



## TRIPARTITE CLIENT AGREEMENT

between

.....  
("executing member")

and

.....  
("nominated member")

and

.....  
("client")

### TERMS AND CONDITIONS OF AGREEMENT

#### 1 Interpretation

- 1.1 In this agreement, unless otherwise clearly indicated by, or inconsistent with, the context
  - 1.1.1 the terms used in this agreement bear the same meaning as are assigned to them in the Derivatives Rules of the JSE ("the rules");
  - 1.1.2 in the event of conflict between the rules and the provisions of this agreement the provisions of the rules shall prevail.
- 1.2 The rules, the decisions of the JSE Executive Committee and the practices of the JSE shall be binding on the parties and apply to this agreement as if specifically incorporated herein.

#### 2 Conditions precedent

This agreement shall be of no force and effect until the client has been loaded on the trading system as a client of the nominated member in terms of the rules.

#### 3 Investment manager

It is recorded that if the client is an investment manager

- 3.1 this agreement shall be of no force and effect until an investment management agreement between the client and the nominated member has been concluded;
- 3.2 the investment manager acts as an agent for and on behalf of his clients listed in the list of clients annexed to the investment management agreement between the nominated member and the investment manager without incurring personal liability in respect of any trade allocated or transferred to the nominated member.

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#### **Trading**

- 4.1 The client authorises the executing member to execute orders transmitted by the client to the executing member and to allocate or transfer the resulting executed trade to the nominated member accordingly.
- 4.2 The nominated member
  - 4.2.1 may by notice to the client and the executing member place limits or conditions on the trades he will accept from the executing member for the client's account;
  - 4.2.2 shall accept all trades done within such limits or conditions allocated or transferred to him by the executing member; and
  - 4.2.3 may charge the client such fees or commissions on trades accepted by him as are agreed upon in the client agreement.
- 4.3 The executing member
  - 4.3.1 shall be responsible for determining that all orders placed by the client are authorised;
  - 4.3.2 reserves the right to reject an order placed by the client;
  - 4.3.3 shall allocate or transfer all executed orders placed by the client to the nominated member for the account of the client on execution of such orders; and;
  - 4.3.4 may take a turn on any trade allocated or transferred to the nominated member for the account of the client.
- 4.4 The client may give the executing member instructions by way of telephone, facsimile, electronic means or in any other manner agreed upon by the parties.
- 4.5 An instruction to the executing member to trade with the nominated member remains valid until cancelled or, if not cancelled, until –
  - 4.5.1 expiry of the period agreed on when the instruction was given or, if no such period was agreed upon,
  - 4.5.2 the close of the market on the day that the instruction was given if it was given before 14h00, or 12h00 midday on the following business day if the instruction was given after 14h00, all times being South African times.

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#### **Recommendation, advice and information**

Neither the executing member nor the nominated member shall 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.

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#### **Telephone recordings**

The parties confirm that they are conversant with the provisions of rule 10.20.4 relating to the tape recording of telephone calls and the client hereby irrevocably consents to such tape recording being made by the members, if the members consider it necessary.

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#### **Confidentiality**

The members undertake not to disclose confidential information relating to the client except where such disclosure is –

- 7.1 made under compulsion of law or in terms of the rules;
- 7.2 in compliance with a duty to the public to disclose;
- 7.3 necessary to further the legitimate interests of the members; or;
- 7.4 made with the consent of the client.

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**Arbitration**

- 8.1 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.
- 8.2 Any dispute arising out of or in connection with this agreement or the subject matter of this agreement, including without limitation, any dispute concerning –
- 8.2.1 the existence of this agreement apart from this clause;
  - 8.2.2 the interpretation and effect of this agreement;
  - 8.2.3 the respective rights and obligations of the parties under this agreement;
  - 8.2.4 the rectification of this agreement;
  - 8.2.5 the breach, termination or cancellation of this agreement or any matter arising out of the breach, termination or cancellation;
  - 8.2.6 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.

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**Law**

- 9.1 This agreement shall be governed by, and construed in accordance with, the laws of the Republic of South Africa.
- 9.2 Subject to the provisions of clause 8, the parties submit to the jurisdiction of the South African courts.

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**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.

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**Whole agreement**

- 11.1 This agreement contains the entire agreement between the parties and neither of them shall be bound by any undertaking, representation or warranty not recorded herein.
- 11.2 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.

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**Notices and domicilia**

- 12.1 The parties choose as their domicilia citandi et executandi their respective addresses set out below, or at such other address, not being a post office box or poste restante, of which the party concerned may notify the other in terms of this agreement, 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.
- 12.2 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 –
- 12.2.1 at the time of delivery if delivered by hand during normal business hours at the addressee's registered address;
  - 12.2.2 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;

12.2.3 on transmission if transmitted by facsimile or electronic means if sent on a business day and within business hours.

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

12.4 For the purposes of this agreement the respective addresses shall be as follows –

**The executing member**

**Address:**

--

**Telephone number:**

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**Facsimile:**

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**E-mail:**

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**The nominated member**

**Address:**

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**Telephone number:**

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**Facsimile:**

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**E-mail:**

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**The client**

**Address:**

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**Telephone number:**

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**Facsimile:**

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**E-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.

Thus done and signed at.....

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

.....  
Full name

.....  
**For the executing member**

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

**As Witnesses:**

1. ....  
Full name

2. ....  
Full name

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

.....  
Full name and designation

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

**As Witnesses:**

1. ....  
Full name

2. ....  
Full name

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

.....  
Full name and designation

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

**As Witnesses:**

1. ....  
Full name

2. ....  
Full name