

# Introduction

## *Welcome to Scotiabank Corporate and Commercial Banking*

Knowing how to meet business expectations begins by working with a bank that is committed to meeting your needs. At Scotiabank, our Corporate and Commercial Banking team works with you to understand your specific business needs and deliver flexible, customized financial solutions to help you achieve your goals. As your financial partner, we know how to use our extensive industry knowledge and global expertise to help you navigate the ever-changing marketplace.

## *General Information about Accounts*

To benefit from our business services, you must open a Business Account and you must not in any circumstances utilize any personal accounts opened by you for business purposes.

We offer a variety of accounts and plans which package banking services for you. Not all accounts or Services are available in every country. For more information about account or Service availability contact your branch.

As you must be approved for all Business Accounts and Services, we require that you complete the Application for Business Accounts and/or Banking Services (the “Business Account Application”) or otherwise provide the information requested in the Application to us. You certify that any and all information and documents (including evidence of incorporation and continuing good status) submitted by you to us are true, correct and complete. You also agree to promptly notify us of any changes to any of this information or to any of the documents you have provided to us.

You must also apply separately for and be approved for our financing and risk management solutions, including our trade finance services and foreign exchange services. Please contact your branch for more information.

## *Terms we use in this booklet*

“Agreement” means collectively this Corporate & Commercial Financial Services Agreement, the Business Account Application, any Service Request and Pricing Schedule (if applicable), all certifications and consents provided in any Business Account Application, and any other document or agreement which is incorporated by reference to this Agreement.

The terms “you” or “your” mean the business customer, all partners (in the case of a partnership) and a corporation or limited liability company (in the case of an entity that is incorporated), or any director, officer, partner or signing officer to this Business Account. It also means any individual who has provided a guarantee for any financial or insurance product or service offered by us.

“We”, “our”, “us”, “Scotiabank”, and the “Bank” mean, as applicable, The Bank of Nova Scotia and its branches and subsidiaries and affiliates operating outside of Canada, including but not limited to, its branches in China, Korea, Hong Kong, Singapore, Malaysia, Japan, Taiwan, Egypt, India, its affiliate in Thailand, and its subsidiaries, Scotiabank (Hong Kong) Limited, The Bank of Nova Scotia Berhad, The Bank of Nova Scotia Asia Limited, and Scotiatrust (Asia) Limited. .

Scotiabank Group means collectively, The Bank of Nova Scotia and all its subsidiaries and affiliates.

### *Other Definitions you need to know*

**Business Accounts** are our business chequing and savings accounts.

**Debit transactions** include any type of withdrawal, including cash withdrawals, checks drawn on your accounts, funds transfers (regardless of whether the transfer is to another Scotiabank account), bill payments, bank drafts, money orders, pre-authorized payments and any other method of direct payments.

**Domicile Account or Domicile Branch** refers to the country where your branch account is located.

**Inactive Business Account** refers to your Business Account that is inactive or dormant as a result of you not completing a transaction or requesting a statement of account within the period documented by your domicile branch.

If your Business Account becomes inactive or dormant, we require that you visit your domicile branch and present acceptable proof of your identity and address to reactivate your Account. If your Business Account remains inactive, we will follow the laws of the jurisdiction in which your Account is domiciled concerning inactive accounts, which may include transferring your money to government authorities after a specified period of time and following certain legal procedures.

Inactive accounts cannot be accessed through any other Scotiabank branch.

**Service** means any business banking, insurance, brokerage or financial product or service offered by us.



**Teller-Assisted Transactions** are transactions processed directly with a teller at a Scotiabank branch.

Applicable Law refers to the laws of Malaysia

## Scope of this Agreement

By signing the Business Account Application, you acknowledge that you have received this Corporate & Commercial Financial Services Agreement and agree to the following terms and conditions governing your Business Accounts.

## Operation of this Agreement

This Agreement and the instructions given by you under it, replaces all previous agreements and shall remain in force and can be relied upon by us until we receive written notice of cancellation by any one or more of you.

The terms and conditions of this Agreement are binding on you and any person who succeeds you (including trustees, receivers, heirs, executors, administrators and other legal representatives) or takes on your obligations. You may not assign any Business Account or Service or this Agreement without getting our written permission first. You will notify us immediately if you transfer or sell any substantial part (at least 25% of the assets or share capital) of your business.

This Agreement and all transactions contemplated under it and any claim, dispute or controversy relating to this Agreement and all Business Account(s) and Services shall be governed, construed and interpreted in accordance with the laws of the jurisdiction where your Business Account or Service is domiciled, and you agree to submit only to the jurisdiction of the courts where your Business Account(s) are domiciled.

In the event any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable, the remaining provisions shall remain valid and enforceable.

Our rights under this Agreement, other account documents and applicable law are cumulative, and we can exercise any right without losing any other right.

We can delay enforcing any right without losing that right. We can also waive any right on one occasion, or on multiple occasions, without losing our ability to exercise that right in the future.

We can add or change the terms and conditions of this Agreement or any Service at any time and from time to time. This right includes our right to amend this Agreement by adding new terms, establishing new rates, charges and fees, and increasing or decreasing rates, charges and fees. We will notify you of changes as may be required by law.

Notice of additional or amended terms and conditions may be given to you by electronic communication, or by posting a notice in our branches, may be posted on our public website, and may also be given through notices in our monthly statements and any of these methods will be adequate delivery of notice. You agree that any such notice of changes in the terms and conditions of this Agreement will be binding upon you and forms part of this Agreement without requiring your signature.

We may close your Business Account(s) or terminate any Service(s) under this Agreement without notice to you if you do not operate your Business Account(s) in a satisfactory manner, for example, if you maintain an overdrawn balance due to NSF cheques or long outstanding service charges, breach any terms and conditions of this Agreement, or if you use the account(s) for illegal or improper purposes. We may close your Business Account(s) or terminate any Service under this Agreement without reason by giving you thirty (30) days' written notice sent to your address of record. You may close your Business Account(s) at any time upon notice to us. Upon closure of your Business Account(s), the Bank may return without payment all checks or payment orders presented for collection.

You may close your Business Account(s) at any time upon notice to us. Upon closure of your Business Account(s), the Bank may return without payment all cheques or payment orders presented for collection.

If you are a non-resident of the country where your Business Account is domiciled, you are advised that off-shore banking transactions may have tax consequences in the country where your account is domiciled and/or in your home country. Accordingly, if you are a non-resident, you should obtain prior written advice for such transactions from qualified tax advisors in your own domicile. A copy of such advice may be requested by the Bank prior to opening a Business Account or anytime thereafter.

We will withhold taxes on payments to you only where required to do so by law, otherwise you are responsible for any taxes including The Goods & Services Tax (GST) that may be incurred on your Business Account(s) or Service(s). If we are required to make any deductions or withholding of any taxes for payments to us, then the amount of the payment to us will be increased by the amount necessary to pay such taxes. You agree to indemnify us for all losses, costs, and/or interest payments caused by your failure to pay such taxes or additional costs due to failure to file necessary returns or information with government authorities.

We retain all our rights under any law respecting set-off, deposits and banking matters even if they are not described in this Agreement.

## **Special terms for Partnerships or Joint Ventures**

If you are a partnership or joint venture, each individual or entity which is a member of the partnership or joint venture (but not the limited partners of a limited partnership) is jointly and severally responsible for:

- All obligations to provide any money needed to fund the Business Account;
- All present and future transactions entered into or which may be entered into with us in your name, and every promissory note, bill of exchange, draft, cheque, instrument, receipt, security agreement, mortgage, encumbrance, or charge receipt;
- Except for a lawful claim made before repayment, the whole or any part of the credit balance in your Business Account may be withdrawn by any one of you, or applied by us to the debts of any one or more of you to us;
- The instructions given by you which remain in force and can be relied upon by us until we receive written notice of cancellation by any one or more of you;
- This Agreement, and any order or receipt signed or authorized by any one or more of you under this Agreement is binding on each of you and your own legal or personal representatives.

# General Terms and Conditions Applicable to all Business Accounts and Services

## 1. How We Will Protect Your Privacy

Your privacy is important to Scotiabank. This Scotiabank Privacy Agreement (the “Privacy Agreement”), as amended from time to time, sets out the information practices for the Scotiabank Group\*, including the type of information collected, how the information is used, and with whom the information is shared. It applies to each individual that has applied for, signed an application, enrolled in or uses any personal or business banking, insurance, brokerage or financial product or service offered by us (“Service”) including any co-applicant(s), guarantor(s) and personal representatives.

This Privacy Agreement replaces all previous agreements, either written or oral, between you and us regarding the collection, use and disclosure of your personal and financial information.

In this Privacy Agreement,

“We”, “our”, “us”, “Scotiabank”, and the “Bank” mean, as applicable, The Bank of Nova Scotia and its branches and subsidiaries and affiliates operating outside of Canada, including but not limited to, its branches in China, Korea, Hong Kong, Singapore, Malaysia, Japan, Taiwan, Egypt, India, its affiliate in Thailand, and its subsidiaries, Scotiabank (Hong Kong) Limited, The Bank of Nova Scotia Berhad, The Bank of Nova Scotia Asia Limited, and Scotiatrust (Asia) Limited. .

“Scotiabank Group” means collectively, The Bank of Nova Scotia and all its subsidiaries and affiliates.

“You” and “your” mean an individual that has applied for, signed an application, has enrolled in or uses any Service and includes any co-applicants, guarantors and personal representatives.

### **Collecting, using and disclosing your information**

Scotiabank is a global organization with legal entities, business processes, management structures and technical systems that cross borders. Our privacy

practices are designed to provide protection for your personal and financial information within the Scotiabank Group of companies all over the world.

When you apply for, or provide a guarantee in respect of, or use any Service and while you are our customer, you agree that:

we may collect certain personal and financial information from you and about you such as:

- your full name, address, date of birth and occupation and the nature and type of business you operate (if applicable), which is required by law in many of the countries that Scotiabank does business;
- at least one piece of government-issued identification with a picture, such as a valid passport, national identification card, voter's card or driver's license, as well as other documents or means of confirming your identity that are acceptable to us. We may also ask for documents such as a recent utility bill to verify your name and address;
- your annual income, assets and liabilities and credit history;
- Information about your transactions, including payment history, account activity, how you intend to use the account, products or Services and the source of any incoming funds or assets;
- Information we may need in order to provide you with a Service, such as asking you for health information if you are applying for certain insurance products. In some instances, providing this information is optional;
- information about third parties such as your spouse if you are applying for certain Services, where this information is permitted by law; and
- Information about beneficial owners, intermediaries and other third parties which is required by law.

For legal entities such as companies, partnerships, trusts, estates, organizations or clubs, we may collect the information referred to above for each authorized person, partner, trustee, executor and club member, as appropriate.

We may collect from, use and disclose this personal and financial information to, any person or organization for the following purposes:

- to confirm your identity;
- to understand your needs;
- to determine the suitability of our Services for you;
- to determine your eligibility for our Services;
- to set up, manage and offer Services that meet your needs;
- to provide you with ongoing Services;
- to meet our legal and regulatory requirements;
- to help us collect a debt or enforce an obligation owed to us by you;



- to respond to a court order, search warrant or other demand or request that we believe to be valid or to comply with the rules of production of a court;
- to manage and assess our risks;
- to investigate and adjudicate insurance claims; and
- to prevent or detect fraud or criminal activity or to manage and settle any actual or potential loss in connection with fraud or criminal activity.

When we collect your health information for the purpose of providing an insurance Service, we will use that information strictly for that purpose. (See below for more information.)

We do not provide directly all the services related to your relationship with us. We may use third party service providers to process or handle personal and financial information on our behalf and to assist us with various services such as printing, mail distribution, data processing, marketing, providing customer support or performing statistical analysis of our services and you acknowledge that we can release personal and financial information about you to them.

Our service providers are located all over the world. As a result, your personal and financial information may be accessible to regulatory authorities in accordance with the laws of the countries where our service providers operate. We will require our service providers to protect the personal and financial information they receive from us in a manner that is consistent with Scotiabank Group of companies' privacy policies and practices.

We may share your personal and financial information within the Scotiabank Group of companies for any of the purposes set out above and you agree that we may transfer it to countries in the world where we do business. This means that your personal and financial information may be accessible to regulatory authorities in these countries in accordance with the laws of these countries.

We may collect, use and disclose your social security number, national identification number or any other type of tax or other government-issued personal identification number for income tax reporting purposes, as required by law. In addition, we may ask you for your social security number, national identification number or other tax or other government-issued personal identification information, where permitted by law, to verify and report credit information to credit bureaus and credit reporting agencies as well as to confirm your identity. This allows us to keep your personal and financial information separate from that of other clients, particularly those with similar names and helps maintain the integrity and accuracy of your personal and financial information.

We may verify relevant information you give us with your employer, your references or other reliable independent sources and you authorize any person whom we contact in this regard to provide such information to us.

We may refuse to enter into or continue relationships or conduct transactions with you for certain legal reasons, or if you insist on anonymity or provide false, inconsistent or conflicting information where the inconsistency or conflict cannot be resolved to our satisfaction after reasonable inquiry.

You agree that we may monitor your account(s) to meet our legal and regulatory obligations, including using automated surveillance systems to prevent or detect fraud or criminal activity such as money laundering or terrorist financing. You agree that we may share your information within the Scotiabank Group of companies for these purposes, including monitoring account activity, investigating unusual or suspicious activity and, if necessary, reporting such activity to law enforcement agencies.

You agree that we may monitor or record any telephone call we have with you. The content of the call may also be retained. We may inform you before proceeding with the call of this possibility. This is to establish a record of the information you provide, to ensure that your instructions are followed properly and to ensure customer service levels are maintained. You also agree that a copy of our permanent business record(s) (in any form, including microfilm, photocopy, CD-ROM or image) of any communication may be substituted for an original document. You agree that such records, or any recorded verbal communication, may be used as conclusive evidence of the content of that communication in any legal or other proceedings.

If you have a Service with us, we may use, disclose to and collect from credit bureaus, credit reporting agencies or financial service industry databases (where applicable), credit and other information about you in order to offer you pre-approved credit products or margin facilities. We may also do this after the Service has ended.

When you apply for, accept, or guarantee a loan or credit facility or otherwise become indebted to us, and from time to time during the course of the loan or credit facility, we may use, give to, obtain, verify, share and exchange credit and other information (except health information) about you with others including credit bureaus, mortgage insurers, creditor insurers, registries, other companies in the Scotiabank Group of companies and other persons with whom you may have financial dealings, as well as any other person as may be permitted or required by law. We may do this throughout the relationship we have with you and we can continue to disclose your personal and financial information to credit bureaus even after the loan or credit facility has been retired and you may not withdraw your consent to our doing so.

If you have a Service with us such as a *ScotiaCard*\* banking card, credit card or line credit product, we may give information (except health information) about you to electronic payment service providers, credit or charge card associations, loyalty program partners and their employees and agents for the purpose of processing, authorizing and authenticating your transactions (as the case may be), providing you with customer assistance services and for other purposes related to your Services. We may also give this information in respect of your participation in contests and promotions administered by the electronic payment service providers, credit or charge card associations and loyalty program partners on our behalf.

We may give personal and financial information (except health information) about you to other members of the Scotiabank Group of companies (where the laws of Malaysia allows this) so that these companies may tell you directly about their products and services. The Scotiabank Group of companies includes companies engaged in services to the public such as deposits, loans and other personal financial services, credit, charge, debit and payment card services, full-service and discount brokerage services, mortgage loans, trust and custodial services, insurance services, investment management and financial planning services and mutual funds investment services. This consent will apply to any companies that form part of the Scotiabank Group of companies in the future. You also agree that we may provide you with information from third parties we select.

We may ask you for contact information such as your telephone, mobile, fax number or e-mail address and keep and use this information as well as disclose it to other members of the Scotiabank Group of companies so that we or any of these companies may contact you directly through these channels for the purpose of marketing, including telemarketing. This consent will also apply to any companies that form a part of the Scotiabank Group of companies in the future.

If we sell a company in the Scotiabank Group of companies or a portion of the business of a Scotiabank Group member, we may release the information we hold about you to the prospective purchaser. We will require any prospective purchaser to protect the information provided and to use it in a manner that is consistent with Scotiabank Group of companies' privacy policies and practices.

We may keep and use information about you in our records for as long as it is needed for the purposes described in this Privacy Agreement, even if you cease to be a customer.

All information that you give us will, at any time, be true and complete. If any personal or financial information changes or becomes inaccurate or out of date, you are required to advise us so we can update our records.

**If you apply for an Insurance Service with us (Not applicable to Malaysia)**

When you apply for, or sign an application in respect of or accept an Insurance Service from us, we may use, give to, obtain, verify, share and exchange information about you with others including references you have provided, from hospitals and health practitioners, from government health insurance plans, from other insurers, from medical information and insurance service bureaus, from law enforcement representatives, from private investigators, and from other groups or companies where collection is necessary to underwrite or otherwise administer the Service requested, including the assessment of claims. You also authorize any person whom we contact in this regard to provide such information to us.

If you accept an Insurance Service with us or if an Insurance Service is issued on your life, you may only withdraw your consent as indicated above so long as the consent does not relate to the underwriting or claims where the Scotiabank Group member must collect and report information to insurance service bureaus after the application has been underwritten or the claim has been adjudicated. This is necessary to maintain the integrity of the underwriting and claims systems.

**Changes to this Privacy Agreement**

You acknowledge and agree that we can amend, modify, change or replace this Privacy Agreement at any time to take into consideration changes in laws or other issues that may arise. We will post the revised Privacy Agreement on our public website and may make it available at our branches. We may also notify you of any changes to this Privacy Agreement in any of the following ways:

- a notice addressed to you at your last address in our records;
- a notice on our public website;
- a notice in our branches; or
- a notice in your monthly statement.

Your continued use of the account, product or Service or if you have funds on deposit with us in the account following notice of such change means that you agree to and accept the new terms and conditions of the Privacy Agreement as amended. If you do not agree with any of the changes made, you must immediately stop using the account and/or Services and notify us that you are terminating your respective agreement with us.

**2. How We Can Contact Each Other**

We will use the address or any other contact details given in your Business Account Application to contact you. You agree to tell us of any changes or additions to these details. We may contact you by mail, telephone or email. All

statements and notices we have agreed to give you will be sent to the address most recently notified by you, to us, and will be deemed to have been received by you five business days after it has been mailed or at the time of personal delivery if we send an electronic communication. Correspondence from the Bank is forwarded in envelopes marked with our name and return address.

You may contact us using the address and other contact details we give you when you open your Business Account or Service. We will give you written notice if any of these change. If you contact us by telephone, we will take reasonable steps to verify your identity before providing any Business Account information.

You agree that we may leave a message for you to contact us on answering or facsimile machines or with the person answering the telephone and that we may use an automatic dialing system to give you recorded telephone messages.

### **3. How We Will Accept Instructions From You**

Any instructions to us may be given in person at your branch or delivered to your domicile branch in writing. We will accept instructions through the mail, when we receive them at your domicile branch, but we are not responsible for delays or failure of delivery of such instructions.

We may refuse to act upon any instructions if, in our opinion, you have violated a provision of this Agreement; or to do so may be illegal or in breach of any obligation owed by us to a third party; or cause us to fail to comply with any code, guideline or standard in force from time to time as it applies to us; or if we are in doubt as to the authenticity of the person giving such instruction; or if the instructions you provide are incomplete (including endorsements), illegible, or the information provided does not match the information in our records or this Agreement.

If you also wish to give instructions by telephone, facsimile or e-mail you agree to the following:

- That such instruction will be accepted only from signing officers.
- That the Bank or any of its subsidiaries or agents will not be liable to you or the business for acting on your instructions or on instructions which appear to be from you, if those actions are in good faith.
- That you indemnify and save harmless the Bank and any of its subsidiaries and their respective agents from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, disbursements of any kind or nature whatsoever which may be imposed upon, incurred by, or served against them, by reason of their actions taken in accordance with the instructions.

- That service fees will apply for actions taken by the Bank in response to your instructions. These fees may be deducted from any account you have with the Bank, unless otherwise specified by you in your instructions.

You agree to maintain security systems, procedures and controls to prevent and detect:

- theft of funds;
- forged, fraudulent and unauthorized instructions and electronic transfer of funds; and
- losses due to fraud or unauthorized access to a Business Account or Service.

It is your responsibility to ensure:

- all cheques and instruments are numbered sequentially;
- all cheques and instruments are secured in the same manner as large sums of cash;
- all cheques and other instruments, bank cards, access terminals, check imprinters, stamps, seals and facsimile signature devices are kept in a secured locked safe, vault or other receptacle;
- periodic reviews are carried out to ensure checks and other instruments are secure;
- periodic audits of checks, instruments, bank cards, access terminals, check imprinters, stamps, seals and facsimile signature devices are performed;
- that the individual responsible for doing bank statement reconciliations is not the same individual who is responsible for the security of checks or instruments or their preparation; and
- all employees and agents having any role in preparing checks or instruments and the business' bank statement reconciliation or other banking functions are supervised and monitored.

We and our officers, directors and employees and agents will not be liable to you or to any third party for any claims or losses you may suffer that result from any fraud caused by any of your employees or agents even if any of the above controls are not breached, even if you send us a notice within the thirty (30) day period advising us of such loss.

You are responsible for settling payment of your instructions. Unless you have made specific arrangements with us, you will ensure that your Business Account(s) have sufficient cleared funds to settle any instructions at the time that you give us an instruction. We are not required to settle an instruction, if sufficient cleared funds are not available in your Business Account(s). The reported balances for your Business Account(s) may include amounts which are

not cleared funds. Cleared funds mean cash or any funds from any deposit which have been finally settled through the clearing system.

We may process your payment instructions and any charges to your Business Account(s) in any order convenient to us. Where more than one instruction is presented for payment on your Business Account(s), the order of processing may affect whether an instruction is honored if there are insufficient cleared funds in the Business Account(s).

You acknowledge that we must clear instructions using a clearing system and are bound by the rules of any clearing system we use, including rules for endorsement of instructions, identity of payee and the time for final settlement. These rules affect our ability to honor your request to cancel instructions and the procedures we must follow to settle your instructions and clear funds for you. You acknowledge and agree that these rules shall in no way whatsoever operate or be construed to impair or limit any rights or remedies we have against you.

We reserve the right to clear and transfer instructions by whatever method we choose, whether they are drawn on your Business Account(s) or negotiated by you.

You grant us sufficient time to settle all instructions. You acknowledge that we may, at our discretion, delay crediting your Business Account(s) until we receive the cleared funds for the instruction.

If we cannot charge a payment, fee or expense to your Business Account(s), or if we ask you to, you must immediately pay us any amounts you are required to pay under this Agreement, plus interest at our published overdraft rate. Interest will be calculated on a daily basis and will be payable monthly or as we may otherwise require.

If an instruction on your Business Account(s) requires settlement in a currency other than the currency of the Business Account, we may sell to you or purchase from you (as the case may be) the amount of the other currency required to settle your instruction. The sale or purchase will be at our customer rate of exchange in effect at the time of settling the transaction. Any costs for this exchange will be added to the sale amount payable by you or deducted from the purchase amount otherwise payable to you. We will charge the resulting total sale amount or credit the resulting net purchase amount to your Business Account.

#### **4. Our Payment Obligations To You**

The money we owe to you because of your deposits to your Business Account(s) with us is payable only at the branch where you maintain the accounts. You are not entitled to ask for payment at any other branch or subsidiary of Scotiabank.

While we may permit you to withdraw monies and perform other banking transactions at another Scotiabank branch, this privilege is subject to restrictions and we reserve the right to limit or remove such Services at our discretion.

The Bank will not take any responsibility or be liable for any reduction in any Business Account due to taxes or depreciation in the value of the funds credited to the Business Account due to restrictions on transfer, payments or convertibility or due to requisitions, involuntary transfers, distress of any character, exercise of military or usurped power or any other cause beyond the control of the Bank. You will not have any claim, action or other recourse to the Bank or any of its branches, affiliates or subsidiaries other than the branch where the Business Account is maintained.

## **5. Your Payment Obligations To Us**

In return for our opening and keeping your Business Account(s), you agree to pay (and we can deduct) from your Business Account(s) any monthly fee and additional service charges for the Business Account(s) and Service(s).

You also agree that we can deduct from your Business Account(s):

- Any debt or liability of any of you to us or to any of our subsidiaries together with any expenses incurred by us in connection therewith.
- The amount credited to your Business Account(s) or paid to you pursuant to any instruction, regardless of whether or not we have received settlement in respect of such instruction, if in our sole and absolute discretion such instruction is in any way whatsoever related to a fraudulent item, an item with an endorsement error or an item for which we may incur a loss if the payment or credit thereof is not reversed, together with all related costs associated with such a charge to your Business Account(s).
- If any of these deductions creates or increases an overdraft, you are still responsible for each charge, debit or liability until you pay us. You promise to pay us on request, the amount of any overdraft along with your overdraft charges then currently due.

**Fees** - We can provide you with details of the monthly fees and service charges when you request them. We may vary at our discretion all charges payable by you, in accordance with applicable law, and as described in the Operation of this Agreement section of this booklet.

## **6. We May Put A Hold On Your Funds**

Cheques presented for cash or deposit to your account may not always be cashed right away. We may place a hold on funds to ensure that the financial institution on which the cheque is drawn will not return the cheque. A hold,



however, provides no guarantee that a cheque will not be returned as invalid or otherwise after the hold period has expired. You are responsible to us for any cheque that you deposit that is returned to us, regardless of whether any hold period has expired.

The length of time you have dealt with the Scotiabank branch, the amount of funds already in your Business Account, local or international clearing arrangements, and the amount and characteristics of the cheque being deposited may all influence whether the funds will be held, and the length of the hold period.

Some cheques may be sent on “collection”, meaning that the funds will be credited to your Business Account only if and when the cheque clears the other financial institution and the funds have been received by Scotiabank.

Electronic and telephone transfers received for deposit to your Business Account are subject to our verification of source of funds. A hold may be placed on any such transferred funds until we complete the verification.

## **7. Your Cheques May Be Returned**

You agree to complete cheques so that they are not easy to alter and you must not put a date on your cheques which is after the date of signature. If you do, we will not be liable for any loss you incur as a result of us paying a cheque before the date you have put on it.

If we return cheques or regular payment orders or refuse to accept other instructions we will tell you the reason for doing so. Charges for returned items or items we are obliged to pay, such as guaranteed cheques, are available on request.

We may refuse to make any payment if you do not have cleared funds (or an agreed overdraft) available on the working day before the items are presented for payment.

In deciding whether you have funds available we may take into account any earlier instructions to make payments, regular payments from your Business Account(s), and any cheques we are treating as cleared. We will tell you if you can make payments from your Business Account(s) against cheques which are not cleared. We may not take into consideration regular credits paid into your account or any credits received after the decision to refuse payment has been taken.

## 8. Cheques you deposit may be returned

U.S. federal law entitled the “Check 21 Act” (applicable for U.S. Dollar cheques drawn in U.S. only) allows U.S. banks to remove an original paper cheque from the cheque payment system, capture its image electronically and destroy the original item. As a result, if you negotiate a U.S. dollar cheque that is processed through the U.S. cheque payment system and it is subsequently returned, you might receive a paper reproduction of the electronic image, a “Substitute Check”, instead of the original paper cheque. Under U.S. law, a Substitute Check is the legal equivalent of the original cheque, provided that it meets the conditions prescribed under the Check 21 Act.

The reasons a cheque you deposit may be returned by another financial institution may include but are not limited to the following:

- **NSF or Refer To Drawer:** means there is not enough money in the account on which the cheque is drawn.  
**Payment Stopped:** The owner of the account has requested the cheque not be paid.
- **Postdated:** The date on the cheque is in the future.
- **Stale Dated:** The date on the cheque is 6 months or older.
- **Account Closed:** The account the money is coming from is closed.
- **Funds Not Cleared:** A “hold” has been placed on funds in the account on which the cheque is drawn on.
- **Materially Altered Cheque:** The owner of the account says the cheque has been altered without authorisation.
- **Counterfeit Cheque:** The owner of the account denies issuing the cheque.  
**Irregular Signature:** The signature on the face of the cheque does not match the usual signature of the person that it purports to be.  
**Forged Signature:** The signature on the face of the cheque is not the signature of the person that it purports to be.
- **Forged Endorsement:** The signature of the endorser of the cheque is not the signature of the person that it purports to be.  
**Words and Figures Differ:** The written and numerical amounts on the cheque don't match.

If you deposit a cheque that was drawn in a foreign currency and the cheque is returned to us, you will be responsible to repay to us the local currency equivalent of that cheque at the time that it is returned to us.

You may stop payment of a cheque you have issued before it has been presented for payment (unless it has been guaranteed). You may only cancel instructions given by any means acceptable to us if they have not been acted upon. If we are able to cancel your instruction, we may impose a charge. Our charge for stopping payment of cheques is available on request.

When you cancel an instruction (which includes a stop payment), you must follow the procedures specified by your branch and complete any form which we give you. You must also communicate the cancellation to us in writing or by fax before final settlement. You acknowledge we must follow any applicable clearing system rules or electronic funds transfer systems requirements and this may affect our ability to cancel an instruction.

If you cancel an instruction, we will not be obliged to hold the funds or return the funds to you unless:

- We are able to have the instruction stopped and the cleared funds are returned to us, and
- The branch specifies a procedure for you to cancel instructions and you correctly followed that procedure.

If any cheque you have negotiated is returned to us unpaid we will debit your Business Account(s), whether or not it creates or increases an overdraft and even if we allowed you to make a payment or to take cash against the cheque.

Should the Bank in its discretion pay any cheque or payment order when there are insufficient funds in your Business Account(s), you agree to pay the Bank said overdraft on demand, and also agree to pay interest on the overdraft at the maximum rate permitted by law or regulation from the date of the overdraft to the date of payment of the overdraft.

## **9. We May Use Agents and Transmission Services**

We may use any correspondent or third party to act as your agent for funds transfers or other transactions for your Business Account(s). This correspondent or third party, while processing your funds, will be considered your agent and not an agent of the Bank.

You must promptly review any notice sent to you of a funds transfer transaction for your account, and notify us within 24 hours of when you received or were deemed to have received notice, of any error or omission in the transaction. If you fail to promptly report such an error or omission you relieve the Bank of any liability with respect to such discrepancies or objections.

### **9. You Must Verify Your Accounts**

We will periodically provide you with statements of your Business Account(s) which will be mailed to the address we have for you in our records.

You must review each statement carefully to check and verify the entries. If you believe there are any errors or omissions, you must tell us in writing within thirty (30) days from the date we mailed the statement or made it available for pickup

in person. If you do not tell us of any errors or omissions within those thirty (30) days, you have acknowledged that:

- The balance shown in your statement is correct;
- All amounts charged to your Business Account(s) are valid;
- There are no transactions omitted from your statement (i.e., that the statement is correct and complete); and
- The use of any Service shown is correct.

We and any of our officers, directors, employees and agents will not be liable to you or to any third party for any claims or losses you may suffer that result from any fraud caused by any of your employees or agents even if you send us a notice within the 30 day period advising us of such loss. After thirty (30) days, you cannot claim, for any purpose, that any cheque, instrument or entry (debit or credit) on your statement is incorrect, and you will have no claim against us for reimbursement relating to a cheque, instrument or entry, even if the cheque, instrument or instruction charged to your Business Account was forged, unauthorized or fraudulent.

We will tell you if the nature of any Service you are approved for requires more frequent statements, exchange of information, reports or verification than described generally for the Business Account. The account verification conditions described above will apply regardless of the reporting frequency, but the Business Account verification period will be the one described in the notice to you and not the thirty (30) day verification period as above.

We will mail your statements of account to your latest address in our records or make them available for pick-up at the branch, as may be agreed in writing from time to time. If you do not receive a statement, or pick it up as you have agreed to do, within ten (10) days after the end of the statement period, you must let us know within fifteen (15) days after the end of the statement period. If you do not let us know you did not receive the statement of Business Account within that time, then you will be deemed to have received the statement five (5) days after the mailing date, and you have a further thirty (30) days to review the statement and advise us of any error.

## **11. Limitation of Liability and Indemnity**

Except as otherwise required by law, or as otherwise provided in this Agreement, we and our officers, directors, employees and agents are not liable for any loss or damage you suffer in connection with your Business Account(s) or the provision of any product or Service, or refusal to provide any Service, except if it was caused by our gross negligence. You acknowledge that this means that we and our officers, directors, employees and agents are not liable for any of the following:

- Honoring, or refusing to honor or cancel, a check or an instruction, for any reason;
- Any delay in completing or failing to provide a Service for any reason even if this means you are unable to access funds in your Business Account;
- Any matter arising from your actions or your failure to perform your obligations properly under this Agreement even if you are not at fault; and
- A forged, unauthorized or fraudulent use of Services, check or instruction, or material alteration to a check or an instruction, even if you or we did or did not verify the signature, check, or instruction or authorization.

If we are found to be liable for failing to perform a Service properly, our liability will not be more than the direct cost to you of any loss of funds you suffered. This loss will be calculated from the time we should have made the funds available to you until the time we did make them available, or until you should reasonably have discovered their loss, whichever is earlier.

The Bank will not be liable for any damages or loss due to delays or failures to fulfill other obligations pursuant to this Agreement caused by or attributable to circumstances beyond its control. Such circumstances include, but are not limited to, Acts of God, acts of other parties, military action, orders by civil authorities, strikes, power interruptions, loss of communications or computer facilities, floods.

Under no circumstances will we or any of our officers, directors, employees or agents be liable for any indirect, consequential, incidental, special or punitive damages that are a consequence of a loss, including, without limitation, loss of profits.

You agree to:

- Release us and our officers, directors, employees and agents from liability;
- Indemnify and hold us and our officers, directors, employees and agents blameless; and
- Compensate both us and any third party providing Services or settling instructions on your behalf for any loss, damage, payment, legal expense (based on attorney's fees and costs incurred by us) whether incurred at the trial or appellate level, in an arbitration or administrative proceeding, in bankruptcy (including, without limitation, any adversary proceeding, contested matter or motion or otherwise) and other cost, as may be applicable, resulting from:
  - A) any Service performed or refused;
  - B) Any check or instruction honored, processed, negotiated, settled, changed, cancelled, reversed or refused; or,
  - C) your failure to properly provide information or follow any procedures for a Business Account or Service under this Agreement.

We will let you know if a claim arises for which you have agreed to indemnify us. We will each cooperate in dealing with the claim, but any costs will be at your expense. You may defend a claim before making a payment to settle it; as long as we are satisfied that this will not cause us to be exposed to further loss.

## **12. Corporate Consent Clause**

The Company hereby irrevocably consents and authorises, and confirms that it has duly obtained its directors, shareholders, officers, guarantors and/or such other relevant persons consent and authority, for The Bank of Nova Scotia Berhad (Scotiabank):

- i. to be provided information (inclusive of relevant personal information of the said directors, shareholders, officers, guarantors and/or relevant persons) as may be required by Scotiabank for use in accordance with relevant terms and conditions and for the purpose of the grant and continued maintenance of the facility / account;
- ii. to carry out the necessary reference checks including but not limited to credit reference/reporting checks to further ascertain the status of the Company and its subsidiaries, directors, shareholders, officers, guarantors and/or such other relevant persons;
- iii. to disclose the said directors, shareholders, officers, guarantors and/or relevant persons personal information to the classes of parties described in the Scotiabank Privacy Notice (which is available at [www.scotiabank.com.my](http://www.scotiabank.com.my)) and
- iv. to provide the said directors, shareholders, officers, guarantors and/or relevant persons with information on Scotiabank's products, services and/or offers (inclusive of the products, services and offers of entities within the Scotiabank Group) which may be of interest and/or financial benefit to them,

at Scotiabank's sole discretion, without further reference to the Company, its subsidiaries, the directors, its shareholders, officers, guarantors and/or relevant persons. The Company agrees to undertake the responsibility to update Scotiabank in writing should there be any change to the personal and financial information relating to the said directors, shareholders, officers, guarantors and/or relevant persons. Should the said consent and/or authority be



subsequently revoked by any of the said directors, its shareholders, officers, guarantors and/or relevant persons, the Company agrees that Scotiabank shall have the right to terminate this facility / close the account.

This clause shall be without prejudice to any other clause in these Terms and Conditions which provides for the disclosure of information.