



PKF Capital Markets (Seychelles) Limited

**PKF CAPITAL MARKETS (SEYCHELLES) LIMITED**  
**TERMS AND CONDITIONS**

**February 2022**

**V1. 2022**

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## 1. Interpretation and definitions

1.1 Unless otherwise stated or inconsistent with the context in which they appear, the following terms shall bear the following meanings and cognate expressions shall bear corresponding meanings:

1.1.1	<b>“Abnormal Market Conditions”</b>	means that, in the opinion of PKF, abnormal, emergency or unusual conditions exist in Securities markets, the effect or likely effect of which is that the prices or availability of any Security is materially affected;
1.1.2	<b>“Agreement”</b>	means this Agreement with any schedules and Appendices referred herein;
1.1.3	<b>“Appendices”</b>	means the appendices attached to these terms and conditions and “Appendix” shall mean any of them as the context may indicate;
1.1.4	<b>“Applicable Law”</b>	means all laws, regulations, by-laws, rules and directives issued by a competent authority and which are binding on a Party, whether in respect of the conduct of business of the Party, this Agreement or any Transaction;
1.1.5	<b>“Application Form”</b>	means the application form on the Website and/or any other account opening documentation completed by the Client and submitted to PKF as applicable from time to time;
1.1.6	<b>“Associate”</b>	means, in the case of PKF only, each of its Related Companies and Service Providers, and each person that has at least 25% (twenty five percent) ownership in PKF, its Related Companies or the Service Providers;
1.1.7	<b>“Authorised Representative”</b>	means any representative appointed, from time to time, by PKF;
1.1.8	<b>“Business Day”</b>	means any day other than Saturday, Sunday or an official public holiday in Seychelles or the applicable jurisdiction of the Transaction;

1.1.9	<b>“Client”, “you”, “your” and “yourselves”</b>	<p>means –</p> <ul style="list-style-type: none"> <li>a) the entity or person who has submitted the Application Form and agreed to be bound by the terms and conditions of this Agreement and who has been notified by PKF that its application has been accepted; or</li> <li>b) in the event that the person who submitted the Application Form is acting on behalf of another entity, then the latter shall be considered as the <b>“Client”</b>, provided that: <ul style="list-style-type: none"> <li>(i) the Client is duly registered within 14 (fourteen) days from the date of submission of the Application Form;</li> <li>(ii) agrees, in writing, to be bound to the terms of this Agreement within 14 (fourteen) days of its registration; and</li> <li>(iii) delivers to PKF all such account opening documentation required by PKF;</li> </ul> </li> </ul>
1.1.10	<b>“Client Account”</b>	means a running account maintained by PKF in respect of the Client for the purpose of recording credits and debits in relation to Client Money;
1.1.11	<b>“Client Money”</b>	means all money which, in the course of providing the Services, PKF, its Associate, or any person on its behalf, holds for the Client or receives from the Client, or on behalf of the Client;
1.1.12	<b>“Commencement Date”</b>	means the date on which the Application Form has been submitted by the Client as referred to in Clause 2 of this Agreement;

<p><b>1.1.13</b></p>	<p><b>“Confidential Information”</b></p>	<p>a) Means any information of whatever nature relating wholly or partly to the Services or the affairs of the Parties which:</p> <ul style="list-style-type: none"> <li>(i) is supplied by or on behalf of the Client to PKF or its authorized recipients in writing or orally and whether before or after the Commencement Date</li> <li>(ii) is obtained by PKF or its Authorized Recipients in writing or orally, through or following discussion with the management, employees, agents or advisors of the Client;</li> <li>(iii) is acquired by observation or attendance by the Service Provider or its Authorized Recipients at the offices or other premises of the Company; or</li> <li>(iv) consists of any reports, analyses, compilations, studies, the know-how, trade secrets, technical processes, information relating to pricing, market share, products, finances, clients or suppliers, the right to all lists of clients and suppliers of that party or of any of its Associates or other documents prepared by, on behalf of or for the Service Provider, and which contain or are derived from or otherwise reflect any information described in points (i) – (iii) above relating to any one Party and/or the business carried on or proposed or intended to be carried on by the Disclosing Party (as defined below), which is made available in connection with this Agreement to the other Receiving Party (as defined below) by the Disclosing Party and other information relating to that party or to any of its Associates and their respective businesses, and which by its nature, or by the circumstances of its disclosure to the</li> </ul>
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		<p>holder of the information, is or could reasonably be expected to be regarded as confidential.</p> <p>b) But excluding information which:</p> <p>(i) Is publicly available at the time of its disclosure or becomes publicly available (other than as a result of disclosure by the Receiving Party contrary to the terms of this Agreement); or</p> <p>(ii) was lawfully in the possession of the Receiving Party of any restriction as to its use or disclosure prior to its being so disclosed; or</p> <p>(iii) following such disclosure, becomes available to the Receiving Party from a source other than the Disclosing Party which source is not bound by any duty of confidentiality owed, directly or indirectly to the Disclosing Party in relation to such information;</p>
<b>1.1.14</b>	<b>“Confirmation”</b>	means, in relation to a Transaction, a document or other evidence issued, delivered or otherwise made available for the purpose of confirming or evidencing that Transaction, but excludes an electronic mail or text message, unless PKF specifies otherwise in that electronic mail or text message or otherwise in writing;
<b>1.1.15</b>	<b>“Disclosing Party”</b>	means the party disclosing Confidential Information to the other party;
<b>1.1.16</b>	<b>“Electronic Trading Platform”</b>	means any electronic trading platform made available by PKF to the Client, depending upon the type of Transactions that PKF is willing to enter into at that time.

		A reference to “Electronic Trading Platform” in this Agreement is a reference to the Electronic Trading Platform provided in relation to the relevant type of Transaction.
<b>1.1.17</b>	<b>“Force Majeure”</b>	<p>means any event or cause beyond the reasonable control of PKF, including -</p> <ul style="list-style-type: none"> <li>a) Abnormal Market Conditions; or</li> <li>b) an act of God, inevitable accident, fire, lightning, cyclone, earthquake, landslide, volcanic eruption or other natural phenomenon; or</li> <li>c) sabotage, revolution, insurrection, act of war (whether declared or not) or war-like operations; or</li> <li>d) a confiscation or expropriation, embargo, quarantine restriction or any like event; or</li> <li>e) any strike, dispute or lockout; or</li> <li>f) civil commotion or industrial dispute affecting a Third Party (for which a substitute Third Party is not readily available).</li> <li>g) an epidemic, toxic emission or any like event; or</li> <li>h) a requirement, restriction, prohibition, intervention, law, regulation, decree or other legally enforceable order of any government; or</li> <li>i) an explosion, nuclear accident or any like event; or</li> <li>j) a telecommunications, network, power or equipment failure or damage, or power or water shortage,</li> </ul> <p>as a result of which, in each case in the opinion of PKF , it is impossible, impractical or illegal for PKF to perform and comply with any of its obligations under this Agreement or any Transaction;</p>
<b>1.1.18</b>	<b>“FSA”</b>	means the Financial Services Authority of the Republic of Seychelles;
<b>1.1.19</b>	<b>“Intellectual Property Rights”</b>	includes any copyright, design rights, patents, inventions, logos, business names, moral rights, rights in databases, data, source codes, reports,



		drawings, specifications, know how, business methods, trade secrets, semi-conductor rights, topography rights, whether registered or unregistered, rights in the nature of unfair competition and the right to sue for passing off, applications for registration, and the right to apply for registration, for any of these rights, and all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;
<b>1.1.20</b>	<b>“Normal Business Hours”</b>	means 10 am to 4pm (Seychelles time) on a Business Day;
<b>1.1.21</b>	<b>“Order”</b>	means an instruction in the prescribed format, submitted by the Client to open or close a position in respect of any particular Security;
<b>1.1.22</b>	<b>“Markets and Fees Schedule”</b>	means, at any time, any schedule, addendum or other document, by whatever name, issued by PKF or any of its Associates containing its rates, fees, commissions and charges applicable to Transactions at that time, which is either published on the Website from time to time or otherwise available on request from PKF, it being recorded that these may be published as separate documents or a single document from time to time;
<b>1.1.23</b>	<b>“Party”</b>	means any one of the Parties to this Agreement. The term “Parties” shall have corresponding meaning;
<b>1.1.24</b>	<b>“PKF”, “us”, “we” and “our”</b>	means PKF Capital Markets (Seychelles) Limited, with company number 841075-1 and with securities dealer license number SD001;
<b>1.1.25</b>	<b>“Receiving Party”</b>	means the Party that processes the Confidential Information of the Disclosing Party;
<b>1.1.26</b>	<b>“Recognised Exchange”</b>	means a licensed securities exchange where PKF is a member, or acts via a member;
<b>1.1.27</b>	<b>“Regulatory Authority”</b>	means an authority within a competent jurisdiction, which includes but may not be limited to the Seychelles Financial Services Authority, the Seychelles Financial Intelligence Unit, and the Seychelles Revenue Commission or the applicable jurisdiction where a Transaction is being conducted;
<b>1.1.28</b>	<b>“Securities”</b>	means listed and unlisted securities, financial instruments, warrants, investments,

		cryptocurrency, and similar or related to any of the foregoing;
<b>1.1.29</b>	<b>“Security Credentials”</b>	means any personalised username, account number, Client ID, one time pin and/or password in relation to the access or use of the Electronic Trading Platform or otherwise provided by PKF or its Associate;
<b>1.1.30</b>	<b>“Segregated Funds Account”</b>	means a bank account that, where required by this Agreement, is established and maintained by PKF in accordance with the provisions of this Agreement (and all annexures or appendices hereto), for the purpose of receiving, holding and disbursing Client Money, including client money of other clients of PKF;
<b>1.1.31</b>	<b>“Services”</b>	means the services delivered by PKF as set out in this Agreement and other services as may be provided from time to time;
<b>1.1.32</b>	<b>“Service Provider(s)”</b>	means any entity appointed by PKF and at PKF’s sole discretion to deliver the Services outlined in this Agreement;
<b>1.1.33</b>	<b>“Third Party”</b>	means any person or entity which is not a Party to this Agreement;
<b>1.1.34</b>	<b>“Trading Platform Communication”</b>	means any Order or instruction or other communication sent by way of the Electronic Trading Platform by or on behalf of the Client, or purportedly by or on behalf of the Client;
<b>1.1.35</b>	<b>“Transaction”</b>	means any transaction into which PKF and/or its Associates have entered or propose to enter into for or on behalf of the Client;
<b>1.1.36</b>	<b>“Website”</b>	means the website on which the Client completed and submitted the Application Form residing on the following URL: <a href="http://www.pkf.sc">www.pkf.sc</a>

1.2 In this Agreement, headings are for convenience only and do not affect the interpretation of this Agreement and, unless the context otherwise requires:

1.2.1 The clause headings of this Agreement have been inserted for convenience only and shall not be taken into consideration in its interpretation.

- 1.2.2 Any reference to the singular includes the plural and vice versa and any reference to natural persons includes legal persons and vice versa and reference to any gender includes reference to the other genders.
- 1.2.3 Any reference in this Agreement to a Party shall include a reference to that Party's assigns expressly permitted under this Agreement and, 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.
- 1.2.4 A reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before, or after the Commencement Date).
- 1.2.5 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 the Agreement.
- 1.2.6 The expiry 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 expiry or termination or which of necessity must continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.2.7 The words "include", "including" and "in particular" shall be construed as being by way of example or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding word/s.
- 1.2.8 Terms other than those defined in this agreement will be given their plain English meaning, and those terms, acronyms, and phrases generally known in the financial services industry will be interpreted in accordance with their generally known meanings.
- 1.2.9 Words and expressions defined in any sub-clause shall, for the purpose of the clause of which the sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 1.2.10 If any period is referred to in this Agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the day shall be the next succeeding Business Day.

- 1.2.11 The rule of construction that the contract shall be interpreted against the Party responsible for the drafting or preparation of this Agreement, shall not apply.
- 1.2.12 This Agreement shall be governed by and construed and interpreted in accordance with the laws of Seychelles.
- 1.2.13 The word “person” includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a legal arrangement, a state and an agency of state (in each case, whether or not having a separate legal personality).
- 1.2.14 A reference to a person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and permitted assignees.
- 1.2.15 A reference to something having a material adverse effect on a person is a reference to it having a material adverse effect –
- 1.2.15.1 on that person’s financial condition or operations or on its consolidated financial condition or operations; or
  - 1.2.15.2 on its ability to comply with its obligations under this Agreement.

## **2. APPLICATION FORM**

- 2.1 It is recorded that the submission of the Application Form amounts to an offer by the Client to enter into this Agreement with PKF and PKF’s acceptance thereof.
- 2.2 By submitting the Application Form the Client acknowledges to PKF that –
- 2.2.1 the Client has received read, understood and agreed, to these terms and conditions, the Markets and Fees Schedule and all Appendices hereto.
  - 2.2.2 the Client shall be deemed to have read, understood and agreed to all amendments to this Agreement, including the amendments to the Markets and Fees Schedule and all Appendices hereto which have been delivered in accordance with clause 36;
  - 2.2.3 the Client will be required to submit due diligence documentation from time to time and the recurrence of which shall be at PKF’s sole discretion, with the aim to align with any Applicable Law, amongst others.

Further to this:

- 2.2.3.1 it is hereby agreed that the Client's failure to comply with the foregoing requirements shall constitute a material breach of this Agreement and may result in the suspension of Services and where necessary, the termination of the relationship with the Client by PKF; and
- 2.2.3.2 it is hereby agreed that in any case whereby PKF incurs any fines and/or penalties as a result of non-responsiveness and/ or non-compliance of the Client, this will be passed on to the Client, who shall be liable for the settlement of such fines and penalties as the case may be.
- 2.2.4 the Client has further understood and agreed that these terms and conditions may from time to time and at PKF's sole discretion be revised by PKF and that the Client shall endeavour to consult the terms and conditions and to remain abreast of any changes. An updated version of the PKF's terms and conditions will remain accessible on the Website and;
- 2.2.5 whether or not this Agreement is specifically referred to and unless the terms of this Agreement are expressly excluded, every Transaction is governed by the terms and conditions of this Agreement.

### **3. TERM OF AGREEMENT**

- 3.1 This Agreement takes effect, and the rights and obligations of each Party commence, on and from the Commencement Date.
- 3.2 This Agreement continues in force until terminated in accordance with its terms or as agreed by the Parties.

### **4. MODE OF SERVICE PROVISION**

- 4.1 Provided that the Client complies with its obligations under this Agreement, and subject to the terms of this Agreement, PKF shall –
  - 4.1.1 make the Electronic Trading Platform available to the Client at the Client's request and access to which shall be approved at PKF's sole discretion; and

- 4.1.2 enter into and execute Transactions for or on behalf of the Client as further addressed in this Clause 4;
- 4.2 It is recorded that the Services rendered by PKF to the Client in terms of this Agreement may include the Limited Discretionary Services and the Discretionary Services.
- 4.3 By default, this Agreement is a limited discretionary mandate in that-
  - 4.3.1 the Transactions will be entered into on the Client's instructions only, as provided for in this Agreement and PKF will have no discretion in respect of the choice of the type of Transaction or type of Security; and
  - 4.3.2 PKF shall have discretion only in respect of the following –
    - 4.3.2.1 the determination of the exact scope of Services necessary to give effect to the Transaction;
    - 4.3.2.2 the selection, on behalf of the Client, of Service Providers in respect of the intermediary Services necessary to give effect to the Transaction; and
    - 4.3.2.3 the entry into and acceptance, on behalf of the Client, of terms and conditions applicable to the conclusion of the Transaction.
- 4.4 The Client acknowledges and agrees that in relation to the limited discretionary mandate–
  - 4.4.1 such Transactions will only be entered into by PKF, on the Client's instructions as provided for in this Agreement;
  - 4.4.2 save as necessarily implied by the limited discretion referred to in clause 4.3, PKF does not provide any advice, recommendation, opinion or guidance in relation to the entry into this Agreement or any such Transaction, and PKF makes no representations to the Client;
  - 4.4.3 save as necessarily implied by the limited discretion referred to clause 4.3, the execution of the instructions by the Client shall at no time imply PKF's approval of any of the Client's investment decisions and entry into of a Transaction by the Client does not mean that PKF makes a recommendation, holds an opinion or gives guidance to the Client in relation to its entry into of that Transaction; and
  - 4.4.4 PKF does not intend to and is not required to consider one or more of the Client's objectives, financial situation and needs but-

4.4.4.1 PKF may provide general information to the Client that PKF provides to its clients generally; and

4.4.4.2 that information will not take into account the particular needs, objectives or financial circumstances of the Client.

4.5 Where a Client wishes to appoint a Third Party to act and convey instructions to PKF on their behalf, they shall confer such right of instruction through an appropriate power of attorney as agreed in writing with PKF.

4.6 Only if instructed by the Client, this Agreement shall be considered as a discretionary mandate in that the Client hereby authorises PKF to manage the Client's investments on a full discretionary basis, which includes but is not limited to acting as the Client's duly authorised agent to purchase, sell and enter into any Transactions on the Client's behalf.

4.7 In the case of a discretionary mandate the following shall apply:

4.7.1 If the Client instructs PKF to manage its investments on a full discretionary mandate, PKF shall not be obliged to do so nor accept any liability, with banks or other financial institutions, including Associates;

4.7.2 Investments are conducted within the limits of the Client's existing account balances;

4.7.3 PKF shall maintain an up-to-date list of chosen investments and the Client has the right at any time to request the current list of chosen investments;

4.7.4 PKF shall designate the Service Provider, the amount, the currency, the duration and the conditions of the investments at its own discretion, insofar as the Client has issued no directions to the contrary in a written instruction. This is subject to any measures by the country or in respect of the currency or the investment;

4.7.5 Investments conducted and Custody Assets held by PKF shall be in its own name or in that of its nominee, but shall be for the account of and at the risk of the Client; and

4.7.6 The Client has been informed and agrees that he shall bear the risk of default on the part of the Service Provider.

4.8 Subject to the provisions of this Agreement and Applicable Law, the Client hereby authorises PKF to appoint one or more Authorised Representatives to represent it in the performance of its obligations under this Agreement and delegate all or any of its powers and authorities in terms of this agreement to such Authorised Representative.

## **5. NO AGENCY**

5.1 The Client represents and warrants to PKF that it enters into this Agreement and each Transaction in its own capacity, as principal and not as an agent.

5.2 If the Client nevertheless enters into this Agreement or any Transaction on behalf of one or more principals, the Client acknowledges and agrees that PKF shall not accept any such

5.3 principal as a client for the purpose of this Agreement or any Transaction.

## **6. TRADING OF SECURITIES**

### **6.1 Availability of an Electronic Trading Platform**

6.1.1 Where available, PKF may provide an Electronic Trading Platform for the purpose of the Client entering into certain types of Transactions, viewing Confirmations and/or other ancillary services. Access to an Electronic Trading Platform may be made available to the Client, at the Client's request and shall be approved at PKF's sole discretion;

6.1.2 Where access to an Electronic Trading Platform is provided to the Client-

6.1.2.1 the Client agrees to access and use each Electronic Trading Platform in accordance with, and solely for the purposes set out in, this Agreement;

6.1.2.2 the Client understands that the provision of an Electronic Trading Platform may involve the sub-licensing of licensor software and/or information systems; and

6.1.2.3 PKF or the licensor may, with or without notice to the Client, change the nature, composition, features or availability of an Electronic Trading Platform, provided that such change shall not prevent PKF from performing the Services.

### **6.2 Unavailability of Electronic Trading Platform**



- 6.2.1 Where, for any reason, the Client is unable to access and use the relevant Electronic Trading Platform, PKF may, at its absolute discretion, trade through other means with the Client, such as through signed Order forms.
- 6.2.2 PKF shall be entitled to notify the Client of any unavoidable delay in the performance of the rectification of the Electronic Trading Platform and will advise the Client of other means of trading, having regard to the circumstances.

### 6.3 Acknowledgments and agreements of Client

The Client –

- 6.3.1 acknowledges and agrees that any Electronic Trading Platform is provided on an “as is” basis;
- 6.3.2 acknowledges and agrees that there are significant risks associated with using and relying on an electronic trading platform, including but not limited to risks related to the use of software and/or telecommunications systems, such as software errors and bugs, delays in telecommunications systems, interrupted service, data supply errors, faults or inaccuracies and security breaches;
- 6.3.3 assumes all risk of use or attempted use of the Electronic Trading Platform and any data provided by way of the Electronic Trading Platform;
- 6.3.4 acknowledges and agrees that it has no recourse against PKF or any licensor in relation to the use or availability of the Electronic Trading Platform or any errors in licensor software and/or related information systems; and
- 6.3.5 the Client acknowledges and agrees that PKF has no obligation or responsibility to
  - 
  - 6.3.5.1 provide support for or maintenance of the Electronic Trading Platform, including by supplying any corrections, updates or new releases;
  - 6.3.5.2 verify, correct, complete or update any information displayed on the Electronic Trading Platform;
  - 6.3.5.3 inform the Client of any difficulties PKF or other Third Parties experience in relation to use of or access to an Electronic Trading Platform or to take any action in relation to these difficulties, subject to clause 6.2.2; or

- 6.3.5.4 verify, correct, complete or update any information displayed on an Electronic Trading Platform.

#### 6.4 Security

The Client –

- 6.4.1 assumes full responsibility for any decision in relation to which any data provided to the Client by way of the Electronic Trading Platform may be used or relied upon by the Client;
- 6.4.2 will make its own independent decision to access or use an Electronic Trading Platform or to enter into any Transaction;
- 6.4.3 acknowledges and agrees that the Electronic Trading Platform does not serve as the primary basis for any of the Client's investment decisions concerning its accounts or its managed or fiduciary accounts;
- 6.4.4 agrees to ensure the security and confidentiality of all Security Credentials;
- 6.4.5 agrees and acknowledges that, if any person accesses or uses an Electronic Trading Platform using a Security Credential, the Client is liable for the conduct of that person and the person's compliance with this Agreement, whether or not the Client authorises the access and/or use;
- 6.4.6 acknowledges and agrees that, if PKF determines that the security surrounding any Electronic Trading Platform or the security or confidentiality of any Security Credentials is or has been breached, PKF may terminate, revoke, suspend, modify or change any or all of the Security Credentials at any time with or without prior notice;
- 6.4.7 acknowledges and agrees that where the Electronic Trading Platform requires the use of Security Credentials, all Trading Platform Communications are deemed to be on behalf of and authorised by the Client;
- 6.4.8 accepts all responsibility for the genuineness and accuracy, in relation to content and form, of all Trading Platform Communications and for all resulting actions, including Orders entered and Transactions entered into;
- 6.4.9 acknowledges that PKF and/ or any other Service Providers are not obliged to act on any Trading Platform Communication and will be free to accept or reject, in

their sole discretion, any Transaction that the Client seeks to execute through the Electronic Trading Platform;

6.4.10 acknowledges and agrees that PKF and/ or any other Service Providers may, at their discretion, verify receipt of any Trading Platform Communications;

6.4.11 acknowledges and agrees that the Client has no right to amend or revoke a Trading Platform Communication, unless PKF and/ or any other Service Providers agrees otherwise; and

6.4.12 acknowledges and agrees that –

6.4.12.1 PKF’s records of any Electronic Trading Platform Communication and any communication sent by PKF by way of the relevant Electronic Trading Platform are deemed to be accurate until the contrary is proven; and

6.4.12.2 the Client bears the burden of proof that those records are inaccurate or incomplete, except in the case of manifest error or fraud.

## 6.5 Provision of Market Information

### 6.5.1 **Market Information**

The Client acknowledges and agrees that where the Electronic Trading Platform displays market data and other purely factual information (collectively “**Market Information**”) that –

6.5.1.1 PKF does not endorse or approve the Market Information and makes it available to the Client only as a service and convenience;

6.5.1.2 PKF does not guarantee the accuracy, timeliness, completeness or correct sequencing of the Market Information;

6.5.1.3 PKF does not warrant any results from the Client’s use or reliance on the Market Information;

6.5.1.4 PKF is not obligated to update any information or opinions contained in any Market Information;

6.5.1.5 PKF may discontinue offering Market Information at any time;

6.5.1.6 PKF will not be liable in any way for the termination, interruption, delay or inaccuracy of any Market Information; and

6.5.1.7 the Client will not redistribute or facilitate the redistribution of Market Information to any Third Party.

## 6.6 Licensors

6.6.1 The Client acknowledges and agrees that the provision of the Electronic Trading Platform may involve the sub-licensing of a licensor's software and/or information systems.

6.6.2 The Client waives all claims and causes of action which it may otherwise have against a licensor.

6.6.3 The Client acknowledges and agrees that -

6.6.3.1 the licensor is providing only a technical means for effecting Transactions;

6.6.3.2 the licensor is neither directly nor indirectly a party to any Transaction;

6.6.3.3 the licensor is not inviting, arranging for, or advising the Client or any Third Party to effect any Transaction or to purchase, sell or otherwise deal in any Security;

6.6.3.4 the licensor is not liable in any manner to any person for the failure of any person effecting a Transaction by way of an Electronic Trading Platform to perform its obligations under that Transaction; and

6.6.3.5 the licensor will not be involved in any dispute relating to any Transaction.

6.6.4 The Client -

6.6.4.1 is to maintain, for the duration of this Agreement, and for a period of seven (7) years afterwards, accounting and computer records that enable PKF and/or any licensor to determine compliance with this Agreement;

6.6.4.2 is to permit PKF and/or any licensor to audit the Client's access to and use of any Electronic Trading Platform (including the Client's records of its access to and use of that Electronic Trading Platform); and

- 6.6.4.3 acknowledges that information obtained pursuant to this clause may be used to determine the Client's compliance with this Agreement.

## 6.7 Intellectual Property Rights in Electronic Trading Platform

6.7.1 The Client acknowledges and agrees that -

- 6.7.1.1 all Intellectual Property Rights in respect of or derived from an Electronic Trading Platform are and remain the sole and exclusive property of PKF and/or any licensors; and
- 6.7.1.2 the Client has no Intellectual Property Rights in respect of or derived from and will not acquire any Intellectual Property Rights in relation to an Electronic Trading Platform and/or any derivative or adaptation of an Electronic Trading Platform.

6.7.2 The Client is to use all reasonable efforts -

- 6.7.2.1 to protect any such Intellectual Property Rights in an Electronic Trading Platform; and
  - 6.7.2.2 to comply with a request of PKF and/or the licensor, acting reasonably, to protect its contractual, statutory and common law rights and obligations in respect of an Electronic Trading Platform.
- 6.7.3 If the Client becomes aware of any access to or use of the Electronic Trading Platform by a Third Party that is unauthorised or which constitutes an infringement or interference with any of PKF's and/or the licensor's Intellectual Property Rights, it is promptly to notify PKF and, acting reasonably, co-operate with PKF and/or any licensor with respect to any legal action which PKF and/or any licensor may undertake in respect of the infringement.

## 6.8 Restrictions on use of Electronic Trading Platform

The Client acknowledges and agrees not –

- 6.8.1 to access or use any Electronic Trading Platform for any purpose other than the intended purpose for which access was granted, which may include but may not be limited to requesting of prices and entering into Transactions;
- 6.8.2 to use, copy, merge, make derivative works of or transfer copies of any software;

- 6.8.3 to use or disclose to any Third Party any information obtained through or from an Electronic Trading Platform other than for the purposes expressly set out in this Agreement;
- 6.8.4 to allow any access to or use of an Electronic Trading Platform by any Third Party;
- 6.8.5 to sell, lease or otherwise provide, directly or indirectly, an Electronic Trading Platform to any Third Party except as expressly permitted by this Agreement;
- 6.8.6 to reverse engineer, disassemble or decompile any software;
- 6.8.7 to copy any manuals related to an Electronic Trading Platform;
- 6.8.8 to remove any statutory copyright notice, or other notice included in an Electronic Trading Platform or licensor software or on any medium containing that software;
- 6.8.9 to transmit or receive using an Electronic Trading Platform (or cause to transmit or receive) any information or material which is pornographic, obscene, abusive, profane, offensive, misleading, deceptive, disparaging or defamatory; or
- 6.8.10 to use the Electronic Trading Platform after the expiry, termination or cancellation of this Agreement and/or any license agreement between PKF and its licensor.

#### 6.9 Security and operating environment

The Client is responsible for ensuring the adequacy of the operating environment and the security of the environment, both physical and electronic, of the Client's access to and use of an Electronic Trading Platform, including –

- 6.9.1 maintaining appropriate security measures to prevent unauthorised access to, use of or damage to-
  - 6.9.1.1 an Electronic Trading Platform and any information systems accessible through an Electronic Trading Platform; and
  - 6.9.1.2 any password management system not explicitly controlled by PKF or a licensor;
- 6.9.2 where the Client accesses and uses, or attempts to access and use, the Electronic Trading Platform from any laptop computer or other portable device, taking all

measures necessary to ensure the security, integrity and reliability of such computer or other portable device (including the security of the internet connection) and the Client is solely liable for any failure in such computer or other portable device's security, integrity or reliability; and

- 6.9.3 complying with all reasonable operational and security procedures notified by PKF and/ or its licensors and/or Service Providers from time to time and to inform PKF immediately of any breach of security.

#### 6.10 PKF representation or warranty relating to the Electronic Trading Platform

To the maximum extent permitted by law, PKF makes no representation or warranty (express or implied) and expressly disclaims any warranties –

- 6.10.1 in relation to the merchantability or fitness for a particular purpose and any warranty for the access to or use of or the results of the access to or use of the Electronic Trading Platform with respect to its suitability, availability, functionality, correctness, quality, accuracy, completeness, reliability, performance, timeliness, operation, continued availability or otherwise;

- 6.10.2 that any Trading Platform Communication –

- 6.10.2.1 will result in PKF and/or the Service Provider entering into a Transaction for or on behalf of the Client; and/or
- 6.10.2.2 has been received by PKF and/or the Service Provider; and
- 6.10.2.3 that the Electronic Trading Platform meets the requirements or needs of the Client.

## 7. TRANSACTIONS

- 7.1 Orders may be placed via the Electronic Trading Platform or alternatively as otherwise communicated by PKF from time to time.

- 7.2 Orders will be executed substantially in accordance with the provisions of this Agreement, as applicable and/or as communicated to the Client by PKF from time to time.

- 7.3 PKF provides market access and trading Services for Securities as a securities exchange member, through its related party securities exchange members, Third Party brokers or

relevant market participants. The Client acknowledges that these Service Providers determine whether the Transaction in question is to be executed on the relevant Recognised Exchange. The Transaction may be in the name of PKF or PKF's Service Provider and on behalf of the Client if required.

7.4 If the Transaction cannot be executed, the Client will be notified.

7.5 The Order may be split or merged, and thus may be executed at different prices during the day of trading or the following days. In case that an Order is split and completed over a period, the total trading costs may increase. The reason for such an increase may be due to the applicability of a minimum fee, as set out in the relevant Markets and Fees Schedule.

## **8. DEPOSITORY AND CUSTODY ARRANGEMENTS**

8.1 PKF is entitled to refuse acceptance of Securities held in safe custody ("Custody Assets") in whole or in part without stating reasons. The Client shall have no access to the place of safekeeping.

8.2 PKF is authorised to verify the authenticity of Custody Assets deposited by the Client or Third Parties for safekeeping and to determine if there are any blocking notifications. PKF accepts no liability in either respect. PKF shall carry out the review based on the information available to it.

8.3 PKF shall treat the Custody Assets with the customary measure of care.

8.4 PKF may require that Custody Assets be removed, without stating the reason, at any time.

8.5 The Client is responsible for complying with all obligations to report Custody Assets in line with the Applicable Law. PKF is not obligated to inform the Client of such reporting obligations, and disclaims any liability for any deficiencies in this regard on the part of the Client or the beneficial owner of the assets.

8.6 The Custody Assets shall be held by PKF or its Associate and may be reflected as an electronic entry in a central depository or electronic scrip or nominee registry or similar, subject to Applicable Law.

8.7 If PKF is not an account holder in such depository or registry, PKF shall be entitled to electronically enter the Securities in the depository or registry or similar, through an account holder of its choice.



8.8 The Custody Assets shall be held in an account in the name of PKF or its nominee or, if PKF or its nominee is not an account holder, in an account in the name of the account holder with which PKF deposits the Custody Assets or the account holder's nominee.

8.9 PKF is authorised to hold the Custody Assets and to move such Custody Assets from one electronic record to another or withdraw any such Custody Assets for the purpose or in connection with the performance of the Services.

8.10 The Client shall bear the risk of statutory or administrative regulations or restrictions, other political events and any taxes or charges imposed in the relevant countries where Custody Assets are held on behalf of the Client.

## **9. PROVISION OF NOMINEE SERVICES**

9.1 A Client may elect to make use of nominee Services provided by PKF, its Associates or Service Providers.

9.2 Where Custody Assets are registered or held in the name of a nominee, the nominee will otherwise have no legal or beneficial interest in the Custody Assets and all other attributes of the beneficial ownership of the Custody Assets shall be and remain in the Client.

9.3 The nominee shall maintain details in a nominee register(s) of all Custody Assets held in trust on behalf of the Client.

9.4 Any instructions relating to a vote by proxy at a general meeting or similar must be received by the nominee at least forty-eight (48) hours before the proxy submission deadline in question. In the absence of specific instructions within the required timeframe from the Client, the voting rights attached to the Securities will not be exercised.

9.5 Any instructions relating to a corporate action or similar must be received by the nominee at least forty-eight (48) hours before the election deadline in question. In the absence of specific instructions within the required timeframe from the Client, the default option shall be selected.

9.6 A deposit may be received by PKF and securities may be purchased for the Client, while the Client is still undergoing the due diligence screening and account opening process. When this is done, the deposit and/or securities shall be held by PKF's nominee company in the name of the nominee on the Client's behalf. Subject to clause 2.2.3, should the Client's account opening not be successful or completed timeously, for whatsoever reason, the deposit and/ or securities held in nominee will be refunded/sold by PKF and

the Client's cash will be returned net of fees. In the case of securities held, the securities may be illiquid and the time to liquidate these securities may be significant. PKF shall not be held liable for any delay in the refund of cash in this instance.

## **10. FEES AND EXPENSES**

10.1 The basis on which, the manner in which and the intervals at which the Client will remunerate PKF and/or its Associates for the Services rendered by PKF and/or its Associates to the Client or Transactions concluded by or on behalf of the Client in terms of this Agreement are set out in the applicable Markets and Fees Schedule as furnished via the Website or as otherwise notified by PKF and/or its Associates to the Client or its clients generally.

10.2 PKF may, on prior written notice, furnish to the Client, whether electronically or otherwise, any changes with regards to the fees and charges from time to time.

10.3 PKF shall be entitled to recover any other fees not stated in PKF's Markets and Fees Schedule, which are reasonably incurred by PKF in connection with this Agreement or any Transaction.

## **11. INDUCEMENTS**

11.1 The Client acknowledges and accepts that PKF may receive and be entitled to claim payments in kind and other goods and services free of charge ("Inducements") from Third Parties, in connection with the distribution of financial instruments or for other services provided on behalf of said Third Parties. The amount of these inducements may differ depending on the product and provider.

11.2 In all cases, PKF shall take the necessary organisational measures to ensure that the interests of the Client are protected.

11.3 PKF also reserves the right to award inducements to Third Parties for acquiring and/or managing clients and/or for providing additional services. The Client accepts that only the Third Party is obliged to disclose said inducements to the Client; PKF is subject to no such obligation.

## **12. INTEREST AND THIRD-PARTY ACCOUNTS**

12.1 No interest is payable by PKF on a Client Account, except as specifically provided for in this clause 12.

12.2 PKF shall not be liable to pay any interest on uninvested cash in the Client Account.

12.3 Interest shall only be payable on a Client Account where interest is a product feature of a Security held in the Client Account.

12.4 Where applicable, the Client authorises PKF –

12.4.1 to withhold or deduct from any such payment of interest to the Client any resident or non-resident withholding tax that is required to be withheld or deducted by Applicable Law; and

12.4.2 if necessary for this purpose, to withdraw any such withholding tax from a Segregated Funds Account where Client Moneys are held.

12.5 If a Client Account has a debit balance, the Client is to pay interest daily to PKF on the full amount of that balance at the relevant interest rate as set out in the applicable Markets and Fees Schedule or otherwise published or provided by PKF .

12.6 If the Client fails to meet any payment obligations, the Client is to pay interest daily to PKF on the amount that was due but not paid at the relevant interest rate as set out in the applicable Markets and Fees Schedule or otherwise published or provided by PKF .

12.7 The Client acknowledges and agrees that PKF –

12.7.1 may, in its absolute discretion, without being obliged to do so, return any receipt of moneys from, a third-party account, unless PKF has previously agreed otherwise in writing; and

12.7.2 does not accept or bear any liability or responsibility for any loss, including consequential loss, incurred or sustained by the Client as a result of or arising out of PKF returning any receipt of moneys from, a third-party account, including any loss, including consequential loss, incurred or sustained by the Client because it is subsequently in default of its obligations under this Agreement or any Transaction.

### **13. PAYMENTS**

13.1 All Client Money received by PKF shall be paid through electronic funds transfers only, into a Segregated Funds Account in which Client Moneys are held.

13.2 The Client authorises PKF in accordance with its usual practice, to withdraw from a Segregated Funds Account where Client Moneys are held and to debit the Client Account accordingly, for the purpose of –

13.2.1 making payment of any commission or charge when it becomes payable to PKF and/or any of its Associates in terms of this Agreement;

13.2.2 paying for Securities purchased, on behalf of the Client, in terms of this Agreement; and

13.2.3 making such other payments as are reasonably necessary in the operation of this Agreement and the performance of the Services; or as may be requested by any regulatory or legislative authority.

13.3 PKF shall, upon request by the Client and subject to clause 13.2, make payment to the Client of the balance standing to the credit of the Client in the Client Account net of any outstanding and/or applicable fees, subject to the satisfaction of the necessary procedures including but not limited to Third Party requirements.

13.4 All payments to the Client made in terms of this Agreement shall be made into the account specified by the Client in the Application Form or such other bank account nominated by the Client from time to time, in the form prescribed by PKF, provided that the Client shall not be entitled to nominate a Third Party to receive any payments due to it in terms of this Agreement, unless otherwise provided for in this Agreement.

#### **14. REPORTING TO CLIENT**

PKF will provide the Client access to monthly electronic statements setting out –

14.1 details of any change in Securities, held on behalf of the Client, and any Client Money; and

14.2 the period for which the Securities and Client Money were held.

#### **15. RISK OF TRANSACTIONS**

15.1 The Client acknowledges and agrees that –

15.1.1 the Client has read and understood the risks of entering into Transactions outlined hereunder:

THAT THIS INFORMATION IS GENERAL INFORMATION ONLY AND DOES NOT TAKE INTO ACCOUNT YOUR PERSONAL OBJECTIVES, FINANCIAL SITUATION AND NEEDS. YOU SHOULD CONSIDER THESE THINGS AND SEEK INDEPENDENT PROFESSIONAL ADVICE BEFORE MAKING A DECISION ABOUT INVESTING IN FINANCIAL PRODUCTS AND/OR SECURITIES.

THAT THE CLIENT MUST BE SATISFIED THAT ANY TRADING YOU UNDERTAKE IN RELATION TO FINANCIAL PRODUCTS AND/OR SECURITIES IS APPROPRIATE IN VIEW OF YOUR OBJECTIVES, FINANCIAL SITUATION AND NEEDS. THAT SHOULD A CLIENT WISH TO CONCLUDE ANY OF THE TRANSACTIONS, SUCH CLIENT IS REQUIRED TO AGREE TO THE TERMS OF THE CLIENT AGREEMENT.

15.2 The Client should be aware of the following points:

- 15.2.1 All stock market based investment is exposed to a degree of risk;
- 15.2.2 Market fluctuations may have an effect on the value, price or income of investments;
- 15.2.3 Investment is not guaranteed and past performance is not a guide to future investment performance;
- 15.2.4 The Client is responsible for the selection of any Transaction that the Client places or instructs to be placed. As such, the performance of any trade will depend on investment decisions made by the Client. PKF does not make any representations regarding the performance of any investment;
- 15.2.5 Under certain market conditions it may be difficult or impossible to liquidate a position. This may occur, for example, where trading is suspended or restricted at times of rapid price movement or due to a lack of liquidity in the market;
- 15.2.6 Where permitted, placing a stop-loss order will not necessarily limit your losses to the intended amounts, as market conditions may make it impossible to execute such Orders at the stipulated price;
- 15.2.7 Your ability to trade depends on the continued operation of, among other things, the Electronic Trading Platform, the internet, and your personal computer. A fault, delay or failure of any of these things (inter alia) could prevent you from placing Orders and may result in losses on your open positions;
- 15.2.8 You should read all available information in order to properly consider your risks;

15.2.9 You should carefully consider whether trading is appropriate for you in light of your experience, objectives, financial resources and other relevant circumstances;

15.2.10 Before trading listed instruments on any securities exchange, you should be aware of tax consequences and on this you should consult your lawyer, accountant or other tax advisor;

15.2.11 Entering into Transactions incurs the risk of loss as well as the prospect of profit; and the Client accepts such risks, which may result in financial loss.

## **16. SEGREGATED FUNDS ACCOUNT**

16.1 Subject to this Agreement and Applicable Law, PKF will hold Client Money in a Segregated Funds Account –

16.1.1 in Seychelles with one or more registered banks; or

16.1.2 outside Seychelles with one or more overseas banks.

16.2 The Client acknowledges and agrees that, where Client Money is described as being held in a “Segregated Funds Account” –

16.2.1 that account is maintained by PKF in its own name or by one of its Service Providers or a member’s trust account in the name of PKF with a Recognised Exchange, held for the benefit of the Client;

16.2.2 Client Money may be pooled with client money of other clients of PKF; and

16.2.3 there are risks involved in the manner in which Client Money is so held.

16.3 The Client acknowledges and agrees that PKF and its Service Provider, or PKF and a Recognised Exchange may jointly, or PKF may singly, subject to Applicable Law and/or operating procedures, withdraw moneys from a Segregated Funds Account, for the purpose of –

16.3.1 making a payment for, or in connection with Transactions (including any such payment referred to in this Agreement); or

16.3.2 making a payment to the Client; or

16.3.3 making a payment to another person designated by PKF in connection with the Services provided under this Agreement and agreed to by the Client,

such payments stated in 16.3.1 to 16.3.3 being, for the purposes of this clause, payments made for Transactions specified by the Client in accordance with the written instruction of the Client,

16.3.4 meeting the amount of any fees, commissions or other charges payable under this Agreement by the Client to PKF or a Service Provider or a Recognised Exchange, in respect of any Transaction; or

16.3.5 making a payment to PKF in reimbursement for any payment made by PKF to or on behalf of the Client for which PKF is entitled to be reimbursed by the Client under this Agreement; or

16.3.6 withdrawing that portion of the funds that is not Client Money, where funds are deposited into the Segregated Funds Account that include Client Money and other money; or

16.3.7 withdrawing money where PKF has deposited its own money into the Segregated Funds Account cover a shortfall in the Segregated Funds Account once it is no longer required to cover the shortfall.

16.4 PKF is entitled at any time to deduct, without notice or recourse to the Client, any moneys deposited in, or credited to, the Segregated Funds Account –

16.4.1 in error by, or on behalf of, PKF; or

16.4.2 that are not Client Money.

The Client shall bear the risk of statutory or administrative regulations or restrictions, other political events and any taxes or charges imposed in the relevant countries where Client Money is held outside of the Seychelles.

## **17. SECURITY INTEREST AND RIGHT OF OFFSET**

17.1 PKF shall have a right of lien or security interest and a right of disposal over all assets held at PKF or elsewhere for the account of the Client and on all rights which it holds in a fiduciary capacity for the account of the Client, insofar as permitted by law. PKF shall also

have a right of offset in respect of all existing and future amounts owed by and claims against the Client, irrespective of maturity date or currency.

17.2 When disposing of assets, PKF shall be entitled to act in its own name.

17.3 The above provisions shall also apply if the Client fails to meet with PKF's request for coverage or additional coverage, provided there is no express agreement to the contrary.

## **18. REPRESENTATIONS AND WARRANTIES**

18.1 PKF and the Client each represents and warrants to the other that –

18.1.1 its obligations under this Agreement and each Transaction are legal, valid, binding and enforceable in accordance with its terms, subject to equitable principles and insolvency laws of general application;

18.1.2 no litigation, arbitration or administrative proceeding is current, pending or, to its knowledge, threatened that has or could have a material adverse effect on it or on PKF's ability to exercise or enforce its rights under this Agreement or any Transaction;

18.1.3 it is solvent and able to pay its indebtedness as it falls due;

18.1.4 no Event of Default has occurred and is continuing;

18.1.5 the execution and delivery of, and observance under, this Agreement and each Transaction, and any instrument in connection with this Agreement to which it is a party, do not violate or conflict with any Applicable Law, any provision of its constituent documents, any order or judgment of any court or Regulatory Authority applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

18.1.6 all consents required to be obtained by it in connection with the execution, delivery and performance of this Agreement, including in relation to its access to and use of the Electronic Trading Platform, have been obtained and all Transactions are valid and subsisting.

18.2 The Client represents and warrants that –



18.2.1 all information provided by the Client to PKF in connection with this Agreement and each Transaction was/is true in all material respects as at the date when that information was/is provided and remains so as at the Commencement Date;

18.2.2 there are no facts or circumstances that have not been disclosed to PKF that would make that information untrue or misleading in any material respect;

18.2.3 Securities and Client Money which are the subject of this Agreement do not constitute the proceeds of crime as defined in the Applicable Law;

18.2.4 the Client's access to and use of each Electronic Trading Platform complies with –

18.2.4.1 all Applicable Law (including all relevant export laws or regulations to ensure that no software or any portion of it is exported, directly or indirectly, in violation of those laws);

18.2.4.2 all applicable policies and practices of securities exchange and associations, alternative trading facilities, and regulatory or self-regulatory organisations; and

18.2.4.3 the policies and procedures (whether stated orally or in writing) applicable to each Electronic Trading Platform and this Agreement,

and the Client has all consents, rights, authority and has taken all actions necessary, to use the Electronic Trading Platform and/or enter any Transaction;

18.2.5 the Client is not in default under –

18.2.5.1 any agreement relating to indebtedness; or

18.2.5.2 any guarantee; or

18.2.5.3 any other agreement,

to an extent or in a manner that has or would have a material adverse effect on the Client;

18.2.6 in respect of Transactions entered into as part of the non-discretionary Services:

18.2.6.1 the Client is acting for the Client's own account;

- 18.2.6.2 the Client has made its own independent decision to enter into this Agreement and each Transaction, and whether any Transaction is appropriate or proper, is based upon the Client's own judgment and upon advice from such advisers as the Client has deemed necessary;
- 18.2.6.3 the Client is not relying on any communication (written or oral) of PKF as investment advice or as a recommendation to enter into this Agreement or any Transaction, it being understood that information and explanations related to the terms and conditions of a Transaction are not considered investment advice or a recommendation to enter into that Transaction;
- 18.2.6.4 the Client has not received from PKF any assurance or guarantee as to the expected results of any Transaction;
- 18.2.6.5 the Client is capable of assessing the merits of and understanding (on the Client's own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of each Transaction;
- 18.2.6.6 PKF does not act as a fiduciary for, or an adviser to the Client in respect of any Transaction;
- 18.2.7 in respect of Transactions entered into as part of the discretionary Services, the investment objectives provided by the Client to PKF from time to time, shall at all times be accurate and correct;
- 18.2.8 the Client is capable of assuming, and assumes, the financial and other risks of each Transaction; and
- 18.2.9 except as disclosed to, and accepted in writing by, PKF, no encumbrance, legal claim or lien, exists over or affects, nor is there any agreement to give or permit to exist any encumbrance, legal claim or lien over or affecting, any Client Account or moneys payable or paid to PKF.
- 18.3 If the Client is a legal entity, the Client represents and warrants that –
  - 18.3.1 it is incorporated or otherwise legally registered, has full power and authority to enter into and comply with its obligations under this Agreement and each Transaction;

18.3.2 has taken all corporate and other action and obtained all consents needed to enable it to do so; and

18.3.3 the execution, delivery and performance of this Agreement and each Transaction does not violate its founding documentation.

18.4 If the Client is a duly appointed representative of a legal arrangement (including but not limited to a trust), the Client represents and warrants that –

18.4.1 the Client is entering into this Agreement and each Transaction as duly appointed representative of the legal arrangement;

18.4.2 the Client is presently the sole duly appointed representative or, if not, that all duly appointed representatives have entered into this Agreement;

18.4.3 the legal arrangement was validly created and is in existence at the date of the Client's submission of the Application Form;

18.4.4 the execution, delivery and performance of this Agreement and each Transaction is permitted by the terms of the legal arrangement and does not violate the terms of the legal arrangement;

18.4.5 the Client has full power and authority to enter into and comply with its obligations under this Agreement and each Transaction;

18.4.6 the Client has taken all action and obtained all consents necessary to enable it to do so;

18.4.7 the Client is not in breach of the terms of the legal arrangement, whether related to this Agreement or not, and has the right to be indemnified from the assets of the legal arrangement for all liabilities incurred under this Agreement and each Transaction; and

18.4.8 even though the Client is entering into this Agreement and each Transaction as duly appointed representative of a legal arrangement, the Client is personally liable to meet any obligations under this Agreement and each Transaction.

18.5 Each of the representations and warranties in this clause is deemed to be repeated continuously so long as this Agreement remains in effect by reference to the facts and circumstances then existing.

## **19. TRADING HOURS**

19.1 Subject to clauses 19.2, PKF intends to, but is under no obligation to, quote prices and rates and accept instructions (whether written or electronic) in relation to any Transaction during Normal Business Hours.

19.2 PKF is under no obligation to quote prices or rates, or to accept instructions (whether written or electronic) in relation to any Transaction on a Seychelles public holiday which, in PKF's reasonable opinion, affects any Security.

19.3 PKF is under no obligation to quote prices or rates or accept instructions (whether written or electronic) in relation to any Transaction during any time when the relevant listed securities market is closed for business.

## **20. LEGAL AND REGULATORY REQUIREMENTS**

20.1 Notwithstanding any other provision of this Agreement, PKF may take any action it considers necessary or desirable in its absolute discretion to ensure compliance with all Applicable Law.

20.2 PKF undertakes to comply with all Applicable Law.

20.3 The Client undertakes to comply with all Applicable Law.

20.4 The Client acknowledges that, for the purpose of compliance with any Applicable Law, PKF may be required to report details relating to the Client to the relevant Regulatory Authorities.

## **21. TAXES**

21.1 The Client is to pay all taxes, VAT, levies, stamp duty, withholding taxes or other duty and any other charge, deduction or withholding of a similar nature, including any penalty or interest payable in connection with any failure to pay or any delay in paying any of these ("**Tax**").

21.2 Any imposition of Tax, which may from time to time be levied in respect of this Agreement or any Transaction, is for the account of, and payable by, the Client.

21.3 PKF is entitled to deduct or withhold any Tax, as required by law to be deducted or withheld, from any payment made under this Agreement, or any payment made under

any Transaction or any amount credited to a Segregated Funds Account where Client Moneys are held or any Client Account.

21.4 The Client is aware that advice or information provided by PKF, unless otherwise warranted or agreed, does not include the tax implications of investments made by the Client or his tax situation in general; in particular, PKF shall bear no liability for the tax implications of investments it recommends or intermediates. The Client should seek advice from a tax specialist in this regard.

## **22. FORCE MAJEURE**

22.1 PKF is not in default or breach of this Agreement or any Transaction to the extent that Force Majeure arises.

22.2 Subject to clause 22.3, if Force Majeure arises, PKF is to use its reasonable endeavours to give notice as soon as reasonably practicable to the Client accordingly.

22.3 PKF is not liable to the Client for any failure or delay in giving this notice.

22.4 If Force Majeure arises, and regardless of whether or not PKF has given the notice referred to in clause 22.2, PKF may take whatever steps in relation to this Agreement or any Transaction that, in its opinion, are necessary or desirable, including –

22.4.1 changing or restricting any hours within which the Client may enter into Transactions;

22.4.2 cancelling any instructions or Orders under this Agreement or any Transaction; or

taking or omitting to take any other action that PKF, acting reasonably, deems to be appropriate in the circumstances having regard to its business and its Clients, generally.

## **23. EVENTS OF DEFAULT**

23.1 An Event of Default is any of the following events or circumstances with respect to PKF or the Client, as appropriate (the “**Defaulting Party**”, the other party being the “**Non-defaulting Party**”) –

- 23.1.1 if any representation or warranty made by PKF or the Client under or in connection with this Agreement or a Transaction is later found to be incorrect or misleading in a material respect; or
- 23.1.2 if the Client fails to satisfy any credit requirement as may be determined by PKF from time to time having regard for the Applicable Law; or
- 23.1.3 if the Client fails to perform or comply with any of its obligations under this Agreement or any Transaction; or
- 23.1.4 if the Client is in breach of any Applicable Law; or
- 23.1.5 if the conduct of the Client is such that, in the opinion of PKF, would cause a reasonably prudent financial person dealing in any of the Transactions to be of the view that the Client could be unable to perform and comply with any of the Client's obligations under this Agreement or any Transaction, including strict compliance with any time limit; or
- 23.1.6 if PKF ceases to be a member of the relevant securities exchange or loses its ability trade through a securities exchange and/or ceases to be authorised by the FSA to manage investments in the manner described in this Agreement; or
- 23.1.7 if this Agreement is, without the consent of PKF, withdrawn or becomes defective or insufficient; or
- 23.1.8 where the Client is a natural person –
  - 23.1.8.1 the Client dies or becomes of unsound mind; or
  - 23.1.8.2 the Client, or their estate is liable to be dealt with in any way under any law relating to mental health; or
  - 23.1.8.3 in the absence of the Client making alternative arrangements, the Client is not contactable by PKF for any period of 24 hours in order for PKF to obtain instructions relating to any Transaction, any Order or any obligations of the Client under this Agreement or any Transaction; or
  - 23.1.8.4 the Client becomes bankrupt or enters into a composition or arrangement for the benefit of creditors, becomes insolvent or goes into administration as defined in the Applicable Law; or

23.1.9 where the Client as a legal person:

23.1.9.1 is or becomes insolvent or under administration as defined in the Applicable Law; or

23.1.9.2 compromises or attempts to compromise with its creditors, or defers or attempts to defer payment of debts owing by either Party to its creditors generally; and/or

23.1.9.3 any final judgment of any court or arbitration award against either Party remains unsatisfied for a period of ten (10) Business Days after it has been granted against such Party and for the purposes of this sub-paragraph, a final judgment means a judgment –

23.1.9.3.1 which is not appealable, or

23.1.9.3.2 which is appealable but in respect of which the period for the lodging of an appeal has lapsed and the relevant Party has failed to institute appeal proceedings, or

23.1.9.3.3 which is not capable of rescission, or

23.1.9.3.4 which is capable of rescission but in respect of which the period for applying for rescission has lapsed and the relevant Party has failed to apply for rescission or has applied for rescission of such judgment and the application for rescission has been denied; and/or

23.1.10 if any property, moveable or immovable, of either Party is attached in execution or by any process of any Court; and/or

23.1.11 if the Defaulting Party or the members thereof pass a resolution for its liquidation or winding-up; and/or

23.1.12 if either Party has an order granted against or in respect of it, in terms of which such Party is sought to be provisionally or finally wound up, liquidated, dissolved or placed under judicial management or has any equivalent application or proceedings brought against it in terms of any equivalent applicable legislation; and/or

23.1.13 any liquidator, administrator or receiver is appointed; and/or

23.1.14 if any guarantee, or security given in respect of the Client's obligations under this Agreement, becomes defective or otherwise unenforceable.

23.2 If, at any time, an Event of Default has occurred in respect of the Defaulting Party, the Non-defaulting Party may terminate this Agreement or any Transactions that have not been settled, on written notice to the Defaulting Party, which notice shall specify the date of termination either of this Agreement or the relevant Transaction.

## **24. TERMINATION**

24.1 This Agreement shall commence on the Commencement Date and shall continue until terminated in accordance with the provisions of clause 23 and the remaining provisions of this clause 24.

24.2 Either Party shall be entitled to terminate this Agreement –

24.2.1 by notice in writing to the other Party of sixty (60) calendar days; or

24.2.2 by written agreement, subject to the terms of such written agreement.

24.3 PKF may cancel this Agreement in the event of a material breach having been committed by the Client and the Client failing to rectify such breach within seven (7) Business Days of receipt of a written notice from PKF.

24.4 Should PKF –

24.4.1 cease to be licensed by the FSA; or

24.4.2 be sequestrated, liquidated or placed under judicial management, whether provisionally or finally;

PKF shall notify the Client immediately and take reasonable steps to ensure any outstanding business is completed promptly or transferred to another provider.

24.5 Subject to specific written instructions received from the Client and accepted by PKF, PKF shall not initiate any Transaction on behalf of the Client after notice of termination has been received or given.



24.6 Upon termination of this Agreement and subject to clause 13.2 or as otherwise permitted under this Agreement, PKF shall make payment to the Client of the Client Money standing to the credit of the Client in the Client Account.

## 25. INDEMNITY

25.1 Subject to clause 25.2, PKF shall not be liable for, and the Client hereby indemnifies PKF 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 Transactions concluded by the Client.

25.2 The exemption and indemnity in clause 25.1 shall not extend to any loss, expense or damage which arises as a result of the fraud, dishonesty or gross negligence of PKF or any director, employee, officer, or agent of PKF.

25.3 PKF shall, to the extent, and if required by the relevant Regulatory Authority, arrange and maintain, at its own expense, insurance cover in respect of any liability which may be incurred by PKF in connection with this agreement.

25.4 The Client indemnifies each of PKF and its Associates (each referred to as “**Indemnified Party**”) against, and agrees to hold each of them harmless from, any and all losses, including consequential loss, sustained or incurred by an indemnified party arising out of or in connection with –

25.4.1 any breach of representation or warranty made by the Client under or in connection with this Agreement or any Transaction; or

25.4.2 any failure by the Client to comply with or perform any of its obligations under or in connection with this Agreement or a Transaction; or

25.4.3 any access or use or attempted access or use to or of the Electronic Trading Platform by the Client and any person accessing or using the Electronic Trading Platform through any Security Credentials, whether or not such access or use is authorised by the Client; or

25.4.4 any third-party claim related to the access or use or attempted access or use to or of the Electronic Trading Platform by the Client, any component of the Electronic Trading Platform or any data provided through the Electronic Trading Platform or relating to decisions or advice arising out of such access or use; or

25.4.5 any claim by any licensor arising or resulting from the Client's' access or use or attempted access or use to or of the Electronic Trading Platform; or

25.4.6 any insufficiency whatsoever with respect to the environment from which the Client accesses or uses the Electronic Trading Platform and/or with respect to the Client's security measures to prevent unauthorised access to or use of the Electronic Trading Platform and any security breach in relation to the Electronic Trading Platform (including any access to or use of any of PKF's other systems not covered by this Agreement and any software viruses or other activities that comprise the security arrangements of PKF's IT infrastructure or network) caused directly or indirectly by the Client or any of its officers, directors, employees agents and representatives; or

25.4.7 any error, corruption or delay in any Order or other instruction (whether written or electronic) communicated by the Client; or

25.4.8 acting on any Order or instruction (whether written or electronic) which is communicated using any Security Credentials or from the verified email address on file for the Client; or

25.4.9 the termination by PKF of any Transaction under this Agreement; or

25.4.10 the enforcement of an indemnified party's rights under this Agreement or any Transaction,

except and to the extent that the loss is sustained or incurred by an indemnified party directly as a result of its gross negligence or wilful default.

25.5 Each indemnity in this clause constitutes a separate and independent obligation of the Client from its other obligations under this clause.

25.6 No proof or evidence of any actual loss, including consequential loss, may be required by the Client.

## **26. EXCLUSION OF LIABILITY**

26.1 PKF is not liable to the Client for any direct or consequential loss suffered or incurred by the Client arising out of or in connection with this Agreement or any Transaction, whether in contract, delict, or otherwise, including –

- 26.1.1 any error, corruption or delay in any Order, instruction or other communication (whether written or electronic) by the Client; or
- 26.1.2 any delay or failure to execute an Order or instruction as a result of circumstances outside of the control of PKF; or
- 26.1.3 PKF acting on any Order, instruction or other communication (whether written or electronic) through any Security Credentials or from the verified email address on file for the Client; or
- 26.1.4 any misrepresentation of any information or general financial advice provided by or on behalf of PKF in relation to this Agreement or a Transaction; or
- 26.1.5 except in the case of fraud by PKF, the reliance of the Client on a rate or a price which the Client knew, or ought reasonably to have known, to be materially incorrect; or
- 26.1.6 the entry into of a Transaction, or other action, by the Client on the basis of money deposited in or credited to a Client Account, or (where applicable) the Segregated Funds Account or any other account where Client Money is held, in error by, or on behalf of, PKF; or
- 26.1.7 the exercise, attempted exercise or non-exercise of any of the rights, powers or remedies of PKF under this Agreement or any Transaction; or
- 26.1.8 the occurrence and continuance of any Force Majeure; or
- 26.1.9 any failure of the Client –
  - 26.1.9.1 to access or use the Electronic Trading Platform for its intended purposes, whether as a result of failure by PKF or otherwise; or
  - 26.1.9.2 to maintain the security, integrity and confidentiality of all Security Credentials; or
  - 26.1.9.3 to verify its Trading Platform Communications and any communications sent by PKF by way of the relevant Electronic Trading Platform or via email, other notices and communications and other reports; or
  - 26.1.9.4 any deficiency whatsoever of the Electronic Trading Platform, including failure of, or inability to, access or use the Trading Platform; or

- 26.1.10 the occurrence of Abnormal Market Conditions; or
- 26.1.11 any failure of a telecommunications link or network by which the Client may seek access to or use of the Electronic Trading Platform or communicate instructions to PKF; or
- 26.1.12 with respect to any information published on the Website, the Electronic Trading Platform or other channels, including any claims or losses in relation to the accuracy, reliability or timeliness of such information; or
- 26.1.13 with respect to any support, advice or assistance provided by PKF, including any claims or losses in relation to technical support, trading support and account administration support.

## **27. RECORDING OF COMMUNICATIONS**

- 27.1 The Client acknowledges and agrees that PKF may –
  - 27.1.1 record all messaging, voice and/or video conversations between the Client and PKF (together referred to as “Recordings”); and
  - 27.1.2 submit the Recordings, or a transcript from the recording, as evidence to any court or in any proceeding for the purpose of establishing any matters pertinent to this Agreement or any Transaction.
- 27.2 The Client acknowledges and agrees that PKF is under no obligation to retain a recording or transcript made by PKF and that PKF may destroy such recording or transcript.

## **28. CONFIDENTIALITY**

- 28.1 Each Party undertakes, without the prior written consent of the other Party –
  - 28.1.1 not to use (other than in performing its obligations or exercising its rights under this Agreement or a Transaction) or disclose to any person any Confidential Information it has or acquires under or pursuant to this Agreement or any Transaction; and
  - 28.1.2 to make every effort, including issuing legal proceedings, to prevent the use or disclosure of Confidential Information by any person.

28.2 The obligations contained in clause 28.1 do not apply –

28.2.1 to the extent required by law, by the listing, market or other requirements of any relevant securities exchange or other Regulatory Authority; or

28.2.2 to the extent that the information is already in the public domain (other than by virtue of a breach by it of the provisions of this Agreement or any Transaction); or

28.2.3 to any information that each Party agrees in writing is not Confidential Information; or

28.2.4 to the extent that either Party must use or disclose Confidential Information in order to perform its obligations under, or comply with the terms of, this Agreement or any Transaction; or

28.2.5 to any information about the Client that PKF, in its absolute discretion, deems necessary to disclose to its Associates provided that each of those persons –

28.2.5.1 is made aware of the provisions of this clause; and

28.2.5.2 needs to know that information for the purpose of performing obligations or exercising rights under this Agreement or a Transaction as the case may be.

28.3 If either party becomes aware, or suspects, that any unauthorised person has obtained or attempted to obtain access to Confidential Information of the other Party, that Party is immediately to notify the other Party and take the steps reasonably available to it to protect that Confidential Information.

## **29. DATA PROTECTION & DATA PRIVACY**

29.1 PKF has the right to save, process and use Client data, publicly available information on Clients and data of Third Parties about Clients. Such data may be used by PKF and its Associates to make available to Clients customized consultation, tailored offers and information on products and services, as well as for market research, marketing and risk management purposes. This applies, in particular, to master data, financial data and Client needs.

29.2 PKF agrees that it shall:

- 29.2.1 handle all Client personal information responsibly and confidentially;
  - 29.2.2 use and apply appropriate measures, procedures and controls in the processing of the Client's personal information in terms of this Agreement, it being agreed that PKF shall process the Client's personal information in accordance with this Agreement;
  - 29.2.3 ensure that in the course of the performance of its obligations in terms of this Agreement, it complies with all Applicable Law relating to the protection of data or personal information; and
  - 29.2.4 comply with all applicable industry codes of conduct to the extent that they regulate or relate to the processing of personal information.
- 29.3 For the purpose of this Clause, personal information includes any information that allows PKF to identify the Client as a unique individual or entity and includes but may not be limited to identification and/ or registration information, physical address, contact details amongst other information submitted to or requested by PKF.
- 29.3.1 Personal information may be given to or collected by PKF in writing as part of a written application form, electronically (email), telephonically, online ([www.pkf.sc](http://www.pkf.sc)) or via electronic trading platforms used by or provided by PKF and its Service Providers.
  - 29.3.2 Processing of personal information includes any initial processing that PKF does when it first collects Client personal information. It also includes any further and ongoing processing required for PKF's due diligence and operational requirements. The term 'processing' includes collecting, using, altering, merging, linking, organising, disseminating, storing, retrieving, disclosing, erasing, archiving, destroying or disposing of personal information.
  - 29.3.3 PKF will only collect and process Client personal information for the reasons they have been provided to PKF, or to enable PKF to comply with the requirements of specific laws by which it is governed. Likewise, disclosure of any related information will only be done as required by law.
  - 29.3.4 The general purposes for which PKF collects and processes Client personal information include, but are not limited to:

- 29.3.4.1 Creating a record for the Client on our system to verify your identity, provide you with the products and/or services you have applied for and then communicate with and keep you informed about these products and/or services;
  - 29.3.4.2 Identifying you and verifying your physical address, source of income and similar information;
  - 29.3.4.3 Any purpose related to the prevention of financial crime, including sanctions screening, monitoring of anti-money laundering and any financing of terrorist activities;
  - 29.3.4.4 Further processing for historical, statistical or research purposes where the outcomes will not be published in an identifiable format;
  - 29.3.4.5 Providing income tax-related information to tax authorities;
  - 29.3.4.6 For purposes relating to the provision of corporate transactions between PKF and yourself;
- 29.4 In most cases, Client personal information will be collected directly from you, but there may be other instances when PKF will collect personal information from other sources. These may include public records, places where you may already have made your personal information public (for example, on social media), credit bureaus, or individuals/directors whom you have appointed as your representative, where you are a corporate entity. However, PKF will only collect your personal information from other sources where we are legally entitled or obliged to do so. PKF may outsource these functions to third parties, either within PKF or through service providers external to PKF, including parties in other countries.
- 29.5 PKF may also need to share your personal information with external organisations, such as tax authorities or other regulatory or industry bodies, so that we can meet our due diligence or regulatory requirements. We may need to share your personal information with our business partners or counterparties, where we are involved in corporate transactions relating to the provision of services within the PKF Group.

- 29.6 PKF will not share your personal information with third parties who do not need your personal information, or where PKF is not legally permitted to do so.
- 29.7 PKF may process your personal information through a secure automated tool, or perform profiling resulting in a decision that may affect you significantly. If you are unhappy about the outcome of such a decision, please contact: [support@pkf.sc](mailto:support@pkf.sc).
- 29.8 As a Client, if you have opted out of receiving electronic marketing communications (on media such as SMS, email or automated calling machines), PKF will not market to you using electronic media. However, if you are receiving marketing via electronic media, you have the right to opt out at any time by following the instructions on the marketing material received.
- 29.9 PKF reserves the right to change this statement at any time. All changes to this statement will be communicated to you. Unless otherwise stated, the current version shall supersede and replace all previous versions of this statement.
- 29.10 Should you have any queries with regards to this statement, you may contact us on [support@pkf.sc](mailto:support@pkf.sc)

### **30. CONFLICTS OF INTEREST**

The Client acknowledges that PKF's relationship to the Client is not that of a fiduciary and PKF owes no fiduciary duties to the Client.

### **31. SHARING OF COMMISSIONS, FEES AND CHARGES**

- 31.1 The Client acknowledges and agrees that PKF may share commissions, fees and charges with its Associates or other Third Parties or receive remuneration from them in respect of Transactions.
- 31.2 Details of these commissions, fees, charges, remuneration or sharing arrangements will be disclosed in accordance with any requirements of Applicable Law.



## **32. INSTRUCTIONS**

32.1 The Client may place an Order or otherwise give PKF instructions (whether written or electronic) as specified in this Agreement or otherwise published or provided by PKF .

32.2 PKF may, in its absolute discretion, decide whether or not to accept any written or electronic instructions.

32.3 Any oral instructions shall not be accepted by PKF.

32.4 PKF may act upon the written or electronic Order or instruction, including any Trading Platform Communications, of the Client, or any person who appears to PKF to be the Client, notwithstanding that the person is not, in fact, the Client.

32.5 In particular, PKF may act upon any Trading Platform Communications using the Client's Security Credentials or written instructions received from the verified email address on file for the Client.

32.6 The Client is to keep all security information relating to the Electronic Trading Platform, its Transactions, each Client Account and this Agreement, all Security Credentials and access to the verified email address on file for the Client, confidential and secure.

32.7 PKF is not required to establish the authority of any person quoting the Client's Security Credentials or email received from the verified email address on file for the Client.

32.8 If the Client is aware or suspects that any of these things is no longer confidential or secure, then the Client is to contact PKF as soon as practicable in order that it or they may be changed or otherwise made secure.

32.9 The Client must promptly give to PKF any instructions which PKF may require of the Client in respect of any Transaction or proposed Transaction.

32.10 If the Client does not promptly give those instructions, PKF, acting reasonably, may take the steps at the Client's cost and expense as PKF considers necessary or desirable for its own protection or the protection of the Client.

32.11 The Client authorises PKF to charge the Segregated Funds Account or member's account with a Recognised Exchange where Client Moneys are held with any such cost or expense of taking those steps.

32.12 The Client acknowledges and agrees that PKF is not responsible for notifying the Client of any times, dates or events that may be relevant to any Transaction (including in relation to Transactions where PKF may require instructions).

32.13 PKF may (but is not in any circumstances obliged to) require confirmation (in the form that PKF requires) of any Order or instruction (whether written or electronic) if –

32.13.1 the Order or instruction is to close a Client Account or remit money due to the Client; or

32.13.2 it appears to PKF, acting reasonably, that the confirmation is necessary or desirable.

32.14 PKF may acknowledge an Order, instruction or other communication (whether written or electronic) orally, in writing or by way of the Electronic Trading Platform.

### **33. ASSIGNMENT**

33.1 Subject to this clause, this Agreement is binding upon and ensures for the benefit of each of PKF and the Client and its successors and permitted assignees or transferees.

33.2 PKF may assign or transfer any of its rights or obligations under this Agreement or any Transaction without the consent of the Client. Each assignee or transferee is to have the same rights against the Client under this Agreement or any Transaction as if named in this Agreement as PKF.

33.3 PKF may disclose, on a confidential basis, to a potential assignee, transferee or other person with whom contractual relations in connection with this Agreement or any Transaction are contemplated, any information about the Client, whether or not that information was obtained in confidence and whether or not that information is publicly available.

33.4 The Client may not –

33.4.1 assign or transfer (whether absolutely, in equity, by way of security or otherwise), declare a trust over or otherwise deal with any of its rights or obligations under this Agreement or any Transaction; or

33.4.2 allow any such assignment, transfer, trust or dealing to subsist, without the prior written consent of PKF.

33.5 If an Event of Default occurs or the Client is in default of any of its obligations under this Agreement or any Transaction, PKF may (without prejudice to any other rights it may have) at any time afterwards assign and transfer to any person, with immediate effect all or any of its rights in respect of moneys owing to it under this Agreement or any Transaction, as well as any security or other remedies available to it in respect of those moneys.

33.6 If any such assignment is made, then the Client, if so required by PKF and the assignee and transferee, is to acknowledge in writing that the assignee and transferee has assumed the rights and obligations of PKF under this Agreement and any Transaction in relation to the relevant moneys.

#### **34. DISPUTE RESOLUTION**

34.1 The Parties agree that any dispute (including an alleged breach of, or default under, any Transaction) will be notified by the disputing party to the other party in writing, following which the Parties shall in good faith, attempt to reach an amicable resolution, within thirty (30) days of such notification of the dispute.

34.2 Failure to reach an amicable resolution in line with clause 34.1 shall result in the Parties submitting the dispute for resolution by arbitration. The Parties shall mutually agree on and appoint one arbitrator who shall preside over the proceedings. The seat of the arbitration shall be Seychelles, governed by the laws of the Republic of Seychelles and the process shall be in line with the ICC rules of arbitration.

34.3 This clause shall not preclude either Party from obtaining urgent relief from a court of competent jurisdiction.

34.4 The decision of the arbitrator shall be final and binding on the Parties to the dispute and may be made an order of the court referred to in clause 34.3 at the instance of any of the Parties to the dispute.

34.5 The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of obtaining an order as contemplated herein.

34.6 The provisions of this clause 34 are severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this Agreement.

### **35. NOTICES AND ADDRESSES OF SERVICES**

35.1 Each of the Parties choose as the address for service and delivery of documents their respective addresses set out in the Client Application for the purposes of the giving of any notice, the serving of any process and for any other purpose arising out of or in connection with this Agreement.

35.2 Each of the Parties shall be entitled from time to time to vary its address for the service and delivery of documents to any other address which is not a post office box or *post restante*.

35.3 Any notice given in terms of this Agreement shall be in writing and shall -

35.3.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

35.3.2 if posted by prepaid registered post be deemed to have been received by the addressee on the 10<sup>th</sup> (tenth) day following the date of such posting;

35.3.3 if sent by courier be deemed to have been received on the date of delivery by the courier service concerned, unless the contrary is proved; and

35.3.4 if transmitted by email message, be deemed to have been delivered to and received by the addressee when the complete email message enters an information system designated or used for that purpose by the addressee and is capable of being retrieved and processed by the addressee.

35.4 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties shall be adequate written notice or communication to such Party.

### **36. AMENDMENTS**

36.1 Except as specifically otherwise provided herein, PKF may amend, modify or replace this Agreement and/or any of the then-current documents that comprise this Agreement at any time by –

36.1.1 written notice to the Client; and/or

36.1.2 posting notice accordingly and/or an amended form of this Agreement and/or any of its components on the Website; and/or

36.1.3 posting notice accordingly and/or an amended form of this Agreement and/or any of its components on an Electronic Trading Platform; and/or

36.1.4 as otherwise permitted by Applicable Law.

36.2 The Client acknowledges and agrees that –

36.2.1 PKF may make available to the Client any such notice and/or an amended form of this Agreement and/or any of its components to this Agreement by any one or more of the means specified in clause 36.1; and

36.2.2 if the notice and/or an amended form of this Agreement and/or any of its components is made available to the Client by more than one means, it is deemed to be made available to the Client at the earliest possible time.

36.3 A notice and/or an amended form of this Agreement and/or any of its components posted on the Website or on an Electronic Trading Platform is deemed to have been made available to the Client at the time the relevant document was posted by PKF on the Website or on the Electronic Trading Platform.

36.4 Any amendment, modification or replacement to or of this Agreement and/or any of its components is effective on the date specified in the notice, which shall not be less than thirty (30) days from the earliest date on which the notice of amendment is deemed to be delivered to the Client.

36.5 Upon delivery of the notice of amendment to the Client, the Client shall be entitled to terminate this Agreement prior to the effective date of such amendment, failing which the Client shall be deemed to have accepted the amendment.

36.6 If, after receipt of the notice of amendment, the Client issues any instruction to PKF in terms of this Agreement, the Client shall be deemed to have accepted the amendment and shall not be entitled to terminate the Agreement in accordance with clause 36.5.

36.7 Any such amendment, modification or replacement, where applicable, also amends the terms of any outstanding Transaction on that effective date.

## 37. GENERAL

- 37.1 Each of the provisions of this Agreement is separate and severable and enforceable accordingly. If any such term or condition is or becomes unenforceable for any reason whatsoever, that term or condition is severable from and shall not affect the validity of any other term or condition contained in this Agreement.
- 37.2 Certificates, statements or other documents provided by PKF of any amount payable under this Agreement or any Transaction is, in the absence of manifest error or fraud, conclusive evidence for all purposes, including for any proceedings.
- 37.3 Each party will pay its own costs (including legal fees) of entering into this Agreement.
- 37.4 Where a Client is a duly appointed representative, the Client undertakes –
- 37.4.1 to notify PKF immediately in writing if –
    - 37.4.1.1 the Client ceases for any reason or at any time to be duly appointed representative of the legal arrangement; or
    - 37.4.1.2 if there are two or more duly appointed representatives, any other duly appointed representative ceases for any reason to be a duly appointed representative of the legal arrangement; or
    - 37.4.1.3 the legal arrangement is determined or for any other reason ceases to exist; or
    - 37.4.1.4 it becomes aware of any breach of trust; and
  - 37.4.2 not to make any distribution of any capital of the legal arrangement which would result in the legal arrangement having insufficient assets to meet the Client's liabilities under outstanding Transactions and this Agreement.
- 37.5 Except as expressly set out in this Agreement, all warranties that may be implied in this Agreement by law are excluded to the maximum extent permitted by law.
- 37.6 Where this Agreement is executed by any party under power of attorney then, by executing this Agreement, each attorney is deemed to have stated that the attorney has received no notice of revocation of the relevant power of attorney.

- 37.7 The expiration, cancellation or other termination of this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after such expiration, cancellation or other termination or which of necessity must continue to endure after such expiration, cancellation or other termination, notwithstanding that the relevant clause may not expressly provide for such continuation.
- 37.8 No indulgence, leniency or extension of time which any Party may give or allow to the other Party in respect of the performance of any obligation hereunder or under a Transaction, shall in any way prejudice the Party giving or allowing the indulgence, leniency or extension or preclude such Party from exercising any of its rights and enforcing the obligations of the other Party in terms of this Agreement and a Transaction. A provision of, or a right created under, this Agreement or any Transaction may not be waived except in writing executed by the party granting the waiver.
- 37.9 The person submitting the Application Form on behalf of the Client warrants his authority to do so.
- 37.10 The rights of each party under this Agreement and each Transaction are cumulative and not exclusive of any rights provided by law.