

REFERRAL AGREEMENT

Memorandum of agreement made and entered into by and between



Registration number: 2003/091833/23,
a close corporation herein represented by Annalene Kinghorn
in her capacity as member, duly authorised hereto

Address: P.O. Box 6914,
Welgemoed, 7538

And

.....(FSP NAME)
also referred to as the "Adviser"

Registration number:/...../...,
An Authorised Financial Services Provider,
FSP Number:

Address:
.....
.....
.....

Represented by

.....
.....
.....
.....

Duly authorised thereto

1.1 INTERPRETATION AND DEFINITIONS :

In this agreement, unless clearly inconsistent with or otherwise indicated by the context:

- 1.1.1 “ **AGREEMENT** “ : means the contents of this document.
- 1.1.2 “ **ACQUISITION PRICE** ”: means in relation to a tradable policy, the aggregate of the net surrender value and the net fee. The net fee is equal to the total fee less POLINVEST’s Nominated Agent/Trader fee (see section 7).
- 1.1.3 “ **BUSINESS DAY** “ : means a day (other than a Saturday, a Sunday, or an official South African public holiday, the latter as defined in the Public Holidays Act 36 of 1994) on which banks are open for business in the Republic of South Africa.
- 1.1.4 “ **BUYER** “ : means those buyers that buys Tradable Policies or Investments from Polinvest CC or its Nominated Agent/Trader.
- 1.1.5 “ **CLIENT** “ : means the client of the appointed financial adviser or the policyholder directly or the executor of an estate or the cessionary.
- 1.1.6 “ **COMMENCEMENT DATE** “ : means the date this Agreement is executed by the last signing Party.
- 1.1.7 “ **DOCUMENTATION** “ : means all the relevant documentation required by Polinvest or its Nominated Agent/Trader and the relevant Insurer to effect full transfer of ownership from the seller to the buyer.
- 1.1.8 “ **FEE** “ : means the fee due to Polinvest CC or its Nominated Agent/Trader and comprise of the difference between the Acquisition Price and the Trading Price.
- 1.1.9 “ **LIFE COMPANY** “ : means a company which carries on a long term insurance business in the Republic of South Africa and is registered as a long term insurer in terms of the Long Term Insurance Act, No. 52 of 1998 or such other company as is agreed to from time to time in writing by the Parties.
- 1.1.10 “ **LIFE POLICY** “ : means a life insurance policy as defined in the Long Term Insurance Act, No. 52 of 1998.
- 1.1.11 “ **MATURITY DATE** “ : means any policy of which the contractual term has been reached or about to expire.
- 1.1.12 “ **NET SURRENDER VALUE** “ : means the surrender value of a Life Policy and is presented by the gross surrender value of the policy, less the policy premium debts and policy loan debts.
- 1.1.13 “ **PARTIES** “ : means the parties to this Agreement.

- 1.1.14 “ **PROCESS OF SURRENDERING** “ : means an act of surrendering the Life Policy either instituted by a bank itself in accordance with its internal administration processes or either voluntarily by the client.
- 1.1.15 “ **SALES/TRADING PRICE** “ : means the price that is paid for the Life Policy if such a Life Policy is sold to a buyer. The Sales or Trading Price will at all times be higher than the net surrender value, unless the policy is restricted in terms of the Long Term Insurance Act or due to product rules.
- 1.1.16 “ **SELLER** “ : means the client of the appointed financial adviser or the policyholder directly or the executor of an estate or the cessionary that agrees to the sale of a Life Policy at a pre-negotiated sales/trading price.
- 1.1.17 “ **SETTLEMENT** “ : means the delivery of all required documentation to Polinvest CC or its Nominated Agent/Trader and payment of the full Acquisition Price into the bank account of the client or nominee.
- 1.1.18 “ **TERM** “ : means the period commencing on the Commencement Date of this Agreement and ending on the date this Agreement is terminated in accordance with its terms.
- 1.1.19 “ **TRADED POLICY** “ : means:
- 1.1.19.1 a Life Policy as defined in the Long Term Insurance Act, No. 52 of 1998;
 - 1.1.19.2 an endowment policy; or
 - 1.1.19.3 a whole of life or a long dated endowment policy, either of which may or may not have been converted to an endowment policy;
 - 1.1.19.4 and on which the buyer can affect additional lives insured.
- 1.1.20 “ **VALUATION DATE** “ : means the date on which a particular Life Policy is evaluated by or on behalf of Polinvest CC with specific valuation instruction from the Adviser or Client .
- 1.1.21 “ **VALUATION** “ : means obtaining the values on the particular Life Policy gathered from the insurer or Adviser or client and performing the full evaluation of the particular Life Policy to meet the investment expectations and criteria as set by the buyers.

1.2 INTERPRETATION

Headings are for convenience only and do not affect interpretation. In this Agreement, unless the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa;

- 1.2.2 a reference to a person includes a reference to a body corporate, a government institution or body, or an unincorporated body and any other entity;
- 1.2.3 each recital and schedule to this Agreement and written notice given in terms of this Agreement shall form part of this Agreement;
- 1.2.4 a reference to this document or this Agreement includes a reference to any variation, replacement or novation of it;
- 1.2.5 a reference to any legislation or to any provision of any legislation includes a reference to any modification or re-enactment of such legislation, any legislative provision substituted for it and all regulations and statutory provisions issued under it;
- 1.2.6 a reference to any Party to this Agreement, where relevant, includes a reference to the Party's successors and permitted assigns;
- 1.2.7 a reference to “ *Rand* “ or “ *R* ” is a reference to the currency of the Republic of South Africa;
- 1.2.8 where a word or phrase is defined, its other grammatical terms have corresponding meanings;
- 1.2.9 a reference to conduct includes a reference to any omission, statement or undertaking, whether or not in writing;
- 1.2.10 if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day, and where applicable, inclusive of the last day.

2. APPOINTMENT OF POLINVEST CC

The **Adviser** hereby appoints **Polinvest CC** or its **Nominated Agent/Trader** as its preferred trader in Restricted policies and policies to be Surrendered by any of his/her clients.

3. CONDITIONS OF APPOINTMENT

Polinvest CC and its **Nominated Agent/Trader** will adhere to the internal time standards and administrative procedures set by the **Adviser** as agreed.

4. PERIOD OF APPOINTMENT

- 4.1 The **Adviser** appoints **Polinvest CC** and/or its **Nominated Agent/Trader** as its trader in Restricted policies and policies to be Surrendered by any of his/her clients as set out in clause 2 of this Agreement commencing on the commencement date.
- 4.2 Either party on a 90 (ninety) day written notice may terminate this agreement.

5. DUTIES OF POLINVEST CC OR ITS NOMINATED AGENT/TRADER

POLICIES TO BE SURRENDERED

- 5.1 **Polinvest CC** will after receiving the request for valuation, request the client details from the **Adviser** or the insurer in regard to that particular surrender. **Polinvest CC** will not liaise with any client directly unless instructed to do so by the **Adviser**.
- 5.2 **Polinvest CC** will after receiving the information as described in clause 5.1, obtain the net surrender value from the insurer or the **Adviser** within 1 (one) working hour.
- 5.3 **Polinvest CC** will after receiving the net surrender value, immediately ascertain the sales price on the particular Life Policy.
- 5.4 **Polinvest CC** will within 1 (one) working day from the date prescribed in clause 5.2 issue a Valuation Certificate with all relevant policy information on it and supply it to the **Adviser**.
- 5.5 **Polinvest CC** will within 1 (one) working day after the date prescribed in clause 5.2 contact the **Adviser** and offer him/her the Acquisition Price to be paid into the clients personal bank account or into an account nominated by the client.
- 5.6 **Polinvest CC** will within 2 (two) working days after the date prescribed in clause 5.2 set up an appointment with the **Adviser** or the client to get all the documentation signed by the client.
- 5.7 **Polinvest CC** will within 2 (two) working days after the date prescribed in clause 5.6 arrange for payment of the Acquisition Price into the clients account.
- 5.8 **Polinvest CC** will after receiving the net surrender value and ascertaining that there is no value above the net surrender value in the policy immediately (within the hour) inform the **Adviser** about it so that they can proceed with surrendering the Life Policy.
- 5.9 **Polinvest CC** will supply the **Adviser** on a monthly basis with a compiled stock list and payment statement for every transaction as required by the **Adviser**.
- 5.10 **Polinvest CC** will ensure that the buyers note and execute all changes on the traded policies.

RESTRICTED POLICIES

- 5.11 The **Adviser** will refer all restricted policies to **Polinvest CC** in the same way as policies to be surrendered are referred to **Polinvest CC**.
- 5.12 **Polinvest CC** will apply exactly the same trading process to restricted policies as for policies to be surrendered and all the above procedures apply.

6. DUTIES OF THE ADVISER

- 6.1 On an ongoing basis supply **Polinvest CC** with all applicable information to perform and execute their duties as prescribed in clause 5 of this Agreement.
- 6.2 The **Adviser** will give his/her full co-operation requested by **Polinvest CC** to enable **Polinvest CC** to fully execute its duties relating to this Agreement with the **Adviser**.

7. REMUNERATION / COMMISSION

Polinvest CC will charge no fee, but its **Nominated Agent/Trader** will be entitled to a fee, which will be disclosed on the Valuation Certificate to the **Adviser** and his/her client. The minimum fee charged will be R1, 000 (Excluding VAT).

Polinvest CC will disclose the total Acquisition Price and total profit to the **Adviser**. The **Adviser** is in the position to disclose and negotiate his/her own fee with the client. The client must sign the Valuation Certificate disclosing all fees and the net acquisition price.

8. CONFIDENTIALITY

Polinvest CC acknowledges the confidentiality of the **Advisers** business and specifically the confidentiality of any information between the **Adviser** and the client and undertakes to honor this confidentiality, unless it becomes necessary, during the execution of its duties, to share such information with another party, and with the express written consent of either the **Adviser** or the client. **Polinvest CC** will however be allowed to share all information with its **Nominated Agent/Trader**.

9. NOTICES AND DOMICILIUM

- 9.1 The parties choose as their *domicilium citandi et executandi* their respective addresses set out in the heading for all purposes arising out of or in connection with this Agreement at which addresses all the processes 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.
- 9.2 Any notice given in terms of this Agreement shall be in writing and shall :
 - i. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
 - ii. if given by telegram be deemed to have been received by the addressee 1 (one) business day after despatch;
 - iii. if transmitted by facsimile be deemed to have been received by the addressee 1 (one) business day after despatch.
- 9.3 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the parties from another including by way of facsimile transmission shall be adequate written notice or communication to such party.

10. MISCELLANEOUS

10.1 Payment

All payments in terms of or arising out of this Agreement shall be made free of bank exchange, commission and all other deductions to the party entitled thereto.

10.2 Implementation and Good Faith

The parties undertake to do all such things, perform all such acts and take all steps to procure the doing of all such things and the performance of all such acts, as may be necessary or incidental to give or conducive to the giving of effect to the terms, conditions and import of this Agreement.

10.3 Obligations

The parties shall at all times during the continuance of this Agreement, observe the principles of good faith towards one another in the performance of their obligations in terms of this Agreement. This implies, without limiting the generality of the a foregoing, that they:

10.3.1 are at all times during the term of this Agreement to act reasonably, honestly and in good faith;

10.3.2 perform the obligations arising out of this Agreement diligently and with reasonable care; and

10.3.3 make full disclosure to each other of any matter that may affect the execution of this Agreement.

10.4 Assignment

Polinvest CC shall be entitled to assign this Agreement, or all or any of its rights and obligations hereunder without the prior written consent of the **Adviser** in order for **Polinvest CC** to execute its duties.

10.5 Warranty of Authority

Each party warrants to the other party that it has power, authority and legal right to sign and perform this Agreement and that this Agreement has been duly authorised by all necessary actions of its members/directors and constitutes valid and binding obligations on it, in accordance with the terms of this Agreement.

10.6 Whole of Agreement

This Agreement constitutes the whole Agreement between the parties as to the subject matter hereof and no Agreement, representations or warranties between the parties other than those set out herein are binding on the parties.

10.7 Further Assurances

The parties hereto agree to perform any further acts and to execute and deliver any further documents which may be necessary or appropriate to carry out the purposes and the implementation of this Agreement.

10.8 Independent Advice

Each of the parties hereto acknowledges that they have been free to secure independent legal advice as to the nature and effect of all of the provisions of this Agreement and that they have either taken such independent legal advice or dispensed with the necessity of doing so.

Further, each of the parties hereto acknowledges that all of the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are part of the overall intention of the parties in connection with the project.

10.9 Variation

No addition to 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 all the parties or their duly authorised representatives.

10.10 Relaxation

10.10.1 No latitude, extension of time or other indulgence which may be given or allowed by any party to any other party in respect of the performance of any obligation hereunder or enforcement of any right arising from this Agreement and no single or partial exercise of any right by any part shall under any circumstances be construed to be an implied consent by such party or operate as a waiver or a novation of, or otherwise affect any of that party's rights in terms of or arising from this Agreement or stop such party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

10.10.2 If any party of the agreement is found to be invalid or unenforceable, the rest of the agreement shall remain valid and enforceable.

SIGNED ATONOF20.....

AS WITNESSES:

1.

.....
For: ADVISER

2.

SIGNED ATONOF20.....

AS WITNESSES:

1.

.....
For: POLINVEST CC

2.