

# USD540m subordinated loan agreement between DBS Bank (Hong Kong) Limited (the “Borrower”) and DBS Group Holdings Ltd (the “Lender”) – Full terms and conditions

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement:

“**Authorisation**” means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation, lodgement or registration.

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in Hong Kong and Singapore and, if on that day a payment is to be made, New York.

“**Facility**” means the subordinated loan facility made available under this Agreement as described in Clause 2 (*The Facility*).

“**Hong Kong**” means the Hong Kong Special Administrative Region of the People's Republic of China.

“**Interest Payment Date**” means the day of the month in March, June, September and December in each year which is the same as the day of the month of the Utilisation Date, as may be adjusted in accordance with Clause 13.6 (*Business Days*).

“**Interest Period**” means the period starting on the Utilisation Date and ending on the first Interest Payment Date and each successive period beginning on an Interest Payment Date and ending on the next succeeding Interest Payment Date.

“**LIBOR**” means:

- (a) the offered rate (rounded upwards or downwards (as the case may be) by the Lender, if necessary, to four decimal places provided that the Lender shall only round such rate upwards if the fifth decimal (if any) of such rate is equal to or more than 6 and shall only round such rate downwards if the fifth decimal (if any) of such rate is less than 6) for USD deposits for a period of three months quoted on the Moneyline Telerate Page 3750 (or any equivalent successor of such page) at or about 11:00 a.m. (London time) on the Rate Fixing Day; or
- (b) if at or about 11:00 a.m. (London time) on the Rate Fixing Day no such rate appears on the Moneyline Telerate Page 3750, such page is not on display or the Moneyline Telerate is not operating, the rate (rounded upwards or downwards (as the case may be), if necessary, to four decimal places provided that the Lender shall only round such arithmetic mean upwards if the fifth decimal (if any) of such arithmetic mean is equal to or more than 6 and shall only round such rate downwards if the fifth decimal (if any) of such rate is less than 6) quoted by the Lender to be the rate at which they are offering USD deposits to leading banks in the London interbank market at or about 11:00 a.m. (London time) on the Rate Fixing Day for a period of three months.

“**Loan**” means the loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.

**“London Business Day”** means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

**“Margin”** means 2.50 per cent per annum

**“Month”** means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day; and
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month.

**“Optional Repayment Date”** means the date which is the next Business Day immediately following the date which is 60 Months from the Utilisation Date or any Interest Payment Date thereafter.

**“Party”** means a party to this Agreement.

**“Rate Fixing Day”** means the second London Business Day before the first day of an Interest Period.

**“Tax”** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

**“Termination Date”** means the date falling 120 Months after the Utilisation Date.

**“Unpaid Sum”** means any sum due and payable but unpaid by any Party under this Agreement.

**“US\$”** or **“US Dollars”** means the lawful currency of the United States of America.

**“Utilisation”** means the utilisation of the Facility.

**“Utilisation Date”** means the date of the Utilisation, being the date on which the Loan is to be made.

**“Utilisation Request”** means a notice substantially in the form set out in Schedule 1 (*Utilisation Request*).

## 1.2 Construction

1.2.1 Unless a contrary indication appears, any reference in this Agreement to:

- (i) any **“Party”** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (ii) a **“person”** includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- (iii) a provision of law is a reference to that provision as amended or re-enacted; and
- (iv) a time of day is a reference to Hong Kong time.

1.2.2 Section, Clause and Schedule headings are for ease of reference only.

- 1.2.3 Unless a contrary indication appears, a term used in any notice or certificate given under or in connection with this Agreement has the same meaning as in this Agreement.

## **2 THE FACILITY**

It is now agreed between the Lender and the Borrower that subject to the terms of this Agreement, the Lender makes available to the Borrower a subordinated loan facility in US Dollars in an amount equal to US\$540,000,000.

## **3 UTILISATION**

### **3.1 Delivery of the Utilisation Request**

- 3.1.1 The Borrower may utilise the Facility in one lump sum by delivery to the Lender of a duly completed Utilisation Request not later than 10:00 a.m. on the third Business Day before the Utilisation Date.
- 3.1.2 The Borrower may not deliver the Utilisation Request unless the Lender has received all of the documents and other evidence listed in and appearing to comply with the requirements of Schedule 2 (*Conditions precedent*) in form and substance satisfactory to the Lender.

### **3.2 Completion of the Utilisation Request**

- 3.2.1 The Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
- 3.2.1.1 the currency and amount of the Utilisation comply with Clause 3.3 (*Currency and amount*);
  - 3.2.1.2 it specifies the account and bank to which the proceeds of the Utilisation are to be credited; and
  - 3.2.1.3 the proposed Utilisation Date is a Business Day.
- 3.2.2 Only one Loan may be requested in the Utilisation Request and the Borrower shall not deliver more than one Utilisation Request.

### **3.3 Currency and amount**

- 3.3.1 The currency specified in the Utilisation Request must be US Dollars.
- 3.3.2 The amount of the proposed Loan shall be US\$540,000,000.

## **4 REPAYMENT**

### **4.1 Final Repayment**

- 4.1.1 Unless previously repaid pursuant to Clause 4.2 and Clause 4.3, the Loan shall be repaid on the Termination Date. The Loan may not be repaid at the option of the Borrower other than in accordance with this Agreement.
- 4.1.2 The Lender may not demand the Borrower to repay the Loan before the Termination Date.

## 4.2 Call Option

- 4.2.1 Subject to Clause 7, the Borrower may at its option repay the Loan in whole but not in part on the Optional Repayment Date on giving not less than 30 days' prior notice to the Lender of its intention to exercise such option (which notice shall be irrevocable and shall be binding on both the Borrower and the Lender) at the principal amount thereof together with accrued interest.
- 4.2.2 Upon giving notice in accordance with Clause 4.2.1, the Borrower shall be obliged to repay the Loan on the Optional Repayment Date to the Lender.

## 4.3 Repayment upon a Regulatory Repayment Event

- 4.3.1 Subject to Hong Kong Monetary Authority ("HKMA")'s prior approval as described in Clause 7, upon the occurrence of a Regulatory Repayment Event, the Borrower may repay the Loan in whole, but not in part, at any time, on giving not less than 30 but not more than 60 days' notice ("Repayment Notice") to the Lender (which notice shall be irrevocable). The repayment amount shall be the principal amount of the Loan together with interest accrued up to but excluding the date specified in the Repayment Notice.
- 4.3.2 In this agreement :

A "**Regulatory Repayment Event**" occurs if the Loan in whole, but not in part, no longer qualifies as term subordinated debt for inclusion in Tier 2 Capital of the Borrower as a result of amendments to the relevant provisions of the Banking Ordinance (Cap. 155) of Hong Kong or the statutory guidelines issued by the HKMA in relation thereto after the Utilisation Date, excluding for the avoidance of doubt, non-qualification of the Loan solely by virtue of the Borrower already having outstanding instruments with an aggregate principal amount up to or in excess of any limit of Tier 2 Capital permitted from time to time by the HKMA or solely as a result of any discounting requirements as to the eligibility of the Loan for such inclusion pursuant to the relevant legislation and statutory guidelines in force as at 12<sup>th</sup> December 2012.

## 5 INTEREST

### 5.1 Calculation of interest

The rate of interest on the Loan for each of its Interest Period is the percentage rate per annum which is the aggregate of the applicable:

- (a) Margin; and
- (b) LIBOR.

### 5.2 Payment of interest

The Borrower shall pay accrued interest on the Loan on each Interest Payment Date. The final Interest Period shall end on the Termination Date or, where the option to repay pursuant to Clause 4.2 (*Call Option*) has been exercised, on the Optional Repayment Date or, where the Regulatory Repayment Event has occurred pursuant to Clause 4.3 (*Repayment upon a Regulatory Repayment Event*), on the date specified in the Repayment Notice or, where a trigger event has occurred pursuant to Clause 8.1.2 (*Loss Absorbency at the Point of Non-Viability*), on the date of occurrence of the trigger event.

Interest will accrue from and including the first day of each Interest Period but excluding the last day of that Interest Period on the basis of the actual number of days elapsed and a 360 day year.

## 6 STATUS, SUBORDINATION AND CONDITIONALITY

### 6.1

- (a) The indebtedness for the Loan constitutes direct, unconditional, unsecured and subordinated obligations of the Borrower, and, upon any distribution to creditors of the Borrower in a Winding Up (as defined below) of the Borrower as provided in Clause 6.2(a), the claims of the Lender shall be subordinated in right of payment, to the extent and in the manner provided in this Clause 6, to the prior payment in full of all liabilities (whether actual or contingent, present or future) of the Borrower, including claims of depositors, except those subordinated liabilities which by their terms rank equally in right of payment with or junior to the Loan (the “**Senior Indebtedness**”).
- (b) Claims in respect of the Loan will rank in priority to the rights and claims of holders of all classes of equity securities of the Borrower, including holders of preference shares, if any.

### 6.2 Upon any distribution to creditors of the Borrower in a Winding Up (as defined in Clause 6.10):

- (a) the holders of all Senior Indebtedness shall first be entitled to receive payment in full of the principal thereof and the interest and premium, if any, and all other sums due thereon, before the Lender is entitled to receive any payment on account of the principal of or interest on the Loan; and
- (b) any payment by, or distribution of assets of, the Borrower of any kind or character, whether in cash, property or securities, to which the Lender would be entitled except for the provisions of this Clause 6, shall be paid or delivered by the person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidator or otherwise, to the holders of Senior Indebtedness (or their representative or representatives or to the trustee or trustees under any trust deed under which any instruments evidencing any of such Senior Indebtedness may have been issued) rateably according to the aggregate amounts remaining unpaid on account of the Senior Indebtedness held or represented by each holder of Senior Indebtedness to the extent necessary to make payment in full of all Senior Indebtedness remaining unpaid after giving effect to any concurrent payment or distribution to the holders of such Senior Indebtedness.

Without prejudice to Clause 6.8, in the event that the Lender in a Winding Up directly receives (whether by set-off or otherwise) any payment by, or distribution of assets of, the Borrower of any kind or character, whether in cash, property or securities, to which that holder would be entitled except for the provisions of this Clause 6 and other than after the operation of the above paragraphs, the Lender shall turn such payment or distribution over to the trustee in bankruptcy, receiver or liquidator or other such party administering the property and assets of the Borrower in a Winding Up for distribution in accordance with Clause 6.2(b).

If, in any such Winding Up of the Borrower, the amounts payable with respect to the Loan and any claims ranking pari passu with the Loan are not paid in full, the Lender and the

holders of other claims ranking pari passu with the Loan will share rateably in any distribution of the remaining assets of the Borrower after the application of the provisions of this Clause 6.2 in proportion to the respective outstanding amounts to which they are entitled.

In the event of a Winding Up Proceeding or a Winding Up, the Borrower shall notify the Lender in accordance with Clause 14.

**6.3** The Borrower shall promptly notify the Lender of any facts known to the Borrower that would cause a payment of any principal or interest with respect to the Loan to violate this Clause 6 but failure to give such notice shall not affect the subordination of the Loan to the Senior Indebtedness as provided in this Clause 6.

**6.4** After all Senior Indebtedness is paid in full and until all amounts outstanding under the Loan have been repaid or paid in full, the Lender shall be subrogated (equally and rateably with all other indebtedness ranking pari passu with the Loan) to the rights of holders of Senior Indebtedness to receive distributions applicable to Senior Indebtedness to the extent that distributions otherwise payable to the Lender have been applied to the payment of Senior Indebtedness. A distribution made under Clause 6.2 to holders of Senior Indebtedness that otherwise would have been made to the Lender is not, as among the Borrower and the Lender, a payment by the Borrower of any amount outstanding under the Loan.

**6.5** This Clause 6 defines the relative rights of the Lender and holders of Senior Indebtedness in a Winding Up. Nothing in this Agreement shall:

- (a) impair, as between the Borrower and the Lender, the obligations of the Borrower, which are absolute and unconditional, to pay principal of and interest on the Loan in accordance with their terms;
- (b) affect the relative rights of the Lender and creditors of the Borrower, other than the rights of the Lender in relation to holders of Senior Indebtedness; or
- (c) prevent the Lender from exercising the remedies permitted under Clause 6.9 upon the occurrence of an Enforcement Event (as defined in Clause 6.9), subject to the rights of holders and owners of Senior Indebtedness to receive distributions and payments otherwise payable to the Lender.

If the Borrower fails to pay principal of or interest payable on the Loan on the due date as a result of the operation of this Clause 6, such failure shall still constitute an Enforcement Event (as defined in Clause 6.9).

**6.6** As long as any amounts remain outstanding under the Loan, the Borrower agrees that it will not create, issue, assume, guarantee or otherwise incur any indebtedness which shall be or shall purport to be subordinated obligations of the Borrower or which shall, at the time it is so created, issued, assumed or otherwise incurred, or at any time thereafter, be considered to be capital of the Borrower for any regulatory purposes, unless such obligation ranks pari passu with, or junior to the Borrower's obligations under the Loan in respect of distributions of assets by the Borrower in a Winding Up of the Borrower.

**6.7** Upon any payment or distribution of assets of the Borrower referred to in this Clause 6, the Lender shall be entitled to rely upon any order or decree made by any court of competent jurisdiction or any written notice issued by the liquidator, trustee in bankruptcy, receiver or

agent or other person making any distribution to the Lender, for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of the Senior Indebtedness and other indebtedness of the Borrower, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Clause 6.

**6.8** The Lender irrevocably agrees and acknowledges that:

- (a) it may not exercise or claim any right of set-off in respect of any amount owed to it by the Borrower arising under or in connection with this Agreement; and
- (b) it shall, to the fullest extent permitted by applicable law, waive and be deemed to have waived all such rights of set-off.

**6.9** If any of the following events (each an “**Enforcement Event**”) occurs:

- (a) (i) default is made in the repayment of any amount of principal and premium (if any) in respect of the Loan on the due date for payment thereof or (ii) default is made in the payment of any amount of interest in respect of the Loan within 10 days of the due date for payment thereof; or
- (b) the Borrower (i) is (or is, or could be, deemed by law or a court to be) insolvent or bankrupt or unable to pay its debts, (ii) stops, suspends or threatens to stop or suspend payment of all or a material part of (or of a particular type of) its debts, (iii) proposes or makes any agreement for the deferral, rescheduling or other readjustment of all of (or all of a particular type of) its debts (or of any part which it will or might otherwise be unable to pay when due), (iv) proposes or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors in respect of any of such debts, or (v) a moratorium is agreed or declared in respect of or affecting all or any part of (or of a particular type of) the debts of the Borrower; or
- (c) the Borrower takes any corporate action or other steps are taken or legal proceedings are started for its winding up, bankruptcy, dissolution or re-organization (except in any such case for the purposes of a merger, consolidation, reorganisation, reconstruction or amalgamation upon which the continuing corporation or the corporation formed thereby effectively assumes the entire obligations of the Borrower under this Agreement and the terms of which have previously been approved by the Lender or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or of any or all of its revenues and assets; or
- (d) any act, condition or thing required to be done, fulfilled or performed at any time in order (i) to enable the Borrower lawfully to enter into, exercise its rights under and perform the obligations expressed to be assumed by it under this Agreement, or (ii) to ensure that the obligations expressed to be assumed by the Borrower under this Agreement are legal, valid and binding, is not done, fulfilled or performed at such time,

then the Lender may, at its discretion and without further notice, institute such proceedings against the Borrower as it may think fit and may (without limitation) institute Winding Up Proceedings against the Borrower to enforce any obligation, condition or provision binding on the Borrower in respect of the Loan; provided that the Borrower shall not by virtue of the institution of any such proceedings other than Winding Up Proceedings be obliged to pay any sum or sums sooner than the same would otherwise have been payable by it.

If (i) a court agency or regulatory or supervisory authority in Hong Kong or any other person having jurisdiction shall have instituted Winding Up Proceedings or entered a decree or order for a Winding Up of the Borrower in Hong Kong or (ii) an order is made or an effective resolution is passed for the Winding Up of the Borrower in Hong Kong (whether or not an Enforcement Event has occurred and is continuing and except where such order or resolution is for the purposes of a reconstruction, amalgamation or otherwise the terms of which have previously been approved by the Lender) (such event, also an “Enforcement Event”), then the Lender may, by written notice to the Borrower, effective upon the date of receipt thereof, declare the Loan to be forthwith due and payable whereupon the same shall become forthwith due and payable in its full principal amount together with accrued interest without further formality.

No remedy against the Borrower other than as specifically provided by this Agreement shall be available to the Lender whether for the recovery of amounts owing in respect of the Loan or in respect of any breach by the Borrower of any of its obligations under this Agreement or otherwise.

**6.10** In this Agreement:

“**Winding Up**” shall mean, with respect to the Borrower, a final and effective order or resolution for the bankruptcy, winding up, liquidation, receivership or similar proceeding in respect of the Borrower; and

“**Winding Up Proceeding**” shall mean, with respect to the Borrower, proceedings in Hong Kong in respect of the Borrower for the bankruptcy, winding up, liquidation, receivership or other similar proceeding in respect of the Borrower.

## **7 CONDITIONS OF REPAYMENT**

**7.1** The Lender acknowledges that it is intended that the Loan should constitute Tier 2 Capital of the Borrower and accordingly, under statutory requirements prevailing at the date of this Agreement in respect of Tier 2 Capital, and by virtue of the above provisions, any repayment of such Loan is subject to the prior consent of the HKMA at the relevant time, as set out in this Clause 7.

**7.2** Notwithstanding any other provision in this Agreement, the Loan (subject as provided below) may not be repaid without the prior consent of the HKMA (or any successor thereto). Accordingly the Borrower shall not give any notice of repayment and repay the Loan, unless the prior written consent of the HKMA for such repayment shall have been obtained provided, however, that if from time to time the consent of the HKMA is not a requirement for any such Loan to constitute Tier 2 Capital (or equivalent) of the Borrower for the purposes of, and as defined in, the Banking Ordinance (Cap. 155) of Hong Kong, or any successor legislation, then the condition to the repayment of the Loan set out in this Clause 7 shall not apply for so long as such consent is not so required.

**7.3** The Loan so repaid pursuant to this Agreement may not be re-borrowed and the obligations of the Borrower in respect of the Loan shall be discharged.



## **8 LOSS ABSORBENCY AT THE POINT OF NON-VIABILITY**

**8.1** Notwithstanding any other provision in this Agreement, the Lender acknowledges that:

**8.1.1** The Loan would be converted into ordinary shares of the Borrower upon the occurrence of the trigger event specified in Clause 8.1.2. In such event, the Loan would be converted into a number of ordinary shares of the Borrower determined by dividing the principal amount and accrued interest of the Loan by the net tangible assets per share as determined by an independent party according to the generally accepted accounting principles and standards in Hong Kong at the latest month end prior to conversion, floored at HK\$1 per share. The USD Loan will be converted to HKD at the prevailing exchange rate on the date when the trigger event specified in Clause 8.1.2 occurs. Subject to the agreement between the Lender and Borrower, the ordinary shares would be issued to the Lender or its delegated subsidiaries.

**8.1.2** For the purpose of this Clause 8.1, trigger event is the earlier of:

**8.1.2.1** the HKMA notifying the Borrower in writing that the HKMA is of the opinion that a write-off or conversion is necessary, without which the Borrower would become non-viable, or

**8.1.2.2** the HKMA notifying the Borrower in writing that a decision has been made by the government body, a government officer or other relevant regulatory body with the authority to make such a decision, that a public sector injection of capital or equivalent support is necessary, without which the Borrower would become non-viable.

**8.1.3** Conversion under the Clause 8 does not constitute an Enforcement Event as specified in Clause 6.9.

## **9 REPRESENTATIONS**

The Borrower makes the representations and warranties set out in this Clause 9 to the Lender on the date of this Agreement and throughout the continuance of this Agreement.

### **9.1 Status**

**9.1.1** It is a corporation, duly incorporated and validly existing under the laws of its jurisdiction of incorporation.

**9.1.2** It has the power to own its assets and carry on its business as it is being conducted.

### **9.2 Binding obligations**

The obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations.

### **9.3 Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, this Agreement does not and will not conflict with:

- 9.3.1 any law or regulation applicable to it;
- 9.3.2 its constitutional documents; or
- 9.3.3 any agreement or instrument binding upon it or any of its assets.

#### **9.4 Power and authority**

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement and the transactions contemplated by this Agreement.

#### **9.5 Validity and admissibility in evidence**

All Authorisations required or desirable:

- 9.5.1 to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Agreement;
- 9.5.2 to make this Agreement admissible in evidence in its jurisdiction of incorporation; and
- 9.5.3 for it to carry on its business,

have been obtained or effected and are in full force and effect.

#### **9.6 Governing law and enforcement**

- 9.6.1 The choice of Hong Kong law as the governing law of this Agreement will be recognised and enforced in its jurisdiction of incorporation.
- 9.6.2 Any judgment obtained in Hong Kong in relation to this Agreement will be recognised and enforced in its jurisdiction of incorporation.

#### **9.7 Deduction of Tax**

It is not required under the law applicable where it is incorporated or resident or at its address for the purpose of this Agreement to make any deduction for or on account of Tax from any payment it may make under this Agreement.

#### **9.8 No filing or stamp taxes**

Under the law of its jurisdiction of incorporation it is not necessary that this Agreement be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to this Agreement or the transactions contemplated by this Agreement.

### **10 TAX GROSS UP**

#### **10.1 Definitions**

10.1.1 In this Clause 10:

“**Tax Deduction**” means a deduction or withholding for or on account of Tax from a payment under this Agreement.

**“Tax Payment”** means an increased payment made by the Borrower to the Lender under Clause 10.2 (*Tax gross-up*).

**10.1.2** Unless a contrary indication appears, in this Clause 10, a reference to “determines” or “determined” means a determination made in the absolute discretion of the person making the determination.

## **10.2 Tax gross-up**

**10.2.1** All payments to be made by the Borrower to the Lender under this Agreement shall be made without any set-off or counterclaim, and free and clear of and without any Tax Deduction, unless the Borrower is required by law to make a Tax Deduction, in which case the sum payable by the Borrower (in respect of which such Tax Deduction is required to be made) shall be increased to the extent necessary to ensure that the Lender receives a sum net of any deduction or withholding equal to the sum which it would have received had no such deduction or withholding been made or required to be made.

**10.2.2** Each Party shall promptly upon becoming aware that the Borrower must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify each other accordingly.

**10.2.3** If the Borrower is required to make a Tax Deduction, the Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

**10.2.4** Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Lender evidence reasonably satisfactory to the Lender that the Tax Deduction has been made or (as applicable) any appropriate payment has been paid to the relevant taxing authority.

## **11 COSTS AND EXPENSES**

### **11.1 Transaction expenses**

The Borrower shall be responsible for all costs and expenses incurred by the Lender in connection with (i) the negotiation, preparation, printing and execution and (ii) any amendment or waiver of this Agreement and any other documents referred to in this Agreement.

### **11.2 Enforcement costs**

The Borrower shall, within three Business Days of demand, pay to the Lender the amount of all costs and expenses (including legal fees) incurred by the Lender in connection with the enforcement of, or the preservation of any rights under, this Agreement.

## **12 ASSIGNMENT**

The Borrower or the Lender may not assign or transfer any of its rights and obligations under this Agreement.

## **13 PAYMENT MECHANICS**

### **13.1 Payments to the Lender**

13.1.1 On each date on which the Borrower is required to make a payment under this Agreement, the Borrower shall make the same available to the Lender for value on the due date at the time and in such funds specified by the Lender as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

13.1.2 Payment shall be made to such account in New York City with such bank as the Lender specifies.

### **13.2 Payments by the Lender**

On each date on which the Lender is required to make a payment under this Agreement, the Lender shall, subject to Clause 13.3 (*Distributions to the Borrower*), make the same available to the Borrower for value on the due date, to such account in New York City as the Borrower may notify to the Lender by not less than five Business Days' notice.

### **13.3 Distributions to the Borrower**

The Lender may apply any amount payable by it to the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under this Agreement or in or towards purchase of any amount of any currency to be so applied.

### **13.4 Partial payments**

If the Lender receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under this Agreement, the Lender shall apply that payment towards the obligations of the Borrower under this Agreement in any order selected by the Lender.

### **13.5 No set-off by Borrower**

All payments to be made by the Borrower under this Agreement shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

### **13.6 Business Days**

13.6.1 Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

13.6.2 During any extension of the due date for payment of any principal or other unpaid amount under this Agreement, interest is payable at the rate payable on the original due date.

### **13.7 Currency of account**

13.7.1 Subject to Clauses 13.7.2 to 13.7.5 inclusive below, US Dollars is the currency of account and payment for any sum due from the Borrower under this Agreement.

- 13.7.2 A repayment of the Loan or Unpaid Sum or a part of the Loan or Unpaid Sum shall be made in the currency in which the Loan or Unpaid Sum is denominated on its due date.
- 13.7.3 Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued.
- 13.7.4 Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- 13.7.5 Any amount expressed to be payable in a currency other than US Dollars shall be paid in that other currency.

## **14 NOTICES**

### **14.1 Communications in writing**

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax or by letter.

### **14.2 Addresses**

The address, fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is that identified as the Party may notify to the other Parties by not less than five Business Days' notice.

### **14.3 Delivery**

Any communication or document made or delivered by any Party to another Party under or in connection with this Agreement will only be effective:

- (i) if by way of fax, when received in legible form; or
- (ii) if by way of letter, when arrival.

### **14.4 English language**

- 14.4.1 Any notice given under or in connection with this Agreement must be in English.
- 14.4.2 All other documents provided under or in connection with this Agreement must be in English.

## **15 CALCULATIONS AND CERTIFICATES**

### **15.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with this Agreement, the entries made in the accounts maintained by the Lender are prima facie evidence of the matters to which they relate.

### **15.2 Certificates and Determinations**

Any certification or determination by the Lender of a rate or amount under this Agreement is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### **15.3 Day count convention**

Any interest accruing under this Agreement will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the relevant interbank market differs, in accordance with that market practice.

## **16 PARTIAL INVALIDITY**

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## **17 REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

## **18 AMENDMENTS AND WAIVERS**

No term of any of this Agreement may be amended or waived without the prior written consent of all the Parties and any such amendment or waiver will be binding on all Parties. Any changes to the provisions relating to repayment (including the definitions of Optional Repayment Date and Termination Date) and other material changes that may alter the eligibility of the Loan to qualify as the Tier 2 capital of DBS Bank (Hong Kong) Limited will be subject to the prior consent of the HKMA.

## **19 DISCLOSURE**

The Lender may disclose to any potential or actual assignee or transferee of its rights (whether by way of security or not) under this Agreement or any person for whom such potential or actual assignee or transferee is holding an interest under this Agreement or any other person to whom a disclosure of information is required by any applicable law or regulation any information about this Agreement and the Borrower without the consent of the Borrower.

## **20 COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

## **21 GOVERNING LAW**

This Agreement is governed by Hong Kong law.

## **22 ENFORCEMENT**

### **22.1 Jurisdiction of Hong Kong courts**

**22.1.1** The courts of Hong Kong have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement).

**22.1.2** The Parties agree that the courts of Hong Kong are the most appropriate and convenient courts to settle disputes and accordingly no Party will argue to the contrary.

**SCHEDULE 1  
UTILISATION REQUEST**

Dated: **10<sup>th</sup> December 2012**

Dear Sirs

**US\$540,000,000 Facility Agreement  
dated 10<sup>th</sup> December 2012 (the “Facility Agreement”)**

- 1** We refer to the Facility Agreement. This is an Utilisation Request. Terms defined in the Facility Agreement shall have the same meaning in this Utilisation Request.
- 2** We wish to borrow the Loan on the following terms:  
Proposed Utilisation Date: 12<sup>th</sup> December 2012  
Amount: US\$540,000,000
- 3** The proceeds of the Loan should be credited to account with Bank of New York 803-315-2001
- 4** This Utilisation Request is irrevocable.

Yours faithfully

.....  
authorised signatory for  
**DBS BANK (HONG KONG) LIMITED**



**SCHEDULE 2**  
**CONDITIONS PRECEDENT**

- 1** Certified true copies of the certificate of incorporation, memorandum and articles of association and other constitutional documents of the Borrower.
- 2** A certified true copy of a resolution of the board of directors of the Borrower:
  - (i) approving the terms of, and the transactions contemplated by this Agreement and resolving that it execute this Agreement; and
  - (ii) authorising a specified person or persons, on its behalf, to execute the documents referred to in sub-paragraph (i) above and to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with those documents.
- 3** A copy of any Authorisation or other document, opinion or assurance which the Lender considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by this Agreement or for the validity and enforceability of this Agreement.