

## BUSINESS AFFILIATE AGREEMENT

**THIS AGREEMENT** (“**Agreement**”) is made on \_\_\_\_\_ by and between:

[**Company Name**] (the ‘Company’) a company organized under the laws of [Company’s Country], the registered office of which is [Address], with registration number [Registration Number] and has entered into an Intermediary Services agreement with Key Way Investments Limited, Key Way Markets Ltd, and JME Financial Services (PTY) Ltd

**and**

[**Affiliate Name**], the address of which is [Address], with Passport/ID No. [Passport Number], an entity that has successfully completed a process of application and registration as the Company’s Affiliate (“**Affiliate**”),

each a “**Party**” and collectively the “**Parties**”.

### **WHEREAS:**

A. **Key Way Investments Limited** (‘Key Way’) is a regulated investment services firm, authorized in the conduct of its activities by the Cyprus Securities and Exchange Commission (“**CySEC**”) under license number 292/16, operating **CAPEX.COM**

B. **Key Way Markets Ltd**, is a company licensed and regulated by the ADGM Financial Services Regulatory Authority (FSRA), the registered office of which is Office 126-132, floor 15, Al Khatem Tower, Adgm Square, Al Maryah Island, Abu Dhabi, United Arab Emirates, under license No. 190005, operating, **AE.CAPEX.COM**

C. **JME Financial Services (PTY) Ltd** is authorized by the Financial Sector Conduct Authority under FSP license number 37166, the registered address of which is Suite 10, 21 Lighthouse Rd 201 Beacon Rock, Umhlanga Rocks, Kwa-Zulu Natal, 4320, South Africa, operating **ZA.CAPEX.COM**,

hereafter collectively referred as the ‘Regulated Entities’, ‘Companies’ or individually ‘Regulated Entity’, ‘Company’

D. The Regulated Entities have the sole and exclusive license to use the domains mentioned above worldwide and the Regulated Entities operate the trading platform through these domains,

E. The Regulated Entities, under the terms of their operating license issued respectively by CySEC, FSCA and ADGM (the ‘Regulators’), are in the business of providing investment services to retail and professional clients (“Investment Services”) as all such terms are defined in the Laws and Regulation of the Regulated Entities,

F. Regulated Entities, under the terms of their operating license issued by their Regulators, has to adhere at all times to the Laws, the directives, circulars, guidance notes and pronouncements issued or updated, amended or supplemented from time to time

G. At the date of this Agreement, the Regulated Entities engage in the online trading of Contracts for Difference (“CFDs”) in underlying financial instruments such as foreign exchange, commodities,

indices, shares, cryptocurrencies and bonds through the trading platforms of the Regulated Entities on which clients can place their orders to buy or sell CFDs for such financial instruments,

H. The Company is responsible for undertaking business development, marketing and other related non-financial services activities, including entering into business affiliate agreements with third parties as envisaged herein,

I. By entering into this Agreement with the Affiliate, the Company aims to set out the framework in accordance with which the Affiliate will provide Services to the Company,

J. The Affiliate is willing to refer Clients to the Company in return for a Commission (as defined in Schedule 1 below) earned as specified in this Agreement, and subject to the terms and conditions of this Agreement, including with respect to the conduct of work by the Affiliate in a manner that is compliant with the Applicable Laws and Regulations at all times,

K. The affiliate will promote the brands of the Company and direct web-traffic to the Regulated Entities, to increase the online profile of the Company and perform any other similar (with the abovementioned) activity.

## **THE PARTIES HEREBY AGREE AS FOLLOWS:**

### **1. INTERPRETATION**

The following definitions and rules of interpretation apply in this Agreement.

#### **1.1 Definitions:**

**Adverse Action:** means any situations:

- (i) Where any Client (actual or prospective) referred to the Company by the Affiliate submits a complaint to the Company, any member of the Group, its holding company, CySEC, FSCA, FSRA, ADGM, any Financial Ombudsman, or any other authority (including regulatory authorities in the domestic jurisdiction of the Client) or commences any judicial or arbitral proceedings against the Company or any member of the Group which are adversely determined by the relevant court or arbitral tribunal against the Company/member of the Group, and which complaint or proceedings are in any way related to a breach by the Affiliate of its obligations under this Agreement, the Code of Conduct or Marketing Communication Guidelines, or
- (ii) Where any Client (actual or prospective) makes any derogatory or defamatory statement against the Company, any member of the Group or the Group, which are in any way related to a breach of the obligations to which the Affiliate is subject to in accordance with the provisions of this Agreement, or
- (iii) Where the Company has evidence or otherwise reasonably determines that the Affiliate is in breach of its obligations as set out in this Agreement; or

(iv) Where any Client commits a material breach of its Agreement with the Company, including but not limited:

(a) refusal or failure to provide or update, or providing false, inaccurate or misleading information or documents under Clause 2 below;

(b) engaging in any behavior which could be considered by the Company as abusive of the Company's trading systems, including but not limited engaging in any practices for the purpose of deriving a benefit from delays in the prices, trading at off-market prices and/or outside trading hours, abusing the system for trading at manipulated prices; or

(c) any event of default under the Agreement.

**Banned Jurisdictions:** means any jurisdiction that the Company and the Regulated Entities may from time to time at their discretion designate as a "**Banned Jurisdiction**" by a written notice to the Affiliate.

**Business Day:** a day other than the weekend as interpreted in each country, a public holiday in Gibraltar, Cyprus, Abu Dhabi, and South Africa when banks are open for business.

**Client:** means a natural person which is either a prospective client of the Key Way or has entered into an ISA with Key Way, after Key Way, at its sole discretion, successfully undertook an assessment of such person's knowledge and experience for trading in CFDs or other products the Company may offer, properly identified the client for Anti Money Laundering purposes, and has otherwise completed a client on boarding process in accordance with the terms of the ISA.

**Code of Conduct:** means the Code of Conduct attached hereto as Schedule 1(A) as the same may be amended from time to time.

**Commission:** has the meaning given to it in Clause 5 below.

**Competent Regulator** means the competent data protection regulator.

**Confidential Information:** means, without limitation, all tangible and intangible information and materials being disclosed to the Affiliate in connection with this Agreement, in any form or medium (and without regard to whether the information is owned by the Company or any member of the Group or by a third party), including but not limited to:

(i) the existence and terms of this Agreement;

(ii) any information relating to:

(a) the business, affairs, Clients, trading platforms, liquidity providers, data or feed providers and other vendors, plans, intentions, or marketing plans and opportunities, financial position and financial projections of the Company or of the Group; and

(b) the operations, processes, product information, know-how, designs, trade secrets or software of the Company or of the Group;

(iii) any information or analysis derived from Confidential Information;

but not including any information which:

(a) was available to the Affiliate on a non-confidential basis prior to disclosure by the Company; or

(b) the Parties agree in writing is not confidential or may be disclosed; or

(c) was publicly known at the time of the disclosure or becomes publicly known through no wrongful act or failure of the Affiliate (or its employees, officers, representatives or advisers).

**Data Protection Commissioner:** the Commissioner for the Protection of Data, appointed as per the respective regulator of the Country that that the Company operates

**Data Protection and Electronic Communications Rules:** each as transposed in any relevant jurisdiction and legislation with similar purpose or effect in all relevant EU and non-EU countries, and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by any relevant supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction (whether mandatory or not).

**Data Protection Commissioner:** the relevant body / authority, responsible for the Protection of Data.

**EEA** means the European Economic Area.

**End Client Data** means the personal data processed by Business Affiliate on behalf of the Company pursuant to the Agreement.

**Evaluation Period:** the period within which the Company may evaluate the performance of the Affiliate in order to assess whether the Affiliate satisfies the requirements of the Company, as set out in this Agreement and is otherwise fit to provide Services to the Company as provided for herein. The Evaluation Period shall be a three (3) month period from the entry into effect of this Agreement or any such other period that that Company may, acting reasonably, deem appropriate.

**Financial Ombudsman:** means the Financial Ombudsman of each country if applicable.

**Group:** means Key Way Investments Limited, Key Way Markets LTD, JME Financial Services (PTY) LTD and any entity controlled by or controlling any of the said entities and/or entities under common ownership and control with the said entities where “control” means direct or indirect control, of at least 20% of the voting rights or capital of an entity.

**Intellectual Property Rights:** means without limitation patents, know-how, trademarks, rights to inventions, copyright and related rights, trade marks, business names and domain names, lists and information on any Clients, information on business or trading practices and remuneration, client incentive and loyalty schemes, commission or other similar incentive schemes for affiliates and other business partners, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Investment Services** means the investment and ancillary services that the Regulated Entities provides to its Clients in accordance with the terms of the ISA and pursuant to the authorization granted to it by Regulated Entities’ Competent Authority under its license.

**ISA** means the Investment Services Agreement for Retail and Professional Clients of Key Way, including all and any documents which are expressed to form an integral part of the aforesaid agreement, as may be amended and supplemented from time to time.

**Mandatory Policies:** the Company's mandatory policies and procedures (or relevant extracts thereof provided to the Affiliate by the Company for the purposes of this Agreement) listed in Schedule 1, as the same may be amended from time and which includes, without limitation, the Code of Conduct of the Company and the Marketing Communication Guidelines.

**Marketing Communication Guidelines:** means the marketing communication guidelines for Affiliates, attached hereto as Schedule 1(C)

**Referral:** the referral of prospective Clients where such referral results in a Client successfully registering for a trading account with the Company, entering into the ISA and commencing trading through the Company’s electronic trading platforms. “refer”, “refers” and “referred” shall be interpreted accordingly.

**Sanctions:** mean any country- or territory-wide trade, economic or financial sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by a Sanctions Authority from time to time that the Company has to observe. A Sanction Authority can include any of the following, without limitation the Anti Money Laundering Agencies, the Competent Authority, the Central Bank, the Ministry of Finance or any other Ministry of the respective Country where the Regulated Entity is established;

**Website(s):** means the websites of the Regulated Entities [www.capex.com](http://www.capex.com) , [www.ae.capex.com](http://www.ae.capex.com), [www.za.capex.com](http://www.za.capex.com)

1.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2 The Schedules 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 Schedules.

1.3 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.4 A reference to a law or statutory provision shall include all subordinate legislation made under that law or statutory provision.

1.5 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.6 References to clauses and Schedules are to the clauses and Schedules of this agreement; references to paragraphs are to paragraphs of the relevant Schedule.

## **2. ESTABLISHMENT OF RELATIONSHIP**

2.1 Upon the onboard of the Affiliate, the Company shall conduct an initial review of the Affiliate. In the event the Company is willing to enter into this Agreement with the Affiliate, the Company's authorized representative (the "**Affiliate Manager**") shall contact the Affiliate using the contact details provided by the Affiliate and notify the Affiliate about provisional acceptance thereof as the Company's affiliate and about commencement by the Company of the Affiliate due-diligence, KYC and verification process (the "**Verification Process**").

2.2 As soon as reasonably practicable after giving notice to the Affiliate under Clause 2.1 above, the Affiliate Manager shall contact the Affiliate and inform him of the KYC, anti-money laundering and other verification and compliance documentation that the Affiliate will have to provide to the Company in the course of the Verification Process, including the documents specified in Clause 2.3 below.

2.3 The Affiliate shall, as soon as reasonably possible upon receipt of the communication from the Company under Clause 2.2 above, provide to the Company such documents as the Company shall determine in its sole discretion for the purposes of completion of the Verification Process and as may be required for the purposes of the Company complying with the Applicable Laws and Regulations. Without prejudice to the generality of the foregoing, the Affiliate shall provide to the Company copies of the following documentation:

(i) If the Affiliate is a natural person, the Affiliate's proof of residence and proof of identity in a form satisfactory to the Company;

(ii) If the Affiliate is a body corporate, copies of all statutory documents of the Affiliate, including but not limited to its memorandum and articles of association, certificate of incorporation, proof of registered address, register of directors and shareholders, certificate of good standing; and

(iii) the Affiliate's source(s) of traffic (Digital) which the Affiliate intends to use for the purposes of introducing potential Clients to the Company, will be in accordance with the regulations, applicable laws and /or circulars of the Regulated Entity.

2.4 The Affiliate shall ensure that all and any documents requested from it under this Clause 2 are provided to the Company in a form satisfactory to the Company before the date of any commission payment becoming due to the Affiliate under this Agreement. The Affiliate understands and agrees that the Company reserves the right to withhold any commission and any other payments due to the Affiliate hereunder until the Verification Process is completed to the Company's satisfaction. The Affiliate Manager shall notify the Affiliate of successful completion of the Verification Process.

2.5 The Affiliate shall immediately notify the Company in writing in the event of any changes to its circumstances (or in the event where the Company notifies the Affiliate that it has become aware of such changes) that cause any of the documents submitted to the Company during the Affiliate Verification Process be outdated or invalid, and shall henceforth provide to the Company accurate and up-to-date documents reflecting any such changes.

### **3. REFERRALS**

3.1 In consideration of the commissions payable by the Company under Clause 5 below, the Affiliate agrees to serve as a point of referral and facilitator for the purposes of introducing prospective Clients and to provide the following Services:

(i) Provide a link from its own website to the Website or the trading platform.

(ii) With the Company's prior written consent, approach the prospective Clients and/or otherwise advertise the Website through off-line Traffic Sources. For the avoidance of doubt, the Affiliate shall at no time promote Regulated Entity or its business in any manner or approach prospective Clients via the off-line Traffic Sources without the Company's prior written consent. In the event of any breach by the Affiliate of the provisions of this paragraph (B), the Company shall have a right to terminate this Agreement with immediate effect and withhold any accrued but unpaid amounts of the Commission.

(iii) Inform the prospective Clients the Competent Authority of the respective Regulated Entity.

(iv) Provide true, fair and accurate information to prospective Clients in relation to the Investment Services offered by Regulated Entity in respect of trading by Clients in CFDs or other financial instruments that the Regulated Entity may engage in. Provide a true, fair and accurate description of Regulated Entity's and the Group's business such as to enable a correct and balanced understanding by the prospective Clients of the services offered by Regulated Entity and the Group. The Affiliate shall ensure that each prospective Client who approaches or is approached by the Affiliate is provided with information concerning the risks involved in trading CFDs, including the risk of losing most of or all

capital invested by a prospective Client. Such information must be not less detailed than that contained in the Risk Disclosure Statement of Regulated Entity available at its Website.

(v) Comply with any business-related instructions or directions given to the Affiliate by the Company in carrying out the Services provided for herein.

(vi) Regularly check the Website and the trading platform to be updated of the Regulated Entity and be fully informed with the terms and conditions of trading of CFDs by Clients, or any other disclosures issued by the Company.

(vii) The Affiliate shall not approach any potential Clients or distribute any advertising or marketing materials whatsoever about the Company or its Investment Services in any Banned Jurisdictions, or outside the scope permitted by this Agreement

(viii) The Affiliate shall not support the Clients on any technical or other matters associated with the Clients' trading with the Regulated Entity and shall direct the Clients to Regulated Entity's customer support service in the event any such matters arise. The Affiliate will not induce, encourage, push or promote any prospective Client (either through offline or online ways or means or in any other tactics) to enter into any trading or deposit funds with the Regulated Entity or offer any investment, tax, legal or any other advice or portfolio management service to any Client, whether directly or indirectly, or operate or direct operation of any Client's account with the Regulated Entity, even if the Client seeks to provide the Affiliate any authority or power of attorney to authorize such operation.

(ix) Provide any other services as may be mutually agreed between the Parties in writing in accordance with the provisions of this Agreement.

3.2 The Affiliate shall not allow its interests to conflict with its duties under this Agreement and shall comply with all reasonable and lawful instructions of the Company. The Affiliate should not in any way produce his own material (either text, videos, banners etc.) regarding the Company and its services but always use material pre-screened and approved in writing by the Company.

3.3 Where the Company, in its absolute discretion, considers that the Affiliate does not satisfy the requirements of the Company as set out in this Agreement or that the Affiliate is otherwise not fit to provide Services to the Company, it may terminate this Agreement with immediate effect by giving to the Affiliate a written notice, without prejudice to any of the rights of the Company under this Agreement.

3.4 The Affiliate shall have no authority, and shall not hold itself out, or permit any person to hold itself out, as being authorised to bind the Company, the Regulated Entity or any member of the Group in any way, and shall not do any act or otherwise conduct itself in such manner which might reasonably create the impression that the Affiliate is so authorised. The Affiliate shall not make or enter into any contracts or commitments or incur any liability for or on behalf of the Company, and shall not negotiate any terms for the provision of the Investment Services with Clients. Breach of the provisions of this Clause 3.4 shall allow the Company to immediately terminate this Agreement by giving a written notice to the Affiliate.



3.5 The Affiliate shall disclose to each prospective Client that it provides Services to the Company and shall inform such prospective Clients that it has no authority or power to negotiate or vary any term of the ISA or the Investment Services provided by the Regulated Entity, or to enter into any contract on behalf of the Regulated Entity.

3.6 The Affiliate shall use only such marketing or advertising materials relating to the Regulated Entity or the Investment Services, as is provided to the Affiliate by the Company. The Affiliate shall not produce any such material, or use the Regulated Entity's, the Company's or the Group's name, logo or trademarks, without the prior written consent and approval of the Company. In cases where the logo of the Company is used in accordance with the foregoing, it must be clearly indicated that the website of the Affiliate is a tool for the direction of prospective Clients for registration as Clients of the Company.

3.7 The Affiliate shall not, without the Company's prior written consent, make or give any representations, warranties or other promises express or implied, concerning the Investment Services provided by the Regulated Entity which are not contained in the Company's formal marketing materials provided to the Affiliate.

3.8 Any information and marketing material related to the Company and its services shall be prepared and approved by the Company prior to being included in the website of the Affiliate or used by the Affiliate in any other way.

3.9 The Company shall have the right to reject, in its sole and absolute discretion, any of the Traffic Sources used by the Affiliate. The Affiliate shall, immediately upon receipt from the Company of a notification to that effect, cease using the Traffic Sources so identified by the Company for the purposes of providing services under this Agreement.

3.10 The Affiliate shall exercise due skill and care, interest, diligence and professionalism so as to satisfactorily fulfil its obligations arising under this Agreement. In providing services hereunder, the Affiliate shall always act in accordance with the best industry practices and market standards for similar services.

3.11 The Affiliate shall not in any way give or offer any investment, tax, legal or any other advice or opinion or information (whether oral, written or electronic in any mode or medium), disseminate investment research or make any statement which may be construed as constituting such advice, research or opinion to any prospective or actual Client. Without prejudice to the generality of the foregoing, the Affiliate shall not:

(i) give to any prospective or actual Client any personal opinion on trading or the direction of the markets and/or of financial instruments;

(ii) advise prospective or actual Clients on any investment strategies;

(iii) advise prospective or actual Clients on opening of new positions in any financial instrument (whether offered by the Company or not);

(iv) advise prospective or actual Clients on closing existing positions in any financial instrument (whether offered by the Company or not);

(v) give to prospective or actual Clients any advice or recommendation on hedging positions in such Client's portfolio;

(vi) provide any kind of custom-made trading signals to prospective or actual Clients or use any trading signals service provided by any third parties.

(vii) The affiliates should not in any way collect personal data from clients or carry background checks for AML purposes.

3.12 The Company will monitor the activities of the affiliate monthly on an ongoing risk-based approach in order to ensure that it complies with the Company's policies. In cases where the affiliate is found non-compliant and does not take action to rectify the identified deficiencies within 7 days the agreement will be terminated.

3.12 Affiliate:

(i) is prohibited from giving or offering any investment, tax, legal or any other advice or opinion or information (whether oral, written or electronic in any mode or medium) or make any statement which may be construed as constituting such advice or opinion to any prospective or actual Client,

(ii) shall not represent to any prospective Clients or otherwise create an impression that such Clients are guaranteed any profits by the Company or that such Clients may derive their primary income from CFD trading,

(iii) shall not make any misleading statements, represent or otherwise create an impression with the prospective Clients that CFD trading is simple or that it does not require knowledge, experience and understanding of the financial markets and instruments,

(iv) shall not in any way create an impression with prospective or actual Clients (either through communication with them or otherwise) that leveraged trading in CFDs offers guaranteed or risk free returns, or that it offers any kind of extraordinary, large or similar returns;

(v) shall not in any way compare an account of the potential Client of the Company to normal bank accounts or create an impression or communicate to the potential Clients that any account with the Company bears interest and/or enjoys any statutory and regulatory protections afforded to the bank accounts;

(vi) shall not manage or operate any trading account of, or for, any Client, and further shall not undertake any portfolio management (whether on discretionary or on advisory basis) for any active or prospective Client.

(vii) agrees that it will not represent to any prospective Client that the Regulated Entity will guarantee such Client against losses or limit the losses of such Client,

(viii) shall not use any language or practices that may be construed as offering any promise or guarantee of any trading gain or profits to any Client,

(ix) shall not engage in high pressure sales tactics or any unethical techniques with regard to any Client and shall abide at all times by high ethical standards in its dealings with all Clients,

(x) shall not seek to advise, direct or influence, directly or indirectly, how any Client will respond to the Company's questionnaires aimed at the Company assessing the knowledge and experience of the Client in CFDs or at assessing the source of wealth and economic profile of the Client, and

(xi) shall adhere at all times to the Code of Conduct of the Company (including, without limitation, the Company's policy of Treating Customers Fairly);

(xii) shall at all times comply with the Company's Marketing Communication Guidelines as they may change from time to time and are attached hereto as Schedule 1(C).

3.13 No exclusivity is granted to the Affiliate by virtue of this Agreement.

3.14 The Services provided by the Affiliate, are provided at its own cost and risk.

3.15 The Affiliate may not use any form of outsourcing or sub-contracting arrangements in the performance of the Services provided for hereunder without the prior written approval of the Company.

#### **4. COMPLIANCE WITH LAWS AND POLICIES**

4.1 Each Party shall, at its own expense, comply with the Applicable Laws and Regulations relating to its activities under this Agreement, as they may change from time to time, and with any conditions binding on it in any applicable licenses, registrations, permits and approvals.

4.2 The Affiliate hereby represents that it shall at all times comply with the Applicable Laws and Regulations in providing such Services, including ensuring that the Services it will provide under this Agreement will comply indicatively with the investment services, investor protection, marketing

(including distant marketing and electronic marketing) and data processing legislation and regulations in the country of its domicile and in the country where the Affiliate will promote its Services to.

4.3 The Affiliate shall comply with the Mandatory Policies (or relevant extracts thereof as the case may be), foremost of which is the Code of Conduct of the Company and of the Group which the Business Affiliate confirms has received a copy of;

4.4 The Affiliate understands that each Regulated Entity is authorized and regulated in the conduct of its activities, by the respective competent authority and shall adhere at all times to Applicable Laws and Regulations. The Affiliate understands, accepts and agrees that it will at all times ensure that none of its actions cause any actual or potential breach of the Applicable Laws and Regulations by the Company and undertakes to cooperate with the Company in any requests aimed at achieving or enhancing the Company's compliance with the Applicable Laws and Regulations.

4.5 The Affiliate undertakes to cooperate, if required, with each Regulated Entity's Competent Authority, the Data Protection Commissioner and any other relevant authority in connection with the Services which it provides to the Company pursuant to this Agreement and to allow the Company, the Company's Compliance function or its internal or external auditors as well as each Regulated Entity's Competent Authority effective access to: (a) data (including all communications and all documentation in whatever mode or form) related to the Services which it provides to the Company pursuant to this Agreement without withholding or delaying any such access or data; and (b) the business premises of the Affiliate.

4.6 The Affiliate shall ensure that all communications in which it engages in the course of providing Services to the Company in accordance with the provision of this Agreement, (whether oral, written, electronic or otherwise and through whatever mode or medium) including in relation to the Regulated Entity or the trading platform, are fair, clear, not misleading and not aggressive and that nothing in its communication or interaction with any Client, will be untrue, unfair, misleading or aggressive. The Affiliate agrees and accepts that this will be the subject of assessment at regular intervals by the Company, as deemed appropriate by the Company at its sole discretion. The Affiliate undertakes to cooperate fully with the Company at all times and to provide all such documentation, records of communication as well as other information and clarifications that may be required by the Company in order to enable the Company to undertake such assessments.

4.7 The Affiliate shall not engage in any conduct which gives the impression that the regulated status of the Company applies to the Affiliate, or that the Investment Services provided by the Company are provided by the Affiliate.

4.8 It is the Affiliate's responsibility to inform the Company to which venues it publishes any materials regarding the company. No material will be published to any venue without the prior consent of the company.

## **5. COMMISSION AND PAYMENT**

5.1 Subject to the provisions of this Clause 5 and subject at all times to the Affiliate being in full compliance with its obligations under this Agreement, the Affiliate shall be entitled to Commission if a prospective Client referred by the Affiliate enters into the ISA with the Regulated Entity, and continuously complies with the relevant compliance, anti-money laundering, know-your-customer requirements, trading and other terms of the ISA. The Affiliate acknowledges, understands, agrees and accepts that the each Regulated Entity retains at all times the sole right as to whether to accept a prospective Client as a Client of each Regulated Entity and that it will at no time be permitted to participate in each Regulated Entity's assessment of the knowledge and experience of the prospective Client in CFDs (known as "appropriateness" test) or in the each Regulated Entity's assessment of the source of wealth and economic profile of the prospective Client for the purposes of the each Regulated Entity complying with its legal obligations pertaining to the combating of financial crime and money laundering, or in any other assessment or evaluation of the prospective Clients that the each Regulated Entity may undertake for any reason.

5.2 The amount of commission and or other payments (collectively the "**Commission**") payable shall be as determined in accordance with the provisions set out in Schedule 2 hereto ("**Commission Structure and Schedule**") and subject to the provisions of this Clause 5.

5.3 The Company shall within 15 (fifteen) Business Days of the end of each calendar month in which any Clients referred by the Affiliate had any trading activity in their trading accounts with each Regulated Entity, send to the Affiliate a written statement setting out, in respect of such month, the Commission payable to the Affiliate. Payment of the invoice is subject to confirmation by the Company as to the relevant Referrals made by the Affiliate.

5.4 The Company shall have a right to suspend and/or withhold any accrued but unpaid Commissions in the event of breach by the Affiliate of any provision of this Agreement.

5.5 The Affiliate undertakes to provide to the Company as soon as reasonably practicable after the date of this Agreement coming into effect, and in any event not later than the date on which the first payment of the Commission becomes due, accurate wire transfer details which shall indicate the Affiliate as the sole beneficiary of the payment. The Company shall have a right to reject any payment to the Affiliate hereunder if the Affiliate is not the sole beneficiary in the payment details provided by the Affiliate to the Company. The Company shall not be liable for any errors or inaccuracies in the payment details provided by the Affiliate.

5.6 Commission shall be payable to the Affiliate in United States Dollars (USD) only, unless the Company elects at its discretion to effect a payment in any other currency.

5.7 The Affiliate shall bear its own costs in providing Services hereunder and shall be solely responsible for the payment of all its personnel, marketing, communication, administration and other overhead expenses, taxes and/or charges and/or fees and duties arising from the provision of Services pursuant to this Agreement (including on domain and other internet related payment).

5.8 It is agreed by both Parties, that the Commission payable by the Company to the Affiliate is subject to review from time to time.

5.9 Without prejudice to the provisions of Clause 23 (Indemnity and Remedial Action) below, the Commissions payable by the Company under this Agreement shall be subject to malus and clawback, such that in the case of Adverse Action against the Company or its Group, the Company may refuse to make further payments of Commission, and/or may demand repayment of any Commissions already paid to the Affiliate up to the amount of a reasonable estimate of the Company's loss resulting from such breach or failure. The Company and the Affiliate agree that the provisions of this Clause 5.9 are without prejudice to any other rights which the Company or the Group may have against the Affiliate, whether arising under law, contract or otherwise.

5.10 Where the Affiliate refers to the Company persons who also become Affiliates of the Company ("**Sub-Affiliate**"), the Affiliate, in effectively a Master Affiliate capacity shall be entitled to such payments as shall be agreed between the Company and the Affiliate in writing.

5.11 The Company may, in its sole and absolute discretion, provide additional remuneration in the form of a reward, based on qualitative and other criteria that the Company may establish from time to time, having also regard to Applicable Laws and Regulations. The Affiliate shall not receive any Commission from the market performance of the clients' trading portfolio.

5.12 The Company has the absolute right, after giving prior notice to the Affiliate, to change the Commission payable to the Affiliate for reasons related to the Company's remuneration policy by giving to the Affiliate at least 15 Business Days' advance notice by e-mail. Where the Affiliate does not return to the Company with written objections to the proposed changes to the Commission and continues to provide Services after receiving or being deemed to have received notice in accordance with the provisions of this Agreement, the Affiliate will be deemed to have accepted such change in the Commission payable, by conduct. For the avoidance of doubt, any change in Commission made hereunder shall apply, from the date on which any such change became effective, shall apply with respect to both the Clients referred by the Affiliate prior to such change and the Clients referred after such change, but shall not affect any payments of Commission accrued up to the effective date of such change.

The Affiliate shall not receive any remuneration or other non-monetary compensation from any Client which it refers to the Company, in respect of such Referrals.

5.13 The Affiliate is prohibited from receiving or handling any funds from any Client for any purpose whatsoever, whether as recipient for its own account or for the purpose of relaying or delivering such funds to any other person or entity, including, without limitation, the Company.

## **6. ANTI-MONEY LAUNDERING CHECKS AND APPROPRIATENESS ASSESSMENT**

6.1 Without prejudice to the provisions of Clause 7.3 below, when introducing Clients, the Affiliate hereby undertakes not to refer any Client which it knows or believes or reasonably should have known or believed may be involved in any money-laundering or terrorist financing activities.

6.2 The Affiliate hereby undertakes not to refer to the Company any Client which it knows or believes or reasonably should have known or believed it does not have the knowledge or experience in dealing in CFDs or generally in receiving the Investment Services of the Company.

6.3 The Affiliate shall provide the Company with any information the Company deems as necessary in relation to its obligation to undertake an assessment of the Affiliate with respect to money laundering risk.

6.4 The Affiliate shall update the Company by written notice, as soon as possible, about any change (whether actioned or expected) in its corporate, financial and legal status and with respect to any regulatory, judicial, police or other investigations in its affairs or affairs of its shareholders and key personnel.

## **7. OBLIGATIONS OF THE COMPANY**

7.1 The Company shall provide the Affiliate with the relevant material to be used by the Affiliate in order to carry out its duties, including marketing information, details related to the Investment Services and the CFDs or other financial instruments that the Company may allow its Clients to trade in, in from time to time, and other information about the Company.

7.2 The Company shall, as set out in Clause 5.7 above, not be responsible for any costs incurred by the Affiliate unless such costs have been agreed by the Company in writing, in advance.

7.3 The Company shall:

(i) be under no obligation to follow up on any referral made by the Affiliate or to provide Investment Services to any natural or legal person referred to it by the Affiliate.

(ii) have the entire discretion to reject any prospective Client or to terminate any Client referred to it by the Affiliate for any reason that it deems appropriate, including without limitation for matters pertaining to its commercial policy or regulatory compliance with the Applicable Laws and Regulations, or where the Company has a right to terminate any such Client under the ISA.

(iii) have the full and sole right to decline any prospective or actual Client that fails the Company's assessments and requirements for knowledge and experience as well as for the reason of anti-money laundering and financial crime prevention.

## **8. REPRESENTATIONS AND WARRANTIES**

8.1 Where the Affiliate is a natural person, it hereby represents and warrants to the Company the following:

- (i) it has the capacity to enter into this Agreement and to perform the Services provided for hereunder,
- (ii) it shall not be in breach of the Applicable Laws and Regulations in providing the Services,
- (iii) it is not bankrupt or subject to any administrative, insolvency order, tax or other proceedings, and
- (iv) has not been convicted for any criminal activity or been subject to any sanctions, regulatory or other investigations, for unlawful or unethical conduct or breach of any law, regulation or professional conduct other than minor traffic offenses.

8.2 Where the Affiliate is a legal person, it hereby represents and warrants to Company as follows:

- (i) It has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder and to provide the Services and transactions contemplated hereunder and that there are no other undertakings or agreements preventing it from committing itself in accordance with this Agreement and performing its obligations hereunder.
- (ii) The execution and delivery of this Agreement, and the performance by the Affiliate of its obligations hereunder, have been duly authorized by its relevant governance bodies in accordance with applicable law and its internal statutes and regulations.
- (iii) This Agreement, upon execution and delivery by the Company and the Affiliate, will constitute the legal, valid and binding obligations of the Affiliate, enforceable against the Affiliate in accordance with its terms.
- (iv) The Affiliate and its shareholders, Board of Directors and key staff have not been subject to any legal or regulatory investigations or been subject to any sanctions or fines or other penalties for breaches of the Applicable Laws and Regulations applicable to it, including without limitation, any fines or sanctions for breaches of and financial services laws and regulations.

8.3 The Affiliate hereby warrants and undertakes that the information provided to each Regulated Entity is true, fair, complete and accurate. The Company has the right to constantly monitor the activities of the Affiliate for the purpose of ensuring compliance with the provisions of this Agreement. In the event in which any such information is or becomes false, misleading or inaccurate, the Affiliate agrees and accepts that the Company shall have the right to terminate this Agreement forthwith by a written notice to the Affiliate.

8.4 The Affiliate acknowledges that Clients referred to the Company become Clients of the Company and are not clients of the Affiliate and further, that it shall refrain at all times from any action which could be construed by prospective or actual Clients to indicate that there is a contractual or other legal relationship between the Clients and the Affiliate. The Affiliate undertakes to inform prospective Clients



that their legal relationship is solely with the Company and that all communications with respect to their ISAs and their trading at large shall be solely with the Company.

8.5 The Affiliate undertakes that it shall not solicit or entice away from the Company, any Clients of the Company, either for the benefit of itself or any third party and shall not encourage or facilitate the migration of any Client to any competitor of the Company for the duration of this Agreement and for a period of two (2) years after termination of this Agreement may have taken place.

## **9. INTELLECTUAL PROPERTY**

9.1 The Affiliate acknowledges and agrees that Intellectual Property Rights belonging to the Company and its Group, shall remain the proprietary property of the Company and the Group as appropriate, and that nothing in this Agreement or in any disclosures made during the course of this Agreement or emanating therefrom shall be construed as granting to the Affiliate any right, entitlement, licence, patent, copyright, design licence or any other Intellectual Property Rights which may now or hereafter exist. Nothing in this Agreement shall be deemed to be a waiver, transfer or entitlement to any such Intellectual Property Rights by the Company or the Group.

9.2 Subject to the provisions of this Clause 10 (Intellectual Property), the Affiliate may use the Company's logo and brand names with the prior written permission of the Company in accordance with Clause 3.6 above.

## **10. CONFIDENTIALITY**

10.1 The Affiliate undertakes that it shall not at any time during this Agreement, and for a period of five (5) years after termination of this Agreement, disclose to any person any Confidential Information concerning the business, marketing strategy, affairs and Clients of the Company or clients of any member of its Group, except as permitted by Clause 10.2 below.

10.2 The Affiliate may disclose the Company's Confidential Information:

(i) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Affiliate's obligations under this Agreement. The Affiliate shall procure that its employees, officers, representatives or advisers to whom it discloses the Company's Confidential Information comply with this Clause 10 and are bound by relevant confidentiality and professional undertakings to the Affiliate; and

(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority, including each Regulated Entity's Competent Authority.

10.3 Notwithstanding any other provision contained herein, the Company may, at any time, disclose the details of this Agreement and any information of the Affiliate provided by it to the Company as may be

required by law, a court of competent jurisdiction or any governmental or regulatory authority, including the Regulated Entity's Competent Authority. Furthermore, and notwithstanding any other provision contained herein, the Company may, at any time, disclose the details of the Commission or any other fee or compensation arrangements which it has in place with the Affiliate, to any third party, including the relevant Client, or any governmental or regulatory authority, including the Regulated Entity's Competent Authority.

10.4 No Party shall use any other Party's Confidential Information for any purpose other than to perform its obligations under this Agreement.

10.5 All documents and other records (whether verbal, in writing, electronic or otherwise, stored in whatever mode or medium) containing Confidential Information supplied to or acquired by the Affiliate from the Company shall be returned promptly to the Company on termination of this Agreement, and no copies shall be kept. Where Confidential Information has been kept in physical, electronic or other mode of storage, the Affiliate shall return one copy to the Company and confirm to the Company that it has deleted all other copies, other than one single copy it may deem necessary to maintain so as to defend itself in any action in front of any court of competent jurisdiction or any governmental or regulatory authority, including the Regulated Entity's Competent Authority.

## **11. COMMENCEMENT AND DURATION**

This Agreement shall take effect in accordance with clause 25 below and shall continue until terminated earlier in accordance with Clause 12 below.

## **12. TERMINATION**

12.1 Without affecting any other right or remedy available to it, and subject to the provisions of Clause 19 below, either Party may terminate this Agreement for any reason, at any time, after providing to the other Party five (5) Business Days' written notice.

12.2 The Company shall have a right to terminate this Agreement with immediate effect by a written notice to the Affiliate at any time during the Evaluation Period.

12.3 Without prejudice to the provisions of Clauses 12.1 and 12.2 above, the Company may terminate this Agreement with immediate effect by giving written notice to the Affiliate if:

(i) the Affiliate commits a material breach (as determined by the Company in its reasonable opinion) of this Agreement, including without limitation, a breach of any of its obligations under this Agreement or in general the conduct of the Affiliate is one that the Company, acting at its discretion and reasonably, deems to cause regulatory or reputation issues to the Company;

(ii) the Affiliate produces or uses any advertising on marketing in breach of the requirements of Clause 3.6 above;

(iii) the Affiliate alters or modifies marketing material of the company or misrepresents the Company in a way which is not fair or it is misleading.

(iv) the Affiliate rejects any proposed change in Commission communicated to it by the Company pursuant to Clause 5 above;

(v) the Affiliate is in breach of the provisions of Clause 3.1 (ii) and (vii) above;

(vi) where any Client referred by the Affiliate commits any breach of the ISA, including without limitation, a breach of any provision of the ISA on abusive or unfair trading practices or manipulation of the electronic trading platform of the Company;

(vii) any Client referred to the Company provides to the Company fake, inaccurate or misleading documentation in the course of the KYC and anti-money laundering checks, as may be required by the Company under the ISA and the Applicable Laws and Regulations.

(viii) where the Affiliate is a legal entity, the Affiliate becomes insolvent or is subject to any insolvency, administrative, regulatory or professional proceedings as per the applicable provisions in its jurisdiction of incorporation, or, where the Affiliate is a natural person, is subject to bankruptcy proceedings;

(ix) The Affiliate does not, in the Company's discretion, act reasonably and in good faith;

(xi) The Affiliate becomes or is reasonably likely to become incapable of performing its obligations under this Agreement;

(xii) The Affiliate is in breach of the Mandatory Policies;

(xiii) Pursuant to Clause 23.3 of this Agreement;

(xiv) Where the Affiliate, being a natural person, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

12.4 All Clients referred to the Company during the term of this Agreement, shall remain Clients of the Company upon termination or cessation of this Agreement (unless terminated by the Company in its sole discretion for any reason whatsoever). The Affiliate shall not interfere with any Client's right to maintain the Client's account with, or transfer the Client's account to or from, the Company.

12.5 For the avoidance of doubt, all terms of this Agreement constitute material terms.

### **13. CONSEQUENCES OF TERMINATION**

13.1 The Parties agree that the following clauses are material clauses that survive termination of this Agreement: Clause 1 (Interpretation), Clause 10 (Confidentiality), Clause 22 (Indemnity and Remedial Action) and Clause 24 (Record Keeping).

13.2 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

### **14. NO PARTNERSHIP OR AGENCY**

14.1 The relationship between the Company and the Affiliate shall be that of independent parties. Nothing in this Agreement is intended to, or shall be deemed to, establish an employee-employer relationship, any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party. Furthermore, the Affiliate agrees that:

(i) Where the Affiliate is not authorized and regulated in the provision of investment or any other services, it shall not hold itself out as being regulated to provide any services for which it is not duly authorized and regulated in accordance with the provisions of the Applicable Laws and Regulations, and shall not make use of the contractual or other relationship which it has with the Company, to represent or hold itself out as being so regulated; and

(ii) The Affiliate shall not engage in any conduct which gives the impression that the regulated status of the Company applies to itself, or that the Investment Services provided by the Company are provided by the Affiliate.

14.2 Without prejudice to the generality of the above, the Affiliate shall not be deemed or construed or hold itself out as acting as broker or agent of the Company and shall not indicate or seek to indicate such in any marketing or communication material however transmitted.

14.3 The Affiliate shall not use the name of the Company in answering its telephone or in any other ways represent that it is associated with the Company other than in a relationship of a business Affiliate. In contracting for support services such as rent, telephone and utilities, the Affiliate shall not use or refer the name of the Company.

14.4 The Affiliate confirms that it is acting on its own behalf and for solely its own benefit and not for the benefit of any other person.

## **15. DATA PROTECTION**

15.1 The Affiliate shall ensure that

(i) it has obtained all necessary rights from third parties and any notification or consent requirements which may be required from any person in relation to or for the purposes of processing data for the purposes of providing Services in accordance with its obligations under this Agreement,

(ii) it has complied with all other requirements under any applicable privacy and data protection laws, regulations and mandatory codes and shall ensure that, at all times, the Services provided to the Company are provided in a way which does not cause or effect a breach of the Data Protection and Electronic Communications Rules, and

(iii) that it shall comply with all instructions and enter into such legally binding arrangements with the Company or any third party, upon request of the Company, such as to ensure compliance with the Data Protection and Electronic Communications Rules as these may apply from time to time.

15.2 The Affiliate shall, upon request of the Company, provide to the Company all such documentation and information evidencing its compliance with the requirements of this Clause 15.

15.3 The Affiliate agrees and accepts that nothing in this Agreement creates an obligation for the Company to share any information it gathers or acquires at any stage about any Client, with the Affiliate.

15.4 For all clients referred specifically to Key Way Investments Limited the affiliate shall abide to the GDPR Regulation (EU) 2016/679 of the European Parliament and of the Council as defined in Schedule 2 below.

## **16. ENTIRE AGREEMENT**

16.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

16.2 Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

16.3 Nothing in this Clause shall limit or exclude any liability for fraud.

## **17. VARIATION**

Subject to the provisions of Clause 23 (Amendments to this Agreement) below, no variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

## **18. ASSIGNMENT AND OTHER DEALINGS**

18.1 This Agreement is personal to the Parties and, subject to the provisions of Clause 18.2 below, neither Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

18.2 The Company may, by providing five (5) Business Days' written notice in accordance with the provisions of Clause 22 (Notices) below of this Agreement, assign, novate, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement to any member of its Group or to any third party that it reasonably considers at its discretion capable of performing the duties, responsibilities and obligations under this Agreement.

18.3 In respect of any notification given by the Company to the Affiliate for the assignment, or novation or transfer of rights and obligations to any third party (unless such assignment, transfer or novation is made to any member of the Group of the Company in which case the Affiliate hereby consents to such assignment, transfer or novation, effective upon notice being provided by the Company and without any further action being required on the part of the Affiliate for effecting such assignment, transfer or novation) in accordance with the provisions of this Clause 18, failure on the part of the Affiliate to object to such transfer within the notice period provided for in Clause 18.2 above shall evidence its acceptance of such transfer, and the transfer of the rights and obligations of the Company under this Agreement shall take effect giving rise to a direct contractual relationship between the transferee and the Affiliate.

## **19. WAIVER**

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **20. SEVERANCE**

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 20 shall not affect the validity and enforceability of the rest of this Agreement.

## **21. NOTICES**

Any notice or other communication given to a Party under or in connection with this Agreement shall be in writing, addressed to that Party in accordance with the contact details stated in this Clause 21 in respect of each Party, or such other address as that Party may have specified to the other Party in writing in accordance with this Clause 21, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.

Details for notices send to the Company:

Email: [info@kwiholdings.com](mailto:info@kwiholdings.com)

Details for notices send to the Affiliate:

Email:

As provided by the Affiliate

## **22. INDEMNITY AND REMEDIAL ACTION**

22.1 The Affiliate will indemnify the Company and keep the Company indemnified on demand in respect of all direct, indirect, punitive, incidental, special, consequential damages or any other damages, all liabilities, costs, claims, demands and expenses (including legal costs) of any nature whatsoever (collectively, “**Losses**”) which the Company may suffer or incur as a direct or indirect result of any act or omission of the Affiliate in connection with its relationship with the Company or any Client referred by the Affiliate to the Company or any failure by the Affiliate to perform any of the Affiliate’s obligations under this Agreement, the Code of Conduct or the Marketing Communication Guidelines but excluding any Losses which result from the Company’s own negligence, fraud, willful misconduct or material breach by the Company of the terms of this Agreement.

22.2 The Company shall in no circumstances be liable to the Affiliate for any consequential or indirect, losses including but not limited to loss of profits, loss of opportunity, costs, expenses, penalties or damages the Affiliate may suffer in relation to this Agreement. Except in the event of liability for fraud, personal injury or death, any liability of the Company under this Agreement shall not exceed USD 10,000 (United States Dollars ten thousand).

22.3 Without prejudice to the generality of the above, the Affiliate agrees to indemnify and hold harmless the Company for any Losses suffered as a result of Adverse Action.

22.4 Where any Adverse Action consists of or relates to any derogatory or defamatory statement against the Company or its Group, the Affiliate undertakes to take such remedial action and make such corrective statement as the Company may instruct for the purposes of addressing the effect of the Adverse Action, provided always that the Affiliate will not be required to make any statement which is misleading or untrue.

## **23. AMENDMENTS TO THIS AGREEMENT**

23.1 Notwithstanding any other provision contained in this Agreement, the Company retains the right at any time to amend the provisions contained herein by giving a written notice to the Affiliate. Such

amendment shall become effective on the date specified in the notice. Where the Affiliate continues to provide Services after the date specified on the notice, it will be deemed to have accepted the amendment by conduct. Where the Affiliate does not accept such change, the Company may terminate this Agreement.

23.2 Where any amendment is deemed by the Company to be necessary or appropriate for the purposes of compliance with the Applicable Laws and Regulations or pursuant to directives, circulars, instructions or recommendations of the Regulated Entity's Competent Authority or any other competent authority, the Affiliate agrees, acting at the request of the Company, to effect such amendments within the timeframe set by the Company at its entire discretion and as may be necessary or appropriate for this purpose.

23.3 In the case in which the Affiliate does not agree to any amendment which the Company considers reasonable or appropriate, within the period set by the Company, this Agreement may be terminated by the Company without further notice.

## **24. RECORD KEEPING AND MONITORING**

24.1 The Affiliate should be able to provide to the Company at any time, evidence of its compliance with the provisions of this Agreement, and for this purpose, and without limitation of the generality of the above, it shall maintain at all times adequate records regarding the following:

(i) the content of any statement or representation made to any Client, (along with a translation in the case in which the relevant communication is not in English),

(ii) the manner and means in which any such communication was communicated, and

(iii) copies of all verbal, written and electronic communication with Clients, in whatever mode or medium transmitted, including all marketing communication.

24.2 The Affiliate shall maintain such records throughout the duration of this Agreement and for the time period as this specified by the Regulated Entity's Competent Authority, and shall deliver all such records to the Company at any time upon request by the Company and upon termination of this Agreement.

24.3 The Affiliate acknowledges that each Regulated Entity will from time to time at intervals of the Company's discretion review the websites, social media postings, blogs, video logs for any material (e.g. image, video, text etc.) that concerns the Regulated Entity and its activities and the said material shall be scrutinized in accordance with the applicable regulations of each Regulated Entity. In case where the Regulated Entity identifies any material that is deficient it will notify the Affiliate and instruct to restore to a state acceptable by the Company. In case where the Affiliate declines and/or fails to do so within 2 business days, the agreement will be terminated as per clause 12.



**25. EXECUTION**

This Agreement shall take effect upon the sign of the agreement by both parties.

**26. GOVERNING LAW**

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

*[Company's Name]*

*AFFILIATE*

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

## SCHEDULE 1(A) – CODE OF CONDUCT

### 1. DEFINITIONS AND INTERPRETATIONS

Terms used but not otherwise defined in this Code of Conduct shall have the same meaning as in the Business Affiliate Agreement.

**Brand:** means “[www.capex.com](http://www.capex.com) , [www.ae.capex.com](http://www.ae.capex.com), [www.za.capex.com](http://www.za.capex.com)”.

**Branding:** means any marketing and/or promotional materials served by the Company in relation to the Brand.

**Client Account:** means any and all accounts opened by the respective Regulated Entity to a Client under the sole judgment of the Regulated Entity

**Creative and Creative Information:** means the creative or other marketing and/or promotional materials distributed by the Company or Related Entities through the Company’s marketing platform.

**Disqualified Lead:** means a Lead and/or unique end user that has failed to provide the Company with the unique user’s verifiable name, address and contact details (including, without limitation, telephone number and email address) upon registration.

**Fees:** means the fees as set out in Schedule 2 of the Agreement unless otherwise agreement by the Parties in writing.

**Fraud:** means an attempted act, act or omission by the Affiliate or a Client - which is (i) illegal by any Applicable Law and Regulations, (ii) made in bad faith or (iii) intended to defraud the Company, circumvent any contractual or Applicable Law and Regulations, regardless of whether such act or attempted act actually caused any damage or harm. Fraud shall include, without limitation, also collusion; abuse of bonuses or other promotions; Spamming; false, misleading or unauthorized advertising or representations; use of 3rd party payment method (such as credit cards etc.); identity theft (whether by act or omission) and unauthorized use of Intellectual Property rights.

**IP Rights:** means Intellectual Property Rights.

**Lead:** means any unique end user that had registered via the Brands’ Websites, referred by the Affiliate and that has provided by each Regulated Entity with the unique user’s verifiable name, address and contact details (such as telephone number and email address) upon registration. The unique user shall only be recognized for one account per user and/or one account per household.

**Malware and Spyware:** means the use of pop-up banners that hide banners that are displayed on a website, the placement of icons beside keywords found in text that if clicked will take the visitor to another website and other similar practices.

**Names, Trademarks and Marks:** means any Trade names and/or Trademarks or any other protected marks associated with the Company and/or its Related Entities.

**Promotion Mails:** means graphical artwork or text regarding specific promotion campaigns, sent by Company from time to time for dissemination by the Affiliate.

**Prospective Affiliate:** means any other marketing organizations and/or website owners and/or other marketing venues that may be potential Affiliate of the Company.

**Qualified Trader:** means a Client who was referred to the Regulated Entity by the Affiliate in accordance with the Code of Conduct and Agreement and identified by a tracker ID assigned to such Affiliate by the Company provided that:

(i) The Company confirms that such Affiliate shall be included in the relevant scheme and linked to the Site(s) in accordance with the Code of Conduct and the Agreement; and/or

(ii) Such Client has been approved by the Regulated Entity and has made a minimum real money deposit in line with the Regulated Entity rules; and/or

(iii) with respect to Affiliates paid under the Company's Cost Per Activation ("CPA") plan, the Client has generated spreads in the amount specified in the CPA table detailed in Schedule 2 to the Agreement or any other activity level agreed by the Parties in writing; and/or

(iv) Such Client is not already registered to the Site under a different name or with a different identity or from same IP address; and

(v) Has complied with all Applicable Law and Regulations.

**Referral of Client:** means the completion of the electronic form found in the Regulated Entity's website by the Client which the Affiliate referred to the Regulated Entity, who met its compliance requirements (as the same may be amended from time to time).

**Related Entity:** means any entity that, directly or indirectly, controls, is controlled by, or is under common control with, the Affiliate and/or of the Affiliate; where "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of another, whether through the ownership of voting securities, by contract, as trustee or executor, or otherwise.

**Sites / Websites:** means the websites (and all their related pages) promoted by the Company.

**Supporting documents for natural persons:** Any type of proof requested by the Company, including but not limited to valid passport copy; valid driving license copy; a copy of a utility bill; a letter of reference from the Affiliate and/or Affiliates' bank; tax certificate and/or a copy of a bank statement - all under the Affiliate's full name and in the English language.

**Supporting documents for Legal persons:** Any type of proof requested by the Company or its Related Entities including, but not limited to, certificate of incorporation; memorandum and articles of association (or equivalent document); certificate of registered office; duly approved resolution; certificate of good standing; power of attorney; tax certificate – all under the name of the legal person - and information regarding the identity of the beneficiary owner of the legal person and the identity of the directors of the legal person. All in the English language.

**Spam:** means emails, messages and calls that meet any one or more of the following criteria: (i) unsolicited approach (usually addressed to a large number of addressees); (ii) contains false or misleading statements; (iii) does not truthfully identify the source or the originating sender; (iv) does not contain an online and/or real time “remove” option (v) bundles certain service with other service, or (vi) inserts icons or causes software download or installation or similar action without the consent of the addressee.

**Text Links and Banners:** means the hyper-linked graphical artwork or texts that are used to direct Clients from the Affiliate's website to the Sites using trackers.

**Unfair Trading Practice:** means a trading strategy that attempts to profit from small and short-term price changes and/or by abusing the trading conditions of the Regulated Entity (also known as “scalping” etc.).

**Use of Scumware:** means the use of pop-up banners that hide banners that are displayed on a website, the placement of icons beside keywords found in text that if clicked will take the visitor to another website and other similar practices.

## **2. AFFILIATE SERVICES CONDUCT**

(i) The Affiliate shall use its best efforts and shall devote reasonable amounts of its time, personnel and resources to promote and market the Site banners with respect to which the Affiliate has or will have a marketing arrangement to bring Leads and/or Qualified Traders to the Regulated Entity.

(ii) The Affiliate can also identify Prospective Affiliates for the Company subject to the Agreement and the Code of Conduct. In the event that a Prospective Affiliate becomes an Affiliate as a result of referral by an Affiliate, the Prospective Affiliate must enter into an agreement with the Company and accept the terms of this Code of Conduct. The current Affiliate shall provide the Company with all such

information required on the Prospective Affiliate for the Company to assess its credibility, in the light of the Company's business appetite and its sole judgment in relation to compliance with the Applicable Laws and Regulations. Unless otherwise specified in the Code of Conduct, the current Affiliate shall, in relation to the Prospective Affiliate, be entitled to receive a Fee as agreed between the Parties in writing.

(iii) If a potential Client is already known to the Regulated Entity or is in the process of applying to become a Client of the Regulated Entity or has been referred to the Regulated Entity by a party other than the Affiliate, the Affiliate shall have no rights whatsoever with respect to the referral of such potential Client.

(iv) The Company will provide the Affiliate with remote online access to reports regarding its Affiliate activity. The Affiliate acknowledges and accepts that the Company will not be liable for the completeness or accuracy of any report.

(v) The Affiliate is not involved in the transactions between the Clients and the Regulated Entity. The latter is the only one eligible accepting and safeguarding Clients' funds in accordance with the Applicable Law and Regulation.

(vi) The Affiliate is not involved in the services the Clients are getting from the Regulated Entity who has the sole mandate to execute Clients' orders.

(vii) It is the Company that shall maintain the required records in connection with all Clients referred by the Affiliate in relation to the Affiliate's accounts and its records are conclusive reference in relation to this Code of Conduct and Agreement. The Company is neither involved in monitoring Clients' accounts nor in collecting margin from the Clients, these are done by the Regulated Entity in accordance with its offering and trading policies.

(vii) The Company shall not be required, under any circumstances, to share any information with regard to the acceptance or rejection of Clients with the Affiliate. Upon the Regulated Entity's or the Company's request the Affiliate shall disclose any information that is required by the Regulated Entity or the Company in respect of the Client

(ix) The Regulated Entity prohibits Unfair Trading Practices and the definition of certain behaviour as such practice is as per the Regulated Entity's own discretion. The Company is not in a position to affect Regulated Entity's judgment and shall not be held responsible for the outcome of enforcement of Unfair Trading Practices on a Client. The Parties agree that all spread generated from Unfair Trading Practices will not count as spread generated by the Affiliate in a commission by volume deal i.e. Affiliate will not be compensated for the spread generated from Unfair Trade Practices trades done by the Clients.

(x) The Regulated Entity will calculate the amounts payable to the Affiliate in accordance with the applicable payment plan based on the information it has in its systems which is derived from the Clients activity with the Regulated Entity

(xi) The Company is committed, at all times, to the secrecy and confidentiality of the Affiliate's identity and information. However, Company shall be entitled to inform relevant authorities, banks, card issuers, electronic payment providers or other financial institutions of the Affiliate's identity and of any suspected unlawful, fraudulent or improper activity and the Affiliate will cooperate fully with the Company to investigate any such activity.

(xii) The Company prohibits and actively prevents money laundering and any activity that facilitates money laundering or funding of terrorist or criminal activities. The Company will verify the Affiliate's identity through the information provided by the Affiliate and by obtaining information from public sources and databases.

### **3. NO ADVICE TO CLIENTS**

(i) The Affiliate and his employees shall not offer any type of advice on trading to Clients. This includes:

(a) Personal opinion on trading or the direction of the market and/or instruments;

(b) Advice on investment strategies;

(c) Advice on opening new positions in any financial instrument (whether offered by the Regulated Entity or not);

(d) Advice on closing existing positions in any instrument (whether offered by the Regulated Entity or not);

(e) Advice on hedging positions in Client's portfolio;

(f) Custom-made trading signals by the Affiliate;

(g) Advice on portfolio management.

(ii) The Affiliate and his employees may:

(a) Quote third party opinions about the market and/or specific traded instruments as long as the Affiliate clearly states this is a third party opinion, the identity of the third party and obtain written approval to distribute the said information from the third party. The Affiliate must keep records of all of the information distributed as proof in case of future request by the Regulated Entity or in case of Clients' or the said third party complaint.

(b) Provide financial market education to Clients. This education must include clear disclaimer that it is marketing material and be in strict compliance with the Marketing Communication Guidelines (as they may change from time to time).

(c) Provide general review on the Regulated Entity's trading platforms and financial services offering.

#### **4. NO TRADING IN CLIENT'S ACCOUNT**

(i) The Affiliate and its employees are strictly forbidden from trading in Client account.

(ii) The Affiliate and its employees are strictly forbidden from accessing the Client's account in any manner.

#### **5. RISK DISCLOSURE OF INVESTING & PROHIBITION ON PROMISE OF RETURNS**

(i) The Affiliate must advise the Client that leveraged trading carries risk of capital loss via the Company's materials that will be provided to the Affiliate.

(ii) The Affiliate shall not guarantee, promise or mislead the Clients and potential Clients to think that leveraged trading offers guaranteed returns, exaggerated returns, risk free positive returns or similar messages.

(iii) The Affiliate must refer the Client to the Regulated Entity's risk disclosure on the Website.

#### **6. COMMUNICATION WITH THE COMPANY**

All communication with the Company must be performed through the relevant account manager of the Affiliate, who will ensure that any requests, information and/or documentation will be communicated to the Regulated Entity, where needed.

#### **7. AFFILIATE'S MARKETING STANDARDS**

(i) The Affiliate will be solely responsible for the operation and content of the Affiliate's websites and other marketing channels or venues, including for ensuring that materials posted on the Affiliate's websites are in line with Applicable Laws and Regulations and shall strictly meet the Marketing Communication Guidelines. Without limiting the generality of the foregoing, the Affiliate shall not be involved, in relation to the Company/Regulated Entity, Related Entities and/or to the Websites, in the following:

(a) Use Malware and/or Spyware techniques or use any other aggressive advertising or marketing methods;

(b) Make any "use of Scumware" or use any other predatory advertising or marketing methods in any of its dealings;

(c) Make any false, misleading or disparaging representations or statements;

(d) Engage in any other practices which may affect adversely the high image, credibility and good reputation of the Company/Regulated Entity and the Brand, including but not limited to, using any website in any manner, or having any content on any Website, that:

i. Promotes sexually explicit materials, violence, discrimination based on race, sex, religion, nationality, disability, sexual orientation or age and/or any illegal activities and/or libelous, obscene or otherwise illegal; and/or

ii. Violates any intellectual property or other proprietary rights of any third party; and/or

iii. Use or cause spamming; and/or

iv. Do any act that disparages the Company and the Brand or any of the Sites or that otherwise is damaging or is reasonably expected to be damaging to the goodwill of the abovementioned; and

v. In any way alter, affect or interfere with the operation or accessibility of the Sites or any page thereof.

(ii) Pay Per Click campaign using any keywords associated with the Company (such as the Brand's name, the Regulated Entity's name etc.) are not allowed. For avoidance of doubt, any Pay Per Click campaign (or similar marketing campaign, such as Google AdWords, Yahoo Pay Per Click advertising, MSN Pay Per Click advertising and contextual keyword targeted campaigns) resulting in the redirection of a potential Client by the Affiliate shall NOT be viewed as an activity which qualify for a Fee, and may result termination of the Agreement and the imposition of any other sanction by the Company.

(iii) The Affiliate accepts and agrees that it will not engage in, allow, assist, promote, encourage or benefit from, directly or indirectly, any act or traffic that involves Fraud. The Affiliate will act at all times to refrain from, immediately stop and not allow, any act or traffic that involves Fraud or that the Affiliate believes or should reasonably believe to potentially involve Fraud.



(iv) The Affiliate accepts that it will disclose to the Company from the onset in writing all venues that it intends to publish material concerning the Regulated Entity (e.g. websites, social media or other) and will not be permitted to publish or redistribute the material to any venue previously undisclosed.

## **8. ADVERTISING GUIDELINES**

(i) Advertising material, marketing material, publications and all marketing operation related issues which the Affiliate is using for introducing Clients to the Regulated Entity must comply with the in strict compliance with the Applicable Law and Regulation, the Marketing Communication Guidelines and the Regulated Entity's Competent Authority.

(ii) All marketing material must be pre-approved by Regulated Entity prior publication. The material must be provided to the relevant account manager at the Company who will ensure to communicate this to the Regulated Entity and receive the relevant approval and/or comments.

(iii) The following practices are explicitly forbidden:

(a) Promised/guaranteed returns.

(b) Statements that mislead Clients to think that trading in Forex and CFD carries little or no risk.

(c) Testimonials of any kind.

(d) Advertising on Gambling and Adult sites.

(e) Spam marketing.

(iv) If, for any reason, the Regulated Entity will be approached by any other regulator with complaint concerning the Affiliate's operation, publications, advertising or any marketing activity, the Affiliate will be obliged to disclose to the Regulated Entity all information related to the complaint and act according to guidelines of the Regulated Entity and the Regulated Entity's Competent Authority.

(v) If the Company or the Regulated Entity demand that the Affiliate ceases to use certain or all marketing materials, the Affiliate must comply with the instruction within 24 hours. Should the Affiliate face any issues with timely provision of the information this should be immediately communicated to the Company.

## 9. FEE PAYMENT RESTRICTIONS

(i) Subject to the strict compliance of the Affiliate with the terms of the Code of Conduct and the Agreement, the Affiliate shall be eligible to the Fee, which consist the sole inclusive gross remuneration that the Affiliate is eligible for in relation to referring Qualified Traders via the Company to the Regulated Entity and any other service provided as per the Agreement. An online report provided by Company, stating that a Client which was referred under the Agreement has become a Client of the Regulated Entity and has met the relevant criteria of Qualified Trader, shall be the conclusive evidence thereof.

(ii) The Company, in its sole discretion, shall withhold the payment or net off any outstanding commissions to any Affiliate should the Company consider that:

(a) The Affiliate and/or the Client have been involved in creating false trading account(s) for the purposes of generating Accruals; and/or

(b) The Clients referred by the Affiliate made an initial deposit but do not trade.

(c) The Company is in a position that the Affiliate was involved in Fraud and/or Unfair Trading Practice.

(iii) If Company, at its sole discretion and in good faith, reasonably determines that Affiliate's Clients:

(a) Use Unfair Trading Practices; and/or

(b) Trading at financial instruments prices that could not be verified by the Regulated Entity.

It shall be entitled to, in its sole discretion, to:

(a) Ignore the Fee associated with the Unfair Trading Practice or abuse; and/or

(b) Withhold the payment of any outstanding Fee and forfeit from the Affiliate's Fee (and any future Fee) the Fee which was paid in relation to that advised Unfair Trading Practice; and/or

(c) immediately enjoin all Fees derived from any Affiliate activities, without the necessity of showing damages (ii) receive a prompt refund of all amounts paid to the Affiliate hereunder and (iii) be indemnified for any losses, damages or liability incurred by Company in connection with such violation.

## 10. INTELLECTUAL PROPERTY RIGHTS

(i) IP Rights shall be and remain the sole and exclusive property of their respective owners. Nothing in the Code of Conduct or the Agreement shall confer in the Affiliate any right of ownership of the IP Rights and all use thereof by the Affiliate shall ensure to service the aim of the Code of Conduct and Agreement only.

(ii) Notwithstanding the abovementioned, any equipment, device and tool which were provided by or via the Company in connection with the Agreement shall remain the sole and exclusive property of the Company.

(iii) The Affiliate acknowledges and agrees that the Affiliate shall not, now or in the future, contest the validity of any IP Rights or use any term or mark confusingly similar to any of the IP Rights. The Affiliate undertakes to use the IP Rights in a lawful manner and in strict compliance with all format(s), guidelines, standards and other requirements prescribed by Company and in accordance with the Agreement and the Code of Conduct.

(iv) All Branding provided by Company is provided on an "as is" basis and without any warranty whatsoever:

(a) Company will provide the Affiliate with copies of or online access to the Branding.

(b) The Affiliate may display the Branding on the Affiliate's Websites solely for the purpose of marketing and promoting the Brands promoted by Company and/or by Company Related Entities during the term of the Agreement or until such earlier time as Company may, upon reasonable prior notice, instruct the Affiliate with regard.

(c) The Affiliate will use only Company's preapproved Text Links and Banners and promotion mails and will not alter their appearance, design or content, unless Company gives the Affiliate specific prior written authorization to do so. At the Affiliate's request, Company may provide the Affiliate with a code that will enable the Affiliate to post in the Affiliate's Websites rotating banners from of the Branding. The Affiliate understands and acknowledges that the appearance and contents of Company's Text Links and Banners and promotion mails constitute the only authorized and permitted representation of the Sites.

(d) The Affiliate will be solely responsible that all the content of the Affiliate's Websites is original or otherwise is permitted to be published by the owner of the information thereof. The Affiliate may not alter, amend, adapt or translate marketing material nor any IP Right without the Company's prior written explicit consent or remove or alter any "TM", "™", copyright or other proprietary notice or designation without Company's prior written explicit consent.

(e) Nothing contained in any marketing material shall, in any way, be deemed a representation or warranty of Company, or any Related Entity of the Company.

## **11. CONFIDENTIALITY AND DATA PROTECTION**

(i) Each Party agrees to use the other Party's Confidential Information solely as necessary for performing its obligations hereunder and that the Confidential Information will not be released or disclosed to any third party whatsoever without the prior written consent of Company.

(ii) Each Party agrees that it shall take all reasonable steps, at least substantially equivalent to the steps it takes to protect its own proprietary information, to prevent the duplication, disclosure or use of any such Confidential Information, other than:

(a) by or to its employees, agents and subcontractors who must have access to such Confidential Information to perform such Party's obligations hereunder, who each shall treat such Confidential Information as provided herein; or

(b) as required by any law, regulation, or order of any court of proper jurisdiction over the Parties and the subject matter contained in this Agreement.

(iii) Confidential Information shall not include any information which is:

(a) in the public domain, or is already known by or in the possession of the non-disclosing Party, at the time of disclosure of such information;

(b) is independently developed by the non-disclosing Party without breaching any provisions of the Code or the Agreement; or is thereafter rightly obtained by the non-disclosing Party from a source other than the disclosing Party without breaching any provision of this Agreement.

(iv) Each Party agrees to comply with the data protection rules as per the Applicable Laws and Regulations and to process and possess all personal data in accordance with them.

(v) The Company reserves the right to inform third parties or public authorities in regards to the Affiliate's personal information, transactions or any other information as it may deem necessary in case where the Affiliate is directly or indirectly involved in Fraud or upon the Authority's request.

(vi) The Parties acknowledge that all data relating to the Clients and their activity shall be and remain the exclusive property of each Regulated Entity.

## **12. GENERAL PROVISIONS**

(i) Force Majeure - If the performance of any part of this Agreement by either Party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, fire, judicial or

governmental action (including, but not limited to, any law, regulation or embargo prohibiting the performance contemplated hereunder and/or the failure or refusal of a government agency to issue a license required for any performance pursuant to this Agreement), labour disputes, act of God or any cause beyond the reasonable control of that Party, the Party shall be excused from such performance to the extent that it is prevented, hindered or delayed by such cause. Notwithstanding anything herein to the contrary, the Party prevented from performing hereunder by a force majeure event shall nevertheless use its best efforts to recommence its performance hereunder as soon as reasonably practicable and to mitigate any damages resulting from its non-performance hereunder.

(ii) Amendments, Counterparts, Authority - The Company may modify the Code of Conduct and it is the responsibility of the Affiliate to regularly check the Code of Conduct and comply in all respects with it.

(iii) Remedies and Injunctive Relief -

(a) the Company's rights and remedies hereunder shall not be mutually exclusive, i.e., the exercise of one or more of our rights or remedies in connection with the Code of Conduct shall not preclude the exercise of any other right or remedy.

(b) The Affiliate acknowledges, confirms and agrees that damages may be inadequate for a breach or a threatened breach of the Code of Conduct and, in the event of a breach or threatened breach by the Affiliate and/or Affiliate of any provision of the Code of Conduct, Company's rights and obligations may be enforceable by specific performance, injunction, or other equitable remedy.

(c) Nothing contained in the Code of Conduct shall limit or affect any of the Company's rights at law, contract or otherwise, for a breach or threatened breach of any provision of the Code of Conduct, it being the intent of this provision to make clear that our respective rights and obligations shall be enforceable in equity as well as at law or otherwise.

(iv) Assignment and Delegation - The benefit, rights, responsibilities and obligations arising under this Agreement may not be assigned or delegated by the Affiliate either in whole or in part without the prior written approval of Company. The Company may assign and/or delegate its rights and obligation as per the Code of Conduct by providing written notice

## **SCHEDULE 1(B) – PRIVACY POLICY**

Terms used but not otherwise defined in this Privacy Policy shall have the same meaning as in the Business Affiliate Agreement.

The protection of privacy and the safeguarding personal information is our highest priority.

Please view the following Privacy Statement which clearly explains how the Company collects, processes, stores and protects information.

While providing introductory services, the Affiliate will be exposed to End Users' personal information. The Company will be exposed to personal information of the Affiliate and the End Users during the course of the Agreement. Therefore, the Affiliate hereby confirms that while providing services the Affiliate will strictly comply with the standards in this Privacy Policy and to Clause 15 of the agreement that refers to the Data Protection. The Affiliate grants the Company its consent to such collection, processing, storage and use of personal information by the Company as explained below. Please be advised that the Company has limited access to End Users' information possessed by the Company and that in any way the Company information held by the Company will not be disclosed to the Affiliate, unless required by law.

### **The collection of personal information**

The Company collects the necessary information required to open, transact and safeguard End Users' assets and to provide the End User with the services they require. To this end, the Company gathers information from the End Users and may, in certain circumstances, gather information from relevant banks and/or credit agencies, and/or other sources which help the Company profile the End Users' requirements and preferences in an effort to provide better services. The Company may run similar checks on the Affiliate, in order to assess the business relationship between the party, service fees and to meet its legal constraints in practicing the referral business.

The information that the Company collects includes information such as first and last name, e-mail address, details about financial status, residential address, phone number, date of birth, a copy of your national identity card or passport, in case of a legal entity the Company will request copies of corporate documents as well as details and personal documents of the Ultimate Beneficial Owner.

If the Company requests you to provide it with personal data and you fail to do so, the Company may not be in a position to enter into an agreement with you, in which case it will inform you accordingly.

### **Usage of personal information**

The Company uses personal information only as required by each Regulated Entity's Competent Authority in order to verify the existence, status, and to help the Company to constitute a profile on its partners, in addition, it helps the Company to provide quality service and security to the Affiliate. This information also helps improve services, customize browsing experience and enables the Company to inform the Affiliate of additional products, services or promotions and the Affiliate hereby agrees using this data for such purposes by the Company.

Should the Affiliate do not want to receive information of this nature for any reason, it shall contact the Company at the following address: [info@kwiholdings.com](mailto:info@kwiholdings.com).

### **Legal Ground for personal Data processing**

The Company may process your personal data for one or more lawful bases of processing ("Lawful Basis") depending on the specific purpose for which we are using your data.

The Lawful Basis are the following:

- to perform our contractual obligations towards you
- to be compliant with applicable legal and regulatory requirements
- to pursue our legitimate interests

Where the Company will request personal information which does not fall under one of the above-mentioned Lawful Bases the Company will require you to provide your consent. Such consent shall be freely given by you and you will have the right to withdraw your consent at any time by contacting us using the contact details set out in this privacy notice or by unsubscribing from email lists.

### **How we use your personal data**

The Company has the right to disclose Client information (including recordings and documents of a confidential nature, card details) in the following circumstances:

- i. where required by law or a court order by a competent Court.
- ii. where requested by each Regulated Entity's Competent Authority or any other regulatory authority having control or jurisdiction over the Company or the Client or their associates or in whose territory the Company has Clients.
- iii. to government bodies and law enforcement agencies where required by law and in response to other legal and regulatory requests;
- iv. to relevant authorities to investigate or prevent fraud, money laundering or other illegal

activity;

- v. where necessary in order for the Company to defend or exercise its legal rights to any court or tribunal or arbitrator or Ombudsman or governmental authority;
- vi. to auditors or contractors, provided that in each case the relevant professional shall be informed about the confidential nature of such information and commit to the confidentiality herein obligations as well;
- vii. where necessary in order for the Company to defend or exercise its legal rights to any court or tribunal or arbitrator or Ombudsman or governmental authority.
- viii. to anyone authorised by you.

### **The safety of your personal data**

The Company takes the appropriate measures to ensure a level of enhanced security to protect any personal data provided to us from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to personal data transmitted, stored or otherwise processed.

The Company implements appropriate technical and organisational measures such as data encryption, access management procedure, clean desk policy, business continuity and disaster recovery, IT systems risk assessment, physical and logical access segregation, process in case of personal data breach policy, etc.

Your personal data may be stored electronically or in paper form.

### **How long we store your personal data for**

The Company will only retain your personal data for as long as it is reasonably require it for legal or business purposes subject to Regulated Entity's Competent Authority. In determining data retention periods, we take into account local laws, contractual obligations, and the expectations and requirements of our partners. When we no longer need personal data, we securely delete or destroy it.

### **Rights as a data subject**

**Right of access** – you have the right to request from us to provide you with a copy of the personal data that we hold about you.

**Right of rectification** – you have a right to request from us to correct the personal data we hold about you that is inaccurate or incomplete.

**Right to be forgotten** – you have a right to request from us in certain circumstances to erase your personal data from our records. In case that these circumstances apply to your case and provided that no exception to this obligation applies (e.g. where we are obliged to store your personal data in compliance



with a legal obligation under the respective law), the Company will erase your personal data from its records.

**Right to restriction of processing** – you have a right to request from us where certain conditions apply, to restrict the processing of your personal data.

**Right to withdraw consent** where we are relying on consent to process your personal data. However, this will not affect the lawfulness of any processing carried out before you withdraw your consent.

In respect to the aforementioned rights, the Company will respond to requests for personal data and, where applicable, will correct, amend or delete your personal data.

### **Non-affiliated third parties**

The Company does not sell, license, lease or otherwise disclose personal information to third parties, except as described in this policy.

The Company reserves the right to disclose personal information to third parties where required by law, regulatory, law enforcement or other government authority as mentioned above.

To help the Company improve its services, the Company may engage third parties to help carry out certain internal functions such as Fee processing, support service, introductory satisfaction surveys or other data collection activities relevant to the Company's business. Use of the shared information is strictly limited to the performance of the above and is not permitted for any other purpose. All third parties with which the Company shares personal information are required to protect such personal information in accordance with all relevant legislation and in a manner similar to the way the Company protects the same. The Company will not share personal information with third parties which it considers will not afford the required level of protection.

Where the Affiliate has been referred to the Company by another Affiliate ("**Master Affiliate**"), such Master Affiliate may have access to the Affiliate's information. The Affiliate hereby unambiguously and unequivocally consents to the sharing of information with such Master Affiliate.

The Affiliate acknowledge that in order to provide services to the Master Affiliate, it may be necessary for information to be transferred outside the jurisdiction of the Company or the Master Affiliate act in, and the Affiliate consent to such transfer.

### **Restriction of responsibility**

The Company is not responsible for the privacy policies or the content of the websites, other marketing material, the Affiliate may publish from time to time that are not related to the Company.

The Company has no control of the use or protection of information provided by the Affiliate or the End User or collected from them by those websites. Whenever the Affiliate elects to link to a co-branded website or to a linked website, it may be asked to provide registration or other information. Please note that such information is recorded by a third party and will be governed by the privacy policy of that third party.

### **Use of 'cookies'**

The Company uses cookies to secure the Affiliate activities and to enhance the performance of its websites. Cookies are small text files stored by the browser on your equipment's hard drive. They send information stored on them back to our web server when you access our Website. Cookies used by the Company do not contain personal information or other sensitive information.

To administer and improve the Company's websites, the Company may use third parties to track and analyze usage and statistical volume information. These cookies do not contain any personally identifiable information.

### **Privacy Statement Updates**

From time to time, the Company may update this policy. In the event the Company materially changes this policy including how the Company collects, process or use the Affiliate's personal information, the revised policy will be posted to the Company's websites. The Affiliate agrees to accept posting of a revised policy electronically on the Company's websites as actual notice to the Affiliate. Any dispute over this policy is subject to this notice, the Agreement and the Code of Conduct of conduct the Company practice with the Affiliate. The Company encourages the Affiliate to periodically check back and review this policy so that it will always know what information the Company collects, how the Company uses it, and to whom, the Company may disclose it.

## **SCHEDULE 1(C) – MARKETING COMMUNICATION GUIDELINES**

### **MARKETING COMMUNICATION GUIDELINES FOR AFFILIATES**

#### **1. INTRODUCTION**

1.1 These Marketing Communication Guidelines form an integral part of the Agreement and may be amended from time to time.

1.2 The Marketing Communication Guidelines are designed to provide guidance to Affiliates when promoting any of the websites of the Regulated Entities [www.capex.com](http://www.capex.com), [www.ae.capex.com](http://www.ae.capex.com), [www.za.capex.com](http://www.za.capex.com), in any kinds of marketing communication venues. When following these Marketing Communication Guidelines, you help us strengthen our corporate and brand identity.

1.3 The Affiliate will use only marketing material (banners, landing pages, texts etc) that are provided by the Company. Any alterations of the said material by the Affiliate is considered as being in breach of the agreements and shall be subject to the termination clause of the agreement

1.4 Terms used but not otherwise defined in these Marketing Communication Guidelines shall have the same meaning as in the Business Affiliate Agreement.

1.5 In these Marketing Communication Guidelines ‘you’ means the Affiliate who has entered into this Agreement. ‘your’ and ‘your’s’ shall be construed accordingly.

#### **2. KEY GUIDELINES**

- **In any Marketing Communication always include a risk warning: “Trading CFDs carries considerable risk of capital loss”.**
- **Do not guarantee or promise profits or guarantee against losses.**
- **Do not use absolute statements.**
- **Always state that the electronic trading platform only offers CFD trading.**
- **Always mention that each website is operated by the respective Regulated Entity, which is regulated by the respective Competent Authority.**

#### **3. GENERAL GUIDELINES**

##### **3.1 Websites**

You **can** advertise Regulated Entity's website only on websites or webpages related to financial markets, news or other financial related services/products that offer trading information.

You **cannot** advertise Regulated Entity's website on websites or webpages or other sources which include content that promotes sexually explicit materials, violence, discrimination based on race, sex, religion, nationality, disability and/or any other kind of website forbidden under the Code of Conduct.

### **3.2 Marketing Tools**

You are allowed to use the official marketing tools which can be provided by the Regulated Entity.

### **3.3 Risk Warning**

3.3.1 Always notify the potential client of the risk associated with the services offered in the marketing communication.

3.3.2 Whenever you mention Regulated Entity's website or the Regulated Entity itself in any Marketing Communication, you must include a risk warning:

***“Trading Contracts for Differences (CFDs) is highly speculative, carries considerable risk of capital loss and is not appropriate for every investor. You may sustain a loss of some or all of your invested capital, therefore, you should not speculate with capital that you cannot afford to lose. You should be aware of all the risks associated with trading on margin”.***

OR in case of limitation of space the risk warning can be:

***“Trading CFDs carries considerable risk of capital loss”.***

3.3.3 Format of risk warning: clearly readable, in a prominent place and with visible colors.

3.3.4 Even if you are using a promotional “button” which redirects a potential client to Regulated Entity's website, then the risk warning must be positioned below or close to such button and be clearly visible to the potential clients.

3.3.5 Where appropriate you must refer the potential client to the ‘Risk Disclosure Statement’ on Regulated Entity's website.

### 3.4 Do not guarantee or promise profits or guarantee against losses.

3.4.1 Trading CFDs does not always result in profits and involves a significant risk of loss of all of clients' funds invested, therefore no profits can be guaranteed. Do not imply that trading can be a way of guaranteed returns and do not guarantee that no losses shall be incurred by the potential clients. In addition, do not guarantee that you are able to assist clients who have suffered losing trades in recovering losing positions.

3.4.2 Present opportunities and risks in a balanced manner.

<b>Do not use:</b>	<b>Use:</b>
'easy' or 'simple' in relation to trading, 'trading can be an easy process'	'Easy' in relation to the platform usage or tools;
'secure trading', 'providing traders with the ability to safely trade'	'Security' if you refer to the IT security of Regulated Entity's systems or trading platforms;
'trading profits', 'use your spare time to earn money', 'you can become a profitable trader', 'profit anytime and anywhere', 'more income', 'risk free trading', or pictures of money.	'Risk free' if you refer to the demo account only.

### 3.5 Do not use absolute or unqualified statements.

<b>Do not use:</b>	<b>Use:</b>
'best', 'highest', 'complete control', 'control the market' or testimonials that do not reflect the real opinion of the individual(s) involved.	'one of the best', 'high', 'one of the highest' 'one of the top'.

### 3.6 Regulation

3.6.1 Always mention that Regulated Entity is licensed by the respective Regulated Entity's Competent Authority.

3.6.2 Always mention that Regulated Entity is the broker whilst the trading platform operated is done via the Regulated Entity's website.

<b>Do not use:</b>	<b>Use:</b>
'regulated throughout the EU', 'EU licensed and regulated'	(only for Key Way Investments LTD) Under the EU's Markets in Financial Instruments Directive ("MiFID II"), Key Way is permitted to passport its services into any EEA jurisdiction.

Regulated Entity’s website i.e. ‘capex.com is fully licensed by CySEC’, ‘capex.com is a leading online trading broker’.	‘Regulated Entity is licensed/regulated/ authorized by Regulated Entity’s Competent Authority and/or FSB’, ‘Regulated Entity is a broker’.
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Do not use the Regulated Entity’s Competent Authority logo, European Supervisory Authorities logos, the EU/third countries logo or flag.

### 3.7 Language

If your website is in a language other than English, all the relevant warnings and disclosures specified in these Marketing Communication Guidelines must be fully translated accordingly, in a correct and not misleading manner.

### 3.8 Contracts for Difference (CFDs)

3.8.1 Regulated Entity’s platform offers CFDs trading, therefore it needs to be clear in any Marketing Communication that the potential clients will trade CFDs and not the related underlying financial instrument, and that at no times shall a delivery of or transfer of title to the underlying financial instruments shall be made to the potential clients.

3.8.2 Whenever writing about Regulated Entity’s website you need to make sure that the word ‘CFDs’ is mentioned.

Do not use:	Use:
Trade shares, forex, commodities, indices and ETFs with Regulated Entity’s website.	Regulated Entity’s website offers CFDs on shares, forex, commodities, indices and ETFs.

### 3.9 Incentives

3.9.1 We are **NOT** offering any bonuses to clients, that are designed to incentivize retail clients to trade in complex speculative products such as CFDs, therefore no bonus advertising is allowed.

3.9.2 Always include the term ‘**T&C apply**’ in all Marketing Communications.

3.9.3 Format of ‘T&C apply’: Clearly readable, in a prominent place and with visible colors.

### 3.10 Audience

3.10.1 The Company's services and products traded, are only available to individuals who are at least 18 years old.

3.10.2 CFDs are complex financial instruments and can only be marketed to people who would possess the necessary level of knowledge and experience.

Do not use: 'no experience needed', 'you do not need any experience or understanding in order to be successful and trade profitably', 'this platform is built in such a way that satisfies every type of trader, even beginners who are just starting to trade...' or any similar language.

### **3.11 No investment advice or portfolio management**

3.11.1 Regulated Entity is authorized to provide the investment services of:

(a) Reception and transmission of orders of financial instruments

(b) Execution of orders on behalf of the clients and

(c) Dealing on own account (applies only to Key Way Investments LTD)

3.11.2 Regulated Entity is **NOT** authorized to provide the investment service of investment advice or portfolio management.

3.11.3 Affiliates must **NOT** provide any investment and/or financial advice and/or portfolio management services to the potential clients, including money management.

3.12 Always use your correct personal information. Do not use false personal information that could mislead clients and/or potential clients, such as false names, postal and email addresses.

3.13 Do not contact the same client using different email addresses or phone numbers.

3.14 Ensure you have clients' prior consent when sending marketing communication concerning Regulated Entity's website or Regulated Entity.

## **4. ADDITIONAL INFORMATION**

4.1 Any relationship between the Regulated Entity and a potential client shall be subject to a client entering into the Investment Services Agreement for Retail and Professional Clients ("**ISA**") with the

Regulated Entity; and also subject to the Regulated Entity successfully completing its compliance, AML and other assessments of the client.

**4.2 Banned Jurisdictions**

The Regulated Entity restricts offering its services to certain jurisdictions or countries and considers them as banned countries in terms of engagement with potential clients as this is defined in the ISA

The Regulated Entity monitors all of its Affiliates’ websites on an on-going-basis to ensure compliance with these Marketing Communication Guidelines. You may therefore be contacted at any time by your affiliate manager to amend and/or remove material as the Regulated Entity may deem appropriate. If that is the case, you must comply within 24 hours. If you face any issues with the timely compliance, this should be immediately communicated to your affiliate manager who will ensure to communicate this to the Regulated Entity, for extension of the timeframe.

**4.3 Representation**

The Affiliate shall under no circumstances present itself as being operated and/or representing and/or being the agent and/or employee of the Company. The relationship between the Company and the Affiliate shall be that of independent parties. To that extent, it shall not use the Company’s name in a way as to give to the public and/or the regulator the impression of the above. The Affiliate shall refrain from using the Company’s name or the Company’s brands’ name in communication with the potential clients such as in email communication in a way that it appears that the communication is being send by the Company and/or on behalf of the Company.

4.4 These Marketing Communication Guidelines may be updated at any time, as regulatory bodies may change legislation and/or interpretation of legislation, and consequently you will need to comply with the updated Marketing Communication Guidelines at all times.

*[Company’s Name]*

*AFFILIATE*

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_



**SCHEDULE 2 – COMMISSION STRUCTURE AND SCHEDULE**

UNLESS OTHERWISE AGREED BETWEEN THE BUSINESS AFFILIATE AND THE COMPANY THE FOLLOWING FEES SHALL APPLY:

**Cost per Activation (CPA) Scheme:**

As will be agreed with the Regulated Entity.

*[Company's Name]*

*AFFILIATE*

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_