

HSBC General Conditions

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Part 1: General Facility Terms

1. Definitions and Interpretation

1.1 Definitions

Unless the context otherwise requires, words and expressions used in the Agreement have the following meaning:

Accounts means:

- (a) for a company:
 - (i) its statement of financial performance and statement of cash flows for a particular period;
 - (ii) its statement of financial position as at the end of a period; and
 - (iii) all disclosures, reports and notes required to be included or attached to or intended to be read with any of those financial statements, and all directors' declarations about those financial statements; and
- (b) for a natural person, such accounts as are requested by HSBC from time to time.

Advance means each utilisation or cash advance drawn down or made available under a Facility.

Affiliate means a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Person specified.

Agreement means the Facility Agreement and includes all Facility Schedules and these General Conditions.

Alternative Currency means any currency other than NZD in which Advances are available or have been made to the Customer.

Amount Owing means all moneys which each Transaction Party (whether alone or with another person) is, or at any time may become, actually or contingently liable to pay to or for the account of HSBC (whether alone or with another person or whether as agent) for any reason and whether or not it is contemplated at the date of the Agreement (including any contingent liability or indebtedness arising from Facilities or agreements with HSBC's treasury department).

It includes, without limitation, money by way of principal, interest, fees, costs, guarantees, indemnities, charges, duties or expenses or payment of liquidated or unliquidated damages for which a Transaction Party is or at any time may become so liable under or in connection with a Transaction Document, as a result of a breach of or default under or in connection with a Transaction Document or as a result of an assignment to HSBC.

Where a Transaction Party would have been liable but for its Insolvency, it will be taken still to be liable.

Authorisation includes any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with any person including an Authority.

Authorities includes any public, regulatory, governmental, semi-governmental, fiscal, administrative or judicial entity, including any self-regulatory organisation established under statute or any stock exchange, any Tax Authority, any securities or futures exchange, court, central bank or law enforcement body, or any of their agents, with jurisdiction over any part of the HSBC Group.

Availability Period means, in relation to each Facility, the period commencing on the Commencement Date and ending on the Maturity Date for that Facility or such earlier date as may otherwise be specified in the Agreement.

Base Currency Equivalent means the equivalent amount in the currency in which a Combined Limit, Facility Limit or Sub-Limit, or the Maximum Exposure is denominated on any other currency on any date determined by applying HSBC's spot rate of exchange at any time on that date for the purchase of the second currency in the first currency.

Base Rate means any rate specified as the base rate in the relevant Facility Schedule, and if any such rate is below zero, that rate will be deemed to be zero.

BBR means, in respect of any period in which interest is payable, the rate quoted by HSBC at which it would purchase Bills accepted by itself with an aggregate face value comparable to the relevant amount and with a period comparable to the relevant period, at or about 10:00am (New Zealand time) on the date of commencement of such period.

BBSY Bid means, for an Interest Period relating to an Advance in AUD:

- (a) the Australian Bank Bill Swap Reference Rate (Bid) administered by the Australian Financial Markets Association (or any other person which takes over the administration of that rate) for Australian Dollars at or about 10.15am (Sydney time) on the first day of that Interest Period for a period equal to or similar in length to the Interest Period of that Advance and displayed on page BBSY of the Thomson Reuters Screen (or any replacement Thomson Reuters page which displays that rate); or
- (b) if the rate described in paragraph (a) above is not available, the rate per annum that is HSBC's Cost of Funds, and if, in either case, that rate is less than zero, BBSY Bid shall be deemed to be zero.

Beneficiary means any person in whose favour an HSBC Guarantee is, or is to be, issued under the Agreement or any successor in title.

Bill means a bill of exchange as defined in the Bills of Exchange Act 1908.

BKBM means, for an Interest Period relating to an Advance in NZD:

- (a) the New Zealand Bank Bill Reference Rate (Bid) administered by the New Zealand Financial Markets Association (or any other person which takes over the administration of that rate) for New Zealand Dollars at or about 10.45am

(New Zealand time) on the first day of that Interest Period for a period equal to or similar in length to the Interest Period of that Advance and displayed on page BKBM of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate); or

(b) if the rate described in paragraph (a) above is not available, the rate per annum that is HSBC's Cost of Funds, and if, in either case, that rate is less than zero, BKBM shall be deemed to be zero.

BLR means HSBC's base lending rate (this is a variable rate) for the relevant currency as determined by HSBC in its sole discretion from time to time.

Business Day means:

- (a) in respect of Advances denominated in New Zealand Dollars a day, other than Saturday or Sunday, on which registered banks (as defined in the Reserve Bank of New Zealand Act 1989) are open for banking business in Auckland and in the city in which the Lending Office is located; and
- (b) in respect of Advances denominated in an Alternative Currency, a day on which banks and foreign exchange markets and HSBC are open for business in the relevant interbank market.

Cancellation Rights mean the rights of HSBC to:

- (a) cancel the Facility or any unutilised part of the Facility, terminating HSBC's obligations under it (but without prejudice to the Customer's obligations with respect to any part of the Facility that has been utilised);
- (b) demand repayment and payment of all or any of the Amount Owing (including, without limitation, amounts that are contingently owing) in which case that amount will immediately become due and payable by the Customer to HSBC;
- (c) demand cash cover in accordance with clause 6.5;
- (d) enforce any or all of the Security; and
- (e) convert into NZD on HSBC's usual terms any part of the Amount Owing which is in an Alternative Currency.

CDOR means, for an Interest Period relating to an Advance in CAD:

- (a) the Canadian Dollar Offered Rate administered by Thomson Reuters (or any other person which takes over the administration of that rate) for the relevant currency at or about 10:15am (Canadian eastern time) on the first day of that Interest Period for a period equal to or similar in length to the Interest Period of that Advance and displayed on page CDOR of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate); or
- (b) if the rate described in paragraph (a) above is not available, the rate per annum that is HSBC's Cost of Funds, and if, in either case, that rate is less than zero, CAD shall be deemed to be zero.

Claim means any claim, cost (including legal costs on a solicitor and client basis), damages, debt, expense, Tax, liability, loss (including any exchange loss), obligation, allegation, suit, action, demand, cause of action, proceeding or judgment of any kind however calculated or caused, and whether direct or indirect, consequential, incidental or economic.

CNH mean Renminbi, the lawful currency of the People's Republic of China, for settlement offshore.

CNH HIBOR means, for an Interest Period relating to an Advance in CNH:

- (a) the CNH Hong Kong Interbank Offered Rate administered by the Treasury Markets Association (or any other person which takes over the administration of that rate) for CNH at or about 11.15 a.m. (Hong Kong time) on the first day of that Interest Period for a period equal to or similar in length to the Interest Period of that Advance and displayed on page CNHHIBORFIX01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate); or
- (b) if the rate described in paragraph (a) above is not available, HSBC's Cost of Funds, and if, in either case, that rate is less than zero, CNH HIBOR shall be deemed to be zero.

Combined Limit means the limit specified in the Facility Agreement to be a combined limit.

Commencement Date means, in respect of a Facility, the date by which HSBC confirms that it has received, in form and substance satisfactory to it, the Conditions Precedent.

Companies Act means the Companies Act 1993.

Compliance Obligations means obligations of the HSBC Group to comply with:

- (a) Laws or international guidance and internal policies or procedures;
- (b) any demand from Authorities or reporting, disclosure or other obligations under Laws; and
- (c) Laws requiring HSBC to verify the identity of HSBC's customers.

Conditions Precedent means the conditions precedent specified in the Agreement.

Connected Person means a person or entity (other than the Customer) whose information (including Personal Data or Tax Information) the Customer provides, or which is provided on the Customer's behalf, to any member of the HSBC Group or which is otherwise received by any member of the HSBC Group in connection with the provision of the Services. A Connected Person may include, but is not limited to, any guarantor, a director or officer of a company, partners or members of a partnership, any "substantial owner", "controlling person", or beneficial owner, trustee, settlor or protector of a trust, account holder of a designated account, payee of a designated payment, the Customer's representative, agent or nominee, or any other persons or entities with whom the Customer has a relationship that is relevant to the Customer's relationship with the HSBC Group.

controlling persons means individuals who exercise control over an entity. For a trust, these are the settlor, the trustees, the protector, the beneficiaries or class of beneficiaries, and anybody else who exercises ultimate effective control over the trust, and for entities other than a trust, these are persons in equivalent or similar positions of control.

Cost of Funds means, in respect of any period, the rate quoted by HSBC as its cost of providing funds in the currency of the relevant Advance and for a period comparable to a relevant period, in such interbank market or by such other means as HSBC may in its discretion select, at or about the normal time for seeking quotes for such funds prior to the commencement of such period.

Customer Information means the Customer's Personal Data, confidential information, and/or Tax Information or that of a Connected Person.

Default Event means any event or circumstance described in Schedule 4 and all events and circumstances specified in the Transaction Documents to be a Default Event.

Default Interest Rate means the default interest rate specified in a Facility Schedule and if not specified the rate of default interest there will be a rate equal to the aggregate of the Interest Rate plus a margin of 5% per annum.

Distribution has the same meaning as in section 2(1) of the Companies Act.

Documentary Credit has the meaning specified in the Trade Financing General Agreement.

Drawdown Date means the date on which any Advance has been made or requested to be made under any Facility.

Drawdown Notice means:

- (a) in respect of an Advance (other than under a Trade Facility or an Overdraft Facility), a notice under clause 2.5 in the form required by HSBC from time to time; or
- (b) in respect of a Trade Facility, an Application (as that term is defined in the Trade Financing General Agreement).

ENC means an encashment authority issued or to be issued by HSBC to a Beneficiary under the Agreement.

Environmental Obligations mean all applicable current laws, regulations, practices and standards relating to the protection of the environment from pollution, including the latest version of the Equator Principles (being those principles so entitled which set out a financial industry benchmark for determining, assessing and managing environmental and social risk in projects).

Expiry Date means, in relation to an HSBC Guarantee, the expiry date set out in that HSBC Guarantee.

Facility or **Facilities** means the facility or facilities made available to the Customer pursuant to the Facility Agreement and includes any Sub-Facilities and, if applicable, any Trade Facilities.

Facility Agreement means the facility agreement signed by HSBC and the Customer under which certain Facilities are to be made available by HSBC to the Customer.

Facility Limit means the facility limit for each Facility as specified in the Facility Agreement.

Facility Schedule means the schedule to the Facility Agreement that sets out terms specific to a Facility.

Financial Crime means money laundering, terrorist financing, bribery, corruption, tax evasion, fraud, evasion of economic or trade sanctions, and/or any acts or attempts to circumvent or violate any Laws relating to these matters.

Financial Crime Risk Management Activity means any action to meet Compliance Obligations relating to or in connection with the detection, investigation and prevention of Financial Crime.

Financial Indebtedness means any indebtedness, present or future, actual or contingent in respect of any financial accommodation whatsoever.

Fixed Rate Period means a period agreed between HSBC and the Customer pursuant to clause 3.4 to be the period for which HSBC will charge a fixed rate of interest.

General Conditions means these HSBC General Conditions (comprised of the General Facility Terms and the Trade Financing General Agreement) as amended from time to time.

General Facility Terms means the terms and conditions set out in Part 1 of these General Conditions.

Group means the Customer and those companies, if any, specified in the Facility Agreement.

Group Limit means the limit specified in the Facility Agreement to be the Group Limit.

GST has the same meaning as in the Goods and Services Tax Act 1985.

Guarantee means any guarantee, indemnity, letter of credit, performance bond, legally binding letter of comfort or suretyship.

Guarantee Sub-Facility means a Guarantee Sub-Facility provided by HSBC under the Agreement.

HIBOR means, for an Interest Period relating to an Advance in HKD:

- (a) the Hong Kong Interbank Offered Rate administered by the Treasury Markets Association (or any other person which takes over the administration of that rate) for Hong Kong Dollars at or about 11.00am (Hong Kong time) on the first day of that Interest Period for a period equal to or similar in length to the Interest Period of that Advance and displayed on page HIBOR of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate); or
- (b) if the rate described in paragraph (a) above is not available, HSBC's Cost of Funds, and if, in either case, that rate is less than zero, HIBOR shall be deemed to be zero.

HSBC means The Hongkong and Shanghai Banking Corporation Limited, incorporated in the Hong Kong SAR, acting through its New Zealand branch.

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

HSBC Guarantee, when used in the Agreement, means each Guarantee issued, or to be issued by HSBC under the Agreement.

Income Tax means Tax (other than tax deducted or withheld from any payment) imposed on the net income, profits or gains of the Customer or the Group.

Independent Trustee means any person specified as such in the Facility Agreement.

Insolvency includes insolvency, provisional liquidation, administration, receivership, compromise, arrangement, amalgamation, official management, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, bankruptcy or death.

Insolvency Event means the happening of any of these events to a person:

- (a) an application is made to a court or a meeting is convened or a resolution is passed, or a notice is issued, or any step taken for that person to be wound up or dissolved, or that a liquidator or a provisional liquidator be appointed (unless the application is withdrawn, struck out or dismissed within 14 days of it being made) or the appointment is made;
- (b) a resolution is passed or a decision taken to appoint an administrator, administrative receiver, receiver, receiver and manager, compulsory manager, statutory manager, judicial manager, or other similar officer in respect of any of its assets or the appointment is made;
- (c) the person enters into, or resolves to enter into, an arrangement or composition with, or assignment for the benefit of, all or any of its creditors;
- (d) the person is, states that it is or is presumed under any applicable law to be, insolvent;
- (e) the person is unable to pay its debts as may fall due from its own money, suspends or threatens to stay or suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with a view to readjustment, rescheduling or deferral of its indebtedness;
- (f) the value of the assets of the person is less than its liabilities (taking into account contingent and prospective liabilities);
- (g) a moratorium is declared in respect of any indebtedness of the person;
- (h) the person is declared at risk pursuant to the Corporations (Investigation and Management) Act 1989, or a statutory manager is appointed or a step taken with a view to any such appointment in respect of it or any of its associated persons, under that Act (including a recommendation by any person to the Financial Markets Authority supporting such an appointment);
- (i) anything having a substantially similar effect to any of the events specified above happens under the law of any jurisdiction to the person;
- (j) the person stops or suspends the conduct of all or a substantial part of its business; or
- (k) if the person is a natural person:
 - (i) the person has a bankruptcy notice issued against the person or a receiver or a trustee for creditors is appointed to any of the person’s property or a garnishee notice is given concerning any money that the person is said to be owed or the person proposes or enters into an arrangement or compromise with, or an assignment for the benefit of, any of the person’s creditors or the person proposes or effects a moratorium involving any of the person’s creditors;
 - (ii) the person is unable to pay all of the person’s debts as they fall due or is presumed to be insolvent under any applicable law;
 - (iii) the person dies, is imprisoned or becomes incapable of managing his or her own affairs; or
 - (iv) anything having a substantially similar effect to any of the events specified above happens under the law of any jurisdiction to the person.

Interest Payment Date means the date specified in the Facility Schedule or otherwise in the Agreement as the date on which interest is payable by the Customer.

Interest Period in respect of a Facility means each period selected in a Drawdown Notice or otherwise selected in accordance with clause 3.2(c) and which complies with the requirements of the Agreement.

Interest Rate means, in relation to an Interest Period, the aggregate of the Base Rate for that period and the Margin or such other interest rate as is specified in the relevant Facility Schedule.

Laws include any local or foreign law, regulation, judgment or court order, voluntary code, sanctions regime, agreement between any member of the HSBC Group and an Authority, or agreement or treaty between Authorities and applicable to HSBC or a member of the HSBC Group.

Lending Office means the office from which HSBC issues the Facility Agreement to the Customer.

LIBOR means, for an Interest Period relating to an Advance:

- (a) the London Interbank Offered Rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant currency at or about 11.00am (London time) on the first day of that Interest Period for a period equal to or similar in length to the Interest Period of that Advance and displayed on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate); or

(b) if the rate described in paragraph (a) above is not available, HSBC's Cost of Funds, and if, in either case, that rate is less than zero, LIBOR shall be deemed to be zero.

Margin in respect of each Facility means the rate specified in the relevant Facility Schedule.

Material Adverse Effect means, in the opinion of HSBC, a material adverse effect on the:

- (a) ability of a Transaction Party to perform its obligations under a Transaction Document;
- (b) financial condition or business of a Transaction Party;
- (c) ability of HSBC to exercise its rights under a Transaction Document; or
- (d) value of any Security.

Maturity Date for a Facility means the date specified in the Facility Schedule or such other date as is agreed in writing by HSBC.

Maximum Exposure means the maximum exposure for Alternative Currency Advances specified in the Facility Agreement or a Facility Schedule.

NZD Equivalent means, on any date and in relation to an amount of Alternative Currency, the equivalent amount in NZD determined by applying HSBC's spot rate of exchange as at 11:00am on that date for the purchase of that Alternative Currency in NZD.

NZ GAAP means generally accepted accounting practice as defined in section 8 of the Financial Reporting Act 2013.

Obligations means any obligations, actual or contingent, of HSBC under a Transaction Document or instrument issued under or in connection with a Facility.

Overdraft Account means an account held by a Customer with HSBC, nominated by HSBC from time to time as the account supporting an Overdraft Facility.

Overdraft Facility means any Facility specified in the Facility Schedule to be an "Overdraft Facility".

Party means a party to the Agreement and includes its successors in title, permitted assigns and permitted transferees.

Permitted Financial Indebtedness means any Financial Indebtedness:

- (a) incurred with the prior written consent of HSBC;
- (b) incurred under any Transaction Document; and
- (c) due to a Related Company of the Transaction Party that is also a Security Provider.

Permitted Security Interest means:

- (a) a Security Interest arising under a Transaction Document;
- (b) any security in relation to personal property acquired by a person in the ordinary course of its normal business, which meets the following criteria:
 - (i) it is given by the relevant person (as buyer) in favour of a seller of the personal property;
 - (ii) it secures (and only secures) all or part of the purchase price for the personal property; and
 - (iii) it is discharged within 60 days of its creation;
- (c) any security in relation to personal property that is created or provided for by:
 - (i) a transfer of an account receivable or chattel paper;
 - (ii) a lease for a term of more than 1 year; or
 - (iii) a commercial consignment,that does not secure payment or performance of an obligation;
- (d) any charge or lien created by any statute other than the PPSA or arising by operation of any rule of law (but not if created or arising as a result of any non-performance or default);
- (e) any right of set-off, netting or combination of accounts; or
- (f) a Security Interest to which HSBC has given its prior written consent and if required by HSBC, in respect of which a priority arrangement satisfactory to HSBC has been entered into.

Person means an individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership.

Personal Data means any information relating to an individual from which they can be identified.

Potential Default Event means any event or circumstance which with the giving of notice or passage of time or both would become a Default Event.

PPSA means the Personal Property Securities Act 1999.

Principal Outstanding means the aggregate principal amount of all outstanding Advances and Obligations at any time (even if those Obligations are contingent).

Purpose means, in respect of each Facility, the purpose specified in the Facility Schedule.

Quarter means, unless otherwise specified in the Agreement, each period of three months ending on 31 March, 30 June, 30 September and 31 December in each year and "Quarterly" has a like meaning.

Related Company has the meaning given to “related company” in the Companies Act.

Scheduled Repayment means any repayment of principal specified in the Facility Schedule.

Security or **Securities** means any Security Interest, Guarantee or other document or agreement at any time created or entered into as security for any Amount Owing, including without limitation the Security specified in the Facility Agreement.

Security Interest includes:

- (a) any mortgage, charge, encumbrance, lien, pledge, finance lease, sale (or lease) and lease-back, sale and repurchase, assignment by way of security, title retention arrangement or similar interest imposed by statute, or other arrangement of any nature having similar economic effect to any of the foregoing; and
- (b) any present or future right or interest in personal property that is a security interest for the purposes of the PPSA.

Security Provider means a person who grants a Security in favour of HSBC other than the Customer.

Services includes: the opening, maintaining and closing of the Customer’s bank accounts, providing the Customer with credit facilities and other banking products and services, processing applications, credit and eligibility assessment, and maintaining HSBC’s overall relationship with the Customer, including marketing services or products to the Customer, market research, insurance, audit and administrative purposes.

SIBOR means, for an Interest Period relating to an Advance in SGD:

- (a) the Singapore Interbank Offered Rate administered by the ABS Benchmarks Administration Co Pte Ltd (or any other person which takes over the administration of that rate) for SGD at or about 11:00am (Singapore time) on the first day of that Interest Period for a period equal to or similar in length to the Interest Period of that Advance and displayed on page ABSIRFIX01, of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate); or
 - (b) if the rate described in paragraph (a) above is not available, HSBC’s Cost of Funds,
- and if, in either case, that rate is less than zero, SIBOR shall be deemed to be zero.

Special Condition means any condition specified in the Facility Agreement to be a “Special Condition”.

Sub-Facility means a Facility offered to a Customer in the Facility Agreement as a Sub-Facility.

Sub-Limit means in respect of each Sub-Facility, the amount specified in the Facility Agreement as the Sub-Limit.

subsidiary has the same meaning as in section 5 of the Companies Act.

Substantial owners means any individuals entitled to more than 10% of the profits of or with an interest of more than 10% in an entity either directly or indirectly.

Tax or **Taxation** include GST, stamp duty or any tax, levy, impost, deduction, charge, rate, duty, compulsory loan or withholding which is levied or imposed by a Tax Authority, and any related interest, penalty, charge, fee or other amount but does not include tax on the overall net income of HSBC.

Tax Authorities means New Zealand or foreign tax, revenue or monetary authorities (for example, the Inland Revenue Department).

Tax Information means documentation or information about the Customer’s tax status and the tax status of any owner, “controlling person”, “substantial owner” or beneficial owner.

Term Facility means any Facility specified in the Facility Schedule to be a “Term Facility”.

Trade Facility means a Facility provided in connection with a trade product or service and subject to the Trade Financing General Agreement.

Trade Financing General Agreement means the terms and conditions in connection with any Trade Service, as set out in Part 2 of these General Conditions, and such other terms and conditions specified by HSBC to be applicable to a Trade Service.

Trade Service has the meaning specified in the Trade Financing General Agreement.

Transaction Document means:

- (a) the Agreement;
- (b) the Securities;
- (c) any agreement relating to the priority of any Security;
- (d) any fees and charges guide applicable from time to time;
- (e) any instrument issued by HSBC under a Facility from time to time;
- (f) any document or agreement entered into or provided under or in connection with, or for the purpose of amending or novating, any of the above; and
- (g) any other document which HSBC and the Customer agree is a Transaction Document.

Transaction Party means the Customer and any Security Provider.

Trust means the Trust of which any Customer is a trustee.

Undrawn Commitment means, at any time in respect of any Facility, the Facility Limit or Sub Limit as the case may be less the Principal Outstanding under that Facility or Sub-Facility.

1.2 Interpretation

- (a) A reference to the Agreement or another instrument or document includes any variation, supplement, novation or replacement of any of them.
- (b) A reference to a law includes a law that amends or replaces it, and regulations and other enactments under it.
- (c) A reference to a currency designator is the currency designator as defined by the standard developed by the International Organisation for Standardisation, ISO 4217.
- (d) The singular includes the plural and vice versa.
- (e) References to a person include an individual, a firm, body corporate, an unincorporated association or an authority and include that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns.
- (f) A reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it.
- (g) Where 2 or more persons comprise the Customer:
 - (i) a reference to that entity includes each and any two or more of them; and
 - (ii) the obligations on the part of that entity bind them jointly and severally.
- (h) Every person described as a Customer who accepts the Agreement shall be bound even if any other person described as the Customer does not accept the Agreement.
- (i) Amounts and obligations will still be taken to be owed and HSBC's rights and powers will be enforceable:
 - (i) even if a Transaction Party becomes legally incapacitated (as far as the law allows); or
 - (ii) despite any moratorium.
- (j) Time is of the essence in the Agreement.

1.3 Inconsistency

In the event of any inconsistency between the terms of the various components of the Agreement or between the Agreement and a Security, then the following order of priority will prevail:

- (a) the Facility Agreement;
- (b) the Trade Financing General Agreement (in respect of any Trade Facility);
- (c) the General Conditions; and
- (d) a Security.

For the purposes of the Agreement an "inconsistency" will not exist if the term of one document relating to a particular topic is more comprehensive than a term of another document relating to that topic. In that case the more comprehensive provision will be applied.

2. Facilities/Advances

2.1 Availability of Facilities

Subject to the Agreement HSBC agrees to make available to the Customer during the Availability Period the Facilities specified in the Facility Agreement.

2.2 Limits

- (a) The Customer shall not be entitled to give a Drawdown Notice for an Advance and HSBC shall have no obligation to comply with any request contained in a Drawdown Notice for an Advance if the Advance would result in the Principal Outstanding:
 - (i) for a Sub-Facility exceeding its Sub-Limit;
 - (ii) for all Sub-Facilities exceeding the Facility Limit for the Facility under which the Sub-Facilities are offered;
 - (iii) for a Facility exceeding its Facility Limit;
 - (iv) under all Facilities which are part of a Combined Limit, exceeding the Combined Limit; or
 - (v) under all Facilities that are part of a Group Limit exceeding the Group Limit.
- (b) Subject to clause 2.2(a), in the event that the Facility Agreement provides a Group Limit to the Customer (or certain Customers) then all Facilities provided under the Group Limit are interchangeable under that Group Limit by the relevant Customers.
- (c) Subject to clause 2.2(a), in the event that the Facility Agreement provides a Combined Limit to the Customer then all Facilities provided under the Combined Limit are interchangeable under that Combined Limit. The Principal Outstanding under each particular Facility offered under a Combined Limit can be drawn up to either:
 - (i) the lesser of the Facility Limit for that particular Facility and the Combined Limit; or
 - (ii) if no Facility Limit is specified, the Combined Limit.
- (d) Subject to clause 2.2(a), in the event that the Facility Agreement provides a Facility Limit and that Facility has a Sub-Facility with a Sub-Limit then all the Sub-Facilities provided under the relevant Facility Limit are interchangeable under

that Facility Limit. The Principal Outstanding under each particular Sub-Facility offered under that Facility Limit can be drawn up to either:

- (i) the lesser of the Sub-Limit for that particular Sub-Facility and the relevant Facility Limit; or
- (ii) if no Sub-Limit is specified, the relevant Facility Limit.

2.3 Maximum Exposure

Where a Facility is made in an Alternative Currency and the Combined Limit, the Facility Limit or Sub-Limit for that Facility is expressed as a New Zealand Dollar amount and the Facility Agreement or the Facility Schedule provides for a Maximum Exposure for that Facility, then the Customer undertakes to maintain at all times an NZD Equivalent of the Principal Outstanding for that Facility, or for those Facilities under the Combined Limit (as the case may be), that is equal to or less than the Maximum Exposure specified in the Facility Agreement or the Facility Schedule. This clause does not limit the application of clause 9.4.

2.4 Purpose

The Customer shall only use each Facility for its Purpose or for such other purposes as may be agreed in writing from time to time between the Customer and HSBC.

2.5 Advances

- (a) Whenever the Customer wishes to request an Advance, other than under an Overdraft Facility, it must give to HSBC an irrevocable Drawdown Notice. Each Drawdown Notice must be duly completed and substantially in the form required by HSBC from time to time.
- (b) HSBC is under no obligation to make an Advance unless:
 - (i) HSBC has received a Drawdown Notice that satisfies the requirements of clause 2.5(a) in a time frame prior to the Drawdown Date acceptable to HSBC; and
 - (ii) as at the date of the Drawdown Notice and the Drawdown Date:
 - (A) all representations and warranties made by the Transaction Party in, or in connection with, a Transaction Document are true and not misleading, by omission or in any other way; and
 - (B) no Default Event or Potential Default Event has occurred which has not been remedied or waived or would result from the Advance; and

3. Interest on Advances

3.1 Interest

- (a) The Customer must pay interest to HSBC on each Advance (including Advances under an Overdraft Facility):
 - (i) at the Interest Rate; and
 - (ii) in advance or arrears (as specified in the Facility Schedule) on each Interest Payment Date.
- (b) Interest under this clause:
 - (i) accrues from day to day; and
 - (ii) is calculated on the basis of the actual number of days elapsed (including the first day but excluding the last) and for Facilities in the case of an:
 - (A) Advance in NZD or Selected Currency Advance, a 365 day year; and
 - (B) Advance in Alternative Currency, a 360 day year or otherwise in accordance with the relevant market practice for that currency.

3.2 Selection

- (a) Subject to this clause and clause 3.3:
 - (i) the length of the first Interest Period is the period selected by the Customer in the Drawdown Notice; and
 - (ii) the length of each subsequent Interest Period is the period selected by the Customer by notice, which must be received by HSBC not later than 11:00am 2 Business Days before the start of the relevant Interest Period (or a later time agreed by HSBC).
- (b) The Interest Period selected must:
 - (i) not exceed the period specified in the Facility Schedule (if any); and
 - (ii) only be a period of either 3 or 6 months or any other period that HSBC agrees.
- (c) If the Customer does not select an Interest Period in the Drawdown Notice for an Advance, or selects an Interest Period that does not comply with this clause or clause 3.3, the Customer is considered to have selected an Interest Period of 3 months or any other period selected by HSBC.

3.3 Interest Periods/Fixed Rate Periods

- (a) The Interest Period or Fixed Rate Period for an Advance starts on the Drawdown Date for that Advance or the rollover date for that Advance.
- (b) An Interest Period or Fixed Rate Period that would otherwise end on a day that is not a Business Day instead ends on the following Business Day.
- (c) No Interest Period or Fixed Rate Period may end after the Maturity Date. An Interest Period or Fixed Rate Period which would otherwise end after the Maturity Date instead ends on the Maturity Date.

3.4 Option to Fix Rate for Term Facilities

- (a) This clause only applies to Term Facilities.
- (b) As long as no Default Event, or Potential Default Event is subsisting, if a Facility Schedule specifies that the Customer is able to elect that the interest rate for all or any part of an Advance shall be a fixed rate, the Customer may prior to the proposed Drawdown Date or prior to the last day of an Interest Period, ask HSBC to quote (at the discretion of HSBC):
 - (i) a fixed interest rate for all or part of the amount of an Advance (Relevant Amount) and for the Fixed Rate Period; and
 - (ii) the Interest Payment Dates that would apply during the Fixed Rate Period.
- (c) The Customer may only elect that the interest rate for all or any part of an Advance be a fixed rate where:
 - (i) the Relevant Amount at the time of the election to fix the interest rate is greater than NZD250,000 or such other amount as HSBC may, in its sole discretion, permit; and
 - (ii) the Fixed Rate Period is at least 12 months in duration and ends on or before the Maturity Date for the Facility;
- (d) The Customer may select the quoted rate for the Relevant Amount in a Drawdown Notice given to HSBC in accordance with clause 2.5 and, if so, is deemed to have accepted the relevant Interest Payment Dates.
- (e) If the Relevant Amount is not the whole amount of the relevant Advance, then with effect on and from the first day of the Interest Period relating to the Relevant Amount, each of the Relevant Amount and the remainder of the relevant Advance will be taken to be separate Advances for the purposes of the Agreement.
- (f) The Customer acknowledges that HSBC may, in providing any Advance at a fixed rate of interest, arrange or enter into an interest rate swap agreement or other commitment and may, as a consequence of this (whether directly or indirectly), suffer or incur losses, costs, damages or expenses in the event that all or part of the Amount Owing is repaid prior to the expiry of the Fixed Rate Period. The Customer indemnifies HSBC against any such losses, costs, damages or expenses under clause 16.1 and HSBC shall be entitled to add any such amounts to the Amount Owing under the Agreement.

4. Interest on Overdue Amounts

4.1 Accrual

Interest accrues on each unpaid amount which is due and payable by a Transaction Party under or in respect of any Transaction Document (including interest payable under this clause) at the Default Interest Rate:

- (a) on a daily basis up to the date of actual payment from (and including) the due date or, in the case of an amount payable by way of reimbursement or indemnity, the date of disbursement or loss, if earlier; and
- (b) both before and after judgment (as a separate and independent obligation), and is payable on demand.

4.2 Capitalisation of Interest

Interest on unpaid amounts (that are due and payable) may be capitalised at intervals determined in the absolute discretion of HSBC.

5. Repayment and prepayment

5.1 Repayment

- (a) The Customer must make all Scheduled Repayments in the amounts and on the dates specified in the Facility Schedule, as updated from time to time.
- (b) The Customer must pay to HSBC such amounts as are necessary to ensure that:
 - (i) the Principal Outstanding at any time does not exceed the Group Limit, Combined Limit, Facility Limit or Sub-Limit (as the case may be); or
 - (ii) the NZD Equivalent of the Principal Outstanding at any time does not exceed the NZD Facility Limit, NZD Combined Limit or Maximum Exposure specified in the Facility Schedule or the Facility Agreement.
- (c) The Customer must repay each Advance under a Trade Facility as specified in the Facility Schedule.
- (d) The Customer must repay in full the Amount Owing relating to a Facility on the relevant Maturity Date.
- (e) Any repayment or prepayment may not be reborrowed and reduces the relevant Facility Limit or Sub-Limit (as the case may be) unless otherwise specified in the Facility Schedule.

5.2 Prepayment

The Customer may:

- (a) on the last day of an Interest Period or a Fixed Rate Period, on giving prior notice to HSBC specifying the proposed prepayment date and the amount of the proposed prepayment which must, in the case of a partial payment, be at least the minimum amount specified in the Facility Schedule, or such other amount agreed to by HSBC; and
- (b) subject to clauses 16 and 3.4(f), without premium or penalty,

prepay all or part of any Advance, as the case may be, in accordance with the notice given to HSBC. If required by HSBC, the Customer must, on the date of prepayment pay interest on that prepaid Advance or part of it, as the case may be, up to that date. Unless otherwise agreed with HSBC, part prepayments reduce the terms of the relevant Advance rather than the amount of the future Scheduled Repayments. Any prepayment notice given under this clause is irrevocable.

5.3 Cancellation

The Customer may cancel the whole or any part of the Undrawn Commitment of a Facility at any time by written notice to HSBC, and on doing so, the relevant Facility Limit will reduce accordingly.

6. Payments

6.1 Manner

The Customer shall make all payments under the Agreement in immediately available funds in the currency in which those funds were drawn, to the relevant account specified by HSBC from time to time, by 11:00am (New Zealand time) on the due date or if no date is specified, on demand.

6.2 No deductions

- (a) All payments to be made under the Agreement must be made without:
 - (i) set-off or counterclaim; and
 - (ii) deduction or withholding except for Taxes where required by law.
- (b) In the event that the Customer is prohibited by law from making payments free of all deductions and withholdings, then the Customer must:
 - (i) pay such Taxes (as necessary) and pay such additional amount (as necessary) to HSBC in order that the actual amount received by HSBC after deduction or withholding (and after payment of any relevant Taxes) equals the amount that would have been received if such deduction or withholding were not required or made; and
 - (ii) promptly provide to HSBC official receipts or other documentation acceptable to HSBC evidencing the payment of any Taxes or any such amount withheld or deducted to the relevant Authority.

6.3 Payment to be made on Business Day

Whenever any payment becomes due in respect of the Agreement on a day which is not a Business Day the due date will be the next Business Day unless that day falls after the relevant Maturity Date, in which case the due date will be the previous Business Day.

6.4 Appropriation where insufficient moneys available

Where amounts received by HSBC are not sufficient to make all the payments required, those amounts shall be appropriated as between principal, interest (including capitalised interest) and other amounts as HSBC determines in its absolute discretion.

6.5 Cash Cover

- (a) Any amount paid to or held by HSBC in respect of a contingent liability under or in connection with any amount that is contingently owing by the Customer, will be held by HSBC by way of cash cover for such contingent liabilities in a suspense account.
- (b) All such amounts will accrue and be credited interest at a rate and in the manner determined by HSBC from time to time.
- (c) Without limiting any other provision of the Agreement, HSBC may at any time apply those amounts held (including interest accrued) in payment of any moneys then payable by the Customer to HSBC.

7. Terms for Guarantee Facilities

7.1 Form of HSBC Guarantees

Each HSBC Guarantee must be in the form determined by HSBC from time to time.

7.2 ICC Rules for Standbys

Each HSBC Guarantee which is a standby letter of credit will be issued subject to the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits current at the time of issuance.

7.3 Limit on Guarantees issued

The Customer must ensure that no Drawdown Notice is delivered for:

- (a) an HSBC Guarantee that extends beyond the Expiry Date (if any) specified in the Facility Schedule; or
- (b) an HSBC Guarantee to a Beneficiary or class of Beneficiary not mentioned in the Facility Schedule.

7.4 Claims

- (a) HSBC may honour any complying demand under an HSBC Guarantee.
- (b) In dealing with any demand under an HSBC Guarantee, HSBC will be required only to assess whether a complying demand has been made.
- (c) As between HSBC and the Customer, it is agreed that no demand under an HSBC Guarantee will be taken, or may be claimed by the Customer, to be non-complying by reason only of the following matters, and HSBC will have no liability or responsibility to the Customer to make reference to or enquiry of, or to seek confirmation or take account of the following matters:
 - (i) underlying relationship between the Customer and the Beneficiary;
 - (ii) the description, quantity, weight, quality, condition, packing, delivery, value or existence of, or any other matter relating to, any goods, services or other performance or data to which the HSBC Guarantee relates;
 - (iii) the good faith, acts, omissions, solvency, performance, standing or statements of the Customer, the Beneficiary or any other person;
 - (iv) the form, sufficiency, accuracy, genuineness, falsification, or legal effect of any signature or document presented to HSBC;
 - (v) the general or particular statements made in, or superimposed on, any document presented to HSBC;
 - (vi) any error in translation or any misinterpretation of a technical term in any document presented to HSBC;
 - (vii) any delay, loss in transit, mutilation or other error arising in the transmission of any document; or
 - (viii) any equivalent matter claimed by any person to affect the correctness or validity of any demand under an HSBC Guarantee.
- (d) HSBC is not released from liability under an HSBC Guarantee and may honour an otherwise complying demand despite:
 - (i) any dispute between the Customer and the Beneficiary;
 - (ii) any termination, cancellation or other expiry (whether express or implied by the lapse of time or otherwise) of the underlying relationship between the Customer and the Beneficiary;
 - (iii) no demand having been made on, or no notice of the demand having been given to, the Customer;
 - (iv) the Customer having made any payment to the Beneficiary;
 - (v) any return of the HSBC Guarantee (unless the HSBC Guarantee is expressed to expire thereupon);
 - (vi) any condition or qualification of the HSBC Guarantee (other than a date or the lapse of a period) in respect of which no document is specified to indicate compliance with that condition or qualification and the fulfilment of which cannot be determined from HSBC's own records or from an index specified in the HSBC Guarantee;
 - (vii) any right of set-off or other claim or defence the Customer has against the Beneficiary; or
 - (viii) any direction by the Customer to HSBC not to make the payment.
- (e) HSBC may exercise (or not exercise) any right, power or discretion given to it in an HSBC Guarantee (including any right to pay out, terminate, cancel or not renew an HSBC Guarantee), without reference to the Customer and without liability or responsibility to the Customer for the exercise (or non-exercise) of that right, power or discretion.
- (f) Where HSBC uses the services of another party for the purpose of giving effect to the Customer's instructions in connection with an HSBC Guarantee, it does so for the account and at the risk of the Customer.
- (g) HSBC is not obliged at any time to commence, pursue or defend any legal proceedings or other process in connection with any demand under an HSBC Guarantee.
- (h) Nothing in paragraphs (a) to (g) above is intended to exempt HSBC from liability or responsibility for any failure by HSBC to act in good faith.

7.5 Payment by the Customer

The Customer indemnifies HSBC for, and must pay to HSBC on demand:

- (a) all amounts that HSBC pays or is required to pay under an HSBC Guarantee;
- (b) all commissions, fees, charges, interest on overdue payments and expenses incurred or to be incurred by HSBC under or in connection with an HSBC Guarantee; and

- (c) all other costs, losses, liabilities and expenses incurred or to be incurred by HSBC under or in connection with an HSBC Guarantee, including without limitation in relation to:
- (i) issuing an HSBC Guarantee;
 - (ii) any payment or claim for payment under an HSBC Guarantee;
 - (iii) anything done by a Beneficiary or any other person in relation to or in reliance on an HSBC Guarantee; or
 - (iv) any obligations and responsibilities imposed by foreign laws and usages (including where those foreign laws and usages impose terms into an HSBC Guarantee that override its specified terms).

7.6 Cancellation

The Customer must, immediately after the cancellation of any Guarantee Sub-Facility by HSBC, procure that all HSBC's Guarantees issued by HSBC in connection with that Guarantee Sub-Facility be returned to HSBC or, unless notified otherwise by HSBC, provide cash cover to HSBC in accordance with clause 6.5.

8. Review of Facility

8.1 Periodic review

Without prejudice to HSBC's rights under the Agreement, HSBC may, with or without notification to the Customer, review each Facility from time to time which normally will be at least once in every calendar year. Following a review, HSBC may change the terms of the Facilities or exercise any of its Cancellation Rights.

8.2 Notice of changes

HSBC will give the Customer at least 14 days written notice of any change to the terms of the Facilities or to the exercise of its Cancellation Rights pursuant to clause 8.1. If the Customer does not accept the changes to the terms, it must notify HSBC within 14 days of receipt of the notice from HSBC, following which HSBC will be entitled to exercise its Cancellation Rights immediately.

8.3 Financial Undertaking Review

If there is any change to NZ GAAP which, in the opinion of HSBC alters the manner in which a financial undertaking set out in the Agreement is calculated or the economic effect of such calculation, the Customer and HSBC agree to discuss in good faith for a period of 20 Business Days any necessary adjustment which may be required to such financial undertaking to ensure that it remains, in substance, unaffected by the change to NZ GAAP. If, at the expiry of 60 days from the earlier of the date of the change occurring or the date of the request to negotiate, the Customer and HSBC have failed to reach agreement on such changes then upon the expiration of a further 30 days the Customer must prepare and deliver to HSBC a set of financial statements prepared on the basis of NZ GAAP (as it was at the date of the Agreement) to enable HSBC to ascertain whether a financial undertaking set out in the Agreement has been breached by reference to those financial statements.

8.4 Limitation

Nothing in this clause limits HSBC's rights to cancel a Facility or to require repayment of the Amount Owing if it were otherwise entitled to do so under the Agreement.

9. Increased costs/illegality

9.1 Increased costs

This clause applies if:

- (a) after the date of the Agreement, a change in:
 - (i) a law or requirement of an Authority or a new law or requirement of an Authority;
 - (ii) a Tax or a new Tax; orthe interpretation of a law or requirement of an Authority or a Tax,
- (iii) affects facilities of the kind contemplated in the Agreement; and
- (b) its effect, in HSBC's opinion, directly or indirectly:
 - (i) increases the cost to any member of the HSBC Group of providing or maintaining the Facilities or of providing funds under them; or
 - (ii) reduces the effective rate of return to any member of the HSBC Group (whether on capital, assets, deposits or otherwise) on the Facilities.

9.2 Payment

The Customer agrees to pay to HSBC, on demand, the amount calculated by HSBC as necessary to compensate HSBC for the increase in cost or reduction in rate referred to in clause 9.1. The amount payable will be calculated by HSBC from the day it first incurred the cost or suffered the reduction.

9.3 Illegality

If HSBC gives the Customer written notice that, in its opinion it has become illegal in a jurisdiction or otherwise impracticable for HSBC to continue to make a Facility available, HSBC's obligations in relation to the Facility will terminate. The Customer must pay the Amount Owing to HSBC in full on the date specified in the notice.

9.4 Market Disruption

- (a) If the cost to HSBC of funding an Advance exceeds the Base Rate (on the basis of the relevant screen rate), the Base Rate will be HSBC's cost of funding the Advance and HSBC shall promptly notify the Customer.
- (b) HSBC shall then negotiate with the Customer until not more than 20 Business Days after HSBC gives the notification with a view to agreeing an alternative basis for determining the rate of interest. Any alternative basis agreed in writing by HSBC and the Customer within the 20 Business Day period shall take effect in accordance with its terms.
- (c) If an alternative basis is not so agreed, the Facility shall be cancelled and the Customer shall repay each Advance together with all accrued interest thereon at the end of the Interest Period.

9.5 Top-up

If at any time HSBC, in its absolute discretion, determines that:

- (a) the Base Currency Equivalent of the aggregate Principal Outstanding under any Facilities that are subject to the same Group Limit exceeds the Group Limit;
- (b) the Base Currency Equivalent of the aggregate Principal Outstanding under any Facilities that are subject to the same Combined Limit exceeds the Combined Limit;
- (c) the Base Currency Equivalent of the Principal Outstanding under any Facility exceeds the Facility Limit;
- (d) the Base Currency Equivalent of the Principal Outstanding under any Sub-Facility exceeds the Sub-Facility Limit; or
- (e) the NZD Equivalent of the Principal Outstanding comprising Alternative Currency Advances exceeds the Maximum Exposure, (the amount of the excess called the "Shortfall") then, without prejudice to any other rights which HSBC may have under the Agreement, HSBC may, in its discretion, give notice to the Customer requiring the Customer within five Business Days to do any of the following:
 - (i) provide HSBC with additional security with a value (in the opinion of HSBC) of not less than the Shortfall, which security is to be, in form and substance, satisfactory to HSBC;
 - (ii) deposit in an account with HSBC, in the currency HSBC specifies, cash deposits in cleared funds equal to the Base Currency Equivalent of the Shortfall, which deposits, subject to the prior written consent of HSBC, will be incapable of assignment or of being the subject of a security interest or of being withdrawn by the Customer for so long as the Shortfall would otherwise exist; or
 - (iii) repay to HSBC an amount equal to or equivalent to the Shortfall, and the Customer shall comply with that notice.

10. Trusts/Partnerships/Joint Ventures

The terms set out in Schedule 1 shall apply where a Customer has entered into the Agreement as:

- (a) trustee of a Trust, whether or not that Trust is disclosed to HSBC;
- (b) as a partner in a partnership; or
- (c) as a joint venturer in a joint venture.

11. Representations and warranties

11.1 Representations and warranties by Customer

The Customer makes the declarations set out in Schedule 2 in respect of itself and each Transaction Party. The Customer acknowledges that HSBC relies on these declarations in entering into the Transaction Documents.

11.2 Repetition

The representations and warranties contained in Schedule 2 shall be deemed to be repeated every day the Amount Owing remains outstanding or contingently outstanding and on the issue of each Drawdown Notice. The Customer must notify HSBC if at any time these declarations cease to be correct.

12. Undertakings

Unless HSBC otherwise agrees in writing, the Customer undertakes that it will and where specified in Schedule 3, it will procure each Security Provider to, comply with the undertakings contained in Schedule 3.

13. Default Events

Each of the events or circumstances contained in Schedule 4 are Default Events and apply to all Term Facilities.

14. Valuations

HSBC may complete, obtain or require the Customer to obtain, at any time and from time to time, a valuation or revaluation of the Customer's property or assets. Any such valuation will be at the Customer's cost. The Customer authorises HSBC to debit the cost to any account the Customer has with HSBC. HSBC will not be obliged to discuss the results of the valuation or revaluation with the Customer. HSBC is not liable to the Customer in respect of the contents of any valuation it undertakes, obtains or asks the Customer to obtain under the Agreement.

15. Fees and charges

15.1 Fees and charges

- (a) HSBC may debit any of the Customer's accounts with HSBC for the relevant amount of fees and charges payable or may invoice the Customer requesting payment of such fees and charges.
- (b) In respect to fees for a Facility specified in a Facility Schedule, unless otherwise stated, these fees accrue from the date of the Agreement at the rate specified in the Facility Schedule, and are non-refundable and non-rebateable. The fees are calculated on the actual number of days elapsed and a year of 365 days for NZD and 360 days or otherwise in accordance with the relevant market practice for Alternative Currencies and payable as specified in the Facility Schedule.

15.2 Variation of fees and charges

- (a) HSBC may do any of the following:
 - (i) vary any fees and charges;
 - (ii) introduce new fees and charges; and
 - (iii) vary the frequency or time for payment of fees and charges.
- (b) HSBC may do any of the above by:
 - (i) a notice in writing to the Customer; or
 - (ii) advertising the change in a major national newspaper, on or before the change takes effect, having regard to any period of notice that HSBC is required to give under any applicable law or code of conduct, or if there is no mandatory notice period, whatever period of notice HSBC determines.

16. Indemnities

16.1 General indemnity

The Customer unconditionally and irrevocably indemnifies HSBC, its officers and employees against any Claim suffered or incurred or payable by HSBC or its correspondents or agents in connection with or arising directly or indirectly out of:

- (a) breach by the Customer of the Agreement or any instrument issued in connection with an Obligation;
- (b) HSBC accepting and acting in good faith on any email, telex, facsimile or telephone instructions purporting to originate from the Customer or given by an agent of the Customer;
- (c) in respect of Documentary Credits, HSBC acting on any representations made by the Customer to HSBC relating to a Documentary Credit, or any failure or refusal on the part of HSBC to honour a Documentary Credit because of a court order or other similar obligation, or because HSBC is of the view that a transaction to which a Documentary Credit relates is tainted by fraud;
- (d) a Default Event or Potential Default Event or the exercise or attempted exercise by HSBC of a right or power arising from a Default Event or Potential Default Event;
- (e) funding, or making arrangements to fund, an Advance requested by the Customer in accordance with the Agreement but not made for any reason (other than by reason of default or negligence by HSBC alone);
- (f) the failure by the Customer to make a prepayment in accordance with a notice of prepayment;
- (g) a repayment of an Advance or any part of an Advance being made on any day other than the last day of an Interest Period or a Fixed Rate Period for that Advance and in accordance with the Agreement; or
- (h) the termination of any hedging, swap, option or other treasury product agreement or instrument entered into by HSBC by reason of or in connection with any financial accommodation made available to the Customer, including without limitation, liability, loss, costs, charges or expenses on account of funds borrowed, contracted for or used to fund or for the purposes of any amount payable under a Facility.

16.2 Currency indemnity

If an amount payable by a Transaction Party under a Transaction Document is received or recovered by HSBC in a currency other than the currency in which it is due ("Due Currency") (whether under a judgment, in the winding up of a Transaction Party or otherwise) the:

- (a) obligations of the Transaction Party are discharged only to the extent that HSBC purchases the Due Currency with that other currency in accordance with its usual banking procedures on receipt of that amount; and
- (b) Customer indemnifies HSBC in respect of, and will immediately pay to HSBC, the amount of any shortfall between the amount in Due Currency which may be purchased under this clause 16.2, after deducting any costs of exchange and any other related costs and Taxes, and the relevant sum payable under the Transaction Documents.

16.3 Electronic Communication indemnity

In respect to the indemnity in clause 16.1(b), the Customer acknowledges:

- (a) that it requests and authorises HSBC to accept instructions from time to time, in connection with the Agreement and
- (b) any other arrangement with HSBC, by telephone, electronic mail or facsimile (without requiring written confirmation bearing actual signatures or written confirmation by mail ("Instructions");
- (c) the risks inherent in the giving of instructions by verbal communications, facsimile and/or other form of telecommunication. Fraudulent or other unauthorised instructions may be transmitted by electronic communication. Facsimile instructions may be transmitted to wrong numbers, may never reach HSBC and may become known to third parties;
- (d) that good and proper receipt by HSBC of the Instructions will be conclusive evidence of such receipt;
- (e) that HSBC will not be under any duty to verify the identity of the persons giving Instructions purportedly in the name of the Customer and any transaction made pursuant to those Instructions will be binding upon the Customer whether made with or without the Customer's authority, knowledge or consent; and
- (f) HSBC is not required to act on Instructions and may, at its discretion, choose whether or not to accept and/or act on Instructions in any case.

16.4 Customer Obligations not affected

- (a) To the fullest extent permitted by applicable law, the Customer's obligations under the Agreement are not affected or in any way limited by any:
 - (i) negligence or default on the part of HSBC or its employees;
 - (ii) communication being inaccurately transmitted or received or being sent by an unauthorised person;
 - (iii) Transaction Document being, or being affected by, any invalidity or impossibility or illegality in performance or any law or act of any Authority or arbitrator;
 - (iv) failure to obtain any necessary Authorisation for any Transaction Document;
 - (v) set-off, counterclaim, defence, deduction or other claim the Customer has against HSBC; or
 - (vi) falsity, inaccuracy, insufficiency or forgery of or in any demand, certificate, declaration or other document that on its face purports to be signed or authorised under or in respect of any product or service governed by the Agreement.
- (b) The indemnities in the Agreement are continuing obligations of the Customer, separate and independent from the other obligations of the Customer and survive the termination of the Agreement or any other Transaction Document.
- (c) It is not necessary for HSBC to incur expense or make payment before enforcing a right of indemnity under the Agreement.

17. Costs and Expenses

The Customer must reimburse HSBC for its costs and expenses in relation to the following:

- (a) preparing, negotiating, executing and completing any Transaction Document;
- (b) any consent, approval, waiver, amendment, release or discharge relating to any Transaction Document;
- (c) any enquiry by an Authority relating to a Transaction Party or any other asset the subject of any Transaction Document;
- (d) the actual, attempted or contemplated enforcement of, or exercise of its powers under any Transaction Document; and
- (e) all Taxes including stamp, transaction and similar duties and charges (including fines and penalties) payable in connection with any Transaction Document.

This includes expenses incurred in any review or environmental audit, conducting property valuations or in retaining consultants to evaluate matters of material concern to HSBC, and administrative costs including overheads and the salaries and wages of its employees and agents.

It also includes legal fees (including in-house lawyers charged at their usual rates) on a full indemnity basis in relation to any of the above.

18. GST and tax compliance

- (a) The Customer acknowledges that the Customer is solely responsible for understanding and complying with the Customer's tax obligations (including but not limited to, tax payment or filing of returns or other required documentation relating to the payment of all relevant taxes) in all jurisdictions in which those obligations arise and relating to the opening and use of account(s) and/or Services provided by HSBC and/or members of the HSBC Group. Each Connected Person acting in their capacity as a Connected Person (and not in their personal capacity) also makes the same acknowledgement in their own regard. Certain countries may have tax legislation with extra-territorial effect regardless of the Customer's or Connected Person's place of domicile, residence, citizenship or incorporation. Neither HSBC nor any member of the HSBC Group provide tax advice. The Customer is advised to seek independent legal and/or tax advice. Neither HSBC nor any member of the HSBC Group have responsibility in respect of the Customer's tax obligations in any jurisdiction which they may arise including any that may relate specifically to the opening and use of account(s) and/or Services provided by HSBC and/or members of the HSBC Group.
- (b) All amounts paid or payable to HSBC under the agreement and the Transaction Documents are expressed on a GST exclusive basis. The Customer must pay GST or other Tax (if necessary) on any amount that it is required to pay HSBC.

19. Assignments and transfers

19.1 Customer must not assign

The Customer may not assign or transfer any of its rights or obligations under any Transaction Document without the prior written consent of HSBC.

19.2 HSBC

HSBC may assign or transfer a Transaction Document and its rights under any Transaction Document to any other person, free of any set off, equity or cross claim (to the maximum extent allowed by law) which the Customer would have against HSBC or HSBC's assignee or transferee.

19.3 Disclosure of information by HSBC

The Customer agrees that HSBC may disclose information about any Transaction Party for the purpose of enabling an actual or proposed assignee of HSBC, or participant or sub-participant of HSBC's rights in respect of the Customer, to evaluate the transaction intended to be the subject of the assignment, participation or sub-participation.

20. Notices

20.1 Notices from HSBC

A representative of HSBC may give the Customer a notice, request, consent or other document (including court proceedings) ("Notice") by:

- (a) delivering it personally;
- (b) posting it or leaving it at the Customer's address last known to HSBC; or
- (c) sending it by fax or (if the Customer agrees, as set out in clause 20.2 below) by other electronic means to any number or address the Customer gives HSBC.

20.2 Electronic communications from HSBC

Unless any applicable law or code of conduct provides otherwise, if the Customer agrees to HSBC doing so, HSBC may give a Notice by:

- (a) electronic communication to a device, electronic equipment or electronic address nominated by the Customer; or
- (b) displaying information at HSBC's website www.hsbc.co.nz.

The Customer may at any time vary the device, electronic means or electronic address it has nominated, or terminate its arrangement with HSBC that it can notify changes to the Customer by one or both of the methods of electronic communication above.

20.3 Notices from the Customer

Subject to HSBC accepting the Customer's request made pursuant to clause 16.3 in connection with any communication, all Notices from the Customer relating to a Transaction Document:

- (a) must be in writing; and
- (b) must be sent to the Lending Office of HSBC or to any other address specified by HSBC.

20.4 When a Notice is received

Any Notice will be taken to have been given to the recipient:

- (a) for a Notice sent by post, on the date when, in the ordinary course of the post it could have been expected to be

received but in any event no later than three days after it was posted. This applies even if the Notice is returned undelivered;

- (b) for a Notice sent by fax or other electronic transmission, at the time and on the date when the sending machine indicates transmission has occurred unless a code of conduct provides otherwise; and
- (c) for a Notice given personally or left at an address, at the time and on the date that it is given or left.

However, if the Notice is received after 4:00 pm on that day, or on a day that is not a Business Day in the place of receipt, it will be deemed to have been received on the next Business Day.

21. Set off

If the Customer has an account with HSBC, HSBC may (but need not) at any time, apply any credit balance in the account or debit an Overdraft Account towards satisfaction of any Amount Owing.

This includes any Amounts Owing pursuant to clauses 15, 16, 17 and 18.

The Customer irrevocably authorises HSBC to do anything necessary for this purpose including:

- (a) sign any document and effect appropriate currency exchanges) for that purpose; and
- (b) debit the Customer's account even if such debit will put the account into overdraft, and the Customer agrees to pay interest on the overdue amount in accordance with clause 4.

To the maximum extent allowed by law the Customer gives up any right to set off any amounts HSBC owes the Customer against amounts the Customer owes under the Agreement.

22. Acknowledgment of exchange of information and consent

This clause 22 explains how HSBC will use the Customer's information and that of Connected Persons. By using the Services, the Customer agrees that HSBC and members of the HSBC Group shall use Customer Information in accordance with this clause.

- (a) Customer Information will not be disclosed to anyone (including other members of the HSBC Group), other than where:
 - (i) HSBC is legally required to disclose;
 - (ii) HSBC has a public duty to disclose;
 - (iii) HSBC's or a third party's legitimate business purposes require disclosure;
 - (iv) the disclosure is made with the Customer's consent; or
 - (v) it is disclosed as set out in this clause.
- (b) HSBC and other members of the HSBC Group may collect, use and share Customer Information (including relevant information about the Customer, the Customer's transactions, the Customer's use of HSBC's products and services, and the Customer's relationships with the HSBC Group). Customer Information may be requested by HSBC or on HSBC's behalf or that of the HSBC Group, and may be collected from the Customer directly, from a person acting on the Customer's behalf, from other sources (including from publically available information), and it may be generated or combined with other information available to HSBC or any member of the HSBC Group.
- (c) When dealing with HSBC by telephone, conversation with HSBC may be recorded for verification, authentication, training quality control or evidential purposes.
- (d) Customer Information will be processed, used, transferred and disclosed by HSBC and/or members of the HSBC Group in connection with the following purposes:
 - (i) the provision of Services and to approve, manage, administer or effect any transactions that the Customer requests or authorises;
 - (ii) meeting Compliance Obligations;
 - (iii) conducting Financial Crime Risk Management Activity;
 - (iv) collecting any amounts due and outstanding from the Customer;
 - (v) conducting credit checks and obtaining or providing credit references, as described in more detail below;
 - (vi) enforcing or defending HSBC's rights, or those of a member of the HSBC Group;
 - (vii) for HSBC's internal operational requirements or those of the HSBC Group (including credit and risk management, system or product development and planning, insurance, audit and administrative purposes); and
 - (viii) maintaining HSBC's overall relationship with the Customer (including marketing or promoting financial services or related products and market research).
- (e) By using the Services, the Customer agrees that HSBC may, as necessary and appropriate for the purposes set out in clause 22(d) (the "Purposes"), transfer and disclose any Customer Information to the following recipients globally (who may also process, use, transfer and disclose such Customer Information for the Purposes):
 - (i) any member of the HSBC Group;
 - (ii) any sub-contractors, agents, service providers, or associates of the HSBC Group (including their employees, directors and officers);

- (iii) any Authorities;
 - (iv) persons acting on the Customer's behalf, payment recipients, beneficiaries, account nominees, intermediary, correspondent and agent banks, clearing houses, clearing or settlement systems, market counterparties, upstream withholding agents, swap or trade repositories, stock exchanges, companies in which the Customer has an interest in securities (where such securities are held by HSBC for the Customer);
 - (v) any party to a transaction acquiring interest in, or assuming risk in, or in connection with, the Services;
 - (vi) other financial institutions, credit reporting/reference agencies or credit bureaus, for the purposes of obtaining or providing credit references, as described in more detail below;
 - (vii) any third party fund manager who provides asset management services to the Customer;
 - (viii) any introducing broker to whom HSBC provides introductions or referrals; and
 - (ix) in connection with any HSBC business transfer, disposal, merger or acquisition, wherever located, including in jurisdictions which do not have data protection laws that provide the same level of protection as the jurisdiction in which the Services are supplied.
- (f) As part of the application and review process for providing and maintaining the Services, the Customer (and each Connected Person) acknowledges that Personal Data will be disclosed to credit reporting agencies for the purpose of obtaining credit checks at any time and that:
- (i) credit reporting agencies will provide HSBC with information about the Customer or a Connected Person as requested;
 - (ii) HSBC will give the Customer's Personal Data to the credit reporting agencies and that the credit reporting agencies will hold that information on their systems and use it to provide their credit reporting service to other customers or users of that service;
 - (iii) when other customers of the credit reporting agencies use the same credit reporting service the credit reporting agencies may give the Customer's Personal Data to those customers;
 - (iv) if the Customer is in default of any payment obligation to HSBC, information about that default may be given to credit reporting agencies and credit reporting agencies may give that information about the Customer's default to other customers or users of that credit reporting service;
 - (v) HSBC may use credit reporting services in the future for purposes related to the provision of credit or account maintenance. This may include using a credit provider's monitoring services to receive updates if any of the information held about the Customer changes; and
 - (vi) the Privacy Act 1993 and Credit Reporting Privacy Code 2004 give the Customer the right to access and correct personal information held by a credit reporting agency. Contact details for credit reporting agencies HSBC uses are available on request.
- (g) The Customer agrees to inform HSBC promptly, and in any event, within 30 days in writing if there are any changes to Customer Information supplied to HSBC or a member of the HSBC Group from time to time, and to respond promptly to any request from HSBC or a member of the HSBC Group.
- (h) The Customer must ensure that every Connected Person whose information (including Personal Data or Tax Information) the Customer (or anyone else on the Customer's behalf) provided, or will from time to time provide, to us or a member of the HSBC Group has been notified of and agreed to the processing, disclosure and transfer of their information as set out in the Agreement before their information is provided. The Customer must at the same time advise them that they have rights of access to, and correction of, their Personal Data.
- (i) Where:
- (i) the Customer fails to provide promptly Customer Information that HSBC reasonably requested; or
 - (ii) the Customer withholds or withdraws any consents that HSBC may need to process, use, transfer or disclose Customer Information for the Purposes (except for purposes connected with marketing or promoting products and services to the Customer); or
 - (iii) HSBC has, or a member of the HSBC Group has, suspicions regarding Financial Crime or an associated risk, HSBC may:
 - (iv) be unable to provide new, or continue to provide all or part of the, Services to the Customer and reserve the right to terminate HSBC's relationship with the Customer;
 - (v) take actions necessary for HSBC or a member of the HSBC Group to meet the Compliance Obligations; and/or
 - (vi) block, transfer or close the Customer's account(s) where permitted under local Laws.
- In addition, if the Customer fails to supply promptly the Customer's, or a Connected Person's, Tax Information and accompanying statements, waivers and consents, as may be requested, then HSBC may make HSBC's own judgment with respect to the Customer's status, including whether the Customer is reportable to a Tax Authority, which may require HSBC or other persons to withhold amounts as may be legally required by any Tax Authority and paying such amounts to the appropriate Tax Authority.
- (j) Whether it is processed in a home jurisdiction or overseas, in accordance with data protection legislation, Customer Information will be protected by a strict code of secrecy and security which all members of the HSBC Group, their staff and third parties are subject to.

- (k) Under the Privacy Act 1993 and any other relevant data protection legislation, the Customer has the right to request copies of certain categories of Personal Data which may be held and to request that any errors in such data are corrected. A fee may be payable by the Customer for access to, or correction of, the Customer's Personal Data.

23. Financial Crime Risk Management Activity

- (a) HSBC, and members of the HSBC Group, are required, and may take any action relating to or in Financial Crime Risk Management Activity. Such action may include, but is not limited to:
- (i) screening, intercepting and investigating any instruction, communication, drawdown request, application for Services, or any payment sent to or by the Customer, or on the Customer's behalf;
 - (ii) investigating the source of or intended recipient of funds;
 - (iii) combining Customer Information with other related information in the possession of the HSBC Group; and/or
 - (iv) making further enquiries as to the status of a person or entity, whether they are subject to a sanctions regime, or confirming the Customer's identity and status.
- (b) Exceptionally, HSBC's Financial Crime Risk Management Activity may lead to HSBC delaying, blocking or refusing the making or clearing of any payment, the processing of the Customer's instructions or application for Services or the provision of all or part of the Services. To the extent permissible by law, neither HSBC nor any other member of HSBC Group shall be liable to the Customer or any third party in respect of any loss (however it arose) that was suffered or incurred by the Customer or a third party, caused in whole or in part in connection with the undertaking of Financial Crime Risk Management Activity.
- (c) The Customer acknowledges and agrees that neither HSBC nor any member of the HSBC Group warrants that any information on HSBC's systems relating to any payment messages and the Customer's instructions which are the subject of any action taken in connection with any Financial Crime Risk Management Activity is accurate, current or up-to-date at the time it is accessed, whilst such action taken is being taken.

24. Related Parties

Section 83 of Hong Kong's Banking Ordinance has imposed on HSBC certain limitations on advances to persons related to its directors or employees. Upon accepting the Agreement, the Customer must advise HSBC whether it is in any way related to any of HSBC's directors or employees within the meaning of Section 83 of the Banking Ordinance and, in the absence of such advice, HSBC will assume that the Customer is not so related. The Customer shall immediately advise HSBC in writing if subsequent to signing the Agreement it becomes aware of such a situation.

25. Standard Provisions

25.1 Waivers, remedies cumulative

HSBC may form opinions, make determinations, and exercise rights, powers and remedies, in its absolute discretion. The rights that HSBC has under the Transaction Documents cannot be waived except by HSBC giving the Customer written notice waiving the particular right. HSBC does not waive any right or remedy merely because it does not exercise it fully or at a given time. The right or remedy can be exercised again or at a later date.

25.2 Consents and approvals/certificates

Except where otherwise expressly stated, HSBC may in its absolute discretion, give or refuse approvals and consents. A certificate signed by HSBC stating a rate, an amount due, owing or payable, or any other matter for the purpose of a Transaction Document, is, in the absence of manifest error, conclusive.

25.3 Further assurances/completion of document

- (a) The Customer must, at its own expense, whenever requested by HSBC, promptly do or cause to be done, and cause each Security Provider to do or cause to be done, anything which HSBC considers necessary or desirable to:
- (i) give full effect to a Transaction Document; or
 - (ii) more fully secure the rights, remedies and powers of HSBC under a Transaction Document or to enable HSBC to exercise those rights, remedies and powers, including signing and delivering documents.
- (b) HSBC may complete any document executed by the Customer or make any amendment to a Transaction Document which HSBC considers necessary for registration or to ensure that the Transaction Document is correct or effective.

25.4 Moratorium legislation

To the full extent permitted by law all legislation which at any time directly or indirectly lessens, varies or affects in favour of the Customer or the Security Provider any obligation under a Transaction Document or delays, prevents or prejudicially affects the exercise by HSBC of any right, power or remedy conferred by any Transaction Document is excluded from the Transaction Documents.

25.5 Counterparts

The Agreement may be executed in any number of counterparts, each of which when taken together will constitute one and the same instrument. Each party may enter into the Agreement by signing such counterparty copy.

25.6 Facsimile signature

With HSBC's prior consent, the parties may sign a counterpart copy of the Agreement by photocopying a facsimile of the Agreement and signing that photocopy. The transmission by facsimile by a Party to the other of the counterpart copy of the Agreement signed by that Party will be deemed proof of signature of the original and the signed facsimile so transmitted will be deemed to be an original.

25.7 Severability

- (a) A construction of a Transaction Document that results in all provisions being enforceable is to be preferred to a construction that does not.
- (b) If, despite the application of clause 25.8(a), a provision of a Transaction Document is illegal or unenforceable:
 - (i) and it would be legal, enforceable and not have a contrary meaning if words were omitted, then those words are omitted; and
 - (ii) in any other case, the whole provision is severed, and the remainder of the Transaction Document continues in force. If the provision subsequently becomes legal and enforceable, the provision will be reinstated.

25.8 Service failures and disruptions

To the fullest extent permitted by applicable law:

- (a) HSBC accepts no responsibility and will not be liable for any loss or damage for or in connection with any service failures or disruptions (including but not limited to, loss of data) attributable to a systems or equipment failure or due to reliance by HSBC on third party products or interdependencies including, but not limited to, electricity or telecommunications.
- (b) HSBC accepts no liability or responsibility for the consequences arising out of the interruption of its business by acts of god, riots, civil commotions, insurrections, wars or any other causes beyond its control, or by strikes or lockout

25.9 Limitation of liability

- (a) Except as expressly provided in this clause and unless a law that cannot be excluded states otherwise:
 - (i) all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the provision of any product or service by HSBC, are excluded; and
 - (ii) HSBC shall not be under any liability to the Customer in respect of any delay, loss or damage (including consequential loss or damage) however caused which may be suffered or incurred or which may arise directly or indirectly in respect of the provision of any product or service by HSBC.
- (b) HSBC's liability will be limited to any direct loss suffered by the Customer arising from the deliberate misconduct of HSBC or its employees in respect of the provision of any product or service by HSBC.

25.10 No merger

- (a) No Transaction Document merges, discharges, postpones or adversely affects in any other way the rights, remedies or powers of HSBC under any other Transaction Document.
- (b) If a judgment is made in favour of HSBC against the Customer or a Security Provider in respect of the Amount Owing or any part of it, HSBC holds the judgment collaterally with the Transaction Documents as security for payment of the Amount Owing and no Transaction Document merges in the judgment.

25.11 Governing law and jurisdiction

The Agreement is governed by and will be construed in accordance with New Zealand law and the Parties submit to the nonexclusive jurisdiction of the courts of New Zealand.

25.12 Information on fees, charges and interest rates

On request, HSBC will give the Customer information on current fees and charges and on current interest rates.

25.13 Changes to interest rates

If an interest rate applying to a Facility is variable, HSBC may, at its discretion, vary that rate.

25.14 Cancellation of direct debit requests

If, in relation to a Facility, the Customer asks HSBC to cancel a direct debit authorising:

- (a) HSBC or another financial institution to deduct funds from an account nominated by the Customer; or
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- (b) HSBC to make payments to such account by deducting funds with another financial institution, HSBC will do so promptly. However, where HSBC cancels a direct debit for the Customer's Facility repayments, the Customer must make other arrangements to make the Facility repayments, or it may become in default of the Facility.

25.15 Joint debtors

If there is more than one Customer, any one or more of those Customers may terminate its liability in respect of future accommodation under the Agreement by written notice to HSBC. If a Customer does this a Default Event will have occurred and HSBC will then have Cancellation Rights in respect of the Agreement.

A Customer will still be liable for any Amount Owing before the notice is received by HSBC.

25.16 Exchange rate movements

If the Customer enters into a Facility in one currency (e.g. Hong Kong Dollars) and its receivables into an account are in another currency (e.g. New Zealand Dollars), it will face exchange rate risk. Customers with receivables in a different currency to the currency of the Facility should consider an appropriate mechanism to protect against adverse movements in their position. HSBC offers a hedging method to its customers, forward foreign exchange contracts, to manage/hedge this risk.

25.17 Survival of Agreement

The Agreement shall continue to apply notwithstanding its termination, any termination by HSBC or a member of the HSBC Group of the provision of any Services to the Customer or the closure of any account.

Schedule 1

Trusts/Partnerships/Joint Ventures

Trustee – If the Customer is a trustee the following provisions apply:

1. The Customer makes the following declarations:
 - (a) It enters into the Transaction Documents in its own capacity (unless it is an Independent Trustee) and as trustee of the Trust.
 - (b) The relevant Trust document is valid and complies with the law.
 - (c) Any copies of the Trust documents the Customer has given HSBC are true and complete copies and disclose everything about the Trust.
 - (d) The Customer, and anyone else who signs any Transaction Document as trustee, are properly appointed and are the only trustee(s) of the Trust.
 - (e) The Customer has always complied with the terms of the Trust, and its duties and powers.
 - (f) The Customer has a right of indemnity from the Trust assets in respect of each Transaction Document.
 - (g) It is proper for the Customer, as trustee, to execute each Transaction Document to which it is expressed to be a party and do anything those Transaction Documents contemplate that the Customer will do. Those things do or will benefit the beneficiaries of the Trust.
 - (h) None of the Trust assets have been re-settled or set aside.
 - (i) The Trust has not terminated nor has any event for the vesting of the assets occurred.

The Customer acknowledges that HSBC relies on the above declarations. The Customer must make sure these declarations remain true at all times while there is any Amount Owing. The Customer must tell HSBC if, at any time, these declarations are no longer correct or if it cannot repeat them whenever HSBC provides the Customer with a loan or other financial accommodation covered by a Transaction Document.

2. The Customer must do the following.
 - (a) Properly sign each Transaction Document to which it is expressed to be a party under the terms of the Trust and in accordance with its duties and powers as trustee, or if there is any doubt as to the duties and powers of the trustee and all beneficiaries are over 18, obtain their written consent for the trustee to enter into the Transaction Documents.
 - (b) Comply with the terms of the Trust and its duties as trustee.
 - (c) Not do anything which may result in the loss of HSBC's right of indemnity from the Trust assets, or its own indemnity.
 - (d) Make sure there is no change of trustee without HSBC's prior written consent.
 - (e) If, despite the above, it is replaced or rejoined as trustee, make sure the new trustee becomes bound to HSBC's satisfaction by the Transaction Document to which it is expressed to be a party (or by a document or arrangement which are identical in effect).
 - (f) Not re-settle, set aside or distribute any of the assets of the Trust without HSBC's consent unless compelled to do so by the Trust deed.
 - (g) If requested by HSBC, the Customer must exercise any rights that it has against the Trust assets or the beneficiaries for the purpose of repaying the Amount Owing to HSBC. HSBC may exercise all the rights that the Customer may have against the Trust assets or the beneficiaries.
 - (h) Ensure the Trust deed is not amended or revoked without HSBC's prior written consent.
3. If the Customer enters into the Agreement in its capacity as an Independent Trustee of any Trust, the trustee will not be liable to pay or satisfy any obligation incurred by it under the Agreement out of any assets other than the assets of the Trust. This clause does not apply to the extent that the trustee does not have or has lost (for whatever reason) a right of indemnity for the assets of the Trust or where any representation or warranty made by the trustee in the Agreement or any other Transaction Document is incorrect.

Partnership or Joint Venture - If the Customer is a partnership or joint venture the following provisions apply:

1. the Transaction Documents bind all the partners or joint venturers jointly and severally. All references to the Customer are to the partners or joint venturers jointly and each partner or joint venturer alone. Any Notice or act by any one or more partner or joint venturer binds all partners or joint venturers;
2. the Transaction Documents continue to bind the partners or joint venturers despite the dissolution, or any change at any time in the constitution, of the partnership or joint venture. They continue to bind a partner or joint venturer even if that partner or joint venturer ceases to be a partner or joint venturer of the partnership or joint venture; and
3. the Amount Owing includes the amount owing by the partnership or a joint venture, even if the original partnership or joint venture has changed.

Schedule 2

Representations and Warranties

Representations and warranties

The Customer makes the following declarations:

1. **(Solvency)** It, and the Group as a whole, is solvent and there are reasonable grounds to expect that, on the execution of each Transaction Document and the entry into of the transaction contemplated under those documents, it will remain solvent.
2. **(Status)** If it is a company it is, and its subsidiaries (if any) are, duly incorporated and registered and validly existing under the laws of the jurisdiction under which they are registered.
3. **(Power)** It, and each of its subsidiaries (if any), has the power to enter into and perform its obligations under the Transaction Documents, to carry out the transactions contemplated by those documents and to carry on its business as now conducted or contemplated.
4. **(Authority)** It, and each of its subsidiaries, has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents and the transactions contemplated by those Transaction Documents.
5. **(Documents Binding)** Each Transaction Document to which it is expressed to be a party constitutes a valid and binding obligation enforceable against it in accordance with its terms, subject to any necessary stamping and registration and general equitable principles.
6. **(Transactions Permitted)** The execution and performance by it of the Transaction Documents to which it is expressed to be a party and each transaction contemplated under those documents did not and will not:
 - (a) violate a law or treaty or a judgment, ruling, order or decree of an Authority or Authorisation binding on it;
 - (b) if it is a company, trust or partnership, violate its constitution or other constituent documents;
 - (c) violate any obligation or agreement which is binding on it or its property;
 - (d) create or impose a Security Interest on any of its assets other than a Permitted Security Interest;
 - (e) allow a person to accelerate or cancel or liquidate an obligation with respect to Financial Indebtedness, or constitute a Default Event, cancellation event, prepayment event or similar event (whatever called) under an agreement relating to Financial Indebtedness, whether immediately or after notice or lapse of time or both; or
 - (f) if it is a company, trust or partnership, exceed any limits on its powers or the powers of its director(s), trustee(s) or partners.
7. **(Accounts):**
 - (a) The most recent Accounts provided to HSBC:
 - (i) give a true and fair view of the relevant person's and the Group's state of affairs and financial position as at the date to which the Accounts relate and the results of the relevant person's and the Group's operations during the period covered by the Accounts;
 - (ii) contain proper and adequate provisions for and fully disclose all of the relevant person's and the Group's actual and contingent liabilities as at the date to which the Accounts relate; and
 - (iii) were prepared in accordance with NZ GAAP, except for any departures from those standards which are disclosed in the Accounts.
 - (b) Since the date of the Accounts referred to in this clause were provided to HSBC, there has been no material adverse change in the relevant person's and the Group's financial condition, assets, reviews or business.
8. **(No Litigation)** No litigation, arbitration, Tax claim, dispute or administrative or other proceeding is current or pending or, to its knowledge, threatened, which may have a Material Adverse Effect against it or any of its subsidiaries.
9. **(No Default)** No Default Event or Potential Default Event has occurred or is continuing or is reasonably likely to result from any Advance or the entry into, the performance of, or any transaction contemplated by, a Transaction Document.
10. **(Authorisations and Consents)** Each Authorisation and consent that is required or desirable:
 - (a) to enable it to lawfully execute, deliver and perform its obligations under the Transaction Documents to which it is a party;
 - (b) to ensure the validity and enforceability of the Transaction Documents and the effectiveness or priority of each Security (where relevant) to which it is a party;
 - (c) to make the Transaction Documents to which it is a party admissible in evidence in its jurisdiction; and
 - (d) to carrying on its business as now conducted or contemplated,has been obtained or effected, is in full force and effect, has been complied with and all applicable fees have been paid.
11. **(No Misrepresentation)** All information it has given to HSBC is true, complete and accurate and it is not misleading by omission or otherwise.

12. **(Disclosure)** It has fully disclosed in writing to HSBC all facts of which it has knowledge or which it possesses which are material to HSBC's assessment of the nature and degree of risk undertaken by it in granting financial accommodation to the Customer.
13. **(Law)** It, and each of its subsidiaries, has complied with all laws or Authorisations binding on it.
14. **(Anti-bribery)** None of it or any of its Affiliates, nor, to its knowledge, any director, officer, agent, employee or other person acting on behalf of it or any of its Affiliates, is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of any applicable anti-bribery law, including but not limited to the United Kingdom Bribery Act 2010 (the "UK Bribery Act"), the U.S. Foreign Corrupt Practices Act of 1977 (the "FCPA"), the Australian Criminal Code Act 1995 (Cth) (the "Australian Criminal Code"), the New Zealand Crimes Act 1961 (the "NZ Crimes Act") and the New Zealand Secret Commissions Act 1910 ("NZ Secret Commissions Act"). Furthermore, it and, to its knowledge, its Affiliates, have conducted their businesses in compliance with the UK Bribery Act, the FCPA, the Australian Criminal Code, the NZ Crimes Act and the NZ Secret Commissions Act and similar laws, rules or regulations and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.
15. **(Trust)** It does not, nor does any of its subsidiaries, hold any assets as the trustee of any Trust (except as previously disclosed in writing to HSBC).
16. **(Insolvency)** An Insolvency Event has not occurred in relation to it or any of its subsidiaries.
17. **(Corporate Benefit)** The transactions contemplated by the Transaction Documents is for its benefit and is in its best interests.
18. **(Security Interests)** No Security Interest exists over its, or any of its subsidiaries', assets except a Permitted Security Interest.
19. **(Sanctions)** No director or officer or any employee, agent, or affiliate of it or any of its subsidiaries is an individual or entity ("Person") that is, or is owned or controlled by Persons that are:
 - (a) the subject of any sanctions administered or enforced by the US Department of the Treasury's Office of Foreign Assets Control, the US Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, the Hong Kong Monetary Authority or the New Zealand government (collectively, "Sanctions");
or
 - (b) located, organised or resident in a country or territory that is, or whose government is, the subject of Sanctions.
20. **(Environment)** It is in compliance with the Environmental Obligations and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in the future.

Schedule 3

Undertakings

Reporting undertakings

The Customer must provide and procure to be provided to HSBC in respect of each Transaction Party:

- (Accounts/Company)** Where that party is a company:
 - as soon as they are available and within 120 days of the end of each financial year, copies of its consolidated and unconsolidated audited (unless HSBC agrees otherwise) Accounts, directors' report and auditor's report for that financial year prepared for distribution to its members;
 - as soon as they are available and within 90 days of the end of the first half of each financial year, copies of its unaudited Accounts for that half-year or if the Company is required by law to have its half year accounts audited, its consolidated and unconsolidated audited Accounts, and auditor's reports for that financial half year;
 - promptly any additional financial or other information requested by HSBC; and
 - all documents which under applicable law it is required to issue to its members or debenture holders, promptly following issue of the same.
- (Accounts/Individuals)** Where the party is a natural person such Accounts as are reasonably required by HSBC from time to time.
- (Litigation)** Promptly, written particulars of any litigation, arbitration, administrative proceedings, Tax claim, dispute that is current, pending or threatened against it or any of its subsidiaries which, if adversely determined, could have a Material Adverse Effect.
- (Authority)** Promptly, any notice, order or material correspondence from or with an Authority, which may have a Material Adverse Effect.
- (Default Event/Potential Default Event)** Notification together with full details as soon as becoming aware of any Default Event or Potential Default Event.
- (Other Information)** Promptly, such other information in relation to each Transaction Party or their operations or projects which HSBC may reasonably request.

General undertakings

The Customer will:

- (Comply with Obligations)** Comply with all of its obligations under the Transaction Documents.
- (Corporate Existence/Ownership)** Do (and procure that each of its subsidiaries will do) everything necessary to maintain its corporate existence, not transfer its jurisdiction of incorporation or enter any merger or consolidation and ensure that there is no change in its ownership or control.
- (Comply with Law)** Comply (and procure that each of its subsidiaries will comply) with all laws binding on it or any of its assets and businesses and all requirements to do so of any Authority.
- (Authorisations)** Comply with and do all that is necessary to maintain in full force and effect any Authorisation to:
 - enable it to perform its obligations under the Transaction Documents to which it is a party;
 - ensure the validity and enforceability of the Transaction Documents and the effectiveness or priority of each Security (where relevant) to which it is a party;
 - make the Transaction Documents to which it is a party admissible in evidence in its jurisdiction; and
 - carrying on its business as now conducted or contemplated.
- (Anti-bribery)** Ensure that no part of the proceeds of any Advance will be used, directly or indirectly, for any payment that could constitute a violation of any applicable anti-bribery law.
- (Pay Taxes)** Pay (and procure that each of its subsidiaries will pay) all Taxes payable by it when due.
- (Books and Records)** Prepare and maintain, in accordance with NZ GAAP, proper and adequate books and financial records reflecting fully all transactions entered into by it.
- (Inspection)** Permit HSBC and/or professional consultants appointed by HSBC to inspect and copy (if necessary) at reasonable times its books and financial records or enter any property used or owned by it to determine whether a Transaction Party is complying with the Transaction Documents.
- (Intergroup Payments)** Ensure that all intergroup payments made by the Customer or by any of its subsidiaries are to be made on arm's length commercial terms.
- (Obligations' Ranking)** Ensure that its obligations under the Transaction Documents at all times rank at least equally with all its unsecured and unsubordinated obligations, other than those which on its Insolvency must be preferred by law.
- (Favourable Terms)** Ensure that the Facilities provided by HSBC are maintained on terms and conditions no less favourable to HSBC than the terms and conditions on which any other Permitted Financial Indebtedness is provided to the Customer (other than with respect to Facility Limit, fees and Margin).

12. **(Financial)** Comply with all financial undertakings specified in the Facility Agreement (if any).
13. **(Special Conditions)** Ensure that all the Special Conditions contained in the Facility Agreement (if any) will be complied with to HSBC's satisfaction during the term of the Facility.
14. **(Insurance)** Insure (and procure that each of its subsidiaries will insure) all of its assets which are of an insurable nature for amounts and with an insurance company acceptable to HSBC from time to time and where required by HSBC from time to time provide HSBC with such certificates, policies or information in relation to such insurance.
15. **(KYC)** Promptly, upon the request of HSBC supply, or procure the supply of, such documentation and other evidence as is reasonably requested HSBC in order for HSBC to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Transaction Documents.
16. **(Environment)** Comply with the Environmental Obligations.

Negative undertakings

The Customer undertakes that it will not, without the prior written consent of HSBC:

1. **(Security Interests)** Create or allow to exist (and will procure that none of its subsidiaries will create or allow to exist) any Security Interest over all or any of its respective present or future revenues or assets other than a Permitted Security Interest.
2. **(Financial Indebtedness)** Incur (and will procure that none of its subsidiaries will incur) any Financial Indebtedness other than Permitted Financial Indebtedness.
3. **(Distributions)** Make any Distribution if:
 - (a) it would have or be likely to have a Material Adverse Effect; or
 - (b) a Default Event or Potential Default Event is subsisting.
4. **(Constitution):**
 - (a) If it or its subsidiary has a constitution, modify or repeal (and will procure that no such subsidiary) will modify or repeal all or any provision of its constitution; or
 - (b) If it or its subsidiary has no constitution, adopt (and procure that no such subsidiary will adopt) a constitution, if any of these would have a Material Adverse Effect.
5. **(Change its Corporate Status)** Consolidate, amalgamate or merge (and will procure that none of its subsidiaries will consolidate, amalgamate or merge) with another entity.
6. **(Capital)** Purchase or redeem its issued shares, reduce its capital, or make a distribution of assets or other capital to its members.
7. **(Appointment of Administrator)** Appoint (and will procure that none of its subsidiaries will appoint) an administrator or enter into a deed of company arrangement pursuant to the Companies Act.
8. **(Change of business)** Change (and will procure that none of its subsidiaries will change) the general nature or scope of its business or the business of the Group taken as a whole from that carried on by it at the date of the Agreement.
9. **(Disposals)** Enter (and will procure that none of its subsidiaries will enter) into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset. This restriction does not apply to any sale, lease, transfer or other disposal:
 - (a) made in the ordinary course of trading of the Customer or its subsidiary;
 - (b) of assets in exchange for other assets comparable or superior as to type, value and quality and for a similar purpose; or
 - (c) of worn out or obsolete assets.
10. **(Sanctions)** Directly or indirectly, use the proceeds of any Facility or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person:
 - (a) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions; or
 - (b) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Facility, whether as underwriter, advisor, investor or otherwise).

Schedule 4

Default Events

Each of the following is a Default Event:

1. **(Payments)** The Customer or a Security Provider fails to pay any amount payable by it under a Transaction Document when due.
2. **(Obligations under Transaction Document)** A Transaction Party fails to comply with any of its obligations under a Transaction Document and, in the opinion of HSBC, that failure cannot be remedied or, in the opinion of HSBC, that failure can be remedied and the failure is not remedied within 5 Business Days after:
 - (a) HSBC gives notice to the Transaction Party (as the case may be) requiring that failure to be remedied; or
 - (b) the date by which the Transaction Party becomes aware of the default or ought reasonably to have become aware of the default.
3. **(Misrepresentation)** A Transaction Party gives incomplete, misleading or incorrect information to HSBC or otherwise makes any false or misleading statement in a Transaction Document.
4. **(Cross Default)** In respect of a Transaction Party or any of its subsidiaries:
 - (a) any Financial Indebtedness is not paid when due or within an applicable grace period;
 - (b) any Financial Indebtedness becomes due and payable or capable of being declared due and payable before its stated maturity or expiry; or
 - (c) a Security Interest created by a Transaction Party is enforced or becomes capable of being enforced.
5. **(Insolvency Event)** An Insolvency Event occurs in respect of a Transaction Party or any of its subsidiaries.
6. **(Reduction of Capital)** Without HSBC's written consent, a Transaction Party reduces its capital (including, without limitation, a purchase of its shares).
7. **(Investigation)** An investigation into all or part of the affairs of any Transaction Party or any of its subsidiaries commences under any legislation.
8. **(Execution)** Distress, attachment, execution or other court process is issued, levied or enforced on or against a Transaction Party or any of its subsidiaries.
9. **(Vitiating of Transaction Documents):** All or a material part of a Transaction Document is terminated or is or becomes void, illegal, invalid, unenforceable or of limited force and effect or any Transaction party alleges that this is so.
10. **(Material Adverse Effect)** Any event or series of events, whether related or not, occurs (including, without limitation, a material adverse change in the business, assets or financial condition of any Transaction Party), that may have a Material Adverse Effect.
11. **(Financial Assistance)** A Transaction Party provides financial assistance for the purchase of shares in itself or its holding company.
12. **(Control of Customer and Security Provider)** Without the prior written consent of HSBC, in the opinion of HSBC there is a material change (direct or indirect) in the ownership or control of, or in the management of, a Transaction Party.
13. **(Cancellation)** If there is more than one Customer and any, but not all, of the Customers provide a notice to HSBC pursuant to clause 25.15 that it or they intend to cancel their liability under a Facility.

Part 2: Trade Financing General Agreement

In addition to the General Facility Terms, the terms and conditions in this Part 2 of the General Conditions apply to any Trade Service as stipulated by HSBC including, but not limited to the following (which the Customer may be applying for now or in the future):

Trade products or services

1. Prepaid Documentary Credit
2. Export Documentary Credit Advising
3. Confirmation of Documentary Credit
4. Negotiation under Export Letter of Credit (payment upon receipt of proceeds)
5. Negotiation under Export Letter of Credit (payment upon negotiation)
6. Assignment of Proceeds under Export Letter of Credit
7. Transfer of Documentary Credit (partial or in entirety)
8. Import Collection
9. Export Collection

Trade Finance Facilities for Importers

Import Finance Line with the following Sub-Facilities

1. Documentary Credit Sub-Facility/Back to Back Documentary Credit Sub-Facility (including for Air Waybill Release and Shipping Guarantee where applicable)
2. Clean Import Loan Sub-Facility
3. Bill Avalisation Sub-Facility

Trade Finance Facilities for Exporters

Export Finance Line with the following Sub-Facilities

1. Pre-shipment Finance – Packing Credit – Loan Against Export Sub-Facility/ Post-shipment Finance/ Export Loan (Export DA/DP) Sub-Facility
2. Discrepant Documents Sub Facility

Where a Customer requires Facilities in connection with a Trade Service they will also need to sign a Facility Agreement.

Operative Provisions

1. Definitions

Words defined in the General Facility Terms have the same meaning when used in this Part 2 of the General Conditions.

In this document, unless the context otherwise requires, words and phrases have the meanings given to them in, or by virtue of, the PPSA, and:

Application means an application requesting a utilisation of a Trade Service made by the Customer in the form prescribed by HSBC from time to time.

DC Beneficiary means a beneficiary under a Documentary Credit.

Documents means all drafts, Bills, documents of title, transportation documents, insurance policies and other documents relating to Goods including without limitation Air Waybills, customer assessment notices or consignments, Import Bills and Documentary Credits issued in favour of the Customer or HSBC.

Documentary Credit means a documentary credit issued or confirmed by HSBC at the request or for the account of the Customer and any commitment by HSBC to issue such credit and also includes any such credit or commitment as extended or amended from time to time.

Exchange Rate means the rate for converting one currency into another which HSBC determines to be prevailing in the relevant foreign exchange market at the relevant time, such determination to be conclusive and binding on the Customer.

General Facility Terms means the terms and conditions in Part 1 of these General Conditions.

Goods mean the goods or produce or both to which the Documents and the Trade Facility relate, provided that:

- (a) (but solely for the purposes of the application of the PPSA) where the goods are inventory of the Customer, then all references to Goods in this document shall, in respect of those goods, be read as references to inventory for so long as they are held as inventory; and
- (b) where the goods are not inventory of the Customer, then all references to Goods in this document shall, in respect of those goods, mean the goods described in an Application made under the Trade Facility on the basis that such Application is deemed to be assented to by the Customer, incorporated into, and form part of, this document.

Import Bill means, in relation to a Bill Avalisation Facility, the Bill delivered by an exporter to the Customer or HSBC (as one of the Documents), in connection with the import of Goods by the Customer, where the exporter is named as the drawer and the Customer is named, and has signed the Bill as the acceptor.

Invoice means an invoice issued by the Customer to a buyer in connection with Goods.

Invoice Amount means the amount invoiced by the Customer to a buyer in respect of the Goods.

Master DC means, in connection with a Back to Back Documentary Credit Facility, a Documentary Credit issued in favour of the Customer in support of a Documentary Credit to be issued by HSBC under the Facility and from a bank and in a form satisfactory to HSBC in HSBC's absolute discretion.

Permitted Portion means the percentage amount specified in the Facility Schedule as being the percentage to which HSBC will fund each Invoice Amount or the Purchase Price.

Purchase Price means, in respect of a Pre-shipment Finance – Packing Credit – Loan Against Export Facility, the price the Customer is required to pay to its supplier to purchase materials or services in order to prepare, manufacture, assemble or otherwise produce Goods for export, as evidenced by an invoice from the Customer's supplier.

Tenor means the period specified by HSBC in the Trade Service as the Tenor.

Trade Service means a trade product, Trade Facility or other service provided to the Customer and stipulated by HSBC to be governed by these General Conditions.

2. Application

- 2.1 The Trade Financing General Agreement will apply to Trade Services made available to the Customer by HSBC from time to time and is to be read in conjunction with General Facility Terms. In the event of inconsistency between specific terms applying to a Trade Service and the Trade Financing General Agreement, the terms of the Trade Service will prevail to the extent of such inconsistency.
- 2.2 Each Documentary Credit shall be subject to the Uniform Customs and Practice for Documentary Credits issued by the International Chamber of Commerce.

3. International Chamber of Commerce rules

The International Chamber of Commerce rules which apply to every instrument or Trade Service are set out in the terms for each Trade Service (including the Trade Facilities) below. In the event of any conflict between the Trade Financing General Agreement and the International Chamber of Commerce:

- (a) Uniform Customs and Practice for Documentary Credits ("UCP");
- (b) Uniform Rules for Collections;
- (c) Uniform Rules for Bank to Bank Reimbursements for Documentary Credits;

- (d) Uniform Rules for Demand Guarantee;
 - (e) International Standard Banking Practice for the examination of documents under Documentary Credits, as are in effect from time to time,
- the Trade Financing General Agreement shall prevail.

4. General Terms for Import Documentary Credits (including where applicable Trade Finance Facilities for Importers)

- 4.1 HSBC is authorised and entitled to honour any complying presentation under a Documentary Credit. The Customer will pay HSBC not later than the applicable due date an amount equal to the amount due under the Documentary Credit.
- 4.2 HSBC may restrict negotiations under any Documentary Credit to its own offices or to any correspondent or agent of its choice.
- 4.3 The Customer acknowledges that HSBC is not obliged to notify the Customer or to seek the Customer's waiver of any discrepancies before refusing the Documents on a discrepancy. The Customer further acknowledges that any decision by HSBC to seek a waiver at any time does not oblige HSBC to seek a waiver at any other time in respect of any other discrepancies.
- 4.4 Without limiting the foregoing, if HSBC notifies the Customer of a discrepancy in the Documents and the Customer requests HSBC and/or its agents or correspondents to:
 - (a) comply with its payment obligations under the Documentary Credit, notwithstanding the discrepancy; or
 - (b) countersign or issue any guarantee or indemnity covering those discrepancies, the Customer must comply with the Customer's payment obligations notwithstanding the discrepancy.
- 4.5 If the Customer uses Documents forwarded directly to the Customer to obtain possession of the Goods or otherwise obtains possession of the Goods without a complying presentation having been made to HSBC then the Customer must accept all Documents presented and pay or accept upon presentation and pay at maturity all drafts drawn in respect of the Goods, notwithstanding any discrepancy or any other matter or thing that might otherwise have relieved or affected the Customer's obligations.
- 4.6 The Customer acknowledges that a Documentary Credit is by its nature a separate transaction from any contract between the Customer and any other party on which the Documentary Credit may be based. As such, the Customer acknowledges that HSBC is not obliged to notify the Customer prior to making a payment or accepting drafts, claims or drawings under the Documentary Credit. The Customer further acknowledges that HSBC is entitled to make any payment or accept any draft, claim or drawing under the Documentary Credit if it determines that the Documents comply with the terms of the Documentary Credit notwithstanding notice from the Customer of any claim or defence the Customer may have against the DC Beneficiary of the Documentary Credit.
- 4.7 If the Customer requests HSBC to authorise release or delivery of the Goods or Documents to the Customer or takes delivery of the Goods, before advice of negotiation or presentation of drafts under the relevant Documentary Credit, the Customer agrees that the Customer must:
 - (a) hold the Goods exclusively for the purpose of their sale or other disposition approved by HSBC on normal trade terms at market value;
 - (b) hold the Documents and the Goods when received (and the proceeds from the sale of them) in safe custody and on trust for HSBC and pay the proceeds of sale of Goods (without deduction of any expenses) immediately upon receipt of the proceeds (or each portion of them) to HSBC or to authorise HSBC to receive such proceeds direct from third parties;
 - (c) until sale or delivery (if applicable) warehouse the Goods in the name of HSBC and at the Customer's cost and immediately deliver to HSBC the warrants for the Goods and otherwise authorise HSBC (or any officer of HSBC) to enter any warehouse or other premises where the Goods may be located at any time for the purpose of viewing, inspecting, identifying or taking the possession of the Goods;
 - (d) insure the Goods against fire and any other risks that HSBC may reasonably require to their full insurable value and to hold the policies on behalf of HSBC and in case of loss pay the insurance moneys to HSBC in the same manner as proceeds of sale and make good any deficiency;
 - (e) keep any transaction involving the Goods separate from all other transactions and to keep the Documents, the Goods and any proceeds from the sale of them separate and distinct from any other Documents, Good or proceeds relating to or arising from any other transaction;
 - (f) not permit the Goods to be processed or altered or incorporated in any other Goods without HSBC's consent; and
 - (g) whilst the Customer remains the owner of the Goods, not mortgage, charge, pledge or otherwise encumber or allow to be encumbered the Goods (otherwise than in favour of HSBC or as agreed to by HSBC in writing) until HSBC has been paid in full,and, the Customer, acknowledges and agrees that:

- (h) the Customer has no claim, lien or set-off of any kind in respect of anything that the Customer holds on trust for HSBC under this clause;
 - (i) the Goods will remain the property of HSBC until sold or otherwise disposed of and risk in the Goods remains with the Customer at all times; and
 - (j) any proceeds of sale or other disposal paid to HSBC in accordance with this clause may be appropriated and applied by HSBC as it thinks fit.
- 4.8 HSBC will not be bound at any time to release any Documents or Goods to the Customer unless the Customer has fully discharged the Customer's obligations and liabilities to HSBC in respect of any Documentary Credit.

5. General Terms for Export

- 5.1 The Customer may make an application to HSBC to:
- (a) negotiate Documents and credit proceeds immediately to account(s) specified; or
 - (b) negotiate Documents and credit proceeds to account(s) specified when payment is received by HSBC.
- 5.2 HSBC is under no obligation to negotiate (and may decline to negotiate at any time and for any reason), except where expressly agreed by HSBC with the Customer.
- 5.3 If HSBC accepts an application to negotiate Documents:
- (a) the Customer irrevocably assigns and transfers to HSBC with immediate effect, absolutely and unconditionally, all of the Customer's right, title and interest in the Documents and all proceeds thereof; and
 - (b) HSBC acquires an interest in the Documents and all proceeds thereof as 'purchaser' for the purposes of the PPSA.
- 5.4 If HSBC accepts an application to negotiate Documents and credit proceeds before payment is received, the Customer must pay interest:
- (a) in arrears or in advance as specified by HSBC from time to time;
 - (b) on the face value of the amount credited or negotiated (before deduction of any fee owing to HSBC);
 - (c) from (and including) the day on which the amount is credited to (but excluding) the day on which that amount is received by HSBC; and
 - (d) at the current rate applicable to such advances as notified by HSBC to the Customer from time to time.
- 5.5 If HSBC has confirmed the Documentary Credit, HSBC will have recourse to the Customer in the case of non-payment by reason of:
- (a) any alleged or actual invalidity, non-compliance or unenforceability of the Document or Documentary Credit (whether arising out of fraud, illegality or any unauthorised act);
 - (b) any injunction or other court order preventing such payment (whether or not subsequently discharged); or
 - (c) any anti-money laundering, terrorist financing or sanction laws or regulations that may prohibit such payment, including, without limitation, those economic sanctions issued, administered or enforced by the US Department of the Treasury's Office of Foreign Assets Control, the US Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, the Hong Kong Monetary Authority and the New Zealand government.
- Furthermore, unless HSBC has confirmed the Documentary Credit, the Customer will pay HSBC not later than the applicable date an amount equal to the amount due under the Document negotiated or endorsed by HSBC, whether or not drawn under a Documentary Credit, which are dishonoured or not paid on their due date. Non-payment shall be deemed to have occurred if HSBC has not received unconditionally the whole sum due.
- 5.6 HSBC is authorised, at its discretion and on such conditions as it thinks fit, in relation to any Documents it has negotiated:
- (a) to take conditional acceptances, or acceptances for honour and to extend the due date for payment;
 - (b) to accept payment from the drawee or acceptor before maturity in whole or under rebate or discount;
 - (c) to accept part payment before maturity and to deliver a proportionate part of the Goods to the drawee or acceptor of the Documents or the consignee of the Goods;
 - (d) at the request of the drawee, to delay presentation of the Documents for payment or acceptance without affecting the Customer's liability to HSBC in respect of such Documents; and
 - (e) to institute proceedings and to take steps for recovery from any acceptor or endorser of the Documents or any amount due in respect of such Documents, despite HSBC having debited the Customer's account with the amount of such Documents.
- 5.7 The Customer will also reimburse HSBC on demand for advances made against any Documents which have not been duly taken up on presentation or in respect of which payment has not been duly made to HSBC. If HSBC accepts an application to negotiate Documents, any proceeds of the Documents received by the Customer will be held by the Customer on behalf of and on trust for HSBC.

6. Security interest and enforcement

- 6.1 The Customer grants to HSBC a security interest in all of the Customer's right, title and interest in:
- (a) all Goods the subject of a Documentary Credit;
 - (b) all Documents; and
 - (c) all accounts receivable, earnings, interest, money or other rights attributable to, or arising out of, the property referred to in paragraphs (a) and (b) above, and the proceeds thereof,
- in clause 6 and clause 7 of the Trade Financing General Agreement, the "Secured Property", as security for payment to HSBC of all the Amount Owing. This security will be a continuing security, in addition to, not affected by and enforceable despite the existence of any other Security held by HSBC. The Customer acknowledges that this Security shall continue until HSBC gives the Customer a final release.
- 6.2 The Secured Property will be dealt with by the Customer in accordance with such instructions as HSBC may give to the Customer from time to time for the protection of HSBC's interest in them including, without limitation, keeping the Goods separate from any other property of the Customer.
- 6.3 HSBC is authorised, at its discretion and acting reasonably, at any time without notice to the Customer to enter any premises for the purpose of inspecting or securing possession or custody of the Secured Property and also to take such steps as it considers necessary or desirable to protect its interest in the Secured Property.
- 6.4 HSBC may at any time, without notice or demand to the Customer (and without prejudice to any of its other rights and remedies) cause the Secured Property (or any part of the Secured Property), to be landed, stored, transported, insured, or sold (or sold without landing) or otherwise disposed of on such terms and for such consideration, or negotiate or otherwise dispose of the Documents, as HSBC considers appropriate, in which circumstance:
- (a) HSBC is not liable for any loss suffered by the Customer as a consequence of such action;
 - (b) the Customer must pay to HSBC on demand the costs and expenses incurred by HSBC in respect of any actual or attempted landing, storage, transportation, insurance, docking, sale or other disposal of the Secured Property;
 - (c) the Customer must do any thing, including endorse, assign, sign, execute and deliver any transfers, deeds or documents (or arrange any such matters) that HSBC requires in order to perfect HSBC's interest in the Secured Property or to otherwise give effect to any proposed landing, storage, insurance, sale or other disposal; and
 - (d) the Customer will remain liable for and must pay any deficiency that may remain owing to HSBC after the sale or disposal of the Secured Property.
- 6.5 The Customer acknowledges that HSBC may register one or more financing statements in relation to the Security Interest provided for by this agreement. The Customer waives its right to receive a verification statement in respect of any financing statement or any related financing change statement relating to the Security Interest.
- 6.6 To the extent that Part 9 of the PPSA would otherwise apply to an enforcement by HSBC of the Security Interest provided for by this agreement, HSBC and the Customer agree that, to the extent permitted by law:
- (a) sections 114(1)(a), 133 and 134 of the PPSA do not apply; and
 - (b) the Customer will have none of the rights referred to in sections 116, 120(2), 121, 125, 129 and 131 of the PPSA.
- 6.7 The Customer agrees that the Security Interest has the same priority in relation to all amounts forming part of the Amount Owing, including future advances.
- 6.8 Without limiting any other provision of this document, if a Default Event occurs:
- (a) HSBC may suspend or terminate any contract;
 - (b) the Amount Owing shall immediately become due and payable notwithstanding that the due date has not arisen;
 - (c) HSBC may enforce the security interest; and/or
 - (d) HSBC may (without the consent of the Customer) appoint a receiver in respect of any Secured Property and any receiver is authorised to do anything referred to in this document and otherwise to exercise all rights and powers conferred on a receiver by law.
- 6.9 Without limiting any other provision of this document, the Customer agrees that, at any time after a Default Event has occurred and is continuing or at any time if any Secured Property is at risk, HSBC may:
- (a) take possession of any Secured Property; and/or
 - (b) sell or otherwise dispose of any Secured Property,

in each case in such manner and generally on such terms and conditions as it thinks fit and, in each case, otherwise do anything the Customer could do in relation to that Secured Property. As the Customer's agent, HSBC (and its employees and agents) may, without prior notice, enter any land or premises where the Secured Property is kept, whether or not an occupier is present, in order to take possession of and/or remove it, without being responsible for any damage caused in doing so. The Customer agrees to procure all other rights (including consents) necessary to enable, and to indemnify HSBC (and its employees and agents) against any liability incurred in connection with, such entry, taking of possession and removal. HSBC may resell any of the Secured Property and apply the proceeds of sale in reduction of the Amount Owing.

7. Trade Undertakings

- 7.1 The Customer undertakes that:
- (a) the Secured Property will be in the sole beneficial ownership of the Customer, free from encumbrances and claims, except for any security in favour of HSBC;
 - (b) it will insure the Secured Property for its full value against all insurable risks and in such manner as HSBC may require and, if so requested by HSBC, will arrange for HSBC's interest in the Secured Property to be endorsed on the relevant policy and direct the insurer to make payment direct to HSBC in respect of any damage or loss;
 - (c) it will make payment to HSBC of all insurance proceeds received by it in respect of the Secured Property and, pending payment, will hold such proceeds on trust for HSBC;
 - (d) it will endorse any Secured Property that is a Document in favour of HSBC, deposit the Document with HSBC or to its order and note in its records the interest of HSBC in the Document;
 - (e) it will inform HSBC of any event of which it becomes aware that can adversely affect the ability of a buyer to complete the purchase of Secured Property;
 - (f) it will procure the prompt release of HSBC from any guarantee, indemnity or other commitment that HSBC may have provided in respect of Secured Property;
 - (g) it will not nor will it attempt to encumber, transfer, sell, dispose of or otherwise deal with the Secured Property except as directed by or with the prior written consent of HSBC;
 - (h) it will keep the Secured Property separate and readily identifiable from any other property of the Customer or other persons;
 - (i) it will not permit the Secured Property to be processed or altered without the prior written consent of HSBC;
 - (j) it will not take any action that might prejudice the value of the Secured Property or the effectiveness of the Security Interest in clause 6 above and this agreement;
 - (k) it will comply with all applicable laws, and pay all charges, duties and Taxes relating to the Secured Property and the export or import of Secured Property as well as all storage charges or freight and other amounts payable under any contract of carriage. The Customer indemnifies HSBC in respect of any costs or other liabilities that may arise as a consequence of the importation of the Secured Property that may be prohibited by law from import into the country of destination;
 - (l) it will promptly do all things, sign any further documents and/or provide any information which HSBC may reasonably require to enable HSBC to perfect and maintain the perfection of any security interest (including by registration of a financing statement); and
 - (m) it will give HSBC not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including, but not limited to, changes in the Customer's address, facsimile number, trading name or business practice).
- 7.2 The Customer undertakes that, at the request of HSBC, it will:
- (a) provide HSBC with such information concerning the Secured Property and any proposed sale of the Secured Property as HSBC may require;
 - (b) keep HSBC informed of the whereabouts of the Secured Property and of any change in the condition, quality or quantity of the Secured Property; and
 - (c) execute such documents and perform such acts as HSBC may consider expedient in connection with the exercise of its powers and rights under this agreement.

8. Insurance

HSBC is authorised at its absolute discretion and for the Customer's account to insure the Goods to their full value against all insurable risks in the event that the Customer shall fail to do so.

9. Other trade expenses

- 9.1 The Customer agrees to pay all charges levied on HSBC by any third party (including any correspondent or negotiating bank) in respect of the Trade Service.
- 9.2 The Customer must comply with all governmental exchange regulations applicable to Trade Services provided by HSBC to the Customer and will pay HSBC on demand such amount as HSBC may be required to expend on account for such regulations.

10. Bills

HSBC is authorised, at its discretion and on such conditions as it thinks fit, in relation to any Bill, whether or not drawn under a Documentary Credit:

- (a) to take conditional acceptances, or acceptances for honour and to extend the due date for payment;
- (b) to accept payment from the drawees or acceptors before maturity under rebate or discount;
- (c) to accept part payment before maturity and to deliver a proportionate part of the Goods to the drawees or acceptors of the Bills or the consignees of the Goods;
- (d) at the request of the drawees, to delay presentation of any Bill for payment or acceptance without affecting the liability of the Customer to HSBC in respect of such Bill; and
- (e) to institute proceedings and to take steps for recovery from the acceptors or endorsers of any Bill or any amount due in respect of such Bill, despite HSBC having debited the account of the Customer with the amount of such Bill.

11. Authorisations

The Customer authorises HSBC:

- (a) to appoint any other person as its correspondent, nominee or agent in connection with the Trade Services and HSBC may delegate any of its powers under this agreement to such person;
- (b) to take such steps and to make such payments as it considers necessary, at the cost of the Customer, to remedy any default by the Customer in compliance with any of its obligations under this agreement;
- (c) to land and store Goods and to arrange for their shipment and to inspect the Goods at any time;
- (d) to notify any other person of its interest in the Documents and the Goods; and
- (e) to make payment immediately when due or on demand under any Documentary Credit, guarantee, indemnity or other commitment that HSBC may have provided in respect of Documents or Goods without reference to or further authority from the Customer or any other person and without enquiry as to the validity or otherwise of any document, claim or demand, (irrespective of any dispute by the Customer), and payment by HSBC will be binding on the Customer.

12. Payments

- 12.1 Payments by the Customer shall be made to HSBC as specified by HSBC without set-off, counterclaim, condition, withholding or deduction of any kind except that, if the Customer is compelled by law to make such withholding or deduction, the sum payable by the Customer shall be increased so that the amount actually received by HSBC is the amount it would have received if there had been no withholding or deduction.
- 12.2 Payment by the Customer to HSBC shall be in the currency of the relevant liability or, if HSBC so agrees in a different currency, in which case the conversion to that different currency shall be made at the Exchange Rate.
- 12.3 If any moneys paid to HSBC in respect of any Trade Service are required to be repaid by virtue of any law relating to insolvency, bankruptcy or liquidation or for any other reason, HSBC shall be entitled to enforce this Trade Financing General Agreement as if such moneys had not been paid.

13. Miscellaneous

- 13.1 HSBC will not be bound at any time to release any Documents or Goods to the Customer unless the Customer has fully discharged its obligations and liabilities to HSBC in respect of any Documentary Credit.
- 13.2 The Customer must reimburse HSBC on demand for advances made against any Documents that have not been duly taken up on presentation or in respect of which payment has not been duly made to HSBC.
- 13.3 The Customer acknowledges that HSBC may disclose information about the Customer to any person making a claim under a Documentary Credit.
- 13.4 The Customer undertakes to reimburse on demand HSBC for the amount of the consignor's or any carrier's invoices in relation to the Goods in the currency of the relevant invoice.
- 13.5 HSBC will not be liable to the Customer or any other person for any act, delay or failure to act, on the part of HSBC or any other person, in respect of the Documents or the Goods or otherwise for the condition, quantity or value of the Goods. The Customer shall indemnify HSBC, its officers and employees against all liabilities, claims, costs and damages of any kind which may be incurred by any of them and all actions or proceedings which may be brought by or against them in connection with the Documents and/or the Goods and the exercise of the powers and rights of HSBC under this Trade Financing General Agreement, unless due to the gross negligence or wilful default of HSBC, its officers or employees.
- 13.6 HSBC may, at its discretion, accept instructions believed by it to have emanated from the authorised persons and if it acts in good faith on such instructions, such instructions will be binding on the Customer and HSBC will not be liable for doing so, whether or not the instructions were given by the Authorised Persons and HSBC will not be under any duty to verify the identity of the persons giving instructions.

14. Collections

- 14.1 Additional terms and conditions applicable to any collection will be outlined in the relevant correspondence attached by HSBC to the collection. If HSBC is requested to make a collection, HSBC is authorised to treat the service as subject to and conditional upon collection and receipt by HSBC of full payment of the relevant Bill, draft or Document.
- 14.2 In the absence of such collection and receipt by HSBC, the Customer must reimburse HSBC, on demand, for any amount due in respect of such service and must indemnify HSBC for any damages, losses, costs and expenses whatsoever in connection with that collection service.
- 14.3 The collection will be subject to the International Chamber of Commerce Uniform Rules for Collections current at the time of issuance.

Trade Finance Facilities for Importers

If HSBC provides the Customer with an import finance line or Trade Facility, then the following terms will apply to each Sub-Facility offered under the import line.

15. Documentary Credit Sub-Facility/Back to Back Documentary Credit Sub-Facility

15.1 Issue of Documentary Credits

- (a) Each Documentary Credit applied for and issued under this Trade Facility must be consistent with the Application under which it is issued and in the form determined by HSBC from time to time and must:
 - (i) be irrevocable;
 - (ii) be for a Tenor that is not longer than the Tenor specified in the relevant Facility Schedule to be the maximum tenor of a Documentary Credit;
 - (iii) be in a currency acceptable to HSBC; and
 - (iv) comply with any Special Conditions specified in the relevant Facility Schedule.
- (b) Each Documentary Credit is issued subject to the UCP and, where specified in the Documentary Credit, the Uniform Rules for Bank-to-Bank Reimbursements under Documentary Credits as are in effect at the time of issuance of the Documentary Credit.
- (c) The Customer must not make an Application under this Facility, and HSBC is not obliged to issue the Credit, if in respect of a Back to Back Documentary Credit Facility, HSBC has not received from the Customer the original of a Master DC.
- (d) This agreement is subject to such other terms and conditions that may be specified by HSBC in or in relation to any individual Documentary Credit issued under the Trade Facility.
- (e) HSBC may make alterations to the Customer's requested wording of or other information contained in the Documentary Credit, including altering the requested advising and/or negotiating bank, if in HSBC's opinion, such alterations will clarify, correct or otherwise improve the wording of or other information contained in the Documentary Credit.

15.2 Payments by HSBC

HSBC may, in its absolute discretion, if the Customer requests, allow the Documentary Credit terms to stipulate that certain specific Documents required by the Customer, including title documents, be forwarded by the DC Beneficiary direct to the Customer at or prior to the time the DC Beneficiary makes any claim under such Documentary Credit. In this instance, all remaining Documents relating to such Documentary Credit must be produced to HSBC in respect of any claim under such Documentary Credit. If the Customer uses the Documents forwarded directly to it to obtain possession of the Goods or otherwise obtains possession of the Goods without a complying presentation having been made to HSBC then the Customer must accept all Documents presented and pay or accept upon presentation and pay at maturity all drafts drawn in respect of the Goods, notwithstanding any discrepancy or any other matter or thing that might otherwise have relieved or affected the obligations of the Customer.

15.3 Payments by the Customer

The Customer must pay to HSBC:

- (a) in the currency that HSBC pays or is required to pay under a Documentary Credit, the amounts that HSBC pays or is required to pay under a Documentary Credit, on the same day as HSBC makes, or is required to make, that payment; and
- (b) on demand all commissions, fees, charges, interest on overdue payments and expenses (incurred or to be incurred) under or in connection with the Documentary Credit.

16. Clean Import Loan Sub-Facility

The Customer must not deliver an Application under this Trade Facility, and HSBC is not obliged to provide an Advance if:

- (a) the amount of an Advance would be greater than the Permitted Portion of the Invoice Amount; and
- (b) the Customer has not complied with the Special Conditions set out in the relevant Facility Schedule or the Conditions Precedent.

17. Bill Avalisation Sub-Facility

17.1 Drawings

- (a) On Application by the Customer, HSBC may accept or endorse Import Bills that have first been signed by the Customer as acceptor.
- (b) The Customer must not make an application for HSBC to accept or endorse an Import Bill and HSBC is not obliged to accept or endorse an Import Bill if:
 - (i) the Special Conditions set out in the relevant Facility Schedule are not complied with; or
 - (ii) the tenor of the Import Bill extends beyond the tenor permitted by HSBC under the Facility Schedule.

17.2 Customer's obligations on Bills

- (a) The Customer must pay to HSBC the face value of any Import Bill drawn, accepted, endorsed or purchased under this Facility on its maturity date in such manner as HSBC may specify.
- (b) As between HSBC and the Customer, the Customer must be primarily liable on all Import Bills and the obligations and liabilities of the Customer under the Facility and in relation to each Import Bill drawn, accepted and endorsed under the Facility must continue notwithstanding that HSBC may become the holder of the Bill in its own right before, on or after its maturity date.

17.3 HSBC's authority to pay

The Customer absolutely, irrevocably and unconditionally authorises HSBC to pay immediately on demand by the exporter (and without any prior notice to the Customer) any money demanded by the exporter under or pursuant to any Import Bill on its maturity date. HSBC will not be under any obligation to enquire whether any claim, demand or drawing by the exporter is properly made or whether the Customer disputes the validity of any such claim by the exporter. Any action taken by HSBC in good faith pursuant to this clause will bind the Customer in respect of such action.

Trade Finance Facilities for Exporters

If HSBC provides the Customer with an export finance line or Trade Facility, then the following terms will apply to each Sub-Facility offered under the export line.

18. Pre-Shipment Finance – Packing Credit – Loan Against Export Sub-Facility / Post-Shipment Finance – Export Loan (Export DA/DP) Sub-Facility

18.1 Drawings

The Customer must not make an Application under either of these Trade Facilities, and HSBC is not obliged to provide an Advance if:

- (a) in respect of the Pre-shipment Finance – Packing Credit Facility – Loan Against Export, the amount of an Advance would be greater than the Permitted Portion of the Purchase Price;
- (b) in respect of the Post Shipment Finance Export Loan the amount of an Advance would be greater than the Permitted Portion of the Invoice Amount; or
- (c) the Customer has not complied with the Special Conditions set out in the relevant Facility Schedule.

18.2 Repayment

- (a) The Customer must repay the Advance in the currency of the Advance on the earlier of:
 - (i) the date on which it receives payment from the importer or buyer of the Goods financed pursuant to this Facility; or
 - (ii) the last day of the Interest Period for that Advance; or
 - (iii) the expiry date of the Documentary Credit.
- (b) The Customer must present all Documents in connection with the Goods financed pursuant to this Facility to HSBC for collection. The Customer acknowledges that HSBC will use funds received in respect of the Documents and the Goods to repay Advances outstanding under this Facility. The Customer must indemnify HSBC in respect of any shortfall between the amount actually received by HSBC in respect of the Goods and Documents and the amount due to HSBC in respect of the Advance.

19. Discrepant Documents Sub-Facility

19.1 Discrepant Documents

- (a) If the Customer requests HSBC to negotiate an export Documentary Credit or drafts drawn under it and HSBC or its correspondent or agent issues a discrepancy notice to the Customer noting certain discrepancies in or concerning the Documents presented for negotiation and the Customer provides instructions to HSBC or its correspondent or agent to negotiate the Customer's Documents under the export Documentary Credit notwithstanding the discrepancies, the Customer agrees that if the Documents or HSBC's claim under the export Documentary Credit are not honoured in the timeframe specified in the relevant Facility Schedule, the Customer must pay or repay HSBC on demand:
- (i) the amount of the claim in each case;
 - (ii) interest on that amount as if the amount paid by HSBC is an Advance at the rate that is the sum of the Base Rate and the Margin for that Interest Period, calculated from the date the Documents were, or claim was, negotiated until the date of repayment; and
 - (iii) all charges incurred by HSBC.
- (b) Without limiting clause 16 of the General Conditions, the Customer indemnifies HSBC against all Claims whatsoever that HSBC may incur or be liable for as a result of negotiating the Documents or claim as a result of the irregularities with the underlying export Documentary Credit. Clause 16.4 of the General Conditions will apply to this indemnity.

19.2 Confirmation

If the Customer applies to have HSBC confirm the export Documentary Credit, HSBC will, if it accepts that application, notify the Customer of the basis on which HSBC accepts that application, including any additional terms and conditions.

19.3 International Chamber of Commerce rules

These terms and conditions are subject to the UCP and if acceptable to HSBC, the Uniform Rules for Bank-to-Bank Reimbursements under Documentary Credits, as are in effect from time to time.

For more information

Call 0800 802 380

Visit www.hsbc.co.nz

