



Card(s) are issued and Card facilities are granted by us, Nedbank Limited, in our sole discretion to The Business and/or Cardmember(s) and the Card application is processed and approved in Johannesburg and the dispatch of the Card to The Business and/or Cardmember(s) constitutes our acceptance of the application, subject to the following terms and conditions:

### 1 INTERPRETATION

In this Agreement:

- 1.1 clause headings are for convenience and are not to be used in its interpretation;
- 1.2 unless the context indicates a contrary intention, an expression which denotes:
  - 1.2.1 any gender includes the other genders;
  - 1.2.2 a natural person includes a juristic person and vice versa; and
  - 1.2.3 the singular includes the plural and vice versa.

### 2 DEFINITIONS

In this Agreement, unless the context otherwise indicates, the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings.

- 2.1 **'Act'** means the National Credit Act, 2005;
- 2.2 **'Additional Card'** is a Card applied for by the holder of a Card account and the Additional Cardholder and is issued by us at our discretion for use by the Additional Cardholder for Business Expenditure, for which the applicant and the Additional Cardholder accept joint and several liability;
- 2.3 **'Agreement'** means the agreement concluded between you and us, upon your acceptance of this quotation, which Agreement shall be governed by the terms and conditions of use contained in this quotation and includes the Application for the Card;
- 2.4 **'Annual Interest rate'** means the maximum interest rate as prescribed by the Act from time to time.
- 2.5 **'Application'** means the written application completed by you in respect of the Card;
- 2.6 **'ATM'** means an automated teller machine;
- 2.7 **'Authorised Representative'** means the service establishment or supplier who is stated on the application form as an authorised representative;
- 2.8 **'Business'** means the business named on the Card application form and the entity that hereby applies for Cards and/or Card numbers and facilities;
- 2.9 **'Card'** means the Nedbank Business and/or Corporate, American Express® Corporate, Business, Business Travel Account, Personal Travel or suppressed Card:
  - 2.9.1 issued by us in our sole discretion for use by the business's employee named on the Card; and
  - 2.9.2 where applicable, lodged with and used by an authorised representative and identified as a duplicate Card;
- 2.10 **'Card Account'** means your Card account with us opened pursuant to your application for the Card facility described herein or any other account with us, which is operated by means of the Card;
- 2.11 **'Cardmember'** means the employee of the business who is the holder of, or is issued with a Card and/or a Card number;
- 2.12 **'Card number'** means the number that:
  - 2.12.1 is embossed on the Card and by which the Card is identified; or
  - 2.12.2 we may issue to the business and which may be furnished to suppliers or service establishments to effect Card transactions;
- 2.13 **'Card Transaction'** means any commercial transaction, including but not limited to purchases, services, cash advances, cash withdrawals or deposits made:
  - 2.13.1 with the Card from or to the Card account by using an ATM or SST or other electronic or other device; or
  - 2.13.2 by furnishing the Card number to a merchant or supplier;
- 2.14 **'Conversion Fee'** means a fee to cover global fluctuations in the currency market. Any charge that is made in a foreign currency other than US dollar will, when the conversion is done, be converted into US dollar before being converted into South African rand and will attract a currency conversion fee;
- 2.15 **'Credit Bureau'** means:
  - Experian Pty. Ltd. (Head Office);**
    - Tel: +27 (0) 86 110 5665
    - Fax: +27 (0) 11 463 3988
    - E-mail: info@experian.co.za
    - Physical Address: Experian House, The Ambridge Office Park, Vrede Avenue, Douglasdale, 2191
    - Postal Address: P O Box 98183, Sloane Park, 2152
  - TransUnion ITC (Head Office);**
    - Tel: +27 (0) 861 482 482
    - Fax: +27 (0) 866 701 737
    - E-mail: Disputeinfo@transunion.co.za
    - Physical Address: Wanderers Office Park, 52 Corlett Drive, Illovo, Johannesburg, 2196
    - Postal Address: P O Box 4522, Johannesburg, 2000
  - Expert Decision Systems (XDS);**
    - Tel: +27 (0) 11 645 9100
    - Fax: +27 (0) 11 484 6588
    - E-mail: info@xds.co.za
    - Physical Address: 11-13 St. Andrews, Oakhurst Building, Parktown, Johannesburg,
    - Postal Address: P O Box 30987, Braamfontein, 2017
  - KreditInform (Head Office);**
    - Tel: +27 (0) 11 777 2700
    - Fax: +27 (0) 11 886 3837
    - E-mail: gautengservicecentre@kredit.co.za
    - Physical Address: 15 Philips Street, Ferndale, Randburg
    - Postal Address: P O Box 1001, Randburg, 2125
- 2.16 **'Card Facility'** means the facility, which we may decide to make available to you, which is operated by means of the Card or the Card number, subject to these terms and conditions of use, and the amount of this facility will be advised by us to you (not applicable to charge cards). The purpose of this facility is to cover the full amount used by you on The Business's Card account for purchases or services, or

withdrawn by you from The Business's Card account by means of your PIN, in circumstances where sufficient cash funds are not available in The Business's Card account;

- 2.17 **'Chip'** means the integrated circuit that is embedded in a plastic card and which is designed to perform processing and / or memory functions;
- 2.18 **'Chip and PIN card'** means a plastic card, commonly called a chip card, with an embedded chip that communicates information to a point-of-transaction terminal and / or other electronic devices;
- 2.19 **'Delivery'** means that in terms of any notice required to be provided to you and/or us, such notice may only be given in writing and must be delivered to you and/or us by way of hand delivery or prepaid registered post or telefax or telegram or e-mail or SMSs. If delivered by hand, the notice shall be deemed to have been received on the date of delivery. If delivered by prepaid registered post, the notice shall be deemed to have been received within 7 (seven) days of posting, unless the contrary is proved. If sent by telefax, the notice shall be deemed to have been received on the date of confirmation of the successful transmission of the facsimile evidenced by a transmission report and/or slip. If delivered by telex, the notice shall be deemed to have been received within 7 (seven) days of submission, unless the contrary is proved. If sent by e-mail, the notice shall be deemed to have been received on the day of transmission, unless the contrary is proved. If sent by SMS, the notice shall be deemed to have been received on the day of transmission, unless the contrary is proved.
- 2.20 **'Individual Interest Rate'** means the variable interest rate which we offer you as it appears on your statement and/or your quotation, which is applicable to this Agreement and which is based on the Annual Interest Rate discounted by your personal risk profile where applicable, which will not exceed the maximum permissible interest rate allowed under the Act;
- 2.21 **'Liability structure'** means the form of liability that was adopted when the Card agreement between you and us was initially concluded;
- 2.22 **'Overdue amount'** means that portion of any amount payable that appears on the Card account statement that is not paid prior to, or on the payment date recorded on the statement;
- 2.23 **'PIN'** means a personal identification number, which is a secret number, which we may either send to you or, which will be selected by you and, which only you know. This number must be encoded on the Card by us and is used as a means of user identification;
- 2.24 **'Principal Debt'** means all amounts owing in terms of this agreement;
- 2.25 **'Repo Rate'** means the interest rate at which the South African Reserve Bank lends cash to the banking system;
- 2.26 **'Quotation'** means the written quotation given in respect of this Agreement as contemplated in the Act;
- 2.27 **'Service Establishment'** means the supplier of goods and services purchased or required by the Cardmember by use of the Card and/or PIN, and includes any merchant performing the same service;
- 2.28 **'SST'** means a self service terminal;
- 2.29 **'We', 'us' and 'our'** refer to Nedbank Limited Reg No 1951/000009/06, its successors in title and assigns of 135 Rivonia Road, Sandown, Sandton, NCR Registration number NCRCP16;
- 2.30 **'The Business'** and **'Cardmember(s)'** refer to the applicant for the Card facility and, where appropriate, the applicant for an additional card(s);
- 2.31 **'You', 'your' and 'yourself'** refer to The Business and/or Cardmember(s) and Cardholder(s);
- 2.32 Any number of days shall be determined by excluding the first and including the last day, or where the last falls on a day that is not a business day, the next business day.

### 3 RECITAL

Should you accept this pre-agreement and quotation and enter into the Agreement with us in respect of the Card facility to you in this quotation, we agree to extend the facility to you, and you agree to utilise such facility, as specified in the quote, subject to the terms and conditions of this Agreement. The agreement between you and us will come into being at the moment when we open an account in your name.

### 4 TERMS OF CARD FACILITY

- 4.1 Subject to the terms and conditions of this Agreement, we agree to provide a Card Facility to you, and you agree to the provision of a Card Facility in the amount specified in the Quote;
- 4.2 The Card Facility will be provided to you, or on your behalf, in our sole discretion, and subject to compliance by you with the terms and conditions of this Agreement;
- 4.3 To the extent that the Act is applicable to this Agreement:
- 4.3.1 if you wish to increase your card facility, you may request us to do so in writing. This does not apply to an automatic annual increase with respect to your card facility, that we may grant, provided that you have requested us to do so in the appropriate space on the Application;
- 4.3.2 you may not exceed your card facility unless you first obtain our written approval. If we accept any sales voucher, cash voucher or other evidence of withdrawal of cash and/or purchase resulting in the Card facility being exceeded, this will not mean that we have increased the Card facility permanently;
- 4.3.3 if you exceed the applicable card facility, same will constitute a breach of this Agreement and all amounts owing to or claimable by us from you in terms of this Agreement will, at the option of us, become immediately due and payable without notice, in the event that you fail to pay on demand any sum or sums of money owing to or claimable by us in respect of any facility granted to you;
- 4.3.4 if you, at the time of completing the Application or at any later time, in writing have specifically requested the option of having the Card facility automatically increased from time to time, we may unilaterally increase the Card facility as provided for in terms of the Act.

### 5 USE OF THE CARD

- 5.1 The Cardmember must, immediately when The Business receives the Card, insert the Cardmember signature in the space provided thereon with a non-erasable ballpoint pen;
- 5.2 If you do not want the Card, you must destroy it immediately without using it and also notify us in writing thereof;
- 5.3 The Card may be used only by the natural or juristic person whose name appears thereon;
- 5.4 The Card may only be used for Business or Business-related expenditure;
- 5.5 The Card is valid from the first day of the 'valid from' date on the Card until it expires or until your account is closed by any of the parties for whatever reason. If we allow a card transaction after the Card has expired or has been cancelled, this does not mean that we have extended the validity term of the Card;
- 5.6 We are the owners of the Card and when your account is closed for whatever reason, you must give the Card back to us (or to any person who is authorised to act on our behalf);
- 5.7 We shall, where applicable, encode the Card with a PIN, which will give you the right to deposit and/or withdraw cash and/or make use of services by means of the Card at compatible ATMs or SSTs or other electronic devices;
- 5.8 It is important that your card and account is not used fraudulently. You must therefore:
- 5.8.1 take proper care of the Card and card number and do everything that is necessary to prevent it from being lost, stolen and/or used wrongfully;
- 5.8.2 ensure that any record of the Cardmember PIN is kept separate from the Card in a safe place;
- 5.8.3 not allow anybody to obtain knowledge of the Cardmember PIN;
- 5.9 If the Card, card number or PIN:
- 5.9.1 is lost, stolen and/or used wrongfully; or
- 5.9.2 is used by any person other than the Cardmember;

- 5.9.3 you must notify us immediately at our Nedbank Card Division in Johannesburg by calling the number provided on your monthly statement. You must also notify us immediately if you have reason to believe or suspect that this has happened. You will be provided with a reference number during your telephone call. It is important that you keep a record of this reference number – you must be able to provide it to us whenever you are requested to do so. You must confirm your verbal notification by sending us written confirmation thereof, stating the reference number, within 24 (twenty-four) hours after the verbal notification;
- 5.10 You will be liable for and must repay us all amounts we pay or have to pay if the Card, your card number or PIN is used unless you have reported it as lost, stolen or being used wrongfully as set out in 5.9 above;
- 5.11 Except where a transaction is made by means of a PIN or is requested by mail or telephone order, the Cardmember must sign a sales voucher, a cash advance voucher or a refund voucher, as the case may be, every time the Cardmember uses the Card or gives the Card number to a merchant or supplier. By signing the voucher the Cardmember confirms that the information on it is correct. You will be liable for and must repay us all amounts we pay or have to pay in respect of your card transactions. If The Cardmember does not sign the relevant voucher(s), you will still be liable to us;
- 5.12 You must comply with all the applicable exchange control regulations when the Cardmember uses the Card outside the common monetary area. Card transactions made in foreign currencies will be shown on your statements in South African rand;
- 5.13 You may not use the Card for any unlawful or illegal transaction and it is the Cardmember's duty to make sure that a transaction is lawful before you use the Card;
- 5.14 When the Cardmember uses an ATM or a SST or any other electronic device, the Cardmember does so at their own risk and we shall not be liable for any loss or theft resulting from the use of an ATM or a SST or other electronic device;
- 5.15 When making withdrawals at ATMs outside the borders of South Africa, the daily withdrawal limit will be different from the daily withdrawal limit at ATMs inside the borders of South Africa;
- 5.16 You authorise us (which authorisation may not be cancelled):
- 5.16.1 to pay for any purchases, services or cash advances in respect of which the Card or the Card number is used and to debit the amount concerned to your card account;
- 5.16.2 to debit your card account with the amount of the sales voucher or cash advance voucher or any other cash amount withdrawn; and
- 5.16.3 to make the necessary entries to do the above and to reverse these entries when appropriate.
- 5.17 We shall not in any way be liable to you if any merchant or supplier does not accept the Card or the Cardmember card number, or if we refuse to authorise any card transaction;
- 5.18 If there are any claims or disputes between you and any merchant or supplier in respect of the nature, quality or quantity of any goods or services the Cardmember obtained from the merchant or supplier or in respect of any other matter or thing, our rights to receive payment from you will not be affected in any way nor will it give anyone a right of setoff or counterclaim against us. You hereby acknowledge that no merchant or supplier is our agent;
- 5.19 If a merchant or supplier gives you a refund, it will be credited to your card account only in the event of and once we receive a properly issued credit voucher from the merchant or supplier;
- 5.20 You will not have the right to stop any payment we are making or which we are about to make to a merchant or supplier in respect of any transaction, nor will you have the right to instruct us to reverse a payment in respect of a transaction which has already been made, except as may be provided otherwise by statute;

## **6 FEES, COSTS, INTEREST AND OTHER CHARGES**

- 6.1 We pay interest on the average daily credit balances on your Card account at the rate, which we shall notify you of from time to time in your monthly statement. This interest is credited to the Card account monthly on the statement date;
- 6.2 You will be liable to pay interest to us in respect of each transaction, calculated monthly on daily balances as set out in your statement and/or your quotation, which interest will not exceed the maximum Annual Interest Rate.
- 6.3 Your variable Individual Interest Rate which we offer you and which applies to this Agreement is based on the Annual Interest Rate discounted by your personal risk profile where applicable, which may change from time to time. The Individual Interest Rate can be changed by us at any time at our sole discretion by giving you notice as required in terms of the Act.
- 6.4 If you pay the outstanding balance on the Card account in full on or before the due date reflected on the monthly statement, we may decide not to charge interest in respect of card transactions (other than cash advances/withdrawals, electronic transfers, foreign exchange, casino chip purchases, or fuel purchases with any garage card), which appear for the first time on that statement. If we decide not to charge interest, this will not mean that we have waived our right to charge interest and we reserve the right to charge interest at any time;
- 6.5 If you fail to pay any amount owing to us on the due date, you will be liable for penalty interest at a rate equal to the maximum rate of interest prescribed by the National Credit Act, 34 of 2005, on the full amount due but unpaid, including interest;
- 6.6 You will be responsible for and shall pay to us the fees, costs and charges specified in clause 6 as part of the cost of credit, as contemplated by the Act. We are entitled at any time, and from time to time, in its discretion to vary any fee, cost or charge, provided that no fee or charge will exceed the maximum amount prescribed from time to time in terms of the Act or, where the Act does not apply to this Agreement, such other amount as may be prescribed by law. To the extent that value-added tax is payable in respect of any fee, cost or charge, such fee, cost or charge will be inclusive of value-added tax payable by you;
- 6.7 In addition, you shall pay any:
- 6.7.1 default administration charge imposed by us to cover administration costs incurred as a result of you defaulting on an obligation under this Agreement; and
- 6.7.2 collection costs that may be charged by us in respect of enforcement of your monetary obligations under this Agreement (other than a default administration charge), provided that such charges and costs will not (to the extent that the Act applies to this Agreement) exceed the maximum default administration charges and collection costs prescribed from time to time in terms of the Act.
- 6.8 Subject to the provisions of clause 6, all fees, costs and charges will be calculated and payable in the manner set out in clause 6. The Annual Interest Rate will be charged in respect of any fee, costs or charge not paid on or before the due date for payment thereof and this will not prejudice restrict or in any manner detract from our rights pursuant the an act of default.
- 6.9 To the extent that you are required to pay or reimburse any costs, fees, expenses or disbursements pursuant to this Agreement, you agree that such obligation includes the payment or reimbursement of value-added tax, where applicable;
- 6.10 All applicable government levies, which you must pay in respect of the use of the Card account, will be debited to the Card account monthly and paid over to the relevant government bodies by us;
- 6.11 We have the right to debit the Card account with our standard services and other fees and charges payable from time to time, which will be reflected on your monthly statement. These include, but are not limited to, an annual fee (which will be debited for each year or part of a year), a card replacement fee and a returned-payment fee;
- 6.12 You will be liable to pay all legal costs we incur in exercising any of our rights in terms of these terms and conditions of use, including all legal charges as between attorney and client, counsel's fees, tracing fees and collection charges;
- 6.13 You will be charged a currency conversion fee for transactions concluded outside the common monetary area. In the event where MasterCard processed the currency conversion, a charge of 0.20% would be added to cross border/international transactions;
- 6.14 We shall notify you in writing of any variation in your variable individual Interest Rate in accordance with the requirements of the Act.

## **7 STATEMENT, PAYMENT, DEPOSITS and settlement**

- 7.1 We shall send you a statement each month to the postal address selected by you, setting out each entry as prescribed by law in respect of all transactions on the Card account in the preceding month, as well as the total debit or credit balance, as the case may be, on the Card account as at the statement date and also, where applicable, the minimum amount you must pay and the date on which it must be paid;
- 7.2 You must pay us not less than the minimum amount shown on the statement and your payment must reach us at our Nedbank Card Division in Johannesburg during banking hours on or before the date, which is stated on the statement as the due date;
- 7.3 If you pay us by sending a cheque or postal order by mail, all risk involved, which will include but not be limited to fraud, theft or loss of the cheque or postal order, will be borne by you, whether or not it is caused by our negligence or that of any of our employees;
- 7.4 It is important that you check your monthly statement to determine if it is correct. If you dispute any item or entry in the monthly statement, you must write to us within 30 (thirty) days of the date of the statement recording your dispute so that we can investigate your complaint properly, obtain the relevant documents pertaining to the disputed entry and make the necessary enquiries. The relevant documents are only available for a limited time;
- 7.5 The Principal Debt together with any interest, charges and/or fees, which may be debited to the Account in terms of this Agreement, shall be repaid by you to us as set out in the Quotation;
- 7.6 The first payment shall become due on the date specified in the Quotation;
- 7.7 You must check that you receive your monthly statement. If you do not receive a monthly statement this will not give you the right or be a reason not to pay any amount, which is due and payable to us. You must inform us in writing if you do not receive a monthly statement;
- 7.8 If any negotiable instrument is deposited into the Card account, the proceeds will be provisionally credited to the Card account, but you will only be entitled to the proceeds thereof once the instrument is honoured;
- 7.9 All payments received from you will be credited to the Card account and we shall apply this money firstly to due and unpaid interest charges, then any applicable government levies, then any fees and other charges we levy on your card account, then any legal costs, and finally the principal debt. You may not attach any conditions whatsoever to any payment made to us. If you attach any conditions, we shall have the right to accept your payment and exercise our rights in terms of these terms and conditions of use as if you have not attached any condition;
- 7.10 It is recorded that the following information is not known or cannot be determined beforehand, namely:
- 7.10.1 the amount that will actually be spent on your account;
- 7.10.2 the nature or amount of other charges;
- 7.10.3 the amount of the principal debt;
- 7.10.4 the amount of interest that will accrue in rands and cents;
- 7.10.5 the amount of each payment and the date on which each payment must be made.
- 7.11 All payments in terms of this Agreement will be made in South African currency without set off, or deduction of any kind and free of exchange, bank costs and other charges, at the branch or our Card Division or wherever else we may at any time in writing direct. If arrangements are made to pay the monthly instalment by way of debit order or automatic payment order, this will not detract in any manner from your obligation to effect payment of each payment on or before the due date for payment thereof;
- 7.12 You may at any time prepay any amount owed to us in terms of this Agreement or settle this Agreement; provided that this Agreement is subject to the Act. To the extent that this Agreement is not subject to the Act, no amount owed by you to us shall be prepaid or this Agreement settled without the prior consent in writing from us. Any consent by us for this purpose may be given unconditionally or subject to such conditions as we in our sole discretion determine;
- 7.13 To the extent that the Act is applicable to this Agreement, the amount required to be paid by you to us in order to settle this Agreement is the total of the following amounts:
- 7.13.1 the Principal Debt or the balance thereof outstanding at the time of settlement;
- 7.13.2 any unpaid interest and all other fees and charges owing to or claimable to us in terms of this Agreement up to the settlement date; and
- 7.13.3 if the interest rate applicable to this Agreement at the time of settlement is a fixed rate, an early termination charge determined by us at such time; provided that such fee does not exceed the maximum charge permitted from time to time by the Act.

## **8 LIABILITY STRUCTURE**

- 8.1 You have agreed to be bound to us under the following liability structure as stated in the agreement between the you and us:
- 8.1.1 Joint and Several liability: You are jointly and severally, in solidum, liable to us as co-principal debtor with each and every Cardmember for all amounts owing to us on the Card account and obligations arising out of these terms and conditions of use, as well as for all amounts owing to us on the Card account in respect of the use of the Card and/or the Card number and obligations arising out of these terms and conditions of use.
- 8.2 On return of the Card to us by the you and after all amounts owing to us in respect of the use of the Card have been paid, we will at your request cancel the card facility, the Card and/or the Card number and you will then no longer be liable to us for future debt in respect of the card facility, the Card and/or the Card number;
- 8.3 You hereby give up the benefit of the legal exceptions and/or defenses of excussion, division, cession of action, no cause of debt, no value received or revision of accounts which you can or may plead to defend any claim we bring against you as co-principal debtors and it is hereby acknowledged that you are familiar with and fully understand the meaning and effect of all the exceptions and defences mentioned above.

## **9 LIABILITY**

We shall not be liable to you for any damage or loss, which you suffer if:

- 9.1 any person gains unauthorised access to the Cardmember card, your card number, your account, your PIN or your card facility or any information in respect thereof;
- 9.2 there is a delay, failure or malfunction of any ATM or SST or other device (electronic or manual) you use to make transactions with the Card; or
- 9.3 any person gains unauthorised access to any information or data (whether correct or incorrect).

## **10 CERTIFICATE AND OTHER DOCUMENTARY EVIDENCE OF INDEBTEDNESS**

- 10.1 To the extent permitted by the Act, the nature and amount of your indebtedness to us in terms of this Agreement, as well as the interest rate payable in respect thereof, will at any time be determined and proved by a written certificate purporting to have been signed by a Manager or Accountant for the time being of any branch or at our Head Office, whose capacity or authority it will not be necessary to prove, which certificate will upon the mere production thereof be binding on you and be prima facie proof of the contents of such certificate and of the fact that such amount is due and payable in any legal proceedings against you, and will be valid as a liquid document against you in any competent court;
- 10.2 Whenever we take any legal steps against you, we shall have the right to use microfilm and/or copies of any other relevant records.

## **11 SUSPENSION OR CLOSING OF CARD FACILITY**

- 11.1 To the extent that the Act is applicable to this Agreement, and this Agreement constitutes a card facility as defined in the Act, we may suspend such card facility at any time you are in default under the Agreement, or close the card facility by giving written notice of termination to you at least 10 (ten) business days before the card facility is to be closed;
- 11.2 Despite the suspension or closure of the card facility, any liability which you may have in respect of this Agreement and/or any facility provided in respect thereof will not be affected by the above action, and this Agreement shall remain in effect to the extent necessary until you have paid all amounts lawfully due by you in terms of the Act.

## 12 CREDIT BUREAU INFORMATION

- 12.1 To the extent that the Act applies to this Agreement, we hereby inform you that we supply consumer credit information to Credit Bureaux and in this regard:
- 12.1.1 You confirm that we may transmit to Credit Bureaux data about the application, opening and termination of an Account by you;
- 12.1.2 You acknowledge that information on non-compliance with the terms and conditions of this Agreement is transferred to the Credit Bureaux;
- 12.1.3 The Credit Bureaux provide credit profiles and possibly credit scores on your credit worthiness, subject to the credit record;
- 12.2 You have the right to have the credit record disclosed and to correct inaccurate information;
- 12.3 You may contact the Credit Bureaux at the details provided in clause 2.

## 13 ACKNOWLEDGEMENT, CONFIRMATION AND CONSENT

- 13.1 You warrant that you have fully and truthfully answered all and any requests for information made by us relating to this Agreement;
- 13.2 You confirm that you understand and appreciate the risks and costs inherent in this Agreement, and your rights and obligations under this Agreement.
- 13.3 You confirm and agree that we may in our sole discretion, amend these terms and conditions at any time by furnishing you with notice of any amendments by way of statement messages or any other means we may deem necessary
- 13.4 If you disagree with these amendments to the terms and conditions you will have the right to cancel the Agreement before the terms and conditions become operational ('Operational date'), in which instance clause 19 becomes applicable.
- 13.5 You acknowledge and agree that, if you decide not to cancel the Agreement before the Operational Date of the amendments to the terms and conditions, they will be binding on you. If you decided to use your Card facility after the Operational Date of the amendments, it would be deemed that you have accepted the amendments to the terms and conditions and they will be binding on you.

## 14 JURISDICTION

You hereby agree and give your consent that a magistrates' court will have jurisdiction in respect of any legal steps we take against you, even if the amount we claim exceeds the jurisdiction of the magistrates' court. We shall, however, have the right to approach a higher court if we wish to do so.

## 15 NOTICES AND DOMICILIUM

- 15.1 The physical address given by you on the application form will always be the address you have chosen where summonses, legal documents and notices may be served on you ('domicilium'). The postal address given by you on the application form is the address to which we shall send all other notices, correspondence, card account statements and documents addressed to you;
- 15.2 You may change your postal address to any other physical postal address in South Africa if you send us a written notice thereof. If you change your domicilium, it will only be valid 14 (fourteen) days after the date our Nedbank Card Division in Johannesburg receives your written notice;
- 15.3 Either party to this Agreement may change its address for the purposes of this clause by delivering to the other party a written notice of the new address by hand or registered mail;
- 15.4 Unless otherwise provided by this clause or the Act, a notice, order or other document that, in terms of the Act, must be served on either party to this Agreement will have been properly served when it has been either delivered to that party or sent by registered mail to that party's last known address;
- 15.5 All notices or communications you send to us must be in writing and sent by pre-paid registered post to our Card Division in Johannesburg.

## 16 CLIENT RIGHTS

- 16.1 To the extent that the Act is applicable to this Agreement, you have the right (provided that any such right is exercised in accordance with the Act) to:
- 16.1.1 resolve a complaint by way of alternative dispute resolution;
- 16.1.2 file a complaint with the National Credit Regulator; or
- 16.1.3 make an application to the Tribunal;
- 16.1.4 **The National Credit Regulator** can be contacted at:  
Tel: +27 (0) 11 647 4400 or 0860 627 627  
Fax: +27 (0) 11 484 6122  
E-mail: info@NCR.org.za  
Physical Address: 11 Parklane Avenue, Parktown, Johannesburg, 2193  
Postal Address: P O Box 2694, Houghton, 2041
- The National Consumer Tribunal** can be contacted at:  
Tel: 0860 627 627  
E-mail: info@ncr.org.za or rmthembu@ncr.org.za
- The Ombud for Banking Services** can be contacted at:  
Tel: +27 (0) 11 838 0035 or 0860 800 900  
Fax: +27 (0) 11 838 0043  
E-mail: info@obssa.co.za  
Physical Address: 5th Floor, 28 Harrison Street, Johannesburg, 2001  
Postal Address: P O Box 5728, Johannesburg, 2000
- 16.2 You may dispute all or part of any particular credit or debit entered on your account in terms of this Agreement by delivering a written notice to us where upon we shall give you written notice either explaining the entry in reasonable detail or confirming that the statement was in error either in whole or in part, and setting out the revised entry;
- 16.3 To the extent that the Act applies to this Agreement, we shall advise you in terms of this Act, before any prescribed adverse information concerning you are reported to Credit Bureaux, and shall provide a copy of that information to you upon written request.

## 17 DEFAULT BY THE CLIENT/TERMINATION

- 17.1 We shall have the right when you breach any term of this Agreement to close your account, cancel the card facility and demand that you repay us the full amount outstanding on your account and immediately give the Card and additional card(s), if applicable, back to us. We shall give you reasons for the above. Any liability which you or the holder of the additional card(s), if applicable, may have in respect of these terms and conditions of use and any facility granted to you previously will not be affected by the above action;

- 17.2 The full amount you owe us will immediately become due and payable if:
- 17.2.1 we close your account; and/or
  - 17.2.2 we cancel your card facility; and/or
  - 17.2.3 we demand that you give the Card back to us; and/or
  - 17.2.4 you breach any of these terms and conditions of use; and/or
  - 17.2.5 your estate is provisionally or finally placed under curatorship or liquidated; and/or
  - 17.2.6 the Business dissolves and/or Cardmember dies;
  - 17.2.7 you do or cause to be done anything which, in the reasonable opinion of us, affects or prejudices your ability to meet your obligation in terms of this agreement.
- 17.3 You hereby agree that we may inform any merchant, supplier or other person that we have closed your card account and/or have cancelled your card facility, and you will not have any claim against us because we have given this information;
- 17.4 You may not use the Card after it has expired and, if we cancel the Card before the expiry date, you may not use it after the date on which it was cancelled;
- 17.5 If you want to terminate your right to use the Card and/or card facility, you must cut up the Card and send it to us, together with a written notice that you want to terminate your right. The Card and/or your card facility will then be cancelled on the day we receive your notice and the cut-up Card at our Nedbank Card Division in Johannesburg;
- 17.6 Any termination of your card account and/or card facility and/or the Card will not affect your liability to us in respect of the use of the Card and these terms and conditions of use before that termination or before we receive back the Card, whichever happens last;
- 17.7 Should you breach any condition contained in this Agreement, or should you breach a condition of any other agreement with us (which breach shall constitute a breach of this Agreement), we shall have the right, to the extent permitted by the Act, to claim repayment of all amounts owing to or claimable by us in terms of this Agreement, together with interest thereon;
- 17.8 All amounts owing to or claimable by us from you in terms of this Agreement will, at the option of us and to the extent permitted by the Act, become immediately due and payable without notice, in the event that you fail to pay on demand any sum or sums of money owing to or claimable by us in respect of the financial facility granted to you or any other indebtedness of yours from whatever cause arising. Any failure by you to effect payment as aforesaid shall constitute a breach of this Agreement;
- 17.9 In the event that this Agreement is subject to the Act, nothing contained in this clause 17 shall be construed as entitling us to recover the amounts so claimed from you without complying with the requirements of clause 19.

## 18 APPLICATION FOR DEBT REVIEW

- 18.1 Without detracting from or in any manner limiting us the right in the event of default, your attention is directed to section 86 of the Act, which entitles you, in certain circumstances, to apply to a debt counsellor in the prescribed manner and form to have yourself declared over-indebted;
- 18.2 An application in terms of section 86 of the Act may not be made in respect of, and does not apply to, this Agreement if at the time such application is made we have, under this Agreement, proceeded to take the steps contemplated in clause 17 to enforce this Agreement;
- 18.3 A debt counsellor who has accepted an application in terms of section 86 must determine in the prescribed manner and within the prescribed time whether you appear to be over-indebted, and if you seek a declaration of reckless credit, whether any of your credit agreements appear to be reckless;
- 18.4 Depending on the findings of the debt counsellor, the application may be rejected, or it may be recommended that you and the respective credit providers voluntarily consider and agree on a plan of debt re-arrangement or, if the debt counsellor concludes that you are over-indebted, a proposal may be issued recommending that the Magistrate's Court makes an order with regard to the question of reckless credit and any plan of debt re-arrangement, as contemplated in section 86(7) of the Act;
- 18.5 If a recommendation by a debt counsellor is accepted by you and each credit provider, such order must be recorded in the form of an order and, if it is consented to by you and each credit provider concerned, filed as a consent order by the debt counsellor in terms of section 138 of the Act;
- 18.6 If a debt counsellor rejects an application contemplated in section 86(7)(a) of the Act, you, with the leave of the Magistrate's Court, may apply directly to the Magistrate's Court, in the prescribed manner and form, for an order contemplated in section 86(7)(c) ;
- 18.7 If you are in default under this Agreement and this Agreement is being reviewed in terms of section 86 of the Act, we may give notice to terminate the review in the prescribed manner to you, the debt counsellor and to the National Credit Regulator contemplated in the Act. Such notice may be given at any time at least 60 (sixty) business days after the date on which you have applied for the debt review;
- 18.8 If we give notice to terminate a review as contemplated in clause 18.7 and proceeds to enforce this Agreement in terms of clause 17, the Magistrate's Court hearing the matter may order that the debt review resume on any conditions the court considers to be just in the circumstances.

## 19 REQUIRED PROCEDURE BEFORE DEBT ENFORCEMENT

- 19.1 If you are in default under this Agreement, we may:
- 19.1.1 draw the default to the notice of yourself in writing and propose that you refer this Agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the parties resolve any dispute under this Agreement or develop and agree on a plan to bring the payments under this Agreement up to date, and we may not commence any legal proceedings to enforce this Agreement before such notice has been given; or
  - 19.1.2 in circumstances where this Agreement is being reviewed in terms of section 86 of the Act, we may give notice to terminate the review in the prescribed manner to you, the debt counsellor and the National Credit Regulator at any time at least 60 (sixty) days after the date on which you applied for the debt review;
  - 19.1.3 provided that the requirements set out in this sub-clause will not apply in circumstances where this Agreement is subject to a debt restructuring order, or to proceedings in a court that could result in such an order;
- 19.2 We may approach the court for an order enforcing this Agreement only if, at that time, you are in default and have been in default under this Agreement for at least 20 (twenty) business days and –
- 19.2.1 at least 10 (ten) business days have elapsed since we delivered a notice to you as contemplated in clause 19.1.1;
  - 19.2.2 in the case of a notice contemplated in clause 19.1.1, you have:
    - 19.2.2.1 not responded to that notice; or
    - 19.2.2.2 responded to the notice by rejecting our proposal.
- 19.3 Despite any provision of law or contract to the contrary, in any proceedings commenced in a court in respect of this Agreement, the court may determine the matter only if the court is satisfied that –
- 19.3.1 the procedures contemplated in clauses 19.1.1 and 19.1.2 have been complied with;
  - 19.3.2 there is no matter arising under this Agreement, and pending before the National Consumer Tribunal established by section 26 of the Act, that could result in an order affecting the issues to be determined by the court; and
  - 19.3.3 If we have not approached the court:
    - 19.3.3.1 during the time that the matter was before a debt counsellor, alternative dispute resolution agent, consumer court or the ombud with jurisdiction; or
    - 19.3.3.2 despite your having –
    - 19.3.3.2.1 agreed to a proposal made in terms of section 129(1)(a) of the Act and acted in good faith in fulfilment of that agreement;

- 19.3.3.2.2 complied with an agreed plan as contemplated in section 129(1)(a) of the Act; or
- 19.3.3.2.3 brought the payments under this Agreement up to date, as contemplated in section 129(1)(a) of the Act.
- 19.4 In any proceedings contemplated in section 130 of the Act, if the court determines that:
  - 19.4.1 this Agreement was reckless as described in section 80 of the Act, the court must make an order contemplated in section 83 of the Act;
  - 19.4.2 We have not complied with the relevant provisions of the Act, as contemplated in section 130(3)(a) of the Act, or has approached the court in circumstances contemplated in section 130(3)(c) of the Act, the court must:
    - 19.4.2.1 adjourn the matter before it; and
    - 19.4.2.2 make an appropriate order setting out the steps we must complete before the matter may be resumed;
  - 19.4.3 this Agreement is subject to a pending debt review in terms of Part D of Chapter 4 of the Act, the court may:
    - 19.4.3.1 adjourn the matter, pending a final determination of the debt review proceedings;
    - 19.4.3.2 order the debt counsellor to report directly to the court, and thereafter make an order contemplated in section 85(b) of the Act; or
    - 19.4.3.3 if this Agreement is the only credit agreement to which you are a party, order the debt counsellor to discontinue the debt review proceedings, and make an order contemplated in section 85(b) of the Act;
  - 19.4.4 there is a matter pending before the Tribunal referred to in clause 19.3.2, as contemplated in section 130(3)(b) of the Act, the court may:
    - 19.4.4.1 adjourn the matter before it, pending a determination of the proceedings before the said Tribunal; or
    - 19.4.4.2 order the said Tribunal to adjourn the proceedings before it, and refer the matter to the court for determination;
  - 19.4.5 this Agreement is either suspended or subject to a debt re-arrangement order or agreement, and you have complied with that order or agreement, the court must dismiss the matter.
- 19.5 The provisions of this clause will only apply to this Agreement to the extent that this Agreement is subject to the Act.

## 20 GENERAL

- 20.1 This Agreement constitutes the whole of the agreement between the parties relating to the subject matter thereof, and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect, unless reduced to writing. To the extent that there is any conflict between the provisions of this Agreement and any provision of the Security, the provisions of this Agreement will prevail and apply.
- 20.2 The parties agree that no other terms or conditions, whether oral or written, and whether express or implied, apply;
- 20.3 No waiver of any of the terms and conditions of this agreement will be binding or effectual for any purpose unless expressed in writing and signed by the party hereto giving the same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either party hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege;
- 20.4 You are not entitled to cede any right as such to yourself or any part thereof. If we have agreed to lend to you moneys on condition that repayment is made from the Card facility, then upon execution of the Security, or on the date upon which the Card facility will be advanced, so much of the Card facility's is required to repay the moneys lent to you, will be set off against the Card facility. To the extent that such payment to we are, for whatever reason, not made, we shall be entitled to withdraw from the Agreement whether or not any Security has been provided by you, in which event you will have no claim of whatsoever nature against us;
- 20.5 We have the right at any time and from time to time, without the consent of yourself, to cede, assign and transfer all or any of its rights, title and interest in and to this Agreement and/or the Security, as well as any other security of whatsoever nature held by us in respect of your indebtedness in terms of this Agreement, to and in favour of any third party or parties, whether natural, juristic or of any other kind or nature. The aforesaid right includes the right to delegate any obligation in terms of this Agreement and/or the Security or other security, mutatis mutandis. To the extent that any cession, assignment, transfer or delegation aforementioned constitutes or results in a splitting of claims that requires the consent of yourself, you hereby consent thereto;
- 20.6 In the event that you comprise more than one person, whether natural or otherwise, all such persons will be liable to Nedbank jointly, severally and in solidum for the performance by you of your obligation in terms of this Agreement;
- 20.7 You shall, on request, furnish us with such information and/or documents as we from time to time require in respect of your spouse, including any person having an interest whether direct or indirect to you, in the event that you are not a natural person, and any surety, guarantor or other person who has provided security in respect of the indebtedness of yourself;
- 20.8 In the event of you being a juristic person and any change in the directorship and/or shareholding or where applicable, membership, of such juristic person taking place, all amounts owing to us in terms of this Agreement, together with interest thereon, shall immediately become due and payable unless the prior written consent of us is obtained. Should such change in the directorship or membership as the case may be, of such juristic person take place in terms of the provisions hereof, all such new or additional directors or members, as the case may be, shall enter into a deed of suretyship upon such terms and conditions as we require to bind themselves to and in favour of us, in solidum and as co-principal debtors for the due repayment by you to us of all amounts owing to us whether in terms of this Agreement or otherwise howsoever;
- 20.9 Every provision (including this provision) of these terms and conditions is deemed to be separate and severable, and should any provision be found to be defective or unenforceable for any reason, that provision will be severed from the remaining provisions and the validity of the remaining provision will continue to be of full force and effect.
- 20.10 The quotation supersedes all previous quotations provided in respect of this transaction.
- 20.11 In the event that the client receives the quotation in any language other than English/Afrikaans and in the event of any conflict between those versions, the English/Afrikaans version will prevail.

[version 04Mar09]