



## INVESTMENT MANAGEMENT AGREEMENT

between

.....  
(the "member")

and

.....  
(the "investment manager")

acting as agent for and on behalf of each of the parties listed from time to time in the schedule annexed hereto marked C (each such party hereinafter being referred to as "the client")

Whereas -

- A The member is a member of JSE Limited ("JSE") and authorised to buy and sell IRC securities on behalf of other persons or on his own account;
- B The member and the investment manager wish to enter into an agreement with each other through the agency of the investment manager setting out the terms on which the member will trade with or on behalf of the client.
- C Pursuant to and in consideration of the member entering into this agreement with the client, the investment manager is to act as principal undertaking certain obligations to the member.

### 1 Interpretation

- 1.1 In this agreement, unless otherwise clearly indicated by, or inconsistent with the context –
  - 1.1.1 a reference to any one gender includes a reference to all other genders;
  - 1.1.2 the singular includes the plural and vice versa; and
  - 1.1.3 all the terms used bear the same meaning as are assigned to such terms in the Interest Rate and Currency Rules of the JSE ("the rules").
- 1.2 In the event of conflict between the rules and the provisions of this agreement, the rules shall prevail.
- 1.3 The relevant provisions of the rules, resolutions of the JSE Executive Committee shall apply *mutatis mutandis* to this agreement as if incorporated in this agreement, the client hereby acknowledging and confirming that he has read and understood and shall be bound by the rules and such resolutions.

### 2 Capacity of trading member

- 2.1 The client appoints the member to trade on the client's behalf as agent on the terms and conditions set out in the rules and this agreement which appointment the member accepts: Provided that the member shall be entitled to trade with the client as principal if prior notice is given to the client.
- 2.2 When acting as agent, the member shall on behalf of the client enter into an equal and opposite trade with a counterparty as required by the rules.

**3 Financial arrangements**

The client hereby –

- 3.1 authorises the member to operate a separate trust account with a bank into which all margin and other payments from or for the account of clients shall be deposited and to make withdrawals from it as provided for by the rules;
- 3.2 acknowledges that, as between the member and himself, all profits arising from trades to which he is a party and entered into in accordance with the provisions of this agreement, shall be for his own account and undertakes to place the member on demand in sufficient funds to enable the member to defray all losses and to pay all expenses and other costs arising from such trades; and
- 3.3 authorises the member to utilise any amount standing to the credit of the client in such account to settle any liabilities or losses arising from any trade entered into with or for the client pursuant to this agreement and instructs the member to repay to him, after any position relating to any such trade has been closed out or the trade has expired and no liabilities remain in respect thereof, any amount standing to his credit in that account.

**4 Fees, levies and charges**

Fees, levies and charges for services rendered by the member to the client shall be levied in accordance with the schedule set out in annexure A hereto.

**5 Instructions and notices**

- 5.1 The client or the investment manager or any person authorised in writing by him to the member may give the member instructions by way of telephone, facsimile, electronic means or any other manner agreed upon by the parties.
- 5.2 Telephonic instructions shall be confirmed and accepted by the representative of the member to whom they are given. The approximate time of entering into any transaction in an IRC security shall appear on the confirmation note which shall be supplied to the client.

**6 Risk acknowledgment**

The investment manager warrants that the client has been advised that by reason of the leverage afforded by the margining system and the volatile nature of transactions in IRC securities, trading involves a high degree of risk and should only be engaged in by persons who possess the required skill and who fully understand the underlying principles of IRC securities and transactions therein, the inherent risks of trading and the nature and extent of their rights and obligations.

**7 Margin**

- 7.1 The client shall pay to the member in terms of the rules, by depositing in the account referred to clause 3, initial, variation, settlement and top-up margin or any other amount required by the member to maintain margin in respect of a position.
- 7.2 The member shall, in his discretion and at any time, be entitled to increase the margin in respect of a position and the client shall pay such additional margin to the member on demand.

**8 Obligations of a trading member**

The member shall –

- 8.1 forthwith pay to the client any amounts due to the client in terms of the rules, especially repayment of margin; and
- 8.2 shall ensure that proper account is kept of the client's interest in and to the account referred to in clause 3.

**9 Recommendation, advice and information**

The member shall not incur any liability for any loss sustained by the client as a result of any recommendation made, advice given or information supplied to the client by the member relating to trading on the JSE, provided the recommendation is made, the advice given and the information is supplied in good faith and without gross negligence.

**10 Closing of accounts**

- 10.1 Time shall be of the essence for the performance by the parties of any obligation under this agreement.
- 10.2 The client shall be deemed to have breached his obligations in terms of this agreement if –

- 10.2.1 the client fails to fulfil any of his obligations in terms of a trade or a position or breaches the provisions of this agreement or any rule; in particular, if he fails to comply fully and immediately with his obligation to pay margin when due or required in terms of this agreement or the rules;
  - 10.2.2 he is in default as contemplated by the rules; or
  - 10.2.3 a guarantee or suretyship for the liabilities of the client in favour of the member is withdrawn or becomes invalid, unenforceable or, in the opinion of the member, becomes inadequate, insufficient or unreliable.
- 10.3 The member shall in the event of a breach by the client of any of his obligations in terms of this agreement be entitled, without notice to the client, to -
- 10.3.1 close out any position or all positions of the client;
  - 10.3.2 exercise a right of retention over any or all the assets of the client in the 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 client to the member;
  - 10.3.3 exercise any right he may have in terms of the rules or the common law.

**11 Breach by member**

- 11.1 Should the member breach any of the terms and conditions of this agreement and fail to rectify such breach within a period of twenty-four hours after notice from the client requiring such breach to be remedied, the client shall be entitled, without prejudice to any other rights which the client 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 member or to instruct the member to close out any or all of the client's positions; or
  - 11.1.2 to claim specific performance of all the obligations of the defaulting member in terms of this agreement including, but not limited to, repayment of margin.
- 11.2 The client shall advise the JSE of any action taken by it in terms of this clause.

**12 Telephone calls**

The client and the member each acknowledge and confirm that he is conversant with the relevant provisions of the rules insofar as the tape recording of telephone calls is concerned and the client hereby irrevocably consents to such tape recording being made by the broker, if the member considers it necessary to tape such calls.

**13 Voluntary termination**

A party shall be entitled to terminate this agreement by the giving written notice to the other party in the manner provided in this agreement, provided that such termination shall not –

- 13.1 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 such notice or at the date of termination of this agreement;
- 13.2 entitle the client to claim or withdraw from the account referred to in clause 3 any monies held to secure the obligations of the client, until such obligations have been settled.

**14 Disclosure to third parties**

The member undertakes not to disclose confidential information relating to the client except where such disclosure is –

- 14.1 made under compulsion of law or in terms of the rules;
- 14.2 in compliance with a duty to the public to disclose;
- 14.3 necessary to further the legitimate interests of the member; or
- 14.4 made with the consent of the client.

**15 Arbitration**

- 15.1 This clause is a separate, divisible agreement from the rest of this agreement and shall not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the agreement and not to this clause and shall remain in effect even if this agreement is cancelled or terminated.

- 15.2 Any dispute arising out of or in connection with this agreement or the subject matter of this agreement, including without limitation, any dispute concerning -
- 15.2.1 the existence of this agreement apart from this clause;
  - 15.2.2 the interpretation and effect of this agreement;
  - 15.2.3 the respective rights and obligations of the parties under this agreement;
  - 15.2.4 the rectification of this agreement;
  - 15.2.5 the breach, termination or cancellation of this agreement or any matter arising out of the breach, termination or cancellation;
  - 15.2.6 damages in delict, compensation for unjust enrichment or any other claim, whether or not the rest of the agreement apart from this clause is valid and enforceable, shall be decided by arbitration as set out in the rules of the JSE.

**16 Law**

- 16.1 This agreement shall be governed by, and construed in accordance with, the laws of the Republic of South Africa.
- 16.2 Subject to the provisions of clause 15, the parties submit to the jurisdiction of the South African courts.

**17 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 of 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.

**18 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.

**19 Whole agreement**

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

**20 Notices and *domicilia***

- 20.1 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.
- 20.2 For the purposes of this agreement the respective addresses shall be as follows –

**The member:**

**Address:**

**Telephone number:**

**Facsimile:**

**Electronic mail:**


**The investment manager:**

**Address:**

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**Telephone number:**

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**Facsimile:**

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**Electronic mail:**

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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.

- 20.3 Any notice given in terms of this agreement shall, unless it sent by electronic means, be in writing and shall -
- 20.3.1 if delivered by hand during normal business hours at the addressee's registered address be deemed, until the contrary is proved, to have been received at the time of delivery;
  - 20.3.2 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;
  - 20.3.3 if transmitted by facsimile or electronic means be deemed, until the contrary is proved, to have been received on proof of transmission.
- 20.4. 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.

**21 Termination of mandate**

- 21.1 The client shall immediately notify the member of the termination of his mandate to the investment manager.
- 21.2 In the event of such termination, the member shall be entitled and is hereby irrevocably authorised, without notice to the client, to close out any or all of the positions of the client.

**22 Warranties of investment manager**

- 22.1 The investment manager hereby warrants to the member that -
  - 22.1.1 he is authorised to act on behalf of the clients listed in the list of clients annexed hereto and marked annexure C;
  - 22.1.2 the client has acknowledged and agreed to the Risk Disclosure Agreement.
- 22.2 the investment manager shall -
  - 22.2.1 allow the member to examine the mandate on request;
  - 22.2.2 notify the member of the termination of the mandate;
  - 22.2.3 keep the list of clients updated and correct, and immediately notify the member of any changes in it; and
  - 22.2.4 provide the member with full details of any new client proposed for inclusion in the list of clients.

Thus done and signed at.....

on this the ..... day of .....20.....

.....  
Full name

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

**As Witnesses:**

1. ....  
Full name

2. ....  
Full name

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

.....  
Full name

**For the investment manager**  
(who warrants that he is duly  
authorised to bind the investment manager).

**As Witnesses:**

1. ....  
Full name

2. ....  
Full name

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**ANNEXURE A**

**Schedule of fees**

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**ANNEXURE B**

**Risk Disclosure Statement**

This risk disclosure statement is made pursuant to the rules. The risk of loss arising from trading in futures and options can be substantial. You should carefully consider whether such investments are suitable for you in the light of your circumstances and financial resources. You should be aware of the following points -

1. If the market moves against your position, you may, in a relatively short time, sustain more than a total loss of the funds placed by way of margin or deposit with your member. You may be required to deposit a substantial additional sum, at short notice, to maintain your margin balances. If you do not maintain your margin balances your position may be closed out at a loss and you will be liable for any resulting deficit.
2. Under certain market conditions it may be difficult or impossible to close out a position. This may occur, for example, where trading is suspended or restricted at times of rapid price movement.
3. Where permitted, placing a stop-loss order will not necessarily limit your losses to the intended amounts, for market conditions may make it impossible to execute such orders at the stipulated price.
4. A spread or straddle position may be as risky as a simple long or short position and can be more complex.
5. Markets in futures and options can be highly volatile and investment in them carry a substantial risk of loss. The high degree of "gearing" or "leverage" which is often obtainable in trading these contracts stems from the payment of what is a comparatively modest deposit or margin when compared with the overall contract value. As a result a relatively small market movement can, in addition to achieving substantial gains where the market moves in your favour, result in

substantial losses which may exceed your original investment where there is an equally small movement against you.

6. When your member deals on your behalf, you should allow this only in contracts listed on the JSE. Should you deal in contracts not listed on the JSE, then you do so at your own increased risk.
7. Prior to the commencement of trading, you should require from your member written confirmation of all current commission, fees and other transaction charges for which you will be liable.
8. Members may also be dealers trading for their own account in the same markets as you, in which case their involvement could be contrary to your interests.
9. Your member's insolvency or that of any other members involved in your contracts may lead to your positions being closed out without your consent.
10. You should carefully consider whether your financial position permits you to participate in a syndicate. Areas of particular concern are -
  - 10.1 charges for management, advisory and brokerage fees;
  - 10.2 the performance record of the syndicate and for how long it has been operating; and
  - 10.3 the credibility of management.
11. Your member should explain to you the meaning of various terms set out herein so that you are fully aware of their significance.
12. If you have any doubts or concerns regarding the risks in trading futures and options you may contact the JSE for more detailed information before signing this statement.

This brief statement cannot disclose all risks of investment in futures and options. They are not suitable for many members of the public and you should carefully study such investments before you commit funds to them. They may also have tax consequences and on this you should consult your lawyer, accountant or other tax advisor.

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## **ANNEXURE C**

### **List of clients**