

## TERMS AND CONDITIONS FOR OPERATION OF ACCOUNTS

The 'Customer' for valuable consideration hereby agrees with THE BANK OF NEVIS LIMITED (the 'Bank') that the operation of each account which the Customer now or hereafter has with the Bank at any branch or office of the Bank and the carrying on of other banking business by the Customer with the Bank at any branch or office shall be subject to the Terms and Conditions hereinafter:

### 1. WAIVERS

Subject to any specific instructions given to the Bank in writing by the Customer,

- (a) The Customer hereby waives presentment, notice of dishonour and protest of all bills of exchange, promissory notes, cheques and other instruments (each an 'instrument') drawn, made, accepted or endorsed by the Customer now or hereafter delivered to the Bank for any purpose whatsoever, and the Customer shall be liable to the Bank in respect as if presentment, notice of dishonour and protest has been duly made or given;
- (b) If the Bank should consider it in the best interest of the Customer or the Bank that any instrument should be noted or protested because of any endorsement other than that of the Customer or for any other reason, the same may be noted or protested at the discretion of the Bank, but the Bank shall not be liable for failure or omission to note or protest any such instrument.

### 2. ELECTRONIC COMMUNICATIONS INDEMNITY AGREEMENT

- (a) The Customer hereby authorises the Bank to accept all tested or untested instructions given by the Customer or on their behalf by telephone, facsimile, telex cable, e-mail, or otherwise, regarding any or all of your accounts (either existing or opened at a future date) with the Bank, subject to any written restrictions imposed by the Customer or the Bank relating to the issuance of such instructions.
- (b) The said instructions may relate to but are not limited to: (a) payments (b) placement (c) cancellations (d) custody accounts (e) purchase/sale of securities (f) transfer of funds (g) renewals of certificates of deposits (h) deposits.
- (c) With regard to oral instructions, the Customer agrees that the records of oral instructions (a copy of which may be forwarded to the Customer on request) as recorded by the Bank shall be the final and conclusive evidence of the Customer's oral instructions.
- (d) With regard to instructions issued which are not received simultaneously upon issuance (e.g. by post or cable), the Customer agrees that the instructions shall be deemed to have been issued only upon receipt by the Bank.
- (e) With regard to instructions issued by electronic and/or mechanical processes (e.g. by facsimile or telex), the Customer accepts the risk of equipment malfunction including paper shortage, transmission errors, omissions and distortion.
- (f) It is agreed that the risks of misunderstandings and errors, and the risk of instructions being given by unauthorised parties, are the Customer's only, and that the Bank shall not be responsible for any loss, liability or expense that may result from such misunderstandings, errors and unauthorised instructions. The Customer hereby undertakes to indemnify the Bank from and against all actions, proceeding damages, cost, claims, demands, expenses and losses which the Bank may suffer, incur or sustain by reason of our following such instructions.
- (g) Instructions may also be given to the Bank on behalf of the Customer by the Customer's authorised representative(s), if any, regarding all of the Customer's accounts with the Bank. The

Bank shall have the right to ask the Customer's authorised representative(s) to furnish any information the Bank may require to establish authority of the said authorised representative but the Bank is not obliged to do so. The Bank shall be fully protected in, and shall incur no liability to the Customer for acting upon oral instructions which the Bank in good faith believes to have been given by the Customer or the Customer's authorised representative(s).

- (h) The Bank may at any time, at its discretion, refuse to execute the Customer's instructions or any part thereof, without incurring any responsibility for loss liability or expense arising out of such refusal.

### **3. USE OF AGENTS AND TRANSMISSION SYSTEMS**

- (a) The Bank may use the services of any correspondent or other entity or any funds transfer method or system as it may deem best in doing any act or thing in the course of or in connection with the banking business of the Customer. Such correspondent or other entity, in providing such services, and the Bank, in using such services or funds transfer methods or systems, shall be deemed the agent of the Customer.
- (b) The Bank shall not be liable to the Customer by reason of:
  - i. any act or omission of such correspondent or other entity in the performance of such services or the failure of any such funds transfer method or system due to any reason beyond the reasonable control of the Bank, or
  - ii. the loss, destruction or delayed delivery of any instrument, security, certificate, document, instruction or signal of any kind while in transit or while in the possession of control of a person other than the Bank.
- (c) The Bank shall not be liable to the Customer for any delay in completing or failure to complete any funds transfer instructions:
  - i. through the use of any funds transfer method or system for any reason not within the reasonable control of the Bank, or
  - ii. due to any chronology in handling funds transfer instructions by the Bank or any other party or system.

### **4. CREDITING ACCOUNTS AND CHARGES TO ACCOUNTS**

- (a) The Bank may charge against any account of the Customer:
  - i. the amount of any service charge at the usual rates charged by the Bank from time to time for services normally provided in connection with the operation of any account of the Customer, unless otherwise agreed, and to pay such other charges as may be agreed upon by the Customer and the Bank for such other services as the Bank may provide to the Customer from time to time and the Bank is hereby authorized to debit any of the Customer's accounts with the amount of such charges. The Bank reserves the right to unilaterally vary its rates and service charges.
  - ii. the amount of any instrument drawn, made, accepted or endorsed by the Customer which is payable at any branch or office of the Bank or in respect of which the Bank must reimburse a third party.
  - iii. the amount of funds instructed by the Customer to be transferred to a third party or another account.

- iv. the amount of any instrument cashed or negotiated by the Bank for the Customer or credited to the Customer's account for which payment is not received by the Bank.
  - v. the amount credited to any account of the Customer pursuant to any instruction to transfer funds whether by the Customer or any third party, howsoever implemented, which is reversed in whole or in part for any reason or in respect of which settlement is not received by the Bank; and
  - vi. any other indebtedness or liability of the Customer to the Bank, together with any expenses incurred by the Bank in connection therewith, whether or not the charging of such amount against any account of the Customer creates or increases an overdraft.
- (b) The Bank reserves the right to receive any instrument payable or endorsed to the Customer as a collection agent for the Customer and to delay the Customer's access to the amount of such instrument or the amount referred to in a funds transfer instruction pending collection upon such instrument or settlement of net position of participants in any funds transfer systems, as applicable.

## 5. OVERDRAFT

- (a) The Customer agrees to keep their account in credit unless the Bank has agreed an overdraft with them.
- (b) When the Bank agrees to an overdraft with the Customer, the Bank will inform you (the Customer) of the agreed limit and the interest rate and usage fees payable; and the Bank will confirm these details in writing. The Customer authorises the Bank to make credit reference and other enquiries whenever the Customer requests any credit facilities, or if the Bank wishes to consider increasing the agreed limit or offering the Customer other products.
- (c) The Bank's interest rates and usage fees are available on request. Interest is calculated on a daily basis on the statement balance. Interest and usage fees are charged monthly in arrears and on closure of the account.
- (d) If the Customer overdraws without agreeing an overdraft with the Bank on any account, or exceeds an agreed overdraft limit, the Bank may require the Customer to pay into their account sufficient funds to cover the unauthorised amount immediately. The Bank may charge its authorised interest rate and usage fees on the unauthorised amount until either it has been repaid or the Bank agrees the overdraft, or an increase in the overdraft limit, with the Customer.
- (e) Unless the Bank has specifically agreed otherwise with the Customer, the Bank may demand the repayment of, or reduction in the Customer's overdraft at any time and without notice. The Bank will continue to calculate and charge interest and fees on the overdraft in accordance with these Terms and Conditions both before and after judgment until it is repaid in full.

## 6. THE RIGHT OF SET-OFF

The Bank may use any credit balances in any currency on any account the Customer has with the Bank, any securities or any other property, to reduce or repay any overdrawn balances or other sums the Customer owes the Bank (including card accounts) either in the Customer's own name or jointly with anyone else and will tell the Customer when it (the Bank) does so.

**7. USE OF CHEQUES AND STOP PAYMENT INSTRUCTION**

- (a) It is understood and agreed that in the ordinary course all cheques issued by the Customer will be drawn on the branch or office of the Bank where the account is maintained and on forms satisfactory to the Bank for each type of account. The Customer expressly relieves the Bank of any and all responsibility which it may incur on account of the Bank refusing to honour any cheque or other order of payment not drawn on such branch or office of the Bank at which the Customer maintains the account, and on any cheque or other order for payment not made on forms satisfactory to the Bank.
- (b) The Customer further agrees to fully indemnify and save harmless the Bank against all damages, costs and expenses which the Bank may incur through refusing payment of any cheque(s) or reversing or revoking any transfer instruction for which the Customer issues or communicates a stop payment, reversal or revocation order to the Bank, and discharges the Bank from any responsibility resulting from payment of such cheque(s), or completion of any reversed or revoked instruction being made due to Customer's failure to furnish the Bank with accurate information as to the cheque(s) to be countermanded or its instruction(s) to be reversed or revoked provided that the Bank treat all fund transfer instructions as final and not subject to stop payment or recall and the Customer shall not have the right to reverse, adjust or revoke any instruction after it is received by the Bank except with the consent of the Bank, such consent to be invalid if the instruction shall have already been acted upon by the Bank prior to its acting upon the adjustment, reversal or revocation.
- (c) The Bank may, in its sole discretion, refuse to honour any instruction, instrument, cheque or other order for payment if drawn or made with respect to an account impressed with a trust, expressed, implied or constructive. The Bank shall not incur liability as a consequence of such refusal.

**8. MAILING OF ACCOUNTS RECORDS**

- (a) The Bank will provide the Customer with statements showing all entries on the Customer's account since the previous statement. The Customer agrees to check their statements carefully and contact the Bank as soon as possible if the Customer's account includes an item which appears to the Customer to be wrong or not made in accordance with the Customer's instructions.
- (b) The Bank will correct any entries it makes to the Customer's account by mistake as soon as possible after the Customer informs the Bank about them or the Bank notices them.
- (c) The Bank will supply additional statements on request. A charge may be made for supplying these.
- (d) The Bank may put messages on the Customer's statements to give the Customer notice of variations to these Terms and Conditions.
- (e) The Customer may ask the Bank not to provide statements for some accounts.

**9. VERIFICATION OF ACCOUNT**

- (a) Upon receipt from the Bank from time to time of a statement of account of a Customer, the Customer will check the credit and debit entries in the said statement and examine all cheques and vouchers included therewith;
- (b) The Customer will within thirty (30) days of the delivery of a statement to the Customer, or if the Customer has instructed the Bank to mail the said statement, within thirty (30)

days of the mailing thereof to the Customer, notify the Bank in writing of any errors or omissions or therefrom;

- (c) At the expiration of the said thirty (30) days, except as to any errors or omissions of which the Bank has been so notified, and except as to any amounts improperly credited to the Customer's account, it shall be finally and conclusively settled in all respects save as set out in (d) below, as between the Bank and the Customer that:
- i. the amount of the balance shown in such statement is true and correct,
  - ii. the said cheque and vouchers are genuine,
  - iii. all amounts charged to the said account are properly chargeable to the Customer
  - iv. the Customer is not entitled to be credited with any amount not shown on the said statement,
  - v. the Bank is totally and irrevocably released from all claims by the Customer in respect of any and every item in the said statement, and,
  - vi. the Customer fully and completely acknowledges that the Customer will have no further action against or recourse to the Bank in respect of the debit entries in the said statement, and all cheques and vouchers included therein.
- (d) Nothing herein contained shall preclude the Customer from later objecting to any payments made on unauthorized or forged endorsements provided notice in writing is given to the Bank forthwith after the Customer has acquired knowledge thereof.

#### 10. VERIFICATION OF TRANSMISSION OF FUNDS

- (a) With respect to any funds transfer implemented by or through any transmission system, the Customer shall review promptly the written or electronic notification of transfer sent to the Customer by the Bank after each transfer and promptly, and in any event within twenty-four (24) hours of receipt or deemed receipt of same, report to the Bank any discrepancy or objection concerning such transfer. The Customer expressly agrees that the failure to promptly report any such discrepancies or objections shall relieve the Bank of any liability with respect to such discrepancies or objections.
- (b) Such notification may be sent to the Customer by mail at its last known address and shall be deemed to have been received five (5) business days subsequent to mailing or by electronic notification to the Customer and shall be deemed received twenty-four (24) hours subsequent to sending such notification. Any delay due to an interruption in any authorized communication service shall extend the date of deemed receipt commensurately.

#### 11. FORGERY AND UNAUTHORIZED SIGNATURES

- (a) The Customer shall:
- i. Maintain systems and controls sufficient to prevent and detect thefts of instruments or loss due to forgeries or fraud involving instruments; and
  - ii. Monitor the conduct of employees and agents having banking functions.
- (b) The Bank shall not be liable for any loss due to a forged or unauthorized signature, unless the Customer proves that

- i. the forged or unauthorized signature was made by a person who at no time was the Customer's employee or agent;
- ii. the loss was unavoidable despite compliance with 10(a) above and
- iii. the loss was unavoidable despite steps to prevent forgery, unauthorized signature and any loss resulting therefrom.

## 12. **LIMITATION OF LIABILITY**

- (a) Where the Bank is requested to act upon any instruction respecting banking business of the Customer, the Bank shall incur no liability in acting upon such instruction including, without limitation, telephoned, oral, telex, electronic or other instructions or directions which the Bank believes in good faith to have been given by the Customer or by an authorized representative or attorney of the Customer. In the event of a discrepancy between any such instruction and any written confirmation thereof, such instruction as understood by the Bank is agreed to be paramount.
- (b) Notwithstanding any oral or written advice from any person respecting the purpose of any instrument or instruction, the Bank shall not be liable for any consequential or special damages.
- (c) The Bank will not be liable to the Customer for any loss the Customer may suffer if the Bank does not act on the Customer's instructions for any reason or the Bank cannot provide, or are delayed in providing the Customer with, any banking or other services as a direct or indirect result of anything outside the Bank's reasonable control. This includes, but is not limited to:
  - (a) industrial dispute;
  - (b) failure or fluctuation of power or telecommunications supplies;
  - (c) breakdown in computer hardware or other equipment or error in software;
  - (d) any error or discrepancy in the Customer's instructions;
  - (e) any failure or delay in the supply of services to the Bank by any third party. The Bank will not be liable for any indirect or consequential losses if the Bank fails to act on the Customer's instructions for the reasons referred to above or any other reason whatsoever. However, the Bank does not exclude any liability the Bank might have for death or personal injury due to negligence

## 13. **DISCLOSURE OF INFORMATION**

The Bank may disclose any information about the Customer and the Customer's accounts:

- (a) in response to credit inquiries;
- (b) if the Bank in its discretion deems such disclosure necessary or desirable;
- (c) pursuant to legal process or court order;
- (d) if disclosure is necessary to protect the Bank's interest.

The Customer hereby consents to and authorizes any such disclosure, and the Bank shall not become liable by reason of the giving of such information or of its being inaccurate or incomplete.

**14. AUTHORITY TO CLOSE ACCOUNT**

The Bank may at any time and from time to time close any of the Customer's accounts by giving 14 days' notice in writing to the Customer.

**15. NOTICE**

Any notice, communication or other document to be given by either party herein with respect to any of the provisions of these Terms and Conditions shall be in writing in English and be deemed duly given if signed by or on behalf of a duly authorized officer of the party giving the notice and if left at or sent by pre-paid registered or recorded delivery post or by telex, telegram, cable, facsimile transmission or other means of telecommunication in permanent written form to the address of the party receiving such notice as notified between the parties for the purpose of this clause.

- (a) Any such notice or other communication shall be deemed to be given to and received by the addressee:
  - i. at the time the same is left at the address of or handed to a representative of the party to be served;
  - ii. by post on the day not being a Sunday or public holiday 2 days following the date of posting;
  - iii. in the case of a telex, telegram, cable, facsimile transmission or other means of telecommunication on the next following day.
- (b) In proving the giving of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was properly addressed and posted, or that the applicable means of telecommunication was addressed and dispatched and dispatch of the transmission was confirmed and/or acknowledged as the case may be.

**16. GOVERNING LAW**

- (a) Any banking Terms and Conditions implied by law will also apply to the relationship between the Bank and the Customer unless varied or amended by any particular Terms and Conditions relating to an account or service or by these Terms and Conditions
- (b) These Terms and Conditions and any account of the Customer with the Bank shall be governed in all respects by the laws of the Federation of Saint Christopher and Nevis.