

# FEDERATION OF INVESTMENT MANAGERS MALAYSIA (FIMM)

## TERMS AND CONDITIONS OF USE

### 1. Introduction

- 1.1 The purpose of the System is, among others, to facilitate the online registration of persons intending to market and distribute unit trust schemes and private retirement schemes.
- 1.2 These Terms and Conditions are applicable to all Principal Users, including their Authorised Users and Administrators.

### 2. Definitions

- 2.1 The following terminology applies to these Terms and Conditions:
  - (a) “Administrator” means an individual appointed by the Principal User as an administrator for the purposes set out in clause 3.2 herein;
  - (b) “Authorised User” means an individual authorised by the Principal User to access and use the System;
  - (c) “Business Day” means any day other than Saturdays, Sundays and public holidays declared by the relevant authority in the Federal Territory of Kuala Lumpur;
  - (d) “officer” in relation to a corporation, includes any director, secretary and employee
  - (e) “PDPA” means the Personal Data Protection Act 2010;
  - (f) “personal data” has the same meaning as given in the PDPA;
  - (g) “Principal User” means a corporation that is a member of FIMM pursuant to its Memorandum and Articles of Association or is a corporation registered and authorised by FIMM to market and distribute unit trust schemes or private retirement schemes, and is given access by FIMM to use the System;
  - (h) “processing” in relation to personal data, has the same meaning as given in the PDPA;
  - (i) “Sign-On Password” means the password created for a Principal User to access and use the System;
  - (j) “System” means the Internet Investment Information (I3) System or Private Retirement Scheme System of FIMM;
  - (k) “these Terms and Conditions” means these Terms and Conditions of Use;

- (l) "User ID" means the identifier used by a Principal User to access and use the System;
  - (m) "Consultant" means an individual registered with and authorised by FIMM to market and distribute unit trust schemes or private retirement schemes.
- 2.2 A reference to any person includes a corporation or an individual, a reference to the masculine gender includes the feminine or neuter, and a reference to singular includes the plural and vice versa.
- 2.3 A reference to any statute or subsidiary legislation or any provision of any statute or subsidiary legislation includes all modifications, extensions, substitutions or re-enactments thereof in force at any particular time and all regulations, rules, orders, directives, notices and other instruments then in force and issued under or deriving validity from the relevant statute or subsidiary legislation or provision.
- 3. System Access and Use**
- 3.1 The Principal User is granted a non-exclusive, non-transferable and limited right under these Terms and Conditions to access and use the System solely for purposes of registration with FIMM.
- 3.2 The Principal User must ensure that the Administrator administer and monitor the access and use of the System by Authorised Users including the use of the System for purposes of:
- (a) registration (including renewal) of the Principal User and Consultants;
  - (b) making changes to the information relating to the Principal User or personal data of its relevant officers or Consultants;
  - (c) remitting payment of annual fees; and
  - (d) registration to sit for FIMM's examination.
- 3.3 The Principal User is responsible for ensuring that:
- (a) its Authorised User comply with these Terms and Conditions with regard to access and use of the System; and
  - (b) its Administrator comply with these Terms and Conditions with regard to the administration and monitoring responsibility mentioned in clause 3.2 above.
- 3.4 The Principal User must ensure that its Authorised User and Administrator do not:
- (a) use the System and any content, material or information contained therein for any unlawful purpose;
  - (b) upload, download, post, send, transmit or otherwise publish through the System any content, material or information which is libellous, defamatory, obscene, pornographic, threatening, abusive, illegal or otherwise objectionable, or which

would constitute or encourage a criminal offence, violation of any right of any party, or which would give rise to liability or violate any law;

- (c) distribute, reproduce, transmit, sell, broadcast, publish, hyperlink to or otherwise deal in any manner whatsoever with any content, material or information contained in the System without the knowledge and written authorisation of FIMM; and
  - (d) use the System in any way that results in any virus or such other destructive element being transmitted through the System.
- 3.5 The Principal User must ensure that all things uploaded or downloaded from the System is free from virus and such other destructive element.
- 3.6 The Principal User must immediately notify FIMM in writing in the event of:
- (a) unauthorised access or use of the System, including unauthorised use of the User ID or Sign-On Password;
  - (b) failure to access or use the System;
  - (c) failure to receive, within one (1) Business Day, an acknowledgement of receipt by FIMM of any registration application submitted through the System; or
  - (d) any other security breach relating to the System.

#### **4. Fees**

- 4.1 Except as otherwise specified, a Principal User, including its Authorised User and Administrator, may access and use the System free of charge.
- 4.2 However, the Principal User is solely responsible for any fee or charge imposed by its internet service provider, telecommunication service provider and such other providers for services rendered to the Principal User that enable the Principal User to access and use the System.

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

- 5.1 FIMM retains all relevant intellectual property rights in the System and its contents.
- 5.2 The Principal User, including its Authorised User and Administrator, may not by any means modify, copy, distribute, transmit, broadcast, display, reproduce, publish, transfer, sell or otherwise commercially deal with the System or its contents, in whole or in part, without the prior written consent of FIMM.
- 5.3 Nothing in the System or its contents may be construed as conferring any proprietary interest or licence under any of the intellectual property rights of FIMM or any third party, whether explicitly or implicitly, by acquiescence or waiver, or otherwise.

## **6. Limitation of Liability**

6.1 The System is provided on an “as is” basis. To the fullest extent permitted by law, FIMM excludes:

- (a) all representations and warranties relating to the System and its contents or which is or may be provided by any third party, including in relation to any inaccuracy or omission in the System;
- (b) all liability for loss or damages arising out of or in connection with the use of the System by the Principal User or its Authorised User or Administrator. This includes without limitation direct loss, loss of business or profits (whether or not the loss of such profits was foreseeable or arose in the normal course of things or the Principal User advised FIMM of the possibility of such loss), damage caused to the computer, computer software and systems and programmes of the Principal User and the data thereon, and any other direct or indirect, consequential and incidental damages;
- (c) all liability for loss of any information or personal data due to use of the System by the Principal User or its Authorised User or Administrator;
- (d) all liability for loss or damages arising out of or in connection with any unauthorised access or use of the System;
- (e) all liability for loss or damages arising out of or in connection with any error, mistake and inaccuracy in the information or personal data provided by the Principal User in the System;
- (f) all liability for loss or damages arising out of or in connection with any failure, interruption or delay in the operation of the System due to any interruption in electricity supply or internet connection, or breakdown, failure or malfunction of any telecommunication device, computer system, equipment or software, or contamination or corruption in any form (such as computer virus); or
- (g) all liability for loss or damages arising out of or in connection with any failure by FIMM to provide access and use of the System due to an event beyond the control of FIMM including but not limited to any action or inaction of any government or local authority, or any strike, boycott or blockade, or an act of God, or any natural disaster.

6.2 A Principal User will indemnify, defend and hold harmless FIMM against:

- (a) any and all claims, suits, actions, losses, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or relating to the death or bodily injury of any agent, officer, customer, or arising out of or relating to any loss of or damage to tangible real or personal property, to the extent that such claim, action, liability, loss, damage, cost or expense was proximately caused by the tortious act or omission of the Principal User or its Authorised User or Administrator; and

- (b) each and every action, processing, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on an advocate and solicitor client basis) and demands incurred by FIMM which arise directly or in connection with the processing of personal data by the Principal User or its Authorised User or Administrator hereunder, including without limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, misconduct, breach of statutory obligation or non-compliance with any part of the PDPA by the Principal User or its Authorised User or Administrator.

## **7. Compliance with PDPA**

- 7.1 The Principal User must ensure its compliance with the PDPA with regard to any personal data processed by the Principal User using the System. The Principal User is further responsible for ensuring similar compliance by its Authorised User and Administrator.
- 7.2 In particular, the Principal User must obtain the consent of the Consultants and relevant officers for the processing of their personal data which includes providing the personal data to FIMM in the System.
- 7.3 With regard to processing of personal data for regulatory purposes as set out in FIMM's [Personal Data Notice](#), <sup>[NH-LSRA1]</sup>FIMM reserves the right to:
  - (a) disclose and provide such personal data to the relevant regulator, authority or body;
  - (b) disclose and publish for the benefit of the public relevant personal data of Consultants and relevant officers of the Principal User; and
  - (c) publish information on any action taken and sanction imposed against the Principal User or any of its Consultants which includes personal data.

## **8. Suspension and Termination**

- 8.1 FIMM may suspend the access to and use of the System:
  - (a) at regular intervals for purposes of periodic maintenance and administration, in which case, FIMM will use its best endeavours to give prior notice of such suspension and not to carry out such maintenance and administration during the normal working hours of FIMM; or
  - (b) in the event the Principal User (or its Authorised User or Administrator) breaches any of these Terms and Conditions.
- 8.2 FIMM may, immediately upon notice in writing, terminate the access to and use of the System in the event:
  - (a) the Principal User ceases to be registered with FIMM;

- (b) the Principal User (or its Authorised User or Administrator) breaches any of these Terms and Conditions, whereby such breach is not capable of being remedied; or
- (c) the Principal User (or its Authorised User or Administrator) infringes the intellectual property rights of FIMM or a third party.

8.3 FIMM is not liable for any loss suffered or damages incurred as a result of any suspension or termination of access to and use of the System pursuant to these Terms and Conditions.

## **9. Changes to Terms and Conditions of Use**

9.1 FIMM reserves the right to change these Terms and Conditions of Use from time to time as it considers fit and the continued access and use of the System signifies acceptance of any adjustment to these Terms and Conditions by the Principal User.

## **10. Waiver**

10.1 Any failure by FIMM to insist upon strict performance of any of these Terms and Conditions or any failure by FIMM to exercise any right or remedy to which it is entitled hereunder does not constitute a waiver thereof and does not cause a diminution of the obligations of the Principal User hereunder.

## **11. Governing Law and Jurisdiction**

11.1 These Terms and Conditions are governed by and construed in accordance with the laws of Malaysia.

11.2 By accessing and using the System, the Principal User consents to these Terms and Conditions and to the exclusive jurisdiction of the Malaysia courts in all disputes arising out of such access and use.