



# Phillip Commodities (HK) Ltd.

## LEVERAGED FOREIGN EXCHANGE CLIENT AGREEMENT

### Schedules:

1. On-line Trading Agreement
2. Personal Information Collection Statement
3. Risk Disclosure Statement and Disclaimers
4. Account opening Form (Customer Information Form)

# LEVERAGED FOREIGN EXCHANGE CLIENT AGREEMENT

THIS AGREEMENT is made the date stated in the Account Opening Form.

## BETWEEN:

- (1) **Phillip Commodities (HK) Limited**, a Company incorporated in Hong Kong with its principal place of business at 11/F, United Centre, 95 Queensway, Hong Kong and a corporation licensed for Type 2, 3 and 5 regulated activities under the Securities and Futures Ordinance with CE No. AAZ038 (the "Company") and
- (2) The party whose name, address and details are set out in the Account Opening Form (the "Customer").

## WHEREAS:

- (1) The Customer is desirous of opening one or more non-discretionary account(s) with the Company as the Customer may decide from time to time for the purpose of entering into contracts of all kinds for foreign exchange trading and leveraged foreign exchange trading.
- (2) The Company agrees that it will from time to time at the request of the Customer and at its discretion allow the Customer to open one or more non-discretionary account(s) with the Company and will maintain such account or accounts to be designated by name(s), number(s) or otherwise for the Customer for the purpose of foreign exchange trading and leveraged foreign exchange trading.

## AGREEMENT:

### 1. Definitions

In this Agreement:

**"Account"** means any one or more trading accounts now or hereafter opened in the name of the Customer with the Company in connection with this Agreement.

**"Account Opening Form"** means the form attached as Schedule 4.

**"Additional Margin"** means such further deposit in addition to the Initial Margin as the Company shall demand from time to time from the Customer as a deposit for the performance by the Customer of a FX Contract.

**"Agreement"** means this agreement, including the Account Opening Form and the various Schedules attached hereto, as originally executed or as hereafter from time to time amended or supplemented.

**"Associate"** means, in relation to the Company, a body corporate which is its subsidiary or affiliated Company, in Hong Kong or elsewhere and shall include, but not be limited, to the following:

- (a) Phillip Securities (HK) Ltd
- (b) Phillip Asset Management (HK) Ltd
- (c) Phillip Finance (HK) Ltd
- (d) Phillip Financial Advisors (HK) Ltd

**"Authorised Person"** means, in the case of a corporate Customer, the person(s) initially so named in the Account Opening Form and, in the case of individual Customer, the Customer or the person(s) initially so named in the Account Opening Form who holds a valid power of attorney from the Customer the original of which is to be provided to the Company.

**"Business Day"** means any day on which the company is open for trading other than Saturdays, Sunday, public holiday and any other day declared by the Company to be a non business day.

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

**"FX Contract(s)"** means contract(s) entered into between the Company and the Customer in relation to FX Transaction(s)

**"FX Transaction(s)"** means transaction(s) involving "leveraged foreign exchange trading or foreign exchange trading" within the meaning of Part 2, Schedule 5 of the SFO.

**"Hong Kong"** means the Hong Kong Special Administrative Region of the People's Republic of China.

**"Instructions"** means any instructions or orders regarding FX Transactions communicated by the Customer or its Authorised Person to the Company.

**"Initial Margin"** means the deposit of money and/or Securities or other property as collateral initially demanded by the Company from the Customer prior to the entering of a FX Contract as security for the performance by the Customer of the FX Contract.

“**Investor Compensation Fund**” means the compensation fund established under the laws of Hong Kong.

“**Margin**” means the Initial Margin together with the Additional Margin demanded by the Company.

“**Rules**” means any of the rules, regulations and guidelines made by SFC under SFO.

“**Securities**” means (1) stocks, shares, units and other equity securities, (2) bonds, notes and other debt securities, (3) spot and forward contracts, options, warrants, futures, contracts for differences, swaps, exchanges and derivatives (whether or not linked or related in any way to any of the foregoing or to any moneys, index or other assets, property or item) and (4) other investments of any kind whatsoever, in each case whether listed or unlisted, traded or not traded on any exchange or market, privately placed or publicly offered and whether or not constituted, evidenced or represented by a certificate or other document (bearer, negotiable or otherwise) or by an entry in the books of an issuer, a clearing house, a depository, a custodian or any other person, together with rights against any issuer, clearing house, depository, custody or any other person, in respect of any of the foregoing and other rights, benefits and proceeds in relation to any of the foregoing.

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

“**SFO**” means the Securities and Futures Ordinance, Cap.571 of the Laws of Hong Kong.

“**Value Day**” means the date on which the foreign exchange agreed to be purchased or sold pursuant to a FX Contract is to be delivered or deferred.

## 2. **Preliminary and General Matters**

- 2.1 Before entering into any FX Contract, the Customer shall satisfy itself that such FX Contract is suitable for the Customer’s purposes. Notwithstanding that the Company may express views on the subject matter of any FX Contract or on any matter connected with FX Transaction generally, each FX Contract shall be deemed to have been entered into by the Customer in reliance only upon its own judgement and the Company shall have no responsibility or liability whatsoever in respect of any advice given, or views expressed by it or any of its directors, officers, employees or agents to the Customer, whether or not such advice is given or such views are expressed at the request of the Customer.
- 2.2 It is expressly understood that unless otherwise disclosed herein or to the Customer in writing in the usual manner of the Company, the Company is acting as principal in any FX Transactions made by the Customer with the Company and the Company shall have no obligation to provide the Customer with financial or other advice with respect to any position of the Customer and (except as directed by the Customer and except as provided under the Rules) the Company shall have no obligation to but shall have the right to close out any position in the Account which the Customer may open with any of the Company.
- 2.3 The Customer hereby expressly acknowledges that rates for foreign exchange may fluctuate in a very short period of time and agrees that any rate quoted by the Company whether verbally, by telephone or otherwise shall not be binding on the Company.
- 2.4 The Customer acknowledges that there may, on occasions, be a delay in making prices or in dealing by the Company due to the physical restraints or the rapid changes in the prices of FX Transactions and the Company may not, after using reasonable endeavours, be able to trade at the prices quoted at any specific time. The Customer agrees that the Company shall not be liable for any loss arising by reasons of its failing, or being unable, to comply with any terms of the Customer’s Instruction.
- 2.5 The Customer shall ensure that all necessary authorisations, approvals and consents of any governmental or other regulatory body or authority applicable to any FX Transactions are obtained and that the terms thereof and all the applicable regulations of such bodies and authorities are complied with.
- 2.6 Every FX Contract is made on the clear understanding that both the Company and the Customer contemplate actual performance thereof.
- 2.7 **THE CUSTOMER ACKNOWLEDGES THAT THE COMPANY MAY, TAKE THE OPPOSITE POSITION TO THE CUSTOMER’S ORDER IN RELATION TO ANY FX CONTRACTS, WHETHER ON THE COMPANY’S OWN ACCOUNT OR FOR THE ACCOUNT OF ITS ASSOCIATES OR OTHER CUSTOMERS OF THE COMPANY.**
- 2.8 The Company discloses to the Customer that it trades on its own account or on the account of any Associate and any of its directors or employees may trade on its own account. The Customer is trading on his own account or for the account of the ultimate beneficial owner of the Account as set out in the Account Opening Form.

- 2.9 The Company agrees on request from the Customer to provide to the Customer:
- (a) a product specification or other offering document relating to the FX Transactions and FX Contracts entered into pursuant to this Agreement; and
  - (b) a full explanation of margin procedures and the circumstances under which the Customer's positions may be closed without his consent.
- 2.10 Nothing in this Agreement operates to remove, exclude or restrict any rights of the Customer or obligations of the Company under the law.
- 2.11 None of the employees or representatives of the Company shall accept appointment by the Customer as agent to operate the Account(s) unless a separate agreement is entered into in accordance with the Code of Conduct.
- 2.12 Subject to 2.11, the Customer hereby irrevocably and by way of security for its obligations under this agreement appoints the Company and its officers as the agent and the attorney of the Customer and in its name and on its behalf and as its act and deed to do or execute all such deeds, assurances, agreements, instruments notices, acts and things which may be lawfully required to give full effect to this agreement. The Customer hereby ratifies and confirms and agrees to ratify and confirm any Instrument, act or thing which such attorney may execute or do.
- 2.13 The Customer acknowledges that he may be affected by any curtailment of, or restriction on, the capacity of the Company to deal in respect of open positions as a result of action taken by the Securities and Futures Commission under the Rules or for any other reason, and in such circumstances, the Customer may be required to reduce or close out his positions with the Company.
- 2.14 All monies, securities and other property received by the Company from the Customer or from any other person for the account of the Customer shall be held by the Company as trustee, segregated from the Company's own assets;
- 2.15 The Customer shall not be entitled to any interest as may be received by the Company attributable to any credit balance of the Customer in the Account. The Customer shall pay interest on all debit balances on the Account (including any amount otherwise owing to the Company at any time) at such rates and on such other terms as the Company notifies the Customer from time to time. Such interest shall accrue on a day-to-day basis and shall be payable on the last day of each calendar month or upon any demand being made by the Company. Overdue interest shall be compounded monthly and shall itself bear interest.
- 2.16 The Customer confirms that the information supplied in the Account Opening Form is true and complete and agrees to notify the Company forthwith of any material changes in such information supplied. The Company will notify the Customer forthwith of any material changes in:
- (a) its description set out above;
  - (b) the nature of the services provided to or available to the Customer;
  - (c) the description of any remuneration to be paid to the Company;
  - (d) details of margin requirements, interest charges, margin calls and circumstances when the Customer's position may be closed without its consent.
- 2.17 The Customer hereby authorizes the Company to conduct C credit enquiry (or personal credit enquiry in case of individual Customer) or check on the Customer for the purpose of ascertaining the financial situation and investment objectives of the Customer and Customer shall keep the Company informed regarding its financial standing and shall immediately report to the Company.

### **3. Margin Requirements**

- 3.1 The Customer shall pay to the Company an Initial Margin in such amount and in such manner as the Company may, subject to the requirement as imposed by the Rules from time to time, in its absolute discretion determine. The present Margin requirement is [5] % of the gross amount payable under any FX Transaction but the Company may vary this at any time on notice to the Customer.
- 3.2 The Company shall be entitled from time to time and at any time to demand the Customer to pay to the Company Additional Margin for any outstanding FX Contract (notwithstanding that the Value Date thereof has expired) in such amount and in such manner as the Company may determine in its absolute discretion and the Customer shall forthwith on demand pay to the Company such Additional Margin and such demand therefore shall be deemed conclusively and validly made with immediate effect. Notwithstanding that the Customer cannot be contacted personally or message

has been left for the Customer by telephone at the telephone number(s) of the Customer on the Company record or in writing left at the Customer's address on record with the Company. Notwithstanding any demand for Additional Margin, the Company may at any time exercise its right under the clause 9.2.

- 3.3 Subject to the provisions of the Rules, the Company may change Margin requirements at any time at its sole discretion. No previous Margin shall establish any precedent and these requirements once established may apply to existing positions as well as to the new positions in the FX Contracts affected by such change.
- 3.4 The Customer shall at all time be liable for the payment of any debit balance(s) owing in the Account, and that in all cases, the Customer shall be liable for any Margin deficiency in the Account .Any debit balance(s) or Margin deficiency in the Account shall be charged with interest thereon at rate of 3% over the prime rate per annum or such rate as the Company shall in its absolute discretion determine with reference to the prevailing market rates and the Customer shall promptly settle upon demand all liabilities outstanding to the Company together with all costs of collection (including but not limited to legal costs ).
- 3.5 The Customer hereby undertakes to fulfil any Margin requirement and to settle any debit balance(s) in the Account with or without demand from the Company.
- 3.6 Subject to applicable law and Rules, the Company may from time to time, without prior notice to the Customer, transfer all or any part of any money or other security held by the Company for the account of the Customer between accounts of the Customer with the Company as it may at its sole discretion considers to be necessary or desirable in order to meet any Margin requirement of the Customer.
- 3.7 Any documents or other property held by the Company as security for any Margin, deposit or other obligation of the Customer to the Company shall be held by it by way of charge unless it is held expressly subject to some other security arrangement.

#### **4. Orders and Instructions**

- 4.1 All Instructions shall be given by the Customer (or its Authorized Person) orally either in person or by telephone, or in writing, delivered by hand, by post or in such other form as from time to time accepted by the Company and only be valid and effective if actually received by the Company within business hours on a Business Day.
- 4.2 The Customer acknowledges and agrees that any Instructions given or purported to be given by any means to the Company by the Customer or by any Authorized Person and which are acted on or relied on by the Company shall at all times be irrevocable and bind the Customer, whether or not such Instructions are in fact given or authorized by the Customer. Under no circumstance shall the Company have any duty to enquire or verify the identity or authority of the person giving Instruction by any accepted means.
- 4.3 The Customer acknowledges that once an Instruction has been made it may not be possible to cancel or change the Instruction.
- 4.4 The Company may at its absolute discretion and without assigning any reason, refuse to carry out any FX Transactions on behalf of, or enter into any FX Contract with the Customer
- 4.5 In the event that the date on which the foreign exchange agreed to be purchased or sold pursuant to a FX Contract is deferred, the FX Contract will be subject to a computation of the interest rate differentials which are charged or paid by the Company on a daily basis of being long or short, once currency against another until the FX is delivered or the value date of the closing out of the FX Contract
- 4.6 (a) The Customer shall notify the Company of his intention to take delivery of foreign exchange pursuant to any FX Contract at least two business days before the day of delivery of the foreign exchange concerned.  
  
(b) For purpose of clause 4.6(a), "Business Day" shall means a day which is not a banking holiday in the country of the corresponding foreign exchange and which the Company is open for FX Transaction.

#### **5. Performance of FX Contract**

- 5.1 The Customer hereby agrees that:
  - (a) Any profit or loss arising as a result of a fluctuation in the exchange rate affecting the foreign exchange in any FX Transaction will be entirely for the account and risk of the Customer;

- (b) Subject to the provisions of the Rules, all Initial Margin and Additional Margin shall be made in such currency and in such amounts as the Company may, at the sole discretion of the Company, require; and
- (c) When such FX Contract is closed out, the Company shall either debit or credit (as the case may be) the Account in the currency in which they are due.

## **6. Fees, Charges and Payment**

- 6.1 All payments pursuant to this Agreement or otherwise in connection with any FX Transaction shall be made in immediately available funds (or other funds determined by and acceptable to the Company at its absolute discretion) in such currency as the Company may in its absolute discretion require, on the due date of such payment and be exclusive of any deductions or withholding.
- 6.2 If the Customer defaults in the payment on the due date of any sum due hereunder to the Company, the Customer shall on demand pay interest calculated on the daily amount outstanding of such sum at the rate which is from time to time notified to the Customer by the Company. The Customer will, in addition, reimburse the Company on demand for all expenses which may be incurred by the Company in protecting any of its rights, or in suing for or recovering any sum due to it in respect of any FX Transaction effected by it for the Customer.
- 6.3 The Customer shall pay to the Company the commission, interest (at rate of 3% over the prime rate per annum) and additional charges (including without limitation, markups and markdowns, statement charges, idle account charges, account transfer charges or other charges), fee (including without limitation, fee imposed by any interbank agency, bank, contract markets or other regulatory or self-regulatory organization) arising out of Company providing services hereunder.
- 6.4 The Customer shall pay to the Company the commission, interest, additional charges and fee as may be determined by the Company from time to time and notified to the Customer.

## **7. Transaction Notices and Reports**

- 7.1 The Company will report to the Customer executions of FX Transactions (i) promptly by telephone calls or facsimile or other means as agreed and (ii) by sending to the Customer a copy of the FX Transaction confirmation and account statement within two Business Days of the execution of the FX Transaction. Unless there have been no FX Transactions or any revenue or expense item in the Account during any particular month and the Account does not have any outstanding balance or holding of position of FX Contracts, the Company will send to the Customer a monthly statement showing a FX Transaction summary for the month in accordance with the relevant law, regulations and Rules.
- 7.2 The Customer shall have a duty to examine the FX Transaction confirmation, account statement and the monthly statement carefully and to notify the Company in writing of any alleged error or irregularity therein within 2 Business days or such other period of time as may be specified by the Company generally or in any particular case, after the date of despatch of such confirmation or statement. The Customer agrees that the Company is not liable for any damages or market fluctuations resulting from any delay in reporting an error to the Company. Otherwise, in the absence of a manifest error, the FX Transaction confirmations, account statement and monthly statement shall be conclusive and the Customer shall be deemed to have waived any such error and the Company will be released from all claims by the Customer in connection with the statement or any action taken or not taken by the Company regarding the Account. In the case that there is an overpayment of money or FX Contracts to the Account, the Customer agrees to notify the Company as soon as it is aware of the overpayment and agrees not to remove (or if it is removed, to return) the money or FX Contracts.

## **8. Events of Default**

- 8.1 The following events shall be Events of Default for the purposes of this Agreement:
  - (i) in respect of any FX Contract or this Agreement, the Customer fails to observe or perform on its due time and date any provision thereof, or in respect of any other agreement or FX Transaction between the Customer and the Company, the Customer fails to observe or perform on its due date any provision thereof or the Customer assigns or purports to assign the whole or any part of the benefit of any FX Contract; or
  - (ii) the Customer (in the case of an individual) dies, or becomes incapable of managing his own affairs, or a petition is issued for his bankruptcy or, (in the case of an corporate) is insolvent, or unable to pay its debts as they fall due, or a petition is issued for its winding up or a resolution for winding up is passed or, (in the case of a partnership) is dissolved or enters into an arrangement or composition for the benefit of its creditors or ceases or threatens to cease to make payment of its debts; or
  - (iii) an encumbrancer takes possession or a receiver, trustee or other similar officer is appointed in respect of any part of the Customer's undertaking, assets or revenues or a distress,

execution or other process is levied or enforced or sued out upon or against any property of the Customer and is not removed, discharged or paid out in full within 7 days; or

- (iv) an administrator, liquidator or similar officer is appointed or an administration order made with respect to the Customer or the whole or any part of the Customer's assets or business; or
- (v) any money or security deposited as Margin by the Customer shall be determined by the Company at its sole discretion to be inadequate having regard to the value of Contracts entered into, or proposed to be entered into, by the Customer; or
- (vi) there shall, without the prior written consent of the Company, be a debit balance on any Account of the Customer with the Company; or
- (vii) the receipt by the Company of notice of any dispute as to the validity of any order or instruction from the Customer and/or any FX Contract; or
- (viii) the continued performance of any FX Contract becoming illegal or being declared by any government authority to be illegal; or
- (ix) the continued performance of this agreement becoming illegal or being declared by any government authority to be illegal; or
- (x) the Company has, for more than 2 consecutive Business Days, been unable to establish direct contact with the Customer or any of its designated representatives; or
- (xi) notwithstanding that none of the above events has occurred, the Company considers it necessary for its own protection.

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

- (i) The Company shall be entitled to immediately close the Account;
- (ii) The Company shall be entitled to terminate all or any part of this Agreement;
- (iii) The Company shall be entitled (but not under duty) to satisfy the obligations the Customer may have to the Company or any of the companies (either directly or by way of guarantee or suretyship) out of any property belonging to the Customer in the custody or control of the Company or Associates ;
- (iv) The Company should be entitled (but not under duty) to close out all or any positions in any Account(s) which any of the Company or Associates may carry on behalf of or maintain with the Customer and cancel any outstanding orders in the Account(s) of the Customer; [Expansion necessary]
- (v) The Company shall not, pending remedy thereof, be obliged to pay over any sum or deliver any assets held by way of security to the Customer in respect of any FX Transaction;
- (vi) The Company shall be entitled to suspend performance of any of its obligations to the Customer howsoever arising and whether under any FX Contract or otherwise, including the payment of any sum or sums of money then due or which might thereafter become due, until such time as the Customer has fully complied with all its obligations to the Company;
- (vii) The Company shall be entitled at any time after the occurrence of any Event of Default to close out all or any existing FX Contracts in such manner as it considers necessary or desirable having regard to the Rules notwithstanding that the settlement date(s) thereof shall not have arrived and to take such other steps as it may consider necessary to protect its interests, but in no circumstances shall the Company be under any obligation to exercise any of such rights or, if it does exercise any of such rights, to do so at a time or in a manner beneficial to the Customer;
- (viii) The Company may sell or subpledge any securities, financial instruments, documents or other property held by it under this Agreement as it may deem appropriate in order to discharge any obligations of the Customer to the Company; and
- (ix) The Company may combine, consolidate and set-off any or all accounts of the Customer in accordance with Clause 12. All amounts due or owing by the Customer to the Company under this Agreement shall become immediately due and payable if an Event of Default occurs.

- 8.3 The right provided in this clause may be exercised by the Company without prior notice to or consent of the Customer, the Customer's heirs, executors, administrators, legatees, personal representatives or assigns. The exercise of the rights by the Company under this clause is without prejudice to the other rights and remedies of the Company and without prejudice to any other liability of the Customer to the Company.
- 8.4 When the Company exercises any of its rights under clause 8.2 herein by way of closing out all or any positions in the Account(s) or closing out all or any positions or sale or purchase of commodities in any Account(s) which any of the Company or associated companies may carry on behalf of or maintain with the Customer, such closing out or sale or purchase may be made on any market where such business is usually transacted or in such manner as the Company shall decide according to the judgement of the Company and at the discretion of the Company. The Customer agrees that in respect of such closing out or sale or purchase, the Company shall have no liability for any loss thereby incurred and without prejudice to the generality of the foregoing, the Customer will not make any claim against the Company concerning the manner of such closing out or the timing thereof.
- 8.5 Where the Company exercises its rights as provided in clause 8.2 to close out all or any outstanding positions in any of the Account(s), the closing out shall be effected for an amount of foreign exchange as the case may be sufficient to close out the said outstanding positions and for this purpose the Customer irrevocably appoints the Company as its agent and attorney.
- 8.6 The prices at which closing out are made pursuant to clause 8.2 herein shall be at such prices as the Company shall in its own judgement and at its discretion decide with reference to the prevailing market price.

## **9. Termination**

- 9.1 Provided that there is no outstanding FX Contract in the Account, either party may terminate this Agreement at any time by giving the other party no less than 3 Business Days' notice in writing.
- 9.2 Upon termination of this Agreement under this Clause, all amounts due or owing by the Customer to the Company under this Agreement shall become immediately due and payable. The Company shall cease to have any obligations to conduct FX Transactions on behalf of the Customer in accordance with the provisions of this Agreement, notwithstanding any Instructions from the Customer to the contrary.

## **10. Notice and Communications**

- 10.1 All notices, reports, statements, confirmations and other communications shall be in written or electronic form (if applicable) which may be personally delivered or transmitted by post, facsimile or electronic mail, if to the Customer, at the address, facsimile number or electronic mail address given in the Account Opening Form or at such other address, facsimile number or electronic mail address as shall be designated by the Customer in a written notice to the Company; and if to the Company, at its address at such office of the Company as the Company may from time to time select and notify to the Customer.
- 10.2 All such notices, reports, statements, confirmations and other communications shall be deemed to have been duly served:
- (i) at the time of delivery or transmission, if delivered personally, by facsimile or by electronic mail; or
  - (ii) 2 Business days after the date of posting, if sent by local mail; or
  - (iii) 5 Business days after the date of posting, if sent by overseas mail.
- 10.3 The Customer acknowledges that telephone calls between the Customer and the Company will be recorded on a centralised recording system and that the record may be used as final and conclusive evidence of the Instructions in the case of disputes.
- 10.4 The Customer hereby acknowledges and agrees that there are risks of misunderstanding or errors in any communication and that such risks shall be borne by the Customer unless such misunderstanding or error in communication is caused by the deliberate and proven malfeasance by any director, officer or employee of the Company.
- 10.5 The Company shall not be responsible for delays in the transmission of orders due to a breakdown or failure of transmission of communication facilities, or to any other cause or causes beyond the reasonable control or anticipation of the Company.

## **11. Assignment**



- 11.1 The Customer may not assign any rights hereunder or under any FX Contract without the consent of the Company. The Customer's rights arising under each FX Transaction or FX Contract shall be subject to all rights, liabilities and obligations arising out of the application of this Agreement to every other FX Transaction entered into by the Customer with the Company.
- 11.2 The Customer agrees that the Company may transfer its rights and obligations under this Agreement without the Customer's consent.
- 11.3 Neither the Customer nor his appointee shall assign any or all rights and interest of the Customer under this agreement and/or FX Contracts and/or FX Transactions (whether absolutely or by way of security or otherwise) without the prior written consent of the Company.

**12. Set-Off, Lien and Combination of Account**

- 12.1 In addition and without prejudice to any general liens, rights of set-off or other similar rights to which the Company may be entitled under laws or this Agreement, all Securities, receivables, monies and other property of the Customer (held by the Customer either individually or jointly with others) held by or in the possession of the Company at any time shall be subject to a general charge in favour of the Company as continuing security to offset and discharge all of the Customer's obligations, arising from FX Transactions or otherwise, to the Company and its Associates.
- 12.2 In addition and without prejudice to any general charges or other similar rights which the Company may be entitled under law or this Agreement, the Company for itself and as agent for any of its Associates, at any time without notice to the Customer, may combine or consolidate any or all accounts of the Customer, of any whatsoever and either individually or jointly with others, with the Company or any of its Associates and the Company may set off or transfer any monies, securities or other property in any such accounts to satisfy obligations or liabilities of the Customer to the Company or any of its Associates, whether such obligations and liabilities are actual or contingent, primary or collateral, secured or unsecured, or joint or several.

**13. Currency**

- 13.1 The Company may, without prior notice to the Customer, make any currency conversions it considers necessary or desirable for the purposes of complying with its obligations or exercising its rights under this Agreement or any FX Contract. Any such conversions shall be effected by it in such manner and at such rates as it may at its discretion determine having due regard to the prevailing rates for freely convertible currencies.
- 13.2 All foreign currency exchange risk arising from any Contract or from the compliance by the Company with its obligations or the exercise by it of its rights under this Agreement shall be borne by the Customer.

**14. Limitation of Liability and Indemnity and Exemptions and Waivers**

- 14.1 Neither the Company nor any of its directors, officers, employees and agents or any correspondents shall be liable to the Customer for any direct, indirect or consequential loss or damage (including economic loss or damage) suffered by the Customer arising out of or connected with any act or omission in relation to this Agreement, any FX Contracts or in respect of any FX Transactions unless such loss results from its or any of its fraud or wilful default. The Customer undertakes to keep the Company and its directors, its officers, employees and agents indemnified against all costs, charges, loss, claims, damages, liabilities, demands or proceedings (including, without limitation, any costs and expenses incurred in settling any claim, demand or proceeding) incurred by the Company or them arising out of anything done or omitted pursuant to any Instruction given by the Customer or the Authorised Persons or in relation to any matters contemplated by this Agreement, by any of the FX Contracts or in respect of any FX Transactions or arising out of or connected with any breach by the Customer of the Customer's obligations to the Company pursuant to this Agreement, any of the FX Contracts or in respect of any FX Transactions.
- 14.2 The Company will not be responsible or liable for any loss or expense suffered or incurred by the Customer arising from any delay, failure or inability of the Company to discharge any of its obligations or liabilities as a result of any reasons or causes beyond the Company's reasonable control, including without limitation, any order, law, regulation, directive, levy, tax, embargo, moratorium, exchange control or restriction or other act of any government whether do facto or de jure or other authority, any breakdown or failure of transmission or Instruction or in computer facilities, postal or other strike, closure or suspension of trading on any exchange, board of trade, market or clearing house, any act of God, fire, flood, frost, storm, explosion. In particular, the Company shall not be obliged to account to the Customer if any correspondent or agent with whom moneys or investments have been placed is prevented from making payment or delivery to the Customer.
- 14.3 In addition to any charge, right of set-off or other right which the Company may have, the Company shall be entitled at any time and without notice to the Customer to set-off the indemnity herein given or any such charge, fee or monies owing to the Company in respect of the services herein rendered

against any of the Customer's account whether in Hong Kong or elsewhere notwithstanding that the credit balances on such accounts and the Customer's liabilities may not be expressed in the same currency. The Customer hereby authorises the Company to effect any necessary conversion of the currency at the Company's prevailing rate of exchange and the Customer hereby waives any rights, claims, actions or proceedings which the Customer may have against the Company for any loss or liabilities which the Customer may suffer as a consequence of the Company acting in accordance with this authorization.

## 15. **Joint and Several Liability/Successors**

- 15.1 Where the Customer comprises two or more individuals:
- (i) the Account shall be owned by the individuals as joint tenants with the right of survivorship and each such individual shall be jointly and severally liable for all obligations under this Agreement;
  - (ii) the Company may accept Instructions from, give receipts to and for all purposes deal with any one of such individuals without notice to the other individual and the Company is not responsible for determining the purposes or propriety of an Instruction the Company receives from any such individual or for the disposition of payments or deliveries among such individuals. The Company reserves the right to require written Instructions from all such individuals at its discretion;
  - (iii) any payments made to any one of such individuals shall be a valid and complete discharge of the Company's obligations to each individual regardless of whether such payment is made before or after the death of any one of more of such individuals;
  - (iv) any notices and communications sent to one such individual will be deemed notice to all individuals holding the Account;
  - (v) subject to the provisions of the Estate Duty Ordinance (Cap. 111), on the death of any such individual (being survived by any other such individual), this Agreement shall not be terminated and the interest in the Account of the deceased shall thereupon vest in and enure for the benefit of the survivor(s) (and, in the case of the death of all individuals, to the legal representative(s) of the last survivor on production of a Grant of Probate or Letter of Administration in respect of that last survivor) provided that any liabilities incurred by the deceased individual shall also be enforceable by the Company against such deceased Customer's estate. The surviving Customer(s) shall give the Company written notice immediately upon any of them becoming aware of any such death.
- 15.2 This Agreement shall be binding on the Customer's heirs, executors, administrators, personal representatives, successors and assigns, as the case may be.

## 16. **Amendments**

The Customer agrees that the Company may amend the terms of this Agreement by giving the Customer reasonable notice of the changes in writing at any time. Any amendment to this Agreement shall take effect on expiry of such notice period and the Customer will be deemed to have accepted the amendment if it does not terminate the Account.

## 17. **Client Identity Rule**

Notwithstanding Clause 2.5, if the Customer effects FX Transactions for the account of others whether on a discretionary or non-discretionary basis, and whether as agent or by entering into matching FX Transactions as principal with its own client, the Customer hereby agrees that, in relation to such FX Transactions where the Company has received an enquiry from the SFC, or any other exchange, governmental or regulatory authority in any jurisdiction (the "**Relevant Regulators**"), the following provisions shall apply.

- 17.1 Subject as provided below, the Customer shall, immediately upon request by the Company, inform the Relevant Regulators of the identity, address, occupation and contact details of the client for whose account the FX Transactions was effected and (so far as known to the Customer) of the person with the ultimate beneficial interest in the FX Transactions. The Customer shall also inform the Relevant Regulators of the identity, address, occupation and contact details of any third party (if different from the client/ultimate beneficiary) who originated the FX Transactions.
- 17.2 If the Customer effected the FX Transactions for a collective investment scheme, discretionary account or discretionary trust the Customer shall, immediately upon request by the Company inform the Relevant Regulators of the identity, address and contact details of the scheme, account or trust and, if applicable, the identity, address, occupation and contact details of the person who, on behalf of the scheme, account or trust, instructed the Customer to effect the FX Transactions.
- 17.3 If the Customer effected the FX Transactions for a collective investment scheme, discretionary account or discretionary trust, the Customer shall, as soon as practicable, inform the Company when the Customer's discretion to invest on behalf of the scheme, account or trust has been overridden. In the case where the Customer's investment discretion has been overridden, the

Customer shall, immediately upon request by the Company inform the Relevant Regulators of the identity, address, occupation and contact details of the person(s) who has or have given the instruction in relation to the FX Transactions.

- 17.4 If the Customer is aware that its client is acting as intermediary for its underlying clients, and the Customer does not know the identity, address, occupation and contact details of the underlying client for whom the FX Transactions was effected, the Customer confirms that:
- (i) it has arrangements in place with its client which entitle the Customer to obtain the information set out in Clauses 17.1 and 17.2 from its client immediately upon request or procure that it be so obtained; and
  - (ii) it will, on request from the Company in relation to a FX Transaction, promptly request the information set out in Clauses 17.1 and 17.2 from the client on whose instructions the FX Transactions was effected, and provide the information to the Relevant Regulators as soon as received from its client or procure that it be so provided.
- 17.5 The Customer confirms that, where necessary, it has obtained all relevant consents or waivers from clients, collective investment schemes, discretionary accounts or discretionary trusts for whose account FX Transactions may be effected to release information to the Relevant Regulators of the identity and contact details of such clients, collective investment schemes, discretionary accounts or discretionary trusts, and of the person(s) with the ultimate beneficial interest in any such FX Transactions, and (if different from the client/ultimate beneficiary) of the person(s) who originated the FX Transactions.
- 17.6 The provisions of this Clause shall continue in effect notwithstanding the termination of this Agreement.

**18. Confidentiality**

- 18.1 The Company shall upon the request of the Relevant Regulators, disclose the name, beneficial identity, and such other information concerning the Customer as they may request or require. The Customer undertakes to disclose such other information concerning itself to the Company within the time the Company specified as may be required for the Company to comply with the applicable laws, rules, regulations, and/ or the requirements of Relevant Regulators. The Customer irrevocably authorizes the Company to make any such disclosure.
- 18.2 Where the Customer is an individual, the Company is subject to the Hong Kong Personal Data (Privacy) Ordinance which regulates the use of personal data concerning individuals. The Company's policies and practices relating to personal data are set out in Schedule 2 to this Agreement and the Customer acknowledges that it fully understands and accepts the provisions in Schedule 2.

**19. Anti-Money Laundering and Counter-Terrorist Financing**

- 19.1 Where the Customer is an Intermediary as defined in the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance ("AMLO"), the Customer undertakes the following:
- (i) Maintenance of internal policies, procedures and controls to comply with anti-money laundering/countering the financing of terrorist laws, regulations, and guidelines including performing ongoing monitoring of clients and their transactions;
  - (ii) Performance of the client due diligence measures specified in section 2 of schedule 2 of AMLO; and
  - (iii) Provision without delay of the documentary evidence obtained in the course of carrying out client due diligence measures upon request from overseas or local regulators or the Company.

**20. Governing Law**

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

**21. General**

- 21.1 Each Term of this Agreement is severable and distinct from the others. If any Agreement is inconsistent with any present or future law, Rules and regulations of any authority having jurisdiction over the subject matter of this Agreement, such provision shall be deemed to be rescinded or modified in accordance with any such law, Rules or regulation. In all other respects, this Agreement shall continue and remain in full force and effect.

- 21.2 Time shall in all respects be of essence in the performance of all of the Customer's obligations under this Agreement.
- 21.3 A failure or delay in exercising any right, power or privilege in respect of this Agreement by the Company will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or future exercise of that right, power or privilege.
- 21.4 In the event of any difference in the interpretation or meaning between the Chinese and English version of this Agreement, the Customer and the Company agree that the English version shall prevail.
- 21.5 In relation to any dispute between the Company and the Customer, the Company shall, if the Customer so requires, agree to refer to the dispute to arbitration in accordance with the Securities and Futures – (Leveraged Foreign Exchange Trading Arbitration) Rules.

**22. Risk Disclosure and Disclaimer**

The Company refers the Customer to the Risk Disclosure Statements and Disclaimers as contained in Schedule 3.

## SCHEDULE 1

### On-line Trading Agreement

This On-line Trading Agreement is supplemental to the Leveraged Foreign Exchange Trading Client Agreement entered into by the Company and the Customer to which this On-line Trading Agreement is annexed whereby the Company agrees to provide to the Customer Electronic Services which enable the Customer to give electronic Instructions and to obtain quotations and other information via computer or telephonic transmission for use on compatible personal, home or small business computers, including internet appliance with modems, terminals or network computers that can connect to a telecommunication network ("Electronic Services"). Where any conflict arises between the Leveraged Foreign Exchange Trading Client Agreement and the provisions of this On-line Trading Agreement, the provisions of the latter shall prevail.

#### 1. Interpretation

- 1.1 Terms defined in this On-line Trading Agreement have the same meanings as in the Leveraged Foreign Exchange Trading Client Agreement unless stated otherwise.
- 1.2 The following expressions shall, unless the context requires otherwise, have the following meanings:
  - "**Login ID**" means the Customer's identification, used in conjunction with the Password, to gain access to the Electronic Services;
  - "**Information**" means any transaction or market data, bid and ask quotations, news reports, third party analysts' reports, research and other information relating to financial futures Contract and the futures markets;
  - "**Password**" means the Customer's password, used in conjunction with the Login ID, to gain access to the Electronic Services.
- 1.3 References to "Instructions" in the Leveraged Foreign Exchange Trading Client Agreement are deemed to include electronic Instructions given by means of Electronic Services.
- 1.4 "Transaction Notice and Reports" and "Notices and Communications" referred to in Clauses 7 and 10 of the Leveraged Foreign Exchange Trading Client Agreement respectively may be sent solely by means of Electronic Services if the Customer so consents and such consent can be given initially as indicated in the Account Opening Form or subsequently by Electronic Services. Confirmations delivered by Electronic Services shall be deemed to have been duly delivered at the time of transmission.

#### 2. Using Electronic Services

- 2.1 On the issuance by the Company to the Customer of its Login ID and Password, the Electronic Services shall be activated and the Company shall notify the Customer.
- 2.2 The Company is entitled to require the Customer to place a cash and/or securities deposit prior to execution of any Instructions as will be informed by the Company from time to time.
- 2.3 The Customer agrees:
  - (i) that it shall use the Electronic Services only in accordance with this On-line Trading Agreement, the Leveraged Foreign Exchange Trading Client Agreement and the instructions and procedures as set out in the Company's Instruction Manual which is supplied to the Customer from time to time;
  - (ii) that it shall be the only authorized user of the Electronic Services;
  - (iii) that it shall be responsible for the confidentiality and use of its Login ID and Password.
  - (iv) that it shall be solely responsible for all Instructions entered through the Electronic Services using its Login ID and Password and any Instructions so received by the Company shall be deemed to be made by the Customer at the time received by the Company and in the form received;
  - (v) that it shall immediately inform the Company if it becomes aware of any loss, theft or unauthorized use of its Login ID or Password;
  - (vi) that the Company has the right to suspend the Electronic Services if an incorrect Login ID and Password are entered on more than 3 occasions;
  - (vii) to provide the Company with the Customer's e-mail address, and promptly provide the Company with any changes to the Customer's e-mail address, and to accept electronic communications from the Company at the e-mail address the Customer has specified;

- (viii) that the Company may in its absolute discretion impose restrictions on the types of orders, and the range of prices for orders which can be placed through the Electronic Services;
- (ix) that the Customer agrees to pay all subscription, service and user fees, if any, that the Company charges for the Electronic Services and authorises the Company to debit the Customer's Account with the same;
- (x) that it shall be bound by any consent the Customer gives through the Electronic Services for the Company to provide any notices, statements, trade confirmations and other communications to the Customer solely through Electronic Services; and
- (xi) that it shall logoff the Electronic Services immediately following the completion of each Electronic Services session.

2.4 After the giving of an Instruction via the Electronic Services, the Customer shall check via the Electronic Services that its Instruction has been correctly acknowledged by the Company.

2.5 Without limiting the generality of the foregoing, the Customer acknowledges and agrees that it may not be possible to amend or cancel an Instruction after it has been given through the Electronic Services and that an Instruction may only be amended or cancelled if it has not been executed by the Company. In such circumstances the Company will use its best efforts to amend or cancel the Instruction but, notwithstanding an acknowledgement by the Company in relation to the amendment or cancellation, there is no guarantee that the amendment or cancellation will occur. If the amendment or cancellation does not occur, the Customer shall remain liable for the original Instruction.

2.6 In the case the Electronic Services is not available, the Customer shall place its Instructions in accordance with the Leveraged Foreign Exchange Trading Client Agreement.

### **3. Provision of Information**

3.1 The Company may convey Information to the Customer by Electronic Services. The Customer may be charged a fee for Information the Company provides that has been obtained from any markets and from other third-parties that transmit Information (collectively referred to as the "Information Providers").

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

- (i) not upload, post, reproduce or distribute any Information, software or other material protected by copyright or other intellectual property right (as well as rights of publicity and privacy) without first obtaining the permission of the owner of such rights; and
- (ii) not use the Information or any part thereof other than for its own use or in the ordinary course of its own business.

3.3 The Customer agrees not to:

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

3.4 The Customer agrees to comply with reasonable written requests by the Company to protect the Information Providers' and the Company's respective rights in the Information and the Electronic Services.

3.5 The Customer shall comply with such reasonable directions as the Company may give from time to time concerning permitted use of the Information.

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

4.1 The Customer acknowledges that the Electronic Services, and any software comprised in it, is proprietary to the Company. The Customer warrants and undertakes that it shall not, and shall not attempt to, tamper with, modify, decompile, reverse engineer or otherwise alter in any way, and shall not attempt to gain unauthorized access to, any part of the Electronic Services or any of the software comprised in it. The Customer agrees that the Company shall be entitled to terminate this On-line Trading Agreement if at any time the Customer breaches, or if the Company at any time reasonably suspects that the Customer has breached, this warranty and undertaking.

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

- 5.1 The Company, Associates, its agents and the Information Providers shall not be responsible for any losses, costs, expenses or liabilities suffered by the Customer resulting from circumstances beyond their reasonable control including, without limitation:
- (i) delays, failure or inaccuracies in transmission of communications to or from the Company through telephone, electronic or other systems that are not under its control;
  - (ii) delays, inaccuracies or omissions in or unavailability of research, analysis, market data and other Information prepared by Information Providers;
  - (iii) unauthorized access to communications systems, including unauthorized use of the Customer access number(s), password(s) and/or account numbers; and
  - (iv) war or military action, government restrictions, labour disputes or closure of or disruption to orderly trading on any market or exchange, severe weather conditions and acts of god.
- 5.2 The Customer agrees to defend, indemnify and hold the Company, its Associates, its agents and the Information Providers harmless from and against any and all claims, losses, liability costs and expenses (including but not limited to attorneys' fees) arising from the Customer's violation of the Leveraged Foreign Exchange Trading Client Agreement (including this On-line Trading Agreement), applicable futures laws or regulations, or any third party's rights, including but not limited to infringement of any copyright, violation of any proprietary right and invasion of any privacy rights. This obligation will survive the termination of this On-line Trading Agreement.
- 5.3 The Customer accepts that while the Company endeavours to ensure the accuracy and reliability of the Information provided, the Company does not guarantee its accuracy or reliability and accepts no liability (whether in tort, contract or otherwise) for any loss or damage from any inaccuracies or omission.

## **6. Termination of Electronic Services**

- 6.1 The Company reserves the right to terminate the Customer's access to the Electronic Services or any portion of them in its sole discretion, without notice and without limitation, for any reason whatsoever, including but not limited to the unauthorized use of the Customer's Login ID, Password and/or account number(s), breach of this On-line Trading Agreement or the Leveraged Foreign Exchange Trading Client Agreement, discontinuance of the Company's access to any Information from any Information Provider or termination of one or more agreements between the Company and Information Providers.
- 6.2 In the event of termination by the Company, the Information Providers, and the Company shall have no liability to the Customer; provided, however, that if the termination is without cause the Company will refund the pro rata portion of any fee that may have been paid by the Customer for the portion of the Electronic Services not furnished to the Customer as of the date of such termination.

## **7. Risk Disclosure**

The Company refers the Customer to the Risk Disclosure Statements and Disclaimers contained in Schedule 3.

## **8. General**

- 8.1 In the event of any dispute between the parties, the Customer agrees that the records of the Company (including electronic records) shall prevail.
- 8.2 The Company may change the terms in this On-line Trading Agreement from time to time by giving the Customer reasonable notice in writing or via Electronic Services.

## SCHEDULE 2

### Personal Information Collection Statement

This Statement is provided to the Customer as an individual Customer of Phillip Group (the "Group") in accordance with the requirements of the Hong Kong Personal Data (Privacy) Ordinance (the "**Ordinance**").

#### 1. Definitions

**"Account"** means any one or more accounts now or hereafter opened in the name of the Customer with the Company;

**"Account Opening Form"** means the prescribed document the Customer completes and signs for the opening of an account with the Company;

**"Associate"** means, in relation to the Group, a body corporate which is its subsidiary or affiliated company in Hong Kong or elsewhere including, where appropriate, but not limited to Phillip Securities (Hong Kong) Limited, Phillip Commodities (HK) Limited, Phillip Capital Management (HK) Limited, Phillip Financial Advisors Limited, and Phillip Bullion Limited;

**"Client Agreement"** means the agreement signed between the Customer and the Company, including the Account Opening Form and the various schedules attached, as originally executed or as thereafter from time to time amended or supplemented;

**"Company"** means the corporate body with whom the Customer entered into a Client Agreement;

**"Correspondent Agent"** means anyone who acts as the Company's agent, contractor or third party service provider (whether in Hong Kong or elsewhere) who provides administrative, telecommunications, computer, payment, debt collection or securities clearing, custodian, audit, banking, financing, insurance, risk management, business consulting, outsourcing, customer relationship management, marketing or other services to the Group in connection with the operation of its business;

**"Customer"** means the party whose name, address, and details are set out in the Account Opening Form; and

**"Instructions"** means any instructions or orders communicated by the Customer or its authorized persons to the company.

#### 2. Disclosure Obligation

Unless otherwise stated the Customer must supply the personal data requested on the enclosed Account Opening Form to the Company. If the Customer does not supply this data, it will not be possible for the Customer to open an Account with the Company as the Company will not have sufficient information to open and administer the Account.

#### 3. Use of Personal Data

##### 3.1 Users

All personal data concerning the Customer (whether provided by the Customer or any other person, and whether provided before or after the date the Customer receives the Client Agreement containing this information) may be used by any of the following companies or persons (each, a "**User**"):

- (i) any member of the Group;
- (ii) any director, officer or employee or agent of the Group;
- (iii) any person (such as lawyers, advisers, nominee, custodian etc.) authorized by the Group when carrying out the Customer's Instructions and/or the business of the Group;
- (iv) any actual or proposed assignee of any rights and obligations of the Group in relation to the Customer;
- (v) any governmental, regulatory or other bodies or institutions, whether as required by law or regulations applicable to any member of the Group; and
- (vi) any Correspondent Agent.

##### 3.2 Purposes

All personal data concerning the Customer may be used by any User for the following purposes:

- (i) processing the Customer's Account opening application;
- (ii) carrying out new or existing client verification and credit checking procedures and assisting other financial institutions to do so;
- (iii) ongoing Account administration, including the collection of amounts due, enforcement of security, charge or other rights and interests ;
- (iv) designing further products and services or marketing a Group product to the Customer.
- (v) transfer of such data to any place outside Hong Kong;
- (vi) comparison with the Customer's personal data (irrespective of the purposes and sources for which such data were collected, and whether collected by a User or any other person) for the purpose of: (A) credit checking; (B) data verification; and/or (C) otherwise producing or verifying data which may be



used for the purpose of taking such action that a User or any other person may consider appropriate (including action that may relate to the rights, obligations or interest of the Customer or any other person);

- (vii) providing on the terms of any other agreements and services relating to the Customer;
- (viii) any purpose relating to or in connection with compliance with any law, regulation, court order or order of any regulatory body;
- (ix) investigating suspicious transactions; and
- (x) any other purpose relating to the execution of the Customer's Instructions or in connection with the business or dealings of the Group.

### **3.3 Use of Data in Direct Marketing**

The Company intends to use and /or transfer the Customer's data to its Associates for direct marketing and the Company requires the consent (including no objection) of the Customer for that purpose. In this connection, please note that:

- (i) the name, contact details, portfolio information, transaction pattern and financial background of the Customer may be used in direct marketing of investment or financial related products and services of the Group; and
- (ii) if a Customer does not wish the Company to use and /or transfer the Customer's data for use in direct marketing, the Customer may, without charge, exercise the right to opt-out.

### **3.4 Duration of Use**

The Company shall store the Customer's data for no longer than required under the rules, regulations, and laws of all relevant regulators.

## **4. Rights of the Customer**

The Customer has the right to have access to and correction of the Customer's personal data as set out in the Ordinance. In general, and subject to certain exemptions, the Customer is entitled to:

- (i) enquire whether an Associate holds personal data in relation to the Customer;
- (ii) request access to the Customer's personal data within a reasonable time, at a fee which is not excessive, in a reasonable manner and in a form that is intelligible;
- (iii) request the correction of the Customer's personal data;
- (iv) be given reasons if a request for access or correction is refused, and object to any such refusal;
- (v) object to the use of its data as listed under clause 3.2 above, however the objection to any one of the uses contained therein shall prevent the Company from administering the account. Therefore any objections shall be treated as a request to close the Customer's account with the Company; and
- (vi) lodge a complaint with a relevant supervisory authority if the Customer considers that the processing of his/her data infringes on his/her rights.

## **5. Disclosure of Personal Data**

Upon the death of the Customer, the Company shall upon the request of the surviving spouse, child, or parent of the Customer (the Applicant) disclose the account balance and such other information concerning the Customer as the Applicant may require if the Applicant provides a certified true copy of the Customer's government issued death certificate to the Company.

## **6. Contact Person**

If the Customer wishes to request access to and /or correct personal data and/or opt out of receiving direct marketing material, the Customer should contact the Data Protection Officer of the Company on 2277 6555 or [cs@phillip.com.hk](mailto:cs@phillip.com.hk).

## Risk Disclosure Statement and Disclaimers

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

### **Risk of Trading of Leverage Foreign Exchange**

The risk of loss in leverage foreign exchange trading can be substantial. You may sustain losses in excess of your initial margin funds. Placing contingent orders, such as “stop-loss” and “stop-limit” orders, will not necessarily limit losses to the intended amounts. Market conditions may make it impossible to execute such orders. You may be called upon at short notice to deposit additional margin funds. If the required funds are not provided within the prescribed time, your position may be liquidated. You will remain liable for any resulting deficit in your account. You should therefore carefully consider whether such trading is suitable in light of your own financial position and investment objectives.

The high degree of leverage that is often obtainable in trading hereunder because of the small margin requirements can work against you as well as for you. The use of leverage can lead to large losses as well as gain.

You accept and understand that this brief statement cannot, of course, disclose all the risks and other significant aspects of the market and that you should therefore carefully study all trading hereunder before you trade.

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

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

### **Risk of Margin Trading**

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

### **Risks of Customer Assets Received or Held outside Hong Kong**

The Customer’s assets received or held by the Company outside Hong Kong are subject to the applicable laws and regulations of the relevant overseas jurisdiction which may be different from the Securities and Futures Ordinance (Cap. 571) and the rules made thereunder and in particular the Securities and Futures (Client Money) Rules and the Securities and Futures (Client Securities) Rules. Consequently, such Customer assets may not enjoy the same protection as that conferred on Customer assets received or held in Hong Kong.

### **Futures**

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

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

#### **2. Risk-reducing orders or strategies**

The placing of certain orders (e.g. “stop-loss” orders, or “stop-limit” orders) which are intended to limit losses to certain amounts may not be effective because market conditions may make it impossible to execute such

orders. Strategies using combinations of positions, such as “spread” and “straddle” positions may be as risky as taking simple “long” or “short” positions.

## **Options**

### **1. Variable degree of risk**

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

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

Selling (“writing” or “granting”) an option generally entails considerably greater risk than purchasing options. Although the premium received by the seller is fixed, the seller may sustain a loss well in excess of that amount. The seller will be liable for additional margin to maintain the position if the market moves unfavourably.

The seller will also be exposed to the risk of the purchaser exercising the option and the seller will be obligated to either settle the option in cash or to acquire or deliver the underlying interest. If the option is on a futures contract, the seller will acquire a position in a futures contract with associated liabilities for margin (see the section on Futures above). If the option is covered by the seller holding a corresponding position in the underlying interest or a futures contract or another option, the risk may be reduced. If the option is not covered, the risk of loss can be unlimited.

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

### **2. Terms and conditions of contracts**

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

### **3. Suspension or restriction of trading and pricing relationships**

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

### **4. Deposited cash and property**

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

### **5. Commission and other charges**

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

### **6. Transactions in other jurisdictions**

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

### **7. Currency risks**

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

## **ADDITIONAL RISKS COMMON TO FUTURES, OPTIONS AND LEVERAGE FOREIGN EXCHANGE**

### **Terms and conditions of Contracts**

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

### **Suspension or restriction of trading and pricing relationships**

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

Further, normal pricing relationships between the underlying interest and the futures, and the underlying interest and the option may not exist. This can occur when, for example, the futures contract underlying the option is subject to price limits while the option is not. The absence of an underlying reference price may make it difficult to judge "fair value".

### **Deposited cash and property**

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

### **Commission and other charges**

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

### **Transactions in other jurisdictions**

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

### **Currency risks**

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

### **Trading facilities**

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

### **Electronic trading**

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

### **Off-exchange transactions**

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

**Risk of using the Electronic Services under the On-line Trading Agreement**

- (a) If you undertake Financial Futures transactions via Electronic Services, you will be exposed to risks associated with the Electronic Services system including the failure of hardware and software, and the result of any system failure may be that your order is either not executed according to your Instructions or is not executed at all;
- (b) Due to unpredictable traffic congestion and other reasons, Electronic Services may not be reliable and transactions conducted via Electronic Services may be subject to delays in transmission and receipt of your Instructions or other Information, delays in execution or execution of its Instructions at prices different from those prevailing at the time your Instructions were given, transmission interruption or blackout. There are risks of misunderstanding or errors in communication, and that there is also usually not possible to cancel an Instruction after it has been given. The Company accepts no responsibility for any loss which may be incurred by the Customer as a result of such interruptions or delays or access by third parties. You should not place any Instruction with us via Electronic Services if you are not prepared to accept the risk of such interruptions or delays; and
- (c) Market data and other information made available to the Customer through our Electronic Service may be obtained by the Company from third parties. While the Company believes such market data or information to be reliable, neither the Company nor such third parties guarantees the accuracy, completeness or timeliness of any such market data or information.