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**OC/SCMI Short Form Appointment Letter – Hong Kong**

**Pursuant to paragraph 21 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (the “Code”)**

***Instructions for use:***

* *Below is proposed text for a form of agreement to be used to confirm the appointment of an OC or Syndicate CMI by an issuer in connection with a capital markets offering pursuant to paragraphs 21.3.2 and 21.4.1 of the Code.*
* *The form should be modified to reflect the specific circumstances of the mandate, including designation of the role (e.g., OC, SCMI), roles and responsibilities of designated roles, the fee arrangements and fee payment schedule.*
* *This form includes language that is in [brackets] that may be considered optional depending on the circumstances.*
* *Delete all footnotes and drafting instructions before sending to an issuer.*
* *It is contemplated that this form may be used to create a written agreement to be signed by each of the parties or formatted into the body of an email to be agreed to by authorized representatives of each party.[[1]](#footnote-2)*

\*\*\*

[Date]

[Name of Company][[2]](#footnote-3)

[Address]

[Address]

Attention: [ ]

[*Addressee(s)*]:

**Overview/Appointment of [Syndicate Capital Markets Intermediary]/[Overall Coordinator and Syndicate Capital Markets Intermediary]]**

We are pleased to confirm our appointment by [Name of issuer client] (the “Company”) in connection with its proposed Offering as follows:

|  |  |
| --- | --- |
| Name of intermediary: | *[Name of financial institution] (“[short form name]”)* |
| Commercial title: | *[Joint/sole global coordinator; joint bookrunner, joint lead/lead manager] [Draft Note: such titles to be as they will appear on the OC/prospectus cover]* |
| Role under SFC Code of Conduct: | *[Overall coordinator (“OC” and Syndicate capital markets intermediary (“SCMI”))/Syndicate capital markets intermediary (“SCMI”)]* |
| Description of Securities & Offering: | *[Shares] [Currency] [Fixed/Floating] [Perpetual etc*.] *(the “Securities”) to be offered [describe offering] (the “Offering”)* |

Such appointment is made pursuant to paragraph 21 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission [in effect at the time of [the appointment/Offering]] (the “Code”)[and the Listing Rules of the Hong Kong Stock Exchange [in effect at the time of [the appointment/Offering] (the “Listing Rules”)], and is further subject to the terms and conditions set forth herein [and in Appendix A “Terms and Conditions” attached hereto]/ [in the “Terms and Conditions” trailing the body of this message].]

As used herein, “[short form financial institution name]” shall mean [**Use entity as per above**] and/or any affiliate thereof, as we determine appropriate to perform the services described herein. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Code.

1. **Roles and Responsibilities**
   1. SCMI

We shall perform such services and activities as required of an SCMI pursuant to paragraph 21.1.1 of the Code[, which includes, among other things, advising, guiding and assisting the Company in bookbuilding and placing activities in connection with the Offering. For the purposes of this letter, “bookbuilding activities” shall include collating investors’ orders (including indications of interest) in connection with the Offering in order to facilitate: (i) the price determination and the allocation of Securities to investors; or (ii) the process of assessing demand and making allocations; and “placing activities” shall include marketing or distributing the Securities to investors pursuant to those bookbuilding activities].

* 1. [OC

[Equity] [In our role as an OC, and in addition to responsibilities as an SCMI, we shall perform such services and activities as required of an OC pursuant to paragraph 21.2.3 of the Code[, which includes any or all of the following activities:

(i) overall management of the Offering, coordinating the bookbuilding or placing activities conducted by other CMIs, exercising control over bookbuilding activities and making allocation recommendations to the Company;

(ii) advising the Company of the offer price and being a party to the price determination agreement with the Company; or

(iii) exercising the discretion to reallocate shares between the placing tranche and public subscription tranche, reduce the number of offer shares, or exercise an upsize option or over-allotment option.]

[To be considered where there are multiple OCs] [The Company further acknowledges and agrees that [name of the relevant OC] shall be appointed as the designated OC / the Company will appoint a designated OC for communication with, and provision of information to, [the Hong Kong Stock Exchange and] the SFC in accordance with the applicable legal or regulatory requirements or upon request (save for the information otherwise specified under [the Listing Rules and ]the Code which shall be submitted by each of the OCs and other relevant parties, respectively).]]

[Debt/equity-linked] [In our role as an OC, and in addition to responsibilities as an SCMI, we shall perform such services and activities as required of an OC pursuant to paragraph 21.2.4 of the Code[, which includes conducting the overall management of the Offering, coordinating the bookbuilding or placing activities conducted by other CMIs, exercising control over bookbuilding activities and makes pricing or allocation recommendations to the Company.]]

In connection with our role as an OC, the Company agrees to grant to us full access to the order book (not read-only access) and invite us to, and allow us to participate in, discussions with the Company and other intermediaries related to bookbuilding, pricing and allocation, among other things.][[3]](#footnote-4)

1. **Fees**

[Option 1 (Debt Only)][The gross underwriting commission for the Offering shall equal \_\_% of the aggregate [principal amount] [gross proceeds] of the Securities (the “Total Fees”), which amount shall be [deducted from the proceeds of the Offering]/[paid by the Company as set out below] and divided among the syndicate. [The Total Fees will be broken into fixed and discretionary fees at a ratio of [⏺: ⏺], respectively.][[4]](#footnote-5) [ [x]% of the fixed fee shall be payable to [short form financial institution name][[5]](#footnote-6). [The distribution of the discretionary fee will be payable in amounts to be determined by the Company at its discretion.][[6]](#footnote-7)

[Option 2 (Mixed-syndicate[[7]](#footnote-8) Debt Only)][The gross underwriting commission for the Offering shall equal [x]% of the aggregate [principal amount] [gross proceeds] of the Securities (the “Total Fees”), which amount shall be [deducted from the proceeds of the Offering]/[paid by the Company as set out below] and divided among the syndicate. [The Total Fees will be broken into fixed and discretionary fees at a ratio of [⏺: ⏺], respectively, with][[8]](#footnote-9) [[x]% of the [Total Fees/fixed fee] shall be payable to [consider title-based distributions] and [y]% of the [Total Fees/fixed fee] payable to [consider title-based distributions] / [The/the] final allocation of the fixed fee payable to each [OC/SCMI ENTITY] shall be agreed in [agreement title] [[9]](#footnote-10) [, and the discretionary fee shall be payable in amounts to be determined by the Company at its discretion][[10]](#footnote-11).]

[Option 3 (Listing Rules Compliant for Equity)][The gross underwriting commission for the Offering shall equal \_\_% of the aggregate [principal amount] [gross proceeds] of the Securities (the “Total Fees”), which amount shall be deducted from the proceeds of the Offering and divided among the syndicate. The Total Fees will be broken into fixed and discretionary fees at a ratio of [⏺:⏺][[11]](#footnote-12), respectively, with [x]% of the fixed fee payable to [OC/SCMI ENTITY][[12]](#footnote-13), and the discretionary fee being payable in amounts to be determined by the Company at its discretion.]

[The foregoing fees shall be withheld by the settlement manager and paid from the proceeds of the Offering within [X] [Hong Kong business] days of closing.]/[The foregoing fees shall be paid by the Company within [X] [Hong Kong business] days after closing of the Offering.]

We look forward to working with you on this important transaction. Please confirm that the foregoing, as well as the Terms and Conditions [contained in Appendix A hereto]/[following immediately below], are in accordance with your understanding of our agreement by [signing and returning to us a copy of this appointment letter][return email containing an express confirmation such as “acknowledged and agreed.”].

[Yours sincerely,

[OC/SCMI ENTITY]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name]

[Title]

[Accepted and agreed to as of the

date set forth above:

[NAME OF COMPANY]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title: ] /[SENDER TO CONSIDER HOUSE STYLE FOR EMAIL SIGN-OFF

**APPENDIX A**

Terms and Conditions

The following terms and conditions shall apply to the Company’s appointment of [OC/SCMI] as described in the above appointment letter. Capitalized terms used herein shall have the meanings ascribed to them in appointment letter to which these terms and conditions are appended.

1. **[Expenses and Payment**
2. The Company will bear all legal, accounting, printing and other expenses in connection with the Offering. [For PRC clients who need to reimburse [OC/SCMI] from on-shore PRC accounts, include the following: The Company acknowledges that such expenses are incurred in connection with services provided or to be provided by [OC/SCMI] in accordance with this appointment letter, irrespective of whether the Offering is proposed or completed.
3. All amounts payable to [OC/SCMI] or its affiliates hereunder are stated in [HK/U.S. dollars] and shall be paid in immediately available funds in [HK/U.S. dollars], free and clear of any applicable tax whether income taxes, withholding taxes, value-added taxes, goods and services taxes, business or services taxes or similar taxes other than taxes imposed in respect of net income by a taxing jurisdiction wherein the recipient is incorporated or resident for tax purposes.[[13]](#footnote-14)]
4. **[Company Obligations**

To facilitate [OC/SCMI] in identifying investors to whom the allocation of equity securities or interests would be subject to restrictions or require prior consent from the Hong Kong Stock Exchange under the Listing Rules, and for each syndicate CMI to meet its obligations and responsibilities under the Code and Rule 3A.46 under the Listing Rules, the Company agrees:

1. to provide each syndicate member with a list of its directors and existing shareholders, its and their respective close associates and any persons who are engaged by or will act as a nominee for any of the foregoing persons to subscribe for, or purchase, equity securities or interests in connection with the Offering as soon as practicable, and in any event at least four clear business days before the date of the listing hearing;
2. to inform [OC/SCMI] of any material changes to information provided under sub-paragraph (a) above as soon as it becomes known to the new applicant and its directors; and
3. to provide to, or procure for, [OC/SCMI] all necessary consents for its provision of the information referred to in sub-paragraphs (1) to (2) above to any distributor other than a syndicate member for the same purpose as set out herein.][[14]](#footnote-15)
4. **Conditions**

Nothing in this appointment letter is a commitment, express or implied, on the part of [OC/SCMI ENTITY] to underwrite or purchase the Securities or to commit any capital, nor does it obligate us to enter into an underwriting agreement or similar commitment to finance. Our participation in any Offering will be subject to, among other things, (i) satisfactory completion of all documentation for the Offering (including a disclosure document (where applicable) and an underwriting agreement with customary representations and warranties, conditions to closing, termination and indemnification); (ii) completion of a due diligence review to our satisfaction[(including but not limited to legal, business, financial, and auditor due diligence)]; (iii) market conditions which are satisfactory to us at the time of launch and in our determination, the absence of any material adverse change in the financial condition, operations or prospects of the Company; (iv) receipt of all required governmental and other approvals and appropriate legal opinions[, including 10b-5 disclosure opinions from counsels acceptable to [OC/SCMI ENTITY]]; and (v) mutually acceptable offering size, structure[, ratings] and pricing [and receipt of our internal approvals [(including commitment committee approval)]. [**Add other conditions on a deal-specific basis.**]

1. **Term and Termination**

Our engagement hereunder is effective as of the date hereof [or INSERT DATE] and may be terminated at any time by either the Company or us by giving written notice to the other party. Termination will not affect any obligations or undertakings of the Issuer in relation to assisting our compliance with paragraph 21 of the Code (including without limitation, paragraph 1 of this appointment letter and section [5] of this Appendix A), [any accrued rights or obligations or the provisions relating to the payment of fees and expenses and the provisions relating to indemnification,] *[May be removed pursuant to client’s request, provided similar provisions are included in the subscription agreement]* the Company’s submission to [jurisdiction / arbitration] and [the waiver of sovereign immunity] ] *[To be confirmed whether it applies to the issuer]* will survive any such termination. [If within [two years] following termination of this appointment letter by the Company the Offering is effected by the Company, we will be entitled to the transaction fee provided for herein.] *[To be decided on commercial level]*

1. **Certain Acknowledgments**
   1. As [Financial institution] will be acting as [the sole/a] [OC/SCMI] in connection with the Offering, the Company acknowledges that (i) as an [OC/SCMI], [Financial institution] owes certain regulatory duties to [the Hong Kong Stock Exchange and] the Hong Kong Securities and Futures Commission (the “SFC”) (which regulatory duties are owed to no other party) and (ii) [OC/SCMI] can fulfill these duties only with the Company’s full assistance and cooperation. The Company agrees that it, and its directors, shall promptly on request provide us with all materials, information and other assistance which we reasonably request from time to time for the purposes of meeting our obligations and responsibilities under the Code[ and the Listing Rules]. The Company acknowledges and agrees that [OC/SCMI] may need to take actions which may not appear to be in the best interest of the Company in fulfilling these duties and obligations.
   2. [For OC on in-scope equity transaction] [The Company acknowledges and agrees that pursuant to paragraph 19 of Appendix 6 to the Listing Rules, we shall inform the Hong Kong Stock Exchange if, in our opinion, decisions made by the Company on allocation and pricing amount to non-compliance with the Listing Rules related to, among other things, the placing activities conducted by us or the Company.]
   3. [For OC on in-scope equity transaction] [The Company further acknowledges that as an OC, we may be required to notify the Hong Kong Stock Exchange in the event that our appointment hereunder is terminated.]
   4. Information about investors underlying omnibus orders that may be shared with you pursuant to paragraph 21.3.5(b) of the Code may contain personally identifiable information which is highly sensitive, confidential in nature, and potentially subject to data privacy laws to which you may be subject. You hereby consent to receive this information and undertake to keep any such information confidential and to only use it for purposes of this Offering only.
   5. [Indemnity clause][[15]](#footnote-16)
   6. [To the extent that the Company or any of its respective property or assets may be or become entitled to any right of immunity, on grounds of sovereignty or otherwise, from any legal action or proceeding, including arbitration proceedings, with respect to their obligations, liabilities or any other matter under, arising out of or related to this Agreement, the Company hereby irrevocably waives such right and agrees not to claim any such immunity.]
   7. [To the extent the Company also may engage another investment bank as another OC or SCMI in connection with the Offering pursuant to a separate agreement between the Company and any such other investment bank, the Company understands and acknowledges that [financial institution name] and any such other OC or SCMI, as the case may be, are not and will not be deemed for any purpose to be acting as an agent, joint venturer or partner of the other, and that [financial institution name] assumes no responsibility, express or implied, for, and has no liability to the Company or its shareholders with respect to, any actions or omissions of, or the performance of services by, any such other OC or SCMI, as the case may be, in connection with the Offering or otherwise.]
   8. [Notwithstanding anything express or implied to the contrary, each party (and each employee, representative or other agent of such party) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this appointment letter and all materials of any kind (including opinions or other tax analyses) that are provided to such party relating to such tax treatment and tax structure. ]
   9. [For OC on in-scope equity-linked transactions] [The parties hereto acknowledge and agree that we are appointed as an OC on the basis that all members of the syndicate in respect of the Offering are in-scope syndicate members under paragraph 21 of the Code, and that in the event any syndicate members in respect of the Offering are not in-scope syndicate members under paragraph 21 of the Code, our role under the Code shall be as SCMI only and not as OC.]
   10. [Additional acknowledgments and clauses may be considered based on circumstances.]
2. **Governing Law**

This appointment letter, and any non-contractual obligations arising out of or in connection with it, shall be governed by Hong Kong law without giving effect to principles of conflicts of laws and will be binding upon and inure to the benefit of the Company and [OC/SCMI ENTITY] and their respective successors and assigns. The Company hereby agrees that Hong Kong courts are to have non-exclusive jurisdiction to settle any disputes, which may arise in connection with this appointment letter. Solely for purposes of enforcing this agreement, the Company hereby consents to personal jurisdiction, service of process and venue in any court in which any claim or proceeding that is subject to this agreement is brought against [OC/SCMI ENTITY]. [ARBITRATION MAY ALSO BE CONSIDERED]

A person who is not a party to this agreement shall have no right under the Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the Laws of Hong Kong) to enforce or to enjoy the benefit of any term of this agreement.]

1. **[Successors**

The terms of this appointment letter shall be binding on, and inure for the benefit of, each party and its successors, but no party may assign any of its rights or obligations hereunder without the written consent of each other party.]

1. **[Counterparts**

This appointment letter may be executed in any number of counterparts, each of which shall be deemed an original.]

1. If a written agreement or email acknowledgements are not possible (e.g., an issuer refused) consider sending the email as a one-way deemed acceptance by the issuer unless they respond otherwise. [↑](#footnote-ref-2)
2. The addressee/counter party to the agreement should include the substantive client who is receiving the benefit of the service. For example, in the case where the issuer is a SPV, consider adding, as the case may be, the guarantor, keepwell provider, or corporate client to the agreement. [↑](#footnote-ref-3)
3. To be included if also acting as OC in addition to SCMI [↑](#footnote-ref-4)
4. To be included if there will be a discretionary fee payable. [↑](#footnote-ref-5)
5. Fees paid to other CMIs may be added as relevant. [↑](#footnote-ref-6)
6. To be included if there will be a discretionary fee payable. [↑](#footnote-ref-7)
7. Pursuant to FAQ13, if an issuer client refuses to formally appoint Hong Kong non-OC syndicate CMIs under a written agreement that fully satisfies paragraph 21.3.2 (e.g., in a mixed-syndicate situation per FAQ12) and those CMIs have informed the issuer of their obligations under the Code, proper documentation should be maintained to demonstrate that “reasonable steps” have been taken to seek appointment under a written agreement. Option 2 here presents several options that may be presented in an effort to demonstrate reasonable steps taken to document fee arrangements where an issuer client refuses to enter into a written agreement fully satisfying fee arrangement requirements under paragraph 21.3.2. [↑](#footnote-ref-8)
8. To be included if there will be a discretionary fee payable. [↑](#footnote-ref-9)
9. Where an issuer won’t agree to fix fee allocations for specific banks in a mixed-syndicate situation only, allocation at a “syndicate title” level (e.g. OC v SCMI or JGC v JLM) or deferring to an agreement to be executed later (e.g., a subscription agreement) might be considered. [↑](#footnote-ref-10)
10. To be included if there will be a discretionary fee payable. [↑](#footnote-ref-11)
11. The Code requires OCs to provide guidance to the issuer on market practices for the fee split ratio, which the SFC indicated they believed was “around 75% fixed and 25% discretionary (75:25 ratio).” The SFC took the view that issuers should assess whether they should deviate significantly from a ratio of 75:25. [↑](#footnote-ref-12)
12. To be expanded to cover individual fixed fee allocations where more than one OC is being appointed. [↑](#footnote-ref-13)
13. Tax language may be amended as needed to reflect circumstances. [↑](#footnote-ref-14)
14. To include in the context of New Listings (e.g. IPOs and dual primary or secondary listings) per Rule 3A.46. [↑](#footnote-ref-15)
15. Where an indemnity clause is desirable, house standard forms may be used. [↑](#footnote-ref-16)