

# Custodial Services Agreement

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# Custodial Services Agreement

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## 1 Definitions and interpretation

### 1.1 Definitions

**AML/CTF** means anti-money laundering, counter-terrorist financing, Sanctions and non-proliferation of weapons of mass destruction.

**Amount Owing** means all amounts that:

- (a) at any time;
- (b) for any reason or circumstance in connection with this agreement (including transactions in connection with it);
- (c) whether at law or otherwise; and
- (d) whether or not of a type within the contemplation of the Parties at the date of this agreement,
  - (i) are payable, are owing but not currently payable, are contingently owing, or remain unpaid, by the Client to the Custodian;
  - (ii) the Custodian has advanced or paid on the Client's behalf or at the Client's express or implied request;
  - (iii) the Client is liable to pay by reason of any act or omission on the Client's part, or that the Custodian has paid or advanced in the protecting or maintaining this agreement following an act or omission on the Client's part; or
  - (iv) are reasonably foreseeable as likely, after that time, to fall within any of the above paragraphs.

This definition applies:

- (A) irrespective of the capacity in which the Client or the Custodian became entitled to, or liable in respect of, the amount concerned;
- (B) whether the Client or the Custodian is liable as principal debtor, as surety, or otherwise;
- (C) whether the Client is liable alone, or together with another person;
- (D) even if the Client owes an amount or obligation to the Custodian because it was assigned to the Custodian, whether or not:
  - (aa) the assignment was before, at the same time as, or after the date of this agreement;
  - (ab) the Client consented to or was aware of the assignment; or
  - (ac) the assigned obligation was secured before the assignment;
- (E) even if this agreement was assigned to the Custodian, whether or not:

- (aa) the Client consented to or was aware of the assignment; or
- (ab) any of the Amount Owing was previously unsecured.

For the avoidance of doubt, Amount Owing includes all fees (where applicable), and Costs incurred by the Custodian in carrying out its functions and/or exercising its rights and discretions under and in accordance with this agreement (which includes the Costs of any agent, delegate, nominee or custodian appointed by the Custodian under this agreement).

**Applicable Law** means common law, principles of equity, and laws made by a government or relevant Authority, including regulations, rules, office directives, requests, policies, codes, circulars, guidelines or other instruments (whether or not having the force of law), and consolidations, amendments, re-enactments or replacements of any of them from time to time.

**Authorised Person** means any person the Client authorises (either alone or collectively) and the Custodian approves to act on behalf of the Client in connection with this agreement.

**Authority** means any government (including its instrumentalities) or regulatory authority, enforcement body or agency in Hong Kong or (if applicable) outside Hong Kong, including Tax authorities.

**Associate** means an associated company as defined under the Companies Ordinance (Cap. 622 of the laws of Hong Kong).

**Business Day** means a day that is not a:

- (a) Saturday;
- (b) Sunday;
- (c) general holiday (as defined in the General Holidays Ordinance (Cap. 149 of the Laws of Hong Kong); or
- (d) day on which a tropical cyclone No. 8 or above or a "black" rainstorm warning is hoisted in Hong Kong at any time between 9:00 am and 5:00 pm and, if hoisted before 11:59 am on that day, is not lifted before 12:00pm on that day.

**Client** means the person approved as such by the Custodian.

**Client Assets** means any assets held by Fusang Custody Limited on behalf of Clients, including but not limited to Virtual Assets, Securities and Fiat Currencies.

**Commencement Date** means the date of this agreement.

**Costs** includes costs, charges and expenses, including those in connection with engagement of third party service providers (on a full indemnity basis) including legal advisers, trustees, or any agent, delegate nominee or custodian appointed by the Custodian.

**Custodial Services** means the services provided by the Custodian to the Client under this agreement.

**Custodial Wallet** means the multi-signature wallet for the purpose of holding the Client Assets which is held with the Custodian under the name of the Client pursuant to this agreement.

**Custodian** means Fusang Custody Limited, a private company limited by shares incorporated under the laws of Hong Kong with company number 2817789, and a licensed “trust or company service provider” under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) with licence number TC006585, having its registered office at 13/F, BOCG Life Assurance Tower, 136 Des Voeux Road Central, Hong Kong

**Custodian Website** means the website at [vault.fusang.co](http://vault.fusang.co).

**Dispute** includes any dispute, controversy, difference or claim arising out of or in connection with this agreement or the subject matter of this agreement, including any question concerning its formation, validity, interpretation, performance, breach and termination.

**Fiat Currency** means any asset that is:

- (a) legal tender in a country or territory; and
- (b) customarily used and accepted as a medium of exchange in its country or territory of issue.

**Financial Crime Regulations** means all relevant financial crime regulations, including any applicable law, rules, internal policy or regulatory requirement pertaining to money laundering, terrorism financing, bribery, corruption, tax evasion, fraud, the trafficking of arms, drugs, humans or wildlife, slavery, proliferation of weapons of mass destruction, or evasion of sanctions.

**Force Majeure Event** means any event that is beyond the control of the Custodian and prevents it from performing its obligations under this agreement, including:

- (a) acts of God or a public enemy;
- (b) acts of a civil or military authority;
- (c) embargoes;
- (d) natural disasters;
- (e) pandemic;
- (f) labour disputes;
- (g) failure in systems or of equipment; or
- (h) any law, decree, regulation or order of any Authority or any court or tribunal.

**Hong Kong** means the Hong Kong Special Administrative Region of the People's Republic of China.

**HKIAC** means the Hong Kong International Arbitration Centre.

**Insolvency or Insolvent** means, for a person, the occurrence of any corporate action, legal proceedings or other step in relation to, or the indication by the person of its consent or approval to:

- (a) suspension of payments, moratorium on indebtedness, bankruptcy, winding-up or composition or arrangement with creditors;
- (b) the appointment of a receiver, administrator in respect of that person or any of their assets; or

- (c) attachment, sequestration, distress or execution affecting any of their property or the enforcement of any security over their assets.

**Instruction** means an instruction that the Custodian believes in good faith to have been given by the Client in accordance with the requirements set out on the Custodian Website.

**Labuan Financial Services and Securities Act** means the Labuan Financial Services and Securities Act 2010 (Act 704 of the Laws of Malaysia).

**Loss** includes any loss, damage, demand, claims, liabilities and Costs of any kind.

**Mainland China** means People's Republic of China.

**Parties** means the Custodian and the Client.

**Proscribed Person** means a person who appears to the Custodian to:

- (a) be in breach of the laws of any jurisdiction relating to AML/CTF or the subject of any Sanction;
- (b) appear in a list of persons with whom dealings are proscribed by the United Nations or the government or a regulatory Authority of any relevant jurisdiction; or
- (c) act on behalf, or for the benefit of, any person described in paragraph (a) or (b) above.

**Rules** shall have the meaning ascribed to it in clause 14.4.

**Sanctions** means any economic sanctions laws, regulations, embargoes or restrictive measures imposed by the United Nations Security Council and/or Hong Kong, the United States of America, the European Union or its member states.

**Securities** means "securities" as defined in the Labuan Financial Services and Securities Act, and "Security" is to be interpreted accordingly.

**Software** means the software (including any files, images, tables and data incorporated in or generated by the software and data accompanying the software) comprised in the Custodial Services.

**Taxes** means taxes, levies, imposts, charges and duties imposed by any Authority (including stamp and transaction duties) together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, the overall net income of the Custodian.

**Termination Event** means each of the events listed in clause 10.3.

**Virtual Asset** means any asset that is:

- (a) expressed as a unit; and
- (b) capable of being transferred, stored and traded on a peer-to-peer basis.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document:

- (a) the singular includes the plural and vice versa;



- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (e) a reference to “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an Authority or any other entity or organisation;
- (f) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to Hong Kong time;
- (h) a reference to dollars, \$ or HK\$ is a reference to the currency of Hong Kong;
- (i) a reference to “**law**” includes common law, principles of equity and legislation (including regulations);
- (j) a reference to any ordinance includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (k) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (l) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and each of them individually;
- (m) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (n) a reference to anything (including an amount) is a reference to the whole and each part of it;
- (o) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (p) if a Party must do something under this document on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day; and
- (q) if the day on which a Party must do something under this document is not a Business Day, the Party must do it on the next Business Day.

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## 2 Custodial Services

### 2.1 Appointment of Custodian

The Client appoints the Custodian to act as its custodian to hold the Client Assets on trust for the Client in accordance with the provisions of this agreement and subject to Applicable Laws.

## **2.2 Establishment of Custodial Wallet**

- (a) The Custodian agrees to establish and maintain one or more Custodial Wallets for the Client for the purposes of clause 2.1.
- (b) The Custodian's establishment and maintenance of each Custodial Wallet is subject to:
  - (i) the Client providing all necessary information that the Custodian requires;
  - (ii) the Custodian carrying out any verification checks and other assessments that the Custodian may be required to perform under Applicable Laws or in accordance with its policies; and
  - (iii) any other conditions imposed by the Custodian at its discretion.
- (c) The Client may use each Custodial Wallet to store, transfer, track and manage relevant Client Assets approved by the Custodian, subject to this agreement, the procedures set out on the Custodian Website and any other conditions imposed by the Custodian at its discretion.

## **2.3 Custodial Wallet information**

The Client can view the Client Assets in each Custodial Wallet and relevant transactions by following the procedures set out on the Custodian Website. The Custodian does not issue statements.

## **2.4 No investment**

The Parties acknowledge and agree that the Custodian is under no obligation to invest the Client Assets for and on behalf of the Client. This is without prejudice to the rights of the Custodian where clause 6 applies.

## **2.5 'Know your client' information**

- (a) The Client must promptly, upon the request of the Custodian, supply such information, documentation and authorisation in order for the Custodian to carry out all necessary "know your customer", AML/CTF requirements and comply with all Applicable Laws.
- (b) The Client must promptly notify the Custodian in writing of any change in any information, documentation or authorisation provided to the Custodian, and submit evidence or supporting document of such change.

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# **3 Consideration and payments**

## **3.1 Consideration**

Each Party acknowledges entering into this agreement and incurring obligations and giving rights under this agreement for valuable consideration received from each other Party.

## **3.2 Costs and other amounts payable to the Custodian**

The Client agrees to pay the Custodian:

- (a) any Costs incurred by the Custodian in providing the Custodial Services including any charges levied in respect of any services provided by third parties;
- (b) any Taxes and charges which are payable in connection with this agreement; and

- (c) any other applicable Amounts Owning to the Custodian,
- in each case as notified by the Custodian.

### **3.3 Calculations and other determinations**

The calculations and other determinations and records of the Custodian are final and binding on the Client in the absence of error.

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## **4 Access to the Custodial Services**

### **4.1 Access rights and availability**

- (a) The Custodian grants to the Client a non-exclusive, non-transferable personal right to access and use the Custodian Website to use the Custodial Services, subject to this agreement.
- (b) The Custodial Services may not be available at certain times. In particular, there may be downtime period (as advised on the Custodian Website) when the Client will not be able to access the Custodial Services. The Custodian may also periodically shut down the Custodial Services and interrupt any automatic functions for the following reasons:
  - (i) system and Software maintenance;
  - (ii) seasonal holidays; and
  - (iii) any other event that the Custodian considers requires suspension of the Custodial Services.
- (c) There are other events that may interrupt or prevent the Client's access to the Custodial Services.
- (d) For the purpose of accessing and using the Custodial Services, the Custodian grants to the Client a non-exclusive, non-transferable personal licence in relation to the Software. The Custodian does not transfer title to nor grant any interest in the Software to the Client.

### **4.2 Limitations on use**

- (a) The Client may only use the Custodial Services, the Custodian Website, the Software and any other information, services and materials that are available through the Custodian Website for its own needs.
- (b) The Client may not allow or permit any other person to access or use any such information, services or materials or otherwise deal with them for the benefit of any other person or in any way that is not specifically contemplated by this agreement (including by way of downloading, copying, reproducing, adapting, publishing, selling, or distributing them) without the Custodian's express written consent, which the Custodian may reject or grant at its own discretion, with or without conditions.
- (c) The Client agrees that before accessing or using the Custodial Services while outside its jurisdiction of domicile and/or residency, as notified to the Custodian, the Client will ensure that the Client would not be breaking any laws, rules or regulations in that other jurisdiction by doing so.
- (d) The Custodian reserves the right to withdraw or suspend the Client's right to access and/or use the Custodial Service and/or the Software (or any part of them) at any time without prior notice to or any consent from you and without assigning any reason for that action.

### **4.3 Third party services**

The Custodian may use certain service providers to make certain functions or information available to the Client. The Client may change any service provider at any time without prior notice. In addition to this agreement, the Client's use of the Custodial Services is subject to the terms and conditions imposed by relevant third parties from time to time, as notified to the Client.

### **4.4 Maintaining sufficient Client Assets**

- (a) The Client agree at all times to maintain sufficient Client Assets in each Custodial Wallet for the purpose of effecting its Instructions and for paying any Amounts Owed.
- (b) The Client acknowledges and agrees that if at any time there are (having regard to other payments debited or due to be debited) insufficient Client Assets in a relevant Custodial Wallet, the Custodian may, in the Custodian's absolute discretion and without any obligation to do so:
  - (i) decline to execute the Client's Instructions;
  - (ii) force-sell any Client Assets held by the Custodian on the Client's behalf; and
  - (iii) transfer Client Assets as necessary from any other Custodial Wallet without further instruction or sanction from you,in addition to any other rights it may have under Applicable Law.

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## **5 Client Assets transaction and Instructions**

### **5.1 Client Assets**

- (a) The Custodian only accepts Client Assets for the purposes of the Custodial Services.
- (b) The Custodian will not accept any deposit and withdrawal of Client Assets which are from or to any onshore banks of the Mainland China and the Custodian assume no responsibility for any issues, liabilities or losses resulting from the transfer of Client Assets to and from such bank.
- (c) Notwithstanding clause 5.1(a), the Custodian reserves the right at any time to refuse to take or continue to accept Client Assets. Where the Custodian exercises this right, the Client agrees to accept or procure the delivery and transfer of the Client Assets out of each relevant Custodial Wallet as soon as reasonably practicable and at its own expense.

### **5.2 Client Asset transactions**

- (a) The Client may send, receive and store the Client Assets by providing Instructions to the Custodian.
- (b) The Client may also request the Custodian to transfer the Client Assets from the Custodial Wallet to a specified blockchain address by providing Instructions to the Custodian. The Client must ensure that there are sufficient Client Assets in the Custodial Wallet to cover any such transaction.
- (c) The Custodian may charge a fee for sending Client Assets to, or transferring Client Assets from, a Custodial Wallet, as set out on the Custodian Website.

### 5.3 Limits

- (a) The Custodian may from time to time implement a number of filters for the purpose of implementing limits in relation to the Custodial Services and the Client's activities. Such limits may apply to one or more Custodial Wallet and/or Client Assets and may change from time to time. The Client may be prevented from entering into transactions at certain times and the Client's Instructions may be rejected (even though other Instructions may have been accepted in excess of those limits).
- (b) The Custodian may, in its sole discretion, with or without notice to the Client, vary the limits or procedures at any time and, in the case of limits, by any level. The Client may also stipulate that such limits or procedures will apply to existing positions as well as new positions in the Client Assets affected by such variation. The Client acknowledges that the Custodian may, in certain market conditions, effect an immediate change in limits or procedures and the Client waives any right to object on the grounds that any limit is unreasonable.
- (c) Any filter, limit or procedure imposed by the Custodian is solely for the Custodian's protection. The Client must not rely on them as its security or compliance feature. The Custodian has no responsibility for monitoring or ensuring the Client's compliance with any limits imposed on its activities by itself or Applicable Law. The Client agrees not to take any action that may cause the Client to violate any applicable limits on its activities.

### 5.4 Instructions generally

- (a) The Client authorises the Custodian to accept, rely upon and/or act upon any Instructions received by it without inquiry. The Client acknowledges and agrees that once given, an Instruction cannot be revoked and if acted on by the Custodian, the Instruction will be binding on the Client.
- (b) The Custodian reserves the right at all times to decline to accept the Client's Instructions, without giving any reason or explanation or prior notice. For example, the Custodian may, in addition to any other rights it may have:
  - (i) decline to act on the Client's behalf or accept the Client's Instructions where the Custodian believes that the Instruction could result in a breach of any Applicable Law, or that it is unclear, ambiguous or incomplete;
  - (ii) where the Client, or a person the Custodian believes is connected with the Client, appears to be a Proscribed Person, refuse to process or complete any Instruction, suspend the provision of a product or service to the Client, refuse to allow or to facilitate any of the Client Assets held by the Custodian to be used or dealt with, refuse to make any Client Assets available to the Client or to any other Proscribed Person or other person or terminate this agreement; and
  - (iii) decline to act where there are insufficient Client Assets in the Custodial Wallet to carry out the Instruction, or where the transaction does not comply with any limit that applies.
- (c) If the Custodian exercises its rights under clause 5.4(b)(iii), the Client must pay the Custodian on demand any Loss that the Custodian incurs in relation to any action taken under that clause or any Applicable Law.

## **5.5 Giving and receiving Instructions**

- (a) The Client must give the Custodian Instructions in accordance with the requirements set out on the Custodian Website or as otherwise specified by the Custodian
- (b) Subject to the Custodian's discretion to reject any Instruction, all Instructions are only valid and effective if actually received by the Custodian on a Business Day.
- (c) Subject to the Custodian's discretion to reject any Instruction, the Custodian will execute the Client's Instructions within a reasonable time.
- (d) The Client:
  - (i) authorises the Custodian to accept Instructions on its behalf from each Authorised Person (if any) and the Client confirms that each Authorised Person has the power to give Instructions on the Client's behalf;
  - (ii) agrees that the Custodian may assume the authenticity of any Instructions given or purportedly given by the Client or any Authorised Person, or that any person claiming to be the Client's authorised representative is in fact that person. The Custodian is not obliged to enquire into any of these matters; and
  - (iii) authorises the Custodian to act upon any Instruction that the Custodian believes to be authentic and valid. The Custodian may conclusively rely on the Instructions if the Custodian believes that the Instructions were given by the Client or its Authorised Person (if any) and are duly authorised, accurate and complete, even though this is incorrect and even if the Client sends the Custodian further communications that differ in any respect from such Instructions.

## **5.6 Confirmation of Instructions**

The Custodian may, but is not required to, acknowledge the Client's Instructions in writing, in person or by telephone or email.

## **5.7 Execution via multiple transactions**

The Custodian may complete the Client's Instructions by multiple transactions and the Client authorises the Custodian to accumulate those transactions on a single record and specify the volume weighted average price for those transactions.

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# **6 Custodian's use of the Client Assets**

## **6.1 Application**

This clause 6 only applies where the Client has provided express written consent to its application.

## **6.2 The Custodian not precluded from entering into transactions**

- (a) The Custodian may, without giving notice to the Client:
  - (i) acquire, hold or dispose of any Client Assets of the Client;
  - (ii) enter into any transaction with any such person in respect of the Client Assets; and

- (iii) otherwise use, transfer, commingle, assign, pledge or rehypothecate the Client Assets of the Client,

for its own purposes at its absolute discretion, free from any claim or right of any nature of the Client, and in each case with the same rights as it would have had if the Custodian were not acting as trustee.

- (b) Where the Custodian exercises its rights under clause 6.2(a), the Custodian will transfer assets of an identical type, and in the same amount, of the relevant Client Assets back to the Client upon the Client's demand. The Custodian makes no representations, warranties or undertakings with respect to such returned Client Assets.

### **6.3 Retention of benefits**

The Custodian may retain for its own account all fees, profits, interest, income or other benefits received in connection with its use of the Client Assets under clause 6.2(a). The Client waives and relinquishes in favour of the Custodian all claims for such fees, profits, interest, income or other benefit that may accrue with respect to such Client Assets.

### **6.4 No segregation of assets**

- (a) The Custodian may at its sole discretion place any Client Assets in one or more other wallet(s) together with the assets of the Custodian or which the Custodian holds for other persons. For the avoidance of doubt, the Custodian is not obligated to place all Client Assets of any Client in a single wallet, and has the discretion to place them in one or more other wallet(s) as it thinks fit.
- (b) The Client acknowledges that:
  - (i) subject to clause 6.2, the Custodian is not bound to identify or deliver the same Client Assets as any others previously stored in the Custodial Wallet; and
  - (ii) in the event of an irreconcilable shortfall in the Custodian's holdings (for any reason), the Client may not receive full entitlement and return of the Client Assets, and may share in that shortfall pro-rata among other clients of the Custodian.

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## **7 The Custodian's rights and powers**

### **7.1 Advice**

- (a) The Custodian may seek the advice or opinion of any professional adviser or expert (including any lawyer, valuer, accountant, surveyor, banker, broker, auctioneer or auditors, investment bank or financial consultant) at the expense of the Client.
- (b) The Custodian and each of its directors, officers, employees and duly appointed agents may take, or omit to take, any action in accordance with the advice or opinion. The advice or opinion may be sent or obtained by letter, electronic communication or fax, and the Custodian and each of its directors, officers, employees and duly appointed agents may act in good faith on any advice or opinion purporting to be conveyed by such means even if it contains some error or is not authentic.

### **7.2 Agents and delegates**

The Custodian may, in the conduct of its business, instead of acting personally, employ and pay an agent or delegate (at the expense of the Client) selected by it

to transact or conduct any business and any act required to be done by the Custodian (including the receipt and transfer of Client Assets).

### **7.3 Responsibility for agents etc.**

If the Custodian exercises due care in selecting any sub-custodian, agent, delegate or nominee, it will not have any obligation to supervise or monitor such sub-custodian, agent, delegate or nominee.

### **7.4 Determinations conclusive**

The Custodian may reasonably determine all questions and doubts arising in relation to any of the provisions of this agreement. Such determinations, whether made upon such a question actually raised or implied in the acts or proceedings of the Custodian, will be conclusive and will bind the Custodian and the Client.

### **7.5 Conversions**

Where it is necessary to convert any Client Asset from one type to another, or to Fiat Currency, the relevant Client Asset will (unless otherwise provided in this agreement or required by law) be converted at such rate or rates, in accordance with Applicable Law and such method and as at such date as may be specified by the Custodian but having regard to current conversion rates, if available. Any rate, method and date so specified will be binding on the Client.

### **7.6 Illegality of Client Assets**

Nothing in this agreement or any other document to which the Custodian is a party requires the Custodian to do anything which in its opinion may:

- (a) be illegal or contrary to any Applicable Law or requirement of any Authority, or the rules, policies and operating procedures of the Custodian (and the Custodian may do anything which is, in its opinion, necessary to comply with any of the foregoing);
- (b) which would or might otherwise render it liable to any person; or
- (c) cause or require it to expend or risk its own funds, assets or otherwise incur any Loss in the performance of any of its duties or in the exercise of any of its own rights, powers, authority or discretion under this agreement.

### **7.7 Discretion to act**

The Custodian has absolute and unfettered discretion to exercise or non-exercise its functions, rights, powers or discretion under this agreement.

### **7.8 Waiver of conflicts**

- (a) The Client acknowledges that circumstances may arise in which the Custodian or its officers, employees or agents has a material interest in a transaction or where a conflict of interest arises between the Client's interests and those of other clients or the Custodian.
- (b) The Client irrevocably waives, in favour of the Custodian, any conflict of interest which may arise by virtue of the Custodian exercising its rights under this clause 7.

### **7.9 No implied duties**

The Custodian is only required to perform the duties as set out in this agreement, and no implied duties or obligations may be read into this agreement with respect to the Custodian. In particular, there are no duties that would oblige the Custodian to accept responsibilities more extensive than those set out in this agreement or



which would prevent or hinder the Custodian in carrying out any of the activities contemplated by this agreement.

#### **7.10 Consent**

Any consent given to the Custodian, or any discretion to be exercised by the Custodian for the purposes of this agreement may be given on such terms and subject to such conditions (if any) as the Custodian thinks fit, and notwithstanding it may be contrary to this agreement.

#### **7.11 Professional fees**

Where the Custodian acts in the course of any profession or business, the Custodian is entitled to be paid all usual professional fees and disbursements for business conducted and acts performed by the Custodian on matters arising in connection with the trusts of this agreement.

#### **7.12 Force Majeure Events**

The Custodian is not responsible for any failure to perform any of its obligations (nor will it be responsible for any unavailability of the Client Assets credited to the Custodial Wallet) if such performance is prevented, hindered or delayed by a Force Majeure Event, in which case its obligations will be suspended for so long as the Force Majeure Event continues.

#### **7.13 Insurance**

The Custodian is not under any obligation to insure any Client Assets or Custodial Wallet, or to require any other person to maintain any such insurance.

#### **7.14 Forks**

- (a) The Custodian may choose to follow one or more chains resulting from a fork in a Client Asset.
- (b) The Custodian must publish its decision on the Custodian Website at least one Business Day before the occurrence of the fork, unless to do so is impossible or reasonably impracticable.

#### **7.15 Set-off**

The Custodian may at any time and without notice to the Client set off any amount the Custodian owes the Client against any amount that the Client owes the Custodian or, where more than one person constitutes the Client, that any one or more of those persons singly or jointly owes the Custodian (in either case, whether or not the obligation is matured or contingent).

#### **7.16 Powers and rights cumulative**

The rights and powers conferred on the Custodian by this agreement are in addition to any other rights or powers that the Custodian may otherwise have under general law or as holder of any of the Client Assets.

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## **8 Custodian representations and warranties**

### **8.1 Representations and warranties**

The Custodian represents and warrants that:

- (a) it has been incorporated or formed in accordance with the laws of its place of incorporation or formation, is validly existing under those laws and has power and authority to own its assets and carry on its business as it is now being conducted;

- (b) it has power to enter into this agreement, to comply with its obligations under it and exercise its rights under it;
- (c) it has in full force and effect each authorisation necessary for it to:
  - (i) enter into this agreement, to comply with its obligations and exercise its rights under it, and to allow them to be enforced; and
  - (ii) carry on any business it conducts;
- (d) its obligations under this agreement are valid and binding and are enforceable against it in accordance with its terms; and
- (e) it is not Insolvent.

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## **9 Client obligations**

### **9.1 Representations and warranties**

The Client represents and warrants that:

- (a) it has full legal capacity and power to enter into this agreement, to comply with its obligations under it and exercise its rights under it;
- (b) if the Client is a corporation:
  - (i) it has been incorporated or formed in accordance with the laws of its place of incorporation or formation, is validly existing under those laws and has power and authority to own its assets and carry on its business as it is now being conducted; and
  - (ii) the entry by it into, its compliance with its obligations and the exercise of its rights under, this agreement do not and will not conflict with:
    - (A) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
    - (B) any law binding on or applicable to it or its assets;
- (c) it has in full force and effect each authorisation necessary for it to:
  - (i) enter into this agreement, to comply with its obligations and exercise its rights under it, and to allow them to be enforced; and
  - (ii) carry on any activities it conducts;
- (d) its obligations under this agreement are valid and binding and are enforceable against it in accordance with its terms;
- (e) it is not Insolvent;
- (f) there is no current, pending or (to its knowledge, having made due enquiry), threatened proceeding, investigation or claim affecting it or any of its assets before a court, Authority, commission or arbitrator in which a decision against it is likely;

- (g) all Client Assets held by the Custodian from time to time, shall come from a legitimate (and not illegal) source and are not proceeds of any illegal or unlawful activity;
- (h) unless this agreement expressly states otherwise:
  - (i) it has entered into this document on its own initiative without relying on the Custodian or any of its Associates (in whatever capacity) or their advisers or on any representation, warranty, statement, undertaking or conduct of any kind made by any of them or on their behalf;
  - (ii) it has obtained its own Tax, legal, financial and other professional advice in relation to this agreement and the activities contemplated by it; and
  - (iii) it does not rely on the Custodian to meet any compliance obligations except as expressly set out in this agreement;
- (i) all Instructions in respect of the Client Assets will be given in accordance with the requirements specified by the Custodian;
- (j) it is responsible for its own Tax affairs, and is not committed or been convicted of any Tax or other criminal offence;
- (k) it is responsible for compliance with the applicable laws and regulations in its respective jurisdiction;
- (l) no Termination Event has occurred, nor has any event occurred which may, with the giving of notice or lapse of time or fulfilment of any condition, become a Termination Event;
- (m) it understands that the information provided on the Custodian Website is not intended for distribution to, or use by, the Client in any jurisdiction or country where such distribution or use would be contrary to law or regulation which the Client is subject to;
- (n) it understands the nature and risks of Client Assets and the Custodial Services, including those set out in clause 13, and will seek independent advice where necessary. The Client acknowledges that the Custodian does not provide advice and that the Client must rely on its own judgment, assessment or evaluation (with or without the assistance of an adviser) having regard to its own situation, objectives and particular needs before giving any Instructions;
- (o) each Authorised Person is duly authorised by the Client to operate, or contribute to the operation of, a Custodial Wallet or to otherwise act on behalf of the Client in connection with this agreement;
- (p) it acts as principal and not as agent or nominee for any other person, as trustee of any trust or on behalf, or the benefit, of any other person; and
- (q) it does not and will not hold any Client Assets (or any part of them) on behalf of any other person.

## 9.2 Repetition of representations and warranties

The representations and warranties in clause 9.1 are taken to be made on the Commencement Date and also made on each day during the term of this agreement.

### 9.3 Undertakings

The Client undertakes to:

- (a) pay on time all Amounts Owing for which the Client is liable for in respect of the Custodial Services;
- (b) ratify and confirm whatever the Custodian, or its agents, do or purport to do in compliance with this agreement;
- (c) act in accordance with any regulatory obligations for holding, receiving and transferring the Client Assets;
- (d) comply with all Applicable Laws and Financial Crime Regulations relevant to the Custodial Services, including those relating to AML/CTF and the Client Assets, and to do all such acts and things as may be necessary to enable the Custodian to comply with all Applicable Laws and Financial Crime Regulations;
- (e) only provide to the Custodian Instructions regarding the transfer of the Client Assets that involve a transfer to a blockchain address that belongs to, and is controlled by, the Client;
- (f) notify the Custodian immediately of any:
  - (i) communications from an Authority that are relevant to the exercise of the Custodian's rights and obligations under this agreement;
  - (ii) Termination Event or circumstances constituting a Termination Event;
  - (iii) breach of Applicable Law relevant to the Client Assets or the Custodial Services;
  - (iv) litigation involving the Client relevant to the Custodial Services;
  - (v) investigation, examination, disciplinary action undertaken or proposed to be undertaken by any Authority in relation to the Client or the Custodial Services; and
  - (vi) change in any Authorised Person in accordance with the procedures specified by the Custodian.
- (g) without limiting any other provision of this agreement, if the Custodian asks the Client at any time during or after the term of this agreement, to provide the Custodian promptly on demand any information about, or documents in connection with, the Client, the Client Assets or the Custodial Wallet, in the form the Custodian requires; and
- (h) ensure that all information provided to the Custodian in connection with this agreement is accurate, complete and not misleading (including by omission).

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## 10 Term and suspension

### 10.1 Commencement

This agreement is effective on the Commencement Date and continues in force until terminated under clauses 10.2 or 10.3 or by operation of law.

## **10.2 Termination by either Party**

Either Party may terminate this agreement by giving the other Party at least 5 Business Days' written notice.

## **10.3 Termination by the Custodian**

The Custodian may also terminate this agreement by notice to the Client, if:

- (a) the Client gives incorrect, incomplete or misleading information or makes a representation or warranty that is incorrect or misleading;
- (b) the Client breaches any obligation or other term of this agreement or any other agreement with the Custodian;
- (c) the Client becomes Insolvent or any of its assets (including Client Assets) are subject to Insolvency proceedings;
- (d) performance of any obligation by either the Client or the Custodian under this agreement breaches, or is likely to breach, any Applicable Law or is otherwise contrary to any policy the Custodian applies as a result of an order or sanction issued by any Authority;
- (e) the Custodian is required by law to do so;
- (f) the Client fails to provide any information requested under this agreement, or where required to do so in compliance with any Applicable Law or the requirement of any contract;

The Custodian's rights under this clause 10.3 do not affect any other rights under this agreement or under Applicable Law and are subject to the giving of any notice, demand or lapse of time which is required by Applicable Law and that cannot be excluded.

## **10.4 Handling of Client Assets upon termination**

On or before the end of the termination notice period, subject to the Custodian's rights and obligations under this agreement and any Applicable Law, the Client Assets may be disbursed in accordance with the Client's Instructions.

## **10.5 Appointment of new custodian**

Where, after the termination of this agreement, the Client appoints a new entity as custodian, the Client acknowledges and agrees that the Custodian will not be responsible for monitoring or supervising any such new custodian.

## **10.6 Suspension**

The Custodian may suspend its engagement contemplated by this agreement at any time for any reason. If the Custodian does so, the Custodian will notify the Client as soon as practicable, to the extent permitted by Applicable Law.

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# **11 Liability and indemnities**

## **11.1 Indemnity**

The Client indemnifies the Custodian and its directors, officers, employees, agents (each, an "**indemnified party**") against, and must pay the indemnified party on demand for, any Loss it reasonably incurs in connection with this agreement and any transaction, including:

- (a) a Termination Event;

- (b) searching and enquiries made in connection with the Client (including checking for Insolvency);
- (c) Instructions given to the Custodian by the Client or an Authorised Person, or a person purporting to be the Client or an Authorised Person provided that the Custodian acts in good faith when effecting the Instructions, save where the Custodian has actual knowledge of any fraud or forgery;
- (d) the Custodian acting on, delaying or refusing to act on Instructions from the Client or an Authorised Person or taking action against the Client or an Authorised Person;
- (e) any service provided by a third party;
- (f) any Tax payable by the indemnified party on, or calculated by reference to, any Client Assets paid or payable by or to the Client under this agreement (excluding any Tax payable by the indemnified party by reference to its net income);
- (g) any person exercising, or not exercising, rights under this agreement (including in the case of any Dispute, proceeding or enforcement action and debt collection Costs, such as valuation fees and auctioneer's charges);
- (h) the Costs of the indemnified party in defending itself successfully against any claims of fraud, negligence or wilful default,

except to the extent the Loss is a direct result of the indemnified party's gross negligence, fraud or wilful misconduct.

## **11.2 Liabilities of the Custodian**

- (a) Unless an Applicable law prohibits the Custodian from excluding or limiting its liability or where the Loss is directly caused by the Custodian's own gross negligence, fraud or wilful misconduct, the Custodian is not liable for any Loss incurred in connection with this agreement, including in connection with:
  - (i) the Custodian acting in accordance with Instructions provided by or deemed to have been provided by the Client;
  - (ii) any unauthorised use of your Custodial Wallet;
  - (iii) any unavailability or delay in providing the Custodial Services due to a Force Majeure Event;
  - (iv) the exercise or attempted exercise of, failure to exercise, or delay exercising a right or remedy or delay or error in providing the Custodial Services;
  - (v) the acts, omissions, misconducts, defaults or unavailability, or any use, of any agent, delegate or third-party service provider provided the Custodian has exercised due care in its selection;
  - (vi) any error of judgement made in good faith by any officer or employee of the Custodian assigned by the Custodian to administer its corporate trust matters;
  - (vii) the Client's or an Authorised Person's Instructions, any unauthorised Instructions or the Custodian's refusal to act on any Instruction;

- (viii) the appointment of a new custodian;
- (ix) any theft, loss, disappearance, destruction or other compromise of the Client Assets, the Custodial Wallet or data of the Client;
- (x) any Termination Event; or
- (xi) any other matter arising from or related to the terms of this agreement,

and this disclaimer applies where the Loss arises for any reason and even if the Loss was reasonably foreseeable or the Custodian had been advised of the possibility of the Loss.

- (b) The Custodial Services and information provided in connection with them are provided on an “as is” and “as available” basis. The Custodian does not provide any express or implied warranties (including warranties of merchantability or fitness for a particular use) and expressly excludes any implied terms.
- (c) If the Custodian’s liability in relation to any matter relating to or arising in connection with this agreement is capable of limitation (but not exclusion), the Custodian’s total liability under or in connection with this agreement is limited to the value of the Client Assets stored in the Client’s Custodial Wallet at the time a relevant claim is made.
- (d) The Client agrees that it will not commence, or attempt or threaten to commence, any proceedings, action or claim (including any claim for compensation or Costs) against the Custodian in any jurisdiction for the recovery of any loss, damage, Cost or expense, or in relation to any liability, described in this clause 11 or which has otherwise been excluded under this agreement.

### **11.3 Survival**

This clause 11 survives the termination (for whatever reason) of this agreement.

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## **12 Notices and communications**

### **12.1 Notices and electronic delivery**

- (a) The Client authorises the Custodian to deliver all communications, agreements, documents, notices and disclosures to the Client by email, or through any other electronic means as the Custodian deems fit.
- (b) In some cases, the Custodian’s notices and communications may be posted on the Custodian Website.

### **12.2 Delivery**

- (a) Communications take effect from the time they are received or taken to be received under clause 12.2(b) (whichever happens first) unless a later time is specified in the communication.
- (b) Communications are taken to be received:
  - (i) if sent by email:
    - (A) when the Custodian receives an automated message confirming delivery; or

- (B) 4 hours after the time sent (as recorded on the device from which the Custodian sent the email) unless the Custodian receives a delivery failure receipt;
- (ii) if delivered via other electronic means, 24 hours after the Custodian sends it; and
- (iii) if posted on the Custodian Website, at the time of posting.
- (c) The Client's notices and communications are effective when the Custodian actually receives them in legible form. If that occurs after 5:00pm in the place of receipt or on a non-Business Day, the relevant notice or communication is taken to be received at 9.00am in that place on the next Business Day and takes effect from that time unless a later time is specified.

### **12.3 Digital signatures**

Instructions and communications digitally signed and supported by a digital certificate have the same validity, admissibility and enforceability as if signed in writing. Any notice or communication that is digitally signed must comply with any Applicable Law.

### **12.4 Electronic contracts**

The Client acknowledges and agrees that it is satisfied that electronically executed contracts are enforceable despite the legal risks associated with them. The Client agrees not to dispute the contents of any notice or communication sent by the Custodian using electronic equipment.

### **12.5 Client constitutes more than one person**

If the Client constitutes more than one person, notices and communications (including notices of any variation to this agreement and any statements (including any consolidated statements)) sent to the email notified to the Custodian as the email for receipt of notices and other communications in connection with this agreement are taken to be given to all persons.

### **12.6 Recording of communications**

Subject to any Applicable Law, the Client agrees that the Custodian may, without further disclosure to, or consent from, the Client:

- (a) record and monitor its correspondence with the Client or an Authorised Person (and the Client confirms it is authorised to provide consent on behalf of the Authorised Person);
- (b) use the recorded conversations, transcripts, messages or other records of correspondence for its internal compliance purposes, in any Dispute in connection with this agreement and in any other manner not prohibited by Applicable Law; and
- (c) disclose such conversations, transcripts, messages or other records of correspondence to any applicable Authority or as otherwise required by Applicable Law.

### **12.7 Records**

- (a) All records shown on or provided in connection with the Custodial Services are for the Client's information only. These records are not binding on the Custodian or any other person.



- (b) Notwithstanding anything to the contrary contained in this agreement, in any record should there be any inconsistency between:
    - (i) the information (including any document but not any advice) available on or via the Custodian Website, the internet or other electronic medium; and
    - (ii) the information in the Custodian's records,
- the information in the Custodian's records will prevail unless there is a manifest error.

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## **13 Important risk factors**

### **13.1 Introduction**

- (a) The Custodian's access to and use of the Custodial Services is at the Client's own risk.
- (b) This section provides a summary of certain risks relating to using electronic media and other factors. There are other risks involved in using the Custodial Services.
- (c) The Client must read the risk factors contained in this agreement in conjunction with any other risks factors that the Custodian may advise from time to time. The Client should also seek appropriate and independent advice and conduct an independent analysis regarding the Custodial Services and any proposed transaction.

### **13.2 Risks relating to the use of the internet or other electronic medium**

- (a) Any communication or transaction via or information (including any document) transmitted via the internet or other electronic medium involves risks. By accessing the Custodian Website, the Client acknowledge that it understands and accepts the following risks:
  - (i) The Custodian may use such authentication technologies as the Custodian deems appropriate. No authentication, verification or computer security technology is completely secure or safe. The Client agrees to bear all risks of unauthorised access/use, hacking or identity theft.
  - (ii) The internet or other electronic media (including without limitation electronic devices, services of third party telecom service providers such as mobile phones or other handheld trading devices or interactive voice response systems) are an inherently unreliable form of communication, and such unreliability may be beyond the Custodian's control.
  - (iii) Any information (including any document) transmitted, or communication or transactions made, over the internet or through other electronic media (including electronic devices, services of third party telecommunication service providers such as mobile phones or other handheld trading devices or interactive voice response systems) may be subject to interruption, transmission blackout, delayed transmission due to data volume, internet traffic, market volatility or incorrect data transmission (including incorrect price quotation) or stoppage of price data feed due to the public nature of the internet or other electronic media.
  - (iv) As a result of such unreliability:

- (A) there may be time-lags, delays, failures or loss of data or loss of confidentiality in the transmission of data and receipt of Instructions;
- (B) while the Custodian may believe certain data to be reliable, there may be no independent basis for the Custodian to verify or contradict the accuracy or completeness of such data; and
- (C) Instructions may be executed at prices different from those prevailing at the time the Instructions were given.

The Client understands that this is not an exhaustive list of all the consequences arising from such unreliability and the Client agrees that the Client cannot infer any recommendation or endorsement from any data provided on the Custodian Website or otherwise in connection with the Custodial Services.

- (b) The Client is solely responsible for preventing anything which may be harmful to any equipment that the Client uses in connection with the Custodial Services (including any computer virus, malicious program or harmful component) from affecting any such equipment, regardless of whether it originated from the Custodial Services or any other product or service provided by the Custodian or its Associates.

### **13.3 Risks relating to Authorised Persons**

There are substantial risks in allowing another person to operate, or contribute to the operation of, a Custodial Wallet. It is possible that Instructions could be given by persons who are not properly authorised, or who act outside of their authority. The Client accepts all of the risks of such an operation and irrevocably releases the Custodian from all liabilities arising out of or in connection with such Instructions, whether taken by the Custodian or otherwise.

### **13.4 Risk of changes that could affect the Client's position**

- (a) Changes in prices, rates of exchange, fees, charges and other factors may impact upon the Client's overall financial position and/or the value of any particular Client Assets. The Custodian is entitled to act upon the Client's Instructions and the Client cannot assume that the Custodian will warn the Client if the Client's Instructions are ill-timed or inadvisable for any reason or if the Instructions are likely to cause loss.
- (b) Before the Client gives any Instruction, the Client should ensure that the Client understands the relevant procedures, terms and consequences and obtain a clear explanation of any fees and other amounts (if any) for which the Client will be liable. These matters can impact the Client's position.

### **13.5 General risks relating to Virtual Assets**

- (a) Purchasing, holding or using Virtual Assets carries potential financial, regulatory and other risks.
- (b) Virtual Assets are for sophisticated purchasers who are knowledgeable and experienced in the features and risks of digital platforms, digital assets, blockchain technology and smart contracts. Potential purchasers should determine for themselves the relevance of the information contained in this agreement and related materials, in each case as supplemented from time to time, and the necessity for additional enquiry, research and professional advice. Any decision to participate in any Virtual Asset transaction and to use the Custodial Services should be based upon such independent investigation and advice as the Client deems

necessary. This agreement should not be considered as a recommendation by any person to engage in any Virtual Asset transaction or to use the Custodial Services.

- (c) Virtual Assets rely on various types of distributed ledger technology. Some of this technology is open source software that is built upon experimental technology, namely blockchain. Risks arising from this reliance include the existence of technical flaws in the technology, targeting by malicious persons, majority-mining, consensus-based or other mining attacks, changes in the consensus protocol or algorithms, decreased community or miner support, rapid fluctuations in value of relevant Virtual Assets, the existence or development of competing networks, platforms and assets, flaws in the scripting language, disputes between developers, miners and/or users and regulatory action.
- (d) Developments in cryptographic technologies and techniques, including the advancement of artificial intelligence and/or quantum computing, pose security risks to all cryptography-based systems including the Virtual Assets. Applying these technologies and techniques to Virtual Assets and/or the Custodial Wallet may result in theft, loss, disappearance, destruction, devaluation or other compromises of the Virtual Assets, the Custodial Wallet or data of the Client.
- (e) Transactions involving Virtual Assets are irrevocable. Lost or stolen Virtual Assets may be irretrievable. Once a transaction has been verified and recorded on a blockchain, loss or stolen Virtual Assets generally will not be reversible.
- (f) Virtual Assets may be subject to forks or attacks on the security, integrity or operation of the networks. Such events may affect the features, functions, operation, use or other properties of any Virtual Asset, network or platform. The events may also severely impact the price or value of any Virtual Assets, or even result in the shutdown of the network or platform associated with the Virtual Asset. Such events may be beyond the control of the Client or the Custodian, or to the extent the Custodian has any ability to impact such event, the Custodian's decision or actions may not be in the Client's interests.
- (g) The legal and regulatory treatment of the Virtual Assets may change. Regulation of the Virtual Assets is not fully settled and changing internationally. Legal and regulatory treatment varies according to the jurisdiction and the Virtual Asset in question. The effect of regulatory legal risk is that any Virtual Asset may decrease in value or lose all of its value due to legal or regulatory change. This may affect the value of the Virtual Assets. Legal changes may have the effect of making a previously acceptable Virtual Asset being subject to substantial restrictions which may affect the Client's position. Legal and regulatory changes may also impact the availability of the Custodial Services.
- (h) Tax treatment of Virtual Assets may vary amongst jurisdictions. The Client's use of the Custodial Services as a result of or in connection with any purchase, grant, delivery, exercise, vesting, distribution, activation, holding, use, appreciation, conversion, sale, exchange, redemption, assignment, transfer, disposal, may attract Taxes either now or in the future. The Custodian may receive formal or informal queries, notices, requests, or summons from Tax authorities and as a result the Custodian may be required to furnish certain information about the Custodial Services, the Client and related Instructions and transactions. The Client must seek independent professional advice on the Tax implications in relation to the use of the Custodial Services and any applicable transactions for its particular situation.

- (i) For the avoidance of doubt, nothing contained in or on the Custodian Website shall be construed as a solicitation of an offer to buy or offer, or recommendation to acquire or dispose of any Virtual Assets or to engage in any other transaction or be construed as any advice for investment, tax, legal, financial, or other advice or as a recommendation or a representation about the suitability or appropriateness of any product or service. The Client shall independently evaluate and where necessary, seek advice and consult with its own advisors.

### **13.6 General risks relating to Custodial Services**

- (a) In addition to the risks in the rest of this clause 13:
  - (i) the Custodian has a number of rights pursuant to this agreement that may adversely affect the Client's position and result in loss. For example, where clause 6 applies, the Custodian may sell the Client Assets in a Client's Custodial Wallet and the Custodian may not be in a position to return the same Client Assets at the time they are requested by the Client. Furthermore, the Custodian's ability to safeguard Client Assets is not absolute; and
  - (ii) there may be circumstances where the Client's ability to withdraw any Client Asset is delayed or restricted. The Custodian may (but is not obliged) to notify the Client of such delay or restriction;
  - (iii) the operation of the Custodial Services may require third party contractors with particular expertise in blockchain technology. The availability of such contractors is limited. There may not be sufficient (or any) such contractors available on terms deemed acceptable by the Custodian. The Costs associated with any such contractors may be significantly greater than currently estimated. Further, the quality, reliability and timely delivery of services by such contractors may vary significantly. These may impact the delivery of the Custodial Services.

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## **14 Dispute resolution**

### **14.1 Injunctive or interim relief**

Nothing in this clause 14 prevents a Party seeking urgent injunctive or similar interim relief from a court.

### **14.2 Meeting**

If a Party gives the other Party a written notice claiming that a Dispute has arisen and the Parties are unable to resolve the Dispute within 10 Business Days of service of that notice, then the Parties must:

- (a) use their best endeavours to ensure that a meeting is held in an effort to resolve the Dispute; and
- (b) make available a representative who has authority to settle the Dispute to attend that meeting.

### **14.3 Submission to arbitration**

If the meeting referred to in clause 14.2 either:

- (a) takes place and the Parties are unable to resolve the Dispute within 10 Business Days of the meeting taking place; or

- (b) does not take place for any reason within 20 Business Days (or a longer period agreed in writing by the Parties) of service of the notice referred to in clause 14.2,

then either Party is entitled to refer the Dispute to arbitration in accordance with the requirements and procedures set out in clause 14.4.

#### **14.4 Arbitration**

- (a) Subject to clauses 14.1 to 14.3, any Dispute must be referred to and finally resolved by binding arbitration administered by the HKIAC in accordance with the HKIAC Administered Arbitration Rules (“**Rules**”), as in force when the Notice of Arbitration is submitted in accordance with those Rules, and as may be amended by the rest of this clause 14.4. Capitalised terms used in this clause 14.4 and which are not otherwise defined in this agreement shall have the meaning given to those terms in the HKIAC Administered Arbitration Rules.
- (b) The Parties agree that:
  - (i) the appointing authority shall be the HKIAC;
  - (ii) the arbitration proceedings must be conducted in English;
  - (iii) the arbitration must be conducted in Hong Kong;
  - (iv) the arbitral tribunal is to be constituted by one (1) arbitrator appointed by mutual decision of the Parties. If the Parties cannot agree upon an arbitrator within ten (10) Business Days from the date the Respondent receives the Notice of Arbitration, the arbitrator is to be appointed by the HKIAC.
- (c) The arbitration award is final and binding on the Parties and the Parties agree to be bound and to act accordingly. Unless required by Applicable Laws or regulatory requirements or with the prior written consent of the Parties, the content, existence and award of any arbitral proceedings must be kept confidential. The Costs of the arbitration and reasonable legal fees will be payable by the Parties as the arbitrator directs in the arbitration award.
- (d) Unless the Parties otherwise agree in writing or until the arbitral tribunal hands down an award, the Parties are obliged to continue to fulfil their obligations under this agreement notwithstanding the commencement of an arbitration.

#### **14.5 Enforcement of arbitration awards**

Judgment upon any award rendered by the arbitral tribunal may be entered, and application for judicial confirmation or recognition or enforcement of the award may be made in any court of competent jurisdiction, and each of the Parties irrevocably submits to the jurisdiction of such court for the purposes of enforcement of this clause 14.5 or for confirmation or recognition or enforcement of any award rendered by the arbitral tribunal in accordance with the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

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### **15 Miscellaneous**

#### **15.1 Confidential information**

Each of the Parties agrees not to disclose information provided by the other Party (including the existence or contents of this agreement) except:

- (a) such information that is required to enable a Client Asset transaction to be recorded on the relevant ledger;
- (b) information that is publicly available;
- (c) to any person in connection with an exercise of rights or a dealing, or proposed dealing, with rights or obligations in connection with this agreement;
- (d) to officers, employees, agents, contractors, legal and other advisers and auditors of any Party;
- (e) to any Party or any Associate of either of them, provided the recipient agrees to act consistently with this clause 15.1;
- (f) with the consent of the other Party; or
- (g) any disclosure the disclosing party reasonably believes is required by any law, Authority, securities exchange or rating agency.

Each of the Parties consents to disclosures made in accordance with this clause 15.1.

## **15.2 Governing law and jurisdiction**

The law in force in Hong Kong governs this agreement and, to the extent the law permits, all matters in connection with this agreement, including any non-contractual matters.

## **15.3 Statutory obligations**

- (a) Nothing in this agreement is intended to exclude, restrict or modify any statutory obligation on the Custodian that cannot be lawfully excluded, restricted or modified.
- (b) The Custodian's duties are limited to those set out in this agreement.

## **15.4 Policies, procedures and service levels**

Without limiting any other provision of this agreement:

- (a) the Custodian may implement certain policies, procedures and service levels in connection with the Custodial Services from time to time. Where it does so:
  - (i) unless expressly stated otherwise, these are for the Custodian's purposes and do not expand the Custodian's contractual obligations beyond this agreement; and
  - (ii) the Custodian may (but is not obliged to) publish them on the Custodian Website and/or notify them to the Client through other means, as applicable;
- (b) the Custodian may vary, replace or remove any of them in its sole discretion, with or without notice to the Client; and
- (c) the Client must comply with any policies and procedures notified to it from time to time and monitor the Custodian Website for any variations.

### **15.5 Successors and assigns**

- (a) This agreement will be binding on each of the Parties' successors and assigns.
- (b) The Custodian may assign, novate, transfer and otherwise deal with any of its rights or obligations under this agreement at any time and without any further consent from the Client. The Client may not do so without the prior written consent of the Custodian.

### **15.6 Third party rights**

A person who is not a Party to this agreement, other than an indemnified party specified in clause 11, has no right under the Contracts (Rights of Third Parties) Ordinance (Cap 623 of the Laws of Hong Kong) to enforce or to enjoy the benefit of any term of this agreement.

### **15.7 Entire agreement**

This agreement sets out the entire agreement between the Parties in connection with the subject matter hereof, and this agreement supersedes any other agreement, statement or representation relating to custody, whether written or oral.

### **15.8 Severability and survival**

If one or more provisions of this agreement are held invalid, illegal or unenforceable in any respect on the basis of any particular circumstances or in any jurisdiction, it is severed for that particular circumstance or jurisdiction. The remainder of this agreement has full force and effect and the validity, legality and enforceability of such provision or provisions under other circumstances or in other jurisdictions will not in any way be affected or impaired.

### **15.9 Waiver**

- (a) Except as otherwise provided in this agreement, no failure or delay on either Party in exercising any power or right under this agreement operates as a waiver, nor does any single or partial exercise of any power or right preclude any other or further exercise, or the exercise of any other power or right.
- (b) A provision of this agreement or a right, power or remedy created under it, may not be waived except in writing, signed by the Party or Parties to be bound.

### **15.10 Variation**

- (a) The Custodian may vary any of the terms of this agreement from time to time by giving notice to the client in accordance with its usual practice. The notice may be published on the Custodian Website or in any other manner which the Custodian considers appropriate.
- (b) The Client will be bound by any variation made by the Custodian unless the Custodian has received notice from the Client to terminate this agreement with effect before the date on which that variation takes effect.