# Security Over Cash, Credit Balances and Collateral Instruments

**(All Provinces Except Quebec)**

## To: HSBC Bank Canada

Branch Address Date

## Charge

1. For valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the undersigned), the undersigned hereby assigns, transfers, and pledges in favour of **HSBC Bank Canada** (the “**Bank**”) and grants to the Bank a security interest in and releases to the Bank the entire right, title, claim and interest of the undersigned in and to:

*Delete (b) and (c) for security over specific deposit instrument\* and have the undersigned initial.
Delete (a) and (c) for security over monies in deposit accounts and have the undersigned initial.
Delete (a) and (b) for security over credit balances and have the undersigned initial.*

* 1. the principal sum, interest, and all other monies owing and payable or hereafter owing and payable to the undersigned pursuant to the terms of the instrument or instruments (the “Instrument”), if any, described in the Schedule “A” to this Agreement, and the entire right, title and interest of the undersigned in and to the Instrument, all renewals thereof, substitutions therefor, and accretions and additions thereto, and all proceeds thereof;
	2. all monies in account number(s)       at the branch of the Bank set out above, including all amounts now or hereafter owing by the Bank to the undersigned with respect to the deposits constituted thereby (including interest if any, paid or payable by the Bank with respect to such deposits), all renewals thereof, substitutions therefor, and accretions and additions thereto, and all proceeds thereof and any and all instruments, receipts, certificates and other documents evidencing any of the foregoing, and including monies which the Bank has withdrawn or withdraws from any other account of the undersigned and has deposited or deposits in any of the first mentioned account(s), the Bank being hereby authorized to make such withdrawals and deposits from time to time; and
	3. all monies which are now or which may from time to time in the future stand to the credit of the undersigned in any accounts at the branch of the Bank set out above,

(all of which are hereinafter collectively referred to as the “Collateral”), as continuing security for the payment and performance of all Obligations (as defined below). In addition, the undersigned hereby expressly grants to the Bank the right to set-off all amounts now or hereafter owing by the Bank to the undersigned in respect of any and all Collateral against any and all such Obligations (and to combine accounts with respect thereto). The undersigned confirms and agrees that: value has been given by the Bank; the undersigned has rights in all existing Collateral and the power to transfer rights and grant a security interest in the Collateral to the Bank; and that the undersigned and the Bank have not postponed the time for attachment of the security interests provided for herein and the security interests shall attach to existing Collateral upon the execution of this Agreement and shall attach to after-acquired Collateral at the time the undersigned acquires rights therein.

## Obligations Secured

1. The assignment, transfer, pledge, security interest and release granted above shall be general and continuing security for payment, performance and satisfaction of each and every obligation, indebtedness and liability of the undersigned to the Bank (including interest thereon), present or future, direct or indirect, absolute or contingent, joint or several, matured or unmatured, whether as principal, surety, guarantor or indemnifier, extended or renewed, wheresoever and howsoever incurred, and any ultimate unpaid balance thereof (including interest thereon) including all future advances and re-advances, and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again and whether the undersigned be bound alone or with another or others and whether as principal, guarantor or surety (all of which obligations, indebtedness and liabilities are herein collectively called the “**Obligations**”).

## Representations and Warranties

1. The undersigned represents and warrants that:
	1. this Agreement has been duly authorized, executed and delivered by the undersigned to the Bank;
	2. the Collateral is legally and beneficially owned by the undersigned free and clear of all security interests, mortgages, liens, claims, charges and other encumbrances, save for the security constituted by this Agreement and any other security in favour of the Bank.
	3. the undersigned has the power, capacity and authority to incur the Obligations, to create and grant the security interest, assignment, transfer and pledge granted above and to execute and deliver and perform its obligations under this Agreement;
	4. this Agreement constitutes a legal, valid and binding obligation of the undersigned, enforceable against the undersigned in accordance with its terms subject only to bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application affecting creditors’ rights and the discretion exercisable by courts of competent jurisdiction in respect of the availability of equitable remedies;
	5. the chief executive office or principal place of business of the undersigned, and the jurisdiction in which the undersigned is located for purposes of the *Personal Property Security Act* (Ontario) and under which the undersigned is incorporated, continued, amalgamated or otherwise organized is the Province or Territory identified in Schedule “B” of this Agreement;

## Dealing with Instruments and Renewals

1. The undersigned irrevocably authorizes and directs the Bank to receive the principal, interest and other monies represented by the Instrument, if any, described in the Schedule of Instruments, and, in the Bank’s sole and absolute discretion, to retain or to reinvest all or part of such monies in one or more instruments of the same or similar nature on such terms as are in effect at such maturity and to receive another instrument which shall then stand in the place of and be deemed to be the Instrument; provided that unless otherwise instructed by the undersigned, the Bank shall not be bound to reinvest the monies as provided above and shall not be responsible for any loss occasioned by its failure or neglect to do so. The Bank shall not be responsible for any loss whatsoever occasioned by any retention or reinvestment of the monies or acceptance of a replacement instrument as aforesaid.
2. It is understood and agreed that the security constituted by this Agreement extends to any renewals and replacements of the Collateral and all interest earned thereon and to all proceeds of any type or kind whatsoever, derived directly or indirectly from any dealing with the Collateral or proceeds arising from them.

## Default

1. Unless otherwise agreed in writing by the Bank, the occurrence of any of the following events shall be a default under this Agreement:
	1. the Obligations or any part thereof are not repaid and satisfied when the same become due;
	2. the undersigned breaches any term, condition, proviso, agreement or covenant with the Bank, or any representation or warranty given by the undersigned to the Bank in this Agreement, or otherwise, is untrue;
	3. if the undersigned becomes insolvent or commits or threatens to commit any act of bankruptcy or if the undersigned makes an assignment or proposal in bankruptcy or files a notice of intention to make a proposal in bankruptcy or if a bankruptcy petition is filed or presented against the undersigned or if the undersigned otherwise becomes subject to proceedings under the *Bankruptcy and Insolvency Act* (Canada), *Companies’ Creditors Arrangement Act* (Canada), the *Winding Up and Restructuring Act*, or any other bankruptcy, insolvency or analogous law in any jurisdiction for relief as a debtor or if the undersigned seeks relief or consents to the filing of a petition against it under any law which involves any compromise of any creditor’s rights against the undersigned; or
	4. there is instituted by or against the undersigned any formal or informal proceeding, or if an order is made or a resolution passed, for the winding-up, liquidation or dissolution of the undersigned or a settlement of claims against, or winding up of the affairs of, the undersigned; or
	5. if the undersigned is a natural person, the undersigned dies or is declared incompetent to manage his or her affairs; or
	6. if the undersigned ceases or threatens to cease to carry on business or makes a bulk sale of its assets, or if a receiver, receiver-manager or a receiver and manager or a trustee for the undersigned or any of its property or assets is appointed (whether privately or by court order); or
	7. any execution, sequestration, extent or other process of any court becomes enforceable against the undersigned or a distress or analogous process is levied upon the Collateral or any part thereof; or
	8. if a petition is presented or filed for the winding-up of the undersigned, whether pursuant to the *Winding-up and Restructuring Act* (Canada) or otherwise; or
	9. without the prior written consent of the Bank, the undersigned creates or permits to exist any encumbrance against any of the Collateral other than an encumbrance in favour of the Bank; or
	10. the undersigned enters into any reconstruction, reorganization, amalgamation, merger or other similar arrangement with any other person; or
	11. the Bank in good faith believes and has commercially reasonable grounds to believe that the prospect of payment or performance of any of the Obligations is impaired or that any of the Collateral are or are about to be placed in jeopardy; or
	12. if the undersigned permits any sum which has been admitted as due by the undersigned or is not disputed to be due by it and which forms or is capable of being made a charge on any of the Collateral in priority to the security interest in favour of the Bank to remain unpaid after proceedings have been taken to enforce such charge; or
	13. if the undersigned defaults in the observance or performance of any provision relating to the indebtedness or liability of the undersigned to any creditor or other person, other than the Bank, and thereby enables such creditor or other person to demand payment of such indebtedness; or
	14. if any licence, permit or approval required by any law, regulation or governmental policy or any governmental agency or commission for the operation by the undersigned of its business shall be withdrawn or cancelled.

## Enforcement

1. Upon default under this Agreement, the security constituted by this Agreement will immediately become enforceable, and the Bank may take any action permitted by law or in equity as it may deem expedient, to enforce and realize on the security constituted by this Agreement, including without limiting the generality of the foregoing, the Bank may, subject to applicable law, immediately without notice, demand for payment, or other formality, enforce and realize upon the security constituted by this Agreement as fully and effectually as if the Bank were the absolute owner of the Collateral and the Bank may retain or apply all or any portion of the Collateral against payment of the Obligations or any part of it in such amount and in any manner that the Bank, in its absolute discretion sees fit, and the Bank may apply the Collateral against the Obligations without having to seize or otherwise realize upon the Collateral and the Bank shall at all times, and from time to time, have the right to change any appropriation of any moneys received by the Bank and to reapply the same on any other part or parts of the Obligations as the Bank may see fit, notwithstanding any previous application by whomsoever made.

## Combination and Set-Off

1. Upon default under this Agreement, the Bank may forthwith, without notice, without demand for payment, and without any other formality, all of which are hereby waived by the undersigned to the fullest extent permitted by applicable law, take, appropriate, set off, combine accounts and apply the Collateral, or any part thereof, to pay the Obligations or any part thereof. The undersigned expressly acknowledges and agrees that the Bank may set off, combine accounts and apply the Collateral contemporaneously with any demand made by the Bank for payment of any of the Obligations and the undersigned hereby waives, to the fullest extent permitted by applicable law, any obligation on the Bank to allow the undersigned reasonable notice prior to the exercise by the Bank of such set-off, combination of accounts or application.

## Restriction on Withdrawal

1. Notwithstanding any other agreement to the contrary, the undersigned shall not withdraw, assign, transfer or demand payment of any of the Collateral or any part thereof, or otherwise deal with the Collateral and shall not pledge, assign, encumber, grant a security interest in or otherwise dispose of any of the undersigned’s rights in the Collateral, (other than to the Bank) while the Obligations or any part thereof remain outstanding, and the Bank shall not be required to surrender or deliver up the Collateral by reason of any partial payment on account of the Obligations and may retain the Collateral or the proceeds derived from them until the entire Obligations have been finally and indefeasibly satisfied in full.

## Continuing Security

1. This Agreement shall:
	1. be in addition to and not in substitution for any other security held by the Bank;
	2. not operate as a merger or a novation of any debt outstanding to the Bank, nor suspend the fulfillment of or affect the rights, remedies and powers of the Bank or any obligations of the undersigned or any other person to the Bank;
	3. not be deemed to be redeemed or cancelled pro tanto or otherwise, due to any partial payment made by the undersigned on account of the Obligations or any ceasing by the undersigned to be indebted to the Bank, and this Agreement shall remain valid security for any subsequent Obligations.

## Non-Exclusive Remedies, etc.

1. The remedies and rights given to the Bank in this Agreement are not intended to be exclusive. Each and every remedy and right shall be cumulative and shall be in addition to every other right or remedy given by this Agreement or now or hereafter existing at law, in equity, by statute or otherwise. In particular, without limiting the generality of the foregoing, this Agreement does not affect the rights of the Bank to any lien, claim or interest arising by operation of law. The exercise or commencement of exercise by the Bank of any one or more of such remedies or rights shall not preclude the simultaneous or later exercise by the Bank of any or all of such remedies or rights.
2. The Bank shall not be obliged to exercise any remedies which it may have against the undersigned or any other parties or against any other security it may hold before realizing on or otherwise dealing with the Collateral in whatever manner the Bank considers appropriate.
3. The Bank shall not be responsible for any failure to exercise or enforce, or for any delay in the exercise or enforcement of, any powers, rights or discretions of the Bank, or directions to the Bank, and the Bank shall be accountable only for such monies as it shall actually receive.

## Dealings

1. The Bank may do all or any of the following:
	1. grant time, renewals, extensions, indulgences, releases and discharges to;
	2. take securities from;
	3. abstain from taking additional security from;
	4. abstain from perfecting securities of;
	5. accept compositions from;
	6. obtain judgment against; and
	7. otherwise deal with

all persons and securities as the Bank may see fit without prejudice to the Bank’s rights under this Agreement, including without limitation, the Bank’s right to hold, deal with and realize on the Collateral in whatever way the Bank considers appropriate.

## Indemnity

1. The undersigned hereby releases, saves harmless, and indemnifies the Bank from and against any and all claims, demands, costs, expenses, actions and causes of action arising pursuant to or in respect of this Agreement and arising pursuant to or in respect of the holding, application, appropriation, set-off, combination of accounts, use of, or dealings with the Collateral, or any part thereof by the Bank and any breach of trust or fiduciary duty or breach of guarantee resulting therefrom.

## Miscellaneous

1. If the undersigned receives any of the Collateral, the undersigned shall receive the same in trust as depositary for and on behalf of the Bank, and shall deal with the Collateral as the Bank may direct.
2. The records of the Bank shall constitute prima facie evidence of the amount of the Collateral and of the amount of the Obligations at any time and of the undersigned being in default or of any demand having been made.
3. The Bank or any manager, acting manager or account manager of the Bank is hereby appointed as the irrevocable attorney of the undersigned with authority to do such acts, execute all documents necessary to give effect to this Agreement (on behalf of and in the name of the undersigned) and to the realization and enforcement of this Agreement by the Bank.
4. The undersigned shall pay all costs, charges and expenses including solicitors’ costs, charges and expenses which may be incurred by the Bank in connection with this Agreement and its enforcement.
5. The undersigned:
	1. acknowledges receiving an executed copy of this Agreement; and
	2. waives to the fullest extent permitted by applicable law, all rights to receive from the Bank a copy of any financing statement, financing change statement or verification statement filed at any time or from time to time in respect of this Agreement.
6. If this Agreement is executed by more than one party, the liability of each of the undersigned shall be joint and several with one another.
7. In this Agreement, any word importing the singular number shall include the plural, and, without restricting the generality of the foregoing, where there is more than one undersigned any reference to the undersigned refers to each and every one of the undersigned. The headings in this Agreement are inserted for convenience only and shall not affect the construction hereof.
8. Any notice, demand, statement or other communication permitted or required or otherwise to be given hereunder shall be in writing and may be effectively given by delivering it to the address(es) hereinafter set forth or by sending the same by facsimile to such address(es). Any notice, demand or other communication so given prior to 5:00 p.m. (Toronto time) on a Business Day by personal delivery or by fax shall be deemed to have been given, received and made on such Business Day and if so given after 5:00 p.m. (Toronto time) on a Business Day or a day which is not a Business Day, such notice, demand, statement or other communication shall be deemed to have been given, received and made on the next following Business Day. The addresses of the parties for the purposes hereof shall be:
	1. in the case of the Bank, addressed as follows:

**HSBC Bank Canada**

**<Address>**

**<Address>**

**Attention:** **<Title>**

**Fax Number:** **<insert number>**

* 1. in the case of the undersigned, addressed as follows:

**<Name of undersigned>**

**<Address>**

**<Address>**

**Attention:** **<Title>**

**Fax Number:** **<insert number>**

Either party may from time to time notify the other, in accordance with the provisions hereof, of any change of address which thereafter, until changed by like notice, shall be the address of such party for all purposes of this Agreement.

1. This Agreement shall be binding upon the undersigned and the heirs, executors, administrators, successors and assigns of the undersigned, and shall enure to the benefit of the Bank and its successors and assigns.
2. This Agreement shall be governed by and construed in accordance with the laws of the jurisdiction where the branch of the Bank indicated above is located.
3. The parties hereto acknowledge that they have expressly required that this Agreement and all deeds, documents or notices relating to this Agreement be drafted in the English language. *Les parties aux présentes reconnaissent qu’elles ont exigé expressément que la présent convention et tous autres contrats, documents ou avis qui y sont afférents soient rédigés en langue anglaise.*
4. The Bank may in writing (and not otherwise) waive any default by the undersigned in the observance or performance of any provision of this Agreement; provided that no waiver by the Bank shall extend to or be taken in any manner whatsoever to affect any subsequent default, whether of the same or a different nature, or the rights resulting therefrom.
5. Nothing herein shall obligate the Bank to make any advance or loan or further advance or loan or to renew any note or extend any time for payment of any indebtedness of the undersigned to the Bank.
6. If one or more of the provisions contained in this Agreement are determined to be invalid, illegal or unenforceable in any respect, such provision or provisions shall be severed from this Agreement only to the extent necessary, and the validity, legality and enforceability of the remaining provisions hereof, including the provision or provisions remaining after such severance, shall not in any way be affected or impaired thereby.
7. Where any provision or remedy contained or referred to in this Agreement is prohibited, modified or altered by the laws of any Province or Territory of Canada which governs that aspect of this Agreement and the provision or remedies may be waived or excluded by the undersigned in whole or in part, the undersigned hereby waives and excludes such provision to the fullest extent permissible by applicable law.
8. Unless otherwise expressly provided in this Agreement, if any matter in this Agreement is subject to the determination, consent or approval of the Bank or the Bank’s discretion, or as the Bank sees fit (or similar judgement by the Bank) or is to be acceptable to the Bank, such determination, consent, approval, discretion, judgement or determination of acceptability will be in the sole discretion of the Bank, which means the Bank shall have sole and unfettered discretion, without any obligation to act reasonably. If any provision in this Agreement refers to any action taken or to be taken by the undersigned, or which the undersigned is prohibited from taking, such provision will be interpreted to include any and all means, direct or indirect, of taking, or not taking, such action. When used in the context of a general statement followed by a reference to one or more specific items or matters, the term “including” shall mean “including, without limitation” and the use of the term “**includes**” shall mean “**includes, without limitation**”. When used in this Agreement, “**Business Day**” means a day (other than a Saturday, Sunday or statutory holiday in the Province of Ontario) on which the Bank is open to carry on business in the City of Toronto, Ontario and when used in this Agreement, “**Person**” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, limited partnership or other entity.
9. For the purpose of legal proceedings this Agreement shall be deemed to have been made and performed in the jurisdiction where the branch of the Bank indicated above is located and the courts of that Province shall have jurisdiction over all disputes which may arise under this Agreement. The undersigned hereby irrevocably and unconditionally attorns and submits to the non-exclusive jurisdiction of such courts, provided always that nothing herein contained shall prevent the Bank from proceeding at its election against the undersigned in the Courts of any other Province, country or jurisdiction.
10. This Agreement shall be binding upon the undersigned and the heirs, executors, legatees, trustees, administrators, successors and assigns (including any successor by reason of amalgamation or any other change by the undersigned) of the undersigned, and shall enure to the benefit of the Bank and its successors and assigns. The undersigned shall not assign any of its rights or obligations hereunder without the prior written consent of the Bank. The Bank may assign, transfer and deliver to any transferee of any of the Obligations all or any portion of its right, title and interest in and to and all benefits arising under or in respect of this Agreement, the Collateral and any documents or instruments held by the Bank in respect thereof provided that no such assignment, transfer or delivery shall release the undersigned from the Obligations and thereafter the Bank shall be fully discharged from all responsibility with respect to the Obligations, Collateral, documents and instruments (or its right, title, interest therein and benefit thereof) so assigned, transferred and/or delivered. Such transferee shall be vested with all powers and rights of the Bank under the said Obligations, Collateral, documents or instruments but the Bank shall retain all right, title, interest and benefit with respect to any of the Obligations, Collateral, documents or instruments not so assigned, transferred or delivered.
11. Time shall be of the essence of this Agreement.
12. At the request of the Bank, the undersigned shall, at its sole expense, execute all such additional transfers, assignments and documents as may reasonably be required, with all necessary powers as may be expedient for better vesting the Collateral in the Bank or such person or persons as the Bank may appoint.
13. The headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.
14. Upon full, final and indefeasible payment and fulfillment by the undersigned, its successors or permitted assigns, of all Obligations and provided that the Bank is then under no obligation (conditional or otherwise) to make any further loans, advances or extend any other type of credit to the undersigned or to any other Person, the payment of which is secured, directly or indirectly, by this Agreement, the Bank shall, upon request in writing by the undersigned, delivered to the Bank at the Bank’s address as set out in Section 23 hereof and at the undersigned’s expense, discharge this Agreement.
15. The undersigned agrees that the Bank may from time to time provide information concerning this Agreement (including a copy hereof), the Collateral and the Obligations to any Person the Bank in good faith believes is entitled thereto pursuant to applicable law.
16. This Agreement and any amendment, supplement, restatement or termination may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed an original and all of which, taken together, shall constitute one and the same agreement. Any party hereto may deliver an executed copy of this Agreement by facsimile to the other parties hereto provided that in such event that party shall promptly deliver to the other parties hereto an originally executed copy of this Agreement.

**IN WITNESS WHEREOF** the undersigned has executed this Agreement as of the day and year first above written.

## Where the Undersigned is an Individual:

By:

Full Name:

Full Address:

Birth Date:

In the presence of:

Witness

Full Name of Witness:

Address of Witness:

## Where the Undersigned is a Corporation:

Name of Corporation:

Address of Corporation:

By:

Name:

Title:

By:

Name:

Title:

Where the Undersigned is not a corporation but a partnership, use the following variations.

## General Partnership

For a general partnership describe it by naming each partner, followed by the name of the partnership as follows:

**[Partner Name]** and **[Partner Name],** carrying on business in partnership as **[Partnership Name]**

Per:

Name:

Title:

Per:

Name:

Title:

## Limited Partnership

The signature block is to be set out as follows:

**[Limited Partnership Name]**, by its general partner,

## [General Partner Name]

Per:

Name:

Title:

Per:

Name:

Title:

## Trust

Where the Undersigned is a trust, use the following signature block and describe the trust using its full legal name:

**[Name of Trust]**, by its authorized trustees

Per:

Name:

Title:

Per:

Name:

Title:

# Schedule “A”

Instrument(s)

|  |  |  |
| --- | --- | --- |
| Date | Cert. No. | Principal Amount |
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# Schedule “B”

NOTE: list all Provinces and/or Territories of: (i) the undersigned’s incorporation, amalgamation or other organization and formation; and (ii) the undersigned’s chief executive office, principal place of business or registered office (if different from the chief-executive office) and the place of business of the undersigned.