



JSE CLEAR AGREEMENT

**Memorandum of Agreement
between**

**JSE Clear (Pty) Ltd
("JSE Clear")
(registration number 1987/02294/07)**

and

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

and

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

Whereas

- A JSE Limited (JSE) is an exchange licensed in terms of the Securities Services Act ("the Act") to regulate the business of its members of buying and selling IRC securities listed from time to time in the list of securities kept by the JSE Executive Committee;
- B The JSE has entered into an agreement with JSE Clear in terms of which JSE Clear is to ensure the performance of all transactions to be entered into on the Interest Rate and Currency markets in particular with respect to the clearing of IRC securities as contemplated by the Interest Rate and Currency Rules of the JSE ("the rules"); and
- C The clearing member has satisfied, for the time being, the requirements for clearing membership of the Interest Rate and Currency markets and hereby enters into this agreement as required by the rules.

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 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 the JSE for the time being shall apply *mutatis mutandis* to this agreement as if incorporated in this agreement.

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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 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 2.3.6 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 IRC security which has to be cleared by JSE Clear in the clearing member's name in accordance with the rules, and in respect of any transaction entered into with regard to IRC securities, 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 transaction.

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Clearing facilities provided by JSE Clear

- 3.1 Clearing of IRC securities
- Subject to the rules, JSE Clear agrees to clear all IRC securities reported to it by the clearing member, or reported directly to it by a trading member in accordance with the terms of the clearing agreement between the clearing member and such trading 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 by JSE Clear of a transaction in an IRC security, JSE Clear shall by the process of novation take an equal and opposite position to each party to the transaction in IRC securities and JSE Clear shall be liable and responsible for protecting buyers and sellers from financial loss by assuring performance on each transaction.

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

3.4 Notification and verification records

3.4.1 Pursuant to notification by the clearing member to JSE Clear of the details of a transaction, and upon remittance by JSE Clear to the clearing member of a daily report reflecting the details of the days accepted deals, JSE Clear 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 trading system 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 JSE Clear 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 JSE Clear such sum as JSE Clear shall require from time to time by way of initial, variation, settlement and top-up margin or any other amount required by JSE Clear 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 JSE Clear 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, JSE Clear shall be entitled to require the clearing member to pay in respect of any transaction either before the clearing thereof, or at any time during the subsistence thereof, a larger or additional margin.

3.5.3 JSE Clear 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 right 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

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

6 Clearing agreement

The clearing member hereby undertakes to ensure that any clearing agreement entered into by it with a trading 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 9.2 hereof any party may terminate this agreement by giving to the other parties 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 member is in any way in 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 9, on the breach or default of the clearing member the relevant provisions of the rules shall apply *mutatis mutandis*.

10 Arbitration

Any dispute between the parties emanating or arising from the implementation or interpretation of this agreement shall, unless resolved between the parties hereto, be referred to and decided by arbitration in terms of the relevant provisions of the rules.

11 Law

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

12 Relaxation

No latitude, extension of time or other indulgence which may be given or allowed by any party to any 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 to be 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, at any time without notice, strict and punctual compliance with each and every provision or term hereof.

13 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 all parties or their duly authorised representatives.

14 Whole agreement

This agreement contains the entire agreement between the parties and none of them shall be bound by any undertakings, representations or warranties not recorded herein.

15 Notices and domicilia

15.1 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 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 **JSE Clear and the JSE:**

One Exchange Square
Gwen Lane
Sandown

and the **clearing member:**

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

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

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

- 15.2.1 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
- 15.2.2 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
- 15.2.3 if transmitted by facsimile or electronic means be deemed until the contrary is proved to have been received on confirmation or receipt.

15.3 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

.....
For JSE Clear
(who warrants that he is duly
authorised to bind JSE Clear).

As Witnesses:

1.
Full name

2.
Full name

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

.....
Full name

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

As Witnesses:

1.
Full name

2.
Full name

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