

## 1. BANK WINDHOEK INTERNET BANKING TERMS AND CONDITIONS

### STANDARD TERMS AND CONDITIONS OF USE

#### 1.1 MEANING OF WORDS

In this Agreement, except in a context indicating that some other meaning is intended –

1.1.1 "the account" means the account held in the Client's name together with any other accounts in respect of which the Client holds a valid mandate;

1.1.2 "the Bank" means Bank Windhoek Limited (Registration Number 79/081), a registered bank duly incorporated in accordance with the laws of the Republic of Namibia;

1.1.3 "the Bank's Internet Banking website" means the iBank site which is used, for effecting electronic payments and internal and external transfers;

1.1.4 "the Billing Account" means the Client's nominated account used for the purpose of debiting the fees payable in terms of this Agreement, the details whereof are contained in Annexure A hereto.

1.1.5 "commencement date" means the date of signature of this Agreement;

1.1.6 "iBank" means the Facility's interface for effecting electronic payments, internal and external transfers, and/or electronic debtor collections;

1.1.7 "the Facility" means Bank Windhoek Internet Banking, which for the time being includes the following services:

1.1.7.1 Obtaining information relating to the Client's accounts, including transactions and standing instructions.

1.1.7.2 Transferring funds to and from the account.

1.1.7.3 Requesting from the Bank the supply of statements and inquiries, which relate to the account.

1.1.7.4 The paying of accounts/third party payments by using the iBank interface.

1.1.7.5 Effecting own defined payments and/or collections using the iBank interface.

1.1.7.6 Implementation of stop payment instructions on cheques.

1.1.7.7 Bureau Upload Facility to process bulk Electronic Fund Transfers for payments and/or collections, using the predefined file layouts provided by the Bank. (This is only applicable to Clients who have chosen the Bureau Upload Facility).

1.1.8 "the Client" means the Person or Entity named in this Agreement and shall include any nominee and/or person acting on behalf of the Client.

1.1.9 "the Internet" means the global network accessible through an Internet Service Provider, by any person with a personal computer;

1.1.10 "the nominee" means any person authorised or deemed to be authorised by the Client to use the Facility, whose details appear in this

Agreement to which these standard terms and conditions of use are annexed;

1.1.11 "notification service" means an optional security measure which alerts the Client via sms or e-mail notification when certain activities are conducted on the Client's account.

1.1.12 "the parties" mean the parties to this Agreement and "party" means any one of them;

1.1.13 "the Client's Password" means the confidential password chosen by the Client for himself/herself and for each nominee and used as a security and authentication measure, together with the Client's Access Number and User Name, during access procedures;

1.1.14 "the Rules" mean the Rules for Electronic Fund Transfers as detailed in Annexure A to this Agreement;

1.1.15 "the Token" means the E-Secure Hardware Token which generates a once-off password (E-Secure Code) digital generating device which is an optional Internet Banking security feature offered by the Bank;

1.1.16 "the Token PIN" means the confidential PIN chosen by the Client and which is used as a security and authentication measure and which must be entered on the Token before the once-off password (E-Secure Code) can be generated;

1.1.17 "a valid mandate" means a legitimate instruction given to the Bank by a third party authorising the Client to act on behalf of the third party;

1.1.18 "authority to debit" means a legitimate instruction given to the Client by a third party authorising the Client to debit his/her account for payments/instalments due to the Client; (This is only applicable to Clients who have chosen the Bureau Upload Facility).

1.1.19 "User Name" means the user name chosen by the Client for use on the Facility;

1.1.20 "the Customer" means a person or corporate entity dealing with the Client in respect of whom Electronic transactions are submitted to the

Bank in terms of this Agreement for the processing of debit or credit transactions. (This is only applicable to Clients who have chosen the Bureau Upload Facility);

1.1.21 “unauthorised transaction” means any transaction conducted on the Client’s account without authorization, permission or consent of the Client;

1.1.22 “software protection” means an additional security measure such as anti-virus, anti-spyware, anti-spam, malware and/or any form of software program to protect the Client’s computer from any malicious intrusion by a third party and/or unauthorised person.

1.1.23 “Activities” means the actions conducted on the client’s account for which the client shall receive sms and/or email notification. These actions are defined on the “Notification Service Disclaimer” that the client is prompted to acknowledge on the Bank’s Internet Banking website.

1.1.24 In this Agreement –

1.1.24.1 references to or expressions in the singular also denote the plural and vice versa;

1.1.24.2 words and phrases denoting natural persons refer also to juristic persons and vice versa; and

1.1.24.3 pronouns of any gender include the corresponding pronouns of other genders.

## 1.2. RECORDAL

1.2.1 The Client wishes to conduct banking business from the Client's own premises.

1.2.2 The Bank will provide a Facility known as Bank Windhoek Internet Banking to the Client upon the Terms and Conditions as set out below. The Bank may vary the Terms and Conditions, insofar as they relate to the Client’s use of the Facility, after giving the Client not less than one (1) month's written notice, except in circumstances where legislation requires an immediate change.

1.2.3 In pursuance of the foregoing the Client confirms that -

1.2.3.1 he is aware that all changes to this Agreement shall be reflected on the Bank’s Internet Banking site;

1.2.3.2 by entering the Client’s Password to gain access to the Bank’s Facility, he is bound to the terms and conditions in force at that time as they appear on the Bank’s Internet Banking site;

1.2.3.3 the Bank may, in its sole discretion, compile an audit trail of all transactions made by the Client using the Facility, and the same shall be prima facie proof of any instruction given or request made to the Bank.

1.2.4 The Bank will make reasonable effort to ensure that the Facility will be available at all times specified by it from time to time, subject to the availability of the Internet connection and to any periods required for necessary maintenance of the Facility or the accounts.

1.2.5 The provision of the Facility will not entitle the Client to overdraw the account if borrowing arrangements have not been made with the Bank, nor to overdraw in excess of any borrowing limit agreed to by the Bank.

1.2.6 Use of the iBank interface is subject to the right of the Bank to return as "unpaid items" any transactions authorised by the Client in the event of there being insufficient funds on the account.

1.2.7 Provided that the transactions submitted by the Client to the Bank -

1.2.7.1 comply with this Agreement and the Rules; and

1.2.7.2 are suitable for processing by the Facility,

1.2.8 The Bank shall on or after the operative date process such transactions in accordance with the Rules.

### 1.3. INTERNET

1.3.1 The Client must obtain access to the Facility via the Internet. For this purpose, the Client must, where applicable, register with an Internet Service Provider, before the commencement date.

1.3.2 The Client will be solely responsible for:

1.3.2.1 the acquisition, installation and maintenance of the connection to the Internet and any related costs or expenses will be borne by the Client;

1.3.2.2 the acquisition, installation and maintenance of software protection onto the Client's computer and any related costs or expenses will be borne by the Client.

1.3.3 The Bank shall not be liable whatsoever for any loss or damage, whether direct, indirect or consequential arising from any malicious intrusion onto the Client's computer, unless such intrusion are due to a culpable mistake or internal fraud on the part of the Bank.

1.3.4 Should the Internet software and hardware requirements be modified with a view to improving or upgrading the Internet and/or the Facility, the resultant cost of any hardware, software or Internet connection required so as to use the Facility will be for the Client's account.

#### 1.4. FEES

1.4.1 The Client authorises the Bank to:

1.4.1.1 debit the Billing Account with the fees for the services selected by the Client from time to time.

1.4.1.2 amend the Billing Account, should the Billing Account be changed to any status other than “active”

1.4.2 The fees may be amended by the Bank from time to time.

1.4.3 The fees charged for the Facility includes Value Added Tax, which is for the Client's account.

#### 1.5. AUTHORIZATION AND SECURITY

1.5.1 The Client authorises the Bank to carry out any and all instructions given via the Facility, including the debiting of and transfer of funds from the account by way of the iBank interface, and the furnishing of information on the accounts, provided that the instructions are authenticated by the use of:

1.5.1.1 The Client’s username.

1.5.1.2 The Client’s Password.

1.5.1.3 The once-off password (E-Secure Code) generated by the Token (only if Client elects to be issued with a Token).

1.5.1.4 The Client’s Bureau upload code (Bureau only)

1.5.1.5 Any other procedures which may be agreed to in writing between the Client and the Bank.

1.5.2 On request of paying of accounts/third party payments, the Client will not hold the Bank liable for any loss, damage or liability which may arise out of the non-payment or late payment of any account for which a payment instruction has been given to the Bank, or which may arise out of the failure or unavailability of the third party’s facilities or systems, or the inability of any third party to process a transaction.

1.5.3 The Client indemnifies the Bank in respect of any loss or damage or claim that may be instituted against the Bank arising from non-payment or late payment in this respect. For purposes of this clause, “third party”, includes, without limitation, any Automated Clearing House and all other financial institutions where the destination accounts are kept.

1.5.4 The Client accepts the financial limits imposed on transfer and collection of funds, which limits may be altered at any time by the Bank. The

Client may provide a written request to the Bank to increase the limit imposed on transfer of funds.

1.5.5 It is the Client's responsibility to control and restrict access to the Facility. The Bank will supply the Client with the means to register Client's Passwords for each nominee. All nominees, accompanied by the Client, will need to call on the branch, identify themselves and select an individual Client's Password. The client can change his/her password on the site or by giving written instructions to the Bank at any time. It is the

Client's responsibility to ensure that the Client's Passwords supplied to nominees are changed regularly.

1.5.6 The Client must keep the details of his Password secret. The Client must not disclose his Password, thereby giving access to any person. The Client must notify the Bank immediately on becoming aware that his Client's Password may have fallen into the hands of an unauthorized person. In the event that a Client believes that his Client's Password has been taken or used without authorization or permission, then the Client must take immediate steps to notify any branch of the Bank, in writing by letter/email or immediately change the passwords online. Once notified by the Client, the Bank shall take reasonable steps in the circumstances to prevent further unauthorised transactions and/or activities being conducted on the Client's account.

1.5.7 If any unauthorised person obtains the Client's Password and the Client's Token with its PIN in any manner whatsoever, such person shall be deemed to be the Client's duly authorised agent with full authority to use the Facility on the Client's behalf.

1.5.8 The Bank shall not be liable whatsoever for any loss or damage, whether direct, indirect or consequential arising from unauthorised transactions conducted by unauthorised persons on the Client's account, unless the reason why such person has obtained the Client's Password and the Client's Token with its PIN is due to a culpable mistake or internal fraud on the part of the Bank.

1.5.9 The Client must take all reasonable precautions to prevent unauthorised use of the Facility and unauthorised access to the account.

1.5.10 The Client warrants his authority to deal with the accounts in the name of a third party on the basis of a valid mandate.

1.5.11 The Client warrants his authority to debit a debtors account, on the basis of a signed and legitimate mandate signed with the debtor. (Applicable to iBank and Bureau Collections).

1.5.12 Transactions made through the Facility will be recorded electronically. Transfers from one Bank Windhoek account to another Bank Windhoek account will be reflected as soon as reasonably possible. Transfers/payments to accounts held with other financial institutions will be debited immediately but will be reflected on the recipients' account within the shortest reasonable period thereafter depending on the third party service used.

1.5.13 The Client understands and accepts that any confirmed instruction given by the Client via the Facility is irreversible. The Client must, therefore, before confirming any instruction, ensure that account details and other information provided regarding the instruction, are correct.

1.5.14 The Client understands that for security purposes and to maintain the highest level of service, telephone conversations made by the Client to the Bank's Client Care Centre in respect of the Facility may be recorded.

## 1.6. E-SECURE TOKEN

The following conditions apply:

1.6.1 The Bank will issue a Token to the Client, if the Client elects to be issued with a Token.

1.6.2 The Client understands that the Token is an additional security measure and it is not a complete safeguard against unauthorised transactions and/or activities being conducted on the Client's account by unauthorised persons.

1.6.3 The Client must keep his Token in a safe and secure place where it will not fall into the hands of an unauthorised person.

1.6.3 The Client must keep his Token PIN secret and not disclose it to any person.

1.6.4 The Client must notify the Bank immediately on becoming aware that his Token may have fallen into the hands of an unauthorised person or if the Token has been lost or breaks. In the event that the Client believes his Token has been taken or used without authorization or permission, then the Client must take immediate steps to notify any branch of the Bank, in writing by letter or e-mail. Once notified by the Client, the Bank shall take reasonable steps in the circumstances to prevent further unauthorised transactions and/or activities being conducted on the Client's account.

1.6.5 The Client understands that once he has activated his Token, he will only be able to log in to the Bank's Internet Banking site by using the once off password (E-Secure Code) generated by the Token.

1.6.6 The Client shall be responsible for:

1.6.6.1 Ensuring that his Token is with him whenever he wishes to log in to the Bank's Internet site; and

1.6.6.2 Ensuring that the Token is not stored together with his other Internet banking log in details.

1.6.7 The Client understands that since each Token is powered by an irreplaceable battery, the Token will not be operational forever, and, in the event of the Token becoming defective, the Client is responsible to request a new/replacement Token from the Bank.

1.6.8 The Bank shall not be liable whatsoever for any loss or damage, whether direct, indirect or consequential arising from any unauthorized transaction and/or activities on the Client's account, unless the reason why such transaction and/or activities was conducted is due to a culpable mistake or internal fraud on the part of the Bank.

## 1.7. NOTIFICATION SERVICE

The following conditions apply:

1.7.1 The Client has the option to receive notification via sms or email or no notifications. The Client can indicate his/her/its option when they access the Facility via the Bank's Internet Banking website.

1.7.2 The Bank will alert the Client via sms and/or email when certain Activities are conducted on the Client's account.

1.7.3 The Client must provide the Bank with a cell phone number to which sms notifications will be sent and an email address to which email notifications will be sent.

1.7.4 The Client understands that the Notification Service is an additional security measure and it is not a complete safeguard against unauthorized transactions and/or activities being conducted on the Client's account.

1.7.5 The Bank shall endeavour to keep the Notification Service operating effectively, but does not take any responsibility and shall not be liable to the Customer for the Notification Service being unavailable due to circumstances beyond its control.

1.7.6 The Client shall be responsible for ensuring that he notifies the Bank when there is a change in cell phone number or email address.

## 1.8 DETERMINATION OF RISK AND INDEMNITY

1.8.1 The Client understands that the use of the Facility is at the Client's own risk and that the Bank shall not be liable for any damage, loss or consequential damage which the Client may suffer that include, without limiting the generality of the a foregoing -

1.8.1.1 any malfunction or defect in the hardware used by the Client (which shall include the personal computer);



1.8.1.2 any malfunction or unavailability of the Notification Service;

1.8.1.3 any defect in the software used by the Client to gain access to the Facility;

1.8.1.4 any defect or malicious intrusion in the software protection installed onto the Client's computer by the Client;

1.8.1.5 any act or omission by the Internet Service Provider or any defect in the Internet network or any other medium by which access is gained to the system;

1.8.1.6 the Facility being off-line or unavailable in whole or in part due to the failure or breakdown of the Bank's communication network, ancillary equipment, computer systems or any other circumstance;

1.8.1.7 the incorrect or late execution of any instruction given by the Client due to the circumstances set out in 1.8.1.1 to 1.8.1.4 above;

1.8.1.8 any industrial action;

1.8.1.9 any failure or unavailability of the Facility, or the failure by the Bank to perform a transaction as a result of the loss or destruction of data, the deterioration or corruption of storage media, power failures, natural phenomena, riots, acts of vandalism, sabotage, terrorism or other person authorised or deemed to be authorised.

1.8.3 In the event that the Client elect to transmit or accept documents and/or instructions to or from the Bank by means of electronic mails (e-mails)

or facsimile messages the Client accepts the risks associated with these forms of communication and hereby indemnify and hold the Bank harmless against all demands, actions and proceedings which may be made or instituted against the Bank, and all loss or damage which may be suffered by the Bank, whether directly or indirectly arising out of the Client's election to use electronic mails or facsimile messages in the

Client's dealings with the Bank.

1.8.4 In the event that the Client experiences problems with the Internet and the Internet connection, it is the Client's responsibility to liaise with the

Internet Service Provider prior to contacting the Bank.

1.8.5 In order to protect the Client, the Bank and its banking systems, the Bank is entitled to immediately suspend or withdraw all or part of the

Facility if -

1.8.5.1 the Facility is being used contrary to the terms of this Agreement; or

1.8.5.2 the Bank has reasonable grounds to believe that the Facility may be used negligently, illegally or fraudulently; or

1.8.5.3 the Bank believes that the security of its systems used to provide the Facility may be compromised.

1.8.6 The Client hereby warrants that every Customer, on whose account a debit or credit is drawn, will have an authority for the Client and the Client's bank to debit or credit such Customer's account accordingly. The Client acknowledges that there is no onus on the Bank, the Customer's bank or any other person to ensure that the amounts and/or account numbers on entries submitted under such authority are in fact correct.

1.8.7 The Client furthermore:

1.8.7.1 Indemnifies the Bank and the Customer's bank and undertakes to hold each of them harmless from any and all loss, costs, fees, damages, liabilities, claims, suits and demands whatsoever which they may suffer, incur or be under or which may be made or brought against them by whomsoever, by reason of or in any way arising out of -

1.8.7.1.2 the failure whether with or without cause and whether negligent or inadvertent, to pay any such transaction; save where such failure occurs as a result of the gross negligence and/or misconduct by the Bank; and

1.8.7.1.3 undertakes and agrees to refund the Bank or Customer's bank, as the case may be, any and all amounts paid to the Client or the Customer in respect of any such debits or credits if the Customer at any subsequent time disputes the validity of the transaction, provided that the Bank or the Customer's bank has given the Client notice of its intention to reverse the debit or credit concerned, or it has, in accordance with the clearing house rules prescribed by Namclear acting as a Bureau and adhered to by the banks, within 45 (forty five) days after the Action date reversed such debit or credit.

1.8.8 The warranty and indemnity given herein shall remain operative and enforceable, notwithstanding the termination of this Agreement in respect of any such loss, costs, fees, damages, liabilities, claims, suits or demands as aforesaid, the cause of which arose during the existence and subsistence of this Agreement.

1.8.9 Notwithstanding anything to the contrary contained in 4.8.7 the Bank shall not be indemnified in the event of any loss, costs, fees, damages, liabilities, claims, suits and demands which may result from any gross negligence or intentional act or omission on the part of the Bank.

## 1.9. NOMINEES

1.9.1 The Client must provide the Bank with the necessary written authorizations in terms of which the nominees are authorised to use the Facility.

1.9.2 The Client is entitled to re-assign the nominees by providing the Bank in writing with an authorized amended resolution from time to time.

1.9.3 The said authorized resolution shall be attached to this Agreement from time to time.

## 1.10. DURATION

1.10.1 This Agreement shall commence on the commencement date and shall terminate upon expiry of thirty (30) days written notice given by either party to the other party.

1.10.2 The Bank shall be entitled, in its discretion, to terminate this Agreement at any time if -

1.10.2.1 the Bank deems it necessary and on, but not limited to, the grounds referred to in clause 1.8.5 above;

1.10.2.2 the Client breaches any of the terms and conditions of this Agreement without prejudice to any rights it may have to recover any amounts due to it, or any losses or damages suffered in consequence of such breach.

1.10.3 The Client will be liable for all transactions and/or obligations (and related charges) which are incurred up to and including the date of termination.

1.10.4 In the event of the Facility not being utilized for a period of six (6) months or longer, the Bank reserves the right to terminate the Facility without prior notice. The Client is at liberty to re-apply for the service at any time.

## 1.11 COMPLIANCE WITH RULES

1.11.1 The parties agree to adhere to the Rules as set out in the Rules prescribed and amended by the Bank, from time to time, governing the operation of the Service. Save for changes required to be made in terms of any applicable law in any shorter period, the Bank may amend these Terms and Conditions and the Rules by -

1.11.1.1 Publishing such changes on the Bank's Internet Banking Site.

1.11.2 Should the Client not be satisfied with the amendments the Client may give one (1) month's written notice of his intention to terminate the Internet Banking Agreement with the Bank.

#### 1.12. NOTICES

1.12.1 The Client and Bank choose as their domicilium citandi et executandi for all notices and processes to be given and served pursuant to this Agreement, the addresses quoted in this Agreement.

1.12.2 All written notices given in terms of this Agreement by the Bank to the Client and vice versa shall be deemed duly given, provided they were sent by either party to the other party at the latter's domicilium citandi et executandi:

1.12.2.1 If by prepaid registered letter, five (5) days after having been posted.

1.12.2.2 If delivered by hand, on date of receipt.

1.12.2.3 If by telefax, at the time of transmission.

1.12.2.4 If by e-mail, by way of authorized messaging using the Facility, on the date of transmission of such message.

1.12.3 The Client undertakes to inform the Bank, in writing, immediately upon any change of his address occurring after the signature of this Agreement in order to avoid a dispute arising as to non-delivery or delivery, as the case may be, of notices and correspondence.

1.12.4 The Bank shall notify the Client of any amendment to the terms and conditions of this Agreement by way of e-mail messaging using the Facility, save where such notification contains any reference to confidential and/or personal information regarding the Client, in which event one of the methods described in clauses 1.12.2.1, 1.12.2.2 or 1.12.2.3 shall be used.

1.12.5 The Bank shall not be liable to the Client for any damage, loss or consequential damage which the Client may suffer as a result of not reading and/or opening such e-mail messages dispatched in accordance with clause 1.12.4, whether intentionally or negligently omitting to do so.

#### 1.13. GENERAL

1.13.1 These Terms and Conditions, together with the terms of the disclaimer contained on the Bank's Internet Banking site and the Internet Banking Agreement, constitutes the sole record of the Agreement between the parties and, subject to what is stated in clause 1.2.2 and 1.11 above, no additions,

variations and/or cancellations of this Agreement shall be valid unless it is in writing and signed by or on behalf of the parties.

1.13.2 The Client shall not cede or assign or otherwise make over or dispose of any of the Client's rights or obligations in terms of this Agreement without the prior written consent of the Bank first having been obtained.

1.13.3 Any disputes between the Bank and the Client arising from or in connection with the terms and conditions of this Agreement, including the implementation, execution, interpretation, rectification, validity, enforceability, termination or cancellation thereof, shall be finally resolved in accordance with the provisions of the Arbitration Act, Act 42 of 1965, as amended, except where the Client is in breach of these terms and conditions, in which event, the Bank shall be entitled to litigate against the Client immediately.

1.13.4 Subject to 1.13.3, the Client hereby consents to the jurisdiction of the Magistrate's Court having jurisdiction over him in respect of all proceedings arising from this Agreement and shall be liable for all attorney and client costs (including collection commission) which may be incurred by the Bank. The Bank shall have the right, however, in its sole discretion, to institute any action in the High Court of Namibia.

1.13.5 Should the Client be in arrears with any payment due by the Client in terms of this Agreement, a certificate given by any general manager, assistant general manager, senior manager or manager for the time being of the Bank (whose appointment and authority it is not necessary to prove) setting out such amount owing by the Client in terms of this Agreement or any other fact, shall be sufficient proof of that amount or fact and shall be valid as a liquid document or for the purpose of obtaining any order or judgement thereon against the Client in any competent court.

1.13.6 As read together with the provisions of clause 4.8.3 in its entirety, the Bank cannot be held responsible for the confidentiality of information contained in documents that are sent to the Client's selected e-mail address, or for documents that do not reach the selected e-mail address.

1.13.7 In the event that the terms and conditions of this Agreement conflict with any other Bank agreement signed by the Client, the Client understands that the conflicting clauses will be interpreted so as to give effect to the intention of the parties.

1.13.8 The Bank shall keep confidential and use its best endeavours to preserve the confidential nature of all data received from the Client.

1.13.9 Except in regard to the payment of any sum of money due and payable in terms of this Agreement none of the parties shall be liable for failure to fulfil its obligations in terms of this Agreement if such failure is occasioned by casus fortuitous, force majeure, act of God, refusal of license,

act of government, fire, explosion, accident, industrial dispute, riot, civil commotion, national emergency, war (whether declared or not), inability to obtain materials or any other similar or different cause beyond the control of such party.

1.13.10 This Agreement shall be governed by and interpreted according to the laws of the Republic of Namibia.