



**CLIENT AGREEMENT**

**DERIVATIVE SECURITIES TRADING**



## AUTHORIZED SIGNATORIES

	Authorized Signatory 1	Authorized Signatory 2	Authorized Signatory 3
Name			
Designation			
Postal Address & Code			
Identification No.			
Mobile No.			

## Client's Bank Details

Account Name:	Account Number: <input type="text"/>
Bank Name:	Bank Branch:
Bank Code: <input type="text"/>	Swift Code: <input type="text"/>
Signature (s) of applicant/authorized signatories in accordance to mandate provided	

Payments Preference: Cheque  Direct to Bank

### **For proof of banking details produce:**

- Copy of 3 months bank statement

For Companies	For Trust	For Partnership
<ul style="list-style-type: none"> <li>i. Copy of Certificate of Incorporation/Certificate of registration</li> <li>ii. Certified Memorandum and Articles of Association.</li> <li>iii. Copy of P.I.N. Certificate</li> <li>iv. Copy of Director's IDs Photos and P.I.N. Certificate</li> <li>v. Resolution specifying who is authorized to act on behalf of the company</li> <li>vi. Copy of IDs and Photos authorized person</li> <li>vii. 3 months bank statement</li> </ul>	<ul style="list-style-type: none"> <li>i. Letter of authority signed by court.</li> <li>ii. Trust deed or other founding documents.</li> <li>iii. Resolution specifying who is authorized to act on behalf of the trust</li> <li>iv. Copy of IDs and Photos authorized person.</li> <li>v. Copy of IDS for all trustees and beneficiaries.</li> <li>vi. ID of the founder of the trust Certificate of registration</li> <li>vii. 3 months bank statement</li> </ul>	<ul style="list-style-type: none"> <li>i. Partnership agreement</li> <li>ii. ID of natural persons who are partners.</li> <li>iii. Resolution specifying who is authorized to act on behalf of the partnership.</li> <li>iv. Certificate of registration</li> <li>v. Pin certificate, passport photos</li> <li>vi. 3 months bank statement</li> </ul>

**Source of Funds**

Salary

Business

Others (Specify)

Salary		Business		Other
Occupation		Type		

**Investment objectives**

- i. ....
- ii. ....
- iii. ....
- iv. ....
- v. ....

**Collateral**

- i. ....
- ii. ....
- iii. ....
- iv. ....
- v. ....

## Bank Details

CO-OPERATIVE BANK	
ACCOUNT NAME	AIB-AXYS AFRICA LIMITED
ACCOUNT NO.	01136709278000
BANK	CO-OPERATIVE BANK
BRANCH	CITY HALL
SWIFT ADDRESS	KCOOKENA

## MPESA

PAYBILL	400200
ACCOUNT NO.	01136709278000

## AIB Contact Details

**Mobile:** +254 711 047 000/ +254 725 965 555

**Phone:** +254 20 220178 / 2212206

**Email:** [info@aib-axysafrica.com](mailto:info@aib-axysafrica.com)

## EMAIL MANDATE

Dear [Mr/Mrs/Ms/Dr./Prof]

You are kindly requested to complete this Email Mandate form which shall give AIB-AXYS Africa Limited ("AIB") authority to accept and execute email orders received from you, in the instance that you are not able to visit our offices to complete a sell/buy order or a payment request form, where instructions are sent to us via electronic mail, AIB and/or its agents give no guarantee as to the timeliness or execution of those instructions.

You mandate AIB to send statements portfolio, valuation reports and notification to the email provided.

AIB undertakes to act promptly with due care and diligence. You hereby request and authorize AIB to act, to rely and act upon any such instructions which may from time to time be, or purport to be given by you or in your name, you should be aware that email is not a secure medium and that any instructions received by us purported to be from you by email will be actioned.

AIB shall have no obligation to verify the authenticity of any instruction sent to us by email.

AIB will not be held liable to you or to any other person for or in respect of any direct, indirect consequential damage, expense, loss or cost of any kind or nature, arising from an instruction sent or received by email, whether or not as a result of delay, data destruction, system malfunction, interruption of communication links or provider service, or any similar problem over which AIB has no control.

You should therefore not assume that any email has been received by us and/or actioned unless you receive either an email and/or telephone call acknowledging our receipt.

You acknowledge and accept that generally it will not be possible to cancel or revise an electronic instruction after it has been given & executed.

You furthermore acknowledge and agree that there are risks of misunderstanding, error and fraud in any communication by electronic medium and that such risk shall be borne by you unless caused by the deliberate and proven default of the directors, officers or employees of AIB.

Please note that you will need to print off an AIB Buy/Sell Order form (available electronically upon request) or payment request form, complete it, sign, scan and send back to AIB.

Client Name \_\_\_\_\_

Email Address \_\_\_\_\_

Mobile No. \_\_\_\_\_

P. O. Box No. \_\_\_\_\_

CDS Account No. \_\_\_\_\_

AIB Account No. \_\_\_\_\_

Date of Signing \_\_\_\_\_ Signature \_\_\_\_\_

Witnessed by AIB-AXYS Africa Limited representative:

Name \_\_\_\_\_

## SECTION 3: TERMS AND CONDITIONS

**CONTRACT DATE:** The date of this Client Agreement (“Agreement”) is indicated in Section I as Contract Date.

### CONTRACT PARTIES:

This Agreement is made between:

- A. The Client(s) whose details are captured in Section I (“Client”); and,
- B. AIB-AXYS Africa Limited of Postal Address Number 43676-00100 Nairobi, Kenya, with its registered office at The Promenade, 5th Floor, General Mathenge Drive, Westlands. Nairobi (“AIB”).

### PREAMBLE

- a. AIB is duly admitted as a Trading Member of the Nairobi Securities Exchange Derivatives Market authorized to carry on the execution of transactions in Derivative Securities on behalf of its clients and on its proprietary account;
- b. The Client wishes to appoint AIB to facilitate and undertake trading of Derivative Securities in the Derivatives Market on behalf of the Client and AIB is willing to accept the appointment and provide the trading services subject to the terms and conditions of this Agreement;
- c. This Agreement sets out the terms and conditions governing the relationship of the Client and AIB and it is made in compliance with the NSE Derivatives Rules and the Capital Markets Derivatives Rules.

**NOW** in consideration of the mutual covenants and undertakings set out herein and other valuable consideration, sufficiency of which is acknowledged by the Client and AIB, **IT IS HEREBY AGREED** as follows:

### I. Definitions and Interpretation

#### I.1. Definitions

- I.1.1. **“Act”** means the Capital Markets Act (Chapter 485A of the Laws of Kenya) and any applicable regulations, rules and guidelines made thereunder, as re-enacted or amended from time to time;
- I.1.2. **“Applicable Laws”** means the Act, the Capital Markets Derivatives Regulations, the NSE Derivatives Rules and all other legal instruments governing or relevant to the activities of the Derivatives Market from time to time;
- I.1.3. **“Appointed Clearing Member”** means a Clearing Member appointed by AIB to clear and settle its Derivative Securities transactions in accordance with the NSE Derivatives Rules;
- I.1.4. **“Business Day”** has the meaning set out in the NSE Derivatives Rules;
- I.1.5. **“Capital Markets Derivatives Regulations”** means the Capital Markets (Derivatives Markets) Regulations, 2015 as re-enacted or amended from time to time;
- I.1.6. **“Clearing Member”** has the meaning set out in Rule 2 of the NSE Derivatives Rules;
- I.1.7. **“Client”** refers to the person whose details are set out in Section I;
- I.1.8. **“Client Trust Account”** means the bank account opened by AIB with the Appointed Clearing Member for purposes of handling all monies belonging to its clients;
- I.1.9. **“Collateral”** means the cash security provided by the Client to AIB from time to time to secure the performance of the Client’s obligations under this Agreement over and above the Initial Margin, Additional Margin and Market Collateral;
- I.1.10. **“Derivatives Market”** has the meaning set out in Section 2 of the Act;
- I.1.11. **“Effective Date”** means the date when this Agreement will come into force, which is the date AIB signs the Agreement;
- I.1.12. **“Funds Settlement Guidelines”** means the settlement guidelines contained in NSE Directive No.1 of 2016 - Derivatives Market Directive on Service Level Agreements;

- I.1.13. **“KYC”** means Know-Your-Client;
- I.1.14. **“Mandate”** means either (i) a non-discretionary mandate where AIB only transacts in response to an order of the Client or (ii) a discretionary mandate where AIB transacts for the Client at any time and on its own decision within the broad limits agreed with the Client, selected by the Client in Section I;
- I.1.15. **“Market Collateral”** has the meaning set out in the Capital Markets Derivatives Regulations;
- I.1.16. **“NSE”** means the Nairobi Securities Exchange Limited;
- I.1.17. **“NSE Clear”** means NSE Clear Limited, the duly approved Clearing House established by the NSE;
- I.1.18. **“NSE Derivatives Rules”** means the NSE Derivatives Rules as re-enacted or amended from time to time;
- I.1.19. **“Party”** means either AIB or the Client and **“Parties”** means both of them;
- I.1.20. **“Personal Information”** means information relating to an identifiable, natural or juristic person, including, but not limited to information about: race; gender; sex; pregnancy; marital status; nationality; ethnic or social origin; colour; sexual orientation; age; physical or mental health; well-being; disability; religion; conscience; belief; culture; language; birth; education; medical, financial, criminal or employment history; any identifying number; symbol; e-mail, postal or physical address; telephone number; location; any online identifier; any other particular assignment of the person; biometric information; personal opinions, views or preferences of the person or the views or opinions of another individual about the person; correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence; and the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person;
- I.1.21. **“Services”** means all the services to be provided by AIB to the Client under this Agreement;
- I.1.22. **“The Financial Reporting Centre”** means the institution established by Section 21 of the Proceeds of Crime and Anti-Money Laundering Act of 2009;
- I.1.23. **“Trading Member”** has the meaning set out in Rule 2 of the NSE Derivatives Rules and in this Agreement specifically refers to AIB.

## I.2. Interpretation

- I.2.1 All the capitalized terms used in this Agreement shall bear the respective meanings assigned to them in the NSE Derivatives Rules unless they are otherwise defined herein, or unless their usage in this Agreement is clearly inconsistent with their definition. In particular, the following capitalized terms shall have the meanings assigned to them in Rule 2 of the NSE Derivatives Rules: **“Additional Margin”**, **“Clearing House”**, **“Derivative Securities”**, **“Initial Margin”**, **“Margin”**, **“Retained Margin”** and **Trading Member**.
- I.2.2 Any timelines stipulated in this Agreement which have been adopted from the Applicable Laws, shall be automatically varied with the changes to the Applicable Laws from time to time.
- I.2.3 In the event of a conflict between the provisions of this Agreement and the provisions of the NSE Derivatives Rules, the provisions of the NSE Derivatives Rules shall apply.
- I.2.4 Words in the singular include the plural and *vice versa*.
- I.2.5 Words importing any one gender include any other gender.
- I.2.6 A reference to a Party shall include a reference to that Party's successors in interest, personal representatives and permitted assigns.
- I.2.7 The headings and sub-headings used in this Agreement are intended for convenience of reference only and shall not be taken into account for purposes of interpretation of the Agreement.
- I.2.8 The various sections in this Agreement form an integral part of the Agreement and shall have full force and effect as though the content were expressly set out in the main body of the Agreement.
- I.2.9 Where words have been defined in the body of this Agreement, such words will have the meaning so assigned throughout the Agreement, unless the context clearly requires otherwise.



- 1.2.10 Where the word “promptly” is used in this Agreement, it shall mean (i) within the timelines prescribed in the Applicable Laws, (ii) where there is no specific timeline prescribed in the Applicable Laws, then within a reasonable timeline taking into account any legal obligations that AIB may have to third parties, and (iii) in any other case, within three (3) Business Days.
- 1.2.11 Any reference to days, months or years shall, unless indicated otherwise, be taken to mean calendar days, months or years.
- 1.2.12 If any provision in a definition in this Agreement 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 this Agreement, notwithstanding that it is only contained in a definition.
- 1.2.13 The expiration or termination of this Agreement shall not affect those provisions of this Agreement that expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination.
- 1.2.14 No rule of construction shall apply to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.

## **2. Rules Binding**

- 2.1. The Parties agree that the terms of their relationship and engagement with respect to Derivatives Securities and any trade dealings undertaken by AIB on behalf of the Client shall be subject to the Applicable Laws and the prevailing operating rules, practices, directions and decisions of NSE Clear.
- 2.2. Without limiting the foregoing Clause 2.1, the Client acknowledges that the trading, settlement and clearing of the Derivative Securities is subject to the terms and conditions stipulated by NSE Clear from time to time and any contracts signed between AIB and its Approved Clearing Members.

## **3. General Client Agreements**

- 3.1. The Client acknowledges that the terms and conditions set out in this Agreement are in addition to the terms and conditions of the any other general agreements that the Client may have entered into with AIB. In case of any inconsistency between the provisions of such other agreements and this Agreement, the terms of this Agreement shall prevail.

## **4. Appointment and Term**

- 4.1. The Client hereby appoints AIB and grants AIB the Mandate to provide the Services in accordance with the terms set out in this Agreement and AIB accepts the appointment.
- 4.2. This Agreement shall come into operation on the Effective Date and shall continue in force unless terminated in accordance with Clause 21 (“**the Term**”).

## **5. Risk Acknowledgement**

- 5.1. The Client acknowledges that they have read the Risk Disclosure Statement in Section 4 and they fully understand the contents thereof.
- 5.2. The Client acknowledges that dealing in Derivative Securities is risky and may result in loss of the Client’s investments.
- 5.3. The Client further acknowledges that they have given consideration to their investment objectives, financial situation and needs and has formed the opinion that dealing in Derivative Securities is suitable for their purposes.

## **6. The Services**

- 6.1. AIB shall execute trades and undertake the buying and selling of Derivative Securities on behalf of the Client in accordance with the Mandate and perform all obligations imposed on it under this Agreement and the Applicable Laws.
- 6.2. The Client hereby acknowledges that AIB may refuse to deal or act in accordance with the Client’s instructions where to do so would exceed the trading limits set by AIB or would constitute a breach of the Applicable Laws or any Agreement to which AIB is a Party including but not limited to any Agreements between AIB and its Appointed Clearing Member. AIB will notify the Client of any such refusal as soon as practicable.

6.3. The Client authorizes AIB to accept and to act without any inquiry upon instructions provided by the Client (including orders placed) by recorded telephone or e-mail which appear to AIB to have been given by the Client, authorized agent of the Client, or by any other person duly acting on behalf of the Client, and the Client hereby indemnifies AIB in respect of any losses or expenses that AIB may suffer or incur as a result of so acting.

## **7. Obligations of AIB**

7.1. AIB agrees with the Client as follows:

- 7.1.1. AIB shall endeavour, but shall not be obliged, to confirm to the Client that any instruction has been executed and shall not be responsible for any accidental delay or inaccuracy in the execution of the Client's instructions;
  - 7.1.2. AIB may report to the Client in writing whenever a trade occurs and such report shall include details of the Derivatives Securities, the price, the volume, the time of the instruction to trade, the time at which the trade occurred, whether the trade had the effect of opening, closing, increasing or decreasing a position, the fees and commission payable and other details relevant to the trade; and,
  - 7.1.3. AIB shall maintain the trading and position records in accordance with Rule 7.2 of the NSE Derivatives Rules and shall take all reasonable steps to provide the Client with any information that the Client requires relating to their positions.
- 7.2. AIB shall prepare and provide the Client with account statements on a monthly basis in accordance with Rule 14.5 of the NSE Derivatives Rules.
- 7.3. Where the Client has granted AIB a discretionary Mandate, AIB hereby warrants that it will manage the Client's investments in accordance with the Client's Investment objectives set out in Section I.

## **8. Obligations of the Client**

8.1. The Client hereby undertakes as follows to AIB:

- 8.1.1. To deposit with AIB, as and when required by AIB, such funds as AIB may require to perform its obligations under this Agreement including Initial Margin, Variation Margin, Additional Margin and Collateral;
- 8.1.2. To promptly pay AIB any fees, charges or levies duly owing to AIB under this Agreement;
- 8.1.3. To provide all documentation and information AIB may require to perform its obligations under this Agreement, including but not limited to KYC documents and to promptly notify AIB of any changes thereto;
- 8.1.4. To cooperate with AIB in all matters relating to compliance with regulators including, CMA, NSE, NSE Clear and The Financial Reporting Centre;
- 8.1.5. To co-operate with AIB in all matters pertaining to this Agreement;
- 8.1.6. To promptly notify AIB in the event they are unable or likely to become unable to meet any of their obligations under this Agreement;
- 8.1.7. To perform all the obligations imposed upon the Client by the Applicable Laws.

## **9. Client Accounts and Client Funds**

- 9.1. AIB shall maintain a Client Trust Account and the Client authorises AIB to deal with the Client's funds to trade on behalf of the Client in accordance with this Agreement and the Applicable Laws.
- 9.2. The Client acknowledges that the Client's monies and the monies of other Clients of AIB may be commingled in the Client Group Trust Account unless the Client has requested and paid for a segregated client bank account.
- 9.3. All deposits and withdrawals made on behalf of the Client shall be made through the Client Group Account or the segregated client bank account, as may be applicable.
- 9.4. The Client hereby authorizes AIB to withdraw from the Client Trust Account or the segregated client bank account (as may be applicable), such amounts as are required from time to time to settle any amounts due in the course of opening, closing or maintaining any positions on behalf of the Client and to effect such other payments as are necessary in the operation of the Client's account.

- 9.5. All fund settlements to the Client Trust Account shall be made in accordance with the Funds Settlement Guidelines.
- 9.6. The Client acknowledges and authorizes that any and all funds held by AIB to the credit of the Client, at any point in time, may be used to meet any outstanding obligations of the Client or settle any default of the Client.

## **10. Margin**

### **10.1. Margin Payments and Market Collateral**

- 10.1.1. The Client hereby undertakes to deposit with AIB such sums as AIB may require in writing, from time to time, as Initial Margin, Variation Margin, Additional Margin, Market Collateral or any other amount required by AIB in order to close or maintain any positions on behalf of the Client and to perform its obligations under this Agreement and the Applicable Laws.

### **10.2. Margin Calls and Collateral**

- 10.2.1. Without in any way limiting or varying the requirement of Clause 10.1.1, AIB may call for payment of money or the provision of any other form of Collateral which AIB considers in its absolute discretion to be appropriate to secure the performance of the obligations incurred or to be incurred by AIB in connection with Derivative Securities transactions entered into for the account of the Client. The Client acknowledges and authorizes that AIB is entitled to call for Collateral of an amount or value which exceeds the Initial Margin, Additional Margin and any collateral which AIB is required to provide to NSE Clear or the Appointed Clearing Member. The Client further undertakes that they will maintain the Collateral stipulated in Section 1 or as required by AIB from time to time.
- 10.2.2. Time shall be of essence in the provision of Margin and Collateral required by AIB. The Client undertakes that they shall provide the Margin and Collateral within the timelines stipulated by AIB.
- 10.2.3. As security for the payment or delivery of all monies that are payable by the Client, and the performance of all of the Client's obligations under this Agreement, the Client hereby grants to AIB a security interest over the Collateral provided to or held by AIB, including the benefit of all contractual rights and obligations under this Agreement and under any transaction. The Client further grants to AIB a security interest over any present and future rights in relation to accounts receivable due to the Client. AIB shall have all of the rights of a secured party with respect to any such Collateral in respect of which AIB has a security interest and the Client will, at AIB's request, take such action as may be required to enable AIB to perfect the security or enforce any security interest and the Client hereby irrevocably appoints AIB as their attorney to take all necessary actions on the Client's behalf to perfect the security or enforce the security interest.
- 10.2.4. Notwithstanding anything in this Agreement, the Client further acknowledges that AIB is not providing the Client with any kind of safe custody service and that any Collateral provided by the Client to AIB under this Agreement is solely for the purposes set out in this Agreement. Accordingly, the Client acknowledges that no interest is payable on Collateral, Margin or any monies provided by the Client to AIB under this Agreement.
- 10.2.5. AIB may itself provide funds or other collateral to NSE Clear or Authorized Clearing Member and AIB will be entitled to retain any interest it receives on such moneys.
- 10.2.6. Until the Client has paid or discharged in full all monies and liabilities owed to AIB, and performed all obligations under any transactions contemplated under this Agreement, any monies from time to time outstanding to the credit of any of the Client's accounts with AIB may, at the discretion of AIB, be used to set off the Client's debts or discharge the Client's obligations under this Agreement.

### **10.3. Retained Margin**

- 10.3.1. The Client hereby acknowledges that AIB may on the Client's instructions retain any funds due to the Client as Retained Margin provided always that money so retained shall be paid to the Client if not traded within thirty (30) days.

### **10.4. Mode of Payment**

- 10.4.1. All payments made by the Client to AIB including Initial Margin, Additional Margin, Collateral or fees shall be by way of:
- a) a cheque;
  - b) a bank draft; or
  - c) online bank transfer or

## 10.5. Default by Client

10.5.1. In the event:

- a) the Client fails to pay any money or fails to provide security or fails to perform any obligation in relation to the provision of the Services; or
- b) the collateral provided by the Client to AIB is withdrawn or becomes ineffective and other replacement security acceptable to AIB is not provided; or
- c) the Client is at any time is not contactable by AIB within any reasonable period in order for AIB to obtain instructions on margin calls, provision of Collateral; or
- d) the conduct of the Client is such that a reasonably prudent AIB would be of the view that the Client would be unable to comply with all the Client's obligations under this Agreement including strict compliance with any time limits; or
- e) any other event of default occurs which AIB and the Client have agreed to be a breach either in this Agreement or any other agreement entered into between AIB and the Clearing Member in connection with this Agreement,

(each a default), AIB may in addition to any other right which it may have against the Client, without giving prior notice to the Client, take any or all of the following actions:

- a) realize the Collateral through sale, transfer or any other recognized method of disposal;
- b) realize any other securities or assets held by AIB to the credit of the Client whether such securities or assets are held by AIB in connection with this Agreement or for any other reason;
- c) take any action, or refrain from taking action which it considers reasonable in the circumstances in relation to Derivative Securities in the account of the Client;
- d) enter in to one or more transactions to effect the close out of one or more positions in accordance with the Applicable Laws;
- e) apply any cash held by AIB on the Client's account or to which AIB has access to or payments received from the Client in reduction of the Client's liability to AIB;
- f) charge an administration fee calculated by reference to the additional cost which may be incurred by AIB as a result of the default;
- g) levy a default charge on the amount of up to 15% per annum;
- h) Cancel any of the Client's unexecuted orders;
- i) exercise any other power, right or remedy which AIB may have under the Applicable Law or common law;
- j) exercise any other power, right or remedy that AIB may have under this Agreement or any other agreement entered into between the Client and AIB and the Client shall be liable for any direct and consequential losses and any deficiency that AIB may incur.

## 11. Clearing and Settlement Arrangement

- 11.1. The Client Acknowledges that AIB is a market participant in the NSE Derivatives Market and is a Party to a Clearing Agreement with the Appointed Clearing Member and accordingly all clearing and settlement of trades entered into by AIB on behalf of the Client shall be cleared and settled through the Appointed Clearing Member and AIB shall not be liable for any acts or omissions of the Appointed Clearing Member.
- 11.2. AIB is required to comply with settlement procedures prescribed in the Applicable Laws and the Client undertakes that they will use their best efforts to facilitate AIB's compliance with the said settlement procedures.
- 11.3. AIB is required to strictly comply with the timelines and processes for clearing and funds settlement set out in the NSE Directive No 1 of 2016, Derivatives Markets Directives Directive on Service Level Agreements and the Client undertakes that they will use their best efforts to facilitate AIB's compliance with the said Directive.

## **12. Execution of Orders**

12.1.1. AIB will use all commercially reasonable endeavours to execute the Client's instructions as given but AIB will not be liable for delays or errors in the transmission or execution of the Client's instructions.

## **12.2. Trading Limits**

12.2.1. AIB shall have the right, at any time to limit the positions of the Client as it deems necessary or as imposed upon it by the Appointed Clearing Member or in a manner and on a basis agreed upon between AIB and the Client and to close out any position, which exceeds the set limits.

12.2.2. AIB shall advise the Client of all trading or position limits imposed in accordance with clause 12.2.1.

## **12.3. Trading Records**

12.3.1. AIB hereby undertakes to establish and maintain all such records and accounts as are required under the Applicable Laws.

## **13. Trading by AIB**

13.1. The Client acknowledges that AIB, its directors, employees or associated entities may deal or trade as principal on their own accounts or deal or trade in Derivative Securities in a principal capacity.

13.1.1. The Client acknowledges and authorizes that AIB may, in certain circumstances permitted under the Applicable Laws, take the opposite position in a Derivatives Securities transaction either acting for another client or on its own account.

## **14. Telephone Calls**

The Parties hereby acknowledge and confirm that they are conversant with the relevant provisions of NSE Derivatives Rules in so far as the tape recording of telephone calls is concerned and the Parties hereby irrevocably consent to such tape recordings being made.

## **15. Client Details and Accessibility**

Dealing in Derivative Securities is acutely time-sensitive and it is the Client's responsibility to ensure the Client is accessible at all times during market opening hours. The Client therefore agrees to notify AIB in writing within two (2) Business Days of any change in the personal details that the Client has previously provided to AIB. Where the Client has open positions they must provide AIB with telephone or e-mail details that they can be contacted on Twenty Four (24) hours a day.

## **16. Fees**

16.1. The Client shall pay to AIB commissions, fees, levies, charges and taxes charged by AIB in connection with provision of the Services at the rates determined by AIB from time to time and notified to the Client in writing. The initial Fees and commissions payable are as set out in Section 5.

16.2. Any changes to the charges specified in this Agreement shall be notified to the Client in writing, unless notified to the Client verbally prior to the relevant dealing or trading taking place, and will take effect on the date mentioned in the relevant written or verbal (as the case may be) communication ("Due Date") Provided that where notice is given verbally it will be formalized in writing as soon as it is reasonably practicable.

16.3. The Client hereby undertakes to pay such amounts on the Due Date. In the event that the said amounts are not paid, AIB shall be entitled to set off against the Client's account, any fees, levies and/or charges, to the extent permissible by Law.

16.4. The Client further agrees that AIB may submit to the Client for payment, or may recoup from the Client any administration fees, and charge or management fees charged by the NSE or the Clearing House or duly incurred by AIB in the undertaking its obligations under this Agreement.

## **17. Data Protection**

17.1. The Client acknowledges that:

17.1.1. The Applicable Laws may require the Trading Member to collect Personal Information;

17.1.2. All Personal Information that the Client provides to the Trading Member is voluntarily provided; and

17.1.3. The Trading Member will have the right to determine (i) the means for Processing any Personal Information provided to it by the Client; and (ii) the objectives of processing all Personal information.

17.2. The Client consents to the Trading Member exchanging the Personal Information within its Group and disclosing such Personal Information to third parties where this is necessary for the performance of the Trading Members obligations or for any other objective the Trading Member may determine in terms of this Agreement but subject to Clause 17.3.

17.3. The Trading Member hereby undertakes to ensure protection of the data and Personal Information shared by the Client and further undertakes that no entity within its Group shall use the Personal Information to gain unfair advantage to the detriment of the Client

## **18. Disclosure to Third Parties**

18.1. Without prejudice to clause 17 above, AIB undertakes not to disclose confidential information relating to the Client except where such disclosure is:

18.1.1. made under compulsion of law or in terms of the Applicable Law; or

18.1.2. made with the consent of the Client.

## **19. Client Representation and Warranties**

19.1. The Client represents and warrants that:

19.1.1. all information and documents provided by the Client including but not limited to KYC documents and information and any other documents or information provided by the Client pursuant to this Agreement is true and correct in all material respects;

19.1.2. they will promptly notify AIB of any changes in the information set out in the documents mentioned in Clause 19.1.1;

19.1.3. they will comply with all the requirements of the Applicable Law;

19.1.4. they that they have read the Risk Disclosure Statement in Section 4 and fully understand the contents thereof and that they understand the risks involved in trading in Derivative Securities and are willing and able, financially or otherwise, to assume the risks of trading in Derivative Securities and;

19.1.5. they have legal capacity, full power and authority to enter into this Agreement, which when executed will constitute binding obligations on them in accordance with its terms;

19.1.6. where the Client has given AIB a discretionary Mandate, that the Client has the investment objectives set out in Section I and that the Client has read and understood the terms and conditions of the discretionary agreement executed between the Client and AIB.

## **20. Breach**

### **20.1. Breach by the Client**

20.1.1. The Client acknowledges that time shall be of the essence for the performance by the Client of any obligation under this Agreement and the Applicable Laws.

20.1.2. The Client commits a breach of this Agreement if the Client:

- a) fails to perform any of its obligations under this Agreement or any general Agreement executed by AIB and the Client in particular failing to pay any Margin as instructed by AIB or failing to provide collateral or failing to pay any fees due to AIB;
- b) commits an act of breach as stipulated in Rule 9.3 of the NSE Derivatives Rules;
- c) commits an act of default as set out in Clause 10.5

20.1.3. In the event the Client commits an act of breach as set out in clause 20.1.2, AIB shall be entitled to:

- a) Undertake any of the actions stipulated in Rule 9.4 of the NSE Derivatives Rules; or
- b) Require the Client to rectify the breach in the manner and within the timelines stipulated by AIB;
- c) Exercise any right to which AIB is entitled under this Agreement or any written law

20.1.4. The Client hereby agrees that the rights set out in Clause 20.1.3 shall be without prejudice to the right of AIB to receive indemnification for losses and costs incurred as a result of the breach by the Client.

## 20.2. Breach by AIB

20.2.1. AIB shall be deemed to have breached its obligations in terms of this Agreement if:

- a) it fails to fulfil any of its obligations as set out in this Agreement; or
- b) it commits an act of default as set out under the NSE Derivatives Rules; or

20.2.2. In the event AIB commits an act of breach as set out in clause 20.2.1, the Client shall be entitled to:

- a) If breach is capable of remedy require AIB to rectify such breach within seven (7) days or such reasonable time as shall be agreed between AIB and the Client and if AIB shall fail to rectify such breach within the stated period following receipt of notice from the Client requiring such breach to be remedied, the Client shall be entitled, to terminate this Agreement forthwith and to require AIB to transfer any position to any other AIB after having entered into the prescribed Client Agreement with such other member, or to instruct AIB to close out any or all of the Client's positions; or
- b) Exercise any right it may have under the Applicable Laws or the common law;

## 21. Termination

### 21.1. Termination without cause

21.1.1. Either Party may terminate this Agreement by giving to the other Party thirty (30) days' notice (or such period as the Parties may agree in writing) specifying the effective date of termination ("the Termination Date") which shall be a business day and this Agreement shall terminate on the Termination Date. Provided that:

21.1.1.1. AIB shall ensure that by the close of business on the Termination Date all trading positions entered into on behalf of the Client are closed out or transferred to another AIB in accordance with the NSE Derivatives Rules;

### 21.2. Termination for cause

21.2.1. Either Party may terminate this Agreement forthwith in the event:

- a) a Party commits a breach as set out under Clause 20 and if breach is capable of remedy fails to remedy that breach in accordance with Clause 20;
- b) the other Party has valid reason to suspect any illegal, invalid, unlawful or fraudulent activity on the part of the other Party;
- c) a Party becomes the subject of sanctions established by a regulatory body;
- d) The other Party is declared bankrupt or an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the other Party;
- e) The other Party makes any voluntary arrangement with its creditors or becomes subject to an administration order;
- f) The other Party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the entity resulting therefrom effectively agrees to be bound by or assume the obligations imposed on such Party under this Agreement);
- g) The other Party ceases, or threatens to cease, to carry on business.

## 21.2.2. Consequences of Termination

21.2.2.1. The termination of this Agreement shall not:

- a) affect the rights or obligations of the Parties in terms of this Agreement which may have arisen or in existence prior to and on the Termination Date of this Agreement;
- b) entitle the Client to claim or withdraw from the Client account any monies held to secure the obligations of the Client, until such obligations have been settled.

## 22. Costs and Taxes

- 22.1. The Client will pay AIB on demand all stamp duty or any other tax or duty imposed by the government and registration fees (if any) payable on or in connection with this Agreement and any documents executed under or in connection with this Agreement and all legal costs and expenses of or in connection with the enforcement or attempted enforcement of this Agreement and all costs and expenses including bank charges in relation to all transactions (including payments, receipts and banking thereof ) and all matters connected with or arising out of or contemplated by this Agreement.
- 22.2. AIB may deduct, withhold or pay taxes, levies and fees from any payments due to the Client's if it is required to do so by law.

## 23. Limitation of Liability

- 23.1. AIB makes no representation as to the suitability of the Client's investments. The Client needs to make their own decision in this respect.
- 23.2. AIB is not able to exercise control over any services that AIB does not supply directly to the Client. Neither AIB nor any of its staff shall be under any liability whatsoever for any loss or damage sustained by the Client arising from any circumstances beyond AIB's reasonable control or from any actual or proposed transactions as a result of or in connection with the provision of any services to which this Agreement applies except in so far as, and then only to the extent that, such loss or damage is caused by negligence or wilful default on AIB's part or on the part of its staff or any failure by AIB to comply with Applicable Law.
- 23.3. In the event that the Client instructs AIB to sell or purchase any investment, AIB shall use all reasonable endeavors to do so but shall be under no liability for any loss or expense the Client incurs by reason of delay or any change in market conditions before the particular transaction is affected.

## 24. Indemnity

- 24.1. The Client hereby irrevocably and unconditionally agrees to indemnify, hold harmless and defend AIB against any claim, loss or expense arising directly out of or in connection with or which may be sustained or incurred by AIB including without limitation, all legal costs or charges actually and reasonably incurred by AIB in respect of any civil or criminal proceedings against AIB, based upon, arising out of, attributable to, related to, or in any way connected with:
  - 24.1.1. any instructions issued by the Client;
  - 24.1.2. the Client's non-compliance with Applicable Laws;
  - 24.1.3. any breach or non-performance of any covenant or obligation to be performed by the Client under this Agreement;
  - 24.1.4. failure of the Client to conform to the standards set by the CMA, NSE, NSE Clear or other relevant Authority or failure to comply with any applicable law;
  - 24.1.5. any negligence, misconduct, unlawful conduct on the part of the Client or its authorized representatives;
  - 24.1.6. any loss arising as a result of failure by the Appointed Clearing Member to perform its obligations in accordance with the clearing agreement and the Applicable Law;
  - 24.1.7. any misrepresentation made by the Client to AIB pursuant to this Agreement;
  - 24.1.8. any act or omission of AIB in reliance upon any instruction duly received from the Client or the Clients authorized agent.



## 25. Joint and Several Liability

If the Client constitutes more than one person then each of those persons is jointly and severally bound by this Agreement and AIB is entitled to act on the instructions of any one of those persons.

## 26. Waiver

26.1. No latitude, extension of time or other indulgence which may be given or allowed by a Party to the other Party in respect of the performance of any obligation under this Agreement or the enforcement of any right arising from this Agreement, and no single or partial exercise of any right by any Party shall under any circumstances be construed as an implied consent by such Party or operate as a waiver or a novation of or otherwise affect the rights of any Party under this Agreement or prevent such Party from enforcing strict and punctual compliance with each and every provision or term hereof.

26.2. The provisions of the NSE Derivatives Rules on waiver shall apply to any such relaxation or terms or indulgence.

## 27. Force Majeure

In the event of any failure, interruption or delay in the performance of AIB's obligations in this Agreement resulting from acts, events or circumstances not within AIB's control, including but not limited to acts of God, industrial disputes, civil unrest, terrorism, strikes, lock outs, fire, acts or regulations of any governmental bodies and authorities or of any securities exchange or clearing house or the breakdown, failure or malfunction of any telecommunication, postal or internet service, disruptions or non-availability of any trading system, AIB shall not be liable to the Client or any other person for or in respect of any direct, indirect or consequential liability, loss, damage or cost of any kind or nature. AIB will notify the Client in writing within seven (7) days of the occurrence of such factors.

## 28. Severance

If any term of this Agreement is to any extent illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.

## 29. Whole Agreement

This Agreement contains the entire Agreement between AIB and Client and neither of them shall be bound by any undertakings, representations or warranties not recorded herein.

## 30. Variation

### 30.1. Variation by NSE or Applicable Law

30.2. In the event NSE or NSE Clear or any Applicable Law prescribes amended minimum terms for a client agreement in relation to Derivative Securities, to the extent of any inconsistency between the terms of this Agreement and the new terms, the new terms will override this Agreement and apply as if the Client and AIB had entered into an agreement containing the new terms.

### 30.3. Variation by the Parties

30.3.1. No addition or variation of this Agreement shall be of any force or effect unless reduced to writing and signed by both parties.

## 31. Notices

31.1. Any notices from one party to another arising out of or in connection with this Agreement shall be sent to a party through its address as set out in Section I of this Agreement or such other address as may be notified in writing from time to time in accordance with this Agreement.

31.2. Any notice given in terms of this Agreement shall be in writing and shall be deemed, until the contrary is proved, to have been received –

31.2.1. at the time of delivery if delivered by hand during normal business hours at the addressee's registered address;

31.2.2. no later than the seventh day after the date of posting if posted by pre-paid registered post from an address within the

Republic of Kenya to the addressee at the addressee's registered address;

31.2.3. on proof of transmission if transmitted by facsimile or electronic means.

31.3. Notwithstanding anything to the contrary contained in this Agreement, a communication actually received by one of the parties from another shall be adequate written notice or communication to such Party.

## **32. Dispute Resolution**

### **32.1. Amicable Settlement**

32.1.1. The Parties shall use reasonable efforts to amicably settle any dispute arising out of or in connection with this Agreement or its interpretation.

32.1.2. An aggrieved Party shall write to the other Party with the details of the grievance and the other Party shall acknowledge receipt of the grievances within Five (5) Business Days.

32.1.3. The Parties shall seek an amicable settlement of any grievance or dispute within Thirty (30) Business Days from the date the grievance was first lodged by the aggrieved Party.

### **32.2. Arbitration**

32.2.1. If a dispute is not amicably resolved in accordance with the process in Clause 32.1 or if an aggrieved Party reasonably anticipates that the process in Clause 32.1 would not lead to an amicable settlement, then the dispute may be immediately referred to arbitration in accordance with the NSE Derivatives Rules.

## **33. Governing Law**

33.1. This Agreement shall be governed by and construed in accordance with the laws of the Republic of Kenya.

33.2. Subject to the provisions of Clause 32, the parties submit to the jurisdiction of the Kenyan courts.

## SECTION 4: RISK DISCLOSURE STATEMENT

This risk disclosure statement is made pursuant to Applicable Laws. The risk of losses arising from trading in Derivative Securities can be substantial. As a Client, you should carefully consider whether such investments are suitable for you in the light of your circumstances and financial resources. You should also be aware of the following points:

1. Trading in Derivative Securities is highly speculative, involves a significant risk of loss and is not suitable for all investors but only for those who:
  - a) understand and are willing to assume the risks involved;
  - b) are experienced and knowledgeable about trading in Derivative Securities and in underlying asset types; and
  - c) are financially able to assume losses up to the value of their invested deposit and in excess of margin and other assets provided as collateral because investors may lose the total value of the contract not just the margin or the deposit.
2. If the market moves against the Client's position, the Client may, in a relatively short time, sustain more than a total loss of the funds placed by way of margin, deposit or collateral with AIB. You may be required to deposit a substantial additional sum, at short notice, to maintain the margin balances. If you do not maintain the margin balances your position may be closed out at a loss and you will be liable for any resulting deficit.
3. Under certain market conditions it may be difficult or impossible to close out a position and this may increase the risk of loss. This may occur, for example, where trading is suspended or restricted at times of rapid price movement.
4. Where permitted, placing a stop-loss order will not necessarily limit the Client's losses to the intended amounts, for market conditions may make it impossible to execute such orders at the stipulated price.
5. A spread or straddle position may be as risky as a simple long or short position and can be more complex.
6. Derivatives Markets can be highly volatile and investments in them carry a substantial risk of loss. The high degree of "gearing" or "leverage" which is often obtainable in trading these contracts stems from the payment of what is a comparatively modest deposit or margin when compared with the overall contract value. As a result a relatively small market movement can, in addition to achieving substantial gains where the market moves in the Client's favour, result in substantial losses which may exceed the Client's original investment and other assets provided as Collateral where there is an equally small movement against the Client. Accordingly, under no circumstances should the Client risk more than they are prepared to lose.
7. AIB only deals in Derivative Securities listed on NSE Clear and may not be able to facilitate the Client's offsetting of risk using instruments other than those listed on NSE. Should you deal in instruments not listed on NSE, then you do so at your own risk.
8. Prior to the commencement of trading, the Client should require from AIB written confirmation of all current commissions, fees and other transaction charges for which the Client will be liable.
9. AIB may also trade Derivative Securities for itself in its proprietary account. AIB may in doing so take opposite positions to the Client's positions.
10. The Client should carefully consider whether their financial position permits them to participate in a syndicate. Areas of particular concern are —
  - 10.1. charges for management, advisory and brokerage fees;
  - 10.2. the performance record of the syndicate and for how long it has been operating; and
  - 10.3. the credibility of management.
11. In the event the Client requires any clarification, AIB shall explain to the Client the meaning of various terms set out herein so that they are fully aware of their significance.
12. If the Client has any doubts or concerns regarding the risks in trading in Derivative Securities the Client may contact NSE for more detailed information before signing this Agreement.
13. They may also have tax consequences and on this you should consult your lawyer, accountant or other tax advisor.

This brief risk disclosure statement cannot disclose all risks related to investments in Derivative Securities. If you require additional information or a clarification, please make an information request or book a meeting with AIB.

## SECTION 5: FEES AND COMMISSIONS

### 34. Fees and commissions

- 34.1. From time to time, AIB may enter into arrangements with a third party under which AIB agrees to provide to that third party certain products, and services for which the third party makes no payment, but instead undertakes to place business through AIB. By accepting these Standard Terms and Conditions you agree that AIB may affect such contracts with third parties.
- 34.2. In consideration for the services to be provided by us in terms of these Standard Terms and Conditions, AIB shall be entitled to the fees set out in the “Fees Schedule” as amended from time to time. We are specifically authorized to realize any collateral that may be held by us in terms of the Safe Custody Mandate should there be insufficient cash available to settle our fee. Should these Standard Terms and Conditions be terminated during any calendar month, our fee in respect of that month shall be payable on the date of termination.

### FEES SCHEDULE

Fees	Single Stocks Futures	Index Futures
NSE	0.025%	0.02%
Clearing Member	0.025%	0.02%
Trading Member	0.100%	0.08%
Investor Protection Fund	0.010%	0.01%
Capital Markets Authority	0.010%	0.01%
<b>TOTAL</b>	<b>0.17%</b>	<b>0.14%</b>

## SECTION 6: DECLARATION AND SIGNATURES

1. I/we acknowledge that all the above details are correct.
2. I/we undertake to abide by the Applicable Laws, rules and directives of the Nairobi Securities Exchange and the Capital Markets Authority.
3. I/we will advise AIB-AXYS Africa of any changes to the above details contained in Section 1 of this Agreement.
4. I/we apply for investments through AIB-AXYS Africa Ltd on the terms, conditions and regulatory information set out herein.
5. I/we confirm that the investments are not being acquired directly or indirectly by or on behalf of any person restricted by the law of any jurisdiction from acquiring such investments and that I/We will not sell, transfer or otherwise dispose of any such investments directly or indirectly to or for the account of such person.
6. I/we hereby agree that all proceeds for redemption and income distribution will be paid in accordance to the applicable payment Instructions.
7. I/we confirm that the money used for the Investment through AIB-AXYS Africa Ltd is not arising out of the proceeds of any money laundering, terrorism or other illicit activities.
8. I/we agree that AIB-AXYS Africa Ltd is not responsible for any liability, losses or damages resulting from e-mail or fax or electronic instructions, except when such liability or loss results from negligence, or wilful default on AIB-AXYS Africa Ltd part.
9. I/we warrant that all the information given on this Agreement and in all documents which have been or will be signed by me in connection with the proposed application whether in my hand writing or not, is true and complete.
10. I/we acknowledge that I have read and understood the standard terms of business and all the relevant obligation and risk disclosure statements (where applicable).
11. I/we agree to be bound by the standard terms and condition as set out in Section 3 of this Agreement.

**I/We have read, understood and voluntarily accepted the content of this Agreement. By signing below, I/We voluntarily agree to enter into a legally binding contract with AIB-AXYS Africa Ltd.**

_____	_____	_____	____/____/____
Name	Signature	ID No	Date

_____	_____	_____	____/____/____
Name	Signature	ID No	Date

_____	_____	_____	____/____/____
Name	Signature	ID No	Date

_____	_____	_____	____/____/____
Name	Signature	ID No	Date

### APPROVAL BY AIB-AXYS Africa Ltd.

_____	_____	_____	____/____/____
Name	Signature	ID No	Date