

# SMARTFUND ADVISER TERMS

4 July 2009

These terms and conditions (the "SMARTfund Adviser Terms" or "Terms"), together with the SMARTfund Distribution Agreement agreed to by your Firm and the associated IFA Registration Form under which you became a Registered Individual for your Firm, form a legal agreement between you, your Firm and SMARTfund Administration Limited. The Terms set out the basis on which you can use the SMARTfund Platform to enable your customers to invest in SMARTfunds and, if your customer engages you to do so, advise them.

**These Terms will come into force on the date on which you first access the SMARTfund Platform.**

**The definitions in Section 1 and rules of interpretation below apply throughout these Terms.**

- **Headings shall not affect the interpretation of these Terms.**
- **References to the singular shall include the plural and vice versa. References to clauses and sections are to clauses and sections of these Terms.**
- **References to statutes, rules or regulations shall be taken to include any amendments made to them from time to time.**



## Section 1 - Definitions

The term:	Means:
<b>Account</b>	a secure online account maintained by the Manager for each investor in a SMARTfund. The Account provides the investor and their Nominated Representative with access to information about their SMARTfund investment(s) i.e. their Unit(s)
<b>Adviser Firm</b>	The FSA authorised firm that has asked the Manager to register you with the SMARTfund Platform in accordance with its SMARTfund Distribution Agreement
<b>Application</b>	An application to make an Investment (i.e. purchase Unit) in a SMARTfund made on a hard copy Application Form
<b>Application Form</b>	a hard copy SMARTfund application form
<b>Adviser Charging Component</b>	The component of the SMARTfund manager's annual management charge and/or initial charge described in the Prospectus, being a percentage rate (which may be zero) or for initial charges a fixed amount, that a Unit holder agrees with their Nominated Representative and initially specifies on their Application Form
<b>FSA</b>	the Financial Services Authority of 25 North Colonnade, Canary Wharf, London E14 5HS or any other regulatory body which may assume its regulatory responsibilities from time to time
<b>FSA Handbook</b>	the handbook of rules and guidance made by the FSA under the Financial Services and Markets Act 2000, as amended, updated or replaced from time to time
<b>IFA Registration Form</b>	The registration form completed by your Adviser Firm and supplied to the Manager in connection with the SMARTfund Distribution Agreement
<b>Key Features</b>	A key features document (including effects of charges and growth illustrations relevant to a particular potential investor and their investment) relating to an investment in a SMARTfund
<b>Manager</b>	SMARTfund Administration Limited, being the manager of SMARTfunds. References to "Manager" in these Terms also include any company to which we may transfer our rights and obligations
<b>Nominated Representative</b>	You, in relation to each of your customers that has named you as their Nominated Representative on their Application Form or, subsequently, an independent financial adviser or other intermediary authorised by the FSA to whom the SMARTfund investor has transferred this role
<b>Prospectus</b>	the prospectus relating to the SMARTfund as published from time to time
<b>Registered Individual</b>	A person that the Manager has registered with the SMARTfund Platform at the request of the Adviser Firm so that they may be named by their customers who invest in SMARTfunds as a Nominated Representative
<b>SMARTfund</b>	A sub-fund within the SMARTfund range of unit trusts
<b>SMARTfund Distribution Agreement</b>	The agreement entered into by your Adviser Firm with the Manager under which it has requested that you become one of its Registered Individuals and have access to the SMARTfund Platform
<b>SMARTfund Investment</b>	An investment (a unit) in a SMARTfund
<b>SMARTfund Platform</b>	the SMARTfund website and associated online interface which provides a SMARTfund investor and their Nominated Representative access to certain information relating to their SMARTfund Investments
<b>Terms SMARTfund Adviser Terms</b>	or these terms and conditions (as amended from time to time);
<b>You</b>	A person who is a Registered Individual and who may be named as a Nominated Representative by customers in relation to their SMARTfund Investment and who thereby does business with the Manager under these Terms.

## SECTION 2 – GENERAL DEALINGS

### 1 Use of the SMARTfund Platform

- 1.1 The SMARTfund Platform is accessible online via the SMARTfund website at <http://www.smartfund.co.uk/>
- 1.2 When you register on the SMARTfund Platform you will be asked to create your own username and password for future access. You can change your username and password at any time. The password and username is for your use only. You are responsible for any use of your username and password so please keep them confidential and notify us if either of them is lost or stolen or you become aware of any unauthorised use of it.
- 1.3 The SMARTfund Platform includes a "Quick User Guide" intended to help you use its features. You should familiarise yourself with these guidance notes before using the SMARTfund Platform.
- 1.4 Once registered, you will have access via the SMARTfund Platform (or we will otherwise provide you with access) to:
- The Key Features for relevant SMARTfund(s), customised by reference to information on the relevant Application Form;
  - The SMARTfund Client Terms;
  - Application Forms and other relevant necessary documentation for investors in a SMARTfund;
  - these Terms; and
  - The applicable Prospectus for all SMARTfunds.
- 1.5 You will be deemed to be aware of the full contents of these documents.
- 1.6 You may generate customised Application Forms for your customers from the SMARTfund Platform. Application Forms can be initially completed online but must then be printed for signature by your customer before they invest.
- 1.7 Each Application Form must specify who the applicant's Nominated Representative is and what rates of Adviser Charging Component have been agreed with them (which may be NIL) in relation to the SMARTfund investments they wish to make.
- 1.8 You are not required to provide advice to your customer in order for them to invest in a SMARTfund. However, the SMARTfund Platform will provide you with detailed information about their SMARTfund investment that may assist you to provide services including advice to them.
- 1.9 Regardless of the advice or service you provide to your customer they appoint you as their agent in relation to their SMARTfund investment(s) and other dealings with the Manager subject to the SMARTfund Client Terms. It is for you and your customer to agree the scope of any authority you be given in relation to their SMARTfund investment and other affairs. However, the Manager is entitled

to treat as valid instructions given by you which we reasonably believe have been given legitimately on your behalf even if that is not the case.

- 1.10 The production and provision of point of sale materials, including but not limited to the relevant Key Features, is your responsibility.
- 1.11 When assisting your clients in completing their Application Forms you must use your best endeavours to ensure the information given is correct and in particular must correctly identify whether or not the customer has been advised in relation to their investment.
- 1.12 The Manager may, subject to its obligations under the FSA Handbook, reject any Application in whole or part on reasonable grounds.
- 1.13 When the Manager accepts an Application, cleared funds will be immediately due and payable to the Manager. The Manager is entitled to cancel any transaction for the purchase of Investments if cleared funds are not received by the Manager within four days of accepting instructions (regardless of the method of payment).

### 2 Investment information

- 2.1 When an investor first invests in a SMARTfund the Manager will open an Account for them. Unless your customers direct otherwise, you will be able to access the Accounts of those of your customers who name you as their Nominated Representative and view details of their investments and a variety of investment reports.
- 2.2 Accounts are updated to reflect any additional investments or withdrawals made as well as changes in the assets held by the relevant SMARTfund(s).
- 2.3 The information available to SMARTfund investors is more fully described in the Key Features. The information made available to SMARTfund investors is the same as is made available to you. If you cease to be an investor's Nominated Representative, you will cease to have access to information relating to their SMARTfund investment(s).
- 2.4 All investor reporting is made available to you online via the SMARTfund Platform.
- 2.5 You may be sent copies of the short reports, annual and half-yearly long reports and other investor communications relating to the SMARTfunds by email for distribution to your customers as appropriate.

### 3 Adviser Charging

- 3.1 Subject to and in accordance with the SMARTfund Distribution Agreement, the Manager will pay your Adviser Firm (or as it directs) in respect of each of your customers that invest in a SMARTfund and name it as their Nominated Representative amount(s):
- equal to the Adviser Charging Component of the SMARTfund manager's initial fee; and
  - equal to the Adviser Charging Component of the SMARTfund

manager's annual management charge,

for each SMARTfund in which they are invested.

3.2 The payments referred to in clause 3.1 are not a liability of any SMARTfund and will not be deducted from the scheme property of any SMARTfund but will be paid by the Manager from its own funds.

3.3 The Manager will continue to pay amounts in respect of the Adviser Charging Component you have agreed (if any) to the Nominated Representative specified on the relevant Application Form in accordance with the SMARTfund Distribution Agreement. Under that agreement payments may not be made in certain circumstances, for example:

- (a) If your customer changes their Nominated Representative and the Manager has been notified of the change in writing by your customer as well as both your Adviser Firm and the new Nominated Representative;
- (b) If your Adviser Firm ceases to have the FSA authorisation required to give investment advice;
- (c) If your Adviser Firm becomes insolvent or otherwise unable to meet its debts as they become due.

3.4 The rates of Adviser Charging Component specified on an Application Form for an initial investment in any particular SMARTfund and therefore the Manager's initial and annual management charges will apply to future investments in the same SMARTfund. The Manager will not change its rates of initial or annual charges to reflect any change you may agree in the future with your customer until:

- (a) you and your customer have confirmed the change to the Manager in writing; and
- (b) the requirements of all applicable FSA Handbook have been complied with.

3.5 Your customer may change their Nominated Representative in future but the Manager will continue to pay amounts in respect of the Adviser Charging Component you have agreed (if any) to the original Adviser Firm until the Manager has been notified in writing of the change by your customer as well as both the old and the new Nominated Representatives.

3.6 When agreeing amounts or rates of Adviser Charging Component or other arrangements with your customer in relation to your role as their Nominated Representative you must act fairly, reasonably and in accordance with the FSA Handbook. The Manager may impose restrictions on Adviser Charging Component amounts/rates, agree to changes of Nominated Representative or otherwise act in accordance with the SMARTfund Distribution Agreement if it reasonably believes you have failed to do so.

#### **4 Anti-Money Laundering**

4.1 The Manager is required to undertake procedures and controls to combat money

laundering. The Manager may need at any time request assistance to identify your customers who wish to invest in SMARTfunds and/or the source of any subscription funds. You must provide assistance if we ask for it and it is within your power to do so.

4.2 If the Manager is unable to verify your client's identity or the source of any related subscription funds to its satisfaction the requested transaction may be delayed, refused, reversed or cancelled.

#### **5 Intellectual Property Rights**

5.1 As a Registered Individual you are granted a revocable, non-transferrable right to use the SMARTfund Platform on these Terms for the purposes of assisting your customers.

5.2 You are not permitted to distribute, transfer, publish, transmit or sub-license any part of the SMARTfund Platform or its contents to, or for the use of any other person. You acknowledge that SMARTfund Administration Limited and other members of its group own all Intellectual Property Rights and other rights in the SMARTfund Platform.

5.3 You will only use the SMARTfund Platform for the purpose for which it was designed and must not commit any act or fail to do anything which may damage or impair the SMARTfund Platform or may interfere with the use or availability of any facilities delivered via the SMARTfund Platform.

5.4 You must not (and must not permit anyone else to):

- (a) Interfere, tamper with, alter, amend or modify the SMARTfund Platform or any part of it; or
- (b) copy or disassemble any of the software comprised in the SMARTfund Platform; or

except, in each case, as may be necessary to use the SMARTfund Platform in accordance with the provisions of these Terms and the SMARTfund Distribution Agreement or as expressly required or allowed by law

#### **6 Liability**

6.1 The SMARTfund Platform is available online. In order to access it you will need to obtain your own computer and electronic communication links.

6.2 There are minimum equipment and software requirement to use the SMARTfund Platform which are available on request from SA. SA does not provide and is not responsible for equipment, hardware or software, required to view the website or other parts of the SMARTfund Platform.

6.3 The SMARTfund Platform may be taken off-line from time to time for maintenance and development work, but the Manager will endeavour to ensure this takes place with minimum disruption to all users.

6.4 You must inform SA without delay if you become aware of any defect in the SMARTfund Platform or of any identifiable breach of security.

- 6.5 We will use reasonable endeavours to make the SMARTfund Platform available for you. However we accept no liability for any interruption in the availability of the service or any malfunction or breakdown regardless of its cause.
- 6.6 We will use reasonable endeavours to exclude viruses and other malicious elements from the SMARTfund Platform but cannot guarantee their complete and successful exclusion and you should therefore take appropriate steps to safeguard yourself against this risk.
- 6.7 If you add information or content to the SMARTfund Platform or otherwise give the Manager information (for example by means of completing an Application Form), you are responsible for the accuracy of that information and content.
- 6.8 Save as expressly set out in any particular case, the Manager is not responsible for the accuracy or completeness of any information accessible on the SMARTfund Platform either generally or in relation to any particular Application (and you should not rely on any such information) except for the Prospectus and Key Features as they relate to any SMARTfund or investment in a SMARTfund.
- 6.9 You will indemnify and keep indemnified and hold SMARTfund Administration Limited, all members of its group and all their respective directors, officers, employees and agents on demand from and against any claim, loss, liability, or expense incurred by any such persons, including reasonable legal fees, by or in respect of any claim by a third party due to any breach or non-observance of your obligations under these Terms of Business.
- 6.10 The Manager is liable for the direct results of its negligence, knowing default, fraud and for any breach of the FSA Handbook or of these Terms. Subject to this, the Manager is not liable for any loss caused through a fall in value of SMARTfund investments (including, without limitation, those which may occur due to delays during the process of verifying an investor's identity in compliance with anti-money laundering regulations). The Manager is also not liable for any indirect, special or consequential loss you might suffer (including direct or indirect loss of profit). The only exception is where this results from fraud or a breach of the Conduct of Business Sourcebook or the Client Assets Sourcebook in the FSA Handbook, on the Manager's part.
- 6.11 The Manager will not be liable for any loss to you other than as expressly stated in this clause.

## **7 Termination**

- 7.1 Your right to use the SMARTfund Platform will terminate if the SMARTfund Distribution Agreement with your Adviser Firm terminates. Under that agreement the Manager may also suspend or terminate your use of the SMARTfund Platform in various circumstances including if you:
- 7.2 commit a material breach or a material series of breaches of the SMARTfund Distribution Agreement or these Terms;
- 7.3 Cease to be an FSA approved person or cease to have an FSA customer function for your Adviser Firm or if you become the subject of any formal disciplinary investigation or sanction by the FSA or your Adviser Firm;
- 7.4 Become insolvent; or
- 7.5 Are not a current Nominated Representative to any SMARTfund investor for a period of six months or more.

## **8 Notices and Instructions**

- 8.1 All notices and documents (including statements and fund reports), instructions and other communications between you and the Manager may generally be provided electronically through the SMARTfund Platform. However, we may send notices to you by email, fax, or recorded or hand delivery to you at your Adviser Firm. Notices sent by email will be deemed to be received when we send them.
- 8.2 If you telephone us, we may record our conversation subject to complying with applicable regulations.
- 8.3 The Manager is entitled to treat as valid, instructions given by you, or which we reasonably believe have been given by you or legitimately on your behalf by a representative of your Adviser Firm even if that is not the case.
- 8.1 You may not assign your rights or obligations under these Terms without our prior written consent. We may assign our rights and obligations under these Terms to any member of our group without your consent.

## **9 Law**

- 9.1 These Terms will be governed by and construed in accordance with English law. You, your Adviser Firm and the Manager submit to the exclusive jurisdiction of the English courts to settle any disputes arising under these Terms. It is not intended for any provision of these Terms to be enforceable by any person other than you, your Adviser Firm and the Manager or their permitted successors or assignees.