



# **Upstream Participation Agreement**



This agreement is entered into between Upstream, a MERJ Exchange market, along with MERJ Exchange Limited, duly licensed as a Securities Exchange under the Seychelles Securities Act 2007, and the Client and sets out the terms and conditions on and subject to which MERJ Exchange Limited and the Client will enter into Transactions.

This agreement forms part of this application and consists of the following documentation:

- Upstream Terms and Conditions
- Digital Trust Disclosure Statement for Upstream Members
- Upstream NFT Marketplace Terms and Conditions
- Terms and Conditions of MERJ Platform Participation Agreement

# UPSTREAM TERMS AND CONDITIONS

## 1. Interpretation and Application

1.1. The terms and conditions set out herein (“these Terms and Conditions”) shall form part of the Participation Agreement and shall accordingly be read and interpreted with the Participation Agreement. You (“the User”, “you” and “your”) have entered into the MERJ Platform Participation Agreement (“the Participation Agreement”) with MERJ Exchange Ltd (“MERJ”, “we” “us” and “our”) in respect of the conclusion of Transactions using MERJ Platforms.

1.2. Unless the contrary is indicated by the context, all terms defined in the Participation Agreement shall have the same meaning herein.

1.3. The Upstream branded digital security primary offering and secondary-market security trading platform (“Upstream App”) is a MERJ Platform which will enable the User, that has approved to use Upstream, to conclude Transactions using the Upstream App.

1.4. These Terms and Conditions, together with the Participation Agreement, govern your use of the Upstream App to conclude Transactions. These Terms and Conditions shall apply to any and all transactions that you conduct on the Upstream App following your registration on Upstream as a user and shall endure until such time as your Upstream Account has been terminated.

## 2. Registration and Upstream Account

2.1. When you register to use the Upstream App, an account (“Upstream Account”) will be opened on the Upstream App which will reflect all Transactions concluded on the Upstream App.

2.2. If you are a permanent resident of the United States of America (“US”) –

2.2.1. you warrant that you are using a valid social security number;

2.2.2. you may only open an Upstream Account for liquidation only from a position held in an issuer of a Security listed on the Upstream App; and

2.2.3. whether or not you are a resident of the US you were not solicited by the Upstream App to liquidate your account and were contacted by the issuer directly.

## 3. Keep Your Upstream Account Secure

3.1. You understand that you are responsible for securing the confidentiality and use of Security Credentials issued in respect of your Upstream Account. You will be solely responsible for all

Transactions that are sent electronically using your Security Credentials. You should notify us immediately if your Security Credentials are compromised or lost.

3.2. You understand that we use technology to protect and encrypt the transmission of information from and to you. While we believe that we have taken reasonable measures to keep your information secure, we are not liable if your data and communications are intercepted. Should someone intercept a transmission of your information, you agree that you will not hold us, our Associates or Service Providers, liable for any type of damages. This includes any liabilities or damages resulting from viruses that may infect your or our smartphone(s) or third-party Internet facilities.

#### **4. Deposits and Sub-Custody Agreement**

4.1. All fiat funds paid by you for the purpose of entering into Transactions on the Upstream App shall be held by FinTruth LLC dba Digital Group t/a Digital Trust (“the Custodian”), in accordance with the Digital Trust Sub-Custody Agreement entered into between you and the Custodian (“**the Sub-Custody Agreement**”). All execution, clearing and bookkeeping in respect of your funds will be done by the Custodian in accordance with the Sub-Custody Agreement. The Custodian shall maintain an account for you in respect of all funds held in terms of the Sub-Custody Agreement (“**the Sub-Custody Account**”).

4.2. You acknowledge that the Custodian does not accept physical cheques or paper money orders. All funds to your Sub-Custody Account must be paid electronically by you to the Custodian in accordance with their guidelines as published on our Website and subject to the Sub-Custody Agreement.

4.3. Any payments made from the US shall be subject to the following terms:

4.3.1. Payment made to the Custodian from the US may only be made by way of The Automated Clearing House (“ACH”) or Fedwire.

4.3.2. The US Federal Reserve System processes bank wires. They are normally completed on the US business day following your request. Please refer to the Special Services and Fees page for the current fee schedule of the Custodian.

4.3.3. The ACH processes electronic fund transfers. To use this service, your bank must be an ACH member, and one common name must appear on your bank account documentation and your Upstream Account. Transfers are normally completed within three US business days, and credits to your Upstream Account may be on hold for five to seven business days thereafter, in accordance with our then-current policies. We may limit whether we accept or permit ACHs initiating or terminating at our site.

4.4. MERJ has entered into an agreement with the Custodian in terms whereof the Custodian will agree to act upon the instructions of MERJ in respect of your Upstream Account. You hereby authorize MERJ to provide the Custodian with all the necessary instructions in respect of the Sub-Custody Agreement, provided that such instructions are consistent with the Orders

placed by you in terms of these Terms and Conditions. You hereby agree to indemnify and hold MERJ harmless in respect of all claims, actions, loss, liability or expenses (including attorneys fees) whatsoever and howsoever arising in respect of the delivery of instructions by MERJ to the Custodian.

4.5. If the Sub-Custody Agreement is terminated, for any reason whatsoever, MERJ shall be entitled to suspend the Upstream Account until such time as you conclude a custodian agreement with a third party approved by MERJ.

4.6. MERJ shall not be responsible for any actions, omissions or failures of the Custodian to fulfil its obligations in terms of the Sub-Custody Agreement and you hereby indemnify MERJ against, any claims for loss, expense, or damage which you may suffer, however such loss, expense or damage may arise or be suffered, in respect of the termination of a Sub-Custody Agreement.

4.7. You authorize MERJ to disclose to the Custodian, all the information necessary to open your Sub-Custody Account, including, but not limited to, name, address, phone number, email address, social security number, tax identity number, birthdate, Upstream Account number, transaction data, and government ID.

## 5. Transactions on the Upstream App

5.1. You appoint MERJ as your agent to –

5.1.1. execute instructions in respect of the conclusion of Transactions in respect of Limit Orders on the Upstream App (“**Orders**”); and

5.1.2. to issue the requisite instructions to the Custodian in order to fulfil the Order.

5.2. The execution of Orders by MERJ shall at all times be subject to these Terms and Conditions, the MERJ Platform Agreement and Applicable Laws.

5.3. Before you can purchase a Security on the Upstream App, you must have available funds to cover the sum of all open Orders. Your Upstream Account shall not be permitted to stand in debit.

5.4. Before you can sell a Security on the Upstream App, you must have available Securities to cover all open Orders for sale of Securities. There is no short selling of Securities in your Upstream Account.

5.5. Only Limit Orders may be placed and executed on the Upstream App. A Limit Order is an order placed on the Upstream App to enter into a Transaction, whether such Transaction is for the sale or purchase of Securities, when the price of the relevant Security reaches a predetermined level (the limit price) on the Upstream App.

5.6. When you place an Order, you will receive the price at which the Order is executed in the marketplace on a best bid price or best ask price basis, as the case may be. The “best ask price”

is the price, or better, you may buy Securities at. The “best bid price” is the price, or better, you may sell Securities.

5.7. During periods of high volume, illiquidity, fast movement or volatility in the marketplace, the execution price received may be better than the limit price that you provided on entry of an Order, and you may receive partial executions of an Order at different prices, at the limit price or better. You understand that MERJ is not liable for any price fluctuations. You also understand that price quotes generally are for only a small number of Securities as specified by the marketplace, and larger Orders are relatively more likely to receive executions at prices that vary from the limit pricing or in multiple lots at different prices, at the limit price or better. You understand that hidden orders, i.e., so-called iceberg orders, are not permitted on the Upstream App.

5.8. Securities may open for trading at prices substantially higher or lower than the previous closing price or the anticipated price. If you place an Order (whether during normal market hours or when the market is closed), you agree to pay or receive the prevailing price, or better, at the time the Limit Order is executed. You acknowledge that the price you pay may be significantly better, but never worse, than anticipated at the time you placed the Limit Order. You also understand that Limit Orders may not be executed at any particular time, or at all if there is not sufficient trading at or better than the limit price you specify. The Support Website contains further information regarding the Limit Order types and limitations on the Upstream App, which you agree to read and understand before placing such Orders.

5.9. Orders to Transact Upstream may only be placed by means of the Upstream App and by not other means.

## **6. Fees and Charges**

6.1. By opening the Upstream Account and placing each Order you agree to pay the then-current fees applicable to the Upstream Account and all Transactions as set out on the Upstream App, from time to time.

6.2. The fees and charges in respect of each Transaction will be accessible on the Upstream App prior to placing the Order (“Transaction Fees”). We will charge and deduct from your Custody Account, the Transaction Fees upon execution of the Transaction. You hereby authorise us to deduct the Transaction Fees from the Custody Account as and when they become due and payable.

6.3. The Transaction Fees may be in addition to any other fees and costs charged in terms of the Participation Agreement. In this regard, it is your responsibility consider Fee Schedules on the Website, which may be applicable to your Transaction.

## **7. Orders by means of Upstream App only**

Please consider carefully if you can afford or want to take on the risks of limiting your method of placing Orders on the Upstream App. Your Upstream Account is only accessible by means of the Upstream App. If you cannot access the Upstream App or the Upstream App is not functioning, you will not be able to place Orders through other means. You agree that you assume responsibility for all losses that arise if your Orders cannot be placed on or through the Upstream App.

## **8. Risks in Transactions**

8.1. You understand that all Transactions concluded through the Upstream App are unsolicited and that all trading decisions made by you will be your own decisions and that no representatives of MERJ will offer any trading or investment advice. You further understand that you must review your suitability and investment objectives before placing an Order. You understand that all investments involve risk, that you may lose my entire investment, and that the past performance of a Security, industry, sector, market or financial product does not guarantee future results or returns.

8.2. All investments on the Upstream App are speculative. Listings on the Upstream App are only suitable for investors who are familiar with and willing to accept the high risk associated with speculative investments, often in early and development stage companies. There can be no assurance as to the valuation of any particular Securities. Investors must be able to afford market volatility and afford the loss of their investment. Companies listed on the Upstream App are subject to significant ongoing corporate obligations including, but not limited to disclosure, filings and notification requirements, as well compliance with applicable quantitative and qualitative listing standards.

8.3. You acknowledge that Securities listed on the Upstream App do not have a bank guarantee, are not insured and may lose value.

## **9. Risks of Online Investing**

9.1. While we have put tremendous resources into building and testing our computer systems, computer glitches, slowdowns, and crashes will occur.

9.2. We will also need to restrict access to some parts of the Upstream App to perform routine maintenance. We will try to schedule our maintenance during the middle of the night outside of market hours but may sometimes need to perform maintenance during less convenient times, which could interfere with your access to the Upstream App. You agree that we are not

responsible for any lack of access or functionality resulting from such required maintenance.

9.3. While it is our intention that the Upstream App will be available seven days a week except when maintenance is scheduled (usually for weekends), the ability to execute Transactions on the Upstream App are limited to regular trading hours, non-holidays, Monday to Friday from 10:00am to 6:00am Seychelles time, and you understand that we do not guarantee that you will always be able to access the Upstream App to place Orders or that your Orders will always be executed. The Support Website sets out the annual holiday schedule and operating hours of the Upstream App. Computer glitches can arise on your end, our end, or anywhere in between: your phone may break down; the connection between your phone and your carrier or Internet service provider may not work properly; your carrier or Internet service provider may go down; or our computers and the computers we link to may be unavailable due to unforeseen system outages.

9.4. During certain times when trading volumes increase on the Upstream App, many Upstream App account holders may want to place Orders at the same time, and as a result, delays in Order processing may occur. You agree that we are not responsible for any losses or liabilities that may occur as a result of high trading volume, market volatility, or computer, telecommunications, or internet failures, regardless of the cause.

## **10. Extraordinary Events**

You agree that we are not liable for any losses caused directly or indirectly by extraordinary events or conditions beyond our control. Such events include, but are not limited to, government actions, exchange or market rulings, and suspensions of trading.


## **11. No Guarantee on Accuracy of Third- Party Information**

You understand that we are not responsible for the accuracy or your use of any information we receive from third parties. While we use vendors we believe to be reliable, we have not verified and do not make any warranty for information provided by third parties. Our Website may contain links to other Websites. We provide these links for the convenience of our customers, however, we have no control over these other sites. Therefore, we are in no way responsible for and in no way approve, endorse, or guarantee the accuracy, reliability, or completeness of any data or information provided in any hyperlinked webpage or website.

## **12. Disclosure of Information to Issuers**

You hereby authorise MERJ, or its Associates, to provide information to any issuer of your Securities acquired by means of the Upstream App, insofar as such information is required by the





purpose of corporate actions by such issuer. Such information may include, but shall not be limited to, your name, postal address, email address and securities position information.

### **13. Upstream Account Statements and Confirmations Report Errors Immediately**

13.1. You will receive notice by email periodically, but not less than quarterly, that your Upstream Account statement is accessible and available for viewing or printing. These statements will detail all activity recorded in your Upstream Account. You may also receive notice by e-mail if opted in, that a trade confirmation in respect of a Transaction is accessible and available for viewing or printing from our Website, the business day following the date of the Order. You are strongly encouraged to review these documents promptly. We will conclude that all information is correct unless you contact us promptly about any errors.

13.2. If, for any reason, you do not periodically receive emails from us notifying you of your statement or trade confirmation delivery, you agree to notify us immediately so that we can determine the cause of the notification failure and take appropriate steps to correct it.

### **14. Exclusions**

The ability to Transaction using the Upstream App is limited to natural persons acting individually. The Upstream App does not make provision for joint accounts held by more than one person, corporate accounts held by juristic persons of margin accounts for the purpose of concluding Margin Transactions.

### **15. Default and Termination**

Without limiting the rights of MERJ in the Participation Agreement, in the event of your default of these Terms and Conditions or the Participation Agreement, MERJ will be entitled take all such action as it deems fit to protect MERJ, MERJ Trading Platforms and other users of MERJ Trading Platforms, including but not limited to the restriction of your access to the Upstream App, restriction or limitation on your ability to make Orders or conclude Transactions, the termination of any open Orders, or the termination of your Upstream Account. The termination of your Upstream Account will not affect the rights and/or obligations of either party incurred prior to such termination. If this Agreement is terminated, the Upstream App shall have no right to access or otherwise prevent a cash withdrawal from the User's account with the Custodian.

## 16. No Cession or Assignment

You shall not be entitled to cede, assign, or transfer your rights or obligations in terms of these Terms and Conditions.

## 17. Notices and Communication

17.1. All notices, documents, and other information related to your Upstream Account and Transactions are delivered electronically. This may be done through the push-notification by means of the App, an online posting on the Website, an email or other electronic media to which you hereby consent. Your consent to electronic delivery extends to all information required to be provided by us, by the issuers of the Securities in which you invest, and by other Service Providers in respect of the Upstream App. This means you will receive email or other notices relating to your Upstream Account and Transactions, including statements and confirmations, prospectuses, annual reports, proxy statements, proxies, tender offers and mergers and corporate recapitalization's.

17.2. You agree that when we send these email notices to you that they constitute delivery to you of the information or documents referred to in the email even if you do not actually access the information or documents sent or published. You may not revoke this consent to electronic delivery.

17.3. You agree to keep a working email address and other current contact information and will update your information immediately if your email address or other contact information changes. If you do not maintain an e-mail address that is working and accessible to us, your Upstream Account will be terminated.

17.4. If your email address or other contact information changes at any time, you must update your information with us.

## 18. Amendments

We can amend these Terms and Conditions by notice to you in accordance with the MERJ Platform Agreement. Your conduct of any Transactions on the Upstream App after notice of such amendments will constitute your agreement to the amendments. If a provision of these Terms and Conditions is or becomes inconsistent with any Applicable Law, the provision in question will be amended to conform to the Applicable Law, and all other provisions will remain binding.

## Digital Trust Disclosure Statement for Upstream Members

This Disclosure Statement (“Statement”) is made by and between the individual Upstream Member accepting these terms (“Upstream Member”) and Digital Trust, LLC (“Custodian”). Custodian

hereby agrees to accept and hold such monies, securities and property (“Property”) as may from time to time be delivered by or for Upstream Member to Custodian, or added in the process of investing the Property, in a custody sub-account (“Custodial Sub-Account” or “Sub-Account”) and to invest such Property, solely at the direction of the Upstream Member who maintains an account on the “Upstream App” (being the digital security trading platform application known as Upstream). Upstream Member acknowledges and agrees that the Sub-Account opened with Custodian is for cash deposits to execute trades on the Upstream App and Upstream Member acknowledges and agrees that it will be subject to the terms below.

### ARTICLE I GENERAL TERMS

1. During the term of this Statement, Custodian shall have custody and possession of the Property and shall be charged with the duty of safely keeping the same. Custodian may for convenience take and hold title to Property or any part thereof in its name as Custodian or in the name of its nominee. Upstream Member acknowledges that Custodian will hold in custody the indicia of ownership or confirmation or other evidence of purchase and not the asset itself. Where the asset is an investment vehicle for the investment in other assets, the Custodian shall have no control over or responsibility for the underlying assets. Custodian is acting solely as a passive custodian to hold Sub-Account cash assets, and in no other capacity. Custodian will have the right not to affect any transaction/investment in which it deems to be beyond the scope of its administrative capabilities or expertise.

2. Upstream Member authorizes MERJ Exchange Ltd. (“MERJ”) to disclose the information necessary to open a Sub-Account, to Custodian including, but not limited to, Name, Address, Phone Number, Email Address, Social Security Number, Tax ID number, birthdate, Upstream account number, transaction data, and government ID. Upstream Member authorizes Custodian to accept any and all directions for the investment, sale, and reinvestment of the Property that are provided by the Upstream App consistent with the authority granted by the Upstream Member as furnished to the Custodian as though they were directions directly from Upstream Member. Custodian is not required to verify with the Upstream Member any of the directions from the Upstream App.

3. IMPORTANT USA PATRIOT ACT INFORMATION. To help the government fight the funding of terrorism and money laundering activities, federal law requires all U.S. financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means to Upstream Member: That you agree to allow MERJ via the Upstream App

to provide us with your name, residential address, date of birth, and your social security number and driver's license number (U.S. Citizens), or Taxpayer Identification Number (TIN), Passport, or foreign govt issued ID (non-U.S. Citizens) before we will accept and open your account. Upstream Member certifies that the identification number provided pursuant to this Statement is my correct identification number.

4. It is Upstream Member's responsibility to prepare and file all required tax returns including income and capital gains. Upon request through the Upstream App, Custodian will provide to Upstream Member a statement containing all information regarding the transactions executed under this Statement that may reasonably be required for the preparation of Upstream Member's income tax returns. Upstream Member is responsible for the payment of any and all accountant and attorney fees incurred in the preparation of Upstream Member's tax return or resulting from the operation of this Account.

5. Either the Upstream Member or the Custodian may terminate and close this account by providing notice ("Termination Notice") to the other party via the Upstream App or in writing directly to the Custodian. If the Account is terminated, Custodian shall deliver the Property as soon as practicable to Upstream Member or, at Upstream Member's written or electronic request, to another custodian or other third party. If the Custodial Sub-Account is closed and within 30 days of the date of the Termination Notice, the Custodian has not received delivery instructions, the Custodian may deliver Property in kind and/or liquidate Property and send the net proceeds to the Upstream Member at the last address the Upstream Member provided to the Custodian. Upstream Member acknowledges that Property may require a reasonable amount of time to be transferred. Upon delivery of all Property, the Custodian's responsibility under this Account will then cease.

6. This Account shall also terminate upon receipt by the Custodian of evidence of death of an individual Upstream Member or as otherwise required by law, subject to clause 7 below.

7. If this Account terminates due to the death of the Upstream Member, upon receiving satisfactory evidence of the death, Custodian shall freeze the Custodial Sub-Account and review documents, or information provided by the Estate via the Upstream App directing Custodian to transfer ownership of the Property or liquidate Property and provide instructions to wire funds to an Estate account.

8. In order to invest in securities, private equity and asset related transactions via the Upstream App, Upstream Member, agrees to read and understand the terms of each investment and/or other relevant materials outlining trading and investment rules and risks including the Upstream Terms and Conditions and MERJ Platform Participation Agreement (collectively "Membership Agreements"); and Upstream Member further agrees that it is the Upstream Member's choice to assume risk of making investments via the Upstream App. Upstream Member understands that any order or other transaction entered via the Upstream App is placed by Upstream Member on a best-efforts basis as prescribed and recognized by the Upstream App and that Custodian is not responsible for unexecuted orders due to the failure of any electronic communication system; the completion of a purchase or liquidation is dependent on the cooperation of the Upstream App. Upstream Member agrees to be fully responsible for the

information contained within the Membership Agreements and to hold the Custodian harmless for any deficiencies contained therein or Upstream Member's failure to read or understand such information. It is not the responsibility of Custodian to review the prudence, merits, viability or suitability of any investment made by Upstream Member or to determine whether the investment is acceptable under any applicable law.

## **ARTICLE II - AMENDMENT**

This Statement will be amended from time to time to comply with changes in the law and related regulations. Without prior notice to or consent of the Upstream Member, the Custodian may amend this Statement from time to time in order to comply with U.S. law and related regulations. Notice of such amendment shall be sent to the Upstream Member by electronic means within thirty (30) days after such amendment is to be effective. The Custodian may amend this Statement for any reason without the consent of the Upstream Member; provided notice of such amendments shall be sent to the Upstream Member thirty (30) days before the date such amendment is to be effective.

## **ARTICLE III - GENERAL POWERS AND DUTIES OF THE CUSTODIAN AND LIMITS THEREON**

1. The Custodian is hereby authorized and empowered:

- a. To hold Property received from time to time from the Upstream Member, on behalf of the Upstream Member which shall, when aggregated with any interest earned thereon, be collectively referred to as the Custodial Sub-Account.
- b. To collect any income generated from the Property and add such sums to the Custodial Sub-Account; to make payments, disbursements or distributions from the fund as directed by the Upstream Member or as provided under the provisions of this Statement; to purchase, sell, convey, assign, exchange, mortgage or pledge any property in the Custodial Sub-Account in such manner and upon such terms as instructed by the Upstream Member via the Upstream App and in conformity with the terms of this Statement.
- c. Custodian shall collect, receive and hold in custody proceeds when Property matures, is sold or is redeemed. Custodian shall notify Upstream Member via the Upstream App, if any, of such transaction and shall hold the proceeds of such transaction until receipt of written instructions from Upstream Member via the Upstream App. Custodian will use its best efforts to collect Property at maturity and at dates of call for payment but assumes no responsibility for its failure to do so.
- d. The entire net income derived from Property held hereunder, after payment of all charges and expenses, including Custodian's fees, may be paid to Upstream Member or otherwise,

as Upstream Member shall direct via the Upstream App.

2. The Custodian shall be responsible only for such funds or assets received by it hereunder. The Custodian shall act only with the direction and approval of the Upstream Member in the investment, management, disbursement and disposition of the custodial assets for the purposes and in accordance with the provisions of this Statement. The Upstream Member shall direct the Custodian as to investment and reinvestment of the Custodial Sub-Account. Custodian shall have no duty or obligation to inquire into or investigate the suitability or propriety of any direction of the Upstream Member. The terms of this Statement shall be binding upon the Custodian and Upstream Member.

3. The Custodian shall have no duty to review the assets held in Custodial Sub-Account in respect to their safety, risk, or timeliness, and shall render no opinion as to Property so held or as to the advisability of initial and subsequent purchases directed by the Upstream Member. The Custodian shall not be held liable or otherwise accountable for losses incurred by reason of investment selections in accordance with Upstream Member's directions.

4. The Custodian may respond to any subpoena without prior notice to the Upstream Member.

5. Agreeing to the custody of a specific asset does not constitute marketing, distributing or raising capital for that asset and the Custodian is not in any way endorsing the asset.

6. The Upstream Member acknowledges that the nominal owner of any investment held in the Custodial Sub-Account is Digital Trust as Custodian. Therefore, the Upstream Member agrees not to receive or withdraw any funds or any Property held in the Custodial Sub-Account other than through the Custodian via the Upstream App and Custodian is authorized to take any action necessary to ensure that any investment directed to be purchased by the Upstream Member via the Upstream App is correctly documented as being purchased in and owned by the Custodial Sub-Account.

7. All requests for withdrawals shall be via the Upstream App, on a written or electronic form provided by, or acceptable to the Custodian. The Upstream Member's tax identification number must be provided to the Custodian before the Custodian is obligated to make a distribution.

8. Upstream Member agrees that the Custodian has no duty to report any information on any asset held in the Custodial Sub-Account which the Custodian may have learned in connection with another account or customer or from any source other than in the operation of the Upstream Member's Custodial Sub-Account.

#### **ARTICLE IV - INVESTMENT OF THE ACCOUNT - NO CUSTODIAN RESPONSIBILITY**

1. Subject to Article V of this Statement, the Upstream Member has the sole authority and discretion, fully and completely, to select and to direct the investment of all assets in the Custodial Sub-Account. The Upstream Member accepts full and sole responsibility for the success or failure of any selection made. It is the Upstream Member's responsibility to understand the nature of the investments, the principals and risks involved with the investments



the Upstream Member has chosen. The Custodian has no responsibilities for the selection, continuation or sale of any assets. The Custodian is under no duty to disclose any risks associated with any investment.

2. The Custodian shall not be responsible for the investment of assets or their performance after the Upstream Member's death as the Custodian shall not assume any duties or responsibilities after the Upstream Member's death in addition to the duties and responsibilities specifically provided for and assigned to the Custodian in this Statement.

3. The Custodian shall not be responsible to investigate any investment, or any principals involved with any investment.

4. In connection with certain investments, Upstream Member may execute certain ancillary documents. If Upstream Member has agreed to provide services or has appointed an agent to provide services pursuant to such ancillary documents, the Custodian shall not have any responsibility for the performance or nonperformance of those services. Upstream Member agrees to indemnify and hold harmless Custodian from and against losses or any liability caused by Upstream Member's third-party service providers.

#### **ARTICLE V - UNINVESTED CASH FUNDS.**

1. Funds deposited with Custodian, or received funds in settlement of trades, that are not subject to a current Direction of Investment (or are awaiting your direction), are collectively referred to as ("Uninvested Cash Funds"). All cash deposits are initially placed in one or more demand deposit accounts (savings or checking), including but not limited to Certificates of Deposit (CDs), investment grade bonds, "A" rated or higher life insurance companies (fixed annuities) and/or Treasury Notes, other loans, maintained by us, and your account is credited with all Uninvested Cash Funds the same business day they are received. You agree that Custodian may invest Uninvested Cash Funds from your Custodial Sub-Account in account(s) of Custodian's choosing using a formula designed to maintain liquidity of the Uninvested Cash Funds.

2. Specifically, Upstream Members authorize and directs Custodian to sweep Uninvested Cash Funds automatically into Custodian's designated account(s) until such time as further direction is received from Upstream Member. If FDIC insurance applies to the investments purchased with Uninvested Cash Funds, the insurance will be subject to all applicable laws and regulations, including those laws and regulations related to FDIC insurance limitations. Custodian may adjust the formula for investment between the accounts or replace one or both of the accounts from time to time, but only after providing you with notice of the change. You will be deemed to have consented to this change and the continued investment of any Uninvested Cash Funds in the updated account, within 30 days from the date Custodian sends the investment change notice, unless you notify us in writing that you do not consent. Custodian's depository

institution partners' FDIC insurance may cover each fully disclosed Sub-Account for each Upstream Membership as deposited by the Upstream Member from time to time, as agreed upon with Custodian's depository institution partner. The standard insured amount at the time of Execution is \$250,000.00 per the United States Federal Deposit Insurance Act, Section 11. If investments are not FDIC insured, they will be one hundred percent collateralized. Custodian is not liable for uninvested, idle funds that cannot be FDIC insured.

3. You understand and agree that Custodian is entitled to retain as part of its compensation for the services Custodian provides under this Statement the excess of any interest or other income earned or otherwise generated from the Uninvested Cash Funds deposited in such accounts. Custodian is not required to credit a percentage of these earnings back to your account but may choose to do so at Custodian's discretion. The amount credited back to your account will be at Custodian's discretion.

4. If Custodian receives moneys after hours or that otherwise cannot be immediately swept into an approved interest-bearing investment, such amounts may remain uninvested in our bank account overnight. In that case, Custodian may also earn float on such amounts. In addition, if Custodian issues a check on your behalf in connection with (1) distributions requested by you or (2) fees paid to third party service providers to your account, Custodian debits your account the amount of the check and deposit the funds into a special disbursement account held by us. In that case, we will earn float on the amount of the check from the date it is issued until the date the check is presented and paid.

5. Because the amounts held in Custodian's bank account overnight or disbursement account are invested on an omnibus basis and not segregated from other deposit funds, attributing an exact earnings or interest factor applicable to your specific Custodial Sub-Account is not possible. What Custodian earns on the float depends on numerous factors such as current interest rates, credit risk, the duration of a particular investment, and our current crediting rate. However, Custodian anticipates that our earnings on the float will be at a rate similar to that of short-term U.S. Treasury Notes, although the rate may differ from time to time.

## **ARTICLE VI - OTHER ADMINISTRATIVE POWERS AND DUTIES OF THE CUSTODIAN**

1. The Custodian may make any payment or distribution required or authorized hereunder by ACH or by wire or other electronic transfer to the payee by means of the Upstream App. The Custodian shall not be liable for any payment made in good faith without actual knowledge of any changed condition or status of any person receiving benefits hereunder. The Account Owner shall be responsible for all wire fees published on the fee schedule.

2. The Custodian may consult with and employ other agents or legal counsel, who may, but need not be counsel for the Custodian individually, and the Custodian shall be fully protected from liability in actions taken or omitted, in good faith, upon the advice of such counsel.

3. The Custodian may perform any and all other acts which, in its judgment may be necessary or appropriate for the proper administration of the custodial assets. In the performance of its



duties and responsibilities under this Statement the Custodian may employ such agents and vendors as it feels appropriate without notice to the Upstream Member.

4. After the death of the Upstream Member, the Custodian reserves the right to request such documentation and certification as it deems appropriate within its discretion to verify and establish the identity of the estate, if the assets are to be distributed to the Upstream Member's estate. Prior to a distribution of assets to the estate of the Upstream Member, Custodian reserves the right to request from the estate of the Upstream Member, indemnification and discharge from any liability.

## **ARTICLE VII - DISTRIBUTIONS**

Distributions from the Custodial Sub-Account shall be made only upon the request of the Upstream Member provided however, that the Custodian is empowered to make a distribution absent such instruction if directed to do so pursuant to a court order, or an IRS levy or other valid and enforceable levy, and the Custodian shall in such event incur no liability for acting in accordance with such court order or levy.

## **ARTICLE VIII - RECORDS, REPORTS, AND VALUATION OF CUSTODIAL SUB-ACCOUNTS**

1. Upon request via the Upstream App, the Custodian shall furnish or cause to be furnished to the Upstream Member a statement concerning the status of the Custodial Sub-Account. The Upstream Member can retrieve the statements through the internet. The records of the Custodial Sub-Account shall be opened to inspection by the Upstream Member during the Custodian's regular business hours.

2. The Custodian agrees to submit reports to the Internal Revenue Service and the Upstream Member at such time and in such manner and containing such information as is prescribed by the Internal Revenue Service.

3. Upstream Member shall have forty-five (45) days to file any written objections or exceptions with Custodian after either (a) the date of mailing of a paper Custodial Sub-Account statement or (b) the posting of a Custodial Sub-Account statement online via the Upstream App. The failure to file any objections or exceptions within said forty-five (45) day period shall signify Upstream Member's approval of the statement and preclude Upstream Member from making future objections or exceptions regarding the statement. Such approval by Upstream Member shall be full acquittal and discharge of Custodian regarding the transactions and information on such statement.

4. Upon request via the Upstream App, the Upstream Member shall receive a statement of the fair market value ("FMV") of the Account. Such statements shall be in lieu of any trade advice or

transaction confirmations. The Custodian does not furnish trade advice or confirmations. The Upstream Member shall indemnify and hold the Custodian harmless for any loss, damage, tax or other consequences to the Upstream Member or the Account arising from or relating to the valuation of Property including the Custodian's accepting, reporting and acting upon any FMV supplied by the Upstream Member, or Valuation Agent, or for using the Last Value as provided via the Upstream App.

## **ARTICLE IX – HOLD HARMLESS AND INDEMNIFICATION, ARBITRATION**

1. The Custodian shall not be responsible in any way for determining the selection, retention or disposition of the investments of the Custodial Sub-Account; the amount, character, timing, purpose, propriety of any withdrawal; or any other action or non-action taken by the Upstream Member. The Upstream Member shall at all times fully indemnify and hold harmless the Custodian, its affiliates, successors and assigns, from any liability arising from transactions executed by Custodian in following directions from Upstream Member through the Upstream App, and from any and all other liability, damages, costs including legal costs, taxes and penalties on the Custodial Account, losses and expenses (collectively, "Damages") whatsoever which may arise in connection with the Account, except Damages arising directly from the gross negligence or willful misconduct of the Custodian. The Custodian shall not be responsible for any taxes, penalties, judgments and expenses incurred by the Upstream Member.

2. The Custodian shall be under no duty to take any action other than as herein specified with respect to the Custodial Account unless the Upstream Member shall furnish the Custodian with instructions in proper form. The instructions must be actually received by the Custodian. The Custodian shall not be obliged to determine the accuracy or propriety of any such directions and shall be fully protected in acting in accordance therewith. If the instructions, in the opinion of the Custodian, are unclear, or are not given in accordance with this Statement, the Custodian shall not be liable for any loss during the period preceding the Custodian's receipt of written clarification of the instructions. Upstream Member agrees to defend and indemnify Custodian and to hold Custodian harmless from and against all damages arising from taking any direction, orally or in writing, by original document, electronic copy or fax, from Upstream Member through the Upstream App. Custodian shall not be required to expend or risk any of its own funds or otherwise incur any financial or other liability in the performance of any of its duties hereunder. Claims expenses from any cause or causes, including attorney's fees and costs and expert witness fees and costs, so that the total aggregate liability of the Custodian and Custodian's officers, directors, partners, employees, shareholders, owners and subconsultants shall not exceed the Custodian's total fees for services rendered under this Account.

3. In the event a claim or dispute of any kind or nature arises between the Upstream Member and Custodian, including the scope of this arbitration clause, it shall be resolved by arbitration conducted in Las Vegas, Nevada as follows: a) either party may submit the matter to arbitration by serving a complaint on the other party that sets forth the nature of the claim. Service may be made by certified mail to designee. The parties shall mutually select an arbitrator who shall

be a retired judge or an attorney licensed to practice law in the state of Nevada, and shall have not less than ten years of experience in servicing as arbitrator or judge in disputes or litigation concerning the subject matter of the dispute; b) the arbitrator shall conduct an evidentiary hearing and issue a final award within 180 days of his or her appointment. The arbitrator shall be bound to follow and apply the substantive law of the State of Nevada, and the procedural and evidentiary rules of the State of Nevada in effect at the time of any arbitration proceeding hereunder; c) the arbitrator shall award reasonable attorney's fees and costs of arbitration to the prevailing party; d) if the parties cannot agree upon the appointment of an arbitrator, either party may file a petition in the Eighth Judicial District Court, Clark County, to appoint an arbitrator.

4. Notwithstanding the above, the Custodian shall have the right to bring suit against Upstream Member or the Custodial Sub-Account in a court of competent jurisdiction for the recovery of any sums owed to Custodian under this Account, including, but not limited to fees, costs, expenses and sums paid by Custodian in error to or for the benefit of the Custodial Account. In such event all court costs, legal expenses, reasonable compensation of time expended by the Custodian in the performance of its duties, and other appropriate and pertinent expenses and costs shall be collected by the Custodian from the Custodial Sub-Account or the Upstream Member.

## **ARTICLE X – ADMINISTRATIVE EXPENSE AND CUSTODIAN FEES**

All reasonable costs, charges, expenses, and taxes incurred by the Custodian in the administration of the Custodial Sub-Account (including legal fees and compensation of other agents) payable to the Custodian will be charged to and paid from the Custodial Commission Account, which shall be held by the Custodian for MERJ and to which all fees payable by the Upstream Member to MERJ in respect of the Property shall be credited. In the event that any fees remain unpaid, Custodian shall have the right to seek a judicial settlement in which Upstream Member would also be liable for all related costs of the suit including reasonable attorney's fees. The Custodian reserves the right to discount any of its fees within its discretion to certain Upstream Members without notice thereof to the Upstream Member.

## **ARTICLE XI – NOTICES**

1. Any and all notices or other communications directed to be given to the Custodian hereunder shall not be deemed delivered until actually received by the Custodian, in writing, at its place of business or by means of the Upstream App. The Custodian shall not be required to determine the validity of any receipt, affidavit, notice or other paper or agreement required to be delivered to it under this Account, but it shall be sufficient that such a document is delivered to it by

one of the parties as herein required and that the same shall be in apparently correct form and signed or otherwise executed by the party required to sign or execute the same, and the Custodian shall be relieved of any liability or responsibilities for the sufficiency thereof as long as it purports on its face to be such form and executed by such person as is required by this Statement.

2. Any notice provided by the Custodian to the Upstream Member for any circumstance shall be sent to the last known address of the Upstream Member by regular mail or, where the Upstream Member has provided the Custodian an e-mail address, to the most recent e-mail address of record for the Upstream Member, and for purposes of this Statement shall be considered delivered as of the date of the mailing or e-mailing. The Upstream Member shall be responsible to notify the Custodian via Upstream App of a change of address or e-mail address.

## **ARTICLE XII – APPLICABLE LAW**


All questions arising with respect to the provisions of this Statement shall be determined by application of the laws of the State of Nevada. If any part of this Statement is held to be illegal or invalid, the remaining parts shall not be affected. Neither the Upstream Member's nor the Custodian's failure to enforce at any time or for any period of time any of the provisions of the Statement shall be construed as a waiver of such provisions Custodian's right thereafter to enforce each and every such provision.

## **ARTICLE XIII – UPSTREAM MEMBER'S REPRESENTATIONS**

a. Upstream Member represents and warrants that any information given or that will be given with respect to this Custodial Sub-Account is complete and accurate. Further, Upstream Member agrees that any directions Upstream Member gives the Custodian, or any actions Upstream Member takes will be proper under this Statement and that the Custodian is entitled to rely upon any such information or directions. The Custodian shall not be responsible for losses of any kind that may result from such directions to the Custodian or Upstream Member's actions. Upstream Member agrees to reimburse the Custodian for any losses the Custodian may incur as a result of such directions, actions or failures to act.

## **ARTICLE XIV – NOTICES, DELIVERY, ELECTRONIC SIGNATURE AND CHANGE OF ADDRESS**

### **CONSENT FOR ELECTRONIC DISCLOSURES UNDER THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT**



The Upstream Terms and Conditions, the MERJ Platform Participation Agreement and this Disclosure Statement provisions together as one which have been presented to you prior to executing the Application. By completing the Application online, you agree to be bound by all terms and conditions contained in the Application, Upstream Terms and Conditions, MERJ Participation Agreement and this Disclosure Statement.

### **Consent to Electronic Delivery of Statements and Other Communications**

By consenting to the terms and conditions of this Disclosure Statement, you agree to receive the following communications electronically: periodic statements, disclosures, notices (including Amendment changes), agreements, changes to terms and conditions, records, documents, tax statements, Privacy Notice, and all other information Custodian provides to you. Custodian may deliver these communications to you through your online access, by email or by using other electronic methods allowed pursuant to applicable laws and regulations. However, Custodian reserves the right to deliver any communication to you as a paper copy, rather than electronically. Your consent remains in effect until you give us notice that you are withdrawing it and covers all communications, including those related to any product or service offered either now or in the future.

### **Withdrawal of Consent**

You may contact us in any of the ways described below to withdraw your consent to receive any future communication electronically. Please refer to the published Digital Trust Fee Schedule for any fee that may apply for paper copies. If you wish to receive electronic communications after you have withdrawn your consent, please contact Custodian at the phone number or address below.

### **IMPORTANT**

It is your responsibility to provide and maintain a current email and residential address with us. Custodian may treat an invalid email address or the subsequent malfunction of a previously valid email address as a withdrawal of your consent to receive electronic communication. Custodian will not impose a fee to process the withdrawal of your consent; however, fees may apply to paper copies mailed. Withdrawal of your consent to receive electronic communications will be effective only after Custodian has a reasonable period of time to process your withdrawal. All communications in either electronic or paper format from us to you will be considered "in writing."

## Paper Delivery of Disclosures and Notices

You have the right to receive a paper copy of any communication sent electronically. To receive a paper copy, you may request it in writing by sending your request to: Digital Trust, LLC, 7336 W. Post Road, Suite 111, Las Vegas NV 89113 or calling us at 800-777-9878. You may have to pay a fee for the paper copy unless charging a fee is prohibited by law.

## How to Update Your Records

It is your responsibility to provide us with true, accurate and complete email address, contact, and other information related to your account. You must promptly notify us of any changes in this information. You can update your information via the Upstream App, by calling us, or by writing us at the address above.

## Equipment and Software Requirements

In order to view and retain electronic communications that Custodian makes available to you, you must have:

- A PC or other device with an Internet browser that has “cookies” enabled and supports 128 bit encryption
- An Internet connection
- An email address
- A PDF viewer (such as Adobe Reader)
- A printer or computer with sufficient electronic storage space

All communications shall be delivered to the last address Custodian has on file for you. These notices will be sent through electronic delivery (email) and will be considered delivered the same day as sent. If you have opted out of electronic delivery, communications sent to you through the United States Postal Service are considered delivered 5 business days after the postmark date. It is your responsibility to notify the Custodian of any email address change or residential address change. Custodian will not be held liable for any losses or damages if you have not provided Custodian with the most current address information. The electronically signed copy of this document should be considered equivalent to a printed hard copy form. It is considered a true and complete record of the document, admissible in arbitration and/or administrative hearings or proceedings. Your electronic signature on the Application and other electronic forms are considered valid and the same as if the paper form or Application were signed.

## **ARTICLE XV – THIRD PARTY ACTIONS**

The Custodian shall not be liable to the Upstream Member for (i) any statements, representations, actions or inactions of the Upstream App, MERJ, Horizon Fintex, or its affiliates, or principal of any investment purchased for the Custodial Sub-Account and (ii) the use of account information provided to the Upstream App or other third party as authorized or directed by the Upstream Member.

# UPSTREAM NFT MARKETPLACE TERMS AND CONDITIONS

## 1. Definitions

1.1. Unless the contrary is indicated by the context, all terms defined in the Participation Agreement shall have the same meaning herein.

1.2. The following words shall have the following definitions –

1.2.1. **“Custodian”** means FinTruth LLC dba Digital Group t/a Digital Trust;

1.2.2. **“Eligible NFT”** or **“NFT”** means non-fungible token that meets the following criteria and any additional criteria that may be laid down by a directive in the Clearing Agency or Securities Facility rules –

1.2.2.1. is delivered by electronic means and in respect of which all requisite approvals being provided where necessary;

1.2.2.2. is held on a non-fungible basis;

1.2.2.3. is auctioned inside the NFT Marketplace, as determined by MERJ;

1.2.2.4. is subject to being distinguished by a number or token-identifier;

1.2.2.5. is not subject to any restrictions on foreign ownership, unless otherwise agreed to by MERJ and

1.2.2.6. is not subject to any restrictions on transferability, unless otherwise agreed to by MERJ;

1.2.3. **“MERJ”, “we”, “us”** and **“our”** means MERJ Exchange Ltd, as described in more detail in the Participation Agreement;

1.2.4. **“NFT Auction”** means an auction of an Eligible NFT by means of the Upstream App as defined in clause 7.5

1.2.5. **“NFT Bid”** means a bid placed in an NFT Auction to purchase the Eligible NFT that is the subject of that NFT Auction;

1.2.6. **“NFT Creation Fee”** means the amount payable to create an Eligible NFT in an NFT Auction as published on the Upstream Website at the time of creation;

1.2.7. **“NFT Marketplace”** means the auction marketplace on the Upstream App in which NFT Transactions are concluded;

1.2.8. **“NFT Media”** means any the digital media which may include text, graphics, photos, audio, video or other digital material which is the subject matter of an NFT;

1.2.9. **“NFT Sales Fee”** means the commission payable by the seller of an NFT upon the successful conclusion of an NFT Auction as published on the Upstream Website at the time of sale;



- 1.2.10. **“NFT Transaction”** means any of the following transactions in respect –
  - 1.2.10.1. the creation of an Eligible NFT on the Upstream App; and
  - 1.2.10.2. the purchase and sale of an Eligible NFT on the Upstream App, including any bid placed in and NFT Auction;
- 1.2.11. **“Participation Agreement”** means the participation agreement entered into between you and MERJ in respect of your use of the MERJ Platforms;
- 1.2.12. **“these Terms and Conditions”** means the terms and conditions set out in this document;
- 1.2.13. **“Upstream Account”** means your account on the Upstream App in which all your NFT Transactions are recorded;
- 1.2.14. **“Upstream App”** means the trading platform application known as *Upstream*; and
- 1.2.15. **“the User”, “you” and “your”** means the person accepting these Terms and Conditions and entering into the Participation Agreement with MERJ.

## 2. Introduction and Application

- 2.1. The NFT Marketplace is a MERJ Platform which will enable an approved user to conclude NFT Transactions using the Upstream App.
- 2.2. These Terms and Conditions, together with the Participation Agreement, govern your use of the Upstream App to conclude NFT Transactions. These Terms and Conditions shall apply to any and all NFT Transactions that you conduct on the Upstream App following your registration on Upstream as a user and shall endure until such time as your Upstream Account has been terminated.

## 3. INTELLECTUAL PROPERTY RIGHTS

- 3.1. By creating, providing, or selling an NFT through the NFT Marketplace, you hereby represent and warrant that –
  - 3.1.1. you own all legal right, title and interest in all intellectual property rights arising from all content, including NFT Media, that you post, upload or submit through the NFT Marketplace (**“Your Content”**);
  - 3.1.2. to the extent that Your Content is constituted of any third party rights, you have obtained, all rights, licenses, consents, permissions, power and/or authority necessary to grant the rights granted herein;
  - 3.1.3. you can give valid and legal title to the NFT to any purchaser of the NFT in the NFT

Marketplace; and

3.1.4. you can give valid and legal title to the purchaser of the “NFT Purchase License” as described in clause 3.6 below.

3.2. When you purchase an NFT, you acknowledge that you –

3.2.1. own the NFT that is associated with relevant NFT Media;

3.2.2. you are granted certain rights in respect of the relevant NFT Media as set out in clause 3.7 below, but you do not own the intellectual property rights in such NFT Media.

3.3. We may, at our discretion, help to evaluate or provide you with information about a seller of an NFT. However, such information is provided for informational purposes only. As purchaser of an NFT, you bear full responsibility for verifying the authenticity, legitimacy, identity of any NFT you purchase on the NFT Marketplace. We make no guarantees or promises about the legitimacy, or authenticity of any NFT on the NFT Marketplace.

3.4. As owner or authorised holder of the intellectual property rights in and to Your Content, you hereby grant MERJ certain rights in respect thereof. As purchaser of any NFT in the NFT Marketplace, you acknowledge that MERJ has certain rights in respect of the intellectual property rights arising from or related to the NFT and its subject matter, and that you acquire the NFT subject to such rights. The rights granted to MERJ is set out hereafter in clauses 3.5 to 3.6.

3.5. In order to operate the NFT Marketplace, we must obtain from you certain license rights in Your Content so that actions we take in operating the NFT Marketplace are not considered legal violations. Accordingly, by using the NFT Marketplace and uploading Your Content or otherwise making Your Content available, you grant us a license to –

3.5.1. access, use, host, cache, store, copy, reproduce, transmit, display, publish, distribute, adapt and modify (for technical purposes, e.g., making sure content is viewable on smartphones as well as computers and other devices) Your Content in any and all media or distribution methods (now known or later developed), but solely as required to be able to operate and provide services of the NFT Marketplace;

3.5.2. provide, promote, and improve the NFT Marketplace and to make Your Content available to other companies, organizations or individuals for the distribution, promotion or publication of Your Content on other media and services,;

3.5.3. make Your Content available to, and pass these rights along to, others with whom we have contractual relationships related to the provision of the NFT Marketplace, and solely for purpose of providing the NFT Marketplace, and to otherwise permit access to disclose Your Content to third parties if we determine such access is necessary to comply with our legal obligations.

3.6. You agree that these rights and licenses are royalty free, transferable, sub-licensable, worldwide and irrevocable (for so long as Your Content is stored with us).

3.7. If you sell an NFT through the NFT Marketplace, you grant to the buyer of the NFT a worldwide, non-exclusive, non-transferable, royalty-free license to use, copy, and display

the NFT Media for such purchased NFT, solely for the following purposes: (a) for the buyer's own personal use; (b) as part of a marketplace that permits the purchase and sale of such NFTs, provided that the marketplace cryptographically verifies each NFT's owner's rights to display the NFT Media for their NFTs to ensure that only the actual owner can display the NFT Media; or (c) as part of a third party website or application that permits the inclusion, involvement, or participation of your NFT, provided that the website/application cryptographically verifies each NFT's owner's rights to display the NFT Media for their NFTs to ensure that only the actual owner can display the NFT Media, and provided that the NFT Media is no longer visible once the owner of the NFTs leaves the website/application (**"the NFT Purchase License"**).

3.8. If you are a buyer of NFTs, then you acknowledge and agree that the NFT Purchase License set forth above only lasts as long as you are the valid owner and holder of the NFT associated with the licensed NFT Media. If you sell or transfer the NFT to another person, this NFT Purchase License will transfer to such other owner or holder of the NFT, and you will no longer have the benefits of such NFT Purchase License. Unless otherwise specified by the seller of an NFT in writing, your purchase of an NFT does not give you the right to publicly display, perform, distribute, sell or otherwise reproduce the NFT or its related NFT Media for any commercial purpose.

3.9. If you sell an NFT, you agree that you will not have any claims against MERJ for any breach of these Terms and Conditions by a purchaser, including but not limited to, if they make commercial use of the related NFT Media in breach of these Terms and Conditions.

3.10. We have the right to remove or refuse to post any of Your Content, including NFTs, (a) for any or no reason in our sole discretion; and (b) take any action with respect to Your Content that we deem necessary or appropriate in our sole discretion, including if we believe that Your Content violates these terms, infringes any intellectual property right of any person or entity, threatens the personal safety of Upstream App users of the NFT Marketplace or the public, or could create liability for MERJ or other Upstream App users.

3.11. MERJ may, but is not obligated to, monitor the NFTs, NFT Media and Your Content uploaded to the NFT Marketplace for any infringement of a third party's intellectual property rights. However, MERJ cannot undertake to review all such content before it is posted on the NFT Marketplace, and cannot ensure prompt removal of objectionable content after it has been posted.

3.12. MERJ assumes no liability for any action regarding transmissions, communications, or content provided by any user or third party. If you believe that any text, graphics, photos, audio, videos or other materials or works uploaded, downloaded or appearing on the NFT Marketplace have been copied in a way that constitutes copyright infringement, you may submit a notification to our legal department, by providing the following information in writing: identification of the copyrighted work that is claimed to be infringed; identification of the allegedly infringing material that is requested to be removed, including a description

of where it is located on the NFT Marketplace; information for our copyright agent to contact you, such as an address, telephone number and e-mail address; a statement that you have a good faith belief that the identified, allegedly infringing use is not authorized by the copyright owners, its agent or the law; a statement that the information above is accurate, and under penalty of perjury, that you are the copyright owner or the authorized person to act on behalf of the copyright owner; and the physical or electronic signature of a person authorized to act on behalf of the owner of the copyright or of an exclusive right that is allegedly infringed. Notices of copyright infringement claims should be sent by mail to: MERJ Exchange Limited, Attn: Legal Department, 28 Eden Plaza, Eden Island, PO BOX 360, Republic of Seychelles; or by e-mail to [copyright@upstream.exchange](mailto:copyright@upstream.exchange).

3.13. It is our policy, in appropriate circumstances and at our discretion, to disable or terminate the accounts of users who repeatedly infringe copyrights or intellectual property rights of others. Any user of the NFT Marketplace who has uploaded or posted materials identified as infringing as described above may supply a counter-notification. When we receive a counter-notification, we may reinstate the posts or material in question, in our sole discretion. To file a counter-notification with us, you must provide a written communication (by fax or regular mail or by email) that sets forth: your name, address, telephone number, e-mail address and physical or electronic signature; identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled; and a statement under penalty of perjury that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled. Please note that you will be liable for damages if you materially misrepresent that content or an activity is not infringing the copyrights of others.

3.14. Any purchase or sale you make, accept or facilitate outside of the NFT Marketplace of an NFT will be entirely at your risk. You acknowledge that you have obtained sufficient information to make an informed decision to purchase an NFT, including carefully reviewing the NFT and fully understand and accept the functions of the same. We do not control or endorse purchases or sales of NFTs outside of the NFT Marketplace. We expressly deny and disclaim any liability to you and deny any obligation to indemnify you or hold you harmless for any losses you may incur by transacting, or facilitating transactions, in NFTs outside of the NFT Marketplace. Certain parts of the NFT Marketplace may display, include or make available content, data, information, applications or materials from third parties ("Third Party Materials"). By using the NFT Marketplace, you acknowledge and agree that MERJ is not responsible for examining or evaluating the content, accuracy, completeness, availability, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of such Third Party Materials. We do not warrant or endorse and do not assume and will not have any liability or responsibility to you or any other person for any third-party services, Third Party Materials, or for any other materials, products, or services of third parties.

#### 4. Registration and Upstream Account

When you register to use the Upstream App for NFT Transactions, an account will be opened on the Upstream App which will reflect all NFT Transactions concluded on the Upstream App.

#### 5. Keep Your Upstream Account Secure

5.1. You understand that you are responsible for securing the confidentiality and use of Security Credentials issued in respect of your Upstream Account. You will be solely responsible for all NFT Transactions that are sent electronically using your Security Credentials. You should notify us immediately if your Security Credentials are compromised or lost.

5.2. You understand that we use technology to protect and encrypt the transmission of information from and to you. While we believe that we have taken reasonable measures to keep your information secure, we are not liable if your data and communications are intercepted. Should someone intercept a transmission of your information, you agree that you will not hold us, our Associates or Service Providers, liable for any type of damages. This includes any liabilities or damages resulting from viruses that may infect your or our smartphone(s) or third-party Internet facilities.

#### 6. Deposits and Sub-Custody Agreement

6.1. All fiat funds paid by you for the purpose of entering into NFT Transactions on the Upstream App shall be held by the Custodian, in accordance with the Digital Trust Sub-Custody Agreement entered into between you and the Custodian ("**the Sub-Custody Agreement**"). All execution, clearing and bookkeeping in respect of your funds will be done by the Custodian in accordance with the Sub-Custody Agreement. The Custodian shall maintain an account for you in respect of all funds held in terms of the Sub-Custody Agreement ("**the Sub-Custody Account**").

6.2. You acknowledge that the Custodian does not accept physical cheques or paper money orders. All funds to your Sub-Custody Account must be paid electronically by you to the Custodian in accordance with their guidelines as published on our Website and subject to the Sub-Custody Agreement.

6.3. Any payments made from the US shall be subject to the following terms:

6.3.1. Payment made to the Custodian from the US may only be made by way of The Automated Clearing House ("**ACH**") or Fedwire.

6.3.2. The US Federal Reserve System processes bank wires. They are normally completed

on the US business day following your request. Please refer to the Special Services and Fees page for the current fee schedule of the Custodian.

6.3.3. The ACH processes electronic fund transfers. To use this service, your bank must be an ACH member, and one common name must appear on your bank account documentation and your Upstream Account. Transfers are normally completed within three US business days, and credits to your Upstream Account may be on hold for five to seven business days thereafter, in accordance with our then-current policies. We may limit whether we accept or permit ACHs initiating or terminating at our site.

6.4. MERJ has entered into an agreement with the Custodian in terms whereof the Custodian will agree to act upon the instructions of MERJ in respect of your Upstream Account. You hereby authorise MERJ to provide the Custodian with all the necessary instructions in respect of the Sub-Custody Agreement, provided that such instructions are consistent with the Auctions placed by you in terms of these Terms and Conditions. You hereby agree to indemnify and hold MERJ harmless in respect of all claims, actions, loss, liability or expenses (including attorneys fees) whatsoever and howsoever arising in respect of the delivery of instructions by MERJ to the Custodian.

6.5. If the Sub-Custody Agreement is terminated, for any reason whatsoever, MERJ shall be entitled to suspend the Upstream Account until such time as you conclude a custodian agreement with a third party approved by MERJ.

6.6. MERJ shall not be responsible for any actions, omissions or failures of the Custodian to fulfil its obligations in terms of the Sub-Custody Agreement and you hereby indemnify MERJ against, any claims for loss, expense, or damage which you may suffer, however such loss, expense or damage may arise or be suffered, in respect to the termination of a Sub-Custody Agreement.

6.7. You authorize MERJ to disclose to the Custodian, all the information necessary to open your Sub-Custody Account, including, but not limited to, name, address, phone number, email address, social security number, tax identity number, birthdate, Upstream Account number, transaction data, and government ID.

## **7. NFT Transactions on the Upstream App**

7.1. You appoint MERJ as your agent to –

7.1.1. execute instructions in respect of the conclusion of NFT Transactions; and

7.1.2. to issue the requisite instructions to the Custodian in order to fulfil your obligations in respect of an NFT Transaction.

7.2. The execution of NFT Transactions by MERJ shall at all times be subject to these Terms and Conditions, the Participation Agreement and Applicable Laws.

7.3. Before you can purchase an Eligible NFT on the Upstream App, you must have available funds to cover the sum of all your open NFT Bids. Your Upstream Account shall not be permitted to stand in debit.



7.4. Before you can auction an Eligible NFT on the Upstream App, you must have ownership of the relevant Eligible NFT.

7.5. Eligible NFTs shall only be purchased and sold by means of auctions conducted through your Upstream Account in accordance with the provisions of clauses 7.6 to 7.11 below (“**the NFT Auction**”).

7.6. To sell an Eligible NFT, you must, through your Upstream Account, create an NFT Auction by creating the Eligible NFT and setting a minimum price acceptable to you, as seller, and the end-date of the NFT Auction. As seller, you may not cancel the NFT Auction prior to the end-date.

7.7. To participate in the NFT Auction, as willing buyer, you must, through your Upstream Account, place a bid for the relevant Eligible NFT (“**NFT Bid**”). You may not cancel your NFT Bid for as long as it is the highest bid in the NFT Auction.

7.8. In placing an NFT Bid, you agree to purchase the Eligible NFT at a purchase price that is not more than your NFT Bid.

7.9. At the close of the NFT Auction, the highest bid placed will win the NFT Auction and a sale and purchase transaction will be concluded between the seller and the highest bidder in respect of the relevant Eligible NFT on the following terms –

7.9.1. the purchase price payable for the Eligible NFT will be the second highest bid of the NFT Auction (i.e., a second price auction);

7.9.2. immediately following the close of the NFT Auction –

7.9.2.1. the purchase price will be debited from the purchaser’s Upstream Account;

7.9.2.2. the purchase price less the NFT Sales Fee will be credited to the seller’s Upstream Account; and

7.9.2.3. the relevant Eligible NFT will be credited to the purchaser’s Upstream Account.

7.4. NFT Auctions may open at prices substantially higher or lower than the previous closing price or the anticipated price. If you place a bid, you agree to pay, at most, your bid price, or lower in the event of there being a second-highest bid, at the time the NFT Auction is concluded. You acknowledge that the price you pay may be significantly better, but never worse, than your highest bid at the time you placed the NFT Bid. The Support Website contains further information regarding the NFT Auctions and limitations on the Upstream App, which you agree to read and understand before placing such NFT Bids.

7.5. NFT Auctions conducted on Upstream may only be conducted by means of the Upstream App and by no other means.

6.3.1. on the US business day following your request. Please refer to the Special Services and Fees page for the current fee schedule of the Custodian.

6.3.2. The ACH processes electronic fund transfers. To use this service, your bank must be an ACH member, and one common name must appear on your bank account documentation and your Upstream Account. Transfers are normally completed within three US business days, and credits to your Upstream Account may be on hold for five to seven business days thereafter, in accordance with our then-current policies. We may limit whether we accept or permit ACHs initiating or terminating at our site.

6.3. MERJ has entered into an agreement with the Custodian in terms whereof the Custodian will agree to act upon the instructions of MERJ in respect of your Upstream Account. You hereby authorise MERJ to provide the Custodian with all the necessary instructions in respect of the Sub-Custody Agreement, provided that such instructions are consistent with the Auctions placed by you in terms of these Terms and Conditions. You hereby agree to indemnify and hold MERJ harmless in respect of all claims, actions, loss, liability or expenses (including attorneys fees) whatsoever and howsoever arising in respect of the delivery of instructions by MERJ to the Custodian.

6.4. If the Sub-Custody Agreement is terminated, for any reason whatsoever, MERJ shall be entitled to suspend the Upstream Account until such time as you conclude a custodian agreement with a third party approved by MERJ.

6.5. MERJ shall not be responsible for any actions, omissions or failures of the Custodian to fulfil its obligations in terms of the Sub-Custody Agreement and you hereby indemnify MERJ against, any claims for loss, expense, or damage which you may suffer, however such loss, expense or damage may arise or be suffered, in respect to the termination of a Sub-Custody Agreement.

6.6. You authorize MERJ to disclose to the Custodian, all the information necessary to open your Sub-Custody Account, including, but not limited to, name, address, phone number, email address, social security number, tax identity number, birthdate, Upstream Account number, transaction data, and government ID.

## **7. NFT Transactions on the Upstream App**

7.1. You appoint MERJ as your agent to –

7.1.1. execute instructions in respect of the conclusion of NFT Transactions; and

7.1.2. to issue the requisite instructions to the Custodian in order to fulfil your obligations in respect of an NFT Transaction.

7.2. The execution of NFT Transactions by MERJ shall at all times be subject to these Terms and Conditions, the Participation Agreement and Applicable Laws.

7.3. Before you can purchase an Eligible NFT on the Upstream App, you must have available funds to cover the sum of all your open NFT Bids. Your Upstream Account shall not be permitted to stand in debit.



7.4. Before you can auction an Eligible NFT on the Upstream App, you must have ownership of the relevant Eligible NFT.

7.5. Eligible NFTs shall only be purchased and sold by means of auctions conducted through your Upstream Account in accordance with the provisions of clauses 7.6 to 7.11 below (“**the NFT Auction**”).

7.6. To sell an Eligible NFT, you must, through your Upstream Account, create an NFT Auction by creating the Eligible NFT and setting a minimum price acceptable to you, as seller, and the end-date of the NFT Auction. As seller, you may not cancel the NFT Auction prior to the end-date.

7.7. To participate in the NFT Auction, as willing buyer, you must, through your Upstream Account, place a bid for the relevant Eligible NFT (“**NFT Bid**”). You may not cancel your NFT Bid for as long as it is the highest bid in the NFT Auction.

7.8. In placing an NFT Bid, you agree to purchase the Eligible NFT at a purchase price that is not more than your NFT Bid.

7.9. At the close of the NFT Auction, the highest bid placed will win the NFT Auction and a sale and purchase transaction will be concluded between the seller and the highest bidder in respect of the relevant Eligible NFT on the following terms –

7.9.1. the purchase price payable for the Eligible NFT will be the second highest bid of the NFT Auction (i.e., a second price auction);

7.9.2. immediately following the close of the NFT Auction –

7.9.2.1. the purchase price will be debited from the purchaser’s Upstream Account;

7.9.2.2. the purchase price less the NFT Sales Fee will be credited to the seller’s Upstream Account; and

7.9.2.3. the relevant Eligible NFT will be credited to the purchaser’s Upstream Account.

7.10. NFT Auctions may open at prices substantially higher or lower than the previous closing price or the anticipated price. If you place a bid, you agree to pay, at most, your bid price, or lower in the event of there being a second-highest bid, at the time the NFT Auction is concluded. You acknowledge that the price you pay may be significantly better, but never worse, than your highest bid at the time you placed the NFT Bid. The Support Website contains further information regarding the NFT Auctions and limitations on the Upstream App, which you agree to read and understand before placing such NFT Bids.

7.11. NFT Auctions conducted on Upstream may only be conducted by means of the Upstream App and by no other means.

## 8. Fees and Charges

8.1. By opening the Upstream Account and placing each NFT Auction you agree to pay the then-current fees applicable to the Upstream Account and all NFT Transactions as set out on the Upstream App, from time to time.

8.2. Without limitation to the fees set out in the Upstream App, if you are the seller of an Eligible NFT, you will be charged –

8.2.1. the NFT Creation Fee in respect of each Eligible NFT Asset created for sale in an NFT Auction; and

8.2.2. the NFT Sales Fee in respect of each sale of an Eligible NFT Asset by means of the NFT Auction.

8.3. We will charge and deduct from your Custody Account, the NFT Creation Fee upon creation of the Eligible NFT for an NFT Auction. We will charge the NFT Sales Fee upon the close of an NFT Auction. You hereby authorise us to deduct the NFT Sales Fee from the sales proceeds when the NFT Auction closes at a price above your stated reserve price.

8.4. The NFT Creation Fee and the NFT Sales Fee may be in addition to any other fees and costs charged in terms of the Participation Agreement. In this regard, it is your responsibility consider Fee Schedules on the Website, which may be applicable to your NFT Transaction.

## 9. NFT Transactions by means of Upstream App only

Please consider carefully if you can afford or want to take on the risks of limiting your method of concluding NFT Transaction on the Upstream App. Your Upstream Account is only accessible by means of the Upstream App. If you cannot access the Upstream App or the Upstream App is not functioning, you will not be able to conclude NFT Transactions through other means. You agree that you assume responsibility for all losses that arise if your NFT Transactions cannot be concluded on or through the Upstream App.

## 10. Risks in NFT Transactions

10.1. You understand that all NFT Transactions concluded through the Upstream App are unsolicited and that all auction and bid decisions made by you will be your own decisions and that no representatives of MERJ will offer any auction, bid or NFT ownership advice. You further understand that you must review your suitability and NFT ownership objectives before placing an NFT Auction or bidding on an NFT Auction. You understand that NFT purchases involve risk, that you may lose my entire price paid, and that the past performance of an NFT, industry, sector, market or NFT digital media does not guarantee future auction values.

10.2. All NFT purchases on the Upstream App are speculative. NFT creations on the Upstream

App are only suitable for creators and purchases who are familiar with and willing to accept the high risk associated with purchasing NFTs. There can be no assurance as to the valuation of any particular NFT. Buyers must be able to afford NFT market volatility and afford the loss of their purchase price. NFTs created on the Upstream App are not subject to ongoing corporate obligations including, disclosures, filings and notification requirements, as well compliance with applicable quantitative and qualitative listing standards.

10.3. You acknowledge that NFTs created on the Upstream App do not have a bank guarantee, are not insured and may lose value.

## 11. Risks of Online Investing

11.1. While we have put tremendous resources into building and testing our computer systems, computer glitches, slowdowns, and crashes will occur.

11.2. We will also need to restrict access to some parts of the Upstream App to perform routine maintenance. We will try to schedule our maintenance during the middle of the night outside of market hours but may sometimes need to perform maintenance during less convenient times, which could interfere with your access to the Upstream App. You agree that we are not responsible for any lack of access or functionality resulting from such required maintenance.

11.3. While it is our intention that the Upstream App will be available seven days a week except when maintenance is scheduled (usually for weekends), the ability to execute NFT Transactions on the Upstream App are limited to regular trading hours, non-holidays, Monday to Friday from 10:00am to 6:00am Seychelles time, and you understand that we do not guarantee that you will always be able to access the Upstream App to place NFT Auctions or that your NFT Auctions will always be executed. The Support Website sets out the annual holiday schedule and operating hours of the Upstream App. Computer glitches can arise on your end, our end, or anywhere in between: your phone may break down; the connection between your phone and your carrier or Internet service provider may not work properly; your carrier or Internet service provider may go down; or our computers and the computers we link to may be unavailable due to unforeseen system outages.

11.4. During certain times when trading volumes increase on the Upstream App, many Upstream App account holders may want to place NFT Auctions and NFT Bids at the same time, and as a result, delays in NFT Auction and NFT Bid processing may occur. You agree that we are not responsible for any losses or liabilities that may occur as a result of high NFT marketplace volume, NFT market volatility, or computer, telecommunications, or internet failures, regardless of the cause.

## **12. Extraordinary Events**

You agree that we are not liable for any losses caused directly or indirectly by extraordinary events or conditions beyond our control. Such events include, but are not limited to, government actions, exchange or market rulings, and suspensions of trading.

## **13. No Guarantee on Accuracy of Third- Party Information**

You understand that we are not responsible for the accuracy or your use of any information we receive from third parties. While we use vendors we believe to be reliable, we have not verified and do not make any warranty for information provided by third parties. Our Website may contain links to other Websites. We provide these links for the convenience of our customers, however, we have no control over these other sites. Therefore, we are in no way responsible for and in no way approve, endorse, or guarantee the accuracy, reliability, or completeness of any data or information provided in any hyperlinked webpage or website.

## **14. Disclosure of Information to Creators**

You hereby authorize MERJ, or its Associates, to provide information to the claimant of your Eligible NFT acquired in the NFT Marketplace, insofar as such information is required by the claimant for legal dispute purposes that may arise from time to time. Such information may include, but shall not be limited to, your name, postal address, email address and NFT Media.

## **15. Upstream Account Statements and Confirmations Report Errors Immediately**

15.1. You will receive notice by email periodically, but not less than quarterly, that your Upstream Account statement is accessible and available for viewing or printing. These statements will detail all activity recorded in your Upstream Account. You may also receive notice by e-mail if opted in, that a trade confirmation in respect of an NFT Transaction is accessible and available for viewing or printing from our Website, the business day following the date of the NFT Auction. You are strongly encouraged to review these documents promptly. We will conclude that all information is correct unless you contact us promptly about any errors.

15.2. If, for any reason, you do not periodically receive emails from us notifying you of your statement or NFT Auction confirmation delivery, you agree to notify us immediately so that we can determine the cause of the notification failure and take appropriate steps to correct it.

## 16. Exclusions

The ability to perform NFT Transaction using the Upstream App is limited to natural persons acting individually. The Upstream App does not make provision for joint accounts held by more than one person or corporate accounts held by juristic persons.

## 17. Default and Termination

Without limiting the rights of MERJ in the Participation Agreement, in the event of your default of these Terms and Conditions or the Participation Agreement, MERJ will be entitled take all such action as it deems fit to protect MERJ, MERJ Trading Platforms and other users of MERJ Trading Platforms, including but not limited to the restriction of your access to the Upstream App, restriction or limitation on your ability to make NFT Auctions or conclude NFT Transactions, the termination of any open NFT Auctions, NFT Bids, or the termination of your Upstream Account. The termination of your Upstream Account will not affect the rights and/or obligations of either party incurred prior to such termination. If this Agreement is terminated, the Upstream App shall have no right to access or otherwise prevent a cash withdrawal from the User's account with the Custodian.

## 18. No Cession or Assignment

You shall not be entitled to cede, assign, or transfer your rights or obligations in terms of these Terms and Conditions.

## 19. Notices and Communication

19.1. All notices, documents, and other information related to your Upstream Account and NFT Transactions are delivered electronically. This may be done through the push-notification by means of the App, an online posting on the Website, an email or other electronic media to which you hereby consent. Your consent to electronic delivery extends to all information required to be provided by us, by the creator of the NFT which you purchased, and by other Service Providers in respect of the Upstream App. This means you will receive email or other notices relating to your Upstream Account and NFT Transactions, including statements and confirmations, prospectuses, annual reports, proxy statements, proxies, tender offers and mergers and corporate recapitalisations.

19.2. You agree that when we send these email notices to you that they constitute delivery to

you of the information or documents referred to in the email even if you do not actually access the information or documents sent or published. You may not revoke this consent to electronic delivery.

19.3. You agree to keep a working email address and other current contact information and will update your information immediately if your email address or other contact information changes. If you do not maintain an e-mail address that is working and accessible to us, your Upstream Account will be terminated.

19.4. If your email address or other contact information changes at any time, you must update your information with us.

## **20. Amendments**

We can amend these Terms and Conditions by notice to you in accordance with the MERJ Platform Agreement. Your conduct of any NFT Transactions on the Upstream App after notice of such amendments will constitute your agreement to the amendments. If a provision of these Terms and Conditions is or becomes inconsistent with any Applicable Law, the provision in question will be amended to conform to the Applicable Law, and all other provisions will remain binding.

## **TERMS AND CONDITIONS**

### **MERJ PLATFORM PARTICIPATION AGREEMENT**

This agreement is entered into between MERJ Exchange Limited, duly licenced as a Securities Exchange under the Seychelles Securities Act 2007, and the User and sets out the terms and conditions on and subject to which MERJ Exchange Limited and the User will enter into Transactions.

This agreement forms part of this application and consists of the following documentation -

- 1 MERJ Platform Participation Agreement
- 2 Risk Disclosure Statement

## MERJ PLATFORM PARTICIPATION AGREEMENT

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## **APPENDICES**

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RISK DISCLOSURE STATEMENT

## TERMS AND CONDITIONS

### 1 INTERPRETATION AND DEFINITIONS

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

- 1.1.1 **"APIs"** means Application Programming Interfaces;
- 1.1.2 **"Abnormal Market Conditions"** means that, in the opinion of MERJ, abnormal, emergency or unusual conditions exist in Eligible Assets, the effect or likely effect of which is that the prices or availability of any Eligible Asset is materially affected;
- 1.1.3 **"Account"** means a funds account or securities account held with MERJ, a bank, Service Provider or other third party;
- 1.1.4 **"Act"** means the Seychelles Securities Act, 2007 as may be amended and any regulation prescribed by the Minister or the Seychelles Financial Services Authority;
- 1.1.5 **"the/this Agreement"** means the Application Form, the Risk Disclosure Statement, the Privacy Policy and the Fee Schedules per the website, the Rules and the terms and conditions as set out in this document and all other Appendices and schedules to these terms and conditions, any other document expressed by MERJ to be part of this Agreement and any variation, novation or replacement of it;
- 1.1.6 **"Appendices"** means the appendices attached to these terms and conditions and **"Appendix"** shall mean any of them as the context may indicate;
- 1.1.7 **"Applicable Law"** includes each law, regulation, by-law, code, notice, directive and order in Seychelles which -
- 1.1.7.1 applies to the conduct by MERJ of its business; or
- 1.1.7.2 applies to the performance by MERJ or the User of its obligations under this Agreement or any Transaction; or
- 1.1.7.3 otherwise applies to MERJ or to the User;
- 1.1.8 **"Application Form"** means the application form and account opening documentation completed by the User and submitted to MERJ;
- 1.1.9 **"Associate"** means, in the case of MERJ only, each of its Related Companies and Service Providers;
- 1.1.10 **"Automated Trading System"** means an electronic trading platform referred to in clause 5, made available by MERJ to the User, including by way of the Internet, for the purposes, among other things, of entering into certain types of Transactions;
- 1.1.11 **"Business Day"** means a day other than a Saturday, Sunday or public holiday within the meaning of the Public Holidays Act 1976 in the Seychelles or any public holidays in the applicable offshore jurisdiction of the Transaction and excluding any other day on which the Exchange is closed;
- 1.1.12 **"Clearing Agency"** means a company that is licensed and regulated in Seychelles or a recognized jurisdiction for the provision of clearing and settlement services of securities;
- ;

- 1.1.13 “**Commencement Date**” means the date on which MERJ notifies the User that, having received and accepted a duly completed and transmitted Application Form and completed all further checks or enquiries that MERJ deems necessary or desirable, the User’s application has been accepted;
- 1.1.14 “**Confidential Information**” means in relation to the User and MERJ and each of its Associates -
- 1.1.14.1 the know-how, trade secrets, technical processes, information relating to pricing, market share, products, finances, Users or suppliers, the right to all lists of Users and suppliers of that party or of any of its Associates; and
- 1.1.14.2 other information relating to that party or to any of its Associates and their respective businesses,
- which by its nature, or by the circumstances of its disclosure to the holder of the information, is or could reasonably be expected to be regarded as confidential;
- 1.1.15 “**Confirmation**” –
- 1.1.15.1 means, in relation to a Transaction, a document or other confirming evidence delivered to one party by the other party, exchanged between the Parties, available by way of a MERJ Platform or otherwise effected, and whether by way of the MERJ Platform or otherwise, in each case for the purposes of confirming or evidencing that Transaction; but
- 1.1.15.2 does not include an electronic mail or text message, unless MERJ specifies otherwise in that electronic mail or text message or otherwise in writing;
- 1.1.16 “**Corporate Action**” means an event (including a dividend payment, corporate restructuring, rights issue, bonus issue or share buy-back) initiated by a company that affects the securities issued by that company, including but not limited to the events contemplated in clause 12;
- 1.1.17 “**Disclosure Statement**” means a document containing important information about MERJ and general information about your rights and MERJ’s duties in terms of the Act;
- 1.1.18 “**Distributed Ledger Technology**” or “**DLT**” means a database system in which information is recorded, consensually shared, and synchronised across a network of multiple nodes
- 1.1.19 “**DLT Assets**” means
- 1.1.19.1 a virtual token;
- 1.1.19.2 a virtual financial asset;
- 1.1.19.3 electronic money; or
- 1.1.19.4 any other instruments
- 1.1.19.5 that is intrinsically dependent on, or utilises, Distributed Ledger Technology
- 1.1.20 “**Eligible Assets**” means securities and DLT Assets that meet the following criteria and any additional criteria that may be laid down by a directive in the Exchange Rules:
- 1.1.20.1 capable of being delivered by electronic means and in respect of which all requisite approvals being provided where necessary;
- 1.1.20.2 capable of being held on a fungible basis;
- 1.1.20.3 are not subject to being distinguished by a number;

- 1.1.20.4 are not subject to any restrictions on foreign ownership, unless otherwise agreed to by MERJ and
- 1.1.20.5 are not subject to any restrictions on transferability , unless otherwise agreed to by MERJ.
- 1.1.21 **“Exchange”** means MERJ Exchange Limited, a company incorporated under the company laws of the Seychelles (Company Number 879858-1) and licensed to operate as a securities exchange in terms of the Act;
- 1.1.22 **“Electronic Money”** as defined in the National Payment Systems Act, 2014;
- 1.1.23 **“Fee Schedule”** means, at any time, any schedule, addendum or other document, by whatever name, issued by MERJ and 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 MERJ, it being recorded that these may be published as separate documents or a single document from time to time;
- 1.1.24 **“Force Majeure”** means any event or cause beyond the reasonable control of MERJ, including -
- 1.1.24.1 Abnormal Market Conditions; or
- 1.1.24.2 an act of God, inevitable accident, fire, lightning, cyclone, earthquake, landslide, volcanic eruption or other natural phenomenon; or
- 1.1.24.3 sabotage, revolution, insurrection, act of war (whether declared or not) or war-like operations; or
- 1.1.24.4 a confiscation or expropriation, embargo, quarantine restriction or any like event; or
- 1.1.24.5 any strike, dispute or lockout; or
- 1.1.24.5 an epidemic, toxic emission or any like event; or
- 1.1.24.6 a requirement, restriction, prohibition, intervention, law, regulation, decree or other legally enforceable order of any Government; or
- 1.1.24.7 an explosion, nuclear accident or any like event; or
- 1.1.24.7 a telecommunications, network, power or equipment failure or damage, or power or water shortage,
- 1.1.24.8 as a result of which, in each case in the opinion of MERJ, it is impossible, impractical or illegal for MERJ
- 1.1.24.9 to perform and comply with any of its obligations under this Agreement or any Transaction;
- 1.1.25 **“Foreign Exchange”** means any currency including but not limited to bills of exchange, letters of credit, money order, postal order, promissory note, travellers cheque or any other instruments of foreign exchange;
- 1.1.26 **“Free Margin”** means, at any time, the amount in an Account available to meet any Margin Percentage Requirement, determined in accordance with the relevant Fee Schedule;
- 1.1.27 **“FSA”** means the Seychelles Financial Services Authority;
- 1.1.28 **“Funds”** means banknotes and coins, scriptural money, electronic money and includes virtual financial assets;

- 1.1.29 **“Intellectual Property Rights”** means all patents, copyrights, trade secrets, trademarks, service marks, trade names and all other intellectual property rights;
- 1.1.30 **“Issuer”** means any person that issues an Eligible Asset.
- 1.1.31 **“Interest Earning Amount”** means the amount, as determined in accordance with clause 7 in an Account on which MERJ agrees from time to time to pay interest;
- 1.1.32 **“Licensor”** means each licensor of any software utilised by MERJ in relation to the services being provided by MERJ under this Agreement;
- 1.1.33 **“Limit Order”** means, in relation to a Transaction, an order placed by the User on the MERJ Platform to enter into that Transaction when the security price reaches a predetermined level on the System;
- 1.1.34 **“Long Position”** means a position held by the User in respect of a Transaction concluded by the User as a buy trade in terms of which the User agrees to receive the difference between the opening and closing value of the underlying asset over a period of time; or
- 1.1.35 **“Margin Percentage Requirement”** means the prevailing “margin percentage requirement” calculated in accordance with the relevant Fee Schedule;
- 1.1.36 **“Margin Requirement”** means the prevailing “margin requirement” calculated in accordance with clause 9 or the relevant Product Schedule, as applicable;
- 1.1.37 **“Margin Transaction”** means a margin Transaction that is automatically Rolled Over at the Close of Business;
- 1.1.38 **“Market Order”** means an Order to buy or sell Securities as soon as possible at the price obtainable in the market;
- 1.1.39 **“Member”** means a securities dealer or recognized overseas securities dealer that has been admitted as a member of MERJ Exchange;
- 1.1.40 **“MERJ”** means MERJ Exchange Limited and/or any of its Associates and/or Related Companies as the context dictates;
- 1.1.41 **“MERJ Mobile Application”** means the mobile trading application developed, published and distributed by MERJ;
- 1.1.42 **“MERJ Platform”** means the trading platform on <https://merj.exchange> and subdomains, mobile applications (including the MERJ Mobile Application), APIs and other media owned by MERJ used to provide its Services;
- 1.1.43 **“MERJ Platform Communication”** means any order or instruction or other communication sent by way of the MERJ Platform by or on behalf of the User (or purportedly by or on behalf of the User);
- 1.1.44 **“MERJ Platform Participant”** means a member or direct User of MERJ which uses a MERJ Platform pursuant to the terms of this Agreement;
- 1.1.45 **“Nominee”** means a person who acts as the registered holder of Eligible Assets or of an interest in Eligible Assets, on behalf of other persons;
- 1.1.46 **“Normal Trading Hours”** means official trading times set by the MERJ;
- 1.1.47 **“Order”** means an instruction by the MERJ Platform Participant to open or close a position in respect of any particular Eligible Asset;
- 1.1.48 **“the Parties”** means the User and MERJ and **“Party”** means any of them as the context may indicate;

- 1.1.49 **“Privacy Policy”** means the privacy policy on the Website;
- 1.1.50 **“Public Authority”** means -  
 any government in any jurisdiction whether national, federal, state, regional, territorial or local;  
 and  
 1.1.50.1 any minister, department, office, commission, delegate, instrumentality, agency, board,  
 1.1.50.2 authority or organisation of any government or any state-owned enterprise; and  
 1.1.50.3 the FSA;
- 1.1.51 **“Related Companies”** means MERJ Depository and Registry Limited company number 8411029-1, MERJ Clearing and Settlement Limited company number 8411028-1, MERJ Nominees Ltd. company number 210928.
- 1.1.52 **“Representative”** means, in relation to any Party, each of its officers, directors, employees, agents and representatives;
- 1.1.53 **“Risk Disclosure Statement”** means the document setting out general information in respect of the risks associated with utilising our Services;
- 1.1.54 **“Rules”** means the Market Rules, Clearing Agency Rules, Securities Facility Rules and/ or Listing Rules of MERJ;
- 1.1.55 **“Securities”** means **“securities** as defined in Schedule 1 of the Act;
- 1.1.56 **“Securities Account”** means an account representing Eligible Assets deposited or otherwise maintained in electronic form pursuant to the Rules of MERJ;
- 1.1.57 **“Security Credentials”** means, in relation to a MERJ Platform, any security credentials that the User uses to access or use the MERJ Platform, including any user name, account number, User ID, one time pin sent to the User’s cell phone number, user ID and/or password;
- 1.1.58 **“Segregated Funds Account”** means an account that, where required by this Agreement (including any appendices hereto), is established and maintained by MERJ or its Associates in accordance with the provisions of this Agreement (and all annexures hereto), for the purpose of receiving, holding and disbursing of Eligible Assets, User Funds, including User funds of Users who have granted direct access to their Users in terms of the MERJ Rules;
- 1.1.59 **“Services”** means the facilitation of transactions in Eligible Assets on a MERJ market, including but not limited to matching buyers and sellers, clearing, settlement, registry, depository, nominee and/or any ancillary services provided by MERJ or its Associates;
- 1.1.60 **“Service Providers”** means any entity appointed by MERJ to deliver the Services outlined in this Agreement;
- 1.1.61 **“Settlement”** means, to discharge the obligations arising from a Transaction;
- 1.1.62 **“Tax(es)”** includes any VAT, tax, levy, stamp, 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);
- 1.1.63 **“Terminated Transaction”** means a Transaction that is terminated in accordance with clause 22.1.7;
- 1.1.64 **“Termination Date”** means a date for the termination of all or some Transactions either as specified in a Termination Notice or as otherwise provided by this Agreement;

- 1.1.65 “**Termination Notice**” means a notice given by MERJ in accordance with this Agreement terminating all or some Transactions;
- 1.1.66 “**Transaction**” means any transaction entered into by a User on or through a MERJ Platform or any transaction into which MERJ or its Associates have entered or propose to enter into with or on behalf of the User involving, or referable to the value of, or granting rights or accepting obligations in respect of or by reference to an Eligible Asset;
- 1.1.67 “**User**”, “ ” means a MERJ Platform Participant 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 MERJ that its application has been successful;
- 1.1.68 “**User Funds**” means, in relation to the User -
- 1.1.68.1 all funds which -
- 1.1.68.1.1 MERJ or any person on its behalf holds for, or receives from or on behalf of, the User; and
- 1.1.68.1.2 is not immediately due and payable on demand to MERJ or that other person for its own account; and
- 1.1.68.2 where the funds are required to be held in a Segregated Funds Account, all such funds held in a Segregated Funds Account;
- 1.1.69 “**Virtual Financial Assets**” means any form of digital medium recordation that is used as a digital medium of exchange, unit of account, or store of value and that is not -
- (a) electronic money;
- (b) a security; or
- (c) a virtual token;
- 1.1.70 “**Virtual token**” means a form of digital medium recordation that has no utility, value or application outside of the **Distributed Ledger Technology** platform on which it was issued and may only be redeemed for funds on such platform directly by the issuer of such asset, provided that electronic money shall be excluded from this definition.
- 1.1.71 “**Website**” means the website of MERJ.
- 1.2 The words written and writing include electronic mail and any other means of communication resulting in permanent visible reproduction.
- 1.3 The clause headings of this Agreement have been inserted for convenience only and shall not be taken into consideration in its interpretation.
- 1.4 Any references 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 gender.
- 1.5 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.



- 1.6 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 date of this Agreement).
- 1.7 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.
- 1.8 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.
- 1.9 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.
- 1.10 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.
- 1.11 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.
- 1.12 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive clause in the body of the Agreement, notwithstanding that it is only contained in this interpretation clause.
- 1.13 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.
- 1.14 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.
- 1.15 This Agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of Seychelles.
- 1.16 In case of any conflict between any provisions of this Agreement and the Rules, the provisions of the Rules shall apply.
- 1.17 The word person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a state and an agency of state (in each case, whether or not having a separate legal personality).
- 1.18 A reference to a person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and permitted assignees.
- 1.19 A reference to something having a material adverse effect on a person is a reference to it having a material adverse effect -
- 1.19.1 on that person’s financial condition or operations or on its consolidated financial condition or operations; or
- 1.19.2 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 acceptance by the User to enter into this Agreement with MERJ. Either Party can terminate this Agreement at any time as stipulated in clause 24 of this Agreement.
- 2.2 By submitting the Application Form and by initiating each Transaction, the User acknowledges to MERJ that -
- 2.2.1 the User has received or downloaded, and read and understood, these terms and conditions, all Appendices hereto, Disclosure Statement/s, the Risk Disclosure Statement, the Fee Schedules and the Privacy Policy; and
- 2.2.2 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 SCOPE OF AGREEMENT**

- 4.1 Provided that the User complies with its obligations under this Agreement, MERJ may enter into Transactions with the User as set out in and in accordance with this Agreement and any annexure to this Agreement and the Rules.
- MERJ may, but is not obliged to, enter into any Transaction with the User or where applicable, on behalf of,
- 4.2 the User.
- If MERJ specifies any further type of Transaction that it may enter into with the User or if MERJ otherwise
- 4.3 determines (in its sole discretion) that amendments to this Agreement are necessary, the User acknowledges and agrees that -
- 4.3.1 MERJ may amend this Agreement including, in the case of any further type of Transaction being specified, to reflect the terms and conditions on and subject to which MERJ will enter into any such Transaction;
- 4.3.2 any such amendment will be notified to the User by way of the Website, the MERJ Platform or electronic mail or such other form of communication as MERJ determines to be appropriate;
- 4.3.3 a copy of this Agreement, as amended, and the Rules will be available on the Website; and
- 4.3.4 Users are required to accept amended terms within 30 business days from notification or access to the platform may be suspended. Users may terminate the Agreement per clauses 2 and 3 in this Agreement if they do not accept amendments. The User can activate the Account at any time after suspension by accepting the new terms.
- 4.4
- This Agreement, each Transaction (and, to the extent recorded in a Confirmation, each Confirmation)
- 4.5 together constitute a single agreement between the Parties.

The User acknowledges and agrees that, unless MERJ agrees otherwise in writing -

- 4.5.1 The Transactions will only be entered into on the User's instructions as provided for in this Agreement and MERJ will at all times have a non-discretionary mandate;
- 4.5.2 MERJ does not provide any advice, recommendation, opinion or guidance in relation to the entry into this Agreement or any Transaction, and MERJ makes no representations to the User; and
- 4.5.3 The execution of the instructions by the User shall at no time imply MERJ's approval of any of the User's investment decisions and entry into of a Transaction by the User does not mean that MERJ makes a recommendation, holds an opinion or gives guidance to the User in relation to its entry into of that Transaction.
- 4.6 The User acknowledges and agrees that MERJ does not intend to and is not required to consider one or more of the User's objectives, financial situation and needs but that -
  - 4.6.1 MERJ may provide general information to the User that MERJ provides to its Users generally through its Website; and
  - 4.6.2 that information will not take into account the particular needs, objectives or financial circumstances of the User.

## **5. MERJ PLATFORM**

### **5.1. Availability of MERJ Platform**

- 5.1.1 For each type of Transaction offered by MERJ, MERJ will provide -
  - 5.1.1.1 an Automated Trading System; or
  - 5.1.1.2 another MERJ Platform that may be used for the provision of the Services.

### **5.2 Password-protection**

- 5.2.1 Where a MERJ Platform is available, MERJ will allow access to the MERJ Platform Participant by way of a password-protected account to which the User has access over the Internet.
- 5.2.2 The User acknowledges and agrees that the User may not transact with MERJ except in accordance with the specified MERJ Platform or as may otherwise be agreed by MERJ on a case by case basis.

### **5.3 Using a MERJ Platform**

- 5.3.1 MERJ may provide a MERJ Platform for the purpose of the User entering into certain types of Transactions, viewing Confirmations and/or other ancillary services.
- 5.3.2 The User agrees to access and use the MERJ Platform in accordance with, and solely for the purposes set out in, this Agreement.
- 5.3.3 The provision of a MERJ Platform may involve the sub-licensing of Licensor software and/or information systems.
- 5.3.4 MERJ or the Licensor may, with or without notice to the User, change the nature, composition, features or availability of a MERJ Platform, provided that such change shall not prevent MERJ from performing the Services.

### **5.4 Reference to MERJ Platform in Agreement**

- 5.4.1 MERJ may provide one or more MERJ Platforms depending upon the type of Transactions that MERJ is willing to enter into at that time.
- 5.4.2 A reference to “ MERJ Platform” in this Agreement is a reference to the MERJ Platform(s) provided in relation to the relevant Service or type of Transaction.

## **5.5 Acknowledgments and agreements of User**

- 5.5.1 The User -
- 5.5.1.1 acknowledges and agrees that any MERJ Platform is provided on an “as is” basis;
- 5.5.1.2 acknowledges and agrees that there are significant risks associated with using and relying on a MERJ Platform, including 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;
- 5.5.1.3 assumes all risk of use or attempted use of a MERJ Platform and any data provided by way of a MERJ Platform; and
- 5.5.1.4 acknowledges and agrees that it has no recourse against MERJ or any Licensor in relation to the use or availability of a MERJ Platform or any errors in Licensor software and/or related information systems;

### **Security**

- 5.6** The User -
- 5.6.1 assumes full responsibility for any decision in relation to which any data provided to the User by way of a MERJ Platform may be used or relied upon;
- 5.6.1.1 will make its own independent decision to access or use a MERJ Platform or to enter into any Transaction;
- 5.6.1.2 acknowledges and agrees that no MERJ Platform serves as the primary basis for any of the User’s investment decisions concerning its accounts or its managed or fiduciary accounts;
- 5.6.1.3 agrees to ensure the security and confidentiality of all Security Credentials;
- 5.6.1.4 agrees and acknowledges that, if any person accesses or uses a MERJ Platform using a Security Credential, the User is liable for the conduct of that person and the person’s compliance with this Agreement, whether or not the User authorises the access and/or use;
- 5.6.1.5
- 5.6.1.6 acknowledges and agrees that, if MERJ determines that the security surrounding any MERJ Platform or the security or confidentiality of any Security Credentials is or has been breached, MERJ may terminate, revoke, suspend, modify or change any or all of the Security Credentials at any time with or without prior notice; and
- 5.6.1.7 acknowledges and agrees that where a MERJ Platform requires the use of Security Credentials, all MERJ Platform Communications are deemed to be on behalf of and authorised by the User;
- 5.6.1.8 accepts all responsibility for the genuineness and accuracy, in relation to content and form, of all MERJ Platform Communications and for all resulting actions, including orders entered and Transactions entered into;

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- 5.6.1.9 acknowledges that MERJ is not obliged to act on any MERJ Platform Communication and will be free to accept or reject, in its sole discretion, any transaction that the User seeks to execute through the MERJ Platform;
  - 5.6.1.10 acknowledges and agrees that MERJ may, at its discretion, verify receipt of any MERJ Platform Communications;
  - 5.6.1.11 acknowledges and agrees that the User has no right to amend or revoke a MERJ Platform Communication, unless MERJ agrees otherwise; and
  - 5.6.1.12 acknowledges and agrees that -
    - 5.6.1.12.1 MERJ's records of any MERJ Platform Communication and any communication sent by MERJ by way of the relevant MERJ Platform are deemed to be accurate until the contrary is proven; and
    - 5.6.1.12.2 the User bears the burden of proof that those records are inaccurate or incomplete, except in the case of manifest error or fraud.

## **5.7 Provision of Market Information**

### **5.7.1 Market Information**

- 5.7.1.1 The User acknowledges and agrees that where a MERJ Platform displays market data and other purely factual information (collectively "**Market Information**") that -
  - 5.7.1.1.1 MERJ does not endorse or approve the Market Information and makes it available to the User only as a service and convenience;
  - 5.7.1.1.2 MERJ does not guarantee the accuracy, timeliness, completeness or correct sequencing of the Market Information;
  - 5.7.1.1.3 MERJ does not warrant any results from the User's use or reliance on the Market Information;
  - 5.7.1.1.4 MERJ is not obligated to update any information or opinions contained in any Market Information;
  - 5.7.1.1.5 MERJ may discontinue offering Market Information at any time;
  - 5.7.1.1.6 MERJ will not be liable in any way for the termination, interruption, delay or inaccuracy of any Market Information; and
  - 5.7.1.1.7 The User will not redistribute or facilitate the redistribution of Market Information to any third party.

### **5.8 Third party Licensors**

- 5.8.1 The User acknowledges and agrees that the provision of an Automated Trading System may involve the sub-licensing of Licensor software and/or information systems.
- 5.8.2 The User waives all claims and causes of action which it may otherwise have against a Licensor.
- 5.8.3 The User acknowledges and agrees that -
  - 5.8.3.1 the Licensor is providing only a technical means for effecting Transactions;

- 5.8.3.2 the Licensor is neither directly nor indirectly a party to any Transaction;
- 5.8.3.3 the Licensor is not inviting, arranging for, or advising the User or any third party to effect any Transaction or to purchase, sell or otherwise deal in any Eligible Asset;
- 5.8.3.4 the Licensor is not liable in any manner to any person for the failure of any person effecting a Transaction by way of an MERJ Platform to perform its obligations under that Transaction; and
- 5.8.3.5 the Licensor will not be involved in any dispute relating to any Transaction.

5.8.4 The User -

- 5.8.4.1 is to maintain, for the duration of this Agreement, and for a period of, not less than, 7 years afterwards, accounting and computer records that enable MERJ and/or any Licensor to determine compliance with this clause and this Agreement;
- 5.8.4.2 is to permit MERJ and/or any Licensor to audit the User's access to and use of any MERJ Platform (including the User's records of its access to and use of that MERJ Platform); and
- 5.8.4.3 acknowledges that information obtained pursuant to this clause may be used to determine the User's compliance with this clause.

**5.9 Intellectual Property Rights**

5.9.1 The User acknowledges and agrees that -

- 5.9.1.1 all Intellectual Property Rights in respect of or derived from a MERJ Platform are and remain the sole and exclusive property of MERJ and/or any Licensors; and
- 5.9.1.2 the User has no Intellectual Property Rights in respect of or derived from and will not acquire any Intellectual Property Rights in relation to a MERJ Platform and/or any derivative or adaptation of a MERJ Platform.

5.9.2 The User is to use all reasonable efforts -

- 5.9.2.1 to protect any such Intellectual Property Rights in a MERJ Platform; and
- 5.9.2.2 to comply with a request of MERJ, acting reasonably, to protect its contractual, statutory and common law rights and obligations in respect of a MERJ Platform.

5.9.3 If the User becomes aware of any access to or use of the MERJ Platform by a third party that is unauthorized or which constitutes an infringement or interference with any of MERJ's and/or the Licensor's Intellectual Property Rights, it is promptly to notify MERJ and, acting reasonably, co-operate with MERJ and/or any Licensor with respect to any legal action which MERJ and/or any Licensor may undertake in respect of the infringement.

**5.10 Restrictions on use of MERJ Platform**

5.10.1 The User acknowledges and agrees not -

- 5.10.1.1 to access or use any Automated Trading System for any purpose other than to request prices and enter into Transactions; or
- 5.10.1.2 to use, copy, merge, make derivative works of or transfer copies of any software; or
- 5.10.1.3 to use or disclose to any third party any information obtained through or from a MERJ Platform other than for the purposes expressly set out in this Agreement; or

- 5.10.1.4 to allow any access to or use of an MERJ Platform by any third party; or
- 5.10.1.5 to sell, lease or otherwise provide, directly or indirectly, an MERJ Platform to any third party except as expressly permitted by this Agreement; or
- 5.10.1.6 to reverse engineer, disassemble or decompile any software; or
- 5.10.1.7 to copy any manuals related to a MERJ Platform; or
- 5.10.1.8 to remove any statutory copyright notice, or other notice included in a MERJ Platform or Licensor software or on any medium containing that software; or
- 5.10.1.9 to transmit or receive using a MERJ Platform (or cause to transmit or receive) any information or material which is pornographic, obscene, abusive, profane, offensive, misleading, deceptive, disparaging or defamatory; or
- 5.10.1.10 to use the MERJ Platform after the expiry, termination or cancellation of this Agreement and/or any license agreement between MERJ and its Licensor.

**5.11 Security and operating environment**

The User is responsible for ensuring the adequacy of the operating environment and the security of the environment, both physical and electronic, of the User's access to and use of a MERJ Platform, including -

- 5.11.1 maintaining appropriate security measures to prevent unauthorized access to, use of or damage
- 5.11.1.1 to a MERJ Platform and any information systems accessible through a MERJ Platform; and
- 5.11.1.2 to any password management system not explicitly controlled by MERJ or a Licensor;
- 5.11.2 where the User accesses and uses, or attempts to access and use, a MERJ 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 User is solely liable for any failure in such computer or other portable device's security, integrity or reliability; and
- 5.11.3 complying with all reasonable operational and security procedures notified by MERJ from time to time and to inform MERJ immediately of any breach of security.
- 5.12 To the maximum extent permitted by law, MERJ makes no representation or warranty (express or implied) and expressly disclaims any warranties -
  - 5.12.1 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 a MERJ Platform with respect to its suitability, availability, functionality, correctness, quality, accuracy, completeness, reliability, performance, timeliness, operation, continued availability or otherwise;
  - 5.12.2 that any MERJ Platform Communication -
    - 5.12.2.1 will result in MERJ entering into a Transaction with the User; and/or
    - 5.12.2.2 has been received by MERJ; and
    - 5.12.2.3 MERJ Platform meets the requirements or needs of the User.



## 6 NATURE OF RELATIONSHIP

- 6.1 MERJ facilitates Transactions and provides Services to the User in accordance with the terms of this Agreement and the Rules.
- 6.2 The User agrees that MERJ may appoint its Related Companies and Associates to render some of the Services and, where applicable, facilitate the Transactions.
- 6.3 The User represents and warrants to MERJ that it enters into this Agreement, and undertakes that it will enter into each Transaction, on its own behalf or on its User's behalf.
- 6.4 The aforementioned representation and warranty are deemed to be repeated each time the User enters into a Transaction.
- 6.5 If the User nevertheless enters into this Agreement or any Transaction on behalf of one or more principals, the User acknowledges and agrees that MERJ does not accept any such principal as a User for the purposes of this Agreement or any Transaction.

## 7 INTEREST AND THIRD PARTY ACCOUNTS

- 7.1 No interest is payable by MERJ on an Account except as specifically provided for in this clause 7.
- 7.2 For purposes of this clause 7 "**Deposit Interest**" means interest payable by MERJ on User Funds.
- 7.3 MERJ will pay Deposit Interest earned on User Funds less applicable fees on uninvested cash in the User's Account.
- 7.4 The applicable interest rates in respect of which MERJ will pay Deposit Interest are set out in the applicable Fee Schedule.
- 7.5 MERJ will pay Deposit Interest in arrears on such days as may be specified in the applicable Fee Schedule.
- 7.6 The User authorises MERJ -
  - 7.6.1 to withhold or deduct from any such payment of Deposit Interest to the User any resident or non-resident withholding tax that is required to be withheld or deducted by Applicable Law; and
  - 7.6.2 if necessary for this purpose, to withdraw any such withholding tax from a MERJ Account where User Funds are held (including, where relevant, a Segregated Funds Account).
- 7.7 If an Account has a debit balance, the User is to pay interest daily to MERJ on the full amount of that balance at the relevant Cost of Funds that is set out in the applicable Fee Schedule or otherwise published or provided by MERJ.
- 7.8 If the User fails to meet any payment obligations, the User is to pay interest daily to MERJ on the amount that was due but not paid at the relevant Cost of Funds that is set out in the then-current Risk Disclosure Statement or otherwise published or provided by MERJ.
- 7.9 The User is to ensure that any transfer of funds by it, is drawn on or made from an account in its name and not on or from that of another party, unless MERJ has previously agreed otherwise in writing.
- 7.10 The User acknowledges and agrees that MERJ -
  - 7.10.1 may, in its absolute discretion, without being obliged to do so, return any cheque drawn on, or transfer of funds from, a third party account, unless MERJ has previously agreed otherwise in writing; and
  - 7.10.2 does not accept or bear any liability or responsibility for any loss, including consequential loss, incurred or sustained by the User as a result of or arising out of MERJ returning any cheque drawn on, or transfer of funds from, a third party account, including any loss, including consequential loss,

incurred or sustained by the User because it is subsequently in default of its obligations under this Agreement or any Transaction.

## **8 MARGIN TRANSACTIONS**

### **8.1 Holding of User Money**

Subject to this Agreement and Applicable Law, MERJ Clearing and Settlement Limited (MERJ Clear) will hold User Money in respect of Margin Transactions in a Segregated Funds Account.

### **8.2 Financing and Rollover of Margin positions**

8.2.1 Each outstanding Margin Transaction is automatically valued and Rolled Over by MERJ at Close of Business on each day.

8.2.2 MERJ determines the Transaction Value as at the Close of Business.

8.2.3 MERJ determines the MERJ Rollover Interest Rate as at the Close of Business.

8.2.4 When a Margin Transaction is Rolled Over, MERJ charges the User a fee for the Roll Over as set out in the Fee Schedule.

8.2.5 The User authorises MERJ to withdraw the fee set out in clause 8.2.4 from the Segregated Funds Account immediately after the Close of Business.

### **8.3 Margin CFDs**

8.3.1 Where the User is in a Long Position in respect of the Transaction, MERJ applies to the Account with an amount equivalent to financing rate quoted in the prevailing product specification to the next trading date equal to the MERJ Rollover Interest Rate on the Transaction Value.

8.3.2 Where the User is in a Short Position in respect of the Transaction, MERJ applies to the Account with an amount equivalent to overnight financing rate quoted in the prevailing product specification to the next trading date equal to the MERJ Rollover Interest Rate on the Transaction Value.

### **8.4 Overnight Financing Payments**

8.4.1 For the purposes of clause 8.3, the overnight financing is calculated on the basis of the annual rate, divided by 360 or 365 (according to relevant market practice), for and including the Business Day on which that Close of Business occurs to but excluding the next spot date.

8.4.2 The overnight financing referred to in clause 8.3 is credited or debited, as the case may be, to the Account immediately after the Close of Business.

### **8.5 Close-out of Margin Transactions**

8.5.1 A Margin Transaction may be closed out in accordance with clause 25 if –

8.5.2 the User instructs MERJ to do so; or

8.5.3 MERJ exercises any of its rights under this Agreement to close out a Margin Transaction at any time before the Margin Transaction otherwise closes out under this Agreement.

### **8.6 Margin and margin maintenance**

8.6.1 The User is to pay to MERJ, as a margin in respect of a Transaction, such sums as MERJ may require under this Agreement or as otherwise notified in writing by MERJ to the User.

- 8.6.2 The User is to ensure that moneys paid to MERJ are correctly designated to be allocated to the Account.
- 8.6.3 From time to time, MERJ is to provide to the User details of the arrangements that apply to making payments to MERJ.
- 8.6.4 The User acknowledges and agrees that MERJ will credit those moneys to the Segregated Funds Account only when they become cleared funds.
- 8.6.5 Moneys paid by electronic fund transfers may not be available as collateral and, therefore are not Free Margin until the funds have been received and allocated to MERJ bank account.
- 8.6.6 MERJ will, in accordance with the normal practices at which the Segregated Funds Account is held, arrange for the credit of those moneys to the Segregated Funds Account as soon as practicable after they become cleared funds.
- 8.6.7 The User undertakes to maintain the Margin Requirement(s) being either –
- 8.6.7.1 in the case of Margin Transactions entered into using the MERJ Platform, the relevant Margin Requirement(s) specified in the applicable Fee Schedule; and
- 8.6.7.2 in all other cases, the Margin Requirement(s) advised by MERJ.
- 8.6.8 The undertaking in clause 8.6.7 is deemed to be repeated at the time each Margin Transaction is entered into.
- 8.6.9 For the avoidance of doubt, the undertaking in clause 8.6.7 is a margin requirement for the purpose of clause 8.6.8.
- 8.6.9.1 The User acknowledges and agrees that the applicable Margin Requirement may, from time to time, be updated by MERJ by amending the relevant Fee Schedule and it is the User's responsibility to ensure it is aware of the prevailing Margin Requirement at any point in time.
- 8.6.10 The User must maintain sufficient Free Margin so that, should the relevant MERJ Platform become unavailable and the User is unable to ascertain its real-time Margin Requirement or amount of Free Margin available, the applicable Margin Requirement will still be satisfied notwithstanding any market movement during that period.
- 8.6.11 The User acknowledges and agrees that, if at any time during any day, the relevant Margin Requirement is not maintained –
- 8.6.11.1 the relevant MERJ Platform may automatically terminate and close out some or all outstanding Margin Transactions; and
- 8.6.11.2 MERJ may at its discretion, but is under no obligation to, terminate and close out some or all of the Margin Transactions.
- 8.6.12 The User acknowledges and agrees that Free Margin in its Account at any time does not include any interest that has accrued but has not been paid under this Agreement.
- 8.6.13 The User acknowledges that, by accessing the MERJ Platform at any time, the User is able to view its margin position in real time.
- 8.6.14 The User acknowledges and agrees that the User is solely responsible for monitoring its margin position daily on a 24-hour basis, by way of the MERJ Platform, and that, in doing so, the User must have regard to –

- 8.6.14.1 outstanding Margin Transactions;
- 8.6.14.2 the volatility of any relevant securities market or markets generally;
- 8.6.14.3 any applicable interest rate risk; and
- 8.6.14.4 the time it takes the User to remit sufficient cleared funds to MERJ (including the time it takes those funds to clear).
- 8.6.15 The User acknowledges and agrees that under no circumstances is it entitled to receive a margin demand, call or notice from MERJ: (Should be changed to 8.6.16)
- 8.6.15.1 In particular, the User acknowledges and agrees that, whether or not extreme or unusual market conditions exist, where the value of outstanding Margin Transactions is moving or have moved particularly quickly against the User, MERJ is not obliged to make a margin call or give notice before exercising its right to terminate and close out all (or some only) Transactions under this Agreement.
- 8.6.15.2 No demand, call or notice made or given by MERJ to the User in any one or more instances invalidates the acknowledgement and agreement given by the User in clause 8.6.15.
- 8.6.15.3 MERJ is not obliged to allow the User time to forward further funds to meet its Margin Requirement under this clause before exercising its right to terminate and close out any Transactions (including Margin Transactions) under this Agreement.
- 8.6.15.4 However, MERJ may in its absolute discretion allow the User time to forward funds to meet its Margin Requirement, in which event that permission is only effective once it is confirmed in writing by MERJ, and then only to the extent specified in the written notice given by MERJ.
- 8.7 Stop Loss Orders and Limit Orders**
- 8.7.1 MERJ may agree to a Stop Loss Order by the User in relation to a Margin Transaction.
- 8.7.2 MERJ may charge a fee it deems appropriate for the Stop Loss Order, as set out in the relevant Fee Schedule.
- 8.7.3 The User authorises MERJ to withdraw this fee from the Segregated Funds Account when the Margin Transaction relating to the Stop Loss Order is entered into.
- 8.7.4 Subject to clause 8.7.5, MERJ will close out the relevant Margin Transaction in accordance with the Stop Loss Order.
- 8.7.5 In respect of a Margin Transaction concluded in respect of a Stop Loss Order, the User acknowledges that –
  - 8.7.5.1 market conditions, including Abnormal Market Conditions, may arise such that MERJ may only be able to terminate and close out the Margin Transaction at a price or rate that is substantially less than that in the Stop Loss Order;
  - 8.7.5.2 once the Stop Loss Order is triggered, MERJ will close out the Margin Transaction at whatever price or rate it is able to obtain for the User in the market, and
  - 8.7.5.3 the User accepts these risks accordingly.
- 8.7.6 MERJ may agree to a Limit Order placed by the User in relation to a Margin Transaction.
- 8.7.7 MERJ may charge a fee it deems appropriate for the Limit Order.

8.7.8 In respect of the Margin Transaction concluded in terms of a Limit Order, the User acknowledges that, while the Limit Order will be entered into at the price or rate set out in the Limit Order, market conditions, including Abnormal Market Conditions, may arise such that MERJ may only be able to enter into the Margin Transaction at a price or rate that is substantially different from the prices or rates prevailing in the relevant market at the time of entry into of the Margin Transaction; and the User accepts this risk accordingly.

## **8.8 Trading conduct and Corporate Actions**

8.8.1 The User gains no ownership rights on the underlying instrument which the Transaction relates pursuant to CFD Contracts.

8.8.2 The User accepts that it must acquaint itself with the relevant rules and legislation for the Exchange on which the underlying instrument is traded when trading and is bound by those rules when trading CFDs with MERJ.

8.8.3 For the purpose of this clause 8.8 “**Corporate Action**” means an event or action initiated by a company that affects the securities issued by that company, including but not limited to dividends, unbundling’s, takeovers, capital reductions, rights issues, share conversions, scrip dividends and share redemptions.

8.8.4 MERJ will act reasonably and in good faith, taking into account the nature of a Corporate Action that has occurred, in order to endeavour to preserve the economic value of the relevant Transaction.

8.8.5 If a Corporate Action occurs, MERJ is entitled to –

8.8.5.1 change MERJ prices;

8.8.5.2 change MERJ spreads;

8.8.5.3 change margin factors;

8.8.5.4 change minimum Transaction Value or maximum Transaction Value in respect Transactions;

8.8.5.5 suspend the acceptance of or refuse to accept Transactions or instructions for any affected market.

8.8.6 In addition, if a Corporate Action occurs MERJ is entitled to do any of the following in relation to a Transaction that is directly or indirectly affected by the Corporate Action and that was in place prior to the relevant Corporate Action –

8.8.6.1 change the opening MERJ price of the trade as determined by the relevant exchange;

8.8.6.2 change the agreed execution price of the order as determined by the relevant exchange;

8.8.6.3 close any open position and cancel any order;

8.8.6.4 open a new trade or order in the relevant market; or

8.8.6.5 make an appropriate credit or debit to your Account.

8.8.7 MERJ can exercise the above rights with or without notice depending on the nature of the Corporate Action concerned. If MERJ exercises a right before giving notice, MERJ will inform the User as soon as reasonably practicable that we have done so.

8.8.8 If a dividend adjustment applies to an equity or index to which a Transaction relates and the Transaction was open at the Close of Business on the last day to trade (for that equity or index) prior

to the relevant ex-dividend date MERJ will apply a dividend adjustment in accordance with clause 8.8.9 or 8.8.10.

- 8.8.9 In the case of Transactions relating to individual equities, the dividend adjustment will be applied as follows –
- 8.8.9.1 if the User holds long individual equity CFD positions, the Account will be credited with an ex dividend adjustment net of the tax requirements of the relevant tax authority as determined by MERJ acting reasonably; and
- 8.8.9.2 if the User holds short individual equity CFD positions, the Account will be debited an ex dividend adjustment net of the tax requirements of the relevant tax authority as determined by MERJ acting reasonably.
- 8.8.10 In the case of adjustments to index Transactions, the rate of adjustment will be determined by MERJ acting reasonably, taking into account, for example, the weighting of the companies concerned. Adjustments are applied as follows –
- 8.8.10.1 Long Positions are credited with the relevant adjustment; and
- 8.8.10.2 Short Positions are debited with the relevant adjustments.
- 8.8.11 MERJ may (acting reasonably) terminate or vary the dividend adjustment depending on changes in law, the applicable regulatory system, rates of tax and in particular the withholding tax requirements of the relevant tax authority.

## **9 TRADING CONDITIONS**

- 9.1 In the event that the Exchange does not support Market Orders for certain Eligible Assets, if the User places a Market Order in respect of such an Eligible Asset, MERJ will automatically cancel the Market Order. The User will be responsible to check if the Market Order is filled in the market after order entry.
- 9.2 If the User experiences or suspects any errors with a Market Order that the User cannot remedy, then the User should contact MERJ immediately. MERJ will not be responsible for orders not filled due to this.
- 9.3 The User acknowledges and agrees that in cases where a Market Order regarding an Eligible Asset is split in that the Transaction is completed over a period of more than one day, the total fees payable to MERJ for the Transaction may increase as a result of the fee as set out in the applicable Fee Schedule being charged in respect of the number of days necessary for the total execution of the Transaction.
- 9.4 Dividend payments from Eligible Asset positions will be credited to the User's Account after deduction of any applicable standard withholding taxes payable by the User in respect of such dividend as may be instructed by the Issuer. The User acknowledges that MERJ does not support or offer preferential withholding tax rates that may be available due to residency or legal status. The User further acknowledges that MERJ does not offer a tax reclaim service and that MERJ only processes corporate actions as instructed by the Issuer.

## **10 TRANSACTIONS IN ELIGIBLE ASSETS**

- 10.1 MERJ facilitates Transactions in Eligible Assets through the Exchange. The Transactions are performed on a commission basis or as otherwise stipulated in the Rules or as otherwise indicated on the Website.
- 10.2 The Order is only submitted for execution provided it is tradable on the Exchange or through the Service Provider. If the Transaction cannot be executed on the terms outlined above, the User will be notified on the MERJ Platform.

10.3 The Order may be split or merged, and thus be executed at different prices during the day of trading or the following days. In case that an Order is split, and completed partially over a period of more than one day, the total trading costs may increase.

The reason for such increase is that the minimum fee as set out in the applicable Fee Schedule may be charged more than one time based on the number of days necessary for the total execution of the Order.

## 11 REGISTRATION AND CUSTODY ARRANGEMENTS

11.1 All Transactions shall be registered in the name of the User.

11.2 MERJ shall, on behalf of the User, open Accounts in accordance with the Rules.

11.3 MERJ shall, on behalf of the User, hold in safe custody on behalf of the User all share certificates or other documents evidencing title to the Transactions from time to time in accordance with the Rules.

11.4 Where MERJ is holding securities and DLT Assets as a Nominee, it shall do so in accordance with the Rules.

## 12 CORPORATE ACTIONS

Without limiting any other provision of this Agreement, this clause sets out the consequences, for the purpose of this Agreement, of any Corporate Action taken by a company in which the User holds Eligible Assets either directly in its own name or through a MERJ Nominee.

### 12.1 Definitions

For the purpose of this clause 12 –

12.1.1 “**Ex-Date**” means the date immediately prior to the date on which the Corporate Action is Scheduled to take place; and

12.1.2 “**Pay-Date**” means, in relation to a Corporate Action, the date on which the consideration in respect of the relevant Securities to which that Corporation Action relates is payable by the Issuer.

### 12.2 Rights Issues

If the User holds Eligible Asset positions on the last date to trade as specified by the issuer of such shares, the User may receive an offer to acquire Eligible Assets or other Securities in respect of the issuer (“**the Rights Offer**”). The Rights Offer may be renounceable or non-renounceable. The User shall provide MERJ with a written instruction as to the Rights Offer within the time period specified by MERJ. If the Rights Offer is non-renounceable, the User shall be entitled to accept or reject the Rights Offer. If the Rights Offer is renounceable, the User shall be entitled to accept or reject the Rights Offer or sell the Rights Offer to a third party. If the User fails to respond to a non-renounceable Rights Offer within the period specified by MERJ, the Rights Offer may lapse and have no further force and effect. If the User fails to respond to a renounceable Rights Offer within the time period specified by MERJ, MERJ shall be entitled, but not obliged, to sell the Rights Offer to any third party for the account of the User. The proceeds from the sale of the Rights Offer will be for the account of the User less the fees payable to MERJ in terms of this Agreement.

### 12.3 Cash Dividends

Cash dividends are allocated to the User on the Ex-date reflecting the market price movement on the Ex-date, but the actual value of the payment will be settled on the date on which payment is made to MERJ. Dividend payments from Eligible Asset positions will be credited to the User’s Account less any applicable withholding taxes deducted.

### 12.4 Optional Dividends



- 12.4.1 Unless the User elects otherwise in terms of clause 12.4 dividend shall be paid in cash. The User can elect to apply the dividend by acquiring for additional Eligible Assets from the issuer. The Eligible Assets to be acquired by the User as aforesaid shall be proportional to the Eligible Assets held by the User as at the record date for the dividend. The Eligible Assets will be allocated once the reinvestment rate is confirmed for the value Pay Date, once the Eligible Assets have been received by MERJ.
- 12.4.2 The User shall not be entitled to receive payment of a dividend in a different currency to the currency in which the dividend has been declared.

**Dividends and Bonuses** An issuer in which the User holds Eligible Assets may issue additional Eligible Assets to the User, whether in proportion to existing Eligible Asset holding or otherwise. These Eligible Assets may be issued and allotted by the issuer on the Ex-date at the value as at the Pay Date. The additional Eligible Assets issued as aforesaid shall only be available to trade once they have been received by MERJ and allocated to the User on the MERJ Platform.

## 12.5 Splits, Reverse Splits/ Spin Offs

- 12.5.1 A "Share Split" is an increase in an issuer's number of issued shares proportional to a reduction in the par value or nominal value of the existing shares. In the case of a Share Split the User shall receive additional shares in the issuer in proportion to its shareholding. The additional shares issued in terms of a Share Split shall be allocated to the User on the Ex-Date, but at a reduced price. The additional shares in terms of a Share Split shall be issued to the User as fully paid up shares.
- 12.5.2 A "Reverse Share Split" is a decrease in the number of issued shares proportional to an increase in the par value of the existing shares. In terms of a Reverse Share Split the number of shares held by the User will be reduced on the Ex-Date, but the shares held by the User after the Reverse Share Split will be reflected at an increased price.
- 12.5.3 A "Spin Off" means the issue of additional shares to the User in a new class of shares in proportion to their existing holding in the issuer. Such additional shares are allocated on the Ex-Date.
- 12.5.4 The additional shares resulting from a Share Split or Spin Off will be allocated on the Ex-Date but will only be available for trading once such additional shares have been received by MERJ.

## 12.6 Tender Offers

The User shall be entitled to tender shares in its portfolio on the terms on which the User has been notified of by means of the MERJ Platform.

## 12.7 Mergers & Mergers with Elections

- 12.7.1 As a result of a merger in respect of the issuer of Eligible Assets held by the User, the User may become entitled to –
- 12.7.1.1 receive payment in cash on the Pay-Date;
  - 12.7.1.2 be issued additional Eligible Assets in the issuer on the Ex-Date;
  - 12.7.1.3 receive a combination of payment in cash and the issued of additional Eligible Assets in the issuer on the Ex-Date.
- 12.7.2 In the case of a mandatory merger, the User shall have no election as to the form of consideration to be received by the User in terms of clause 12.7.1. In the case of a non-mandatory merger, the User may elect the form of payment or consideration to be received by the User, provided that such election is exercised within the timer period set out in the applicable notice, failing which the consideration payable to the User shall be as set out in the applicable merger notice.

12.7.3 Any Eligible Assets allocated as a result of the merger will only be available for trading once such Assets have been received by MERJ.

## 12.8 Deletion of open Orders due to a Corporate Action

12.8.1 On the Ex-Date open Orders are deleted for certain types of Corporate Events, as set out in the table below.

Corporate Action Type	Never Delete Orders	Always Delete Orders	Rules in respect of deleting orders
Tender Offers	X		
Stock splits		X	
Reversed Stock Split		X	
Bonus Issues		X	
Mandatory Mergers		X	
Spin Offs		X	
Ticker Changes		X	
De-Listing		X	
Cash Dividends			Deleted if the change in the market price is calculated to be over 20% due to the Cash Dividend
Eligible Asset Dividends			Deleted if the change in the market price is calculated to Dividends be over 20% due to the Share Dividends
Optional Dividends			Deleted if the change in the market price is calculated to be over 20% due to the Optional Dividends
Rights Issue			Deleted if the change in the market price is calculated to be over 20% due to the Rights Issue

## 12.9 New Positions in non-online traded Securities and Eligible Assets

If a Corporate Action relates to an Eligible Asset that is not tradable online with MERJ through the MERJ Platform, the following procedures shall be applicable -

12.9.1 Positions in respect of Eligible Asset arising as a result of a Corporate Action, are booked to the User's Account.

12.9.2 The relevant Eligible Asset will be added to the User's Account for reporting purposes.

12.9.3 In instances where there is an election to receive consideration by means of the issue of an Eligible Asset that is not supported by MERJ or its Service Provider on the Electronic Platform, the User will not have the option to elect and will receive the cash settlement.

## 12.10 Fractional Compensation

12.10.1 A fractional Asset is less than one full share in an issuer and can arise as a result of a Corporate Action entitlement calculation. For the following Corporate Actions, MERJ shall cash compensation wherever the User becomes entitled to a fractional Asset -

12.10.2 share splits;

12.10.3 reverse share splits;

12.10.4 optional dividends on share positions; and

12.10.5 mergers.

### **12.11 Taxes and Fees on Corporate actions**

Taxes and fees may also occur on other Corporate Actions, other than cash dividends such as fee on a share dividend or tax on a merger. When such taxes and fees occur MERJ will debit the User's Account accordingly.

### **12.12 Special Corporate Action Events**

Special and infrequent Corporate Actions that do not come under the descriptions above may occur. MERJ, through its Associates and Service Providers, will handle such Corporate Actions in the overall best interest of the User to the extent that time and operational procedures will allow.

## **13 FEES AND EXPENSES**

13.1 The basis on which, the manner in which and the intervals at which the User will remunerate MERJ and/or its Associates for the Services rendered by MERJ and/or its Associates to the User or Transactions concluded with or on instruction of the User in terms of this Agreement are set out in the applicable Fee Schedule as furnished via the Website or as otherwise notified by MERJ and/or its Associates to the User or its Users generally.

13.2 MERJ may, on prior written notice, furnish to the User, whether electronically or otherwise, with changes to the fees and charges from time to time.

13.3 The Parties agree that MERJ will calculate the fees and charges payable on the applicable calculation dates and notify the User in writing of the fees calculated.

## **14 PAYMENTS AND STANDARD SETTLEMENT INSTRUCTIONS**

14.1 The User authorises MERJ in accordance with their usual practice, to withdraw from the relevant MERJ Account where User Funds and/or Eligible Assets are held (including, where relevant, the Segregated Funds Account), and to debit accordingly, at any time any fee, commission or charge when it becomes payable to MERJ and/or any of its Associates.

14.2 MERJ may, in its absolute discretion, determine and advise the User that if, on any date-

14.2.1 the same amounts are payable under this Agreement in respect of the same type of Transaction by each party to the other in the same currency, then, on that date, each party's obligation to pay that amount is automatically satisfied and discharged; and

14.2.2 the aggregate amount payable by one party exceeds the aggregate amount that is payable by the other party in the same currency, then, on that date, the amounts payable by each party to the other party are to be paid or satisfied by payment of the net amount of those obligations by the party having a net debit to the party having a net credit.

14.3 A MERJ appointed Service Provider will ensure that it complies at all times with its memorandum and articles of associations or memorandum of incorporation, whichever is applicable, and that all payments made by MERJ will be in line with the standard settlement instruction issued by the User or the relevant third party.

## **15 RISK**

15.1 The User acknowledges and agrees that –

15.1.1 the User has read and understood the risks of entering into Transactions outlined in the Risk Disclosure Statement and/or on the Website; and

15.1.2 entering into Transactions incurs the risk of loss as well as the prospect of profit; and

15.1.3 it accepts such risks, which may result in financial loss.

## **16 EXEMPTION, INDEMNITY AND INSURANCE**

16.1 Subject to clause 5, MERJ shall not be liable for, and the User hereby indemnifies MERJ against, any claims for loss, expense or damage which the User may suffer, howsoever such loss, expense or damage may arise or be suffered, in respect of the Transactions concluded by the User.

16.2 The exemption and indemnity in clause 16.1 shall not extend to any loss, expense or damage which arises as a result of the fraud, dishonesty or gross negligence of MERJ or any director, employee, officer, or agent of MERJ.

16.3 MERJ shall, to the extent, and if required by the Act arrange and maintain, at its own expense, insurance cover in respect of any liability which may be incurred by MERJ in connection with this agreement. MERJ shall on request from the User furnish the User with written confirmation of the amount of such insurance cover.

## **17 SEGREGATION OF MERJ PLATFORM PARTICIPANTS' ASSETS AND MERJASSETS**

17.1 MERJ shall maintain User Funds separate from its own funds in accordance with the Act and the Code of Conduct.

17.2 In the event of a loss of any or all of such funds, including interest on such funds, such loss will be apportioned gradually as circumstances and the liabilities of MERJ may permit.

17.3 In respect of funds held on behalf of members' Users and direct Users MERJ must pay to the Users such interest as it may from time to time receive on such funds, less a charge in respect of the Services rendered by MERJ or an external administrator as the case may be.

17.4 MERJ must satisfy the Securities Authority that it holds adequate insurance cover against losses of funds held or deposited by MERJ arising from the negligence, dishonesty or fraud of any employee of MERJ, an external administrator or from theft.

17.5 MERJ may appoint agents, who are licensed as discretionary financial services providers, to manage the investments of funds in User Funds. Such investments will be restricted to money market investments as stipulated in Directive 8 of the MERJ Exchange Rules.

## **18 REPRESENTATIONS AND WARRANTIES**

18.1 MERJ and the User represents and warrants to the other that -

18.1.1 its obligations under each of 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 MERJ'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 Laws, any provision of its constituent documents, any order or judgment of any court or Public 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 a MERJ Platform, have been obtained and all Transactions are valid and subsisting.
  - 18.2 The User represents and warrants that -
    - 18.2.1 all information provided by the User to MERJ in connection with this Agreement and each Transaction was true in all material respects as at the date when that information was provided and remains so as at the date of this Agreement; and
    - 18.2.2 there are no facts or circumstances that have not been disclosed to MERJ that would make that information untrue or misleading in any material respect;
    - 18.2.3 unless Participant is appropriately licensed and regulated to do so, Participant hereby represents (i) that Participant has not and will not solicit offers to buy, or offers to sell the Securities, or any beneficial interest therein in a jurisdiction where this would be prohibited to or for the account of any person in a jurisdiction where this would be prohibited or engage in any hedging transactions involving the Securities; (ii) that it has not engaged, nor is it aware that any party has engaged, and it will not engage or cause any third party to engage, in any directed selling efforts in any jurisdiction with respect to the Securities; (iii) that it is not a distributor or dealer; (iv) that it is not acquiring the Securities for the account or benefit of any other person; and (v) that it has satisfied itself as to the full observance of the laws of its jurisdiction in connection with any transactions in connection with the Securities, including (A) the legal requirements within its jurisdiction in connection with the Securities and any transactions contemplated by the terms of the Securities, and (B) any governmental or other consents that may need to be obtained.
    - 18.2.4 the User's access to and use of each MERJ Platform and the Website complies with -
      - 18.2.4.1 all Applicable Law (including all relevant export laws and 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 the Rules, policies and procedures (whether stated orally or in writing) applicable to the MERJ Platform and this Agreement;
- and the User has all consents, rights, authority and has taken all actions necessary, to use the MERJ Platform and enter any Transactions relating thereto;

- 18.2.5 the User 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 User;
- 18.2.6 the User is acting for the User's own account, and it has made its own independent decision to enter into this Agreement and each Transaction, and whether any Transaction is appropriate or proper, based upon the User's own judgment and upon advice from such advisers as the User has deemed necessary;
- 18.2.7 the User is not relying on any communication (written or oral) of MERJ 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; and
- 18.2.8 the User has not received from MERJ any assurance or guarantee as to the expected results of any Transaction;
- 18.2.9 the User is capable of assessing the merits of and understanding (on the User's own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of each Transaction; and
- 18.2.10 the User is capable of assuming, and assumes, the financial and other risks of each Transaction;
- 18.2.11 MERJ does not act as a fiduciary for or an adviser to the User in respect of any Transaction; and
- 18.2.12 except as disclosed to, and accepted in writing by, MERJ, no security interest exists over or affects, nor is there any agreement to give or permit to exist any security interest over or affecting, any Account or funds payable or paid to MERJ.
- 18.3 If the User is a company, the User represents and warrants that -
- 18.3.1 it is incorporated, has full power and authority to enter into and comply with its obligations under this Agreement and each Transaction; and
- 18.3.2
- 18.3.3 has taken all corporate and other action and obtained all consents needed to enable it to do so; and the execution, delivery and performance of this Agreement and each Transaction does not violate its founding documentation.
- 18.4 If the User is trustee of a trust, the User represents and warrants that -
- 18.4.1 the User is entering into this Agreement and each Transaction as duly appointed trustee of the trust; and
- 18.4.2 the User is presently the sole trustee or, if not, that all trustees have entered into this Agreement;
- 18.4.3 the trust was validly created and is in existence at the date of the User'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 trust deed and does not violate the trust deed or the trust; and

18.4.5 the trust is solely constituted by the trust deed;

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

18.4.7 the User has taken all action and obtained all consents necessary to enable it to do so; and

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

18.4.9 even though the User is entering into this Agreement and each Transaction as trustee of a trust, the User 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 MARKET HOURS**

19.1 Subject to clause 18 MERJ is under no obligation, to quote prices and rates and accept instructions (whether oral, written or electronic) in relation to any Transaction outside of MERJ's business days and market hours.

19.2 MERJ is under no obligation to quote prices or rates or accept instructions (whether oral, written or electronic) in relation to any Transaction during any time when the relevant Eligible Asset market is closed for business.

## **20 LEGAL AND REGULATORY REQUIREMENTS**

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

20.2 The User undertakes to comply with all Applicable Law and Rules.

20.3 The User acknowledges that, for the purpose of compliance with any Applicable Laws or Rules, MERJ may be required to report details relating to the User to the relevant authorities.

## **21 TAXES**

21.1 MERJ 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 the MERJ Account where User Funds are held (including, where relevant, the Segregated Funds Account) or any Account.

## **22 FORCE MAJEURE**

22.1 MERJ 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, MERJ is to use its reasonable endeavours to give notice as soon as reasonably practicable to the User accordingly.

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



22.4 If Force Majeure arises, and regardless of whether or not MERJ has given the notice referred to in clause 22.2, MERJ 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 User may enter into Transactions; or

22.4.2 amending this Agreement or any Transaction, to the extent only that it is not possible, practicable or legal for MERJ to perform or comply with its obligations to the User under this Agreement or any Transaction; or

22.4.3 terminating, closing out or not rolling over any Transaction or cancelling any instructions or orders under this Agreement or any Transaction; or

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

## 23 EVENTS OF DEFAULT

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

23.1.1 any representation or warranty made by MERJ or the User 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 the User fails to maintain margin at least equal to the Margin Requirement; or

23.1.3 the User fails to perform or comply with any of its obligations under this Agreement or any Transaction; or

23.1.4 the User is in breach of any Applicable Law or the Rules; or

23.1.5 the conduct of the User is such that, in the opinion of MERJ, it would cause a reasonably prudent financial person dealing in any of the Transactions to be of the view that the User could be unable to perform and comply with any of the User’s obligations under this Agreement or any Transaction, including strict compliance with any time limit; or

23.1.6 where the User is a natural person -

23.1.6.1 the User dies or becomes of unsound mind; or

23.1.6.2 the User’s person or estate is liable to be dealt with in any way under any law relating to mental health; or

23.1.6.3 in the absence of the User making alternative arrangements, the User is not contactable by MERJ for any period of 24 hours in order for MERJ to obtain instructions relating to any Transaction, any order or any obligations of the User under this Agreement or any Transaction; or

23.1.6.4 the User becomes insolvent or enters into a composition or arrangement for the benefit of creditors or if the User commits an act of insolvency in terms of Applicable Law; or

23.1.7 MERJ or the User, where the User is a company -

23.1.7.1 if either Party is deemed to be unable to pay its debts in terms of Applicable Law; and/or

23.1.7.2 if either Party 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

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

23.1.7.3.1 which is not appealable, or

23.1.7.3.2 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

23.1.7.3.3 which is not capable of rescission, or

23.1.7.3.4 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

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

23.1.7.4 if either Party's members propose or pass a resolution to be placed in business rescue or for its liquidation or winding-up; and/or

23.1.7.5 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

23.1.7.6 any guarantee of or security given in respect of the User's obligations under this Agreement is, without the consent of MERJ, withdrawn or becomes defective or insufficient.

23.1.8 If, at any time, an Event of Default has occurred in respect of the Defaulting Party, the Non-defaulting Party may give a Termination Notice to the Defaulting Party designating a Termination Date for the termination of all (or some only) Transactions (Terminated Transaction).

## **24 TERMINATION**

24.1 This Agreement shall commence on the Commencement Date and shall continue until terminated in accordance with the provisions of 24.2 and the remaining provisions of this clause 24.

24.2 Subject to any applicable default proceedings in the Rules, MERJ and the User shall be entitled to terminate this Agreement -

24.2.1 via the Website; or

24.2.2 by notice in writing to the other party of 60 calendar days; or

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

24.3 Should MERJ -

24.3.1 cease to be a licensed Exchange in terms of the Act; or

24.3.2 be sequestered, liquidated or placed under judicial management, whether provisionally or finally; MERJ shall notify the User immediately and take reasonable steps to ensure any outstanding business is completed promptly or transferred to another provider.

## 25 CLOSE-OUT

25.1 If –

25.1.1 an Event of Default occurs pursuant to clause 23; or

25.1.2 any other Event of Default occurs and the Non-defaulting Party gives a Termination Notice pursuant to clause 23; or

25.1.3 MERJ gives a Termination Notice pursuant to clause 24; or

25.1.4 Abnormal Market Conditions exist; or

25.1.5 clause 8 provides accordingly,

then –

25.1.6 as from the Termination Date, the Terminated Transactions are terminated;

25.1.7 the amount payable in respect of that Termination Date and those Terminated Transactions is to be determined by MERJ and paid in accordance with this clause; and

25.1.8 MERJ may refuse to enter into any further Transactions.

25.2 Notwithstanding any other provision in this Agreement, the Parties agree that where –

25.2.1 an Event of Default occurs pursuant to clause 23; or

25.2.2 Abnormal Market Conditions exist, some or all Transactions in existence between them will (in the case of clause 25.2.1 and may (in the case of clause 25.2.2 immediately become Terminated Transactions and that –

25.2.3 the Termination Date is the date of the occurrence of such Event of Default or that such Abnormal Market Conditions first occur;

25.2.4 the nature of immediate termination is such that MERJ will not be able to give a Termination Notice to the User prior to the termination taking effect; and

25.2.5 MERJ may, but is not obliged to, give a Termination Notice to the User after such Transactions have been terminated, whether by way of electronic mail, text messaging, a message displayed on the Trading Platform or such other notice procedures as are set out in this Agreement.

25.3 The netted balance payable in respect of a Termination Date and the relevant Terminated Transactions is to be determined by MERJ as follows –

25.3.1 MERJ is to take an account of all money due between the parties in respect of the Terminated Transactions by calculating an amount equal to –

25.3.1.1 the sum of –

25.3.1.1.1 the amount calculated by MERJ in respect of the Terminated Transaction (“**the Settlement Amount**”).

25.3.2 all obligations in respect of that netted balance are to be satisfied by payment of the net amount due from or on behalf of the party having a net debit to or on behalf of the party having a net credit.

25.4 On or as soon as reasonably practicable after the Termination Date, MERJ is to give the User notice specifying any amount payable in accordance with clause 25.3.

25.5 Any netted balance calculated in accordance with to clause 25.3 is payable in the case of –

25.5.1 a Termination Date which occurs as a result of an Event of Default, on the day on which notice given in accordance with clause 25.4 is effective; or

25.5.2 any other Termination Date, on the day which is two Business Days after the day on which notice given in accordance with clause 25.4 is effective.

25.6 The Parties agree that any Settlement Amount determined by reference to the Close Out Formula is a reasonable pre-estimate of loss and not a penalty.

25.7 The Parties agree that –

25.7.1 any Settlement Amount includes full and final payment in respect of the loss of bargain and the loss of protection against future risks; and

25.7.2 except as otherwise provided in this Agreement, neither Party is entitled to recover any additional damages as a consequence of those losses.

25.8 Notwithstanding any other provision of this Agreement and without limiting any right of setoff, off-set, combination of accounts, right of retention or withholding or similar right that either Party may have at law or in equity, the User agrees that MERJ may debit and set off at current value any moneys due and payable by the User to MERJ under this Agreement or any Transaction or otherwise against any moneys held by MERJ or payable by the User.

25.9 The User is liable to MERJ for any costs and expenses incurred by MERJ, acting reasonably, in connection with or arising out of the exercise by MERJ of its rights under this clause, together with interest on those costs and expenses.

25.10 The User authorises MERJ to withdraw the amount of any such costs, expenses or interest payable under clause 25.9 from the MERJ bank account where User Monies are held (including, where relevant, the Segregated Funds Account).

## **26 INDEMNITY**

26.1 The User indemnifies each of MERJ and the Associates (each, an 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 -

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

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

26.1.3 any access or use or attempted access or use to or of a MERJ Platform by the User and any person accessing or using a MERJ Platform through any Security Credentials, whether or not such access or use is authorised by the User; or

26.1.4 any third party claim related to the access or use or attempted access or use to or of a MERJ Platform by the User, any component of a MERJ Platform or any data provided through a MERJ Platform or relating to decisions or advice arising out of such access or use; or

26.1.5 any claim by any Licensor arising or resulting from the User's' access or use or attempted access or use to or of a MERJ Platform; or

26.1.6 any insufficiency whatsoever with respect to the environment from which the User accesses or uses a MERJ Platform and/or with respect to the User's security measures to prevent unauthorised access to or use of a MERJ Platform and any security breach in relation to a MERJ Platform (including any

access to or use of any of MERJ's other systems not covered by this Agreement and any software viruses or other activities that comprise the security arrangements of MERJ's IT infrastructure or network) caused directly or indirectly by the User or any of its Representatives; or

26.1.7 any error, corruption or delay in any order or other instruction (whether oral, written or electronic) communicated by the User; or

26.1.8 acting on any order or instruction (whether oral, written or electronic) which is communicated using any Security Credentials; or

26.1.9 the termination by MERJ of any Transaction under this Agreement; or

26.1.10 the enforcement of an indemnified party's rights under this Agreement or any Transaction, except and to the extent that the loss or Consequential Loss is sustained or incurred by an indemnified party directly as a result of its gross negligence or willful default.

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

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

## **27 EXCLUSION OF LIABILITY**

27.1 MERJ is not liable to the User for any loss or consequential loss suffered or incurred by the User arising out of or in connection with this Agreement or any Transaction, whether in contract, delict, or otherwise, including -

27.1.1 any error, corruption or delay in any order, instruction or other communication (whether oral, written or electronic) by the User; or

27.1.2 MERJ acting on any order, instruction or other communication (whether oral, written or electronic) through any Security Credentials; or

27.1.3 any misrepresentation of any information provided by or on behalf of MERJ Exchange Limited in relation to this Agreement or a Transaction; or

27.1.4 except in the case of fraud by MERJ, the reliance of the User on a rate or a price which the User knew, or ought reasonably to have known, to be materially incorrect; or

27.1.5 the entry into of a Transaction, or other action, by the User on the basis of money deposited in or credited to an Account, or (where applicable) the Segregated Funds Account or any other account where User Money is held, in error by, or on behalf of, MERJ; or

27.1.6 the exercise, attempted exercise or non-exercise of any of the rights, powers or remedies of MERJ under this Agreement or any Transaction; or

27.1.7 the occurrence and continuance of any Force Majeure; or

27.1.8 any failure of the User -

27.1.8.1 to access or use the MERJ Platform for its intended purposes, whether as a result of failure by MERJ or otherwise; or

27.1.8.2 to maintain the security, integrity and confidentiality of all Security Credentials; or

27.1.8.3 to verify its MERJ Platform Communications and any communications sent by MERJ by way of the MERJ Platform, other notices and communications and other reports as may be published by MERJ; or

27.1.8.4 any deficiency whatsoever of the MERJ Platform, including failure of, or inability to, access or use the MERJ Platform; or

27.1.8.5 the occurrence of Abnormal Market Conditions; or

27.1.8.6 any failure of a telecommunications link or network by which the User may seek access to or use of a MERJ Platform; or

27.1.8.7 with respect to any information published on the Website, including any claims or losses in relation to the accuracy, reliability or timeliness of such information; or

27.1.8.8 with respect to any support, or assistance provided by MERJ, including any claims or losses in relation to technical support, trading support and account administration support.

## **28 TAPE RECORDING**

28.1 The User acknowledges and agrees that MERJ may -

28.1.1 record all telephone conversations between the User and MERJ; and

28.1.2 submit the recording, 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.

28.2 The User acknowledges and agrees that MERJ is under no obligation to retain a recording or transcript made by MERJ and that MERJ may destroy such recording or transcript.

## **29 CONFIDENTIALITY**

29.1 Each Party undertakes, without the prior written consent of the other Party -

29.1.1 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

29.1.2 to make every effort, including issuing legal proceedings, to prevent the use or disclosure of Confidential Information by any person.

29.2 The obligations contained in clause 29.1 do not apply -

29.2.1 to the extent required by Applicable Law, by the Rules of MERJ of any relevant Exchange, or other Public Authority; or

29.2.2 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

29.2.3 to any information that each party agrees in writing is not Confidential Information; or

29.2.4 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

29.2.5 to any information about the User that MERJ, in its absolute discretion, deems necessary to disclose to its Associates provided that each of those persons -

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

29.2.5.2 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.

29.3 If either party becomes aware, or suspects, that any unauthorized 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.

### **30 DATA PROTECTION LAWS**

MERJ agrees that it shall –

30.1 use and apply appropriate measures, procedures and controls in the processing of the User's personal information in terms of this Agreement, it being agreed that MERJ shall process the User's personal information in accordance with the Privacy Policy;

30.2 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

30.3 comply with all applicable industry codes of conduct to the extent that they regulate or relate to the processing of personal information.

### **31 CONFLICTS OF INTEREST**

31.1 The User acknowledges and agrees that MERJ is not responsible for any loss, including consequential loss, which may result directly or indirectly from services or actions provided or taken pursuant to this Agreement.

31.2 The User acknowledges that MERJ's relationship to the User is not that of a fiduciary and MERJ owes no fiduciary duties to the User.

### **32 INITIAL MARGIN AND VARIATION MARGIN**

32.1 For these purposes the User –

acknowledges and agrees that User is required to maintain the required Initial Margin pursuant to the product specification published on the MERJ website and provide the required variation margin at all times to retain its position. MERJ will reflect the movements in margin in the Users account.

### **33 SHARING OF COMMISSIONS, FEES AND CHARGES**

33.1 The User acknowledges and agrees that MERJ may share commissions, fees and charges with its Associates or other third parties or receive remuneration from them in respect of Transactions.

33.2 Details of these commissions, fees, charges, remuneration or sharing arrangements will be disclosed in accordance with any requirements of Applicable Law.

### **34 INSTRUCTIONS**

#### **34.1 Instructions**



34.1.1 The User may place an order or otherwise give MERJ instructions (whether oral, written or electronic) as specified in any then-current Risk Disclosure Statement or otherwise published or provided by MERJ.

34.1.2 MERJ may, in its absolute discretion, decide whether or not to accept any oral, written or electronic instructions.

34.1.3 MERJ may act upon the oral, written or electronic order or instruction, including any MERJ Platform Communications, of the User, or any person who appears to MERJ to be the User, notwithstanding that the person is not, in fact, the User.

34.1.4 In particular, MERJ may act upon any MERJ Platform Communications using the User's Security Credentials.

34.1.5 The User is to keep all security information relating to a MERJ Platform, its Transactions, each Account and this Agreement, and all Security Credentials, confidential and secure.

34.1.6 MERJ is not required to establish the authority of any person quoting the User's Security Credentials.

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

#### **34.2 Required instructions, etc.**

34.2.1 The User must promptly give to MERJ any instructions which MERJ may require of the User in respect of any Transaction or proposed Transaction.

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

34.2.3 The User authorises MERJ to charge the User account where User Funds are held (including, where relevant, the Segregated Funds Account) with any such cost or expense of taking those steps.

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

34.2.5 MERJ may (but is not in any circumstances obliged to) require confirmation (in the form that MERJ requires) of any order or instruction (whether oral, written or electronic) if -

34.2.5.1 the order or instruction is to close an Account or remit funds due to the User; or

34.2.5.2 it appears to MERJ, acting reasonably, that the confirmation is necessary or desirable.

34.2.6 MERJ may acknowledge an order, instruction or other communication (whether oral, written or electronic) orally, in writing or by way of a MERJ Platform.

#### **35 ASSIGNMENT**

35.1 Subject to this clause, this Agreement is binding upon and ensures for the benefit of each of MERJ and the User and its successors and permitted assignees or transferees.

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

35.3 MERJ 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 User, whether or not that information was obtained in confidence and whether or not that information is publicly available.

35.4 The User may not -

35.4.1 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

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

35.5 If an Event of Default occurs or the User is in default of any of its obligations under this Agreement or any Transaction, MERJ may (without prejudice to any other rights it may have) at any time afterwards assign and transfer to any person (including any third party with whom MERJ has entered into Hedging Arrangements) with immediate effect all or any of its rights in respect of money owing to it under this Agreement or any Transaction, as well as any security or other remedies available to it in respect of that money.

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

## **36 DISPUTE RESOLUTION**

36.1 This section 36 shall not apply to a Member of the Exchange or any participant of MERJ Clearing and Settlement Limited or MERJ Depository and Registry Limited that is permitted by MERJ to provide security services to third parties. Instead the Rules shall dictate the dispute resolution procedures.

36.2 The Parties agree that any disputes in connection with this Agreement that cannot be successfully resolved through other means will be referred to arbitration by two arbitrators in accordance with the provisions of the Seychelles Commercial Code and Rules made thereunder.

36.3 Reference to arbitration shall be a condition precedent to any other action of law. The venue of arbitration shall be agreed by both parties but shall not be outside Seychelles.

## **37 NOTICES AND ADDRESSES OF SERVICES**

37.1 Each of the Parties choose as the address for service and delivery of documents their respective addresses set out in the User 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.

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

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

37.2.2 if posted by prepaid registered post be deemed to have been received by the addressee on the 4th (fourth) day following the date of such posting;

37.2.3 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;

37.2.4 if transmitted by electronic mail message, be deemed to have been delivered to and received by the addressee when the complete electronic mail 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 provided that a message received after 4pm in the time zone of the User will be deemed to have been received the next day.

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

## **38 AMENDMENTS**

38.1 Except as specifically otherwise provided in any of the Annexures, MERJ may amend, modify or replace this Agreement and/or any of the then-current documents that comprise this Agreement at any time by -

- 38.1.1 written notice to the User in accordance with clause 5; and/or
- 38.1.2 posting notice accordingly and/or an amended form of this Agreement and/or any of its components on the Website; and/or
- 38.1.3 posting notice accordingly and/or an amended form of this Agreement and/or any of its components on a MERJ Platform; and/or
- 38.1.4 as otherwise permitted by Applicable Law.

38.2 The User acknowledges and agrees that -

- 38.2.1 MERJ may make available to the User 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 38.1; and
- 38.2.2 if the notice and/or an amended form of this Agreement and/or any of its components is made available to the User by more than one means, it is deemed to be made available to the User at the earliest possible time.

38.3 A notice and/or an amended form of this Agreement and/or any of its components posted on the Website or on a MERJ Platform is deemed to have been made available to the User at the time the relevant document was posted by MERJ on the Website or on the MERJ Platform.

38.4 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.

38.5 The amendment, modification or replacement to or of this Agreement is deemed to be accepted by the User if the User -

- 38.5.1 continues to enter into Transactions by way of the MERJ Platform; or
- 38.5.2 allows any outstanding Transaction to roll over.

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

## 39 GENERAL

39.1 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.

39.2 Each party will pay its own costs (including legal fees) of entering into -this Agreement.

39.3 If the User is a trustee, the User undertakes -

39.3.1 to notify MERJ immediately in writing if -

39.3.1.1 the User ceases for any reason or at any time to be the sole trustee of the trust; or

39.3.1.2 if there are two or more trustees, any other trustee ceases for any reason to be a trustee of the trust; or

39.3.1.3 the trust is determined or for any other reason ceases to exist; or

39.3.1.4 it becomes aware of any breach of trust; and

39.3.2 not to make any distribution of any capital of the trust which would result in the trust having insufficient assets to meet the User's liabilities under outstanding Transactions and this Agreement.

39.4 Except as expressly set out in this Agreement, all warranties that may be implied into this Agreement by law are excluded to the maximum extent permitted by law.

39.5 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.

39.6 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.

39.7 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 an enforcing the obligations of the other Party in terms of this Agreement and the 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.

39.8 The person submitting the Application Form on behalf of the User warrants his authority to do so.

39.9 This Agreement constitutes the entire agreement between the Parties as to the subject matter hereof and save as may be expressly set out herein, no agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.

39.10 The rights of each party under this Agreement and each Transaction are cumulative and not exclusive of any rights provided by law.

## RISK DISCLOSURE STATEMENT

**The information in this Risk Disclosure Statement 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 our Eligible Assets.**

**You must be satisfied that any trading you undertake in relation to the products described in this Risk Disclosure Statement is appropriate in view of your objectives, financial situation and needs. If you wish to conclude any of the Transactions, you are required to agree to the terms of the MERJ Platform Participation Agreement.**

### General Risks

- All Exchange based investment is exposed to a degree of risk.
- Market fluctuations may have an effect on the value, price or income of investments.
- Investment capital is not guaranteed, and past performance is not a guide to future investment performance.
- You are responsible for the selection of any transaction that you place on the MERJ Platform. As such, the performance of any transaction will depend mainly on investment decisions made by you. MERJ does not make any representations regarding the performance of any investment.
- Under certain market conditions it may be difficult or impossible to close out a position. This may occur, for example, where trading is suspended or restricted at times of rapid price movement.
- Prior to the commencement of trading, you should understand all commissions, fees and other transaction charges for which you will be liable.
- Your ability to trade depends on the continued operation of, among other things, the MERJ Platform, the internet, and your personal computer or internet enabled device. A fault, delay or failure of any of these things could prevent you from placing Orders and may result in losses on your Open positions.
- You should read all available information on the MERJ Platform including, but not limited to, the User Terms and Conditions and the “frequently asked questions” in order to properly consider your risks.
- You should carefully consider whether your financial position permits you to participate in listed instruments on the Exchange.
- You should carefully consider whether trading is appropriate for you in light of your experience, objectives, financial resources and other relevant circumstances.
- Before trading listed instruments on the Exchange, you should be aware of tax consequences and on this you should consult your lawyer, accountant or other tax advisor.

### System Risks

MERJ relies on a number of technology solutions to provide you with its online MERJ Platform. Transacting on the MERJ Platform may differ from trading on other automatic trading systems.

A disruption to the MERJ Platforms may mean you are unable to trade in products offered by MERJ when you wish and you may suffer a financial loss or opportunity loss as a result.

During a disruption of the MERJ Platform, it may be possible for you to continue to use our Eligible Assets by contacting us over the phone; however this will not be possible in every case.

- **Automatic Trading**

There are significant risks associated with using and relying on a web-based, electronic MERJ Platform. Such risks include, but are 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.

These risks and the occurrence of disruptive events are outside the control of MERJ and, accordingly, you will have no recourse against MERJ in relation to the use of or availability of our MERJ Platform or any errors in the software and/or related information systems.

There are important provisions regarding the use of the MERJ Platform contained in the MERJ Platform Participation Agreement. You must ensure that you fully understand these provisions and the risks involved in relying on an on-line, automatic trading system and the limitations in the service that MERJ can provide in relation to the MERJ Platform.

- **MERJ Platform Closed**

Due to the dynamic nature of the financial markets, it is possible that the value of your open positions will change while the trading function of the MERJ Platform is unavailable. In this case, you will not be able to trade in a product such as open a new transaction or close out an open transaction until the trading function of the MERJ Platform is available again. You may suffer a financial loss or opportunity loss as a result.

- **Discretionary Powers of MERJ**

Under the MERJ Participation Agreement, MERJ has a number of discretionary powers which may affect your trading activities. These powers are set out in this Risk Disclosure Statement as well as the MERJ Platform Participation Agreement and you should ensure that you fully understand them.

- **Market Volatility**

Markets are subject to many influences which may result in rapid fluctuations and reflect unforeseen events or changes in conditions

In certain market conditions such as during times of price volatility in markets, quotes provided by MERJ may 'gap'. A gap means that a price may unexpectedly jump from one price level to another without trading at rates in between those two price levels or quotes. It is not possible for us to predict when a price 'gap' will occur or by how much. Price gaps are generally a result of unexpected news or previously unknown data being released (e.g. news of terrorist attacks, revaluation of a currency, geopolitical upheaval or natural disasters).

- **User Acknowledgement**

By accepting the electronic check box as part of this application process I/We confirm receipt of this Risk Disclosure document and have read, understood and agree to its contents.



**upstream**