

## General Terms and Conditions for NBD's Bank-a-Net Agreement

This Section states the general terms and conditions that apply when you open qualifying account(s) on the Internet, Internet-enable qualifying account(s), access account information over the Internet, or transfer funds between qualifying Internet-enabled accounts. These general terms and conditions are in addition to those that apply to any accounts you have with us or any other services you obtain from us.

The following definitions apply in the general terms and conditions, unless otherwise stated:

### **1. Explanation of certain terms;**

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| <p>1.1 <u>"We", "us" and "our"</u> mean The National Bank of Dominica Ltd, 64 Hillsborough Street, Roseau, Commonwealth of Dominica;</p> <p>1.2 <u>"NBD"</u> means the National Bank of Dominica Ltd;</p> <p>1.3 <u>"You" and "your"</u> means the individual, company or other business entities that we permit to use the Internet banking services subject to the terms of this agreement;</p> <p>1.4 <u>"Company representative"</u> means, if you are a business entity, anyone we reasonably believe, in accordance with our security procedures, to be authorized to act on your behalf;</p> <p>1.5 <u>"Internet-enable" your account(s)</u> means to enable you to obtain our service that allows you to obtain information and perform payments we make available for your qualifying accounts over the Internet (by use of a personal computer) and/or other means we authorize or allow;</p> <p>1.6 <u>"Bank-a-Net"</u> means the services provided under this agreement which allow you to access information about your Internet-enabled accounts, transfer funds between qualifying accounts, and perform other payments and obtain other services that we authorize or allow;</p> | <p>1.7 <u>"Online"</u> means through the Internet by use of a personal computer or other screen-based electronic device;</p> <p>1.8 <u>"Account"</u> means any Chequing, Savings, Certificate of Deposit, Credit Card, Loan or other account for which payments may be performed using our Bank-a-Net service;</p> <p>1.9 <u>"Consumer account"</u> means an account established primarily for personal, family, or household use;</p> <p>1.10 <u>"Business account"</u> means an account which is used for a business purpose and not for personal, family or household use;</p> <p>1.11 <u>"Business Day"</u> means Monday through Friday, excluding holidays in the Commonwealth of Dominica on which banks are closed to the public;</p> <p>1.12 <u>"Access codes"</u> include the customer username, password, token codes and any other means of access to our Bank-a-Net service we establish or provide for you;</p> <p>1.13 <u>"Instructions"</u> means all messages including request for inquiry and (payment) transfers sent by the customer and/or user to NBD by way of a communication method, which is provided with an electronic signature (Token) and/or the username and password of the customer; ("Instruction" shall have the same meaning accordingly.);</p> <p>1.14 <u>"Customer"</u> means any consumer or business account holder who has entered into this Agreement with the NBD;</p> <p>1.15 <u>"Token"</u> means the hardware that creates a onetime password enabling NBD to verify Customer's identity and/or the user's identity;</p> |
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- 1.16 “User” means any individual who is authorized to access any of the Bank-a-Net services;
- 1.17 “Single User” means any Consumer Account, Business Account or Joint Account where a single person is the sole user under one (1) Bank-a-Net contract.
- 1.18 “Multi-User” means any Business Account or Joint Account where multiple persons (2 or more) are users under one (1) Bank a-Net contract.
- 1.19 “User Manual” means the document, which may be amended from time to time, that NBD provides to Customer, either electronically, digitally, by regular mail or by hand which contains information, procedures and requirements relating to NBD Bank-a-Net and use of the Token.
- 1.20 “General Terms and Conditions” means the General Terms and Conditions that may be amended and revised from time to time.
- 1.21 “Customer Account Mandate” means the written instructions given to the Bank in relation to the operation of the Customer Account at the time when the Account was first opened. This includes but is not limited to the authorized signatories on the account for payment instructions.
- 1.22 “Confidential Information” means any information that NBD obtains regarding the Customer and/or Customer’s business operation(s) in connection with providing Token Security Services to Customer and other legitimate business purposes (including but not limited to any information about any account of the Customer) other than information available through the public domain.
- 2 General**
- i. The Conditions, the Sections and Annexes form an integral part of the Agreement. As far as the Annexes contradict with the Agreement and its Conditions, the terms and conditions of the Agreement will supersede and prevail.
- ii. If any provision of the Agreement is held to be invalid or ineffective, the validity of the remaining provisions of the Agreement will supersede and prevail.
- iii. The Customer and/or User shall observe and comply with the General Terms and Conditions. The Customer acknowledges that he has been duly informed of the contents of the General Terms and Conditions and shall adhere to and act in accordance with them.
- iv. Neither Token(s) nor any information relative thereto may be duplicated, and if so, is considered by National Bank of Dominica to constitute fraud.
- v. The Customer must inform National Bank of Dominica immediately of any changes in address and/or other changes concerning the Customer and/or User, or any other information that can be considered to be of importance or significance for the proper execution of the Agreement and the use of National Bank of Dominica Bank-a-Net.
- vi. National Bank of Dominica will establish and determine at all times the conditions and/or terms and/or limits under which the Customer and/or User can obtain access to National Bank of Dominica Bank-a-Net and will inform the Customer by periodic notices on its website of any amendment of such conditions and/or terms and/or limits.
- vii. The Customer and/or User should consult the Customer Support Unit and the help functions available at National Bank of Dominica's website regularly.
- viii. Customer and/or User will not acquire any title, ownership interest or intellectual property right in National Bank of Dominica Bank-a-Net, the Token(s) or any device or manual relative thereto.

- ix. Token Security Services may be provided to the Customer and/or User on behalf of National Bank of Dominica, by third parties (Security Services Providers), such Security Services Providers to include any of National Bank of Dominica's affiliates, agents or subcontractors. The Customer agrees that such third party Security Services Providers are third party beneficiaries of the provisions of the Agreement which apply to National Bank of Dominica, including provisions which indemnify National Bank of Dominica or limit its liability.
- x. For the usage of the Token Security Services, Customer and/or User is herewith granted a non-exclusive and non-transferable license for the Token(s).

### **3 Amendments of the conditions and use of Bank-a-Net**

- i. National Bank of Dominica may amend, change and supplement the Conditions, and/or suspend or discontinue any aspects of National Bank of Dominica Bank-a-Net, either completely or in part, at any time, in order to take into consideration a material development in National Bank of Dominica's business or its operational banking systems, the introduction of new products and/or services or reflect a change in the law, in case of any specific legal requirement and/or in the applicable banking rules and regulations to which National Bank of Dominica is subject. In such event National Bank of Dominica will endeavor to provide the Customer with at least 30 business days prior notice of any such change, unless this is not reasonably practicable so to do.
- ii. The changes set forth in Clause 3.i above shall be binding on the Customer 30 days after the Customer has been informed thereof. If the Customer does not agree to such changes or additions, Customer shall inform National Bank of Dominica accordingly in writing within the above-mentioned 30 business days, after which

the Agreement is terminated, in accordance with Clause 13 of the Terms and Conditions.

- iii. The Customer is responsible and shall guarantee that the User is aware of the changes of and/or additions to the Terms and Conditions and/or any aspect of the Service within the 30 business days of 3i above.
- iv. Amendments as a result of a change of law or in respect of specific legal requirements and/or amendments in the above-mentioned applicable banking rules and regulations, may take effect immediately. Other amendments will take effect after the notice period as referred to in article 3.i above when reasonably practicable.

### **4 Instruction(s)**

- i. Every Instruction has the same status and legal value as a written instruction signed by the Customer and/or User. Accordingly, the Customer agrees not to challenge the legal effect, validity or enforceability of an Instruction authenticated by a Token and/or Password.
- ii. The Customer is bound by his/its Instruction(s) as received by National Bank of Dominica. An Instruction cannot be cancelled or revoked. The Customer and/or User can nevertheless request National Bank of Dominica not to execute an Instruction by notifying the bank within 24 hours of execution of the transaction. National Bank of Dominica will then determine (to its sole discretion) whether that request can be complied with. Any possible execution of an Instruction will remain at the Customer's own risk.
- iii. After an Instruction has been given, it must first be approved by National Bank of Dominica in accordance with its applicable approval and authorization procedures before it can be processed.

- iv. All instructions received by NBD Ltd. will be approved and authorized subject to the Customer Account Mandate. Where Instructions given using the Bank-a-Net Services would contradict or be in conflict with the Customer Account Mandate, the Account Mandate shall prevail.

## 5 The Customer's/User's Obligation

- i. The Customer and User shall use the Token(s) and Passwords exclusively in accordance with the Agreement and/or National Bank of Dominica's instructions and directions as made known to the Customer.
- ii. The Customer shall represent and warrant that on every occasion the Customer and/or the User uses the Token(s), the Customer and/or the User have all necessary powers, authority and approvals to do so and to perform in accordance with Customer's obligations under this Agreement.
- iii. The Customer shall exercise sufficient care in handling and in using the Token(s) and the Password(s) and shall be responsible for the use thereof either by the Customer or the User under the terms of the Agreement. All acts of the User are for the Customer's risk and account.
- iv. The Customer and/or User is required to inform the Customer Support Unit **immediately** in a manner indicated by National Bank of Dominica in the event:
  - a. Token has been lost, stolen, misused or falsified;
  - b. Customer and/or the User is aware or suspects that a Password is known to third (unauthorized) parties;
  - c. Customer and/or User have discovered irregularities in the use of the Token(s).

The Customer and/or User shall confirm

the above-mentioned information immediately in writing, by fax or electronically to National Bank of Dominica Customer Support Unit in the manner indicated in the User Manual, whereby the date, the time and location of the event needs to be reported.

Reporting the event can be done 24 hours a day, seven days a week.

- v. Customer is not allowed to do anything which would result in any infringement or unauthorized use of any intellectual property rights of National Bank of Dominica relative to the Token(s) or the User Manual and/or the National Bank of Dominica product in general.
- vi. Customer is not allowed to copy, publish, sell, rent, lease, sub-lease, sub-use, distribute, lend, modify, merge, translate, decompile or reverse compile the Token(s) (or any part of it).
- vii. The customer shall scan their computer for computer viruses and other harmful programs regularly, with the aid of the most recent versions of anti-virus programs and other programs and, if detected, take the appropriate measures. Therefore the customer shall use his/her best efforts to ensure that the used computer and system software are free of viral contamination and other destructive codes and shall use their best efforts to not transmit a virus to the computer systems or the NBD computer equipment, hardware and/or software.
- viii. The Customer and User must check that there is a protected connection with NBD Ltd before transmitting any Instruction as described in the User Manual.
- ix. In the event an Instruction is challenged as not having been legitimately given, the Customer and/or the User shall inform National Bank of Dominica immediately. In such a case, the Customer and/or User shall give National Bank of

Dominica the opportunity, at NBD's request, to check the Customer's and/or User's hardware and computer applications for which purpose copies of relevant files and/or documents may be made by National Bank of Dominica. The Customer and/or User accepts that liability shall not be ascribed to National Bank of Dominica unless it has been determined that National Bank of Dominica's equipment is at fault.

- x. In the event problems with the Password and/or the Token(s) occur, the Customer and/or User shall inform National Bank of Dominica immediately. The Customer and/or User shall give National Bank of Dominica, at NBD's request, an opportunity to check the Customer and/or User hardware and computer applications for the purpose of rectifying the problem.

## 6 Customer Liability

- i. The Customer shall be liable for the consequences of any unauthorized use, misuse or incorrect use of the Token(s) and/or the Password(s) which occurred prior to the time at which the Customer and/or the User(s) has notified National Bank of Dominica Customer Support Unit or its Security Services Provider in accordance with article 5.iv of the Conditions. The Customer is no longer liable for Instructions received by National Bank of Dominica following such notification and until such time as National Bank of Dominica deems the problem to have been corrected.

## 7 Security

- i. Customer must comply with all security procedures and all other requirements provided by National Bank of Dominica by regular mail or by hand, including, where relevant, those procedures as set out in the User Manual.  
In addition, customer must take all reasonable precautions to prevent fraudulent or unauthorized use of or

access to customer's security details and of the Token Security Services

## 8 National Bank of Dominica's liability

- i. With the exception of gross negligence by National Bank of Dominica, National Bank of Dominica is not liable for any damage which is directly or indirectly derived or arises from;
  - a. National Bank of Dominica's services not being wholly or partially available
  - b. Change, suspension and/or termination of the National Bank of Dominica Bank-a-Net services
  - c. The non-execution or untimely execution of an Instruction
  - d. Mutilation, non-receipt
  - e. Unauthorized taking cognizance or changing of an Instruction
  - f. The non-functioning or inadequate functioning (or malfunctioning) of the Token(s) and/or Password(s)
- ii. National Bank of Dominica can only be held liable for direct damage and is therefore not liable for any indirect damage, consequential damage and/or loss or profit.
- iii. In addition, National Bank of Dominica will not be liable either for any loss whatsoever if National Bank of Dominica fail to execute the Customer's Instruction(s), or in the event National Bank of Dominica is prevented from providing the Token Security Services to the Customer, due to and caused by or resulting from any cause beyond National Bank of Dominica's reasonable control.
- iv. The non-functioning or inadequate functioning of the communication method(s), or any other malfunctioning, does not indicate that Instructions have not been executed. In such event the Customer shall have to obtain



information from National Bank of Dominica with respect to the status of the Instructions given (or pending) by contacting the Customer Support Unit during working hours.

- v. Customer must indemnify National Bank of Dominica and keep National Bank of Dominica harmless from and against any and all losses, and of all acts of and omissions by the Customer, or any of its Users under this Agreement including, but not limited to any breach of this Agreement, any violations by the Customer of National Bank of Dominica's rights, the Customer's violation of any applicable law, any failure to maintain the safety of our security details and any third party claim arising out of or relating to the Customer's use of or failure to use, our Token Security Services.

## 9 Administrative Changes by Customer

- i. NBD will act on written instructions by the Customer concerning the administration of Bank-a-Net Services including the re-setting of passwords, the de-activation and/or replacement of Tokens, the changes to Users.
  - a) For business or corporate accounts, any instruction or request referred to in clause 9 (1) must be signed by the signatories in accordance with the Account Mandate, and a party authorized to execute the service agreement on behalf of the legal entity. For other account types, the request must be signed by the authorized signatories in accordance with the Account Mandate.
  - b) For the purposes of Clause 9 (1), a request/instruction received by email, fax or other electronic communication is not valid. Original written requests must be sent to the Customer Service Support Unit, and duly signed by signatories in accordance with Clause 9 (1)A.

## 10 Proof

- i. All Instructions may be recorded or registered by NBD.
- ii. All data recorded or registered by or on behalf of NBD, and/or all written reproduction of data in connection with Instruction or other data recorded by NBD shall be accepted as evidence relative to the contractual relationship between Customer and NBD, in respect of such transactions and the rights and obligations there-under, unless the contrary is proven by the Customer.
- ii. In the absence of manifest error, an extract from NBD's written or electronic records which have been duly certified by an authorized NBD officer shall form, prima facie, undisputable evidence.
- iii. NBD will maintain records of all Tokens as well as the data related thereto for a period of at least 1(one) year after the date of expiry or revocation of the same.
- iv. We do not warrant that the information available through the Services is accurate, sufficient or error free, nor that such information is up-to-date at the time accessed.

## 11 Multiple Users

- i. The Customer warrants that the Users of the Multi-User Contracts have all necessary powers, authority and approvals to access the Customer's accounts at the Permission level that is specified in the User Details Section.
- ii. For Business Accounts, NBD will only approve and process Instructions that are given in compliance with the Company's Customer Account Mandate that relates to the names and numbers of authorized signatories on the Banking Account. In addition to duly executed Agreement, the application for Bank-a-Net services by a limited liability company must be accompanied by a resolution of the

Board of Directors, in form attached Annex E.

- iii. For Joint Accounts, NBD will only approve and process Instructions that are given in compliance with the Customer Account Mandate.
- iv. For **all** accounts, NBD will grant non-signatory users' permission to make inquiries only and no email alerts will be available. The Customer warrants that any non-signatory user identified in Section 3B has the necessary authority and approvals to make inquiries on the account.

## 12 Single Users

- i. In the event the Customer's account is solely owned by him/her, NBD will act on the Instructions of the single account holder in accordance with his/her Customer Account Mandate.
- ii. For Business Accounts, National Bank of Dominica will only approve and process Instructions that are given in compliance with the Company's Customer Account Mandate that relates to the names and numbers of the authorized signatory on the Banking Account. In addition to duly executed Agreement, the application for Bank-a-Net services by a limited liability company must be accompanied by a resolution of the Board of Directors, in form attached Annex E.

## 13 Bank-a-Net Transaction Fees

- i. NBD will charge the customer transaction fees for using the **Bank-a-Net** Services where they apply as stated in table Annex "A" section #3.
- ii. The Bank has the right to adjust such fees at any time, from time to time.
- iii. All costs of the communication method(s), telephone and data communication costs shall be borne by the customer.

## 14 Termination of the Agreement

- i. Subject to the provisions hereafter, the Agreement is entered into for an indefinite period of time.
- ii. National Bank of Dominica is authorized to terminate the Agreement with immediate effect in the event of:
  - failure by the Customer and/or the User(s) and/or representative of the Customer to comply with one or more of the obligations and terms and conditions under the Agreement;
  - bankruptcy of the Customer;
  - application for moratorium of payments by the Customer;
  - termination of the Customer's business;
  - statutory debt restructuring of the Customer;
  - the Customer's death;
  - putting the Customer's assets under administration;
  - commencement of any insolvency proceedings against the Customer
- iii. Furthermore, the Agreement shall be terminated in the event the Customer or National Bank of Dominica gives a thirty (30) business day's written notice to that extent. If observance of this term of notice cannot reasonably be adhered to by the party giving notice, that party can terminate with immediate effect.
- iv. The Agreement shall end immediately in the event of:
  - National Bank of Dominica receiving a written notification from the Customer that he/she does not agree to a change in and/or addition to the Conditions;
  - Termination of the (contractual) banking relationship between National Bank of Dominica and the Customer.

- v. Upon termination of the Agreement the Client must return any Token provided to him/her/it by National Bank of Dominica.

## 15 Notices

- i. Any notice between National Bank of Dominica and/or the Customer under the Agreement can be given by electronic mail, prepaid regular mail or by courier to the addresses of the Customer and National Bank of Dominica as indicated in the Agreement.
- ii. If sent by electronic mail, any notice will be deemed delivered when received in the relevant electronic mail box. If sent by prepaid regular mail or courier, any notice will be deemed delivered on actual receipt.

## 16 Assignment

- i. Neither party may transfer or assign its rights, benefits and or obligations under this Agreement without the prior written consent of the other party. However, National Bank of Dominica is entitled to, without the Customer's prior consent, to assign any of its rights and transfer any of its obligations to any of its affiliates.

## 17 Changes and additions to Conditions

- i. NBD will not communicate or disclose the customer's confidential information to third parties without the customer's consent unless NBD is required to do so pursuant to the Banking Act of the Commonwealth of Dominica Ltd. or other relevant law.
- ii. In addition to the disclosure in clause 16i. the customer agrees that NBD may disclose confidential information without the customer's prior consent to:
  - a) Any of its affiliates
  - b) Any of its professional advisers
  - c) Any third party to the extent it is necessary to provide Token services

to the customer, using the third party services

- iii. NBD will use its best efforts to advise the other parties to whom NBD discloses the customer's confidential information under this clause of the confidential nature of such information and to obtain the warranty of such other parties to maintain such confidentiality.
- iv. NBD may disclose information received from the customer regarding the Users to any of its affiliates, agents and subcontractors for operational or any other legitimate business purpose. The customer agrees that NBD may provide such information to its affiliates, agents and subcontractors who conduct their business from various countries in order to be able to provide the Token services to the customer. Some of those countries may not necessarily have data protection laws providing safeguards equal to those laws, applicable to National Bank of Dominica.

## 18 Administrative Changes by Customer

- i. NBD will act on written instructions by the Customer concerning the administration of Bank-a-Net Services including the re-setting of passwords, the de-activation and/or replacement of Tokens, the changes to Users.
  - a) For business or corporate accounts, any instruction or request referred to in clause 18 (1) must be signed by the signatories in accordance with the Account Mandate, and a party authorized to execute the service agreement on behalf of the legal entity. For other account types, the request must be signed by the authorized signatories in accordance with the Account Mandate.
  - b) For the purposes of Clause 9 (1), a request/instruction received by email, fax or other electronic communication is not valid. Original



written requests must be sent to the Customer Service Support Unit, and duly signed by signatories in accordance with Clause 9 (1)A.

**19 Applicable Law and Jurisdiction**

- i. This Agreement is governed by the laws of the Commonwealth of Dominica.
- ii. Any dispute between the Customer and National Bank of Dominica arising from this Agreement shall be exclusively submitted to the competent Courts of The Commonwealth of Dominica.
- iii. Notwithstanding the foregoing, in the event National Bank of Dominica would act as claimant, it shall be entitled to bring any dispute, law suit or claim before the foreign court in a foreign jurisdiction.