

## **Agreement to UOB Express Banker's Guarantee Terms and Conditions**

### **1. Agreement**

By applying to United Overseas Bank Limited (the "Bank") for the Banker's Guarantee (hereinafter known as the "Guarantee") online (the "Online Application"), the Applicant agrees to be bound by this Agreement governing the Bank's provision of this service.

### **2. Margin Deposit**

2.1 In consideration of the Bank agreeing to consider the Applicant's request to issue the Guarantee in favour of the Beneficiary named in the Online Application, the Applicant hereby irrevocably authorize the Bank to debit from its account number stated in the Online Application ("Applicant's Account") the amount stated in the Online Application ("Margin Deposit Amount") which the Applicant hereby deposits with the Bank for the purpose of enabling the Bank to meet payment under the Guarantee and for payment of all costs and expenses including without limitation, all charges, fees and commissions in relation to the Guarantee.

2.2 The Applicant shall not assign, transfer, mortgage, charge or otherwise deal with or encumber the Deposit Amount (other than in the Bank's favour). Any such assignment, transfer, charge or other dealing, actual or purported, shall be void.

2.3 The Applicant hereby irrevocably and unconditionally authorize the Bank to debit from the Applicant's Account such further amounts as may be needed for the purpose of meeting the aforesaid payments and for any shortfall due to foreign exchange fluctuations and for moneys due to the Bank under the Applicant's indemnity in this Agreement.

2.4 The Applicant agrees that any Deposit Amount remaining unutilized for the aforesaid purpose may be retained by the Bank until such time that the Bank declines to issue the Online Application, or in the event that the Bank agrees to issue the Guarantee, the Bank is satisfied that there will be no further claim arising under or in connection with the Guarantee and this Agreement.

3. The Applicant acknowledges and agrees that the Bank shall be under no obligation to process the Online Application. In the event that the Bank decides to rely, act on or process the Online Application, the Bank shall be allowed such amount of time to act on or process the Online Application as may be reasonable, having regard to the systems and operations of the Bank and the other circumstances then prevailing. The Bank shall not be liable for any loss arising from any delay on its part in acting on or processing the Online Application.

### **4. Requirements for Online Application**

4.1 The Applicant is required to have the following:

- (a) a personal computer or other device with access to the Internet;
- (b) a web browser which supports 128-bit SSL encryption;
- (c) a valid facsimile number or email address with which the Bank and the Applicant can fax or send emails relating to the Online Application; and

- (d) any other requirements which the Bank may inform the Applicant from time to time.
- 4.2 The Applicant shall be solely responsible to make its own arrangements to fulfil the above requirements to enable it to make the Online Application.
- 4.3 The Applicant is required to print the Online Application and submit the duly signed Online Application to the Bank ("instructions") via facsimile or email.
5. The Applicant shall ensure that only persons duly authorized by it make the Online Application. The Applicant shall be responsible for all the actions of the users who make the Online Application. The Bank shall be entitled to rely on and treat the Online Application as having been made for and on behalf of the Applicant. The Bank shall be under no obligation to check the authenticity of the Online Application or the authority of the person or persons making the Online Application.
6. Fascimile / Email Instructions
- 6.1 The Applicant authorizes and instructs the Bank to accept, rely and act on the instructions given pursuant to Clause 4.3 via facsimile or email or purported to be given by the Applicant. The Applicant agrees that instructions given by an unauthorized person will not be discovered by the Bank in the ordinary course of business. The Bank shall be under no obligation to otherwise identify or make attempts to identify the party sending the Instructions or to check with the Applicant on the authenticity, accuracy or completeness of such instructions. The Applicant further agrees that the Bank shall not be obliged to inquire as to the purpose of any transfer of funds authorized by any such instructions or the identity of any transferee. The Applicant will accept such documents containing the instructions as the Bank may receive as final, conclusive and irrefutable evidence of the instructions.
- 6.2 The Applicant agrees that to the extent the Bank accepts, relies and acts on the instructions as provided above, the Bank does so in response to the Applicant's authority and instructions and for the Applicant's convenience.
- 6.3 The risk of misunderstanding (on either party's part), errors, unauthorized instructions or alterations of instructions, fraud, forgery or forged instructions, and the risk of operational failures, faults or errors howsoever occurring in the course of the transmission of the Applicant's Instructions (whether in respect of equipment belonging to either party) are entirely the Applicant's. The Bank shall not be responsible or liable to the Applicant for any loss, liability or expense that may result from such misunderstandings, errors, unauthorized instructions or alterations of instructions, fraud, forgery or forged instructions, operational failures or faults.
- 6.4 The Bank may at any time and at its absolute discretion refuse to execute or delay the execution of any such instructions or any part thereof without incurring any responsibility or liability to the Applicant for loss, liability or expense arising out of or in connection with such refusal or delay and without giving the Applicant any explanation.
- 6.5 The Bank shall not be obliged to act on Instructions conveyed by a mode of transmission other than via facsimile or email, including but not limited to instructions via telephone.

- 6.6 The Bank is authorized to treat any instructions given or purportedly given by the Applicant as new instructions when it is not specified that the instructions are a confirmation or a change of the previous instructions given. The Bank will not be held responsible under any circumstances for any steps taken or omitted to be taken pursuant to any instructions given or purportedly given by the Applicant which are subsequently amended, varied, cancelled or countermanded by the Applicant, whether or not the Applicant's subsequent instructions reach the Bank before the Bank acts on the Applicant's earlier instructions.
- 6.7 It shall not be necessary for the Bank (although the Bank is at liberty) to obtain from or sent to the Applicant written confirmation of the instructions received by the Bank via facsimile or email.
- 6.8 The Bank is not obliged in any way to check or verify with the Applicant or any party or against the Bank's own records on the authenticity, accuracy, correctness or completeness of any instructions via facsimile or email or any fact or matter mentioned therein or the signatures appearing on any document containing such instructions purporting to be the Applicant's or those of the Applicant's authorized signatories.
- 6.9 The Applicant shall not hold the Bank liable for acting upon any instructions via facsimile or email notwithstanding that it is subsequently shown that the same were not given by the Applicant.
- 6.10 The Bank is at all times fully entitled (but without being obliged) to demand the sighting and/or receiving the original printed duly signed Online Application at any time under any circumstances at the Bank's absolute discretion and to impose any other condition as the Bank deems fit but reserving always the right not to accept, act on or undo any steps taken in connection with such letter of instructions until after sighting and/or receiving of the original letter of instructions and being satisfied that all conditions as the Bank deems fit have been complied with.
- 6.11 All instructions given by the Applicant or purported to be given by the Applicant via facsimile or email shall be valid and binding on the Applicant, its successors and assigns and the Applicant shall not be at liberty to question or plead the validity or invalidity of such instructions or to question or plead the capacity or incapacity of the party who actually used or despatched the same on such instructions.
- 6.12 Where the Applicant or its authorized signatories have forwarded to the Bank a written confirmation as to the authority of any person or party to act on the Applicant's behalf, the Applicant hereby confirm that such person or party is fully authorized by the Applicant to give the Bank instructions via facsimile or email pursuant to the terms of this Agreement. The Applicant confirms that such instructions shall in all respects be treated as instructions given by and fully binding on the Applicant. Such authorised person or party as is referred to in this provision shall include person or party other than the Applicant's authorized signatories.
7. The Guarantee shall only be issued and the terms therein shall be effective only on execution of the legal documentation involved and the fulfilment of such conditions

precedent as the Bank may require. The Bank reserves the right to decline to issue the Guarantee without giving any reason.

8. Applicant's Responsibilities

- 8.1 The Applicant is solely responsible for ensuring the accuracy and completeness of all information provided in and for the Online Application. The Bank shall not be responsible for the consequences of any information being incomplete or inaccurate.
- 8.2 In addition to submitting the Online Application via the Bank's website, the Applicant is solely responsible for printing out the Online Application and submitting the duly signed Online Application to the Bank. The Applicant shall ensure that the printed Online Application submitted to the Bank is exactly the same as the Online Application which it submitted online.

9. Applicant's Undertakings

- 9.1 All claims drawn under the Guarantee shall be for the Applicant's account and the Applicant undertakes to pay on demand or on presentation of a claim any amount so paid by the Bank in accordance with the Guarantee.
- 9.2 Unless otherwise agreed to in writing, the Applicant undertakes to deposit with the Bank on demand either before or after the issue of the Guarantee such sum(s) of money as the Bank may from time to time at the Bank's sole discretion require for the purposes of security, additional security (where security has already been given) or for any other reason which the Bank may think fit.
- 9.3 The Applicant undertakes that upon the expiry and/or cancellation of the Guarantee, the Applicant will obtain the original thereof from the Beneficiary and return the same to the Bank for renewal or cancellation as may be necessary.
- 9.4 The Applicant shall not, without the Bank's prior written consent (which will not be unreasonably withheld), undertake or permit any re-organisation, amalgamation, reconstruction, take-over, substantial change of shareholders or any other schemes of compromise or arrangement affecting the Applicant's present constitution or amend or alter any of the provisions in the Applicant's Memorandum & Articles of Association or Constitution (as the case may be) relating to the Applicant's borrowing powers and principal business activities.
- 9.5 The Applicant agrees that unless expressly agreed or otherwise stated, the Bank's liability under the Guarantee shall not be reduced or affected in any manner whatsoever by reason of any partial performance of the contract between the Applicant and the Beneficiary or by reason of any dispute, whether contractual or otherwise, related thereto.

10. Applicant's Authorisation

Where the claim by the Beneficiary is not specified in sufficient detail by the Applicant, the Bank shall nevertheless make such payment to the Beneficiary as may be required under the Guarantee upon the written request of the Beneficiary forwarded directly through the

Applicant or the Applicant's named correspondent and the Bank is further authorized to debit the Application's account in accordance with any such payment made pursuant to Clause 13.2 below.

11. Where this Agreement and the terms of the Guarantee in the specimen text are insufficient, incomplete or otherwise unacceptable to the Bank for any reason whatsoever, the Bank may, with the Applicant's consent (such consent may be either oral or written) modify, alter or otherwise amend the terms of the Guarantee and any guarantee resulting from such modification, alteration or amendment shall bind the Applicant upon this Agreement herein as if the modified, altered or amended guarantee was issued upon the Applicant's express written application.

12. Applicant's Obligations

- 12.1 The Applicant agrees to comply with and to procure that its users comply with these Conditions and any other instructions or recommendations the Bank may issue regarding security in relation to the Online Application. The Applicant acknowledges that security is a paramount concern and agrees that it is solely responsible for the set-up, maintenance and review of its security arrangements concerning the Online Application, its telecommunication, computer or other electronic equipment or system or information stored therein, and the Online Application. The Applicant bears the risk of any unauthorized Online Application, use and/or access to its telecommunication, computer or other electronic equipment or system and information stored therein.
- 12.2 The Applicant shall supply to the Bank on request all statements, information, materials and explanations relating to the Applicant's business and financial position including, where appropriate, annual audited financial statements and directors' and auditors' reports which shall be provided not later than 6 months after the close of each financial year.

13. Bank's rights

- 13.1 For the avoidance of doubt, all the Bank's rights and powers at law and in equity shall not be prejudiced or limited in any manner whatsoever. The Applicant agrees that the Bank's rights under this Agreement shall be in addition to and shall not affect or lessen the Bank's rights created by any circumstances of any transactions under any other agreement and the Applicant agrees that the rights and powers conferred by this Agreement are in addition to and without prejudice to any other securities which the Bank may now or hereafter hold for the Applicant's account.
- 13.2 Without prejudice to any other rights that the Bank may have, the Bank shall have the right (without being obliged to) at any time without prior notice to debit the Applicant's current account and/or to debit the balance of the Applicant's overdraft facility with all outstandings in respect of the Guarantee, fees, commissions, charges, the costs and expenses stated in Clause 16.3 below and all other moneys due from the Applicant in connection with this Agreement provided no such debiting shall be deemed to be a payment of the amount due (except to the extent of any amount in credit in the Applicant's current account ) or a waiver of any event of default under this Agreement or any other agreement relating to the

Guarantee. If such debiting causes the Applicant's account to be overdrawn, interest shall be payable accordingly.

- 13.3 The Bank shall be entitled (but shall not be obliged) at any time and without notice to the Applicant to combine, consolidate or merge all or any of the Applicant's accounts and liabilities with and to the Bank whether single or jointly or jointly with any other person and may transfer or set off any sums in credit in such accounts in or towards satisfaction of any of the Applicant's liabilities whether actual or contingent, primary or collateral. If any of the accounts in credit is expressed in quantities of gold, silver or other precious metals or is in a currency other than the currency of the liabilities, the Bank may convert them to cash in the currency of the liabilities at the Bank's own rate for their purchase or exchange then prevailing.
- 13.4 If any sum paid or recovered in respect of the Applicant's liabilities under this Agreement is less than the amount then owing, the Bank may apply that sum to interest, fees, principal or any amount due in such proportions and order and generally in such manner the Bank thinks fit or may credit the same or part thereof to a suspense account if the Bank thinks fit.

14. Interest

Interest at 2% per annum in addition to the prescribed rate will be charged on all fees, commissions and all other charges not paid when due. All interest charged (including additional interest) will be calculated based on a 365-day year with monthly rests or with such other periodic rests as the Bank may specify and is payable both before and after judgment. The Bank may vary the interest rate(s) (including additional interest) from time to time at the Bank's absolute discretion.

15. Personal Data Protection

- 15.1 The Applicant agrees to the UOB Privacy Notice (Corporate), as may be amended from time to time. The Applicant represents, undertakes and warrants that it shall comply with its obligations under the UOB Privacy Notice (Corporate).
- 15.2 Without prejudice to the foregoing sub-clause, the Applicant shall not do anything, and not omit to do anything that will cause the Bank and/or its related corporations to be in breach of any applicable data protection law.

16. Indemnity

- 16.1 Notwithstanding anything to the contrary, the Applicant undertakes to indemnify and at all times keep the Bank and its related corporations (together with their respective officers, employees and agents (each an "Injured Party") fully and completely indemnified at all times from and against all claims, demands, actions, proceedings, losses, damages and expenses (including legal costs on a full indemnity basis) and all liabilities of whatsoever nature or description which may be made, taken, suffered or incurred by the Injured Party or asserted against the Injured Party by any person or entity (including but not limited to the Applicant and/or its agents) whatsoever, in connection with or in respect of any matter or event whatsoever arising out of, in the course of or by reason of:

- (i) any breach of any of the provision in Clause 15 (Personal Data Protection);
  - (ii) any action or omission by the Applicant, that causes the Bank and/or its related corporations to be in breach of any applicable data protection law;
  - (iii) the Guarantee and any extension or renewal thereof; and/or
  - (iv) the Bank accepting, relying or acting on the instructions from the Applicant, including facsimile instructions
- 16.2 The Applicant agrees that its liability shall be a continuing liability and shall remain in full force and effect until the Bank's liability under the Guarantee and any extension or renewal thereof is discharged in full and has expired.
- 16.3 The Applicant shall pay to the Bank on demand on a full indemnity basis all costs and expenses, legal or otherwise connected with the provision, protection and realization of securities and the processing, implementation and recovery of moneys owing under this Agreement, together with interest from the date the costs and expenses are incurred to the date of full payment at such rate as the Bank may prescribe.
17. Authorisation to Disclose Information
- 17.1 The Applicant expressly and irrevocably authorizes and permits the Bank and each of its officers to divulge, reveal or disclose any and all of the particulars and information relating to the Applicant, any Applicant's user, the Online Application to any of the following persons at any time and from time to time:
- (a) any corporation which is deemed to be a related corporation of the Bank by virtue of section 6 of the Singapore Companies Act, Cap. 50 or any other applicable laws;
  - (b) all courts, governmental agencies and lawful authorities in Singapore and elsewhere where the disclosure is required by applicable laws;
  - (c) any guarantor, mortgagor, chargor, pledgor or any other person who has undertaken liability or provided security for the Applicant's accounts with the Bank or for the Applicant's liabilities under this Agreement;
  - (d) any person which the Bank or any of its officers in good faith considers to be appropriate for the purpose of providing the service for the Online Application, including any agents, contractors or third party service provider which have agreed to perform works or services for the Bank in connection with and which affect or may affect the operation of this Online Application service or any other services provided by the Bank;
  - (e) any person in connection with the use of the Online Application service or the provision by the Bank of any service to the Applicant or any person who owns, operates, provides or maintains any part of any system or equipment relevant to the provision of the Online Application service or any other service provided by the Bank; or
  - (f) any other person at any time where the particulars of any account were inadvertently divulged, revealed or disclosed to or accessed by such person through no willful default of the Bank or its officer(s).

17.2 The provisions above are in addition to any other authorisations and consents of the Applicant to the Bank with respect to the use and/or disclosure of information relating to the Applicant, any user of the Applicant, any service provided by the Bank, or account with the Bank, or instruction given to the Bank.

18. Exclusions

18.1 In addition and without prejudice to any other right or remedy which the Bank may have (at law or otherwise), so long as the Bank acts in good faith in acting upon or processing the Online Application, the Bank shall not be liable to the Applicant in any respect for any loss suffered by the Applicant caused by or arising in any way from the Bank's execution or processing of the Online Application or any matter arising therefrom and notwithstanding any breach by the Bank of its obligations to the Applicant.

18.2 The Bank shall not be liable to the Applicant for any loss caused by or arising from any one or more of the following events or matters, howsoever caused or occurring:

- (a) any incompatibility between the Applicant's equipment and the Online Application service;
- (b) any virus, default, defect, deficiency, harmful component or malfunction and/or breakdown, disruption or failure of any software, or any telecommunications, computer or other electronic equipment or system (whether or not owned, operated or maintained by the Bank, the Applicant, any user of the Applicant, or any other person and whether or not used in the provision or operation any account with or service provided by the Bank;
- (c) any failure or refusal by the Bank to process the Online Application due to any order of court, any authority's order, notice, directive or any statute, regulation or by-law;
- (d) any error(s) in transmission of the Online Application;
- (e) any loss associated with systems failures, processing errors, software defects, operating mistake, hardware breakdowns, capacity, inadequacies, network vulnerabilities, control weaknesses security shortcomings, malicious attacks, hacking incidents, fraudulent actions and inadequate recovery capabilities which may arise despite the Bank's best efforts;
- (f) any cessation, interruption or delay in transmission or any wrongful interception of the Online Application, any corruption or loss of any data, through any telecommunications, computer or other electronic equipment or system (whether or not owned, operated or maintained by the Bank or by any other person);
- (g) any breach of the Bank's obligations or duties to the Applicant caused by or arising from any one or more of the events or matters set out in any one or more of the foregoing sub-paragraphs of this Clause 18.2;

18.3 Without prejudice to the generality of the foregoing and notwithstanding any provision to the contrary in this Agreement or in any other agreement between the Bank and the



Applicant, the Bank shall not be in any event liable to the Applicant for any indirect, special or consequential loss or for punitive damages, whether arising from any breach of the Bank's obligations to the Applicant or otherwise.

- 18.4 No representation or warranty is made or given by the Bank to the Applicant or any person and no obligation or liability is assumed by the Bank to the Applicant or any person as regards the availability or continued availability or operation any the Online Application service, or any telecommunication or electronic equipment, system or terminal (whether or not provided, operated or maintained by the Bank or otherwise) notwithstanding any provision to the contrary in this Agreement.

19. Events of Default

On the occurrence of any of the following events of default, the Bank shall cease to be under any further commitment to the Applicant and all outstandings hereunder shall become due and payable immediately and the Applicant shall provide cash cover for all contingent liabilities and for all bonds, guarantees, indemnities, documentary or other credits or any instruments whatsoever from time to time entered into by the Bank for the Applicant's account or at the Applicant's request:

- (a) if the Applicant breaches any term of this Agreement including failure to pay any amount due under this Agreement on the due date or on demand, if so payable;
- (b) if the Applicant is unable to pay its debts when they become due ;
- (c) if the Applicant ceases or threatens to cease carrying on its business or transfer or dispose or intend to so transfer or dispose of a substantial part of the Applicant's assets or change or intend to change the nature or scope of the Applicant's business as now conducted;
- (d) if any resolution is passed, or a petition is presented against the Applicant for bankruptcy, liquidation, winding up or dissolution or for the appointment of a judicial manager, or a liquidator, receiver, trustee or similar official is appointed of all or a substantial part of the Applicant's assets or of execution or any form of action is levied or taken against any of the Applicant's assets;
- (e) if the Applicant defaults under any other agreement involving the borrowing of money or the granting of advances or credit which gives the holder of the obligation concerned the right to accelerate repayment or withdraw the advance or credit;
- (f) if, in the Applicant's opinion, there is any change or threatened change in circumstances which would materially and adversely affect the Applicant's business or financial condition or the Applicant's ability to perform its obligations under this Agreement or any other agreement with the Bank, including any change or threatened change in the Applicant's shareholders or directors, if a corporation;

- (g) if a notice for compulsory acquisition of the mortgaged property (if any) or any part thereof is issued or made under or by virtue of an Ordinance, Act of Parliament or other statutory provision;
- (h) if any of the foregoing events or analogous events or proceedings occurs in relation to any third party who now or hereafter has guaranteed or provided security or given an indemnity for the facilities.

20. Miscellaneous

- 20.1 This Agreement and the Guarantee are governed by and construed in accordance with the laws of Singapore. The Applicant hereby irrevocably submits to the non-exclusive jurisdiction of the courts of Singapore for any disputes or matters whatsoever arising out of or in connection with this Agreement and Guarantee. This shall not however preclude the Bank from commencing any action or proceedings in any other foreign jurisdictions as the Bank may deem fit.
- 20.2 This Agreement shall continue to be valid and binding notwithstanding any change in the Applicant's constitution, if a corporation, by amalgamation, consolidation, reconstruction or otherwise, and if a firm, by retirement, expulsion, death, admission, accession or change of any partners or otherwise.
- 20.3 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act (Cap. 53B) (the "Act") to enforce any term herein, provided always that all defences and limitations in these Conditions shall be enforceable by all the Bank's subsidiaries (whether wholly or partly owned), branches, any other bank within the United Overseas Bank Limited Group, whether carrying on business in Singapore or not, the Bank's successors in title or assigns, entities into or with which the Bank may merge or consolidate, any entities formed as a result of acquisition, by or of the Bank as well as the Bank's employees, sub-contractors and agents, all of whom or which shall be deemed as third parties for the purpose of the Act. For the purposes of this Act, consent of any of these third parties is not required for any variation, rescission or termination of this Agreement.
- 20.4 If any of the provisions or any part of any provision herein is or becomes illegal, invalid or unenforceable in any respect under any law, the same shall not affect the legality, validity or enforceability of the remaining provisions, or the remaining part of a provision.
- 20.5 The Bank may neglect or forbear to enforce any of the terms in this Agreement or waive on such conditions as the Bank deems fit any breach by the Applicant of the same without prejudice to the Bank's right at any time afterwards to act strictly in accordance with the originally agreed terms in respect of the existing or subsequent breach. No failure or delay in exercising or enforcing on the part of the Bank of its rights under any of the terms in this Agreement shall operate as a waiver thereof nor shall it in any way prejudice or affect the right of the Bank afterwards to act strictly in accordance with the powers conferred on the Bank under this Agreement.

- 20.6 The Bank may amend, vary or supplement any provision of this Agreement by giving notice thereof to the Applicant by any means that the Bank deems fit, and any such amendment, variation or supplement shall take effect as between the Applicant and the Bank as from the date specified in such notice or in the absence thereof as from the date of such notice.
- 20.7 The headings or titles to the provisions in this Agreement are to facilitate reference and shall not be referred to or relied upon in the construction of any provision of this Agreement.