

附件2:

**SWAP CONNECT CLEARED DERIVATIVES AGREEMENT  
(2024 Version)**

## Statement

The Copyright of this Swap Connect Cleared Derivatives Agreement (2024 Version) (the "Swap Connect Agreement") is vested in the National Association of Financial Market Institutional Investors ("NAFMII"). NAFMII has worked together with Hong Kong Exchanges and Clearing Limited and its affiliates to formulate this Swap Connect Agreement. Except for the purpose of carrying out transactions under this Agreement or conducting teaching or research, without the prior permission in writing of the copyright holder, no person shall reproduce, copy, translate or distribute this Agreement in paper, electronic or any other forms.

The Swap Connect Agreement is formulated in accordance with the relevant Swap Connect regulations, transaction and clearing rules. This version is applicable to the Northbound Swap Connect centrally cleared transactions with the election of "Cancel" as the method following non-acceptance of a transaction for clearing. Participants shall elect, amend or supplement the clauses of this Agreement in the Annex according to their needs. To elect "Resubmit" or other methods as the method following non-acceptance of a transaction for clearing, parties need to effect supplements in the Annex as may be necessary for the specific transactions, so as to ensure that the final agreement meets with the parties' requirements for risk management.

# SWAP CONNECT CLEARED DERIVATIVES AGREEMENT (2024 Version)

dated as of [●] between:

..... and .....

("Party A")

("Party B")

## Whereas

- (A) For the purpose of facilitating transactions of the mutual access between the Chinese Mainland and Hong Kong Special Administrative Region of the People's Republic of China ("**Hong Kong**") interest rate swap markets ("**Swap Connect**"), and the clearing of such transactions through the peer-to-peer clearing link arrangement (the "**Clearing Link**") between OTC Clearing Hong Kong Limited ("**OTCC**") and Shanghai Clearing House ("**SHCH**"), expressly defining the rights and obligations of the parties and safeguarding the legal rights and interests of the parties, the parties have entered into this Swap Connect Cleared Derivatives Agreement, which includes the annex (the "**Annex**") (together, this "**Agreement**"), at their own will and on the basis of equality.
- (B) Party A is a Northbound Swap Connect market maker announced by China Foreign Exchange Trade System & National Interbank Funding Center ("**CFETS**") according to the Northbound Swap Connect Rules and a clearing participant of SHCH.
- (C) Party B is an offshore investor who is eligible to participate in Northbound Swap Connect Derivative Transactions according to the Northbound Swap Connect Rules.

It is agreed as follows:

## 1 Definitions

In this Agreement:

"**Accepted for Clearing**" means, with respect to a Northbound Swap Connect Derivative Transaction, that such Northbound Swap Connect Derivative Transaction has been novated for central clearing through the Clearing Link in accordance with the rules of OTCC and SHCH such that Party A and Party B are parties to separate Cleared Transactions corresponding to such Northbound Swap Connect Derivative Transaction and "Acceptance for Clearing" will be construed accordingly.

"**Cancel**" means, with respect to a Northbound Swap Connect Derivative Transaction, that such Northbound Swap Connect Derivative Transaction has been rejected by either OTCC or SHCH and therefore becomes *void*.

"**Cleared Transaction**" means, in respect of a Northbound Swap Connect Derivative Transaction and a party to this Agreement, the cleared derivative transaction arising upon Acceptance for Clearing of such Northbound Swap Connect Derivative Transaction, governed by the applicable Clearing Agreement.

"**Clearing Agreement**" means, in respect of a Cleared Transaction and a party to this Agreement: (a) if such party is a client of a Clearing Member in relation to such Cleared Transaction, the agreement that such party has with its Clearing Member governing the clearing arrangement of such Cleared Transaction, or (b) if such party is a Clearing Member

in relation to such Cleared Transaction, the applicable arrangements such party has with OTCC or SHCH governing such Cleared Transaction and, in either case, including all annexes, schedules and other supplements thereto.

**“Clearing Member”** means an entity that is eligible to perform a clearing function with respect to a Northbound Swap Connect Derivative Transaction at OTCC or SHCH on which the Northbound Swap Connect Derivative Transaction is to be cleared on behalf of Party A or Party B, which may include Party A or Party B if such entity is eligible to perform such clearing function.

**“Derivative Master Agreement”** means the master agreement, if any, specified in the Annex that will apply in respect of this Agreement.

**“Northbound Swap Connect”** means offshore investors from Hong Kong and other countries and regions, participate in the Chinese Mainland interbank financial derivatives market through the connection of the infrastructure between the Chinese Mainland and Hong Kong in respect of trading, clearing and settlement, etc.

**“Northbound Swap Connect Rules”** means the laws, regulations, policies, rules or guidelines promulgated by any of the Swap Connect Authorities or the Swap Connect Market Infrastructure in respect of Swap Connect, as amended, modified, supplemented, revised or replaced from time to time.

**“Northbound Swap Connect Derivative Transaction”** means an over-the-counter derivative transaction that is entered into and concluded on the electronic trading platform operated by CFETS and is intended to be cleared through the Clearing Link.

**“Relevant Event”** means, in respect of a Northbound Swap Connect Derivative Transaction, any of the following events:

- (1) OTCC or SHCH has not received the trade details relating to such Northbound Swap Connect Derivative Transaction for clearing by the cut-off time specified in the Northbound Swap Connect Rules;
- (2) Party A or Party B’s Clearing Member (if applicable) has not accepted such Northbound Swap Connect Derivative Transaction (where such acceptance is required) by the cut-off time specified in the Northbound Swap Connect Rules; or
- (3) OTCC or SHCH rejects such Northbound Swap Connect Derivative Transaction at any time or has not accepted such Northbound Swap Connect Derivative Transaction for clearing by the cut-off time specified in the Northbound Swap Connect Rules.

**“Swap Connect”** means the arrangement for onshore and offshore investors to participate in the Chinese Mainland interbank financial derivatives market and the financial derivatives market of Hong Kong by connecting infrastructure in the Chinese Mainland and Hong Kong.

**“Swap Connect Authorities”** means the People’s Bank of China, Hong Kong Securities and Futures Commission, Hong Kong Monetary Authority, and any other regulator, agency, or authority with competent jurisdiction, authority or responsibility in respect of Swap Connect.

**“Swap Connect Market Infrastructure”** means CFETS, SHCH, OTCC and any other market infrastructure recognised by the Swap Connect Authorities to provide services in respect of Swap Connect.

## **2 General**

### **2.1 Scope**

- 2.1.1 Party A and Party B may, from time to time, enter into Northbound Swap Connect Derivative Transactions and unless otherwise agreed, this Agreement will apply to all such Northbound Swap Connect Derivative Transactions (irrespective of whether the parties have entered into a Derivative Master Agreement between them).
- 2.1.2 If Party A and Party B have entered into one or more master agreements in respect of over-the-counter derivative transactions between them but no such master agreement is elected as applicable in the Annex, such master agreement shall not constitute a Derivative Master Agreement for the purposes of this Agreement and shall not apply to the Northbound Swap Connect Derivative Transactions.

### **2.2 Inconsistency**

- 2.2.1 In the event of any inconsistency between an effective transaction agreement such as a trade slip generated on the electronic trading platform operated by CFETS for any Northbound Swap Connect Derivative Transaction and the provisions of this Agreement, such effective transaction agreement shall prevail.
- 2.2.2 In the event of any inconsistency between the provisions of the Annex and the other provisions of this Agreement, the Annex shall prevail.
- 2.2.3 If a Derivative Master Agreement is specified to be applicable in the Annex, in the event of any inconsistency between this Agreement and the Derivative Master Agreement, this Agreement will prevail.
- 2.2.4 If the parties have entered into or intend to enter into a separate cleared derivatives execution agreement or a similar agreement, this Agreement shall prevail in respect of any Northbound Swap Connect Derivative Transactions.

## **3 Clearing of Northbound Swap Connect Derivative Transactions**

### **3.1 Submission**

In respect of each Northbound Swap Connect Derivative Transaction, Party A and Party B will each submit trading instructions to CFETS for CFETS to submit such Northbound Swap Connect Derivative Transaction to OTCC and SHCH for central clearing.

### **3.2 Reasonable Steps to Clear**

Without prejudice to Clause 5 of this Agreement and in accordance with the Northbound Swap Connect Rules, the parties will take reasonable steps to enable a Northbound Swap Connect Derivative Transaction to be cleared.

## **4 Transactions Accepted for Clearing**

Upon Acceptance for Clearing of a Northbound Swap Connect Derivative Transaction, neither Party A nor Party B will have any further rights against or obligations to the other (in each case, whether accrued or otherwise) with respect to such Northbound Swap Connect Derivative Transaction, and such Northbound Swap Connect Derivative Transaction no longer constitutes a transaction subject to the Derivative Master Agreement (if any such Derivative Master Agreement is specified to be applicable in the Annex).

## 5 Transactions Rejected for Clearing

Notwithstanding Clause 3.2 of this Agreement, if a Relevant Event occurs with respect to a Northbound Swap Connect Derivative Transaction, such Northbound Swap Connect Derivative Transaction shall be *void ab initio* and no amount (including any amount of margin arising out of or in connection with such Northbound Swap Connect Derivative Transaction) will be payable by either party in respect of such Northbound Swap Connect Derivative Transaction, and shall not constitute an event of default or termination event under the Derivative Master Agreement (if applicable). For the avoidance of doubt, Clause 5 of this Agreement constitutes the mutual agreement between the parties to elect **Cancel** as the method following non-acceptance of a Northbound Swap Connect Derivative Transaction for clearing under the Northbound Swap Connect Rules. To elect resubmit as the method following non-acceptance of a Northbound Swap Connect Derivative Transaction for clearing, the parties may agree otherwise in the Annex.

## 6 Representations, Undertakings and Acknowledgements

### 6.1 Representations

Each of Party A and Party B represents to the other, as at the time of execution of this Agreement and as at the time of execution of a Northbound Swap Connect Derivative Transaction, that:

- 6.1.1 (i) it is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation, (ii) it has the power and authority to execute, enter into, and perform its obligations under this Agreement, each Northbound Swap Connect Derivative Transaction and each corresponding Cleared Transaction and (iii) its obligations under this Agreement, each Northbound Swap Connect Derivative Transaction and each corresponding Cleared Transaction constitute its legal, valid and binding obligations, enforceable in accordance with their terms;
- 6.1.2 with respect to Party A only, (i) it is a Northbound Swap Connect market maker that has entered into the relevant agreement with CFETS under the Northbound Swap Connect Rules; and (ii) it is a clearing participant of SHCH; and
- 6.1.3 with respect to Party B only, (i) it has completed system connection with CFETS pursuant to the Northbound Swap Connect Rules; (ii) it has a Clearing Agreement with a relevant Clearing Member, or is a Clearing Member, of OTCC and (iii) it has entered into each Northbound Swap Connect Derivative Transaction for risk management purposes (if applicable) under the Northbound Swap Connect Rules.

### 6.2 Undertakings

Each of Party A and Party B undertakes to the other that:

- 6.2.1 it will comply with applicable laws and regulations, including the Northbound Swap Connect Rules, to which it may be subject; and
- 6.2.2 it will provide to the other party any information and documents in connection with it, the Northbound Swap Connect Derivative Transactions and the Cleared Transactions that is requested or required by the Swap Connect Authorities to be provided via the other party, and it hereby consents to the disclosure of such information by the other party to any Swap Connect Authorities and shall notify the other party of any changes to such information that it has provided to the other party, only for the purposes of this Agreement and the Northbound Swap Connect Derivative Transactions.

## **6.3 Acknowledgements**

Each of Party A and Party B acknowledges that:

- 6.3.1** neither party will be responsible or liable (whether in contract or in tort or otherwise) for losses or damages incurred by the other party or any other person that arise out of or in connection with (i) error, negligence or misconduct of CFETS, OTCC, SHCH or any service provider selected in good faith, (ii) failure of transmission, communication or electronic order facilities or (iii) any other causes beyond their control; and
- 6.3.2** If there is any discrepancy between the English language and the Chinese language in the recording and interpretation of the trade details of the Northbound Swap Connect Derivative Transactions, the Chinese language shall prevail, and that each party is responsible to ensure it understands such information in Chinese language.

## **7 Miscellaneous**

### **7.1 Amendments**

An amendment, modification or waiver in respect of this Agreement will only be effective if in writing and executed by each of the parties.

### **7.2 Counterparts**

This Agreement (and each amendment, modification and waiver in respect of it) may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

## **8 Governing Law and Dispute Resolution**

### **8.1 Governing Law**

This Agreement and any effective transaction agreement evidencing any Northbound Swap Connect Derivative Transactions and generated on the electronic trading platform operated by CFETS (including any non-contractual rights or obligations arising therefrom or in connection therewith) will be governed by and construed in accordance with the law specified in the Annex.

### **8.2 Dispute Resolution**

With respect to any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement) and any effective transaction agreement evidencing any Northbound Swap Connect Derivative Transactions and generated on the electronic trading platform operated by CFETS (a “**Dispute**”), the parties shall submit to the jurisdiction of the court or arbitral tribunal specified in the Annex.

**Signing Block**

.....

(Name of Party A)

and

.....

(Name of Party B)

Authorized person of Party A

Authorized person of Party B

Name:

Name:

Title:

Title:

[Chop of Party A]\*

[Chop of Party B]\*

\*Include if applicable.

## ANNEX

### 1 Governing Law and Dispute Resolution <sup>i</sup>

For the purposes of Clause 8 of this Agreement:

[*Option A:* This Agreement (including the arbitration provisions below) and any effective transaction agreement evidencing any Northbound Swap Connect Derivative Transactions and generated on the electronic trading platform operated by CFETS (including any non-contractual rights or obligations arising therefrom or in connection therewith) will be governed by and construed in accordance with the laws of the People's Republic of China (which, for the purpose of this Agreement, does not include the laws of Hong Kong, Macao Special Administrative Region and Taiwan area).

The parties shall resolve any Dispute in good faith. Failing which, any Dispute shall be referred to and finally resolved by arbitration. The arbitration shall be conducted in accordance with the China International Economic and Trade Arbitration Commission Arbitration Rules. The arbitral tribunal shall consist of three arbitrators. The seat, or legal place of arbitration, shall be Beijing. The language used in the arbitral proceedings shall be Chinese. The arbitration award shall be final and binding on the parties.] <sup>ii</sup>

OR

[*Option B:* This Agreement (including the arbitration provisions below) and any effective transaction agreement evidencing any Northbound Swap Connect Derivative Transactions and generated on the electronic trading platform operated by CFETS (including any non-contractual rights or obligations arising therefrom or in connection therewith) will be governed by and construed in accordance with Hong Kong law.

The parties shall resolve any Dispute in good faith. Failing which, any Dispute shall be referred to and finally resolved by arbitration. The arbitration shall be conducted in accordance with the Hong Kong International Arbitration Centre Administrated Arbitration Rules. The members of the arbitral tribunal shall be appointed in accordance with the Hong Kong International Arbitration Centre Administrated Arbitration Rules. The arbitration tribunal shall consist of three arbitrators. The seat, or legal place of arbitration, shall be Hong Kong. The language used in the arbitral proceedings shall be English.

A person who is not a party to this Agreement has no right under the Hong Kong Contracts (Rights of Third Parties) Ordinance, Cap. 623 (the **Third Parties Ordinance**) to enforce or to enjoy the benefit of any term of this Agreement.] <sup>iii</sup>

OR

[*Option C:* This Agreement (except for the arbitration provisions below which shall be governed by Hong Kong law) and any effective transaction agreement evidencing any Northbound Swap Connect Derivative Transactions and generated on the electronic trading platform operated by CFETS (including any non-contractual rights or obligations arising therefrom or in connection therewith) will be governed by and construed in accordance with \_\_\_\_\_ law.

The parties shall resolve any Dispute in good faith. Failing which, any Dispute shall be referred to and finally resolved by arbitration. The arbitration shall be conducted in accordance with the Hong Kong International Arbitration Centre Administrated Arbitration Rules. The members of the arbitral tribunal shall be appointed in accordance with the Hong Kong International Arbitration Centre Administrated Arbitration Rules. The arbitration tribunal shall consist of three arbitrators. The seat, or legal place of arbitration, shall be Hong Kong. The language used in the arbitral proceedings shall be English.] <sup>iv</sup>

OR

[Option D: This Agreement and any effective transaction agreement evidencing any Northbound Swap Connect Derivative Transactions and generated on the electronic trading platform operated by CFETS (including any non-contractual rights or obligations arising therefrom or in connection therewith) shall be subject to the governing law clause under the Derivative Master Agreement.

The parties shall submit any Dispute to the jurisdiction of the court or arbitral tribunal specified in the Derivative Master Agreement.]<sup>v</sup>

## 2 Service of Process

Party A appoints as its agent for service of process: [not applicable]/[●]/[the process agent specified in the Derivative Master Agreement]

Party B appoints as its agent for service of process: [not applicable]/[●]/ [the process agent specified in the Derivative Master Agreement]

where applicable, without prejudice to any other manner of service permitted by the governing law, the parties:

(1) irrevocably appoint the relevant agent as their respective agent for the service of any process in relation to any Dispute; and

(2) agree that the failure of the agent for service of process to notify the relevant party of the proceedings will not render such proceedings invalid.

## 3 Derivative Master Agreement<sup>vi</sup>

For the purposes of Clause 2 of this Agreement:

[Derivative Master Agreement: not applicable].<sup>vii</sup>

[Derivative Master Agreement: applicable.

"Derivative Master Agreement" means the [NAFMII Master Agreement (2009 version)] / [NAFMII Master Agreement (Cross-border – 2022 version)] / [1992 ISDA Master Agreement] / [2002 ISDA Master Agreement] / [●] between Party A and Party B dated as of [●].<sup>viii</sup>

## 4 Data Protection Clause

[Applicable] / [Not applicable]

If applicable, the following clause shall be inserted to Clause 6.1 of this Agreement:

[to the extent one party as data provider provides personal information or other data to the other party as data receiver in connection with the Agreement, the data provider represents that it has (i) obtained any necessary and required consent; (ii) provided any necessary notice and (iii) done all other things, in each case as required of the data provider under the laws of the jurisdiction where the data provider is incorporated and other applicable laws and regulations, in respect of disclosing such personal information or other data to the data receiver and allowing the data receiver to process such personal information or other data (which may include cross border transmission).]

## 5 Other Provisions<sup>ix</sup>

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- <sup>i</sup> The options specified in this Agreement only provide model clauses for governing law and dispute resolution. Parties may elect other governing law or dispute resolution, or elect whether to include effective transaction agreement evidencing Northbound Swap Connect Derivative Transactions or non-contractual rights or obligations in this clause and modify the relevant provisions.
- <sup>ii</sup> Use Option A, *mutatis mutandis*, if parties wish to elect People's Republic of China law.
- <sup>iii</sup> Use Option B, *mutatis mutandis*, if parties wish to elect Hong Kong law.
- <sup>iv</sup> Use Option C, *mutatis mutandis*, if parties wish to elect the law of other country or region, e.g. English law, New York law, etc.
- <sup>v</sup> Use Option D if the Derivative Master Agreement is applicable, which the governing law and dispute resolution agreed in the Derivative Master Agreement will apply.
- <sup>vi</sup> Parties may use this Agreement without having an over-the-counter derivatives master agreement between them. If the parties wish to subject the Northbound Swap Connect Derivative Transactions to an existing over-the-counter derivatives master agreement, the parties shall specify the applicable Derivative Master Agreement in this Annex. By specifying the applicable Derivative Master Agreement, this Agreement and the Derivative Master Agreement will both govern the Northbound Swap Connect Derivative Transactions, but this Agreement shall prevail in accordance with Clause 2.2.3 of this Agreement. Only one Derivative Master Agreement can be specified.
- <sup>vii</sup> Only use this option if:
- (1) parties do not have an over-the-counter derivatives master agreement between them; or
  - (2) parties have entered into certain over-the-counter derivatives master agreement(s) between them but wish to carve out the Northbound Swap Connect Derivative Transactions from these over-the-counter derivatives master agreements, so that this Agreement will solely govern the Northbound Swap Connect Derivative Transactions. Under this circumstance, the parties may consider to adjust the "Scope of Agreement" set out in the relevant Derivative Master Agreement accordingly.
- <sup>viii</sup> Only use this option if parties have an over-the-counter derivatives master agreement (e.g. NAFMII master agreement or ISDA master agreement, etc.) between them and wish to subject the Northbound Swap Connect Derivative Transactions to the specified Derivative Master Agreement.
- <sup>ix</sup> Include any additional provisions as necessary. If the parties agree otherwise and choose "resubmit" for any Northbound Swap Connect Derivative Transaction, the parties may provide for the termination process of such transaction and the valuation of the early termination amount in the "Other Provisions" in the Annex, and modify the relevant provisions.