

## **Terms of Business**

### **1. Commencement**

- 1.1 These Terms of Business shall become effective and legally binding on the Client and Instinet Pacific Limited (CE No. ABB038) (“Instinet”) upon the Client’s acceptance of the offer letter or the Client’s commencement of dealing with Instinet (whichever is earlier), and shall remain valid and in full force until terminated by either party. These Terms of Business replace all previous agreements and correspondence between the Client and Instinet in relation to the service provided by Instinet to the Client, except to the extent specifically stated and agreed in writing by both parties in such agreements and correspondence.
- 1.2 Acknowledgement by Client. The Client acknowledges that it enters into these Terms of Business with Instinet without inducement or solicitation by Instinet or the directors, officers, employees or agents of Instinet.

### **2. Securities Dealing Services**

- 2.1 Pursuant to the terms and conditions stated herein, Instinet shall provide certain securities dealing services, including but not limited to brokerage services in securities and certain electronic trading services and/or products (such as market information) to the Client.
- 2.2 The relationship between Instinet and the Client is as described herein and neither that relationship nor the services provided by Instinet shall give rise to any fiduciary or equitable duties on the part of Instinet or any of its affiliate or associated companies which would prevent or hinder any such parties from acting in a capacity or manner which might be inconsistent with the interest of the Client. The Client agrees that Instinet may, in its absolute discretion and without prior disclosure to the Client, effect or arrange for the effecting of transactions with or for the Client in which, by virtue of the business of Instinet or that of any of its affiliates or associated companies, Instinet may have a material interest. The Client acknowledges that Instinet shall not be under any obligations to disclose to the Client the nature or extent of any interest, holding or position it may have in any transactions.

### **3. Transactions**

- 3.1 Securities and Futures Ordinance and relevant laws. All orders and instructions given by the Client and the services provided by Instinet to Client are subject to the rules and regulations of the Hong Kong Exchanges and Clearing Limited, Securities and Futures Commission (“SFC”), the laws of the Hong Kong Special Administration Region (“HKSAR”) including but not limited to the Securities and Futures Ordinance and all other applicable rules, regulations and laws as may be in force from time to time in relation to the

markets in which Client trades. Client agrees to comply and be familiar with all such relevant rules, regulations and laws at all times. Any such rules, regulations and laws shall prevail in the event of conflicts with these Terms of Business. The Client agrees that Instinet may take or omit to take any action it considers necessary to ensure compliance with the same.

- 3.2** Best Execution. Instinet shall take reasonable care to ensure that the Client's orders and any matching of such orders are effected at the best terms available in the market for transactions of similar size and nature at the time of execution, having regard to such matters as Instinet considers relevant. The Client agrees that Instinet may modify or cancel any orders or instructions issued by the Client and that it shall accept and be bound by the consequences of such modification or cancellation. Instinet shall use reasonable endeavours to execute Client's orders but shall be under no liability for any loss or expense incurred by the Client as a result of any changes in market conditions between the time of receipt and the time of execution of such orders by Instinet. For further details, please refer to Instinet's best execution policy published at <https://www.instinet.com/legal-regulatory>.
- 3.3** Aggregation of Orders. The Client agrees that Instinet has the right to combine the Client's orders with orders of other clients and/or with orders of clients of its associated companies. The Client accepts that combining the Client's orders with orders of other party may operate to the Client's advantage on some occasions and to the Client's disadvantage on other occasions.
- 3.4** Cancellation of Client Orders. The Client agrees that Instinet has no obligation to accept, execute or cancel all or any part of the orders or transactions of the Client. Instinet shall have no obligation to act in accordance with the Client's orders or instructions if it believes that such orders or instructions may result in Instinet or the Client breaching the relevant rules, regulations or laws. If Instinet in its absolute discretion declines to accept instructions from the Client, Instinet shall notify the Client accordingly. The Client acknowledges that Instinet shall not be held liable in any way for any loss, loss of profit or gain, damage, liability, cost or expense suffered or incurred by the Client arising out of or in connection with Instinet declining to act on such orders or instructions from the Client or omitting to notify the Customer of any such decision or action taken by Instinet.
- 3.5** Client's own decision. Where the Client is an Institutional Professional Investor or Corporate Professional Investor pursuant to Paragraph 15 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission of Hong Kong (as amended from time to time), or its successor or equivalent, (the "Code of Conduct"), Client agrees that it shall make its own investment and trading decisions independently without relying on any advice or recommendation by Instinet, when giving orders or instructions to Instinet. The Client agrees that it shall be solely responsible for any investment or trading decisions it makes and Instinet shall not be responsible for determining whether any transactions the Client enters into is suitable or appropriate for the Client.

- 3.6** Suitability Clause – Non Professional Investors only. Where applicable, if Instinet solicit the sale of or recommend any financial product to Client, the financial product must be reasonably suitable for you having regard to your financial situation, investment experience and investment objectives. No other provision of this agreement or any other document we may ask you to sign and no statement we may ask you to make derogates from this clause.
- 3.7** Market Information. While every care is taken by Instinet in providing the Client with market information which Instinet believes to be true and reliable, the accuracy of such market information is not guaranteed by Instinet. Instinet shall not be held liable for any direct or consequential loss arising from the use of such market information by the Client.
- 3.8** Short Sale.
- (a) The Client undertakes to designate its short sale orders as such, inform Instinet of such short sale orders and locate the borrowing of the relevant shares prior to placing the short sale orders to Instinet. The Client undertakes with Instinet that any short sale orders placed by the Client shall be in compliance with all relevant requirements of the Securities and Futures Ordinance and/or any other applicable rules, regulations or law.
  - (b) Where the Client sends a short sale order via Financial Information Exchange (FIX) message with FIX tag 114 LocateReqd Field marked “N”, Client warrants that Client has a present and unconditional right to vest the securities to which the order relates in the purchaser of such securities.
- 3.9** Sub-accounts. Client represents and warrants on a continuing basis, with respect of any sub-accounts opened with Instinet, that:
- (a) any ultimate beneficiary of such sub-accounts shall not be an individual/retail client and,
  - (b) each sub-account represents different funds/underlying beneficiaries, and,
  - (c) Client carries out checks on its clients/funds represented by each sub-account as required under relevant rules and regulations and that such client has satisfied such checks.
  - (d) Client has been duly authorised to enter into transactions on behalf of such clients/funds.
- Client will notify Instinet immediately should such representation and warranty cease to be true and correct.
- 3.10** Except as otherwise disclosed to the Client, Instinet shall be acting as agent of the Client when effecting transactions in securities dealing on behalf of the Client.

#### **4. Alternative Liquidity Pools**

- 4.1 Alternative Liquidity Pools (“ALP”). Instinet has several alternative liquidity pools available in various markets in which it or its affiliates are able to facilitate trading on behalf of Client. In some markets, Instinet is able to access ALPs run by other brokers. Instinet may route Client orders to ALPs at its discretion, taking into account factors such as price, liquidity access and market impact. Client acknowledges that an order may be routed to ALP for reasons other than pricing. Client will instruct Instinet if it does not want its orders routed through any particular or any alternative liquidity pools (“opt-out”). Details of the operation of the alternative liquidity venues are available on [www.instinet.com](http://www.instinet.com).
- 4.2 User Restrictions in Hong Kong ALP. Instinet offers BlockMatch Asia as its ALP as defined by the Code of Conduct. In accordance with Paragraph 19.4 and Section 7 of Schedule 8 to the Code of Conduct, Clients that have not opted-out of the ALPs in Hong Kong, including BlockMatch Asia, represent and warrant to Instinet that Client (and, if applicable, Client’s principal(s)) are and will remain qualified investors as defined in the Code of Conduct and that Client has adequate processes in place to ensure that the entity ultimately responsible for originating the instructions for the order is a qualified investor. Client will notify Instinet immediately should such representation and warranty cease to be true and correct.
- 4.3 Instinet publishes Guidelines for BlockMatch Asia as applicable from time to time at <https://www.instinet.com/legal-regulatory>.

#### **5. Orders and Instructions**

- 5.1 Instinet shall be entitled to rely on the orders, instructions, directions, notices or other communications which Instinet reasonably believes in good faith to be issued by the Client or a person authorised by the Client to act on its behalf, regardless of whether the person in question is named or not named on any applicable authorised trader information. The Client agrees, at the time each order is submitted, to identify (or be able to identify on Instinet’s request) the Client’s applicable authorised trader for that order. The Client agrees to indemnify Instinet and keep Instinet harmless from and against any losses, costs and expenses (including legal costs) suffered or incurred by Instinet in reliance thereon.
- 5.2 The Client may give instructions by telephone, in writing or other means as may be agreed by Instinet. Such instructions shall be effective only upon actual receipt by Instinet. Without limiting the foregoing, Instinet shall have no responsibility for transmissions that are inaccurate or not received by Instinet and, may execute any transaction on the terms actually received by Instinet.
- 5.3 Instinet shall not be held responsible for delays in the transmission of orders to the place of execution or the transmission of reports of executed orders

to the Client due to any failure of communications facilities, or any other delays beyond the control of Instinet.

## **6. Settlement of Trades**

- 6.1** Unless otherwise agreed, Instinet does not hold securities, funds or money on behalf of the Client. The Client shall establish and maintain accounts for clearing transactions entered into by the Client with Instinet. The Client shall clear and settle all such transactions in a timely and customary manner and shall keep Instinet indemnified against any losses, damages, demands, costs, fees and expenses in connection with any settlement failure. For the avoidance of doubt, the Client shall not be entitled to receive interest on any funds or money held by Instinet on its behalf and any such interest shall be regarded as money belonging to Instinet.
- 6.2** The Client acknowledges the settlement rules in the relevant markets, including the Hong Kong market, and its subsequent settlement obligations. For any transaction not settled by the Client in a timely and customary manner, Instinet reserves the right to trade out of the position or take any other actions Instinet deems necessary. Without limiting the generality of clause 6.1, the Client shall be responsible for any losses Instinet incurs as a result of or in relation to the Client's non-performance or any actions Instinet takes as a result thereof. For the avoidance of doubt, where Instinet trades out of the position, Instinet's obligation to deliver the securities to the Client or pay the purchase price will cease.
- 6.3** The Client acknowledges that orders placed by the Client may be passed to an affiliate or associated company of Instinet or another broker for execution. In such circumstances, the Client may be required to settle the relevant transactions directly with such party as instructed by Instinet for execution purpose.
- 6.4** Instinet may share commission from the Client with another broker, including an affiliate, to pay for execution of orders or for providing liquidity to Instinet to facilitate execution of Client orders and may also share commission from the Client with another broker or other third party where Client's order is introduced to Instinet or its affiliates by such broker or other third party.

## **7. Research (If Applicable)**

- 7.1** Upon the Client's request, Instinet may arrange for certain researches or publications, prepared independently by a third party, to be supplied to Client ("Research"). The Client acknowledges that no information, advice or recommendation based on such Research ("Advice") shall be treated by the Client as inducement, solicitation or encouragement by Instinet or the suppliers of such Research to conduct any investment or trading activity. The Client agrees that neither Instinet nor such Research suppliers shall be held liable for the direct, indirect or consequential loss arising from the

Client's use of or reliance on the Research and/or Advice which Instinet may arrange for the Client to receive as aforesaid.

## **8. Electronic Instructions (If Applicable)**

**8.1** Instinet Trading Platform. At the Client's request, Instinet installs or arranges for the installation of certain computer software or programmes, which are created and owned by Instinet, at the Client's registered office or such other places as may be requested by the Client, to enable the Client to obtain access to the services provided by Instinet as stated in these Terms of Business by means of interface connected to an electronic data communication network (the "Instinet Trading Platform").

**8.2** Intellectual Property Rights. Instinet hereby grants to the Client, a personal, limited, non-exclusive, revocable, non-transferable and non-sublicenseable license to use the Instinet Trading Platform. The Client acknowledges that all proprietary rights in the Instinet Trading Platform are solely owned by Instinet and are protected by intellectual property laws. The Client acknowledges that any programme, software, hardware or equipment (as the case may be) provided to the Client by Instinet shall remain the sole and exclusive property of Instinet and the Client shall exercise reasonable care when using them. If the Client becomes aware of any violation of Instinet's proprietary rights in the Instinet Trading Platform, the Client shall notify the Instinet forthwith. This paragraph shall survive any termination, cancellation, replacement, expiration, modification, rejection or cessation of effectiveness of these Terms of Business.

**8.3** Using the Instinet Trading Platform.

(a) When using the Instinet Trading Platform, the Client shall comply with the following instructions:

(i) The Client shall only access the Instinet Trading Platform by the user identity ("User ID") and password assigned to the Client by Instinet and the Client shall ensure that the User ID and password are only disclosed to and used by persons authorised by the Client.

(ii) The Client agrees that all transmissions generated by the use of the Client's User ID and password shall be deemed to be authorised by the Client.

(iii) The Client shall restrict access to the Instinet Trading Platform to persons authorised by the Client to act on its behalf.

(iv) The Client shall comply with the legends, disclaimers, instructions, terms of use and restrictions displayed on or linked to the Instinet Trading Platform.

(v) The Client shall be responsible for all acts or omissions of any person accessing or using Instinet Trading Platform with the User ID and password assigned to the Client by Instinet and be bound by

all such transactions executed and orders placed through the Instinet Trading Platform.

- (vi) The Client shall not make any alteration, connection or interface with or to the Instinet Trading Platform nor permit or authorise another party to do so.
  - (vii) If the Client's User ID and/or password have been lost, stolen or disclosed to a party not authorised by the Client, the Client shall forthwith notify Instinet. The Client understands that upon receipt of such notice by Instinet, the relevant User ID and/or password shall become invalid. The Client agrees that it shall be responsible for all transactions placed to the Instinet Trading Platform before the actual receipt of such notification by Instinet.
- (b) The Client warrants that they have read, understood and complies with the minimum client requirements for DMA services and algorithmic trading set out in paragraph 18 and Schedule 7 of the Code of Conduct and that it will comply with Instinet's minimum requirements. Instinet's minimum requirements for clients using its electronic services can be found at <https://www.instinet.com/legal-regulatory>.
- 8.4 The Client acknowledges and agrees that Instinet and its affiliates may have access to and obtain Client data and information, including but not limited to trade data, through the Client's usage of the Instinet Trading Platform. The Client agrees and consents to Instinet using such data and information, including but not limited to, to administer client accounts and to provide and enhance the products and services that Instinet offer.

## 9. Use of Market Data (If Applicable)

- 9.1 Certain data and information regarding the securities listed and/or traded on markets to which the Client has been given access ("Market Data") shall be made available by Instinet in its provision of service to the Client. The Market Data is provided to Instinet by various data providers pursuant to the relevant agreements in place and the use of Market Data is subject to the terms and conditions of such agreements. For the purpose of enabling Instinet to comply with the relevant terms and conditions relating to the use of Market Data, the Client hereby undertakes the following:
- (i) not to use or permit the use of the Market Data or any part thereof other than in the ordinary course of the Client's business.
  - (ii) not to use or permit the use of the Market Data or any part thereof for any illegal purpose.
  - (iii) not to disseminate or redistribute the Market Data or any part thereof to any other party.
  - (iv) only to use the Market Data in compliance with the applicable laws, rules and regulations.

- 9.2 Additionally, in relation to the Market Data of securities traded and/or listed in the Hong Kong stock market, the Client hereby acknowledges that HKEx Information Services Limited (“HKEx-IS”) may need to access the Client’s information and records in situations where the Client is in breach of the above-mentioned provisions or where the Client is suspected by Instinet or HKEx-IS of breaching such provisions. The Client’s commencement of trading with Instinet constitutes a consent for Instinet to release the Client’s information and records to the HKEx-IS for inspection and/or investigation purposes.

## 10. Commissions and Charges

- 10.1 Commissions and Charges. In consideration of the services provided by Instinet, the Client shall pay to Instinet commissions, charges or other remunerations as may be agreed with Instinet and reimburse Instinet on a full indemnity basis for any other charges arising from the execution of orders on behalf of the Client, including but not limited to, statutory fees, stamp duties and taxes, exchange fees, transaction levies or other levies as may be imposed by the Securities and Futures Commission or Government agents from time to time. In certain circumstances, transactions with the Client may be effected on a "net" and not a commission basis.
- 10.2 Defaults. If the Client defaults in making payments to Instinet when they fall due or fails to deliver securities according to Instinet’s instructions, interest shall be payable by the Client to Instinet at not less than Citibank, N.A.’s base lending rate in the relevant currency as may be in effect from time to time.
- 10.3 Soft Dollar/Commission Sharing. Instinet and Client may choose to enter into an arrangement for the accrual of soft dollar/commission credits by Client with Instinet. In that event, Client agrees to comply with paragraph 13 of the Code of Conduct and all other applicable rules, regulations, laws and/or guidelines. Where the goods and services listed in invoices presented for payment under this arrangement appear not to be of the type described in paragraph 13.1 of the Code of Conduct, Instinet is entitled, in its sole discretion, to inquire further or decline to effect payment on Client’s behalf. For the avoidance of doubt, soft dollar/commission credits are credits available to Client for payments of goods and services in accordance with paragraph 13.1 of the Code of Conduct but should not be construed as funds payable to Client or any account managed by the Client. Soft dollar/commission credit balances are not Client’s money and the Securities and Futures (Client Money) Rules do not apply to any soft dollar/commission credit available to Client or any account managed by Client. If the Client’s account or any account managed by Client is terminated or otherwise closed any soft dollar/commission credit balances will remain Instinet’s money and will not be paid back to Client.

## 11. **Liability of Instinet**

- 11.1 Instinet and its directors, officers, employees and agents (each an “Instinet Related Party”) shall not have liability, contingent or otherwise, to the Client, for the correctness, quality, accuracy, security, completeness, reliability, performance, timeliness, pricing or continued availability, the delays or omissions of the services provided by Instinet, or for the failure of any connection or communication to provide or maintain the Client’s access to various markets or exchanges or any erroneous communications between Instinet and the Client.
- 11.2 In no event shall Instinet and any Instinet Related Party be liable for any indirect or consequential loss not arising as a natural consequence of a breach or other event giving rise to liability of a party, any loss of use, opportunity, advantageous tax position, dividends, interests, contract value, revenue, anticipated profit or profit, damages for lost opportunity, any trading losses or any incidental, exemplary, special or punitive damages whether arising out of breach of contract, tort (including negligence), or otherwise, regardless of whether such breach was foreseeable and whether or not Instinet or any Instinet Related Party has been advised of the possibility of such damages.
- 11.3 The Client shall indemnify and keep Instinet and any Instinet Related Party harmless from and against any and all losses, liabilities, judgments, suits, actions, proceedings, claims, damages, costs (including legal costs) resulting from or arising out of the Client’s use of the services provided by Instinet.
- 11.4 The Client understands and accepts that orders that the Client effects through Instinet may be routed through an intermediary, a third party system, market or exchange for execution. The Client agrees that Instinet shall not be held responsible for any losses, damages or costs that may result from errors made by any such intermediary, third party system, market or exchange in receiving, reading, processing, transmitting or executing such orders or if the intermediary, third party system, market or exchange otherwise fails to properly execute such orders from the Client.
- 11.5 The terms and conditions of this paragraph shall survive the termination, cancellation, replacement, expiration, modification, rejection or cessation of effectiveness of these Terms of Business.

## 12. **General**

- 12.1 **Recording of Communications.** Instinet may record telephone conversations and other forms of communication between the Client and the directors, officers, employees and agents of Instinet. The Client accepts that such recordings shall be the sole property of Instinet and shall be retained and used by Instinet for such periods and purposes as it deems appropriate.

- 12.2** Indications of Interests. Instinet may at its discretion disseminate indications of interests (“IOIs”). Client acknowledges and consents to the dissemination of their trading interest through IOIs and Client must instruct Instinet if it does not want its trading interest to be disseminated through IOIs (“opt-out”).
- 12.3** Services of Documents. Unless otherwise stated in these Terms of Business, all notices and documents shall be delivered personally or sent by registered mail or by fax to an address or fax number or electronically by electronic mail to an electronic mail address as may be advised by Instinet and the Client from time to time. Notices shall be deemed to be received three business days after being sent or on proof of delivery, whichever is earlier.
- 12.4** Severability. Each of the provisions in these Terms of Business is severable and distinct from the others and if any part of these Terms of Business is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remainder of these Terms of Business shall not be in any way affected or impaired.
- 12.5** Client Documentation. Instinet shall be entitled to issue client documentation to Client by electronic means, including by way of publication on a website. Unless Client informs Instinet otherwise, Instinet shall assume Client has consented to the provision of information by electronic means, including by way of publication on Instinet’s website where appropriate.
- 12.6** Amendments. Instinet may amend these Terms of Business in writing with five (5) days prior notice by posting the updated Terms of Business on Instinet’s website or by electronic mail. Notice of any amendment to the Terms of Business shall be deemed to be given on the day subsequent to the day the updated Terms of Business were posted on the website or when the electronic mail was sent. It is Client’s responsibility to visit Instinet’s website from time to time in order to obtain the latest Terms of Business and read the terms thereof. If Instinet believes that amendment to these Terms of Business is necessary to comply with any legal or regulatory requirement, Instinet may make such amendment without prior notice to the Client.
- 12.7** No Waiver. A failure or delay in exercising the rights, powers or privileges hereof shall not be presumed to operate as a waiver and a single or partial exercise of any right, power or privilege shall not be presumed to preclude any subsequent or further exercise of that right, power or privilege.
- 12.8** No Promotion. Without the prior consent in writing from the other party, neither Instinet nor the Client shall (i) use the name, the trade name, trademark, trade device, service mark, symbol or abbreviation, contraction or simulation of the other party in advertising, publicity, or otherwise; or (ii) represent (directly or indirectly) that any product or service provided by one party has been approved or endorsed by the other.
- 12.9** Headings. The headings in these Terms of Business are intended for ease of reference only and shall not affect interpretation thereof.

- 12.10 A reference to a guideline, rules, statute or statutory provision includes a reference to it as amended, extended or re-enacted from time to time.
- 12.11 Words denoting the singular include the plural and vice versa, as the context requires.
- 12.12 Successors and Assigns. These Terms of Business shall ensure for the benefit of Instinet, its successors and assigns and shall be binding upon the Client.

### 13. **Trading in Hong Kong Securities**

- 13.1 To the extent that Client deals in Hong Kong securities, Client agrees to comply with the Securities and Futures Commission of Hong Kong (“SFC”) regulatory measures aimed at identifying those who invest in the Hong Kong stock market (the “Client Identity Rule”). The SFC’s Client Identity Rule (see: [www.sfc.hk](http://www.sfc.hk) under Rules and standards: Codes & Guidelines – Codes - Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission, paragraph 5.4) applies to all intermediaries licensed by the SFC who deal in Hong Kong Securities. Under the Client Identity Rule, licensed intermediaries must ascertain and record the identity of the ultimate beneficiaries and originators of transactions involving Hong Kong Securities (the “Identity Information”) before such transactions are effected. Of particular relevance to Instinet, the Client Identity Rule requires all licensed intermediaries to provide the Identity Information of their clients to the SFC and/or relevant exchange in Hong Kong (the “Regulators”) within two business days of receiving such requests from a Regulator. By commencing trading and continuing to trade with Instinet, Client agrees to comply with the Client Identity Rule. Such compliance shall continue after termination of these Terms of Business.
- 13.2 If Client and/or (if applicable) the client(s) of the Client is in a jurisdiction with client secrecy laws, Client confirms that it and (if applicable) its clients waive the benefit of those secrecy laws in relation to any enquiry by the Regulators. Client confirms that such waivers are valid and binding under the laws of such jurisdiction.

### 14. **Trading in US Securities**

- 14.1 To the extent that Client deals in US securities, Client agrees to the following representations in connection with the USA PATRIOT Act:
  - (i) Client will immediately inform Instinet if Client maintains or anticipate holding an account for a non-US shell bank, as that term is defined in section 313 of the USA PATRIOT Act, or that is beneficially owned by a non-US shell bank;
  - (ii) if Client is a bank, or Client maintains or anticipates holding an account or sub-account for a non-US bank, Client will provide

Instinet with a valid US Treasury Certification Form (in accordance with section 319(b) of the USA PATRIOT Act). In addition, Client agrees to provide an updated US Treasury Recertification Form within every three years thereafter; and

- (iii) by continuing to submit Orders to Instinet or its affiliates for US securities without providing Instinet with a US Treasury Certification Form, Client certifies that any accounts or sub-accounts benefiting from the transactions are not non-US shell banks or non-US banks.

## **15. Information from the Client**

- 15.1** Information to be provided by Client. For the purpose of enabling Instinet to review the credit worthiness of the Client (“Credit Reviews”), to comply with the relevant regulatory requirements (including but not limited to the duty to “Know-Your-Client”) or other purposes as may be deemed necessary by Instinet, the Client shall promptly furnish to Instinet its financial statements and such other relevant information, statements or documents as may be reasonably requested by Instinet from time to time or annually. The Client agrees that Instinet is entitled to decline to provide, suspend or terminate its services to the Client until and unless the Client has provided the relevant information, statements or documents to the reasonable satisfaction of Instinet. The Client further agrees that Instinet may conduct the necessary enquiry, search or investigation in relation to the business of the Client for the above-mentioned purposes.
- 15.2** Client acknowledges and agrees that Instinet may obtain information (including personal data as defined in the Personal Data (Privacy) Ordinance, Chapter 486 and/or other applicable laws, rules and regulations) about Client, its directors, officers and employees and/or other persons relevant for the service provided by Instinet to Client. Instinet’s privacy policy, as amended from time to time, (“Instinet Asia Privacy Policy”) is available at <https://www.instinet.com/legal-regulatory> and Client agrees to have read and accepted the terms thereof. In addition, Client agrees to provide a copy of the latest version of Instinet’s privacy policy to any person whose personal data has been provided (or will be provided) by Client to Instinet, or who has been directed (or will be directed) by Client to provide their personal data to Instinet.
- 15.3** The Client shall notify Instinet forthwith in the event of a (i) change of name; (ii) change in control; (iii) material change of ownership; (iv) material change in business structure; or (v) material change in business or financial condition.
- 15.4** The Client shall forthwith provide written notice to Instinet if (i) the Client becomes insolvent by reason of its inability to pay its debts as they fall due; (ii) the Client enters into re-organisation, re-adjustment of debts, dissolution or liquidation whether voluntarily or compulsorily; (iii) the Client appoints a receiver for all or any part of its assets; (iv) the Client suffers the filing of a petition for its winding-up or similar action; (v) a warrant or order of attachment, distress or equivalent order is issued against the Client; or (vi)

a judgment is made, levied, enforced or executed by a court of law against the Client.

## **16. Representation and Warranty by the Client**

**16.1** The Client represents and warrants on a continuing basis that:

(i) it is duly incorporated in its place of incorporation and has the full power and authority to carry on its business now being conducted and the business contemplated herein and to own property and other assets (including securities) and to enter into and perform its obligations as contained in these Terms of Business, and that all necessary shareholders and board resolutions and other actions to enable it to execute, deliver and perform the same have been taken, and that it has obtained and shall maintain in full force and effect any necessary consents, licences and authorities;

(ii) it shall cooperate fully with Instinet in respect of any enquiries made by any relevant trading venue or regulatory or governmental authority in relation to the provision of and/or the Client's use of the service provided by Instinet;

(iii) any information supplied by the Client to Instinet is complete, accurate and not misleading in any material respect and the Client agrees to notify Instinet should any such information or any part thereof change in any material respect; and

(iv) it will comply with and fulfil all of the Client's obligations under all laws, rules and regulations applicable to Client and/or any transactions entered into under or in connection with these Terms of Business and will not breach any such laws, rules or regulations by entering into or performing any transaction under or in connection with these Terms of Business.

## **17. Assignment/Sub-contracting**

**17.1** The Client agrees that any of Instinet's rights and obligations may be assigned transferred or sub-contracted to any of Instinet's affiliates for execution purposes. By way of example and without limitation, in the case of transactions in certain securities effected by the Client, the Client's counterparty for settlement purposes may be an affiliate of Instinet.

**17.2** Notwithstanding the generality of the foregoing, Instinet may assign its rights and obligations to any entity (i) controlling, controlled by or under common control with Instinet; (ii) which succeeds to all or substantially all of Instinet's assets and business; or (iii) to any of Instinet's affiliates established or prepared to provide the same service. In such event, after the date of assignment, the Client shall look only to such assignee and not to Instinet for the performance of all duties, obligations, and responsibilities, without limitation, provided for under this Agreement.

- 17.3 Save and except for the above-mentioned situations, neither party may assign any of its rights or obligations without the prior written consent of the other.

## 18. Disclosure of Client Information

- 18.1 Disclosure to group companies. The Client agrees that Instinet may, without notice to the Client, disclose to its group companies, or to any assignee or agent of any of Instinet's rights or obligations, information relating to the Client.
- 18.2 Disclosure. Information relating to the Client may be requested by the relevant regulatory, governmental or similar authorities, trading venues, intermediaries, professional advisors (together the "Third Parties") from time to time for regulatory or other legitimate purposes. The Client hereby irrevocably authorises Instinet and any of Instinet's affiliates to disclose to the relevant Third Parties all information and to provide such Third Parties with all documents relating to the Client (or copies thereof) in Instinet's possession as may be requested by such Third Parties, including but not limited to the identity of the Client and the Client's financial position.

## 19. Set-off and Liens

- 19.1 General Lien. The Client's assets held by Instinet shall be subject to a general Lien in favour of Instinet in respect of any outstanding amounts due to Instinet from the Client. Instinet shall have the right, at any time without notice to the Client, to combine and/or consolidate all or any of the Client's accounts maintained by Instinet and to take such other action and in such manner as Instinet in its absolute discretion may decide in order to discharge the Client's liabilities to Instinet.
- 19.2 Set-Off. Instinet reserves the right to retain or make deductions from any amounts which Instinet owes to the Client or assets which is being held by Instinet for the Client in respect of the non-settlement by Client of any debt or money due to Instinet. In addition, Instinet reserves the right to sell or realise assets which Instinet is holding or entitled to receive on the Client's behalf in order to meet any liabilities which the Client may have incurred with Instinet. The Client agrees to indemnify Instinet for any losses suffered by Instinet as a result of Instinet appropriating or selling any such assets.

## 20. Force Majeure

- 20.1 Neither the Client nor Instinet shall be liable for any delay or failure to perform its obligations hereunder so long as that delay or failure is the result of an event beyond its reasonable control, provided that such party uses commercially reasonable efforts to fulfill its obligations under these Terms of Business.

20.2 Notwithstanding the foregoing, the Client agrees and acknowledges that its settlement obligations shall not be waived under this, or any other, provisions and that the Client's obligations to settle its trades shall remain in full force and effect.

## 21. Undertakings by Instinet

21.1 Instinet hereby undertakes to notify the Client in the event of any material change to the following :

- (i) its full name, address, CE number assigned by and registration status with the SFC
- (ii) the nature of service provided by Instinet to the Client; and
- (iii) the description and basis of remuneration to be paid by the Client to Instinet.

## 22. Governing Law and Jurisdiction

22.1 The validity, construction, interpretation and enforcement of these Terms of Business shall be governed by the Laws of the HKSAR and the parties hereto consent to the exclusive jurisdiction of the courts of HKSAR in connection with any suit, action or proceeding arising out of or in connection with these Terms of Business, and the Client explicitly waives any right to claim that those courts are an inconvenient forum.

## 23. Termination

23.1 These Terms of Business can be terminated by either party by giving one month's written notice to the other party.

23.2 The Client agrees that Instinet may suspend and/or terminate its provision of services to the Client and these Terms of Business forthwith without notice and liability to the Client in the following circumstances:

- (i) the Client is in breach of or otherwise fails to comply with or adhere to its representations or warranties or material obligations in these Terms of Business;
- (ii) the Client is in breach of any applicable laws, rules or regulations of the relevant exchange;
- (iii) the Client has made or furnished materially false or misleading information, documents, representations or certifications to Instinet in relation to the services provided by Instinet;
- (iv) the Client is engaged in an act of winding up, insolvency or similar proceeding, on a voluntary or involuntary basis, an order or

resolution is passed for the Client's winding up, a receiver or administrator is appointed in respect of any of the Client's assets, or the Client is otherwise unable to pay its debts as they become due;

- (v) Instinet is notified by a regulatory body or government agent that the Client is no longer a member in good standing;
- (vi) the Client is not using the services of Instinet in a manner consistent with their intended purpose;
- (vii) the Client has not been trading through Instinet for at least one year;
- (viii) the Client is delinquent on its payment to Instinet for more than 30 days; or
- (ix) the Client, in Instinet's opinion, poses a risk (including but not limited to credit risk, reputational risk) to Instinet.

**23.3** Any such suspension or termination shall be without prejudice to the accrued rights and obligations of the parties hereto which shall remain in full force and effect and shall be enforceable notwithstanding such suspension or termination.