

## Terms and Conditions

IN TERMS OF SECTION 11(3) OF THE ELECTRONIC COMMUNICATIONS AND TRANSACTIONS (ECT) ACT 25 OF 2002, THESE TERMS AND CONDITIONS ARE BINDING AND ENFORCEABLE AGAINST ALL PERSONS THAT ACCESS FIRSTRAND SUPPLIER SUPPORT WEBSITE, AND APPLICATION, OR ANY PART THEREOF. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS YOU MUST LEAVE FIRSTRAND WEBSITE IMMEDIATELY, AS FURTHER USE WILL AUTOMATICALLY BIND YOU TO THESE TERMS AND CONDITIONS.

DEFINITIONS AND INTERPRETATION

- a) "FirstRand" means the FirstRand Limited, its subsidiaries, employees, and its agents, specifically including B1SA BEE Software Management Solutions (PTY) LTD;
- b) "FirstRand Website" means FirstRand supplier support website located at [BEE.theFirstRand.gov.za] and includes any part or element thereof, and specifically includes FirstRand Online Vendor Application, which use is offered under license by the terms of this agreement; [Note: is the website BEE,the FirstRand.gov.za correct?]
- c) "User" means any person who enters or uses FirstRand Website and Application , notwithstanding the fact that such a person only visited the home page of FirstRand Website;
- d) References herein to the singular include the plural and vice versa; and
- e) Notwithstanding the fact that hyperlinks in these terms and conditions to copyright notices and legislation should be deemed part of these terms and conditions in terms of section 11 of the ECT Act, the fact that some or all of the hyperlinks may be non-operational, shall not play a role in determination of the validity and interpretation of these terms and conditions.

### 1. GENERAL

FirstRand provides vendor procurement policy, framework, and oversight, and its agents provide under license the technology and infrastructure, services and solutions used in FirstRand Website and application.

### 2. ALLOWED USE AND LICENSE

- 2.1 FirstRand licenses the User to view, download and print the content of FirstRand Website, provided that such content is used only for the purpose of fulfilling the procurement requirements of FirstRand;
- 2.2 Content from FirstRand Website and application shall not be used or exploited by Users for any commercial and non-private purposes in the absence of prior written consent of FirstRand;
- 2.3 Users may only access and use FirstRand Website if requested to do so by FirstRand for lawful purposes;
- 2.4 The caching of FirstRand Website shall only be allowed if:
  - 2.4.1 The purpose of the caching is to make the onward transmission of the content from FirstRand Supplier Support Website more efficient;
  - 2.4.2 The cached content is not modified in any manner whatsoever;
  - 2.4.3 The cached content is updated at least every 12 (twelve) hours; and
  - 2.4.4 The cached content is removed or updated when so required by FirstRand.
- 2.5 If any User uses content from FirstRand Website in breach of the provisions detailed herein:
  - 2.5.1 FirstRand reserves the right to take any legal steps available to it against the User, including but not limited



to:

2.5.1.1 the right to claim damages from the User;

2.5.1.2 the right to institute criminal proceedings against the User; and

2.5.2 FirstRand shall not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of such content by the User or any third party who obtained any content from the User.

2.6 Hyperlinks to the FirstRand Website from any other source shall be directed at the home page of FirstRand Website. FirstRand shall not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of content from FirstRand Website, if such content was accessed through a hyperlink not directed at the home page of FirstRand Website. Persons that wish to link to content beyond the home page of FirstRand Supplier Support Website shall do so at their own risk and indemnify FirstRand against any loss, liability or damage that may result from the use of content from FirstRand Website, if such content was accessed through a hyperlink not directed at the home page of FirstRand Website;

2.7 No person may frame FirstRand Website, in any manner whatsoever, without the prior written consent of FirstRand;

2.8 Apart from bona-fide search engine operators and use of the search facility provided on FirstRand Website by Users, no person may use or attempt to use any technology or applications (including web crawlers or web spiders) to search or copy content from FirstRand Supplier Support Website for any purposes, without the prior written consent of FirstRand; and

2.9 All licenses and/or permissions granted in terms of this clause 2 are provided on a non-exclusive and non-transferable basis and may be terminated or cancelled by FirstRand at any time without giving reasons therefore.

### **3. INTELLECTUAL PROPERTY RIGHTS AND DOMAIN NAME USE**

All intellectual property on FirstRand Website, including but not limited to content, trademarks, domain names, patents, design elements, software, databases, text, graphics, icons and hyperlinks are the property of or licensed to FirstRand or its agents and as such, are protected from infringement by domestic and international legislation and treaties. Subject to the rights licensed to the User in clause 2, all other rights to intellectual property on FirstRand Website are expressly reserved.

### **4. SOFTWARE AND EQUIPMENT**

It is the responsibility of the User to acquire and maintain, at his/her own expense, the computer hardware, software, lines and access accounts required to access the Internet and FirstRand Website and/or download content from this website.

### **5. DISCLOSURES REQUIRED BY SECTION 43 OF THE ECT ACT**

Access to the services, content, software and content downloads available from FirstRand Website is classified as "electronic transactions" in terms of the ECT Act and therefore Users have the rights detailed in Chapter 7 of the ECT Act and FirstRand has the duty to disclose the following information:

5.1 The full name and legal status of the website owner: FirstRand Limited (FirstRand);

5.2 VAT registration number: 4210102051;

5.3 The website address of FirstRand website is: [www.firstrand.b1sa.com](http://www.firstrand.b1sa.com)

5.4 Membership of self-regulatory or accreditation bodies: The Banking Association of South Africa;

5.5 Alternative dispute resolution: Subject to urgent and/or interim relief, all disputes regarding:



5.5.1 access to FirstRand Website;

5.5.2 the inability to access FirstRand Website;

5.5.3 the services and content available from FirstRand Supplier Support Website; or

5.5.4 these terms and conditions,

shall be referred to arbitration in terms of the expedited rules of the Arbitration Foundation of South Africa and such arbitration proceedings shall be conducted in Johannesburg in English. The arbitration ruling shall be final and the unsuccessful party shall pay the costs of the successful party on a scale as between attorney and own client.

5.6 The costs associated with the access and use of FirstRand Website: Free;

5.7 Cooling-off period: In terms of the operation of section 42(1)(d) of the ECT Act, the cooling-off provisions of the ECT Act do not apply to this web site; and

5.8 Users may lodge complaints concerning FirstRand Website at [groupprocurement@firstRand.co.za](mailto:groupprocurement@firstRand.co.za). Users hereby assign the copyright in such complaints to FirstRand and understand that FirstRand may use, disclose and publish such complaints and is furthermore under no legal duty to answer, address or resolve such complaints.

## **6. CHANGES AND AMENDMENTS**

FirstRand expressly reserves the right, in its sole and absolute discretion, to do any of the following, at any time without prior notice:

6.1 change these terms and conditions;

6.2 change the content and/or services available from FirstRand Website;

6.3 discontinue any aspect of FirstRand Website or service(s) available from FirstRand Website; and/or

6.4 change the software and hardware required to access and use FirstRand Website.

## **7. PRIVACY**

7.1 FirstRand shall take all reasonable steps to protect the personal information of Users and for the purpose of this clause, "personal information" shall be defined as detailed in the Promotion of Access to Information Act 2 of 2000 (PAIA);

7.2 FirstRand may electronically collect, store and use, amongst other, the following personal information of Users:

7.2.1 name and surname;

7.2.2 contact details;

7.2.3 non-personal browsing habits and click patterns;

7.2.4 e-mail address; and

7.2.5 IP address.

7.2.6 Information pursuant to the vendor application and updates as facilitated by FirstRand Supplier Support Website

7.3 FirstRand collects, stores and uses the abovementioned information for the following purposes:

- 7.3.1 communicate requested information to the User;
- 7.3.2 registration and / or authentication of Users; and
- 7.3.4 to fulfill the data requirements of the supplier take-on procedures set out by FirstRand;
- 7.3.5 to compile non-personal statistical information about browsing habits, click-patterns, access to FirstRand Website;

7.4 Information detailed above is provided voluntarily by the User.

7.5 FirstRand may collect, maintain, save, compile, share, disclose and sell any information collected from users, subject to the following provisions:

- 7.5.1 FirstRand shall not disclose personal information from Users unless the User consents thereto;
- 7.5.2 FirstRand shall disclose information without the User's consent only through due legal process; and
- 7.5.3 FirstRand may compile, use and share any information that does not relate to any specific individual; and
- 7.5.4 FirstRand owns and retains all rights to non-personal statistical information collected and compiled by FirstRand.

## **8. HYPERLINKS TO THIRD PARTY SITES**

- 8.1 FirstRand may provide hyperlinks to websites not controlled by FirstRand (target sites) and such links do not imply any endorsement, agreement on or support for the content of such target sites; and
- 8.2 FirstRand does not editorially control the content on such target sites and shall not be liable, in any manner whatsoever, for the access to, inability to access or content available on or through such target sites.

## **9. SECURITY**

- 9.1 FirstRand and its agents have taken all reasonable steps to secure the content of FirstRand Website and database and the information provided by and collected from Users from unauthorised access and/or disclosure. However, FirstRand does not make any warranties or representations that content shall be 100% safe and secure;
- 9.2 Although FirstRand encrypt and digitally authenticate access to certain parts of FirstRand website and application, FirstRand is under no legal duty to encrypt any content or communications from and to FirstRand Website and is also under no legal duty to provide digital authentication of any page on FirstRand Website;
- 9.3 Users may not deliver or attempt to deliver, whether on purpose or negligently, any damaging code, such as computer viruses, to FirstRand Website or the server and computer network that supports the FirstRand Website;
- 9.4 Notwithstanding criminal prosecution, any person who delivers any damaging code to FirstRand Website, whether on purpose or negligently, shall, without any limitation, indemnify and hold FirstRand harmless against any and all liability, damages and losses FirstRand and its agents may suffer as a result of such damaging code;
- 9.5 Users may not develop, distribute or use any device to breach or overcome the security measures of FirstRand Website and FirstRand reserves the right to claim damages any and all persons concerned with a security failure or breach; and



- 9.6 Any User who commits any of the offences detailed in sections 85 to 88 of the ECT Act shall, notwithstanding criminal prosecution, be liable for all resulting liability, loss or damages suffered and/or incurred by FirstRand and its agents.

## **10. DISCLAIMER AND LIMITATION OF LIABILITY**

- 10.1 Subject to the provisions of sections 43(5) and 43(6) of the ECT Act, if applicable, and as far as allowed by law, FirstRand (including its employees, suppliers, Internet service providers, partners, affiliates and agents and subcontractors covered by principle contract with FirstRand) shall not be liable for any damage, loss or liability of any nature incurred by whomever and resulting from:

10.1.1 access to FirstRand Website;

10.1.2 access to websites linked to FirstRand Website;

10.1.3 inability to access FirstRand Website;

10.1.4 inability to access websites linked to FirstRand Website;

10.1.5 content available on FirstRand Website;

10.1.6 services available from FirstRand Website;

10.1.7 downloads and use of content from FirstRand Website; or

10.1.8 any other reason not directly related to FirstRand, or its agents', gross negligence.

- 10.2 FirstRand Website is supplied on an "as is" basis and has not been compiled to meet the User's individual requirements. It is the responsibility of the User to satisfy himself or herself, prior to entering into this agreement with FirstRand, that the content available from and through FirstRand Website meets the User's individual requirements and is compatible with the User's computer hardware and/or software;

- 10.3 Information, ideas and opinions expressed on FirstRand website should not be regarded as professional advice or the official opinion of FirstRand and Users are encouraged to seek professional advice before taking any course of action related to the information, ideas or opinions expressed on FirstRand website;

- 10.4 FirstRand does not make any warranties or representations that content and services available from FirstRand Website will in all cases be true, correct or free from any errors. FirstRand shall take all reasonable steps to ensure the quality and accuracy of content available from FirstRand Website and encourages Users to report incorrect and untrue information subject to the right of FirstRand to rely on its free expression rights and determine, in its sole and absolute discretion, the contents of this website;

- 10.5 FirstRand does not make any warranties or representations that FirstRand Website shall be available at all times. Users acknowledge that FirstRand Website may be unavailable due to updates or other causes beyond the reasonable control of FirstRand, including, but not limited to virus infection, unauthorised access, power failure or other "acts of God."

## **11. REMOVAL AND CORRECTION OF CONTENT**

Users are encouraged to report untrue, inaccurate, defamatory, illegal, infringing and/or harmful content available from FirstRand Supplier Support Website to FirstRand and FirstRand undertakes to correct and/or remove such content or any part thereof if the person reporting such content provided reasonable grounds to prove the alleged nature of the content.

## **12. INTERCEPTION OF COMMUNICATIONS**

- 12.1 Subject to the provisions of the Regulation of Interception of Communications (RIC) Act 70 of 2002, the User agrees to FirstRand's right to intercept, block, filter, read, delete, disclose and use all communications sent or posted by the User to FirstRand Website, its staff and employees; and



12.2 The User agrees and acknowledges that the consent provided by the User in clause 12.1 satisfies the "writing" requirement as detailed in the ECT Act and the RIC Act.

### **13. ENTIRE AGREEMENT AND SEVERABILITY**

13.1 These terms and conditions constitute the entire agreement between FirstRand and the User and shall take precedence over any disclaimers and/or legal notices attached to any communications and/or postings received by FirstRand from the User;

13.2 Any failure by FirstRand to exercise or enforce any right or provision shall in no way constitute a waiver of such right or provision; and

13.3 In the event that any term or condition detailed herein is found unenforceable or invalid for any reason, such term(s) or condition(s) shall be severable from the remaining terms and conditions. The remaining terms and conditions shall remain enforceable and applicable.

### **14. AGREEMENT IN TERMS OF SECTION 21 OF THE ECT ACT**

The User and FirstRand agree that:

14.1 the User shall be bound to these terms and conditions and such agreement is concluded in Johannesburg (South Africa) at the time the User enters FirstRand Supplier Support website for the first time;

14.2 data messages (as defined in the ECT Act) addressed by the User to FirstRand shall only be deemed to have been received if and when responded to;

14.3 data messages (as defined in the ECT Act) addressed to the User by FirstRand shall be deemed to be received by the User as detailed in section 23(b) of the ECT Act;

14.4 data messages (as defined in the ECT Act) addressed by the User to FirstRand shall be deemed to have been created and sent by the User from within the geographical boundaries of South Africa;

14.5 electronic signatures, encryption and/or authentication is not required for valid electronic communications between the User and FirstRand; and

14.6 The User agrees and warrants that data messages that are sent to FirstRand from a computer, IP address or mobile device normally used by or owned by the User, was sent and/or authorised by the User personally.

### **15. APPLICABLE AND GOVERNING LAW**

FirstRand Website is hosted, controlled and operated from the Republic of South Africa and therefore the South African law enforced by the South African courts governs the use or inability to use FirstRand Website, its content, services and these terms and conditions.

### **16. LEGAL COSTS**

FirstRand, its agents and suppliers, shall not be liable for costs incurred by Users to obtain professional advice relating to these terms and conditions.

A handwritten signature in black ink, consisting of a stylized, cursive 'S' or 'R' shape.