

NEDBANK GENERAL TERMS AND CONDITIONS

(GENERAL T&Cs)



- These General T&Cs are applicable where the Client, Authorised Person(s) and Mandated Person(s) have established or intend to establish a business relationship and/ or have applied for, or intend to apply for Service(s),
- In the event that the National Credit Act (the "NCA") applies to any transaction or agreement between Nedbank and a Client and any of these General T&Cs are in conflict with any provisions of the NCA, then such conflicting terms and conditions shall not apply to such transaction or agreement.
- **The Client should pay special attention to the terms in bold as they may involve some risk on the part of the Client or limited responsibility for Nedbank.**

1. DEFINITIONS AND INTERPRETATION/GLOSSARY

1.1. Words in these terms and conditions have the following meanings:

- 1.1.1. **Authorised Person** means the person(s) duly authorised by the Client in the prescribed Resolution to act as its representative(s) among other things and to establish a business relationship and/or apply for Services with Nedbank as contemplated in clause 2 below;
- 1.1.2. **Authentication Mechanism** means any security mechanism including but not limited to a PIN, password, user number, certificate and/or devices used to identify an Authorised Person or a Mandated Person;
- 1.1.3. **Client** means the person that has established or intends to establish a business relationship with Nedbank (the applicant), and may mean the co-applicant, spouse of applicant if married in community of property, legal guardian of applicant, surety or guarantor (where applicable);
- 1.1.4. **Confidential Information** means any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is or ought reasonably to be identifiable as confidential and/or proprietary to the Disclosing Party or which is provided or disclosed in confidence, and which the Disclosing Party or any person acting on behalf of the Disclosing Party may disclose or provide to the Receiving Party or which may come to the knowledge of the Receiving Party by whatsoever means. Without limitation, the Confidential Information of the Disclosing Party shall include the following even if it is not marked as being "confidential", "restricted" or "proprietary" (or any similar designation) –

- 1.1.4.1. information relating to the Disclosing Party's business activities, business relationships, products, services, processes, data, and Staff, including agreements to which the Disclosing Party is a party;
- 1.1.4.2. the Disclosing Party's technical, scientific, commercial, financial and market information, methodologies, formulae and trade secrets;
- 1.1.4.3. the Disclosing Party's architectural information, demonstrations, plans, designs, drawings, processes, process maps, functional and technical requirements and specifications, and the data relating thereto;
- 1.1.4.4. Intellectual Property that is proprietary to the Disclosing Party or that is proprietary to a third party, including but not limited to Third Party products and data relating to the customers of the Disclosing Party; and
- 1.1.4.5. where the Disclosing Party is Nedbank, demographic and other data relating to any Staff or potential Staff of Nedbank, which data may be disclosed to the Supplier by Nedbank in order for the Supplier to perform the Services for Nedbank in terms of this Agreement.

Confidential Information excludes information of data which –

- 1.1.4.6. is lawfully in the public domain at the time of disclosure thereof to the Receiving Party; or
- 1.1.4.7. subsequently becomes lawfully part of the public domain by publication or otherwise; or
- 1.1.4.8. is or becomes available to the Receiving Party from a source other than the Disclosing Party which is lawfully entitled without any restriction on disclosure to disclose such Confidential Information to the Receiving Party; or
- 1.1.4.9. is disclosed pursuant to a requirement or request by operation of law, regulation or court order but then only to the extent so disclosed and then only in the specific instance and under the specific circumstances in which it is obliged to be disclosed;

provided that –

- 1.1.4.10. the onus shall at all times rest on the Receiving Party to establish that such information falls within such exclusions; and
- 1.1.4.11. the information disclosed will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in a Party's possession; and

- 1.1.4.12. any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in a Party's possession, but only if the combination itself is in the public domain or in a Party's possession. The determination of whether information is Confidential Information shall not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trademarks or otherwise;
- 1.1.5. **Electronic Signature** means an electronic signature contemplated in Section 1 of the Electronic Communications and Transaction Act 25 of 2002 as amended and implemented in accordance with Clause 18.
- 1.1.6. **Fees** means charges, costs, service and transaction fees, administration charges and any other amount(s) payable by the Client to Nedbank in consideration for the Services;
- 1.1.7. **Insolvency Event** means the occurrence of any of the following events in relation to the Client –
- 1.1.7.1. the Client is wound up, liquidated, deregistered or placed under business rescue, in any such event whether provisionally or finally and whether voluntary or compulsorily, or the Client passes a resolution providing for such an event and/or taking any procedural steps in relation to such an event; or
- 1.1.7.2. the Client becomes insolvent or commits any act which is, or if it were a natural person, would be an act of insolvency as contemplated in the Insolvency act, 1936;
- 1.1.8. **Intellectual Property** means any know-how (that is not in the public domain), invention, patent, design, logo, trademark, copyright material, multimedia works and computer software programmes, domain names and URLs, databases and rights in databases, goodwill, processes, methodology and all other intellectual property that may exist anywhere in the world and any applications for registration of such intellectual property;
- 1.1.9. **General T&Cs** means these Nedbank General Terms and Conditions, as may be amended from time to time, including all notices and correspondence that Nedbank may send to the Client from time to time;
- 1.1.10. **Mandated Persons** means any person, to whom the Authorised Person has delegated its powers and authority to take up and/or perform any act in respect of any Service;
- 1.1.11. **NCA** means the National Credit Act 34 of 2005, as amended from time to time;

- 1.1.12. **Nedbank** means Nedbank Group Limited Registration number, 1966/010630/06, including Nedbank Limited Registration number 1951/0000009/06, and any other direct or indirect South African subsidiaries thereof;
- 1.1.13. **Nominated Account** means the Nedbank account(s) selected by the Client which may be utilised to credit amounts due to the Client and to debit any Fees due by the Client to Nedbank;
- 1.1.14. **Parties** means the Client and Nedbank and **Party** means any one of them;
- 1.1.15. **Personal Information** means personal information as defined in the Protection of Personal Information Act 4 of 2013;
- 1.1.16. **Process/Processing** has the same meaning assigned thereto in the Protection of Personal Information Act 4 of 2013;
- 1.1.17. **Resolution** means a prescribed form appointing the Authorised Person, that is signed by the natural person(s) acting on behalf of the Client where the Client is juristic person;
- 1.1.18. **Sanctions** means trade, economic or financial sanctions, laws, regulations, embargoes or restrictive measures administered, enacted or enforced by any Sanctioning Body;
- 1.1.19. **Sanctioning Body** means any one or a combination of the following entities:
- 1.1.19.1. the Office of Foreign Assets Control of the Department of Treasury of the United States of America;
- 1.1.19.2. the United Nations Security Council;
- 1.1.19.3. the European Union or any participating member state of the European Union;
- 1.1.19.4. Her Majesty's Treasury of the United Kingdom; and
- 1.1.19.5. any other sanctions authority body in South Africa or of a foreign country in whose currency Nedbank may facilitate payment.
- 1.1.20. **Sanctions List** means the lists or specially designated national entity or designated natural persons or juristic entities (or equivalent) held by a Sanctions Body, and/or any other sanctions lists that Nedbank may from time to time deem necessary or be required to screen, verify and process transactions against;
- 1.1.21. **Sanctioned Country** means a country which is subject to general sanctions or embargo by a Sanctioning Body;

- 1.1.22. **Sanctioned Transaction** means either the use by a Client of amounts in a Nedbank account for the purpose of financing directly or indirectly, in whole or in part, the activities of any, which is on a Sanctions list or which is in a Sanctioned Country, and/or the contribution or making available of amounts paid from an account to any person, and such person intends to use such funds for the purpose of financing directly or indirectly, in whole or in part, the activities of any person which is in a Sanctioned Country and/or is on a Sanction List, in each case to the extent that such financing or provision of funds would be prohibited by Sanctions;
- 1.1.23. **Service(s)** means any and all products and/or services provided by Nedbank from time to time, including the Nedbank accounts linked to such products and services;
- 1.1.24. **Service(s) Terms and Conditions** means the terms and conditions relating to Service(s) including where applicable, these General T&Cs, any manuals that contain standards, rules and procedures in relation to the Services;
- 1.1.25. **Tax** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any Tax);
- 1.1.26. **Tax Deduction** means a deduction or withholding for or on account of Tax from a payment under this General T&Cs or any Service.
- 1.2. In these General T&Cs and any agreement or document pertaining to the Services:
- 1.2.1. clause headings are for reference only and are not to be used in the interpretation of the General T&Cs;
- 1.2.2. no provision will be construed or interpreted against a Party by reason of such Party having or being deemed to have drafted such provision;
- 1.2.3. unless the context indicates a contrary intention, an expression that denotes:
- 1.2.3.1. **applicable law** will include all and any national or international statutes, subordinate legislation and common law, regulations, directives, codes of practice, circulars, guidance notices, position papers, judgements and decisions of any competent authority, or any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.2.3.2. **business day** means Monday to Friday, excluding a Saturday, Sunday or any proclaimed public holiday in South Africa;

- 1.2.3.3. any **gender** includes the other genders;
- 1.2.3.4. a **person** includes a natural or juristic person (whether registered or unregistered) and
- 1.2.3.5. the **singular** includes the **plural** and vice versa;
- 1.2.4. any substantive provision conferring rights or imposing obligations on any of the Parties and appearing in any of the definitions in clause 1.1 or elsewhere in the General T&Cs will be given effect to as if it were a substantive provision within the body of the General T&Cs;
- 1.2.5. the use of the word including followed by specific examples will not be construed as limiting the meaning of the general wording preceding it, and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example;
- 1.2.6. any reference to **days** will be construed as a reference to calendar days. Unless specifically otherwise provided, any number of days prescribed is determined by excluding the first and including the last day or, where the last day would otherwise falls on a Saturday, Sunday or public holiday, the next Business Day; and
- 1.2.7. a reference to legislation is a reference to legislation as at the date of enactment of the legislation or as it is amended or re-enacted from time to time, and includes all regulations issued under that legislation.

2. BUSINESS RELATIONSHIP

- 2.1. The Client has established or intends to establish a business relationship with Nedbank. The business relationship is established once the Client has complied with all applicable laws and Nedbank's requirements.
- 2.2. Once the Client has established a business relationship with Nedbank, the Client shall be entitled to Services.
- 2.3. To the extent permitted by applicable laws Nedbank may terminate the Services Terms and Conditions either immediately or on reasonable prior written notice.

3. SERVICES

- 3.1. The Authorised Person or Mandated Person (if applicable) may select Services that the Client requires.

- 3.2. The Client will be obliged to access and use a Service strictly in accordance with the provisions of the applicable Services Terms and Conditions and these General T&Cs.
- 3.3. In the event of conflict or inconsistency between the General T&Cs and/or the Services Terms and Conditions, the provisions of the Services Terms and Conditions will prevail.
- 3.4. Any request or application by a Client for Services may, at the sole discretion of Nedbank, be declined.
- 3.5. To the extent that any applicable law does not apply, Nedbank may -
 - 3.5.1. at any time and with reasonable prior notice to the Client amend, suspend and/or withdraw any of the Services.
 - 3.5.2. amend the General T&Cs by posting the amended version on the link provided and simultaneously or as soon as possible thereafter, notify the Client.

4. FEES AND TAXES

- 4.1. The Client must pay all Fees when due to Nedbank.
- 4.2. The Client authorises Nedbank to debit any Fees due and or not paid when due against any of the Client's Nedbank accounts.
- 4.3. Interest on all overdue Fees will accrue at a rate not exceeding twice the ruling South African Reserve Bank repurchase rate from time to time plus 10%.
- 4.4. Unless otherwise specified, all Fees set out in each of the Services Terms and Conditions are exclusive of value-added tax and other statutory fees and charges. The Client must pay all value-added tax and such other statutory fees and charges.
- 4.5. Nedbank may from time to time adjust the Fees. The Client will receive reasonable prior notification of any adjustment to the Fees.
- 4.6. Should the Client wish to change its Nominated Account it must provide Nedbank with prior written request to do so.

5. CLIENT'S OBLIGATIONS

- 5.1. In order for the Client to use any of the Services, the Client must ensure that its electronic information systems and hardware such as its computers, tablets, smartphones and the like are able to communicate with Nedbank's electronic information systems.

- 5.2. The Client must comply with Nedbank's specifications concerning the installation and configuration of the Client's electronic information systems and any specifications set out in the Services' Terms and Conditions.
- 5.3. It is the Client's responsibility to maintain all applicable software licence arrangements directly with the third-party licensors of any software, to pay any applicable licence fees and to procure all necessary telecommunications lines, hardware, software and consumable materials (as well as all necessary updates or upgrades to any of the foregoing) required for the Client's access to and use of the Services.
- 5.4. The Client must:
 - 5.4.1. adhere to the operating, maintenance and security requirements and procedures (including encryption standards) required by Nedbank and must ensure that its electronic information systems are free from destructive programmes including, without limitation, any viruses, worms and spyware;
 - 5.4.2. adhere to all applicable laws and Services Terms and Conditions when using the Services;
 - 5.4.3. ensure the integrity, safekeeping and confidentiality of all communication lines, data and other Confidential Information;
 - 5.4.4. ensure the integrity, safekeeping and confidentiality of Authentication Mechanisms and take adequate steps to ensure that its employees do not share Authentication Mechanisms with any other persons; and
 - 5.4.5. ensure that the Services are not accessed or used, and that no other relevant functions are performed, by anyone other than persons authorised to do so.
- 5.5. The Client acknowledges that the responsibility of safeguarding the Authentication Mechanisms lies solely with the Client. Except to the extent that Nedbank acted with gross negligence or fraudulent intent, Nedbank will not be liable for any costs incurred or loss or damage suffered by the Client, relating to or arising from the loss, theft, use or misuse of any Authentication Mechanism after delivery thereof to the Client;
- 5.6. The Client must, on becoming aware of any breach of the confidentiality or security obligations or the loss or theft of any Authentication Mechanisms, immediately advise Nedbank thereof;

- 5.7. The Client must immediately advise Nedbank of any error or inaccuracy contained in any system-generated electronic confirmation issued by Nedbank in relation to a transaction executed in terms of a Client's instruction. Nedbank reserves the right to retract or amend such confirmation.
- 5.8. Nedbank will not be obliged to reverse any of its actions following any lawful instruction given to Nedbank by the Client.
- 5.9. Nedbank will be entitled to reverse any amount incorrectly credited to the Client's account.
- 5.10. Nedbank may set off any amount due and payable by Nedbank to the Client against any amount due and payable by the Client to Nedbank. The Client must immediately pay any net amount that it owes to Nedbank after set-off.

6. UNDERTAKINGS

The Client unconditionally and irrevocably undertakes, in favour of Nedbank, for the duration of the Services:

- 6.1. **to advise Nedbank in the event that it materially changes its nature or the nature of its business and/or ownership from that previously advised to Nedbank;**
- 6.2. **to promptly notify Nedbank in writing of any Insolvency Event occurring / occurred or commencing / commenced in respect of the Client;**
- 6.3. **to promptly notify Nedbank, in writing, of receipt by the Client of notices from the Companies and Intellectual Property Commission ("CIPC") in terms of sections 22(2) and 22(3) of the Companies Act regarding reckless trading or trading under insolvent circumstances.**

7. WARRANTIES AND REPRESENTATIONS

The Client and all natural persons signing the Resolution on behalf of the Client hereby represents and warrants in favour of Nedbank that -

- 7.1. **They have the necessary capacity, powers and authority to enter into the business relationship, the General T&Cs, the Services Terms and Conditions and/or any other documents or forms pertaining thereto;**
- 7.2. **the Authorised Persons have been duly authorised to enter into a business relationship with Nedbank, elect Services with and sign and effect any transaction on behalf of the Client;**
- 7.3. **the Mandated Persons are authorised to sign and effect any further Service and/or transaction on behalf of the Client;**

- 7.4. **the Client will not conclude any Sanction Transaction with a person on the Sanctions List or a person located in any Sanctioned Country, and will ensure that the Client's accounts with Nedbank are not used for a Sanctioned Transaction;**
- 7.5. **the Client will for the duration of its business relationship, these General T&Cs and any Services Terms and Conditions, comply with all applicable laws;**
- 7.6. **all information and documentation provided to Nedbank by the Client or by anyone on the Client's behalf concerning the Client or its business is true and correct in all material aspects and is accurate and up-to-date for all purposes, including that of Financial Intelligence Centre Act 38 of 2001, US Foreign Account Tax Compliance Act and/or Common Reporting Standards as specified and required under the Tax Administration Act;**
- 7.7. **to the extent applicable, it will at all times maintain its registration with any applicable registering body, in good standing; and**
- 7.8. **it is not subject to an Insolvency Event.**

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1. Nedbank will, at all times, retain any and all Intellectual Property rights to the Services and other software and documentation used to render the Services.
- 8.2. The Client may not duplicate, reproduce, decompile, reverse-engineer, create derivative works from or in any way tamper with any of Nedbank's Intellectual Property or any device, certificate, software or documentation that may be supplied to it by Nedbank.
- 8.3. The Client represents and warrants that it will, at all times, access and use the Services and perform its obligations under this General T&Cs in a manner that does not constitute an infringement or misappropriation of any Intellectual Property or other proprietary rights of Nedbank or any third party.

9. TAX AND COMPLIANCE

- 9.1. All payments made by the Client shall be without any Tax Deduction, unless a Tax Deduction is required by applicable law.
- 9.2. If a Tax Deduction is required by applicable law to be made by the Client, the amount of the payment due from the Client to Nedbank shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due to Nedbank if no Tax Deduction had been required.

10. SANCTIONS, MONEY-LAUNDERING AND COUNTERTERRORIST FINANCING

10.1. The Client acknowledges and agrees that Nedbank -

10.1.1. is obliged to comply with all international and local anti-money-laundering, counterterrorist financing, Sanctions and prohibited-business-activity laws, regulations, policies and requirements;

10.1.2. is obliged to conduct the necessary due diligence in respect of all clients and accounts to ensure that they are not on any Sanctions List, not located in any Sanctioned Country and that the Client's accounts are not used to directly or indirectly finance or fund a Sanctioned Transaction;

10.1.3. is entitled to screen, verify and process all Client and related information and to monitor all information, instructions and transactions by and on behalf of the Client on a continuous basis.

10.1.4. is entitled to immediately close any account used to directly fund or finance a Sanctioned Transaction.

10.2. The Client further acknowledges and agrees that –

10.2.1. the performance of the obligations as set out in clause 10.1 above, may result in the prohibition, limitation or delay in the execution of instructions, transactions and Services, and even in the suspension of accounts and the declining or termination of any transaction, Service or the termination of General T&Cs. To the extent permissible in applicable law, Nedbank shall advise the Client of any action it intends to take;

10.2.2. Nedbank nor its employees, officers, or directors, shall be liable for any direct, indirect or consequential loss, damage, cost or expense whatsoever that may be suffered or incurred by the Client as a result of, arising from or relating to any such prohibition, limitation, delay, decline or termination due to the implementation of this clause 10.

11. PERSONAL INFORMATION

11.1. The Client acknowledges and agrees that, subject to applicable laws, -

11.1.1. Nedbank may share information concerning the Client's accounts with credit bureaux;

11.1.2. credit bureaux may provide a credit profile and possible credit score on the creditworthiness of the Client. The Client has the right to contact such credit bureaux to have its credit record disclosed and to correct any inaccurate information

- 11.2. The Client acknowledges and consents thereto that Nedbank may:
- 11.2.1. make enquiries to confirm and verify information provided by the Client to Nedbank and generally making whatever enquiries it deems necessary, for purposes of providing Services to the Client, from any source whatsoever;
 - 11.2.2. seek information from any credit bureau when assessing the Client's application and at any time during the existence of the business relationship and these General T&Cs
 - 11.2.3. process the Personal Information of the Client to enter into the business relationship, and for purposes of maintaining and providing Services to the Client, including any benefits attached to the Services and complying with the instructions of the Client;
 - 11.2.4. disclose the Personal Information of the Client to persons involved in providing the whole or any aspect of the Services;
 - 11.2.5. disclose the Personal Information of the Client contained in the application form, and any other documentation in relation to any of the Client's accounts to other persons in Nedbank, if the Client has taken up or applied for any Service at any other entity within Nedbank in order for such entities to assess, monitor and market to the Client application and in order to comply with applicable laws related to customer due diligence in that jurisdiction;
 - 11.2.6. process and disclose the Client's Personal Information for purposes of the prevention, detection and reporting of *inter alia* fraud and criminal activities, the identification of the proceeds of unlawful activities and the combating of money laundering activities;
 - 11.2.7. transfer the Client's Personal Information cross-border, to the extent required to provide the Services to the Client or fulfil any of the Client's instructions to Nedbank, to a third party with whom Nedbank has entered into appropriate confidentiality undertakings for the Processing of the Personal Information by that third party;
 - 11.2.8. process and report on the Personal Information of the Client to comply with an obligation imposed by applicable laws on Nedbank; and
 - 11.2.9. provide the Client's financial information to any person who has agreed to provide security for the indebtedness of the Client;
 - 11.2.10. Nedbank may in terms of South African tax legislation provide the South African Revenue Service with Client information and may exchange information with tax authorities of other countries.

12. EVENTS BEYOND THE CONTROL OF NEDBANK

- 12.1. Nedbank will not be liable for delays or failure to perform any of its obligations in terms of the General T&Cs resulting from acts beyond the reasonable control of Nedbank. Such acts include, without limitation, acts of God, strikes, lockouts, riots, acts of war, civil disorder, rebellions or revolutions in any country, epidemics, acts of terrorism, vandalism or sabotage, governmental regulations imposed after the fact, communication line failures, power and telecommunications failures, earthquakes, fire, floods or other disasters ("Force Majeure Event").
- 12.2. If Nedbank is affected by a Force Majeure Event, where possible, it will notify the other Party thereof.

13. NO LIABILITY AND INDEMNITY

- 13.1. **Except to the extent that Nedbank acted with gross negligence or fraudulent intent, Nedbank shall not be liable for, and the Client specifically indemnifies Nedbank against and holds it harmless from all demands, claims, actions, losses and damage of whatever nature that may be brought against Nedbank or that Nedbank or the Client may suffer or incur arising from:**
- 13.1.1. **incorrect information furnished by the Client or on the Client's behalf; and**
- 13.1.2. **the use of any Service and/or the breach of the provisions of the General T&Cs and the Services Terms and Conditions by the Client (whether acting personally or through any Authorised Person or Mandated Person);**
- 13.1.3. **any theft, fraud or other unlawful activity or any negligent, wilful or fraudulent misconduct of the Client, any Authorised Person or Mandated Person,**
- 13.1.4. **any costs incurred by Nedbank in enforcing any provision of the General T&Cs, the Services Terms and Conditions or costs incurred in defending any legal action brought against Nedbank as a result of the Client having access to the Services;**
- 13.1.5. **any instruction provided by the Client to Nedbank, including without limitation any incorrect, illegible, incomplete or inaccurate information or data;**
- 13.1.6. **any inadvertent delays in accessing or using the Services;**
- 13.1.7. **any use, misuse, abuse or possession of any software used to access the Services including, without limitation, any operating system software, browser software, third-party software or any other software packages or programs;**

- 13.1.8. any unauthorised or unlawful access to the Client's accounts or data or any loss, destruction or theft of or damage to any of the Client's or Nedbank's data or equipment;
- 13.1.9. any fluctuation in exchange rates, interest rates or values applicable to foreign exchange transactions, money market transactions or any other transaction conducted through the use of the Services;
- 13.1.10. the Client's failure to comply with any of the Client's obligations set out in the General T&Cs, the Services Terms and Conditions together with any banking and security procedures specified by Nedbank, including its security and technical procedures and requirements;
- 13.1.11. malfunctions, distortion, interruptions, failure, system glitches, bugs or defects or the unavailability of any hardware, software or equipment, communication links, third-party facilities or systems, or any security breaches caused by the Client or a third party or the inability of a third party to process a transaction;
- 13.1.12. a network breakdown, system failure or equipment malfunction, or by the destruction of or damage to facilities of the Client caused by power failures or similar occurrences;
- 13.1.13. false, fraudulent or altered instructions, mandates, consents, commitments and the like that are alleged to be given by the Client by any means whatsoever;
- 13.1.14. misplacement or loss of any instructions or notices sent to Nedbank by electronic means and delay in acting within a reasonable period upon any instruction or notices sent to Nedbank by electronic means;
- 13.1.15. any lack of or defect in authority by the Client to represent or act on behalf of any third party for the purposes of the General T&Cs or the Services Terms and Conditions;
- 13.1.16. the Client acting outside of the mandate of a third party's authority.
- 13.1.17. the Client's use of an Electronic Signature to sign forms and accept these General T&Cs.
- 13.2. The Client acknowledges that –
 - 13.2.1. there are inherent shortcomings in telephonic, fax and/or email instructions (such as that it can be delayed, mislaid, tampered with, intercepted, abused, be illegible or fraudulently used by outsiders, or that there can be other security breaches); and
 - 13.2.2. Nedbank cannot verify that any instruction sent by these means has indeed been sent by the Client; and

- 13.2.3. **Nedbank is under no obligation to confirm receipt of any instructions by telephone, fax or email, and the Client remains responsible for ensuring that instructions are received by Nedbank correctly and timeously.**
- 13.3. **The Client therefore indemnifies Nedbank and/or employees against any loss or damage caused directly or indirectly by instructions given by telephone, fax and/or email, including loss or damage brought about by or in relation to, among others, events beyond Nedbank's control, malfunctions, delays in the execution of instructions and failures or the unavailability of any hardware, software or equipment.**
- 13.4. **To the extent permissible in law –**
- 13.4.1. **any demand, claim or action arising against Nedbank in connection with these General T&Cs, the Services Terms and Conditions and/or any Services (whatever the basis of the claim) will be limited to claims for direct damage only; and**
- 13.4.2. **Nedbank shall not be liable for any special, indirect or consequential damage of whatever nature.**
- 13.5. **Except to the extent that Nedbank acted with gross negligence or fraudulent intent, Nedbank shall not be liable for any direct, indirect, special, incidental or consequential losses or damages which the Client may suffer or incur for any reason whatsoever.**

14. BREACH

To the extent that the NCA does not apply, where a breach of any of the General T&Cs and/or the Services Terms and Conditions occur, without limiting any other right Nedbank may have, Nedbank may, at its sole discretion:

- 14.1. claim specific performance;
- 14.2. terminate any applicable Service;
- 14.3. suspend the availability of any one or more of the Services;
- 14.4. conduct an immediate review of the Client's obligations to Nedbank, in which event the Client must supply Nedbank with any documentation or information required to complete this review;
- 14.5. restrict the Client's access to the Services to limits considered acceptable by Nedbank;
- 14.6. increase the interest rate applicable to one or more of the Services, which increased rate will not exceed the default interest rate;

- 14.7. require that the Client supply sufficient additional security (which the Client will be obliged to provide within the period set out in the relevant notice); and/or
- 14.8. do any combination of any of the above.

**15. ADDRESSES FOR DELIVERING CORRESPONDENCE, LEGAL NOTICES AND PROCESS
(DOMICILIUM CITANDI ET EXECUTANDI)**

15.1. The Parties choose the following addresses as their address for the service of all notices and processes and execution in connection with the General T&Cs.

15.1.1. For Nedbank: 135 Rivonia Road, Sandown, Sandton 2196

15.1.2. For the Client: the last physical address supplied by the Client.

which addresses may be changed to any other physical address in South Africa by not less than 10 Business Days' prior written notice to the other Parties.

15.2. All notices addressed to any of the Parties at its latest address notified by it to the other Parties will be deemed to have been received, unless the contrary is proved:

15.2.1. on the date of delivery if delivered by hand; or

15.2.2. 10 Business Days after the date of posting if sent by prepaid registered post;

15.3. Any communication, with the exception of court process documentation, required or permitted to be given will be valid and effective only if in writing but it will be competent to communicate by e-mail by sending an email to the Party's last known email address. The Parties agree that they may correspond via email during the currency of this Agreement for routine operational reasons, but that no formal notice, demand or request required in terms of this Agreement may be given or concluded via email.

16. GENERAL

16.1. The Client will not cede assign or transfer the benefits or obligations of all or any part of these General T&Cs to any other party without obtaining the prior written consent of Nedbank.

16.2. Nedbank may cede and/or delegate any or all of its rights and/or obligations under the General T&Cs to any third party. The Client consents to any splitting of claims that arises or may arise as a result of such cession and/or delegation.

16.3. The General T&Cs are deemed to be, in respect of each part, entire, separate, severable and separately enforceable in the widest sense from the Services Terms and Conditions. Should any

provision be found by any competent court to be defective or unenforceable for whatever reason, the remaining provisions will continue to be of full force and effect.

- 16.4. Any provision of, or the application of any provision of the General T&Cs that is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.
- 16.5. Any provision of the General T Cs that contemplates performance or observance of any of the Parties' obligations contained herein subsequent to any cancellation or termination thereof will survive any cancellation or termination of the General T&Cs and will continue to be of full force.
- 16.6. No failure or delay by Nedbank in exercising any right, power or privilege under the General T&Cs will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further privilege thereof or the exercise of any other right, power or privilege.
- 16.7. The General T&Cs may be executed in one or more counterparts, each of which is deemed to be original, and all of which together constitute one and the same agreement at date of signature of the Party last signing one of the counterparts.
- 16.8. The business relationship and General T&Cs are governed by and must be construed in accordance with the laws of the Republic of South Africa
- 16.9. The Client irrevocably waives any immunity in respect of its obligations under the General T&Cs or any Service that it may acquire from the jurisdiction of any court or any legal process for any reason including the service of notice, attachment before judgment, perfection or execution.
- 16.10. The use of any expression in the General T&Cs covering a process available under South African law, (without limitation *eiusdem generis*) shall, if the Client is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.
- 16.11. The General T&Cs constitute the whole of the agreement between the Parties relating to the subject matter thereof and, save as otherwise provided therein, no amendment, alteration, addition, variation or cancellation will be of any force or effect, unless it is in writing and it has been agreed to by the Parties thereto acting through their duly authorised representatives.
- 16.12. To the extent permissible in law, and except to the extent that the NCA applies, all legal fees, costs, charges and disbursements (on a scale as between an attorney and own client) incurred by Nedbank in enforcing any of the provisions of the General T&Cs , tracing the Client and/or in collecting or endeavouring to collect all or any amounts payable by the Client to Nedbank in terms of the General

T&Cs or otherwise, and all collection commissions and fees and charges of a like nature, will be for the account of the Client and will be payable on demand.

- 16.13. The nature and amount of the Client's obligation and the applicable interest rate will be determined and proved by a certificate or any other written evidence ('Certificate') purporting to have been signed by a Nedbank manager whose capacity or authority does not have to be proved. Unless the contrary is proved, the Certificate will on the production thereof be binding and be prima facie proof of the content thereof and of the fact that the amount is due and payable. The Certificate will be valid as a liquid document (alternatively proof of a liquidated amount) in any competent court or for any other purpose.

17. SIGNATURE

- 17.1. The Client and Authorised Person(s) (*where applicable*) are required to sign the Client Information Form and where applicable the application for Service(s) before a business relationship will be established.
- 17.2. The Client and Authorised Person(s) may elect to use a handwritten or Electronic Signature to effect 17.1 above.
- 17.3. Where the Client is a juristic person, the natural person(s) authorised to sign the Resolution may elect to use a handwritten or Electronic Signature to sign the Resolution.
- 17.4. All natural persons authorising a Resolution will receive a notification on his/her mobile phone and will be required to select YES to the notification.
- 17.5. By selecting YES and signing the Client Information form the Client and Authorised Person(s) where applicable agree to be bound by these General T&Cs.
- 17.6. Where applicable, the Authorised Person(s) will be required to accept their appointment as Authorised Person(s) using a handwritten or Electronic Signature.
- 17.7. Where the Client and the Authorised Person(s) elect to use an Electronic Signature, he/she/they will be required to select YES to the notification received on their mobile phone.
- 17.8. By selecting YES timeously, the Client:
- 17.8.1 indicates the intention to enter into a business relationship with Nedbank;
 - 17.8.2 accepts these General T&Cs;
 - 17.8.3 agrees to proceed with the application(s) for Service(s).
- 17.9. By selecting NO or not responding timeously, the Client:
- 17.9.1 indicates the intention not to enter into a business relationship with Nedbank;

- 17.9.2 the application(s) for Service(s) will lapse;
- 17.10. The Client and Authorised Person(s) agree that the Electronic Signature will be the legally binding equivalent of a handwritten signature and that the Electronic Signature will have the same validity and meaning as a handwritten signature.
- 17.11. The Client and Authorised Person(s) (where applicable) may not at any time in the future repudiate the Electronic Signature or claim that it is not legally binding.
- 17.12. The Client and Authorised Person(s) agree that the words “electronically signed” together with the unique reference number appearing on Client Information form or any application for Service(s) shall constitute prima facie proof of the Electronic Signature.