Mobile Remote Deposit Capture Terms & Conditions

Mobile Remote Deposit Capture (“mRDC”) is a Service that allows Customers of HSBC Bank USA, NA (“Bank”) to remotely deposit checks using the HSBCnet Mobile App. Customers who are approved by the Bank and use this Service, effectively agree to the following terms and conditions, as amended from time to time (the “Agreement”). This Agreement is subject to change at any time by the Bank and the Bank will notify the Customer of any change via email, post, or by publishing the revised terms and conditions on the Bank’s public website. Additionally, the Bank reserves the right, in its sole discretion, to change, modify, add, or remove portions of the Service. The Customer’s continued use of the Service will indicate its acceptance of any such changes to the Service.

The use of the Service and the account(s) into which the mRDC checks (mRDC Check is defined as an electronically scanned image of an original check using a mobile device) are deposited (an “mRDC Account”) as approved by the Bank, can be suspended or terminated by the Bank without notice at any time for any reason or no reason. The Customer may deposit eligible original physical checks (each an “Original Check”) using the HSBCnet Mobile App (“Mobile App”) with a compatible mobile device (“Mobile Device”) into an mRDC Account (each an “mRDC Deposit”) in accordance with this Agreement, the terms, conditions and disclosures governing the mRDC Account, as well as related product guides and operating manuals, any of which may be revised without notice, and in effect from time to time.

CUSTOMER REPRESENTATIONS AND WARRANTIES

The Customer represents and warrants to, and covenants and agrees in favor of the Bank, as follows:

(a) Each mRDC Check deposited pursuant to this Service (other than U.S. postal money orders) is an Original Check, not an image replacement document or substitute check drawn on a bank located in the U.S. and each mRDC Check (including U.S postal money orders) is denominated in U.S. dollars;

(b) The Customer has the right to exclusive possession, actually possesses, and has the right to receive full payment on, each Original Check at the time that the related mRDC Check is transmitted for deposit pursuant to this Service; and the Customer shall not subsequently relinquish possession of or control over, or otherwise treat, such Original Check, in a manner that (i) is inconsistent with its exclusive right of possession thereto (including returning such Original Check to the drawer thereof without clearly indicating to such person that the related mRDC Check has been deposited for collection) or (ii) allows for such Original Check to be transferred, collected and/or paid or entered in to bank collection channels outside of this Service;

(c) The Original Check relating to each mRDC Check deposited pursuant to this Service is genuine and what it purports to be, has not been altered, contains all required endorsements, each of which is authorized, and is not subject to any defense or claim of recoupment or setoff;

(d) The Customer has properly reviewed each mRDC Deposit and the electronic image of each Original Check (each an “Electronic Check”) prior to transmitting such mRDC Deposit to the Bank pursuant to this Service, and such mRDC Deposit and Electronic Check accurately and legibly represents all printed, manuscript and other information on the front and the back of the related Original Check in the form of the electronic reproduction thereof at the time that such mRDC Check is transmitted for deposit pursuant to this Service, and furthermore meets the standards of image quality that are required by the Mobile App, with clearly visible and legible date, numerical and written amount, drawer signature, check number, account number, routing transit number and full Magnetic Ink Character Recognition(MICR) line, and any endorsement or other information written on the check. The Customer acknowledges that if these requirements are not met, or for any other reason or no reason at all, in the Bank’s sole discretion, the Bank may reject the mRDC Deposit.
(e) The Customer shall not attempt to receive payment, and shall not permit any person to receive payment, in respect of any mRDC Check deposited pursuant to this Service other than in accordance herewith, unless such mRDC Check is rejected as ineligible for this Service; If any check is presented or deposited more than once, whether by mRDC or by any other means, the Bank may, in its sole discretion, reject it or return it and charge it against any of the Customer's accounts with the Bank without prior notice to you.

(f) The Customer shall not use this Service to deposit, collect or obtain payment on any check other than (i) an mRDC Check payable to the Customer as the original payee thereof or (ii) an mRDC Check that is being presented for payment for the first time (a check that is not a duplicate presentment) or (iii) an mRDC Check which such Customer receives as payment for a sale and/or service in the ordinary course of its business; provided that, if the Customer is a bank or other financial institution which collects checks on behalf of its customers in the ordinary course of its business, such Customer may use this Service for purposes of collecting its customers' checks in such ordinary course; and

(g) The Customer shall not alter or otherwise modify the mRDC system, including its operation and its legibility standards or other quality standards, except with the prior permission and/or direction of the Bank.

(h) The Customer shall be responsible for preventing access to its Mobile Device, login information to the Mobile App and access to Original Checks, and take any other precautions or measures necessary to prevent a subsequent deposit of the Original Checks by any other means. The Customer shall not use multiple deposit channels to deposit the same check. Furthermore, once a deposit channel is used, the Original Check is no longer eligible for deposit via any other channel or bank. The Customer agrees to contact the Bank for further instruction with regard to the disposition of the check.

(i) It is the Customer's sole responsibility to secure access to the Service to only those users duly authorized by the Customer for HSBCnet and the mRDC Account, and the Bank has no duty or obligation to inquire or verify such authorization.

ACKNOWLEDGEMENT OF RECEIPT
The Bank will furnish the Customer with prompt acknowledgment of its receipt of an mRDC Deposit. Such acknowledgement shall not be considered or treated as receipt for final value or credit to any mRDC Account, or other account of or benefit to the Customer, other than as expressly provided below under this Agreement for this Service. The Customer hereby agrees that such acknowledgement shall grant in, and transfer to the Bank, all of the right, title and interest in the mRDC Checks contained in the accepted mRDC Deposit which the Bank would acquire in the related Original Checks as if the Customer presented for deposit such Original Checks at a Bank branch located in New York, New York. The Customer agrees that once the check image is deposited at the Bank, the Bank may process any check image that is deposited and it can be converted to an Image Replacement Document under the Check Clearing for the 21st Century Act.

LIMITATIONS ON USE
The Bank may at its sole discretion, establish limits on your use of mRDC, including but not limited to check amount, daily deposit amount, daily check volume and geographical location. It is the Customer's sole responsibility to stay within these and any other limits established by the Bank from time to time. The Customer Agrees that the Bank is not liable for any resulting damages to Customer or any third party resulting from any limitations with this Service.

VERIFICATION AND DISCREPANCIES
The Bank will notify the Customer of any failure, discrepancy or other problem, including as to the stated or actual amount of a deposit (each a "Discrepancy"), of which the Bank becomes aware with respect to any Electronic Check (each a "Discrepant Item"), within a reasonable period of time after the date that Bank discovers such Discrepancy. Each affected mRDC Check shall thereafter be deemed rejected and ineligible for this Service, unless the Bank otherwise agrees in writing. Notwithstanding anything contained herein to the
contrary, the Bank shall not be responsible for validation of accuracy, content, or otherwise, with respect to any Restricted Data or any information contained in any Report.

AVAILABILITY OF mRDC DEPOSITS
Each amount (or portion thereof) deposited using mRDC before 10pm ET on a Business Day will be considered to be deposited on such Business Day and credited to the ledger balance of an mRDC Account. Deposits made on a Business Day after 10pm ET will be considered to be made on the next Business Day. Funds deposited may not be available for immediate withdrawal and will be available as if presented for deposit at a Bank branch in New York, NY and in accordance with the funds availability schedule of the Bank (refer to the Funds Availability section for more information).

ADJUSTMENTS AND CHARGEBACKS
An amount credited to any mRDC Account, though available for withdrawal or use by the Customer, shall nonetheless be subject to adjustment and chargeback to such mRDC Account, as appropriate. The Bank shall be entitled to charge back against the designated mRDC Account an amount equal to the amount of each mRDC Check credited to such mRDC Account, which is subsequently returned unpaid or is otherwise uncollected, regardless of the reason, plus associated third-party expenses and charges. In addition to the foregoing and notwithstanding any provision hereof, the Bank shall be entitled to make adjustments to any mRDC Account for any clerical or other error in accordance with its usual and customary practices. Information regarding such chargeback or adjustment to an mRDC Account shall be available to Customer via HSBCnet, within two business days following such chargeback or adjustment.

COLLECTION OF mRDC CHECKS
The Bank shall commence collection of each mRDC Check, other than a Discrepant Item, contained in an accepted mRDC Deposit, promptly (and in any event not later than one business day after the date of acceptance of such delivery), in accordance with its usual and customary practices as if the related Original Check were presented for deposit at a Bank branch located in New York, New York. In addition, all laws, rules and regulations applicable to the Bank and the Customer relating to the deposit, transfer, collection or payment of checks shall apply to this Service as if the applicable Original Check were presented for deposit at a Bank branch located in New York, New York, unless otherwise provided in such law, rule or regulation or superseded by other applicable law.

RETENTION, SAFEKEEPING AND LIMITATION ON USE OF ORIGINAL CHECKS
The Customer shall retain and protect from misuse, alteration or destruction the Original Check for each mRDC Check deposited pursuant to this Service for at least 60 days after the date of acceptance of the mRDC Deposit containing such mRDC Check. The Customer agrees that it shall not use, and it shall not permit any other person to use, the Original Checks for the purpose other than pursuant to this Service. Without limiting the foregoing, the Customer shall not sell or license use of Original Checks, including any information contained therein; provided that, upon destruction (in the Customer's discretion) of any Original Check, subject to the 60-day retention period, the Customer may accept payment for the scrap value of the paper of the Original Checks. The foregoing provisions of this section shall not apply to any Original Check relating to an mRDC Check rejected as ineligible for this Service. Upon the request of the Bank, the Customer shall promptly deliver to the Bank any Original Checks, which the Customer is at such time required to retain (during the 60-day period), and any Original Checks with respect to which the Customer has possession of or control over at such time. Notwithstanding the foregoing, the Customer may retain the Original Check for each mRDC Check for less than 60 days after the date of acceptance of the mRDC Deposit containing such mRDC Check so long as the Customer indemnifies the Bank for any and all losses, damages, costs, claims, or liabilities arising from the Customer's failure to retain such Original Check for 60 days. Any Customer utilizing the mRDC Service should
consult with their legal advisor to determine whether it may be necessary or prudent to (a) retain Original Checks beyond the minimum time periods required under this Rule, or (b) obtain contractual representations and/or warranties enforceable under local laws from their clients or vendors submitting U.S. dollar checks to be deposited via the mRDC Service.

FEES
The Customer agrees to pay all fees associated with mRDC Services provided under this Agreement and as provided in the Terms and Charges Disclosure or similar fee schedule, as amended from time to time.

BANK INSPECTION RIGHTS
The Customer shall grant the Bank reasonable access to Customer's mRDC Service operations and records to review and inspect the Customer's use of, and procedures and records relating to this Service, including the Customer's proper use of the mRDC IP, its retention and safekeeping of Original Checks and its destruction procedures thereof, if any. The Customer agrees that where applicable, the Bank may require the Customer to implement additional specific internal controls at the Customer’s location.

LIMITATION OF LIABILITY
The Bank shall have no other duties or obligations, except those expressly provided for herein, and neither the Bank nor its directors, officers, employees, attorneys and agents shall have any liability for any action or omission in connection with this Service, except in the case of the gross negligence or willful misconduct of any of such parties as determined by a final decision of a court of competent jurisdiction. For avoidance of doubt, the Bank is not liable for any direct or remote loss to the Customer due to the Customer’s inability to use the Service for any reason, including the Mobile Device being located outside the authorized geographical area, (ii) the Customer’s failure to provide consent to allow their Mobile Device to be located, or (iii) failure of the Service to connect to the Customer’s Mobile Device for any other reason. Notwithstanding anything contained herein to the contrary, neither party shall be liable to the other for indirect, special, punitive or consequential damages (including loss of profits) in connection with this Service, except in the case of breach by the Customer of any of its obligations hereunder relating to the mRDC IP.

DELEGATION, SUBCONTRACTING AND AGENCY
The Customer shall not assign any of its rights or obligations with respect to the mRDC Service without the Bank’s written consent. The Bank shall be entitled to assign to one or more independent contractors, vendors and other agents any or all of its rights and obligations with respect to the mRDC Service without the consent of, or notice to, the Customer.

MODIFICATION
Customer may add, delete or change an mRDC Account on at least ten days’ prior written notice to the Bank, subject to acceptance by the Bank, and shall provide any additional documentation, if requested by the Bank.

TERM AND TERMINATION
The Customer may terminate this Service for any reason upon 30 days’ prior written notice to the Bank. The Bank may terminate the Service at any time for any reason or for no reason. Upon termination of the Service, the mRDC IP license shall be deemed to be immediately and automatically revoked and the Customer shall immediately discontinue use of all mRDC IP. Any provisions herein that by their terms are intended to survive termination, shall survive any termination of the Service.