



HSBC Bank Canada

## COMMERCIAL ACCOUNT OPERATING AGREEMENT

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In exchange for banking services provided by HSBC, the Customer and HSBC agree as follows:

### 1. Definitions

In this Agreement:

**"ATM/POS Terminal"** means an automated banking machine or card-reading terminal at any point of sale used by the Customer to access an Account or HSBC banking services;

**"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 HSBC services or products;

**"Account"** means each account the Customer holds with HSBC from time to time;

**"Account Statement"** means a periodic statement or summary of Account activity pertaining to an Account;

**"Amounts Owning"** means all amounts owed by the Customer to HSBC or any Member of the HSBC Group whether in connection with an Account, Services, credit facility or any other reason from time to time and the costs incurred to collect Amounts Owning;

**"Authorities"** includes judicial, administrative, public, or regulatory bodies, as well as governments, tax, revenue and monetary authorities, examiners, monitors, securities or futures exchanges, courts, central banks or law enforcement bodies with jurisdiction over any part of the HSBC Group, and their agents.

**"Authorized Signatory"** means an individual who is authorized to give Instructions or otherwise conduct banking activities on the Customer's behalf, including any delegate of an Authorized Signatory;

**"Bankcard"** means each financial services card (but not a Mastercard®) provided to the Customer by HSBC from time to time and any and all replacement cards;

®Mastercard is a registered trademark of Mastercard International Incorporated and is used under license.

**"Bearer Shares"** are shares issued by a corporation which assigns ownership to whomever has possession of the physical share certificates.

**“Compliance Obligations”** means:

- (a) Laws and international guidance;
- (b) internal policies and procedures; and
- (c) directions, guidelines and requirements of Authorities;

**“Connected Person”** means a person or entity (other than the Customer) associated with the Customer through employment, management, governance, shareholding, ownership, control or similar capacity. A **Connected Person** may include a guarantor, director, officer, Authorized Signatory or Delegate, representative, agent, nominee partners or members of a partnership, Substantial Owner, Controlling Person, beneficial owner; trustee, beneficiary, settlor or protector of a trust and other persons or entities with whom the Customer has a relationship relevant to the Customer's relationship with the HSBC Group.

**“Controlling Person”** means an individual who exercises control over an entity

**“Customer”** means the organization named on the Relationship Acceptance Form. For a general partnership, limited partnership, limited liability partnership, joint venture, or unincorporated association, “Customer” includes every partner, general partner, joint venture participant, or member, respectively, of the organization jointly and severally;

**“Customer Information”** means Personal Information, confidential information and/or Tax Information of the Customer and Connected Persons;

**“Digital Reproduction”** means an imaged or electronic copy or representation of all or part of an Instrument or Instruction;

**“Financial Crime”** includes money laundering, terrorist financing, bribery, corruption, tax evasion, fraud, predicate offences to money laundering, violations and evasion of country or economic or trade sanctions. It also includes acts or attempts to circumvent or violate Laws relating to these matters;

**“HSBC”** means HSBC Bank Canada;

**“HSBC Group”** and **“Members of the HSBC Group”** means HSBC Holdings plc, its affiliates, subsidiaries, associated entities, and their branches and offices (together or individually).

**“Instructions”** means any verbal, written or electronic instructions, directions or agreement provided or reasonably believed by HSBC to have been provided by or on behalf of the Customer, including but not limited to those received via electronic, telephone or other communication channel or device;

**“Instrument”** means any cheque, bill of exchange, promissory note, payment item, security, coupon, cash, note, evidence of deposit, bank draft or other order for payment of money, clearing item, negotiable instrument, bankers acceptance, bill payment remittance, EFT's, wires or credit card sales slip or other valuable item that HSBC takes for deposit or for discount, collection or acceptance or as collateral security or otherwise, or issues, negotiates, pays, collects, transmits or processes on Customer's behalf, including any Digital Reproduction of the foregoing;

**“Laws”** includes local and foreign laws, regulations, sanctions regimes, judgments, court orders, voluntary codes, industry rules, protocols, guidance or direction provided by regulators, examiners and similar authorities and agreements and treaties with or between Authorities that apply to HSBC or a Member of the HSBC Group;

**“Loss”** means any claims, charges, costs (including, but not limited to, any legal fees, on a substantial indemnity basis, or other professional costs), damages, debts, expenses, taxes, liabilities, and any other payments or losses of any kind (including, but not limited to, any currency or exchange loss), obligations, allegations, suits, actions, demands, causes of action, proceedings or judgments of any kind however calculated or caused, and whether direct or indirect, consequential, punitive or incidental;

**“Personal Information”** means information about an identifiable individual;

**“Remote Banking”** means provision of Instructions through any telecommunication or information system, including internet, telephone banking, and all other electronic or automated services;

**“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, biometric data, or other identification or memorable data, which permits the Customer access to an Account or other Services;

**“Services”** means (without limitation) (a) opening, closing, maintaining and operating Account, (b) credit facilities and other banking products and services, including payment, cash management, liquidity, agency, custodian, clearing or technology procuring services (c) the maintenance of HSBC's overall relationship with the Customer, including marketing or promoting Services or other financial services or related products to the Customer;

**“Substantial Owner”** means an individual entitled to more than 10% of profits from the Customer or with a direct or indirect interest of more than 10% in the Customer;

**“Tax Information”** means documentation or information relating, directly or indirectly, to the tax status of the Customer and Connected Persons, including evidence of tax residence, place of organization, tax domicile, tax identification number, filings for tax-related purposes, residential address, age, date of birth, place of birth, nationality, and citizenship;

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

## 2. Use of Account/Services

Customer agrees to use Accounts in accordance with this Agreement and only for lawful commercial banking purposes and business consistent with generally accepted community standards of conduct or propriety. Customer agrees that it will use the Accounts and Services for its own benefit and not for the benefit of third parties whose identity is not disclosed to HSBC.

Customer agrees to use Accounts and Services in accordance with any supplemental agreements, service guides or user manuals issued by HSBC 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 prevail unless a supplemental agreement expressly states otherwise.

HSBC reserves the right to investigate suspected illegal or improper use of any Account and may, without notice, close an Account, or otherwise limit, suspend or cancel Services.

## 3. Authorized Signatories

Customer agrees to do all things necessary to ensure that Authorized Signatories are at all times duly appointed and properly authorized to give Instructions for all banking activity, agrees to provide evidence of such authority as may be required by HSBC, and confirms that Authorized Signatories (without the need for corporate seal) may, using any form of signature, consent, adherence or affirmation acceptable to HSBC:

- (a) provide Instructions, data, information, confirmations, and authorizations to effect any transaction, including without limitation to open, maintain or close Accounts or transfer funds, including to a Connected Person;
- (b) sign, enter into and deliver contracts, agreements and confirmations binding the Customer;

- (c) sign, endorse, make, draw, enter into, transmit, deliver and accept Instruments and generally all Instructions and other documents for the purpose of binding or obligating the Customer in any way, whether or not creating an overdraft;
- (d) borrow money or otherwise obtain financial assistance including arranging for loans, lines of credit, letters of credit, and guarantees;
- (e) provide guarantees and grant, assign, transfer, convey, hypothecate, mortgage, charge, pledge or give security in any manner on Customer assets;
- (f) sub-delegate to any persons any of the above. Customer may only change Authorized Signatories by providing Instructions to HSBC in the format requested by HSBC. HSBC will not be responsible for making changes without proper notification or with improperly completed documentation. Changes will only be effective after HSBC has accepted notice of the change and updated its records accordingly. If, for any reason, HSBC determines that required documentation has not been duly completed, authorized, ratified or approved, or is deficient in some other respect, or if HSBC doubts the identity or authority of Authorized Signatories, HSBC may decline to change Authorized Signatories, restrict access to Accounts or Services, place a “hold” on funds in any Account in accordance with this Agreement, or suspend dealings with the Customer.

## 4. Responsibility for Instructions:

Without limiting the above, the Customer also agrees:

- (a) HSBC is authorized to accept, act and rely upon and treat as valid all Instructions given or reasonably believed by HSBC to be given by the Customer;
- (b) HSBC is under no obligation to inquire as to the authorization or validity of any Instructions and the Customer agrees that HSBC may consider all Instructions as valid, binding orders directly made, signed, initiated or transmitted by an Authorized Signatory on behalf of the Customer;
- (c) HSBC may, but shall not be required to, decline to act or delay acting on Instructions if HSBC doubts the validity or authenticity of any Instructions in its absolute discretion or if HSBC identifies potential breach of Compliance Obligations;
- (d) Customer is responsible for all unauthorized Instructions, including from any person purporting to represent the Customer and from any Authorized Signatory, employee, director, officer, representative, agent, or other person alleged to have provided Instructions not authorized by the Customer;

- (e) HSBC may reverse and charge the Customer with the amount of any Instrument which is returned unaccepted or unpaid by a financial institution or which cannot be processed by HSBC;
- (f) HSBC may decline to process or accept Instructions and Instruments, including, without limitation, if they would exceed limits implemented by HSBC or if they are provided in a form not acceptable to HSBC or using a means of transmission not acceptable to HSBC, including the following:
  - (i) Instructions and Instruments that are not given or issued in accordance with this Agreement;
  - (ii) Instructions and Instruments that cannot be processed or completed due to system malfunction, delay or any other cause beyond HSBC's reasonable control;
  - (iii) Instructions and Instruments that may cause an Account balance, line of credit or overdraft limit to be exceeded;
  - (iv) Instructions and Instruments that may not comply with Laws, that may relate to Financial Crime or proceeds of Financial Crime, or that may not comply with Compliance Obligations; or
  - (v) Instructions or Instruments involving an inactive account;
- (g) The Customer is responsible for confirming that Instructions have been executed and posted to the relevant Account;
- (h) HSBC may record any Instructions or other verbal information Customer provides.

#### **5. Use of Other Financial Institutions and Third Parties**

HSBC and members of HSBC Group shall use reasonable care in the selection and use of other financial institutions, clearing systems and third parties used to support the provision of Services and processing of Instructions, including, without limitation, financial institutions used to effect payments in other jurisdictions. HSBC is not required to use a financial institution suggested by the Customer to process any Instruction and may in its sole discretion use other financial institutions at its discretion. HSBC will not, in any circumstances, be responsible or liable to the Customer for any act or omission of other financial institutions, clearing systems or third parties in the performance of such services or for the loss, theft, destruction or delayed delivery of any Instructions or Instrument or by any of them unless solely due to the gross negligence or wilful misconduct of HSBC or another member of HSBC Group. HSBC will take appropriate commercially reasonable efforts to carry out the Customer's Instructions and make inquiries as to any actions or omissions of other financial institutions, clearing systems or third parties as appropriate.

#### **6. Transactions and Limits**

##### **ATM/POS Terminals and Website Terms and**

**Conditions:** Customer agrees to use ATM/POS Terminals and HSBC or HSBC Group websites in accordance with any applicable posted ABS/POS Terminal requirements and any website terms and conditions as stated from time to time. Without limiting the foregoing, Customer agrees to deposit only items that are eligible for deposit at ATM/POS Terminals.

**Withdrawal Limits:** HSBC may establish or change withdrawal limits applicable to Remote Banking transactions, with or without notice to the Customer. HSBC may decline to process any Instruction, Instrument or cash withdrawal that exceeds withdrawal limits, the cleared balance available in an Account or the unused balance of an authorized overdraft or line of credit.

**Funds Transfers:** Completion of funds transfers (whether domestic or international) are subject to hours of operation, time zone differences, holidays and practices of financial institutions and clearing systems that may result in delays.

**Bankcards and Security Codes:** The Customer acknowledges that any person who has received or has access to a Security Code will be able to provide Instructions and deal with HSBC on the Customer's behalf. HSBC is not responsible for confirming the authority of any person providing Instructions or for verifying the accuracy of any Instructions received using Bankcards or Security Codes. Without limiting its rights under this Agreement, HSBC may carry out all Instructions received with applicable Security Codes as valid even if such Instructions were not in fact made with Customer authority. Bankcards and Security Codes may be cancelled or suspended at any time without prior notice to the Customer.

Without limiting its obligations under section 20 of this Agreement, the Customer will restrict the distribution and use of Bankcards and Security Codes to Authorized Signatories, and will not permit the transfer or disclosure of Bankcards or Security Codes. Customer will instruct users to select different codes for each Bankcard or Remote Banking access and not to use codes that may be easily identified.

**Liability for Losses:** If the Customer knows or suspects that an unauthorized person has obtained a Security Code or if a Bankcard is lost or stolen, the Customer will notify HSBC as soon as possible at any HSBC branch or as directed by HSBC's website.

The Customer is responsible for Losses relating to Remote Banking Transactions occurring prior to acceptance of notification by HSBC of unauthorized access to Security Codes or BankCards unless arising to HSBC system malfunctions.

## 7. Electronic Signatures

Customer authorizes HSBC to accept electronic, digital, mechanical or hand-written signatures or affirmations, which may be transmitted electronically or by other means acceptable to HSBC, on Instruments, Instructions and agreements and for all other purposes in connection with banking activity of the Customer, as binding on behalf of the Customer. HSBC will not be liable for any obligations or Losses arising due to any reliance upon or dealings with an Instrument, Instruction or agreement bearing or purporting to bear an electronic, digital or mechanical Signature or affirmation, whether or not made with the Customer's authority.

The Customer agrees that HSBC may, on the Customer's behalf, make, accept and act upon Digital Reproductions, subject to any requirements of HSBC, for all purposes as though they were original Instruments delivered to HSBC. HSBC may destroy the original paper Instrument (if any) represented by a Digital Reproduction and is not required to return originals to the Customer. HSBC will not be liable for any Losses that arise due to any reliance upon or dealings with a Digital Reproduction.

## 8. Account Charges

Customer agrees to pay and authorizes HSBC to charge its Accounts(s), even if such charge creates or increases an overdraft, for all Amounts Owing and the following:

- (a) **Instruments Drawn on Account:** the amount of all Instruments drawn on an Account and any other Instruction directing a debit to an Account, including withdrawals, pre-authorized payments, bill payments and fund transfers;
- (b) **Unpaid Instruments:** the amount of any Instrument:
  - (i) that is not paid on presentation or is disputed after payment;
  - (ii) that is dishonoured by non-acceptance or non-payment;
  - (iii) for which any party thereto (including the paying financial institution) is bankrupt, insolvent or subject to restructuring, insolvency, winding-up or similar proceedings;
  - (iv) the proceeds of which, for any reason, HSBC is unable to collect or withdraw;
  - (v) for which HSBC reasonably believes it will not receive payment or payment may be reversed; or
  - (vi) 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 alleged to be fraudulent, illegal or materially altered.

HSBC retains all rights and remedies against all parties liable on any unpaid Instrument whether or not debited to an Account.

- (c) **Lost or Destroyed Instruments:** the amount of any Instrument that is lost, stolen, destroyed or otherwise disappears;
- (d) **Fees, Service Charges & Expenses:** the amount of:
  - (i) all service charges established by HSBC from time to time for products and services provided to the Customer as advised by HSBC from time to time or otherwise agreed by HSBC and the Customer, and for prevailing charges imposed by other financial institutions (which may be collected by deducting such charges from payments made or received by the Customer) in respect of transactions relating to any Account or Service;
  - (ii) any and all expenses incurred by HSBC or HSBC Group arising from the operation of any Account, any matter arising in relation to this Agreement or any other agreement the Customer has with any Member of the HSBC Group (including disputes regarding any such agreement), or Customer dealings with HSBC; and
  - (iii) all costs, fees and expenses incurred by HSBC relating to any of (i) and (ii), including without limitation, investigation costs, search fees, actual legal fees and disbursements, expenses relating to operation of any Account or acting on the Customer's behalf, whether incurred by HSBC through retainer of third parties or devotion of internal resources.

HSBC may change service charges by providing 30 days written notice to Customers who receive Account Statements or by posting a notice in HSBC branches, points of service and HSBC's website, subject to requirements of applicable Laws;

- (e) **Taxes:** all applicable federal, provincial and withholding taxes that HSBC is required to collect.

## 9. Set Off; Security

Customer agrees that HSBC may consolidate and set-off Amounts Owing against balances in any Accounts, irrespective of currency. HSBC may also consolidate and set-off any Amounts Owing against the Customer's funds or accounts held with any subsidiary of HSBC, in accordance with any agreements of such subsidiaries.

Amounts Owing are also deemed to be secured by outstanding Instruments (including a term deposit or guaranteed investment certificate) held with or issued by HSBC to the Customer. HSBC may, at its sole discretion, accelerate the maturity date and set-off the proceeds or amounts owing by HSBC in respect of an Instrument against any Amounts Owing by the Customer to HSBC.

## 10. Issuing Instruments and Providing Instructions

Customer will issue Instruments and Instructions only in accordance with the rules and protocols that apply to clearing of Instruments and any instructions provided by HSBC. Without limiting the foregoing, the Customer will issue Instruments and Instructions using a format approved by HSBC and acceptable for clearing or processing and in the currency and with encoding applicable to the Account on which the Instruments are drawn or issued. The Customer will ensure that all Instructions and Instruments contain all data requested by HSBC, including information relating to the sender, beneficiary, payee, purpose of payment, and other information as applicable, and that such data is accurate, complete and transparent. HSBC is not responsible for confirming the accuracy of any information Customer provides to HSBC or for any discrepancies, irregularities or errors in cheque numbers, serial numbers, amounts, payee names payee account numbers or other information provided by the Customer in respect of Instructions or Instruments issued by it. HSBC is not liable for any Loss whatsoever arising from the refusal of HSBC or any other financial institution to accept or honour an Instrument that does not comply with these requirements.

## 11. Overdrafts

Overdrafts are not permitted on an Account without specific written agreement from HSBC. If HSBC honours an Instrument drawn on an Account or accepts Instructions to debit an Account when there are insufficient funds on deposit, thus creating or increasing an overdraft on such Account, the amount of any overdraft created is deemed payable immediately without demand, with interest accruing at HSBC's prevailing rates for overdrafts or other rate agreed by HSBC and the Customer.

## 12. Interest

- (a) Positive Account balances will bear interest at an annual rate as disclosed to the Customer in accordance with the **Bank Act** (Canada) failing which positive Account balances will not bear interest.
- (b) Where interest is calculated on Amounts Owing by the Customer to HSBC, including the amount of any credit advances, loans, overdrafts, lines of credit, outstanding fees, letters of credit, and other credit support made available by HSBC to the Customer, the applicable rate of interest payable by the Customer shall not be less than zero, even if the reference rate (whether an HSBC or external reference rate) used for the calculation of such interest, or the total of the reference rate and any applicable interest spread, is less than zero.

## 13. Waiver of Protest

Unless the Customer provides HSBC with prior written Instructions to the contrary, the Customer waives presentment, protest or notice of dishonour for non-acceptance or non-payment in respect of any Instrument delivered to HSBC by the Customer for deposit, discount, collection or for any other purpose and the Customer is liable to HSBC as if such presentment, protest or notice of dishonour had been given. HSBC records will be conclusive evidence of the time of presentment, payment or dishonour in the absence of evidence to the contrary.

HSBC may, in its sole discretion, note or protest in the usual course, any Instrument which HSBC considers should be noted or protested and HSBC will not be liable for protesting or noting, or failing to note or protest any Instrument.

## 13. Hold on Funds

Customer acknowledges that HSBC may place a "hold" on funds in an Account:

- (a) in accordance with HSBC's Hold Funds Policy in effect from time to time Any credit to an Account for any non-cash Instrument before HSBC receives actual irrevocable payment is provisional and subject to reversal;
- (b) if HSBC becomes aware of suspicious or possible fraudulent, illegal or unauthorized Account activity;
- (c) if HSBC is required to do so to comply with Laws or Authorities' directions or requirements.
- (d) if, in HSBC's sole opinion, a potentially legitimate claim is made by a third party respecting funds in an Account.

HSBC will not be liable for any Loss in respect of any "hold" placed or removed by HSBC.

## 15. Stop Payments

The Customer may request HSBC to stop the payment of certain Instruments by providing adequate written Instructions in a form satisfactory to HSBC. HSBC is not able to stop or recall the payment of an Instrument (including electronic payments, letters of credit and bank drafts) which has already been presented for payment, certified, processed or paid. HSBC is not able to reverse any stopped payment once the Instrument has been dishonoured.

Customer is solely responsible for the consequences of stopping payment of an Instrument, and acknowledges HSBC makes no representation or warranty as to the legal effect or consequences of any stopped payment nor as to its ability to act on a request to stop payment of an Instrument, even where the request has been accepted by HSBC.

## 16. Foreign Currency Transactions

Customer agrees to pay the rate of conversion set by HSBC for foreign currency transactions from time to time (and which may apply to Instruments issued and received by the Customer in foreign currencies). Customer acknowledges that rates for buying a currency may be different than the rates for selling the same currency.

Customer acknowledges that transactions may be routed to intermediaries (who may be other financial institutions or Members of the HSBC Group). Intermediaries may carry out currency conversions and may charge conversion rates and processing fees which may be deducted from Instruments or payable by the Customer, and a portion of such amounts may be paid to HSBC.

## 17. Holdback Accounts; Trust Arrangements

Where agreed with the Customer, HSBC may establish, maintain and administer a holdback account, in HSBC's sole discretion, subject to payment by the Customer of all associated reasonable charges, expenses and costs incurred by HSBC and any other agreement between HSBC and the Customer.

Customer acknowledges that HSBC does not act as trustee for any Account, funds or property, including any holdback account or Account designated as a "trust" Account or in respect of which the Customer may be subject to other obligations, and does not supervise the operation of any Account or property held by HSBC to ensure that it is operated in accordance with the provisions of any trust document or other obligations of the Customer, whether or not HSBC has notice of the existence of any such trust, the specific provisions governing the same, or other obligations.

## 18. Termination and Changes

Subject to Section 8, HSBC may at any time change this Agreement by providing the Customer with 30 days' notice posted in either HSBC branches or on the HSBC website, or with less than 30 days' notice if such change is required by Laws. If the Customer issues Instructions or continues to access an Account or Services after the effective date of the change, the Customer will be deemed to have been notified and accepted the amended terms.

HSBC may restrict or terminate the Customer's use of any product or service, close any Account or terminate this Agreement, at any time without prior notice to the Customer. Terms of this Agreement relating to Instructions, activity or events that occurred prior to termination and any provisions relating to responsibility or liability of the parties shall survive termination of this Agreement. On termination of any Service or this Agreement, the Customer will immediately return any Bankcards and Bank security devices to the Bank.

The Customer may terminate Services, or close any Account, by written notice to HSBC delivered to the branch where its Account is maintained. Nothing in this Agreement limits the Customer's right to close an Account as set out in the Bank Act (Canada). Termination of a Service will take effect upon HSBC acknowledgment of receipt of the notice. All Customer-initiated changes to these terms must be mutually agreed to in writing.

## 19. Verification

Customer agrees to verify that its Instructions have been properly executed and accurately recorded on Transaction Records and Account Statements. In the absence of evidence to the contrary, HSBC records are conclusive proof for all purposes, including litigation, of transactions or Instructions made, including without limitation, the date of mailing of an Account Statement, the contents of any deposit, the making of a withdrawal, deposit or transfer, and any other matter or thing relating to an Account.

Unless HSBC receives Instructions to the contrary, HSBC will send an Account Statement for each Account to the Customer's business address appearing on HSBC records or as otherwise instructed. Promptly upon receipt of each Account Statement, or, if the Customer elects not to receive an Account Statement, upon receipt of each Transaction Record, Customer agrees to examine and verify each entry and transaction, reconcile it with Customer's own records and immediately notify HSBC in writing of any errors, omissions, or irregularities, including any fraudulent or unauthorized activity. If Customer fails to notify HSBC within thirty (30) days of receipt of the Account Statement or Transaction Record, as applicable, the entries and balance shown on the Account Statement and Transaction Record will be deemed correct, complete, authorized and binding upon Customer and HSBC will be released from all liability in respect of the Account for that period.

Customer is deemed to have received, and be aware of all transactions disclosed on, each Transaction Record and Account Statement on the date it is issued to Customer. Customer will notify HSBC in writing if Customer does not receive a Transaction Record within the time period Customer should have received it.

## 20. Customer's Responsibilities to Implement Controls

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

- (a) take reasonable precautions to control the issuance and use of Instruments, Bankcards, Security Codes and Access Terminals in such a way as to prevent, deter and detect theft, forgery, conversion, fraud, unauthorized transactions, and other activity that may cause loss or liability (whether criminal or otherwise).

At a minimum, such precautions must include:

- (i) ensuring that cheques and other Instruments are numbered sequentially;
  - (ii) ensuring that cheques and other Instruments, Bankcards, Access Terminals, Security Codes cheque imprinters, stamps, seals, scanners, devices for imaging and electronic signatures and bank records, are kept in a secure place and under the Customer's control;
  - (iii) implementing security protocols recommended by HSBC, regularly changing passwords and updating security measures; and
  - (iv) conducting periodic reviews to ensure that the above mentioned precautions are taken and that sufficient procedures are in place;
- (b) verify the credentials of, and diligently supervise and monitor the conduct and work of, all individuals having a role in the Customer's banking activities, including the issuance and review of Instructions, Instruments, deposits and withdrawals and the receipt, review and reconciliation of Transaction Records, communications with HSBC, and other banking activity;
- (c) take other precautions to prevent forgeries, alterations, and unauthorized Instructions and Instruments, including using up-to-date security features and using both words and figures where appropriate on Instruments; and
- (d) take reasonable precautions to detect and deter Financial Crime being conducted through its Account and any other violations of Laws.

## 21. \*\*\* Limitation of Liability\*\*\*

- (a) **Without limiting any other liability clauses in this Agreement, Customer agrees that HSBC will NOT be liable and is 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 HSBC. For greater certainty, HSBC will NOT be liable in any event and is released from all liabilities, claims and Losses sustained in connection with or arising from:**

- (i) **Customer or Counterparty Fraud:** any fraudulent or unauthorized Account activity by the Customer or its counterparties, including by any previous or current Authorized Signatories, directors, officers, employees, representatives or agents, and irrespective whether such activity was undertaken with or without proper authority;
- (ii) **Customer or Counterparty Conduct:** any negligent action or omission of the Customer or

its counterparties, including by past or present Authorized Signatories, directors, officers, employees, representatives or agents, and any failure to act on information or direction provided by HSBC;

- (iii) **Breach:** Customer's failure to comply with this Agreement, including, without limitation, the Customer's failure to implement controls as described in this Agreement;
  - (iv) **Forged Signature:** forged or unauthorized signatures on any cheque or written Instrument or document unless notified to HSBC as required and such Loss is not otherwise excluded by this Agreement;
  - (v) **Executing Instructions:** HSBC following any Instruction, including instructions to place a stop payment;
  - (vi) **Cancellation / Restriction of Services:** any change, cancellation or restriction made in accordance with this Agreement including closure of Accounts, withdrawal restrictions, or limitations on Services;
  - (vii) **Delays and Malfunctions:** delays or errors in implementing Instructions and system or communications malfunctions, interruptions or unavailability;
  - (viii) **Instructions:** improper, inaccurate, incomplete or corrupt information or Instructions, including Instructions that do not conform to the requirements of this Agreement;
  - (ix) **Processing:** HSBC or any other financial institution delaying or declining processing of Instructions or Instruments due to incomplete, corrupt or fraudulent information on any Instructions, Compliance Obligations, Financial Crime Risk Management Activity (as defined in this Agreement), or the unavailability of clearing or settlement systems.
- (b) Notwithstanding anything else contained in this Agreement, HSBC will not be responsible or liable for any Loss arising as a result of any act of God, natural disaster, strike, lockout or labour disruption, war, riot, civil commotion, international or national crisis, fire, flood, epidemic, loss of power, computer hardware or software malfunction, clearing system shutdown, or other event beyond HSBC's reasonable control.
- (c) **Customer agrees that any liability of HSBC will exclude liability for indirect, consequential or special damages including, without limitation, loss of data, profit or interest or business interruption, anticipated or actual even if HSBC has been advised of or should have foreseen the possibility of such damages.**



- (d) If the Customer suffers a loss that may be covered by a standard fidelity insurance policy covering losses arising from theft or dishonesty, the Customer agrees not to claim against HSBC for such losses whether such losses are actually covered or not. Customer agrees not to grant any rights of subrogation as against HSBC arising from losses actually covered. To the extent the Customer maintains any fidelity insurance policy, Customer will list HSBC as an additional insured with respect to that policy.

## 22. Indemnity

EXCEPT for any proven gross negligence or intentional misconduct by HSBC, CUSTOMER AGREES to indemnify and save HSBC harmless from all direct or indirect Losses suffered or incurred by or brought against HSBC arising out of or relating to this Agreement, any Accounts or other Customer dealings with HSBC, including but not limited to:

- (a) a breach of this Agreement by the Customer;
- (b) improper or illegal use of an Account;
- (c) claims from third parties relating to trust or other similar obligations;
- (d) claims relating to Instructions that were not processed by HSBC, whether due to Financial Crime Risk Management Activity, Compliance Obligations, or otherwise in good faith, and claims relating to Instructions alleged to have been improper, unauthorized or fraudulent; and
- (e) expenses incurred by the Bank in order to comply with orders from Authorities to freeze, seize, investigate, provide information, garnish or restrict funds in an Account or Account activity.

## 23. Collection and Disclosure of Customer Information

- (a) **Collecting, using, processing, transferring and disclosing Customer Information:** By using the Services, Customer agrees that HSBC and Members of the HSBC Group may collect, use, store, process, transfer and disclose Customer Information according to these clauses.

- (i) **Collecting:** HSBC or someone acting on behalf of HSBC or the HSBC Group may request and collect Customer Information:
- from the Customer
  - from a person acting on a Customer's behalf
  - from a Connected Person
  - from other sources (including publically available information)

This information may be generated or combined with other information available to HSBC or other Members of the HSBC Group.

- (ii) **Purpose for Collecting, Using, Processing, Transferring and Disclosing:** HSBC and other Members of HSBC Group will collect, use, process, transfer, and disclose Customer Information for the following purposes (the "Purposes"):

- providing the Customer with Services and to approve, manage, administer, or effect transactions and Instructions the Customer requests or authorizes
- meeting Compliance Obligations
- conducting Financial Crime Risk Management Activity as defined in section (c) below
- collecting Amounts Owing
- conducting credit checks and obtaining or giving credit references
- enforcing or defending the rights of HSBC or the HSBC Group
- for internal operations of HSBC or the HSBC Group (including credit and risk management, system or product development, and market research, insurance, audit, administration, security, statistics, processing, transfer and storage of records)
- maintaining HSBC's relationship with the Customer including marketing or promotion

- (iii) **Sharing:** By using the Services, the Customer agrees HSBC may transfer and disclose Customer Information to the recipients below and they may also collect, use, process, transfer, and disclose Customer Information, as necessary and appropriate for the Purposes:

- Members of the HSBC Group
- sub-contractors, agents, service providers, or associates of the HSBC Group (including their employees, directors, and officers)
- Authorities
- persons acting on Customer's behalf, payment recipients, beneficiaries, account nominees, intermediaries, correspondent and agent banks, clearing houses, clearing or settlement systems, market counterparties, upstream withholding agents, swap or trade repositories, and stock exchanges
- parties to a transaction acquiring an interest in, or assuming risk in, or in connection with, the Services and in connection with any HSBC business transfer, disposal, reorganization, merger or acquisition
- financial institutions, credit agencies, or credit bureaus to obtain or give credit reports and/or credit references

- subject to industry regulations, to brokers or insurers
- Government registries and financial industry databases (who may share information with others)

wherever they are located, including in jurisdictions with different Laws, that may include less strict data protection laws, than those in the jurisdiction where HSBC supplies the Services to the Customer.

- (iv) Before the Customer gives HSBC or a Member of the HSBC Group information (including Personal Information or Tax Information) about a Connected Person, Customer must:
- advise the Connected Person that Customer is giving HSBC (or a Member of HSBC Group) their information;
  - ensure the Connected Person consents and agrees that HSBC (or a Member of HSBC Group) and the Customer may collect, use, process, disclose, and transfer their information as set out in these terms;
  - advise the Connected Person that they may have rights to access and correct their Personal Information which are further outlined in HSBC's Privacy Policy available at <http://www.hsbc.ca/1/2/personal/privacy>.

Customer acknowledges that it is responsible for any collection, use, sharing and disclosure of information of Connected Persons by the Customer under this Agreement.

- (vi) Without limiting any other provisions of this Agreement, if any of these things occur:
- Customer fails to promptly give Customer Information HSBC reasonably requests
  - Customer withholds or withdraws any consents required to collect, use, process, transfer, or disclose Customer Information for the Purposes (except for marketing and promoting)
  - the HSBC Group has suspicions about Financial Crime or an associated risk
- HSBC may take any of these actions:
- decline to provide Services to Customer
  - take actions to meet Compliance Obligations
  - block, transfer, or close Customer accounts
  - terminate HSBC's relationship with the Customer.

- (b) **Data protection:** In accordance with data protection legislation, Members of the HSBC Group, their staff, and third parties to whom information is transferred by HSBC, whether located in Canada or another country,

are required to protect Customer Information by a strict code of secrecy and security.

(c) **Financial Crime Risk Management Activity**

- (i) HSBC, and Members of the HSBC Group, are required to meet Compliance Obligations relating to detecting, investigating and preventing Financial Crime ("**Financial Crime Risk Management Activity**"). HSBC and Members of the HSBC Group may take action to meet these Compliance Obligations, including:

- screening, intercepting, and investigating Instructions, Instruments, communications, drawdown requests, applications for Services, payments sent to, by Customer, or on Customer's behalf
- investigating who sent, received, or was intended to receive funds
- combining Customer Information with other information that HSBC Group has
- obtaining information about, making enquiries about, and investigating the status or identity of the Customer and Connected Persons, including whether they are or have been subject to investigation, prosecution or sanctions.
- any combination of the above

- (ii) HSBC's Financial Crime Risk Management Activity may lead it to delay, block, or refuse to:

- make, clear or accept an Instrument, payment or funds in an Account
- process Instructions or application for Services
- provide all or part of any Services

Without limiting any other provisions of this Agreement, neither HSBC nor any other Member of HSBC Group will be liable to Customer or a third party for Customer's or their loss (however it arose) caused or partially caused by Financial Crime Risk Management Activity.

- (d) **Tax compliance:** Customer is solely responsible for understanding and complying with Customer's tax obligations related to using Customer's accounts and Services as applicable in all jurisdictions. This includes paying taxes, filing tax returns, and filing other documents related to paying taxes. Neither HSBC nor any Member of the HSBC Group provides tax advice, nor is responsible for Customer's tax obligations in any jurisdiction, even if they relate to opening and using Accounts and Services that HSBC or Members of the HSBC Group provide. HSBC advises the Customer to seek independent legal and tax advice.

- (e) **Miscellaneous:** If there is a conflict or inconsistency between the terms of this Section 23 (the "**Terms**")

and the terms of other agreements for Services, products, business relationships, Accounts, or arrangements currently in place, or that are put into place in the future, between Customer and HSBC (collectively, “**Other Terms**”), these Terms prevail. Further, the foregoing sentence shall govern notwithstanding the existence of any contrary provisions in such Other Terms regarding conflict or inconsistency between such Other Terms and these Terms

(f) **Survival on termination**

These Terms continue to apply even if:

- this Agreement is terminated
- HSBC or a Member of the HSBC Group, stop providing Services to Customer
- an Account is closed

**24. Information Updates; Other Obligations**

- (a) Customer will provide to HSBC updates of information provided in connection with the Services, upon request from HSBC, and in any case within 30 days of any change in such information, including:
- (i) change of Substantial Owners, Controlling Persons, and Connected Persons, including Authorized Signatories;
  - (ii) change or amendment to charter licence to operate, nature of business, location of business operations, issuance of bearer shares by the Customer or any Substantial Owner or Controlling Person, or any other information provided in connection with the Services; or
  - (iii) sanctions, fines or penalties being levied against Customer relating to Financial Crimes or material non-compliance by Customer with Laws.
- (b) Customer agrees to observe and comply with, and ensure that all use of the Services and issuance and deposit of all Instruments complies with requirements of HSBC Group notified to the Customer and with all Laws;
- (c) Customer will not attempt to evade the requirements of the Laws or HSBC Group requirements, including withholding or disguising the purpose, destination, origin, beneficiary, sender, amount, or other details pertaining to an Instruction or Instrument, or use of the Services;
- (d) Customer will provide full, complete and accurate disclosure to HSBC respecting its business and affairs, including information pertaining to Connected Persons, customers and clients of the Customer, will respond promptly to requests for information and will permit site visits upon reasonable prior notice by HSBC.

**25. Electronic Disclosure and Communications**

Customer designates fax, electronic mail and internet banking services to which Customer has subscribed or will subscribe as information systems through which HSBC may deliver information to the Customer. Customer consents to HSBC sending commercial electronic messages to the Customer and to HSBC providing the Customer with all communications, notices and the following disclosures through those information systems: all communications, notices and documents (including disclosure statements, rate and fee schedules, agreements, amendments to agreements and charges, designations of Authorized Signatories, Account Statements, Instruments and Transaction Records) and other information that HSBC provides or is required by law to provide to the Customer (including product and service features, rates, fees, HSBC’s policies and procedures and HSBC’s collection practices.) Customer understands that: a) Customer’s consent is effective immediately; b) Customer can revoke its consent at any time; c) Customer must inform HSBC of any changes to Customer’s designated information systems, such as Customer’s fax number or email address, or if it revokes its consent; and d) Customer must print and keep a copy of each document HSBC provides to Customer electronically.

**26. Tax Status**

(a) **Unless the Customer informs HSBC otherwise in writing, the Customer represents and certifies that the Customer is a resident of Canada for tax purposes and warrants that the Customer is not, and is not acting for or on behalf of, a “U.S. Person” as defined by U.S. laws.** While Customer is responsible for ensuring compliance with this section and for seeking its own tax advice, the term “U.S. Person” may include a corporation or partnership formed or organized in the U.S., a trust where U.S. Persons have authority to control substantial decisions of the trust, and an individual who is a U.S. citizen or U.S. resident based on residency tests. If the Customer is or becomes a non-resident of Canada or a U.S. Person, the Customer will notify HSBC within 30 days, advise HSBC of the Customer’s tax status and/or country of residence, and will complete and file additional forms (which may include IRS Form W-9) as requested. Customer acknowledges that a false statement or misrepresentation of tax status may lead to penalties under U.S. and other Laws. If the Customer fails to promptly provide Tax Information respecting the Customer or a Connected Person upon request, HSBC may make decisions about Customer’s tax status, including whether Customer is reportable to a Tax Authority. This may require that HSBC withhold and pay amounts legally required by a Tax Authority. The Customer acknowledges HSBC may disclose information to, and may withhold any pay amounts required by a Tax Authority, in HSBC’s absolute discretion.

(b) For purposes of provincial and federal taxes in Canada, the Customer confirms that its address provided in connection with this Agreement or other agreement with HSBC is the head office, primary office or principal office in Canada unless otherwise advised by the Customer.

## 27. General

Customer represents and warrants that:

- (a) it is duly constituted or created and is validly existing under the laws of its place of constitution or creation and that it has all necessary powers and obtained all approvals to execute and deliver this Agreement and to perform its obligations under this Agreement; and
- (b) neither the Customer nor any Substantial Owner, Controlling Person, shareholder or beneficial owner has issued or will issue or convert to bearer shares or other shares or ownership structure that assigns ownership to whomever has possession of the physical share certificates, without prior notice to HSBC.

Customer agrees that:

- (a) nothing in this Agreement shall be deemed or construed as creating a relationship of principal and agent, fiduciary, partnership, or joint venture between HSBC and the Customer;
- (b) except as expressly set forth in this Agreement or requested by HSBC, all notices required to be given under this Agreement will be in writing and may be communicated by fax, email, postal mail, courier or hand delivery, except that HSBC may, in its reasonable discretion, provide any notice to Customer by telephone or in person and upon delivery, such notice shall be deemed to meet any notice obligation on HSBC. If transmitted by postal mail, notices will be deemed to have been received 7 calendar days after posting by one party to the postal address most recently notified by the receiving party, and if transmitted by email, on the next business day after transmission;
- (c) the terms of this Agreement are binding on the Customer and the Customer's representatives, successors and permitted assigns, and may not be assigned without HSBC's prior written consent;

- (d) if an Account is held jointly, then the terms of this Agreement apply to each Account holder jointly and severally. If any Account or Customer is located in the Province of Quebec the words "joint and several" mean "solidarily";
- (e) this Agreement and all services and issues relating to an Account will be governed exclusively by the laws of the Province in which the branch where the Customer's Account(s) is/are located and the federal laws of Canada, as applicable. If the Customer holds Accounts at branches in different provinces, this Agreement will be governed by the laws of the Province of the Customer's head office, primary office or principal office in Canada as advised by the Customer or otherwise determined by HSBC. The Customer irrevocably submit to the exclusive jurisdiction of the courts of that province and Canada, as applicable;
- (f) in this Agreement, words that are 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;
- (g) if any part of this Agreement is held unenforceable for any reason, the unenforceable portion 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; and
- (h) it is the express wish of the parties that this Agreement and any related documents be drawn up and executed in English. *Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés et signés en anglais.*

END