

ORDER AND TRADE FILES SERVICE AGREEMENT

AN AGREEMENT dated the day of

BETWEEN:-

- (1) **HKEx INFORMATION SERVICES LIMITED** whose registered office is situated at 12th Floor, One International Finance Centre, 1 Harbour View Street, Central, Hong Kong ("**HKEx-IS**"); and
- (2) The Exchange Participant whose name and address is set out in Schedule 1 hereto ("**The Licensee**").

WHEREAS:-

- (A) HKEx-IS is a wholly owned subsidiary of The Stock Exchange of Hong Kong Limited and an indirect wholly owned subsidiary of Hong Kong Exchanges and Clearing Limited.
- (B) It has been agreed that HKEx-IS will grant to the Licensee a non-exclusive licence to use certain information, for the period and upon the terms and conditions hereinafter appearing.

IT IS HEREBY AGREED as follows:-

1 Interpretation

In this Agreement, unless otherwise expressed or required by the context, the following expressions shall have the following meanings:-

Expressions

Meanings

"Agreement"

this agreement together with any subsequent modifications thereto agreed in writing by the parties.

"Bureau Services"

compliance, surveillance and/or other bureau or back office services provided by the Service Provider to a participant of the Exchange in respect of its trading activities on the Exchange.

"Commencement Date"

the date on which the Licensee begins receiving any of the Information under this Agreement or the commencement date specified in Schedule 1, whichever is earlier.

"Exchange"

The Stock Exchange of Hong Kong Limited whose registered office is at 1st Floor, One and Two Exchange Square, Central, Hong Kong.

"Hong Kong"

the island of Hong Kong, Kowloon and the New Territories.

"Information"

any or all of the information specified in Schedule 2 which is compiled by the Exchange and/or provided by HKEx-IS to the Licensee and/or its Service Provider pursuant to this Agreement.

"Licence Fees"	the fees to be paid by the Licensee to HKEx-IS pursuant to clause 5 of this Agreement.
"Off Market"	a trading floor or dealing service where (a) trading in Securities listed on the Stock Exchange or of a type capable of being so listed or (b) any other Securities relating to Securities described at (a) above is being undertaken otherwise than at or through the Stock Exchange.
"Order and Trade Files Service"	the service under which the Licensee may subscribe to HKEx-IS with respect to order, trade and best bid/ask files specified in Schedule 2.
"Permitted Purpose"	the processing of Information by the Licensee for its internal use or by the Service Provider for the sole purpose of providing Bureau Services to the Licensee.
"Securities"	the same meaning as defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap.571).
"Service Provider"	the company which has been appointed by the Licensee to provide Bureau Services to it, and for the purpose of this Agreement, the Service Provider shall be the company specified in Schedule 1 and HKEx-IS shall treat such company as the Service Provider unless any change of Service Provider has been approved in writing in advance by HKEx-IS.
"Stock Exchange"	a stock market operated by the Exchange.
"Transmission Method"	the method of transmission of the Information as notified in writing to the Licensee by HKEx-IS prior to the Commencement Date and from time to time.

2. Licence

- 2.1 HKEx-IS hereby grants to the Licensee a non-exclusive, non-transferable and non-assignable licence to use the Information for the Permitted Purpose and according to the terms set out in this Agreement.
- 2.2 This Agreement shall commence on the Commencement Date.
- 2.3 The Information provided to the Licensee hereunder shall be those specified in Schedule 2. HKEx-IS shall have the right at any time to amend Schedule 2 and alter the presentation or categorization or substance of the Information by giving written notice to the Licensee or, if required to do so by reasons outside its control, without prior notice.

3. Supply of Information

- 3.1 The Information shall under normal circumstances be made available on an HKEx-IS designated web-server for downloading by the Licensee and, if requested by the Licensee, its Service Provider at such time after the market close on each trading day as may be specified by HKEx-IS.

- 3.2 The Licensee acknowledges that Information made available to its Service Provider may be combined with information of other participants of the Exchange which have also subscribed to the Order and Trade Files Service and appointed the same Service Provider to provide Bureau Services to them. Conversely, the Licensee hereby authorizes and permits HKEx-IS to combine the Information (including information specific to, or confidential information of, the Licensee) with information of such other participants of the Exchange when supplying information to the Service Provider under their subscription to the Order and Trade Files Service.
- 3.3 While HKEx-IS will act in good faith in compiling and supplying the Information, it gives the Licensee no covenants, representations or warranties of any kind whatsoever (whether express, implied, statutory or otherwise) in respect of the accuracy or completeness of the Information.
- 4. Permitted use of Information**
- 4.1 The Licensee agrees that it will, and will ensure that its Service Provider will, use the Information solely for the Permitted Purpose. For the avoidance of doubt, it is agreed that the Information shall not be used or permitted to be used by the Licensee or its Service Provider for the purpose of trading or conducting any trading activities or to establish, maintain, provide, procure or assist in establishing, maintaining or providing an Off-Market or in any way operate a stock exchange.
- 4.2 The Licensee shall, and shall ensure that its Service Provider shall, at all times hold the Information in strictest confidence and except as expressly permitted under Clause 4.3, shall not disseminate the Information or allow the same to be disseminated to any third party under any circumstances without the prior written consent of HKEx-IS. For the avoidance of doubt, third party includes but is not limited to any company within the group of companies of the Licensee and any client of the Licensee.
- 4.3 In the event that the Licensee has appointed the Service Provider to provide Bureau Services, the Licensee may disseminate the Information to the Service Provider solely for the Permitted Purpose. The Licensee may also request, and thereby authorizes, HKEx-IS to supply the Information to the Service Provider directly. The Licensee agrees to be fully responsible for any authorized use or dissemination of Information by the Service Provider as if all acts and omissions of the Service Provider relating to the use of the Information were acts and omissions of the Licensee and the Licensee shall be fully responsible for any claims, damages and other liabilities arising out of the supply of Information to the Service Provider. - In the event that other participants of the Exchange subscribing to the Order and Trade Files Service have also appointed the Service Provider to provide Bureau Services to them, the liability of the Licensee and such other participants for the acts and omissions of the Service Provider shall be joint and several.
- 4.4 HKEx-IS shall have the right not more than once in each calendar quarter during the currency of this Agreement and also once in the calendar quarter following termination of this Agreement to inspect either by itself or its authorized agents all documents, equipment and other materials of, or in the possession of, the Licensee or its Service Provider which are considered by HKEx-IS to be relevant for determining whether there is unauthorized use or dissemination of the Information. The Licensee shall, upon receiving HKEx-IS' written request, permit and/or (if so requested) procure that HKEx-IS may inspect promptly thereafter the premises and records of the Licensee and its Service Provider, for the purpose of satisfying HKEx-IS by whatever proofs HKEx-IS may reasonably require that the Licensee and its Service Provider are using the Information for the Permitted Purpose only and are not using Information contrary to the provisions of this Agreement. HKEx-IS shall bear its costs (including internal management time and expenses) of each inspection, unless the inspection establishes that there has been unauthorized use or dissemination of the Information by the Licensee or its Service Provider, in which case the Licensee shall bear such cost.
- 4.5 The Licensee may not assign or sub-license any of its right to use the Information.

5. Licence Fees and payments

- 5.1 During the currency of this Agreement the Licensee shall pay to HKEx-IS the Licence Fees in accordance with the provisions of Schedule 3 hereto.
- 5.2 HKEx-IS shall have the right to amend the Licence Fees at any time upon giving the Licensee not less than three months notice in writing thereof. At any time during the 30 days following service of such notice the Licensee shall be entitled to terminate this Agreement with effect from the date when the amendment is to be implemented, by giving written notice to HKEx-IS. For the avoidance of doubt, HKEx-IS' right to amend the Licence Fees includes without limitation the right to introduce additional Licence Fees to cover any new or existing types of service or trade or order files, to modify the basis for calculating any Licence Fees and to change the classification of any service so that an amended Licence Fee becomes payable.
- 5.3 No part of the Licence Fees will be refundable to the Licensee if this Agreement terminates, for whatever reason, during a month for which the Licence Fees or any part thereof have been paid in advance.
- 5.4 If the Licensee is late in paying any sums due to HKEx-IS under this Agreement by more than 30 days, interest shall be payable on such sums calculated from the date such sums first become due in respect of each month or part thereof for which they are not paid at a rate of 40% per annum)

6. Termination

- 6.1 Either party shall be entitled without stating a reason to terminate this Agreement by giving not less than thirty complete calendar days' prior notice of termination in writing to the other party.
- 6.2 This Agreement may be terminated forthwith by HKEx-IS at any time without notice to the Licensee upon the occurrence of any of the following events:-
- 6.2.1 the Licensee ceases to hold a Stock Exchange Trading Right; or
- 6.2.2 the Licensee is expelled or suspended from participation of the Exchange; or
- 6.2.3 the Licensee suspends or ceases trading; or
- 6.2.4 the Licensee's right to access the trading system of the Exchange is suspended, withdrawn or revoked; or
- 6.2.5 the Licensee is in breach of any terms of this Agreement and fails to remedy the breach to the satisfaction of HKEx-IS within seven calendar days following notice to the Licensee specifying the breach provided that HKEx-IS may terminate this Agreement forthwith if the breach is in its absolute opinion material or if the Licensee's failure to perform or observe an obligation is repeated or on a frequent basis. For the avoidance of doubt, any unauthorized use or dissemination of the Information and any non-payment of fees and charges when due shall constitute a material breach.
- 6.3 The Licensee shall be entitled to terminate this Agreement forthwith by written notice if for any reason Information is not supplied to Licensee for a period in excess of 10 consecutive working days on which the Stock Exchange is open for the business of trading in Securities.
- 6.4 Upon termination of this Agreement, the Licensee's subscription to the Order and Trade Files Service shall forthwith terminate and HKEx-IS shall have the absolute right to terminate the supply of the Information with immediate effect, and all sums due hereunder from Licensee shall become payable forthwith to HKEx-IS.

7. Exclusion of Liability and Indemnity

- 7.1 Nothing in this clause shall restrict or exclude liability of HKEx-IS or the Licensee in respect of death or personal injury resulting from negligence.
- 7.2 Subject to the foregoing, neither HKEx-IS nor the Exchange shall be liable to the Licensee, the Service Provider or any person claiming through the Licensee in respect of consequential, economic or any other loss or damage arising from any act or omission, mistake, delay, interruption, whether wilful, negligent or otherwise, arising from or in connection with (a) the collection, use or supply of the Information by or to the Licensee or its Service Provider or (b) the Information being inaccurate, incomplete or otherwise misleading. Further the Licensee undertakes not to institute or attempt or threaten to institute any proceedings in any jurisdiction in or outside Hong Kong against HKEx-IS or the Exchange for recovery of any of the aforesaid loss suffered by the Licensee or by any other person or otherwise to maintain any claim against HKEx-IS or the Exchange for or in respect of any of the aforesaid loss.
- 7.3 Subject to clause 7.1 the Licensee will at all times hereafter indemnify and keep HKEx-IS and the Exchange effectively indemnified against and in respect of all liabilities, economic or other losses, damages, costs, claims, suits, demands, fees and expenses of whatsoever nature which may be incurred by HKEx-IS or the Exchange towards or in relation to any person or which may be taken, made or claimed against HKEx-IS or the Exchange by any person as a result of or in connection with or arising out of any act, omission, mistake, delay or interruption, on the part of the Licensee or its Service Provider, HKEx-IS or the Exchange, whether wilful, negligent or otherwise, in relation to this Agreement, including (without prejudice to the generality of the foregoing) acts or omissions in respect of or in connection with or arising out of the collection, use or supply of the Information by or to the Licensee or its Service Provider or arising from the Information being inaccurate, incomplete or otherwise misleading.
- 7.4 For the purposes of this clause, HKEx-IS contracts as agent for the Exchange, and Licensee agrees to said exclusion of liability and indemnity in favour of the Exchange in consideration of the Exchange consenting to HKEx-IS entering into this Agreement.

8. Notices

- 8.1 Any notice or other document to be given or served hereunder may be delivered by hand or sent by pre-paid post, or facsimile transmission to the party to be served at its address stated herein or at such other address as that party shall have notified the other in accordance with this Agreement.
- 8.2 Any such notice or document shall be deemed to have been served:-
- 9.2.1 if delivered, at the time of delivery; or
- 9.2.2 if posted, at the expiration of seven days after the postage pre-paid envelope containing the same shall have been put into the post; or
- 9.2.3 if sent by facsimile transmission, at the expiration of 12 hours after the same shall have been despatched.
- 8.3 In proving such service it shall be sufficient to prove that delivery was made or that the envelope containing such notice or document was properly addressed and posted or that the facsimile transmission was properly addressed and despatched as the case may be.

9. Proprietary Rights

- 9.1 The Licensee hereby acknowledges that it has no entitlement to any proprietary rights including without limitation rights of copyright in and to the Information or the presentation of the Information, which rights are owned by the Exchange or by other third parties. As regards rights owned by the Exchange, the Licensee acknowledges that the Exchange has authorized HKEx-IS only to supply the Information by way of this Agreement and HKEx-IS warrants that it has obtained such authorization.
- 9.2 The Licensee shall at all times treat the Information and any information ancillary thereto obtained pursuant to this Agreement as confidential and shall not disclose such Information to any third party other than to its Service Provider, irrespective of whether it is in the same format as supplied to the Licensee by the Exchange or HKEx-IS.
- 9.3 This clause shall continue to have effect notwithstanding termination of the rest of this Agreement.

10. Amendments, Waivers and Enforceability

- 10.1 Unless expressly provided for under this Agreement, a provision of this Agreement may be amended only if the parties agree in writing.
- 10.2 No waiver or indulgence by any party to this Agreement shall be binding unless in writing and in any event no waiver of one breach of any term or condition of this Agreement shall operate as a continuing waiver unless so expressed nor operate as a waiver of another breach of the same or any other term or condition of this Agreement.
- 10.3 In the event that any provision in this Agreement is for any reason held to be unenforceable, illegal or otherwise invalid, this shall not affect any other provisions of this Agreement, and the provision in question shall be construed in such reasonable manner as achieves the intention of the parties without being invalid.

11. Entire Agreement

This Agreement sets out the entire agreement of the parties concerning the subject matter hereof and supersedes all prior agreements, negotiations, representations and proposals, whether written or oral.

12. Governing Law

- 12.1 This Agreement shall be governed by and construed in accordance with the laws of Hong Kong whose courts shall have non-exclusive jurisdiction in relation thereto.

IN WITNESS whereof the parties have entered into this Agreement the day and year first above written.

SIGNED by)
for and on behalf of)
HKEx INFORMATION SERVICES LIMITED)
in the presence of :-)

SIGNED by)
for and on behalf of)
)
in the presence of :-)

SAMPLE

SCHEDULE 1

The Licensee

Name

[name as appears on certificate of incorporation, latest certificate of incorporation on change of name or their equivalent]

Place of Incorporation

Registered office in place of incorporation

Address and fax number for notices under clause 9

[address]

Attention:

Fax No.:

Name and address of the Service Provider

Commencement Date

SAMPLE

SCHEDULE 2

MEMORANDUM OF PERMITTED PURPOSE (Cross reference clause 2)

Information specifications

1. Order File

Field No.	Field Description	Length (Bytes)	Remarks
1	Order ID	13	9(13) unique number (Broker number + Order Sequence Number)
2	Broker No.	4	9(4)
3	Broker Firm ID	5	9(5)
4	Stock Code	5	9(5)
5	Stock Currency	3	X(3) e.g. 'HKD'
6	Price	9	9(6)v9(3)
7	Reduced Quantity	8	9(8)
8	Total Quantity	8	9(8)
9	Order Side Code	1	'B' – Bid 'A' – Ask
10	Cancel Type	2	9(2)
11	Order Time	6	Hhmmss
12	Odd Lot Flag	1	'Y' – Odd Lot 'N' – Broad Lot
13	Order Type Indicator	1	'A' – At Auction 'E' – Enhanced Limit 'I' – At Auction Limit 'L' – Limit Order 'Q' – Quote 'S' – Special Limit 'V' – Average Limit ' ' – Order is not input for auto-matching and auction matching
14	Shortsell Indicator	1	'C' – Shortsell cover 'M' – Shortsell for market making 'N' – Non shortsell 'Y' – Shortsell 'A' – Arbitrage 'F' – SFMM
15	Hedge Indicator	1	' ' – None 'E' – Hedging 'L' – Liquidating hedging 'N' – Non hedging

2. Trade File

Field No.	Field Description	Length (Bytes)	Remarks
1	Trade ID	17	9(17) unique number
2	Buyer Broker No.	4	9(4)
3	Buyer Broker Firm ID	5	9(5)
4	Seller Broker No.	4	9(4)
5	Seller Broker Firm ID	5	9(5)
6	Stock Code	5	9(5)
7	Stock Currency	3	X(3) e.g. 'HKD'
8	Price	9	9(6)v9(3)
9	Quantity	8	9(8)
10	Trading Method	1	'A' – Automatch 'M' – Manual 'E' – Semi-automatic Special Lot 'O' – Semi-automatic Odd Lot 'S' – Special 'Q' – Special Lot 'P' – Odd Lot 'R' – Previous Day 'T' – Option Exercise 'U' – Auction 'V' – Overseas
11	Isolation Indicator	1	'I' – Isolated Trade 'B' – Buyin Trade ' ' – Non-isolated Trade
12	Direct Indicator	1	'Y' – Direct Trade 'N' – Non-direct Trade
13	Reject Indicator	1	'Y' or 'N'
14	Trade Time	6	hhmmss
15	Reject Time	6	hhmmss
16	Buyer Order Sequence Number	9	9(9)
17	Seller Order Sequence Number	9	9(9)
18	Buyer Shortsell Indicator	1	
19	Seller Shortsell Indicator	1	
20	Buyer Hedge Indicator	1	
21	Seller Hedge Indicator	1	

3. Change of Best Bid/Ask File

Field No.	Field Description	Length (Bytes)	Remarks
1	Stock Code	5	9(5)
2	Price	9	9(6)v9(3)
3	Change Type	1	1 – Best Bid Change 2 - Best Ask Change
4	Time	6	hhmmss

NOTES:

1. Only orders belonging to the Licensee will be selected and written to the Order file; orders that do not belong to the Licensee will be excluded from the Order file.
2. For the Trade File, broker numbers and information of trades that do not belong to the Licensee will be masked off. Only the identities of the Licensee will be disclosed in the Trade File.

SCHEDULE 3

LICENCE FEES

1 Licence Fees Payable

The Licensee shall pay to HKEx-IS on such payment terms as it may from time to time prescribe, a subscription fee of HK\$5,000 per month for the Order and Trade Files Service. HKEx may from time to time amend the subscription fee in accordance with clause 5.

2 Payment Terms

Unless otherwise prescribed by HKEx-IS and notified to the Licensee, the License Fees shall be payable quarterly in advance.

SAMPLE