



## Terms and Conditions

Shiftly FX (Pty) Ltd trading as "Shiftly"  
Reg. No. 2019/338591/07  
FSP 51806

Last update: 28 November 2023

## TERMS AND CONDITIONS

### 1. INTRODUCTION

- 1.1. Shiftly FX (Pty) Ltd (“Shiftly FX”) warrants that it is an authorised Financial Service Provider (FSP 51806) in terms of Financial Advisory and Intermediaries Services Act, 37 of 2002 (“FAIS”). Shiftly FX is the holder of a Category I FSP License and is authorised to render intermediary services in respect of foreign exchange products residing under the financial product categories:
  - 1.1.1 Warrants, certificates and other instruments
  - 1.1.2 Derivative Instruments
- 1.2. Shiftly FX has been granted permission by the South African Reserve Bank to operate as a foreign exchange intermediary and is a Foreign Exchange Broker as per Section 5(C) of the Exchange Control Rulings. Shiftly FX is an Accountable Institution in terms of FICA and is registered as such on GoAML.
- 1.3. The Client wishes to appoint Shiftly FX to enter into certain transactions on the Client’s behalf with the Authorised Dealer and to render Services in relation thereto. The Parties agree that they will enter the transactions governed by the terms and conditions of this Client Mandate.

### 2. DEFINITIONS

- 2.1. In this Client Mandate, the following words and expressions set out below shall have the following meanings and cognate words and expressions shall have a corresponding meaning:
  - 2.1.1. “Additional Authorised Individual” means a duly authorised person, advisor or broker appointed by the Client in terms of Section F of the Individual Onboarding & Registration.
  - 2.1.2. “Applicable Law” means any law, statute, regulation, judgment, treaty, directive or other legislative measure of any legislative authority, court of law, or regulatory or similar body, as amended, replaced, re-enacted, restated or reinterpreted from time to time;
  - 2.1.3. “Associate(s)” means with respect to Shiftly FX, any other Person that is directly or indirectly controlled by, under common control with or controlling such Person;
  - 2.1.4. “Authorised Dealer” means a financial institution authorised by the Financial Surveillance Department of the South African Reserve Bank to deal in foreign exchange;
  - 2.1.5. “Base Rate” means the market related base rate quoted by the Authorised Dealer, the determination and amendment of which shall be solely within the Authorised Dealer’s discretion;
  - 2.1.6. “Client” means the person identified as the client in the Individual Onboarding & Registration
  - 2.1.7. “Client Account” means the account opened with the Authorised Dealer. This can take form of a corporate cash manager account/s (or such other similar account) opened on behalf of the Client and in the Client’s name with the Authorised Dealer for the purpose of executing Transactions;

- 2.1.8. "Client Mandate" means this mandate and the annexures thereto, save where the context indicate otherwise;
- 2.1.9. "ECT Act" means the Electronic Communications and Transactions Act 25 of 2002;
- 2.1.10. "Effective Date" means date on which the provisions of this Client Mandate become effective (provided that the Effective Date shall be the Signature Date should no date be stipulated above);
- 2.1.11. "FACTA" means the Fair and Accurate Credit Transactions Act of 2003;
- 2.1.12. "FAIS" means the Financial Advisory and Intermediary Services Act 37 of 2002;
- 2.1.13. "FICA" means the Financial Intelligence Centre Act 38 of 2001;
- 2.1.14. "FX Transactions" will include the following but will not be limited to: Any flow of funds for which Shiftly FX is able to give instructions to the Client's Authorised Dealer in respect of this Client Mandate with regard to transactions in respect of over the counter and/or exchange traded Foreign Exchange, Money Market Transactions, futures, online or electronic trading platforms, currency and interest rate swap transactions (as defined in the 2006 ISDA Definitions as published by ISDA, as amended and supplemented from time to time) executed on behalf of the Client;
- 2.1.15. "Party" refer to Shiftly FX or the Client, as the context indicates, and "Parties" means Shiftly FX and the Client, provided that the Client acknowledges and agrees that undertakings given by the Client in favour of the Authorised Dealer in terms of this Client Mandate are valid and binding on the Client;
- 2.1.16. "Personal Information" has the meaning as ascribed to it in the PoPIA;
- 2.1.17. "PoPIA" means the Protection of Personal Information Act 4 of 2013;
- 2.1.18. "Processing" means any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including—(a) the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
- (b) dissemination by means of transmission, distribution or making available in any other form; or, (c) merging, linking, as well as restriction, degradation, erasure or destruction of information;
- 2.1.19. "Services" refers to the services listed in the client mandate, namely foreign exchange and cryptocurrency services in relation to FX Transactions, provided by Shiftly FX for the purchase, sale and delivery of currency and/or cryptocurrency in accordance with clause 3 of this Client Mandate.
- 2.1.20. "Shiftly FX" refers to Shiftly FX (Pty) Ltd, a private company duly registered in terms of the laws of the Republic of South Africa with registration number: 2019/338591/07
- 2.1.21. "Signature Date" means the date on which the Client Mandate is signed by the last party to do so; and

- 2.1.22. "Transaction Date" means the date on which a FX Transaction is concluded with the Client and the Authorised Dealer.
- 2.2. In this Client Mandate unless inconsistent with the context:
- 2.2.1. when any number of days is to be determined, such number shall be determined excluding the first day and including the last day unless the last day does not fall on a Business Day, in which event the last day shall be the next succeeding Business Day;
- 2.2.2. headings of clauses have been inserted for convenience only and shall not be taken into account in interpreting this Client Mandate;
- 2.2.3. references to:
- 2.2.3.1. one gender include a reference to the other genders;
- 2.2.3.2. the singular include the plural and *vice versa*;
- 2.2.3.3. natural persons include juristic persons and *vice versa*;
- 2.2.3.4. a Person includes a reference to that Person's legal personal representatives, successor(s) or permitted transferee(s) where applicable;
- 2.2.3.5. a document is a reference to that document as amended and/or restated from time to time;
- 2.2.3.6. "include" and "including" shall be deemed (respectively) to be a reference to "includes without limitation" and "including without limitation";
- 2.2.4. Any reference to a statutory provision shall include any subordinate legislation made from time to time under that provision and shall include that provision as modified or re-enacted from time to time.
- 2.2.5. Unless otherwise stated, capitalised terms used in this Client Mandate bear the meanings assigned to them in this Client Mandate.
- 2.2.6. Any provision in this Client Mandate which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Client Mandate shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (i.e. *pro non scripto*) and severed from the balance of this Client Mandate, without invalidating the remaining provisions of this Client Mandate or affecting the validity or enforceability of such provision in any other jurisdiction.
- 2.2.7. To the extent that a definition imposes substantive rights and obligations on a party to this Client Mandate, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition.

### **3. APPOINTMENT**

- 3.1. Shiftly FX is an independent intermediary in relation to all Authorised Dealers;

- 3.2. The Client hereby appoints Shiftly FX to enter into and execute documentation for FX Transactions on behalf of the Client, to and invest money on the Client's behalf with the Authorised Dealer and to render the Services in relation thereto as set out in the Client Mandate: and Shiftly FX wishes to accept such appointment. The terms and conditions of the appointment are set out in this Client Mandate;
- 3.3. The Client has from the Effective Date of the Client Mandate appointed Shiftly FX to act on behalf of the Client.
- 3.4. Shiftly FX undertakes to fulfil its obligations in terms of this Client Mandate in the utmost good faith and to always act in the interest of the Client.
- 3.5. Shiftly FX will act on instructions from the Client and its Additional Authorised Individual (as per Section F of the Individual Onboarding & Registration)
- 3.6. Instructions will be limited to FX Transactions as defined above and in the Client Mandate.
- 3.7. The Client agrees to be bound by all FX Transactions entered into by Shiftly FX where Shiftly FX has been instructed to execute a FX Transaction on behalf of the Client.
- 3.8. The Client will not hold Shiftly FX, or its Associates liable for damages or losses whatsoever whether consequential or otherwise, that may be incurred by the Client, unless arising from Shiftly FX's breach of duties in terms of this Client Mandate.
- 3.9. The Client authorizes Shiftly FX to obtain information from the Authorised Dealer regarding credit limits in order to complete an FX Transaction.
- 3.10. The Client agrees not to circumvent Shiftly FX with any business associates introduced to the Client by Shiftly FX. For the avoidance of doubt the Client agrees not to circumvent Shiftly FX by entering into a business relationship with an Authorised Dealer that was introduced to the Client by Shiftly FX. In the event of circumvention, the Client will be liable to Shiftly FX in an amount that is equal to the average fee income earned by Shiftly FX under this Client Mandate in the preceding 12 months. This non-circumvention clause shall expire 24 months after the termination of this Client Mandate.

#### **4. CLIENT ACCOUNT**

- 4.1. In order for Shiftly FX to execute FX Transactions, the Client is required to have a Client Account into which funds entering and leaving South Africa can be paid. Funds will only be paid once the Client Account has been opened with the Authorised Dealer.
- 4.2. Details of the Client Account will be confirmed after onboarding is completed in a separate email.
- 4.3. Shiftly FX is hereby authorised and empowered by the Client to open a Client Account, and to effect all and any FX Transactions on the Client Account on the Client's behalf as instructed by the Client, or on the instructions of the Client's Additional Authorised Individual.
- 4.4. The Client Account is interest bearing. The Client shall be liable to Shiftly FX for a fee of up to 1% including VAT per annum for operating the Client Account. This fee is calculated and accrued

daily on the Client Account balance and is paid monthly. The Authorised Dealer shall send a monthly statement to the Client.

- 4.5. The Client may give written notice to Shiftly FX to effect cash withdrawals and Shiftly FX shall make payment to the Client within 3 (three) Business Days of receiving such a notice.

## **5. TRANSACTION INSTRUCTIONS**

5.1. All FX Transaction instructions and confirmations which are not delivered to Shiftly FX under an online or electronic trading platform are to be signed by the Client or the Additional Authorised Individual in manuscript or by electronic signature as envisaged by section 13(3) of the ECT Act and sent by the Client or the Additional Authorised Individual, from the authenticated e-mail address or cellphone number in as per Section F of the Individual Onboarding & Registration:

- 5.1.1. by fax or electronic messaging system to Shiftly FX;
- 5.1.2. by WhatsApp, Telegram to Shiftly FX to +27 66 158 2352.

5.2. Shiftly FX shall only transact with one Authorised Dealer per FX Transaction on behalf of the Client.

## **6. INFORMATION REGARDING FX TRANSACTIONS**

6.1. The Client shall furnish Shiftly FX with all information and documentation to enable Shiftly FX to render the Services and carry out the FX Transactions on behalf of the Client. A delay in confirming a FX Transaction will result in the late payment of funds.

6.2. It is the Client's obligation to inform Shiftly FX about his or her correct residency and exchange control status.

6.3. Shiftly FX does not guarantee any positive outcome for exchange control procedures and cannot be held liable for any loss that might be suffered by the Client due to a delay or any other causes.

6.4. Where the Client is required to complete any application, instruction or other form or provide any contractual information relating to a financial product, FX Transactions or the Services, the Client:

- 6.4.1. shall disclose all material facts accurately. The accuracy and completeness of statements and other information provided is the Client's responsibility and any changes thereto must be notified to Shiftly FX as soon as practically possible;
- 6.4.2. shall be responsible for ensuring the accuracy and completeness of any application, instruction or contractual information submitted to Shiftly FX or to the Authorised Dealer on the Client's behalf;
- 6.4.3. agrees that any misrepresentation or non-disclosure of a material fact or inclusion of incorrect information may materially affect the FX Transaction in question;
- 6.4.4. may request a copy or written or printed record of any application, instruction or other form or contractual information to be provided to the Client within a reasonable time; and

- 6.4.5. the Client shall ensure that any formal document to be signed by the Client contains all requisite details and that the Client shall not be required to sign any such form or document unless all requisite information has been inserted by the Client or on the Client's behalf.

## **7. FOREIGN EXCHANGE TRANSACTIONS**

- 7.1. The Client acknowledges that the Base Rate in respect of FX Transactions entered into by Shiftly FX on behalf of the Client shall be the rate at which the Authorised Dealer will convert the currency.
- 7.2. The Client hereby expressly authorises Shiftly FX to charge a fee of up to 1% above the Base Rate for executing each FX Transaction. The Authorised Dealer will also charge a swift fee of up to R400.00 to cover banking cost only on the Client's side of the transaction or up to R800.00 to cover banking cost on the Client and beneficiary side. Shiftly FX also charges an administration fee to corporate Clients of up to R1000.00. The Client authorises the Authorised Dealer to pay Shiftly FX its fees as they accrue in respect of FX Transactions executed by Shiftly FX on behalf of the Client in terms of this Client Mandate.
- 7.3. Shiftly FX may receive commission, incentives, fee reductions or rebates from a foreign forex service provider or other applicable institution for placing the Client's funds with them.
- 7.4. The Client acknowledges that the Authorised Dealer has the sole discretion to enter into FX Transactions with Shiftly FX.

## **8. WARRANTIES AND ACKNOWLEDGEMENTS**

- 8.1. The Client warrants that the information provided in this Client Mandate is true, complete, accurate and correct in all respects. The Client acknowledges that neither the Authorised Dealer or Shiftly FX will be liable for errors, omissions, or delays in transmitting any funds which may arise as a result of the Authorised Dealer or Shiftly FX acting on the information contained in this Client Mandate provided by the Client or the Client's Additional Authorised Individual; or as a result of circumstances beyond the control of the Authorised Dealer or Shiftly FX.
- 8.2. Shiftly FX has no obligation to make any enquiries or verify any request, confirmation or instruction from the Client or the Additional Authorised Individual, which emanates from the authorised e-mail address, fax number or cellphone number specified in clause 3 of Part A: Client Information. Nor shall Shiftly FX or the Authorised Dealer be liable for any costs, losses or special or general damages which are suffered or incurred by the Client or any other person or entity directly or indirectly pursuant to any e-mail, facsimile or message, which has been delayed, not delivered, intercepted, amended in an unauthorised manner, or results from phishing, or which constitutes a fraudulent, unauthorized or invalid instruction, which is ostensibly sent by the Client or its Additional Authorised Individual to Shiftly FX.
- 8.3. The Client and Shiftly FX hereby warrant that they have the necessary capacity to enter into this Client Mandate and the FX Transactions and each warranty and representation in the Client Mandate shall be deemed to be repeated by the Client in respect of each and every FX Transaction. The only persons who have the authority to represent the Client in fulfilment of its obligations under this Client Mandate shall be the persons named in Part A: Client Information. Save as required by any Applicable Law, Shiftly FX shall not be obliged to verify the identity and authority of such persons.

- 8.4. The Client acknowledges and agrees that the Authorised Dealer shall be entitled to rely on the authority of Shiftly FX; and has no obligation or liability to make any enquiries or to verify any requests or instructions from Shiftly FX in respect of any FX Transaction, including the selection of the manner in which, or the platform over which, Shiftly FX wishes to execute any FX Transaction on behalf of the Client, until such time as it has been notified in writing by Shiftly FX or the Client of the termination of this Client Mandate in accordance with clause 15 hereof.
- 8.5. The Client acknowledges that, as required by the Financial Surveillance Department of the South African Reserve Bank, purchasers and sellers of foreign exchange must retain the documentary evidence relating to trade and other FX Transactions for a period of five (5) years for inspection purposes.
- 8.6. The Client hereby agrees that Shiftly FX does not provide advice on the merits of any of the FX Transactions or the Services, provide taxation advice or other advice to the Client. The Client acknowledges the inherent risks associated with the Services and FX Transactions and agrees that Shiftly FX will not be liable for the consequences of any loss to the Client resulting from the execution of the FX Transactions or provision of the Services and acknowledges that the total risk is borne by the Client in utilising the Services and the execution of FX Transactions.
- 8.7. The Client acknowledges that the Services are financial in nature and therefore that no cooling off period applies to the use of the Services.
- 8.8. The Client warrants that any FX Transactions undertaken on the Client's behalf by Shiftly FX shall comply with any rulings, regulations and legislation of the South African Reserve Bank and, further, the Client warrants that it is not, as at the Effective Date hereof, and shall not, during the duration of this Client Mandate, be, in contravention of any exchange control rules, regulations and/or legislation.

## **9. INDEMNITY**

- 9.1. The Client hereby indemnifies Shiftly FX and the Authorised Dealer against any and all claims, damages, losses, demands, liability, costs and expenses of whatsoever nature and howsoever caused and arising, which may at any time be made against the Authorised Dealer and/or Shiftly FX by the Client or any other person or entity, or which the Authorised Dealer and/or Shiftly FX may sustain or incur arising directly or indirectly out of or in consequence of any FX Transactions and/or facilitated by Shiftly FX and/or the Authorised Dealer on behalf of the Client in terms of this Client Mandate.

## **10. REPORTING**

- 10.1. Upon written request by the Client, or the Additional Authorised Individual, if applicable, Shiftly FX will furnish the Client or Additional Authorised Individual as the case may be, with a report, containing such information as is reasonably necessary to enable the Client to:
  - 10.1.1. Produce a set of financial statements;
  - 10.1.2. Determine the changes in the market value of the investment over the reporting period;
  - 10.1.3. Determine the charges levied over the reporting period.



- 10.2. The Client, or the Additional Authorised Individual, if applicable, may in addition to the above request information about:
  - 10.2.1. The original value of the FX Transaction, as well as the current market value thereof;
  - 10.2.2. Currency pairs purchased and sold during the period;
  - 10.2.3. Profits and losses realized during the reporting period; and
  - 10.2.4. The leverage employed during the reporting period.
11. Professional indemnity insurance
  - 11.1. Shiftly FX shall maintain adequate professional indemnity cover as an FSP.

## **12. CONFIDENTIALITY**

- 12.1. Each Party shall treat all information relating to the Client Mandate and the actions or affairs of the Client and of Shiftly FX as confidential and shall not disclose any such information to any person, provided that such information may be disclosed:
  - 12.1.1. with the prior obtained consent of the relevant Party;
  - 12.1.2. by a Party to its officers, directors, employees, consultants and professional advisers on a need-to-know basis, and provided that each such Person is directed to and undertakes to keep the information confidential;
  - 12.1.3. to a person providing administrative services to Shiftly FX;
  - 12.1.4. if required by the provision of any Applicable Law with which the Party must comply, or during any court proceedings, or by the rules or regulations of any Exchange or any other applicable regulatory body with whose rules such Party is accustomed to comply.
- 12.2. The in-house research conducted by Shiftly FX is an important competitive advantage enabling a superior return to be achieved on the FX Transactions, and the Client undertakes to treat as confidential and to keep secret any investment information which it may receive from Shiftly FX's management of the FX Transactions.

## **13. DISCLOSURE AND PROTECTION OF PERSONAL INFORMATION**

- 13.1. The Client hereby authorises Shiftly FX to disclose any information, including Personal Information as defined in PoPIA, disclosed by the Client or the Additional Authorised Individual to Shiftly FX, including information regarding the Client's business with Shiftly FX, or any related company, to any or all of the Authorised Dealer(s), the South African Revenue Service, or any other applicable regulatory authorities and any third party service provider or professional advisor who provides services to Shiftly FX in connection with its business.
- 13.2. The Client acknowledges and agrees that Shiftly FX utilises a third-party FICA verification system, which is currently provided by DocFox Africa (Pty) Ltd (registration number 2015/275633/07) ("DocFox"), and consents to the disclosure of its Personal Information to DocFox or such other third-party FICA verification service provider as may be appointed by Shiftly FX from time to time.

- 13.3. All Personal Information of the Client contained in Part A: Client Information, and all further Personal Information collected in the course of the business relationship with Shiftly FX may be Processed as defined in terms of PoPIA and used by Shiftly FX as determined herein.
- 13.4. Shiftly FX undertakes to Process all Personal Information in compliance with PoPIA and in terms of its own internal policies, which will be provided to the Client upon request.
- 13.5. The Personal Information shall be Processed for the purposes of account administration, anti-money laundering, counter-terrorist financing identification and tax identification for the purpose of compliance with FACTA.
- 13.6. Personal Information may be transferred to companies appointed by Shiftly FX to support the provision of the Services by Shiftly FX, such as an Authorised Dealer with which Shiftly FX does not yet have a relationship.
- 13.7. The Parties agree that Personal Information may be collected and processed from and/or with a source other than the Client, provided such Personal Information is necessary for purposes of discharging the obligations contained in this Client Mandate.
- 13.8. The Parties hereby agree, and the Client hereby gives express consent to Shiftly FX that a source as mentioned above includes Shiftly (Pty) Ltd (registration number: 2019/341555/07);
- 13.9. The Client may request details of his or her Personal Information held in Shiftly FX's records in accordance with Applicable Law. The Client may also request the updating or the correction of any incorrect Personal Information.
- 13.10. In the event of termination of this Client Mandate or on written receipt by the Client, Shiftly FX will return, delete, or destroy all Personal Information of the Client under its control or in its possession as soon as reasonably possible following the termination of the Client Mandate or receipt of the written request by the Client and to the extent permissible by any Applicable Law.
- 13.11. In the event of a data breach, or where there are reasonable grounds to believe that Personal Information has been accessed or acquired by an unauthorised person, Shiftly FX shall, as soon as reasonably possible upon becoming aware of such compromise, notify the Client in writing of:
  - 13.11.1. the possible consequences of the security compromise;
  - 13.11.2. the measures implemented, or to be implemented, to address the security compromise and whether such measures have been effectively implemented;
  - 13.11.3. the identity of the unauthorised person who is reasonably suspected to have accessed or acquired the Personal Information, if known.
- 13.12. The Parties agree to attempt to resolve any disputes regarding the Processing of Personal Information in terms of this Client Mandate internally. Notwithstanding the aforementioned, the Client may, without prejudice to any other right or remedy under any Applicable Law, lodge a complaint with the Information Regulator in the prescribed manner and form alleging interference with the protection of its Personal Information.

- 13.13. The Client acknowledges that the Authorised Dealer is required to report to SARS on account holders who are citizens or residents of the United States of America (“US”) or who have US indicators, such as a US passport number.
- 13.14. The Client hereby consents to the Processing of his/her/its Personal Information in terms hereof.

## **14. RISK AND LIABILITY**

- 14.1. The Client acknowledges:
  - 14.1.1. Forex trading carries a high degree of risk and may not be suitable for all investors.
  - 14.1.2. Forex risk is the risk of an investment’s value changing due to fluctuations in currency exchange rates:
  - 14.1.3. Currency risk is a form of risk that arises from the change in price of one currency against another currency.
  - 14.1.4. Event risk is the risk due to unforeseen events partaken by or associated with a company.
  - 14.1.5. Operational risk is a form of risk that summarizes the risks a firm undertakes when it attempts to operate within a given field or industry. Operational risk is the risk that is not inherent in financial and systematic risk; and includes risks resulting from breakdowns in internal procedures, people and systems.
  - 14.1.6. Leverage risk is the risk associated with enhanced exposure obtained from gearing. Small movements in an instruments’ price can generate proportionately larger movements in the associated investment’s value.
- 14.2. The Client confirms that, save as set out in the remaining provisions of this clause, Shiftly FX shall not be liable for, and the Client hereby indemnifies Shiftly FX in respect of, any claims for loss or damage which the Client may suffer, howsoever such loss or damage may arise or be suffered, in respect of the FX Transactions managed by Shiftly FX on behalf of the Client.
- 14.3. Shiftly FX shall however be liable for, and shall indemnify the Client in respect of, any such loss or damage which arises as a result of the fraud, dishonesty or gross negligence of Shiftly FX or any director, employee, officer, or agent of Shiftly FX.
- 14.4. Shiftly FX shall arrange and maintain, at its own expense, insurance cover in respect of any liability which may be incurred by Shiftly FX in terms of this Client Mandate.
- 14.5. Upon request, Shiftly FX shall furnish the Client with written confirmation of the amount of the insurance cover and any changes thereto from time to time.

## **15. DURATION AND TERMINATION:**

- 15.1. This Client Mandate shall commence on the Effective Date and shall continue until terminated in accordance with the remaining provisions of this clause 15.
- 15.2. Shiftly FX and the Client shall be entitled to terminate this Client Mandate:

- 15.2.1. by notice in writing to the other Party of 5 calendar days; or
- 15.2.2. by written agreement, subject to the terms of this Client Mandate;
- 15.3. This Client Mandate shall be terminated immediately and without the requirement for notice, should Shiftly FX:
  - 15.3.1. cease to be an authorised financial services provider in terms of the FAIS Act;
  - 15.3.2. fail to procure or maintain the necessary approval from the Financial Surveillance Department through an Authorised Dealer;
  - 15.3.3. be sequestrated, liquidated or placed under judicial management, whether provisionally or finally; in which event Shiftly FX shall account to the Client immediately.
- 15.4. Subject to specific written instructions from the Client, Shiftly FX shall not initiate any market transaction in any FX Transactions on behalf of the Client after notice of termination has been received or given. It is recorded that any FX Transaction initiated on behalf of the Client prior to the giving or receipt of the notice of termination shall be completed.
- 15.5. Upon any termination or cancellation of this Client Mandate, unless the Client directs otherwise, the following provisions shall apply:
  - 15.5.1. all cash, FX Transactions and documents of title at the date of termination shall be returned or transferred to the Client or its nominee as soon as possible, if applicable;
  - 15.5.2. Shiftly FX shall simultaneously provide the Client with a detailed final statement of account.

## **16. COMPLAINTS**

- 16.1. It is Shiftly FX's policy to ensure that steps are taken promptly to respond to all complaints. Shiftly FX has a complaints resolution procedure in place to facilitate this. Any complaint involving Shiftly FX should be set out in writing and include all relevant information. All relevant documents should be attached. The complaint should then be sent to the Compliance Officer using the contact details set out in Annexure A of this Client Mandate.

## **17. DISPUTE RESOLUTION**

- 17.1. If any dispute (other than a dispute in respect of which urgent relief may be obtained from a court of competent jurisdiction) arises between the Parties in connection with:
  - 17.1.1. the formation or existence of, carrying into effect of, interpretation or application of;
  - 17.1.2. the parties' respective rights and obligations in terms of or arising out of;
  - 17.1.3. the validity, enforceability, rectification or termination, whether in whole or in part of; or
  - 17.1.4. any documents furnished by the parties pursuant to this Client Mandate, and if the disputing Parties are unable to resolve the dispute among themselves, any disputing party may, by written notice to the others, refer the dispute for determination by arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa and shall be governed by the Arbitration Act 1965 or any replacement Act;

- 17.2. This clause is a separate, divisible agreement from the rest of this Client Mandate and shall:
- 17.2.1. not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the Client Mandate and not to this clause. The Parties intend that any such issue shall be subject to arbitration in terms of this clause;
  - 17.2.2. remain in effect even if the Client Mandate is terminated or cancelled for any reason whatsoever.
- 17.3. The judicial seat of the arbitration shall be Cape Town, South Africa;
- 17.4. The Parties shall endeavor to ensure that it is completed within 90 (ninety) days of receipt of the written notice requiring the claim to be referred to arbitration;
- 17.5. The decision of the Arbitrator shall be final and binding on the Parties;
- 17.6. The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential unless otherwise contemplated in this Client Mandate;
- 17.7. The arbitrator shall be obliged to give his award in writing, fully supported by reasons;
- 17.8. Any decision or award of the arbitrator may be made an order of any court of competent jurisdiction.

## **18. GENERAL**

- 18.1. Applicable Law and Jurisdiction
- 18.1.1. This Client Mandate and the rights, obligations and relationship of the Parties pursuant to this Client Mandate shall be governed by and interpreted in accordance with the laws of the Republic of South Africa. The Client agrees that any dispute arising out of the Client Mandate or the interpretation thereof, both while in force and after its termination, or any claim for payment howsoever arising shall be submitted to and determined by a court of law in South Africa, subject to clause 17 of this Client Mandate, and the Client hereby irrevocably consent to the jurisdiction of the South African courts. To the extent not prohibited by Applicable Law, the Parties hereby waive, and agree not to assert by way of motion, a defence or otherwise, in any such proceeding, any claim that is not subject to the jurisdiction of such courts, that any such proceeding brought in such courts is improper or that this Client Mandate, or the subject matter hereof, may not be enforced in or by such courts.
- 18.2. Whole Agreement
- 18.2.1. This Client Mandate constitutes the whole agreement between Shiftly FX and the Client. No agreement, representations or warranties, other than those set out in the Client Mandate will binding on the parties.
- 18.3. Variation, cancellation, waiver

- 18.3.1. No contract, varying, adding to, deleting, or cancelling this Client Mandate, and no waiver of any right under this Client Mandate Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.
- 18.4. Electronic Signature
- 18.4.1. The Parties hereby agree that signatures may be evidenced by emailed PDF of a signed counterpart of this Client Mandate. These signatures must be treated in all respects as having the same force and effect as original signatures.
- 18.5. No Representations
- 18.5.1. No Party may rely on any representation which allegedly induced the Party to enter into this Client Mandate, unless the representation is recorded in this Client Mandate.
- 18.6. Indulgences
- 18.6.1. No relaxation or indulgence granted by Shiftly FX or the Authorised Dealer to the Client shall be deemed to constitute a waiver of Shiftly FX's or the Authorised Dealer's rights in terms of the Client Mandate.
- 18.7. Breach
- 18.7.1. If any Party at any time breaches any of that Party's obligations under this Client Mandate, any aggrieved Party (the "Aggrieved Party"), may at any time after that breach exercise any right that became exercisable directly or indirectly as a result of the breach, unless the Aggrieved Party has expressly elected in writing or by clear and unambiguous conduct, amounting to more than mere delay, not to exercise the right. If the Aggrieved Party is willing to relinquish that right the Aggrieved Party will on request do so in writing. In particular, acceptance of late performance be provisional only, and the Aggrieved Party may still exercise that right during that period and shall not be estopped (precluded) from exercising the Aggrieved Party's rights arising out of that breach, despite that fact that the Aggrieved Party may have elected or agreed on one or more previous occasion not to exercise the rights arising out of any similar breach or breaches.
- 18.8. Execution in counterparts
- 18.8.1. This Client Mandate may be executed in counterparts, each of which shall be deemed to be an original of this Client Mandate.
- 18.9. Cession
- 18.9.1. Save as expressly contemplated in this Client Mandate, none of the Parties may cede such Party's rights and/ or delegate that Party's obligations without the prior written consent of the other Parties.
- 18.10. Notices
- 18.10.1. The Client chooses the Client's physical and e-mail address stated in Part A: Client Information as the Client's domicilium citandi et executandi at which all written notices, legal processes and other communications must be delivered to the Client in terms of the Client Mandate.

18.10.2. Shiftly FX chooses as its domicilium citandi et executandi the following address: 47 Reitz Street, Audas Estate, Somerset West, Western Cape, 7130 and per e-mail to: lourens@shiftlyfx.com.

18.11. Costs

18.11.1. Each Party is responsible for its own costs related to the negotiation, preparation, and implementation of this Client Mandate.

## Annexure “A” Shiftly FX (Pty) Ltd Key Individual(s) and Representative(s)

1. The below listed individuals are registered with the Financial Sector Conduct Authority (“FSCA”) and Shiftly FX accepts responsibility for the activities which they perform within the course and scope of their employment:

**Key Individual(s):**

- MARIJUS SMIGELSKIS

**Category I**

- Class of Business: Investments

**Representative(s):**

- MARIJUS SMIGELSKIS  
(Under Supervision)
- LOURENS COETZEE
- JARED AIDAN STALEY

2. This list will be updated when any new Key Individual or Representative joins Shiftly FX or when any existing Key Individual or Representative leaves Shiftly FX.
3. The categories/subcategories for which a Representative is registered with the FSCA, and the most recent version of this Annexure A are available on request from the Compliance Officer, or are available on the FSCA website.
4. Name and contact details of **(Internal) compliance manager:**

**Contact person:** Lourens Coetzee

**Telephone number:** +27 73 030 7212

**E-mail address:** lourens@shiftlyfx.com

5. Name and contact details of **(External) compliance officer:**

**Contact person:** Deon Harmse

**Telephone number:** +27 21 554 5745

**E-mail address:** dharmse@moonstonecompliance.co.za