

Dear Employee

**OPPORTUNITY TO SUBSCRIBE FOR ORDINARY SHARES IN CAPITEC BANK HOLDINGS LIMITED ("CAPITEC")**

- 1 Capitec is pleased to provide you with an opportunity to subscribe for ordinary shares in Capitec ("**Capitec Shares**") at a discounted subscription price of R[●] per Capitec Share ("**Subscription Price**"), on the Terms and Conditions set out in the **Annexe** to this letter (the "**Terms and Conditions**"). The Subscription Price amounts to a 50% discount to the opening share price of the Capitec Shares on 22 February 2022.
- 2 A total of [●] Capitec Shares ("**Scheme Shares**") will be made available for subscription to all Capitec group employees who are permanently employed with the Capitec group as at the date of issue of the Capitec Shares (which is expected to be [28 February] 2022) and who have not resigned by such date and who were so employed on or before 1 January 2019 (excluding any person who is a director or who is a related party to Capitec for purposes of the JSE Listings Requirements or who is an annual participant in, or beneficiary of, the Capitec Bank Holdings Share Trust) ("**Eligible Employees**"), as follows:
  - 2.1 As an Eligible Employee you will be entitled to subscribe for a minimum number of Capitec Shares ("**Allocated Shares**"). The number of Allocated Shares that you are entitled to subscribe for is [●] Capitec Shares, which number has been calculated by reference to your years of service and demographics.
  - 2.2 If you elect to subscribe for the Allocated Shares and you are also a person who falls within the definition of "Black people" as defined in the sector code applicable to Capitec, as gazetted from time to time in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act, No. 53 of 2003 ("**Black Employee**"), then you also qualify to elect to subscribe for more Capitec Shares than the Allocated Shares ("**Additional Shares**").
  - 2.3 If there are excess Scheme Shares available for subscription (after allocating the Allocated Shares to all relevant Eligible Employees) ("**Excess Shares**"), Black Employees who validly elect to subscribe for Additional Shares will subscribe for such Additional Shares, subject to the number of available Excess Shares. If Black Employees elect to subscribe for more Additional Shares than the available Excess Shares, then the Excess Shares will be divided amongst such Black Employees, capped at the number of Additional Shares that they have elected to subscribe for.
  - 2.4 If you elect to subscribe for the Allocated Shares, you will receive all your Allocated Shares. However, if you elect to subscribe for Additional Shares, you may receive fewer Additional Shares than the number you elect to subscribe for. As soon as practicably possible after the closing date set out in paragraph 4.2 below, you will receive confirmation by Capitec via the Capitec Learning Hub of the number of Capitec Shares you have subscribed for ("**Subscription Shares**"); the aggregate Subscription price payable by you and the amount of the Loan described in paragraph 3.
- 3 In addition to having the opportunity to subscribe for the Subscription Shares at a 50% discount, Capitec will provide you with a loan to enable you to pay the Subscription Price in respect of the Subscription Shares ("**Loan**"), on the terms set out in the Terms and Conditions. It is a condition to subscribing for the Subscription Shares that you take up the Loan so that all Eligible Employees who elect to participate in this scheme are treated in the same way. Repayment of the Loan will be secured by way of a pledge and cession of your Subscription Shares and the rights in respect thereof on the terms set out in the Terms and Conditions ("**Pledge and Cession**"). Applicable taxes will be deducted from any dividends paid by Capitec in respect of your Subscription Shares from time to time and you will receive 50% of the balance of such dividends and the remaining 50% will be used to repay a portion of the interest and capital of the Loan.
- 4 If you want to take up the opportunity to subscribe for Capitec Shares and take up the Loan subject to the Pledge and Cession, you are required to:
  - 4.1 carefully read the Terms and Conditions and ensure that you understand the Terms and Conditions. If you require assistance with understanding the Terms and Conditions or you have any questions please contact your line manager; and

4.2 if you are comfortable with the Terms and Conditions, complete the **Schedule** to this letter and accept the Terms and Conditions by signing the **Schedule** to this letter **by no later than [18:00] (South African time) on [24 February] 2022,**

failing which the opportunity will lapse and will no longer be capable of acceptance by you.

**5 Spousal Consent: If you are married in community of property then by signing the Schedule you warrant and represent to Capitec that true and complete copies of this letter, the Schedule to this letter and the Terms and Conditions have been provided to your spouse; he/she is familiar with each of their terms, and has consented in writing to the transactions set out therein.**

6 Upon your valid acceptance of the opportunity to subscribe for Capitec Shares and take up the Loan subject to the Pledge and Cession in accordance with paragraph 4.2, a binding agreement will automatically come into force and effect between you and Capitec on the terms and conditions set out in this letter as read with the Schedule to this letter and the Terms and Conditions, provided that if you are no longer permanently employed by the Capitec Group as at the date of issue of the Capitec Shares (which is expected to be [28 February] 2022) or you have resigned by such date, then you may not validly accept the opportunity to subscribe for Capitec Shares.

Yours faithfully,

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**Capitec Bank Holdings Limited**

[Gerrie Fourie]

[Chief Executive Officer]

*Being duly authorised hereto*

**1 Employee details***(Please complete in full)*

1.1	Full name and surname ("Employee")	
1.2	Identity number	
1.3	Employee CP number	
1.4	Physical address	
1.5	Email address	
1.6	Phone number	
1.7	Number of Capitec Shares allocated to you ("Allocated Shares")	[●]
1.8	Number of additional Capitec Shares you would like to subscribe for ("Additional Shares")	
1.9	Employee marital status and regime <i>(please indicate with an "x")</i>	married <input type="checkbox"/> single <input type="checkbox"/> divorced <input type="checkbox"/> If married : Married in community of property <input type="checkbox"/> <i>(If married in community of property, you hereby warrant that your spouse is familiar with the transactions envisaged in the Agreement and that she/he has consented thereto in writing.)</i> Married out of community of property without accrual <input type="checkbox"/> Married out of community of property with accrual <input type="checkbox"/>
1.10	Employee demographics <i>(please indicate with an "x")</i>	African <input type="checkbox"/> Coloured <input type="checkbox"/> Indian <input type="checkbox"/> White <input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/>

**The definitions in clause 1 of the Terms and Conditions apply hereto.**

**2 Agreement**

By signing this Schedule, the Employee hereby agrees to subscribe for the Subscription Shares and to be bound by the Agreement.

**3 Declaration**

**By signing this Schedule, the Employee acknowledges and confirms that –**

- 3.1 he/she is legally competent to enter into the Agreement and, if he/she is married in community of property, his/her spouse has in writing consented to him/her entering into the Agreement;**
- 3.2 he/she is not currently under administration, debt review or sequestration or in the process of applying for such;**
- 3.3 Capitec has provided him/her with financial education learning material which explains what shares are, and the risks and rewards associated with shares and that he/she has had the opportunity to read and ask questions about the learning material and that he/she understand how shares work;**

- 3.4 he/she has been given the opportunity to secure independent legal and other advice as to the nature and effect of the Agreement and that he/she has either taken such independent legal and other advice or dispensed with the necessity of doing so;
- 3.5 he/she has read and understands and appreciates the Agreement and in particular his/her risks, costs, rights and obligations under the Agreement;
- 3.6 all of the provisions of the Agreement and the restrictions therein contained are part of the overall intention of the Parties in connection with the matters set out in the Agreement;
- 3.7 his/her signature, whether handwritten or electronic, indicates his/her acceptance of all terms and stipulations contained in the Agreement and that he/she is bound by them; and
- 3.8 in any legal proceedings that Capitec may institute against him/her, Capitec may at its election rely on an electronic signature or handwritten signature as rebuttable evidence of his/her acceptance of all terms and stipulations contained in the Agreement.

**Signature**

*(Please complete in full and sign)*

Signed at \_\_\_\_\_ (place) on \_\_\_\_\_ (date).

.....  
*Employee signature (Type your full name(s) and surname)*

## TERMS AND CONDITIONS

**NOTE: We are going to use certain words over-and-over in the Agreement, so we have defined the words here so that it is easier for you to read the rest of the Agreement.**

## 1 Interpretation

1.1 In these Terms and Conditions, the following words shall, unless otherwise defined or inconsistent with the context in which they appear, bear the following meanings and cognate words shall bear corresponding meanings:

- 1.1.1 "**Act**" means the Companies Act, No. 71 of 2008 (as amended);
- 1.1.2 "**Agreement**" means, collectively, the Letter, the Schedule and these Terms and Conditions;
- 1.1.3 "**Business Day**" means any day other than a Saturday, Sunday or gazetted national public holiday in South Africa;
- 1.1.4 "**Capitec**" means Capitec Bank Holdings Limited, registration number 1999/025903/06;
- 1.1.5 "**Capitec Group**" means Capitec and/or its subsidiaries (as defined in the Act), from time to time;
- 1.1.6 "**Capitec Shares**" means ordinary shares having a par value of R0.01 each in the share capital of Capitec;
- 1.1.7 "**Computershare Nominees**" means Computershare Nominees Proprietary Limited, registration number 1999/008543/07;
- 1.1.8 "**Disposal**" means, in the context of a Capitec Share –
- 1.1.8.1 the transfer of all or any rights making up such share to any other person for his benefit and/or for the benefit of others, whether such transfer is effected pursuant to a sale, cession, assignment, alienation, amalgamation, merger, exchange, donation, renunciation, surrender, waiver, relinquishment, unbundling, vesting, collar structure, scrip lending or otherwise (whether by a voluntary or involuntary single transaction or series of transactions); or
- 1.1.8.2 any other transaction or event whereby such share becomes registered in the name of, or beneficially owned by, someone other than the person who was the registered or beneficial holder thereof immediately prior to such transaction or event taking place,
- and "**Dispose**", "**Disposal**" and "**Disposing**" shall bear a corresponding meaning;
- 1.1.9 "**Dividends**" means all cash dividends declared and paid by Capitec in respect of the Subscription Shares;
- 1.1.10 "**Employee**" means the person whose name appears in item 1.1 of the Schedule;
- 1.1.11 "**Encumbrance**" means any right of first refusal, right of pre-emption, purchase right, option, mortgage, pledge, lien, cession in the nature of security, assignment in the nature of security, hypothecation, set-off arrangement, security interest or any other restriction of any kind on ownership, transfer, use, possession, receipt of income from or any other exercise of any attribute of ownership, or any other agreement or arrangement having the effect or intention of conferring security and "**Encumber**" shall have a corresponding meaning;
- 1.1.12 "**Event of Default**" means an event specified in clause 7.1 below;
- 1.1.13 "**Fringe Benefit Rate**" means the official rate of interest published by the South African Reserve Bank (otherwise known as the repo rate), plus 1%;
- 1.1.14 "**Interest Payment Date**" means each date on which Capitec pays a Dividend;

- 1.1.15 "**Interest Period**" means each period:
- 1.1.15.1 commencing on (and including) the Subscription Date and thereafter commencing on (and including) each successive Interest Payment Date; and
- 1.1.15.2 ending on (but excluding) the next Interest Payment Date;
- 1.1.16 "**law**" means as any law including common law, statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other measure of any government, local government, statutory or regulatory body or court having the force of law;
- 1.1.17 "**Letter**" means the letter by Capitec to the Employee to which these Terms and Conditions are attached, dated [●] 2022;
- 1.1.18 "**Loan**" means the loan in an amount equal to the Subscription Price to be made under the Agreement, or the principal amount outstanding of that loan from time to time, as the context may require;
- 1.1.19 "**Maturity Date**" means the date occurring on the 5<sup>th</sup> anniversary of the Subscription Date;
- 1.1.20 "**Notice of Pledge and Cession**" means the notice of pledge and cession attached to these Terms and conditions as Annexe A;
- 1.1.21 "**Parties**" means collectively, the Employee and Capitec, and the term "**Party**" shall mean each or either of them, as the context may require;
- 1.1.22 "**Related Rights**" means, in relation to the Restricted Shares:
- 1.1.22.1 any monies and proceeds (including the proceeds of a disposal or other realisation) accrued or receivable in respect of all or part thereof, including any and all "*distributions*" (as defined in the Act) by Capitec in respect thereof;
- 1.1.22.2 all rights and benefits in respect of any agreement for the disposal thereof; and
- 1.1.22.3 all contracts, warranties, remedies, security interests, indemnities and other undertakings in respect thereof;
- 1.1.23 "**Restricted Shares**" means the Subscription Shares together with any capitalisation shares issued in respect of the Subscription Shares and any shares or other securities issued in substitution or exchange thereof, from time to time;
- 1.1.24 "**Schedule**" the Schedule attached to the Letter;
- 1.1.25 "**Secured Property**" means the Restricted Shares and the Related Rights;
- 1.1.26 "**sign/signed**" shall include any form of electronic signature as envisaged in the Electronic Communications and Transactions Act, No. 25 of 2005 and scanned copies of documents which have been physically signed;
- 1.1.27 "**Signature Date**" means the date on which the Employee signs the Schedule;
- 1.1.28 "**Specified Bank Account**" means the bank account into which the Employee's monthly remuneration is paid by the Capitec Group from time to time;
- 1.1.29 "**Subscription Date**" means [●] 2022;
- 1.1.1 "**Subscription Price**" means an amount of R[●] per Subscription Share;
- 1.1.2 "**Subscription Shares**" means the number of Capitec Shares comprising of –
- 1.1.2.1 the Allocated Shares as set out in item 1.7 of the Schedule; and

- 1.1.2.2 the Additional Shares (if any) which the Employee has elected to subscribe for as specified in item 1.8 of the Schedule, or such lesser number of Additional Shares as may be determined by Capitec in its sole and unfettered discretion (which determination shall be final and binding on the Employee), by reference to the total number of Capitec Shares (if any) that remain available for subscription and the number of Additional Shares which the Employee has elected to subscribe for as specified in item 1.8 of the Schedule;
- 1.1.3 "**Terms and Conditions**" means these Terms and Conditions and Annexe A hereto; and
- 1.1.4 "**writing/written**" includes faxes, emails and any non-transitory form of visible reproduction or words but excludes text messaging over mobile phone or other electronic device.
- 1.2 In the Agreement –
- 1.2.1 words importing the masculine gender include the feminine and neuter genders and *vice versa*; the singular includes the plural and *vice versa*; and natural persons include artificial persons and *vice versa*;
- 1.2.2 any definition, wherever it appears in the Agreement, shall bear the same meaning and apply throughout the Agreement unless otherwise stated or inconsistent with the context in which it appears;
- 1.2.3 unless otherwise stated, where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the succeeding Business Day; and
- 1.2.4 where the day upon or by which any act is required to be performed is not a Business Day, the act shall be performed upon or by the next succeeding Business Day.
- 1.3 The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.4 Unless otherwise provided, defined terms appearing in the Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 1.5 A reference to any law shall be construed as a reference to that law as at the Signature Date and as amended or substituted from time to time.
- 1.6 Unless otherwise expressly stated, any reference in the Agreement to "the Agreement" or any other agreement or document shall be construed as a reference to the Agreement or, as the case may be, such other agreement or document, as amended, re-instated, restated, varied, novated or supplemented from time to time.
- 1.7 In the event of a conflict between the Letter and/or the Schedule on the one hand and these Terms and Conditions on the other, the provisions of these Terms and Conditions shall prevail to the extent of such inconsistency.

## Part 1: Subscription

**NOTE: This part is all about you becoming a shareholder in Capitec, this is serious stuff! Capitec Shares are listed on the JSE, South Africa's largest securities exchange, so we need to make sure that the JSE and Capitec know that you want the Capitec Shares so that Capitec can issue them in your name and the JSE can list them. Capitec's auditors and BEE rating agencies will also want to make sure of this, so let's help them. This part sets out how you subscribe for the Capitec Shares. You also cannot sell or use the Capitec Shares as security for at least 5 years, so we have recorded that in clause 3.**

### 2 Subscription

- 2.1 The Employee hereby subscribes for the Subscription Shares at the Subscription Price, with effect from the Subscription Date.
- 2.2 On the Subscription Date –
- 2.2.1 the Employee will make payment of the Subscription Price to Capitec in accordance with clause 4.2 below; and
- 2.2.2 against payment of the Subscription Price, Capitec will allot and issue the Subscription Shares to the Employee by crediting an account in the name of Computershare Nominees, who will hold such Subscription Shares for the benefit of the Employee for the duration of the pledge and cession as envisaged in clause 9 below, on the following basis:
- 2.2.2.1 the Employee will be the beneficial owner of the Subscription Shares; and
- 2.2.2.2 the Employee will be bound by the provisions of the rules and directives of Strate Proprietary Limited, registration number 1998/022242/07, (registered as a central securities depository under the Financial Markets Act, No. 19 of 2012) in respect of the Subscription Shares held by Computershare Nominees, and will be deemed to have concluded a custody agreement with Computershare Nominees.

### 3 Restrictions

From the Subscription Date until the later of (i) expiry of the pledge and cession envisaged in clause 9 below and (ii) the Maturity Date, the Employee shall not be entitled to Dispose of or Encumber the Restricted Shares.

## Part 2: Loan

**NOTE: We have told you that we will lend you the money you need to subscribe for the Capitec Shares, well this is it. You are all bankers, so you know how a loan works; it is the main business of the bank. This part of the Agreement contains all the "normal" stuff that a loan agreement usually has, including the amount you are borrowing, the interest rate which you are borrowing at and how it is calculated and how and when the interest and loan will be repaid. Check out clauses 5.2.1 and 5.3 – this is where we explain the dividends you are entitled to. SARS will take their tax portion and then from the amount left over, 50% goes to you and 50% will be kept to pay off interest and the loan. We do not want our employees to lose sleep over the loan, so we "put our money where our mouth is" and have put this in writing in clause 6.4 to protect our employees. Ask our collections departments, you don't see this type of clause very often!**

### 4 Advance

- 4.1 Capitec makes available the Loan to the Employee for the sole purpose of paying the aggregate Subscription Price.
- 4.2 The Loan shall be advanced to the Employee on the Subscription Date by Capitec retaining the Loan amount, thereby extinguishing the Employee's obligation to make payment of the aggregate Subscription Price to Capitec and Capitec's obligation to advance the Loan to the Employee.

## 5 Interest

- 5.1 For each Interest Period, interest shall accrue on the Loan at the Fringe Benefit Rate, day to day and calculated on the basis of the actual number of days elapsed and a year of 365 days (irrespective of whether the year in question is a leap year).
- 5.2 Accrued interest shall be due and payable on each Interest Payment Date and shall be serviced from the proceeds of 50% of any Dividends payable on that Interest Payment Date (after the deduction of applicable taxes) (the "**Relevant Dividends**") on the basis that:
- 5.2.1 the Relevant Dividends will be applied first to accrued interest and thereafter to the capital amount of the Loan. To the extent that the Relevant Dividends payable to the Employee on that Interest Payment Date are insufficient to settle the full amount of the accrued interest due and payable on that Interest Payment Date, the outstanding interest will be capitalised to the Loan amount and no capital amount shall be repaid; and
- 5.2.2 to the extent that the Relevant Dividends payable to the Employee on any Interest Payment Date exceeds the amount of accrued interest due and payable on that Interest Payment Date, the amount of such excess ("**Excess Relevant Dividends**") shall be applied in accordance with clause 6.2 below.
- 5.3 For purposes of the payments contemplated in clause 5.2 above, the Employee hereby authorises Computershare Proprietary Limited to make payment of all Dividends to Capitec on behalf of the Employee on the relevant Interest Payment Date and authorises Capitec to retain the Relevant Dividends in settlement of the Employee's obligations to pay the accrued interest on that date up to a maximum amount equal to the Relevant Dividends and, if applicable, capital as contemplated in clause 6.2 below and to pay the balance of the said Dividend (after deduction of applicable taxes) to the Employee into the Specified Bank Account. This clause shall constitute a *stipulatio alteri* in favour of Computershare Proprietary Limited, capable of acceptance at any time without notice to any person.

## 6 Repayment

- 6.1 Subject to clause 6.2 below, the Employee shall repay the full amount of the Loan, together with the accrued, unpaid interest thereon, on the Maturity Date.
- 6.2 The Excess Relevant Dividends shall be utilised to settle an equivalent amount of the Loan on each Interest Payment Date.
- 6.3 On the Maturity Date, the Employee shall be entitled to settle the full amount referred to in clause 6.1 above from his or her own funds. Alternatively, by no later than 5 Business Days before the Maturity Date, the Employee shall be entitled to instruct Capitec (in such form and substance as may be determined by Capitec) to, as soon as practicably possible after the Maturity Date, Dispose of so many of the Restricted Shares at prices equal to the prevailing bids in the order book of the JSE at the time that such shares are offered for sale, in order to enable the Employee to repay the full amount referred to in clause 6.1 above and Capitec shall apply the proceeds of such sale (net of costs and taxes) first to accrued interest and thereafter to the capital amount of the Loan.
- 6.4 If the Employee is unable or unwilling to repay the full amount referred to in clause 6.1 above (whether out of his/her own funds or pursuant to a Disposal of his/her Restricted Shares as envisaged in clause 6.3 above), this will constitute an Event of Default and Capitec shall be entitled to exercise its rights under Part 3 of these Terms and Conditions in order to settle such amount. To the extent that the value of the Restricted Shares and/or the proceeds from the sale thereof, is insufficient to discharge the full amount owing, Capitec shall in its sole and unfettered discretion (which determination shall be final and binding on the Employee), either write off the outstanding balance at that stage or make another arrangement with the Employee to settle the outstanding balance.
- 6.5 All payments to be made by the Employee under these Terms and Conditions shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

## 7 Events of Default

- 7.1 Each of the events set out in this clause 7.1 shall constitute an Event of Default:
- 7.1.1 the Employee fails to repay any amount of the Loan in accordance with clause 6 above;
- 7.1.2 the Employee is in breach of or fails to comply with any other provision of the Agreement;
- 7.1.3 the Employee:
- 7.1.3.1 is or is deemed for the purposes of any applicable law to be insolvent or unable to pay its debts as they fall due;
- 7.1.3.2 admits his or her insolvency or inability to pay his or her debts as they become due; or
- 7.1.3.3 by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to the rescheduling, restructuring or compromise of any of his or her indebtedness;
- 7.1.4 it becomes unlawful for the Employee or Capitec to perform any of its obligations under Part 2 of the Agreement.
- 7.2 On and at any time after the occurrence of an Event of Default which is continuing, Capitec may by notice to the Employee and without prejudice to any other rights or remedies which Capitec may have under the Agreement or at law:
- 7.2.1 declare that all or part of the amount of the Loan and interest accrued thereon and all other amounts outstanding under Part 2 of these Terms and Conditions:
- 7.2.1.1 are immediately due and payable, whereupon they shall become immediately due and payable; and/or
- 7.2.1.2 are payable on demand, whereupon they shall immediately become payable on demand by Capitec; and/or
- 7.2.1.3 exercise its rights under Part 3 of these Terms and Conditions.

## 8 Changes to the lender in respect of the Loan

Capitec may, without notice or the consent of the Employee, cede any of its rights and/or delegate any of its obligations as the lender in respect of the Loan under Part 2 of these Terms and Conditions. The Employee agrees to co-operate and take all such steps as Capitec may reasonably require to give effect to such a cession or delegation. The Employee consents to any splitting of claims that may arise as a result of such cession and/or delegation.

### Part 3: Pledge and Cession

**NOTE: We have spoken about the money you are going to borrow from us, now we need security for the repayment of that money. You will become the owner of the Capitec Shares, but this part comes into play if you do not fully repay the loan on time, 5 years from now. Check out clause 14 – this describes the process which Capitec can follow if you do not do what is required in terms of the Agreement; we trust that this will never happen, but who knows? We also need to tell Computershare that you have pledged the Capitec Shares to us as security for your Loan, so check out the Notice of Pledge and Cession in Annexe A for information on this.**

## 9 Pledge and Cession

- 9.1 The Employee pledges to Capitec all of his or her Restricted Shares, and cedes in security to Capitec all its Secured Property, in each case individually and collectively with all the other Secured Property, as continuing

general covering collateral security for the punctual performance in full of all of his or her obligations under the Agreement, which pledge and cession Capitec accepts.

- 9.2 Without detracting from the obligations under clause 11 below, if any Secured Property is subject to a prior Encumbrance in breach of the representations and warranties in these Terms and Conditions, then, without prejudice to any other rights that Capitec may have, any reversionary or other interests the Employee may have in the said Secured Property (including all of the Employee's rights of action against such other person and any rights which now or may in the future vest in the Employee pursuant to such reversionary rights) are also ceded in security to Capitec. Capitec shall be entitled to notify such other person of the Agreement and the pledge and cession contemplated herein.
- 9.3 If, for any reason, the pledge and cession intended to be created under these Terms and Conditions is or becomes illegal, invalid or unenforceable in respect of some of the Restricted Shares or the Secured Property, then the pledge of those Restricted Shares and the cession of that Secured Property shall be severed from the Agreement, and the Agreement and the pledge and cession created over the remainder of the Secured Property shall continue in full force and effect.
- 9.4 The cession contemplated by these Terms and Conditions operates as a security cession and not as an outright cession, and the Employee retains bare ownership of all its Secured Property and shall be entitled to exercise its voting rights in respect of the Restricted Shares and shall be entitled to the distributions (as defined in the Act) in respect of the Restricted Shares, subject to the rights of Capitec as secured creditor and the provisions of clauses 5 and 6 above.

## 10 Duration

- 10.1 The pledge and cession contemplated in clause 9 above:
- 10.1.1 shall come into force on the Subscription Date and shall terminate once all amounts owing under the Loan and interest accrued thereon and all other amounts outstanding under Part 2 of these Terms and Conditions are fully and finally discharged, provided that Capitec shall be entitled to release all or a portion of the Restricted Shares for purposes of a Disposal as envisaged in clause 6.3; and
- 10.1.2 is of continuing effect and will extend to the ultimate balance of all the amounts owing in connection with the Loan and interest accrued thereon and all other amounts outstanding under Part 2 of these Terms and Conditions, notwithstanding any intermediate payment or discharge of such amounts, in whole or in part.
- 10.2 Without prejudice to any other provision of the Agreement, if as at the date of the Agreement, any of the Secured Property is not yet owned by the Employee, or has not yet come into existence, then the pledge and cession contemplated in these Terms and Conditions in respect of such Secured Property shall automatically come into full force and effect on the date on which the Employee acquires ownership of such Secured Property, or the date on which such Secured Property comes into existence (as the case may be).

## 11 Waiver

The Employee renounces, to the maximum extent permitted under applicable law, the benefits of each of the legal exceptions of excussion, division, revision of accounts, no value received, *errore calculi*, *non causa debiti*, *non numeratae pecuniae* and cession of actions, and declares that he/she understands the meaning of each such legal exception and the effect of such renunciation.

## 12 Undertakings

The Employee undertakes that he/she shall not, for the duration of the pledge and cession contemplated in clause 9 above:

- 12.1 Encumber nor Dispose of the Secured Property in any manner; or
- 12.2 take or omit to take any action which will, or is reasonably likely to, adversely affect the rights of Capitec under the Agreement or the effectiveness of the pledge and cession created by the Agreement.

### **13 Delivery of documents**

- 13.1 The Employee acknowledges and consents to the terms and conditions set out in the Notice of Pledge and Cession.
- 13.2 The Employee authorises Capitec to:
- 13.2.1 complete the relevant information in the Notice of Pledge and Cession on his or her behalf; and
- 13.2.2 deliver a duly completed Notice of Pledge and Cession on his or her behalf to Computershare Proprietary Limited, in its capacity as central securities depositary participant.

### **14 Enforcement**

- 14.1 Upon the occurrence of an Event of Default, without prejudice to any other rights that Capitec may have in law or otherwise, Capitec shall be entitled to:
- 14.1.1 exercise all or any of the rights, powers and privileges and enforce all or any obligations attaching to the Secured Property in such manner and on such terms as Capitec in its sole discretion deems fit;
- 14.1.2 receive payment for, delivery of, and/or performance in respect of, the Secured Property in its own name;
- 14.1.3 authorise any officer of Capitec (whose appointment need not be proved) to sign, on behalf of and in the name of the Employee, any securities transfer form or other document that may be necessary to give effect to any disposal of Secured Property by Capitec under this clause; and
- 14.1.4 at the election of Capitec:
- 14.1.4.1 sell or otherwise realise all or some of the Secured Property by public auction or private treaty; and/or
- 14.1.4.2 take over all or some of the Secured Property at a fair value.
- 14.2 If Capitec elects to exercise its rights under the Agreement, the Employee undertakes to carry out any lawful directions Capitec may give in regard to the realisation of the Secured Property, and sign any document or do any other lawful act necessary to:
- 14.2.1 vest the Secured Property in Capitec;
- 14.2.2 enable any sale, purchase or other realisation or transfer of Secured Property; and/or
- 14.2.3 perfect and complete (to the extent necessary) the pledge and the cession of any Secured Property under these Terms and Conditions.

### **15 Changes to the secured creditor**

Capitec may, without notice or the consent of the Employee, cede any of its rights and/or delegate any of its obligations as the secured creditor under Part 3 of these Terms and Conditions. The Employee agrees to cooperate and take all such steps as Capitec may reasonably require to give effect to such a cession or delegation. The Employee consents to any splitting of claims that may arise as a result of such cession and/or delegation.

**Part 4: General**

**This is the stuff which you find at the end of the Capitec Retail branch documents and at the end of the Capitec Business documents.**

**16 Warranties**

**Employee warranties**

- 16.1 The Employee hereby gives to and in favour of Capitec the following warranties –
- 16.1.1 the Agreement constitutes an agreement valid and binding on it and enforceable against the Employee in accordance with its terms;
- 16.1.2 the execution of the Agreement and the performance of the employee's obligations hereunder do not and shall not –
- 16.1.2.1 contravene any law or regulation to which the Employee is subject; or
- 16.1.2.2 conflict with or constitute a breach of any applicable laws or provisions of any agreement, obligation, restriction or undertaking which is binding on the Employee;
- 16.1.3 the Employee is not aware of the existence of any fact or circumstance that may impair its ability to comply with all of his/her obligations in terms of the Agreement;
- 16.1.4 the Employee is not relying upon any statement or representation by or on behalf of the other Party or any other party, except those expressly set forth in the Agreement;
- 16.1.5 he/she is aware and understands that he/she shall not be entitled to Dispose of or Encumber the Restricted Shares until the later of (i) expiry of the pledge and cession envisaged in clause 9 above and (ii) the Maturity Date, (other than as contemplated in the Agreement);
- 16.1.6 if the Employee is married in community of property, the Employee has obtained the necessary written spousal consent to enter into and perform his/her obligations under the Agreement;
- 16.1.7 the Employee has the legal capacity and power to enter into, perform and deliver, and has taken all necessary action to authorise, his or her entry into, performance and delivery of, the Agreement;
- 16.1.8 the Agreement creates the Encumbrance it purports to create and that Encumbrance is valid and effective;
- 16.1.9 the Employee is and will remain the sole legal and beneficial owner of all of the Secured Property to the exclusion of all others; and
- 16.1.10 no part of the Secured Property has been pledged, ceded (either outright or as security), discounted, factored, mortgaged under notarial bond or otherwise, or otherwise Disposed of or Encumbered, which would apply on enforcement by Capitec of its rights under these Terms and Conditions.

**Capitec warranties**

- 16.2 Capitec hereby gives to and in favour of the Employee the following warranties –
- 16.2.1 the Subscription Shares will, upon being issued to the Employee –
- 16.2.1.1 be listed on the Main Board of the securities exchange operated by the JSE Limited; and
- 16.2.1.2 rank *pari passu* with all the other issued ordinary shares in Capitec.
- 16.2.2 it has the legal capacity and has taken all necessary corporate action (including the necessary shareholder and director resolutions) required to empower and authorise it to enter into the Agreement and comply with its obligations hereunder;

- 16.2.3 the Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms;
- 16.2.4 the execution of the Agreement and the performance of its obligations hereunder do not and shall not –
- 16.2.4.1 contravene any law or regulation to which it is subject;
- 16.2.4.2 contravene any provision of its constitutional documents; or
- 16.2.4.3 conflict with or constitute a breach of any applicable laws or provisions of any agreement, obligation, restriction or undertaking which is binding on it;
- 16.2.5 it is not aware of the existence of any fact or circumstance that may impair its ability to comply with all of its obligations in terms of the Agreement; and
- 16.2.6 it is not relying upon any statement or representation by or on behalf of the other Party or any other party, except those expressly set forth in the Agreement.
- 16.3 Each of the warranties given by the Parties in terms of this clause 16 shall –
- 16.3.1 be given at the Signature Date and the Subscription Date and each day between (and including) those dates;
- 16.3.2 be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other words in the Agreement;
- 16.3.3 continue and remain in force notwithstanding the completion of any or all the transactions contemplated in the Agreement; and
- 16.3.4 *prima facie* be deemed to be material and to be a material representation inducing the other Party to enter into the Agreement.
- 16.4 Save for the warranties given in terms of this clause 16, no warranties or representations are given or made by either Party in relation to the subject matter of the Agreement, whether express, tacit or implied.

## 17 Notices and *domicilia*

The Parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required in terms of or in connection with the Agreement, the said physical addresses as well as the following email addresses:

- 17.1 the Employee:
- physical address and email address: the addresses which appear in items 1.4 and 1.5 of the Schedule; marked for the attention of: the Employee; and
- 17.2 Capitec:
- physical address: No 5 Neutron Road, Techno Park, Stellenbosch, 7600; email address: enquiries@capitecbank.co.za; marked for the attention of: Company Secretary,

provided that either Party may change the aforementioned physical address or email address by written notice to the other Party to that effect. Such change will be effective on the Business Day after receipt of the notice of the change. Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received.

## 18 Dispute resolution

- 18.1 Any dispute or difference between the Parties arising out of or in connection with the Agreement, including any dispute or difference as to the existence, validity, termination, cancellation or otherwise of the Agreement ("**Dispute**"), shall, on written demand by either Party be submitted to arbitration in Stellenbosch for determination in accordance with the Commercial Arbitration Rules of the Arbitration Foundation of Southern Africa ("**AFSA**") without recourse to the ordinary courts of law, except as explicitly provided for in clause 18.4 below.
- 18.2 The Parties shall agree on the arbitrator who shall be a practising attorney at one of the 5 largest law firms in South Africa (by number of partners) or a senior advocate (in each case with at least 15 years' experience in commercial legal practice) ("**Qualifying Arbitrator**"). If agreement is not reached within 10 business days after either Party calls in writing for such agreement, the arbitrator shall be a Qualifying Arbitrator (who need not be on the panel of arbitrators of AFSA) appointed by the Chairman of AFSA for the time being.
- 18.3 Either Party may appeal the decision of the arbitrator to an appeal panel of three arbitrators appointed by agreement between the Parties, failing which any places on the arbitral tribunal which are not filled by agreement shall be a Qualifying Arbitrator (who need not be on the panel of arbitrators of AFSA) appointed by the Chairman of AFSA.
- 18.4 Nothing herein contained shall be deemed to prevent or prohibit a Party from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.
- 18.5 A written arbitration demand by a Party in terms of clause 18.1, is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, No. 68 of 1969.

## 19 Miscellaneous

- 19.1 The Agreement will in all respects be governed by and construed under the laws of South Africa.
- 19.2 Subject to the provisions of clause 18 above, each Party hereby consents and submits to the non-exclusive jurisdiction of the Western Cape Division of the High Court in any dispute arising from or in connection with the Agreement, including any dispute as to the validity thereof.
- 19.3 The rule of construction that the Agreement shall be interpreted against the party responsible for the drafting of the Agreement, shall not apply.
- 19.4 The Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, any undertaking, representation, term or condition relating to the subject matter of the Agreement not incorporated in the Agreement shall not be binding on either of the Parties.
- 19.5 No addition to or variation, deletion, or agreed cancellation of all or any clause or provision of the Agreement will be of any force or effect unless in writing and signed by the Parties.
- 19.6 Subject to clauses 8 and 15, neither the Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by either Party without the prior signed written consent of the other Party.
- 19.7 All provisions and the various clauses of the Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of the Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of the Agreement shall remain of full force and effect. The Parties declare that it is their intention that the Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

- 19.8 The termination or cancellation of the Agreement shall not affect such of the provisions of the Agreement which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 19.9 No failure to exercise, nor any delay in exercising, on the part of Capitec, of any right or remedy under the Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies of Capitec under the Agreement:
- 19.9.1 are cumulative and not exclusive of its rights under the general law;
- 19.9.2 may be exercised as often as Capitec requires; and
- 19.9.3 may be waived only in writing and specifically.
- 19.10 Delay in the exercise or non-exercise of any right is not a waiver of that right.
- 19.11 The Agreement may be signed in counterparts, all of which shall be deemed originals, and which together shall constitute one and the same agreement as at the Signature Date.

**Notice of Pledge and Cession**

To: Computershare Proprietary Limited  
From: Capitec Bank Holdings Limited (**Capitec**)

[Date]

Dear Sirs,

**Pledge and cession of shares**

1. We refer to:
  - 1.1 the written pledge and cession in security contained in the written agreement entered into between Capitec (as, amongst other things, lender and cessionary) and \_\_\_\_\_ (ID number \_\_\_\_\_) (the **Employee**) (as, amongst other things, borrower and cedent) dated \_\_\_\_\_, in terms of which, *inter alia*, the Employee pledges and cedes the Relevant Shares (as defined below) in favour of Capitec (the **Agreement**) (a copy of which is attached for your records);
  - 1.2 securities account \_\_\_\_\_ in the name of the Employee (the **Securities Account**); and
  - 1.3 without derogating from the generality of paragraph 1.1 above, clause [13] of the Terms and Conditions (as defined in the Agreement), wherein the Employee consents to the terms of this notice and authorises Capitec to deliver same on his or her behalf after the Subscription Date.
2. Unless otherwise defined herein, terms and expressions defined in the Agreement have the same meaning where used in this letter.
3. You are holding \_\_\_\_\_ dematerialised Subscription Shares in the abovementioned Securities Account on behalf of the Employee as a nominee under the Financial Markets Act (the **Relevant Shares**).
4. The Employee and Capitec hereby give you notice pursuant to the Agreement that the Employee has, amongst other things, pledged and ceded *in securitatem debiti* the Relevant Shares in favour of Capitec.
5. You are hereby instructed to make the necessary entries in the Securities Account with effect from the date of this notice, to effect such pledge and cession in accordance with section 39 of the Financial Markets Act.
6. Your attention is drawn to the fact that with effect from the date on which the Capitec notifies you in writing that an Event of Default has occurred, and thereafter until otherwise notified by Capitec you must:
  - 6.1 make all payments to be made in respect of the Relevant Shares directly to Capitec by payment into any bank account nominated by it in writing; and
  - 6.2 if instructed to do so by Capitec, transfer all or any part of the Relevant Shares to Capitec or any person nominated by it.
7. The Employee shall be entitled to exercise the voting rights in respect of the Relevant Shares until such time as Capitec notifies you in writing that an Event of Default has occurred, and thereafter Capitec shall exercise such rights until otherwise notified by it. Save in respect of such voting rights prior to such notice of an Event of Default, you must act solely in accordance with the instructions of Capitec, which instructions shall override any conflicting instructions or directions given by the Employee or any other person.
8. The instructions in this letter may not be revoked or amended without the prior written consent of Capitec.

9. This letter and any non-contractual obligations arising out of or in connection with this letter are governed by the laws of South Africa.

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For and on behalf of:

**CAPITEC BANK HOLDINGS LIMITED**

Name: \_\_\_\_\_

Office: \_\_\_\_\_

(who warrants his authority)

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For and on behalf of:

**CAPITEC BANK HOLDINGS LIMITED**

Name: \_\_\_\_\_

Office: \_\_\_\_\_

(who warrants his authority)