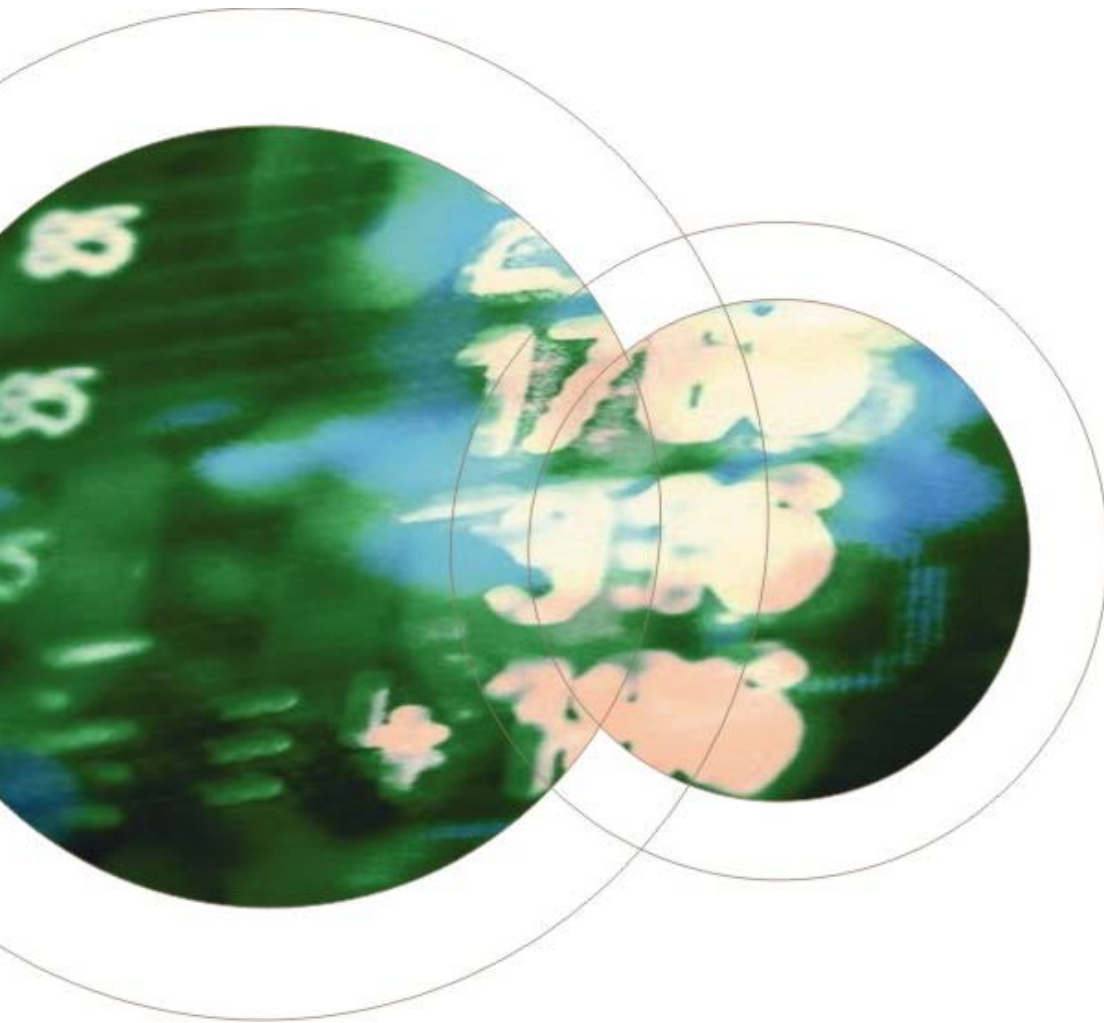


# Contracts for difference

Terms and conditions

July 2009



MAKE THINGS HAPPEN

**NEDBANK**  
CAPITAL



# Contents

	Page
<b>Risks</b> .....	<b>3</b>
Market risk .....	3
Counterparty risk (obligations of Nedbank Capital) .....	3
Investment decisions .....	3
Leverage .....	3
Involuntary Closeout .....	3
<b>1 Definitions and interpretations</b> .....	<b>4</b>
1.1 Definitions .....	4
1.2 Interpretations .....	8
<b>2 Contracts for difference</b> .....	<b>8</b>
2.1 Nedbank Capital's discretion .....	8
2.2 Business Day convention .....	9
2.3 Mode of delivery and payment .....	9
2.4 Buying or selling a CFD .....	9
2.5 Quotation of Reference Instrument Prices .....	9
2.6 Placing Orders .....	9
2.7 Acceptance of an Order .....	10
2.8 Confirmations .....	10
2.9 Errors .....	10
2.10 Cancellation of Orders .....	10
2.11 No transfer of legal or beneficial interest in the Reference Instruments .....	10
2.12 The Reference Instruments .....	10
2.13 Term .....	10
2.14 Corporate events .....	11
2.15 Nedbank Capital's CFDs and the JSE .....	11
2.16 Enquiries and complaints .....	11
2.17 Cooling-off period .....	11
<b>3 Margin</b> .....	<b>12</b>
<b>4 Costs of CFDs</b> .....	<b>12</b>
4.1 Premium .....	12
4.2 Intermediary Fee .....	12
4.3 Bank charges .....	12
4.4 Penalty interest .....	13
<b>5 Margin account</b> .....	<b>13</b>
5.1 Opening a Margin Account .....	13
5.2 Moving funds into and out of the Margin Account .....	13
5.3 Interest received on the Margin Account .....	14
5.4 Closure of Margin Account .....	14
5.5 Setoff .....	14



<b>6</b>	<b>NedTrade</b>	<b>15</b>
6.1	Scope of NedTrade authorisation	15
6.2	The NedTrade services	15
6.3	The Investor and Authorised Persons	15
6.4	Security	15
6.5	Confidentiality and use of the Investor's Information	16
6.6	Margin Account via NedTrade	17
6.7	Terms of the NedTrade Software sublicense	17
6.8	Warranties	17
6.9	Undertakings, acknowledgements and representations	18
6.10	Indemnity and exclusion from liability	18
6.11	Suspension of Investor's use of NedTrade	19
<b>7</b>	<b>General</b>	<b>19</b>
7.1	Representations	19
7.2	Undertakings and acknowledgements	20
7.3	Assignment	20
7.4	Deduction of Taxes	20
7.5	Indemnity and exclusion of liability	21
7.6	Severability	21
7.7	Waiver	21
7.8	Conditional settlement	21
7.9	Costs and expenses	22
7.10	Stamp duty	22
7.11	Consent to telephone recording	22
7.12	Investor to supply information	22
7.13	Amendments to Premium	22
7.14	Notices	22
7.15	Governing law and submission to jurisdiction	22
7.16	VAT	22
7.17	Injunctive relief by way of interdict	22



## Risks

An Investor should consider all of the risks associated with opening a Margin Account and buying or selling CFDs from or to Nedbank Capital.

### Market risk

CFDs are highly leveraged and carry a high level of risk. Additionally, any profit or loss accruing to the Investor will be adjusted to take into account any premium and other costs due to Nedbank Capital. An Investor should not invest in CFDs unless he is experienced in equity derivatives and understands and is comfortable with the risks of investing in CFDs. An Investor should also read the Terms and Conditions for Nedbank Capital's CFDs in their entirety, and obtain his own financial advice as to whether CFDs are an appropriate investment for him.

This document has been prepared by Nedbank Capital and does not take into account an Investor's personal objectives, financial situation or needs. Before buying or selling a CFD, an Investor should consider its appropriateness based on his personal circumstances. In deciding whether to open a Margin Account and engage in CFD trading, an Investor should consider the content of these Terms and Conditions.

An Investor should note that, in certain circumstances, a Reference Instrument Price may not match the prices on the underlying exchange.

Nedbank Capital or its associates, officers or employees may have interests in CFDs or Reference Instruments by acting in various roles and may receive fees, brokerage or commissions. Further, Nedbank Capital or its associates, officers or employees may buy or sell the Reference Instruments as principal or agent and may effect transactions that are not consistent with any recommendations above.

Investments in CFDs are subject to significant investment risk, including possible delays in repayment as well as loss of income and capital invested. Neither Nedbank Capital nor any member of the Nedbank Group guarantees the performance of, return of capital from or any particular rate of return of a CFD or Margin Account. An Investor may lose more than the amount of funds he has in his Margin Account.

The distribution of the information in jurisdictions outside South Africa may be restricted by law and persons into whose possession the information comes should inform themselves about, and observe, any such restrictions. Any failure to comply with these restrictions may constitute a violation of the laws of an applicable jurisdiction.

### Counterparty risk (obligations of Nedbank Capital)

A CFD is an instrument directly between an Investor and Nedbank Capital. As the value of a CFD depends on, among other things, the ability of Nedbank Capital to perform its obligations under these Terms and Conditions, failure by Nedbank Capital to comply with such obligations may result in the investment being worth less than it otherwise would have been. An Investor must make his own assessment of Nedbank Capital's ability to perform its obligations under the CFDs, pursuant to the terms set out in these Terms and Conditions.

Any cash in the Margin Account represents a deposit liability of Nedbank Capital.

### Investment decisions

An Investor is responsible for the selection of the Reference Instrument relating to any CFD the Investor wishes to buy from or sell to Nedbank Capital. As such, the performance of any CFD investment will depend on investment decisions made by the Investor.

### Leverage

CFDs offer exposure to a Reference Instrument with a relatively small cash collateral outlay. This can have the effect of magnifying potential gains or losses. An Investor should note that losses can exceed the amount of Margin laid out.

### Involuntary Closeout

Nedbank Capital may buy or sell a CFD previously bought or sold by the Investor, and/or close the Margin Account, in a number of circumstances, including where an Investor has insufficient funds in his Margin Account to meet the Margin call or where Nedbank Capital is unable to borrow the Reference Instrument required to hedge its exposure to an Investor who sold a CFD to Nedbank Capital. An Investor should note that collateral requirements are calculated on a continuous basis and that it is his responsibility to ensure that amounts transferred into his Margin Account are cleared in sufficient time to meet collateral obligations.

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# 1 Definitions and interpretations

## 1.1 Definitions

The following definitions apply to the Transaction Documents, unless the context otherwise required:

**'Accept'** or **'Acceptance'** or **'Accepted'** means when Nedbank Capital agrees to accept an offer in accordance with these Terms and Conditions by listing the CFD Transaction on the Deal Screen and listing the CFD Transaction in the Investor Account where the CFD Transaction can be viewed under the tab 'Transactions'.

**'Account Information'** means information regarding the Investor Account including statements of account, CFD Transactions, margin requirements and other summary records of transactions processed on the Margin Account.

**'Adjustment Event'** means, in relation to a Reference Instrument, any of the following:

- (a) the Reference Instrument being cancelled, delisted or otherwise ceasing to be calculated or announced by the relevant Listed Entity or that Listed Entity being wound up or otherwise ceasing to trade;
- (b) the proposal or occurrence of any event that may have a diluting or concentrative effect on the theoretical value of the security underlying the Reference Instrument, including any cash return of capital, capital reduction, liquidator's distributions unit buyback, bonus issue, rights issue, compulsory acquisition, redemption, arrangement, scheme of arrangement, compromise, merger, demerger, reconstruction, cancellation, replacement, modification, subdivision or consolidation, takeover offer, unit split, non-cash distribution or any similar event (but excluding the payment or declaration of ordinary cash distributions and dividends);
- (c) the Listed Entity being subject to an Insolvency Event;
- (d) the proposal or occurrence of any event that may, at Nedbank Capital's sole discretion, either have an effect analogous to, or lead to the occurrence of any of the events set out in paragraphs (a) to (c), or materially affect the determination of the market price of the Reference Instrument.

**'Aggregate Margin Required'** means, in respect of the Investor, the aggregate of all Margin Required calculated pursuant to these Terms and Conditions.

**'Aggregate Reserved Amount'** means, in respect of the Investor, the aggregate of all Reserved Amounts calculated pursuant to these Terms and Conditions.

**'Application'** means an application by the Investor by completing the Application Form and forwarding the Application Form to Nedbank Capital in order (i) to transact CFDs on

NedTrade and (ii) to open a Margin Account, subject to these Terms and Conditions.

**'Application Form'** means the Application Form available on the Website.

**'Authorised Person'** means anyone nominated and authorised by the Investor to operate and/or access NedTrade under these Terms and Conditions.

**'Benchmark Interest Rate'** means 'SAFEY', which is the weighted average of the overnight call deposit rate paid by A1-rated local and F1-rated foreign financial institutions where Safex places its daily Margin deposits received by its members. Reuters code SFXROD and Bloomberg code RAONON Index.

**'Business Day'** means a day on which banks and the JSE are open for business in Johannesburg.

**'CFD'** means an over-the-counter contract for difference, or instrument, which is referenced to a specific Reference Instrument and which an Investor can buy from or sell to Nedbank Capital under these Terms and Conditions from time to time.

**'CFD Data'** means all data or information arising in connection with any communication, any Order made or CFD already bought or sold by the Investor, including the applicable Reference Exposure, CFD Notional Value and Terms and Conditions, any Closeout Date, Closeout Price or Closeout CFD Notional Value.

**'CFD Notional Value'** means, in respect of a CFD or Order at any Valuation Time, the amount calculated by Nedbank Capital in accordance with the following formula:

$$\text{Reference Instrument Price} \times \text{Reference Exposure}$$

**'CFD Statement'** means the statement that Nedbank Capital will make available to the Investor on NedTrade on a daily basis and which will have the details of the CFD Transactions entered or closed out by the Investor, as well as the Premium, Mark-to-market Payments, Margin Interest Rate and Margin payable.

**'CFD Transaction'** means either (i) where an Investor buys a CFD or (ii) where an Investor sells a CFD.

**'Close Out'** or **'Closeout'** means when an Investor buys back from, or sells back to, Nedbank Capital an existing CFD, whether in the normal course of business due to an Early-termination Event, thus closing out a CFD Transaction.

**'Closeout CFD Notional Value'** means the amount calculated by Nedbank Capital in accordance with the following formula:

$$\text{Closeout Price} \times \text{Reference Exposure}$$

**'Closeout Date'** means the date on which there is a Closeout.

**'Closeout Price'** means the price of the Reference Instrument (i) as Accepted by Nedbank Capital or (ii) at which Nedbank Capital buys or sells a CFD due to an Early-termination Event and which price is applicable to a Closeout.

**'Closing Time'** means the time that trading ceases in the ordinary course of business on the JSE.

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**Company** has the meaning set out in the Companies Act.

**'Companies Act'** means the Companies Act 61 of 1973.

**'Confirmation'** means, in relation to a CFD, the document confirming the terms of the CFD Transaction, prepared by Nedbank Capital and made available to the Investor under 'Account Information' on NedTrade as soon as is reasonably possible after the Closing Time.

**'Deal Screen'** means the 'Transactions' screen on NedTrade, which provides the Investor with all the details of the Investor's CFD Transactions.

**'Dividend Amount'** means, in respect of a Listed Entity, an amount equal to the gross amount of any ordinary cash dividend paid in respect of the relevant Reference Instrument.

**'Early-termination Event'** means any of the following:

- (a) an Event of Default;
- (b) any event, circumstance or cause beyond the control of Nedbank Capital that has or would be expected to have (as determined by Nedbank Capital at its sole discretion) a material adverse effect on its ability to perform its obligations under, or hedge its positions with respect to, the CFD, including, for the avoidance of doubt, any situation where Nedbank Capital is unable to borrow at acceptable rates, determined at Nedbank Capital's sole discretion, any Reference Instruments needed to hedge a CFD Transaction where the Investor sold a CFD;
- (c) any change in law or interpretation that makes it unlawful for Nedbank Capital to give effect to any provision of these Terms and Conditions;
- (d) any government, governmental agency, department or commission seizing, confiscating or compulsorily acquiring (whether permanently or temporarily and whether with payment of compensation or not) any property of the Investor;
- (e) a Market Disruption Event occurring in relation to the Reference Instrument underlying a CFD held by the Investor; and
- (f) an Investor dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing his own affairs for any reason.

**'Effective Date'** means (i) the date on which the Application is Accepted by Nedbank Capital, (ii) the date on which the Initial Deposit Amount is paid into the Margin Account or (iii) the date on which the Investor receives his user name and password, whichever occurs the latest.

**'Event of Default'** means, in relation to an Investor, any one or more of the following events:

- (a) the Investor not paying or becoming unable to pay on time any amount due and payable under the Transaction Documents, including, for the avoidance of doubt, any situation where the Aggregate Margin Required and/or the Aggregate Reserved Amount exceeds an Investor's Margin Account balance at any Valuation Time;

- (b) the Margin Account being closed or terminated by the Investor, other than in the normal course of business;
- (c) the Investor failing duly and punctually to perform or comply with any of his obligations [other than those covered by paragraph (a)] or otherwise breaching any of the terms or conditions of the Transaction Documents [other than those covered by paragraph (a)], and such default, if capable of being remedied, not being remedied within 2 (two) Business Days after written notice from Nedbank Capital requiring the breach to be remedied;
- (d) any representation or warranty made by the Investor being, or being notified by the Investor to have been, incorrect or misleading when made;
- (e) the Investor being subject to an Insolvency Event;
- (f) any litigation, administrative proceedings or other procedure for the resolution of disputes being commenced against the Investor in relation to any CFD, which proceedings or procedure will or is reasonably likely to affect, restrain or otherwise hinder the Investor's and/or Nedbank Capital's rights under these Terms and Conditions;
- (g) Nedbank Capital receiving any notice from a credit reporting agency or any other credit provider in relation to the Investor that indicates that the Investor is in default under any other financial payment or performance obligation with any other party or that any of the events specified in the foregoing paragraphs of this definition have occurred, and which obligation and/or event is or may be material at Nedbank Capital's sole discretion; and
- (h) an event that, in the reasonable opinion of Nedbank Capital, is or may be a Material Adverse Change.

**'Execution Premium'** means that part of the Premium that is any one of and/or the total of the following 2 (two) amounts:

- (a) the amount payable on entry into a new CFD Transaction, being an amount calculated as follows:  

$$\text{Initial Nominal Exposure} \times \text{Execution Premium Percentage}$$
- (b) the amount payable on a Closeout by the Investor, being an amount calculated as follows:  

$$\text{CFD Notional Value} \times \text{Execution Premium Percentage}$$

**'Execution Premium Percentage'** means initially 150 (one hundred and fifty) basis points or as agreed between Nedbank Capital and the Investor to be applicable at the relevant date for payment of an Execution Premium. The percentage is subject to change from time to time, due to underlying market conditions, and Nedbank Capital will notify the Investor of such a change by notification on NedTrade or any other agreed electronic means.

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**'Funds Transfer'** means the transfer of any Trading Capacity out of the Margin Account at the request of the Investor pursuant to these Terms and Conditions.

**'Information'** means information that is commercially sensitive or proprietary to either party, its affiliated companies or third parties to whom either party has a duty of confidentiality, including any and all non public information of any form obtained by a party or its employees while transacting under these Terms and Conditions, such as information pertaining to NedTrade, trade secrets, processes, CFDs bought or sold by the party, investors, employees and any data or documentation related thereto.

**'Initial Deposit Amount'** means, in relation to a Margin Account, the amount (not less than ZAR 20 000) that is required to be deposited by the Investor into the Margin Account once the Margin Account has been opened.

**'Initial Nominal Exposure'** means the amount calculated as follows:

$$\text{Reference Instrument Price at Acceptance} \times \text{Reference Exposure}$$

**'Insolvency Event'** means, in respect of a person, any one of the following:

- (a) a petition being presented (and not struck out or dismissed within 7 (seven) Business Days of it being presented) or an effective resolution being passed under the Companies Act for the winding up of the party or any similar process in relation to the entity;
- (b) a judicial manager, curator, trustee, administrator or similar official being appointed to deal with all or any substantial part of the assets or undertaking of the person;
- (c) a liquidator or trustee in insolvency being appointed to the person;
- (d) the person resolving to wind up itself, or otherwise to dissolve itself, or giving notice of its intention to do so, except to reconstruct or amalgamate while solvent and with the prior consent of Nedbank Capital, or who is otherwise being wound up or dissolved;
- (e) the person committing an act of insolvency;
- (f) the person stating that it is insolvent or is presumed to be insolvent under any applicable law;
- (g) as a result of the operation of the Companies Act the person being taken to have failed to comply with a statutory demand;
- (h) the person entering into a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or a moratorium involving any of them;
- (i) the person being or stating that it is unable to pay its debts when they fall due; or
- (j) anything being analogous to or which has an effect similar to anything described above.

**'Intellectual Property Rights'** means all present and future rights in or in relation to copyright, trademarks, designs, patents, circuit layouts, business and domain names, inventions, the CFDs to be transacted under these Terms and Conditions, and other rights in the industrial, commercial, scientific, literary or artistic fields.

**'Intermediary Fee'** means any intermediary fee payable by Nedbank Capital with respect to the Investor's CFDs, which Nedbank Capital is obliged to pay to the relevant Authorised Person as agreed upon between Nedbank Capital and the Investor in the Transaction Documents.

**'Investor'** means, in relation to a Margin Account and any CFD, the person or legal entity specified in the Application Form as the applicant.

**'Investor Account'** means a screen on NedTrade consisting of 3 (three) tabs dealing respectively with (i) margin requirements and existing positions, (ii) transaction details and (iii) a summary of Confirmations and daily statements.

**'JSE'** means the JSE Limited (Registration Number 2005/022939/06).

**'Legislative Event'** means the receipt of advice by Nedbank Capital from reputable legal counsel that, as a result of the introduction of, or any amendment to, or clarification of, or change in, or announcement of a prospective introduction of, or amendment to, or clarification of, or change in, any law or regulation of the Republic of South Africa, or any other political subdivision or any official administrative pronouncement or action or judicial decision interpreting or applying such laws or regulations, additional requirements would be imposed on Nedbank Capital in relation to a CFD, an Order or a Margin Account, which requirements Nedbank Capital reasonably determines to be prejudicial to Nedbank Capital and/or the Investor.

**'Listed Entity'** means, in relation to a Reference Instrument, the company or responsible entity that is considered by the JSE to be the issuer of the Reference Instrument.

**'Margin'** means the amount in the Margin Account that is held as collateral by Nedbank Capital for the Investor's CFD Transactions and Orders in accordance with these Terms and Conditions.

**'Margin Account'** means the deposit account opened in the name of the Investor pursuant to these Terms and Conditions.

**'Margin Interest Rate'** means the interest rate, set and payable by Nedbank Capital on the balance in the Margin Account, being the Benchmark Interest Rate minus a spread, which will not be more than the maximum percentage stipulated from time to time on the Website.

**'Margin Rate'** means the percentage that is applicable to the CFD and its related Order in respect of each Reference Instrument, and which is set, from time to time, by Nedbank Capital at its sole discretion and published on the Website. The Margin Rate is also available on NedTrade on the 'Prices' screen under the heading 'Margin Rate WKN'.

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**'Margin Required'** means, in respect of a given CFD at any time on any day, an amount calculated as:

$$\text{CFD Notional Value} \times \text{Margin Rate}$$

**'Mark-to-market Payment'** means a payment that is required to be made after close of market on the JSE on any Business Day by the Investor or Nedbank Capital in accordance with any movement in the CFD Notional Value and which therefore reflects the profit or loss with respect to a CFD that would be realised if the relevant CFD was closed out immediately.

**'Market Disruption Event'** means the suspension, delisting or material limitation of trading in the Reference Instruments on the JSE on which they are listed, the existence of which will be determined in good faith by Nedbank Capital.

**'Material Adverse Change'** means a change in relation to an Investor, which, at Nedbank Capital's sole discretion, has a material adverse effect on the Investor's assets, revenue or financial condition, or his ability to perform his respective obligations under the applicable Transaction Documents.

**'Nedbank Capital'** means Nedbank Capital, a division of Nedbank Limited (Registration Number 1951/000009/06), a public company duly incorporated in accordance with the laws of the Republic of South Africa.

**'Nedbank Group'** means Nedbank Limited (Registration Number 1951/000009/06), a public company duly incorporated in accordance with the laws of the Republic of South Africa, including all its direct and indirect subsidiaries.

**'NedTrade'** means the platform that consists of the services provided by Nedbank Capital under these Terms and Conditions, and which is accessed by the Investor by using the Software.

**'Order'** means an offer made by an Investor to Nedbank Capital to buy or to sell a CFD from or to Nedbank Capital pursuant to these Terms and Conditions, which offer may or may not be Accepted by Nedbank Capital.

**'Overnight Long'** means an amount, calculated on a daily basis, equal to (i) the CFD Notional Value at the Closing Time as determined on the JSE, multiplied by (ii) a percentage set by Nedbank Capital and applicable to a CFD Transaction where an Investor buys a CFD. This percentage will be equal to the Benchmark Interest Rate plus a maximum spread of 2% (two percent). The maximum spread will be determined by Nedbank Capital from time to time, based on the underlying market conditions, and will be reflected in the Benchmark Interest Rate and published on the Website.

**'Overnight Short'** means an amount, calculated on a daily basis, equal to (i) the CFD Notional Value at the Closing Time as determined on the JSE, multiplied by (ii) a percentage set by Nedbank Capital and applicable to a CFD Transaction where the Investor sells a CFD. This percentage will be equal to the Benchmark Interest Rate minus a maximum spread of 3% (three percent). The maximum spread will be determined by Nedbank Capital from time to time, based on the underlying market conditions, and will be reflected in the Benchmark Interest Rate and published on the Website.

**'Password'** means a series of characters that are (i) issued by Nedbank Capital to the Investor or to the Authorised Person or (ii) selected by the Investor or the Authorised Person to secure access to NedTrade.

**'Penalty Interest Rate'** means the Benchmark Interest Rate plus a maximum spread of 5% (five percent). The maximum spread will be determined by Nedbank Capital from time to time, based on the underlying market conditions, and will be reflected in the Benchmark Interest Rate and published on the Website.

**'Premium'** means the consideration payable by the Investor to Nedbank Capital for any CFD Transaction, being the aggregate of:

- (a) the Execution Premium;
- (b) plus Overnight Long;
- (c) minus Overnight Short; and
- (d) plus or minus an amount, as contemplated in 4.1 below, equal to any dividend and/or other cash distributions paid in respect of the Reference Instrument.

**'Reference Exposure'** means the number of Reference Instruments to which a CFD or an Order relates, as adjusted in accordance with these Terms and Conditions.

**'Reference Instrument'** means a specific underlying security of a Listed Entity to which a CFD is referenced.

**'Reference Instrument Price'** means the price for a Reference Instrument at any relevant time, as determined by Nedbank Capital.

**'Reserved Amount'** means, in respect of a given Order at any relevant time, an amount calculated as:

$$\text{CFD Notional Value} \times \text{Margin Rate}$$

**'Security Interest'** includes any mortgage, bill of sale, pledge, deposit, lien, encumbrance, hypothecation, arrangement for the retention of title and any other right, interest, power or arrangement of any nature whatsoever having the purpose or effect of providing security for, or otherwise protecting against default in respect of, the obligations of any person.

**'Security Measure'** means a method of:

- (a) securing communications between parties; or
- (b) authenticating a person; or
- (c) restricting access to a service; or
- (d) any combination of the foregoing,

including by means of Passwords or public key infrastructure.

**'Software'** means software provided by Nedbank Capital to the Investor under these Terms and Conditions, which enables the Investor to transact in accordance with these Terms and Conditions, as more fully described in 6.7.

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**'South African Rand'** or **'ZAR'** means the lawful currency of the Republic of South Africa.

**'STT'** means Securities Transfer Tax as defined in the Securities Transfer Tax Act, 2007 (as amended).

**'Takeover Offer'** means, in relation to a Reference Instrument, an offer, made under the Companies Act, to acquire that Reference Instrument.

**'Tax Event'** means receipt by Nedbank Capital of an opinion from reputable legal counsel or a reputable tax adviser experienced in the tax laws of the Republic of South Africa to the effect that, as a result of:

- (a) any amendment to, clarification of, or change (including any announced prospective change) in the laws or treaties (or any regulations thereunder) of such jurisdictions or any political subdivision or taxing authority thereof or therein affecting taxation;
- (b) any judicial decision, published official administrative pronouncement, private ruling, regulatory procedure, notice or announcement (including any notice or announcement of intent to adopt such procedures or regulations) (an **'Administrative Action'**) in relation to such tax laws;
- (c) any amendment to, clarification of, or change in the pronouncement that provides for a position with respect to an Administrative Action that differs from the previous generally accepted position, in each case, by any legislative body, court, governmental authority or regulatory body, irrespective of the manner in which such amendment, clarification, change or Administrative Action is made known;

there is a reasonable risk that Nedbank Capital would be exposed to any increase in its costs in relation to a Margin Account as a result of increased Taxes, or that Nedbank Capital would not be allowed a tax deduction for any interest paid or due and payable by it under these Terms and Conditions.

**'Taxes'** means all taxes (including VAT), levies, imposts, deductions, charges, withholding taxes imposed by any government agency together with any related interest, penalties, fines, duties, expenses or other amount incurred in connection with them, arising in connection with or as a consequence of any CFD Transaction.

**'Terms and Conditions'** means the terms and conditions contained in this document.

**'Trading Capacity'** means the greater of (i) the cash balance in the Margin Account less the sum of the Aggregate Reserved Amount and the Aggregate Margin Required and (ii) nil.

**'Transaction Documents'** means these Terms and Conditions, the Application Form and the Confirmations.

**'Valuation Time'** means:

- (a) the Closing Time on each Business Day; and

- (b) any other time that Nedbank Capital decides, at its absolute discretion, to require a Mark-to-market Payment.

**'VAT'** means any value-added tax imposed under the VAT Act.

**'VAT Act'** means the Value-added Tax Act 1991.

**'Website'** means www.nedbankcfd.co.za.

**'ZAR'** means the lawful currency of the Republic of South Africa.

## 1.2 Interpretations

The following interpretations apply to the Transaction Documents, unless the context otherwise requires:

- (a) A reference to an agreement or to any deed, document or instrument includes, respectively, that agreement or that deed, document or instrument as amended, novated, supplemented, varied or replaced, from time to time, in writing.
- (b) A reference to any statute, ordinance, code or other law, or any sections or provisions thereof includes any statutory modification or reenactment or any statutory provision substituted therefor and all ordinances, by-laws, regulations and other statutory documents issued thereunder.
- (c) The singular includes the plural and vice versa.
- (d) The word 'person' includes an individual, a company, a close corporation, a trust and a statutory authority.
- (e) A reference to any party includes a reference to that party's executors, administrators, successors, substitutes and permitted assigns.
- (f) A reference to any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them.
- (g) Examples of a thing and references to matters that are included in that thing are not exhaustive of that thing.
- (h) Where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning.
- (i) Headings are inserted for convenience only and do not affect the interpretation of any Transaction Document.

## 2 Contracts for difference

### 2.1 Nedbank Capital's discretion

The Investor acknowledges that:

- (a) Nedbank Capital is vested with discretion under these Terms and Conditions to take certain actions or to make certain determinations;

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- (b) any such discretion Nedbank Capital may have under these Terms and Conditions is unfettered and absolute and may be exercised without obligation and notwithstanding any previous waiver of it and in addition to any other rights or remedies conferred by the Transaction Document or by law;
- (c) Nedbank Capital is under no obligation to grant equal terms to each Investor;
- (d) Nedbank Capital is under no obligation to accept an Investor's Application.

## 2.2 Business Day convention

If the day on or by which a party must do something under a Transaction Document is not a Business Day, the parties agree and confirm that the party must do it on or by the previous Business Day.

## 2.3 Mode of delivery and payment

Where a person is obliged, in accordance with these Terms and Conditions and the terms of any of the other Transaction Documents, to pay a sum of money, that obligation must be satisfied by the delivery or transferring of the amount in immediately available funds.

## 2.4 Buying or selling a CFD

- (a) The Investor will place an Order to buy or sell a CFD, which is referenced to a specific Reference Instrument, on NedTrade and, on Acceptance by Nedbank Capital, Nedbank Capital agrees to sell or buy the relevant CFD to or from the Investor.
- (b) Where the Investor buys a CFD from Nedbank Capital, the following payments will be payable:
  - (i) a premium in accordance with 4.1 below; and
  - (ii) a Mark-to-market Payment.
- (c) Where the Investor sells a CFD to Nedbank Capital, the following payments will be payable:
  - (i) a premium in accordance with 4.1 below; and
  - (ii) a Mark-to-market Payment.

## 2.5 Quotation of Reference Instrument Prices

- (a) Nedbank Capital will quote Reference Instrument Prices on NedTrade.
- (b) The Investor acknowledges and agrees that:

- (i) any quote provided by Nedbank Capital in accordance with paragraph (a) is indicative only; and
- (ii) the agreement to buy or sell a CFD will be concluded only when the Investor's Order is Accepted by Nedbank Capital in accordance with these Terms and Conditions.

## 2.6 Placing Orders

- (a) Once the Investor has opened a Margin Account, the Investor may, by placing an Order with Nedbank Capital:
  - (i) offer to buy or sell a CFD from or to Nedbank Capital; or
  - (ii) Close Out the CFD mentioned in (i) above.
- (b) When placing an Order, the Investor is responsible for ensuring that there is sufficient Trading Capacity in his Margin Account to meet the Margin requirements for each new Order to buy or sell a CFD.
- (c) When placing the Order on NedTrade, the Investor must set out the details required in the open Order entry window, and failure to do so will result in the Order not being Accepted.
- (d) If the Investor places an Order that is the opposite of an existing CFD Transaction of the Investor:
  - (i) the Order will be treated as a request to Close Out to the extent that the CFD Notional Value of the newly placed Order offsets the CFD Notional Value of the existing CFD Transaction; and
  - (ii) to the extent that the CFD Notional Value of the newly placed Order exceeds the CFD Notional Value of the existing CFD Transaction, this will be treated as an Order for a new CFD with a CFD Notional Value equal to the amount of this excess.
- (e) If the Investor places a buy Order that is in excess of the current market offer price or if the Investor places a sell Order that is lower than the current market bid price, then NedTrade will automatically adjust the price of the Order to the current market bid or offer price.

All the Orders placed on NedTrade are limit Orders or trigger Orders, which may potentially become limit Orders. This means that the bid or offer price of an Order will normally be Accepted by Nedbank Capital when it is equal to the respective available bid or offer price of the underlying Reference Instrument.

The Investor may place a trigger Order, which may potentially become a limit Order. This means that the limit Order is activated only when the last traded price on the JSE (as received by NedTrade from Reuters) is higher than or lower than a predetermined level. Again NedTrade will automatically adjust the price of the limit

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Order as indicated above, which adjusted price will remain unchanged for the life of the limit Order.

- (f) Nothing in this 2.6 limits Nedbank Capital's ability to Accept, at Nedbank Capital's sole discretion, an Order placed by the Investor by means other than through NedTrade.

## 2.7 Acceptance of an Order

- (a) Nedbank Capital may, at its sole discretion, Accept an Order in whole or in part.
- (b) An Order will be binding on the Investor upon the Acceptance by Nedbank Capital of the Order.

## 2.8 Confirmations

- (a) If Nedbank Capital Accepts an Order, Nedbank Capital will subsequently make a Confirmation available to the Investor on NedTrade under 'Account Information'.
- (b) Failure by Nedbank Capital to send the Investor a Confirmation will not affect the validity of the CFD the Investor buys or sells.
- (c) If there is a conflict between:
  - (i) the Transaction Documents; and
  - (ii) Nedbank Capital's records of the transaction concerning a CFD or an Order;

the Transaction Documents will prevail in the absence of any other records that can resolve the conflict.

## 2.9 Errors

If within 5 (five) Business Days of Acceptance of an Order, Nedbank Capital determines that any terms relating to the pricing of the CFD are materially incorrect, then, without prejudice to any other rights of the parties:

- (a) Nedbank Capital may at its discretion reverse the transaction;
- (b) Nedbank Capital will give notice to the Investor of the error and any reversal as soon as reasonably practicable;
- (c) each party must immediately refund any amounts paid by the other party in respect of the CFD;

and neither party will have any further obligation in respect of the CFD.

## 2.10 Cancellation of Orders

- (a) An Order can be cancelled at any time prior to it being Accepted by Nedbank Capital. Such a cancellation can be made by:
  - (i) the Investor on NedTrade; or
  - (ii) Nedbank Capital by cancelling the Order on an instruction received from the Investor.
- (b) Where an Investor does not cancel an Order prior to Acceptance by Nedbank Capital, the CFD or Closeout resulting from the Acceptance will be valid and binding on the Investor and on Nedbank Capital under these Terms and Conditions.
- (c) The Investor agrees and acknowledges that any action by the Investor to modify or cancel an Order otherwise than in accordance with 2.10 (a) will be ineffective.

## 2.11 No transfer of legal or beneficial interest in the Reference Instruments

The Investor agrees and acknowledges that a CFD does not transfer the legal or beneficial interest in any Reference Instrument to or from the Investor and that the Investor has no right or obligation to acquire or deliver the Reference Instrument underlying a CFD.

## 2.12 The Reference Instruments

The Investor acknowledges and agrees that, while Nedbank Capital will determine the list of securities available as Reference Instruments for the purposes of these Terms and Conditions, the selection of the Reference Instruments underlying an Order or a CFD is the Investor's responsibility. The inclusion of a particular security as a Reference Instrument under these Terms and Conditions is not a representation, warranty or endorsement of the value or prospects of that Reference Instrument by Nedbank Capital and, as such, Nedbank Capital accepts no liability or responsibility for the performance of any Reference Instrument.

## 2.13 Term

- (a) The agreement incorporating these Terms and Conditions begins as of the Effective Date and continues unless terminated in accordance with these Terms and Conditions.

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- (b) The Investor acknowledges that these Terms and Conditions and the Margin Account will continue until (i) both the Investor and Nedbank Capital have performed all their obligations under the CFDs, (ii) all CFDs between Nedbank Capital and the Investor have been Closed Out and (iii) the Margin Account is closed in accordance with these Terms and Conditions.

## 2.14 Corporate events

Where a Reference Instrument is affected by a corporate event (such as a bonus issue of shares), amendments are likely to be required to any CFD or Order associated with that Reference Instrument to preserve the economic equivalence of the rights and obligations of the parties immediately prior to such an event. These corporate events are also defined as Adjustment Events, and in these cases Nedbank Capital is vested with a broad discretion to deal with the Investor's Orders or CFD Transactions in good faith. In exercising this discretion, Nedbank Capital may either (i) vary the terms of the relevant Order and/or CFD Transaction or (ii) cancel and/or Close Out the relevant Order and/or CFD Transaction.

### (a) Adjustment

If an Adjustment Event occurs in respect of a Reference Instrument that is the subject of a CFD or an Order, Nedbank Capital will, at its sole discretion, determine the appropriate adjustment, if any, to be made to the terms of any affected CFD or Order as it reasonably considers appropriate to account for the diluting or concentrative effect of that event in order to preserve the economic equivalence of the rights and obligations of the parties under the relevant CFD or Order immediately prior to the event. Such adjustment by Nedbank Capital will take effect as at a date determined by Nedbank Capital and notification of the adjustment will be given by Nedbank Capital to the Investor as soon as reasonably practicable after the adjustment has been effected.

### (b) Cancellation and/or Closeout

Notwithstanding 2.10 above, Nedbank Capital may cancel and/or Close Out, at Nedbank Capital's sole discretion, the affected Order and/or CFD Transaction.

## 2.15 Nedbank Capital's CFDs and the JSE

When an Investor places an Order in relation to a Reference Instrument, it is likely that Nedbank Capital will place a corresponding order on the JSE to buy or sell the security relating to that Reference Instrument to hedge Nedbank Capital's market risk. It will be at Nedbank Capital's discretion whether to Accept an Order, and, if so, when to Accept the Order. Without limiting this discretion, it is likely that Nedbank Capital will elect not to Accept an Order in circumstances where its corresponding order on the JSE has not been filled.

### (a) Market trading periods

Normal trading on NedTrade occurs between the hours of 09:15 and 16:45 on Business Days. Where the Investor places an Order outside these market hours, the Investor's Order will, in the absence of a specific agreement to the contrary, not be Accepted by Nedbank Capital until normal trading commences or Nedbank Capital is otherwise able to purchase or sell the corresponding security on the JSE.

### (b) Closed periods, suspensions and delistings

A JSE-listed security may be in a closed period in circumstances that include the existence of price-sensitive information (including a takeover bid) relating to that security. Additionally, a security may be suspended or delisted in circumstances including failure by the Listed Entity to abide by the JSE listing requirements. Nedbank Capital reserves its rights to (a) hold the relevant positions and to request 100% margin on same or (b) decline to Accept the Investor's Order where the Reference Instrument is the subject of a closed period, a suspension or a delisting or (c) not quote a Reference Instrument Price for the relevant Reference Instrument on NedTrade.

### (c) Dividends

The ex dividend date for a JSE-listed security is the first day where the security is traded without the buyer being entitled to a previously declared dividend. Orders placed on the JSE in relation to a Reference Instrument that will trade on an ex dividend basis on the following Business Day will not be cancelled. It is the Investor's responsibility to manage Orders that Nedbank Capital has not Accepted yet.

## 2.16 Enquiries and complaints

Nedbank Capital has procedures in place properly to consider and deal with any enquiries or complaints from Investors in CFDs. Nedbank Capital will acknowledge receipt of a written complaint within 5 (five) Business Days and provide a substantive response within 21 (twenty-one) days.

## 2.17 Cooling-off period

The Investor should note that there is no cooling-off period following Acceptance of the Investor's Application or any Acceptance related to a specific Order.

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### 3 Margin

Amounts within the Margin Account will be designated as either Trading Capacity or Margin depending on the Investor's Orders, CFD Transactions and market movements.

In addition to holding sufficient Trading Capacity in the Margin Account to meet the Premium and other charges associated with the Investor's Margin Account as referred to above, the Investor is required to make Margin available in respect of each Order to buy or sell a CFD, as well as in respect of the Investor's existing CFD Transactions. Such Margin represents security held by Nedbank Capital for the Investor's Orders and CFD Transactions.

The Investor should ensure that he has sufficient Trading Capacity in his Margin Account to cover the Margin for the specific Order. If the Investor has sufficient Trading Capacity, the funds required as Margin for that Order will be designated as a Reserved Amount.

The Investor can only withdraw funds from his Margin Account where those funds are designated as Trading Capacity. The Investor will not be able to withdraw funds from his Margin Account where those funds are designated as Margin.

The Aggregate Margin Required and the Aggregate Reserved Amount for the Investor will fluctuate depending on market movements as well as the Investor's CFD Transactions and/or Orders placed by the Investor. It is the Investor's responsibility to monitor the amounts of Trading Capacity in his Margin Account, the Aggregate Reserved Amount and the Aggregate Margin Required, which will be reflected as the closing Margin on the Investor's CFD Statement, and make additional deposits where necessary. While Mark-to-market Payments will generally occur only at the end of each Business Day, calculations of the closing Margin and designation of funds between Trading Capacity and Margin are made continuously during each Business Day.

If, at any time, there are insufficient funds in the Investor's Margin Account to meet the Aggregate Reserved Amount and/or the Aggregate Margin Required obligations after allowing for Mark-to-market Payments based on prevailing intraday Reference Instrument Prices, Nedbank Capital may:

- cancel the Investor's Orders; and/or
- Close Out open CFD Transactions; and/or
- apply default interest to the amount of the cash shortfall; and/or
- close or temporarily deactivate the Investor's Margin Account.

The formula for determining the Margin Required in respect of any CFD and the formula for determining the Reserved Amount in respect of any Order are set out in the definitions of 'Margin Required' and 'Reserved Amount' in 1.1 above. The formula refers to the applicable Margin Rate. These Terms and Conditions do not specify Margin Rates. This is because the Margin Rate applicable to each Reference Instrument is determined by reference to a number of variable factors

including the liquidity and volatility of the Reference Instrument. These rates may change for each Reference Instrument and will be published by Nedbank Capital from time to time on the Website and will be available on NedTrade.

### 4 Costs of CFDs

#### 4.1 Premium

An Investor will pay the Premium to invest in a CFD. The Premium will be payable per CFD and will be the aggregate of the following:

- When buying or selling a CFD, including selling a CFD previously bought, the maximum percentage on entry of the CFD Transaction is 1,50% (one comma five percent), subject to a minimum of ZAR 30,00 (thirty South African rand). If applicable, an amount equal to the agreed Intermediary Fee will be added to the minimum premium. The maximum percentage will be determined by Nedbank Capital, from time to time, based on the underlying market conditions and will be published on the Website.
- Where the Investor buys a CFD from Nedbank Capital, Overnight Long is charged on a daily basis.
- Where the Investor sells a CFD to Nedbank Capital, Overnight Short is earned on a daily basis.
- Where the Investor buys a CFD, Nedbank Capital will pay the Premium (if any) to the Investor, the value of which will be equivalent to any dividend amounts received on an underlying Reference Instrument.
- Where the Investor sells a CFD, the Investor will pay the Premium (if any) to Nedbank Capital, the value of which will be equivalent to any dividend amounts received on an underlying Reference Instrument.

#### 4.2 Intermediary Fee

Any Intermediary Fee, as amended from time to time, payable by Nedbank Capital with respect to the Investor's CFDs will be paid by Nedbank Capital to the Authorised Person as agreed on in the Transaction Documents.

#### 4.3 Bank charges

Any bank charges incurred by Nedbank Capital as a result of cash being deposited with Nedbank Capital, or cash being deposited into any account of Nedbank Capital held at another bank, will be recovered from the Investor's Margin Account.

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## 4.4 Penalty interest

When payment commitments are not met by the Investor, penalty interest will be charged on the Benchmark Interest Rate, plus a spread of 5% (five percent). The spread will be determined by Nedbank Capital from time to time, based on the underlying market conditions, and will be reflected in the Benchmark Interest Rate and published on the Website.

### Note

- Rates are subject to change without notice and current rates are available on the Website.

## 5 Margin account

### 5.1 Opening a Margin Account

Upon acceptance by Nedbank Capital of the Investor's Application, Nedbank Capital will open a Margin Account in the Investor's name. Nedbank Capital will then require that the Initial Deposit Amount be deposited into the Margin Account via electronic transfer. Nedbank Capital must be in possession of cleared funds in order for Nedbank Capital to credit the Investor's Margin Account.

The Margin Account operates as a deposit account held with Nedbank Capital.

### 5.2 Moving funds into and out of the Margin Account

- (a) The Investor acknowledges and agrees that:
- the Investor will not be entitled to withdraw any amount from the Margin Account other than funds designated as Trading Capacity or otherwise in accordance with these Terms and Conditions; and
  - notwithstanding any other provision of the Transaction Documents, the Investor will not be entitled to withdraw any moneys from the Margin Account without the consent of Nedbank Capital unless and until the Investor has fully satisfied all his obligations and liabilities to Nedbank Capital (whether liquidated or not and whether contingent, prospective or currently accrued as due and whether relating to the payment of moneys or the performance or omission of any act or thing and including all rights resulting in damages only and all obligations not currently owing but which might become owing in the future, whether or not of a type within the contemplation of the parties at the date of execution of the Application) arising in or by reason of any transaction, matter, thing or

event in or by which Nedbank Capital may become in any manner whatsoever a creditor of the Investor associated with the Transaction Documents.

- the Investor can request, electronically or via any other means acceptable to Nedbank Capital, that the Trading Capacity be transferred out of the Margin Account. In addition the Investor:
  - irrevocably authorises Nedbank Capital to accept all transfer instructions that have not otherwise been cancelled by the Investor and notified to Nedbank Capital prior to Nedbank Capital acting on that transfer instruction;
  - will ensure that there are sufficient funds in the Margin Account to meet all transfers;
  - acknowledges that transfers may not be processed if there are insufficient funds;
  - acknowledges that Nedbank Capital may set its own priority to the processing of transfers regardless of their nature or the order in which they are received;
  - acknowledges that there are circumstances in which a transfer may not be processed on the same day that such instruction is received by Nedbank Capital; and
  - acknowledges that Nedbank Capital may establish further requirements as to the manner and times during which transfers must be submitted and other relevant information, provided that any changes will be advised to the Investor.
- Nedbank Capital will not be liable in respect of any errors or delays in relation to the receipt or processing of any transfer, or if the intended payee of any payment does not receive those funds.
  - Transfers will be processed unless notice in a form acceptable to Nedbank Capital is received by Nedbank Capital to cancel the transfer prior to processing.
  - Upon receipt of any notice to cancel a transfer, Nedbank Capital will adopt a reasonable-endeavours approach to cancel the original transfer. However, Nedbank Capital will not be held liable to the Investor if a transfer is otherwise processed.
  - Nedbank Capital has no duty or responsibility to make any enquiry as to whether a transfer has in fact been properly issued by the Investor or any Authorised Person.

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### 5.3 Interest received on the Margin Account

Funds that are in an Investor's Margin Account will earn interest at the Margin Interest Rate. This interest will be capitalised to the Margin Account at the end of each month or upon closure of the Margin Account.

### 5.4 Closure of Margin Account

#### (a) Closure of the Margin Account by the Investor

If:

- (i) all the Investor's CFDs have been Closed Out;
- (ii) there are no funds in the Investor's Margin Account; and
- (iii) the Investor has paid in full all amounts due to Nedbank Capital under these Terms and Conditions;

the Investor may close the Margin Account by giving notice in a form acceptable to Nedbank Capital.

#### (b) Closure of Margin Account by Nedbank Capital

Nedbank Capital may, at its sole discretion:

- (i) close the Investor's Margin Account;
- (ii) terminate the Investor's use of NedTrade; and
- (iii) satisfy any obligation the Investor may have to Nedbank Capital out of, without limitation, funds in the Margin Account or funds available pursuant to Nedbank Capital's setoff rights;

either:

- (i) upon giving not less than 1 (one) Business Day's written notice to the Investor; or
- (ii) immediately, without prior notice to the Investor:
  - if an Early-termination Event occurs; or
  - if Nedbank Capital's interests need to be otherwise protected.

#### (c) Position after closure of the Margin Account

After the Investor's Margin Account has been closed and the Investor's rights associated with the use of NedTrade cease pursuant to (b) above, in addition to the rights set out in (e) below:

- (i) any indemnity granted by the Investor;
- (ii) all the Investor's confidentiality obligations;
- (iii) the Investor's obligations in relation to NedTrade;
- (iv) the representations and warranties given by the Investor; and

- (v) any exclusion of Nedbank Capital's liability;

under the Transaction Documents, and any other rights or obligations of the Investor that arose before the Investor's Margin Account was closed and the use of NedTrade was terminated, will continue to be of full force and effect.

#### (d) Action in respect of an Early-termination Event

The provisions contained in (b) and (c) above will operate in addition to any other rights of Nedbank Capital or remedies conferred on Nedbank Capital by the Transaction Documents or by law.

#### (e) Settlement following closure of the Margin Account

- (i) If the Margin Account is closed under (a) or (b) above, Nedbank Capital's obligation to pay any surplus and the Investor's obligation to pay any shortfall will be satisfied in full by making the Mark-to-market Payments and by application of the unrefunded prepayments of those amounts, so that no additional payment needs to be made by Nedbank Capital or the Investor on account of the said surplus or shortfall.
- (ii) Without prejudice to any other rights or remedies to which a party may be entitled in law, upon closure of the Margin Account, any amounts due and payable in accordance with these Terms and Conditions by one party to another up to and including the date of the closure of the Margin Account, must be paid in accordance with these Terms and Conditions.

### 5.5 Setoff and Netting

- (a) Nedbank Capital may (in addition to any general or banker's lien, right of setoff, right to combine accounts or any other right to which it may be entitled), without notice to the Investor or any other person, set off any obligation of the Investor to make payment to Nedbank Capital under these Terms and Conditions against Nedbank Capital's liability to the Investor in respect of any credit balance (or any part thereof in such amounts as Nedbank Capital may elect) in the Margin Account or any other account (whether such account is subject to notice or not and whether matured or not) of the Investor with Nedbank Capital and any other moneys payable by Nedbank Capital to the Investor.
- (b) Upon the liquidation or sequestration (whichever may be applicable) of either Nedbank Capital or an Investor:–
  - (i) all unperformed obligations of these parties in terms of any transactions executed in

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accordance with these Terms and Conditions –

- (aa) shall terminate or may be terminated; or
- (bb) shall become or may become due immediately; and
- (ii) the values of the unperformed obligations shall be determined or may be determined; and
- (iii) the values shall be netted or may be netted, so that only a net amount (whether in the currency of the Republic or any other currency) is payable to or by a party,

and the value of any assets (if applicable) which have been transferred as collateral security for obligations under any of the transactions executed in accordance with these Terms and Conditions shall be included in the calculation of the net amount payable upon such liquidation or sequestrations (whichever may be applicable).

## 6 NedTrade

### 6.1 Scope of NedTrade authorisation

Nedbank Capital agrees to provide, on the Effective Date, the Investor with the NedTrade platform in accordance with the Terms and Conditions under this clause 6 and grants the Investor a temporary, revocable, personal, non-exclusive, non-transferable sublicense to use NedTrade and its associated information and systems, including a sublicense to use the Software (as set out in 6.7 below).

### 6.2 The NedTrade services

NedTrade consists of the following electronic services, which Nedbank Capital will make available to the Investor either directly or through a third-party service provider:

- (a) an online transaction facility that allows the Investor to place Orders;
- (b) online displays of pricing information regarding CFDs;
- (c) online displays of the Investor's current Account Information;
- (d) online displays on the Deal Screen of the Investor's Offers that have been Accepted by Nedbank Capital; and
- (e) any other services that Nedbank Capital may at its discretion make available to the Investor.

## 6.3 The Investor and Authorised Persons

### 6.3.1 Appointment of Authorised Persons

The Investor is entitled to appoint Authorised Persons (i) to operate and access NedTrade on the Investor's behalf in order to trade on the Investor's Margin Account or (ii) to access NedTrade in order to view the Investor's Account Information.

### 6.3.2 Investor's undertakings and acknowledgements with respect to Authorised Persons

Where the Investor appoints any Authorised Person, the Investor undertakes to:

- (a) restrict access to NedTrade to the Authorised Person; and
- (b) ensure that each Authorised Person registers with Nedbank Capital such Authorised Person's access details, Password and other verification information that Nedbank Capital may require; and
- (c) ensure that all details of the Authorised Person held by Nedbank Capital are accurate and current;

and the Investor acknowledges and agrees that:

- (d) Nedbank Capital has no duty or responsibility to make any enquiry as to whether any Order or other instruction placed on NedTrade by the Investor or the Authorised Person is accurate and correct;
- (e) all Authorised Persons are acting as the Investor's agent and accordingly the Investor unconditionally and irrevocably assumes full responsibility and liability for all acts or omissions of any of the Authorised Persons, including any liability arising in connection with an Authorised Person's access to the Investor's Margin Account Information via NedTrade; and
- (f) subject to 6.10.3 and 7.5.2 below, the Authorised Person's logo may appear on the CFD Statement generated by NedTrade until either (i) the Authorised Person is not acting as the Investor's agent anymore or (ii) the Authorised Person requests Nedbank Capital not to continue generating CFD Statements with the Authorised Person's logo on the said statements.

## 6.4 Security

### 6.4.1 Passwords and Security Measures

- (a) The Investor is responsible for ensuring the security of NedTrade in relation to his and any Authorised Person's use of the platform.
- (b) The Investor will ensure that he and each Authorised Person:
  - (i) chooses his own Password;

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- (ii) does not choose a Password that someone else could easily ascertain;
- (iii) keeps his Password confidential.
- (c) The Investor will, and will ensure that each Authorised Person will, keep secure and not permit any other person to use any Security Measure provided by Nedbank Capital to the Investor or the Authorised Person.
- (d) The Investor will immediately notify Nedbank Capital upon becoming aware or suspecting that:
  - (i) any person other than the Investor or the relevant Authorised Person knows or may use a Password or Security Measure;
  - (ii) a Password or Security Measure has been lost, stolen or is being misused; or
  - (iii) any other breach of security has occurred.
- (e) The Investor and/or the relevant Authorised Person, with reference to (d) above, will change his Password immediately on becoming aware of or suspecting any one of the circumstances detailed in (d) above.

**6.4.2 Deactivation of Passwords and Security Measures**

- (a) The Investor is responsible for notifying Nedbank Capital immediately if he terminates the appointment of any Authorised Person as his agent to operate and access NedTrade.
- (b) Upon notification Nedbank Capital will deactivate the Authorised Person's access to NedTrade as soon as reasonably practicable.
- (c) To the maximum extent permitted by law, Nedbank Capital is indemnified by the Investor, or any other person claiming through the Investor, for any loss or damage (including consequential loss or damage) that may be suffered or incurred by the Investor or that may arise directly or indirectly in connection with:
  - (i) the occurrence of any of the events described in 6.4.1 (d) above; or
  - (ii) Nedbank Capital acting or not acting on the instructions or Accepting Orders of an Authorised Person, whether or not the Investor has instructed that the Authorised Person's access to NedTrade should be deactivated.

**6.5 Confidentiality and use of the Investor's Information**

**6.5.1 Nedbank Capital to act on instructions**

The Investor irrevocably authorises and directs Nedbank Capital to act on any instructions or to Accept any Order Nedbank Capital receives from the Investor or the Authorised Person through NedTrade, and, where the Investor is a legal entity, to assume with no further enquiry that the legal entity has authorised and agreed to such instruction or Order.

**6.5.2 Confidentiality**

The Investor will keep confidential any Information, without time limit, and agree not to disclose the Information to any third party or use the Information for any purpose not contemplated by these Terms and Conditions, and the Investor will ensure that each of the Authorised Persons, employees and contractors abide by these restrictions. Notwithstanding the previous sentence, the Investor will not be obliged to keep confidential any Information that is:

- (a) personal to the Investor;
- (b) in the public domain other than as a result of a breach of these Terms and Conditions;
- (c) previously known to the Investor; or
- (d) independently developed by the Investor outside of these Terms and Conditions.

**6.5.3 Intellectual Property Rights**

- (a) The Investor acknowledges and agrees that:
  - (i) all rights, including Intellectual Property Rights, in NedTrade, the CFD Data and the information contained in NedTrade, as between Nedbank Capital and the Investor, are owned by Nedbank Capital;
  - (ii) the Investor will not contest Nedbank Capital's Intellectual Property Rights in NedTrade or the CFD Data, and the Investor agrees not to do anything to compromise those rights.
  - (iii) the Investor will have no right to distribute by any means any information, whether contained in or obtained from NedTrade, to any third party.
- (b) Nedbank Capital grants the Investor a non-exclusive, royalty-free licence to use the CFD Data for conducting the Investor's business. This licence does not require Nedbank Capital to provide or make available any CFD Data to the Investor.

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#### 6.5.4 Collection of Information

The Investor agrees to supply all Information Nedbank Capital may reasonably request regarding the Investor's use of NedTrade and the Investor consents to Nedbank Capital using, storing and disclosing such Information for:

- (a) Nedbank Capital's own administrative purposes;
- (b) any other purpose to which the Investor has consented; and
- (c) passing the information to regulatory authorities where necessary.

### 6.6 Margin Account via NedTrade

#### 6.6.1 Provision of Margin Account Information via NedTrade

Nedbank Capital will use reasonable endeavours to provide the Investor with access to Margin Account Information via NedTrade on a basis of 24 (twenty-four) hours a day, 7 (seven) days a week, except in instances of interruptions caused by technical problems or general system maintenance. System maintenance will usually occur outside business hours. Notwithstanding this provision, Nedbank Capital has no liability in the event that the Investor or the Authorised Person cannot access the Margin Account Information.

#### 6.6.2 Investor liable for access to the Margin Account via NedTrade

- (a) The Investor acknowledges that an Authorised Person may access Margin Account Information via NedTrade.
- (b) The Investor will be liable for all damages, direct or indirect, incurred by Nedbank Capital in connection with internal or external access of the Investor's Margin Account Information via NedTrade by the Investor or any third party.
- (c) Nedbank Capital will not be liable for any damages arising in connection with unauthorised access, inaccuracy or incompleteness of any Margin Account Information accessed via NedTrade.

### 6.7 Terms of the NedTrade Software sublicense

#### Provision of Software by Nedbank Capital

Nedbank Capital will from time to time and at its sole discretion offer the Investor the use of certain Software relating to NedTrade, whether in object code, source code or any other format, including any additions thereto and any updates, modifications and new releases thereof, as well as any associated documentation, in any media.

#### 6.7.1 Acknowledgements of Investors with regard to a Software sublicense

The Investor acknowledges and agrees that:

- (a) the Software is proprietary to Nedbank Capital or the third party from whom Nedbank Capital has secured the right to sublicense it. Nedbank Capital hereby grants the Investor a temporary, revocable, personal, non-exclusive, non-transferable sublicense to use the Software solely in connection with the Investor's use of NedTrade;
- (b) Nedbank Capital and its relevant third-party supplier retain all Intellectual Property Rights and title to the Software and the Investor acquires no interest in the Software other than the limited sublicense granted herein;
- (c) the Investor will not, and will not allow any third party to:
  - (i) use the Software for any illegal purpose or any purpose other than to receive NedTrade; or
  - (ii) copy, modify, change, reproduce, adapt, merge with other software, recompile, decompile, disassemble, reverse-engineer or translate all or any part of the Software except as permitted by law;
- (d) if Nedbank Capital, acting reasonably, suspects that the Investor has breached the Terms and Conditions under this clause 6, the Investor will provide Nedbank Capital with all documents and data associated with the Investor's (and any Authorised Person's) use of the Software and any associated material that Nedbank Capital reasonably requires;
- (e) upon termination of NedTrade for any reason the Investor will, at Nedbank Capital's option, either destroy or return to Nedbank Capital all copies of the Software;
- (f) the Software may be subject to export, reexport, import or use controls imposed by legislation and the Investor agrees to comply with any such legislation anywhere in the world.

### 6.8 Warranties

#### 6.8.1 Limited liability of Nedbank Capital with respect to warranties

If Nedbank Capital breaches any warranties implied by any law, then, to the maximum extent permitted by law, Nedbank Capital's liability to the Investor will be limited to:

- (a) supplying NedTrade again; or
- (b) the cost of resupplying NedTrade.

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### 6.8.2 No warranty concerning NedTrade

Except as provided in 6.8.1 above and to the maximum extent permitted by law, Nedbank Capital makes no warranty, express or implied, to the Investor concerning NedTrade. In particular, and without limiting the foregoing, Nedbank Capital does not warrant:

- (a) the correctness, accuracy, timeliness, reliability or completeness of any information that the Investor may obtain through NedTrade;
- (b) the merchantability or fitness for a particular purpose of NedTrade, the Software, any associated systems or any information contained in NedTrade;
- (c) the quality or timeliness of NedTrade, the Software, any associated systems or any information contained in NedTrade;
- (d) the continued availability or uninterrupted access to NedTrade or any of its functions or the Software; or
- (e) that NedTrade or the Software will be free of viruses, bugs, Trojans or any other harmful coding.

### 6.9 Undertakings, acknowledgements and representations

In addition to the undertakings, acknowledgements and representations under 7.1 and 7.2 of these Terms and Conditions:

- (a) the Investor undertakes to ensure that his and any Authorised Person's use of NedTrade complies with all applicable laws, rules, regulations, practices of exchanges and relevant associations, any agreements with Nedbank Capital, and any policies of Nedbank Capital that are brought to the Investor's attention from time to time;
- (b) the Investor acknowledges and agrees that
  - (i) NedTrade is provided 'as is' and is not tailored to his circumstances; and
  - (ii) NedTrade does not serve as the basis for his investment decisions and Nedbank Capital does not, in providing NedTrade to the Investor, act as an adviser or fiduciary for the Investor; and
- (c) the Investor represents and warrants that:
  - (i) the Investor and any Authorised Person have all the rights, authorities, licences and consents to use NedTrade and buy and/or sell CFDs;
  - (ii) the Investor will not use Nedbank Capital's name or any of its trademarks in any way without the prior written consent of Nedbank Capital; and
  - (iii) the Investor will not sell, lease or provide NedTrade or any information contained in

NedTrade to any third party, either directly or indirectly, except as permitted by these Terms and Conditions.

### 6.10 Indemnity and exclusion from liability

#### 6.10.1 Investor liable for Authorised Person's actions

Nedbank Capital is entitled to assume that whenever NedTrade is accessed or operated via a Password (including, without limitation, the buying or selling of a CFD) this has been done by the Investor, or an Authorised Person, regardless of the true identity of the person accessing and operating NedTrade, and the Investor:

- (a) unconditionally and irrevocably assumes full responsibility and liability for all acts or omissions of any person using a Password; and
- (b) waives the right to argue the contrary.

#### 6.10.2 Indemnity given by Investor

In addition to any other indemnities given by the Investor under these Terms and Conditions, the Investor unconditionally and irrevocably indemnifies, and agrees to keep indemnified, Nedbank Capital in full against all actions, suits, claims, demands, losses, liabilities, damages, costs, expenses and taxes that may have been or may be made or brought against or suffered or incurred by Nedbank Capital directly or indirectly arising out of or in connection with any matters resulting from the Investor's or an Authorised Person's use of NedTrade, the Information obtained from NedTrade or breach of these Terms and Conditions.

#### 6.10.3 Exclusion of Nedbank Capital's liability

- (a) Except as provided in 6.8.1, to the maximum extent permitted by law, Nedbank Capital and its officers, partners, agents and third-party suppliers exclude all liability to the Investor or any other person claiming through the Investor in contract, delict, under statute or otherwise in connection with these Terms and Conditions for loss of profit, revenue or anticipated savings, loss of business opportunity or goodwill, loss of data or recreation of lost data (other than as expressly provided), aggregated or exemplary damages, or indirect, special or consequential loss.
- (b) To the maximum extent permitted by law, Nedbank Capital's liability to the Investor and any Authorised Person in respect of all claims, demands, actions or proceedings for any breach of these Terms and Conditions in delict, under statute or otherwise is limited to ZAR 20 000.

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## 6.11 Suspension of Investor's use of NedTrade

For the protection of the Investor and Nedbank Capital, Nedbank Capital may suspend the Investor's use of NedTrade if:

- (a) Nedbank Capital has reasonable grounds to suspect that the confidentiality of any Password or Security Measure has been compromised;
- (b) the Investor advises Nedbank Capital that the Investor knows or suspects that any Password or Security Measure may be known by or have been used by an unauthorised person;
- (c) the Investor (or any Authorised Person) is in breach of any of the Investor's obligations under these Terms and Conditions; or
- (d) Nedbank Capital's interests need to be otherwise protected.

## 7 General

### 7.1 Representations

The Investor represents and warrants for the benefit of Nedbank Capital that, on the Effective Date and on each day that the Margin Account remains open:

- (a) if the Investor is a legal entity:
  - (i) it is duly incorporated and validly existing under the laws of its jurisdiction of incorporation; and
  - (ii) it has the power to execute and deliver the Application Form and to perform all its obligations under the Transaction Documents and has taken all actions necessary to authorise execution and delivery of the Application Form and performance of those obligations;
- (b) If the Investor is an individual:
  - (i) he/she is over 18 years old; and
  - (ii) he/she may execute and deliver the Application Form and perform all his/her obligations under the Transaction Documents;
- (c) If the Investor is an employee of any company in the Nedbank Group:
  - (i) he/she has obtained all the necessary internal approvals, including the relevant compliance department's written approval; and
  - (ii) he/she will comply with the relevant internal policy;
- (d) If the Investor is a trust whose trustee(s) completed the Application Form on its behalf:
  - (i) it enters into these Terms and Conditions and any CFD Transaction, establishes the Margin

Account and places any Order in the same capacity, and all information in the Application Form regarding the trust and its trustee(s) is true and correct;

- (ii) the trust has been validly created and continues to exist, no event has occurred causing the assets of the trust to be vested in one or more beneficiaries (other than in accordance with the trust deed that governs the trust) and no property of the Trust has been resettled;
- (iii) it has power under the trust deed to perform its obligations under these Terms and Conditions and any CFD Transaction or Order; and
- (iv) all information provided to Nedbank Capital as set out in the Application Form relating to the trust and its trustees is true, accurate and correct; and
- (e) in every case specified in (a), (b) and (c) above:
  - (i) unless stated in the Application Form, the Investor is not acting as a trustee of a trust;
  - (ii) no funds deposited into the Margin Account are subject to any Security Interest;
  - (iii) no Event of Default continues unremedied and no breach of any law or obligation exists that is likely to lead to a Material Adverse Change;
  - (iv) performance under these Terms and Conditions and the obligations under any CFD Transaction or Order do not violate any existing law or regulation or any document or agreement to which the Investor is a party or which is binding on the Investor or any of the Investor's assets;
  - (v) all authorisations, rights, licences and consents required in order for the Investor to conduct the Investor's business and relevant to the performance, validity or enforceability of these Terms and Conditions and any CFD Transaction or Order have been obtained or effected and are of full force and effect, and the Investor will not dispute any claim by Nedbank Capital on the basis that the Investor was not authorised to open the Margin Account, place any Order or enter into any CFD Transaction;
  - (vi) there are no actions or claims pending, the adverse determination of which might have a material adverse effect (i) on the ability of the Investor to perform his obligations under these Terms and Conditions and any CFD Transaction or Order or (ii) on the rights granted to Nedbank Capital;
  - (vii) the Investor is not entitled to claim for itself or any of its assets or revenues any right of general immunity or exemption on the grounds of sovereignty or otherwise from suit, execution, attachment or other legal process in respect of

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his obligations under these Terms and Conditions and any CFD Transaction or Order; and

- (viii) all information contained in the Application Form is complete and accurate.

## 7.2 Undertakings and acknowledgements

- (a) The Investor undertakes to:
  - (i) notify Nedbank Capital if any representation or warranty made by the Investor under the Transaction Documents and any CFD Transaction is or becomes incorrect or misleading; and
  - (ii) do everything necessary to ensure that no Event of Default occurs.
- (b) The Investor acknowledges and agrees that:
  - (i) the Investor is responsible for advising Nedbank Capital of any legal restrictions on him when he enters into a CFD Transaction or places an Order, and for providing Nedbank Capital with any necessary documents to satisfy legal requirements, including requirements to transfer any legal or beneficial title in the property of the Investor. The Investor is liable for any delays, expenses and losses associated with compliance or failure to comply with the requirements under any Transaction Document; and
  - (ii) Nedbank Group, including Nedbank Capital, may engage in trading in CFDs for its proprietary accounts and on behalf of accounts under its management, which could affect the value or termination of a CFD, and that Nedbank Group, including Nedbank Capital, may enter into transactions at prices different from the Reference Instrument Prices reflected on NedTrade.
- (c) The Investor will supply to Nedbank Capital, when requested to do so:
  - (i) copies of any financial statements of the Investor for each financial year; and
  - (ii) such additional financial or other information relating to the Investor as Nedbank Capital may from time to time reasonably request.

## 7.3 Assignment

- (a) **No assignment by Investor**

The Investor may not create or allow to exist a Security Interest over or an interest in these Terms and Conditions, the Margin Account, a CFD or the sublicence granted in respect of NedTrade ('the Sublicence'), or assign or otherwise transfer the benefit of these Terms and Conditions, the Margin Account, a CFD or the Sublicence or any of its respective rights, remedies, powers, duties or obligations under any of these Terms and Conditions, the Margin Account, a CFD or the Sublicence without the prior written consent of Nedbank Capital. The Investor acknowledges that his rights in the Margin Account and the balance credited to the Margin Account are personal to him and are not capable of assignment without the prior written consent of Nedbank Capital.

- (b) **Nedbank Capital may assign**

Nedbank Capital may assign, transfer or otherwise grant participation or subparticipation in all or any part of the benefit of these Terms and Conditions, the Margin Account, a CFD or the Sublicence, and any of its rights, remedies, powers, duties and obligations under any of these Terms and Conditions, the Margin Account, a CFD or the Sublicence.

- (c) **Nedbank Capital disclosure**

Nedbank Capital may disclose to a potential assignee, transferee, participant or subparticipant without limitation any information about the Investor, the Investor's Margin Account, CFDs and Orders and any Information set out in a Transaction Document as Nedbank Capital at its absolute discretion deems appropriate.

## 7.4 Deduction of Taxes

If a law requires the Investor to withhold or deduct Taxes from a payment so that Nedbank Capital would not actually receive for its own benefit on the due date the full amount provided under these Terms and Conditions and on any CFD, then:

- (a) the Investor must make the deduction; and
- (b) the Investor must pay the full amount deducted to the relevant authority by the due date in accordance with applicable law and deliver to Nedbank Capital a copy of any receipt of payment from the relevant authority (or other reasonable evidence of payment if no such receipt is provided).

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## 7.5 Indemnity and exclusion of liability

### 7.5.1 Exclusion of liability

The Investor acknowledges, agrees and accepts that:

- (a) he understands the advisability of reading these Terms and Conditions and has read, understands and accepts them;
- (b) where more than one person has completed the Application Form as joint applicants:
  - (i) each of these persons is jointly and severally liable for the activities of the Investor; and
  - (ii) Nedbank Capital is entitled, but not obliged, to act on the instructions or Accept any Orders of any one of such persons or of any Authorised Person purporting to have been appointed by any one of or all such persons and to assume, with no further enquiry, that each person has agreed to such instruction or Order; and
  - (iii) subject to subparagraph (i) above, a reference to the Investor in these Terms and Conditions is a reference to each of those persons separately so that (for example) a representation or undertaking is given by each of them separately;
- (c) in placing each Order and entering into each CFD Transaction, the Investor is relying on his own judgement and investment experience, and Nedbank Capital will have no responsibility or liability in respect of any decision of, or advice or recommendation given or views expressed to, the Investor associated with any Order, CFD or any aspect relating to the Transaction Documents; and
- (d) without limiting any other provision of the Transaction Documents, to the maximum extent permitted by law, Nedbank Capital and its officers, partners, agents and third-party suppliers are excluded from all liability to the Investor or any other person claiming through the Investor in contract, delict, under statute or otherwise for loss of profit, revenue or anticipated savings, loss of business opportunity or goodwill, aggregated or exemplary damages or indirect, special or consequential loss whatsoever, including as a result of Nedbank Capital:
  - (i) exercising, attempting to exercise or not exercising any of its rights, powers or remedies under the Transaction Documents;
  - (ii) not Accepting the Investor's Order, or delaying such Acceptance;
  - (iii) failing to transmit, or delaying transmission of, funds into or out of the Margin Account; or
  - (iv) failing to redesignate, or delaying redesignation of, funds from Margin to Trading Capacity.

### 7.5.2 Indemnity

The Investor unconditionally and irrevocably indemnifies, and will keep indemnified, Nedbank Capital in full against all actions, suits, claims, demands, losses, liabilities, damages, costs and expenses that may have been or may be made or brought against or suffered or incurred by Nedbank Capital directly or indirectly arising out of or in connection with:

- (a) any Event of Default;
- (b) the exercise or non-exercise of any right, power or remedy contained, referred to or implied in these Terms and Conditions and any CFD or Order;
- (c) any Taxes payable by Nedbank Capital in connection with a Transaction Document;
- (d) Nedbank Capital acting in good faith on instructions purporting to have been provided by the Investor or any Authorised Person via fax, telephone or electronic means; and
- (e) Nedbank Capital acting in accordance with any direction, request or requirement of any regulatory authority or government body.

## 7.6 Severability

If any provision of the Transaction Documents (or any portion thereof) is invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of these Terms and Conditions will not be affected or impaired.

## 7.7 Waiver

Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise of enforcement of any right, remedy, power or privilege under the Transaction Documents by Nedbank Capital will not in any way preclude or operate as a waiver of any further exercise or enforcement thereof or the exercise or enforcement of any other right, remedy, power or privilege under the Transaction Documents or provided by law.

## 7.8 Conditional settlement

Any settlement or discharge between Nedbank Capital and the Investor will be conditional upon any security or payment given or made to Nedbank Capital by the Investor or by any other person in relation to the obligations of the Investor under the Transaction Documents in consideration for or in connection with that settlement or discharge, not being avoided, repaid or reduced by any Insolvency Event. If the relevant security or payment is avoided, repaid or reduced, Nedbank Capital will be entitled subsequently to recover the value or amount of that

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security or payment from the Investor, as if that settlement or discharge had not occurred.

### 7.9 Costs and expenses

The Investor acknowledges that he is solely responsible for all costs and expenses (including taxes) incurred by him in association with the Margin Account and the Transaction Documents.

### 7.10 Stamp duty

The Investor must pay and account for any transfer or similar duties or taxes, which include STT, and any loan security or other stamp duties (if any) chargeable in connection with any transaction effected pursuant to or contemplated by the Transaction Documents, and will indemnify and keep indemnified Nedbank Capital against any liability arising as a result of the Investor's failure to do so.

### 7.11 Consent to telephone recording

The Investor consents to the recording of any of its conversations with Nedbank Capital in relation to the Transaction Documents and any CFD.

### 7.12 Investor to supply information

The Investor will supply to Nedbank Capital such financial or other information relating to the Investor as Nedbank Capital may from time to time reasonably request.

### 7.13 Amendments to Premium

- (a) Nedbank Capital may amend the percentage of the Premium charged on buying or selling a CFD (i) without giving notice when it is a new CFD or (ii) following 24 (twenty-four) hours' notice where it is an existing CFD.
- (b) In the event that Nedbank Capital amends the percentage of the Premium charged at any other time during the life of the CFD, the amended percentage will be reflected on the CFD Statement that is made available to the Investor on NedTrade on a daily basis.

### 7.14 Notices

Any notice or other communication that must be given or served under the Transaction Documents and/or these Terms and Conditions must be in writing to be valid, but it is sufficient if placed on NedTrade or sent via any other electronic

communication in a form acceptable to Nedbank Capital, and notice so given will be deemed to be given instantaneously.

### 7.15 Governing law and submission to jurisdiction

- (a) Each of the Transaction Documents will be governed by and construed in accordance with the laws of the Republic of South Africa.
- (b) Each party irrevocably submits to and accepts, generally and unconditionally, the non-exclusive jurisdiction of the High Court of South Africa (Witwatersrand Local Division), or any other division of such court that may have jurisdiction, with respect to any legal action or proceedings that may be brought at any time relating in any way to any of the Transaction Documents or any CFD or Order. Each party irrevocably waives any objection it may now or in the future have to the venue of any such action or proceedings and any claim it may now or in the future have that any such action or proceeding has been brought in an inconvenient forum.

### 7.16 VAT

- (a) Consideration for a supply under or in connection with or contemplated by these Terms and Conditions is exclusive of VAT, unless expressly stated to be inclusive of VAT.
- (b) If VAT is payable by Nedbank Limited or any members of the Nedbank Group on any supply under or in connection with or contemplated by these Terms and Conditions, in addition to providing any consideration for that supply (which is exclusive of VAT), the Investor must:
  - (i) pay to Nedbank Limited or the relevant member of the Nedbank Group (as the case may be) an amount equal to the VAT payable on the supply, without deduction or setoff of any other amount; and
  - (ii) make that payment as and when the consideration or part of it must be paid or provided, except that the Investor need not pay unless he has received a tax invoice (or adjustment note) for that supply.

### 7.17 Injunctive relief by way of interdict

The Investor acknowledges that a breach or threatened breach of his obligations in 6.4, 6.5 and 6.7 above may cause Nedbank Capital immediate and irreparable harm for which monetary damages alone may not be an adequate remedy. The Investor therefore agrees that, in addition to any other rights and remedies that may be available to Nedbank Capital at law or in

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equity, Nedbank Capital may seek injunctive relief by way of an interdict against such breach or threatened breach.

SIGNED AT \_\_\_\_\_

ON \_\_\_\_\_

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INVESTOR

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