

GENERAL TERMS AND CONDITIONS

applicable to "the client"

and **NEDBANK NAMIBIA LIMITED** (hereinafter referred to as "the bank")

Upon formal approval of the client by the bank, it will provide to the client various electronic banking services ('the services') in terms of which the bank, using its equipment, will execute on behalf of the client, instructions given to it by the client in written or electronic format. The client understands and accepts that the terms and conditions stated below, shall apply to the use of any of the services pursuant to this application.

1. THE SERVICES RELATED TO THE PROFILE

- 1.1 Once the bank has formally approved the client and the client has been provided by the bank with a profile number (or security device, signature numbers, passwords, application or password ('the device'), the client shall be afforded the utilisation of the services as listed below these terms and conditions and may be allowed access from time to time to other profiles (other systems containing other services) of the bank.
- 1.2 Further services and profiles may be added from time to time by the bank and it reserves the right to modify, replace or withdraw any service and/or profile at any time, for any reason whatsoever, without prior notice to the client.
- 1.3 For the purposes hereof a reference to 'services' shall include a reference to profiles and systems offered by the bank from time to time in terms hereof.

2. PASSWORD AND EQUIPMENT

- 2.1 Should the client wish to make use of any of the systems or services where a password is required, it is hereby recorded that a password shall be allocated to the client in respect of the client's profile number. The password will allow the client to gain access to the services linked to the client's profile. In this regard the client agrees to comply with all the terms and conditions in force from time to time and applicable to the bank's services when entering its profile number and password to gain access to any of the services or profiles.
- 2.2 The client shall provide and maintain hardware and all consumable materials required for the use of the services aforementioned. The bank makes no representations as to the suitability of any of the client's hardware, software or consumable materials for the use of the services.
- 2.3 The client agrees to make use of the services available to it after approval by the bank of the client and the provision by the bank of the profile number or password to the client in accordance with these terms and conditions.

3. CLIENT'S OBLIGATIONS

- 3.1 The client acknowledges that it is aware that the rendering of the services is subject to various acts and other legislation and the client undertakes to comply with all applicable legislation at all times.
- 3.2 The client acknowledges that its use of the services shall in no way vary any aspect of the bank-client relationship between it and the bank and the client furthermore, without limiting the generality thereof, agrees in particular that:
 - 3.2.1 the utilisation of any service shall be subject to the completion and signature by a duly authorised signatory/signatories of the client of the application form and any other documentation or agreement required by the bank from time to time and the delivery thereof to a branch or electronic banking centre of the bank;
 - 3.2.2 it shall be obliged to settle any payment obligations to the bank in accordance with the instructions issued to the bank through the service and that this shall not in any way entitle the client to overdraw any account, unless prior arrangements have been made with the bank and then only in terms of such arrangements;
 - 3.2.3 the limits allocated to any of the client's accounts will not be exceeded.
- 3.3 The client declares and warrants that all information provided in the application form and any information to be given in the future in terms hereof and information to be contained in each instruction processed electronically through the service, is and will be correct in all respects. The client records that it shall be obliged to inform the bank of any change in the information provided by the client and that it will have no claims against the bank in the event of any information provided by the client to the bank being incorrect.
- 3.4 The client at all times:
 - 3.4.1 shall follow the security procedures notified to the client by the bank from time to time or such other procedures as may be applicable to the services from time to time and specifically those that are contained on the bank's internet website. The client acknowledges that:
 - 3.4.1.1 any failure on the part of the client to follow the recommended security procedures may result in a breach of the client's profile confidentiality and may lead to unauthorised transactions between accounts linked to the client's electronic banking subscription with the bank;
 - 3.4.1.2 any software downloaded by the client from the internet and specifically the bank's internet site, is third-party software, the licensing of which shall be subject to such terms and conditions as the licensor of such software may impose;
 - 3.4.2 shall ensure the safekeeping of passwords and confidentiality of all devices, passwords, signature numbers and other confidential information;
 - 3.4.3 shall ensure that the services are not used or the instructions are not issued or the relevant functions are not performed by anyone other than a person authorised to do so;
 - 3.4.4 shall notify the bank immediately on the client becoming aware that a device or password has been lost or forgotten or may have fallen into the hands of an unauthorised person;
 - 3.4.5 will be deemed to have read, understood and applied the information displayed on any profile, system or electronic banking site and the client's role in respect thereof.
- 3.5 The client shall not at any time:
 - 3.5.1 cede or assign any of its rights under this agreement without the prior written consent of the bank;
 - 3.5.2 operate or use the service in any manner that may be prejudicial to the bank.

3.6 The client understands and accepts that it may link a business account or an account requiring multiple signatures to the client's profile only if the client has submitted to the bank an original written resolution or power of attorney to this effect and it will be the responsibility of the client to ensure that no unauthorised persons have access to its accounts.

3.7 The bank shall be entitled and authorised to debit the client's accounts with the amounts of the transactions effected via the services or any of them as well as to debit the client's accounts with the amount of any fees applicable to the services from time to time.

4. THE BANK'S OBLIGATIONS

4.1 The bank shall:

4.1.1 furnish the password to the client upon the bank having approved the client's utilisation of the services offered in terms hereof;

4.1.2 furnish replacement passwords to the client only upon written notice that a password has been lost or forgotten.

4.2 The client acknowledges that:

4.2.1 the bank shall neither be required to enquire into the authority of any person who uses or has used the services or the passwords, nor shall the bank be required to enquire into the validity of any information provided by the client to it for purposes of the utilisation of the services;

4.2.2 once the bank has received and implemented an instruction given by the client in the utilisation of the services, the client shall not be entitled to countermand or amend such instruction but shall be obliged to follow such procedures as may be prescribed by the bank from time to time in respect of the various services.

5. COPYRIGHT

5.1 The bank shall at all times retain its copyright in or licence to the software (including the passwords) and associated documentation, should such software and associated documentation belong to it, used in the provision of the services as well as in respect of any logos, trademarks or service marks used.

5.2 The client shall not duplicate, reproduce or in any way tamper with the software and associated documentation without the prior written consent of the bank.

5.3 In respect of third-party software, the bank is not a party to any licence agreement entered into by the client and the licensor and thus makes no warranties relating to such software, including without limitation, warranties relating to the suitability for a particular purpose, security features or performance. The client acknowledges that the use of such software shall be at the client's own risk and indemnifies and holds the bank harmless against any loss or damage, which the client may suffer as a result of the use, abuse or possession of such software.

5.4 Furthermore, the client understands that the utilisation of such third-party software may be illegal in jurisdictions outside Namibia and/or may infringe upon certain third-party intellectual property rights in such jurisdictions. The client understands that should it use any third-party software outside the boundaries of Namibia, it shall at all times be incumbent upon the client to ascertain the legality of such use and to obtain all necessary licences and permissions from the relevant parties. The client accordingly indemnifies and holds the bank harmless against any and all liability, which it may incur in this regard.

6. DOMICILIUM AND NOTICES

6.1 The client chooses as its domicilium citandi et executandi for the purpose of legal proceedings and for the purposes of giving or sending any notice provided for or necessary in terms of this agreement the address given in the application form.

6.2 The bank's address for the purposes hereof is:

6.3 Physical: 12-20 Dr Frans Indongo Street, Windhoek

6.4 Postal: P O Box 1, Windhoek, Namibia

6.5 Telefax: 061 – 295 2120

6.6 Attention: The Company Secretary

6.7 Provided that a party may change its domicilium to any other physical address or telefax number by written notice to the other party to that effect. Such change of address will be effective seven days after receipt of notice of the change of domicilium.

6.8 All notices to be given in terms of this agreement will:

6.8.1 be given in writing;

6.8.2 be delivered or sent by telefax;

6.8.3 if delivered, be presumed to have been received on the date of delivery;

6.8.4 if sent by telefax, be presumed to have been received on the first business day following the date of sending of the telefax unless the contrary is proved.

6.9 Notwithstanding the above, any notice actually received by the party to whom the notice is addressed will be deemed to have been properly given and received notwithstanding that such notice has not been given in accordance with the provisions of this clause.

7. INDEMNITY

7.1 The client hereby waives its rights in respect of and indemnifies the bank against any demand, claim or action relating to or in connection with the services, whether directly or indirectly, unless such demand, claim or action arose as a direct consequence of the gross negligence or wilful misconduct of the bank or any of its employees.

7.2 Any demand, claim or action arising against the bank in connection with the circumstances referred to in subclause 7.1 above shall be limited to direct damages. Special or consequential damages are hereby specifically excluded.

7.3 The client indemnifies and holds the bank harmless from:

- 7.3.1 all demands, claims, actions, losses and damages of whatsoever nature which may be brought against the bank or which it may suffer or incur arising from its acting, or not acting on any instruction or arising from or out of the malfunction, failure or unavailability of any hardware, software or equipment, the loss or destruction of any data, power failures, corruption of storage media, natural phenomena, riots, acts of vandalism, sabotage, terrorism, any other event beyond the bank's control, interruption or distortion of communication links or arising from the reliance by any person on any incorrect, illegible, incomplete or inaccurate information or data contained in any instructions received by the bank;
- 7.3.2 any loss or damage that may arise from the use, misuse, abuse or possession of any third-party software, including without limitation, any operating system software, browser software or any other software packages or programs;
- 7.3.3 any unauthorised access to the client's accounts or any breach of security or any destruction or accessing of the client's data or any destruction or theft of or damage to any of the client's equipment;
- 7.3.4 any loss or damage occasioned by the failure to adhere to any terms and conditions applicable to the services and/or by the supplying of incorrect information or loss or damage occasioned by the failure or unavailability of third-party facilities or systems or the inability of a third party to process a transaction.

8. GENERAL

- 8.1 These terms and conditions govern the relationship between the client and the bank in respect of the services. Should there, however, be a conflict between the provisions hereof and the provisions of any agreement relating to a specific service utilised by the client, then the provisions of that agreement insofar as they conflict with the provisions hereof only will take precedence.
- 8.2 Notwithstanding the a foregoing terms and conditions, the client acknowledges and accepts that the bank may from time to time amend such terms and conditions insofar as they relate to the use by the client of the services. In pursuance of the a foregoing the client confirms that:
 - 8.2.1 it is aware that all such changes shall be reflected in the terms and conditions published on the bank's internet site;
 - 8.2.2 by entering the client's electronic banking subscription number and PASSWORD or security device to gain access to the services, the client binds itself to the terms and conditions in force at that point in time as they may appear on the bank's internet site.
- 8.3 In this agreement, unless expressly indicated otherwise:
 - 8.3.1 the singular shall include the plural and vice versa;
 - 8.3.2 natural persons shall include created entities, whether incorporated or not.
- 8.4 This agreement shall be interpreted in accordance with and governed by the laws of Namibia notwithstanding the fact that any instruction emanated from outside the borders of Namibia.

9. BREACH

Should the client breach any term or fail to perform any of its obligations in terms of this or any other agreement which it may have with the bank, the bank shall be entitled, without notice, to cancel this agreement and withdraw the services with immediate effect, without prejudice to its rights to recover:

- 9.1 any amounts due to the bank in terms of this agreement;
- 9.2 any loss or damage suffered by the bank as a consequence of the breach by the client of any term of this agreement or the cancellation of this agreement or the withdrawal of the services.

10. DISPUTE

- 10.1 Should any dispute arise at any time between the bank and the client relating to any matter arising out of any use of the services, such dispute shall be finally resolved in accordance with the rules of the Professional Arbitration and Mediation Association of Namibia (PAMAN) by an arbitrator(s) appointed by the association. The client agrees that in pursuance hereof, either the client or the bank may demand that a dispute be referred to arbitration by giving written notice to that effect to the other party.
- 10.2 This clause shall not preclude the client or the bank from obtaining interim relief on an urgent basis from a court with competent jurisdiction pending the decision of the arbitrator.
- 10.3 The arbitration referred to herein shall be held at Windhoek in the English language and shall be held immediately with a view to be completed within 21 (twenty-one) days after it is demanded. The client irrevocably agrees that the decision of the arbitrator in the arbitration proceedings:
 - 10.3.1 shall be final and binding on it;
 - 10.3.2 shall be carried into effect;
 - 10.3.3 and may be made an order of court of competent jurisdiction.
- 10.4 This clause 10 is severable from the rest of the terms and conditions and shall remain valid and binding on the client notwithstanding any cancellation by the client of its electronic banking services with the bank or any withdrawal by the bank of the services or any of them.

11. TERMINATION

Notwithstanding anything contained above, the agreement may be terminated at any time by the bank or the client on having given such notice as may be required in respect of each service utilised, except that in the event of any change in any law or the application thereof, which would have the effect of prejudicing the bank should it continue with the rendering of any service, the bank shall be entitled to terminate the agreement on 48 (forty-eight) hours' written notice to the client.