

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ year \_\_\_\_\_  
**Between Apex Securities Berhad**, a company incorporated in Malaysia with its registered office at 6th Floor, Menara Apex, Off Jalan Semenyih, Bukit Mewah, 43000, Kajang, Selangor Darul Ehsan (hereinafter referred to as "the Company") of the first part, and

(NRIC/ Passport No. : \_\_\_\_\_) (hereinafter referred to as "Client") of the second part.

## PREAMBLE

This document ("this Agreement") and Client's Account Application form together with the Terms and Conditions therein ("the Terms and Conditions"), collectively constitutes the Agreement ("the Agreement") between the Client and the Company. This document contains the terms and conditions applying to the Client's subscription to Apex online trading platform.

The Company has introduced a package of electronic share trading facilities, known as Apex online trading platform for the trading of shares and stocks listed on BMSB and/or any other Stock Exchange(s) approved by Securities Commission ("the Service") for the exclusive use of its Clients.

Client is at all material times a Client of the Company in that Client has opened or has applied to open a Trading Account with the Company.

Client desires to subscribe to Apex online Trading platform and have access to and be able to utilise the Service offered by the Company.

All words not defined herein but defined in the Terms and Conditions shall have the same meaning as in the Terms and Conditions.

In consideration of the Company granting Client access to and use the Service, Client agrees to the terms and conditions contained in this Agreement. Client acknowledges that the Company may require amendments to the terms of this Agreement for commercial, regulatory or other reasons. The Company shall notify Client of any amendments in writing and of the effective date of such amendments. Client agrees to be bound by such amendments.

Client further agrees to, at all times, comply with and observe all applicable laws and regulations in Malaysia and other countries.

## 1. PROVISION OF SERVICE

- 1.1 Client's subscription to the Service provided by the Company shall be for a period of one (1) year or such other period as the Company may approve at its absolute discretion.
- 1.2 The Service provided by the Company consists of:
  - a. Online electronic trading system for securities transactions on BMSB and/or any other Stock Exchange(s) approved by Securities Commission; and
  - b. Any other facilities that may be introduced from time to time.Client has the option to subscribe to any one or any combination of the abovenamed services.
- 1.3 The Company will provide any or all of the following facilities to Client depending on the extent of Client's subscription to the Service:
  - a. Access to real-time quotes;
  - b. Access to account information;
  - c. To buy or sell securities or to cancel or amend orders;
  - d. To review business done;
  - e. To access key market indicators;
  - f. To access News and Publications;
  - g. To change sign-on password and personal identification number ("PIN").
- 1.4 Notwithstanding the above, the Company may at any time and from time to time, vary the list of facilities herein abovementioned without giving any notice thereof to Client. Any variation or change by the Company pursuant to this provision shall not in any manner, affect the other.

## 2. MEDIA OF SERVICE

- 2.1 Client has agreed to utilise the Service mentioned in Clause 1 above by using one or any of the following media:
  - a. Modem-equipped terminal or personal computer; and
  - b. Any other medium of communication which the Company may, in its absolute discretion, adopt or introduce for use to its Clients.
- 2.2 Client agrees that in the event Client experiences difficulties in using one of the media of service listed in Clause 2.1, Client shall attempt to use alternate methods to communicate with the Company. In such an event the terms and conditions governing the use of the alternative method shall be those embodied in the Terms and Conditions of Account Opening.
- 2.3 Client further agrees that the Company may record telephone calls, if deemed necessary, to monitor the quality of service and to verify information relating to securities transactions.

## 3. NO GUARANTEE OR WARRANTY

- 3.1 It is hereby acknowledged by Client that the data, information and messages disseminated and/ or provided through the Service to Client is derived either directly from the Company, Bursa Malaysia Securities Bhd ("BMSB"), other Stock Exchange(s) approved by Securities Commission and/or independent information providers. Client agrees that neither the Company nor any of its information providers, licensors, employees or agents guarantees the correctness, accuracy, completeness, timeliness or correct sequencing of any such data, information or messages disseminated and/ or provided by any party through the Service. Client acknowledges that there may be delays, omissions or inaccuracies in the information provided under this Service.
- 3.2 Client agrees that neither the Company nor any of its information providers, licensors, employees or agents shall be liable in any way for : (a) any inaccuracy, error or delay in, or omission of (i) any such data, information, or message, or any other aspect of the Service or (ii) the transmission or delivery of any such data, information, or message; or (b) any loss or damages arising from or occasioned by (i) any such inaccuracy, error or delay in, or omission, (ii) non-performance, or (iii) interruption of any data, information or message, or any other aspect of the Service, due either to any negligent act or omission by the Company or any disseminating party, or to any "force majeure" (including but not

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limited to flood, adversely inclement weather, earthquake or other act of God, fire, war, insurrection, riot, labour dispute, accident, action of government, communications, power or equipment failure, or software failure or malfunction) or any other cause beyond the reasonable control of the Company or any disseminating party; or (c) any decision made or action taken by Client or any other persons whomsoever in reliance upon the data, information or messages disseminated and/ or provided by the Service.

3.3 Client agrees:

- 3.3.1 That the Company does not warrant the merchantability or fitness for a particular purpose or use and gives no other warranty or guarantee of any kind, either express or implied, regarding the information furnished under the Service or any other aspect of the Service, including but not limited to data, information, messages, or access, or the execution of any buy or sell orders and/ or the cancellation or amendment of any such orders;
- 3.3.2 That neither the Company nor any of its information providers, licensors, employees or agents shall be liable for any direct, consequential, incidental, special or indirect losses or damages whatsoever which may arise or be caused by the failure or alleged failure of the Company to execute, cancel or amend such orders.

**4. LIMITATION OF COMPANY'S LIABILITY**

In addition to and not in derogation of any other terms of this Agreement, Client agrees:

- 4.1 That in providing the Service, neither the Company nor any of its information providers, licensors, employees or agents shall, in any event, be liable to Client or any other parties having access to the Service whether with or without the Company's consent for any direct, consequential, incidental, special or indirect losses or damage (including but not limited to loss of profits, trading losses and damages) that results from any inconvenience, delay or loss of the use of the Service or access to Client's Account, or any of the circumstances enumerated in Clause 8 hereof notwithstanding that the Company had been advised of the possibility of such damages or losses;
- 4.2 That neither the Company nor any of its information providers, licensors, employees or agents shall be liable for any loss resulting from a cause over which they have no direct control, including but not limited to failure of electronic or mechanical equipment or communication lines, telephones or other internet problems, unauthorised access, theft, operator errors, weather, earthquakes, floods and strikes or other labour problems;
- 4.3 That the liability of the Company to Client arising out of any kind of legal claim in whatsoever way connected with this Service and its use or the information provided thereunder not covered in this Agreement, will not exceed the monthly fee paid (if any) by Client for the use of the Service under Clause 10 hereof.

**5. TRADING ORDERS AND CANCELLATION REQUESTS**

- 5.1 Client agrees that any order(s) received by the Company through the use of Client's code and PIN shall be deemed to have been issued by Client notwithstanding that such order(s) may have been issued by a third party, whether authorised or otherwise.
- 5.2 Client acknowledges that the confirmation of the receipt and/ or execution of an order initiated by Client through the Service as reflected in Order Status Screens shall be deemed conclusive of :
  - a. The receipt by the Company of the order; and
  - b. That the content of such order is as received by the Company; and
  - c. That such order may be relied and acted on by the Company without further reference to or verification from Client.
- 5.3 Client agrees to review the Order Status Screens to ascertain that the said order was correctly received through the Service.
- 5.4 Client acknowledges that not all trades will be executed concurrently with the order issued by Client. Client further acknowledges and accepts, without liability of the Company, its employees or agents, that there will be times when a quoted price will change prior to the trade's execution due to market circumstances.
- 5.5 Client acknowledges that a request to cancel an earlier order is not guaranteed by the Company as the earlier order can only be cancelled if the cancellation request is received and effected before the earlier order is executed.

**6. LICENCE & TITLE TO INFORMATION / PROPRIETARY RIGHTS**

- 6.1 Subject to the terms of this Agreement, the Company grants to Client a personal, non-exclusive, non-assignable and non-transferable license to use and display the Service's software or web site (whichever is applicable) (hereinafter referred to as "Software") on any computer of which Client is the primary user. Unauthorised copying of the software, including software that has been modified, merged or included with the Software, or the written materials associated therewith is expressly forbidden. Client agrees not to sub-license, assign or transfer this license or the software. Any attempt to assign or transfer any of the rights, duties or obligations under this license is void.
- 6.2 Client acknowledges that the Company, BMSB, other Stock Exchange(s) approved by Securities Commission and/or participating information providers assert a proprietary right on the data, information, messages disseminated through and/ or provided by the Service (hereinafter referred to collectively as "information"). Client agrees not to reproduce, retransmit, disseminate, sell, distribute, publish, broadcast, circulate or commercially exploit the information in any manner whatsoever without the express written consent of the Company nor use the information for any illegal purpose.
- 6.3 Client agrees that it shall protect the contractual and statutory rights of the Company, BMSB, other Stock Exchange(s) approved by Securities Commission and/or participating information providers in or to the information furnished under and through the Service and shall comply with all written requests from the parties hereinbefore mentioned as they deem necessary to protect their respective rights.

**7. CLIENT'S SOLE RISK**

- 7.1 Client acknowledges that neither the Service nor the information provided thereunder is intended to amount to or constitute tax or legal advice. Although the Service provides access to opinions, information and recommendations about how to invest and what to buy, the Service shall not be construed as amounting to offers, invitations or solicitation to buy or sell the securities concerned. The Company does not warrant the accuracy stated in any manner of the opinions, information and recommendations, and no reliance by Client on the matters aforementioned should give rise to any claim whatsoever.
- 7.2 The Company does not recommend any investment nor does it offer any advice regarding the nature, potential value or suitability of any particular security, transaction or investment strategy. Client acknowledges that all orders made by it through the Service and executed by the Company pursuant thereto are made at Client's sole and absolute risk.
- 7.3 Client acknowledges that BMSB and/or any other Stock Exchange(s) approved by Securities Commission is the regulatory and supervisory authority of the Company and that BMSB and/or any other Stock Exchange(s) approved by Securities Commission shall have the right to

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examine, inspect, scrutinise Client's terminals for audit and other supervisory purposes as and when they deem fit subject to such examination, inspection, scrutinisation being carried out at reasonable hours. Client acknowledges that it shall not hold the Company liable for any liability and/ or losses that may occur as a result of the actions and omissions of the Company, BMSB and/or any other Stock Exchange(s) approved by Securities Commission.

### 8. NOTIFICATION BY CLIENT

- 8.1 Without prejudice to Clauses 5.1 and 5.2 herein, Client agrees that it shall notify the Company immediately and in any case not later than twenty-four (24) hours from the time Client should have become aware of the existence of any of the following :
- Any loss or theft of Client's User ID, sign-on password, Client code or PIN;
  - Any unauthorised use of any of Client's User ID, sign-on password, Client code or PIN, or of the Service or any information obtained thereunder;
  - Any failed or incorrect receipt of an order initiated by Client through the Service upon Client's review of the Order Status Screens of the Service; and
  - Any receipt of confirmation (whether electronic, written or otherwise) of business done of an order which Client did not place or any receipt of inaccurate or conflicting report or information.
- In all cases, the Company reserves the right to determine the validity of Client's objection to a transaction arising from, but not limited to, the above.
- 8.2 In the event that Client shall fail to notify the Company of the occurrence of any of the above incidents within the period of time stipulated above, neither the Company nor any of its information providers, licensors, employees or agents, shall be responsible and/ or liable to Client or any other party whose claim may arise through Client for any claims with respect to handling, mishandling or the loss of any order.

### 9. CONFIDENTIALITY

Client shall be responsible for the confidentiality and the use of its User ID, sign-on password, trading password and PIN. Client further accepts full and absolute responsibility for all orders entered through and under its User ID, sign-on password, trading password and PIN and any orders so received by the Company shall be deemed to have been received from Client.

### 10. FEES

- 10.1 Client agrees to pay and authorises the Company to debit its Account with the following fees:
- Legal fees, real-time quotes subscription fees for any relevant approved Stock Exchange(s) and other expenses incurred by the Company in the enforcement of the Company's rights and entitlement under this Agreement and the recoveries of the monies owed by Client to the Company;
  - Interest on all outstanding sums at such rate and at such mode as the Company shall notify Client in writing;
  - Other reasonable fees and charges imposed by the Company and/or various Exchange(s) concern (if any) from time to time for services and facilities rendered to Client.
- 10.2 Notwithstanding the above provisions, the Company may at its discretion vary the rate of such fees and subscription, at any time and from time to time without notice.
- 10.3 Client agrees that the Company may impose additional fees in relation to the provision of the Service, subject to obtaining the prior agreement of Client. In the event Client is not agreeable to the Company imposing the additional fee(s), the Company shall have the option of terminating this agreement in accordance with Clause 17 herein.

### 11. CONTINUING SECURITY OF ASSETS

Client agrees that it shall pay all cost including but not limited to solicitor's fees, if any, incurred by the Company in collecting any overdue fees from Client. Client hereby grants the Company a continuing security interest and/ or lien on the assets belonging to Client in all its accounts with the Company in order to secure the timely payment of all fees owed by it for the Service and any other amounts owing under this Agreement and that the Company shall be at liberty to use or dispose these assets in whatsoever manner and upon such terms and conditions as the Company deems fit to secure the full payment of such overdue fees, subject to any rules that may be laid down by BMSB and/or any other Stock Exchange(s) approved by Securities Commission in respect of such matter.

### 12. TAXES & LICENCES

Client shall pay all taxes and license fees payable for the use of the Service, if any.

### 13. RESTRICTION IN USE OF SERVICE

- 13.1 The Company reserves the right to determine whether Client is to trade via the Service on either Ready Basis Contracts or other types of contracts as provided for in the Rules of BMSB and/or in the Rules of any other Stock Exchange(s) approved by Securities Commission.
- 13.2 Client shall not be entitled to use the Service offered by the Company under this Agreement, if there exists any restriction whatsoever on Client's account either imposed by the Company or by any relevant authorities and Exchange(s), including but not limited to cash up-front restriction or restrictions imposed due to amounts remaining outstanding in the Client's account.
- 13.3 The Company shall not be held responsible for any failure to provide the Service, including the execution of any order arising out of any restriction imposed on Client's account.

### 14. DEPOSIT

- 14.1 The Company reserves the right to require Client to place cash and/ or equity as deposit prior to the execution of any transaction through the Service. It shall be in the absolute discretion of the Company to determine the amount of deposit payable by Client and the time and manner

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for the placement and nature of such deposit.

14.2 The Company reserves the right to require Client to maintain a minimum balance at any one time in Client's account. It shall be at the absolute discretion of the Company to determine the quantum of the said minimum balance to be so maintained. At the Company's absolute discretion failure to maintain such minimum balance as stipulated by the Company would entitle the Company to terminate this agreement in accordance with Clause 17 herein.

14.3 The Company shall not be held responsible or be liable for any failure to provide the Service arising out of such failure, refusal or delay in placing such deposit or in failing to maintain the minimum balance as stipulated by the Company.

**15. FOREIGN CURRENCY TRANSACTIONS**

15.1 Client agrees that if the Company enters into a transaction that is effected in a foreign currency on behalf of the Client:

a. Any profit or loss resulting from exchange rate fluctuations of such currency shall be at the Client's sole risk and shall not hold the Company accountable for any loss thereof;

b. All initial and subsequent deposits for margin purposes shall, unless the Company otherwise stipulates, be made in such currency (the "Relevant Currency") and in such amounts as the Company may, in its sole and absolute discretion require; and

c. The Company may debit or credit the Client's account in the Relevant Currency when such transaction is liquidated, and the rate of exchange of any foreign currency required to be converted to the Relevant Currency shall be determined by the Company in its sole and absolute discretion on the basis of the rates of exchange prevailing at the time of the debit and credit.

The Company may, at any time in its sole and absolute discretion, convert any amounts in any Client's account(s) or standing to the credit of the Client to any other currency for the purposes of carrying out the orders of the Client or exercising any of the Company's rights under this Agreement or under any Client's account. Exchange rate losses and the costs of conversion shall be borne by the Client.

15.2 The Client also acknowledges and consents to the Company having the right and discretion where it deems appropriate to deposit moneys/foreign securities received on Client's account which are denominated in a foreign currency in a trust account which is maintained outside of Malaysia with a bank/custodian licensed, registered or authorised to conduct banking/custodian business in that jurisdiction.

**16. INDEMNITY**

Client hereby agrees that it shall fully and effectively indemnify the Company and hold the Company indemnified from and against any and all claims, losses, liabilities, cost and expenses (including but not limited to solicitor's fees on a Solicitor and Client basis) arising or which may arise out of Client's breach or violation of the terms and conditions of this Agreement or any third party rights, including but not limited to violation of any copyright, proprietary or privacy rights. This obligation to indemnify the Company shall survive the termination of the Service.

**17. TERMINATION OF RIGHT OF ACCESS**

Notwithstanding anything herein to the contrary, the Company may at any time, in its absolute discretion terminate forthwith Client's right of access to the Service or any portion of it by giving seven (7) market days' notice (whether in writing or otherwise), without any obligation to give any reasons therefore or for any reason whatsoever, including but not limited to any unauthorised use of the User ID, sign-on password, trading password and PIN, not agreeing to the levying of additional fees, or breach of any terms and conditions of this Agreement in any manner whatsoever whether by Client or by any other person(s) whomsoever.

In the event of such termination by the Company, the Company shall not be liable to Client for any claims, losses or anticipated profit which may be suffered by Client arising out of or pursuant to or connected with such termination; provided however, where the termination is without cause, the Company may refund a pro-rated portion of any fees which have been paid to the Company by Client for any remaining portion of the term of Service not furnished to Client as at the date of such termination.

**18. REPRESENTATIONS**

Client represents and hereby agrees that the following statements are and will continue to be true for so long as the Client has access to the Service:

a. That Client is at least eighteen (18) years of age;

b. That Client agrees to be bound by the terms & conditions of this Agreement and is not acting on behalf of a firm, corporation, partnership, trust or association; and

c. That Client will use the information provided under this Service solely in connection with Client's own personal investment activities and not in connection with any trade or business activities; and

d. That Client is not a securities broker/ dealer, investment adviser, futures commission agent, commodities dealer or commodity trading adviser, member of a securities exchange or association or futures exchange or an owner partner or associated person of any of the foregoing; and

e. That Client is not employed by a bank or any organisation or corporation to perform functions related to securities or commodities futures investment or trading activity.

Provided however, the above conditions shall not be applicable in the event Client has disclosed the existence of any of the above circumstances and has provided the Company with the relevant documents prior to the execution of this Agreement. Provided further that where a corporate entity or a partnership applies for the Service and the said corporate entity or partnership is a Client, Client shall hereby indemnify the Company against all losses or damages, direct or consequential which may arise out of the action of any representative(s) designated by such corporate entity or partnership using the Service on behalf of the corporate entity or partnership (whichever is applicable).

**19. ACKNOWLEDGEMENT**

a. Client acknowledges that the Company is providing the Service on the basis of Client's acceptance to be bound by the terms & conditions contained in this Agreement.

b. Subject to Clause 19.3 herein, Client acknowledges that the terms and conditions contained in this Agreement, inclusive of the Application

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Form, constitutes the complete statement of Client's agreement with the Company in respect of Client's subscription to the Service and that the agreement does not include any other prior or contemporaneous promises, representations or descriptions regarding the Service even if they are contained in any materials provided by the Company.

- c. Client hereby agrees that the terms and conditions of this Agreement shall be read together with the Terms and Conditions. In the event of any conflict between the terms herein and the Terms & Conditions, the Terms & Conditions shall prevail.

**20. AMENDMENTS AND MODIFICATIONS**

Notwithstanding Clause 18, the Company may in its absolute discretion, by giving one (1) day's notice (whether in writing or otherwise) amend or vary the terms and conditions of this Agreement hereunder at any time or from time to time and/ or impose additional clauses which shall bind Client as if the amendments and additional clauses have been originally set out in this Agreement.

**21. GOVERNING LAW**

This Agreement and performance hereunder by the parties will be governed by and construed in accordance with the laws of Malaysia and the parties hereto submit to the exclusive jurisdiction of the Courts of the States of Malaya in all matters connected with the obligations and the liabilities of the parties under this Agreement.

**22. TIME**

Time wherever mentioned shall be of the essence of this Agreement.

**23. SEVERABILITY**

Any term, condition, stipulation, provision, covenant or undertaking herein which is illegal, void, prohibited or unenforceable shall be ineffective to the extent of such illegality, voidness, prohibition or unenforceability without invalidating the remaining provisions hereof, and any such illegality, voidness, prohibitions or unenforceability shall not invalidate or render illegal, void or unenforceable any other term, condition, stipulation, provision, covenant or undertaking herein contained. Furthermore, any ambiguities in language and intent of this Agreement shall not be construed and/ or held against the Company.

**24. ASSIGNMENT & SUCCESSORS**

- 24.1 Client shall not assign or transfer any of its rights or obligations under this Agreement or any contract thereunder, except with the Company's prior written consent. Client hereby expressly consents to the Company assigning or transferring any of its rights and obligations under this Agreement or any contract thereunder to any other party.
- 24.2 The terms and conditions of this Agreement shall be binding upon the successors-in-title and permitted assigns of the parties hereto.

**25. WAIVER**

Except as specifically permitted in this Agreement, no provision, term, or clause, of this Agreement can be, nor be deemed to be waived, altered, modified or amended unless acknowledged in writing by the Company that such waiver, alteration, modification or amendment will take effect and bind both Client and the Company.

**26. NOTIFICATION**

- 26.1 Client hereby irrevocably consents to any notification to Client by the Company, where required under this Agreement or where given under the Company's discretion, by any one or more of the following methods :
- a. By prepaid ordinary post to the last known address of Client in the Company's records and such notification shall be deemed effective on the third day after posting;
  - b. By way of a single publication of the notice in one or more newspapers of the Company's choice and such notification shall be deemed effective on the date of first publication in any such newspaper;
  - c. By inserting a notice in the Company's statement of account to Client and such notification shall be deemed effective three (3) days after the date of posting of the notice contained in the said statement of account to Client;
  - d. By publishing the notice in the designated forum on the home page and such notification shall be deemed effective two (2) days after the date of publishing the notice; and
  - e. By electronic mail ("e-mail") to the e-mail address of Client and such notification shall deemed effective two (2) days after the date the e-mail is sent by the Company.
- 26.2 Any failure or delay on the part of the Company to give notice to Client in accordance with Clause 26.1 hereof, where required under this Agreement, shall not prejudice or have the effect of invalidating the subject matter of the notification.

**27. AUTHORISATION TO ACCESS INFORMATION**

- 27.1 Client hereby expressly agrees and authorises the Company to access Client's account with the Bursa Malaysia Depository Sdn Bhd (and/ or any other depositories that may be hereafter established) to extract the information relating to Client's shareholding. Unless otherwise notified by Client, Client shall be deemed to have requested the Company to extract the aforesaid information and post the same on to that part of the Service known as "Portfolio Manager" or any other name so given that achieves the same purpose. Without contrary to the provision in Clause 16 and any other Clause herein, Client hereby indemnifies the Company against all actions, proceedings, losses, charges, damages, expenses, claims and demands which may be brought or made against the Company by reason of the Company's agreement to the Client's request herein.
- 27.2 Client hereby consents to the disclosure by Bursa Malaysia Depository Sdn. Bhd. ("Bursa Depository") to the Company, and to such agents,

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