

## **TERMS OF USE**

**Last Updated [August 4, 2022]**

Eko Investments Inc. (“Eko,” “we,” “us,” or “our”) welcomes you. These terms of use (these “Terms of Use”) relate to our services, which are made available to you through a variety of platforms, including, but not limited to, <https://eko.investments> (the “Website”) and our mobile app, which is accessible through tablets, smart phones, connected televisions, and other devices (the “App”). The Website and the App are collectively referred to as the “Platform.” Eko is an investment adviser registered with the U.S. Securities and Exchange Commission.

By clicking “I Accept” or by browsing the public areas of the Platform or accessing and using the Platform, you acknowledge that you have read, understood, and agree to be legally bound by the terms and conditions of these Terms of Use and the terms and conditions of our Privacy Policy <https://www.eko.investments/legal> (the “Privacy Policy”), which are hereby incorporated by reference. If you do not agree to any of these terms, then you are not permitted to use the Platform.

**THE SECTIONS BELOW TITLED “BINDING ARBITRATION” AND “CLASS ACTION WAIVER” CONTAIN A BINDING ARBITRATION AGREEMENT AND CLASS ACTION WAIVER. THEY AFFECT YOUR LEGAL RIGHTS. PLEASE READ THEM CAREFULLY.**

### **1. USE OF THE PLATFORM**

We provide Visitors and Clients with access to the Platform as described below.

**1.1 Visitors.** A “Visitor,” as the term implies, is someone who does not register with us, but wants to explore the Platform. No login or Client Agreement (as defined below) is required for Visitors. Visitors can view and access all publicly-available features and functionality on the Platform, but does not create an Eko Account or use the Platform as a Client (as defined below).

**1.2 Clients.** A “Client” can do all the things that Visitors can do, and has also created an account with us (an “Eko Account”) and permits us to manage their assets in their Eko Account. In order to become a Client, you must agree to the terms and conditions and execute our Discretionary Investment Management Agreement (the “Client Agreement”) <https://www.eko.investments/legal/InvestmentManagementAgreement.pdf>, in addition to agreeing to these Terms of Use. Additional agreements and/or disclosures may apply with respect to your access to and use of the Platform generally or certain products and services that may be accessed via the Platform through, without limit, us and third party providers such as Alpaca Securities, LLC (the “Custodian”). Additional agreements and/or disclosures include, without limitation, the brokerage account you will be required to open with the Custodian, the Form ADV Part 2A Disclosure Brochure, the Form CRS (Client Relationship Summary), and/or other disclosures located on our Website. The terms of such agreements and/or disclosures are incorporated into these Terms of Use by reference; to the extent such terms do not conflict with these Terms of Use. In the event of a conflict, the terms of such separate user agreement and/or disclosure will prevail with respect to such specific products or services.

We are under no obligation to accept any individual as a Client and may accept or reject any Eko Account in our sole discretion. In addition, we may, but are not required to, deactivate any Eko Account at any time, including, without limitation, if we determine that a Client has violated these Terms of Use or the Client Agreement.

We may limit access to all or a portion of the Platform to users who meet certain eligibility criteria. Identification of these eligibility criteria is in our sole discretion and is subject to change at any time. We reserve the right, in our sole and absolute discretion, to deny you access to the Platform, or any portion of the Platform, including by closing or disconnecting your Eko Account(s), subject to our agreement with you. Subject to applicable federal, state and local law, we will take reasonable steps to notify you if we deny you access to the Platform. You are solely responsible for ensuring that your use of the Platform is in compliance with applicable federal, state and local laws and regulations.

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

## **2. YOUR ACCOUNT AND CREDENTIALS**

Clients will be required to create an Eko Account, which will require a sign-in name (“Sign-In Name”), a password (“Password”), and may be required to provide certain additional information that will assist in authenticating your identity when you log-in in the future (“Unique Identifiers” and together with your Sign-In Name and Password, your “Credentials”). You warrant and represent that all information that you provide to us in connection with your Eko Account is true, accurate, current and complete.

You are solely responsible for the confidentiality and use of your Credentials, as well as for any use or misuse made through your Eko Account. You will immediately inform us if any of your Credentials are lost or stolen or if you suspect any unauthorized use of your Eko Account. We reserve the right to delete or change your Credentials at any time and for any reason, upon notice to you, and we shall have no liability to you for any loss or damage caused by such action.

You may link your Eko Account with third-party financial institutions with which you have customer relationships, maintain accounts or engage in financial transactions and direct us to retrieve and display information from these accounts (your “Third-Party Account Information”). We work with one or more third-party service providers to access this Third-Party Account Information. By linking these accounts or directing us to retrieve your Third-Party Account Information, you are consenting to (i) the processing of your Third Party Account Information, and other personal information you provide that is needed to retrieve your Third Party Account Information, such as your third party account credentials, by us and such service provider(s) in accordance with our Privacy Policy and as permitted by law; and (ii) the use of your Third-Party Account Information by us in connection with your use of the Platform and the management of your Eko Account. You represent and warrant that by linking these accounts or directing us to retrieve your Third-Party Account Information you are not violating any agreement or terms that you are subject to. We do not review the Third-Party Account Information for accuracy, legality

or non-infringement. We are not responsible for the Third-Party Account Information or products and services offered by such third party financial institutions.

When you create an Eko Account with us, you automatically agree to receive various types of alerts relating to your Eko Account via e-mail and mobile notification. You may customize or modify alerts through your Eko Account. We will not include your Credentials in these alerts, but we may include your name, email address and/or information about your Eko Account, and anyone with access to your e-mail or mobile device will be able to view these alerts.

### **3. RESTRICTIONS ON USE**

You will not, and will not authorize, permit, or encourage any third party to: (i) share your Credentials with any third party or allow any third party to access your Eko Account; (ii) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code or interface protocols of the Platform; (iii) resell, distribute, or sublicense the Platform or use any of the foregoing for the benefit of anyone other than you; (iv) remove or modify any proprietary markings or restrictive legends placed on the Platform; (v) use the Platform in violation of any applicable law, rule or regulation, or to build a competitive product or service, or for any purpose not specifically permitted in this Agreement; (vi) interfere with, or attempt to interfere with, the Platform or servers, or any of our security or authentication measures; (vii) introduce, post, or upload to the Platform any data that (a) you do not have the right to use, copy, transmit, distribute, display or make available; (b) infringes or misappropriates any third party intellectual property or other rights; (c) is unsolicited or unauthorized advertising, promotional material, junk, spam, chain letter, pyramid schemes, or any other form of solicitation; (d) is unlawful, obscene, harmful, threatening, harassing, defamatory, or hateful, invades the privacy of any third party, or otherwise objectionable in our sole discretion; (e) contains software viruses or any other computer codes, files or programs designed to interrupt, destroy or limit the functionality of any computer software, or that includes code that is hidden or otherwise surreptitiously contained within other information that you send to us; or (viii) otherwise use the Platform in any manner other than as expressly permitted in these Terms of Use.

### **4. FEES**

If you are a Client, we will charge you a fee to use the Platform, as set forth in the Client Agreement. In addition to the fee that we may charge pursuant to the Client Agreement, the financial institution through which you first accessed the Platform (the “Financial Institution”) may charge you a separate fee in connection with your use of the Platform. This fee is determined by the Financial Institution and shall be payable in accordance with the terms of your agreement with the Financial Institution. We will deduct this fee from your Eko Account during the term of your Client Agreement, on behalf of the Financial Institution.

### **5. TERMINATION**

We reserve the right, in our sole discretion, to restrict, suspend, or terminate these Terms of Use and your access to all or any part of the Platform, at any time and for any reason without prior notice or liability. If you are a Client, your access to the Platform will terminate immediately upon the expiration or earlier termination of the Client Agreement. We reserve the right to change,

suspend, or discontinue all or any part of the Platform at any time without prior notice or liability. Sections 3 through 15 of these Terms of Use shall survive termination.

## **6. DISCLAIMERS**

THE PLATFORM IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT ANY WARRANTIES OF ANY KIND. WE DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE PLATFORM AND ANY CONTENT OR OTHER INFORMATION OR SERVICES PROVIDED THROUGH THE PLATFORM, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT OF THIRD PARTIES’ RIGHTS, AND FITNESS FOR PARTICULAR PURPOSE AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, WE DISCLAIM ANY AND ALL WARRANTIES: (I) REGARDING THE AVAILABILITY, SECURITY, ACCURACY, RELIABILITY, TIMELINESS AND PERFORMANCE OF THE PLATFORM, AND ANY CONTENT OR OTHER INFORMATION OR SERVICES PROVIDED THROUGH THE PLATFORM; (II) THAT THE PLATFORM WILL BE ERROR-FREE OR THAT ANY ERRORS WILL BE CORRECTED; (III) THAT THE PLATFORM WILL BE FREE FROM ELECTRONIC VIRUSES AND OTHER DESTRUCTIVE ELEMENTS; (IV) REGARDING THE PERFORMANCE, ACCURACY, QUALITY, CURRENCY, COMPLETENESS OR USEFULNESS OF ANY INFORMATION PROVIDED BY US THROUGH THE PLATFORM. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES. ACCORDINGLY, SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

IF YOU ARE A VISITOR, THEN YOU UNDERSTAND AND AGREE THAT THE INVESTMENT RESULTS THAT MAY BE OBTAINED FROM INVESTMENT INFORMATION AND FINANCIAL INSIGHTS PROVIDED THROUGH THE PLATFORM CANNOT BE GUARANTEED AND THAT WE CANNOT BE HELD RESPONSIBLE FOR ANY LOSSES OR DAMAGES THAT YOU MAY INCUR AS A RESULT OF RELIANCE ON ANY OF THE FOREGOING. ALL INVESTMENTS ENTAIL A RISK OF LOSS AND YOU MAY LOSE MONEY. AS A VISITOR, YOU FURTHER UNDERSTAND AND AGREE THAT YOUR USE OF THE PLATFORM IS FOR EDUCATIONAL PURPOSES ONLY AND IS NOT INTENDED TO PROVIDE LEGAL, TAX OR FINANCIAL PLANNING ADVISE; YOU ARE RESPONSIBLE FOR YOUR OWN INVESTMENT RESEARCH AND INVESTMENT DECISIONS, THE PLATFORM IS ONLY ONE OF MANY TOOLS THAT YOU MAY USE AS PART OF A COMPREHENSIVE INVESTMENT EDUCATION PROCESS, YOU SHOULD NOT AND WILL NOT RELY ON THE PLATFORM AS THE PRIMARY BASIS FOR YOUR INVESTMENT DECISIONS, AND WE WILL NOT BE LIABLE FOR DECISIONS OR ACTIONS THAT YOU TAKE OR AUTHORIZE A THIRD PARTY TO TAKE ON YOUR BEHALF BASED ON INFORMATION THAT YOU RECEIVE THROUGH THE PLATFORM. IF YOU ARE A CLIENT, WE PROVIDE INVESTMENT MANAGEMENT SERVICES TO YOU, SUBJECT TO THE TERMS OF YOUR CLIENT AGREEMENT WITH US.

NOTHING IN THIS SECTION OR ELSEWHERE IN THIS AGREEMENT SHALL BE INTENDED TO WAIVE ANY RIGHTS UNDER FEDERAL SECURITIES LAWS THAT

CANNOT BE WAIVED, AND IF ANY TERMS HEREIN ATTEMPT TO WAIVE ANY SUCH RIGHTS, THOSE TERMS SHALL BE VOID.

## **7. LIMITATION OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: (I) IN NO EVENT SHALL WE, OR ANY OF OUR AFFILIATES, OR OUR OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS (THE “EKO PARTIES”), BE LIABLE FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, OR INDIRECT DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION/DATA, OR ANY OTHER PECUNIARY LOSS OF ANY KIND ARISING OUT OF THE USE OR INABILITY TO USE THE PLATFORM OR ANY CONTENT, INFORMATION OR SERVICES PROVIDED THROUGH THE PLATFORM, OR OTHERWISE ARISING OUT OF THESE TERMS OF USE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (II) THE AGGREGATE LIABILITY OF THE EKO PARTIES FOR ANY DIRECT DAMAGES NOT ATTRIBUTABLE TO PERSONAL INJURY DUE TO OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT SHALL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE FEES PAID BY YOU TO US IN THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE CLAIM.

## **8. INTELLECTUAL PROPERTY**

We own and shall continue to own all right, title and interest in and to the Platform, and all material, such as software, text, graphics, images, designs, sound recordings, audiovisual works, and other material provided by or on behalf of us to you through the Platform, together with all improvement and modifications to, and derivative works of, the foregoing (collectively, the “Eko Technology”). You have no rights in or to any Eko Technology, except for the limited right to access and use the Eko Technology strictly in accordance with these Terms of Use.

The trademarks, service marks, and logos used and displayed on the Platform may be registered and/or unregistered trademarks or service marks of ours or our licensors (collectively, the “Trademarks”). Nothing on the Platform should be construed as granting, by implication, estoppel, or otherwise, any license or right to use the Trademarks, without our prior written permission specific for each such use. Use of the Trademarks as part of a link to or from any site is prohibited unless establishment of such a link is approved in advance by us in writing. All goodwill generated from the use of the Trademarks inures to the benefit of us or our licensors.

## **9. INDEMNIFICATION**

You agree to defend, indemnify, and hold us and our officers, directors, employees, successors, licensees, and assigns harmless from and against any claims, actions, or demands, including, without limitation, reasonable legal and accounting fees, arising or resulting from your breach of these Terms of Use, or your use or misuse of the Platform. We shall provide notice to you of any such claim, suit, or proceeding and shall assist you, at your expense, in defending any such claim, suit, or proceeding. We reserve the right, at your expense, to assume the exclusive defense and control of any matter that is subject to indemnification under this section. In such case, you agree to cooperate with any reasonable requests assisting our defense of such matter.

## **10. COMMUNICATIONS WITH US**

Although we encourage you to e-mail us, we do not want you to, and you should not, e-mail us any content that contains confidential information. With respect to all e-mails and communications you send to us, including, but not limited to, feedback, questions, comments, suggestions, and the like, we shall be free to use any ideas, concepts, know-how, or techniques contained in your communications for any purpose whatsoever, including but not limited to, the development, production, and marketing of products and services that incorporate such information without compensation or attribution to you.

## **11. EXTERNAL SITES**

The Platform may contain links to third-party websites that are not owned or controlled by us (“External Sites”). These links are provided solely as a convenience to you and not as an endorsement by us of the content or products available through such External Sites. The External Sites may offer third-party goods and services (the “Third Party Products”), and you acknowledge and agree that: (i) we do not manufacture or sell the Third Party Products and thus have no control over the quality, safety, legality or efficacy of any Third Party Product; (ii) we have no involvement in any transaction involving any Third Party Products; and (iii) we shall have no liability with respect to any Third Party Product or any transaction or interaction between you and the provider of any Third Party Product.

The content of such External Sites is developed and provided by others. You should contact the site administrator or webmaster for those External Sites if you have any concerns regarding such links or any content located on such External Sites. We are not responsible for the content of any linked External Sites and do not make any representations regarding the content or accuracy of materials on such External Sites. We strongly advise you to read the terms and conditions and privacy policies of any External Sites that you visit. You should take precautions when downloading files from all websites to protect your computer from viruses and other destructive programs. If you decide to access linked External Sites, you do so at your own risk.

## **12. UNITED STATES-USE ONLY**

The Platform is only available for use in the United States. We make no claims concerning whether the Platform may be appropriate for use outside of the United States. If you access or use the Platform from outside of the United States, you do so at your own risk. Whether inside or outside of the United States, you are solely responsible for ensuring compliance with the laws of your specific jurisdiction.

## **13. BINDING ARBITRATION**

In the event of a dispute arising under or relating to these Terms of Use (“Dispute”), either party may elect to finally and exclusively resolve the dispute by binding arbitration governed by the Federal Arbitration Act (“FAA”). Any election to arbitrate, at any time, shall be final and binding on the other party. IF EITHER PARTY CHOOSES ARBITRATION, NEITHER PARTY SHALL HAVE THE RIGHT TO LITIGATE SUCH CLAIM IN COURT OR TO HAVE A JURY TRIAL, EXCEPT EITHER PARTY MAY BRING ITS CLAIM IN ITS LOCAL SMALL CLAIMS COURT, IF PERMITTED BY THAT SMALL CLAIMS COURT RULES AND IF

WITHIN SUCH COURT'S JURISDICTION. ARBITRATION IS DIFFERENT FROM COURT, AND DISCOVERY AND APPEAL RIGHTS MAY ALSO BE LIMITED IN ARBITRATION. All disputes will be resolved before a neutral arbitrator selected jointly by the parties, whose decision will be final, except for a limited right of appeal under the FAA. The arbitration shall be commenced and conducted by JAMS pursuant to its then current Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those rules, or, where appropriate, pursuant to JAMS' Streamlined Arbitration Rules and Procedures. All applicable JAMS' rules and procedures are available at the JAMS website [www.jamsadr.com](http://www.jamsadr.com). Each party will be responsible for paying any JAMS filing, administrative and arbitrator fees in accordance with JAMS rules. Judgment on the arbitrator's award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The arbitration may be conducted in person, through the submission of documents, by phone, or online. If conducted in person, the arbitration shall take place in the United States county where you reside. The parties may litigate in court to compel arbitration, to stay a proceeding pending arbitration, or to confirm, modify, vacate or enter judgment on the award entered by the arbitrator. The parties shall cooperate in good faith in the voluntary and informal exchange of all non-privileged documents and other information (including electronically stored information) relevant to the Dispute immediately after commencement of the arbitration. Nothing in these Terms of Use will prevent us from seeking injunctive relief in any court of competent jurisdiction as necessary to protect our proprietary interests.

#### **14. CLASS ACTION WAIVER**

You agree that any arbitration or proceeding shall be limited to the Dispute between us and you individually. To the full extent permitted by law, (i) no arbitration or proceeding shall be joined with any other; (ii) there is no right or authority for any Dispute to be arbitrated or resolved on a class action-basis or to utilize class action procedures; and (iii) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons. YOU AGREE THAT YOU MAY BRING CLAIMS AGAINST US ONLY IN YOUR INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.

#### **15. MISCELLANEOUS**

These Terms of Use and any action related thereto will be governed by the laws of the State of New York without regard to its conflict of laws provisions. Except for proceedings commenced by Eko to protect its intellectual property or confidential information which may be brought in any court of competent jurisdiction, the parties mutually agree that any and all disputes arising hereunder shall be resolved exclusively by state or federal courts located in the State of New York.

Our failure to act on or enforce any provision of these Terms of Use shall not be construed as a waiver of that provision or any other provision in these Terms of Use.

No waiver shall be effective against us unless made in writing, and no such waiver shall be construed as a waiver in any other or subsequent instance.

We reserve the right to modify these Terms of Use at any time in our sole discretion. Any changes to these Terms of Use become effective when we post them to the Platform and will be noted by the “last updated” date indicated above. Your continued use of the Platform after we post the modified Terms of Use to the Platform constitutes your agreement to the modified Terms of Use. We further reserve the right, in our sole discretion and without any obligation, to modify, improve, discontinue or correct any errors or omissions in any portion of the Platform or any portion thereof at any time without notice.

We are not responsible for representations made by non-employees or third parties, unless they are expressly authorized, in writing, to speak on our behalf. We do not endorse, authorize or stand behind any representations made by users of our Platform. You will not seek to hold us liable for the representations of third parties.

Your electronic signature or indication of assent to any agreement related to the Platform is sufficient to legally bind you as if you had physically executed a hard copy of that document. You will not dispute the admissibility of an electronically stored copy of an agreement that you electronically signed or to which you indicated your assent. You will not dispute the validity of your electronic signature or indication of assent and you will not dispute the admissibility of the business records maintained by us to reflect and memorialize your electronic signatures and indications of assent.

The section headings are provided merely for convenience and shall not be given any legal import.

You shall not assign these Terms of Use or any of your rights or obligations hereunder, without our prior written consent, which may be withheld in our sole discretion. We may assign these Terms of Use or any of our rights or obligations hereunder without your consent. These Terms of Use will inure to the benefit of each party’s successors and permitted assigns.

These Terms of Use, together with the Privacy Policy, and, if you are a Client, your Client Agreement and any other required agreements with us, constitutes the entire agreement between you and us with respect to the subject matter, and supersedes all previous or contemporaneous agreements, whether written or oral, between you and us with respect to the subject matter hereof.

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