

南洋商業銀行有限公司  
作為中國銀行（香港）有限公司的代理人

規則：貴金屬存摺賬戶

Nanyang Commercial Bank, Limited  
as agent for Bank of China (Hong Kong) Limited.

Rules: Notional Precious Metals Passbook Account



NCB 南洋商業銀行









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## 10. 改變

10.1 本行可改變本行的服務、營運方式、任何規定、時間限制或金錢款額，或對任何服務實施限制、暫停或撤回任何服務。本行可改變服務的名稱。本行可改變本行的營業時間或可提供服務的時間。該等改變可不經通知而作出，而本行亦毋須承擔責任。

10.2 本行可隨時改變適用於一項服務或一個賬戶的任何條款、條件及規則，並以通知會您。如改變影響到費用、收費或您的權利或義務，在實際可行情況下該通知將於 90 日後生效。

## 11. 終止

- 11.1 您可在給予本行30日事先通知後終止賬戶或服務，但您須遵守本行的規定及向本行支付費用。
- 11.2 本行可隨時向您發出30日事先通知及在不給予理由的情況下結束您的賬戶。通知於必要時可立即生效。本行可不給予事先通知而結束一個零結餘的賬戶。
- 11.3 在您的賬戶終止後7日（或本行同意的較長期間）內，您須給予本行交付您的財產（如有）的指示（您須承擔風險，並受本行權利規限），並支付所有有關費用及開支。假如您不依此行事，本行將繼續根據本規則持有財產，但不附帶任何責任（您須承擔風險，並受本行權利規限）。由終止日期起，任何貸方結餘概不會獲支付利息。
- 11.4 終止賬戶或服務不會影響累算權利或仍然生效的交易。本行可酌情取消、結束或完成任何未完結的指示或合約。規則第7條、第8條、第9條、第14.5條、第14.11條及第14.12條於終止後仍然有效。

## 12. 違約事件

- 12.1 在符合無違約事件（見下文12.2）或潛在違約事件發生及兩者並非正在發生的前提條件下，各方將根據每份證實單付款及交收。「**潛在違約事件**」指在發出通知或時間過去或兼具上述兩者的情況下，可能會構成違約事件的任何事件。
- 12.2 於任何時候發生下列涉及您或您任何聯繫人或提供任何保證或抵押以支持您在您與本行訂立的全部或任何交易（「**協議**」）項下的義務的任何人士（各別稱為「**有關人士**」）的事件構成違約事件（「**違約事件**」）：

（「**聯繫人**」）指，就任何實體（它）而言，受它直接地或間接地控制的任何其他實體，直接地或間接地控制它的任何其他實體，或直接地或間接地受它共同控制下的任何其他實體。就此而言，「控制」指實體的大多數投票權的擁有權。）

- (a) **未能付款或交收**。於到期時，未能按協議項下的規定付款或交收。
- (b) **違約事項**。未能遵守協議的任何其他義務。

- (c) **支持的缺失。**
- (i) 未能履行為支持您於協議項下的義務而提供任何保證或擔保的任何協議；
  - (ii) 無本行的書面同意，該等擔保或保證屆滿，或不再具有十足效力及作用；或
  - (iii) 任何有關人士（或獲指派管理或代其行事的任何人士）提出捨棄或廢除（全部或部分）該等擔保或保證，或質疑該等擔保或保證的有效性。
- (d) **失實陳述。**任何陳述被證明在任何重大方面屬不正確或存有誤導成份。
- (e) **交叉失責。**發生或存在下列各項的情況下：
- (i) 在一項或以上金融、投資、衍生工具或借款交易下的失責（不論名目為何），而有關的失責導致該等交易成為，或成為足以被宣布、到期及應付款或應交收，或以其他方式提早終止；
  - (ii) 於到期日在任何金融、投資、衍生工具或借款交易（在達到適用的通知規定或寬限期後）項下的一項或以上的付款或交收失責；或
  - (iii) 任何金融、投資、衍生工具或借款交易的卸棄、不履行或駁回（全部或部分）（或該等行動乃由獲指派或獲授權管理任何有關人士的任何人士或代其行事的任何人士進行）。
- (f) **無償債能力。**任何有關人士：
- (i) 成為無償債能力，或未能或以書面形式承認其無能力於債務到期時償付其債務；
  - (ii) 以或為債權人的利益作一般出讓、安排或債務重整協議；
  - (iii) 或任何其他人士展開任何司法、行政或其他法律程序，或採取任何法律行動，(1) 就有關人士，或其債務或資產尋求一項無償債能力、破產、清盤、重組或改過自身的判決或安排，(2) 為有關人士或其資產

的任何重要部分的資產尋求受託人、接管人、清盤人、監督人或保管人的指派，或 (3) 以達至相若效力；

- (iv) 有一項為其清盤、重組或重新整頓而通過的決議案；
  - (v) 有一名有抵押人士管有其資產的全部或任何部分，或有針對其資產的全部或任何部分而強制執行的扣押、執行令、扣押書或其他法律程序；或
  - (vi) 引致根據任何適用法律具有相若於以上任何一項的效力的任何事件或受其規限。
- (g) **合併**。任何有關人士與另外一個實體兼併或合併，或轉讓其資產的全部或任何重要部分予另外一個實體。
- (h) **身故**。假如您屬個別人士，而您身故或成為在神智上無能力行事。
- (i) **不可抗力**。
- (i) 由於任何事件或情況，任何有關人士未能或可能未能遵守，或事屬或可能事屬不可能遵守協議的任何重要條文，或遵守協議的任何重要條文並非切實可行，而該等事件或情況並非受影響人士所能控制的；或
  - (ii) 根據任何適用法律，任何有關人士遵守協議的任何重要條文乃屬或可能屬不合法。
- 就此而言，重大條文包括交易項下準時付款或收款或交收的義務。
- (j) **充份保證**。當本行有合理理由不安，而您未能提供充份保證，保證您有能力於本行發出書面要求後第二個營業日或之前履行您於協議，或各當事人訂立的任何其他協議項下的尚未履行義務。

### 12.3 提早終止

- (a) 假如違約事件於任何時候發生及正在繼續，本行可於至少7天前向您發出註明違約事件的通知，就受影響或所有尚未履行交易指定一個日子作為提早終止日（而有關交易將於指定日子終止）。

(b) 本行將以真誠態度釐定本行依據當時通行情況取代或提供本行每宗遭終止交易的重要條款的經濟等值物而招致或實現或可能招致或實現的損失或得益及費用，其中包括支付餘款、交收項目及權利。本行將於一個在商業上合理的日子釐定該等金額，以及訂出一個商業上合理的結果。本行可視乎交易的類型、複雜度或其他有關因素而定，對每宗不同的交易採用不同的估值方法。本行可考慮任何相關的資料，其中包括源自本行內部的市場數據及資料，而沒有重覆：

(i) 集資的任何費用；

(ii) 就本行終止或取得涉及對遭終止交易的任何對沖安排而招致的任何損失、費用或收益。

所有金額將以港元或本行所選擇的另外一種貨幣計算。本行將按本行的現貨匯率換算另外一種貨幣的金額。

本行將扣除 (1) 於提早終止日當日或之前應付予涉及所有遭終止交易的任何一方的金額及 (2) 相等於需要於提早終止日當日或之前交付但於該日並無如是交付予涉及每宗遭終止交易的任何一方的任何交付東西於原來計劃日的公平市價的金額 (按本行合理地釐定)，連同按逾期利率計算自原定到期日 (包括當日) 起計至 (但不包括) 提早終止日止的利息。

(c) 只要於提早終止日後合理地切實可行，本行將向您發出一份結單，其中以合理地詳盡列出有關計算及本行根據上文 (b) 段計算的任何應付款金額。該金額將需於通知內列明的日子予以支付，連同其按逾期利率計算自 (及包括) 提早終止日起計至 (但不包括) 支付該金額當日止裁決之前及之後的利息。

(d) 訂約雙方同意根據上文 (b) 段可追索金額為一項合理的事前估計損失而並非一項罰金。該金額是針對日後種種風險的應付買賣損失及保障損失。除協議另有規定者外，任何一方將無權追索有關該等損失的任何額外損害賠償。

### 13. 重大利益

當為您進行交易時，本行的聯繫人或本行在有關的交易中可以有重大利益。例如，本行的聯繫人或本行可：

- (a) 就有關投資持倉，或以發行人、經辦人、保管人、受託人或其他身分參與其中；或
- (b) 將您的買賣指示與其他客戶的買賣指令進行配對。

假如本行在某宗交易上出現實際或潛在的利益衝突，除非本行已向您披露有關利益衝突，並已採取一切合理步驟確保您獲得公平待遇，否則本行將不會進行有關交易。

本行或許與涉及任何投資的發行或管理事宜的任何人士或彼等的聯繫人有現存或未來的商業或銀行業務關係，又或本行將為保障本行利益而作出各種合適的行動；但並無義務向您披露或交待上述事，亦不論該等行動是否可能對您構成不利影響。

### 14. 一般條款

- 14.1 本行可作出或不作出任何事宜，該等事宜是本行相信有必要籍以遵守任何法律、規例、規則及慣例（包括監管機構、香港銀行公會、交易所及結算所的規則、守則、指引及慣例）。以上所有行動及不作為均對您具約束力。
- 14.2 在使用服務前，您或須遵守本行對該服務的規定。每項服務只可在本行所決定的時間內提供，並須遵守本行所決定的程序及條件。本行可拒絕取用而毋須給予理由，亦毋須負責。
- 14.3 (a) 您須承諾在收到每份結單或確認書時仔細查核。假如您發現任何錯誤或未經授權交易，您須在收到結單或確認書當日起計90天內通知本行。假如您在90天內並未通知本行，結單或確認書內的所有記項將成為不可推翻的記項，並對您具有約束力，即表示您同意除明顯錯誤以外不會提出爭議。
- (b) 即使您未於90天內通知本行，您毋須對以下未經授權交易負責：(i) 任

何第三方偽造或欺詐所造成的未經授權交易，而本行並無對其採取合理的謹慎措施和技巧；或 (ii) 本行僱員或代理人偽造或欺詐所造成的未經授權交易；或本行失責或疏忽所造成的其他未經授權交易。除非您是個人（不包括全東商號、合夥商號、會所及社團），否則本 (b) 段對您並不適用。

- 14.4 除非另有書面協定，或本行現已代您持有足夠現金或投資項目，您將於本行通知您的時間，以可交收方式向本行支付已結清資金或向本行交付投資項目，以為每宗交易進行結算。假如您未有如此支付或交付，本行可終止有關交易，或出售該等已購入投資項目，或借入或購買投資項目以結算該等交易。您將對所有負債、損失及開支賠償本行。
- 14.5 本行任何形式的賬戶及記錄對該處所述事情或事實而言均為不可推翻，並對您具約束力，即表示您須同意除明顯錯誤外不就此提出爭議。您同意該等賬戶及記錄將於任何法庭或審裁處獲接納為當中所記錄的事實及事情的證據。
- 14.6 您只可透過本行所通知的方式，根據您的授權書中的簽署安排及本行的規定向本行發出指示。本行可拒絕或按照並非透過以上方式給予的指示行事。不同的服務可能有不同的發出指示方式。即使與現有安排有異，本行仍可未經查詢即按照您的指示行事。向本行發出指示前，您將核對每項指示是否正確。
- 14.7 任何使用您的密碼發出的指示均屬有效，並對您具約束力，即使您的授權書或任何其他安排有任何不同的規定亦然。更改您的被授權簽字人或簽署安排不會影響以您的密碼進行操作：您需要更改您的密碼。
- 14.8 您的被授權簽字人可全權就您的賬戶進行任何事宜，包括操作您的賬戶、買賣任何投資項目（就投資賬戶而言）、提取或轉撥（現金、投資項目、業權文件及其他財產）、為賬戶進行登記、註銷登記或結束賬戶、更改交易限額、與本行安排任何融資及融通、訂立任何協議、作出任何指示及填寫與簽署所有文件（包括開戶表格），但不得變更您的其他被授權簽字人，以及（如您是一名或以上人士）除非經本行同意，不得開立賬戶或申請新服務。
- 14.9 您將應本行要求指定您一個或以上賬戶作為結算賬戶。假如本行同意，您的投資賬戶或結算賬戶的被授權簽字人可操作以上兩個賬戶以及任何掛鈎存款。

- 14.10 (a) 您可透過互聯網、電話，或本行建議的其他電子網絡或設備，進入本行不時提供的電子銀行服務。您的指示可能由電腦自動處理而毋任何監督。
- (b) 電子訊息被視為經訊息發送人簽署的書面文件。任何一方不得對以電子訊息訂立的合約的有效性基於其訂定的方式而提出異議。
- (c) 您承認本行可基於電腦操作為理由拒絕已經受理的指示。您將向本行查明是否已執行您的指示。本行將不會就任何未執行指示而知會您。
- 14.11 您已閱讀本行給予客戶有關《個人資料（私隱）條例》的通知（可不時修訂）。您授權本行使用您的資料作該通知（可不時更改）所述用途，並向該通知（可不時更改）所述人士及本行的服務供應商，以及監管機構、網絡、交易所及結算所披露該等資料。本行可與本行的附屬成員（包括南洋商業銀行有限公司及集友銀行有限公司）就有關您的賬戶及該等公司或本行向您提供的服務共用您的資料。您授權本行的附屬成員及本行使用您的資料，用以向您推廣任何產品及服務。
- 14.12 任何有關您的賬戶的文件經以本行決定的方式記錄後，本行可予以銷毀。記錄只會在本行決定的期間保留。
- 14.13 除另行議定外，本規則及與您進行的所有交易均須受香港特別行政區的法律管限。雙方均願受香港法庭的非專屬性司法管轄權管轄。

## **15. 風險披露**

### 一般事項

以下風險披露聲明不能披露所有涉及的風險。在進行交易或投資前，您應負責本身的資料蒐集及研究。您應按您本身的財政狀況及投資目標謹慎考慮進行交易或投資是否適宜。本行建議您於進行交易或投資前應尋求獨立的財務及專業意見。假如你不確定或不明白以上風險披露聲明或進行交易或投資所涉及的性質及風險的任何方面，您應尋求獨立的專業意見。

## 貴金屬存摺賬戶的風險

貴金屬市場情況反覆，您可能會因貴金屬的交易蒙受損失。貴金屬並不附帶利息。

你就賬戶購入貴金屬並不代表購買實物金屬或存放款項。您在本行所擁有或持有的任何貴金屬並無擁有任何權益，亦無權實物交收貴金屬。

儘管投資可帶來賺取利潤的機會，然而各類投資均存有本身的風險。基於貴金屬市場的波動性質，貴金屬的價格或會超出您預期的升跌幅度，而您的投資資金價值或會因買賣貴金屬而升跌。在作出投資決定前，您應評估您本身的意願及承受風險的能力，本行建議您尋求獨立財務顧問的意見。

## **Notional Precious Metals Passbook Account**

In these Rules, “we” refer to Bank of China (Hong Kong) Limited, and Nanyang Commercial Bank Limited as its agent.

Please also refer to our Conditions for Services. If there is any inconsistency, these Rules shall prevail.

In these Rules, unless the context otherwise requires, “we” and all references to us include our successors and assigns. “You” includes your estates, heirs, successors and personal representatives. Words importing the singular include the plural and vice versa. Words importing a gender include every gender. “Business day” means a day on which banks are open for business in Hong Kong. “Including” is not a word of limitation. A “person” includes an individual, corporation, association, sole proprietorships, partnerships, clubs and societies. Headings are for ease of reference only and do not affect interpretation. These Rules are drafted in simple language, and are to be interpreted fairly and liberally. The rule of interpretation against the maker will not apply.

### **1. Opening an account**

- 1.1 You may, with our agreement, open an account to invest in the precious metals from time to time specified by us.
- 1.2 We will issue a passbook to you on opening your account. In the event of discrepancy, our record will prevail over your passbook. Unless we agree otherwise, you will present your passbook to operate your account.
- 1.3 The passbook is not transferable. You will not make entries in or alter the passbook. You will safeguard the passbook and notify us immediately of any loss of or damage to the passbook.
- 1.4 If a person producing the passbook authorises a transaction, we may assume that you have authorised the transaction, whether or not this is the case. You will not subsequently claim that the transaction is unauthorised.

## **2. Transactions**

- 2.1 You may purchase precious metals for your account, and sell the precious metals in your account. Each purchase and sale will be at the price offered by us (as principal) at the time of the transaction and in the minimum quantities determined by us. A sale may be of all metals in your account, but not more. You will give an instruction for a purchase or sale in the form specified by us. A purchase or sale is concluded when our authorised officer countersigns your order or when we issue an electronic confirmation to you. The terms of each purchase or sale will be as set out in your countersigned order or our confirmation. In case of inconsistency, the terms of your countersigned order or our confirmation shall prevail over these Rules.
- 2.2 On conclusion of each purchase, we may debit the price payable by you to your settlement account, and will credit the purchased quantity of metals to your account. Without affecting our rights, we may apply all funds in your settlement account towards a purchase (including of fractional units of the metals) if the funds are insufficient, and terminate the remainder of the transaction. Before you have paid the full purchase price, you may not sell the metals.
- 2.3 Upon the conclusion of a sale, we may debit the sold quantity of the metals to your account. We will credit your settlement account with the sale proceeds after deducting relevant reasonable expenses, if time permits, on the same business day, or if not, on the next business day.
- 2.4 We will not deliver physical metals, and will not hold physical metals for your account. You have no rights to any physical metals but only a claim against us.
- 2.5 All payments will be made in Hong Kong dollars.
- 2.6 Transactions will only be effected during the business hours determined by us. Transactions in certain metals may not be available on Saturdays.
- 2.7 We will at your request quote indicative sale and purchase prices, unless we are unable to do so. We are not obliged to transact at such prices.

2.8 We may act through another bank as agent. These Rules benefit both agent and principal.

### **3. Fees and taxes**

You will on demand pay all our fees and charges in connection with each transaction, and all taxes, duties and levies in connection with each transaction and your account. Our fees are shown on the fees schedule available on request. We may impose other fees and charges after at least 90 days' prior notice.

### **4. Death or disability**

In the event of your death or disability,

- (a) no purchase can be effected by your personal or other legal representative;
- (b) a sale order signed by your personal or other legal representative will only be accepted after delivery to us of such documents as we require including consent of the Estate Duty Commissioner or the original or a certified copy of the probate, letters of administration and certificate of exemption of estate duty.

### **5. Closing the account**

- 5.1 You may close the account, after selling all the precious metals in the account, returning the passbook to us and complying with our procedures.
- 5.2 If the account balance is nil for the minimum period determined by us from time to time, we may close the account without notice to you.

### **6. Your representations**

You represent to us that:

- (a) You have full capacity and authority to perform your obligations under these Rules and each transaction.
- (b) You have made your own independent decision to enter into each transaction and as to

whether the transaction is appropriate for you based upon your own judgment or upon advice from such third party adviser as you consider necessary; you understand and accept the terms and risks of the transaction and will not rely on our advice or recommendation.

## **7. Limit of our liability**

7.1 Unless caused by our wilful misconduct, we are not liable for:

- (a) any delay or interruption in your having access to an account or service, or any inability to use an account or service;
- (b) any loss, error, delay, misdirection, corruption or unauthorized alteration or interception of a message sent through the internet, telephone or any other means, or any unauthorized access to a service, account or information;
- (c) (in the absence of gross negligence) any failure to execute or error in executing your instructions;
- (d) any error, malfunctioning, interruption, suspension or failure of any software, equipment or system;
- (e) anything including any computer virus which may impair the functions of a computer system; or
- (f) any loss or damage arising from termination of your account or any service provided to you.

7.2 We are not liable for any loss caused by a third party, government, market disruption or any event beyond our control. We are not liable for any act or omission unless due to our gross negligence or fraud. We are not obliged to account to you if our relevant office is prevented from acting.

7.3 We are in any event not liable for any indirect, special, incidental or consequential damages.

- 7.4 Any information or advice provided by us is for your reference only. Unless otherwise expressly stated, it is not an offer. Reliance on such information or advice is at your own risk. We do not provide advice. Our employees and agents do not have authority to advise you. No information provided should be regarded as an advice. You acknowledge that we do not give any representation, guarantee or assurance as to the outcome of any investment. Any price, rate or other quotation provided by us is only indicative, unless otherwise expressly stated, and may be changed without notice until we have confirmed acceptance of your offer. Unless otherwise expressly stated, the prices payable by you do not include, and you will in addition pay, applicable taxes, duties, levies, fees and expenses.
- 7.5 If we are liable for any damages, our liability will be limited to the amount of our fees for the transaction.
- 7.6 We have no duty to verify the validity or genuineness of any documents or the title to your property to be received or held by us.
- 7.7 We have no duty to enquire whether any person involved in the issue or management of any investment is performing its duties.
- 7.8 These limits of our liability operate to the extent permitted by applicable law.

## **8. Your indemnity**

- 8.1 You will indemnify us and our officers and employees against any liability, loss or expense (including tax or levy) arising from your instructions, your account or the provision of a service to you.
- 8.2 You will indemnify us against any act or omission by you or your employees or agents including any breach of these Rules or the terms, conditions or rules applicable to an account, service or transaction. You will pay us all expenses (including legal fees) in reasonable amounts and reasonably incurred in the exercise or enforcement of our rights including in recovering any sum from you or in obtaining any advice we consider necessary in relation to your account.

8.3 We may employ third party agencies to collect overdue sums from you.

## **9. Set-off and lien**

9.1 If any sum is payable by you but unpaid, we may, without prior notice, combine all or any of your accounts anywhere with any of us and all your liabilities (whether actual or contingent, future or existing, alone or jointly with others, or owing to any of us). For such purpose, we may convert any currency into another currency at our spot rate, treat future liabilities as presently due after a discount by us to present value in a commercially reasonable manner, and estimate the amounts of contingent or unquantified liabilities. This is not intended to create a security interest.

9.2 We may debit one or more of your accounts with any amounts (or part thereof) payable by you.

9.3 So long as you have any present, future or contingent liability (whether or not quantified) to us, you may not, without our consent, withdraw or otherwise deal with any money, right or property in your accounts.

9.4 Your property (of any nature, wherever situate, and whether held by us for safe custody or otherwise) is subject to a lien in our favour. If you do not perform any of your obligations owed to us or any of our affiliates, we may sell any of your property or part thereof at such price, on such terms and by such method as we may determine. We may apply the net proceeds to reduce your liability (whether or not arising from these Rules).

## **10. Changes**

10.1 We may change our services, the manner of operation, any requirements, time limits or monetary amounts, or impose restrictions, or suspend or withdraw any services. We may vary the name of a service. We may change our business hours or the hours during which a service is available. Such changes may be made without notice or liability.

10.2 We may change any terms, conditions, and rules applicable to a service or an account at

any time by notice to you. The notice will take effect, if the changes affect fees, charges, or your rights or obligations, and where practicable, after 90 days.

## **11. Termination**

- 11.1 You may terminate an account or service after you have given 30 days' prior notice to us, complied with our requirements and paid our fees.
- 11.2 We may at any time, by 30 days' prior notice to you and without giving a reason, close your account. The notice may, if necessary, take effect immediately. We may close an account with a zero balance without prior notice.
- 11.3 Within 7 days (or such longer period as we agree) after the termination of your account, you will give us instructions for the delivery (at your risk and subject to our rights) of your property (if any), and pay all relevant fees and expenses. If you have not done so, we will continue to hold the property at your risk and subject to our rights, but without the obligations, under these Rules. No interest will be payable on any credit balance as from the date of termination.
- 11.4 Termination of an account or a service will not affect accrued rights or subsisting transactions. We may at our discretion cancel, close out or complete any outstanding instruction or contract. Rules 7, 8, 9, 14.5, 14.11 and 14.12 will survive termination.

## **12. Events of Default**

- 12.1 The parties will make payments and deliveries in accordance with each confirmation, subject to the condition precedent that no Event of Default (see 12.2 below) or Potential Event of Default has occurred and is continuing. "**Potential Event of Default**" means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.
- 12.2 The occurrence at any time of any of the following events with respect to you or any of your Affiliates or any person who has provided any guarantee or security in support of your obligations under all or any of your transactions with us ("**Agreement**") (each a "**relevant party**") constitutes an event of default ("**Event of Default**");

("Affiliate" means, in relation to any entity (it), any other entity controlled directly or indirectly by it, any other entity that controls directly or indirectly it or any other entity directly or indirectly under common control with it. For this purpose, "control" means ownership of a majority of the voting power of the entity.)

- (a) **Fail to pay or deliver.** Failure to make, when due, any payment or delivery required under the Agreement.
- (b) **Breach.** Failure to comply with any other obligation in accordance with the Agreement.
- (c) **Support default.**
  - (i) Failure to perform any agreement to provide any guarantee or security in support of your obligations under the Agreement;
  - (ii) such guarantee or security expires or ceases to be in full force and effect without our written consent; or
  - (iii) any relevant party (or any person appointed to manage it or act on its behalf) disclaims or repudiates, in whole or part, or challenges the validity of, such guarantee or security.
- (d) **Misrepresentation.** Any representation proves to be incorrect or misleading in any material respect.
- (e) **Cross default.** The occurrence or existence of:
  - (i) a default (however described) under one or more financial, investment, derivative or borrowing transactions which has resulted in such transactions becoming, or becoming capable of being declared, due and payable or deliverable, or otherwise terminated prematurely;
  - (ii) a default in making one or more payments or deliveries on the due date under any financial, investment, derivative or borrowing transaction (after giving effect to applicable notice requirement or grace period); or

- (iii) a disclaimer, repudiation or rejection, in whole or in part, of any financial, investment, derivative or borrowing transaction (or such action is taken by any person appointed or empowered to manage any relevant party or act on its behalf).
- (f) **Insolvency.** Any relevant party:
  - (i) becomes insolvent or fails or admits in writing its inability to pay its debts as they become due;
  - (ii) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
  - (iii) or any other person commences any judicial, administrative or other proceeding, or takes any action, (1) seeking a judgment of or arrangement for insolvency, bankruptcy, liquidation, reorganization or rehabilitation with respect to the relevant party or its debts or assets, (2) seeking the appointment of a trustee, receiver, liquidator, supervisor or custodian for the relevant party or any part of its assets, or (3) which has a similar effect;
  - (iv) has a resolution passed for its liquidation, reorganization or rehabilitation;
  - (v) has a secured party take possession of all or any part of its assets or has a distress, execution, attachment or other legal process enforced against all or any part of its assets; or
  - (vi) causes or is subject to any event which, under any applicable law, has a similar effect to any of the above.
- (g) **Merger.** Any relevant party amalgamates or merges with or transfers all or any substantial part of its assets to another entity.
- (h) **Death.** If you are an individual and you die or become mentally incapacitated.
- (i) **Force majeure.**

- (i) Any relevant party, by reason of any event or circumstance, is or would be prevented from complying with, or it is or would be impossible or impracticable to comply with, any material provision of the Agreement where such event or circumstance is beyond the control of the affected party; or
- (ii) It is or would be unlawful under any applicable law for any relevant party to comply with any material provision of the Agreement.

For this purpose, material provisions include the obligation to make or receive a payment or delivery on a timely basis under a transaction.

- (j) **Adequate assurances.** You fail to provide adequate assurances of your ability to perform your outstanding obligations under the Agreement or any other agreement between the parties on or before the second business day after our written request when we have reasonable grounds for insecurity.

### 12.3 Early termination

- (a) If at any time an Event of Default has occurred and is continuing, we may, by not more than 7 days notice to you specifying the Event of Default, designate a day as an Early Termination Date in respect of the affected or all outstanding transactions (which will terminate on the designated date).
- (b) We will determine in good faith our losses or gains, and costs, that are or would be incurred or realized under then prevailing circumstances in replacing or providing for us the economic equivalent of the material terms of each terminated transaction including the remaining payments, deliveries and rights. We will determine such amounts as of a commercially reasonable date and to produce a commercially reasonable result. We may apply different valuation methods to different transactions depending on type, complexity or other relevant factors. We may take into account any relevant information including market data and information from internal sources, and without duplication:

- (i) any cost of funding;
- (ii) any loss, cost or gain incurred in connection with our terminating or obtaining any hedge related to a terminated transaction.

All amounts will be expressed in Hong Kong dollars or another currency chosen by us. We will convert amounts in another currency at our spot exchange rate.

We will net off (1) amounts that became payable to either party in respect of all terminated transactions on or prior to the Early Termination Date and which remain unpaid as at such date and (2) an amount equal to the fair market value as of the original scheduled date for delivery (as reasonably determined by us) of anything which was required to be delivered to either party in respect of each terminated transaction on or prior to the Early Termination Date and which has not been so delivered as at such date, together with interest from (and including) the original due date to (but excluding) the Early Termination Date, at the rate for overdue interest.

- (c) As soon as reasonably practicable after an Early Termination Date, we will provide to you a statement showing, in reasonable detail, the calculations and any amount payable following our calculation under paragraph (b) above. Such amount will be payable on the day specified in the notice, together with interest thereon (before and after judgment) from (and including) the Early Termination Date to (but excluding) the date such amount is paid, at the rate for overdue interest.
- (d) The parties agree that an amount recoverable under paragraph (b) above is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for loss of bargain and loss of protection against future risks. Except as otherwise provided in the Agreement neither party will be entitled to recover any additional damages for such losses.

### **13. Material interest**

When effecting transactions for you, our affiliates or we may have a material interest in relation to the transaction. For example, our affiliates or we may:

- (a) have a position in relation to the investments or are involved as issuer, manager, custodian, trustee or otherwise; or
- (b) match your order with those of other customers.

If we have an actual or potential conflict of interest in relation to a transaction, we will not act unless we have disclosed that conflict to you and have taken all reasonable steps to treat you fairly.

We may have existing or future commercial or banking relationships with any person involved in the issue or management of any investment or their affiliates, and will pursue actions which we deem appropriate to protect our interests, without obligation to disclose or account to you, and regardless of whether such action might adversely affect you.

### **14. General**

- 14.1 We may do or refrain from doing anything that we believe is required in order to comply with any laws, regulations, rules and practices, including the rules, codes, guidelines and practices of regulatory authorities, the Hong Kong Association of Banks, exchanges and clearing houses. All such actions and omissions bind you.
- 14.2 Before using a service, you may be required to comply with our requirements for that service. Each service is only available during the times and is subject to the procedure and conditions determined by us. We may refuse access without giving a reason and without liability.
- 14.3 (a) You undertake to examine each statement of account or confirmation of a transaction carefully on receipt. If you discover any error or unauthorized transaction, you will notify us within 90 days of receipt of the statement or confirmation. If you do not notify us within the 90-day period, all entries in the

statement or confirmation will become conclusive and binding on you, i.e., you agree not to dispute them except for manifest error.

- (b) You will not however be liable a a result of non-notification within the 90-day period for unauthorised transactions arising from forgery or fraud (i) by any third party in relation to which we have failed to exercise reasonable care and skill, or (ii) by our employee or agent, or other unauthorised transactions arising from our default or negligence. This Paragraph does not apply to you unless you are a private individual (excluding sole traders, partnerships, clubs and societies).

14.4 Unless otherwise agreed in writing or we are already holding sufficient cash or investments on your behalf, you will pay us cleared funds or deliver to us investments in deliverable form, by the time we notify you, in order to settle each transaction. If you fail to do so, we may terminate the transaction, or sell the purchased investments, or borrow or purchase investments to settle the transaction. You will indemnify us against all liabilities, losses and expenses.

14.5 Our accounts and records (in any form) are conclusive of the matters or facts therein stated and are binding on you i.e., you agree not to dispute them except for manifest error. You agree that they will be admissible in any court or tribunal as evidence of the facts and matters recorded in them.

14.6 You will only give instructions to us through a means we have notified, in accordance with the signing arrangement in your mandate, and in accordance with our requirements. We may reject (or act on) an instruction not so given. Different means of giving instructions may be available for different services. We may act on your instruction without enquiry, although it is inconsistent with an existing arrangement. You will check that each instruction is correct before sending it to us.

14.7 Any instruction given by the use of your password is valid and binding on you. This is so notwithstanding any different requirements in your mandate or any other arrangement. Changes in your authorized signatories or signing arrangement will not affect operation by your password: you will need to change your password.

- 14.8 Your authorized signatories have full authority to do everything for you in relation to your accounts including to operate your accounts, buy or sell any investments (in the case of an investment account), make withdrawals or transfers (of cash, investments, title documents and other property), register, deregister or close accounts, change transaction limits, arrange with us for any facilities and accommodation, enter into any agreement, give any instructions and complete and sign all documents including account opening forms, but not to change your other authorized signatories, and, if you are one or more individuals, not to open accounts or apply for new services, unless agreed by us.
- 14.9 You will as required designate one or more of your accounts as settlement account(s). Your authorised signatories for your investment account or settlement account may operate both accounts and also any linked deposit, if we agree.
- 14.10(a) Electronic banking services (on the internet, telephone, or other electronic network or devices as advised by us) allow you to access such services as are provided by us on the relevant channel from time to time. Your instructions may be processed automatically by computers without oversight.
- (b) Electronic messages are treated as a writing signed by the sender. Neither party will contest the validity of a contract concluded by electronic messages on the grounds that it was so concluded.
- (c) You acknowledge that an accepted instruction may be rejected by reason of computer operations. You will check whether your instructions have been executed. We will not notify non-execution.
- 14.11 You have read our notice to customers (as amended from time to time) relating to the Personal Data (Privacy) Ordinance. You authorize us to use your information for the purposes and to disclose them to the persons referred to in that notice (as from time to time varied) and to our service providers, and regulatory authorities, networks, exchanges and clearing houses. We may share your information with our affiliates including Nanyang Commercial Bank Limited and Chiyu Banking Corporation Limited for all purposes connected with your accounts and the services provided by them or us

to you. You authorize our affiliates and us to use your information for the purposes of marketing any products and services to you.

14.12 We may destroy any document relating to your account after recording it in a manner determined by us. Records will only be retained for the period determined by us.

14.13 These Rules and all transactions with you are, unless otherwise agreed, governed by the laws of the Hong Kong Special Administrative Region. The parties submit to the non-exclusive jurisdiction of the Hong Kong courts.

## **15. Risk disclosure**

### General

The following risk disclosure statements cannot disclose all the risks involved. You should undertake your own research and study before you trade or invest. You should carefully consider whether trading or investment is suitable in light of your own financial position and investment objectives. You are advised to seek independent financial and professional advice before you trade or invest. You should seek independent professional advice if you are uncertain of or have not understood any aspect of the above risk disclosure statements or the nature and risks involved in trading or investment.

### Risk of notional precious metals passbook account

The market in precious metals is volatile and a loss may be incurred from transacting in precious metals. Precious metals do not bear interest.

Your purchase of precious metals for the account does not represent a purchase of physical metals or a deposit of money. You will not have any interest in any precious metals owned or held by us or be entitled to physical delivery of precious metals.

Although investment may bring about profit opportunities, each kind of investment tool comes with its own risks. Due to the fluctuating nature of the precious metals markets, the prices of precious metals may rise or fall beyond your expectations and your investment funds may increase or decrease in value as a result of selling and purchasing of precious metals. Before making any investment decision, you should assess your own willingness and ability to bear risks and are advised to seek advice from an independent financial advisor.

