

e-BANKING SERVICE AGREEMENT

This Agreement between the Customer and the Bank sets out the terms and conditions governing the Customer's use of the Services (capitalized terms defined below). The Bank does not offer the Services other than in accordance with this Agreement. By accessing or using the Services, the Customer acknowledges and agrees to be bound by all of the terms and conditions of this Agreement.

1. INTERPRETATION

1.1 Defined Terms

For the purposes of this Agreement and the attached schedules, the following terms are defined as indicated below:

- (a) **"Account"** means any account the Customer maintains with the Bank, individually or jointly with other persons, to which the Bank provides access through the Services;
- (b) **"Agreement"** means this e-banking services agreement, including the schedules hereto, as may be supplemented or amended from time to time;
- (c) **"Applicable Laws"** means all applicable laws, including, without limitation, PIPA and PIPEDA and all comparable privacy legislation, and all ordinances, rules, regulations, statutes and orders of a public authority, whether municipal, provincial, federal, domestic or international, having jurisdiction over this Agreement, the Services or the Websites, as same may be amended.
- (d) **"Authorized User"** means a person that has been granted access to an Account by a Corporate Customer with the approval of the Bank;
- (e) **"Bank"** means First Commercial Bank, and includes First Commercial Bank's parent company, subsidiaries and affiliates, and their respective successors and assigns;
- (f) **"Business Day"** means any day other than a Saturday, Sunday or any other day which is a legal holiday in Vancouver, British Columbia, Canada;
- (g) **"Corporate Customer"** means a customer of the Bank that maintains an Account, other than an Individual Customer, including a customer that is a corporation, partnership, sole proprietorship, or other legal entity;

- (h) “**Confidential Information**” has the meaning set forth in section 8.1;
- (i) “**Customer**” means an Individual Customer or a Corporate Customer and each Authorized User designated by such Corporate Customer;
- (j) “**Customer’s Confidential Information**” has the meaning set forth in section 8.7;
- (k) “**Electronic Device**” means any electronic device that the Bank permits the Customer to use to access the Services, including, a personal computer, tablet computer, cellular phone and smart phone;
- (l) “**Fees**” has the meaning set forth in section 6.1;
- (m) “**Global e-Banking Service Agreement**” means the agreement governing the “Global e-Banking Service” provided by the Bank which permits a Corporate Customer to designate certain of its corporate affiliates to access and operate Accounts maintained by the Corporate Customer with international branches of the Bank, and to use the Services in connection with such Accounts in accordance with this Agreement;
- (n) “**Individual Customer**” means a customer of the Bank with an Account that is a natural person;
- (o) “**Indemnified Party**” has the meaning set forth in section 10.5;
- (p) “**Information**” has the meaning set forth in section 3.5;
- (q) “**Information Provider**” has the meaning set forth in section 3.5;
- (r) “**Information Services**” has the meaning set forth in section 3.5;
- (s) “**Instructions**” means any instructions communicated to the Bank in connection with the Services after the Username and Password or Personal Verification Questions have been correctly provided to the Bank in order to establish the authority of the person providing the instructions;
- (t) “**Losses**” means any and all damages, claims, fines, penalties, deficiencies, losses, liabilities (including settlements and judgments), costs and expenses (including interest, court costs, reasonable fees and expenses of lawyers, accountants and other experts and professionals or other reasonable fees and expenses of litigation or other proceedings or of any claim, default or

assessment), including, without limitation, indirect, incidental, special, punitive or consequential losses or damages, loss of profits, loss of revenue, loss of business opportunities, or any other foreseeable or unforeseeable loss resulting directly or indirectly out of this Agreement or the Services, even if the Bank was advised of the possibility of damages or was negligent;

(u) “**person**” means any natural person or legal entity, including an individual, partnership, association, body corporate, unincorporated body of persons, firm, trustee, executor, administrator or legal representative;

(v) “**Notice of Amendment**” has the meaning set forth in section 2.3;

(w) “**PIPA**” means the *Personal Information Protection Act*, S.B.C. 2003, c. 63;

(x) “**PIPEDA**” means the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5;

(y) “**Report**” has the meaning set forth in section 3.5;

(z) “**Services**” means the e-banking services made available by the Bank in order to enable the Customer to:

(i) access and obtain information relating to Accounts;

(ii) provide the Bank with Instructions relating to Accounts;

(iii) conduct and authorize Transactions;

(iv) access and use the Information Services; and

(v) conduct such other business relating to Accounts as the Bank may permit from time to time,

online through the Websites using Electronic Devices;

(aa) “**Third Party**” means any person other than the Bank or a principal, officer, director, affiliate, representative, employee, agent or contractor retained by the Bank in connection with this Agreement;

(bb) “**Transaction**” means any transaction relating to an Account, including a transfer, withdrawal, deposit, payment, remittance, dealing or other act effected by the Bank pursuant to or as a result of an instruction given to the Bank by the Customer or an Authorized User; and

- (cc) “**Website**” means any website accessible through the internet that is established, operated or maintained by or on behalf of the Bank in order to enable Customers to use the Services.

1.2 Interpretation

For the purposes of this Agreement, except as otherwise expressly provided herein:

- (a) the words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Part, clause, subclause or other subdivision or schedule;
- (b) the singular of any term includes the plural and vice versa and the use of any term is equally applicable to any gender and where applicable to a body corporate;
- (c) the word “including” is not limiting (whether or not non-limiting language such as “without limitation” or “but not limited to” or other words of similar import are used with reference thereto);
- (d) a reference to a “Part” is to a Part of this Agreement, and a reference to a section followed by a number or some combination of numbers and letters refers to the section, paragraph, subparagraph, clause or subclause of this Agreement so designated;
- (e) any reference to a corporate entity includes and is also a reference to any corporate entity that is a successor to such entity; and
- (f) any reference to “Customer”, in the case of a sole proprietorship, means the sole proprietor and, in the case of a partnership, means each of the present and future partners of the partnership, and, in the case of a corporation or other legal entity, its lawful successors, and any personal representative or lawful successor of the Individual Customer, the sole proprietor, or each partner of the partnership.

1.3 Headings

The headings to the Parts and clauses of this Agreement are inserted for convenience only and do not form a part of this Agreement and are not intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

2. THE AGREEMENT

2.1 Scope

This Agreement governs the Customer's use of the Services and applies when the Customer accesses or uses the Services. Subject to subsection 2.2 below, this Agreement replaces all prior agreements between the Customer and the Bank in connection with the Services.

2.2 Other Agreements.

The Customer acknowledges and agrees that this Agreement supplements (i) any and all other written agreements that the Customer has entered into or will enter into with the Bank, and (ii) any terms and conditions provided on the Websites and binding on users thereof. If there is a conflict between a term in this Agreement and any other written agreement entered into between the Customer and the Bank, except the Global e-Banking Service Agreement, the term of the other agreement will apply to the extent necessary to resolve the conflict.

2.3 Amendments to Agreement

The Bank may amend the terms and conditions of this Agreement at any time, at the Bank's sole and unfettered discretion, by providing notice of such amendment (a "**Notice of Amendment**") to the Customer. The Bank may provide the Notice of Amendment by any means determined by the Bank, including, without limitation, by posting, broadcasting, displaying, or otherwise providing information about the amendments on a Website, in a Bank branch, on any correspondence delivered to the Customer, or a statement issued by the Bank to the Customer. If the Customer continues to use the Services or maintain an Account on or after the date that the amendments subject to a Notice of Amendment come into effect, the Customer shall be deemed to have agreed to be bound by such amendments. Where the Bank requests that a Corporate Customer confirm acceptance of any amendment to this Agreement, the Bank may accept the confirmation provided by any Authorized User of the Corporate Customer, and such confirmation shall be binding for all purposes on the Corporate Customer.

3. SERVICES

3.1 The Services

The Bank shall make the Services available to the Customer in accordance with the terms and conditions of this Agreement. If the Customer is an Individual Customer, the Services shall be made available for such Customer's sole and exclusive use. If the Customer is a Corporate Customer, the Services shall be made available to such Corporate Customer and each Authorized User thereof.

3.2 **Use of Services**

Upon accessing and using the Services, the Customer shall be bound by the terms and conditions of this Agreement. The Customer shall use the Services exclusively in accordance with (i) this Agreement, (ii) any additional instructions and directions as the Bank may provide from time to time, and (iii) any additional terms and conditions referenced in section 2.2 above.

3.3 **Lawfulness**

The Customer shall not use or knowingly allow any other person to use the Services, the Information or the Reports for or in connection with any illegal or unauthorized purpose or activity. The Customer shall notify the Bank immediately upon becoming aware of any use of the Services, Information or Reports that is, or may reasonably be expected to be, an illegal or unauthorized use of same.

3.4 **Jurisdiction of Access**

The Services are only offered in jurisdictions where and when they are legally permitted by the Applicable Laws. The Customer acknowledges and agrees that (i) some features of the Services and the Websites may not be available in all jurisdictions, and (ii) the Customer accesses the Services and the Websites at the Customer's sole and exclusive risk, and bears all responsibility for compliance with the Applicable Laws binding on such access or use.

3.5 **Information Services**

As a feature of the Services, the Bank may, at its sole and unfettered discretion, publish or otherwise make available to the Customer via any Website or otherwise any information, material or data, including information about financial and banking services, market data, securities quotations, financial advice and opinions, and other related materials (collectively, the "**Information**"), prepared by any person (each person, an "**Information Provider**", which expression shall include any person that supplies information to an Information Provider) authorized by the Bank, and may provide the Customer with reports (each, a "**Report**") compiled from such Information in any form or medium (collectively, the "**Information Services**"). The Bank neither endorses nor expresses any comment on any Information or Report supplied by an Information Provider, nor assumes any duty to check or verify any Information.

3.6 **Timing of Transactions**

The Customer acknowledges that the Bank may not process Transactions instantly, and that there may be a time delay between the time Instructions are

provided to the Bank using the Services and the time the corresponding Transaction is completed. The Customer acknowledges and agrees that the Bank may, at its sole and unfettered discretion, decline or delay acting on a Transaction for any reason, including circumstances where the Instructions provided to the Bank are incomplete, ambiguous or cannot be carried out due to insufficient funds or otherwise, or where the Bank doubts the authenticity or lawfulness of the Instructions.

4. REGISTRATION AND ACCESS

4.1 Registration

- (a) In order to commence using the Services, the Customer shall (i) register to use the Services via the Website designated by the Bank for such purpose, or in such other manner as the Bank may instruct, (ii) indicate the Customer's acceptance of all terms and conditions governing the use of the Services, (iii) provide all information requested by the Bank, including information required in order to identify the Customer, the Accounts, and the Authorized Users, if any, (iv) create a username (the "**Username**") and password (the "**Password**") satisfactory to the Bank to be used for the purposes of logging in and using the Services, and (iv) create personal verification questions and answers (the "**Personal Verification Questions**") that the Customer may use in order to confirm its identity to the Bank and access or change its Username or Password.
- (b) The Customer represents and warrants to the Bank that all information provided to the Bank in connection with the Services is true and correct, and agrees to immediately inform the Bank of any changes to such information.
- (c) The Customer may change the Password at any time, but any change to the Password shall become effective only once it is approved by the Bank. The Username may only be changed with the consent of the Bank, which consent the Bank may unreasonably withhold at its sole and unfettered discretion.

4.2 Designation of Authorized User

By designating a person as an Authorized User, the Corporate Customer authorizes such person to view information about the Corporate Customer and its Accounts and to give Instructions and carry out Transactions on behalf of the Corporate Customer (subject to any limits on the Authorized User's access set out in section 4.3 below). The Corporate Customer accepts the responsibility for all Losses that may arise from any unauthorized use including an Authorized

User misusing his or her authority in any way, either purportedly on the Corporate Customer's behalf or for personal or other purposes. The Corporate Customer and individual Authorized User shall ensure that the Authorized User meets any eligibility or other requirements for online access that are communicated by the Bank as part of the registration process.

4.3 Levels of Access

At the request of the Corporate Customer, the Bank may provide different levels of access to the Services for different categories of Authorized Users. For example, one category of Authorized User may be permitted to view Account information only, and another category of Authorized User may be permitted to view information and provide Instructions to conduct Transactions. In such circumstances, the Authorized User's access to the Services shall be limited by the level of access that the Bank makes available. The Customer acknowledges and agrees that it is the Customer's responsibility to ensure that the level of access the Bank provides to an Authorized User is appropriate for that person.

4.4 Login and Access

The Customer shall provide the Customer's Username and Password upon being prompted to do so in order to access the Services and provide Instructions to the Bank. The Customer authorizes the Bank to accept without any further verification, and agrees to be exclusively responsible for, all Instructions provided to the Bank using the Services, and all corresponding Transactions, when such Instructions are provided along with the Customer's Username and Password.

4.5 Disclosure of Passwords

- (a) The Customer shall take all reasonable steps and precautions necessary in order to prevent the disclosure of the Username, Password or Personal Verification Questions to an unauthorized person. The Customer shall exercise reasonable care and diligence when entering the Username, Password or Personal Verification Questions into any Website or Electronic Device in order to prevent any other person from observing such information. The Customer acknowledges and agrees that the Customer shall be fully responsible and bear all risks for Losses arising in connection with (i) any accidental or unauthorized disclosure of the Username, Password or Verification Questions, and (ii) the use of the Username, Password or Verification Questions by any person to whom such information was disclosed.

(b) The Customer shall notify the Bank immediately upon any of the following occurrences:

- (i) any disclosure of the Username, Password or Verification Questions to a person other than the Customer or an Authorized User, unless such disclosure is authorized by the Customer and the Bank;
- (ii) any unauthorized use of the Services; or
- (iii) any use of the Services by an unauthorized person,

and shall provide such notice to the Bank in person, by telephone or in such other manner as the Bank may prescribe. In addition to providing the foregoing notice, the Customer shall provide the Bank with such further information in writing as the Bank may request. The Customer shall remain solely responsible for any and all Losses arising in connection with any of the foregoing occurrences.

5. INSTRUCTIONS

5.1 Instructions Binding

The Customer acknowledges and accepts that all Instructions provided to the Bank are final and binding. The Customer agrees that the Customer and each Authorized User, if any, will be jointly and severally liable for the Transactions that are conducted on Instructions, and any Losses that may arise from such Transactions or Instructions. The Customer acknowledges and agrees that the Bank may rely on the Customer's Instructions (including the Customer's electronic acceptance of this Agreement and any other terms and conditions applicable to the Services) as if the Customer had provided the Bank with an executed paper copy of them. The Customer agrees that the Bank may maintain a record of all Instructions provided by or on behalf of the Customer. The Bank's records of the Customer's Instructions shall be binding on the Customer in a dispute, including any legal proceedings, unless the Customer provides clear evidence that the Bank's records are incorrect or incomplete.

5.2 Acceptance of Instructions

The Bank shall only accept Instructions from a Customer or Authorized User in connection with the Services if such Instructions are complete and provided in a manner prescribed by the Bank. The Bank may refuse to act on Instructions that, in the opinion of the Bank, are impracticable or unreasonable, contrary to the Bank's regular

business practices or procedures, incomplete, ambiguous, or if the Bank doubts their authenticity or lawfulness.

5.3 Sufficient Funds

The Customer shall maintain sufficient funds or available credit in each Account necessary for the Bank to fulfil the Instructions provided in relation thereto. The Customer acknowledges and agrees that the Bank shall not be liable for any consequence, including Losses, arising from or in connection with any Instructions not carried out by the Bank due to insufficiency of funds or credit facilities. The Bank may, however, at its sole and unfettered discretion follow any Instructions and conduct any Transaction pursuant to Instructions notwithstanding such insufficiency without the prior approval from or notice to the Customer, and the Customer shall be liable for any overdraft fee, debit or Losses incurred as a result.

5.4 No Rescinding Instructions

The Customer acknowledges and agrees that the Customer may not rescind or withdraw Instructions provided to the Bank without the consent of the Bank. All Instructions provided to the Bank and acted upon by the Bank shall be irrevocable and binding on the Customer, whether given by the Customer, an Authorized User, or by any other person purporting to be the Customer or an Authorized User. The Customer acknowledges that the Bank has no duty to verify the identity or authority of any person providing Instructions to the Bank if such Instructions correctly include the Customer's Username and Password.

5.5 Confirmation of Instructions

The Bank shall provide evidence that an Instruction has been received and processed on the Website designated for the purpose or in such other manner as the Bank may determine from time to time. Such confirmation shall be deemed to have been received by the Customer immediately upon being posted to the Website, and the Customer shall be responsible for reviewing the Website to receive such confirmation. The Customer shall be solely responsible for enquiring with the Bank with respect to any Instructions that have not been confirmed by the Bank within the time customarily required for the Bank to confirm comparable instructions.

5.6 Applicable Currency

The Bank may effect, or require the Customer to effect, any payment relating to an Account in any currency prescribed by the Bank. Where the conversion of

one currency into another currency is required, such conversion shall be effected at the rate determined by the Bank to be the prevailing rate in the relevant foreign exchange market at the relevant time, and such determination by the Bank shall be conclusive and binding on the Customer.

6. FEES, CHARGES AND COMMISSIONS

6.1 Fees

The Bank reserves the right to charge fees, charges, disbursements and commissions (collectively, the “**Fees**”) in relation to the use of the Services and Accounts, and to revise such Fees from time to time. When conducting Transactions using the Services, the Customer shall be charged the Fees, if any, provided under the agreements governing the Customer’s Accounts and other services provided by the Bank. The Bank shall determine and give prior notice to the Customer of the rate of any Fee applicable to the Services at least 30 calendar days before such rate becomes effective. The adjusted rates shall be binding on the Customer if the Customer continues to use the Services on or after the effective date. The Fees shall be deducted from the Customer’s Account, or be billed to the Customer, in accordance with the relevant agreement between the Customer and the Bank, or in such manner and at such intervals as the Bank may specify. The Customer acknowledges that Third Parties, including internet and wireless service providers, may charge the Customer additional fees for access to the Services using an Electronic Device.

6.2 Remittances

If the Customer provides the Bank with Instructions to remit funds to a beneficiary using the services of a Third Party or agent of the Bank, the Customer shall pay all such fees and disbursements as are charged by the Third Party or agent. The Customer acknowledges and agrees that such fees and disbursements may be deducted from the amount remitted to the beneficiary.

7. RESPONSIBILITIES OF THE CUSTOMER

7.1 Information Upon Request

The Customer shall provide all such information, including the Customer’s Confidential Information, as the Bank may request in connection with the Services, or any Instructions, Transaction or Account.

7.2 No Interference with Services

The Customer shall not adapt, alter, modify, convert, decompile, reverse-engineer, enhance, add to, delete or in any way tamper with, or gain access to, any part of the

Services, any Website or Account, or any software, application or code related to the forgoing.

7.3 Seeking Advice

The Customer acknowledges that it is the Customer's responsibility to independently investigate and verify market prices, rates, quotations and any Information or Report before relying or acting on same. The Customer acknowledges that it should seek independent advice from certified professionals on all legal, tax, investment and other matters in connection with the use of the Services, the Information, the Reports, this Agreement, and any Transaction that may incur consequences under the Applicable Laws.

7.4 Security Measures

The Customer shall ensure that each Electronic Device that the Customer uses to access the Services and any Website is installed with an up-to-date anti-virus program, anti-spyware program and a firewall, or such comparable security measures as are available for such Electronic Device.

7.5 Cooperation with Investigations

The Customer and each Authorized User, if any, shall cooperate with the Bank in the investigation of unusual or deficient Transactions or Instructions, poor quality transmissions, and resolutions of claims, including by providing, upon request by the Bank, any originals or copies of Transaction records available to the Customer or any Authorized User.

7.6 Covenants of Corporate Customer

In addition to the other provisions of this Agreement, if the Customer is a Corporate Customer, the Customer and each Authorized User thereof:

- (a) shall execute such forms, instruments and documents, provide such information, and perform such acts as the Bank may request in connection with the provision of the Services, designation of the Authorized User and Accounts, and the performance, exercise and preservation of the Bank's obligations, powers and rights under this Agreement.
- (b) acknowledge and agree with the Bank that, subject to any daily limits or other restrictions on the Services which the Customer or the Bank may impose, the Authorized User may provide any Instructions with respect to an Account that

the Customer could, including, without limitation, Instructions to withdraw funds from the Account for personal use. The Customer authorizes the Bank to carry out all Instructions in accordance with this Agreement and confirms that the Bank is not under any duty to verify the propriety or integrity of any Instructions.

- (c) shall take appropriate measures to monitor and control the use of the Services from time to time, the designation of Authorized Users and Accounts, and adopt appropriate policies and procedures to safeguard against unauthorized use of the Services, including, without limitation, prescribing daily maximum limits or other restrictions on the amounts which the Authorized User may debit, withdraw or transfer from the Accounts in accordance with section 4.3.
- (d) shall cause the Authorized User to only use the Services in accordance with the restrictions placed on the Authorized User by the Corporate Customer. For greater certainty, if the Customer has restricted an Authorized User to access one or more, but not all, Accounts held by the Customer, the Authorized User may only provide Instructions with respect to such Accounts in accordance with the relevant restrictions.
- (e) represents and warrants to the Bank that the Customer (i) has the necessary power and authority, without limitation, to accept the terms and conditions of this Agreement, use the Services, and perform each of the Customer's covenants and obligations hereunder, (ii) has taken all necessary corporate steps and proceedings to duly authorize the execution of this Agreement and use of the Services, and (iii) that the acceptance of the terms and conditions of this Agreement and use of the Services shall not contravene or conflict with any provision in the constating documents of the Customer, or any other agreement binding on the Customer or the Authorized User.

8. INTELLECTUAL PROPERTY, CONFIDENTIAL INFORMATION AND INFORMATION SERVICES

8.1 Confidential Information

The Customer acknowledges and agrees with the Bank that the Services, Information, Reports, and Websites, and their form, format, mode or method of compilation, selection, configuration, presentation and expression (collectively, the “**Confidential Information**”) are trade secrets and confidential and proprietary property of the Bank and the respective Information Providers.

8.2 Prohibited Uses

Unless expressly permitted under this Agreement, the Customer shall not:

- (a) sell, transfer, disclose, assign, convey, lease, sub-license, share, loan, distribute, transmit, broadcast, cablecast, put in circulation, download, reproduce, duplicate or otherwise provide or disseminate any Confidential Information in any form or by any means to any other person or exploit any Confidential Information for a commercial purpose;
- (b) remove, obliterate, erase, relocate or modify in any way any proprietary marking on or appearing with the Confidential Information including, without limitation, any trademark or copyright notice; or
- (c) incorporate or combine the Confidential Information with any other publication, report, product, material or program.

8.3 No Interest Transferred

The Customer acknowledges and agrees that all right, title and interest in and relating to the Confidential Information and any and all related copyright, patent, trademark, service mark, proprietary property, trade secrets and exclusive works are and shall remain the exclusive property of the Bank and the respective Information Providers. No right, title or interest is granted to the Customer other than the right to access and use the Services, the Information and the Reports subject to this Agreement. The Customer shall not make any representation or perform any action which could reasonably be taken to indicate that the Customer has any such right, title or interest.

8.4 Terms of Information Provider

The Customer acknowledges and agrees that an Information Provider may impose terms and conditions binding on the Customer in relation to any Information or Report provided by it. Accessing or using Information or a Report after receiving notice of the terms and conditions applicable thereto shall constitute acceptance of such terms and conditions by the Customer.

8.5 No Liability for Information Services

Except as provided in section 10.1(a) or as otherwise required by the Applicable Laws, neither the Bank nor the Information Providers shall be liable to the Customer for Losses arising from the Information Services. For greater certainty,

neither the Bank nor the Information Providers shall be liable if any Information or Report provided (i) does not meet the Customer's needs or is not suitable for any particular purpose, (ii) is not timely, in sequence, or accurate, (iii) or is unavailable at any time. The Customer acknowledges and agrees that the Bank and each Information Provider shall be entitled to enforce the terms of this Agreement against the Customer. The Customer acknowledges that the Information and the Reports are made available for reference only and may not be relied upon for investment, trading or other purposes. No warranty, representation or guarantee of any kind relating to the Services, Information, Reports or Information Services is given or may be implied, and no officer, director, employee, agent, or contractor of the Bank or any Information Provider is authorized to give any such warranty, representation or guarantee. Views, opinions and recommendations included in the Information Services are not endorsed by the Bank or the Information Providers. The Information Services are not intended to provide tax, financial, investment, accounting or legal advice or to recommend the purchase or sale of any security. For greater certainty, neither the Bank nor any Information Provider shall be deemed to have entered into a professional advisory or consulting relationship with the Customer.

8.6 Information on Websites for Reference

The Customer acknowledges that any Account or Transaction information, exchange rate, interest rate, dealing rate, fee, price, or other related information quoted by the Bank or an Information Provider on a Website, or elsewhere, whether quoted in response to an online inquiry by the Customer or provided unsolicited, is for reference only and is not binding on the Bank or the respective Information Provider. Any rate, price or other information offered by the Bank in connection with a Transaction shall be binding on the Customer upon the Customer's acceptance thereof, irrespective of any different rate, price or new information quoted by the Bank thereafter.

8.7 Customer's Confidential Information

The Customer acknowledges and agrees that, subject to section 9.1 below and the Applicable Laws, the Bank may collect, use and disclose personal, financial and other confidential information (the "**Customer's Confidential Information**") relating to the Customer, each Authorized User, if any, and their respective Accounts, Instructions and Transactions from time to time during the course of its relationship with the Customer. The Bank may collect, use and disclose the Customer's Confidential Information for any reason relating to: (i) the provision of the Services, (ii) performance of the Bank's or the Customer's

obligations under this Agreement, (iii) the opening and operation of Accounts, (iv) the provision of such products, information and services to the Customer as the Customer may request, (v) the determination of the Customer's financial status, (vi) the determination of the Customer's eligibility for products and services offered by the Bank or Information Providers, (vii) managing or improving the Bank's business relationship with the Customer, (viii) maintaining or improving the Bank's business operations, (ix) complying with the Applicable Laws, (x) complying with valid requests for information from regulators, government agencies, public bodies and other entities who have a right to issue such requests, and (xi) other legitimate operational business purposes. The Bank may obtain the Customer's Confidential Information from a variety of sources, wherever located, including from the Customer, Authorized Users, credit reporting agencies, other financial institutions, registries, Third Parties and other sources, as the Bank deems necessary or desirable for the provision of the Bank's products and services. The Customer acknowledges and agrees that the Bank may disclose the Customer's Confidential Information to any of the Bank's affiliates, employees, agents and service providers, wherever located, for operational or other legitimate business purposes relating to this Agreement, the Services or any other agreement entered into between the Customer and the Bank. For greater certainty, the Customer's Confidential Information does not include information that is compelled to be disclosed by law, is disclosed with the consent of the Customer, or becomes available to the public without breach of this Agreement.

9. RESPONSIBILITIES OF THE BANK

9.1 Treatment of Customer's Confidential Information

The Bank shall develop and maintain privacy policies and procedures with respect to the collection and use of the Customer's Confidential Information that meet the requirements of PIPA and PIPEDA and such other privacy legislation as may apply under the Applicable Laws, and shall take steps to ensure that these policies and procedures are complied with by all principals, officers, directors, affiliates, representatives, employees, agents and contractors retained by the Bank in connection with this Agreement. Without limitation to the other provisions of this Agreement, the Bank shall only use or disclose the Customer's Confidential Information in accordance with the Applicable Laws. The Bank shall take, and shall cause its principals, officers, directors, affiliates, representatives, employees, agents and contractors, if any, to take, such reasonable steps and precautions to protect and maintain the confidentiality of

the Customer's Confidential Information, provided that the foregoing shall not prevent the Bank from disclosing any such the Customer's Confidential Information and materials on a confidential basis for the express purpose of providing the Services.

9.2 Technology Safeguards

The Bank shall take reasonable steps to ensure that the systems, Websites and software used in connection with the provision of the Services are configured to include all such safeguards and safety features, including anti-virus, anti-spyware and firewall protection, as are required under the Applicable Laws.

10. LIABILITY AND WARRANTIES

10.1 Limitation of Liability

- (a) The Customer acknowledges and agrees that, subject to section 10.1(b) and in addition to the limitations of liability set out elsewhere in this Agreement, the Bank shall only be liable to the Customer for the direct damages resulting from the Bank's gross negligence, fraud or willful misconduct arising directly from the performance by the Bank of its obligations under this Agreement, and the Bank shall not be liable for any other losses or damages, including, without limitation, any indirect, incidental, special, punitive or consequential damages. To the extent that direct damages result from a Transaction, the Bank's liability for such direct damages may not exceed the amount of the relevant Transaction. For greater certainty, "gross negligence" in this Agreement means conduct, whether through action or inaction, or through words or silence, which is (i) a marked and flagrant departure from the conduct ordinarily expected of a reasonable and prudent person in the Bank's position, or (i) so wanton and reckless as to constitute an utter disregard for harmful, foreseeable and avoidable consequences.
- (b) The Customer acknowledges and agrees that neither the Bank nor any principal, officer, director, affiliate, representative, employee, agent or contractor of the Bank, shall be liable to the Customer for any other Losses, including indirect, incidental, special, punitive or consequential losses or damages including without limitation, loss of profits, damages for inconvenience, loss of revenue, loss of business opportunities, or any other foreseeable or unforeseeable loss resulting directly or indirectly out of this Agreement or any services, including the Services, provided to the Customer by the Bank, even if the Bank was advised of the possibility of such Losses or if the Bank was negligent, and

regardless of the form or the basis of the action, including a cause of action in contract, tort, statute or any other doctrine of law. The Customer acknowledges that these limitations of liability apply to any act or omission of the Bank and any principal, officer, director, affiliate, representative, employee, agent or contractor of the Bank, whether or not the act or omission would otherwise give rise to a cause of action in contract, tort (including negligence), statute or any other doctrine of law.

10.2 Specific Cases Where Liability Precluded

In addition to the limitations of liability set out in section 10.1(b) above and elsewhere in this Agreement, and subject to section 10.1(a), the Bank will not under any circumstances be liable to the Customer or any other person for any Losses resulting from:

- (a) any use of the Services, including any Website, Information or Report, by the Customer, an Authorized User, or any other person whether or not such use was authorized;
- (b) any interruption, interference, suspension, delay, loss, unavailability, or other failure in the provision of the Services, in the transmission of Instructions or information relating to the Services, in the processing of a Transaction, or in access to a Website, whether or not such failure was caused by the Bank or any principal, officer, director, affiliate, representative, employee, agent or contractor of the Bank, by a Third Party, or by circumstances outside of the Bank's control;
- (c) termination of this Agreement or withdrawal of the Services, or any part or feature of the Services, by the Bank for any reason;
- (d) failure by the Customer or an Authorized User to comply with any of its obligations under this Agreement;
- (e) failure by any person using the Services to use up-to-date anti-virus software, anti-spyware software and a firewall on the Electronic Device such person uses to access the Services or any Website; or
- (f) any restrictions imposed by a governmental or administrative authority, or any changes to the Applicable Laws.

10.3 **No Warranties**

Subject to any explicit warranties the Bank may make to the Customer in other written agreements, the Bank disclaims any warranties and conditions, including any oral, implied or statutory warranties and conditions, regarding the nature, quality or character of the Services, the Websites, the Information, the Reports and the Accounts, including any warranties and conditions as to merchantability, operation, currency, timeliness, merchantable quality, fitness for a particular purpose, title, non-infringement, security, and accuracy. The Bank does not represent or warrant that (i) the Services, Websites, Information, Reports and Accounts will meet the Customer's requirements; (ii) the Services, Websites, Information, Reports and Accounts will be error free or provided on an uninterrupted or continuous basis; (iii) there will be no delays, no difficulties in use, no defects, or no incompatibilities with the Customer's use of the Services, Websites, Information, Reports and Accounts; (iv) all deficiencies in the Services, Websites, Information, Reports and Accounts can be found or corrected; or (v) that the Websites and any communication from the Bank, whether from a Website, or otherwise, is free of viruses, malicious code, unauthorized programs, disable code, or other harmful components.

10.4 **Customer's Liability**

Subject to section 10.1(a), and in addition to the other provisions of this Agreement, the Customer and each Authorized User shall be fully liable and responsible for all Losses arising from or in connection with use of the Services, including, without limitation, the use of any Website, Information or Report, or the performance of any Transaction conducted pursuant to Instructions received by the Bank from the Customer, any Authorized User, or any other person.

10.5 **Indemnity**

The Customer and each Authorized User, if any, shall jointly and severally indemnify and save the Bank, the Information Providers, and their respective principals, officers, directors, affiliates, representatives, employees, agents and contractors, and anyone for whom they are responsible in law (each, for the purposes of this section, an "**Indemnified Party**"), harmless to the maximum extent permitted by law, from and against all Losses suffered by an Indemnified Party (other than Losses caused by gross negligence, fraud or wilful misconduct as set out in section 10.1(a)) arising in connection with this Agreement, including:

- (a) any performance or non-performance of an obligation under this Agreement by the Customer or an Authorized User, if any, or any principal, partner, director, officer, employee, agent, contractor or affiliate of either of the foregoing;
- (b) any breach by the Customer or an Authorized User of a representation or warranty made under this Agreement;
- (c) any act, omission, or negligence of the Customer or an Authorized User, or any principal, partner, director, officer, employee, agent, contractor or affiliate of either of the foregoing; and
- (d) any failure by the Customer or an Authorized User, or any principal, partner, director, officer, employee, agent, contractor or affiliate of either of the foregoing, to comply with any of the Applicable Laws.

This indemnity is in addition to any other indemnity or assurance against any loss that the Customer may provide to the Bank, and shall survive any termination of this Agreement.

11. AMENDMENT AND TERMINATION

11.1 Amendments to Services

The Customer acknowledges and agrees that the Bank may, at its sole and unfettered discretion, add, remove or amend any part or feature of the Services, including the scope of the Services offered, at any time, without providing notice to the Customer. For greater certainty, the Bank may at any time impose or vary restrictions on the use and availability of the Services, including the minimum and maximum daily limits applicable to Transactions, the service hours during which the Services are available, the availability of foreign exchange and currency conversion services, and the accounts available to use in connection with the Services.

11.2 Termination by Bank

The Customer acknowledges and agrees that the Bank may, at its sole and unfettered discretion, terminate this Agreement, or suspend or terminate all or any part of the Services, or their use by the Customer or any Authorized User, at any time, without providing advance notice or reason to the Customer or any Authorized User. If the Bank terminates this Agreement or withdraws or

suspends the Customer's access to the Services, this Agreement shall continue to apply in respect of all past access to the Services by the Customer and any Authorized Users. The Bank shall not be liable for any Losses or inconvenience that result from the Bank's termination of this Agreement or suspension or termination of the Services.

11.3 Termination of Services by Customer

The Customer may terminate this Agreement and its use of the Services by providing the Bank with at least five Business Days' notice. Any notice of termination shall not release the Customer from any obligations binding on the Customer incurred under this Agreement prior to its termination.

11.4 Bank's Rights to Collect Debts

If the Customer or any Authorized User fails to make any payment owing to the Bank in connection with this Agreement in the manner prescribed herein or otherwise as directed by the Bank, the Bank may exercise any or all of the following rights and remedies in order to collect such debt:

- (a) the Bank may, at any time and without notice, apply the credit balance in any Account held by the Customer or an Authorized User, whether such Account is in the name of the Customer, the Authorized User, or in the names of the Customer or the Authorized User and any other person, toward the satisfaction of any indebtedness owed by the Customer or the Authorized User to the Bank under this Agreement, whether such indebtedness is actual or contingent, and whether it is owed solely by the Customer, the Authorized User, or by the Customer or the Authorized User and any other person;
- (b) at the Customer's sole cost and expense, the Bank may retain any person, including any debt collection agency or solicitor, to act as the Bank's representative or agent for the purposes of collecting the outstanding debt owed to the Bank; and
- (c) the Bank may place and exercise a lien or charge over any personal and real property and assets legally or beneficially owned or controlled by the Customer or any Authorized User, as the case may be, as security for such indebtedness, and may seize and sell such property and apply the proceeds of such sale toward the outstanding debt and the additional costs incurred in exercising such remedy, to the maximum extent permitted by the Applicable Laws.

The foregoing rights and remedies are in addition to any other rights and remedies the Bank may be entitled to exercise under any other agreements entered into between the Bank and the Customer and the Applicable Laws, and shall survive the termination of this Agreement.

12. GENERAL

12.1 Notice

- (a) Any notice or other communication required or permitted to be provided under this Agreement by the Bank to the Customer shall be deemed to be well and sufficiently provided if sent by post or delivered personally to the Customer's last known address, in writing, or if delivered by facsimile or other electronic transmission to the latest facsimile number or email address provided to the Bank by the Customer. Any such notice sent to the Customer shall be deemed to have been received, if sent by facsimile or other electronic transmission, on the second Business Day following dispatch; if sent by post, on the second Business Day following dispatch if sent to an address within the United States or Canada, or on the 7th Business Day following dispatch if sent to an address outside of the United States or Canada; and if delivered personally, on the date of delivery if a Business Day and if not a Business Day on the next ensuing Business Day.
- (b) Any notice or other communication required or permitted to be provided under this Agreement by the Customer to the Bank shall be deemed to be well and sufficiently provided if delivered in writing at the address or facsimile number provided by the Bank to the Customer for such purpose. Any such notice sent to the Bank shall be deemed to have been received on the day of actual receipt.
- (c) The Bank may prescribe and amend, from time to time, the methods of communication and form of notice required to be provided under this Agreement. The Bank may inform the Customer of the foregoing requirements by publishing such information on a Website or in any branch of the Bank accessible to the Customer or an Authorized User, or by any other means at the Bank's discretion. The Customer shall be at all times responsible for maintaining the Bank's contact information for the Customer up-to-date.

12.2 Waiver

None of the provisions of this Agreement may be waived, amended,

supplemented or otherwise modified except with the written consent of the Bank. Any waiver, amendment or consent is effective only in the specific instance and for the specific purpose for which it was given. For greater certainty, waiver by the Bank of any particular default under the terms of this Agreement by the Customer or an Authorized User shall not affect or impair the Bank's right in respect of any subsequent default of the same or of a different nature, nor shall any delay or omission of the Bank to exercise any rights arising from such default affect or impair that the Bank's rights with respect to that default or any subsequent default. The Bank shall not by any act, delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder.

12.3 Severance

If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be severed from this Agreement and be ineffective to the extent of such illegality, invalidity or unenforceability and the remaining provisions shall continue in full force and effect.

12.4 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable hereto. The courts of the Province of British Columbia shall have exclusive jurisdiction to hear any disputes arising hereunder.

12.5 Time of the Essence

Time is of the essence of this Agreement.

12.6 Assignment

The Customer shall not assign its right, title or interest in and to this Agreement without the prior written consent of the Bank, which consent may be unreasonably withheld. Any attempt to assign this Agreement without such consent shall be void and of no effect. The Bank may assign this Agreement at any time without the prior written consent of the Customer.

12.7 Language

This Agreement, and any written notice, communication or other related document to be prepared in accordance with this Agreement shall be prepared in the English language, unless the Bank instructs otherwise. The English

version of this Agreement shall be the definitive version and shall prevail to the extent of any inconsistency between the English version and a version prepared in any other language, including the Chinese version.

12.8 Currency

All monies payable and dollar amounts referred to in this Agreement are in the lawful currency of Canada, unless otherwise instructed by the Bank.

12.9 Enurement

This Agreement shall enure to the benefit of and be binding upon the Bank and the Customer and their respective successors and permitted assigns.

12.10 Further Assurances

The Customer shall execute and deliver such further assurances or other documents and do such further acts and things as may be necessary to implement and carry out the intent of this Agreement.