



Nedbank Corporate Cards, Card Numbers and credit facilities are granted by us at our sole discretion and all applications are processed and approved in Johannesburg. The dispatch of the Card to the Business and/or the employee or, in the case of a Card Number, the dispatch of the notification of the Card Number to the Business and/or the employee will constitute our acceptance of the particular application, subject to the terms and conditions of use set out below.

1 LEGAL AND GENERAL INFORMATION

- 1.1 While Nedbank Group Limited and all its subsidiaries and associates and its cessionaries, delegates or successors in title (collectively 'Nedbank') are constantly striving to provide a service that is intended to make your banking as easy and convenient as possible, all South African banks are legally obliged to verify, including identity verification with statutory bodies, and retain information received from you.
- 1.2 Apart from the information you will provide in your application, Nedbank may therefore require additional documentation and information from the Business and the Cardholder.

2 DEFINITIONS

In these terms and conditions of use, unless the context indicates the contrary:

- 2.1 **'Act'** means the Companies Act, 71 of 2008, reference to which must not be construed as excluding the old Companies Act, 61 of 1973, where the Act contemplates that the old act will continue to have effect;
- 2.2 **'ATM'** means an automated teller machine;
- 2.3 **'Authorised Representative'** means the Service Establishment or supplier who is stated on the application form as an authorised representative;
- 2.4 **'Business'** means the business named on the Card application form and the entity that hereby applies for Cards and/or Card Numbers and Facilities;
- 2.5 **'Business Account'** means an account created by us in the name of the Business, which account is used to consolidate all accounts owing in respect of card accounts in the name of the employees of the Business;
- 2.6 **'Card'** means the American Express® Corporate, Procurement, Business Gold, Personal Travel or suppressed Card and Nedbank Corporate, Procurement, Business or Garage Card, which may be Chip and PIN-enabled and/or contactless-enabled:
- 2.6.1 issued by us at our sole discretion for use by the Business's employee named on the Card; and
- 2.6.2 where applicable, lodged with and used by an Authorised Representative and identified as a duplicate Card;
- 2.7 **'Card Account'** means the card account in the name of the Business linked to the Card issued by us, or against which Card Transactions are debited;
- 2.8 **'Card Limit'** means the maximum amount that we at our sole discretion may make available to a Cardholder to spend in respect of the Card issued to the Cardholder, provided that the limit will not exceed the amount of the Facility;
- 2.9 **'Cardholder'** means the employee of the Business who is the holder of, or is issued with, a Card and/or a Card Number;
- 2.10 **'Card Number'** means the number that:
- 2.10.1 is embossed on the Card and by which the Card is identified; or
- 2.10.2 we may issue to the Business and which may be furnished to suppliers or Service Establishments to effect Card Transactions;
- 2.11 **'Card Transaction'** means any commercial transaction, cash withdrawal transaction or deposit transaction made:
- 2.11.1 with the Card from or to the Card Account by using an ATM or other electronic or other device; or
- 2.11.2 by furnishing the Card Number to a Service Establishment or supplier; or
- 2.11.3 from or to the Card Account by using an electronic or other device, or the internet, to input the Card Number;
- 2.12 **'Chip'** means the integrated circuit that is embedded in a plastic card and which is designed to perform processing and/or memory functions;
- 2.13 **'Chip and PIN card'** means a plastic card, commonly called a chip card, with an embedded Chip that communicates information to a point-of-transaction terminal and/or other electronic device;
- 2.14 **'Client'** means for business rescue provisions the business/entity that has a contractual relationship with us, and includes any of its subsidiaries, related and interrelated persons and/or any security provider and/or any of its subsidiaries;
- 2.15 **'Client Agreements'** means any loan, or other agreement, or any facility letter applicable to the Client;
- 2.16 **'Conversion Fee'** means a fee to cover global fluctuations in the currency market. Any charge that is made in a foreign currency other than US dollar will, when the conversion is done, be converted into US dollar before being converted into South African rand and will attract a currency Conversion Fee;
- 2.17 **'Common monetary area'** means states neighbouring South Africa whose currency is linked directly to the South African rand;
- 2.18 **'Contactless Payment'** means a payment transaction that may or may not require a PIN, made below the contactless transaction limit, where the contactless-enabled card is placed against a compatible Payment Device or within close proximity of the Contactless Payment Device;
- 2.19 **'Contactless Payment Device'** means a point-of-sale (POS) device that is enabled to perform Contactless Payments;
- 2.20 **'CVV'** means card verification value;
- 2.21 **'Expenditure Limit'** is variable and is reviewed regularly based on a number of factors, including your credit record, account history, spending patterns and our current understanding of your financial resources;
- 2.22 **'Facility'** means a facility that we alone may decide to make available to the Business for each Card or Card Number issued, subject to these terms and conditions of use. We will determine the amount of this facility. The purpose of this facility is to cover the full amount used by the Cardholder on the Card or the Card Number for purchases or services, or that is withdrawn by the Cardholder from the Card Account in circumstances where sufficient cash funds are available in the Card Account;
- 2.23 **'juristic person', 'related and interrelated person', 'business rescue', 'business rescue practitioner', 'affected persons', 'subsidiary' and 'financially distressed'** have the meanings contemplated in section 128 of the Act. The term **'security provider'** means the juristic person that provides security in respect of the obligations of the Client;
- 2.24 **'Liability Structure'** means the form of liability that was adopted when the Card agreement between the Business and/or the Cardholder and us was initially concluded;
- 2.25 **'Overdue Amount'** means that portion of any amount payable that appears on the Card Account statement that is not paid prior to or on the payment date recorded on the statement;
- 2.26 **'PIN'** means a personal identification number, which is a secret number selected by the Cardholder and which only the Cardholder knows. This number must be encoded on the Card by us and is used as a means of user identification;
- 2.27 **'Related Invoices'** means invoices from external service providers, including but not limited to travel management, car hire and hotel companies invoices;
- 2.28 **'Service Establishment'** means the supplier of goods and services purchased or acquired by the Cardholder by using the Card and/or the PIN, and includes any merchant performing the same service;

- 2.29 'Transaction Limits' means daily and monthly POS transaction limits for both Card Transactions and Contactless Payments, as communicated to you from time to time; and
- 2.30 'we', 'us' and 'our' mean and refer to Nedbank Limited Reg No 1951/000009/06, its successors in title and assigns who inter alia operates American Express® Cards under licence in South Africa, of 135 Rivonia Road, Sandown, Sandton and its successors in title and assigns.

3 APPLICATION FOR A CARD ACCOUNT

- 3.1 By completing an application for the issue of a Card, a Card Number and/or the granting of a Facility, and causing it to be submitted to us, the Business and the Cardholder are requesting us to conclude an agreement with them.
- 3.2 Regardless of how the application is received by us, whether by hand, by post, by courier or through any electronic medium, our Card Division, situated in Sandton will consider the application.
- 3.3 This application is subject to our identifying and verifying all parties to the agreement in terms of the Financial Intelligence Centre Act, 38 of 2001. All parties will therefore be required to provide us with documents that will enable us to identify these parties as outlined in the Financial Intelligence Centre Act. Without providing us with this information and documentation, the application will not be considered and no Card will be released or handed over to the Business. Should the Business and/or the Cardholder's details change, the Business and/or the Cardholder will be required to provide us with new relevant documents, as required by the Financial Intelligence Centre Act.
- 3.4 The application will be assessed and, if approved, will be processed at our offices in Johannesburg.
- 3.5 If the application is approved, a Card account will be opened in the name of the Business and/or the Cardholder under the Liability Structure of corporate liability or joint and several liability in terms of our agreement with the Business.

4 USE OF THE CARD AND CARD NUMBER

- 4.1 The Cardholder must, immediately on receipt of the Card, sign the Card in the space provided thereon with a ballpoint pen.
- 4.2 The Card may be used only by the Cardholder, except in the case of American Express® Personal Travel Cards, which may be used only by an Authorised Representative.
- 4.3 The Card may only be used within the Expenditure Limit as well as the Card Limit. While we will exercise due care to ensure that the Expenditure Limit and the Card Limit are not exceeded, we will not accept any responsibility or liability should the Expenditure Limit or the Card Limit be exceeded for any reason whatever.
- 4.4 Card Numbers that are issued specifically for use at identified suppliers and Service Establishments may be furnished to such suppliers and Service Establishments only for payment of goods and services supplied by such suppliers and Service Establishments.
- 4.5 American Express® Personal Travel Cards may be used by the Authorised Representative only to sign, on behalf of the Business, for goods and/or services provided by the Authorised Representative as stipulated in the agreement between the Business and the Authorised Representative and to debit such Card Transactions to the Card Account.
- 4.6 Should we receive a written request from the Business to amend or remove the Authorised Representative, as stipulated in the agreement between us and the Business, the amendment will come into effect when such written notification is received by our Card offices in Johannesburg. Such Authorised Representative, as originally stipulated in the agreement before the amendment or removal came into effect, will cease to be recognised as an Authorised Representative or third party under the aforesaid agreement from the moment the amendment or removal of such Authorised Representative becomes effective.
- 4.7 Neither the Business nor the Cardholder may cede or delegate any rights or obligations arising out of these terms and conditions of use in respect of the Card, the Card Account, the Card Number and/or the Facility.
- 4.8 The Card and the Card Number are valid from the time they are issued, or from the first day of the 'valid from' date on the Card, as the case may be, until they expire, until the Facility is cancelled or until the Card Account is closed for whatever reason. If we process a Card Transaction after the Card and/or the Card Number has expired or the Facility has been cancelled, it does not mean that we have extended the validity term of the Card and/or the Card Number.
- 4.9 We are the owners of the Card and/or the Card Number and when the Facility and/or the Card Number is cancelled or the Card Account is closed for whatever reason, the Business and the Cardholder are responsible for ensuring that the Card is cut up and returned to us or to any person who is authorised to act on our behalf.
- 4.10 The Card may not be used for any illegal purposes or as payment for any illegal purchases.
- 4.11 When the Facility and/or the Card Number is cancelled, the Card Account is closed at the request of the Business or the mandate of the Authorised Representative is terminated for whatever reason, the Business and the Cardholder are responsible for ensuring that a written instruction to cancel the Card Number and/or close the Card Account is received by us.
- 4.12 The Cardholder is entitled, with the express permission of the Business, to draw cash with the Card up to an amount authorised by us.
- 4.13 Should the Cardholder cease to be employed with the Business for whatever reason, it is the responsibility of the Business to submit written notification to us informing us of the termination of the Cardholder's employment and requesting the cancellation of the Card and the Card Number. Should we not receive notification of the aforementioned the Business will be held liable for all transactions processed on the Card Account.
- 4.14 The Cardholder will receive a PIN, which, when selected by the Business, will enable the Cardholder to make deposits and/or withdraw cash and/or make use of services by means of the Card at compatible ATMs or other electronic devices.
- 4.15 The Business and the Cardholder must:
- 4.15.1 take proper care of the Card and/or the Card Number and do everything that is necessary to prevent the PIN from being lost, stolen or the PIN and the Card Number being used wrongfully;
- 4.15.2 ensure that any record of the PIN is kept separate from the Card in a safe place; and
- 4.15.3 not allow anybody to obtain knowledge of the PIN.
- 4.16 If the Card and/or the Card Number:
- 4.16.1 is lost, stolen or used wrongfully; or
- 4.16.2 is used by any person other than the Cardholder and, in the case of American Express® Personal Travel Cards, if the Card and/or the Card Number is used by any person other than the Authorised Representative the Business and/or the Cardholder must notify us immediately at our Card Division in Johannesburg. We must also be notified immediately if anyone other than the Cardholder obtains knowledge of the PIN and/or the Card Number or if there is reason to believe or suspect that this has happened. If we are notified verbally, such notification must be confirmed in writing within 24 (twenty-four) hours after the verbal notification. It is the responsibility of both the Business and the Cardholder to ensure that every written notice is received by us at our Card Division in Johannesburg.
- 4.17 The Business and/or the Cardholder will be liable for, and must pay us all amounts arising out of all transactions occurring on the Card Account prior to receipt by us of written notification by the Business and/or the Cardholder that the Card and/or the Card Number has been lost or stolen, or that the Facility and/or the PIN is being used unlawfully.
- 4.18 The Business and/or the Cardholder will be liable for and must repay us all amounts we pay or have to pay if the Card and/or the Card Number is used before we have had reasonable time after notification to take the necessary action, whether the Card is used with or without the authority of the Business and/or the Cardholder.
- 4.19 Except where a Card Transaction is effected by means of the PIN or for a mail or telephone order, or where a Card Transaction is effected with an American Express® Personal Travel Card, the Cardholder must sign a sales voucher, a cash advance voucher or a refund voucher, as the case may be, every time the Cardholder uses the Card. By signing the voucher, the Cardholder confirms that the information on it is correct. The Business and the Cardholder will be liable for and must repay us all amounts we pay or have to pay in respect of Card Transactions. If the Cardholder does not sign the relevant voucher(s), the Business and the Cardholder will still be liable to us.
- 4.20 When a Cardholder uses the Card outside the common monetary area, a currency Conversion Fee will be charged for such transactions and/or for transactions concluded outside the borders of South Africa.

- 4.21 The Business and the Cardholder must be fully familiar with and comply with all the applicable exchange control regulations when the Cardholder uses the Card outside the common monetary area. Card Transactions made in foreign currencies will be shown on the statement in South African rand.
- 4.22 We will not be liable for any loss or theft resulting from the use of an ATM.
- 4.23 The Business and the Cardholder authorise us, which authorisation may not be cancelled:
- 4.23.1 to pay for purchases, services and cash advances obtained by means of the Card, with or without the PIN, and to debit the amount concerned to the Card Account;
- 4.23.2 to debit the Card Account with the amount of the sales receipt or cash advance receipt or any other cash amount withdrawn; and
- 4.23.3 to make the necessary entries to do the above and to reverse these entries when appropriate.
- 4.24 If we accept any sales voucher, cash advance voucher or other evidence of withdrawal of cash and/or purchase or we authorise a Card Transaction resulting in the Facility being exceeded, it will not mean that we have exercised our discretion to increase the Facility permanently.
- 4.25 We will not in any way be liable to either the Business or the Cardholder if any Service Establishment or supplier does not accept the Card or if we refuse to authorise any Card Transaction.
- 4.26 When the Cardholder presents a Card to a Service Establishment and authorises a purchase, the Cardholder will be deemed to have consented on behalf of the Business to debit the Card Account for payment. For online, telephone or mail orders or other means of placing orders where the Card is not physically present with the Service Establishment, the Cardholder will be deemed to agree to the transaction on behalf of the Business when the Cardholder provides the Card Number and related Card and Card Account details and follow the Service Establishment's instructions for processing payment. If the amount of the transaction is not specified at the time the Cardholder agrees to it, the Business will remain liable for the full amount of the resulting Charge. The Cardholder cannot cancel Charges.
- 4.27 If there are any claims or disputes between the Business and/or the Cardholder and any Service Establishment or supplier in respect of the nature, quality or quantity of any goods or services that the Business and/or the Cardholder obtained from such Service Establishment or supplier, our right to receive payment from the Business and the Cardholder will not be affected in any way, nor will it give anyone a right of setoff or counterclaim against us. Such claims or disputes should be taken up directly with such Service Establishment or supplier.
- 4.28 The Business and the Cardholder hereby acknowledge that:
- 4.28.1 the Authorised Representative is the agent of the Business;
- 4.28.2 no supplier or Service Establishment is our agent.
- 4.29 You have the right to dispute a Card Transaction, but not necessarily a Contactless Payment. If we are unsuccessful with the chargeback request, you will remain liable for the amount owing on your total Card Facility. An unsuccessful dispute does not limit your right to claim directly from the merchant.
- 4.30 If a Service Establishment or supplier gives a refund, it will be credited to the Card Account only after we have received a properly issued refund from such Service Establishment or supplier.
- 4.31 Neither the Business nor the Cardholder will have the right to stop any payment that we are making or which we are about to make in respect of any Card Transaction, nor will the Business or the Cardholder have the right to instruct us to reverse a payment that has already been made.

5 CONTACTLESS TRANSACTIONS

- 5.1 Your Card may be enabled to make Contactless Payments.
- 5.2 You may make a Contactless Payment for an amount below the prescribed limits without the use of a PIN.
- 5.3 **When you make a Contactless Payment without the use of a PIN, you may not have the right to dispute this payment.**
- 5.4 You cannot make internet purchases or cash withdrawals at an ATM using Contactless Payment functionality.

6 INTEREST AND OTHER CHARGES

- 6.1 We pay interest on any daily credit balance on the Card Account at a rate that we determine and notify to the Business and/or the Cardholder from time to time. This interest is credited to the Card Account monthly on the statement date.
- 6.2 Subject to 6.4 the Business and/or the Cardholder must pay interest to us, calculated daily at the rate that we determine from time to time, on any debit balance on the Card Account resulting from Card Transactions, including but not limited to cash advances, travellers cheque purchases, casino chip purchases, fuel purchases and transfers from the Card Account, from the date of the Card Transaction to the date on which the full amount is credited to the Card Account.
- 6.3 The Business and the Cardholder must pay interest to us, calculated daily at the rate that we determine from time to time, on all Overdue Amounts.
- 6.4 In the event of short or late payment interest will be levied on the full amount outstanding on the Card.
- 6.5 Notwithstanding anything contained herein, if the Business and/or the Cardholder pays the outstanding balance on the Card Account in full on or before the due date reflected on the monthly statement, we may decide not to charge interest in respect of Card Transactions (other than cash advances, cash withdrawals, casino chip purchases, travellers cheque purchases and ledger fees) that appear for the first time on that statement. If we decide not to charge interest, it will not mean that we have waived our right to charge interest, and we reserve the right to charge interest at any time.
- 6.6 All applicable government levies in respect of the use of the Card will be debited to the Card Account monthly.
- 6.7 We have the right to debit the Card Account with our standard ledger, service and other fees and charges payable from time to time, which will be due and payable on the date they are debited to the Card Account and will be reflected on the monthly statement. Such fees and charges include but are not limited to an annual fee (which will be debited for each year or part of a year, whether or not the Card is used), a Card replacement fee, a returned-payment fee, a late-payment fee, a currency Conversion Fee, an overfacility fee and a copy-of-document fee in respect of the issue of and use by the Cardholder or the Authorised Representative of the Card or the Card Number.
- 6.8 The Business and/or the Cardholder hereby authorises us to debit the Card Account with all legal costs we incur in exercising any of our rights in terms of these terms and conditions of use. These costs include all legal charges as between attorney and client, tracing fees, counsel fees and collection charges.

7 ADDITIONAL UNDERTAKINGS

- 7.1 In addition to the other undertakings contained in the Client Agreements, the Client unconditionally and irrevocably undertakes:
- 7.1.1 promptly to inform us in writing of –
- 7.1.1.1 any alterations to its constitutional documents;
- 7.1.1.2 any change in the present shareholding or ultimate beneficial control relating to voting rights of the Client;
- 7.1.1.3 any other event or circumstance whatsoever relating to business rescue proceedings in respect of the Client or members of the Client or by an affected person contemplated under the Act or at the instance of the court pursuant to a court order commencing business rescue proceedings (whether such proceedings are anticipated, threatened or have commenced), and immediately to provide us with full details thereof, copies of all relevant documents including applications, notices of meetings, resolutions, etc and of any steps that the Client is taking or proposes to take in respect thereof.
- 7.1.1.4 receipt by the Client of notices from the Companies and Intellectual Property Commission (**the Commission**) in terms of sections 22(2) and 22(3) of the Act forthwith on becoming aware thereof;
- 7.1.2 to deliver to us written notice of a board or members' meeting of the Client to approve a resolution contemplated under section 129 of the Act, together with the details of the date and place at which the meeting will be held, no later than 5 (five) business days prior to the date on which the meeting will be held so as to enable us at our discretion to attend such meeting. The Client further agrees that we will be entitled

at our discretion to attend the meeting and should we do so, we will have the right, subject to applicable laws, to be consulted in respect of the appointment of an appropriate business rescue practitioner;

- 6.1.3 not to enter into any amalgamation, demerger, merger or corporate reconstruction without our prior written consent;
- 6.1.4 to comply with section 75 (Disclosure of financial interest) of the Act in respect of all agreements of whatsoever nature the Client contemplates, and in the event of non-compliance, to obtain a ratifying extract from its shareholders;
- 6.1.5 if applicable, to deliver the written notice contemplated in section 129(7) of the Act promptly to us; and
- 6.1.6 following the effective date of the Act, promptly to comply with the requirements of section 11(3)(b) ('RF' Companies) and section 13(3) of the Act in respect of any special conditions contained in its memorandum immediately prior to and subsequent to the effective date of the Act.

7 ADDITIONAL WARRANTIES

In addition to any warranties contained in the Client Agreements that govern the relationship between the Client and us, the Client represents and warrants to us that:

- 7.1 it has not received any notices from the Commission in terms of section 22(2) or 22(3) of the Act;
- 7.2 it is not financially distressed nor is it reasonably likely to become financially distressed within the immediately ensuing 12(twelve)-month period;
- 7.3 the board or members of the Client have neither resolved to commence business rescue proceedings, nor has any such board or members or any of its agents, officers or employees taken any other steps contemplated under the Act in anticipation of business rescue proceedings, in respect of itself;
- 7.4 no person has applied or threatened to apply to court for an order commencing business rescue proceedings in respect of the Client;
- 7.5 no corporate action, legal proceedings or similar procedure or steps have been taken or threatened, nor do any circumstances exist that are likely to give rise to steps being taken in respect of the Client relating to the appointment of a business rescue practitioner or similar officer of it or of any of its assets, nor has anything analogous to any of the foregoing occurred in any applicable jurisdiction; and
- 7.6 the entry into and performance by the Client of and the transactions contemplated in this agreement and the Client Agreements do not conflict with any law or regulation applicable to it, its constitutional documents, or any agreement or instrument binding on it or any of its assets.

8 STATEMENT, PAYMENT AND DEPOSITS

- 8.1 We may send the Business and/or the Cardholder a statement each month, setting out each entry as well as the total debit or credit balance, as the case may be, on the Card Account at the statement date, and also the amount that must be paid and the date on which it must be paid;
- 8.2 The Business and/or the Cardholder will be liable for and must pay us the amount shown on the statement.
- 8.3 Payment:
 - 8.3.1 must reach us at our Card Division in Johannesburg during banking hours on or before the due date shown on the statement; and
 - 8.3.2 will be effective and credited to the account only when it is recorded by our Card Division in Johannesburg, and the risk of interception, loss, alteration and/or theft of a payment sent by post will remain the liability of the Business and the Cardholder until payment is received at the offices of our Card Division in Johannesburg.
- 8.4 Since transactions erroneously debited against the Cardholder's account can only be systematically amended within a limited period, it is the responsibility of the Cardholder and/or the Business to examine the Card Account statement for errors timeously. If the Business and/or the Cardholder disputes any item or entry shown on the monthly Card Account statement, the Business or the Cardholder must notify us, in writing, within 30 (thirty) days of the date of the statement on which the transaction first appears. If this is not done, neither the Business nor the Cardholder will have any claim against us for any errors or omissions.
- 8.5 If the Business and/or the Cardholder disputes any Card Transaction, the disputed Card Transaction must be queried with the Service Establishment or the supplier.
- 8.6 The Business and/or the Cardholder elects the postal address(es) and email address(es) to which a monthly Card Account statement or Related Invoices are sent, by post or electronically. It is the responsibility of the Business and/or the Cardholder to ensure that the monthly Card statement or Related Invoices are received. Should the Business and/or the Cardholder not receive a monthly Card Account statement or Related Invoices, it is the responsibility of the aforementioned parties to notify us immediately, in writing, of this. If the Business and/or the Cardholder does not receive a statement, this will not give the Business and/or the Cardholder the right not to pay us the minimum amount owing at the statement date. It is the responsibility of the Business and/or the Cardholder to contact us in order to determine the amount owing to us for payment. In addition, it is the responsibility of the Business and/or the Cardholder to ensure that all postal and email address details supplied to us for the purpose of distributing Card Account statements are up to date and correct at all times.
- 8.7 Where the Business is bound by joint and several liability and there is a dispute between the Business and the Cardholder with regard to any Card Transaction, it will not be an excuse for the Business or the Cardholder not to pay us. The dispute must be resolved between the Business and the Cardholder.
- 8.8 Any record of a deposit into the Card Account may be checked and confirmed by us, and if there is a difference between the records of the Business and our records, our records will be prima facie proof of a deposit.
- 8.9 If any negotiable instrument is deposited into the Card Account, the proceeds will be credited to the Card Account when the deposit is made, but the proceeds will be available as cash only when the negotiable instrument has been honoured. If the negotiable instrument is subsequently dishonoured, the Card Account will be debited with the full amount thereof, regardless of whether or not we allowed the Cardholder to draw cash against the uncleared instrument, and the negotiable instrument returned to the Business and/or the Cardholder. The Business and/or the Cardholder will not be entitled to raise an estoppel against us, for whatever reason, if we allow the Cardholder to draw cash against an uncleared instrument that is subsequently dishonoured.
- 8.10 All payments received from the Business and/or the Cardholder will be credited to the Card Account and we will apply this money firstly to pay any applicable government levies, then any legal costs, then any fees, then any other charges we levy on the Card Account, then finance charges, and finally the principal debt.
- 8.11 No conditions whatsoever may be attached to any payment made to us. If any conditions are attached, we have the right to ignore such conditions, accept payment on the Card Account, and exercise our rights in terms of these terms and conditions of use as if the Business and/or the Cardholder has not attached any conditions thereto.

9 SMS SERVICE

- 9.1 The Business and the Cardholder understand that the Cardholder will automatically receive transactional SMSs on the Cardholder's cellphone in respect of purchases for such amounts as are predetermined by us.
- 9.2 The Business and the Cardholder confirm that the use of the SMS service is at their own risk.
- 9.3 We do not warrant that:
 - 9.3.1 the SMS service will meet the requirements of the Business or the Cardholder;
 - 9.3.2 the service will be uninterrupted, timely or secure;
 - 9.3.3 the SMS will be accurate, correct or will arrive at the supplied cellphone number; and/or
 - 9.3.4 the SMS received will reconcile to the activity on the Card Account.
- 9.4 We may not be held liable for any direct or indirect loss or damage resulting from the use of or inability to use the service or any delays in the SMS service or any fraudulent transaction taking place when the service is unavailable for any reason.

10 INFORMATION ON THIRD-PARTY TRANSACTIONS

- 10.1 The Business hereby agrees to and gives consent to us to provide, electronically and/or otherwise, Card Account transaction information and Card Account monthly statements pertaining to the relevant Card Accounts and their corresponding Card Numbers.
- 10.2 The Business agrees to and acknowledges that we will, at our sole discretion, decide on the nature of information that we will provide the nominated third party with and we may, without obligation to give reasons therefore, refuse to provide any information requested by the authorised third party pursuant to a letter of authorisation.
- 10.3 The Business agrees to waive rights that it could otherwise have against us, and undertakes to refrain from holding us liable in the event that the Business incurs or suffers any loss or damage as a result of our carrying out the instructions outlined herein, unless such loss or damage is a result of our gross negligence or wilful misconduct or that of any of our employees (in which case the matter will be dealt with on its legal merits) and, in this regard, the Business's claim or action is limited to its direct damages and we will not be liable for:
- 10.3.1 any indirect, special or consequential damages;
- 10.3.2 any loss or damage caused by our failure to furnish correct information;
- 10.3.3 any loss or damage occasioned by the failure of any third party to process a submission of information; or
- 10.3.4 any failure or unavailability of systems, or any of them, or failure by us to perform as a result of any other event beyond our control.
- 10.4 The Business agrees that, in the event that there is a discrepancy between the information in the possession of the authorised third party and information we hold, the information held by us will take precedence

11 FUNDING OF THE CARD ACCOUNT (applicable to prefunded Card accounts only)

- 11.1 The Business may not overdraw or allow the Card Account to be overdrawn. We will be entitled to decline to authorise any Card Transaction where there are not sufficient funds to cover the amount of the Card Transaction. We may, where prior proof of payment has been obtained from the Business, authorise a Card Transaction where transferred funds are not reflected in the Card Account at the time of payment to cover the amount of the Card Transaction, and we will be entitled to charge interest on the debit balance.
- 11.2 Where we have authorised a Card Transaction in circumstances where the funds are not reflected in the Card Account to cover the amount of the Card Transaction, this will in no way mean that we have granted the Business a credit facility.
- 11.3 Any amount by which the Card Account is overdrawn must be paid on demand and, should the Business not pay the amount when so demanded, the Business will be in breach of its obligations in terms of these terms and conditions of use and we will be entitled to recover the amount by any means available to us and the cost of the recovery will be debited to the Card Account.
- 11.4 In the event that there is a conflict between the terms as stated in clause 12 and the terms and conditions stated elsewhere in this agreement, the additional terms contained within clause 12 will take precedence.

12 LIABILITY STRUCTURE

- 12.1 The Business and/or the Cardholder has agreed to be bound to us under one of the following Liability Structures as stated in the agreement between the Business and/or the Cardholder and us:
- 12.1.1 Corporate liability: The Business will be liable for all amounts owing to us on the Card Account and obligations arising out of these term and conditions; or
- 12.1.2 Joint and several liability: The Business and the Cardholder will be jointly and severally and *in solidum* liable to us as coprincipal debtors with each and every Cardholder for all amounts owing to us on the Card Account and for obligations arising out of these terms and conditions of use, as well as for all amounts owing to us on the Card Account in respect of the use of the Card and/or the Card Number and obligations arising out of these terms and conditions of use.
- 12.2 On return of the Card to us by the Business and/or the Cardholder, and after all amounts owing to us in respect of the use of the Card have been paid, we will at the request of the Business and/or the Cardholder cancel the Facility, the Card and/or the Card Number and the Business and/or the Cardholder will then no longer be liable to us for future debt in respect of the Facility, the Card and/or the Card Number.
- 12.3 The Business and the Cardholder hereby give up the benefit of the legal exceptions and/or defences of excussion, division, cession of action, no cause of debt, no value received or revision of accounts that the Business and/or the Cardholder can or may plead to defend any claim we bring against the Business and/or the Cardholder as coprincipal debtors and it is hereby acknowledged that the Business and the Cardholder are familiar with and fully understand the meaning and effect of all the exceptions and defences mentioned above.

13 LIABILITY

- 13.1 We will not be liable to the Business or the Cardholder for any damage or loss that may be suffered if:
- 13.1.1 any person gains unauthorised access to the Card, the Card Number, the Card Account, the PIN or the Facility or any information or data, whether correct or incorrect, in respect thereof, except in the event of our wilful misconduct or gross negligence;
- 13.1.2 incorrect information is given by us, in good faith, to any person, including any credit bureau;
- 13.1.3 we process any information incorrectly; and
- 13.1.4 there is a delay, failure or malfunction of any ATM or other device (electronic or manual) that is used to effect Card Transactions.
- 13.2 We will not be responsible or liable to the Business or the Cardholder for any loss or damage arising in relation to:
- 13.2.1 delay or failure by a Service Establishment to accept the Card, the imposition by a Service Establishment of conditions on the use of the Card or the manner of a Service Establishment's acceptance or non-acceptance of the Card;
- 13.2.2 goods and/or services purchased with the Card or their delivery or non-delivery;
- 13.2.3 failure to carry out our obligations under the service if that failure is caused by a third party or because of a force majeure event such as a systems failure, data processing failure, industrial dispute or other action outside our control; or
- 13.2.4 our declining to approve any Card transaction.
- 13.3 We will not be liable under any circumstances for loss of profits or any incidental, indirect, consequential, punitive or special damages.
- 13.4 Nothing in this agreement will exclude or seek to exclude any liability to the extent such exclusion would contravene applicable law.
- 13.5 We may from time to time and at our sole discretion procure the services of and negotiate terms of service with third parties for the use of the Business and/or the Cardholder. In the event of the Business contracting or using the services of such third parties, it is agreed that the Business and/or the Cardholder will have no recourse against us for any loss or damage whatsoever and howsoever caused as a result of such contracting or use of services, except in the event of our and/or such third parties' wilful misconduct or gross negligence.

14 CERTIFICATE AND OTHER DOCUMENTARY EVIDENCE OF INDEBTEDNESS

- 14.1 If any one of our managers, whose status and appointment need not be proved, signs a certificate stating:
- 14.1.1 that the Business and/or the Cardholder is indebted to us and the amount of this debt, which includes the capital and interest and any other amounts or charges;
- 14.1.2 the fact that the amount of this debt is owed and must be paid to us;
- 14.1.3 the details of any Card Transaction; and
- 14.1.4 any other matter regarding the Card Account;
- this will be prima facie proof that the contents of the certificate are correct. This certificate may be used for any purpose, which includes but is not limited to obtaining a judgment or any other order or relief against the Business and/or the Cardholder.
- 14.2 We have the right to use microfilm and/or copies of any relevant records in any legal proceedings as *prima facie* proof of indebtedness to us.

15 FURTHER PROCESSING

- 15.1 We may search, update or place the Business and/or Cardholder records at credit reference bureaus and government agencies in order to verify their identity, assess their ability to obtain credit or provide collateral of any kind, including guarantees or

suretyships, and may, on request from another credit provider with whom they have applied for credit, provide such credit provider with their personal information, including credit reference data, and also make any enquiries deemed necessary to confirm the details on this form for marketing purposes and to assess their creditworthiness.

15.2 We may use the Business' and/or Cardholder(s) personal information for debt enforcement, including but not limited to recovery, collection, repayment, surrender, enforcement and cession of debts.

15.3 The Business and /or Cardholder(s) confirm that they have fully disclosed their debt repayment history.

16 CONFIDENTIAL INFORMATION

16.1 The Business hereby authorise us to:

16.1.1 check and confirm any information on the application form and to make any enquiries that we think are necessary with any third party;

16.1.2 supply any confidential information about any account held with us to any person, including any credit bureau, in accordance with the Code of Good Banking Practice or otherwise according to generally accepted banking practice; and

16.1.3 give, electronically and/or otherwise, Card Account transactional and Card Account monthly statement information pertaining to the relevant Card Account Number(s) linked to the aforesaid Card Account to an Authorised Representative or third party as specified on the Card Account application form, or on any subsequent written amendment submitted to us at our offices in Johannesburg by the Business.

16.2 We may, at our discretion, cede, delegate and/or assign this agreement to American Express® Cards or its designee, in which event the Business authorises us and gives us consent that we may share data with American Express® Cards and American Express® Cards entities for the purpose of executing Cardholder transactions on the American Express® network, or for any other purpose contemplated elsewhere in this agreement, which will include, but is not limited to, marketing purposes. This clause (proviso) may not be amended or revised without the prior written approval of American Express® Cards.

17 CONSENT

17.1 The Business and/or the Cardholder confirms and agrees that we may amend these terms and conditions of use by giving them notice by way of statement messages or any other means.

17.2 The Business and/or the Cardholder agrees that we will not be obliged to obtain their written consent to such amendments, but if they disagree with these amendments, they may cancel this agreement before the terms and conditions of use become operational.

17.3 The Business and/or the Cardholder agrees that if they decide not to cancel this agreement before the amendments become operational, they will be binding on them. The use of the Card after our amendment of the terms and conditions of use signifies the Business's and/or the Cardholder's acceptance of the amendments.

17.4 The Business and/or the Cardholder consents to our processing their personal information for purposes of providing financial services and preventing fraud and money laundering and to our sending their personal information to third parties in order to provide services to them, and also to our sending such information to foreign countries for processing.

17.5 The Business and/or Cardholder agrees that we may use their personal information in debt enforcement, including but not limited to recovery, collection, repayment, surrender, enforcement and cession of debts.

17.6 The Business and/or the Cardholder understands that we supply consumer credit information to credit bureaus and:

17.6.1 they confirm that we may transmit data about the application for and opening and termination of an account by them to credit bureaus;

17.6.2 they acknowledge that information on non-compliance with this agreement is transferred to the credit bureaus;

17.6.3 they acknowledge that the credit bureaus provide credit profiles and possible credit scores on their creditworthiness; and

17.6.4 they acknowledge that they have the right to have the credit record disclosed and to correct inaccurate information.

17.7 The contact details of the credit bureaus to whom we provide consumer credit information are:

17.7.1 Experian [telephone: +27 (0)86 110 5665];

17.7.2 TransUnion ITC [telephone: +27 (0)861886 466]; and

17.7.3 Expert Decision Systems (XDS) [telephone: +27 (0)11 645 9100].

17.8 Further, the Business and or the Cardholder consent to our disclosing any information about fraudulent activity by them to the South African Fraud prevention Services and/or any similar organisation.

18 JURISDICTION

18.1 The Business and/or the Cardholder hereby agrees and gives consent that a magistrate's court will have jurisdiction in respect of any legal steps we take against the Business and/or the Cardholder, even if the amount we claim exceeds the jurisdiction of the magistrate's court. We will, however, have the right to approach a higher court if we wish to do so.

18.2 This agreement is governed and interpreted under the laws of the Republic of South Africa and magisterial jurisdiction of Johannesburg.

19 NOTICES AND DOMICILIUM

19.1 The physical address given by the Business on the application form will always be the address that the Business and/or the Cardholder has chosen where summonses, legal documents and any notices may be served on the Business and/or the Cardholder (**'domicilium'**). The postal address given by the Business on the application form is the address to which we will send all other notices, correspondence, Card Account statements and documents.

19.2 The physical and postal address may be changed to any other physical or postal address in the Republic of South Africa if written notice thereof is sent to us, and received by us at our Card Division in Johannesburg. If notice of any change of *domicilium* is given to us, the new *domicilium* will be effective only 14 (fourteen) days after the date our Card Division in Johannesburg receives the written notice.

19.3 Any notice sent to the Business and/or the Cardholder at the last *domicilium* chosen or to the last postal address will be deemed to have been received on the 7th (seventh) day after the day on which it was posted.

19.4 All notices or communications sent to us must be in writing and sent by prepaid registered post or by hand to our Card Division in Johannesburg. If notice is sent to us otherwise than by registered post or by hand, the sender accepts all risk thereof.

20 TERMINATION

20.1 We will have the right at any time, without giving any reasons, to cancel the Facility, the Card and/or the Card Number, to demand that the Business repays us the full amount outstanding on the Card Account and immediately gives back the Card to us and/or to close the Card Account. Any liability or obligation which exists in respect of these terms and conditions of use will not be affected by the above action.

20.2 Any closure of the Card Account and/or cancellation of the Facility, the Card and/or the Card Number will not affect the liability of the Business in respect of any Card Transaction that was processed before that closure and/or cancellation or before we receive back the Card, whatever happens last.

20.3 Should the Business and/or the Cardholder want to terminate the right to use the Facility, the Card and/or the Card Number, the Business and the Cardholder must ensure that the Card is cut up and sent to us, together with a written notice of termination and/or notice of cancellation of the Card Number. The Facility, the Card and/or the Card Number will then become invalid on the day we receive the notice and the Card at our Card Division in Johannesburg.

20.4 The full amount owed to us by the Business and the Cardholder will immediately become due and payable if:

20.4.1 we cancel the Card Account, the Facility and/or the Card Number; and/or

20.4.2 we demand that the Business or the Cardholder gives the Card back to us; and/or

20.4.3 any of these terms and conditions of use are breached; and/or

20.4.4 we close the Card Account; and/or

20.4.5 the Cardholder is provisionally or finally placed under curatorship or sequestrated; and/or

20.4.6 the Business is provisionally or finally placed under judicial management or liquidated and/or the Cardholder dies.

- 20.5 The Business and the Cardholder hereby agree and give consent that we may inform any Service Establishment, supplier or other person that we have closed the Card Account and/or have cancelled the Card, the Card Number and/or the Facility, and neither the Business nor the Cardholder will have any claim against us because we have given this information.
- 20.6 The Card and the Card Number may not be used after they have expired or after we have cancelled them before the expiry date.

21 ADDITIONAL EVENTS OF DEFAULT

- 21.1 The following will, in addition to the other events listed in the Client Agreements and together with the additional warranties given in respect of the occurrence of the events listed in clause 7 above, be Events of Default, each of which is severable and distinct from the others:
- 21.1.1 if the Client fails to comply with any term or condition or undertaking in this agreement or any other agreement entered or to be entered into with us; or
- 21.1.2 if in any proceedings in respect of or against the Client, a court orders, or indicates that it may order, the commencement of business rescue proceedings in respect of the Client; or
- 21.1.3 if a moratorium is declared in respect of any indebtedness of the Client; or
- 21.1.4 if any provision of an agreement to which the Client is party is cancelled or suspended (whether entirely, partially or conditionally) by the Client, or any liquidator, business rescue practitioner, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Client or any of its assets, including a cancellation or suspension contemplated under section 136(2) of the Act.
- 21.2 Where an Event of Default occurs and the Client fails to remedy the matter within the period, if any, stipulated by us at such time, we will, in respect of all entities that comprise the Client, without diminution of any other right that we may hereby or otherwise acquire, be entitled, at our sole discretion, to:
- 21.2.1 refuse to advance any further amounts to the Client or suspend the availability of any of the facilities; or
- 21.2.2 conduct an immediate review of the Client's obligations to us, in which event the Client must supply us with any documentation or information required to complete this review; or
- 21.2.3 restrict the Client's access to the facilities, including any agreements, to limits we consider acceptable; or
- 21.2.4 increase the interest rate applicable to one or more of the facilities, including any agreements, which increased rate will not exceed the default interest rate; or
- 21.2.5 require that the Client supply sufficient additional security; or
- 21.2.6 do any combination of any of the above.
- 21.3 The Client hereby indemnifies us against and holds us harmless on demand from any loss, liability or cost suffered by us if any obligation provided for in this agreement is or becomes unenforceable, invalid or illegal or is cancelled or suspended entirely, partially or conditionally, including but not limited to any damage suffered by us as contemplated in section 136(3) of the Act; and/or any claim that we have or may have against the Client for restitution, arising from the exercise by any business rescue practitioner of the powers granted to him/her/it in accordance with section 136(2) of the Act. The amount of that loss, liability or cost must include at least the amount that we would otherwise have been entitled to recover.

22 VARIATION AND AMENDMENT OF TERMS AND CONDITIONS OF USE

- 22.1 We alone may decide to change or replace all or any of these terms and conditions of use at any time by sending both the Business and /or the Cardholder(s) a notice thereof and/or by sending the Business and/or the Cardholder(s) a copy of the latest terms and conditions of use. Such notice and/or copy of the changed or new terms and conditions of use will be binding from the date of receipt, and the notice will be deemed to have been received on the 7th (seventh) day after the date on which it was posted.
- 22.2 If we change or replace these terms and conditions of use, it will not mean that the change or replacement is a novation of this agreement or of any obligation to us.

23 GREENBACKS REWARDS PROGRAMME (applicable to Nedbank cards only)

- 23.1 Greenbacks Rewards will be applicable only to Nedbank Business and Corporate Cards and will not be applicable to the Nedbank Purchasing Card.
- 23.2 The Business may elect to be included in the Greenbacks Rewards Programme.
- 23.3 The Business may choose if Greenbacks Rewards should accrue to the Business or to a Cardholder Greenbacks account.
- 23.4 The terms and conditions of the Greenbacks Rewards Programme will apply to the recipient of the Greenbacks Rewards and a copy of these terms is available on www.nedbankgreenbacks.co.za.

24 MEMBERSHIP REWARDS™ PROGRAMME (applicable to American Express® Cards only)

- 24.1 Membership Rewards will be applicable only to the American Express Business and Corporate Cards and will not be applicable to the Corporate Purchasing Card.
- 24.2 The Business may elect to be included in the Membership Rewards Programme.
- 24.3 The Business will choose whether the Business or the Cardholder(s) will receive the Membership Rewards accrued in terms of the Membership Rewards Programme.
- 24.4 The terms and conditions of the Membership Rewards Programme will apply to the recipient of the Membership Rewards and a copy of these terms is available on www.membershiprewards.co.za.

25 SETOFF

- 25.1 To the extent permitted by law and in instances where the National Credit Act is not applicable to this agreement and without derogating from any of our rights or entitlements, on the commencement of business rescue proceedings, or the taking of any steps contemplated in the National Credit Act in anticipation of business rescue proceedings, all amounts owing by the Client to us will at our option (and without prior notice to the Client being required) be reduced by setoff against any other amounts ('Other Amounts') payable by us to the Client (whether or not arising under this agreement and whether or not such Other Amounts are due and payable or contingent). To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly in all respects.
- 25.2 We will advise the Client of any setoff effected under this clause.

26 GENERAL

- 26.1 If we allow the Business and/or the Cardholder(s) any latitude or extension of time, it is not and must not be understood as a novation or waiver of our rights in respect of these terms and conditions of use, and it will also not be, or be the cause of, an estoppel against us.
- 26.2 If we use the singular form in these terms and conditions of use, it will include the plural form, and viceversa.
- 26.3 The headings in these terms and conditions of use are used only for convenience and will not have an effect on the interpretation thereof.
- 26.4 These terms and conditions of use, read with the application, as changed or replaced by us from time to time, together with any additional amendments to and/or other additional terms and conditions of use, as changed or replaced by us, will form the whole agreement between us, the Business and/or the Cardholder(s) in connection with the Card Account and/or the Facility and/or the Card or the use thereof and/or the Card Number and the use thereof.
- 26.5 Every provision of these terms and conditions of use (including this provision) is deemed to be separate and severable, and should any provision be found to be defective or unenforceable for any reason, that provision will be severed from the remaining provisions and the validity of the remaining provisions will continue to be of full force and effect.