

# Xafinity / Fundsdirect Nominee Service

## Adviser Agreement

## XAFINITY / FUNDSDIRECT Adviser Agreement

**THIS AGREEMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_\_\_\_

### **BETWEEN**

(1) Fundsdirect (the trading name for the Nominee Service of Investment Funds Direct Limited, company number 1610781), registered office; Trimbridge House, Trim Street, Bath, BA1 1HB. ("**Fundsdirect**"),

And

(2) \_\_\_\_\_

of \_\_\_\_\_

Registered Company number \_\_\_\_\_ and FSA reference number \_\_\_\_\_ ("**The Firm**").

### **WHEREAS:**

Fundsdirect is the trading name for the Nominee service provided by Investment Funds Direct Limited, which is a wholly owned subsidiary of Investment Funds Direct Group Limited (IFDGL) and is authorised and regulated by the Financial Services Authority.

The Fundsdirect service offers a Nominee platform for Independent Financial Advisers (IFAs). The Fundsdirect Nominee service provides extensive facilities to administer client assets that enable IFAs to manage their clients more effectively.

Xafinity SIPP Services Ltd ("Xafinity") is the administrator of a Self Invested Pension Plan (SIPP) and a portfolio of Small Self Administered Schemes (SSASs) and has agreed with Fundsdirect to offer jointly a Xafinity version of this nominee service to the IFA customers and their clients.

The Firm is an authorised firm that provides investment advice to its clients and requires a Nominee service that will provide it with the ability to administer and manage the assets of its clients which are held within a Xafinity SIPP, incorporating the SimplySIPP, or SSAS in an efficient and cost effective manner.

Fundsdirect and The Firm agree to enter into a contract to provide and use the Xafinity/Fundsdirect Nominee service in accordance with the provisions given below. With respect to the Firm's use of the Xafinity/Fundsdirect Nominee service this Agreement shall take precedence over any other contract between the Firm and Fundsdirect.

### **Acceptance of this Agreement**

To acknowledge acceptance of this Agreement please sign both copies of the Agreement and return them to Fundsdirect at Trimbridge House, Trim Street, Bath, BA1 1HB for the attention of the Company Secretary. A duly authorised representative of Fundsdirect will then sign both copies and return one to The Firm for safe keeping.

Once signed by The Firm and Fundsdirect this Agreement will be legally binding between The Firm and Fundsdirect in relation to all transactions involving The Firm and/or The Firm's organisation, The Firm's representative, The Firm's employees, The Firm's Registered Individuals, The Firm's Appointed Representatives and The Firm's Clients.

Subject to clause 16 (Termination), this Agreement will continue for as long as The Firm remains the authorised IFA for any Client who has access to the Xafinity/Fundsdirect Nominee service and/or so long as The Firm continues to receive commission and/or fee payments from Fundsdirect in respect of the business The Firm has transacted on behalf of the said Clients.

**Definitions:**

<b>“Fundsdirect”:</b>	Fundsdirect is the trading name for the Nominee service offered by Investment Funds Direct Ltd (IFDL). IFDL is a wholly owned subsidiary of Investment Funds Direct Group Limited, whose registered office is at Trimbridge House, Trim Street, Bath, BA1 1HB .
<b>“The Firm”:</b>	Is the party entering in to this Agreement with Fundsdirect whether as an individual or as a duly authorised signatory on behalf of your authorised financial services business.
<b>“Appointed Representative”:</b>	A person or organisation who/that is authorised by The Firm to conduct Investment Business on its behalf.
<b>“Accounts”:</b>	A tax or legal structure in which the assets in a Portfolio are held.
<b>“Act, the”:</b>	The Financial Services and Markets Act 2000 (as amended).
<b>“Agreement”:</b>	The contract that shall exist between Fundsdirect and The Firm upon the Firm signing this document.
<b>“Bonds”:</b>	Government Bonds (Gilts), Corporate Bonds and other similar fixed interest securities.
<b>“Cash”:</b>	Cash held in a client’s portfolio, whether in the fee account, trading account and/or other investment account.
<b>“Client”:</b>	A person introduced by The Firm and who has signed a contract with Fundsdirect and Xafinity to hold and record their savings and investments using the Fundsdirect platform and who has confirmed to Fundsdirect that The Firm are the IFA/Financial Adviser who provides them with investment and financial advice.
<b>“Commission”:</b>	The rates of commission payable under this Agreement (see schedule A.)
<b>“Equities”:</b>	Shares or securities listed on a recognised stock exchange.
<b>“FSA”:</b>	An abbreviation for The Financial Services Authority.
<b>“IFA”:</b>	An abbreviation for Independent Financial Adviser including a group of independent financial advisers who is/are authorised and regulated to conduct Investment Business under the Act whether trading as a sole trader, partnership, limited liability company, private limited company or public limited company. For the purposes of this agreement an IFA in this context can also be a SIPP Trustee or any other firm where it has been agreed by the management of Fundsdirect it may place its client’s assets on the platform.
<b>“IFDL”:</b>	An abbreviation for Investment Funds Direct Limited.
<b>“IFDGL”</b>	An abbreviation for Investment Funds Direct Group Limited.
<b>“Initial Commission”:</b>	The amount of Commission initially paid at the commencement of a new investment.
<b>“Investment”:</b>	Any asset, other than cash, which is held in a Client’s Portfolio.
<b>“Investment Business”:</b>	The business of engaging in one or more of the activities described in Schedule I Part II of the Act and which are not excluded by Part III of that Schedule.
<b>“Model Portfolio”</b>	A set of clients all of whose Investments are run to an identical asset allocation model.
<b>“New Cash”:</b>	Cash deposited by a Client into their Portfolio, as well as any interest, dividends, other investment income, tax rebates and any rebates of charges applicable to investments collected from fund management companies.
<b>“Nominee”:</b>	The internet based investment and asset consolidation service provided by Fundsdirect.

<b>“Person”:</b>	Includes a company, partnership, joint venture, association, corporation or other corporate body.
<b>“Portfolio”:</b>	A range of Investments for a Client consisting of any one or more Nominees or investment accounts held with the Fundsdirect Nominee service.
<b>“Portfolio Value”:</b>	The value of all Investments and Cash held in the Portfolio at any given time.
<b>“Registered Individual”:</b>	A person who is authorised by the Firm to conduct Investment Business on its behalf.
<b>“RI”:</b>	An abbreviation for Registered Individual and shall include singular and plural.
<b>“Quarter”:</b>	A period of three months ending on 31 March, 30 June, 30 September or 31 December.
<b>“Schedule”:</b>	The schedule accompanying this Agreement and labelled “Schedule A”.
<b>“Terms and Conditions”:</b>	The terms and conditions of the Client Agreement between the client and Fundsdirect (including amendments).
<b>“Trail Commission”:</b>	Commission paid each year that the Client’s funds remain invested through Fundsdirect, whatever the frequency paid (monthly/quarterly/half yearly/annually).

## 1. POWER, AUTHORITY AND AUTHORISATION

- 1.1. Each party represents warrants and undertakes on a continuing basis to the other party that:
  - 1.1.1. It has full power and authority to enter and perform this Agreement and other documentation relating to the business contemplated by it; and
  - 1.1.2. The entry into and performance of this agreement by it does not (and will not during the term of this Agreement) violate or conflict with any law or regulation applicable to it or any provision of its constitutional documents; and
  - 1.1.3. All governmental and/or regulatory consents required to have been obtained by it with respect to the business contemplated by this Agreement have been obtained and are in full force and effect and all conditions of such consents have been complied with.
- 1.2. The Firm acknowledges that it is solely responsible for ensuring that, in using the service, it acts within the authorisations and scope of its permitted business with the FSA. In particular the Firm warrants that where it is authorised on an ‘advisory’ basis it will obtain the explicit agreement of the client concerning fund selection before trading on their behalf.
- 1.3. Its obligations under this agreement (and any arrangement entered into by it pursuant to or contemplated by this agreement) constitute (or, where applicable, will at the time they are entered into constitute) its legal, valid and binding obligations enforceable in accordance with their respective terms.
- 1.4. The Firm must evidence that it is appropriately regulated to conduct Investment Business by providing The Firm’s FSA registration number and, if so requested, a copy of its FSA registration certificate.
- 1.5. Each party shall notify the other immediately of any suspension or termination by the FSA of its approved status or any reductions in scope, limitations or restrictions imposed by the FSA that affect the services supplied by either party.
- 1.6. Each party shall be cognisant of the potential effect of their actions on the reputation and standing of the other and endeavour to ensure no actions are taken which could undermine or damage that reputation and standing.
- 1.7. Should The Firm cease to be authorised under the Act, Fundsdirect reserve the right to withdraw any services and commission and/or fee payments due to The Firm under the terms of this Agreement. Nonetheless, The Firm will remain bound by the terms of this Agreement at all times unless released from these terms by Fundsdirect in writing.

- 1.8. Fundsdirect require confirmation that RIs have been authorised by the FSA to conduct regulated investment business on behalf of their Firm. Once Fundsdirect establish that they have been so authorised and Fundsdirect have received the appropriate Application the RI will receive a letter of confirmation containing his/her Fundsdirect Adviser Number. Fundsdirect will send each RI their individual personal identification number ("PIN") under separate cover. Should authorisation to act as an RI of the Firm be withdrawn for any reason, it is the duty of The Firm to inform Fundsdirect accordingly and such person may no longer act for any Client registered with Fundsdirect and that person will lose all access to Fundsdirect and its services. For the avoidance of doubt, the withdrawal of authorisation from one or more RIs shall not preclude The Firm appointing another RI from The Firm provided always that the Client remains a Client of The Firm.
- 1.9. The Firm will notify Fundsdirect immediately should any of The Firm's RIs cease to be authorised to carry on Investment Business for whatever reason or to conduct any investment activity or if any of The Firm's RIs cease to be an RI of The Firm.
- 1.10. The Firm agrees that:
  - 1.10.1. it will, and will procure that its representatives, employees, Registered Individuals and Appointed Representatives will, comply with the Fundsdirect Terms and Conditions for use of the Xafinity/Fundsdirect Platform which the Client has entered into with Fundsdirect and Xafinity (the "Client T&Cs");
  - 1.10.2. in the event of conflict between the Client T&Cs and this Agreement then the terms of the Client T&Cs shall take precedence.

## **2. GENERAL SERVICES PROVIDED BY FUNDSDIRECT**

- 2.1. Once Fundsdirect has received and accepted The Firm's signed IFA Agreement it will send The Firm a letter of confirmation. This will include The Firm's Fundsdirect Username. Under separate cover Fundsdirect will send The Firm's PIN. The PIN will be required when giving investment or other transaction instructions and will enable The Firm to view and, where authorised, give instructions on The Firm's Clients' Portfolios via the Xafinity / Fundsdirect website.
- 2.2. Fundsdirect will also issue each of The Firm's authorised RIs who wish to use the Xafinity/Fundsdirect Nominee service with an Fundsdirect Username and a PIN specific to this Platform enabling The Firm's RIs to give Fundsdirect instructions and grant them access to Client details relating to Xafinity SIPPs or SSAs, both by phone and via the Xafinity / Fundsdirect website.
- 2.3. Fundsdirect will only act on investment instructions directly from a Client where The Firm has confirmed that their agreement with the Client incorporates this type of dealing facility.
- 2.4. Fundsdirect will maintain records of all transactions undertaken on a Client's behalf and provide The Firm with access to the information contained in these records.
- 2.5. Fundsdirect may also operate a recording system of telephone calls and monitor any communication between Fundsdirect and The Firm, The Firm's RIs, The Firm's Appointed Representatives and the clients.
- 2.6. Communication with The Firm and its RIs will primarily be via e-mail and all contract notes and valuations will be issued electronically.

### 3. INVESTMENT ADMINISTRATION SERVICES PROVIDED BY FUNDSDIRECT

The Fundsdirect Nominee service provides the following investment administration facilities:

- 3.1. Ability to subscribe new Client Cash to the Fundsdirect Nominee via the bank account of the applicable Xafinity SIPP and SSAS and to purchase Investments.
- 3.2. Ability to transfer a Client's existing Investments through re-registration or encashment either within the applicable Xafinity SIPP or SSAS or to another approved pension arrangement.
- 3.3. Ability to log in and view on a web browser the value of the Client's Portfolio.
- 3.4. Ability to trade Investments on the Nominee platform via the web browser.
- 3.5. Investments include an open market list of UK Mutual Funds and a cash account with tiered rates of interest but excludes investments not permitted by pension rules for SSASs and SIPPs.
- 3.6. Ability to research and select funds on the platform
- 3.7. The Products available include the Xafinity SIPP and the Xafinity SSAS. Xafinity may change the Products available in conjunction with this service from time to time.

In addition Fundsdirect plans to provide the following services as soon as is reasonably possible:

- 3.8. Equity and bond trading via Crest
- 3.9. The ability to build Model Portfolios against which to allocate clients.
- 3.10. The ability to report Total Portfolio performance against selected benchmarks.
- 3.11. The ability to track and report on Clients' Capital Gains Tax liability.
- 3.12. The Firm acknowledges and agrees that:
  - (a) all assets, cash and investments held within the Xafinity/Fundsdirect Nominee service are held within approved pension scheme arrangements;
  - (b) it shall not, and it shall procure that its RI's and employees shall not, transfer any cash or investments into or out of the Xafinity/Fundsdirect Nominee service without the prior written consent of Xafinity.

### 4. ACCESS & INFORMATION

- 4.1. The Firm's username and PIN may be used to access information on the Xafinity / Fundsdirect website. Such information will include all Portfolios held within a Xafinity SIPP or SSAS operated by the Firm's Clients, as well as other records pertaining to the Firm's dealings with Fundsdirect.
- 4.2. Fundsdirect will send The Firm electronic confirmation of all investment purchases and sales (other than those done automatically on a regular basis) as they are completed. Regular monthly transactions will be shown via the web screens and on reports. All transaction details and valuations will also be available via the Xafinity / Fundsdirect website.
- 4.3. Note that Fundsdirect will advise by email clients and the Firm of the availability of Contract Notes on the secure website. It is The Firm's responsibility to print and forward to the Client all client copies of contract notes and valuations.
- 4.4. RIs who have been nominated by The Firm on the Xafinity / Fundsdirect Client Application, or are subsequently notified as being the RI that gives financial planning advice to the Client, will be issued with their own Fundsdirect Adviser Number and PIN. Once authorised, access to information for RIs will be limited to those Clients to whom they currently give financial advice and are registered according to our records.

## 5. PIN NUMBERS

- 5.1. The terms of this Agreement governing the use of PINs apply equally to both The Firm and any RIs representing The Firm.
- 5.2. The information displayed to The Firm via the Xafinity / Fundsdirect platform will contain information about all The Firm's Clients holding a Xafinity SSAS or SIPP and their Portfolios, whilst the information displayed to RIs will contain information only for such Clients which they currently advise.
- 5.3. Unless Fundsdirect has been previously advised that the security of a PIN has been compromised, every time a PIN is used to access details about The Firm, an RI of the Firm, a Client or Portfolio, or used to make a transaction, it will be deemed for all purposes that the registered PIN-holder was the only party who received the information or instructed on the transaction. Should this not be the case, that holder will regardless be liable for any consequences (whether legal, regulatory or other) resulting from the misuse of any such information received or transaction conducted.

## 6. AUTHORITY TO ACT

- 6.1. Where The Firm has current authority to do so, it may give instructions on behalf of The Firm's Clients, in respect of their Portfolio, via the Xafinity / Fundsdirect website.
- 6.2. An RI may also give such instructions in respect of those Clients he or she currently advises as long as he or she too holds a current authority to do so. A current authority may consist of either:
  - an appropriate and up to date instruction from The Firm's Client to undertake a particular transaction or;
  - a discretionary investment management agreement.
- 6.3. The Firm may not open a Fundsdirect Portfolio or facility on behalf of a Client, or advise a Client to do the same, unless the Client has been provided with the appropriate Fundsdirect documentation including the Xafinity / Fundsdirect Application and Terms and Conditions. Where requested by the Client, The Firm or The Firm's RI will promptly supply them with any such documentation, along with any necessary Fundsdirect documents which he or she might require in order to effect any decision to invest through Fundsdirect. Fundsdirect undertake to supply such documentation to The Firm or The Firm's RI upon request as soon as is practicable.
- 6.4. Whenever an instruction to act on a Client's Portfolio is given to Fundsdirect by The Firm or an RI, The Firm warrants:
  - where acting on an execution-only basis, that a valid instruction has been received from the Client so to act; or
  - where acting on a discretionary basis, that The Firm holds an up to date consent from the Client and is appropriately regulated so to act.
- 6.5. Any power given to The Firm or any other persons (such as an RI) by the Client under this clause shall be automatically deemed to be no longer current where at any time:
  - The Firm has ceased to act for the Client;
  - The Firm has ceased to be appropriately regulated under the Act;
  - Fundsdirect cannot ascertain the currency of any authority; or
  - Fundsdirect has been made aware that the Client has revoked such authority.
- 6.6. Where any of the circumstances listed above occurs, The Firm and its RIs will cease to have access to any information about that Client.
- 6.7. Fundsdirect may refuse to accept or suspend any instructions from The Firm or its RIs should it be unable to ascertain the validity of the source or the nature of the instruction until clarification or any necessary authority has been obtained.

## 7. MONEY LAUNDERING

The Firm undertakes full responsibility in the fulfilment of all the prescribed identification procedures contained in law and regulation in respect of the prevention of money laundering (including, but not limited to, the related declaration contained in the Xafinity / Fundsdirect Client Application). Such responsibility extends to all transactions effected through or by Fundsdirect as instructed by The Firm, any of The Firm's RIs and/or The Firm's Client.

## 8. NON-FUNSDIRECT SERVICES

Commissions referred to in this Agreement apply only to Xafinity / Fundsdirect Portfolios. For details of any commissions payable in relation to Xafinity pension products you should refer to Xafinity. For details of any commissions payable in relation to other Fundsdirect Portfolios you should refer to Fundsdirect.

## 9. INVESTMENT ADVICE

Fundsdirect (including IFDL and IFDGL) does not provide investment advice in any way to anyone. This includes advice on the merits, suitability or otherwise of any transactions or investments. Should a Client ever ask Fundsdirect any questions related to the suitability or otherwise of an investment, it is the strict policy of Fundsdirect to refer them to The Firm for such guidance and advice.

## 10. DELEGATION OF DUTIES

Fundsdirect may delegate any functions under this Agreement to third parties (subject to statutory or regulatory limitations).

## 11. NOTIFICATION OF CHANGES

- 11.1. The Firm and The Firm's RIs will provide all necessary information in order to allow Fundsdirect to comply with its operational, regulatory and transaction reporting obligations.
- 11.2. The Firm will notify Fundsdirect immediately should The Firm or any of The Firm's RIs cease to act for any Client.
- 11.3. The Firm will notify Fundsdirect immediately should any of The Firm's RIs cease to be an RI of The Firm.

## 12. COMMISSIONS

- 12.1. Fundsdirect are entitled to rely upon any election made by The Firm for the sharing of commission as notified at the time of the transaction.
- 12.2. The rates of commission and/or fees charged by the Firm to their Clients using the Fundsdirect Nominee service will be agreed by negotiation between The Firm, and/or The Firm's RIs, and their Client.
- 12.3. Fundsdirect will pay to The Firm any Initial and Trail Commission resulting from Client transactions and will provide The Firm and The Firm's RIs with statements detailing these commissions once they have been paid.
- 12.4. Subject to the relevant regulations and authorisations, Fundsdirect will pay The Firm commissions and/or fees resulting from Client transactions by BACS direct credit.
- 12.5. Initial Commission will be calculated and deducted from a Client's Portfolio and will be held and distributed to The Firm weekly in arrears.
- 12.6. Trail commission will be calculated in line with the terms of this Agreement and, subject to these clauses, will be paid to The Firm on at least a quarterly basis.

- 12.7. Neither Fundsdirect nor Xafinity have any obligation or liability to pay any commissions or fees whatsoever to the Firm or any employee or agent of the Firm arising from this Agreement or use of the Xafinity/Fundsdirect Nominee service. Fundsdirect's responsibility shall be solely to pay such commissions and fees to the Firm as it is instructed to by the Client.
- 12.8. In the event that Fundsdirect's contract with Xafinity terminates or expires then Fundsdirect reserves the right to transfer the obligation to administer the commissions agreed between the Firm and the Client pursuant to this Agreement to another provider on notice in writing to the Firm.
- 12.9. Fundsdirect may refuse to pay or cease paying commission to The Firm in respect of any transaction(s). For example, Fundsdirect may do this where:
- The Firm ceases to be FSA authorised or authorisation is suspended;
  - The Firm has ceased to act for the Client using the Fundsdirect Nominee service;
  - The Firm enters into liquidation or receivership or becomes subject to administration.

### 13. RECLAIM OF COMMISSIONS

- 13.1. Without prejudice to clause 12.7:
- 13.1.1. Clients may have 14 day cancellation rights in respect to opening a Fundsdirect account which is related to a Xafinity pension product and initial commissions may therefore be paid to The Firm during that period. Should the Client cancel, The Firm agrees to repay to Fundsdirect within seven days of the date of the Client cancellation all commissions paid to The Firm in respect of that Client.
- 13.1.2. Value Based Commissions will begin to accrue at the beginning of the cancellation period. Should the Client cancel, The Firm, will not be entitled to any Trail Commission that may have accrued during this 14 day period. Where the Client does not cancel and the running of the cancellation period takes in the end of one month and the beginning of the next month, The Firm will be entitled to payment of any Trail Commission accrued over this period at the end of that second month. Should The Firm receive any overpayment of commission, or payment in error, The Firm agrees to repay to Fundsdirect the amount in question within seven days of having received notification of such an occurrence.
- 13.1.3. Where a complaint results in Fundsdirect being required to refund monies to a Client, The Firm must repay the commission paid to The Firm by Fundsdirect to the full amount of the monies refunded to the Client in accordance with the above. Please note that any monies which remain outstanding under these clauses beyond the expiry of the stated repayment period will attract interest at a rate prescribed by the FSA from time to time.
- 13.1.4. Should any commission repayments due from The Firm not be received by Fundsdirect within the due date, Fundsdirect reserve the right to withhold any other commissions due to The Firm from Fundsdirect until such time as this debt, including interest at a rate as prescribed by the FSA, is fully repaid.

### 14. FUNSDIRECT CHARGES

- 14.1. Fundsdirect will apply the charges given in the Client Terms and Conditions. These charges and their frequency may change subject to reasonable notification to The Firm and the Clients.
- 14.2. The Fundsdirect charges may be offset in part or whole by commissions received from Fund Providers and other sources. All commissions received by Fundsdirect will be allocated for offset of the client fees from The Firm and Fundsdirect.
- 14.3. Most Transaction Charges are VAT exempt but this may be subject to change as defined by HM Revenue & Customs. All withdrawal/closure and ad hoc service charges are usually subject to VAT at the prevailing rate.

## 15. CASH BALANCES & INTEREST

- 15.1. Cleared cash in client accounts will be credited with interest at the published rates as shown on the Xafinity / Fundsdirect website.
- 15.2. In order to pay commissions, Fundsdirect transaction or account fees, it will be The Firm's responsibility to ensure that the Client maintains a sufficient cash balance in all accounts. Fundsdirect will have the right to sell Client Investments to pay such charges. The choice of Investments to be sold will be at the sole discretion of Fundsdirect. This will usually be the highest value Investment and sufficient will be sold to settle the outstanding charges.
- 15.3. If a client has elected to take income drawdown payments from their pension account it will be The Firm's responsibility to ensure sufficient cash is available to meet the monthly payments to the Client. The Firm or RI will be expected to establish sufficient free cash in the Client's account on an annual basis to cover all drawdown payments for the coming year.

## 16. TERM AND TERMINATION

- 16.1. Either party may terminate this agreement immediately (or within such period of notice that the terminating party may elect) by written notice to the other party if:
  - That other party is in material breach of its obligations under this agreement
  - That other party becomes insolvent
  - That other party or its appropriate subsidiary ceases to be authorised
- 16.2. This agreement may be terminated by either party with 90 days notice in writing.
- 16.3. In the event that the IFA terminates this agreement for any reason all rights and claims to potential, outstanding or unexercised share participation will be forfeit.
- 16.4. This Agreement will terminate automatically upon the termination or expiry of Fundsdirect's contract with Xafinity.

## 17. REGULATORY OBLIGATIONS

- 17.1. Nothing in this agreement shall preclude the obligations of either party to meet their regulatory obligations to the FSA or other regulatory body, including in the case of the IFA, the requirement to give suitable advice to the client.
- 17.2. For the avoidance of doubt, The Firm will be authorised by the FSA or its successor(s) to conduct investment business in its own right, and the Fundsdirect service will not provide any regulatory authorisation or appointed representative status to The Firm or its RIs, nor will the Fundsdirect service provide any investment advice.

## 18. LIABILITY

- 18.1. In The Firm's dealings with Fundsdirect, Clients or any associated third parties, any acts and/or omissions of The Firm's employees, servants, agents, nominees or those of The Firm's RIs shall be deemed to be The Firm's own, thus making The Firm responsible for all such acts and/or omissions.
- 18.2. Fundsdirect shall exercise due care and diligence in its dealings with The Firm but, subject to its obligations as a member of the FSA, and as otherwise provided in this Agreement, Fundsdirect shall not be liable, nor shall Fundsdirect compensate The Firm, for any loss arising as a result of Fundsdirect doing (or not doing) anything in reliance upon any instruction given (or which Fundsdirect reasonably believes to be given) by The Firm (or The Firm's representative); nor from any failure by The Firm or The Firm's RIs to comply with the provisions of the Act, any applicable rules and regulations, or this Agreement.
- 18.3. The Firm and The Firm's RIs agree to release and indemnify Fundsdirect and its subsidiaries, and its subsidiary's employees, servants, agents and nominees from and against any and all costs, claims, demands, losses, expenses or liabilities suffered by or arising from it acting (or not acting) in reliance upon any instruction given (or which Fundsdirect believe to be given) by The

Firm, The Firm's representatives and RIs, for the acts or omissions of Fundsdirect, its employees, servants, agents or nominees, or those of any third party, except where these arise as a result of its gross negligence, wilful default or breach of any statutory obligation.

- 18.4. Whilst it is understood by the parties that Fundsdirect's normal terms of operation are such that liability arising under the indemnity contained in the immediately preceding paragraph above is unlikely to eventuate, nonetheless, neither the The Firm nor The Firm's RIs shall be subject to the terms of that indemnity where monies instructed to be received from a Client by Fundsdirect are not so received by the fault of the Client or its banker(s).
- 18.5. Both parties agree they shall not be liable to the other for any consequential and indirect loss or damage including financial loss, loss of data, loss of profits, loss of contracts, loss of operating time, loss of use of any equipment or any other forms of consequential or indirect loss.
- 18.6. Neither party shall be liable to the other for any loss, damage or delay caused wholly or partly, directly or indirectly by industrial disputes, force majeure or circumstances beyond its reasonable control.

## 19. CONFIDENTIALITY

- 19.1. Each party agrees to keep and treat as confidential and not disclose to any third party (other than to the Inland Revenue, H.M. Customs & Excise, auditors, professional advisers or a regulatory authority or organisation within the meaning of the Act, and subsequent revisions) unless under compulsion of law, any information of a proprietary or confidential nature concerning the operations, plans, know-how, trade secrets, business transactions and affairs received or acquired from the other, nor make use of that information for any purpose unless this information is also available elsewhere from external sources, or is:
- In, or comes in to, the public domain other than as a result of a breach of this clause;
  - Rightfully in the possession of that party prior to receipt from the other;
  - Received from a bona fide third party not receiving the information directly or indirectly from the other party.
- 19.2. Each party agrees to exercise no less a degree of care in protecting the confidential information disclosed to it by the other than that it uses to protect its own information of similar sensitivity and importance.
- 19.3. On completion of the service or termination of this Agreement both parties agree to return or destroy copies of confidential information belonging to the other, unless agreed otherwise in writing for some purpose such as a subsequent service or a further project between them.

## 20. DATA PROTECTION

- 20.1. Fundsdirect will need to process and store certain information obtained by or given to Fundsdirect in respect of The Firm, The Firm's RIs and The Firm's Client dealings with Fundsdirect.
- 20.2. Fundsdirect will only provide this information to people with whom Fundsdirect deal in the day-to-day operation of Portfolios, or who are acting as agents, or anyone to whom Fundsdirect transfer or may transfer its rights and duties, or as necessary in the general course of its business, on the understanding that it will keep the information confidential. This includes passing details to fund and investment managers in respect of The Firm and The Firm's RIs where any Client of The Firm's RIs has purchased those managers' funds or other investments (as appropriate) through Fundsdirect. Otherwise Fundsdirect will keep The Firm's data confidential and will not use it for marketing purposes without The Firm's permission.
- 20.3. The Firm consents to Fundsdirect passing personal data related to its RI's and employees captured in the course of this Agreement to Xafinity. Xafinity may use this personal data for the administration of your Client's SSAS or SIPP. This information may also be kept by Xafinity for record purposes.

## 21. CLIENTS & CLIENT INFORMATION

- 21.1. IFDGL, its subsidiaries and assigns undertake to use client information solely as required by Data Protection and Financial Services regulation to treat customers fairly and to keep them informed about their portfolios.
- 21.2. IFDGL, its subsidiaries and assigns undertake not to advertise to clients nor attempt to recruit clients who have been introduced to IFDGL and its subsidiaries through the Fundsdirect service.
- 21.3. Save as provided in clause 20.3, IFDGL, its subsidiaries and assigns undertake not to pass client data to any other organisation including any future purchaser of the businesses of IFDGL or its subsidiaries.
- 21.4. IFDGL, its subsidiaries and assigns shall not be bound by Clauses 21.2 and 21.3 above where a client has:
  - Expressly instructed IFDGL or its subsidiaries to transfer his/her account to another adviser.
  - Expressly instructed IFDGL or its subsidiaries to deal directly with him/her using the Fundsdirect service without the use of an adviser.
- 21.5. IFDGL, its subsidiaries and assigns undertake not to suggest to nor encourage any client to use the Fundsdirect service without the use of his/her appointed financial adviser.

## 22. RELATIONSHIP BETWEEN THE PARTIES

Nothing in this Agreement shall act to create any partnership or agency agreement between The Firm and any Registered Individuals and Fundsdirect. Therefore, The Firm acknowledges that an RI of The Firm who places Investment Business for Clients using Fundsdirect does so subject to the provisions of this Agreement and acts solely as The Firm's agent and is not an agent of Fundsdirect.

## 23. HEADINGS

The headings of this agreement are for convenience only and shall have no legal effect.

## 24. SEVERABILITY

If any provision of this agreement is judged to be invalid, illegal, void or unenforceable, the remainder will continue in full force and effect; and both parties agree to attempt to substitute a valid and enforceable alternative provision which achieves to the greatest possible extent the objectives of the void provision.

## 25. NOTICES

All notices must be given in writing to the address shown above or to the main company address if the receiving party has moved. Any notice from Fundsdirect sent by post will be considered to have been received by The Firm or an RI of The Firm (as appropriate) within three business days of the date of posting or, in the case of notices sent by fax or e-mail, when the transmission is shown as complete. Notice sent from The Firm or an RI of The Firm to Fundsdirect will only be valid when actually received by Fundsdirect.

## 26. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties relating to this subject and supersedes all prior agreements, arrangements and understandings between them on this matter.

## 27. VARIATIONS

IFDGL including IFDL reserve the right to vary the terms of this Agreement at any time to conform with legal or regulatory requirements or to implement changes necessary for the effective and secure operation of the service. Fundsdirect will notify The Firm as soon as possible of all such changes and should these changes affect The Firm materially, Fundsdirect will notify The Firm at least one month prior to such changes becoming effective wherever possible.

**28. ASSIGNMENT**

Neither The Firm nor The Firm's RIs may assign or transfer any of the rights and obligations of this agreement without the prior written consent of Fundsdirect except in the case of an assignment to a parent, subsidiary or associated company in which case consent will not be unreasonably withheld.

**29. CONTRACTS (Rights of Third Parties)**

No person who is not a party to this agreement ("a third party") has or will have any rights, either individually or under the Contracts (Rights of Third Party) Act 1999 or similar act to enforce any term of this agreement and no consent of any third party, either individually or under that act or any similar act, will be required for any cancellation or variation of this agreement exception for Xafinity which may enforce any rights which are expressed as being for the benefit of Xafinity.

**30. ARBITRATION**

- 30.1. Both parties agree that any dispute under this agreement or a related matter shall first be referred for final settlement to an expert mutually agreed by the parties or failing agreement upon the application of either party to the President of the Law Society, who shall be requested to appoint an expert (who need not necessarily be a lawyer) conversant with the matters in dispute.
- 30.2. The expert shall be deemed to act as an expert and  or to determine in his opinion a just and fair outcome to resolve the dispute. His decision will, in the absence of clerical or manifest error, be final and binding on both parties and all his fees and any other costs relating to the dispute shall be borne by the party who in his opinion is considered most at fault or most unreasonable in this matter.

**31. GOVERNING LAW**

This Agreement shall in all respects, including its form, validity, construction and method be governed by and construed in accordance with English Law and any dispute in respect to this agreement, having first failed to be settled by arbitration as defined in the previous ARBITRATION clause, shall be determined in the English Courts.

**Signed for and on behalf of The Firm:**

Authorised Signatory: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

**Signed for and on behalf of Fundsdirect:**

Authorised Signatory: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

**If you require this document in another format for ease of reading, please let us know.**

