

# Business Integrated Account General Conditions

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The Customer agrees to be bound by these Conditions.

## CONTENTS

SECTION I	GENERAL CONDITIONS .....	2
SECTION II	SAVINGS ACCOUNT .....	18
SECTION III	CURRENT ACCOUNT.....	19
SECTION IV	E-CHEQUES .....	21
SECTION V	TIME DEPOSITS .....	24
SECTION VI	ATM CARD AND BUSINESS DEBIT CARD .....	25
SECTION VII	SECURED CREDIT .....	26
SECTION VIII	WAYFOONG STATEMENT GOLD.....	28
SECTION IX	STRUCTURED INVESTMENT DEPOSITS.....	29
SECTION X	DEPOSIT PLUS.....	34
SECTION XI	INVESTMENT SERVICES ACCOUNT .....	36
SECTION XII	BUSINESS INTERNET BANKING .....	41
SECTION XIII	AUTO-SWEEPING SERVICE.....	47
SECTION XIV	FOREX SWITCHING SERVICE.....	48
SECTION XV	BUSINESS CARD .....	50
SECTION XVI	BUSINESS REVOLVING CREDIT.....	51
SECTION XVII	HSBC'S DIRECT ADVICE, ESTATEMENT AND EADVICE SERVICE .....	52
SECTION XVIII	BIZALERT SERVICE.....	55
APPENDIX I	DEFINITIONS .....	58
APPENDIX II	NOTICE RELATING TO THE PERSONAL DATA (PRIVACY) ORDINANCE (THE "ORDINANCE").....	63
APPENDIX III	CUSTOMER INFORMATION OTHER THAN PERSONAL DATA .....	66

## Section I General Conditions

### 1 Interpretation

- 1.1. Capitalised terms used in these Conditions are defined in Appendix I.
- 1.2. Unless the context otherwise requires, any reference in these Conditions to:
  - (a) a "Section", "Sub-Section", "Clause" or "Appendix" shall be construed as a reference to a section, sub-section or clause of these Conditions or an appendix hereto;
  - (b) these Conditions or any other agreement or document shall be construed as a reference to the same as amended, varied or supplemented from time to time; and
  - (c) a statute shall be construed as a reference to the same as amended or re-enacted from time to time.
- 1.3. Section, Sub-section, Clause and Appendix headings used herein are for ease of reference only.

### 2 Accounts and Services

- 2.1 All Accounts and Services are offered on terms specified by the Bank. The Bank may do any of the following without prior notice:
  - (a) introduce new or new types of Accounts or Services;
  - (b) vary, suspend or withdraw any Accounts or Services (including not accepting a deposit); or
  - (c) specify or vary the scope or extent of any Accounts or Services.
- 2.2 Unless otherwise specified by the Bank, all Services are provided by, and all Accounts are maintained with, the Bank. Where any Services or Accounts are to be provided by or maintained with any third party, the Customer may be required to accept specific conditions and the provisions of any mandate(s) applicable thereto as required by the third party.

### 3 Instructions

#### *Customer's responsibilities*

- 3.1 The Customer must comply with all Applicable Regulations in using the Services, an Account or in conducting transactions or activities under these Conditions.
- 3.2 Neither the Customer, nor to the knowledge of the Customer, any director, officer, agent, employee, affiliate or other person acting on behalf of the Customer or any of its/their subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of any applicable anti-bribery law, including but not limited to, the United Kingdom Bribery Act 2010 (the "UK Bribery Act") and the U.S. Foreign Corrupt Practices Act of 1977 (the "FCPA"). Furthermore, the Customer and, to the knowledge of the Customer, its/their affiliates have conducted their businesses in compliance with the UK Bribery Act, the FCPA and similar laws, rules or regulations and have instituted and maintained policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith. None of the Accounts or Services will be used, directly or indirectly, for any payments that could constitute a violation of any applicable anti-bribery law.
- 3.3 The Customer may only open an Account or utilise a Service by issuing an Instruction in a form and by means acceptable to the Bank.

#### *Bank's rights and responsibilities*

- 3.4 The Bank has the right to do any of the following:
  - (a) accept or refuse an Instruction; or
  - (b) prescribe any condition for accepting an Instruction, without giving any reason.
- 3.5 The Bank is not liable for any loss, cost or damage of any kind incurred or suffered by the Customer as a result of the Bank exercising any of the rights referred to in Conditions 3.4 (a) or (b) of this Section I.
- 3.6 The Bank will only act on an Instruction if it reasonably believes the Instruction was given or authorised by the Customer. The Bank is not liable if that belief is incorrect. The Customer will be bound by that Instruction as understood and executed by the Bank in good faith, even if:
  - (a) the Instruction is incorrect, false or unclear; or
  - (b) the Instruction was not given or authorised by the Customer.
- 3.7 Subject to Conditions 3.4 to 3.6 of this Section I, the Bank will act on an Instruction as soon as reasonably practicable following receipt.

### 4 Use of Accounts and Services

#### *General requirements*

- 4.1 If the Customer does not specify an Account for a transaction, the Bank may credit or debit (as applicable) any Savings Account of the Customer.
- 4.2 An inward remittance may not be credited to an Account or accrue interest on the date it is received, if the Bank does not receive the applicable payment advice before the relevant cut-off time. No interest will accrue on any inward remittance before the funds are actually credited into the Account.
- 4.3 The Bank may pay to the Customer an amount withdrawn from an Account through any one of the following methods:
  - (a) cash payment in the currency of the Account;
  - (b) cheque drawn by the Bank in the currency of the Account; or
  - (c) cash payment or cheque denominated in HKD, and converted (if necessary) from the relevant Foreign Currency equivalent at the Bank's prevailing buying rate.

#### *Cheques and other monetary instruments*

- 4.4 The Customer is solely responsible for ensuring that all Items provided to the Bank are in order and that the details of Items are accurate and complete.
- 4.5 Before depositing any Items with the Bank using any means or channels offered or accepted by the Bank, a Customer should ensure that such Item is in order on the face thereof, including, without limitation, that the Item is appropriately dated and signed, and that the amounts in both words and figures matched.
- 4.6 Where the Customer is required to advise, complete or enter details of the Items when depositing the same with the Bank, the Customer agrees that it is the Customer's sole responsibility to ensure that such details being advised, completed or entered by the Customer are accurate and complete and that the Bank is entitled to rely upon the same in issuing receipts. Such receipts issued shall for all purposes be issued subject to subsequent verification by the Bank in its normal course of business. In the event of any discrepancy between the receipts and the outcome of the

Bank's verification, the outcome of the Bank's verification shall be final and binding on the Customer and the Bank shall be entitled to adjust the Accounts accordingly by debiting or crediting the same as the case may be.

- 4.7 All inward remittances, cheques and monetary instruments are accepted for deposit into an Account subject to final payment and the Bank is entitled not to make the proceeds available until they have been cleared. The Bank reserves the right to charge the Accounts concerned with the appropriate amounts if, for whatever reason, any Items are subsequently returned unpaid or partially paid or where the remittance amounts are not eventually received. If the inward remittance or any Items (including the payment pursuant to the standing instructions of another person) is in a currency not supported by the Bank, the Bank has the right to convert it into Hong Kong dollar or any other currency supported by the Bank at the prevailing buying exchange rate before depositing it into an Account.

*Standing instructions and direct debit arrangements*

- 4.8 The Bank may reverse any credit received under a standing instruction if a condition of the standing instruction is not fulfilled - this may occur for example, if there are insufficient funds in the transferor's account.

*Suspending Account mandates*

- 4.9 The Bank has the right to suspend any Account mandate if any of the following occurs:
- (a) there is a dispute between the Customer and any of its authorised signatories or directors (as applicable);
  - (b) the Bank reasonably believes that such Account mandate is not valid; or
  - (c) the Bank reasonably believes that the Customer is not the true owner of the credit balances or any other assets held in the relevant Account.

*Inactive Accounts and zero balances*

- 4.10 If an Account has been inactive or has had a zero balance, in each case for a period determined by the Bank, the Bank has the right to:
- (a) restrict or impose conditions for accessing the Account;
  - (b) close the Account; or
  - (c) impose a service charge at its discretion without prior notice.

**5 Bank-Customer Relationship**

- 5.1 The Bank is the debtor and the Customer is the creditor of any deposit placed by the Customer with the Bank.
- 5.2 The Bank is the bailee and the Customer is the bailor of any Item held by the Bank in safe custody for the Customer.
- 5.3 The Customer confirms that the Customer is acting as principal in relation to the Services and the Master Account, including all Accounts.
- 5.4 Other types of relationships may arise between the Bank and the Customer, depending on the Services provided.

**6 Foreign Currency Transactions**

*General requirements*

- 6.1 Unless the Bank specifies otherwise in these Conditions, if the conversion of one currency into another currency is required or appropriate under these Conditions, that conversion will take effect at the Bank's prevailing exchange rate at the time of conversion or such other rate as agreed between the Bank and the Customer. Any exchange rate provided by the Bank at any other time may differ from the rate at which the Bank effects the conversion and is for reference only.
- 6.2 Before carrying out a currency conversion transaction, the Bank may require the Customer to provide information or documentation to prove that such transaction is in compliance with all Applicable Regulations, including those issued by any regulatory authority, governmental agency (including tax authority), clearing or settlement bank, exchange or industry or self-regulatory body from time to time – the Bank has the right to refuse to carry out a currency conversion transaction if the Bank is not satisfied with the information or documentation provided by the Customer for such purpose.

*Foreign Currency cheques*

- 6.3 In respect of all Foreign Currency cheques accepted by the Bank in the payment or settlement of any transaction, the Bank may do any of the following:
- (a) in accepting cheques drawn on banks abroad, decide which cheques to purchase and which to send for collection;
  - (b) require repayment from an Account holder or debit an Account with the value of the cheque, using the higher of the Bank's prevailing selling rate and the original buying rate, plus any charges, if (i) any cheque purchased is dishonoured, or (ii) any cheque is required to be repaid or refunded;
  - (c) debit a deposit account with any overseas charges; or
  - (d) process a cheque received after the relevant cut-off time during the next Business Day.
- 6.4 Where the Bank purchases any cheques, the Bank shall credit the deposit account (using the Bank's prevailing buying rate) with the proceeds immediately, under advice to the deposit account holder, and subject to having recourse to the deposit account holder in the event of dishonour. The purchase of cheques may be subject to the condition that the proceeds credited to the deposit account cannot be withdrawn for a period as determined by the Bank taking into account the required clearing time for cheques in question and which will be specified in the credit advice to be sent to the deposit account holder in confirmation of the transaction. Where the Bank sends a cheque for collection, this will be done subject to the rules contained in ICC Publication No. 522 and the proceeds of the cheque will only be credited to the deposit account once payment is received from the bank abroad.

*US Dollar transactions*

- 6.5 Transactions denominated in US Dollars may be cleared or settled through the US Dollar Clearing System established in Hong Kong.
- 6.6 The US Dollar Clearing System is subject to the US Dollar Clearing House Rules and the USD Operating Procedures. The Hong Kong Monetary Authority does not owe any duty and will not incur any liability to the Customer or any other person in respect of any claim or Loss (including without limitation, loss of business, loss of business opportunity, loss of profit, special, indirect or consequential loss) (even if the Hong Kong Monetary Authority knew or ought reasonably to have known of their possible existence), of any kind or nature directly or indirectly from or as a result of:
- (a) anything done or omitted to be done by the Hong Kong Monetary Authority bona fide or by the settlement institution of the US Dollar Clearing System, Hong Kong Interbank Clearing Limited or any member of the US Dollar Clearing House in the management, operation or use (including without limitation, the termination and/or suspension of the settlement institution, the US Dollar clearing facilities or any such member) of the US Dollar Clearing House or the US dollar clearing facilities or any part of any of them; or
  - (b) without prejudice to Condition 6.2 of this Section I, the giving of any notice, advice or approval in relation or pursuant to, the US Dollar Clearing House Rules and the US Dollar Operating Procedures referred to therein (in each case, as the same may be modified from time to time).

*Currency conversions*

- 6.7 In the event that:

- (a) the Customer debits any account (the "**original account**") maintained with the Bank and denominated in a particular currency (the "**original currency**") to purchase a different currency (the "**new currency**"):
  - (i) to effect any remittances in the new currency; and/or
  - (ii) for any other transactions; and
- (b) any of the purchases, remittances or transactions referred in paragraphs (a)(i) and (ii) of this Condition 6.7 or any instruction relating thereto is cancelled, rejected or returned,

then the Bank will convert the new currency back to the original currency at the Bank's prevailing buying rate or the Bank's original selling rate, whichever is lower, and deposit the resulting sum into the original account without notice.

- 6.8 The Bank is fully authorised to deduct any charges from the original account for the currency exchange referred to in Condition 6.7 of this Section I and the Customer shall be solely liable for all losses, costs, expenses and charges of any kind resulting therefrom.

## 7 Funds Transfers (including proxy ID registration, direct debit authorisation and use of QR code services)

### Definitions

- 7.1 Capitalised terms used in this Condition 7 shall have the meanings set out below. If any capitalised term used in this Condition 7 is not defined below, that capitalised term has the meaning set out in Appendix 1.

**"Addressing Service"** means a service provided by HKICL as part of HKICL FPS to facilitate customers of Participants to use predefined Proxy ID instead of account number to identify the destination of a payment or funds transfer instruction and other communications for the purpose of HKICL FPS.

**"Bank Services"** means the services (including the QR Code Services) provided by the Bank to customers from time to time to facilitate payments and funds transfers using HKICL FPS and the Addressing Service, eDDA Service and any other services and facilities provided by HKICL in connection with the Faster Payment System from time to time.

**"Default Account"** means the account maintained by the Customer with the Bank or any other Participant and set as the default account for receiving payment or funds using HKICL FPS or (if and to the extent specified or permitted by the rules, guidelines and procedures of HKICL) for debiting payment or funds using HKICL FPS.

**"eDDA"** means a direct debit authorisation set up by electronic means using HKICL FPS.

**"eDDA Service"** means a service provided by HKICL as part of HKICL FPS to facilitate customers of Participants to set up direct debit authorisation.

**"FPS Identifier"** means a unique random number generated by HKICL FPS to be associated with the account of a customer of a Participant.

**"HKICL"** means Hong Kong Interbank Clearing Limited and its successors and assigns.

**"HKICL FPS" or "Faster Payment System"** means the Faster Payment System and related facilities and services provided, managed and operated by HKICL from time to time for (i) processing direct debits and credits, funds transfers and other payment transactions and (ii) exchanging and processing instructions relating to eDDA Service and Addressing Service.

**"Participant"** means a participant of HKICL FPS which may be a bank or other financial institution, a retail payment system operator, a licensed stored value facility, or any other person accepted by HKICL as a participant of HKICL FPS from time to time.

**"Proxy ID"** means the identifiers which may be accepted by HKICL for registration in the Addressing Service to identify the account of a customer of a Participant, including the mobile phone number or email address of the customer, or the FPS Identifier.

**"QR Code Services"** means the QR code and the associated payment and funds transfer services provided by the Bank to customers from time to time.

**"Regulatory Requirement"** means any law, regulation or court order, or any rule, direction, guideline, code, notice or restriction (whether or not having the force of law) issued by any regulatory authority, governmental agency (including tax authority), clearing or settlement bank or exchange, or industry or self-regulatory body, whether in or outside Hong Kong, to which HKICL, the Bank or any other Participant or the respective affiliates or group companies, or the Customer is subject or are expected to comply with from time to time.

### Scope of Bank Services and conditions for use

- 7.2
- (a) The provisions of this Condition 7 apply to the Bank's services relating to funds transfer, including the services the Bank provides in relation to the Faster Payment System. The provisions of other Conditions continue to apply to the Bank Services to the extent that they are relevant and not inconsistent with the provisions of this Condition. Unless otherwise specified, the provisions of this Condition prevail if there is any inconsistency between them and the provisions of the other Conditions with respect to the Bank Services.
  - (b) The Bank provides the Bank Services to customers to facilitate payment and funds transfer using the Faster Payment System and the Addressing Service, eDDA Service and any other services and facilities provided by HKICL in connection with the Faster Payment System from time to time. The Bank has the right to set or vary from time to time the scope of the Bank Services and the conditions and procedures for using the Bank Services. In order to use the Bank Services, the Customer has to accept and follow these conditions and procedures.
  - (c) The Bank may provide the Bank Services to facilitate payment and funds transfer in any currency specified by the Bank from time to time, including Hong Kong dollars and Renminbi.
  - (d) In order to enable the Bank to handle an instruction for the Customer in relation to payment or funds transfer using HKICL FPS, the Customer has to provide or input the necessary information and complete the process by such means or in such manner prescribed by the Bank from time to time.
  - (e) All payment or funds transfer transactions using HKICL FPS will be processed, cleared and settled under the interbank clearing and settlement arrangements including without limitation the arrangements in relation to the Faster Payment System agreed by the Participants and HKICL from time to time.
  - (f) The Bank reserves the right to suspend or terminate the Bank Services in whole or in part at any time without giving notice or reason.
  - (g) By requesting the Bank to register any Proxy ID for the Customer in the HKICL FPS or to set up any eDDA for the Customer using the HKICL FPS, or by initiating any payment or funds transfer using the HKICL, the Customer agrees to be bound by all the provisions of this Condition 7.

### Addressing Service - registration and amendment of Proxy ID and related records

- 7.3
- (a) In order to use the Addressing Service to receive payment or funds transfer using HKICL FPS, the Customer has to register its Proxy ID in the HKICL FPS. The Bank has discretion as to whether to offer the FPS Identifier as Proxy ID to the Customer.
  - (b) Registration and amendment of Proxy ID and related records in the HKICL FPS must be done in accordance with the applicable rules, guidelines and procedures imposed by HKICL from time to time. In order to enable the Bank to register or amend Proxy ID or any related records for the Customer, the Customer has to provide or input the necessary information and complete the registration process by such means or in such manner prescribed by the Bank from time to time.
  - (c) At any time where the same Proxy ID is registered by the Customer for more than one account (whether maintained with the Bank or with any other Participant), the Customer must set one account as the Default Account. By instructing the Bank to set or change the Default Account

for the Customer, the Customer consents and authorises the Bank to submit the request on behalf of the Customer to HKICL FPS to override the existing Default Account registered in HKICL FPS.

#### *eDDA Service*

- 7.4 (a) In order to enable the Bank to handle a request for the Customer in relation to eDDA setup, the Customer has to provide or input the necessary information and complete the process by such means or in such manner prescribed by the Bank from time to time. The prescribed process may include requiring the relevant parties to set up the eDDA using their respective account numbers or customer identification numbers or codes. For the avoidance of doubt, a Proxy ID is not intended for verifying eDDA setup. Any amendment of a Proxy ID and the related records or termination of a Proxy ID after an eDDA setup will not affect that eDDA. In the circumstances, the Bank will not be notifying the Customer of any changes to the Proxy ID in connection with the eDDA once it has successfully been set up.
- (b) Where the Customer has set up a direct debit authorisation (including an eDDA) on an Account but no debit is made pursuant to that authorisation for a significant period of time, the Bank has the right to cancel the direct debit authorisation without prior notice to the Customer even if that authorisation has not expired or is not subject to an expiry or termination date.

#### *QR Code Services*

- 7.5 (a) Using the QR Code Services and the Customer's responsibility
- (i) The QR Code Services allow the Customer to scan a QR code provided by the Bank or by another person to automatically capture the payment or funds transfer data without the need for manually entering the data. Any QR code provided by another person must meet the specifications and standards prescribed by HKICL in order to be accepted. The Customer is fully responsible for ensuring that the captured data is accurate and complete before confirming any payment or funds transfer instruction. The Bank is not responsible for any error contained in such payment or funds transfer data.
  - (ii) The QR Code Services can be used on a mobile device running an operating system supported and specified by the Bank from time to time.
  - (iii) Updates to the QR Code Services may be issued periodically through the supplying app store for the mobile app. For some devices, updates will be downloaded automatically. For other devices, the Customer will need to download the updates itself. Depending on the update, the Customer may not be able to use the QR Code Services until the latest version has been downloaded. The Customer is fully responsible for ensuring the latest version has been downloaded to the Customer's mobile device for the purpose of using the QR Code Services.
  - (iv) The QR Code Services are intended for use by the Bank's Customers only. The Bank has the right to cancel the Customer's account for the mobile app and/or block the Customer from accessing the QR Code Services if the Bank discovers that the Customer is not eligible to use the QR Code Services.
  - (v) The QR Code Services are not intended for use in any jurisdiction where their use would be contrary to any law or regulation of that jurisdiction or where the Bank is not licensed or authorised to provide the QR Code Services.
  - (vi) The Customer must comply with all applicable laws and regulations that govern its download of the mobile app, or access or use of the mobile app or the QR Code Services.
- (b) Security
- (i) The Customer must not use the QR Code Services on any device or operating system that has been modified outside the mobile device or operating system vendor supported or warranted configurations. This includes devices that have been "jail-broken" or "rooted". A jail broken or rooted device means one that has been freed from the limitations imposed on it by the Customer's mobile service provider and the phone manufacturer without their approval. The use of the QR Code Services on a jail broken or rooted device may compromise security and lead to fraudulent transactions. Use of the QR Code Services in a jail broken or rooted device is entirely at the Customer's own risk and the Bank will not be liable for any losses or any other consequences suffered or incurred by the Customer as a result.
  - (ii) The Customer is fully responsible for all instructions or requests given by it or any other person authorised by it during the use of the QR Code Services.
  - (iii) The Customer is fully responsible for ensuring that the information shown or stored on its mobile device is kept secure.
  - (iv) If the Customer knows or suspects that any other person knows its security details, or has used or tried to use them, or if the Customer's mobile device is lost or stolen, the Customer must notify the Bank as soon as reasonably practicable.
- (c) The Bank's responsibility and restriction of liability
- (i) While the Bank makes commercially reasonable efforts to provide the QR Code Services, the Bank is not liable for any failure to provide the QR Code Services.
  - (ii) The QR Code Services are provided on an "as is" basis with no representation, guarantee or agreement of any kind as to their functionality. The Bank cannot guarantee that no viruses or other contaminating or destructive properties will be transmitted or that no damage will occur to the Customer's mobile device in the use of the QR Code Services. The Bank is not responsible for any loss the Customer may incur as a result of its use of the QR Code Services.
  - (iii) The Customer understands and agrees that:
    - (1) The Customer uses the QR Code Services at its sole risk. To the maximum extent permitted by law, the Bank expressly disclaims all warranties and conditions of any kind, whether express or implied.
    - (2) The Customer downloads or obtains any material or information through the use of the QR Code Services at its sole risk and discretion. The Customer is solely responsible for any damage to its computer or other device or loss of data resulting from downloading, obtaining or using such material or information.
  - (iv) For the avoidance of doubt, nothing above is intended to exclude or restrict any condition, warranty, right or liability which may not be lawfully excluded or restricted.

#### *Collection and use of Customer Information*

- 7.6 (a) For the purposes of using the Bank Services, the Customer may be required to provide the Bank with the personal data and other information (as applicable) relating to one or more of the following persons from time to time:
- (i) the Customer;
  - (ii) the recipient of any payment or funds transfer to be made by the Customer, or the counterparty of any eDDA to be set up by the Customer; and
  - (iii) where the Customer is a company, a corporation, or a sole proprietorship or partnership firm or any other unincorporated body, any of its directors, officers, employees, authorised persons and representatives,

all personal data and information provided to the Bank or compiled by the Bank from time to time in connection with the Bank Services are collectively referred to as "Customer Information".

- (b) The Customer agrees (and, where applicable, for and on behalf of each of its directors, officers, employees, authorised persons and representatives) that the Bank may collect, use, process, retain or transfer any of the Customer Information for the purposes of the Bank Services. These purposes include without limitation one or more of the following:
  - (i) providing the Bank Services to the Customer, maintaining and operating the Bank Services;
  - (ii) processing and executing the Customer's instructions and requests in relation to the Bank Services from time to time;
  - (iii) disclosing or transferring the Customer Information to HKICL and other Participants for their use for the purpose of the operation of HKICL FPS;
  - (iv) meeting the requirements to make disclosure under any Regulatory Requirements; and
  - (v) purposes relating to any of the above.
- (c) The Customer understands and agrees that the Customer Information may be further disclosed or transferred by HKICL, the Bank or any other Participants to their customers and any other third parties who are users of HKICL FPS for the purposes of providing and operating the Bank Services.
- (d) If the Customer Information includes personal data or other information of any person other than the Customer (including any persons specified in Conditions 7.6(a)(ii) or 7.6(a)(iii) above), the Customer confirms that it will obtain and has obtained the consent from such person regarding the use (including disclosure and transfer) of his/her personal data and other information by HKICL, the Bank and the other Participants as specified in this Condition.

*Customer's responsibilities*

7.7 (a) Present genuine owner or authorised user of Proxy ID and accounts

The Customer can only register its own Proxy ID for its own accounts or set up eDDA for its own accounts. The Customer must be the present genuine owner or authorised user of each Proxy ID and each account provided to the Bank for registration in the Addressing Service and the eDDA Service. By instructing the Bank to register any Proxy ID or any account for the Customer in relation to the Faster Payment System, the Customer confirms that it is the present genuine owner or authorised user of the relevant Proxy ID or account. This is particularly important for mobile phone numbers as they may be recycled.

(b) Proxy ID

Any Proxy ID to be registered by the Customer for the Addressing Service must satisfy any applicable requirements imposed by HKICL from time to time.

(c) Correct information

- (i) The Customer has to ensure that all the information provided by the Customer for registration or amendment of Proxy ID (or any related records) or for any eDDA setup is correct, complete, up-to-date and not misleading. The Customer has to notify the Bank as soon as reasonably practicable of any changes or updates to such information by such means or in such manner specified by the Bank from time to time.
- (ii) The Customer is fully responsible for using the correct and up-to-date Proxy ID and related records in giving each payment or funds transfer instruction. The Customer is solely liable for and will hold the Bank harmless from any incorrect payment or transfer effected by the Bank and HKICL FPS due to incorrect or outdated Proxy ID or related records.
- (iii) The Customer acknowledges that the Bank, other Participants and HKICL have the right to deregister any Proxy ID that is no longer correct or up-to-date in accordance with available information without the Customer's consent.

(d) Timely updates

The Customer is fully responsible for giving instructions and information changes or updates to the Bank on a timely basis for amending its Proxy ID (or related records) or any eDDA setup, including without limitation changing its Default Account, or terminating any Proxy ID or eDDA. The Customer acknowledges that keeping its Proxy ID, eDDA and all related records up-to-date is critical for ensuring effective execution of payment and funds transfer instructions and for avoiding incorrect payment or transfer due to incorrect or outdated Proxy ID, eDDA or related records.

(e) Change of Default Account

If an account is terminated as the Default Account by the Customer or by the relevant Participant for any reason (including suspension or termination of the account), the system of HKICL will automatically assign the most recently registered record in the Addressing Service that is associated with the same Proxy ID to be the Default Account. If the Customer wishes to set another account as the Default Account, the Customer has to change the registration through the Participant where it maintains that other account.

(f) Transactions binding on the Customer

- (i) For any payment or funds transfer, once the Customer confirms the details of a transaction and submit instruction to the Bank, such instruction and any resulting transaction is final, irrevocable and binding on the Customer.
- (ii) For any Proxy ID registration or eDDA setup, once the Customer submits an instruction to the Bank, such instruction is irrevocable and binding on the Customer. The Customer may amend or cancel any Proxy ID or eDDA setup in accordance with the procedures and requirements prescribed by the Bank from time to time.

(g) Use Bank Services responsibly

The Customer must use the Bank Services in a responsible manner. In particular, the Customer has to comply with the following obligations:

- (i) The Customer must comply with all Regulatory Requirements that govern its use of the Bank Services, including collecting, using and handling the personal data and other information relating to any other person in compliance with the Regulatory Requirements protecting data privacy. The Customer must not use the Bank Services for any unlawful purposes or any purposes other than those authorised or contemplated in the rules, guidelines and procedures of HKICL.
- (ii) In sending remarks or messages to be displayed to recipients or counterparties of its payment or funds transfer instructions or eDDA setup using HKICL FPS, the Customer should mask the name or other data of such recipients or counterparties to prevent unauthorised display or disclosure of any personal data or confidential data.
- (iii) the Customer should not repeatedly cancel the registration and request for generation of another FPS Identifier in an attempt to generate a number or value that it desires.

(h) Other obligations regarding payments and funds transfers

Any instruction given by the Customer in relation to the Bank Services will be handled by the Bank in accordance with this Condition 7 and the applicable provisions in these Conditions. The Customer has to comply with the other obligations with respect to payments, funds transfers and direct debit authorisations, including without limitation maintaining sufficient funds in the relevant accounts for settling payment and funds transfer instructions from time to time.

(i) The Customer is responsible for its authorised persons

Where the Customer authorises any other person to give instructions or requests to the Bank in connection with the use of the Bank Services (whether the Customer is a company, a corporation, or a sole proprietorship or partnership firm or any other unincorporated body):

- (i) the Customer is responsible for all the acts and omissions of each person authorised by the Customer;
- (ii) any instruction or request received by the Bank, believed by the Bank in good faith to be given by the Customer or any person authorised by the Customer, will be irrevocable and binding on the Customer; and
- (iii) the Customer is also responsible for ensuring that each person authorised by it will comply with the provisions of this Condition 7 that are applicable to him/her when acting on its behalf.

*Bank's responsibilities regarding HKICL FPS*

7.8 Where a funds transfer is effected through HKICL FPS, the Bank will process and submit the Customer's instructions and requests to HKICL FPS in accordance with the applicable rules, guidelines and procedures imposed by HKICL from time to time. HKICL FPS has the right to process and execute the Customer's Instructions and requests in such sequence or manner as HKICL considers appropriate. The Bank has no control over the operation of HKICL FPS nor the timing on which the Customer's instructions or requests are executed by HKICL FPS. Where the Bank receives status update notifications involving any of the Customer's Proxy ID (or related records) or eDDA setup or any other matter relating to HKICL FPS from or through HKICL FPS from time to time, the Bank will notify the Customer accordingly by such means and at such time as the Bank considers appropriate.

*Limitation of liability regarding HKICL FPS*

7.9 Without limiting or reducing the effect of Conditions 7.8 and 22 of this Section I:

- (a) the Bank is not liable for loss, damage or expense of any kind which the Customer or any other person may incur or suffer arising from or in connection with the use of the Bank Services or the processing or execution of instructions or requests given by the Customer in relation to the Bank Services or HKICL FPS, except to the extent that any loss, damage or expense incurred or suffered is direct and reasonably foreseeable arising directly and solely from the Bank's gross negligence or wilful default or that of the Bank's officers, employees or agents;
- (b) for clarity, the Bank is not liable for loss, damage or expense of any kind which the Customer or any other person may incur or suffer arising from or in connection with one or more of the following:
  - (i) the Customer's failure to comply with its obligations relating to the Bank Services; and
  - (ii) any delay, unavailability, disruption, failure, error of or caused by HKICL FPS, or arising from any circumstances beyond the Bank's reasonable control; and
- (c) in no event will the Bank, its affiliates or group companies, its licensors, and the respective officers, employees and agents of the foregoing parties be liable to the Customer or any other person for any loss of profit or any special, indirect, incidental, consequential or punitive loss or damages (whether or not they were foreseeable or likely to occur).

*Customer's responsibilities regarding funds transfer*

7.10 The Customer may only effect a funds transfer (local or overseas) with the Bank by issuing an Instruction in the form and by means acceptable to the Bank from time to time (e.g. electronic clearing, TT, RTGS or HKICL FPS). If the Customer desires a funds transfer to occur on a particular date, that date must be clearly stated in the Instruction.

7.11 The Customer (and not the Bank) is responsible for ensuring the Customer has suitable information about the following matters:

- (a) any exchange control or restriction which may be imposed by Applicable Regulations; and
- (b) any charges which may be imposed by a correspondent or beneficiary bank or any other bank or a Participant.

7.12 The Customer must ensure that the beneficiary account information provided to the Bank is correct and complete and satisfies the verification procedures adopted by the beneficiary bank. The Bank will not verify the beneficiary account information.

*Bank's rights regarding funds transfer*

7.13 Unless otherwise specified by the Bank, the Bank may do any of the following:

- (a) refuse an Instruction to effect a funds transfer;
- (b) effect a funds transfer Instruction using any routing arrangement at the Bank's discretion;
- (c) send the funds transfer either in words or in code;
- (d) convert the currency of the funds transfer, if the beneficiary account is in a currency that is different from the remitting currency;
- (e) effect the funds transfer through a correspondent or beneficiary bank or a Participant other than that specified by the Customer – this may be required, for example, by operational circumstances or Applicable Regulations;
- (f) if the beneficiary of a payment does not maintain an account with an HSBC Group member or HSBC agent, pay that beneficiary other than by funds transfer, and in accordance with the accepted banking practice in the place where payment is to be received; or
- (g) effect the funds transfer on the basis of a provisional exchange rate, subject to adjustment when the actual exchange rate is ascertained, and debit or credit any difference between the provisional rate and the actual rate to a Customer account.

7.14 While the Bank will endeavour to give effect to the Customer's requests regarding charges relating to the funds transfer, the Customer understands that the Bank only has discretion regarding its own charges. Where the Customer has requested to pay overseas charges or other bank's charges, the Bank will communicate such request but whether the beneficiary can receive the full amount of the funds transfer will depend on the practice adopted by the correspondent bank and/or beneficiary bank and/or the Participant involved, which is beyond the Bank's control and the Bank cannot be held responsible or liable for the same.

*What the Bank is not responsible for*

7.15 The Bank is not responsible for any of the following:

- (a) any Loss, delay, Error, omission or alteration of the message which may occur in the transmission of a funds transfer Instruction;
- (b) any misinterpretation by the recipient of the message in a funds transfer Instruction;
- (c) processing a funds transfer Instruction on the day of the Bank's receipt, if the Bank's remittances department does not receive it before the relevant cut-off time;
- (d) the funding arrangement requirements of the settlement banks; or
- (e) the availability of the relevant services – including, for example, the availability of the clearing system of the applicable currency and the location of the correspondent or beneficiary bank or the Participant.

7.16 The matters referred to in Conditions 7.15(c) to (e) of this Section I may mean that the Customer's Account will be debited before the day on which payment in respect of a funds transfer is received by the beneficiary bank. The Bank is not responsible for any interest expense or Loss incurred or suffered by the Customer or any other person resulting from that debit.

*Communications with the correspondent or beneficiary bank or the Participant*

- 7.17 The Bank will endeavour to communicate to the correspondent bank, beneficiary bank or the Participant (as applicable) each of the following:
- (a) any payment condition the Customer specifies in a funds transfer Instruction;
  - (b) any message to the beneficiary the Customer specifies in a funds transfer Instruction; and
  - (c) any Customer's request to pay the Customer's charges or overseas charges.
- 7.18 However, the Bank is not responsible or liable for any Loss arising from any of the following:
- (a) a failure to satisfy the payment condition referred to in Condition 7.17(a) of this Section I – the Bank may effect payment whether or not that payment condition is satisfied;
  - (b) failure by the correspondent bank, beneficiary bank or the Participant to communicate or act on any message referred to in Condition 7.17(b) of this Section I;
  - (c) the outcome of the Customer's request in Condition 7.17(c) of this Section I; or
  - (d) a rejection by a beneficiary bank or a Participant of any payment request, for whatever reason.

*Overriding right of refusal to process*

- 7.19 The Bank has the overriding right to refuse to process or effect, without notice, payments of funds transfer, if the Bank reasonably believes any one of the following has occurred:
- (a) there are insufficient available funds in the Account specified in the Customer's Instruction from which payment is to be made;
  - (b) any information given in the relevant Instruction is incorrect, incomplete or unclear;
  - (c) the relevant Instruction or processing of the relevant Instruction would breach any Applicable Regulations; or
  - (d) the Customer has specified additional Instructions or requests relating to the funds transfer, and those additional Instructions or requests are not acceptable to the Bank.

*Anti-money laundering and anti-terrorist financing*

- 7.20 The Customer acknowledges that, in processing a funds transfer Instruction, the Bank may be required by Applicable Regulations concerning anti-money laundering and anti-terrorist financing activities to disclose personal data or other information about the Customer. The information disclosed may include the originating account number and the Customer's name, address, date of birth, personal or corporate identity document number and other unique references about the Customer.
- 7.21 In connection with any disclosure required to be made under Condition 7.20 of this Section I:
- (a) the Customer expressly authorises the Bank to make the required disclosure to any correspondent or beneficiary bank or Participant, the payee or any Authority the Bank considers appropriate; and
  - (b) the Customer expressly authorises each correspondent bank or beneficiary bank or Participant to make the required disclosure to any other correspondent bank or beneficiary bank or Participant, the payee or any Authority that correspondent bank or beneficiary bank or Participant considers appropriate.

*Stop payment Instructions*

- 7.22 The Bank is not required to process any stop payment Instruction received by the Bank, including when the Customer's Account has not been debited when the Bank receives that Instruction.
- 7.23 The Bank may at its discretion process a stop payment Instruction using its commercially reasonable efforts. The Bank will notify the Customer whether the Bank has successfully executed that stop payment Instruction as soon as reasonably practicable following the date the Bank receives such Instruction. The Bank will not be able to process any stop payment Instruction for any funds transfer in which the Customer's Account has already been debited.

## **8 Account Packages**

- 8.1 The Bank may do any of the following:
- (a) allocate to a Customer, vary or withdraw from a Customer, an Account Package or the Features of an Account Package – which are typically made by reference to pre-designated criteria made available by the Bank to the Customer;
  - (b) designate one or more Account Package(s) with different Features, which may include enhanced services, preferential terms, preferential interest rates and/or special promotions on other accounts;
  - (c) allocate (but without any obligation to do so) an Account Package to a Customer holding a current Master Account either at the request of the Customer or at the Bank's sole discretion; or
  - (d) at any time and from time to time vary or entirely withdraw an Account Package, either at the request of the Customer or at the Bank's sole discretion.
- 8.2 The allocation or withdrawal of an Account Package to or from a Customer or the variation of an Account Package so allocated, whether at the request of a Customer or at the Bank's sole discretion, will be made by reference to pre-designated criteria, subject always to the final decision of the Bank. These criteria may include, without limitation, the value of assets deposited by the Customer with the Bank and/or the amount of credit facilities granted by the Bank to the Customer from time to time and are subject to changes at the Bank's discretion. The most updated criteria and other details concerning the Account Packages are available from the Bank upon request.
- 8.3 Upon exercising any right referred to in Condition 8.1 of this Section I, the Bank will notify the Customer using means as it shall deem reasonable.
- 8.4 The Customer is solely responsible for ensuring that all the criteria for maintaining an Account Package and the terms and conditions for enjoying the Features in that Account Package are fully satisfied and observed. However, the Customer's fulfilment of all such criteria and terms and conditions does not prejudice the Bank's overriding right to allocate, vary or withdraw an Account Package.
- 8.5 Neither the variation of an Account Package nor the termination of any Features will affect these Conditions or any other Conditions of those Features, which will in each case continue to bind the Customer until all obligations and liabilities owing by the Customer to the Bank with respect to such Features have been fully repaid and satisfied. All applicable provisions of these Conditions and other Conditions governing the use of any new or additional Features that the Customer enjoys as a result of the variation of the Account Package, will bind the Customer.
- 8.6 The Bank is not liable or responsible for any Loss incurred by, or inconvenience caused to, a Customer, as a result of any allocation or withdrawal of an Account Package to or from a Customer or any variation of an Account Package.
- 8.7 The Bank's records are conclusive as to the Account Package allocated to a Customer, except for manifest error.
- 8.8 The withdrawal of an Account Package does not affect the Customer's use or operation of the Master Account or of any other Account, unless the Bank confirms otherwise to the Customer.



## 9 Consolidated Statements

- 9.1 The Bank will provide a Consolidated Statement to a Customer on a monthly basis (or such other intervals as may be determined by the Bank from time to time) unless the Customer has notified the Bank that it does not require a Consolidated Statement. However, the Bank is not required to provide a Consolidated Statement if there is no transaction, no account balance and no accrued interest in the Master Account during the relevant period.
- 9.2 A Customer's Consolidated Statement will include information on its Services, Accounts and Account Package. A Consolidated Statement may also include information on other services, products or accounts of the type selected by or relating to the Customer which are maintained with, or provided by, the Bank or any of its subsidiaries, under the same identification documents as the Master Account.
- 9.3 The Customer must notify the Bank of any alleged Error in a Consolidated Statement within 90 days following the Bank's delivery of that Consolidated Statement. If the Bank does not receive any such notice from the Customer within that period:
- (a) that Consolidated Statement will be treated as correct, conclusive and binding on the Customer; and
  - (b) the Customer will be treated as having waived any right to raise an objection or pursue a remedy against the Bank in relation to that Consolidated Statement.
- 9.4 The Bank may provide copies of the Consolidated Statement or any other information on or relating to the Master Account to any one or more directors or partners of the Customer, or such other Persons the Bank reasonably believes are members of the governing body of the Customer, and the Bank may charge the Customer an administrative fee for doing so.
- 9.5 The Customer will be considered as having received a Consolidated Statement:
- (a) on the day of personal delivery to the Customer;
  - (b) on the day the Bank posts it to the Customer;
  - (c) on the day the Bank emails it to the Customer; or
  - (d) on the day the Bank places it in the Customer's online internet banking profile if it is made available there.

## 10 Joint Accounts

- 10.1 Each Joint Signatory is jointly and severally liable with each other Joint Signatory for the obligations and liabilities under each Account maintained by them, each Service utilised by them and under these Conditions.
- 10.2 If a Joint Signatory is authorised to operate an Account singly, the Bank may do each of the following:
- (a) comply with any Instruction or other directions given by any Joint Signatory for or in connection with that Account (unless the Bank agrees or decides otherwise) - this includes for example, an Instruction to close that Account; and
  - (b) treat the Instruction for a forward date transaction last received by the Bank as the final Instruction for that transaction.
- 10.3 Upon any Joint Signatory accepting the Conditions governing an Account or Service, each other Joint Signatory will be bound by those Conditions.
- 10.4 Each Joint Signatory is bound by these Conditions and such other terms and conditions governing the relevant Account or Service, even if either of the following deficiencies exist, and whether or not the Bank knows or ought to have known about them:
- (a) a Joint Signatory intended to be bound by these Conditions or such other terms and conditions is not in fact bound; or
  - (b) any of these Conditions or any other terms and conditions are invalid or unenforceable against a Joint Signatory or any other Person.
- 10.5 The Bank may deal separately with any Joint Signatory on any matter without limiting or reducing the Bank's rights, powers and remedies against another Joint Signatory. This may include either of the following, for example:
- (a) varying or discharging any liability to any extent; or
  - (b) granting time or other indulgence or making other arrangements.
- 10.6 Any notice under these Conditions to any Joint Signatory will be treated as effective notice to all Joint Signatories.
- 10.7 Without limiting or reducing the effects of any other Condition, the Bank is authorised to disclose to all Joint Signatories:
- (a) any information about an Account – this may relate to a period the Account is not maintained in the Joint Signatories' joint names; and
  - (b) any personal data and other information relating to, or provided by, any Joint Signatory.

## 11 Bank's Right of Lien and Set-Off

- 11.1 The liabilities the Customer owes the Bank at any time may:
- (a) be actual or contingent, present, future or deferred, primary or collateral;
  - (b) be owed by the Customer solely or jointly with any other Person; and
  - (c) include fees, expenses or interest.
- 11.2 Without limiting or reducing any of the Bank's rights under these Conditions, in law or under any agreement, the Bank is entitled without prior notice to the Customer, to do the following (or any of them):
- (a) debit any liabilities owed by the Customer to the Bank (including any fees, expenses or interest) from any Account, irrespective of whether there are sufficiently available funds, overdrafts or other facilities in the relevant Account;
  - (b) withhold, combine or consolidate the balance in the Accounts;
  - (c) set-off or transfer any money (in the form of credit balance or credit facility) standing to the credit of any Account, in or towards the settlement of any liabilities owed by the Customer to the Bank in connection with the Services or under these Conditions; and
  - (d) refuse to repay the Customer any amount in any currency standing to the credit of the Accounts when due or on demand by the Customer, to the extent such amount is equal to or less than the liabilities owed by the Customer to the Bank.
- 11.3 If any debit referred to in Condition 11.2(a) of this Section I causes the relevant Account to be overdrawn, the Customer is liable to repay the outstanding amount to the Bank on demand, together with fees, expenses and interest accruing on the outstanding amount at the rate set by the Bank.
- 11.4 If the Bank makes a demand referred to in Condition 11.3 of this Section I, the amount demanded will remain outstanding to the Bank on substantially the Conditions in force immediately before the Bank made the demand or on such other conditions considered appropriate by the Bank.
- 11.5 The Bank's rights under this Condition 11 shall not be affected by the death or legal incapacity of the Customer or any person(s) comprising the Customer.

- 11.6 The Customer acknowledges and agrees that, at any time, the liabilities the Bank owes the Customer will not exceed the net amount of any credit balance or credit facility standing to the credit of any Account after deducting or providing for the total of all liabilities the Customer owes the Bank.

## 12 Sole Proprietorships

- 12.1 This Condition 12 applies to a Customer which is a sole proprietor. This Condition 12 does not apply to any other type of Customer.
- 12.2 The Bank is authorised to do all of the following:
- (a) honour and comply with all cheques, promissory notes and other orders drawn, and all bills accepted on behalf and in the name of the sole proprietor, whether its Current Account is in credit or is overdrawn;
  - (b) comply with all directions given for, or in connection with, the Master Account, on behalf of the sole proprietor, including a direction to close the Master Account; and
  - (c) accept and act upon all receipts for money deposited with or owing by the Bank on the Master Account.
- 12.3 Subject to other applicable Conditions, the sole proprietor or any other authorised person according to the Business Integrated Account Opening Form, may do any of the following:
- (a) withdraw any securities or other property of, or deposited in the name of, the sole proprietor;
  - (b) borrow any money from the Bank in the name or on behalf of, the sole proprietor; and
  - (c) secure in any manner any securities, money or property of, or deposited in the name of, the sole proprietor.
- 12.4 The Person authorised for the purposes of Condition 12.3 of this Section I or the Business Integrated Account Opening Form, may be changed upon notice in writing received and in the form required by the Bank, duly signed by the sole proprietor.

## 13 Partnerships

- 13.1 This Condition 13 applies to a Customer which is a partnership. This Condition 13 does not apply to any other type of Customer.
- 13.2 The Bank is authorised to do all of the following:
- (a) honour and comply with all cheques, promissory notes and other orders drawn, and all bills accepted on behalf and in the name of the partnership, whether its Current Account has a credit balance or is overdrawn;
  - (b) comply with all directions given for, or in connection with, the Master Account, on behalf of the partnership, including a direction to close the Master Account; and
  - (c) accept and act upon all receipts for money deposited with or owing by the Bank on the Master Account.
- 13.3 Subject to other applicable Conditions, the partnership or any other authorised person according to the Business Integrated Account Opening Form may do any of the following:
- (a) withdraw any securities or other property of, or deposited in the name of, the partnership;
  - (b) borrow any money from the Bank in the name or on behalf of, the partnership; and
  - (c) secure in any manner any Securities, money or property of, or deposited in the name of, the partnership.
- 13.4 The Person authorised for the purposes of Condition 13.3 of this Section I or the Business Integrated Account Opening Form, may be changed upon notice in writing received and in the form required by the Bank, duly signed by all the partners in the partnership.
- 13.5 The Bank may treat the partners or last partner, for the time being, of the partnership, as having full power to carry on the business of the Customer and to deal with its assets freely.
- 13.6 The partnership will not be treated as being dissolved for any reason until the relevant authority has been revoked in writing by any partner or the legal personal representatives or trustees of any partner, in each case comprising the partnership.
- 13.7 These Conditions prevail over any contrary agreement between any of the partners in the partnership, including any such agreement known to the Bank.
- 13.8 The partners in the partnership are jointly and severally liable for each of the following:
- (a) all directions given on behalf of the partnership; and
  - (b) the repayment of all borrowings from the Bank, together with interest, costs, charges and expenses.

## 14 Companies

- 14.1 This Condition 14 applies to a Customer which is a company. This Condition 14 does not apply to any other type of Customer.
- 14.2 The Customer warrants that neither it nor any of its shareholders has issued any bearer shares.
- 14.3 The Customer will notify the Bank promptly if it or any of its shareholders issues any bearer shares or converts any shares to bearer form.
- 14.4 If the Customer is incorporated in Hong Kong or registered as a non-Hong Kong company at the Companies Registry in Hong Kong, the Bank has the right to conduct a search on the Customer at the Companies Registry. If there is any discrepancy between any search result and any information provided by the Customer, the Bank has the right to take necessary action. Such action may include:
- (a) not opening an Account for the Customer; or
  - (b) if the Customer has already opened an Account with the Bank, requiring rectification of such discrepancy or limiting the use of, suspending or terminating the Account or any Services.

## 15 Phone Banking Service

### Scope

- 15.1 This Condition 15 only applies to the Phone Banking Service. All agreements, terms and conditions governing the respective accounts, cards, services and products accessible or covered by the Phone Banking Services, including in the other Conditions, also apply to the Phone Banking Service, unless the Bank otherwise agrees. However, this Condition 15 prevails over such agreements and terms and conditions to the extent of any inconsistency between them.
- 15.2 The Bank may do any of the following at any time and without prior notice:
- (a) specify or vary the scope, features or conditions of the Phone Banking Service; or
  - (b) revoke the Customer's right to give Telephone Instructions.
- 15.3 If the Customer wishes to use the Phone Banking Service, it must provide the Bank with Telephone Instructions on the Customer's accounts and cards.

- 15.4 All Authorised Phonebanking Service Users may use the Phone Banking Service and give Telephone Instructions singly, even if the signing authority or signing arrangement applicable to the relevant Debit Account, Credit Account or other account prescribes a different signing authority or arrangement.
- 15.5 The Customer may designate the Credit Accounts and the Debit Accounts on which the Phone Banking Service is to be used, provided that designation is made in the manner and form acceptable to the Bank. By designating a Debit Account, the Customer confirms that each Debit Accountholder of that Debit Account:
- (a) has authorised the Customer to debit that Debit Account by using the Phone Banking Service;
  - (b) agrees with, and agrees to be bound by, any Telephone Instructions purported to be given by the Customer; and
  - (c) has accepted the provisions of this Condition 15.

*Limitation of Bank's liability*

- 15.6 The Bank:
- (a) is authorised to act on Telephone Instructions given using the Customer's PIN;
  - (b) has no duty to verify the identity of the person using the Customer's PIN or that person's authority to give Telephone Instructions;
  - (c) is not liable for acting in good faith on the basis of a Telephone Instruction given using the Customer's PIN, even if that Telephone Instruction was not authorised by the Customer;
  - (d) is not required to process a Telephone Instruction immediately or on the same day of the Bank's receipt of such Instruction;
  - (e) is not liable for any delay or failure in effecting a Telephone Instruction;
  - (f) is not required to, but may, act on a Telephone Instruction if there are no sufficient funds or available credit facilities;
  - (g) is not required to notify the Customer or any Debit Accountholder before acting on a Telephone Instruction;
  - (h) may exclude any joint account from the Phone Banking Service; and
  - (i) is not responsible for notifying any person of the Phone Banking Service.
- 15.7 The Bank's decisions on whether to effect a Telephone Instruction and on the timing of effecting a Telephone Instruction, are final and binding on the Customer and on each Debit Accountholder.
- 15.8 If a personal account of the Authorised Phonebanking User is designated as a Credit Account, the Customer should be aware that a higher amount cannot be transferred from an Account to the aforesaid personal account without the Customer's prior knowledge. The Bank will not be held liable in acting on a Telephone Instruction emanating from an Authorised Phonebanking User instructing the Bank to transfer funds to his or her personal account (whether or not designated as a Credit Account) and is under no obligation to make any enquiries in relation thereto.

*Customer's responsibilities*

- 15.9 Neither the Customer nor any Authorised Phonebanking User may:
- (a) allow any other Person to use its PIN (whether voluntarily or not); or
  - (b) keep a record of its PIN in any way that may enable another Person to use it.
- 15.10 The Customer and each Authorised Phonebanking User must do each of the following:
- (a) keep its PIN strictly confidential;
  - (b) promptly report to the Bank any Loss, theft, disclosure or unauthorised use of the Customer's PIN;
  - (c) (together with each relevant Debit Accountholder), ensure that there are sufficient funds or available credit facilities in the relevant Debit Account to effect a Telephone Instruction;
  - (d) (together with each relevant Debit Accountholder), repay and indemnify the Bank for any overdraft, advance or credit created by effecting a Telephone Instruction;
  - (e) immediately notify the Bank if a Debit Account is converted to a joint account with a joint signing arrangement; and
  - (f) immediately notify a Debit Accountholder, the holder of a Credit Account and each other Person with whom the Customer effects a transaction or fund transfer using the Phone Banking Service, of the details of that transaction or fund transfer.
- 15.11 Any exchange rate or interest rate quoted by the Bank in response to a Telephone Instruction is for reference only, unless the rate is confirmed by the Bank for a transaction. A rate confirmed by the Bank and accepted by the Customer for a transaction through the Phone Banking Service will be binding on the Customer and each relevant Debit Accountholder, even if the Bank has previously quoted a different rate.

**16 Drop & Go Counter Service**

*Scope*

- 16.1 The Drop & Go Counter Service enables the Customer to submit applicable documents and items at "Drop & Go Counters" accepted by the Bank for its processing (the "**Drop & Go Counter Service**"). The scope of the Drop & Go Counter Service shall be determined and notified (via such means of communication as the Bank shall decide) by the Bank from time to time. This Condition 16 only applies to the Drop & Go Counter Service.
- 16.2 The Customer must use the Drop & Go Counter Service in accordance with the Bank's guidelines and directions from time to time.
- 16.3 If the Bank accepts deposits of banknotes, coins or cheques:
- (a) the Bank is only responsible for those deposits once the Bank has received, counted and verified those banknotes, coins or cheques (as applicable) in accordance with the Bank's practice and to the Bank's satisfaction; and
  - (b) the Bank will only credit to the Customer's Account those banknotes, coins or cheques that the Bank has received, counted and verified to the Bank's satisfaction.
- 16.4 The following decisions are final and binding on the Customer:
- (a) the Bank's decision as to how to account for any discrepancy between the details specified in a pay-in-slip and the banknotes, coins or cheques accompanying that pay-in-slip which are received by the Bank; and
  - (b) the Bank's decision to not accept any banknotes, coins or cheques deposited.

*Customer's responsibility*

- 16.5 The Customer must ensure that all documents and items submitted under the Drop & Go Counter Service are complete, accurate and properly signed. The Bank has the right to not process any document or item if it is incomplete, inaccurate or improperly signed.

#### *Limitation of Bank's liability*

- 16.6 The Bank is not liable for any loss, damage or expense of any kind which the Customer or any other person incurs or suffers in relation to the Customer's use of the Drop & Go Counter Service which is provided in accordance with the Customer's Instructions. In addition, the Bank is not liable for either:
- (a) the Bank's decision to not process, or to delay processing, any Instruction or item deposited (or part of it); or
  - (b) the Customer's default in performing its obligations under this Condition 16 or under any Applicable Regulations.

#### **17 Communication Address and Change of Customer's Particulars**

- 17.1 The Customer warrants that all particulars given to the Bank are, to the best of the Customer's knowledge, accurate. The Bank may use any contact information provided by the Customer and kept on the Bank's records (including without limitation, the Customer's registered office, postal address, telephone number, email address, and fax number) to communicate with the Customer (whether through letters, telephone calls, SMS, fax, email or other means).
- 17.2 The Bank may stop sending the Customer any communication if, in the Bank's opinion, such communication will likely fail to reach the Customer.
- 17.3 These Conditions and any communications delivered personally, sent by post, facsimile transmission, telex or email shall be deemed to have been received by the Customer (where delivered personally) at the time of personal delivery or on leaving it at the address last notified in writing by the Customer to the Bank, (where sent by post) 48 hours after posting if such address is in Hong Kong and seven days after posting if such address is outside Hong Kong or (where sent by facsimile transmission, telex or email) immediately after transmitting to the facsimile or telex number or email address last notified in writing by the Customer to the Bank. Communications sent by the Customer to the Bank shall be treated as delivered to the Bank on the day of actual receipt.
- 17.4 All communications sent by the Customer to the Bank must be in the form, and must be sent by means, acceptable to the Bank. The Bank is not required to act on any communication if it is not in the form or sent by means acceptable to the Bank and is not liable for any Loss of any kind incurred or suffered by the Customer as a result of the Bank consequently refusing to act on any such communication.
- 17.5 The Customer must notify the Bank of any change of any of the following (in such manner as may be prescribed or accepted by the Bank from time to time):
- (a) its address or contact details;
  - (b) its directors, shareholders, partners or controllers (as applicable);
  - (c) its legal status; or
  - (d) its constitutional documents.
- 17.6 This Condition 17 does not limit or reduce the effect of any other Condition that apply to either:
- (a) the issuing of Consolidated Statements, transaction advice or confirmation by the Bank to the Customer; or
  - (b) the giving of Instructions by the Customer to the Bank.

#### **18 Charges and Interest**

##### *General*

- 18.1 The Bank may charge the Customer fees for providing a Service or maintaining an Account (including without limitation charges where the credit balance of any account falls below the minimum deposit amount specified by the Bank) from time to time as the Bank at its sole discretion thinks fit.
- 18.2 The Customer will be notified of the relevant fees at the time the Account is opened, Service requested or an Instruction takes effect. The Bank has the right to charge a fee at the Bank's discretion for closing an Account. A list of Bank fees is available upon request at any of the Bank's branches.
- 18.3 The Customer is required to pay all costs and expenses reasonably incurred by the Bank in connection with the Services or an Account from time to time. Those costs or expenses may include applicable taxes, duties or levies payable in respect of the Customer's assets or expenses for preserving or enforcing the Bank's rights in connection with the Services or Accounts.
- 18.4 The Bank may use one or more members of the HSBC Group or any other Person to assist the Bank in providing Services to the Customer or fulfilling the Customer's requirements. The Customer further agrees that the Bank may pay such Persons remuneration of any nature (whether fees, commissions, rebates or other payments) for the services provided by them to the Bank. The Bank may also pay remuneration to members of the HSBC Group or other Persons in return for introducing the Customer to the Bank. The payment of such remuneration by the Bank does not affect the amount of fees or charges payable by the Customer to the Bank in connection with the Services or an Account (including fees of any collection agent employed by the Bank or legal fees in demanding, collecting, suing or recovering any outstanding or overdue amount).
- 18.5 The Bank may accept from any manager, stockbroker, underwriter or any other person (whether or not a member of the HSBC Group) any rebate or payment of brokerage, commission, fee, incentive, discount or other benefits arising out of, or in connection with, the provision of the Services, including any amount payable to the Bank in respect of a transaction involving the purchase or sale of any securities or other assets for the Customer. The Bank is entitled to retain those amounts for the Bank's own account and benefit absolutely.

##### *Calculation of interest*

- 18.6 Interest on an Account accrues:
- (a) on a daily basis;
  - (b) on the credit balance in the Account; and
  - (c) at the interest rate specified by the Bank at the Bank's discretion;
  - (d) in the case of HKD, compounded at such intervals as may be specified by the Bank.
- 18.7 Interest rates applicable from time to time on an Account will be displayed at the Bank's premises, published on the Bank's website and/or advertised in the media. If the interest rate is above zero, interest is payable by the Bank to the Customer and will become a credit entry to that Account at the end of each calendar month (or at such other interval set by the Bank)..
- 18.8 The Bank has the right to set or vary without prior notice, any minimum credit balance in an Account for interest to accrue. No interest will accrue if the credit balance in the Account falls below the minimum credit balance set by the Bank.
- 18.9 If an Account is closed during an interest period for any reason, interest will accrue only up to the last calendar day before the day of closure.

##### *Insufficient funds*

- 18.10 If the Customer gives the Bank an Instruction to pay to, or withdraw from, a Customer's Account which is a Savings Account, or a HKD, US Dollar or Renminbi Current Account and:
- (a) there are insufficient funds in that Account; or
  - (b) if such Instruction was executed, the Customer's Account would be overdrawn or exceed an existing overdraft limit,

the Bank will treat that Instruction as a request for an unauthorised overdraft.

18.11 The Bank may:

- (a) refuse the Customer's request referred to in Condition 18.10 of this Section I and impose a service charge for considering and refusing that request; or
- (b) agree to that request and provide the Customer with an overdraft or an increase to the Customer's existing overdraft. The amount of that overdraft or increase will be subject to the Bank's prevailing interest rate and calculated on a daily basis. The Bank may charge an arrangement fee for any overdraft or increase.

## 19 Collection and Disclosure of Customer Information

### 19.1 Definitions

Capitalised terms used in this Condition 19 have the meanings set out in this Condition 19. If a capitalised term used in this Condition 19 is not defined below, that capitalised term has the meaning set out Appendix I.

**"Authorities"** includes any local or foreign judicial, administrative, public or regulatory body, any government, Tax Authority, securities or futures exchange, court, central bank or law enforcement body, self-regulatory or industry bodies or associations of financial service providers or any of their agents with jurisdiction over any part of the HSBC Group.

**"Compliance Obligations"** means obligations of the HSBC Group to comply with each of the following:

- (a) any Laws, international guidance or internal policies or procedures;
- (b) any demand from Authorities or reporting, disclosure or other obligations under Laws; or
- (c) Laws requiring the HSBC Group to verify the identity of its customers.

**"Connected Person"** means a person or entity (other than the Customer) whose information, including Personal Data or Tax Information, is provided by the Customer, or on the Customer's behalf, to any member of the HSBC Group, or which is otherwise received by any member of the HSBC Group in connection with the provision of the Services.

A **"Connected Person"** may include a guarantor, a director or officer of a company, partners or members of a partnership, any Substantial Owner, Controlling Person, beneficial owner, trustee, settlor or protector of a trust, account holder of a designated account, payee of a designated payment, the Customer's representative, agent or nominee, or any other person or entity with whom the Customer has a relationship that is relevant to the Customer's relationship with the HSBC Group.

**"Controlling Persons"** means individuals who exercise control over an entity. For a trust, the "Controlling Persons" will include the settlor, the trustees, the protector, the beneficiaries or class of beneficiaries, and any other person who exercises ultimate effective control over the trust, and for entities other than a trust, the "Controlling Persons" will be persons in equivalent or similar positions of control.

**"Customer Information"** means in relation to a Customer or a Connected Person, all or any of the following:

- (a) Personal Data;
- (b) information about the Customer or Connected Person, or either of their accounts or transactions;
- (c) information about the use of the Bank's products or services by the Customer or Connected Person;
- (d) information about the relationships of the Customer or Connected Person with the HSBC Group; or
- (e) Tax Information.

**"Financial Crime"** means money laundering, terrorist financing, bribery, corruption, tax evasion, fraud, evasion of economic or trade sanctions, or any acts or attempts to circumvent or violate any Laws relating to any of those matters.

**"Financial Crime Risk Management Activity"** means any action to meet Compliance Obligations relating to, or in connection with, the detection, investigation or prevention of Financial Crime that the Bank or members of the HSBC Group may take.

**"Laws"** include any local or foreign law, regulation, judgment or court order, voluntary code, sanctions regime, agreement between any member of the HSBC Group and an Authority, or agreement or treaty between Authorities applicable to the Bank or a member of the HSBC Group.

**"Personal Data"** means any information relating to an individual from which such individual can be identified.

**"Services"** includes each of the following:

- (a) the opening, maintaining and closing of the Customer's accounts;
- (b) the provision of credit facilities or other banking products and services, processing applications, credit and eligibility assessment;
- (c) maintaining the Bank's overall relationship with the Customer, including marketing services or products to the Customer, market research, insurance, audit and administrative purposes.

**"Substantial Owners"** means any individuals entitled to more than 10% of the profits of or with an interest of more than 10% in an entity, directly or indirectly.

**"Tax Authorities"** means Hong Kong or foreign tax, revenue or monetary authorities.

**"Tax Information"** means documentation or information about the Customer's tax status or the tax status of a Connected Person.

Reference to the singular includes the plural (and vice versa).

### 19.2 Collection, Use and Sharing of Customer Information

- (a) This Condition 19.2 explains how the Bank will use information about the Customer and Connected Persons. The Notice relating to the Personal Data (Privacy) Ordinance which applies to the Customer, each Connected Person and other individuals (the **"Notice"**) also contains important information about how the Bank and the HSBC Group will use such information and the Customer should read this Condition 19 in conjunction with the Notice. The Bank and members of the HSBC Group may use Customer Information in accordance with this Condition 19 and the Notice. The Notice is attached to these Conditions as Appendix II.
- (b) Customer Information will not be disclosed to anyone (including other members of the HSBC Group), other than where any of the following occurs:
  - (i) the Bank is legally required to disclose;
  - (ii) the Bank has a public duty to disclose;
  - (iii) the Bank's legitimate business purposes require disclosure;
  - (iv) the disclosure is made with the data subject's consent; or
  - (v) it is disclosed as set out in this Condition 19 or the Notice.

#### Collection

- (c) The Bank and other members of the HSBC Group may collect, use and share Customer Information. Customer Information may be requested by the Bank or on behalf of the Bank or the HSBC Group, and may be collected from the Customer directly, from a person acting on behalf of the Customer, from other sources (including from publicly available information), and it may be generated or combined with other information available to the Bank or any member of the HSBC Group.

#### Use

- (d) The Bank and members of the HSBC Group may use, transfer and disclose Customer Information:
- (i) in connection with the purposes set out in this Condition 19 or Appendix III (Customer Information other than Personal Data);
  - (ii) as set out in the Notice (applicable to Personal Data); or
  - (iii) in connection with matching against any data held by the Bank or the HSBC Group for whatever purpose (whether or not with a view to taking any adverse action against the Customer),
- (Conditions 19.2(d)(i) to (iii) of this Section I are collectively referred to as the “Purposes”).

#### Sharing

- (e) The Bank may (as necessary and appropriate for the Purposes) transfer and disclose any of Customer Information to the recipients set out in the Notice (who may also use, transfer and disclose such information for the Purposes) and Appendix III (Customer Information other than Personal Data).

#### Customer's Obligations

- (f) The Customer agrees to inform the Bank promptly and in any event, within 30 days in writing if there are any changes to Customer Information supplied to the Bank or a member of the HSBC Group from time to time, and to respond promptly to any request for Customer Information from the Bank or a member of the HSBC Group.
- (g) The Customer confirms that every Connected Person whose information (including Personal Data or Tax Information) has been (or will be) provided to the Bank or a member of the HSBC Group has (or will at the relevant time have) been notified of and agreed to the processing, disclosure and transfer of their information as set out in this Condition 19, Appendix II (Notice relating to the Personal Data (Privacy) Ordinance) and the Notice (as each may be amended or supplemented by the Bank from time to time). The Customer will advise any such Connected Persons that they have rights of access to, and correction of, their Personal Data.
- (h) The Customer consents and will take such steps as are required from time to time for the purposes of any applicable data protection law or secrecy law to permit the Bank to use, store, disclose, process and transfer all Customer Information in the manner described in these Conditions. The Customer agrees to inform the Bank promptly in writing if the Customer is not able or has failed to comply with the obligations set out in Conditions 19.2(f) or (g) of this Section I in any respect.
- (i) Where any of the following occurs:
- (i) the Customer or any Connected Person fails to provide promptly Customer Information reasonably requested by the Bank;
  - (ii) the Customer or any Connected Person withholds or withdraws any consents that the Bank may need to process, transfer or disclose Customer Information for the Purposes (except for purposes connected with marketing or promoting products and services to the Customer); or
  - (iii) the Bank or a member of the HSBC Group has suspicions regarding Financial Crime or an associated risk,
- the Bank may do any of the following:
- (A) refuse to provide new Services to the relevant Customer;
  - (B) refuse to continue to provide all or part of the Services to the relevant Customer;
  - (C) terminate its relationship with the relevant Customer;
  - (D) take actions necessary for the Bank or a member of the HSBC Group to meet the Compliance Obligations; or
  - (E) block, transfer or close the relevant Customer's accounts where permitted under local Laws.
- (j) If the Customer fails to promptly supply the Customer's, or a Connected Person's, Tax Information or accompanying statements, waivers or consents, as may be requested, then the Bank may make its own judgment with respect to the Customer's status or that of the Connected Person, including whether the Customer or a Connected Person is reportable to a Tax Authority. This may require the Bank or other person to withhold amounts as may be legally required by any Tax Authority and to pay such amounts to the appropriate Tax Authority.

### 19.3 Financial Crime Risk Management Activity

- (a) For the purposes of Condition 19.3(b) of this Section I, a “Financial Crime Risk Management Activity” includes each of the following:
- (i) screening, intercepting and investigating any instruction, communication, drawdown request, application for Services, or any payment sent to or by the Customer, or on the Customer's behalf;
  - (ii) investigating the source of, or intended recipient of, funds;
  - (iii) combining Customer Information with other related information in the possession of the HSBC Group; or
  - (iv) making further enquiries as to the status of a person or entity, whether they are subject to a sanctions regime, or confirming the identity and status of the Customer or that of Connected Person.
- (b) The Bank and HSBC Group's Financial Crime Risk Management Activity may lead to the delay, blocking or refusing the making or clearing of any payment, the processing of the Customer's instructions or application for Services or the provision of all or part of the Services. To the extent permissible by law, neither the Bank nor any member of the HSBC Group will be liable to the Customer or any third party in respect of any Loss (however it arose) that was suffered or incurred by the Customer or a third party, or caused in whole or in part in connection with the undertaking of a Financial Crime Risk Management Activity.

### 19.4 Tax Compliance

- (a) The Customer acknowledges that the Customer is solely responsible for understanding and complying with its tax obligations (including tax payments or filing of returns or other required documentation relating to the payment of all relevant taxes) in all jurisdictions in which those obligations arise and relating to the opening and use of accounts or Services provided by the Bank or members of the HSBC Group. Each Connected Person acting in its capacity as a Connected Person (and not in its personal capacity) makes the same acknowledgement in its own regard.
- (b) Certain countries may have tax legislation with extra-territorial effect regardless of the Customer or Connected Person's place of domicile, residence, citizenship or incorporation. Neither the Bank nor any member of the HSBC Group provides tax advice. The Customer is advised to seek independent legal and tax advice. Neither the Bank nor any member of the HSBC Group has responsibility in respect of the Customer's

tax obligations in any jurisdiction which may arise including any that may relate specifically to the opening and use of account(s) and Services provided by the Bank or members of the HSBC Group.

#### 19.5 Miscellaneous

- (a) In the event of any conflict or inconsistency between any provisions in this Condition 19 and those in or governing any other service, product, business relationship, account or agreement between the Customer and the Bank, the provisions in this Condition 19 will prevail.
- (b) If all or any part of the provisions of this Condition 19 become illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of such provision in any other jurisdictions or the remainder of this Condition 19 in that jurisdiction.
- (c) This Condition 19 will continue to apply notwithstanding any termination by the Bank or a member of the HSBC Group of the provision of any Services to the Customer, or the closure of any of the Customer's accounts.

#### 20 Termination or Suspension of Services or Accounts

- 20.1 The Customer may terminate the Services or an Account by giving the Bank prior written notice of such period acceptable to the Bank.
- 20.2 Subject to Condition 20.4 of this Section I, the Bank may, upon giving the Customer prior notice (save under exceptional circumstances when termination may be made without notice) with or without cause, terminate:
  - (a) all or any part of the Services;
  - (b) the Master Account; or
  - (c) an Account.
- 20.3 This Condition 20 does not limit or reduce the Bank's termination right under any other Condition.
- 20.4 If the Bank believes that any events set out in Condition 20.5 of this Section I (each an "Event of Default") has occurred, the Bank has the right to suspend or terminate all or any part of the Services or an Account with immediate effect.
- 20.5 For the purposes of Condition 20.4 of this Section I, the "Events of Default" are:
  - (a) the Customer breaches or fails to perform or observe these Conditions - this may include for example, the Customer's failure to settle any transaction or to pay any amount due or perform any other obligations in relation to the Services or Account; or
  - (b) the Bank believes or has reason to suspect that any of the following has occurred:
    - (i) the Bank has not been given a valid mandate;
    - (ii) the Customer is not the true owner of the Account; or
    - (iii) the Customer does not have authority to operate the Account.

#### 21 Variation of Conditions

- 21.1 The Bank has the right to vary these Conditions (including fees and charges) and any other conditions governing any Services or any Account at any time by notifying the Customer. The Bank will notify the Customer of any variation applying to the Customer by displaying that variation at:
  - (a) the Bank's premises;
  - (b) the Consolidated Statements; or
  - (c) in any other manner the Bank considers appropriate.
- 21.2 The Customer will be bound by a variation to these Conditions and other conditions applying to any Account or Service, unless the Bank has received notice from the Customer to close the relevant Account or terminate the relevant Service with effect before the date on which that variation is to take effect.
- 21.3 The Bank has no obligation to notify a Customer of any variation referred to in Condition 21.2 of this Section I that does not apply to that Customer.

#### 22 Limitation on Liability

- 22.1 The Bank is not liable for any loss, cost or damage of any kind incurred or suffered by the Customer as a result of any interruption, delay or failure (whether total or partial) in providing any of the Services or the Bank's equipment or facilities to the Customer or performing the Bank's duties and obligations in respect of the Services to the extent attributable to any cause or circumstance that is beyond the Bank's reasonable control or the reasonable control of the Bank's agents or nominees.
- 22.2 In no circumstance is the Bank responsible to the Customer or any other person for:
  - (a) any loss of profit or interest, indirect or consequential loss arising from or in connecting with the Bank providing, or failure or delay in providing, the Services; or
  - (b) the Customer's failure to provide complete, accurate and up-to-date information requested by the Bank in discharging its regulatory or legal duties (including but not limited to the Customer's failure to provide Customer Financial Information).

#### 23 Customers' Indemnity

- 23.1 Except as set out in Condition 23.3 of this Section I, the Customer will indemnify and reimburse:
  - (a) the Bank;
  - (b) the Bank's agents and nominees; and
  - (c) the Bank's officers and employees,

in each case for all Claims or Losses which any Person referred to in paragraph (a), (b) or (c) of this Condition 23.1 incurs or suffers as a result of, or in connection with any of the following:

- (i) the Customer's use of the Services or the Bank providing the Services to the Customer, maintaining an Account for the Customer, or effecting any transactions for or with the Customer;
- (ii) the Bank's decision not to process any Instruction or the Bank's delay or failure to act on an Instruction in part or in full for any reason;
- (iii) any fluctuation in the price of the relevant asset between the time the Bank receives an Instruction and the time the Bank acts on it;
- (iv) any default by the Customer in performing the Customer's obligations under these Conditions or the Applicable Regulations;
- (v) any other default by the Customer relating to the Services or an Account;

- (vi) the preservation or enforcement of the Bank's rights or exercise of the Bank's powers in connection with the Services or an Account;
  - (vii) the Bank acting or not acting on Telephone Instructions; and
  - (viii) the Bank providing the Drop & Go Counter Service to the Customer.
- 23.2 The indemnity referred to in Condition 23.1 of this Section I will continue after the termination of:
- (a) any Service;
  - (b) any Account;
  - (c) these Conditions; or
  - (d) an ATM Card or credit card.
- 23.3 If it is proved that a Claim or Loss (as applicable) was caused by the gross negligence or wilful default of:
- (a) the Bank;
  - (b) the Bank's agents or nominees; or
  - (c) the Bank's officers or employees,
- the Customer is not liable under Condition 23.1 of this Section I, to the extent such Claim or Loss is reasonably foreseeable and arises directly and solely from such gross negligence or wilful default.

## 24 Miscellaneous General Provisions

### *Collection and recovering of debts*

- 24.1 The Bank has the right to employ any person to assist the Bank in collecting and recovering any outstanding or overdue amount owing by the Customer to the Bank. Such person may be a collection agent or another service provider appointed by the Bank.

### *Recording*

- 24.2 In the course of providing the Services, the Bank (or any of the Bank's agents or nominees) may record and monitor Instructions or communications with the Customer by tape, video or other means. The Bank has the right to destroy such recordings after such period as the Bank considers appropriate.
- 24.3 The Bank may collect, store and analyse recordings of the Customer's voice to generate a "voice print" that is unique to the Customer. The Bank may use such voice print to identify the Customer when the Customer calls the Bank or when the Customer uses the Services provided by the Bank.

### *Microfilming or scanning*

- 24.4 The Bank has the right to destroy any document or record relating to the Customer, an Account or any of the Services after microfilming or scanning it. The Bank also has the right to destroy any microfilmed or scanned document or record after such period of time as the Bank considers appropriate.

### *Additional terms and conditions governing Accounts and Services*

- 24.5 In addition to these Conditions, other terms and conditions may apply to different types of Accounts or Services. Copies of such terms and conditions are available upon request at any of the Bank's branches. Such other terms and conditions will prevail to the extent of any inconsistency between them and these Conditions.

### *Appointment of agent or nominee*

- 24.6 The Bank may appoint any other person as the Bank's agent or nominee to perform any of the Services for the Customer. Such person includes any service provider or sub-contractor acting in its capacity as the Bank's agent or nominee. For that purpose:
- (a) the Bank may delegate any of its powers to that person; and
  - (b) the Customer authorises the Bank to disclose or transfer any information relating to the Customer, an Account or the Services to that person.

### *Authorised Persons*

- 24.7 Any Person authorised by the Customer to use or administer an Account or Service on behalf of the Customer is authorised by the Customer to accept the terms and conditions relating to that Account or Service. The Customer agrees to be bound by such terms and conditions.

### *Assignment by the Bank or by the Customer*

- 24.8 The Bank may at any time assign or transfer any or all of its rights or obligations to any person without the Customer's agreement.
- 24.9 The Customer is not allowed to assign or transfer any of its rights or obligations to any person, except with the Bank's prior written agreement.

### *Staff's remuneration*

- 24.10 The remuneration for the Bank's sales staff is determined based on the staff's overall performance with reference to a wide range of factors, and is not determined solely on his financial performance. Sales staff's remuneration is subject to review from time to time, for the purpose of encouraging the building of deep, long-lasting and mutually valuable relationships with customers.

### *Tax Indemnity and gross-up*

- 24.11 All payments or amounts payable to the Bank or receivable by the Bank in connection with the Services or in respect of an Account (including fees, costs, charges, interest and expenses) are exclusive of value added, sales, use, goods and services, business, stamp or any similar taxes or duties that may be applicable. All payments or amounts payable to the Bank or receivable by the Bank will be clear and free of any deduction or withholding or payment for or on account of Tax or a similar charge for any present or future Taxes or charges. If a deduction or withholding or payment for or on account of Tax or a similar charge is required by applicable laws or regulations, the Customer must increase the payment to the Bank or pay the Bank an additional amount to ensure receipt by the Bank of the full amount which the Bank would have received had no deduction or withholding or payment for or on account of Tax or a similar charge been required. The Customer will upon the Bank's request, deliver promptly evidence satisfactory to the Bank that the Customer has complied with applicable deduction or withholding or payment obligations. The Customer holds the Bank harmless and agrees to fully indemnify the Bank on demand for all consequences of any failure to comply with such obligations including any claim which may be made against the Bank by any authorities.
- 24.12 The Customer shall indemnify the Bank against, and pay to the Bank an amount equal to, any loss, liability or cost which the Bank determines will be or has been (directly or indirectly) suffered for or on account of Tax in connection with the Services or in respect of an Account, together with any interest, penalty, cost or expense incurred in connection therewith.
- 24.13 Without limiting or reducing any of the Bank's rights in law, the Bank is entitled without prior notice to the Customer to debit any amount payable by the Customer to the Bank under Conditions 24.11 or 24.12 of this Section I from any account irrespective of whether there are sufficient available funds, overdraft or other facilities in the relevant account.
- 24.14 Conditions 24.11 to 24.13 of this Section I will continue to be effective following the termination of the Services, these Conditions or any Account.



*Bank's By-laws and practices*

24.15 All Services and Accounts, the interest thereon, service charges and other matters relating thereto, shall be governed, in addition to these Conditions, by the Rules of Hong Kong Association of Banks and the Bank's by-laws, regulations and practices, brought to the attention of the Customer by display, the Consolidated Statement, advertisement or otherwise, as the foregoing are in effect from time to time.

*Waivers and remedies*

24.16 No failure or delay by the Bank in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Any remedies provided to the Bank herein are not intended to be exclusive of any other remedy and each and every remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise.

*Loss of seal*

24.17 In the event of loss of the identity document, seal or chop used for giving Instructions to the Bank in respect of or the use of the Services, the Customer must immediately notify the Bank in writing. The Bank will not be responsible for any payment made prior to receiving such written notice.

*Partial invalidity*

24.18 If any provision in these Conditions is declared or adjudged to be illegal, invalid or unenforceable under any law, such illegality, invalidity or unenforceability will not affect any of the other provisions in these Conditions, which will remain in full force, validity and effect.

*Third party rights*

24.19 No person other than the Customer or the Bank has any right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) of the Laws of Hong Kong to enforce or enjoy the benefit of any of the provisions of these Conditions.

*Governing law*

24.20 These Conditions are governed by, and will be construed according to, Hong Kong law.

*Jurisdiction*

24.21 The Customer submits to the non-exclusive jurisdiction of the Hong Kong courts.

24.22 These Conditions may be enforced in the courts of any competent jurisdiction.

*Sanctions*

24.23 The Customer represents and confirms that neither (i) the Customer, (ii) any of the Customer's subsidiaries, nor (iii) any of the Customer's directors, officers, employees, agents or affiliates or that of any of the Customer's subsidiaries, is an individual or entity ("**Person**") that is, or is owned or controlled by Persons that are:

- (a) the subject of any sanctions administered or enforced by the US Department of the Treasury's Office of Foreign Assets Control, the US Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, the Hong Kong Monetary Authority or any other relevant sanctions authorities (collectively, "**Sanctions**"); or
- (b) located, organised or resident in a country or territory that is, or whose government is, the subject of Sanctions, including the Crimea region, Cuba, Iran, North Korea, Sudan and Syria.

24.24 The Customer agrees that the Customer will not, directly or indirectly, use the funds in any Account or any financing provided by the Bank, or lend, contribute or otherwise make available such funds to any subsidiary, joint venture partner or other Person:

- (a) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions; or
- (b) in any other manner that would result in a violation of Sanctions by any Person.

## Section II Savings Account

### 1 General

This Section II applies, and only applies, to the Customer's use and maintenance of a Savings Account. All Conditions set out in Section I also apply to the Customer's use and maintenance of a Savings Account, unless the Bank otherwise agrees. This Section II prevails over the Conditions in Section I to the extent of any inconsistency between them (save for Condition 19 (Collection and Disclosure of Customer Information) of Section I).

### 2 Interest

#### *General*

Conditions 18.6 (Calculation of interest) to 18.11 (Insufficient funds) of Section I apply to each Savings Account maintained by the Customer.

#### *Interest on HKD or Foreign Currency accounts*

2.1 Interest on a Savings Account denominated in HKD will be credited on a monthly basis, or on such other basis specified by the Bank.

2.2 Interest on a Savings Account denominated in a Foreign Currency will be credited on a half-yearly basis, or on such other basis specified by the Bank.

### 3 Withdrawals

3.1 Withdrawals from a Savings Account may be made on demand at the counter in the hours during which the Bank's Savings Department is open for business, provided satisfactory identification or appropriate authority is produced.

3.2 Cheque withdrawals from a Savings Account are not permitted.

3.3 A withdrawal from a Foreign Currency Savings Account in cash denominated in a Foreign Currency is subject to seven (7) days' prior notice to the Bank and availability of the currency in question.

### 4 Cheque Deposits

4.1 If a cheque deposited in a Savings Account is denominated in a currency which is different to that of the currency of that Savings Account and that cheque is subsequently returned, the Bank may debit that Savings Account with an amount calculated, at the Bank's discretion, using either:

(a) the Bank's prevailing buying or selling rate; or

(b) the original buying or selling rate, which may be different to the rate applying at the time of crediting that Savings Account.

4.2 If there are insufficient funds in that Savings Account, the Bank is entitled to debit the relevant amount from any other Account or accounts maintained with the Bank by, and held in the name of, the Customer.

### 5 Commission

The Bank will charge commission for notes denominated in a Foreign Currency either deposited to, or withdrawn from, the Savings Account if the amounts deposited or withdrawn exceed the daily limit set by the Bank at any time. Additionally, the Bank reserves the right to levy a charge for any deposit to, or withdrawal from, the Savings Accounts of notes denominated in a Foreign Currency (regardless of the amount).

### 6 Renminbi Savings Account

6.1 If the Bank reasonably suspects that any Renminbi note credited to a Renminbi Savings Account is counterfeit, the Bank may, without notice to the Customer:

(a) debit that Account or any other account held by the Customer with the Bank, with the aggregate amount of such note; and

(b) inform the relevant authority and disclose to them all such information relating to the same, including the name, contact number and address of the Customer deemed appropriate by the Bank.

6.2 The Customer must keep the Bank at all times indemnified against all actions, claims, proceedings, losses, damages, costs and expenses which may be brought against the Bank or suffered or incurred by the Bank arising out of, or in connection with, the matters referred to in Condition 6.1 of this Section II.

6.3 The Bank will not accept coins as deposits into the Renminbi Savings Account.

6.4 No Renminbi overdraft facilities will be offered in respect of the Renminbi Savings Account.

### 7 Payments to Third Parties

Any payment made by the Bank to a person producing satisfactory identification or a withdrawal form purporting to be signed, sealed or chopped as authorised by the Customer will have the same effect as if made to the Customer and will absolve the Bank from all liabilities to the Customer or to any other party.

## Section III Current Account

### 1 General

This Section III applies, and only applies, to the Customer's use and maintenance of a Savings Account. All Conditions set out in Section I also apply to the Customer's use and maintenance of a Savings Account, unless the Bank otherwise agrees. This Section III prevails over the Conditions in Section I to the Extent of any inconsistency between them (save for Condition 19 (Collection and Disclosure of Customer Information) of Section I).

### 2 Interest

Unless otherwise specified by the Bank, no interest (whether at a rate above or below zero) will accrue on a Current Account.

### 3 Handling cheques with care

#### *Customer's obligation to handle cheques with care*

- 3.1 A cheque book will be issued to the Customer upon opening a HKD Current Account
- 3.2 The Customer is responsible for safekeeping the Customer's cheque books and cheques from loss, theft or unauthorised use. The Customer should take appropriate security measures including lock and key.
- 3.3 All cheques must be drawn in the currency of the Current Account (HKD).
- 3.4 The Customer may apply for a cheque book for the Customer's Current Account by presenting a duly completed and signed cheque book application form to the Bank or by any other means acceptable to the Bank. The Bank has the right to not issue a cheque book. The Bank will deliver a cheque book by post to the Customer's address on the Bank's records (or by such other means as determined by the Bank). The Bank is not responsible for any delay or loss caused by any means of delivery.
- 3.5 Before using a new cheque book, the Customer must check the cheque serial numbers, account number and the Customer's name printed on the cheques and the total number of cheques. The Customer must report any irregularity to the Bank as soon as reasonably practicable.
- 3.6 The Customer must delete the words "or *bearer*" and cross a cheque if the Customer intends to deliver it other than in person.
- 3.7 The Customer must be careful in drawing a cheque to ensure that it is correct. The Customer must not draw a cheque in any manner that may allow it to be altered or may facilitate fraud or forgery. In particular, the Customer must:
  - (a) write the amount in the spaces provided on the cheque, both in words and figures as close to each other and to the left hand margin as possible, leaving no space for inserting other words or figures;
  - (b) add the word "only" after stating the amount in words and use only Arabic numerals to state the amount in figures;
  - (c) write and sign the cheque with non-erasable ink or ball-point pen in Chinese or English;
  - (d) sign the cheque so that the Customer's signature matches the specimen signature on the Bank's record;
  - (e) confirm any alteration on the cheque by the Customer's full signature - the Customer agrees that the Bank is not responsible for any loss arising from an alteration which cannot be readily detected by the Bank; and
  - (f) comply with the conditions printed on the inside cover of a cheque book and any other conditions in force.
- 3.8 The Customer must report any loss, theft or unauthorised use of a signed cheque or a cheque book to the Bank in writing as soon as reasonably practicable.

#### *Bank's authorisations*

- 3.9 The Customer agrees and authorises the Bank to do each of the following:
  - (a) record a cheque drawn by the Customer in electronic or other form as the Bank considers appropriate;
  - (b) allow the cheque after payment to be retained by the collecting bank or Hong Kong Interbank Clearing Limited for a period specified in the rules relating to the operation of the clearing house for the related currency, and to be destroyed by the collecting bank or Hong Kong Interbank Clearing Limited after that period; and
  - (c) contract with collecting banks, Hong Kong Interbank Clearing Limited and other persons in relation to the arrangements and matters set out in Conditions 3.9(a) and (b) of this Section III.

### 4 Return Cheques

#### *Bank's rights*

- 4.1 The Bank has the right to not pay a cheque in each of the following cases:
  - (a) if there are insufficient funds in the Account;
  - (b) if there is an error on the cheque; and
  - (c) for any other reason the Bank considers appropriate.
- 4.2 If either of the circumstances referred to in Condition 4.1(a) or (b) of this Section III occurs, the Bank has the right to return the relevant cheque and impose a service charge.

#### *Insufficient funds*

- 4.3 Conditions 18.10 and 18.11 (Insufficient funds) of Section I apply to each Current Account maintained by the Customer.

### 5 Stop payment order

- 5.1 The Customer must give the Bank a clear Instruction if the Customer wishes to stop payment of a cheque. The Bank has no obligation to act on the Customer's Instruction if the Bank does not receive it in time to enable the Bank to stop payment.
- 5.2 The Customer must clearly identify the cheque in the Customer's Instruction by quoting the cheque number. If the Customer quotes any other detail instead of the cheque number, the Bank has no obligation to, but may, act on the Customer's Instruction at the Bank's discretion without being liable. If the Customer quotes any other detail in addition to the cheque number, the Bank is not responsible for checking whether that detail conforms with the corresponding detail on the cheque in question.
- 5.3 The Bank has no obligation to act on an Instruction to stop payment if the Bank is unable to verify its authenticity. However, that does not restrict the Bank from acting on an Instruction at the Bank's discretion if the Bank believes in good faith that it is given or authorised by the Customer. In any case, the Bank is not liable and the Customer will be bound by that Instruction if the Bank acts on it even if it is incorrect, false or unclear or was not given or authorised by the Customer. The Customer should confirm an Instruction as soon as reasonably practicable in a manner accepted by the Bank.

### 6 OD Protection

If an overdraft protection facility ("**OD Protection**") with a pre-defined limit is granted to the HKD Current Account, the Customer agrees that:

- 6.1 the OD Protection may be granted, revised and cancelled at any time at the Bank's sole discretion without notice;
- 6.2 the pre-defined limit of the OD Protection is subject to variation by the Bank;
- 6.3 interest on the OD Protection will accrue at the rate determined by the Bank and will be payable monthly by debiting the HKD Current Account; and
- 6.4 the Bank has the overriding right at any time to demand immediate repayment of any debit balance (plus interest) created under the OD Protection.

## Section IV e-Cheques

### 1 General

This Section IV applies, and only applies, to the Customer's use of the e-Cheques Services. All Conditions set out in Section I also apply to the Customer's use of the e-Cheques Services, unless the Bank otherwise agrees. The other provisions of these Conditions which apply to paper cheque or generally to the Bank's services continue to apply to e-Cheques and the Bank e-Cheques Services to the extent that they are relevant and not inconsistent with the provisions in this Section IV. This Section IV prevails over the Conditions in Section I to the extent of any inconsistency between them (save for Condition 19 (Collection and Disclosure of Customer Information) of Section I).

### 2 Definitions

Capitalised terms used in this Section IV have the meanings set out in this Condition 2. If any capitalised term used in this Section IV is not defined in this Condition 2, that capitalised term has the meaning set out in Appendix 1.

"**Bills of Exchange Ordinance**" means the Bills of Exchange Ordinance (Cap. 19) of the Laws of Hong Kong, as may be amended from time to time.

"**Clearing House**" means Hong Kong Interbank Clearing Limited and its successors and assigns.

"**Customer**" means each customer to whom the Bank provides e-Cheques Services and, where the context permits, includes any person authorised by the customer to sign e-Cheques on its behalf from time to time.

"**Deposit Channel**" means any channel offered by the Bank for presentment of e-Cheques for deposit.

"**e-certificate**" means a certificate recognised by the Clearing House for the purpose of issuing e-Cheques that are issued by a certification authority acceptable to the Bank.

"**e-Cheque**" means a cheque (including a cashier's order), issued in the form of an electronic record (as such term is defined in the Electronic Transactions Ordinance (Cap. 553) of the Laws of Hong Kong with an image of the front and back of the e-Cheque or e-cashier's order (as the case may be). e-Cheques may be issued in HKD, US Dollars or Renminbi or in any other currency specified by the Bank from time to time.

"**e-Cheque Drop Box**" or "**e-Cheque Drop Box Service**" means an electronic drop box provided by the Clearing House that accepts presentment of e-Cheques in respect of which an e-Cheque Drop Box user must register an e-Cheque Drop Box Account with the Clearing House before presenting e-Cheques to a Payee Bank Account, as this term may be amended in accordance with the e-Cheque Drop Box Terms.

"**e-Cheque Drop Box Account**" means a user account for the e-Cheque Drop Box Service, and for which each user must register with the Clearing House before using the e-Cheque Drop Box for presenting e-Cheques for deposit into a Payee Bank Account, as this term may be amended in accordance with the e-Cheque Drop Box Terms.

"**e-Cheque Drop Box Terms**" means all the terms and conditions prescribed by the Clearing House from time to time for governing the e-Cheque Drop Box Service provided by the Clearing House and the use of the e-Cheque Drop Box Service.

"**e-Cheques Deposit Services**" means the service offered by the Bank for depositing e-Cheques.

"**e-Cheques Issuance Services**" means the service offered by the Bank for issuing e-Cheques (including any services relating to e-certificates).

"**e-Cheques Services**" means collectively, the e-Cheques Issuance Services and the e-Cheques Deposit Services.

"**Industry Rules and Procedures**" means the rules and operating procedures governing the handling of e-Cheques adopted by the Clearing House and the banking industry from time to time.

"**Payee Bank**" means the bank at which a Payee Bank Account is held.

"**Payee Bank Account**" means, in respect of each e-Cheque presented for deposit using the e-Cheques Deposit Services, the bank account of the payee of the e-Cheque maintained with the Bank into which the e-Cheque is to be deposited, which may be a sole name or a joint name account of the payee acceptable by the Bank for the purposes of e-Cheque Deposit Services.

"**Payer Bank**" means the bank which digitally signed an e-Cheque created by its customer.

### 3 Nature and Scope of e-Cheques Services

3.1 The Bank may provide e-Cheques Services at the Bank's discretion. If the Bank provides e-Cheques Services to the Customer, the Customer may issue e-Cheques and deposit e-Cheques. In order to use the e-Cheques Services, the Customer has to provide such information and documents and accept such terms and conditions which may be required or prescribed by the Bank and the Clearing House respectively from time to time. The Customer may also be required to sign forms and documents prescribed by the Bank from time to time.

3.2 e-Cheques Issuance Services allow the Customer to issue e-Cheques drawn on the Bank, in accordance with Condition 4 of this Section IV.

3.3 e-Cheques Deposit Services allow the Customer and other persons to present e-Cheques (whether payable to the Customer or any other holder of the Payee Bank Account) for deposit with the Bank (as Payee Bank), using the e-Cheque Drop Box Service offered by the Clearing House or using the Deposit Channels, in accordance with Condition 5 of this Section IV.

3.4 The Bank may provide e-Cheques Services relating to e-Cheques that are issued in any currency specified by the Bank from time to time, including HKD, US Dollars or Renminbi.

3.5 The Bank has the right to set or vary from time to time the terms and conditions for using the e-Cheques Services. These terms and conditions may include the following (or any of them):

- (a) the service hours of the e-Cheques Services (including cut-off times for issuing, countermending or presenting e-Cheques);
- (b) any maximum total amount or total number of e-Cheques which the Customer may issue in any specified period; and
- (c) any fees and charges payable by the Customer for the e-Cheques Services.

### 4 e-Cheques Issuance Services

4.1 This Condition 4 only applies if the Customer maintains an online internet banking profile with the Bank.

#### *Format of and steps for issuing an e-Cheque*

4.2 The Customer is required to issue an e-Cheque in the format with such layout specifications and following the steps and inputting the details prescribed by the Bank from time to time. The Customer is not allowed to add to, remove from or modify the contents, format, layout or image of an e-Cheque.

4.3 Each e-Cheque must be signed by the Customer (as payer) and by the Bank (as Payer Bank) with the each of their respective digital signatures in the sequence set by the Bank, except that the payer's digital signature may not be required for an e-Cheque that is a cashier's order.

4.4 Where the Customer draws an e-Cheque on a joint account, the Customer is solely responsible for ensuring that the e-Cheque is digitally signed by such person(s) following such signing arrangement as authorised by the joint account holders for signing e-Cheques from time to time.

4.5 The Customer is solely responsible for ensuring that each e-Cheque is digitally signed on the Customer's behalf by such person(s) following such signing arrangement as authorised by the Customer for signing e-Cheques from time to time.

#### *e-certificate*

- 4.6 The Customer's digital signature on an e-Cheque must be produced by an e-certificate that is valid (and not expired or revoked) at the time of producing that digital signature.
- 4.7 The Customer's digital signature on an e-Cheque may be produced by either a general purpose e-certificate or a specific usage e-certificate.
- 4.8 If the Bank provides such services and the Customer chooses to produce the Customer's digital signatures by a general purpose e-certificate, the Customer is required to maintain a valid general purpose e-certificate on an on-going basis in compliance with Condition 4.6 of this Section IV.
- 4.9 The Bank may provide services relating to the specific usage e-certificate at the Bank's discretion. The Bank's services may include applying for, holding, maintaining, renewing, revoking and managing (or any of the above) a specific usage e-certificate on the Customer's behalf. If the Bank provides such services and the Customer chooses to produce the Customer's digital signatures by a specific usage e-certificate, the Customer directs and authorises the Bank to:
- (a) provide such services in the scope and manner set by the Bank from time to time, which may include holding the specific usage e-certificate and the corresponding key and password for the Customer, and effect and produce the Customer's digital signatures on e-Cheques on the Customer's behalf as instructed by the Customer from time to time; and
  - (b) take all necessary steps (including providing all necessary information and personal data to the certification authority issuing the specific usage e-certificate) for the purposes relating to the specific usage e-certificate.
- 4.10 In applying for a specific usage e-certificate for the Customer, the Bank is entitled to rely on the information provided by the Customer. The Customer is solely responsible for providing the Bank with correct and up-to-date information. If the Bank obtains a specific usage e-certificate based on incorrect or outdated information provided by the Customer, the Customer is still bound by any e-Cheque signed by digital signatures produced by that e-certificate.
- 4.11 An e-certificate is issued by the relevant certification authority. The Customer is bound by the terms and conditions specified by that certification authority in relation to the Customer's e-certificate. The Customer is solely responsible for performing the Customer's obligations under those terms and conditions.
- 4.12 Any Customer Delegates authorised by the Customer to use or administer the online internet banking profile maintained by the Customer with the Bank from time to time is authorised to accept the terms and conditions specified by the relevant certification authority for and on behalf of the Customer and the Customer agrees to be bound by such terms and conditions as accepted by such person on the Customer's behalf.

#### *Sending e-Cheques to payees*

- 4.13 Once the Customer confirms the issue of an e-Cheque, the Bank will generate the e-Cheque file. The Customer may download the e-Cheque file for delivery to the payee itself. Alternatively, the Bank may send the e-Cheque file to the payee by electronic means on the Customer's behalf, if the Bank offers this service.
- 4.14 The Customer should not issue an e-Cheque (or instruct the Bank to issue an e-Cheque on the Customer's behalf) to a payee unless the payee agrees to accept e-Cheques. The Customer is solely responsible for each of the following:
- (a) before issuing an e-Cheque (or instructing the Bank to issue an e-Cheque on the Customer's behalf) to a payee, informing the payee that the payee may agree or decline to accept the e-Cheque;
  - (b) using secured electronic means and taking appropriate email encryption and other security measures in sending the e-Cheque file; and
  - (c) providing the Bank with correct and up-to-date contact information of a payee to enable the Bank to send the e-Cheque file to the payee by electronic means on the Customer's behalf, if the Bank offers this service.
- 4.15 The e-Cheque file will be regarded as having been delivered to the payee upon the Bank's sending it to the payee by electronic means using the payee's contact information provided by the Customer. The Bank does not have any duty to verify whether the payee has actually received the e-Cheque file. The Customer is advised to check with the payee whether the payee actually receives the e-Cheque file, whether it was sent by the Customer or by the Bank.

#### *Waiver of presentment requirements*

- 4.16 Each e-Cheque is only required to be presented by sending it in the form of an electronic record in accordance with the Industry Rules and Procedures. The Bank is entitled to pay each e-Cheque against presentation of its electronic record in that manner without requesting any other form of presentation. Without reducing the effect of Condition 4.2 of this Section IV and Conditions 6.2 to 6.5 of this Section IV, the Customer expressly accepts the waiver of presentment requirements set out on an e-Cheque from time to time.

## **5 e-Cheques Deposit Services**

#### *General*

- 5.1 The e-Cheques Deposit Services may allow presentment of e-Cheques for deposit with the Bank (as Payee Bank) using the e-Cheque Drop Box Service provided by the Clearing House or using the Bank's Deposit Channels.

#### *e-Cheque Drop Box Service*

- 5.2 The e-Cheque Drop Box Service is provided by the Clearing House. The Customer is bound by the e-Cheque Drop Box Terms in relation to the Customer's use of the e-Cheque Drop Box Service. The Customer is solely responsible for performing the Customer's obligations under the e-Cheque Drop Box Terms.
- 5.3 In order to use the e-Cheque Drop Box Service, the Customer is required by the e-Cheque Drop Box Terms to register an e-Cheque Drop Box Account with one or more Payee Bank Account for presenting e-Cheques. The Customer is allowed by the e-Cheque Drop Box Terms to register an e-Cheque Drop Box Account with a Payee Bank Account that is the Customer's same-name account or an account other than the Customer's same-name account. The Customer is responsible for the presentment of all e-Cheques by the Customer or any other person using the Customer's e-Cheque Drop Box Account (including presentment of any e-Cheques to a Payee Bank Account other than the Customer's same-name account).
- 5.4 Any issue relating to the use of the e-Cheque Drop Box Service should be handled in accordance with the e-Cheque Drop Box Terms. The Bank may (but has no obligation to) provide reasonable assistance to the Customer. In particular, the Bank does not have the electronic record or image of any e-Cheque deposited using the e-Cheque Drop Box Service. On the Customer's request, the Bank may (but has no obligation to) provide the date, e-Cheque amount, e-Cheque number, payee name and any other information agreed by the Bank relating to an e-Cheque deposited using the Customer's e-Cheque Drop Box Account.
- 5.5 The Bank gives no representation or guarantee, whether express or implied, relating to the availability, quality, timeliness or any other aspect of the e-Cheque Drop Box Service provided by the Clearing House. Unless otherwise stated in the e-Cheque Drop Box Terms, the Customer bears the responsibilities and risks relating to the use of the e-Cheque Drop Box Service. The Bank is not liable for loss, damage or expense of any kind which the Customer or any other person may incur or suffer arising from or in connection with the use of the e-Cheque Drop Box Service.

#### *The Bank Deposit Channels*

- 5.6 The Bank's Deposit Channels are available in:

- (a) the Bank's public website; and
  - (b) the Customer's online internet banking profile maintained with the Bank.
- 5.7 Any e-Cheques presented using the Bank's Deposit Channels after the applicable daily cut-off time on a Business Day will be treated as having been received by the Bank on the next Business Day.
- 5.8 After presentment of an e-Cheque using the Bank's Deposit Channels, there are other validations and procedures in relation to presentment, clearing and settlement of an e-Cheque and the acceptance by the Bank of an e-Cheque presented using the Bank's Deposit Channels itself does not guarantee clearing and settlement.
- 5.9 The Bank will only credit to a Payee Bank Account such e-Cheques presented to the Bank using the Bank's Deposit Channels after verification and validation to the Bank's satisfaction, and the Bank's decision is final and binding on the Customer.
- 5.10 The Customer will ensure that an e-Cheque presented to the Bank using the Bank's Deposit Channels is complete, accurate, virus free and in a prescribed format acceptable to the Bank from time to time. The Bank has the right not to accept an e-Cheque presented to the Bank using the Deposit Channels without giving any reason.
- 5.11 The Bank has the right to charge or vary the fees relating to the use of the Bank's Deposit Channels. The Bank will give the Customer prior notice of new fees or any variation of fees. The Bank may collect fees from the Customer in such manner and at such intervals as the Bank may specify.
- 5.12 In addition to these Conditions, by using the Bank's Deposit Channels, the Customer will be considered to have accepted the applicable terms and conditions published on:
- (a) the Bank's public website; and
  - (b) the Customer's online internet banking profile maintained with the Bank,
- and will be bound by each of them.
- 5.13 The Bank may specify or vary from time to time:
- (a) the available Deposit Channels without notice; and
  - (b) the terms governing the use of any Deposit Channel.

## **6 Handling of e-Cheques, Associated Risks and the Bank's Liabilities**

### *Handling of e-Cheques*

- 6.1 The Customer understands that the Bank and other banks have to follow the Industry Rules and Procedures in the handling, processing, presentment, payment, collection, clearance and settlement of e-Cheques drawn by the Customer or payable to the Customer. Accordingly, the Bank is entitled to pay and collect e-Cheques for the Customer in the following manner, even if the Bills of Exchange Ordinance (Cap. 19) of the Laws of Hong Kong may not expressly provide for presentment of e-Cheques or may specify another manner for presentment of cheques:
- (a) pay any e-Cheque drawn by the Customer on the Bank upon presentment of that e-Cheque to the Bank in accordance with the Industry Rules and Procedures; and
  - (b) collect any e-Cheque payable to the Customer by presenting that e-Cheque to the Payer Bank in accordance with the Industry Rules and Procedures.

### *Limitation of the Bank's liability*

- 6.2 Without limiting or reducing the effect of Condition 22 (Limitation on liability) of Section I, except as set out in Condition 6.3 of this Section IV, the Bank is not liable for any Loss which the Customer or any other person may incur or suffer arising from or in connection with the use of the e-Cheques Services or the handling, processing, presentment, payment, collection, clearance or settlement of e-Cheques issued by the Customer or presented by the Customer or any other person using the Deposit Channels provided by the Bank to the Customer.
- 6.3 If it is proved that any event in Condition 6.2 of this Section IV was caused by the negligence or wilful default of:
- (a) the Bank;
  - (b) the Bank's agents or nominees; or
  - (c) the Bank's officers or employees or that of the Bank's agents or nominees,
- then the Bank will be liable for any loss and damage the Customer incur or suffer that is direct and reasonably foreseeable arising directly and solely from such negligence or wilful default.
- 6.4 For the avoidance of doubt, the Bank is not liable for any Loss which the Customer or any other person may incur or suffer arising from or in connection with any of the following:
- (a) use of the e-Cheque Drop Box Service by the Customer or any other person, or the e-Cheque Drop Box Terms;
  - (b) the Customer's failure to comply with the Customer's obligations relating to the e-Cheques Services, including the Customer's obligation to safeguard against the issuance of e-Cheques by unauthorised persons;
  - (c) presentment of any e-Cheque issued by the Customer or payable to the Customer in accordance with the Industry Rules and Procedures, despite the provisions of the Bills of Exchange Ordinance; or
  - (d) any failure or delay in providing the e-Cheques Services, or any error or disruption relating to the e-Cheques Services, caused by or attributed to any circumstance beyond the Bank's reasonable control.
- 6.5 In no event will the Bank be liable to the Customer or any other person for any loss of profit or any special, indirect, consequential or punitive loss or damages.

### *Customer's confirmation*

- 6.6 The Customer accepts the restriction of liabilities and disclaimers imposed by the Bank and the Clearing House in relation to the e-Cheques Services and the services provided by the Clearing House respectively. The Customer accepts and agrees to bear the risks and the liabilities for issuing and depositing e-Cheques.

## Section V Time Deposits

### 1 General

This Section V applies, and only applies, to Time Deposits held by the Customer with the Bank. All Conditions set out in Section I also apply to Time Deposits held by the Customer with the Bank, unless the Bank otherwise agrees. This Section V prevails over the Conditions in Section I to the extent of any inconsistency between them (save for Condition 19 (Collection and Disclosure of Customer Information) of Section I).

### 2 Placement of Time Deposits

- 2.1 A Time Deposits Account will be taken to be opened for the purposes of these Conditions when the Customer first places a Time Deposit with the Bank.
- 2.2 All Time Deposits placed with the Bank (except the first Time Deposit) will be deposited into the Time Deposits Account referred to in Condition 2.1 of this Section V.
- 2.3 A Time Deposit may only be placed:
- (a) in such currencies;
  - (b) with such minimum initial deposit; and
  - (c) with respect to such range of maturity dates,
- as determined by the Bank from time to time.
- 2.4 If a cheque deposited in, and credited to, a Time Deposits Account, is denominated in a currency that is different to that of the Time Deposits Account and that cheque is subsequently returned, the Bank may debit that Time Deposits Account with an amount calculated, at the Bank's discretion, using:
- (a) the Bank's prevailing buying or selling rate; or
  - (b) the original buying or selling rate, which may differ from the rate applicable at the time of crediting that Time Deposits Account.
- 2.5 If there are insufficient funds in the Time Deposits Account referred to in Condition 2.4 of this Section V, the Bank is entitled to debit the amount concerned from any other account maintained by, and held in the name of, the Customer, including, without limitation, any other Account.

### 3 Interest

- 3.1 The Bank reserves the right to vary the interest rate applicable from time to time on a Time Deposit at the Bank's sole discretion, as displayed in the Bank's premises, published on the Bank's website and/ or advertised in the media.
- 3.2 Interest on a Time Deposit will accrue to the day prior to maturity of the Time Deposit and is payable on the due date.
- 3.3 If the interest rate is above zero, interest is payable by the Bank to the Customer and may be either withdrawn or added to the principal on a Business Day.
- 3.4 Notwithstanding Conditions 3.1 to 3.3 of this Section V, accrued interest on deposits which are not less than a prescribed amount and which are for a term of not less than eighteen (18) months, will be paid by the Bank at the end of each calendar half-year on those dates determined by the Bank. Monthly interest may be paid by the Bank upon request by the Customer on HKD deposits of not less than a prescribed amount for a prescribed term, as determined by the Bank.
- 3.5 Details of accrued interest and the amount of tax deducted (if applicable) will be advised each time a Time Deposit is withdrawn or renewed.
- 3.6 Interest on call deposits is calculated daily based on the prevailing rate at the end of the day, except that interest for the day upon which the call deposits are placed with the Bank will be calculated based on the interest rate printed on the deposit confirmation.

### 4 Withdrawal and Renewal of Time Deposits

- 4.1 At the request of the Customer, the Bank may at its discretion repay a Time Deposit before the due date. However, if there is such early repayment, the Bank:
- (a) is not required to pay any interest on the relevant Time Deposit;
  - (b) may recover a handling charge and the additional cost (if any) of obtaining funds in the market for the remaining period of the relevant Time Deposit;
  - (c) may cancel such repayment if there is a lack of funds or if the appropriate handling fee levied exceeds the amount of the relevant Time Deposit; and
  - (d) may deduct any sums already paid to the Customer by way of interest and to the Government by way of taxation (if applicable) from the principal sum before repayment of the balance.
- 4.2 Deposits which fall due on a day which is not a Business Day in Hong Kong or in the country of the Foreign Currency concerned are payable on the next Business Day, except when such extension exceeds the maximum period for deposits acceptable to the Bank or as regulated from time to time, in which case the deposits are payable on the immediately preceding Business Day.
- 4.3 All placements, renewals and withdrawals of Time Deposits are accepted subject to the transaction date and hours set by the Bank from time to time.
- 4.4 Any Instructions regarding disposal of funds at maturity and any amendments thereto must be given at least one (1) Business Day prior to the date of maturity. The Customer may give the Bank an Instruction directly or through local bankers in writing or by such other means acceptable to the Bank.
- 4.5 Where automatic renewal Instructions are given for Time Deposits and the Bank accepts such Instructions, the prevailing rate of interest applied will be the rate of interest (whether above or below zero) applicable on the due date at such time as the Bank at its sole discretion decides. Even if the Bank has accepted an Instruction to renew automatically, the Bank has the right unilaterally to cease to act on the Instruction at any time without giving reason.
- 4.6 If no disposal instructions are received by the due date, interest on the due date and thereafter will accrue on the principal amount only. The interest will accrue at the Bank's daily savings deposit rates applicable during the period on and after the due date in respect of the relevant currency concerned. If the Bank's daily savings deposit rates are above zero, accrued interest payable by the Bank will be credited into the relevant account on a Business Day only when instructions to credit are received.
- 4.7 Withdrawals in Foreign Currency cash are subject to seven (7) days' prior notice and availability of the currency in question.
- 4.8 The Bank will charge commission for Foreign Currency notes deposited to, or withdrawn from, the Time Deposits Account, if the amounts deposited or withdrawn (as applicable) exceed the daily limit set by the Bank from time to time. Additionally, the Bank reserves the right to levy a charge for deposit to or withdrawal from (as applicable), the Time Deposits Account of Foreign Currency notes (regardless of the amount).



## Section VI ATM Card and Business Debit Card

### 1 General

This Section VI applies, and only applies, to the Customer's use of a Card. All Conditions set out in Section I also apply to the Customer's and/or its Cardholder's use of a Card, unless the Bank otherwise agrees. This Section VI prevails over the Conditions in Section I to the extent of any inconsistency between them (save for Condition 19 (Collection and Disclosure of Customer Information) of Section I).

### 2 Card

- 2.1 All references to "**Card**" in this Section VI include ATM Cards, Business Debit Cards, or both (as applicable).
- 2.2 The Card is and will be at all times, the property of the Bank. The Bank reserves the right to, at its discretion do any of the following at any time without notice:
  - (a) withdraw the Card; or
  - (b) add to, delete from or vary the scope of any of the services thereby offered.
- 2.3 The loss or theft of the Card should be reported to the Bank immediately and confirmed in writing as soon as possible. The Customer will be responsible for all transactions effected by use of the Card until such notification. The Bank may debit any Account with any cost incurred in issuing a replacement Card.
- 2.4 When the Bank executes its rights under Condition 21 of Section I to add to, delete, or vary any of the Conditions under this Section VI, the use of the Card after the date upon which that change is to take effect (as specified in the Bank's notice), will constitute acceptance without reservation by the Customer of such changes. If the Customer does not accept any proposed changes, the Card must be returned to the Bank prior to the date upon which such changes are to take effect.

### 3 Liabilities of Card Transactions

- 3.1 Subject to Condition 2 of this Section VI, the Customer will be responsible for all transactions effected through the use of the Card, whether authorised by the Customer or not and whether effected by the Cardholder or not.
- 3.2 The relevant Account will be debited with the amount of any withdrawal, transfer or other transaction effected by use of the Card. The Customer will maintain sufficient funds in the Accounts to meet any such transactions. Transactions which are effected in currencies other than HKD will be debited to the relevant Account after converting those transactions into HKD at the prevailing rate determined by the Bank on the day of conversion.
- 3.3 The PIN is strictly confidential and should not be disclosed to any third party under any circumstance or by any means, whether voluntary or otherwise. The Customer should not keep any written record of any PIN in any place or manner which may enable a third party to use its Card.
- 3.4 Cash or cheques deposited with any ATM by use of the Card will be credited to the relevant Account, subject to subsequent verification by the Bank in its normal course of business. The statement issued by the ATM at the time of deposit only represents what the Customer purports to have deposited and will not bind the Bank. Cheques will be accepted for collection only and the proceeds will not be available until they have been cleared.
- 3.5 The Bank will not be liable for any consequential or indirect damages arising from or related to the use of the Card.
- 3.6 The relevant Account will be debited with such charges as the Bank may from time to time consider reasonable in respect of the Card. The Bank will give notice of the latest charges to the Customer or Cardholder (as applicable) in such manner as the Bank considers appropriate.
- 3.7 The Bank may disclose in strict confidence to other institutions (whether within or outside Hong Kong), such information concerning the Card and the Accounts as may be necessary or appropriate in connection with its participation in any electronic fund transfer network or generally to facilitate its provision of any and all services relating to the Card.
- 3.8 Through ATMs or other means, the Bank may provide information about products, services and banking facilities offered by the Bank, other members of the HSBC Group or those selected third parties which the Bank thinks may interest the Customer. The information accessible by the Customer and the Cardholder may include, among other things, indicative facility limits, indicative pricing or business terms that may be applicable to the Customer. Additional terms and conditions may apply to these products, services and banking facilities.
- 3.9 For the purposes of this Section VI, all references to "**Accounts**" will include all accounts accessible by the Card.
- 3.10 The Customer will maintain a record of the name and identification of the Cardholder of each Card issued to the Customer and will produce such record to the Bank on demand. The Customer undertakes to ensure that the Cardholders agree to the foregoing and will comply with all these Conditions to the extent applicable, as if each of them were the Customer.

## Section VII Secured Credit

### 1 General

This Section VII applies, and only applies, to the Customer's use of a Secured Credit. All Conditions set out in Section I also apply to the Customer's use of a Secured Credit, unless the Bank otherwise agrees. This Section VII prevails over the Conditions in Section I to the extent of any inconsistency between them (save for Condition 19 (Collection and Disclosure of Customer Information) of Section I.

### 2 Overview

2.1 Any Secured Credit is made available at the Bank's sole discretion and is subject to these Conditions and any other terms and conditions specified by the Bank from time to time. The availability and utilisation of the Secured Credit is also subject to the completion and production of any other agreements, documents, applications and evidence which may be required by the Bank from time to time.

2.2 If a Secured Credit is granted to the Customer, the Customer will be notified by a confirmation letter which will set out (among others):

- (a) the credit limit, or the basis upon which the credit limit is calculated (or both);
- (b) the applicable interest rate, or the basis upon which the interest rate is calculated (or both); and
- (c) any other terms for granting the Secured Credit.

Such notification by letter constitutes a binding agreement as regards the granting of the Secured Credit, on the terms and conditions listed in that letter (as varied from time to time).

2.3 The Bank reserves the overriding right at any time to demand immediate repayment of the Secured Credit outstanding at that time and the right to reduce or withdraw the Secured Credit. In addition, the Bank has an unrestricted discretion to cancel or suspend, or determine whether or not to permit drawings, in relation to the Secured Credit.

2.4 An annual non-refundable service fee on the current overdraft limit calculated at the rate to be determined by the Bank from time to time, will be debited annually at the Bank's absolute discretion from the account to which the Secured Credit has been granted.

2.5 Interest on the Secured Credit will accrue at the rate or rates determined and will be subject to variation from time to time by the Bank at its absolute discretion and will be payable monthly to the debit of the account to which the Secured Credit has been granted.

2.6 The Customer will notify the Bank as soon as possible of any difficulty in repaying any amount outstanding under the Secured Credit.

2.7 The Secured Credit is subject to the Bank's review at any time.

### 3 Security over Customer's Assets

3.1 In consideration of the Bank providing the Services and granting or continuing to make available the Secured Credit, the Customer, as beneficial owner, hereby charges, pledges and assigns the Secured Assets to the Bank as a continuing security for the payment by the Customer of the Secured Indebtedness. For the avoidance of doubt, no security will be created if no Secured Credit is granted by the Bank to the Customer.

3.2 In this Section VII:

(a) "**Ceiling Limit**" means the maximum principal amount of the Secured Credit:

- (i) as elected by the Customer and accepted by the Bank; or
- (ii) if no such election has been made, as prescribed by the Bank from time to time.

(b) "**Secured Assets**" means:

- (i) subject to Condition 3.2(b)(ii) below, all assets and property of the Customer which stand to the credit of the Master Account at any time of and up to an amount equal to the Secured Assets Value, comprising, without limitation, deposits (including renewals and extensions thereof), money, interest on such deposits and money (irrespective of the currency of denomination and any change therein), gold and any other precious metal and commodity, stocks, shares, bonds, notes, options and other money market, debt and financial instruments, whether negotiable, bearer or otherwise, investments and securities of all kinds, all rights and benefits attached or accruing thereto and the proceeds thereof; and
- (ii) (if the value of the assets and property (as conclusively determined by the Bank) in the Master Account at any relevant time exceeds the Secured Assets Value at that time), a portion of the assets and property in the Master Account of and up to the Secured Assets Value at that time comprising assets and property in accordance with the order of priority as specified in the Business Integrated Account Secured Credit Interest Rate and Loan Ratio Table, as amended and notified by the Bank to the Customer from time to time.

(c) "**Secured Assets Value**" means the value determined by the Bank to be appropriate to secure the Ceiling Limit from time to time in accordance with the loan-to-asset ratio specified and notified by the Bank to the Customer from time to time.

(d) "**Secured Indebtedness**" means all money (including interest, fees, charges, costs and expenses), in whatever currency, which are now or may at any time hereafter be or become, from time to time, due or owing to the Bank by the Customer in respect of the Secured Credit made available to the Customer and which the Customer hereby agrees is payable on demand. Any statement of account signed as correct by any of the Bank's duly authorised officers will be conclusive evidence of the Secured Indebtedness.

3.3 The Customer hereby irrevocably and by way of security appoints the Bank to be the Customer's attorney and in the name of and on the Customer's behalf and as the Customer's act or deed or otherwise, without any reference to or consent from the Customer, to execute all documents and to do all things as may be required for the full exercise of all or any of the powers conferred on the Bank under this Section VII or as the Bank may deem expedient in connection with the Secured Assets. This power of attorney is coupled with an interest and is irrevocable and will remain irrevocable as long as any Secured Indebtedness remains outstanding. The Customer ratifies and confirms and agrees to ratify and confirm any agreement, act or thing which any attorney appointed under this Condition 3.3 may lawfully execute, seal, deliver or do.

3.4 The Customer undertakes at all times to maintain in the Master Account assets and property of a value (according to the determination of the Bank) that exceeds or equals the value determined by the Bank to be appropriate to secure the amount of Secured Indebtedness from time to time in accordance with the loan-to-asset ratio specified and notified by the Bank to the Customer from time to time.

3.5 The Customer hereby undertakes, during the continuance of the security created hereunder, to maintain absolute title to the Secured Assets and not, without the Bank's prior written consent, to withdraw, sell, dispose of or deal with or to charge, pledge, assign otherwise encumber or grant or suffer to arise any third party rights over or against any of the Secured Assets, except in the Bank's favour.

3.6 If the Customer creates or purports to create any security (whether fixed or floating) over the Secured Assets or any part thereof in breach of Condition 3.5 of this Section VII or if any person levies or attempts to levy any form of process against the Secured Assets or any part thereof, the security created by Condition 3.1 of this Section VII, to the extent that it may be a floating charge, will automatically and without notice from the Bank crystallize and operate as a fixed charge instantly when such event occurs.

#### **4 Further Assurances**

- 4.1 The Customer undertakes, if and when required by the Bank, to execute such further documents or do such agreements, assurances, acts and things as the Bank will require in respect of the Master Account to:
- (a) secure the Secured Indebtedness;
  - (b) perfect, protect or improve any security created or intended to be created by Condition 3 of this Section VII; or
  - (c) facilitate the exercise or proposed exercise by the Bank of any of its rights under this Section VII.
- 4.2 The Customer undertakes to pay the Bank, on demand, all the Bank's expenses (including legal and out-of-pocket expenses) of reasonable amount and reasonably incurred by the Bank in contemplation of, or in connection with, the preservation, enforcement or exercise of any rights under this Section VII.
- 4.3 Payments by the Customer will be made to the Bank as specified by the Bank without any set-off, counterclaim, withholding or condition of any kind except that, if the Customer is compelled by law to make such withholding, the sum payable by the Customer will be increased so that the amount actually received by the Bank is the amount it would have received if there had been no withholding.

#### **5 Enforcement of Security**

- 5.1 If:
- (a) the Customer has failed to pay any Secured Indebtedness on demand or is in default under any of these Conditions;
  - (b) the Customer is unable or admit inability to pay debts as they become due;
  - (c) any proceedings in or analogous to the bankruptcy, insolvency or composition of the Customer are commenced; or
  - (d) legal process is levied or enforced against any of the Customer's assets,
- the Bank may, without notice, legal process or any other action with respect to the Customer, realise or sell the Secured Assets or any of them, at any time and in any way which the Bank may deem expedient, free from and discharged from all the Customer's trusts, claims, rights of redemption and equities, in or towards settlement of the Secured Indebtedness. The Customer will not have any right or claim against the Bank in respect of any loss arising out of such realisation or sale, howsoever such loss may have been caused.
- 5.2 Without prejudice to Condition 3 of this Section VII and insofar as the security created by Condition 3.1 of this Section VII is a floating charge, the Bank may, without prejudice to the above, convert the floating charge into a specific fixed charge at any time and from time to time by notice in writing to the Customer.
- 5.3 The proceeds of the realisation or sale of Secured Assets may be placed by the Bank to the credit of a suspense account with a view to preserving the Bank's rights to prove for the whole of the Bank's rights against the Customer in the event of any proceedings in or analogous to bankruptcy, insolvency, winding-up, liquidation or composition and may also be applied by the Bank to such account, obligation or liability of the Customer as the Bank may, at the Bank's sole discretion, from time to time conclusively determine.
- 5.4 If the currency of any Secured Indebtedness is not the currency in which the Secured Assets or any of them are denominated, the conversion will be calculated at the Bank's spot buying rate of exchange (as conclusively determined by the Bank) for the currency for which the Customer is liable against the currency in which the relevant Secured Assets are denominated.
- 5.5 No payment to the Bank (whether under any judgment or order of any court or otherwise) will discharge an obligation in respect of the Secured Indebtedness unless and until the Bank has received payment in full in the currency in which such obligation was incurred and, to the extent that the amount of any such payment will, on actual conversion into such currency, fall short of such obligation expressed in that currency, the Bank will have a further separate cause of action against the Customer and will be entitled to enforce the security hereunder to recover the amount of such shortfall.

#### **6 Nature of Security**

- 6.1 The security created under Condition 3.1 of this Section VII is a continuing security and will cover and secure the ultimate balance of the Secured Indebtedness from time to time owing to the Bank by the Customer on each separate account or in any manner whatsoever, notwithstanding the Customer's death, bankruptcy, incapacity, winding-up, liquidation, insolvency or the Bank's receipt of notice of any such occurrence or any settlement of account or other matter whatsoever.
- 6.2 The security created under Condition 3.1 of this Section VII is in addition to and may be enforced notwithstanding any guarantee, indemnity, assurance, pledge, lien, bill, note, mortgage, charge, debenture, security or other right, power or remedy now or hereafter held by or available to the Bank.
- 6.3 Any release, discharge or settlement between the Bank and the Customer is conditional upon no security, disposition or payment to the Bank by the Customer or any other person being avoided, reduced or repaid pursuant to any provisions or enactments relating to bankruptcy, liquidation, winding-up, insolvency or circumstances analogous thereto and, for such purpose, will be entitled to retain this instrument for such period as the Bank may determine and, if such condition will not be fulfilled, the Bank will be entitled to enforce the security hereunder subsequently as if such release, discharge or settlement had not occurred.
- 6.4 If more than one person comprises the Customer, Condition 3.1 of this Section VII creates a security in the Secured Assets to the full extent of their respective interests therein and none of such persons will be entitled to any rights or remedies of a surety as regards the Customer's obligations.
- 6.5 Any statutory restriction on the right of consolidating mortgage securities contained in any law in force in Hong Kong will not apply to this security.

## Section VIII Wayfoong Statement Gold

### 1 General

- 1.1 This Section VIII applies, and only applies, to the Customer's purchase, sale or other use of Wayfoong Statement Gold. All Conditions in Section I also apply to the Customer's purchase, sale or other use of Wayfoong Statement Gold, unless the Bank otherwise agrees. This Section VIII prevails over the Conditions in Section I to the extent of any inconsistency between them (save for Condition 19 (Collection and Disclosure of Customer Information) of Section I).
- 1.2 The Customer should read the provisions of this Section VIII together with the Wayfoong Statement Gold product key facts statement and product sheet, which are available upon request from any of the Bank's branches.

### 2 Purchase of Wayfoong Statement Gold

- 2.1 The Customer should give Instructions to purchase Wayfoong Statement Gold in such form and manner set by the Bank from time to time. Each purchase Instruction should be for not less than one (1) unit of Wayfoong Statement Gold or in whole multiples thereof.
- 2.2 The price per unit at which the Customer makes each purchase of Wayfoong Statement Gold should be the prevailing price for purchase of per mace of gold that the Bank conclusively determines at the time the Bank executes the relevant purchase Instruction. Such price is binding on the Customer and is recorded on the receipt relating to the purchase. Any price quoted by the Bank at any other time is for reference only and is valid only at the exact time that it is quoted. The Bank will effect a purchase Instruction, if time permits, during the Business Day of receipt of the Customer's purchase Instruction. However, if a purchase Instruction is to be settled by the Customer by cheque, the Bank will effect that purchase Instruction, if time permits, during the Business Day on which the cheque is cleared.
- 2.3 A purchase of Wayfoong Statement Gold will be settled by:
- (a) an immediate direct debit of the Customer's Current Account or Savings Account or any other account designated by the Customer; or
  - (b) full payment by the Customer in cash, by cheque or by cashier's order on the same Business Day as execution of the purchase Instruction.
- 2.4 The Customer agrees that if the amount of any cheque tendered as payment for a purchase Instruction is insufficient on clearance to purchase the units of Wayfoong Statement Gold specified in the Instruction, the Bank has the right to purchase less units of Wayfoong Statement Gold with the amount of the cleared cheque. The Bank will account to the Customer for any amount of money remaining after that purchase. The Bank is not liable to the Customer for purchasing less units of Wayfoong Statement Gold in that case.
- 2.5 By giving a purchase Instruction, the Customer confirms that the Customer has full right, power and authority to purchase the Wayfoong Statement Gold specified in that Instruction.

### 3 Sale of Wayfoong Statement Gold

- 3.1 The Customer should give Instructions to sell the Wayfoong Statement Gold held in the Customer's Wayfoong Statement Gold Account in such form and manner set by the Bank from time to time. The Customer should specify in each sale Instruction the Wayfoong Statement Gold Account designation and the number of units of Wayfoong Statement Gold to be sold.
- 3.2 Each sale Instruction is irrevocable. The details specified in the form setting out a sale Instruction are conclusive evidence as to the number of units of Wayfoong Statement Gold to be sold in that transaction in the absence of manifest error.
- 3.3 The price per unit at which the Customer makes each sale of Wayfoong Statement Gold should be the prevailing price for sale of per mace of gold that the Bank conclusively determines at the time the Bank executes the relevant sale Instruction. Such price is binding on the Customer and is recorded on the receipt relating to the sale. Any price quoted by the Bank at any other time is for reference only and is valid only at the exact time that it is quoted.
- 3.4 The proceeds of a sale of Wayfoong Statement Gold will, if time permits, be paid to the Customer on the same Business Day as execution of the sale Instruction. Payment may be made by direct credit to the Customer's Current Account or Savings Account or any other account designated by the Customer. Payment may also be made in cash, by cheque or by cashier's order as specified by the Customer in the sale Instruction.

### 4 Customer's indemnity

Where the law or any governmental agency or regulatory authority imposes any tax, levy or penalty with respect to the Customer's Wayfoong Statement Gold Account or the purchase or sale of Wayfoong Statement Gold and:

- 4.1 the Bank is liable to pay or withhold any tax, levy or penalty for the Customer as a result of the Customer's failure to pay or withhold it;
- 4.2 the Bank is liable to pay any tax, levy or penalty as a result of the Customer's breach or non-compliance with the Customer's obligations in connection with the Customer's establishment or operation of the Customer's Wayfoong Statement Gold Account or the Customer's use of the related services;
- 4.3 the Bank is liable to pay any tax, levy or penalty as a result of the Customer's breach or non-compliance with any legal or regulatory requirement applicable to the Customer; or
- 4.4 the Bank is liable to pay any tax, levy or penalty in connection with the establishment or operation of the Customer's Wayfoong Statement Gold Account or the purchase or sale of Wayfoong Statement Gold on the Customer's behalf in any other case,

the Customer shall pay and indemnify the Bank against such liability in each case.

### 5 Risk and other disclosures relating to investment in Wayfoong Statement Gold

- 5.1 The Customer accepts the risks and disclosures set out in this Condition 5.
- 5.2 The gold market is volatile and in particular:
- (a) the value of the Customer's investment in Wayfoong Statement Gold may go down as well as up - it is possible that a loss will be incurred from an investment in Wayfoong Statement Gold;
  - (b) investment in Wayfoong Statement Gold is subject to investment risk and is not insured by any governmental agency - this risk includes the possible loss of the principal invested;
  - (c) gold prices have to rise over the purchase price in order to provide a return equal to that of income-producing assets; and
  - (d) Wayfoong Statement Gold Account does not represent a deposit of money and provides no yield or interest.
- 5.3 The Bank does not make, and should not be considered as having made, any representation of any kind on the performance of Wayfoong Statement Gold. The Customer should make each decision to purchase or sell Wayfoong Statement Gold based on the Customer's own judgment. The Customer should not rely on any advice, view or information provided by the Bank or any other member of the HSBC Group.
- 5.4 At no time is the Customer able to take delivery of gold from the Bank. The operation of the Customer's Wayfoong Statement Gold Account is restricted to purchase and sale of units of Wayfoong Statement Gold. When the Customer wishes to close the Wayfoong Statement Gold Account, the Customer may only do so by selling the units of Wayfoong Statement Gold in the Wayfoong Statement Gold Account and receiving the proceeds of sale.
- 5.5 If the Bank accepts any means of giving Instructions not bearing an original signature (e.g. by telephone), the Customer will be bound by each purchase or sale Instruction given by such means. The Customer will be bound by the transaction executed by the Bank at the price the Bank notifies

the Customer using such means (e.g. in the course of the telephone communication). In the case of a purchase Instruction, the Customer must make payment in accordance with Condition 2.3(a) of this Section VIII. In the case of a sale Instruction, the proceeds of sale will be paid to the Customer in accordance with Condition 3.4 of this Section VIII.

- 5.6 The Bank may close the Customer's Wayfoong Statement Gold Account by giving the Customer not less than thirty (30) days' prior notice (or such shorter period subject to the approval by the Securities and Futures Commission of Hong Kong). The Customer could suffer a loss from the sale of the units of Wayfoong Statement Gold upon account closure, depending on the price of gold at the time of account closure.
- 5.7 If the Customer needs to convert the units of Wayfoong Statement Gold held in the Customer's Wayfoong Statement Gold Account to another currency, the Customer may suffer a loss due to foreign exchange rate fluctuations.
- 5.8 If by virtue of or arising out of the purchase or sale of units of Wayfoong Statement Gold in accordance with the Conditions in this Section VIII any profit, commission, fee, benefit or other advantage shall accrue to the Bank or any member of the HSBC Group, the Bank or such member is entitled to retain the same for the Bank's or its own benefit.
- 5.9 The units of Wayfoong Statement Gold held in the Customer's Wayfoong Statement Gold Account is subject to both the actual and perceived measures of the Bank's credit worthiness and there is no assurance of protection against default by the Bank in respect of the Bank's repayment obligations.
- 5.10 The Customer accepts that this Condition 5 explains some principal risks but is not an exhaustive list of all possible risks associated with investment in Wayfoong Statement Gold.
- 5.11 The Bank has the right to vary the provisions of this Condition 5 at the Bank's discretion from time to time upon giving the Customer not less than thirty (30) days prior notice. The Customer will be bound by a variation if the Bank does not receive notice from the Customer to close the Wayfoong Statement Gold Account with effect before the date on which that variation takes effect.

## **6 Use of Wayfoong Statement Gold for discharging the Customer's liability**

- 6.1 The Customer authorises the Bank to appropriate from the Customer's Wayfoong Statement Gold Account such units of Wayfoong Statement Gold as may be required to discharge the Customer's liability to the Bank from time to time. The Bank has a lien over the Wayfoong Statement Gold in the Customer's Wayfoong Statement Gold Account. The lien stands as a continuing security for the payment by the Customer of any liability whether actual or contingent, present or future (including any fees, expenses or interest) owing by the Customer to the Bank.
- 6.2 If the Customer fails to pay any amount due to the Bank within five (5) Business Days after the Bank demands payment, the Bank has the right to sell all or any of the units of Wayfoong Statement Gold in the Customer's Wayfoong Statement Gold Account at any time and in any way which the Bank considers appropriate as if the Bank has received a sale Instruction. The Bank may apply the proceeds of sale in or towards settlement of any amount owing by the Customer to the Bank after deducting the costs and expenses of reasonable amounts and reasonably incurred by the Bank in relation to the sale.

## **7 Termination of Wayfoong Statement Gold Account**

- 7.1 If the Customer's Wayfoong Statement Gold Account is to be closed at any time by the Customer or by the Bank, the Bank will sell the units of Wayfoong Statement Gold in the Wayfoong Statement Gold Account. The proceeds of sale will be paid to the Customer in accordance with Condition 3.4 of this Section VIII. The Wayfoong Statement Gold Account will be closed afterwards.
- 7.2 Subject to the Bank's records, the balance entry in the Customer's Wayfoong Statement Gold Account shall confirm that the Bank holds for the Customer the units of Wayfoong Statement Gold described in that entry.

## **8 Recording**

The Bank may record Instructions or communications with the Customer in connection with the Customer's Wayfoong Statement Gold Account. The Customer consents to such recording and accepts that such recording may be used to resolve any question relating to such Instructions or communications.

## **9 Communications**

If any notice, demand or other communication is sent to the Customer by post, the Customer will be considered as having received such notice, demand or other communication twenty-four (24) hours after posting it to the address last notified in writing by the Customer.

# **Section IX Structured Investment Deposits**

## **1 General**

This Section IX applies, and only applies, to the Customer's purchase, sale or other use of a SID Deposit. All Conditions in Section I also apply to the Customer's purchase, sale or other use of a SID Deposit, unless the Bank otherwise agrees. This Section IX prevails over the Conditions in Section I to the extent of any inconsistency between them (save for Condition 19 (Collection and Disclosure of Customer Information) of Section I).

## Sub-Section (A) – General Terms & Conditions for Structured Investment Deposits

### 1 General Provisions

- 1.1 The conditions set out in this Sub-Section (A) govern all SID Deposits. In addition, Supplemental Conditions where appropriate apply to each relevant type of SID Deposit which the Bank makes available. An Appendix to such Supplemental Conditions and/or the SID Conditions sets out the methodology for determining the Redemption Amount, Return and/or other similar factors in respect of the relevant SID Deposit. Where the Customer places a deposit which is accepted as a SID Deposit by the Bank, a confirmation in respect of the SID Deposit setting out details such as the principal amount of the SID Deposit, and incorporating by reference the relevant Appendix, will be issued to the Customer.
- 1.2 It is anticipated that in addition to any Supplemental Conditions and Appendices set out herein or herewith, further Supplemental Conditions and further Appendices, all of which supplement and form a part of these Conditions, will be produced from time to time.
- 1.3 These Conditions, each set of Supplemental Conditions, and each Appendix (as well as the form of any confirmation used) are subject to change as per these Conditions.
- 1.4 In the event of any conflict, the documentation will govern in the following order:
  - (a) the relevant confirmation;
  - (b) the relevant Appendix;
  - (c) the relevant Supplemental Conditions;
  - (d) the SID Conditions; and
  - (e) the Conditions.

### 2 SID Deposits

- 2.1 SID Deposits may be made in such currencies as the Bank may allow, with such minimum initial deposit and in multiples of such minimum amounts as the Bank may decide, from time to time.
- 2.2 SID Deposits are to be placed for such SID Deposit Periods as the Bank may allow from time to time.
- 2.3 Funds in respect of a SID Deposit must be received before the Cut-off Time for the relevant SID Deposit Period. Subject to the terms hereof, such funds will be held in an interest-bearing account as a Time Deposit to which the relevant terms hereof will apply, until the relevant SID Deposit Date. Details of interest rates payable will be available upon request. Once funds have been received for the purposes of making a SID Deposit, they may not be withdrawn except in accordance herewith. Subject to the terms hereof, the Reserved Amount will on the SID Deposit Date be placed as a SID Deposit.
- 2.4 No SID Deposit (including the principal amount of any such SID Deposit and any Return or Redemption Amount payable in respect of such SID Deposit) can or will be automatically renewed for any subsequent SID Deposit Period.
- 2.5 The Bank reserves the right, in its sole discretion, on or before a SID Deposit Date either not to accept any funds received (including any Reserved Amount), or to accept only part of such funds, as a SID Deposit (whether or not funds are accepted in whole or in part from any other customer as such SID Deposit). In the event of such non-acceptance, the Bank will notify the Customer as soon as practicable and any funds received but not accepted as a SID Deposit will be placed in the Disposal Account.

### 3 Withdrawal of SID Deposits

- 3.1 A SID Deposit, or any part thereof, may not be withdrawn without the Bank's consent prior to the SID Maturity Date relating to the current SID Deposit Period.
- 3.2 Where the Bank permits the Customer to redeem a SID Deposit prior to the relevant SID Maturity Date ("**Early Redemption**"), the terms on which such Early Redemption will be permitted will be set out in the relevant Appendix. Note that it is likely that the Return upon such Early Redemption will be lower than if the SID Deposit had been kept in place until the relevant SID Maturity Date (and may be negative).
- 3.3 The Bank will have the discretion to uplift a SID Deposit or any part thereof prior to the SID Maturity Date, and (subject to the deduction of such break costs or the addition of such proportion of the Return or Redemption Amount, as the Bank will conclusively determine to be deductible or to have accrued, which may result in a figure less than the original principal amount of the SID Deposit) place the relevant funds in the Disposal Account or otherwise on interest bearing deposit if it determines, in its sole discretion, that this is necessary or appropriate to protect any right of the Bank to combine accounts or set off, or any security interest, or to protect the Customer's interests.

### 4 Return and Redemption Amount

- 4.1 Interest may not be paid on a SID Deposit at a predetermined rate. Instead, a Return calculated in accordance with the relevant Supplemental Conditions (and/or the relevant Appendix), will be payable on maturity.
- 4.2 In relation to certain types of SID Deposit, the total amount repayable on maturity is expressed as a Redemption Amount. Such Redemption Amount may, in certain circumstances, depending upon the capital protection provisions which may be applicable, be greater than or less than the original principal amount of the SID Deposit.
- 4.3 The Bank will notify the Customer of the amount of the Return or Redemption Amount payable on or in respect of a SID Deposit as soon as practicable after the SID Maturity Date.

### 5 Calculations and Determinations

All rates, fixings and values required for the purposes of calculating a Return or Redemption Amount, and all other matters to be ascertained or established in respect of any SID Deposit, will be as conclusively determined by the Bank acting in a reasonable manner in accordance with prevailing market practices.

### 6 Participation Rate

The Participation Rate (if applicable), which (if applicable) may be different for each type of SID Deposit and for each choice of calculation of Return or Redemption Amount available to Customers, represents the percentage of the increase or decrease (as the case may be), if any, of the underlying index(es) or other reference(s), of which the Customer will receive the benefit over the SID Deposit Period and which is to be used in calculating the Return or Redemption Amount in accordance with the relevant formula set out in the relevant Supplemental Conditions and/or the relevant Appendix. It will be affected by a number of variables such as interest rates, currency exchange rates, market volatility and dividend/coupon yield and will therefore change for each SID Deposit Period.

### 7 Fees

The Bank reserves the right to impose service fees, facility fees and/or other charges from time to time as the Bank in its absolute discretion thinks fit. The Bank will notify the Customer of any fees or charges imposed (or of any changes to such fees or charges) at least one (1) month in advance. Such fees will not apply in respect of a specific SID Deposit already placed with the Bank during the term of that SID Deposit.

### 8 Tax

Any Return, Redemption Amount and/or interest will be paid subject to any deduction or withholding in respect of tax required to be made by law. The amount of tax deducted (if applicable) will be advised each time any Return, Redemption Amount and/or interest is paid.

### 9 Waiver

No act or omission by the Bank will affect its right, powers or remedies hereunder or any further or other exercise of such rights, power or remedies.

**10 Business Days**

If any payment or calculation to be made or other action to be taken hereunder by the Bank and/or the Customer would otherwise fall on or by reference to a day which is not a Business Day, unless otherwise provided in the relevant Supplemental Terms, Appendix or Confirmation, it will be postponed until (or, as appropriate, by reference to) the first succeeding Business Day.

## **Sub-Section (B) – Supplemental Terms & Conditions for Currency-Linked Structured Investment Deposits**

### **11 Return and Redemption Amount**

The Redemption Amount will be calculated in accordance with the terms of the relevant Appendix to these Supplemental Conditions and be payable on the SID Maturity Date.

### **12 Interest**

12.1 Interest on a SID Deposit in respect of any SID Deposit Period, if stated to be payable in the relevant Appendix to these Supplemental Conditions, will be calculated in accordance with the terms of the relevant Appendix setting out the structure selected by the Customer from those made available by the Bank from time to time, and will be payable on the SID Maturity Date.

12.2 Interest will accrue from and including the SID Deposit Date to but excluding the SID Maturity Date at the applicable Interest Rate per annum on the basis of the actual number of days that have elapsed during such period and in accordance with the prevailing market practices.

### **13 Risk disclosure**

13.1 The Return in relation to a SID Deposit will depend on the exchange rate movements of the relevant currencies prevailing at the fixing time(s) during or in respect of the relevant SID Deposit Period or such other period or periods as specified in the relevant Appendix. The foreign exchange rate(s) may go up or down during such period and this will affect the Return. The Return may be less than that which would have been payable on a time deposit for the same period and it is possible that no amount by way of return will be payable at all.

13.2 The Customer must be prepared to risk the interest that the Customer might otherwise have earned on money invested on a deposit and, in the case of a SID Deposit which is not 100% capital protected, the principal amount of the SID Deposit to the extent not so protected.

13.3 If the Customer have any concerns about SID Deposits, the Customer should consult the Customer's professional advisers.

### **14 Capital protection**

The principal amount of SID Deposits under these Supplemental Conditions is (unless otherwise stated in the relevant Appendix) fully (i.e. 100%) capital protected on maturity. Subject to any provisions to the contrary in respect of Early Redemption, or early withdrawal by the Bank, and unless otherwise stated in the relevant Appendix, if the Return, calculated on maturity under the relevant formula in the Appendix, would be negative, it will not be deductible from the principal amount and, instead, will be deemed to be nil.



## **Sub-Section (C) – Supplemental Terms & Conditions for Interest Rate-Linked Structured Investment Deposits**

### **15 Redemption Amount**

The Redemption Amount in respect of a SID Deposit will be calculated in accordance with the terms of the relevant Appendix and will be payable on the SID Maturity Date or such other day or days as specified in the relevant Appendix.

### **16 Interest**

16.1 Interest on a SID Deposit in respect of any SID Deposit Period, if stated to be payable in the relevant Appendix, will be calculated in accordance with the terms of the relevant Appendix setting out the structure selected by the Customer from those made available by the Bank from time to time, and will be payable on the SID Maturity Date of the Deposit or at such other time or times as specified in the relevant Appendix.

16.2 Unless otherwise stated in the relevant Appendix, interest will accrue from and including the SID Deposit Date to but excluding the SID Maturity Date at the applicable Interest Rate per annum on the basis of the actual number of days that have elapsed during such period and in accordance with the prevailing market practices.

16.3 Where Interest Rate on a SID Deposit is calculated by reference to HIBOR, LIBOR or other reference rate (as such terms may be defined in the relevant Appendix) and the rate is not available for whatever reason, it will be conclusively determined by the Bank in good faith and in a commercially reasonable manner.

### **17 Risk Disclosure**

17.1 The Return in relation to a SID Deposit will depend on the interest rate movements of the relevant currencies prevailing at the fixing time(s) during or in respect of the relevant SID Deposit Period or such other period or periods as specified in the relevant Appendix. The interest rate(s) may go up or down during such period and this will affect the Return. The Return may be less than that which would have been payable on a time deposit for the same period and it is possible that no amount by way of return will be payable at all.

17.2 The Customer must be prepared to risk the interest that the Customer might otherwise have earned on money invested on a deposit and, in the case of a SID Deposit which is not 100% capital protected, the principal amount of the SID Deposit to the extent not so protected. If the Customer have any concerns about this product, the Customer should consult the Customer's professional advisers.

### **18 Capital Protection**

The principal amount of SID Deposits under these Supplemental Conditions is (unless otherwise stated in the relevant Appendix) fully (i.e.100%) capital protected on maturity. Subject to any provisions to the contrary in respect of Early Redemption, or early withdrawal by the Bank, and unless otherwise stated in the relevant Appendix, if the Return, calculated on maturity under the relevant formula in the Appendix, would be negative, it will not be deductible from the principal amount and, instead, will be deemed to be nil.

## Section X Deposit Plus

### 1 General

- 1.1 This Section X applies, and only applies, to Time Deposits and Deposit Plus deposits ("**Deposits**"). All Conditions in Section I also apply to Deposits, unless the Bank otherwise agrees. This Section X prevails over the Conditions in Section I to the extent of any inconsistency between them (save for Condition 19 (Collection and Disclosure of Customer Information) of Section I).
- 1.2 The Conditions in this Section X are supplemental to the Conditions for Time Deposits ("**Time Deposit Terms**") in force from time to time and, which, together with the Time Deposit Terms, will apply to all Deposits.
- 1.3 In the event of any conflict between the Conditions in this Section X and the Time Deposit Terms, the Conditions in this Section X will prevail for the purposes of the Deposits.

### 2 Deposits

- 2.1 Deposits may be made in such currency as the Bank may agree at its absolute discretion. The Bank may impose such additional conditions in relation to any Deposit as the Bank thinks fit in respect of the Deposit Currency and/or the Linked Currency, such additional terms to be contained in the relevant Confirmation.
- 2.2 Each Deposit must be of not less than the minimum amount specified by the Bank from time to time.
- 2.3 The terms of each Deposit will be subject to the terms of each separate Confirmation to be issued in respect of each Deposit. The terms of each Confirmation will be read with these Conditions and the Time Deposit Terms and will be deemed to form a single agreement between the Bank and the Customer. In the event of any conflict between these Conditions, the Time Deposit Terms and a Confirmation, the terms of the Confirmation will prevail.
- 2.4 Any repayment of a Deposit (whether on maturity or otherwise) as provided in Condition 3 of this Section X will be paid to the credit of an account with the Bank in Hong Kong unless the Bank will at its sole discretion agree to the contrary.

### 3 Returns and Currency of Deposit

- 3.1 On the Maturity Date the Bank will pay to the Customer for value on the Maturity Date, subject as provided below, for the credit of such account with the Bank as the Customer will have nominated in any disposal instructions (or if the Customer has not nominated an account or the nominated account has been closed, such other account of the Customer as the Bank will decide), the principal amount of the Deposit and interest thereon calculated in accordance with Conditions 3.2 and 3.3 of this Section X.
- 3.2 Interest will be calculated on the principal amount of the Deposit on the basis of the number of days in the Interest Period (or which have elapsed prior to any breaking of the Deposit for whatever reason) and the relevant Interest Year.
- 3.3 Interest will accrue at the rate specified in the relevant Confirmation.
- 3.4 The Deposit and interest payable thereon will be repaid in the Deposit Currency where:
  - (a) the Final Exchange Rate is less than or equal to the Conversion Rate, if the Relevant Rate specified in the relevant Confirmation is the amount of the relevant Linked Currency for one unit of the relevant Deposit Currency; or
  - (b) the Final Exchange Rate is greater than or equal to the Conversion Rate, if the Relevant Rate specified in the relevant Confirmation is the amount of the relevant Deposit Currency for one unit of the relevant Linked Currency.The Deposit and interest payable thereon will be repaid in the Linked Currency where:
  - (a) the Final Exchange Rate is greater than the Conversion Rate, if the Relevant Rate specified in the relevant Confirmation is the amount of the relevant Linked Currency for one unit of the relevant Deposit Currency; or
  - (b) the Final Exchange Rate is less than the Conversion Rate, if the Relevant Rate specified in the relevant Confirmation is the amount of the relevant Deposit Currency for one unit of the relevant Linked Currency.

### 4 Withdrawals

A Deposit may not be withdrawn prior to its Maturity Date without the consent of the Bank. The Bank may at its absolute discretion refuse to give such consent, or impose such conditions as the Bank may determine for the withdrawal of such Deposit, such conditions to include (without limitation) the deduction of such breakage costs as the Bank will determine conclusively acting in good faith. Such breakage costs will include the costs, expenses, liabilities or Losses incurred or suffered by the Bank as a consequence of breaking its hedge, or funding from other sources in respect of the Deposit and/or in respect of the Linked Currency and therefore the total amount repaid on withdrawal may be less than the principal amount of the Deposit.

### 5 No Renewal

There can be no automatic renewal of Deposits.

### 6 Representations and Warranties

Any Customer which is a body corporate hereby represents and warrants that it has the authority and power to enter into these Conditions and to make the Deposit, that it has taken all necessary corporate steps to authorise the execution hereof and that the terms hereof are legally binding upon it and are fully enforceable against it.

### 7 Waiver

No act or omission by the Bank will affect its rights, powers or remedies hereunder or any further or other exercise of such rights, powers or remedies.

### 8 Force Majeure

If the Bank is prevented from, hindered or delayed by reason of force majeure or act of state, in the performance of any of its obligations under these Conditions or any Confirmation, the Bank will not be under any liability to the Customer for any loss, damage, cost or expense incurred by the Customer due to the inability or failure of the Bank to perform any such obligation.

### 9 Invalidity, Illegality or Unenforceability

In the event that any one or more of the provisions contained in these Conditions or any Confirmation should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof or thereof will not in any way be affected or impaired thereby.

### 10 Certificates

The Bank's certificate as to the amount of any sum payable by the Bank or to the Bank pursuant hereto will be conclusive save in the case of manifest error.

### 11 Tax

Any return, principal and/or interest will be paid subject to any deduction or withholding in respect of tax required to be made by law. The amount of tax deducted (if applicable) will be advised each time any return, principal and/or interest is paid.

### 12 Risk Disclosure Statement

The net return on the Deposit will depend upon market conditions prevailing at the Fixing Time on the Fixing Date. The Customer must be prepared to risk any loss as a result of depreciation in the value of the currency paid. Such loss may offset the interest earned on the deposit and may even result in losses to the principal amount of the Deposit. If the Customer has any concerns about this product the Customer should consult its professional advisers.

## Section XI Investment Services Account

### 1 Authority

The Bank is hereby appointed and authorised by the Customer on the conditions set out below, as may be amended from time to time, to provide the Services. This Authority may be revoked at any time by the Customer pursuant to Condition 15 (Termination of Investment Services Account) of this Section XI.

### 2 Investment Services

#### *Scope of Investment Services*

- 2.1 In relation to the purchase and/or sale of any product:
- (a) the Bank may solicit the sale of or recommend a product to the Customer in accordance with Conditions 2.5(a) or (c) of this Section XI; and/or
  - (b) the Customer may enter into the transaction without or inconsistent with any solicitation or recommendation from the Bank in accordance with Condition 2.5(d) of this Section XI.
- 2.2 The Bank does not provide advisory services and therefore does not assume any advisory duty of care or obligation in the solicitation of the sale or recommendation of any product other than to ensure reasonable suitability as set out in Conditions 2.5(a) and (c) of this Section XI.
- 2.3 Making available to the Customer any advertisements, marketing or promotional materials, market information or other information relating to a product or service shall not, by itself, constitute solicitation for the sale or recommendation of any product or service.
- 2.4 Unless otherwise specified in these Conditions or in the other terms and conditions in relation to any product:
- (a) the Bank does not advise on personalised asset allocation, investment portfolio and investment strategy; and
  - (b) the Bank does not have any obligation to make available any service or provide advice in relation to the purchase or sale of products which the Bank does not distribute or offer to its customers.

#### *Transactions entered into with the Bank to buy or sell products*

- 2.5
- (a) If the Bank solicits the sale of or recommends any Financial Product to the Customer, the Financial Product must be reasonably suitable for the Customer having regard to its Customer Financial Information.
  - (b) No other provision of these Conditions or any other documents the Bank may ask the Customer to sign and no statement the Bank may ask the Customer to make derogates from Condition 2.5(a) of this Section XI.
  - (c) If the Bank solicits the sale of or recommends any investment product not being a Financial Product (other than an insurance product) to the Customer, the Bank will also ensure that the product is reasonably suitable for the Customer based on the Bank's suitability assessment. In its assessment, the Bank will take into account the Customer's financial situation, investment experience and/or investment objectives, if it is required by applicable regulatory requirements.
  - (d) If the Customer enters into a transaction with the Bank to buy and/or sell a product without or inconsistent with any solicitation or recommendation from the Bank, the Bank will not have any obligation or duty to assess whether or ensure that the product is suitable for the Customer. The Customer acknowledges and agrees that it is the Customer's sole responsibility to assess and to satisfy the Customer that the transaction is appropriate for the Customer.
  - (e) Except as set out in Condition 10.4 of this Section XI, the Bank is not liable for any loss (including indirect or consequential loss), cost or damage of any kind incurred or suffered by the Customer or any other person with respect to or arising out of any transactions which fall under Condition 2.5(d) of this Section XI.
- 2.6 By entering into a transaction with the Bank to buy or sell a product, the Customer confirms that any information the Customer provides to the Bank (including its Customer Financial Information) is complete, accurate and up-to-date. When the Bank assesses suitability, the Bank will rely on the Customer's confirmation.
- 2.7 Before the Customer enters into a transaction with the Bank to buy and/or sell a product, the Customer should:
- (a) consider the Customer's own circumstances and understand the product's features, conditions and risks, and the Customer should contact the Bank if the Customer has any questions on the product;
  - (b) note that the Bank has no ongoing responsibility to ensure that a product the Bank has solicited the sale of or recommended to the Customer remains suitable for the Customer;
  - (c) note that if circumstances relating to the Customer, such product, such product's issuer or general market conditions change, such product may no longer be suitable for the Customer; and
  - (d) note that the Bank does not provide legal, tax or accounting advice on the Customer's investments, and the Customer should therefore consider obtaining independent professional advice (including legal, tax and accounting advice) about the Customer's investments where necessary.
- 2.8 Conditions 2.5 to 2.7 of this Section XI take effect on 8 June 2017 ("**Effective Date**"), and apply to:
- (a) any solicitation and/or recommendation of a product the Bank makes to the Customer on or after the Effective Date, provided that the Customer enters into a transaction with the Bank to buy and/or sell such product following the Bank's solicitation and/or recommendation; and
  - (b) any transaction the Customer enters into with the Bank to buy and/or sell a product without or inconsistent with any solicitation or recommendation from the Bank on or after the Effective Date.

#### *Refusal to perform investment services*

- 2.9 The Bank is hereby appointed and authorised to perform all or any of the following investment services but reserves the right to refuse to do so if, in its opinion, there are grounds for such refusal:
- (a) to purchase or subscribe for any type of Securities or other investment in accordance with the Customer's Instructions;
  - (b) to sell or otherwise dispose of Securities and to deal with the proceeds, in each case in accordance with the Customer's Instructions;
  - (c) to deliver the documents of title and any other instruments relating to such Securities to the Customer or to the order of the Customer in accordance with any Instruction but at the risk of the Customer; and
  - (d) to provide credit facilities from time to time at the discretion of the Bank.

#### *Bank as custodian*

- 2.10 In the event the Bank performs custodian services, the Bank holds any Securities as custodian only and is not responsible for giving any advice or recommendation in respect of such holdings, nor is the Bank liable to the Customer for any depreciation in value of any Securities and investment.

### 3 Custodian Services

- 3.1 The Bank is hereby appointed and authorised to perform all or any of the following custodian services but reserves the right to refuse to do so if, in its opinion, there are grounds for such refusal:
- (a) to hold or to arrange for Securities to be held in safe custody;
  - (b) to hold bearer instruments in that form and to register other instruments in the name of the Bank or any other person appointed by it;
  - (c) where Securities are registered in the name of the Bank or any other person appointed by it and have been deposited under these Conditions, to notify the Customer of information received by the Bank which requires action to be taken by the Customer in relation to such Securities and to request, collect, receive and make payments or distributions attributable to such Securities arising from acquisition, ownership, disposal, conversion, exchange or otherwise.
- 3.2 In providing the Investment Services, the Bank will:
- (a) maintain a Cash Account and a Securities Account or accounts and will credit all income and proceeds derived from the Securities to the Cash Account; and
  - (b) maintain records which identify the Securities which records will segregate such Securities from other assets held by the Bank for its own account and for the account of other customers.
- 3.3 No Security may be deposited with the Bank under these Conditions unless it is either:
- (a) beneficially owned by and registered in the name of the Customer (or jointly by all of them where there is more than one person making up the Customer) or is accompanied by such transfer documents and/or Instructions as the Bank may require to transfer the beneficial ownership to the Customer (or jointly to all of them where there is more than one person making up the Customer); and
  - (b) in addition to any transfer documents and/or Instructions required by Condition 3.3(a) of this Section XI, the Securities for depositing will also be accompanied by such transfer documents and Instructions as the Bank may require to enable the Bank to transfer such Securities into the name of the Bank or the Bank's nominee; and
  - (c) any fees, expenses, duties or other sums payable in respect of any transfer under Condition 3.3(a) and/or Condition 3.3(b) of this Section XI will be payable by the Customer and will be fees and expenses payable under Condition 12 of this Section XI. The Bank may refuse to accept the deposit of any Securities until such sums have been paid.
- 3.4 All Securities delivered, purchased or held pursuant to these Conditions will be held in the name of the Bank, as nominee, or by the Bank's nominee or the CCASS nominee for one or more accounts of the Bank as a CCASS participant as the Bank in its complete discretion may deem fit. For the purposes of settlement of any purchase or sale of any Securities and/or for the purposes of transacting any Corporate Action, the Bank may transfer Securities between such entities.

#### **4 Provision of Services**

- 4.1 The Bank is authorised, at its discretion, to take such steps as it may consider expedient to enable it to provide the Investment Services and to exercise its powers under these Conditions, including the right:
- (a) to comply with any law, regulation, order, directive, notice or request of any government agency (whether or not having the force of law) requiring the Bank to take or refrain from action and nothing herein will remove, exclude or restrict any rights of the Customer under such law;
  - (b) on behalf of the Customer, to withhold and/or make payment of any taxes or duties payable on or in respect of the Securities;
  - (c) not to notify the Customer of any Corporate Action information received by the Bank referred in Condition 3.1(c) of this Section XI;
  - (d) in the absence of or delay in receiving Instructions from the Customer in response to a notification and request in accordance with Condition 3.1(c) of this Section XI, to act or refrain from acting in accordance with the default option as specified in the notification and request;
  - (e) to co-mingle the Securities with the property of other owners;
  - (f) to return to the Customer Securities which may not have the same serial number or identification as those originally deposited with or received by the Bank; and
  - (g) to participate in and to comply with the rules and regulations of any depository and system which provides central clearing and settlement facilities in respect of Securities and to hold the Securities in any such depository or system without the Bank incurring any liability for any acts or omissions on the part of the manager or operator of such system or depository.
- 4.2 Where any Securities are held in the Bank's name or the name of any nominee of the Bank, unless the Bank receives an Instruction (which will be deemed to include the default option specified in any notification and request for Instructions), the Bank will not attend any meeting or exercise any voting or other rights including the completion of proxies.
- 4.3 The Bank may appoint any other person as its nominee or agent to perform any of the Investment Services on its behalf and may delegate any of its powers under these Conditions to such person but, in such a case, the Bank will remain liable for the negligence or wilful default of any such appointee as if no such appointment had been made.
- 4.4 In performing the Investment Services, the Bank will exercise the same degree of care as it exercises in respect of its own property save as may otherwise be provided in these Conditions.
- 4.5 The Bank is authorised to disclose any information it has concerning the Customer, any Securities and the Investment Services to any other person appointed by it in connection with the Investment Services.
- 4.6 Where the Bank accepts foreign listed Securities, the Bank will have no duty to ascertain the nationality of the owner of the Securities or whether Securities deposited are approved for foreign ownership unless specifically instructed by the Customer.

#### **5 Reports Statements and Information**

- 5.1 The Bank will provide the Customer with such reports and statements concerning the Securities at least on a monthly basis and on request by the Customer.
- 5.2 The Bank and the Customer hereby undertake to notify the other in the event of any material change to any information provided to the other in connection with this Investment Services Account.
- 5.3 After effecting a securities transaction, the Bank will make available the essential features of the transaction as soon as reasonably possible through such means or mediums provided by the Bank from time to time. The Customer will check the essential features of the securities transaction by himself through such means or mediums provided by the Bank. The Customer accepts that the Bank is not obliged to confirm with the Customer the essential features of the securities transaction otherwise than in accordance with the foregoing.
- 5.4 The Bank will provide a contract note to the Customer in accordance with applicable regulatory requirements after effecting a securities transaction. Where the contract note refers to a settlement date, if settlement cannot take place on that date because a gale warning or black rainstorm warning is in force on that date, the settlement date will be deferred to the next trading day.

#### **6 Instructions**

- 6.1 The Bank is authorised but not obliged to act on Instructions given, or purported to be given by the Customer or any of them where the Customer comprises more than one person. Instructions may be given during the times advised by the Bank to the Customer which the Bank may vary from time to time.

- 6.2 The Bank may, at its discretion, accept Instructions reasonably believed by it to have emanated from the Customer in which case, if it acts in good faith on such Instructions, such Instructions will be binding on the Customer and the Bank will not be liable for doing so, whether or not the Instructions were given by the Customer and the Bank will not be under any duty to verify the identity of the person(s) giving those Instructions.
- 6.3 The Bank will not be under any obligation to accept any Instruction to purchase any Securities unless:
- (a) there are sufficient monies held in cleared funds and/or due to be received under any sale of Securities transaction(s) to the credit of the Cash Account to meet any purchase price together with any estimated expenses to be incurred in connection with such purchase; or
  - (b) there are sufficient available credit facilities provided by the Bank to meet such purchase price and expenses and all terms and conditions relating to such facilities have or will have been satisfied in the opinion of the Bank.
- 6.4 The operation of the Cash Account, in particular the manner in which and the times during which credits to and withdrawals from the Cash Account may be made, may be subject to restrictions as advised by the Bank to the Customer which the Bank may vary from time to time.
- 6.5 The Bank will not be under any obligation to act on any Instruction to sell any Securities unless sufficient amount of such Securities are held in the Bank's nominee name, or that of the Bank's nominee and/or due to be credited to the Securities Account under any purchase transaction(s) which are not subject to any charge, lien or other security interest in favour of any person including the Bank.
- 6.6 Any Instruction for the purchase or sale of any Securities will only be accepted if it is for completion on the day of Instruction if it is received before the relevant 'cut-off' time as provided in Condition 6.7 of this Section XI. Where for whatever reason such Instruction has not been executed (or any unexecuted part of any such Instruction in the case of a partially executed Instruction), it will be deemed to lapse at the expiry of the trading date specified in any such Instruction. If the date of Instruction is a public holiday, the Bank will execute the Instruction on the first Business Day thereafter.
- 6.7 Any Instruction for the sale or purchase of any Securities for execution on the date of Instruction must be received before any relevant 'cut-off' time in respect of any relevant exchange or market.
- 6.8 All other Instructions will be given so as to allow the Bank sufficient time to comply.

## **7 Bank's Duties – Instructions**

The Bank will act on Instructions as soon as reasonably possible but will not be liable for any loss, damage or expense or consequential loss, damage or expense suffered by the Customer (including without limitation any loss, damage or expense suffered or incurred as a result of any change in the price of any Securities between the time of giving or receipt of any Instruction to or by the Bank and the time at which such Instruction is acted on) by virtue of any delay in acting on any Instruction or any partial completion of or failure or inability to act on any Instruction for whatsoever reason unless such delay is caused by the Bank's negligence (including without limitation any failure or error of any computer or electronic system or equipment).

## **8 Purchase and Sale Instruction**

- 8.1 On receipt of any Instruction to purchase Securities pursuant hereto the Bank acting in good faith will forthwith calculate the sums required to meet such purchase Instruction plus an estimate of the sums required to meet any tax, duty or other expenses in connection with such purchase. Following such calculation the following provisions will apply:
- (a) The Bank will be entitled to set off over an amount equivalent to such sum available in the Cash Account or any other account maintained by the Customer or any of them with the Bank (in the form of credit balance and/or credit facility) against all actual or contingent liabilities incurred by the Bank as a consequence of the said Instruction including any liability to pay the purchase price and other expenses to any third party.
  - (b) Until completion of the said purchase the Customer will not be entitled to withdraw all or any part of the said amount and the said amount will not constitute a debt owed by the Bank to the Customer.
  - (c) The Customer hereby charges the said amount in favour of the Bank as security for the Bank's actual or contingent liabilities in respect of the said purchase monies and anticipated purchase expenses.
- 8.2 On receipt of any Instruction to sell Securities pursuant hereto, the Bank will be entitled to debit the Securities Account with the relevant Securities on or (at the Bank's sole discretion) at any time before completion of the said sale. The Customer acknowledges that the Customer will not be entitled to withdraw or in any way deal with all or any part of such relevant Securities (which will be held on trust for the Bank) until completion of the said sale.

## **9 Cancellation of Instructions**

The Bank will not be obliged to act on any Instruction for cancellation, variation or amendment of any Instruction already given to the Bank nor be responsible or liable to the Customer for any loss or expense suffered or incurred by the Customer if the original Instruction has already been completed or in the opinion of the Bank, the Bank has insufficient time or is unable to act on such Instruction to cancel, vary or amend the original Instruction.

## **10 Limitations on Liability and Indemnity**

- 10.1 The provision of the Investment Services does not constitute the Bank a trustee and the Bank will have no trust or other obligations in respect of the Securities except those contained in these Conditions.
- 10.2 The Bank is under no duty to examine or verify the validity of the ownership of or title to any Securities and will not be liable in respect of any defect in ownership or title.
- 10.3 Neither the Bank nor any of its market information providers will be liable for any taxes or duties payable on or in respect of the Securities nor for the management of or any diminution in the value of the Securities.
- 10.4 The Bank will not be liable for losses of any kind which may be incurred by the Customer as a result of the provision of the Services by the Bank in accordance with Instructions or the Customer's failure to provide complete, accurate and up-to-date information requested by the Bank in discharging its regulatory or legal duties (including but not limited to the Customer Financial Information under Condition 2.5 of this Section XI); nor, in any other case (including without limitation any delay, error or failure in making available the essential features of a securities transaction as provided in Condition 5.3 of this Section XI), unless due to the negligence or wilful default of the Bank or any other person appointed by it or their respective officers or employees.
- 10.5 The Customer will indemnify the Bank, its market information providers, any other person appointed by it and their respective officers and employees against all claims, liabilities, damages, losses, costs and expenses of any kind which may be incurred by any of them and all actions or proceedings which may be brought by or against any of them in connection with the provision of the Investment Services and/or as a result of any default by the Customer in the performance of these Conditions (including without limitation to the generality of the foregoing, any costs incurred or actions or proceedings brought as a result of the Customer failing to maintain sufficient Securities in the Securities Account) and/or the enforcement of these Conditions and/or the Customer's failure to provide complete, accurate and up-to-date information requested by the Bank in discharging its regulatory or legal duties (including but not limited to the Customer Financial Information under Condition 2.5 of this Section XI) unless due to the negligence or wilful default of the Bank, any other person appointed by it or their respective officers or employees and this indemnity will continue despite the termination of these Conditions.
- 10.6 The Bank may at its discretion and subject to any conditions it may require agree to include in the Securities, Securities which are not fully paid. Where such Securities are included in the Securities, the Customer will indemnify the Bank and any other person appointed by the Bank against all claims, liabilities, damages, costs and expenses of any kind which may be incurred by them as a result. In particular (but without limitation) the Customer agrees to pay to the Bank on demand or as specified by the Bank the amount of any call received by the Bank or any such person in respect of any such Securities:
- (a) It is the Customer's sole responsibility to handle and/or fulfil any local, overseas or worldwide tax issues, liabilities and/or obligations under all applicable laws (including, without limitation, tax reporting, filing relevant tax return(s), paying any applicable tax and dealing with any

application for Tax Reclaim Arrangement) arising from or in connection with trading, holding, disposing of or otherwise dealing with Securities or investment via the Bank. Customers must seek independent professional advice from their own tax advisors to determine their tax position, liabilities and obligations in relation to the relevant Securities or investments. The Bank assumes no responsibility for advising on or handling such tax issues, liabilities and/or obligations nor will the Bank provide any service or assistance in this regard. In this Condition 10.6, "**Tax Reclaim Arrangement**" means any tax refund, tax concession, tax differences reclaim, preferential tax treatment or the like, including any tax credit or refund or a reduced tax rate or preferential tax treatment on interest, dividend, or any other distribution, proceeds or gains from any investment or transaction contemplated under this Section XI and any tax differences reclaim as a result of any change of nationality or domicile or tax residency.

- (b) In particular, the Customer agrees and accepts that, unless otherwise specified by the Bank, in no circumstances will the Bank or any of its nominees, custodians and/or agents be under any obligation or responsibility to apply for, or assist in the application for, any Tax Reclaim Arrangement that may be available to the Customer. The Customer agrees and accepts that neither the Bank nor its nominees, custodians and/or agents will be held liable for the loss of Tax Reclaim Arrangement or any other losses, damages, costs and/or expenses incurred or suffered by the Customer in this regard.
- (c) Notwithstanding the above but without prejudice to the full force of the foregoing provisions, if the Bank so requests at its absolute discretion, the Customer will complete, provide information, sign and file any tax forms, certificates or documents which the Bank or any of its nominees, custodians and/or agents is required by any tax authority of any applicable jurisdiction to submit in respect of the Customer in connection with any investment or transaction made on behalf of the Customer pursuant to these Conditions. The Customer agrees to cooperate with the Bank, its nominees, custodians and/or agents and provide the necessary information and assistance to them or any of them for such purposes.

## 11 Customer Representations and Warranties and Acknowledgements

11.1 The Customer represents and warrants as follows:

- (a) that the Customer is not resident or incorporated in a country where there is any restriction on the Customer's purchase of any Securities. If the Customer becomes resident in any such country or is otherwise subject to such restrictions, the Customer will inform the Bank immediately and will if so required by the Bank sell or redeem any such restricted Securities;
- (b) that the Customer when purchasing or dealing in any Securities will ensure that the Customer is not subject to, and is not acting on behalf of any person who is subject to any prohibition against the purchase or dealing in any such Securities; and
- (c) that the Customer is acting as principal in relation to the Investment Services.

11.2 The Customer acknowledges the following risk disclosure statements:

- (a) Risk of Securities Trading. The prices of Securities fluctuate, sometimes dramatically. The price of a Security may move up or down, and may become valueless. It is as likely that losses will be incurred rather than profit made as a result of buying and selling Securities.
- (b) Risk of Trading Growth Enterprise Market Stocks. Growth Enterprise Market ("**GEM**") stocks involve a high investment risk. In particular companies may list on GEM with neither a track record of profitability nor any obligation to forecast future profitability. GEM stocks may be very volatile and illiquid. There may be risks arising out of the emerging nature of GEM Companies and the business sectors or countries in which the companies operate. The Customer should make the decision to invest only after due and careful consideration. The greater risk profile and other characteristics of GEM mean that it is a market more suited to professional and other sophisticated investors. Accordingly, the Customer needs to have access to up-to-date information on GEM-listed companies. Current information of GEM stocks may only be found on the internet website operated by The Stock Exchange of Hong Kong Limited. Companies listed on GEM are usually not required to issue paid announcements in gazetted newspapers. This risk disclosure statement does not purport to disclose all the risks and other significant aspects of GEM. The Customer should undertake the Customer's own research and study on the trading of Securities on GEM before commencing any trading activities. The Customer should seek independent professional advice if the Customer is uncertain of or has not understood any aspect of this disclosure statement or the nature and risks involved in trading of GEM stocks.
- (c) Risk of Client Assets Received or Held Outside Hong Kong. Securities that are foreign listed securities and are held outside Hong Kong are subject to the applicable laws and regulations of the relevant overseas jurisdiction that may be different from the Securities and Futures Ordinance (Cap. 571) of the Laws of Hong Kong and the rules made thereunder in Hong Kong. Consequently, such Securities may not enjoy the same protection as that conferred on Securities received or held in Hong Kong.

## 12 Fees and Expenses

- 12.1 The Customer will pay fees to the Bank for the provision of the Investment Services as is advised to the Customer by the Bank upon the opening of this Investment Services Account and as may be varied upon 30 days prior notice to the Customer.
- 12.2 The Customer will also pay to the Bank all other expenses incurred by the Bank or any other person appointed by it in the provision of the Investment Services. A certificate as to the nature and amount of such expenses issued by the Bank will be conclusive evidence against the Customer of such expenses.
- 12.3 Without prejudice to any other rights under these Conditions if any of the fees and expenses referred to in Conditions 12.1 and 12.2 of this Section XI or incurred or owing pursuant to these Conditions remain outstanding after they have become due and payable the Bank will be entitled to debit automatically and/or set off against any account of the Customer with the Bank in or towards settlement.

## 13 Power to Debit

In addition to any other rights the sums payable in respect of any transaction, including the payment of any fee payable to the Bank or any person employed by the Bank may be debited to the Cash Account and in the event that such debiting causes such account to be overdrawn then interest will be payable at such rate as the Bank will determine and will in the absence of agreement to the contrary be repayable on demand. Any sale proceeds, dividend received by the Bank in respect of the Services will be credited to the Cash Account.

## 14 Commission

The Customer agrees that the Bank may accept from any stockbroker(s) or underwriter(s) or any other third party engaged in any transaction authorised in accordance with these Conditions any rebate or reallowance of any brokerage or commission payable in respect thereof. The Customer further agrees that the Bank will be entitled to retain any interest generated on any payment(s) made by/to the Customer pending transfer to the Cash Account (or any other account maintained by the Customer or any of them with the Bank) or to stockbrokers, underwriters and/or fund houses to effect an Instruction hereunder.

## 15 Termination of Investment Services Account

- 15.1 The provision of the Services may be terminated by the Bank giving not less than 30 days' notice in writing to the Customer or by the Customer revoking its Authority by giving not less than 30 days' notice in writing to the Bank.
- 15.2 The Bank may also by giving notice in writing to the Customer any time (save in the case of any event referred to in sub-clause (f) below when no such notice need to be given) on the occurrence in the opinion of the Bank of any of the following events exercise any or all of the rights contained in Conditions 15.3 and 15.4 of this Section XI and/or terminate or suspend the Investment Services or any part thereof with immediate effect:
  - (a) any breach of these Conditions by the Customer; or
  - (b) any failure by the Customer or any of them to pay monies of whatever nature when due under these Conditions, to pay any purchase monies when due, or to pay when due any other monies payable by the Customer to the Bank of whatever nature; or
  - (c) the filing of a petition in bankruptcy, winding up or the commencement of any analogous proceedings against the Customer or any of them; or
  - (d) the levying of any attachment against the Cash Account or any of the Securities; or

- (e) any dispute or proceedings between any of the persons making up the Customer where there is more than one; or
  - (f) any other matter or event including any regulatory requirement which in the opinion of the Bank renders termination necessary or advisable in the interests of the Bank.
- 15.3 On the occurrence of any of the events described in Condition 15.2 of this Section XI the Bank may at its discretion:
- (a) cancel any outstanding Instruction(s); or
  - (b) close any outstanding contracts entered into on behalf of or with the Customer; or
  - (c) exercise any of its rights under Condition 15.4 of this Section XI.
- 15.4 As provided in Conditions 15.2 and 15.3(c) of this Section XI the Bank may at its discretion without prejudice to any other rights under these Conditions or any other agreements:
- (a) without prior notice to the Customer set off over or withhold any monies held to the credit of the Cash Account or resulting from the sale of any Securities in respect of any other monies due, owing or payable to the Bank by the Customer of whatever nature, including all sums payable pursuant to these Conditions; or
  - (b) without notice to the Customer combine or consolidate the Cash Account with any other account(s) held by the Customer with the Bank.
- 15.5 Any termination of the Investment Services Account and any withdrawals of the Securities, whether or not following termination of the Investment Services Account will be without prejudice to the right of the Bank to settle any transactions entered into or to settle any liability incurred by the Customer under these Conditions or by the Bank on behalf of the Customer prior to termination.

**16 Prices**

- 16.1 Prices of Securities listed on the Hong Kong Stock Exchange are provided by The Stock Exchange of Hong Kong Limited and prices of unit trusts are provided by the related fund houses. While the Bank and its market information providers endeavour to ensure the accuracy and reliability of the prices quoted, no guarantee as to their accuracy is given and no liability (whether in tort or contract or otherwise) is accepted for any loss or damages arising from any inaccuracies or omissions.
- 16.2 Any price of any Securities quoted by the Bank in response to any enquiry by the Customer is for reference only and will not be binding on the Bank or any of its market information providers. The Bank will be entitled to act on any Instruction for the sale and purchase of any Securities even if the price of such Securities has changed to the disadvantages of the Customer between the time of receipt of such Instruction and the time at which the Bank or its agent completes any such sale or purchase.
- 16.3 No Customer who has obtained quotes of the prices of any Securities from the Bank will:
- (a) disseminate such quotes (or any part thereof) to any other person;
  - (b) use or permit the use of such quotes (or any part thereof) for any illegal purpose;
  - (c) use such quotes (or any part thereof) other than for the Customer's own personal use; or
  - (d) use such quotes (or any part thereof) in relation to any trading or dealing of Securities otherwise than through the Bank.

**17 Customer Consent to Lend Securities**

- 17.1 In case the Customer expressly gives consent to the Bank to lend Securities owned by the Customer, the Bank will remain fully liable for the return of equivalent Securities to the Investment Services Account of the Customer free of any encumbrances or liens of any nature.
- 17.2 The term of the Customer's consent to lend Securities under Condition 17.1 of this Section XI will be for a period of twelve (12) months and may be renewed by the Customer's written consent on its anniversary for, in each instance, a further twelve (12) months.

**18 No Fiduciary Relationship**

Where the bank acts as custodian or has discretion in managing the Customer's assets (if any), notwithstanding any other provisions contained in these Conditions or any other arrangements the Customer has with the Bank, the Customer acknowledges that:

- 18.1 such services provided by the Bank do not constitute a fiduciary relationship between the Bank and the Customer; and
- 18.2 the Bank shall, in no circumstances, be required to undertake any action that could possibly characterise the Bank as a fiduciary to the Customer.



## Section XII Business Internet Banking

### 1 General

1.1 The Business Internet Banking Service will be made available to the Customer subject to these Conditions.

### 2 Business Internet Banking Service

2.1 The Customer, acting through Customer Delegate(s), may access the Business Internet Banking Service through the hsb.com Site.

2.2 The Business Internet Banking Service enables the Customer to view certain accounts Online and to give the Bank instructions Online in relation to certain services that Customers receive from the Bank and certain accounts and products that the Customer has with the Bank. The Bank may also provide certain related or ancillary products and services to the Customer using the Business Internet Banking Service.

2.3 The Customer agrees to at all times, in addition to complying with these Conditions, exercise due diligence and good faith in using the Bank's Business Internet Banking and the Bank's Business Internet Banking Service.

2.4 If the Bank believes that the Customer or the Customer Delegates have in any way breached these Conditions, the Bank has the right to, without further notice, suspend or terminate the use of Business Internet Banking or Business Internet Banking Service by the Customer and/or any one or more of the Customer Delegates.

2.5 The Customer understands that the Services involve no solicitation of the sale or recommendation of, or advice on, any product from the Bank. All transactions that the Customer enters into through the Services are conducted on an execution-only basis and are based on the Customer's own judgment. The Bank does not have any duty to assess or ensure suitability of the products or the transactions that the Customer enters into.

2.6 Any solicitation or recommendation or suitability assessment the Bank may have made to or for the Customer in the past in relation to any product through channels outside the Services is valid only as at the time it was made, and the Bank cannot ensure on-going suitability of such product. If the circumstances relating to the Customer, such product or its issuer or market conditions change, the product may no longer be suitable for the Customer. Execution through the Services does not allow the Bank to confirm the validity of any such prior solicitation, recommendation or suitability assessment.

2.7 If the Customer wishes to receive a solicitation or recommendation from the Bank, the Customer should contact the Bank and, where relevant, the Bank will conduct a suitability assessment before transacting.

### 3 Registration Procedure

3.1 The procedure for registration of Customer Delegates is set out in the Business Internet Banking Customer Guide.

3.2 Failure to follow the procedure for registration of Customer Delegates set out in the Business Internet Banking Customer Guide may result in the Customer or any Customer Delegate being unable to access the Business Internet Banking Service.

### 4 Customer Instructions

#### *Bank's rights and responsibilities*

4.1 The Bank will only accept a Customer Instruction if it has been effected through the Business Internet Banking Service using the appropriate Password(s) in accordance with the Business Internet Banking Customer Guide, these Conditions and as otherwise prescribed by the Bank.

4.2 The Customer authorises the Bank to treat all apparently valid Customer Instructions received by the Bank as instructions properly authorised by the Customer, even if they conflict with the terms of any other mandates given by the Customer at any time concerning the Customer's accounts or affairs. Subject to the Bank's obligations in Condition 4.1 of this Section XII, the Bank is not required to check the authenticity of Customer Instructions or the authority of the person or persons giving them.

4.3 If the Customer requests the Bank to cancel or modify a Customer Instruction, the Bank will make all reasonable efforts to comply with the Customer's request. However, the Bank is not liable for any failure to cancel or modify the Customer Instruction if such request is received at a time or under circumstances that render the Bank unable to comply with the Customer's request.

4.4 The Bank is entitled to debit the Customer's accounts, wherever they are situated and whenever they are opened, with any amounts that the Bank has paid or incurred in accordance with a Customer Instruction.

4.5 The Bank may, in its absolute discretion and without liability, refuse to act on or delay acting on a Customer Instruction if any of the following occurs:

- (a) it is a request or instruction the effect of which would be to exceed a limit imposed by the Bank upon the Customer generally or upon the Customer Delegate in question;
- (b) the Bank knows of or suspects a breach of security in respect of or in connection with the operation of one or more of the Customer's account or the Business Internet Banking Service generally; or
- (c) the Bank has terminated these Conditions.

4.6 In the event that the Bank does not act on or delays acting on a Customer Instruction pursuant to Condition 4.5 of this Section XII, The Bank will notify the Customer of this as soon as is reasonably possible.

4.7 As part of certain of the Business Internet Banking Service, the Customer may issue a Customer Instruction requesting the Bank to forward certain information to third parties on its behalf. If the Bank agrees to act on such request, the Bank will use reasonable efforts to forward any such information to the recipient and address specified in the relevant Customer Instruction within a reasonable time of receipt of such Customer Instruction. The Customer must ensure information that the Customer asks the Bank to forward is complete, accurate and will not give rise to any claim against the Bank (including without limitation any claim in defamation, in relation to privacy or for infringement of any other third party rights).

4.8 If the Bank agrees that the Customer may communicate with the Bank or the Bank agrees to communicate with the Customer (or any third party) through email, the internet, or any other method (other than via Business Internet Banking), the Customer acknowledges the risks that any such communications may be intercepted, monitored, amended or otherwise interfered with by third parties. The Bank is not responsible or liable to the Customer or any third party in the event of any such occurrence in relation to any communication between the Bank and the Customer (or which appears to have been made on its behalf), or any communication the Customer asks the Bank to enter into with any third party.

#### *Customer's responsibilities*

4.9 The Customer is responsible for the accuracy and completeness of Customer Instructions and for ensuring that they will achieve the Customer's intended purpose. The Bank is not liable for any Loss or delay resulting from the contents of a Customer Instruction being inaccurate or incomplete.

4.10 By entering into any transaction through the Services, the Customer confirms that the information the Customer provides to the Bank (including the Customer Financial Information) is complete, accurate and up-to-date and that the Bank will rely on the Customer's confirmation.

4.11 Before the Customer enters into a transaction to buy and/or sell a product through the Services, the Customer should:

- (a) consider the Customer's own circumstances and understand the product features, terms and risks, and the Customer should contact the Bank if the Customer has any question on the product;
- (b) note that the Bank has no ongoing responsibility to ensure that a product the Bank has solicited that sale of or recommended to the Customer remains suitable for the Customer;

- (c) note that if circumstances relating to the Customer, such product, such product's issuer or general market conditions change, such product may no longer be suitable for the Customer; and
- (d) note that the Bank does not provide legal, tax or accounting advice on the Customer's investments, and the Customer should therefore consider obtaining independent professional advice (including legal, tax and accounting advice) about the Customer's investments where necessary.

#### *Processing Customer Instructions*

- 4.12 The Bank may not always be able to carry out a transaction at the same time it receives a Customer Instruction. Some matters may take time to process and certain Customer Instructions may only be processed during normal banking hours even though Business Internet Banking is Online and may be accessible outside such hours.

### **5 Service Interruption**

- 5.1 The Bank may suspend any service provided to the Customer under the Business Internet Banking Service without notice – this may occur for example, when there is a suspected breach of security or the Bank needs to suspend the Business Internet Banking Service for maintenance.
- 5.2 The Bank will use reasonable efforts to inform the Customer without undue delay through the Business Internet Banking Service or the Bank's website when service under the Business Internet Banking Service is not available. If the Bank levies any charge to the Customer which is specifically expressed to be for a particular service which is not available (which for the avoidance of doubt will not mean any periodic fee charged for the Business Internet Banking Service), then the Bank will reimburse the Customer this sum. Other than reimbursing any sum as set out above, the Bank will have no further liability to the Customer.
- 5.3 It may be necessary from time to time to suspend some or all of the Business Internet Banking Service for routine, non-routine or emergency maintenance where the Bank considers it necessary to do so. If any such suspension is necessary, the Bank will in so far as is possible provide the Customer with a reasonable period of notice prior to the suspension.

### **6 Transactions with Other Institutions**

- 6.1 The Customer appoints the Bank as the Customer's agent on its behalf to request any Institution to supply Business Internet Banking with information about the Customer and the Customer's accounts and to use Business Internet Banking to instruct an Institution to give effect to Customer Instructions.
- 6.2 Where the Bank passes Customer Instructions to an Institution on the Customer's behalf, the Bank is not responsible for any delay or failure by the Institution in executing those instructions.
- 6.3 Where Business Internet Banking delivers to the Customer any information supplied to the Bank by an Institution, the Bank makes no warranty as to the accuracy or sufficiency of the information provided by that Institution.
- 6.4 In order for an Institution to give effect to a Customer Instruction, the Customer agrees that the Bank may, as the Customer's agent, agree with any Institution that where applicable, the terms of these Conditions will apply between the Customer and that Institution.
- 6.5 The Bank may appoint other parties to provide some or all of the Business Internet Banking Service under these Conditions. The Customer agrees that such parties will have the benefit of any provisions of these Conditions which limit the Bank's liability.

### **7 Security Provisions**

- 7.1 The Customer and all Customer Delegates agree to comply with these Conditions and any other reasonable instructions or recommendations the Bank may issue to the Customer regarding Business Internet Banking security including, without limitation, the security recommendations contained in the Business Internet Banking Customer Guide. The Customer agrees that it is the Customer's sole responsibility to set-up, maintain and regularly review security arrangements concerning access to, and use of, the Business Internet Banking Service, and information stored on the Customer's computing and communications systems, and in particular the Customer's and any of the Customer Delegates' control of Passwords and Digital Certificates and access to Business Internet Banking.
- 7.2 The Customer confirms that the Customer has assessed the security features of Business Internet Banking and has determined that they are adequate to protect each of the Customer Delegate's and the Customer's interests.
- 7.3 The Customer agrees to ensure that each of the Customer Delegates complies with the terms of these Conditions and any security procedures mentioned or referred to in it including, without limitation, the security recommendations contained in the Business Internet Banking Customer Guide.
- 7.4 The Customer must ensure that the Customer Delegates keep their Passwords, Security Device and Digital Certificates secure and secret at all times and take steps to prevent unauthorised use thereof. For example, they must:
  - (a) never write or otherwise record their Passwords in a way that can be understood by someone else except where it is required by the Bank for the registration of a Customer Delegate or for any other reason as set out in the Business Internet Banking Customer Guide;
  - (b) never reveal their Passwords to anyone else including the Bank's staff, except where specifically provided in the Business Internet Banking Customer Guide;
  - (c) destroy any advice from the Bank concerning their Passwords promptly after linking their Business Internet Banking logon details to their hsb.com Site logon, except where specifically provided in the Business Internet Banking Customer Guide;
  - (d) avoid Passwords which may be easy to guess such as passwords used in connection with third parties;
  - (e) inform the Bank immediately if they believe that a third party may have seen or have had access to their Passwords or access to their Security Device;
  - (f) never record their Passwords on any software which retains their Passwords automatically (for example, any computer screen prompts or 'save password' feature on their Internet browser);
  - (g) ensure that they are not overlooked by anyone or monitored by closed circuit TV and must avoid allowing anyone to identify the keys they are pressing while logging on;
  - (h) change their Password on a regular basis and not alternate between passwords;
  - (i) never personalise their Security Device in such a manner so as to allow or facilitate anyone to link the Security Device to them; and
  - (j) never allow anyone to come into possession or take control of or use their Security Device.
- 7.5 Once they have logged on to Business Internet Banking or the hsb.com Site the Customer Delegate must not leave at any time the Internet terminal from which they have accessed Business Internet Banking or the hsb.com Site or let anyone else use the Internet terminal until they have logged off Business Internet Banking and the hsb.com Site. The Customer will be responsible for ensuring that each Customer Delegate has logged off Business Internet Banking and the hsb.com Site at the end of any session.
- 7.6 The Customer and the Customer Delegates must not permit Customer Delegates to access Business Internet Banking or the Hsb.com Site from any computer connected to a local area network (LAN) or any public Internet access device or access point without first making sure that the computer and the network are free of virus, spyware, destructive or disruptive component, malicious code or any other software or component which will or may compromise either the Bank's or the Customer's access to and/or use of the hsb.com Site, the Bank's Business Internet Banking and the Business Internet Banking Service and that no-one else will be able to observe or copy their access or get access to Business Internet Banking or the hsb.com Site pretending to be a Customer Delegate.

- 7.7 The Customer and/or the Customer Delegates must notify the Bank immediately of the following:
- (a) any unauthorised access to Business Internet Banking, the hsbc.com Site or any unauthorised transaction or instruction which the Customer or any of the Customer Delegates know of or suspect; or
  - (b) if the Customer suspects someone else knows the Password(s) of one or more of the Customer Delegates or has access to their Digital Certificate or Security Device. In the event of any such breach or suspected breach of security the Customer must ensure that all the Customer Delegates change their Passwords (except the Security Code) immediately to one which they have not used before.
- 7.8 The Customer hereby agree to comply immediately with all reasonable requests for assistance from the Bank and/or the police in trying to recover any losses or identify actual or potential breaches of security. The Bank may disclose information about the Customer or the Customer's account to the police or other third parties if the Bank thinks it will help prevent or recover losses.
- 7.9 If the Customer suspects any impropriety on the part of any Customer Delegate in connection with the Business Internet Banking Service or a Customer Delegate leaves the Customer's business, the Customer must ensure that the Primary User immediately takes all steps available to ensure that the Customer Delegate is unable to access the Business Internet Banking Service.
- 7.10 If the Customer suspects any impropriety on the part of the Primary User in connection with the Business Internet Banking Service or the Primary User leaves the Customer's business, the Customer must immediately take steps to replace such Primary User.
- 7.11 Where the Bank provides the Customer and/or the Customer Delegate(s) with or otherwise require the Customer and/or the Customer Delegate(s) to use Digital Certificate(s) in connection with the Customer's access to and/or use of the Bank's Business Internet Banking and/or any Business Internet Banking Service, the Customer and the Customer Delegates are responsible for the security of any of the Digital Certificates held on the memory of the Customer's computers or otherwise held by the Customer or held on the memory of the computers of the Customer Delegates or otherwise held by them. The Customer and the Customer Delegates must ensure that Digital Certificates cannot be accessed, copied or otherwise tampered with. In particular, the Customer and the Customer Delegates must ensure that Digital Certificates are removed from the memory of any computers which leave the Customer's possession at any time or the possession of the Customer Delegates, even temporarily. The Bank will not be liable to the Customer or to third parties for any loss whatsoever arising from the unauthorised copying and/or unauthorised use of any Digital Certificates. Further, neither the Customer nor any Customer Delegate must use any Digital Certificate other than for the purposes of identifying itself to the Bank and must not transmit or otherwise send the Digital Certificate to any party other than the Bank.
- 7.12 The Customer agrees that it is solely responsible for the performance and protection of any browser used in connection with Business Internet Banking including the prompt adoption by the Customer of all security patches and other security measures issued or recommended from time to time by the suppliers of such browsers.
- 7.13 The Customer agrees to keep the Bank indemnified against all actions, proceedings, costs, losses and damage of any kind which the Bank or any other member of the HSBC Group may suffer as a result of the Bank or any member of the HSBC Group, acting on any Customer Instruction in accordance with these Conditions, or as a result of the Customer's failure to comply with the Customer's duties under Condition 8 of this section.

## **8 Information and Information Providers**

- 8.1 The Customer is aware and acknowledges that the Information and Reports and their form, format, mode or method of compilation, selection, configuration, presentation and expression are trade secrets and are confidential and proprietary property of the Bank and the respective Information Providers.
- 8.2 The Customer and the Customer Delegates must not do or attempt to do any of the following:
- (a) sell, transfer, disclose, assign, convey, lease, sub-licence, share, loan, distribute, transmit, broadcast, cablecast, put in circulation, download, reproduce, duplicate or otherwise provide or disseminate any of the Information and Reports in any form whatsoever;
  - (b) remove, obliterate, erase, relocate or modify in any way any proprietary marking on or appearing with the Information and/or the Reports, including any trademark or copyright notice; or
  - (c) incorporate any of the Information or Reports with any other programmes.
- 8.3 The restrictions on confidentiality in respect of the Information and/or the Reports referred to in Condition 8.2 of this Section XII will not apply where:
- (a) the disclosure is compelled by law but only to the extent required by law and only after the Customer has given written notice of the requirement to disclose to the Bank; or
  - (b) the Bank has written to agree to the disclosure.
- 8.4 The Customer agrees that all right, title and interest to the Reports and Information and any and all copyright, patent, trademark, service mark, proprietary property, trade secrets and exclusive works remains the Bank's and the Information Provider's exclusive property. Other than accessing the Information and Reports in accordance with these Conditions, the Customer does not have or acquire any right or title to the Information and the Reports. Accordingly the Customer must not represent or act in such a manner to indicate that the Customer has acquired any of the foregoing rights.
- 8.5 An Information Provider can impose its own terms in relation to the Information or Reports that it supplies. Where these terms have been made known to the Customer and the Customer continues to access this Information and/or Reports after the date that these terms, come into effect, the Customer will be considered to have accepted those terms of the Information Provider.
- 8.6 The Information and Reports are available for reference only and not intended for trading or other purposes. Making available any Information or Report to the Customer shall not, by itself, constitute solicitation of the sale or recommendation of any product.
- 8.7 The Customer acknowledges that it is its responsibility to independently determine market prices and rates for trading purposes, to verify any Information and/or Report before acting on it and to seek independent legal, accounting and tax advice in connection with the use of Business Internet Banking, Business Internet Banking Services, the Information and/or the Reports and the terms of these Conditions and other issues which may affect the Customer under all Applicable Regulations.
- 8.8 The Information and Reports are supplied by the Information Provider and the Bank is making this available to the Customer as the Bank receives this from the Information Provider. By making the Information and Reports available, this does not mean or imply that the Bank endorses the content of such materials. The Bank is not responsible for verifying the content of any Information or Reports.
- 8.9 No warranty, representation or guarantee of any kind relating to the Information and/or Reports is given or may be implied and no employee or agent of the Bank or any Information Provider is authorised to give any such warranty, representation or guarantee.
- 8.10 Neither the Bank nor the Information Provider guarantee the accuracy, completeness, reliability, truth or timeliness of any of the Information and Reports or that it is fit for any purpose. Therefore the Bank and the Information Provider are not liable to the Customer or any other person (whether in tort or contract or otherwise) for any Information and/or the Reports made available to the Customer.
- 8.11 The Bank will take reasonable care to ensure that any information provided to the Customer by the Business Internet Banking Service is an accurate reflection of the information contained in the Bank's computer systems or, where the information is provided by a third party, accurately reflects the information the Bank receive from that third party. Due to the nature of the product and circumstances beyond the Bank's control, the Bank does not warrant that the information provided through the Business Internet Banking Service is accurate or error free. Some of the information available through the Business Internet Banking Service may be identified on the screens or in the Business Internet Banking Customer Guides as subject to a disclaimer or other provisions. If the Customer relies on that information, the Customer does so subject to the disclaimer or those provisions.

## **9 Digital Certificate and Security Device**

- 9.1 Where the Bank requires the Customer and/or any of the Customer Delegate(s) to use Digital Certificates in connection with the Bank's Business Internet Banking and/or any Business Internet Banking Service, the Bank grants the Customer a non-exclusive, non-transferable licence to install and use Digital Certificates on the Internet browsers of such Customer Delegates and this license can be revoked by the Bank at any time with or without notice. Title to and rights in the Digital Certificates belong to the relevant member of the HSBC Group and, except for the specific rights granted to the Customer by this licence, neither the Customer nor any Customer Delegates will acquire any rights whatsoever to the Digital Certificates, which will remain the property of the Bank or relevant member of the HSBC Group.
- 9.2 The Bank will make all reasonable efforts to ensure that any Digital Certificate and Security Device that the Bank provides to the Customer will perform as necessary to permit access to Business Internet Banking as and when required. The Customer and/or the relevant Customer Delegate will notify the Bank immediately if any Digital Certificate and Security Device fails to function correctly.
- 9.3 The Bank will have no liability for breach of any implied term as to satisfactory quality, merchantability or fitness for purpose of any Digital Certificate and Security Device.
- 9.4 The Bank will not be liable for any damage to or reduction in the performance of the Customer's computer system or any part thereof by the installation and/or use of any Digital Certificate.
- 9.5 The Bank will not be liable for any loss or damages incurred or suffered by the Customer or the Customer Delegates arising from or in connection with, whether directly or indirectly, the Customer and their use of the Security Device.

## **10 Fees, Supplementary Terms, Changes to and Termination of the Agreement and Site**

- 10.1 The Customer agrees to pay the Bank's scale of charges (if any) for providing the Business Internet Banking Service as the Bank advises the Customer from time to time including, without limitation, charges for the Security Device. The Bank may vary the Bank's charges and the frequency and dates of payment on giving the Customer not less than thirty (30) days' notice. These charges are in addition to any charges for particular banking or other services the Bank might provide in response to the Customer Instructions through the Business Internet Banking Service.
- 10.2 The Customer is liable for any telephone charges and any charges made by the Customer's Internet service provider as a result of the Customer's use of the Business Internet Banking Service.
- 10.3 The Customer authorises the Bank to debit any of the Customer's accounts with any charges for providing the Business Internet Banking Service.
- 10.4 When the Bank introduces new services under Business Internet Banking, the Bank may provide such new services on supplementary terms which will be notified to the Customer from time to time in accordance with these Conditions.
- 10.5 The hsbc.com Site through which the Customer accesses Business Internet Banking and the Business Internet Banking Service is subject to change by the Bank. Unless the Bank has specifically agreed to give prior notice to the Customer, the Bank may make such changes (including changes to layout) without notification to the Customer.
- 10.6 The Bank may modify the terms of these Conditions upon giving the Customer prior notice by way of display in the Bank's premises or in the Consolidated Statements or by such other method as the Bank may decide.

## **11 The Bank's liability to the Customer**

- 11.1 Subject to Condition 11.6 of this Section XII, the Bank will be liable to the Customer for direct losses suffered by the Customer arising out of the Customer's use of Business Internet Banking or the Business Internet Banking Service where such losses are directly attributable to the Bank's breach of contract, including any breach of Condition 11.3 of this Section XII, or to gross negligence of the Bank, its officers or employees.
- 11.2 The Bank does not exclude or limit liability for loss of interest on the Customer's credit balances or interest incurred on the Customer's debit balances as a result of a Customer Instruction that the bank has processed in breach of the Bank's duties to the Customer under these Conditions. The Bank is not liable for this loss to the extent that it is attributable to the Customer's own neglect or default.
- 11.3 In the case of a breach of the undertaking in Condition 9.2 of this Section XII, the Bank will take all reasonable steps to correct the defect.
- 11.4 The Bank will not be liable to the Customer for any loss or damage arising out of the Customer's use of Business Internet Banking or the Business Internet Banking Service, or caused by any breach of contract, including any breach of Conditions 11.1, 11.2 or 11.3 of this Section XII, or any negligence of the Bank, to the extent that such loss or damage is indirect, consequential or special, whether or not the Bank has been advised of the possibility of such loss or damage.
- 11.5 The Customer agrees that unless the Bank has specifically agreed with the Customer otherwise, the Bank will have no liability whatsoever for (a) any equipment, software or associated user documentation which any party other than the Bank produces or supplies at any time for use in connection with Business Internet Banking or the Business Internet Banking Service including, without limitation, the Security Device or (b) any services through which the Customer accesses Business Internet Banking or the Business Internet Banking Service which are not controlled by the Bank.
- 11.6 Without prejudice to Condition 11.4 of this Section XII, the Bank will not be liable to the Customer for any loss or damage arising out of the Customer's use of Business Internet Banking or the Business Internet Banking Service to the extent that such loss or damage is:
- (a) a loss of profits;
  - (b) a loss of data; or
  - (c) any loss other than as set out in Conditions 11.1, 11.2 or 11.3 of this Section XII whether or not the Customer has been advised of the possibility of such loss or damage.
- 11.7 For the avoidance of doubt, the provisions of Conditions 11.6(a), 11.6(b) and 11.6(c) of this Section XII will each be construed as a separate exclusion of liability.
- 11.8 Nothing in these Conditions will limit the Bank's liability for death or personal injury or for dishonesty, deceit or fraudulent misrepresentation on the part of the Bank.

## **12 Setting up Business Internet Banking Password**

- 12.1 The Customer may only access Business Internet Banking via the hsbc.com Site. To access the hsbc.com Site, Customer Delegates are required to set up their own personal hsbc.com Site username and Password. Once this has been achieved they can link their Business Internet Banking logon details to their hsbc.com Site logon and thereafter gain access to Business Internet Banking.
- 12.2 The procedure for setting up Customer Delegates with Business Internet Banking Passwords is set out in the Business Internet Banking Customer Guide.

## **13 Resetting Business Internet Banking Password**

Reset procedures may be notified in the Business Internet Banking Guide, via the Business Internet Banking Service or via the Direct Banking Service. The Customer agrees to comply with such reset procedures as are in force from time to time.

## **14 Authority and Indemnity**

- 14.1 The Customer requests and authorises the Bank from time to time to act upon written instructions or requests to the Bank concerning the administration of Business Internet Banking or the Business Internet Banking Service when signed, or purporting to be signed, as described in Condition 14.3 of this Section XII. Such instructions and requests may include, without limitation, the giving by the Customer to the Bank of requests:

- (a) to remove or replace any Primary User;
  - (b) to reset any Passwords; or
  - (c) to take any action to promote the continued and orderly operation of Business Internet Banking or the Business Internet Banking Service.
- 14.2 The Bank will be entitled to refuse to act on any written instruction or request which is sent by facsimile transmission or other electronic communication in accordance with Condition 14.1 of this Section XII. The Bank agrees however to use reasonable endeavours to inform the Customer if the Bank refuses to so act.
- 14.3 Where any written instruction or request referred to in Condition 14.1 of this Section XII is sent by facsimile transmission or other electronic communication, the customer hereby requests and authorises the Bank from time to time without further authority or notice from the Customer to act upon such instruction or request. In addition the Customer agrees that the Bank will not be liable to the Customer or any third party for any loss or damage suffered by the Customer or any third party arising from the facsimile transmission or other electronic communication being unauthorised or fraudulent and the Customer agrees to keep the Bank fully indemnified against any claims or demands arising therefrom.
- 14.4 The Bank will not be liable for any losses arising as a result of any delays when acting in accordance with written instructions howsoever given pursuant to Condition 13 and Condition 14 of this Section XII.

## 15 Electronic Advertising

From time to time the Bank may advertise the Bank's own products or Services and those of other companies in the HSBC Group and also those of other parties on the Bank's Internet website(s) (including the hsbc.com Site) through which the Customer accesses the Business Internet Banking Service. If, in relation to other agreements between the Customer and the Bank, the Bank has agreed not to send the Customer any marketing material (or if the Customer does so in the future), the Customer agrees that this restriction will not apply to these electronic advertisements and consent to receiving them when accessing the Bank's Internet website(s) and/or the Business Internet Banking Service.

## 16 Encryption and Viruses

- 16.1 The Customer should be aware that the Bank uses a very high level of encryption. The use of such levels of encryption may be illegal in jurisdictions outside Hong Kong. It is the Customer's responsibility to ensure that, if outside the Hong Kong, the Customer's ability to use Business Internet Banking is permitted by local law and the Bank will not be liable for any loss or damage suffered by the Customer as a result of not being able to use Business Internet Banking in these jurisdictions.
- 16.2 Business Internet Banking is accessed through the Internet which is a public system over which the Bank has no control. It is therefore the Customer's duty to make sure that any computer or other device which the Customer uses to access Business Internet Banking is free from and adequately protected against computer viruses and other destructive or disruptive components. Neither the Bank, any member of the HSBC Group nor the Information Provider warrants or represents that any information and/or reports obtained through Business Internet Banking are free from virus or other destructive features which may adversely affect the Customer's hardware, software or equipment.
- 16.3 Due to the nature of Business Internet Banking, the Bank will not be responsible for any loss of or damage to the Customer's data, software, computer, computer networks, telecommunications or other equipment caused by the Customer using Business Internet Banking unless such loss or damage is directly and solely caused by the Bank's negligence or deliberate default.

## 17 Termination

- 17.1 The Bank may terminate these Conditions with prior notice (save under exceptional circumstances when termination may be made without notice) with or without cause. The Customer may terminate these Conditions on not less than thirty (30) days' written notice to the Bank.
- 17.2 Either party may also terminate these Conditions with immediate effect by notice to the other, if the other party commits a material breach of these Conditions or becomes insolvent under the laws of any applicable jurisdiction.
- 17.3 Termination will not affect the rights and remedies of either party accrued to the date of termination nor will it affect any provision of these Conditions (including, without limitation, Conditions 11 and 19 of this Section XII) which is intended to apply after termination.
- 17.4 Upon termination of these Conditions for any reason, the Digital Certificate licence referred in Condition 9.1 of this Section XII terminates. Within seven days of termination the Customer or the Customer Delegates must remove all Digital Certificates held on the memory of the Customer's computers or otherwise held by the Customer. The Customer must ensure that neither the Customer nor any Customer Delegates, employees, agents or representatives do anything on or after termination of these Conditions which will result in the security of Business Internet Banking or the systems or security of any other Business Internet Banking customers, being compromised.
- 17.5 Upon termination of these Conditions under this Section, all provisions of this Section which, in order to give effect to their meaning need to survive termination of these Conditions, will remain in full force and effect. Notwithstanding termination, each party will continue to be bound by these Conditions to the extent that they relate to any obligations or liabilities which remain to be performed or discharged.

## 18 Force Majeure

Neither party will be liable for delay in performing or failure to perform any of its obligations under these Conditions which is caused by circumstances beyond its reasonable control, including, but not limited to, the failure, malfunction or unavailability of telecommunications, data communications and computer systems and services, war, civil unrest, government action, strikes, lock-outs or other industrial action or trade disputes (whether involving either party's employees or those of a third party). Any delay or failure of this kind will not be deemed to be a breach of these Conditions and the time for performance of the affected obligation will be extended by a period which is reasonable in the circumstances.

## 19 Miscellaneous

- 19.1 These Conditions are the entire agreement between the parties concerning the use of Business Internet Banking and the Business Internet Banking Service. It supersedes all previous agreements, communications, representations and discussions between the Customer and the Bank relating to Business Internet Banking and/or the Business Internet Banking Service. Neither party will have a right of action against the other arising from any previous agreement, communication, representation and discussion in respect of Business Internet Banking and/or the Business Internet Banking Service, except in the case of fraud. Any other agreements between the Bank and the Customer and/or mandates relating to the conduct of the Customer's accounts will remain unaffected.
- 19.2 Any notice to be given under these Conditions must be communicated by post, through Business Internet Banking or to the Customer's email address most recently notified to the Bank. If by post the notice will be taken to have been received five days after posting by one party to the postal address most recently notified by the receiving party and if through Business Internet Banking or via email five (5) days after transmission of the email.
- 19.3 Where the Customer is a partnership, these Conditions will continue in force unless revoked by notice given by any one partner, notwithstanding any change of name of the partnership, admission of new partner(s) or any partner ceasing to be a member of the partnership by reason of death or otherwise.
- 19.4 The provision of the Business Internet Banking Service in certain countries or territories may be subject to special supplementary terms. Where applicable, the Customer confirms that the Customer has received and read these terms and agree to be bound by them.
- 19.5 The Bank and the Customer both agree to comply with all applicable data protection and other laws to the same or similar purpose in all relevant jurisdictions. The Customer confirms that all employees and other persons whose personal or other data is transmitted, processed or otherwise handled have consented to such transmission, processing or other handling under these Conditions in accordance with these laws, or will do so prior to any such transmission, processing or other handling. The Customer agrees that the Customer will obtain such consent by getting all such employees and other persons to sign an appropriate consent in writing and, upon request, to provide to the Bank's copies of all such consents. The

Customer further agrees to indemnify and hold the HSBC Group harmless from all costs, penalties, damages and other losses incurred as the result of any breach of this provision.

- 19.6 Each of the terms of these Conditions is severable from the others and if one or more of them becomes void, illegal or unenforceable, the remainder will not be affected in any way.
- 19.7 Subject to the applicable laws of evidence, each party agrees not to object to the admission of the records (including computer records) of the other as evidence in legal proceedings.
- 19.8 Copyright in the pages, screens, information (other than information about the Customer's accounts and financial affairs) and all material in their arrangement included in the Business Internet Banking Service and in the hsbc.com Site (together the "**Material**") is owned by or licensed to the Bank or the HSBC Group unless otherwise noted. Other than in respect of any information and/or reports obtained through Business Internet Banking, the Customer may imprint, copy, download, or temporarily store extracts from the Material for the Customer's own information or when the Customer uses the Business Internet Banking Service. The Customer may not alter or otherwise make any changes to any Material that the Customer prints or downloads including, without limitation, removing any identifying marks or legends from such Material. Any other use is prohibited unless the Customer first requests and obtains the Bank's written permission. HSBC is a trademark of HSBC Holdings plc and all rights in and to HSBC vest in HSBC Holdings plc. Other than as provided above, the Customer may not use or reproduce the HSBC trademark, logo or brand name.
- 19.9 Where tools and other facilities ("**Tools**") are provided to Customer Delegates in connection with the hsbc.com Site, such Tools will not be provided as part of the Business Internet Banking Service but will be provided by the relevant member of the HSBC Group which is providing such Tools. The provision of the Tools will be subject to the Conditions, exclusions and disclaimers relevant to such Tools.
- 19.10 Nothing in these Conditions will affect any right of set-off or combination which the Bank has in relation to any accounts which the Customer accesses Online.

#### **ADDITIONAL CONDITIONS FOR BUSINESS INTERNET BANKING MPF SERVICE**

- 1 The Customer remains at all times responsible for compliance with the MPF legislation and by its provision of the MPF Services, the Bank assumes no responsibility.
- 2 If the Mandatory Provident Fund Schemes Authority amends the MPF legislation, the Bank will use its best endeavours to revise the MPF Services in good time to enable the Customer to comply with its MPF obligations but the Bank will accept no responsibility or liability for the continued use by the Customer of the MPF Services meanwhile or for any loss or damage suffered by the Customer as a result of any delay in delivery of a revised MPF Service including any failure by the Customer to comply with its MPF obligations.
- 3 The Bank assumes no responsibility whatsoever in relation to any refusal by the MPF Administrator to accept for any reason the Remittance Statement.

#### **ADDITIONAL CONDITIONS FOR MY HSBC SERVICE**

- 1 Where the Customer and/or the Customer Delegate(s) make use of the My HSBC Services, the Customer and the Customer Delegate(s) agree to be bound by the My HSBC Terms and Conditions.
- 2 Identifiers referred to in My HSBC Terms and Conditions will for all purposes be a reference to the Password, Security Code, Security Device and Digital Certificate mentioned in these Conditions.
- 3 In the event of any inconsistency between My HSBC Terms and Conditions and these Conditions, the provisions set out in My HSBC Terms and Conditions will prevail insofar as the subject matter relates My HSBC.

## Section XIII Auto-sweeping Service

### 1 The Auto-sweeping Service

- 1.1 The Bank will determine the Debit Balance at the Cut-off Time on every Business Day. If the Debit Balance does not exceed the Ceiling Amount and at the Transfer Time the amount of available cleared funds in the Savings Account equals or exceeds the Debit Balance, then the Bank will (at the Transfer Time) automatically transfer the Prescribed Sum from the Savings Account to the Current Account.
- 1.2 If any one of the conditions set out in Condition 1.1 of this Section XIII is not satisfied, the Bank will not effect the transfer referred to in that Condition.
- 1.3 Despite any transfer effected by the Bank pursuant to Condition 1.1 in this Section XIII, interest will accrue on the Debit Balance from the date the Current Account becomes overdrawn to the date of full repayment thereof at the same rate(s) that applies to the OD Protection or any unauthorised overdraft, or both (as the case may be).

### 2 Customer's Responsibility

The Customer acknowledges and agrees that it is its duty to continually monitor and maintain sufficient available cleared funds in the Savings Account to enable all applicable instructions, obligations and liabilities on the Savings Account owed to the Bank or any third party (including any autopay or direct debit instructions) to be met, or discharged, or both, taking into account any automatic transfers which may be effected by the Bank pursuant to the Auto-sweeping Service.

### 3 Exclusion of Liability

- 3.1 The Bank is not liable or responsible to the Customer or any third party for checking or matching any applicable instructions, obligations or liabilities of the Customer owed to the Bank or any third party on the Savings Account, or for the consequences arising out of or in connection with the provision of the Auto-sweeping Service. For example, the Bank is not liable for any Loss suffered by the Customer or any third party resulting from the lack or insufficiency of funds in the Savings Account to meet or discharge any applicable instructions, obligations or liabilities on the Savings Account.
- 3.2 The Bank is not liable for Losses incurred by the Customer as a result of the provision of the Auto-sweeping Service by the Bank, unless those Losses were caused by the negligence or wilful default of the Bank or its officers or employees.

## Section XIV ForEx Switching Service

### 1 ForEx Switching Service

- 1.1 The Bank is appointed and authorised to provide to the Customer the following ForEx Switching Service described in Condition 1.2 of this Section XIV (the "**ForEx Switching Service**"), subject to the Conditions set out in this Section XIV ("**ForEx Terms**"). However, the Bank reserves the right to refuse to provide the ForEx Switching Service, in its sole discretion.
- 1.2 The ForEx Switching Service will enable the Bank to do any of the following, without notice to or consent from, the Customer:
- (a) debit any and all available credit balances in the Savings Account, the Current Account, or both, maintained by the Customer under the Master Account (whether denominated in HKD or any other currency and whether denominated in one or more currencies) determined in accordance with Condition 2.5 in this Section XIV (the "**Available Balance**") at the intervals elected by the Customer;
  - (b) at the Customer's instruction, use any available pre-arranged overdraft facilities under the debit account (the "**Available Credit Limit**") for the ForEx Switching Service;
  - (c) apply the amount debited to the purchasing of the currencies elected by the Customer subject to the Exchange Rate Criteria (as defined below in this Section XIV) elected by the Customer; and
  - (d) credit any and all amount of each purchased currency to any account maintained by the Customer under the Master Account in the relevant currency denomination.
- 1.3 Notwithstanding any provisions to the contrary in these ForEx Terms, the Bank is entitled to prescribe and vary at its discretion from time to time:
- (a) the currencies and any minimum or maximum amount of each currency which may be exchanged by the Customer;
  - (b) any minimum or maximum amount which the Customer may elect to transfer pursuant to the ForEx Switching Service;
  - (c) the timing and frequencies at which transfers may be made pursuant to election by the Customer;
  - (d) the criteria determining the availability and amount of Available Balance, or Available Credit Limit, or both (the "**Balance Criteria**"), which the Customer may elect for the purpose of marking the transfer amount (the "**Marked Transfer Amount**");
  - (e) the criteria determining whether actual transfers are to be made to effect purchases of currencies (the "**Exchange Rate Criteria**"), which the Customer may elect;
  - (f) the timing at which the Bank applies the Balance Criteria elected by the Customer to the relevant account to determine the Available Balance and/or Available Credit Limit, and in turn the Marked Transfer Amount;
  - (g) the timing and frequencies at which the Bank checks the Exchange Rate Criteria elected by the Customer against the prevailing buying rate or selling rate applicable to the relevant currencies quoted by the Bank to determine whether any actual transfer will be made to effect a purchase; and
  - (h) any minimum or maximum number of transfer instructions which the Customer may set up under the ForEx Switching Service, whether by reference to an account, a currency or any other criteria.
- 1.4 The Bank reserves the right not to act on any transfer instruction of the Customer if:
- (a) where (1) the Customer has not instructed the Bank to use any Available Credit Limit, the Available Balance in the debit account is insufficient, at the time of actual transfer, to pay the Marked Transfer Amount determined in accordance with Condition 2.5 of this Section XIV, or (2) where the Customer has instructed the Bank to use any Available Credit Limit, the Available Balance together with the Available Credit Limit in the debit account are insufficient, at the time of actual transfer, to pay the Marked Transfer Amount, whether or not due to any decrease in the Available Balance and/or Available Credit Limit in the account after determining the Marked Transfer Amount; or
  - (b) there are any irregularities concerning the relevant account or other technical or operational reasons not to act on the transfer instruction.

### 2 Balance Criteria and Exchange Rate Criteria

- 2.1 The Bank may prescribe Balance Criteria and Exchange Rate Criteria by reference to such factors and/or standards and/or a combination of factors and standards at its discretion.
- 2.2 The Customer will elect his Balance Criteria and Exchange Rate Criteria and notify the Bank of his election in such manner as the Bank may require from time to time.
- 2.3 Subject to the agreement of the Bank, the Customer may instruct the Bank in such manner as the Bank may require from time to time to vary any Balance Criteria or Exchange Rate Criteria elected by the Customer and/or to cancel any transfer instruction or suspend it for a specified period. Any instruction received by the Bank pursuant to this Condition 2.3 will not be effective until after the Bank has been given reasonable time to process it. The Bank will continue to act on any transfer instruction unless and until the Bank has received the Customer's instructions otherwise.
- 2.4 Subject to the agreement of the Bank, the Customer may elect a fixed transfer amount or a variable transfer amount, and the Marked Transfer Amount in each case will be determined in accordance with Condition 2.5 of this Section XIV. The Bank will debit the Marked Transfer Amount from the debit account if the Available Balance (or, if the Customer has instructed the Bank to use the Available Credit Limit, the Available Balance together with the Available Credit Limit) are sufficient, at the time of actual transfer, to pay the Marked Transfer Amount. In case of any insufficiency at the time of actual transfer, no transfer will be made. The Bank will not be under any obligation to ensure that any minimum credit balance remains in the debit account after debiting the Marked Transfer Amount.
- 2.5 The Bank will determine the Available Balance and/or the Available Credit Limit, and in turn the Marked Transfer Amount in the debit account by applying the Balance Criteria elected by the Customer against the day-end balance in the account on the Business Day before the transfer date as reflected in the Bank's records. If the Customer elects a fixed transfer amount and the Available Balance (or, if the Customer has instructed the Bank to use the Available Credit Limit, the Available Balance together with the Available Credit Limit) in the debit account on the previous Business Day exceed the fixed transfer amount specified by the Customer, then the Customer specified amount will be marked as the Marked Transfer Amount. If the Customer elects a variable transfer amount, any and all of the Available Balance (or, if the Customer has instructed the Bank to use the Available Credit Limit, any and all Available Balance together with any and all Available Credit Limit) on the previous Business Day will be marked as the Marked Transfer Amount.
- 2.6 If the day on which the Bank is:
- (a) to apply the Exchange Rate Criteria to determine whether any transfer and purchase will be made; or
  - (b) to make any transfer or purchase,
- is not a Business Day, the Bank will perform the relevant action on the next Business Day except that the Bank will perform the relevant action on the previous Business Day if the next Business Day falls into the next month.

### 3 Transactions

- 3.1 The Bank will check the Exchange Rate Criteria elected by the Customer against the prevailing buying rate or selling rate applicable to the relevant currency quoted by the Bank at the time(s) of checking. Unless the Bank has made other arrangements with the Customer, the Bank will be entitled to effect a currency transaction for the Customer at such prevailing rate quoted by the Bank if such rate falls within the Exchange Rate Criteria



elected by the Customer. The Bank will not be under any obligation to check the Exchange Rate Criteria elected by the Customer against the rates prevailing in the relevant foreign exchange market on a real time basis, nor to effect any currency transaction at such rates.

- 3.2 The Customer acknowledges that no warranty or guarantee is given by the Bank that the Bank will effect any transaction for the Customer pursuant to the ForEx Switching Service. The Bank may be unable to check whether the Exchange Rate Criteria elected by the Customer match the prevailing rates quoted by the Bank or to effect any transaction notwithstanding that the Customer's Exchange Rate Criteria have been matched due to the volume of instructions and transactions, market circumstances or other factors beyond the Bank's reasonable control which may be existing at the relevant time. The Bank will not be liable for any loss or damage which the Customer may suffer or incur as a result of the Customer's Exchange Rate Criteria not being checked or matched or any transaction not being effected due to the above circumstances.

#### **4 Fees**

The Bank reserves the right to charge fees in relation to the use and/or termination of the ForEx Switching Service and to revise such fees. The Bank will determine and notify the Customer of the rate of any fee from time to time which will be binding on the Customer if the Customer continues to maintain or use the ForEx Switching Service after the effective date for imposing the fee or the revised fee. Fees may be collected from the Customer in such manner and at such intervals as the Bank may specify. Paid fees are not refundable except otherwise specified by the Bank.

#### **5 Variation and Termination**

- 5.1 The Bank has the right to determine and vary from time to time the scope and extent of the ForEx Switching Service.
- 5.2 The Bank may, at any time, without giving notice or reasons suspend or terminate the ForEx Switching Service or its use by the Customer.

## **Section XV Business Card**

If a Business Card is issued to the Customer or Cardholder, each of the Customer and the Cardholder will be bound by the relevant "Business Card Programme Agreement" and the "Terms and Conditions for using the Services of the 'Credit Cards Customer Service Hotline' for Business Card Programme" for the Customer and the Cardholder and all such other terms relating to credit cards introduced by the Bank from time to time (together, the "Business Card Terms"). All Conditions set out in Section I also apply to the Customer's and/or its Cardholder's use of a Business Card, unless the Bank otherwise agrees. The Business Card Terms prevail over the Conditions in Section I to the extent of any inconsistency between them (save for Condition 19 (Collection and Disclosure of Customer Information) of Section I).

## Section XVI Business Revolving Credit

Where the Customer has successfully applied for a business revolving credit facility (the "**Facility**"), the Customer will be notified by a facility setup confirmation letter (the "**Confirmation Letter**") upon approval and granting of the Facility. The use of the Facility will be subject to the following Conditions:

- 1 Subject to Condition 17 of this Section XVI, the Customer will be notified by the Bank of the approved limit of the Facility (the "**Credit Limit**"), and the Facility will be granted to a Current Account (the "**Facility Account**").
- 2 Once the Facility is approved and made available, the overdraft protection feature of the Facility Account will not be available to the Customer.
- 3 A monthly non-refundable facility fee on the Facility in an amount calculated by multiplying the Credit Limit by the rate stated in the relevant business revolving credit application, subject to any alteration as provided in Condition 15 of this Section XVI, will be debited immediately upon approval of the Facility and subsequently on the same day of each succeeding month to the Facility Account.
- 4 The Bank is authorised to debit the Facility Account from time to time in paying such facility fee when due.
- 5 Interest on the Facility will be charged and calculated at the interest rate stated in the business revolving credit application. Interest will accrue on a daily basis on the debit balance outstanding under the Facility Account and will be payable monthly in arrears by debit to the Facility Account.
- 6 A statement will normally be provided to the Customer on a monthly basis (on the statement date as referred to in the Confirmation Letter) and will detail the total amount outstanding on the Facility Account on the statement date (the "**Outstanding Debit Balance**") and the amount due ("**Minimum Amount Payable**") from the Customer, which will be the sum of any payment in arrears, unauthorised debit amount and the minimum monthly repayment, and the date by which payment must be made to the Bank (the "**Payment Due Date**"). The minimum monthly repayment will be the amount calculated by multiplying the Outstanding Debit Balance (or, if lower, the credit limit) by 4% or HKD100 (whichever is higher), subject to any alteration as provided in Condition 17 of this Section XVI. The amount of Minimum Amount Payable will be rounded, either up or down, to the nearest dollar. Payment of any part of Outstanding Debit Balance effected by cheque or other means will be accepted subject to the Bank's normal Conditions.
- 7 Without prejudice to the other provisions of these Conditions, if the Customer fails to pay in full the Minimum Amount Payable by the Payment Due Date, the unpaid portion will be included as payment in arrears and a late charge amount calculated at the rate of 5% of such unpaid portion or HKD100 (whichever is higher and subject to a cap of HKD500), subject to any alteration as provided in Condition 15 of this Section XVI, will be debited to the Facility Account after the Payment Due Date. The amount of late charge will be rounded, either up or down, to the nearest dollar.
- 8 In the event the Facility is cancelled, on the Customer's instruction, within the first twelve (12) months from the date on which the Facility was granted, a facility cancellation fee of HKD500, subject to any alteration as provided in Condition 15 of this Section XVI, will be levied and debited to the Facility Account with or without prior notice.
- 9 If the total Outstanding Debit Balance exceeds the Credit Limit, interest will be charged on the excess amount at the rate of:
  - 9.1 10% per annum over the Bank's HKD best lending rate where the Facility is subject to floating interest rate; or
  - 9.2 22% per annum over the Bank's HKD best lending rate where the Facility is subject to a fixed interest rate,in each case (both before and after judgment) from the date the excess arises until the date of actual settlement.

Such interest will be payable at such intervals as the Bank may determine and at any time upon demand by the Bank. In addition, the Bank reserves the right to charge an unauthorised overdraft handling charge of HKD120 (subjected to any alteration as provided in Condition 15 of this Section XVI) and this will be debited to the Facility Account.
- 10 Without prejudice to Condition 17 of this Section XVI, the Bank reserves the right to suspend further drawing of the Facility if the Minimum Amount Payable is not paid in full by the Payment Due Date.
- 11 All costs and expenses (including legal fees) incurred by the Bank in connection with the extension of the Facility and any matters arising therefrom are to be reimbursed by the Customer on demand. The Customer authorises the Bank to debit the Facility Account from time to time in paying any such costs and expenses when due.
- 12 Where the Customer is a limited company, as security, the Bank requires a guarantee to be provided to the Bank in respect of the approved Facility amount. Where the Customer is a partnership, it is agreed between the partners and the Bank that the partnership will not be dissolved in the event of any of the partners retiring or ceasing to be a partner of the partnership or there being any change to the constitution of the partnership.
- 13 To comply with the Code of Banking Practice and guidance given by the Courts, the Bank needs to obtain the Customer's consent before it can provide a copy or summary of the Facility, or information on the Customer's outstanding liabilities to the Bank, to any guarantor or other third party providing security (the "**Surety**") or to the Surety's advisors. In addition, if the Bank is obliged to make any formal demand for repayment because the Customer has failed to settle an amount due following a customary reminder, the Bank will also need to provide the Surety with a copy of its Demand Letter. Whether or not the Bank has made demand, the Bank will also need to provide the Surety with a copy of the latest statement of account and/or to give the Surety details of the Customer's outstanding liabilities to the Bank, whether actual or contingent. The Customer agrees to the Bank providing any of the aforesaid documents or information to the Surety, to the Surety's solicitors and other professional advisers. Where this consent is not given, the Bank will be unable to proceed with the transaction.
- 14 Section 83 of the Banking Ordinance (Cap. 155) of the Laws of Hong Kong has imposed on the Bank as a bank certain limitations on advances to persons related to its directors or employees. The Customer is required to advise the Bank whether the Customer, or any of its directors, partners, managers or agents, is in any way related to any of the Bank's directors or employees within the meaning of Section 83 of the Banking Ordinance (Cap. 155) of the Laws of Hong Kong and in the absence of such advice the Bank will assume that the Customer is not so related. Should the Customer, or any of its directors, partners, managers or agents, becomes so related subsequent to the date of this application, the Customer will immediately advise the Bank in writing.
- 15 The amounts or percentage of fee, charges and interest rate applicable to the Facility will be as set out herein or stipulated in the Confirmation Letter or notified to the Customer by other means. The Bank reserves the right to alter such these Conditions and such amounts, percentage, fee, charges and interest rate, as well as impose new fee and charges, from time to time and may notify the Customer of such alteration or imposition in any manner it thinks fit. The Customer will be bound by such alteration or imposition in any manner it thinks fit. The Customer will be bound by such alteration or imposition unless the Facility is cancelled and repaid in full before the date upon which it is to have effect.
- 16 In case of any dispute in connection with the Facility, the Bank's decision will be final.
- 17 Notwithstanding any other terms herein, the Facility which is granted on an uncommitted basis is subject to review by the Bank at any time and to the Bank's overriding right of suspension and withdrawal at any time. The Bank will have an unrestricted discretion to determine whether or not to permit utilisation of the Facility or to increase or decrease the Facility Limit. The Bank further reserves the right at its absolute discretion to require immediate repayment of all amount outstanding on the Facility Account or with respect to the Loan, together with all accrued interest, at any time.
- 18 In the event of any inconsistency between the provisions of this section and the terms set out in the Confirmation Letter (as the case may be), the latter will prevail.
- 19 In the event that the Customer maintains any other facilities with the Bank, unless otherwise specified by the Bank, such other facilities will not be affected by the granting of the Facility and all Conditions relating to such facilities will remain unchanged.

## Section XVII HSBC's Direct Advice, eStatement and eAdvice Service

### 1 Terms of Use

- 1.1 The use of the Direct Advice, eStatement and eAdvice Service (the "Service") will at all times be governed by the Conditions in this Section XVII.
- 1.2 These Conditions are not intended to and will not supersede or replace the existing Conditions governing the Master Accounts and the Customer's use of other products and services offered by the Bank, including, without limitation, those concerning the Statements and the Advice (collectively "Other T&Cs"), which will continue to apply unless otherwise provided.
- 1.3 In the event of inconsistency or conflict between these Conditions and Other T&Cs, these Conditions will prevail where the Service is concerned.

### 2 Scope of the Service

- 2.1 The Bank will from time to time determine or specify the scope and features of the Service and are entitled to modify, expand or reduce the same at any time with or without notice.
- 2.2 If the Bank gives notice of a change to the Service, such notice may be made in such manner and by such means of communication as the Bank will deem fit.
- 2.3 The Bank may from time to time include within the Service or send with the eCorrespondence marketing materials relating to the Bank's products and services or those offered by other HSBC members and selected third parties (collectively "Marketing Materials") if the Bank has obtained the Customer's consent or no objection or otherwise permitted by law. The Customer may request the Bank to discontinue sending Marketing Materials to the Customer by notifying the Bank.

### 3 Registering / Managing the Service

- 3.1 Once the Customer has registered for the Service, the Bank will provide the Customer with the eCorrespondence covered by the Service and/or selected by the Customer as the case may be, in one or more of the following ways as the Bank will determine from time to time:
  - (a) by placing the eCorrespondence in the Customer's BIB Profile;
  - (b) by sending the eCorrespondence to the Customer's eAddress.The corresponding Statements and Advice (i.e., in their paper form) will no longer be sent to the Customer's mailing address or by any other means unless otherwise stipulated, including that set out in Conditions 3.3 and 3.8 under this Section XVII.
- 3.2 Where an eCorrespondence provided under Condition 3.1 in this Section XVII is an eStatement, the Bank may, in the Bank's discretion, send a message to the Customer's email address and/or mobile phone number last registered with the Bank to notify the Customer that the same has been placed in the Customer's BIB Profile.
- 3.3 During such time when the Customer is registered with the Service, the Customer may request for the corresponding Statement/Advice of an eStatement/eAdvice to be sent to the Customer's mailing address last registered with the Bank or be otherwise provided by the Bank in addition to that eStatement/eAdvice, but such a request is at all times subject to the Bank's decision and will also be subject to any limitations that may be imposed by the Bank from time to time and to such charges as the Bank will determine from time to time.
- 3.4 The Service is at all times provided subject to the Customer's having one or more of the following, as applicable:
  - (a) a valid BIB Profile;
  - (b) a valid and up-to-date eAddress that has sufficient capacity at all relevant times to receive the eCorrespondence;
  - (c) an internet service provider, appropriate telecommunications equipment and computer software capable of receiving and reading the eCorrespondence, any or all of which may be determined by the Bank from time to time; and/or
  - (d) a valid and up-to-date mobile phone number to which messages can be sent and viewed.
- 3.5 In order to receive the eCorrespondence, the Customer must maintain such account(s) with the Bank and/or subscribe for such product(s) or service(s) as the Bank may stipulate from time to time.
- 3.6 The Customer will bear any fees, charges or expenses which may be imposed by any telecommunications company (whether or not designated by the Bank) providing or servicing the Customer's telecommunications equipment in connection with the Service.
- 3.7 The Customer warrants that all particulars given to the Bank for the purposes of or in connection with the Service are complete, accurate and up-to-date at all relevant times and undertake to promptly notify the Bank (via such means and in such format and manner as will be acceptable to the Bank) of any changes thereto including, without limitation, the Customer's eAddress.
- 3.8 The Bank may re-send to the eAddress any eCorrespondence which, in the Bank's opinion, has failed to reach the Customer the first time the Bank sent it. This will be done in accordance with the Bank's procedures for re-sending that eCorrespondence, if any, as designated by the Bank from time to time. If, in the Bank's opinion, the eCorrespondence sent or re-sent further to the Customer's eAddress has failed to reach the Customer, the Bank may, in the Bank's sole discretion, notify the Customer of the same using such means as the Bank deems appropriate and the Customer must comply with any instructions the Bank may specify in such notices. The Bank may, but will not be obliged to, forward the corresponding Statement or Advice of that particular eCorrespondence to the mailing address the Customer has last registered with the Bank. The Bank may also, in the Bank's sole discretion, stop sending the said eCorrespondence or even all other eCorrespondence in the future and the Bank may dispose of the said eCorrespondence as the Bank will decide including, without limitation, deleting or removing the same from the Bank's systems and record.
- 3.9 All eCorrespondence placed in the Customer's BIB Profile or sent by email will only be available for a limited period as determined by the Bank from time to time, irrespective of whether or not they have been reviewed and/or saved by the Customer. The Bank will periodically remove past eCorrespondence from its BIB Profile even if the Customer has not viewed, accessed or saved them. The Customer will not be able to open eCorrespondence sent by email to its eAddress after a designated period of time as determined by the Bank from time to time, so the Customer should save a decrypted version of the eCorrespondence (e.g. in pdf format) in its telecommunications equipment for retention and record purposes.
- 3.10 (i) An eCorrespondence placed in the Customer's BIB Profile shall be deemed to be delivered to the Customer at the time it is placed in the Customer's BIB Profile according to the Bank's records. (ii) An eCorrespondence sent or re-sent (if applicable) under the Service to the eAddress will be deemed to be delivered to the Customer at the time when the eCorrespondence was, according to the Bank's record, successfully sent or re-sent by the Bank.
- 3.11 The Customer agrees to open, read or access and carefully review and examine all eCorrespondence sent to the Customer's eAddress in a timely manner and advise the Bank as soon as possible, of any errors, discrepancies, unauthorised transactions or other irregularities arising from whatever cause, including, without limitation, forgery, fraud, lack of authority or the Customer's negligence or negligence of any other person(s) ("Errors").
- 3.12 Where the eCorrespondence sent to the Customer's eAddress is an eStatement, the Customer agrees that the eStatement will, as between the Bank and the Customer, be conclusive evidence as to the balance shown therein and that the eStatement will be binding upon the Customer and the Customer will be deemed to have agreed to waive any rights to raise objections or pursue any remedies against the Bank in respect thereof unless the Customer notifies the Bank (via such means and in such format and manner as will be acceptable to the Bank) of any such Errors within 60 days where the eStatement is a monthly credit card eStatement and ninety (90) days for all other eStatements after the Bank has sent the eStatement to the Customer eAddress or placed the same in the Customer's BIB Profile as the case may be. Where the account concerned is a joint account, the reference to "the Customer" in this Condition 3.12 under this Section XVII will mean all account holders of this joint account irrespective of the signing mandate.

- 3.13 It is the Customer's responsibility to frequently and periodically check the Customer's eAddress and/or the Customer's BIB Profile as will be applicable for eCorrespondence. Condition 3.12 will apply irrespective of whether or not the Customer has opened, read, accessed, reviewed and/or examined the eStatements in accordance with Condition 3.11.
- 3.14 Where the Service utilises proprietary software of the Bank, the Bank's affiliates and/or other software supplies, the Bank grants to the Customer a non-exclusive license to use this software solely for the purposes of the Service or such other purposes as the Bank will permit. The Customer agrees not to disassemble, decompile, copy, modify or reverse engineer any such software or permit anyone else to do so.
- 3.15 Where the Customer has selected or that the Bank has designated, as the case may be, a certain type, category or group of eStatements and/or eAdvice to be sent to the Customer's eAddress or placed in the Customer's BIB Profile under the Service, the Bank may without further notice and unless the Bank specifies otherwise, include within the Service the eStatements and eAdvice all new Accounts that the Customer will open with the Bank and the eStatements and eAdvice of all products and services that the Bank will provide to or will be used by the Customer in the future that will, in the Bank's view, fall within the said type, category or group.

#### **4 eCorrespondence**

- 4.1 Each eCorrespondence sent by email to the Customer's eAddress will be secured by a Password which the Customer will use to open, read or otherwise access eCorrespondence previously sent by email to the Customer's eAddress using the latest Password.
- 4.2 Any eCorrespondence sent by the Bank is one-way only and the Customer should not reply to the same.
- 4.3 Once an eCorrespondence has, according to the Customer's record, been sent successfully, the Bank will not re-send it again. If the Customer deletes such eCorrespondence, it cannot be sent again.
- 4.4 The Customer confirms that the customer has assessed and analysed and so the Customer understands, acknowledges and accepts all possible risks involved in using the Service including, without limitation, the eCorrespondence being intercepted, monitored, amended, tempered with or being sent or disclosed to other parties without the Customer's authorisation.
- 4.5 Neither the Customer nor any other persons should regard any information or communication contained in an eCorrespondence, the covering email or facsimile or any hyperlink(s) attached as an offer or solicitation to subscribe to any products or services (including, without limitation, investments, deposits, insurance and loans) in any jurisdiction to any person to whom it is unlawful to make such an invitation or solicitation in such jurisdictions.
- 4.6 The Customer must notify the Bank immediately (via such means and in such format and manner as will be acceptable to the Bank) should the Customer fails to receive, or that there is any delay in or other irregularities or problems in connection with any eCorrespondence or the Customer's receiving any eCorrespondence from the Bank.

#### **5 Security**

- 5.1 The Customer must keep the Password and all other security details (if any) secure and confidential at all times and take all reasonable precautions to prevent unauthorised or fraudulent use thereof and ensure that unauthorised or fraudulent access to the Customer's eAddress is prevented.
- 5.2 The Customer should change the Customer's Password from time to time to guard against unauthorised or fraudulent access to the eCorrespondence sent by email to the Customer's eAddress.
- 5.3 The Customer should never respond to a request purportedly from the Bank via the Service to provide the Customer's account, Password, security details or the Customer's personal information as the Bank will never make such a request.
- 5.4 The Customer must inform the Bank as soon as possible if any email or facsimile, eCorrespondence, website hyperlink, the Customer's BIB Profile or BIB appears to be irregular.
- 5.5 The Customer is responsible for the security of the Customer's telecommunications equipment and must take all reasonable precautions to prevent any other person from accessing any confidential information including the eCorrespondence sent thereto.
- 5.6 The Customer should never provide the Customer's account or personal information on screen following a website hyperlink from an eCorrespondence. All website hyperlinks authorised by the Bank will be for information only and will not require the inputting of the Customer's account or personal information.
- 5.7 The Customer must inform the Bank as soon as possible of all matters which may have an impact on or otherwise affect the Bank's provision or the Customer's use of the Service including, without limitation, if the Customer knows or suspects that someone knows the Customer's Password or the Customer's BIB Profile log-on credentials or has unauthorised access to the Customer's eAddress, BIB Profile, the eCorrespondence or any telecommunications equipments to which the Customer receives the eCorrespondence or if the Customer's eAddress or other contact details are or will be changed or the Customer's telecommunications equipment or internet service has or will be suspended, expired, disconnected or terminated.
- 5.8 The Customer should check, verify and authenticate the sender of the eCorrespondence including, without limitation, the facsimile number, email or website address of the sender of the eCorrespondence as the case may be to ensure that they are genuine and have been sent by the Bank.

#### **6 Liability**

- 6.1 The Customer agrees and undertakes not to hold the Bank liable or in any way responsible for any loss, damages or expenses that the Customer will incur, including, without limitation, any loss or damage caused to the Customer's data, software, computer, telecommunications equipment or other equipment in connection with the Customer's use of the Service unless they are caused solely and directly by the Bank's gross negligence or wilful default.
- 6.2 If the Bank can show that the Bank has sent, or attempted to send, to the Customer the eCorrespondence according to the service scope of the Service as will be determined by the Bank from time to time (including, without limitation, any re-sending procedures if the eCorrespondence fails to be sent to the Customer), the Bank has no liability to the Customer if the Customer suffers Loss due to the eCorrespondence not being received accurately or at all.
- 6.3 The Bank will not be liable for any disclosure of confidential information not herein authorised where the Customer has not complied with these Conditions or such other security guidelines or recommendation that the Bank may issue from time to time.
- 6.4 Neither the Bank, any of the Bank's affiliates, nor any of the telecommunications companies designated by the Bank (if any) for the purposes of providing the Service will assume any liability or responsibility for any failure or delay in providing the Service or any error or failure in the eCorrespondence unless this results from gross negligence or wilful default on the Bank's part, any of the Bank's affiliates, or such telecommunications companies. In particular, neither the Bank, any of the Bank's affiliates, nor any such telecommunications companies will assume any liability or responsibility for the consequences arising from any cause beyond the Bank's reasonable control, that of the Bank's affiliates, or such telecommunications companies, including, without limitation, failure of the Customer's telecommunications equipment to receive the eCorrespondence for whatever reason, any telecommunications breakdown, mechanical failure, path failure, malfunction, technical breakdown, interruption or accuracy of equipment or installation.
- 6.5 The third parties supporting the Service (including telecommunications companies designated by the Bank) are neither agencies of the Bank nor representing the Bank. There is no co-operation, partnership, joint venture or other relationship with the Bank. The Bank is not responsible for any Loss caused by such third parties including system operators.
- 6.6 The Customer hereby undertakes to ratify and confirm all things and matters done by the Bank, the Bank's nominees, their respective officers and employees pursuant to or in connection with the provision of the Service to the Customer and agree to indemnify the Bank, the Bank's nominees, their respective officers and employees against all or any losses, liabilities, charges, expenses and penalties of any kind which may be incurred or suffered by the Bank or any of them in connection with or as a result of the provision of the Service to the Customer unless directly and solely caused by or due to the gross negligence or wilful default of the Bank or any of them and then only to the extent of direct and reasonably foreseeable loss and damages (if any) arising directly and solely therefrom.

## **7 Pricing and Charges**

- 7.1 The Bank reserves the right to at any time and from time to time impose fees and charges for the Service with reasonable notice.
- 7.2 The Customer will bear, and the Customer hereby authorises the Bank to, without further notice to the Customer, debit from any one or more of the Customer's Account(s) any fees, charges or expenses which the Bank may impose under or in connection with this Service, including, without limitation, the Bank's charges for re-sending an eCorrespondence or for sending the corresponding Statement or Advice to the Customer's mailing address in accordance with these Conditions.

## **8 Suspension and Termination**

- 8.1 The Customer may terminate the Service at any time in such manner as the Bank may prescribe from time to time.
- 8.2 The Bank can suspend or terminate all or any part of the Service at any time and in the Bank's absolute discretion with or without notice.
- 8.3 Without prejudice to the generality of Condition 8.2 in this Section XVII, in the event where the Bank has reason(s) to believe that the security of the Customer's BIB Profile or the Customer's eAddress or the eCorrespondence sent to the Customer has been compromised or that the eCorrespondence will no longer reach the Customer at the Customer's BIB Profile or the Customer's eAddress, the Bank may in the Bank's sole discretion and without notice suspend the Service in which case the Bank will forward all future corresponding Statements and Advices to the Customer's mailing address last registered with the Bank until the Service is resumed either by the Bank or by the Customer in accordance with the Bank's procedures applicable at the time.
- 8.4 The Bank will not assume any liabilities or responsibilities for any suspension or termination of the Service under any circumstances.
- 8.5 Any termination or suspension of the Service is without prejudice to and will not affect the liabilities and rights which have accrued between the Customer and the Bank prior to the date of suspension or termination.

## **9 Amendments**

The Bank reserves the right to add to, delete and/or vary any of these Conditions upon notice to the Customer using such means of notification as the Bank will deem appropriate. Use of the Service after the date upon which any changes to these Conditions are to have effect (as specified in the Bank's notice) will constitute acceptance without reservation by the Customer of such changes. If the Customer does not accept any proposed changes the Customer must cancel or terminate, the Service prior to the date upon which such changes are to have effect.

## **10 Miscellaneous**

- 10.1 No failure or delay by the Bank in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Any remedies provided to the Bank herein is not intended to be exclusive of any other remedy and each and every remedy will be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise.
- 10.2 If any provision hereof will be declared or adjudged to be illegal, invalid or unenforceable under any applicable law, such illegality, invalidity or unenforceability will not affect any other provisions hereof which will remain in full force, validity and effect.

## Section XVIII BizAlert Service

### 1 Terms of Use

- 1.1 This section contains terms of use of the BizAlert Service by using, or continuing to use the BizAlert Service on or after receiving these Conditions the Customer agrees to be bound by them together with all applicable Conditions.
- 1.2 References to “**telecommunications equipment**” will include references to mobile telephones, laptop computers, desktop personal computers, pocket personal computers, personal digital assistants and any other electronic media and/or equipment used to receive the BizAlert Service.

### 2 Customers' Information

- 2.1 To enable the Bank to provide the Customer with the BizAlert Service, the Customer is required to supply data to the Bank and keep the data updated. Failure to do the same may result in the Bank's inability to provide the Customer with such service.
- 2.2 The data received by the Bank will be used to consider the Customer's request and subject to the Bank agreeing to provide such service, the data and all other details/information relating to the Customer's transactions or dealings with the Bank will be used in connection with the provision of such service to the Customer. The Bank will use, store, disclose, transfer (whether within or outside Hong Kong) obtain and/or exchange such data and such other details and information to, from or with such persons as the Bank may consider necessary (including the members of the HSBC Group or any service provider) for any purposes the Bank deems appropriate.

### 3 Scope of BizAlert Service

- 3.1 The Bank will from time to time determine or specify the scope and features of the BizAlert Service and is entitled to modify, expand or reduce the same at any time with or without notice.
- 3.2 If the Bank gives notice of a change to the BizAlert Service, such notice may be made in such manner and by such means of communication as the Bank will deem fit, including, without limitation, use of direct mailing material, advertisement, branch display or electronic communications such as e-mail and SMS.
- 3.3 The Bank may from time to time include within the BizAlert Service marketing material relating to the Bank's products and Services (“**Marketing Material**”). Should the Customer decide to opt out of or give instructions to the Bank to discontinue sending the Marketing Materials to the Customer, the Customer notes that the Bank is likely to have to discontinue the provision of the BizAlert Service to the Customer at the same time.

### 4 Opening/Operating BizAlert Service

- 4.1 Once the Customer has enrolled for the BizAlert Service the Customer may determine the number and frequency of the BizAlert message and specify the type of BizAlert message the Customer requires in such manner as the Bank may prescribe from time to time.
- 4.2 The BizAlert Service is available to the Customer provided the Customer has appropriate telecommunications equipment and a service provider both of which may be determined by the Bank from time to time.
- 4.3 The Bank reserves the right to restrict the number of pieces of telecommunications equipment which may be registered by the Customer for receiving the BizAlert message(s) from time to time and different restrictions may apply to different types of telecommunications equipment and/or customers.
- 4.4 The BizAlert Service may without notice to the Customer be suspended or terminated for any reason including without limitation the reason specified in Condition 3.3 of this Section XVIII, invalid data, Nominated Account closure, insufficient funds within the Nominated Account, non specification of a Nominated Account, breakdown, maintenance, modification, expansion and/or enhancement work caused or initiated by the telecommunications company(ies) concerned in relation to their network or by any service provider in respect of the BizAlert Service. The Bank will not assume any liabilities or responsibilities for any such suspension or termination.
- 4.5 The Customer will promptly notify the Bank of any changes to or in any register maintained by the Bank in connection with or for the purposes of the BizAlert Service including the contact details of the Customer's telecommunications equipment and the telecommunications company providing or servicing it.
- 4.6 The Customer must notify the Bank immediately upon the disconnection or suspension of the Customer's telecommunications equipment/service.
- 4.7 Neither the Bank nor any of the telecommunications companies which may be designated by the Bank for the purposes of providing the BizAlert Service will assume any liability or responsibility for any failure or delay in transmitting information to the Customer or any error or failure in such information unless this results from negligence or wilful default on the Bank's part or such telecommunications companies. In particular, neither the Bank nor any such telecommunications companies will assume any liability or responsibility for the consequences arising from any cause beyond the Bank's or its reasonable control including without limitation failure of the Customer's telecommunications equipment to receive information for whatever reason, any telecommunications breakdown, mechanical failure, path failure, malfunction, breakdown, interruption or accuracy of equipment or installation.
- 4.8 The Customer will bear any fees, charges or expenses which may be imposed by the Customer's telephone service provider and/or any telecommunications company (whether or not designated by the Bank) providing or servicing the Customer's telecommunications equipment in connection with the BizAlert Service.
- 4.9 The Customer warrants that all particulars given to the Bank are to the best of the Customer's knowledge accurate.
- 4.10 The Customer undertakes to notify the Bank in writing of any change of address or other particulars recorded with the Bank. All communications sent or re-sent via the BizAlert Service to the contact details registered by the Customer with the Bank will be deemed to be delivered to the Customer at the time when the communication was sent or re-sent by the Bank.
- 4.11 The Bank may re-send to the contact details registered by the Customer with the Bank any communications via the BizAlert Service which, in the Bank's opinion, has failed to reach the Customer in accordance with the Bank's procedures for re-sending BizAlert message(s) as designated by the Bank from time to time. If in the Bank's opinion the communications sent or re-sent further to the details registered with the Bank have failed to reach the Customer the Bank may in the Bank's sole discretion stop sending further communications.
- 4.12 The Customer undertakes to indemnify the Bank against all actions, claims, demands, liabilities, losses, damages, costs and expenses of whatever nature that may result or which the Bank may sustain, suffer or incur as a result of the Bank agreeing to provide the BizAlert Service.

### 5 Nature of Information Provided

- 5.1 The Customer acknowledges any information received by the Customer under the BizAlert Service is for the Customer's (and not any other persons') reference only, is not binding, and will not be taken as conclusive evidence of the matter to which it relates.
- 5.2 It is the Customer's sole responsibility to verify any information received under the BizAlert Service before relying or acting on it. In particular, any commentaries, confirmations, financial information and data provided are for reference only and are not intended as investment advice or for trading or other purposes. They may be provided to the Bank by other persons or compiled by the Bank from information and materials of other persons. The Bank does not warrant, represent or guarantee the sequence, accuracy, truth, reliability, adequacy, timeliness or completeness of any commentaries, confirmations, financial information or data or whether it is fit for any purpose. Nor does the Bank assume any liability (whether in tort or contract or otherwise) for any reliance on any commentaries, confirmations, information or data by the Customer or any other person.

### 6 SMS Messaging

- 6.1 The Customer may nominate one mobile phone number for each type of BizAlert message to be received and the Bank will only send the BizAlert message to that particular mobile number registered to receive that type of BizAlert message by the Customer. All nominated mobile phones

registered to receive the different types of BizAlert messages must be a compatible piece of telecommunications equipment capable of receiving such BizAlert message.

- 6.2 The Customer will inform the Bank as soon as possible if any of the SMS messages appear to be irregular.
- 6.3 The Bank will only send SMS messages once. If the Customer deletes the SMS messages which the Bank has sent the Customer they cannot be re-sent.
- 6.4 Any SMS message sent by the Bank is one-way and the Customer should not reply to such SMS message.
- 6.5 The Customer should never respond to a request purportedly from the Bank via the BizAlert Service or BizAlert message to provide the Customer's account or security details by SMS message as the Bank will never make such a request.

## **7 E-mail BizAlert**

- 7.1 If the Customer elects to receive BizAlert message(s) by e-mail, the Customer is responsible for ensuring the Customer has compatible telecommunications equipment capable of receiving such BizAlert message(s).
- 7.2 The Customer must keep any password and security details secret and take all reasonable precautions to prevent unauthorised or fraudulent use of the Customer's password or security details and ensure that unauthorised or fraudulent access to the Customer's e-mail is prevented.
- 7.3 BizAlert message(s) sent by e-mail may not be encrypted and may not be secure from corruption by third party. The Customer is responsible for ensuring that the Customer's password and any other identification used for accessing the Customer's account information is kept secure and secret.
- 7.4 The Customer should never respond to a request purportedly from the Bank via the BizAlert Service to provide the Customer's account or security details by e-mail as the Bank will never make such a request.
- 7.5 The Customer should never provide the Customer's account or personal information on screen following a website hyperlink from an e-mail BizAlert message(s). All website hyperlinks authorised by the Bank will be for information only and will not require the inputting of the Customer's account or personal information.
- 7.6 The Customer must inform the Bank as soon as possible if any e-mail or website hyperlink appears to be irregular.
- 7.7 Any e-mail sent by the Bank is one-way and the Customer should not reply to such e-mails.
- 7.8 The Bank will only send e-mails once. If the Customer deletes the e-mail which the Bank has sent the Customer they cannot be sent again.

## **8 Security**

- 8.1 The Customer is responsible for the security of the Customer's telecommunications equipment and must take all reasonable precautions to prevent anyone else from accessing any confidential information.
- 8.2 For every account the Customer intends to receive information about via the BizAlert Service the Bank recommends that the Customer chooses a nickname personal to such Customer Delegate(s) of the Customer avoiding names easy to guess such as the Customer Delegate's name or the Customer's account number. The Customer Delegate should check that the BizAlert message(s) received on the Customer Delegate's mobile phone or by e-mail containing information about accounts the Customer has nominated contain the Customer Delegate's nicknames for those accounts.
- 8.3 The Customer should use at all times the SIM Card personal identification number ("**SIM Card PIN Code**") on the mobile telephone registered to receive a BizAlert message re-setting any pre-set SIM Card PIN Code and re-setting the SIM Card PIN Code if the Customer knows or suspects someone else knows it. When choosing or using the SIM Card PIN Code avoid numbers which are easy to guess.
- 8.4 The Customer will not tell anyone else the SIM Card PIN Code or nicknames and not write them down in a way that someone else may understand.
- 8.5 The Customer should only use secure private e-mail sites protected by a password which should be kept secret. Avoid passwords which are easy to guess.
- 8.6 The Customer must inform the Bank as soon as possible of all matters which may have an impact on or otherwise affect the Bank's provision or the Customer's use of the BizAlert Service including, without limitation, if the Customer knows or suspects that someone knows the SIM Card PIN Code for the mobile phone registered to receive a BizAlert message or the Customer Delegate's nick-names or has unauthorised access to the Customer's e-mails or if the Customer Delegate's mobile telephone number/e-mail address changes or if the mobile telephone registered to receive a BizAlert message is lost, stolen or no longer under the Customer Delegate's control or if the Customer's contract with the network operator ends.
- 8.7 The Customer should check the telephone number of the sender of SMS message BizAlert and the e-mail/website address for e-mail BizAlert to ensure that they are genuine and have been sent by the Bank.
- 8.8 The Customer should suspend the SMS BizAlert Service if the mobile phone which has been registered to receive a BizAlert message will be taken outside Hong Kong due to the fact that the security of any foreign telephone network through which BizAlert message(s) may be transmitted to the registered mobile telephone cannot be guaranteed.
- 8.9 If the mobile phone registered to receive a BizAlert message is taken outside Hong Kong without suspending the BizAlert Service the Customer/Customer Delegate will be deemed to authorise the Bank, the network operators and any third party to whom information about the Customer/the Customer Delegate and the Customer's account has been passed for the provision of the BizAlert Service to transmit such information and store information in such countries or territories as are necessary to send BizAlert to that mobile phone.

## **9 Liability**

- 9.1 If the Bank can show that the Bank has sent, or attempted to send, to the Customer the BizAlert message(s) according to the service scope of the Bank's BizAlert Service as will be determined by the Bank from time to time (including, without limitation, any re-sending procedures if the BizAlert message(s) fails to be sent to the Customer), the Bank has no liability to the Customer if the Customer suffers Loss due to the BizAlert message(s) not being received accurately or at all.
- 9.2 The Bank will not be liable for any disclosure of confidential information not herein authorised where the Customer has not complied with the provisions of Conditions 4, 7 and/or 8 in this Section XVIII.
- 9.3 The Bank will not be liable to the Customer for any Loss the Customer suffers due to any event or circumstance beyond the Bank's reasonable control which leads to the BizAlert Service being wholly or partly unavailable as a result of but not limited to technical breakdown, strike and industrial action of any party or communications or path failure.
- 9.4 Due to the nature of the BizAlert Service, the Bank will not be responsible for any loss or damage caused to the Customer's data, software, computer, telecommunications equipment or other equipment caused by the Customer's use of the BizAlert Service unless such loss or damage is directly and solely caused by the Bank's negligence or deliberate fault.
- 9.5 The third parties supporting the BizAlert Service (including telecommunications companies designated by the Bank) are neither agencies of the Bank nor representing the Bank. There is no co-operation, partnership, joint venture or other relationship with the Bank. The Bank is not responsible for any losses caused by such third parties including system operators.

## **10 Pricing and Charges**

- 10.1 The Customer has the right to choose the BizAlert message(s) the Customer wishes to receive but acknowledge some BizAlert message(s) will be charged for at rates determined by the Bank from time to time. The Customer is advised to check with the Bank regularly for any charging changes or updates.



- 10.2 In order to receive the BizAlert message(s) the Customer must maintain such account(s) with the Bank as the Bank may stipulate from time to time.
- 10.3 Charges will be made for certain BizAlert message(s) (as determined by the Bank from time to time) ("**Chargeable BizAlert**") sent on an individual basis or by way of subscription to plans/packages made available from time to time.
- 10.4 The Customer may nominate the account the Customer wishes debited to pay for the Chargeable BizAlert ("**Nominated Account**"). Without prejudice to any of the Bank's rights regarding the Customer's account (including any set-off rights) the Customer hereby authorises the Bank to debit the charges incurred by the Customer for the provision of the BizAlert Service on a monthly basis and/ or pursuant to any monthly payment package from the Nominated Account.
- 10.5 All Chargeable BizAlert sent the Customer will be charged regardless of whether the Customer receives them or not so long as the failure to receive such Chargeable BizAlert is not as a result of the wilful default or negligence of HSBC.
- 10.6 Each Chargeable BizAlert sent will be charged for on an individual basis or where applicable in accordance with a plan/package which has been subscribed for. If the same BizAlert message(s) is received via e-mail and SMS message, this will count as two BizAlert message(s) for the purposes of charging and reducing the number of the Customer's available BizAlert message(s).
- 10.7 The Customer will ensure that there are sufficient funds/credit in the Customer's Nominated Account to cover accrued charges.
- 10.8 The Bank reserves the right to revise any existing charging structure and/or make additional charges from time to time.

## **11 BizAlert Suspension and Termination**

- 11.1 The Customer may terminate or suspend service at any time in such manner as the Bank may prescribe from time to time.
- 11.2 Termination, in respect of the calculation of charges, will be effective on the 5th day of the month following the month in which the Customer's termination request was made or the BizAlert Service was terminated by the Bank. However, the Customer will be unable to reactivate or access the Customer's BizAlert Service after the 1st day of the month following the month in which the Customer's termination request was made or the BizAlert Service was terminated by the Bank. Prior to the 1st day of the following month the e Service will be suspended. The Customer may reactivate the BizAlert Service during this time at which charges, if applicable, will accrue again.
- 11.3 If the BizAlert Service is suspended or terminated then, with immediate effect, no BizAlert message(s) will be sent during the period of suspension or at all in the event of termination.
- 11.4 The Customer may reactivate the BizAlert Service after suspension at any time at which point the Customer will receive BizAlert message(s) from the date of reactivation and charges will accrue.
- 11.5 A start date and finish date needs to be provided for suspension of the BizAlert Service and at the end of the suspension term, the BizAlert Service will resume and charges, if applicable, will accrue.
- 11.6 The Bank may suspend or terminate the BizAlert Service if it is suspected it has not been received by the Customer or are being accessed by unauthorised person.
- 11.7 The Bank can suspend or terminate the BizAlert Service at any time and in its absolute discretion and the Bank will be entitled to deduct any outstanding fees or charges from the Nominated Account.
- 11.8 If the Customer is receiving Chargeable BizAlert and/or there are charges outstanding as at the date of termination, these costs will be deducted by the Bank from the Customer's Nominated Account on the 5th day of the month following the month in which the Customer terminated the BizAlert Service.
- 11.9 Payment for the BizAlert Service is in arrears and any sums paid are non-refundable.
- 11.10 Any termination or suspension of the BizAlert Service is without prejudice to and will not affect the liabilities and rights which have accrued between the Customer and the Bank prior to the date of suspension or termination.

## **12 Applicable Terms**

When the Customer uses the BizAlert Service, the Customer must comply with these Conditions and other applicable Conditions including those governing the telecommunications equipment from which the Customer accesses the BizAlert Service.

## Appendix I Definitions

### Definitions

Unless otherwise defined in these Conditions, capitalised terms in these Conditions have the meanings set out below.

“**Account**” means any of the following:

- (a) a Savings Account;
- (b) a Current Account;
- (c) a Time Deposits Account;
- (d) an Investment Services Account;
- (e) a Securities Account;
- (f) a Wayfoong Statement Gold Account; or
- (g) any other account opened or to be opened by the Customer under the Master Account and provided for in the Conditions.

“**Account Package**” means a package designated by the Bank as an “Account Package” and allocated to a Customer. An “Account Package” allows the Customer to enjoy certain Features under, or in connection with, the Master Account.

“**Advice**” means any advice, report, message, record, confirmation, receipt, acknowledgement, notice or communication in respect of, or in relation to, one or more Accounts or of the products and services offered by the Bank, as from time to time issued or provided by the Bank in paper form.

“**Applicable Regulations**” means any law, regulation or court order, or any rule, direction, guideline, code, notice or restriction (whether or not having the force of law) issued by any authority, industry or self-regulatory body, whether in Hong Kong or elsewhere, which the Bank or the Customer is expected to comply with.

“**ATM**” means automated teller machine.

“**ATM Card**” means any card in relation to the Master Account issued to the Customer by the Bank which may be used to effect banking transactions by electronic means, whether at automated teller machines, point of sale terminals or such other mediums made available by, or which are acceptable to, the Bank.

“**Authorised Phone Banking Service User**” means the person who is authorised by the Customer or the Debit Accountholder to operate the Master Account or the Debit Account through telephone. References to “Authorised Phone Banking Service User” in these Conditions include references to such Customer and to such Debit Accountholder.

“**Authority**” means the authority given to the Bank by the Customer pursuant to Condition 1 of Section XI.

“**Auto-sweeping Service**” means the automatic fund transfer provided by the Bank to the Customer in accordance with the Conditions in Section XIII.

“**Bank**” means The Hongkong and Shanghai Banking Corporation Limited, including its successors and assigns, of 1 Queen’s Road Central, Hong Kong, a registered institution under the Securities and Futures Ordinance (Cap. 571) of the Laws of Hong Kong. The Bank is registered with the Securities and Futures Commission, Hong Kong with central entity number AAA523.

“**BizAlert Service**” means the service described in Section XVIII.

“**Business Card**” means a credit card issued by the Bank under Section XV.

“**Business Day**” means:

- (a) for the purposes of these Conditions, other than the Conditions in Sections IX, a day (other than a Saturday, Sunday or public holiday) on which banks are open for general business in Hong Kong; or
- (b) for the purposes of Section IX, a day (other than a Saturday, Sunday or public holiday) on which banks are open for business (including dealings in foreign exchange and Foreign Currency deposits) in:
  - (i) Hong Kong; or
  - (ii) if another location is stated or referenced, that location.

“**Business Debit Cards**” means any debit card issued by the Bank to the Customer, which may be used to debit funds from an Account.

“**Business Internet Banking**” or “**BIB**” means the HSBC Groups’ business Internet banking available through the Internet.

“**Business Internet Banking Customer Guide**” means the welcome letter, the Business Internet Banking brochure, the welcome guide, the security guide and all customer guides, manuals, help text or similar documents (whether in hard copy or in electronic form) issued by the Bank to the Customer at any time in any format for use with Business Internet Banking Services.

“**Business Internet Banking ID/User ID**” means the user short name for the Business Internet Banking Service designated (whether by the Bank, the Customer or the Customer Delegate as prescribed by the Bank) for use and/or used by the Customer Delegate.

“**Business Internet Banking Service**” means any banking product or service provided the Bank to the Customer using Business Internet Banking.

“**Business Integrated Account Opening Form**” means the account opening form completed and executed by or on behalf of the Customer for the purpose of opening the Master Account.

“**Cardholder**” means any person designated or authorised by the Customer to use the ATM Card, the Business Card, or both (where applicable).

“**Cash Account**” means the account (including but not limited to an Account) maintained with the Bank by the Customer, which has been designated for the purpose of debiting and crediting funds in connection with the Investment Services and which is subject to various restrictions advised by the Bank to the Customer.

“**CCASS**” means the clearing system operated by the Hong Kong Securities Clearing Company Limited.

“**Ceiling Amount**” means the maximum fund transfer amount, prescribed by the Bank in its absolute discretion.

“**Claim**” means actions, proceedings or claims of any Person, for any alleged Losses, whether based in contract, tort, implied or express warranty, strict liability, statute, permit, ordinance, regulation, common law or otherwise.

“**Code of Banking Practice**” means the Code of Banking Practice issued jointly by the HK Association of Banks and the DTC Association in February 2015, and endorsed by the Hong Kong Monetary Authority.

“**Companies Registry**” means the Companies Registry of Hong Kong.

“**Conditions**” means the conditions set out in Section I (General Conditions) to XVIII (BizAlert Service) of this document, as amended, and “**Condition**” means any one of them.

**"Confirmation"** means each separate Confirmation issued by the Bank to the Customer in respect of each Deposit Plus deposit pursuant to these Conditions, and "relevant Confirmation" means, in relation to each Deposit Plus deposit, the Confirmation issued by the Bank pursuant to Condition 2.3 of Section X in respect of such Deposit Plus deposit.

**"Consolidated Statement"** means a consolidated statement relating to the Services, the Accounts or such other information determined by the Bank, provided in paper or electronic form or in such other form, format, medium, means or manner determined by the Bank.

**"Conversion Rate"** means, in relation to each Deposit Plus deposit, the Relevant Rate specified as such in the relevant Confirmation.

**"Corporate Action"** means any entitlement attributable to a security and offered by the issuer thereof.

**"CPI Deposit"** means one of the types of investment which the Bank makes available, from time to time, as a Capital Protected Investment Deposit.

**"Credit Account"** means any account (including but not limited to an Account) maintained with the Bank, which is designated for the purposes of receiving a deposit of funds in relation to the Phone Banking Service.

**"Current Account"** means a current account maintained by the Customer with the Bank.

**"Customer"** means the holder of a Master Account. If there is more than one such holder, references to the "Customer" will be construed, as the context requires, to any, all or each of them.

**"Customer Delegate"** means any Primary User or Secondary User who is authorised to use the Business Internet Banking Service.

**"Customer Financial Information"** means, in respect of a Customer, its financial situation, investment experience and investment objectives.

**"Cut-off Time"** in Section IX, in relation to a SID Deposit Period, means the applicable time and date stated in the relevant confirmation or Appendix or, failing which, the Bank's close of business on the second Business Day prior to the relevant scheduled SID Deposit Date.

**"Cut-off Time"** in Section XIII, in relation to the Auto-sweeping Service, means such time of the day designated by the Bank in order to determine the Debit Balance.

**"Debit Account"** means, subject to the relevant Debit Accountholder having agreed to the terms of the relevant Conditions, any account (including but not limited to an Account) maintained with the Bank, which is designated for the purposes of making withdrawals of funds in relation to the Phone Banking Service.

**"Debit Accountholder"** means each holder of a Debit Account, including the Customer.

**"Debit Balance"** means the total amount overdrawn on the Current Account arising from use of any OD Protection or any unauthorised overdraft as at the Cut-off Time of each Business Day.

**"Demand Letter"** means a demand for repayment issued by the Bank to the Customer.

**"Deposit"** means each Deposit Plus deposit lodged with the Bank pursuant to these Conditions, the principal amount of which is set out in the relevant Confirmation.

**"Deposit Currency"** means, in relation to each Deposit Plus deposit, the currency in which such Deposit Plus deposit is denominated when received by the Bank, as set out in the relevant Confirmation.

**"Deposit Date"** means, in relation to each Deposit Plus deposit, the date on which such Deposit Plus deposit is made with the Bank in accordance with these Conditions, such date being a Business Day, and as set out in the relevant Confirmation.

**"Deposit Plus"** means the deposits referred to in Section X.

**"Digital Certificate"** means a security certificate that is issued to each Customer Delegate by the Bank or a member of the HSBC Group, to be used in conjunction with a Password to enable the Customer to access the hsbc.com Site, Business Internet Banking, or to effect Instructions (as applicable).

**"Direct Advice"** means an Advice relating to such types of transactions as may be specified by the Bank from time to time, issued or provided by the Bank in electronic form under the Service, including without limitation by facsimile.

**"Direct Banking Service"** means such support services made available to the Customer in connection with the Business Internet Banking Service.

**"Disposal Account"** means the account (including but not limited to an Account) maintained with the Bank nominated by the Customer for the purpose of holding funds which are not accepted as a SID Deposit or which are withdrawn from a SID Deposit.

**"Drop & Go Counter Service"** means the service described in Condition 16 of Section I.

**"eAddress"** means the email address or facsimile number that the Customer has last registered with the Bank at the time the Bank sends an eCorrespondence to the Customer, whether registered under the Service or in connection with other accounts, products or services offered by the Bank.

**"eAdvice"** means an Advice issued or provided by the Bank in electronic form under a Service, including a Direct Advice.

**"Early Redemption"** has the meaning given to it in Condition 3.2 of Sub-Section (A) of Section IX.

**"eCorrespondence"** means an eStatement and/or an eAdvice.

**"Error"** means:

- (a) an error, discrepancy or unauthorised debit; or
- (b) a transaction or entry arising from a forgery, forged signature, fraud, lack of authority or negligence of the Customer or any other person.

**"eStatement"** means a Statement issued or provided by the Bank in electronic form under the Service.

**"Facility Limit"** means the limit for a Facility referred to in Section XVI.

**"Features"** means the Services, rewards, benefits, privileges and the like that a Customer is able to enjoy under, or in connection with, an Account Package.

**"Financial Product"** means, any securities, futures contracts or leveraged foreign exchange contracts as defined under the SFO. For the purposes of this definition, "leveraged foreign exchange contracts" mean those traded by persons licensed for a Type 3 regulated activity under the relevant regulations in Hong Kong.

**"Final Exchange Rate"** means, in relation to each Deposit Plus deposit, the Relevant Rate as quoted by the Bank in good faith, as of approximately the Fixing Time on the Fixing Date.

**"Financial Crime Risk Management Activity"** has the meaning given to it in Condition 19.1 of Section I.

**"Fixing Date"** means:

- (a) in Section IX, in relation to a SID Deposit, the date specified as such in the relevant Appendix of SID Deposit; and
- (b) in Section X, in relation of a Deposit Plus deposit, the date specified as such in the relevant Confirmation.

**"Fixing Time"** means 2:00 pm Hong Kong time.

**"Foreign Currency"** means a currency other than HKD.

**"HKD or Hong Kong Dollar"** means the lawful currency for the time being in Hong Kong.

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

“**HSBC Group**” means HSBC Holdings plc and its subsidiary and associate undertaking, or any of their branches.

“**hsbc.com Site**” means the HSBC portal through which the Customer accesses Business Internet Banking.

“**Information**” means any information relating to any Securities, any product or any other investment made available to a Customer or Customer Delegate in connection with the Business Internet Banking Service.

“**Information Provider**” means a provider or author of any Information or Report.

“**Institution**” means any of the following:

- (a) any member of the HSBC Group (other than the Bank); and
- (b) any third party financial institution which the Customer has notified to the Bank should be treated as an Institution for the purpose of these Conditions.

“**Instruction(s)**” means each and any Instruction given by any means or mediums as may be acceptable to the Bank from time to time and may include by telephone, via the automated teller machines, via point of sale terminals, via Business Internet Banking, by any other electronic means or mediums and any other means or mediums as may be acceptable to the Bank from time to time.

“**Interest Period**” means, in relation to each Deposit Plus deposit, the period from and including the Deposit Date to but excluding the Interest Period End Date relating to such Deposit Plus deposit.

“**Interest Period End Date**” means, in relation to each Deposit Plus deposit, the Maturity Date as specified in the relevant Confirmation (and for the purposes of this definition, no adjustment to the Maturity Date as contemplated in the definition of “Maturity Date” set out below will be made).

“**Interest Year**” means the number of days in a year for the purpose of calculating the accrual of interest determined by the Bank by reference to the current market practice in Hong Kong in respect of the Deposit Currency.

“**Investment Services**” means the investment and custodian services to be provided under the Investment Services Account.

“**Investment Services Account**” means the account described in Section XI.

“**Item**” means a cheque or other monetary instrument.

“**Joint Signatory**” means a Person which maintains an Account or utilise a Service jointly with another Person.

“**Linked Currency**” means, in relation to each Deposit Plus deposit, such currency other than the Deposit Currency selected by the Customer and agreed by the Bank in the relevant Confirmation.

“**Loan Ratio Table**” means the table made available by the Bank in connection with the Secured Credit described in Section VII.

“**Loss**” means any loss, damage, cost or expense of whatever kind or nature, whether based in contract, tort, implied or express warranty, strict liability, statute, permit, ordinance, regulation, common law or otherwise.

“**MPF**” means the Mandatory Provident Fund of Hong Kong.

“**MPF Administrator**” means HSBC Life (International) Limited or such other person as may be appointed to administer the MPF scheme concerned.

“**Mace**” means the unit weight of gold for transactions under these Conditions.

“**Master Account**” means the “Business Integrated Account” maintained by the Customer with the Bank including, where the context requires, a reference to any and each of the Accounts opened under the Master Account.

“**Maturity Date**” means, in relation to each Deposit Plus deposit, the date of maturity of such Deposit as agreed by the Bank and the Customer and set out in the relevant Confirmation, or if such date is not a Business Day the next following date which is a Business Day, or otherwise as determined in accordance with these Conditions.

“**OD Protection**” has the meaning set out in Condition 6 of Section III.

“**Online**” means by way of Internet access to Business Internet Banking through the hsbc.com Site.

“**Participation Rate**” means the rate referred to in Condition 6 of Section IX (Sub-Section (A)).

“**Password**” means:

- (a) subject to paragraph (b), any confidential password, phrase, code or number, or any other identification whether issued to the Customer or any Customer Delegate by the Bank or adopted by the Customer or any Customer Delegate (including any Business Internet Banking ID/User ID) which may be used to access the hsbc.com site and/or Business Internet Banking or the Business Internet Banking Service or to effect Instructions; and
- (b) in Section XVII, the password or personal identification number designated by either the Customer or the Bank (as the case may be) from time to time for accessing the eCorrespondence sent by email to the Customer's eAddress.

“**Person**” includes, where the context requires, any public body and any body of persons, corporate or unincorporated.

“**Phone Banking Service**” means the services provided by the Bank to the Customer referred to in Condition 15 of Section I, which may be utilised by the Authorised Phone Banking Service User through the telephone.

“**PIN**” means the personal identification number, the Customer's voice print or other biometric credential for the time being established for a Customer or Authorised Phone Banking Service User for the purpose of identifying that Customer or Authorised Phone Banking Service User in giving instructions to the Bank by telephone or for use with the ATM Card. A “PIN” includes any code number assigned to the Customer or Authorised Phone Banking Service User by the Bank, any number subscribed by the Customer or Authorised Phone Banking Service User and the Customer's voice print generated by the Bank's collecting and analysing the Customer's voice or other biometric credential for that purpose.

“**Prescribed Sum**” means the fixed sum required for the purpose of repaying the Debit Balance in full and which must not exceed the Ceiling Amount.

“**Primary User**” means the Customer Delegate entrusted with responsibility for the initial Business Internet Banking portfolio registration and the Customer's on-going use of Business Internet Banking as described in the Business Internet Banking Customer Guide.

“**Redemption Amount**” means the sum representing the original principal amount of a SID Deposit increased (or reduced, as applicable) in accordance with the relevant Supplemental Conditions or the relevant Appendix of SID Deposit.

“**Relevant Rate**” means:

- (a) in respect of a Table 1 Currency Pair, the amount of the relevant Linked Currency for one unit of the relevant Deposit Currency; and
- (b) in respect of a Table 2 Currency Pair, the amount of the relevant Deposit Currency for one unit of the relevant Linked Currency,

where:

“**Table 1 Currency Pairs**” means the following Deposit Currency for Linked Currency pairs (and a “Table 1 Currency Pair” means such a pair)

“**Table 2 Currency Pairs**” means the following Deposit Currency for Linked Currency pairs (and a “Table 2 Currency Pair” means such a pair)

Deposit Currency	Linked Currency	Deposit Currency	Linked Currency
AUD	USD	USD	AUD
NZD	USD	USD	NZD
EUR	USD	USD	EUR
GBP	USD	USD	GBP
USD	CHF	CHF	USD
USD	JPY	JPY	USD
USD	CAD	CAD	USD
AUD	HKD	HKD	AUD
NZD	HKD	HKD	NZD
CAD	HKD	HKD	CAD
GBP	HKD	HKD	GBP
EUR	HKD	HKD	EUR
JPY	HKD	HKD	JPY
CHF	HKD	HKD	CHF

#### Currency Code

AUD – Australian Dollar	EUR – Euro	HKD – Hong Kong Dollar
NZD – New Zealand Dollar	CAD – Canadian Dollar	GBP – Pound Sterling
JPY – Japanese Yen	USD – US Dollar	CHF – Swiss Franc

“**Remittance Statement**” means a statement showing the relevant income and amount of MPF contribution per employee (other than a casual employee in an industry scheme whose contribution is made on the next Business Day immediately after the relevant income is paid).

“**Renminbi**” means the lawful currency of the People’s Republic of China.

“**Renminbi Savings Account**” means Renminbi Trade Settlement Savings Account or Renminbi Savings Account (for Designated Business Customer) opened or to be opened by the Customer under the Master Account and provided for in the above Conditions.

“**Report**” means any report, analysis or recommendation relating to any Securities, any product or any other investment, made available to a Customer or Customer Delegate in connection with the Business Internet Banking Service.

“**Reserved Amount**” means the principal amount of the funds placed by the Customer with the Bank which subject to the terms hereof are intended to be placed as a SID Deposit on the relevant SID Deposit Date.

“**Return**” means the sum representing the return on a SID Deposit calculated and payable in accordance with the relevant Supplemental Conditions or the relevant Appendix.

“**RTGS**” means interbank funds transfer under Real Time Gross Settlement.

“**Savings Account**” means a savings account maintained by the Customer with the Bank.

“**Secondary User**” means a Customer Delegate appointed by the Primary User.

“**Secured Assets**” has the meaning set out in Condition 3.2 of Section VII.

“**Secured Credit**” means the facility described in Section VII.

“**Secured Indebtedness**” has the meaning set out in Condition 3.2 of Section VII.

“**Securities**” means such stocks, shares, warrants, bonds, notes, derivative instruments, certificates of deposit, collective investment schemes and other interest commonly known as securities held or to be held in the nominee name of the Bank, or the Bank’s nominee which the Bank will from time to time allow to be sold, purchased, transferred or deposited pursuant to these Conditions provided that the Securities must be beneficially owned by the Customer or jointly by each of the persons making up the Customer where there is more than one.

“**Securities Account**” means any account maintained by the Customer under the Master Account for the safe-keeping or deposit of Securities.

“**Security Code**” means a one-time password generated by the Security Device for use by a Customer Delegate to access the hsbc.com Site, Business Internet Banking, or certain Business Internet Banking Service.

“**Security Device**” means an electronic device designated by the Bank for use by each Customer Delegate to generate the Security Code.

“**Services**” means any one or more of the services or products made available to the Customer by the Bank at any time and from time to time including without limitation, credit facilities and the Account services, and includes the services set out in Condition 2 of Section XI.

“**Service**” in Section XVII means the eCorrespondence service provided by the Bank under which eStatements and eAdvice are provided.

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

“**SID Deposit**” means one of the types of investment which the Bank makes available from time to time as a Structured Investment Deposit in accordance with the relevant terms hereof (including without limitation a CPI Deposit).

“**SID Deposit Date**”, in relation to a SID Deposit and a SID Deposit Period, means the Business Day which is the first day of such SID Deposit Period as set out in the relevant confirmation, subject to the provisions hereof.

“**SID Deposit Period**” means the period of a SID Deposit being the period from, and including, its SID Deposit Date to, but excluding, its SID Maturity Date.

“**SID Maturity Date**”, in relation to a SID Deposit and a SID Deposit Period, means the date set out as such in the relevant confirmation (subject to the provisions hereof) or, if such date is not a Business Day, the next following date which is a Business Day, and on which, subject to the terms applicable thereto, the SID Deposit is repayable together with any Return or any Redemption Amount in respect of the SID Deposit is payable.

“**SID Conditions**” means the Structured Investment Deposit Conditions of the Bank from time to time.

“**SMS**” means short message service.

“**Statement**” means any statement, report, message, record, confirmation, receipt, acknowledgement, notice or communication in respect of or in relation to one or more Account(s) or of the products and services offered by the Bank, as from time to time issued or provided by the Bank in paper form.

**“Supplemental Conditions”** means the supplemental Conditions for Index-Linked CPI Deposits or Currency-Linked CPI Deposits (as the case may be) as set out in Section IX.

**“Tax”** means any direct or indirect tax, levy, impost, duty, or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same) other than tax on the Bank’s net income by reason of being organised under the laws of or having some other connection (other than through providing the services under these Conditions) with the jurisdiction imposing the tax.

**“Telecommunications equipment”** will include references to facsimile machines, mobile telephones, laptop computers, desktop personal computers, pocket personal computers, personal digital assistants and any other electronic media and/or equipment used to receive the Service as the case may be.

**“Telephone Instructions”** means instructions of the Customer and/or the Debit Accountholder given by the Authorised Phone Banking Service User by telephone.

**“Time Deposit”** means a deposit with a fixed maturity date placed by the Customer with the Bank.

**“Time Deposits Account”** means an account into which a Time Deposit is deposited.

**“Transfer Time”** means such time of the day designated by the Bank from time to time to effect the transfer of the Prescribed Sum from the Savings Account to the Current Account.

**“TT”** means telegraphic transfer.

**“US Dollar”** means the lawful currency of the United States of America.

**“US Dollar Clearing House Rules”** means the Clearing House Rules for US Dollar transactions issued by the Hong Kong Interbank Clearing Limited, for the time being in force.

**“USD Operating Procedures”** means the operating procedures referred to in the US Dollar Clearing House Rules, for the time being in force.

**“Wayfoong Statement Gold Account”** means the account maintained for the purposes of Section VIII.

## Appendix II Notice relating to the Personal Data (Privacy) Ordinance (the “Ordinance”)

The Hongkong and Shanghai Banking Corporation Limited (“we”, “us”, “our”, including our successors and assigns)

### Collection of Data

- (a) We may collect the data of customers and other individuals in connection with the purposes set out in this Notice. These customers and other individuals may include the following or any of them (collectively “you”, “your”):
- applicants for banking or financial services;
  - persons giving or proposing to give guarantees or security for obligations owed to us;
  - persons linked to a customer or an applicant that is not an individual, including the beneficial owners and officers of that customer or applicant, or in the case of a trust, including the trustees, settlors, protectors and beneficiaries of the trust; and
  - other persons who are relevant to a customer’s relationship with us.
- (b) If the data requested by us is not provided, we may be unable to provide (or continue to provide) products or services to you or to the relevant customer or applicant linked to you.
- (c) Data may be:
- (i) collected from you directly, from someone acting on your behalf or from another source; and
  - (ii) combined with other data available to members of the HSBC Group (“**HSBC Group**” and any “**member of the HSBC Group**” means HSBC Holdings plc and/or its affiliates, subsidiaries, associated entities and any of their branches and offices).

### Use of Data

- (d) We will use data for the following purposes or any of them (which may vary depending on the nature of your relationship with us):
- (i) considering and processing applications for products and services and the daily operation of products and services (including credit facilities provided to you or the relevant customer linked to you);
  - (ii) conducting credit checks whenever appropriate (including upon an application for consumer credit (including mortgage loans) and when we review credit which normally takes place one or more times each year);
  - (iii) creating and maintaining our credit and risk related models;
  - (iv) assisting other financial institutions to conduct credit checks and collect debts;
  - (v) ensuring your ongoing credit worthiness and good standing;
  - (vi) designing financial products and services (including insurance, credit card, securities, commodities, investment, banking and related products and services) for your use;
  - (vii) marketing products, services and other subjects as described in paragraph (f) below;
  - (viii) determining the amount of indebtedness owed to or by you;
  - (ix) exercising our rights under contracts with you, including collecting amounts outstanding from you;
  - (x) meeting our obligations, requirements or arrangements or those of any member of the HSBC Group, whether compulsory or voluntary, to comply with or in connection with:
    - (1) any law, regulation, judgment, court order, voluntary code, sanctions regime, within or outside the Hong Kong Special Administrative Region (“**Hong Kong**”) existing currently and in the future (“**Laws**”) (e.g. the Inland Revenue Ordinance and its provisions including those concerning automatic exchange of financial account information);
    - (2) any guidelines, guidance or requests given or issued by any legal, regulatory, governmental, tax, law enforcement or other authorities, or self-regulatory or industry bodies or associations of financial services providers within or outside Hong Kong existing currently and in the future (e.g. guidelines, guidance or requests given or issued by the Inland Revenue Department including those concerning automatic exchange of financial account information) and any international guidance, internal policies or procedures;
    - (3) any present or future contractual or other commitment with local or foreign legal, regulatory, judicial, administrative, public or law enforcement body, or governmental, tax, revenue, monetary, securities or futures exchange, court, central bank or other authorities, or self-regulatory or industry bodies or associations of financial service providers or any of their agents with jurisdiction over all or any part of the HSBC Group (together the “**Authorities**” and each an “**Authority**”) that is assumed by, imposed on or applicable to us or any member of the HSBC Group; or
    - (4) any agreement or treaty between Authorities;
  - (xi) complying with any obligations, requirements, policies, procedures, measures or arrangements for sharing data and information within the HSBC Group and/or any other use of data and information in accordance with any programmes for compliance with sanctions or prevention or detection of money laundering, terrorist financing or other unlawful activities;
  - (xii) conducting any action to meet our obligations or those of any member of the HSBC Group to comply with Laws or international guidance or regulatory requests relating to or in connection with the detection, investigation and prevention of money laundering, terrorist financing, bribery, corruption, tax evasion, fraud, evasion of economic or trade sanctions and/or any acts or attempts to circumvent or violate any Laws relating to these matters;
  - (xiii) meeting our obligations or those of any member of the HSBC Group to comply with any demand or request from the Authorities;
  - (xiv) enabling actual or proposed assignee(s) of all or any part of our business and/or assets, or participant(s) or sub-participant(s) of our rights in respect of you to evaluate the transaction intended to be the subject of the assignment, participation or sub-participation and enabling the actual assignee(s) to use your data in the operation of the business or rights assigned; and
  - (xv) any other purposes relating to the purposes listed above.

### Disclosure of Data

- (e) Data held by us or a member of the HSBC Group will be kept confidential but we or a member of the HSBC Group may provide data to the following parties or any of them (whether within or outside Hong Kong) for the purposes set out in paragraph (d) above:
- (i) any agents, contractors, sub-contractors or associates of the HSBC Group (including their employees, officers, agents, contractors, service providers and professional advisers);
  - (ii) any third party service providers who provide services to us or any member of the HSBC Group in connection with the operation or maintenance of our business (including their employees and officers);
  - (iii) any Authorities;

- (iv) any persons under a duty of confidentiality to us or a member of the HSBC Group which have undertaken to keep such data confidential;
- (v) the drawee bank providing a copy of a paid cheque (which may contain data about the payee) to the drawer;
- (vi) any persons acting on your behalf whose data are provided, payment recipients, beneficiaries, account nominees, intermediary, correspondent and agent banks, clearing houses, clearing or settlement systems, market counterparties, upstream withholding agents, swap or trade repositories, stock exchanges, companies in which you have an interest in securities (where such securities are held by us or any member of the HSBC Group) or any persons making any payment into a customer's account;
- (vii) credit reference agencies, and, in the event of default, to debt collection agencies;
- (viii) any persons to whom we are or any member of the HSBC Group is under an obligation or required or expected to make disclosure for the purposes set out in, or in connection with, paragraph (d)(x), (d)(xi) or (d)(xii) above;
- (ix) any actual or proposed assignee(s) of ours or participant(s) or sub-participant(s) or transferee(s) of our rights in respect of you;
- (x) any persons giving or proposing to give a guarantee or security to guarantee or secure your obligations to us; and
- (xi)
  - (1) any member of the HSBC Group;
  - (2) third party financial institutions, insurers, credit card companies, securities and investment services providers;
  - (3) third party reward, loyalty, co-branding and privileges programme providers;
  - (4) co-branding partners of ours or any member of the HSBC Group (the names of such co-branding partners will be provided during the application process for the relevant products and services, as the case may be);
  - (5) charitable or non-profit making organisations; and
  - (6) external service providers that we or any member of the HSBC Group engage(s) for the purposes set out in paragraph (d)(vii) above.

Such data may be transferred in and to a place outside Hong Kong.

#### **Provision of Data to Credit Reference Agencies (CRA) and Debt Collection Agencies**

- A. We may provide the following data relating to you (whether in sole name or joint names with others) to a CRA:
- i. full name;
  - ii. capacity in respect of each mortgage (as borrower, mortgagor or guarantor);
  - iii. Hong Kong Identity Card Number or travel document number or certificate of incorporation number;
  - iv. date of birth or date of incorporation;
  - v. correspondence address;
  - vi. mortgage account number in respect of each mortgage;
  - vii. type of the facility in respect of each mortgage;
  - viii. mortgage account status in respect of each mortgage (e.g. active, closed, write-off); and
  - ix. if any, mortgage account closed date in respect of each mortgage.

The CRA will use the above data for the purposes of compiling a count of the number of mortgages from time to time held by you (as borrower, mortgagor or guarantor, whether in sole name or joint names with others) for sharing in the consumer credit database of the CRA by credit providers.

- B. You can instruct us to make a request to the relevant CRA to delete from its database any account data relating to any credit that has been terminated by full repayment provided that there has not been, within five (5) years immediately before such termination, a default in payment under the credit for a period in excess of sixty (60) days according to our records.
- C. If there is any default in payment, unless the amount in default is fully repaid or written off (other than due to bankruptcy order) before the expiry of sixty (60) days from the date of default, your account repayment data may be retained by the CRA until the expiry of five (5) years from the date of final settlement of the amount in default.
- D. In the event of any amount being written off due to a bankruptcy order being made against you, the CRA may retain your account repayment data until the earlier of (i) the expiry of five (5) years from the date of final settlement of the amount in default, or (ii) the expiry of five (5) years from the date of your discharge from bankruptcy as notified to the CRA by you with evidence.
- E. For the purposes of paragraphs C and D above, account repayment data are the amount last due, amount of payment made during the last reporting period, remaining available credit or outstanding balance and default data (being amount past due and number of days past due, date of settlement of amount past due, and date of final settlement of amount in material default (that is, default in payment for a period in excess of sixty (60) days) (if any)).

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

- (f) Where you are a customer, we intend to use your data in direct marketing and we require your consent (which includes an indication of no objection) for that purpose. Please note that:
- (i) your name, contact details, products and other service portfolio information, transaction pattern and behavior, financial background and demographic data held by us from time to time may be used by us in direct marketing;
  - (ii) the following classes of products, services and subjects may be marketed:
    - (1) financial, insurance, credit card, banking and related products and services;
    - (2) reward, loyalty, co-branding or privileges programmes and related products and services;
    - (3) products and services offered by our co-branding partners (the names of such co-branding partners will be provided during the application for the relevant products and services, as the case may be); and
    - (4) donations and contributions for charitable and/or non-profit making purposes;
  - (iii) the above products, services and subjects may be provided by or (in the case of donations and contributions) solicited by us and/or:
    - (1) any member of the HSBC Group;



- (2) third party financial institutions, insurers, credit card companies, securities and investment services providers;
  - (3) third party reward, loyalty, co-branding or privileges programme providers;
  - (4) co-branding partners of ours or any member of the HSBC Group (the names of such co-branding partners will be provided during the application of the relevant products and services, as the case may be); and
  - (5) charitable or non-profit making organisations;
- (iv) in addition to marketing the above products, services and subjects ourselves, we may provide the data described in paragraph (f)(i) above to all or any of the persons described in paragraph (f)(iii) above for use by them in marketing those products, services and subjects, and we require your written consent (which includes an indication of no objection) for that purpose; and
- (v) we may receive money or other property in return for providing the data to the other persons in paragraph (f)(iv) above and, when requesting your consent or no objection as described in paragraph (f)(iv) above, we will inform you if we will receive any money or other property in return for providing the data to the other persons.

**If you do not wish us to use or provide to other persons your data for use in direct marketing as described above, you may exercise your opt-out right by notifying us.**

#### **Provision of Another Person's Data**

- (g) Where you provide to us data about another person, you should give to that person a copy of this Notice and, in particular, tell him/her how we may use his/her data.

#### **Data Access Requests**

- (h) You have the right:
- (i) to check whether we hold data about you and to access such data;
  - (ii) to require us to correct any data relating to you which is inaccurate;
  - (iii) to ascertain our policies and practices in relation to data and to be informed of the kind of data held by us; and
  - (iv) in relation to consumer credit, to be informed on request which items of data are routinely disclosed to credit reference agencies or debt collection agencies, and be provided with further information to enable the making of an access and correction request to the relevant credit reference agency or debt collection agency.
- (i) In accordance with the provisions of the Ordinance, we have the right to charge a reasonable fee for the processing of any data access request.
- (j) You should send requests for access to data or correction of data or for information regarding policies and practices and kinds of data held to:

The Data Protection Officer  
 The Hongkong and Shanghai Banking Corporation Limited  
 PO Box 72677  
 Kowloon Central Post Office  
 Hong Kong  
 E-mail: [dfv.enquiry@hsbc.com.hk](mailto:dfv.enquiry@hsbc.com.hk)

- (k) We may have obtained a credit report on you from a credit reference agency in considering any application for credit. In the event you wish to access the credit report, we will advise the contact details of the relevant credit reference agency.
- (l) Nothing in this Notice shall limit your rights as a data subject under the Ordinance.

Please contact us if you have any queries about this Notice.

## Appendix III Customer information other than personal data

The following terms supplement Condition 19 of Section I (General Conditions) and relate to the use, storage, processing, transfer and disclosure of Customer Information other than Personal Data. Terms used in this Appendix III have the meanings given to them in Condition 19 of Section I (General Conditions).

### 1 Use of Customer Information other than Personal Data

The purposes for which Customer Information (other than Personal Data) may be used are as follows:

- 1.1. considering applications for Services;
- 1.2. approving, managing, administering or effecting Services or any transaction that the Customer requests or authorises;
- 1.3. meeting Compliance Obligations;
- 1.4. conducting Financial Crime Risk Management Activity;
- 1.5. collecting any amounts due from the Customer and from those providing guarantee or security for the Customer's obligations;
- 1.6. conducting credit checks and obtaining or providing credit references;
- 1.7. enforcing or defending a member of the HSBC Group's or the Bank's rights;
- 1.8. meeting the Bank's internal operational requirements or that of the HSBC Group (including credit and risk management, system or product development and planning, insurance, audit and administrative purposes);
- 1.9. creating and maintaining the Bank's credit and risk related models;
- 1.10. ensuring the Customer's ongoing credit worthiness and of those providing guarantee or security for the Customer's obligations;
- 1.11. marketing, designing, improving or promoting Services or related products to the Customer (and to Connected Persons to the extent permissible by Laws) and conducting market research;
- 1.12. determining the amount of indebtedness owed to or by the Customer and by those providing a guarantee or security for the Customer's obligations;
- 1.13. complying with any obligations, requirements or arrangements that the Bank or any of the Bank's branches or any member of the HSBC Group is expected to comply with, according to:
  - (a) any laws or compliance obligations;
  - (b) any codes, internal guidelines, guidelines or guidance given or issued by any Authorities;
  - (c) any present or future contractual or other commitment with any Authorities with jurisdiction over all or any part of the HSBC Group; or
  - (d) any agreement or treaty between Authorities;
- 1.14. complying with any obligations, requirements, policies, procedures, measures or arrangements for sharing data and information within the HSBC Group or any other use of data and information in accordance with any programmes for compliance with sanctions or prevention or detection of Financial Crime;
- 1.15. meeting any obligations, demand or request from Authorities;
- 1.16. enabling the Bank's actual or proposed assignee, or participant or sub-participant of the Bank's rights in respect of the Customer to evaluate the transaction intended to be the subject of the assignment, participation or sub-participation;
- 1.17. maintaining the Bank or HSBC Group's overall relationship with the Customer; and
- 1.18. any purposes relating or incidental to any of the above.

### 2 Sharing and Transfer of Customer Information other than Personal Data

The Bank may (as necessary and appropriate for all or any of the Purposes) transfer, share, exchange and disclose any of Customer Information (other than Personal Data) to all such persons as the Bank may consider necessary (wherever located) including:

- 2.1 any member of the HSBC Group;
- 2.2 any agents, contractors, sub-contractors, service providers or associates of the HSBC Group (including their employees, directors and officers, agents, contractors, service providers and professional advisers);
- 2.3 any Authorities;
- 2.4 anyone acting on behalf of the Customer, payment recipients, beneficiaries, account nominees, intermediary, correspondent and agent banks, clearing houses, clearing or settlement systems, market counterparties, upstream withholding agents, swap or trade repositories, stock exchanges, companies in which the Customer has an interest in securities (where such securities are held by the Bank or any member of the HSBC Group for the Customer);
- 2.5 any party acquiring an interest in or assuming risk in or in connection with the Services;
- 2.6 other financial institutions, credit reference agencies or credit bureaus, for obtaining or providing credit references; and
- 2.7 any party involved in any business transfer, disposal, merger or acquisition by the Bank or any member of the HSBC Group.