

OTC Clearing Hong Kong Limited

and

[•]

MEMBERSHIP AGREEMENT

This Agreement is made on [_____] between:

- (1) OTC Clearing Hong Kong Limited (“**OTC Clear**”) whose registered office is situated at 12th Floor, One International Finance Centre, 1 Harbour View Street, Central, Hong Kong; and
- (2) _____ (“**the Applicant**”) whose registered office is situated at:

_____.

WHEREAS:

- (A) OTC Clear is a company incorporated in Hong Kong and which is a Recognized Clearing House under the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong);
- (B) OTC Clear requires any person wishing to become a Clearing Member to enter into an agreement with it in this form;
- (C) The Applicant has applied to become a Clearing Member on the terms and subject to the conditions set out in this Agreement.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. In this Agreement:
 - (a) “**Clearing Rules**” means the relevant rules of OTC Clear for the type or types of services for which the Applicant is permitted to use and shall include, where the context so permits, the Clearing Procedures applicable to the relevant type or types of services, both as in force from time to time;
 - (b) “**Group**” means the Applicant and its subsidiaries;
 - (c) unless the context otherwise provides, references to “**Clearing Member**” mean a Clearing Member of OTC Clear with respect to the type or types of services to which the Applicant is permitted to use as set out in Schedule A to this Agreement, and any reference to “**Membership**” shall be construed accordingly; and
 - (d) the capitalised terms and expressions used in this Agreement shall have the same meaning as defined in the Clearing Rules that apply to each relevant type of service which the Applicant is permitted to use, unless a different meaning has been specifically ascribed in this Agreement.
2. The Applicant shall, as of the date of this Agreement, become a Clearing Member of OTC Clear and shall abide by and be bound by all of the provisions of the Clearing Documentation as in force from time to time. The Applicant agrees that where it is permitted to use other type or types of services provided by OTC Clear after the date of this Agreement, it shall also, as a Clearing Member, abide by and be bound by all of the provisions of the applicable Clearing Documentation as in force from time to time with effect from the date on which OTC Clear grants the necessary approval, whereupon Schedule A shall be updated by OTC Clear and a copy of the updated Schedule A shall be provided by OTC Clear to the Applicant. The Applicant shall be bound by any amendment to the Clearing Documentation with respect to any matter or with respect to any dealing or transaction occurring at or subsequent to the time such amendment takes effect.

3. The Applicant undertakes to comply on an on-going basis with all conditions imposed upon its becoming a Clearing Member as set out in the Clearing Documentation or as otherwise notified to it by OTC Clear, including but not limited to its satisfaction of all continuing obligations of Clearing Members as set out in the Clearing Documentation. Should the Applicant have reason to believe that it is not, or may no longer be, able to satisfy any such continuing obligations, it shall immediately notify OTC Clear of the circumstances. For the avoidance of doubt, the Applicant acknowledges and agrees that a breach of the Clearing Rules shall be regarded as a breach of this Agreement, and a breach of this Agreement shall be regarded as a breach of the Clearing Rules.
4. The Applicant shall, in relation to all its matters, dealings and transactions with or relating to OTC Clear or its systems or services be liable to OTC Clear as principal regardless of whether it is acting in any capacity for any other persons whether in a fiduciary capacity or otherwise.
5. The Applicant will pay OTC Clear such fees, commissions, levies, costs and other payments (together the "**Clearing Amounts**") as provided in the Clearing Rules and as may be notified to the Applicant from time to time. The Applicant acknowledges that if it fails to pay the Clearing Amounts in a timely manner as required, OTC Clear may impose interest charges and/or penalty fees, without prejudice to any other rights OTC Clear may have to recover damages due to the late payment or non-payment. The Applicant agrees that its contribution of Collateral shall be dealt with in accordance with the Clearing Rules (including, without limitation, the return of such Collateral to the Applicant upon termination of this Agreement).
6. The Applicant agrees that the liability of OTC Clear, its Affiliates, a recognized exchange controller which is the controller of OTC Clear (the "**Recognized Controller**"), or any of their respective Representatives, to the Applicant or to any other Person in respect of anything done or omitted to be done in good faith in connection with the operation of OTC Clear's services, shall be subject to such limitations as provided in the Clearing Rules.
7. The Applicant agrees to indemnify OTC Clear, its Affiliate and the Recognized Controller in the manner and to the extent as set out in the Clearing Rules.
8. The Applicant shall, in relation to its Membership in OTC Clear, comply with all Applicable Laws, all rules and regulations thereunder.
9. The Applicant represents and warrants that:
 - (a) all information provided to OTC Clear in relation to its application to become a Clearing Member or to use any services provided or to be provided by OTC Clear and all information subsequently provided is correct and accurate;
 - (b) the Applicant is validly incorporated and existing under the laws of its jurisdiction of incorporation; the execution of this Agreement and the performance of the terms have been duly authorised; they constitute binding and enforceable obligations of the Applicant and do not violate the constitutional documents of the Applicant or any law, regulation or other agreement;
 - (c) the Applicant has complied with all Applicable Laws in the conduct of its business (including all laws, rules, regulations and requirements relating to the prevention of bribery, money laundering, financial crimes and terrorist financing); and has all the necessary approvals, licences and authorisations in place for the carrying on of its business in all jurisdictions;

- (d) the Applicant, its directors and employees and to the Applicant's knowledge after making reasonable enquiries, entities within the Group are not and have not been subject to any sanctions promulgated or imposed by the United Nations or any Governmental Authority or Regulatory Authority;
 - (e) the Applicant is not subject to any Insolvency Proceedings; and
 - (f) the Applicant and its directors are not subject to any governmental or regulatory investigation, action, suit or proceeding arising from any breach of any Applicable Laws and, to the best of the Applicant's knowledge, no such investigation, action, suit or proceeding is threatened or contemplated.
- 10.** The Applicant authorises OTC Clear to obtain such information as OTC Clear deems necessary or appropriate in order to properly evaluate the Applicant's application, including but not limited to verification of information provided by the Applicant via public or non-public sources or communication with governmental, regulatory or self-regulatory organisations in Hong Kong or elsewhere.
- 11.** The Applicant:
- (a) acknowledges that it has obtained, read and understood the Clearing Documentation;
 - (b) undertakes to OTC Clear (acting for itself and as the agent of Hong Kong Futures Exchange Limited ("HKFE")) that so long as the clearing of Designated Futures Contracts under the Securities and Futures (Futures Contracts) Notice 2012 by OTC Clear applies, it shall, as required by the Clearing Rules, be subject to and shall abide by Chapter XVII of the Rules of HKFE as in force from time to time and agrees that the undertaking in this Clause 11(b) is given in favour of OTC Clear and HKFE.
- 12.** This Agreement shall only terminate upon the Applicant ceasing to be a Clearing Member in respect of all the services set out in Schedule A, provided however that if the Applicant ceases to be a Clearing Member for any services, the Applicant shall nonetheless continue to be bound by the relevant Clearing Rules as to all matters and transactions effected by it whilst a Clearing Member and in respect of any other obligations it may have as provided in the relevant Clearing Rules.
- 13.** The Applicant irrevocably waives, to the extent permissible by Applicable Laws, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (a) suit or proceedings, (b) jurisdiction of any court or arbitral tribunal, (c) relief by way of injunction or order for specific performance or recovery of property, (d) attachment of its assets (whether before or after judgment or award), (e) any effort to confirm, enforce, or execute any decision, settlement, award, judgment, service of process, execution order or attachment that results from any judicial or administrative proceedings and (f) execution or enforcement of any judgment or award to which it or its revenues or assets might otherwise be entitled in any proceedings before an arbitral tribunal or in the courts of any jurisdiction, in each case, in relation to any proceeding relating to its activities as a Clearing Member or the services provided by OTC Clear.
- 14.** Clauses 6, 7, 13, 14, and 15 of this Agreement shall survive the termination of this Agreement.

15. In case any one or more of the provisions of this Agreement may be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be affected or prejudiced thereby.
16. If the Applicant is not incorporated or registered in Hong Kong, it represents and warrants that it has appointed an agent in Hong Kong to accept service of process issued out of the courts of Hong Kong, with the details as set out in Schedule B to this Agreement, and undertakes to maintain such agent or replacement agent in accordance with the Clearing Rules. The Applicant's appointment of a process agent shall not affect the right of OTC Clear to serve process in any other manner permitted by law.
17. This Agreement shall be governed by and construed in accordance with the laws of the Hong Kong Special Administrative Region ("HKSAR") and the Applicant submits to the exclusive jurisdiction of the courts of the HKSAR in respect of all matters and disputes arising under or out of or in connection with the Agreement.
18. [In the event of any inconsistency in meaning between the English and Chinese versions of this Agreement, the English version shall prevail.]^{*}

SIGNED by []

for and on behalf of []

SIGNED by []

**for and on behalf of OTC Clearing
Hong Kong Limited**

^{*} Only applicable if this Agreement is signed in both language versions.

Schedule A

Type(s) of Permitted Service

Type of permitted service	Effective date

Schedule B

Details of Process Agent

For Applicants not incorporated or registered in Hong Kong

Name: _____

Address: _____

Telephone: _____

Fax: _____

Date appointed: _____