

# Ark Capital Management (Dubai) Limited

## General Terms of Business

These general terms only apply to you if you meet the following criteria:

- 1 You meet the requirements to qualify as a Professional Client or a Market Counterparty in accordance with the provisions of the Conduct of Business Module ("**COB**") of the Dubai Financial Services Authority ("**DFSA**"); and
- 2 You have not opted-in to be classified as a Retail Client in accordance with the requirements of COB Rule 2.4.1.

Please read these general terms of business (the "**Terms**" or "**Terms of Business**"), then complete, sign and return the same. These Terms, and/or any other written agreement or document executed by all parties hereto for the provision of the Services (as defined in clause 2.2) shall constitute the client agreement between the parties (the "**Client Agreement**").

These Terms and all other documentation referred to herein are the Terms of Ark Capital Management (Dubai) Limited, a company established in the Dubai International Financial Centre ("**DIFC**") with registration number 1462 ("**Ark Capital, we, us, ours**"). These Terms contain the general terms which shall apply with respect to any businesses or transaction/s carried out by you ("the "**Client**") and applicable to the establishment and operation from time to time of the relationship between the Client and Ark Capital. In addition to these Terms, other terms and conditions specific to the investments offered to you from time to time within the scope of its license (the "**Investments**") and Services (as defined in clause 2.2) shall apply to such Investments or Services (as the case may be).

These Terms shall comprise an agreement for the purpose of COB of the DFSA Rulebook and shall be binding on you and Ark Capital upon us opening an account for you. These Terms shall form the basis upon which we shall carry on business with you.

### **1 Establishing a Relationship**

- 1.1 These Terms will come into effect upon the later of its execution by all the parties and when the documents submitted to us are complete in all respects to the satisfaction of Ark Capital. Acceptance of documents by us does not confer any right to the applicant. The applicant is bound to furnish any further documents or rectification of the documents already submitted to us as and when required by us. Ark Capital is entitled to hold back or suspend the relationship or part or whole of the Services offered/provided or to be offered or provided to the applicant or Client till receipt of the documents or rectification as sought by us have been provided to our satisfaction.

### **2 Corporate Structure and Regulatory Status**

- 2.1 Ark Capital is an Authorized Firm. It is authorized with a Category 3a license issued by the DFSA and functions and conducts business out of DIFC in Dubai. The firm is regulated by the DFSA and has its office, currently at Unit - S2402, Floor-24, Emirates Financial Towers, Dubai International Financial Centre, Dubai, 211036, United Arab Emirates.

2.2 As per the authorisation received from the DFSA, our firm is currently authorised to carry out the following financial Services (collectively, the "**Services**" and each a "**Service**"):

2.2.1 Advising on Financial Products;

2.2.2 arranging Credit and Advising on Credit;

2.2.3 arranging Deals in Investments;

2.2.4 managing Assets;

2.2.5 dealing in Investments as Agent; and

2.2.6 dealing in Investments as Principal where it does so only as a Matched Principal in accordance with the DFSA Prudential Rules.

Further, we may provide other Services within the regulatory approvals allowed by the DFSA under the firm's current permissible licensed activities.

Capitalized terms used but not defined in these Terms will have the meaning(s) assigned to them in the DFSA Rulebook or (where applicable) the other DFSA rules and regulations, as amended.

### **3 Client Classification**

3.1 Pursuant to the DFSA Rules, with respect to a Financial Service, a Client may be classified as a Retail Client, a Professional Client or a Market Counterparty.

3.2 Ark Capital does not provide Financial Services to Retail Clients. Accordingly, if with respect to a Service, the appropriate classification for the Client is that of Retail Client, we will not be able to provide such Service to the Client.

3.3 You acknowledge that as a Professional Client or Market Counterparty (as the case may be), you do not benefit from the higher level of protection available to Retail Clients.

3.4 If you wish to classify yourself as a Retail Client for all type of asset classes or certain asset classes in various markets, then the firm, based on its authorizations cannot deal with you.

3.5 Further, you are required to inform us on any change/s or other matters that may be of relevance about your Client classification by us, including but not limited to AML/KYC, Sanctions and Counter-Terrorism Financing ("**CTF**") requirements.

### **4 Nature of Services and execution instructions**

4.1 Without limiting the generality of clause 2.2 in respect of the Services the firm is licensed to provide, you authorise the firm under these Terms to carry out from time to time dealings in such Investments on an execution-only basis, following such execution methods and forms as Ark Capital may be authorised to adopt from time to time, acting within the scope of its license.

- 4.2 Ark Capital shall use its best endeavours to carry out the Investments instructed in accordance with clause 4.2 on a best-execution basis, this means that we shall take prudent and reasonable care to ascertain the preferential price at the time available in the relevant market for orders of the Investments of the size and type concerned, taking into account specific instructions from you. In the event we are unable to reasonably carry out an execution or instruction by you on a best-execution basis due to the circumstances at the time, we shall endeavour to carry out the execution as soon as reasonably possible thereafter, applying the same prudent and reasonable assessment at the time.
- 4.3 For the purpose of clause 4.1, the Client authorises Ark Capital to enter into and execute Investments in accordance with the Client's oral or written or computer instructions, subject to the terms of this Agreement. It is envisaged in this respect that an instruction related to a given Investment will be executed through communications with the Client in accordance with clause 8, Upon receiving such instruction from the Client, Ark Capital shall pass it through its own platform system directly to the prime broker designated at Ark Capital's discretion.
- 4.4 In order to further facilitate the Client's direct access to the Investments, Ark Capital may, upon the request of the Client, arrange for the Client direct access to trading platform by assisting the Client in setting up the Client's own trading account within the platform identified from time to time by Ark Capital.
- 4.5 In the event of a Client's direct access to a trading platform in accordance with clause 4.4:
- 4.5.1 any instruction related to a given Investment shall be executed directly by the Client through the trading platform;
- 4.5.2 the Client shall be obligated to keep passwords secret and is solely responsible for ensuring that third parties do not obtain access to the password or trading facilities.
- 4.6 The Client agrees to be exclusively responsible for any instruction sent electronically by the Client that is identified with the Client's password and account number and for any electronic, oral and written instruction to Ark Capital from persons Ark Capital in its sole judgment, believes are apparently authorized by the Client.
- 4.7 Ark Capital shall have no responsibility for further inquiry into such apparent authority and no liability for the consequences of any actions taken or omitted to be taken by Ark Capital in reliance on any such instructions or on the apparent authority of any such persons.
- 4.8 We would provide you with information, generic reports, presentations, marketing material, investment research on the money markets, commodities in relation to your Investments and may also provide economic commentary and analysis of a generic nature sourced from our affiliates and group companies (collectively referred to as the "**Group**") and other service provider that is specific to any company/ sectors, to suit particular need etc. relating to Investments and Services which we consider to be of interest to you or which may be requested by you. However, you shall make decisions only after considering the merits and demerits of such a decision and we shall not be responsible for such decision for any reason whatsoever.

If need be, seek additional information/advice from your [Wealth Advisor] with regard to the Investments or Services which may interest you as each Investment would have separate Investment literature associated charges and investment risks etc. The same would also be available in the Investment documentation, brochures, or specified on the website of the Investment manufacturer etc. You should conduct your own due diligence on the financial Investments and Services and take an independent decision.

- 4.9 The information, generic reports, presentations, promotional/ marketing material, etc. provided to you is intended only for persons to whom we may lawfully promote under DFSA requirements. We may seek to obtain from you such information as is necessary to enable us to conclude whether the promotional/marketing information may be provided to you. Information received from you in respect to such requests from us will be accepted in good faith and relied upon by us.
- 4.10 By providing you with the promotional/marketing information on Investments, we are not providing any advice or making any recommendation, nor should this information be inferred as a recommendation, to suit your investments needs. In particular any comments we make about the merits and/or demerits of these Investments related to the intrinsic merits and/or demerits of such Investments are general and are not intended in any way to suggest explicitly or implicitly, that the Investments would suit your specific requirements or circumstances. Independent decision has to be taken by you.
- 4.11 Detailed information about the Investments such as structure, investment objectives, risks, and any other matters of relevance will be available in the Investment documentation. This may be including, but not limited to, term sheets, placement memorandum, subscription document, prospectus, etc. Ark Capital makes no warranty as to the accuracy of any such information provided and accepts no liability in respect of any loss suffered by you as a consequence of relying on the Investment documentation.
- 4.12 We, upon your instruction and if found suitable, may arrange credit facilities for you and/or make arrangements with a view to execute transaction/s for you in relevant Investments. You are responsible for ensuring that monies are transmitted directly and on a timely basis to the third party in order to ensure that the transaction is completed from end to end. You acknowledge that the assets in respect of which the financial Service is provided may be held in a jurisdiction outside the DIFC and the market practices, insolvency and legal regime applicable to that jurisdiction may differ from the regime applicable in the DIFC.
- 4.13 You acknowledge that Ark Capital will not be able to offer you the Investments or Services until such time you have been on-boarded as a Professional Client or Market Counterparty (as the case may be) after completing a comprehensive know your client check and a full AML verification including further open source, PEP's and sanction checks undertaken by the compliance officer. You also acknowledge that the client onboarding approval is at the discretion of the compliance officer and subject to meeting DFSA requirements.
- 4.14 We may be required to provide your details to related parties and service providers (such as corporate administrators, legal advisors and financial institutions) based on

your specific Investment or Service requirement. Kindly note that this is provided based on your deemed approval and without any risk and responsibility on part of Ark Capital. Any such related party or service provider has the absolute right to either accept or reject your application based on the information provided by you and/or they may ask for any additional information or documentation to meet their regulatory/internal requirements.

- 4.15 We will not do anything or refrain from doing anything which would in our opinion infringe any applicable regulations or other requirements to which we are subjected to comply. We may carry out any action that is, in our reasonable opinion, necessary to comply with such regulations and requirements.
- 4.16 Subject always to the DC Accounts (as defined and operated in accordance with clause 5 below), all the accounts maintained in the sole name of a Client shall be operated singly by the Client or the holder of a duly executed and valid Power of Attorney of such Client, and in the case of joint accounts, by both/all account holders jointly or by the specific account holder(s) as instructed by the joint account holders in the Relationship Opening Form, or by their holder of Power of Attorney as accepted by Ark Capital in its discretion.
- 4.17 In case of joint accounts, any change in operational instructions/signing conditions or any other change in relation to information provided in the Client Account Opening Form is to be given by all the joint account holders irrespective of the mode of operation of signing conditions, failing which Ark Capital may take such action as it deems appropriate, including freezing of the account.
- 4.18 Accounts in the names of a company, partnership firm, trust, association or other entity shall be operated by the Authorised Signatory (ies) of the respective entity/ies as specified in the Client Account Opening Form submitted by such entity/ies at the time of establishing the account. Changes to Authorized Signatories of such entities shall be recognized only upon submission of the requisite authorizations/ resolutions approving the appointment of Authorized Signatories to the satisfaction of Ark Capital. Further, we reserve the right to (though not obliged to) verify these submissions of the requisite authorizations/resolutions approving such changes. Further, in case there are any changes regarding principal controller, beneficial owner, trustee and individuals who have control over the funds, it shall be the responsibility of the Client to inform us about these changes before they are allowed to exercise control over the funds.
- 4.19 The Client further declares that any further acts and transactions by us related to the relationship established shall be on our own behalf. At no time shall we act on behalf of any other person.
- 4.20 Ark Capital has investor grievances redressal mechanism in place according to which customers may report their grievance, feedback or complaint. All complaints should be made in writing / email and directed in the first instance to the Compliance Officer of Ark Capital. The same will be attended and/ or resolved within a reasonable period of time.

## **5 Designated Client Bank Account**

5.1 Ark Capital will open a designated client bank account (a "**DC Account**") to hold Client money on your behalf. Such DC Account enables us to hold your individual funds in an account separate from other clients' and company's accounts.

5.2 The DC Account is an account whose sole purpose is to hold Client funds for transactional purposes only. The DC Account cannot be accessed by third parties and is separate from the account belonging to us (to whom the funds are transferred). Your funds are held in a separate DC Account so that there is no relationship between your accounts and the company's bank account. The DC account will be held and operated in accordance with the DFSA Client Money and Client Money Distribution provisions.

5.3 Once you have been approved for investment, you will send investment funds to the DC Account allocated to you by Ark Capital. After a transaction has been approved upon your instruction, the funds to be utilized for such transaction will be moved from your DC Account to the relevant Ark Capital trading account to execute such transaction, and the margin funds related to such transaction will be moved across from the DC Account to Ark Capital's company account.

## **6 Non-US/Canada Status**

You confirm that you are not a US/Canada person (that is primarily, but not limited to, a person resident in the US/Canada) and are not acting for a US/Canada person at the time that we provide Services to you under these Terms. Further, you are required to inform us as soon as your status changes. Based on our policy, we do not deal with US/Canada Persons.

## **7 Anti-Money Laundering Requirements**

7.1 Our dealings with you will be covered by various legal requirements relating to Money Laundering, Sanctions and/or Terrorist Financing, etc (collectively known as AML/KYC, Sanctions and CTF) these are termed as "**Anti Money Laundering Requirements**" in these Terms.

7.2 In order to enable us to discharge our obligations under the "Anti money Laundering" requirements, you are required to provide us, at our request, with such information about yourself and/or your associates, beneficial owners, related parties and details of all the entities which you may have either direct or indirect relationship, and other details as we may reasonably require. In the event of failure to provide any of the requirements, as part of our compliance requirements with various statutory bodies or regulatory authorities we will comply with the requirements laid down by the DFSA AML rule book and/or guidance/recommendations.

## **8 Communications**

8.1 You may communicate with us by letter, telephone, email or in person. We may at our discretion and without being required to give any explanations can refuse to act upon instructions given by or for you which are not in accordance with these Terms.

8.2 It should be noted, that electronic communications such as email should have the relative indemnities executed by you in advance with us (for instructions to us) or

with the respective service provider (for instructions to them through us) for any transactions which you may wish to get executed using the above modes (email). In any case, all instructions should be emailed to [●].

- 8.3 Unless we receive specific instruction from you to communicate in a particular way, any communication sent by us to your contact details, shall be deemed to have been received by you.
- 8.4 We shall be entitled to act on the instructions of any person who is designated by you or authorized by you to act as your agent for the purposes of any such communication.
- 8.5 We shall send by any of the above means any communication/document/information or otherwise from time to time to the mailing address furnished by you. Hence, it is incumbent upon you to inform us of any changes in mailing address immediately. We will not be responsible for any loss, damage or consequences for wrong delivery of the items arising out of you for not informing us of the change in mailing address/other communication details for any reasons whatsoever. Without derogating from the obligations of the Client contained in this clause, it is clarified that we may, when appropriate and as provided for herein, also use electronic means to communicate with you on such terms and conditions as it may specify.
- 8.6 We shall be entitled to rely on, and shall not be liable for any actions taken or omitted to be taken in good faith pursuant to any communication (or any communication purporting to be such or believed to be such) received from you, which is not in writing unless specifically requested by you not to do so.
- 8.7 Any confirmation, account or other statement which we give in writing, will in the absence of manifest error, be deemed correct, conclusive and binding on you, if not objected by you in writing within five business days of dispatch by us.
- 8.8 You agree that we may from time to time make direct contact with you by telephone, email or otherwise without your express invitation, in order to provide you with details of Investments or Services that may be of interest to you or for providing better Service.
- 8.9 Ark Capital will provide the Client with e-mail statements on an annual basis outlining the details of funds held by Ark Capital for the Client and Investment valuations at the end of the period covered by the statement. Statements will also show all charges applied during the period covered by the statement, if any.
- 8.10 If a Client opts for the direct access to the trading platform pursuant to clause 4.4, real time access to such Client's account showing transactions, the time of the orders and the balance on the Client's account will also be available to such Client.

## **9 Reporting**

- 9.1 Your dealings with the service provider shall be on terms expressly agreed upon or on terms contained in the relevant documentation provided to you separately. The service provider or the credit institutions extending credit facilities shall confirm the same to you. Our role shall be limited to facilitating your Investments and/or arranging and/or advising on credit.

- 9.2 Whilst you are responsible for your individual reporting obligations, Ark Capital may assist you from time to time with reporting obligations that may apply to a fund or a company in which you are investing, provided such fund or company is established in connection with an investment structure arranged or advised on by Ark Capital in accordance with these Terms.

## **10 Risks and Acknowledgement**

- 10.1 When entering into any financial transaction with or through us, you should be satisfied that you fully understand and appreciate the transaction, the nature and the extent of the underlying risks and rewards. You are requested to independently assess the suitability of the transaction (after taking independent professional advice, if deemed necessary) in light of your investment objectives, experience, financial condition and other relevant circumstances.
- 10.2 You should refer to any additional details of associated risks provided to you in connection with any transaction and for additional risks associated with the Investment that may be provided to you from time to time by Ark Capital prior to entering into such transaction.
- 10.3 Where Ark Capital provides any Services, you should ensure that you have reviewed and understood the terms and conditions and other documents or agreements with which it is provided so that you may properly appreciate and distinguish between the Services or Investments being provided by us and others, and appreciate the characteristics of respective obligations owed by us and other relevant provider. In the event of doubt, you should contact us, and we will be glad to provide clarification or refer you to the person who can provide such clarification.
- 10.4 Without prejudice to any of the foregoing, you acknowledge, understand and warrant that:
- 10.4.1 investment in leveraged and non-leveraged transactions such as the Investments are speculative, involves a high degree of risk, and is appropriate only for persons who can assume risk of loss of their entire margin deposit;
  - 10.4.2 because of the low margin normally required in OTC trading, price changes in OTC may result in significant losses;
  - 10.4.3 guarantees of profit or freedom from loss are impossible in OTC trading;
  - 10.4.4 you are willing and able, financially and otherwise, to assume the risk of OTC trading;
  - 10.4.5 you have received no such guarantees from Ark Capital or from any of its representatives or any introducing agent or other entity with whom you are conducting your account and you have not entered into this Agreement in consideration of or in reliance upon any such guarantees or similar representations;
  - 10.4.6 the high degree of leverage that is obtainable in the trading of Forex, CFDs and Options transactions can work against you as well as for you. Leverage can lead to large losses as well as gains;



- 10.4.7 CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage, and at any time, You should consider whether you understand how CFDs work and whether you can afford to take the high risk of losing your money;
- 10.4.8 during times of extreme volatility it can be difficult or impossible to execute orders; and
- 10.4.9 in consideration of Ark Capital's carrying the Services, you agree not to hold Ark Capital and any of its subsidiaries, affiliates or agents responsible for any losses incurred by you should any of the above risks or similar risks occur in relation to an Investment.

## **11 Conflicts of Interest**

- 11.1 With the complexity and the size of business which we as Ark Capital have and our reliance on third parties including for providing Investments/Services, situations many arise where we may have an interest, relationship or arrangement ("**interest**") in any Services offered by us which may conflict with your interests. Such interests may not be separately disclosed to you before or at the time you enter into any agreement, any transaction or any other arrangement as a consequence of any Services provided to you pursuant to this Client Agreement. In such a situation we shall take all reasonable steps to ensure that your interests are not adversely affected and ensure a fair treatment.
- 11.2 Ark Capital may, but is not obliged to, at its sole discretion provide information and documents to you relating to any such interests, relationships or arrangements, upon your written request for the same.
- 11.3 For the effective management of conflicts of interest, we have systems and policy in place to ensure that while providing those Services neither we nor those employees will be required to have regard to any information which is confidential to another client and which is not known to us or particular employee(s) responsible for handling your affairs and hereby ensuring that clients are treated fairly and in such a manner as to ensure that any conflict that may exist does not prejudice that client's interests.
- 11.4 Further, as a result of this relationship with other clients and with a person or persons connected with us, we may in exceptional circumstances be unable to provide Services in relation to particular investments. If you request information in relation to such investment, we may inform you that it is for the time being precluded from advising in relation to those investments and we shall not be obliged to disclose the reason why that is the case or any further information relating thereto.

## **12 Data Protection and Client Confidentiality**

- 12.1 Ark capital is subject to the Data Protection Law DIFC Law No. 5 of 2020 as supplemented by the Data Protection Regulations of the DIFC in force on 1 July 2020, in each case as may be amended or updated from time to time (together "**Data Protection Law**" or "**DPL**") and the term "personal data", "controller", "data subject" and "process" in this clause 12 and Annex A to the Terms have the

meanings given to them in the DPL. In the event of any inconsistency between the DPL and any provision of these Terms, the DPL shall prevail.

- 12.2 In order to meet our obligations under these Terms we need to collect, use, share, and store personal data (including financial information) about you, or where you are not an individual but a corporate entity, about your officers, employees or other representatives ("**Your Data**").
- 12.3 By entering into these Terms, you acknowledge that we will process Your Data as set out in this clause 12 and Annex A – Details of personal data processing, which forms part of these Terms. By entering into these Terms you acknowledge that you have read Annex A. Clause 16 shall apply to the extent that Your Data constitutes Client Information.
- 12.4 We may also process the types of information set out above in connection with others. Where you provide us with personal or financial information about others such as your dependants you confirm that you are authorised to provide us with such information and have brought these Terms (in particular, Annex A) to their attention.
- 12.5 Where you are a corporate entity, you shall (and shall procure that any Affiliates and agents and your and their officers, employees and other representatives shall) collect any necessary permission, provide any necessary notice and do all such other things as are required under the DPL in order for: (i) you to disclose Your Data to us as set out in these Terms; and (ii) us to process Your Data (including by providing Your Data to our affiliates or any other third party) as set out in these Terms.

### **13 Fees, Commission and Charges**

- 13.1 You shall be liable to pay our fees in accordance with the relevant documents executed by you including but not limited to other relevant forms in connection with the specific Investments that you make and/or any other specific agreement that we may enter into from time to time in respect of the Services. It is clarified that no amount is payable by you to us on execution of these Terms.
- 13.2 Without limiting the generality of clause 13.1, it is envisaged in respect of a given Investment that Ark Capital shall charge you, and you shall pay Ark Capital, fees on a commission basis calculated as a percentage of the notional value of such Investment. Such commission may be debited from the Client's account at the same time as Ark Capital executes the order in respect of such Investment.
- 13.3 Where Ark Capital increases or introduces any new charges, we will notify the Client in accordance with clause 8 at least 7 days before they take effect.
- 13.4 We may also charge for incidental banking-related fees such as wire charges for deposits/withdrawals and returned check fees.
- 13.5 In certain circumstances additional fees may include such things as statement charges, order cancellation charges, account transfer charges, telephone order charges or fees imposed by any interbank agency, bank, contract, market or other regulatory or self-regulatory organisations arising out of Ark Capital's provision of the Services.

- 13.6 You may incur additional fees for the purchase of optional, value added services Ark Capital may offer from time to time.
- 13.7 For the avoidance of doubt, our fees are exclusive of any value-added tax ("**VAT**"), which would be payable by you in addition to our fees. VAT has been introduced in the UAE from 1 January 2018. It may be, depending on various factors set out in the applicable laws and regulations that such VAT may not apply to the services provided by us to you and in such cases we will act accordingly.

#### **14 Liability for Loss and Indemnities**

- 14.1 We do not accept any liability for loss, including loss of profit, costs or expenses suffered or incurred by you as a result of or in connection with the Services provided herein by us unless, and then only to the extent that, such loss, costs or expenses are caused (directly or indirectly) by the fraud, negligence or wilful default on our part or our staff in the provision of such Services. Without prejudice to the generality of, but subject to, the foregoing we do not accept liability for any adverse tax consequences which may arise as a result of the purchase, retention or disposal of Investment by you.
- 14.2 Without prejudice to any other rights we may have under these Terms or otherwise, you shall indemnify us and any persons connected with us against any cost, expense, damage, loss or liability whatsoever which may be suffered or incurred by us or any person connected with us as a result of any transaction in Investment.
- 14.3 Nothing contained in these Terms shall exclude or restrict any duty or liability which we may have under the regulatory system applicable to the DIFC.

#### **15 Recording of Telephone Calls**

The Client hereby acknowledges and agrees that any telephone calls made between us our agents or representatives, or you or your agents or representatives or any third parties may be recorded by us. Our records of all instructions, communications, commitments, notices or requests given by you or your agents or your representatives or any third parties by telephone shall be conclusive proof thereof and such records shall be our sole property. We may rely and act on instructions, commitments, notices or requests without any receipt of written confirmation.

#### **16 Client Confidentiality**

- 16.1 You hereby irrevocably authorise us to disclose, as and when required to do so by applicable law or we regard such disclosure as necessary or expedient, any information relating to the Client on Client's behalf ("**Client Information**") in accordance with Annex A, and in particular to:
- 16.1.1 affiliates of Ark Capital and any related party to the transaction
  - 16.1.2 our auditors, professional advisers and any other person(s) under a duty of confidentiality to Ark Capital;
  - 16.1.3 bankers or lenders in connection with each asset we buy;
  - 16.1.4 vendors, installers, maintainers or Services of our computer systems;

- 16.1.5 any exchange, market, or other authority or regulatory body having jurisdiction over us, its head office or any other branch of ours;
  - 16.1.6 any party entitled to make such demand or request;
  - 16.1.7 any person with whom we contract or propose to contract with regard to the sale or transfer or sharing of any of its rights, obligations or risks under the Terms;
  - 16.1.8 any person (including any agent, contractor or third party service provider) with whom we contract or propose to contract with regard to the provision of Services in respect of the Client's account(s);
  - 16.1.9 any person employed with, or engaged as an agent by us or our related party including any relationship officers, for the purposes of or in connection with interactions with the Clients or providing Services to the Clients or processing transactions pertaining to the Clients' account(s);
  - 16.1.10 pursuant to any court order or judgement or other order from any authority having legal binding effect;
  - 16.1.11 to enable us to centralise or outsource its data processing and other administrative operations to our related party or third parties engaged by us (whether within or outside DIFC) for any such Services/operations; and
  - 16.1.12 to any regulatory or governmental or other authority with relevant powers to which either us or you is subject to or submits to (whether or not the authority has the force of law).
- 16.2 Clause 12 shall apply to the extent that Client Information constitutes Your Data.
- 16.3 You hereby authorise us to use the services of other members, related parties or external service providers to undertake certain delegated activities on your behalf.

## **17 Variation**

We reserve the right to alter, delete, modify or add to any or all of these Terms at any time as per our discretion. Such alterations, deletions or additions shall be deemed to be effective and binding on the Client 30 days after the notice thereof is issued to the Client, unless it is impracticable in the circumstances to give such notice.

## **18 Termination**

- 18.1 These Terms may be terminated forthwith by either party by giving a written notice to the other party. Such termination would be effective either immediately as agreed; else the agreement would be terminated 30 days after a notice has been issued to the other party, with or without reason. Any such termination will not affect any accrued right, or any commitment already entered into by you or by us on your behalf. Email communication is accepted as a valid instruction to cancel these terms.
- 18.2 Upon your termination of these Terms, all amounts payable by you to us will become immediately due and payable including (without limitation) outstanding fees, charges and commissions.

- 18.3 Notwithstanding the termination of these Terms, the obligation of each party under these Terms shall continue to be governed by these Terms until such obligations are concluded. Any amount due to you from us will be paid on the termination of these Terms, provided there are no outstanding amounts due from you, in which case the amounts payable to you will be set off against the amounts due to us.
- 18.4 We may not fulfil any of the above obligations wherein we are of the opinion that there exist certain exceptional circumstances which necessitate termination of account (e.g. where the account is used for criminal, terrorist or anti money laundering activities or where the account is required to be terminated to comply with the regulatory/statutory requirements etc).

## **19 Notification**

Any question, matter or dispute in relation to a transaction must be raised by you in writing within 30 days from the receipt of confirmation that the transaction has been effected. Unless the same is raised by you in such manner, the transaction shall be conclusive and binding upon you.

## **20 Authority and Consents**

You warrant that you will:

- (a) Obtain and maintain in effect in relation to all transactions all necessary consents by any government or regulatory body (the "**Consents**");
- (b) Comply with the Terms of all such Consents and all applicable laws, regulations and directives of such bodies and authorities;
- (c) Forthwith on demand deliver to us copies of all such Consents or such other evidence of any such Consents and such evidence or compliance with such and with any laws, regulations and directives as we may reasonably require.

## **21 Delegation**

- 21.1 You authorize us to delegate any of our functions and responsibilities under these Terms to Ark Capital or any of our external service providers (with or without power to sub delegate). We reasonably consider these parties to be capable of discharging those functions and responsibilities to the same standards that we would, and enter into appropriate and enforceable, legal arrangements. These parties may be located in jurisdiction outside the DIFC.
- 21.2 Our liability to you for the matters delegated will not be affected as a result. You authorise us to delegate all functions and responsibilities without obtaining any further consent from you.

## **22 Force Majeure**

In the event of any failure, interruption or delay in performance of our obligation resulting from acts, events or circumstances not reasonably within our control, including but not limited to, industrial disputes, acts, or regulations of any governmental, or supranational bodies, or authorities, breakdown, failure or malfunction of any telecommunications or computer Services, acts of God, fire, civil

commotion, insurrection or embargo, we shall not be liable or have any responsibility of any kind for any loss of damage thereby incurred or suffered by you.

**23 Illegality**

If any of these Terms or any part hereof shall become or be declared illegal, invalid or unenforceable for any reason whatsoever, such terms, provision or part shall be divisible and deemed to be deleted from these Terms. Provided such deletions does not substantially affect or alter the commercial basis of these Terms. The parties shall negotiate in good faith to amend and modify them as necessary or desirable in the circumstances.

**24 Entire Agreement**

These Terms embody and set forth the entire agreement and understanding between you and we, the Services provided herein will supersede all prior oral or written agreements, Terms, understandings or arrangements relating to its subject matter, nothing in this clause will be taken to limit either party's liability for fraudulent misinterpretation.

**25 Governing Law**

The rights and obligations of the parties under these Terms shall be governed by constructed and interpreted in accordance with the laws of the DIFC/DFSA. The parties hereto irrevocably agree that the courts of DIFC are to have jurisdiction to settle any lawsuit, action or proceeding to enforce the Terms ("**Proceeding**"). Without prejudice to the forgoing, you further irrevocably agree that any proceedings may be brought in the courts of such other jurisdictions or jurisdictions as we may from time to time select. You are required to irrevocably appoint an agent for Services of the process in Dubai and notify us accordingly.

**26 Interpretation**

Unless the context otherwise requires, or unless expressly defined in these Terms, words and phrases define in the DIFC/DFSA requirement have the same meaning in these Terms.

**27 Additional Confirmation by Secondary Account Holder**

In addition to the foregoing declarations constituted by my/our signature(s) below, I/We also confirm that all Investment decisions relating to the joint account are generally made for me/us or on my/our behalf by the Primary Account Holder(s).

I/We certify that I/we have read and understood the Client Agreement, inclusive of the Terms of Business. By affixing my/our signature/s below (whether properly authorised or purported to be properly authorised) I/We agree to be bound to the terms and conditions of all of the above-mentioned.

Signature/s for and on behalf of the Client being duly authorised to do so:

.....

Name:

Date:

Designation:

Accepted on the terms set out above:

Signature/s of a duly authorised representative of

**Ark Capital Management (Dubai) Limited**

.....

Name:

Date:

Designation:

# Ark Capital Management (Dubai) Limited

## Annex A – Details of personal data processing

Ark Capital Management (Dubai) Limited is the controller of Your Data. We take the privacy and security of personal data seriously and responsibly and this Annex A sets out how we process Your Data.

We reserve the right to amend this Annex A from time to time. We will take steps to inform you of any such update by appropriate means (e.g. through publication of a notice on our official website), depending on how we normally communicate with you. We encourage you to review any updates to Annex A to remain informed about how we are protecting Your Data.

### 1 Data we process

Your Data processed by or on behalf of us in connection with these Terms will consist of the information we obtain from you such as your name, address, contact details, financial account information, date / place of birth, gender, nationality, marital status, family relationship, legal capacity, employed / self-employed, identification data (e. g., identification document data), authentication data (e. g. specimen signature), tax-ID. It will also consist of information we obtain from third parties such as credit reference agencies, crime prevention agencies and other similar organizations about your financial holdings, creditworthiness and dealings, and also information that we learn about you from the transactions you undertake with us, such as information about the investments you make, enquiries and contacts we have with or from you, information and records on your interaction with our Investments and Services.

### 2 Are you obliged to provide Your Data?

Within the scope of our business relationship with you, we may request personal data that is necessary for the purposes of providing you with Investments and Services. In particular, provisions of money laundering law require that we verify your identity before establishing the authority / authorization, for example, by means of your identity card and that we record your name, place of birth, date of birth, nationality and your residential address. In order for us to be able to comply with such statutory obligations, you must provide us with the necessary information and documents and notify us without undue delay of any changes that may arise during the course of our business relationship with you. If you do not provide us with the necessary information and documents, we may not be permitted to institute or continue the provision of Investments and/or Services to you.

### 3 Purposes and legal bases for which we process Your Data

We process Your Data in compliance with Data Protection Law and other applicable data protection law applicable to us in other regions. We will only process Your Data on the following legal bases and for the purposes for which it was collected, as follows:

#### 3.1 for the performance of contractual obligations:

3.1.1 Meeting our obligations under these Terms and providing the Services referred to, including obtaining data from the Investment providers/manufacturers/distributors/Third parties through which we had



arranged Investments for you. This data would be strictly used for our internal processes, maintenance and updating our records with regard to the Investments/Services that were obtained through us;

3.2 for compliance with a legal obligation:

3.2.1 We may use Your Data if it is necessary to comply with the requirements of a regulatory authority or law to which we are subject, including:

- (a) financial regulations in compliance with which we set up security measures in order to prevent abuse and fraud, detect transactions which deviate from the normal patterns and record, when necessary, phone calls;
- (b) prevention of money-laundering and financing of terrorism; and
- (c) reply to an official request from a duly authorised public or judicial authority.

3.3 for the purposes of safeguarding legitimate interests. Where necessary, we process your data above and beyond the actual performance of our contractual obligations where necessary for legitimate interests pursued by us or by a third party. Examples include:

3.3.1 Assessing and identifying Investments or Services that may be of interest to you;

3.3.2 Providing better servicing;

3.3.3 Detecting and preventing crime, including without limitation, fraud and money laundering;

3.3.4 Transferring data to our service providers, including providers of information technology services for the purpose of receiving support or back-up services from them;

3.3.5 Asserting legal claims and mounting a defense in the event of litigation;

3.3.6 Voice recording for traceability and / or regulatory purposes;

3.3.7 Preventing, detecting and investigating crimes, including fraud;

3.3.8 Measures for building and systems security (e.g. access control); and

3.3.9 as otherwise set out in clause 12 and Annex A of these Terms. We do not undertake automated decision-making or profiling in relation to you.

#### **4 Disclosure and Recipients of Your Data**

In accordance with clause 16 of these Terms, we may disclose Your Data or any information relating to you for the purposes set out in clause 12 and Annex A of these Terms, to the following recipients:

- (a) affiliates of the Ark Capital Management (Dubai) Limited and any related party to the relevant transaction;

- (b) our auditors, professional advisers and any other person(s) under a duty of confidentiality to the Ark Capital Management (Dubai) Limited;
- (c) banks or lenders in connection with each asset we buy;
- (d) vendors, installers, maintainers or Services of our computer systems;
- (e) any exchange, market, or other authority or regulatory body having jurisdiction over us, its head office or any other branch of ours;
- (f) any party entitled to make such demand or request;
- (g) any person with whom we contract or propose to contract with regard to the sale or transfer or sharing of any of its rights, obligations or risks under the Terms;
- (h) any person (including any agent, contractor or third party service provider) with whom we contract or propose to contract with regard to the provision of Services in respect of the Client's account(s);
- (i) any person employed with, or engaged as an agent by us or our related party, including any relationship officers, for the purposes of or in connection with interactions with the Clients or providing Services to the Clients or processing transactions pertaining to the Clients' account(s);
- (j) to any regulatory or governmental or other authority with relevant powers to which either us or you is subject or submits (whether or not the authority has the force of law); and
- (k) to our related parties and service providers and /or third parties.

## **5 Particular purposes for which we may disclose Your Data**

In connection with the purposes set out at (3) above, we may in particular disclose Your Data to the above recipients for the following purposes:

- (a) to the extent required by law; or
- (b) to the extent required by any regulatory or governmental or other authority with relevant powers to which either us or you is subject or submits (whether or not the authority has the force of law); or
- (c) where required for the purposes set out in these Terms and to the extent that Your Data is in or has come into the public domain through no fault of that party; or
- (d) to the extent that you have given prior written consent to the disclosure; or

- (e) to the extent necessary to obtain any relevant tax clearances from any appropriate tax authority; or
- (f) for assessing and identifying appropriate Investments or Services for you; or pursuant to any court order or judgement or other order from any authority having legal binding effect; or
- (g) to enable us to centralise or outsource our data processing and other administrative operations to our related party or third parties engaged by us (whether within or outside the DIFC) for any such Services/operations.

## **6 Retaining Your Data**

We shall retain information about you for the longer of the period required in order to comply with applicable laws and regulations or another period to the extent necessary for legal, regulatory, internal requirements, prevention of fraud, and financial crime, responding to legal claims or regulatory requests, or our operational requirements, such as proper account maintenance, facilitating client relationship management.

If Your Data is no longer required for the performance of our contractual and statutory obligations, it is regularly deleted, unless its further processing (for a limited time) is necessary for the following purposes:

- (a) Compliance with records retention periods under commercial and tax law, laws relating to the accounts of credit institutions, regulations on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing and financial sector law. The records retention periods prescribed therein at least 6 years following the end of the relationship; or
- (b) preservation of evidence within the scope of statutes of limitations as required under local law.

## **7 Transferring Your Data Overseas**

When processing Your Data for the purposes set out in these Terms, we may share Your Data with persons in jurisdictions outside the DIFC that do not offer privacy protection comparable to that offered by the DPL, in which case we will put in place any safeguards required by the DPL in relation to such data sharing. For the purposes of executing instructions, Your Data may also be exchanged with recipients who are based in jurisdictions outside the DIFC and we will also apply such safeguards to this data sharing. To obtain a copy of these safeguards or details on where they are available, you can send a written request to the contact details at paragraph 9 below.

## **8 Your Data Protection Rights**

Every data subject has certain rights available to them under the DPL. These include:

- (a) a right to withdraw consent (where this was the basis relied on for processing personal data)

- (b) a right of access (to receive copies of any personal data we hold about you);
- (c) a right to request rectification of your personal data (if inaccurate or incomplete),
- (d) a right to erasure (e.g. if it is no longer required for the purpose for which it was collected),
- (e) a right to object or restriction of processing (if the personal data we hold is irrelevant or is being processed in a way which does not comply with Data Protection Law)

To exercise your rights under the DPL, please contact us at the details given in paragraph 9 below. Data subjects also have a right to lodge a complaint with the supervisory authority in relation to how their personal data is being used.

## **9 Contact**

If you have questions regarding how we process Your Data or on individuals' rights under the DPL please contact our Data Protection Officer (DPO) at: [•]

You may also contact us at our postal address:

FAO Data Protection Officer (DPO)  
Unit - S2402, Floor-24, Emirates Financial Towers,  
Dubai International Financial Centre, Dubai, 211036,  
United Arab Emirates