

**TemplateSAMPLE Clauses in the ~~[Provisional/Formal Agreement]~~ for Sale and Purchase Agreement**

**For Payment Arrangements for Property Transactions – Sale & Purchase Scenario<sup>1</sup>**

1. The parties agree ~~to~~ the following ~~additional~~ terms and conditions shall supersede the payment clause at Clause [\*] herein if the parties agree to adopt PAPT for S&P (as defined below) in this sale and purchase Provided Always the following ~~terms and the terms~~ Clauses [2 to 10] hereof shall ~~not be incorporated in nor form part of the formal agreement for sale and purchase (or if already incorporated, shall void and cease to be effective) if any party has elected to withdraw its have effect if there is a withdrawal of the~~ agreement to adopt PAPT for S&P ~~either at the time of signing of the formal agreement for sale and purchase or~~ pursuant to either of the ~~BMI-BuyerPMI/Buy-side~~ Contract (as defined below) or the ~~Appointee Bank-Seller/Sell-side~~ Contract (as defined below) on or before ~~5eight (8)~~ eight (8) Business Days before the completion date, ~~or any of the Conditions under Clause 3 has not been satisfied. In case the following terms and conditions becoming void and cease to have effect, the parties shall not use PAPT for S&P as the method of settlement on completion and:~~
  - (a) the Purchaser shall discharge its obligation to pay the purchase price by way of cashier's order(s) and/or solicitor's cheque(s) in accordance with the payment clause at Clause [\*] herein; and
  - (b) the parties acknowledge that they shall not by reason of a change in the method of payment as hereinbefore provided seek to rescind the sale and purchase of the Property.
2. The ~~BuyerPurchaser~~ and the ~~SellerVendor~~ agree that the ~~Buyer mayPurchaser shall~~ discharge its obligation to pay the balance of the purchase price on completion in the following manner:
  - (a) Subject to Clause 23, if the ~~BuyerPurchaser~~ obtains a mortgage loan from a Bank ("~~BMIPMI~~"), by way of (i) the ~~BMIPMI~~ transferring the net mortgage loan amount ("~~BMIPMI Funds~~") to the ~~Seller'sVendor's~~ existing mortgagee ("~~SMIVMI~~") (or if there is no existing mortgage over the Property, the ~~SAMVAM~~ (as defined below)) via CHATS (or if the ~~BMIPMI~~ and the ~~SMIVMI~~ or the ~~SAMVAM~~ are the same entity, internal fund transfer) in payment or part payment of the balance of the purchase price and (ii) the ~~BMIPMI~~ providing the CHATS Advice or (as the case may be) the Bank Advice in respect of such transfer to the

<sup>1</sup> ~~MandatorySample~~ terms to be incorporated in all ~~PSPAs and~~ FSPAs adopting PAPT for S&P.

~~Seller's~~Vendor's solicitors and to be held by the SMIVMI or the SAMVAM upon the terms and conditions of the T&C (as defined below) (such payment arrangement being "PAPT for S&P"); and

- (b) By way of cashier's order~~(s)~~ and/or ~~solicitors'~~solicitor's cheque(s) in case the BMIPMI Funds fall short of the balance of the purchase price payable on completion.

3. Both the BuyerPurchaser and the SellerVendor agree that the adoption of PAPT for S&P is subject to the following conditions (the "Conditions"):

- (a) the BuyerPMI/Buy-side Contract having been signed ~~the BMI-Buyer Contract~~ and delivered ~~it~~ to the BMIPMI and the ~~Seller having signed the~~ Appointee Bank-Seller/Sell-side Contract having been signed and delivered ~~it~~ to the SMIVMI (or if there is no existing mortgage over the Property, the SAMVAM) in respect of this sale and purchase, by which (among others) each of the BuyerPurchaser and the SellerVendor confirms ~~(among others)~~ its agreement to adopt the T&C for this sale and purchase; and

- (b) the following consents having been obtained no later than [●] Business Days prior to the completion date:

- (i) the BuyerPurchaser shall ~~first~~ obtain the consent of the BMIPMI to adopt PAPT for S&P in this sale and purchase; and
- (ii) ~~if the BMI consents, the~~ SellerVendor shall obtain the consent of the SMIVMI (or if there is no existing mortgage over the Property, the SAMVAM) to adopt PAPT for S&P in this sale and purchase.

- ~~4. For the avoidance of doubt, if (i) the Conditions have not been satisfied in accordance with Clause 2, or (ii) the parties do not use PAPT for S&P as the method of settlement on completion for any other reason:~~

- ~~(a) the Buyer shall discharge its obligation to pay the purchase price by way of cashier's order and/or solicitors' cheque; and~~

- ~~(b) the parties acknowledge that they shall not by reason of a change in the method of settlement seek to rescind the sale and purchase of the Property.~~

- 5.4. If PAPT for S&P is adopted in this sale and purchase, the SellerVendor through its solicitors shall be entitled, by giving the BuyerPurchaser or its solicitors at least [two] Business Days' prior notice in writing, to require the BuyerPurchaser to split payment in respect of the balance of the purchase price (if any) less the BMIPMI

Funds and deliver to the ~~Seller's~~Vendor's solicitors one or more cashier's order(s) and/or ~~solicitors'~~solicitor's cheque(s) issued in favour of the person(s) or party/parties entitled to such payment(s).

~~6.5.~~ [Conveyancing Scenario 1- Contract completion note: when there is an existing ~~Seller's~~Vendor Mortgage to be discharged. Delete as appropriate.]

On completion, the ~~Buyer~~Purchaser shall give directions as to the following:

- (a) The ~~BMIPMI~~ shall transfer the ~~BMIPMI~~ Funds to the ~~SMIVMI~~ via CHATS or (as the case may be) internal fund transfer before 12 noon. Such payment of the ~~BMIPMI~~ Funds by the ~~BMIPMI~~ to the ~~SMIVMI~~ shall be evidenced by the CHATS Advice or (as the case may be) the Bank Advice that is issued to the ~~BMIPMI~~ following such payment;
- (b) The ~~Buyer's~~Purchaser's solicitors shall deliver to the ~~Seller's~~Vendor's solicitors by [5:00pm]<sup>2</sup> or such other earlier time as agreed between the parties:
  - (i) the CHATS Advice or (as the case may be) the Bank Advice;
  - (ii) cashier's order(s) or ~~solicitors'~~solicitor's cheque(s) in respect of the balance of the purchase price less the ~~BMIPMI~~ Funds (if any); and
  - (iii) the amount of Fees and Expenses (if applicable).

OR

5. [Conveyancing Scenario 2: Contract completion note: when there is no existing ~~Seller's~~Vendor Mortgage. Delete as appropriate.]

The ~~Seller~~Vendor shall designate a HKD account at a Bank in Hong Kong, which serves as the ~~SAMVAM~~, for receiving the ~~BMIPMI~~ Funds. On completion, the ~~Buyer~~Purchaser shall give directions as to the following:

- (a) The ~~Buyer~~PMI shall ~~give directions to the BMI to~~ transfer the ~~BMIPMI~~ Funds to the ~~SAMVAM~~ via CHATS or (as the case may be) internal fund transfer before 12 noon. Such payment of the ~~BMIPMI~~ Funds by the ~~BMIPMI~~ to the ~~SAMVAM~~ shall be evidenced by the CHATS Advice or (as the case may be) the Bank Advice issued to the ~~BMIPMI~~ following such payment;

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<sup>2</sup> The parties must ensure that the time to be agreed is sufficient for CHATS Advice to reach the ~~SMI~~SAMVMI / VAM by 5:30 pm. Please also note the usual deadline for completion in conveyancing transactions is 5:00pm. Please consult the solicitors acting for you to determine the appropriate deadline.

(b) The ~~Buyer's~~Purchaser's solicitors shall deliver to the ~~Seller's~~Vendor's solicitors by 5:00pm<sup>3</sup> or such other earlier time as agreed between the parties:

- (i) the CHATS Advice or (as the case may be) the Bank Advice; and
- (ii) cashier's order(s) or ~~solicitors'~~solicitor's cheque(s) in respect of the balance of the purchase price less the ~~BMIPMI~~ Funds (if any); and
- (iii) the amount of Fees and Expenses (if applicable).

6. The ~~Seller~~Vendor acknowledges and agrees that:

- (a) (if there is an existing ~~Seller's~~Vendor Mortgage over the Property) any surplus of the ~~BMIPMI~~ Funds after deduction of the redemption money for discharging the existing mortgage on completion ("Surplus") will be released by the ~~SMIVMI~~ to the ~~Seller~~Vendor by the End of the completion date (but the actual date of the ~~Seller~~Vendor receiving cleared funds will be subject always to the completion of the Relevant Checks) to a ~~Seller's~~Vendor's bank account in Hong Kong;
- (b) (if there is no existing ~~Seller's~~Vendor Mortgage over the Property) the ~~BMIPMI~~ Funds will be released by the ~~SAMVAM~~ to the ~~Seller~~Vendor by the End of the completion date (but the actual date of the ~~Seller~~Vendor receiving cleared funds will be subject always to the completion of the Relevant Checks) to a ~~Seller's~~Vendor's bank account in Hong Kong;
- (c) the ~~Buyer~~Purchaser shall have fulfilled his obligations for payment of such part of the balance of the purchase price, which is the ~~BMIPMI~~ Funds upon ~~physical~~ delivery of the CHATS Advice or (as the case may be) the Bank Advice to the ~~Seller's~~Vendor's solicitor (but the actual date of the ~~Seller~~Vendor receiving cleared funds will be subject always to the completion of the Relevant Checks);
- (d) the ~~Seller~~Vendor shall be deemed to have acknowledged receipt of the full balance of purchase price on completion, upon receipt by the ~~Seller's~~Vendor's solicitors of (i) the CHATS Advice or (as the case may be) the Bank Advice (in respect of the ~~BMIPMI~~ Funds); and (ii) the ~~Buyer's~~Purchaser's cashier's order(s) or ~~solicitors'~~solicitor's cheque(s) in favour of such party(ies) and in such amount as directed by the ~~Seller's~~Vendor's solicitors (in respect of the balance of the purchase price less the ~~BMIPMI~~ Funds (if any)) (but the actual date of the ~~Seller~~Vendor receiving cleared funds will be subject always to the Relevant Checks); and

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<sup>3</sup> In contrast to Conveyancing Scenario 1, this will not need to be moved to an earlier time of the completion date as the ~~SAMVAM~~ is not expected to have its own solicitors.

- (e) in the event that any Surplus (in the case where there is an existing mortgage) or the BMIPMI Funds (in the case where there is no existing mortgage) is payable to the Seller's Vendor's bank account, there shall be no more than one account of the Seller Vendor for receiving such moneys.
7. The CHATS Advice may be corrected to the extent that the redemption reference quoted therein is incorrect. The parties agree that the BMIPMI shall be entitled to issue a CHATS Advice Correction Notice to correct the redemption reference in the CHATS Advice addressed to the SMIVMI or (as the case may be) the SAMVAM with a copy provided to the BMIPMI's solicitors and the SMIVMI's solicitors (or the Seller's Vendor's solicitors, whichever applicable), stating the correct information. A CHATS Advice that has been duly corrected with a CHATS Advice Correction Notice in such manner shall be deemed a CHATS Advice for the purpose of this sale and purchase.
8. The Seller Vendor shall give directions to his solicitors, after receiving the CHATS Advice or (as the case may be) the Bank Advice from the Buyer's Purchaser's solicitors, to promptly provide the same to the SMIVMI or (as the case may be) the SAMVAM, and in any event no later than such time as may be required by the SMIVMI or the SAMVAM. The Buyer Purchaser shall not be held liable for any failure or delay in the Seller Vendor receiving the Surplus or (as the case may be) the BMIPMI Funds as a result of the Seller's Vendor's solicitors not delivering the CHATS Advice or the Bank Advice as aforesaid or any delay caused by the SMIVMI or the SAMVAM.
9. If the BMIPMI has effected transfer of the BMIPMI Funds to the SMIVMI or (as the case may be) the SAMVAM via CHATS but the BMIPMI does not receive the CHATS Advice after initiating such transfer, the Seller Vendor and the Buyer Purchaser acknowledge and agree that:
- (a) the BMIPMI may promptly arrange for the re-issuance of the CHATS Advice and use such re-issued CHATS Advice for the purpose of discharging the Buyer's Purchaser's obligation to pay the balance of the purchase price on completion in accordance with Clause ~~12~~(a); and
- (b) provided that the BMIPMI has promptly arranged for re-issuance of the CHATS Advice but is unable to receive any re-issued CHATS Advice, it may request the SMIVMI (or if there is no existing mortgage over the Property, the SAMVAM) to confirm whether it has received the BMIPMI Funds from the BMIPMI. If the SMIVMI or the SAMVAM is able to identify the receipt of the BMIPMI Funds, it may issue a written confirmation to the BMIPMI confirming receipt of the

BMIPMI Funds and such confirmation shall replace the CHATS Advice for the purpose of discharging the ~~Buyer's~~Purchaser's obligation to pay the balance of the purchase price on completion in accordance with Clause ~~12~~(a). All references to the CHATS Advice in the foregoing paragraphs shall then be replaced by such written confirmation by the SMIVMI or (as the case may be) the SAMVAM issued to the BMIPMI in such circumstances.

10. If the completion date falls on a day on which a CHATS Failure takes place at any time ~~between 9:00am and 11:00am~~before 12:00 noon:
  - (a) such completion date shall automatically be postponed to the next business day on which no CHATS Failure has occurred ~~between 9:00am and 11:00am~~at any time before 12:00 noon (“**Rescheduled Completion Date**”); and
  - (b) on the Rescheduled Completion Date, the Buyer~~Purchaser~~ and the Seller~~Vendor~~ shall use PAPT for S&P as the method of settlement in accordance with Clause [5].
11. Each of the Seller~~Vendor~~ and the Buyer~~Purchaser~~ acknowledges and agrees that where there is any inconsistency between the additional terms and conditions set out in Clauses [1] to [11] (“**Additional**PAPT Terms”) and any other terms in the agreement for this sale and purchase, the Additional~~PAPT~~ Terms shall prevail.

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[Additional Defined Terms]

~~“Additional Terms” has the meaning given to it in Clause [11].~~

“**Appointee Bank**-~~Seller/Sell-side~~ Contract” means an agreement in respect of this sale and purchase transaction adopting PAPT for S&P signed by the Seller~~Vendor~~ [(and the VMI Borrower, if different from the Vendor)]<sup>4</sup> and addressed to the SMIVMI or (as the case may be) the SAMVAM, which incorporates the terms of the T&C.

“**Bank(s)**” means a company which holds a valid banking licence, as defined in the Banking Ordinance (Cap. 155).

“**Bank Advice**” means a document issued by a Bank in respect of the completion of an internal fund transfer.

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<sup>4</sup> Delete for Conveyancing Scenario 2

~~“BMI” has the meaning given to it in Clause [1(a)].~~

~~“BMI Funds” has the meaning given to it in Clause [1(a)].~~

“**Business Day**” means Monday to Friday excluding ~~Saturday, Sunday and Saturdays, Sundays~~, general holidays defined in the General Holidays Ordinance, Cap. 149 of the Laws of Hong Kong.

~~“BMI-Buyer Contract” means an agreement in respect of this sale and purchase transaction adopting PAPT for S&P signed by the Buyer and addressed to the BMI, which incorporates the terms of the T&C.~~

“**Conditions**” has the meaning given to it in Clause [23].

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

“**CHATS Advice**” means a document in a format that is printable by the BMI/PMI only, which is issued automatically by Hong Kong Interbank Clearing Limited to BMI/PMI on the CHATS interface immediately after a payee receives payment in its settlement account from a payor via CHATS.

“**CHATS Failure**” means a system failure of CHATS which prevents the BMI/PMI from making remittance or transfer to the SMI/VMI or (as the case may be) the SAM/VAM via CHATS.

“**End of the completion date**” means 11:59pm on the completion date.

“**Fees and Expenses**” means fees and expenses agreed to be settled between the ~~Buyer~~Purchaser and the ~~Seller~~Vendor, including but not limited to rental deposit, utilities deposit, management fee, or stakeholders' money such as renovation money (if applicable).

“**PAPT for S&P**” has the meaning given to it in Clause [12(a)].

“PAPT Terms” has the meaning given to it in Clause [11].

“PMI” has the meaning given to it in Clause [2(a)].

“PMI Borrower” means the borrower under the bank facilities granted by the PMI which are secured by the Purchaser’s mortgage over the Property.

“PMI/Buy-side Contract” means an agreement in respect of this sale and purchase transaction adopting PAPT for S&P signed by the Purchaser (and the PMI Borrower, if different from the Purchaser) and addressed to the PMI, which incorporates the terms of the T&C.



“PMI Funds” has the meaning given to it in Clause [2(a)].

“**Relevant Checks**” means any customary screening in respect of funds received by the ~~SMI~~VMI or (as the case may be) the ~~SAM~~VAM in compliance with the internal policy of the relevant Bank and all applicable laws and regulations.

~~“**Seller’s Account Maintainer**” means a Bank that provides mortgage services for the purpose of receiving BMI Funds and is a participating institution of CHATS.~~

~~“**SMI**” has the meaning given to it in Clause [1(a)].~~

“**Surplus**” has the meaning given to it in Clause [6].

“**T&C**” means “Terms and Conditions in relation to the operation of PAPT” as referred to in each of the ~~BMI-Buyer~~PMI/Buy-side Contract and the Appointee Bank-~~Seller~~Sell-side Contract.

“**VAM**” means a Bank that provides mortgage services for the purpose of receiving PMI Funds and is a participating institution of CHATS.

“**VMI**” has the meaning given to it in Clause [2(a)].

“**VMI Borrower**” means the borrower under the bank facilities granted by the VMI which are secured by the existing mortgage over the Property.