

Debit User Terms and Conditions

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Debit User Terms and Conditions

The Bank agrees to allow the Customer to instruct the Bank to make debits on Consumer Accounts (“Debit Service”) as set out as follows.

1. Definitions

“Account” means the Consumer’s bank account with a Banking institution in Bermuda that will be debited as a result of the Direct Debit Request Service Agreement.

“Agreement” means this agreement and any supplementary terms and schedules for the provision of this Debit User Agreement published and amended by the Bank from time to time.

“Bank” means HSBC Bank Bermuda Limited, its subsidiaries and affiliates.

“Customer” means the organisation which is applying to be a Debit User.

“Claims” means all claims, liabilities, damages, indebtedness actions, causes of action, expenses (including legal, accounting and other professional expenses) and losses of any kind whatsoever, taxes, levies, fines, fees or penalties suffered and/or incurred by, or brought against, the Bank.

“Consumer” means each customer of the Customer.

“Debit Service” means a service pursuant to which the Bank will make debits on the Consumer accounts of the Customer regarding services provided by the Customer to the Consumer pursuant to the terms of a Direct Debit Request.

“Debit User” means the Customer who allows the Bank to make debits on Consumers’ Accounts.

“Details” means the Customer details at the back of this Agreement.

“Direct Debit Request” means an authority and request from a Consumer to the Customer to debit amounts to a specified Account of that Consumer in a form agreed to by the Bank in writing.

“Notice” means a notice, request, consent and other communication in connection with this Agreement.

“Person” includes a corporation, unincorporated association, or authority and includes their successors and assigns.

Words in this Agreement that are in the singular include the plural and vice versa, unless the context requires otherwise; words importing the masculine gender include the feminine and are deemed gender neutral; and words importing persons include individuals, sole proprietors, corporations, partnerships, trusts and unincorporated associations.

2. Debit Service

- 2.1 The Bank agrees to:
 - 2.1.2 allow the Customer to use the Debit Service on the terms and conditions set out in this Agreement; and
 - 2.1.2 accept and act upon payment instructions received from the Customer to debit the Accounts of its Consumers.

3. Extent of Obligations

- 3.1 The Customer agrees to comply with all the conditions, accountabilities and responsibilities which apply to the Customer in:
 - 3.1.1 this Agreement;
 - 3.1.2 any Direct Debit Request the Customer enters into with a Consumer; and
 - 3.1.3 any requirements under the laws of Bermuda.

4. Debit User Obligations

4.1 General

- 4.1.1 The Customer may only use a Direct Debit Request and any other information which the Customer must give Consumers in relation to a Direct Debit Request if the Customer has the Bank’s written approval of the format, content and medium prior to printing them or publishing them by any other means to the Consumers;
- 4.1.2 The Customer must obtain from each Consumer a valid and binding Direct Debit Request in the form approved by the Bank from time to time. The Bank will not check that the Customer holds a valid and binding Direct Debit Request from a Consumer. The obligation to obtain a binding Direct Debit Request is the sole obligation of the Customer. If the Customer fails to obtain a valid Direct Debit Request from a Consumer or make any mistake, error, omission, mis-statement or provision of incorrect information in connection therewith, the Customer will indemnify the Bank against any Claims incurred or suffered by the bank in connection therewith.
- 4.1.3 The Customer must not initiate instructions to the Bank for Debit Services for any Consumer unless the Consumer has signed a valid and binding Direct Debit Request;
- 4.1.4 The Customer must issue debit payment instructions strictly in accordance with the arrangements made between the Customer and a Consumer and ensure that such instructions do not exceed the conditions (if any) specified in the Direct Debit Request provided by the Consumer;
- 4.1.5 The Customer must inform a Consumer of any change in the terms of the debit arrangements made between the Customer and a Consumer at least 14 (fourteen) days before the change is to be implemented;
- 4.1.6 The Customer must act promptly in accordance with any instructions given by a Consumer to cancel or suspend a Direct Debit Request or to stop or defer individual debit payment instructions from time to time;

4.1.7 The Customer must not make any representation in connection with any goods or services which may bind the Bank;

4.1.8 The Customer must ensure that the correct Account information for a Consumer appears on any Direct Debit Request given to the Customer and the Customer acknowledges that the Customer is solely responsible for ensuring this information is correct. If the Customer initiates a debit in accordance with incorrect Account information provided by a Consumer, the Customer acknowledges that it may result in the Bank being liable for any Claims suffered or incurred by such other financial institutions or arising out of or in connection with such debit. The Bank will then claim the amount payable to them from the Customer under the indemnities contained in this Agreement;

4.1.9 The Customer must notify the Bank within 60 (sixty) days of any significant changes in the arrangements for the issuing of debit payment instructions including without limitation any changes relating to the amount of or frequency of debit payments;

4.1.10 The Customer must notify the Bank within 60 (sixty) days of any proposed changes to the Customer's name, mergers, changes of shareholding control, and changes of a like kind - in this notification period the Bank will consider the proposed change and determine whether or not the Bank will continue the Debit Service and advise the Customer accordingly.

4.2 Claims

The Customer agrees that it:

4.2.1 must promptly and in good faith investigate and deal with any query, claim or complaint relating to alleged incorrect or wrongful debits received from the Bank and provide such assistance as is reasonably required by the Bank so the Customer may deal with and respond to such queries, claims or complaints within 5 (five) days by either:

4.2.1.1 accepting the claim and paying the disputed amount (either to the Bank or in the manner the Bank directs the Customer to pay it); or

4.2.1.2 disputing the claim and providing the Bank with full particulars of the Customer's reasons for disputing the claim including evidence of the Customer's authority to debit. If the Customer fails to satisfactorily respond to a claim received from the Bank within 5 (five) days then the Customer acknowledges and agrees that an amount equal to the amount allegedly incorrectly or wilfully debited may be debited by the Bank to the Customer's account and that this amount will be credited by the Bank to the Consumer's Account.

4.2.2 must promptly and in good faith investigate and deal with any query, claim or complaint relating to

alleged incorrect or wrongful debits received from a Consumer and advise the Consumer in writing of the Customer's conclusion.

4.3 Storage

4.3.1 The Customer must safely and securely retain all Direct Debit Requests given to the Customer for a period of not less than 7 (seven) years from the date the last debit was made under the relevant Direct Debit Request and produce them or any one of them upon request by the Bank or the relevant financial institution for verification of the Customer's authority to debit.

4.4 Settlement of transactions

4.4.1 The Customer must have at least 1 (one) account with the Bank which can be used for the purposes of this Agreement.

4.5 Access and Document Review

4.5.1 The Customer will allow the Bank's employees, contractors, officers, attorneys, and agents (the "Bank's Representatives") to enter the Customer's premises at reasonable times during normal business hours for any purpose relating to this Agreement. The Customer will provide the Bank's Representatives with access to, and, if requested, copies of documents and agreements relating to this Agreement and any services provided hereunder.

5. Costs, Fees and Other Payments

5.1 The Customer authorises the Bank to withdraw from any account the Customer has with the Bank, including the account maintained under section 4.4.1, without Notice:

5.1.1 all fees, charges and costs in connection with the Debit Service of this Agreement;

5.1.2 all amounts arising from any query, claim or dispute;

5.1.3 all stamp duties and other government charges levied on or in connection with any Direct Debit Request, the Customer's accounts with the Bank and this Agreement;

5.1.4 any amounts found to be due to the Bank during an audit or check by the Bank;

5.2 The Customer must pay on demand from the Bank any balance which remains unpaid because there are not enough funds in the Customer's account to pay the amounts due under section 5.1 above.

6. Confidentiality

6.1 Each party agrees that it will not, at any time during the continuance of this Agreement or at any time after its termination, use the other's name, logo or trademark in any advertising, press release or other written materials provided to third parties without the prior written consent of the other party.

6.2 Notwithstanding any other provisions in this Agreement, the Bank may disclose confidential information to any third parties involved in consulting with respect to the Services and to attorneys, auditors, government or other agencies as prescribed by law.

7. Indemnity

7.1 The Customer agrees to indemnify and save the Bank harmless and keep the Bank indemnified and held harmless against all Claims incurred or suffered by the Bank arising out of or in connection with this Agreement or the provision of any services hereunder including but not limited to:

7.1.1 the debiting to the Account of any Consumer and the payment to the Customer of any sum or sums of money the debiting of which was not at the time authorised by a Direct Debit Request or to which the Customer was not then legally entitled; or

7.1.2 the making of any payment not in accordance with the terms of a Direct Debit Request; or

7.1.3 the failure to make payment in accordance with the terms of a Direct Debit Request.

7.1.4 any claim, action or cause of action made by any third party (including any third party financial institution against the Bank) as a result of this Agreement or any of the services provided by this Agreement.

7.2 The Customer will not be liable under this section 7 with respect to a Claim to the extent that the Claim was caused by the Bank's gross negligence or the gross negligence of any of the Bank's employees or agents in processing the Customer's debit payment instructions.

7.3 The Customer authorises the Bank to admit, compromise or reject any Claims without reference to or authority from the Customer and will not dispute the quantum of any payment made as a result of any admission.

7.4 Each indemnity is a continuing indemnity, and is separate and independent from any other obligations and survives termination of this Agreement.

7.5 It is not necessary for the Bank to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

8. Bank Obligations

The Bank will accept and act upon the Customer's debit payment instructions given in accordance with this Agreement.

9. Variation and Waiver

9.1 The Bank may vary this Agreement or the terms at any time by giving the Customer Notice in writing. The variation

begins on the date of the Notice or a later date specified on the Notice.

9.2 Either party may only waive a right created by this Agreement by giving the other Notice in writing.

10. Termination

10.1 Either party may end this Agreement by giving the other 30 (thirty) days Notice in writing. The Notice does not have to state a reason.

10.2 The termination of this Agreement does not affect any of the Customer's or the Bank's rights and obligations which arose before the termination date.

10.3 Notwithstanding section 10.1, the Bank may end this Agreement immediately if:

10.3.1 the Customer defaults in performing any of the Customer's obligations under this Agreement or any other agreement between the Customer and the Bank;

10.3.2 in the Bank's sole opinion there has been a material adverse change in the Customer's circumstances.

11. Disclaimer

11.1 Subject to Section 11.3 below, the Bank will use all reasonable endeavours to fulfil the Bank's obligations under this Agreement. The Bank will not be liable (whether in contract, tort or otherwise) for any loss or damage whatsoever arising out of any failure or other deficiency with respect to the Bank's obligations or any part of them, even if the possibility of such loss or damage was known or ought to have been reasonably known to the Bank.

11.2 The Customer acknowledges the Bank may use third parties to perform various tasks in connection with this Agreement and the Customer agrees that the Bank will not be liable (whether in contract, tort or otherwise) for any loss or damage whatsoever arising out of any failure or other deficiency with respect to the Bank's obligations or any part of them, even if the possibility of such loss or damage was known or ought to have been reasonably known to the Bank.

11.3 The Bank expressly disclaims all conditions and warranties, express or implied, in respect of the subject matter of this Agreement including any condition or warranty of merchantability or fitness for a particular purpose.

12. Bank Consent

The Bank may give its consent for the purposes of this Agreement conditionally or unconditionally or withhold it in the Bank's absolute discretion unless this Agreement expressly indicates differently.

13. Debit User Rights

13.1 The Bank may enter into this Agreement as principal or agent. The Bank may also transfer its interest in this

Agreement or give another person an interest in or form of security over it without obtaining the Customer's consent.

13.2 The rights, powers and remedies which the Bank and the Customer have under this Agreement are in addition to the ones provided independently by law. The Bank and the Customer may exercise the rights, powers and remedies under the law as well as any of those provided by this Agreement.

13.3 If the Bank or the Customer do not insist upon or enforce a right arising from a breach of this Agreement, that does not mean that the Bank or the Customer have given up or waived that right or any other right arising from that breach or any later breach.

13.4 This Agreement cannot be assigned by the Customer.

14. Notices

14.1 A Notice must be in writing.

14.2 A Notice must be:

14.2.1 given personally to the addressee; or

14.2.2 left at the address last advised; or

14.2.3 sent by prepaid post to the address last advised; or

14.2.4 sent by facsimile to the facsimile number last advised.

14.3 Until further Notice is given, the address last advised will be the address for Notices shown in the Details.

14.4 If a Notice is sent by post, it is taken to be received on the 5th (fifth) day after posting.

14.5 If a Notice is by facsimile, it is taken to be received on production of a transmission report by the transmitting machine which indicates that the whole facsimile was sent.

14.6 A Notice takes effect from the time it is delivered unless a later time is specified in it.

14.7 Any legal process or Notice of legal process (for example, a summons) may be served on the Bank or the Customer by delivering or leaving it at the Bank's or the Customer's last advised address or by any other method of service permitted by law.

15. Governing Law

This Agreement will be governed exclusively by the laws of Bermuda and the Bank and the Customer submit to the exclusive jurisdiction of the courts of Bermuda.

16. Declarations and Signatures

The Customer confirms that through its authorised signatory(ies), has read and agrees to the terms and conditions of this Agreement for which it has applied and confirms to be bound by such terms and conditions and any changes that may occur from time to time.

SIGNATURES

Account signatories must sign this signature form exactly as they will sign payment instructions or notices and communications to the Bank. Please sign in black ink within the boxes provided.

Authorised Signatory <input type="text"/>	Authorised Signatory <input type="text"/>
Signature <input type="text"/>	Signature <input type="text"/>
Title <input type="text"/>	Title <input type="text"/>
Date (dd/mm/yyyy) <input type="text"/>	Date (dd/mm/yyyy) <input type="text"/>

DETAILS

Debit User <input type="text"/>	
Insert full name <input type="text"/>	
Address for Notices to the Debit User <input type="text"/> <input type="text"/> <input type="text"/>	Address for business premises (if different) <input type="text"/> <input type="text"/> <input type="text"/>

www.hsbc.bm

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