

## **Services Agreement Standard Terms and Conditions**

### **Delegation**

Cape International shall be entitled to delegate the performance of any of the services (“**Services**”) set forth in the Services Agreement to any one or more direct and/or indirect affiliates of Cape International. Each such party to which any performance is delegated is referred to herein as a “**Representative**”. The parties to the Services Agreement (“**Party**” or “**Parties**”) acknowledge and agree that Cape International will make available any and all of its employees, agents and other resources, which Cape International, at its sole discretion, determines to be necessary for it to perform its Services under the Services Agreement.

### **Client Information**

The Client will furnish Cape International with all information concerning the Client and its operations that Cape International deems necessary or appropriate (“**Client Information**”). The Client acknowledges and agrees that Cape International will be using and relying on the Client Information without independent verification thereof or independent appraisal of any of the Client's assets and may, in its sole discretion, use additional information contained in public reports or other information furnished by the Client or third parties. Cape International and each Representative shall not be responsible for any inaccuracy in nor be required to verify the accuracy of the Client Information.

The Client shall indemnify Cape International and each Representative against any losses, costs and expenses incurred or borne as a result of any such Client Information being inaccurate and/or misleading.

The provisions contained in this Client Information paragraph shall survive the termination of the Services Agreement.

### **Responsibility for Decisions**

The Client shall have the option in its sole discretion to accept, reject or modify any information or advice rendered to it by Cape International and/or each Representative and all decisions in relation to the Services shall be made by and be the sole responsibility of the Client which shall make an independent analysis of the Services in conjunction with its own professional advisers.

### **Accuracy of Data**

Cape International and/or each Representative make no representation or warranty to the Client as to the accuracy or completeness of data or information gathered by Cape International and/or each Representative or the operational condition, financial condition, capabilities, creditworthiness, affairs, status and nature of any party to the Project.

### **Ownership of Work Product**

Any work product produced by Cape International in the course of the provision of the Services remains Cape International’s exclusive property. However, subject to the Client

complying with all of its obligations under the Services Agreement and these standard terms, and making all required payments to Cape International, the Client is granted a non-transferable, non-assignable and non-exclusive license to use such property solely for the purposes contemplated in the Services Agreement (but not otherwise).

### **Records**

All business records, papers and documents of the Client (including, but not limited to, client information, business plans, projections, business and regulatory filings, financial data and records of the Client) are the property of the Client (except for property of Cape International) and shall be available for inspection and copying by Cape International during regular business hours. Upon the termination of the Services Agreement, Cape International shall promptly return to the Client in an orderly manner all business records, papers and documents of the Client then in the possession of Cape International. The Client agrees that Cape International may retain a copy of all such records, papers and documents for regulatory reporting, archival purposes and resolution of rights under the Services Agreement.

### **Independent Contractor Relationship**

In the performance of the work, duties and obligations described hereunder, it is mutually understood and agreed that each Party is at all times acting and performing as an independent contractor with respect to the other and that no relationship of partnership, joint venture, or employment is created by the Services Agreement. Neither Party, nor any other person performing services on behalf of either Party pursuant to the Services Agreement, shall have any right or claim against the other Party under the Services Agreement for social security benefits, workers' compensation benefits, disability benefits, unemployment insurance benefits, health benefits, vacation pay, sick leave, or any other employee benefits of any kind.

### **Other Activities**

Nothing herein shall in any way preclude Cape International or its officers, employees, agents, representatives, members or affiliates from engaging in any business activities or from performing services for its or their own account or for the account of others, including for companies that may be in competition with the business conducted by the Client.

### **Nature of Services**

The Client acknowledges that the provision of the Services do not constitute taxation, legal, or accounting advice. It is acknowledged that Cape International does not hold itself out as, nor do Cape International's directors, employees and consultants hold themselves out as financial, taxation or legal advisers.

Cape International is not an 'investment adviser', a 'broker' or 'dealer' within the meaning of any applicable laws. The Services to be provided by Cape International under the Services Agreement do not include those of an 'investment adviser' (i.e., providing advice as to the value of securities or the advisability of investing in, purchasing or selling securities), or those of a 'broker' or 'dealer' (i.e., effecting transactions in securities for the account of the Client or others). It is specifically

intended by the parties that Cape International's activities hereunder will not subject Cape International to any regulation or registration under any federal, state or other laws.

CAPE INTERNATIONAL (i) DOES NOT REPRESENT ITSELF OR ITS PRINCIPALS AS LEGAL ADVISERS WITHIN THE UNITED STATES OF AMERICA, NOR (ii) DOES IT OR ITS PRINCIPALS PROVIDE ANY LEGAL ADVICE WITH REGARDS TO ANY LAW OR LAWS WITHIN THE UNITED STATES OF AMERICA. ALL LEGAL ADVICE PROVIDED WITH REGARDS TO ANY SPECIFIC JURISDICTION MUST BE OBTAINED FROM LAWYERS ADMITTED IN SUCH JURISDICTIONS.

### **Disclaimer**

Although Cape International undertakes to use all reasonable efforts to fulfill the terms of the Services Agreement to support the Client in connection for the Services, Cape International specifically excludes any warranty with respect to the success or otherwise for Services.

### **Confidentiality**

The terms of the Services Agreement and all the Client Information that is proprietary are intended to be confidential. Neither Party shall disclose to any third party any of the terms of the Services Agreement, or the Client's Information (in the case of Cape International), without the other Party's prior written consent, except (a) to the extent that such disclosures may be required by applicable law, and/or regulation, supervisory authority or other applicable judicial or governmental order, or (b) that such disclosure may be made (on a comparable confidential basis) to the party's lawyers, accountants or tax advisers ("**Advisers**") in the ordinary course of business, provided, however, that any disclosure to such Advisers may be made only after such Advisers have been informed of the confidential nature of the Services, and the Client Information, and shall have been instructed to keep the same confidential.

The Client should be aware that other parties with conflicting interests may also be Cape International's clients, and that Cape International may be providing financial or other services to them. However, consistent with Cape International's long-standing policy to hold in confidence the affairs of its clients, Cape International will not disclose confidential information obtained from the Client to any other Cape International client. By the same principle, Cape International will not use on the Client's behalf, or make available to the Client, confidential information that Cape International has obtained from any other client.

The detailed terms of the Services disclosed to or agreed with the Client reflect certain contacts, structures and techniques which are proprietary to Cape International which, together with advice or analysis (written or oral) rendered or provided to the Client by Cape International and/or each Representative pursuant to this letter are hereafter referred to as "**Cape International Information**". The Client agrees to use the Cape International Information only for the purposes outlined in the Services Agreement and to keep confidential and restrict access to the Cape International Information to:

- (i) employees of the Client who need to know the same for the purpose of approving or maintaining the Project;
- (ii) professional advisers involved in arranging the Project. Such advisers will provide Cape International with a confidentiality undertaking acceptable to Cape International prior to being given any Cape International Information;
- (iii) parties to whom Confidential Information is required to be disclosed by law.

Cape International and each Representative agree to use the Client Information only for the purposes of the provision of the Services and to keep confidential and restrict access to the Client Information to:

- (i) employees of Cape International engaged in the performance of services hereunder;
- (ii) professional advisers involved in the provision of the Services, which will be asked to provide the Client with a confidentiality undertaking prior to being given any Client Information; and
- (iii) parties to whom disclosure of Confidential Information is required by law or by any regulator with whose requests Cape International customarily complies.

Cape International's confidentiality obligations under the Services Agreement shall not apply to any portion of the Client Information which (i) at the time of disclosure to Cape International or thereafter is generally available to and known by the public (other than as a result of a disclosure directly or indirectly by Cape International); (ii) was available to Cape International on a non-confidential basis from a source other than the Client, provided that such source is not and was not bound by a confidentiality agreement with the Client; (iii) has been independently acquired or developed by Cape International without violating any of its obligations under the Services Agreement; or (iv) the disclosure of which is legally compelled (whether by deposition, interrogatory, request for documents, subpoena, civil or administrative investigative demand or other similar process). In the event that Cape International becomes legally compelled to disclose any of the Client Information, Cape International shall provide the Client with prompt prior written notice of such requirement so that the Client may seek a protective order or other appropriate remedy and/or waive compliance with the terms of the Services Agreement.

The provisions contained in this Confidentiality paragraph shall survive the termination of the Services Agreement.

### **Indemnification**

The Client will indemnify and hold harmless Cape International and its officers, employees, agents, representatives, members and affiliates (each being an "**Indemnified Party**") from and against any and all losses, costs, expenses, claims, damages and liabilities ("**Liabilities**") to which such Indemnified Party may become subject under any applicable law, or any claim made by any third party, or otherwise, to the extent they relate to or arise out of the performance of the Services contemplated by the Services Agreement or the engagement of Cape International pursuant to, and the performance by Cape International of the Services contemplated by, the Services

Agreement. The Client will reimburse any Indemnified Party for all reasonable costs and expenses (including reasonable legal fees and expenses) as they are incurred in connection with the investigation of, preparation for or defense of any pending or threatened claim for which the Indemnified Party would be entitled to indemnification under the terms of the previous sentence, or any action or proceeding arising therefrom, whether or not such Indemnified Party is a Party hereto, provided that, subject to the following sentence, the Client shall be entitled to assume the defense thereof at its own expense, with counsel satisfactory to such Indemnified Party in its reasonable judgment. Any Indemnified Party may, at its own expense, retain separate counsel to participate in such defense, and in any action, claim or proceeding in which the Client, on the one hand, and an Indemnified Party, on the other hand, is, or is reasonably likely to become, a party, such Indemnified Party shall have the right to employ separate counsel at the Client's expense and to control its own defense of such action, claim or proceeding if, in the reasonable opinion of counsel to such Indemnified Party, a conflict or potential conflict exists between the Client, on the one hand, and such Indemnified Party, on the other hand, that would make such separate representation advisable. The Client agrees that it will not, without the prior written consent of the applicable Indemnified Party, settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding relating to the matters contemplated hereby (if any Indemnified Party is a party thereto or has been actually threatened to be made a party thereto) unless such settlement, compromise or consent includes an unconditional release of the applicable Indemnified Party and each other Indemnified Party from all liability arising or that may arise out of such claim, action or proceeding. Provided that the Client is not in breach of its indemnification obligations hereunder, no Indemnified Party shall settle or compromise any claim subject to indemnification hereunder without the consent of the Client. The Client will not be liable under the foregoing indemnification provision to the extent that any loss, claim, damage, liability, cost or expense is determined by a court, in a final judgment from which no further appeal may be taken, to have resulted solely from the gross negligence or willful misconduct of Cape International. If an Indemnified Party is reimbursed hereunder for any expenses, such reimbursement of expenses shall be refunded to the extent it is finally judicially determined that the Liabilities in question resulted solely from the gross negligence or willful misconduct of Cape International.

The Client shall indemnify Cape International against any losses, costs and expenses incurred or borne as a result of any such Client Information being inaccurate and/or misleading.

The provisions contained in this Indemnification paragraph shall survive the termination of the Services Agreement.

**Publicity**

Subject as set forth in the paragraph immediately below each of the Client and Cape International agree to keep confidential the engagement of Cape International as adviser and the terms of such engagement as set forth herein.

The Client acknowledges that at an appropriate time after the Services have been completed, Cape International may place a customary announcement in such newspapers and periodicals as it may choose, stating that Cape International has acted as an adviser to the Client in respect of the provision of the Services.

### **General**

The appointment of Cape International does not itself constitute a commitment by Cape International or any of its affiliates to procure loans or provide any other form of financing to, or to underwrite any financing for the Project. Any such commitment would require the receipt of all approvals; the receipt of all necessary consents, permissions, and governmental approvals; and final evaluation of all risks involved, and is not covered in the Services Agreement.

### **Payments**

All payments due to Cape International shall be made without any deductions, withholdings or set-off whatsoever.

Payments not made by the client when due shall be subject to interest as of the date of such delinquency at a rate of five percent (5%) over the prime lending rate as published by the Hong Kong office of HSBC on the date on which such interest begins to accrue, which interest shall be calculated monthly at the times designated for the payment of the delinquent payments.

### **Effect of Termination**

Expiration or termination of the Services Agreement shall not release or discharge either Party from any obligation, debt or liability which shall have previously accrued and remain to be performed upon the date of expiration or termination. Upon expiration or termination, the Client shall pay all outstanding fees and reimburse Cape International for all Cape International's out-of-pocket expenses incurred prior to the date of such expiration or termination and other all compensation due to Cape International with respect to all applicable periods prior to such expiration or termination.

The provisions of any sections or clauses as the context so requires shall survive the termination of the Services Agreement.

### **Third Party Beneficiaries**

The Services Agreement is expressly entered into only by and between the Parties thereto and is only for their benefit. The Parties thereto expressly agree that there is no intent by either Party to create or establish third party beneficiary status rights or their equivalent in any other referenced individual, subcontractor, or third party, and no such third party shall have any right to enforce any right or enjoy any benefit created or established under the Services Agreement.

### **Severability**

Any terms or provisions of any agreement which shall prove to be invalid, void or illegal shall in no way affect, impair, or invalidate any other term or provisions herein and such remaining terms and provisions shall remain in full force and effect. All such terms or provisions which are determined by a court of competent jurisdiction or other dispute

resolution proceeding to be invalid, void or illegal shall be construed and limited so as to allow the maximum effect permissible by law.

### **Legal Fees**

In the event that any party to any agreement shall bring any action at law or in equity to enforce any term, covenant, or condition of such agreement, the prevailing party in such action shall be entitled to recover all costs and expenses, including reasonable legal fees and costs and the costs of any dispute resolution proceedings (including but not limited to those incurred in or relating to any and all trial and appellate proceedings), incurred by such party in connection with such action.

### **Governing Law**

All agreements between the Parties shall be governed by, and enforced in accordance with, the laws of Hong Kong (excluding the choice of law principles thereof). The Parties to such agreement(s) hereby agree to submit to the non-exclusive jurisdiction of the courts located in Hong Kong in any action or proceeding arising out of or relating to such agreement(s).

### **Assignment**

The Client may not assign any agreement with Cape International without the prior written consent of Cape International, which consent may be withheld by Cape International.

### **Successors and Assigns**

Subject to the provisions of these terms regarding assignment, the terms, covenants and conditions contained herein shall be binding upon and inure to the benefit of the successors and assigns of the Parties to any agreement(s) between them.

### **Waiver**

The waiver by Cape International of any one or more defaults, if any, on the part of the Client, shall not be construed to operate as a waiver of any other or future defaults under the same or different terms, conditions or covenants contained in any agreement(s) between the Parties.

### **Caption and Headings**

The captions and headings throughout any agreement(s) between the Parties are for convenience of reference only and shall in no way be held or deemed to be a part of or affect the interpretation of such agreement(s).

### **Entire Agreement and Amendment**

Any agreement states the entire contract between the Parties thereto in respect to the subject matter of such agreement and supersedes any oral or written proposals, statements, discussions, negotiations, or other agreements prior to or contemporaneous with such agreement.

The Parties acknowledge that they have not been induced to enter into any agreement by any oral or written representations or statements not expressly contained in any such agreement.

All agreements may be modified only by mutual agreement of the parties thereto provided that, before any modification shall be operative or valid, it be reduced to writing and signed by the parties thereto.

All rights of a Party are cumulative and not exclusive, unless otherwise explicitly stated herein.

All agreements may be executed in two or more counterparts, and by different parties on separate counterparts. Each set of counterparts showing execution by all parties thereto shall be deemed an original, and shall constitute one and the same instrument.