



## 1 DEFINITIONS

In these terms and conditions, unless the context requires otherwise:

- 1.1 **'the account'** means the client's transactional current account to which these terms and conditions apply.
- 1.2 **'the Act'** means the National Credit Act, 34 of 2005, as amended from time to time, if applicable.
- 1.3 **'the agreement'** means the agreement between the parties as constituted by these terms and conditions, read together with the application, the relevant product specification and pricing brochure (as amended from time to time) and, if applicable, the subsequent agreement with the client pertaining to the rates, fees, costs and charges (as amended from time to time).
- 1.4 **'ATM'** means automated teller machine.
- 1.5 **'the bank'** means Nedbank Limited, registration number 1951/000009/06, with registered address Nedbank 135 Rivonia Campus, 135 Rivonia Road, Sandown, Sandton, 2196 and postal address PO Box 1144, Johannesburg, 2000.
- 1.6 **'card'** means the relevant magnetic-strip or chip bank card issued to the client, which at the discretion of the bank may or may not include a Nedbank Maestro debit card, a Nedbank Visa Electron card, a Nedbank or MasterCard cheque card, a Nedbank garage debit card, a Nedbank ATM card, a Nedbank MasterCard debit card or Nedbank Visa debit card.
- 1.7 **'card transaction'** means any commercial transaction, including purchases, payments, interaccount transfers, services, cash withdrawals or deposits made:
  - 1.7.1 with the card from the account by using an ATM or SST or other electronic device; or
  - 1.7.2 by furnishing the card to a merchant or supplier.
- 1.8 **'chip'** means the integrated circuit that is embedded in a plastic card and which is designed to perform processing and/or memory functions.
- 1.9 **'CHIP & PIN card'** means a plastic card, commonly called a chip card, with an embedded chip that communicates information to a point-of-transaction terminal.
- 1.10 **'the client'** means the applicant whose details are set out in the application form.
- 1.11 **'delivery'** and **'deliver'** mean that, in terms of any notice required to be given to the client and/or the bank, such notice may only be given in writing and must be delivered to the client and/or the bank by way of hand delivery or prepaid registered post or fax or telegram or email or SMS. If delivered by hand, the notice will be deemed to have been received on the date of delivery. If delivered by prepaid registered post, the notice will be deemed to have been received within seven days of the posting date, unless the contrary is proved. If sent by fax, the notice will be deemed to have been received on the date of confirmation of the successful transmission of the fax as evidenced by a transmission report and/or slip. If delivered by telegram, the notice will be deemed to have been received within seven days after the telegram was sent, unless the contrary is proved. If sent by email, the notice will be deemed to have been received on the day of transmission, unless the contrary is proved. If sent by SMS, the notice will be deemed to have been received on the day of transmission, unless the contrary is proved.
- 1.12 **'dormant account'** means an account that has had no client-initiated debit or credit transactions for such period as the bank, at its reasonable discretion, may determine from time to time.
- 1.13 **'interest rate'** means the interest rate that appears in this agreement, being the variable interest rate that applies to the agreement initially, which rate is subject to change as provided for in this agreement.
- 1.14 **'the parties'** means the bank and the client.
- 1.15 **'PIN'** means personal identification number. This is a secret number selected by the client and which only the client knows. This number must be encoded on the card by the bank and is used as a means of user identification. The card must be encoded with a PIN before the client will be able to withdraw and deposit money and otherwise use the card at such compatible ATMs, SSTs, point-of-sale terminals and other electronic devices as the bank may advise from time to time.
- 1.16 **'pricing brochure'** means the latest, effective leaflet or any other source of information, furnished to the client, stipulating the items that attract fees, costs and charges and, in addition, the corresponding fees, costs and charges levied for such items and the effective date of the pricing brochure.
- 1.17 **'product brochure'** means the latest, effective leaflet or any other source of information as published by the bank that contains a list of products offered by the bank and the corresponding product specifications.
- 1.18 **'product specifications'** means specific features of products offered by the bank, including minimum deposits, minimum balances, interest rates, costs, charges, fees and service fees.
- 1.19 **'SST'** means self-service terminal.

## 2 USE OF CARDS

- 2.1 The client and/or its authorised representative must immediately on receiving the card sign the card on its reverse with a non-erasable ballpoint pen.
- 2.2 Subject to product specifications, the client may operate the account through access to electronic banking services, which include services at an ATM, SST and a point-of-sale device, as well as by telephone banking services and internet banking services.
- 2.3 The client and/or its authorised representative will have access to ATMs or SSTs by using the card together with a PIN.
- 2.4 It is important that the client's card is not used fraudulently. The client must therefore:
  - 2.4.1 take proper care of the card and the card number and take all reasonable steps to prevent it from being lost, stolen and/or used wrongfully;
  - 2.4.2 ensure that any record of the PIN is kept separate from the card and in a safe place;

- 2.4.3 never tell anybody who offers to help, including any bank employee, the PIN;
- 2.4.4 never write down or record the PIN; and
- 2.4.5 not allow anyone to obtain knowledge of the PIN.
- 2.5 When the client has received the card, the bank will, where applicable, encode the card with a PIN, which will give the client the right to deposit and/or withdraw cash and/or make use of services by means of the card at a compatible ATM, SST or other electronic device.
- 2.6 By keeping and/or using the card the client accepts all these terms and conditions in respect of the use of the card.
- 2.7 The client may not cede or delegate any of his rights or obligations in respect of the card or its use.
- 2.8 The card is valid from the time it is issued or from the first day of the 'valid from' date on the card, as the case may be, until it expires or until the account is closed by either the client or the bank for whatever reason.
- 2.9 The bank is the owner of the card and, when the account is closed for whatever reason, the client must give the card back to the bank (or to any person who is authorised to act on the bank's behalf).
- 2.10 If the card, or the client's card number or PIN:
- 2.10.1 is lost, stolen or used wrongfully; or
- 2.10.2 is used by any person other than the client;
- the client must notify the bank immediately by calling the number provided on the client's statement or on the client's card itself. The client must also notify the bank immediately if anyone obtains knowledge of his PIN or if he has reason to believe or suspect that this has happened. The client will be provided with a reference number during the telephone call. It is important that the client keeps a record of the reference number as he must be able to give it to the bank whenever requested to do so. The client must confirm the verbal notification by sending the bank written confirmation thereof, stating the reference number, within 24 hours after the verbal notification. The client will be liable for and must repay the bank all amounts the bank pays or has to pay if the card, card number or PIN is used, unless it has been reported as being lost, stolen or used wrongfully.
- 2.11 The client may not use the card for any unlawful or illegal transaction and it is the client's duty to make sure that a transaction is lawful before the card is used.
- 2.12 The client may not use the card for any payment on behalf of a business or for transactions that in the bank's reasonable opinion are non-personal transactions, unless the client is a juristic person, sole proprietor or trust.
- 2.13 The bank may debit the client's account with the amounts of:
- 2.13.1 all transactions carried out by the client by using the card and the PIN; and
- 2.13.2 all transactions not authorised by the client, but which have been carried out by means of the card and PIN before the bank has had the reasonable opportunity, after the verbal notification in terms of clause 2.10 above, to prevent any further unauthorised transactions.
- 2.14 Except where a transaction is made by means of PIN or is made by mail or telephone order, the client must sign a sales voucher or a refund voucher, as the case may be, each time the card is used or the card number is given to a merchant or supplier. By signing the voucher the client confirms that the information on it is correct. The client will be liable for and must repay the bank for all amounts the bank pays in respect of the client's card transactions. Unless the client has notified the bank that the card has been lost or stolen in terms of clause 2.10, even if the client does not sign the relevant vouchers, the client will still be liable to the bank for such transactions.
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- 2.15 The client must comply with all applicable exchange control regulations when the card is used outside the common monetary area. Card transactions made in foreign currencies will be converted into South African rand at an exchange rate determined by the bank and will be shown on the client's statements in South African rand. An additional fee may be payable by the client for such transactions. Such fee will be disclosed in the pricing brochure available from the bank.
- 2.16 The client may not use the card for any unlawful or illegal transaction and it is the client's duty to make sure that a transaction is lawful before the card is used.
- 2.17 The client may not use the card for any payment on behalf of a business or for transactions that in the bank's reasonable opinion are non-personal transactions, unless the client is a juristic person, sole proprietor or trust.
- 2.18 **When the client uses an ATM or SST, the client does so at his own risk and the bank will not be held liable for any loss or theft resulting from the use of an ATM or SST or other electronic device.**
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- 2.19 When making withdrawals at ATMs outside the borders of the Republic of South Africa, the daily withdrawal limit will be different from the daily withdrawal limit at ATMs inside the borders of the Republic of South Africa.
- 2.20 The client authorises the bank (which authorisation may not be cancelled):
- 2.20.1 to pay any purchases or services in respect of which the card or the card number is used and to debit the amount concerned to the client's account;
- 2.20.2 to debit the client's account with the amount of the sales voucher or any other cash amount withdrawn; and
- 2.20.3 to make the necessary entries to do the above and to reverse these entries when appropriate.
- 2.21 **The bank will in no way be liable to the client if any merchant or supplier does not accept the card or the card number, or if the bank refuses to authorise any card transaction.**
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2.22 **If there are any claims or disputes between the client and the merchant or supplier in respect of the nature, quality or quantity of any goods or services obtained by the client from the merchant or supplier or in respect of any other matter, the bank's right to receive payment from the client will not be affected in any way nor will it give anyone a right of setoff or counterclaim against the bank. The client hereby acknowledges that no merchant or supplier is the bank's agent.**

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2.23 If a merchant or supplier refunds a client, the refund will be credited to the client's account only in the event of and once the bank receives a properly issued credit voucher from the merchant or supplier.

2.24 The client will not have the right to stop any payment that the bank makes or which the bank is about to make to a merchant or supplier in respect of any transaction, nor will the client have the right to instruct the bank to reverse a payment in respect of a transaction that has already been made, except as may be provided otherwise by statute.

### **3 USE OF THE ACCOUNT**

3.1 The client agrees that:

3.1.1 the bank will open a banking account for the client, the type of account and name of which will be indicated by the client by completing the necessary documentation to be provided by the bank;

3.1.2 the client will supply the bank with the details of the signing arrangement on the account in the format of or similar to the document to be provided by the bank;

3.1.3 the bank will be advised of all changes in signing arrangements;

3.1.4 the bank is authorised to pay all cheques, promissory notes, bills of exchange and other negotiable instruments payable at the bank, purporting to be drawn, made or accepted by or on behalf of the client;

3.1.5 the bank is authorised to debit the above instruments to the account, whether the account is in credit or otherwise;

3.1.6 the bank is authorised to receive and deposit any cheque to the account, but that the proceeds will be considered as cleared only when the cheque has been honoured. All cheque deposits are subject to a clearance period, which normally is seven business days, but which may vary;

3.1.7 the bank is authorised to accept any instruction by fax or other electronic means and to treat such instructions as above; and

3.1.8 the use and handling of the account are subject to such arrangements as the bank may have in regard to the implementation of the magnetic ink character recognition system as coupled with the Automated Clearing Bureau.

### **4 RESTRICTED ACCOUNTS**

4.1 If the client cannot provide the bank with acceptable documentation that serves as proof of the client's residential address, the client's account will be subject to the following restrictions:

4.1.1 the client may not hold more than one account with the bank;

4.1.2 the maximum balance of the account may not be more than R25 000; and

4.1.3 no withdrawal, payment or transfer from the account may exceed R5 000 a day or R25 000 month.

4.2 If the client does not adhere to the limits set out in clause 4.1 above, the bank will freeze or close the account immediately, without giving the client prior notice. There will be no transacting capability on the account if the account is frozen or closed.

4.2.1 If the bank has frozen or closed an account, the client must approach the bank to make necessary arrangements.

### **5 INTEREST RATE**

5.1 The bank will not have to pay interest on any account, unless it was specifically agreed in writing.

5.2 Where applicable, interest will accrue to credit balances.

5.3 Where applicable, interest on credit balances will be calculated on the end-of-day balance and will accrue and be capitalised on a monthly basis.

5.4 Interest rates on credit balances will be the rates specified in the product specifications as stipulated in the product brochure, levied in accordance with the type of account indicated by the client or, if applicable, the rates as subsequently agreed with the client.

5.5 An income tax certificate (IT3b certificate) will be issued to the client in respect of an account where the interest earned for the tax year was equal to or more than the prescribed amount in terms of the Income Tax Act.

5.6 Debit interest at the maximum interest rate for credit facilities, as prescribed from time to time in the regulations promulgated in terms of the Act, will accrue to the account if the end-of-day balance is a debit balance or, if applicable, the rate as subsequently agreed with the client.

5.7 The bank may change the interest rates on credit balances at any time and will reasonably endeavour to give prior notice of the changes in interest rates. If the client does not receive such prior notice, the bank will not be prevented from adjusting the interest rate.

### **6 CALCULATION AND PAYMENT OF INTEREST ON DEBIT BALANCES**

Interest on debit balances will be reckoned from the date on which the account goes into debit and is calculated daily on the basis of a year of 365 days, whether or not the year is a leap year, and is debited monthly in arrear. Any interest not paid on or before the due date for the payment thereof will bear further interest at the rate applicable to this agreement.

### **7 WITHDRAWALS**

7.1 Funds are available on demand, subject to the following limits:

7.1.1 daily withdrawal limits at ATMs;

7.1.2 withdrawal limits at teller terminals;

7.1.3 cheque deposits that have not been cleared; and

7.1.4 product-specific withdrawal limits.

## 8 DEPOSITS

- 8.1 Subject to product specifications, there is no limit on the number and size of deposits that can be made on the account after the opening deposit has been made.
- 8.2 If any negotiable instrument is deposited on the account, the proceeds will be credited to the account, but the proceeds will be available as cash only when the negotiable instrument has been honoured. If the negotiable instrument is dishonoured, the account will be debited accordingly and the bank will send the negotiable instrument to the client at his risk.
- 8.3 The client agrees that cheques will be cleared by the bank through any clearing system used by clearing banks.
- 8.4 If a cheque deposited by the client is returned unpaid, the bank will inform the client within a reasonable period of time.

## 9 FEES, COSTS AND CHARGES

- 9.1 The bank is entitled to charge and recover fees, costs and charges as stipulated in the pricing brochure or the fees, costs and charges as later agreed with the client, regardless of whether the client transacts on the account or not. Such fees, costs and charges will be debited in accordance with the product specifications. **The client is entitled to obtain a pricing brochure that contains information regarding the fees, costs and charges at any branch of the bank and the client hereby confirms that he has obtained such a pricing brochure and has read and understood the information contained therein.**

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- 9.2 The client will be liable for and must pay the bank the fees, costs and charges as stipulated above. The bank is entitled at its reasonable discretion to vary any fee, cost or charge or the items attracting such fees, costs or charges, provided that, in the event that the Act is applicable to this agreement, no such fee, cost or charge will exceed the maximum amount or no such items attracting such fees, costs or charges will exceed the stipulations of the Act, as prescribed from time to time. 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 the client.
- 9.3 In addition, if the Act is applicable, the client must pay any:
- 9.3.1 default administration charge imposed by the bank to cover administration costs incurred because the client is defaulting on an obligation under the agreement; and
- 9.3.2 collection costs that may be charged by the bank in respect of the enforcement of the client's monetary obligations under the agreement (other than a default administration charge);
- provided that such charges and costs will not (to the extent that the Act applies to the agreement) exceed the maximum default administration charges and collection costs prescribed from time to time in terms of the Act.
- 9.4 Interest at the interest rate applicable to the agreement from time to time will be charged in respect of any fee, cost 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 the rights of the bank pursuant to an act of default.
- 9.5 In addition, and to the extent permitted by the Act (where applicable), all amounts that the bank may pay or incur pursuant to the agreement due to the client's default, including any amount actually disbursed by the bank either when collecting any payment owing by the client or when exercising any of its rights arising out of any breach of the client's obligations in terms of the agreement, including legal costs on the attorney-and-client scale (including tracing fees and any collection commission), will be payable by the client to the bank on demand.
- 9.6 When and if applicable, the pricing discount for the Young Professional Bundle will be valid until the client reaches 30 years of age. The qualifying client will benefit from the reduced monthly fee on the Young Professional Bundle until the client does not qualify. The bank will be entitled to charge the full established professional fees once the discount period has ended. The client agrees that the bank is entitled to change the fees automatically on the applicable date.

## 10 GOVERNMENT DUTIES

All applicable government levies in respect of the use of the account will be debited to the client's account monthly and paid over to the relevant government body.

## 11 NO RIGHT TO OVERDRAW THE ACCOUNT

- 11.1 The client must ensure that there are sufficient funds in the account to pay for any debits against the account.
- 11.2 The account must always have a zero or credit balance. The bank will only grant the client credit if the client applies for a credit facility and this has been approved by the bank subject to separate terms and conditions applicable to the credit facility.
- 11.3 If the bank has not granted the client a credit facility but the account has a debit balance for whatever reason, the full debit balance will be payable immediately. In such instance the bank will charge its standard fees to the account and interest will be levied on the debit balance in terms of clause 6.

## 12 LIABILITY

- 12.1 **Except where damage or loss is occasioned by the wilful misconduct or gross negligence of the bank (or any person acting for or controlled by the bank), the bank will not be liable to the client for any damage or loss that the client may suffer because:**
- 12.1.1 **any person gained unauthorised access to any information or data;**
- 12.1.2 **incorrect information was given to any person, including any credit bureau; and**
- 12.1.3 **there was a delay, failure or malfunction of any ATM, SST or other device (electronic or manual) that the client uses to carry out card transactions with the card.**

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## 13 ALLOCATION OF PAYMENTS

Each payment made by the client in terms of this agreement will be allocated firstly to any due or unpaid interest charges, secondly to any due or unpaid fees or charges, and lastly in reduction of the capital amount outstanding.

## 14 TERMINATION

- 14.1 The client may cancel the agreement without prior notice to the bank, but the bank will, subject to clause 19 hereunder, give reasonable prior notice of its intention to close the account, except where fraud or suspected fraud is occurring or has occurred on the account, in which event the bank may close the account without prior notice.
- 14.2 On termination of the agreement the client's right to use any card that has been issued to him in respect of the account will terminate. The client must immediately return the card to the bank at the address set out in clause 16. The card must be cut into pieces to prevent further use.

## 15 CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

- 15.1 The client's personal information will be treated as confidential and will not be disclosed, except in the following circumstances:
- 15.1.1 when the bank is legally compelled to do so;
- 15.1.2 when it is in the public interest to disclose; and
- 15.1.3 when the bank's interests require disclosure or when disclosure is made at the client's request or with his written consent.
- 15.2 If the client holds a restricted account, the bank will report the client's personal information to BankServ for record-keeping purposes and the client expressly agrees thereto.
- 15.3 The bank may disclose information to credit reference agencies relating to the client's personal debts owed to the bank:
- 15.3.1 if the client has fallen behind with the repayment of his debt and has not made alternative satisfactory arrangements with the bank (if the amount owed or in arrears is in dispute, this fact will also be disclosed but not the amount itself); or
- 15.3.2 if the client has given his written consent.

## 16 ADDRESS FOR LEGAL NOTICE

- 16.1 The parties choose as their addresses for the purposes of the agreement:
- the bank:** Nedbank 135 Rivonia Campus, 135 Rivonia Road, Sandown, Sandton.
- the client:** the last known physical address supplied by the client.
- 16.2 Any legal process to be served on any party may be served at the address specified for such party in clause 16.1 and such party chooses that address as its address for legal notice for all purposes under the agreement.
- 16.3 Any notice or other communication to be given to any party in terms of the agreement will be valid and effective only if it is given in writing.
- 16.4 A notice to any party that is delivered to the party by hand at the address specified for such party in clause 16.1 will be deemed to have been received on the day of delivery, provided it was delivered to a responsible person during ordinary business hours.
- 16.5 Notwithstanding anything to the contrary in this clause 16 a written notice or other communication actually received by any party will be adequate written notice or communication to such party even if the notice was not sent to or delivered at the party's chosen address.
- 16.6 A party may by written notice to the other party change its address or fax number for the purpose of clause 16.1 to any other address (other than a post office box number) or fax number, provided that the change will become effective on the seventh business day after the receipt of the notice.

## 17 LIMITATION IF THE ACT IS APPLICABLE

- 17.1 Clauses 18 and 19 hereunder are only applicable if the Act is applicable to the agreement.

## 18 APPLICATION FOR DEBT REVIEW

- 18.1 Without detracting from or in any manner limiting the bank's right in the event of default, the client's attention is directed to section 86 of the Act, which entitles the client, in certain circumstances, to apply to a debt counsellor in the prescribed manner and form to have the client declared overindebted.
- 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 the bank has, under this agreement, proceeded to take the steps contemplated in clause 19 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 the client appears to be overindebted.
- 18.4 Depending on the findings of the debt counsellor, the application may be rejected or it may be recommend that the client and the respective credit providers voluntarily consider and agree on a plan of debt rearrangement or, if the debt counsellor concludes that the client is overindebted, a proposal may be issued recommending that the magistrate's court make an order with regard to the question of any plan or debt rearrangement, as contemplated in section 86(7) of the Act.
- 18.5 If a recommendation by a debt counsellor is accepted by the client and each credit provider, such recommendation must be recorded in the form of an order and, if it is consented to by the client 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, the client, 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 terms of section 86(7)(c).
- 18.7 If the client is in default under this agreement and this agreement is being reviewed in terms of section 86 of the Act, the bank may give notice to terminate the review in the prescribed manner to the client, the debt counsellor and to the National Credit Regulator contemplated in the Act. Such notice may be given at any time at least 60 business days after the date on which the client applied for the debt review.
- 18.8 If the bank gives notice to terminate a review as contemplated in terms of clause 18.7 and proceeds to enforce this agreement in terms of clause 18, 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 EVENTS OF DEMAND

- 19.1 The following will be events of demand, each of which will be severable and distinct from the others:
- 19.1.1 if the client fails to conduct the account in a manner acceptable to the bank;
  - 19.1.2 if the client allows the account to become overdrawn and fails to rectify such excess on demand;
  - 19.1.3 if the client breaches any condition contained in this agreement, or breaches a condition of any other agreement with the bank (which breach will constitute a breach of this agreement);
  - 19.1.4 if the client commits an act of insolvency, or an act similar to an act of insolvency, as defined in the Insolvency Act of 1936 (as amended) or an act defined in terms of section 344 of the Companies Act of 1973 (as amended), if applicable;
  - 19.1.5 if the client is unable or ceases for any reason whatsoever to conduct the business carried on by it in an ordinary and regular manner, if applicable;
  - 19.1.6 if any material assets of the client are attached under writ of execution; or
  - 19.1.7 if the client is voluntarily or compulsorily placed under judicial management, is sequestrated or has his estate wound up, or enters into any compromise, composition or arrangement with its creditors or any class thereof.
- 19.2 Where an event of demand occurs, the bank may (without limiting any other right the bank may hereby or otherwise acquire) claim immediate repayment of all amounts owing under the agreement from whatever cause arising in connection therewith, and all such amounts will immediately become due and payable, together with interest calculated at the applicable rate and levied as agreed in terms hereof.
- 19.3 No indulgence or extension of time granted by the bank to the client may be deemed to be a waiver of any of the bank's rights.

## 20 REQUIRED PROCEDURE BEFORE DEBT ENFORCEMENT

- 20.1 If the client is in default under this agreement, the bank may:
- 20.1.1 bring the default to the notice of the client in writing and propose that the client 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 the bank may not commence any legal proceedings to enforce this agreement before such notice has been given; or
  - 20.1.2 in circumstances where this agreement is being reviewed in terms of section 86 of the Act, give notice to terminate the review in the prescribed manner to the client, the debt counsellor and the National Credit Regulator at any time at least 60 (sixty) business days after the date on which the client applied for debt review, provided that the requirements set out in this subclause 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.
- 20.2 The bank may approach the court for an order enforcing this agreement only if, at that time, the client is in default and has been in default under this agreement for at least 20 business days and:
- 20.2.1 at least 10 business days have elapsed since the bank delivered a notice to the client as contemplated in clause 20.1.1;
  - 20.2.2 in the case of a notice contemplated in clause 20.1.1, the client has –
    - 20.2.2.1 not responded to that notice; or
    - 20.2.2.2 responded to the notice by rejecting the bank's proposals.
- 20.3 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:
- 20.3.1 the procedures contemplated in clause 20.2 have been complied with;
  - 20.3.2 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
  - 20.3.3 the bank has not approached a court –
    - 20.3.3.1 during the time that the matter was before a debt counsellor, alternative dispute resolution agent, consumer court or the ombud with jurisdiction;
    - 20.3.3.2 despite the client having –
      - 20.3.3.2.1 agreed to the proposal made in terms of section 129(1)(a) of the Act and acted in good faith in fulfilment of that agreement;
      - 20.3.3.2.2 complied with an agreed plan as contemplated in section 129(1)(a) of the Act; or
      - 20.3.3.2.3 brought the payments under this agreement up to date, as contemplated in section 129(1)(a) of the Act.
- 20.4 In any proceedings contemplated in section 130 of the Act, if the court determines that:
- 20.4.1 this agreement is subject to a pending debt review in terms of Part D of Chapter 4 of the Act, the court may –
    - 20.4.1.1 adjourn the matter, pending a final determination of the debt review proceedings;
    - 20.4.1.2 order the debt counsellor to report directly to the court, and thereafter make an order contemplated in section 85(b) of the Act; or
    - 20.4.1.3 if the agreement is the only credit agreement to which the client is a party, order the debt counsellor to discontinue the debt review proceedings, and make an order contemplated in section 85(b) of the Act;
  - 20.4.2 there is a matter pending before the tribunal referred to in clause 20.3.2, as contemplated in section 130(3)(b) of the Act, the court may –
    - 20.4.2.1 adjourn the matter before it, pending a determination of the proceedings before the said tribunal; or
    - 20.4.2.2 order the said tribunal to adjourn the proceedings before it, and refer the matter to the court for determination; or
  - 20.4.3 the agreement is either suspended or subject to a debt rearrangement order or agreement and the client has complied with that order or agreement, the court must dismiss the matter.
- 20.5 The provisions of this clause will apply to the agreement only to the extent that the agreement is subject to the Act.

## 21 JURISDICTION

At the option of the bank any claim arising hereunder may be recovered in any magistrate's court having jurisdiction, irrespective of the amount of the claim, and the client hereby consents to the jurisdiction of that court.

## 22 STATEMENTS

- 22.1 Subject to such an option being available, a statement reflecting all the debit and credit entries as well as the total debit or credit balance, as the case may be, will, on a regular basis and in accordance with product specifications, be mailed to clients who have exercised the option.
- 22.2 At the sole discretion of the bank an additional cost may be levied against the client's account for receiving mailed statements.
- 22.3 If the client has not opted to receive mailed statements, a statement printout may be obtained at the client's branch, at an SST, over the internet or through telephone banking, if and when required.
- 22.4 In the event of overdrawn accounts and if the Act is applicable to the agreement, the bank will provide the client with a statement of account as prescribed by the Act.
- 22.5 Unless otherwise agreed in writing with the client, the bank will provide the client with a monthly statement by post or electronic mail in accordance with the requirements of the Act.
- 22.6 Statements should be checked for accuracy by the client as soon as they are received, and any discrepancies must be reported to the bank within 30 (thirty) days of receipt of the statement.
- 22.7 In the event of a dispute with regard to the items appearing on the statement the bank's records will be proof on the face of it.

## 23 DORMANT ACCOUNTS

- 23.1 An account will become dormant if the client has not performed any debit or credit transactions on his account for such a period as the bank, at its discretion, may determine from time to time. The bank shall continue to charge fees on the account, regardless of whether the client transacts on the account or not.
- 23.2 The client will not be able to transact on a dormant account unless he provides proof of his identity, in which event the account may be reactivated.
- 23.3 The bank may, after sending a notification to the client, at its sole discretion close an account that has been dormant for such a period as the bank may determine from time to time. Prior to closing the dormant account, the bank will send a notification to the client, informing the client that the account will be closed.
- 23.4 If an account has not had any credits paid into it within 90 (ninety) days of the account being opened, the bank may close such account without notifying the client.
- 23.5 Once the dormant account is closed, no interest will accrue to the account.

## 24 CLIENT'S RIGHTS

- 24.1 To the extent that the Act is applicable to this agreement, the client has the right to:
  - 24.1.1 resolve a complaint by way of alternative dispute resolution;
  - 24.1.2 file a complaint with the National Credit Regulator; or
  - 24.1.3 make an application to the tribunal, provided that any such right is exercised in accordance with the Act.
- 24.2 The **National Credit Regulator** can be contacted at:
  - Tel: +27 (0)11 554 2600/0860 627 627
  - Fax: +27 (0)11 554 2871
  - Email: info@NCR.org.za
  - Physical address: 127 15th Road, Randjies Park, Halfway House, 1685
  - Postal address: PO Box 209, Halfway House, 1685
- 24.3 The **National Consumer Tribunal** can be contacted at:
  - Tel: +27 (0)12 683 8140
  - Fax: +27 (0)12 663 5693
  - Email: Registry@nct.org.za
  - Physical address: Ground Floor, Block B, Lakefield Office Park, 272 West Avenue, cnr West Avenue and Lenchen Avenue North, Centurion
  - Postal address: Private Bag X110110, Centurion, 0046
- 24.4 The **Ombud for Banking Services** can be contacted at:
  - Tel: 0860 800 900/+27 (0)11 712 1800
  - Fax: +27 (0)11 483 3212
  - Email: info@obssa.co.za
  - Physical address: 1st Floor, Houghton Place, 51 West Street, Houghton
  - Postal address: PO Box 87056, Houghton, 2041
- 24.5 The client may dispute all or part of any particular credit or debit entered on the account in terms of the agreement by delivering a written notice to the bank, whereupon the bank will give the client 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.
- 24.6 To the extent that the Act applies to this agreement, the bank will advise the client in terms of the Act before any prescribed adverse information concerning the client is reported to a credit bureau and will provide a copy of that information to the client on written request.

## 25 CREDIT BUREAU INFORMATION

- 25.1 To the extent that the Act is applicable to the agreement, the bank hereby informs the client that it supplies consumer credit information to the credit bureaus, and in this regard –

- 25.1.1 the client confirms that the bank may transmit to the credit bureaus data about the application, opening and termination of an account by the client;
- 25.1.2 the client acknowledges that information on non-compliance with the terms and conditions of the agreement is transferred to the credit bureaus; and
- 25.1.3 the credit bureaus provide a credit profile and possibly credit scores on the creditworthiness of the client, subject to the credit record.
- 25.2 The client has the right to have the credit record disclosed and to correct inaccurate information.
- 25.3 The client may contact the credit bureaus at:
- 25.3.1 **TransUnion**
- Tel: 0861 886 466/+27 (0)11 214 6000  
 Fax: 0866 701 737  
 Email: disputeinfo@transunion.co.za  
 Physical address: Wanderers Office Park, 52 Corlett Drive, Illovo, Johannesburg, 2000  
 Postal address: PO Box 4522, Johannesburg, 2000
- 25.3.2 **Experian (Pty) Ltd (Headoffice)**
- Tel: 0861 105 665  
 Email: info@experian.co.za  
 Physical address: Experian House, Ballyoaks Office Park, 35 Ballyclare Drive, Bryanston, 2021  
 Postal address: PO Box 98183, Sloane Park, 2152

## 26 CERTIFICATE

To the extent permitted by the Act, the nature and amount of the client's indebtedness to the bank in terms of the agreement, as well as the interest rate in respect thereof, will at any time be determined and proved by a written certificate purporting to have been signed by a manager of the bank for the time being, whose capacity or authority it will not be necessary to prove, which certificate will, on the mere production thereof, be binding on the client and, on the face of it, be proof of the contents of such certificate and of the fact that such amount is due and payable in any legal proceedings against the client, and will be valid as a liquid document against the client in any competent court.

## 27 GENERAL TERMS

- 27.1 Before opening an account the bank may follow up references or otherwise satisfy itself of the client's identity and suitability as an account holder. The bank may refuse to open an account or accept a deposit.
- 27.2 The client agrees that the bank may combine any or all accounts the client may have with the bank, without notifying the client thereof. However, if the bank combines only some of these accounts, the bank will still have the right to claim from the client any amount in respect of an account that is not part of the combined accounts.
- 27.3 These terms and conditions read with the application, the relevant product specification and pricing brochure (as amended from time to time) and, if applicable, the later agreement with the client about the rates, fees, costs and charges (as amended from time to time) will form the whole agreement between the parties in connection with the client's current account.
- 27.4 Product specifications, as amended by the bank from time to time, will apply to the agreement.
- 27.5 Any latitude, indulgence or extension of time granted by the bank to the client will not constitute a novation or waiver of the bank's rights in terms of these terms and conditions. The failure by any party to enforce any provision of the agreement will not in any way affect that party's right to require performance of the provision at any time in the future.
- 27.6 Any amendment of the terms and conditions will not constitute a novation of the agreement or of any previous obligation of the client to the bank.
- 27.7 The client may not cede, assign or otherwise encumber any of his rights or obligations in and to the account (including the funds held therein) without the bank's prior written consent, which consent may be subject to any terms and conditions stipulated by the bank at the bank's sole discretion.
- 27.8 The agreement will be governed in accordance with the laws of the Republic of South Africa.

## 28 INTERPRETATION

- 28.1 For the purposes of the agreement, unless the context clearly requires otherwise:
- 28.1.1 the singular includes the plural and vice versa;
- 28.1.2 a reference to any one gender, whether masculine, feminine or neuter, includes the other two;
- 28.1.3 any reference to a natural person includes an artificial person and vice versa; and
- 28.1.4 any word or expression defined in clause 1 and expressed in the singular includes the plural and vice versa, and a cognate expression has a corresponding meaning.
- 28.2 All the headings in these terms and conditions are for convenience only and are not to be taken into account for the purposes of interpreting the agreement.

## 29 ACKNOWLEDGEMENT, CONFIRMATION AND CONSENT

- 29.1 **The client warrants that he has fully and truthfully answered all questions and responded to requests for information by the bank relating to the agreement.**
- 29.2 **The client confirms that he understands and appreciates the risks and costs inherent in the agreement, as well as his rights and obligations under the agreement.**
- 29.3 **In the event of non-compliance by the client of the qualifying criteria applicable to the account, the client confirms and acknowledges that the bank has the right to migrate the client to an account where the client does meet the qualifying criteria. Such migration will be communicated to the client and the client will be subject to different terms and conditions.**
- 29.4 **The client confirms and acknowledges that the bank has the right to claim any difference in the pricing applicable to the two accounts from the client, from the date of non-compliance of the qualifying criteria of the account to the date of the migration.**

Initial

Signed at ..... on ..... / / .....  
Place Day Month Year

.....  
Signature of client(s)

.....  
Signature of client(s)

Capacity (if applicable) .....

Capacity (if applicable) .....