

entered into between **NEDBANK NAMIBIA LIMITED** Reg No 73/04561

and Reg No

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words bear the following meanings:

1.1.1 **'Agreement'** means this agreement, including the schedules to this Agreement as each may be substituted from time to time;

1.1.2 **'Available Balance'** means the actual balance available for electronic transfer by the client, and includes any credit up to the limit the bank has approved in favour of the client;

1.1.3 **'Business Day'** means any day (other than a Saturday, Sunday or a proclaimed public holiday in Namibia);

1.1.4 **'Client'**
means
registration number
a company registered in accordance with the laws of the Republic of Namibia ;

1.1.5 **'Effective Date'** means the date on which the last Party hereto signs this Agreement;

1.1.6 **'Intellectual Property'** means any know-how (which is not in the public domain), invention, patent, design, trademark, copyright material, goodwill, processes, methodology and all other identical or similar intellectual property as may exist anywhere in the world and any applications for registration of such intellectual property, including all trademarks, designs, graphics, terms and conditions and the glossary displayed on Nedbank's websites via which the Services are provided;

1.1.7 **'Nedbank'** means Nedbank Namibia Limited, registration number 73/04561, a company with limited liability and a bank registered in accordance with the laws of the the Republic of Namibia.

1.1.8 **'Parties'** means the parties to this Agreement;

1.1.9 **'Services'** means the electronic transactional banking services provided by Nedbank to the Client in terms of this Agreement.

1.2 In this Agreement:

1.2.1 clause headings are for convenience and are not to be used in the interpretation of this Agreement;

1.2.2 no provision shall be construed or interpreted against a Party by reason of such Party having or being deemed to have structured or drafted such provision;

1.2.3 unless the context indicates a contrary intention, an expression which denotes:

1.2.3.1 any gender includes the other genders;

1.2.3.1.1 a natural person includes a juristic person and vice versa; and the singular includes the plural and vice versa;

1.2.4 any substantive provision conferring rights or imposing obligations on a Party and appearing in any of the definitions in clause 1.1 or

elsewhere in this Agreement shall be given effect to as if it were a substantive provision within the body of this Agreement;

1.2.5 terms other than those defined within this Agreement shall be given their plain English meaning, and those terms, acronyms and phrases known in the information technology industry shall be interpreted in accordance with their generally accepted meanings;

1.2.6 where figures are referred to in numerals and words, and there is a conflict between the two, the words shall prevail, unless the context indicates a contrary intention;

1.2.7 the word **'clause'** refers to clauses of this Agreement; and

1.2.8 any reference to **'days'** shall be construed as a reference to calendar days unless qualified by the word **'business'**, in which instance the definition of Business Day shall apply. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a Saturday, Sunday or public holiday, the next Business Day.

2 COMMENCEMENT AND DURATION

2.1 This Agreement shall commence on the Effective Date and shall continue for a period of 2 (two) years as from the Effective Date ('the Initial Period'), unless terminated earlier in accordance with this Agreement..

2.2 Either Party may terminate this Agreement on 30 (thirty) days' written notice to the other Party before the expiry of the Initial Period.

2.3 If the Agreement is terminated by the Client prior to the expiry date of the Initial Period the Client shall remain liable for the payment of cancellation fees and fees and charges outstanding in respect of the Initial Period.

2.4 If the Client ceases to bank with Nedbank, this Agreement shall automatically terminate and the Client shall be liable for the payment of cancellation fees

3 SERVICES

3.1 The Client hereby agrees to access and use the Services strictly in accordance with the terms and conditions of this Agreement.

3.2 Where the Client requires multiple legal entities within its group structure to have access to and use the Services, the relevant details of such entities shall be set out in the Main Participant Resolution and Participant Resolutions, as amended from time to time and annexed to this Agreement by way of schedules.

- 3.3 The Services shall at all times be subject to the terms and conditions set out in this agreement, as well as all applicable laws and regulations, as may be amended from time to time.
- 3.4 Nedbank may in its sole and absolute discretion at any time, upon notice to the Client, withdraw any and/or all of the Services.
- 3.5 Nedbank shall, where applicable, provide the Client with devices, certificates, passwords, profile number, and user ID numbers, as well as any replacement thereof, upon request from the Client in terms hereof. The Client acknowledges that it shall bear sole responsibility for all passwords, profile number, and user ID numbers, certificates and devices, and neither the Client nor any other person shall have any recourse whatsoever against Nedbank, including any claim for loss, injury or damage, for any reason whatsoever, relating to the loss, theft, use or misuse of the password, profile number, user ID number, certificate or device after delivery thereof to the Client. The Client acknowledges that Nedbank retains ownership of the devices and certificates and upon request by Nedbank the Client shall be obliged to return to Nedbank such devices and certificates.

4 FEES AND CHARGES

- 4.1 The Client shall be liable to Nedbank in respect of the fees and charges for the Services, as notified to the Client by Nedbank from time to time, which fees and charges Nedbank shall, without prior notice, be mandated and entitled to debit against any of the Client's accounts.
- 4.2 Additional or replacement devices required for the use of the Services may be purchased by the Client from Nedbank at Nedbank's then prevailing charges for such devices.

5 CLIENT'S OBLIGATIONS

- 5.1 In order to receive and access the Services the Client shall be obliged to have appropriate connectivity, which may include Internet connectivity, and the Client shall maintain and assume full responsibility for all necessary telecommunications lines, hardware, software and consumable materials required for the Client's access and use of the Services. Nedbank makes no representations as to the suitability of any of the Client's information technology systems for receiving, accessing or using the Services.
- 5.2 Where applicable, the Client shall maintain all applicable software licence arrangements directly with the third-party licensor of any software required for the Client to receive, access and use the Services, and the Client shall be responsible for the payment of any applicable licence fees for such software. The Client shall further be obliged to ensure, at its own cost, that the hardware, middleware and software used by it to receive, access and use the Services be upgraded and refreshed from time to time so as to be compatible with the hardware, middleware and software used and/or specified by Nedbank from time to time for the provision of the Services.
- 5.3 The Client shall at all times:
 - 5.3.1 adhere to the operating, maintenance and security requirements and procedures (including encryption standards) provided by Nedbank from time to time and ensure that its information

- technology systems are free from destructive programs, including without limitation viruses, worms and spyware;
- 5.3.2 ensure the integrity, safekeeping and confidentiality of all communication lines, data and other confidential information (such as devices, certificates, passwords and PINs);
- 5.3.3 take adequate steps to ensure that its employees do not share devices, certificates, passwords with other persons, including other Client employees ; and
- 5.3.4 ensure that the Services are not accessed or used, or any relevant functions performed, by anyone other than a person authorised by the Client to do so.
- 5.4 The Client shall, on becoming aware of any breach of the confidentiality or security obligations hereunder or the loss or theft of any devices, certificates, or passwords, immediately, in writing, advise Nedbank thereof.
- 5.5 The use of the Services is, in addition to the terms and conditions contained herein and in the schedules hereto, further subject to the terms and conditions applicable to the Client's bank accounts held at Nedbank, and in the event of any conflict the terms and conditions applicable to such bank accounts shall prevail over this Agreement.
- 5.6 The Client acknowledges that the Services allow the Client to check its current available balance and the Client's administrator to determine a Client user's transaction limit. The Client acknowledges that the Client's users may transact only up to their individual transaction limit and a transaction cannot at any time exceed the Client's available balance. The use of the Services shall not entitle the Client to overdraw any account, unless prior arrangements have been made with Nedbank and then only in terms of those arrangements
- 5.7 The Client shall perform its obligations in terms of this Agreement at its own cost.

6 INTELLECTUAL PROPERTY RIGHTS

- 6.1 Nedbank shall at all times retain any and all Intellectual Property rights in and to the Services as well as software and documentation used in the provision of the Services.
- 6.2 The Client shall not duplicate, reproduce, decompile, reverse-engineer, create derivative works from or in any way tamper with any Nedbank Intellectual Property and any device, certificate, software or documentation which may be provided to it by Nedbank.
- 6.3 The Client represents and warrants that it shall at all times access and use the Services and perform its obligations under this Agreement 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.

7 WARRANTIES

- 7.1 The Client warrants that it shall, for the duration of this Agreement, comply with all relevant legislative, regulatory or documentary requirements (including exchange control regulations applicable in the Republic of Namibia) and hold all necessary licences, certificates, authorisations and consents required under the laws of the Republic of Namibia or in terms

of this Agreement, as may be applicable to the Services and the use thereof.

- 7.2 The Client acknowledges that it shall not under any circumstances be entitled to countermand any instruction given by it pursuant to the use of the Services once Nedbank has received such instruction.

8 CONFIDENTIALITY UNDERTAKING

- 8.1 Each Party shall treat as strictly confidential all information that: (a) either Party discloses in confidence, or (b) reasonably can be identified as confidential and/or proprietary to the party which disclosed such information, or (c) is received or obtained as a result of entering into or performing in terms of this Agreement, which relates to:

- 8.1.1 the provisions of this Agreement;
- 8.1.2 the negotiations relating to this Agreement;
- 8.1.3 the subject matter of this Agreement; and/or
- 8.1.4 the other Party.
- 8.2 A Party may disclose information which would otherwise be confidential if and to the extent:
- 8.2.1 required by law;
- 8.2.2 required by any securities exchange or regulatory or governmental body to which either Party is subject, wherever situated, whether or not the requirement for information has the force of law;
- 8.2.3 disclosed to the professional advisers and auditors of any Party;
- 8.2.4 the information comes into the public domain through no fault of that Party; or
- 8.2.5 the affected Party has given prior written approval to the disclosure, such approval not to be unreasonably withheld or delayed;
- provided that any information so disclosed shall be disclosed only after written notification to the other Party

9 FORCE MAJEURE

- 9.1 Nedbank shall not be liable for delays or failure to perform any of its obligations under the terms of this Agreement resulting from acts beyond the reasonable control of Nedbank. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, civil disorders, rebellions or revolutions in any country, epidemics, acts of terrorism, vandalism or sabotage, governmental regulations superimposed after the fact, communication line failures, power and telecommunications failures, earthquakes, fire, floods or other disasters (a 'Force Majeure Event').
- 9.2 If Nedbank is affected by a Force Majeure Event, it shall, where possible, notify (electronically via the applicable websites) the Client thereof and shall use reasonable endeavours to mitigate and/or eliminate the consequences of such Force Majeure Event (to the extent it can do so without incurring significant costs).

10 INDEMNITY

- 10.1 The Client hereby indemnifies Nedbank and its employees against and holds them harmless from any and all losses suffered or damage incurred as a result of the breach of the provisions of this Agreement by the Client and/or its signatories and administrators or other employees; or for any loss caused by any theft, fraud or other unlawful activity or any negligent, wilful or fraudulent misconduct of the Client or its employees.

- 10.2 Any demand, claim or action arising against Nedbank in connection with this Agreement and/or the Services (whether arising out of contract or delict) shall be limited to claims for direct damage only. Nedbank shall not be liable for any special, indirect or consequential damages of any nature whatsoever.

- 10.3 The Client specifically indemnifies Nedbank against and holds it harmless from all demands, claims, actions, losses and damage of whatever nature which may be brought against Nedbank or which Nedbank or the Client may suffer or incur arising from:

- 10.3.1 any instruction provided by the Client to Nedbank, including without limitation any incorrect, illegible, incomplete or inaccurate information or data;
- 10.3.2 any inadvertent delays in accessing or using the Services, any Service interruptions, the malfunction, distortion, failure, interruption or unavailability of any hardware, software, communication links, equipment, 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;
- 10.3.3 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;
- 10.3.4 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; or
- 10.3.5 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.
- 10.4 The Client has elected to use the Services based on the Client's, Nedbank's and third parties' electronic infrastructure, which necessitates the electronic transfer of confidential data via the internet, email and/or fax. The Client indemnifies Nedbank against and holds it harmless from all demands, claims, actions, losses and damage of whatever nature resulting from the delay, interception, miscommunication, malfunction, distortion, disclosure, loss and/or fraudulent abuse of such data, prior to, during and after transmission. Nedbank shall not be obliged to confirm receipt of an instruction from the Client sent to Nedbank by such means, and such instruction shall be deemed to have been validly sent by the Client.

11 BREACH

- Should the Client breach any term of this Agreement or fail to perform any of its obligations in terms of this or any other agreement which it may have with Nedbank, Nedbank shall be entitled, without notice, to claim specific performance or terminate this Agreement and withdraw the Services with immediate effect, without prejudice to its rights to recover
- 11.1.1 any amount due to Nedbank in terms of this Agreement;

11.1.2 any loss or damage suffered by Nedbank as a consequence of the breach by the Client of any term of this Agreement or the termination of this Agreement or the withdrawal of the Services.

12 TERMINATION AS A RESULT OF CHANGE IN LAW

Notwithstanding anything to the contrary contained in this Agreement, this Agreement may be terminated at any time by Nedbank upon 48 (forty-eight) hours' written notice to the Client in the event of any change in any law or the application thereof or a change in the Client's financial position which would have the effect of prejudicing Nedbank should it continue with the rendering of any of the Services.

13 DISPUTE RESOLUTION

13.1 Should any dispute arise at any time between Nedbank and the Client relating to this Agreement or a matter arising out of any use of the Services, such dispute shall be finally resolved in accordance with the rules of the Arbitration Foundation of southern Africa by an arbitrator(s) appointed by the foundation. The Parties agree that, in pursuance hereof, either Party may demand that a dispute be referred to arbitration by giving written notice to that effect to the other Party.

13.2 This clause 15 shall not preclude any of the Parties from obtaining interim relief on an urgent basis from a court with competent jurisdiction.

13.3 Any Nedbank branch manager, whose authority and position need not be proved, may certify statements of, the balance of, the rate of interest and interest on the Client's accounts, which shall constitute prima facie proof of the information contained therein.

13.4 The arbitration referred to herein shall be held in Winhoek with a view to be completed within 21 (twenty-one) days after it is demanded. The Client irrevocably agrees that the decision of the Arbitrator in the arbitration proceedings:

13.4.1 shall be final and binding on it;

13.4.2 shall be carried into effect; and

13.4.3 may be made an order of court of competent jurisdiction.

13.5 This clause 15 is severable from the remainder of the terms and conditions and shall remain valid and binding on the Client notwithstanding any cancellation by the Client of any of the Services or the withdrawal by Nedbank of any of the Services

14 DOMICILIUM

14.1 The Parties choose the following as their respective addresses for the service of all notices and processes and execution in connection with this Agreement, which address may be changed to any other physical address in the Republic of Namibia by not less than 5 (five) Business Days' written notice to the other Party:

14.1.1 **Nedbank:** NEDBANK NAMIBIA LIMITED;
3rd Floor, Mutual Platz, Post Street Mall • Windhoek
Marked for the attention of: The Executive Operations

14.1.2 **The Client:**
.....
.....
.....
Marked for the attention of:
.....

14.2 All notices addressed to either Party at its latest address notified by it to the other Party shall be deemed to have been received, unless the contrary is proved:

14.2.1 if delivered by hand, on the date of delivery; and

14.2.2 If sent by prepaid registered post, 5 (five) Business Days after the date of posting.

14.3 Legal notices may not be sent by telex, telegram, fax or email.

15 GENERAL

15.1 The Client shall not be entitled to assign or transfer the benefits or obligations of all or any part of this Agreement to any other party without obtaining the prior written consent of Nedbank.

15.2 Should any of the terms or conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions shall be severable from the remaining terms and conditions, which shall continue to be valid and enforceable.

15.3 No amendment, waiver or discharge of the terms and conditions of this Agreement shall be valid unless reduced to writing and signed by both Parties.

15.4 No failure or delay by Nedbank in exercising any right, power or privilege under this Agreement 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.

15.5 This Agreement may be executed in one or more counterparts, each of which shall be deemed to be original, and all of which together shall constitute one and the same Agreement as at date of signature of the Party last signing one of the counterparts. The Parties undertake to take whatever steps may be necessary to ensure that each counterpart is duly signed by each of them without delay

15.6 This Agreement shall be governed by and construed in accordance with the laws of the Republic of Namibia, and all disputes, actions and other matters relating thereto will be determined in accordance with such laws.

15.7 Any provision of this Agreement which contemplates performance or observance of either Party's obligations contained herein subsequent to any cancellation or termination of this Agreement shall survive any cancellation or termination of this Agreement and shall continue to be of full force and effect.

15.8 This Agreement constitutes the whole of the agreement between the Parties relating to the subject matter hereof and save as otherwise provided herein no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Parties hereto or their duly authorised representatives.

15.9 Each Party shall bear and pay its own costs of or incidental to the drafting, preparation and execution of this Agreement.

Signed at on
(place) *(day)* / *(month)* / *(year)*

As witnesses

For:

1

Who warrants that he/she is authorised to do so

Name

2

Capacity

Signed at on
(place) *(day)* / *(month)* / *(year)*

As witnesses

For:

1

Who warrants that he/she is authorised to do so

Name

2

Capacity

Signed at on
(place) *(day)* / *(month)* / *(year)*

As witnesses

For: NEDBANK NAMIBIA LIMITED

1

Who warrants that he/she is authorised to do so

Name

2

Capacity

Signed at on
(place) *(day)* / *(month)* / *(year)*

As witnesses

For: NEDBANK NAMIBIA LIMITED

1

Who warrants that he/she is authorised to do so

Name

2

Capacity