LOAN SECURED BY IT:

(1) WE MAY TAKE POSSESSION OF AND SELL THE MORTGAGED PROPERTY

AND

(2) WE MAY CLAIM AND RECOVER FROM YOU ANY SHORTFALL BETWEEN THE AMOUNT OWING UNDER THIS MORTGAGE AND THE FACILITY AGREEMENT AND ANY AMOUNT WE RECEIVE FROM THE SALE OF THE MORTGAGED PROPERTY.

The Hong Kong Mortgage Corporation Limited consents to the use, reproduction and distribution to the general public of this Two-party Mortgage in its entirety by any person on a not-for-profit basis. Sale or distribution otherwise than in accordance with the above conditions is strictly prohibited. The Hong Kong Mortgage Corporation Limited, and each member of the Steering Committee of the Project on Standardization of Mortgage Origination Documents in Hong Kong, expressly disclaims any liability to the fullest extent possible for the contents of this Two-party Mortgage, any loss, damage or claim suffered or incurred by any mortgage lender or any other person in connection with, or in reliance on, the whole or any part of this Two-party Mortgage. Any mortgage lender or any other person proposing to use this Two-party Mortgage must seek its own legal advice as to the suitability of this Two-party Mortgage for its intended purposes.

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THIS MORTGAGE is made on []

Section A: Parties to this Mortgage

you/Mortgagor: [Name of the mortgagor], holder of *Hong Kong identity card number⁽¹⁾/
passport number⁽¹⁾ / company number⁽²⁾: []

we: [Name of the mortgage lender].

Section B: Interpretation

(a) In this Mortgage, the words listed below have the meanings shown beside them:

Amount Owing All money, obligations and liabilities due, owing or incurred by you (and if there is more than one person named as you, then only money, obligations and liabilities owing or incurred by those persons **jointly**) under the Facility Agreement or the Mortgage now or in the future including any unpaid interest or Expenses due and other amounts payable by you under this Mortgage.

Expenses Any costs and expenses which we or a Receiver reasonably incur in connection with this Mortgage and any Facility Agreement, including interest charged on the Expenses. We give examples of the Expenses in clause 20 of the Mortgage Conditions.

Facility Agreement All existing or future agreements, documents, arrangements or relationships (whether documented in writing or not) by which we make facilities available to you (and if there is more than one person named as you, then only facilities made available to those persons **jointly**) or under which you owe us any money, obligation or liability.

Mortgage Conditions The Mortgage Conditions (Two-party Version) (2003 Edition) described in Section D of this Mortgage.

Property The property described in Section C of this Mortgage.

we / us The person so named in Section A of this Mortgage; and **our, ours** and **ourselves** shall be construed accordingly.

you The person as named in Section A of this Mortgage and if there is more than one of you then each individual of you on your own; and **your, yours** and **yourself(ves)** shall be construed accordingly.

* Delete as appropriate.

⁽¹⁾ Only applicable where the relevant Mortgagor is an individual.

⁽²⁾ Only applicable where the relevant Mortgagor is a corporation.

- (b) The meanings and rules of interpretation contained in clause 1 of the Mortgage Conditions apply to this Mortgage Deed.

Section C: Property charged under this Mortgage

The Property charged under this Mortgage:

[] equal undivided [] part or share of and in [Lot number and section in relation to the Property] together with the exclusive right and privilege to hold, use, occupy and enjoy [description of the flat] of [description of the building of the Property], which is shown on the plan annexed to an assignment registered at the Land Registry by Memorial Number [].

Section D: Terms and conditions of this Mortgage

The Mortgage Conditions (Two-party Version) (2003 Edition) form part of this Mortgage. You confirm that before signing this Mortgage Deed, we have given you a copy of the Mortgage Conditions.

Section E: Contact details of the parties to this Mortgage

Our contact details are set out below:

Address: []
Fax number: []

We may change our contact details at any time by giving you a notice in writing.

Your contact details are set out below:

Address: []
Fax number: []

Section F: Charge over the Property

You charge and assign as beneficial owner all your interest in the Property to us to secure the Amount Owning and performance of your obligations under this Mortgage, subject to your right of redemption. The charge created by this Mortgage is a legal charge in so far as the Property is a legal estate.

You assign to us (and, if we reasonably require it, you will enter into one or more separate assignments in any form we may choose) the sale proceeds, rents or other amounts due now or in the future under any sale agreement, lease, tenancy or other agreement in respect of the whole or any part of your interest in the Property together with power for us to take proceedings and give valid receipt or discharges for the above in your name.

Section G: Default interest rate for any unpaid part of the Amount Owning

The default interest rate for any unpaid part of the Amount Owning is:

- (a) in connection with the mortgage loan granted by us to you for which the Property is charged as security under this Mortgage, []; and

- (b) in connection with other money secured under this Mortgage (other than the mortgage loan mentioned in (a) above), the default interest rate stated in the terms and conditions of the applicable Facility Agreement.

Section H: Costs for production of certified copies

When you sell the Property, if we have previously assigned or transferred our rights and interests in this Mortgage:

Tick the appropriate box

- we will make available to you or your solicitors at no cost,
- you will at your own cost obtain,

certified true copies of all the assignment and transfer documents executed by us or our assignee(s) and transferee(s) in order to enable you to prove good title.

Section I: Rights of third parties

For the purpose of the Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the Laws of Hong Kong) (“**CRTPO**”), you and we agree:

- (a) that a person who is not a party to this Mortgage Deed (“**Third Party**”) has no right under the CRTPO to enforce or to enjoy the benefit of any term of this Mortgage Deed but this does not affect any right or remedy of a Third Party, which exists or is available apart from the CRTPO;
- (b) that no right under any term of this Mortgage Deed enforceable by a Third Party under the CRTPO shall be assigned by the Third Party to another person unless this Mortgage Deed expressly provides otherwise; and
- (c) that you and we shall be entitled to rescind or vary any term of this Mortgage Deed at any time as provided by this Mortgage Deed without the consent of a Third Party.

Your Declaration

You confirm that before signing this Mortgage, your attention has been drawn to the “Important Notice” on the front page and, in particular, to the warning that separate independent legal advice should be obtained before entering into this Mortgage.

(³)SIGNED SEALED and DELIVERED by the Mortgagor in the presence of a *witness/solicitor:

The Mortgagor



Your signature

*Witness's/Witnessing solicitor's name and address

*Witness's/Witnessing solicitor's signature

* Delete as appropriate.

⁽³⁾ Only applicable where the Mortgagor is an individual.

⁽⁴⁾SEALED with the COMMON SEAL of the Mortgagor AND SIGNED by the authorized signatory(ies) of the Mortgagor in the presence of a *witness/solicitor:

The Mortgagor



Signature of the authorized signatory(ies)

Name and title of the authorized signatory(ies)

*Witness's/ Witnessing solicitor's name

*Witness's/ Witnessing solicitor's signature

* Delete as appropriate.

⁽⁴⁾ Only applicable where the Mortgagor is a corporation.

MORTGAGE CONDITIONS (TWO-PARTY VERSION) (2003 EDITION)

Important Notice

These Mortgage Conditions form an important legal document, and apply to the Mortgage Deed and are legally binding on you.

You should read these Mortgage Conditions carefully. If you do not understand them, the way in which they work or their consequences, you should obtain separate independent legal advice from your solicitors before signing the Mortgage Deed.

The Hong Kong Mortgage Corporation Limited consents to the use, reproduction and distribution to the general public of these Mortgage Conditions in their entirety by any person on a not-for-profit basis. Sale or distribution otherwise than in accordance with the above conditions is strictly prohibited. The Hong Kong Mortgage Corporation Limited, and each member of the Steering Committee of the Project on Standardization of Mortgage Origination Documents in Hong Kong, expressly disclaims any liability to the fullest extent possible for the contents of these Mortgage Conditions, any loss, damage or claim suffered or incurred by any mortgage lender or any other person in connection with, or in reliance on, the whole or any part of these Mortgage Conditions. Any mortgage lender or any other person proposing to use these Mortgage Conditions must seek its own legal advice as to the suitability of these Mortgage Conditions for its intended purposes.

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1. Interpretation

1.1 In these Mortgage Conditions, the words listed below have the meanings shown beside them:

Amount Owing	The Amount Owing as defined in Section B of the Mortgage Deed.
Building	The building of which the Property forms part.
Deed of Mutual Covenant	Any deed of mutual covenant or sub-deed of mutual covenant to which the Property is subject.
Event of Default	Any of the events set out in clause 12.
Expenses	The Expenses as defined in Section B of the Mortgage Deed.
Facility Agreement	The Facility Agreement as defined in Section B of the Mortgage Deed.
Government Lease	The Government lease or agreement for a Government lease which relates to the Property.
Hong Kong	The Hong Kong Special Administrative Region of the People's Republic of China.
Mortgage	The mortgage or charge over the Property which consists of (a) these Mortgage Conditions and (b) the Mortgage Deed.
Mortgage Deed	The deed executed by you which, together with the Mortgage Conditions, creates the Mortgage.
Ordinance	The Conveyancing and Property Ordinance (Chapter 219 of the Laws of Hong Kong).
person	Any individual, personal representative, company, incorporated or unincorporated body, juridical person, trust, partnership or firm and includes any successors and assigns.
Property	The property described in Section C of the Mortgage Deed and any part of it.
Receiver	Any person we appoint at any time to be a receiver or a manager of the Property.
security	Any instrument or collateral given to secure payment or repayment of any debts, liabilities or obligations, and includes (but is not limited to) any charge, mortgage, guarantee, pledge or lien.

we / us The person as named in Section A of the Mortgage; and **our, ours** and **ourselves** shall be construed accordingly.

you The person as named in Section A of the Mortgage; and **your, yours** and **yourself(ves)** shall be construed accordingly.

1.2 In these Mortgage Conditions:

- (a) words in the singular include the plural and words in the plural include the singular;
- (b) headings are for ease of reference only and do not alter the meaning of these Mortgage Conditions;
- (c) references to any clause or schedule are references to clauses of or schedules to these Mortgage Conditions and include any changes to those clauses or schedules;
- (d) times and dates are Hong Kong times and dates;
- (e) references to a document include any changes made to that document or any documents which replace it; and
- (f) references to any statutory provision include any changes to those statutory provisions or to any statutory instrument, order or regulation made under any of them.

2. Joint and several liability

2.1 If there is more than one of you, this Mortgage applies to you all together and to each of you on your own. This means that each of you can be held fully responsible for complying with the obligations contained in the Mortgage even if the Mortgage cannot be enforced against the other of you.

2.2 We may choose to enforce our rights against, discharge or reach an agreement with any of you alone without affecting our rights against the other of you.

3. Payment

3.1 You must:

- (a) pay or discharge the Amount Owing as and when it becomes due and payable; and
- (b) pay the Expenses immediately when we demand payment of them.

3.2 You agree that we are not obliged to demand payment of the Amount Owing from any other person or take any action to obtain payment (such as selling the Property or any other security we hold) before demanding payment of the Amount Owing from you.

- 3.3 If we do not receive full payment of any Expenses we demand, we may charge default interest on any unpaid Expenses at the rate set out in the relevant Facility Agreement from the date on which the Expenses were incurred until the date of payment. Default interest is payable on demand.
- 3.4 All payments under the Mortgage must be paid in full. If a deduction on account of tax or a similar charge is required by law, you must make up the payment so that we receive the full amount due under the Mortgage.
- 3.5 You may not deduct any sums owed by us to you from any payments made by you under the Mortgage, and must pay the full amount of the Amount Owing as demanded by us at any time.

4. Indemnity

- 4.1 You agree to indemnify us (for ourselves and as agent for each of our directors, officers and employees, each an “**Indemnified Person**”) against all liabilities, reasonable losses and damages, actions, proceedings, demands, claims and reasonable costs and expenses (including legal costs) which any Indemnified Person may suffer as a result of any breach of the Mortgage or any misrepresentation in connection with the Mortgage.
- 4.2 Any amounts which you must pay us under clause 4.1 will be added to the Expenses.

5. Release of the Mortgage

- 5.1 When the Amount Owing has been fully paid and all your obligations under the Mortgage have been performed, we will, at your cost, execute a document to:
- (a) acknowledge full receipt of the Amount Owing; and
 - (b)
 - (i) release or discharge the Mortgage; or
 - (ii) (if your interest in the Property is an equitable interest) re-assign the Property to you.
- 5.2 Any action we take under clause 5.1 is subject to the condition that no money we receive in payment of the Amount Owing will subsequently be returned or reduced under any law.
- 5.3 If we take any action under clause 5.1, and are later obliged under law to return any money paid to us in payment of the Amount Owing, you will:
- (a) remain liable under the Mortgage as if we had never received that money; and
 - (b) at your cost, execute any document and do any thing necessary to charge (if your interest in the Property is a legal estate) or assign (if your interest in the Property is an equitable interest) your full interest in the Property to us, and we will be entitled to enforce the Mortgage as if none of the matters set out in clause 5.1 had occurred.

5.4 If we agree to release, discharge or re-assign the Property without receiving full payment of the Amount Owing, you will remain liable for any remaining Amount Owing.

6. Your representations and warranties

You represent and warrant to us that at the date of the Mortgage:

- (a) you are the sole beneficial owner of the Property and have a good and marketable title to the Property;
- (b) no encumbrance or security exists over the Property and the Property is not subject to any tenancy or licence to occupy (except as already disclosed to and acknowledged by us in writing) in favour of any other person;
- (c) by signing the Mortgage, you have not breached any law, rule, regulation, judgment, order, agreement, authorization or obligation applicable to or binding on you;
- (d) the particulars of the Property set out in the Mortgage Deed are true, accurate and complete;
- (e) each of the Government Lease and the Deed of Mutual Covenant is valid and in force and no circumstances exist which entitle the Government of Hong Kong to terminate the Government Lease;
- (f) you have fully paid the premium, rent and other money payable in respect of the Property under the Government Lease or the Deed of Mutual Covenant, and have observed the terms and conditions of the Government Lease and the Deed of Mutual Covenant so far as they affect the Property;
- (g) you have fully paid the management fees, rates, taxes and other outgoings and money payable in respect of the Property;
- (h) no litigation, arbitration or administrative proceedings in connection with the Property are currently taking place or threatened;
- (i) no Event of Default, and no event which may become an Event of Default if any notice is given or any condition is satisfied or any period of time has lapsed, has happened;
- (j) all the information (including your personal data and financial information) supplied to us in connection with the Mortgage, the Amount Owing and the Property is true, accurate and complete;
- (k) you have given to us all information relevant to our decision to lend any money or the amount to be lent to you;

- (l) you have the necessary power, capacity and legal right to sign or execute the Mortgage and to perform your obligations under the Mortgage;
- (m) you have obtained all necessary approvals for the signing or execution of the Mortgage and the performance of your obligations under the Mortgage, and that those approvals will remain in force so long as the Mortgage is in force; and
- (n) (if you are a corporation) you are duly incorporated and are validly existing under the laws of the place of your incorporation, and have duly authorized your officer(s) to sign or execute the Mortgage and have the power to perform all your obligations under the Mortgage.

7. Your insurance obligations

7.1 You must insure the Property at all times. The following terms apply to any insurance:

- (a) we have the right to approve the choice of insurer and the terms of the insurance policy;
- (b) our interest in the Property must be noted on the insurance policy, or the insurance must be in the joint names of you and us, or we may ask for your interest in the policy to be assigned to us;
- (c) the insurance policy must:
 - (i) cover all risks which we reasonably specify; and
 - (ii) be for an amount as agreed by you and us;
- (d) if we require, the original or a copy of the insurance policy must be given to us for our records; and
- (e) you must punctually pay the insurance premium and must give us the original or a copy of the receipt for such payment.

7.2 If you do not insure the Property under clause 7.1 or if you do not keep to the terms of clause 7.1, then we may insure the Property. If we insure the Property, the following terms apply:

- (a) we will insure the Property at your cost and we will be entitled to add that cost to the Expenses; and
- (b) we will choose:
 - (i) the insurer;
 - (ii) the amount of the insurance;
 - (iii) whether the insurance is to be in our name alone, or in the joint names of you and us; and

(iv) the risks to be covered.

- 7.3 You agree that the insurance policy for the Property is to provide that the proceeds of any claims made under the policy will be paid directly to us. To the extent that any part of the Amount Owing remains outstanding, you will hold the proceeds paid under any insurance policy on trust for us.
- 7.4 You agree to notify us immediately if you wish to make a claim under any insurance policy for the Property.
- 7.5 We have the right to act for you to settle or adjust any claim you may have under the insurance policy for the Property. If we decide to do so, you agree to sign all documents and do all things we reasonably ask.
- 7.6 If any money is paid out as a settlement or compensation for a claim under any insurance policy for the Property, we have the right to choose to use that money either to pay or reduce the Amount Owing or to repair or rebuild the Property.
- 7.7 If we choose to use the money paid out under clause 7.6 to repair or rebuild the Property, you must use the money for that purpose only and must make up any shortfall so as to make sure that the repair or rebuilding is done to the same standard as before the damage.
- 7.8 You must not do, or allow to be done, anything which may:
- (a) reduce the scope of insurance cover or the insured amount for the Property;
 - (b) increase the premium of any insurance policy for the Property;
 - (c) prevent or hinder any claim being settled in full under any insurance policy for the Property;
 - (d) cancel, end or invalidate any insurance policy for the Property; or
 - (e) adversely affect any insurance policy for the Property.

8. Your obligations relating to the Property

Unless we otherwise agree in writing, you agree at all times and at your own cost:

- (a) to remain the sole beneficial owner of the Property and to ensure that you hold a good and marketable title to the Property;
- (b) to inform us promptly of the existence of any circumstances which entitle the Government of Hong Kong to terminate the Government Lease;
- (c) to keep the Government Lease valid and in force;
- (d) to pay fully and punctually all premiums, rents, management fees, rates, taxes and other outgoings and money payable in respect of the Property or under the Government Lease or the Deed of Mutual Covenant and to provide us promptly with reasonable evidence of that payment on our demand;

- (e) to observe the terms and conditions of the Government Lease and the Deed of Mutual Covenant;
- (f) to keep the Property in good repair and condition and to allow us and people we appoint to enter the Property to do any necessary repairs if you fail to do so;
- (g) to allow our or the Receiver's appointed representatives to inspect the Property at all reasonable times upon giving reasonable notice (and those persons shall not be treated as having taken possession of the Property by that inspection);
- (h) to send us, within 7 days of your receipt, a copy of any notice received by you or left at the Property demanding any overdue payments in respect of the Property or threatening any litigation, arbitration or administrative proceedings in respect of the Property;
- (i) to inform us promptly of any dispute or complaint concerning the Property and the outcome of that dispute or complaint, and to send us, within 7 days of your receipt, a copy of all notices or papers sent to or by you or your representative in relation to that dispute or complaint;
- (j) to comply with all laws, rules, regulations, judgments, orders, agreements and authorizations in relation to the Property;
- (k) to send us, within 7 days of your receipt, a copy of any judgment or order in respect of the Property and all orders, notices and proposals issued in respect of the Property by any governmental authority or manager of the Building;
- (l) to comply with any order, notice or proposal issued in respect of the Property by any governmental authority or manager of the Building;
- (m) at our request, to make or join with us in making a claim, a defence or a response in accordance with our instructions in any litigation, arbitration or administrative proceedings in respect of the Property;
- (n) at our request, to make or join with us in making, an objection, appeal or a response in accordance with our instructions in connection with any judgment, order, notice or proposal issued in respect of the Property by any court, governmental authority or manager of the Building, or any dispute or complaint concerning the Property;
- (o) to observe the terms and conditions of the Facility Agreement;
- (p) to keep us informed promptly of any change and any incorrect, inaccurate or incomplete information in the particulars of the Property set out in the Mortgage, and to correct promptly that incorrect, inaccurate or incomplete information;
- (q) to provide us promptly with any information about yourself or the Property as we may ask at any time for:
 - (i) enforcing the Mortgage;

- (ii) preserving the Property; or
- (iii) recovering the Amount Owning;
- (r) to inform us promptly of any change in the information (including your personal data and financial information) you previously gave us in respect of the Mortgage, the Amount Owning or the Property;
- (s) to deliver to us all documents of title relating to the Property for our custody;
- (t) to inform us promptly of the happening of any Event of Default or of any event which may become an Event of Default if any notice is given or any condition is satisfied or any period of time has lapsed;
- (u) to pay us all costs and expenses we reasonably incur in complying with your or your solicitors' requests for the production of photocopies, certified copies or originals of any document in relation to the Property or the Mortgage;
- (v) to keep the Mortgage and the Facility Agreement valid and in force, to maintain the value of the Property and to enable us and the Receiver to exercise our respective rights and powers under the Mortgage;
- (w) to maintain all necessary approvals for the validity of the Mortgage and the Facility Agreement and the performance of your obligations under them;
- (x) to sign any document and to do any thing necessary to keep valid and in force all the approvals obtained for the signing or the validity of the Mortgage and the Facility Agreement or the performance of your obligations under them;
- (y) if at any time we became entitled to exercise the power of sale contained in the Mortgage, at our written request, to immediately give up vacant possession of the Property to us or anyone we nominate;
- (z) at our request at any time to sign and execute all documents (including a legal charge if your equitable interest in the Property becomes a legal interest) and do whatever acts and things as we may reasonably require for perfecting the security intended to be created under the Mortgage;

(Paragraphs (aa) and (bb) below are applicable only if you are a corporation or firm.)

- (aa) to keep proper accounting records in respect of your business; and
- (bb) to engage a firm of qualified auditors to audit and certify your financial statements, and to provide those audited and certified financial statements to us within the period we require.

9. Things you agree not to do

Without our written consent, you agree not to do, or allow to be done, any of the following things:

- (a) sell, transfer, sub-divide, dispose or deal with the Property or any interest in it;
- (b) create any rights or interests or impose obligations (including any security) in favour of any other person over the Property;
- (c) use the Property for unlawful or immoral uses or any use not permitted under the Deed of Mutual Covenant or the Government Lease;
- (d) pull down or make any structural alterations or additions to the Property unless required by law, the Government Lease or the Deed of Mutual Covenant;
- (e) do anything which may decrease the value of the Property or prejudice the security created under the Mortgage;
- (f) apply for any planning permission, building consent or any grant for improvements or repairs in respect of the Property; and
- (g) vary or give up any term or right contained in the Government Lease or the Deed of Mutual Covenant.

10. Occupying the Property

10.1 Without our written consent, you must not at any time:

- (a) enter into any lease, tenancy or licence agreement in connection with the Property;
- (b) vary or give up any term of any lease, tenancy or licence agreement in connection with the Property;
- (c) accept early termination of any lease, tenancy or licence agreement in connection with the Property by the other party to that lease, tenancy or licence agreement; or
- (d) terminate or do anything to terminate any lease, tenancy or licence agreement in connection with the Property in case of any breach by the other party to that lease, tenancy or licence agreement.

10.2 Subject to clause 10.1, you must do the following things at your own cost:

- (a) send us certified copies of any lease, tenancy or licence agreement in connection with the Property and any subsequent variation within 14 days from the date of that lease, tenancy or licence agreement or variation; and if any such lease, tenancy or licence agreement has been stamped or adjudicated, a certified copy with stamping or adjudication;
- (b) perform all your obligations under any lease, tenancy or licence agreement in connection with the Property;

- (c) do your best in good faith to ensure the performance of any lease, tenancy or licence agreement in connection with the Property by the other party to that lease, tenancy or licence agreement;
- (d) inform us promptly of any breach of any lease, tenancy or licence agreement in connection with the Property by the other party to that lease, tenancy or licence agreement; and
- (e) inform us promptly of any request to extend or vary any lease, tenancy or licence agreement in connection with the Property by the other party to that lease, tenancy or licence agreement; or any modification to any such lease, tenancy or licence agreement.

11. Renewal, extension and re-grant of the Government Lease

11.1 If the Government of Hong Kong offers a renewal, extension or re-grant of the Government Lease, you must:

- (a) immediately accept that offer;
- (b) satisfy promptly all the conditions of that offer and pay promptly any premium and other consideration as demanded;
- (c) upon completion of the renewal, extension or re-grant, at your own cost execute a mortgage of the Property under the renewed, extended or re-granted Government Lease in our favour in the same form as the Mortgage with any necessary changes required; and
- (d) pending the signing of the mortgage pursuant to clause 11.1(c), hold your interest in the Property under the renewed, extended or re-granted Government Lease on trust for us.

11.2 On expiry of the Government Lease, if you fail to obtain a renewal, extension or re-grant of the Government Lease, you must provide any additional security we require for the Amount Owing.

12. Events of Default

Each of the events listed below is an Event of Default:

- (a) you fail to observe any term of the Facility Agreement or the Mortgage or any other loan agreement to which you are party;
- (b) any of your representations or warranties made to us in the Facility Agreement, the Mortgage or any other documents based on which we have made available the facilities under the Facility Agreement is breached or found to have been incorrect;
- (c) you fail to repay any debt due and payable;
- (d) you admit your inability to repay any debt due and payable;

- (e) any action is taken to enforce any security created by you;
- (f) any law, rule, regulation, judgment, or any order, notice or proposal issued by any governmental authority under any law or regulation, suspends, varies, terminates or excuses your obligations under the Facility Agreement or the Mortgage;
- (g) the Property is destroyed or damaged;
- (h) any governmental or other authority re-enters or re-takes or expresses an intention or any proposal to re-enter or re-take possession of the Property;
- (i) the Government Lease is terminated;
- (j) the Property is resumed or acquired (whether or not any compensation is paid);
- (k) the Facility Agreement, the Mortgage or any other security provided to us becomes invalid or unenforceable or is terminated or in default;
- (l) any obligation under the Facility Agreement or the Mortgage becomes impossible to perform;
- (m) any third party applies for a court order in respect of the Property;
- (n) any third party occupies or takes possession of the Property without our written consent;
- (o) you or any other security provider in respect of the Amount Owing enters into or proposes to enter into an arrangement in respect of your or the security provider's debts with or for the benefit of your or the security provider's creditors;
- (p) any action taken or omission by you or any other security provider which in our reasonable opinion might materially and adversely affect your or the security provider's ability to perform your or the security provider's obligations under the Facility Agreement or the Mortgage or other security for the Amount Owing;
- (q) a petition for your bankruptcy is presented to the court and is not discharged within 7 days;

(Paragraphs (r) to (z) below apply only if you are a corporation or firm.)

- (r) a receiver or similar officer is appointed over any part of your business or assets;
- (s) creditors take possession of any part of your business or assets;
- (t) a legal action is commenced against any part of your business or assets and is not discharged within 7 days of the commencement;

- (u) a petition is presented to the court, or a legal action commenced, or an order made, or a resolution passed, for your winding-up, administration, reorganization or dissolution;
- (v) you dispose of, or express your intention to dispose of, any substantial part of your business or assets;
- (w) any substantial part of your business or assets is compulsorily purchased or taken over or acquired (whether or not any compensation is paid);
- (x) you cease, or express an intention to cease, to carry on any substantial part of your business;
- (y) you make or express your intention to make, any significant change to the nature or scope of your business; and
- (z) any material and adverse change in your business or financial condition which, in our reasonable opinion, might materially or adversely affect your ability to perform your obligations under the Facility Agreement or the Mortgage.

(References to “you” in paragraphs (q) to (z) above include a security provider for the Amount Owing.)

13. Enforcement of the Mortgage

On the happening of an Event of Default, the Mortgage becomes enforceable, the Amount Owing becomes immediately due and payable, and we are entitled to:

- (a) terminate the Facility Agreement and all banking, credit or other facilities or accommodation provided to you so that our obligations under all of them cease immediately;
- (b) demand payment of the Amount Owing;
- (c) exercise all powers given to us as mortgagee by law (including those under the Ordinance); and
- (d) exercise all powers given to us by the Mortgage.

14. Default interest rate and charges

If you fail to pay the Amount Owing (except for the unpaid Expenses) in accordance with clause 13(b) or as otherwise required under the Facility Agreement, you must pay us default interest in accordance with Section G of the Mortgage Deed together with late charges and other handling fees on the unpaid amount at the rate and on the terms specified in the Facility Agreement.

15. Appointment of a Receiver

- 15.1 If an Event of Default occurs, we may appoint a Receiver without giving prior notice to you or obtaining your prior consent.
- 15.2 Subject to clause 16.2, it is agreed that section 50 of the Ordinance applies to the appointment of a Receiver.

16. Our powers and those of a Receiver

- 16.1 If an Event of Default occurs, we or the Receiver may:
- (a) sell or otherwise dispose of or deal with the Property, in any manner, at any price (whether in cash or in any other form) and on any terms as we or the Receiver consider appropriate;
 - (b) assign the Property either in our name or in your name in exercise of our or the Receiver's power under the Mortgage;
 - (c) take possession of the Property;
 - (d) receive any rent, deposit and profit in respect of the Property and require you to execute, at your own cost, an assignment of the rent or profit to us or the Receiver;
 - (e) grant any lease, tenancy or licence agreement in connection with the Property on any terms as we or the Receiver consider appropriate;
 - (f) sign any document and do anything that we or the Receiver consider appropriate for the sale, lease or tenancy of the Property or the granting of any other right to occupy or possess the Property;
 - (g) insure the Property, and to keep the Property insured, against fire and other risks that we or the Receiver may require, for the insured amount and on the terms as we or the Receiver consider appropriate;
 - (h) carry out any repairs, renovations, alterations, improvements and developments to the Property as we or the Receiver consider appropriate;
 - (i) appoint any person in connection with the exercise of any of our or the Receiver's powers and rights under the Mortgage for any remuneration and on any terms as we or the Receiver consider appropriate;
 - (j) delegate any of our or the Receiver's powers and rights under the Mortgage to any person for any remuneration and on any terms as we or the Receiver consider appropriate;
 - (k) incur reasonable costs and expenses in exercise of any of our or the Receiver's powers and rights under the Mortgage;

- (l) in connection with the exercise of any of our or the Receiver's powers and rights under the Mortgage, to raise money on any terms as we or the Receiver consider appropriate, including on terms providing the Property as security either in priority to the Mortgage or subject to the Mortgage. However:
 - (i) the Receiver will not exercise this power without our prior written consent and we are not liable for giving or refusing to give that consent; and
 - (ii) any person lending money to the Receiver as a result of the exercise of this power is entitled to assume that the Receiver has power to borrow that money and is borrowing that money in accordance with this sub-clause;
 - (m) institute or defend any litigation, arbitration or administrative proceedings in respect of the Property;
 - (n) use your name in connection with the exercise of any of our or the Receiver's powers and rights under the Mortgage; and
 - (o) do any other lawful act as we or the Receiver consider necessary or incidental to the exercise of any of our or the Receiver's powers and rights under the Mortgage.
- 16.2 To the extent permitted by any law, any restriction on the exercise of our or the Receiver's power to sell the Property under the Mortgage including those in the Ordinance do not apply.
- 16.3 In the exercise of our or the Receiver's powers and rights under the Mortgage, we or the Receiver will be liable to account only for money we or the Receiver have actually received.
- 16.4 We or the Receiver are not liable for any loss arising from the exercise of any of our or the Receiver's powers and rights under the Mortgage unless the loss is caused by our or the Receiver's fraud or gross negligence.
- 16.5 Any person dealing with us or the Receiver is entitled to assume that:
- (a) we or the Receiver are entitled to exercise all or any of our or the Receiver's powers and rights under the Mortgage;
 - (b) we or the Receiver exercise all or any of our or the Receiver's powers and rights in accordance with the Mortgage;
 - (c) we or the Receiver use all money received in exercise of our or the Receiver's powers and rights in accordance with the Mortgage; and
 - (d) a receipt for all or any of the money paid to us or the Receiver is a good and sufficient discharge to any person paying that money.

17. Your remedy

Unless we or the Receiver have acted fraudulently or have been grossly negligent, your remedy for any unauthorized, improper or irregular exercise by us or the Receiver of our or the Receiver's powers and rights under the Mortgage is in damages only.

18. Application of proceeds of security realization

Subject to applicable law, we or the Receiver will apply any money we or the Receiver receive under the Mortgage in the following order:

- (a) payment of the Expenses;
- (b) payment of the Amount Owing (other than the Expenses, and with interest being paid first) pursuant to the Mortgage; and
- (c) payment of any remaining balance to you or any other person who is entitled to receive that money.

19. Effects of bankruptcy or insolvency laws

19.1 If we receive any payment or security from you or any other person for the Amount Owing, and are later obliged under any bankruptcy or insolvency laws to restore our position to what it would have been if that payment or security had not been received, then you remain liable under the Mortgage as if we had never received that payment or security.

19.2 We will be entitled, before any order under those bankruptcy or insolvency laws is made against us, to agree or settle any claim arising under those laws on any terms as we consider appropriate without your prior consent.

19.3 If we agree or settle a claim under clause 19.2, you remain liable under the Mortgage as if a court order had been made containing the terms we have agreed in connection with that claim.

19.4 If we have given a release, discharge or re-assignment of any security (including the Mortgage) given by you in our favour in return for any payment or security from you or any other person, then that release or discharge is conditional upon no claims being made against us under the bankruptcy or insolvency laws in connection with that payment or security.

20. The Expenses

Examples of the Expenses are:

- (a) all reasonable costs and expenses (including legal costs) incurred by us or the Receiver in connection with the Mortgage, for the following purposes:
 - (i) preparing, negotiating, signing or registering the Mortgage;

- (ii) exercising any of our or the Receiver's powers under the Mortgage;
 - (iii) recovering or attempting to recover the Amount Owing;
 - (iv) protecting or enforcing any of our or the Receiver's rights under the Mortgage;
 - (v) preserving or attempting to preserve the Property;
 - (vi) making any claim or defending any claim against us or the Receiver in respect of the Amount Owing, the Mortgage or the Property;
 - (vii) preparing, signing or registering a release of the Mortgage;
 - (viii) certifying receipt of full payment of the Amount Owing;
 - (ix) (if your interest in the Property is an equitable interest) preparing, signing or registering all documents and doing everything necessary to re-assign the Property to you upon full payment of the Amount Owing;
 - (x) giving or refusing to give our consent under the Mortgage;
 - (xi) (if you fail to perform your obligations under the Mortgage) performing your obligations under the Mortgage; or
 - (xii) taking possession of, or selling or leasing or granting other rights to occupy or possess the Property under the Mortgage;
- (b) the Receiver's fees as reasonably agreed between the Receiver and us; and
 - (c) any amounts which you are liable to pay us under clause 4.1.

21. Deductions from other credit balances and lien

21.1 You agree that if you fail to pay any part of the Amount Owing due and payable under the Mortgage, we may without giving prior notice to you or any other person:

- (a) use any credit balance in any of your accounts (whether in your own name or in joint names with other persons) with us to pay that unpaid sum to us;
- (b) off set that unpaid sum by any debt or liability we owe you now or in the future;
- (c) exercise a lien on all of your assets or property we hold; and
- (d) sell any of your assets or property we hold at a price and in a manner we decide, and use the proceeds to pay the unpaid sum.

21.2 You agree to waive all rights to set off against the Amount Owing, any debt or liability we owe you now or in the future.

22. Payment in other currencies

22.1 Unless we otherwise agree in writing, the Amount Owing must be paid in the currency in which it was incurred (“**Original Currency**”).

22.2 If the Amount Owing is not paid in the Original Currency, we will be entitled to convert the amount paid into the Original Currency within a reasonable period at the best exchange rate reasonably available. If there is any shortfall between the converted amount and the Amount Owing, you remain liable for the shortfall.

23. Appointment as your attorney

23.1 You appoint us and (as a separate appointment) the Receiver to act as your attorney either individually or jointly with others to do the following things in your name and on your behalf:

- (a) to sign, seal and deliver all documents; and
- (b) to do all things we or the Receiver consider appropriate to:
 - (i) perform any obligations which you fail to perform under the Mortgage;
 - (ii) exercise any power or right given to us or the Receiver under the Mortgage; or
 - (iii) give us the full benefit of the Mortgage; and
- (c) to appoint another person as attorney for the Mortgagor in replacement for ourselves or the Receiver.

23.2 You agree to confirm and ratify any document signed or anything done at any time by us or the Receiver and any other person appointed as attorney under clause 23.1.

23.3 This appointment is given by way of security and may not be revoked so long as the Mortgage is in force.

24. Evidence of the Amount Owing

Unless there is an obvious mistake or fraud, a certificate signed by our officer as to the amount of the Amount Owing, the Expenses, any interest, default interest, late charge or handling fee is conclusive evidence against you for all purposes.

25. Suspense account

25.1 If an Event of Default occurs and until the Amount Owing has been paid in full, we may hold any money we receive under the Mortgage (unless the amount wholly satisfies the Amount Owing) in a suspense account in order to preserve the full amount of our claims against you or any other security provider for the Amount Owing.

- 25.2 If we have not already done so pursuant to clause 25.1, we may treat all money we receive under the Mortgage as having been credited to a suspense account in order to preserve the full amount of our claims against you or any other security provider for the Amount Owing, and not in reduction of the amount of the Amount Owing.
- 25.3 Amounts standing to the credit of a suspense account pursuant to clause 25.1, or a deemed suspense account pursuant to clause 25.2, shall bear interest at our prevailing rates for deposit accounts with a similar credit balance from time to time.

26. Continuing security

26.1 The Mortgage is a continuing security securing the Amount Owing due at any time by you to us. Your liabilities and obligations under the Mortgage continue until full payment of the Amount Owing, and are not affected or discharged by any of the following events:

- (a) your death, mental incapacity, bankruptcy, insolvency or liquidation (where applicable) or change of name;
- (b) any change in our name or constitution;
- (c) (if you are a partnership or any other organization), any change in the name or membership or constitution of the partnership or organization (in that case, the Mortgage continues to bind those persons who make up the partnership or the organization as so constituted for the time being);
- (d) the takeover of yourselves by, your absorption of or your merger with, any other person;
- (e) the takeover of ourselves by, our absorption of or our merger with, any other bank or institution;
- (f) the appointment of a receiver over your business or assets;
- (g) your entry into any arrangement with your creditors to repay your debts or other liabilities; and
- (h) any assignment of the Amount Owing, any transfer of the Mortgage or any declaration of trust or other acts affecting our rights in respect of the Amount Owing or the Mortgage.

26.2 Without affecting any of our rights or your liabilities under the Mortgage we or the Receiver may at any time:

- (a) give any other security provider for the Amount Owing more time to pay money due and payable;
- (b) vary, extend, release, reduce, exchange, increase, accelerate, renew or discharge any obligations or liabilities of any other security provider for the Amount Owing;

- (c) make any other arrangement, compromise or settlement with any other security provider for the Amount Owning;
- (d) take or deal with any other security or legal commitment for the Amount Owning;
- (e) fail to take any other security or legal commitment for the Amount Owning; or
- (f) neglect, release, enforce or choose not to enforce any of our rights under the Mortgage or any other security or legal commitment for the Amount Owning.

26.3 Your liabilities under the Mortgage are not and will not be affected by:

- (a) the invalidity of, or irregularity in, entering into the Facility Agreement or the Mortgage;
- (b) the invalidity of any other security or legal commitment for the Amount Owning;
- (c) any lack of power by you to enter into, or perform any of your obligations, under the Facility Agreement or the Mortgage; or
- (d) any act, omission, event or circumstance which may operate to prejudice, adversely affect or discharge the Mortgage had this clause 26.3 not existed.

27. Other general matters

27.1 Our or the Receiver's rights under these Mortgage Conditions are not lost or limited:

- (a) by any earlier exercise of them;
- (b) by any failure to exercise them;
- (c) by any delay in exercising them; and/or
- (d) by exercising them in part only.

27.2 Our or the Receiver's rights under the Mortgage are in addition to any other rights which we or the Receiver may have under the law.

27.3 We are entitled to employ debt collecting agent(s) to collect any sum due under the Mortgage.

28. Unenforceability of certain terms of the Mortgage

If any term of the Mortgage is or becomes unenforceable under the laws of any place, this will not affect its enforceability under the laws of any other place nor the enforceability of the remaining terms of the Mortgage.

29. Amendments and consents to be in writing

- 29.1 No change to any term of the Mortgage is binding unless it is in writing and signed by you and ourselves.
- 29.2 No consent we give will bind us unless it is given in writing and signed by our authorized officer.

30. Further security

We are entitled to require you to provide further security if, in our reasonable opinion at any time, the Property is not a sufficient security for the Amount Owing. You agree to provide promptly further security to our satisfaction if we demand it.

31. Our power to assign or transfer of our rights and obligations

- 31.1 You agree that we may assign or transfer, or agree to assign or transfer, the Facility Agreement, the Mortgage and any other documents based on which we have made available the facilities under the Facility Agreement and any of our rights or obligations under them to any person at any time.
- 31.2 For the purpose of any assignment or transfer under clause 31.1, you agree to sign any document or do any thing as we reasonably require.
- 31.3 On any assignment or transfer under clause 31.1, the assignee or transferee, or its successors and assigns, will be able to enforce the Mortgage or Facility Agreement against you in the same way and to the same extent that we could enforce them before the assignment or transfer.
- 31.4 You may not assign or transfer your rights or obligations under the Facility Agreement or the Mortgage without our prior written consent.

32. Disclosure of your information

- 32.1 You confirm that you have received, read, and understood and agree to the contents of the data privacy statement which we issue to customers and prospective customers. You agree to allow us to disclose your personal and credit information (including credit reports), subject to the provisions of Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong), to the persons and for the purposes stated in our data privacy statement.
- 32.2 You agree to allow us to disclose or provide to any security provider for the Amount Owing at any time all information regarding the Mortgage, the Facility Agreement and the Amount Owing (including but not limited to the amount of the current outstanding debts which you owe us and the purpose, amount and terms of each of the banking/credit facilities or additional banking/credit facilities which we have granted to you as secured or to be secured under the Mortgage).

33. The Mortgage independent of any other guarantee or security

- 33.1 The Mortgage is independent of, and is in addition to, any other guarantee or security which we presently have or may have in the future in connection with the Amount Owing.

- 33.2 If we have any other security for the Amount Owing, we may choose which security we will enforce and the order of enforcement.
- 33.3 We are not obliged to enforce any other security for the Amount Owing or to take any steps or proceedings before we enforce the Mortgage.

34. No right to our security

You agree that you shall not be entitled to receive any money from the sale or other dealing of any security (including the Property) which we presently hold or may acquire in the future in respect of the Amount Owing, or to share in any other money received by us to reduce the Amount Owing, until the full Amount Owing has been paid in or discharged.

35. Postponement of your rights

35.1 Until the Amount Owing has been paid or discharged in full, you must not without our written consent:

- (a) exercise or enforce any right (including any right of set-off) against any other security provider for the Amount Owing;
- (b) pursue any claim against any other security provider for the Amount Owing;
- (c) make a claim in competition with us in the bankruptcy or insolvency of any other security provider for the Amount Owing; or
- (d) receive the benefit of any payment or distribution or security from any other security provider for the Amount Owing.

35.2 You must give us the benefit of each claim and pay us all money you receive in breach of clause 35.1 and in the meantime hold them on trust for us.

35.3 If you take any security referred to in clause 35.1(d), (whether with or without our consent), you hold that security on trust for us and must pay us all money you receive in respect of that security.

36. Notices and demands

36.1 All notices or demands given under the Mortgage must be in writing and may be given in any of the following ways:

- (a) by serving the notice or demand in a way which is required by law;
- (b) by post to the address of the relevant party set out in Section E of the Mortgage (or the last address known to the sender). In this case, the notice or demand is treated as given on the second business day after the posting date;
- (c) by hand to the address of the relevant party set out in Section E of the Mortgage (or the last address known to the sender). In this case, the notice or demand is treated as given at the time of delivery; or

(d) by fax to the fax number of the relevant party set out in Section E of the Mortgage (or the last fax number known to the sender). In this case, the notice or demand shall be treated as given at the time of dispatch.

36.2 If there is more than one of you, a notice or demand served by us on any one of you shall be a sufficient notice or demand on all of you.

36.3 If you are an individual, any notice or demand served after your death in accordance with this clause 36 is sufficient service on your personal representative(s).

36.4 You must notify us in writing of your new contact information within 7 days from any change.

37. Governing law and jurisdiction

37.1 Hong Kong law governs this Mortgage.

37.2 You agree to take any legal action in connection with the Mortgage only in Hong Kong. However, we may take legal proceedings against you under the Mortgage in any place where you or your assets may be located.

38. Language

The Mortgage (including these Mortgage Conditions) is written in English with a Chinese translation. The Chinese translation is for reference purposes only. The English version alone is intended to have legal effect.

39. Rights of third parties

39.1 For the purpose of the Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the Laws of Hong Kong) (“**CRTPO**”), you and we agree:

- (a) that a person who is not a party to the Mortgage (“**Third Party**”) has no right under the CRTPO to enforce or to enjoy the benefit of any term of the Mortgage but this does not affect any right or remedy of a Third Party, which exists or is available apart from the CRTPO;
- (b) that no right under any term of the Mortgage enforceable by a Third Party under the CRTPO shall be assigned by the Third Party to another person unless the Mortgage expressly provides otherwise; and
- (c) that you and we shall be entitled to rescind or vary any term of the Mortgage at any time as provided by the Mortgage without the consent of a Third Party.