

TERMS AND CONDITIONS IN RELATION TO THE OPERATION OF PAPT (the “T&C”)

[Version:]

Effective from: [date]

PART 1

Introduction

1. The T&C are adopted by the Hong Kong Association of Banks for use by parties who seek to use PAPT for S&P (as defined below) for the sale and purchase (the “**Conveyancing Transaction**”) of a particular target property (the “**Property**”), and are intended for incorporation by the parties into their contracts.
2. In respect of a Conveyancing Transaction, (a) in the case where the T&C is incorporated into a contract (the “**BMI-Buyer Contract**”) between the buyer in the Conveyancing Transaction (the “**Buyer**”) and the mortgage institution providing or offering to provide mortgage loan to the Buyer (the “**BMI**”), Parts 1 and 2 of the T&C shall apply to the BMI-Buyer Contract; (b) in the case where the T&C is incorporated into a contract between the seller in the Conveyancing Transaction (the “**Seller**”) and the Appointee Bank (as defined below) (the “**Appointee Bank-Seller Contract**”), Parts 1 and 3 of the T&C shall apply to the Appointee Bank-Seller Contract.

Disclaimers

3. The Buyer (under the BMI-Buyer Contract) or the Seller (under the Appointee Bank-Seller Contract) (as the case may be) hereby acknowledges and agrees that: -
 - (a) no Participating Bank is responsible for, nor accept any responsibility or liability in relation to or resulting from, the acts or omissions of any other party, including but not limited to any matters in connection with the services provided by HKICL as a third party, failure error or delay of the CHATS system, acts or omissions of the BMI in effecting the payment of the Payment Amount;
 - (b) no Participating Bank is bound by, or taken to have any notice of, the SPA or any of its terms. A Participating Bank is under no obligation to make any enquiries into the SPA or any of its terms;
 - (c) under normal circumstances, an Appointee Bank will use reasonable efforts to make available its services in respect of the holding and the handling of the Payment Amount in accordance with the T&C, but it makes no representations, endorsements or warranties to users of the services as to the reliability or availability of the CHATS, title, stature, competence, capability of the Participating Banks, or suitability of the PAPT for S&P for the Conveyancing Transaction in place of other method of settlement, or any kind whatsoever; and
 - (d) ***Force Majeure*** – A Participating Bank shall not be in breach of the BMI-Buyer Contract or the Appointee Bank-Seller Contract (as the case may be) or the T&C nor be liable for delay in performing, or failure to perform, any of its obligations under the BMI-Buyer Contract or the Appointee Bank-Seller Contract (as the

case may be), the T&C or otherwise in relation to or in connection with PAPT for S&P, if such delay or failure results from events, circumstances or causes beyond its reasonable control, including but not limited to any system failure of CHATS.

Severance

4. If any provision of any part of the T&C (or any part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the T&C, and the validity and enforceability of other provisions of the T&C shall not be affected.

Governing law and jurisdiction

5. The T&C shall be governed by the laws of Hong Kong. The parties irrevocably agree that the courts in Hong Kong shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with the T&C.

Definitions and interpretations

6. In all Parts 1, 2 and 3 of the T&C:

“Appointee Bank” shall mean:

- (a) where there is a Seller’s Mortgage, the mortgagee of the Seller’s Mortgage; or
- (b) where there is no Seller’s Mortgage, a bank to be designated by the Seller as the bank which provides mortgage services for the purpose of receiving the Payment Amount.

“Appointee Bank Written Confirmation” means a certificate issued by the Appointee Bank to the BMI in the event that the BMI is unable to receive a CHATS Advice from the CHATS system or from HKICL after effecting the payment of the Payment Amount via CHATS to the Appointee Bank, taking effect as the missing CHATS Advice.

“Bank Advice” means a document issued by the Appointee Bank in respect of the completion of an internal fund transfer of the Payment Amount, where the Appointee Bank and the BMI are the same entity.

“BMI” means the bank which is granting the mortgage loan in respect of the purchase of the Property.

“BMI-Buyer Contract” has the meaning set out in paragraph 2.

“Business Day” means Monday to Friday excluding Saturdays, Sundays and general holidays defined in the General Holidays Ordinance (Cap. 149).

“Buyer” has the meaning set out in paragraph 2.

“CHATS” means Hong Kong Dollar Clearing House Automated Transfer System.

“CHATS Advice” means a document issued automatically and provided in printable-by-BMI-only format by HKICL to the BMI on the CHATS interface immediately after the Appointee Bank receives the Payment Amount from the BMI via CHATS.

“CHATS Advice Correction Notice” means a document issued by the BMI and addressed to the Appointee Bank in the event that the Redemption Reference in the CHATS Advice is incorrect.

“Conveyancing Transaction” has the meaning set out in paragraph 1.

“Dday” means the completion date of the sale by the Seller and the purchase by the Buyer of the Property (which falls on a Business Day); all references to Dday plus or minus any number of days means Dday plus or minus such number of business days i.e. Monday to Friday excluding Saturdays, Sundays and general holidays as defined in the General Holidays Ordinance (Cap. 149).

“HKICL” means Hong Kong Interbank Clearing Limited.

“Interim Period” means:

- (c) where there is a Seller’s Mortgage, the period from the receipt of the Payment Amount (or any part thereof) from the BMI by the Appointee Bank to the application of the Payment Amount towards the discharge of any outstanding amount secured by the Seller’s Mortgage and (if applicable) the credit of any surplus in favour of the Seller, or alternatively, the refund of the Payment Amount to the BMI; or
- (d) where there is no Seller’s Mortgage, the period from the receipt of the Payment Amount (or any part thereof) from the BMI by the Appointee Bank to the credit of the Payment Amount in favour of the Seller, or alternatively, the refund of the Payment Amount to the BMI.

“PAPT Dedicated Account” means the account of the Appointee Bank or the BMI (as the context requires) dedicated for PAPT for S&P participation.

“PAPT for S&P” means the payment arrangements for property transactions in Hong Kong, particulars of which are documented in the document entitled ["Payment Arrangements for Property Transactions (the "PAPT") – Sale & Purchase Scenario ("PAPT for S&P")] dated [] 2024, [published on the website of the Hong Kong Association of Banks] and as amended from time to time. For the avoidance of doubt, the aforementioned document is not intended and does not form part of the T&C.

“Participating Bank” means a bank participating in PAPT for S&P, including the BMI and the Appointee Bank.

“Payment Advice” means:

- (a) the CHATS Advice;
- (b) the Bank Advice;
- (c) the CHATS Advice as corrected by a CHATS Advice Correction Notice; or

(d) the Appointee Bank Written Confirmation,

in each case in respect of the Conveyancing Transaction and as the context may require.

“Payment Amount” means such amount(s) paid by the BMI to the Appointee Bank via CHATS (or via internal bank transfer where the BMI and the Appointee Bank are the same entity) in relation to the completion of a Conveyancing Transaction.

“Property” has the meaning set out in paragraph 1.

“Redemption Reference” means the unique identifier assigned by the Appointee Bank to a transaction which appears as part of the "Payment Detail" code on a CHATS Advice.

“Seller” has the meaning set out in paragraph 2.

“Seller's Account” means a bank account in Hong Kong in the name of the Seller.

“Seller's Bank” means a bank in Hong Kong (other than the Appointee Bank) in which the Seller's Account is held.

“Seller's Mortgage” means the existing mortgage over the Property as registered at the Land Registry of Hong Kong.

“SPA” means the agreement for sale and purchase for the Conveyancing Transaction, whether provisional or formal, supplemental or variation.

7. The T&C should be interpreted as follows:

- (a) Any references to a time of day is a reference to Hong Kong time.
- (b) The headings are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting the Rules.
- (c) Any references to a singular form include its plural form and vice versa.
- (d) Any references to the masculine gender in this Agreement shall include the feminine and neuter genders and vice versa.

PART 2 – T&C FORMING PART OF THE BMI-BUYER CONTRACT ONLY

Adoption of PAPT for S&P

- 8. By incorporating the T&C into the Buyer-BMI Contract, the Buyer agrees that Parts 1 and 2 of the T&C shall be adopted.
- 9. The Buyer may withdraw his agreement for adoption of PAPT for S&P up to (but no later than) 5 Business Days before Dday by notifying in writing the withdrawal of his agreement to use PAPT for S&P to the BMI, and shall in such case of withdrawal notify the Seller forthwith.
- 10. Notwithstanding anything herein provided to the contrary and without limitation to the generality of paragraph **Error! Reference source not found.**, the adoption of PAPT

for S&P for the Conveyancing Transaction is subject to the assessment and discretion of the BMI and the Appointee Bank.

11. The Buyer hereby represents, warrants, acknowledges and agrees that it shall not rescind or nullify the T&C and that no agreement that will be inconsistent with any part of the T&C has been or will be entered into, save and except the withdrawal of the agreement under paragraph 9.

Settlement of the Payment Amount

12. The Buyer hereby acknowledges and agrees that, upon receipt by the Appointee Bank of the Payment Amount from the BMI, the Appointee Bank is authorised to hold the Payment Amount received by it from the BMI in the PAPT Dedicated Account during the Interim Period subject to the refund mechanism as set out in paragraph 16.
13. Notwithstanding any contrary provisions, arrangements or agreements, the Buyer hereby acknowledges and agrees without any recourse that the Appointee Bank is authorised and has the right to: -
 - (a) hold the Payment Amount for and on behalf of the Seller and the Buyer jointly during the Interim Period; and
 - (b) distribute, return or otherwise deal with the Payment Amount in accordance with the T&C.
14. The Buyer hereby acknowledges and agrees that upon receipt by the Appointee Bank of the Payment Advice and confirmation of completion of the Conveyancing Transaction by 5:30pm on Dday from the Seller's solicitors or the Appointee Bank's solicitors, the Appointee Bank is authorised and has the right to apply the Payment Amount in the following manner:
 - (a) firstly (applicable where there is a Seller's Mortgage), discharging any outstanding amount secured by the Seller's Mortgage; and
 - (b) secondly, crediting (i) any surplus of the Payment Amount after the step in paragraph 14(a) above where applicable; or (ii) (where there is no Seller's Mortgage) the Payment Amount (in each case of (i) and (ii), less any fees and charges due and payable to the Appointee Bank) to the Seller's Account (*if the Seller's Account is held with the Appointee Bank*) or by transfer to the Seller's Bank (*if the Seller's Account is not held with the Appointee Bank*).

For the avoidance of doubt, receipt of the Payment Advice by the Seller's solicitors or the Appointee Bank's solicitors does not constitute receipt by the Appointee Bank of the Payment Advice for the purpose of this paragraph 14.

15. The Buyer hereby acknowledges and agrees that he has no rights (and hereby waives any such rights) to, whether acting on its own or acting jointly with the Seller, demand the Appointee Bank for the Payment Amount (or any part of it) during the Interim Period.

Refund of Payment Amount

16. (a) If:

- (i) on or before the Dday, the Appointee Bank is notified in writing by its solicitors or the Seller's solicitors that the completion of the Conveyancing Transaction has fallen through (and for the avoidance of doubt, receipt of such notification by the Seller's solicitors or the Appointee Bank's solicitors is not deemed to be receipt by the Appointee Bank of such notification for the purpose of this paragraph 16(a)(i)); and
- (ii) the Appointee Bank has nevertheless received from the BMI via CHATS (or via internal bank transfer where the BMI and the Appointee Bank are the same entity) the Payment Amount in the PAPT Dedicated Account of the Appointee Bank; or

(b) If:

- (i) by 5:30pm on Dday, the Appointee Bank has not received the Payment Advice in accordance with paragraph 14 above (and for the avoidance of doubt, receipt of Payment Advice by the Seller's solicitors or the Appointee Bank's solicitors is not deemed to be receipt by the Appointee Bank of the Payment Advice for the purpose of this paragraph 16(b)(i); and
- (ii) the Appointee Bank has nevertheless received from the BMI via CHATS (or via internal bank transfer where the BMI and the Appointee Bank are the same entity) the Payment Amount in the PAPT Dedicated Account of the Appointee Bank,

the Appointee Bank is authorised by the Buyer to and that the Appointee Bank has the right to refund the Payment Amount that has been remitted by the BMI to, and received by, the Appointee Bank to the BMI's PAPT Dedicated Account and shall not be obliged to seek prior consultation with or approval of either the Buyer or the Seller or any of their solicitors.

17. The Buyer hereby acknowledges and agrees that the neither the BMI nor Appointee Bank shall be responsible nor liable for any claims, demands, cost, loss or damage whatsoever incurred directly or indirectly by any refund of the Payment Amount being made in accordance with paragraph 16 above.

Rights of Third Parties

18. Each of the BMI and the Buyer acknowledges and agrees that the Appointee Bank has a commercial interest and benefit arising out of the T&C, including but not limited to (i) the disclaimers as described in paragraph 3, (ii) the settlement of the Payment Amount directly by the Appointee Bank as described in paragraphs 12 to 15, (iii) the refund of the Payment Amount directly by the Appointee Bank as described in paragraph 16 above, and that the Appointee Bank may enforce paragraphs 3, 12 to 15 and 16 of the T&C.

19. Subject to paragraph 18 above: -

- (a) the T&C shall not create or give rise to, nor shall it be intended to create or give rise to, any third party rights;
- (b) no third party shall have any right to enforce or rely on any provision of the T&C which does or may confer any right or benefit on any third party, directly or indirectly, expressly or impliedly; and
- (c) the application of any legislation giving rise to or conferring on third parties contractual or other rights (including without limitation the Contracts (Rights of Third Parties) Ordinance) in connection with the T&C is hereby expressly excluded.

PART 3 – T&C FORMING PART OF THE APPOINTEE BANK-SELLER CONTRACT ONLY

Adoption of PAPT for S&P

- 20. By incorporating the T&C into the Appointee Bank-Seller Contract, the Seller agrees that Parts 1 and 3 of the T&C shall be adopted.
- 21. The Seller may withdraw his agreement for adoption of PAPT for S&P up to (but no later than) 5 Business Days before Dday by notifying in writing the withdrawal of his agreement to use PAPT for S&P to the Appointee Bank, and shall in such case of withdrawal notify the Buyer forthwith.
- 22. Notwithstanding anything herein provided to the contrary and without limitation to the generality of paragraph 20, the adoption of PAPT for S&P for the Conveyancing Transaction is subject to the assessment and discretion of the Appointee Bank and the BMI.
- 23. The Seller hereby represents, warrants, acknowledges and agrees that it shall not rescind or nullify the T&C and that no agreement that will be inconsistent with any part of the T&C has been or will be entered into, save and except the withdrawal of agreement under paragraph 21.

Settlement of the Payment Amount

- 24. The Seller hereby acknowledges and agrees that, upon receipt by the Appointee Bank of the Payment Amount from the BMI, the Appointee Bank is authorised to hold the Payment Amount received by it from the BMI in the PAPT Dedicated Account during the Interim Period subject to the refund mechanism as set out in paragraph 29.
- 25. Notwithstanding any contrary provisions, arrangement or agreements, the Seller hereby acknowledges and agrees without recourse that the Appointee Bank is authorised to and has the right to: -
 - (a) hold the Payment Amount for and on behalf of the Seller and the Buyer jointly during the Interim Period; and

- (b) distribute, return or otherwise deal with the Payment Amount in accordance with the T&C.
26. The Seller hereby acknowledges and agrees that upon receipt of the Payment Advice and confirmation of completion of the Conveyancing Transaction by 5:30pm on Dday from the Seller's solicitors or the Appointee Bank's solicitors, the Appointee Bank is authorised to and has the right to apply the Payment Amount in the following manner:
- (a) firstly (applicable where there is a Seller's Mortgage), discharging any outstanding amount secured by the Seller's Mortgage; and
 - (b) secondly, crediting (i) any surplus of the Payment Amount after the step in paragraph 26(a) above where applicable or (ii) (where there is no Seller's Mortgage) the Payment Amount (in each case of (i) or (ii), less any fees and charges due and payable to the Appointee Bank) to the Seller's Account (*if the Seller's Account is held with the Appointee Bank*) or by transfer to the Seller's Bank (*if the Seller's Account is not held with the Appointee Bank*).

For the avoidance of doubt, receipt of the Payment Advice by the Seller's solicitors or the Appointee Bank's solicitors does not constitute receipt by the Appointee Bank of the Payment Advice for the purpose of this paragraph 26.

27. The Appointee Bank shall:
- (a) hold the Payment Amount for and on behalf of the Seller and the Buyer jointly during the Interim Period;
 - (b) distribute, return or otherwise deal with the Payment Amount in accordance with the T&C; and
 - (c) apply the Payment Amount in the manner described in paragraph 26.
28. The Seller hereby acknowledges and agrees that he has no rights (and hereby waives any such rights) to, whether acting on its own or acting jointly with the Buyer, demand the Appointee Bank for the Payment Amount (or any part of it) during the Interim Period.

Refund of Payment Amount

29. (a) If:
- (i) on or before the Dday, the Appointee Bank is notified in writing by its solicitors or the Seller's solicitors that the completion of the Conveyancing Transaction has fallen through (and for the avoidance of doubt, receipt of such notification by the Seller's solicitors or the Appointee Bank's solicitors is not deemed to be receipt by the Appointee Bank of such notification for the purpose of this paragraph 29(a)(i)); and
 - (ii) the Appointee Bank has nevertheless received from the BMI via CHATS (or via internal bank transfer where the BMI and the Appointee Bank

are the same entity) the Payment Amount in the PAPT Dedicated Account of the Appointee Bank; or

(b) If:

- (i) by 5:30pm on Dday, the Appointee Bank has not received the Payment Advice in accordance with paragraph [26] above (and for the avoidance of doubt, receipt of Payment Advice by the Seller's solicitors or the Appointee Bank's solicitors is not deemed to be receipt by the Appointee Bank of the Payment Advice for the purpose of this paragraph 29 (b)(i)); and
- (ii) the Appointee Bank has nevertheless received from the BMI via CHATS (or via internal bank transfer where the BMI and the Appointee Bank are the same entity) the Payment Amount in the PAPT Dedicated Account of the Appointee Bank,

the Appointee Bank is authorised by the Seller to and that the Appointee Bank has the right to refund the Payment Amount that has been remitted by the BMI to, and received by, the Appointee Bank to the BMI's PAPT Dedicated Account and shall not be obliged to seek prior consultation with or approval of either the Buyer or the Seller or any of their solicitors.

- 30. The Appointee Bank shall refund the Payment Amount in accordance with paragraph 29.
- 31. The Seller hereby acknowledges and agrees that the neither Appointee Bank nor the BMI shall be responsible nor liable for any claims, demands, cost, loss or damage whatsoever incurred directly or indirectly by any refund of the Payment Amount being made in accordance with paragraph 29 above.
- 32. The Seller hereby acknowledges and agrees that:
 - (a) it will not, and will not seek to, countermand the refund authorisations as relied upon by the Appointee Bank and as set out in paragraph 29 above;
 - (b) the Appointee Bank has the right and authority to carry out the refund as set out in paragraph 29 notwithstanding any contrary or inconsistent instructions from the Seller.

Rights of Third Parties

- 33. Each of the Appointee Bank and the Seller acknowledges and agrees that the Buyer has a commercial interest and benefit arising out of the T&C, including but not limited to the handling of the Payment Amount as described in paragraph 27, the refund of the Payment Amount directly by the Appointee Bank as described in paragraph 29 above and the non-countermand provisions as described in paragraphs 28 and 32, and that the Buyer may enforce paragraphs 27, 28, 29 and 32 of the T&C.
- 34. Subject to paragraph 33 above: -

- (a) the T&C shall not create or give rise to, nor shall it be intended to create or give rise to, any third party rights;
- (b) no third party shall have any right to enforce or rely on any provision of the T&C which does or may confer any right or benefit on any third party, directly or indirectly, expressly or impliedly; and
- (c) the application of any legislation giving rise to or conferring on third parties contractual or other rights (including without limitation the Contracts (Rights of Third Parties) Ordinance) in connection with the T&C is hereby expressly excluded.