

# **Investment Instruments Business Terms and Conditions**

Professional clients and eligible  
counterparties

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HSBC BANK PLC ACTING THROUGH HSBC BANK PLC – POBOČKA PRAHA  
PROFESSIONAL CLIENT AND ELIGIBLE COUNTERPARTY  
HSBC INVESTMENT INSTRUMENTS BUSINESS TERMS AND CONDITIONS

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**These Investment Instruments Business Terms and Conditions are important and you should read them carefully to ensure you understand them fully (we recommend taking legal advice, if necessary) and retain a copy for your records as these Investment Instruments Business Terms and Conditions will constitute an integral part of a legally binding contract between HSBC Bank plc, acting through HSBC Bank plc – pobočka Praha, and you.**

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# Part 1 – Introduction and purpose

## 1. Introduction

- 1.1. These Investment Instruments Business Terms and Conditions, together with any schedules (the “**Terms**”), stipulate the basic rules that shall govern the obligation between HSBC and you established by the Agreement and form an integral part thereof.
- 1.2. HSBC shall make available to you those Electronic Services which HSBC has agreed to provide to you from time to time. Unless otherwise agreed in writing, the provisions of such Electronic Services shall be subject to these Terms, as well as any additional terms applicable to such Electronic Services set out in the terms contained in Schedule 2 of these Terms (the “**Electronic Terms**”).
- 1.3. For the avoidance of doubt, Electronic Services do not include any execution services offered with respect to “HSBC Evolve”.
- 1.4. These Terms have been prepared on the basis that you are either a Professional Client or an Eligible Counterparty.
- 1.5. For the purposes of these Terms:
  - 1.5.1. “**we**”, “**us**” or “**HSBC**” means HSBC Bank plc, acting through its Czech Republic Branch HSBC Bank plc – pobočka Praha;
  - 1.5.2. “**you**” means the person or persons entering into the Agreement in their capacity as clients of HSBC; and
  - 1.5.3. “**Party**” means either HSBC or you.

## 2. The Services that we will provide to you under these Terms

- 2.1. Our Services for Professional Clients and Eligible Counterparties:
  - 2.1.1. Subject to these Terms are any Investment Services HSBC may provide to you under the Agreement (the “**Services**”). The Services namely include buying or selling or otherwise dealing with you or arranging for you, as applicable, any Investment Instruments.
  - 2.1.2. We assess what products and services should be made available to our different client and target market types. We will provide you with services where our identified target market for such services includes Professional Clients.
- 2.2. Limitations on the scope of our Services:
  - 2.2.1. Our Services do not include investment advice or personal recommendations.
  - 2.2.2. We do not provide any representations as to the suitability of any of our Services.
  - 2.2.3. You are responsible for obtaining any legal, accounting, financial or tax advice you may need in determining whether any Investment Instrument or Service is suitable for your needs or the needs of your business.
  - 2.2.4. Any information provided to you in relation to the Agreement or these Terms (including, but not limited to, any market information or research forecasts shared with you in relation to any proposed Order or otherwise) will be for your information only and is not in any way to be relied upon as financial advice as to the suitability of placing an Order, of entering into any transactions relating to Investment Instruments, or of any Service.
  - 2.2.5. Insofar as is permissible under the Applicable Investment Services Regulations, HSBC does not owe you any Fiduciary Duty or any similar obligation under the Agreement or these Terms.

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2.2.6. All transactions under any Agreement and these Terms shall be subject to Applicable Law, but so that:

- (i) HSBC shall be entitled to take such action or steps or omit to take any action or steps as it shall in its absolute discretion consider necessary to ensure compliance with Applicable Law, including, without limitation, the taking of any action to avoid or mitigate any loss arising as a result of a change in Applicable Law; and
- (ii) all Applicable Law and any such action or step so taken by HSBC shall be binding upon you as if expressly set out herein or authorised hereby.

2.3. Risk warnings:

2.3.1. We will provide you with a notice of risks related to the Investment Instruments.

2.3.2. This information will be made available at <http://www.gbm.hsbc.com/financial-regulation/market-structure/mifid/policies-disclosures> or such other website as notified to you by us. You should read the notice carefully.

2.4. If you have any questions about the Agreement, these Terms or about the Services, please contact your usual HSBC representative.

### 3. Interpretation, effective date and interaction with other agreements

3.1. Words and phrases used within these Terms which hold particular meanings are defined within these Terms and are also listed in Schedule 1 of these Terms.

3.2. These Terms shall take effect from 3 January 2018.

3.3. To the extent to which:

- (i) the Agreement differs from these Terms, or is in conflict with them, the Agreement shall prevail;
- (ii) these Terms are in conflict with the HSBC Business Terms and Conditions for Current Accounts of Legal Entities, as amended from time to time (the “**General Terms**”), in case both the General Terms and these Terms are a part of the Agreement, the provisions of the General Terms prevail;
- (iii) these Terms differ from the General Terms, in case both the General Terms and these Terms are a part of the Agreement, the provisions of the General Terms prevail, but only to the extent that the provisions of these Terms cannot be reasonably applied next to the provisions of the General Terms.

### 4. Information about us

4.1. HSBC Bank plc is a member of the HSBC Group, the ultimate holding company of which is HSBC Holdings plc, and HSBC Bank plc is acting in the Czech Republic through its branch, HSBC Bank plc – pobočka Praha.

4.2. The registered address of HSBC Bank plc is 8 Canada Square, London E14 5HQ, United Kingdom. HSBC Bank plc is registered in England, with company registration number 14259. HSBC Bank plc's email address for communications in relation to these Terms is [regulatory.business.support.europe@HSBC.com](mailto:regulatory.business.support.europe@HSBC.com). The registered address of HSBC Bank plc – pobočka Praha is Na Florenci 2116/15, Nové Město, 110 00 Praha 1, Czech Republic. HSBC Bank plc – pobočka Praha is registered in the Commercial Register maintained by the Municipal Court in Prague, under File No. A 20030, identification number 659 97 212.

4.3. HSBC Bank plc is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority. HSBC Bank plc appears on the United Kingdom's financial services register with firm reference number 114216. HSBC Bank plc operates in the Czech Republic based upon a notification to the Czech National Bank (the “**CNB**”), which supervises its activities in the Czech Republic in a limited scope.

4.4. HSBC Bank plc's VAT identification number is GB 365684514, HSBC Bank plc – pobočka Praha's VAT identification number (in Czech, *daňové identifikační číslo* or DIČ) is CZ65997212.

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- 4.5. The address of the Prudential Regulation Authority is Prudential Regulation Authority, 20 Moorgate, London EC2R 6DA, United Kingdom. The address of the Financial Conduct Authority is Financial Conduct Authority, 25 The North Colonnade, London E14 5HS, United Kingdom. The address of the Czech National Bank is Czech National Bank, Na Příkopě 28, 115 03, Prague 1, Czech Republic.

## 5. HSBC's capacity

- 5.1. In providing the Services referred to in Clause 2 (*The Services that we will provide to you under these Terms*) pursuant to these Terms, HSBC may be acting:
- 5.1.1. as principal;
  - 5.1.2. as agent on your behalf;
  - 5.1.3. as a combination of 5.1.1 and 5.1.2; or
  - 5.1.4. as agent, arranger or introducer for Connected Companies in the provision of the Services concerned.
- 5.2. HSBC may use a Connected Company as an agent, arranger, introducer or otherwise in or for the purposes of carrying on its business under the Agreement and these Terms.

## 6. Your capacity

- 6.1. HSBC, in its dealings with you, will assume that the transactions which it enters into with you are for you and no one else and will treat you as its client/counterparty.
- 6.2. Without prejudice to Clause 6.1, you undertake and warrant that if you are party to any transactions executed pursuant to the Agreement and these Terms as agent for, or on behalf of, another person, then:
- 6.2.1. in doing so, you are expressly authorised by, or otherwise acting within the scope of the authority you have received from, your principal; and
  - 6.2.2. notwithstanding paragraph 6.2.1, you will procure the performance by your principal of all obligations and liabilities arising under or by virtue of the Agreement and these Terms or any transactions carried out thereunder, failing which you will be liable to HSBC as if you were a principal in respect of all such obligations and liabilities.
  - 6.2.3. The provisions of this Clause shall continue to be the case notwithstanding that you have disclosed or may in the future disclose to HSBC that you are acting as agent for, or on behalf of, another person. HSBC shall not be bound to act in accordance with the instructions of any person other than you (but shall be entitled to act in accordance with all instructions given by you or purporting to be given by you) and HSBC's liabilities to you hereunder shall be fully discharged by HSBC performing such instructions for you, notwithstanding any instructions that HSBC may receive from your principal or any other notice that HSBC may receive that your authority to act on behalf of your principal has been revoked or varied.
- 6.3. In any dealing or other matter where you are an agent or otherwise acting on behalf of or for the benefit of any other person then, even if you disclose that fact and/or identify that person to HSBC, HSBC will (save as provided below) treat you alone as HSBC's client for all purposes relating to such dealing or matter, and (subject to Applicable Laws) HSBC shall not owe any contractual, regulatory or other obligations to that person. If you wish, HSBC will consider accepting such other person as a client of HSBC, but only if you first furnish HSBC with full details of that person and any other information HSBC may require. If HSBC is willing to do this, it will notify you in writing of the extent to which it is prepared to accept obligations towards that person but, pending your agreement to the terms so notified in writing, you alone shall remain HSBC's client and be liable in accordance with the Agreement and these Terms in relation to all such dealings with or for that person.
- 6.4. You represent, warrant and undertake to us on the date that you enter into the Agreement and on each date you place an Order or enter into a transaction under the Agreement and these Terms:
- 6.4.1. you are empowered to enter (and are not prohibited from entering) into the Agreement and all transactions in Investment Instruments involving HSBC and to receive all Services from HSBC;

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- 6.4.2. you have obtained, and will maintain in effect, in relation to all transactions in Investment Instruments, all necessary consents of any governmental or other regulatory body or authority applicable to each transaction in Investment Instruments and that you will comply with the terms of the same and all Applicable Laws (including any reporting requirements (including, but not limited to, any requirement to report complete and accurate details of executed transactions to the appropriate competent authority), requirements to make public the volume and price of transactions and the time at which they were concluded (to the extent required by Applicable Law), requirements designed to prevent market abuse, trading limits and position limits and/or Short Sale rules. Except to the extent required by Applicable Law, or otherwise agreed by us in writing with you, we shall have no responsibility to inform you of such requirements or otherwise assist you in complying with them). You will, on demand by HSBC, deliver to HSBC copies of (or evidence of) such consents and compliance with Applicable Laws as HSBC may reasonably require;
- 6.4.3. with respect to Investment Instruments to which you purport to have title, you are, or are acting within the scope of your authority on behalf of, the absolute beneficial owner of such Investment Instruments;
- 6.4.4. where you hold Investment Instruments to which you purport to have title as a trustee, or are acting within the scope of your authority on behalf of a trustee, you are fully empowered and duly authorised to enter into the Agreement and to apply such Investment Instrument in accordance with its terms and these Terms;
- 6.4.5. you will not assert and, so far as you are able, will procure that no person for whom you hold Investment Instruments will assert any interest that you or that person may have in the Investment Instrument in any way which will prevent a transfer of title of that Investment Instrument. You further undertake that you will inform HSBC if you become aware of any event that has occurred or which you believe may occur or may have occurred which could affect the ability of HSBC to transfer any Investment Instruments sold by you; and
- 6.4.6. you have the necessary experience and knowledge to understand the risks involved in relation to each Order or transaction.
- 6.5. Sanctions and anti-bribery
- 6.5.1. You will not directly or indirectly use the proceeds of any transaction concluded with or through us, or lend, contribute or otherwise make available such proceeds to any Person, (i) 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 target of country- or territory-wide Sanctions or (ii) in any other manner that would result in a violation of Sanctions by any Person.
- 6.5.2. You will not, in connection with any transaction concluded with or through us, violate any applicable anti-bribery laws and regulations, including, but not limited to the U.S. Foreign Corrupt Practices Act, the UK Bribery Act (each as may be amended from time to time) and other analogous legislation in other applicable jurisdictions.
- 6.5.3. We shall have the right to suspend or terminate the Agreement and any transaction subject to the Agreement and these Terms on immediate written notice should we become aware of a breach of your obligations under this Clause 6.5.

## 7. Authority

- 7.1. You hereby confer on HSBC all powers, authorities and discretions on your behalf which are necessary for, incidental to, or customary in the provision of, the Services to be provided under the Agreement and these Terms including the power to appoint sub-agents, and you hereby agree to ratify and confirm everything which HSBC shall lawfully do in the exercise of such powers, authorities or discretions.
- 7.2. If required to do so by HSBC, you shall execute in favour of HSBC a power of attorney in such form and conferring such powers as HSBC may think fit to enable it to exercise its rights and powers under the Agreement and these Terms.
- 7.3. HSBC shall be entitled to instruct any brokers and other agents (who may be Connected Companies) on your behalf as it may decide and confer on them all such authorities conferred on HSBC under the Agreement and these Terms (including the authority to appoint other brokers and agents likewise).

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- 7.4. HSBC may rely on any Order from you or any person who is, or is believed by us in good faith to be, a person designated or authorised by you to give instructions in relation to the Agreement and these Terms. HSBC may accept and act without further enquiry upon such instructions and/or Orders. You will be responsible for, and bound by, any Order and any resulting transaction resulting from those instructions and/or Orders.

## 8. Your classification as an Eligible Counterparty and/or as a Professional Client

- 8.1. You will be categorised as either an Eligible Counterparty and/or as a Professional Client for the purposes of the Applicable Investment Services Regulations. Your categorisation is set out in the consent letter you received at the same time as these Terms, or will be notified to you by us in another way prior to the provision of Services to you.
- 8.2. If you are categorised as an Eligible Counterparty, Clause 18 (*Execution*), Clause 13.1 and Clause 22 (*Fees, commissions or non-monetary benefits that we may receive or pay*) of these Terms will not apply to you.

## 9. Your right to request a different categorisation

- 9.1. If you are categorised as an Eligible Counterparty, you have a right to make a written request for a different categorisation under the Applicable Investment Services Regulations, indicating in such request whether additional protection is required for one or more Service or transaction. If you request to be classified as a Professional Client, we will treat you as a Professional Client.
- 9.2. If you are categorised as a Professional Client, you have the right to make a written request for a different categorisation under the Applicable Investment Services Regulations:
- 9.2.1. if you are a Professional Client and request categorisation as an Eligible Counterparty and HSBC agrees to such categorisation, you may be treated as an Eligible Counterparty; however, you will lose the protection afforded by certain regulatory rules;
- 9.2.2. if you are a per se Professional Client or Eligible Counterparty and you request categorisation as a Retail Client, in which case additional protections would be afforded by certain regulatory rules to you, HSBC will not agree to such a request; and
- 9.2.3. if you are a Retail Client and you have opted up to be treated as a Professional Client in accordance with the Applicable Investment Services Regulations, you have the right to request treatment as a Retail Client and we are obliged to agree to such a request. However, if you so request, we may terminate the Agreement and we may decide not to provide any Services to you from thereon.
- 9.3. You must keep HSBC informed about any changes that could affect your categorisation.



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## Part 2 – Transacting with us

### 10. Placing Orders with us

- 10.1. You may place Orders with us by any approved means notified to you by us from time to time for these purposes.
- 10.2. Where you place an Order with us, HSBC will act on instructions before receipt of any written confirmations and its records of communications shall be conclusive evidence of such instructions.
- 10.3. An Order will be legally binding on you and we shall have no responsibility for any error or inaccuracy in such Order. Therefore, before you place an Order with us, you must carefully review the details provided by you and (if applicable) the quote received from us.
- 10.4. Subject to these Terms, you may request that an Order be amended or cancelled and we may, in our absolute discretion, amend or cancel such Order if it has not yet been executed. We do not guarantee that the original Order will not have been executed prior to such request and any such request to amend or cancel an Order will have no effect on any Order which has already been executed.
- 10.5. Once you have placed an Order with us, that Order will become immediately binding on you. However, you should not assume that we have executed the Order until we have informed you that we have done so.
- 10.6. We shall be under no obligation to execute your Order. For instance, we may not execute your Order in, without limitation, the following instances:
  - 10.6.1. there is a lack of liquidity in the market;
  - 10.6.2. there is market disruption;
  - 10.6.3. Applicable Law, market practice or a rule or regulation would, in our reasonable opinion, prevent us from doing so;
  - 10.6.4. where you have insufficient credit; or
  - 10.6.5. where we are in doubt as to the authenticity of instructions.
- 10.6.6. Consequently, we shall not be liable to you where we have declined an Order or have been unable to execute an Order.
- 10.7. Where permitted by Applicable Law, we will not be obliged to provide a quote for a transaction with you (including in relation to the termination of a transaction) and we may decline to provide a quote at any time in our absolute discretion. In particular, we may refuse to quote or enter into transactions on the basis of your credit status and other commercial considerations.
- 10.8. You will inform us in writing if any Order or transaction relates to or is a Short Sale in which you are the seller.

### 11. Acting in our capacity as Systematic Internaliser

- 11.1. Where, in our capacity as a Systematic Internaliser, we are required under Applicable Law to make public or provide quotes in respect of shares, depositary receipts, exchange traded funds, certificates and other similar Investment Instruments traded on a Trading Venue, you acknowledge and agree that, under and subject to Applicable Law, we may:
  - 11.1.1. decide the size or sizes of such quotes;
  - 11.1.2. update such quotes at any time;

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- 11.1.3. under exceptional market conditions, withdraw such quotes;
  - 11.1.4. in justified cases, execute Orders at a better price than set out in such quotes provided that the price falls within a public range close to market conditions for Professional Clients;
  - 11.1.5. execute Orders at a different price than such quotes without complying with the conditions described in Clause 11.1.4 in respect of transactions where execution in several securities is part of one transaction or in respect of Orders that are subject to conditions other than the market price;
  - 11.1.6. where we provide only one such quote or where our highest quote is lower than standard market size and we receive an Order of a size bigger than our quotation size but lower than the standard market size, decide to execute that part of the Order which exceeds our quotation size at the quoted price, or at a different price where permitted by the conditions described in Clauses 11.1.4 and 11.1.5;
  - 11.1.7. where we provide such quotes in different sizes and receive an Order between those sizes, decide to execute the Order at one of the quoted prices, or at a different price where permitted by the conditions described in Clauses 11.1.4 and 11.1.5; and
  - 11.1.8. limit both the number of transactions that we undertake with a client at the published quote and the total number of transactions that we undertake with different clients at the same time.
  - 11.1.9. Further written details are available to you upon written request.
  - 11.2. Where, in our capacity as a Systematic Internaliser, we are required under Applicable Law to make public or provide quotes in respect of bonds, structured finance products, emission allowances and derivatives traded on a Trading Venue, you acknowledge and agree that, under and subject to Applicable Law, we may:
    - 11.2.1. update such quotes at any time;
    - 11.2.2. under exceptional market conditions, withdraw such quotes;
    - 11.2.3. limit the number of transactions that we undertake to enter into with clients pursuant to any such quote; and
    - 11.2.4. in justified cases, execute Orders at a better price than set out in such quotes provided that the price falls within a public range close to market conditions.
  - 11.3. You also acknowledge and agree that, under and subject to Applicable Law, such quotes may be subject to specific sizes. Further written details are available to you upon written request.
  - 11.4. Where we do not act as a Systematic Internaliser we will not be subject to the above.

## 12. Publication

- 12.1. Where we, any Connected Company or our and their agents and delegates execute an Order with or for you, we may make the relevant transaction information public or report such transaction information to a relevant government or regulatory authority in accordance with Applicable Law. You acknowledge and agree to such disclosure of transaction information.
- 12.2. Where we execute a transaction outside of the rules of a Trading Venue, we shall arrange to make public the information regarding that transaction regardless of whether we act as buyer, seller or agent in accordance with Applicable Law, unless you inform us in writing that, in accordance with Applicable Law: (i) you wish to undertake this obligation yourself; (ii) you will make the relevant transaction information public; and (iii) either: (a) in the circumstances where HSBC is not a Systematic Internaliser, you are either a Systematic Internaliser and/or acting as seller; or (b) in the circumstances where HSBC is a Systematic Internaliser, you are a Systematic Internaliser acting as seller. You acknowledge and agree to such disclosure of transaction information.

## 13. Aggregation of Orders; client limit orders

- 13.1. HSBC may aggregate your Orders with the orders of other clients, HSBC or any Connected Company. For professional clients, when doing so in relation to Orders in Investment Instruments, HSBC must reasonably

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believe that it is unlikely that the aggregation will work to the overall disadvantage of the relevant clients. However, the effect of the aggregation may operate on some occasions to your disadvantage.

- 13.2. Where you place with us a limit order in shares which are admitted to trading on a Regulated Market or traded on a Trading Venue and that Order is not immediately executed under prevailing market conditions, we shall not be obliged to immediately publish such a limit order where we have received an express instruction from you not to do so or the order is large in scale compared to normal market size as may be set by the Czech National Bank under the Applicable Investment Services Regulations.

## 14. Programme trades

The term “programme trade” is used in this Clause to describe a single transaction or series of transactions executed for the purpose of acquiring or disposing, for a customer, of all or part of a portfolio or a large basket of securities. HSBC may execute programme trades on your behalf in any capacity set out in Clause 5.1 and you hereby acknowledge and notify HSBC that HSBC need not disclose to you in what capacity it is acting when executing a programme trade. Your information may be shared between HSBC and Connected Companies in order to facilitate the transaction. In the processing of the programme trade, it may be necessary for HSBC and/or a Connected Company to amend or cancel your original instruction where there is an error, in order that your trade may be executed and settled.

## 15. Appropriateness

- 15.1. When providing Services, to the extent that HSBC is required by the Applicable Investment Services Regulations to assess whether a proposed transaction is appropriate for you, HSBC is entitled to assume that you have the necessary experience and knowledge in order to understand the risks involved in relation to those particular Investment Instruments and/or the particular Service.
- 15.2. For the purposes of any such appropriateness assessment, HSBC is entitled to rely on the information that you or your agent have supplied to us and you represent and warrant that such information is true, accurate and complete.
- 15.3. You undertake to notify HSBC immediately if any of the information referred to in Clause 15.2 changes in any respect.
- 15.4. Where the Applicable Investment Services Regulations permit, we will not consider the appropriateness of a product or service in relation to Non-complex Investments.

## 16. Settlement

- 16.1. Where any transaction is effected by HSBC as your agent, delivery or payment (as the case may be) by the other party to the transaction shall be at your entire risk and HSBC's obligations to deliver Investment Instruments to you or to account to you or any other person on your behalf for the proceeds of sale of Investment Instruments shall be conditional upon receipt by HSBC of deliverable documents or sale proceeds (as the case may be) from the other party or parties to the transaction. In the case of investments subject to an initial public offer, settlement may be delayed if delivery can only be completed with investments issued by the offeror.
- 16.2. HSBC may purchase or arrange for the purchase of Investment Instruments to cover any liability of yours to deliver Investment Instruments to HSBC (or any Connected Company) and, subject to Applicable Law, may debit any of your accounts with any loss HSBC or any Connected Company suffers thereby.
- 16.3. If you make any payment under the Agreement and these Terms which is subject to any deduction or withholding whatsoever, you shall pay to HSBC such additional amount as is necessary to ensure that the amount actually received by HSBC will equal the full amount HSBC would have received had no such deduction or withholding been made. Any payment made by HSBC under these Terms which is subject to any deduction or withholding whatsoever will be made by HSBC subject to such deduction or withholding.

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- 16.4. We shall be entitled to charge interest in respect of such amounts due and owing by you from the agreed payment date (the “**Settlement Date**”) until the date such funds are made available by you (at such rate of interest as we may set in the List of Charges in accordance with the General Terms).
- 16.5. In the event of any settlement delay (that is you do not pay amounts owing to us under the Agreement and these Terms on the due date), HSBC retains the right, if it considers it reasonable to do so, to close out the whole or part of the outstanding position.

## 17. Confirmations

- 17.1. Following execution of each transaction carried out pursuant to these Terms, we will provide the key details of the transaction. Unless provided to you by a third party, we may also subsequently provide you more detailed information regarding such transactions. The way in which we provide you information will depend on the type of transaction and the way in which it was transacted and we may agree or otherwise notify you in advance of how such information will be provided. On your request, we will supply information about the status of your transaction. If you are an Eligible Counterparty, we may separately agree the content and timing of the information we provide.
- 17.2. Any question, matter or dispute in relation to the terms of a transaction must be raised by you orally or in writing forthwith upon receipt by you of the information provided in respect of that transaction, failing which, in the absence of manifest error, such information shall be conclusive and binding on you.

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## Part 3 – Our policies, governance and commitments

### 18. Execution

- 18.1. Where you are categorised as a Professional Client, this Clause contains (or refers to) disclosures on order execution, including certain consents from you. Please read the clause and the disclosures carefully.
- 18.2. In relation to the execution of certain types of Order, HSBC is under a regulatory duty to take all sufficient steps to obtain the best possible result for you, taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other relevant considerations. This is known as “**Best Execution**”.
- 18.3. We are required to provide you with a statement providing summary information on our Best Execution Policy (the “**Statement**”). Such Statement, which includes asset class annexes, sets out when the Best Execution requirements will apply. We may update the Statement from time to time.
- 18.4. The Statement will be made available at <http://www.gbm.hsbc.com/financial-regulation/market-structure/mifid/policies-disclosures>, or such other website as notified to you by us. You should read the Statement carefully.
- 18.5. HSBC owes no duties to you in respect of Best Execution, other than as set out in the Applicable Investment Services Regulations, and any other duties are expressly excluded.
- 18.6. By concluding the Agreement or otherwise engaging in trading pursuant to the Agreement and these Terms on or after 3 January 2018, you are deemed to consent to any Services offered to you under the Agreement and these Terms in relation to Investment Instruments being subject to our Best Execution Policy, and you are analogically deemed to consent to the Best Execution Policy.
- 18.7. Where we have received express consent from you or subsequently do so, HSBC may execute your Orders outside of a Trading Venue.
- 18.8. HSBC’s Best Execution Policy does not apply if you have been classified as an Eligible Counterparty.

### 19. Conflicts of interest

- 19.1. Situations can arise where our interests, or those of our staff, conflict with your interests or where your interests compete with those of our other clients.
- 19.2. We will make available to you a description of our Conflicts of Interest Policy through our website <http://www.gbm.hsbc.com/financial-regulation/market-structure/mifid/policies-disclosures> or such other website as notified to you by us.
- 19.3. Our Conflicts of Interest Policy is a policy we maintain setting out the circumstances which may constitute or may give rise to a conflict of interest, the procedures we will follow and the measures we will adopt to prevent or manage such conflicts (our “**Conflicts of Interest Policy**”). Where you request, we will provide you with further information on our Conflicts of Interest Policy.
- 19.4. Whilst we take all appropriate steps to identify and to prevent or manage conflicts of interest, where we are not reasonably confident that our arrangements are sufficient to ensure that risk of damage to your interests will be prevented, we will disclose to you the nature of the conflict and the steps that we have taken to mitigate the risk before undertaking business with you.

### 20. Recording and monitoring of communications

- 20.1. In certain circumstances, communications in relation to the Agreement and these Terms (including emails, voicemail, online chat conversations, telephone calls and website usage records) as well as paper

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correspondence such as envelopes or packages may be monitored, recorded or inspected (as appropriate) using monitoring devices or other technical or physical means. The monitoring of communications may take place where deemed necessary for purposes permitted by law from time to time, including, without limitation, to record evidence of business transactions and so as to ensure compliance with HSBC's regulatory obligations and its policies and procedures.

- 20.2. As required by Applicable Law, HSBC will record telephone conversations and electronic communications that result in transactions or that may result in transactions.
- 20.3. Where HSBC is required to record communications under the Applicable Investment Services Regulations, a copy of the recording of the communications referred to in Clause 20.2 will be made available to you on request for a period of five years from the date of the communication. The Applicable Regulator may request that we retain certain or specific records for longer than five years and, if it does, the records retained as a result of such a request of the Applicable Regulator will be available to you for a period of up to seven years.
- 20.4. Any telephone conversations and electronic communications that are recorded in accordance with this Clause may be recorded without use of a warning tone or other notification.
- 20.5. All recordings and other records shall be and remain our sole property. We may use such recordings and other records as evidence in court or other proceedings.

## 21. Costs and charges

- 21.1. We shall provide you in good time with appropriate information with regard to all costs and related charges in accordance with Applicable Law through our website <http://www.gbm.hsbc.com/financial-regulation/market-structure/mifid/policies-disclosures> or such other website as notified to you by us. Without prejudice to these obligations, you agree to the fullest extent permissible under Applicable Law to a limited application of the detailed information requirements on costs and associated charges.
- 21.2. Subject to Applicable Law, you shall pay to HSBC on demand all taxes which may be payable as a result of or in connection with a transaction under the Agreement or these Terms or action or steps taken by HSBC or any other person on your behalf under the Agreement and these Terms (other than taxes of HSBC in respect of its profits or gains).
- 21.3. Where required by Applicable Law, the information under Clause 21.1 will provide for separate evidence of Costs and Charges where a Service is packaged with another service or product or is provided as a condition for the same agreement or package.
- 21.4. Local charges levied on you in respect of a transaction represent HSBC's charge and may not necessarily equate to charges paid by HSBC to local brokers or other intermediaries.

## 22. Fees, commissions or non-monetary benefits that we may receive or pay

- 22.1. When providing Services to you, HSBC may pay or receive fees, commissions or non-monetary benefits to and from a Connected Company or other third party where permitted by the Applicable Investment Services Regulations. HSBC will provide you with separate disclosure of the essential arrangements relating to such fees, commissions or non-monetary benefits where it is required to do so under Applicable Law. You consent to us retaining such commissions, rebates or other benefits.
- 22.2. Information on our general approach relating to these arrangements, can be accessed through our website <http://www.gbm.hsbc.com/financial-regulation/market-structure/mifid/policies-disclosures>, or such other website as notified to you by us. You should read the notice carefully. Where necessary under the Applicable Investment Services Regulations, we will also provide you with further details about such arrangements as they relate to particular services separately.

## 23. Confidentiality and data protection

- 23.1. This Clause 23 shall apply unless otherwise agreed.

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- 23.2. Each of the Parties to these Terms will at all times keep confidential any Confidential Information it may acquire in connection with these Terms except as otherwise permitted by these Terms. “**Confidential Information**” means all information of a confidential nature (which is either marked “confidential” or is clearly by its nature confidential) disclosed by one Party to the other in connection with these Terms together with Personal Data or Special Category Data (as those terms are defined under EC Directive 95/46/EC or the General Data Protection Regulation (EU) 2016/679, as applicable), relating to individuals such as your employees, representatives and agents and those of your affiliates, subsidiaries and third parties, including clients (if any).
- 23.3. The obligations in this Clause 23 shall not apply to any Confidential Information (other than Personal Data or Special Category Data) lawfully in a Party’s possession otherwise than under or as a result of these Terms or coming into the public domain otherwise than by breach by any Party of its obligations contained in these Terms.
- 23.4. Notwithstanding the provisions of Clause 23.2, HSBC and any Connected Company may collect, use, transfer, disclose or otherwise process Confidential Information for the following purposes (the “**Purposes**”):
- 23.4.1. in connection with the provision of goods or services to you (for example: administration and operation of your account(s) both online and offline, account/product underwriting, research, statistical analysis, testing and benchmarking against HSBC and/or any Connected Company’s peer group);
- 23.4.2. in the operations of HSBC or any Connected Company (including, without limitation, credit and risk management, hedging against risk and managing customer demand, whether expected or unexpected, system or product development and planning, insurance, audit and administrative purposes);
- 23.4.3. to meet Compliance Obligations;
- 23.4.4. to conduct Compliance Activity;
- 23.4.5. to maintain HSBC’s overall relationship with you;
- 23.4.6. as part of the disposal or reorganisation or the granting of security interests or encumbrances over the whole or any part of the business or assets of HSBC or any Connected Company, or the transfer or securitisation of any rights or obligations; and
- 23.4.7. in accordance with Clause 23.8.
- 23.5. Confidential Information may be disclosed for the Purposes to any Connected Company (including their employees, directors and officers) as well as to the following recipients:
- 23.5.1. any legal or regulatory Authorities in response to a request from them;
- 23.5.2. persons acting on your behalf, Infrastructure Providers, payment recipients, beneficiaries, account nominees, intermediaries, correspondent and agent banks, clearing houses, clearing or settlement systems, market counterparties, upstream withholding agents, swap or trade repositories, stock exchanges, and companies in which you have an interest in securities (where such securities are held by HSBC for you);
- 23.5.3. any party to a transaction acquiring interest in or assuming risk in or in connection with the Services; and
- 23.5.4. other financial institutions, credit reference agencies or credit bureaus, for the purposes of obtaining or providing credit references,
- 23.5.5. wherever located, including in jurisdictions which do not have data protection laws that provide the same level of protection as the jurisdiction in which the Services are supplied. Such recipients may process, transfer and/or disclose Confidential Information for the Purposes.
- 23.5.6. Wherever it is processed, Confidential Information will be protected by codes of secrecy and security with which HSBC, Connected Companies, third parties and their respective employees are required to comply.
- 23.6. HSBC, any Connected Company or any relevant third party may disclose Confidential Information if required or requested to do so by any tax authority or any other Authorities conducting tax investigations in any territory.

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- 23.7. You undertake, represent and warrant that you have taken and will continue to take any steps needed (including, without limitation, notifying any relevant individuals and/or obtaining all relevant consents), to facilitate processing of Confidential Information for the Purposes. These Terms do not in any way restrict other rights HSBC or any Connected Companies may have now or in the future to otherwise process Confidential Information relating to you or relevant individuals under Applicable Law and under the terms of any other agreement with you.
- 23.8. Where permitted to do so, HSBC may from time to time use contact details that you have given us to provide you or your employees or those of any of your affiliates and subsidiaries with information about new products, services and promotions available from HSBC and Connected Companies and approved third parties by various means (including telephone, email, mobile messaging or other electronic communication) in accordance with your marketing preferences as notified to HSBC by you or your employees or those of any of your affiliates or subsidiaries.
- 23.9. Under data protection law, individuals may have the right to request access to or erasure of Personal Data relating to them, to restrict or object to its processing, and to require Personal Data to be corrected if inaccurate. Any individuals wishing to exercise such rights should contact their usual HSBC representative.

## 24. Pre-trade and post-trade publications

Without prejudice to Clause 23 (*Confidentiality and data protection*), you agree and acknowledge that HSBC has regulatory obligations in respect of any pre-trade or post-trade information relating to the execution of any transactions and HSBC may use this information for its own commercial purposes.

## 25. Complaints

In the event that you have a complaint about the quality of HSBC's service to you under the Agreement and these Terms, you may speak to your usual HSBC representative or proceed according to the Complaints Procedure Regulation. Further details of the complaints-handling process, including information about our complaints management policy and the contact details of our complaints management function, are available on request.

## 26. Compensation

26.1. Our activities in relation to provision of Services to you may be covered by an investment protection scheme, established by law, to provide compensation if a financial firm is unable to meet its liabilities to clients. This protection is only available to **certain types of clients** (for example, it is not available for financial institutions) and is subject to certain limits, which will be reviewed from time to time. For the most up-to-date amounts, or for further details of the relevant schemes, please contact us or the relevant scheme.

26.1.1. Investor compensation scheme:

- (i) HSBC is a participant in the Financial Services Compensation Scheme (the "**FSCS**") in the United Kingdom. The FSCS operates the United Kingdom investor compensation scheme, which can pay compensation in respect of protected "investment business" (the scope of "investment business" might be similar to our dealing and arranging services in relation to the Investment Instruments under the Agreement and these Terms) where there is an eligible claim.

If you have eligible claims under the FSCS's investor compensation scheme, such claims are subject to maximum limits on compensation, as published from time to time on the FSCS's website. The compensation limit for investment business as at August 2017 is set at 100% of £50,000 per client per authorised firm.

You can obtain further up-to-date information on request from HSBC or from the FSCS ([www.fscs.org.uk](http://www.fscs.org.uk)) about the compensation provided by the FSCS (including the amounts covered and eligibility to claim).



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## 27. Acting as a general clearing member

- 27.1. Where we agree to act as a general clearing member for you, the terms upon which we agree to act will be set out in a separate written agreement between you and us. However, if we do provide such services to you, we shall conduct a periodic assessment of your performance against the due diligence criteria listed below.
- 27.2. We shall conduct such assessments on an annual basis, provided that we may, at our discretion, conduct such assessments at a greater frequency than this where we consider it necessary or desirable.
- 27.3. Where you do not meet such criteria, we may take such action as we consider necessary, which may include, but is not limited to, limiting, suspending or ceasing the provision of, or refusing to provide, our clearing services.
- 27.4. Our assessment criteria are:
  - 27.4.1. credit strength, including any guarantees given;
  - 27.4.2. internal risk control systems;
  - 27.4.3. intended trading strategy;
  - 27.4.4. payment systems and arrangements that enable you to ensure a timely transfer of assets or cash as margin, as required by us in relation to the clearing services we provide;
  - 27.4.5. systems settings and access to information that helps you to respect any maximum trading limit agreed with us;
  - 27.4.6. any collateral provided to us by you;
  - 27.4.7. operational resources, including technological interfaces and connectivity; and
  - 27.4.8. any involvement of you in a breach of the rules ensuring the integrity of the financial markets, including involvement in market abuse, financial crime or money laundering activities.

## 28. Know your client ("KYC") requirements

- 28.1. Our dealings with you will be covered by certain Applicable Laws relating to client identification and money laundering which may require us to seek further evidence and confirmation of your identity and the business that you propose to undertake with us. In addition, where you act as an agent on behalf of one or more other persons, we may seek confirmation and/or evidence that appropriate evidence of the identity of such underlying clients has been obtained and recorded under procedures maintained by you.
- 28.2. If satisfactory evidence of your identity and/or the identity of any underlying client has not been obtained within a reasonable period, we reserve the right not to accept or process any Order or transaction in any Investment Instruments or Service or otherwise to cease to deal with you under the Agreement and these Terms.

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## Part 4 – General provisions

### 29. Amendments to the Terms

- 29.1. HSBC shall be entitled to amend or supplement these Terms at any time.
- 29.2. HSBC shall notify you of all amendments or supplements of the Terms through an appropriate note on an Account statement or an information letter or by other appropriate means of notification, including notification on the Home Page, at least two (2) months prior to the effective date of the proposed amendment.
- 29.3. Information about any amendments to the Terms shall indicate the effective date of the amendments and include a notice requiring you to read the updated Terms on the Home Page or at a branch of HSBC. HSBC shall publish the amended or supplemented Terms on the Home Page and at HSBC's branch at least two (2) months prior to the effective date of the amendment.
- 29.4. If you continue to receive and use the Services, it shall be deemed that you have accepted the proposed amendments to the Terms with effect as of the effective date proposed by HSBC, unless you expressly state your disagreement with the proposed amendments to the Terms in writing at the latest on the last Business Day prior to the proposed effective date.
- 29.5. You may reject an amendment in writing, and may terminate the Agreement within the time limit given in Clause 29.4. HSBC may join the proposed change or supplementation of the Terms with its termination notice for the case that you reject the change or amendment, but do not terminate the Agreement.
- 29.6. Both you and HSBC acknowledge and agree that:
- 29.6.1. these Terms may, by definition, reasonably require an amendment at a later date;
- 29.6.2. HSBC may amend the provisions of these Terms in accordance with customary business practice of banks and foreign bank branches operating on the Czech market, or with a view to legislative changes affecting the business of HSBC or Connected Companies;
- 29.6.3. any amendments of the Terms pursuant to this Clause 29 shall be deemed reasonable for the purposes of Section 1752 (1) of the Civil Code;
- 29.6.4. the provision of Section 1752 (2) of the Civil Code shall not apply to the extent that it limits HSBC's ability to amend these Terms to this Clause 29, and amendments effected by HSBC pursuant to this Clause 29 shall not be deemed to constitute changes triggered by a change of circumstances that must have been foreseen by HSBC upon the conclusion of the Agreement, nor changes triggered by a change of HSBC's personal or financial standing; and
- 29.6.5. for the purposes of Section 1752 (1) of the Civil Code, any obligation to settle debts arising under the Agreement and payable upon termination of such Agreements shall not be deemed to constitute special obligations onerous for the terminating party if such Agreement is terminated by you.

### 30. Language of communication and documents

- 30.1. Communications in relation to the Agreement and these Terms shall be in English or Czech.
- 30.2. If these Terms are drawn-up in more language versions, the Czech version thereof shall prevail.

### 31. Provision of information

These Terms are drafted on the basis that you are not a "consumer" as defined in the E-Commerce Directive 2000/31/EC as may be amended from time to time (the "**E-Commerce Directive**"), (i.e. you are not an individual or,

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if you are, you are dealing in the course of your trade, business or profession). As a non-consumer, you hereby agree to the fullest extent permissible under the E-Commerce Directive that we shall not be required to make any disclosures or comply with any requirements which would otherwise be required by the E-Commerce Directive.

### 32. Illegality

If any provision or term of these Terms or any part thereof shall become or be declared illegal, invalid or unenforceable for any reason whatsoever, such term, provision or part shall be divisible from these Terms and shall be deemed to be deleted from these Terms.

### 33. No waiver

Our failure or delay in exercising any right, power or privilege in respect of these Terms will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise of that right, power or privilege or exercise of any other right, power or privilege.

### 34. Exclusion of provisions of contracts of adhesion

34.1. Pursuant to Section 1801 of the Civil Code, you and HSBC diverge from the provisions of Sections 1799 and 1800 of the Civil Code on contracts of adhesion, whereby the potential invalidity of any provisions of these Terms or any Agreement due to a conflict with provisions of contracts of adhesion is excluded, including, without limitation, the invalidity of:

- 34.1.1. clauses referring to terms and conditions outside the wording of the respective Agreement, where you were not advised of their meaning, and where you are not demonstrated to possess knowledge of their meaning;
- 34.1.2. clauses that can only be read with particular difficulty, or clauses incomprehensible to persons of average intellect, even if they are detrimental to you and you were not adequately advised of their meaning; and
- 34.1.3. clauses that are particularly onerous for you without reasonable grounds, especially where the respective agreement or contract diverges significantly and for no special reason from terms and conditions customarily agreed in analogous cases.

### 35. Governing law and jurisdiction

- 35.1. These Terms and any non-contractual obligations arising out of or in connection with it, are governed by Czech law and both parties submit to the jurisdiction of the Czech courts.
- 35.2. You irrevocably waive to the fullest extent permitted by Applicable Law, with respect to yourself and your revenue and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any courts, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which you or your revenues or assets might otherwise be entitled in any legal proceedings in the courts of any jurisdiction ("**Proceedings**") and irrevocably agree that you will not claim any immunity in any Proceedings. You consent generally in respect of any Proceedings to the giving of any relief or the issue of any process in connection with such Proceedings, including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such Proceedings.

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# Schedule 1

## Definitions

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In these Terms, the following words and expressions shall, unless the context otherwise requires, bear the following meanings given to them:

“**Agreement**” means any agreement concluded between us and you that refers to these Terms being a part thereof, given that the agreement includes, where relevant, the General Terms;

“**Applicable Investment Services Regulations**” means, as applicable in each case, (i) the FCA Rules, or (ii) the CMUA and other law that is applicable to our provision of Services to you;

“**Applicable Law**” means (i) all applicable laws; (ii) all applicable regulations and requirements imposed by any competent regulatory, prosecuting, tax or Governmental Authority in any jurisdiction, domestic or foreign (including, without limitation, the FCA rules), or imposed by or arising under the constitution, rules, regulations, bylaws, customs, usages and interpretations of any exchange, trading system, trading venue or organised market on which purchasers and sellers of securities or other investment instruments are brought together, and any clearing house, settlement exchange or other service provided to facilitate clearing and settlement; and (iii) any agreement entered into with, or between, any competent regulatory, prosecuting, tax or Governmental Authority in any jurisdiction, domestic or foreign;

“**Applicable Regulator**” means, as applicable in each case, the FCA, the PRA or the Czech National Bank, or any replacement or successor regulator, which may regulate the provision of HSBC’s Services to you;

“**Authorities**” means any competent regulatory, prosecuting, tax or Governmental Authority in any jurisdiction, domestic or foreign;

“**Best Execution**” has the meaning given to it in Clause 18.2;

“**Best Execution Policy**” means our policy and related arrangements on Best Execution which explains how we will execute orders for you;

“**Business Day**” has the meaning given to it in the General Terms;

“**CMUA**” means Czech Capital Market Undertakings Act No. 256/2004 Coll., as amended;

“**Compliance Activity**” means any activity performed by a Connected Company considered to be appropriate, acting reasonably, to meet Compliance Obligations relating to or in connection with the detection, investigation and prevention of Financial Crime, international and national guidance, relevant HSBC procedures and/or the direction of any public, regulatory or industry body relevant to any member of HSBC Group;

“**Compliance Obligation**” means obligations of a Connected Company to comply with: (a), any applicable local or foreign statute, law, regulation, ordinance, rule, judgment, decree, voluntary code, directive, sanctions regime, court order or international guidance and HSBC’s mandatory policies or procedures, (b) any demand from Authorities or reporting, regulatory trade reporting, disclosure or other obligations under law or (c) any Applicable Laws or internal policies requiring HSBC to verify the identity of its customers;

“**Confidential Information**” has the meaning given to it in Clause 23;

“**Conflicts of Interest Policy**” has the meaning given to it in Clause 19.3;

“**Connected Company**” means HSBC Holdings plc and, from time to time, any subsidiary thereof (as defined in section 1159 of the Companies Act 2006) or affiliated company thereof (as defined in the FCA rules) and (a) agents of any such person and (b) direct or indirect third party service providers of any of the foregoing persons;

“**Costs and Charges**” means the sums payable to HSBC in respect of fees, commissions, expenses and charges pursuant to the Agreement and these Terms;

“**CRD Credit Institution**” has the meaning given to it under the FCA rules;

“**Electronic Services**” has the meaning set out in paragraph 19 of Schedule 2 to these Terms;

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**“Eligible Counterparty”** is a client to whom the provision of Services is subject to the exemption of the application of Sections 15 through 15r of the CMUA under conditions set out in Section 2d(1) and (2) of the CMUA; ;

**“FCA”** means the United Kingdom Financial Conduct Authority, or any successor regulator, which may regulate the provision of HSBC’s services under these Terms;

**“FCA rules”** or **“rules of the FCA”** means the rules, regulations and procedures of the FCA in force from time to time;

**“Fiduciary Duty”** means any duty where a financial institution holds, manages, oversees or has responsibilities for assets for a third party that involves a legal and/or regulatory duty to act with the highest standard of care and with utmost good faith. A fiduciary must make decisions and act in the best interests of the third parties and must place the wants and needs of the third party first, above the needs of the fiduciary;

**“Financial Crime”** means money laundering, terrorist financing, bribery, corruption, tax evasion, fraud, evasion of economic or trade sanctions, and/or violations, or attempts to circumvent or violate any laws or regulations relating to these matters;

**“FSCS”** has the meaning given to it in Clause 26.1.1;

**“General Terms”** has the meaning given to it in Clause 3.3;

**“Governmental Authority”** means the government of any jurisdiction, or any political subdivision thereof, whether provincial, state or local, and any department, ministry, agency, instrumentality, authority, body, court, central bank or other entity lawfully exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government;

**“Home Page”** has the meaning given to it in the General Terms;

**“HSBC”** has the meaning given to it in Clause 1.5.1;

**“HSBC Group”** means HSBC Holdings plc, its subsidiaries, related bodies corporate, associated entities and undertakings and any of their branches;

**“Infrastructure Provider”** means any third party providing shared market infrastructure necessary for a party to perform its obligations under the Agreement or these Terms including any communications, clearing, settlement or payment system, or intermediary or correspondent bank;

**“Investment Instrument”** is an investment instrument specified in Section 3 of the CMUA;

**“Investment Services”** has the meaning given to it under Section 4 of the CMUA;

**“List of Charges”** has the meaning given to it in the General Terms;

**“MTF”** means a multilateral trading facility, which shall have the meaning given to it in the Applicable Investment Services Regulations;

**“Non-complex Investments”** means Investment Instruments described in Section 15k(3) of the CMUA and detailed in other Applicable Investment Services Regulations;

**“OFAC”** means the Office of Foreign Assets Control of the US Department of the Treasury;

**“Order”** means any order, request for quote, direction or instruction from you or any person who is, or is believed in good faith to be, a person designated or authorised by you to give instructions in relation to the Agreement and these Terms. Best Execution will not necessarily apply to the Order (as set out further under Clause 18);

**“OTF”** means an organised trading facility, which shall have the meaning given to it in the Applicable Investment Services Regulations;

**“Party”** has the meaning given to it in Clause 1.5.3;

**“Person”** means an individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership;

**“PRA”** means the United Kingdom Prudential Regulation Authority or any successor regulator which may regulate the provision of HSBC’s services under these Terms;

**“PRA rules”** or **“rules of the PRA”** means the rules, regulations and procedures of the PRA in force from time to time;

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**“Proceedings”** has the meaning given to it in Clause 35.2;

**“Professional Client”** is a client of HSBC who is classified under Section 2a(1)(2) or 2b(1) of the CMUA, except, as the case may be, when the client is classified as an Eligible Counterparty;

**“Purposes”** has the meaning given to it in Clause 23.4;

**“Regulated Market”** has the meaning given to it in the Applicable Investment Services Regulations;

**“Relevant Requirements”** means, in respect of HSBC, HSBC’s legal and regulatory obligations, any request of a public or regulatory authority or pursuant to internal policies applicable to HSBC in relation to the prevention of fraud, money laundering, terrorism or other criminal activities or the provision of financial and other services to sanctioned persons;

**“Retail Client”** is a client who is not classified as a Professional Client or an Eligible Counterparty;

**“Sanctions”** means the sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by any of the Sanctions Authorities;

**“Sanctions Authorities”** means:

- (i) the United States of America;
- (ii) the United Nations;
- (iii) the European Union;
- (iv) the United Kingdom;
- (v) Hong Kong;
- (vi) the jurisdiction of your incorporation or establishment; or
- (vii) the respective Governmental Authorities of any of the foregoing, including without limitation, OFAC, the US Department of State and Her Majesty’s Treasury.

**“Services”** has the meaning given to it in Clause 2.1;

**“Settlement Date”** has the meaning given to it in Clause 16.4;

**“Short Sale”** means a sale of a security not owned by you;

**“Statement”** has the meaning given to it in Clause 18.3;

**“Systematic Internaliser”** has the meaning given to it in the Applicable Investment Services Regulations;

**“Terms”** has the meaning given to it in Clause 1.1;

**“Trading Venue”** means a Regulated Market, MTF and/or OTF;

**“we”, “us” or “HSBC”** has the meaning given to it in Clause 1.5.1; and

**“you”** has the meaning given to it in Clause 1.5.2.

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# Schedule 2

## Electronic Terms

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### 1. Introduction

This Schedule applies in respect of all Electronic Services provided by HSBC to you from time to time. Any transaction or other interaction with any System shall be subject to the terms of this Schedule. For the avoidance of doubt, Electronic Services do not include any execution services offered with respect to “HSBC Evolve”.

### 2. The Electronic Services that we will provide to you under these Electronic Terms

2.1. Subject to paragraph 2.2 below, we grant you and your Authorised Users a personal, non-transferable, non-assignable, non-exclusive, revocable and limited licence to use (but not modify or sub-license) the relevant System to:

2.1.1. execute transactions in Investment Instruments with HSBC;

2.1.2. access a Third-party System which HSBC may, in its sole discretion, choose to make available to you from time to time, including to view information, input orders and to execute transactions, as the case may be. You acknowledge and agree that HSBC will not always be permitted or have the authorisation to provide you with any licence or consent to use any such Third-party System pursuant to these Electronic Terms, and such access is subject to you obtaining any relevant consent or licence from the relevant Third-party Provider or otherwise, as applicable for the use of such Third-party System. Such access may be:

- (i) Direct Electronic Access (Direct Market Access or Sponsored Access); or
- (ii) Electronic Order Intermediation.

Direct Electronic Access provides you with greater control over the timing of order submission. Direct Electronic Access without passing through appropriate control filters of HSBC and those of the Third-party System is not permitted under Applicable Law. As such, filters add minimal, but a finite amount of delay to your order reaching the matching engine of the Third-party System and as a consequence some filters may preclude the possibility of you exercising discretion regarding the exact fraction of a second at which an order is sent. Where the possibility is so precluded, the relevant Service will be one of Electronic Order Intermediation rather than Direct Electronic Access.

If consent is granted by HSBC pursuant to paragraph 2.7.3, you may grant a sub-licence to the relevant Sub-Delegate on equivalent terms to this paragraph 2.1 and paragraph 2.3.

2.2. You shall use each System in accordance with, and in compliance with, the Agreement, the Terms and any User Manual, Market Requirements and other such restrictions, obligations or procedures which HSBC may reasonably impose from time to time and which shall be notified by HSBC to you in writing (such restrictions, obligations or procedures together being the “**Additional Obligations**”).

2.3. In particular, when using a System:

2.3.1. you will procure the agreement of any Authorised Users to these Electronic Terms and any other applicable terms, prior to their access and/or use of the System;

2.3.2. you and all Authorised Users will observe the standard of behaviour required or reasonably expected of members of each System (as if you were in fact a member thereof) and you will not take any step which would cause HSBC (or any Broker or Third-party Provider) to fail to observe the standard of behaviour required or reasonably expected of a member of each such System;

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- 2.3.3. you and all Authorised Users will not submit any order or enter into any transaction or adopt any course of conduct which would be precluded (in respect of HSBC or you) by any applicable Market Requirements or which you or HSBC (or any Broker or Third-party Provider) would not be permitted to submit or enter into or adopt if the transaction or conduct were done by means other than through the Electronic Service;
- 2.3.4. neither you nor any Authorised User will connect any automated trading facility to any System where such automated trading facility sends, or may send, multiple orders to such System;
- 2.3.5. you and all Authorised Users will comply with all instructions given by HSBC relating to your use of the System, applicable Market Requirements, User Manuals, market conventions (including those covering the export and use of encryption technology) and any other reasonable requirements of HSBC or any Third-party Provider;
- 2.3.6. neither you nor any Authorised User will use a Service to do any act or thing which, individually or together, is intended to improperly influence the price structure in the relevant Third-party System, which is devoid of commercial purpose, or which is intended to delay or prevent access to the Third-party System by other market participants;
- 2.3.7. if you come into possession of information that only Third-party System members are permitted to receive ("**Private Market Information**"), you undertake to keep such Private Market Information confidential and not to disseminate it to any natural or legal person or to use such Private Market Information for any purpose whatsoever; and
- 2.3.8. you and your Authorised Users will comply with all applicable export and import laws and regulations.
- 2.4. Where Electronic Services are initiated by your sending HSBC an electronic message sent via a System to HSBC using the FIX Protocol or via a Third-party System which uses the FIX Protocol, you will comply with the Client Connectivity Profile (if any). Where no Client Connectivity Profile exists, the parties will use the FIX Protocol in accordance with separate arrangements entered into between them.
- 2.5. A System's response time may vary due to market conditions, System performance, access device location or other factors, and access to a System may be limited or unavailable during periods of peak demand, market volatility, systems upgrades, maintenance or for other reasons. In the event of a system delay or failure, you are responsible for contacting HSBC by alternative means, such as telephone.
- 2.6. HSBC shall have sole discretion and control over, and the right to modify at any time, any System (other than Third-party System) functionality, configuration, appearance and content. No course of dealing shall be construed as a promise of continued or continuous availability of such communication, System or service capability.
- 2.7. Direct Electronic Access
- 2.7.1. Unless otherwise agreed between us, we are under no obligation to provide you with Direct Electronic Access Services. Any provision of Direct Electronic Access Services by us to you will be subject to your satisfactory completion (as determined by us at our sole discretion) of a due diligence assessment to ensure that you meet the Market Requirements.
- 2.7.2. Notwithstanding any other term in these Electronic Terms, when we provide you with Direct Electronic Access Services, we are responsible for ensuring that your use of such Direct Electronic Access Services complies with the Market Requirements. You acknowledge and agree that such responsibility shall not affect the contractual rights and obligations between us in respect of your use of our Direct Electronic Access Services.
- 2.7.3. Sub-delegation
- (i) Where we expressly consent in writing, we may, in our sole discretion, permit you to delegate your rights to the Electronic Services to a Sub-Delegate.
- Any such consent with you will be conditional upon:
- (a) you agreeing with your Sub-Delegate terms equivalent to these Electronic Terms (subject to (c) below) including the satisfaction of a due diligence assessment equivalent to our assessments of you, and ensuring compliance by the Sub-Delegate with: (i) these



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Electronic Terms; (ii) any instructions given by HSBC relating to your or its use of the System; (iii) applicable Market Requirements; (iv) User Manuals; (v) market conventions (including those covering the export and use of encryption technology); and (vi) any other reasonable requirements of HSBC or any Third-party Provider to ensure in each case that the arrangements meet the requirements of Applicable Law applying to our provision of the Direct Electronic Access Services;

- (b) upon HSBC's request, your provision to HSBC of evidence (to HSBC's reasonable satisfaction) of your and the Sub-Delegate's compliance with the above;
- (c) you ensuring that no further delegation by the Sub-Delegate will be permitted without HSBC's express consent; and
- (d) you informing HSBC immediately of any breach of the equivalent terms referred to in (a) above in place between you and the Sub-Delegate.

HSBC will not treat the Sub-Delegate as its client and accordingly, in respect of any transactions in HSBC's name resulting from the Sub-Delegate's access to the Electronic Services, HSBC will hold you liable as principal and enter into any necessary back to back agreements with you (unless otherwise agreed).

### 3. Interpretation and interaction with other agreements

- 3.1. Words and phrases used within these Electronic Terms which hold particular meanings are defined within these Electronic Terms, Schedule 1 to the Terms and are also listed in paragraph 19 below.
- 3.2. In the event of any conflict or inconsistency between the Agreement, this Schedule, the Terms, the General Terms and any applicable Market Requirements, the following shall prevail in descending order of precedence:
  - 3.2.1. the Agreement;
  - 3.2.2. the applicable Market Requirements;
  - 3.2.3. any Additional Obligations;
  - 3.2.4. the General Terms;
  - 3.2.5. this Schedule (only to the extent that the conflicting term is specific to the provision of Electronic Services and not Applicable Law); and
  - 3.2.6. the Terms other than this Schedule.

### 4. Your capacity

- 4.1. With respect to the Electronic Services, you will:
  - 4.1.1. except to the extent that you and HSBC mutually agree in writing to the contrary (see clauses 6.2 and 6.3 of the Terms), act as principal, and not as agent for, or on behalf of, your underlying clients;
  - 4.1.2. act, for the purpose of this Schedule, from one or more of your designated offices (agreed between the parties). Any access to, or use of, any System by you or any Authorised User, who is physically located outside of the jurisdiction in which such designated office is located, is strictly prohibited without the prior written consent of HSBC and any relevant Third-party Provider; and
  - 4.1.3. only use the relevant System for your own business and commercial purposes.

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## 5. Charges

HSBC's provision of the Electronic Services will be subject to such charges as are mutually agreed between us or as set in the List of Charges. Other than as otherwise agreed between us, you are responsible for all fees, costs, charges and expenses associated with your use of a System.

## 6. Authorised Users, Sub-Delegates, security and unauthorised use

- 6.1. You will ensure that only Authorised Users and/or Sub-Delegates view information and enter orders via each System.
- 6.2. You shall ensure Authorised Users and/or Sub-Delegates shall have all necessary consents of any governmental or other regulatory body or authority and will comply with all necessary Applicable Laws in the jurisdictions in which they are located in relation to any provision of the Electronic Services to such users.
- 6.3. HSBC has no responsibility for verifying that each person accessing a System is an Authorised User and/or a Sub-Delegate.
- 6.4. Unless and until notified otherwise, HSBC shall be entitled to treat, without enquiry, all communications between you and HSBC relating to the Electronic Services and any modifications or cancellations thereof that appear to have been placed by you as having been placed by an Authorised User and/or a Sub-Delegate. In the event of any inconsistency between the information available to you and the information available to HSBC via a System, the information available to HSBC via such System shall be conclusive.
- 6.5. Where HSBC or a Third-party Provider issues any Access Codes to you, you shall keep such Access Codes confidential and shall ensure that such Access Codes are only used to access and use the relevant System and Electronic Services by Authorised Users and/or Sub-Delegates and shall provide such evidence thereof as may be specified in any User Manual or as HSBC may otherwise reasonably request.
- 6.6. In order to maintain the security of each System, you will use adequate security procedures to ensure the confidentiality and security of any Access Codes and to prevent unauthorised access to your equipment or a System.
- 6.7. You will follow all security procedures and reasonable instructions of HSBC or any Third-party Provider (as appropriate) relating to any Access Codes and the relevant System at all times.
- 6.8. You must ensure that none of you, your Authorised Users, Sub-Delegates, your employees nor your agents or representatives will do anything during, or after, the term of this Schedule which will result in the security of a System, or the systems or security of any of HSBC's other customers, being compromised.
- 6.9. Any breach of any of your obligations in respect of a System by your Authorised Users or other employees, agents or representatives and/or Sub-Delegates shall constitute a breach of such obligations by you.
- 6.10. You will notify HSBC as soon as you become aware of any actual or potential breach of security as described in this paragraph 6, including, but not limited to, any unauthorised access. Upon HSBC becoming aware of such notification, HSBC will suspend your ability to use the Electronic Services until further agreement with you pursuant to the Electronic Terms.
- 6.11. Neither the Authorised User (or other employee, agent or representative) nor any Sub-Delegate shall attempt to gain access to any other HSBC system or any data contained therein other than the System authorised by HSBC.
- 6.12. You shall establish, maintain and regularly review appropriate security arrangements to ensure that there is no unauthorised sending of communications between you and HSBC relating to the Electronic Services.
- 6.13. In the event you become aware of any actual or attempted unauthorised use of a System, you will immediately notify HSBC of such unauthorised use and, if within your control, cause such unauthorised use to cease. Upon HSBC becoming aware of such notification, HSBC will suspend your ability to use the Electronic Services until further agreement with you.
- 6.14. You confirm that you have assessed the security arrangements required pursuant to this paragraph 6 and have determined that they are adequate to protect your interests.

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- 6.15. In the event that a transaction results from unauthorised access owing to a breach of your security arrangements or lack of your security arrangements, such transaction will be binding on you and HSBC will have no obligation to unilaterally unwind the transaction and have no liability in respect of losses suffered by you as a result of such transaction.

## 7. Training

- 7.1. You will ensure that all Authorised Users and/or Sub-Delegates have been given suitable training in the use of each System, including, but not limited to, all relevant Market Requirements.
- 7.2. HSBC is under no obligation to provide you, or your employees, with any training or assistance in relation to your use of the Electronic Services or in relation to the use or installation of any software necessary to use the Electronic Services.
- 7.3. Notwithstanding paragraphs 7.1 and 7.2 above, by using a System to view information, input orders and/or execute trades, you will be deemed to acknowledge that you understand how to use such System and that you understand all Market Requirements.

## 8. Customer's System

- 8.1. You understand that you are responsible (at your own cost) for:
- 8.1.1. the installation and proper use of any Software (and, if HSBC notifies you in writing that it is required, any upgrades thereto) provided by HSBC to you to enable you to use a System;
  - 8.1.2. selecting and providing all your own equipment, operating platforms, computer hardware and software, network facilities and other technology necessary to access and use a System, in accordance with any minimum standards set out in any User Manual ("Customer's System");
  - 8.1.3. all maintenance and support services required in relation to a Customer's System;
  - 8.1.4. the installation and proper use of any virus detection/scanning program which HSBC may require from time to time;
  - 8.1.5. compliance with any system requirements notified by HSBC to you from time to time; and
  - 8.1.6. compliance with all applicable Market Requirements.
- 8.2. You will run such tests and provide such information to HSBC as HSBC shall reasonably consider necessary to establish that a Customer's System satisfies the requirements specified in paragraphs 8.1.5 and 8.1.6 above.
- 8.3. You shall ensure that the data, messages and codes that you provide to HSBC by electronic messaging do not contain any viruses, worms, Trojan horses or other components likely to cause harm to a System or HSBC's systems.
- 8.4. In the event you become aware of a material defect, malfunction, virus or other destructive or disruptive components in a Customer's System or System, you will immediately notify HSBC of such and cease all use of such Customer's System or System, as the case may be, until you have received permission from HSBC to resume use of such System. Upon HSBC becoming aware of such notification, HSBC will suspend your ability to use the Electronic Services until further agreement with you.

## 9. Control of orders prior to execution

- 9.1. HSBC has the right to set, or to require a Third-party Provider to set, trading, position and credit limits and/or (pre- or post-trade) parameters to control your ability to use a System and/or that of your Sub-Delegates at the sole discretion of HSBC. Such trading, position and credit limits and/or (pre- or post-trade) parameters may be amended, increased, decreased, removed or added to by HSBC at the sole discretion of HSBC and may include (without limitation):

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- 9.1.1. controls over price collars, maximum order values, maximum order volumes and maximum message limits (pertaining to submission, modification or cancellation of an order);
  - 9.1.2. controls over HSBC's total exposure to you;
  - 9.1.3. controls over the number of times an algorithmic trading strategy can be applied;
  - 9.1.4. controls over prices at which orders may be submitted (to include (without limitation) controls over orders which are at a price which differs greatly from the market price at the time the order is submitted to the order book);
  - 9.1.5. controls over access to a System (to include (without limitation) any verification procedures to ensure that any particular order or orders has/have come from you); and
  - 9.1.6. any other limits, parameters or controls which HSBC may be required to implement in accordance with Market Requirements.
- 9.2. Prior to accepting the first trading order from you and/or a Sub-Delegate, HSBC will notify you in writing (or by electronic communication) of the pre-set trading, position and credit limits and/or parameters, including, but not limited to, price collars, maximum order values, maximum order volumes and maximum message limits (pertaining to submission, modification or cancellation of an order). HSBC reserves the right to vary these limits and will notify you accordingly. Any orders properly submitted by you and/or a Sub-Delegate prior to your receipt of notification of new limits taking effect shall not be deemed subject to such new limits but shall be subject to the previously established limits.

## 10. Order management

- 10.1. If you and/or a Sub-Delegate submit an order via a System in error (including any error orders issued by your Authorised Users resulting from "fat-finger" (i.e. mistaken excess computer keystrokes) or other similar errors) and wish to withdraw that order, HSBC shall, so far as is reasonably practicable, provide assistance to you to enable you to do so. However, HSBC accepts no responsibility for ensuring that such an order is withdrawn or for the actions or inaction of any Third-party Provider to which a request has been submitted to cancel or withdraw an error order and, in all circumstances, you shall be responsible for any transaction (including any transaction resulting from your error) which arises in circumstances where it is not possible to withdraw an order made by you.
- 10.2. In the event of any disagreement between you and HSBC as to whether or not an order has been accepted and executed by the relevant Third-party Provider, any confirmations or notices received by you via a System shall be conclusive evidence of the implementation of such a transaction and, in the event such notices or confirmations are unavailable, any records systematically produced by a System shall be conclusive.

## 11. Withdrawal of Electronic Services and termination

- 11.1. HSBC has the right, at any time, unilaterally, upon notice (where it is practicable to provide such notice), to suspend or withdraw permanently your and/or your Sub-Delegate's ability to use (i) the Electronic Services (including, where we provide you with Direct Electronic Access Services, to the extent we consider it necessary or desirable to comply with Commission Delegated Regulation (EU) 2017/589), and/or (ii) the Software as amended or supplemented from time to time, or any part of (i) and/or (ii), for any reason, including (but not limited to) any of the following reasons:
  - 11.1.1. you are in breach of any of the Agreement, Terms (including this Schedule) or you fail to agree to any amendments of the Terms issued by HSBC from time to time;
  - 11.1.2. a Sub-Delegate is in breach of any equivalent agreement (to this Schedule) in place with you pursuant to paragraph 2.7.3 or you fail to agree any revisions or replacements to such agreement as required by HSBC from time to time;
  - 11.1.3. you or a Sub-Delegate fail to operate the Electronic Services in accordance with the terms hereof;
  - 11.1.4. there is or has been a delay, suspension, defect in or failure of the whole or any part of (or combination of) a Customer's System or a System (including, without limitation, the internet), HSBC's network link to any

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Third-party System and any network, communication or computer systems or facilities owned or operated by a Third-party Provider;

- 11.1.5. HSBC, or the service providers of HSBC are to carry out maintenance;
- 11.1.6. HSBC is unable to provide the Electronic Service due to changes in Market Requirements or the policies and procedures of HSBC or any Broker;
- 11.1.7. any act of God, fire, action of any government or state, governmental or supranational body or authority or any Third-party Provider (including default, suspension or termination) and/or clearing house or system, strike or industrial action, any act or threatened act of terrorism or military action, war, civil commotion, adverse weather conditions, any power supply or utility which fails or is interrupted, either in whole or in part, or other cause beyond our control, whether or not similar in kind to any of the foregoing;
- 11.1.8. non-use by you or a Sub-Delegate of a System for a period of 90 days or more; and
- 11.1.9. where HSBC determines in its sole discretion that your use, or the use of a Sub-Delegate, of the Electronic Services is not, or may not be, consistent with the trading, position and credit limits and/or parameters set out in paragraph 9.1 above.
- 11.2. Without prejudice to paragraph 11.1 above, HSBC shall, whenever practicable, provide you with reasonable notice before suspending or withdrawing your access to a System, or any part thereof.
- 11.3. Without prejudice to paragraph 11.1 above, your access to and use of the Electronic Services and/or the Software, or the relevant part thereof, will terminate immediately:
  - 11.3.1. upon either Party giving prior written notice of termination to the other Party; or
  - 11.3.2. automatically, with respect to any Third-party Provider, upon the termination (for whatever reason) of any licence granted to HSBC by such Third-party Provider or by any Broker which relates to the Electronic Service.
- 11.4. On termination under paragraph 11.1 or 11.3 above, all the parties' respective rights and obligations in relation to the terminated Electronic Service and/or Software shall automatically terminate except for such rights of action as shall have accrued prior to such termination, including any rights or obligations with respect to any outstanding transaction, and any obligations which expressly, or by implication, are intended to come into or continue in force on or after such termination.
- 11.5. In the event that any Electronic Service is suspended or withdrawn, you may submit orders to HSBC by alternative means acceptable to HSBC. Unless stated otherwise by HSBC, such orders shall not be subject to these additional terms but shall be subject to the remaining provisions of the Agreement, the Terms and (where relevant) this Schedule.
- 11.6. HSBC may (but is under no duty to and assumes no liability in respect thereof) cancel, refuse to execute or reduce the size of any order submitted by you if HSBC, in the sole discretion of HSBC, believes that such order would be in violation of any Market Requirements or exceeds any limits which HSBC may impose on your positions from time to time. HSBC shall notify you promptly if HSBC takes any such action.
- 11.7. On termination, you shall, and where applicable, ensure that your Sub-Delegate shall:
  - 11.7.1. immediately cease to use the Software and/or any User Manual;
  - 11.7.2. immediately cease to access or use the relevant System in respect of your (or your Sub-Delegate's) dealings with HSBC or use the Electronic Services whether via a Third-party System or otherwise; and/or
  - 11.7.3. upon request by HSBC, and at the option of HSBC, return to HSBC or destroy all hardware, software and documentation which HSBC may have provided to you in connection herewith and any copies thereof (including all copies of the Software and any User Manual) and provide such proof of destruction as HSBC may require.

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## 12. HSBC's recovery of liabilities, losses and costs

- 12.1. You and your Authorised Users will not use a System, via a Third-party Provider or otherwise, to send messages which are defamatory, fraudulent, contain personal data in contravention of any data protection regulation or legislation, contain viruses or other harmful or destructive materials or to facilitate any criminal transaction or act, contravene any law or any regulation, or do or omit to do any act or thing which might give rise to a third-party claim against HSBC.
- 12.2. Notwithstanding the provisions of the Agreement or the Terms, your use of a System is at your own risk, and, without prejudice to any provisions of the Agreement or the Terms relating to HSBC's recovery of liabilities, losses or costs, you agree to indemnify, protect and hold harmless HSBC and any of its successors, assignees and employees (collectively, the "Indemnified Parties") from and against all claims, demands and proceedings, and for any costs, liabilities, losses, damages or expenses, including, but not limited to:
- 12.2.1. any fine, penalty or other similar charge imposed on HSBC for any reason by any Third-party Provider or any regulatory authority or under any Market Requirements which relate in any way to a transaction entered into by you (or a Sub-Delegate) or by HSBC on your behalf via the Electronic Service (in so far as this is permitted by Applicable Law);
- 12.2.2. all losses, liabilities, judgments, suits, actions, proceedings, claims, damages and costs incurred or suffered by HSBC and resulting from or arising out of:
- (i) any act or omission by any person using the Electronic Services or any part thereof, or a System, by using your designated passwords or the designated passwords of a Sub-Delegate, whether or not you or the Sub-Delegate authorised such use;
  - (ii) your or a Sub-Delegate's misuse of a System;
  - (iii) any orders you or a Sub-Delegate submit or conclude via a System;
  - (iv) any breach of the provisions of this Schedule or equivalent terms that you have in place with a Sub-Delegate; and/or
  - (v) any malfunction or failure of a System; and/or
- 12.2.3. all financial losses resulting from or arising out of a Third-party Provider ordering HSBC (or any Broker) to cease trading due to a Short Sale order issued by you or your Sub-Delegate or any other act or omission for which you are responsible or your Sub-Delegate is responsible and considered by a Third-party Provider to amount to market manipulation or other violation of any Market Requirements,
- (together, the "Costs") unless, and then only to the extent that, such Costs are caused by the proven gross negligence or wilful default of any of the Indemnified Parties in the provision of the Electronic Services.
- 12.3. You will be bound by any assent or agreement you or a Sub-Delegate transmits through a System howsoever that assent or agreement is given or made, including, but not limited to, any consent you or a Sub-Delegate gives to receive communications from HSBC solely through electronic transmission. Where this function is made available, you agree that, if you or your Sub-Delegate clicks on an "I agree", "I consent" or other similarly worded button or entry field with your mouse, keystroke or other computer device, you are providing your express agreement or consent which will be legally binding and enforceable and the legal equivalent of your hand written signature.

## 13. HSBC's limitation of liability

- 13.1. Without limiting any provisions of the Agreement or the Terms relating to HSBC's limitation of liability, other than as a result of the proven gross negligence, fraud or wilful default of HSBC, HSBC will not be liable to you or a Sub-Delegate for any losses, costs, taxes or expenses which arise out of or relate to:
- 13.1.1. any interruption or failure for any reason of the whole of, or any part or function of, a System, the Software, the Electronic Services, any Third-party System (if any) or any associated communications systems or equipment;
- 13.1.2. any uncompleted or incorrect transactions resulting from incomplete, incorrect, garbled, failed, intercepted or misdirected communications between you and HSBC, whether via a Third-party System or otherwise;

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- 13.1.3. your failure, or that of your Sub-Delegate, to receive HSBC's electronic acknowledgement of a completed transaction, if such electronic acknowledgement was sent;
- 13.1.4. the existence of any viruses or other harmful components; or
- 13.1.5. any information provided to you via a System and the Electronic Services.
- 13.2. Neither Party will have any claim against the other for a misrepresentation in respect of a System and the Electronic Services unless that misrepresentation was made fraudulently. Each System and the Electronic Services are provided "as is" and HSBC does not make any representation or warranty whatsoever, including warranties that a System or any Electronic Services will be uninterrupted or error free, or otherwise with respect to accuracy, timeliness or completeness. HSBC further disclaims any express or implied warranties, including implied warranties of title, non-infringement, merchantability, suitability or fitness for a particular purpose in respect of a System or Electronic Services.
- 13.3. Without prejudice to the generality of the foregoing, HSBC does not warrant or undertake that:
- 13.3.1. electronic messages sent through a System will be recognised or understood by your system or that of your Sub-Delegate; or
- 13.3.2. HSBC will update the Software in accordance with your preferences.
- 13.4. HSBC shall not be bound by any provisions relating to the use by you, or a Sub-Delegate, of any Third-party System, except to the extent agreed between HSBC and the relevant Third-party Provider.
- 13.5. Should you instruct HSBC to make any claim against a Third-party Provider in relation to a transaction resulting from an error order where, in your reasonable view, a Third-party Provider was at fault in not being able to cancel or withdraw the error order following an instruction from you or HSBC, HSBC will use reasonable endeavours to assist you, provided that all costs and expenses of pursuing such claim (whether internal or external) against the Third-party Provider are borne by you. Any law firm or other external consultant retained in relation to such a claim shall be paid directly by you, even if they are acting for you and HSBC jointly.
- 13.6. For the avoidance of doubt, and without limitation to the foregoing, HSBC excludes its liability towards any Sub-Delegate under this Schedule 2, to the maximum extent permitted by law.
- 13.7. Nothing in this Schedule 2 seeks to discharge any obligation that HSBC has under Applicable Law related to the provision of the Electronic Services.
- 13.8. In any event the entire aggregate liability of HSBC and its Connected Companies under or in connection with this Schedule, whether arising from tort (including negligence), breach of contract or otherwise, in relation to a claim, or series of claims arising out of the same cause in any calendar year, to the fullest extent permitted by Applicable Law, will not exceed in aggregate £100,000 or its equivalent in any other currency. Notwithstanding the foregoing, HSBC does not seek to exclude or restrict, or to rely on any exclusion or restriction of, any duty or liability HSBC may have to you under the rules of the FCA or HSBC's liability for death or personal injury arising from its negligence or that of its employees, agents or sub-contractors.
- 13.9. You acknowledge that the exclusions and limitations of HSBC's and its Connected Companies' liabilities under this Schedule are fair and reasonable given that the System and the Electronic Services are made available to you by HSBC at no additional marginal cost to you to facilitate the parties' respective internal business operations.

## 14. Your record keeping

You shall keep adequate records in accordance with all Market Requirements to demonstrate the nature of orders submitted and the time at which such orders are submitted, and that these records will be made available to HSBC to assist in providing any regulatory data requested by Third-party Providers, Brokers, regulators or auditors.

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## 15. HSBC and Third-party Provider right of access, periodic assessment and monitoring

- 15.1. You grant to HSBC, any Third-party Provider and their agents or subcontractors the right, at any time and on reasonable prior written notice, to enter your premises and inspect books and records required to be kept in accordance with Market Requirements and/or a Customer's System to ensure that it complies with the requirements notified by HSBC to you in writing from time to time and that you are using a System in accordance with, and otherwise complying with, the Terms and any Market Requirements. Any access granted under this paragraph 15.1 shall be subject to HSBC's compliance with your reasonable policies and security procedures.
- 15.2. Further to paragraph 15.1 above, HSBC may conduct a periodic risk-based assessment of the adequacy of a Customer's System, a System, the provision of Electronic Services, its compliance with Market Requirements and the appropriateness of the trading, position and credit limits and/or parameters set out in paragraph 9.1 above on an annual basis, or at such other frequency as HSBC determines.
- 15.3. Further to clause 20 (*Recording and monitoring of communications*) of the Terms, HSBC shall have the right to monitor in real-time your use of a System in order to identify, or identify potential, infringements, disorderly trading conditions or market manipulation or abuse and to retain such information in accordance with clause 20 (*Recording and monitoring of communications*) of the Terms. You shall procure from your Sub-Delegate agreement that HSBC may have the same monitoring rights in respect of the Sub-Delegate's use of a System.

## 16. Usage information

You will provide us with information reasonably requested in connection with these Electronic Terms. Where we provide you with Direct Electronic Access Services, you shall provide us with information on the trading desks and traders authorised to submit orders and the financial instruments in respect of which they are authorised to submit orders. You undertake to give us written notice of any material changes to the information provided pursuant to this paragraph 16. You agree to provide all assistance and information reasonably requested by us (including, but not limited to, information requested by a regulatory body, exchange or trading system) in relation to the Electronic Services.

## 17. Intellectual property

- 17.1. All present and future rights conferred by statute, common law or equity in any territory in or in relation to inventions, patents, copyrights, database rights, designs and design rights, circuit layouts, trade marks and trade names, business and domain names, logos, trade secrets, know-how and any other intellectual property rights or confidential information (whether registered or unregistered, registrable or patentable) and all applications therefore relating to a System, the User Manual, the Software, the Electronic Services will (as between you and HSBC) remain vested in HSBC or its licensors.
- 17.2. Where HSBC provides Software and/or a User Manual to you, HSBC grants you a revocable, non-exclusive, non-assignable, non-transferable licence for the duration of this Schedule to use the Software and User Manual only to access a System and solely for your internal business purposes. Notwithstanding the foregoing, solely where consent is granted pursuant to paragraph 2.7.3, you may grant a sub-licence to the relevant Sub-Delegate of the Software and User Manual on equivalent terms to this paragraph 17.
- 17.3. You will not:
  - 17.3.1. cause or permit the reverse engineering, disassembly or decompilation of the Software (save to the extent expressly permitted by section 50B of the Copyright, Designs and Patents Act 1988 or any amendment or applicable replacement thereof);
  - 17.3.2. make the Software, User Manual or Access Code available to any third party for any purpose;
  - 17.3.3. recreate or copy the Software or User Manual (save to the extent expressly permitted by section 50A of the Copyright, Designs and Patents Act 1988 or any amendment or applicable replacement thereof); or
  - 17.3.4. re-export or redistribute the Software or any part of a System or Electronic Services without HSBC's prior written permission.



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17.4. Use of a System may require the distribution of cryptographic technology which may be the subject of export controls or restrictions. You will not redistribute or re-export such cryptographic technology supplied by HSBC without:

17.4.1. the prior written consent of HSBC;

17.4.2. your compliance with all applicable export laws; and

17.4.3. your compliance with the laws of the country of destination or use.

## 18. Proprietary rights

This Schedule does not operate to vest in you any right, title or interest in any System (or any information provided therein) or any software or documentation provided to you in connection with a System, except as expressly provided hereunder.

## 19. Definitions

In this Schedule, the following words and expressions shall, unless the context otherwise requires, bear the following meanings given to them:

**“Access Code”** means an electronic identification to be used by each Authorised User to access a System (whether as password, digital certificate, access code, token and/or other identification or security device) as advised to you by HSBC in accordance with the User Manual or otherwise (or by any Third-party Provider with respect to access to a Third-party System) from time to time;

**“Additional Obligations”** has the meaning given to it in paragraph 2.2;

**“Authorised User”** means any employee, agent or representative who is controlled by you and who you have authorised to access and use a System;

**“Broker”** means the broker through which HSBC executes transactions on any relevant Third-party System;

**“Client Connectivity Profile”** means a questionnaire issued by HSBC and completed by you which comprises a record of how the parties agree to use the FIX Protocol in relation to a System and which may be amended by the parties in writing from time to time;

**“Costs”** has the meaning given to it in paragraph 12.2 above;

**“Customer’s System”** has the meaning given to it in paragraph 8.1.2 above;

**“Direct Electronic Access”** means an arrangement where a member or participant or client of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue and includes:

(i) Direct Market Access; and

(ii) Sponsored Access,

provided that, where you cannot exercise discretion regarding the exact fraction of a second of order entry and the lifetime of the order within that timeframe, such arrangements shall not constitute Direct Electronic Access;

**“Direct Electronic Access Services”** means the provision of Direct Electronic Access to one or more exchanges, markets or multilateral trading facilities on which, or under the rules of which, a transaction takes place (such term including, where relevant, the clearing house thereof) of which HSBC may notify you from time to time;

**“Direct Market Access”** means arrangements which involve the use by a person of the infrastructure of HSBC, or any connecting system provided by HSBC, to transmit the orders (as compared to Sponsored Access);

**“Electronic Order Intermediation”** means electronic access arrangements other than Direct Electronic Access where your orders are intermediated through electronic means by members or participants of a trading venue such as online brokerage provided that you do not have the ability to determine the fraction of a second of order entry and the lifetime of orders within that time frame;

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**“Electronic Services”** means the provision of each System, and/or access to each System (including, where applicable, Direct Electronic Access and Electronic Order Intermediation), to you from time to time. For the avoidance of doubt, this does not include any execution services offered with respect to HSBC Evolve;

**“FIX” or “FIX Protocol”** means the protocol developed by FIX Protocol Limited which is published on [www.fixprotocol.org](http://www.fixprotocol.org), or any replacement site thereof and which is the industry standard format, used to transmit electronic messages between entities;

**“Market Requirements”** means the rules and regulations of each Third-party Provider, and such other rules, regulations or laws of any regulatory body, exchange, trading system or jurisdiction as may have application to the conduct of your trading (whether or not through a System or use of a System);

**“Private Market Information”** has the meaning given to it in paragraph 2.3.7 above;

**“Software”** means the software, if any, provided to you by HSBC to enable you to access a System and the Electronic Services but excluding the software, if any, provided to you by any third party to enable you to access a Third-party System;

**“Sponsored Access”** is the same as Direct Market Access, provided that you do not use HSBC’s infrastructure but rather route your orders to the Third-party Provider using HSBC’s Access Code. Under Applicable Law, the controls for Sponsored Access applied by the Third-party Provider (not HSBC as HSBC’s infrastructure is not used) must be at least equivalent to those for Direct Market Access, including applying HSBC’s usual pre-trade controls to the trading flow such as setting appropriate trading limits and credit thresholds. Naked or unfiltered access to a Third-party System is prohibited under Applicable Law;

**“Sub-Delegate”** means a client of yours, whom you have authorised to have access to a System following consent from HSBC and fulfilment of the conditions under paragraph 2.7.3 above;

**“System”** means an infrastructure used in the provision of electronic services to you directly by HSBC or by HSBC by way of a Third-party System, which shall include, but not be limited to, any electronic trading and information system providing electronic transaction execution facilities and facilities for making requests for quotes or responses, allocation instructions and all of HSBC’s computer or wireless systems or services;

**“Third-party Provider”** means the provider of a Third-party System;

**“Third-party System”** means any website, portal, electronic order routing or other system or service provided by a third party; and

**“User Manual”** means any technical user guide and all other documentation provided by HSBC or a Third-party Provider to you, including for, but not limited to, aiding use of a System, detailing a System’s operation and functionality and/or setting forth certain procedures and requirements applicable to a Customer’s access to and use of a System, in each case, as may be updated or amended by HSBC or the Third-party Provider from time to time.