
BITFUND TERMS AND CONDITIONS OF USE

between

BITFUND

and

THE CLIENT



Table of contents

1.	INTERPRETATION	2
2.	INTRODUCTION.....	7
3.	CRYPTOCURRENCIES	8
4.	COLD STORAGE SYSTEM	8
5.	MANDATE.....	8
6.	FINANCIAL REGULATIONS AND COOPERATION WITH LEGAL AUTHORITIES	9
7.	INVESTMENT RISKS.....	10
8.	DELAY OF PRICING.....	10
9.	USE OF THE WEBSITE	10
10.	TRADING ON THE BITFUND PLATFORM	11
11.	CANCELLATION AND SUSPENSION OF ACCOUNT	11
12.	PRIVACY AND INFORMATION.....	13
13.	INTELLECTUAL PROPERTY	13
14.	LIABILITY	14
15.	WARRANTIES AND UNDERTAKINGS.....	15
16.	DOMICILIUM AND NOTICES	16
17.	DISPUTE RESOLUTION.....	17
18.	APPLICABLE LAW AND JURISDICTION.....	17
19.	GENERAL.....	17

BITFUND TERMS AND CONDITIONS OF USE

Between

BitFund Proprietary Limited; and

The Client

1. INTERPRETATION

1.1 Definitions

In this Agreement, unless the context appears otherwise, the following expressions shall bear the meanings assigned to them below and cognate expressions shall bear the corresponding meaning:

- (a) **Account** means your BitFund Account with corresponding profile, opened in terms of this Agreement for your Trading with BitFund, under which all your Trading is recorded and reconciled;
- (b) **Affiliate** means any member of the BitFund group of companies, including its holding companies or subsidiary, if any and includes an Entity:
 - (i) which is directly or indirectly controlled by BitFund;
 - (ii) which directly or indirectly controls the Specified Entity; and
 - (iii) which is directly or indirectly controlled by an Entity in the BitFund group;
- (c) **Agreement** means this Agreement, together with any Annexures;
- (d) **Annual Asset Management Fees** means the fees BitFund may charge from time-to-time, which may be charged to the Client at any time;
- (e) **Annexures** means any annexures attached to this Agreement, which may be amended from time-to-time;
- (f) **Application Form** means the account opening form that is required to be completed when applying to become a Customer of BitFund;
- (g) **Applicable Laws** means the laws of the Republic of South Africa;
- (h) **Authorised User** means each person who has been verified by our identity verification systems;
- (i) **Basket** means a group of preselected Cryptocurrencies which have been listed together in a basket;
- (j) **BitFund** or **Company** means BitFund Proprietary Limited, registration number 2017/243104/07, a private company incorporated in terms of the laws of the RSA;
- (k) **BitFund Platform** means the services offered by BitFund from time-to-time and the online trading platform, accessed via our Website or by any other electronic means or devices, using your personal user name and password;
- (l) **Board** means the board of directors of the Company from time-to-time;
- (m) **Bundle** means a weighted combination of Cryptocurrencies held together in a single group, making up different proportions of the total value of that Bundle;

- (n) **Business Day** means any day other than a Saturday, Sunday or official public holiday in the RSA;
- (o) **Cold Storage** or **Cold Storage System** means the keeping of the Cryptocurrencies offline;
- (p) **Confidential Information** means information disclosed by that Party to the other Party prior to the conclusion of this Agreement, in terms of this Agreement or otherwise in connection with this Agreement;
- (q) **Costs** means the list of costs which apply to the Customer's Account with BitFund, as published on our Website or in an Annexure attached hereto, but are not limited to costs in relation to Annual Asset Management Fees, Deposit Fees, Performance Fees, execution fees, exchange trading fees, exchange deposit fees, exchange withdrawal fees, bank fees, administrative fees, debit order fees and any other fee that may be associate with the Account;
- (r) **Cryptocurrency** or **Cryptocurrencies** or **Crypto** means the meaning ascribed to them in clause 3;
- (s) **Currency** shall mean the currency of RSA, being the South African Rand;
- (t) **Customer** or **Client** or **you** means any Customer who utilises the BitFund Platform or has been verified by our Identity Verification Systems;
- (u) **Customer Money** means money held on behalf of our Customer, pursuant to the Financial Institutions (Protection of Funds) Act, 2001 and the regulations thereto;
- (v) **Debit Order** means the standing periodic debit order instruction that you may give to your bank in respect of debiting a specified amount of money to be paid into your Account;
- (w) **Debit Order Confirmation** means the confirmation received from our vendor/(s) indicating that your Debit Order has not failed;
- (x) **Debit Order Failure** means the charge that will automatically be debited against your Account in respect of each unsuccessful Debit Order which cannot be processed for whatever reason;
- (y) **Debit Order Fee** means the fee charged for processing one of the Debit Orders, in accordance with the costs set out by BitFund;
- (z) **Designated Account** means the bank account listed in the Application Form and verified by our Identity Verification Systems to open an Account on behalf of the Customer on the BitFund Platform, which account will be debited and credited, as in accordance with any payments or deductions;
- (aa) **Entity** means any natural or juristic person, association, business, close corporation, company, concern, enterprise, firm, partnership, joint venture, trust, undertaking, voluntary association, body corporate, and any similar entity;
- (bb) **Exchange Control** means the requirements relating to the transfer of money, into and out of South Africa, under the Exchange Control Regulations, 1961 published in terms of the Currency and Exchanges Act, 1933;
- (cc) **Execution Price** means the price at which the Trade is actually made or executed;
- (dd) **Financial Product** means:

- (i) securities and instruments, including:
 - (A) shares in a company other than a 'share block company', as defined in the Share Blocks Control Act, 1980;
 - (B) debentures and securitised debt;
 - (C) any money-market instrument;
 - (D) any warrant, certificate and other instrument acknowledging, conferring or creating rights to subscribe to, acquire, dispose of, or convert securities and instruments;
 - (E) any 'securities' as defined in section 1 of the Securities Services Act, 2002;
 - (ii) a participatory interest in one or more collective investment schemes;
 - (iii) a long-term or a short-term insurance contract or policy as referred to in the Long-term Insurance Act, 1998 and the Short-term Insurance Act, 1998 respectively;
 - (iv) a benefit provided by:
 - (A) a pension fund organisation as defined in section 1(1) of the Pension Funds Act, 1956, to the members of the organisation by virtue of membership; or
 - (B) a friendly society referred to in the Friendly Societies Act, 1956, to the members of the society by virtue of the membership;
 - (v) a foreign currency denominated investment instrument, including a foreign currency deposit;
 - (vi) a deposit as defined in section 1(1) of the Banks Act, 1990;
 - (vii) a health service benefit provided by a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998;
 - (viii) any other product similar in nature to any financial product above, inclusive, declared by the registrar, after consultation with the Advisory Committee, by notice in the Gazette to be a financial product for the purposes of this Act;
 - (ix) any combined product containing one or more of the financial products referred to above;
 - (x) any financial product issued by any foreign product supplier and marketed to the RSA and which in nature and character is essentially similar or corresponding to a financial product referred to above;
- (ee) **Income Tax Act** means the Income Tax Act, 1962;
- (ff) **Intellectual Property** means the following subsisting through the world:
- (i) patents, patent applications, utility models, design registrations and certificates of invention and other governmental grants for the protection of inventions or industrial designs (including all related continuations, continuations-in-part, divisional, reissues and re-examinations) (collectively, **Patent Rights**);

- (ii) registered trademarks and service marks, logos, Internet domain names, corporate names, domain names and doing business designations and all registrations and applications for registration of the foregoing, common law trademarks and service marks and trade dress (collectively, **Trademarks**), and all goodwill in the foregoing;
 - (iii) copyrights, designs, data and database rights and registrations and applications for registration thereof, including moral rights of authors;
 - (iv) mask works and registrations and applications for registration thereof and any other rights in semiconductor topologies under the laws of any jurisdiction;
 - (v) inventions, invention disclosures, statutory invention registrations, trade secrets and confidential business information, know-how, manufacturing and product processes and techniques, research and development information, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information, whether patentable or non-patentable, whether copyrightable or non-copyrightable and whether or not reduced to practice; and
 - (vi) other proprietary rights relating to any of the foregoing (including remedies against infringement thereof and rights of protection of interest therein under the laws of the RSA),
- owned and/or used by the Service Provider and made available by the Service Provider to the Company pursuant to the rendering of the Services in terms of this Agreement;
- (gg) **Order** means a conditional instruction given by the Customer to BitFund through the BitFund Platform, to either buy or sell the part or whole part of the Customers Portfolio;
 - (hh) **Parties** means collectively, BitFund and you and any reference to **Party** shall be a reference to either of them, as the context may indicate;
 - (ii) **Portfolio** means the Customers particular holding of one or more cryptocurrencies on the BitFund Platform;
 - (jj) **Parties** means BitFund and the Customer;
 - (kk) **Pending Transaction** means a Recurring Investment which has been duly accepted by BitFund and raised on the BitFund Platform but which has not yet been executed on the BitFund Platform for any reason whatsoever;
 - (ll) **POPI** means the Protection of Personal Information Act, 2013;
 - (mm) **Quoted Price** means the price of a particular Portfolio displayed by BitFund on the Website, which price could be delayed based on market movements;
 - (nn) **Rand** or **R** or **ZAR** means the currency of South Africa, that being, the South African Rand;
 - (oo) **Recurring Investment** means a recurring buy Order placed by you to buy a pre-determined Rand value of a Portfolio, any Basket of a Portfolio or any Bundle of Portfolio at multiple future dates and at the frequency and on a day permitted by us, including without limitation, monthly, quarterly or annually;
 - (pp) **Recurring Investment Amount** means the pre-determined Rand value selected by you to be periodically invested in each of your Recurring Investments;

- (qq) **Recurring Investment Fee** means the pre-determined Rand value selected by you to be periodically invested in each of the Recurring Investments;
- (rr) **Securities** means:
- (i) shares, stocks and depository receipts in public companies and other equivalent equities, other than shares in a share block company as defined in the Share Blocks Control Act, 1980;
 - (ii) notes
 - (iii) derivative instruments;
 - (iv) bonds;
 - (v) debentures;
 - (vi) participatory interests in a collective investment scheme as defined in the Collective Investment Schemes Control Act, 2002 (**CISCA**), and units or any other form of participation in a foreign collective investment scheme approved by the Registrar of Collective Investment Schemes in terms of section 65 of CISCA;
 - (vii) units or any other form of participation in a collective investment scheme licensed or registered in a foreign country;
 - (viii) instruments based on an index;
 - (ix) the securities contemplated above that are listed on an external exchange; and
 - (x) an instrument similar to one or more of the securities contemplated above declared by the registrar by notice in the Gazette to be a security,
- but excludes
- (i) some money market instruments; and
 - (ii) any security contemplated above specified by the registrar by notice in the Gazette;
- (ss) **Settings Page** means the page on BitFund's Website which allows you to amend your profile from time-to-time;
- (tt) **Single Discretionary Allowance** or **SDA** means an allowance within an overall limit of R1,000,000 per calendar year which a South African resident over the age of 18 years may avail of;
- (uu) **Tax Clearance Certificate** means the certificate granted by the Financial Surveillance Department of the South African Reserve Bank, in the prescribed format, allowing the Client to invest R10,000,000 per calendar year offshore;
- (vv) **Time** means all references to the time of day in this Agreement, indicated in the format of a 24 hour clock and in relation to G.M.T. +2:00;
- (ww) **Trade** or **Trading** means any transaction confirmed by you for the purchase of a Portfolio, including any trade in respect of a Basket or Recurring Investment;
- (xx) **VAT** means value added tax which is levied in respect of goods and services in terms of the VAT Act;

- (yy) **VAT Act** means Value Added Tax Act 89 of 1991;
- (zz) **Website** means www.bitfund.co.za or any other website owned or controlled by BitFund or its Affiliates that connects with it;
- (aaa) **Website Terms of Use** means the terms and conditions which apply to your use of the Website; and
- (bbb) **Weightings** means the percentage of the total value of the Bundle, which is assigned to each user.

1.2 Interpretation

In this Agreement:

- (a) an expression which denotes:
 - (i) any gender includes the other gender;
 - (ii) a natural person includes a juristic person and vice versa; and
 - (iii) the singular includes the plural and vice versa;
- (b) any reference to any legislation is to such legislation as at the Signature Date and as amended or re-enacted from time to time;
- (c) if in any definition any contractual right is conferred or obligation is imposed on any Party, then notwithstanding that such contractual right and/or obligation is only in the interpretation clause, such contractual right and/or obligation shall be binding on the Parties;
- (d) when any number of days is prescribed such number shall exclude the first and include the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding day which is a Business Day;
- (e) any reference to days (other than a reference to Business Days) months or years shall be a reference to calendar days, months or years, as the case may be;
- (f) the use of the words "including", "include" and "includes" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the rule of interpretation to the contrary shall not be applied in the interpretation of such general wording or such specific example/s;
- (g) the terms of this Agreement having been negotiated, the rule of interpretation to the effect that the Agreement shall be interpreted against the Party responsible for its drafting shall not be applied in the interpretation of this Agreement.

2. INTRODUCTION

2.1 Introduction to this Agreement

- (a) This Agreement sets out the terms and conditions between the Parties, governing the use of the BitFund Platform and the services provided by BitFund to the Customer.
- (b) This Agreement is legally binding on you and does not require your signature. By using the BitFund Platform, you warrant that you fully understand the contents and that you agree to all the terms and conditions set in this Agreement.

2.2 Introduction to BitFund

- (a) BitFund is an online platform, which allows customers to have easy access to a wide variety of Cryptocurrencies.
- (b) BitFund aims to make access to Cryptocurrencies as easy and efficient as possible.
- (c) BitFund aims to provide consumers with a method to diversify their high risk portfolios through the BitFund Platform.

3. CRYPTOCURRENCIES

- (a) Cryptocurrencies have not as yet been defined as an Asset, Security, Currency or any Financial Product.
- (b) A cryptocurrency is a digital or virtual currency that uses cryptography for security. A cryptocurrency is difficult to counterfeit because of this security feature.
- (c) A defining feature of a cryptocurrency, and arguably its most endearing allure, is its organic nature; it is not issued by any central authority, rendering it theoretically immune to government interference or manipulation.
- (d) Cryptocurrency allows encryption techniques to be used to regulate the generation of units of Cryptocurrency and verify the transfer of funds, operating independently of a central bank.

4. COLD STORAGE SYSTEM

- (a) BitFund takes all reasonable, precautionary steps to prevent the theft of Cryptocurrencies.
- (b) BitFund stores the Cryptocurrencies in Cold Storage, referring to keeping the reserve of Cryptocurrencies offline.
- (c) The purpose of the Cold Storage System is to ensure BitFund is not exposed to any theft or hacks of the Cryptocurrencies.
- (d) BitFund follows its internal policy in relation to the Cold Storage System, which in line with the best industry standards.

5. MANDATE

5.1 The Client's Mandate

- (a) The Client acknowledges and unconditionally consents to BitFund's processing the transaction for the use of the BitFund Platform.
- (b) The Client authorises BitFund to transfer the funds offshore, under the Client's Single Discretionary Allowance or Tax Clearance Certificate in order to enable BitFund to act on instructions with regard to the purchase of Cryptocurrencies on the BitFund Platform.
- (c) The Client acknowledges that it has the legal obligation to ensure it does not exceed its Single Discretionary Allowance or Tax Clearance Certificate. In the event that the Client exceeds its Single Discretionary Allowance or Tax Clearance Certificate, BitFund will not be held liable for any legal consequences for the Client as a result thereof.
- (d) The Client acknowledges that the mandate will allow BitFund to:

- (i) act as an agent and deal on behalf of the Client;
 - (ii) purchase or sell the Cryptocurrencies on behalf of the Client;
 - (iii) batch transactions with other Clients;
 - (iv) authorise any transaction that may be required to purchase or sell the Cryptocurrencies;
 - (v) rebalance the Client's portfolio, in accordance with the Client's selection on the Website and BitFund Platform;
 - (vi) perform the services under this Agreement;
 - (vii) enter into transactions on the Client's behalf in order to fulfil its obligations to the client under the mandate;
 - (viii) instruct other employees, agents or otherwise to facilitate BitFund with purchasing or selling the Cryptocurrencies; and
 - (ix) fulfil any obligations in terms of the Agreement.
- (e) The Client is responsible at all times for obtaining and managing this mandate and authority to act.
 - (f) If the Client is married in community of property, the Client confirms and warrants that his spouse is aware of the implications of using the Website and BitFund Platform and will remain responsible for the Client's actions with regard to such action. BitFund will not be held liable for the Client's *ultra vires* actions, including if Cryptocurrencies are purchased or sold without proper marital consent.
 - (g) The Client undertakes to inform BitFund of any changes to its mandate.
 - (h) The Client warrants that it will ensure its details are up-to-date.

5.2 The Client's Instructions

The Client hereby authorises BitFund to exercise full discretion for action taken on purchasing, selling or rebalancing Cryptocurrencies on the Client's behalf. BitFund is under no obligation to notify the client of such decisions being taken as a result of the Client providing BitFund with the full legal authority under this mandate.

6. FINANCIAL REGULATIONS AND COOPERATION WITH LEGAL AUTHORITIES

- (a) The BitFund Platform is not regulated by any laws within the RSA.
- (b) BitFund is closely following changes to legislation in all applicable jurisdictions and undertakes to act in accordance with any changes that may affect the BitFund Platform.
- (c) BitFund undertakes to cooperate with any governmental legal authority or regulator of the RSA, including an authorized financial institution to govern the BitFund Platform.
- (d) BitFund and its representatives are not financial advisors and do not provide any form of financial advice. All investments made on the BitFund Platform by Clients are not with the assistance or on the advice or recommendation of BitFund.
- (e) BitFund is not under the supervision of any supervisory authority and does not provide any licensed financial services in accordance with regulated financial services.

- (f) None of the information presented on the Website or BitFund Platform is intended to form the basis of any investment decision by the Clients and no specific recommendations are intended for the Client.
- (g) BitFund's Platform and Website are not, and do not, offer any investment or financial products or advice, but rather provide a software application to assist Clients with purchasing Cryptocurrencies and diversifying their investments.

7. INVESTMENT RISKS

- (a) Investment in Cryptocurrencies can lead to loss of money over short or even long periods, due to the high risk associated with investing in Cryptocurrencies.
- (b) Clients should expect prices to have large range fluctuations.
- (c) The BitFund Platform cannot and does not guarantee that you will not lose money in Cryptocurrencies.
- (d) All risks associated with the Clients investments in Cryptocurrencies is the risk of the Client who acknowledges that BitFund makes no representations or warranties and provides no advice in respect of the Cryptocurrency investments.

8. DELAY OF PRICING

The Client acknowledges that the volatility of the Cryptocurrency price may result in the price being different from the time of selecting 'invest' of the Website and BitFund Platform to the time that BitFund executes the trade. As such, the Client warrants that it will not hold BitFund liable for the difference in price, caused as a result of the international transfer of funds or the delay of transacting on Cryptocurrency exchanges.

9. USE OF THE WEBSITE

- (a) You agree to not:
 - (i) use the Website in any way or take any action that causes, or may cause, damage to the Website or impair its performance, availability, or accessibility;
 - (ii) use the Website in any way that is unlawful, illegal, fraudulent, or harmful, or in connection with any unlawful, illegal, fraudulent, or any other harmful purpose or activity;
 - (iii) use the Website to copy, store, host, transmit, send, use, publish, or distribute any material that consists of (or is linked to) any spyware, computer virus, trojan horse, worm, keystroke logger, rootkit, or any other malicious computer software;
 - (iv) conduct any systematic or automated data collection activities (including, among others, scraping, data mining, data extraction, and data harvesting) on or in relation to the Website without express prior written consent of BitFund; and
 - (v) access or otherwise interact with the Website using any robot, spider, or other automated means, except for the purpose of search engine indexing, or with express prior written consent of BitFund.
- (b) You warrant that all information provided to BitFund through the Website or BitFund Platform is true, accurate, current and complete.

- (c) You may only use the Website for your own personal and business purposes, unless in accordance with the terms and conditions of this Agreement.
- (d) Except as otherwise expressly permitted in terms of this Agreement, you may not edit or modify any material on the Website or BitFund Platform.
- (e) BitFund reserves the right to restrict access to certain areas or to the whole Website or BitFund Platform at its own discretion. You are not allowed to circumvent or bypass, or attempt to circumvent or bypass any access restrictions on the Website or BitFund Platform.

10. TRADING ON THE BITFUND PLATFORM

- (a) The BitFund Platform allows you to purchase Cryptocurrencies through a wide variety of Portfolios. The Portfolios, Baskets and Bundles displayed on the Website do not constitute any form of financial advice, as BitFund and its representatives are not financial advisors.
- (b) The Client acknowledges that all investment decisions are made by you and not as a result of the conduct of or representations imparted by BitFund or its representatives.
- (c) Any choice of an investment in a Portfolio, Basket or Bundle is made by the Client and BitFund will not be responsible for any losses suffered because of an investment made through the BitFund Platform.

11. CANCELLATION AND SUSPENSION OF ACCOUNT

11.1 Cancellation or suspension of account by BitFund

- (a) BitFund may, in its sole discretion:
 - (i) suspend your account;
 - (ii) cancel your account; or
 - (iii) edit your account details,when it is of the view or has reasonable suspicion to believe that the Client:
 - (i) attempts to gain unauthorized access to the Platform or another clients account or providing assistance to others attempting to do so;
 - (ii) attempts to overcome software security features limiting use of or protecting any content;
 - (iii) usage of the BitFund Platform to perform illegal activities such as money laundering, terrorism financing or other criminal activities;
 - (iv) violations of this Agreement;
 - (v) failure to pay or fraudulent payment for transactions on the BitFund Platform;
 - (vi) unexpected operational difficulties; or
 - (vii) requests by law enforcement or other government agencies.
- (b) The Client may cancel its account on the Website or BitFund Platform at any time.
- (c) The Client agrees that BitFund may, in its sole discretion and by giving notice, terminate the Client's access to the BitFund Platform or Website, prohibit access to the

BitFund Platform and Website and its content, services and tools, delay or remove hosted content, and take technical and legal steps to prevent the Client's access to the BitFund Platform, if the Company, in its exclusive discretion, believes that the Client has breached or may breach this Agreement or is otherwise acting inconsistently with the intentions of this Agreement.

- (d) BitFund reserves the right to terminate accounts that have been inactive for a period of 6 (six) months or more, or to modify or discontinue the BitFund Platform. The Client agrees that BitFund will not be liable to them or to any third party for termination of their accounts or access to the BitFund Platform or Website.

11.2 Closure of the Client's Account

- (a) A Client may close its account at any time, by notification to BitFund by way of e-mail. BitFund will be presumed to receive this e-mail, when it replies to the Client.
- (b) When a Client's account is closed, whether by BitFund or the Client, BitFund will:
 - (i) in respect of any deposited currency held in the Client's nominated bank account, the amount of the deposit of fiat currency to the value of the Cryptocurrencies at the date thereof; or
 - (ii) in respect of any Cryptocurrency that was deposited and held in the Client's account, in BitFund's absolute discretion, either:
 - (A) transfer the Cryptocurrency to the Client or a person nominated by the Client (which must be to a Cryptocurrency wallet); or
 - (B) sell the Cryptocurrency at the prevailing market price and pay the amount raised to the Client's nominated bank account.
- (c) BitFund agrees to consider the Client's preference, on closure of a Client's account.

11.3 Fees on cancellation or closure of Client's Account

- (a) BitFund is entitled to retain from any amounts (whether in Cryptocurrency or fiat currency), which may otherwise be payable to the Client on closure of its account, any amount payable by the Client to the Company, including as fees or commissions on sale of Cryptocurrencies.
- (b) BitFund may be legally limited in the values it may refund over a certain period of time and a Client shall not hold the Company liable for an inability to refund all values as expeditiously as the Client's may desire.
- (c) Notwithstanding any suspension or termination of a Client's account, the Client remains liable for all fees and commissions payable in respect of the account or any transaction entered prior to the suspension or termination.

11.4 Cancellation as a result of Business Rescue, Insolvency or Liquidation

- (a) In the event that BitFund goes into business rescue proceedings, is declared insolvent or voluntarily or is forced into liquidation, BitFund shall:
 - (i) in respect of any deposited currency held in the Client's nominated bank account, the amount of the deposit of fiat currency to the value of the Cryptocurrencies at the date thereof; or

- (ii) in respect of any Cryptocurrency that was deposited and held in the Client's account, in BitFund's absolute discretion, either:
 - (A) transfer the Cryptocurrency to the Client or a person nominated by the Client (which must be to a Cryptocurrency wallet); or
 - (B) sell the Cryptocurrency at the prevailing market price and pay the amount raised to the Client's nominated bank account.

12. PRIVACY AND INFORMATION

- (a) The Client is required to provide BitFund with any necessary information and documents that it deems to be required to maintain compliance with any law, regulation or policy.
- (b) Such information includes, but is not limited to, passports, driver's licenses, utility bills, bank statements, photographs of yourself, government identification cards and sworn statements.
- (c) BitFund may collect information through your use of the Website and BitFund Platform. BitFund collects information it receives from your computer, mobile phone or other access device.
- (d) BitFund may place data files on your computer or other device, as it uses technologies to recognize you as a BitFund user.
- (e) BitFund stores and processes your personal information on its servers. BitFund takes all necessary steps to protect your personal information and reduce the risks of loss, misuse, unauthorized access, disclosure and alteration. All of BitFund's procedural safeguards comply with applicable laws and regulations, in particular, POPI.
- (f) BitFund reserves the right to share your personal information with:
 - (i) its banking partners;
 - (ii) companies BitFund has business with, whether existing or future;
 - (iii) third-party identification service providers;
 - (iv) law enforcement, government officials or other third parties when BitFund is:
 - (A) compelled to do so by a subpoena, court order or other legal process; or
 - (B) acting in good faith that the disclosure of personal information is necessary to prevent physical harm or financial loss, to report suspected illegal activity or to investigate a breach of this Agreement.
- (g) BitFund will never disclose your information to other BitFund users, unless required in terms of this clause 12.
- (h) BitFund is not liable for any loss, damage, expense or other loss you may suffer arising from information arising from the Website or BitFund Platform.

13. INTELLECTUAL PROPERTY

- (a) BitFund's Intellectual Property includes the following in any location or jurisdiction worldwide:

- (i) all inventions (whether patentable or unpatentable) and whether or not reduced to practise), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all revisions, extensions and re-examinations thereof;
 - (ii) all trademarks, service marks, trade dress, logos, trade names and corporate names, (including all domain names, internet and intranet names, addresses, icons and other designations useful to identify or locate the Employer on a computer network such as the world wide web), together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith;
 - (iii) all works capable of copyright, all copyright, and all applications, registrations and renewals in connection therewith;
 - (iv) all trade secrets and business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supply lists, pricing and cost information, and business and marketing plans and proposals);
 - (v) all computer software (including data and related documentation);
 - (vi) all patterns and/or designs and design applications and registrations;
 - (vii) all other proprietary rights;
 - (viii) all business or trade names used by or in connection with, or normally associated with the Employer; and
 - (ix) all copies and tangible embodiments thereof, in each instance in whatever form or medium.
- (b) The Client acknowledges that it may not use BitFund’s Intellectual Property without the prior written consent of BitFund.
- (c) All content on the Website and BitFund platform, including, but not limited to inventions, processes, marks, methods, compositions, formulae, techniques, information, data, text, graphics, logos, images, charts, video, audio, and source code, as well as any compilation thereof, and any software used on the Website, is the property of BitFund and protected by copyright, trademark, and other laws protecting Intellectual Property and proprietary rights
- (d) If the Client uses BitFund’s Intellectual Property through enhancing, adopting, using, execution or in connection with or in any way affecting or relating to BitFund, the Client acknowledges that such Intellectual Property shall be deemed the Intellectual Property of BitFund.

14. LIABILITY

- (a) BitFund and its Affiliates and their respective officers, employees or agents will in regard to the Website, the BitFund Platform and any other related products or services not be liable to you or anyone else for any damages of any kind, including, but not limited to, direct, consequential, incidental, special or indirect damages (including but not limited to lost profits, trading losses or damages that result from use or loss of use of the Website, the BitFund Platform and its products).

- (b) BitFund will not be responsible for any theft damage or loss, amongst others, including from the use or attempted use of the Website, the BitFund Platform or any other linked product.
- (c) The Client acknowledges that there are risks involved with the storage and purchasing of Cryptocurrencies. BitFund warrants to take all necessary steps to secure the Cryptocurrencies, but in the event of theft, damage or otherwise, the Client warrants that BitFund will not be held liable therefor in any capacity whatsoever.
- (d) BitFund, its Affiliates or representatives will not be held liable for any compensation, reimbursement or damage arising in connection with:
 - (i) the Client's inability to use the Website or the Platform;
 - (ii) the theft of any Cryptocurrencies;
 - (iii) the cost of procurement of the Cryptocurrencies;
 - (iv) any investments, expenditures or commitments by you in connection with this Agreement or your use of the Website or the BitFund Platform; and
 - (v) any unauthorized access to, alteration of, or the deletion, destruction, damage, loss or failure to store any data, including records or other credentials associated with the Website and BitFund Platform.
- (e) The information, software, products, and services included in or available through the Website or BitFund Platform may include inaccuracies or typographical errors. Changes are periodically added to the information herein. BitFund may make improvements and/or changes in the Website and BitFund Platform at any time. BitFund makes no representations about the suitability, reliability, availability, timeliness, and accuracy of the to the Website, the BitFund Platform, information, software, products, services and related graphics contained on the Website or BitFund Platform for any purpose.
- (f) The Client agrees that it will not hold BitFund liable if it suffers any loss of whatsoever nature, due to a software problem of the Website, BitFund Platform or the blockchain. This includes a technical failure of or a security breach of the BitFund Cold Storage System

15. WARRANTIES AND UNDERTAKINGS

15.1 Warranties by the Client

The Client warrants that:

- (a) s/he has full authorization and capacity to enter into the Agreement and perform the obligations in terms of this agreement;
- (b) s/he will not use BitFund's name or any of the trademarks in any way, without the prior written consent of BitFund;
- (c) s/he is of legal age in the country in which you reside, that being, 18 years of age in South Africa and have contractual capacity to enter into and perform in terms of this Agreement;
- (d) s/he has obtained the necessary exchange control approvals which may be required to purchase a Portfolio, Basket or Bundle;

- (e) s/he will not use any software, electronic device or trading strategy that may be seen to manipulate the manner in which BitFund constructs, buys or sells its Portfolios;
- (f) s/he is not prevented from any law from trading on the BitFund Platform;
- (g) s/he has not been declared insolvent previously or to date;
- (h) the fiat currency or any other method used to enter the BitFund Platform was acquired lawfully and has not been used in any criminal instances;
- (i) s/he understands the tax implications, if any, of using the BitFund Platform and agrees to adhere to any tax regulations and legislations;
- (j) s/he will not hold BitFund or its Affiliates liable for any loss, damage or otherwise that may be caused as a result of using the BitFund Platform; and
- (k) all information given by him/her in connection with BitFund in terms of this Agreement is true and correct and may be relied on wholly.

15.2 General

- (a) The warranties shall be deemed to be representations and undertakings given by the Client in favour of BitFund.
- (b) Each warranty shall be deemed to be a representation of fact, inducing the Client to adhere to the terms and conditions set out in this Agreement.
- (c) Each warranty shall be presumed material, unless proven to the contrary.
- (d) The warranties shall continue to remain in force and in accordance with the terms and conditions set out in this Agreement, for a reasonable period after the Client discontinues to use the BitFund Platform.
- (e) Each warranty shall be a separate warranty and in no way limited or restricted by reference to or inference from the terms of any other warranty.

16. DOMICILIUM AND NOTICES

- (a) BitFund chooses its *domicilium citandi et executandi* (**Domicilium**) for all purposes relating to this Agreement, including the giving of any notice or the serving of any process, as follows:

Disclosing Party: BitFund (Pty) Ltd

Physical: 34 Melrose Boulevard

Melrose Arch

2076

E-mail: compliance@bitfund.co.za

- (b) BitFund shall be entitled from time to time, to vary its physical Domicilium to any other physical address (not being a post office box or poste restante) within the RSA, and to vary its e-mail Domicilium to any other e-mail address.
- (c) Any notice given or payment made by a Party to the others (**Addressees**) which is delivered by hand between the hours of 08:00 and 17:00 on any Business Day to the Addressee's physical Domicilium for the time being shall be deemed to have been received by the Addressees at the time of delivery.

- (d) Any notice given by any Party to the others which is successfully transmitted by e-mail to the Addressees' e-mail Domicilium for the time being shall be deemed (unless the contrary is proved by the Addressees) to have been received by the Addressees on the day immediately succeeding the date of successful transmission thereof.
- (e) Any notice in terms of or in connection with this Agreement shall be valid and effective only if in writing and if received or deemed to be received by the Addressees.

17. DISPUTE RESOLUTION

- (a) Any dispute arising out of this Agreement (other than a dispute in respect of which a specific dispute resolution mechanism is expressly provided for herein) shall be submitted to and determined by arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa (**AFSA Rules**). Such arbitration shall be held in Sandton, Johannesburg, unless otherwise agreed to and shall be held in a summary manner with a view to it being completed as soon as possible.
- (b) There shall be one arbitrator who shall be, if the question in issue is:
 - (i) primarily an accounting matter, an independent chartered accountant of at least 10 years' standing;
 - (ii) primarily a legal matter, a practising senior counsel or commercial attorney of at least 10 years' standing; or
 - (iii) any other matter, a suitably qualified person.
- (c) The appointment of the arbitrator shall be agreed upon between the Parties to the dispute. Failing agreement between the Parties within a period of 10 Business Days after the arbitration has been demanded, any of the Parties shall be entitled to request the Chairman for the time being of the Arbitration Foundation of Southern Africa to make the appointment who, in making his appointment, shall have regard to the nature of the dispute in terms of this clause (c).
- (d) The arbitrator shall have the powers conferred upon an arbitrator under the AFSA Rules.
- (e) The decision of the arbitrator shall, in the absence of manifest error, be final and binding on the Parties to the dispute, and may be made an order of any court of competent jurisdiction.
- (f) Notwithstanding anything to the contrary contained in this clause 17, any Party shall be entitled to apply for urgent interim relief from any competent court having jurisdiction, pending the decision of the arbitrator.

18. APPLICABLE LAW AND JURISDICTION

This Agreement will in all respects be governed by and construed under the laws of the RSA.

19. GENERAL

19.1 Whole Agreement

This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein.

19.2 Variation of Agreement

BitFund may amend, vary or delete clauses or provisions in this Agreement without notifying the Client. The Client acknowledges that it is their responsibility to read the terms and conditions before using the BitFund Platform.

19.3 Severability

All provisions of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions of this Agreement shall remain of full force and effect.

19.4 Legal Advice

The Parties acknowledge that they have been free to secure independent legal, tax and other advice as to the nature and effect of all the provisions of this Agreement and that they have either taken such independent legal, tax and other advice or dispensed with the necessity of doing so.

19.5 Signature

The Client acknowledges that by using the Website and/or BitFund Platform, it accepts each of the terms and conditions of use.

Version 3.0