

# Ashburton Managed Solutions Investment Application Form

## - Individual Investor

Ashburton Fund Managers (Pty) Ltd ("Discretionary FSP") is regulated by the Financial Sector Conduct Authority and is a licensed Financial Services Provider ("FSP") in terms of the Financial Advisory and Intermediary Services Act, 37 of 2002 ("FAIS"), with FSP number 40169.

### Instructions

1. This application and supporting documentation must be emailed to [rmbinstruct@investoradmin.co.za](mailto:rmbinstruct@investoradmin.co.za).
2. Please complete all relevant sections (pages 1-6 & 15) of this ("Agreement") and initial each page.
3. **Please sign and return the investment fact sheet.** It is important that you have read the fact sheet and understood the terms and risks associated with the product.
4. Should any of the documents forming part of the application as listed below not form part of the pack of documents executed by the Investor, the Investor should immediately inform the Discretionary FSP. This application form includes the below listed documents ("Agreement"):
  - a. This application form;
  - b. The signed Terms and Conditions;
  - c. An information pack which can be found on [www.ashburtoninvestments.com](http://www.ashburtoninvestments.com) inclusive of:
    - i. the Investment Parameters and the relevant product specific terms and conditions;
    - ii. the Risk Disclosure Statement; and
    - iii. a FAIS disclosure statement.
  - d. Please refer to the **Ashburton Check List** available on our website (Ashburton website > Resources > Documents & forms) for Financial Intelligence Centre Act (Act No. 38 of 2001) (FICA) documents required;
  - e. Proof of deposit. Banking details will be supplied once your application has been accepted;
  - f. For RMB Protected Equity 100 or RMB Cash Index Notice Plus, please sign and attach the quotation;
  - g. Copy of ID/passport where identification/passport number has been provided;
  - h. If you are a US citizen or born of a US parent, please provide us with the relevant Internal Revenue Services (IRS) W-9 or W-8BEN form confirming or disconfirming your status as a US specified person. The form can be found on the IRS website.

#### Please note:

- All valid instructions received before 2pm on a business day, will be processed the following business day. However some investments that are linked to underlying instruments that don't cater for daily dealing may be delayed until the next available dealing date. Please refer to the Annexure "A" (the product fact sheet) for further information.
- The Administrator will only process this application when all required documents are received and the deposit reflects in the product bank account.
- As a financial institution, the Discretionary FSP is not allowed to give tax advice, if the Client has any questions about this Client Information Form or defining his/her tax residency status, the Client should consult his/her tax advisor or local tax authority. The Client can also find out more at the Organisation for Economic Co-operation and Development ("OECD") automatic exchange of information portal: [www.oecd.org](http://www.oecd.org).
- If the Client was born in the US and is not a US tax resident, please ensure that a certificate of loss of nationality is supplied, or a reasonable explanation as to why citizenship was not attained at birth, in order to refute his/her US tax residency status.

Due to various legislative requirements, the South African Revenue Service ("SARS") requires the Discretionary FSP to collect and report certain information about the Client's tax residency status. If the Client has a tax obligation or tax residence outside of South Africa, the Discretionary FSP is legally obliged to pass on the information in this form to SARS.

*In terms of Foreign Account Tax Compliance Act ("FATCA"), it is law for the Discretionary FSP to ask for the information requested. The Client may decline the request to provide the information, however, should the requested information not be provided we advise that we will report the undocumented status of the account to the SARS and the account may be subject to a withholding tax penalty for non-compliance.*

*In the event that you as the Client, are an existing client of the Discretionary FSP, kindly insert your details in 1 below, and ignore sections 02-12 of the Client Information Form.*

### 01. Client information

#### Individual investor

New client  Existing client  (if existing Ashburton investor, supply investor ID and only complete fields marked with an asterisk\*)

Investor ID

\_\_\_\_\_

Title\* Surname\*

\_\_\_\_\_

First name(s)\*

\_\_\_\_\_

Identity/Passport number\*

\_\_\_\_\_

Date of birth

[ Y | Y | Y | Y | M | M | D | D ]

Country of issue of passport (if passport number provided)

\_\_\_\_\_

Expiry date of passport

[ Y | Y | Y | Y | M | M | D | D ]

Country of birth

\_\_\_\_\_

Country of citizenship/s

\_\_\_\_\_

Occupation

\_\_\_\_\_

Initial

Employer name

\_\_\_\_\_

Residential address

\_\_\_\_\_

Country

Area code

\_\_\_\_\_

Postal address (if the same as residential address, please tick this box)

\_\_\_\_\_

Country

Postal code

\_\_\_\_\_

Email address (please provide your email address if you require web access, or if you prefer email communication)

\_\_\_\_\_

Contact telephone number

Mobile number\*

Country dialling code (+ ) \_\_\_\_\_ Country dialling code (+ ) \_\_\_\_\_

At least one contact number must be supplied.

If you are acting on behalf of the investor (eg legal guardian or person with power of attorney to act on behalf of the investor), please complete the Person Acting on Behalf of the Investor Form, found on our website and supply the required FICA documentation.

## 02. Source of funds

Please indicate the source of funds:

Existing Ashburton account  Sale of investments  Bonus  Savings/Bank account  Inheritance

Salary  Property sale  Transfer from other financial services provider  Assets of trust/Investment company  Loan

Other (specify) \_\_\_\_\_

Please note that in certain circumstances we may request additional information.

## 03. Dividends tax

SARS will levy a withholding tax on dividends at a rate of 20% (or at the rate to be determined by SARS from time to time). If you are exempt, kindly provide the Discretionary FSP with a requisite declaration hereof. Unless the declaration is submitted, the default rate of 20% will apply.

Exempt from dividends tax

## 04. Tax and residency

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

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

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

Are you a registered taxpayer with SARS? Yes  No

If yes, South African Tax Identification Number (TIN) \_\_\_\_\_

If no, reason for no TIN provided: Not registered  Do not wish to disclose

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

- Withholding Tax on Interest will not apply;
- Dividends Tax at 20%, unless the REIT exemption elected above applies.

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

In which country are you a resident for tax purposes?

\_\_\_\_\_

Are you a registered taxpayer in this country? Yes  No

If yes, Tax Identification Number (TIN) \_\_\_\_\_

If no, reason for no TIN provided: Not registered  Not issued in this jurisdiction  Do not wish to disclose  \_\_\_\_\_

As a foreign tax resident, unless we receive the relevant declaration from you, the following defaults will be applied:

- Withholding Tax on interest at 15% (where applicable);
- Dividends Tax at 20% (where applicable); and
- We will withhold Dividends Tax on distributions from Real Estate Investment Trusts ("REITs") at a rate of 20%.

If you are exempt from or could be entitled to a reduced rate of withholding tax for Dividends Tax or Withholding Tax on Interest, please complete the relevant declaration forms.

*\* (Please refer to the Statutory Limits Table on the Website for information for these limits.)*

**Additional tax registrations:**

In addition to the information given above, if you are registered for tax in any other countries, please complete these details below:

Tax Identification Number (TIN)	Country	Reason for no TIN (tick the relevant column)		
		Not issued in jurisdiction	Not registered	Do not wish to disclose
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**05. Determination of your residency status for Exchange Control purposes**

Should you wish to operate the account as a non-resident in terms of exchange control regulations, we require the following confirmation:

Are you currently a permanent resident in South Africa? Yes  No

If NO, have you previously been a permanent resident in South Africa? Yes  No

If you answered YES, when you left South Africa did you formalise your emigration? Yes  No

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

Do you have any of the following?

RSA ID  RSA passport  RSA birth certificate  RSA work permit

RSA permanent residence permit  RSA temporary residence permit

Source of assets to be invested in the account: South African  Foreign

Your application to open a non-resident account will be considered, amongst others, on the information which you provide above, and, if required, any additional information. You acknowledge that all such information is of material importance and directly relevant to the consideration of your application. You, furthermore, warrant that all information you supply, have supplied or will supply to us is truthful, accurate and correct in all material respects and that you are not aware of any other information which, should it become known to the Discretionary FSP would affect the consideration of your application in any way.

**06. Bank details of the investor**

Please supply proof of bank details (a cancelled cheque or relevant bank statement or a letter on a bank letterhead with bank stamp not older than 3 months). The bank account must be in the name of the investor. Please note that no third party payments will be accepted.

Name of bank

\_\_\_\_\_

Branch code

Branch name

\_\_\_\_\_

\_\_\_\_\_

Country

\_\_\_\_\_

Account name

\_\_\_\_\_

Account no.

Type of account

\_\_\_\_\_

Current  Savings

Please submit proof of banking account details with this application form.  
Please note that non residents will be subject to Exchange Control Regulations.

\_\_\_\_\_

## 07. Communication

Should the Discretionary FSP be required to contact you please select one of the following methods of communication:

Telephone  Email

Where communication is transmitted to you through an electronic medium, the Discretionary FSP shall not be liable to you or any other person receiving the communication for or in respect of any direct, indirect or consequential liability, loss, damage or cost of any kind or nature arising by virtue of the fact that the communication is sent through an electronic medium whether or not as a result of the destruction of the data, system malfunction, interruption of communication links or any other problem over which the Discretionary FSP has no control.

Please note all statement correspondence will be communicated via email.

## 08. Web access and communication preferences

### Web access

Would you like to have web access to view your statements, correspondence and upload instructions?

Yes  No

If you are acting on behalf of the investor (eg legal guardian or person with power of attorney to act on behalf of the investor), and requiring web access please supply the information in the table below.

Name of person	ID or passport number	Mobile number	Email address

### Communication preferences

How would you like to receive confirmation notes and quarterly statements?

1) Email  or

2) Web, with preferred method to be notified when new communication is available online:

a) SMS  b) Email  c) No notification, I will visit the website regularly

3) None, all communication will be via my advisor

## 09. Marketing consent

You agree that your personal details and contact information may be used by the Discretionary FSP to email you value added information that might be relevant to you subject to the following terms and conditions:

- In instances where the Discretionary FSP has obtained your personal information in the context of investment purposes;
- For the purpose of direct marketing of the Discretionary FSP own similar products or services; and
- You have been given a reasonable opportunity to object, free of charge and in a manner free of unnecessary formality, to such use of your details both at the time when your personal information was first collected and each time the Discretionary FSP or its related third party service provider communicates with you for marketing purposes.

1. Value added/educational information (e.g. market or investment related information)

Yes  No

2. Information about the Discretionary FSP products and services

Yes  No

If no option is selected you will not receive any marketing information from the Discretionary FSP.

## 10. Financial services provider details

You confirm that the advisor below, as an Authorised Representative of this financial services provider ("FSP"), is your appointed advisor;

Financial advisor name

\_\_\_\_\_

FSP name

\_\_\_\_\_

FSP telephone (office)

FSP mobile

\_\_\_\_\_

FSP email

\_\_\_\_\_

Where you have signed a discretionary mandate with the advisor please indicate and complete below:

Full discretionary mandate

Limited discretionary mandate

Limited discretionary mandate restrictions:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The FSP warrants that he/ she has the requisite authority to enter into this mandate as per the discretionary mandate entered into between the FSP and the client.

## 11. Investment Amount and Allocation

Investment Amount  R \_\_\_\_\_

Investment	% Allocation (to Total 100%)	Further Instructions
<b>Yield Investments</b>		
RMB Cash Index Notice Plus	%	
Ashburton Cash Enhancer	%	
<b>Growth Investments</b>		
Ashburton Structured Plus 100	%	
Ashburton Protected Flexible 80	%	
RMB Protected Equity	%	Please attach signed quotation (Quotation valid for <input type="checkbox"/> days)
<b>Bespoke Investments</b>		
Ashburton Bespoke	%	All RMB Bespoke instructions are to be instructed by the Financial Advisor via the Control Sheet (OTC instruction).  All OTC instructions are to be dealt in compliance with the terms and conditions set out in the Service Level Agreement (SLA) signed between RMB and the Financial Advisor, and with particular reference to the Submission Date Schedule component in the SLA.  The SLA in conjunction with the Submission Date Schedule contain all the necessary parameters for successful completion and submission of the OTC instructions.
<b>Total allocation</b>	<b>100%</b>	

\_\_\_\_\_

Initial

## 12. Confirmation of advisor fees

### Advisor fees negotiated

Initial and ongoing Advisor fees are negotiated between the client and the Financial Advisor. Should the client and the Financial Advisor agree to any fees please indicate this fee percentage in the fees section below.

Please state required **initial fee** excluding VAT

.  %

### Advisor fees per investment

These are the fees built in at the underlying investment level, that are deducted by RMB and paid across to the Advisor.

Investment Type	Initial Fees (%)	Ongoing Fees (%)
<b>Yield Investments</b>		
RMB Cash Index Notice Plus	None	0.15%
<b>Growth Investments</b>		
RMB Protected Equity	Upfront fee, per quote sheet	None

Please state required over and above **ongoing fee** in table below.

Product Type	Over and Above Ongoing Fees
Yield Investments	excluding VAT %

Please state required **ongoing fee** in table below.

Product Type	Ongoing Fee
Growth/Bespoke investments	excluding VAT %

## 13. Confirmation from advisor

- 6.1 Notwithstanding that it will remain the primary accountable institution in accordance with FICA, and will accordingly establish and verify the identity of the client and/ or person acting on behalf of the client as required in terms thereof and subordinate legislation thereto, the advisor will provide the Discretionary FSP with all necessary documentation necessary as contained in the checklist for the Discretionary FSP to establish and verify the identity of the client and/or person acting on behalf of the client as required in terms of FICA and subordinate legislation thereto;
- 6.2 In the event that the advisor is unable to provide the documentation as contained in the checklist as aforesaid, it shall provide the Discretionary FSP with a signed Letter of Introduction in respect of the client and/or the person acting on behalf of the client; on the basis that such client and/or person acting on behalf of the client may, on an annual basis, be subject to a review by the Discretionary FSP of its FICA documentation held on record by the advisor;
- 6.3 Where the advisor either provides the Discretionary FSP with the documentation as contained in the checklist as contemplated in clause 6.1 above or where it completes the letter of introduction as contemplated in clause 6.2 above, it agrees and acknowledges that in the event there is missing or incomplete documentation or information, this will delay the application.

### Advisor signature

\_\_\_\_\_

Name

Date

\_\_\_\_\_

| Y | Y | Y | Y | M | M | D | D |

# Terms & conditions

Now therefore it is agreed as follows:

## 1. Interpretation and definitions

**Unless a contrary intention clearly appears:**

- 1.1 words importing:
- 1.1.1 any one gender includes the others;
  - 1.1.2 the singular includes the plural and vice versa; and
  - 1.1.3 natural persons include created entities (corporate or unincorporated) and the state and vice versa;
- 1.2 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

<b>“Administrator”</b>	means, if applicable, the person appointed as administrator as contemplated in clause 10 from the date of such appointment;
<b>“Affiliate”</b>	means, in respect of a person, its holding company (as defined in the Companies Act), its subsidiary (as defined in the Companies Act) and each subsidiary of its holding company;
<b>“Applicable Law”</b>	means, in relation to any relevant jurisdiction, the common law and statutory law applicable in such jurisdiction, including any present or future constitution, decree, judgment, legislation, measure, requirement, order, ordinance, regulation, statute, treaty, directive, rule, code, guideline, practice, concession, or request issued by any relevant authority, governmental body, agency or department or any central bank or other fiscal, monetary, regulatory, self-regulatory or other authority or agency and shall specifically include (without limitation) the Financial Advisory and Intermediary Services Act No.37 of 2002, the Financial Intelligence Centre Act No.38 of 2001 and all other legislation applicable to the management of the Products in terms of this Agreement;
<b>“Authorised Representative”</b>	means a person authorised as contemplated by the FAIS Act to represent the Discretionary FSP in providing financial services;
<b>“Bank Account”</b>	means the bank account contemplated in clause 7.3;
<b>“Business Day”</b>	means any day, other than a Saturday, Sunday or a statutory public holiday in South Africa;
<b>“Codes of Conduct”</b>	means the Codes of Conduct for Administrative and Discretionary FSPs, published under Board Notice 79 of 8 August 2003, as amended;
<b>“Companies Act”</b>	means the Companies Act, 2008;
<b>“Custodian”</b>	means the person appointed as custodian as contemplated in clause 7.2 from the date of such appointment;
<b>“Discretionary FSP”</b>	means Ashburton Fund Managers Proprietary Limited, a financial services provider rendering investment management intermediary services chiefly of a discretionary nature as regards management of assets (and acts for this purpose in accordance with the provisions of the Financial Advisory and Intermediary Services Act);
<b>“FICA”</b>	means the Financial Intelligence Centre Act, 2001;
<b>“Financial Advisory and Intermediary Services Act” or “FAIS Act”</b>	means the Financial Advisory and Intermediary Services Act, 2002 and the regulations, codes and notices made thereunder;
<b>“Financial Products”</b>	has the meaning ascribed thereto in the Financial Advisory and Intermediary Services Act, and includes bonds, notes, debentures, securitised debt and money-market instruments;
<b>“Investment Parameters”</b>	means the investment objectives and restrictions set out in the product specific terms and conditions which can be found in the information pack as noted in the Instructions;
<b>“the Products”</b>	means the products selected by the Client and issued by RMB in terms of clause 11 of the Client Information Form, managed from time to time by the Discretionary FSP on behalf of the Client in terms of this Agreement;
<b>“Registrar”</b>	means the Registrar of Financial Services Providers;
<b>“RMB”</b>	means FirstRand Bank Limited (acting through its Rand Merchant Bank Division) registration number 1929/001225/06;
<b>“Risk Disclosures”</b>	means the risk disclosures set out in the relevant the Discretionary FSP documentation and information pack as noted in the Instructions which the Client will be or has been made aware of; and
<b>“Signature Date”</b>	means the date on which this Agreement is signed by the last party to do so.



- 1.3 any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted or replaced from time to time;
- 1.4 any reference in this Agreement to any other agreement or document copy shall be construed as a reference to such other agreement as same may have been, or may from time to time be, amended, varied, novated or supplemented;
- 1.5 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 this Agreement;
- 1.6 when any number of days is prescribed in this Agreement, same shall be reckoned inclusively of the first and exclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;
- 1.7 in the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for payment shall be the following Business Day;
- 1.8 any reference to a party includes that party's successors-in-title and permitted assigns;
- 1.9 expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions;
- 1.10 where any term is defined within the context of any particular clause or annexure in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause or annexure, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.11 the expiration 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 expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.12 the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply;
- 1.13 any conflicts between this Agreement and any annexure shall as far as possible be read together but if such is not possible, then the terms and conditions of the annexure shall prevail (subject to Applicable Laws and the Codes of Conduct); and
- 1.14 any reference in this Agreement to a party shall, 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.
- 1.15 the headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof.

## 2. Appointment of the discretionary FSP

- 2.1 The Discretionary FSP is hereby appointed by the Client as its investment manager to manage the Products in accordance with the terms and conditions of this Agreement, the annexures and Applicable Law until this Agreement is terminated in accordance with clause 3 or clause 4 below.
- 2.2 The Discretionary FSP shall carry out its powers and duties under this Agreement with the due care, diligence and skill that can reasonably be expected of a discretionary financial services provider, and shall act in good faith and in the best interest of the Client at all times.
- 2.3 The appointment of the Discretionary FSP as the Client's investment manager in respect of the Products will not preclude the Client from appointing one or more other financial services providers or product suppliers to manage other assets and investments of the Client.

## 3. Commencement and termination

- 3.1 This Agreement shall be deemed to have commenced on the Signature Date and shall continue until terminated in accordance with this agreement.
- 3.2 Each of the parties may terminate this Agreement by giving at least sixty (60) days' written notice of such intended termination to the other party.
- 3.3 Unless the Discretionary FSP actually receives a written notice to the contrary from the Client, the Discretionary FSP shall not initiate any market transaction in any investments on the Client's behalf after actual receipt of the notice of termination referred to in clause 3.2 above. If any transaction has been initiated on the Client's behalf prior to the actual receipt of the termination notice referred to in clause 3.2 above, such transaction shall be completed, even if completion of the transaction occurs after the expiry of the said sixty (60) day period referred to in clause 3.2 above.
- 3.4 Subject to the provisions of this Agreement, on termination of this Agreement, the Discretionary FSP will provide a final statement of account and will provide the Client with particulars where all investments and documents of title are kept in safe custody on the Client's behalf. The Discretionary FSP's appointment (and this Agreement) shall terminate upon the expiry of written notice of termination of 60 (sixty) days given by either party to this Agreement to the other party.
- 3.5 This Agreement will automatically expire once all of the investments have been realised and all amounts relating to the Products have been paid to the Client.
- 3.6 The Discretionary FSP's appointment shall terminate immediately:
  - 3.6.1 in the event that it ceases to hold a category II licence under the FAIS Act; or
  - 3.6.2 if it is provisionally or finally liquidated or placed under supervision pursuant to the commencement of business rescue proceedings or curatorship; or
  - 3.6.3 if it makes any offer of compromise to its creditors; or
  - 3.6.4 if it gives any notice of a meeting of its shareholders to adopt a resolution placing it in liquidation, whether provisionally or finally; or
  - 3.6.5 if any of its assets are attached by a creditor and the Discretionary FSP fails to procure the release of such assets from attachment within 30 days of the attachment.

## 4. General termination provisions

- 4.1 Subject to specific written instructions from the Client, the Discretionary FSP shall not initiate any market transaction in any investments on behalf of the Client after notice of termination has been received or given or after any of the events contemplated in clause 3.6 has occurred. Any transaction initiated on behalf of the Client prior to the receipt of the notice of termination shall be completed.
- 4.2 Upon the termination or cancellation of this Agreement, unless the Client directs otherwise, the following provisions shall apply:
  - 4.2.1 the Products (including inherent gearing as noted in the product specific terms and conditions of which can be found in the information pack as noted in the Instructions) being unwound;
  - 4.2.2 all cash, investments and documents of title comprising the Products held by the Discretionary FSP at the date of termination shall be returned, transferred or otherwise made available to the Client or its nominee as soon as possible;



- 4.2.3 the Discretionary FSP shall simultaneously provide the Client with a detailed final statement of account setting out:
  - 4.2.2.1 the investments forming part of the Products (and any further matters as may be agreed between the parties); and
  - 4.2.2.2 the fees payable by the Client to the Discretionary FSP as at the date of the termination or cancellation of this Agreement; and
- 4.2.4 where assets and documents of title are in the possession of a Custodian or nominee company and the Client so requires, the Discretionary FSP shall forthwith issue a written instruction to such Custodian or nominee company to return such assets or documents of title to the Client or its nominee, and the Discretionary FSP shall attach a copy of the written instruction to the final statement of account as proof that such instruction has been given.
- 4.3 The expiry or termination of this Agreement shall not affect such provisions of this Agreement which 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, notwithstanding that the clauses themselves do not expressly provide for this.

## 5. Authorities granted by the client to the discretionary FSP

- 5.1 Subject to the provisions of this Agreement (including clause 5.2 below and the express restrictions (if any) and other terms contained in the information pack as noted in the Instructions) and Applicable Law, the Client hereby authorises the Discretionary FSP and confers on the Discretionary FSP full discretion, to manage the Products and to take such action as the Discretionary FSP considers necessary or desirable to attain the investment objectives of the Client as set out in the Investment Parameters.
- 5.2 The Client may give reasonable instructions in writing to the Discretionary FSP relating to the duties of the Discretionary FSP in terms of this Agreement from time to time, provided that no such instruction may require the Discretionary FSP to breach its undertakings in terms of this Agreement or result in the unilateral amendment of any provision of this Agreement.
- 5.3 Without derogating from the generality of the foregoing, but subject to the express restrictions (if any) and other terms contained in the annexures, the Discretionary FSP shall have full power and authority to be the Client's lawful agent, and without detracting from the generality thereof:
  - 5.3.1 in its name, place and stead to open a banking account, negotiate and execute legal agreements;
  - 5.3.2 vote, buy, sell, acquire, dispose of, convert, manage, transact, move cash and otherwise deal with those investments of the Client that are entrusted to the Discretionary FSP (now or in future), including implementation of risk protection mechanisms (which may include gearing or capital guarantees, as may be necessary);
  - 5.3.3 placing and removing scrip from safe custody, subject to the terms of this Agreement;
  - 5.3.4 to sign, on behalf of the Client, all documents and to do or cause to be done whatsoever shall be requisite to give effect to this Agreement, as fully and effectively, for all intents and purposes, as the Client might or could do if personally present and acting therein;
  - 5.3.5 ask, demand and receive from any company, corporation, government or other corporate body or person all dividends, interest, bonuses, repayments and any other sums that may become due to the Client in respect of any of the investments;
  - 5.3.6 on behalf of the Client, amend or waive any of the terms of the Products (including, without limitation, waiving the right to receive any fees or penalties which would otherwise be payable to the Client under the terms of the Products), grant any consent relating to the Products, exercise contractual or other voting rights in respect of the Products, and exercise any creditor rights and entitlements in respect of the Products (including, without limitation, any and all rights in relation to the liquidation, sequestration or placement under supervision pursuant to business rescue proceedings of a debtor or in relation to any compromise, scheme of arrangement or similar proceedings);
  - 5.3.7 exercise, for and on behalf of the Client, all rights and privileges and perform all duties which the Client may now or in future have in relation to the Products;
  - 5.3.8 use the services of its own staff or, at its own cost, that of another authorised financial services provider to perform its obligations under this Agreement;
  - 5.3.9 sub-contract another juristic person to discharge on its behalf one or more obligations which it has undertaken to perform in terms of this Agreement and;
  - 5.3.10 if it decides to do so, appoint an Administrator at its own cost to assist it with the performance of its obligations under this Agreement;
  - 5.3.11 the Discretionary FSP shall in its discretion select a delivery mechanism to meet the investment objectives of the Products, which delivery mechanism will be stipulated in the Investment Parameters and the relevant product specific terms and conditions and subject to change from time to time on communication from the Discretionary FSP to the Client;
  - 5.3.12 The Discretionary FSP may redeem (in full or a portion) the Products to apply towards, inter alia, creating a provision within the Clients account for current and future fees, regulatory, internal, economic, banking or tax changes (including internal or legislative capita adequacy changes) that may occur during the term of this Agreement and settling, on behalf of the Client, any amounts owing to any third party with whom the Discretionary FSP has entered into an agreement for the purpose of giving effect to the terms of this Agreement and/or instruction (for the avoidance of doubt, this may include payments to any third party providing risk protection, gearing or guarantees to the Client).
- 5.4 The Client hereby ratifies (and, if called upon to do so, agrees to ratify) the actions of the Discretionary FSP, or the actions of any agent appointed by the Discretionary FSP, performed in terms of the powers and entitlements granted to the Discretionary FSP in this clause.
- 5.5 In the event that gearing is required by the Client, this may be done by way of a cession of certain of the underlying assets of the Products as collateral with the funding provider.
- 5.6 In the event that an investment offered by the Discretionary FSP is no longer available, and the Client does not submit a re-allocation instruction within the time specified in the notice from the Discretionary FSP, then the Discretionary FSP may redeem (in full or a portion) the Products.

## 6. Sub-contracting, delegation and cession

To the extent that the Discretionary FSP:

- 6.1 uses the services of another financial services provider to assist it to perform its obligations under this Agreement; and/or
- 6.2 appoints one or more Authorised Representatives to represent it in the performance of its obligations under this Agreement and/or delegates any or all of its powers and authorities in terms of this Agreement to such Authorised Representative, the Discretionary FSP shall ensure that any such relationship is governed by a written contract which contains the necessary provisions so as to ensure compliance with the insurance laws and Applicable Law, applicable to such agreement and that clearly describes all the material aspects of the arrangement between the Discretionary FSP and the relevant counterparties, including the rights, responsibilities and service level requirements of each of the parties thereto.
- 6.3 The Client may only cede, assign or transfer any of its rights, obligations or duties under this agreement or any part thereof with the express written consent of the Discretionary FSP and by notifying the Discretionary FSP. Any deposit by the Client with the Discretionary FSP which is not in terms of an agreed transaction will be deemed a call deposit and will earn interest at a rate determined by the Discretionary FSP.

## 7. Registration, custody and bank account

- 7.1 All investments which are capable of registration shall be registered in the name of the Client or, where applicable, a nominee company of any depository institution or central securities depository registered or licensed in terms of the Financial Markets Act, 2012, or of any bank registered or licensed in terms of the Banks Act, 1990 or such other nominee company approved by the Registrar as may be nominated by the Client from time to time.
- 7.2 The Discretionary FSP shall appoint the Custodian on behalf of the Client, and on such terms and conditions as the Discretionary FSP may agree with the Custodian, to hold in safe custody on behalf of the Client all certificates or other documents evidencing title to the investments comprising the Products from time to time.
- 7.3 Unless otherwise agreed to in writing, the Discretionary FSP shall open a bank account and all money in respect of a Products shall be deposited into this bank account. Save for the exceptions permitted by Applicable Law, all monies received in respect of the Products (including interest and capital repayments) shall be deposited to the credit of the Client into this bank account. The details of this bank account will be provided to the Client as and when it is applicable.
- 7.4 The Client shall not without the prior written consent of the Discretionary FSP enter into a separate agreement with any custodian, nominee company, administrator or bank which imposes an unreasonable burden on the Discretionary FSP or which conflicts with the obligations and duties of the Discretionary FSP as set out in this Agreement.

## 8. Voting proxies

- 8.1 The Client provides and grants the Discretionary FSP with the authority and power to attend a meeting, speak on a matter before such a meeting or vote in regard to any Financial Products or securities held for the purposes of the investments. The Discretionary FSP is free to exercise such proxies as the it thinks fit and at all times in the best interests of the Client.
- 8.2 The Discretionary FSP may not exercise voting rights in respect of investments forming part of the Products to gain, directly or indirectly, control of a listed company except where any such voting is exercised to protect the interests of the Client.

## 9. Details of portfolio, investment parameters and other matters

- 9.1 The Discretionary FSP shall manage the Products in accordance with this Agreement and the annexures hereto (including the Investment Parameters) and/or any subsequent written investment mandate from the Client.
- 9.2 The Client selects the products as listed in section 9 of the application form as its investment to form part of its Products.
- 9.3 Unless otherwise instructed by the Client from time to time, the Discretionary FSP shall, following deduction of any fees, costs and expenses which the Discretionary FSP is entitled to withdraw from the Products in terms of this Agreement, apply the proceeds of all monthly cash receipts (whether consisting of dividends, interest, the repayment of capital sums or otherwise) received in relation to the investments to reinvest in the Products in accordance with the Investment Parameters set out in the Investment Parameters and the relevant product specific terms and conditions.
- 9.4 The Discretionary FSP, shall on notice to the Client, advise the Client of any changes in regard to the the products as listed in the relevant product specific terms and conditions, which may be amended by the Discretionary FSP from time to time.

## 10. Reporting to Client

- 10.1 The Discretionary FSP shall (or shall procure that the Administrator shall) keep accounts in respect of the Products in such a manner as to establish clearly all transactions entered into with or on behalf of the Client, and shall distinguish all transactions in such a manner as can be readily understood and shall fairly represent the state of the affairs of the Products.
- 10.2 The Discretionary FSP shall (or shall procure that the Administrator shall) at monthly intervals (and, in addition, within a reasonable period of any request by the Client) provide the Client with a report in respect of the Products. The Client hereby elects to receive such report in electronic format. The report shall contain sufficient information to enable the Client to:
  - 10.2.1 produce a set of financial statements;
  - 10.2.2 determine the composition of the assets comprising the Products and the changes therein over the period reported on; and
  - 10.2.3 determine the fair value of the assets comprising the investments and the changes therein over the period reported to which the report relates.
- 10.3 In addition, the report shall contain detailed information in respect of the following matters:
  - 10.3.1 the original cost of an investment held, as well as the current fair value thereof including risk protection premiums;
  - 10.3.2 investments purchased or sold during the period reported on;
  - 10.3.3 cash receipts and payments during the period reported on;
  - 10.3.4 income earned and expenses incurred during the period reported on;
  - 10.3.5 if any, details of non-cash transactions during the period, including, without limiting the generality of the foregoing, details of capitalisation issues, script dividends and option expiries;
  - 10.3.6 investments received or delivered to the Client;
  - 10.3.7 profits and losses realised during the period;
  - 10.3.8 any other information which the Discretionary FSP is required by Applicable Law to furnish to the Client or which may be reasonably requested by the Client; and
  - 10.3.9 any further matters stipulated in the relevant product specific terms and conditions and/or any subsequent written investment mandate from the Client.
- 10.4 The Client hereby instructs the Discretionary FSP to provide it with information in respect of investments in the Products which a relevant supplier of Financial Products must disclose in terms of any Applicable Law, save where the Client specifically requests the Discretionary FSP not to obtain and transmit such information to it.
- 10.5 Save where the Client holds the applicable documents, the Discretionary FSP shall make available or instruct the Custodian or applicable nominee company to make available for inspection by the auditors of the Client such investment records as they may require for the purposes of audit and verification of the investments comprising the Products.

## 11. Fees, costs and expenses payable by the Client

- 11.1 The Discretionary FSP shall be entitled to levy fees as set out in this Agreement.
- 11.2 The Client shall pay all brokerage fees, taxes, levies, administration charges, audit charges, custodian charges, nominee charges, bank charges, risk protection premiums and all other third party costs reasonably incurred in the management and administration of the Products in terms of this Agreement as set out in the relevant product specific terms and conditions and as agreed by the parties in writing. The Discretionary FSP shall be entitled to pay, where applicable, and unless otherwise stated in this Agreement, any such fees and costs from the the Client's bank account.

## 12. Value added tax

- 12.1 All amounts for which the Client is liable under this Agreement are stated exclusive of value added tax. If value added tax is levied on any such amount, whether pursuant to a change in Applicable Law or otherwise, then the Client shall pay such value added tax in addition to the stated amount.

## 13. Acknowledgement by the Client

The Client acknowledges:

- 13.1 that it is aware of the extent to which the FAIS Act is applicable to the service provided to it by the Discretionary FSP;
- 13.2 that there is an investment risk associated with all asset classes, including foreign investments, that are exposed to currency risk in that their performance depends on the performance of the underlying investment as well as any fluctuations in the exchange rate of the applicable currency against the nominated currency of the underlying investments;
- 13.3 that the Discretionary FSP does not guarantee or have control over any future performance of the investments or whether any investment shall retain its value or whether any investment shall behave in any particular manner or whether any investment can be realised prior to its maturity or whether the credit risk pertaining to any investment will deteriorate; and
- 13.4 that it understands and is aware of the various risks that are involved in holding the investments including gearing and in dealing therein in the financial markets, has read and understood the Risk Disclosures hereto and that it accepts such risks, which may result in financial loss to the Client for which it will not hold the Discretionary FSP liable unless clause 13.2 applies.

## 14. Exemption, indemnity and insurance

- 14.1 The Discretionary FSP shall not be liable for, and the Client hereby indemnifies the Discretionary FSP 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 investments managed by the Discretionary FSP in terms of this Agreement on behalf of the Client.
- 14.2 The exemption and indemnity in clause 14.1 shall not extend to any cost, loss, liability, expense or damage which arises as a result of a material breach by the Discretionary FSP of this Agreement in circumstances where the Discretionary FSP or any director, employee, officer or agent of the Discretionary FSP has acted dishonestly, negligently or fraudulently or with the wrongful intent to cause cost, damage, loss or liability.
- 14.3 Notwithstanding anything to the contrary contained in this Agreement, the Discretionary FSP shall in no circumstances whatsoever be liable to the Client for any indirect or consequential cost, damage, loss or liability, howsoever arising.
- 14.4 Without limiting the generality of clause 14.3, the Discretionary FSP shall not be liable to the Client for any cost, damage, loss, liability, fine, penalty or legal expense (whether joint or several) that may be incurred or suffered by, or asserted or awarded against, the Client arising out of or in connection with or relating to loss of profits; damage to reputation or goodwill; any tax; any indemnity, counterindemnity, undertaking, guarantee or warranty given by the Client to any person; any unlawful action or omission by the Client and/or any claim, investigation, litigation or proceeding (or the preparation of any defence with respect thereto) commenced, threatened or concluded in relation to this Agreement or the investments by any governmental or regulatory authority.
- 14.5 The Discretionary FSP shall maintain at its own expense sufficient fidelity and professional indemnity insurances as required by the Registrar in order to protect the Client from loss occasioned by the fraud, theft, dishonesty or negligence of the employees and agents of the Discretionary FSP. The Discretionary FSP shall on request from the Client furnish the Client with written confirmation of the amount of such insurance cover.

## 15. Conflicts of interest and related matters

- 15.1 The Discretionary FSP shall:
- 15.1.1 not, directly or indirectly, sell any investment owned by the Discretionary FSP to the Client without the prior written approval of the Client;
  - 15.1.2 not, directly or indirectly, buy for its own benefit or account investments owned by the Client without the prior written approval of the Client; and
  - 15.1.3 neither directly nor indirectly without the prior written approval of the Client knowingly take a position against the Client.
- 15.2 The Discretionary FSP shall make available to the Client on request, its conflicts of interest management policy, as contemplated by the Financial Advisory and Intermediary Services Act.
- 15.3 The Discretionary FSP will not receive any soft commissions, incentives, rebates, fee reductions or any discounts from any person for placing the Client's investments with such person.
- 15.4 In the event that the Discretionary FSP does receive any commission, incentive, rebate, fee reduction or discount in relation to an investment, the benefit or value of such commission, rebate, fee reduction or discount will be passed on to the Client.

## 16. Representations and warranties

- 16.1 The Discretionary FSP hereby records and warrants that the Registrar has duly approved the Discretionary FSP to act as a financial services provider (thereby authorising it to render intermediary investment management and administration services where required) in terms of the FAIS Act and in respect of the categories and sub-categories set out in the FAIS disclosure statement which is part of the information pack as noted in the Instructions attached hereto.
- 16.2 The Discretionary FSP further warrants that it shall, at all times for the duration of this Agreement, have the necessary key individuals, representatives, governance, risk management, internal controls and information technology systems in place in order to render the intermediary services to the standard as required in terms of this Agreement.

- 16.3 The Client warrants, undertakes and represents to the Discretionary FSP, as at the Signature Date and at any time thereafter up to (and including) the date on which this Agreement is terminated, that:
- 16.3.1 he/she full capacity and authority to enter into this Agreement and to carry out all obligations contemplated in this Agreement and has disclosed to the Discretionary FSP all material facts that may affect the management of the Client's assets.
  - 16.3.2 the carrying out by the Discretionary FSP of its duties as investment manager in accordance with this Agreement will not breach any other agreement binding on the Client. The Client undertakes to inform the Discretionary FSP promptly in writing if any representation, warranty or agreement made by it in this Agreement is no longer true or requires exception or modification to remain true.
  - 16.3.3 it has the power to execute this Agreement and any other documentation relating to this Agreement to which it is party and to perform its obligations under this Agreement and has taken all necessary action to authorise such execution and performance;
  - 16.3.4 the execution and performance of this Agreement does not violate or conflict with any law applicable to it, any provision of its constitutional documents or any order or judgement binding on or affecting it or any of its assets;
  - 16.3.5 where applicable, it has all governmental and other consents, that are required with respect to this Agreement and any such consents are in full force and effect;
  - 16.3.6 to supply the Discretionary FSP with any information, documentation or letter of comfort requested in writing by the Discretionary FSP in order for it to comply with its obligations under FICA.
  - 16.3.7 no sequestration proceedings have been instituted by the Client and no legal proceedings have been instituted against it, or are to its knowledge contemplated, which if resolved in manner adverse to it would have a material adverse effect on its financial conditions;
  - 16.3.8 it has taken its own financial, legal and taxation advice and has not sought to rely on any representation or warranty by the Discretionary FSP or any of the Discretionary FSP's officers, employees, directors or agents, and the entry into by the Client of this Agreement;
  - 16.3.9 by completing, signing and submitting the Agreement and its annexes, the Client agrees to be bound by these Terms and Conditions;
  - 16.3.10 misrepresentation or non-disclosure of a material fact or the inclusion of incorrect information could impact on the validity of this Agreement;
- 16.4 The Discretionary FSP represents and warrants to the Client, as at the Signature Date and at any time thereafter up to (and including) the date on which this Agreement is terminated, that:
- 16.4.1 it is duly incorporated or registered (as applicable) and validly existing under the laws of South Africa;
  - 16.4.2 it is an accountable institution as defined in FICA and as such warrants that it complies with the obligations as set out in FICA to the combating of money laundering;
  - 16.4.3 it is a foreign financial institution and is required to comply with FATCA when dealing with Clients in the execution of its duties under this Agreement;
  - 16.4.4 it has the power and authority to sign this Agreement and all necessary corporate, shareholder, trustee or other action will have been taken and not revoked to authorise such signature and the performance of its obligations under this Agreement;
  - 16.4.5 this Agreement will create valid, legally binding and enforceable obligations for each party (subject to applicable bankruptcy, insolvency, reorganisation, moratorium, prescription or other laws affecting the enforcement of creditors' and shareholders' rights generally);
  - 16.4.6 the signature and terms of this Agreement do not and shall not:
    - 16.4.6.1 contravene any law, regulation, directive, or judgement to which it is subject; or
    - 16.4.6.2 result in any actual or potential breach of or default under any obligation, agreement, instrument or consent to which it is party or by which it is bound or which it requires for its business; or
    - 16.4.6.3 contravene any provisions of its memorandum of incorporation;
  - 16.4.7 in accordance with paragraph 5(2) and/or paragraph 5(3) of the Codes of Conduct (as applicable):
    - 16.4.7.1 the terms of this Agreement have been duly approved by the registrar and all applicable conditions stipulated by the registrar have been duly satisfied; and
    - 16.4.7.2 any and all material amendments or any other information deemed necessary in the interest of the Client have been duly made to and approved by the Registrar;
  - 16.4.8 it has the appropriate governance, risk management systems and internal controls in place necessary to perform its obligations in terms of this Agreement and which can reasonably be expected of it in order to eliminate as far as possible, the risk that the Client might suffer financial loss through theft, fraud, other dishonest acts, poor administration, negligence, professional misconduct or culpable omissions.
- 16.5 The parties have entered into this Agreement on the strength of, and relying on, the representations and warranties set out in this clause, each of which shall be deemed to be a separate representation and warranty given without prejudice to any other representation or warranty and deemed to be a material representation inducing the parties to enter into this Agreement.
- 16.6 The Discretionary FSP does not provide investment advice relating to the Products and will not transact with a Client directly. It is the Discretionary FSP's policy that a Client makes the decision to invest in the Products with the assistance of an authorised and approved financial services provider.
- 16.7 In the event that a Client advises the Discretionary FSP in writing that the appointment of their financial advisor has been terminated, the Discretionary FSP will either:
- 16.7.1 accept instructions from a new financial advisor from that day further, provided that the financial advisor has complied with the Discretionary FSP's requirements and has been duly appointed by the Client; or
  - 16.7.2 disinvest, as per product specific terms set out in the Investment Parameters and the relevant product specific terms and conditions, from all the Client's investments, and return the Client's funds, by crediting the Client's bank account.

## 17. Confidentiality and data protection

- 17.1 FirstRand Group means FirstRand Limited, its Affiliates, delegates or successors in title and / or appointed third parties (like its authorised agents, advisors, partners and contractors). Any reference to FirstRand Group includes the employees of FirstRand Group. FirstRand Group is a global organisation. The Client's personal information may be shared within FirstRand Group and may therefore be transferred to another country.
- 17.2 FirstRand Group will process (by collecting, using, storing or otherwise dealing with) the Client's personal information and that of third parties which the Client provides (like the personal information of the Client's children or spouse), for the purposes of providing services and products to the Client. In providing the personal information, the Client acknowledges that the information has been collected directly from the Client and that the Client had consented to its processing by FirstRand Group. The personal information will be processed in accordance with FirstRand Group's privacy policy and requirements of law. All personal information the Client provides to FirstRand Group is given voluntarily. However, if the Client withholds any personal information requested or withhold consent for the processing of its personal information or object to the processing of its personal information, this may result in FirstRand Group not establishing or continuing a business relationship with the Client. This may limit the Client's access to FirstRand Group services and products.
- 17.3 The Client must be authorised to provide any personal information of third parties to FirstRand Group. In doing so, the Client indemnifies FirstRand Group against any and all losses by or claims made against it as a result of the Client not having the required authorisation.
- 17.4 The Client can refer to FirstRand Group's Privacy Policy which can be obtained at: [https://www.fnb.co.za/downloads/legal/FSR\\_Customer\\_Privacy\\_Policy.pdf](https://www.fnb.co.za/downloads/legal/FSR_Customer_Privacy_Policy.pdf) for more information on FirstRand Group's private practices and how FirstRand Group uses the Client's personal information.



## 18. Force majeure

- 18.1 Neither party will be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent to which such delay or non-performance arises from any event (including any act or omission of any third party) beyond its reasonable control which could not reasonably be planned for or avoided (each a “**Force Majeure Event**”).
- 18.2 A party whose performance is affected by a Force Majeure Event (“**Affected Party**”) will:
- 18.2.1 promptly notify the other party in writing of the Force Majeure Event and the cause and the likely duration of any consequential delay or non-performance of the Affected Party's obligations; and
  - 18.2.2 use reasonable endeavours to avoid or mitigate the effect of such event on the other party and the performance of the Affected Party's obligations and resume full performance of the Affected Party's obligations as soon as reasonably possible.
- 18.3 If the Affected Party has met the conditions in clause 18.2, its performance of any affected obligation under this Agreement will be suspended for the period that the Force Majeure Event continues and the Affected Party will have an extension of time for performance equal to the period of delay or failure, but the Affected Party will continue to perform all other obligations that are not prevented by the Force Majeure Event. If performance of any material part of the relevant obligations is not resumed within 15 Business Days after the notice from the Affected Party to the other party, the other party may terminate this Agreement immediately by giving written notice to the Affected Party.

## 19. Complaints

- 19.1 Should the Client have reason to complain to the Discretionary FSP, the Client should, in the first instance, refer the matter together with all supporting documentation to the Complaints Department of the Discretionary FSP at [compliance@ashburtoninvestments.co.za](mailto:compliance@ashburtoninvestments.co.za).
- 19.2 The compliance officer shall attempt to resolve the complaint in terms of the Discretionary FSP's complaints policy. The Discretionary FSP shall make a copy of its complaints policy available to the Client on request.
- 19.3 Should the Client not be satisfied with the resolution of the complaint by the Compliance Officer, the Client may deal with the complaint in accordance with the requisite procedure set out in the Financial Advisory and Intermediary Services Act including, if it has jurisdiction, referral of the complaint to the Ombud for Financial Services Providers who can be contacted on +27 12 470 9080 / +27 12 762 5000 or [info@faisombud.co.za](mailto:info@faisombud.co.za).

## 20. Settlement of disputes

- 20.1 Subject to clause 19.3, if any dispute arises between the parties in connection with the formation or existence of, carrying into effect of, interpretation or application of:
- 20.1.1 the parties' respective rights and obligations in terms of or arising out of;
  - 20.1.2 the validity, enforceability, rectification or termination, whether in whole or in part of; or
  - 20.1.3 any documents furnished by the parties pursuant to, by this Agreement, and if the disputing parties are unable to resolve that dispute among themselves, any disputing party may by written notice to the other, refer the dispute for determination by arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa (“AFSA”).
- 20.2 Each party agrees that the arbitration will be held as an expedited arbitration in Johannesburg in accordance with the then current rules for expedited arbitration of AFSA by one (1) arbitrator appointed by agreement between the parties to the dispute, including any appeal against the arbitrator's decision. If the applicable parties cannot agree on the arbitrator or appeal arbitrators within a period of ten (10) Business Days after the referral of the dispute to arbitration, the arbitrator and appeal arbitrators shall be appointed by the Secretariat of AFSA.
- 20.3 The provisions of this clause 20 shall not preclude any party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or mandamus pending finalisation of this dispute resolution process.
- 20.4 The references to AFSA in this clause 20 shall include its successor or body nominated in writing by it in its stead.
- 20.5 This clause is a separate, divisible agreement from the rest of this Agreement and shall remain in effect even if the Agreement terminates, is nullified or cancelled for whatsoever reason or cause.

## 21. Governing law and jurisdiction

- 21.1 The laws of the Republic of South Africa shall govern this Agreement.
- 21.2 Without derogating from the provisions of clause 20, the parties hereby agree to submit to the (non-exclusive) jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg) in respect of any court proceedings.

## 22. Domicilium

- 22.1 The parties choose the following addresses for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature:
- 22.1.1 Discretionary FSP
    - Physical: 3rd floor, 4 Merchant Place, Corner Fredman Drive and Rivonia Road, Sandton, 2196
    - Email: [Alessandro.scalco@ashburton.co.za](mailto:Alessandro.scalco@ashburton.co.za)  
(Marked for the attention of: Head of Legal)
  - 22.1.2 Client
    - As per the Client Information Form.
- 22.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing. It is competent to give notice or communicate by electronic means.
- 22.3 Any party may, by notice to the other party, change its physical address to another physical address where postal delivery occurs in South Africa, or change email address.
- 22.4 Any notice to a party:
- 22.4.1 delivered by hand to a responsible person during ordinary business hours at its chosen physical address shall be deemed to have been received on the day of delivery; or
  - 22.4.2 sent by email shall be deemed to have been received on the first Business Day after the date of successful transmission, unless the objecting party proves the contrary.
- 22.5 Notwithstanding anything to the contrary, a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent or delivered in accordance with the provisions of this clause 22.

## 23. No stipulatio alteri

23.1 No provision in this Agreement shall constitute a contractual provision capable of acceptance and enforcement by any person who is not a party to this Agreement unless the applicable provision expressly states that it shall be capable of acceptance by such person.

## 24. General

- 24.1 No variation of, addition to, consensual cancellation of or waiver of any right arising in terms of this Agreement (including this clause ) shall be of any force or effect unless it is reduced to writing and signed by a duly Authorised Representative of each of the parties.
- 24.2 No relaxation, indulgence or extension of time granted by any party ("Grantor") to another party shall be construed as a waiver of any of the Grantor's rights in terms hereof, or a novation of any of the terms of this Agreement or estop the Grantor from enforcing strict and punctual compliance with the terms of this Agreement, but the Grantor shall be bound by any relaxation, indulgence or extension of time or any waiver expressly granted in writing by a duly Authorised Representative of such Grantor.
- 24.3 At the Signature Date, this document constitutes the entire agreement between the parties in relation to the subject matter hereof and no party shall accordingly be bound by any undertaking, representation or warranty not recorded therein.
- 24.4 In the event of any changes of law, rule, Applicable Law or directive, changes can be made to the Agreement (after prior reasonable notification to the Client) to ensure compliance with such Applicable Law, rule or directive. The Client may elect to disinvest subject to the product specific terms and conditions.
- 24.5 The annexes to this Agreement are subject to change upon prior notification to the Client.

## 25. Counterparts

This Agreement:

- 25.1 may be executed in separate counterparts, none of which need contain the signature of all of the parties, each of which shall be deemed to be an original and all of which taken together constitute one agreement; and
- 25.2 shall be valid and binding upon the parties thereto, notwithstanding that one or more of the parties may sign a faxed or scanned copy thereof and whether or not such faxed or scanned copy contains the signature of any other party.

## 26. Declaration by Client

By signing this Agreement, I (the Client) declare that:

- 26.1 All information and declarations provided by me in this Agreement and all supporting documentation in connection with this Agreement are true, correct and accurate in every respect.
- 26.2 I am bound by the terms and conditions as set out in this Agreement and the relevant annexures as set out in information pack and as noted in the Instructions. Misrepresentation or non-disclosure of a material fact or the inclusion of incorrect information could impact on the validity of this Agreement.
- 26.3 I have read and understood the contents of this Agreement and the relevant annexures as set out in information pack and as noted in the Instructions and agree to be bound by the terms and conditions contained herein, and as updated and communicated to me from time to time.
- 26.4 I have read and understood the portion relating to the processing of my personal information.
- 26.5 I hereby confirm and consent as necessary that FirstRand Limited together with its Affiliates, may process (collect, use or otherwise deal with) my information (including processing of my personal information outside the borders of South Africa), which was voluntarily provided by myself, for the purposes of providing services and products, according to the terms and conditions and requirements of the law.
- 26.6 I confirm that the Discretionary FSP has not given me any advice in respect of the tax, legal, accounting, regulatory and/or financial consequences of this investment or the Products.
- 26.7 I confirm that the money that I am investing in terms of this Agreement is not derived from the proceeds of any unlawful activities as defined and contemplated in the Prevention of Organised Crime Act, (Act No. 121 of 1998) ("POCA").
- 26.8 I am aware that it is the sole responsibility of the beneficial owner and or foreign person to ensure the tax declaration and undertaking is filed timeously, and that it complies with all requirements and obligations in relation to withholding tax as set out in the Income Tax Act from time to time.
- 26.9 I confirm that I hold no other citizenships and residencies for tax purposes other than those disclosed above and will inform the Discretionary FSP in writing of any change of this status within 30 (thirty) days of the change of the disclosed status, and that in the event that I have renounced my US citizenship, I shall furnish the Discretionary FSP with the requisite declaration/evidence in the form of a certificate from the Department of Home Affairs.
- 26.10 I fully understand the information and the risks that come with this investment and where I have a financial advisor, I confirm that the information relating to this investment product has been fully and adequately explained to me by my financial advisor.
- 26.11 I agree and understand that if I have elected not to have a financial advisor that the Discretionary FSP is unable to provide updates on legal changes and/or industry developments, and that the Discretionary FSP will not be monitoring my investment compared to my personal investment goals.
- 26.12 I hereby confirm that I have entered into this Agreement voluntarily, by my free will and that I was not under any form of duress.
- 26.13 I hereby indemnify the Discretionary FSP against any liability for any loss or damage suffered by me as a result of inaccurate or incomplete or late submission of information contained herein.

Initial

Ashburton Fund Managers Proprietary Limited

Signature (who warrants that he / she is duly authorised thereto)

\_\_\_\_\_  
Name

Date

\_\_\_\_\_  
Place

[ Y | Y | Y | Y | M | M | D | D ]

Ashburton Fund Managers Proprietary Limited

Signature (who warrants that he / she is duly authorised thereto)

\_\_\_\_\_  
Name

Date

\_\_\_\_\_  
Place

[ Y | Y | Y | Y | M | M | D | D ]

Client

Signature (who warrants that he / she is duly authorised thereto)

\_\_\_\_\_  
Date

[ Y | Y | Y | Y | M | M | D | D ]

Place