

The Hongkong and Shanghai Banking Corporation Limited

BUSINESS INVESTMENT ACCOUNT TERMS AND CONDITIONS

1. Definitions

'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.

'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.

'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. The Bank is registered with the Securities and Futures Commission, Hong Kong, with central entity number AAA523.

'Business Investment Account' means the account(s) maintained with the Bank by the Customer for the purpose of holding Securities.

'Cash Account' means the account(s) maintained with the Bank by the Customer which has been designated pursuant to Clause 15 below for the purpose of debiting and crediting funds in connection with the Services and which shall be subject to various restrictions as advised by the Bank to the Customer from time to time.

'CCASS' means the clearing system operated by the Hong Kong Securities Clearing Company Limited.

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

'Customer' means the person(s) (and/or where there is more than one, all and each of them) including a sole proprietor or the authorised person of the limited company or the partnership or other entity who has/have opened a Business Investment Account.

'Customer Authority' means the authority given to the Bank by the Customer pursuant to Clause 2 below.

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

'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 fax, by telex, by telephone, via the automated teller machines, via point of sale terminals, by or via any other electronic means or mediums and/or by any other means or mediums as may be acceptable to the Bank from time to time.

'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.

'Market Requirement' means the constitution, by-law, rule, regulation, custom, procedure, usage, ruling and interpretation of (i) any relevant exchange or market (whether in or outside Hong Kong) where transactions are executed, or (ii) any clearing house, custodian or depository of the relevant exchange or market, to which the Bank or the Customer is subject or with which the Bank or the Customer is expected to comply from time to time.

'Securities' means such stocks, shares, warrants, bonds, notes, derivative investment, certificates of deposits, collective investment schemes and other interests commonly known as securities held or to be held in the nominee name of the Bank, or the Bank's nominee which the Bank shall from time to time allow to be sold, purchased, transferred or deposited pursuant to the Terms and 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.

'Services' means the investment and custodian services provided pursuant to these Terms and Conditions and include the services set out in Clause 3.

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

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

'Terms and Conditions' means these terms and conditions as amended from time to time.

'US' means the United States of America.

'US Citizen' means:

- (a) an individual born in the US;
- (b) an individual whose parent is a US Citizen;
- (c) a former alien who has been naturalised as a US Citizen;
- (d) an individual born in Puerto Rico;
- (e) an individual born in Guam; or
- (f) an individual born in the U.S. Virgin Islands.

'US Market Data Provider' means the New York Stock Exchange and any other US-registered national securities exchanges and national securities associations which may make available sale information, quotation information or any other market information or data relating to any product listed or traded in the US to the Bank from time to time.

'US Person' means:

- (a) a US Citizen or resident of the US;
- (b) a partnership created or organised in the US or under the law of the US or of any state, or the District of Columbia;
- (c) a corporation created or organised in the US or under the law of the US or of any state, or the District of Columbia;
- (d) any estate or trust other than a foreign estate or foreign trust (see Internal Revenue Code section 7701(a)(31) for the definition of a foreign estate and a foreign trust);
- (e) a person that meets the substantial presence test; or
- (f) any other person that is not a foreign person.

2. Customer Authority

The Bank is hereby appointed and authorised by the Customer on the terms set out below, as may be amended from time to time, to provide the Services. This Customer Authority may be revoked at any time by the Customer pursuant to the terms of Clause 17 below.

The Appendix applies specifically to the trading of any product listed or traded in the US. In the event of any inconsistency between any of the provisions of these Terms and Conditions and those of the Appendix in relation to the trading of any product listed or traded in the US, the Appendix shall prevail.

3. Investment Services

- 3.1 In relation to the purchase and/or sale of any Securities, Financial Product or other investment handled by the Bank from time to time under these Terms and Conditions (referred to as a **"product"** for the purposes of these Terms and Conditions):
- (a) the Bank may solicit the sale of or recommend a product to the Customer in accordance with Clause 3.5(a) or (c); and/or
 - (b) the Customer may enter into the transaction without or inconsistent with any solicitation or recommendation from the Bank in accordance with Clause 3.5(d).
- 3.2 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 Clause 3.5(a) and (c).
- 3.3 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 of the sale or recommendation of any product or service.
- 3.4 Unless otherwise specified in these terms or in 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:
 - (i) offer or advise on alternatives and variants to any product the Bank solicits the sale of or recommends; or
 - (ii) 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.
- 3.5 (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 financial situation, investment experience and investment objectives ("**Customer Financial Information**").
- (b) No other provision of these Terms and Conditions or any other document the Bank may ask the Customer to sign and no statement the Bank may ask the Customer to make derogates from Clause 3.5(a).
- (c) If the Bank solicits the sale of or recommends any investment product not being a Financial Product (other than 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 its sole responsibility to assess and to satisfy itself that the transaction is appropriate for it. Any limitation of the Bank's obligation or duty in this Clause 3.5(d) is subject to compliance with all applicable law, regulation or regulatory guidelines or circulars.
- (e) Except as set out in Clause 11.4, the Bank is not liable for any loss (including indirect or consequential loss), cost or damage of any kind incurred or suffered by it or any other person with respect to or arising out of any transactions which fall under Clause 3.5(d).
- 3.6 By entering into a transaction with the Bank to buy or sell a product, the Customer confirms that any information it provides to the Bank (including the Customer Financial Information) is complete, accurate and up-to-date. When the Bank assesses suitability, it will rely on the Customer's confirmation.
- 3.7 Before the Customer enters into a transaction with the Bank to buy and/or sell a product, the Customer should:
- (a) consider its own circumstances and understand the product features, terms and risks, and it should contact the Bank if it has any questions on the product;
 - (b) note that the Bank has no ongoing responsibility to ensure that a product it has solicited the sale of or recommended to the Customer remains suitable for it;
 - (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 its investments where necessary.
- 3.8 Clauses 3.5 to 3.7 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.
- 3.9 Provision and use of the Services are subject to Applicable Regulations and Market Requirements. In this connection:
- (a) In the event of any inconsistency between these Terms and Conditions and any Applicable Regulation or Market Requirement, that Applicable Regulation or Market Requirement shall prevail.
 - (b) The Customer is bound by Applicable Regulations and Market Requirements and any action or step taken by the Bank to prevent or remedy a breach of Applicable Regulations or Market Requirements, as if the Applicable Regulations and Market Requirements are expressly set out in these Terms and Conditions.
- 3.10 Without limiting or reducing the effect of Clause 20, the Customer authorises the Bank to disclose any information the Bank has relating to the Customer, the transactions, products or Services under these Terms and Conditions:
- (a) To any other person appointed by the Bank as its nominee, agent or delegate to perform any of the Services for the Bank (whether or not a member of the HSBC Group and whether local or overseas); or
 - (b) Where disclosure is:
 - (i) required or useful in the performance of any of the Services;
 - (ii) in the Bank's interests;
 - (iii) required or requested by any Applicable Regulation or Market Requirement;
 - (iv) required by any Authority or body which has jurisdiction over the Bank, its nominee, agent or delegate or over the Customer;
 - (v) required by any relevant exchange, clearing house or share registrar (whether local or overseas) or the US Market Data Provider; or
 - (vi) pursuant to any audit requirements or any internal policies of the HSBC Group relating to the prevention of criminal activities or the provision of services to any persons that may be subject to any sanctions regime.
- 3.11 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 in accordance with the Customer's Instructions;
 - (b) to sell or otherwise dispose of Securities and to deal with the proceeds 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.

- 3.12 For the avoidance of doubt and without limiting or reducing the Bank's rights under other provisions of these Terms and Conditions, the Bank has the right without giving reason to refuse to provide or to cease to provide any Services with respect to any product listed or traded in the US.
- 3.13 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.

4. Custodian Services

- 4.1 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 Terms and Conditions, to request, collect, receive and make payments or distributions attributable to such Securities arising from acquisition, ownership, disposal, conversion, exchange or otherwise.
- 4.2 In providing the Services, the Bank will:
- (a) maintain a Cash Account and a Business Investment 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 shall segregate such Securities from other assets held by the Bank for its own account and for the account of other customers.
- 4.3 No Security may be deposited with the Bank under these Terms and Conditions unless:
- (a) it is either beneficially owned by and registered in the name of 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; and
 - (b) in addition to any transfer documents and/or Instructions required by (a) above, 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 (a) and/or (b) above will be payable by the Customer and will have been paid.
- 4.4 All Securities delivered, purchased or held pursuant to these Terms and Conditions will be held in the name of the Bank, as nominee, or by the Bank's nominee or agent or by the nominee of the relevant clearing system, custodian or depository whether local or overseas (including the CCASS nominee) for one or more accounts of the Bank as a participant of the relevant clearing system, custodian or depository (including as a CCASS participant) as the Bank in its complete discretion may deem fit. The Securities will be held in accordance with or as permitted by Applicable Regulations and Market Requirements. For the purposes of settlement of any purchase or sale of any Security and/or for the purposes of transacting any Corporate Action, the Bank and the other nominee entities may transfer Securities between such entities.

5. Provision of Services

- 5.1 The Bank is authorised, at its discretion, to take such steps as it may consider expedient to enable it to provide the Services and to exercise its powers under these Terms and 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) applicable to the Bank and/or the Securities requiring the Bank to take or refrain from action and nothing herein shall 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 the Corporate Action information as provided in Clause 4.1(c) including proxy voting forms without notice to the Customer;
 - (d) in the absence of or delay in receiving Instructions from the Customer in response to a notification and request pursuant to Clause 4.1(c), 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;
 - (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; and
 - (h) to take action or not to take action in order to comply with any Applicable Regulation or Market Requirement.
- 5.2 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 shall not attend any meeting or exercise any voting or other rights including the completion of any proxies.
- 5.3 The Bank may appoint any other person as its nominee or agent to perform any of the Services on its behalf and may delegate any of its powers under these Terms and Conditions to such person but, in such a case, the Bank shall remain liable for the negligence or wilful default of any such appointee as if no such appointment had been made.
- 5.4 In performing the 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 Terms and Conditions.
- 5.5 The Bank is authorised to disclose any information it has concerning the Customer, any Securities and the Services to any other person appointed by it in connection with the Services.
- 5.6 Where the Bank accepts foreign listed Securities, the Bank shall have no duty to ascertain the nationality or the location of domicile or residence of the owner of the Securities (including that of the Customer) or whether Securities deposited are approved for foreign ownership or are subject to any other restriction unless specifically instructed by the Customer.

6. Reports, Statements and Information

- 6.1 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. The Bank may provide the reports and statements by placing them in the Customer's online internet banking profile, by email or post. No account statement will be issued if an account registers no transactions for the relevant period.
- 6.2 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 the Business Investment Account.
- 6.3 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.

- 6.4 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.
- 6.5 In relation to any product listed or traded in the US as the Bank may determine from time to time, the Customer accepts that:
 - (a) where an Instruction is executed at more than one (1) price, subject to applicable Market Requirements, the contract note of the relevant transaction may record only the average price of all the executed prices;
 - (b) the average price may be rounded off as the Bank considers appropriate; and
 - (c) the total consideration will be calculated based on the rounded average price and may be rounded off as the Bank considers appropriate.

7. Instructions

- 7.1 The Bank is authorised but not obliged to act on the Instructions given, or purported to be given by the Customer. Instructions may be given during the times advised by the Bank to the Customer which the Bank may vary from time to time.
- 7.2 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.
- 7.3 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 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 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.
- 7.4 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.
- 7.5 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 Business Investment 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.
- 7.6 Any Instruction for the purchase or sale of any Security will only be accepted if it is for completion on the date of Instruction if it is received before the relevant "cut-off" time as provided in Clause 7.7 below. 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 or the first working day thereafter if it is a public holiday on the date of Instruction. If on the date of Instruction it is a public holiday, the Bank will execute instructions on the first working day thereafter.
- 7.7 Any Instruction for the sale or purchase of any Security for execution on the date of Instruction must be received before any relevant "cut-off" time in respect of any relevant exchange or market as advised by the Bank to the Customer.
- 7.8 All other Instructions shall be given so as to allow the Bank sufficient time to comply.
- 7.9 Without limiting or reducing the Bank's rights under other provisions of these Terms and Conditions, the Bank has the right without giving reason:
 - (a) (either directly or via any agent or nominee) not to (1) act on any Instructions to requisition any meeting of or propose or second any resolution at any meeting of any issuer of Securities or products, or (2) take any other action as registered or nominee holder of any Securities or products, in each case if such action would in the Bank's opinion materially prejudice the Bank's position or reputation (or that of any relevant agent or nominee). The Bank (either directly or via any agent or nominee) will inform the Customer of its decision not to act as soon as practicable after receipt of the relevant Instructions or of notice of the relevant meeting. The Bank is not liable for any losses incurred or suffered by the Customer or any other person as a result of the benefit of such corporate action not being obtained or voting rights not being exercised; and
 - (b) not to provide any custodian or withdrawal service for Securities or products listed or traded in the US.

8. Bank's Duties - Instructions

The Bank shall act on Instructions as soon as reasonably possible but shall 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).

9. Purchase and Sale Instruction

- 9.1 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.
- 9.2 On receipt of any Instruction to sell Securities pursuant hereto, the Bank shall be entitled to debit the Business Investment 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 shall 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.

10. Cancellation of Instructions

The Bank shall 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.

11. Limitations on Liability and Indemnity

- 11.1 The provision of the 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 Terms and Conditions.
- 11.2 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.
- 11.3 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.

- 11.4 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 nor 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 Clause 3.5); and 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 Clause 6.3 of this section) unless due to the negligence or wilful default of the Bank or any other person appointed by it or their respective officers or employees.
- 11.5 The Customer shall 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 Services and/or as a result of any default by the Customer in the performance of these Terms and 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 Business Investment Account) and/or the enforcement of these Terms and 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 Clause 3.5); and 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 Terms and Conditions.
- 11.6 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 shall 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.
- 11.7 (a) It is the Customer's sole responsibility to handle and/or fulfill 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 Clause 11.7, "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 these Terms and Conditions 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 shall 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 Terms and 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.
- 11.8 If the Customer is or becomes a US Person:
- (a) the Bank has the right to suspend or terminate any or all Services with respect to any product listed or traded in the US or with US source income or the relevant Accounts (or both). The Bank is not liable for any losses, costs, fees or expenses of any kind that the Customer may incur or suffer in connection with such suspension or termination; and
- (b) the Bank has the right (but has no obligation) to make or handle any tax reporting in relation to the relevant product on the Customer's behalf.

12. Customer Representations and Warranties and Acknowledgements

12.1 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 Customers purchase of any Security. If the Customer becomes resident in any such country or is otherwise subject to such restriction 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 Security;
- (c) that the Customer is acting as principal in relation to the Services.

12.2 If the Customer trades products listed or traded in the US:

- (a) The Customer confirms the following matters:
- (i) The Customer is not a US Person.
- (ii) The Customer is not a director or officer of a company listed on any stock exchange in the US, or a shareholder who holds 10% or more of the interests in the shares of such a company.
- (iii) The Customer is not:
- (1) registered or qualified with the Securities and Exchange Commission of the US, the Commodities Futures Trading Commission of the US, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association;
- (2) engaged as an "investment advisor" as that term is defined in Section 202(11)(a) of the Investment Advisor's Act of 1940 (as may be amended from time to time), whether or not the Customer is registered or qualified under that Act; or
- (3) employed by a bank or other organisation exempt from registration under Federal or state securities laws to perform functions that would require the Customer to be so registered or qualified if the Customer were to perform such functions for an organisation not so exempt.
- (iv) Any securities or products delivered or pledged by the Customer or the Customer's transfer agent to the Bank will be free from any lien, charge, claim or other encumbrance or restriction other than a lien imposed on all securities or products by the applicable clearing house or depository. These restrictions may include:
- (1) the volume limitations and manner of sale limitations set out in Rule 144 of the Securities Act of 1933 (as may be amended from time to time);
- (2) any requirement to obtain consent from any person or entity for a sale, pledge, assignment or other transfer of such securities;
- (3) any limitation on the type or status of any purchaser, pledgee, assignee or transferee of such securities;
- (4) any requirement to deliver any opinion of counsel, notice or other documentation to the issuer, registrar or any other person prior to a sale, pledge, assignment or other transfer; and
- (5) any registration or qualification requirement or prospectus delivery requirement pursuant to applicable securities laws.

(b) The Customer agrees to the following matters:

- (i) If the Customer becomes a US Person, the Customer should notify the Bank promptly. The Customer should also transfer out from the Bank or otherwise dispose of all of the Customer's holdings in products listed or traded in the US within one (1) month of becoming a US Person (or any other period as the Bank determines). The Customer accepts that in that case all the income, interest, proceeds and distributions arising from the products will be subject to the maximum withholding tax rate (or any other withholding tax rate as the Bank determines).
- (ii) If the Customer becomes engaged, registered, qualified or employed in the manner set out in paragraph (a)(ii) or (a)(iii) above, the Customer should notify the Bank promptly. If the Customer is or becomes deemed by any US Market Data Provider to be engaged, registered, qualified or employed in that manner, the Bank has the right to pass on to the Customer any additional market data subscription fees and any other costs and expenses incurred as a result of or in connection with the Customer's status.

12.3 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:

- (i) The Growth Enterprise Market has been established as a market designed to accommodate companies to which a high investment risk may be attached. In particular, companies may list on the Growth Enterprise Market with neither a track record of profitability nor any obligation to forecast future profitability. Growth Enterprise Market stocks may be very volatile and illiquid. There may be risks arising out of the emerging nature of companies listed on the Growth Enterprise Market and the business sectors or countries in which the companies operate.
- (ii) There are potential risks of investing in such companies and the Customer should make the decision to invest only after due and careful consideration. The greater risk profile and other characteristics of the Growth Enterprise Market mean that it is a market more suited to professional and other sophisticated investors.
- (iii) The principal means of information dissemination on the Growth Enterprise Market is publication on the internet website operated by the Stock Exchange of Hong Kong Limited. Companies listed on the Growth Enterprise Market are not generally required to issue paid announcements in gazetted newspapers. Accordingly, the Customer needs to have access to up-to-date information on the Growth Enterprise Market-listed companies as published on the Growth Enterprise Market website.
- (iv) This risk disclosure statement does not purport to disclose all the risks and other significant aspects of the Growth Enterprise Market. The Customer should undertake the Customer's own research and study on the trading of securities on the Growth Enterprise Market before commencing any trading activities.
- (v) The Customer should seek independent professional advice if the Customer is uncertain of or has not understood any aspect of this risk disclosure statement or the nature and risks involved in trading of securities on the Growth Enterprise Market.

(c) Risk of Client Assets Traded, Received or Held Outside Hong Kong

Securities that are foreign listed securities and are traded, received and/or 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 and the rules made thereunder in Hong Kong. Consequently, such Securities may not enjoy the same protection as that conferred on Securities traded, received or held in Hong Kong.

(d) Risk of Trading Nasdaq-Amex Securities at The Stock Exchange of Hong Kong Limited

The securities under the Nasdaq-Amex Pilot Program ("PP") are aimed at sophisticated investors. The Customer should consult the licensed or registered person and become familiarised with the PP before trading in the PP securities. The Customer should be aware that the PP securities are not regulated as a primary or secondary listing on the Main Board or the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited.

(e) Risk relating to trading of products listed or traded in the US:

- (i) A product listed or traded in the US is subject to US Laws and the rules of the relevant exchange or market in the US, in addition to the Applicable Regulations and Market Requirements in Hong Kong.
- (ii) The Customer should seek advice from its own consultants or professional advisers regarding the relevant US Laws and rules of the relevant exchange or market in the US as the Customer considers necessary. The Customer shall refrain from trading a product listed or traded in the US if in doubt.
- (iii) Market data relating to products listed or traded in the US including prices, quotes and transaction volume may not be up-to-date.

13. Customer Consent to Lend Securities

13.1 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 Customer's account free of any encumbrances or liens of any nature.

13.2 The term of the Customer's consent to lend Securities under Clause 13.1 hereof will be for a period of twelve months and may be renewed by the Customer's written consent on its anniversary for, in each instance, a further twelve months.

14. Fees and Expenses

14.1 The Customer will pay fees to the Bank for the provision of the Services as is advised to the Customer by the Bank upon the opening of the Business Investment Account and as may be varied upon 30 days prior notice to the Customer.

14.2 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 Services. A certificate as to the nature and amount of such expenses issued by the Bank shall be conclusive evidence against the Customer of such expenses.

14.3 Without prejudice to any other rights under the Terms and Conditions if any of the fees and expenses referred to in Clauses 14.1 and 14.2 or incurred or owing pursuant to the Terms and Conditions remain outstanding after they have become due and payable:

- (a) 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;
- (b) the Bank will have a lien over the Securities which shall stand as security for such fees and expenses with power to sell by public or private sale on such conditions as the Bank thinks fit any such Securities in or towards settlement. Any proceeds of sale may be applied in or towards payment of the said fees and expenses.

The Bank's rights pursuant to this clause will be in addition to and not in substitution for any other rights of a similar nature enjoyed by the Bank.

15. 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.

16. 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 Terms and Conditions any rebate or reallowance of any brokerage or commission payable in respect thereof. The Customer further agrees that the Bank shall 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.

17. Termination of Services

- 17.1 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 the Customer Authority by giving not less than 30 days notice in writing to the Bank.
- 17.2 The Bank may also by giving notice to the Customer any time (save in the case of any event referred to in sub-clause (f) below where no notice need 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 Clauses 17.3 and 17.4 below and/or terminate or suspend the Services or any part thereof with immediate effect:
- (a) any breach of the Terms and Conditions by the Customer; or
 - (b) any failure by the Customer or any of them to pay monies of whatever nature when due under the Terms and 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 Applicable Regulation which in the opinion of the Bank renders termination necessary or advisable in the interests of the Bank.
- 17.3 On the occurrence of any of the events described in Clause 17.2 above 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 right under Clause 17.4 below.
- 17.4 As provided in Clauses 17.2 and 17.3(c) above the Bank may at its discretion without prejudice to any other rights under the Terms and 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 Security in respect of any other monies due, owing or payable to the Bank by the Customers of whatever nature, including all sums payable pursuant to the Terms and Conditions;
 - (b) without notice to the Customer combine or consolidate the Cash Account with any other account(s) held by the Customer with the Bank;
 - (c) for the purpose of the exercise of any right under (a) and (b) above to sell or otherwise dispose of any of the Securities on such terms as the Bank may determine either to the Bank, its associated entity or a third person.
- 17.5 Any termination of the Services and any withdrawals of the Securities, whether or not following termination, 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 the Terms and Conditions or by the Bank on behalf of the Customer prior to termination.

18. Prices

- 18.1 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. Prices of products listed or traded in the US are provided by US Market Data Providers. 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.
- 18.2 Any price of any Security 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 Security even if the price of such Security 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.
- 18.3 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.

19. Governing Law

- 19.1 These Terms and Conditions are governed by and shall be construed in accordance with the laws of the Hong Kong Special Administrative Region.
- 19.2 No person other than the Bank and the Customer will have any right under the Contracts (Rights of Third Parties) Ordinance to enforce or enjoy the benefit of any of the provisions of these Terms and Conditions.

20. Notice relating to the Personal Data (Privacy) Ordinance (the "Ordinance") 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, including third party service providers with whom the customer interacts in connection with the marketing of our products and services and in connection with the customer's application for our products and services (including credit references agencies approved for participation in the Multiple Credit Reference Agencies Model (hereinafter referred to as "**credit reference agencies**" or "**CRAs**")).
- (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 credit providers in Hong Kong approved for participation in the Multiple Credit Reference Agencies Model (hereinafter referred to as "**credit providers**") 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;
- (vi) marketing products, services and other subjects as described in paragraph (f) below;
- (vii) 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 (including the operator of any centralised database used by credit reference agencies), and, in the event of default, to debt collection agencies;
 - (viii) any persons to whom we 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 (CRAs) and Debt Collection Agencies

- (A) We may provide the following data relating to you (whether in sole name or joint names with others) to CRAs:
 - (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.

CRA's 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) with credit providers, for sharing in the consumer credit databases of CRA's 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 CRA's 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, CRA's 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 CRA(s) 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 behaviour, 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.

Transfer of Data to Third Party Service Providers Using Bank Application Programming Interfaces (API)

- (g) We may, in accordance with your instructions to us or third party service providers engaged by you, transfer your data to third party service providers using our API for the purposes notified to you by us or third party service providers and/or as consented to by you in accordance with the Ordinance.

Provision of Another Person's Data

- (h) 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

- (i) 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 access and correction requests to the relevant credit reference agency(ies) or debt collection agency(ies).
- (j) 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.
- (k) 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
P O Box 72677
Kowloon Central Post Office
Hong Kong
[Email: dfv.enquiry@hsbc.com.hk](mailto:dfv.enquiry@hsbc.com.hk)
- (l) We may have obtained credit report(s) on you from credit reference agency(ies) in considering any application for credit. In the event you wish to access the credit report(s), we will advise the contact details of the relevant credit reference agency(ies).
- (m) Nothing in this Notice shall limit your rights as a data subject under the Ordinance.

21. Miscellaneous

- (a) These Terms and Conditions can be amended by the Bank from time to time on giving prior notice to the Customer by way of display in the Bank's premise or by such other method as the Bank thinks fit. If the Customer does not close the Business Investment Account prior to the expiry of the notice period, the Customer shall be deemed to have agreed to such amendment.
- (b) Where the context permits, the use of singular expressions in these Terms and Conditions shall include the plural and vice versa.

22. 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 Terms and Conditions or any other arrangements the Customer has with the Bank, the Customer acknowledges that:

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

Note: In case of discrepancies between the English and Chinese versions, the English version shall apply and prevail.

Appendix - NYSE Agreement For Market Data Display Services

The terms of this Appendix shall apply only where the Customer trades any product listed or traded in the US under any of the Services (as defined in Clause 1). The Bank agrees to make "Market Data" (as defined below) available to the Customer pursuant to the terms and conditions set forth in this Appendix, and the Customer agrees to comply with those terms and conditions.

TERMS AND CONDITIONS OF GENERAL APPLICABILITY

1. **MARKET DATA DEFINITION** – For all purposes of this Appendix, "Market Data" means:
 - 1.1. last sale information and quotation information relating to securities that are admitted to dealings on the New York Stock Exchange ("NYSE");
 - 1.2. such bond and other equity last sale and quotation information, and such index and other market information, as US-registered national securities exchanges and national securities associations (each, an "Authorising SRO") may make available and as the NYSE may from time to time designate as "Market Data"; and
 - 1.3. all information that derives from any such information.
2. **PROPRIETARY NATURE OF DATA** – The Customer understands and acknowledges that each Authorising SRO and Other Data Disseminator (as defined below) has a proprietary interest in the Market Data that originates on or derives from it or its market(s).
3. **ENFORCEMENT** – The Customer understands and acknowledges that:
 - 3.1. the Authorising SROs are third-party beneficiaries under this Appendix; and
 - 3.2. the Authorising SROs or their authorised representative(s) may enforce this Appendix, by legal proceedings or otherwise, against the Customer or any person that obtains Market Data that is made available pursuant to this Appendix other than as this Appendix contemplates. The Customer shall pay the reasonable attorney's fees that any Authorising SRO incurs in enforcing this Appendix against the Customer or such other person.
4. **DATA NOT GUARANTEED** – The Customer understands that no Authorising SRO, no other entity whose information is made available over the Authorising SROs' facilities (an "Other Data Disseminator") and no information processor that assists any Authorising SRO or Other Data Disseminator in making Market Data available (collectively, the "Disseminating Parties") guarantees the timeliness, sequence, accuracy or completeness of Market Data or of other market information or messages disseminated by any Disseminating Party. Neither the Customer nor any other person shall hold any Disseminating Party liable in any way for:
 - 4.1. any inaccuracy, error or delay in, or omission of:
 - (a) any such data, information or message; or
 - (b) the transmission or delivery of any such data, information or message, or
 - 4.2. any loss or damage arising from or occasioned by:
 - (a) any such inaccuracy, error, delay or omission;
 - (b) non-performance; or
 - (c) interruption in any such data, information or message,due either to any negligent act or omission by any Disseminating Party, to any "force majeure" (e.g., flood, extraordinary weather conditions, earthquake or other act of God, fire, war, insurrection, riot, labor dispute, accident, action of government, communications or power failure, equipment or software malfunction) or to any other cause beyond the reasonable control of any Disseminating Party.
5. **PERMITTED USE** – The Customer shall not furnish Market Data to any other person or entity and shall use Market Data only for the Customer's individual use in the Customer's business.
6. **DISSEMINATION DISCONTINUANCE OR MODIFICATION** – The Customer understands and acknowledges that, at any time, the Authorising SROs may discontinue disseminating any category of Market Data, may change or eliminate any transmission method and may change transmission speeds or other signal characteristics. The Authorising SROs shall not be liable for any resulting liability, loss or damages that may arise therefrom.
7. **DURATION; SURVIVAL** – This Appendix remains in effect for so long as the Customer has the ability to receive Market Data as contemplated by this Appendix. In addition, the Bank may terminate this Appendix at any time, whether at the direction of the Authorising SROs or otherwise. Paragraphs 2, 3 and 4, this Paragraph 7 and the first two sentences of Paragraph 8, survive any termination of this Appendix.
8. **MISCELLANEOUS** – The laws of the State of New York shall govern this Appendix and it shall be interpreted in accordance with those laws. This Appendix is subject to the Securities Exchange Act of 1934, the rules promulgated under that act, and the joint-industry plans entered into pursuant to that act. This Appendix contains the entire agreement between the parties in respect of the Bank's supply of Market Data to the Customer. The Customer may not assign all or any part of this Appendix to any other person. The person manifesting assent to this Appendix represents and warrants that it has legal capacity to contract and, if that person is manifesting assent on behalf of a proprietorship or a business, partnership or other organisation, represents and warrants that he or she has actual authority to bind the organisation.