

## **General Terms and Conditions**

These Terms and Conditions (“Terms”), the applicable account opening documentation for using any service/account/product of Bank Windhoek Limited, with registration number 79/0081 (“Bank Windhoek / “it” / “we” / “us” / “our” / “the Bank”) and the specific product descriptions/requirements/benefits shall apply to all the services/accounts/products/access channel the account holder (“you” / “your” / “Client”) may hold with the Bank and as may be updated from time to time by us and published on our website.

The Client acknowledges and agrees that these Terms, as amended from time to time, must be read together with the Bank’s application forms, the specific terms and conditions (if applicable) of the service/account/product, specific product descriptions/requirements/benefits, the Bank’s standard internet banking terms and conditions (“Terms of Use”), the Electronic Funds Transfer Industry Rules (“Rules”) and shall together constitute the whole agreement between the Parties.

The use and operation of the services/accounts/products /access channel shall be subject to such arrangements as the Bank may have with the Electronic Clearing House, Namclear (Pty) Limited.

The Client acknowledges and agrees that the Bank may, in its sole discretion, amend and/or substitute any of, or the whole of, these Terms from time to time. Should the Bank elect to amend the Terms, the revised Terms will be posted on the Website. The Client undertakes to check the Website regularly for any changes that may have been made to the Terms since the Client previous visit to the Website. If a Client uses or accesses the Website after the Terms have been changed or amended, the Client will be deemed to have accepted those changes or amendments.

These Terms were last updated on 13 June 2019.

Without derogating from the afore-going and without imposing any obligation on the Bank whatsoever, the Bank reserves the right to notify Clients of any amendment of the Terms either by means of Electronic Communication (including email or SMS) or by posting a notice on the Website.

### **1. AMENDMENT/UPDATING OF CLIENT INFORMATION**

1.1. The Client agree:

1.1.1. to notify the Bank in writing of any change of your particulars and that the Client will not have any claim against the Bank in the event of any information provided, by you, to the Bank, being incorrect or outdated.

1.1.2. to furnish the Bank, on request, with such information and/or documents as may be required from time to time in respect of yourself, your spouse and/or any surety, guarantor or other person who has provided security in respect of your indebtedness to the Bank.

**2. FEES, CHARGES AND INTEREST**

2.1. Any fees and charges in respect of the services/accounts/products / access channel will be debited to the Client's nominated account. In clarification to the before-mentioned all stamp duties, insurance premiums, costs, fees and charges, where applicable, payable under or in respect of these Terms shall be paid by the Client.

2.2. All applicable government levies payable in respect of the use of any card issued to you by us will be debited to your account(s) monthly and paid over to the relevant government bodies by us.

2.3. The Client expressly authorises the Bank to draw against the Account (or any other account to which the Account may subsequently be transferred) all fees and charges due in terms of these Terms.

2.4. The Bank may vary the charges, fees and costs in respect of the services/accounts/products/access channel by giving reasonable notice thereof to the Client.

2.5. The fees and costs levied by the Bank exclude all fees and costs charged by any third party service provider charged directly to the Client.

2.6. The Client authorise the Bank to debit their account(s) with all legal costs incurred in exercising any of the Bank's rights in terms of this Agreement, including all legal charges as between attorney-and-own-client, tracing fees and collection charges.

2.7. The Bank shall pay interest (if applicable) on any credit balance on your account at a rate, which the Bank may determine and will notify you from time to time. Interest (if applicable) will be credited to the Clients account monthly.

- 2.8. The Client shall be liable to pay interest to the Bank, on any debit balance on their account(s) resulting from any cause whatsoever, calculated at the appropriate declared rate which the Bank will determine from time to time.
- 2.9. Interest on all amounts owed to the Bank shall be capitalised each month in arrears and will appear on the monthly statement.

### **3. STATEMENTS, PAYMENT AND DEPOSITS**

- 3.1. The Bank may send statements via electronic mail or the post, setting out each entry as well as the total debit or credit balances, as the case may be, on your account. The Client must ensure that that the statements are received, and if not, inform the Bank, in writing.
- 3.2. The Client understand and accept that whilst the Bank will make every reasonable endeavour to ensure that the statements are transmitted /sent as per the client instruction, the Bank cannot guarantee secure or timeous delivery to the nominated delivery address. The Bank and all its subsidiaries, affiliates, shareholders, agents, consultants and employees will thus not be liable for any losses, damages, expenses or costs of any nature whatsoever, be it direct or consequential, suffered or incurred by the client in the event that the statement is not securely or timeously received by the intended recipient(s) or is received by persons other than the intended recipient(s) or is received by person other than the intended recipient(s). Should the Bank not receive notification to the contrary within 30 days from statement date, the Bank will assume that the statement was received.
- 3.3. If the Client wish to dispute any item or entry on any statement, please inform the Bank, in writing, within 30 (thirty) calendar days of the date of the statement. The Bank will investigate the disputed item or entry, obtain the relevant documents pertaining to the disputed item or entry and make the necessary enquiries.
- 3.4. The Client hereby consent that the Bank may use any credit balance on their account or on any of their other accounts held at the Bank, at any time to set off any money owing to the Bank, for whatever reason, without notifying the Client thereof. If there remains an outstanding amount after the set off, the Bank may demand that you immediately repay the outstanding amount.

- 3.5. Any record of a deposit into the Client's account may be verified by the Bank and, if there is a difference between the Client's and the Bank's records, the Bank's records will be binding on the Client unless proven otherwise by the Client.
- 3.6. If any negotiable instrument is deposited into the Client's account, the proceeds will be credited to the account, but the negotiable instrument will be available as cash only when it has been honoured. If the negotiable instrument is dishonoured, the Client's account will be debited accordingly and, the Bank will return the negotiable instrument to the Client, at the Client's risk.
- 3.7. All payments received from the Client or on behalf of the Client will be credited to the Client's account and the Bank will apply the payments, firstly to pay any applicable government levies, then any legal costs, then any fees, then any other charges we levy on your account, then interest, and finally the principal debt.
- 3.8. The Bank will make every reasonable endeavour to ensure that statements are transmitted as per the Client instruction; however the Bank cannot guarantee secure or timeous delivery to the nominated delivery address.
- 3.9. The Bank and all its subsidiaries, affiliates, shareholders, agents, consultants and employees will not be liable for any losses, damages, expenses or costs of any nature whatsoever, be it direct or consequential, suffered or incurred by the Client in the event that the statement is not securely or timeously received by the intended recipient(s) or is received by persons other than the intended recipient(s) or is received by person other than the intended recipient(s).

#### **4. SET-OFF**

- 4.1. You hereby authorize the Bank to combine/set-off against each other all the balances of the account without prior notice for the purposes of determining whether there are sufficient funds to meet any withdrawal instruction given by you to the Bank.
- 4.2. In this regard you pledge and cede all your claims to any credit balance on the account held with the Bank, from time to time hereafter owed or indebted to you by the Bank, whether such indebtedness be incurred in respect of your current account or arising from any other cause whatsoever.

- 4.3. The Bank may in its sole discretion disregard any withdrawal instruction made by you on any of the accounts conducted by you with the Bank, or in any other manner, if the balance of the accounts at the time of the withdrawal instruction being given is not sufficient for the amount of the withdrawal instruction so given. You agree that the Bank may at any time refuse to execute any instruction to transfer funds from one of the accounts to any of the other and/or to appropriate incoming funds to any specific one of the accounts.

## **5. LIABILITY**

- 5.1. The Client acknowledges that the use of the service/account/product is solely at the Client's own risk.
- 5.2. The Bank will not be liable to the Client for any damage or loss that the Client suffers if:
- 5.2.1. any person gains unauthorised access to the card, your account, your PIN or your facility or any information in respect thereof;
  - 5.2.2. incorrect information is given by us in good faith to any person, including any credit bureau;
  - 5.2.3. we process any information incorrectly received;
  - 5.2.4. there is a delay, failure or malfunction of any ATM or other device (electronic or manual) you use to make card transactions with the card; or
  - 5.2.5. any person gains unauthorised access to your information or data (whether correct or incorrect).
  - 5.2.6. any malfunction or defect in the cellphone used by the Client;
  - 5.2.7. any act or omission by a Network Service Provider;
  - 5.2.8. or any defect in the service/account/product or any other medium by which access is gained to the system;
  - 5.2.9. the service/account/product being off-line or unavailable;
  - 5.2.10. any other circumstances not reasonably within the Bank's control;
  - 5.2.11. erroneous, unauthorized, incomplete, incorrect or unlawful instructions from the Client;
- and
- 5.2.12. incorrect or late execution or non-payment of any instruction given by the Client.

- 5.3. You acknowledge that the Bank shall neither be required to
- 5.3.1. enquire into the authority of any person who uses/has used the passwords/accessed the Account, nor shall the Bank be required to enquire into the validity of any information provided by the Client to it for purposes of the Account;
  - 5.3.2. determine whether the name of the beneficiary and the account number and branch clearing code of such a beneficiary refer to the same person.
  - 5.3.3. and that once the Bank has received and implemented an instruction given by the Client, 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.

## **6. UNLAWFUL USE OF ACCOUNT / SERVICES / PRODUCTS**

- 6.1. As a condition of subscribing to any account/services/products, the Client warrant to the Bank that the account / services / products shall not be used for any unlawful purpose which is prohibited, expressly or implicitly, by the terms of this Agreement or by any applicable law or regulation, nor shall the Client use it in any manner that may be prejudicial to the Bank.
- 6.2. Without prejudice to any other provision set out in these Terms, the Client undertakes that he shall at all times comply with all applicable laws, statutes, ordinances and regulations of the Republic of Namibia pertaining to the account / services / products provided by the Bank.
- 6.3. The Client agree to settle any payment obligations to the Bank in accordance with the instructions issued to the Bank and the Client is not entitled to overdraw any account unless prior arrangements have been made with the Bank, and then only in terms of such arrangement and that the limits allocated to any applicable account will not be exceeded.

## **7. ANTI-BRIBERY AND CORRUPTION**

- 7.1. The Client acknowledges that
  - 7.1.1. the Bank and its affiliates are committed to creating and delivering sustainable value for their investors and clients. The Bank conducts its business in an honest, ethical and professional manner and adheres to the highest standards of corporate governance.
  - 7.1.2. the Bank has always adopted a zero tolerance towards all corrupt activities.

7.1.3.the Bank forbids and does not support any individuals or organisations that participate in any acts of fraud, bribery, corruption or in the practice of making use of facilitation payments, where facilitation payments is defined as “payments” made as a way to get or speed up a legitimate service that is offered by a government agent. Facilitation payments do not include legitimate fees that are payable for that service and the fees are applicable to anyone receiving the same or similar service. Facilitation payments also do not include the payment of a “fast track” fee as long as the faster service is available to anyone paying a similar fee. Nor do they include the provision of resources to assist the government agent to more efficiently provide the services that are supplied.

7.2. In the circumstances, the Client undertakes at all times to:

7.2.1.comply with all applicable anti-bribery and anti-corruption laws and regulations;

7.2.2.not offer any bribe or facilitation payment to any public official or other person;

7.2.3.not accept any bribe or corrupt payment in respect of any activity related or attributable to the Administrator or its affiliates; and

7.2.4.not to do anything that may cause the Bank or any of its affiliates to breach the Anti-bribery Law.

7.3. If the Client breaches, or appears to breach, this clause then the Bank may immediately terminate the business relationship between the Client and the Bank, without further notice to the Client.

## **8. ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM / SANCTIONED TRANSACTIONS / EXCHANGE CONTROL**

8.1. The Client agrees not to use any account / services / products / financing made available by the Bank available to sanctioned individuals and/or entities or for the purposes of any sanctioned or illegal activity.

8.2. To comply with and meet its reporting requirements in terms of all applicable laws and regulations relating to anti-money laundering (AML), countering the financing of terrorism (CFT), sanctioned transactions and exchange control, the Bank may be:

8.2.1.prohibited from entering into certain foreign exchange transactions unless the conditions of approval by Bank of Namibia are first complied with; and/or

- 8.2.2. prohibited from entering or concluding transactions involving certain countries, entities, banks, vessels or individuals; and/or
- 8.2.3. prohibited from engaging in transactions that are subject to such sanctions (including the clearing of incoming / outgoing cheques drawn on / presented before all sanctioned banks); and/or
- 8.2.4. compelled to reject such transactions and/or block the related funds, as per sanctions, policies and legislation; and/or
- 8.2.5. required to report any suspicious transactions to the relevant authorities.
- 8.3. The Bank or any of its employees shall be entitled to:
  - 8.3.1. intercept and investigate any payment messages and/or other information or communications sent to or by you and/or on your behalf; and/or
  - 8.3.2. delay, block and/or refuse to make any payment and payment screening, which in turn may cause a delay in the processing of certain information.
- 8.4. The Bank shall not be liable for any loss arising out of any action taken or any delay or failure to perform its duties or obligations caused in whole or in part by any steps taken above.

## **9. BLOCKING OF ACCOUNT / WITHHOLDING OF FUNDS**

- 9.1. The Bank may, without prior notice to the Client, block (and later unblock) and/or withhold and pay over any amount in any of your accounts at any time, if required to do so by any relevant authority, law, regulator or other authority, or in order to comply with its internal policies and/or any applicable order or sanction of an authority.
- 9.2. The Bank may withhold from the Client's account(s) such amounts as may be required by foreign regulatory authorities and/or tax authority according to the requirements of the Foreign Account Tax Compliance Act ("FATCA Act").

## **10. FATCA POLICY**

- 10.1. The Foreign Account Tax Compliance Act (the "Act") forms part of this Agreement and you hereby agree to be bound by, comply with and adhere to the terms of the Act. Should there be any conflict or inconsistency between the Act and the Agreement, the contents of the Act shall prevail.
- 10.2. The Bank, or any of its affiliates, may report your information to foreign authorities and/or tax authorities (where necessary) in accordance with the requirements of the Foreign



Account Tax Compliance Act (“FATCA Act”) as may be stipulated by applicable laws, regulations, agreement or regulatory guidelines or directives.

- 10.3. That the Bank may withhold from my account(s) such amounts as may be required by foreign regulatory authorities and/or tax authority according to the requirements of the Act.

**11. CREDIT BUREAU REGULATIONS: BANK OF NAMIBIA ACT, 1997**

- 11.1. To the extent that the Namibian Credit Regulations, 1997 is applicable, favourable or unfavourable information having bearing to the Client’s credit history or payment profile must be provided by the Bank to registered credit bureaus.
- 11.2. The Client is entitled by law to request a copy of said credit report from the relevant credit bureau and where applicable, to request the correction of inaccurate information contained therein.
- 11.3. The Client consent that the Bank may periodically check and reporting your credit status with any registered credit bureau or credit reference agency. By doing so the Client consent to the Bank disclosing such information as may be necessary or required to check and/or to report in terms of the applicable laws, and in this regard:
- 11.3.1. you confirm that we may transmit to all relevant credit bureaus data about the application for, opening and termination of an account by you, as well as your conduct of such account;
- 11.3.2. you acknowledge that information on non-compliance with the terms and conditions of this Agreement is transferred to such credit bureaus;
- 11.3.3. the credit bureaus provide credit profiles and possibly credit scores on your credit worthiness, subject to the credit record;
- 11.3.4. you have the right to have the credit record disclosed and to correct inaccurate information by contacting the credit bureaus directly.

**12. CONFIDENTIAL INFORMATION**

- 12.1. The Client authorise the Bank to check and confirm any information on the completed application form and to make any enquiries we deem necessary.
- 12.2. The Client acknowledge that the Bank is bound by the client-banker confidentiality principle and hereby waive such right in favour of the Bank and consent to the Bank disclosing

such confidential information to other companies in the Capricorn Group for marketing cross-selling and other related purposes.

- 12.3. Notwithstanding the provisions as contained above, the Bank, or any of its affiliates, may report the Client's information to foreign authorities and/or tax authorities (where necessary) in accordance with the requirements of the FATCA Act or as may be stipulated by applicable laws, regulations, agreement or regulatory guidelines or directives.
- 12.4. If applicable the Bank may disclose to their Insurer of choice any personal and financial information to ensure that the benefits as provided for in certain of the service/account/product can be provided to you.
- 12.5. The Client acknowledges that information transmitted through any wireless communication system is susceptible to unlawful access, distortion and monitoring and that the Client uses the service/account/product at its own risk. The Parties agree to take all reasonable precautions to protect the confidentiality of information and to prevent disclosure of any information to any third party.

### **13. WAIVER AND INDEMNITY**

- 13.1. The Client understands, confirm and acknowledge that:
- 13.1.1. authorizing the Bank to act upon telephonic, fax, short message service ("sms") and/or email instructions, or to correspond with you via sms, may not be the safest or most prudent way of managing your account as a result of the inherent shortcomings in relation to each of these methods;
- 13.1.2. aside from asking questions relating to personal information, it is not possible for the Bank to confirm the identity of any person providing instructions telephonically and that, should this personal information fall into the hands of a third party, it may be used for the purposes of committing fraudulent transactions;
- 13.1.3. instructions sent by fax can very easily be tampered with, intercepted, fraudulently abused by outsiders, be the cause of delay in carrying out instructions contained therein, be mislaid or not be properly legible and it may furthermore not be possible to verify any signature that has been faxed;

- 13.1.4. The Bank cannot confirm that any instruction sent by email has indeed been sent by you and that the risk of email facilities being fraudulently abused by unauthorised persons cannot be excluded;
- 13.1.5. correspondence sent to you via sms may be intercepted and fraudulently abused by outsiders with access to your mobile phone;
- 13.1.6. by instructing and authorising the Bank to accept telephone, fax, sms and/or email instructions, and to correspond with you via sms, you may be exposing yourself to risk, including but not limited to the aforementioned.
- 13.2. Now therefore:
- 13.2.1. the Client hereby indemnify the Bank its officers, agents, employees and servants (“the Indemnified Parties”) against and waive any rights in connection with any demand, claim, action, losses and damages of whatsoever nature which may be brought against the Bank or which you may suffer or incur, whether directly or indirectly relating to or in connection with your account, whether directly or indirectly, and whether or not arising from any verbal, written, telephonic, fax, sms and/or email instruction given, or sms received, unless the matter is as a result of gross negligence or willful misconduct of the Bank or any of its employees or person acting for or controlled by the Bank, in which case the matter shall be dealt with on its legal merits;
- 13.2.2. you undertake that should any claim or action be made or instituted against the Bank as a result of such gross negligence or wilful misconduct, any claim shall be limited to direct damages and that no indirect, special or consequential damages shall be claimed;
- 13.2.3. you furthermore specifically indemnify the Bank its officers, agents, employees and servants (“the Indemnified Parties”) and hold it harmless from all demands, claims, actions, losses and damage of whatever nature in relation to:
- 13.2.3.1. infringements of confidentiality arising from the use of the telephone, fax, sms and/or email to convey instructions to the Bank;
- 13.2.3.2. infringement of confidentiality arising from the correspondence that you received from the Bank via sms;
- 13.2.3.3. the Bank 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, interruption or distortion of communication links or storage media, natural

phenomena, riots, acts of vandalism, sabotage, terrorism, any other event beyond the Bank's control;

13.2.3.4. damage arising from any event beyond the Bank's control;

13.2.3.5. damage arising from the reliance of any person on incorrect, illegible, incomplete or inaccurate information or dates contained in any instructions received by or sent by the Bank;

13.2.3.6. damage arising from the sending of false, fraudulent or altered instructions to the Bank by telephone, fax, sms and/or email;

13.2.3.7. damage caused by the misplacement or loss, however caused, of any instructions sent to the Bank by fax and/or email;

13.2.3.8. damage caused by the Bank's delay to act immediately upon any instruction to the Bank;

13.2.3.9. 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;

13.2.3.10. any unauthorized access to your account or any breach of security or any destruction or accessing of your data or any destruction or theft of or damage to any of your equipment;

13.2.3.11. your failure to adhere to any of the terms and conditions applicable to the services and/or your account; and/or

13.2.3.12. the supplying of incorrect information, or by the failure or unavailability of third party facilities or systems, or the inability of a third party to process a transaction.

13.3. The Client understands that this means that the Client will need to reimburse the Bank for any amounts, damages, expenses or costs that the Bank may be required to pay to any person, or any amount that the Bank may lose, as a result of incorrect, wrong, unauthorized and/or wrongful instructions or information given to the Bank by the Client or any other person authorized or deemed to be authorized to act on behalf of the Client

13.4. No waiver by the Bank of any term or condition of this Agreement shall be binding or effectual unless contained in writing and signed by the Bank, and any such waiver will be effective only in the specific instance and for the purpose given.

13.5. No failure or delay on the part of the Bank in exercising any right, power or privilege will operate as a waiver thereof, nor will any single/partial exercise of any right, power or privilege preclude

any exercise thereof or the exercise of any other right, power or privilege. Should the Bank thus allow you any latitude or extension of time, it is not and should not be understood as a novation or waiver of its rights in respect of this Agreement, and it will also not be, or be the cause of, an estoppel against the Bank.

- 13.6. The Client further indemnifies the Bank against any damage, loss and/or consequential damage that the Bank may suffer as a result of incorrect, wrong, unauthorized and/or wrongful instructions or information given by the Client or any other person authorized or deemed to be authorized to act on behalf of the Client.

**14. CERTIFICATE AND OTHER DOCUMENTARY EVIDENCE OF INDEBTEDNESS**

- 14.1. Should the Client be in arrears with any payment due by the Client in terms of these Terms, a certificate given by any branch manager, 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 (including but not limited to capital and interest and any other amounts or charges) 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 judgment thereon against the Client in any competent court.

**15. SEVERABILITY**

- 15.1. Every provision (including this clause) of this Agreement is deemed to be separate and severable, and should any provision be found to be defective or unenforceable for any reason, that provision will be severed from the remaining provisions and the validity of the remaining provisions will continue to be of full force and effect.

**16. CESSION**

- 16.1. The Client hereby consent to the Bank ceding, assigning and/or transferring all or any of its rights, title and interest in and to this Agreement, any account and/or services provided to you, as well as any other security of whatsoever nature held by the Bank in respect of your indebtedness to the Bank, to and in favour of any third party/-ies. This includes the right to delegate any obligation in terms of this Agreement and/or the security or other security mutatis mutandis.

16.2. The Client are not be entitled to cede any rights, title and interest in and to this Agreement nor to validly cede any claim which you may have in respect of any credit balance appearing on any one of your account to any other third party without obtaining the Bank's prior written consent.

**17. WITHHOLDING TAX**

17.1. Amounts in your account (including any interest earned) may be subject to withholding tax in accordance with the applicable laws.

**18. WHOLE AGREEMENT**

18.1. These Terms, as amended from time to time, must be read together with the Bank's application forms, the specific terms and conditions (if applicable) of the service/account/product , specific product descriptions/requirements/benefits, the Bank's standard internet banking terms and conditions ("Terms of Use"), the Electronic Funds Transfer Industry Rules ("Rules") and shall together constitute the whole agreement between the Parties.

18.2. Notwithstanding the above, you acknowledge and accept that the Bank may from time to time amend or replace such terms and conditions insofar as they relate to the account/services and publish the revised terms and conditions on its website.

18.3. It remains your responsibility to keep yourself informed of the terms and conditions via the website, or you may request a hard copy of the terms and conditions at your nearest Bank branch. You confirm that by entering your electronic banking subscription number and password or security device to gain access to the services, you bind yourself to the terms and conditions in force at that point in time as they may appear on the Bank's website.

**19. WARRANTY**

19.1. The Client declare and warrant that all information provided in the relevant application form(s), communication with the Bank, and any information to be given in the future and information to be contained in each instruction processed electronically through any of the services performed by the Bank, is and will be correct in all respects.

- 19.2. The Client record that you shall be obliged to inform us of any change in the information provided by you and that you will have no claims against the Bank in the event of any information provided by you to the Bank being incorrect.
- 19.3. The Client hereby warrants to the Bank that the Client has the required legal capacity to enter into and be bound by these terms and conditions.

**20. NO REPRESENTATION**

- 20.1. The parties agree that no other terms or conditions, whether oral or written and whether express or implied, apply.

**21. Governing law and jurisdiction**

- 21.1. These Terms shall in all respects be governed and construed in accordance with the laws of the Republic of Namibia.
- 21.2. Any dispute, disagreement or claim arising between the parties connected to, relating to or concerning these Terms (“the dispute”) shall be resolved by means of arbitration conducted by an independent arbitrator.
- 21.3. The appointment of the arbitrator shall be agreed upon by the Parties within 5 (FIVE) Business Days of the arbitration being demanded by means of a notice by any of the Parties; if agreement is not reached within 5 (FIVE) Business Days of the notice, the president for the time being of the Law Society of Namibia or its successor in title, shall be instructed or requested to nominate an arbitrator, who shall be a senior counsel;
- 21.4. The arbitrator shall settle the procedure and manner in which the arbitration shall be conducted.
- 21.5. Notwithstanding anything to the contrary contained in these Terms, the Bank shall in its sole discretion be entitled to institute legal proceedings in a court of law of competent jurisdiction to resolve the dispute. Notwithstanding anything to the contrary contained in this Agreement, should the Bank institute legal proceedings in a court of law to resolve the dispute, without first referring the dispute to arbitration, in terms of this Agreement, and the legal proceedings become defended or opposed (as the case may be), the Bank shall in such event remain entitled in its sole discretion to refer the dispute to arbitration and ask the court to stay the legal proceedings pending such arbitration.

- 21.6. The parties hereby agree, in terms of section 45 of the Magistrate Court Act, Act 32 of 1944, as amended, in respect of any legal proceedings relating to this Internet Banking Facility Agreement, to the jurisdiction of the Magistrates Court having jurisdiction in respect of them in terms of section 28(1) of the said Act; provided that the Bank shall in its discretion be entitled to institute any such legal proceedings in the High Court of Namibia where such court has jurisdiction.
- 21.7. Except in regard to the payment of any sum of money due and payable in terms of these Terms, neither of the parties shall be liable for failure to fulfil its obligations in terms of these Terms if such failure is occasioned by casus fortuitus, force majeure, act of God, refusal of licence, 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.

## **22. DOMICILIUM AND NOTICES**

- 22.1. The physical address given by the Client you to the Bank on the application form will always be the address you have chosen where summonses, legal documents and notices may be served on you ('domicilium citandi et executandi). The postal address given by you on the application form is the address to which we will send all other notices, correspondence, account statements and documents addressed to you.
- 22.2. The Client may on 14 (fourteen) days written notice advise the Bank of any alteration of such domicilium, which shall be a physical address.
- 22.3. All notices by the Bank to the Client may be dispatched to the Client's postal address as advised from time to time and shall be deemed to have been received by the Client on the 7th (seventh) day after posting.
- 22.4. All notices by the Client to the Bank must be posted by pre-paid registered post to Bank Windhoek Ltd, PO Box 15, Windhoek, Namibia or delivered to Retail Banking Services, Capricorn Group Building, Kasino Street, Windhoek, Namibia and if delivered a receipt stating the date and time of delivery must be obtained.
- 22.5. This provision shall not be construed as precluding the utilisation of other means and methods for the transmission or delivery of notices, acceptances, demands and other communications, but no presumption of delivery shall arise if any such other means or method is used.



**23. TERMINATION, SUSPENSION, WITHDRAWAL OR CALL-UP**

23.1. Notwithstanding anything contained above, the relationship between the Parties may be terminated at any time by either the Bank or the Client on having given 30 (thirty) days' written notice, 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 we continue with the rendering of any service to you, we will be entitled to terminate the agreement on 48 (forty eight) hours' written notice to you.

23.2. The Bank is entitled, at its sole discretion, to terminate the Services at any time the Bank deems it necessary.

23.3. In order to protect the Client, the Bank and the banking systems, the Bank is entitled to immediately suspend or withdraw all or part of the services/accounts/products/access channel if:

23.3.1. The Services are being used contrary to the Terms, the Terms of Use or the Rules; or

23.3.2. The Bank has reasonable grounds to believe that the Services may be used negligently, illegally or fraudulently;

23.3.3. The Services has not been used by the Client or its authorized User/s for a period of 6 (six) calendar months;

23.3.4. The Bank has reasons to believe that the Client has no access to a cellphone or cellphone services; or

23.3.5. The Bank believes that the security of the systems used to provide the Services may be compromised.

23.3.6. The Bank shall be entitled, in its discretion, to terminate the Services at any time:

23.3.6.1. the Client commits a material breach of these Terms and fails to remedy such breach within 3(three) days of receiving written notice to do so,

23.3.6.2. to call up any overdraft or loan facilities granted to you, notwithstanding the fact that the agreed limit of such overdraft or loan facilities has not been exceeded.

without prejudice to any rights it may have to recover any amounts due to it, or any losses or damages suffered in consequence of any breach.

23.4. Save where immediate termination is provided for in these Terms or the Terms of Use or Rules, the Client shall be entitled to terminate the Relationship upon 30 (thirty) days written notice to the Bank.

- 23.5. 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.
- 23.6. The Client may re-apply for provision of the services/accounts/products / access channel at any time after termination of the services/accounts/products/access channel.
- 23.7. The Bank is entitled to terminate your services/accounts/products/access channel or place the Client's services/accounts/products/access channel on hold if the Client does not comply with the Terms contained herein and / or any other legal requirements as required by Namibian statutory provisions from time to time. These provisions include, but are not limited to, the Bank's reporting obligations in relation to fraudulent transactions, money laundering and terrorist financing activities. In the event that a hold is placed on your account, you will not be able to withdraw or transfer any funds from your account.
- 23.8. In the event that the Client fail to provide the Bank, any document as required by accordance with the requirements of the FATCA Act as may be stipulated by applicable laws, regulations, agreement or regulatory guidelines or directives you will be deemed a recalcitrant person, the Bank has the right to terminate, suspend, cancel and/or recall, at their sole and absolute discretion your account(s) and/or facilities granted to you.
- 23.9. If the Client's account remains inactive or dormant for such period of time as the Bank may determine, the Bank reserves the right to impose such conditions in relation to the further operation of the account as it may determine in its sole and absolute discretion.
- 23.10. The Bank may also elect to suspend your account when you are in default under the Agreement, or close the account by giving you at least 10 (ten) days' prior written notice of such termination.
- 23.11. The Bank, in its sole and absolute discretion, shall have the right at any time to close your account, cancel any credit facility and demand that you repay us the full amount outstanding on your account and immediately give back the card and the additional card(s), if applicable, to the Bank. The Bank is under no obligation to provide the Client with reasons for the above. Any liability which the Client or the holder of the additional card(s), if applicable, may have in respect of these terms and any credit granted to you previously will not be affected by the above action.
- 23.12. The full amount you owe us will immediately become due and payable if we close your card account; and/or we cancel your credit facility; and/or we demand that you give the card

back to us; and/or you breach any of these terms; and/or your estate is provisionally or finally placed under curatorship or sequestrated; and/or you die.

23.13. The Client hereby agree that we may inform any merchant or other person that we have closed your account and/or have cancelled the services / your credit facility, and you will not have any claim against us because we have given this information.

23.14. Any termination of your account and/or credit facility and/or the card and/or the services will not affect your liability to us in respect of the use of the card/account/services and this Agreement before that termination or before we receive back the card, whichever happens last.

## **24. ACKNOWLEDGEMENT AND CONFIRMATIONS**

24.1. The Client renounces the benefits of all otherwise applicable legal immunities, defences and exceptions to the extent that they would be applicable in the absence of this renunciation and specifically state that the Client is acquainted with the meaning and effect of the legal exceptions hereunder and hereby agrees to renounce the exceptions hereunder:

**24.1.1. *Errore calculi;***

[In other words, the Client renounces the right to dispute the accuracy of previously agreed amounts or accounts.]

**24.1.2. *De duobus vel pluribus reis debendi;***

[In other words, the Client renounces the benefit of being sued together.]

**24.1.3. *Non Causa debiti (reason for the debt);***

[In other words, the effect of renunciation of this right by the Client would be to place the onus of proving the absence of a cause of debt on the Client.]

**24.1.4. *revision of account; and***

**24.1.5. *no value received.***

## **25. BREACH**

25.1. Should the Client breach any Term or fail to perform any of your obligations in terms of this Agreement or any other agreement between you and the Bank, the Bank shall be entitled, without notice, to cancel this Agreement and withdraw the services and/or the services in respect of your account with immediate effect, without prejudice to its rights to recover any amounts due to it in terms of this Agreement and/or any loss or damage suffered by Nedbank

as a consequence of the breach by you of any term of this Agreement or the cancellation of this Agreement or the withdrawal of the services.

**26. GENERAL**

- 26.1. These Terms govern the relationship between you and the Bank in respect of the account/services. Should there, however, be a conflict between the provisions hereof and the provisions of any agreement relating to a specific account/service used by you, then the provisions of that agreement will take precedence, but only insofar as they conflict with the provisions hereof.
- 26.2. You acknowledge that your use of the services provided by the Bank shall not vary any aspect of the bank-client relationship between you and the Bank and you agree that the utilisation of any account/service shall be subject to the completion, signature and submission to the Bank of the relevant application form(s) and any other documents/agreements required by the Bank from time to time.