

# CLIENT AGREEMENT<sup>1</sup>



SPECIFICATION NO. | 2009/1.0\_APRIL 2009

<sup>1</sup> 如客戶希望閱讀本協議書之中文版本，可直接向受理客戶開戶申請的東英亞洲證券有限公司之代表索取。如本協議書之中、英文版本之間存在差異，概以英文版本為準。

## CLIENT AGREEMENT

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This document together with the related Account Opening Form contains important terms and conditions that apply to and constitute the agreement on all Accounts made between the Client and OPSL. The Client has been advised to read this Agreement carefully and retain it for the Client's future reference.

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**The Client hereby requests OPSL to open an Account(s) for the Client and agrees to accept and be bound by the following terms and conditions:**

**Part 1 – Definition and Interpretation**

1. In this Agreement, unless the context otherwise requires, the following terms shall bear the following meanings:

<b>“Account(s)”</b>	any securities trading account(s) including cash account(s), margin account(s) and eTrade account(s) from time to time opened in the Client’s name and maintained with OPSL
<b>“Account Opening Form”</b>	the account opening form or other documents (however described) prescribed by OPSL from time to time in respect of the relevant Client’s application to open one or more Accounts with OPSL
<b>“Affiliate”</b>	in relation to a party, an individual, corporation, partnership or any other form of entity directly or indirectly controlling, controlled by or under common control with such party or any of such entities’ directors, officers or employees
<b>“Agreement”</b>	this document, the related Account Opening Form and all other relevant documents (including the fee schedule) enclosed herewith which terms and conditions shall constitute a legally binding contract between the relevant Client and OPSL, as may from time to time be amended, modified or supplemented
<b>“Authorized Person(s)”</b>	the person(s) authorized by the Client to give Instructions to OPSL as notified to OPSL from time to time in such manner as required by OPSL
<b>“Business Day”</b>	a day (other than a Saturday) on which banks in Hong Kong generally are open for business
<b>“Cash Client”</b>	any Client who has opened and maintained a cash Account in his name with OPSL
<b>“Client(s)”</b>	any personal client(s) and/or corporate client(s) of OPSL including the Cash Client(s), the Margin Client(s) and the eTrade Client(s) who has executed the related Account Opening Form (either individually or jointly with others) and agreed to accept and be bound by the terms and conditions of this Agreement
<b>“Client Data Policy”</b>	OPSL’s privacy policy relating to the Personal Data (Privacy) Ordinance (Chapter 486 of the laws of Hong Kong) and as may from time to time be amended, modified or supplemented
<b>“Code of Conduct”</b>	the Code of Conduct for Persons Licensed by or Registered with the SFC in force from time to time
<b>“Dormant”</b>	in respect of any Account, the state of any Account that has recorded no trading activity for a continuous period of thirty six (36) months
<b>“Electronic Trading Services”</b>	a facility which enables the Client to give Instructions to purchase and sell or to dispose Securities through electronic means including but not limited to the internet, wire or wireless applications and to receive relevant information from OPSL and/or other third party service providers
<b>“eTrade Client”</b>	any Client who has opened and maintained a eTrade Account in his name with OPSL and thus the Client is allowed to use the Electronic Trading Services provided by OPSL
<b>“Exchange”</b>	the Stock Exchange of Hong Kong Limited
<b>“HKSCC”</b>	Hong Kong Securities Clearing Company Limited
<b>“Hong Kong”</b>	the Special Administrative Region of Hong Kong of the People’s Republic of China
<b>“Instruction(s)”</b>	any instruction(s) given by the Client and/or the Authorized Person(s) for buying, selling, other disposition or dealing of any Securities and other order(s) incidental thereof
<b>“Margin Client”</b>	any Client who has opened and maintained a margin Account in his name with OPSL
<b>“OPSL”</b>	Oriental Patron Securities Limited
<b>“Securities”</b>	shall have the meanings ascribed to it under the SFO
<b>“SFC”</b>	the Securities and Futures Commission
<b>“SFO”</b>	the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong)
<b>“Transaction(s)”</b>	any transaction(s) in Securities and other transaction(s) incidental thereof which OPSL effects for or on behalf of the Client

2. The headings of this Agreement are inserted for convenience only and shall be ignored in construing this Agreement.
3. The expression “the Client(s)” shall, where the context permits, include their respective successors, personal representatives and permitted assigns.
4. Unless the context otherwise requires, references in this Agreement to the singular shall be deemed to include references to the plural and *vice versa*; references to one gender shall include all genders and references to any person shall include an individual, firm, body corporate or unincorporated.
5. References to any statute or statutory provision shall include any statute or statutory provision which amends or replaces or has amended or replaced it and shall include any subordinate legislation made under the relevant statute.
6. References in this Agreement to clauses, schedules and exhibits are references to clauses, schedules and exhibits of this Agreement.
7. References to “other”, “include” and “including” in this Agreement shall not be construed restrictively although they are respectively preceded or followed by words or examples indicating a particular class of acts, matters or things.
8. References to times of a day are, unless otherwise provided herein, to Hong Kong time.

## **Part 2A – Standard Terms and Conditions**

### **1. Application**

- 1.1 These terms form the standard terms and conditions of this Agreement and unless the context otherwise stated, shall be binding on all Clients and/or OPSL. If the Client is allowed to engage in margin trading and/or to use Electronic Trading Services provided by OPSL, the Client shall be further subject to the terms and conditions set out respectively in Part 2B and/or Part 2C hereof. If there is any inconsistency, the provisions for a particular service will prevail over general provisions.
- 1.2 The Client agrees to and hereby irrevocably appoint OPSL with full power and authority as the Client's true and lawful attorney, to the fullest extent permitted by law, to act for and on the Client's behalf for the purpose of carrying out the provisions of this Agreement and taking any action and execution any document or instrument in his name or in OPSL's own name which OPSL may deem necessary or desirable to accomplish the purposes of this Agreement.

### **2. The Account**

- 2.1 The Client confirms that all information provided in relation to the Account including information in the related Account Opening Form is complete and accurate. The Client will inform OPSL in writing of any changes to that information. It is the Client's responsibility to ensure Account accuracy and to notify OPSL immediately with regard to any discrepancies.
- 2.2 OPSL is authorized to conduct credit enquiries or check on the Client for the purpose of ascertaining the financial situation and investment objectives of the Client and to verify the information provided. The Client also understands that OPSL may provide the Client's information to credit reference agencies and in the event of default to a debt collection agent.
- 2.3 OPSL will keep information relating to the Account confidential, but may provide any such information to the regulators, law enforcement agencies and other competent authorities, including but not limited to the Exchange, the SFC and Independent Commission Against Corruption to comply with their requirements or requests for information or to any persons pursuant to any court orders or statutory provisions, even if the Account has been terminated prior to such request.
- 2.4 The Client's private information is collected and used by OPSL in accordance with OPSL's Client Data Policy a copy of which is available upon request.

### **3. Applicable Laws and Rules**

- 3.1 All Transactions will be effected in accordance with all laws, rules, regulatory directives, bye-laws, customs and usages applying to OPSL. This includes the rules, codes and guidance of the Exchange, HKSCC and SFC from time to time. All actions taken by OPSL in accordance with such laws, rules, regulatory directives, bye-laws, customs and usages will be binding on the Client. The Client also agrees that irrespective of his country of domicile (or if the Client is a company, its place of incorporation), any dispute with OPSL may at OPSL's discretion be referred to the SFC, and not other securities regulators in any jurisdictions.
- 3.2 This Agreement is governed by, and may be enforced in accordance with, the laws of Hong Kong.
- 3.3 If the Client is an individual domiciled or a company incorporated outside Hong Kong, the Client shall, immediately upon demand by OPSL, appoint a person or an agent in Hong Kong to be his or its process agent to receive all notices and communications relating to any legal proceedings involving the Client, and the Client agrees that any service of any legal process on the process agent shall constitute sufficient service on the Client for purpose of legal proceedings in the Hong Kong courts.
- 3.4 No provision of this Agreement shall operate to remove, exclude or restrict any of the Client's rights or obligations of OPSL under the laws of Hong Kong.

### **4. Instructions and Transactions**

- 4.1 OPSL will act as the Client's agent in effecting Transactions unless OPSL indicates (in the combined daily statement which includes the contract notes and receipts for the relevant Transaction or otherwise) that OPSL is acting as principal.
- 4.2 The Client agrees that OPSL shall not be accountable to the Client for any commissions, remuneration, rebates or other benefits which OPSL may receive from or offer to any person in respect of any Transaction or business conducted with the Client or on the Client's behalf.
- 4.3 The Client agrees that OPSL (including OPSL's directors, officers, licensed representatives and employees) does not provide tax, legal or investment advice nor does OPSL give advice or offer any opinion or recommendation with respect

- to the suitability of any Securities or Transactions. The Client agrees that the Client, independently and without reliance on OPSL, makes his own decisions and judgments with respect to his Instructions. Should the Client need investment advice from OPSL, a separate agreement has to be made between the Client and OPSL.
- 4.4 The Client or the Client's Authorized Person(s) may give Instructions to OPSL (which OPSL may in its absolute discretion reject) to effect Transactions or other transactions for the Client. OPSL may act on such Instructions given orally, in writing or electronically which purport, and which OPSL reasonably believes to come from the Client or the Client's Authorized Person(s) or to have been given on behalf of the Client. OPSL will not be under any duty to verify the capacity of the person(s) giving those Instructions.
  - 4.5 Unless otherwise inform OPSL in writing, the Client confirms that the Client is the beneficial owner of the Securities under his Account free from any lien, charge, equity or encumbrance save as created by or under this Agreement and is ultimately responsible for originating the Instruction in relation to all Transactions. If, in relation to any particular Transaction in the Client's Account, the Client is not the person or entity (legal or otherwise) ultimately responsible for originating the Instruction or the person or entity (legal or otherwise) that stands to gain its commercial or economic benefit and/or bear its commercial or economic risk, the Client undertakes and agrees to provide information on the identity, address and contact and other details of such person or entity to OPSL before giving the Instruction to OPSL. The Client also undertakes and agrees to provide such information to OPSL, or direct to the relevant exchange, government agencies or regulators within two (2) Business Days of OPSL's written request and such undertaking and agreement will survive any termination of this Agreement.
  - 4.6 The Client confirms that until such time as OPSL receives written notice from the Client to the contrary in respect of one or more specific Transactions, the Client will not give OPSL any Instruction to sell securities which is a short selling order (as defined in section 1 of Part 1 of Schedule 1 to the SFO) to be executed at or through the Exchange.
  - 4.7 Without prejudice to Clause 4.6 above, in respect of each short selling order to be transacted at or through the Exchange upon the Client's Instruction, the Client understands the relevant provisions of sections 170 and 171 of the SFO and its related subsidiary legislation and agrees to ensure compliance with the same by the Client and any other relevant persons.
  - 4.8 On all Transactions, the Client will pay OPSL's commissions and charges, as notified to the Client, as well as applicable fees and levies imposed by the Exchange and/or the SFC, and all applicable stamp duties. OPSL may deduct such commissions, charges, levies, fees and duties from the Account. The Client acknowledges and agrees that the commission rates and fees are determined and set solely by OPSL, the Exchange, the SFC and other government agencies, and are subject to change at any time.
  - 4.9 OPSL may determine the priority in the execution of the Client's Instructions having due regard to market practice, applicable regulations and fairness to all Clients.
  - 4.10 OPSL may, without prior notice to the Client, combine for execution the Client's Instructions with the Instructions of other Clients. This may result in a more favorable or less favorable price being obtained for the Client than executing the Client's Instructions separately. Where there are insufficient Securities to satisfy the Instructions so combined, the Transactions will be allocated between Clients with due regard to market practice and fairness to Clients.
  - 4.11 OPSL will not be liable for any delay or failure in the transmission of Instructions due to breakdown or collapse of communication facilities or for any other delay or failure beyond the control of OPSL.
  - 4.12 By reason of physical restraints and rapid changes of Securities prices, OPSL may not always be able to execute the Client's Instructions in full or at the prices quoted at any specific time or "at best" or "at market" and the Client agrees to be bound by such executions.
  - 4.13 All Instructions in respect of the Transactions given by the Client are good for the day on which they were given. They will be automatically cancelled if not executed by the close of trading on the Exchange or such other expiration date required by the Exchange. OPSL may execute these Instructions at any time prior to their automatic cancellation or receipt of cancellation Instructions, and the Client accepts full responsibility for the Transactions so executed.
  - 4.14 The Client may request to cancel or amend their Instructions in respect of the Transactions but OPSL may at its discretion (such discretion not to be exercised in an unreasonable manner) refuse to accept any such request. These Instructions may be cancelled or amended only before execution. Cancellation of market Instructions is rarely possible as they are subject to immediate execution. In the case of full or partial execution of the Client's Instructions before cancellation, the Client accepts full responsibility for the executed Transactions and OPSL shall incur no liability in connection therewith.
  - 4.15 The Client understands and agrees that OPSL may use a telephone record system to record conversations and Instructions with the Client and the Client's Authorized Persons. The Client acknowledges and warrants that each Authorized Person also consents to such recording.

4.16 The Client may request OPSL to subscribe for Securities offerings on the Client's behalf. OPSL may be required to provide warranty or make representation in respect of such application, including but not limited to the following:

- (a) that OPSL has due authority to make such application on the Client's behalf;
- (b) that no other application is being made for the Client's benefit whether by the Client himself or by any other person other than the application submitted on the Client's behalf.

The Client hereby expressly authorizes OPSL to provide such warranty and representation to the Exchange or issuer of the relevant Securities. The Client acknowledges that the aforesaid declaration will be relied upon by the issuer of the relevant Securities in deciding whether or not to make any allotment of Securities in response to the application made by OPSL as the Client's agent.

4.17 At the Client's request, OPSL may provide financial accommodation to facilitate the subscription of Securities offerings, and, where applicable, for the continued holding of those Securities under a separate agreement to be made between the Client and OPSL.

4.18 The Client understands that OPSL generally does not accept stop-loss orders. If such orders are accepted, OPSL does not guarantee the execution of such orders.

4.19 The Client agrees that OPSL may, in its discretion and without giving the Client prior notice, prohibit or restrict the Client's ability to trade Securities through the Account. The Client agrees that OPSL is not liable for any losses and/or damages, actual or hypothetical, as a result of such restrictions.

## 5. Settlement

5.1 Unless otherwise agreed, in respect of each Transaction, unless OPSL is already holding sufficient cash or Securities on the Client's behalf to settle the Transaction, the Client will:

- (a) pay OPSL cleared funds or deliver Securities to OPSL in deliverable form; or
- (b) otherwise ensure that OPSL has received such funds or Securities

by such time as OPSL has notified the Client in relation to that Transaction. If the Client fails to do so, OPSL may on behalf of the Client:

- (i) in the case of a purchase Transaction, sell the purchased Securities; and
- (ii) in the case of a sale Transaction, borrow and/or purchase Securities in order to settle the Transaction.

5.2 The Client will indemnify OPSL against any losses, costs, fees and expenses resulting from the Client's settlement failures.

5.3 The Client agrees to pay a penalty charge for each settlement failure at such rates and on such other terms as OPSL has stipulated at its discretion and notified the Client from time to time.

5.4 The Client agrees to pay interest on all overdue balances (including interest arising after a judgment debt is obtained against the Client) at such rates and on such other terms as OPSL has stipulated at its discretion and notified the Client from time to time. The Client agrees to pay for the costs and expenses of collection of the overdue balances and any unpaid deficiency in the Account(s), including without limited to attorney's fees, court costs and any other costs incurred or paid by OPSL.

5.5 The Client acknowledges that delivery of any Securities that OPSL may have purchased on behalf of the Client from the selling party is not guaranteed. In the case that OPSL has confirmed with the Client that the relevant purchase Transaction was completed but the selling party or its broker fails to deliver on the settlement date and OPSL has to purchase the Securities to settle the Transaction, the Client will not be responsible to OPSL for the costs of such purchase.

## 6. Safekeeping of Securities

6.1 Any Securities which are held by OPSL for safekeeping may, at OPSL's discretion:

- (a) (in the case of registrable Securities) be registered in the Client's name or in the name of OPSL's nominee; or
- (b) be deposited, at the Client's costs, in safe custody in a designated account with OPSL's bankers or with any other institution which provides facilities for the safe custody of documents. In the case of Securities in Hong Kong, such institution shall be approved by the SFC as a provider of safe custody services.

6.2 Where Securities are not registered in the Client's name, any dividends or other benefits arising in respect of such Securities shall, when received by OPSL, be credited to the Client's Account or paid or transferred to the Client after deduction of the relevant charges, as agreed with OPSL. Where the Securities form part of a larger holding of identical Securities held for the Clients, the Client will be entitled to the same share of the benefits arising on the holding as the Client's share of the total holding.

- 6.3 The Client agrees to pay service charges upon the Account at such rates and on such other terms as OPSL has stipulated at its discretion and notified the Client from time to time in respect of the safe custody services.
- 6.4 Save for the Margin Client, OPSL as a broker who does not have the Client's written authority pursuant to section 7(2) of the Securities and Futures (Client Securities) Rules shall not:
- (a) deposit any of the Client's Securities with a banking institution as collateral for an advance or loan made to OPSL, or with the HKSCC as collateral for the discharge of OPSL's obligations under the clearing system;
  - (b) borrow or lend any of the Client's Securities; and
  - (c) otherwise part with possession (except to the Client or on the Client's Instructions) of any of the Client's Securities for any purpose.
- 6.5 Subject to settlement of all outstanding balances of any and all of the Accounts owing to OPSL (if any), Securities purchased for the Client will be delivered to the Client provided that:
- (a) such Securities are fully paid; and
  - (b) such Securities are not subject to any lien.

#### **7. Cash Held for the Client**

- 7.1 Any cash held for the Client, other than cash received by OPSL in respect of settling a Transaction and/or fulfilling other debt obligations by the Client, will be credited to a client trust account maintained with a licensed bank as required by applicable laws from time to time.
- 7.2 Subject to any written agreement to the contrary, the Client hereby agrees that, OPSL shall be entitled at any time and from time to time withhold, withdraw and retain for its own use and benefit absolutely any and all interest at any time and from time to time earned, accrued, paid, credited or otherwise derived from the retention at any time or from time to time of any and all amounts:
- (a) received for the Account(s) of the Client in respect of dealing in Securities;
  - (b) for or on account of the Client;
  - (c) in any trust account established by OPSL under the SFO;
  - (d) received or held by OPSL or any of OPSL's nominees, agents, representatives, correspondents or bankers for or on account in any other circumstances, for any purpose or pursuant to any Transaction.

#### **8. Joint Account**

- 8.1 Where the Client consists of more than one person:
- (a) the liability and obligations of each of them shall be joint and several and references to the Client shall be construed, as the context requires, to any or each of them;
  - (b) OPSL shall be entitled to, but shall not be obliged to, act on Instructions or any other requests from any of them;
  - (c) each of them shall be bound though any other Client or any other person intended to be bound is not, for whatever reason, so bound; and
  - (d) any notice, payment or delivery by OPSL to either any one the joint Account holders shall be a full and sufficient discharge of OPSL's obligations to notify, pay or deliver under this Agreement.
- 8.2 Where the Client consists of more than one person, on the death of any of such persons (being survived by any other such persons), this Agreement shall not be terminated and the interest in the Account of the deceased will thereupon vest in and enure for the benefit of the survivor(s) provided that any liabilities incurred by the deceased Client shall be enforceable by OPSL against such deceased Client's estate. The surviving Client(s) shall give OPSL written notice immediately upon any of them becoming aware of any such death.

#### **9. Lien, Set-off and Combination of Accounts**

- 9.1 All Securities held for the Account shall be subject to a lien by way of first fixed charge in OPSL's favour for the performance of the Client's obligations to OPSL arising in respect of dealing in Securities for the Client. In addition, OPSL shall have a lien by way of first fixed charge over any and all Securities, acquired on the Client's behalf, or in which the Client has an interest (either individually or jointly with others) which are held for the Accounts and all cash and other property at any time held by OPSL on the Client's behalf, all of which shall be held by OPSL as a continuing security for the payment and/or discharge of the Client's obligations to OPSL arising from the business of dealing in Securities and all stocks, shares (and the dividends or interest thereon) rights, monies or property accruing or offered at any time by way of redemption, bonus, preference, option or otherwise to or in respect of such Securities. Upon default by the Client in payment on demand or on the due date therefor of any of the Client's indebtedness to OPSL or any default by the Client hereunder, OPSL shall have the right, acting in good faith, to sell or otherwise dispose the whole or

any part of such security as when and how and at such price and on such terms as OPSL shall think fit and to apply the net proceeds of such sale or disposition and any moneys for the time being in OPSL's hands in or towards discharge of the Client's indebtedness to OPSL.

- 9.2 Subject to the provisions of the SFO and relevant rules made thereunder and without prejudice to any of the rights OPSL may have, OPSL shall be entitled and authorized to, at any time or from time to time and without prior notice to the Client, notwithstanding any settlement of Account or other matter whatsoever, combine or consolidate any or all of the Accounts (of whatever nature and whether held individually or jointly with others) maintained with OPSL and set-off or transfer any money, securities or other property standing to the credit of any one or more of such Accounts in or towards satisfaction of the indebtedness, obligations or liabilities of the Client towards OPSL on any other Accounts whether such indebtedness, obligations or liabilities be present or future, actual or contingent, primary or collateral, several or joint and secured or unsecured. Where such set-off, consolidation, combination or transfer requires the conversion of one currency into another, such conversion shall be calculated at the rate of exchange conclusively determined by OPSL to be applicable.

## **10. Amendment**

- 10.1 OPSL may from time to time in its absolute discretion add, amend, delete or substitute any of the terms and conditions of this Agreement by giving the Client notice of such changes which will become effective from the date specified in such notice.
- 10.2 The Client acknowledges and agrees that if the Client does not accept any amendments (including the amendments to OPSL's commission rates and fees etc.) as notified by OPSL from time to time, the Client shall have the right to terminate this Agreement in accordance with the termination clause under this Agreement. The Client further agrees that any amendments shall be deemed to be accepted by the Client, should OPSL continue to effectuate any Transaction(s) in the Account without being expressly communicated with the Client's objections to such amendments prior to the Transaction(s).

## **11. Limitation of Liability and Indemnity**

- 11.1 OPSL shall not be liable for any delay or failure to perform their obligations or any losses, damages or costs resulting therefrom so long as they have acted in good faith. Moreover, OPSL shall not be held responsible for any consequences resulting whether directly or indirectly from any uncontrollable events including without limitation government restrictions, imposition of emergency procedures, exchange ruling, third party conduct, suspension of trading, breakdown or collapse of communication facilities, war, strike, market conditions, civil order, acts or threatened acts of terrorism, natural disasters, or any other circumstances beyond OPSL's control whatsoever.
- 11.2 The Client further agrees that OPSL (including OPSL's directors, officers, licensed representatives and employees) shall not be liable in respect of any information rendered, whether such information was given at the Client's request.
- 11.3 The Client shall fully indemnify OPSL (including OPSL's directors, officers, licensed representatives and employees) against all claims, actions, liabilities (whether actual or contingent) and proceedings against any one of them and bear any losses, costs, charges or expenses (including legal fees) which any one of them may suffer or incur in connection with their carrying out of obligations or services, or exercise of rights, powers or discretion under this Agreement, including any action taken by OPSL to protect or enforce its rights, or its security interest under this Agreement, whether or not as a result of any default or breach of the Client.

## **12. Default**

- 12.1 All amounts owing by the Client to OPSL together with interest become immediately due and payable without any notice or demand upon any one of the following events of default:
- (a) if, in OPSL's opinion, the Client has breached any material term of this Agreement or defaulted in respect of any transaction with or through OPSL;
  - (b) if any representation, warranty or undertaking to OPSL was when given or hereafter becomes incorrect in any material respect;
  - (c) for compliance with any rules or regulations of any relevant exchange or clearing house;
  - (d) in the event of the Client's death (in the case of joint Account, Clause 8.2 of this Agreement shall apply) or being declared incompetent or a petition in bankruptcy is filed by or against the Client or an order is made or resolution passed for the Client's voluntary or compulsory winding up or a meeting is convened to consider a resolution that the Client should be so wound up;
  - (e) any warranty or order of attachment or distress or equivalent order is issued against any of the Client's Accounts with OPSL; or

(f) when the Client's Account has become Dormant and the balance of which is zero (i.e. neither cash nor Securities are maintained in the Account) or negative (i.e. in the case that the Client has indebtedness owing to OPSL),

and upon the occurrence of any of such events (collectively referred to as "Default"), OPSL shall be entitled in its absolute discretion, without notice or demand and without prejudice to any other rights or remedies available to OPSL, forthwith to:

- (i) sell or realize all or any part of the Client's property held by OPSL in such manner and upon such terms as OPSL may conclusively decide and satisfy the Client's obligations and indebtedness towards OPSL out of the net proceeds (with fees, expenses and costs deducted) thereof;
- (ii) cancel any open orders for the purchase or sale of Securities;
- (iii) sell any or all Securities long in the Account;
- (iv) buy any or all Securities which may be short in the Account; and/or
- (v) exercise any of its rights under this Agreement.

### 13. Termination

13.1 Either party may terminate this Agreement at any time on the giving of not less than seven (7) Business Days' prior written notice to the other. However, OPSL may terminate this Agreement forthwith at any time without notice to the Client in the case of Default committed by the Client.

13.2 Any termination shall not affect any transaction entered into, or prejudice or affect any right, power, duty and obligation of either party accrued, prior to such termination.

13.3 Upon termination of this Agreement, the Client will immediately pay to OPSL any and all amounts due or owing to it.

13.4 In case of any cash or Securities balances in the Account upon termination of this Agreement by way of notice (other than as a result of Default), the Client agrees to withdraw such balances within seven (7) days from the date of such termination. If the Client does not do so, the Client agrees that OPSL may on behalf of the Client and without any responsibility for any loss or consequence on its part sell or dispose of the Client's Securities in the market or in such manner and at such time and price as OPSL may reasonably determine and send to the Client at the Client's sole risk its cheque representing any net sale proceeds and credit balances in the Accounts to the Client's last known address.

### 14. Notices and Communication

14.1 Any notice or communication given by OPSL to the Client shall be deemed made or given:

- (a) if made by letter, upon delivery to the Client by hand or if sent by prepaid mail, within two (2) days if the Client is in Hong Kong or within five (5) days if the Client is outside Hong Kong; and
- (b) if made by telex, facsimile, electronic mail or other electronic means, upon transmission of the message to or accessible by the Client.

14.2 OPSL may also communicate with the Client verbally. The Client is deemed to have received any message left for the Client on the Client's answer machine, voicemail or other similar electronic or mechanical devices at the time it is left for the Client.

14.3 Any notice or communications made or given by the Client will be sent at the Client's own risk and will be effective only upon actual receipt by OPSL.

14.4 Unless otherwise inform OPSL in writing, the Client expressly consent to OPSL sending any notice, documents or communication to the Client by electronic means.

14.5 The Client agrees to check regularly the Client's mailbox, electronic mailbox, facsimile machine and other sources of facilities through which the Client receives communication from OPSL. OPSL will not be responsible for any losses that arise from the Client's failures, delay or negligence to check such sources or facilities.

14.6 The Client understands, for the security and integrity of the Account, that OPSL may temporarily or permanently disable or restrict the Account, if and when the mails become undeliverable or are returned as a result of the Client's failure to provide, update and/or notify OPSL with most current and accurate Account information.

14.7 The Client is responsible for reviewing all acknowledgements, confirmations, contract notes and Account statements in relation to the Client's Transactions and other Account activities information upon first receiving them. All Transactions and other information therein contained will be binding on the Client unless OPSL receives the Client's notice of objection in writing within seven (7) days after the Client receives or deemed to have received them. In all cases, OPSL reserves the right to determine the validity of the Client's objection to the relevant Transaction or information.

## **15. General Provisions**

- 15.1 All currency exchange risks in respect of any Transactions, settlement actions or steps taken by OPSL under this Agreement shall be borne by the Client.
- 15.2 If OPSL commits a default as defined in the SFO and the Client thereby suffers a pecuniary loss, the Client shall have a right to claim under the Compensation Fund established under the SFO, subject to the terms of the Compensation Fund from time to time.
- 15.3 Each of OPSL and the Client undertakes to notify the other in the event of any material change to the information (as specified in paragraphs 6.2(a), (b), (d), (e) and (f) of the Code of Conduct) provided in this Agreement.
- 15.4 The terms and conditions of this Agreement shall survive any changes or succession in the Client's business, including the Client's bankruptcy or death and will be binding on the Client's successor(s), personal representative(s) or permitted assign(s).
- 15.5 Time shall be of essence in relation to all matters arising under this Agreement.
- 15.6 Waiver of any right under this Agreement must be in writing signed by the party waiving such right. The rights, powers, remedies and privileges in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law. Any failure or delay in exercising all or part of any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver to preclude any subsequent exercise of that right, power or privilege.
- 15.7 Each of the provisions in this Agreement is several and distinct from the others and if any one or more of such provisions is or becomes invalid or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 15.8 OPSL shall have the right to assign, transfer or otherwise dispose of all or any of its rights, interests or obligations in or under this Agreement to its Affiliates as it thinks fit and without having to notify the Client or obtain the Client's consent. The Client shall not assign, transfer or dispose of the Client's rights, interests or obligations in or under this Agreement to any third party without the prior written consent of OPSL.

## **16. Risk Disclosure Statements**

- 16.1 The Client acknowledges that the relevant risk disclosure statements specified in Part 3A hereof form part of this Agreement. If the Client is allowed to engage in margin trading and/or to use Electronic Trading Services provided by OPSL, the Client shall further acknowledge the relevant risk disclosure statements set out respectively in Part 3B and/or Part 3C hereof.

## **17. Representation, Warranties and Undertakings**

- 17.1 The Client represents that he is of required legal age and mentally fit to enter into this Agreement. If the Client is a corporate client, it has obtained all necessary consents from shareholders and directors and has taken all necessary actions to enable the Client to enter into this Agreement and perform its obligations under this Agreement.
- 17.2 Save as disclosed in the Account Opening Form, the Client represents and warrants to OPSL that the Client is not associated with any directors, employees or licensed representatives of OPSL or its associated companies and agrees that if the Client is or becomes associated with any of such directors, employees or licensed representatives, the Client shall promptly notify OPSL of the existence and nature of such association and acknowledge that OPSL may, upon receipt of such notice, at OPSL's discretion, choose to terminate the Account. If the Client is a corporate client, the expression "Client" in this Clause 17.2 and Clause 17.3 below shall include any of the Client's directors, shareholders or Authorized Persons.
- 17.3 The Client represents that, unless the Client has previously disclosed in writing to OPSL, the Client is not a director or employee of any exchange, clearing house or any licensed or registered person under the SFO.
- 17.4 This Agreement and its performance and the obligations contained in this Agreement do not and will not contravene any applicable law and regulations, any provisions of the Client's memorandum and articles of association or by-laws (where applicable), or constitute a breach of default under any agreement or arrangement by which the Client is so bound.
- 17.5 The Client will not charge, pledge or allow to subsist any charge or pledge over the Client's Securities or monies in the Account or grant or purport to grant an option over any Securities or monies in the Account without the prior written consent of OPSL.
- 17.6 All representations and warranties appeared in this Agreement shall be deemed to be repeated immediately before each Transaction or dealing is carried out for or any service is provided to the Client or on the Client's behalf.

**Part 2B – Additional Terms and Conditions for Margin Client**

1. In addition to Part 2A of this Agreement, this Part 2B sets out the terms and conditions to which the Client shall be further subject upon the Client opening a margin Account with OPSL in relation to Transactions carried out in connection therewith and the Client shall in this Part 2B be referred to as Margin Client.
2. The Margin Client shall on demand from OPSL make payments of deposits or margin in cash, Securities or otherwise in amounts agreed with OPSL or which may be required by the rules of any exchange or market of which OPSL is a member.
3. The Margin Client shall be granted facilities up to 50 per cent. or such percentage as may be determined by OPSL from time to time of the market value of the collateral maintained with OPSL.
4. OPSL shall not, without the Margin Client's prior written consent, deposit any of the Margin Client's Securities as security for any loans or advances made to OPSL, or lend or otherwise part with the possession of any of the Margin Client's Securities for any purpose. Such written consent shall be in the form appearing in the "Authorisation Letter from Margin Clients".

## **Part 2C – Additional Terms and Conditions for eTrade Client**

1. In addition to Part 2A of this Agreement, this Part 2C sets out the terms and conditions to which the Client shall be further subject upon the Client opening a eTrade Account with OPSL in relation to Transactions carried out in connection therewith and the Client shall in this Part 2C be referred to as eTrade Client.
2. The eTrade Client consents to the use of the Electronic Trading Services as a medium of communication with OPSL and to transmit information, data and document (for avoidance of doubt, the transmission of document includes but does not limit to sending the contract note, trading confirmation, statement of the Account and other documents in electronic form through any electronic means) to the eTrade Client.
3. The eTrade Client accepts the risk of receiving or gaining access to services through and communication and conducting Transactions over the internet or other electronic means or facilities.
4. The eTrade Client acknowledges that information concerning the use, operation, policy and procedures of the Electronic Trading Services and the Account applicable at all time has been made available to the eTrade Client on the service website or other applicable wire or wireless facilities, and have read and understood the terms of which may be amended, modified and supplemented from time to time and which shall be binding on the eTrade Client in respect of the eTrade Client's use of the Electronic Trading Services and the Account. In the event of inconsistencies between the terms of this Agreement and the information, the terms of this Agreement shall prevail.
5. The eTrade Client shall not and shall not attempt to tamper with, modify, de-compile, reverse engineer or otherwise alter in any way, or gain unauthorized access to, the Electronic Trading Services.
6. The eTrade Client shall be the only authorized user of the Electronic Trading Services, and acknowledges that the services may require the eTrade Client to use various identification and access codes, including a password, account identification number and other user identification to access the service and the Account and that the eTrade Client shall be responsible for the confidentiality and proper use at all time of the eTrade Client's password, account identification number, user identification and account number for all Transactions initiated through the Electronic Trading Services.
7. The eTrade Client agrees to notify OPSL immediately of the eTrade Client's becoming aware of any loss, theft or unauthorized use of the eTrade Client's password, account identification number, user identification, Account or account number, or any unauthorized use of the Electronic Trading Services or any information or data provided.
8. The eTrade Client acknowledges that any information and data (including news and real time quotes) provided through the Electronic Trading Services relating to Securities and securities markets are obtained from any securities exchanges and markets and from other third party service providers appointed by OPSL from time to time. The eTrade Client further acknowledges and accepts that:
  - (a) such information and data are or may be protected by copyright laws, and are provided for personal non-commercial use only, and the eTrade Client may not use, reproduce, retransmit, disseminate, sell, distribute, publish, broadcast, circulate or commercially exploit any information or data in any way without the consent of such service providers.
  - (b) such information and data are received by OPSL from sources that are believed to be reliable, however neither the accuracy, completeness, timeliness or sequence of any of the information or data can be guaranteed either by OPSL or by such services providers.
9. The eTrade Client acknowledges and agrees that neither OPSL nor any of the services providers shall be liable to the eTrade Client for any reliance by the eTrade Client on any of the information or data provided through the Electronic Trading Services nor for availability, accuracy, completeness or timeliness of such information or data nor any actions taken or decisions made by the eTrade Client in reliance of such information or data.
10. OPSL is not obliged to execute the eTrade Client's Instructions until there are sufficient cleared funds or Securities in the eTrade Client's Account to settle the eTrade Client's Transactions.
11. The eTrade Client acknowledges and agrees that OPSL shall not be deemed to have received or executed the eTrade Client's Instructions unless and until the eTrade Client has received OPSL's message acknowledging receipt or confirming execution of the eTrade Client's Instructions.

12. The eTrade Client acknowledges and agrees that if the Electronic Trading Services become temporarily unavailable, the eTrade Client may during such period continue to operate the Account subject to OPSL's right to obtain such information regarding the verification of the eTrade Client's identity to OPSL's satisfaction.
13. The eTrade Client agrees that OPSL shall not be liable for any loss the eTrade Client may suffer as a result of using or attempting to use the Electronic Trading Services. The eTrade Client further undertakes to indemnify OPSL in full for any loss or damage OPSL may suffer as a result of the use of the Electronic Trading Services, save for damages caused by willful default on OPSL's part.

### **Part 3A – Risk Disclosure Statements for all Clients**

The Client should be aware of the following potential risks in connection with securities trading.

#### **Risk of securities trading**

The prices of securities fluctuate, sometimes dramatically. The price of a security may move up or down, and may become valueless. It is as likely that losses will be incurred rather than profit made as a result of buying and selling securities.

#### **Risk of trading Growth Enterprise Market stocks**

Growth Enterprise Market (GEM) stocks involve a high investment risk. In particular, companies may list on GEM with neither a track record of profitability nor any obligation to forecast future profitability. GEM stocks may be very volatile and illiquid.

The Client should make the decision to invest only after due and careful consideration. The greater risk profile and other characteristics of GEM mean that it is a market more suited to professional and other sophisticated investors.

Current information on GEM stocks may only be found on the internet website operated by the Exchange. GEM Companies are usually not required to issue paid announcements in gazetted newspapers.

The Client should seek independent professional advice if the Client is uncertain of or have not understood any aspect of this risk disclosure statement or the nature and risks involved in trading of GEM stocks.

#### **Risks of client assets received or held outside Hong Kong**

Client assets received or held by OPSL outside Hong Kong are subject to the applicable laws and regulations of the relevant overseas jurisdiction which may be different from the Securities and Futures Ordinance (Cap.571) and the rules made thereunder. Consequently, such client assets may not enjoy the same protection as that conferred on client assets received or held in Hong Kong.

#### **Risk of providing an authority to hold mail or to direct mail to third parties**

If the Client provides OPSL with an authority to hold mail or to direct mail to third parties, it is important for the Client to promptly collect in person all contract notes and statements of the Client's account and review them in detail to ensure that any anomalies or mistakes can be detected in a timely fashion.

#### **Risk of trading NASDAQ-AMEX securities at the Exchange**

The securities under the Nasdaq-Amex Pilot Program ("PP") are aimed at sophisticated investors. The Client should consult OPSL and become familiarized with the PP before trading in the PP securities. The Client should be aware that the PP securities are not regulated as a primary or secondary listing on the Main Board or the GEM of the Exchange.

### **Part 3B – Additional Risk Disclosure Statements for Margin Client**

In addition to Part 3A, the Margin Client should be aware of the following potential risks in connection with margin trading.

#### **Risk of providing an authority to repledge the Client's securities collateral etc.**

There is risk if the Client provides OPSL with an authority that allows it to apply the Client's securities or securities collateral pursuant to a securities borrowing and lending agreement, repledge the Client's securities collateral for financial accommodation or deposit the Client's securities collateral as collateral for the discharge and satisfaction of its settlement obligations and liabilities.

If the Client's securities or securities collateral are received or held by OPSL in Hong Kong, the above arrangement is allowed only if the Client consents in writing. Moreover, unless the Client is a professional investor, the Client's authority must specify the period for which it is current and be limited to not more than twelve (12) months. If the Client is a professional investor, these restrictions do not apply.

Additionally, the Client's authority may be deemed to be renewed (i.e. without the Client's written consent) if OPSL issues the Client a reminder at least fourteen (14) days prior to the expiry of the authority, and the Client does not object to such deemed renewal before the expiry date of the Client's then existing authority.

The Client is not required by any law to sign these authorities. But an authority may be required by OPSL, for example, to facilitate margin lending to the Client or to allow the Client's securities or securities collateral to be lent to or deposited as collateral with third parties. OPSL should explain to the Client the purposes for which one of these authorities is to be used.

If the Client signs one of these authorities and the Client's securities or securities collateral are lent to or deposited with third parties, those third parties will have a lien or charge on the Client's securities or securities collateral. Although OPSL is responsible to the Client for securities or securities collateral lent or deposited under the Client's authority, a default by it could result in the loss of the Client's securities or securities collateral.

A cash account not involving securities borrowing and lending is available from most licensed or registered persons. If the Client does not require margin facilities or does not wish the Client's securities or securities collateral to be lent or pledged, the Client should not sign the above authorities and ask to open this type of cash account.

#### **Risk of margin trading**

The risk of loss in financing a transaction by deposit of collateral is significant. The Client may sustain losses in excess of the Client's cash and any other assets deposited as collateral with OPSL. Market conditions may make it impossible to execute contingent orders, such as "stop-loss" or "stop-limit" orders. The Client may be called upon at short notice to make additional margin deposits or interest payments. If the required margin deposits or interest payments are not made within the prescribed time, the Client's collateral may be liquidated without the Client's consent. Moreover, the Client will remain liable for any resulting deficit in the Client's account and interest charged on the Client's account. The Client should therefore carefully consider whether such a financing arrangement is suitable in light of the Client's own financial position and investment objectives.

### **Part 3C – Additional Risk Disclosure Statements for eTrade Client**

In addition to Part 3A, the eTrade Client should be aware of the following potential risks in connection with the use of Electronic Trading Services.

#### **Risk of electronic trading services**

The access, communication and conducting transactions over the internet or other electronic means or facilities involve the use of public networks and represent an attractive target for attacks by intruders. Should intruders infiltrate the electronic trading system of OPSL and obtain sensitive data and information or create bugs or virus which sabotages its function, the electronic trading system (including the Client's account) may be damaged. While various steps and procedures (e.g. the use of login password, cryptography, firewall) have been taken and/or implemented by OPSL to protect unauthorized access to electronic trading system and the Client's account, there can be no assurance that such steps and procedures can prevent or respond to all forms of attacks in a timely or effective manner.

Internet or any other electronic means are, due to unpredictable traffic congestion and other reasons, an inherently unreliable medium of communication and that such unreliability is beyond the control of OPSL. As a result of such unreliability, there may be delays in the transmission and receipt of instructions or other information (e.g. canceling or changing the Client's original instructions), delays in execution or execution of the Client's instructions at prices different from those prevailing at the time the Client's instructions were given, transmission interruption or breakdown and/or for some reason OPSL may not be able to act on the Client's instructions at all. If the Client subsequently give instructions canceling or changing the Client's original instructions, OPSL will not accept them if it has already acted on the Client's original instruction or there is insufficient time to act on the Client's subsequent instruction. The Client should therefore give instructions in good time before the closes of the market.

Information and data provided through the electronic trading services relating to securities and the securities markets has been obtained from any securities exchanges and markets and from other third party service providers. Owing to market volatility, possible delay in data transmission process and other reasons, the information and data may not be accurate, complete, timely and in correct sequence. Thus any reliance on such information and data may lead to incorrect investment decisions and/or other actions.