

# Discretionary PMS Agreement Form

PORTFOLIO MANAGEMENT AGREEMENT DATED ...../...../.....

This Portfolio Management Service Agreement (PMS Agreement) made by and between,

Client's Full Name \_\_\_\_\_

Client's Full Address: \_\_\_\_\_

Client's Citizenship Certificate/NRN Certificate Number: \_\_\_\_\_ Issued by: \_\_\_\_\_

Product Type: \_\_\_\_\_

Investment Amount: \_\_\_\_\_ Investment Tenure: \_\_\_\_\_

Mr. / Mrs. / Messrs. .... residing/having its registered office at .....(hereinafter referred to as the "Client" which expression shall, unless repugnant to the context or meaning, thereof, be deemed to include its/his/her/their respective heirs executors, administrators, successors, legal representatives and permitted assigns) of the ONE PART.

AND

HIMALAYAN CAPITAL, a Company incorporated under the Company Act, 2063 and having its Registered Office at Thamel-26, Kathmandu, Nepal (hereinafter referred to as "Portfolio Manager", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) of the OTHER PART.

WHEREAS:

- a. The Portfolio Manager is licensed by Securities Board of Nepal (SEBON) under its Securities Businessperson (Merchant Banker) Regulations, 2008.
- b. At the request of the Client, the Portfolio Manager has agreed to provide Discretionary Portfolio Management Services (PMS hereafter) to the Client;
- c. The Client upon having examined the financials/skills/competency of the Portfolio Manager has satisfied itself of the capacity of the Portfolio Manager to provide PMS.
- d. The parties hereto are entering into this Agreement to set out the terms and condition on which the Portfolio Manager has agreed to render and the Client has agreed to avail of, the aforesaid services.

THE PARTIES AGREE AS UNDER:

**1. Definition:**

Unless the context or meaning thereof otherwise requires, the following expressions shall have the meaning assigned to them hereunder respectively:-

- 1.1. "Agreement" means this Agreement and any amendments (including by way of exchange of letters) made hereunder from time to time.
- 1.2. "Portfolio Manager" means Himalayan Capital Limited. who pursuant to this Agreement with the Client, advises or directs or undertakes on behalf of the Client the management or administration of portfolio of securities or the funds of the Client, as the case may be.
- 1.3. "Discretionary Portfolio Management Services" means the PMS rendered to the Client, by the Portfolio Manager as per the terms and conditions stipulated in the Agreement, under which the Portfolio Manager exercises discretion in investments or management of assets of the Client.
- 1.4. "Application" means the Application made by the Client to the Portfolio Manager to place monies and/or securities or any other services connected therewith, therein mentioned with the Portfolio Manager for Discretionary PMS. However, the Portfolio Manager will have the discretion to consider/reject the securities forwarded at it disposal by the Client. Upon execution of this Agreement by the Portfolio Manager, the Application shall be an integral part of this Agreement. In case of any conflict in the contents of the Application and the provisions of this Agreement, the provisions of this Agreement shall prevail.
- 1.5. "Assets" means (i) the Portfolio and/or (ii) the Funds
- 1.6. "Bank Account" means one or multiple accounts opened, maintained and operated by the Portfolio Manager with any Banks/Financial Institutions in the name of the Client.

- 1.7. **“Depository Account”** means one or multiple accounts opened, maintained and operated by the Portfolio Manager in the name of the Client with Depository or Depository Participants registered/licensed under appropriate laws of Nepal.
- 1.8. **“Custodian”** means any person who carried on or proposes to carry on the business of providing custodial services. For rendering of PMS under this Agreement, it will be Himalayan Capital.
- 1.9. **“Funds”** means monies managed by the Portfolio Manager on behalf of the Client pursuant to this Agreement and includes monies mentioned in the Application, any further monies placed by the Client with the Portfolio Manager for being managed pursuant to this Agreement, the proceeds of the sale or other realization of the Portfolio and interest, dividend or other monies arising from the assets, so long as the same is managed by the Portfolio Manager.
- 1.10. **“Parties”** means the Portfolio Manager and the Client; and **“Party”** shall be construed accordingly.
- 1.11. **“Person”** includes any individual, partners in partnership, company, body corporate, co-operative society and corporation.
- 1.12. **“Portfolio”** means the Securities managed by the Portfolio Manager on behalf of the Client pursuant to this Agreement and includes any Securities mentioned in the Application, any further Securities placed by the Client with the Portfolio Manager for being managed pursuant to this Agreement, Securities acquired by the Portfolio Manager through investment of Funds, bonus and rights shares in respect of Securities forming part of the Portfolio, so long as the same is managed by the Portfolio Manager.
- 1.13. **“Portfolio Management Fees”** shall have the meaning attributed thereto in Clause (5) below.
- 1.14. **“Regulations”** means Portfolio Management Guidelines, 2010 issued by SEBON and as may be amended from time to time:
- 1.15. **“SEBON”** means Securities Board of Nepal established under Clause 3 of the Securities Act, 2007.
- 1.16. **“Securities”** includes:
  - a. **“Securities”** as defined under the Securities Act, 2007.
  - b. Any other instruments or investments as maybe permitted by applicable law from time to time.
- 1.17. **“Sub Delegate”** means a person to whom the Portfolio Manager has fully or partially delegated the performance of his duties, discretion, obligations, any of power and authority.

## 2.0 Appointment of the Portfolio Manager

Pursuant to valid and proper authority and in accordance with applicable law, the Client hereby appoints, entirely at his/her/its own risk, the Portfolio Manager to provide services for and in respect of Assets of the Account in accordance with the provisions of this Agreement and the Regulations (as maybe applicable and in force from time to time).

## 3.0 Scope

- 3.1 The Portfolio Manager agrees to provide the services which shall include investment management, the responsibility of managing, renewing and reshuffling the Assets in the Account of the Client, buying and selling Securities, keeping safe custody of the Securities and monitoring book closures, dividend, bonus, rights etc. and other corporate actions so as to ensure all benefits accrue in the Client's Account and to take day to day decisions in respect of the Account in accordance with this Agreement and may include consultancy services.
- 3.2 The Portfolio Manager shall individually, independently and at its sole, entire and absolute discretion manage the Assets of Account of the Client.
- 3.3 The Portfolio Manager shall, in discharging its duties as such, act as management / trustee of the Client and in fiduciary capacity with regard to Client's Account consisting of investments, accruals, benefits, allotments, calls refunds, returns privileges, entitlements, substitutions and /or replacements or any other beneficial interest including dividend, interest, rights, bonus as well as residual cash balances, if any (represented both by quantity and in monetary value).
- 3.4 All actions undertaken by the Portfolio Manager, under this Agreement, shall be in accordance with the stated investment objectives and restrictions, as may be stipulated here under and further detailed in writing by the Client forming integral part of the Agreement. All transactions in investments shall be subject to prevailing rules, regulations and laws so that:
  - a. In the event of any conflict between the terms and conditions of this Agreement and any prevailing laws, the prevailing law shall prevail;
  - b. The Portfolio Manager shall be entitled to take such action or steps or omit to take any action or steps as it shall in its absolute discretion consider necessary to ensure compliance with the prevailing laws, including taking of any action to avoid or mitigate any loss arising as a result of a change in the prevailing law; and
  - c. All of the prevailing law and any such action or steps taken by the Portfolio Manager as a consequence of such requirement shall be binding upon the Client as if expressly set out here in or authorized hereby.
- 3.5 The Portfolio Manager shall inform the Client about its portfolio, the returns generated on the same, the costs associated with the portfolio construction etc. on regular basis by creating a window for the same on its Official Web-site [www.himalayancapital.com](http://www.himalayancapital.com) wherein the Client will be able to review their said information only by logging in with his/her/its user name & password forwarded by the Portfolio Manager to the Client.

## 4.0 Functions of the Portfolio Manager

The main function of the Portfolio Manager as per this Agreement is as follows:-

- 4.1 To carry on the activity of portfolio management for the Client by providing the Services in general and by exercising its discretion for the investments to be made with respect to the Assets of the Account as per the Investment Guidelines inter alia provided for in Clause7;
- 4.2 To deploy funds contributed with an objective to enable the Client earn reasonable returns on his/her/its contribution;
- 4.3 The Portfolio Manager has as on the date hereof launched certain Portfolios and may launch more Portfolios for the above purpose and the Client may invest in such Portfolios as per the conditions stipulated in Product Paper.
- 4.4 For Institutional Client, the Portfolio Manager shall rely upon instructions/notices given by a person who is duly authorized by the Client including decision for partial withdrawal of returns as per Product Paper. Without prejudice to the aforesaid, the Portfolio Manager shall be facilitated with a copy of a board resolution of the Client authorizing such person to act on behalf of the Client with respect to this Agreement. In the event of revocation of authority of any such person, the Client shall promptly inform the Portfolio Manager of such actions.
- 4.5 The Portfolio Manager may, if required by applicable law or regulations, disclose the identity of the Client to the issuers of Securities held as part of the Assets or to the agents of such issuer upon the request of such issuer, or to any Government body or the court of law, without further consent from the Client.
- 4.6 The Portfolio Manager shall observe a high standard of integrity and fair dealing in all transactions involving the Client's Account.
- 4.7 The Portfolio Manager shall maintain appropriate records for every transaction undertaken in respect of the Client's Account. The records so maintained shall indicate the data, facts and opinion leading to the decision to conduct the transaction.

#### **5.0 Fees and Charges**

- 5.1 Notwithstanding anything contained herein or elsewhere, a Portfolio Management Fee as mutually agreed upon from time to time and on case to case basis through exchange of letter between the parties shall be paid by the Client to the Portfolio Manager.
- 5.2 In the case of additional fund provided by the client after six months of investment start date, the performance fee will be charged on the pro rata basis on the date the additional fund is received taking the value of the portfolio as per the last trading price of the companies in the portfolio.
- 5.3 The fees will be charged upon activation of the Client's account i.e., from the date on which the account activation formalities are completed and the participation amount(s) is/are realized in the account of the Client, or in case of securities, the date on which the last of the securities with respect to the corresponding Minimum Participation Amount is credited in the depository account of the Client. For all purpose of this Agreement, including without limitation to the computation of the Portfolio Manager's fees hereunder, the Assets of the Account shall be valued in accordance with the Portfolio Manager's standard valuation policies and procedures.
- 5.4 The Client here by undertakes to pay the Portfolio Manager the fees for the Services rendered by the Portfolio Manager. The Client hereby authorizes the Portfolio Manager to debit his/her/its Account for all costs, expenses, charges referred to in this Clause5 and as mutually agreed upon and for any other services rendered by the Portfolio Manager or outsourced by the Portfolio Manager in relation to the Account as mentioned and furnished by the Portfolio Manager to the Client and as agreed by the Client from time to time.
- 5.5 In the event of non-payment of fees and/ or other charges due and payable by the Client as stipulated under this Agreement, the Portfolio Manager by virtue of the authorization given hereby may sell any securities forming part of the Client's portfolio, at its absolute discretion and/or debit Client's Account to the extent of such outstanding fees / charges.

#### **6.0 Portfolio Manager's Power, Duties and Obligations**

- 6.1 The Client here by authorizes the Portfolio Manager to do in its absolute discretion all such acts, deeds, matters and things on behalf of the Client as may be incidental or consequential to the discharge of its responsibilities under this Agreement, any other applicable law in force.
- 6.2 The Portfolio Manager shall maintain books and records relating to its transactions for the Client to ensure compliance with the Regulations.
- 6.3 The Portfolio Manager may at its discretion, constitute, nominate, appoint and substitute agents/custodians/auditors, determine their duties, fix their emoluments and acquire security in such instances and of such amount, as the Portfolio Manager may think fit.
- 6.4 The Portfolio Manager may constitute committees consisting of such persons as it thinks fit to guide and advice the operations of the Portfolio Manager, delegate suitable power to them, impose appropriate regulations on them; and generally, to do all acts, deeds, matters and things which are necessary for any object, purpose of or in relation to the Client's Account in any manner or in relation there to.
- 6.5 The Portfolio Manager may not act upon the instructions given by the Client, in case after the receipt of instruction but before implementation thereof, the Portfolio Manager believes that the implementation or compliance may not be practicable or might be in contravention of any law, Regulations and Rules.
- 6.6 The Portfolio Manager shall at its sole discretion determine the manner in which any voting rights; right to consent to corporate actions, conversion rights, subscription rights, tender rights, appraisal rights and any other rights pertaining to any portfolio of Securities held in the Account may be exercised. For the purpose, the Portfolio Manager may require the Client to execute any such certificate, proxy, consent and/or any other document necessary or appropriate to effectuate its power under this Agreement.
- 6.7 The Portfolio Manager shall not derive any direct or indirect benefit out of the Client's funds or securities other than in the manner

contemplated herein.

## **7.0 Investment Guidelines**

**7.1** Subject to Directives of SEBON and amendments there to from time to time, the Portfolio Manager shall have the sole and absolute discretion to invest Client's funds in any or all of the following securities or in a combination of securities deemed appropriate by the Portfolio Manager.

- a. Securities listed with Stock Exchange
- b. Publicly issued Securities, Money Market Instruments and units of Mutual Fund
- c. Time/Fixed Deposits with Banks/ Financial Institutions and
- d. Any other investment instrument stipulated by SEBON from time to time.

If provided, the Portfolio Manager requires to invest Client's funds with certain restrictions, stipulated by the Client in writing which shall form an integral part of this Agreement.

**7.2** The Portfolio Manager shall not deploy Clients' funds in bill discounting, for the purpose of lending or placement with corporate or non-corporate bodies or investment in such instruments as may be prohibited by SEBON or Nepal Rastra Bank ("NRB") or other regulatory bodies from time to time. The Portfolio Manager, while dealing with the Client's funds shall not indulge in speculative transactions, i . e . transactions for the purchase or sale of any securities which is periodically or ultimately settled otherwise than by actual delivery or transfer of securities.

**7.3** The powers exercised by the Portfolio Manager as above shall be final, binding and irrevocable on the Client and shall be construed having approved/ratified any such investment and/or related activities or deeds that the Portfolio Manager may take on behalf of the client from time to time.

**7.4** In management of Client's Account, the Portfolio Manager may exercise complete discretion on the proportion of exposure on each security and apply for, subscribe, obtain, buy, accept, acquire, endorse, transfer, redeem, renew, exchange, dispose, sell or otherwise deal in the Securities specified in Clause 7.1 above and generally manage, convert, transpose and vary the investments in respect of Client's Account in such manner as the Portfolio Manager in its absolute discretion thinks fit and proper.

**7.5** Accruals, accretions, benefits, allotments, call refunds, returns, privileges, entitlements, substitutions and/or replacements or any other beneficial interest including dividend, interest, rights, bonus that accrue to investments in respect of Client's Account shall be received by the Portfolio Manager either in its own name or in the name of the Client but in either case it shall be placed in Client's Account on relevant date(s) upon realization. The Portfolio Manager shall take necessary steps for conversion of securities when necessary. The subscription /renunciation/ renouncement of rights and options in respect of the Securities shall be at the sole discretion of the Portfolio Manager.

**7.6** The Client agrees to provide Portfolio Manager or its Sub-Delegate, such information as may be required from time to time, including, without limitation, all changes to the information provided by the Client in the Application or "**Know Your Client**" form in order to enable the Portfolio Manager or its Sub-Delegate to update the information therein. Without prejudice to the aforesaid, the Client shall inform the Portfolio Manager of

- a. Residential status and of any changes thereto and
- b. Any restrictions that have been or are imposed upon the acquisition of any particular Securities by the Client.

**7.7** The Portfolio Manager shall ensure that any transaction of purchase or sale including that between the Portfolio Manager's own accounts and Client's accounts or between two Clients' accounts shall beat the prevailing market price.

## **8.0 Delegation and use of Agents**

To the extent permissible by law, the Portfolio Manager may delegate any of its functions under this Agreement to an Agent and may provide information about the Client and the Account to any such Agent. The Portfolio Manager will act in good faith and with due diligence in its choice and use of such Agents.

## **9.0 Maintenance of Client's Account**

**9.1** The Portfolio Manager may open one or more bank accounts for and on behalf of the Client with Banks/ Financial Institutions to deposit and withdraw funds entrusted by the Client and fully operate the same

**9.2** The Client shall execute and deliver to the Portfolio Manager, a Power of Attorney, in the format specified by the Portfolio Manager authorizing the Portfolio Manager or its Sub-Delegates, to do all acts on behalf of the Client necessary for rendering the Services. The Portfolio Manager may rely and act on any instruction or communication which purport to have been given (and which is reasonably accepted as having been given) by or on behalf of any person notified by the Client from time to time as being authorized to instruct the Portfolio Manager in respect of the Account through telephone, facsimile, telex, email, or in writing, whether or not the authority of any such person has been terminated, unless the Portfolio Manager has received a written notice of the termination.

**9.3** The Portfolio Manager shall provide the Client with a statement/report on investments/divestments and all credits to the accounts of the Client by way of accruals, accretions, benefits, allotments, calls, refund, returns, privilege, entitlement, substitutions and / or replacements

or any other beneficial interest including dividend, interest, rights, bonus received from time to time including details specified in Portfolio Management Guidelines, 2010.

#### **10.0 Minimum Tenure and Investment**

The Client shall maintain the minimum participation amount under each Portfolio as may be stated by the Portfolio Manager from time to time as per its product paper and such minimum amount shall not in any event be less than the minimum amount stipulated under the Portfolio Management Guidelines, 2010 or in accordance with the amendments there under from time to time ("the Minimum Participation Amount"). The Portfolio Manager has the discretion to define an amount higher than SEBON specified amount as minimum amount acceptable portfolio value. The assets placed for management by the Client with the Portfolio Manager for Discretionary Portfolio Management Services under this Agreement shall be placed for a period as specified in the product paper.

#### **11.0 Indemnity to Portfolio Manager**

- 11.1** The Portfolio Manager, its Sub-Delegate and every Agent, person employed or appointed by the Portfolio Manager shall be entitled to be indemnified out of the Assets of the Account deployed in respect of all liabilities, losses (direct or indirect) and expenses incurred by the Portfolio Manager in the execution of the services under this Agreement or any of the powers, authorities and discretion vested in them pursuant to these including liabilities, losses and expenses consequent upon any action, omission, mistake, oversight or error of judgment on the part of the Portfolio Manager or any such appointee and against all actions, proceedings, costs, claims and demands in respect of any matter, acts, deeds or things done or omitted in anyway in relation to these. The Portfolio Manager shall have a lien and may retain and pay out of the Assets of the Account in its hands all sums or other amounts necessary to affect such indemnity.
- 11.2** The Portfolio Manager shall however not be liable to the Client for any acts of such Sub-Delegate or Agent. Without prejudice to the generality of the above clause(s), the Portfolio Manager may employ Sub-Delegates or Agents to perform any administrative, accounting, dealing, custodial and ancillary services required for performing its services under this Agreement.
- 11.3** The Portfolio Manager and every person employed or appointed by the Portfolio Manager shall not be responsible to any other person including an employee or officer of the Client, or to the Client for any loss or expenses resulting to such other person, or to the Client due to insufficiency or deficiency of value of or title to any property or security acquired or the exercise of any discretion including voting rights and corporate actions on behalf of the Client or the insolvency or wrongful act of any debtor or any person under obligation to the Client or for anything done in good faith in the execution of the duties of its office or in relation thereto.
- 11.4** The Client is aware that the investments/divestments of the fund shall be at his/her/its entire risk and the Portfolio Manager will not be responsible for loss, damage or diminishing value of the Account and the Securities held therein, except where such loss/damage is occasioned directly due to any willful default, gross negligence or fraud on the part of the Portfolio Manager or its Sub-Delegate.

#### **12.0 Period & Termination**

- 12.1** This Agreement shall commence from the date on which the parties have affixed their signatures and seal, if applicable.
- 12.2** This Agreement shall remain valid in perpetuity unless terminated in accordance with the terms here in.
- 12.3** The Portfolio Manager has right to terminate this Agreement if it has reason to believe that the conditions specified in this Agreement are not complied with by the Client.
- 12.4** The Client has the right to terminate this Agreement after giving a 7 days prior notification in writing in the prescribed format specified by the Portfolio Manager, subject to the minimum period, if any, as per the Product Paper or as stipulated by SEBON from time to time, if applicable. However, the Portfolio Manager shall be entitled to terminate this Agreement and cease operations of the Client's Account within 30 days from the date of receipt of such notification in writing from the Client.
- 12.5** The Portfolio Manager can also terminate this Agreement without assigning any reason there for but after giving 7 days prior notice in writing to the Client. Provided, such notice shall not be required if the termination is for prevention of money laundering or any other illegal activities that the Portfolio Manager may reasonably suspect.
- 12.6** Except in the event of termination as provided under Clause 12.3, the Assets of Account can be withdrawn or taken back by the Client at his/her/its sole risk before expiry of the Agreement under the following circumstances:
- a. Voluntary or compulsory termination of the Services by the Portfolio Manager;
  - b. Suspension or termination of the license granted to the Portfolio Manager by SEBON and/or any other competent authority;
  - c. Liquidation of the Portfolio Manager;
- 12.7** Where no person has been nominated by the Client under this Agreement and in the event of death, incapacitations, insolvency, dissolution or winding up of a Client during the tenure of the Agreement, and on receipt of notice from the Client or successors/heirs, in writing of such an event, the Agreement shall ensure to the benefit of the successors/heirs. However, the Portfolio Manager shall be entitled to terminate this Agreement and cease operations of the Client's Account within 30 days from the date of receipt of such notification in writing from the Client or his/her/its successors/heirs.
- 12.8** The termination of this Agreement, in any manner whatsoever, shall not, affect or preclude the consummation of any transaction initiated by the Portfolio Manager prior to its receipt or transmission of the notice of termination (or, if the Portfolio Manager continues to act until selection of the successor by the Client, any transaction initiated during the period when the Portfolio Manager so continues to

act), in which case all the terms and conditions of this Agreement shall apply to such transactions.

### **13.0 Assignment**

The Client here by agrees that he/she/it shall not assign or transfer any of his/her/its assets, right and/or obligations here under without the prior written consent of the Portfolio Manager.

### **14.0 Repayment & Transfer of Securities**

**14.1** The Portfolio Manager shall on a best effort basis liquidate the securities in the Client's Portfolio at an earliest date from the date of notice of termination and maturity and arrange to deposit the net realized value of securities held in the Client's Account together with all accruals, accretions, benefits, allotments, calls, refunds, returns, privileges, entitlements, substitutions and/or replacements or any other beneficial interest including dividend, interest, bonus as well as residual cash balance, if any on such date, subject to the Client fulfilling all his/her/its obligations under this Agreement, in the designated account. The amount so realized, and/or the Securities together with residual cash balances, if any, due and belonging to the Client, shall be paid/transferred to the Client, subject to the following deductions

- a. Payments, if any, already made to the Client;
- b. Portfolio Manager's fee, custody fee, other fee/expenses as described herein the Agreement or in product paper.
- c. All taxes, rates, fees, duties, commissions, costs, charges, penalties, deductions, recoveries and/or appropriations, etc., to be made in accordance with applicable law or Rules or Regulations or By-laws or otherwise on account of the Client; and
- d. Any other dues, liabilities, obligations, etc. owed by/due on account of the Client under this Agreement.

**14.2** The Portfolio Manager also reserves the right to settle the Client's account, in whole or in part, by issuing physical delivery or by transferring the securities to his/her/its depository account in case:

- a. The Securities in his/her/its account cannot be liquidated by the Portfolio Manager within the stipulated time as aforesaid; and/or
- b. A written request is received from the client to effect the termination by transfer of the Client's Securities to his/her/its depository account.

**14.3** The Portfolio Manager, by disbursement through payment and/or transfer of securities, subject to all the above recoveries, deductions and appropriations, shall be validly discharged of all its obligations owed to the Client or his/her/its legal heir or nominee, as the case may be, in respect of this Agreement.

**14.4** Any accruals, accretions, benefit, allotment, calls, refund, returns, privilege, entitlement, substitutions and/or replacements or any other beneficial interest including dividend, interest, rights, bonus, voting rights arising out of the amount, shall accrue to or vest in the Client and which, if received by the Portfolio Manager shall be returned/made over to the Client in full.

**14.5** At any point of time if the Client's portfolio is valued in excess of the Minimum Participation Amount, the Client may be entitled to withdraw such surplus amounts as specified on the product paper. However, any such withdrawal shall be subject to applicable law and the Portfolio Manager may, in its sole discretion in response to unforeseen circumstances or unusual market conditions, limit the withdrawal of the funds/securities.

### **15.0 Confidentiality**

The terms and conditions of this Agreement and all information and recommendations furnished by the parties shall be treated as confidential by the parties and shall not be disclosed to third parties except if required by applicable laws, Rules or Regulations or as otherwise expressly agreed to in writing by the parties.

### **16.0 Risk and Losses**

**16.1** The Client hereby agrees to undertake the risks pertaining to portfolio investments as stated here in:

- a. Securities investments are subject to market risks and there is no assurance or guarantee that the objectives of the investments will be achieved.
- b. As with any Securities investment, the value of the portfolio can go up or down depending on the factors and forces affecting the market.
- c. The value of various portfolio offered may be affected by changes in the general market conditions, factors and forces affecting the markets, in particular, level of interest rates, various market related factors, trading volumes, settlement periods, transfer procedures, currency exchange rates, foreign investments, changes in government policies, taxation, political, economic and other developments, closure of stock exchanges, etc. Hence, the Portfolio Manager is not responsible or liable for losses resulting from the operations of the portfolio.
- d. The liquidity of portfolio investments is inherently restricted by trading volumes in the securities in which the investment is made.

**16.2** The Client shall not question any act, deed, omission or commission of the Portfolio Manager or its Sub-Delegates under this Agreement,

taken in good faith except on grounds of malafide, negligence, conflict of interest and/or fraud.

- 16.3 The Client understands and acknowledges that past performance is not necessarily indicative of likely future performance.
- 16.4 The Client understands that his/her/its funds will be invested as per Clause 7.1 of this Agreement. However, Equity instruments by nature are volatile and prone to price fluctuations on a daily basis due to both macro and micro factors. Trading volumes, settlement periods and transfer procedures may restrict the liquidity of these investments. Different segments of financial markets have different settlement periods and such periods may be extended significantly by unforeseen circumstances. The inability of the Portfolio Manager to make intended securities' purchases due to settlement problems could cause the Portfolio to miss certain investment opportunities.
- 16.5 The investments made are subject to external risks such as war, natural calamities, policy changes of local/international markets etc. which are beyond the control of the Portfolio Manager and which affects markets.

#### **17.0 Joint Account**

If the Client is more than a single person, the Client's obligations under this Agreement shall be joint and several. It is clarified that in case of the joint Client account, all dealings with the Client under this Agreement, including but without limitation to the payment of Assets of the Account on termination or expiry of the Agreement would be undertaken by the Portfolio Manager with the first holder of the Account or the person jointly authorized by the accountholders. If the Client proposes to disclose the information of its Account to any third person, the Client shall make a written request to the Portfolio Manager

#### **18.0 Representations and Warranties of the Portfolio Manager**

- 18.1 The Portfolio Manager represents and warrants that it is a Portfolio Manager licensed by SEBON to operate under Portfolio Management Guidelines, 2010 and amendments there under from time to time. The Portfolio Manager shall not change any clause of this Agreement without the consent of the Client in writing.
- 18.2 The Portfolio Manager does not provide any guarantee (express or implied) for the appreciation in value of the Securities in which the Portfolio Manager invests the Client's funds.
- 18.3 The Portfolio Manager understands and acknowledges that the liability of the Client shall not exceed the value of his/her/its investment with the Portfolio Manager.

#### **19.0 Representations and Warranties of the Client**

- 19.1 The Client represents and warrants that he /she/it is duly authorized, eligible and competent to enter in to this Agreement and appoint Portfolio Manager to manage the Assets of the Account. The Client having agreed to avail the services offered by the Portfolio Manager shall be deemed to have satisfied eligibility in this respect. The Client shall at all times comply with all relevant laws, rules and regulations as may apply to his/her/its portfolio, or dealing therein.
- 19.2 The Client also warrants that the Portfolio Manager shall have full authority to execute in the name and on behalf of the Client, all necessary deeds, documents, writings, forms, applications, as may be necessary to file with any company, banks and other financial organizations, institutions, securities registrars, depository participants, government bodies, or departments in any manner relating to the management of the Account and to take all necessary actions which enables the Portfolio Manager to effectively exercise the authority conferred in here to and for any incidental and consequential actions.
- 19.3 The Client here by warrants and represents to the Portfolio Manager that cash corpus/securities handed over to the Portfolio Manager upon execution here of, absolutely belongs to him/her/it and there is no encumbrance on the same, of what so ever nature, and he/she/it shall not create any encumbrance on the assets whether by way of pledge, lien, mortgage, hypothecation or any other charge, during the tenure of this Agreement and shall also at all times comply with all relevant laws, rules and regulations as may apply to his/her/its dealings there in.
- 19.4 The Client warrants that all information which he/she/it has provided to the Portfolio Manager in relation to his/her/its status, including in particular his/her/its residence and domicile for taxation purpose, is complete and correct and agrees to provide any further information, if required by any competent authority or the Portfolio Manager. The Client hereby agrees and undertakes to notify the Portfolio Manager forth with if there is any change in any such information provided.
- 19.5 The Client understands and agrees that the Services provided by the Portfolio Manager to the Client are not deemed to be exclusive, the Portfolio Manager being free to render investment advisory, portfolio management and/or other services to other Clients.
- 19.6 In the event of any change in the constitution, identity by change of name and/or residential status of the Client during the tenure of this Agreement, it shall be the duty of the Client to keep the Portfolio Manager duly informed of such changes. The Portfolio Manager shall seek advice or appropriate directions where required, from competent authority, under applicable laws, with regard to the continuation of this Agreement and other Agreements with the Client, if any affected by such a change under the applicable law.
- 19.7 The Client undertakes to maintain the Minimum Participation Amount as specified in the Product Paper.

#### **20.0 Income and Other Taxes**

Any Income tax and other tax liability on investments, funds and yields there from shall be borne and paid by the Client. The Portfolio Manager does not take any responsibility for any matters relating to the tax filings or assessments of the Client.

**21.0 Arbitration**

All disputes, differences, claims and questions whatsoever, which may arise either during the subsistence of this Agreement or afterward between the parties hereto and/or the irrelative representatives touching these presents or any clause or anything contained herein or otherwise in anyway relating to or arising through the interpretation of any provision contained herein shall be first settled by mutual discussions between the parties, failing which the same shall be referred to and settled in accordance with the Arbitration Act, 1999.

**22.0 Governing Law, Jurisdiction and Government Regulations**

The Portfolio Manager shall formulate the Portfolio in accordance with the Regulations, Rules and other guidelines of SEBON and other concerned authorities subject to modification to the extent required by any applicable law, regulation, rule or guideline. This Agreement and the rights and liabilities of the parties shall always be subject to the prevailing Act, Rules, Regulations and Guidelines of SEBON and other concerned authorities.

**23.0 Grievance Handling**

Where the Client has any grievances, he/she/it should promptly notify the same to the Portfolio Manager in writing giving sufficient details to enable the Portfolio Manager to take necessary steps. The Portfolio Manager, on receipt of such grievance, shall take prompt action to redress the same.

**24.0 Miscellaneous**

**24.1** This Agreement sets forth the entire and exclusive understanding of the parties and supersedes and cancels any and all prior Agreements/engagements between the parties, whether written or oral, relating to investment management of the Account or of any other assets of the Client. Unless otherwise provided for herein, this Agreement may not be modified, amended, rescinded, or waived, in whole or part, except by a written instrument signed by duly authorized representatives of both the parties. No provision of this Agreement shall be construed so as to violate, or so as to cause party to violate the applicable provisions of the Portfolio Management Guidelines, 2010 or amendments there under from time to time or any other laws, rules, regulations or orders.

**24.2** The parties hereby agree that all terms, requirements, and other provisions of this Agreement are fair and reasonable and shall be enforceable in the court of law.

**24.3** All mail and notice from the Portfolio Manager to the Client shall be sent to the Client's last known address, as in existence in the records of the Portfolio Manager. All mail and notices from the Client to the Portfolio Manager shall be sent to the address stated in the Application Form.

**24.4** In order to be effective, the Client's notification to the Portfolio Manager regarding change of address etc. must be lodged at least 30(thirty) days before the date on which any payment from the Portfolio Manager to the Client falls due.

**IN WITNESS WHEREOF THE PARTIES HERETO HAVE SET THEIR HANDS ON THIS AGREEMENT AT THE PLACE ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN**

**SIGNED AND DELIVERED**

For & on behalf of the "Portfolio Manager"

**SIGNED AND DELIVERED**

For & on behalf of the "Client"

\_\_\_\_\_  
Authorizes Signatory (ies)

**WITNESSED BY**

\_\_\_\_\_  
Authorizes Signatory (ies)

**WITNESSED BY**