



# Terms and Conditions

## 1. Introduction: what governs the relationship between us?

Our relationship is governed by the following legal documents, which must be read together:

- these terms and conditions;
- the Client Application Form;
- the mandate (where applicable);
- the Investment Policy Statement (where applicable); and
- any annexures, disclosures and additional documentation such as the pricing guide and investment proposal.

We refer to the above, read together, as the Agreement.

You must contact us if you do not understand any part of these terms and conditions or the Agreement as a whole.

The parties to this Agreement are you, the client identified either in the Client Application Form or having logged on via our Website ("you" or "your"), and FNB Stockbroking and Portfolio Management (Pty) Ltd (Registration number 1996/011732/07, a Subsidiary within the FirstRand Group of Companies and an Authorised Financial Services Provider and member of the JSE), hereinafter referred to as "us", "our" or "we". Any reference to the "parties" is reference to you and us, collectively and any reference to a "party" is to either you or us, respectively.

Only you will be authorised to deal with us and instructions originating from other persons, representatives or Financial Services Providers as defined in FAIS will not be accepted or carried out.

You must ensure that your contact details and any other information that you provide to us are correct and current at all times. You undertake to immediately inform us of any changes to your details. This is important as we need to be able to contact you about this Agreement. If we are not able to contact you this may result in you incurring a loss, including a sale of your Financial Products and/or Financial Instruments, and you accept that we cannot be liable for such loss.

## 2. Interpretation

In this Agreement the following terms have the following meanings:

**"Applicable Laws"** means the Financial Advisory and Intermediary Services Act, 2002 (FAIS), the Financial Markets Act, 2012 (FMA), the Financial Intelligence Centre Act, 2001 (FICA), the Financial Sector Regulation Act, 2017 (FSRA), Banks Act, 1990, the Companies Act, 2008 (the "Companies Act"); the JSE Rules and Directives ("the rules"); Exchange Control Rulings and Regulations; the Income Tax Act, 1962; the Tax Administration Act, 2011; the Protection of Personal Information Act, 2013 (POPI); and all other legislation applicable to the management of Financial Products and/or Financial Instruments in terms of this Agreement (as amended, promulgated or substituted from time to time);

**"Client Application Form"** means the form that contains your personal information;

**"Co-Managed Mandate"** means a portfolio that is co-managed with a third-party financial services provider (FSP). In this case, all the investment decisions are made by the Wealth and Investments investment committee using FNB SPM's House view portfolios as a base and amended by the FSP in accordance with the mandate, objectives and preference of that FSP;

**"Dual Capacity Equity Trading Mandate"** means, if applicable and specifically chosen, the agreement titled "Dual Capacity Equity Trading / Dealing Agreement" which you concluded with us and, in accordance with which, you appointed your own Central Securities Depository and granted us the authority to invest or purchase Financial Products and/or Financial Instruments in accordance with specific instructions that you give to us from time to time;

**"Financial Instrument"** has the meaning ascribed to the term in section 1(1) of the FSRA, and includes an instrument issued by a foreign product supplier;

**"Financial Product"** has the meaning ascribed to the term in section 2 of the FSRA, and includes a foreign financial product;

**"Foreign Investment"** means a Financial Product or Financial Instrument listed, issued or traded outside the Republic of South Africa;

**"Investment Policy Statement"** means the investment guidelines and investment policy that you may amend or supplement from time to time with the written acknowledgment of FNB Stockbroking and Portfolio Management (SPM). This may either be contained in the Client Application Form or be a stand-alone document;

**"Investment Management Services"** means the services we render to you in accordance with the Mandate;

**"Managed Mandate"** means the authority that you give to us to render intermediary services of a discretionary nature in respect of your choice of a particular Financial Product and/or Financial Instrument. The Mandate types titled "Fully Managed Portfolio" and "Managed Portfolio that is tailored to your investment preferences and restrictions" in the Client Application Form are Managed Mandates;

**"Mandate"** means either a Managed, Self-Managed, or Co-Managed mandate that you have selected in the Client Application Form, or a Dual Capacity Trading Mandate;

**"Portfolio"** means the set of Financial Products and/or Financial Instruments managed and administered from time to time by us on your behalf in terms of this Agreement;

**"SAC"** means the FirstRand Shari'ah Advisory Committee specialising in Islamic Jurisprudence, which consists collectively of Islamic scholars who are conversant with Shari'ah principles and practices;

**"Self-Managed Mandate"** means a mandate other than a "Managed Mandate" and describes the authority that you give to us to invest or purchase a Financial Product and/or Financial Instrument in accordance with specific instructions that you give to us from time to time. The Mandate types titled "Self-Managed", "Self-Managed with advice, Dual Capacity Trading Mandate and Co-Managed Mandate" in the Client Application Form are Self-Managed Mandates; and

**"Website"** means [shares.fnb.co.za](http://shares.fnb.co.za)

Please note the following:

- The headings of the clauses in this Agreement are included for your reference only and must not be used to interpret the Agreement.
- Unless it is clear from the context, in this Agreement a reference to the singular includes the plural and vice versa.
- The words "including" and "include" must be read as "including, but not limited to".
- For purposes of interpreting the Agreement, any reference to "we" or "us" includes our successors and assigns, and any of our agents, staff and authorised representatives acting on our authority.
- Any law referred to means the relevant enactment or legislative measure as at the date hereof and as amended or re-enacted from time to time.

## 3. Appointment to render Investment Management Services

You hereby appoint us to render Investment Management Services to you in accordance with our Agreement and to act as your agent for this purpose. We hereby accept this appointment and you will accordingly be bound by our actions as your agent.

Where you have chosen to have your Portfolio managed in accordance with Shari'ah, we will only buy, sell or otherwise deal in Financial Products and/or Financial Instruments that have been approved by the SAC.

Where you have given us a Managed Mandate, you acknowledge that you have authorised us to enter into such lawful agreements as are reasonably necessary for us to carry out our duties and achieve your investment objective, including:

- requiring the custodian to retain any cash accruals (including dividends, and where permitted, interest) received on your behalf and/or invest such cash accruals or a portion thereof at our sole discretion, unless you direct otherwise in writing;
- exercising any voting or other rights that we may hold or acquire in respect of any Financial Products and/or Financial Instruments held on your behalf, provided that we will always endeavour to exercise such voting rights in your best interest;
- making or instructing the relevant custodian to make payments out of your cash assets, of any relevant margin balances to the relevant person, or in accordance with the rules of the relevant exchange to the relevant clearing member; and/or
- encumbering your assets or providing your assets as security, with your written consent, in order to enter into a transaction on your behalf.

We acknowledge that we have a duty and responsibility to carry out the Agreement in good faith and with all the due care, diligence and skill that can reasonably be expected of a financial services provider in our position.

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You agree that FNB SPM may utilise its own staff or that of another financial services provider to render the services to you as set out in the Agreement.

## 4. Investment policy and procedures

You must advise us in advance and in writing of all statutory and other limitations (other than the Applicable Laws) that may be applicable to you and of any proposed amendments to the Investment Policy Statement from time to time. We will only be obliged to act in accordance with the amended Investment Policy Statement once you have notified us of those amendments and we have acknowledged it in writing.

The market value of each Portfolio will be calculated as per our internal valuation policy as well as the relevant FirstRand policy, which may be updated from time to time and is available on written request.

## 5. Registration and safe custody of Financial Products and/or Financial Instruments

### Registration of Financial Products and/or Financial Instruments

The Financial Products and/or Financial Instruments in the relevant Portfolio will be registered in your name or in the name of such other nominee as we may appoint from time to time.

### Safe custody of Financial Products and/or Financial Instruments

The custodian appointed by us will hold in safe custody all the certificates in respect of certificated Financial Products and/or Financial Instruments and maintain electronic or other records of all uncertificated Financial Products and/or Financial Instruments that form part of your Portfolio.

We will, on reasonable request from you, provide you with a written receipt for any Financial Product / Financial Instrument that is lodged in safe custody with a custodian or that is registered in the name of the nominee.

All payments and/or distributions in respect of Financial Products and/or Financial Instruments in your Portfolio will be made to or from the custodian or the nominee, as the case may be, into your designated bank account. Subject to Applicable Laws, we will have no liability with respect to the transmission or safekeeping of the Financial Products and/or Financial Instruments in the relevant Portfolio, or the acts or omissions of the custodian and/or the nominee.

### Foreign investments (applicable only if you authorised FNB SPM to invest in Foreign Investments)

We may, on your specific instructions, act as your intermediary and do the following:

- purchase and sell Foreign Investments;
- enter into approved asset swap agreements with third parties;
- enter into any additional arrangements or agreements with foreign financial institutions, subscribing for shares; and
- enter into any other agreement for the purposes of giving effect to a transaction in respect of a Foreign Investment.

If you have authorised us to operate a Managed Mandate for you agree that we will also administer the Foreign Investments for you in accordance with a Managed Mandate.

In carrying out your Mandate, we may act through a third party of our choice in order to facilitate your Foreign Investment, we may be required to comply with the terms of agreements entered into between us and foreign financial institutions (including foreign banks). You acknowledge that, from time to time, this may affect the timing and nature of services we provide to you under this Agreement.

You will remain liable for any management fees charged by the third party for the management of your Foreign Investments, and such fees will be deducted from your account.

On your instruction, we may trade and settle Foreign Investments, and such securities will be held in an account in the name of FNB SPM with a foreign financial services provider for this purpose.

Your Foreign Investments may be held in the same account as the Foreign Investments of other clients, and you hereby authorise us to act for you in a corporate action in respect of such Foreign Investments on such basis as we consider to be in the best interests of all accountholders of that Foreign Investment account.

Any funds intended for buying Foreign Investments, the proceeds of sales of foreign securities or incidental income accruing from such funds or Foreign Investments will be invested in an account held by us with a foreign financial services provider for this purpose, together with the funds of other clients.

You must give us all the information and assistance required to carry out this Agreement, including all the information required by foreign financial institutions or the South African Reserve Bank (SARB). This obligation will apply even after this Agreement has terminated, in accordance with the Applicable Laws.

You must comply with the terms of any approval granted by the SARB that applies to you or us in making your Foreign Investments. This includes how you can access your Foreign Investments and cash. We will invest any funds that are subject to a SARB authorisation, according to the terms of that SARB authorisation. You are responsible for making sure that you do not exceed your offshore allowance set by SARB at any time. You understand that the SARB may require us to repatriate all or part of your Foreign Investments at any time. If this happens, we may liquidate your Foreign Investments.

For off-market transfers of Financial Products and/or Financial Instruments, unless you advise us in writing of the trade value of the Financial Products and/or Financial Instruments prior to the trade, the Financial Products and/or Financial Instruments will be deemed to be transferred at their closing price on the trade date or, in the absence of a trade on the trade date, the previous closing price of the Financial Products and/or Financial Instruments.

## 6. Fees we will charge you

You will be required to pay all applicable brokerage, management or advisory fees, taxes, levies, administration charges, audit charges, custodian charges, nominee charges, bank charges and all other third-party costs reasonably incurred in the management and administration of the Portfolio in terms of this Agreement, as set out in the pricing guide (as updated or amended from time to time) and/or agreed to by us in writing, and hereby referred to as 'fees'. These fees will be debited monthly from your trading account. If you have an FNB bank account and have a Self-Managed Account, you hereby authorise and instruct us to transfer cash from your FNB bank account to your trading account in order to settle your monthly fees. This is known as a "scheduled transfer". You have the right to opt out of this aforementioned scheduled transfer on one month's written notice to us.

We may change fees and add additional fees charged under this Agreement from time to time. We will advise you of this by giving you notice of the changes within the time periods required by the Applicable Law. When this Agreement is terminated by you or by us in accordance with the provisions below, you will no longer be liable to pay fees from the date of termination.

## 7. How we may deal with your money

Unless otherwise agreed to in writing, you will deposit all money in respect of your Portfolio into the designated trust account we notified you of. Save for the exceptions permitted by Applicable Laws, all monies received in respect of the Portfolio, including interest (which will not be applicable where you have chosen to have your investments managed in accordance with Shari'ah) and capital repayments, will be credited and recorded against your name in the relevant internal business system. In this regard, we will clearly record each transaction entered into in respect of the Financial Products and/or Financial Instruments in your Portfolio.

You agree and authorise us to:

- Keep money in your account or withdraw from JSET (where applicable) as may be required to do the following:
  - pay for investments you purchase;
  - make such payments necessary to carry out this mandate; and
  - pay any debts you owe us (including any fees you owe us and costs such as exit fees).

If our Agreement with you is terminated, our management fee for that month and/or CSDP exit fee must be paid on the date of termination.

We will not receive any commission, incentive, fee reduction or rebate from a linked investment services provider, collective investment scheme or member of a licensed exchange for placing your funds with them, without disclosing this to you fully.

If there is a pledge over your Financial Products/Financial Instruments, we will uphold that pledge.

### Payments/Refunds

Unless you have instructed us in writing to the contrary, we will pay any monies due and payable to you under this Agreement into the designated bank account you provided in the Client Application Form. In the event that you require any funds to be paid into any other bank account held in your name, you will instruct us to do so in writing and provide us with the requisite supporting

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documentation. Payment will be made to this bank account subject to our internal verification processes.

Notwithstanding the above, you agree that no funds (payable under this Agreement) will be payable to any other person (a third party), unless we agree otherwise, at our sole discretion, in writing. You may also be requested to complete additional documentation and/or provide additional supporting documentation as may be requested by us. You authorise us to disregard any instruction from you to pay a third party and indemnify us against any claim or liability or loss arising from our refusal to honour any instruction to pay a third party.

## 8. Overdrawn accounts

- 8.1. Should your account become overdrawn, then you will be in breach of this Agreement. The overdrawn amount will be immediately payable by you to us, without demand having to be made and we may levy interest on the overdrawn amount at the rate prescribed by the Prescribed Rate of Interest Act, No. 55 of 1975 ("mora interest") from the date that the account becomes overdrawn to date of payment.
- 8.2. In the event that your account becomes overdrawn you hereby authorise us to:
  - 8.2.1. set off any amount owed to us under this Agreement against any amount owed to you;
  - 8.2.2. from time to time debit any account that you hold with us or our affiliates (as the term is defined in the Companies Act) in respect of these fees; and
  - 8.2.3. from time to time sell all or a portion of your Financial Products and/or Financial Instruments in order to settle any debt you owe us, according to the terms and conditions as contained in the Cession and pledge clause below.
- 8.3. You understand the rules applicable to overdrawn accounts set out in this Agreement.
- 8.4. You authorise and instruct us to carry out the actions described above each time your account becomes overdrawn.

## Cession and pledge

- 8.5. You hereby cede to us and in our favour all of your rights, titles and interests in and to the Financial Products and/or Financial Instruments as a general continuing covering or collateral security for the due performance and discharge of any indebtedness arising towards us should your account become overdrawn, including specifically but without limitation default interest, finance charges, commissions, the cost of recovery and realisation.
- 8.6. You hereby authorise us, at our sole discretion, to do everything necessary to effect the cession in this clause through making the appropriate entries in the central securities account or the securities account in which the Financial Products and/or Financial Instruments are held.
- 8.7. You hereby authorise and empower us to advise all other parties under the Financial Products and/or Financial Instruments of our rights hereunder.
- 8.8. Should your account become overdrawn and we accordingly become entitled to exercise our rights, you hereby authorise us to:
  - 8.8.1. instruct all other parties to the Financial Products and/or Financial Instruments to effect payment in relation thereof directly to us;
  - 8.8.2. receive and grant receipts in our own name for all or any interest, dividends, income and benefits arising from or by virtue of the Financial Products and/or Financial Instruments ceded and/or pledged hereunder and to apply such sum(s) so recovered in reduction of your indebtedness to us or to pay the same to you as we may deem fit; and
  - 8.8.3. without obtaining a court order and at our sole discretion, sell, call up, set-off, collect, and otherwise realise or dispose of any or all of the Financial Products and/or Financial Instruments in such manner and on such conditions as we may deem necessary and to grant valid and effectual receipts for all sums of money paid to us in respect of any such sale, calling up, set-off, collection, realisation and/or disposal and to apply the proceeds thereof to settling the overdrawn account in full after deducting all associated costs.
9. Certain service channels may not be available
- 9.1. You understand and accept that some or all of the service channels described in this Agreement may not be available at certain times including during periods of scheduled and unscheduled maintenance or during other unexpected periods of unavailability. When online channels are not available, you must submit your instructions through our call centre or as otherwise advised to you.
- 9.2. You will have no claim against us because such service channels are not available and you agree to use other service or communication channels for the duration of such unavailability.

- 9.3. We will not be liable to you for any financial losses, damages or costs of any nature due to trade failure or if you fail to resubmit an instruction (where applicable).

## 10. Refunds on Dividend Withholding Tax

You authorise us to outsource the collection of refunds on Foreign Dividend Withholding Tax (FDWT), incurred on certain qualifying shares, to a service provider we appoint. You consent to us providing this service provider with all your necessary information to institute any FDWT claims and recover such amounts on your behalf. There is an additional fee payable for this service, which is set out in the pricing guides as updated from time to time and, which forms part of this Agreement. You will not be charged where a claim is unsuccessful. Please also note that we earn a fee in respect of certain administrative services we render to the service provider in support of the provision of these services. If the value of the refund that you would recover is below a certain minimum threshold as determined in the pricing guide, you may not be eligible for this service. While no further action is required from you in order to participate in this value-added service, you may contact us if you wish to be excluded from this service. You may also instruct us to exclude you from this value-added service for specific financial products only, for example, Compagnie Financière Richemont SA (CFR) only and we will provide this service for all other qualifying financial products that you hold. This value-added service is not intended to constitute tax advice and you should always seek tax advice from an independent tax practitioner.

## 11. Complying with laws that apply to financial entities

We endeavour to stop and/or prevent any criminal activities including money laundering, financing of terrorism and to uphold anti-corruption laws. Because of this we can do any of the following things if we consider it is necessary to do so, or if South African and international laws, rules, regulations, restrictions and policies ("the laws") require us to do so:

- We may verify (check and confirm) your identity as well as that of any persons related to or acting on behalf of or involved with you. This includes, but is not limited to, mandated persons, directors, signatories, shareholders and related entities. We will do this at the start of the business relationship and as often as it or the law considers necessary thereafter.
- Refuse to do business with you and any person (whether natural or juristic) related to or involved in any of your transactions or acting on your behalf that we consider to be undesirable.
- We will not willingly and knowingly do business with, or facilitate payments on behalf of, you or any person (whether natural or juristic) related to or involved in any of your transactions or acting on your behalf included on any sanction lists as prescribed by legislation or used by us in the management of our risk, or that is linked to any person included in such sanction lists, or who is linked to any countries that are subject to sanctions or the government agencies of such sanctioned countries as determined from time to time.
- End our relationship with you with immediate effect.
- Monitor any of your transactions and instructions.
- We can request further information from you before acting on any instruction and/or transaction. We can verify any of your transactions or instructions before processing them. This may result in a delay in our carrying out the instructions or transactions. Such transactions or instructions.
- We can refuse to carry out any of your instructions or transactions and place a hold on any instruction on your account.

You agree to assist us to comply with the laws by providing us with all the information and documents we require. If You fail to do so or provide false information we can refuse to enter into a relationship with you, refuse to carry out or process an instruction or transaction and can also end our relationship with You. We will not be legally responsible to you, or any person for any loss or damage, you or they suffer if we do any of the things mentioned above, or anything else necessary to comply with the laws.

Authorities may require the disclosure of information related to the Agreement arising out of or in connection with money laundering, financing of terrorism and to uphold anti-corruption laws, economic or trade sanctions, market abuse investigations and otherwise in accordance with prevailing relevant laws or regulations. Our disclosure of the required information will not be a breach of any duty of confidentiality we owe you.

## 12. FATCA and other foreign tax reporting obligations

The Foreign Account Tax Compliance Act (FATCA) was passed into US law on 18 March 2010 as part of the Hiring Incentives to Restore Employment Act, 2010. FATCA targets tax non-compliance by United States (US) taxpayers with foreign accounts. Its primary aim is to reduce the levels of tax avoidance by US citizens and entities through Foreign Financial Institutions (FFI). In addition to

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FATCA, the Organisation for Economic Co-operation and Development's (OECD) Common Reporting Standard (CRS) multilateral agreement has been signed by the South African Revenue Service (SARS) and was implemented in 2016. The CRS imposes similar identification and reporting requirements on FFIs as FATCA, with a focus on all other foreign accountholders and foreign controlling persons. We are a Reporting Model 1 FFI and are required to comply with FATCA and the CRS. As a result, we are obliged to report to SARS on all accounts maintained by us on behalf of accountholders who are deemed to be resident in the US or any other foreign jurisdiction for any tax in said jurisdictions at the end of each tax year as provided for in the intergovernmental agreement between the US's Internal Revenue Service (IRS), SARS and the CRS.

We will review all tax information on record obtained through FICA, FATCA and CRS against any Dividends Tax exemption declaration or reduced rate declaration you might claim. For any conflicting information, we will contact you in order to resolve this conflict. Should we not receive a response to resolve the conflict within 30 (thirty) days of contacting you, we will then remove any Dividends Tax exemption declaration or reduced rate declaration in place.

## 13. eBucks

By virtue of having a Financial Product and/or Financial Instrument, you may automatically qualify and be eligible to become an eBucks member under the eBucks rewards programme.

You will not become liable for any additional costs, fees or expenses associated with your eBucks membership and/or the eBucks rewards programme.

This Agreement must be read in conjunction with the eBucks rewards programme terms and conditions, which are available on the eBucks website (ebucks.com).

## 14. Statement of account

Your statement of account, reflecting your Portfolio, will be made available on [www.fnb.co.za](http://www.fnb.co.za).

Should you have any queries or concerns regarding online access of your statements, please contact us and we will gladly assist; however, an additional fee may be charged in this instance. Your statement will show all the transactions on your Portfolio for the period indicated on the statement. Transactions that have been carried out but not yet paid or deducted from your account will not appear on your statement.

You must report any mistakes or transactions effected without your permission to us within 30 days from the date of the statement or contract note (as the case may be). If you do not report such mistakes or transactions effected without your permission, we will assume the entries and transactions shown on the statement or the contract note (as the case may be) were correct and effected by you or with your permission. We will not be responsible for any loss or damage you suffer because you did not report errors or unauthorised transactions on time.

If either party is required to obtain an assurance for their auditors or a regulator that the other party's operational ability meets the requirements of Applicable Laws, or as to the operational ability or the control environment of the other party, they will make such request in writing to the other party who will do their best to assist.

## 15. Who is responsible for loss?

- 15.1. We will take reasonable steps to ensure that access to the FNB App, Website and Online Banking are provided to you in a secure and reliable manner. We will take reasonable care to prevent harm and loss to you. Although we take reasonable care, we will not be liable for any kind of loss or damage you may suffer, including direct, indirect, special, incidental or consequential damages, because of your use of, or inability to use, these services. This will not apply where the loss or damage arose because of our negligence.
- 15.2. In addition to the above we are not liable for the following (except where such loss or damage is caused by our negligence):
  - 15.2.1. any loss or damage that you or any other party may suffer due to unauthorised interception or monitoring;
  - 15.2.2. any loss or damage if you did not take reasonable steps to safeguard your details, or follow the precautionary steps we recommend from time to time;
  - 15.2.3. late or delayed transactions;
  - 15.2.4. loss or damage arising from the unauthorised use of the service channel including where you exceed your authority;
  - 15.2.5. any errors or delays in communication systems that are outside our control;

- 15.2.6. loss or damage arising from any interruption, malfunction, downtime or other failure of any electronic systems or any component part thereof for whatever reason;
- 15.2.7. any loss or damage whatsoever should your investment objectives not be achieved for any reason;
- 15.2.8. loss or damage you suffer because you did not have sufficient funds in your account, or you failed to comply with any rule, regulation or Applicable Law;
- 15.2.9. loss or damage you suffer as a result of us suspending or terminating your account or being unable to reach you due to your failure to update your contact details (this could include, for example, loss suffered as a result of the sale of your Financial Products or tax consequences arising as a result of such a sale);
- 15.2.10. loss or damage because you gave the incorrect or incomplete information, including by error, when you transact or make payment instructions;
- 15.2.11. loss or damage arising because you do not receive an electronic confirmation of a transaction; and/or
- 15.2.12. loss or damage because of any of the following: the destruction of data, system malfunction, interruption of communication links or any other problem over which we have no control.
- 15.3. We do not assume liability for loss or damage that you may suffer from using the services, whether direct or indirect, such as loss or damage resulting from typographical errors, duplicate instructions issued to us or delayed messages due to a loss of connectivity through a fault outside our control.
- 15.4. Notwithstanding the above, nothing in these terms and conditions will absolve us from liability for claims, damages, costs and expenses you suffered or incurred because of any intentional act of fraud, theft, gross negligence or wilful misconduct on our part or the part of our officers, employees, directors or representatives.

## 16. Account suspension and termination

- 16.1. We have the right to act according to our own judgement and decide to end your relationship with us immediately or to suspend your relationship with us pending termination. We may do this for a number of reasons including if (i) we reasonably consider that there is illegal or fraudulent activity on or connected to your Financial Products and/or Financial Instruments and/or accounts with us; (ii) we consider your relationship with us to be undesirable; (iii) we believe that your behaviour was inappropriate or constitutes misconduct; (iv) by continuing the relationship, we may be exposed to action from or prosecution by any government, regulator or other authority or we may break a regulatory or legal requirement; (v) you fail to comply with any of our requests to update your contact details or provide the required documentation; and/or (vi) for any other reason. Whether we suspend or terminate our relationship with you will be determined at our sole discretion in accordance with our internal rules and policies.
- 16.2. Should we exercise our discretion to suspend our relationship with you pending termination, we will provide written notice of such suspension, which may take effect immediately. Such letter will advise you of the effects of suspension and indicate the period for which we may maintain your account in a suspended state prior to termination. This period will be determined in accordance with our internal rules and policies. In instances where we may elect to terminate our relationship with you, whether immediately or pursuant to a managed termination process, we will provide reasonable notice prior to such termination or the commencement of a managed termination process.
- 16.3. If you have not used our services for more than 90 consecutive days, we reserve the right to notify you of our intention to, within a reasonable period, terminate our relationship with you either immediately or through a managed termination process.

### What happens on suspension?

- 16.4. If we suspend our relationship with you, we will from the date of such suspension until termination:
  - 16.4.1. not act on any instructions received from you;
  - 16.4.2. place any funds due and payable to you into a non-interest-bearing suspense account for safekeeping in accordance with our internal rules and policies; and
  - 16.4.3. not accept any further investments from you into your Portfolio, provided that in the case of Managed Accounts we will continue to apply the Wealth and Investments investment committee's decisions, where applicable.
- 16.5. You hereby agree and accept that we will not be liable for any loss or damage you suffer because of the suspension of your relationship with us, and you indemnify us against any claims against us in this



regard, including from any third party. In particular you note that any funds held on your behalf in a suspense account will not accrue any interest.

## What happens on termination?

- 16.6. If we terminate your account, we will (unless your account is suspended) carry out, conclude and settle all transactions that you initiated prior to such termination. If your account has been suspended pending termination, no instructions will be carried out during the suspension period prior to termination, but we will conclude and settle any transactions that you initiated before you received notice of our suspension of your account.
- 16.6.1. We will give you a final statement of account on termination (a final cost calculation including any interest calculations will be done by us, taking into account any outstanding corporate actions).
- 16.6.2. If we have suspended your account pending termination upon notice, we will notify you of the maximum period of suspension before termination and will advise you of your rights to close your account with us during this period.
- 16.7. Upon termination you will pay:
- 16.7.1. our fees on a pro rata basis from the date of notice to the date of termination; and
- 16.7.2. any additional expenses necessarily incurred by us in terminating the Agreement.
- 16.8. On termination, we may direct any third-party agent to retain, and/or realise such assets as may be required to settle transactions already initiated and to pay any of your outstanding liabilities to us, including any outstanding fees.
- 16.8.1. If there is a dispute with respect to fees upon termination, such dispute will be resolved in accordance with our internal rules and policies and the disputed amount may be held in trust pending resolution of the dispute.
- 16.9. Upon termination we will:
- 16.9.1. issue an instruction, where appropriate, to the nominee to return your assets or documents of title if your account is not suspended; or
- 16.9.2. sell all Financial Products and/or Financial Instruments held by you in your Portfolio and pay the proceeds thereof, together with any cash standing to the credit of your account (after deducting any costs for expenses incurred pursuant to the termination of the account), into a bank account you nominated if you have given us all required documentation. If you have not given us all required documentation, we will pay such amount in a non-interest bearing suspense account until such time as you have provided all required documentation, and you hereby instruct us to sell all Financial Products and/or Financial Instruments held by you in your Portfolio if we terminate our relationship with you and it is not appropriate or we are not permitted by law to return your assets or documents of title to you; or
- 16.9.3. issue an instruction to the nominee to transfer the Financial Products and/or Financial Instruments into the name of an independent nominee you specified, and delivered to us by no later than the date provided for in the termination letter, together with all required documentation, provided that you have personally signed the written instruction and that it is accompanied by written confirmation from you that you received full disclosure of the relevant implications, costs and incentives which may arise because of the transfer.
- 16.10. Should you fail or refuse to provide the required documentation and nominate a bank account to receive any credit balance owing to you, any credit balance remaining on your account will be transferred to a non-interest bearing suspense account for safekeeping in accordance with our internal rules and policies. Should any of your Financial Products and/or Financial Instruments be illiquid and, at our discretion, it not be possible to sell such Financial Products and/or Financial Instruments, such Financial Products and/or Financial Instruments will be dealt with on your behalf in accordance with our internal rules and policies relating to illiquid assets. You hereby agree and instruct us to hold any funds owing to you in a non-interest bearing suspense account and acknowledge and agree that after a reasonable period we may be required to transfer such funds in accordance with our internal policies relating to dormant or closed accounts. Notwithstanding that we may transfer such funds out of the suspense account in accordance with our internal rules and policies you will, in exchange, receive the right against us to claim such unclaimed funds for a period of 60 years from the day the account became dormant or was closed, provided that you complete the necessary claim form and you can substantiate your claim and provide any required documentation. You hereby authorise and instruct us to, if it is no longer practicable to hold your funds in a suspense account and we are required to do so by our internal rules and policies, exchange your funds for a claim against us for such

- unclaimed funds. You further instruct us to deal with any illiquid Financial Products and/or Financial Instruments on your behalf in accordance with our internal rules and policies relating to illiquid Financial Products and/or Financial Instruments.
- 16.11. You agree and instruct that if any Financial Products and/or Financial Instruments remain in your account on termination that cannot be sold as the brokerage fee is more than the value of the Financial Products and/or Financial Instruments, such Financial Products and/or Financial Instruments should be donated on your behalf to a charitable organisation in accordance with the Strate donation processes and procedures.
- 16.12. If we terminate your account, you will not be able to reopen the account.
- 16.13. If you terminate your account and thereafter wish to reopen it, a new account will have to be opened and you will have to accept a new Agreement.
- 16.14. You hereby agree and accept that we will not be liable for any loss or damage you suffer because of the termination of your relationship with us and you indemnify us against any claims against us in this regard, including claims from third parties. You acknowledge that you could suffer loss as a result of our disposal of your Financial Products and/or Financial Instruments and that there may be tax consequences for you relating to such disposal.
17. Disputes about transactions  
If there is a dispute about any matter or record, our records (certified as correct by any of our managers whose authority need not be proved) will serve as *prima facie* proof. This means it will be treated as correct unless you can prove it is not.

## 18. Dispute resolution

- 18.1. All complaints in relation to this Agreement should be directed the Dealing Desk, unless you have a portfolio manager, in which case your complaint should be directed to your portfolio manager assistant, whose details will be included in your welcome pack.
- 18.2. If your dispute has not been settled in accordance with our internal procedures, you may lodge the dispute with the relevant Ombud.
- 18.3. The provisions of this clause will not preclude any party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict or mandamus pending finalisation of this dispute resolution process.

## 19. Address for legal notices under this Agreement

- 19.1. The parties choose the following as their *domicilium citandi et executandi* (address for sending and receiving legal notices) under this Agreement:
- 19.1.1. you - the physical address recorded in this Agreement; and
- 19.1.2. FNB SPM - 6 Merchant Place, 9 Fredman Drive, Sandton, 2196, Republic of South Africa.
- 19.2. The parties may change their physical and postal addresses by notice in writing. The change will become effective 21 days after the date of such notice.
- 19.3. Any notice must be given in writing and will be deemed:
- 19.3.1. if delivered by hand, to have been received on the date of delivery;
- 19.3.2. if sent by post, to have been received 10 days after the date of posting; or
- 19.3.3. if sent by email, to have been received on the first business day after it was sent.  
unless you or we can prove otherwise.

## 20. Force majeure (circumstances beyond our control)

At certain times, we may be prevented from providing banking or other services, products, or goods to you or fulfilling our obligations to you because of things or events that are outside our control. This includes involuntary interruptions outside our control such as electricity failures or blackouts or the unavailability of any telecommunications system or network (including that of any regulatory body, investment exchange or clearing house) or the failure or delay of telecommunication or computer system run by us and/or our agents or the Johannesburg Stock Exchange Limited, Central Securities Depository Participant or Strate. Such events also include wars, fires, floods and legal or illegal strikes. In such cases, we will not be responsible for any failure to perform any of our obligations to you or any person, and our obligations will be suspended, for as long as such interruptions continue.

We may, at our discretion, give you prior notice of interruptions and changes, but we have no duty to do so.

Take note: Without limiting the clauses before, we will not be legally responsible to you or any person for any loss, costs, expenses, damages, or any claims,

# Terms and Conditions



lawsuits or demands of any kind whatsoever, whether brought by an individual or any entity, because of any service interruptions that were beyond our reasonable control.

## 21. How we treat your personal information

For the purposes of this clause only, the "FirstRand Group" and references to "we", "us" or "our" mean: the FirstRand Group, and all affiliates, associates, cessionaries, delegates, successors in title or third parties (authorised agents and contractors), when such parties are acting as responsible parties or operators in terms of applicable privacy laws, unless stated otherwise.

- 21.1. Your personal information (which, for the purposes of this clause, includes special personal information) will be held by entities within the FirstRand Group.
- 21.2. To better understand the entities that form part of the FirstRand Group and how your personal information is treated, please refer to FirstRand's Privacy Notice, which should be read together with this clause. The Privacy Notice can be found on our platform and website or you can contact us to request a copy.
- 21.3. By utilising any products or services ("Solutions") offered by us, you acknowledge that in order to:
  - 21.3.1. conclude and fulfil contractual terms or obligations to you;
  - 21.3.2. comply with obligations imposed by law; or
  - 21.3.3. to protect or pursue your, our, or a third party's legitimate interests, including offering Solutions that best meet your needs;your personal information may be processed through centralised functions and systems across entities in the FirstRand Group and may be used for the purposes, in the manner, and with the appropriate controls as set out in our Privacy Notice.
- 21.4. Where it is necessary to obtain consent for processing information for purposes not included in this clause, we will explicitly seek your consent.
- 21.5. We want to ensure that you fully understand how your personal information may be used. We have described the purposes for which your personal information may be used in detail in our Privacy Notice.
- 21.6. We have also set out further information about accessing, correcting or objecting to the processing of your personal information in our Privacy Notice.
- 21.7. For the purposes of this agreement the responsible party is the party with whom you are contracting a Solution, as well as other entities in the FirstRand Group that are listed in our Privacy Notice as responsible parties. For the contact details of these responsible parties, please see our Privacy Notice.

## 22. When and how can we make changes to the terms of the Agreement?

This Agreement may need to be updated from time to time as allowed by law. We will notify you about any important changes to the Agreement before we make the changes. You acknowledge and agree that you will be bound by the latest version of this Agreement, which will apply with effect from the date on which that version is published on our Website.

You can generally close an account affected by any change in the Agreement if you do not owe any amounts, and end your relationship with us if you do not want to accept any change we tell you about. However, you will be deemed to have agreed to the changes and be bound to them with effect from the date on which such changes to this Agreement apply and to the extent that such amended terms and conditions include any variations of your rights or any instructions to us.

## 23. Telephone recordings

- 23.1. We may record all telephone calls we make to you as well as the calls you make to our call centre in order to:
  - 23.1.1. check that we have carried out your instructions correctly and that we are meeting our regulatory obligations;
  - 23.1.2. help detect or prevent fraud or other crimes;
  - 23.1.3. ensure that, among other things, we will have a full record of all instructions – such records will serve as *prima facie* evidence of all your instructions unless you can produce satisfactory evidence to the contrary; and
  - 23.1.4. improve our services to you and other customers.

Should you have any questions please contact us.

## 24. General rules

This Agreement constitutes the entire agreement between you and us.

You agree that we can, at any time, but on not less than 30 (thirty) calendar days' notice in writing to you, cede and assign all of our rights and obligations in this

Agreement, provided that we can only cede our rights and assign our obligations under this Agreement to another approved financial services provider or authorised user to render an intermediary service to you. Such cessionary and delegate will, unless you terminate this Agreement in the period provided for this as set out in the relevant notice, assume all such rights and obligations with effect from the first day of the calendar month after the notice period.

Unless you cancel this Agreement in writing, you agree that you have consented to this cession and delegation. The invalidity, illegality or unenforceability of any of the provisions of this Agreement will not affect the validity, legality and enforceability of the remaining provisions of this Agreement.

If any clause in this Agreement is found to be unenforceable or unlawful it will, to the extent possible, be severed from the remaining clauses, which will continue to apply.

We will comply with the Applicable Laws when managing your investments. If any provision of this Agreement conflicts with the Applicable Laws, the requirements of the law will apply and this Agreement will be treated as having been amended according to that legal requirement.

We will give you all the necessary information that a relevant product supplier must disclose to you under any law, unless you specifically request in writing that we do not send you that information.

You acknowledge that it is your sole responsibility to find, research, read and familiarise yourself with the relevant rules, Applicable Laws referred to in this Agreement, as to their interpretation and significance in relation to this Agreement and that such rules and Applicable Laws are binding on you and will also extend to your authorised representative and any other relevant party.

You agree that while we may give you extra time to comply with your obligations or if we decide not to exercise some of our rights, you must not assume that this means that our agreement with you has been changed or that it no longer applies to you. We can still insist on the strict application of any or all of our rights at a later stage.

This Agreement is governed by South African law. The parties unconditionally consent and submit to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg) (or its successor-in-title) in regard to all matters arising from this Agreement.

We will not request or induce you in any manner to waive any right or benefit conferred on you by or in terms of any provision of FAIS, or recognise, accept or act on any waiver by you in relation to a right or benefit conferred on you by FAIS. In this regard, any waiver of a right or benefit conferred on you by or in terms of any provision of FAIS is void.

- 24.1. If you are a natural person and become deceased, the account status will be changed to an "Estate Late" account. In such instances, we will only accept instructions from the nominated executor of your estate.
- 24.2. If you are a natural person and are placed under curatorship, the account status will be changed to an "Under Curatorship" or similar account. We will only accept instructions from the duly authorised curator of your estate.
- 24.3. If you are a natural person and you are placed under provisional or final sequestration or debt review, the status of your account will be changed to "Under sequestration". We will only accept instructions from the nominated trustee or debt counsellor.
- 24.4. If you are a juristic person and you are placed under provisional or final liquidation or business rescue, the status of your account will be changed to "Under Liquidation". We will only accept instructions from the nominated trustee or business rescue practitioner.
- 24.5. Where you have elected to have this Agreement carried out as a Self-Manged Mandate you understand and accept that you may call our call centre for technical queries. Although we may assist you with your queries, such assistance should not be considered to be advice and you should make your own decision at all times. We do not accept any liability for any loss or damage you may suffer as a result of your reliance on the assistance provided and you hereby indemnify us against any claim against us in this regard.

## 25. Acceptance

You agree to this Agreement either in written format or electronically. You acknowledge that this Agreement will be amended from time to time by being published on our Website. You agree that should you not cancel this Agreement before the date on which any material changes take effect, after we have notified you thereof, you will be deemed to have agreed to be bound by such material changes.

# Terms and Conditions



## 26. Islamic Law terms, conditions and undertakings (applicable if you have elected to trade in accordance with Islamic Law)

We have appointed and consulted the FirstRand SAC. The SAC is entrusted with the responsibility of ensuring that the Financial Products and/or Financial Instruments offered by us under this Agreement comply with Shari'ah.

If you have chosen to have this Agreement managed in accordance with Shari'ah, any disputes will be determined by the SAC in accordance with its internal rules.

**"Profit"** on the applicable Financial Product and/or Financial Instrument will be deemed "interest" and reported to the South African Revenue Service as part of our obligations as a regulated intermediary.

The following definitions will apply in respect of this section:

**"Qualitative Breach"** means that the underlying business to which the Financial Instrument and/or Financial Product relates is declared non-compliant; and

**"Quantitative Breach"** means that the underlying business to which the Financial Instrument and/or Financial Product relates has failed to meet the Shari'ah screening criteria, as applied.

### Non-permissible income

You acknowledge that despite the efforts to apply stringent screening criteria, part of the income of your investments could be or become income from non-permissible sources. The SAC will interpret and decide what income and activities are considered impermissible according to Shari'ah. Generally, this will include interest income, income derived from the sale of prohibited goods, and services and income derived from transactions that do not comply with Shari'ah procedures. To the extent that this does in fact happen, the SAC will apply a purification ratio to calculate the non-permissible income.

### Disposal of non-permissible income

You acknowledge that you will take full responsibility to dispose of all non-permissible income earned on investments under this Agreement as advised by the SAC.

### If you have chosen a Managed Mandate, then the following applies:

To the extent that you allow us to act on your behalf, you understand that we will abide by the principles prescribed by the SAC in the management of your investments. The non-permissible income earned from any Financial Products and/or Financial Instruments will not belong to you and you will have no rights to receive such income nor any future claim for any portion of it. You agree that any non-permissible income earned will be dealt with as advised by the SAC.

If you have chosen a Self-Managed Mandate, then the following applies:

- To the extent that you do not allow us to act on your behalf, you understand that we will not have any liability or responsibility in relation to the investment decisions you made and whether such investment decisions abide by Shari'ah.
- You undertake to comply with interpretation of Shari'ah as advised by the SAC and that such interpretations will be binding on you in terms of this Agreement notwithstanding any other possible interpretations of Shari'ah.
- You understand that Shari'ah compliant Financial Products and/or Financial Instruments, approved by the SAC, will be available on our Website. This will be reviewed and updated from time to time and accordingly each list is only applicable for the period to which it pertains.
- You undertake to comply with the sell-out procedures set out below to ensure compliance with Shari'ah:
  - In the event of a Quantitative Breach, we will notify you at such time of a first Quantitative Breach, as well as at the time of a second Quantitative Breach. These notifications

will also be available on our Website. The onus remains on you to take the necessary steps to comply with Shari'ah, which will include selling the relevant share within 90 (ninety) calendar days of receiving notice of a second breach.

In the event of a Qualitative Breach, we will notify you at the time of such breach. The onus remains on you to take the necessary steps to comply with Shari'ah, which will include selling the relevant share as soon as possible but within 15 (fifteen) calendar days of receiving notice of the Qualitative Breach. Furthermore, any capital appreciation or dividends earned on the affected share after such a breach will be regarded as non-permissible income and you will, accordingly, need to distribute it to charity.

### Important Information

We have professional indemnity and fidelity cover. If you are not satisfied with the financial services rendered by us or any of our representatives, you may contact us.

If we are unable to resolve your complaint, you may contact the FAIS Ombudsman.

### We may be contacted at:

2<sup>nd</sup> Floor, 6 Merchant Place, 9 Fredman Drive, Sandton, 2196

Telephone: 0860 11 22 44 or 087 5742 737 or +27 11 371 3711 (international)  
Website: www.fnb.co.za  
Compliance Officer: WISolutionsLRC@fnb.co.za

Key Individual and Stockbroker in Control:  
Robert Van Eyden; Robert.VanEyden@fnb.co.za

Complaints: 087 574 2737  
Complaints: care@fnb.co.za

### The FAIS Ombudsman can be contacted at:

Sussex Office Park Ground Floor, Block B, 473 Lynnwood Road Cnr Lynnwood Road & Sussex Ave, Lynnwood, Pretoria, 0081

Telephone: +27 12 762 5000 or +27 12 470 9080  
Facsimile: +27 86 764 1422 or +27 12 348 3447  
Email: info@faisombud.co.za  
Website: www.faisombud.co.za

### The JSE Surveillance Department can be contacted at:

Email: surveillance@jse.co.za  
Website: www.jse.co.za

### The Information Regulator can be contacted at:

JD House, 27 Stiemens Street, Braamfontein, Johannesburg, 2001

Telephone: +27 12 406 4818  
Facsimile: +2786 500 3351  
Email: inforeg@justice.gov.za  
Website: www.justice.gov.za

## FNB SPM contact details

**Johannesburg:** 0800 256 256 / +27 11 282 8734 | **Cape Town:** 087 335 6015 / 087 736 6270 | **Durban:** 087 335 0925 | **Pretoria:** 087 335 3833  
[shares.fnb.co.za](http://shares.fnb.co.za)

### BE AWARE OF FRAUDSTERS

FNB SPM will never ask you for your password or OTP in an email, SMS or via a phone call. Visit the FNB SPM website for terms and conditions that apply.