



Counter-Indemnity (Specific)

To : Hang Seng Bank Limited

DC/BG No.(For Bank Use)

Attn : Trade Services, Customer Unit _____

IN CONSIDERATION OF your agreeing to issue or continue, or procuring the issuance or continuance of, a guarantee, standby letter of credit, bond, indemnity or undertaking, however named or described (the **"Guarantee"**, whether such Guarantee is jointly issued by you and other person(s) and which expression shall include any extension, amendment, modification or renewal of such Guarantee) to *(Full Name of the Beneficiary)*

(the **"Beneficiary"**, which expression shall include where applicable any assignee, successor or transferee) pursuant to our request or application to you, we *(Full Name of the Customer)* _____

_____ (the **"Customer"**)

HEREBY AGREE with you as follows:

1. In this Counter-Indemnity, the following terms and conditions shall have the meanings below:-
 - (a) **"Bank"** or **"you"** means Hang Seng Bank Limited of 83 Des Voeux Road Central, Hong Kong and its successors and assigns and, where the context permits, includes the Bank's delegate(s) under this Counter-Indemnity;
 - (b) **"Correspondent"** means any bank (including any of your branch or group office) which issues a Guarantee at your request or instruction;
 - (c) **"Counter-guarantee"** means each counter-guarantee, counter-indemnity, indemnity, standby letter of credit or undertaking, however named or described and in such form and content as determined by you at your sole discretion, which is at any time issued by you to a Correspondent in order to procure, arrange or facilitate the issuance of the Guarantee by the relevant Correspondent, and includes any amendment, extension or renewal of a Counter-guarantee; and
 - (d) **"Guarantee Instrument"** means the Guarantee at any time issued by you or a Correspondent, or a Counter-guarantee.
2. THE Customer HEREBY UNCONDITIONALLY AND IRREVOCABLY AGREES TO INDEMNIFY you against all actions, proceedings, claims, demands, liabilities, payments, losses, taxes, damages, costs, charges and expenses of whatever nature (including legal costs on a full indemnity basis) which you may sustain, suffer or incur in connection with or arising in any way whatsoever out of the Guarantee Instrument, including but not limited to your actual or attempted enforcement of your rights under this Counter-Indemnity and TO PAY to you ON DEMAND all monies and liabilities whatsoever (whether actual or contingent) which may from time to time be claimed or demanded from you, or which you pay or become liable to pay or sustain, suffer or incur under or by reason of or in connection with the Guarantee Instrument.
3. THE Customer shall on demand pay you interest on each payment made by you under or in connection with any Guarantee Instrument calculated from the date of your payment until the date on which the Customer reimburses you in full for such payment. The interest shall accrue at such rate as you and the Customer may agree or, in the absence of such agreement, at such rate determined by you.
4. THE Customer shall pay you, for so long as any Guarantee Instrument is in force, commission(s) at such rate(s) as agreed between you and the Customer from time to time on your maximum liability (whether actual or contingent) under that Guarantee Instrument. Such commission shall be payable in advance on the date of your issue of the Guarantee Instrument and at such intervals as determined by you.
5. YOU are hereby irrevocably authorised and empowered by the Customer, without making prior demand, to debit the accounts of the Customer with any moneys from time to time payable under this Counter-Indemnity and, in the event of a debit balance or a debit balance in excess of any agreed overdraft limit resulting therefrom, to charge interest on such monies until the date of repayment in full (notwithstanding any demand or any judgment obtained by you or any other matter whatsoever) at such rate and upon such terms as you and the Customer may agree from time to time or, in the absence of such agreement, at such rate determined by you.
6. YOU (and, as the case may be, any Correspondent) are hereby further irrevocably authorised and empowered by the Customer to pay immediately any amounts claimed or demanded from you or any Correspondent or which you or any Correspondent may from time to time become liable to pay, or comply with any demands or claims made under or by reason of any Guarantee Instrument without any reference to or further authority from the Customer and without being under any duty to enquire whether any claims or demands on you or any Correspondent have been properly made, and notwithstanding that the validity or amount of any such claim or demand or the underlying transaction or the amount of such claim or demand shall be in dispute.
7. THE Customer shall accept any claim or demand on you (and, as the case may be, any Correspondent) as conclusive evidence that you (and any Correspondent) were liable to pay or comply with and any payment made pursuant to such claim or demand which purports to be in accordance with any Guarantee Instrument as binding upon the Customer. WITHOUT prejudice to the foregoing, the Customer agrees that neither you nor any Correspondent shall be obligated to verify any statements contained in any of the notices or other documents which may be served on or presented to you or any Correspondents under the terms of the Guarantee Instrument and you and any Correspondent shall be entitled to accept the statements therein as conclusive evidence of the facts stated.
8. ANY step taken by you and/or any Correspondent in good faith under or in connection with any Guarantee Instrument shall be binding on the Customer and shall not place you or any Correspondent under any liability to the Customer.
9. YOU (and, as the case may be, any Correspondent) may at any time without prior reference to the Customer determine the Guarantee Instrument or reduce the liability thereunder if such determination or reduction is permissible under the Guarantee Instrument.

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10. (a) ALL sums payable by the Customer to you under this Counter-Indemnity and any documents relating to the issuance of the Guarantee Instrument(s) shall be paid to you in the Hong Kong Special Administrative Region, or otherwise as you may from time to time direct, without any deduction or withholding for or on account of any present or future taxes, levies, imposts, duties or other charges, fees, withholdings, restrictions or conditions, and without set-off or counterclaim or any deduction whatsoever. If the Customer is compelled by law to make any such deduction or withholding from any payment to you, the Customer will ensure that the amount deducted or withheld does not exceed the minimum legal liability therefor, and will promptly pay to you such additional amount as will result in, after the making of such deduction or withholding, the total amount received by you on the due date for such payment (and retained by you, free from any liability in respect of such deduction or withholding) being equal to the full amount which would have been received by you had there been no such deduction or withholding and it is the sole responsibility of the Customer to effect payment of such deduction or withholding to the relevant authority within the applicable time limit. The Customer shall indemnify you against any losses, liabilities, interest, penalties, or cost and expenses which you may incur or suffer due to any failure of the Customer to make any such deduction or withholding or to effect payment of such deduction or withholding to the relevant authority within the applicable time limit or by reason of any increased payment not being made on the due date for such payment. The Customer shall also provide you upon your request conformed copies of documents or evidence satisfactory to you that evidence that such deduction or withholding has been made or (as applicable) any appropriate payment paid to the relevant authority.
- (b) Any sum entitled by you under the Guarantee Instrument(s) and any fee or charge referred to in any documents relating to the issuance of the Guarantee and the Counter-guarantee are exclusive of any value added tax, goods and services tax or any other tax which might be chargeable in connection with that sum or that fee or charge (whichever applicable). If any value added tax, goods and service tax or other tax is so chargeable, it shall be borne by and paid by the Customer at the same time as it pays the sum or the relevant fee or charge (whichever applicable).
11. IF the effect of any, or a change in any, law or regulation is to increase the cost to you for issuing or continuing the Guarantee Instrument or to reduce the effective return to you, the Customer hereby agrees to make payment on demand of such amounts as you consider necessary as compensation therefor.
12. ALL payments hereunder shall be made, at your option, either in the currency in which payments made or liabilities incurred by you or any Correspondent under the Guarantee Instrument(s) are denominated, or in the currency commonly in use in any of the principal places of business of the Customer, or in Hong Kong Dollars. If any sum is due but unpaid by the Customer under this Counter-Indemnity, the Customer shall on demand pay your default interest rate on such sum at the default rate determined by you.
13. The Customer agrees to provide cash cover and/or other form of acceptable security sufficient to fully secure your liability (whether actual or contingent) under the Guarantee Instrument if at any time this is demanded by you.
14. (a) THIS Counter-Indemnity shall not be in any way discharged or diminished, nor shall the liability of the Customer be affected by reason of you or any Correspondent from time to time, without knowledge or consent of the Customer:
 - (i) varying, realising or releasing any of the same, or granting any time, waiver, consent, indulgence or concession to or compounding with the Beneficiary, any counter-guarantor, any correspondent or any other person, or concurring in accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment;
 - (ii) enforcing, determining, varying, reducing or extending the terms of any Guarantee Instrument;
 - (iii) any incapacity, disability or lack of power, authority or legal personality, dissolution, insolvency, winding-up, bankruptcy, liquidation, amalgamation, merger, change in the constitution or status of you, the Beneficiary, any counter-guarantor, any Correspondent or any other person under any Guarantee Instrument or any underlying transaction;
 - (iv) any unenforceability, illegality or invalidity of any obligation of the Beneficiary, any counter-guarantor, any Correspondent or any other person under any Guarantee Instrument or the underlying transaction; or
 - (v) anything done or omitted which, but for this provision, might operate to exonerate the Customer.Without prejudice to the generality of the foregoing, this Counter-Indemnity is and shall continue to remain valid and legally binding upon the Customer notwithstanding that any Guarantee Instrument is or has, for whatever reason, become wholly or in part invalid or unenforceable against you or any Correspondent for whatever reason.
- (b) THE Customer waives any right it may have of first requiring you to proceed against or enforce any other rights or security or claim payment from any person (including but not limited to any counter-guarantor) before claiming from the Customer under this Counter-Indemnity.
15. THE Customer hereby waives all rights of subrogation and agrees not to claim any set-off or counterclaim against any other person, or to claim or prove in competition with you in the event of the bankruptcy, liquidation, winding up or insolvency of any such person, or to have the benefit of or share in any guarantee, indemnity, or security now or hereafter held by you, until you have been fully indemnified against all matters referred to in this Counter-Indemnity.
16. THIS Counter-Indemnity is in addition to any other guarantee, indemnity, assurance, pledge, lien, bill, note, mortgage, charge, debenture, or other security, right, power or remedy now or hereafter held by or available to you.
17. Where a compliant demand includes a request to extend the expiry of any Guarantee Instrument as an alternative, the Customer agrees and confirms that the Bank or a Correspondent shall have no obligation to extend and may elect to make payment notwithstanding objections from the Customer.
18. ANY notice, demand or other communication to be given hereunder or in respect of any Guarantee Instrument shall be in writing and may be made by letter or facsimile and sent to (i) in the case of the Customer, the last address registered with you and (ii) in your case, the principal office in Hong Kong or such other address as you may notify the Customer for this purpose.
19. ANY notice, demand or other communication made by you to the Customer shall be deemed to be effective (a) if by way of personal delivery, when it has been delivered to or left at the address of the Customer; (b) if by way of post, on the second day following the day of posting; (c) if by way of facsimile, when dispatched. Any notice, demand or other communication made or delivered by the Customer to you shall be effective only when it has been actually received by you.
20. THE Customer agrees that no time for limitation of liability in respect of this Counter-Indemnity shall begin to run in favour of the Customer unless and until you shall have made demand on the Customer, and if more than one demand is made, then only from the date and to the extent of each demand respectively.
21. THE Customer agrees to accept that any Guarantee Instrument issued by you to any Correspondent or a beneficiary shall in all respect be considered valid and enforceable in accordance with its terms (whether or not such Correspondent or beneficiary is a third party or another branch or office of Hang Seng Bank Limited). The Customer shall not challenge any payment made or to be made by you pursuant to the terms of any Guarantee Instrument, and the payment may be made by way of cash payment, book entry, transfer of funds or otherwise as determined by you. If any Correspondent is another branch or office of Hang Seng Bank Limited, the terms of this Counter-Indemnity shall also be enforceable by the Correspondent against the Customer as if any reference to "you" in this Counter-Indemnity included such Correspondent.

22. WHERE this Counter-Indemnity is signed by more than one person,
- (a) the expression “the Customer” shall be construed as referring to each such person individually and to any one or more of such persons collectively, and the agreements, undertakings, obligations and liabilities of the Customer herein contained are joint and several and shall be construed accordingly;
 - (b) none of the Customer shall be entitled to any rights or remedies, legal or equitable, of a surety as regards the indebtedness, obligations or liabilities of any other Customer,
 - (c) each of the Customer agrees and consents to be bound by this Counter-Indemnity, notwithstanding that any others who were intended to sign or to be bound by this Counter-Indemnity may not do so or be effectually bound hereby, and notwithstanding that this Counter-Indemnity may be invalid or unenforceable against any one or more of the Customer, whether or not the deficiency is known to you; and
 - (d) you shall be at liberty to release any one or more of the Customer from this Counter-Indemnity, to compound with or otherwise vary or agree to vary the liability of, or to grant time or other indulgence to, or make other arrangements with, any one or more of the Customer, without prejudicing or affecting your rights, powers and remedies against any others of the Customer.
23. WHERE it is necessary, in your opinion, to require the beneficiary of any Guarantee Instrument to confirm in writing of the release or discharge of your liabilities under any Guarantee Instrument and such confirmation is not provided to you, the Customer agrees that it shall remain liable under this Counter-Indemnity notwithstanding that you may, at the Customer’s request, tentatively treat the Guarantee Instrument as cancelled and /or take all or any of the following steps:
- (a) release any guarantee or security held by you for the Guarantee Instrument;
 - (b) amend the bank records to reflect the tentative cancellation of the Guarantee Instrument; and
 - (c) cease charging any commission or other fees in relation to the Guarantee Instrument.
24. WHERE this Counter-Indemnity is signed on behalf of a partnership or body unincorporate,
- (a) all agreements, undertakings, obligations and liabilities shall be binding both on the present and future partners, on the persons from time to time carrying on business in the name of such partnership or under the name in which the business of such partnership may from time to time be continued or on all members of such body unincorporate (as the case may be); and
 - (b) each of the undersigned further confirms and represents to the Bank that he/she has the authority to act for all partners or all members (as the case may be) of such partnership or body unincorporate and his/her execution of this Counter-Indemnity will be binding on all partners or all members of such partnership or body unincorporate.
25. THIS Counter-Indemnity is governed by and shall be construed in all respects in accordance with the laws of the Hong Kong Special Administrative Region (“**Hong Kong**”) and the Customer hereby irrevocably submits to the non-exclusive jurisdiction of the Hong Kong courts, but it shall be open to you to enforce this Counter-Indemnity in the courts of any other competent jurisdiction.
26. NO person other than you and the Customer will have any right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623, Laws of Hong Kong) to enforce or enjoy the benefit of any of the provisions of this Counter-Indemnity.
27. IF any one or more provisions of this Counter-Indemnity, or any part thereof, shall be declared or adjudged to be illegal, invalid or unenforceable under any applicable law, such illegality, invalidity or unenforceability shall not vitiate any other provisions of this Counter-Indemnity, which shall remain in full force, validity and effect.

Dated this _____ day of _____

For and on behalf of the Customer	
<input checked="" type="checkbox"/> _____ Authorised Signature(s) and Company Stamp (if applicable)	
Name of the signatory(ies)	
Title of the signatory(ies)	

Witness:
<input checked="" type="checkbox"/> _____
Full Name (in Block Letters)
Address

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