



**JSE Limited**

**Reg. No. 2005/022939/06**

One Exchange Square  
Gwen Lane, Sandown  
Private Bag X991174  
Sandton, 2146, South Africa  
Telephone 2711 520 7000  
Web: www.JSE Ltd.co.za

**CLEARING HOUSE AGREEMENT**

**Memorandum of Agreement  
between**

**Safex Clearing Company (Pty) Ltd  
("Safcom")**  
(registration number 87/02294/07)

**and**

.....  
**(the "clearing member")**  
(registration number )

**and**

**JSE Limited**  
.....  
**("the JSE")**  
(registration number 2005/022939/06)

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Whereas

- A The JSE is a Stock exchange licenced in terms of the Securities Services Act ("the Act") to regulate inter alia the business of its members of buying and selling financial instruments listed from time to time in the list of financial instruments kept by the executive committee;
- B The JSE has entered into an agreement with Safcom in terms of which Safcom is to ensure the performance of all transactions to be entered into on the financial market in question in particular with respect to the clearing of exchange contracts as contemplated by the derivatives rules of the JSE; and
- C The clearing member has satisfied, for the time being, the requirements for clearing membership of the JSE.

Now therefore it is agreed as follows:

## 1 Interpretation

- 1.1 In this agreement further, unless otherwise indicated by, or inconsistent with, the context -
  - 1.1.1 a reference to any one gender includes a reference to all other genders; and
  - 1.1.2 the singular includes the plural and vice versa; and
  - 1.1.3 all the terms used in this agreement bear the same meanings as are assigned to such terms in the derivative rules of the JSE ("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 executive committee and established practices of the JSE for the time being shall apply *mutatis mutandis* to this agreement as if incorporated in this agreement.

## 2 Clearing membership

- 2.1 The clearing member hereby warrants that the information supplied by the clearing member to the JSE in order to determine whether the clearing member satisfies for the time being the requirements for clearing membership of the JSE is at the date of this agreement true and correct in all material respects.
- 2.2 The clearing member shall ensure that it shall at all times during its membership of the JSE satisfy the requirements for clearing membership. If at any time it has reason to believe that it no longer satisfies or may cease to satisfy any of such requirements the clearing member shall immediately notify the JSE in writing of the circumstances in respect thereof.
- 2.3 The clearing member shall give written notice forthwith to the JSE of the occurrence of -
  - 2.3.1 any of the reasons contemplated in terms of the rules in respect of termination of membership;
  - 2.3.2 the granting, withdrawal or refusal of an application for, or the revocation of, recognition under any statutory enactment of any registration, authorisation or licence under which it operates or wishes to operate;
  - 2.3.3 the conviction of the clearing member for any offence under legislation relating to banking or other financial services, building societies, companies, insolvency, insurance and provident societies or for any offence involving fraud or other dishonesty;

- 2.3.4 any person becoming or ceasing to be a director (or a member or manager in the case of a close corporation) of the clearing member;
- 2.3.5 any change in its name or the address of its head office, or registered office;
- 2.3.6 the clearing member, becoming aware that any person has become or ceased to be, or is to become or ceased to be, or might become or cease to be, a controller of the clearing member and shall in relation to any person becoming a controller of the clearing member state:
  - 2.3.6.1 the controller's name, principal business and address, and
  - 2.3.6.2 the date of the change or proposed change.

In this clause 2.4.6 the "controller" means a person entitled to exercise or control the exercise of 25 percent or more of the voting power in the clearing member, and

- 2.3.7 any change in its business which might reasonably be considered material to the operation of this agreement.
- 2.4 Where the JSE receives notification pursuant to any clauses 2.2 to 2.3, or the JSE reasonably suspects that the clearing member may no longer satisfy the requirements for clearing membership of the JSE, the JSE shall be entitled in its absolute discretion to call for information pertinent to the issue in order to determine whether the clearing member continues to satisfy the requirements for such membership. The clearing member shall forthwith on demand supply such information to the JSE and shall ensure that such information is true and correct in all respects.
- 2.5 The clearing member agrees at all times to abide by the rules, it being recorded that the clearing member hereby acknowledges itself to be conversant with such rules.
- 2.6 The clearing member agrees that in respect of any contract which has to be cleared by Safcom in the clearing member's name in accordance with the rules, and in respect of any contract made, whether with a member or with a client, the clearing member shall contract as principal and not as an agent, unless it has advised the client prior thereto that it is not acting as a principal but as an agent in relation to that contract.

### **3 Clearing facilities provided by Safcom**

#### **3.1 Clearing of contracts**

Subject to the rules, Safcom agrees to clear all contracts reported to it by the clearing member, or reported directly to it by a non-clearing member in accordance with the terms of the clearing agreement between the clearing member and such non-clearing member.

#### **3.2 Fees, levies and charges**

Fees, levies and charges for services rendered shall be levied in accordance with the rules and the clearing member hereby undertakes to pay such amounts on the due date for payment thereof.

#### **3.3 Novation**

3.3.1 Upon the clearing of a contract by Safcom, Safcom shall by the process of novation take an equal and opposite position to each party to the contract and Safcom shall be liable and responsible for assuring performance on each contract.

3.3.2 The clearing member through whom the contract was cleared shall guarantee all obligations arising from such cleared contracts in accordance with the rules.

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### 3.4 Notification and verification of records

- 3.4.1 Pursuant to notification by the clearing member to Safcom of the details of a transaction, and upon remittance by Safcom to the clearing member of a daily report reflecting the details of the day's accepted deals, Safcom shall be deemed to have confirmed the transaction.
- 3.4.2 For the transaction to be correctly reflected in the accounting records of the clearing member, such notification by the clearing member shall be identical to the report referred to in clause 3.4.1.
- 3.4.3 In addition, daily confirmation of positions shall be remitted by Safcom to the clearing member. Such confirmation shall confirm the accuracy of the accounting records of the clearing member.

### 3.5 Margins

- 3.5.1 The clearing member shall pay to Safcom such sum as Safcom shall require from time to time by way of initial and variation margin or any other amount required by Safcom in order to maintain existing margin balances in respect of or in connection with any position, such sums shall be placed with financial institutions acceptable to Safcom in interest-bearing investments. Clearing members shall be paid interest thereon on the second business day of each month on margins held.
- 3.5.2 Without in any way limiting the generality of the provisions of clause 3.5.1, Safcom shall be entitled to require the clearing member to pay in respect of any contract either before the clearing thereof, or at any time during the subsistence thereof, a larger or additional margin.
- 3.5.3 Safcom shall pay to the clearing member any amounts due to it in terms of the rules, especially repayment of margin.

## 4 Maintenance and inspection of records

- 4.1 The clearing member undertakes to establish and maintain all records and accounts as are required by the Act and the rules.
- 4.2 The JSE shall have the right at all reasonable times to inspect the aforesaid records and shall further have the rights to investigate the affairs of the clearing member for the purposes of ascertaining whether the clearing member is complying with the provisions of the Act, the rules and this agreement.

## 5 Trading limits

Safcom shall have the right at any time to limit the proprietary positions of the clearing member and the contracts to be cleared through it in a manner and on a basis agreed upon between the clearing member and Safcom.

## 6 Clearing agreement

The clearing member hereby undertakes to ensure that any clearing agreement entered into by it with a non-clearing member of the JSE shall conform with the basic terms and conditions for such agreement as determined from time to time by the JSE.

## **7 Client agreement**

The clearing member hereby undertakes to ensure that any client agreement entered into by it with a client shall conform with the basic terms and conditions for such agreement as determined from time to time by the JSE.

## **8 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 are concerned and hereby irrevocably consent to such tape recordings being made.

## **9 Termination**

9.1 Subject to clause 10.2 hereof either party may terminate this agreement by giving to the other party thirty days notice (or such other 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. By the close of business on the termination date the clearing member shall ensure that all its proprietary positions are closed out and, if such positions are not closed out, the JSE shall be entitled to close-out such positions in accordance with the relevant provisions of the rules.

9.2 If the clearing member is in breach of any term or provision of this agreement, or the rules, or if the JSE reasonably determines that the clearing member no longer satisfies the requirements for clearing membership, or the clearing members in any way default as contemplated by the rules, the JSE may in its absolute discretion terminate this agreement by written notice either summarily or on the expiry of such period as may be specified in the notice, in which event the JSE may take all such action as it deems expedient in its absolute discretion to protect itself or any other clearing member including, without limitation, the closing-out of any or all the clearing member's proprietary positions, but without prejudice to its own rights in respect of such positions. A notice given by the JSE under this clause may at the JSE's discretion allow the clearing member a specified period in which to remedy the breach or default or to satisfy the requirements for membership as the case may be, and may specify what is to be done to that end, and may provide that if the same is done to the satisfaction of the JSE within that period termination of this agreement shall not take effect.

9.3 Upon the termination of this agreement for whatever reason the clearing member shall in terms of the rules cease to be a clearing member.

9.4 Without in any way limiting the generality of the foregoing provisions of this clause 10, on the breach or default of the clearing member the relevant provisions of the rules shall apply *mutatis mutandis*.

## **10 Law**

This agreement shall be governed and constructed in accordance with the laws of the Republic of South Africa.

## **11 Relaxation**

No latitude, extension of time or other indulgence which may be given or allowed by either party to any other party in respect of the performance of any obligation hereunder 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 to be an implied consent by such party or operate as a waiver or a novation of, or otherwise affect any of that parties rights in terms of the or arising from this agreement or to such party from enforcing, at any time without notice, strict and punctual compliance with each and every provision or term hereof.

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## 12 Variation

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

## 13 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.

## 14 Notices and *domicilium*

14.1 The parties choose as their *domicilium 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 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.

For the purpose of this agreement the parties' respective addresses shall be as regards

**Safcom:**

Att :The Company Secretary  
One Exchange Square  
Gwen Lane  
Sandton  
2196

and the **clearing member:**

.....  
.....  
.....

and the **JSE**

Att :The Company Secretary  
One Exchange Square  
Gwen Lane  
Sandton  
2196

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

14.2 Any notice given in terms of this agreement shall be in writing and shall: -

14.2.1 If delivered by hand during normal business hours at the addressee's registered address by deemed, until the contrary is proved, to have been received at the time of delivery; or

14.2.2 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 be deemed until the contrary is proved by the addressee, to have been received by no later than the seventh day after the date of posting; or

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14.2.3 if transmitted by telex or facsimile be deemed until the contrary is proved to have been received on confirmation or receipt.

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

Thus done and signed at.....  
on this the ..... day of ..... 20.....

.....  
Full Name Signature for Safcom  
(who warrants that he is duly authorised to bind Safcom)

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Thus done and signed at.....  
on this the ..... day of ..... 20.....

.....  
Full Name Signature for the Clearing Member  
(who warrants that he is duly authorised to bind the Clearing Member)

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Thus done and signed at.....  
on this the ..... day of ..... 20.....

Full Name Signature for the JSE  
(who warrants that he is duly authorised to bind the JSE)