

# Mandate: Over the Counter Derivative Contract Private Individuals



## Instructions

Please complete in block letters and mark with an "x" where applicable. All alterations must be initialed. Draw a line through sections which are not applicable to your account.

If you are acting on behalf of the investor (e.g. person with power of attorney to act on behalf of the investor, a guardian for a minor etc.), please complete the Person Acting on Behalf of the Investor Form, found on our website [shares.fnb.co.za](http://shares.fnb.co.za) and supply the required FICA documentation.

The "Agreement" is comprised of this client application form, where applicable, a FAIS approved mandate form and/or an Investment Policy Statement (which may or may not be included in this form) as well as any other disclosures and ancillary documentation. The Agreement (comprising of the documentation above) forms an agreement between the client identified in part 1, ("you" or "your") and FNB Stockbroking and Portfolio Management (Pty) Ltd, a subsidiary of FirstRand Bank Limited, an Authorised user of the JSE Limited (Reg. no.1996/011732/07), hereinafter referred to as "FNB SPM". Any reference to the "parties" is reference to you and FNB SPM, collectively and any reference to a "party" is to either you or FNB SPM, respectively.

In terms of this Agreement, you, as the client, authorise FNB SPM to act as your agent in accordance with the special power of attorney which is attached hereto marked Schedule 1, in terms of which FNB SPM shall conclude the OTC Derivative Contracts with Investec Bank Limited ("Investec") (as the Counterparty) on your behalf.

## 1. Investor details

Title		Surname	
First names in full			
Date of birth		Country of birth	
Identification type	<input type="checkbox"/> RSA ID	Number	
	<input type="checkbox"/> Foreign passport	Number	
		Expiry date	
	<input type="checkbox"/> RSA permit	Number	
Expiry date			

### Foreign passport (if applicable)

Country of issue		Nationality	
Country of residence			

### RSA Permit (if applicable)

Country of residence	
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### Occupation

Occupation		Employer	
If you are self-employed, please provide nature of business activities			

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## Contact details

Home no.		Work no.	
Cellphone no.		Email	
Physical address			
		Area code	

## Relationship to FirstRand employee

If you are employed by the FirstRand Group, which division are you employed by?

- RMB   
  WesBank   
  FNB   
  Ashburton   
  FRCC

FirstRand employee number			
Are you related to an employee of the FirstRand Group?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
If YES please state the name of the employee		Please state the employee's ID number	

If you are related to an employee of FNB SPM, please tick the box which describes your relationship:

- Spouse or partner of the FNB SPM employee.  
 Minor child (including dependent child or stepchild) of the FNB SPM employee.  
 The FNB SPM employee is a duly authorised person on the account.  
 A person involved in a business or profit sharing relationship (including partners in an investment club) with the FNB SPM employee.  
 A Trust in terms of which the FNB SPM employee is a Trustee, founder and/or Beneficiary.  
 A company, close corporation, partnership or any other structure in terms of which the FNB SPM employee is an equity holder, director or member.

*Note: Any reference to 'you/your' shall refer to the client making the application to open the account. As such all information required is in relation to the client making the application to open the account.*

## 2. Tax and residency

Due to various legislative requirements, the South African Revenue Service ("SARS") requires FNB SPM to obtain your certified Foreign Account Tax Compliance Act ("FATCA") / Common Reporting Standard ("CRS") classification and to collect and report certain information about an account holder's tax residency status. If you (or the account holder on whose behalf you are completing the form) have a tax obligation or tax residence outside of South Africa, FNB SPM is legally obliged to pass on the information in this form to SARS.

As a financial institution, FNB SPM is not allowed to give tax advice; if you have any questions about this section or defining your tax residency status, please speak to your tax advisor or local tax authority. You can also find out more at the Organisation for Economic Co-Operation and Development ([www.oecd.org](http://www.oecd.org)) automatic exchange of information portal, which may assist you in determining your tax residency.

Note that we may be obliged to report certain amounts earned in your account to SARS as part of the obligation under the Tax Administration Act 28 of 2011 ("TAA"). The information reported to SARS will be provided to you in the form of an annual tax certificate. Should you have any queries around the information contained in the certificate, please speak to your portfolio manager or the dealing desk. Additionally, should you be unsure of how to use this information, please speak to your tax advisor.

Please complete this section and all withholding tax exemption declarations (interest or dividends) that may be relevant to you. Not doing so may result in processing delays or incorrect withholding tax being applied.

Please note that in addition to your declared tax residency, for any foreign indicators documented in this application, you are required to declare whether you have a tax obligation in this jurisdiction by completing the tax table below for each foreign indicator.

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Please be aware that reporting of joint accounts to regulatory authorities is not possible under the current regulatory reporting model. Should you wish to open an account with one or more beneficial owner of the assets held therein, please be aware that only one tax certificate will be issued in the name of one of the account holders. As a result any proof of joint ownership when filing your tax return(s) will have to be furnished by yourself.

**If you are resident in South Africa for tax purposes, please confirm by ticking this box**

By ticking this box, I confirm that I am a South African tax resident and I qualify for the Dividends Tax ("DT") exemption as stipulated in section 64F(I) of the Income Tax Act on any income earned from Real Estate Investment Trusts (REITs), since it will constitute income that needs to be filed in my annual income tax return.

Are you a South African citizen?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Are you a registered taxpayer with SARS?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please supply your tax registration number:	
If you do not have a tax registration number, please provide a reason	

If you are a resident in South Africa for tax purposes the following default will be applied:

- Withholding Tax on Interest ("WTI") will not apply;
- Dividend Tax at 20%, unless the REIT exemption elected above applies.

**If you are not a resident in South-Africa for tax purposes, please confirm by ticking this box**

In which country are you a resident for tax purposes?	
Are you a registered taxpayer in this country?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Are you a citizen/national in this country?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please supply your tax registration number	

Where you have provided FNB SPM with a US tax residency, please provide us with a completed W-9 form and your US tax identification number.

If you were born in the US and are not a US tax resident, please ensure that a certificate of loss of nationality is supplied, or a reasonable explanation as to why citizenship was not attained at birth, in order to refute your US tax residency status:

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As a foreign tax resident, unless the relevant declaration form is received from you, where applicable, the following defaults will apply:

- Withholding Tax on Interest at 15%; and
- Dividend Tax at 20%.

**Additional tax registrations:**

In addition to the tax residency indicated above, please complete the below table for any other foreign country indicators you have not provided us with. Please also supply all countries in which you are a citizen/national and indicate whether you are a tax resident in that country.

Tax Identification Number (TIN)	Country	Are you considered a Citizen/ National in this country?	Are you currently a tax resident of this country?	Reason for not providing a TIN
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	

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### 3. Determining your residency status for Exchange Control purposes

Are you currently a permanent resident in South Africa?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If NO, have you previously been a permanent resident in South Africa?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If YES, when you left South Africa did you formalise your emigration?	<input type="checkbox"/> Yes <input type="checkbox"/> No

*If you answered YES, please provide us with documentary proof issued by the South African Reserve Bank.*

Do you have any of the following?

<input type="checkbox"/> RSA ID	<input type="checkbox"/> RSA birth certificate	<input type="checkbox"/> RSA work permit
<input type="checkbox"/> RSA passport	<input type="checkbox"/> RSA permanent residence permit	<input type="checkbox"/> RSA temporary residence permit

Source of assets to be invested in the account:	<input type="checkbox"/> South African <input type="checkbox"/> Foreign
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Your application to open a non-resident account will be considered, amongst others, on the information which you provide above, and, if required, any additional information. You acknowledge that all such information is of material importance and directly relevant to the consideration of your application. You furthermore warrant that all information you supply, have supplied or will supply to us is truthful, accurate, correct and complete in all material respects and that you are not aware of any other information which, should it become known to FNB SPM would affect the consideration of your application in any way.

### 4. Client banking account details

The name of the bank account holder must be the same as the name of the applicant. Please provide proof of your bank account details i.e. a bank statement certified by your bank, not older than 3 (three) months.

Name of bank			
Branch code		Branch name	
Account name		Country	
Account no.			
Type of account	<input type="checkbox"/> Current	<input type="checkbox"/> Savings	

Please ensure that the account allows debits.

### 5. FNB SPM mandate

You acknowledge that FNB SPM does not have the authority to manage the portfolio/s on your behalf and that all decisions and actions are the responsibility of the client. FNB SPM will not give any advice and will provide you with execution services only. You will be able to execute your orders by contacting our dealing desk or online via our website at [www.share.fnb.co.za](http://www.share.fnb.co.za). Please ensure that you understand the implications (tax and legal) when making decisions and before entering into any transactions.

You have granted the FNB SPM a Special Power of Attorney to act in terms of this Agreement. The Special Power of Attorney shall be deemed effective on the date of signature thereof and shall be part of this Agreement and shall automatically terminate on termination of this Agreement.

**What this means**

- You have control of your account and make decisions on it;
- We may offer you factual information on specific stocks without taking into consideration your risk profile, and the relative appropriateness of these stocks for your portfolio;

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- This is a reactive service and not a proactive one; and
- Contracts for Difference are not suitable for all investors given that the risks associated with trading in Contracts for Difference can be significant.

You need to carefully consider whether this investment is suitable for you.

You may contact us directly for execution of orders or alternatively, you may execute your orders online via the website at [www.share.fnb.co.za](http://www.share.fnb.co.za).

In providing non-advisory services, you agree that FNB SPM charge you brokerage as per the Pricing guide.

### Important indemnity

You will not hold FNB SPM responsible for any loss you suffer (whether actual and/or consequential) because of any actions it takes on your instruction set out above, with the exception of losses incurred as a result of FNB SPM gross negligence. For purposes of this clause FNB SPM includes its or its affiliates, officers, directors, and employees.

## 6. Your Information and Privacy

In this section:

**“Solutions”** means any banking, insurance, investment, telecommunications or other products, goods, services, benefits, policies, rentals and rewards you select with the FirstRand group of companies.

**“Investments/Investment Solutions/Investment Areas”** means investments/investment solutions/investment areas falling outside of FirstRand Bank Limited, but within the FirstRand Group.

### 6.1. Marketing Consents\*

\*If you have previously provided us with the below mentioned marketing consents, please ignore this section; alternatively, if you would like to update the below mentioned marketing consents, or should you wish to opt out of direct marketing at any time please log onto the FNB App and select “My Profile”.

#### 6.1.1. Direct Marketing Consent

I give my consent to receive direct marketing by any electronic communications (including fax, email, SMS, MMS etc.) from the FirstRand Group (as defined in the FirstRand Group Customer Privacy Notice available on our websites) about non-financial solutions (like telecommunications, rental and value-added solutions).

**By ticking the box I consent to the above**

#### 6.1.2. Personalised Offers\*

I instruct the FirstRand Group (as defined in the FirstRand Group Customer Privacy Notice on our websites) to obtain and use my information:

A. From **credit bureaus** (including ongoing notifications regarding my credit applications) to:  
Conduct ongoing assessments to determine my eligibility for and the appropriateness of future offers for investment and insurance solutions.

**By ticking the box I instruct the FirstRand Group accordingly**

B. And from **third-party qualification data providers** to:  
Conduct ongoing assessments to determine my eligibility for and the appropriateness of future offers for all FirstRand Group solutions.

**By ticking the box I instruct the FirstRand Group accordingly**

I instruct FirstRand Bank Limited to release my information (including my contact details, demographic information and transaction history on all solutions held) to the insurance and investment areas within the FirstRand Group to conduct ongoing assessments to determine my eligibility for and the appropriateness of offers for any insurance or investment solutions.

**By ticking the box I instruct the FirstRand Group accordingly**

#### 6.1.3. Subscription Services\*

I give my consent to receive value added/educational information (e.g. market or investment related information)

**By ticking the box I consent to the above**

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### 6.2. Required Processing Consents\*

*\*To be included/completed only if applicable*

#### 6.2.1. Biometric \*

*\*If this form is being completed on behalf of a minor, this consent relates to the guardian or competent person who completes the form*

I consent that the FirstRand Group (as defined in the FirstRand Group Customer Privacy Notice available on our websites) can use facial recognition (e.g. when I enrol my photograph through a selfie), or use and share my biometric information (e.g. my fingerprint) through and with government departments or similar institutions for verification purposes, as well as for security, authentication and/or electronic signature purposes.

I confirm that this consent will be valid and applicable for the duration of my relationship with the FirstRand Group.

**By ticking the box I consent to the above**

### 6.3. Privacy Notice

Your personal information as captured above will be held by entities within the FirstRand Group. 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. The Privacy Notice can be found on Our website ([www.fnb.co.za](http://www.fnb.co.za))

## 7. Your declarations

1. You hereby authorise FNB SPM to act as your agent in accordance with the special power of attorney subject to the terms and conditions of the Agreement and the applicable legislation.
2. You hereby confirm that all information provided has been done so voluntarily and of your own accord.
3. You confirm that should the information provided be incorrect, untrue or incomplete, you may be held personally liable for any penalties or criminal charges that may be imposed by the regulator due to information you provided.
4. You understand that FNB SPM operates a website (the "website") and if you make use of that website or the services available to you on it, you will be legally bound to the additional terms and conditions (which form part of the Agreement) applicable thereto. You understand that these terms and conditions apply to you in addition to the terms and conditions in this Agreement.
5. You agree to the fees, as set out in the Pricing guide and terms and conditions attached hereto or available on the website. You understand that FNB SPM can change the fees and terms and conditions from time to time. Details of how and when we may change the fees and terms and conditions are contained in the terms and conditions which form part of this Agreement.
6. You confirm that the personal information which you have given to FNB SPM in this Agreement, is correct. You will immediately notify FNB SPM in writing if your personal information changes.
7. You hold no other citizenships and residencies for tax purposes other than those disclosed in this Agreement and will inform FNB SPM in writing of any change of this status within 30 (thirty) days.
8. You have been informed of the risks associated with investments. You understand and accept that this includes the risk of financial loss to you. Risks include, but are not limited to currency risk, market risk, interest risk, exchange rate risk and the default or insolvency on the part of any local and/or foreign custodians, banks or other financial institutions FNB SPM uses. You will not hold FNB SPM legally responsible for any loss you suffer or costs you incur because you took part in any local or foreign investment. A glossary of these risks can be found on [shares.fnb.co.za](http://shares.fnb.co.za).
9. You are aware that FNB SPM cannot guarantee a return on your investment.
10. You warrant that no other person has any rights in any investments you deliver to FNB SPM under this Agreement. This includes any encumbrance.
11. You warrant that the funds you have invested in respect of which we are appointed as agent were obtained legitimately. You warrant that you did not obtain the funds, directly or indirectly, due to any unlawful activity as defined in the Prevention of Organised Crime Act, No. 121 of 1998, as amended, and the Financial Intelligence Centre Act, No. 38 of 2001 as amended. This includes, but is not limited to any contravention of the South African Exchange Control Regulations.
12. You understand that there are risks associated with sending instructions to FNB SPM via email. You agree to carry the risk of sending instructions to FNB SPM via email.
13. You confirm that you have received, read and understood this Agreement. You further confirm that your signing this Agreement should also be taken to mean that you accept the terms and conditions attached hereto, as well as any ancillary documentation and disclosures.
14. Information contained in this Agreement is not intended to constitute tax advice. Any aspect of the services under this Agreement which may be of a tax-related nature is an incidental or subordinate (i.e. a secondary / related / non-core) part of the services provided and you should seek tax advice from an independent tax practitioner before acting on any such aspect of the services. Any information provided herein is furthermore based on the information provided by you to FNB SPM. If certain information is withheld, omitted, incomplete or inaccurate this may affect the quality and accuracy of the services we provide. Furthermore, the service provided is based on our understanding of the information that you made available to us. FNB SPM or any other member or affiliate of the FirstRand Group of companies (the "FirstRand Group") shall not be liable for any loss, damages, claim, penalties or fine suffered by anyone who relies on or acts upon the services, whether the FirstRand Group acted negligently or not.
15. You will not hold FNB SPM responsible for any loss you suffer (whether direct and/or consequential) because of any actions it takes, with the exception of losses incurred as a result of FNB SPMs' gross negligence. For purposes of this clause FNB SPM includes its or its affiliates, officers, directors, and employees.
16. You understand that this is a Contract for Difference and is not governed by the rules of the JSE, nor does it govern trading in equities.

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Signature		Date	
<input type="text"/>		<input type="text"/>	
Name	<input type="text"/>	Capacity	<input type="text"/>

# Schedule 1



## Special Power of Attorney

I, (insert name)	
Identity number	

("the Client"),

do hereby nominate, constitute and appoint FNB Stockbroking and Portfolio Management Proprietary Limited (the "FNB SPM"), to transact on behalf of the Client as hereinafter contemplated. FNB SPM has full power and authority to be the Client's lawful agent, in its name, place and stead to open a banking account in the Client's name (the "Account") with Investec Bank Limited (the "Counterparty"), to deposit and move cash into the Account, to trade in OTC Derivative Instruments on a non-discretionary basis and only in accordance with an Order issued by the Client to the Counterparty to buy from or sell to the Client, subject to the terms of an "Mandate: Over the Counter Derivatives Contract" entered into between the Client and the FNB SPM on or about the date hereof (the "Mandate"). FNB SPM has full power and authority to sign, on behalf of the Client, all documents and to do or cause to be done whatsoever shall be requisite to give effect to the Mandate, as fully and effectively, for all intents and purposes, as the Client might or could do if personally present and acting therein. The Client hereby ratifies, allows and confirms and agrees to ratify, allow and confirm all and whatsoever FNB SPM shall lawfully do, or cause to be done, by virtue of these presents.

Signed at		On (date)	
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**in the presence of the undersigned witnesses.**

Authorised signature 1

Witness signature 1

Authorised signature 2

Witness signature 2



# Terms and Conditions



1. These general terms and conditions read with the Client Information Document constitute an agreement between the client identified in part 1 (the "Client," "you" or "your") and FNB Stockbroking and Portfolio Management; registration number: 1996/011732/07, a subsidiary of the FirstRand Group ("FNB SPM").

## 2. Interpretation

- 2.1. In these Terms and Conditions, unless otherwise clearly indicated by, or inconsistent with, the context:
- 2.1.1. The words and expressions used in the Terms and Conditions (including the annexures attached hereto) shall, unless the context indicates otherwise, bear the same meaning as are assigned thereto in Clause 2;
- 2.1.2. The singular includes the plural;
- 2.1.3. Reference to persons shall include juristic persons;
- 2.1.4. One gender shall include the other and neuter; and
- 2.1.5. The rule of interpretation that these Terms and Conditions shall be interpreted against the party responsible for its drafting shall not be applied in the interpretation of these Terms and Conditions.

## 3. Definitions

- 3.1. **"Applicable Legislation"** refers to the following legislation and their regulations as amended or replaced, from time to time and or any legislation and its regulations as amended or replaced that may become applicable at any time whilst these Terms and Conditions endures:
- JSE Rules and Directives;
  - The Financial Markets Act 19 of 2012 ("FMA");
  - The Companies Act 2008;
  - Exchange Control Rulings and Regulations;
  - The Banks Act 1990;
  - The Financial Advisory and Intermediary Services Act 2002 ("FAIS");
  - The Income Tax Act 1962 ("ITA");
  - Tax Administration Act 2011;
  - Protection of Personal Information Act No 4 of 2013 ("POPI"); and
  - Financial Intelligence Centre Act 37 of 2002 ("FICA"),
  - as well as all other laws (current, or subsequent, replacing, amending or repealing) applicable to the investments from time to time.
- 3.2. **"Business Day"** means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa, as defined in Public Holidays Act, 1994;
- 3.3. **"CFD"** means Contract for Difference; which is a contract for difference by reference to fluctuations in the price of the relevant Underlying Instrument or Underlying Asset;
- 3.4. **"Client Information Document"** means the cover document to which these Terms and Conditions are attached containing relevant Client information;
- 3.5. **"Close Out"** or **"Closed Out"** means the cancellation of a Position in one direction with an equal and opposite Position or by way of any other method as deemed fit by the Counterparty;
- 3.6. **"Corporate Event"** means any action by an issuer of an Underlying Instrument affecting the holder's entitlement to the benefits relating to that Underlying Instrument. This includes, but is not limited to, dividends, unbundlings, takeovers, capital reductions, rights issues, conversions, scrip dividends and share redemptions;
- 3.7. **"Counterparty"** means the banks that offer the OTC Derivative Instruments to the Clients;
- 3.8. **"Fee Schedule"** means the fee schedule attached hereto as Annexure B and read together with Annexure C, as amended and updated from time to time;
- 3.9. **"JSE"** means the JSE Limited (Registration number 2005/022939/06), a company duly registered and incorporated with limited liability in terms of the company laws of the Republic of South Africa, licensed to operate an exchange under the FMA;
- 3.10. **"Long Position"** means a number of OTC Derivative Contracts concluded by the Client in terms of which:
- (a) in relation to CFD contracts, means the Client agrees to receive the difference between the opening and closing value of the Underlying Asset over a period of time; or

(b) in relation to OTC Derivative Contracts, the Client has the right or obligation to buy or sell the Underlying Instrument at the agreed price on or before a future date in accordance with the terms and conditions of the particular Derivative Contracts;

- 3.11. **"Margin Trade"** means an OTC Derivative Contract opened and maintained based on a margin deposit as opposed to one based on a purchase price;
- 3.12. **"Online Terms and Conditions"** means any FNB SPM online trading terms and conditions displayed on the Website;
- 3.13. **"Offer"** means an offer to buy or sell a CFD or OTC Derivative Contract;
- 3.14. **"Order"** means an Offer made by that offer the Client, to the Counterparty to buy or sell a CFD or OTC Derivative Instrument from or to the Client pursuant to these terms and conditions. The Offer may or may the Counterparty at its sole discretion.
- 3.15. **"OTC Derivative Instrument"** or **"OTC Derivative Contract"** means a derivative contract concluded "over the counter" between the Client and FNB SPM, which may include CFDs or other OTC derivative transactions such as options;
- 3.16. **"Position"** means either a Long or a Short Position;
- 3.17. **"Real Time Clearing Payment"** means a real time clearing transaction whereby an inter-bank electronic credit payment instruction issued by the payer to the paying bank to transfer funds from the account of the payer to the account of a beneficiary, which payment instruction is delivered by the paying bank to the credit of the beneficiary account within 60 seconds;
- 3.18. **"SARS"** means the South Africa Revenue Service or any successor thereto;
- 3.19. **"Short Position"** means a number of OTC Derivative Contracts concluded by the Client in terms of which
- (a) in relation to CFD contracts, the Client agrees to pay the difference between the opening and closing value of the Underlying Asset over a period of time; or
- (b) in relation to OTC Derivative Contracts, the Client has granted the right or obligation to another person to buy or sell the Underlying Instrument at the agreed price on or before a future date in accordance with the terms and conditions of the particular Derivative Contracts;
- 3.20. **"Terms and Conditions"** means these terms and conditions and all annexures or schedules thereto;
- 3.21. **"Transaction"** means to enter into a contract to buy or sell an OTC Derivative Instrument;
- 3.22. **"Underlying Instrument"** or **"Underlying Asset"** means the corporeal or incorporeal thing, asset, index as referred to in the definition of "securities" in Section 1 of the FMA; and
- 3.23. **"Website"** means the FNB SPM website being shares.fnb.co.za.

## 4. Agreements Binding

- 4.1. Where you accept these Terms and Conditions electronically, this is done in accordance with the Electronic Communications and Transactions Act, 25 of 2002 (as amended or replaced from time to time) ("ECTA") and acknowledge and confirm that you have read and understood and shall be bound by the Terms and Conditions.
- 4.2. These Terms and Conditions supersede any previous agreement between us on the same subject matter and take effect when you signify your acceptance of these Terms and Conditions.
- 4.3. You acknowledge that you have not relied on or been induced to enter into these Terms and Conditions by a representation other than those expressly set out in these Terms and Conditions.

## 5. Appointment

### 5.1. Non-Discretionary

- 5.1.1. You appoint FNB SPM and FNB SPM accepts the appointment to trade in OTC Derivative Instruments on a non-discretionary basis and only in accordance with your instructions and subject to the terms and conditions set out in these Terms and Conditions, if applicable.
- 5.1.2. Notwithstanding clause 5.1.1 above, if the JSE takes any action (the "action") or if there are any Corporate Actions which affects a Transaction, FNB SPM may take any actions or steps which, in our reasonable discretion, we consider to be desirable or in the best

# Terms and Conditions



interests of affected account holders to mitigate any loss (whether direct, indirect or consequential) incurred by such action. Any such actions or steps taken by FNB SPM will be binding on you.

## 5.2. Authority to Act and capacity

- 5.2.1. You hereby acknowledge and confirm that you understand that any OTC Derivative Contracts shall be concluded between you, as a principal, and the Counterparty, as a principal. FNB SPM will intermediate as your agent, as more fully contemplated below.
- 5.2.2. You agree that FNB SPM may, in order to act as your agent, in rendering the necessary intermediary service to you and performing in accordance with these Terms and Conditions, use the services of its own staff.
- 5.2.3. FNB SPM will, subject to the terms and condition of these Terms and Conditions, perform its duties with such due care, diligence and skill that can reasonably be expected of a financial services provider in the position of FNB SPM, and will endeavour to act in your best interests at all times which includes, *inter alia*:
  - (a) doing all things necessary to give effect to the Transactions, the execution of all mandates,
  - (b) other agreements and documents and confirmations, (including but not limited to any documentation related to FATCA and any documentation required for the proper compliance with any taxation legislation or other Applicable Legislation) to give effect to or in relation to Transactions;
  - (c) the same being forwarded by FNB SPM will be provided to you on your request.
- 5.2.4. You acknowledge the Counterparty has a vested interest in you performing your obligations and as such, you agree that immediately upon default by you of your obligations owed to the Counterparty, any right, title and interest of FNB SPM in any claim against you is automatically and immediately ceded to the Counterparty.

## 6. Conditions Precedent

These Terms and Conditions will be of no force and effect until you have been registered on the Website and if applicable, paid any amount required in terms of these Terms and Conditions.

## 7. Risk Acknowledgement

### 7.1. You acknowledge that you:

- 7.1.1. Have read the OTC Risk Disclosure Statement (attached hereto as Annexure "A") and fully understand the contents thereof;
- 7.1.2. Understand the manner in which OTC Derivative Instruments are priced. Factors that influence prices, such as but not limited to, securities borrowing rates, interest rates, ordinary dividends, special dividends, capital reductions, unbundlings, corporate events and commissions may change without notice, thus affecting the price or other terms of OTC Derivative Instrument Positions; and
- 7.1.3. Understand that certain Corporate Events, such as but not limited to, capital reductions, special dividends, unbundlings, share splits and share consolidations may affect the quantity or other terms of the OTC Derivative Instrument Positions held by you subsequent to the Corporate Event and that the Counterparty has the sole discretion as to the calculation of such adjustments and holders of the derivatives will receive the economic equivalent benefit either in cash or additional CFDs.

## 8. Obligations of FNB SPM

### 8.1. FNB SPM:

- 8.1.1. Will endeavour to confirm to you that any instruction has been executed (in part or in whole) and/or any accidental delay or inaccuracy in the execution of your instructions; and
- 8.1.2. Shall take all reasonable actions to comply with best market practices.
- 8.1.3. FNB SPM will not do the following:
  - (a) Execute an Order without your instructions;
  - (b) Sell any investment to you for its own account;
  - (c) Buy any investment from you for its own account; and
  - (d) Exercise the rights that attach to your investment for its own purpose or interest.
- 8.2. You are obliged to monitor the OTC Derivative Contracts and Positions which you have concluded with the Counterparty.

## 9. Withdrawals from your Account

- 9.1. The Counterparty is authorised to withdraw from your account held with the Counterparty any fees and commissions, the Premium, any Margin requirements and any amounts as are required from time to time to settle any amounts due in the course of opening, closing or maintaining any OTC Derivative Contract Positions on your behalf and to effect such other payments as are necessary in the operation of your account, as more fully set out in the Fee Schedule.
- 9.2. The Counterparty may reserve the right to retain, or make deductions from, any amounts which the Counterparty owes to or is holding for you if any amounts are due from you to the Counterparty and FNB SPM.
- 9.3. FNB SPM accepts no liability for ensuring that margin payments are timeously made to the Counterparty.

## 10. Trading Limits

The Counterparty may reserve the right to impose any trading or Position limits and undertakes to advise you of any such trading or Position limits so imposed by the Counterparty in a timely manner, should FNB SPM become aware thereof.

## 11. Margin Requirements, Security and Payments

### 11.1. You shall pay on demand:

- 11.1.1. To the Counterparty, any amount as required by the Counterparty to give effect these Terms and Conditions and the Transaction contemplated in these Terms and Conditions;
- 11.1.2. To the Counterparty, such sums of money by way of deposits, or as initial, additional or variation margin as the Counterparty may require;
- 11.1.3. To the Counterparty, such sums of money as may from time to time be due to FNB SPM under an OTC Derivative Contract including the Premium and such sums as may be required in or towards clearance of any debit balance on any account; and
- 11.1.4. To the Counterparty, any amount to maintain a positive cash balance on any and all account(s).

## 12. Securities

- 12.1. You hereby cede and assign in *securitatem debiti* all its rights, title and interest in all claims which you may have from time to time against FNB SPM as security for your obligations under these Terms and Conditions, including all amounts deposited or held in an account with FNB SPM as security for any amount which you may owe to FNB SPM.
- 12.2. Any security provided by you to FNB SPM to secure your obligations to the Counterparty shall be provided by FNB SPM as security for your obligation to the Counterparty in terms of clause 5.2.4.
- 12.3. FNB SPM shall be entitled without prejudice to any other rights it may have and subject to all Applicable Legislation to sell or realise any assets or investments belonging to you and under the control of FNB SPM and without any prior notice to you in the event of you being in breach of any material obligation in terms of these Terms and Conditions or FNB SPM is of the opinion that such action is required to protect its interest. The proceeds of any such sale will be set-off against any outstanding amount owed by you to FNB SPM. You hereby also indemnify FNB SPM against any loss, costs or incurred expenses suffered by you pursuant to such sale.
- 12.4. Any amount payable by FNB SPM to you will at FNB SPM's option, and without notice to you be reduced by set-off against any amount due and payable by you to FNB SPM. For purposes of set-off, any amount may be converted by FNB SPM into the currency in which the other is dominated and at the rate of exchange at which FNB SPM would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency. If you have opened more than one account in the same name, FNB SPM shall be entitled at any time without giving any notice to you to combine or merge all or any of such accounts or liabilities to FNB SPM and to apply set-off to discharge or reduce any part of your liability in this regard.

## 13. Margin Trades

- 13.1. On the date of the opening of a Margin Trade between the Counterparty and you, the Counterparty will require you to have margin on the account held with the Counterparty in such amount confirmed to you by the Counterparty.

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- 13.2. The Counterparty's margin requirement shall apply throughout the term of the Margin Trade. It is your responsibility continuously to ensure that sufficient margin is available on the account at any time. If practicably possible, FNB SPM shall notify you if the margin requirements are not met, via electronic communication (the "Notification"), if, at any time during the term of a Margin Trade, the margin available on the account is not sufficient to cover the Counterparty's margin requirement as contemplated in 11.1.
- 13.3. You are obliged to reduce the amount of open Margin Trades or transfer adequate funds to the Counterparty within one (1) hour after the Notification has been sent. All payments in regards to a Notification must be paid as Real Time Clearing Payment.
- 13.4. The Counterparty may request additional margin as and when it deems it necessary on notification to you, which payment of the additional margin must be made by you immediately or by no later than the time at which the JSE market opens for trading on the day following such notification.

## 14. Close Out

- 14.1. Some or all of your OTC Derivative Contract Positions may be Closed Out by the Counterparty in its sole discretion, at any stage during the trading day, in accordance with remaining clauses of this clause 15 if the sum of available trading funds, the margins and any other funds being withheld on unconfirmed OTC Derivative Instrument Orders is negative and no payment has been received to rectify this position as contemplated in clause 13 above.
- 14.2. Automatic close out may Close Out a sufficient quantity of positions in OTC Derivative Contracts held in the portfolio so as to ensure that the value of the available trading funds is no longer negative.
- 14.3. Automatic close out may only occur at any time during which the relevant JSE market is open for trading.
- 14.4. Any unmatched orders placed by the Client may be cancelled in order to execute the Close Out order.
- 14.5. In respect of any OTC Derivative Instrument where an order placed by a Client or FNB SPM, on behalf of the Client, has not been confirmed by the Counterparty at least one hour prior to the close of the JSE on the date of expiry of that OTC Derivative Instrument, the Counterparty may cancel such pending order and shall also prohibit any further trade in such OTC Derivative Instrument.
- 14.6. Even if you take, or FNB SPM on your behalf takes, steps to reduce the size of open Margin Trades or to transfer sufficient funds, or FNB SPM on your behalf takes, may close one, several or all of your Margin Trades or part of a Margin Trade and/or liquidate or sell securities or other property of your account at its sole discretion without assuming any responsibility towards you for such action.
- 14.7. You indemnify and hold FNB SPM harmless against any claims or loss(es) that may arise as a result of such close outs.

## 15. Stop Loss/Stop Profit

- 15.1. To the extent that stop loss/profits are applicable to these Terms and Conditions from time to time, you will notify FNB SPM of any stop loss/profit stipulated by you in respect of any OTC Derivative Instruments, which stop loss/profit FNB SPM will notify the Counterparty. Any OTC Derivative Instrument entered into or terminated as a result of such stop loss/profit shall be done in accordance with these Terms and Conditions. FNB SPM cannot guarantee the stop loss/profit and will furthermore not be liable for any difference in price or percentage between the time that the stop loss/profit is given to FNB SPM and the OTC Derivative Instrument transaction is concluded or terminated.
- 15.2. The stop loss/profit either to conclude or terminate any OTC Derivative Instruments by you can only be changed or cancelled prior to FNB SPM accepting stop loss/profit. You will be able to change, cancel and ascertain the status of all your stop loss/profit on the trading platform.
- 15.3. To the extent that your Position in any OTC Derivative Instrument changes after a stop loss/profit has been placed by you, such stop loss/profit is not automatically cancelled and you acknowledge that it is your obligation to amend the stop loss/profit (in accordance with clause 15.2 above) accordingly and agree that FNB SPM shall not be liable for

any stop loss/profit that it is not notified to FNB SPM as a result of such change.

- 15.4. In the event that the resultant Position after implementation of a stop loss/profit to terminate any OTC Derivative Instrument would be less than zero, you must not notify FNB SPM of such stop loss/profit, which FNB SPM undertakes to notify the Counterparty.
- 15.5. In the event that such advance Order is to conclude any further OTC Derivative Instrument, it shall only apply to the quantity as at the time the advance Order was established.
- 15.6. A stop loss/profit remains in effect until cancelled by you regardless of any change in Position.
- 15.7. FNB SPM cannot guarantee that a stop loss/profit will be executed. FNB SPM may notify you by electronic communication (as defined the ECTA) in the event that a stop loss/profit has failed or has not been received by FNB SPM or the Counterparty for any reason whatsoever, however FNB SPM shall not be liable for any losses, costs or damage that may arise should such notification not be received by FNB SPM.

## 16. Disputes about Transactions and amount of indebtedness

If there is a dispute between you and FNB SPM, regarding the nature and amount of any indebtedness or that a Transaction was validly executed, a certificate signed by any director of FNB SPM whose appointment, authority or qualification need not be proved, will be binding on you and accepted as correct until proved otherwise proof in any legal proceeding against you of the contents of such calculation and the quantum thereof and of the fact that such amount is due and payable or that a Transaction was validly executed, as the case may be.

## 17. Telephone Calls

You hereby acknowledge and confirm that FNB SPM shall have the right to record all telephone calls. With respect to such telephone calls, the recording shall be admissible in any dispute or court proceedings. This is an international practice. We only record and use this information to resolve any dispute about telephonic advice or instructions. Such recordings do not contravene your rights under the privacy laws of South Africa.

## 18. Fees

Fees for services rendered shall be levied by the Counterparty and FNB SPM shall be entitled to such fees in accordance with the Fee Schedule attached hereto and, where applicable, you hereby undertake to pay such amount on the due date for the payment thereof. FNB SPM can change the fees and terms and conditions from time to time. FNB SPM will notify you in advance of any changes to the fees and/or terms and conditions. Any such change will be available on the Website 1 (one) month prior to the changes becoming effective (the "effective date"). You hereby acknowledge that any such changes will be binding and effective from the effective date.

## 19. Payments/ Refunds

- 19.1. The Counterparty will pay any monies due and payable to you under these Terms and Conditions into your designated bank account stated on page 3 of the Client Information Document.
- 19.2. In the event that you require any funds to be paid into any other bank account held in your name, other than your designated bank account, you will instruct the Counterparty (keeping us copied) in writing to such effect and provide the Counterparty with the requisite supporting documentation (i.e. a certified copy of your latest bank statement/ or cancelled cheque).
- 19.3. Notwithstanding the above, you agree that no funds (payable under these Terms and Conditions) will be payable to any other person (a third party), unless otherwise agreed in writing with the Counterparty and FNB SPM.

## 20. How we treat your Personal Information

- 20.1. For the purposes of this clause, the FirstRand group of companies means, and references to "we", "us" or "our" are references to: the

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FirstRand group of companies, 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.

- 20.2. Your personal information (which, for the purposes of this clause, includes special personal information) will be held by entities within the FirstRand group of companies.
- 20.3. To better understand the entities that form part of the FirstRand group of companies and how your personal information is treated, please refer to FirstRand's Privacy Notice which forms part of this clause. The Privacy Notice can be found on our platform, website or you can contact us to request a copy.
- 20.4. By utilising any solutions offered by us, you acknowledge that in order to:
- conclude and fulfil contractual terms or obligations to you;
  - comply with obligations imposed by law; or
  - 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 of companies and may be used for the purposes, in the manner, and with the appropriate controls as set out in our Privacy Notice.
- 20.5. Where it is necessary to obtain consent for processing outside of this clause, we will explicitly seek your consent separately.
- 20.6. 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. We have also set out further information about accessing, correcting or objecting to the processing of your personal information in our Privacy Notice. We strongly advise that you read our Privacy Notice.
- 20.7. For the purposes of these terms and conditions the responsible party is the party with whom you are contracting a solution (utilising a product or service), as well as other entities in the FirstRand group of companies, which are listed in our Privacy Notice as responsible parties. For the contact details of these responsible parties, please see our Privacy Notice.

## 21. Client Warranties

You hereby warrant and undertake on the date these Terms and Conditions comes into effect and as of the date of each Transaction that:

- 21.1. The information set out in these Terms and Conditions and in your details as completed on the Website are in all respects true and correct;
- 21.2. That all information provided has been done so voluntarily and on your own accord;
- 21.3. You have read and understood these Terms and Conditions to give effect these Terms and Conditions and the Transactions contemplated herein;
- 21.4. You acknowledge that all dealings are subject to the rules, directives, practice, and usage of the relevant exchange or market;
- 21.5. You will comply with the provisions of the Applicable Legislation and these Terms and Conditions;
- 21.6. You understand that FNB SPM operates a Website and if you make use of that Website or the services available to you on it, you will be legally bound to the Online Terms and Conditions applicable thereto. You understand that these Online Terms and Conditions apply to you in addition to the terms and conditions in this document. You understand that the Online Terms and Conditions will also apply to any person who uses the Website on your behalf.
- 21.7. You have reached the age of 18 years or over, or are assisted by a legal guardian and accordingly have full capacity to enter into these Terms and Conditions;
- 21.8. You have all necessary authority, powers, consents, licenses and authorisations and have taken all necessary action to enable you lawfully to enter into and perform the Terms and Conditions and such Transaction and to grant the security interests and powers referred to in these Terms and Conditions;
- 21.9. If applicable, the persons entering into these Terms and Conditions and each Transaction on your behalf have been duly authorised to do so;
- 21.10. These Terms and Conditions, each Transaction and the obligations created under them both are binding upon you and enforceable against

you in accordance with their terms (subject to applicable principles of equity) and do not and will not violate the terms of any regulation, order, charge or agreement by which you are bound;

- 21.11. No default (including a failure to meet margin calls) or any event which may become (with the passage of time, the giving of notice, the making of any determination or any combination of the above) a default has occurred and is continuing with respect to you or any credit support provider;
- 21.12. You act as principal and sole beneficial owner in entering into these Terms and Conditions and each Transaction;
- 21.13. Any information which you provide or have provided to us in respect of your financial position, domicile or other matters is accurate and not misleading in any material respect;
- 21.14. You are willing and financially able to sustain a total loss of funds resulting from Transactions and trading of such Transactions is a suitable investment vehicle for you; and
- 21.15. You will keep FNB SPM informed of any changes in the information furnished in terms of these Terms and Conditions.

## 22. Regulatory Screening

- 22.1. FNB SPM endeavours to stop and/or prevent any breach of anti-money laundering, counter financing of terrorism, economic and/or trade sanctions laws or regulations, be they local, international or voluntarily subscribed to by the FirstRand Group. FNB SPM in its reasonable discretion can, without limiting its authority to take any other measures it considers necessary, do any of the following things:
- 22.1.1. verify your identity as well as that of any persons (whether natural or juristic) related, involved or acting on your behalf. This includes, but is not limited to, mandated persons, trustees, directors, signatories, shareholders and related entities ("Related Person"). This may be done before the initiation of any contractual relationship and as often as is legally required thereafter by FNB SPM or such other entity appointed by FNB SPM to perform such a function;
- 22.1.2. refuse to do business with you and any Related Person that it considers to be undesirable;
- 22.1.3. will not willingly and knowingly do business with, or facilitate payments on behalf of, you and any Related Person included on any sanction lists as prescribed by legislation or used by FNB SPM in the management of its 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;
- 22.1.4. end its relationship with you;
- 22.1.5. monitor any of your Transactions and instructions;
- 22.1.6. request further information from you before acting on any instruction and/or Transaction;
- 22.1.7. verify any of your Transactions, instructions or recipients before processing such Transactions or instructions which may result in a delay in FNB SPM carrying out the instructions or Transactions;
- 22.1.8. refuse to carry out any of your instructions or Transactions; and
- 22.1.9. place a hold on any instruction and my account.

## 23. Indemnification

- 23.1. You are responsible for compensating FNB SPM for all direct losses, taxes, expenses, costs and liabilities whatsoever (present, future, contingent or otherwise and including reasonable legal fees) (together referred to as "Loss/es") which may be suffered or incurred by FNB SPM as a result of or in connection with:
- 23.1.1. Your breach of these Terms and Conditions and/or any other terms and conditions, including but not limited to a breach of any warranty, undertaking or declaration given by you; or
- 23.1.2. FNB SPM entering into any Transaction or OTC Derivative Instrument; unless and to the extent only that such Losses are suffered or incurred as a result of FNB SPM gross negligence or wilful default.
- 23.2. This right to compensation shall survive any termination of the Client relationship. FNB SPM shall not be liable for:
- 23.2.1. Any Loss suffered or incurred by you as a result of or in connection with the provision of the services unless and to the extent that such Loss is

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- suffered or incurred as a result of FNB SPM or its employees' fraud, theft, bad faith, dishonesty gross negligence or wilful default;
- 23.2.2. Any Loss due to actions taken by FNB SPM according to its rights under these Terms and Conditions and/or any other terms and conditions, or;
- 23.2.3. Any consequential or other indirect damage or loss suffered or incurred by you or any third party whether arising from FNB SPM negligence or otherwise, whether or not such loss or damages was foreseeable, indirect or consequential loss including, but not limited to, loss of profit/revenue, anticipated savings, business Transactions or goodwill; or
- 23.2.4. Any act of fraud, theft, bad faith, dishonesty or gross negligence on the part of any third party, its affiliates or such third party's employees. FNB SPM will not be legally responsible to you if the third party becomes insolvent, placed under business rescue or its estate is sequestered or is subject to any such proceedings.
- 23.3. FNB SPM shall not be liable for any interruption, malfunction, downtime or other failure of any electronic systems or any component part thereof for whatever reason.
- 23.4. Whilst all efforts are made to ensure all information provided to you is correct, FNB SPM disclaims any liability for any direct, indirect or consequential damages or losses that you may incur from using or relying on the information contained herein. You will indemnify FNB SPM or any third party with whom FNB SPM contracts on your behalf:
- 23.4.1. If you do not comply with your duties under these Terms and Conditions (including your declarations) or the Applicable Legislation;
- 23.4.2. For any bona fide investment FNB SPM makes for you under these Terms and Conditions;
- 23.4.3. For any direct, indirect or consequential loss or damage because you chose to give FNB SPM payment instructions in writing or over the telephone;
- 23.4.4. If you do not receive an electronic confirmation of a Transaction because of any of the following: the destruction of data, system malfunction, interruption of communication links or any other problem over which FNB SPM has no control;
- 23.4.5. Any loss or damage incurred by you as a result of any Transaction relating to the investments under these Terms and Conditions made by FNB SPM in good faith; and
- 23.4.6. For any loss or damage, which FNB SPM or any other party may incur as a result of:
- The operation of your account in accordance with these Terms and Conditions; or
  - Any instruction or election from you; or
  - Any instruction or conduct of an authorised representative duly appointed by you or any third party purporting to act on your behalf, whether as a result of the action of such party outside the scope of these Terms and Conditions from you, or otherwise.
- 23.5. You hereby acknowledge, recognise and accept that any market recommendation and any information communicated by FNB SPM does not constitute an Offer to buy or sell or the solicitation of an Offer to buy or sell an OTC Derivative Contract and that such recommendation and information, although based upon information from sources believed by FNB SPM to be reliable, may be based solely on a broker's opinion and that such information may be incomplete and may be unverified and unverifiable. FNB SPM makes no representation, warranty or guarantee as to, and shall not be responsible for, the accuracy or completeness of any information or trading recommendation furnished to you.
- 23.6. In the event that the Counterparty rejects or suspends a transaction upon prior notice, you shall have no claim against the Counterparty or FNB SPM for any direct or indirect losses, damages, claims or costs including, without limitation, any lost profits, arising from the reversal of the transaction except in the event of FNB SPM's gross negligence, fraud or wilful default, in which case you shall have such a claim and then for direct losses only.
- 23.7. The Counterparty shall not be liable to you in respect of any loss, damage, claims or costs arising from the interception, monitoring, modification or other interference with communications or transactions between you and the Counterparty except in the case of the Counterparty's gross negligence, fraud or wilful default, in which case the Counterparty shall be liable as aforesaid and then only in respect of direct losses.

- 23.8. Neither FNB SPM nor the Counterparty shall be liable for any loss or damage arising from unauthorised use of your unique ID and login password, and you hereby indemnify FNB SPM and the Counterparty in respect of any loss, claim or costs that FNB SPM and/or the Counterparty may suffer or incur by virtue of such unauthorised use, save in the case of FNB SPM and/or the Counterparty's gross negligence, fraud or willful default.

### 24. International Tax Reporting Obligations

- 24.1. The Foreign Account Tax Compliance Act ("FATCA") was passed into US law on 18th March 2010 as part of the Hiring Incentives to Restore Employment Act. FATCA targets tax non-compliance by United States (U.S.) taxpayers with foreign accounts. Its primary aim is to reduce the levels of tax avoidance by U.S. citizens and entities through Foreign Financial Institutions (FFI). In addition to FATCA, the Organisation for Economic Co-operation and Development's ("OECD") Common Reporting Standard ("CRS") multilateral agreement has been signed by SARS and implemented in 2016. The CRS imposes similar identification and reporting requirements on FFIs as FATCA, with a focus on all other foreign account holders and foreign controlling persons. FNB SPM is a Reporting Model 1 FFI and is 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 account holders who are deemed to be resident in the U.S 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 IRS and SARS and the CRS.

### 25. Tax

- 25.1. If a law requires you to withhold or deduct taxes from a payment so that FNB SPM would not actually receive for its own benefit on the due date the full amount provided under these Terms and Conditions and on any OTC Derivative Instrument, then:
- 25.1.1. You must make the deduction; and
- 25.1.2. You must pay the full amount deducted to the relevant authority by the due date in accordance with applicable law and deliver to FNB SPM a copy of any receipt of payment from the relevant authority (or other reasonable evidence of payment if no such receipt is provided).

### 26. Termination

- 26.1. These Terms and Conditions are effective from the time the conditions in Clause 6 come into effect and remain in force until terminated by one party giving the other 1 (one) calendar month's written notice. If so terminated in accordance with this clause 28, FNB SPM shall be entitled to any fees accrued to the date of termination in accordance with the Fee Schedule.
- 26.2. FNB SPM may terminate these Terms and Conditions immediately at our discretion without giving any reason therefor, including if at any time it makes a determination that you and any Related Person is considered to be undesirable.
- 26.3. FNB SPM or you may terminate these Terms and Conditions immediately upon the occurrence of the following events:
- 26.3.1. Either party committing a breach of this agreement that is material; or
- 26.3.2. Either party committing a material breach of these Terms and Conditions and failing to remedy that breach within 14 (calendar) days of being notified in writing of such breach by FNB SPM, or such other time period as agreed in writing between the parties; or
- 26.3.3. Either party declaring bankruptcy, inability to pay debts, insolvency, liquidation, sequestration, receipt of an administration order, seizing of assets in execution or any other act of insolvency as defined in the Insolvency Act; or
- 26.3.4. Either party being placed under Debt Counselling or be subject to Debt Review in terms of the National Credit Act 34 of 2005.
- 26.3.5. FNB SPM may terminate the Terms and Conditions immediately, without giving any reason therefor, if at any time it makes a determination that you and any Related Person is considered to be undesirable.
- 26.3.6. These Terms and Conditions will be terminated automatically if FNB SPM:

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- 26.3.7. Is in breach of any provision of these Terms and Conditions or any Applicable Legislation or regulations in relation to these Terms and Conditions; or
- 26.3.8. No longer qualifies to act in the capacity as contemplated in these Terms and Conditions.
- 26.4. A party shall be entitled to terminate these Terms and Conditions by giving written notice to the other party in the manner provided in these Terms and Conditions, provided that such termination shall not:
- 26.4.1. Affect the rights or obligations of the parties in terms of these Terms and Conditions which may have arisen or are in existence at the date of such notice or at the date of termination of these Terms and Conditions;
- 26.4.2. Entitle you to claim or withdraw from the account referred to in Clause 9 any monies held to secure your obligations, until such obligations have been settled.
- 26.5. If these Terms and Conditions are terminated for any reason whatsoever, both parties shall be subject to the proper settlement of all Transactions and any amounts due to FNB SPM at the date of termination and shall not affect any warranties, undertakings or indemnities made by you under these Terms and Conditions, which shall remain in full force and effect. Any amount due to FNB SPM at the date of termination shall become due and payable on demand. In the event of any such termination, FNB SPM will procure that the Counterparty, as soon as practicable, delivers to you all your investments and cash which it then holds, subject in every case to the prior payment, satisfaction and discharge of all liabilities outstanding from you to FNB SPM (including, but not limited to, fees for rematerialising any shares if required).

## 27. Address for legal notices under these Terms and Conditions

- 27.1. The parties choose the following as their *domicilium citandi et executandi* (address for sending and receiving legal notices) under these Terms and Conditions:  
You - the physical address recorded in the Client Information Document;  
FNB SPM - 4 Merchant Place, 1 Fredman Drive, Sandton, 2196, Republic of South Africa.
- 27.2. The parties may change their physical and postal addresses by notice in writing. The change will become effective 21 (twenty-one) days after the date of such notice. Any notice must be given in writing and will be deemed, unless you or FNB SPM can prove otherwise, if:
- 27.2.1. Delivered by hand, to have been received on the date of delivery;
- 27.2.2. Sent by post, to have been received 10 (ten) days after the date of posting; or
- 27.2.3. Sent by email, to have been received on the first business day after it was sent.

## 28. Arbitration

- 28.1. If any dispute arises between you and FNB SPM, and provided that such dispute cannot be settled in accordance with FNB SPM internal complaint handling procedure within 4 (four) weeks of FNB SPM receiving such complaint (or within such further period, provided FNB SPM has provided you with an appropriate explanation as to why FNB SPM is not, at that time, in a position to respond and has indicated by when FNB SPM will respond), then the dispute must be referred to the FAIS Ombudsman in writing, giving full particulars of the matter concerned and if the disputing parties are unable to resolve that dispute among themselves. Thereafter the matter will be resolved in accordance with the processes set out in the rules.
- 28.2. The provisions of this clause shall 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.

## 29. Governing Law

- 29.1. These Terms and Conditions will be governed by, and construed in accordance with, the laws of the Republic of South Africa and the parties submit to the non-exclusive jurisdiction of High Court of South Africa, (Gauteng Local Division, Johannesburg or any successor thereto).

## 30. Relaxation

- 30.1. 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 these Terms and Conditions or the enforcement of any right arising from these Terms and Conditions, 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 or otherwise affect the rights of any party under these Terms and Conditions or prevent such party from enforcing strict and punctual compliance with each and every provision or term hereof.

## 31. Variation

FNB SPM can change the fees and Terms and Conditions from time to time. FNB SPM will notify you in advance of any changes to the fees and/or Terms and Conditions. Any such change will be available on the website 1 (one) month prior to the changes becoming effective (the "effective date"). You hereby acknowledge that any such changes will be binding and effective on you from the effective date and that you will to independently verify the correctness of information contained on the Website.

## 32. Counterparts

These Terms and Conditions may be executed in two or more counterparts all of which, when read together, shall constitute one and the same instrument.

## 33. Whole Agreement

These Terms and Conditions, the Client Information Document and the Online Terms and Conditions, read with any approved occurrences referred to in Clause 33, contains the entire agreement between FNB SPM and you and neither of the two shall be bound by any undertakings, representations or warranties not recorded herein.

## 34. Independent advice

- 34.1. FNB SPM will give you all the necessary information that an intermediary must disclose to you under any law, unless you specifically request in writing that FNB SPM does not send you that information.
- 34.2. Both parties acknowledge, represent and agree that, save for any representation or warranty contained in this Agreement, it has not relied in any way upon any information and/or advice given by the other in the implementation of this Agreement and has taken all reasonable actions to satisfy itself as to the consequences of entering into this Agreement and all of the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are part of the overall intention of the parties in connection with this Agreement.
- 34.3. You acknowledge that it is your sole responsibility to find, research, read and familiarise yourself with the relevant rules applicable laws referred to herein, as to their interpretation and imports in relation to these Terms and Conditions and that such rules and applicable laws are binding on you and shall include but not be limited to your authorised representative.

## 35. Cession and Delegation

You agree that FNB SPM can at any time on not less than 30 (thirty) calendar days' notice in writing to you, transfer all of its rights and obligations in and under these Terms and Conditions, provided that FNB SPM can only transfer its rights and delegate its obligations under these Terms and Conditions to a third party that is a Financial Services Provider (as defined in FAIS). Such cessionary and delegate will, unless these Terms and Conditions is terminated by you in the period provided for this, assume all such rights and obligations with effect from the first day of the calendar month after the notice period. Unless you cancel these Terms and Conditions in writing, you agree that FNB SPM can assume you have consented to this cession and delegation.

## 36. Bona Fides

Each party agrees that, in its respective dealings with the other party under or in connection with these Terms and Conditions, it shall act in

## Terms and Conditions



good faith. The parties shall endeavour to ensure that no conflict of interest arises between them.

### 37. Force Majeure

- 37.1. Neither party will be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent to which such delay or non-performance arises from any event (including any act or omission of any third party) beyond its reasonable control which could not reasonably be planned for or avoided (each a “Force Majeure Event”).
- 37.2. A party whose performance is affected by a Force Majeure Event (“Affected Party”) will:
- 37.2.1. Promptly notify the other party in writing of the Force Majeure Event and the cause and the likely duration of any consequential delay or non-performance of the Affected Party’s obligations; and
- 37.2.2. Use reasonable endeavours to avoid or mitigate the effect of such event on the other party and the performance of the Affected Party’s obligations and resume full performance of the Affected Party’s obligations as soon as reasonably possible.
- 37.3. If the Affected Party has met the conditions in clause 39.2, its performance of any affected obligation under this Agreement will be suspended for the period that the Force Majeure Event continues and the Affected Party will have an extension of time for performance equal to the period of delay or failure, but the Affected Party will continue to perform all other obligations that are not prevented by the Force Majeure

Event. If performance of any material part of the relevant obligations is not resumed within 15 Business Days after the notice from the Affected Party to the other party, the other party may terminate this Agreement immediately by giving written notice to the Affected Party.

### 38. No Stipulatio Alteri

These Terms and Conditions are entered into solely between the parties, and may be enforced only by, the parties, and does not create any rights which may be accepted by any third parties.

### 39. Comply with Applicable Legislation

FNB SPM will comply with the Applicable Legislation when acting in accordance with its mandate. If any provision of these Terms and Conditions conflicts with the Applicable Legislation, the requirements of the law will apply and these Terms and Conditions will be treated as having been amended according to that legal requirement.

### 40. Enforceability

- 40.1. The invalidity, illegality or unenforceability of any of the provisions of these Terms and Conditions shall not affect the validity, legality and enforceability of the remaining provisions of these Terms and Conditions.
- 40.2. If any clause in these Terms and Conditions is found to be unenforceable or unlawful it will, to the extent possible, be severed from the remaining clauses, which will continue to apply.

## Annexure A: OTC Risk Disclosure Statement



The risk of loss arising from trading in OTC Derivative Contracts 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:

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, Premium or deposit with the Counterparty. 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 an OTC Derivative Contract Position. This may occur, for example, where trading in the Underlying Instrument is suspended or restricted at times of rapid price movement.
3. Where permitted, placing a stop loss/stop profit order will not necessarily limit your losses/ profits to the intended amounts, for market conditions may make it impossible to execute such Orders at the stipulated price.
4. Markets can be highly volatile and investment in them carries a substantial risk of loss. The high degree of "gearing" or "leverage" which is often associated with OTC Derivative Contracts such as CFDs 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.
5. OTC Derivative Contracts are not concluded on any exchange and accordingly the protection Offered in respect of such exchange traded contracts is not available. It is therefore important to understand that the risk in such OTC Derivative Contracts is to the other party to such trades.
6. Your Relationship Manager should explain to you the meaning of various terms set out herein and in the Mandate so that you are fully aware of their significance. If you do not have a Relationship Manager, it is your responsibility to ensure that you fully understand the contents of the Mandate and the workings of the CFD.
7. If you have any doubts or concerns regarding the risks in trading OTC Derivative Instruments you must contact FNB SPM or your Relationship Manager for more detailed information before signing or accepting this statement.
8. Corporate Events on Underlying Instruments can have a material effect on the quantity and/or value and/or other terms of an OTC Derivative Instrument. You are responsible for making the necessary enquiries to ensure that you make an informed decision regarding investing in the OTC Derivative Instrument and specifically, but not limited to, any Corporate Events affecting or which could affect the Underlying Instrument. A Corporate Event could increase the risk of investing in the OTC Derivative Instrument.
9. You are responsible for obtaining the necessary approvals and making the relevant disclosures required in terms of the Listing Requirements of the JSE in respect of any OTC Derivative Contracts where you are a director (as defined in the Listing Requirements) of the issuer of the Underlying Asset.

This brief statement cannot disclose all risks of investment in OTC Derivative Instruments. 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 and other consequences and on this you should consult your lawyer, accountant and/or other tax practitioner.



## Annexure B: Fee Schedule (Schedule 4)



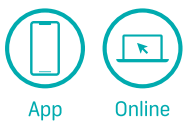
FNB SPM shall earn certain fees and commissions as set out in this schedule for the services rendered by FNB SPM acting as agent on your behalf pursuant to the Agreement. The Counterparty may receive remuneration, profit, commissions from or share charges with a third party. The Counterparty is authorised to withdraw from your account held with the Counterparty any fees and commissions due to FNB SPM and the Counterparty will pay such fees and commissions directly to FNB SPM. These fees and commissions may be charged to your account in addition to any fees, commissions and Premiums due to the Counterparty.

CFD brokerage	Total Client Rate
CFD Local Equities	35bps

Cash Deposit Charges	Base	Total Client Rate
Interest on positive balances	REPO	-75bps
Interest on negative balances	Prime	+125bps
Interest on Margin	SAFEX	-75bps

Finance Charges	Base	Total Client Rate
CFD Overnight Funding (Long)	SAFEX	+2.70bps
CFD Overnight Funding (Short)	SAFEX	-0.75bps
Scrip Lending Fee		Fee incurred on trade

Overnight long will be payable on all long CFD positions by the investor on each business day. Overnight short will be receivable by the investor on all short positions on each business day. Close-out premium will be payable by the investor on close of each existing CFD.



App Online

For help, visit [FNB Online banking](#), the [FNB App](#) or call **087 346 8378** for more information.

### 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.