



**WARWYCK PRIVATE BANK LTD**

**CUSTODIAN SERVICE AGREEMENT**

**WARWYCK PRIVATE BANK LTD**

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THIS AGREEMENT (the “Agreement”) is made by and between

## 1. PARTIES

1.1. Warwyck Private Bank Ltd (Company Registration Number C119943 and Business Registration Number: C119943), a company incorporated in the Republic of Mauritius, with registered address at Warwyck House, Nalletamby Rd, Phoenix 73538, Republic of Mauritius. Licensed by the Financial Services Commission under the Securities Act 2005, the Financial Services Act 2007 and the Virtual Asset and Initial Token Offering Services Act 2021 (“Warwyck” or the “Bank”);

and

1.2. The Client.

## 2. DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply in this Agreement

“Agents”	means brokers, dealers, agents or service providers instructed by the Client to trade Securities and/or Virtual Assets;
“Cash”	means cash in any currency acceptable to and received by the Warwyck or any Sub-Custodian for the Client’s account (by deposit or arising out of or in connection with the Securities);
“Cash Account”	means an account for Cash opened with Warwyck on behalf of the Client;
“Contract Note”	means the trade confirmation between the Client and the Agent containing the details of the purchase or sale of Securities and/or Virtual Assets;
“Client Deposit Account”	means a deposit account which the Client has with Warwyck;
“Custodian”	means Warwyck Private Bank Ltd
“Custody Account”	means an account to hold Securities with Warwyck on behalf of the Client;
“Effective Date”	means the date of the last party to sign this Agreement;



- “Fees”** means the fees that Warwyck charges from time to time for providing the Services as have been agreed between Warwyck and the Client in writing (including e-mail) and shall have effect as if set out in full in the body of this Agreement;
- “Fiat currency”** means bank note or coin that is in circulation as a medium of exchange and be acceptable to and received by the Warwyck or any Sub-Custodian for the Client’s account (by deposit or arising out of or in connection with the Virtual Assets);
- “Instructions”** means instructions which the Client gives to Warwyck which (1) contain the information Warwyck requires to carry out the instructions; and (2) are transmitted with the relevant testing or authentication or which comply with the relevant procedures for verification of origination of instructions as Warwyck may specify; **“Instruct”** and **“Instructed”** “ have corresponding meanings herein;
- “Loss”** means any losses, damages, demands, claims, liabilities, costs (including legal costs) and expenses of any kind, whether or not they were foreseeable or likely to occur;
- “Property”** means Securities, Virtual Assets and/or Cash which the behalf of the Client;
- “Securities”** means any shares, stocks, debentures, bonds, notes, warrants, options, securities, depository receipts, interests in any collective investment vehicles (whether in corporate, unit trust or other legal form) or other similar property (including evidence of securities or title to them and all rights as to them, whether represented by a certificate or by an entry in the books or other permanent records of an issuer, a trustee or other fiduciary of them or in any securities system [any recognised clearing agency, securities depository, settlement system, dematerialized book entry system or similar system]) acceptable to, and deposited or transferred by or for the Client with or to a Sub-Custodian or collected by a Sub-Custodian for the Client’s account;
- “Services”** means the facilitation of the provision of safekeeping, settlement, reporting and ancillary services in connection with



the Property as set out in this Agreement;

- “Sub-Custodian”** means any sub-custodian or its nominee that Warwyck appoints, to carry out the duties in connection with the safekeeping of the Property;
- “Tax”** means, for the purpose of Clause 16, all present and future taxes, levies, imposts, duties or other charges or withholding of a similar nature (including value added taxes, stamp duties, fines, penalties or interest payable in connection with any failure to pay or any delay in paying any of it) the relevant tax authorities impose;
- “Virtual Asset”** means digital representation of value that can be digitally traded or transferred, and can be used for payment, or investment purposes and be acceptable to, and deposited or transferred by or for the Client with or to a Sub-Custodian, or collected by a Sub-Custodian for the Client’s account;
- “Wallet”** means a wallet for Virtual Assets opened with Warwyck on behalf of the Client; and
- “Wallet Address”** Means a public address for the Wallet in which Virtual Assets are held.

2.1. Clause and paragraph headings shall not affect the interpretation of this Agreement.

2.2. The schedule form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the schedule.

2.3. A reference to an entity shall include any company, corporation or other body corporate, wherever and however incorporated or established.

2.4. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

2.5. A reference to any party shall include that party's personal representatives, successors and permitted assigns.



2.6. A reference to "this Agreement" or to any other Agreement or document referred to in this Agreement is a reference to this Agreement or such other document or Agreement as varied or novated (in each case, other than in breach of the terms of this Agreement).

### **3. COMMENCEMENT AND DURATION**

3.1. The Client appoints Warwyck to provide the Services for the markets as selected by the Client in the Schedule 1 hereto, and Warwyck hereby accepts to act as custodian of the Services provided to the Client, upon the terms and conditions of this Agreement.

3.2. Warwyck shall observe the provisions of the constitutive documents or prospectus or offering document of the Client and of this Agreement.

3.3. This Agreement shall commence on the Effective Date and shall continue, unless terminated earlier, in accordance with Clause 20.

### **4. CUSTODY ACCOUNT OPENING**

4.1. On the instructions of the Client, Warwyck shall open a Cash Account, a Custody Account and/or a Wallet for the Client.

4.2. For avoidance of doubt, any credit balance in the Cash Account is held by Warwyck as banker.

4.3. The Custody Account for the Virtual Assets will be on a segregated basis, whereby the Virtual Assets held on behalf of the Client will be identified and segregated from Virtual Assets held on behalf of other clients of the Custodian.

4.4. The instruction to open a Cash Account, a Custody Account and/or a Wallet remains subject to Warwyck receiving all the necessary information and documents it reasonably requires from the Client.

4.5. Warwyck shall then furnish the Client with the Cash Account number, the Custody Account number and the Wallet Address.

### **5. PURCHASE OF SECURITIES AND/OR VIRTUAL ASSETS**

5.1. Upon the purchase of Securities and/or Virtual Assets (the "Purchase") by the Client, the Client (or his Agent) shall procure the delivery of the Contract Note



(containing the Cash Account number, Custody Account number and/or Wallet Address) to Warwyck.

5.2. Upon receipt of the Contract Note, Warwyck shall:

5.2.1. compare the details on the Contract Note with the request for settlement of the Purchase; and

5.2.2. request the Client to confirm the settlement of the Purchase, in writing.

5.3. Upon receipt of the written confirmation contemplated in Clause 5.2.2, Warwyck shall:

5.3.1. debit the Client Deposit Account; and

5.3.2. credit the Cash Account with the necessary funds.

5.4. All costs and expenses relating to the Purchase and transfer of funds shall be for the Client's account and debited from the Client Deposit Account.

5.5. Notwithstanding the terms of this Clause 5, Warwyck shall not be obliged to credit the Cash Account where there are insufficient funds in the Client Deposit Account to settle the Purchase.

## 6. SALE OF SECURITIES AND/OR VIRTUAL ASSET

6.1. Upon the sale of Securities and/or Virtual Assets (the "Sale") by the Client, the Client (or his Agent) shall procure the delivery of the Contract Note (containing the Cash Account number, Custody Account number and/or Wallet Address) to Warwyck.

6.2. Upon receipt of the Contract Note, Warwyck shall:

6.2.1. compare the details on the Contract Note with the request for settlement of the Sale received; and

6.2.2. request the Client to confirm the settlement of the Sale, in writing.

6.2.3. Upon receipt of the written confirmation contemplated in Clause 6.2.2, Warwyck shall:



6.2.4. debit the Cash Account with the necessary funds; and

6.2.5. credit the Client Deposit Account with the funds received from the Sale.

All costs and expenses relating to the Sale and transfer of funds shall be for the Client's account and debited from the Client Deposit Account.

## **7. TRUST**

7.1. Upon the settlement of the Purchase by Warwyck, the latter shall hold the Securities and/or Virtual Asset in safe custody acting for and on behalf of the Client.

7.2. Notwithstanding any provision to the contrary herein, in order for Warwyck to provide the Services, should it be required to be registered as the owner of any Securities, it shall hold such Securities on trust for the Client and the right of the Client to the Securities is vested and indefeasible.

7.3. The Virtual Assets shall be held by Warwyck for the Client entitled to the Virtual Assets and shall remain the sole property of the Client. The Virtual assets shall not be subject to the claims of creditors of Warwyck.

## **8. CLIENT INSTRUCTIONS**

8.1. The Client authorises Warwyck to act on any Instructions Warwyck receives from the Client.

8.2. Warwyck shall treat any Instruction as a new Instruction unless it is clearly indicated to be a confirmation of an earlier Instruction.

8.3. Warwyck may in its sole discretion decline to act upon Instructions received by telephone. If Warwyck agrees to act upon such Instructions, the Client shall confirm such Instructions before the close of business on the same day by an alternative method of communication acceptable to Warwyck. Warwyck is authorised to act upon such Instructions in its sole discretion, notwithstanding the Client's failure to confirm.

8.4. The Client shall ensure that any Instructions are received by Warwyck prior to Warwyck's cut-off time as notified to the Client from time to time. In the event Instructions are received after the cut-off time, Warwyck will use its reasonable endeavours to execute such Instructions. If such Instructions cannot be executed or can





only be partially executed, Warwyck will notify the Client of the situation and will not be liable for any Loss arising therefrom.

8.5. Warwyck is not obliged to act on Instructions to receive (or settle the purchase of) any Securities and/or Virtual Assets unless and until arrangements satisfactory to it for payment of the purchase price have been made.

8.6. Warwyck may reject any Instructions, which in Warwyck's reasonable opinion are incomplete or unclear, or if Warwyck has grounds to believe that any Instructions have not been accurately transmitted or are not genuine, until any incompleteness, uncertainty or lack of clarity has been resolved to Warwyck's reasonable satisfaction. Warwyck shall promptly notify the Client if it rejects any Instructions. Warwyck shall not be liable for any Loss arising from any delay while Warwyck seeks clarification or confirmation from the Client.

8.7. Warwyck may refuse to carry out Instructions or perform the Services if they are contrary to, or in Warwyck's reasonable opinion, might constitute a breach of Warwyck policies, or any applicable law and/or regulation and Warwyck shall promptly notify the Client of such refusal. Despite the above, acting on Instructions shall not be construed to create a cause of action against Warwyck arising from any violation of applicable law and/or regulation.

8.8. Any Instructions shall be conclusively deemed as valid from the Client to Warwyck and Warwyck shall not be liable for any Loss arising from the execution of those Instructions if Warwyck believes in good faith that those Instructions originated from the Client.

8.9. Warwyck shall use its best endeavours to stop or cancel any transaction if the Client requests Warwyck to do so. Warwyck shall not be liable for any Loss if it cannot stop or cancel any transaction.

8.10. Subject to applicable law, each party may record telephone conversations with the other party and use the recorded conversations or transcripts in any dispute in connection with this Agreement.

## 9. SUBCUSTODIANS AND MARKETS

9.1. The Client acknowledges that:

9.1.1. Warwyck may delegate its duties to the Sub-Custodians;



9.1.2. Warwyck may refuse to accept delivery of Securities, Virtual Assets and/or Cash, in certain markets; and

9.1.3. Warwyck shall not be liable for any Loss arising from the above.

9.2. For the purpose of Clause 9.1.1 above, Warwyck may open such sub-custodian account with the Sub-Custodian in order to carry out the duties in connection with the safekeeping of the Property, in terms of this Agreement, provided that, in respect of Virtual Assets, Warwyck shall ensure that it will exercise all due skill, care and diligence in the selection, appointment and periodic review of the Sub-Custodian and of the arrangements for the holding and safekeeping of the Virtual Assets. Warwyck will also ensure that the Sub-Custodian is subject to equivalent regulations as Warwyck itself in relation to the custody of the Virtual Assets.

9.3. Warwyck shall comply with all applicable data protection laws, notably the Mauritius Data Protection Act 2017, when dealing with a Sub-Custodian in order to protect any personal data of the Client, as may be applicable.

## 10. SCOPE OF RESPONSIBILITY

10.1. Warwyck shall:

10.1.1. have no duty or obligation to take or omit to take any action as to the Property except in accordance with, and as expressly stated in, this Agreement;

10.1.2. use reasonable care in performing the Services and will after the Securities and/or Virtual Assets with the same degree of care as is reasonably to be expected from a person engaging in the custody business; and

10.1.3. use its reasonable and best efforts to keep books and records (which may be electronic records) as may be necessary to give a complete record of all transactions Warwyck carries out for the Client under this Agreement.

10.2. Warwyck is not acting under this Agreement as tax adviser, investment manager or investment adviser to the Client and the Client remains responsible at all times for the selection, acquisition and disposal of the Securities and/or Virtual Assets.

10.3. Warwyck is not under any duty or obligation to question Instructions including,



where Warwyck may be in possession of information tending to show that Instructions may not be in the Client's best interests.

**10.4.** The Client is responsible for all filings, tax returns and reports on any transactions undertaken or settled in accordance with this Agreement, which must be made to any relevant authority and for the payment of all unpaid calls, taxes (including any value added tax), imposts, levies or duties, or any other liability or payment arising out of or in connection with the Property.

**10.5.** Warwyck shall not be responsible for the title, validity or veracity of any Property (or any evidence of title thereto).

**10.6.** Subject to Clause 10.1.2 or unless otherwise agreed in writing between Warwyck and the Client, Warwyck shall have no duty to make any special arrangements or take any special precautions beyond those which it makes or takes for the safekeeping of the Securities and/or Virtual assets.

**10.7.** Warwyck shall keep or cause to be kept such books and records (which may be by way of electronic records) as may be necessary to give a complete record of all Property held by Warwyck and transactions carried out by Warwyck on behalf of the Client.

**10.8.** The Client undertakes that it will not acquire or authorise the acquisition of any partly paid Securities and/or Virtual Assets unless the Client has deposited with Warwyck cash or other property acceptable to Warwyck sufficient for paying up any such Securities and/or Virtual Assets in full or for meeting such liability in full and Warwyck shall not be liable for any insufficiency or for meeting any such liability.

## **11. RISKS REGARDING VIRTUAL ASSETS**

The value of Virtual Assets may change significantly (even on an intraday basis). While the volatility of the value of Virtual Assets is (perceived as) high, changes and advances in technology, fraud, theft and cyber-attacks and regulatory changes, among others, may increase volatility further – elevating the potential of investment gains and losses. In addition, Virtual Assets lack the historical track record of fiat currencies or commodities such as gold that could act as a reference point for historical volatility levels.

Below is an overview of various risks generally associated with the holding and trading of Virtual Assets (the "Risk Factors"). They are merely a non-exhaustive and exemplary list of possible risks. A Virtual Asset represents a property right created through blockchain



technology (also called “distributed ledger technology”) (“Virtual Asset”). The Virtual Asset can either hold a native utility, but no right against a third party, or it can hold a relative right against a third party.

THE BANK STRONGLY RECOMMENDS THAT ALL CLIENTS AND PROSPECTIVE CLIENTS OF THE BANK AS WELL AS ALL PEOPLE INTERESTED IN USING THE BANK’S SERVICES (ALTOGETHER THE “CLIENTS”) SEEK OUT ADVICE FROM A PROFESSIONAL INVESTMENT ADVISOR BEFORE MAKING ANY INVESTMENT DECISIONS.

The Client acknowledges that the use of the Banks services for placing orders entails considerable risks, which he/she must bear. The Bank shall use its best efforts to reasonably mitigate the Risk Factors to the extent technically feasible.

## **Risk Factors**

### **11.1. General Risk Factors**

#### **11.1.1. Risks related to Virtual Assets as new financial market instruments**

Virtual Assets may comprise numerous financial or non-financial rights, claims or assets. They may especially comprise rights, claims or assets not usually incorporated in traditional financial market instruments. Therefore, Clients must carefully review rights and obligations incorporated in Virtual Assets before taking any investment decisions.

#### **11.1.2. Risks in connection with assessing the fair value of Virtual Assets**

Virtual Assets may incorporate a wide range of rights. Due to this, their fair value may be difficult to assess and can turn out to be significantly lower than initially expected. This might particularly be the case with Virtual Assets, which include a right to supply goods or services. In this case, the focus is usually not on the supply of such goods or services, but on the expectation of making a profit out of the purchase and sale.

#### **11.1.3. Risks in case of limited exercise of Virtual Asset rights**

The value of Virtual Assets results primarily from the incorporated rights. Since the Client may not be able to exercise these rights at all times, the value of the Virtual Assets may be limited as long as the Client holds such Virtual Assets through the Bank. The Client may also be in a position not to take advantage of opportunities, namely to repurchase Virtual Assets and/or pay for products and/or services of the issuer or of third parties. If the right in the Virtual Assets cannot be exercised in



whole or in part while the Virtual Asset is held at the Bank, the Client would only be able to exercise his/her right by first having the Virtual Assets transferred to a private wallet outside the Bank's environment. Such transfers may be subject to contractual restrictions.

#### 11.1.4. Risks related to the understanding of smart contracts

The technical functionalities of a Virtual Asset (e.g. its creation, transfer, trading, etc.) depend on the smart contract used for the Virtual Asset in question. Smart contracts are based on sophisticated computer code and their interaction with the respective distributed ledger network is often very complex. Therefore, Clients should always make sure they understand how smart contracts work before investing in a particular Virtual Asset.

#### 11.1.5. Risks in connection with execution of smart contracts

A bug-free execution of smart contracts or their usage in the distributed ledger network according to the expectations of the Virtual Asset issuer or the investors cannot be guaranteed. A Virtual Asset issuer has the possibility to change the code of the smart contract at any time. Depending on the rights and obligations in the smart contract, issuers have considerable discretion in the management of their Virtual Assets. For example, they could decide to cancel the Virtual Assets and replace them with other forms of evidence such as paper certificates. The Bank is not obliged to provide storage services for any Virtual Assets, paper certificates or other products replacing Virtual Assets.

### 11.2. Risk Factors related to Issuers of Virtual Assets

#### 11.2.1. Risks due to limited investor protection in the absence of a security exchange listing

Virtual Assets may not be listed on a security exchange and therefore their issuers may not be subject to the rules applicable to listed companies. Consequently, issuers of Virtual Assets could not be bound by important investor protection rules. In particular, issuers may not be required to disclose, inform or publish relevant documents related to Virtual Assets in order to ensure transparency and equal treatment at any time.

#### 11.2.2. Risks associated with susceptibility to fraud and insider trading



If the Virtual Assets are not listed or admitted to trading on a regulated security exchange or multilateral or organized trading system, the Virtual Assets may not be subject to insider trading and market manipulation regulation. Accordingly, the market for Virtual Assets may be more prone to fraud or insider trading.

### 11.3. Valuation Risk Factors

#### 11.3.1. Risks in connection with high price volatility and unpredictable value changes

The prices of Virtual Assets may change significantly, even on an intraday basis. The volatility of Virtual Assets tends to be high and changes in valuation are often unpredictable.

#### 11.3.2. Risks associated with high volatility due to market development, fraud and/or lack of historical fair values

The volatility of Virtual Assets can increase with changes and advances in technology, fraud, theft and cyber-attacks, as well as regulatory changes. Virtual Assets have only been on the market for a short time. In contrast to traditional financial instruments, currencies or commodities, Virtual Assets lack historical fair values that allow a reliable assessment of volatility.

#### 11.3.3. Risks due to a lack of supervision by authorities or institutions

The Client acknowledges that Virtual Assets may not be supervised by any authorities or institutions (i.e. central banks). Therefore, there are no authorities or institutions that could intervene in, stabilize or support the value of Virtual Assets and/or prevent or mitigate irrational price developments. The risk of a significant or complete loss of Virtual Assets exists at all times. The Client acknowledges and agrees that he/she invests in Virtual Assets solely at his/her own risk.

#### 11.3.4. Risks related to irrational bubbles or a lack of market confidence

Investments in Virtual Assets are vulnerable to irrational bubbles or loss of confidence that could cause the demand to collapse in relation to the supply. This is possible, for example, if a market participant (e.g. software developer) behaves unexpectedly, or if government actions or macroeconomic changes occur (e.g. creation of superior competing alternative currencies or a deflationary or inflationary spiral). Market confidence could also collapse due to technical



problems, such as large losses of Virtual Assets.

#### 11.3.5. Risk due to an illiquid market

The market for Virtual Assets may have limited liquidity or even illiquidity. The prices charged by the Bank for the supply and demand of Virtual Assets are based on feeds provided by at least one liquidity provider. There may be only one liquidity provider, which may represent an increased illiquidity risk to a Client. If it is not possible for the Bank to trade Virtual Assets permanently (e.g. due to a lack of a trading venue or counterparty), the Client may be unable to trade Virtual Assets. Low liquidity also means the risk of rapid and hectic price movements, unusually wide spreads or high rejection rates. In certain market situations, it may be difficult or even impossible for a Client to liquidate his open position. This is the case, for example, in an illiquid market where the Bank cannot quote prices and/or execute orders or transactions. In this situation, it can also be extremely difficult for the Client to compare prices of Virtual Assets.

### 11.4. Technology Risk Factors

#### 11.4.1. Risks due to technological innovations

Virtual Assets are based on distributed ledger technology, which is at an early stage of development and will still be subject to considerable technological changes. Technological innovations cannot only represent an opportunity, but can also be a risk for the security of Virtual Assets. In addition, alternative technologies to certain Virtual Assets could be established, making them less relevant or even obsolete. If the distributed ledger a Virtual Asset is based upon becomes less relevant or obsolete, this could negatively affect its price and liquidity.

#### 11.4.2. Risks in connection with open-source software

The functioning of Virtual Assets is based on open-source software. Developers of such open-source software are not appointed or controlled by the Bank. Open-source software code is freely accessible and may be copied, used and modified legally at any time. Therefore, such software is generally exposed to vulnerabilities and bugs. Further development of open-source software could be discontinued, exposing Virtual Assets to vulnerabilities, programming errors and threats from fraud, theft and cyber-attacks.

#### 11.4.3. Risk of availability of blockchain networks, increased processing time and transaction fees



Distributed ledger networks have experienced a large increase in transactions in recent years. If distributed ledger technology should not be further developed or renewed, this can lead to longer processing times per transaction and/or a significant increase in transaction fees paid to miners (i.e. programmers verifying Virtual Asset transactions). Such a situation could limit the Bank's ability to process transactions and lead to an increase in the fees charged by the Bank.

The Bank reserves the right to determine the finality of transactions e.g. number of block confirmations on public blockchains required before it accepts a blockchain transaction as final.

In the unlikely case that there is a sufficient disruption of a public blockchain network, the bank reserves the right to pause services related to such blockchain network interruptions, and to take actions it considers necessary to ensure business continuity.

#### 11.4.4. Risk of hard forks

Since there is no governmental supervision for the development of distributed ledger technology, for the functioning of distributed ledgers or for any improvements of this technology, the cooperation and consensus of different interest groups (e.g. developers and miners) is crucial. Any disagreement between the parties can lead to a hard fork. A hard fork is an open-source software upgrade that is not downward compatible. Hard forks can lead to the instability of the relevant distributed ledger. In addition, hard forks or the threat of a potential hard fork can prevent the adoption of Virtual Assets as a viable alternative to traditional asset trading. Hard forks or the potential of a hard fork can limit the Bank's ability to process transactions and lead to an increase in transaction fees.

The Bank is not able to foresee all upcoming hard forks, the Client is responsible to make itself aware of upcoming hard forks and consider how to deal with them. In the event of a hard fork, the Bank may, at its reasonable discretion, decline to support either or both branches of a hard fork. Client acknowledges the risks presented by a hard fork and accepts that the Bank has no responsibility to assist the Client to move or sell an unsupported branch of a forked protocol.

The Bank hereby excludes any and all liability for losses or damages relating to, arising out of or resulting from a hard fork. Client hereby agrees to indemnify, defend and hold harmless The Bank and their respective directors, officers and employees, and each of the successors and assigns of any of the foregoing, from





and against any and all claims arising out of or resulting from a hard fork.

#### 11.4.5. Risks of fraud, theft and cyber-attacks

The characteristics of Virtual Assets (e.g. their existence in the virtual computer network as well as the irreversibility and anonymity of transactions on the blockchain) make them an attractive target for fraud, theft and cyber-attacks. Various attacks have been reported which attempted at stealing Virtual Assets or disrupt the underlying distributed ledger technology. Such attempts can cause loss or at least skepticism about the long-term future of Virtual Assets, prevent the adoption of Virtual Assets, and increase the volatility and illiquidity of the Virtual Assets in question.

#### 11.4.6. Risks in a virtual environment

Virtual Assets exist only virtually in a computer network and have no physical equivalent. The value of Virtual Assets can be difficult to evaluate and may depend on market confidence as to what extent they will be suitable as a future payment and exchange instrument. Among other things, continued high volatility, changes and advances in technology, fraud, theft and cyber-attacks, but also regulatory changes may prevent Virtual Assets from establishing as recognized long-term instruments of exchange, which may make them significantly less valuable or even worthless.

#### 11.4.7. Risks in connection with adjustments to legal, regulatory and/or tax regulation

Distributed ledger technology has only been available for a relatively short time. Nevertheless, regulators around the world are considering amending current regulation to suit the new technology (e.g. money laundering, taxes, and consumer protection or disclosure requirements). New regulations could restrict or even prohibit trading with Virtual Assets. Similarly, increased regulatory controls could significantly increase the transaction fees of Virtual Assets. There is an uncertainty regarding the legal, regulatory and tax characterization of Virtual Assets and/or transactions.

## 12. STATEMENTS AND REPORTS

**12.1.** Warwyck shall provide the Client with statements of account in respect of the Client Deposit Account, providing details of the transactions funded under this Agreement, in a medium and at a frequency in accordance with Warwyck's normal



practice unless otherwise agreed by the parties.

**12.2.** Warwyck shall provide the Client with statements of account in respect of the Cash Account and Custody Account, to an address provided by the Client. The Client acknowledges that electronic communication is not a secure or reliable means of communication and recognises and fully accepts the associated risks (including, interference with confidential information), and Warwyck shall not be liable in connection with the provision of this service.

**12.3.** The Client shall verify the accuracy of each statement, advice, report and invoice and promptly notify Warwyck of any objections. If the Client does not notify Warwyck within thirty (30) days of receipt of any statement, advice, report or invoice, the Client shall be deemed to have accepted the contents as true and accurate in all respects.

### **13. FEES, COSTS AND CHARGES**

**13.1.** The Client shall pay the Fees, costs and/or charges (in accordance with clause 13.2) as and when they become due in accordance with the tariff guide publicly listed on Warwyck's website.<sup>1</sup>

**13.2.** All costs and/or charges incurred by Warwyck in connection with the Services and/or relating to the registration of any Securities, Virtual asset and/or relating to any currency conversion, including but not limited to insurance premiums, exchange control application costs and legal fees shall be for the Client's account. The Client shall be notified of the details of the costs incurred.

**13.3.** Warwyck may, from time to time, review the Fees and shall provide written notice to the Client of any changes made.

**13.4.** The Client shall pay all amounts due to Warwyck in terms of this Agreement in full and without set off or counterclaim and without any deduction for tax unless prohibited by law.

**13.5.** Warwyck shall be entitled to debit the Client Deposit Account with any Fees due and/or costs and/or charges incurred (in accordance with Clause 13.2).

**13.6.** The Client shall ensure that, at all times during the subsistence of this Agreement,

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<sup>1</sup> <https://www.warwyck.com/en/misc/tariff-guide>



there are sufficient funds held to the credit of the Client Deposit Account to pay the Fees, costs and charges incurred in accordance with this Clause 13.

#### **14. INTEREST**

The Client acknowledges that Warwyck is not obliged to pay interest on the credit balance of the Cash Account unless so agreed with the Client and then only at the rates and the intervals as agreed, in writing, between the parties to this Agreement.

#### **15. LIMITATIONS OF LIABILITY**

**15.1.** Warwyck shall not be liable for any Loss suffered by the Client, howsoever arising, whether caused by any act or omission of any third party, including, the Sub-Custodian except for Warwyck's negligence, wilful misconduct or fraud.

**15.2.** Warwyck shall not be liable for indirect, consequential, special or punitive loss or damage, loss of business, profit or goodwill (whether the Loss arises in contract, tort, under any statute or otherwise in connection with this Agreement) even if the Loss was reasonably foreseeable or likely to occur.

**15.3.** Subject to Clause 15.2 above, Warwyck shall not be liable to the Client for any Loss suffered by or occasioned to the Client:

- i. by any act or omission of any third party provided that Warwyck shall have exercised reasonable care in the appointment of such third party; however, the proviso shall not apply where the use of the relevant third party is mandated by local law or practice or selected or appointed by the Client;
- ii. by the insolvency of any third party;
- iii. for the collection, deposit or credit of fraudulent or forged Securities and/or Virtual Assets or documents of title with respect to Securities and/or Virtual Assets; and
- iv. that arises whilst Securities and/or Virtual Assets are not in the possession of Warwyck (including, but not limited to, when they are in transit).

**15.4.** Warwyck shall not be responsible for Loss to the Client or for any failure to fulfil its duties hereunder directly or indirectly due to (i) any flood, storm, earthquake or other natural event; (ii) any war, hostilities, terrorism, revolution, riot or civil disorder; (iii) any



strike, lockout or other industrial action; (iv) any change in, or in the interpretation or enforcement of, or Warwyck's compliance with, any law or Rules; (v) any act or order of any government, governmental or regulatory body or authority; (vi) any order of a court or other judicial body; (vii) any system or computer malfunction, damage, destruction, failure, suspension, howsoever caused, or third party interference (including hacking); (viii) any restriction or impending restriction on the availability, credit or transfer of foreign exchange; or (ix) any circumstance or cause beyond the reasonable control of Warwyck.

**15.5.** Investing in foreign markets and holding assets overseas may involve special risks. For the avoidance of doubt, Warwyck accepts no liability whatsoever for any Loss suffered by or occasioned to the Client resulting from the general risks of investment or investment in or the holding of Property including, but not limited to, losses arising from nationalisation, expropriation or other governmental actions, regulation of the banking or securities and virtual assets industries including changes in law, market rules, currency restrictions, devaluation or fluctuations, and market conditions affecting the execution or settlement of transactions or the value of Property.

**15.6.** Should it arise, Warwyck's liability to the Client shall not exceed the market value of the Securities and/or Virtual assets to which the Loss relates, at the time of its occurrence plus interest at the rate applicable to the base currency of the Cash Account, if applicable, starting from the time of the occurrence of the Loss to the date of discharge. Warwyck has the option to replace any Securities and/or Virtual Assets to which the Loss relates by delivering to the Client securities and/or virtual Assets of the same number, class, denomination, and issue as those originally deposited with Warwyck and no loss shall be considered to have occurred.

## **16. INDEMNITY**

**16.1.** The Client shall, without double counting, promptly indemnify Warwyck, and each officer or employee of Warwyck ("Indemnified Persons") against any cost, loss or liability incurred by such Indemnified Person in connection with the transactions contemplated in this Agreement or the affairs of the Client (including but not limited to those incurred in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry), unless such loss or liability is caused by the gross negligence or wilful misconduct of that Indemnified Person. Any Indemnified Person other than Warwyck may accept the benefit of this clause by written notice to the Client at any time.

**16.2.** The Client shall indemnify Warwyck on demand against any Tax for which Warwyck, is or may be liable in connection with the performance of the Services or



acting on the Client's Instructions but this indemnity shall not extend to Tax on or attributable to the Fees.

16.3. This clause 16 shall survive the termination of this Agreement.

## 17. SET OFF

17.1. Without limiting any applicable laws and/or regulations, should the Client fail to effect payment of any amount due, owing and payable ("the Outstanding Amount") by it in terms of this Agreement, Warwyck is authorized to set off and to apply against the Property and/or the Client Deposit Account any such amount.

17.2. Without limiting the generality of clause 17.1, Warwyck may, for the purpose of set off:

17.2.1. sell or cause to be sold sufficient Securities and/or Virtual assets as will be required to pay the Outstanding Amount or, if the Securities and/or Virtual assets are not sufficient to settle the Outstanding Amount in full, in part payment thereof; and/or

17.2.2. if the Cash and/or the funds held to the credit of the Client Deposit Account are denominated in a different currency to the Outstanding Amount, convert the Cash and/or the funds held to the credit of the Client Deposit Account at a market rate of exchange to match the currency in which the outstanding amount is denominated.

17.3. Warwyck's rights under this Clause are in addition to any general lien, set-off or other rights to which Warwyck may be entitled under any applicable law or apart from this Agreement.

## 18. CLIENT'S REPRESENTATIONS AND WARRANTIES AND UNDERTAKINGS

### Client's Representations and Warranties

The Client makes the representations and warranties set out in this Clause 18 to Warwyck on the Effective Date and for the duration of this Agreement (in each case with reference to the facts and circumstances then existing):

18.1. If it is an entity:



18.1.1. it is duly incorporated and validly existing under the laws of its jurisdiction of incorporation;

18.1.2. it and each of its subsidiaries, if any, has the power to own its assets and carry on its business as it is being conducted;

18.1.3. its entry into, and the performance by it of the transactions contemplated by, this Agreement do not and shall not conflict with any agreement or obligation by which the Client is bound, or with any law or regulation applicable to it, or with it or its constitutive documents, in the event that it is an entity;

18.1.4. it has the power and authority to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement and the transactions contemplated in this Agreement;

**18.2.** This Agreement constitutes the Client's legal, valid, binding and enforceable obligations in accordance with its terms;

18.2.1. all approvals, authorisations, consents, resolutions, licences, permits, exemptions, filings, notarisations, lodgements, permissions or registrations from any government, local, public or other authority (or, without limitation, from any third party), which are necessary or advisable (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Agreement, and to make this Agreement admissible in evidence in its jurisdiction of incorporation and (ii) for it to carry on its business, have been obtained or effected and are in full force and effect, and the Client has duly complied with all the provisions, terms and conditions thereof;

18.2.2. the Client's rights and obligations in terms of this Agreement shall not in any way be or constitute a contravention of, any exchange control regulations anywhere in the world and all applicable exchange control approvals shall have been obtained and copies thereof furnished to Warwyck prior to the Purchase or Sale; and

18.2.3. it is not required to make any deduction on account of tax from any payment it may make under this Agreement;

18.2.4. under the law of its jurisdiction of incorporation, the latter if the Client is an



entity, it is not necessary that this Agreement be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to this Agreement or the transactions contemplated in this Agreement;

18.2.5. it has disclosed to Warwyck all material information which may be relevant in respect of the conclusion of this Agreement;

18.2.6. all factual information provided by it to Warwyck was true, complete and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated, and is not misleading in any respect;

18.2.7. its payment obligations rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors;

18.2.8. no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined might reasonably be expected to have a material adverse effect, as determined in Warwyck's reasonable opinion, have (to the best of its knowledge and belief) been started or threatened against it or any of its subsidiaries, if applicable;

18.2.9. save as disclosed in writing by it to Warwyck prior to the Effective Date, it has paid all taxes due by it by the due date for payment of the relevant taxes, it is not liable to pay any penalty or interest in connection with any claim for tax and it is not subject to any liability as a result of the reopening of any tax assessment;

18.2.10 its liabilities (fairly valued) do not exceed its assets (fairly valued) and it is able to pay its debts as and when they become due in the 12 months following the Effective Date.

**18.3.** Each warranty and representation set out in this clause 18 is a separate warranty or representation and is in no way limited to or restricted by reference to or by inference from the terms of any other warranty or representation or by any investigation performed by Warwyck.

**18.4.** The Client acknowledges that it is aware that Warwyck has entered into this Agreement on the strength of the warranties and representations set out in this Agreement.



18.5. The provisions of this clause 18 are severable from the remaining provisions of this Agreement and shall accordingly remain of full force and effect notwithstanding that this Agreement may otherwise be void, voidable or cancelled for any reason.

### **Client's Undertakings**

18.6. The Client undertakes to Warwyck for so long as this Agreement is in force, that:

- (i) the Client will observe and comply with the terms of all relevant approvals, authorisations, consents (including, but not limited to, any exchange control consents), licences and exemptions and will promptly obtain any other approvals, authorisations, consents, licences and exemptions which it may be or become necessary or desirable to enable the Client to comply with or to ensure the validity and enforceability of the provisions of this Agreement ;
- (ii) the Client will promptly notify Warwyck of any sale of, or other transactions in or relating to, the Securities and/or Virtual Assets;
- (iii) the Client will not, without the prior written consent of Warwyck, charge or encumber any of the Securities and/or Virtual Assets or authorise anyone else so to charge or encumber them; and
- (iv) the Client will promptly inform Warwyck of particulars of any changes to information and, where applicable, provide up-to-date documents of those previously provided to Warwyck pursuant to this Agreement.

### **19. CONFIDENTIALITY**

During the course of this Agreement and thereafter, each party shall keep confidential the terms and conditions of this Agreement and all information given or relating to the other party or the affairs of the other party except that Warwyck may disclose such information to:

19.1. Sub-Custodians, to whom it is necessary to reveal the information for giving the Services;

19.2. any actual or potential assignee or transferee of Warwyck rights or obligations under any transaction between the parties (or any of its agents or professional advisors);

19.3. any rating agency, insurer or insurance broker, or direct or indirect provider of credit protection; or





19.4. as required by law or any authority;

and Warwyck shall inform the Client that it has disclosed information to any other party as well as the contents of the information as soon as possible and in any event within three (3) days of such disclosure unless it would not be practicable to do so or would be in contravention of any applicable law.

## 20. TERMINATION

20.1. Either party may terminate this Agreement:

20.1.1. on giving at least thirty (30) days' prior written notice to the other party; or

20.1.2. immediately upon receipt of written notice by the other party if the other party:

20.1.2.1. has committed any breach of its obligations in terms of this Agreement and fails to make good such breach within thirty (30) days of receipt of notice from the other party; or

20.1.2.2. goes into liquidation or if a receiver, or analogous person/entity, is appointed over any assets of any party;

20.2. Unless otherwise stipulated in the written notice, termination shall not affect the execution of any Instructions already given or the completion of transactions already initiated and not completed at the time of termination.

20.3. Fees shall be calculated to the expiry of the notice period and shall be payable by the Client to Warwyck on the day of the expiry.

20.4. All costs and/or charges incurred (in accordance with Clause 13.2) during or after the subsistence of this Agreement shall be payable by the Client to Warwyck as and when they become due.

20.5. This Clause, and all remedies under this Agreement, shall survive the termination of this Agreement.



20.6. Unless the circumstances otherwise require, upon termination of this Agreement, for any reason whatsoever, Warwyck shall at the expense of the Client and within five (5) working days, as from date of termination :

(i) deliver or cause to be delivered to the Client or to the Client's order any Property and/or documents of title to the Property, which are in the custody of Warwyck;

(ii) all accounts opened (on behalf or in the name of the Client) in the books of Warwyck shall be closed.

## 21. NOMINATED ADDRESS

21.1. The parties choose as their nominated addresses and address for legal notices for all purposes under this Agreement, whether in respect of court processes, notices or other documents or communications of whatever nature, the following addresses:

21.1.1. Warwyck at: Warwyck House, Nalletamby Rd, Phoenix 73538, Republic of Mauritius.

Email: [g\\_custody@warwyckprivatebank.com](mailto:g_custody@warwyckprivatebank.com)

21.1.2. Client at: Registered Address/ Email Address provided to the Bank.

21.2. Either party shall be entitled by notice in writing to the other party to change its nominated address as set out above.

21.3. Any notice given to a party to this Agreement shall be made in English or French language and sent to such party's address as set out above or duly altered from time to time, and shall:

21.3.1. be delivered by hand, in which event it shall be deemed to have been received on the date of delivery; or

21.3.2. be sent by registered post in which event it shall be deemed to have been received, unless the contrary is proved, on the fourth (4<sup>th</sup>) working day after posting; or

21.3.3. be sent by email, in which event it shall be deemed to have been received on the date that it was transmitted.



21.4. Each party irrevocably consents to any process in any legal action or otherwise being served on it in accordance with this Clause 20. Nothing contained in this Agreement shall affect the right to serve process in any other manner permitted by law.

## 22. COMPLAINT

22.1. If the Client is of the view that Warwyck has failed to meet the Client's expectations, the Client may communicate same to Warwyck so that Warwyck can take corrective measures and ensure that the Client gets the best possible service always.

Warwyck will aim to resolve any problem as soon as it can, and Warwyck will take all necessary steps to prevent such problem from occurring again.

22.2. The Client may contact Warwyck in any of the following ways to share the Client's concern/complaint.

- (i) In writing to:  
Complaints Officer  
Warwyck Private Bank Ltd  
Warwyck House, Nalletamby Rd  
Phoenix 73538, Mauritius
- (ii) By phone to the Complaints Officer on (+230) 698 2700.  
Lines are open between 9.00 a.m. and 5.15 p.m. Mauritian time every day except on weekends and public holidays.
- (iii) By email to the following email address:  
[complaint@warwyckprivatebank.com](mailto:complaint@warwyckprivatebank.com)

## 23. GENERAL

### 23.1. Entire agreement

This Agreement sets out the entire agreement and understanding between the parties in respect of the subject matter of this Agreement.

### 23.2. Assignment

Subject to Clause 21.3, neither party may assign, novate, transfer or otherwise deal with its rights or obligations under this Agreement without the other party's consent, which consent shall not be unreasonably withheld or delayed.

### 23.3. Variation



No purported variation of this Agreement shall be effective unless it is in writing and signed by or on behalf of each of the parties.

#### **23.4. Invalidity**

To the extent that any provision of this Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of this Agreement, it shall not affect the enforceability of the remainder of this Agreement nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

#### **23.5. Counterparts**

23.5.1. This Agreement may be executed in any number of counterparts and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.

23.5.2. Each counterpart, when executed, shall be an original of this Agreement and all counterparts shall together constitute one instrument.

#### **23.6. Third Party Rights**

Unless otherwise stated in this Agreement:

23.6.1. a person not a party to this Agreement has no right to enforce any provision of, or enjoy any benefit under, this Agreement; and

23.6.2. the consent of any person not a party to this Agreement is not required to amend this Agreement.

### **24. GOVERNING LAW**

24.1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Mauritius.

24.2. Each party irrevocably agrees that the courts of Mauritius shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).