



# Apex Fundrock Ltd

## Intermediary Terms of Business

Version 07/2023

[fundrock.com](https://fundrock.com)



These Intermediary Terms of Business should be read in conjunction with any application made on behalf of an Intermediaries customer looking to invest in fund(s) administered by Apex Fundrock Ltd (Apex Fundrock). This document sets out the agreed terms of business and defined terms between Intermediaries acting on behalf of Investors in Funds where Apex Fundrock acts as the ACD. This document forms a binding contract between Apex Fundrock and an Intermediary.

These terms replace any existing Intermediary Terms of Business in force between Apex Fundrock and the Intermediary in respect of the Fund(s) and will come into effect on or after the date they are published on Apex Fundrock's website (www.Fundrock.com) and upon the earlier of the Intermediary placing a purchase or sale order with Apex Fundrock in respect of the Fund(s) or the Intermediary applying to be accepted onto Apex Fundrock's systems.

Intermediaries should retain a copy of this document for future reference.

## 1. Definitions and Interpretations

In these Intermediary Terms of Business the following words and expressions have the meanings and interpretation set out below (unless the context otherwise requires):

**Administrator, ACD and AIFM** means Apex Fundrock Ltd acting in its capacity as administrator, Authorised Corporate Director (ACD) of an Open-Ended Investment Company or the Alternative Investment Fund Manager of an Authorised Unit Trust;

**Anti-Money Laundering Requirements** means all applicable anti-money laundering legislation, regulations, rules or guidelines (as amended from time to time);

**Apex Fundrock** means Apex Fundrock Ltd;

**Applicable Law** means all applicable laws and regulations of the UK or any other territory, and the prevailing regulations, requirements, determination, practice and guidelines of any other governmental or regulatory organisation of which the Intermediary or (if appropriate) an Associate is a member or by which it is regulated;

**Application Form** means the application form to be completed and signed by you relating to your subscription for an Investment;

**Associate** has the meaning ascribed to it in the FCA Handbook;

**Authorised Person** shall have the meaning defined in section 31 of FSMA;

**Business** means the business of engaging in one or more of the activities set out in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

**Business Day** means a day, not being Saturday or Sunday, on which the London Stock Exchange is open for general business in London, England;

**Cancellation Rights** means the cancellation rights set out in Chapter 15 of the FCA'S Conduct of Business Sourcebook which forms part of the FCA Handbook and is applicable to business introduced only via an Independent Financial Adviser;

**Client Company** means the sponsor, manager or operator of a Fund hosted or administered by Apex Fundrock;

**Client Money** means all monies which we receive or hold on your behalf under the FCA rules;

**Commission** means any commission, remuneration or benefit of any kind;

**Confidential Information** means all confidential information (including but not limited to, data, documents, methodologies, software, trade secrets, personnel records, business strategies, pricing, financial arrangements and commercial affairs), whether written, machine-readable or verbal;

**Distance Marketing Directive** means the Distance Marketing of Financial Services Directive (2002/65/EC) and any regulation issued pursuant thereto under Applicable Law;

**Duly Authorised** means that the Intermediary has obtained all necessary authorisations, permissions and licenses under Applicable Law and in all relevant territories in order for the Intermediary to carry on all business relevant to the performance of its obligations and the transactions contemplated under the Intermediary Terms of Business all of which are current and up-to-date and have not been suspended or revoked;

**FATCA** means the Foreign Account Tax Compliance Act;

**FCA** means the Financial Conduct Authority, whose current address is 12 Endeavour Square, London E20 1JN, including any replacement regulatory body;

**FCA Rules** means the rules and guidance of the FCA (as amended time from time);

**FSMA** means the Financial Services and Markets Act 2000;



**Fund** means an Authorised Unit Trust or Open Ended Investment Company managed or administered by Apex Fundrock.

**Fund Sponsor** means the Investment Manager as Detailed within the Fund's Prospectus;

**ISA** means an individual savings account or a new individual savings account (NISA) within the meaning of the Individual Savings Account Regulations 1998 (as amended or replaced);

**Intermediary** means a person advising a client on Investment in a fund;

**Investment** means Units or Shares held directly or in an account;

**Investor** means the applicant who invests in or holds a beneficial interest in a Fund administered by Apex Fundrock and includes joint Investors;

**KIID** means Key Investor Information Document under the Collective Investment Schemes Sourcebook which forms part of the FCA Handbook as amended, updated or replaced from time to time;

**Prospectus** means the prospectus for a Fund as amended or substituted from time to time;

**RDR** means Retail Distribution Review; 'a key part of the FCA's consumer protection strategy, to assist firms in establishing consumer confidence and trust in the retail Investment market.

**Settlement Day** means in respect of any purchase or sale order, the day stated in the contract note (or other confirmation) as the settlement day, on which payment is due;

**SID** means Supplementary Information Document;

**Share** means a share (of any class) in an Open-Ended Investment Company managed, operated or administered by Apex Fundrock, whether held unwrapped or in an ISA, the term Share is used interchangeably with the term Unit and vice versa;

**Sponsor** means the promoter (sponsor) of the Fund or the Investment Manager;

**Terms and Conditions** means these Terms and Conditions;

**UK** means the United Kingdom consisting of England, Wales, Scotland and Northern Ireland only;

**Unit** means a unit (of any class) in an Authorised Unit Trust managed, operated or administered by Apex Fundrock, whether held unwrapped or in an ISA, the term Share is used interchangeably with the term Unit and vice versa;

**Valuation Point** means, in respect of Shares or Units (of any class), the point at which a valuation is carried out for the purpose of determining the price that such Shares or Unit class) may be sold or purchased by you; and

**We, Us and Our** means Apex Fundrock.

Clause headings are for convenience only and do not affect the interpretation of these Terms and Conditions. References to the singular shall include the plural and vice versa and references to persons include natural or incorporated persons. Any words following the terms "including", "include", "in particular" or any other similar expression shall be interpreted as illustrative, and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. General

2.1 This agreement is between Apex Fundrock whose registered office in the United Kingdom is at Hamilton Centre, Rodney Way, Chelmsford, Essex, CM1 3BY ("Us") and the Financial Adviser/Intermediary ("You") whose details are given in the Intermediary Details section of the customer's application form.

2.2 Intermediaries may place instructions with Apex Fundrock in respect of Funds on behalf of Investors only in

line with the terms and conditions of these Intermediary Terms of Business.

2.3 Before placing instructions and at all relevant times, the Intermediary must be Duly Authorised and must provide Apex Fundrock with evidence that it is Duly Authorised by providing its registration number from the FCA, or other relevant authorising regulatory body, and if requested by Apex Fundrock a copy of its FCA registration certificate or similar registration document from such other relevant regulatory body.



2.4 Acceptance of an Intermediary is at the absolute and unfettered discretion of Apex Fundrock, who reserves the right not to accept the Intermediary onto its system or, following acceptance, not to accept the placing of orders from an Intermediary, without providing any reasons to the Intermediary and the Intermediary agrees that Apex Fundrock have no liability for any loss incurred as a consequence thereof.

2.5 Apex Fundrock reserves the right to carry out due diligence on the Intermediary, its owners or principals or Controllers or persons having Close Links with the Intermediary prior to the acceptance of the Intermediary by Apex Fundrock or at any time or times thereafter.

2.6 The Intermediary agrees to promptly provide to Apex Fundrock evidence of identity and such other Information reasonably requested in relation to such due diligence and authorises Apex Fundrock to make such credit reference, identity and other such checks and enquiries reasonably necessary or as required by applicable law.

2.7. At the request of Apex Fundrock the Intermediary will promptly:

- (a) Confirm whether any Cancellation Rights apply to any Share or Unit purchase order it has placed.
- (b) For UK regulated Intermediaries provide its FCA registered number and for non-UK regulated Intermediaries identify its regulator and provide its equivalent registered membership number.
- (c) Provide a properly completed application form for any Investor for whom it places a purchase or sale order (or intends to do so), and, if different, the name and address of the person in whose name the Shares or Units are (or will be) registered.
- (d) Confirm the client classification and status of its client and the nature of the service it has provided to its client (e.g. execution only and/or basic advice) on each order or instruction submitted to Apex Fundrock.
- (e) State whether it is authorised to hold or control Investors' money.
- (f) Provide any reasonable request "Know Your Client" information, or any other information Apex Fundrock may require to meet the requirements that comply with the FCA Rules and Anti Money Laundering Regulations.

### 3. Relationship Between the Parties

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3.1. Following acceptance by Apex Fundrock and subject to the these Terms:

- (a) The Intermediary will be able to deal with Apex Fundrock in respect of investments in the Fund(s) on behalf of Investors and in respect of business introduced or

subsequently transferred in writing by the holders to the Fund(s).

b) Apex Fundrock will be entitled to assume that the Intermediary has received proper authorisation from the Investor to act on its behalf and is in all respects the agent of the Investor until such time as Apex Fundrock is notified otherwise by the Intermediary or the Investor. This shall be assumed to be the case irrespective of whether the Intermediary has received payment from the Investor. For the avoidance of doubt the Intermediary shall remain liable for the performance of all obligations assumed by the Intermediary to Apex Fundrock.

(c) The Intermediary will promptly complete (or procure to be completed), and forward to Apex Fundrock, all necessary documentation relevant to the performance of the obligations and transactions contemplated under the Intermediary Terms of Business.

3.2. The Intermediary will act on behalf of an Investor on that Investor's instructions (or those of the Investor's legal representatives). Such Investor's instructions may take the form of a discretionary mandate given to the Intermediary by the Investor. The Intermediary undertakes to comply with the FCA Rules regarding the delivery of the Treating Customers Fairly outcomes and to act in accordance with the FCA's Clients' Best Interest Rule (or equivalent rules in the relevant jurisdiction).

3.3. Under no circumstances will the Intermediary act, or hold itself out, as the agent of Apex Fundrock and the Intermediary acknowledges and agrees that it has no authority whatsoever to bind or to represent Apex Fundrock.

3.4. The Intermediary hereby acknowledges and agrees that Apex Fundrock will not provide financial or investment advice to the Intermediary or Investors.

3.5. On request from the Intermediary, Apex Fundrock will provide a copy (which may be in electronic form such as a PDF) of the relevant funds KIID's and SID's, and where required by FCA Rules, the Intermediary undertakes that it will provide a copy of the relevant KIID and SID to each Investor before they invest in a Fund.



## Intermediary's Authority

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3.6. The acceptance of the Intermediary by Apex Fundrock, and Apex Fundrock's consent to the Intermediary placing orders on behalf of Investors or potential Investors to the Funds, is subject at all times to the following warranties and undertakings by the Intermediary.

3.7. The Intermediary warrants that:

(a) It is duly authorised and validly subsisting under the laws of its country of incorporation (or registration as appropriate) and has full power and authority to enter into and perform its obligations under these Terms of Business.

(b) It is, and shall at all relevant times, remain duly authorised and regulated with full power, authority and permissions necessary to carry on the business relevant to the performance of its obligations and the transactions contemplated in the Intermediary Terms of Business.

(c) All information it provides to Apex Fundrock relating in any way to itself, its owners or principals or controllers or those with whom it has close links or an Investor will be accurate and complete and it undertakes to promptly inform Apex Fundrock of any changes in such information, from time to time.

3.8. The Intermediary agrees to immediately notify Apex Fundrock if at any time the Intermediary:

(a) Ceases to be duly authorised or to have authority to act on its Investor's behalf.

(b) Has been suspended from conducting business by the FCA or any other regulatory body or there is any change in scope of the Intermediary's regulated activities which may affect its ability to carry on Business.

(c) Becomes aware of a change of control in relation to it or if it transfers or intends to transfer its business and assets to another person.

(d) Any of the principals, directors or partners of the Intermediary or any person performing Controlled Functions in relation to the Intermediary has been charged with, or convicted of, an offence involving fraud or other dishonesty.

## 4. Commission Payments

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4.1. In line with the Retail Distribution Review (RDR) and the RDR Sunset Clause Apex Fundrock no longer offers initial and trail commission on funds it manages.

## 5. Anti-Money Laundering

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5.1. The Intermediary shall be solely responsible for carrying out all client identification procedures required by the Anti-Money Laundering Requirements or by any other relevant money laundering laws, rules and regulations applicable to transactions with Apex Fundrock in respect of the Funds for or on behalf of a potential or existing Investor.

5.2. The Intermediary shall check, obtain and (to the extent that such documents and certificates are required by law to be retained by the Intermediary) retain satisfactory documentary evidence in durable form as to the identity of all Investors or potential Investors introduced by it, in accordance with the Anti Money Laundering Requirements, Applicable Law, industry best practice and any reasonable requirements which Apex Fundrock may specify from time to time.

5.3. The Intermediary will, promptly upon written request by Apex Fundrock, forward to Apex Fundrock such documentary evidence (or properly certified copies thereof) together with properly completed certificates relating to verification of identity of the Investor.

5.4. Apex Fundrock reserves the right to make further identity checks of Investors in addition to those already carried out by the Intermediary. At Apex Fundrock's request, the Intermediary will promptly and in writing, provide any information Apex Fundrock may reasonably require, such request being deemed to be reasonable where Apex Fundrock have specified that such information is required to enable Apex Fundrock to comply with the terms of the FCA Rules or Anti-Money Laundering Requirements.

## 6. Settlement

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6.1. Payment in respect of any purchase contract instructed by the Intermediary must be received by Apex Fundrock on or before midday on Settlement Day. Apex Fundrock will be entitled to cancel, in whole or in part, any contract in respect of which a payment is overdue, with any shortfall being covered by the Investor.

6.2. The Administrator does not normally accept payments from third parties, other than transfers in from other financial institutions and reserves the right to request verification of the source of funds and evidence of identity as required before accepting them.



6.3. The ACD reserves the right to charge £50 each time a trade is not fulfilled by settlement date. The ACD reserves the right to apply a daily interest charge at 2% above the Bank of England Base Rate on the value of any settlement not received by the settlement date.

6.4. Amounts that total over £10,000 or currency equivalent should be paid to Apex Fundrock by electronic means on or before the Settlement Day, with settlements in Australian Dollars and Danish Krone being due one day prior to settlement date. Before a transaction is placed, Apex Fundrock may at its discretion require cleared funds (unless otherwise agreed by Apex Fundrock).

6.5. No interest will be paid on funds held prior to Investment.

6.6. Shares that have not been paid for cannot be redeemed.

6.7. The ACD reserves the right to cancel a purchase deal if settlement is overdue, with any loss arising on such cancellations being the liability of the applicant.

6.8. At the ACD's discretion, payment for large purchases of Shares may be made by telegraphic transfer.

6.9. Redemption proceeds will only be made payable via electronic means to the account holder, unless the portfolio is an ISA account and the funds are being transferred to a new ISA plan manager, in which case a cheque may be issued to the new plan manager.

## 7. Documentation

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7.1. The Intermediary will not place any purchase order on behalf of an Investor unless (if and to the extent required by Applicable Law) it has provided the Investor the relevant KIID & SID documents, to be retained by the Investor(s).

7.2. It is the responsibility of the Intermediary to provide the most up to date versions of the KIID & SID documents, available on Apex Fundrock website.

7.3. Apex Fundrock will promptly supply to the Intermediary the up-to-date KIID & SID and any other documents reasonably required by the Intermediary for the purposes of this clause 7. The Intermediary will promptly pass to the relevant Investor(s) without amendment, any document supplied by Apex Fundrock for the Investor's information on

completion of a transaction and promptly return to Apex Fundrock all completed documents. The Intermediary will not pass to an Investor any KIID & SID, application form or similar if it has been amended in any way. This requirement applies whether Apex Fundrock supplies it in hard copy or electronic form, and whether it is available only on application to Apex Fundrock or from its website (or any similar electronic facility).

7.4. The Intermediary acknowledges that Apex Fundrock may be obliged to, or may at its discretion, send certain documents directly to the Investor. Apex Fundrock also reserves the right, at its discretion, to send communications directly to the Investor in respect of the transactions instructed by or on behalf of the Investor. [Note: these could include, for example, contract notes]

## 8. Investment Risk

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8.1. The Intermediary is solely responsible for ensuring that any investments made by or on behalf of its Investors in the Fund(s) are suitable or appropriate for the relevant Investor, except in relation to execution only transactions as defined in the FCA Glossary.

8.2. The Intermediary must notify Apex Fundrock where a transaction is a non-advised sale, within the meaning set out in COBS 10 in the FCA Handbook. Any transactions which are made without such notification will be classified by Apex Fundrock under the FCA's Product Sales Data ("PSD") reporting requirements as advised sales. All transactions must include the Intermediary's FCA reference number and (in the case of an Intermediary which is part of a Network or where the Intermediary has a Principal), the FCA reference number of the Intermediary's Network or Principal.



## 9. Market Timing

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9.1. The Intermediary undertakes that where it has reasonable grounds to suspect that an Investor is engaged in short-term trading to exploit time zone differences and/or imperfections or deficiencies in the computation of the Net Asset Value of a Fund through increased costs and/or dilution of earnings (Market Timing) it will use all reasonable endeavors to resist any attempt by any such Investor to engage in Market Timing and further undertakes to notify Apex Fundrock in any event.

## 10. Tax Reporting

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### 10.1. EU Savings Directive

10.2. The EU Council Directive 2003/48/EC on taxation of savings income ("EUSD") requires Member States of the European Union ("Member States") to provide to the tax authorities of other Member States details of payments of interest and other similar income paid by a person who is a "paying agent" to an individual (or certain entities) resident in another Member State. Austria, Belgium and Luxembourg will apply a withholding tax for a transitional period, unless during such a period they elect otherwise.

10.3. For a collective investment scheme, income may include distributions or dividends whether paid or accumulated, together with income arising as a result of the sale or redemption of Units or Shares. Investors resident in prescribed territories outside the EU may also be included in the exchange of information.

10.4. Information on these territories can be obtained from HM Revenue & Customs.

### 10.5. CRS and FATCA

10.6. Apex Fundrock is required by HMRC to provide reporting on investments made within its funds by customers who are tax resident outside of the UK, in line with the International Tax Compliance Regulations 2015 which implemented the Foreign Account Tax Compliance Act (FATCA) and the OECD Common Reporting Standard for Automatic Exchange of Financial Account Information (CRS).

10.7. The Intermediary acknowledges that Apex Fundrock does not allow US Person(s) ('US Person is a national, Citizen or resident of the United States of America or a corporation or partnership organized under the laws of the United States of America or having a principal place of business in the United States of America) to apply for shares in the fund. The intermediary shall not apply for shares on behalf of US Persons nor facilitate such an application, and shall not apply for shares in order to further offer, sell or transfer such shares directly or indirectly to US Persons.

### 10.8. Intermediary Obligations

10.9 The Intermediary undertakes to provide Apex Fundrock with such assistance and such co-operation as Apex Fundrock shall reasonably require, to enable it to comply with its obligations arising under the aforementioned global tax legislation.

## 11. Record Keeping and Inspection

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11.1. The Intermediary will retain proper and accurate records relating to all business carried out with Apex Fundrock for at least 3 years from the date of the relevant transaction(s) and, on reasonable notice, it will make such records available to Apex Fundrock or its agents, auditors or professional advisers where this is required by the FCA or under Applicable Law.

11.2. The Intermediary may, on reasonable notice, inspect Apex Fundrock's records of each Investor's purchases, sales, holdings and income in the Funds affected by or through the Intermediary. These records are kept for at least 6 years from the date of the relevant transaction(s).

## 12. Liability

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12.1. Apex Fundrock will take reasonable care and skill in the performance of its obligations under the Intermediary Terms of Business. [Note: Apex Fundrock has obligations under Clause 8.2]

12.2. In the event of circumstances arising which are beyond Apex Fundrock reasonable control (including, but not limited





to, breakdown, failure or malfunction of any computer systems, telecommunications links, industrial disputes, postal delays, failure of third parties to carry out their obligations, the suspension of trading by any exchange or clearing house, the acts of governmental or regulatory authority or natural disasters ("Force Majeure") affecting Apex Fundrock, Apex Fundrock will, where possible, take such reasonable steps as Apex Fundrock can to bring those circumstances to an end as soon as possible. Apex Fundrock shall not be liable for any losses or expenses suffered as a result of Force Majeure.

12.3. Notwithstanding any other provision of this Intermediary Terms of Business, but subject to sub-clauses 14.5 and 14.6, neither party ("first party") will be liable for any type of special, incidental, indirect or consequential damage or loss suffered by the other (nor for any loss of profits, opportunity or goodwill) save where such liability arises from the first party's fraud or willful default.

12.4. Apex Fundrock will not be liable for (and the Intermediary hereby indemnifies Apex Fundrock in respect of) loss suffered as a result of Apex Fundrock's reliance on information, instructions, orders or consents given by the Intermediary, or its representatives or as a result of any breach by the Intermediary of the Intermediary Terms of Business.

12.5. Nothing in this clause shall exclude or limit:

(a) Apex Fundrock's liability for death or personal injury resulting from its negligence;

or

(b) any other liability which cannot be excluded or limited by law, including under the FCA Rules and FSMA.

12.6. Without prejudice to any other provisions in the Intermediary Terms of Business, in particular, clause 7.3, the Intermediary will indemnify Apex Fundrock against any losses, claims, costs, expenses (including without limitation legal fees) damages, liabilities, actions, proceedings, or demands that Apex Fundrock may suffer or incur in connection with:

(a) any failure by the Intermediary to comply with any Applicable Laws;

(b) any breach by the Intermediary of the Intermediary Terms of Business;

(c) the failure of the Intermediary to notify Apex Fundrock that Cancellation Rights are required to be offered to an Investor in respect of a transaction;

(d) the provision of untrue, incorrect or incomplete information by the Intermediary (or on its behalf) or failure to update or correct information previously supplied to Apex Fundrock Ltd;

(e) the reliance by Apex Fundrock upon any term contained in any terms of business agreed or purported to be agreed between the Intermediary and an Investor;

(f) any actions or omissions which cause Apex Fundrock to fail to comply with the provisions of FSMA, the FCA Rules, the Distance Marketing Directive or any other Applicable Law;

(g) Apex Fundrock not receiving full compensation for any shortfall arising as a result of the exercise of Cancellation Rights; or

(h) any breach by the Intermediary of its fiduciary duties to an Investor.

[Note: Apex Fundrock regards these as key protections for its business and is not willing to delete them]

12.7. Apex Fundrock shall provide the Intermediary with a contract note recording the details of deals transacted. It shall be the Intermediary's responsibility to review each contract note for accuracy. If the Intermediary believes that any contract note contains an error or that some other discrepancy or irregularity exists, it must notify Apex Fundrock in writing, within 7 days after the date the contract note was sent to the Intermediary, failing which it will be deemed correct and binding on the Intermediary, and Apex Fundrock shall be released from all liability to the Intermediary in connection therewith.





## Complaints

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12.8. The Intermediary shall be responsible for handling all complaints from an Investor relating to its sales or advisory activity.

12.9. If an Investor has a complaint in connection with the Fund(s), the documentation relating to the Fund(s) or transactions carried out by Apex Fundrock, they should address it to the Compliance Director at Apex Fundrock Ltd, Hamilton Centre, Rodney Way, Chelmsford, Essex, CM1 3BY or phone Apex Fundrock on 01245 398 950.

12.10. Upon receipt of a complaint Apex Fundrock will issue an acknowledgement letter along with a copy of our Complaints Procedures. If the investor is not satisfied with the outcome they have the right to refer the matter to the Financial Ombudsman Service either by phone on 0207 964 1000, by email at [complaint.info@financialombudsman.org](mailto:complaint.info@financialombudsman.org).UK or by post to Financial Ombudsman Service, Exchange Tower, London, E14 9SR.

## 13. Coming into Effect

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13.1. The Intermediary Terms of Business will come into effect on or after the date they are published on Apex Fundrock's website and upon the earlier of the Intermediary placing a purchase or sale order with Apex Fundrock in respect of the Fund(s) or the Intermediary applying to be accepted onto Apex Fundrock's system. These terms replace any existing Intermediary Terms of Business in force between Apex Fundrock and the Intermediary in respect of the Fund(s).

## 14. Confidentiality

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14.1. Each party agrees to keep confidential any Confidential Information made available, disclosed, or otherwise made known to it and its employees by the other party.

14.2. A party receiving Confidential Information will only use it for purposes set out in the Intermediary Terms of Business and will not reveal, publish or otherwise disclose the Confidential Information to any third party without the prior written consent of the other, except that each party may disclose Confidential Information:

(a) to its affiliated companies, agents and professional advisers, to any other person properly exercising any function in relation to the relevant Fund(s), including (as appropriate) the fund manager, investment adviser or the promoter of the Fund(s), or as necessary in the performance of the Intermediary Terms of Business; and (b) to HM Revenue & Customs, the FCA or any other regulatory body or to the extent it is obliged to do so by Applicable Law, an order of any competent judicial, governmental or regulatory body or the rules of any listing authority or stock exchange on which the party's securities are traded.

14.3. The foregoing obligations shall not apply to Confidential Information which:

(a) is publicly available at the time of its disclosure or becomes publicly available thereafter other than as a result of a breach of the Intermediary Terms of Business; or

(b) was in the possession of or known by the relevant party prior to its receipt from the other party; or

(c) becomes available to the party from a third party which is not bound by any duty of confidentiality owed in relation to such Confidential Information.

14.4. Neither the Intermediary Terms of Business nor the disclosure of Confidential Information by one party to another shall be taken as implying an assignment, license or transfer of patents, know-how, copyright, trade secrets or of any other intellectual property rights in the Confidential Information.

14.5. Apex Fundrock may disclose information relating to purchases and sales effected by the Intermediary (not being information enabling Investor or Intermediary identification) for information exchange with other scheme and fund managers and promoters, market research and for the purpose of the compilation of sales and performance statistics.



## Intellectual Property

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14.6. The Intermediary hereby agrees that it does not have and will not assert any rights in and to the trademarks, copyright or other intellectual property of Apex Fundrock or in any of the Funds or Apex Fundrock's products and that the Intermediary shall not use, copy or deal with such intellectual property except as expressly permitted in the Intermediary Terms of Business.

## 15. Advertising

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15.1. The Intermediary will not distribute any Prospectus outside the United Kingdom without the consent of Apex Fundrock and will not engage in any form of general solicitation or general advertising, nor will make an offer or sale of Shares or Units in any state or jurisdiction where such solicitation, advertising, offer or sale is not permitted by Applicable Laws. [Note: Apex Fundrock would expect protection against overseas promotion without its consent].

15.2. The Intermediary will not publish issue or distribute any promotion or literature relating to Apex Fundrock, or use the name or logo of Apex Fundrock, where Apex Fundrock withdraws (in writing) its consent to do so. [Note: Apex Fundrock would expect to have the right to approve in advance any promotional material that refers to it].

## 16. Telephone Recording

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16.1. All calls to customer services at Apex Fundrock are recorded for training and monitoring purposes. Any dealing instructions confirmed over the telephone are legally binding contracts. Any disputes that arise are assessed by listening to the call in question to identify possible discrepancies.

## 17. Online Services and Electronic Mail and Facsimile

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17.1. The Intermediary hereby acknowledges and agrees that Apex Fundrock shall have no responsibility if information sent by email or facsimile is intercepted, redirected, copied, corrupted or read by unauthorised third parties and the Intermediary assumes all and any risks involved with the use of email in communications between the parties.

## 18. Termination

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18.1. Either party may terminate the Intermediary Terms of Business by written notice to the other. After termination, Investors will retain the same right to redeem their holdings as other investors in the Funds.

## 19. Miscellaneous

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19.1. In no event shall any delay failure or omission on the part of either party in enforcing any right power, privilege, claim or remedy which is conferred by the Intermediary Terms of Business or arises hereunder be deemed or construed as:

(a) waiver thereof, or any of any other such right power privilege claim or remedy; or (b) operating so as to bar the enforcement or exercise thereof, or of any other such right, power, privilege, claim or remedy in other instance at any time or times thereafter.

19.2. The Intermediary Terms of Business represents the entire agreement between Apex Fundrock and the Intermediary unless and to the extent they are varied with the agreement of both parties in writing (subject to clause 16.1).

19.3. If any part of the Intermediary Terms of Business are found to be illegal, invalid or unenforceable, then that provision shall to the extent required, be ineffective but without affecting any other provisions of the Intermediary Terms of Business.

19.4. Nothing herein shall confer or is intended to confer on any third party any benefit or the right to enforce any terms contained herein for the purposes of the Contracts (Rights of Third Parties) Act 1999.

19.5. The Intermediary Terms of Business and any disputes arising out of or in connection with them (whether based in contract, tort, and breach of statutory duty or regulation or otherwise) are governed by and construed in accordance with English Law and the Intermediary and Apex Fundrock submit to the exclusive jurisdiction of the English Courts.