

**NCBA INVESTMENT BANK LIMITED
DERIVATIVES CLIENT AGREEMENT**

NCBA INVESTMENT BANK LIMITED (the trading "member")

and _____ ("client")

This Agreement Is Made On The _____. Day Of _____
20_____

Between:

1. NCBA Investment Bank Limited a limited liability company incorporated under the provisions of the Companies Act Chapter 486 of the Laws of Kenya in the Re- public of Kenya and licensed as a Securities Trading entity under the Capital Markets Act Laws of Kenya having its registered office at Nairobi and care of Post Office Box 44599 Nairobi and includes such Branch or Subsidiaries of the Securities as may from time to time be spelNVESTMENT BANK LIMITED, a private company incorporated with limited liability in the Republic of Kenya of Post Office Box 44599 - 00100, in the said Republic (hereinafter referred to as the "member" which expression shall, where the context so requires, include its successors in title and permitted assigns) of the first part; AND

2. _____

_____, a public/private company incorporated with limited liability in the Republic of Kenya of Post Office Box _____
_____, in the said Republic (hereinafter referred to as the "client" which expression shall, where the context so requires, include its successors in title and permitted assigns) of the second part.

Whereas:

- A The member has satisfied the requirements for trading membership of the derivatives markets and hereby enters into this agreement as required by the Derivatives Rules of the NSE ("the rules") and regulations under the Capital Markets Act of Kenya; and
- B The client wishes to enter into an agreement with the member to facilitate the client's participation in the derivatives market in particular with respect to the trading of derivatives securities as contemplated by the rules;

NOW in consideration of the mutual covenants and undertakings hereinafter set out and other valuable consideration IT IS HEREBY AGREED as follows:

1 Interpretation

- 1.1 In this agreement, unless otherwise clearly indicated by, or inconsistent with, the context –
 - 1.1.1 the words and expressions used in this agreement bear the same meaning as are assigned to them in the Derivatives Rules of NSE ("the rules");
 - 1.1.2 In the event of conflict between the rules and the provisions of this agreement the provisions of the rules shall prevail;
 - 1.1.3 "clause" means a separate numbered provision of this agreement; and
 - 1.1.4 Unless the context otherwise requires, words importing one gender include all other genders.
- 1.2 The rules shall apply mutatis mutandis to this agreement as if incorporated herein.

2 Rules binding

The client by its execution or by his or her signature hereto acknowledges and confirms that he has read and understood and shall be bound by the rules.

3 Appointment

3.1 Non-discretionary client agreement

The client appoints the member and the member accepts the appointment to trade in instruments listed by NSE without discretion and only in response to an order from the client.

4 Conditions precedent

This agreement shall be of no force and effect until the client has been loaded on the trading system in terms of the rules and has, if clause 13.4 of this agreement applies, paid the amount to be invested in terms of that clause.

5 Risk acknowledgement

The client acknowledges that he or she has read the Risk Disclosure Statement attached hereto as Annexure A and fully understands the contents thereof.

6 Obligations of member

6.1 The member –

- 6.1.1 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;
- 6.1.2 may report to the client in writing whenever a trade is done and such report shall include details of the NSE security, the price, the number of NSE securities, the time of the instruction to trade, the time at which the trade was done and 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
- 6.1.3 shall maintain the trading and position records and report to the client as required by rule 7.2, and shall take all reasonable steps to provide the client with any information that the client requires relating to the positions of the client.

6.2 In the case of a discretionary client agreement, the member warrants that he will manage the client's investments in accordance with the investment objectives of the client referred to in clause 13.4.1.

7 Margin and withdrawals from client's account

- 7.1 The member is authorised to withdraw from the client's account referred to in rule 8.4 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.
- 7.2 In terms of rule 6.6.3 the client shall pay to the member an amount of house margin equal to a factor of ___% of the client funds.

8 Trading capacity

The client hereby authorises the member to trade as –

- Principal
- Agent X

Principal or agent

(indicate choice with x)

9 Trading limits

The member shall advise the client of all trading or position limits imposed upon it by its clearing member, if any, and of all limits imposed by the member on the client.

10 Telephone calls

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

11 Fees

11.1 Fees for services rendered shall be levied by the member in accordance with the rules and the client hereby undertakes to pay such amount on the due date for the payment thereof.

11.2 The member shall give the client 30 days written notice of any change in the fees contained in Annexure B to this agreement.

11.3 The member –

- may
 may not

(indicate choice with x)

charge a fee for any trade with the client when acting as principal.

12 Disclosure to third parties

The member undertakes not to disclose confidential information relating to the client except where such disclosure is –

- 12.1 made under compulsion of law or in terms of the rules; or
12.2 made with the consent of the client.

13 Client warranties

The client warrants that

- 13.1 the information set out as regards him or her in the Client Registration Form and in this agreement is in all respects true and correct;
- 13.2 he or she will keep the member informed of any changes in the information set out in the documents mentioned in clause 13.1;
- 13.3 he or she complies and will comply with all the requirements of the rules for acceptance as a client; and
- 13.4 in the case of a discretionary client agreement, that he or she–
- 13.4.1 has the investment objectives set out in Annexure C to this agreement, as amended from time to time;
- 13.4.2 shall invest KShs. within days of signature hereof, which shall constitute the investments made;
- 13.4.3 intends to make the investment available for a period of months, subject to clause 13.4.1, starting on, after which the period will automatically be extended by the number of months as stipulated above, subject to clause 18;
(Complete 13.4.2 and 13.4.3)
- 13.4.4 is entitled at any time to require the payment to him or her of any funds in the name of the client which exceeds the investments referred to in clause 13.4.2

14 Breach by client

- 14.1 Time shall be of the essence for the performance by the client of any obligation under this agreement and the rules.
- 14.2 The provisions of rules 9.2 and 9.3 shall apply in case of any breach by the client of his or her obligations under this agreement.

15. Breach by member

- 15.1 Should the member fail to fulfil any obligation to the client in terms of this agreement the client shall immediately inform NSE of the details of such breach.
- 15.2 The provisions rules 9.1 and 9.4 or 9.5, as the case may be, may be invoked in the case of any breach by the member of its obligations under this agreement.

16 Voluntary termination

A party shall be entitled to terminate this agreement by giving written notice to the other party in the manner provided in this agreement, provided that such termination shall not –

- 16.1 affect the rights or obligations of the parties in terms of this agreement which may have arisen or are in existence at the date of such notice or at the date of termination of this agreement;
- 16.2 entitle the client to claim or withdraw from the account referred to in clause 7 any monies held to secure the obligations of the client, until such obligations have been settled.

17 Arbitration

Any dispute arising out of or in connection with this agreement or the subject-matter of this agreement shall be resolved by arbitration or mediation in terms of section 14 of the rules.

18 Law

- 18.1 This agreement shall be governed by, and construed in accordance with, the laws of the Republic of Kenya.
- 18.2 Subject to the provisions of clause 17, the parties submit to the jurisdiction of the Kenyan courts.

19 Waiver

- 19.1 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.
- 19.2 The provisions of rule 8.5 of the rules shall otherwise apply to any such relaxation or indulgence.

20 Variation

No addition or variation, consensual cancellation or novation of this agreement and no waiver of any right arising from this agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by both parties or their duly authorised representatives: Provided that no such addition, variation, novation or waiver shall, except in the case of any addition or variation to Annexures B and C, be effected without the prior approval of the Executive Director of NCBA Investment Bank Limited.

21 Whole agreement

This Agreement, read with any approved occurrences referred to in clause 20, contains the entire agreement between the member and client and neither of them shall be bound by any undertakings, representations or warranties not recorded herein.

22 Notices

22.1 The parties choose as their respective addresses for service the addresses set out in this clause for all purposes arising out of or in connection with this agreement at which addresses all processes, communications and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties.

22.2 For the purposes of this agreement the respective addresses shall be as follows -

The member:
THE EXECUTIVE DIRECTOR, BROKERAGE
NCBA INVESTMENT BANK LIMITED
NCBA ANNEX, HOSPITAL ROAD
P.O BOX 44599 – 00100
NAIROBI

and the client:
.....
.....
.....

or at such other address at which the party concerned may notify the other in terms of this agreement.

22.3 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 -

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

22.3.2 by 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;

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

22.4 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.

IN WITNESS WHEREOF the Parties hereto have set their respective hands hereof on this _____ Day of _____ 20____

SIGNED for and on behalf of the member by its authorized representative:

)
)
_____)

WITNESS:

Signature: _____

Name:

SIGNED for and on behalf of the client by its authorized representative:

)
)
)
_____)

WITNESS:

Signature: _____

ANNEXURE A

Risk Disclosure Statement

This risk disclosure statement is made pursuant to the rules. The risk of loss arising from trading in futures and options can be substantial. You should carefully consider whether such investments are suitable for you in the light of your circumstances and financial resources. You should be aware of the following points -

1. If the market moves against your position, you may, in a relatively short time, sustain more than a total loss of the funds placed by way of margin or deposit with your member. You may be required to deposit a substantial additional sum, at short notice, to maintain your margin balances. If you do not maintain your margin balances your position may be closed out at a loss and you will be liable for any resulting deficit.
2. Under certain market conditions it may be difficult or impossible to close out a position. This may occur, for example, where trading is suspended or restricted at times of rapid price movement.
3. Where permitted, placing a stop-loss order will not necessarily limit your losses to the intended amounts, for market conditions may make it impossible to execute such orders at the stipulated price.
4. A spread or straddle position may be as risky as a simple long or short position and can be more complex.
5. Markets in futures and options 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 your favour, result in substantial losses which may exceed your original investment where there is an equally small movement against you.
6. When your member deals on your behalf, you should allow this only in contracts listed on NSE. Should you deal in contracts not listed on NSE, then you do so at your own increased risk.

7. Prior to the commencement of trading, you should require from your member written confirmation of all current commissions, fees and other transaction charges for which you will be liable.
8. Members may also be dealers trading for their own account in the same markets as you, in which case their involvement could be contrary to your interests.
9. You should carefully consider whether your financial position permits you to participate in a syndicate. Areas of particular concern are --
 - 9.1 charges for management, advisory and brokerage fees;
 - 9.2 the performance record of the syndicate and for how long it has been operating; and
 - 9.3 the credibility of management.
10. Your member should explain to you the meaning of various terms set out herein so that you are fully aware of their significance.
11. If you have any doubts or concerns regarding the risks in trading futures and options you may contact NSE for more detailed information before signing this statement.

ANNEXURE C

Investment objectives of client

The investment objectives of the client as envisaged in clause 13.4.1 of this agreement shall be as follows:

NOTE:

Any later amendments to Annexures B or C must be attached to this agreement, properly signed and dated.

This brief statement cannot disclose all risks of investment in futures and options. They are not suitable for many members of the public and you should carefully study such investments before you commit funds to them. They may also have tax consequences and on this you should consult your lawyer, accountant or other tax advisor.

ANNEXURE B

Fees schedule

The fees referred to in clause 11 of this agreement, will be as follows:

Single Stock Futures:

Participant	Percentage
NSE Clear	0.025%
Clearing Member	0.025%
Trading Member	0.10%
IPF Levy	0.01%
CMA Fee	0.01%
TOTAL	0.17%

The percentages indicated above will be used to calculate the fees based on the notional contract value.

Index Futures:

Participant	Percentage
NSE Clear	0.02%
Clearing Member	0.02%
Trading Member	0.08%
IPF Levy	0.01%
CMA Fee	0.01%
TOTAL	0.14%

The percentages indicated above will be used to calculate the fees based on the notional contract value.