



Merchant Services

SERVICES ESTABLISHMENT AGREEMENT BETWEEN NEDBANK LIMITED, OPERATING UNDER LICENCE AS AMERICAN EXPRESS® ('the bank') AND ('the business')

DDMMYYYY

The bank and the business acknowledge and agree to be bound by the terms and conditions on the reverse side of this agreement.

BUSINESS DETAILS

Registered name, Trading name, Business address, Postal address, Contact name, Contact telephone no, Contact fax number, Cellphone, Company registration no, Registration date, Nature of business, PCI DSS compliant, Estimated monthly turnover, Financial year-end, VAT number, Statement type, How would you like your charge back?

AUTHORISATION AND WARRANTY

1 I/We, the undersigned, nominate, on behalf of the business, the bank account below as the business's nominated bank account for purposes of this agreement: Bank name, Branch name, Branch code, Account number. 2.1 I/We agree that the service establishment commission payable by the business to the bank is % of the aggregate daily transfers to the business's nominated bank account of amounts arising from accumulated card transactions. 2.2 I/We agree that the Bank will charge me/us a set-up fee of R and that this amount will be debited to my/our nominated bank account. 3 I/We agree that the floor limit is: 3.1 R for a Card transaction enabled by a manual imprinter, and 3.2 R for a Card transaction enabled by an electronic device. 4 I/We undertake to notify the bank in the event of the business changing its business type and agree that the bank may in that event, at its discretion, either terminate this agreement or continue with the agreement subject to any amendments that the bank may deem appropriate. 5 I/We warrant, on behalf of the abovementioned business, that the information given herein is true and correct in all respects and that we are duly authorised to sign this agreement on behalf of the business. I/We acknowledge that the agreement will only be effective when all the bank's representatives indicated below have signed it. Signed at on 20

SERVICE ESTABLISHMENT

Full name, Capacity, ID number, Signature, Date

FOR OFFICE USE

AMERICAN EXPRESS CONSULTANT

Full name, Capacity, ID number, Signature, Date, CIS number, Client type, Comm title code, SIC code, Holding company, Region, Hierarchy, MCC code, Risk indicator, Host bank, Merchant number, Terminal ID, Checked by MLO, Date, CIS captured by, Date, Cams captured by, Date, Checked by, Date, Merchant number, City, Country code, Owner type, Officer code, Cash adv/Purchase, Seasonal, Y, N, Month, Remarks

TERMS AND CONDITIONS

These terms and conditions form an integral part of the agreement between Nedbank Limited and the service establishment whose details are reflected in the Service Establishment Agreement.

1 INTERPRETATION

In these terms and conditions:

- clause headings are for convenience and are not to be used in the interpretation hereof.
- unless the context indicates a contrary intention, reference to –
 - a natural person includes a juristic person and vice versa; and
 - the singular includes the plural and vice versa.
- unless a contrary meaning is expressly indicated, the following words and expressions shall have the meanings set out hereunder –
 - Card** means any valid American Express chip and/or magnetic stripe Card that is issued by us or any other person authorised to do so;
 - Cardmember** means the person to whom an American Express Card has been issued and who is authorised to use the Card;
 - Card transaction** means any commercial transaction for which the Card and a point-of-sale device are used;
 - commencement date means the date on which the last signature is appended on the front page of these terms and conditions;
 - days** means and includes all days with the exception of Sundays and public holidays and, when any number of days are prescribed, that number shall exclude the first and include the last day;
 - Floor limit** means the total value of sales (inclusive of value-added tax) that may be made by a Cardmember per Card transaction at a merchant and above which authorisation is required;

fraudulent Card transaction means a Card transaction that would constitute fraud in terms of South African common law and include any Card transaction made by anyone other than the authorised Cardmember and the use of a Card or Card number that has not been issued by a bona fide Card issuer;

- hot-card file** means an electronic file of those Cards that are or have been rendered invalid due to loss or theft;
- notified bank means the bank account reflected in the Service Establishment Agreement;
- Processing bank** means the bank whose point-of-sale device is in use for a particular transaction;
- point-of-sale device** means a manual imprinter or electronic device that enables a Card transaction to take place;
- refund** means the amount that is debited to the nominated bank account and credited to the Cardmember in terms of clause 9;
- service establishment commission** means the fees payable in terms of clause 10;
- the 'this agreement'** means the Service Establishment Agreement on the front page of these terms and conditions read together with these terms and conditions and any appendices hereto;

- voucher** means a paper record of a point-of-sale-generated record of a Card transaction;
- we, us and our** mean Nedbank Limited Reg No 1951/000009/06, operating as American Express Cards under licence in South Africa;
- you and your** mean the service establishment whose name appears in the Service Establishment Agreement;
- chip card** a plastic card embedded with an integrated circuit, or chip, that communicates information to a point-of transaction terminal, which can be used online and offline, depending on the risk parameters on the card and terminal;
- CID**: a security feature for card-not-present transactions on American Express cards consisting of a four-digit value which provides a cryptographic check of the information embossed on the Card;

- these code values validate two things: the customer has the credit card in his/her possession; the card account is legitimate;
- CID** is printed only on the card – it is not contained in the magnetic stripe information, nor does it appear on sales receipts or statements
- AEPS** is an acronym for American Express integrated circuit card payment specification which enables issuers, retailers and consumers to use chip cards and terminals with added security;
- CID**: a cardmember's personal security code allowing him/her to carry out a chip card or magstripe transaction; and
- PIN** – driven card: AEPS chip Card, which is operated by the cardmember by punching the PIN into the EDC terminal or PIN pad.

2 ACCEPTANCE

- You undertake to accept Cards for payment of goods and/or services.
- You shall display adequately our American Express promotional material that we supply to you to accept Cards in payment for purchases and services. You shall also replace or remove such promotional material when we request you to do so.
- You shall accept and process only Cards which:
 - are genuine, current and valid;
 - are not listed in the current hot-card file and
 - reflect a clear signature of the relevant Cardmember.

3 AUTHORISATION

- You shall obtain valid authorisation at the time of each Card transaction in respect of any:
 - purchases which exceed the floor limit;
 - purchases, which are subject to an extended-payment term (also known as budget purchases); and
 - telephone and mail order purchases;
- Telephonic authorisation shall be obtained only:
 - when a manual point-of-sale device is used in conjunction with a Card and the Card transaction exceeds the floor limit;
 - when a Card transaction exceeds the floor limit and/or the magnetic strip on the Card is damaged so that the electronic point-of-sale device is unable to read information contained in the magnetic strip, in which case you must obtain an imprint of the relevant Card and the Cardmember must sign the imprinted voucher;
 - when the electronic point-of-sale device instructs you to obtain such authorisation.

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- We reserve the right to decline any authorisation, without giving any explanation or reason therefore.
- Any authorisation granted by us shall not be evidence or constitute a warranty of the validity of the Card and it is only an indication that the relevant account had sufficient funds to meet payment, and was not reported lost or stolen at the date and time of authorisation and transaction.

- The merchant shall record the authorisation number legibly on each imprinted voucher.
- The authorisation code must at all times be a valid code, either supplied electronically or by contacting Nedbank Card and Payments Authorisation Division in Johannesburg.

4 FLOOR LIMIT

- The floor limit is stipulated in the Service Establishment Agreement.
- We reserve the right to change the floor limit at any time without prior notification.

5 NOMINATED BANK ACCOUNT

- You hereby authorise us to debit from time to time your nominated bank account or any other account held with us or any other financial institution with the following items:
 - the service establishment commission, calculated at the rate stated in the Service Establishment Agreement, on the total value of all valid vouchers you deposit into your nominated bank account;
 - any refund due to the Cardmember;
 - adjustments for any errors;
 - reversals in respect of invalid vouchers;
 - the total amount of vouchers lost after having been deposited with us, subject to a reversal of such debit when you produce properly reconstructed documentation;
 - adjustments in respect of fraudulent entries or items;
 - all service and other fees and charges prevailing from time to time as we may determine at our sole discretion; and
 - the amount of any Card transaction in respect of which you fail to furnish us with the requested sales voucher in terms of 17 of Appendix A.
- Interest in accordance with clause 5.2, and
- Legal fees/costs in accordance with clause 5.4.
- Interest shall accrue on all amounts outstanding in terms hereof at 2 (two) percent per month calculated from due date until date of final payment, both days inclusive. You shall not change your nominated bank account without first giving written notice to us at our American Express Card Division in Johannesburg.
- The merchant shall direct any query relating to its nominated bank account to American Express Card and Payments Division in Johannesburg within 30 (thirty) days of the date of the relevant bank statement, failing which the merchant will have no claim against American Express in this respect.

- You shall be liable for all legal fees/costs on the scale as between attorney and client which costs will include but not be limited to tracing fees and counsel fees, should Nebank institute legal action against you in terms of this agreement .

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6 TELEPHONE, MAIL AND INTERNET ORDER TRANSACTIONS

- You may not effect Card transactions for payment in respect of orders made by telephone, mail order or the internet unless you have received our prior written authorisation.
 - You must retain your copy of the sales voucher for a period of at least 3 (three) years from the transaction date, in such a manner as to ensure that it remains its clarity. The sales voucher will be stored by the merchant for dispute resolution purposes.
 - No manual entry is allowed unless the merchant has obtained the prior written consent from Nedbank, which will be given at Nedbank's sole discretion and on conditions determined by Nedbank. For manual-entry transactions an imprint of the Card has to be obtained and the CID numbers must be recorded for the electronic processing of the transaction.
- ### 7 PRESENTATION OF SALES VOUCHERS FOR PAYMENT
- We shall, on the day of receipt of the sales vouchers, credit your nominated bank account with the full amount of correctly completed vouchers, subject to the provisions of clause 5.
 - By depositing a voucher or downloading an electronic deposit, as the case may be, in your nominated bank account, you warrant that:

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- all data reflected on the voucher is true and correct;
 - the prices of goods and/or services you supplied to the Cardmember do not exceed your cash prices;
 - the transaction between you and the Cardmember is lawful and that there are no defences, counterclaims, disputes or rights to setoff which would entitle the Cardmember to refuse or withhold payment of the full amount appearing on the voucher; and
 - nothing has occurred or arisen which will or may invalidate the voucher.
- You hereby indemnify us against any claim, loss or damage arising from any dispute with the Cardmember regarding goods and/or services obtained through the use of the Card.
 - All vouchers deposited or all deposits electronically downloaded in your nominated bank account shall be deemed as payment of moneys to be credited to your nominated bank account only once each voucher or deposit has been honoured by the processing bank.
 - If any deposit or part of a deposit is disputed by the Cardmember, you authorise us to debit your nominated bank account pending the resolution of such dispute in your favour.
 - Any dispute with a Cardmember shall be resolved between you and the Cardmember, but we undertake to assist you, where possible, in resolving such disputes.
 - You have 3 (three) days from the date of Card transactions to deposit all vouchers used in conjunction with a manual point-of-sale device in your nominated bank account.
 - You have 3 (three) days from the date of the Card transactions to download all electronic deposits into your nominated bank account.
 - If we require a copy of any documentation for further investigation for any reason whatsoever, you have to furnish it to us within 7 (seven) days after we have requested you to do so.

8 INVALID VOUCHERS

- A voucher is invalid, inter alia, if:
 - the transaction in respect of which it is issued is or appears to be unlawful, illegal and/or unenforceable or is a fraudulent Card transaction;
 - the voucher is incomplete in any manner;
 - the voucher is negotiated or discounted in any manner whatsoever;
 - the signature on the voucher is different to the signature on the Card;
 - there is no signature on the voucher, (with the exception of vouchers for PIN-driven card transactions);
 - the voucher deposited with us is not identical to the copy provided by the Cardmember;
 - the Card was not current at the time of the Card transaction;
 - the Card number was listed in the hot-card file at the time of the Card transaction;
 - your floor limit has been exceeded or extended-payment terms have been accepted without prior authorisation having been obtained;
 - the authorisation was not given on the same date as the Card transaction;
 - you fail to deposit the voucher with us within the period stipulated;
 - an imprint of the Card is not obtained when required to do so in terms hereof; and
 - Card transactions for telephone, mail or internet orders have been effected by you without authorisation;
- The merchant may not allow a cardmember to split transactions or carry out multiple card transactions on any single day if the total cost of these transactions would exceed the floor limit. The merchant may also not charge parts of a single transaction on different dates in order to bypass authorisation or take any other measures that would have this effect.
- When a cardmember presents a non-PIN-driven magnetic-strip Card, the merchant shall ensure that the Cardmember signs the voucher. The merchant shall then compare this signature with the specimen signature on the card and ensure that the details of both merchant and Cardmember are imprinted legibly on the voucher.
- We shall be entitled to reverse any amount in your nominated bank account for which an invalid voucher has been processed.

9 FRAUDULENT TRANSACTIONS

- Should fraudulent transactions account for more than 8% (eight percent) of your gross turnover we will be entitled to cancel your agreement with immediate effect and you agree and accept full chargeback liability for all fraud incurred on any American Express Card at your establishment whether or not the chargeback is regarded as a result of fraudulent Card usage or not.

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10 REFUNDS

- You shall not give any cash refunds to any Cardmember.
- The amount of any refund shall be determined at the date on which you processed the refund, taking into account the prevailing exchange rate (where applicable), less any service and other fees and charges prevailing from time to time as we may determine in our sole discretion.

11 SERVICE ESTABLISHMENT COMMISSION

- The service establishment commission payable by you to us shall be the amount stipulated in the Service Establishment Agreement.
- We reserve the right to adjust the service establishment commission at any time by giving you notice to that effect.

12 CONFIDENTIAL INFORMATION

- We shall be entitled to:
 - take all steps as we may deem necessary to verify the information submitted to us;
 - retain and process any information provided by you, and
 - furnish any confidential information relating to any account operated by you with us for any reason to any person (including, without limitation, any credit bureau) in accordance with the Code of Banking Practice of The Banking Council of South Africa or, alternatively, generally accepted banking practice.
- We may, in our discretion, cede, delegate and/or assign this agreement to American Express or its designee, in which event you authorise us and give us consent that we may share data with American Express and American Express entities.

13 HOT-CARD FILE

- You undertake to take all reasonable steps to ensure at all times that each Card presented is not listed in the hot-card file.
- You agree that you shall remain responsible and assume all risk in relation to fraudulent Card transactions, notwithstanding the fact that such Cards may not appear in the hot-card file.

14 BREACH

- We may, without prior notice to you, claim from you repayment of amounts paid to you in respect of invalid vouchers and/or fraudulent Card transaction and/or overpayment.
- Should you breach any other term hereof and fail to remedy the breach within 5 (five) days after receipt of written notice to remedy such breach, we may, without prejudice to other remedies available to us, claim immediate payment of all your obligations or terminate this agreement.
- Any amount owing by you under this agreement shall immediately and without notice become due and payable upon the happening of any of the following events, which shall be deemed to be a breach of this agreement by you, namely if:
 - your estate is sequestrated or you are placed in liquidation or you are placed under judicial management, whether provisionally or finally; or
 - a special resolution is passed for your winding-up; or
 - a notice of surrender for your estate is published; or
 - you make or attempt to make a compromise with your creditors.
- JURISDICTION**
 - For purposes of any legal action which may arise from this agreement the parties consent to the jurisdiction of the magistrate's court, notwithstanding the fact that such action may otherwise be beyond the jurisdiction of such court, and this clause shall be deemed to constitute the necessary written consent granting jurisdiction to the magistrate's court in terms of section 45 of the Magistrates' Court Act of 1994, as amended. Notwithstanding the foregoing, the parties shall have the right in their discretion to institute legal proceedings against each other in any other competent court that may have jurisdiction to entertain such action.
 - This agreement shall in all respects be governed by, and construed in accordance with, the laws of the Republic of South Africa and all disputes, actions and other matters in connection with this agreement shall be determined in accordance with such laws.

16 CERTIFICATE OF INDEBTEDNESS AND DOCUMENTARY EVIDENCE

- A certificate by one of our managers, whose status and appointment need not be proved, stating:
 - that you are indebted to us;
 - that the amount of the debt is owed and must be paid to us; and
 - any other matter regarding the indebtedness; will be prima facie proof of your indebtedness and/or the correctness of such matter.
- You agree that any documentary evidence, whether as microfilm and/or copies of any record relating to your nominated bank account and any other matter pertaining to this agreement but not limited to Card transactions processed or alleged to have been processed by us, will be admissible in any legal proceedings as prima facie (sufficient) proof of your indebtedness and/or the correctness of such matter. The onus will be on you to prove that such documentary evidence is not a true copy of the original document.
- You agree that a sworn statement by a Cardmember will be admissible in any legal proceedings and the onus will be on you to disprove the truthfulness of the statement.

17 TERMINATION

- If the nature of your business changes, we shall be entitled, but not obligated, to terminate this agreement immediately without giving reasons. The merchant shall immediately within 3 (three) working days notify Nedbank in writing should there be any change in the nature of the merchant's business or should there be a change in the ownership of the merchant.

- If the point-of-sale device is used to commit fraud or if we suspect that the point-of-sale device is being used to commit fraud or that any male fide conduct is being perpetrated in respect of any aspect of this agreement, we may immediately terminate this agreement without giving you prior notice.

- Subject to the provisions of clauses 17) and 17.2 above, this agreement may be terminated by either party on 24 (twenty-four) hours' written notice to the other for any reason whatsoever.

- This agreement shall automatically terminate should you not use the point of sale device for more than six months.
- Where you request the termination of this agreement, you must log a call to that effect with the American Express Helpdesk.

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18 DOMICILIUM AND NOTICES

- The parties hereby choose as their domicilia citandi et executandi for all purposes in connection with this agreement, including, without limitation, the service of all notices pertaining to this agreement, their respective physical addresses as cited on the front page of these terms and conditions or such other addresses as may be notified to the other in writing in terms hereof.
- All notices to be given in terms of this agreement shall –
 - be in writing;
 - be delivered or sent by prepaid registered post or by telefax;
 - if delivered, be deemed to have been received on the date of delivery;
 - if sent by prepaid registered post, be deemed to have been delivered within 7 (seven) business days of posting, unless the contrary is proved; and if sent by telefax, be deemed to have been received on the first business day following the date of sending the telefax, unless the contrary is proved.
- The merchant shall immediately within 3 (three) working days notify Nedbank in writing should there be any change in the nature of the merchant's business or should there be a change in the ownership of the merchant.

19 MISCELLANEOUS

- We may add, amend or replace all or any of the terms and conditions of this agreement by sending notice thereof to you and, unless you terminate this agreement by giving us written notice to that effect as contemplated in clause 17, you shall be deemed to have accepted such additional amended or new terms and conditions.
- This agreement, as amended from time to time, constitutes the entire agreement between you and us, and correctly reflects the intention of the parties and constitutes all arrangements entered into between the parties.
- The parties undertake to do all such things, sign all such documents and take all such steps as may be necessary, incidental or conducive to the implementation of the terms, conditions and import of this agreement.
- No failure, delay, relaxation or indulgence by a party in exercising any power or right conferred upon him in terms of this agreement shall operate as a waiver of such power or right nor shall this be deemed to be a novation of any of the terms and conditions of this agreement.
- Save as expressly otherwise herein provided, this agreement or any part thereof, or any share or interest therein or any rights or obligations hereunder may not be ceded, delegated or otherwise transferred without the prior written consent of the other party.
- You hereby acknowledge that, save as recorded in this agreement, we have given no warranty, express or implied, concerning our obligations arising out of this agreement or in respect of any provisions contained in this agreement.
- We shall not be held responsible for any corrupted computerised data or vouchers lost in transit howsoever caused.
- We shall be entitled at our sole discretion, without notification to you, to consolidate any or all accounts which you may have with us. Any partial consolidation shall not preclude us from claiming from you any amount not included in such consolidation.
- You shall be liable for all legal costs incurred by us as a result of your failure to comply with this agreement on the scale as between attorney and own client. We may, for any reason whatsoever, set off any amounts that are due and payable to us against any amounts that may be owing to you from any account that you hold with us. You shall immediately pay us any net amount that remains owing and payable to us after set-off.
- The terms of this agreement shall be deemed to be, in respect of each part, entire, separate, severable and separately enforceable in the widest sense from the rest of the agreement.
- Should any provision of this agreement be found by any competent court to be defective or unenforceable for any reason whatsoever, the remaining provisions of this agreement shall continue to be of full force and effect .

20 CHARGEBACKS

- You hereby confirm that you have requested us to send you voucher request via the captured e-mail address on the application form you acknowledge that we have no way of confirming such a request has been received by us in this manner.**
- You hereby indemnify and hold us harmless in respect and against all actions, proceedings, liability, claims, damages, losses and expenses instituted against, incurred or suffered by us arising from delivery of the relevant voucher via electronic mail.**
- You further indemnify and hold us harmless from any debits or any chargeback's that may not be represented due to non-fulfilment of required documentation where such a request was communicated via electronic mail.**

SERVICE ESTABLISHMENT'S PROCEDURES

PROCEDURE BEFORE AND AT CONCLUSION OF A CARD TRANSACTION

- Only American Express-approved stationery may be used.
- Before concluding a sale, you have to:
 - verify that the Card presented complies with the provisions of clause 2.3 of the terms and conditions; and
 - compare the imprint that appears on the Card to the number printed by the electronic point-of-sale device on the voucher. If the number differs, you must contact our American Express Card Division in Johannesburg for further instructions.
- At the time of the sale you have to ensure that:
 - the Cardmember signs the voucher;
 - the Cardmember's signature on the voucher is the same as the specimen signature on the Card;
 - your details and those of the Cardmember are imprinted legibly on the voucher; and
 - each relevant voucher is dated with the transaction date and that sufficient details are included to identify the Card transaction.
- You have to retain a copy of every voucher for a period of at least 3 (three) years from the Card transaction date.
- If we require a copy of your voucher for any reason whatsoever, you have to furnish it to us within 7 (seven) days after we have requested you to do so.
- You may not charge for goods and/or services in excess of your cash prices.
- You may not allow the Card to be used to draw cash.
- No information relating to the Card may be sold to, purchased from, provided to or exchanged with any third party other than our or your agents, unless you have obtained the Cardmember's consent.
- You may not permit a Cardmember to split Card transactions or to enter into multiple Card transactions on any one day if the sum total thereof will exceed the floor limit, to charge out any one Card transaction on different dates to avoid authorisation or to act in any way to avoid authorisation.
- Where the amount of a Card transaction is reflected in a currency other than rand, the amount will be converted into rand in accordance with our practice at the time the Card transaction is received by us or the Card transaction vouchers are deposited with us.

REFUND PROCEDURE

- If you are of the reasonable opinion that the Cardmember is entitled to a refund, you have to:
 - complete the relevant refund voucher and deposit it in your nominated bank account within 3 (three) days after processing thereof;
 - deliver to the Cardmember a true and complete copy of the relevant refund voucher.
 - Where a manual point-of-sale device is used, the amount of the relevant voucher will be deducted from the total amount of vouchers deposited.
 - Where an electronic point-of-sale device is used, your nominated bank account will be debited with an amount equal to the relevant refund.
- ### AEIPS 'CHIP & PIN' Card
- AEIPS 'CHIP & PIN' transactions are to be processed as follows:
 - The cardmember shall be present when the Card is being processed and verify the transaction by entering his/her valid PIN on the EDC terminal or PIN pad;
 - Transactions may be processed online or offline by inserting the chip card in the point-of-sale terminal;
 - The cardmember under all circumstances will be asked to input his or her PIN into a keypad provided by the merchant;
 - The merchant shall ensure that chip card transactions are performed in a secure environment; should Nedbank request information regarding a transaction, the acquirer shall provide such information in the form of a transaction certificate within 7 (seven) days after we have requested you to do so.
 - The merchant shall under the following circumstances refund the cardmember for goods and services:
 - damaged goods;
 - proof of non-delivery; and
 - wrong delivery of a specified order.
 - A Merchant transaction will be incomplete under one or more of the following circumstances:
 - If the card is pulled out of the chip reader slot before the transaction is completed;
 - If the chip technology fails during the transaction; and
 - If the telcoms are interrupted during the transaction flow.
 - If the Merchant had processed AEIPS chip transactions correctly as detailed in clause 1) above, then in such instance the card issuer shall take liability for the costs of such a transaction. However, if such a transaction had been processed incorrectly by the Merchant, then the Merchant shall take liability for the costs of such a transaction.

- American Express® Cards is operated under licence in South Africa by Nedbank Limited Reg No 1951/000009/06, 135 Rivonia Road, Sandown, 2196, South Africa. Nedbank subscribes to the Code of Banking Practice of The Banking Association South Africa and, for unresolved disputes, supports resolution through the Ombudsman for Banking Services. Nedbank is an authorised financial services provider. Nedbank is a registered credit provider in terms of the National Credit Act (NCR Reg No NCRCP16).

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IMPORTANT:

By ticking all the 'initial here' boxes and attaching your digital signature, you acknowledge that you have read and understand the terms and conditions.