

**ASIA PACIFIC EXCHANGE PTE. LTD.**

**and**

**[ ]**

**ELECTRONIC USER AGREEMENT**

**THIS ELECTRONIC USER AGREEMENT** is made on \_\_\_\_\_ (the “**Agreement**”)

**BETWEEN: -**

- (1) **ASIA PACIFIC EXCHANGE PTE. LTD.** whose registered office is at 80 Robinson Road, #02-00, Singapore 068898 (“**APEPL**”) acting on its own behalf or for and on behalf of one or more Relevant APEX Entities (as defined below) (hereinafter referred to as “**APEX**”); and
- (2) \_\_\_\_\_ whose [principal place of business/registered office] is at \_\_\_\_\_ (the “**User**”)

(each, a “**Party**” and collectively, the “**Parties**”).

**WHEREAS**

- (A) APEPL operates as an Approved Exchange (as defined in the SFA) (the “**Exchange**”), and has devised, developed and administers a trading platform.
- (B) APC, a wholly-owned subsidiary of APEPL, operates as an Approved Clearing House (the “**Clearing House**”), which administers a clearing processing system.
- (C) From time to time, the Relevant APEX Entities (as defined below) will grant Members or Clients access, as applicable, to the Relevant APEX Platforms.
- (D) APEPL, APC and the other Relevant APEX Entities are the owners or licensees, as the case may be, of the Relevant APEX Platforms (as defined below) and the Relevant APEX Software (as defined below). From time to time, the Relevant APEX Entities will grant Members (including its Member’s Traders (if applicable)) or Clients access, as applicable, to the Relevant APEX Platforms.
- (E) The User wishes to connect and interface with the Relevant APEX Platforms and the Relevant APEX Entities wish to grant the User a non-exclusive, non-transferable, revocable, and limited licence to use the Relevant APEX Software to connect and interface with the Relevant APEX Platforms, upon the terms and subject to the conditions set out in this Agreement, the Membership Agreement and Undertaking, the Rules, and Directives.
- (F) The Parties wish to enter into this Agreement to govern the User’s use and access of the Relevant APEX Platforms and Relevant APEX Software.

**IT IS AGREED** as follows:

**1 Definitions and Interpretation**

1.1 In this Agreement unless otherwise expressly stated to the contrary:

- (a) the following expressions shall have the following meanings:

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| <b>"Affiliate"</b>                | means in relation to any company, its subsidiaries, associates and holding company and the subsidiaries and associates of such holding company from time to time;  |
| <b>"Amendment Effective Date"</b> | has the meaning ascribed to it in clause 12.3;   |
| <b>"Approved Affiliates"</b>      | means Affiliate companies of the User who require access to Market Data for non-commercial administrative purposes, internal business purposes, and internal IT maintenance and support, directly relating to the User itself; |

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| <b>“APC”</b>                        | means Asia Pacific Clear Pte. Ltd., whose registered office is at 80 Robinson Road #02-00 Singapore 068898;  |
| <b>“APEX”</b>                       | means APEPL acting on its own behalf or for and on behalf of one or more Relevant APEX Entities;   |
| <b>“APEX Entities”</b>              | means two or more of APEPL, APC and any Affiliate of APEPL or APC, and <b>“APEX Entity”</b> means any one of them;   |
| <b>"APEX Platforms"</b>             | means (i) the Exchange Trading Platform as set out in Part 1A of Schedule A, (ii) the Clearing Processing System as set out in Part 1B of Schedule A, (iii) any other platforms provided by the Relevant APEX Entities to Members as set out in Part 1C of Schedule A, and (iv) any and all Updates thereto; |
| <b>"APEX Software"</b>              | means (i) the Trading Software as set out in Part 2A of Schedule A, (ii) the Clearing Software as set out in Part 2B of Schedule A, (iii) any other software provided by the Relevant APEX Entities to Members as set out in Part 2C of Schedule A, and (iv) any and all Updates thereto;                    |
| <b>"API"</b>                        | means the open application program interface, developed and issued by the Exchange or the Clearing House or the Relevant APEX Entities;  |
| <b>"Business Day"</b>               | means the twenty-four hour day, on all days in Singapore except Saturdays, Sundays, and legal public holidays in Singapore (within the meaning of the Holidays Act (Chapter 126 of Singapore));  |
| <b>“Clearing House”</b>             | means APC;   |
| <b>"Clearing Processing System"</b> | has the meaning given to it in Part 1B of Schedule A;  |
| <b>“Clearing Rulebook”</b>          | means the collection of rules set forth in the Asia Pacific Clear Pte. Ltd. Clearing Rulebook and the Clearing Procedures and any other procedures and rules implemented from time to time by the Clearing House and as applied, interpreted or implemented by Regulatory Notices;                           |
| <b>“Clearing Procedures”</b>        | means the clearing procedures published by the Clearing House from time to time pursuant to the Clearing Rulebook;   |
| <b>“Clearing Software”</b>          | has the meaning given to it in Part 2B of Schedule A;  |
| <b>"Client"</b>                     | in relation to an Exchange Member, means any person who would be a client of the Exchange Member under the Trading Rulebook, and in relation to a Clearing Member, means any person who would be a Customer (as defined in the Clearing Rulebook) of the Clearing Member;                                    |
| <b>"Certificate of Conformance"</b> | means a certificate issued by the Relevant APEX Entities to an ISV upon successful completion of conformance testing or re-conformance testing in accordance with the relevant ISV development and   |

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|                                       |                 | maintenance agreement;   |
| <b>"Compulsory Updates"</b>           |                 | means Updates specified by the Relevant APEX Entities to be (i) necessary to address regulatory or significant operational concerns and (ii) mandatory for the User to install on the Relevant APEX Platforms;   |
| <b>"Confidential Information"</b>     |                 | has the meaning ascribed to it in clause 23;   |
| <b>"Contract(s)"</b>                  |                 | has the meaning ascribed to it in the Trading Rulebook and/or the Clearing Rulebook as the case may be;  |
| <b>"Directive"</b>                    |                 | means a binding notice issued by the Relevant APEX Entities directing a User or Permitted Users to take corrective or other actions or to desist or cease carrying on certain actions, or otherwise pursuant to the powers of the Exchange or the Clearing House pursuant to the relevant Rules;   |
| <b>"Disputes"</b>                     |                 | means any dispute, controversy or claim arising from or connected with this Agreement, including one regarding the existence, validity or termination of this Agreement or the consequences of its nullity;  |
| <b>"Exchange"</b>                     |                 | has the meaning ascribed to it in Recital A;   |
| <b>"Exchange Platform"</b>            | <b>Trading</b>  | has the meaning given to it in Part 1A of Schedule A;  |
| <b>"Governmental Authority"</b>       |                 | means any national, federal, supranational, state, regional, provincial, local or other government, government department, ministry, governmental or administrative authority, regulator, agency, commission, secretary of state, minister, court, tribunal, judicial body or arbitral body or any other person exercising judicial, executive, interpretative, enforcement, regulatory, investigative, fiscal, taxing or legislative powers or authority anywhere in the world with competent jurisdiction;                   |
| <b>"Intellectual Property Rights"</b> | <b>Property</b> | means all intellectual property rights of the Relevant APEX Entities, or any of the Relevant APEX Entities' licensors, including without limitation patents (including all renewals, extensions or divisions thereof), copyright, trademarks, know how, design rights, registered designs, domain names, database rights, confidential information and any other intellectual property rights including any and all similar rights in any jurisdictions, and including any derivatives, developments or modifications thereof; |
| <b>"ISV"</b>                          |                 | means an independent software vendor which is a provider of software which interfaces with or accesses either the Exchange Trading Platform via the Exchange's API or the Clearing Processing System via the Clearing House's API. Such ISV must at all times meet the criteria set forth by the Exchange and/or the Clearing House from time to time;   |
| <b>"Legal Disclosure Requirement"</b> |                 | has the meaning ascribed to it in clause 4.7(b);   |

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| <b>"Limited Purposes"</b>                     |             | has the meaning ascribed to it in Part 5 of Schedule A;  |
| <b>"Market"</b>                               |             | means a Market as defined under the Rules;   |
| <b>"Market Data"</b>                          |             | means all data produced, released and disseminated to Members by the Exchange Trading Platform and/or the Clearing Processing System on a real time, or historical basis;  |
| <b>"Materials"</b>                            |             | has the meaning ascribed to it in clause 3.1;  |
| <b>"Member(s)"</b>                            |             | means entity(ies) or person(s) who has/have been admitted to a category of membership referred to under Rule 302 of the Trading Rulebook (the <b>"Exchange Member(s)"</b> ) and/or who has been admitted to a category of membership referred to under Rule 302 of the Clearing Rulebook (the <b>"Clearing Member(s)"</b> ); |
| <b>"Member's Trader"</b>                      |             | means an individual registered by an Exchange Member with the Exchange to conduct business with the Exchange on the Market for that Exchange Member pursuant to Rule 311 in the Trading Rulebook;  |
| <b>"Membership Agreement and Undertaking"</b> | <b>and</b>  | means the "Membership Agreement and Undertaking" that forms part of the membership application form agreed and signed by the User who is a Member and delivered to the APEX Entities;  |
| <b>"Member Interface"</b>                     | <b>User</b> | means the User's own software (as provided by an ISV or the User) certified by the Relevant APEX Entities and used by the User to connect to the Relevant APEX Platforms;  |
| <b>"Notice Recipient"</b>                     |             | means the individual nominated or authorised by the User for receipt of notices in Part 4 of Schedule A to the Agreement;  |
| <b>"Password"</b>                             |             | means each and every password, logon code, logon id, mnemonic or individual trading mnemonic or similar means of access or identification issued by the Relevant APEX Entities to the User (if applicable);  |
| <b>"Permitted Users"</b>                      |             | has the meaning ascribed to it in clause 2.4;  |
| <b>"Personal Data"</b>                        |             | means data, whether true or not, about an individual who can be identified from that data; or from that data and other information to which the organisation has or is likely to have access;  |
| <b>"Reasonable Diligence"</b>                 | <b>Due</b>  | in relation to any undertaking, obligation, duty or comparable circumstance, means, the exercise of that degree of skill and care and due diligence which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same;   |
| <b>"Relevant Entities"</b>                    | <b>APEX</b> | means the Relevant APEX Entities as identified in clause 1.2, and "Relevant APEX Entity" means such one of them as relevant;   |
| <b>"Relevant Platforms"</b>                   | <b>APEX</b> | means the APEX Platforms identified in clause 1.2, and "Relevant APEX Platforms" means such one of them as relevant;   |

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| <b>"Relevant Software"</b>     | <b>APEX</b>        | means the APEX Software identified in clause 1.2;   |
| <b>"Rules"</b>                 |                    | means the Trading Rulebook and/or the Clearing Rulebook;  |
| <b>"Regulatory Authority"</b>  |                    | means any Governmental Authority which exercises a regulatory or supervisory function under the laws of any jurisdiction in relation to financial services, the financial markets, exchanges or clearing houses (including, without limitation, the Monetary Authority of Singapore);                     |
| <b>"Regulatory Notice"</b>     |                    | means any "Regulatory Notice" as defined under the Trading Rulebook and/or the Clearing Rulebook;   |
| <b>"Related Documentation"</b> |                    | such documents and materials made available to the User by the Relevant APEX Entities from time to time relating to the operation and use of the Relevant APEX Platforms or the Relevant APEX Software;   |
| <b>"S\$"</b>                   |                    | the lawful currency of the Republic of Singapore;   |
| <b>"Seat"</b>                  |                    | means an access privilege the Exchange allocates to Exchange Members for connectivity, with which Exchange Members shall be eligible to establish connections and get access to the Exchange Trading Platform;  |
| <b>"Seat Procedures"</b>       | <b>Application</b> | means the procedures in respect of Exchange Members' application(s) for Seats in accordance with paragraph 1.2 of the Trading Procedures or otherwise as published by the Exchange from time to time;   |
| <b>"Seat Fee"</b>              |                    | means the sum payable by a User who is an Exchange Member in accordance with Part 6 of Schedule A;  |
| <b>"SFA"</b>                   |                    | the Securities and Futures Act (Chapter 289 of Singapore);  |
| <b>"Trading Procedures"</b>    |                    | means the trading procedures published by the Exchange from time to time pursuant to the Trading Rulebook;  |
| <b>"Trading Rulebook"</b>      |                    | means the collection of rules and accompanying annexes set forth in the Asia Pacific Exchange Pte. Ltd. Trading Rulebook and the Trading Procedures and any other procedures and rules implemented from time to time by the Exchange and/or as applied, interpreted or implemented by Regulatory Notices; |
| <b>"Trading Software"</b>      |                    | has the meaning given to it in Part 2A of Schedule A; and   |
| <b>"Updates"</b>               |                    | means updates, modifications, improvements, changes or additions to the APEX Platforms and the APEX Software or any part or parts thereof as provided or required by the Relevant APEX Entities to/of the User in accordance with clause 5.   |

(b) all other capitalised words and expressions (if not defined herein) shall have the meaning respectively given to them in either the Rules, the Membership Agreement and Undertaking or within this Agreement as the case may be.

1.2 In this Agreement:

- (a) in respect of a User who is an Exchange Member but not a Clearing Member:
  - (i) “Relevant APEX Entities” shall mean APEPL and such other APEX Entities as identified by APEX from time to time;
  - (ii) “Relevant APEX Platforms” shall mean the Exchange Trading Platform and such other APEX Platforms as identified by APEX from time to time;
  - (iii) “Relevant APEX Software” shall mean the Trading Software and such other APEX Software as identified by APEX from time to time;
- (b) in respect of a User who is a Clearing Member but not an Exchange Member:
  - (i) “Relevant APEX Entities” shall mean APC and such other APEX Entities as identified by APEX from time to time;
  - (ii) “Relevant APEX Platforms” shall mean the Clearing Processing System and such other APEX Platforms as identified by APEX from time to time;
  - (iii) “Relevant APEX Software” shall mean the Clearing Software and such other APEX Software as identified by APEX from time to time;
- (c) in respect of a User who is both an Exchange Member and a Clearing Member:
  - (i) “Relevant APEX Entities” shall mean APEPL, APC, and such other APEX Entities as identified by APEX from time to time, in each case as the context may require;
  - (ii) “Relevant APEX Platforms” shall mean the Exchange Trading Platform, the Clearing Processing System and such other APEX Platforms as identified by APEX from time to time, in each case as the context may require;
  - (iii) “Relevant APEX Software” shall mean the Trading Software, the Clearing Software, and such other APEX Software as identified by APEX from time to time, in each case as the context may require; and
- (d) where any clause in this Agreement imposing an obligation on the User is silent as to whom that obligation is owed, such obligation shall be owed to each of the APEX Entities and deemed to be conferring a benefit on each of the APEX Entities, and any of the APEX Entities shall be entitled to bring a claim against the User for breach of such obligation.

1.3 Interpretation:

- (a) the headings in this Agreement shall not affect the interpretation of this Agreement;
- (b) any words or terms importing the singular shall, where the context permits, include the plural and vice versa;
- (c) any words or terms importing the masculine gender shall include the feminine gender and shall, where the context permits or requires, include a partnership, incorporated company or any other association, entity or other organization;
- (d) a reference to any statutory provisions shall be construed as references to those provisions as modified or re-enacted from time to time and to any subordinate legislation, regulation, notices or rules made under such provisions and shall include references to any repealed statutory provisions which have been so re-enacted (whether with or without modification);
- (e) a reference to any Rules shall be construed as references to those provisions as modified or re-enacted from time to time and to any Regulatory Notice, Directives or

such other rules made under such provisions and shall include references to any repealed Rules which have been so re-enacted (whether with or without modification);

- (f) a reference to:
  - (i) a clause or schedule, unless the context otherwise requires, is a reference to a clause or a schedule to this Agreement; and
  - (ii) a person includes an individual, partnership, incorporated company, association of people.

## **2 Licence to use the Relevant APEX Software and to access the Relevant APEX Platforms**

2.1 Subject to the terms and conditions of this Agreement and the Rules, the Relevant APEX Entities hereby agree(s) to grant the User for the term of this Agreement:

- (a) where applicable, a non-exclusive, non-transferable, non-sub-licensable, revocable, and limited licence to use the Relevant APEX Software, and where authorised by the Relevant APEX Entities on behalf of its Clients, for the Limited Purposes; and
- (b) a non-exclusive, non-transferable, non-sub-licensable, revocable and limited right to connect and interface with the Relevant APEX Platforms and the Relevant APEX Software for the Limited Purposes, in accordance with Part 3 of Schedule A on its own behalf and where authorised by the Relevant APEX Entities, through the Member User Interface on behalf of its Clients (provided that the right to interface via the Member User Interface shall only exist while the relevant Member User Interface has a valid Certificate of Conformance) in each case for the Limited Purposes.

2.2 This clause 2.2 shall only be applicable if the User is an Exchange Member. For the purposes of the Exchange Trading Platform, a Seat Fee is chargeable in accordance with Part 6 of Schedule A in respect of each Seat granted to the User for the use of the Exchange Trading Platform as per clauses 2.1(a) and 2.1(b) above. The User shall be entitled to apply for Seats according to the Seat Application Procedures issued by APEX after execution of this Agreement. The User may only connect and interface to the Exchange Trading Platform through a Seat approved and allocated by the Exchange.

2.3 All Passwords issued and/or created for the purposes of connecting to the Relevant APEX Platforms by the User or on behalf of the Clients shall be regulated under the terms of the relevant Rules.

2.4 A User may delegate access to the Relevant APEX Platforms or Relevant APEX Software to any of the following persons:

- (i) Clients of the User (whether or not registered with the Relevant APEX Entities);
- (ii) officers, employees, agents and other representatives (whether or not registered with the Relevant APEX Entities) of the User, including any Member's Trader (if applicable); and
- (ii) officers, employees, agents and other representatives (whether or not registered with the Relevant APEX Entities) or Affiliates of the User,

(collectively, "**the Permitted Users**").

## **3 Proprietary Rights**

3.1 The User hereby agrees that all Intellectual Property Rights of whatever nature in and to the APEX Platforms, APEX Software and Related Documentation (and in all parts thereof) and in all other materials and documentation whatsoever relating to the APEX Platforms as provided to the User by APEX (the "**Materials**") from time to time shall remain vested in APEX or the licensors of the APEX Entities, as the case may be, and nothing herein or otherwise shall be construed as an assignment of the Intellectual Property Rights in and to the APEX Platforms, APEX Software and Related Documentation to the User. It is understood that the APEX Entities

have no intention of acquiring, or acquiring rights to, the related software of the User which shall at all times remain the property of the User.

- 3.2 User shall provide the APEX Entities with prompt written notice of (i) any and all infringements of the Intellectual Property Rights in and to the APEX Platforms, APEX Software and Related Documentation, or (ii) any allegations that any of the Intellectual Property Rights in and to the APEX Platforms, APEX Software and Related Documentation infringes the Intellectual Property Rights of any third party. APEX (and/or the APEX Entities, as the case may be), as the owner of all rights, title and interest in such Intellectual Property Rights in and to the APEX Platforms, APEX Software and Related Documentation shall be solely responsible for the prosecution or defense, settlement and discharge of all infringement claims, suits, actions and proceedings relating to the Intellectual Property Rights in and to the APEX Platforms, APEX Software and Related Documentation; provided, however, that the User shall provide APEX (and/or the APEX Entities, as the case may be) with such assistance as APEX (and/or the APEX Entities, as the case may be) shall reasonably request in connection with the prosecution, defense, settlement and/or discharge of any or all such infringement claims, suits, actions and proceedings.
- 3.3 Subject to clause 7, APEX shall indemnify the User from and against all actions, claims, demands, proceedings, losses, damages, costs, charges and expenses (together “**Losses**”) that may arise out of or in connection with any claim or action that the use by the User of the Materials for the Purposes under the terms of this Agreement infringes the Intellectual Property Rights of any third party, provided that:
- (a) the User’s use of the Materials was solely for the Limited Purposes;
  - (b) the User’s use of the Materials was strictly in accordance with the Terms and Conditions of this Agreement;
  - (c) the User shall have a duty to use best endeavours to mitigate the Losses;
  - (d) the Losses were not caused by any contributory negligence on the part of the User;
  - (e) the User shall promptly notify APEX in writing of any claim or action of which it has notice;
  - (f) the User shall not make any admission as to liability or agree to any settlement of or compromise any claim or action without the prior written consent of APEX;
  - (g) APEX shall be entitled to conduct or settle all negotiations and litigation arising from any such claim or action and the User shall, at the request and expense of APEX, give all reasonable assistance in connection with such negotiations and litigation; and
  - (h) the User does not transfer the conduct of any such claim or authorise any third party to settle, negotiate or litigate in respect of such claim or does not otherwise invoke any indemnity provision in any third party agreement in respect of such claim (except as may be authorised by APEX).
- 3.4 If any part of the Materials is found by a final decision of a court of competent jurisdiction to constitute an infringement of the Intellectual Property Rights of a third person, or if APEX concedes that infringement through a settlement of a claim, the APEX Entities may, at its sole and absolute discretion, either:
- (a) procure for the User the right to use the relevant part of the Materials; or
  - (b) modify the relevant part of the Materials so as to render it non-infringing.
- 3.5 APEX shall not be liable for any of the Losses incurred by the User in co-operating with and assisting the APEX Entities in accordance with the terms of clause 3.3 if it can reasonably be demonstrated that the alleged infringement arose from the User’s unauthorised action, unauthorised use of the Materials or unauthorised use of the Member User Interface in conjunction with the Materials, in which case the provisions of clause 8 shall apply.

#### 4 Obligations of the User

The User hereby agrees:

- 4.1 that it will not, and shall ensure that the Permitted Users (whether or not registered with the Relevant APEX Entities) will not, except in accordance with this Agreement:
- (a) use the APEX Software or APEX Platforms in any manner, or for any purpose, that is unlawful or in any manner that violates any rights or interests of the APEX Entities;
  - (b) use or permit the use of the APEX Software or APEX Platforms for any improper, unauthorised or illegal purpose (including, without limitation, any prohibited transactions, trading practices, improper trading or market manipulation) or do anything that would bring the APEX Entities into disrepute with a Regulatory Authority or any third party;
  - (c) restrict or inhibit any other user from using the APEX Software or APEX Platforms;
  - (d) copy, interfere or tamper with, alter, amend or modify the APEX Software or APEX Platforms or any part or parts thereof except when using in a manner that is intended or designed to be used as specified by the APEX Entities;
  - (e) transmit during access to the APEX Software or APEX Platforms anything that contains, or may contain, a virus or other property that may be contaminating or destructive to the APEX Software or APEX Platforms;
  - (f) use during access to the APEX Software or APEX Platforms any robot, spider, Trojan horse, site search/retrieval application, or other manual or automatic device or process to retrieve, index, "data mine";
  - (g) reverse compile, reverse engineer or disassemble the APEX Software or APEX Platforms; nor
  - (h) interface with the Relevant APEX Software or Relevant APEX Platforms via any medium other than by a Member User Interface that is subject to a valid Certificate of Conformance,
- nor purport to do any of the same or permit or purport to permit any of the same to be done.
- 4.2 to comply fully with all restrictions as APEX may from time to time prescribe on access to and use of all the APEX Platforms and APEX Software for the purpose of viewing or effecting trading on the Exchange Systems and/or for the clearing and settlement of Contracts on the Clearing Processing System (as applicable and as specified in Schedule A to this Agreement), and for these purposes to establish and maintain adequate supervisory and security procedures to prevent unauthorised access to and use of all the APEX Platforms, the APEX Software and the Passwords;
- 4.3 upon either expiry, suspension or termination of the Membership Agreement and Undertaking, the User's membership of the Exchange or Clearing House, and/or termination of this Agreement for whatever reason, the User and the Permitted Users shall forthwith cease use of the Relevant APEX Platforms (including the Seat ID issued for the Exchange Trading Platform) and the Relevant APEX Software and immediately delete any copies of the APEX Software and deliver up to the Relevant APEX Entities the Materials and (where relevant) all copies thereof or any part of any of the same in the possession, or under the control, of the User and the Permitted Users and the User shall certify in writing to APEX that it has complied with this clause 4.3;
- 4.4 to refrain, and to procure that its Permitted Users (whether or not registered with the Relevant APEX Entities) refrain from any act or omission which damages or impairs or may damage or impair the APEX Platforms, the APEX Software or any part or parts thereof;

- 4.5 that it shall (save as provided elsewhere in the Agreement):
- (a) use the APEX Software, APEX Platforms and Materials only in the normal course of the User's business and strictly in accordance with the Limited Purposes and in accordance with the relevant Rules;
  - (b) subject to clauses 4.5(i) and 4.5(j), not permit any third parties access to the APEX Platforms or APEX Software save where expressly permitted under the Rules or in order to ensure compliance with its obligations hereunder;
  - (c) remain principally responsible and liable for the use and access of the APEX Platforms and APEX Software by the Permitted Users and ensure that all Permitted Users are made fully aware of the terms of this Agreement and that there are clauses in the User's contractual relationship with the Permitted Users to secure the Permitted Users' undertaking for the benefit of APEX that the Permitted Users shall abide by the terms in this Agreement as if they were parties to this Agreement and will not directly or indirectly cause the User to be in breach of this Agreement;
  - (d) not, unless expressly allowed in writing by APEX, attempt to license, sub-license, or purport to sell or assign any right or interest in the Intellectual Property Rights;
  - (e) where applicable, notify the Relevant APEX Entities as soon as practicable of any defect or malfunction in or any problem in accessing or using the Relevant APEX Platforms or the Relevant APEX Software;
  - (f) subject to clauses 4.5(h), 4.5(i), 4.5(j) and 4.7 below, not distribute (or rent, sell, sub-licence or timeshare) the Market Data or any details of the method of operation of all the APEX Software and APEX Platforms);
  - (g) where applicable, disseminate Market Data only to Approved Affiliates who require access to such Market Data for non-commercial administrative purposes, internal business purposes, and internal IT maintenance and support, directly relating to the User itself;
  - (h) only allow access in relation to the maintenance of the APEX Software to its officers, employees, agents and other representatives (whether or not registered with the Relevant APEX Entities) who are responsible for the User's internal IT maintenance and support, and who have the necessary expertise to perform technological maintenance and technological support only; and
  - (i) where applicable, not permit any person acting on its behalf to distribute any Market Data, and not grant access (including but not limited to read-only access) to any Market Data (including but not limited to any style of quote vending or other data vending or distribution arrangement or agreement) to any third parties unless the User has obtained prior written consent from the Relevant APEX Entity to do so. Such Relevant APEX Entity may at its sole and absolute discretion decline to provide such consent or agree to grant such consent upon such terms and conditions as it sees fit from time to time. For the avoidance of doubt, the dissemination of Market Data to the Permitted Users or a Client who has a direct interest in the relevant trade shall not constitute a breach of this clause;
- 4.6 to make available to the Regulatory Authority of the jurisdiction in which the User or any of the Permitted Users, might be incorporated, registered or operating its business, at the request of any of the APEX Entities, such information, including (where applicable) Market Data, as such Regulatory Authority may request to be provided by any of the APEX Entities;
- 4.7 subject always to the provisions of the Related Documentation, the User shall be entitled to disclose:
- (a) information generally and properly available to all Members; and
  - (b) where disclosure is required by law, by any court of competent jurisdiction or by any

Regulatory Authority (including for these purposes, any of the APEX Entities) (a “**Legal Disclosure Requirement**”), and where notice of such a Legal Disclosure Requirement is received in advance by a User, then, if permissible, the User must (except in circumstances where the requester is any of the APEX Entities) give APEX not less than 2 (two) Business Days’ notice of the date upon which disclosure will occur under the Legal Disclosure Requirement. If, however, such Legal Disclosure Requirement is not received sufficiently in advance and must be complied with within 2 (two) Business Days of receipt, then, if permissible, the User shall (except in circumstances where the requester is any of the APEX Entities) confirm to APEX that such disclosure has occurred as soon as practicable after such disclosure has occurred;

4.8 to retain:

- (a) data relating to all transactions conducted via all APEX Platforms; and
- (b) an audit trail in respect of such transactions conducted via all APEX Platforms,

in accordance with the Rules, the recommendations and/or requirements of the Regulatory Authority in the jurisdiction in which the User or any of the Permitted Users is authorised, registered, or conducts its business, as the case may be;

4.9 to notify APEX immediately if it becomes aware of any unauthorised access to the APEX Platforms, the APEX Software or the Passwords or if it becomes aware of any violation of any Rule, and will use best endeavours to ascertain the source of any unauthorised access or use and will co-operate with the Relevant APEX Entities to gather more information relating to any potential Rule violation;

4.10 to obtain at its sole expense, or to work with the Relevant APEX Entities to obtain any consents that are or may become necessary for the installation or maintenance of any software or connection which is provided for under this Agreement;

4.11 to comply with any terms imposed in connection with the consents to be obtained in accordance with clause 4.10 (subject to prior review), and to reimburse any of the APEX Entities for any out-of-pocket expenses (including reasonable fees of attorneys or agents) it may incur in obtaining those consents. The User will notify APEX immediately if any such consent is withdrawn; and

4.12 that it shall be fully responsible and principally liable for all acts and omissions of its Approved Affiliates and Permitted Users (whether or not registered with the Relevant APEX Entities) to the same extent as it is for the acts and omissions of itself or of persons directly employed, authorised or permitted by it.

## **5 Modifications and Updates to the Relevant APEX Software and the Relevant Member User Interface**

5.1 From time to time the Relevant APEX Entities may directly or indirectly effect Updates to the APEX Platforms or provide Updates on the APEX Software to the User as the Relevant APEX Entities shall deem fit.

5.2 The Relevant APEX Entities shall provide the User with reasonable notice of the date by which any Compulsory Updates must be installed by the User. In the event that the User fails to install Compulsory Updates by the date notified by the Relevant APEX Entities, then the Relevant APEX Entities shall be entitled to suspend the User’s access to the Relevant APEX Platforms for a period of six months from the last date upon which the Compulsory Updates should have been installed in accordance with the relevant notice issued by the Relevant APEX Entities. The last date in this six-month suspension period shall be known as “the Final Installation Date”. If the User installs the relevant Compulsory Updates before the Final Installation Date then such suspension shall cease; if the User has not installed the Compulsory Updates by the Final Installation Date then, unless APEX otherwise specifies in writing, this Agreement shall be automatically terminated.

5.3 The User shall bear the sole responsibility and expense of making any changes to its Member User Interface, as the case may be, that result from Updates.

- 5.4 The Relevant APEX Entities shall only be obliged to support:
- (a) the current version of the Relevant APEX Software and Relevant APEX Platforms; and
  - (b) to the extent that it is commercially practicable to do so, the immediately preceding version of the Relevant APEX Software and Relevant APEX Platforms.

5.5 Notwithstanding that a Member User Interface has a valid Certificate of Conformance, any of the APEX Entities may at any time disconnect any Member User Interface where the operation of such Member User Interface is detrimental to the APEX Platforms, the APEX Software, Members or the APEX Entities.

## **6 Sub-contractors**

APEX and each Relevant APEX Entity shall be entitled to appoint such sub-contractors or authorize any third parties as it shall deem fit to carry out the whole or any part of its obligations in this Agreement.

## **7 Limitation of Liability**

7.1 Notwithstanding any other provision in this Agreement:

- (a) none of the APEX Entities guarantees, or shall be liable for, the sequence, timeliness, accuracy or completeness of any Market Data. None of the APEX Entities guarantees, or shall be liable for, the accuracy, responsiveness or completeness of the APEX Platforms, the APEX Software or the Related Documentation;
- (b) each of the APEX Entities provides the APEX Platforms, the APEX Software, Related Documentation and all services and other materials on an "AS IS" basis and does not make any representations or warranties, express or implied, including, without limitation, implied warranties of fitness for a particular purpose. The User and/or any of the Permitted Users by accessing and using the APEX Platforms, the APEX Software, Related Documentation and all services and other materials shall do so at its own risk. No oral or written information or advice given by any of the APEX Entities shall create a warranty and the User and/or any of the Permitted Users may not rely upon such information or advice except to the extent specified in this Agreement; and
- (c) none of the APEX Entities, and none of the APEX Entities' officers, employees, agents, or licensors, shall be liable in any way to the User or to the Permitted Users or to any other person or entity for any losses, damages, costs or expenses, including, but not limited to, loss of profits, loss of use or direct, indirect, incidental or consequential damages, even if they were foreseen, foreseeable, known or otherwise arising from:
  - (i) any of the circumstances as provided under Rule 206(a) of the Exchange Rulebook and/or Rule 207(a) to (d) of the Clearing Rulebook;
  - (ii) where applicable, any connectivity issues or faults with the APEX Platforms or the APEX Software, however those connectivity issues or faults may arise;
  - (iii) the suspension, termination or inability to access or use the APEX Platforms, the APEX Software or any inaccuracies or omissions in any information provided, however such suspension, termination, inability to access, inaccuracy or omission may arise;
  - (iv) any failure or delay suffered by the User or Permitted Users that receive access to the APEX Platforms through the Member User Interface;
  - (v) any other cause in connection with the furnishing, performance, maintenance or use of or inability to use all or any part of the APEX Platforms, or the APEX Software;
  - (vi) any losses resulting from unauthorised access, alteration, or any other misuse of the APEX Platforms or APEX Software; or

- (vii) any injurious act or default unless such act or default could have been foreseen and avoided by the exercise of Reasonable Due Diligence on the part of any of the APEX Entities. In no circumstances shall any of the APEX Entities be liable to the User, the Permitted Users or any other person or entity for any: (i) indirect; or, (ii) incidental; or, (iii) consequential damages; or, (iv) damages for loss of profits or any other form of economic loss; or, (v) damages for loss of goodwill, even if it has been advised of the possibility of these damages and even if the damages are due to error, omission or negligence of any of the APEX Entities or any their officers, directors, employees, agents or licensors.

7.2 Except as expressly provided in this Agreement, all warranties, conditions, undertakings, terms or representations expressed or implied by statute, common law or otherwise in relation to the APEX Platforms, the APEX Software and Related Documentation or any part or parts of either of the same (hereafter “**Implied Warranties**”) are hereby excluded to the fullest extent permissible by law. No APEX Entity shall be under any liability to the User for any loss, damage or injury, direct or indirect howsoever arising in respect of such Implied Warranties whether or not caused by the negligence of any APEX Entity or any APEX Entity’s officers, employees, agents or representatives.

7.3 Neither the User nor any of the APEX Entities excludes or limits its liability to the other for death or personal injury caused by its negligence or fraudulent misrepresentation.

7.4 Subject in all cases to the foregoing, the maximum aggregate liability (whether under an indemnity or otherwise) of the APEX Entities as a group to the User for any and all claims made by the User in relation to this Agreement in any calendar year shall not exceed the higher of:

- (a) an amount equal to 100% of the Seat Fees (if any) paid by the User to APEPL in relation to trades in Contracts which the User has effected on the APEX Platforms for the period of 3 (three) calendar months immediately preceding the date upon which the events giving rise to the relevant claim arose, or in the case of a series of events the date upon which the first of the series occurred; or
- (b) S\$50,000,

however that liability arises including (without limitation) breach of contract, tort, misrepresentation or breach of statutory duty.

7.5 The Parties shall notify the other of any and all claims arising under or in connection with this Agreement within 6 months from the date on which it becomes aware of the specific act, fact, circumstance or event which gave rise to such relevant claim. The User and the APEX Entities shall not owe any liability to the other for any claim notified after such 6-month period.

## **8 The User's Indemnification**

Notwithstanding anything to the contrary in this Agreement, the User agrees to indemnify, protect and hold harmless each of the APEX Entities and each APEX Entity’s officers, employees, agents, and licensors for any and all losses, damages, expenses and costs, including reasonable legal fees, arising from a claim, suit or other proceeding made or instituted by any Regulatory Authority, person or entity arising from:

- (a) unauthorised access to, or use of the APEX Platforms or the APEX Software by the User or its Permitted Users;
- (b) unauthorised access to or use of the User's Member User Interface or the APEX Interface to access the APEX Platforms, or any use of the User's Member User Interface or the APEX Interface, or unauthorised access to or use of the Materials;
- (c) any breach by the User of clauses 4.1 and/or 4.5, or any breach by the Permitted Users of the clauses in the contract with the User to abide by the terms in this Agreement pursuant to clause 4.5(d);
- (d) any breach of clause 4.8 which gives rise to liability due to inaccurate or incomplete

disclosure;

- (e) any breach of the User's obligations, including any costs incurred by any APEX Entity for the enforcement of the APEX Entity's rights, under this Agreement;
- (f) acting upon any instructions which the User or any of the Permitted Users may give; or
- (g) any negligence, fraud, willful default and/or misconduct on the User's part or any of the Permitted Users' part.

## **9 Term and Termination**

9.1 This Agreement shall take effect when signed by both Parties and shall be for a period of 1 calendar year and shall be renewed automatically upon the same Terms and Conditions upon the expiry of that period and each calendar year thereafter unless terminated in accordance with this Agreement.

9.2 APEX or the User shall have the right to terminate this Agreement forthwith by giving written notice to the other Party if the other Party:

- (a) commits a material breach of any of its obligations under this Agreement, provided that, if the breach is capable of remedy, the non-defaulting Party's right to terminate this Agreement shall only arise if the defaulting Party fails to remedy the breach within 30 (thirty) calendar days of receipt of notice in writing thereof; or
- (b) makes any arrangement or composition with its creditors or if a bankruptcy petition is presented or if a receiving order is made against it or if, being a company, an order is made or a resolution is passed for the winding-up of the other Party or an order is made for the appointment of an administrator to manage the other Party's affairs, business and property, or if a receiver is appointed in respect of any of the other Party's assets or undertaking, or if circumstances arise which entitle the court or a creditor to appoint an administrative receiver, receiver or manager or which entitle the court to make a winding-up order, or if the other Party takes or suffers any similar or analogous action in consequence of debt in any part of the world.

9.3 The Relevant APEX Entities may terminate forthwith the grant to use and access the Relevant APEX Platforms or the Relevant APEX Software by giving written notice to the User in the event that:

- (a) any agreement which affects the operation of this Agreement is terminated for whatever reason and as a result the Relevant APEX Entities are unable to provide the APEX Platforms or APEX Software or to provide replacement(s) within 30 (thirty) days of the termination of such agreement, or in the event that APEX may deem termination of this Agreement necessary in order to ensure compliance with any Rules, law, regulation or court order, including but not limited to the rules, requirements, policies and laws of the relevant Regulatory Authority referred to at clause 19 hereof; or
- (b) it is requested to do so by a Regulatory Authority or any other regulatory body controlling the activities of the Relevant APEX Entities.

9.4 For the avoidance of doubt, for the purposes of clause 9.2(a), any breach of clauses 4.1 to 4.6 by the User shall be a material breach of the User's obligations under this Agreement.

9.5 In any case other than as contemplated in clauses 9.2 or 9.3, any Party may terminate this Agreement by giving 30 days prior written notice to the other Party.

9.6 This Agreement shall terminate automatically upon the User ceasing to be a Member or in accordance with the provisions of clauses 5.2 and 12.3, respectively, of this Agreement.

## **10 Consequences of Termination**

Any termination of this Agreement shall be without prejudice to the accrued rights of each of the APEX Entities and the User as at the date of such termination, and to the continuation in

force of all provisions of this Agreement expressed to survive such termination.

## **11 Suspension of Access to Platform**

Notwithstanding that the Relevant APEX Entities shall use reasonable endeavours to minimise any disruption to the User's access or the Permitted Users' access to the Relevant APEX Platforms and the Relevant APEX Software, the User accepts and acknowledges that APEX shall have the right, whether in accordance with the rights reserved to APEX or any Relevant APEX Entity under the Rules or in accordance with its contractual rights under this Agreement, to immediately discontinue access by the User and the Permitted Users to the APEX Platforms and the APEX Software until further notice.

## **12 Amendments**

12.1 APEX may in its sole and absolute discretion amend any provision of this Agreement by written notice to the User, where failure to do so will or would be likely to give rise to a breach of the rules and regulations of an applicable Regulatory Authority. The User expressly acknowledges and agrees that this provision is a condition of the Agreement and is necessary to ensure that regulatory compliance is maintained at all times.

12.2 For the purposes of clause 12.1 of this Agreement APEX shall be deemed to have given written notice to the User if any APEX entity has given written notice to the individual nominated or appointed by the User for receipt of notices in Part 4 of Schedule A to the Agreement (the "**Notice Recipient**").

12.3 Any amendments to this Agreement as stipulated in any written notice sent to the Notice Recipient or User shall be effective 1 calendar month subsequent to the date the said written notice is given to the Notice Recipient or User (the "**Amendment Effective Date**"), unless the User raises a substantive objection to the amendment to APEX in writing before the Amendment Effective Date. If a substantive objection to the amendment is raised by the User to APEX in writing prior to the Amendment Effective Date, then APEX may at its sole and absolute discretion suspend the User's access to the APEX Platforms from the Amendment Effective Date until such time that the User has confirmed its acceptance of the relevant amendment in writing to APEX. In the event that the User has not signified its acceptance of the amendment in writing to APEX within 1 calendar month of the Amendment Effective Date, then APEX (whether acting for itself or acting for and on behalf of the Relevant APEX Entities) shall be entitled to terminate this Agreement on one month's notice to the User, notwithstanding anything else in this Agreement.

## **13 Waiver**

The failure of a Party to exercise or enforce any right conferred upon it by this Agreement shall not be deemed to be a waiver, whether by estoppel, election or otherwise, of any such right or operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

## **14 Assignment**

14.1 The User may not assign or transfer any of its rights, obligations and duties under this Agreement without the prior written consent of APEX.

14.2 APEX and each of the APEX Entities may assign or transfer any of its rights, obligations and duties under this Agreement, without prior notice and in their absolute discretion, to any entity:

- (a) controlling, controlled by, or under common control with the APEX Entities; or
- (b) which succeeds to all or substantially all of the assets and business of any of the APEX Entities (including without limitation by way of any form of reorganisation, reconstruction, amalgamation, demerger, merger or take-over).

## **15 Severability**

In case any provision in this Agreement shall be, or at any time shall become invalid, illegal or unenforceable in any respect under any law, such invalidity, illegality or unenforceability shall not

in any way affect or impair any other provisions of this Agreement, but this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein or therein.

## **16 Notices**

All notices or communications to be delivered under or with respect to this Agreement shall be delivered to all Parties and be in writing and either be:

- (a) hand delivered or forwarded by registered post; or
- (b) sent via electronic mail;

in either case to the address set out in Part 4 of Schedule A.

Notices shall be deemed to have been served at 9 am Singapore time on the Business Day following the date of sending where the notice is sent by hand or electronic mail, or 9 am Singapore time on the second Business Day following the date of sending where the notice is sent by registered post.

Notices served on a User shall be deemed effective on any of the Permitted Users and Approved Affiliates.

## **17 Remedies Not Exclusive**

No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy including without limitation any remedy or rights under the Rules, except as expressly provided in this Agreement, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise.

## **18 Third Party Rights**

Save for each of the APEX Entities who may rely on and/or enforce the terms of this Agreement, nothing in this Agreement is intended to grant to any third party any right to enforce any term of this Agreement or to confer on any third party any benefits under this Agreement for the purposes of the Contract (Rights of Third Parties) Act (Chapter 53B) of Singapore and any re-enactment thereof.

## **19 Regulatory Requirements**

- 19.1 It shall be the sole responsibility of the User to be aware of and to comply with any and all rules, requirements, policies and laws of the relevant Regulatory Authority including without limitation, all regulatory, audit trail, record keeping and record retention requirements to which they may be subject (in any jurisdiction) and no such inference or interpretation shall be drawn from the terms and conditions of this Agreement. The User shall assume all responsibility for keeping itself fully informed of all such rules, requirements, policies and laws.
- 19.2 The User shall not use, and shall procure that the Permitted Users not use, the APEX Software or access the APEX Platforms in any jurisdiction where it is prohibited to do so for any purpose at any time.

## **20 Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be binding but which together shall constitute one instrument. For the avoidance of doubt, this Agreement shall not be binding on the User or any of the APEX Entities unless and until it shall have been executed by APEX and the User.

## **21 Governing Law and Jurisdiction**

- 21.1 This Agreement is deemed entered into in Singapore and shall be governed by and construed in all respects in accordance with the laws of the Republic of Singapore without giving effect to

principles of conflict of law.

- 21.2 For Disputes arising out of or in connection with the Exchange Systems, Exchange Trading Platform and/or the Trading Software, Rule 601 of the Trading Rulebook shall apply.
- 21.3 For Disputes arising out of or in connection with the Clearing Processing System and/or the Clearing Software, Rule 1201 of the Clearing Rulebook shall apply.
- 21.4 Where at any point there are one or more Disputes such that under clauses 21.2 and 21.3 both Rule 601 of the Trading Rulebook and Rule 1201 of the Clearing Rulebook shall apply, then only Rule 601 of the Trading Rulebook shall apply to all Disputes.
- 21.5 For all Disputes to which neither clauses 21.2 or 21.3 apply, the following shall apply:
- (a) the Parties shall first attempt to settle the Dispute through good faith negotiations, failing which the Dispute shall be settled exclusively by arbitration before the Singapore International Arbitration Centre ("**SIAC**") in accordance with the rules of the SIAC; save that, the requirement to settle Disputes in this clause 21.4(a) shall be without prejudice to the Exchange's or the Clearing House's rights, or a Clearing Member's rights, to litigate a Dispute in court; and
  - (b) any arbitration commenced under or pursuant to clause 21.4(a) shall be conducted in Singapore before a panel of three arbitrators, and the language of the arbitration proceedings shall be English. The seat of the arbitration shall be Singapore.

## **22 Force Majeure**

Other than an obligation of payment under this Agreement and without prejudice to any of APEX's rights or any of the APEX Entities rights under the terms of the Rules, no party shall be liable to the other for any failure or delay in performing any obligation under this Agreement that is due to causes beyond its reasonable control, such as natural catastrophes, war, acts of terrorism, armed conflict, labour strikes or disputes, transportation unavailability, stoppages or slowdowns, provided that the affected party gives prompt notice to the other of the nature of the event and its estimated duration and resumes performance as soon as possible after the event.

## **23 Confidentiality**

- 23.1 In this clause 23, "**Confidential Information**" means all information disclosed (whether in writing, orally or by any other means, whether proprietary or otherwise and whether directly or indirectly) by any of the APEX Entities to the User, whether before or after the date of this Agreement including, without limitation, the APEX Platforms, APEX Software, Related Documentation, Materials and all information relating to any APEX Entity's products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs and information distributed, used, disseminated, disclosed or accessed under the terms of clause 23.
- 23.2 During the term of this Agreement and after termination or expiration of this Agreement the User:
- (a) may not use Confidential Information other than in accordance with its rights and obligations under this Agreement;
  - (b) may not disclose Confidential Information to a person except with the prior written consent of the APEX or in accordance with clauses 23.3 and 23.4; and
  - (c) shall make every effort to prevent the unauthorised use or disclosure of Confidential Information.
- 23.3 During the term of this Agreement the User may disclose Confidential Information to the Permitted Users, or to any court of law or Regulatory Authority (each a "**Recipient**", collectively, the "**Recipients**") to the extent that disclosure is:
- (a) necessary and only on a need-to-know basis for the purposes of performance of the

Limited Purposes; or

- (b) required by a court of law; or
- (c) required to ensure compliance by the User with its regulatory obligations or as requested by its Regulatory Authority as applicable.

23.4 The User shall ensure that any Recipient (other than a court of law or Regulatory Authority) is made aware of and has complied with the obligation of confidentiality under this Agreement as if the Recipient was a party to this Agreement.

23.5 Clauses 23.2 to 23.4 do not apply to Confidential Information which:

- (a) is at the date of this Agreement, or at any time after that date becomes, publicly known other than by the User's or Recipient's breach of this Agreement; or
- (b) can be shown by the User or the Recipient to APEX's reasonable satisfaction to have been known by the User or the Recipient before disclosure by any of the APEX Entities.

## **24 Data Protection**

24.1 Both Parties shall duly observe all their respective obligations under the Personal Data Protection Act 2012 (No. 26 of 2012) in connection with this Agreement (and all amendments and modifications thereto).

24.2 The User acknowledges and agrees that, and hereby consents to, the APEX Entities collecting, using, disclosing and/or processing the User's Personal Data (or, if the User is a corporate entity, the Personal Data of the User's traders, customers and employees) for one or more of the following purposes:

- (a) to process, administer and/or manage the User's account with APEX;
- (b) to contact the User as may from time to time be necessary in connection with the User's use of the Website and/or the services made available on it;
- (c) to carrying out due diligence or other monitoring or screening activities (including Know-Your-Client checks) in accordance with legal or regulatory obligations or risk management procedures that may be required by law or that may have been put in place by the APEX Entities;
- (d) to store, host and/or back up (whether for disaster recovery or otherwise) such personal data, whether within or outside Singapore;
- (e) to process any transactions or payments made by the User and to maintain payment records;
- (f) for record-keeping purposes;
- (g) to conduct research, analysis and development activities (including but not limited to data analytics, surveys and/or profiling) to improve the APEX Platforms, APEX software, services and facilities in order to enhance the services APEX provides to the User, where the User has consented to be contacted for such purposes;
- (h) to respond to legal process, pursue legal rights and remedies, defend litigation and manage any complaints or claims;
- (i) to respond to requests for information from public and governmental / regulatory authorities, statutory boards, related companies and for audit, compliance, investigation and inspection purposes; and
- (j) to comply with any applicable law, regulation, legal process or government request.

- 24.3 The User further acknowledges and agrees that the User's Personal Data (or, if the User is a corporate entity, the Personal Data of the User's traders, customers and employees) may be used, disclosed, maintained, accessed, processed and/or transferred to the following third parties, whether sited in Singapore or outside of Singapore, for the purposes set out in Clause 24.2 above:
- (a) the APEX Entities;
  - (b) third party service providers which require the processing of such Personal Data, for example, third party service providers which have been engaged by any one or more of the APEX Entities: (i) to provide and maintain any IT equipment used to store and access such Personal Data; (ii) to host and maintain the APEX Platforms or the APEX software; or (iii) otherwise in connection with the provision of the services provided to the User on or via the APEX Platforms or the APEX software;
  - (c) the APEX Entities' auditors and legal advisors;
  - (d) financial institutions as defined in the Monetary Authority of Singapore Act (Cap. 186 of Singapore);
  - (e) public and governmental / regulatory authorities, statutory boards, industry associations; and
  - (f) courts and other alternative dispute forums.
- 24.4 If the User provides any Personal Data to the APEX Entities or if the User collects any Personal Data on the APEX Entities' behalf, (including without limitation the Personal Data of the User's traders, customers and employees. If the User is a corporate entity), the User represents and warrants that it has, prior to providing such Personal Data to the APEX Entities:
- (i) notified the individual to whom the Personal Data relates that his/her Personal Data will be disclosed to the APEX Entities, and of the purposes for which the APEX Entities will be collecting, using or disclosing that individual's Personal Data; and
  - (ii) obtained the consent of the individual to whom the Personal Data relates to: (a) permit the User to disclose his/her Personal Data to the APEX Entities; and/or (b) permit the APEX Entities to collect, use or disclose the Personal Data (whether within Singapore or outside of Singapore) for the purposes for which the individual was previously notified.
- 24.5 When providing any Personal Data to the APEX Entities or if the User collects any Personal Data on the APEX Entities' behalf, the User hereby agrees to:
- (i) at each of the APEX Entities' request, use such form(s) or document(s) provided by each of the APEX Entities in obtaining such consents from the individuals in question;
  - (ii) for any Personal Data of individuals that the User will be or are disclosing to any of the APEX Entities, ensure that such Personal Data is accurate, complete and true. Further, the User shall give the APEX Entities notice in writing as soon as reasonably practicable should the User be aware that any such Personal Data has been updated and/or changed after such disclosure; and
  - (iii) assist the APEX Entities in complying with the Data Protection Legislation. In this regard and without limiting the generality of the foregoing, this includes but is not limited to the User executing such further documents as the APEX Entities may require and/or the User making arrangements for additional form(s) and consent(s) to be completed and signed by individuals whose Personal Data are provided by the User.
- 24.6 The User shall ensure that its Permitted Users, employees and/or agents comply with this clause. The User shall remain fully liable for any acts or omissions to act by the User, its Permitted Users employees and/or agents that result, directly or indirectly, in a breach of this Clause.

**25 Further Assurance**

The User and the APEX Entities shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of this Agreement into full force and effect.

**EXECUTED** by the Parties (where applicable)

Signed by \_\_\_\_\_

**(Print Name)**

a duly authorised representative  
of  
**APEX**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

Signed by \_\_\_\_\_

**(Print Name)**

a duly authorised representative of  
**THE USER**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

## **SCHEDULE A**

### **Part 1A: The Exchange Trading Platform**

That part of the combination of software, operating software, hardware, communication equipment and data owned by, licensed to, or in the possession of the Relevant APEX Entities as updated, varied and modified from time to time, which makes up the Exchange Trading Platform, (including without limitation the APEX Block Trade and EFRP Facility) for the trading of Contracts by Members of the Exchange comprising, inter alia, the systems and facilities for the execution and processing of Contracts and for the reporting, surveillance and control of transactions made through such systems and facilities.

### **Part 1B: The Clearing Processing System**

That part of the combination of software, operating software, hardware, communication equipment and data owned by, licensed to, or in the possession of the Relevant APEX Entities as updated, varied and modified from time to time, which makes up the Clearing Processing System (including without limitation, the APEX Clear System) for the clearing of Contracts by Members of the Clearing House comprising, inter alia, the systems and facilities for the clearing, reporting, surveillance and control of Contracts, accounts, trades, positions, etc made through such systems and facilities.

### **Part 1C: Other Systems**

All other systems that are made available to Members by any of the APEX Entities from time to time including but not limited to the Member & Client Management System and the Delivery System.

### **Part 2A: The Trading Software**

The software supplied by the Relevant APEX Entities to the User (if applicable) in order to access the Trading Platform to facilitate viewing of and/or trading in Contracts on the Exchange Trading Platform as the case may be, comprising a graphical user interface and/or API and/or such other elements as may be notified as necessary for such purpose as the Relevant APEX Entities may determine from time to time. For the avoidance of doubt, the Trading Software does not include the Member User Interface.

### **Part 2B: The Clearing Software**

The software supplied by the Relevant APEX Entities to the User (if applicable) in order to access the Clearing System to facilitate viewing of and/or clearing of transactions on the Clearing Processing System as the case may be, comprising a graphical user interface and/or API and/or such other elements as may be notified as necessary for such purpose as the Relevant APEX Entities may determine from time to time. For the avoidance of doubt, the Clearing Software does not include the Member User Interface.

### **Part 2C: Other Software**

All other software supplied by any of the APEX Entities to the User from time to time.

### **Part 3: Connectivity**

The means by which the User shall access each of the APEX Platforms are as follows:

- (a) a telecommunications link provided by a third party under direct contract with the User; or
- (b) internet; or
- (c) by such other means as APEX or a Relevant APEX Entities may allow under the Rules from time to time.

**Part 4: Addresses for Notices**

In the event of any notice being required to be sent to a party under the terms of this Agreement, then such notice shall be addressed as follows:

If to any of the APEX  
Entities:  
Asia Pacific Exchange Pte. Ltd.  
1 Phillip Street  
Royal One Phillip  
#06-00  
Singapore 048692

Telephone no: +65 6914 2809

Attention: Application Support Team  
E-mail: tech-app@asiapacificex.com

If to the User:

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Telephone no: \_\_\_\_\_

Facsimile no: \_\_\_\_\_

Attention: \_\_\_\_\_

E-mail: \_\_\_\_\_

In the event of a Party's notice details changing, then it shall be the responsibility of such Party to confirm details of such changes to the other Party.

**Part 5: Limited Purposes**

**(a) In respect of the Exchange Trading Platform:**

Where applicable, the licence granted pursuant to clause 2 is granted to enable the User, where the User is an Exchange Member, to effect trading on the Exchange Trading Platform in accordance with this Agreement, the Member Agreement and Undertaking, and the Exchange Rulebook.

**(b) In respect of the Clearing Processing System:**

Where applicable, the licence granted pursuant to clause 2 is granted to enable the User, where the User is a Clearing Member, to effect clearing on the Clearing Processing System in accordance with this Agreement, the Member Agreement and Undertaking, and the Clearing Rulebook.

**Part 6: Seat Fee**

In consideration of the rights granted under this Agreement, if the User is an Exchange Member and has been granted a Seat by the Exchange, the User shall pay APEPL a Seat Fee of US\$3,000 per year for the grant of each Seat by the Exchange.