

# NEDBANK INTERNET BANKING SERVICES

## GENERAL TERMS AND CONDITIONS



### GENERAL TERMS AND CONDITIONS

applicable to \_\_\_\_\_

(hereinafter referred to as 'the client')

and **NEDBANK (SWAZILAND) LIMITED** (hereinafter referred to as 'the bank')

The following terms and conditions are applicable to Nedbank Electronic Banking Services ('the services'), which Nedbank Swaziland Limited Reg No 39/1974 ('we') will provide to the client upon formal approval of the client by the bank.

You, the client, confirm that the information and instructions in the electronic banking application form are both true and correct to the best of your knowledge. In the event of incorrect information being supplied, the bank will have the right immediately to discontinue any/all of the services without notification and you specifically waive any right to hold us liable for damage suffered as a consequence of services being discontinued in this manner.

You further confirm that you understand and accept that the terms and conditions below, as set out on the bank's website and amended from time to time, will apply to the use of any of the services pursuant to the electronic banking application.

#### 1 PROFILE AND SERVICES

- 1.1 For the purposes hereof a reference to services will include any and/or all of the various services forming part of the bank's electronic banking services, which may be linked to a client's profile and are made available to the client through the bank's systems.
- 1.2 Once we have approved the application, you will be provided with a profile number or security device, signature numbers, password and/or PIN ('confidential information') in order to use the services.
- 1.3 You will only have access to the services that are linked to your profile and only services selected in the application form (and approved) will be linked.
- 1.4 We may offer new services from time to time and reserve the right to modify, replace or discontinue any existing service without prior notice to you.
- 1.5 Services may be removed from your profile on written request by you and additional services may be linked to your profile on further application.

#### 2 PASSWORD/PIN AND EQUIPMENT

- 2.1 Should you wish to make use of any service where a password/PIN is required, we will allocate you one in respect of your profile number. You agree to comply with all the terms and conditions in force from time to time and applicable to our services when entering your profile number and password/PIN to gain access to any of the services or profiles.
- 2.2 You must provide and maintain hardware and all consumable material required for the use of the services unless such hardware and consumable material form part of our systems. We make no representations as to the suitability of any of your hardware, software or consumable material for the use of the services.
- 2.3 You agree to make use of the services available to you after we have approved and provided the device to you in accordance with these terms and conditions.

#### 3 CLIENT'S OBLIGATIONS

- 3.1 You acknowledge that you are aware that the rendering of the services is subject to various acts and other legislation and you undertake to comply with all applicable legislation at all times.
- 3.2 You acknowledge that your use of the services will not vary any aspect of our relationship with you and both parties agree in particular that:
  - 3.2.1 the use of any service will be subject to the completion and signature by your duly authorised signatory/signatories of the electronic banking application form and any other documentation or agreement required by us from time to time and the delivery thereof to a branch or electronic banking centre of the bank;
  - 3.2.2 you must settle any payment obligations to the bank in accordance with the instructions issued to the bank through the service and this will not in any way entitle you to overdraw any account, unless prior arrangements have been made with us and then only in terms of such arrangements; and
  - 3.2.3 the limits allocated to any of your accounts will not be exceeded.
- 3.3 You must inform us of any change in the information provided to us in the application form and confirm that you will have no claims against us if any information is incorrect.
- 3.4 You must:
  - 3.4.1 acquaint yourself with the functionality of the services and how they are to be used and, if necessary, ask us for help;
  - 3.4.2 immediately change any temporary password/PIN allocated by us for the purpose of giving you access to the services for the first time;
  - 3.4.3 acquaint yourself with and follow the security procedures communicated by us from time to time as well as such other procedures that may apply to the services and specifically those that may be displayed on our internet website, acknowledging that:
    - 3.4.3.1 we are not obliged to prescribe or recommend any security procedures to you, but we may do so and any failure by you to follow the recommended security procedures may result in a breach of the confidentiality of your confidential information and may lead to unauthorised transactions between accounts linked to your electronic banking profile with us; and
    - 3.4.3.2 any software downloaded by you from the internet and specifically our internet site, is third-party software, the licensing of which will be subject to such terms and conditions as the licensor of such software may impose and we make no representations or warranties as to the suitability of any of your information technology systems used for receiving, accessing or using the services;
  - 3.4.4 ensure the safekeeping and confidentiality of all confidential information and must particularly ensure that the confidential information is not written down and kept where it can easily be discovered.
  - 3.4.5 ensure that nobody other than you is permitted to use services to which you have subscribed. If a power of attorney has been given, you must ensure that only authorised persons have access to and are allowed to use the services and businesses must ensure that only authorised employees have access to and are allowed to use the services;
  - 3.4.6 notify us immediately where you reasonably become aware or suspect that confidential information has been lost or forgotten or may have fallen into the hands of an unauthorised person;
  - 3.4.7 read, understand and apply the information displayed on any profile, system or electronic banking site and understand your role in respect thereof;
  - 3.4.8 ensure that you have current and updated antivirus software in place to prevent, detect and remove malicious computer viruses and acknowledge that undetected viruses may corrupt and/or destroy computer programs, applications, files and potentially computer hardware. Additionally, you may unintentionally transmit the virus to other computers. We will not be held responsible for any computer virus that affects your computer or software while using the services; and
  - 3.4.9 acquaint yourself with any specific terms and conditions of use that may exist in relation to any of the services and will be bound by such terms and conditions as though they form part of this document.
- 3.5 You will not:
  - 3.5.1 cede or assign any of your rights under this agreement without our prior written consent;
  - 3.5.2 operate or use the service in any manner that will prejudice us; and
  - 3.5.3 use the services for any purpose that is unlawful or that is not permitted, whether expressly or implicitly, by these terms and conditions or by any applicable law or regulation. We reserve the right, subject to applicable law, to terminate the services and your right to the services at any time and for any reason, including, without limitation, if we in our sole judgement believe that you are or have been engaged in conduct or activities that violate any of the terms and condition or our rights or if you provided us with false or misleading information.
- 3.6 You understand and accept that you may only link a business account or an account requiring multiple signatures to the profile if you have submitted to us an original written resolution or power of attorney to this effect and you must ensure that no unauthorised persons have access to the services.

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3.7 We will be entitled and authorised to debit your accounts with the amounts of the transactions effected through the services as well as to debit your accounts with the amount of any fees applicable to the services from time to time.

### 4 THE BANK'S OBLIGATIONS

- 4.1 We will:
- 4.1.1 furnish you with temporary passwords/PINs on approving your use of the services offered in terms hereof; and
  - 4.1.2 furnish you with replacement confidential information only on written notice that a password/PIN has been lost, forgotten or fallen into the wrong hands.
- 4.2 You acknowledge that:
- 4.2.1 we will neither be required to inquire into the authority of any person who uses or has used the services or passwords/PINs, nor the validity of any information you gave us for the use of the services and we will be entitled to assume (unless we have been informed in writing to the contrary) that any person in possession of the confidential information is properly authorised to conduct any and all transactions through the services;
  - 4.2.2 once we have received and implemented an instruction given by you in the use of the services, you cannot countermand or amend such instruction but must follow the procedures we prescribe from time to time in respect of the various services.
  - 4.2.3 If we are instructed in writing to stop a transaction, we will attempt to do so, but we will not be liable for any loss incurred, whether direct or consequential, if we fail to do so.

### 5 PAYMENTS AND TRANSFERS

- 5.1 Once payment to a third party or a transfer transaction (a transfer between your linked accounts) has been processed, a confirmation reflecting that the payment or transfer has been processed will be available to you.
- 5.2 Payments may take up to three business days to be reflected on third-party accounts.

### 6 FAILED TRANSACTIONS

If any transaction fails, including as a result of insufficient funds being available in your account or of a third-party account having been closed, we will not be held liable.

### 7 INDEMNITY

- 7.1 You hereby waive your rights in respect of and indemnify us against any demand, claim or action relating to or in connection with the services, whether directly or indirectly, unless such demand, claim or action arose as a direct consequence of the gross negligence or wilful misconduct of the bank or any of its employees.
- 7.2 Any demand, claim or action arising against us in connection with the circumstances referred to in subclause 7.1 above will be limited to direct damages. Special or consequential damages are hereby specifically excluded.
- 7.3 Without limiting the generality of subclause 7.1, you specifically waive all your rights in relation to, and indemnify and hold us harmless from, all demands, claims, actions, losses, damages that may be brought against us or which you may suffer or incur arising out of:
  - 7.3.1 any delay or failure by us to act on any instruction given by using the services;
  - 7.3.2 any malfunction, failure or unavailability of any system, hardware, software or equipment;
  - 7.3.3 any loss or destruction of any data, power failures or corruption of storage media;
  - 7.3.4 any natural phenomena, riots, acts of vandalism, sabotage, terrorism or any other event beyond our control;
  - 7.3.5 any interruption or distortion of communication links or reliance by any person on incorrect, illegible, inaudible, incomplete or inaccurate information or data contained in any instructions received by us;
  - 7.3.6 any use, misuse, abuse or possession of any third-party software, including, without limitation, any operating system software, browser software or any other software packages or programs;
  - 7.3.7 any unauthorised access to your accounts or any breach of security or any destruction or accessing of your data or any destruction or theft of or damage to any of your equipment;
  - 7.3.8 your divulging any confidential information and/or permitting unauthorised persons from having access to and/or using the services;
  - 7.3.9 failure to adhere to any terms and conditions applicable to the services and/or the supplying of incorrect information or the failure or unavailability of third-party facilities or systems or the inability of a third party to process a transaction;
  - 7.3.10 confidential information/documentation requested by using the services coming to the knowledge of third parties; or
  - 7.3.12 fraudulent, false or altered instructions given by using the services.

### 8 COPYRIGHT

- 8.1 We will at all times retain our copyright in or licence to software as well as associated information and documentation belonging to us used in the provision of the services as well as in respect of any logos, trademarks or service marks used.
- 8.2 You may not duplicate, reproduce or in any way tamper with the software and associated documents without our prior written consent.
- 8.3 In respect of third-party software we are not a party to any licence agreement entered into by you and the licensor and therefore make no warranties relating to such software, including, without limitation, warranties relating to the suitability for a particular purpose, security features or performance. You acknowledge that the use of such software will be at your own risk and indemnify us against and hold us harmless from any loss or damage you may suffer as a result of the use, abuse or possession of such software.
- 8.4 Furthermore, you understand that the use of such third-party software may be illegal in jurisdictions outside Swaziland and/or may infringe upon certain third-party intellectual property rights in such jurisdictions. You understand that, should you use any third-party software outside the boundaries of Swaziland, you must ascertain the legality of such use and obtain all necessary licences and permissions from the relevant parties. You accordingly indemnify us against and hold us harmless from any and all liability you may incur in this regard.

### 9 DOMICILIUM AND NOTICES

- 9.1 You choose as your domicilium citandi et executandi for the purpose of legal proceedings and for the purposes of giving or sending any notice provided for or necessary in terms of this agreement, the address given in the application form.
- 9.2 Our address for the purposes hereof is:
  - Physical: Cnr Dr Sishayi and Sozisa Roads, Third Floor, Nedcentre Building, Swazi Plaza, Mbabane.
  - Postal: PO Box 68, Mbabane, Swaziland
  - Attention: The Company Secretary/Legal Advisor
- 9.3 Any party may change its domicilium to any other physical address or fax number by written notice to the other party to that effect. Such change of address will be effective seven days after receipt of notice of the change of domicilium.
- 9.4 All notices to be given in terms of this agreement will:
  - 9.4.1 be given in writing;
  - 9.4.2 be delivered or sent by prepaid registered post;
  - 9.4.3 if delivered, be presumed to have been received on the date of delivery;
  - 9.4.4 if sent by registered post, be presumed to have been received on the 10th business day following the date of posting, unless the contrary is proved.
- 9.5 Notwithstanding the above, any notice actually received by the party to whom the notice is addressed will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with the provisions of this clause.

### 10 PREPAID AND VALUE-ADDED SERVICES

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You must ensure that all information used when purchasing prepaid and using value-added services is accurate, as these are non-reversible.

### 11 SEND MONEY SERVICES

You must ensure that all information provided when using Send Money to mobile number services is accurate, as these are non-reversible. For more information please refer to detailed terms and conditions hosted at [www.nedbank.co.sz/sendmoneytcs](http://www.nedbank.co.sz/sendmoneytcs).

### 12 GENERAL

- 12.1 These terms and conditions govern the relationship between you and the bank in respect of the services. Should there, however, be a conflict between the provisions hereof and the provisions of any agreement relating to a specific service used by you, then the provisions of that agreement, only insofar as they conflict with the provisions hereof, will take precedence.
- 12.2 We may effect electronic funds transfers in respect of the accounts of which the numbers are provided in a payment instruction.  
**You acknowledge that we will not be obliged to verify the destination account numbers, parties' names or the amounts involved in any instruction, and if there is a discrepancy between the destination account number and the name of the party concerned, the destination account number will prevail.**
- 12.3 Notwithstanding the foregoing terms and conditions, you acknowledge and accept that we may from time to time amend such terms and conditions insofar as they relate to your use of the services. In pursuance of the foregoing you confirm that:
- 12.3.1 you are aware that all such changes will be reflected in the terms and conditions published on our internet site; and
- 12.3.2 by entering your confidential information to gain access to the services, you are bound by the terms and conditions in force at that point in time as they may appear on our internet site.
- 12.4 In this agreement, unless expressly indicated otherwise:
- 12.4.1 the singular will include the plural and vice versa;
- 12.4.2 natural persons will include created entities, whether incorporated or not; and
- 12.4.3 one gender includes the others.
- 12.5 This agreement will be interpreted in accordance with and governed by the laws of Swaziland, notwithstanding that any instruction emanated from outside the borders of Swaziland.

### 13 BREACH

Should you breach any term or fail to perform any of your obligations in terms of this or any other agreement with us, we may, without notice, cancel this agreement and withdraw the services with immediate effect, without prejudice to our rights to recover:

- 13.1 any amounts due to us in terms of this agreement; and
- 13.2 any loss or damage suffered by us because of your breach of any term of this agreement or our cancellation of this agreement or the withdrawal of the services.

### 14 DISPUTE

- 14.1 Should any dispute arise at any time between us and you relating to any matter arising out of any use of the services, such dispute will be finally resolved by means of arbitration and by an arbitrator appointed by the parties jointly, or if no consensus can be reached on the identity of the arbitrator within seven business days after arbitration has been demanded, by an arbitrator appointed by the President of the Law Society of Swaziland. You agree that, in pursuance hereof, either you or us may demand that a dispute be referred to arbitration by giving written notice to that effect to the other party.
- 14.2 This clause does not preclude either party from obtaining urgent interim relief from a court with competent jurisdiction pending the decision of the arbitrator, nor does it preclude us, at our sole discretion, from instituting legal action in a court of competent jurisdiction. If we have to institute action against you for recovery of any debt or damages arising out of the operation of the services, you agree to pay all costs on the scale as between an attorney and own client (including collection commission and any other sundry charges). The arbitration referred to herein will be held at Mbabane in the English language and will be held immediately with a view to be completed within 21 days after it is demanded. You irrevocably agree that the decision of the arbitrator in the arbitration proceedings:
- 14.2.1 will be final and binding on you;
- 14.2.2 will be carried into effect; and
- 14.2.3 may be made an order of court of competent jurisdiction.
- 14.3 The arbitrator will decide the matter submitted to him according to the applicable laws of Swaziland and the arbitrator may determine any aspect relating to the costs of the arbitration.
- 14.4 This clause 13 is severable from the rest of the terms and conditions and will remain valid and binding on you notwithstanding any cancellation of your electronic banking services with us or any discontinuation by us of any or all of the services.

### 15 TERMINATION

Notwithstanding anything contained above, either party may terminate the agreement at any time by giving such notice as may be required in respect of each service utilised, except that, in the event of any change in any law or the application thereof, which would prejudice us should we continue with the rendering of any service, we may terminate the agreement on 48 hours' written notice to you.

### 16 SPECIFIC TERMS AND CONDITIONS OF USE

You must acquaint yourself with any specific terms and conditions of use that may exist in relation to any of the services and will be bound by such terms as though they formed part of this document.

### 17 CHEQUE DEPOSITS AND AVAILABLE BALANCE

- 17.1 You acknowledge the following:
- 17.1.1 Cheque deposits may be reflected as 'Available Balance' before the cheques have been cleared, which may create the wrong impression that cash is available.
- 17.1.2 Withdrawals or payments against uncleared cheque deposits are done at your own risk and, should the cheque be stopped, returned or be unpaid in any other way, you will be liable for repayment of all amounts used.
- 17.1.3 Notwithstanding the 'Available Balance' indicator, you should verify the nature of all deposits (and especially those from unfamiliar sources) before withdrawals or payments are made.

### 18 FATCA POLICY

The Foreign Account Tax Compliance Act ('FATCA') forms part of the agreement governing the bank-client relationship. FATCA is binding on the parties and you hereby agree to comply with and adhere thereto. Should there be any conflict or inconsistency between FATCA and these terms and conditions or any other agreement between the bank and the client, the contents of FATCA will prevail.

### 19 SUSPENSION OF ACCOUNT

If your account remains inactive or dormant for such period as we may determine, we reserve the right to impose such conditions in relation to the further operation of the account as we may determine at our sole and absolute discretion.

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### 20 WITHHOLDING TAX

Amounts in your account (including any interest earned for a product) may be subject to withholding tax in accordance with the applicable laws.

### 21 BLOCKING ACCOUNTS/WITHHOLDING OF FUNDS

We may, without prior notice to you, block any account (and later remove the block) at any time and/or withhold amounts in any account at any time, if required to do so by any relevant authority, law or pursuant to any agreements with any regulator or other authority, or in order to comply with our internal policies and/or any applicable order or sanction of an authority.

### 22 CREDIT BUREAU

You consent to our periodically checking and reporting your credit status with any registered credit bureau or credit reference agency. By doing so you consent to our disclosing such information as may be necessary or required to check and/or report your credit status in terms of the applicable laws.

### 23 CONFIDENTIALITY

You consent to our disclosing confidential information about you to other divisions/associated companies within our group. You acknowledge that such consent amounts to a waiver, in our favour, of the client-banker confidentiality principle.

### 24 SANCTIONED TRANSACTIONS/ANTI-MONEY-LAUNDERING/COUNTER-TERRORISM FINANCING/EXCHANGE CONTROL

- 24.1 To comply with and/or to meet our reporting requirements in terms of all applicable laws, regulations, requests by authorities, directives, international best practice and policies relating to anti-money-laundering, counter-terrorist financing, exchange control and sanctioned transactions, we may be:
- 24.1.1 prohibited from entering into certain foreign exchange transactions unless the conditions of approval by the Bank of Swaziland are first complied with; and/or
  - 24.1.2 prohibited from entering or concluding transactions involving certain countries, entities, banks, vessels and/or individuals (eg a person or entity that is itself sanctioned or connected to or dealing with – directly or indirectly – any person or entity that is sanctioned under economic and trade sanctions imposed by any supranational organisation, international organisation, official body, the United States of America, Her Majesty's Treasury, the United Nations, the European Union or any country); and/or
  - 24.1.3 prohibited from engaging in transactions that are subject to such sanctions as described above (including, but not limited to, the clearing of incoming/outgoing cheques drawn on/presented before all sanctioned banks); and/or
  - 24.1.4 compelled to reject such transactions and/or block the related funds, as per sanctions, policies and legislation; and/or
  - 24.1.5 required to report any suspicious transactions to the relevant authorities.
- 24.2 To this end we or any of our employees may:
- 24.2.1 intercept and investigate any payment messages and/or other information or communications sent to or by you, and/or on your behalf; and
  - 24.2.2 delay, block and/or refuse to make any payment and payment screening, which in turn may cause a delay in the processing of certain information.
- 24.3 We will not be liable for any loss arising out of any action taken or any delay or failure caused by performing any of our duties or other obligations caused in whole or in part by any steps taken as set out above. You agree not to make any of the finance we provided to you available to sanctioned individuals and/or entities or for the purposes of any sanctioned or illegal activity.
- 24.4 We reserve the right, subject to applicable law, to terminate the services/account/product and your right to use the account/product at any time and for any reason, including, without limitation, if we in our sole judgement, believe that you are/have been engaged in conduct or activities that violate any of the terms and conditions or our rights or if you provide us with false or misleading information.

### 25 GOVERNING LAW

These terms and conditions and the agreement governing the relationship between you and us will be governed by and construed and interpreted in accordance with the applicable laws of Swaziland.

### 26 JURISDICTION

You hereby consent to the jurisdiction of the magistrate's court having jurisdiction over you in respect of all legal proceedings, notwithstanding that the value of the matter in dispute might exceed the magistrate's court jurisdiction. Notwithstanding the foregoing, we may, at our sole discretion, institute all or any proceedings against you connected with this agreement in any division of the High Court of Swaziland having jurisdiction. Any certificate signed by any of our managers (whose authority need not be proved) will be prima facie evidence of the matter therein stated for all purposes.

### 27 RIGHT OF SETOFF

We will retain all our common-law, equitable and statutory rights of setoff. These rights will include, but is not limited to, our option to withhold, without notice to you, and to setoff any moneys due to you by us, whether under this agreement or otherwise, up to an amount due and owing to us with regard to this agreement, any other agreement with us, including any agreement for a term commencing prior to the term of this agreement, plus any amounts due and owing to us for any other reason, whether such liability is liquidated or unliquidated, present or future, or accrued or contingent. We will exercise our setoff rights in accordance with normal banking practices.

For and on behalf of THE CLIENT	For and on behalf of NEDBANK (SWAZILAND) LIMITED
Signed at _____ on _____ <i>Place DD-MM-YYYY</i>	Signed at _____ on _____ <i>Place DD-MM-YYYY</i>
Signature _____ <b>Who warrants that he/she is duly authorised</b>	Signature _____ <b>Who warrants that he/she is duly authorised</b>