

## TERMS AND CONDITIONS

### CLIENT AGREEMENT

This agreement is entered into between Velocity Trade Financial Services Proprietary Limited, duly registered as a financial services provider under the FAIS Act, and the Client and sets out the terms and conditions on and subject to which Velocity Trade Financial Services Proprietary Limited and the Client will enter into Transactions in respect of Khula Sizwe Shares.

This agreement forms part of this online application and consists of the following documentation -

- 1 Online Application submission
- 2 Terms and Conditions of Client Agreement
- 3 Risk Disclosure Statement
- 4 Disclosure Statement
- 5 Privacy Policy

## CLIENT AGREEMENT

NO.	CLAUSE HEADINGS	PAGE
1	INTERPRETATION AND DEFINITIONS	3
2	APPLICATION FORM	9
3	TERM OF AGREEMENT	10
4	SCOPE OF AGREEMENT	10
5	ONLINE PORTAL	11
6	NATURE OF RELATIONSHIP	16
7	INTEREST AND THIRD PARTY ACCOUNTS	17
8	REGISTRATION AND CUSTODY ARRANGEMENTS	18
9	ENCUMBRANCES	18
10	REMATIALIZATION OF KHLUA SIZWE SHARES	18
11	RESTRICTED TRANSACTIONS DURING LOCK-IN PERIOD	18
12	CORPORATE ACTIONS	19
13	FEES AND EXPENSES	23
14	PAYMENTS AND STANDARD SETTLEMENT INSTRUCTIONS	23
15	REPORTING TO CLIENT	23
16	RISK	24
17	EXEMPTION, INDEMNITY AND INSURANCE	24
18	SEGREGATED FUNDS ACCOUNT	24
19	REPRESENTATIONS AND WARRANTIES	26
20	LEGAL AND REGULATORY REQUIREMENTS	28
21	TAXES	29
22	FORCE MAJEURE	29
23	EVENTS OF DEFAULT	30
24	TERMINATION	31
25	INDEMNITY	32
26	EXCLUSION OF LIABILITY	33
27	TAPE RECORDING	34
28	CONFIDENTIALITY	35
29	DATA PROTECTION LAWS	35
30	CONFLICTS OF INTEREST	36
31	ASSIGNMENT	36
32	DISPUTE RESOLUTION	37

33	NOTICES AND ADDRESSES OF SERVICES	38
34	AMENDMENTS	39
35	GENERAL	39

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## APPENDICES

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### TERMS AND CONDITIONS

#### 1 INTERPRETATION AND DEFINITIONS

1.1 Unless otherwise stated or inconsistent with the context in which they appear, the following expressions shall bear the following meanings and cognate expressions shall bear corresponding meanings -

1.1.1 “**Account**” means, in relation to the Client, a running account maintained by Velocity Trade for the purpose of recording certain credits and debits in relation to Transactions and other financial requirements, as set out or described in this Agreement;

1.1.2 “**the/this Agreement**” means the Application Form, the Risk Disclosure Statement, the Disclosure Statement, the Privacy Policy, and the terms and conditions as set out in this document and all other Appendices and schedules to these terms and conditions, any other document expressed by Velocity Trade to be part of this agreement and any variation, novation or replacement of it;

1.1.3 “**Appendices**” means the appendices attached to these terms and conditions and “**Appendix**” shall mean any of them as the context may indicate;

1.1.4 “**Applicable Law**” includes each law, regulation, by-law, directive and order in South Africa which -

1.1.4.1 applies to the conduct by Velocity Trade of its business; or

1.1.4.2 applies to the performance by Velocity Trade or the Client of its obligations under this Agreement or any Transaction; or

1.1.4.3 otherwise applies to Velocity Trade or to the Client;

1.1.5 “**Application Form**” means the application form submitted by the Client, constituting the acceptance by the Client of the public offer made by Khula Sizwe, and in terms of which the Client agrees to subscribe for the Khula Sizwe Shares set out therein and agrees to be bound by these terms and conditions, which application forms will be substantially in the form annexed to the Khula Sizwe Prospectus, completed on the Online Portal either individually or

through the assistance of a contact Call Centre agent on 0800 233 733 or an agent available at the walk-in centres made available by Khula Sizwe;;

1.1.6 “**Authorised Representative**” means a person or juristic entity authorised as contemplated by the FAIS Act to represent Velocity Trade in providing financial services;

1.1.7 “**Associate**” means, in the case of Velocity Trade only, each of its Related Companies and Service Providers;

1.1.8 “**Barloworld**” means

1.1.8.1 Barloworld Limited, with registration number 1918/000095/06, a public company with limited liability duly registered in accordance with the laws of the Republic of South Africa,

1.1.9 “**Business Day**” means a day other than a Saturday, Sunday or public holiday in the Republic of South Africa or the applicable offshore jurisdiction of the Transaction;

1.1.10 “**Call Centre**” means that part of the call centre that ,*inter alia*, responds to related queries or general queries relating to the Services;

1.1.11 “**Client**”, “you” and “your” means the entity or person who has submitted the Application Form and agreed to be bound by the terms and conditions of this Agreement and who has been notified by Velocity Trade that its application has been accepted;

1.1.12 “**Client Money**” means, in relation to the Client -

1.1.12.1 all money which -

1.1.12.1.1 in the course of carrying on its business of dealing in Transactions, Velocity Trade or any person on its behalf holds for, or receives from or on behalf of, the Client; and

1.1.12.1.2 is not immediately due and payable on demand to Velocity Trade or that other person for its own account; and

1.1.12.2 where the money is required by any annexure to be held in a Segregated Funds Account, all such money held in a Segregated Funds Account;

1.1.13 “**Commencement Date**” means the date on which the Client has completed the Application form in accordance with the Khula Sizwe Prospectus and all further checks or enquiries that Velocity Trade deems necessary or desirable are completed to the satisfaction of Velocity;

1.1.14 “**Confidential Information**” means in relation to the Client and Velocity Trade and each of its Associates -

- 1.1.14.1 the know-how, trade secrets, technical processes, information relating to pricing, market share, products, finances, clients or suppliers, the right to all lists of clients and suppliers of that party or of any of its Associates; and
- 1.1.14.2 other information relating to that party or to any of its Associates and their respective businesses,
- which by its nature, or by the circumstances of its disclosure to the holder of the information, is or could reasonably be expected to be regarded as confidential;
- 1.1.15 “**Corporate Action**” means an event (including a dividend payment, corporate restructuring, rights issue, bonus issue or share buy-back) initiated by Khula Sizwe that affects the Khula Sizwe Shares, including but not limited to the events contemplated in clause 12;
- 1.1.16 “**Custodian**” means the Velocity Nominees (Pty) Ltd, registration number 2010/015205/07, or such other person appointed by Velocity Trade to hold the Khula Sizwe Shares on behalf of the Client;
- 1.1.17 “**Disclosure Statement**” means a document containing important information about Velocity Trade and general information about your rights and Velocity Trade’s duties in terms of the FAIS Act;
- 1.1.18 “**FAIS Act**” means the Financial Advisory and Intermediary Services Act, 37 of 2002, as amended;
- 1.1.19 “**FM Act**” means the Financial Markets Act, 19 of 2012, as amended;
- 1.1.20 “**Force Majeure**” means any event or cause beyond the reasonable control of Velocity Trade, including -
- 1.1.20.1 abnormal market conditions as determined by Velocity Trade; or
- 1.1.20.2 an act of God, inevitable accident, fire, lightning, cyclone, earthquake, landslide, volcanic eruption or other natural phenomenon; or
- 1.1.20.3 sabotage, revolution, insurrection, act of war (whether declared or not) or war-like operations; or
- 1.1.20.4 a confiscation or expropriation, embargo, quarantine restriction or any like event; or
- 1.1.20.5 any strike, dispute or lockout; or
- 1.1.20.6 an epidemic, toxic emission or any like event; or
- 1.1.20.7 a requirement, restriction, prohibition, intervention, law, regulation, decree or other legally enforceable order of any Government; or

- 1.1.20.8 an explosion, nuclear accident or any like event; or
- 1.1.20.9 a telecommunications, network, power or equipment failure or damage, or power or water shortage,
- as a result of which, in each case in the opinion of Velocity Trade, it is impossible, impractical or illegal for Velocity Trade to perform and comply with any of its obligations under this Agreement or any Transaction;
- 1.1.21 "**FSCA**" means the Financial Services Conduct Authority, established by section 2 of the Financial Services Act, 97 of 1990, as amended;
- 1.1.22 "**Intellectual Property Rights**" means all patents, copyrights, trade secrets, trademarks, service marks, trade names and all other intellectual property rights;
- 1.1.23 "**Interest Earning Amount**" means the amount, as determined in accordance with clause 7 in an Account on which Velocity Trade agrees from time to time to pay interest;
- 1.1.24 "**Khula Sizwe**" means Main Street 1646 Limited, with registration number 2018/546305/06, a public company with limited liability duly incorporated and registered in accordance with the laws of South Africa;
- 1.1.25 "**Khula Sizwe Prospectus**" means the prospectus issued by Khula Sizwe which relates to the invitation for black people to subscribe for up to 16,340,000 (sixteen million three hundred and forty thousand) ordinary shares in Khula Sizwe at R10 (ten Rand) per share dated [\*];
- 1.1.26 "**Khula Sizwe Shares**" means ordinary shares of no par value in the authorised shares of Khula Sizwe which have been allocated to the Client in terms of the Khula Sizwe Prospectus;
- 1.1.27 "**Lock-in Period**" means the "Lock-in Period" as defined in the Khula Sizwe Prospectus;
- 1.1.28 "**Online Portal**" means the online client portal created and maintained by Velocity at [www.barloworldkhulasizwe.co.za](http://www.barloworldkhulasizwe.co.za);
- 1.1.29 "**the Parties**" means the Client and Velocity Trade and "**Party**" means any of them as the context may indicate;
- 1.1.30 "**Privacy Policy**" means the privacy policy on the Online Portal which forms part of this Agreement;
- 1.1.31 "**Public Authority**" means -
- 1.1.31.1 any government in any jurisdiction whether national, federal, state, regional, territorial or local; and
- 1.1.31.2 any minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government or any state-owned enterprise; and

- 1.1.31.3 the FSB;
- 1.1.32 “**Related Companies**” means Velocity Trade Capital (Pty) Ltd (registered in South Africa), Velocity Trade Limited (Australia) with Australian Financial Services License (AFS) No. 329813, Velocity Trade Capital Limited (Canada) which is a member of the Investment Industry Organization of Canada (IIROC), the Canadian Investor Protection Fund (CIPF) and a participating organization of the Toronto Stock Exchange, Velocity Trade Limited (New Zealand) which is registered as a Financial Services Provider FSP20003 and Velocity Trade International Limited (registered in the United Kingdom) which is authorized and regulated by the Financial Conduct Authority (FCA Registered Number 497263);
- 1.1.33 “**Representative**” means, in relation to any Party, each of its officers, directors, employees, agents and representatives;
- 1.1.34 “**Risk Disclosure Statement**” means the document setting out general information in respect of the risks associated with utilising our Services;
- 1.1.35 “**Services**” means non-discretionary services including, acting as intermediary on behalf of the Client to purchase and sell and enter into Transactions on behalf of the Client;
- 1.1.36 “**Service Providers**” any entity appointed by Velocity Trade to deliver the Services outlined in this Agreement;
- 1.1.37 “**Security Credentials**” means, in relation to the Online Portal, any security credentials that the Client uses to access or use the Online Portal, including any user name, account number, Client ID, one time pin sent to the Client’s cell phone number, user ID and/or password;
- 1.1.38 “**Segregated Funds Account**” means a South African Rand bank account that, where required by this Agreement (including any annexure hereto), is established and maintained by Velocity Trade in accordance with the provisions of this Agreement (and all annexures hereto), for the purpose of receiving, holding and disbursing Client Money, including client money of other clients of Velocity Trade;
- 1.1.39 “**Tax(es)**” includes any VAT, tax, levy, stamp, withholding taxes or other duty and any other charge, deduction or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of these);
- 1.1.40 “**Transaction**” means any transaction into which Velocity Trade or its Associates have entered or propose to enter into on behalf of the Client involving, or referable to the value of, or granting rights or accepting obligations in respect of or by reference to the Khula Sizwe Shares;
- 1.1.41 “**VAT**” means value added tax levied in terms of the Value-added Tax Act, 89 of 1991, as amended;;

- 1.1.42            **“Velocity Trade”, “Velocity”, “us” and “we”** means Velocity Trade Financial Services (Pty) Ltd, Registration No. 2010/010415/07 as authorised financial services provider in terms of the FAIS Act; and
- 1.2                The words written and writing include facsimile communications and electronic mail and any other means of communication resulting in permanent visible reproduction.
- 1.3                The clause headings of this Agreement have been inserted for convenience only and shall not be taken into consideration in its interpretation.
- 1.4                Any references to the singular includes the plural and vice versa and any reference to natural persons includes legal persons and vice versa and reference to any gender includes reference to the other gender.
- 1.5                Any reference in this Agreement to a Party shall include a reference to that Party’s assigns expressly permitted under this Agreement and, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party’s liquidator or trustee, as the case may be.
- 1.6                A reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before, or after the date of this Agreement).
- 1.7                If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- 1.8                The expiry or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiry or termination or which of necessity must continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.9                The words “include”, “including” and “in particular” shall be construed as being by way of example or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding word/s.
- 1.10              Terms other than those defined in this agreement will be given their plain English meaning, and those terms, acronyms, and phrases generally known in the financial services industry will be interpreted in accordance with their generally known meanings.
- 1.11              Words and expressions defined in any sub-clause shall, for the purpose of the clause of which the sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.



- 1.12 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive clause in the body of the Agreement, notwithstanding that it is only contained in this interpretation clause.
- 1.13 If any period is referred to in this Agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the day shall be the next succeeding Business Day.
- 1.14 The rule of construction that the contract shall be interpreted against the Party responsible for the drafting or preparation of this Agreement, shall not apply.
- 1.15 This Agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.
- 1.16 The word person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a state and an agency of state (in each case, whether or not having a separate legal personality).
- 1.17 A reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assignees.
- 1.18 A reference to something having a material adverse effect on a person is a reference to it having a material adverse effect -
- 1.18.1 on that person's financial condition or operations or on its consolidated financial condition or operations; or
- 1.18.2 on its ability to comply with its obligations under this Agreement.

## **2 APPLICATION FORM**

- 2.1 It is recorded that the submission of the Application Form amounts to an offer by the Client to enter into this Agreement with Velocity Trade. Either Party can terminate this Agreement at any time as stipulated in clauses 23 and 24 of this Agreement.
- 2.2 By submitting the Application Form and by initiating each Transaction, the Client acknowledges to Velocity Trade that -
- 2.2.1 the Client has received or downloaded, and read and understood, these terms and conditions, all Appendices hereto, Risk Disclosure Statement/s and Disclosure Statement, the Product Schedules and the Privacy Policy; and
- 2.2.2 whether or not this Agreement is specifically referred to and unless the terms of this Agreement are expressly excluded, every Transaction is governed by the terms and conditions of this Agreement.

### **3 TERM OF AGREEMENT**

- 3.1 This Agreement takes effect, and the rights and obligations of each Party commence, on and from the Commencement Date.
- 3.2 This Agreement continues in force until terminated in accordance with its terms or as agreed by the Parties.

### **4 SCOPE OF AGREEMENT**

- 4.1 Provided that the Client complies with its obligations under this Agreement, Velocity Trade may enter into Transactions with the Client as set out in and in accordance with this Agreement and any annexure to this Agreement.
- 4.2 If Velocity Trade specifies any further type of Transaction that it may enter into with the Client or if Velocity Trade otherwise determines (in its sole discretion) that amendments to this Agreement are necessary, the Client acknowledges and agrees that -
- 4.2.1 Velocity Trade may amend this Agreement including, in the case of any further type of Transaction being specified, to reflect the terms and conditions on and subject to which Velocity Trade will enter into any such Transaction;
- 4.2.2 any such amendment will be notified to the Client by way of the Online Portal or electronic mail or such other form of communication as Velocity Trade determines to be appropriate;
- 4.2.3 a copy of this Agreement, as amended, will be available on the Online Portal; and
- 4.2.4 Clients are required to accept amended terms within 30 business days from notification or access to the platform may be suspended. Clients may terminate the Agreement per clauses 23 and 24 in this Agreement if they do not accept amendments. The Client can activate the account at any time after suspension by accepting the new terms.
- 4.3 This Agreement, each Transaction (and, to the extent recorded in a Confirmation, each Confirmation) together constitute a single agreement between the Parties.
- 4.4 The Client acknowledges and agrees that, unless Velocity Trade agrees otherwise in writing -
- 4.4.1 The Transactions will only be entered into on the Client's instructions as provided for in this Agreement and Velocity Trade will at all times have a non-discretionary mandate;
- 4.4.2 Velocity Trade does not provide any advice, recommendation, opinion or guidance in relation to the entry into this Agreement or any Transaction, and Velocity Trade makes no representations to the Client; and
- 4.4.3 The execution of the instructions by the Client shall at no time imply Velocity Trade's approval of any of the Client's investment decisions and entry into of a Transaction by the Client does

not mean that Velocity Trade makes a recommendation, holds an opinion or gives guidance to the Client in relation to its entry into of that Transaction.

4.5 The Client acknowledges and agrees that Velocity Trade does not intend to and is not required to consider one or more of the Client's objectives, financial situation and needs but that -

4.5.1 Velocity Trade may provide general information to the Client that Velocity Trade provides to its clients generally; and

4.5.2 that information will not take into account the particular needs, objectives or financial circumstances of the Client.

4.6 Subject to the provisions of this Agreement and Applicable Law, the Client hereby authorises Velocity Trade to appoint one or more Authorised Representatives to represent it in the performance of its obligations under this agreement and delegate all or any of its powers and authorities in terms of this agreement to such Authorised Representative.

## **5 ONLINE PORTAL**

### **5.1 Using the Online Portal**

5.1.1 The Client agrees to access and use each Online Portal in accordance with, and solely for the purposes set out in, this Agreement.

5.1.2 The provision of an Online Portal may involve the sub-licensing of Licensor software and/or information systems.

5.1.3 Velocity Trade or the Licensor may, with or without notice to the Client, change the nature, composition, features or availability of an Online Portal, provided that such change shall not prevent Velocity Trade from performing the Services.

5.1.4 .

### **5.2 Unavailability of Online Portal**

5.2.1 Where, for any reason, the Client is unable to access and use the relevant Online Portal, Velocity Trade may, at its absolute discretion, trade through other means with the Client, such as the Call Centre.

5.2.2 Velocity Trade shall be entitled to notify the Client of any unavoidable delay in the performance of the rectification of the Online Portal and will advise the Client of other means of trading, having regard to the circumstances.

### **5.3 Acknowledgments and agreements of Client**

5.3.1 The Client -

- 5.3.1.1 acknowledges and agrees that any Online Portal is provided on an “as is” basis;
- 5.3.1.2 acknowledges and agrees that there are significant risks associated with using and relying on the Online Portal, including risks related to the use of software and/or telecommunications systems, such as software errors and bugs, delays in telecommunications systems, interrupted service, data supply errors, faults or inaccuracies and security breaches;
- 5.3.1.3 assumes all risk of use or attempted use of the Online Portal and any data provided by way of the Online Portal; and
- 5.3.1.4 acknowledges and agrees that it has no recourse against Velocity Trade or any Licensor in relation to the use or availability of the Online Portal or any errors in Licensor software and/or related information systems;

#### **5.4 Support and maintenance of Online Portal**

- 5.4.1 The Client -
  - 5.4.1.1 acknowledges and agrees that Velocity Trade has no obligation or responsibility to -
    - 5.4.1.1.1 provide support for or maintenance of any Online Portal, including by supplying any corrections, updates or new releases; and
    - 5.4.1.1.2 verify, correct, complete or update any information displayed on the Online Portal.
  - 5.4.1.2 acknowledges and agrees that, subject to clause 5.2.2, Velocity Trade has no obligation or responsibility to –
    - 5.4.1.2.1 inform the Client of any difficulties Velocity Trade or other third parties experience in relation to use of or access to an Online Portal or to take any action in relation to these difficulties;
    - 5.4.1.2.2 verify, correct, complete or update any information displayed on an Online Portal; and
    - 5.4.1.2.3 take any action in relation to those difficulties.

#### **5.5 Security**

- 5.5.1 The Client -
  - 5.5.1.1 assumes full responsibility for any decision in relation to which any data provided to the Client by way of the Online Portal may be used or relied upon;
  - 5.5.1.2 will make its own independent decision to access or use the Online Portal or to enter into any Transaction; and

- 5.5.1.3 acknowledges and agrees that no Online Portal serves as the primary basis for any of the Client's investment decisions concerning its accounts or its managed or fiduciary accounts;
- 5.5.1.4 agrees to ensure the security and confidentiality of all Security Credentials;
- 5.5.1.5 agrees and acknowledges that, if any person accesses or uses the Online Portal using a Security Credential, the Client is liable for the conduct of that person and the person's compliance with this Agreement, whether or not the Client authorises the access and/or use;
- 5.5.1.6 acknowledges and agrees that, if Velocity Trade determines that the security surrounding any Online Portal or the security or confidentiality of any Security Credentials is or has been breached, Velocity Trade may terminate, revoke, suspend, modify or change any or all of the Security Credentials at any time with or without prior notice; and
- 5.5.1.7 acknowledges and agrees that where the Online Portal requires the use of Security Credentials, all Online Portal Communications are deemed to be on behalf of and authorised by the Client;
- 5.5.1.8 accepts all responsibility for the genuineness and accuracy, in relation to content and form, of all Online Portal Communications and for all resulting actions, including orders entered and Transactions entered into;
- 5.5.1.9 acknowledges that Velocity Trade is not obliged to act on any Online Portal Communication and will be free to accept or reject, in its sole discretion, any transaction that the Client seeks to execute through the Online Portal;
- 5.5.1.10 acknowledges and agrees that Velocity Trade may, at its discretion, verify receipt of any Online Portal Communications;
- 5.5.1.11 acknowledges and agrees that the Client has no right to amend or revoke the Online Portal Communication, unless Velocity Trade agrees otherwise; and
- 5.5.1.12 acknowledges and agrees that -
  - 5.5.1.12.1 Velocity Trade's records of any Online Portal Communication and any communication sent by Velocity Trade by way of the relevant Online Portal are deemed to be accurate until the contrary is proven; and
  - 5.5.1.12.2 the Client bears the burden of proof that those records are inaccurate or incomplete, except in the case of manifest error or fraud.

## 5.6 Third party Licensors

- 5.6.1 The Client acknowledges and agrees that the provision of an Online Portal may involve the sub-licensing of Licensor software and/or information systems.
- 5.6.2 The Client waives all claims and causes of action which it may otherwise have against a Licensor.
- 5.6.3 The Client acknowledges and agrees that -
  - 5.6.3.1 the Licensor is providing only a technical means for effecting Transactions;
  - 5.6.3.2 the Licensor is neither directly nor indirectly a party to any Transaction;
  - 5.6.3.3 the Licensor is not inviting, arranging for, or advising the Client or any third party to effect any Transaction or to purchase, sell or otherwise deal in any currency, security, commodity, derivative or future;
  - 5.6.3.4 the Licensor is not liable in any manner to any person for the failure of any person effecting a Transaction by way of an Online Portal to perform its obligations under that Transaction; and
  - 5.6.3.5 the Licensor will not be involved in any dispute relating to any Transaction.
- 5.6.4 The Client -
  - 5.6.4.1 is to maintain, for the duration of this Agreement, and for a period of 3 years afterwards, accounting and computer records that enable Velocity Trade and/or any Licensor to determine compliance with this clause and this Agreement;
  - 5.6.4.2 is to permit Velocity Trade and/or any Licensor to audit the Client's access to and use of any Online Portal (including the Client's records of its access to and use of that Online Portal); and
  - 5.6.4.3 acknowledges that information obtained pursuant to this clause may be used to determine the Client's compliance with this clause.

## **5.7 Intellectual Property Rights in Online Portal**

- 5.7.1 The Client acknowledges and agrees that -
  - 5.7.1.1 all Intellectual Property Rights in respect of or derived from an Online Portal are and remain the sole and exclusive property of Velocity Trade and/or any Licensors; and
  - 5.7.1.2 the Client has no Intellectual Property Rights in respect of or derived from and will not acquire any Intellectual Property Rights in relation to an Online Portal and/or any derivative or adaptation of an Online Portal.
- 5.7.2 The Client is to use all reasonable efforts -

- 5.7.2.1 to protect any such Intellectual Property Rights in an Online Portal; and
- 5.7.2.2 to comply with a request of Velocity Trade, acting reasonably, to protect its contractual, statutory and common law rights and obligations in respect of an Online Portal.
- 5.7.3 If the Client becomes aware of any access to or use of the Online Portal by a third party that is unauthorised or which constitutes an infringement or interference with any of Velocity Trade's and/or the Licensor's Intellectual Property Rights, it is promptly to notify Velocity Trade and, acting reasonably, co-operate with Velocity Trade and/or any Licensor with respect to any legal action which Velocity Trade and/or any Licensor may undertake in respect of the infringement.

## **5.8 Restrictions on use of Online Portal**

- 5.8.1 The Client acknowledges and agrees not -
  - 5.8.1.1 to use, copy, merge, make derivative works of or transfer copies of any software; or
  - 5.8.1.2 to use or disclose to any third party any information obtained through or from an Online Portal other than for the purposes expressly set out in this Agreement; or
  - 5.8.1.3 to allow any access to or use of an Online Portal by any third party; or
  - 5.8.1.4 to sell, lease or otherwise provide, directly or indirectly, an Online Portal to any third party except as expressly permitted by this Agreement; or
  - 5.8.1.5 to reverse engineer, disassemble or decompile any software; or
  - 5.8.1.6 to copy any manuals related to an Online Portal; or
  - 5.8.1.7 to remove any statutory copyright notice, or other notice included in an Online Portal or Licensor software or on any medium containing that software; or
  - 5.8.1.8 to transmit or receive using an Online Portal (or cause to transmit or receive) any information or material which is pornographic, obscene, abusive, profane, offensive, misleading, deceptive, disparaging or defamatory; or
  - 5.8.1.9 to use the Online Portal after the expiry, termination or cancellation of this Agreement and/or any license agreement between Velocity Trade and its Licensor.

## **5.9 Security and operating environment**

The Client is responsible for ensuring the adequacy of the operating environment and the security of the environment, both physical and electronic, of the Client's access to and use of an Online Portal, including -

- 5.9.1 Maintain security measures maintaining appropriate security measures to prevent unauthorised access to, use of or damage -
- 5.9.2 to an Online Portal and any information systems accessible through an Online Portal; and
- 5.9.3 to any password management system not explicitly controlled by Velocity Trade or a Licensor;
- 5.9.4 where the Client accesses and uses, or attempts to access and use, an Online Portal from any laptop computer or other portable device, taking all measures necessary to ensure the security, integrity and reliability of such computer or other portable device (including the security of the internet connection) and the Client is solely liable for any failure in such computer or other portable device's security, integrity or reliability; and
- 5.9.5 complying with all reasonable operational and security procedures notified by Velocity Trade from time to time and to inform Velocity Trade immediately of any breach of security.
- 5.10 To the maximum extent permitted by law, Velocity Trade makes no representation or warranty (express or implied) and expressly disclaims any warranties -
- 5.10.1 in relation to the merchantability or fitness for a particular purpose and any warranty for the access to or use of or the results of the access to or use of the Online Portal with respect to its suitability, availability, functionality, correctness, quality, accuracy, completeness, reliability, performance, timeliness, operation, continued availability or otherwise;
- 5.10.2 that any Online Portal Communication -
- 5.10.2.1 will result in Velocity Trade entering into a Transaction with the Client; and/or
- 5.10.2.2 has been received by Velocity Trade; and
- 5.10.2.3 Requirements or needs that the Online Portal meets the requirements or needs of the Client.

## **6 NATURE OF RELATIONSHIP**

- 6.1 The Client agrees that Velocity Trade may appoint its Associates to render some of the Services and, where applicable, facilitate the Transactions.
- 6.2 The Client represents and warrants to Velocity Trade that it enters into this Agreement, and undertakes that it will enter into each Transaction, on behalf of the Client.
- 6.3 The aforementioned representation and warranty is deemed to be repeated each time the Client enters into a Transaction.
- 6.4 If the Client nevertheless enters into this Agreement or any Transaction on behalf of one or more principals, the Client acknowledges and agrees that Velocity Trade does not accept any such principal as a client for the purposes of this Agreement or any Transaction.



## 7 INTEREST AND THIRD PARTY ACCOUNTS

7.1 No interest is payable by Velocity Trade on an Account except as specifically provided for in this clause 7.

7.2 For purposes of this clause 7 and clause 9 “**Deposit Interest**” means interest payable by Velocity Trade on Client Moneys.

7.3 Velocity Trade will pay Deposit Interest earned on client monies less applicable fees on uninvested cash in the Client’s Account.

7.4 The applicable interest rates in respect of which Velocity Trade will pay Deposit Interest are set out in the applicable Product Schedule.

7.5 Velocity Trade will pay Deposit Interest in arrears on such days as may be specified in the applicable Product Schedule.

7.6 The Client authorises Velocity Trade -

7.6.1 to withhold or deduct from any such payment of Deposit Interest to the Client any resident or non-resident withholding tax that is required to be withheld or deducted by Applicable Law; and

7.6.2 if necessary for this purpose, to withdraw any such withholding tax from Velocity Trade bank account where Client Moneys are held (including, where relevant, a Segregated Funds Account).

7.7 If an Account has a debit balance, the Client is to pay interest daily to Velocity Trade on the full amount of that balance at the relevant cost of funds plus a margin that is set out in the applicable Product Schedule or otherwise published or provided by Velocity Trade.

7.8 If the Client fails to meet any payment obligations, the Client is to pay interest daily to Velocity Trade on the amount that was due but not paid at the relevant cost of funds plus a margin that is set out in the then-current Risk Disclosure Statement or otherwise published or provided by Velocity Trade.

7.9 The Client is to ensure that any transfer of moneys by it, is drawn on or made from an account in its name and not on or from that of another party, unless Velocity Trade has previously agreed otherwise in writing.

7.10 The Client acknowledges and agrees that Velocity Trade -

7.10.1 may, in its absolute discretion, without being obliged to do so, return any cheque drawn on, or transfer of moneys from, a third party account, unless Velocity Trade has previously agreed otherwise in writing; and

7.10.2 does not accept or bear any liability or responsibility for any loss, including consequential loss, incurred or sustained by the Client as a result of or arising out of Velocity Trade returning any

cheque drawn on, or transfer of moneys from, a third party account, including any loss, including consequential loss, incurred or sustained by the Client because it is subsequently in default of its obligations under this Agreement or any Transaction.

## **8 REGISTRATION AND CUSTODY ARRANGEMENTS**

- 8.1 All Transactions shall be registered in the name of the Custodian.
- 8.2 Velocity Trade shall appoint the Custodian to hold in safe custody on behalf of the Client all share certificates or other documents evidencing title to the Transactions from time to time. The Custodian must be approved to perform these services in terms of the FM Act or the FAIS Act or the relevant jurisdictions legislation.
- 8.3 Velocity Trade shall have no responsibility or liability with respect to the transmission or safe-keeping of documentation or the acts or omissions of the Custodian or other Service Providers with respect thereto.

## **9 ENCUMBRANCES**

- 9.1 You warrant in favour of Velocity and the Custodian that the Khula Sizwe Shares are and will remain free from any lien, pledge, restriction, right of pre-emption, option or such other encumbrance (“**Encumbrances**”).
- 9.2 You acknowledge and agree that you may not, at any time during the Lock-In Period, Encumber your Khula Sizwe Shares or permit your Khula Sizwe Shares to be Encumbered.
- 9.3 Neither the Velocity nor the Custodian will at any time during the Lock-In Period, grant, acknowledge, accept or record, in whatsoever form, any Encumbrance over or in respect of your Khula Sizwe Shares (or give any instruction with a view to achieving any of the foregoing).

## **10 REMATERIALIZATION OF KHLUA SIZWE SHARES**

You may instruct the Custodian in writing to rematerialize your Khula Sizwe Unlisted Shares at any time in accordance with the Applicable Rules; provided that, during the Lock-In Period, the share certificates in respect of your Khula Sizwe Shares must be retained by the transfer secretary of Khula Sizwe appointed from time to time.

## **11 RESTRICTED TRANSACTIONS DURING LOCK-IN PERIOD**

- 11.1 In respect of Khula Sizwe Shares, only the following types of Transactions will be allowed:
- 11.1.1 transfer of shares to the deceased or insolvent estate of the Client in the case of death or insolvency of the Client;
- 11.1.2 Transactions forming part of a Corporate Action.

- 11.2 In respect of all Transactions referred to in 11.1 above, the following rules will apply:
- 11.2.1 a transfer instruction will be issued to the Custodian (if your Khula Sizwe Shares are held in uncertificated form) or the Transfer Secretary (if your Khula Sizwe Shares are held in certificated form) to transfer your Khula Sizwe Shares to a specific, identified transferee;
  - 11.2.2 if the transferee to whom your Khula Sizwe Shares are to be transferred is already confirmed as a “Verified Shareholder” in terms of the Khula Sizwe Prospectus, then the Transaction will be recorded in your Account;
  - 11.2.3 if the transferee to whom your Khula Sizwe Shares are to be transferred is not already a “Verified Shareholder”, such transferee must complete the Application Process (if applicable) in accordance with the Khula Sizwe Prospectus;
  - 11.2.4 in all cases, all Taxes levied in respect of Transactions set above must (if applicable) be paid by the persons responsible therefor (ie the transferee of Khula Sizwe Shares); and
  - 11.2.5 You, your estate and the person to whom your Khula Sizwe Shares are to be transferred must deposit the relevant transaction fees and any applicable Taxes into the Account.

## 12 CORPORATE ACTIONS

Without limiting any other provision of this Agreement, this clause sets out the consequences, for the purpose of this Agreement, any Corporate Action taken by Khula Sizwe.

### 12.1 Definitions

For the purpose of this clause 12 –

- 12.1.1 “**Ex-Date**” means the date on immediately prior to the date on which the Corporate Action is Scheduled to take place; and
- 12.1.2 “**Pay-Date**” means, in relation to a Corporate Action, the date on which the consideration in respect of the relevant Securities to which that Corporation Action relates is payable by Khula Sizwe.

### 12.2 Rights Issues

If the Client holds share positions on the last date to trade as specified by Khula Sizwe, the Client may receive an offer to acquire additional shares in Khula Sizwe (“**the Rights Offer**”). The Rights Offer may be renounceable or non-renounceable. The Client shall provide Velocity Trade with a written instruction as to the Rights Offer within the time period specified by Velocity Trade. If the Rights Offer is non-renounceable, the Client shall be entitled to accept or reject the Rights Offer. If the Rights Offer is renounceable, the Client shall be entitled to accept or reject the Rights Offer or sell the Rights Offer to a third party. If the Client fails to respond to a non-renounceable Rights Offer within the period specified by Velocity Trade, the Rights Offer may lapse and have no further force

and effect. If the Client fails to response to a renounceable Rights Offer within the time period specified by Velocity Trade, Velocity Trade shall be entitled, but not obliged, to sell the Rights Offer to any third party for the account of the Client. The proceeds from the sale of the Rights Offer will be for the account of the Client less the fees payable to Velocity Trade in terms of this Agreement.

### **12.3 Cash Dividends**

Cash dividends are allocated to the Client on the Ex-date reflecting the market price movement on the Ex-date, but the actual value of the payment will be settled on the date on which payment is made to Velocity Trade. Dividend payments from share positions will be credited to the Client's Account less any applicable Taxes deducted.

### **12.4 Optional Dividends**

12.4.1 Unless the Client elects otherwise in terms of clause 12.4 dividend shall be paid in cash. The Client can elect to apply the dividend by acquiring for additional shares in Khula Sizwe. The shares to be acquired by the Client as aforesaid shall be proportional to the shares held by the Client as at the record date for the dividend. The shares will be allocated once the reinvestment rate is confirmed for the value Pay Date, once the shares have been received by the Custodian.

12.4.2 The Client shall not be entitled to receive payment of a dividend in a different currency to the currency in which the dividend has been declared.

### **12.5 Share Dividends and Bonus Shares**

Khula Sizwe may issue additional shares to the Client, whether in proportion to existing shareholder or otherwise. These shares may be issued and allotted by the issuer on the Ex-date at the value as at the Pay Date. The additional shares issued as aforesaid shall only be available to trade once they have been received by the Custodian and allocated to the Client on the Online Portal.

### **12.6 Share Splits, Reverse Share Splits/ Spin Offs**

12.6.1 A "Share Split" is an increase in Khula Sizwe's number of issued shares proportional to a reduction in the par value or nominal value of the existing shares. In the case of a Share Split the Client shall receive additional shares in Khula Sizwe in proportion to its shareholding. The additional shares issued in terms of a Share Split shall be allocated to the Client on the Ex-Date, but at a reduced price. The additional shares in terms of a Share Split shall be issued to the Client as fully paid up shares.

12.6.2 A "Reverse Share Split" is a decrease in the number of issued shares proportional to an increase in the par value of the existing shares. In terms of a Reverse Share Split the number of shares held by the Client will be reduced on the Ex-Date, but the shares held by the client after the Reverse Share Split will be reflected at an increased price.

12.6.3 A “Spin Off” means the issue of additional shares to the Client in a new class of shares in proportion to their existing holding in the issuer. Such additional shares are allocated on the Ex-Date.

12.6.4 The additional shares resulting from a Share Split or Spin Off will be allocated on the Ex-Date, but will only be available for trading once such additional shares have been received by the Custodian.

**12.7 Tender Offers**

The Client shall be entitled to tender shares in its portfolio on the terms on which the Client has been notified of by means of the Online Portal.

**12.8 Mergers & Mergers with Elections**

12.8.1 As a result of a merger in respect of the issuer of shares held by the Client, the Client may become entitled to –

12.8.1.1 receive payment in cash on the Pay-Date;

12.8.1.2 be issued additional shares in Khula Sizwe on the Ex-Date;

12.8.1.3 receive a combination of payment in cash and the issued of additional shares in Khula Sizwe on the Ex-Date.

12.8.2 In the case of a mandatory merger, the Client shall have no election as to the form of consideration to be received by the Client in terms of clause 12.8.1. In the case of a non-mandatory merger, the Client may elect the form of payment or consideration to be received by the Client, provided that such election is exercised within the timer period set out in the applicable notice, failing which the consideration payable to the Client shall be as set out in the applicable merger notice.

12.8.3 Any shares allocated as a result of the merger will only be available for trading once such shares have been received by the Custodian.

**12.9 Deletion of open orders due to a Corporate Action**

12.9.1 On the Ex-Date open orders to enter into Transactions are deleted for certain types of Corporate Events, as set out in the table below.

Corporate Action Type	Never delete Orders	Always delete Order	Rule in respect of deleting Orders
Tender Offers	X		
Stock splits		X	
Reversed Stock Split		X	

Bonus Issues		X	
Mandatory Mergers		X	
Spin Offs		X	
Ticker Changes		X	
De-Listings		X	
Cash Dividends			Deleted if the change in the market price is calculated to be over 20% due to the Cash Dividend
Share Dividends			Deleted if the change in the market price is calculated to be over 20% due to the Share Dividends
Optional Dividends			Deleted if the change in the market price is calculated to be over 20% due to the Optional Dividends
Rights Issue			Deleted if the change in the market price is calculated to be over 20% due to the Rights Issue

#### **12.10 Fractional Compensation**

- 12.10.1 A fractional share is less than one full share in Khula Sizwe and can arise as a result of a Corporate Action entitlement calculation. For the following Corporate Actions, Velocity Trade shall cash compensation wherever the Client becomes entitled to a fractional share -
- 12.10.2 share splits;
- 12.10.3 reverse share splits;
- 12.10.4 optional dividends on share positions; and
- 12.10.5 mergers.

#### **12.11 Taxes and Fees on Corporate actions**

Taxes and fees may also occur on other Corporate Actions, other than cash dividends such as fee on a share dividend or tax on a merger. When such taxes and fees occur Velocity Trade will debit the Client's Account accordingly.

#### **12.12 Special Corporate Action Events**

Special and infrequent Corporate Actions that do not come under the descriptions above may occur. Velocity Trade, through its Service Providers, will handle such Corporate Actions in the overall best interest of the Client to the extent that time and operational procedures will allow.

#### **12.13 Voting**

**13 THE CUSTODIAN SHALL BE AVAILABLE AT ALL GENERAL MEETINGS OF KHULA SIZWE TO ISSUE SUCH LETTERS OF REPRESENTATION TO YOU OR YOUR DULY AUTHORISED NOMINEE, WHOSE IDENTITY MUST BE VERIFIED BY VELOCITY, IMMEDIATELY PRIOR TO THE MEETING. FEES AND EXPENSES**

- 13.1 The basis on which, the manner in which and the intervals at which the Client will remunerate Velocity Trade and/or its Associates for the Services rendered by Velocity Trade and/or its Associates to the Client or Transactions concluded with or on instruction of the Client in terms of this Agreement are set out in the applicable Product Schedule as furnished via the Online Portal or as otherwise notified by Velocity Trade and/or its Associates to the Client or its clients generally.
- 13.2 Velocity Trade may, on prior written notice, furnish to the Client, whether electronically or otherwise, with changes to the fees and charges from time to time.
- 13.3 Notwithstanding anything contained in this Agreement, the Parties agree that during the Lock-in Period, Khula Sizwe and Barloworld shall be jointly and severally responsible for payment of all fees and expenses payable to Velocity in terms of this Agreement. Velocity shall enter into a separate agreement with Khula Sizwe and Barloworld to regulate such payment.

**14 PAYMENTS AND STANDARD SETTLEMENT INSTRUCTIONS**

- 14.1 The Client authorises Velocity Trade in accordance with their usual practice, to withdraw from the Velocity Trade bank account where Client Moneys are held (including, where relevant, the Segregated Funds Account), and to debit the relevant Account accordingly, at any time any fee, commission or charge when it becomes payable to Velocity Trade and/or any of its Associates.
- 14.2 Velocity Trade may, in its absolute discretion, determine and advise the Client that if, on any date-
- 14.2.1 the same amounts are payable under this Agreement in respect of the same type of Transaction by each party to the other in the same currency, then, on that date, each party's obligation to pay that amount is automatically satisfied and discharged; and
- 14.2.2 the aggregate amount payable by one party exceeds the aggregate amount that is payable by the other party in the same currency, then, on that date, the amounts payable by each party to the other party are to be paid or satisfied by payment of the net amount of those obligations by the party having a net debit to the party having a net credit.
- 14.3 Velocity Trade has appointed a service provider to ensure that Velocity Trade complies at all times with its memorandum and articles of associations or memorandum of incorporation, whichever is applicable, and that all payments made by Velocity Trade will be in line with the standard settlement instruction issued by the Client or the relevant third party.

**15 REPORTING TO CLIENT**

- 15.1 Velocity Trade will provide regular statements electronically to Clients.

15.2 The Client is responsible for ensuring that its electronic mail contact details with Velocity Trade are accurate and up-to-date.

## **16 RISK**

16.1 The Client acknowledges and agrees that –

16.1.1 the Client has read and understood the risks of entering into Transactions outlined in the Risk Disclosure Statement and/or on the Online Portal; and

16.1.2 entering into Transactions incurs the risk of loss as well as the prospect of profit; and

16.1.3 it accepts such risks, which may result in financial loss.

## **17 EXEMPTION, INDEMNITY AND INSURANCE**

17.1 Subject to clause 17.2, Velocity Trade shall not be liable for, and the Client hereby indemnifies Velocity Trade against, any claims for loss, expense or damage which the Client may suffer, howsoever such loss, expense or damage may arise or be suffered, in respect of the Transactions concluded by the Client.

17.2 The exemption and indemnity in clause 17.1 shall not extend to any loss, expense or damage which arises as a result of the fraud, dishonesty or gross negligence of Velocity Trade or any director, employee, officer, or agent of Velocity Trade.

17.3 Velocity Trade shall, to the extent, and if required by the registrar in terms of the FAIS Act, arrange and maintain, at its own expense, insurance cover in respect of any liability which may be incurred by Velocity Trade in connection with this agreement. Velocity Trade shall on request from the Client furnish the Client with written confirmation of the amount of such insurance cover.

## **18 SEGREGATED FUNDS ACCOUNT**

18.1 Subject to this Agreement and Applicable Law, Velocity Trade will hold Client Money in respect of Transactions in a Segregated Funds Account -

18.1.1 in South Africa with one or more Registered Banks; or

18.1.2 outside South Africa with one or more overseas banks.

18.2 The Client acknowledges and agrees that, where Client Money is described as being held in a “segregated funds account” -

18.2.1 that account is maintained by Velocity Trade in its own name or by one of its Service Providers but is held in trust for the benefit of the Clients;

18.2.2 that account is managed by the Service Provider;



- 18.2.3 Client Money of the Client is pooled with client money of other clients of Velocity Trade;
- 18.2.4 Client Money of the Client may, in the insolvency of Velocity Trade and subject to Applicable Law, be held in favour of all clients of Velocity Trade with funds in the relevant Segregated Funds Account; and
- 18.2.5 there are risks involved in the manner in which Client Money is so held
- 18.3 The Parties wish to record that the Client Money falls under the Financial Institutions (Protections of Funds) Act 28 of 2001 and which act applies in relation to the protection of Client Money and trust property and Velocity Trade undertakes at all times to comply with its obligations as a financial institution under such act.
- 18.4 The Client acknowledges and agrees that Velocity Trade and the appointed service provider may, jointly, subject to Applicable Law withdraw moneys from a Segregated Funds Account for the purpose of -
- 18.4.1 making a payment for, or in connection with, the entering into settling of Transactions by Velocity Trade (including any such payment referred to in this Agreement); or
- 18.4.2 making a payment to the Client; or
- 18.4.3 making a payment to another person designated by Velocity Trade in connection with a Transaction entered into under this Agreement and agreed to by the Client,
- such payments being, payments made to persons specified by the Client for the purpose of -
- 18.4.4 meeting the amount of any fees, commissions or other charges payable under this Agreement by the Client to Velocity Trade in respect of any Transaction; or
- 18.4.5 making a payment to Velocity Trade in reimbursement for any payment made by Velocity Trade to or on behalf of the Client for which Velocity Trade is entitled to be reimbursed by the Client under this Agreement; or
- 18.4.6 where funds are deposited into the Segregated Funds Account that include Client Money and other money, withdrawing that portion of the funds that is not Client Money; or
- 18.4.7 where Velocity Trade has deposited its own money into the Segregated Funds Account to cover a shortfall in the Segregated Funds Account, withdrawing that money once it is no longer required to cover the shortfall.
- 18.5 Velocity Trade is entitled at any time to deduct, without notice or recourse to the Client, any moneys deposited in, or credited to, the Segregated Funds Account -
- 18.5.1 in error by, or on behalf of, Velocity Trade; or
- 18.5.2 that are not Client Money.

## 19 REPRESENTATIONS AND WARRANTIES

- 19.1 Each of Velocity Trade and the Client represents and warrants to the other that -
- 19.1.1 its obligations under each of this Agreement and each Transaction are legal, valid, binding and enforceable in accordance with its terms, subject to equitable principles and insolvency laws of general application;
  - 19.1.2 no litigation, arbitration or administrative proceeding is current, pending or, to its knowledge, threatened that has or could have a material adverse effect on it or on Velocity Trade's ability to exercise or enforce its rights under this Agreement or any Transaction;
  - 19.1.3 it is solvent and able to pay its indebtedness as it falls due;
  - 19.1.4 no Event of Default has occurred and is continuing;
  - 19.1.5 the execution and delivery of, and observance under, this Agreement and each Transaction, and any instrument in connection with this Agreement to which it is a party, do not violate or conflict with any Applicable Laws, any provision of its constituent documents, any order or judgment of any court or Public Authority applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
  - 19.1.6 all consents required to be obtained by it in connection with the execution, delivery and performance of this Agreement, including in relation to its access to and use of the Online Portal, have been obtained and all Transactions are valid and subsisting.
- 19.2 The Client represents and warrants that -
- 19.2.1 all information provided by the Client to Velocity Trade in connection with this Agreement and each Transaction was true in all material respects as at the date when that information was provided and remains so as at the date of this Agreement; and
  - 19.2.2 there are no facts or circumstances that have not been disclosed to Velocity Trade that would make that information untrue or misleading in any material respect;
  - 19.2.3 the Client's access to and use of each Online Portal complies with -
    - 19.2.3.1 all Applicable Law (including all relevant export laws and regulations to ensure that no software or any portion of it is exported, directly or indirectly, in violation of those laws);
    - 19.2.3.2 all applicable policies and practices of securities and futures Exchanges and associations, alternative trading facilities, and regulatory or self-regulatory organisations; and
    - 19.2.3.3 the policies and procedures (whether stated orally or in writing) applicable to each Online Portal and this Agreement;

and the Client has all consents, rights, authority and has taken all actions necessary, to use the Online Portal and enter any Transactions relating thereto;

19.2.4 the Client is not in default under -

19.2.4.1 any agreement relating to indebtedness; or

19.2.4.2 any guarantee; or

19.2.4.3 any other agreement,

to an extent or in a manner that has or would have a material adverse effect on the Client;

19.2.5 the Client is acting for the Client's own account, and it has made its own independent decision to enter into this Agreement and each Transaction, and whether any Transaction is appropriate or proper, based upon the Client's own judgment and upon advice from such advisers as the Client has deemed necessary;

19.2.6 the Client is not relying on any communication (written or oral) of Velocity Trade as investment advice or as a recommendation to enter into this Agreement or any Transaction, it being understood that information and explanations related to the terms and conditions of a Transaction are not considered investment advice or a recommendation to enter into that Transaction; and

19.2.7 the Client has not received from Velocity Trade any assurance or guarantee as to the expected results of any Transaction;

19.2.8 the Client is capable of assessing the merits of and understanding (on the Client's own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of each Transaction; and

19.2.9 the Client is capable of assuming, and assumes, the financial and other risks of each Transaction;

19.2.10 Velocity Trade does not act as a fiduciary for or an adviser to the Client in respect of any Transaction; and

19.2.11 except as disclosed to, and accepted in writing by, Velocity Trade, no security interest exists over or affects, nor is there any agreement to give or permit to exist any security interest over or affecting, any Account or moneys payable or paid to Velocity Trade.

19.3 If the Client is a company, the Client represents and warrants that -

19.3.1 it is incorporated, has full power and authority to enter into and comply with its obligations under this Agreement and each Transaction; and

- 19.3.2 has taken all corporate and other action and obtained all consents needed to enable it to do so; and
- 19.3.3 the execution, delivery and performance of this Agreement and each Transaction does not violate its founding documentation.
- 19.4 If the Client is trustee of a trust, the Client represents and warrants that -
- 19.4.1 the Client is entering into this Agreement and each Transaction as duly appointed trustee of the trust; and
- 19.4.2 the Client is presently the sole trustee or, if not, that all trustees have entered into this Agreement;
- 19.4.3 the trust was validly created and is in existence at the date of the Client's submission of the Application Form;
- 19.4.4 the execution, delivery and performance of this Agreement and each Transaction is permitted by the terms of the trust deed and does not violate the trust deed or the trust; and
- 19.4.5 the trust is solely constituted by the trust deed;
- 19.4.6 the Client has full power and authority to enter into and comply with its obligations under this Agreement and each Transaction; and
- 19.4.7 the Client has taken all action and obtained all consents necessary to enable it to do so; and
- 19.4.8 the Client is not in breach of the terms of the trust, whether related to this Agreement or not, and has the right to be indemnified from the assets of the trust for all liabilities incurred under this Agreement and each Transaction;
- 19.4.9 even though the Client is entering into this Agreement and each Transaction as trustee of a trust, the Client is personally liable to meet any obligations under this Agreement and each Transaction.
- 19.5 Each of the representations and warranties in this clause is deemed to be repeated continuously so long as this Agreement remains in effect by reference to the facts and circumstances then existing.

## **20 LEGAL AND REGULATORY REQUIREMENTS**

- 20.1 Notwithstanding any other provision of this Agreement, Velocity Trade may take any action it considers necessary or desirable in its absolute discretion to ensure compliance with all Applicable Law.
- 20.2 Velocity Trade undertakes to comply with all Applicable Law including the terms and conditions of any authorisation to carry on the business of dealing in futures contracts granted under FAIS and the FM Act and as Authorised Representative.

- 20.3 The Client undertakes to comply with all Applicable Law.
- 20.4 The Client acknowledges that, for the purpose of compliance with any Applicable Laws, Velocity Trade may be required to report details relating to the Client to the relevant authorities.

## **21 TAXES**

- 21.1 The Client is to pay all Taxes and all other fees reasonably incurred by Velocity Trade in connection with this Agreement or any Transaction.
- 21.2 Any imposition of Tax, which may from time to time be levied in respect of this Agreement or any Transaction, is for the account of, and payable by, the Client.
- 21.3 Velocity Trade is entitled to deduct or withhold any Tax, as required by law to be deducted or withheld, from any payment made under this Agreement, or any payment made under any Transaction or any amount credited to the Velocity Trade bank account where Client Moneys are held (including, where relevant, the Segregated Funds Account) or any Account.

## **22 FORCE MAJEURE**

- 22.1 Velocity Trade is not in default or breach of this Agreement or any Transaction to the extent that Force Majeure arises.
- 22.2 Subject to clause 22.3, if Force Majeure arises, Velocity Trade is to use its reasonable endeavours to give notice as soon as reasonably practicable to the Client accordingly.
- 22.3 Velocity Trade is not liable to the Client for any failure or delay in giving this notice.
- 22.4 If Force Majeure arises, and regardless of whether or not Velocity Trade has given the notice referred to in clause 22.2, Velocity Trade may take whatever steps in relation to this Agreement or any Transaction that, in its opinion, are necessary or desirable, including -
- 22.4.1 changing or restricting any hours within which the Client may enter into Transactions; or
- 22.4.2 amending this Agreement or any Transaction, to the extent only that it is not possible, practicable or legal for Velocity Trade to perform or comply with its obligations to the Client under this Agreement or any Transaction; or
- 22.4.3 terminating, closing out or not rolling over any Transaction or cancelling any instructions or orders under this Agreement or any Transaction; or
- 22.4.4 taking or omitting to take any other action that Velocity Trade, acting reasonably, deems to be appropriate in the circumstances having regard to its business and its clients generally.

## 23 EVENTS OF DEFAULT

- 23.1 An Event of Default is any of the following events or circumstances with respect to Velocity Trade or the Client, as appropriate (the “**Defaulting Party**”, the other party being the “**Non-defaulting Party**”) -
- 23.1.1 any representation or warranty made by Velocity Trade or the Client under or in connection with this Agreement or a Transaction is later found to be incorrect or misleading in a material respect; or
- 23.1.2 the Client fails to satisfy any credit requirement as may be determined by Velocity Trade from time to time having regard for the Applicable Laws; or
- 23.1.3 the Client fails to perform or comply with any of its obligations under this Agreement or any Transaction; or
- 23.1.4 the Client is in breach of any Applicable Law; or
- 23.1.5 the conduct of the Client is such that, in the opinion of Velocity Trade, it would cause a reasonably prudent financial person dealing in any of the Transactions to be of the view that the Client could be unable to perform and comply with any of the Client’s obligations under this Agreement or any Transaction, including strict compliance with any time limit; or
- 23.1.6 where the Client is a natural person -
- 23.1.6.1 the Client dies or becomes of unsound mind; or
- 23.1.6.2 the Client’s person or estate is liable to be dealt with in any way under any law relating to mental health; or
- 23.1.6.3 in the absence of the Client making alternative arrangements, the Client is not contactable by Velocity Trade for any period of 24 hours in order for Velocity Trade to obtain instructions relating to any Transaction, any order or any obligations of the Client under this Agreement or any Transaction; or
- 23.1.6.4 the Client becomes insolvent or enters into a composition or arrangement for the benefit of creditors or if the Client act of insolvency as defined in the Insolvency Act 24 of 1936; or
- 23.1.7 Velocity Trade or the Client, where the Client is a company -
- 23.1.7.1 if either Party is deemed to be unable to pay its debts in terms of the Companies Act, 2008; and/or
- 23.1.7.2 if either Party compromises or attempts to compromise with its creditors, or defers or attempts to defer payment of debts owing by either Party to its creditors generally; and/or

- 23.1.7.3 any final judgment of any court or arbitration award against either Party remains unsatisfied for a period of 10 (ten) Business Days after it has been granted against such Party and for the purposes of this sub-paragraph, a final judgment means a judgment -
- 23.1.7.3.1 which is not appealable, or
- 23.1.7.3.2 which is appealable but in respect of which the period for the lodging of an appeal has lapsed and the relevant Party has failed to institute appeal proceedings, or
- 23.1.7.3.3 which is not capable of rescission, or
- 23.1.7.3.4 which is capable of rescission but in respect of which the period for applying for rescission has lapsed and the relevant Party has failed to apply for rescission or has applied for rescission of such judgment and the application for rescission has been denied; and/or
- 23.1.7.3.5 if any property, moveable or immovable, of either Party is attached in execution or by any process of any Court; and/or
- 23.1.7.4 if either Party's members propose or pass a resolution to be placed in business rescue or for its liquidation or winding-up; and/or
- 23.1.7.5 if either Party has an order granted against or in respect of it, in terms of which such Party is sought to be provisionally or finally wound up, liquidated, dissolved or placed under judicial management or has any equivalent application or proceedings brought against it in terms of any equivalent applicable legislation; and/or
- 23.1.7.6 any guarantee of or security given in respect of the Client's obligations under this Agreement is, without the consent of Velocity Trade, withdrawn or becomes defective or insufficient.
- 23.1.8 If, at any time, an Event of Default has occurred in respect of the Defaulting Party, the Non-defaulting Party may give written notice to the Defaulting Party designating a date of termination of this Agreement.

## **24 TERMINATION**

- 24.1 This Agreement shall commence on the Commencement Date and shall continue until terminated in accordance with the provisions of 23 and the remaining provisions of this clause 24.
- 24.2 Velocity Trade and the Client shall be entitled to terminate this Agreement -
- 24.2.1 after the Lock-in Period, by notice in writing to the other Party of 60 calendar days; or
- 24.2.2 by written agreement, subject to the terms of such agreement.

24.3 Notwithstanding anything to the contrary contained in this Agreement, in the event of the Client being a natural person, Velocity Trade and the Client shall be entitled to terminate this Agreement in the following manner -

24.3.1 After the Lock-in Period, the Client may terminate this Agreement, at any time, by giving 20 (twenty) business' days' notice to this effect to Velocity Trade; or

24.3.2 Velocity Trade may cancel this Agreement in the event of a material breach having been committed by the individual Client and the Client failing to rectify such breach within 20 (twenty) business' days' of receipt of a written notice from Velocity Trade.

24.4 Should Velocity Trade -

24.4.1 cease to be a licensed financial services provider in terms of the FAIS Act; or

24.4.2 be sequestrated, liquidated or placed under judicial management, whether provisionally or finally;

Velocity Trade shall notify the Client immediately and take reasonable steps to ensure any outstanding business is completed promptly or transferred to another provider.

24.5 Subject to specific written instructions from the Client, Velocity Trade shall not initiate any Transaction on behalf of the Client after notice of termination has been received or given.

## 25 INDEMNITY

25.1 The Client indemnifies each of Velocity Trade and the Associates (each, an indemnified party) against, and agrees to hold each of them harmless from, any and all losses, including Consequential Loss, sustained or incurred by an indemnified party arising out of or in connection with -

25.1.1 any breach of representation or warranty made by the Client under or in connection with this Agreement or any Transaction; or

25.1.2 any failure by the Client to comply with or perform any of its obligations under or in connection with this Agreement or a Transaction; or

25.1.3 any access or use or attempted access or use to or of the Online Portal by the Client and any person accessing or using the Online Portal through any Security Credentials, whether or not such access or use is authorised by the Client; or

25.1.4 any third party claim related to the access or use or attempted access or use to or of the Online Portal by the Client, any component of the Online Portal or any data provided through the Online Portal or relating to decisions or advice arising out of such access or use; or

25.1.5 any claim by any Licensor arising or resulting from the Client's' access or use or attempted access or use to or of the Online Portal; or



- 25.1.6 any insufficiency whatsoever with respect to the environment from which the Client accesses or uses the Online Portal and/or with respect to the Client's security measures to prevent unauthorised access to or use of the Online Portal and any security breach in relation to the Online Portal (including any access to or use of any of Velocity Trade's other systems not covered by this Agreement and any software viruses or other activities that comprise the security arrangements of Velocity Trade's IT infrastructure or network) caused directly or indirectly by the Client or any of its Representatives; or
  - 25.1.7 any error, corruption or delay in any order or other instruction (whether oral, written or electronic) communicated by the Client; or
  - 25.1.8 acting on any order or instruction (whether oral, written or electronic) which is communicated using any Security Credentials; or
  - 25.1.9 the termination by Velocity Trade of any Transaction under this Agreement; or
  - 25.1.10 the enforcement of an indemnified party's rights under this Agreement or any Transaction, except and to the extent that the loss or Consequential Loss is sustained or incurred by an indemnified party directly as a result of its gross negligence or wilful default.
- 25.2 Each indemnity in this clause constitutes a separate and independent obligation of the Client from its other obligations under this clause.
- 25.3 No proof or evidence of any actual loss, including consequential loss, may be required by the Client.

## **26 EXCLUSION OF LIABILITY**

- 26.1 Velocity Trade is not liable to the Client for any loss or consequential loss suffered or incurred by the Client arising out of or in connection with this Agreement or any Transaction, whether in contract, delict, or otherwise, including -
- 26.1.1 any error, corruption or delay in any order, instruction or other communication (whether oral, written or electronic) by the Client; or
  - 26.1.2 Velocity Trade acting on any order, instruction or other communication (whether oral, written or electronic) through any Security Credentials; or
  - 26.1.3 any misrepresentation of any information or general financial advice provided by or on behalf of Velocity Trade in relation to this Agreement or a Transaction; or
  - 26.1.4 except in the case of fraud by Velocity Trade, the reliance of the Client on a rate or a price which the Client knew, or ought reasonably to have known, to be materially incorrect; or

- 26.1.5 the entry into of a Transaction, or other action, by the Client on the basis of money deposited in or credited to an Account, or (where applicable) the Segregated Funds Account or any other account where Client Money is held, in error by, or on behalf of, Velocity Trade; or
- 26.1.6 the exercise, attempted exercise or non-exercise of any of the rights, powers or remedies of Velocity Trade under this Agreement or any Transaction; or
- 26.1.7 the occurrence and continuance of any Force Majeure; or
- 26.1.8 any failure of the Client -
  - 26.1.8.1 to access or use the Online Portal for its intended purposes, whether as a result of failure by Velocity Trade or otherwise; or
  - 26.1.8.2 to maintain the security, integrity and confidentiality of all Security Credentials; or
  - 26.1.8.3 to verify its Online Portal Communications and any communications sent by Velocity Trade by way of the relevant Online Portal, other notices and communications and other reports; or
  - 26.1.8.4 any deficiency whatsoever of the Online Portal, including failure of, or inability to, access or use the Online Portal; or
  - 26.1.8.5 the occurrence of Abnormal Market Conditions; or
  - 26.1.8.6 any failure of a telecommunications link or network by which the Client may seek access to or use of the Online Portal; or
  - 26.1.8.7 with respect to any information published on the Online Portal, including any claims or losses in relation to the accuracy, reliability or timeliness of such information; or
  - 26.1.8.8 with respect to any support, advice or assistance provided by Velocity Trade, including any claims or losses in relation to technical support, trading support and account administration support.

## **27 TAPE RECORDING**

- 27.1 The Client acknowledges and agrees that Velocity Trade may -
  - 27.1.1 record all telephone conversations between the Client and Velocity Trade; and
  - 27.1.2 submit the recording, or a transcript from the recording, as evidence to any court or in any proceeding for the purpose of establishing any matters pertinent to this Agreement or any Transaction.

27.2 The Client acknowledges and agrees that Velocity Trade is under no obligation to retain a recording or transcript made by Velocity Trade and that Velocity Trade may destroy such recording or transcript.

## **28 CONFIDENTIALITY**

28.1 Each Party undertakes, without the prior written consent of the other Party -

28.1.1 not to use (other than in performing its obligations or exercising its rights under this Agreement or a Transaction) or disclose to any person any Confidential Information it has or acquires under or pursuant to this Agreement or any Transaction; and

28.1.2 to make every effort, including issuing legal proceedings, to prevent the use or disclosure of Confidential Information by any person.

28.2 The obligations contained in clause 28.1 do not apply -

28.2.1 to the extent required by law, by the listing requirements of any relevant Exchange or other Public Authority; or

28.2.2 to the extent that the information is already in the public domain (other than by virtue of a breach by it of the provisions of this Agreement or any Transaction); or

28.2.3 to any information that each party agrees in writing is not Confidential Information; or

28.2.4 to the extent that either party must use or disclose Confidential Information in order to perform its obligations under, or comply with the terms of, this Agreement or any Transaction; or

28.2.5 to any information about the Client that Velocity Trade, in its absolute discretion, deems necessary to disclose to its Associates provided that each of those persons -

28.2.5.1 is made aware of the provisions of this clause; and

28.2.5.2 needs to know that information for the purpose of performing obligations or exercising rights under this Agreement or a Transaction as the case may be.

28.3 If either party becomes aware, or suspects, that any unauthorised person has obtained or attempted to obtain access to Confidential Information of the other party, that party is immediately to notify the other party and take the steps reasonably available to it to protect that Confidential Information.

## **29 DATA PROTECTION LAWS**

Velocity Trade agrees that it shall –

29.1 use and apply appropriate measures, procedures and controls in the processing of the Client's personal information in terms of this Agreement, it being agreed that Velocity Trade shall process the Client's personal information in accordance with the Privacy Policy;

- 29.2 ensure that in the course of the performance of its obligations in terms of this Agreement, it complies with all Applicable Law relating to the protection of data or personal information, including but not limited to the Protection of Personal Information Act, 4 of 2013; and
- 29.3 comply with all applicable industry codes of conduct to the extent that they regulate or relate to the processing of personal information.

### **30 CONFLICTS OF INTEREST**

- 30.1 The Client acknowledges and agrees that Velocity Trade is not responsible for any loss, including consequential loss, which may result directly or indirectly from services or actions provided or taken pursuant to this Agreement.
- 30.2 The Client acknowledges that Velocity Trade's relationship to the Client is not that of a fiduciary and Velocity Trade owes no fiduciary duties to the Client.

### **31 ASSIGNMENT**

- 31.1 Subject to this clause, this Agreement is binding upon and ensures for the benefit of each of Velocity Trade and the Client and its successors and permitted assignees or transferees.
- 31.2 Velocity Trade may assign or transfer any of its rights or obligations under this Agreement or any Transaction without the consent of the Client. Each assignee or transferee is to have the same rights against the Client under this Agreement or any Transaction as if named in this Agreement as Velocity Trade.
- 31.3 Velocity Trade may disclose, on a confidential basis, to a potential assignee, transferee or other person with whom contractual relations in connection with this Agreement or any Transaction are contemplated, any information about the Client, whether or not that information was obtained in confidence and whether or not that information is publicly available.
- 31.4 The Client may not -
- 31.4.1 assign or transfer (whether absolutely, in equity, by way of security or otherwise), declare a trust over or otherwise deal with any of its rights or obligations under this Agreement or any Transaction; or
- 31.4.2 allow any such assignment, transfer, trust or dealing to subsist, without the prior written consent of Velocity Trade.
- 31.5 If an Event of Default occurs or the Client is in default of any of its obligations under this Agreement or any Transaction, Velocity Trade may (without prejudice to any other rights it may have) at any time afterwards assign and transfer to any person (including any third party with whom Velocity Trade has entered into Hedging Arrangements) with immediate effect all or any of its rights in respect

of moneys owing to it under this Agreement or any Transaction, as well as any security or other remedies available to it in respect of those moneys.

31.6 If any such assignment is made, then the Client, if so required by Velocity Trade and the assignee and transferee, is to acknowledge in writing that the assignee and transferee has assumed the rights and obligations of Velocity Trade under this Agreement and any Transaction in relation to the relevant moneys.

## **32 DISPUTE RESOLUTION**

32.1 The Parties agree that any dispute (including an alleged breach of, or default under, any Transaction) will be determined in terms of this clause by written notice given to the other Party in accordance with the rules of the Arbitration Foundation of Southern Africa (“**AFSA**”) by an arbitrator or arbitrators nominated by the Parties.

32.2 This clause shall not preclude either Party from obtaining urgent relief from a court of competent jurisdiction.

32.3 The Parties hereby consent to the arbitration being dealt with on an urgent basis in terms of the Rules of AFSA should Velocity Trade, by written notice require the arbitration to be held on an urgent basis. In such event the Parties agree to apply jointly to the AFSA Secretariat as required in terms of the said Rules to facilitate such urgent arbitration.

32.4 The arbitrator shall be, if the matter in dispute is principally -

32.4.1 a legal matter, a practising advocate or attorney of Cape Town of at least fifteen years' standing;

32.4.2 an accounting matter, a practising chartered accountant of Cape Town of at least fifteen years' standing;

32.4.3 any other matter, any independent person,

agreed upon between the Parties.

32.5 Should the Parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within seven days after the arbitration was demanded, the matter shall be deemed to be a legal matter.

32.6 Should the Parties fail to agree on an arbitrator within fourteen days after the giving of notice in terms of clause 32.1, the arbitrator shall be appointed at the request of either Party to the dispute in terms of the Rules of AFSA.

32.7 The decision of the arbitrator shall be final and binding on the Parties to the dispute and may be made an order of the court referred to in clause 32.8 at the instance of any of the parties to the dispute.

- 32.8 The Parties hereby consent to arbitration being held in Cape Town and to the jurisdiction of the High Court of South Africa in respect of the proceedings referred to in clause 32.2.
- 32.9 The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of obtaining an order as contemplated herein.
- 32.10 The provisions of this clause are severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this Agreement.

### **33 NOTICES AND ADDRESSES OF SERVICES**

- 33.1 Each of the Parties choose as the address for service and delivery of documents their respective addresses set out in the Client Application for the purposes of the giving of any notice, the serving of any process and for any other purpose arising out of or in connection with this Agreement.
- 33.2 Each of the Parties shall be entitled from time to time to vary its address for the service and delivery of documents to any other address within the Republic of South Africa which is not a post office box or *post restante*.
- 33.3 Any notice given in terms of this Agreement shall be in writing and shall -
- 33.3.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
- 33.3.2 if posted by prepaid registered post be deemed to have been received by the addressee on the 4<sup>th</sup> (fourth) day following the date of such posting;
- 33.3.3 if transmitted by facsimile be deemed to have been received by the addressee on the expiration of 24 (twenty four) hours after transmission;
- 33.3.4 if sent by courier be deemed to have been received on the date of delivery by the courier service concerned, unless the contrary is proved;
- 33.3.5 if transmitted by electronic mail message, be deemed to have been delivered to and received by the addressee when the complete electronic mail message enters an information system designated or used for that purpose by the addressee and is capable of being retrieved and processed by the addressee.
- 33.4 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from the other including by way of facsimile transmission shall be adequate written notice or communication to such Party.

## **34 AMENDMENTS**

34.1 Except as specifically otherwise provided in any of the Annexures, Velocity Trade may amend, modify or replace this Agreement and/or any of the then-current documents that comprise this Agreement at any time by -

34.1.1 written notice to the Client in accordance with clause 33; and/or

34.1.2 posting notice accordingly and/or an amended form of this Agreement and/or any of its components on the Online Portal; and/or

34.1.3 posting notice accordingly and/or an amended form of this Agreement and/or any of its components on an Online Portal; and/or

34.1.4 as otherwise permitted by Applicable Law.

34.2 The Client acknowledges and agrees that -

34.2.1 Velocity Trade may make available to the Client any such notice and/or an amended form of this Agreement and/or any of its components to this Agreement by any one or more of the means specified in clause 34.1; and

34.2.2 if the notice and/or an amended form of this Agreement and/or any of its components is made available to the Client by more than one means, it is deemed to be made available to the Client at the earliest possible time.

34.3 A notice and/or an amended form of this Agreement and/or any of its components posted on the Online Portal is deemed to have been made available to the Client at the time the relevant document was posted by Velocity Trade on the Online Portal.

34.4 Any amendment, modification or replacement to or of this Agreement and/or any of its components is effective on the date specified in the notice.

34.5 The amendment, modification or replacement to or of this Agreement is deemed to be accepted by the Client if the Client -

34.5.1 continues to enter into Transactions by way of the Online Portal; or

34.5.2 allows any outstanding Transaction to roll over.

34.6 This amendment, modification or replacement, where applicable, also amends the terms of any outstanding Transaction on that effective date.

## **35 GENERAL**

35.1 Each of the provisions of this Agreement is separate and severable and enforceable accordingly. If any such term or condition is or becomes unenforceable for any reason whatsoever, that term or

condition is severable from and shall not affect the validity of any other term or condition contained in this Agreement.

35.2 A certificate by Velocity Trade of any amount payable under this Agreement or any Transaction is, in the absence of manifest error or fraud, conclusive evidence for all purposes, including for any proceedings.

35.3 Each party will pay its own costs (including legal fees) of entering into -this Agreement.

35.4 If the Client is a trustee, the Client undertakes -

35.4.1 to notify Velocity Trade immediately in writing if -

35.4.1.1 the Client ceases for any reason or at any time to be the sole trustee of the trust; or

35.4.1.2 if there are two or more trustees, any other trustee ceases for any reason to be a trustee of the trust; or

35.4.1.3 the trust is determined or for any other reason ceases to exist; or

35.4.1.4 it becomes aware of any breach of trust; and

35.4.2 not to make any distribution of any capital of the trust which would result in the trust having insufficient assets to meet the Client's liabilities under outstanding Transactions and this Agreement.

35.5 Except as expressly set out in this Agreement, all warranties that may be implied into this Agreement by law are excluded to the maximum extent permitted by law.

35.6 Where this Agreement is executed by any party under power of attorney then, by executing this Agreement, each attorney is deemed to have stated that the attorney has received no notice of revocation of the relevant power of attorney.

35.7 The expiration, cancellation or other termination of this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after such expiration, cancellation or other termination or which of necessity must continue to endure after such expiration, cancellation or other termination, notwithstanding that the relevant clause may not expressly provide for such continuation.

35.8 No indulgence, leniency or extension of time which any Party may give or allow to the other Party in respect of the performance of any obligation hereunder or under a Transaction, shall in any way prejudice the Party giving or allowing the indulgence, leniency or extension or preclude such Party from exercising any of its rights an enforcing the obligations of the other Party in terms of this Agreement and the Transaction. A provision of, or a right created under, this Agreement or any Transaction may not be waived except in writing executed by the party granting the waiver.



- 35.9 The person submitting the Application Form on behalf of the Client warrants his authority to do so.
- 35.10 This Agreement constitutes the entire agreement between the Parties as to the subject matter hereof and save as may be expressly set out herein, no agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.
- 35.11 The rights of each party under this Agreement and each Transaction are cumulative and not exclusive of any rights provided by law.