

**IMPORTANT DISCLOSURES NOTICE:** This Terms of Business is only applicable to the Customer who has been classified as an Institutional Professional Investor.

## TERMS OF BUSINESS

### 1 Definitions

1.1 In this Terms of Business, unless the context requires otherwise, the following expressions shall have the following meanings:

**“Account”** means any one or more futures trading accounts now or hereafter opened in the name of the Customer with the Company in connection with this Terms of Business.

**“Account Opening Forms”** means such account opening application form and customer information forms as may be prescribed by the Company from time to time for the Customer to open the Account.

**“Approved Debt Securities”** means Exchange Fund Bills or Notes issued by the Hong Kong Special Administrative Region Government for the account of the Exchange Fund, Treasury Bills or Notes issued by the government of United States (other than United States Treasury Callable Corpus and Separate Trading of Registered Interest and Principal of Securities) and other debt securities or instruments as may from time to time be approved by the HKFE as cover for margin.

**“Approved Securities”** means TraHK Units and such other securities as may from time to time be approved by the HKFE as a form of cover for margin.

**“Associate”** means, in relation to the Company, a body corporate which is its subsidiary or associated company.

**“Authorised Person”** means, in relation to a corporate Customer, the person(s) initially so named in the Account Opening Forms or such other person(s) as the Customer may thereafter from time to time so nominate by written nomination to the Company and, in the case of an individual Customer, the person(s) who hold valid power of attorney from the Customer and is/are initially so named in the Account Opening Forms or is/are thereafter nominated by written nomination of the Customer to the Company.

**“Business Day”** means any day on which the HKFE or the relevant Foreign Futures Exchange (as the case may be) is open for trading other than any day declared by the HKFE or the relevant Foreign Futures Exchange to be a non-business day.

**“Clearing House”** means the HKFE Clearing Corporation Limited (“HKCC”) or any other relevant clearing house which is recognised and authorised to operate in a jurisdiction by the law of such jurisdiction.

**“Client Money Rules”** means the Securities and Futures (Client Money) Rules (Cap. 571I), as amended from time to time.

**“Client Securities Rules”** means the Securities and Futures (Client Securities) Rules (Cap. 571H), as amended from time to time.

**“Code of Conduct”** means the Code of Conduct for Persons Licensed by or Registered with the SFC.

**“Company”** means **China Merchants Futures (HK) Co., Limited**, a company incorporated in Hong Kong whose

registered office is situated at 48/F., One Exchange Square, 8 Connaught Place, Central, Hong Kong and a corporation licensed under the Securities and Futures Ordinance with CE No. AGO928 (the) to carry out types 2 and 5 regulated activities, and an Exchange Participant of the HKFE in the capacity of a futures commission merchant.

**“Commodity” or “Commodities”** means any item and includes, without limitation, agricultural commodities, metals, currencies, shares, interest rates, indices (whether stock market or otherwise), or other financial contracts, energy, right or authority, and shall where the case requires include a Contract in respect of any of the above and in each case whether or not the item is capable of being delivered.

**“Compensation Fund”** means the compensation fund which is established pursuant to the SFO.

**“Contract”** means any contract relating to a Financial Futures transaction.

**“Correspondent Broker”** means any member or participant of an Exchange and/or Clearing House of which the Company may not be a member or participant who, as the Company’s agent, enters into a Contract on such Exchange and/or clears the same, as the case be.

**“Customer”** means the party whose name, address and details are set out in the Account Opening Forms.

**“Electronic Service”** has the meaning ascribed to it in Schedule I to this Terms of Business.

**“Events of Default”** has the meaning ascribed to it in Clause 10.

**“Exchange”** means any exchange recognised and authorised to operate in a jurisdiction by the law of such jurisdiction.

**“FATCA”** means:

- (a) sections 1471 to 1474 of the United States Internal Revenue Code of 1986, as amended, or any associated regulations or other official guidance;
- (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relation to an intergovernmental agreement between the United States and any other jurisdiction (including for the avoidance of doubt, the intergovernmental agreement between the United States and Hong Kong), which (in either case) facilitates the implementation of (a) above; or
- (c) any agreement pursuant to the implementation of (a) or (b) above with the United States Internal Revenue Service, the United States government or any governmental or taxation authority in any other jurisdiction (including, for the avoidance of doubt, the intergovernmental agreement between the United States and Hong Kong).

**“Financial Futures”** includes equity futures, Index Futures, HIBOR Futures and any other index futures, commodities, interest rate futures or foreign exchange futures and options on such futures contracts or items the subject of a futures or options contract traded on the HKFE or any other Foreign Futures Exchanges or any other instrument agreed between the parties from time to time.

**“Foreign Futures Exchange”** means any futures market or exchange which is recognised and authorised to operate in a country or territory outside Hong Kong by the law of that country or territory.

**“Foreign Transactions”** means any transaction related to Financial Futures to be executed on any Foreign Futures Exchanges.

**“Futures Account Application Form”** means the Futures Account Opening Application Form under which the Customer applies for the opening of a futures trading account with the Company.

**“Group Company”** of a corporation means a member of the group of companies to which that corporation belongs and **“Group”** means collectively such group of companies.

**“Hold Mail”** means the Company’s service of holding mail for a Customer.

**“Hong Kong”** means the Hong Kong Special Administrative Region of The People’s Republic of China.

**“HIBOR Futures”** means any Hong Kong Interbank Offered Rate futures which are from time to time traded on the HKFE.

**“HKFE”** means The Hong Kong Futures Exchange Limited and includes its successors, assigns and any resulting or surviving entity into or with which it may consolidate, amalgamate or merge.

**“Indemnified Persons”** includes the Company, its Associates, directors, officers, employees and agents or any correspondents.

**“Index Futures”** means any stock exchange index futures and/or options which are from time to time traded on the HKFE.

**“Institutional Professional Investor”** means persons falling under paragraphs (a) to (i) of the definition of “professional investor” in section 1 of Part 1 of Schedule 1 to the SFO.

**“Instructions”** means any instruction or order regarding Financial Futures transactions communicated by the Customer or its Authorised Persons to the Company in accordance with Clause 4.1.

**“Market”** is defined in Chapter 1 of the Rules of the HKFE.

**“Market Requirements”** means all applicable laws, the constitution and any applicable rule, regulation, custom, code, guideline, notice, order, direction, restriction, limitation, requirement or condition (including any trading or position limits) of or imposed by any relevant regulatory or supervisory authority or body, Exchange, Clearing House, Correspondent Broker and/or the Company from time to time.

**“Professional Investor”** is defined in section 1 of Part 1 of Schedule 1 to the SFO. It includes specified entities set out in paragraphs (a) to (i) of the definition and persons belonging to a class which is prescribed under the Professional Investor Rules.

**“Professional Investor Rules”** means the Securities and Futures (Professional Investor) Rules (Cap. 571D) made by the SFC under section 397(1) of the SFO as amended from time to time.

**“Rules”** means the rules and regulations of the HKFE and the general regulations and procedural manual of the Clearing House as amended from time to time.

**“SFC”** means the Securities and Futures Commission of Hong Kong.

**“SFO”** means the Securities and Futures Ordinance (Cap. 571), and any subsidiary legislation made thereunder, as amended or substituted from time to time.

**“this Terms of Business”** means this Terms of Business, the various Schedules attached hereto, and any other written agreement between the Company and the Customer regarding the opening, maintenance and operation of the Account, including (but not limited to) the Account Opening Forms as originally executed or thereafter may from time to time be amended or supplemented.

**“Trading Representative”** means in relation to a corporate Customer, its authorised representative according to the record of the Company from time to time for operating the Account by way of oral instruction given over the telephone where initially Trading Representative comprises the person(s) so appointed by the Customer at the Account opening process subject to completion of the checking verification and other procedures in connection with anti-money laundering and counter-terrorist financing with respect to such authorised representative by the Company.

**“TraHK Units”** means units issued in accordance with the unit trust scheme named “Tracker Fund of Hong

Kong” established by the trust deed dated 23 October 1999 between (1) State Street Global Advisors (HK) Limited as manager, (2) State Street Bank and Trust Company as trustee, and (3) Exchange Fund Investment Limited as promoter, as from time to time modified or added to.

‘**United States**’ means the United States of America.

“**Variation Adjustment**” means, in relation to transactions of the HKFE, the amount payable by (to) the Clearing House to (from) the Company on behalf of the Customer, calculated on a daily basis in accordance with the rules on variation adjustment of the Clearing Rules of the HKCC.

1.2 In this Terms of Business:

- i. unless the context otherwise requires, words and expressions defined in the SFO, the Client Money Rules and the Client Securities Rules shall have the same meanings in this Terms of Business;
- ii. references to the "**Customer**", wherever used, shall in the case where the Customer(s) is/are corporation or individual(s) include the Customer(s) and his/their respective executors and administrators;
- iii. references to Clauses and sub-Clauses unless otherwise stated are to clauses and sub-clauses of this Terms of Business;
- iv. the headings to the clauses are for convenience only and do not affect their interpretation and construction;
- v. words denoting the singular include the plural and vice versa;
- vi. words importing any gender include every gender and references to persons include individuals and his/ their respective executors and administrators; and
- vii. for the purposes of this Terms of Business, the terms "**tax**" and "**taxes**" shall include any amounts deducted or withheld in connection with FATCA.

## **2 Scope of Terms of Business**

2.1 This Terms of Business shall apply to all Contracts which are effected or to be effected by the Company and/or the Correspondent Broker appointed by the Company on behalf of the Customer on the HKFE or any Foreign Futures Exchanges and shall be deemed to be incorporated in each Contract, whether oral or written, entered into between the Company and the Customer. Any other terms and conditions proposed or referred to by the Customer in writing or otherwise (whether express, implied or imported by custom or course of dealing), or upon which the Company and the Customer may previously have entered into Contracts, are hereby excluded.

2.2 All Contracts made on the HKFE and all transactions between the Company and the Customer shall be binding on the parties and shall be subject to and in accordance with all law, rules, or regulations applicable thereto, including but not limited to the procedures of the HKFE, the provisions of the Memorandum and Articles of Association of the HKFE and the Rules.

2.3 All Foreign Transactions shall be subject to all applicable rules, regulations, orders and laws of the country or territory of the Foreign Transaction concerned and the rules of the relevant markets or Foreign Futures Exchanges. The Customer may have varying levels and types of protection in relation to transactions on different markets and exchanges.

## **3 Preliminary and General Matters**

3.1 Before entering into any Contract, the Customer shall satisfy itself that such Contract is suitable for the Customer’s purposes. Notwithstanding that the Company may express views on the subject matter of any Contract or on any matter connected with Financial Futures transactions generally, each Contract shall be deemed to have been entered into by the Customer in reliance only upon its own judgement and the Company and its other Indemnified Persons shall have no responsibility or liability whatsoever in respect of any information given, or views expressed by any of them, whether or not such information is given or such views are expressed at the request of the Customer.

- 3.2 The Company shall provide to the Customer, upon request, product specifications and any prospectus or other offering document covering such derivative products including, without limitation, futures contracts or options.
- 3.3 The Customer hereby acknowledges that the Company has given a full explanation of margin procedures and the circumstances under which the Customer's positions may be closed without the Customer's consent.
- 3.4 The Customer shall ensure that all necessary authorisations, approvals and consents of any governmental or other regulatory body or authority applicable to any Financial Futures transactions are obtained and that the terms thereof and all the Market Requirements are complied with.
- 3.5 Every Contract is made on the clear understanding that both the Company and the Customer contemplate actual performance thereof.
- 3.6 The Company may at its absolute discretion and without assigning any reason, refuse to carry out any Financial Futures transaction on behalf of, or enter into any Contract with, the Customer.
- 3.7 In relation to Contracts of the HKFE, the Customer acknowledges that in the case of a default committed by the Company and the Customer having suffered pecuniary loss thereby in relation to transactions on the HKFE, the liability of the Compensation Fund will be restricted to valid claims as provided for in the applicable laws, rules and regulations relating to the Compensation Fund (including, without limitation, the SFO, the Securities and Futures (Investor Compensation – Claims) Rules (Cap.571T), the Securities and Futures (Investor Compensation – Compensation Limits) Rules (Cap. 571AC) and any other relevant subsidiary legislation)) and will be subject to the monetary limits specified in such laws, rules and regulations and accordingly there can be no assurance that any pecuniary loss sustained by reason of such a default will necessarily be recouped from the Compensation Fund in full, in part or at all.
- 3.8 The Company discloses to the Customer that it trades on its own account or on the account of any Associate, and that any of its directors or employees may trade on its own account. The Customer further acknowledges and accepts that the Company and any Associate may have interests, or may owe duties to other customers who have interests, which may conflict with the interests of the Customer. The Company shall take all reasonable steps to ensure that the Customer receives fair treatment in the event of any actual or potential conflict arising.
- 3.9 In relation to transactions on the HKFE, the Customer acknowledges that position limits and reporting obligations shall apply under the Securities and Futures (Contracts Limits and Reportable Positions) Rules (Cap 571Y) with which the Customer shall comply, and that the Company is bound by the Rules which permit the HKFE to take steps to limit the positions or require the closing out of relevant Contracts on behalf of such customers who in the opinion of the HKFE are accumulating positions which are or may be detrimental to any particular market or markets or which may be capable of adversely affecting the fair and orderly operation of any market or markets as the case may be. In relation to transactions on any Foreign Futures Exchange, the Customer acknowledges that such Foreign Futures Exchange may in certain circumstances take steps to limit the positions or require the closing out of relevant Contracts to the extent required or permitted by applicable laws, rules and regulations.
- 3.10 In relation to transactions on the HKFE, all monies, securities and other property received by the Company from the Customer or from any other person (including a Clearing House) for the account of the Customer shall:
- i. be held by the Company as trustee, segregated from the Company's own assets; and
  - ii. not form part of the assets of the Company for insolvency or winding-up purposes but shall be returned to the Customer promptly upon the appointment of a provisional liquidator,

liquidator or similar officer over all or any part of the business or assets of the Company.

- 3.11 In relation to transactions on the HKFE, the Customer acknowledges that in respect of any account of the Company maintained with the Clearing House, whether or not such account is maintained wholly or partly in respect of Financial Futures transacted on behalf of the Customer and whether or not monies, Approved Debt Securities or Approved Securities paid or deposited by the Customer have been paid to or deposited with the Clearing House, as between the Company and the Clearing House, the Company deals as principal and accordingly no such account is impressed with any trust or other equitable interest in favor of the Customer and monies, Approved Debt Securities and Approved Securities paid to or deposited with the Clearing House are thereby freed from the trust referred to in Clause 3.9 herein.
- 3.12 In relation to transactions on the HKFE, any monies, Approved Debt Securities or Approved Securities received by the Company from the Customer or from any other person (including the Clearing House) are held in the manner in accordance with applicable laws, rules and regulations (including, without limitation, the Code of Conduct). The Customer authorises the Company to apply any monies or Approved Debt Securities or Approved Securities in the manner in accordance with such laws, rules and regulations. In particular, the Company may apply such monies, Approved Debt Securities or Approved Securities in or towards meeting the obligations of the Company to any party insofar as such obligations arise in connection with or incidental to Financial Futures transacted on the Customer's behalf.
- 3.13 The Customer declares, warrants and represents that the information supplied in the Account Opening Forms is true and complete and agrees and undertakes to notify the Company forthwith of any material changes in such information supplied. The Company will notify the Customer forthwith of any material change in the information supplied in this Terms of Business.
- 3.14 The Company may, subject to the provisions of the SFO and any applicable laws, rules and regulations, take the opposite position to the Customer's order in relation to any Exchange traded futures and options contracts, whether on the Company's own account or for the account of its Associates or other customers of the Company, provided that such trade is executed competitively on or through the facilities of the HKFE in accordance with the Rules or the facilities of any other commodity, futures or options exchange in accordance with the rules and regulations of such other exchange.
- 3.15 The Customer acknowledges that there may, on occasions, be a delay in making prices or in dealing by the Company due to the physical restraints on the HKFE or other Foreign Futures Exchanges and the rapid changes in the prices of commodities and the Company may not, after using reasonable endeavors, be able to trade at the prices quoted at any specific time. The Customer agrees that the Company shall not be liable for any loss arising by reasons of its failing, or being unable, to comply with any terms of the Customer's instruction.
- 3.16 The Customer acknowledges that where the Company is unable after using reasonable endeavors to execute any instruction in full, it is entitled to effect partial performance only without prior reference to the Customer for confirmation. The Customer shall accept and be bound by the outcome of any performances, partial performance or non-performance when the Customer's request to execute and order is made.
- 3.17 Any Customer's instruction that has not been executed before the close of business of the relevant exchange or such other expiration date required by the relevant exchange or such other later time as the Customer and the Company may agree shall be deemed to have been cancelled automatically.
- 3.18 The Customer acknowledges that due to the trading practices and market requirements of the HKFE or other Foreign Futures Exchange in which transactions are executed, it may not always be able to execute orders at the prices quoted "at best" or "at market" and the Customer agrees in any event to be bound by transactions executed by the Company following Instructions given by the Customer.

- 3.19 The Customer hereby authorises the Company to conduct a credit enquiry (or personal credit enquiry in case of individual Customer) or check on the Customer for the purpose of ascertaining the financial situation and investment objectives of the Customer and the Customer shall keep the Company informed regarding its financial standing and shall immediately report to the company any information that indicates that it is insolvent or threatened with insolvency, or guilty of any irregularities or practices affecting the good name of HKFE.
- 3.20 The Customer authorises the Company, at any time and at Company's absolute discretion, for the purpose of obtaining a better execution price and/or reducing the volume of instructions, to consolidate and/or disaggregate the Customer's instructions to purchase and/or sell Contracts on the Customer's behalf with similar instructions received from the Company's other customers. The Customer agrees that in the event of there being insufficient Contracts available to satisfy the purchase/sell orders so consolidated, the number of Contracts actually purchased/sold shall be attributed to the relevant customers in the order in which those orders were received by the Company.
- 3.21 Subject to Market Requirements, the Company may in its discretion determine the priority in the execution of its customers' orders, having due regard to the sequence in which such orders were received, and the Customer shall not have any claim of priority over another customer in relation to the execution of any order received by the Company.
- 3.22 If any relevant Exchange, Clearing House, broker and/or Correspondent Broker on which or through whom any Contract has been entered into by the Company on behalf of the Customer requires any alteration in any terms and conditions of any such Contract, the Company may take all such actions on behalf of the Customer as the Company may in its absolute discretion consider necessary or desirable to comply therewith or as a result thereof, or to avoid or mitigate loss thereunder, and all such actions shall be binding upon the Customer.
- 3.23 Electronic Service
- i. The Customer agrees to use the Electronic Service offered by the Company in the future only in accordance with this Terms of Business and the Terms and Conditions of Electronic Service annexed as Schedule I to this Terms of Business.
  - ii. The Company may in its absolute discretion impose restrictions on the types of orders, and the range of prices for such orders, which can be placed through the Electronic Service.
  - iii. The Customer agrees to pay, if it elects to use the Electronic Service, all subscription, service and user fees, if any, that the Company charges for the Electronic Service.
- 3.24 The Customer represents, warrants and confirms that:
- i. the Customer will make and rely on its own judgment in relation to any Financial Futures transaction;
  - ii. in relation to each Financial Futures transaction that the Customer proposes entering into, the Customer has been informed, or is fully aware, of the volatility of financial condition, creditworthiness and prospects as well as the financial, tax, accounting, legal and other aspects of the relevant merits and risks, and that the Customer is not relying on the advice, views or opinion of the Company or any other member of the Group to which the Company belongs and has made all necessary due diligence or investigations and has obtained independent tax, accounting, legal and other professional advice in this respect to the satisfaction of the Customer; and
  - iii. the Customer has taken its own independent review of each Financial Futures transaction and has obtained professional advice as it deems appropriate in order to determine that each Financial Futures transaction is entirely consistent with its financial needs, objectives

and conditions and investment horizon, and is fit, proper and suitable for it, despite any risk in connection with its entry into such transaction, and that the Customer has been advised by the Company or any person acting on behalf of the Company to obtain independent professional advice if required or appropriate.

3.25 The Customer acknowledges that the Company is bound by Rules of Hong Kong Exchange Ltd (“**HKFE rules**”) which permit HKFE to take steps to limit the positions or require the closing out of contracts on behalf of such Customers who in the opinion of the Exchange are accumulating positions which are or may be detrimental to any particular Market or Markets, or which are or may be capable of adversely affecting the fair and orderly operation of any Market or Markets as the case may be.

3.26 The Customer acknowledges and accepts that the Company does not provide “Hold Mail” services to its Customers.

#### **4 Authority**

4.1 The Customer hereby authorises the Company to purchase and sell Financial Futures for the account of the Customer in accordance with the oral instructions, either in person or by telephone, of the Customer or its Authorised Person(s) (subsequently to be confirmed in writing but the absence of such written authority shall not affect the Company’s authority to act in accordance with such oral instructions) or written instructions given by the Customer or its Authorised Person(s) by post or delivered by hand or purported to be given by the Customer or its Authorised Person(s) in such other form as from time to time accepted by the Company. The Company may act on any instructions which it believes to be from the Customer or its Authorised Person(s). Once given, instructions may only be withdrawn or amended with the Company’s consent.

4.2 The Company shall not be responsible for any delays or inaccuracies in the transmission of orders or other information due to any cause whatsoever beyond its reasonable control.

4.3 The Company shall upon the request of the HKFE or the SFC disclose the name, beneficial identity and such other information concerning the Customer as the HKFE, the SFC or other regulators relating to Foreign Futures Exchanges may require. The Customer undertakes to disclose such other information concerning itself to the Company within the time the Company specified as may be required for the Company to comply with the Rules, the SFO and/or the requirements of the HKFE and/or Foreign Futures Exchanges. The Customer irrevocably authorises the Company to make any such disclosure. In relation to transaction on HKFE, in the event that the Company fails to comply with the disclosure requirement under Rule 606(a) or Rule 613(a) of the HKFE the Chief Executive of the HKFE may require the closing out of positions on behalf of the Customer or the imposition of a margin surcharge on the positions of such Customer. Where the Customer is an individual, the Company is subject to the Hong Kong Personal Data (Privacy) Ordinance (Cap. 486) which regulates the use of personal data concerning individuals. The Company’s policies and practices relating to personal data are set out in Schedule II to this Terms of Business and the Customer acknowledges that it fully understands and accepts the provision in Schedule II to this Terms of Business.

4.4 In relation to transactions on the HKFE, the Customer acknowledges that the Clearing House may do all things necessary to transfer any open positions held by the Company on the Customer’s behalf and any money and security standing to the credit of its account with the Company to another participant of the HKFE in the event the rights of the Company as exchange participant of the HKFE are suspended or revoked.

4.5 The Company will keep information relating to the Account confidential but may without any consent from or notification to the Customer disclose any such information pursuant to court orders, provide any such information to the HKFE, the Exchange, the Foreign Futures Exchange, the SFC or any other authorities (including overseas regulatory authorities, governmental agencies and organizations) to comply with their requirements or requests for information, and to any Associates, professional advisers, auditors, third party service providers of the Company on a need basis.



## **5 Delivery**

The Customer shall promptly deliver any monies, securities, financial instruments, documents or other commodities or property deliverable by it under any Contract in accordance with any instructions given by the Company to meet margin calls and demands for Variation Adjustments applicable to any HKFE transaction or to meet margin requirements applicable to any Foreign Futures Exchanges.

## **6 Margin and Deposit**

- 6.1 The Customer agrees to maintain such collateral and/or margin as the Company may from time to time at the discretion of the Company require. Except as permitted by the Rules or for the purpose of closing out the Customer's open positions or as the Exchange may from time to time require, generally or otherwise, the Company shall not transact for the Customer until and unless the Company has received from the Customer collateral adequate to cover the Customer's expected trading liabilities, and margins. All margin requirements must be settled in cash except as otherwise agreed by the Company. The Customer also agrees to pay immediately on demand any amount owing with respect to any of the Customer's Accounts. Against a position in any commodities, prior to the maturity thereof, the Customer will give the Company instructions to cover the liability in respect of such position or furnish the Company with all necessary delivery documents, and in default thereof, the Company may without demand or notice cover the liability in the manner deemed most appropriate by the Company, or if an order to buy in such contracts cannot be executed under prevailing conditions, the Company may take any other action the Company shall deem appropriate. The Customer understands that the Customer will be responsible for all the expenses of the Company in connection with the above and that the Company will not be liable for any loss that may thereby be incurred.
- 6.2 The proper initial and maintenance margin, as determined by the Company at the sole discretion of the Company, will be maintained by the Customer in any and all Accounts the Customer may at any time maintain with the Company. If the Company determines that additional margin is required, the Customer agrees to deposit with the Company such additional margin upon demand. The Company may change margin requirements and procedures at the sole discretion of the Company and at any time. No previous margin shall establish any precedent and these requirements and procedures once established may apply to existing as well as new positions.
- 6.3 The Customer shall on demand or within the time specified by the Company or the Correspondent Broker pay to or deposit with the Company as margin and/or Variation Adjustments for account or accounts of the Customer with the Company such amount of money, and/or other property as contemplated in Clause 5, as the Company may from time to time in its absolute discretion require, together with such documents as the Company may in its absolute discretion require it to exercise its rights in connection therewith. In relation to transactions on the HKFE, the Company may be required to report to the HKFE and the SFC particulars of all open positions in respect of which two successive margin calls and demands for Variation Adjustments are not met within the period specified by the Company. The Company may require more margin or Variation Adjustments than that specified by the HKFE and/or the Clearing House and may close out open positions in respect of which any margin calls or demands for Variation Adjustments are not met within the period specified by the Company or at the time of making such call(s) or demand(s).
- 6.4 The Company may from time to time, without prior notice to the Customer, transfer all or any part of any money or other property held by the Company for the account of the Customer between Accounts of the Customer with the Company or to any account with a clearing or non-clearing member of the HKFE as it may at its sole discretion consider to be necessary or desirable in order to meet any margin requirement of the Customer. The Company shall notify the Customer upon making any such transfer.
- 6.5 Any documents or other property held by the Company as security for any margin, deposit or other

obligation of the Customer to the Company shall be held by it by way of pledge unless it is held expressly subject to some other security arrangement.

## **7 Fees and Charges**

- 7.1 The Customer shall pay to the Company the commission and exchange fees prescribed by the HKFE or any Foreign Futures Exchange for Financial Futures contracts and such other remuneration, interest, bank charges, transfer fee, nominee and custodial expenses and fees as may be charged by the Company in respect of any transactions entered into pursuant to this Terms of Business in accordance with the commission and fee leaflet of the Company provided to the Customer (as may be amended and notified by the Company to the Customer from time to time).
- 7.2 Every HKFE Contract shall be subject to the charge of a Compensation Fund levy and a levy pursuant to the SFO and both levies shall be borne by the Customer.
- 7.3 The Customer acknowledges and agrees that in the case that the Company acts for the Customer in the exercise of investment discretion, subject to Market Requirements, the Company may receive goods or services (i.e. soft dollars) from a Correspondent Broker appointed by the Company in consideration of directing transaction business on behalf of the Customer to the Correspondent Broker, and the Company may receive and retain cash or money rebates in relation to the Customer's transactions. Any transactions undertaken or services acquired by the Company in relation to any Account that involve payments from the property of the Customer held by the Company directly or indirectly to a person connected with the Company shall be undertaken on terms no less favourable than those generally available in the market and in the best interests of the Customer.
- 7.4 Subject to mutual agreement between the Customer and the Company, no interest shall be payable to any credit balances on the Account. Notwithstanding so, if the credit balance of the Customer held in the account is in a foreign currency upon which a negative interest rate is imposed and thereby reduces the value of the Account, the Company may impose charges on the account at such rate as the Company may from time to time notify the Customer in writing. The Customer shall pay interest on all debit balances on the Account (including any amount otherwise owing to the Company at any time) at such rates and on such other terms as the Company notifies the Customer from time to time. Such interest shall accrue on a day-to-day basis and shall be payable on the last day of each calendar month or upon any demand being made by the Company. Overdue interest shall be compounded monthly and shall itself bear interest, or calculated on the basis which is from time to time notified to the Customer by the Company.

## **8 Payments**

- 8.1 All payments pursuant to this Terms of Business or otherwise in connection with any Financial Futures transaction shall be made in immediately available funds (or other funds determined by and acceptable to the Company at its absolute discretion) in such currency as the Company may in its absolute discretion require, on the due date of such payment and be exclusive of any deductions or withholding.
- 8.2 If the Customer defaults in the payment on the due date of any sum due hereunder to the Company, the Customer shall on demand pay interest. Such interest shall accrue on a day-to-day basis and shall be payable on the last day of each calendar month or upon any demand being made by the Company. Overdue interest shall be compounded monthly and shall itself bear interest, or calculated on the basis which is from time to time notified to the Customer by the Company. The Customer will, in addition, reimburse the Company on demand for all expenses which may be incurred by the Company in protecting any of its rights, or in suing for or recovering any sum due to it in respect of any Financial Futures transaction effected by it for the Customer.

## **9 Contract Notes and Statements**

- 9.1 The Company shall within the period from time to time specified under the SFO or the subsidiary

legislation related thereto or the rules of any Exchange as amended from time to time, send to the Customer copies of the contract note relating to any transactions effected by the Company for the Account. The Company shall dispatch the copy of the contract note and/ or statement to the Customer at the last e-mail address and/ or mailing address on record with the Company. The Customer shall upon receipt of the contract note and/ or statement examine the same and to promptly give notice to the Company if the Customer considers that any details stated therein are incorrect in any respect. If the Company does not receive any written objection from the Customer within the period stipulated in a contract note and/ or statement for this purpose, the Customer shall be deemed to have accepted all the transaction details contained as true and accurate in all respects.

## **10 Events of Default**

10.1 The following events shall be Events of Default for the purposes of this Terms of Business:

- i. in respect of any Contract, the Customer fails to observe or perform on its due time and date any provision thereof (including, without prejudice to the generality of the foregoing, any provision of this Terms of Business), or in respect of any other agreement or transaction between the Customer and the Company, the Customer fails to observe or perform on its due date any provision thereof or the Customer assigns or purports to assign the whole or any part of the benefit of any Contract; or
- ii. the Customer (in the case of an individual) dies, or is judicially declared insane or incompetent, or has filed a petition in bankruptcy or, (in the case of a corporate) is insolvent or, (in the case of a partnership) is dissolved or enters into an arrangement or composition for the benefit of its creditors or ceases or threatens to cease to make payment of its debts; or
- iii. an encumbrancer takes possession or a receiver, trustee or other similar officer is appointed in respect of any part of the Customer's undertaking, assets or revenues or a distress, execution or other process is levied or enforced or sued out upon or against any property of the Customer and is not removed, discharged or paid out in full within 7 days; or
- iv. an administrator, liquidator or similar officer is appointed or an administration order made with respect to the Customer or the whole or any part of the Customer's assets or business; or
- v. any money or security deposited as margin by the Customer shall be determined by the Company at its sole discretion to be inadequate having regard to the value of Contracts entered into, or proposed to be entered into, by the Customer; or
- vi. there shall, without the prior written consent of the Company, be a debit balance on any Account of the Customer with the Company; or
- vii. the occurrence of any event which, in the sole opinion of the Company, might jeopardise any of the Company's rights under this Terms of Business.

10.2 Without prejudice to any other rights or remedies which the Company may have, if any of the Events of Default shall occur, without prior demand, call or notice to the Customer:

- i. The Company shall be entitled to immediately close the Account;
- ii. The Company shall be entitled to terminate all or any part of this Terms of Business;
- iii. The Company shall not, pending remedy thereof, be obliged to pay over any sum or deliver any assets held by way of security to the Customer in respect of any Financial Futures transaction;

- iv. The Company shall be entitled to suspend performance of any of its obligations to the Customer howsoever arising and whether under any Contract or otherwise, including the payment of any sum or sums of money then due or which might thereafter become due and cancellation of all outstanding orders or contracts, until such time as the Customer has fully complied with all its obligations to the Company;
- v. The Company shall be entitled at any time after the occurrence of any Event of Default to close out all or any existing Contracts in such manner as it considers necessary or desirable having regard to the Rules and any other applicable laws, rules and regulations notwithstanding that the settlement date(s) thereof shall not have arrived and to take such other steps as it may consider necessary to protect its interests, but in no circumstances shall the Company be under any obligation to exercise any of such rights or, if it does exercise any of such rights, to do so at a time or in a manner beneficial to the Customer;
- vi. Subject to applicable laws, rules and regulations, the Company may sell or sub-pledge any securities, financial instruments, documents or other property held by it under this Terms of Business as it may deem appropriate in order to discharge any obligations of the Customer to the Company; and
- vii. The Company may combine, consolidate and set-off any or all accounts of the Customer in accordance with Clause 14.

All amounts due or owing by the Customer to the Company under this Terms of Business shall become immediately due and payable if an Event of Default occurs. Any demand, call or notice given by the Company to Customer prior to its exercise of any rights under this Clause shall not be construed as a waiver of the right of the Company to exercise its rights under this Clause without prior notice.

## **11 Termination**

- 11.1 Either party may terminate this Terms of Business at any time by giving the other party no less than 5 Business Days' notice in writing.
- 11.2 The Company may also terminate this Terms of Business upon the occurrence of any one or more of the following events:
  - i. the withdrawal or non-renewal upon expiry (or when called upon to do so) of the Standing Authority (Client Money) and/or Standing Authority (Client Securities) (as applicable) given by the Customer to the Company; or
  - ii. where the Customer no longer maintains any Account with the Company or where the Company no longer provides any services to the Customer by virtue of Clause 11.6.
- 11.3 Termination under this Clause is without prejudice to any other provisions of this Terms of Business and shall not affect:
  - i. any Contracts or Financial Futures transactions entered into by the Company pursuant to this Terms of Business before the termination;
  - ii. any accrued rights or liabilities of any of the parties to this Terms of Business which may already have arisen;
  - iii. any warranties, representations, undertakings and indemnities given by the Customer;
  - iv. any rights of the Company over any of the Customer's property in the possession or control of the Company whether the same be held for safe custody, margin or otherwise and

whether pursuant to this Terms of Business or otherwise so long as there are any outstanding liabilities of the Customer to the Company; and

- v. the rights or liabilities of either party to this Terms of Business arising out of or in connection with any outstanding orders or open Contracts at the time of such termination whether as to margin, commissions, expenses, indemnity or otherwise whatsoever or howsoever in accordance with the terms of this Terms of Business until all such Contracts have been closed out or settlement and/or delivery has been effected and all such liabilities have been fully discharged.

In the event the notice of termination from the Customer is actually received by the Company beyond the notice period mentioned in Clause 11.1, service of notice of termination by the Customer shall not affect any Contracts or Financial Futures transactions entered into pursuant to this Terms of Business before the expiration of one (1) Business Day after the actual receipt of by the Company of the termination notice. Notwithstanding anything in this Terms of Business, the Company may at its full discretion, reasonably exercised, immediately cease or refuse to carry out or execute any order or orders of the Customer (a) upon receipt of a termination notice from the Customer and/ or (b) upon issuance of a termination notice by the Company to the Customer; as the case may be, both notwithstanding that the notice period in Clause 11.1 has not expired.

11.4 Upon termination of this Terms of Business, all amounts due or owing by the Customer to the Company under this Terms of Business shall become immediately due and payable. The Company shall cease to have any obligations to purchase or sell Financial Futures on behalf of the Customer in accordance with the provisions of this Terms of Business, notwithstanding any instructions from the Customer to the contrary.

11.5 The Company may suspend the services to the Customer in relation to or under the Account without prior notice

- i. where the Account has recorded no trading activity for a continuous period of 12 months;
- ii. in the event of system failure, force majeure, suspicion of money laundering terrorist financing and/or other illegal activities through the Contracts, any Financial Futures transactions and/or the use of the Account; and/or
- iii. where requirements of court orders, applicable laws and regulations, regulatory authorities, investigation by any competent authority or the Company for legal and regulatory compliance purpose warrant such suspension.

11.6 The Company may terminate the services to the Customer in relation to or under the Account without prior notice where the Account has recorded no trading activity for a continuous period of 18 months.

## **12 Notice and Communications**

12.1 All notices, reports, statements, confirmations and other communications shall be in written or electronic form (if applicable) which may be personally delivered or transmitted by post, facsimile or e-mail, if to the Customer, at the address, facsimile number or e-mail address given in the Account Opening Forms or at such other address, facsimile number or e-mail address as shall be designated by the Customer in a written notice to the Company; and if to the Company, at its address at such office of the Company as the Company may from time to time select and notify to the Customer.

12.2 All such notices, reports, statements, confirmations and other communications shall be deemed to have been duly served:

- i. at the time of delivery or transmission, if delivered personally, by facsimile or by e-mail; or
- ii. 2 Business Days after the date of posting, if sent by local mail; or

iii. 5 Business Days after the date of posting, if sent by overseas mail.

12.3 The Customer acknowledges that telephone calls between the Customer and the Company may be recorded and that the record may be used as final and conclusive evidence of the instructions in the case of disputes.

### **13 Assignment**

13.1 The Customer may not assign any rights under this Terms of Business without the prior written consent of the Company. Where applicable, the Customer's rights arising under each Contract and Financial Futures transaction shall be subject to all rights, liabilities and obligations arising out of the application of this Terms of Business to every other transaction entered into by the Customer with the Company.

13.2 The Customer agrees that the Company may transfer and assign its rights and obligations under this Terms of Business (including any Contract to which the Company is a party) without the Customer's consent.

### **14 Consolidation of Customer's Accounts and Set-Off**

14.1 The Company shall be entitled but not obliged at any time without notice, to the extent permitted by applicable law, rules and regulations, either for itself or as agent for its Associate, to combine and/or consolidate any or all of the Customer's accounts of any nature and either individually or jointly with others with the Company or any Associate, and liabilities to the Company and/or any Associate.

14.2 Without prejudice to any other right that the Company may have, whether at law or otherwise and to the extent permitted by applicable law, rules and regulations, it may set-off, transfer or apply any money, securities or other property in any of the accounts referred to in Clause 14.1 above and/or any amounts owing by the Company to the Customer under any Contract or otherwise howsoever to satisfy obligations or liabilities of the Customer to the Company and/or any Associate whether such obligations and liabilities are due and payable, actual or contingent, primary or collateral, secured or unsecured, or joint or several.

14.3 Any security given to the Company by the Customer for any purpose shall extend to any amount owing from the Customer to the Company after exercise of any right of set-off, combination/consolidation or transfer referred to in Clauses 14.1 and 14.2 above.

### **15 Currency**

15.1 The Company may, without prior notice to the Customer, make any currency conversions it considers necessary or desirable for the purposes of complying with its obligations or exercising its rights under this Terms of Business or any Contract. Any such conversions shall be effected by it in such manner and at such rates as it may at its discretion determine having due regard to the prevailing rates for freely convertible currencies.

15.2 All foreign currency exchange risk arising from any Contract or from the compliance by the Company with its obligations or the exercise by it of its rights under this Terms of Business shall be borne by the Customer.

### **16 Omnibus Account**

In the case that the Customer operates an omnibus account and is not an exchange participant of the HKFE, the Customer shall, in relation to transactions on the HKFE:

i. in the Customer's dealing with the person(s) from whom the Customer receives instructions

with respect to the omnibus account, comply with and enforce the margin, Variation Adjustment and Interest Rate Cash Adjustments requirements and procedures as stipulated in the Rules and the rules of the Clearing House as though the Customer were a member of HKFE and as though the person(s) for whose account or benefit such instructions are given were clients (as defined in the Rules);

- ii. cause the Exchange Contract (as defined in the Rules) to be entered into in fulfilment of such instructions, so that there shall, in no circumstances, be any dealing with the instructions in a manner which constitutes unlawful dealing in differences in market quotations of commodities under the laws of Hong Kong or in a manner which constitutes or involves betting, wagering, gaming or gambling with respect to such items in contravention of Hong Kong laws or any other applicable laws; and
- iii. ensure that the persons from whom the Customer receives instructions comply with the margin, Variation Adjustment and Interest Rate Cash Adjustment requirements as stipulated in the Rules, with the result that as between HKFE and the Company, the Company should be responsible for ensuring that such requirements are complied with by all persons through whom instructions pass with respect to the omnibus account as if each in turn was the clients (as defined in the Rules) for whom such omnibus account was operated.

## **17 Limitation of Liability and Indemnity**

17.1 Neither the Company nor any of the other Indemnified Persons shall be liable to the Customer for any direct, indirect or consequential loss or damage (including economic loss or damage) suffered by the Customer arising out of or connected with any act or omission in relation to this Terms of Business, any Contracts or in respect of any Financial Futures transactions unless such loss or damage results from their or any of their fraud, negligence or willful default. The Customer undertakes to keep the Company (for itself and as trustee of the other Indemnified Persons) indemnified against all costs, charges, loss, claims, damages, liabilities, demands or proceedings (including, without limitation, any costs and expenses incurred in settling any claim, demand or proceeding) incurred by the Company or any of them arising out of anything done or omitted pursuant to any instruction given by the Customer or the Authorised Persons or in relation to any matters contemplated by this Terms of Business, by any of the Contracts or in respect of any Financial Futures transactions or arising out of or connected with any breach by the Customer of the Customer's obligations to the Company pursuant to this Terms of Business, any of the Contracts or in respect of any Financial Futures transactions.

17.2 In addition to any lien, right of set-off or other right which the Company may have, to the extent permitted by applicable law, rules and regulations, the Company shall be entitled at any time and without notice to the Customer to set-off the indemnity herein given or any such charge, fee or monies owing to the Company in respect of the services herein rendered against any of the Customer's account whether in Hong Kong or elsewhere notwithstanding that the credit balances on such accounts and the Customer's liabilities may not be expressed in the same currency. The Customer hereby authorises the Company to effect any necessary conversion of the currency at the Company's prevailing rate of exchange and the Customer hereby waives any rights, claims, actions or proceedings which the Customer may have against the Company for any loss or liabilities which the Customer may suffer as a consequence of the Company acting in accordance with this authorisation.

## **18 Joint and Several Liability and Successors**

18.1 Where the Customer comprises two or more individuals:

- i. the Account shall be owned by the individuals as joint tenants with the right of survivorship and each such individual shall be jointly and severally liable for all obligations under this Terms of Business;
- ii. the Company may accept instructions from, give receipts to and for all purposes deal with

any one of such individuals without notice to the other individual and the Company is not responsible for determining the purposes or propriety of an instruction the Company receives from any such individual or for the disposition of payments or deliveries among such individuals. The Company reserves the right to require written instructions from all such individuals at its discretion;

- iii. any payments made to any one of such individuals shall be a valid and complete discharge of the Company's obligations to each individual regardless of whether such payment is made before or after the death of any one of more of such individuals;
- iv. any notices and communications sent to one such individual will be deemed notice to all individuals holding the Account; and
- v. subject to the provisions of the Estate Duty Ordinance (Cap. 111), on the death of any such individual (being survived by any other such individual), this Terms of Business shall not be terminated and the interest in the Account of the deceased shall thereupon vest in and enure for the benefit of the survivor(s) (and, in the case of the death of all individuals, to the legal representative(s) of the last survivor on production of a Grant of Probate or Letter of Administration in respect of that last survivor) provided that any liabilities incurred by the deceased individual shall also be enforceable by the Company against such deceased Customer's estate. The surviving Customer(s) shall immediately give the Company written notice by registered mail to 48/F., One Exchange Square, Central, Hong Kong (Attention: Futures Division) upon any of them becoming aware of any such death.

18.2 This Terms of Business shall be binding on the Customer's heirs, executors, administrators, personal representatives, successors and assigns, as the case may be.

## **19 Amendments**

The Customer agrees that the Company may amend the terms of this Terms of Business (including but without limitation to introducing additional terms and conditions) at any time and from time to time by giving the Customer reasonable notice of the changes in writing which may be given by display in the office of the Company, posting on the Company's website or other means as the Company thinks fit. Any amendment to this Terms of Business shall take effect on expiry of such notice period and the Customer will be deemed to have accepted the amendment and the amendment shall be binding on the Customer if after the effective date of the amendment the Customer does not terminate the Account or if there is still any liability owing by the Customer to the Company in respect of the Account.

## **20 Client Identity Rules**

If the Customer effects Financial Futures transactions listed on the HKFE, whether on a discretionary or non-discretionary basis, and whether as agent or by entering into matching transactions as principal with its clients, the Customer hereby agrees that, in relation to such transaction where the Company has received an enquiry from the HKFE, the SFC and/or any other relevant regulatory or supervisory authority, exchange or clearing house (the "**Hong Kong regulators**"), the following provisions shall apply.

20.1 Subject as provided below, the Customer shall, immediately upon request by the Company (which request shall include the relevant contact details of the Hong Kong regulators), inform the Hong Kong regulators of its identity, address, occupation and contact details and (so far as known to the Customer) of the person with the ultimate beneficial interest in the relevant transaction. The Customer shall also inform the Hong Kong regulators of the identity, address, occupation and contact details of any other party (if different from the Customer or the ultimate beneficiary) who originated the relevant transactions.

20.2 If the Customer effected the transactions for a collective investment scheme, discretionary account or discretionary trust the Customer shall, immediately upon request by the Company (which request



shall include the relevant contact details of the Hong Kong regulators), inform the Hong Kong regulators of the identity, address and contact details of the scheme, account or trust and, if applicable, the identity, address, occupation and contact details of the person who, on behalf of the scheme, account or trust, instructed the Customer to effect the transactions.

- 20.3 If the Customer effected the transactions for a collective investment scheme, discretionary account or discretionary trust, the Customer shall, as soon as practicable, inform the Company when the Customer's discretion to invest on behalf of the scheme, account or trust has been overridden. In the case where the Customer's investment discretion has been overridden, the Customer shall, immediately upon request by the Company (which request shall include the relevant contact details of the Hong Kong regulators), inform the Hong Kong regulators of the identity, address, occupation and contact details of the person(s) who has or have given the instruction in relation to the transactions.
- 20.4 If the Customer is aware that its client is acting as intermediary for its underlying clients, and the Customer does not know the identity, address, occupation and contact details of the underlying client for whom the transactions was effected, the Customer confirms that:
- i. it has arrangements in place with its client which entitle the Customer to obtain the information set out in Clauses 20.1 and 20.2 from its client immediately upon request or procure that it be so obtained; and
  - ii. it will, on request from the Company in relation to a transaction, promptly request the information set out in Clauses 20.1 and 20.2 from the client on whose instructions the transactions were effected, and provide the information to the Hong Kong regulators as soon as received from its client or procure that it be so provided.
- 20.5 The Customer declares, warrants and represents that, where necessary, it has obtained all relevant consents or waivers from clients, collective investment schemes, discretionary accounts or discretionary trusts for whose account transactions may be effected to release information to the Hong Kong regulators of the identity and contact details of such clients, collective investment schemes, discretionary accounts or discretionary trusts, and of the person(s) with the ultimate beneficial interest in any such transactions, and (if different from the client/ultimate beneficiary) of the person(s) who originated the transactions.
- 20.6 Where the Customer is in or subject to a jurisdiction with any secrecy laws, the Customers confirms that it waives the benefit of all such secrecy laws in relation to the terms of this Terms of Business, including, without limitation, any enquiry by any Hong Kong regulator contemplated in this Clause 20, to the fullest extent permitted by the laws of such jurisdiction.
- 20.7 The provisions of this Clause shall continue in effect notwithstanding the termination of this Terms of Business.

## **21 Client Securities Rules and Client Money Rules**

- 21.1 If the Customer gives or has given any standing authority to the Company to deal with any money and/or securities (including, without limitation, securities held by the Company as margin) from time to time received or held by the Company on behalf of the Customer and/or deposit such securities with any Clearing House or Correspondent Broker, the following terms will apply where the Customer has been classified by the Company as an Institutional Professional Investor, and the Company shall treat any such standing authority as continuing and it shall remain in effect unless and until specifically revoked by the Customer in writing.
- 21.2 Without prejudice to any other right or remedy which the Company may have, the Customer agrees that the Company may dispose, or initiate a disposal of any securities received or held by the Company on behalf of the Customer in the course of conduct of any regulated activity for which it is registered, in settlement of any liability owed by the Customer or on behalf of the Customer to the

Company or any third party.

- 21.3 The Customer agrees that the Company may retain any interest over any money from time to time received or held by the Company on behalf of the Customer and deal with such interest to the fullest extent permitted by applicable laws, rules and regulations.

## **22 Compliance with the Laws, etc.**

- 22.1 The Customer undertakes to the Company that the Customer will not engage or attempt to engage, and that the Customer has proper safeguards in place to prevent the Customer from engaging, in any activity which may constitute market misconduct under the SFO and further agrees to inform the Company immediately if the Customer becomes aware of any activity by any person that may result in the Customer being involved in market misconduct.

- 22.2 In addition to Clause 4.5, the Customer agrees to provide to the Company and consents to the collection and processing by the Company of any authorisations, waivers, forms, documentation and other information, relating to its status (or the status of its direct or indirect owners or accountholders) or otherwise required to be reported, under FATCA ("**FATCA Information**"). The Customer further consents to the disclosure, transfer and reporting of such FATCA Information to any relevant government or taxing authority, any Group Company, any sub-contractors agents, service providers or associates of the Company or Group Company, and any person making payments to the Company or any Group Company, including transfers to jurisdictions which do not have strict data protection or similar laws, to the extent that the Company reasonably determines that such disclosures, transfer or reporting is necessary or warranted to facilitate compliance with FATCA. The Customer agrees to inform the Company promptly, and in any event, within 30 days in writing if there are any changes or amendments to the information supplied to the Company from time to time. The Customer warrants that each person whose FATCA Information it provides (or has provided) to the Company has been notified of and agreed to, and has been given such other information as may be necessary to permit, the collection, processing, disclosure, transfer and reporting of their information as set out in this paragraph.

- 22.3 The Customer acknowledges that the Company may take or refrain from taking any action the Company reasonably determines it is required by FATCA to take or refrain from taking, including without limitation closing, transferring or blocking its Account.

## **23 Rights of Third Parties**

- 23.1 Notwithstanding the Contracts (Rights of Third Parties) Ordinance (Cap. 623), this Terms of Business is personal to and is made solely for the benefit of the parties to them and shall not create or give any rights to or purport to confer any benefits on any third parties whatsoever. The application of the Contracts (Rights of Third Parties) Ordinance giving to or conferring on third parties the right to enforce any term of this Terms of Business is expressly excluded and no term of this Terms of Business is, or is intended to be, enforceable by any person not being a party to them. Notwithstanding the foregoing in this Clause 23.1, third party rights under this Terms of Business shall be enforceable by our parent company, China Merchants Securities Co., Ltd. ("**CMS**"), and/or an entity which is a wholly-owned subsidiary of CMS in accordance with the Contracts (Rights of Third Parties) Ordinance. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Terms of Business, or any term of this Terms of Business, is not subject to the consent of any third party (including CMS and/or any of the wholly-owned subsidiaries at all times). The term "subsidiary" shall have the same meanings as in section 15 of the Companies Ordinance (Cap. 622) as amended from time to time.

## **24 Governing Law**

- 24.1 This Terms of Business and all rights, obligations and liabilities hereunder shall be governed by and construed in accordance with the laws of Hong Kong and may be enforced in accordance with the laws of Hong Kong.

## **25 Arbitration**

- 25.1 At the sole option of the Company and in its absolute discretion, any dispute, controversy or claim arising out of or relating to this Terms of Business, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Hong Kong International Arbitration Centre Administered Arbitration Rules (“**Rules**”) in force at the time when the Company notifies the Customer that the relevant breach, termination or invalidity shall be settled by arbitration as may be amended by the rest of this Clause. The appointing authority shall be the Hong Kong International Arbitration Centre (“**HKIAC**”). The place of arbitration shall be in Hong Kong at the HKIAC. There shall be only one arbitrator. The language to be used in the arbitral proceedings shall be English.
- 25.2 Notwithstanding the above, the Customer, with an alleged claim amount up to HK\$500,000, shall be able to elect for any such disputes to be managed and resolved under the Financial Dispute Resolution Scheme administered by the Financial Dispute Resolution Centre Limited.

## **26 Others**

- 26.1 Each term of this Terms of Business is severable and distinct from the others. If any term in this Terms of Business is inconsistent with any present or future law, rule or regulation of the HKFE, the Clearing House or any authority having jurisdiction over the subject matter of this Terms of Business, such provision shall be deemed to be rescinded or modified in accordance with any such law, rule or regulation. In all other respects, this Terms of Business shall continue and remain in full force and effect.
- 26.2 Time shall in all respect be of essence in the performance of all of the Customer’s obligations under this Terms of Business.
- 26.3 A failure or delay in exercising any right, power or privilege in respect of this Terms of Business by the Company will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or future exercise of that right, power or privilege.
- 26.4 The Customer acknowledges and agrees that the legality, validity and enforceability of this Terms of Business and the provisions and Schedule(s) of this Terms of Business will not be affected whatsoever in the event of any misspelling and/or typing errors.
- 26.5 The terms of this Terms of Business shall be subject to Market Requirements and nothing in this Terms of Business shall remove, exclude or restrict any rights of the Customer and any obligations of the Company under Market Requirements.
- 26.6 The Customer agrees to pay any taxes, duties, impositions or charges payable to any relevant authorities in respect of the Customer’s residing or any of its activities outside Hong Kong and the execution of any of its Instructions.

## **27 Risk Disclosure and Disclaimer**

- 27.1 The Customer declares and acknowledges that the Customer has been fully explained to the Risk Disclosure Statements annexed as Schedule III to this Terms of Business and has been invited to seek independent legal and financial advice in relation to the matters as more particularly set out in the Risk Disclosure Statements. The Customer further declares that the Customer has carefully read the Risk Disclosure Statements and fully understands and accepts the contents of the same and agrees to be bound by the same.

## **28 Language**

- 28.1 The Customer acknowledges the following:

- i. this Terms of Business is written in the English language and the Chinese version is its translation;
- ii. the English language version is the only binding version and will prevail in the event of any inconsistency or conflict with the Chinese translation;
- iii. the Chinese translation is provided for convenience only and by signing the Account Opening Forms accepting and agreeing to be bound by this Terms of Business, the Customer will be bound by the English version of this Terms of Business;
- iv. whilst every effort has been made by the Company to provide an accurate Chinese translation of this Terms of Business, the Company makes no warranty or representation regarding the accuracy or reliability of the Chinese translation; and
- v. the Company has alerted the Customer that if the Customer is in any doubt as to the meaning of the English version of this Terms of Business or the accuracy of its Chinese translation, the Customer should seek independent advice before signing the Account Opening Forms.

28.2 The Customer agrees that to the extent permitted by applicable law, the Company shall not be liable for any inaccuracy or inconsistency between the English language version of this Terms of Business and its Chinese translation.

## SCHEDULE I

### TERMS AND CONDITIONS OF ELECTRONIC SERVICE

Where the Customer has in writing requested the Company to provide or has applied to the Company for the use of Electronic Service, the Customer shall have agreed to and otherwise shall be deemed to have agreed to these terms and conditions. In any event, where the Company makes available its Electronic Service to the Customer for use, this is done on and subject to these terms and conditions, which shall be binding on both the Customer and the Company.

#### 1 Interpretation

1.1 Terms defined in this Terms and Conditions of Electronic Service have the same meanings as those defined in this Terms of Business unless stated otherwise.

1.2 The following expressions shall, unless the context requires otherwise, have the following meanings:

**“Instruction Acknowledgement”** means, in relation to an instruction, whether to buy or sell Financial Futures or to amend or cancel another prior instruction, means an acknowledgement by the Company of receipt of those instructions.

**“Login ID”** means the Customer’s identification, used in conjunction with the Password, to gain access to the Electronic Service.

**“Electronic Service”** means the electronic trading facility provided by the Company through the Electronic Service which enables the Customer to give electronic instructions to purchase, sell and otherwise deal in Financial Futures, and to obtain quotations and other information via computer or telephonic transmission for use on compatible personal, home or small business computers, including internet appliance with modems, terminals or network computers that can connect to a telecommunication network, which includes “CMF-Net” or such other electronic platforms as may be designated by the Company from time to time.

**“Information”** means any transaction data, bid and ask quotations, news reports, third party analysis’ reports, research and other information relating to securities and the securities markets.

**“Password”** means the Customer’s password, used in conjunction with the Login ID, to gain access to the Electronic Service.

1.3 References to **“Instructions”** in this Terms of Business is deemed to include such electronic instructions given by means of the Electronic Service.

1.4 **“Contract Notes and Statements”** and **“Notice and Communications”** referred to in Clauses 9 and 12 of the Notice respectively may be sent solely by means of Electronic Service if the Customer so consents and such consent can be given initially as indicated in the Account opening application documents or subsequently by Electronic Service.

#### 2 Using Electronic Service

2.1 On the issuance by the Company to the Customer of its Login ID and Password, the Electronic Service shall be activated and the Company will notify the Customer of such activation.

2.2 The Customer agrees:

- i. that it shall use the Electronic Service only in accordance with this Terms and Conditions of Electronic Service and this Terms of Business;

- ii. that it shall only permit its authorised users as notified to the Company from time to time to use the Electronic Service;
- iii. that it shall be responsible for the confidentiality and use of its Login ID and Password. It shall not disclose or in any way publicize its Login ID and Password, and shall change the Password frequently, and if it wishes to record the Password in any manner, it shall carefully arrange for the proper manner of record and shall not allow others to easily identify the Password;
- iv. that it shall avoid using such characters or numbers for the Password which relate to its personal data, such as its contact number or identity card number;
- v. that it shall be solely responsible for all instructions entered through the Electronic Service using its Login ID and Password and any instructions so received by the Company shall be deemed to be made by the Customer at the time received by the Company and in the form received;
- vi. that it shall immediately inform the Company in writing if it becomes aware of any loss, theft or unauthorised use of its Login ID or Password;
- vii. that the Company has the right to suspend the Electronic Service if an incorrect Login ID and Password are entered on more than 3 occasions;
- vii. if the Customer uses the Electronic Service that the Customer accesses by computer, the Customer agrees to provide the Company with the Customer's e-mail address, to promptly provide the Company with any changes to the Customer's e-mail address and to accept electronic communications from the Company at the e-mail address the Customer specified;
- viii. that it shall be bound by any consent the Customer gives through the Electronic Service for the Company to provide any notices, statements, trade confirmations and other communications to the Customer solely through Electronic Service;
- ix. that it shall avoid using any computer which is shared with others to log-on the Electronic Service, and it shall logoff the Electronic Service immediately following the completion of each Electronic Service session; and
- x. that it shall not leave its computer when it is using the Electronic Service.

2.3 Upon such receipt of instructions from a Customer, the Company shall send an Instruction Acknowledgement.

The Customer agrees that its receipt of an Instruction Acknowledgement is not a guarantee that its Instructions will be executed, if the Customer does not receive an Instruction Acknowledgement within 5 minutes following its entering Instructions into the Electronic Service, or if the Customer receives an Instruction Acknowledgement with any error, or if there is any breakdown in its computer or disconnection from the internet linkage when the Customers' instructions are being processed, the Customer is responsible for checking the order status via the Electronic Service and shall immediately contact the Company to confirm whether the Instructions were received and/or executed. The Customer further agrees that non-receipt by it of the Instruction Acknowledgement does not necessarily mean its Instructions will not be executed. In the event that the Customer receives confirmation from the Company that the instructions have been executed but this is not reflected in the Instruction Acknowledgement, the Customer shall still be responsible for settling the trade.

2.4 Without limiting the generality of the foregoing, the Customer acknowledges and agrees that it may not be possible to amend or cancel an instruction after it has been given through the Electronic Service and that an instruction may only be amended or cancelled if it has not been executed by the

Company. In such circumstances the Company will use its reasonable efforts to amend or cancel the instruction but, notwithstanding any receipt by the Customer of an Instruction Acknowledgement in relation to the amendment or cancellation, there is no guarantee that the amendment or cancellation will occur, and if the amendment or cancellation does not occur, the Customer shall remain liable for the original instruction.

2.5 the Customer further confirms that:

- i. if the Customer uses direct market access (“**DMA**”) services provided by the Company:-
  - (i) it has appropriate arrangements in place to ensure that its users are proficient and competent in using the system for the DMA services;
  - (ii) it understands and shall comply with the applicable regulatory requirements;
  - (iii) it has in place adequate arrangements to monitor the orders entered through the DMA services; and
  - (iv) it may only sub-delegate the DMA services to another person if the Customer is a licensed or registered person, an overseas securities or futures dealer or an overseas bank subject to the regulatory supervision, and in the case of any sub-delegation. However, the Customer shall have in place an arrangement to ensure that the orders of such person will flow through the Customer’s systems and will be subject to appropriate risk management and supervisory controls, and such person shall meet the requirements set out in sub-clauses (i) to (iii) above and a written terms and conditions shall be entered into by the Customer and such person setting out the same terms and conditions herein as the DMA services being sub-delegated; and
- ii. if the Customer uses the algorithmic trading system (“**ATS**”) provided by the Company:-
  - (i) it has a comprehensive understanding of the operations of the ATS and trading algorithms; and
  - (ii) it understands and shall comply with the applicable regulatory requirements which may arise from the use of the ATS and trading algorithms.

### **3 Provision of Information**

3.1 The Company may convey to the Customer by Electronic Service Information. The Customer may be charged a fee for the information. The Company obtains Information from Exchanges and markets and from third parties that transmit Information (collectively referred to as the “**Information Providers**”).

3.2 The Information is the property of the Company, the Information Providers or others and is protected by copyright.

The Customer shall not use the information or any part thereof other than for its own use or in the ordinary course of its own business.

3.3 The Customer agrees not to:

- i. reproduce, retransmit, disseminate, sell, distribute, publish, broadcast, circulate or commercially exploit the Information for any illegal purposes or in any manners without the express written consent of the Company and the relevant Information Provider(s);
- ii. use the Information for any unlawful purpose;
- iii. use the Information or any part thereof to establish, maintain or provide or to assist in establishing, maintaining or providing a trading floor or dealing service for trading in any securities or Financial Futures; and
- iv. disseminate the Information to third parties.

- 3.4 The Customer agrees to comply with reasonable written requests by the Company to protect the Information Providers' and the Company's respective rights in the Information and the Electronic Service.
- 3.5 The Customer shall comply with such reasonable directions as the Company may give from time to time concerning permitted use of the Information.

#### **4 Intellectual Property Rights**

- 4.1 The Customer acknowledges that the Electronic Service, and the software comprised in it, is proprietary to the Company. The Customer warrants and undertakes that it shall not, and shall not attempt to, tamper with, modify, decompile, reverse engineer or otherwise alter in any way, and shall not attempt to gain unauthorised access to any part of the Electronic Service or any of the software comprised in it. The Customer agrees that the Company shall be entitled to terminate this Terms and Conditions of Electronic Service if at any time the Customer breaches, or if the Company at any time reasonably suspects that the Customer has breached, this warranty and undertaking.
- 4.2 The Customer acknowledges that the Information or market data made available to it through the Electronic Service may be proprietary to third parties and the Customer agrees that it will not upload, post, reproduce or distribute any information, software or other material protected by copyright or other intellectual property right (as well as rights of publicity and privacy) without first obtaining the permission of the owner of such rights.

#### **5 Limitation of Liability and Indemnification**

- 5.1 None of the Company, the other Indemnified Persons, its Correspondent Brokers and the Information Providers shall be responsible for any losses, costs, expenses or liabilities suffered by the Customer resulting from circumstances beyond its/their reasonable control including, without limitation:
- i. delays, failure or inaccuracies in communications to or from the Company through telephone, electronic or other systems that are not under the Company's control;
  - ii. delays, inaccuracies or omissions in or unavailability of research, analysis, market data and other Information prepared by third parties;
  - iii. unauthorised access to communications systems, including unauthorised use of the Customer's Login ID and/or Password; and
  - iv. wars of military action, government restrictions, labour disputes or closure of or disruption to orderly trading on any market or exchange, severe weather conditions and acts of God.
- 5.2 The Customer agrees to defend, indemnify and hold the Company (for itself and as trustee of the other Indemnified Persons), the other Indemnified Persons, the other Indemnified Persons, any Correspondent Brokers and the Information Providers harmless from and against any and all claims, losses, liability costs and expenses (including but not limited to attorneys' fees) arising from the Customer's violation of the Terms and Conditions (including this Terms and Conditions of Electronic Service), applicable laws, rules or regulations, or any third party's rights, including but not limited to infringement of any copyright, violation of any proprietary right and invasion of any privacy rights. This obligation will survive the termination of this Terms of Business (including this Terms and Conditions of Electronic Service).

#### **6 Termination of Electronic Service**

- 6.1 The Company reserves the right to terminate the Customer's access to the Electronic Service or any portion of them in its sole discretion, without notice and without limitation, for any reason



whatsoever, including but not limited to the unauthorised use of the Customer's Login ID and/or Password, breach of this Terms and Conditions of Electronic Service or this Terms of Business, discontinuance of the Company's access to any Information from any Information Provider or termination of one or more agreements between the Company and Information Providers.

- 6.2 In the event of termination by the Company, each of the Information Providers and the Company shall have no liability to the Customer; provided, however, unless the termination is directly or indirectly caused by or due to any fault on the part of the Customer or its authorised users the Company will refund the pro rata portion of any fee that may have been paid by the Customer for the portion of the Electronic Service not furnished to the Customer as at the date of such termination.

## **7 Risk Disclosure**

The Customer acknowledges and accepts the risks of using the Electronic Service described below:

- 7.1 If the Customer undertakes transactions via Electronic Service, it will be exposed to risks associated with the Electronic Service system including the failure of hardware and software, and that the result of any system failure may be that its order is either not executed according to its instructions or is not executed at all;
- 7.2 Due to unpredictable traffic congestion and other reasons, Electronic Service may not be reliable and that transactions conducted via Electronic Service are subject to delays in transmission and receipt of its instructions or other Information, delays in execution or execution of its Instructions at prices different from those prevailing at the time its Instructions were given, transmission interruption or blackout, risks of misunderstanding or errors in communication, and that it may not be possible to cancel an Instruction after it has been given. The Company accepts no responsibility for any loss which may be incurred by the Customer as a result of such interruptions or delays or access by third parties. The Customer should not place any instruction with the Company over the Electronic Service if the Customer is not prepared to accept the risk of such interruptions or delays; and
- 7.3 Market data and other Information made available to the Customer through our Electronic Service may be obtained by the Company from third parties. While the Company believes such market data or information to be reliable, neither the Company nor any such third party guarantees the accuracy, completeness or timeliness of any such market data or Information, and the Company shall not be responsible for any losses suffered by the Customer as a result any such inaccuracy, incompleteness or delay.

## **8 General**

- 8.1 In the event of any dispute between the parties, the Customer agrees that the records of the Company (including electronic records) shall prevail.
- 8.2 In the case where the Company has entered into a licensing agreement with the Stock Exchange Information Service Limited ("SEIS"), the Customer authorises the Company to provide information on the Electronic Service supplied to the Customer hereunder to SEIS, to enable the Company to comply with its obligations under the licensing agreement between SEIS and the Company relating to market data feeds.

## SCHEDULE II

### NOTICE FROM CHINA MERCHANTS FUTURES (HK) CO., LIMITED. RELATING TO THE PERSONAL DATA (PRIVACY) ORDINANCE (CAP. 486) ("PDPO")

#### 1 Supply of Data

From time to time, it may be necessary for an individual or other parties relating to that individual (e.g. a company of which the individual is a director) to provide China Merchants Futures (HK) Co., Limited (the "**Company**") with personal data (e.g. name, address, particulars of identification document, employer, income, assets, investment risk profile) in connection with or for the purpose of opening or continuation of any account with the Company or the Company's provision or continuation of service (including but without limitation to brokerage, nominee and custodian service) or credit facilities to such individual (whether solely or jointly with any other party) or any other party or compliance with any legal and/or regulatory requirements. Failure to supply such data may result in the Company being unable to open or continue the account or provide or continue the service or credit facilities to the said individual and/or other relevant party(ies) or comply with legal and/or regulatory requirements.

It is also the case that data is and will be collected from the Company's customers ("**Customers**") in the ordinary course of the continuation of the business relationship between such Customers and the Company.

#### 2 Purposes

The purposes for which data relating to an individual may be used are as follows:

- (a) the daily operation of the services and facilities provided to Customers and otherwise of the Company's business, e.g. considering account opening application, investment risk profile assessment, execution of Customers' instructions, ongoing account administration, including collection of amounts due, enforcement of security and guarantee;
- (b) carrying out new or existing client identity verification;
- (c) conducting credit checks (including without limitation upon an application for credit facilities and upon periodic or special reviews of the credit);
- (d) assisting other institutions (whether or not a member of the group of companies to which the Company belongs (the "**Group**")) to carry out new or existing client identity verification, conduct credit checks and collect debts;
- (e) ensuring ongoing creditworthiness of Customers, guarantors and security providers;
- (f) designing financial services or related products for Customers' use;
- (g) marketing services, products and other subjects as described in paragraph 4 below;
- (h) determining the amount of indebtedness owed to or by Customers;
- (i) collection of amounts outstanding from Customers and those providing security or guarantee for Customers' obligations;
- (j) transferring such data to any place outside Hong Kong for the purpose of certain process or work involved in the provision of services to Customers, including, without limitation, the outsourcing to an overseas service provider of certain functions or work process in connection with the provision of services to Customers;

- (k) matching and comparison of individuals' data (irrespective of the sources from which such data was collected, and whether collected by the Company or any other person) for the purposes of: (i) credit checking; (ii) data verification; and/or (iii) otherwise producing or verifying data which may be used for the purpose of taking adverse action against the individuals or any other person as permitted by applicable laws, rules and regulations;
- (l) any purpose relating to or in connection with compliance by the Company or other Group members with any applicable law, rule, regulation, court order or order of any regulatory, supervisory, governmental or other body or exchange or clearing house;
- (n) any purpose in connection with the business or dealings of the Company and the Group, e.g. enabling an actual or proposed assignee of the Company in respect of a transaction or an actual or proposed purchaser of shares in the Company or the Company's business or an actual or proposed participant or sub-participant or transferee of the Company's rights in respect of any Customer to evaluate the assignment, acquisition or transaction concerned and purpose in connection with corporate restructuring of the Group; and
- (m) purposes relating or ancillary to any of (a) to (m) above.

### **3 Transfer of Data**

Personal data held by the Company (whether or not provided by the individual to whom such personal data relates) will be kept confidential but the Company may provide such data to the following parties (whether within or outside Hong Kong) for the purposes set out in paragraph (2):

- (a) any agent, contractor or third party service provider, professional adviser, auditor (whether or not in Hong Kong) which provides administrative, credit information, telecommunications, computer, payment, futures clearing, printing, legal, audit or other services to the Company in connection with the operation of its business;
- (b) credit reference agencies, and, in the event of default, debt collection agencies; and
- (c) any party (including but without limitation to any governmental, regulatory, supervisory or other bodies or institutions or exchange or clearing house) to which the Company is required to provide to pursuant to any legal and/or regulatory requirement and/or order.

## SCHEDULE III

### RISK DISCLOSURE STATEMENTS AND DISCLAIMERS

**This brief statement does not disclose all of the risks and other significant aspects of trading in futures and options. In light of the risks, you should undertake such transactions only if you understand the nature of the contracts (and contractual relationships) into which you are entering into and the extent of your exposure to risk. Trading in futures and options is not suitable for many members of the public. You should carefully consider whether trading is appropriate for you in light of your experience, objectives, financial resources and other relevant circumstances.**

#### **Risk of Trading Futures and Options**

The risk of loss in trading futures contracts or options is substantial. In some circumstances, you may sustain losses in excess of your initial margin funds. Placing contingent orders, such as “stop-loss” or “stop-limit” orders, will not necessarily avoid loss. Market conditions may make it impossible to execute such orders. You may be called upon at short notice to deposit additional margin funds. If the required funds are not provided within the prescribed time, your position may be liquidated. You will remain liable for any resulting deficit in your account. You should therefore study and understand futures contracts and options before you trade and carefully consider whether such trading is suitable in light of your own financial position and investment objectives. If you trade options, you should keep yourself informed of exercise and expiration procedures and your rights and obligations upon exercise or expiry.

#### **Risk of Margin Trading**

The risk of loss in financing a transaction by deposit of collateral is significant. You may sustain losses in excess of your cash and any other assets deposited as collateral with the licensed or registered person. Market conditions may make it impossible to execute contingent orders, such as “stop-loss” or “stop-limit” orders. You may be called upon at short notice to make additional margin deposits or interest payments. If the required margin deposits or interest payments are not made within the prescribed time, your collateral may be liquidated without your consent. Moreover, you will remain liable for any resulting deficit in your account and interest charged on your account. You should therefore carefully consider whether such a financing arrangement is suitable in light of your own financial position and investment objectives.

#### **Futures**

##### **1 Effect of “Leverage” or “Gearing”**

Transactions in futures carry a high degree of risk. The amount of initial margin is small relative to the value of the futures contract so that transactions are “leveraged” or “geared”. A relatively small market movement will have a proportionately larger impact on the funds you have deposited or will have to deposit; this may work against you as well as for you. You may sustain a total loss of initial margin funds and any additional funds deposited with the firm to maintain your position. If the market moves against your position or margin levels are increased, you may be called upon to pay substantial additional funds on short notice to maintain your position. If you fail to comply with a request for additional funds within the time prescribed, your position may be liquidated at a loss and you will be liable for any resulting deficit.

##### **2 Risk-reducing Orders or Strategies**

The placing of certain orders (e.g. “stop-loss” orders, or “stop-limit” orders) which are intended to limit losses to certain amounts may not be effective because market conditions may make it impossible to execute such orders. Strategies using combinations of positions, such as “spread” and “straddle” positions may be as risky as taking simple “long” or “short” positions.

## Options

### 3 Variable Degree of Risk

Transactions in options carry a high degree of risk. Purchasers and sellers of options should familiarise themselves with the type of option (i.e. put or call) which they contemplate trading and the associated risks. You should calculate the extent to which the value of the options must increase for your position to become profitable, taking into account the premium and all transaction costs.

The purchaser of options may offset or exercise the options or allow the options to expire. The exercise of an option results either in a cash settlement or in the purchaser acquiring or delivering the underlying interest. If the option is on a futures contract, the purchaser will acquire a futures position with associated liabilities for margin (see the section on Futures above). If the purchased options expire worthless, you will suffer a total loss of your investment which will consist of the option premium plus transaction costs. If you are contemplating purchasing deep-out-of-the-money options, you should be aware that the chance of such options becoming profitable ordinarily is remote.

Selling (“writing” or “granting”) an option generally entails considerably greater risk than purchasing options. Although the premium received by the seller is fixed, the seller may sustain a loss well in excess of that amount. The seller will be liable for additional margin to maintain the position if the market moves unfavourably. The seller will also be exposed to the risk of the purchaser exercising the option and the seller will be obligated to either settle the option in cash or to acquire or deliver the underlying interest. If the option is on a futures contract, the seller will acquire a position in a futures contract with associated liabilities for margin (see the section of Futures above). If the option is “covered” by the seller holding a corresponding position in the underlying interest or a futures contract or another option, the risk may be reduced. If the option is not covered, the risk of loss can be unlimited.

Certain exchanges in some jurisdictions permit deferred payment of the option premium, exposing the purchaser to liability for margin payments not exceeding the amount of the premium. The purchaser is still subject to the risk of losing the premium and transaction costs. When the option is exercised or expires, the purchaser is responsible for any unpaid premium outstanding at that time.

Options can involve a high degree of risk and may not be suitable for every investor. You should ensure that you understand those risks before participating in the options market.

### Additional Risks Common to Futures and Options

#### 4 Terms and Conditions of Contracts

You should ask the firm with which you deal with about the terms and conditions of the specific futures or options which you are trading and associated obligations (e.g. the circumstances under which you may become obliged to make or take delivery of the underlying interest of a futures contract and, in respect of options, expiration dates and restrictions on the time for exercise). Under certain circumstances the specifications of outstanding contracts (including the exercise price of an option) may be modified by the exchange or clearing house to reflect changes in the underlying interest.

#### 5 Suspension or Restriction of Trading and Pricing Relationships

Market conditions (e.g. illiquidity) and/or the operation of the rules of certain markets (e.g. the suspension of trading in any contract or contract month because of price limits or “circuit breakers”) may increase the risk of loss by making it difficult or impossible to effect transactions or liquidate/offset positions. If you have sold options, this may increase the risk of loss.

Further, normal pricing relationships between the underlying interest and the futures, and the underlying interest and the option may not exist. This can occur when, for example, the futures

contract underlying the option is subject to price limits while the option is not. The absence of an underlying reference price may make it difficult to judge "fair value".

## **6 Deposited Cash and Property**

You should familiarise yourself with the protections given to money or other property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specific legislation or local rules. In some jurisdictions, property which had been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

## **7 Commission and other Charges**

Before you begin to trade, you should obtain a clear explanation of all commission, fees and other charges for which you will be liable. These charges will affect your net profit (if any) or increase your loss.

## **8 Transactions in Other Jurisdictions**

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

## **9 Currency Risks**

The profit or loss in transactions in foreign currency-denominated contracts (whether they are traded in your own or another jurisdiction) will be affected by fluctuations in currency rates where there is a need to convert from the currency denomination of the contract to another currency.

## **10 Issuer Risks**

The issuer of or the counterparty to a Financial Futures may not be able to fulfil its obligations under the relevant Financial Futures on any relevant due date. The value of Financial Futures is expected to be affected, in part, by investors' general appraisal of the creditworthiness of the issuer of or the counterparty to the relevant Financial Futures. Any reduction in the creditworthiness of the issuer or counterparty could result in a reduction in the value of such Financial Futures. If, for example, a bankruptcy proceeding is proposed or commenced in respect of an issuer of or a counterparty to a Financial Futures, the return to a holder of, or a party to, such Financial Futures may be limited and any recovery will likely be substantially delayed. In order to assess the risk, you should consider all information provided in the offering documents relating to the relevant Financial Futures and consult with your own independent professional advisers if you consider appropriate or necessary.

The Company is acting as an agent for you in connection with any Financial Futures transaction entered into by you under this Terms of Business with a third party. The rights and obligations under a Financial Futures transaction are exclusively between the issuer or counterparty of the relevant Financial Futures transaction and you. Accordingly, you are exposed to the credit and other risks of the issuer or counterparty of the relevant Financial Futures. The Company has not conducted, and will not conduct, due diligence on any issuer or counterparty and makes no representation whatsoever as to an issuer's or counterparty's creditworthiness or otherwise.

## **11 Trading Facilities**

Electronic trading facilities are supported by computer-based component systems for the order-routing, execution, matching, registration or clearing of trades. As with all facilities and systems, they are vulnerable to temporary disruption or failure. Your ability to recover certain losses may be subject to limits on liability imposed by the system provider, the market, the clearing house and/or participant firms. Such limits may vary: you should ask us for details in this respect.

## **12 Electronic Trading**

Trading on an electronic trading system may differ from trading on other electronic trading systems. If you undertake transactions on an electronic trading system, you will be exposed to risks associated with the system including the failure of hardware and software. The result of any system failure may be that your order is either not executed according to your instructions or is not executed at all.

## **13 Off-exchange Transactions**

In some jurisdictions, and only then in restricted circumstances, firms are permitted to effect off-exchange transactions. We may be acting as your counterparty to the transaction. It may be difficult or impossible to liquidate an existing position, to assess the value, to determine a fair price or to assess the exposure to risk. For these reasons, these transactions may involve increased risks. Off-exchange transactions may be less regulated or subject to a separate regulatory regime. Before you undertake such transactions, you should familiarise yourself with applicable rules and attendant risks.

## **14 Market Risk**

Market risk, or systematic risk, stems from the economic, geographical, political, social or other factors of the relevant market, and is affected by variables that are related to the entire market. For example, if one invests in a financial product listed in Hong Kong, this investment will be subject to the systematic risk related to the entire Hong Kong market. When any event affects the systematic risk of the market, all financial products will be impacted either in the form of a rise or fall in the prices. This will apply whether you hold one single financial product or a diversified portfolio of financial products in that market. As long as you keep your holdings, you cannot avoid being exposed to the systematic risk of the market. You should be aware that market risk cannot be eliminated, no matter how you diversify your holdings. You should seek professional advice as you think appropriate or necessary to manage (but not eliminate) market risk, and you should be careful about investing too much into a single market.

## **15 Risk of Client Assets Received or Held outside Hong Kong**

Client assets received or held by the Company outside Hong Kong are subject to the applicable laws and regulations of the relevant overseas jurisdiction which may be different from the SFO and the rules made thereunder. Consequently, such client assets may not enjoy the same protection as that conferred on client assets received or held in Hong Kong.

## **16 Emerging Markets Risk**

Special risks may be associated with transactions and investment in financial products of or related to issuers and counterparties established under the laws of, based or principally engaged in, business in emerging markets countries ("**Emerging Markets Products**"). Emerging markets countries include all countries where financial markets are less well developed than in the countries such as those of the Organisation for Economic Cooperation and Development (the "**OECD**").

The risks associated with Emerging Markets Products may arise because, among other things, there are political and economic uncertainties that are greater than in OECD countries. Additionally, some of the emerging markets countries do not have fully developed or clear legal, judicial, regulatory or settlement infrastructures, and the accounting standards may differ markedly. The markets may be far less liquid or transparent than in OECD countries. There may be other special risks and the foregoing is not intended to be a thorough and exhaustive description of all possible risks.

Transactions in Emerging Markets Products should be made only by investors with sufficient ability to appreciate the special risks, and the resources to bear any losses that may be incurred in such markets. Before making any investment in an Emerging Markets Product, you should independently satisfy yourself that you (and, if applicable, your customer) understand(s) and appreciate the significance of the relevant risks, and that such an investment is appropriate and suitable for you (or, if applicable, your customer) in light of your or their objectives, experience, financial and operational resources and other relevant circumstances. You should also ensure that you (and, if applicable, your customer) fully understand(s) the nature of the transaction, the contractual relationship into which you or they are entering and the nature and extent of your or their exposure to risk of loss.

#### **17 Disclaimers in relation to Trading of Stock Index Futures and Stock Index Options**

The following disclaimers are furnished to you, the Customer, pursuant to Regulation (020) of the Regulations for Trading Stock Index Futures and Regulation (024) of the Regulations for Trading Stock Index Options and you, the Customer, are requested to note the contents of the same.

#### **18 Disclaimers in relation to Trading of Stock Index Futures Contracts**

Hang Seng Indexes Company Limited (“**HSIL**”) currently publishes, compiles and computes a number of stock indexes and may publish, compile and compute such additional stock indexes at the request of Hang Seng Data Services Limited (“**HSDS**”) from time to time (for the purpose of this paragraph 18 only, collectively, the “**Hang Seng Indexes**”). The marks, names and processes of compilation and computation of the respective Hang Seng Indexes are the exclusive property of and proprietary to HSDS. HSIL has granted to the Hong Kong Futures Exchange Limited (for the purpose of this paragraph 18 and paragraph 19 of this Schedule only, the “**Exchange**”) by way of licence the use of the Hang Seng Indexes solely for the purposes of and in connection with the creation, marketing and trading of futures contracts based on any of the Hang Seng Indexes respectively (collectively, “**Futures Contracts**”). The process and basis of compilation and computation of any of the Hang Seng Indexes and any of the related formula or formulae, constituent stocks and factors may at any time be changed or altered by HSIL without notice and the Exchange may at any time require that trading in and settlement of such of the Futures Contracts as the Exchange may designate be conducted by reference to an alternative index or alternative indexes to be calculated. Neither the Exchange nor HSDS nor HSIL warrants or represents or guarantees to any participant or any third party the accuracy or completeness of the Hang Seng Indexes or any of them and the compilation and computation thereof or any information related thereto and no such warranty or representation or guarantee of any kind whatsoever relating to the Hang Seng Indexes or any of them is given or may be implied. Further, no responsibility or liability whatsoever is accepted by the Exchange, HSDS or HSIL in respect of the use of the Hang Seng Indexes or any of them for the purposes of and in connection with the Futures Contracts or any of them and/or dealings therein, or for any inaccuracies, omissions, mistakes, errors, delays, interruptions, suspension, changes or failures (including but not limited to those resulting from negligence) of HSIL in the compilation and computation of the Hang Seng Indexes or any of them or for any economic or other losses which may be directly or indirectly sustained as a result thereof by any participant or any third party dealing with the Futures Contracts or any of them. No claims, actions or legal proceedings may be brought by any participant or any third party against the Exchange and/or HSDS and/or HSIL in connection with or arising out of matters referred to in this disclaimer. Any participant or any third party deals in the Futures Contracts or any of them in full knowledge of this disclaimer and can place no reliance whatsoever on the Exchange, HSDS and/or HSIL. For the avoidance of doubt, this disclaimer does not create any contractual or quasicontractual relationship between any participant or third party and HSIL and/or HSDS and must not be construed to have created such relationship.

#### **19 Disclaimer in Relation to Trading of Stock Index Options Contracts**

Hang Seng Indexes Company Limited (“**HSIL**”) currently publishes, compiles and computes a number of stock indexes and may publish, compile and compute such additional stock indexes at the request of Hang Seng Data Services Limited (“**HSDS**”) from time to time (for the purpose of this paragraph 19 only, collectively, the “**Hang Seng Indexes**”). The marks, names and processes of compilation and computation of the respective Hang Seng Indexes are the exclusive property of and proprietary to HSDS. HSIL has granted to the Exchange by way of licence the use of the Hang Seng Indexes solely for the purposes of and in connection with the creation,



marketing and trading of option contracts based on any of the Hang Seng Indexes respectively (collectively, the **“Option Contracts”**). The process and basis of compilation and computation of any of the Hang Seng Indexes and any of the related formula or formulae, constituent stocks and factors may at any time be changed or altered by HSIL without notice and the Exchange may at any time require that trading in and settlement of such of the Option Contracts as the Exchange may designate be conducted by reference to an alternative index or alternative indexes to be calculated. Neither the Exchange nor HSDS nor HSIL warrants or represents or guarantees to any participant or any third party the accuracy or completeness of the Hang Seng Indexes or any of them and the compilation and computation thereof or any information related thereto and no such warranty or representation or guarantee of any kind whatsoever relating to the Hang Seng Indexes or any of them is given or may be implied. Further, no responsibility or liability whatsoever is accepted by the Exchange, HSDS or HSIL in respect of the use of the Hang Seng Indexes or any of them for the purposes of and in connection with the Option Contracts or any of them and/or dealings therein, or for any inaccuracies, omissions, mistakes, errors, delays, interruptions, suspension, changes or failures (including but not limited to those resulting from negligence) of HSIL in the compilation and computation of the Hang Seng Indexes or any of them or for any economic or other losses which may be directly or indirectly sustained as a result thereof by any participant or any third party dealing with the Option Contracts or any of them. No claims, actions or legal proceedings may be brought by any participant or any third party against the Exchange and/or HSDS and/or HSIL in connection with or arising out of matters referred to in this disclaimer. Any participant or any third party deals in the Option Contracts or any of them in full knowledge of this disclaimer and can place no reliance whatsoever on the Exchange, HSDS and/or HSIL. For the avoidance of doubt, this disclaimer does not create any contractual or quasicontractual relationship between any participant or third party and HSIL and/or HSDS and must not be construed to have created such relationship.