



## Terms and Conditions

Effective March 1, 2021

### 1. Introduction

Elphinstone, Inc. ("Elphinstone," an SEC-registered adviser) is an automated investment adviser available online and through mobile applications. When you use our website and mobile applications you enter into a series of legally binding agreements. You also agree to our Privacy Policy which covers how we collect, use, share and store your personal information.

#### 1.1. Purpose

We offer an automated investment service. Should you choose to become our Client, we will manage a diversified portfolio of securities and funds on your behalf.

#### 1.2. Agreement

When you access our website and/or our mobile applications ("our website" (which includes our blog), "our app" or "Elphinstone") as a User, you're agreeing to be bound by the following Terms of Use, and, if you've elected to become a Client, our Client Agreement. Please therefore take the time to read the following binding Terms of Use below.

For the purpose of this agreement a User is an individual who uses our website or mobile application to evaluate our service, or for educational purposes and a Client is an individual who signs our Client Agreement that entitles the Client to have her or his investment portfolio managed by Elphinstone. This Agreement, as well as the Privacy Policy applies to both Users and Clients.

If you elect to become a Client, you will be subject to these Terms of Use, our Client Agreement, our Privacy Policy and any additional terms to which you agree when you create and fund an investment account.

### 2. Obligations

You must be 18 or older to access our website or mobile applications. You will keep your user name and password a secret. You will not share your account with anyone else.

#### 2.1. Eligibility

Elphinstone is intended solely for individuals who are 18 or older. Any access to or use of Elphinstone by anyone under 18 is unauthorized, unlicensed, and in violation of these Terms of Use. By accessing or using Elphinstone, you represent and warrant that you are 18 or older.

#### 2.2. Your Access

In order to access certain features of Elphinstone, you must register to create an account ("User Account"). When you register, you will be asked to choose a password, which you will be required to use to access your User Account. Elphinstone has physical, electronic and procedural safeguards that comply with federal standards to guard Users' and Clients' non-public personal information (see Privacy Policy).

You are responsible for safeguarding your password and other User Account information. You agree not to disclose your password to any third party and you will notify Elphinstone immediately if your password is lost or stolen or if you suspect any unauthorized use of your User Account. As a User you agree that you

shall be solely responsible for any activities or actions under your User Account, whether or not you have authorized such activities or actions.

You agree that the information you provide to us on account registration through our website or mobile applications will be true, accurate, current, and complete.

### 2.3. Alerts, Notifications and Service Communications

By creating a User Account, you automatically sign up for various types of alerts via e-mail and mobile notification. When logged in, you may customize, modify and in some cases deactivate alerts by adjusting the settings accordingly.

We never include your password in these communications, but we may include your name, or email address and information about your portfolio(s) if you are a Client. Anyone with access to your e-mail or mobile device will be able to view these alerts.

You may unsubscribe from marketing oriented emails at any time.

## 3. Disclaimer and Limit of Liability

Elphinstone cannot be held responsible for any financial insights or recommendations provided to Users.

### 3.1. For a User who is not a Client

You understand and acknowledge that the investment results you could obtain from investment information and financial insights provided by Elphinstone cannot be guaranteed and that Elphinstone cannot be held responsible. All investments entail a risk of loss and that you may lose money. Investment management services may be offered to individuals who become clients, at the sole discretion of Elphinstone. Your election to engage our investment management services are subject to your explicit enrollment and acceptance of the separate Client Agreement and related fee schedule.

You agree and understand that your use of Elphinstone is for educational purposes only and is not intended to provide legal, tax or financial planning advice. You agree as a User that you are responsible for your own investment research and investment decisions, that Elphinstone is only one of many tools you may use as part of a comprehensive investment education process, that you should not and will not rely on Elphinstone as the primary basis of your investment decisions and, except as otherwise provided for herein, Elphinstone will not be liable for decisions/actions you take or authorize third parties to take on your behalf based on information you receive as a User of Elphinstone or information you otherwise see on our website.

### 3.2. Disclaimer of Warranties

Your use of Elphinstone's Website, and the personal information you provide is at your sole discretion and risk. Elphinstone's Website and all materials, information, products and services included therein, are provided on an AS IS and AS AVAILABLE basis without warranties of any kind from Elphinstone.

ELPHINSTONE EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, RELATING TO ELPHINSTONE'S WEBSITE, CONTENT AND/OR USER INFORMATION, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF PROPRIETARY RIGHTS, COURSE OF DEALING OR COURSE OF PERFORMANCE. ELPHINSTONE DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED:

- REGARDING THE AVAILABILITY, SECURITY, ACCURACY, RELIABILITY, TIMELINESS AND PERFORMANCE OF ELPHINSTONE'S WEBSITE, CONTENT AND/OR USER INFORMATION;

- THAT ELPHINSTONE'S WEBSITE WILL BE ERROR-FREE OR THAT ANY ERRORS WILL BE CORRECTED;
- THAT ELPHINSTONE'S WEBSITE WILL BE FREE FROM ELECTRONIC VIRUSES; OR
- REGARDING THE PERFORMANCE OF OR ACCURACY, QUALITY, CURRENCY, COMPLETENESS OR USEFULNESS OF ANY INFORMATION PROVIDED BY ELPHINSTONE ON ITS WEBSITE INCLUDING BUT NOT LIMITED TO INFORMATION OBTAINED THROUGH SOCIAL MEDIA.

No advice or information, whether oral or written, obtained by you from Elphinstone's Website, shall create any warranty not expressly stated in this Agreement. If you choose to rely on such information, you do so solely at your own risk.

Some states or jurisdictions do not allow the exclusion of certain warranties. Accordingly, some of the above exclusions may not apply to you.

### 3.3. Limitation of Liability

IN NO EVENT SHALL ELPHINSTONE OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO YOU FOR ANY DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF ELPHINSTONE, CONTENT AND/OR USER INFORMATION, INCLUDING BUT NOT LIMITED TO THE QUALITY, ACCURACY, OR UTILITY OF THE INFORMATION PROVIDED AS PART OF OR THROUGH ELPHINSTONE OR FOR ANY INVESTMENT DECISIONS MADE ON THE BASIS OF SUCH INFORMATION, WHETHER THE DAMAGES ARE FORESEEABLE AND WHETHER OR NOT ELPHINSTONE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION AND IN NO EVENT SHALL ELPHINSTONE'S CUMULATIVE LIABILITY TO YOU EXCEED U.S. \$100.

## 4. Termination

Each of us can end this agreement at any time.

You may request termination of your User Account at any time and for any reason by sending an email to the designated e-mail address for this purpose available on our website.

We may terminate or suspend your access to Elphinstone, in our sole discretion, at any time for any reason without notice to you. Further, if we believe, in our sole discretion, that a violation of these Terms of Use has occurred, we may take any other corrective action we deem appropriate. We reserve the right to investigate suspected violations of these Terms of Use. We may seek to gather information from a user who is suspected of violating these Terms of Use (or from any other user) and you agree to provide us with such information. We will fully cooperate with any law enforcement authorities or court order requesting or directing us to disclose the identity of anyone posting, publishing, or otherwise making available any User information, emails, or other materials that are believed to violate these Terms of Use.

Any suspension, termination, or cancellation shall not affect your obligations to Elphinstone under these Terms of Use (including but not limited to ownership, indemnification, and limitation of liability), which by their sense and context are intended to survive such suspension, termination, or cancellation.

## 5. Dispute resolution

If there is a legal dispute, it will take place in New York Courts under New York Law.

You agree that these Terms of Use shall be governed by and interpreted in accordance with the laws of the State of New York, U.S.A. excluding that body of law pertaining to conflict of laws. Any legal action or proceeding arising under these Terms of Use will be brought exclusively in courts located in New York, New York, and the parties hereby irrevocably consent to the personal jurisdiction and venue therein.

## **6. Conditions of use and prohibitions**

Elphinstone grants you a license to use our website and mobile applications so long as you comply with all our rules.

### 6.1. Conditions of use

You agree you will:

- Comply with all applicable laws, including, without limitation, privacy laws, intellectual property laws, anti-spam laws, export control laws, tax laws, and regulatory requirements;
- Provide accurate information to us, whether reported directly or through a third party who you authorize, and keep it updated;
- Use the services solely for your personal, non-commercial use;
- Use your real name on your profile and keep your password confidential;
- Use the Services in a professional manner

### 6.2. Prohibitions

You agree you will not:

- Circumvent, disable, or otherwise interfere with security-related features of Elphinstone or features that prevent or restrict use or copying of any content or User information;
- Upload, email, transmit, provide, or otherwise make available:
  - any User information which you do not have the lawful right to use, copy, transmit, display, or make available (including any User information that would violate any confidentiality or fiduciary obligations that you might have with respect to the User information); or
  - any User information that infringes the intellectual property rights of, or violates the privacy rights of, any third-party (including without limitation copyright, trademark, patent, trade secret, or other intellectual property right, moral right, or right of publicity); or
  - unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of solicitation; or
  - any personal information that is unlawful, obscene, harmful, threatening, harassing, defamatory, or hateful, or that contain objects or symbols of hate, invade the privacy of any third-party, contain nudity, are deceptive, threatening, abusive, inciting of unlawful action, or are otherwise objectionable in the sole discretion of Elphinstone; or
  - any personal information that contains software viruses or any other computer code, files, or programs designed to (i) interrupt, destroy, or limit the functionality of any computer software; or (ii) interfere with the access of any user, host or network, including without limitation overloading, flooding, spamming, mail-bombing, or sending a virus to Elphinstone; or

- any personal information that includes code that is hidden or otherwise surreptitiously contained within the User information;
- Use any meta tags or other hidden text or metadata utilizing a Elphinstone name, trademark, URL or product name;
- Forge any TCP/IP packet header or any part of the header information in any posting, or in any way use Elphinstone to send altered, deceptive, or false source- identifying information;
- Interfere with or disrupt (or attempt to interfere with or disrupt) any Elphinstone web page, server, or network, or the technical delivery systems of Elphinstone's providers, or disobey any requirements, procedures, policies, or regulations of networks connected to Elphinstone.
- Attempt to probe, scan, or test the vulnerability of any Elphinstone system or network or breach or impair or circumvent any security or authentication measures protecting Elphinstone;
- Attempt to decipher, decompile, disassemble, or reverse-engineer any of the software used to provide Elphinstone;
- Attempt to access, search, or meta-search Elphinstone or content thereon with any engine, software, tool, agent, device, or mechanism other than software and/or search agents provided by Elphinstone or other generally available third- party web browsers, including without limitation any software that sends queries to Elphinstone to determine how a website or web page ranks;
- Violate the terms of service or any other rule or agreement applicable to you or Elphinstone's inclusion in, reference to, or relationship with any third party or third-party site or service, or your use of any such third-party site or service;
- Collect or store personal information about other users without their express permission;
- Impersonate or misrepresent your affiliation with any person or entity, through pretexting or some other form of social engineering, or commit fraud;
- Solicit any User for any investment or other commercial or promotional transaction;
- Violate any applicable law, regulation, or ordinance;
- Scrape or copy information through any means (including crawlers, browser plugins and add-ons, and any other technology or manual work);
- Use, launch, or permit to be used any automated system, including without limitation "robots," "crawlers," or "spiders"; or
- Copy or use the information, content or data on Elphinstone in connection with a competitive service (as determined by Elphinstone);
- Monitor Elphinstone's availability, performance or functionality for any competitive purposes
- Use Elphinstone or content thereon in any manner not permitted by these Terms of Use
- Copyrighted Materials: No Unauthorized Use. If you become aware of misuse of Elphinstone or content thereon by any person, please contact Elphinstone to report any abuse. Elphinstone has adopted and implemented a policy that provides for the termination of Accounts of users who infringe the rights of copyright holders. Please see the Elphinstone Copyright and Intellectual Property Policy for further information.

## **7. Account Information from Third Party Sites**

Users may link their accounts with third-party financial institutions with which they have customer relationships, maintain accounts or engage in financial transactions and direct Elphinstone to retrieve and display information from these accounts (“Account Information”). Elphinstone works with one or more third-party service providers to access this Account Information. By linking these accounts or directing Elphinstone to retrieve your third-party Account Information, you are consenting to the processing of your Account Information, and other personal information you provide that is needed to retrieve your Account Information, such as credentials, by Elphinstone and such service provider(s) in connection with providing this service in accordance with our Privacy Policy and as permitted by law, and, if you’ve elected to become a Client, you are consenting to the use of your Account Information by Elphinstone and its affiliates in connection with the management of your Elphinstone account. Elphinstone does not review the Account Information for accuracy, legality or non-infringement. Elphinstone is not responsible for the Account Information or products and services offered by or on third-party sites.

Elphinstone cannot always foresee or anticipate technical or other difficulties which may result in failure to obtain data or loss of data, personalization settings or other service interruptions. Elphinstone cannot assume responsibility for the timeliness, accuracy, deletion, non-delivery or failure to store any user data, communications or personalization settings. Displayed Account Information is only as fresh as the time shown, which reflects when the information was obtained from third-party sources.

## **8. General Terms**

In the event that any provision in these Terms of Use is held to be invalid or unenforceable, the remaining provisions will remain in full force and effect. The failure of a party to enforce any right or provision of these Terms of Use will not be deemed a waiver of such right or provision. You may not assign this Agreement (by operation of law or otherwise) without the prior written consent of Elphinstone, and any prohibited assignment will be null and void.

Elphinstone may assign this Terms of Use Agreement or any rights hereunder without your consent. The relationship of the parties under these Terms of Use is that of independent contractors, and these Terms of Use will not be construed to imply that either party is the agent, employee, or joint venture of the other. Note that if you elect to become a Client, the relationship of the parties will be governed by these Terms of Use, Client Agreement, our Privacy Policy and any additional terms to which you agree when you create and fund an investment account.

We reserve the right to change this Agreement by posting a revised Terms of Use and we agree that changes cannot be retroactive. If you don't agree with these changes, you must stop using Elphinstone.

You agree the only way to provide us legal notice is at the address provided in Section 10.

## **9. Jurisdictions of allowed use**

Elphinstone is only for use in the United States and Pakistan.

Elphinstone is only available for use in the United States and/or Pakistan. We make no representation that Elphinstone is appropriate or available for use outside the United States and/or Pakistan. Similarly, we make no representations that accessing Elphinstone from locations outside the United States and/or Pakistan is legal or permissible by local law. If you access Elphinstone from areas outside of the United States and/or, you do so at your own risk and are yourself responsible for compliance with local laws.

## **10. Miscellaneous**

This Agreement takes priority over previous agreements.

### 10.1. Integration & Severability

This Agreement is the entire agreement between you and us with respect to Elphinstone, and your use of our website and mobile app, and supersedes all prior or contemporaneous communications and proposals (whether oral, written or electronic) between you and us. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect. The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder.

### 10.2. Advice may differ

You understand and agree that we act as an investment advisor for Clients and will continue to do so. We and our personnel may make recommendations and take action for Clients that may differ from the recommendations we give to you or the action we take on your behalf.

In addition, our personnel may take actions for their own accounts based on their own investment situations that differ from the recommendations we give you or actions we take on your behalf.

### 10.3. Communication

You agree that these Terms of Use and the rules, restrictions, and policies contained herein, and Elphinstone's enforcement thereof, are not intended to confer and do not confer any rights or remedies on any person other than you and Elphinstone. These Terms of Use together with the Elphinstone's Privacy Policy and Client Agreement (if applicable) constitute the entire agreement between Elphinstone and you with respect to the subject matter hereof. Any notice or other communication to be given hereunder will be in writing and given by (a) Elphinstone via email (in each case to the address that you provide), or (b) you via email or to such other addresses as Elphinstone may specify in writing. The date of receipt shall be deemed the date on which such notice is transmitted.

You can also contact Elphinstone by phone at +1 (212) 882-1067 or via physical mail at:

Elphinstone, Inc.  
405 Lexington Avenue, Suite 866  
New York, NY 10174