

THE HONGKONG AND SHANGHAI BANKING CORPORATION LIMITED

and

[DEPOSITOR]

CUSTODIAN AGREEMENT

- (c) to hold bearer instruments in that form and, where possible, to register instruments in the name of the Bank or any other person appointed by it;
- (d) to hold securities which are not fully paid, subject to such conditions as the Bank may specify;
- (e) to purchase or subscribe for any type of security or other investment in accordance with the Depositor's instructions and market practice and following receipt of the funds required for such purpose;
- (f) to sell or otherwise dispose of Property and to deal with the proceeds, in each case in accordance with the Depositor's instructions and market practice;
- (g) to enter into any agreement or instrument on behalf of the Depositor in connection with any security or other investment which is or is to be included in Property, in each case in accordance with the Depositor's instructions and market practice;
- (h) where securities are registered in the name of the Bank or any other person appointed by it (but not otherwise), to notify the Depositor of information received by the Bank which requires action to be taken by the Depositor in relation to such securities and to request, collect, receive and make payments or distributions attributable to such securities;
- (i) to borrow or otherwise deal in securities on behalf of the Depositor in accordance with the Depositor's instructions;
- (j) to arrange from time to time financial accommodation for the Depositor on such terms and conditions as the Bank shall consider appropriate;

- (k) to provide such other services as the Bank and the Depositor may from time to time agree in writing.

2.02 In providing the Services, the Bank shall:-

- (a) maintain securities accounts and also cash accounts to which all income and proceeds derived from Property shall be credited;
- (b) maintain records showing the accounts belong to or are under the duly authorised control of the Depositor on behalf of a customer or customers of the Depositor;
- (c) keep Property segregated from assets held by the Bank for its own account;
- (d) ensure that all of the Property held by it, its nominees or agent is clearly recorded in the books of the Bank as belonging to the Depositor and/or the Depositor's customers as advised by and, where necessary for local laws, identified by the Depositor (and if not so advised as belonging to the Depositor) and not to the Bank or other customers, agents or nominees of the Bank;
- (e) not part with possession of the Property except to the Depositor or on the Depositor's instructions;
- (f) maintain such records as are necessary to identify the location of each title document, including details of:-
 - (i) the date at which the title document came into or left the possession or control of the Bank;
 - (ii) the nature of the title document; and

(iii) the nature, amount and nominal value of the investment to which the title document relates.

2.03 The Bank is authorised to take such steps as it may consider expedient to enable it to provide the Services and to exercise its powers under this Agreement, including the right:-

- (a) to comply with any applicable law, regulation, order, directive, notice or request of any government agency (whether or not having the force of law) requiring the Bank to take or refrain from action and/or to disclose information;
- (b) on behalf of the Depositor, to withhold and/or to make payment of any taxes or duties payable on or in respect of Property;
- (c) in the absence of or delay in receiving instructions from the Depositor in response to a request, to act or refrain from acting as it may deem expedient in the best interests of the Depositor;
- (d) to co-mingle Property with the property of other customers (although the Bank shall clearly identify all securities held in its capacity as custodian on behalf of the Depositor as being Property of the Depositor);
- (e) to return to the Depositor physical securities which may not have the same serial number or identification as those originally deposited with or received by the Bank;
- (f) to participate in and to comply with the rules and regulations of any system which provides central depository, clearing and/or settlement facilities in

respect of securities but without liability for any acts or omissions on the part of the operator or manager of any such system; and

- (g) provided that it is market practice to do so, to accept in lieu of documents of title for Property purchased in exchange for value paid receipt of payment and a promise to provide relevant documents of title at some unspecified future date from the vendor's broker.

2.04 The Bank shall be under no duty to investigate, participate in or take affirmative action concerning proxies received, attendance at meetings and voting except in accordance with the instructions of the Depositor. In the absence of such instructions, the Bank shall take no action unless otherwise required under local law.

2.05 The Depositor shall maintain with the Bank at all times sufficient Property and/or cash to enable the Bank, pursuant to this Agreement, to settle any outstanding transactions entered into, or to settle any liability incurred, by the Depositor or the Bank on behalf of the Depositor. The Bank shall be entitled, but shall not be obliged, in its discretion to retain sufficient Property and/or cash to enable it to settle any such outstanding transactions or liability. If there is insufficient Property and/or cash to enable the Bank to settle any such outstanding transactions or liability, the Bank shall be entitled, but not obliged, in its discretion to settle and/or decline to settle any outstanding transactions and/or to cancel unexecuted instructions whereupon the Bank shall promptly notify the Depositor. Where the Bank does so exercise its discretion to settle any such outstanding transactions, the Depositor shall promptly on demand reimburse the Bank for any and all costs and expense incurred by the Bank. The provisions of this Clause 2.05 shall survive the termination of this Agreement.

2.06 In performing the Services, the Bank shall exercise the same degree of care as it exercises in respect of its own property except to such extent as may otherwise be provided in this Agreement.

2.07 The Bank may take and instruct any delegate to take any action which it in its sole discretion considers appropriate so as to comply with any applicable law, regulation, request of a public or regulatory authority or any HSBC Group policy which relates to the prevention of fraud, money laundering, terrorism or other criminal activities or the provision of financial and other services to sanctioned persons or entities. Such action may include but is not limited to the interception and investigation of transactions on the Depositor's accounts (particularly those involving the international transfer of funds) including the source of the intended recipient of fund paid into or out of the Depositor's accounts. In certain circumstances, such action may delay or prevent the processing of the Depositor's instructions, the settlement of transactions over the Depositor's accounts or the Bank's performance of its obligations under this Agreement. Where possible, the Bank will endeavour to notify the Depositor of the existence of such circumstances. Neither the Bank nor any delegate will be liable for any loss (whether direct or consequential and including, without limitation, loss of profit or interest) caused in whole or in part by any actions which are taken by the Bank or any delegate pursuant to this clause. For the purposes of this clause, the "HSBC Group" means HSBC Holdings plc its subsidiaries and associated companies.

3. **Force Majeure**

3.01 The Bank shall not be responsible or liable for any loss, failure or delay in the performance of its obligations under this Agreement arising out of or caused directly or indirectly by circumstances beyond its reasonable control including, without limitation, acts of God, earthquakes, fires, floods, typhoons, wars, civil or military disturbances, sabotage, terrorism, epidemics, riots, interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service, accidents, labour disputes, regulatory changes, acts of civil or military authority or acts of government, central securities depository and central bank including their regulatory agencies. The exclusions of this clause shall apply to any delegate appointed by the Bank under Clause 4.01 below.

3.02 If the Bank is unable at any time or from time to time to provide or to continue to provide any of the Services as a result of circumstances beyond the Bank's control, the Bank shall be entitled to suspend and/or withdraw the affected Service(s) immediately. The Bank shall notify the Depositor promptly of any such suspension and/or withdrawal and shall also notify the Depositor promptly if the circumstances in question cease so as to enable the Bank to resume the provision of the relevant Service(s).

4. **Delegation**

4.01 The Bank may appoint any other person as its nominee or agent including its associates within the HSBC group of companies to perform any of the Services on its behalf and may delegate any of its powers under this Agreement to such person but, in such a case, the Bank shall remain liable for the negligence or wilful default of any such appointee as if no such appointment had been made, provided that the Bank will not be responsible by reason only of the liquidation or insolvency of any such delegate or agent and further provided that the Bank will not be liable in respect of the acts or omissions of any entity providing central depository, clearing and/or settlement facilities.

4.02 The Bank is authorised to disclose any information it has concerning the Depositor, any Property and the Services to any other person appointed by it in connection with the performance of the Services.

5. **Representation and Warranty**

5.01 The Depositor represents and warrants to the Bank that:-

- (i) the Depositor is authorised and empowered to deposit Property with the Bank;
- (ii) the Depositor will obtain all necessary licences and approvals from all applicable regulatory authorities;
- (iii) the Depositor will comply with all applicable regulations; and
- (iv) the Depositor has and will give the Bank all relevant information.

5.02 The Depositor acknowledges that the provisions for settlement, the legal and regulatory regime and market practice applicable in the jurisdictions in which the Services are provided may be different from those in the Depositor's own jurisdiction and from each other.

5.03 The Depositor acknowledges that the laws and market practice applicable in many jurisdictions are subject to regular change and that the Bank shall only be obliged to bring to the Depositor's attention those changes which affect the Bank's performance of the Services which are of a fundamental nature.

6. **Limitations on Liability and Indemnity**

6.01 The provision of the Services does not constitute the Bank a trustee and the Bank shall have no trust or other obligations in respect of Property except those contained in this Agreement.

6.02 The Bank is under no duty to examine or verify the validity of the ownership of or title to any Property and shall not be liable in respect of any defect in ownership or title.

- 6.03 The Bank shall not be liable for any taxes or duties payable on or in respect of Property nor for the management of or any diminution in the value of Property.
- 6.04 In jurisdictions restricting foreign ownership of Property, the Bank shall have no duty to the Depositor to ascertain the nationality of the owner of Property or that Property deposited is approved for foreign ownership unless specifically instructed by the Depositor.
- 6.05 The Bank shall not be liable for losses of any kind which may be incurred by the Depositor as a result of the provision of the Services by the Bank in accordance with the instructions of the Depositor and market practice nor, in any other case, unless due to the breach by the Bank of this Agreement, the negligence, fraud or wilful default of the Bank or any other person appointed by it or their respective officers or employees or agents.
- 6.06 The Depositor acknowledges that there are particular difficulties in establishing the authenticity of fixed income securities (including, without limitation, corporate and government bonds, bills of exchange, certificates of deposit, convertible bonds, debentures, promissory notes, floating rate notes, treasury bills and commercial paper) settled in certain jurisdictions and unquoted and overseas (non-domestic) securities. Accordingly, although the Bank will endeavour to check that, on its face, an instrument and/or securities' certificate appears genuine, it will not be responsible for verifying the validity or authenticity of any such instrument and will not be liable for any defect in such validity or authenticity.
- 6.07 The Bank shall indemnify the Depositor against all claims, liabilities, damages, costs and expenses of any kind which may be incurred by the Depositor and all actions or proceedings which may be brought against the Depositor as a result of the breach by the Bank of this Agreement, the negligence, fraud or wilful default of the Bank, any other person appointed by it or their respective officers or employees in connection

with the provision of the Services provided that the Bank shall not be responsible for any consequential, or indirect loss or damage. This indemnity shall continue notwithstanding the termination of this Agreement.

6.08 The Depositor shall indemnify the Bank and any other person appointed by it and their respective officers and employees against all claims, liabilities, damages, costs and expenses of any kind which may be incurred by them and all actions or proceedings which may be brought against them in connection with the provision of the Services except insofar as such results from the breach by the Bank of this Agreement, the negligence, fraud or wilful default of the Bank and its respective officers and employees. This indemnity shall continue notwithstanding the termination of this Agreement.

6.09 Insofar as the Bank suffers any loss as a result of the Bank crediting any account of the Depositor in respect of any instrument, advanced payment, wire transfer or remittance of funds which does not then clear, the Bank may debit the account of the Depositor accordingly.

6.10 For the avoidance of doubt, the parties hereby agree that the Bank is not an agent of or a trustee for any customer of the Depositor, and in no circumstances shall the Bank and/or any customer of the Depositor have any direct rights, obligations or liabilities against each other. The contractual relationship is between the Depositor and the Bank and consequently any matter arising in respect of a customer of the Depositor shall be dealt with as between the Bank and the Depositor.

7. **Depositor's Instructions**

7.01 In a case where this Agreement requires the instructions of the Depositor to be given, the Depositor will notify the Bank from time to time in the manner required by the Bank of the persons or entities authorised to give instructions (the "Authorised Persons"). Instructions shall be issued by the Authorised Persons either:-

- (i) in writing;
- (ii) by authenticated SWIFT; or
- (iii) by such other form of communication as the Bank and the Depositor may agree in writing.

7.02 The Bank may, at its discretion, accept instructions reasonably believed by it to have emanated from the Authorised Person(s) in which case, if it acts in good faith on such instructions, such instructions shall be binding on the Depositor and the Bank shall not be liable for doing so, whether or not the instructions were given by the Authorised Person(s) and the Bank shall not be under any duty to verify the identity of the person(s) giving those instructions.

8. **Reports, Statements and Information**

8.01 The Bank shall provide the Depositor with such reports and statements concerning Property and at such intervals as agreed between them from time to time.

8.02 The Bank will on the request of the Depositor prepare and deliver to the Depositor within 20 days of the request a statement, made up as at a date specified by the Depositor (being a date not later than one calendar month before the statement is delivered to the Depositor) identifying in relation to each description of Property:-

- (a) the customer title documents held for the Depositor by the Bank;
- (b) the amount of the Property; and
- (c) where the Property is registrable, the number of units so held in each different name.

- 8.03 The Bank will also inform the Depositor promptly of any legal action instituted by any person concerning Property which is notified to the Bank in connection with the provision of the Services.
- 8.04 The duly authorised representatives of the Depositor shall be allowed access to the Bank's records which identify Property after giving reasonable prior notice to the Bank.
- 8.05 The Bank shall provide the Depositor with such information as the Depositor may reasonably request concerning the operating facilities and methods which the Bank employs in providing the Services and shall provide reasonable assistance to the Depositor in reconciling any differences which may arise between the Bank's and the Depositor's records.
- 8.06 The Bank shall not, however, be required to provide such reports, statements, access and/or information if to do so would contravene any law, regulation, order, directive, notice or request of any government agency, whether or not having the force of law, or, in the case of access and/or information, if to do so would prejudice the security, operations or business of the Bank or its duties of confidentiality.
- 8.07 Save as otherwise provided herein, the Bank agrees to keep all information in its possession relating to the Property and this Agreement confidential and not to disclose such information to any third party.

9. **Fees and Expenses**

- 9.01 The Depositor shall pay fees to the Bank for the provision of the Services as agreed between them from time to time.

- 9.02 The Depositor shall also pay to the Bank all other expenses incurred by the Bank or any other person appointed by it in the provision of the Services. A certificate as to the nature and amount of such expenses produced by the Bank shall be conclusive evidence against the Depositor of the expenses.
- 9.03 Subject to the limitation contained in Clause 9.04, if any of the fees and expenses referred to in Clauses 9.01 and 9.02 remain outstanding after they have become due and payable, the Bank shall be entitled to debit automatically and/or set off against the amount of such fees and expenses any credit balance on any account of the Depositor with the Bank in or towards settlement and in the event that there are insufficient funds in the Depositor's cash Account for the debiting then the Bank shall have the right to charge interest, up to the date of eventual repayment, at such rate as the Bank shall determine in the absence of any prior agreed rate.
- 9.04 The Bank shall not, however, assert or exercise any lien or right of retention in respect of any Property except for any charges or payments relating to the administration or safekeeping of the Property.

10. **Power of Attorney**

The Depositor hereby for the duration of this Agreement irrevocably appoints the Bank and any person appointed by it to be the attorney for the Depositor and in the name and on behalf and as the act or deed of the Depositor or otherwise, without any reference to or consent from the Depositor, to execute all documents and to do all things as may be required for the full exercise of all or any of the powers hereby conferred on the Bank and its rights hereunder as it may consider expedient in connection with the exercise of such powers and rights.

11. **Termination**

This Agreement may be terminated by the Bank or the Depositor giving not less than 30 days notice to the other and by either party giving notice of immediate termination to the other party any time after the other party has contravened any of the provisions of this Agreement. On termination the Bank will deliver the documents of title and any other instruments relating to the Property to the Depositor or to the order of the Depositor in accordance with the Depositor's instructions.

12. **No Waiver**

No act or omission by the Bank or the Depositor pursuant to this Agreement shall affect its rights, powers and remedies hereunder or any further or other exercise of such rights, powers or remedies.

13. **Assignment**

Neither the Bank nor the Depositor may assign or transfer any of its rights or obligations hereunder without the prior written consent of the other provided this Agreement shall enure for the benefit of the Bank and for the benefit of its successors in title or assignees including any person to which the whole or any part of the operations of the Bank may from time to time be transferred or vested by operation of law or otherwise.

14. **Communications**

14.01 Except where this Agreement provides to the contrary, any notice, demand or other communication under this Agreement given by either party shall be in writing addressed to the Depositor at its registered office address or at the last address registered with the Bank and addressed to the Bank at its office or such other address as the Bank may notify to the Depositor for this purpose and may be delivered personally, by leaving it at such address, by post, fax, or SWIFT and shall be deemed

to have been delivered to the other party at the time of personal delivery or on leaving it at such address, or on the second day following the day of posting to the addressee if the address is in Hong Kong and on the seventh day following the day of posting to the addressee by airmail if the address is outside Hong Kong or outside the location from where the notice is dispatched or on the day of despatch, if sent by fax, or SWIFT and, in all cases, to the Bank on the day of actual receipt.

14.02 In consideration of the Bank agreeing to accept instructions by facsimile duly signed or otherwise (“facsimile instructions”) without requiring written confirmation in respect of any facsimile instructions prior to acting thereon, the Depositor:-

- (i) acknowledges that facsimile instructions are not secure means of communication, and that they are aware of the risk involved, and that their request to the Bank to accept such facsimile instructions is for their convenience.
- (ii) undertakes to keep the Bank indemnified at all times against, and to save the Bank harmless from all actions, proceedings, claims, losses, damages, costs and expenses which may be brought against the Bank or suffered or incurred by the Bank and which shall have arisen either directly or indirectly out of or in connection with the Bank accepting facsimile instructions and acting thereon, whether or not the same are confirmed in writing by the Depositor, except to the extent that the same is caused by the Bank’s negligence or wilful default.

15. **Severability**

Each of the provisions of this Agreement is severable and distinct from the others and, if one or more of such provisions is or becomes illegal, invalid or unenforceable, the remaining provisions shall not be affected in any way.

16. **Governing Law**

16.01 This Agreement is governed by and shall be construed in accordance with the laws of England.

16.02 The Depositor submits to the non-exclusive jurisdiction of the English Courts but this Agreement may be enforced in the Courts of any competent jurisdiction.

17. **Previous Agreement**

This Agreement supersedes and replaces any previous Agreement between the parties in relation to the Services.

Signed for and on behalf of the Depositor) By: _____

Signed for and on behalf of the Bank) By: _____