

# Business Account Operating Agreement

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# Business Account Operating Agreement

Thank you for choosing HSBC Bank Bermuda Limited. Please read through this Agreement. In exchange for banking services provided by the Bank, the Customer and the Bank agree as follows:

## 1. Definitions

**"Agreement"** means this agreement and any supplementary terms for the provision of the Business Account Operating Agreement published and amended by the Bank from time to time.

**"Access Terminal"** means any device, including without limitation a computer, telephone or ATM/POS terminal, used by the Customer to access an Account or other Bank services or products.

**"Account"** means each account the Customer holds with the Bank from time to time.

**"Amounts Owing"** means all amounts owed by the Customer to the Bank and any HSBC Group member whether in connection with an Account, other credit facility or any other reason from time to time and the costs incurred to collect Amounts Owing.

**"ATM/POS"** means an automated banking machine or card-reading terminal used by the Customer to access an Account or banking services through the use of a Debit Card.

**"Authorised Signatory"** means, for each Account, each individual designated and whose signature has been certified by the Customer to the Bank as a person who is authorised to give Instructions or otherwise conduct banking activities on the Customer's behalf in accordance with this Agreement.

**"Bank"** means HSBC Bank Bermuda Limited and its subsidiaries.

**"Business Account Application"** means a properly completed and duly signed application form (in the form prescribed by the Bank) submitted by the Customer to the Bank for the purpose of applying for a business account, as amended from time to time by the Customer in accordance with this Agreement.

**"Business Day"** means any day except Saturday or Sunday on which banks in Bermuda are open for business.

**"Cash Management Instruction Date"** means the date, as determined by the Bank from time to time, on which an Instruction in respect of a particular currency must be received by the Bank for processing in respect of a Value Date.

**"Customer"** means the organisation named on the Business Account Opening Application and related resolution for each Account. For a partnership, joint venture, unincorporated association, or sole proprietorship, "Customer" includes every general partner, joint venture participant, member, or individual, respectively, of the organisation jointly and severally.

**"Cut-Off Time"** means the last time on a Business Day specified from time to time by the Bank as the deadline for receiving Instructions on a Cash Management Instruction Date.

**"Debit Card"** means each debit card or other financial services card that the Bank issues to the Customer (but not any of its credit cards) that is used to identify the Customer and to authorise transactions on its Accounts, and includes all or any part of a Debit Card number.

**"Delegate"** means any individual authorised by an Authorised Signatory (a "Primary Delegate"), or authorised by a Primary Delegate in accordance with Customer's resolution or otherwise authorised by the Customer in accordance with a written agreement with the Bank, to give Instructions or otherwise conduct banking activities on Customer's behalf.

**"Demand Deposit"** in reference to an Account means a demand account and any other current or chequing account.

**"Digital Reproduction"** means any imaged or electronic copy or representation of a cheque or other Instrument or just the relevant information from a cheque or Instrument, as may be made or captured and used by financial institutions in the exchange and clearing of payments in Bermuda and internationally.

**"Electronic Means"** includes communications sent by email, facsimile, computer or by the use of scanned or digital signatures or any other electronic means.

**"Fee Schedule"** means the current charge, fee and interest rate schedule provided by the Bank from time to time.

**"Term Deposit"** means a deposit held within an Account which matures at the end of a specified time period after the initial Value Date.

**"HSBC Group"** means all entities in which HSBC Holdings plc holds, directly or indirectly, a controlling interest.

**"Instructions"** means any verbal or written instructions provided or purportedly provided by the Customer, including but not limited to instructions from an Authorised Signatory or Delegate and received by the Bank directly or indirectly, via Electronic Means, telephone or other communication channel or device, including without limitation instructions received in the form of a Digital Reproduction or through Remote Banking (with or without a Security Code).

**"Instrument"** means any bill of exchange, promissory note, cheque, security, coupon, cash, note, evidence of deposit, bank drafts or other order for payment of money, clearing item, negotiable instrument, bankers acceptance, bill payment remittance, or credit card sales slip or other valuable item that the Bank issues, negotiates, pays or processes on Customer's behalf or that the Bank takes from the Customer for deposit or for discount, collection or acceptance or as collateral security or otherwise and Instrument shall include any Digital Reproduction.

**"Mechanical Signature"** means a scanned reproduction system, a rubber stamp or a printed endorsement.

**"OFAC"** means the Office of Foreign Assets Control, United States of America Department of the Treasury.

**"Prohibited Persons"** means entities and individuals, as notified by OFAC (the "OFAC list" - "watch list" or list of specially designated persons, entities or organisations maintained by the U.S. OFAC and posted on the OFAC website, from time to time).

**“Remote Banking”** means all present and future services offered directly or indirectly by the Bank or HSBC Group through any Access Terminal or other transactional, communication or information system, including all Internet or telephone banking and all other electronic or automated services.

**“Securities”** means stocks, shares, bonds, debentures, notes, mutual funds, units, certificates of deposit and other securities and any certificates, receipts, and other instruments evidencing or representing other rights and interests therein or in any other property or assets of any kind or nature.

**“Security Code”** means any Customer identification code, including any PIN (personal identification numbers), password, digital certificate, token or security device, access code, logon user name or other identification or memorable data, which permits the Customer access to an Account, Remote Banking or other Bank products or services.

**“Statement of Account”** means a statement of account information showing transaction(s) for the Customer’s Account(s) and includes monthly or periodic statements of account; a summary of accounts viewed or viewable by the Customer each time it accesses Remote Banking; a statement sent by the Bank by mail or by Electronic Means, and further includes a statement consolidating information for more than one of the Customer’s Accounts.

**“Transaction Record”** means a written or electronic record of activity or information pertaining to an Account or Instruction which may be issued by the Bank and includes without limitation, all Statements of Account, receipts, transaction records or confirmations generated by the Bank in respect of foreign exchange option contracts, guaranteed investments and term deposits.

**“Value Date”** means the date from which items are deemed by the Bank to be credited or debited to an Account for the purpose of calculating any debit or credit interest payment.

## 2. Use of Account/Services

- 2.1 The Customer agrees to use each Account in accordance with this Agreement and only for lawful commercial banking purposes and business consistent with generally accepted community standards of conduct or propriety. The Bank reserves the right to investigate illegal or improper use of any Account and may, without notice, close an Account, suspend Account activity or otherwise limit or cancel services to ensure compliance with this Agreement or any applicable laws.
- 2.2 The Customer also agrees to use all Accounts, any product or service and Remote Banking in accordance with any supplemental agreement or service guide or user manual issued by the Bank from time to time. If there is a conflict between this Agreement and any supplemental agreement, service guide or user manual or other materials, this Agreement will always prevail unless a supplemental agreement expressly states otherwise.

## 3. Acceptance of Instructions

- 3.1 Authority of Authorised Signatories and Delegates:

3.1.1 The Customer agrees to do all things necessary to ensure that each Authorised Signatory and each Delegate is at all times duly appointed and properly authorised to give all Instructions issued by them. The Customer hereby directs and the Bank agrees to accept and rely upon all Instructions that reasonably appear, or the Bank believes to have come from an Authorised Signatory, or Delegate as valid, duly authorised and binding upon the Customer for any of the following:

3.1.1.1 to provide Instructions to the Bank;

3.1.1.2 to provide any data, information, instructions and authorisations required by the Bank or HSBC Group, or any agents to effect any transaction, including without limitation to open or maintain Accounts or transfer funds, even to an Authorised Signatory or a Delegate personally;

3.1.1.3 to sign, under seal or otherwise, endorse, make, draw, enter into, and/or accept any Instrument, any contracts and generally all documents for the purpose of binding or obligating the Customer in any way in connection with any Account or Instructions whether or not an overdraft is thereby created;

3.1.1.4 to borrow money or otherwise obtain financial assistance from the Bank including to arrange for an adequate line of credit to cover any payment or charge due under this Agreement;

3.1.1.5 to assign, transfer, convey, hypothecate, mortgage, charge, pledge or give security in any manner upon any Customer assets, real or personal, moveable or immovable, rights, powers or choses in action, present or future, as security for the fulfilment of any liabilities or obligations including for payment of any present or future indebtedness, however incurred, and to empower the Bank or any person to sell publicly or privately, to assign, transfer or convey from time to time any assets; and

3.1.1.6 without in any way limiting any of the above, give security or promise to give security, enter into agreements and execute documents and other Instruments, to assign bank accounts or other rights, now or hereafter made or incurred in any manner by the Customer.

- 3.2 Without limiting the above, the Customer also agrees:

3.2.1 the Bank is authorised to accept, act and rely upon and treat as valid all Instructions, including by Remote Banking, given or purporting to be given by the Customer, its Authorised Signatories or Delegates, particularly if given in connection with the use of a Debit Card or Security Code;

3.2.2 the Bank is under no obligation to inquire as to the authorisation or validity of any Instructions received or Security Code accepted and the Customer agrees that the Bank may consider all Instructions of

like force and effect as valid written orders directly made and signed by an Authorised Signatory or a Delegate;

3.2.3 if the Bank seeks to verify signatures or the validity of any Instructions and is unable to do so to its satisfaction, the Bank may delay acting upon the Instructions and notwithstanding any other provision of this Agreement, the Bank shall not be liable for any loss suffered pursuant to this section. Nothing in this Agreement and no verification or attempted verification by the Bank of any Instruction, signature or Security Code will obligate the Bank in future to do the same or cause a waiver of any rights under this Agreement;

3.2.4 the Customer will bear the risk for all unauthorised Instructions, including from any Authorised Signatory, Delegate, employee, director or officer, representative or agent, or any person who purports to be one of the foregoing;

3.2.5 the Bank may reverse any transfer which is returned unaccepted by another financial institution or which cannot be processed by the Bank and the Bank may, without prior notice, limit the aggregate amount of funds that the Bank will transfer at any time;

3.2.6 the Bank reserves the right to insist that certain Instructions cannot be sent by Electronic Means or telephone and may refuse to act on or reverse any Instruction or accept documents in the Bank's sole discretion, including but not limited to circumstances when the Instruction:

3.2.6.1 is not properly given in accordance with this Agreement or then current Bank policies and procedures;

3.2.6.2 cannot be processed or completed due to system malfunction, delay or any other cause beyond the Bank reasonable control;

3.2.6.3 will cause an Account balance, line of credit or overdraft limit to be exceeded;

3.2.6.4 is a payment to a transferee, financial institution, business or other person who does not accept the transaction; or

3.2.6.5 involves any account that the Bank considers dormant or unclaimed;

3.2.7 The Customer consents to the Bank making an audio recording of any telephone call, or a record of any electronic communication the Customer has with the Bank to preserve the context of all Instructions or other information the Customer provides to the Bank.

3.3 The Customer authorises the Bank to accept without any further verification, and the Customer agrees to be responsible for and indemnify the Bank against and save the Bank harmless from any damage, claims, indebtedness, action, causes of action, expenses, including legal, accounting and other expenses, taxes, levies, fines, fees or penalties suffered or incurred by, or brought against, the

Bank and the Bank may suffer as a result of Instructions, agreements and documents for transactions submitted to the Bank by Electronic Means or telephone if the Bank reasonably believes that the Instructions have come from the Customer or its agent. The Customer agrees that what in the Bank's reasonable determination appears as the Customer's signature on Electronic Means Instructions or documents (whether or not actually signed by the Customer) binds the Customer legally and makes it responsible to the same extent and effect as if it had given original signed Instructions (except if the Bank has been grossly negligent or acted with wilful misconduct). There may be some types of Instructions or documents the Bank will not accept by Electronic Means or telephone, and the Customer understands that the Bank reserves the right to refuse any Electronic Means or telephone Instructions or documents in its sole discretion.

#### 4. Term Deposits

4.1 The Customer may provide Instructions to the Bank to hold funds in an Account as a Term Deposit which Term Deposit shall be held at the Bank's prevailing rates from time to time. On such Instructions being provided, the Customer and the Bank will determine and agree in respect of the Term Deposit the term or maturity date, the currency, the interest rate and the settlement instructions to a Demand Deposit Account.

4.2 If the Bank does not receive contrary Instructions in respect of both the principal and interest in accordance with the minimum notice period as determined by the Bank from time to time, the Bank will on maturity of a Term Deposit automatically renew the matured principal plus interest on the date of maturity of the Term Deposit for another term equal to the length of the previous Term Deposit and at the prevailing interest rate and continue to renew the Term Deposit in this manner until Instructions are received to the contrary.

4.3 If the Customer gives Instructions relating to a portion of the funds in Term Deposit on maturity, it must give specific Instructions relating to the remaining funds in the Term Deposit. If the Customer does not provide clear, specific Instructions in respect of the remaining funds in the Term Deposit, the Bank may, in its sole discretion, renew the remaining funds in the Term Deposit in accordance to section 4.2 or credit the funds to another Account of the Customer pending receipt of clear, specific Instructions. The Bank will have no liability of any kind whatsoever to the Customer for taking any of the actions referred in this section 4.3.

4.4 In the event of early termination of a Term Deposit, the Customer will incur charges in accordance with the Bank's policy in force from time to time.

#### 5. Overdrafts

5.1 The Customer must always keep its Accounts in credit unless the Bank has agreed an overdraft. Borrowing can, at the Bank's discretion, be arranged by overdraft in respect of an Account (an "Authorised Overdraft"). The Bank is

entitled to require the Customer provide appropriate security or other credit support satisfactory to the Bank in respect of an Authorised Overdraft. The Customer must not exceed any Authorised Overdraft limit without the Bank's prior agreement.

- 5.2 The Bank has no obligation to honour any Instructions which would result in an Account on which an overdraft has not been agreed becoming overdrawn (an "Unauthorised Overdraft") or an Authorised Overdraft limit being exceeded. The Bank may honour such Instructions at its discretion. The Customer shall be deemed to have been asked for payment of an Unauthorised Overdraft at the time of its creation and the Customer must immediately pay enough money into the Account to cover the overdrawn amount or the amount that exceeds the Customer's agreed Authorised Overdraft limit.
- 5.3 The Bank is under no obligation to permit any overdraft to continue and all overdrafts shall be repayable on demand. The Bank shall be entitled at any time at its discretion to reduce the Customer's Authorised Overdraft limit. The Customer will pay overdraft amounts in the corresponding currency. If the Customer has not paid any overdrafts on demand, the Bank is entitled to convert all overdraft amounts into Bermuda Dollars and apply such other remedies as may be available under this Agreement.
- 5.4 For each day an Account is overdrawn, the Bank is entitled periodically to debit any Account with interest at the Bank's customary rates. The Customer acknowledges and agrees that interest rates may be higher for Unauthorised Overdrafts than for Authorised Overdrafts.
- 5.5 The Customer shall pay to the Bank fees and expenses which are charged at the Bank's discretion in respect of the overdraft, including, without limitation, taxes and registration costs incurred or charged by the Bank in connection with the negotiation, preparation, investigation, administration, supervision or enforcement of the Customer's overdraft or any security.
- 5.6 The Bank shall not be regarded as having implicitly agreed to an overdraft or an increased Authorised Overdraft limit if the Bank honours and pays a check or other item issued by the Customer that causes an Account to be overdrawn or exceed any Authorised Overdraft limit.
- 5.7 So long as any overdraft exists under this Agreement, the Customer will ensure that all amounts outstanding under such overdraft will at all times rank at least *pari passu* in right of repayment and in point of security with all Customer's other present and future unsubordinated and unpreferred indebtedness.

## 6. Standing Instructions

- 6.1 The Customer may provide Instruction to the Bank to request that a standing instruction be established on an Account. Such Instruction will remain in effect until contrary Instructions are provided by the Customer, or until the standing instruction is cancelled by the Bank, in accordance with this Agreement.

- 6.2 The Customer must ensure that sufficient funds are in the Account specified for the standing instruction before the Cut-Off Time on the Business Day on which the standing instruction is to be processed. The Bank will disburse funds in accordance with the standing instruction such disbursement to be completed on the payment date if the receiving account is located in Bermuda. If the receiving account is located outside of Bermuda, the Bank will complete the disbursement in accordance with the Bank's then existing procedures, and the Bank will have no liability of any kind whatsoever to the Customer or any third party for any delay in receipt of a disbursement by a receiving bank.
- 6.3 The Bank may in its sole discretion cancel a standing instruction if there are insufficient funds in the relevant Account to complete the standing instruction on 3 (three) occasions. If the Bank in its sole discretion honours the standing instruction such that a negative balance is created in the Account, unless the Customer has an Authorised Overdraft the negative balance shall be treated as an Unauthorised Overdraft in accordance with the relevant provisions of this Agreement, and the Bank will not be obliged to notify the Customer of the creation of such an Unauthorised Overdraft.

## 7. Sweep Facility

- 7.1 The Customer may authorise the Bank (but the Bank is not obliged) to operate one of its Accounts denominated in a currency in which the Bank offers a sweep arrangement, and which the Bank specifies for this purpose ("Specified Account"), to establish such sweep arrangement in accordance with this section provided the Customer is and remains a shareholder of the HSBC Corporate Money Funds Limited ("HCMF").
- 7.2 The Customer authorises the Bank, at the close of each Business Day (a "Sweep Day") to transfer from the Specified Account to the HCMF an amount equal to the amount, if any, by which any positive balance standing to the credit of the Specified Account exceeds an amount notified by the Bank to the Customer from time to time, which amount may be zero or a positive figure but not a negative figure and to request the manager of the HCMF to issue further shares in the HCMF to the Customer, in accordance with the prospectus or any other offering document issued in respect of the shares in the HCMF (the "HCMF Prospectus"), in exchange for such positive balance. The Customer further authorises the Bank to request the manager of the HCMF to redeem shares in the HCMF registered in the name of the Customer in accordance with the HCMF Prospectus and to transfer the proceeds of such redemption to the Bank whereupon the Bank shall use such proceeds of redemption to extinguish or, as the case may be, to reduce such negative balance. In the event that:

7.2.1 there is a negative balance on the Specified Account at the close of business on any Sweep Day;  
or

- 7.2.2 the Specified Account balance falls below the minimum balance as specified by the Bank from time to time at the close of business on any Sweep Day.
- 7.3 To the extent that the proceeds of redemption of all shares in the HCMF registered in the name of the Customer are insufficient to extinguish any negative balance on the Specified Account, the remaining negative balance shall be treated as an Unauthorised Overdraft in accordance with the relevant provisions of this Agreement.
- 7.4 The Customer acknowledges that the sweep arrangement cannot operate retroactively and accordingly any back-valued deposits credited to the Specified Account will earn interest in accordance with the rates applicable to the Specified Account and will be transferred to the HCMF from the Specified Account on the next Sweep Day. If Instructions are received for a Value Date which is not a Sweep Day such that when the Instructions are acted on a negative balance is created in the Specified Account, unless the Customer has an Authorised Overdraft the negative balance shall be treated as an Unauthorised Overdraft in accordance with the relevant provisions of this Agreement.
- 7.5 Notwithstanding the provisions relating to the redemption of shares in the HCMF Prospectus, the Customer agrees that it will not redeem shares in HCMF other than through the sweep arrangement into the Specified Account as set out in this section.
- 7.6 The Bank shall not be liable for any losses, whatsoever suffered or incurred by the Customer for not sweeping the Specified Account in accordance with this Section 9 for any reason, including but not limited to a malfunction in the operation of computer systems.
- 9.3 Will not use Remote Banking to make any withdrawal, transfer or payment from an Account that exceeds the balance available on the Account or the unused balance of an Authorised Overdraft or line of credit. Without limiting anything else in this Agreement, all security now or hereafter held by the Bank in respect of any Amounts Owing will also be security for any and all the Customer indebtedness arising from the use of Remote Banking and the Bank may at any time, without notice to the Customer, apply such security against such indebtedness.
- 9.3.1 At any time the Bank may establish or change dollar or other limits in relation to use of Remote Banking, with or without notice to the Customer. For example, the Bank may fix a daily limit on the amount of cash the Customer may withdraw or transfer from any Account using Remote Banking. The Bank will not be liable for any loss or damage suffered by the Customer by reason of establishing or changing any limit.
- 9.4 Bill payments and transfers may require several business days to process. The Bank retains sole discretion regarding what third party bills may be paid through Remote Banking.
- 9.5 The Bank may, without prior notice, change, discontinue or add to services, procedures, hours of operation and other attributes of Remote Banking.
- 9.6 Any Debit Card or Security Code may be cancelled or suspended at any time without prior notice to the Customer. Anyone to whom the Customer gives a Security Code will have complete access to the Bank services, products or Remote Banking and full access to carry out transactions on Accounts and to deal with the Bank on Customer behalf. The Bank will not be responsible for verifying the identity, confirming the authority of or verifying the accuracy of any Instructions received via Remote Banking. Subject to its rights hereunder, the Bank is authorised to carry out all instructions received with applicable security code as valid even if such instructions were not in fact made with Customer authority. Debit Cards and Security Codes are for individual use alone and the Customer will ensure they are kept secure and confidential. The Customer will under no circumstances permit a Security Code to be disclosed except in accordance with this Agreement. When selecting a Security Code, the Customer will ensure different codes are selected for each Debit Card or Remote Banking access and the Customer agrees not to permit any combination of numbers be used that represent or resemble the Customer's address, telephone number, user birth dates, or other similar numbers that may be easily identifiable (e.g. 1111). The Customer will not keep a record of any Security Code in any insecure location nor on or near a Debit Card or any Access Terminal.
- 9.7 If the Customer knows or suspects that a Security Code has become known to or obtained by an unauthorised person, or a Debit Card is lost or stolen, the Customer will notify the Bank as soon as possible by telephoning Customer support (at numbers the Bank provides from time to time) or by contacting any Bank branch.

## 8. Use of Agents

The Bank may use as agent, the services of any financial institution or other third party of the Bank's choice in carrying out its obligations hereunder or in connection with an Account or other Customer banking business. The Bank will not be liable for the manner in which such services are performed by the agent, including for the loss, theft, destruction or delayed delivery of any Instrument by this agent.

## 9. Notification of Misuse

The Customer agrees that:

- 9.1 At all times to use the Bank or HSBC Group websites in accordance with the website terms and conditions as stated from time to time.
- 9.2 Any credits to an Account for deposits made by ATM/POS may not be available for withdrawal until the deposits are verified and negotiable items such as cheques, are honoured. Remote Banking withdrawals or transfers will be debited to the Customer Account as of the time and date stated on the relevant Transaction Record. The Customer will not deposit any coins, non-negotiable items or any other unacceptable items into an ATM/POS terminal.

- 9.8 Subject to the next paragraph, the Customer will not be liable for losses which result from unauthorised use of a Debit Card or Security Code after the Customer notifies the Bank of suspected loss or compromise, provided the Customer did not contribute to unauthorised use, or for losses are due to intentional Bank errors or system malfunctions.
- 9.9 The Customer will be liable for losses relating in any way to Remote Banking transactions if the Customer:
- 9.9.1 authorised the transaction; or
  - 9.9.2 contributed, either intentionally or unintentionally, to the unauthorised use of Remote Banking including, but not limited to, any entry errors or fraudulent, worthless or dishonoured deposits.
- 9.10 The Customer will be deemed to have contributed to unauthorised use if the Customer:
- 9.10.1 permits a Security Code to be disclosed to or used by an unauthorised party, including by keeping a written record of it;
  - 9.10.2 fails to notify the Bank as soon as it suspects that a Security Code has been disclosed to an unauthorised person; or
  - 9.10.3 fails to notify the Bank as soon as it suspects a Debit Card or Security Code has been lost, stolen or compromised.
- 9.11 Subject to the above, the Customer liability for losses sustained each day through Remote Banking, is limited to the amount of any daily withdrawal limit established by the Bank. This amount may exceed an Account's cash balance if such Account has a line of credit or overdraft protection, or is linked with other Accounts, or any transaction is made on the basis of a fraudulent or worthless deposit at an ATM/POS terminal.

## 10. Mechanical Signatures and Cheque Imaging

- 10.1 If the Customer has adopted a laser reproduction system, a rubber stamp or other printed endorsement or impression in place of an original signature ("Mechanical Signature"), the Customer authorises the Bank to accept any Mechanical Signature or reasonable facsimile thereof as the Customer's sufficient endorsement on all Instruments. The Bank will not be liable for any obligations, losses of any kind whatsoever, taxes, levies, fines, fees or penalties suffered and/or incurred by or brought against, the Bank, or costs arising due to any reliance upon or dealings with an Instrument bearing or purporting to bear a Mechanical Signature or a reasonable facsimile thereof, whether or not such Mechanical Signature was made with the Customer's authority.
- 10.2 To facilitate clearing and payment systems, the Customer agrees that the Bank may, on Customer's behalf, make and act upon a Digital Reproduction for all purposes as though it were an original Instrument delivered to the Bank or other direct Instruction to the same effect.

- 10.3 The Bank may destroy the original paper Instrument represented by any Digital Reproduction and originals need not be returned to the Customer. The Bank will not be liable for any obligations, losses of any kind whatsoever, taxes, levies, fines, fees or penalties suffered and/or incurred by or brought against, the Bank, or costs that arise due to any Bank reliance or dealings further to a Digital Reproduction.

## 11. Account Charges

- 11.1 The Customer agrees to pay and authorises the Bank to charge any Account, even if such charge creates or increases an overdraft, for the following:
- 11.1.1 The amount of any Instrument drawn on an Account and any other Instruction directing a debit to an Account, including withdrawals, transfers, pre-authorised payments, fund transfer debits, bill payments or other similar transactions:
    - 11.1.2 The amount of any Instrument:
      - 11.1.2.1 that is not paid on presentation;
      - 11.1.2.2 for which the Customer has requested a refund, in writing;
      - 11.1.2.3 that may be dishonoured by non-acceptance or non-payment;
      - 11.1.2.4 for which any party thereto is bankrupt or insolvent;
      - 11.1.2.5 the proceeds of which, for any reason, the Bank is unable to collect or withdraw;
      - 11.1.2.6 for which the Bank reasonably believes it will not receive payment or may be reversed; or
      - 11.1.2.7 that has been cashed, negotiated or credited to an Account but is then returned or charged back for any reason whatsoever including because the Instrument or its proceeds are shown to be fraudulent or otherwise illegal; and the Bank retains all rights and remedies against all parties liable on any unpaid Instrument whether debited to an Account or not and if debited, this is not deemed payment of the Instrument.
  - 11.1.3 The amount of any Instrument or the proceeds of which is lost, stolen, destroyed or otherwise disappears.
  - 11.1.4 The Customer irrevocably authorises and directs the Bank to charge any Account for the following amounts:
    - 11.1.4.1 all service charges established by the Bank from time to time for products and services provided to the Customer and for prevailing charges imposed by other

financial institutions in respect of transactions relating to any Account;

11.1.4.2 any and all expenses incurred by the Bank arising from the operation of any Account, any matter arising in relation to this Agreement or any other agreement the Customer has with any HSBC Group member (including disputes regarding any such agreement), or the Customer dealings with the Bank; and

11.1.4.3 all costs, fees and expenses incurred by the Bank relating to any of the foregoing, including without limitation, investigation costs, search fees, actual legal fees and disbursements, expenses relating to operation of any Account or acting on Customer's behalf, whether incurred by the Bank through retainer of third parties or devotion of internal Bank resources. The Bank may change its service charges and/or fees without prior notice from time to time.

11.1.4.4 all applicable taxes as the Bank may be required to collect; and

11.1.4.5 Amounts Owing are deemed to be secured by any funds on deposit in any Account.

## 12. Set-Off

12.1 The Customer agrees that the Bank may consolidate and set-off any Amounts Owing as between Accounts. The Bank may also consolidate and set-off any Amounts Owing against the Customer funds or accounts held with any subsidiary of the Bank, in accordance with the applicable terms and agreements of such members.

12.2 Without limiting the foregoing, if the Customer has insufficient funds on deposit in any Account to satisfy the Amount Owing at any given time and the Customer is in default, all Amounts Owing are deemed to be secured by any Instrument (includes a term deposit) issued by the Bank to the Customer and the Bank may, at its sole option, deem such Instrument immediately due and payable, collapse such Instrument and set-off the proceeds against any Amounts Owing.

12.3 Without prejudice to any provisions herein, the Bank shall be entitled (without notice to the Customer or prior demand for payment or observance of any other formality) at any time at its discretion:

12.3.1 to debit any Account with any sums due and payable to the Bank by the Customer under this Agreement or otherwise;

12.3.2 to convert any sums into such currencies as the Bank may consider appropriate in accordance with this Agreement;

12.3.3 to combine, consolidate or merge all or any of the Customer's Accounts, whether subject to notice or not and denominated in whatever currency, held

alone or jointly with others, and wheresoever situate; and

12.3.4 to retain, apply, set-off or transfer any amount owing by the Bank to the Customer or standing to the credit on any Account (whether Demand Deposit, Term Deposit or otherwise) by or in respect of the Customer towards payment of any amount in any currency at any time owing from the Customer to the Bank.

12.4 The Bank's rights under this section may be exercised notwithstanding all or part of the monies held to the credit of the Customer are denominated in a currency other than the currency in which the Customer is indebted.

12.5 Where any debit, conversion, combination, set-off or transfer in accordance with this section requires the conversion of one currency into another, such conversion shall be made in accordance with this Agreement.

12.6 The Bank shall be entitled to accelerate the maturity of any Term Deposit for the purposes of this section (in which case the amount applied shall be net of the Bank's usual charge for early withdrawal).

12.7 For the purposes of this section, obligations or liabilities owed by the Customer to the Bank or by the Bank to the Customer may be present, future, actual, contingent, primary, collateral, several or joint.

12.8 All assets of the Customer held by the Bank are subject to a general lien in favour of the Bank and the Bank shall have power to withhold and/or sell such assets for the discharge of the Customer's obligations to the Bank or its Affiliates.

12.9 The rights created under this section shall be in addition to and independent of any other security which the Bank may at any time hold.

## 13. Powers of The Bank ("Ruling Off")

13.1 Where the Customer is indebted to the Bank, any money received by the Bank from or on behalf of the Customer may either be:

13.1.1 placed to the credit of a suspense account with a view to preserving the right of the Bank to prove for the whole of its claims against the Customer or any other person liable; or

13.1.2 applied by the Bank in or towards satisfaction of any obligations or liabilities of the Customer to the Bank as the Bank in its sole discretion may from time to time conclusively determine.

13.2 Any release, discharge or settlement between the Customer and the Bank shall be conditional upon no security, disposition or payment to the Bank by the Customer or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to bankruptcy, liquidation or insolvency or for any reason whatever. If such condition shall not be fulfilled, the Bank shall be entitled subsequently to enforce its claims as if such release, discharge or settlement had not occurred and any such payment had not been made.

## 14. Use of Cheques

- 14.1 The Customer will draw encoded cheques only on the Account for which the cheques are encoded.
- 14.2 Unless specified in another agreement, the Bank is not responsible for confirming the accuracy of any information the Customer provides to the Bank or for any discrepancies between cheque numbers, serial numbers, amounts, payee names or other information provided.
- 14.3 The Bank is not liable for any loss or damage whatsoever arising from the wrongful acceptance of a cheque, or the Bank's wrongful refusal to honour a cheque, drawn by the Customer on an Account other than the Account for which the cheque is encoded.
- 14.4 If the Bank receives a cheque for payment with a date of issue that is more than 6 (six) months prior to such receipt, the Bank shall at its discretion be entitled not to honour it.
- 14.5 The Bank shall have no obligation to return cheques drawn on Accounts to the Customer.

## 15. Interest

Positive Account balances will bear interest at an annual rate as disclosed to the Customer in accordance with the Bank's Fee Schedule failing which positive Account balances will not bear interest.

## 16. Waiver of Protest

- 16.1 The Customer hereby waives presentment, protest or notice of dishonour for non-acceptance or non-payment in respect of any Instrument delivered to the Bank by the Customer for deposit, discount, collection or for any other purpose and the Customer is liable to the Bank as if such presentment, protest or notice of dishonour had been given. The Bank records respecting the time of presentment, payment or dishonour will be conclusive evidence of same in the absence of evidence to the contrary.
- 16.2 The Bank may, in its sole discretion, note or protest in the usual course, any Instrument which the Bank considers should be noted or protested and the Bank will not be liable for protesting or noting, or failing to note or protest any Instrument.

## 17. Hold on Funds

- 17.1 The Customer agrees and authorises the Bank to place a "hold" on funds in any Account:
- 17.1.1 subject to the Bank's cheque hold policy in effect from time to time, restricting the Customer's right to make a withdrawal based on any non-cash Instrument until the Bank receives actual irrevocable payment from the drawee. Any credit to an Account for any non-cash Instrument before the Bank receives actual irrevocable payment is provisional and subject to reversal;
- 17.1.2 if the Bank becomes aware of suspicious or possible fraudulent or unauthorised Account activity that may cause a loss to the Customer, the Bank or an identifiable third party;

17.1.3 if an issue arises as to whom are the proper signing authorities on any Account. The Customer authorises the Bank to make such inquiries and perform such searches, at the Customer expense, as the Bank deems necessary, and the Bank may apply, at the Customer expense, to any court of competent jurisdiction (a "Court") seeking directions; or

17.1.4 if, in the Bank's sole opinion, a potentially legitimate claim is made by a third party on those funds, and if not resolved in a reasonable amount of time, the Bank may apply to Court seeking directions, at the Customer expense.

- 17.2 The Bank will not be liable for any loss for following or disregarding any Instructions to place or remove a hold.

## 18. Instructions to Stop Payment

- 18.1 The Bank will endeavour to effect Instructions to cancel any payment provided that:
- 18.1.1 the Instructions shall be in writing and notice of at least one Business Day has been given;
- 18.1.2 the payment is not guaranteed in any way;
- 18.1.3 the Bank has not already processed the payment instruction; or
- 18.1.4 the Bank has not advised the beneficiary bank that it will make the payment.
- 18.2 An Instruction to cancel a payment must include the Account number, the number or other relevant identifying feature, date, name of payee, amount and currency denomination of the relevant Instrument (Stop Payment request). Any such Instruction will be effective in accordance with the Bank's practice in force from time to time.
- 18.3 The Customer agrees to indemnify the Bank in respect of all liabilities, expenses, costs or legal fees which the Bank may incur as a result of the cancellation or non-payment of any Instruction or Instrument. The Customer shall have no claim against the Bank if an Instruction or Instrument is honoured notwithstanding subsequent Instructions to the contrary.
- 18.4 The Customer agrees that a Stop Payment request may be processed by the Bank without further investigation. The party making the Stop Payment Request is deemed to have the Customer authority to do so. The Bank will attempt to carry out Stop Payment requests for the Customer convenience only, provided the Bank is not liable for complying with or failing to comply with a Stop Payment request, even if such failure is as a result of the Bank's negligence.

## 19. Foreign Currency Transactions

For any instructions related to a foreign currency, and provided that the Bank does not have any instructions to the contrary, the Bank may:

19.1 convert any funds the Customer sends into the currency of the jurisdiction where the funds are being received; and

19.2 convert any funds the Customer receives into the currency of the Account in Bermuda.

The Bank shall charge the Customer the standard applicable rate set by the Bank at the time the Bank completes the foreign currency transaction and the Customer's Account will be charged or credited as applicable for the converted funds in the currency of the Customer's Account, plus applicable fees and taxes.

## 20. Trusts/Trust Accounts

20.1 The Customer acknowledges that the Bank is not:

20.1.1 acting as trustee for any Account, including any holdback account established pursuant to this Agreement;

20.1.2 required to recognise or uphold any funds or property as being held under trust obligations, even if the Bank is delivered a trust document in relation thereto; or

20.1.3 required to supervise the operation of any Account or property held by the Bank to ensure that it is operated in accordance with the provisions of any trust, whether or not the Bank has notice of the existence of any such trust or the specific provisions governing the same.

20.2 Any Account or property held whether subject to a trust, or not, will be operated by the Bank pursuant to the terms of this Agreement in the same manner as any other account, and the Customer will indemnify the Bank in accordance with this Agreement. If, for the Customer convenience, the Bank does follow Instructions to describe an Account as a "trust" in its records, this will in no way cause a waiver of any of rights or defences under this Agreement.

## 21. Termination and Changes

21.1 The Bank reserves the right to terminate this Agreement or any Account or restrict the Customer use of any product or service, including Remote Banking or a Debit Card, at any time without notice to the Customer.

21.2 Subject to Section 11, the Bank may at any time change this Agreement by providing the Customer with at least 30 (thirty) calendar days' written notice posted in either the Bank branches or on the Bank website. If the Customer issues any Instruction or continues to access an Account or Remote Banking after the effective date of a change to this Agreement, the Customer will be deemed to have been notified and agreed to all changes.

21.3 The Customer may terminate this Agreement, or any Account, by written notice to the Bank delivered to the branch where its Account is maintained. Termination will take effect immediately upon actual receipt of the notice by the Bank. If the Customer's right to use a Debit Card has been terminated, the Customer will immediately return all Debit Cards to the Bank.

## 22. Transaction Records and Verification

22.1 Unless the Bank receives Instructions to the contrary, the Bank will make available to the Customer Transaction Records or Statements of Account, either by ordinary mail to the Customer most recent address appearing on its records or through such other method as applicable to the Account.

22.2 Whether a Transaction Record is issued or not, the Customer agrees to ensure that Instructions have been properly executed and accurately recorded on Transaction Records. In the absence of evidence to the contrary, the Bank records are conclusive proof for all purposes, including litigation, of transactions or Instructions made, including without limitation, the date the Statement of Account was made available, the contents of any envelope deposited into an ATM/POS Terminal, the making of a withdrawal, deposit or transfer, and any other matter or thing relating to an Account.

22.3 The Customer is deemed to have received and be aware of all transactions disclosed on each Transaction Record or Statement of Account for the preceding month, whether the Customer actually receives one or not, on the earlier of: the day the Customer actually receives a Transaction Record or Statement of Account; the day on which the Customer becomes aware of facts that reasonably put it on enquiry as to the possibility of errors, omissions or irregularities affecting its Account including any fraud or unauthorised activity; or 10 (ten) days after the last day of each month whether the Customer actually receives a Transaction Record or Statement of Account or not. The Customer will further be deemed to have received a Statement of Account each time it accesses Remote Banking.

22.4 The Customer will notify the Bank in writing if the Customer does not receive any Transaction Record within the time period the Customer should have received it. If the Customer elects not to receive a Statement of Account, the Customer waives its right of protest.

22.5 Promptly upon receipt of each Statement of Account, and in any event within 30 (thirty) calendar days from the date on which the Customer is deemed to have received that Statement of Account ("30 Day Review"), the Customer agrees to examine and verify, each entry appearing on a Statement of Account, reconcile it with the Customer's own records and immediately notify the Bank in writing of any errors, omissions, irregularities, including any fraudulent or unauthorised transactions or any other objections the Customer has to that Statement of Account (collectively, "Account Irregularities"). If the Customer fails to notify the Bank, within the 30 (thirty) Day Review, the balance shown on the Statement of Account(s) and all entries, including any Account Irregularities, will be deemed correct, complete, authorised and binding upon the Customer and the Bank will be released from all liability for any transaction occurring up to the date of the most recent Statement of Account except for transactions the Customer gave notice of in accordance with this section.

22.6 If the Customer becomes aware of facts that reasonably puts it on enquiry as to the possibility of errors, omissions or irregularities affecting the Customer's Accounts including any fraud or unauthorised activity, it will immediately notify the Bank so as to prevent any ongoing fraud or unauthorised activity. If the Customer fails to do so, any preventable subsequent losses will not be the Bank's responsibility.

22.7 In addition to the consequences set out elsewhere, if the Customer fails to abide by its obligations under this section of the Agreement, and if the Customer's conduct or omission causes or contributes to a loss on its Account (losses of any kind whatsoever, taxes, levies, fines, fees or penalties suffered and/or incurred by, or brought against the Bank), then the Customer agrees that the Bank will not have any responsibility to the Customer with respect to such loss. The Customer acknowledges that the failure to review Statements of Account in a timely manner as required pursuant to this Agreement will be deemed to cause or contribute to the loss on the Account to the extent of any loss occurring subsequent to the time that any error or omission would have been discovered if the Statement of Account or Transaction Records been reviewed in accordance with this Agreement. The Customer acknowledges that the Bank's maximum liability to the Customer will be limited to actual direct loss in the principal amount wrongfully or erroneously withdrawn from the Customer's Account due to the Bank's gross negligence or wilful misconduct.

22.8 The Customer will not object to the admission of the Bank's records, including Statements of Account, as evidence in any legal proceeding on the ground that such records are not originals, are not in writing, are hearsay, or are documents containing information extracted from a computer. In the absence of evidence to the contrary, the Bank's records are conclusive for all purposes, including litigation, in respect of any Instructions given by the Customer to the Bank, the contents of any envelope deposited by the Customer into an ATM; the making of a withdrawal, deposit or transfer through the use of a Debit Card, and any other matter or thing relating to the state of Accounts between the Customer and the Bank in respect of any transaction.

## 23. Customer Responsibilities to Implement Controls

23.1 Without in any way limiting anything else contained in this Agreement, the Customer agrees to:

23.1.1 take reasonable precautions to control all cheques and other Instruments, Debit Cards, Security Codes and Access Terminals on the Customer premises, in such a way as to prevent and detect thefts of such items or losses due to forgeries or frauds. At a minimum, such precautions must include:

23.1.1.1 ensuring that all cheques and other Instruments are numbered sequentially;

23.1.1.2 ensuring that cheques or other Instruments, Debit Cards, Access Terminals,

cheque imprinters, devices for Mechanical Signatures, stamps or seals, are kept in a secure place and under Customer control;

23.1.1.3 conducting periodic reviews to ensure cheques and other Instruments are secure; and

23.1.1.4 having procedures in place to protect and regularly change passwords and update security measures that protect access to Remote Banking;

23.1.2 diligently supervise and monitor the conduct and work of all of Authorised Signatories, Delegates, directors, officers, employees, contractors, representatives and agents having any role in the preparation of Instruments, giving of Instructions, receipt of Statement of Accounts, Statement of Account reconciliation or other banking; and

23.1.3 take precautions to prevent unauthorised alterations to Instruments, including by writing Instruments with both words and figures and the Customer agrees that the Bank may refuse to negotiate Instruments not complying with this section.

23.2 The Customer also agrees that it will be liable for any loss arising from lost, stolen or forged cheques or other Instruments caused in whole or in part by the Customer's failure to take reasonable precautions, including those referred to above.

## 24. Limitation of Liability

24.1 Without limiting the effect of any other liability sections in this Agreement, the Customer agrees that the Bank will not be held liable and is hereby released from all liabilities, claims and losses sustained in connection with this Agreement or any Account unless the claim or loss was solely caused by the gross negligence or intentional misconduct of the Bank.

24.2 Without limiting the foregoing, the Bank will not be held liable and is hereby released from all liabilities, claims and losses incurred in relation to the operation of any Account or any dealings the Customer may have with the Bank including but not limited to:

24.2.1 any fraud or unauthorised Account activity by the Customer including past or present Authorised Signatories, Delegates, directors, officers, employees, representatives or agents;

24.2.2 any Customer action or omission, including by past or present Authorised Signatories, Delegates, directors, officers, employees, representatives or agents, including Customer's act or failure to act on information or direction provided by the Bank;

24.2.3 the Customer's failure to meet its obligations or otherwise implement the terms of this Agreement in place from time to time;

- 24.2.4 forged or unauthorised signatures on any Instrument or document, unless reported to the Bank as required, and such loss is not otherwise excluded;
  - 24.2.5 the Bank following any Instruction, including Instructions to place a hold or stop payment or Instructions received with use of a Security Code;
  - 24.2.6 any change, cancellation or restriction made in accordance with this Agreement including with respect to use of the Debit Card or Remote Banking without notice to the Customer;
  - 24.2.7 any Remote Banking or other system malfunction, interruption or unavailability;
  - 24.2.8 delays, failure or errors in implementing any Instruction; or
  - 24.2.9 improper, inaccurate or incomplete Instructions or information received by the Bank.
- 24.3 Notwithstanding anything else herein, the Bank will not be responsible or liable for any delay or failure in the performance of any the Bank's obligations under this Agreement as a result of any act of God, strike, lockout or labour disruption, war, riot, civil commotion, fire, windstorm, hurricane, flood, loss of power, computer hardware or software malfunction, or other event beyond the Bank's reasonable control.
- 24.4 If the Bank is held liable for any reason as a result of any claim or loss in connection with products or services provided by the Bank, the Customer agrees that such liability will exclude any liability for indirect, consequential or special damages including, without limitation, loss of data, profit or interest or business interruption, anticipated or actual even if the Bank has been advised of or should have foreseen the possibility of such damages and total Bank liability under this Agreement for any reason whatsoever will be limited to the total annual fees paid by the Customer to the Bank for such products or services in the year the loss occurred.
- 24.5 If the Customer suffers any loss that is or could be covered by any standard fidelity insurance policy covering losses arising from theft or dishonesty the Customer agrees not to claim against the Bank for such losses whether such losses are actually covered or not. The Customer also agrees not to grant any rights of subrogation as against the Bank arising from losses actually covered.

## 25. Indemnity

- 25.1 Except for any gross negligence or wilful misconduct proven on the part of the Bank, the Customer agrees to indemnify and save the Bank harmless (and the Bank may debit the Customer's Account accordingly) on first written demand from all direct or indirect losses, costs, fees, damages, expenses, claims, suits, demands and liabilities whatsoever including without limitation, all out of pocket legal expenses suffered or incurred by or brought against the Bank arising out of or relating to this Agreement, any Accounts, Instructions or other Customer dealings with the Bank, including but not limited to:

- 25.1.1 a breach of this Agreement by the Customer;
- 25.1.2 any improper or illegal use of any Accounts;
- 25.1.3 items deposited via an ATM/POS terminal contrary to this Agreement;
- 25.1.4 an Account being subject to trust obligations; or
- 25.1.5 where the Bank has, in good faith and otherwise in accordance with this Agreement:
  - 25.1.5.1 acted upon, delayed in acting upon or refused to act upon any Instruction or information provided by the Customer, including but not limited to improper, unauthorised or fraudulent Instructions given by an Authorised Signatory or Delegate;
  - 25.1.5.2 caused non-payment of any Instrument in accordance with Instructions (including, without limitation, other expenses incurred by the Bank through its refusal to pay such Instruments on Customer behalf);
  - 25.1.5.3 placed a hold or stop-payment; or
  - 25.1.5.4 established, maintained, administered a holdback account or released information regarding it.

## 26. Use and Sharing of Information

- 26.1 The Customer affirms that all information the Customer has provided to the Bank is true and complete. The Bank may collect and disclose credit and other financially-related information about the Customer from and to credit reporting agencies, credit insurers and other credit grantors, as necessary to provide products and services requested by the Customer. The Bank may use information relating to the Customer (including credit and other financially-related information) and disclose it to HSBC Group or third parties as it solely deems appropriate in order to establish and manage, market or promote products and services to the Customer, to determine the suitability of products or services for which the Customer has applied or is eligible or to provide ongoing service generally. The Bank may also disclose the Customer information as required to meet all legal and regulatory requirements.
- 26.2 In particular, the Customer authorises the Bank to transmit and store information about the Customer through and in various countries or territories and to provide third parties with information in accordance with foreign legal and regulatory requirements, including laws and regulations relating to the prevention of money laundering, terrorist financing and the provision of financial and other services to any persons or entities which may be subject to sanctions. The Bank may take, and may instruct other members of the HSBC Group to take, any action which it, in its sole and absolute discretion, considers appropriate to act in accordance with all such laws and regulations. Such action may include but is not limited to: the interception and investigation of any payment messages, Instructions

or other information sent to the Customer or on its behalf via Remote Banking or any HSBC Group member system; or making further enquiries as to whether a name which might refer to a sanctioned person or entity actually refers to that person or entity.

26.3 Neither the Bank nor any member of the HSBC Group will be liable for loss or damage suffered by any party arising out of:

26.3.1 any delay or failure by the Bank or any HSBC Group member in performing any of its duties under this Agreement or other obligations caused in whole or in part by any steps which the Bank, in its sole and absolute discretion, considers appropriate under applicable laws and regulations; or

26.3.2 the exercise of any of the Bank's rights under this section. In certain circumstances, actions taken by the Bank hereunder may prevent or cause a delay in the processing of information or Instructions. Subject to applicable laws and regulations, the Bank will make best efforts to notify the Customer of the existence of such circumstances as soon as is reasonably practicable.

26.4 Neither the Bank nor HSBC Group warrants that any information relied upon further to this section is accurate, current or up-to-date at the time it is accessed or acted upon.

## 27. Telephone Recording

The Bank may record all telephone conversations between the Customer and the Bank or between any other person and the Bank in relation to the affairs of the Customer and the Customer expressly consents to such recordings. The Customer agrees that any such tape recordings may be submitted in evidence in any proceedings relating to this Agreement.

## 28. Customer's Information

28.1 Information the Bank holds about the Customer will not be disclosed to anyone (including other members of the HSBC Group), other than where:

- the Bank is legally required to disclose,
- the Bank has a public duty to disclose,
- the Bank's interests require disclosure,
- the disclosure is made with the Customer's consent,
- as set out in these terms.

28.2 Sole Traders, Partnerships and Other Unincorporated Customers

28.2.1 The Bank may share information with Credit Reference Agencies (CRAs) to verify the Customer's identity and suitability for an Account using information. If the Customer applies for a current account or credit the Bank may use details of the Customer's credit history (together with those of any financial associate with whom the Customer financial

records have been linked by the CRAs) to assess the Customer's ability to meet financial commitments.

28.2.2 If the Customer's application is for a current account or credit, the CRAs will record details of the Customer's application which will form part of its credit history whether or not it proceeds. If the Customer makes several applications for credit within a short period of time, this may temporarily affect its ability to obtain credit.

28.2.3 Where the Customer has agreed in an application, the Bank may share details of how the Customer manages any current accounts or borrowing from the Bank with CRAs.

28.2.4 If the Bank makes demand for repayment following any default by the Customer and the Customer fails to repay the sum due in full or makes (and adheres to) acceptable proposals for repayment within 30 (thirty) days, then, in the absence of any genuine dispute about the amount owed, the Bank may register the default with the CRAs. This may affect the Customer's ability to obtain further credit.

28.3 Corporate Customers

The Bank may share information with CRAs about the Customer in order to verify the Customer's identity using information connected with the Customer's business. If the Customer applies for a current account or credit, the Bank may use details of the Customer's credit history to assess the Customer's suitability for an account and its ability to meet its financial commitments.

28.4 Crime Prevention and Debt Recovery

28.4.1 To prevent crime, verify the Customer's identity and to recover debt, the Bank may exchange information (both within Bermuda and, where appropriate, overseas), with other members of the HSBC Group, and, where appropriate, with fraud prevention and law enforcement, debt recovery agencies and other organisations including other lenders.

28.4.2 If the Customer gives the Bank false or inaccurate information and potential fraud is identified, details will be passed to fraud prevention agencies to prevent fraud and money laundering.

28.5 Data Sharing

28.5.1 The HSBC Group may use and share relevant information about the Customer, the Customer's transactions and its relationships with the HSBC Group for credit assessment, customer service, market research, insurance, audit and administrative purposes. This may include information provided by the Customer, or someone acting on its behalf. Where appropriate, this information may be shared with HSBC Group Companies outside Bermuda.

28.6 Data Processing

28.6.1 The Bank may use other HSBC Group companies and/or third parties to process information

in accordance with the Bank's instructions to provide services on its behalf. Whether it is processed in Bermuda or overseas, the Customer's information will be protected, in accordance with data protection principles by a strict code of secrecy and security which all members of the HSBC Group, their staff and any third parties are subject to. Information may also be processed for the purpose of complying with applicable laws, HSBC principles, including, without limitation, anti-money laundering and anti-terrorism laws and regulations and fighting crime and terrorism. This may require the disclosure of information to a Bermuda or other governmental or regulatory authority or to any other person the Bank reasonably thinks necessary for these purposes.

#### 28.7 Information about Products and Services

28.7.1 The HSBC Group may use and share relevant information about the Customer, its transactions and its relationships with the HSBC Group, (including the nature of the Customer's transactions) to give the Customer information (including promotions) about products and services, available from HSBC Group companies and those of selected third parties which may interest the Customer by telephone, post, e-mail, secure e-message, text messaging services and other Electronic Means.

#### 28.8 Un-encrypted Communication

28.8.1 The Customer agrees that emails and Internet communication are not secure or confidential unless properly encrypted. Unless the Customer instructs the Bank in writing to the contrary, the Customer confirms that the Bank may send information (which may include confidential information) to the Customer by unencrypted email or by Internet communication. If the Customer uses unencrypted email or Internet communication to send Customer information or any other kind of information to the Bank, the Customer does so at its own risk, and in doing so accepts the risk that this will pose to such information. If the Customer uses unencrypted email or Internet communication to request that the Bank send Customer information or any other information the Customer (or such other person(s) as the Customer shall direct), the Customer confirms its consent to the Bank sending such information by unencrypted email or Internet communication.

The Customer agrees that the Bank, its affiliates, and its providers will not be responsible or liable to the Customer or any other person (whether a natural person or any type of incorporated or unincorporated entity or organization) for any loss or damage suffered as a result of the use of unencrypted email or the Internet to communicate with the Bank, its affiliates or its providers or as a result of either (i) the Customer's use of unencrypted email or the Internet to communicate with the Bank, its affiliates or providers or (ii) the Customer's request that the Bank, its affiliates or its providers use unencrypted email or

the Internet to communicate with the Customer (or such other person(s) as the Customer shall direct).

#### 28.9 Miscellaneous

28.91 The Bank will obtain the Customer's written consent before providing a bankers reference about the Customer. However, if the Bank receives a request from another financial services institution to verify the Customer's identity for money laundering prevention purposes, the Bank will provide this information.

### 29. Payment Screening

29.1 The Bank and other members of the HSBC Group are required to act in accordance with HSBC policies, the laws and regulations operating in various jurisdictions which relate to the prevention of money laundering, terrorist financing and the provision of financial and other services to any persons or entities which may be subject to sanctions. The Bank may take, and may instruct other members of the HSBC Group (and may be instructed by other members of the HSBC Group) to take any action which the Bank, in its sole and absolute discretion, consider appropriate to take to comply with any such HSBC policies, laws and regulations to which you or any other member of the HSBC Group is subject. Such action may include but is not limited to: the interception and investigation of any payment messages and other information or Instructions sent to or by the Customer or on its behalf via the Bank's systems or any other member of the HSBC Group's systems; and making further enquiries as to whether a name which might refer to a sanctioned person or entity actually refers to that person or entity.

29.2 Notwithstanding any provision of this Agreement, neither the Bank nor any member of the HSBC Group will be liable for loss of any kind whatsoever, taxes, levies, fines, fees or penalties suffered and/or incurred by, or brought against, the Bank (whether direct, consequential or loss of profit, data or interest) or damage suffered by any party arising out of:

29.2.1 any delay or failure by the Bank or any member of the HSBC Group in performing any of its duties under this Agreement or other obligations caused in whole or in part by any steps which the Bank, in its sole and absolute discretion, consider appropriate to take in accordance with all such HSBC policies, laws and regulations; or

29.2.2 the exercise of any of the Bank's rights under this section.

29.3 In certain circumstances, the action which the Bank may take may prevent or cause a delay in the processing of certain information. Therefore, neither the Bank nor any member of the HSBC Group warrants that any information on its systems relating to any payment messages and Instructions which are the subject of any action taken pursuant to this section is accurate, current or up-to-date at the time it is accessed, whilst such action is being taken.

Subject to the overriding requirements of any applicable HSBC policies, laws and regulations, the Bank will endeavour to notify the Customer of the existence of such circumstances as soon as it is reasonably practicable.

### 30. Debit Cards

- 30.1 The Customer can use its Debit Card and Security Code to perform transactions through an ATM /POS terminal or similar device or on the Internet or other electronic means, including deposits, withdrawals and transfers to and from specified Accounts. The Customer understands the Bank might need to verify any deposit made through the Customer's Debit Card before the Customer can withdraw or transfer the money deposited.
- 30.2 The Customer will sign the Debit Card and any replacement issued on expiry or loss thereof, immediately upon receipt.
- 30.3 The Debit Card may only be used if sufficient funds are available for use in the Account. The Bank is not liable if the Debit Card is not honoured.
- 30.4 The Bank has the right to stipulate a daily amount the Customer can spend and/or withdrawal using its Debit Card. If the Customer exceeds this limit, a charge will be applied in accordance with a Fee Schedule.
- 30.5 The Customer must sign a sale or cash voucher every time the Debit Card is used for direct payment, but failure to sign does not relieve the Customer from any responsibility for payment.
- 30.6 Debit Cards and Security Codes remain the Bank's property at all times; however, the Bank reserves the right to cancel the Debit Card without notice and on being notified of such cancellation, the Customer undertakes to return such cancelled Debit Card forthwith to the Bank.
- 30.7 The Customer's Debit Card and Security Code are for the Customer use alone and the Customer will keep them confidential and not reveal them to any person. The Customer will take all reasonable precautions to maintain the secrecy and prevent unauthorised use of its Debit Card and Security Codes.
- 30.8 If the Customer knows or suspects that any Security Code is known by anyone else or if its Debit Card is lost, stolen or misused, the Customer will notify the Bank as soon as possible by contacting any of the Bank's branches or by phoning the numbers provided by the Bank from time to time.
- 30.9 The Customer will be liable for all transactions or losses that occur as a result of authorised or unauthorised use of any Debit Card, Security Code or Service.
- 30.10 The Customer will not be liable for losses that occur after the Customer notifies the Bank that the Customer's Debit Card has been lost or stolen, that the Customer suspects any of its Security Codes might be known by anyone else, or that any other unauthorised use of a

Service may be occurring or for any losses resulting from the Bank's errors, technical problems or system malfunctions, as well as for losses resulting from circumstances beyond the Customer's control, including, but not limited to, losses occurring after notification or cancellation, such as losses which result from unauthorised use of a Debit Card or a Security Code after the Customer notifies the Bank and the Bank has received notice that the Debit Card has been lost or stolen or that the Customer suspects the Security Code is known by anyone else.

- 30.11 The Customer will be deemed to have contributed to, and liable for, unauthorised use of its Debit Card or a Security Code if:
- 30.11.1 the Customer voluntarily discloses a Security Code to anyone, write it on or near its Debit Card, or keep a poorly disguised written record of it on or near a Debit Card; or
- 30.11.2 the Customer fails to notify the Bank within a reasonable time that a Debit Card has been lost or stolen, or that the Customer suspects that its Security Code is known by another person; or
- 30.11.3 the Customer selects a Security Code which is based on the number on its Debit Card.

### 31. Dormant and Unclaimed Accounts

The Bank may treat any Account as being dormant if no Customer initiated transaction (other than entries for charges pursuant to the Fee Schedule or interest credits or debits) has occurred in respect of the Account for a period of 2 (two) years and may treat any Account as being unclaimed if no activity has occurred in the Account for a period of 3 (three) years. The Customer acknowledges and agrees that without the Bank's written consent, the Customer may not be able to make withdrawals from any such dormant or unclaimed Account. No interest is payable by the Bank in respect of a dormant or unclaimed Account. An Account reactivation fee may be applied by the Bank prior to the activation of such Account.

### 32. Change of Authorised Signatories

- 32.1 The Customer may only change Authorised Signatories by delivering Instructions in accordance with the Bank procedures in place from time to time. The Bank will not be responsible for making changes without proper notification or with improperly completed documentation. Changes will only be effective after the Bank has accepted notice of the change and updated its records accordingly. If, for any reason, the Bank determines that required documentation has not been duly completed, authorised, ratified or approved, or is deficient in some other respect, the Bank may decline to change Authorised Signatories and may place a "hold" on funds in any Account in accordance with this Agreement, or suspend any dealings with the Customer.
- 32.2 The Customer undertakes to notify the Bank of any change of address, change in signing authority or change of Authorised Person on any Account in the form required by

the Bank. Such change shall be effective in respect of Instructions given on the Business Day following the later of the date of receipt of such notice or the date on which the Bank's requirements in connection with a new Authorised Person have been met including, where applicable, entering into any Remote Banking terms and conditions.

### 33. Tax Status

- 33.1 The Customer undertakes at all times to comply with Bermuda Exchange Control Regulations, and agrees to notify the Bank immediately of any change of address status.
- 33.2 The Customer also undertakes to notify the Bank of any change of circumstances which may impact the Customer's status with respect to foreign currency purchase tax. The Customer agrees to indemnify the Bank against and save the Bank harmless from any damage the Bank may suffer as a result of the Customer's failure to notify the Bank of a change of circumstances which impacts the Customer's status with regard to foreign currency purchase tax.
- 33.3 Unless the Customer informs the Bank otherwise, by opening an Account and signing the Business Account Application, the Customer represents and warrants that it is not a U.S. Person\*\* for purposes of U.S. Federal income tax and the Customer is not acting for, or on behalf of, a U.S. person. The Customer acknowledges that a false statement or misrepresentation of tax status by a U.S. person could lead to penalties under U.S. law. If at any time, the Customer's tax status changes or the Customer becomes a U.S. resident, the Customer agrees to notify the Bank within 30 (thirty) days and file such additional forms or take all other steps as the Bank shall request in regards to the Customer's tax status (including, but not limited to, providing the Bank with a completed IRS Form W-9). If the Customer is presently a U.S. person, the Customer agrees to provide the Bank with a completed IRS Form W-9.
- 33.4 The Customer acknowledges that by being a party to any transaction in US dollars, the Customer must comply with US laws, in particular, with regulations issued by OFAC. OFAC regulations impose trade restrictions and prohibit financial and other transactions with certain foreign countries, entities and individuals ("Prohibited Persons") as notified by OFAC (the "OFAC list").
- 33.5 The Customer acknowledges that it must obtain its own tax and legal advice in connection with opening accounts and obtaining services from the Bank.

\*\*A U.S. Person includes a U.S. citizen or U.S. resident (e.g. someone who has his or her primary residence in the U.S. pursuant to IRS regulations), US Corporation, US Partnership, US trust.

A corporation or partnership formed or organised in the US is generally a US corporation or US partnership. A trust is generally considered a US trust if a court within the US is able to exercise primary supervision over the administration

of the trust and one or more US persons have the authority to control all substantial decisions of the trust.

### 34. General

34.1 The Customer represents and warrants to the Bank that:

34.1.1 it is duly incorporated or created and is validly existing under the laws of its place of incorporation or creation and that it has all necessary powers and obtained all approvals to execute and deliver this Agreement and to perform its obligations hereunder;

34.1.2 This Agreement has been duly executed in the manner required by the Bank which execution does not result in any violation by the Customer of any applicable law or regulation or any term of its constitutional documents;

34.1.3 the opening of any Account does not contravene or constitute a default under any provision of applicable law or regulation or any agreement, judgment, injunction, order, decree or other instrument binding upon the Customer;

34.1.4 the Customer has the authority to deposit any property with the Bank for safe keeping, to have access to and reclaim any property so deposited and to give Instructions to the Bank in respect of such property;

34.1.5 the Customer has obtained, complied with the terms of and maintained all authorisations, approvals, licenses and consents required under any applicable law or regulation to enable it lawfully to open, maintain and operate any Account and to engage the Bank's services which are provided on the basis of this Agreement and to perform under any contract entered into;

34.1.6 the Customer has all exchange control permissions required for any Accounts operated under this Agreement;

34.1.7 the Customer has read and understood the OFAC list and it, its directors or other officers or beneficial owners are not Prohibited Persons and do not deal with any Prohibited Persons; and

34.1.8 all information provided to the Bank by the Customer is correct and undertakes to notify the Bank promptly of any change thereto.

34.2 The Customer agrees that:

34.2.1 nothing in this Agreement shall be deemed or construed as creating a relationship of principal and agent, partnership, or joint venture between the Bank and the Customer or any other financial institution;

34.2.2 except as expressly set forth in this Agreement or requested by the Bank, all notices required to be given under this Agreement will be in writing and communicated by courier or hand delivery, except that the Bank may, in its reasonable discretion, provide any notice to the Customer by telephone or in person and

upon delivery, such notice shall be deemed to meet any notice obligation on the Bank.

34.2.3 the terms of this Agreement are binding on the Customer and the Customer's representatives, successors and permitted assigns, including heirs, executors and administrators where applicable, and may not be assigned without the Bank's prior written consent.

- 34.3 The Agreement shall be construed and interpreted in accordance with the laws of Bermuda. The Customer hereby irrevocably submits to the exclusive jurisdiction of the courts of Bermuda with respect to any action, claim or proceeding and to settle any disputes arising out of or pertaining to this Agreement or any matters or transactions referred to in or contemplated by this Agreement (respectively "Proceedings" and "Disputes").
- 34.4 The Customer irrevocably waives any objection which it may have at any time to the courts of Bermuda being nominated as the forum to hear and determine any Proceeding or settle any Disputes and agrees not to claim that the courts of Bermuda are not a convenient or appropriate forum.
- 34.5 The submission to the jurisdiction of the courts of Bermuda shall not limit the Bank's right to take Proceedings against the Customer in any other court of competent jurisdiction. If the Bank takes Proceedings against the Customer in any one or more jurisdictions, it shall not be precluded from taking Proceedings in any other jurisdiction (whether concurrently or not) if and to the extent possible.
- 34.6 The Customer hereby irrevocably agrees not to claim and irrevocably waives any immunity from suit, execution, attachment or other legal process that it may claim in any jurisdiction for itself and its assets to the full extent permitted by the laws of such jurisdiction.
- 34.7 If any part of this Agreement is held unenforceable for any reason, the unenforceable portion of this Agreement will not affect the enforceability of the remainder of this Agreement, which will continue in full force and effect as if this Agreement had been executed without the unenforceable portion.
- 34.8 The Customer shall not create any encumbrance over any right or interest of the Customer in an Account without the prior written consent of the Bank.
- 34.9 The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and in any order and are not exclusive of any rights or remedies provided by law.

34.10 If in the Bank's opinion, any law or regulation, change in any law or regulation or change in its interpretation makes it unlawful for the Bank to make available or maintain all or part of this Agreement or to perform any of its obligations in relation to them, then the Bank will give notice to this effect on the Customer and the Bank shall then be discharged from its obligations to make available, renew or maintain this Agreement and the Customer shall pay the Bank on demand or on the date specified by the Bank as being the latest date for compliance with the relevant law or regulation, all amounts then due and to become due under this Agreement to the Bank.

34.11 Without prejudice to any other provision of this Agreement, the Bank will not by any act, delay, indulgence or omission be deemed to have waived any right or remedy hereunder or to have acquiesced in any breach of any of this Agreement. A waiver by the Bank of any right or remedy hereunder on one occasion will not be construed as a bar to any right or remedy which the Bank would otherwise have on any future occasion. If the Bank does exercise any right or remedy hereunder, it is not under any obligation to do so at a time or in a manner beneficial to the Customer.

34.12 This Agreement together with the application form supersedes all prior agreements, understandings, representations and negotiations in relation to the matters referred to in this Agreement.

34.13 Unless otherwise specifically provided, the singular includes the plural and vice versa. The headings, table of contents or section titles are for reference only and shall not affect the construction or interpretation of this Agreement.

THIS VERSION OF THIS AGREEMENT IS IN EFFECT SINCE 4 MARCH 2011.

**[www.hsbc.bm](http://www.hsbc.bm)**

HSBC Bank Bermuda Limited  
6 Front Street  
Hamilton HM 11  
Bermuda

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