

## DEED OF GUARANTEE

### **Warning Notice to the Guarantor(s)**

1. The Client (as defined below) has applied to utilize our securities trading or commodities trading services, margin facilities, loans, advances, credits or other financial accommodation and related services on the security of the Guarantee to be executed by you.
2. Before you sign the Guarantee which you have to sign if you go on with the transaction, you should instruct a solicitor to protect your interests and to ensure that your rights and liabilities under the Guarantee are properly protected.
3. YOU ARE RECOMMENDED TO INSTRUCT YOUR OWN SOLICITOR who will be able at every stage of the transaction to protect your interest and to give you independent legal advice.
4. If you instruct your own solicitor, you should request your solicitor to issue a certificate to us confirming that you fully understand the Guarantee and its practical implications.
5. YOU ARE STRONGLY ADVISED to obtain the financial information of each of the Client, and engage your own financial adviser to give you advice on such financial information before signing and executing the Guarantee.
6. Your liability under the Guarantee will be unlimited, if you decide to go on with the transaction and sign and execute the Guarantee.
7. You also have the choice not to proceed with the transaction.
8. Please think carefully before deciding whether to proceed with the transaction. You are free to choose whichever option you prefer.

Magic Compass Securities Limited

Magic Compass Futures Limited

To: Magic Compass Securities Limited / Magic Compass Futures Limited  
Suite 808, Central Plaza, 18 Harbour Road, Wanchai, Hong Kong

In consideration of your agreeing to provide or continue to provide to of \_\_\_\_\_

(Name of the Client)

\_\_\_\_\_  
(Address of the Client)

(the "**Client**") securities trading or commodities trading services, margin facilities, loans, advances, credits, other financial accommodation and related services pursuant to an agreement between you and the Client, the terms of which are contained in your Client Master Agreement, as the same is amended from time to time (the "**Agreement**") (receipt of a copy whereof is hereby acknowledged), the undersigned hereby agrees as follows:

### **1. Unlimited Guarantee and Indemnity**

- 1.1 I/We, the Guarantor(s) (see Schedule 1 below for particulars of the Guarantor(s)), hereby unconditionally and irrevocably guarantee to you that, if for the reason the Client does not pay any sum due and payable by it under the Agreement, including without limitation all interests, expenses, costs and losses payable thereunder, I/we as primary obligor will pay to you that sum on demand by you provided you shall not be under any obligation, whether to me/us, the Client or otherwise, to make any such demand or to make such demand at any particular time.

- 1.2 As between me/us and you but without affecting the Client's obligations, I/we shall be liable under this Guarantee as if I/we were the sole principal debtor and not merely a surety. I/We agree to pay you such sum as may be demanded by you whether or not you have demanded the Client for payment. Accordingly, I/we shall not be discharged, nor shall my/our liability be affected, by anything which would not discharge me/us or affect my/our liability if I/we were the sole principal debtor including without limitation:
- (a) any time, indulgence, concession, waiver or consent at any time given to the Client or any other person,
  - (b) any amendment to the Agreement;
  - (c) the making or failure or delay to make any demand on the Client or any other person for payment;
  - (d) the enforcement of or failure or delay to enforce the Agreement or this guarantee;
  - (e) the taking, existence or release of any security interest or other guarantee;
  - (f) the winding-up, dissolution, death, insanity, incapacity or any change in the name, style or constitution or bankruptcy of the Client or any other person, or any step being taken for any such winding-up, dissolution or bankruptcy; or
  - (g) the illegality, invalidity or unenforceability of, or any defect in, any provision of this Guarantee or the Agreement or any of the obligations of any of the parties under or in connection with this Guarantee or the Agreement.
- 1.3 My/Our obligations under this Guarantee are and will remain in full force and effect by way of continuing security until no sum remains to be paid under the Agreement and you have irrevocably received or recovered all sums payable under the Agreement. Furthermore, those of my/our obligations are additional to any other right which you may possess and may be enforced without first having recourse to the Client, any other person or any other security interest. I/We irrevocably waive all notices and (except as required by the above Clause 1.1) demands of any kind.
- 1.4 I/We shall on demand indemnify you against any funding or other cost, loss, expense or liability sustained or incurred by you as a result of being required for any reason (including any bankruptcy, insolvency, winding-up or similar law of any jurisdiction) to refund all or part of the amount received or recovered by you in respect of any sum payable by the Client under the Agreement and shall in any event pay to you on demand the amount so refunded by you.
- 1.5 As separate, independent and alternative stipulations. I/we unconditionally and irrevocably agree that any sum which, although expressed to be payable by the Client under the relevant Agreement, is for any reason (whether or not now existing and whether or not now known or becoming known to any party to the Agreement) not recoverable from me/us on the basis of a guarantee shall nevertheless be recoverable from me/us as if I/we were the sole principal debtor and shall be paid by me/us to you on demand.
- 1.6 This Guarantee shall be binding on and enforceable against me/us and my/our executors, administrators, legal representatives, successors and assigns until the expiration of three months after your receipt of a written notice to determine this Guarantee served by me/us. Any such notice shall not release me/us in respect of liabilities existing before the expiration of the said notice.

## 2. **Representations and Warranties**

I/We represent and warrant to you and for your benefit as follows:

- 2.1 I/We have the power to enter into, exercise my/our rights and perform and comply with my/our obligations under this Guarantee.

- 2.2 All actions, conditions and things required to be taken, fulfilled and done (including the obtaining of any necessary consents) in order to enable or ensure the following have been taken, fulfilled or done:
- (a) I/we lawfully enter into, exercise my/our rights and perform and comply with my/our obligations under this Guarantee,
  - (b) that those obligations are valid, legally binding and enforceable, and
  - (c) that those obligations rank and will at all times rank at least equally and ratably in all respects with all my/our other unsecured indebtedness except for such unsecured indebtedness as would, by virtue only of the operation of law, be preferred in the event of my/our winding-up, dissolution or bankruptcy.
- 2.3 My/Our execution and performance of or compliance with my/our obligations under this Guarantee do not and will not violate or exceed any restriction granted or imposed by any law to which I am/we are subject or my/our constitutional documents, or result in the existence of, or oblige me/us to create, any security over my/our assets.
- 2.4 Each of the representations and warranties in this Clause 2 will be correct and complied with in all respects so long as any sum remains payable under the Agreement as if repeated then by reference to the then existing circumstances.

### **3. Interest**

I/We will pay interest to you, at the rate of interest applicable under the Agreement to overdue sums, on all sums demanded under this Guarantee from the date of your demand or, if earlier, the date on which the relevant damages, losses, costs, liabilities or expenses arose in respect of which such demand has been made until the date of receipt of such sums by you (both before and after judgment) at such rate of interest applicable under the Agreement to overdue sums.

### **4. Payments**

- 4.1 All sums payable by me/us under this Guarantee shall be paid free of any restriction or condition and free and clear of and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise and any payment made shall be grossed up as necessary to achieve the same.
- 4.2 On each date on which any sum is due from me/us, I/we shall make available to you, by payment in Hong Kong dollars or, at your election, in the currency in which the relevant sum would otherwise be payable under the Agreement. Payment shall be made in immediately available funds to such account as you may specify.

### **5. Set-off**

In addition to any general lien or similar right to which you may be entitled at law, you may, at any time and without prior notice, set off or transfer any monies standing to the credit of my/our account with you or any member of your group of whatever description and in whatever currency and whether held singly or jointly with others towards discharge of all my/our liabilities to you or any member of your group whether such liabilities be primary, collateral, several, joint or in other currencies. Insofar as any of the liabilities to you or any member of your group are contingent or future, your liability to me/us to make payment of any sums standing to the credit of any such accounts will to the extent necessary to cover such sums be suspended until the happening of the contingency or future event. For the purpose of this Clause, a company is a member of your group if it is directly or indirectly controlling, controlled by or under common control with you.

## **6. Assignment**

- 6.1 I/We may not assign or transfer all or any of my/our rights or obligations under this Guarantee.
- 6.2 You may assign or transfer all or part of your rights, benefits and obligations hereunder to such person(s) and disclose to a potential transferee or any other person proposing to enter into contractual arrangements with you in relation to this Guarantee such information about me/us as you may at your absolute discretion think fit.

## **7. Miscellaneous**

- 7.1 Failure or delay in exercising any rights, power or privilege by you in respect of this Guarantee shall not operate as a waiver, nor shall a single or partial exercise, enforcement or waiver of any such rights, power or privilege preclude you from further exercise, enforcement, or the exercise or enforcement of any other right, power or privilege hereunder.
- 7.2 The rights and remedies provided in this Guarantee are cumulative and not exclusive of any other rights or remedies (whether provide by law or otherwise).
- 7.3 If I/we consist of more than one person, then the liabilities of each such person hereunder shall be joint and several. Any notice, payment or delivery by you to either or any one of such persons shall be a full and sufficient discharge of your obligations to notify, pay or deliver under this Guarantee.
- 7.4 A certificate issued by any of your officers stating the outstanding indebtedness of the Client as at any time shall be conclusive and binding on me/us.
- 7.5 In the event of this Guarantee being determined for any reason whatsoever you may open and continue a new or separate account with the Client in your books and if you do not in fact open such new or separate account you shall nevertheless be deemed to have done so at the time this Guarantee is determined and as from and after that time all payments in account made by the Client to you shall (notwithstanding any legal or equitable rule or presumption to the contrary) be placed or deemed to have been placed to the credit of the new or separate account so opened or deemed to have been opened as aforesaid and shall not go in reduction of the amount secured by this Guarantee at the time this Guarantee is determined provided always that nothing contained in this clause shall prejudice the security which you otherwise would have had hereunder for the payment of the moneys hereby guaranteed.
- 7.6 You are entitled to retain this Guarantee for such period as you deem fit after all the amounts secured by this Guarantee have been fully discharged.
- 7.7 In the event of any discrepancy between the English and the Chinese version of this Guarantee, the English version shall prevail.

## **8. Communication**

- 8.1 Each communication under this Guarantee shall be made by fax or otherwise in writing to the fax number or address last known to the party making the communication.

- 8.2 Any communication or notice from me/us shall be irrevocable, and shall not be effective until received by you. Any communication or notice from you to me/us shall be conclusively deemed to be received by me/us.

## **9. Partial Invalidity**

The illegality, invalidity or unenforceability of any provision of this Guarantee under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision.

## **10. Personal Data**

I/We have read and understood your Notice to Clients relating to the Personal Data (Privacy) Ordinance and agree that my/our personal data held by you may be used for the purposes and disclosed to such classes of persons as stated therein (as amended from time to time).

## **11. Governing Law**

This Guarantee shall be governed and construed by the laws of the Hong Kong Special Administrative Region of the People's Republic of China. I/We hereby submit to the non-exclusive jurisdiction of the courts of the Hong Kong Special Administrative Region of the People's Republic of China.

## Schedule 1

### **PARTICULARS OF THE GUARANTOR(S)**

1.	Name of Guarantor :  HKID/Passport/Business Registration No.:  Telephone No. :  Fax No.:  Residential/Registered Address :
2.	Name of Guarantor :  HKID/Passport/Business Registration No.:  Telephone No. :  Fax No.:  Residential/Registered Address :

DATED this \_\_\_\_\_ day of \_\_\_\_\_

#### **(For individual guarantor(s) only)**

SIGNED SEALED AND DELIVERED )

AS A DEED by the said \_\_\_\_\_ )

\_\_\_\_\_ )

in the presence of : )

\_\_\_\_\_  
Guarantor's Signature

X \_\_\_\_\_

Witness Signature

Name :

Occupation :

Address :

SIGNED SEALED AND DELIVERED )

AS A DEED by the said \_\_\_\_\_ )

\_\_\_\_\_ )

in the presence of : )

\_\_\_\_\_  
Guarantor's Signature

X \_\_\_\_\_

Witness Signature

Name :

Occupation :

Address :

**(For corporate guarantor only)**

SEALED with the Common Seal )

of \_\_\_\_\_ )

and SIGNED by \_\_\_\_\_ )

\_\_\_\_\_ )

in the presence of : )

\_\_\_\_\_

Authorized Signatory(ies)

X \_\_\_\_\_

\_\_\_\_\_

Witness Signature

Name :

Occupation :

Address :