

TERMS AND CONDITIONS FOR FOREIGN EXCHANGE AND GOLD MARGIN TRADING SERVICE

In consideration of China CITIC Bank International Limited of 61-65 Des Voeux Road Central, Hong Kong, a registered institution under the Securities and Futures Ordinance with C.E. Number AAF138 (the "**Bank**", which expression shall include its branches and offices wherever situate, its successors and assigns) agreeing to provide foreign exchange and gold margin trading service and/or related services to the Customer (as defined below), the Customer agrees to be bound by these Terms and Conditions, the General Terms and Conditions of the Bank, the Application Form and such other terms as may be agreed between the Customer and the Bank. These Terms and Conditions are a set of Specific Terms and Conditions referred to in the General Terms and Conditions of the Bank which the Customer has agreed to be bound by.

1. Definitions and Interpretation

- 1.1 In these Terms and Conditions, the following expressions shall, unless the context requires otherwise, have the following meanings:-

"**Account Currency**" means the currency in which the Margin Account is denominated, which may be either Hong Kong Dollars ("**HKD**") or United States Dollars ("**USD**") or such other currency as agreed between the Bank and the Customer.

"**Account Statement**" means a statement (however named) from time to time issued by the Bank to the Customer setting out, among other things, details of Contracts entered into between the Bank and the Customer.

"**Application Form**" means the Foreign Exchange and Gold Margin Trading Service Application Form signed by the Customer and submitted to the Bank.

"**Authorised Person**" means:

- (a) in the case where the Customer is an individual or a sole proprietorship, the Customer himself (including the sole proprietor) and any other person appointed by the Customer as an authorised person;
- (b) in the case where the Customer comprises two or more individuals (excluding a partnership), each of such individuals and any other person appointed by the Customer as an authorised person;
- (c) in the case where the Customer is a partnership, each person appointed by the Customer as an authorised person; and
- (d) in any other case (including the case where the Customer is a limited company), each person appointed by the Customer as an authorised person.

"**Bank Reference Rate**" means the prevailing market rate for a pair of currencies determined by the Bank at the relevant time on the basis of or with reference to the information or quotation obtained by the Bank from its internal department carrying out treasury function or received by the Bank from an external information agency as the Bank may in its sole and absolute discretion select from time to time.

"**Business Day**" means a day (excluding Saturday and Sunday) on which banks are generally open for business in Hong Kong.

"**close out**" means, when used as a verb in relation to a Contract, to accelerate, terminate, liquidate or cancel such Contract, and "closed out" shall be construed accordingly.

"**Close-out Amount**" has the meaning given to it in Paragraph 8.1(b).

"Closing-out Contract"	means an Opposite Contract which shall be netted off against the relevant principal Contract by designating the same Value Date in accordance with Paragraph 6.2(a).
"Contract"	means any spot contract between the Customer and the Bank for the purchase of one currency against the sale of another currency. For the purpose of these Terms and Conditions, references to the "currency" or "currencies" may include "gold" as the context requires.
"Customer"	means the person(s) specified as such in the Application Form.
"Equity"	has the meaning given to it in Paragraph 4.3.
"gold"	means gold bullion which is commonly known as Loco London Gold bearing a currency code of "XAU", and the spot price of which is quoted on a per troy ounce basis.
"Hedging Contract"	means an Opposite Contract which hedges the relevant principal Contract and which will not be closed out and netted off against the relevant principal Contract, except pursuant to Paragraph 8 or except as otherwise expressly provided in these Terms and Conditions.
"Hong Kong"	means the Hong Kong Special Administrative Region of the People's Republic of China.
"Margin"	means (i) the principal sums standing to the credit of the Margin Account and (ii) other collaterals in such form and value acceptable to the Bank and deposited or to be deposited with the Bank, whether original, additional or otherwise, by the Customer or any other person(s) for securing performance of any obligation by the Customer in connection with all or any one or more of Contracts, which for the avoidance of doubt shall not include any interest, dividends and other benefits accrued or to be accrued to or derived or to be derived from the Margin.
"Margin Account"	means the account opened and maintained in the name of the Customer with the Bank for the purpose of the Contracts.
"One Account"	means the account opened and maintained in the name of the Customer with the Bank and designated as such in the Application Form.
"open position"	means, in respect of each outstanding Contract, the notional amount of the currency bought or sold by the Customer under such outstanding Contract. For the purpose of these Terms and Conditions, references to the "currency" or "currencies" may include "gold" as the context requires.
"Opposite Contract"	means, in respect of any Contract (" principal Contract "), a Contract which has an opposite position to the principal Contract for (i) an amount of currency bought equal to the amount of currency sold under the principal Contract or (ii) an amount of currency sold equal to the amount of currency bought under the principal Contract.
"Partial Closing-out Contract"	means a Partial Opposite Contract which shall be netted off against the relevant principal Contract in accordance with Paragraph 6.2(b).
"Partial Hedging Contract"	means a Partial Opposite Contract which hedges the relevant principal Contract and which will not be closed out and netted off against the relevant principal Contract, except in accordance with Paragraph 8 or except as otherwise expressly provided in these Terms and Conditions.
"Partial Opposite Contract"	means, in respect of any Contract (" principal Contract "), a Contract which has an opposite position to the principal Contract for (i) an amount of currency bought less than the amount of currency sold under the principal Contract or (ii) an amount of currency sold less than the amount of currency bought under the principal Contract.

"roll-over"	means, when used as a verb in relation to a Contract, to defer the settlement of the Contract, and "rolled-over" shall be construed accordingly.
"Trading Day"	means a day on which foreign exchange markets in or outside Hong Kong (as the context requires) are generally open for trading.
"Value Date"	means, in relation to a Contract, the date on which the parties are obliged (but for the provisions of these Terms and Conditions) to settle such Contract, which may be extended or otherwise designated by the Bank in the Bank's sole and absolute discretion and on such terms as the Bank deems fit.

1.2 Unless contrary indication appears, any reference in these Terms and Conditions to:-

- (a) a Paragraph or Schedule is a reference to a paragraph of, or schedule to, these Terms and Conditions and each Schedule shall form part of these Terms and Conditions;
- (b) a person includes an individual, a company, partnership or body unincorporate and its successors and assigns;
- (c) words importing the singular include the plural and vice versa and words denoting any gender includes all genders;
- (d) "including" or "includes" means including or includes without limitation;
- (e) "these Terms and Conditions" or any other agreement or document is a reference to these Terms and Conditions or other agreement or document as amended, supplemented, novated and/or replaced from time to time; and
- (f) a "party" is the party to a Contract, and "parties" shall be construed accordingly.

1.3 The headings in these Terms and Conditions are for convenience only and are to be ignored in construing these Terms and Conditions.

2. Contracts

2.1 The Bank may from time to time at the Customer's request enter into one or more Contracts with the Customer. However, nothing in these Terms and Conditions shall oblige the Bank to enter into any Contract with the Customer.

2.2 Subject to the approval of the Bank, the Customer may request the Bank to enter into any Contract having regard to the prevailing market practice and conditions in one of the following manners:-

- (a) by written or electronic instructions received by the Bank during such hours as the Bank may determine from time to time;
- (b) by telephone instructions received by the Bank at such designated telephone number during such hours as the Bank may determine from time to time;
- (c) by electronic and online instructions received by the Bank at such designated electronic and online trading facility during such hours as the Bank may determine from time to time; or
- (d) by instructions received by the Bank through such other means and during such time as the Bank may determine from time to time.

2.3 Subject to the approval of the Bank, the Customer may during such hours as the Bank may determine from time to time place with the Bank a standing order in the manner referred to in Paragraph 2.2 effective until such time as may be specified by the Customer in such standing order, or if the Customer shall fail to specify such time in the standing order, until such time as may be determined by the Bank, containing terms which sufficiently identify and authorise the Bank to enter into any Contract on certain specific terms if and when such terms are being offered by the Bank for acceptance by its customers generally. Nevertheless, the Customer agrees that the Bank may at its sole and absolute discretion refuse to accept any such standing order.

- 2.4 The Bank shall not be liable for any losses, damages, costs or claims of any nature whatsoever and however arising under or in connection with these Terms and Conditions, or resulting from failure or delay in the execution of any instruction (including standing order), breakdown or failure of any communication system or any cause beyond the control or anticipation of the Bank.
- 2.5 The Customer understands that none of the Bank's employees or representatives will accept appointment by the Customer as agent to enter into any Contract unless a separate agreement for discretionary account services is entered into between the Customer and the Bank for such purpose.
- 2.6 The Customer expressly authorises the Bank (a) to record all telephone conversations between the Customer and the Bank (or its representatives) made in the course of business or telephone instructions given by the Customer on a tape recording system operated by the Bank and (b) to otherwise record all electronic and online instructions given by the Customer. If a dispute arises at any time in relation to the content of any telephone conversation or telephone instruction, or any electronic or online instruction, then that tape recording, a transcript of such tape recording certified by an officer of the Bank or the record of such electronic or online instruction (as the case may be) shall be conclusive evidence as to the content of the telephone conversation, telephone instruction, electronic instruction or online instruction (as the case may be), unless and until the contrary is established and may be used as evidence in such dispute. The tape recording and the record of the electronic and online instructions will be stored in the Bank's system in such manner and for such period as may be required by the applicable laws, rules and regulations, and thereafter may be deleted without further notice to the Customer.
- 2.7 The Customer authorises each Authorised Person (acting severally) to give instructions (whether by telephone, by electronic means, in writing or otherwise) on behalf of the Customer to the Bank in relation to:
- (a) any request for entering into any Contract;
 - (b) any transfer of funds between One Account and Margin Account for any purpose whatsoever (notwithstanding any mandate or any other agreement relating to the relevant One Account or Margin Account); and/or
 - (c) any Contract, Margin Account and/or any matter whatsoever concerning or arising from any Contract and/or Margin Account and/or otherwise in connection with the services and/or Contracts contemplated under these Terms and Conditions.

The Bank is authorised to act on and/or carry out any instruction from time to time given or purporting to have been given by any Authorised Person.

- 2.8 Any telephone, electronic or online instruction given by the Customer or any one Authorised Person of the Customer shall be deemed to be proper, valid and binding instruction from the Customer if the personal identification number selected by or assigned to the Customer or such other personal details relating to the Customer is provided at such designated telephone number or electronic and online trading facility as the Bank may require. The Customer acknowledges that such personal identification number or personal details is/are confidential and shall at no time and under no circumstances be disclosed to any person except an Authorised Person who shall also keep the same confidential. The Customer acknowledges that there are risks of such personal identification number or personal details being abused by unauthorised persons or for unauthorised purposes and agrees to bear such risks solely and absolutely and to indemnify the Bank against all consequences arising from such risks. The Customer shall notify the Bank immediately upon notice or suspicion of such personal identification number or personal details being disclosed to any unauthorised person.
- 2.9 The Customer shall ensure that each instruction given by it or its Authorised Person to the Bank shall be clear and unambiguous. The Bank is entitled to refuse to act on any unclear or ambiguous instruction without further notice or reference to the Customer. Without limiting the foregoing, the Bank has the right, at its sole and absolute discretion, to act on any such unclear or ambiguous instruction based on the Bank's interpretation of such instruction and the Customer shall be liable for all liabilities, losses and other consequences arising from such instruction and shall indemnify the Bank for all losses and liabilities incurred by the Bank in acting on such instruction, so long as the Bank acts in good faith in acting on such instruction.
- 2.10 The Customer hereby unconditionally and irrevocably fully indemnifies the Bank and holds the Bank harmless from and against all liabilities, losses, damages, proceedings and claims in connection with, directly or indirectly, the Bank's agreeing to act and/or acting on the Customer's instructions hereunder without any inquiry as to the authority or identity of the person giving or purporting to give such instructions or the authenticity thereof, and regardless of the

circumstances prevailing at the time of and the nature of such instructions, or any error, misunderstanding, fraud, forgery or lack of clarity or authorisation in the terms of such instructions except in cases of the Bank's gross negligence or wilful default.

- 2.11 For any outstanding Contract which is a spot Contract and has not been closed out on a Trading Day, the Bank shall be authorized, without reference to any instruction from the Customer, to roll-over such Contract to the next Trading Day or to such other date as the Bank may determine in its sole and absolute discretion, until the Bank receives the Customer's instruction to close out such Contract.
- 2.12 In respect of an outstanding Contract which is rolled-over, until such Contract is closed out:-
- (a) the Customer will pay interest on the amount to be delivered by the Customer at the prevailing offered market interest rate (or "**sell rate**") as quoted and determined by the Bank;
 - (b) the Bank will pay interest, if any, on the amount to be delivered by the Bank at the prevailing bid market interest rate (or "**buy rate**") as quoted and determined by the Bank; and
 - (c) the Bank may levy handling charge on the amount to be delivered by the Bank at such rate quoted and determined by the Bank.
- 2.13 The interest or charge provided in Paragraph 2.12 shall accrue on the actual number of days elapsed under the relevant Contract on the day count basis for the relevant currency in accordance with the prevailing market practice, which is then converted into the Account Currency at the Bank Reference Rate at the time of calculation. Such interest and/or charge shall be payable at such time and in such manner as the Bank determines and the Bank shall not be obliged to pay interest to the Customer unless the Customer has duly paid all outstanding interest and charge (if any) payable to the Bank.
- 2.14 The Bank shall not be obliged to roll-over any Contract. In the event that the Bank decides not to roll-over an outstanding Contract, the Bank shall be entitled to enter into a Closing-out Contract in respect of the outstanding Contract at the Bank Reference Rate without instructions or reference to the Customer.
- 2.15 With respect to any Contract in relation to gold, the Customer does not have any rights, ownership or possession of any physical gold under such Contract. Deposits or withdrawals by physical delivery of gold to or from the Bank will not be allowed.

3. Single and Continuous Agreement

These Terms and Conditions and the General Terms and Conditions of the Bank (which are incorporated in the Application Form signed by the Customer) shall constitute a continuous agreement and shall cover all accounts which the Customer may open with the Bank from time to time with respect to the subject matter of these Terms and Conditions. Unless otherwise agreed, each Contract shall be governed by these Terms and Conditions, the General Terms and Conditions of the Bank, the Application Form and the relevant Account Statement. Each Account Statement shall be supplemental to and form a part of the agreement so constituted and shall be subject to the terms of such agreement. At all times, the agreement constituted by these Terms and Conditions, the General Terms and Conditions of the Bank, the Application Form and all Account Statements shall constitute the single and only agreement between the Bank and the Customer with respect to the subject matter of these Terms and Conditions.

4. Margin

- 4.1 The Customer shall provide to and maintain with the Bank the Margin in such amount and in such forms as the Bank, in its sole and absolute discretion, may require. The Bank may change its requirements relating to the Margin from time to time. It is the Customer's sole responsibility to maintain proper Margin as may from time to time be required by the Bank.
- 4.2 Without prejudice to the Bank's right under Paragraph 2.1, the Bank shall not be obliged to enter into any Contract proposed by the Customer or accept or execute a standing order of a Contract proposed by the Customer, unless the Margin in such amount and value as required by the Bank from time to time has been provided and maintained.
- 4.3 For the purpose of these Terms and Conditions:-

- (a) **"Equity"** means the value of the Margin plus (i) all realized gains of the Customer which have not been settled; plus (ii) all unrealized gains of the Customer on the outstanding Contracts; plus (iii) interest accrued but unpaid on the currency amounts to be delivered by the Bank to the Customer under the outstanding Contracts; less (iv) all realized losses of the Customer which have not been settled; less (v) all unrealized losses of the Customer on the outstanding Contracts; less (vi) interest accrued but unpaid on the currency amounts to be delivered by the Customer to the Bank under the outstanding Contracts; less (vii) any charge to be paid by the Customer to the Bank in respect of the currency amounts to be delivered by the Bank to the Customer under the outstanding Contracts; less (viii) (if the Bank so determines) any other sums due, owing or payable by the Customer to the Bank under these Terms and Conditions;
 - (b) the unrealized gain or loss of the Customer under any outstanding Contract shall be conclusively determined by the Bank using such mark-to-market mechanism and procedure as it deems fit having regard to the prevailing market conditions including, but not limited to, measuring the Customer's open position on the relevant Contract daily against quotes on the relevant markets considered by the Bank to be appropriate and converting the Customer's open position to such currency as may be selected by the Bank and/or any other methods the Bank deems fit;
 - (c) in calculating the Equity, the Bank may (but is not obliged to) adjust the amount of any realized or unrealized gain or loss of a Contract to its present value by discounting the same from the date of calculation to the relevant Value Date using the discount rate as determined by the Bank from time to time;
 - (d) the amounts taken into account for computation of the Margin may, where necessary, be converted into the Account Currency or such other currency as the Bank deems fit at the Bank Reference Rate at the time of calculation and the value of Margin shall exclude interest, dividends or other benefits accrued or to be accrued to or derived or to be derived from the Margin. In relation to any asset or currency comprised in the Margin (other than HKD or USD), the value of such asset or currency may be discounted by such amount or percentage as the Bank may determine in its sole and absolute discretion for calculating the value of the Margin; and
 - (e) any determination by the Bank as to the amount or value of the Equity (including Margin and each other amount used for computing the Equity) shall be conclusive and binding upon the Customer, save for manifest error. The Bank shall not be liable to the Customer in any way in connection with such determination by the Bank.
- 4.4 If at any time the Equity of the Customer (as determined by the Bank) is at or less than 3% (or such higher or lower percentage as the Bank may from time to time determine) of the aggregate open position(s) of the Customer under all outstanding Contract(s) and the standing order(s) of the Customer at such time, the Bank may (but is not obliged to) give the Customer notice of the existence of such condition. For the avoidance of doubt, it is the Customer's responsibility to check with the Bank or through the electronic or online trading facility as to whether such condition exists. The Customer shall immediately after such condition exists, whether or not it has received the aforesaid notice from the Bank, deposit and maintain or procure to be deposited and maintained with the Bank additional Margin in such form as may be acceptable to the Bank within twenty-four (24) hours or such other time limit as may be specified by the Bank and/or cancel any standing order(s) and/or close out any outstanding Contract(s) so that the Equity will be no less than the initial margin level as required by the Bank of the aggregate open position(s) of the Customer under all outstanding Contract(s) and the standing order(s) of the Customer at the relevant time.
- 4.5
- (a) If at any time the Equity of the Customer (as determined by the Bank) is at or less than 1% (or such higher or lower percentage as the Bank may from time to time determine) of the aggregate open position(s) of the Customer under all outstanding Contract(s) and the standing order(s) of the Customer at such time, the Bank shall be entitled, but not obliged, to cancel any standing order(s) and/or close out all or any one or more of the outstanding Contracts and apply, set off, sell or otherwise dispose of the Margin and any proceeds of such Contracts in such manner as the Bank deems fit without prior notice to the Customer.
 - (b) Any such close out, set-off, application, sale and/or disposal may be effected in the manner contemplated under Paragraph 6.2(a) and/or Paragraph 8.1(b), (c) and (d), as determined by the Bank. The Customer shall pay the Bank any shortfall thereunder immediately upon the Bank's demand.
 - (c) Where any such close-out is effected by entering into a Closing-out Contract as contemplated under Paragraph 6.2(a), each realized loss or gain of the Customer (subject to adjustment to its present value as determined by the Bank) shall be respectively aggregated and if the aggregate amount of realized losses of

the Customer exceeds the aggregate amount of the realized gains of the Customer, the Customer shall immediately pay to the Bank the amount of the excess. If the aggregate amount of the realized losses of the Customer is less than the aggregate amount of the realized gains of the Customer, the Bank will pay the difference between these two aggregate amounts to the Customer, but subject to the right of set-off that the Bank may have against the Customer. Any calculation of the Bank as to any amount payable under this Paragraph 4.5 shall be conclusive and binding on the Customer.

4.6 For the purposes of determining the aggregate open position(s) of the Customer under all outstanding Contract(s) and the standing order(s) in Paragraphs 4.4 and 4.5:

- (a) the Bank shall identify such outstanding Contract(s) and standing order(s) relating to the same currency pair (such outstanding Contract(s) and standing order(s) are referred to having the same “**contract type**”) and determine the “big of position” for the outstanding Contract(s) and standing order(s) of the same contract type, which is the greater of:
 - (i) the sum of the amount of currency bought for such outstanding Contracts and standing order(s); and
 - (ii) the sum of the amount of currency sold for such outstanding Contracts and standing order(s);
- (b) the aggregate open position(s) of the Customer under all outstanding Contract(s) and the standing order(s) shall be equal to the sum of the “big of position” for the outstanding Contract(s) and standing order(s) of each contract type, and converted notionally into the Account Currency at the Bank Reference Rate at the time of calculation.

5. Security

5.1 The Customer hereby (as beneficial owner) charges to the Bank by way of a first fixed charge and without prejudice to the foregoing, hereby pledges and grants to the Bank a first priority security interest in, all the Customer's right, title and interest, present and future, in and to:-

- (a) all the Margin and any interest, dividend and benefits in respect of the Margin; and
- (b) any Contract and the proceeds thereof

as security for the payment and discharge of all the Customer's present and future, joint or several, direct or indirect, actual or contingent liabilities to the Bank under these Terms and Conditions and the Contracts.

The security hereby created shall be a continuing security, shall secure the payment and discharge of the ultimate balance of the outstanding amount due to the Bank notwithstanding the bankruptcy, insolvency, liquidation, winding up or incapacity of the Customer or any change in constitution of the Customer or any party providing security to the Bank and shall not be affected by any intermediate settlement of the Customer's account or its withdrawal of its said assets or the application of its said assets by the Bank. The security hereby created is also in addition to and without prejudice to and shall not merge with any other guarantees, liens, or other securities held by the Bank, and shall not restrict the operation of any general lien, right of set-off or any other rights or remedies which the Bank may have by law or otherwise. The Customer hereby irrevocably appoints the Bank to be its attorney with full power and authority in its place and stead and in its name or otherwise, from time to time in the Bank's sole and absolute discretion to take any action and execute and seal any instrument which the Bank deems necessary or advisable to accomplish the purpose hereof.

5.2 If the Customer shall fail to comply with the provisions of these Terms and Conditions or the General Terms and Conditions of the Bank, or shall fail to pay and discharge any debts and liabilities to the Bank, the Bank may take, without further demand, legal process or any other action to realise, dispose of, sell or liquidate all or any Contract in the Margin Account or all or any part of the Margin at any time and in any way which the Bank may deem expedient, free from all claims or other rights in or towards payment and discharge of any of the Customer's debts and liabilities to the Bank. The Bank shall not be liable for any of the Customer's losses arising out of such enforcement, realization, disposal, sale or liquidation, howsoever such loss may have been caused, and whether or not a better price could or might have been obtained by either deferring or advancing the date of realization, disposal, sale or liquidation.

5.3 The Customer hereby agrees that the Customer shall not be entitled to withdraw or have any right to receive the Margin or any part thereof (together with any interest, dividend and other benefits in respect thereof), and the proceeds of any Contract unless all its present and future, joint or several, direct or indirect, actual or contingent liabilities have

been unconditionally and irrevocably paid and discharged in full or with the Bank's consent.

- 5.4 The Customer agrees that the Customer shall not, during such time when the Customer has any liabilities (present and future, joint or several, direct or indirect, actual or contingent) to the Bank hereunder, charge, assign, sell, transfer or create any encumbrance or deal with or grant any third party rights over or against any part of the Margin, the Contract and/or the proceeds thereof.

6. Hedging and Netting of Contracts

- 6.1 If the Customer gives instruction to the Bank for entering into a Contract which is an Opposite Contract or a Partial Opposite Contract in relation to any existing outstanding Contract (the "**principal Contract**"), the Customer shall at the time of giving such instruction clearly indicate to the Bank as to:-

- (a) (in the case of the Opposite Contract) whether such Opposite Contract shall be a Closing-out Contract or Hedging Contract for such principal Contract or (in the case of the Partial Opposite Contract) whether such Partial Opposite Contract shall be a Partial Closing-out Contract or Partial Hedging Contract for such principal Contract; and
- (b) (in the case of Closing-out Contract or Partial Closing-out Contract) the particular principal Contract to which it relates.

In the absence of clear instruction on the details specified in sub-paragraph (a) and/or (b) above, the Bank may deem the Opposite Contract or the Partial Opposite Contract as a Closing-out Contract or Partial Closing-out Contract (as the case may be) and/or close out (wholly or partially, as appropriate) any principal Contract as selected by the Bank in its sole and absolute discretion (including, without limitation, the principal Contract with greatest unrealized loss) through netting with such Opposite Contract or Partial Opposite Contract in accordance with Paragraph 6.2(a) or (b).

- 6.2 If after the Customer has entered into a Contract (the "**principal Contract**"), a Closing-out Contract or a Partial Closing-out Contract is (or is deemed to have been) entered into in respect of the principal Contract, these two Contracts shall be netted off in accordance with the following provisions:-

- (a) where a Closing-out Contract is (or is deemed to have been) entered into, the principal Contract and the Closing-out Contract shall be automatically closed out and discharged by designating the same Value Date for both Contracts and be replaced by a single payment obligation by the party that would otherwise have been due to deliver the larger amount of the other currency under the principal Contract or the Closing-out Contract to deliver the difference between the respective amounts to be delivered by the Customer or the Bank to the other under the principal Contract and the Closing-out Contract. The difference, if payable by the Customer, will be treated as the realized loss of the Customer, or if payable by the Bank, will be treated as the realized gain of the Customer for the purpose of these Terms and Conditions. Unless otherwise agreed by the Bank, such difference shall be payable on the Value Date of the principal Contract and the Closing-out Contract; and
- (b) where a Partial Closing-out Contract is (or is deemed to have been) entered into, the parties' delivery obligations under the principal Contract and the Partial Closing-out Contract shall be netted off as follows:-
 - (i) the Partial Closing-out Contract will be automatically discharged and the parties' delivery obligations under the principal Contract shall be varied as described in sub-paragraph (ii) below; and
 - (ii) with respect to each type of currency under the principal Contract, the party's obligation to deliver such currency under the principal Contract shall be reduced by the amount of such currency that would have been deliverable to that party under the Partial Closing-out Contract and accordingly, only the remainder of such currency amount shall be payable by that party on the Value Date of the principal Contract.

- 6.3 The Bank will issue to the Customer an Account Statement setting out, among other things, the details of the delivery and payment terms of the single payment obligation arriving at pursuant to Paragraph 6.2(a) and of the varied principal Contract arriving at pursuant to Paragraph 6.2(b).

- 6.4 The Bank hereby reserves the right to require the Customer to perform its obligations under the principal Contract, the Closing-out Contract and the Partial Closing-out Contract separately notwithstanding the provision of Paragraph 6.2.

7. Payment, Delivery and Other Charges

- 7.1 Each Contract shall constitute a binding obligation on each of the Bank and the Customer to make or take delivery of the currency upon these Terms and Conditions and such terms as may be agreed in the relevant Contract.
- 7.2 Unless otherwise agreed by the Bank, all deliveries of currencies pursuant to any Contract shall be made in the Account Currency only but not the currencies agreed to be delivered under the Contract or any other currencies. The exchange rate for converting any currency into the Account Currency shall be the Bank Reference Rate for the relevant currency determined by the Bank on the relevant date.
- 7.3 All payments by the Bank to the Customer in connection with these Terms and Conditions or any Contract may be made by crediting the same to the Margin Account, and the Bank may, at any time without prior notice to the Customer, debit from the Margin Account all or any amounts payable by the Customer to the Bank in connection with these Terms and Conditions or any Contract.
- 7.4 The Bank may at any time (whether or not the event or situation provided in Paragraph 8.2 has occurred) set off and/or apply the Margin towards payment of any amount payable or owing by the Customer to the Bank under these Terms and Conditions. If the Margin is not sufficient, interest will accrue on the deficit at the rate determined by the Bank from time to time.
- 7.5 The payment obligations of each of the Bank and the Customer payable pursuant to any Contracts on any single day shall be settled on a net basis so that such party's payment obligations shall be satisfied and discharged by the payment by the party having a greater payment obligation against the other of the net aggregate amounts payable by each of the parties to the other on that day.
- 7.6 The provisions of Paragraphs 6 and 7 shall apply even though the Bank or the Customer may fail to record the obligations in their respective books or the Bank may fail to show the status of any Contract in any Account Statement or other documents in accordance therewith.
- 7.7 The Customer agrees to pay to the Bank such charges, commission, brokerage or other expenses in connection with the Contracts at such rate as the Bank may from time to time prescribe.

8. Close-Out Situations

- 8.1 If the Bank in its sole and absolute discretion determines that any of the Close-out Situations referred to in Paragraph 8.2 occurs, the Bank shall be entitled without further notice or demand to forthwith:-
- (a) cancel all the Customer's outstanding orders in respect of Contracts placed with the Bank; and/or
 - (b) close out all, but not some (save and except such of the Contracts which may not under the applicable laws be closed out) of, the outstanding Contracts on the close out date as designated by the Bank ("**close out date**") in the following manner:-
 - (i) Designating a Value Date for each outstanding Contract;
 - (ii) The various amounts which would have been deliverable by either party on the relevant Value Date of each outstanding Contract shall be notionally converted into a common currency selected by the Bank at the Bank Reference Rate determined by the Bank for the relevant currency at the time of conversion.
 - (iii) Each amount calculated in accordance with Paragraph 8.1(b) (ii) may (but not obliged to), to the extent permitted by applicable law, be adjusted to present value by discounting the same from the relevant Value Date to the close out date using the relevant discount rate, or such other rate as may be prescribed by the applicable law;
 - (iv) (1) Each of the amounts calculated in accordance with Paragraph 8.1(b)(ii) and (iii) which is payable to the Bank shall be aggregated into a single liquidated amount in the common currency and (2) each of the amounts calculated in accordance with Paragraph 8.1(b)(ii) and (iii) which is payable by the Bank shall be aggregated into a single liquidated amount in the common currency;

- (v) The Close-Out Amount is an amount equal to the single liquidated amount calculated under Paragraph 8.1(b)(iv)(1) minus the single liquidated amount calculated under Paragraph 8.1(b)(iv)(2). If the Close-Out Amount is a positive number, the same shall be payable by the Customer and if the Close-Out Amount is a negative number, the same shall be payable by the Bank;
- (vi) The Close-Out Amount shall be adjusted to the extent permitted by the applicable law to reflect any payment made by the Bank or the Customer to the other after the close out date;
- (vii) A letter signed by any of the Bank's authorized officers setting out the Close-Out Amount and the manner in which it is calculated shall be conclusive and binding on the Customer;
- (viii) Each of the Customer and the Bank agrees that the Close-Out Amount calculated as aforesaid reflect a reasonable pre-estimate of loss and not a penalty. Such Close-Out Amount is payable for the loss of bargain and the loss of protection against future risks and, except as otherwise provided in these Terms and Conditions, neither of the Bank nor the Customer will be entitled to recover any additional damages as a consequence of such losses; and
- (ix) The Close-Out Amount shall be deemed to be payable on the close out date notwithstanding that the Close-Out Amount may only be available thereafter; and/or
- (c) apply and set off all or any part of the Margin in or towards payment or discharge of all or any amounts owing by the Customer to the Bank; and/or
- (d) sell or otherwise dispose of in such manner as the Bank thinks fit all or any part of the Margin and apply the proceeds towards payment or discharge of all or any amounts owing by the Customer to the Bank.

8.2 The Close-Out Situations referred to in Paragraph 8.1 are:-

- (a) any petition, application, step or otherwise for any bankruptcy, insolvency, reorganisation, arrangement, composition of debt, dissolution, liquidation or any similar relief relating to the Customer shall be commenced under any applicable law;
- (b) (if the Customer is an individual or consist of any individual) an act of bankruptcy shall be committed or deemed to have been committed by such individual;
- (c) a receiver, trustee, custodian or similar official shall be appointed or an encumbrancer shall take possession of the Customer or the whole or any substantial part of its or any of its property;
- (d) failure of the Customer to perform any of its obligations (including payment obligations and obligations to pay additional Margin in accordance with Paragraph 4) under these Terms and Conditions or any other agreement with the Bank;
- (e) legal proceedings of any nature have been commenced against the Customer;
- (f) the financial conditions of the Customer have in the opinion of the Bank materially and adversely changed;
- (g) (if the Customer is an individual or consist of any individual) such individual dies or becomes mentally incapable;
- (h) the continued performance of any of the Contracts or these Terms and Conditions becomes illegal or is claimed by any government authority to be illegal; or
- (i) the agreement constituted by these Terms and Conditions shall be terminated for whatever reason.

8.3 The Bank is hereby authorized to apply the proceeds received by the Bank (after deducting any expenses incurred) pursuant to the exercise of the powers referred to in Paragraph 8.1 towards repaying all or any amount owing due to the Bank in such manner as the Bank deems fit and the Customer covenants to pay the Bank forthwith upon the Bank's demand any shortfall thereof.

9. Currency and Taxation Indemnities

- 9.1 The receipt or recovery by the Bank of any amount in respect of the Customer's obligation in any currency other than the currency selected by the Bank, whether pursuant to a judgment of any court or under these Terms and Conditions, shall discharge such obligation only to the extent that, on the Bank's next succeeding Business Day following such receipt, the Bank shall be able, in accordance with normal banking procedures, to purchase the currency selected by the Bank with the currency received. If the amount of the currency selected by the Bank so purchasable shall be less than the amount of the Customer's obligation, the Customer shall, as a separate obligation and notwithstanding any judgment of any court, indemnify the Bank against any loss sustained by the Bank.
- 9.2 (a) All payments to be made by the Customer under each Contract or these Terms and Conditions shall be free and clear of all taxes, levies, imposts, duties, charges, fees, deductions, withholdings, restrictions or conditions of any nature (collectively called the "**Taxes**") now or hereafter imposed by any country, political sub-division or taxing authority. Should any such payments be subject to any such deduction, the Customer shall pay to the Bank such additional amount as may be necessary to enable the Bank to receive a net amount equal to the full amount which would have been received by it had no such deduction been made.
- (b) In addition, the Customer agrees to pay any present or future stamp or documentary taxes or any other excise of property taxes, charges or similar levies which arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, any instrument delivered hereunder (collectively called the "**Documentary Duties**").
- (c) The Customer will indemnify the Bank for the full amount of Taxes and/or Documentary Duties (including any Tax payable thereon) paid by the Bank or any liability arising with respect thereto.

10. Statements

- 10.1 A monthly statement of account summarizing the Contracts effected during the preceding month will be issued by the Bank within seven (7) Business Days of each calendar month. Such monthly statements of account will be sent to the Customer by mail, electronic means or such other means as the Bank may determine from time to time, or otherwise made available on the electronic or online trading facility designated by the Bank (in which case the Bank will inform the Customer by e-mail notice on the day when a monthly statement of account is posted on such designated electronic or online trading facility, and such monthly statement of account will be available for access, review and downloading by the Customer for not less than twelve (12) months from the date of such e-mail notice to the Customer).
- 10.2 A daily statement in relation to each Contract will be issued by the Bank within two (2) Business Days of the execution of the Customer's instruction in respect of the relevant Contract. Such daily statement(s) will be sent to the Customer by mail, electronic means or such other means as the Bank determine from time to time or otherwise made available on the electronic or online trading facility designated by the Bank (in which case the Bank will inform the Customer by e-mail notice on the day when a daily statement is posted on such designated electronic or online trading facility, and such daily statement will be available for access, review and downloading by the Customer for not less than one (1) month from the date of such e-mail notice to the Customer).
- 10.3 In addition to the monthly statements of account and the daily statements referred to in Paragraphs 10.1 and 10.2, the Bank will also prepare and issue such other Account Statements to the Customer in such manner as may be required by the applicable laws, rules, regulations, guidelines and codes of conduct from time to time.
- 10.4 It is the Customer's sole responsibility to ensure its receipt of and access to every Account Statement on the scheduled date(s) and to immediately enquire with the Bank to obtain such Account Statement. The Customer undertakes to verify the correctness of each Account Statement issued by the Bank within ninety (90) days from the issue date thereof of any discrepancies, omissions or debits wrongly made to or inaccuracies or incorrect entries in the Bank's record of Contract and/or Account Statements as so stated. Upon expiry of the said ninety (90) day period and subject to Paragraph 10.5, the Bank's record of Contracts and the details of the Contracts as set out in the Account Statements shall be conclusive evidence without any further proof that the Bank's record of Contract and the details in the Account Statements are correct except as to any alleged errors so notified.
- 10.5 Notwithstanding anything aforesaid, the Bank shall be entitled to revise any Account Statement previously sent to the Customer to correct any details contained therein which have been wrongly or mistakenly made by the Bank. The Customer agrees that Paragraph 10.4 shall also apply to such revised Account Statements.
- 10.6 Except as provided above, the Bank shall be free from all claims in respect of the details of the Contracts as set out in the Account Statements notwithstanding any incorrectness of the details of the Contracts as set out in the Account

Statement.

- 10.7 All statements, notices or other communications in connection with the services provided under these Terms and Conditions will be issued or delivered at the Customer's risk. The Bank does not assume any responsibility for any inaccuracy, interruption, error or delay or total failure in transmission or delivery by post, facsimile, e-mail or other written form of electronics communication. In the case of failure to post any such statement, notice or other communication on the electronic or online trading facility designated by the Bank by the relevant due date, such statement, notice or other communication will be sent to the Customer by mail as soon as practicable.

11. Investment Information and Suitability

- 11.1 The Customer fully understands that any Contract effected by the Customer shall be made ultimately upon exercise of its own judgment and at its own discretion notwithstanding any information, suggestion or documents the Bank may have provided to the Customer.
- 11.2 It is the Customer's responsibility to understand completely all of the relevant characteristics and consequences of each Contract it enters into. The Customer acknowledges that the Bank will not give any investment, legal, accounting or tax advice and will not advise the Customer the nature or risks of any particular Contract.
- 11.3 The Customer agrees that the Bank will not, in the absence of any gross negligence or wilful default on its part, be liable for any inaccuracy or incompleteness of any information provided by the Bank or the performance or outcome of any Contracts effected by the Customer after receipt of any such information.
- 11.4 **This clause does not apply to Corporate Professional Investors (where the Bank has complied with paragraphs 15.3A and 15.3B of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (the "Code")) or Institutional Professional Investors under the Code.** If the Bank solicits the sale of or recommend any securities, futures contracts or leveraged foreign exchange contracts as defined under the Securities and Futures Ordinance ("**Applicable Financial Products**" *[Please bold]*) to the Customer, the Applicable Financial Products must be reasonably suitable for the Customer having regard to the Customer's financial situation, investment experience and investment objectives. No other provision of these Terms and Conditions or any other documents the Bank may ask the Customer to sign and no statement the Bank may ask the Customer to make derogates from this clause. For the purposes of this clause, "leveraged foreign exchange contracts" refer to those leveraged foreign exchange contracts traded by persons licensed for Type 3 regulated activity.

12. Acknowledgements

The Customer acknowledges and understands that:-

- (a) the Bank's employees may be permitted to enter into similar Contracts on their own account, and in such event, the Bank will have a written policy communicated to the Bank's employees for their compliance; and
- (b) the Bank or any of the Bank's employees transacting on their own account under Paragraph 12(a) may at any time take the opposite position to the Customer's order for any Contract.

13. Miscellaneous

- 13.1 Any amount payable under each Contract or these Terms and Conditions (including the Close-Out Amount referred to in Paragraph 8.1(b)) shall bear interest payable upon demand. Such interest shall be calculated and accrued on a daily basis commencing on and from the due date for such payment until actual payment of all but not part of such outstanding amount (as well after as before judgment) at the prevailing interest rate for unauthorised debit balance determined from time to time at the Bank's sole and absolute discretion. The basis for interest calculation will be determined by the Bank taking into account the international market convention. The interest rate and year basis will be advised to the Customer in the relevant Account Statement(s).
- 13.2 Simple interest at the rates advised from time to time by the Bank is accrued on the daily credit balance of the Margin Account. The basis for interest calculation will be determined by the Bank taking into account the international market convention. The interest rate and year basis will be advised to the Customer in the relevant Account Statement(s).
- 13.3 The interest payable and interest accrued calculated in accordance with Paragraphs 13.1 and 13.2 will be debited from or credited to the Margin Account at such time and in such manner as may be determined by the Bank.

- 13.4 Time is of the essence under each Contract and these Terms and Conditions.
- 13.5 (a) If any one or more of the provisions under these Terms and Conditions shall be deemed invalid, unlawful or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired.
- (b) The Customer also understands that a Contract may be affected by curtailment of, or restrictions on, the Bank's capacity as a licensed bank in Hong Kong in respect of outstanding Contract(s) as a result of action taken by the Hong Kong Monetary Authority, the Securities and Futures Commission or for any other reason, and that in such circumstances, the Customer may be required to reduce or close out such part of the Customer's outstanding Contract(s) with the Bank.
- 13.6 (a) These Terms and Conditions shall benefit and be binding on the Bank and the Customer, their respective successors and any permitted assignee or transferee of some or all of the Bank's rights or obligations under these Terms and Conditions.
- (b) The Customer may not assign or transfer all or any of its rights or obligations under these Terms and Conditions or any Contract without the Bank's consent.
- (c) The Bank may without the Customer's consent transfer all or part of the Bank's rights, benefits and obligations under or arising out of these Terms and Conditions and/or any Contract and disclose to a potential transferee or any other person inside or outside Hong Kong proposing to enter into contractual arrangements with the Bank in relation to these Terms and Conditions and/or any Contract such information about it as the Bank may think fit for the purposes of such contractual arrangements.
- 13.7 The Bank's failure or delay in exercising any rights, power or privilege in respect of any Contract or these Terms and Conditions shall not operate as a waiver, nor shall a single or partial exercise, enforcement or waiver of any such rights, power or privilege preclude the Bank's further exercise, enforcement, or the exercise or enforcement of any other right, power or privilege hereunder.
- 13.8 The Customer hereby warrants that the Customer is entering into each Contract and the related transactions contemplated by these Terms and Conditions as principal and not as trustee or agent for any other person.
- 13.9 The Customer agrees that in addition to any general lien or similar right to which the Bank may be entitled at law, the Bank may at any time without prior notice, combine or consolidate any or all of its accounts (wherever situate) with its liabilities to the Bank and set off or transfer any sum or sums standing to the credit of any of its accounts in or towards satisfaction of its liabilities to the Bank, whether such liabilities be primary, collateral, several, joint or in other currencies. Further, in so far as its liabilities to the Bank are contingent or future, the Bank's liability to it to make payment of any sum or sums standing to the credit of any of its accounts shall to the extent necessary to cover such liabilities be suspended until the happening of the contingency or future event.
- 13.10 Neither of the Bank nor the Customer shall be liable for any loss sustained by the other party, directly or indirectly, as a result of: (a) any act of any government or authority; (b) suspension of trading of any relevant exchange, clearing house or market; (c) war, hostilities, invasion, act of foreign enemies, revolution, civil commotion or disorder; (d) communication breakdown; or (e) any cause or circumstance beyond their reasonable control.
- 13.11 The Customer agrees that the data requested by the Bank in the Application Form is necessary for the Bank to provide the services in connection with these Terms and Conditions. If the Customer fails to provide the same to the Bank, the Bank may not be able to provide such services to the Customer. The Customer may always contact the Bank to gain access to and request correction or amendment to such data. The Customer undertakes to notify the Bank in the event of any material change to such data. Such data together with any other data of the Customer obtained by the Bank from time to time may be disclosed to such persons and may be used for such purposes as are respectively set out in the Notice to Customers and Other Individuals Relating to the Personal Data (Privacy) Ordinance and the Code of Practice on Consumer Credit Data of China CITIC Bank International Limited published from time to time.
- 13.12 If the Customer consists of more than one person, then the liabilities of each such persons shall be joint and several.

14. Termination

The Bank may terminate the services provided under these Terms and Conditions and/or close out any or all outstanding

Contract(s) by giving thirty days' prior written notice to the Customer. Any such notice or termination shall be without prejudice to the accrued rights and obligations of the parties.

15. **Amendment**

The Bank may at any time vary, delete, replace, add or amend these Terms and Conditions upon prior written notice to the Customer in accordance with the requirements of applicable codes and guidelines.

16. **Notice**

Any notice or other communication to be given or made pursuant to these Terms and Conditions or in relation to any Contract shall be in writing and may be made by personal delivery, prepaid post (airmail if overseas), facsimile, e-mail or other written form of electronic communication and shall be deemed to have been duly served by the Bank on the Customer:-

- (a) if delivered personally, at the time of delivery;
- (b) if sent by prepaid post, 48 hours or (if by airmail) 96 hours after posting; and
- (c) if sent by facsimile or e-mail, at the time of sending.

Any such notice or communication from the Bank to the Customer shall be sent to the Customer at the address, facsimile number or e-mail address stated in the Application Form or such other address, facsimile number or e-mail address notified by the Customer to the Bank (by giving not less than 5 Business Days' prior written notice to the Bank) from time to time for the purpose of this Paragraph.

Any such notice or communication from the Customer to the Bank shall be made in writing and shall be deemed to have been given or made only on actual receipt by the Bank.

17. **Electronic Message Notification Service**

17.1 In this Clause 17:

“**Device**” means the Customer’s device for receiving any Electronic Message under the Electronic Message Notification Service;

“**Electronic Message Notification Service**” means the notification service (including SMS Alert Service) provided by the Bank through mobile phone, emails or other electronic channel or means from time to time subject to these Terms and Conditions;

“**Electronic Message**” means any message sent by the Bank to the Customer under the Electronic Message Notification Service;

“**Service Provider**” means any entity that provides or maintains the channel through which the Bank provides the Electronic Message Notification Service; and

“**SMS Alert Service**” means the alert service provided by the Bank through mobile phone.

17.2 The Bank has the right to determine from time to time the scope of the Electronic Message Notification Service to be made available and the Bank may expand, modify or reduce the scope of the Electronic Message Notification Service at any time without giving notice or reason.

17.3 The Customer acknowledges that the information sent under the Electronic Message Notification Service is for its information only and shall not be relied upon by the Customer or any other person nor be taken as conclusive evidence of the matter to which it relates.

17.4 The Customer shall promptly notify the Bank of any changes to information/documents provided to the Bank related to or for the purposes of the Electronic Message Notification Service.

17.5 The Customer shall notify the Bank immediately if the Customer does not want to receive any Electronic Message.

- 17.6 For the purposes of providing the Electronic Message Notification Service, the Bank will not assume any liability or responsibility for any failure or delay in transmitting information to the Customer or any error or omission in such information unless this results from negligence or default on the part of the Bank. In particular, neither the Bank, Service Provider nor any such companies shall assume any liability or responsibility for the consequences arising from any cause beyond the Customer's or the Bank's reasonable control including without limitation failure of the Customer's Device to receive information for whatever reason, any telecommunications breakdown, mechanical failure, path failure, malfunction, breakdown, interruption or inaccuracy of equipment or installation. For the avoidance of doubt, the Bank assumes no liability that results from the acts of the Service Provider or any such companies.
- 17.7 The Electronic Message Notification Service may without notice to the Customer be suspended or terminated for any reason including without limitation invalid data, closure of related account(s), breakdown, maintenance, modification, expansion and/or enhancement work caused or initiated by any telecommunications companies concerned or by the Service Provider. The Bank will not assume any liabilities or responsibilities for any such suspension or termination.
- 17.8 Notwithstanding that the Bank may have provided the Electronic Message to the Customer on certain banking services or transactions, the Bank shall have no obligation to continue (or otherwise timely to provide the Customer) with the relevant Electronic Message for similar banking services or transactions. The Customer shall not rely on the Electronic Message Notification Service as conclusive evidence to ascertain or confirm the existence or status of any banking services or transactions.
- 17.9 None of the Electronic Messages should be regarded as an offer or a solicitation to subscribe to any products or services in any jurisdiction.
- 17.10 The Bank shall not accept or act on any Customer's instructions relating to banking products/ services given to the Bank via any message under the Electronic Message Notification Service.
- 17.11 The Bank may keep any Electronic Message record for future enquiry.
- 17.12 The Customer is responsible for the security of the Customer's Device and must take all reasonable precautions to prevent any one else from accessing any confidential information.
- 17.13 Any Electronic Message sent by the Bank to the Customer are one-way communications and the Customer should not reply to such message, in particular, the Customer should not provide any account or security details such as passwords in any reply. Any request for such details purported to have been sent by the Bank in any Electronic Message or any other irregularity in such message or the Electronic Message Notification Service must be reported to the Bank immediately.
- 17.14 The Customer's Device should not be tampered (e.g. rooted, hacked, jail-broken, etc.) and the Customer shall not be using such device to access any of the Bank's service or inputting sensitive data.
- 17.15 The Customer is responsible for ensuring that none of the application on the Customer's Device is installed from any mistrusted sources.
- 17.16 The Customer at the request of the Bank will execute such forms and/or documents, provide such information and perform such acts as the Bank may consider necessary or expedient in connection with the provision of the Electronic Message Notification Service.
- 17.17 The Bank will not be liable for any disclosure of confidential information when the Customer has not complied with any provision of this Clause 17.
- 17.18 The Service Provider or any third parties who support the Electronic Message Notification Service are neither agencies of the Bank nor representing the Bank. There is no co-operation, partnership, joint venture or other relationship between any third parties with the Bank.
- 17.19 The Customer acknowledges and consents that the Service Provider or any third parties which support the Electronic Message Notification Service may be able to have access to the information contained in any Electronic Message in connection with the Electronic Message Notification Service.
- 17.20 The Customer acknowledges and consents to be solely responsible and bound by any terms and conditions imposed by the Service Provider or any third parties which support the Electronic Message Notification Service and the Bank shall

not be liable for any breaches constituted by the Customer of such terms and conditions.

- 17.21 The Electronic Message Notification Service is for the Customer's sole and exclusive use.
- 17.22 It is the Customer's responsibility to take appropriate measures to monitor and control the use of the Electronic Message Notification Service from time to time, and to adopt proper safeguards against the Electronic Message Notification Service being used by unauthorized persons or for unauthorised purposes.
- 17.23 The Bank reserves the right to revise any existing charging structure and/or make additional charges from time to time by notice to the Customer in relation to the provision of the Electronic Message Notification Service.
- 17.24 The Customer shall bear any fees, charges or expenses which may be imposed by the Service Provider or any third parties in relation to the provision of the Electronic Message Notification Service.
- 17.25 If the Bank can show that an Electronic Message was sent to the Service Provider, the Bank has no liability to the Customer if the Customer suffers losses due to such Electronic Message not being received accurately or at all.
- 17.26 Without prejudice to Clause 17.7 above, the Bank does not assume any liability or responsibility (unless the following is resulted from the Bank's negligence or default) to the Customer or any other person for the consequences arising from or in connection with: (a) any interruption, suspension, delay, loss, mutilation or other failure in providing the Electronic Message Notification Service howsoever caused; (b) any mechanical failure, power failure, malfunction, or installation in connection with the Electronic Message Notification Service; and (c) any losses caused by the Service Provider or any third parties in connection with the Bank's providing the Electronic Message Notification Service.
- 17.27 The Bank will not be responsible for any losses or damages caused to the Customer's data, Device, telecommunications equipment or other equipment as a result of the Customer's use of the Electronic Message Notification Service unless such loss or damage is caused by the Bank's default or negligence.
- 17.28 The Customer shall indemnify the Bank and its officers and employees against all liabilities, claims, demand, losses, damages, costs, charges and expenses of any kind (including, without limitation, legal fees on a full indemnity basis) which may be reasonably incurred by any of them and at actions or proceedings which may be brought by or against any of them in connection with the provision of the Electronic Message Notification Service unless such loss or damage is caused by the Bank's default or negligence.
- 17.29 It is the Customer's sole responsibility to verify any information received under the Electronic Message Notification Service. The Bank does not assume any liability (whether in tort, contract or otherwise) for any reliance on any commentaries, confirmations, information or data by the Customer or any other person.
- 17.30 In respect of the SMS Alert Service, without prejudice to any other provisions herein: (a) the Customer understands it is its responsibility to register the mobile phone with the Bank by itself with its own costs; (b) the Bank has reserved the right to suspend the SMS Alert Service without prior notice for any reason including, without limitation, any breakdown, maintenance, modification, expansion and/or enhancement work caused or initiated by the telecommunication company(ies) concerned in relation to their network or by any service provider in respect of the SMS Alert Service. The Bank will not assume any liability or responsibility for any such suspension; (c) neither the Bank nor any of the telecommunication companies designated by the Bank for the purposes of providing the SMS Alert Service will assume any liability or responsibility for any failure or delay in transmitting information or for any error or inaccuracy in such information. In particular, neither the Bank nor any such telecommunication companies shall assume any liability or responsibility for consequences arising from any cause beyond its reasonable control including, without limitation, failure of the Customer's mobile phone to receive information for whatever reason, any telecommunication breakdown, mechanical failure, power failure, malfunction, breakdown, interruption or inadequacy of equipment or installation, Act of God, government act, civil commotion, strike, war, fire, flood or explosion; (d) the Customer shall bear any fees, charges and expenses which may be imposed by the telecommunication company providing or servicing its mobile phone in connection with the SMS Alert Service; (e) the Bank makes no representation or warranty as to the accuracy and reliability of the information or data provided and accepts no liability (whether in tort or contract or otherwise) for any loss or damage arising from any inaccuracies or omissions; and (f) the Bank reserves the right to vary, revise, suspend, withdraw or terminate the SMS Alert Service at any time and from time to time without giving any notice or reason.

18. Governing Law

- 18.1 These Terms and Conditions and all rights, obligations and liabilities under it shall be governed by and construed in accordance with the laws of Hong Kong.
- 18.2 Each Contract (and any standing order relating to a proposed Contract) shall be subject to any laws and regulations, policies, market practices and customs of the country of, and the principal financial centre for, the relevant currency affecting any dealing in such currency. The Customer agrees that the Bank shall not be responsible for any restriction or inability caused to the Bank in dealing with any Contract (or any relevant standing order) as a result thereof and agree to indemnify the Bank against all losses, damages, reasonable costs and expenses sustained by the Bank as a result thereof.
- 18.3 The Customer hereby submits to the non-exclusive jurisdiction of the courts of Hong Kong in the event of any dispute arising. Such submission shall not prejudice the Bank's right to commence action against the Customer in any other court of competent jurisdiction.

19. Rights of Third Parties

Except as otherwise expressly stated in these Terms and Conditions, no one other than a party to these Terms and Conditions may enforce any of its terms under the Contracts (Rights of Third Parties) Ordinance, Cap. 623 of the Laws of Hong Kong. Where any clause of these Terms and Conditions entitles any third party to enforce any term of these Terms and Conditions under the Contracts (Rights of Third Parties) Ordinance, the parties reserve the right to vary that term or any other term of these Terms and Conditions without the consent of that third party.

20. Chinese Translation

The Chinese translation of these Terms and Conditions is for reference purpose only. If there is any conflict between the English and Chinese versions of these Terms and Conditions, the English version shall prevail for all purposes.

Schedule

Risk Disclosure Statement

The following is a summary of some of the risks involving the Bank's foreign exchange and gold margin trading service. It is NOT an exhaustive list, and the Customer is recommended to obtain independent professional advice before entering into these trades. The Customer should carefully consider whether such trading is suitable for the Customer in light of the Customer's financial condition, experience and investment objectives.

Risk of margin trading. The risk of loss in financing a contract by deposit of collateral is significant. The Customer may sustain losses in excess of the Customer's cash and any other assets deposited as collateral with the Bank. Placing contingent orders, such as "stop-loss" or "stop limit" orders, will not necessarily limit losses to the intended amounts. Market conditions may make it impossible to execute such orders. For example, certain foreign exchange transactions may be highly illiquid in some circumstances and low liquidity may result in the exchange rate of the relevant contract type moves sharply higher or lower or in a volatile pattern so that the transactions may not be closed out at the desired price to limit the loss. The Customer may not be able to close out the Customer's outstanding Contract(s) to limit loss outside normal banking hours. The Customer may be called upon at short notice to make additional margin deposits (which may be substantial) or interest payments. If the required margin deposits or interest payments are not made within the prescribed time, the Customer's collateral may be liquidated and the contract(s) entered into by the Customer may be closed out without prior notice to, and without consent from, the Customer. Closing out of the contract(s) may result in a loss to the Customer and moreover, the Customer will remain liable for any resulting deficit in the Customer's account and interest charged on the Customer's account. The Customer should therefore carefully consider whether such a financing arrangement is suitable in light of the Customer's own financial position and investment objectives.

Risk of leveraged trading. The risk of loss in leveraged trading can be substantial. The amount of initial margin is small relative to the value of the contract so that the transactions are "leveraged". The lower the initial margin amount is used to create a new position, the higher will be the leverage. The high degree of leverage which is often obtained in connection with the contracts can work against the Customer as well as for the Customer. The use of leverage can lead to large losses as well as gains.

Product suitability. The Bank will neither provide any recommendation to the Customer in respect of nor any advice on the merits of any transaction. Before entering into any margin trade, the Customer should decide for itself whether such trade meets the Customer's investment needs, perform the Customer's own due diligence on investments or seek independent legal, financial and other professional advice prior to any investment decisions. Trading is performed upon the Customer's instructions and the Customer should not assume that the Bank will warn the Customer if the Customer's instructions are likely to lead to loss to the Customer. The Customer may suffer substantial losses under margin trades.

No physical delivery of gold. In relation to gold margin trading, the Customer should note that the Customer will have no right to require any delivery or tender delivery of gold in any physical form in Hong Kong or elsewhere under any Contract. The Bank will not have any duty or liability to appropriate, set aside and/or allot any gold in any physical form for or to the Customer, whether under any gold margin contract, the Margin Account or otherwise. The Customer do not have any rights, ownership and possession of any physical gold under any Contracts.

Non-deliverable transactions. The transactions carried out under the Bank's foreign exchange and gold margin trading service are non-deliverable, i.e. settlement of each Contract will be made in the Account Currency only.

Volatility of gold price. In relation to gold margin trading, the price of gold is volatile and may sometimes fluctuate dramatically. The Customer should recognize that the prices of gold may go down as well as up. In the worst case, losses will be incurred rather than profit made as a result of entering into gold margin contract. The Customer may sustain a substantial or even total loss of the Customer's initial collateral and additional collateral deposited with the Bank to establish or maintain positions.

Exchange rate risk. Any transaction involving foreign currencies, including margin trades, involves additional risks not common to transactions denominated entirely in the Customer's domestic currency. Foreign exchange rates can be highly volatile and can be affected by factors such as changes in political and economic policy (both domestic and overseas), political instability, wars, natural disasters and global market movements. The Customer should recognize that the exchange rate of the relevant contract type may go down as well as up. In the worst case, losses will be incurred rather than profit made as a result of entering into margin contracts. The Customer may sustain a substantial or even total loss of the Customer's initial collateral and additional collateral deposited with the Bank to establish or maintain positions. In addition, the Account Currency is either USD or HKD. If the Customer's trade is denominated in a currency other than the Account Currency, the Customer will be exposed to fluctuations in the prevailing exchange rate between such currency and the Account Currency when the Customer's trade is settled.

Risks relating to CNY. For any transaction involving Chinese Yuan (“CNY”), the Customer should note that:

(i) *Offshore CNY exchange rate risks* – The Bank uses offshore CNY exchange rate in its calculations for margin trades involving CNY. The Customer should note that the offshore CNY exchange rate the Bank uses for these trades may deviate significantly from the onshore CNY exchange rate. Like other foreign currencies, CNY may rise or fall. The offshore CNY exchange rate fluctuates and will be affected by, amongst other things, the PRC government’s foreign exchange control (for example, the PRC government regulates conversion between CNY and foreign currencies), which may adversely affect the Customer’s return under the Customer’s margin trades. The Customer will be exposed to fluctuations in the prevailing exchange rate between the offshore CNY and the Account Currency when the Customer’s trade is settled. The risk of loss can be substantial.

(ii) *Limitations on conversion of CNY* - CNY is currently not freely convertible. The actual conversion arrangement will depend on the restrictions prevailing at the relevant time.

Investment risk. Investment involves risks. The prevailing market price of gold or the prevailing exchange rate of the relevant contract type (as the case may be) may fluctuate. The value of the Customer’s positions in the Customer’s Margin Account may move up or down, sometimes dramatically, and may even become valueless. In the worst case scenario, the Customer’s loss may be substantial or even unlimited. The Customer cannot assume that the Bank will warn the Customer if the Customer’s instructions are likely to lead to loss to the Customer. The Customer acknowledges that the Bank may take the opposite position to the Customer’s order.

Credit risk of the Bank. China CITIC Bank International Limited, which is subject to the prudential regulation of the Hong Kong Monetary Authority, is the Customer’s counterparty in the margin trades. There is no assurance of protection against a default by the Bank in respect of its payment obligations. If the Customer enters into the margin trades, the Customer is relying upon the creditworthiness of the Bank and of no other person. If the Bank becomes insolvent or defaults on its obligations under the margin trades, the Customer can only claim as the Bank’s unsecured creditor. In the worst case scenario, the Customer may lose the Customer’s entire investment irrespective of the performance of the gold price or the exchange rate of the relevant contract type (as the case may be) and the terms of the margin trading services.

Risk relating to the Bank’s hedging activities. The Bank may enter into hedging transactions, which typically involve the establishment of long and/or short positions in gold or the relevant currency pair (as the case may be), with the Bank’s respective hedging counterparties in the market. It is possible that these activities could adversely affect the prevailing market price of gold or the prevailing exchange rate of the relevant contract type (as the case may be) if the size of hedging transaction is substantial. As such the value of the Customer’s positions in the Customer’s Margin Account may be affected as well.

Risk relating to electronic and online trading. The electronic and online trading facilities for the margin trading services are supported by computer or mobile-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. The Customer’s 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, and the Customer should ask the Bank for more information if required. In addition, the Customer is exposed to risks associated with the electronic and online trading system including the failure of hardware and software, interruption, transmission blackout, time lag(s) in data transmission due to internet traffic, incorrect data transmission due to the public nature of the internet, and the risk that the Customer’s order may not necessarily be executed at the price or rate indicated on the internet or may not be executed at all. A system failure may make the Customer unable to place, view or cancel any order. In addition, the result of any system failure may be that the Customer’s order is either not executed according to the Customer’s instructions or is not executed at all.

[Risk relating to provision of statements and/or other trade documents by access through the designated electronic or online trading facility. Where the Customer has consented to the provision of statements and/or other trade documents by access through the designated electronic or online trading facility (the “Access Service”) in lieu of other conventional means, the Customer should note that: (i) appropriate computer or mobile equipment and software, internet access and a specific email address provided and designated by the Customer are required for using the Access Service; (ii) internet and email services may be subject to certain information technology risks and disruption; (iii) the Customer may incur additional costs for using the Access Service; (iv) email will be the Customer’s only notice that the statements and/or trade documents have been posted on the designated electronic or online trading facility, and the Customer should check the Customer’s designated email address regularly for such notice; (v) revocation of consent to the Access Service will be subject to the giving of such advance notice by the Customer as the Bank may reasonably require; and (vi) the Customer may be required to pay a reasonable charge for obtaining a hard copy of any statement or trade document (e.g. daily statement and monthly statement, whether or not such document is no longer available for access and downloading through the designated electronic or online trading facility) according to the Bank’s schedule for service fees and charges (as amended from time to time).

Risks relating to SMS notifications. The notices, information and messages sent to the Customer through the Customer's designated mobile number(s) (such as a Margin Call alert) may be sent on a delayed basis. For example, in extreme circumstances whereby the market moves significantly against the Customer's positions, if the Customer's Margin Ratio falls to or below the Maintenance Margin Level or the Close-out Margin Level within a short period of time, no Margin Call alert may be sent to the Customer before close-out occurs. It is the Customer's sole responsibility to keep track of the Customer's account status and the prevailing Margin Ratio. The Bank is not responsible to notify the Customer of the trigger of the Margin Call manually.

Conflicts of interest. Potential and actual conflicts of interest may arise from the different roles played by the Bank and the Bank's subsidiaries and affiliates in connection with the margin trading, and the economic interests in each role may be adverse to the Customer's interest in the margin trading.

Fees and charges. The Customer acknowledges that the Customer has obtained a clear explanation of all commission, fees and other charges for which the Customer will be liable. The Customer understands that such charges will affect the Customer's net profit (if any) or increase the Customer's loss.

The Customer should read and understand the Terms and Conditions for Foreign Exchange and Gold Margin Trading Service and the information available for such services before the Customer trades in any margin trading.