



CLIENT AND COUNTERPARTY AGREEMENT

1. PARTIES

1.1. The Parties to this Agreement are as follows: -

1.1.1. Flare FX (Pty) Ltd. (hereinafter "**FlareX** "), is an ODP duly authorised by the Authority to originate, issue, sell, and/or make a market in OTC derivatives in accordance with the Financial Markets Act (No. 19 of 2012), as amended, the regulations thereto, and subject to the conditions as set out in the Annexure to its license; and contracts as the Counterparty herein; and,

1.1.2. The person who enters into this Agreement on the referral of the Intermediary; and contracts as the Client herein (hereinafter the "**ODP Client**").

1.1.3. The Parties agree that the ODP Client shall not

2. DEFINITIONS AND INTERPRETATION

2.1. In this agreement, unless the context indicates otherwise, the following words and expressions shall have the meanings assigned to them below:

2.1.1. "**Abnormal Market Conditions**" means any abnormal, emergency, or unusual condition on a foreign exchange, security, commodity, derivative, or futures exchange that, in FlareX's reasonable opinion, affects or may affect the price, rate or availability of currencies, commodities and indices derivatives, or the ability of FlareX to provide Contracts-for-Difference, currency, commodity, and indices derivative prices or rates;

2.1.2. "**Agreement**" means this Client and Counterparty Agreement together with any annexures, schedules, or other addendums, which may be later amended or supplemented from time to time by FlareX, any terms and conditions concerning the ODP Client in any agreement FlareX has with the Intermediary, any legal and/or policy documentation maintained on FlareX's website which may be later amended or supplemented;

2.1.3. "**Applicable Laws**" means all laws, regulations, by-laws, rules and directives issued by a competent authority and binding on a Party, whether in respect of the conduct of business of the Party, the Agreement or any Trade;

2.1.4. "**Application Form**" means any application form completed and submitted by the ODP Client via the Website to enter into the Agreement, determine the appropriateness of the ODP Client and receive services as set out herein;

2.1.5. "**Authority**" means the FSCA;

2.1.6. "**Bank Mandate**" means the bank mandate signed by the ODP Client upon submitting the Application Form;

2.1.7. "**Confidential Information**" means any information of a Party not in the public domain or previously known to a Party, including but not limited to the activities, clients, concepts and ideas, transactions, systems, products, financial statements, business affairs, business management, statistics, personal data of a Party and information contained in its database system, software, software source codes,

trade secrets and know how, and any other information whatsoever of a confidential nature of a Party;

- 2.1.8. “**Client**” means in relation to an ODP and as defined in the FMA, a person other than a Counterparty, with whom an ODP executes an Over-the-Counter derivative transaction, or enters into a relationship with the intention of executing Over-the-Counter derivative transaction;
- 2.1.9. “**Contract-for-Difference/s**” or “**CFD**” means an Over-the-Counter derivative and financial product that can be traded with FlareX, which acts as the counterparty to all transactions concluded with the ODP Client. The price of a CFD is derived from the price of the underlying financial instrument but is not traded on an exchange. FlareX obtains quotes as “bid” and “ask” prices directly from either third-party liquidity providers or services providers and may apply an additional mark-up applied. All CFD contracts traded with FlareX are cash-settled.
- 2.1.10. “**Counterparty**” has the meaning as ascribed in the FMA, and in this Agreement shall specifically mean the party acting in the capacity of an ODP, with whom a Client executes an Over-the-Counter derivative transaction, or enters into a relationship with the intention of executing Over-the-Counter derivative transaction;
- 2.1.11. “**FAIS**” means the Financial Advisory and Intermediary Services Act (No. 37 of 2002) as amended, including any board notices and/or regulations thereto;
- 2.1.12. “**FIC Act**” means the Financial Intelligence Centre Act (No. 38 of 2001), as amended, including any notices and/or guidance notes thereto;
- 2.1.13. “**FMA**” means the Financial Markets Act (No. 19 of 2012), as amended and the regulations thereto;
- 2.1.14. “**FSCA**” means the Financial Sector Conduct Authority of South Africa;
- 2.1.15. “**Intellectual Property**” means all products, goods, software, software documentation, literature, materials, tools, data, information, databases, modules, components, compilations of data, methodologies, policies, procedures, techniques, models, configurations, protocols, routines, interfaces (including API interfaces), reports, plans, files, diagrams, manuals, templates, schematics, correspondence, designs, algorithms, specifications, records, equipment, hardware, servers, computers, platforms, computer code, derivative works, and works of authorship, and irrespective of the form and format of the foregoing and whether tangible or intangible, relating to the FlareX Trading Platform, Trading Platform, or the provision of FlareX’s Products;
- 2.1.16. “**Intermediary**” means the Intermediary Financial Services Provider who referred the ODP Client to FlareX;
- 2.1.17. “**Margin**” in the Trading Account, refers to the amount in excess of the value of a Trade that will be held as a free margin, which Margin will be calculated as a percentage of the Trade value as determined by FlareX;

- 2.1.18. “**Order**” means an instruction produced and/or transmitted from an ODP Client to FlareX, whereby the Client has agreed to the fee stipulated and which order may be accepted or rejected at the sole discretion of FlareX;
- 2.1.19. “**ODP Terms**” means the terms and conditions governing the scope of FlareX’s engagements and/or transactions as principal and counterparty to the ODP Client, as recorded in this Agreement, including any annexure, appendix, or schedule attached hereto, and any later amendment or supplement made by FlareX, from time to time;
- 2.1.20. “**Over-the-Counter Derivatives**” or “**OTC Derivatives**” has the meaning as ascribed in the FMA and;
- 2.1.21. “**Over-the-Counter Derivatives Provider**” or “**ODP**”, means an entity authorised to operate as an ODP by the FSCA;
- 2.1.22. “**Party**” shall mean either, FlareX or the ODP Client, as the context suggests, and “**Parties**” shall mean both FlareX and the ODP Client;
- 2.1.23. “**Services**” means the services provided by us under this Agreement, detailed in Clause 5 hereunder;
- 2.1.24. “**Trading Platform**” means the MT4 and MT5 platform made available by FlareX or the Intermediary for the ODP Client to conclude Trades;
- 2.1.25. “**TPFA Account**” means the segregated third-party funds administrators account opened and administrated by FlareX on behalf of the ODP Client in terms of the Bank Mandate;
- 2.1.26. “**Trade**” means any transaction involving, or referable to the value of, or granting rights or accepting obligations in respect of, or by reference to any Over-the-Counter Derivate, alternatively, any financial instrument the ODP is authorized to provide, which may include Contracts-for-Difference, foreign exchange, crypto assets, indices, commodities and the like;
- 2.1.27. “**Trade value**” means the product of the quoted price of the trading instrument, in respect of a Trade on a specified date, the relevant contract type, and the number of contracts;
- 2.1.28. “**Trading Account**” means a running trading account maintained on the MT4 and MT5 Trading Platform for the purpose of recording and executing Trades;
- 2.1.29. “**Trading Platform**” means the MT4 and MT5 Trading Platform made available by FlareX for the ODP Client to conclude Trades; and,
- 2.1.30. “**Website**” means the domain operated by FlareX.
- 2.2. In this Agreement, unless the context otherwise requires:
- 2.2.1. Words imparting the singular shall include the plural and vice versa, as the context demands.

- 2.2.2. References to terms, clauses, schedules, annexures, and/or exhibits are references to the clauses, schedules, annexures, and/or exhibits of this Agreement, together with any other documents, policy, disclosure or agreement contemplated herein, as FlareX may amend from time to time.
- 2.2.3. References to “include” and “including” shall be interpreted as meaning “include without limitation” and “including without limitation”.
- 2.2.4. References to any statute including any regulations or other subordinate legislation issued under any statute, shall be deemed to include references to such statute, regulations or other subordinate legislation as from time to time amended, supplemented, extended or replaced.
- 2.2.5. The headings in this Agreement are inserted for convenience only and shall not affect its interpretation.
- 2.3. The heading to paragraphs of this Agreement is inserted for reference purposes only and shall not in any way be used or relied upon in the interpretation thereof.
- 2.4. Words importing: -
- 2.4.1. the singular includes the plural and vice versa;
- 2.4.2. natural persons include legal persons and vice versa; and,
- 2.4.3. any one gender includes other genders.

3. SCOPE OF AGREEMENT

- 3.1. By entering into this Agreement and/or concluding any Trade, the ODP Client warrants that they do so acting as a principal, and not as agent.
- 3.2. The Agreement shall be deemed to give FlareX a non-discretionary mandate with respect to the provision of the Services on behalf of the ODP Client, pursuant to their instructions.
- 3.3. FlareX undertakes that it will not provide any advice, recommendation, guidance or opinion in relation to entering the Agreement, any Trade or otherwise, nor will FlareX grant any approval and/or recommendation in respect of the investment decisions of the ODP Client.
- 3.4. FlareX will conduct an appropriateness assessment and provide feedback, electronically or otherwise, for each ODP Client in accordance with this Agreement as further set out below.
- 3.5. General information may be provided by FlareX to the ODP Clients, excluding advice in respect of the trading of OTC Derivatives, and this Agreement does not give rise to any fiduciary relationship between the Parties.
- 3.6. The ODP Client confirms their understanding that only authorised and licensed ODPs may offer OTC Derivatives in South Africa and acknowledges having verified FlareX’s licensure with the FSCA.
- 3.7. This Agreement governs all OTC derivatives contracts the Client enters into with FlareX.

- 3.8. Each Over-the-Counter derivative transaction is a separate transaction, whether produced as a Trade an Order directly made with.
- 3.9. Upon the Effective Date, the Client enters into this Agreement on the understanding that any other agreement the Client holds with any principal or ODP other than FlareX, concluded by referral by the Intermediary, is herewith terminated by the Client; and, all and any terms and conditions included in those agreements are deemed to have no force and effect from the Effective Date. The Client, by entering into this Agreement, warrants to FlareX that it has complied with all requirements of termination set out in those agreements.

4. DURATION

- 4.1. The Agreement between the parties shall commence on the Effective Date.
- 4.2. Unless otherwise stipulated in this Agreement or otherwise in accordance with Applicable Laws, the Agreement shall endure indefinitely.

5. SERVICES

- 5.1. FlareX is responsible for rendering the following services to the ODP Client, namely: -
- 5.1.1. ensuring that the Trading Platform is made available for purposes of executing Trades, subject to the this Agreement; and,
 - 5.1.2. operating the TPFA Account on behalf of the ODP Client, in accordance with the Bank Mandate; and,
 - 5.1.3. the ODP Client will receive daily trading statements by way of electronic mail.
- 5.2. Should the ODP Client fail to comply with any of the obligations set out in this Agreement, FlareX shall not be obliged to perform any of the Services.

6. APPLICATION FORM

- 6.1. Pursuant to submitting the online Application Form, the ODP Client makes the following warranties, namely:
- 6.1.1. that the information submitted is true and correct; and,
 - 6.1.2. that he has read and understood the terms and the Risk Disclosure Statement forming part of the Agreement.
- 6.2. In addition, the ODP Client acknowledges and agrees to the following, namely: -
- 6.2.1. that he is bound to the terms and conditions of this Agreement;
 - 6.2.2. that the ODP Client consents to the sharing of any necessary ODP Client Data, or relevant information, by FlareX to a third-party for verification purposes only, as provided for in terms of the FIC Act;

- 6.2.3. if FlareX, as an accountable institution, is unable to adhere to its obligations in terms of FIC Act, including –
- a) Establishing or verifying the identity of a ODP Client, or obtaining relevant information, or information contemplated in section 21A of the FIC Act; or
 - b) Conduct ongoing due diligence as contemplated in section 21C of FIC Act,
- 6.2.4. then FlareX –
- a) May not establish or conclude a business relationship, or a single transaction with the ODP Client, in the course of a business relationship,
 - b) Or perform any action to give effect to a single transaction; and,
 - c) Must terminate the relationship in accordance with its Risk Management and Compliance Programme, or any existing business relationship with the ODP Client, and consider submitting a report in terms of section 29 of the FICA.
- 6.3. FlareX has the discretion to request ODP Client information from the Intermediary and will be given access to ODP Client information within 3 business days from its request.
- 6.4. Should FlareX be unable to conduct the customer ongoing due diligence as required in FIC Act, the ODP Client Trading Account will be disabled, and a record thereof must be kept for no less than 5 (five) years.
- 6.5. Nevertheless, FlareX retains a right to refuse to open a ODP Client Account at its own discretion, if deemed necessary.

7. RISK DISCLOSURE & CLIENT SUITABILITY

- 7.1. The ODP Client warrants that they have read, understood and acknowledged the Risk Disclosure place on the FlareX Website, outlining the risks of trading in OTC Derivatives, including potential for losses beyond margin, price volatility, and liquidity risks.
- 7.2. The ODP Client confirms they have provided all information needed for the Provider's appropriateness assessment.

8. APPROPRIATENESS ASSESSMENT

- 8.1. FlareX will conduct an appropriateness assessment for the purpose of offering the ODP Client OTC Derivatives.
- 8.2. The appropriateness assessment includes the request for information pertaining to the ODP Client's experience, objectives, knowledge, and financial position. Accordingly, FlareX will rely on the accuracy of the information and documents provided and will not be held liable for any damages or loss arising out of the aforesaid reliance.
- 8.3. The ODP Client undertakes as follows, namely: -
- 8.3.1. to notify FlareX of any changes to the required information as soon as reasonably possible;

8.3.2. to ensure that FlareX is kept updated with the accuracy of the relevant information

8.4. Further to the aforementioned undertakings, the ODP Client expressly acknowledges that it is aware of the risks associated with the transactions pursuant to this Agreement.

9. TRADES

9.1. Trades are executed by the ODP Client on the Trading Platform. Once a Trade is entered into, the ODP Client warrants that he has read and understood the terms of this Agreement.

9.2. Upon the ODP Client's specific instruction, FlareX may execute a Trade on behalf of the ODP Client. FlareX has the sole discretion of accepting the aforesaid instruction.

9.3. FlareX shall verify the aforesaid specific instruction telephonically and in writing prior to the acceptance of executing the Trade on behalf of the ODP Client. Once the Trade has been executed by FlareX, the ODP Client will receive written confirmation within 24 hours.

9.4. Notwithstanding the ODP Client's specific instructions, FlareX shall have no obligation to notify the ODP Client of any dates, times, and/or events relevant to the Trade.

10. TRADING PLATFORM

10.1. Except where expressly stated otherwise, the ODP Client shall only be permitted to Trade using the Trading Platform.

10.2. Once a Trading Account is opened, the ODP Client shall be issued with security credentials, which shall be used for logging into the Trading Platform, and wherefore the ODP Client will be responsible for its confidentiality thereof.

10.3. The ODP Client acknowledges that FlareX is entitled to assume that any communication received using the security credentials has been received from the ODP Client and is not required to verify the authority of any person accessing the Trading Platform using the issued security credentials.

10.4. FlareX is entitled to terminate, revoke, suspend or vary, in whole or in part, the security credentials without prior notice given to the ODP Client, should FlareX determine that a security breach has occurred on the Trading Platform.

10.5. The ODP Client will bear the sole responsibility to ensure that appropriate measures are taken to maintain the confidentiality and security of their security credentials when operating and accessing the Trading Platform.

10.6. The aforesaid responsibility shall extend to the following, including, but not limited to, the integrity and security of any electronic device, or internet connection, utilized by the ODP Client when accessing and operating the Trading Platform. The ODP Client acknowledges that he is solely liable for any failure and/or breach of the security, integrity, or reliability of such electronic device or internet connection.

10.7. The ODP Client acknowledges that it is their responsibility to comply with all reasonable operational and security procedures and shall immediately notify FlareX of any breach of security.

- 10.8. All communication, including but not limited to, electronic communications and telephone conversations, between FlareX and the ODP Client shall be recorded and kept by FlareX, and could be used as evidence, should any proceedings be instituted on the grounds of this Agreement. FlareX is under no obligation to retain the record of instructions received from the ODP Client.
- 10.9. The ODP Client undertakes and acknowledges that FlareX is not responsible, nor obligated, to: -
- 10.9.1. Provide any support, updates, alterations and/or perform any maintenance on the Trading Platforms;
- 10.9.2. To verify or update any information displayed on the Trading Platform; and,
- 10.9.3. Notify the ODP Client of any irregularities faced in relation to the operation of, or access to, the Trading Platform, nor is FlareX responsible or obligated to take any steps to remedy such irregularities.

11. TRADING HOURS

- 11.1. FlareX operates between 08:00 and 17:00 on every business day, and its ODP Client support line shall operate between 07:00 and 22:00 on every business day, excluding international public holidays.
- 11.2. FlareX reserves the right to change its operational hours, and such changes shall be advertised on the Trading Platform.
- 11.3. FlareX records that market trading hours are between 00:00 on a Monday, to 22:00 on a Friday, and is subject to close for rollover and daylight savings time. Once the relevant markets are open to accept Trades, the ODP Client shall be entitled to place Trades at any time.

12. FEES AND WITHDRAWALS

- 12.1. The ODP Client acknowledges and agrees that their transactions shall be subjected to the following charges, namely: -
- 12.1.1. Spread(s), being the spread between the buying price and selling price in respect of the Trade;
- 12.1.2. Swap(s), being a rate of interest calculated on short and long positions in the event of a Trade being rolled over;
- 12.1.3. If the ODP Client was introduced to FlareX by a third-party, a portion of the spread paid by the ODP Client may be shared as commission, fees and/or charges with the third-parties, or FlareX may be entitled to receive remuneration from third-parties with regards to Trades;
- 12.1.4. FlareX derives revenue from it fulfilling its obligations as a counterparty, irrespective of whether the ODP Client's transactions results in a profit or loss, and the aforesaid revenue may vary depending on the frequency of the transaction, volume, or other parameters; and
- 12.1.5. For the avoidance of any doubt, revenue is derived from the ODP Client's net losses in terms of FlareX's prevailing license conditions.

- 12.2. FlareX has the discretion to occasionally change the commission received and/or shared for making deposits and/or withdrawal of funds and shall advertise same under the relevant sections of the FlareX website. It is the ODP Client's responsibility to review the relevant changes made with regards to charges
- 12.3. The ODP Client acknowledges and undertakes that he will be responsible for any charges imposed on him by a TPFA involved in the transfer process.
- 12.4. Subject to the capacity constraints of the business, FlareX endeavours to process all withdrawals within a period of 24 hours from initiation of the withdrawal instruction by the ODP Client.

13. MARGIN & COLLATERAL

- 13.1. The ODP Client agrees to promptly meet all payment and margin obligations, including initial and variation margin.
- 13.2. The ODP Client shall, upon demand by the FlareX, provide and maintain initial margin, variation margin, or additional margin as required for any Trade.
- 13.3. Margin requirements shall be calculated by FlareX in accordance with its internal risk management policies, legislation, and the methodologies published on the Website or Trading Platform.
- 13.4. The Client acknowledges and agrees that margin requirements may be varied at the sole discretion of FlareX in response to market conditions, volatility, liquidity, or regulatory requirements.
- 13.5. FlareX will handle the collateral and Client funds in accordance with its Collateral Management.
- 13.6. The Client shall provide collateral in such form as FlareX may determine as acceptable, which may include cash, financial products and/or other eligible assets.
- 13.7. The Client agrees that FlareX may apply valuation haircuts to collateral placed in relation to a Trade and any collateral provided by the ODP Client shall at all times remain subject to the FlareX's security interest and may be applied, realised, or liquidated to meet the Client's obligations.
- 13.8. In relation to the ODP Client's margin:
- 13.8.1. The ODP Client shall monitor margin requirements and maintain sufficient balances at all times;
- 13.8.2. If the ODP Client fails to meet a margin call within the timeframe specified by FlareX, such failure shall constitute an event of default under and breach of this Agreement.
- 13.8.3. Upon such default and breach, FlareX shall be entitled, without notice, to:
- a) close out some or all of the Client's Transactions;
 - b) apply any collateral towards satisfaction of outstanding obligations; and
 - c) enforce netting and settlement in accordance with the Agreement.

14. SETTLEMENT, NETTING AND CLOSE OUT

- 14.1. The ODP Client authorises FlareX to withdraw the following amounts from the segregated TPFA Account and debit the TPFA Account accordingly: -
- 14.1.1. Any and all amounts payable by the ODP Client to FlareX in terms of this Agreement as and when such amounts become due and payable, including but not limited to Fees, additional margin (when applicable), interest charged on Trading Accounts and costs and expenses payable by the ODP Client; and,
- 14.1.2. Any amount payable by the ODP Client in respect of any Trade, which amount shall be applied to make payment as required in terms of the Trade.
- 14.2. FlareX may, in its absolute discretion, set-off any amounts payable by the ODP Client in respect of a Trade against any amounts payable, provided that such amounts are payable in the same currency and are payable on the same day. The net amount payable after set-off is applied as aforesaid, shall remain payable.
- 14.3. On a termination event, FlareX may determine close-out values and enforce net settlement in terms of this Agreement.
- 14.4. FlareX makes use of the following netting processes Settlement, Netting and Close-Out: -
- 14.4.1. Payment Netting:
- a) FlareX shall apply payment netting on an ongoing basis during the trading day when markets are open;
 - b) In respect of closed positions, all realised gains shall be offset against realised losses to determine a single net settlement amount due to or from the Client; and,
 - c) This process shall be executed automatically via the Provider's electronic Trading Platform.
- 14.4.2. Close-Out Netting:
- a) In the event that the ODP Client fails to meet a margin call or otherwise defaults on any payment obligation, tFlareX shall be entitled to terminate all or part of the ODP Client's outstanding Transactions;
 - b) Termination values shall be determined by FlareX in accordance with this Agreement and netted to produce a single net amount payable by one Party to the other; and,
 - c) Close-out netting shall be applied as a credit risk control measure and shall be binding and enforceable against the ODP Client.
- 14.4.3. Novation Netting
- a) FlareX may, at its discretion, apply novation netting by cancelling offsetting Transactions and replacing them with new net Transactions.
 - b) Such novation netting may include hedging Transactions entered into with third-party counterparties for the purpose of managing FlareX'S market exposure.
 - c) The Client acknowledges and agrees that such novation constitutes a valid and binding method of netting and settlement.

15. RE-HYPOTHECATION & INVESTMENT

- 15.1. The ODP Client acknowledges, consents to and agrees that, FlareX may re-hypothecate, pledge, lend, or otherwise use collateral provided by the ODP Client for its own purposes, including hedging activities with third parties.
- 15.2. FlareX may also invest collateral in accordance with its internal treasury policies.

16. MARKET DATA

- 16.1. The Trading Platform may display market data and other purely factual information ("**Market Data**"). The ODP Client acknowledges and agrees that where the Trading Platform displays Market Data –
 - 16.1.1. FlareX does not endorse or approve the Market Data and makes it available to the ODP Client only as a convenience;
 - 16.1.2. FlareX does not guarantee the accuracy, timeliness, and completeness or correct sequencing of the Market Data;
 - 16.1.3. FlareX does not warrant any results from the ODP Client's use or reliance on the Market Data;
 - 16.1.4. FlareX is not obligated to update any information or opinions contained in any Market Data;
 - 16.1.5. FlareX may discontinue displaying Market Data on the Trading Platform at any time;
 - 16.1.6. FlareX will not be liable in any way for the termination, interruption, delay or inaccuracy of any Market Data;
 - 16.1.7. the ODP Client will not redistribute or facilitate the redistribution of Market Data to any third-party; and,
 - 16.1.8. If Market Data from any third-party providers is temporarily unavailable, then FlareX may determine prices at its own discretion.
- 16.2. FlareX reserves the right to adjust margin requirements on OTC Derivative in response to prevailing market conditions.

17. ODP CLIENT PROFILE AND PAYMENTS

- 17.1. Upon acceptance of the Application, FlareX shall issue the ODP Client with a ODP Client Profile, setting out the ODP Client's details and can be accessed using the ODP Client's security credentials issued once the Trading Account has been opened.
- 17.2. Upon acceptance of the Application, FlareX shall open a Trading Account for the ODP Client which shall reflect the following, namely: -
 - 17.2.1. ODP Client funds held in the segregated TPFA Account;
 - 17.2.2. Open Trade positions held by the ODP Client.

- 17.2.3. Withdrawals made by the ODP Client from the Trading Account.
- 17.2.4. Swap fees charged by FlareX in terms of this Agreement; and,
- 17.2.5. The net amount payable to the ODP Client considering the funds held in the TPFA Account, all open Trade positions, including Margins on Trades and Fees payable to FlareX.
- 17.3. No interest is payable by FlareX on the credit balance of a Trading Account.

18. TPFA ACCOUNT

- 18.1. A segregated TPFA Account will be opened for the purpose of holding ODP Client funds. The segregated TPFA Account will be subject to the Bank Mandate.
- 18.2. All ODP Client funds will be deposited into the ODP Client segregated TPFA Account.
- 18.3. FlareX or FlareX's assignee shall administer the segregated TPFA Account in accordance with the Bank Mandate and shall inter alia be entitled to apply ODP Client Funds in the TPFA Account –
- 18.4. to make payment on behalf of the ODP Client in respect of a Trade; and
- 18.5. to make payment to FlareX of any amounts payable to it in terms of this Agreement as and when they become due and payable, including but not limited to Fees and interest accrued on Trading Accounts.
- 18.6. FlareX shall be entitled to deduct from the TPFA Account any funds deposited into or credited to the TPFA Account in error, whether such funds are deposited by FlareX or any other person.

19. NO PAYMENTS TO AND FROM THIRD-PARTY ACCOUNTS

- 19.1. FlareX shall not accept any funds intended to be ODP Client funds which has been paid from any account other than the account of the ODP Client ("**Third-party Accounts**").
- 19.2. Should FlareX receive any funds from a Third-party Account, FlareX shall return the funds received and shall not accept or bear any liability, or responsibility, for any loss, including consequential loss, incurred by the ODP Client as result of the return of the funds to the Third-party Account.
- 19.3. It is also recorded that FlareX shall not make any payment into a Third-party Account.

20. REGULATORY COMPLIANCE

- 20.1. It is recorded that the services provided by FlareX is subject to the financial sector Laws and regulations of South Africa, and that each party to this Agreement undertakes to comply with same when exercising its rights and performing its obligations under this Agreement.
- 20.2. FlareX may, at its absolute discretion, take any action it may deem necessary to ensure compliance with the applicable laws.

- 20.3. FlareX maintains the right and responsibility to appropriately liaise, communicate with and assist any South African regulatory authority and the South African Police Service in the Investigation of and fraudulent and/or criminal activity.

21. RECORDS, AUDIT AND DATA

- 21.1. The ODP Client undertakes to maintain THEIR accounting and computer records relevant to this Agreement, for the duration of this Agreement, and a further 3 (three) years thereafter.
- 21.2. In addition, FlareX shall be permitted to conduct an audit in respect of the ODP Client's use, access, and operation of the Trading Platform, and be allowed access to the ODP Client's Trading Platform records with the reasonable assistance of the ODP Client.
- 21.3. All and any data provided to FlareX by the ODP Client is processed, processed, stored and used in compliance with the Protection of Personal Information Act No.4 of 2013 (as amended).

22. TAXES

- 22.1. The ODP Client acknowledges and agrees that he shall be responsible for all taxes, levies, value-added tax and duties payable in respect of the Trades, and that FlareX bears no responsibility in this regard.

23. PROHIBITED TRADING PRACTICES

- 23.1. The ODP Client represents and warrants that he shall not use the Trading Platform for, or in connection with, any activity which may be constituted as *mala fide*, fraudulent and/or illegal, and which includes, but is not limited to:
- 23.1.1. Scalping;
 - 23.1.2. Bonus arbitrage or wash trading;
 - 23.1.3. The use of automated Expert Advisors, or any Expert Advisors;
 - 23.1.4. Any insider dealings;
 - 23.1.5. Market manipulation;
 - 23.1.6. Market distortion;
 - 23.1.7. Unauthorized trading;
 - 23.1.8. Spoofing;
 - 23.1.9. Layering;
 - 23.1.10. Manipulation of negative balances;
 - 23.1.11. Unfair trading practices;
 - 23.1.12. Any trading practices FlareX reasonably deems *mala fide*;

- 23.1.13. Any trading practices which has been done excessively without a legitimate intent by the ODP Client to profit from market movements or otherwise,
- 23.1.14. which is directly or indirectly in contravention of any Applicable Laws, and/or industry norms and standards.
- 23.2. It is recorded that FlareX maintains a zero-tolerance policy for the aforesaid prohibited trading practices and abusive trading strategies and reserves its rights to treat any of the aforesaid prohibited trading practices or any result of such transactions as void, and to cancel, close and unwind any such transaction with immediate effect.
- 23.3. For the avoidance of doubt, the ODP Client acknowledges and agrees that any prohibited trading practices committed by the ODP Client in Clause 20 of this Agreement will constitute a material breach of this Agreement.

24. REPORTING OBLIGATIONS

- 24.1. The ODP Client consents to FlareX reporting all OTC Derivative Transactions to an FSCA-authorised trade repository.
- 24.2. FlareX shall retain records of this Agreement, all Trades and Transactions, and related documentation and make them available to the FSCA upon request.

25. WARRANTIES

- 25.1. The ODP Client warrants that all their obligations and Trades performed in accordance with this Agreement are valid, legally binding and enforceable with the terms thereof.
- 25.2. The ODP Client understands that a breach of any of the representations and warranties included in this Agreement constitutes a material breach of this Agreement.
- 25.3. The ODP Client represents and warrants as follows, namely: -
- 25.3.1. That the ODP Client has legal capacity and power to enter into this Agreement, and further that he is not subject to any pending litigation, arbitration, or administrative proceedings, or any proceedings that could have a material adverse effect on his ability to exercise his rights and obligations in accordance with this Agreement or any Trade;
- 25.3.2. That he has not been declared insolvent and/or overindebted, and is able to pay all their debt as it falls due;
- 25.3.3. That all information provided to FlareX associated with this Agreement is true and accurate, as at date when the said information was provided, and remains unchanged until FlareX is notified otherwise;
- 25.3.4. That the ODP Client enters each Trade with bona fide intentions and not to undermine the operations, business, Services, or Trading platform provided by FlareX;

- 25.3.5. That the ODP Client has not misled FlareX in any material respect;
- 25.3.6. That the ODP Client is acting for their own account, with its own independent decision to enter into this Agreement, freely and voluntarily;
- 25.3.7. That the ODP Client enters each Trade upon the basis of the ODP Client's own judgment, and is capable of assessing the merits and understanding the terms and risks of each Trade;
- 25.3.8. The ODP Client is not trading on behalf of any person, or receiving funds from a third-party into its TPFA Account in order to manage and/or enter Trades on behalf of the third-party, without the prerequisite approval of the FSCA as a registered Financial Services Provider, or by power of attorney;
- 25.3.9. No reliance is made on any form of communication or recommendation by FlareX in respect of investment advise and/or entering into this Agreement, or any Trade in accordance with this Agreement. Information and explanations relating to this Agreement are not considered as advise or recommendation of any sort in respect of entering a Trade; and
- 25.3.10. That FlareX has not assured or provided any guarantee as to the expected results of any Trade made by the ODP Client.

26. LIABILITY

- 26.1. It is recorded that FlareX will not be held liable for any consequential, indirect, incidental or special loss, damages, claims, and/or expenses suffered or incurred by the ODP Client, arising out of or in connection with the Services of FlareX, or any Trade entered into in accordance with this Agreement (hereinafter collectively, "**Exclusion of Liability**").
- 26.2. The aforesaid Exclusion of Liability, whether in contract, delict, or otherwise, exists in the following instances, including but not limited to: -
 - 26.2.1. Failure of the ODP Client to report, within 24 (twenty-four) hours from delivery thereof, any error in the ODP Client statements;
 - 26.2.2. Any misrepresentation of information provided by or on behalf of FlareX in relation to this Agreement, or any Trade;
 - 26.2.3. The reliance of the ODP Client on a rate or a price which the ODP Client knew, or ought reasonably to have known, to be materially incorrect, except in the case of fraud by FlareX;
 - 26.2.4. Entry of a Trade by the ODP Client on the basis of money erroneously deposited into the Trading Account by or on behalf of FlareX;
 - 26.2.5. The occurrence and continuance of any Force Majeure.
 - 26.2.6. Whether as a result of the failure by FlareX or otherwise, any failure or inability to access or use the Trading Platform by the ODP Client for its intended purposes;

- 26.2.7. Any deficiency whatsoever of the Trading Platform, including failure of, or inability to, access or use the Trading Platform.
- 26.2.8. In respect to any information published on the Website, including any claims or losses in relation to the accuracy, reliability or timeliness of such information; and
- 26.2.9. In respect to any support, advice or assistance provided by FlareX, including any claims or losses in relation to technical support, trading support and account administration support.
- 26.3. Subject to the Exclusions of Liability set out above, FlareX's liability arising from the Agreement shall be limited to the direct loss suffered by the ODP Client in respect of the relevant Trade in respect of which the liability arises.

27. RISK

- 27.1. The ODP Client expressly agrees and acknowledges that they understand the risks associated with trading in the financial products made available by FlareX and its associated entities, including but not limited to the risks associated with trading in Contracts for Difference and Over-The-Counter derivatives.
- 27.2. It is recorded as follows that the ODP Client warrants that he understands and accepts: -
 - 27.2.1. that any capital of the ODP Client is at risk, as the markets can be volatile, violated, and unpredictable;
 - 27.2.2. as set out in the Risk Disclosure located on the FlareX website, the ODP Client confirms that he has read and understood the terms thereof and the risks of entering a Trade; and,
 - 27.2.3. that the ODP Client may incur the risk of loss, as well as the prospect of profit, when entering a Trade.
- 27.3. It is acknowledged and agreed to by the ODP Client that significant risks are associated with the use of the Trading Platform, which includes, but is not limited to, risks relating to software usage and/or any telecommunications systems, such as:
 - 27.3.1. Glitches;
 - 27.3.2. Software bugs and errors;
 - 27.3.3. Technical errors;
 - 27.3.4. Telecommunication delays and service interruption;
 - 27.3.5. Data supply errors, faults or inaccuracies; or,
 - 27.3.6. Security Breaches.
- 27.4. In addition, the ODP Client acknowledges and assumes the following, namely;
 - 27.4.1. That all risk associated to the use, or attempted use, of the Trading Platform, and any data by way of the Trading Platform; and,

- 27.4.2. That the ODP Client has no recourse against FlareX in relation to the use or availability of a Trading Platform or any errors in software or related information systems.

28. ABNORMAL MARKET CONDITIONS

- 28.1. Any negative balance in the Trading Account arising from or the occurrence of Abnormal Market Conditions shall be for the account of the ODP Client and will be payable by the ODP Client to FlareX upon delivery of a Trading Account statement, indicating such negative balance.

29. INDEMNITY

- 29.1. It is recorded that the ODP Client indemnifies FlareX and agrees as follows, namely: -
- 29.1.1. That FlareX is held harmless for any breach of representation, warranty, or obligations, made by the ODP Client under or in connection with this Agreement or any Trade;
- 29.1.2. Any claim by any third-party licensor arising or resulting from the ODP Client's access, use, or any attempt thereof, to the Trading Platform; and,
- 29.1.3. FlareX's termination of any Trade under this Agreement.
- 29.2. The indemnity set out in this Indemnity Clause shall not extend to any Indemnified Loss sustained or incurred by FlareX as a result of its gross negligence or wilful default.
- 29.3. Each indemnity in this clause constitutes a separate and independent obligation of the ODP Client.

30. CONFIDENTIAL INFORMATION

- 30.1. Either Party will during and after the expiry or termination of the Agreement hold the other Party's Confidential Information in the strictest confidence and will not make use thereof other than for the performance of the obligations under the terms of the Agreement. Such information will be released, if permitted in writing by the respective Party, on the basis that the persons to whom information is disclosed are to be bound by the same confidentiality obligations as contained herein.
- 30.2. Confidential Information does not include: -
- 30.2.1. information which at the time of disclosure thereof by the Disclosing Party was already lawfully in possession of the Receiving Party, free of restriction on disclosure and use;
- 30.2.2. information which, as far as the Receiving Party is aware, is lawfully disclosed to it by a third-party, free of restriction on disclosure and use; and
- 30.2.3. information that is or becomes generally available to the public or the Receiving Party.
- 30.3. The Parties agree that they shall protect any Confidential Information that may be disclosed pursuant to the provisions of the Agreement, using the same standard of care that each Party applies to safeguard its own proprietary, secret or Confidential Information and that the information shall be stored and handled in such a way as to prevent any unauthorised disclosure thereof.

- 30.4. Save as may be required by law or any regulatory authority, no announcement or publicity of the existence of the Agreement, or its content, or the transaction embodied in the Agreement shall be made or issued by, or on behalf of, any party without the prior written agreement of all the Parties.
- 30.5. The Parties specifically agree that Trade information may be communicated by FlareX to any regulatory body, under any license condition or to an FSCA licensed or recognized trade repository.
- 30.6. The provisions of this clause will survive the termination, expiry or cancellation of the Agreement.

31. INTELLECTUAL PROPERTY

- 31.1. All rights, title, ownership and interest, including but not limited to intellectual property rights in and to any Intellectual Property, shall, as between the Parties, at all times remain the sole property of FlareX.
- 31.2. Under no circumstances will the ODP Client acquire any right, title, ownership or interest in or to or related to the Intellectual Property. Nothing in this Agreement will give or be construed to convey to the ODP Client, any ownership, title, interests, or rights in or to or related to the Intellectual Property.
- 31.3. The ODP Client acknowledges and agrees that the provision of the Services may involve the sub-licensing of software and information systems from a third-party ("**Licensor**").
- 31.4. The ODP Client agrees that the Licensor provides no product or service to the ODP Client and the ODP Client shall have no claims whatsoever and howsoever arising against a Licensor.
- 31.5. The ODP Client undertakes that he shall not -
- 31.5.1. Access or use Intellectual Property for any purpose other than for the purpose of this Agreement;
- 31.5.2. Use, copy, merge, make derivative works of or transfer copies of any software;
- 31.5.3. Use or disclose to any third-party any information obtained through or from the Trading Platform other than for the purposes expressly set out in this Agreement;
- 31.5.4. Allow any access to or use of the Trading Platform by any third-party;
- 31.5.5. Sell, lease or otherwise provide, directly or indirectly, any Intellectual Property;
- 31.5.6. Reverse engineer, disassemble or decompile any software forming part of the Intellectual Property;
- 31.5.7. Alter or remove or affect the display of any notices or disclaimers relation to the Intellectual Property;
- 31.5.8. Transmit or receive using Intellectual Property any information or material which is pornographic, obscene, abusive, profane, offensive, misleading, deceptive, disparaging, or defamatory; or
- 31.5.9. Use the Intellectual Property after the termination or cancellation of this Agreement.

32. FORCE MAJEURE

- 32.1. Neither Party shall be liable for any delay or failure in performance due to an event or events outside of a Party's (hereinafter the "**Defaulting Party**") reasonable control, including, without limitation, earthquakes,

labour disputes, actions of governmental entities, whether lawful or unlawful, legal or illegal, riots, war, terrorism, fire, pandemics, epidemics, infrastructure and/or power failure, or other circumstances beyond its reasonable control (hereinafter a **"Force Majeure Event"**).

- 32.2. The Defaulting Party is obliged to notify the other Party, as soon as reasonably possible, in writing, about the material adverse effect of a Force Majeure Event on the performance of its obligations under this Agreement to the reasonable satisfaction of the other Party, and furthermore advise what steps the Defaulting Party will take to rectify and resume the performance of such obligations.
- 32.3. Should FlareX be the Defaulting Party, it is entitled to take any necessary and reasonable steps to mitigate the Force Majeure Event.
- 32.4. The obligations and rights of the Defaulting Party shall be extended for a period equal to the period during which such event prevented such Party's performance – provided that if such period exceeds 90 (ninety) Days and the default of the Defaulting Party is material, then either Party shall be entitled to terminate this Agreement immediately on written notice while the Party's performance continues to be prevented.

33. TERMINATION

- 33.1. The Agreement may be terminated on no less than 30 (thirty) calendar days written notice, by the ODP Client to FlareX. It is the ODP Client's responsibility to ensure that all open positions are closed.
- 33.2. FlareX may terminate the Agreement immediately in the following instances, namely: -
 - 33.2.1. If the ODP Client is in material breach of the Agreement and either such breach is not capable of remedy or, if the breach is capable of remedy, the ODP Client has failed to remedy such breach within 7 (seven) days of receiving written notice requiring it to do so; or,
 - 33.2.2. In terms of any court order, arbitration award or directive issued by any competent authority.
- 33.3. The Agreement shall be terminated immediately without notice, if FlareX: -
 - 33.3.1. Is provisionally or finally liquidated; or,
 - 33.3.2. Ceases to operate as a licensed Financial Services Provider.
- 33.4. If this Agreement is terminated for any reason whatsoever, the amount standing to the credit of the Trading Account shall be paid to the ODP Client from the TPFA Account.
- 33.5. FlareX is obligated to pay funds to third-parties only when requested by court order in terms of a liquidation, or part of a deceased estate as long as the relevant documents have been provided to FlareX.
- 33.6. FlareX will be entitled to terminate any open Trades in accordance with any court order, arbitration award or ruling or directive from any competent authority, which is binding on FlareX.
- 33.7. The Trading Platform will automatically terminate a Trade when the Margin is no longer met, as determined in accordance with the Trade Schedule.

- 33.8. If the ODP Client wishes to terminate a trade, the ODP Client shall do so telephonically or via the Trading Platform.
- 33.9. Termination due to notice by FlareX. If FlareX wishes to terminate a Trade, it may do so by giving the ODP Client notice. Instances when FlareX will provide notice in terms of this clause includes, but is not limited to:
- 33.9.1. The ODP Client's trading position being fully hedged with the ODP Client holding a negative equity balance in their TPFA Account;
- 33.9.2. The financial product the ODP Client has traded, is no longer available due to it being cancelled by the liquidity provider;
- 33.9.3. The ODP Client has traded, however, the ODP Client's deposit does not appear in the ODP Client's TPFA Account within 72 hours after the deposit date;
- 33.9.4. FlareX suspect's the ODP Client of attempting to manipulate the financial product's price;
- 33.9.5. FlareX suspect's the ODP Client of attempting to manipulate the trading processes of the Trading Platform; or
- 33.9.6. FlareX's liquidity provider is changed in order to provide the ODP Client with an improved product offering.
- 33.10. If a particular financial product is no longer available to be traded on the Trading Platform, for any reason whatsoever, FlareX will send a notice to the ODP Client indicating: -
- 33.10.1. That it will no longer provide the Services in respect of the relevant financial product; and
- 33.10.2. Of the time period in which the ODP Client shall be required to close its open Trades in respect of such financial product, which time period shall be fair and reasonable having regard for the circumstances.

34. EVENTS OF DEFAULT

- 34.1. Events of default include the ODP Client engaging or becoming engaged in non-payment, margin breach, insolvency, misrepresentation, or a Prohibited Trading Practice.
- 34.2. Upon and event of default, the Provider may terminate all outstanding OTC Derivative Transactions and determine settlement through close-out valuation.
- 34.3. An event of default is considered a material breach of this Agreement.

35. DISPUTE RESOLUTION

- 35.1. Should any dispute arise between the Parties regarding this Agreement and/or its implementation, including any breach, the Parties shall attempt, within 7 (seven) calendar days of such dispute having arisen, or any further period agreed to in writing by the Parties, to settle such dispute by conciliatory discussions between them.

- 35.2. Should such dispute remain unresolved after the period referred to above, then either Party may formally declare a dispute via notice and such dispute shall be decided by arbitration in the manner set out below.
- 35.3. An Arbitrator who shall be appointed shall be a practicing advocate with not less than 10 (ten) years' standing agreed upon between the Parties, or failing agreement within 10 (ten) business days of a dispute having been declared by either Party, appointed by the Chairperson of the Cape Bar Council (or its successors in title).
- 35.4. If there is any dispute as to whether the question in issue is primarily an accounting, legal or other matter, the Chairperson of the Cape Bar Council (or its successors in title) shall decide thereon, whose decision shall be binding.
- 35.5. The Arbitration shall be held in Cape Town in accordance with the formalities and/or procedures settled by the Arbitrator, which may be in an informal and summary manner, that is, on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedure or the strict rules of evidence, and otherwise subject to the provisions of the Arbitration Act, 1965 (as amended and any statutory modification or re-enactment thereof) or, in the event that any Party to the dispute is domiciled outside of the Republic of South Africa, in accordance with the International Arbitration Act, 2017 (as amended and any statutory modification or re-enactment thereof).
- 35.6. The Arbitrator shall be entitled:
- 35.6.1. to decide the matters submitted to him according to what he considers just and equitable in all the circumstances, having regard to the purposes of this Agreement; and
- 35.6.2. to make such award, including an award for specific performance, an interdict, damages, a penalty or otherwise as he in their discretion may deem fit and appropriate (with due regard to the provisions of this Agreement).
- 35.7. The arbitration shall be held as quickly as possible after it is demanded with a view to it being completed within 30 (thirty) calendar days after it has been so demanded.
- 35.8. This clause shall constitute the irrevocable consent of the Parties hereto to the arbitration proceedings in terms hereof, and no Party shall be entitled to withdraw therefrom or to claim at any such arbitration proceedings that it is not bound by this clause.
- 35.9. The Parties irrevocably agree and undertake that any award that may be made by the Arbitrator:
- 35.9.1. shall be final and binding on them;
- 35.9.2. will immediately be carried into effect; and
- 35.9.3. may be made an Order of Court by FlareX.
- 35.10. The provisions of this clause do not preclude a Party from seeking urgent relief from a court or from making an arbitration award an order of court. In this regard, the Parties hereby consent and submit to the non-exclusive jurisdiction of the Western Cape High Court for such purposes

36. AMENDMENTS

- 36.1. FlareX shall be entitled to amend the terms of this Agreement at its sole discretion, and shall notify the ODP Client of any such amendment as follows: -
- 36.1.1. by publishing a notice of any amendment on its Website and updating the documents on the Website to reflect the amendment; or,
- 36.1.2. circulating a written notice of the amendment to the ODP Client.
- 36.2. The aforesaid amendment shall be effective on the date that FlareX notifies the ODP Client of the amendment or on such later date as may be applicable the notice and shall be binding on the ODP Client.

37. BREACH

- 37.1. If a Party commits any breach of this Agreement and fails to remedy such breach (if capable of remedy) within 7 (seven) business days of being required by the other Party in writing to remedy such breach (such notice to give reasonable particulars of the alleged breach), then the Party giving the notice will be entitled, subject to Clause 14:
- 37.1.1. to claim from the Party who committed the breach, immediate specific performance of all or any other obligations under this Agreement, with or without claiming damages, whether or not such obligation has fallen due for performance; or,
- 37.1.2. to terminate this Agreement, with or without claiming damages, in which case written notice of the termination shall be given to the Party who committed the breach, and the termination shall take effect on the giving of the notice.
- 37.2. Subject to any specific provision to the contrary in this Agreement, no Party shall be entitled to cancel this Agreement without following due procedure in the event of a breach unless such breach is a material breach. A breach will be deemed to be a material breach if:
- 37.2.1. it is capable of being remedied, but is not so remedied within 3 (three) business days of written notice; or
- 37.2.2. it is incapable of being remedied, and payment in money may compensate for such breach, but such payment is not made within 10 (ten) business days of written notice; or,
- 37.2.3. it is otherwise contemplated as being a material warranty and/or representation by the Parties to agreement and set out in these ODP Terms.
- 37.3. The Parties agree that any costs awarded will be recoverable on an attorney-and-own Client scale unless the Court specifically determines that such scale shall not apply, in which event the costs will be recoverable in accordance with the High Court tariff, determined on an attorney-and-own Client scale.

38. NOTICES

- 38.1. The Parties select their provided and/or registered addresses as their respective *domicilia citandi et executandi*, for the purposes of producing or sending of any notice, the serving of any process, and for any other purpose arising from this Agreement, as follows:

FlareX:

Physical address: Sasol Building
50 Katherine Street
Sandton
Johannesburg
2196

For the attention of: Legal & Compliance

- 38.2. The Parties agree that each shall be entitled from time to time, by written notice to the other, to vary its *domicilia citandi et executandi* to any other address which is not a post office box or poste restante within the Republic of South Africa.

- 38.3. Any such notice shall be deemed, unless the contrary is proved, to have been received:

- 38.3.1. if delivered personally by hand, at the time and on the date of delivery;
- 38.3.2. if sent by pre-paid first-class post, 1 (one) business day from the date of posting;
- 38.3.3. in the case of registered mail, 3 (three) business days from the date of posting; and,
- 38.3.4. if sent by email (save for legal processes, which shall only be served at the physical address specified) unless the contrary is proven, within two hours of transmission where it is transmitted during normal business hours (being between the hours of 08:00 and 17:00) on a business day or within two hours of the commencement of the first business day after it is transmitted where so transmitted outside those normal business hours (unless a delivery failure message is received by the sender, in which case such email service shall not be effective).

39. APPLICABLE LAW AND JURISDICTION

- 39.1. This Agreement shall be governed by the laws of the Republic of South Africa and the Parties consent to the non-exclusive jurisdiction of the High Court of South Africa, Western Cape Local Division, Cape Town.