



CLEARING AGREEMENT

Memorandum of Agreement between

.....
(the "clearing member")

and

.....
(the "trading member")

1 Interpretation

- 1.1 In this agreement, unless otherwise clearly indicated by, or inconsistent with, the context –
 - 1.1.1 all the terms used in this agreement bear the meaning assigned to them in the Interest Rate and Currency Rules of the JSE ("the rules");
 - 1.1.2 "IRC security" means a futures contract, an option contract or bonds as defined in the rules; and
 - 1.1.3 "services" means the clearing and other services provided by the clearing member to the trading member in terms of this agreement and the rules.
- 1.2 In the event of conflict between the rules and the provisions of this agreement then the provisions of the rules shall apply.
- 1.3 The relevant provisions of the rules, decisions of the JSE Executive Committee and established practices of JSE shall apply *mutatis mutandis* to this agreement as if incorporated in this agreement.

2 Clearing of IRC securities

- 2.1 The parties agree that all transactions in IRC securities of the trading member or its clients which are required in terms of the rules to be cleared by the clearing house shall be cleared through the clearing member.
- 2.2 The trading member undertakes performance of all obligations in terms of the rules arising from its proprietary positions and the positions of its clients which are cleared by the clearing house.

3 Security

3.1 By trading member

3.1.1 The clearing member has requested the trading member to provide to the clearing member the security as specified in Annexure A for the due performance of all its obligations to the clearing member which may arise from IRC securities cleared by the clearing house pursuant to this agreement for the trading member.

3.1.2 Liability under the security provided in this clause shall arise upon the failure of the trading member to perform any or all of its obligations under IRC securities cleared by the clearing house for the trading member.

3.2 Additional requirements

3.2.1 The clearing member shall have the right to impose such financial, capital adequacy and other requirements as it considers necessary on the trading member in addition to the requirements for the trading membership set by the rules or required by the JSE.

3.2.2 If the trading member fails to meet such requirements the clearing member shall have the right to terminate this agreement in terms of clause 12 hereof.

4 Fees, levies and charges

Fees, levies and charges for the services rendered by the clearing member shall be levied in accordance with the schedule set out in Annexure B and the trading member hereby undertakes to pay such amounts on the due date.

5 Margin requirements

5.1 The trading member shall pay to the clearing member such sums as the clearing member may require from time to time by way of initial, variation, settlement and top-up margin or any other amount required by the clearing member in order to maintain margin balances in respect of or in connection with any position as required by the Act and the rules.

5.2 Without in any way limiting the generality of the provisions of 5.1, the clearing member shall in its discretion be entitled to require the trading member to pay to him additional margin on demand in respect of any position either before or after the clearing thereof.

5.3 The clearing member shall pay to the trading member any amount due to the latter in terms of the rules, particularly margin due to the trading member.

6 Trading limits

The clearing member shall have the right at any time to limit the proprietary positions of the trading member in a manner and on a basis agreed upon between the clearing member and the trading member and to close out any position which exceeds these limits.

7 Maintenance and inspection of records

7.1 The trading member undertakes to establish and maintain all such records and accounts as are required by the Act and the rules.

7.2 The clearing member shall have the right at all reasonable times to inspect such records of the trading member and shall further have the right to investigate the affairs of the trading member for the purposes of ascertaining whether the trading member is complying with the provisions of the Act, the rules and this agreement.

8 Client agreement

The trading member hereby undertakes to ensure that every client agreement entered into by it shall conform with the terms and conditions as prescribed by the JSE and warrants that all clients registered with the JSE for whom the trading member will undertake transactions in IRC securities that are to be cleared through the clearing house shall have signed such a client agreement.

9 Telephone calls

The parties hereto acknowledge and confirm that they are conversant with the relevant provisions of the rules insofar as the tape recording of telephone calls is concerned and hereby irrevocably consent to such tape recordings being made.

10 Breach by trading member

- 10.1 Time shall be of the essence for the performance by either party of any obligation under this agreement.
- 10.2 The trading member shall be deemed to have breached its obligations in terms of this agreement if –
- 10.2.1 it fails to fulfil any of its obligations in terms of a transaction or a position or this agreement or any rule; in particular, if it fails to comply fully and immediately with its obligation to pay margin when due or required in terms of this agreement or the rules;
 - 10.2.2 it is in default as contemplated by the rules; or
 - 10.2.3 a guarantee or suretyship for the liabilities of the trading member in favour of the clearing member is withdrawn or becomes invalid, unenforceable or, in the opinion of the clearing member, becomes inadequate, insufficient or unreliable.
- 10.3 The clearing member shall in the event of a breach by the trading member of any of its obligations in terms of this agreement be entitled, without notice to the trading member, to –
- 10.3.1 close out any position or all proprietary positions of the trading member;
 - 10.3.2 exercise a right of retention over any or all the assets of the trading member in the clearing member's possession, which assets shall be deemed to have been pledged to the member, and to sell such assets and apply the same or the proceeds of the sale to the liability of the trading member to the clearing member;
 - 10.3.3 charge interest on the amount of the trading member's liability to the clearing member from the date that such liability is incurred until the date it is actually discharged; or
 - 10.3.4 exercise any right it may have in terms of the rules or the common law.

11 Breach by clearing member

- 11.1 Should the clearing member breach any of the terms and conditions of this agreement and fail to rectify such breach within a reasonable period after notice from the trading member requiring such breach to be remedied, the trading member shall be entitled, without prejudice to any other rights which the trading member may have in terms of the provisions of this agreement or the rules or in law –
- 11.1.1 to cancel this agreement forthwith and transfer any position to any other clearing member after having entered into the prescribed clearing agreement with such other member, or to instruct the clearing member to close out any or all of the trading member's positions; or
 - 11.1.2 to claim specific performance of all the obligations of the defaulting clearing member in terms of the provisions of this agreement including, but not limited to, repayment of margins.
- 11.2 The trading member shall advise the JSE of any action taken by it in terms of this clause.
- 11.3 Should the rights of the clearing member to trade on the JSE be suspended, the trading member hereby appoints the chief executive officer of the JSE as its attorney to do all things necessary to transfer any position held by the suspended member on behalf of the trading member to another clearing member.

12 Voluntary termination

- 12.1 Either party may terminate this agreement by giving to the other party thirty days notice (or such period as the parties may agree in writing) specifying the date of termination ("the termination date") which shall be a business day and this agreement shall terminate on the termination date. Provided that –
- 12.1.1 the trading member shall ensure that by the close of business on the termination date all its proprietary positions are closed out and, if such positions are not closed out, the clearing member shall be entitled to close them out in accordance with the rules;

- 12.1.2 the trading member shall ensure that by the close of business on the termination date all the positions of the clients of the trading member are closed out or transferred to another member and, if such positions are not closed out or transferred, such positions shall be transferred to the clearing member; and
- 12.1.3 such termination shall not affect the rights or obligations of the parties in terms of this agreement which may have arisen or are in existence at the date of termination of this agreement.

13 Arbitration

Any dispute between the parties arising from or concerning this agreement shall be referred to and decided by arbitration or mediation in terms of the rules.

14 Law

- 14.1 This agreement shall be governed by, and construed in accordance with, the laws of the Republic of South Africa.
- 14.2 Subject to the provisions of clause 13, the parties submit to the jurisdiction of the South African courts.

15 Relaxation

No latitude, extension of time or other indulgence which may be given or allowed by a party to the other party in respect of the performance of any obligation under this agreement or the enforcement of any right arising from this agreement, and no single or partial exercise of any right by any party shall under any circumstances be construed as an implied consent by such party or operate as a waiver or a novation or otherwise affect the rights of any party under this agreement or prevent such party from enforcing strict and punctual compliance with each and every provision or term hereof.

16 Variation

No addition or variation, consensual cancellation or novation of this agreement and no waiver of any right arising from this agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by both the parties or their duly authorised representatives.

17 Whole agreement

This agreement contains the entire agreement between the parties and neither of them shall be bound by any undertakings, representations or warranties not recorded herein.

18 Notices and *domicilia*

- 18.1 The parties choose as their *domicilia citandi et executandi* their respective addresses set out in this clause for all purposes arising out of or in connection with this agreement at which addresses all processes, communications and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties.
- 18.2 For the purposes of this agreement the respective addresses shall be as follows –

The clearing member

Address:

Telephone number:

Facsimile:

Electronic mail:

The trading member

Address:

Telephone number:

Facsimile:

Electronic mail:

or at such other address, not being a post office box or *poste restante*, or number of which the party concerned may notify the other in terms of this agreement.

18.3 Any notice given in terms of this agreement shall, unless sent by electronic means, be _____ in writing and shall be deemed, until the contrary is proved, to have been received –

18.3.1 at the time of delivery if delivered by hand during normal business hours at the addressee's registered address;

18.3.2 by no later than the seventh day after the date of posting if posted by pre-paid registered post from an address within the Republic of South Africa to the addressee at the addressee's registered address;

18.3.3 on proof of transmission if transmitted by facsimile or electronic means.

18.4 Notwithstanding anything to the contrary contained in this agreement a communication actually received by one of the parties from another shall be adequate written notice or communication to such party.

Thus done and signed at.....

on this the day of 20

.....
Full name

.....
For the clearing member

(who warrants that he is duly authorised to bind the clearing member).

As Witnesses:

1.

Full name

.....

2.

Full name

.....

Thus done and signed at.....

on this the day of 20

.....
Full name

.....
For the trading member

(who warrants that he is duly authorised to bind the trading member).

As Witnesses:

1.

Full name

.....

2.

Full name

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