

# Bill Payment Service Agreement



Together we thrive

# Table of Contents

|                                       |   |
|---------------------------------------|---|
| 1. Definitions.....                   | 1 |
| 2. Effective Date.....                | 1 |
| 3. Bill Payment Services .....        | 1 |
| 4. Data and Records.....              | 2 |
| 5. Fees.....                          | 2 |
| 6. Confidentiality.....               | 2 |
| 7. Indemnity.....                     | 3 |
| 8. Limitation of Liability .....      | 3 |
| 9. Assignment .....                   | 3 |
| 10. Excusable Delays .....            | 3 |
| 11. Waiver .....                      | 3 |
| 12. Duration.....                     | 4 |
| 13. Variation .....                   | 4 |
| 14. Termination .....                 | 4 |
| 15. Notices .....                     | 4 |
| 16. Severability.....                 | 4 |
| 17. Survival.....                     | 4 |
| 18. Benefits .....                    | 4 |
| 19. Resolving Disputes .....          | 4 |
| 20. Force Majeure.....                | 4 |
| 21. Telephone Recording .....         | 5 |
| 22. Rights of Third Parties .....     | 5 |
| 23. Implied Terms .....               | 5 |
| 24. Entire Agreement.....             | 5 |
| 25. Authority .....                   | 5 |
| 26. Declarations and Signatures ..... | 5 |
| 27. Governing Law.....                | 5 |
| Schedule "A" .....                    | 6 |

**This Bill Payment Service Agreement covers Bill Payment Services. This Agreement governs the access by and use of the Bill Payment Services the Customer receives from HSBC Bank Bermuda Limited. The Customer has read the Agreement carefully before it accesses and uses the Bill Payment Services. It exempts HSBC Bank Bermuda Limited and other persons from liability or limits their liability and contains other important provisions that the Customer has read. Each time the Customer accesses and uses the Bill Payment Services, this Agreement, as it then reads, will govern such use and access. Accordingly when the Customer accesses and uses the Bill Payment Services, the Customer should check the date of this Agreement (which appears at the end of this Agreement) and review any changes since the last version.**

**All interest rates and charges that apply to the relevant products / services covered in this Agreement are covered in the “Fees and Charges applicable to your products / services” section which is published on our website at [www.hsbc.bm](http://www.hsbc.bm).**

### **1. Definitions**

“**Access Terminal**” means any device, including without limitation a computer, telephone or ATM/POS (point of sale) terminal, used by a Customer or a Consumer to access an account or other Bank services or products.

“**Agreement**” means this agreement as amended or supplemented from time to time and any supplementary terms and schedules (including but not limited to the Fee Schedule) for the provision of the Bill Payment Service Terms and Conditions published and amended by the Bank from time to time.

“**ATM**” means automated teller machine.

“**Bank**” means HSBC Bank Bermuda Limited and its subsidiaries.

“**Bulked Credit**” means the single credit made by the Bank to the Customer’s Account which shall total all payments made by a Consumer to the Customer on any given business day.

“**Business Day**” means any day except Saturday or Sunday in which banks are open for business.

“**Consumer**” means each customer of the Customer.

“**Customer**” means the organisation which is applying to use the Bill Payment Service provided by the Bank.

“**Customer Data**” means the Customer’s data, files, forms, programs, records, reports, information, documentation and other material received, computed, developed, used and/or stored pursuant to this Agreement.

“**Direct Settlement**” means the multiple credits made by the Bank to the Customer’s Account for each payment made by a Consumer to the Customer on any given business day.

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

“**Fee Schedule**” means the current charge, fee and

interest rate schedule provided by the Bank from time to time.

“**HSBC Group**” means HSBC Holdings plc, and/or any of, its affiliates, subsidiaries, associated entities and any of their branches and offices, and “**any member of the HSBC Group**” has the same meaning.

“**Payment File**” means the file containing information relating to payments made by the Consumers including but not limited to Consumer name, payment location, transaction date, transaction amount, and payment amount.

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

“**Services**” means payment facilities provided to the Consumers by the Bank via ATM, and/or Remote Banking as applicable.

“**Telephone Banking**” means a service provided by the Bank which allows the Customer to perform certain transactions related to the Customer account(s) over the telephone.

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. Effective Date**

This Agreement is effective from the date on which it has been executed by the Bank and will supersede all prior agreements, understandings, representations and negotiations in relation to the matters referred to herein.

### **3. Bill Payment Services**

- 3.1 The Bank will in its discretion permit the Consumers, at the request of the Customer, to make payments to the Customer through some or all of the Bank's ATMs, Remote Banking or Telephone Banking channels.
- 3.2 For Customers requesting Bulk Credit, the Bank will send the Payment File and report containing information on payments made by the Consumers on the previous business day to the Customer. For the purpose of this Agreement, payments received on the "previous business day" mean all payments made by the Consumers up to and including 6:00 p.m. Bermuda time on that day.
- 3.3 On receiving payment instructions from any of the Consumers, the Bank will debit the respective Consumer's account with the Bank. The following business day, the Bank will credit the Customer's Account with the total amount debited from the Consumers' accounts.
- 3.4 For Customers requesting Direct Settlement, payment details shall be recorded in both the Customer's and Consumer's statements of account.

#### 4. Data and Records

- 4.1 The Bank will safeguard the Customer Data in accordance with those standards to which it adheres in safeguarding its own data.
- 4.2 In the event that any output data contains errors or omissions which are notified to the Bank, the Bank will correct such errors or omissions by re-entering or reprocessing the relevant input data and will promptly furnish the Customer with corrected data. Such correction of error shall be without charge to the Customer, unless caused by the nature of the input data submitted by the Consumers.
- 4.3 The Bank will use reasonable care to minimise the likelihood of damage or loss of data, delay and error, resulting from an uncontrollable event, and in the event of such damage, loss, delay or error, will use its reasonable commercial efforts to mitigate the effects of such occurrence.
- 4.4 If the Bank is not notified of errors, it will not be responsible for any losses incurred by the Customer prior to the date on which the error was communicated to the Bank.
- 4.5 The Customer agrees to inform the Bank immediately of any changes in its status that could affect this Agreement.
- 4.6 The Customer acknowledges that it will review all data received in connection with the Services and immediately notify the Bank of any errors, omissions or discrepancies. The Bank shall have no liability of any kind whatsoever for any costs, expenses, charges, debts, liabilities, damages, demands, obligations, fees, duties, levies, penalties, actions, proceedings, causes of action, or claims of any other kind whatsoever ("Claims and Liabilities") which would or should have been discovered by the Customer had it reviewed the data received in connection with the Services in a timely fashion and in any event within 30 (thirty) days of receipt. The Customer waives all Claims and Liabilities that it has against the Bank and releases the Bank from any liabilities the Bank would have to the Customer arising or contributed to after the time that the data should have been reviewed whether or not any of the Claims or Liabilities resulted from the negligence of the Bank.

#### 5. Fees

- 5.1 The charges for the Services will be as described in the Fee Schedule in Schedule "A". The Bank reserves the right to amend the Fee Schedule on 30 (thirty) days' notice to the Customer. All amounts due to the Bank shall be debited at such intervals as notified by the Bank to the Customer from the account identified to the Bank by the Customer for this purpose.
- 5.2 The Bank will maintain accurate records of all amounts payable by the Customer under this Agreement.

#### 6. Confidentiality

- 6.1 Subject to section 6.3, each party to this Agreement acknowledges that all material and information of the other party including without limitation:
  - 6.1.1 information concerning each party's customers and present and future business, which has or will come into the other's possession or knowledge in connection with this Agreement or its performance; and
  - 6.1.2 the Customer Data consists of confidential or proprietary information, whose disclosure to or use by third parties will be damaging. Each party therefore agrees to hold such material and information in strictest confidence, not to make use thereof, other than for performance of this Agreement or as prescribed by law, and not to release or disclose it to any other party. For the avoidance of doubt, the parties agree that the Bank is permitted to disclose confidential data to other members of the HSBC Group.

- 6.2 Each party will instruct its personnel that any information of the other party to which they are privy will be kept confidential and each party will take all reasonable precautions against the unauthorised disclosure of confidential information by any of its employees or agents.
- 6.3 The following information will not be considered confidential or proprietary:
- 6.3.1 information generally available to the public;
  - 6.3.2 information released without restriction to the public or the trade, by the party owning such information; and
  - 6.3.3 information provided by a Consumer to the Bank.
- 6.4 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.
- 6.5 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 auditors, government or other agencies as prescribed by law.

## 7. Indemnity

The Customer will have the sole responsibility and liability to its Consumers in connection with the Services provided under this Agreement. The Customer will indemnify and hold harmless the Bank from any claim, loss, cost, damage, liability or demand made by the Consumers in connection with the Services provided under this Agreement.

## 8. Limitation of Liability

The Bank will not be liable for any loss or damage suffered by the Customer or any Consumer including but not limited to the failure of the Bank to provide all necessary data at the time as required or by reason of inaccuracies in the data supplied by the Bank or the Consumers, except where such loss or damage is caused by the gross negligence or wilful misconduct of the Bank. In no event will the Bank be liable for special, indirect or consequential damages to the Customer, any Consumer or any other party.

## 9. Assignment

The parties may not assign this Agreement except with the written consent of the other party, such consent not to be unreasonably withheld. No assignment will relieve any

party from any obligation under this Agreement. Notwithstanding the foregoing, the Bank may assign this Agreement to an affiliate without the consent of the Customer.

## 10. Excusable Delays

Except as expressly provided otherwise in this Agreement, dates and times by which the Bank or the Customer are required to render performance (other than dates and times for payment of money) under this Agreement will be postponed automatically to the extent and for the period of time that the Bank or the Customer, as the case may be, is prevented from meeting them by reason of any causes beyond their reasonable control, including but not limited to acts of God, war, terrorism, riot, civil unrest or commotion, epidemics, earthquakes, fire, flood, windstorm, hurricanes and other disasters, government action, strikes, lock-outs, labour disruption or other industrial action or trade dispute (whether involving the Bank's employees or those of any other person), failure, malfunction or unavailability of power, telecommunications, data communications, computer systems or software and related services, provided that the party prevented from rendering performance notifies the other party immediately and in detail of the commencement and nature of such a cause and, provided further that such party uses its best efforts to render performance in a timely manner utilising to such end all resources reasonably required in the circumstance, including obtaining supplies or services from other sources if the same are reasonably available.

## 11. Waiver

- 11.1 No failure or delay of either party to exercise any power or right granted under this Agreement and no custom or practice of the parties with regard to the terms of performance of this Agreement will constitute a waiver of the rights of such party to demand full and exact compliance with its terms.
- 11.2 No term or provision of this Agreement will be deemed waived and no breach excused, unless such waiver or consent will be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of a breach by the other, whether expressed or implied, will not constitute a consent to, waiver of, or excuse for any other different or subsequent breach provided that:
- 11.2.1 if any party transfers its business to a subsidiary;
  - 11.2.2 assigns this Agreement in accordance with section 9; and

11.2.3 then ceases to conduct business in the normal course, it will not be deemed to be in breach under this section.

Street, Hamilton HM11,  
Bermuda;

## 12. Duration

This Agreement will be for an initial period of 1 (one) year and will be automatically renewed for successive periods of 1 (one) year each.

## 13. Variation

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 in the notice.

## 14. Termination

14.1 In the event that either party is in breach of any of the obligations under this Agreement and such breach continues without correction for a period of 30 (thirty) calendar days after written notice has been given to the infringing party setting forth the nature of the breach complained of, the non-infringing party may give written notice to the infringing party, terminating this Agreement immediately.

14.2 Each party may terminate this Agreement with respect to any or all of the Services at any time, for any reason, by giving 60 (sixty) calendar days prior written notice of such termination. Notwithstanding the aforementioned, the Bank reserves the right to terminate the Services at any time without notice but will endeavour to give the Customer 60 (sixty) calendar days prior written notice of such termination.

14.3 Any termination of this Agreement will be without prejudice to the rights accrued and remedies subsisting hereunder, at the date of such termination.

## 15. Notices

15.1 All notices, requests, demands and other communications under this Agreement will be in writing and will only be duly given:

15.1.1 when delivered by hand (against receipt);

15.1.2 on the date of sending if transmitted by Electronic Means; or

15.1.3 on the 5th (fifth) business day after posting, if sent, during normal postal conditions, by registered or certified mail to the party for which it is intended and addressed as follows:

15.1.3.1 to the Bank at 6 Front

15.1.3.2 to the Customer at the registered office and/or principal place of business.

15.2 Each party to this Agreement may change any such address by giving 10 (ten) calendar days prior written notice of such change to the other party in the manner prescribed above.

## 16. Severability

If any part of this Agreement is held unenforceable for any reason, the unenforceable portion of this Agreement will not affect the enforceability of the remainder of this Agreement, which will continue in full force and effect as if this Agreement had been executed without the unenforceable portion. If all or any part the provisions of this Agreement become illegal, invalid or unenforceable in any respect of the laws of any jurisdiction, that shall not affect or impair the legality, validity or enforceability of such provision in any other jurisdiction or the remainder of this Agreement in that jurisdiction.

## 17. Survival

All obligations accrued to the date of termination as well as the obligations contained in sections 5, 6, 7 and 8 will survive the termination of this Agreement.

## 18. Benefits

This Agreement will be binding upon and inure to the benefit of the parties and each of their respective heirs, executors, administrators, successors and permitted assigns.

## 19. Resolving Disputes

If the Customer has a dispute with the Bank regarding any matter affecting its use of the Service, the Customer will bring it to the Bank's attention. The Customer will not initiate any proceedings relating to any dispute arising from this Agreement, or use of the Service until after it has provided the Bank with written notice of the nature of the dispute, and allows the Bank 21 (twenty-one) Business Days from the delivery of such notice to the Bank to resolve the dispute to the Customer's satisfaction and any proceeding commenced in contravention hereof will be a nullity.

## 20. Force Majeure

The Bank will not be liable for any delay in performing or failure to perform any of its obligations under this Agreement as a result of any circumstances or events beyond its reasonable control, including without limitation the failure, malfunction or unavailability of power,

telecommunications, data communications, computer systems or software and related services, act of God, war, terrorism, riot, civil unrest or commotion, fire, flood, wind storms, hurricanes, government action, strikes, lock-outs, labour disruption or other industrial action or trade dispute (whether involving the Bank's employees or those of any other person). Any delay or failure of this kind will not be deemed to be a breach of this Agreement and the time for performance of the affected obligation will be extended by a period that is reasonable in the circumstances.

## 21. Telephone Recording

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

## 22. Rights of Third Parties

Nothing in these terms of this Agreement shall confer any right on any third party to enforce or enjoy the benefit of any aspect of the terms of this Agreement. Without prejudice to the generality of the foregoing, it is not intended that any provision of the terms of this Agreement shall be enforceable by virtue of the Bermuda Contracts (Rights of Third Parties) Act 2016 as the same may be amended from time to time by any person who is not a party hereto.

## 23. Implied Terms

To the extent permitted by law, agree that no statutory terms (which shall include warranties, conditions or other contractual provisions) or rights, duties or liabilities imposed under the Supply of Services (Implied Terms) Act 2003 shall apply to me or you in relation to the terms of this Agreement.

## 24. Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter. All prior agreements, negotiation, undertakings and discussions, whether oral or written are superseded and there are no warranties or representations between the parties in connection with the subject matter hereof, except as specifically set forth.

## 25. Authority

Each party has full power and authority to enter into and perform this Agreement and the persons signing this agreement on behalf of each have been properly authorised and empowered to enter into the Agreement.

## 26. Declarations and Signatures

The Customer confirms to the Bank the following:

- 26.1 The Customer declares that the Service will only be used for legal purposes.
- 26.2 The Customer agrees to inform the Bank of any changes in the status of the Customer that could affect the operations of the account(s) and this Agreement, including change of address.
- 26.3 The Customer confirms that it 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.
- 26.4 The Customer has taken all necessary action to authorise the entry into and performance of this Agreement; the person(s) who sign below have been duly authorised to sign the Agreement on behalf of the Customer; the Agreement and such authorisations are in accordance with the applicable constitutional documents of the Customer.

## 27. Governing Law

This Agreement will be construed, interpreted and governed exclusively by the laws of Bermuda and the Customer agrees to exclusively attorn to and be bound by the courts of Bermuda.

***THIS VERSION OF THIS AGREEMENT HAS BEEN IN EFFECT SINCE JULY 2018.***

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

HSBC Bank Bermuda Limited  
37 Front Street, Hamilton HM 11, Bermuda

July 2018

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Administrator \_\_\_\_\_  
 Print Name

Date \_\_\_\_\_  
 Date | Month | Year

| <b>SIGNATURES</b>   |  |  |                                       |
|---|--|--|---------------------------------------|
| 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.<br>Signed for and on behalf of the Customer |  |  |                                       |
| Customer Name   |  |  |                                       |
| Name of Authorised Signatory  |  | Name of Authorised Signatory   |                                       |
| Job Title   |  | Job Title  |                                       |
| Signature of Authorised Signatory   |  | Signature of Authorised Signatory  |                                       |
| Date (dd/mm/yyyy)   |  | Date (dd/mm/yyyy)  |                                       |
| Settlement Account no.  |  | Settlement Option<br><input type="checkbox"/> Bulked Credit <input type="checkbox"/> Direct Settlement |                                       |
| Merchant name as it will appear on payment channel (35 character limit)   |  |  |                                       |
| Sample Merchant Customer Account Format   |  |  |                                       |
| <b>Signed for and on behalf of the Bank</b>   |  |  |                                       |
| Signature of Authorised Signatory   |  | Signature of Authorised Signatory  |                                       |
| Date (dd/mm/yyyy)   |  | Date (dd/mm/yyyy)  |                                       |
| <b>FOR BANK USE ONLY</b>  |  |  |                                       |
| HSBCnet Customer  |  | BIB Customer   | Customer Number                       |
| Date Rec'd by PCM Implementation  | Bill Pymt Report available to Company<br>Yes | KC confirmed training<br>Yes   | Report entitlements completed<br>Yes  |
| Was Account Opened<br>Yes 006-000012-   | Merchant Details Set Up<br>Yes Merchant ID:  | Utility Code   | Utility Account Mask                  |
| Min / Max Length<br>____ / ____   |  | DSI Set Up<br>Yes SI Number  | @X Standing Data Table Updated<br>Yes |
| <b>SCHEDULE "A"</b>   |  |  |                                       |
| For the period of 1 (one) year from the date of this Agreement the fees charged to the Customer are: NIL  |  |  |                                       |





| Priority |                          | FOR BANK USE ONLY |                          |                   |                          |                |                          |                |                          |           |                          |     |                          |
|----------|--------------------------|-------------------|--------------------------|-------------------|--------------------------|----------------|--------------------------|----------------|--------------------------|-----------|--------------------------|-----|--------------------------|
| IC       | <input type="checkbox"/> | Private Banking   | <input type="checkbox"/> | Corporate Banking | <input type="checkbox"/> | Small Business | <input type="checkbox"/> | HSE            | <input type="checkbox"/> | Premier   | <input type="checkbox"/> |     |                          |
| SD       | <input type="checkbox"/> |                   |                          |                   |                          |                |                          |                |                          |           |                          | PFE | <input type="checkbox"/> |
| FD       | <input type="checkbox"/> | Global Banking    | <input type="checkbox"/> | Business Banking  | <input type="checkbox"/> | Global Markets | <input type="checkbox"/> | HSEC Insurance | <input type="checkbox"/> | Asset Mgt | <input type="checkbox"/> |     |                          |