



Absa Bank Limited, Reg No 1986/004794/06

Member of the BARCLAYS Group

Business Current Account Application – Client Engagement

CONFIDENTIAL

For Non CPA Affected Clients

To: The Manager
Absa Bank

Absa Capital - CIBW Corporate Coverage
(Branch)

*Delete whichever is not applicable

I/Member/Directors/Partners/Trustees of

Nelson Mandela Bay Metropolitan Municipality

(Name of account holder or legal entity)

hereby agree/have resolved that the following accounts and services be opened, subject to the product terms and conditions relating to the accounts/services. Please print and hand terms and conditions to client.

A BUSINESS DETAILS

TYPE OF ENTITY

Foreign Company	<input type="checkbox"/>	Company	<input type="checkbox"/>	Non-resident	<input type="checkbox"/>	Temporary resident	<input type="checkbox"/>
Close Corporation	<input type="checkbox"/>	Trust	<input type="checkbox"/>	Partnership/JV	<input type="checkbox"/>	Sole Proprietor	<input type="checkbox"/>

Other (specify) Municipality - Government Account

(eg Estate late, Insolvent, Pension Fund)

Trading name Nelson Mandela Bay Municipality

Registration/Practice/Trust Deed no N / A

Pension Fund no/Provident Fund no N / A

Business start date Correspondence Language English Afrikaans

Where is business registered? N/A

Is business registered for VAT?

Income tax no VAT registration no 4 4 9 0 1 9 3 4 7 3

Financial year end Source of funds (eg Donation, Third Party Loan)

Source of Income (eg profit from sales of food in restaurant)

Type of activity expected on the account (eg cash deposit, debit orders)

Registered address 12th Floor, Fidelity House, 190 Govan Mbeki Avenue, Port Elizabeth

Postcode 6 0 0 1

Business postal address P.O. Box 834

Suburb City/Town Port Elizabeth Postcode 6 0 0 0

Operating address (if different from registered)

Suburb City/Town Postcode

Telephone details Telephone No (041) 506 5306 Fax No ()

Internet website

Contact person telephone Telephone No (041) 506 5306 Contact person Shelley

Contact person designation Assistant Director: Cash Management Contact person cell 079 490 0641

E-mail sbaaljie@mandelametro.gov.za

Preferred communication channel! Mail E-mail Telephone

TRUST ADDITIONAL FIC INFORMATION (UNDER THE FINANCIAL INTELLIGENCE CENTRE ACT, 38 OF 2001)

Physical address of the Master of the High Court where Trust is registered N/A

Postcode

Initial

JURISTIC ENTITIES

LEGAL ENTITIES

These are legal entities/businesses who are close corporations, partnerships, trusts, companies, other legal entities such as informal bodies, who are shareholders with 10% or more of the voting rights, partners including joint ventures, trustees, beneficiaries, founders in respect of the applicant

Registered name/Name of Trust/Other legal entity	Registration number/Trust number/Practice number	Legal form (eg society)	Trade name	Registered address/Master's address (Trusts)	Head Office address (if multiple offices)	Physical business address	Percentage shareholding	Owner/ Controller
								Owner
								Controller
								Owner
								Controller
								Owner
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								Controller

5/1/20
 [Signature]

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RELATED PARTIES

NATURAL PERSONS

These are individuals who are authorised signatories, agents, secondary cardholders, guardians of minors, members of close corporations, partners of a partnership including silent partners, persons who exercise executive control in a partnership, directors of companies, including all directors authorised to act on behalf of the company, shareholders of companies with 10% or more of voting rights, trustees of a trust, founders of a trust, manager of affairs of a foreign company based in the republic, principal executive officer of domestic companies.

Full names	Identity/Passport number	Country of issue of passport/Nationality	Residential address	Residential/Cell contact telephone number	Percentage shareholding	Ethnic group					Owner/Controller	Relationship	
						African	Coloured	Indian	White	Other			
1													
2													
3													
4													
5													
6													

bus

FAIS DISCLOSURE (FINANCIAL ADVISOR)

ABSA 3722 EX must be completed.

Advice was provided by an Absa representative on the opening of

Account

If "YES" Record of Advice No

The Absa Bank representative is a permanent employee who has professional knowledge and ability and has been other personal interest in concluding this transaction exists. Should you be dissatisfied with the service rendered by the Absa representative, you may lodge a complaint with Action Line on the following number: 0800 414 141 or Fax 012 367 1212.

The complaints policy and procedure are available to you upon request.

The bank hereby notifies you that in terms of the exemptions applicable to FAIS, if the client's net asset value is new amount as may be determined by the Registrar of Financial Services from time to time greater than R20 000 000 (twenty million rand) or such new amount as may be determined by the Registrar of Financial Services Provider from time to time ("the threshold") then the bank will not have to comply with the provisions of FAIS in so far as the consumer is concerned.

Adviser's name and Employee number

Date

Adviser's signature

REGISTRATION AS A FINANCIAL SERVICES PROVIDER (FSP)

Name of FSP

FSB number

1 Are you rendering Financial Services as defined in the Financial Advisory and Intermediary Services Act (Act No 37 of 2002) ("FAIS")?

2 If answer to point 1 is "YES" insert details above of your FSP and your name as it appears on your FSP licence.

3 If answer to point 1 is "YES", have you provided a certified copy of the said licence to Absa?

4 "If answer to point 3 is "YES", are there any conditions and restrictions relating to the said licence and what are the conditions?"

*Insert details of any restrictions or conditions in respect of licence granted to the extent that it is not stated in the licence.

At any time now or in the future, if the client is considered to be a financial services provider rendering financial services (as defined in FAIS), the client hereby warrants and represents to Absa Bank Limited ("the bank") that the client has been issued with a licence for the rendering of such financial service(s) and the conditions and restrictions of that licence authorises the rendering of such financial service(s). The client further warrants and represents to the bank that it will (upon request from the Bank) immediately provide the bank with a certified copy of the said licence.

At any time hereafter, if the aforesaid licence(s) is/are cancelled/suspended/terminated, the client will immediately inform the bank. The bank shall have the right to immediately terminate any agreement/contract/arrangement/relationship between the bank and the client once it confirms that the said licence(s) is/are cancelled/suspended/terminated.

The client agrees that, to the extent that the client is required to provide the bank with a certified copy of the licence (as contemplated in this document), no agreement/contract/arrangement will come into force and effect between the client and the bank if the said copy of the licence is not provided to the bank.

ACKNOWLEDGEMENT

Client Communications and Consent

Absa Bank diligently guards all personal and financial information relating to our customers. Your dealings with us are held in the strictest confidence and your privacy as an Absa client is one of our highest priorities. At Absa Bank, we do not sell or distribute any of our client lists to third parties, unless we are required to do so by law.

In keeping with this commitment, we need your consent to send you information on Absa Bank's range of products and services as well as any special promotions from us, or promotions on behalf of other carefully selected parties, which we believe would add value to your finances or lifestyle. We might also contact you to conduct research in order for us to improve our products and services to you.

If you would like us to communicate with you in this regard from time to time, please complete the form below:

Absa Marketing Consent

I/We do want Absa Bank to utilise my/our confidential information within the Group (Absa Group Limited and its subsidiaries) and communicate with me/us from time to time regarding products, services, research and special offers that they believe will be of interest.

I am/we are happy to receive such communication via the following communication methods (Please tick (X) whichever apply)

Post Telephone SMS E-mail

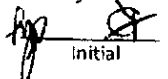
I/We do not want to receive any communication from Absa Bank on products, services or special offers and understand that this means that I/we will not be kept informed of products and services that may be of value to me/us. I/We will therefore not hold Absa Bank liable to the extent allowed by Law, for any opportunities I/we may miss as a result of this decision.

Creditworthiness information

Absa Bank is occasionally approached by credit providers or third parties who are attempting to evaluate your creditworthiness when you apply for credit or wish to enter into a credit agreement with such a party. We can't give them this information without your permission to do so.

I/We give the Bank permission to provide information relating to my credit score or creditworthiness to third parties who may request this information.

I/We do not give the Bank permission to provide information relating to my credit score or creditworthiness to any third parties who may request this information


Initial

BEE STATUS VERIFICATION

Provide proof of shareholding

- (a) Medium and Large Business (turnover more than R5 million) – Empowerdex certificate or Auditor's/Accountant's Certificate
- (b) Small Business (turnover less than R5 million)

Has proof of BEE Status been provided for shareholders? NA

Has proof of annual turnover been provided? NA

TYPE OF BUSINESS

100% Black 100% Coloured 100% Indian 96 - 100% White

Greater than 30% black/coloured/Indian woman Greater than 50% Black/Coloured/Indian Greater than 25% Black/Coloured/Indian

Greater than 5% Black/Coloured/Indian Black SME Turnover between R500 000 - R35 million pa Black/Black Empowered

Please indicate which supporting documents are attached to substantiate the above information (ie registration documents, financial statements, auditor's/accounting officer's confirmation etc)

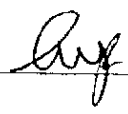
SIGNATURE OF MANDATED SIGNATORIES

Certification/Warranty


I/We certify that the information contained in this form is true and correct and accept that the opening and operation of my/our account(s) is subject to the bank's terms and conditions, a copy of which has been given to me/us and I/we have read and understood it. I/We also warrant that I/we have the authority to sign on behalf of the applicant.

The above is an acknowledgement of fact by you – you must read the above carefully and ensure that each statement is true and correct, this will limit the rights of the business to claim that the statement is not true and correct. Absa Bank may also have claims and other rights against you if this statement is not true and correct.

Signed at PORT ELIZABETH on 1ST AUGUST 2012

**Full name(s) of signatory SELWYN THYS Signature 

*(Capacity)

**Full name(s) of signatory ADRIAN CHYNOWETH Signature 

FERRERA *(Capacity) DIRECTOR : OFFICE OF THE TREASURY

**Full name(s) of signatory _____ Signature _____

*(Capacity)

**Full name(s) of signatory _____ Signature _____

*(Capacity)

* All partners must sign.
** State director, member, trustee, executor, partner, etc.

TERMS AND CONDITIONS APPLICABLE TO A BUSINESS ACCOUNT

- 1 **USE OF ACCOUNT SUBJECT TO CONDITIONS**
 - 1.1 The opening and use of any current account ("account") at Absa Bank Limited (registration number 1986/004794/06 and VAT registration number 494012230), ("the bank") by the applicant ("the client") is subject to the terms and conditions set out below.
 - 1.2 Where the account is a Shari'ah compliant product, the following principles apply:
 - 1.2.1 The product will not earn interest or be linked to interest payments or facilities such as overdrafts and credit cards.
 - 1.2.2 The product operates in accordance with the Qard (loan) principle. (This means that the contract between the parties is treated as an interest free loan contract in terms of which the bank will repay the client an amount equal to the amount borrowed.)
 - 1.2.3 The product operates only on credit balances.
 - 1.2.4 The indicated terms and conditions (*) must be referred to clause 1.2 for a Shari'ah based product.
- 2 **SIGNATURES**
 - 2.1 The bank has the right to:
 - 2.1.1 pay all cheques, bills of exchange, promissory notes and other negotiable instruments ("instruments") which were drawn, made or accepted and signed by the client or by persons who are authorised to sign on the client's behalf; and
 - 2.1.2 debit the client's account with the amounts of such instruments whether the client's account is in credit or not.
 - 2.2 The client may change the persons who are authorised to sign on the client's behalf by giving the bank written notice at the bank's branch where the client's account is.
 - 2.3 The bank is requested and authorised to act on instructions countermanding payment of cheques, bills of exchange, promissory notes or orders for payment and to issue chequebooks, bank statements and certificates of balance in respect of the account upon the written request of any one of the authorised signatories where the account is held.
- 3 ***ELECTRONIC INSTRUCTIONS**

The client hereby authorises the bank to debit the account if the client or somebody mandated on the client's behalf instructs the bank electronically to do so, whether or not there is money in the account.
- 4 **DEPOSITS**
 - 4.1 When the client deposits an instrument, the bank usually acts as collection agent on the client's behalf.
 - 4.2 Instruments delivered by the client or on the client's behalf for collection will only be available as cash after the instruments have been paid.
 - 4.3 The bank may, at the bank's discretion, credit the value of the deposit to the client's account and determine if the value or a portion thereof may be accessed before the bank receives value. If the bank does not receive value for any reason, the bank will reverse the credit and any associated interest.
 - 4.4 The bank will not be liable for errors resulting from incorrect information furnished by the client or on the client's behalf.
 - 4.5 The bank does not accept responsibility for ensuring that the client has lawful title to instruments delivered for collection.
- 5 ***OVERDRAWING**
 - 5.1 If the client's account becomes overdrawn without prior arrangement with the bank, the bank may in its discretion honour a cheque or other instrument drawn on the account but in such event:
 - 5.1.1 the amount in question shall be repaid to the bank on demand; and
 - 5.1.2 the bank shall be entitled to charge interest on the amount together with other fees.
 - 5.2 Should the bank permit any withdrawals against uncleared effects, the bank will be entitled to debit the client's account with such withdrawals and/or dishonoured cheques, should the bank have credited the account with uncleared effects.
 - 5.3 If the client requires an overdraft, the client should apply to the bank for such a facility.
- 6 ***FEES, CHARGES AND INTEREST**
 - 6.1 Any fees, costs, taxes, commission, charges and interest in respect of the account are payable immediately when they arise and will be debited to the client's account.
 - 6.2 The bank is entitled to change or increase any fees, costs, taxes, commission, charges, levies and interest in respect of the account or the method of calculation thereof from time to time, if there is any change in taxation, or statute or any significant change in market conditions, which may cause any increase in the bank's cost or risk in making the account available to the client. The bank will give the client reasonable notice of any such changes and the client shall be entitled to terminate these terms and conditions on the giving of at least 30 (thirty) days' notice to the bank, such notice to be given within 10 (ten) days after notice was given by the bank.
- 7 ***SETOFF OF BALANCES**

The bank shall be entitled to set off at any time the debit and credit balances in respect of current accounts of the same debtor that are denominated in the same currency that exceed the limit authorised by the bank.
- 8 ***BANK STATEMENTS**

It is the client's responsibility to check bank statements. Unless the client notifies the bank in writing within 30 (thirty) days of the date of the client's bank statement of any errors on the statement, the client will no longer have the right to rely on that error for any purpose to the extent allowed by law.
- 9 **INFORMATION SUPPLIED BY THE CLIENT**
 - 9.1 The client warrants that:
 - 9.1.1 all information (including balance sheets and income statements) which the client submits to the bank from time to time is, to the best of the client's knowledge and belief, complete and correct and where the client is a company, it warrants that:
 - 9.1.1.1 Its Memorandum of Incorporation ("MOI") (including any consolidated revision filed with the Companies and Intellectual Property Commission ("commission") is consistent with the Companies Act, 71 of 2008, as amended, replaced or re-enacted from time to time ("the Act");
 - 9.1.1.2 its rules, if any, made by it as contemplated in sections 15(3) to 15(9) of the Act ("rules") are consistent with its MOI and the Act;
 - 9.1.1.3 all special conditions, if any, as contemplated in section 15(3) of the Act, have been included in its MOI and attention has been drawn to them in its Notice of Incorporation or the applicable Notice of Amendment (as contemplated in section 16(2) of the Act) and;
 - 9.1.1.4 its shareholders' agreement, if any, is consistent with the Act, its MOI and its rules.
 - 9.2 in case of any material change in the above, the client must inform the bank immediately in writing.
- 10 **CERTIFICATION OF CHEQUES**

If the client requires the bank to certify, guarantee and/or mark cheques good for funds or to otherwise commit to the payment of a cheque, the client will not be entitled to countermand payment of such a cheque.
- 11 **REALISATION OF SECURITY**

The bank may realise any security which the bank holds for the client's indebtedness towards the bank and apply the proceeds thereof to pay such indebtedness.
- 12 **CREDIT INFORMATION**
 - 12.1 The client agrees that the bank may:
 - 12.1.1 make inquiries to confirm any information provided by the client in the client's application form;
 - 12.1.2 seek information from any credit bureau when assessing the client's application and at any time during the existence of the client's account; or
 - 12.1.3 disclose the existence of the client's account to any credit bureau, sharing positive and negative information about the client's account.
- 13 **THE CLOSURE OF THE ACCOUNT**

Either party may close the account and terminate these terms and conditions on the giving of at least 30 (thirty) days' notice to the other party.
- 14 **CERTIFICATE OF INDEBTEDNESS**

A certificate signed by any manager of the bank (whose appointment or authority as such it shall not be necessary to prove) stating the indebtedness of the client to the bank under these terms and conditions and stating that such amount is due and payable shall be sufficient proof (until the contrary is proved) of the matters therein stated for all purposes, including for the purpose of obtaining provisional sentence and obtaining judgment against the client.
- 15 **ADDRESSES**
 - 15.1 The client agrees to accept any notice and legal processes under these terms and conditions at the address completed in the application form. (This address is known in law as the client's *domicilium citandi et executandi*). The notices include letters reminding the client of payments the client have missed, letters of demand, a summons and other legal notices. A legal process includes the way the bank can enforce any court judgment, for example attaching the client's property and selling it to recover money the client owe to the bank.
 - 15.2 If the client wants to change the address at which the client agrees to accept notices and legal processes, then the client must send the bank a notice in writing by registered post. The notice must:
 - 15.2.1 tell the bank that the client is changing its address; and
 - 15.2.2 set out the new address at which the client agrees to accept notices.
 - 15.3 Any new address must be a physical address in the Republic of South Africa.
 - 15.4 If the client changes its address but do not send the bank this notice, the client agrees that the bank is allowed to send notices to it and carry out legal processes at the address completed in the application form or any new address the client has given the bank proper notice of.
 - 15.5 if the bank sends a notice to the client:
 - 15.5.1 by prepaid registered post to the client's address, the bank will treat it as if the client has received it 7 (seven) days after posting;
 - 15.5.2 by hand, the bank will treat it as if the client has received it on the date of delivery;
 - 15.5.3 by fax at the fax number the client gave to use, the bank will treat it as if the client has received it at the time of the transmission.
 - 15.6 When the bank treats a notice as if the client has received it by a certain date, to the extent allowed by law, this means the bank does not have to prove that the client did receive it then and, if the client claims that it did not receive the notice by that date then the client will have to prove it.


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16 LEGAL COSTS BOTH PARTIES

- 16.1 The client will be liable for all reasonable legal costs, which will include but not be limited to:
 - 16.1.1 legal costs on the so-called attorney and client scale (that is all the disbursements made by the attorney briefed by the bank, including all cost of any advocate instructed by him, as on brief, and the cost of the professional services rendered by the attorney to the bank);
 - 16.1.2 collection charges and tracing fees; and
 - 16.1.3 value-added tax (VAT) thereon, which the bank may incur in recovering or attempting to recover moneys which the client owes the bank.

17 CONSENT TO JURISDICTION

- 17.1 The client agrees that the bank may bring legal proceedings against it relating to these terms and conditions in any Magistrates' Court that has the authority to hear the case. (This authority is called jurisdiction.) The client agrees to the authority of the Magistrates' Court even if the amount the bank is claiming against the client is more than the Magistrates Court limit.
- 17.2 This does not prevent the bank from bringing legal proceedings in a High Court that has authority to hear the case.
- 17.3 These terms and conditions are governed and must be interpreted by the laws of the Republic of South Africa. This applies even if the parties do not live in the Republic of South Africa and if these terms and conditions were signed outside of the Republic of South Africa.

18 WAIVER

The bank does not lose any of its rights under these terms and conditions if it does not immediately and in every instance insist on them and the client may not raise it as a defence if the bank has a right it did not enforce at the relevant time.

19 SANCTIONS

The bank is committed to complying with national and international law, rules and regulations and policies regarding the combating of criminal activities, money laundering and terrorist financing. All applications and all information concerning the client, are therefore subject to verification, processing and screening and the bank may be obliged to decline certain applications. In addition, upon the acceptance of an application, all information, instructions and transactions for and on behalf of the client will be subject to continuous screening which may prohibit, limit or delay the execution thereof and which may oblige the bank to terminate its relationship with the client. The bank shall advise the client of any prohibitions or limitations on such applications, instructions or transactions. The bank, or its respective affiliates, employees, officers and directors, shall not be liable for any special, punitive, indirect, or consequential losses or damages, including, without limitation, loss of profits or any anticipated savings.

20 SWIFT PAYMENT

To make some payments, the details of the payment (including information about those involved in the payment) may be sent to third parties. There it could be accessible to regulators and authorities in connection with their legitimate duties, for example, preventing crime. By signing these terms and conditions, the client agrees to the provisions of this clause as it applies to it as well as on behalf of other parties involved in the payment.

21 GENERAL

- 21.1 The bank will not be liable for losses arising from not readily detectable alterations on cheques, bills of exchange, promissory notes and other negotiable instruments completed with erasable writing material.
- 21.2 All cheques, requisition and withdrawal slips, bills, payments and transfer instructions and other documents which reasonably purport to be duly drawn, signed and accepted by the client relating to the account and which are to be met by the bank, will be deemed to be a proper instruction to the bank.

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- 21.3 Should the bank permit any withdrawals against uncleared effects, the bank will be entitled to debit the client's account with such withdrawals and/or dishonoured cheques, should the bank have credited the account with uncleared effects provided that the bank acts reasonably.
- 21.4 The client undertakes to take reasonable precautions in order to prevent the theft or loss of any chequebook(s), form(s) or card(s) provided to the client in connection with the account or the disclosure of any information including the PIN number pertaining thereto. Should such chequebook(s), form(s) or card(s) be stolen or lost the client undertakes to immediately inform the bank in writing.
- 21.5 Should cheques drawn by the client be subject to a guarantee given by the bank, the client undertakes not to stop payment of any such cheque(s). Should such instruction nevertheless be given because of any reason whatsoever and be accepted by the bank and the bank still remains to perform towards a third party in terms of the guarantee inherent to such cheque, then, to the extent allowed by law the client accepts liability for any such payments notwithstanding such instruction.
- 21.6 The client agrees that the bank may make inquiries to confirm any information provided by the client and that the bank may obtain information from any credit bureau when assessing the client's application or at any time during the existence of the account. The bank may disclose the existence of the client's account to any credit bureau, sharing positive and negative information about the account.
- 21.7 ~~The bank is hereby expressly authorized, in its discretion, and without reference to the client, to cede and/or delegate to any third party of its choice any liability, obligation or debt owed to it by the client.~~
- 21.8 All necessary documents pertaining to the client and/or account as requested by the bank will on signature hereof, be made available.
- 21.9 ~~It is herewith certified that neither the client nor any of its members, directors, partners, trustees:~~
 - 21.9.1 ~~has been provisionally or finally sequestrated/liquidated or placed under judicial management/administration;~~
 - 21.9.2 ~~carries on business recklessly with gross negligence, with the intent to defraud or for fraudulent purposes;~~
 - 21.9.3 ~~carries on business or trades under insolvent circumstances;~~
 - 21.9.4 ~~has received a notice from the commission to show cause why it should be permitted to continue carrying on its business, or to trade;~~
 - 21.9.5 ~~has received a compliance notice in terms of the Act requesting it to cease carrying on business or trading;~~
 - 21.9.6 ~~is under business rescue nor is business rescue pending, threatened against it nor have any steps been taken, at any time, to commence business rescue against it under chapter 6 of the Act;~~
 - 21.9.7 ~~is financially distressed as defined in chapter 6 of the Act and there are no other circumstances present to justify business rescue; or~~
 - 21.9.8 ~~has sent a notice to any "affected person" as contemplated in chapter 6 (section 120) of the Act, to the effect that it is financially distressed; or~~
 - 21.9.9 ~~an application to court for an administration order against it has been made~~
- 21.10 Should any clause in the terms and conditions become illegal, invalid or unenforceable in any respect, the remaining clauses will not be affected or impaired thereby.

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22. TENDER

The bank acknowledges that :

- 22.1 it was appointed as the client's bankers in accordance with a procurement process conducted in accordance with prevailing procurement law and the client's supply chain management policy;
- 22.2 the appointment was made on the basis of the bid submitted by the banker; and
- 22.3 the tender conditions and the bid of the banker are incorporated into these terms and conditions and where there is an inconsistency or conflict between the tender conditions and the bid of the bankers on the one hand and these terms and conditions then the former shall prevail over the latter.

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TERMS AND CONDITIONS APPLICABLE TO A BUSINESS CURRENT ACCOUNT
1 USE OF ACCOUNT SUBJECT TO CONDITIONS

- 1.1 The opening and use of any current account ("account") at Absa Bank Limited (registration number 1986/004794/06 and VAT registration number 4940112230), ("the bank") by the applicant ("the client") is subject to the terms and conditions set out below.
- 1.2 Where the account is a Shari'ah compliant product, the following principles apply:
 - 1.2.1 The product will not earn interest or be linked to interest payments or facilities such as overdrafts and credit cards.
 - 1.2.2 The product operates in accordance with the Qard (loan) principle. (This means that the contract between the parties is treated as an interest free loan contract in terms of which the bank will repay the client an amount equal to the amount borrowed.)
 - 1.2.3 The product operates only on credit balances.
 - 1.2.4 The indicated terms and conditions (*) must be referred to clause 1.2 for a Shari'ah based product.

2 SIGNATURES

- 2.1 The bank has the right to:
 - 2.1.1 pay all cheques, bills of exchange, promissory notes and other negotiable instruments ("instruments") which were drawn, made or accepted and signed by the client or by persons who are authorised to sign on the client's behalf; and
 - 2.1.2 debit the client's account with the amounts of such instruments whether the client's account is in credit or not.
- 2.2 The client may change the persons who are authorised to sign on the client's behalf by giving the bank written notice at the bank's branch where the client's account is.
- 2.3 The bank is requested and authorised to act on instructions countermanding payment of cheques, bills of exchange, promissory notes or orders for payment and to issue chequebooks, bank statements and certificates of balance in respect of the account upon the written request of any one of the authorised signatories where the account is held.

3 *ELECTRONIC INSTRUCTIONS

The client hereby authorises the bank to debit the account if the client or somebody mandated on the client's behalf instructs the bank electronically to do so, whether or not there is money in the account.

4 DEPOSITS

- 4.1 When the client deposits an instrument, the bank usually acts as collection agent on the client's behalf.
- 4.2 Instruments delivered by the client or on the client's behalf for collection will only be available as cash after the instruments have been paid.
- 4.3 The bank may, at the bank's discretion, credit the value of the deposit to the client's account and determine if the value or a portion thereof may be accessed before the bank receives value. If the bank does not receive value for any reason, the bank will reverse the credit and any associated interest.
- 4.4 The bank will not be liable for errors resulting from incorrect information furnished by the client or on the client's behalf.
- 4.5 The bank does not accept responsibility for ensuring that the client has lawful title to instruments delivered for collection.

5 *OVERDRAWING

- 5.1 If the client's account becomes overdrawn without prior arrangement with the bank, the bank may in its discretion honour a cheque or other instrument drawn on the account but in such event:
 - 5.1.1 the amount in question shall be repaid to the bank on demand; and
 - 5.1.2 the bank shall be entitled to charge interest on the amount together with other fees.
- 5.2 Should the bank permit any withdrawals against uncleared effects, the bank will be entitled to debit the client's account with such withdrawals and/or dishonoured cheques, should the bank have credited the account with uncleared effects.
- 5.3 If the client requires an overdraft, the client should apply to the bank for such a facility.

6 *FEES, CHARGES AND INTEREST

- 6.1 Any fees, costs, taxes, commission, charges and interest in respect of the account are payable immediately when they arise and will be debited to the client's account.
- 6.2 The bank is entitled to change or increase any fees, costs, taxes, commission, charges, levies and interest in respect of the account or the method of calculation thereof from time to time, if there is any change in taxation, or statute or any significant change in market conditions, which may cause any increase in the bank's cost or risk in making the account available to the client. The bank will give the client reasonable notice of any such changes and the client shall be entitled to terminate these terms and conditions on the giving of at least 30 (thirty) days' notice to the bank, such notice to be given within 10 (ten) days after notice was given by the bank.

7 *SETOFF OF BALANCES

The bank shall be entitled to set off at any time the debit and credit balances in respect of current accounts of the same debtor that are denominated in the same currency that exceed the limit authorised by the bank.

8 *BANK STATEMENTS

It is the client's responsibility to check bank statements. Unless the client notifies the bank in writing within 30 (thirty) days of the date of the client's bank statement of any errors on the statement, the client will no longer have the right to rely on that error for any purpose to the extent allowed by law.

9 INFORMATION SUPPLIED BY THE CLIENT
9.1 The client warrants that:

- 9.1.1 all information (including balance sheets and income statements) which the client submits to the bank from time to time is, to the best of the client's knowledge and belief, complete and correct and where the client is a company, it warrants that:
 - 9.1.1.1 its Memorandum of Incorporation ("MOI") (including any consolidated revision filed with the Companies and Intellectual Property Commission ("commission") is consistent with the Companies Act, 71 of 2008, as amended, replaced or re-enacted from time to time ("the Act");
 - 9.1.1.2 its rules, if any, made by it as contemplated in sections 15(3) to 15(5) of the Act ("rules") are consistent with its MOI and the Act;
 - 9.1.1.3 all special conditions, if any, as contemplated in section 15(2) of the Act, have been included in its MOI and attention has been drawn to them in its Notice of Incorporation or the applicable Notice of Amendment [as contemplated in section 16(7) of the Act] and;
 - 9.1.1.4 its shareholders' agreement, if any, is consistent with the Act, its MOI and its rules.

- 9.2 In case of any material change in the above, the client must inform the bank immediately in writing.

10 CERTIFICATION OF CHEQUES

If the client requires the bank to certify, guarantee and/or to mark cheques good for funds or to otherwise commit to the payment of a cheque, the client will not be entitled to countermand payment of such a cheque.

11 REALISATION OF SECURITY

The bank may realise any security which the bank holds for the client's indebtedness towards the bank and apply the proceeds thereof to pay such indebtedness.

12 CREDIT INFORMATION

- 12.1 The client agrees that the bank may:
 - 12.1.1 make inquiries to confirm any information provided by the client in the client's application form;
 - 12.1.2 seek information from any credit bureau when assessing the client's application and at any time during the existence of the client's account; or
 - 12.1.3 disclose the existence of the client's account to any credit bureau, sharing positive and negative information about the client's account.

13 THE CLOSURE OF THE ACCOUNT

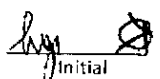
Either party may close the account and terminate these terms and conditions on the giving of at least 30 (thirty) days' notice to the other party.

14 CERTIFICATE OF INDEBTEDNESS


A certificate signed by any manager of the bank (whose appointment or authority as such it shall not be necessary to prove) stating the indebtedness of the client to the bank under these terms and conditions and stating that such amount is due and payable shall be sufficient proof (until the contrary is proved) of the matters therein stated for all purposes, including for the purpose of obtaining provisional sentence and obtaining judgment against the client.

15 ADDRESSES

- 15.1 The client agrees to accept any notice and legal processes under these terms and conditions at the address completed in the application form. (This address is known in law as the client's *domicilium citandi et executandi*) The notices include letters reminding the client of payments the client has missed, letters of demand, a summons and other legal notices. A legal process includes the way the bank can enforce any court judgment, for example attaching the client's property and selling it to recover money the client owe to the bank.
- 15.2 If the client wants to change the address at which the client agrees to accept notices and legal processes, then the client must send the bank a notice in writing by registered post. The notice must:
 - 15.2.1 tell the bank that the client is changing its address; and
 - 15.2.2 set out the new address at which the client agrees to accept notices.
- 15.3 Any new address must be a physical address in the Republic of South Africa.
- 15.4 If the client changes its address but do not send the bank this notice, the client agrees that the bank is allowed to send notices to it and carry out legal processes at the address completed in the application form or any new address the client has given the bank proper notice of.
- 15.5 If the bank sends a notice to the client:
 - 15.5.1 by prepaid registered post to the client's address, the bank will treat it as if the client has received it 7 (seven) days after posting;
 - 15.5.2 by hand, the bank will treat it as if the client has received it on the date of delivery;
 - 15.5.3 by fax at the fax number the client gave to use, the bank will treat it as if the client has received it at the time of the transmission.
- 15.6 When the bank treats a notice as if the client has received it by a certain date, to the extent allowed by law, this means the bank does not have to prove that the client did receive it then and, if the client claims that it did not receive the notice by that date then the client will have to prove it.


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- 16 **LEGAL COSTS**
- 16.1 The client will be liable for all reasonable legal costs, which will include but not be limited to:
- 16.1.1 legal costs on the so-called attorney and client scale (that is all the disbursements made by the attorney briefed by the bank, including all cost of any advocate instructed by him, as on brief, and the cost of the professional services rendered by the attorney to the bank);
- 16.1.2 collection charges and tracing fees; and
- 16.1.3 value-added tax (VAT) thereon, which the bank may incur in recovering or attempting to recover moneys which the client owes the bank.
- 17 **CONSENT TO JURISDICTION**
- 17.1 The client agrees that the bank may bring legal proceedings against it relating to these terms and conditions in any Magistrates' Court that has the authority to hear the case. (This authority is called jurisdiction.) The client agrees to the authority of the Magistrates' Court even if the amount the bank is claiming against the client is more than the Magistrates Court limit.
- 17.2 This does not prevent the bank from bringing legal proceedings in a High Court that has authority to hear the case.
- 17.3 These terms and conditions are governed and must be interpreted by the laws of the Republic of South Africa. This applies even if the parties do not live in the Republic of South Africa and if these terms and conditions were signed outside of the Republic of South Africa.
- 18 **WAIVER**
- The bank does not lose any of its rights under these terms and conditions if it does not immediately and in every instance insist on them and the client may not raise it as a defence if the bank has a right it did not enforce at the relevant time.
- 19 **SANCTIONS**
- The bank is committed to complying with national and international law, rules and regulations and policies regarding the combating of criminal activities, money laundering and terrorist financing. All applications and all information concerning the client, are therefore subject to verification, processing and screening and the bank may be obliged to decline certain applications. In addition, upon the acceptance of an application, all information, instructions and transactions for and on behalf of the client will be subject to continuous screening which may prohibit, limit or delay the execution thereof and which may oblige the bank to terminate its relationship with the client. The bank shall advise the client of any prohibitions or limitations on such applications, instructions or transactions. The bank, or its respective affiliates, employees, officers and directors, shall not be liable for any special, punitive, indirect, or consequential losses or damages, including, without limitation, loss of profits or any anticipated savings.
- 20 **SWIFT PAYMENT**
- To make some payments, the details of the payment (including information about those involved in the payment) may be sent to third parties. There it could be accessible to regulators and authorities in connection with their legitimate duties, for example, preventing crime. By signing these terms and conditions, the client agrees to the provisions of this clause as it applies to it as well as on behalf of other parties involved in the payment.
- 21 **GENERAL**
- 21.1 The bank will not be liable for losses arising from not readily detectable alterations on cheques, bills of exchange, promissory notes and other negotiable instruments completed with erasable writing material.
- 21.2 All cheques, requisition and withdrawal slips, bills, payments and transfer instructions and other documents which reasonably purport to be duly drawn, signed and accepted by the client relating to the account and which are to be met by the bank, will be deemed to be a proper instruction to the bank.
- 21.3 Should the bank permit any withdrawals against uncleared effects, the bank will be entitled to debit the client's account with such withdrawals and/or dishonoured cheques, should the bank have credited the account with uncleared effects provided that the bank acts reasonably.
- 21.4 The client undertakes to take reasonable precautions in order to prevent the theft or loss of any chequebook(s), form(s) or card(s) provided to the client in connection with the account or the disclosure of any information including the PIN number pertaining thereto. Should such chequebook(s), form(s) or card(s) be stolen or lost the client undertakes to immediately inform the bank in writing.
- 21.5 Should cheques drawn by the client be subject to a guarantee given by the bank, the client undertakes not to stop payment of any such cheque(s). Should such instruction nevertheless be given because of any reason whatsoever and be accepted by the bank and the bank still remains to perform towards a third party in terms of the guarantee inherent to such cheque, then, to the extent allowed by law the client accepts liability for any such payments notwithstanding such instruction.
- 21.6 The client agrees that the bank may make inquiries to confirm any information provided by the client and that the bank may obtain information from any credit bureau when assessing the client's application or at any time during the existence of the account. The bank may disclose the existence of the client's account to any credit bureau, sharing positive and negative information about the account.
- 21.7 The bank is hereby expressly authorised, in its discretion, and without reference to the client, to rede and/or delegate to any third party of its choice any liability, obligation or debt owed to it by the client.
- 21.8 All necessary documents pertaining to the client and/or account as requested by the bank will on signature hereof, be made available.
- 21.9 It is herewith certified that neither the client nor any of its members/directors/partners/trustees:
- 21.9.1 has been provisionally or finally sequestered/liquidated or placed under judicial management/administration;
- 21.9.2 carries on business recklessly, with gross negligence, with the intent to defraud or for fraudulent purposes;
- 21.9.3 carries on business or trades under insolvent circumstances;
- 21.9.4 has received a notice from the commission to show cause why it should be permitted to continue carrying on its business, or to trade;
- 21.9.5 has received a compliance notice in terms of the Act requesting it to cease carrying on business or trading;
- 21.9.6 is under business rescue nor is business rescue pending, threatened against it nor have any steps been taken, at any time, to commence business rescue against it under chapter 6 of the Act;
- 21.9.7 is financially distressed as defined in chapter 6 of the Act and there are no other circumstances present to justify business rescue; or
- 21.9.8 has sent a notice to any "affected person" as contemplated in chapter 6 (section 128) of the Act, to the effect that it is financially distressed; or
- 21.9.9 an application to court for an administration order against it has been made.
- 21.10 Should any clause in the terms and conditions become illegal, invalid or unenforceable in any respect, the remaining clauses will not be affected or impaired thereby.


Initial

1 DEFINITIONS

In these terms and conditions the following words and expressions will have the following meanings:

- 1.1 **Bank:**
Absa Bank Limited (Registration No: 1986/004794/06)
- 1.2 **Beneficiary:**
The recipient of funds via EFT by the User in accordance with the Service.
- 1.3 **Billing Account:**
The User's nominated account at the Bank, used for the purpose of debiting fees payable for the use of the Service.
- 1.4 **EFT:**
Electronic Funds Transfer.
- 1.5 **EFT Instructions:**
Electronic credit transactions for processing and clearing in accordance with the Service.
- 1.6 **Functionality:**
The functions selected by the User as part of the Service.
- 1.7 **Manual:**
The Manual provided by the Bank, as amended from time to time, which contains the rules and procedures pertaining to the Service.
- 1.8 **Party:**
The Bank or the User, as the case may be.
- 1.9 **Service:**
The specialised offering which is offered by the Bank.
- 1.10 **User:**
An individual or other legal entity which has registered for the Service, and includes any System Manager or Operator.
- 1.11 **Data:**
The information owned by the User and transferred and switched or required to be transferred and switched between the Bank and the User, in which is required by the Bank to enable a payment transaction. This data shall be managed and administered by the User as part of the Service offering registered with the Bank.

2 USE OF THE SERVICE SUBJECT TO CONDITIONS

- 2.1 ~~The use of the Service is provided subject to these terms and conditions and any annexures attached hereto, as amended from time to time. The User acknowledges that there are no other oral or written understandings or agreements between the parties relating to the Service.~~
- 2.2 If there is any conflict between these terms and conditions and any annexures, the terms and conditions will prevail.
- 2.3 The User acknowledges that the Service will enable the User to access facilities (eg overdraft facilities and limits), accounts, products and channels offered by the Bank, and that such facilities, accounts, products and channels will be governed by separate terms and conditions. Different security systems will also apply to these facilities, accounts, products and channels. If there is any conflict between these terms and conditions and those of the other facilities, accounts, products and channels, the terms and conditions of those facilities, accounts, products and channels used will prevail.
- 2.4 The Bank may impose restrictions on the nature of transactions to be submitted by the User, on the type of account against which credit transactions may be posted, and on the value of any one transaction or set of transactions. The Bank is entitled to vary these restrictions from time to time by giving not less than 30 (thirty) days' written notice to the User.
- 2.5 The Bank discloses to the User that being part of a global financial institution it complies and will in future comply with international and local anti-money laundering, counter terrorist financing, financial sanctions and prohibited business activity laws, regulations, policies and requirements. Therefore, the Bank may initially screen, verify and process all new customer and related information (which information may include personal information of System Managers and authorised signatories) and thereafter monitor all information, instructions and transactions by and on behalf of the user in relation to all transactions and to the business relationship on a continuous basis. This may result in the prohibition, limitation, delay in the execution of instruction of transactions and even in the declining or terminating of any transaction or the business relationship with the User.
To the extent permitted, the Bank shall advise the User of any action it intends to take in terms hereof. The User acknowledges and confirms that neither the Bank nor its affiliates, employees, officers, or directors, shall be liable for any direct, indirect or consequential loss, damage, costs or expenses whatsoever that may be suffered or incurred by the User as a result of, arising from or relating to any such prohibition, limitation, delay, decline or termination due to the implementation of this clause.

3 COMMUNICATION LINKS, HARDWARE AND SOFTWARE

- 3.1 The User obtains access to the Service via communication links such as the Internet and/or telecommunication links, and the User must make use of a relevant service provider.
- 3.2 The User will be solely responsible for the acquisition, installation and maintenance of the connection to the communication link and any related cost will be borne by the User.
- 3.3 The Bank will use its best endeavours to ensure that the Service will be available at the times as set out in the Manual, subject to the availability of the communication link and to any periods required for necessary maintenance of the Service.
- 3.4 Should the software and hardware requirements be modified with a view to improving or upgrading the communication links, the resultant cost of any hardware or software used for the use of the Service will be for the User's own account.

- 3.5 In the event that the User experiences problems with the connection to the communication link, it is the User's responsibility to liaise with the User's service provider prior to contacting the Bank.
- 3.6 The User must ensure that disaster recovery is in place in respect of its service provider.
- 3.7 NotifyMe for Business as a messaging service will be available at all times subject to the availability of connectivity and Bank Server infrastructure.
- 3.8 The User acknowledges that information transmitted through the Internet or any other communication system, including a wireless communication system, is susceptible to unlawful access, distortion and monitoring.
- 3.9 The User must ensure that the Bank has the User's correct network address. The Bank cannot be held liable for damages, which the User may incur, if the User's data is sent to the incorrect address.

4 SERVICE CHARGE AND TARIFFS

- 4.1 In addition to all the normal banking charges, the User shall pay to the Bank a service charge in accordance with the tariffs as set out in Annexure A and B, which service charge and tariffs may be amended from time to time as set out in clause 10.5 below, as well as any incidental costs accrued as a result of any additional services provided or work performed by the Bank on behalf of or for the User.
- 4.2 The User is entitled to apply, in writing, for the amendment of the Functionality. If the functionality is amended, the Bank is entitled to adjust the service charges and tariffs set out in Annexure A.
- 4.3 The service charge and tariffs set out in Annexure A do not include any levies, stamp duties or taxes. Unless specified in Annexure A, such levies, stamp duties or taxes as well as monies payable for utilisation of data transmission services rendered by other entities shall be for the account of the User.
- 4.4 The User authorises the Bank to debit the User's Billing Account with the service charge and tariffs payable for the use of the Service. This account may be amended from time to time by written notification from the User.
- 4.5 It is specifically recorded that the registration fee payable by the User to the Bank, will not be refunded to the User, should the User terminate the Service before the Service becomes effective.
- 4.6 The Bank confirms that no service charges and tariffs will be payable until the Service is fully functional and all necessary documentation is in place.

5 LIABILITY AND OBLIGATIONS OF THE USER

- 5.1 The User acknowledges that:
 - 5.1.1 the use of the Service is at the User's own risk;
 - 5.1.2 if the Service is not available for any reason whatsoever, it is the User's responsibility to limit any potential losses by using other services for the duration of the unavailability of the Service;
 - 5.1.3 the Bank and the Beneficiary's bank rely solely on the account number and branch clearing code, as provided by the User, when effecting credits to the account;
 - 5.1.4 the User may not provide processing facilities, being technical and operational processing of payment instructions, to any party nor on behalf of any party;
 - 5.1.5 the Bank will not process any EFT instructions that contain incorrect information or that are incapable of immediate processing;
 - 5.1.6 the Bank or the Beneficiary's Bank, in instances where the name of the Beneficiary is included, is not obliged to determine whether the name of the Beneficiary and the account number and branch clearing code of such a Beneficiary refer to the same legal entity;
 - 5.1.7 any transfer in or out of any account of the User, is final and irrevocable, and may not be reversed, set aside or repaid other than in accordance with the provisions in the Manual. The Bank will not become involved in any disputes regarding such transactions;
 - 5.1.8 any transmission of data can only be regarded as successful when a status message is received by the User confirming the successful transmission;
 - 5.1.9 the User must impose adequate security measures and provide the Bank with valid and correct instructions. The User also acknowledges that there is no onus on the Bank or any of its employees or agents to ensure that the instructions submitted by the User are in fact valid and correct;
 - 5.1.10 the provision of the Service will not entitle the User to overdraw any account if borrowing arrangements have not been made with the Bank, or to overdraw in excess of any borrowing limit agreed by the Bank.
- 5.2 If the User makes use of the Verified Payments Service:
 - 5.2.1 It is the responsibility of the User to provide the Bank with correct and updated data on a daily basis;
 - 5.2.2 It remains the responsibility of the User to reconcile payments made and update the database on a regular basis;
 - 5.2.3 The User shall be responsible for all complaints, queries and claims resulting from incorrect data provided to the Bank;
 - 5.2.4 The User must open a separate current account with the Bank for the purposes of the Verified Payments service. The Bank shall immediately settle payments of successful transactions processed directly into the User's verified payments nominated account;
 - 5.2.5 The User shall validate the reference number used to identify the client. The User acknowledges that the Bank does not guarantee the correctness of such validation and shall not be liable should the validation fail or be incorrect.

- 5.2.6 With respect to the use of Data, the User undertakes that it will use its best endeavours to ensure that:
- 5.2.6.1 all Data provided will be accurate and will conform to the format and standards set out in the specification manual; and
- 5.2.6.2 the use of Data does not infringe any third party's intellectual property or data privacy rights.
- 5.2.7 The User acknowledges that it is aware that the use of Data, whether by accessing, utilising, storing or otherwise dealing with same may, from time to time, be subject to certain statutory or other regulations within South Africa. The User hereby undertakes to comply with all such relevant statutes and regulations, as same apply to the fulfilment of its obligations in terms of this Agreement.
- 5.2.8 The User shall be responsible for ensuring the security and integrity of the Data while in its possession. The User shall be deemed to have possession of the Data while the Data is within its system, the outer extremity of which is (and includes) the router at the User's end of the communication medium used to transmit and receive Data.
- 5.2.9 The User shall be responsible for implementing its own disaster recovery and back-up procedures in relation to Data in its possession, which shall be designed to ensure that there is minimum down-time in the event of a disaster and that all Data can be restored within 1 (one) day of any occurrence which destroys or corrupts Data.
- 5.2.10 The User may elect to update and upgrade the infrastructure from time to time. User shall advise the Bank in writing in advance of the said updates and upgrades, whereupon the Bank shall endeavour to incorporate same and integrate same with the Payment System and Channels.
- 5.3 If the User makes use of the NotifyMe for Business service:
- 5.3.1 The User's bank statement will remain the official record of the account regardless of the information contained in the NotifyMe for Business notification message;
- 5.3.2 A file containing the notification message(s) will either be sent near real-time or in batches dependant on the option the User elected. The User must retrieve these notification messages within 2 (two) days from delivery, after which period these messages will be deleted;
- 5.3.3 Only Users who have opted for batch notification will be able to retrieve notification messages within the said 2 (two) day period;
- 5.4 The User indemnifies the Bank and as stipulatio alicui (stipulation for the benefit of the Beneficiary) likewise indemnifies the Beneficiary's Bank and undertakes to hold each of them harmless against any loss, damage, legal liability, legal costs (including costs on an attorney and client scale) or expenses of whatever nature they may suffer or become liable for arising from non-compliance by the User to the terms and conditions, computer error by the User or fraudulent and unauthorised use of the Service by the User or any other person authorised or deemed to be authorised to act on behalf of the User, resulting in incorrect, unauthorised and/or wrongful transactions.
- 5.5 If the User makes use of payments and collections via Host to Host or Mailbox:
- 5.5.1 The User acknowledges that the appointment of the System Operator is subject to the approval and appointment of the Bank.
- 5.5.2 The User warrants and represents that the Service Provider/System Operator is authorised to action its behalf and that any agreement concluded with the Service Provider/System Operator does not contain any provisions that are in conflict with the provisions of the terms and conditions applicable to the Service.
- 5.5.3 The User is entitled to withdraw the appointment of a Service Provider/System Operator and to appoint another Service Provider/System Operator in writing and inform the Bank thereof, provided that such Service Provider/System Operator is approved and appointed by the Bank.
- 5.5.4 The Bank is entitled, in its discretion, to refuse to accept the appointment of any Service Provider/System Operator and may also at any time after the appointment of a Service Provider/System Operator require the User to substitute the Service Provider/System Operator with another Service Provider/System Operator, acceptable to the Bank.
- 5.5.5 The User must ensure that the Service Provider/System Operator imposes adequate security measures and provides the Bank with valid and correct instructions. The User acknowledges that there is no onus on the Bank or any of its employees or agents to ensure that the instructions submitted by the Service Provider/System Operator are in fact valid and correct.
- 5.5.6 The User irrevocably and unconditionally indemnifies the Bank and holds the Bank harmless from any loss or damage which the Bank may sustain and any claim(s), court orders, costs, legal expenses (including attorney and client costs), collection fees, damages and/or liability where such liability, damages or claims result from the fact that the Bank complies with any instruction from the System Operator, and furthermore the NAEDO user undertakes to make payment to the Bank of such loss, damage and/or liability on demand. This indemnity includes, but is not limited to instructions by the System Operator for crediting any of the accounts of the NAEDO user with an amount to which the NAEDO user is not legally entitled from the account of an accountholder or payer, as well as against any damage caused by a person who gained unauthorised access to the computer system by using computer hardware and/or computer software in the possession or under the control of the System Operator.
- 5.6 The warranties and indemnities given in this clause 5 shall remain operative and enforceable, notwithstanding the termination of the Service, in respect of any such loss, costs, fees, damages, liabilities, claims, suits or demands as
- aforesaid, the cause of which arose during the subsistence of the Service.
- 6 LIABILITY AND OBLIGATIONS OF THE BANK**
- 6.1 The Bank will provide the User with training and supporting services in the operation of the Service. The Bank may agree to the training of additional staff or extra training and supporting services. The Bank will in such an event be entitled to charge the User a fee.
- 6.2 The Bank, save to the extent that any claim or action arises due to negligence or fraud by the Bank, will not be responsible for any damage or loss which the User may suffer as a result of:
- 6.2.1 any malfunction or defect in the hardware or software (with the exception of software provided by the Bank) used by the User to access the Service;
- 6.2.2 malfunction or unavailability of the communications links used by the User to access the Service;
- 6.2.3 erroneous, unauthorised, incomplete or unlawful instructions from the User;
- 6.2.4 unlawful or unauthorised access by another person(s); and
- 6.2.5 incorrect or late execution or non-payment of any instruction given by the User, due to the circumstances set out in clause 6.2.1 - 6.2.4
- 6.3 The Bank will, if the User makes use of the Electronic Deposit Identifier Service:
- 6.3.1 transfer all payments made by clients (ie any client of the Bank who pays the User electronically through accounts held at the Bank) to the User's Nominated Account at the close of each day; the User may choose to receive immediate settlement of such payments by registering for the Electronic Deposit Identifier Immediate Settlement Service (service charges apply), which service is limited to Absa-on-Absa settlements.
- 6.3.2 transfer payment data (i.e. the payment particulars consisting of the name of the customer, a reference number identifying the customer and the amount paid by the customer) in respect of all payments to the User on the following day after payment when the User has elected to receive a consolidated transfer, and
- 6.3.3 validate the customer's reference number, used to identify the customer, against algorithms received from the User, but does not guarantee the correctness of such validation and will not be liable if the validation should fail or be incorrect.
- 6.4 The Bank will, if the User makes use of the Verified Payments service:
- 6.4.1 transfer all payments made by customers (ie any customer of the Bank who pays the User electronically through accounts held at the Bank) to the User's Nominated Account at the close of each day;
- 6.4.2 transfer payment data in respect of all payments to the User on the following day after payment as more fully set out in the manual
- 6.5 The Bank will, if the User makes use of the NotifyMe for Business service:
- 6.5.1 only respond with a notification message once the Bank becomes aware of the transaction;
- 6.5.2 not be held responsible for the confidentiality of information after it leaves the Bank's network.
- 7 CONFIDENTIALITY**
- The Parties hereby acknowledge that they are aware that in order to provide the Service, information, which may be regarded as secret and/or confidential, will be made available to one another. The parties therefore undertake not to disclose to other parties and/or otherwise divulge in any way whatsoever information thus gained without the prior written consent of the other party except as required by any lawful authority.
- 8 PROPRIETARY AND OTHER RIGHTS**
- 8.1 The proprietary rights to and copyright in respect of all programs, software, documents and material that the Bank makes available to the User shall at all times and under all circumstances remain vested in the Bank. The User undertakes not to make known or available to any person or entity, any program, software or documents or any part or copy thereof, without the Bank's prior written approval.
- 8.2 On termination of the Service, the User undertakes to return, on demand, all programs, software, documents and material in whatever format it may be (including copies and records) to the Bank, who is the lawful owner thereof.
- 9 FORCE MAJEURE**
- 9.1 If the performance of any obligation of a Party is prevented or interfered with by force majeure for a period not exceeding 21 (twenty one) days, that Party shall be excused from that performance to the extent of that prevention or interference, but shall use its best endeavours to avoid such force majeure and shall continue to perform in terms of this agreement as soon as performance becomes possible. However, should the period of 21 (twenty one) days be exceeded then the other Party may terminate the Service by giving 5 (five) days' written notice to the Party who is prevented to perform any of its obligations as a result of force majeure.
- 9.2 For the purpose of this clause, "force majeure" shall include war (whether declared or otherwise), earthquake, fire, flood, tempest, act of God or of government, legislative amendment, regulatory interference, strikes and any other industrial disputes, and all other causes beyond the reasonable control of a Party.
- 10 BREACH AND TERMINATION**
- 10.1 Should either Party breach any of the provisions of these terms and conditions and/or the Manual and fail to remedy such breach within 30 (thirty) days after receipt of a written notice from the other Party to remedy that breach, the latter will be entitled, without prejudice to any remedies which it may otherwise have in terms of these terms and conditions or at law, to terminate the Service or to claim specific performance, in either event without prejudice to the other Party's right to claim damages.

- 10.2 In the event that:
- 10.2.1 a resolution is taken for the voluntary liquidation of the User, or application is issued for the judicial management of the User; or
 - 10.2.2 an act of insolvency as contemplated in section 8 of the Insolvency Act (No 24 of 1936) was committed by the User; or
 - 10.2.3 the User makes any general assignment for the benefit of its creditors or effects or attempts to effect a compromise or composition with its creditors; or
 - 10.2.4 a judgment is granted against the User, and the User fails within 7 (seven) days or such other period prescribed by law after the date of such judgment either to satisfy same or to take steps (and thereafter actively pursue such steps) to appeal or set aside such judgment; then and in any such event, the Bank shall, notwithstanding anything to the contrary in these terms and conditions and without prejudice to any other rights which it may have in law, be entitled to terminate or to cancel the Service by notice with immediate effect.
- 10.3 Notwithstanding anything to the contrary in these terms and conditions, the Bank shall be entitled to immediately terminate or suspend all or part of the Service or suspend the User should:
- 10.3.1 the Bank have reasonable grounds to believe that the Service is being used negligently, illegally or fraudulently; or
 - 10.3.2 the Bank believes that the security of the systems used to provide the Service may be compromised.
- 10.4 If any of the circumstances referred to in the previous sub-clause occur, or in the event of the User's liquidation, the Bank shall, without prejudice to any other rights which it may have in law, be entitled to claim payment of all amounts which the User may owe to the Bank, notwithstanding that the due date for payment of such amounts has not yet arrived.
- 10.5 Either Party may terminate the Service upon 3 (three) months' written notice.
- 10.6 The Bank shall give the User written notice of not less than 30 (thirty) days (or such shorter period as may be necessitated by Government action, legislative or regulatory requirements or the withdrawal of another bank from the Service) of any amendment(s) to the service charges and tariffs, terms and conditions, the Manual, the Format Specifications Manual and the annexures, and the User shall be bound by such amendment(s) unless the Service is terminated as further provided in this clause. The User shall be entitled to terminate the Service upon 20 (twenty) days' written notice to the Bank within 10 (ten) days after having been notified by the Bank of such amendments.
- 10.7 Termination of the Service will not relieve a Party of obligations imposed upon such Party by statute or regulation or by the use of the Service or the Manual prior to its termination. In particular, the User is liable for all transactions, service charges, tariffs, fees, costs and/or obligations (and related charges) which are incurred up to and including the date of termination.
- 11 CERTIFICATE
A certificate signed by any of the Bank's managers (whose appointment need not be proved) will be sufficient (ie prima facie) proof of the User's indebtedness to the Bank, interest and the rate of interest, stated therein.
- 12 WAIVER
If the Bank, for any reason or purpose, does not immediately enforce or implement any of the Bank's rights in terms of these terms and conditions, it does not mean that the Bank has abandoned or waived any of those rights.

19. TENDER

The bank acknowledges that:

- 22.1. it was appointed as the client's bankers in accordance with a procurement process conducted in accordance with prevailing procurement law and the client's supply chain management policy;
- 22.2. the appointment was made on the basis of the bid submitted by the banker; and
- 22.3. the tender conditions and the bid of the banker are incorporated into these terms and conditions and where there is an inconsistency or conflict between the tender conditions and the bid of the bankers on the one hand and these terms and conditions then the former shall prevail over the latter."

13 JURISDICTION

These terms and conditions shall be governed, construed, interpreted and implemented according to the laws of Republic of South Africa and the Parties irrevocably submit to the exclusive jurisdiction of the High Court of the Republic of South Africa in respect of any dispute or matter arising out of or in connection with the Service.

14 COSTS

Either Party shall be liable for and pay all costs (on the scale as between an attorney and client) arising out of or in connection with any demand or legal proceedings by the other Party for the recovery of any amount owing in terms hereof, including tracing fees, collection commission and disbursements.

15 NOTICES AND DOMICILIUM

15.1 The User's physical address as provided by the User to the Bank is the address (*domicilium citandi et executandi*) which the User chooses as the address where any process of court may be served on the User (domicile address). The User's mail address will be used to forward statements, notices or other communications.

15.2 If the User moves to another physical address, changes the mail address or wish to give the Bank any notice, the User must inform the Bank in writing at Cash Management and Payments Operations and Support, Absa Towers North 6W2, 161 Main Street, Johannesburg, 2001.

15.3 All notices given by the Bank will be regarded as having been received by the User:

15.3.1 by pre-paid post to the User's postal address, 7 (seven) days after having been posted;

15.3.2 by hand, on date of delivery;

15.3.3 by facsimile, at the time of transmission;

15.3.4 electronically, when the notice enters an information system designated or used for that purpose by the User and is capable of being retrieved and processed by the User.

16 LIMITATION OF LIABILITY

Notwithstanding anything to the contrary contained in these terms and conditions, the Parties shall not be liable to each other for any indirect or consequential loss or damage, including without limitation, loss of profit, revenue, anticipated savings, business transactions or goodwill or other contracts whether arising from negligence or breach of contract.

17 CESSION AND ASSIGNMENT

17.1 Neither Party shall be entitled to cede, assign, transfer or make over any of its rights or obligations without obtaining the prior written consent of the other Party, which shall not be unreasonably withheld.

17.2 Any cession or assignment agreed to by the Bank will not relieve the User of any obligations with respect to any covenant, condition, or obligation required to be performed by the User.

18 SEVERABILITY

The invalidity, illegality or unenforceability of any of the provisions of these terms and conditions shall not affect the validity, legality and enforceability of the remaining provisions of the terms and conditions.

[Handwritten signature]