



bitfly staking gmbh

Up to ETH 1 000 000 Floating Rate Investments

Capital Market Prospectus

according to Scheme A of the Austrian Capital Market Act 2019

This investment prospectus (the "**Prospectus**") relates to the offering of up to ETH 1 000 000 uncertificated and non-transferable floating rate investments (*Veranlagungen*) pursuant to § 1 (1) 3 of the Austrian Capital Market Act 2019 (the "**Investments**") of bitfly staking gmbh, FN 569385 g, Wiedner Gürtel 9, 1100 Vienna, Austria (the "**Issuer**"). The Investments are divided into 10 000 000 units (each a "**Unit**") with a nominal value of ETH 0.1 each (the "**Nominal Value**"). The Investments are marketed under the name "**Ethermine Staking**".

The Investments bear interest pursuant to the terms and conditions attached hereto in Schedule 1 (the "**Terms**"). Interest is floating and is equivalent to the ETH.STORE (as defined in chapter C. 'DEFINITIONS') minus a fee, depending on the number of Units subscribed. The Investments constitute senior unsecured obligations of the Issuer which rank equal to all other existing and future financial obligations of the Issuer.

INTEREST IS PAID EXCLUSIVELY IN ETHER REGARDLESS OF THE PRICE DEVELOPMENT OF ETHER. UNTIL SOMETIME AFTER THE MERGE, INVESTORS CANNOT WITHDRAW ETHER OR ANY PART OF THE INVESTMENT.

A public offer is made from 18 August 2022 until 17 August 2027 only in Austria (the "**Offer Period**"). During the Offer Period, the Investments can be subscribed by interested persons (the "**Subscriber(s)**") on the website of the Issuer at <https://staking.ethermine.org> (the "**Website**"). The price per Unit is 100 % of the Nominal Value (the "**Issue Price**").

Prospective Subscribers should consider that the Investments involve risks. For a discussion of certain significant risks, see chapter D. 'RISK FACTORS' starting on page 144. The occurrence of one or more of such risks could result in the loss of some or all of the capital invested. The Investment is suitable only for financially sophisticated investors who are capable of evaluating the merits and risks of such investment and who have sufficient resources to be able to bear losses which may result from the investment.

This Prospectus has been prepared by the Issuer and its legal advisor, Stadler Völkel Rechtsanwälte GmbH, Seilerstätte 24, 1010 Vienna, Austria, in accordance with Scheme A of the Austrian Capital Market Act 2019 and has been audited by Moore Interaudit GmbH, Strubergasse 28, 5020 Salzburg, Austria. The prospectus controller examines the Prospectus only in respect of its correctness and completeness pursuant to § 7 of the Austrian Capital Market Act 2019.

The Investments have not been and will not be registered under the U.S. Securities Act of 1933, as amended (the "**U.S. Securities Act**") or with any securities regulatory authority of any U.S. State or other jurisdiction of the United States and may not be offered, sold or delivered within the United States to, or for the account or benefit of U.S. Persons (as defined in Regulation S under the U.S. Securities Act), except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and applicable state securities laws.

17 August 2022

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A. IMPORTANT NOTICES

RESPONSIBILITY STATEMENT

The Issuer, with its registered office at Wiedner Gürtel 9, 1100 Vienna, Austria is responsible for the information given in this Prospectus. The Issuer hereby declares that, to the best of the knowledge of the Issuer, the information contained in this Prospectus is in accordance with the facts and makes no omission likely to affect its import.

FORWARD-LOOKING STATEMENTS

This Prospectus contains certain forward-looking statements. A forward-looking statement is a statement that does not relate to historical facts and events. They are based on analyses or forecasts of future results and estimates of amounts not yet determinable or foreseeable. These forward-looking statements are identified by the use of terms and phrases such as "anticipate", "believe", "could", "estimate", "expect", "intend", "may", "plan", "predict", "project", "will" and similar terms and phrases, including references and assumptions. This applies, in particular, to statements in this Prospectus containing information on future earning capacity, plans and expectations regarding the Issuer's business and management, its growth and profitability, and general economic and regulatory conditions and other factors that affect it.

Forward-looking statements in this Prospectus are based on current estimates and assumptions that the Issuer makes to the best of its present knowledge. These forward-looking statements are subject to risks, uncertainties and other factors which could cause actual results, including the Issuer's financial condition and results of operations, to differ materially from and be worse than results that have expressly or implicitly been assumed or described in these forward-looking statements. The Issuer's business is also subject to a number of risks and uncertainties that could cause a forward-looking statement, estimate or prediction in this Prospectus to become inaccurate. Accordingly, investors are strongly advised to read the section on risk factors in Chapter D. This section includes more detailed descriptions of factors that might have an impact on the Issuer's business and the markets in which it operates.

In light of these risks, uncertainties and assumptions, future events described in this Prospectus may not occur. In addition, none of the Issuer assumes any obligation, except as required by law, to update any forward-looking statement or to conform these forward-looking statements to actual events or developments.

NOTICE

This Prospectus should be read and understood in conjunction with any other documents incorporated herein by reference. The Issuer has confirmed that this Prospectus contains all information with respect to the Issuer and the Investments which is material to their offer and issue, the information contained herein with respect to the Issuer and the Investments is accurate in all material respects and not misleading, the opinions and intentions expressed therein with respect to the Issuer and the Investments are honestly held, there are no other facts with respect to the Issuer or the Investments the omission of which would make the Prospectus misleading in any material respect; and that all reasonable enquiries have been made to ascertain such facts and to verify the accuracy of all statements contained herein.

No person has been authorized to give any information or to make any representations other than those contained in this Prospectus and, if given or made, such information or representations must not be relied upon as having been authorized by or on behalf of the Issuer.

Except for the Issuer, no other person mentioned in this Prospectus is responsible for the information contained in this Prospectus or any other document incorporated herein by reference, and accordingly, and to the extent permitted by the law of any relevant jurisdiction, none of these persons make any representation or warranty or accept any responsibility as to the accuracy and completeness of the information contained in any of these documents.

Each investor contemplating purchasing any Investments should make its own independent investigation of the financial condition and affairs, and its own appraisal of the creditworthiness of the Issuer. This Prospectus does not constitute an offer of Investments or an invitation by or on behalf of the Issuer to purchase any Investments. Neither this Prospectus nor any other information supplied in connection with the Investments should be considered as a recommendation by the Issuer to a recipient hereof and thereof that such recipient should purchase any Investments.

The Issuer does not consent that this Prospectus is used for or in connection with the subsequent resale or final placement of the Investments in connection with an offer of Investments to the public within the meaning of the Austrian Capital Market Act 2019.

The language of this Prospectus is English. This Prospectus reflects the status as of its date. Neither the delivery of this Prospectus nor the offering, sale or delivery of the Investments shall, in any circumstance, create any implication that the information contained herein is accurate and complete subsequent to the date hereof or that there has been no adverse change in the financial situation of the Issuer since such date or any other information supplied in connection with the

issue of the Investments is accurate at any time subsequent to the date on which it is supplied or, if different, the date indicated in the document containing the same.

The distribution of this Prospectus and the offering, sale and delivery of the Investments in certain jurisdictions may be restricted by law. Persons into whose possession this Prospectus comes are required by the Issuer to inform themselves about and to observe any such restrictions.

This Prospectus may only be used for the purpose for which it has been published. It does not constitute an offer or an invitation to subscribe for or purchase any Investments. This Prospectus may not be used for the purpose of an offer or solicitation by anyone in any jurisdiction in which such offer or solicitation is not authorized or to any person to whom it is unlawful to make such an offer or solicitation.

ROUNDING ADJUSTMENTS

Rounding adjustments have been made in calculating some of the financial information included in this Prospectus and are exact arithmetic aggregations of the actual figures. Accordingly, in certain cases, the sum of the numbers in a column in a table may not conform to the total figure given for that column. The percentages contained in this Prospectus were calculated not on the basis of rounded figures but of exact figures (before approximation).

B. INTRODUCTION

This introduction is intended to provide a simple and easy-to-understand overview of what is offered under this Prospectus. To that end, it is relevant to understand the business model of the Issuer. Bitfly staking gmbh, the Issuer, is an Austrian-based company and part of the bitfly Group. The bitfly Group has been active since 2017 and is most known for providing comprehensive blockchain explorers, namely Etherchain for the Ethereum Mainnet (<https://etherchain.org/>), and Beaconcha.in for the Beacon Chain (<https://beaconcha.in/>). Besides that, the bitfly Group operates the world's largest mining pool for Ethereum (and other virtual currencies), namely Ethermine (<https://ethermine.org/>), with a market share hovering between a quarter to more than a third of the hashrate in the entire Ethereum Network.¹

The Issuer, bitfly staking gmbh, bundles the Group's operations in terms of its activities related to staking on the Ethereum Network. Staking on the Ethereum Network means depositing 32 ETH to activate Validator software. Validators are service providers on the Ethereum Network that propose blocks and make attestations and receive rewards in Ether in return. In addition to operating Validators on its own account, the Issuer offers a non-custodial staking service, an MEV relay service and operates its own MEV trading bot. The Issuer aims to achieve synergies between these services mainly by increasing the number of Validators it operates. The more Validators it operates, the more successful the Issuer expects its business operations to be.

With this offering of Investments, bitfly intends to raise funds to expand its staking-related operations. Bitfly is committed to Ethereum. With the exception of certain expenses that necessarily need to be made in Euro, most of the expenses of the Issuer are paid in Ether. It therefore makes sense for bitfly to offer the Investments in Ether and to also make payments in the form of Ether.

Put in simple terms, when you decide to purchase the Investments offered under this Prospectus using Ether, bitfly promises you the payment of interest in Ether and the repayment of the amount of Ether you have invested. The promised interest rate is intended to be objective and transparent. To this end, the Calculation Agent (the parent company of the Issuer) has created a new reference rate called the Ether Staking Offered Rate (ETH.STORE), which basically represents the average financial return validators on the Ethereum Network have achieved in a 24-hour period. From this variable interest rate, bitfly deducts a percentage that is dependent on the amount of Ether you decide to invest. The more Ether you invest, the less of a deduction bitfly makes.

¹ <https://web.archive.org/web/20220602134908/https://etherscan.io/stat/miner?range=14&blocktype=blocks>.

Bitfly does not limit itself in terms of how it may use the funds raised through the sale of Investments. However, it is fair to assume that a large part of the funds raised will be used by bitfly to set up and operate additional Validators on the Ethereum Network. However, as of yet, the transition to proof-of-stake (i.e., the Merge) has not been completed, and a number of functions are not operational. For example, Validators do not have access to certain rewards because the function of accessing such rewards has not yet been implemented. For this reason, the Investments include certain limitations on interest payouts and repayment of the invested Ether. Put in simple terms, payouts and repayments will only occur after the Validator-withdrawing function(s) in the Ethereum Network have been implemented.

If you decide to purchase the Investments offered under this Prospectus as a substitute for operating your own Validator, please note that these are two fundamentally different approaches. While you retain full control over your Ether when staking them yourself in a Validator, you hand over your Ether to bitfly when purchasing the Investments. Not your keys, not your coins. Bitfly will use its best efforts to ensure its business operations are successful in order to be able to keep all promises made in association with the Investments. However, be aware that you expose yourself to risks you otherwise would not face if you operated your own Validator. We encourage you to thoroughly review the discussion of risks in chapter D. 'RISK FACTORS' starting on page 144.

C. DEFINITIONS

Accrued Interest	means Interest which has accrued in accordance with § 4 of the Terms but which has not yet been paid out in accordance with § 5 of the Terms.
Active Validators	means all Validators that attest and propose blocks during an entire Reward Day.
Austrian Corporate Income Tax Act	means the <i>Körperschaftsteuergesetz 1988</i> , as amended.
Austrian Federal Fiscal Code	means the <i>Bundesabgabenordnung</i> , as amended.
Austrian Financial Markets Anti-Money Laundering Act	means the <i>Bundesgesetz zur Verhinderung der Geldwäscherei und Terrorismus-finanzierung im Finanzmarkt</i> , as amended.
Austrian Income Tax Act	means the <i>Einkommensteuergesetz 1988</i> , as amended.
Austrian Insolvency Act	means the <i>Insolvenzordnung</i> , as amended.
Austrian Capital Market Act 2019	means the <i>Bundesgesetz über das öffentliche Anbieten von Wertpapieren und anderen Kapitalveranlagungen</i> , as amended.
Austrian Companies Register	means the Austrian companies register as maintained by the Austrian higher courts in commercial matters (<i>Firmenbuchgerichte</i>).
Beacon Chain	means the consensus layer of the Ethereum Network launched on 1 December 2020 that achieves consensus by proof-of-stake.
Beaconcha.in	means the Beacon Chain explorer developed and operated by the bitfly Group available at https://beaconcha.in/ .
Calculation Agent	means bitfly gmbh, FN 472953 w, Wiedner Gürtel 9, 1100 Vienna, Austria.

Consensus Rewards	means rewards issued to Validators for proposing and attesting in accordance with the consensus rules of the Ethereum Network.
Effective Balance	means the Ether balance of a Validator used to determine the size of a reward or penalty on the Ethereum Network.
Epoch	means a unit of measure on the Beacon Chain that consists of 32 slots.
Epoch, finalized	means an Epoch that precedes at least two justified Epochs.
Epoch, justified	means an Epoch in which more than two-thirds of the attesting Validators agree on current state of the network.
ETH.STORE	<p>means the rate <i>per annum</i> determined by the Calculation Agent by dividing (i) the Total Staking Rewards by (ii) the Total Effective Balance; ETH.STORE is short for Ether Staking Offered Rate.</p> <p><i>Explanation: ETH.STORE is a reference rate that represents the average financial return validators on the Ethereum Network have achieved in a 24-hour period; it represents the rate of return an investor could reasonably expect to achieve by staking Ether on the Ethereum Network. The ETH.STORE is independent of the Issuer's (or any other single validator's) performance.</i></p>
Ether or ETH	The native currency of the Ethereum Network.
Ethereum Mainnet	means the execution layer of the Ethereum Network that achieves consensus by proof-of-work before the Merge.
Ethereum Network	means the open-source, public, blockchain-based distributed computing platform featuring smart contract functionality that launched on 30 July 2015 and is recognized by the official Go Ethereum client.
Ethermine Staking	the name under which the Investments are marketed.

EU AML5 Directive	means Directive (EU) 2018/843 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended.
Fee Rate	means, in accordance with § 4 (1) of the Terms, the number of basis points the Issuer deducts from the ETH.STORE when calculating Interest; the applicable Fee Rate is based on the aggregate Nominal Value of the Units held by the Investor on a Reward Day.
Group	means bitfly holding gmbh, FN 514211 v, Wiedner Gürtel 9, 1100 Vienna, Austria as well as all companies held, directly or indirectly, by bitfly holding gmbh.
Interest	means the consideration paid by the Issuer to the Investor for the Investment in accordance with § 4 (1) of the Terms; Interest is floating and equals the ETH.STORE minus the Fee Rate.
Investment Address	means, in accordance with § 3 (2) (b) of the Terms, an Ethereum wallet address provided by the Issuer to which the Subscriber pays the Investment Amount and the processing fee in Ether.
Investment Amount	means, in accordance with § 3 (1) of the Terms, the Nominal Value multiplied by the number of Units subscribed by a Subscriber.
Investment Date	means, in accordance with § 3 (3) of the Terms, the Reward Day the Issuer accepts the Subscription.
Investments	means the investments (<i>Veranlagungen</i>) which are subject of this Prospectus and the Terms of which are attached hereto as <u>Annex 1</u> .
Investor	means a Subscriber on and after the Investment Date.
Issue Price	means the price for a single Unit of the Investments which equals their Nominal Value.
Issuer	means bitfly staking gmbh, FN 569385 g, Wiedner Gürtel 9, 1100 Vienna, Austria.

Merge	means the merge of the Beacon Chain with the Ethereum Mainnet, transitioning the consensus mechanism of the Ethereum Network from proof-of-work to proof-of-stake, which is expected to occur in 2022 or 2023.
MEV	stands for "maximum extractable value" and means the maximum value that can be extracted from block production in excess of the standard block reward and gas fees by including, excluding, and changing the order of transactions in a block.
MiFID II	means Directive 2014/65/EU of 15 May 2014 on markets in financial instruments.
Minimum Investment Amount	means one (1) Unit, in accordance with § 3 (1) of the Terms.
Nominal Value	means ETH 0.1 per Unit, in accordance with § 1 (2) of the Terms.
Notice Period	means, in accordance with § 6 (2) of the Terms, twelve (12) weeks.
Offer Period	means the period from 18 August 2022 until 17 August 2027 in which the public offer of the Investments is made.
Payout	means, in accordance with § 5 (2) of the Terms, each payment of Accrued Interest to the Investor.
Payout Address	means, in accordance with § 5 (1) of the Terms, a specific Ethereum address on which the Investor wishes to receive the Accrued Interest.
Payout Date	means, in accordance with § 5 (2) of the Terms, the date the Issuer will fulfill a Payout Request by the Investor, which, unless the Issuer is required by law, administrative ordinance or a court ruling to do otherwise, shall occur without undue delay.
Payout Request	means, in accordance with § 5 (1) of the Terms, a request of the Investor to receive Accrued Interest on a specific Ethereum address.

Prospectus	means this Prospectus that relates to the Public Offer of ETH 1 000 000 Investments including all documents incorporated by reference and any Supplements thereto.
Public Offer	means the public offer of the Investments made in Austria only.
Repayment	means, in the event of termination of the Investments, in accordance with § 6 (3) of the Terms, payment to the Investor on the Termination Date of the Nominal Value of each terminated Unit and Accrued Interest on the terminated Units.
Reward Day	means the period of elapsed time that begins at 12:00:23 UTC and ends 24 hours later at 12:00:22 UTC.
Staking	means depositing 32 ETH to activate Validator software on the Ethereum Network.
Subscriber(s)	means, in accordance with § 3 (1) of the Terms, a person interested in purchasing the Investments.
Subscription	means, in accordance with § 3 (2) of the Terms, the process to validly subscribe to the Investments.
Termination Date	means the last Reward Day of the calendar month the end of the Notice Period occurs in.
Terms	means the terms and conditions of the Investments as attached hereto as <u>Annex 1</u> .
Total Effective Balance	means the sum of Effective Balances of Active Validators as at the start of a Reward Day.
Total Staking Rewards	means the sum of (i) Consensus Rewards and (ii) Transaction Fees earned by Active Validators in a Reward Day.
Transaction Fees	means fees received by validators for processing transactions on the Ethereum Network.

U.S. Securities Act	means the U.S. Securities Act of 1933, as amended.
Unit	means, in accordance with § 1 (2) of the Terms a single unit in the Investments with a Nominal Value of ETH 0.1 each.
UTC	means Coordinated Universal Time.
Validator	means a service provider on the Ethereum Network that proposes blocks and makes attestations.
Waiting Period	means the period of time determined by the Issuer and published under https://staking.ethermine.org/statistics that begins twelve (12) hours after the transfer of the Investment Amount has been confirmed by sixty-five (65) blocks.
Website	means https://staking.ethermine.org .

D. RISK FACTORS

Investors should carefully consider the following risk factors in evaluating the Issuer's business and their investment in the Investments offered pursuant to this Prospectus. The Issuer considers the risks set out below to be the most material risks relating to the Investments. Such risks might turn out not to be complete or prove not to be exhaustive. In addition to these risks, there may be risks that the Issuer does not yet know of or that the Issuer currently deems to be immaterial to its business. The risks described below may materialize individually or cumulatively. If any of the following risks occur, the Issuer's business, net assets, financial condition, cash flow and results of operations could be materially adversely affected, the value of the Investments could be impaired and Investors could lose all or part of their investment.

Risks specific to the Issuer

- **The Issuer is a young company and operates in a new business field. It is uncertain whether the Issuer's business activity can be implemented and operated profitably in the long run. If the Issuer fails to operate profitably, it may be unable to perform its obligations under the Investments, potentially resulting in a loss for the Investor.**

Although the bitfly Group has been developing software solutions in the crypto industry for some time now, the Issuer was founded in December 2021 and is operating in a new business field, namely operating Validators on the Ethereum Network, among other things. The Issuer's business, as described in this Prospectus, is therefore untested in the long run. This presents multiple risks. First, there is little data on how the risks described herein may materialize, making it difficult for the Issuer to plan ahead and mitigate such risks. Second, unexpected costs and obstacles may arise, especially in the early phase of the Issuer's existence. Third, it cannot be predicted whether the planned business activities can be operated profitably in the long run. All these circumstances could have a material adverse effect on the Issuer's business, results of operations and financial condition and therefore have a negative impact on its ability to perform its obligations under the Investments.

- **Under the Terms, Investors may terminate the Investments after five years at the latest, even if withdrawals are not possible by that time. If the Issuer is unable to withdraw its staked Ether before Investors are able to terminate the Investments, an insolvency of the Issuer is likely to occur. In such a case, repayment of the invested capital cannot be guaranteed.**

Under § 6 of the Terms, Investors may terminate the Investments—and thereby trigger the Issuer's obligation to pay to the Investor the Nominal Amount and any Accrued Interest—

at the earlier of (a) when the Ethereum protocol allows the withdrawal of Consensus Rewards and Transaction Fees, or (b) for a period of five years starting on the Investment Date, subject to a notice period of twelve weeks. The Issuer expects that it will be possible to withdraw staked Ether sometime after the Merge, which is expected to take place in 2022 or 2023, although this cannot be guaranteed. It is therefore possible that Investors may terminate the Investments before the Issuer is able to withdraw its staked Ether. Because the Issuer also expects to use the staked Ether (as well as the staking rewards earned therefrom) to fulfill its repayment obligations pursuant to the Investments, the Issuer's inability to withdraw its staked Ether might prevent the Issuer from being able to fulfill these obligations and might trigger the Issuer's insolvency pursuant to the Austrian Insolvency Act (*Insolvenzordnung*; IO). In such a case, the Issuer plans to fulfill its obligations and avoid insolvency by obtaining short-term financing or by selling its Validators to a third party.

In the case of insolvency or bankruptcy proceedings, repayment of the invested capital cannot be guaranteed. The Investments rank *pari passu* with the claims of all the Issuer's other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally. This means that investors do not have first priority over the Issuer's assets, which may result in losses for investors in the case of a restructuring or liquidation of the Issuer. A total loss of the invested capital cannot be ruled out.

- **The Issuer may be targeted by criminals seeking to obtain private keys to steal Ether held or staked by the Issuer. These Ether are the basis for the Issuer's operations. If criminals are successful in stealing Ether from the Issuer, it could result in the halting of the Issuer's operations and a loss of the Issuer's assets, which could result in a loss for the Investor.**

The Issuer is under a constant threat of criminals, particularly hackers, seeking to steal the Ether held or staked by the Issuer. Anyone who circumvents the Issuer's security measures could misappropriate proprietary information or cause interruptions in services or operations. In the recent past, computer viruses and software programs that disable or impair computers have been distributed and have rapidly spread over the Internet. Computer viruses could be introduced into the Issuer's systems which could disrupt the functionality or make it vulnerable to attacks. Such computer viruses could also be used in an attempt to steal private keys or other operations-related information.

The Issuer has implemented security measures to counteract attempted breaches of its systems. Nonetheless, these security measures may be inadequate to prevent security breaches. The Issuer may be required to spend large portions of its capital to protect against

the threat of security breaches and to alleviate problems caused by breaches as well as by any unplanned unavailability of the Issuer's internal systems.

Furthermore, if an actual or perceived breach of the Issuer's security systems occurs, allowing others to access customer data, regardless of whether the breach is attributable to the Issuer's services, the market perception of the Issuer's services could be harmed. Because the techniques used by computer hackers to access or sabotage networks change frequently and may not be recognized until launched against a target, the Issuer may be unable to anticipate an attack. Alleviating any of these problems could require significant expenditures by the Issuer and diversion of technical resources from development efforts. Additionally, these efforts could cause interruptions of the availability of its Validators, which could expose the Issuer to slashing (see the risk factor beginning "The Issuer's Validators may be subject to stake penalties, slashing and ejections"). All these circumstances could have a material adverse effect on the Issuer's business, results of operations and financial condition.

- **The managing director of the Issuer indirectly has sole control over the Issuer as sole shareholder of bitfly holding gmbh. Conflicts of interest may occur between the ownership-perspective and the operational management perspective of the Issuer. Such conflicts of interest may negatively impact the Investments, potentially resulting in a loss for the Investor.**

In general, Austrian limited liability companies, such as the Issuer, are represented by their managing directors. Managing directors are obliged to carry out the management of the company while safeguarding the interests of the company they represent. In doing so, they need to observe the diligence and care of a prudent entrepreneur. However, managing directors are bound by the instructions of the shareholders (for example in the form of shareholder resolutions, rules of procedures or otherwise) in terms of operational management of the company. In order to avoid conflicts of interest and safeguard prudent entrepreneurship, the Issuer plans to establish a three-member advisory board (*Beirat*) nominated by shareholders holding at least 20 % interest in the Issuer. Since the Issuer is currently held by a sole shareholder, that sole shareholder will have the sole authority to nominate the members of the advisory board. The advisory board will advise and supervise the sole managing director, who is obliged to obtain prior consent for certain business decisions.

The sole managing director of the Issuer is at the same time (i) the sole shareholder and sole managing director of bitfly holding gmbh, as well as (ii) the sole managing director of bitfly gmbh, the Issuer's sole shareholder. Consequently, the sole managing director of the

Issuer therefore controls the entire bitfly Group. Ownership interests are independent of the interests of the Issuer as a company and are not always in line. Also, the sole managing director and sole shareholder is currently the only person having the right to nominate members to the advisory board, potentially limiting its intended purpose to supervise the Issuer. In case interest from an ownership perspective deviate from interests on an operational management level of the Issuer, such conflicts may negatively impact the Investments, potentially resulting in a loss for the Investor.

- **The Issuer depends on key team members with extensive knowledge about the crypto industry and may suffer material losses if one or several key team members and/or managing directors decide to leave the Issuer or if material developments and trends in the crypto industry are not timely recognized.**

The Issuer currently has a core team of seven members. The Issuer's success depends on this skilled core team, who have many years of experience in the crypto industry. In addition, the Issuer may suffer material losses if the core team fails to recognize, or draw false conclusions about, significant developments and trends in the crypto industry, which is still very young and fast developing. As a result, policy decisions may be taken that may be unprofitable in achieving the long-term corporate objectives and, additionally, could be difficult to reverse. All these circumstances could have a material adverse effect on the Issuer's business, results of operations and financial condition.

- **Long queues for activating or exiting Validators may disrupt the Issuer's operations, particularly with regard to operating Validators, which may negatively affect the Issuer's business, results of operations and financial condition.**

On the Beacon Chain, only four Validators may be activated or exited, respectively, per Epoch. The remaining Validators that intend to enter or exit the Beacon Chain are placed in a queue. Because one Epoch lasts approximately 6.4 minutes and there are, as at the date of this Prospectus, roughly 400,000 active Validators as of the date of this Prospectus,² the queue to exit the Beacon Chain could last hours, days or even months. The queue to activate a Validator could be just as long. Long exit queues in particular may occur shortly after the

² <https://web.archive.org/web/20220602135125/https://beaconscan.com/stat/validator>.

Merge as Validator operators seek to realize profit by withdrawing their Validator rewards and staked Ether.

Long queues for activating or exiting Validators may disrupt the Issuer's operations, particularly with regard to operating Validators. Although the Issuer intends to maintain sufficient liquidity to fulfill its payment obligations under the Investments, long exit queues may harm the Issuer's ability to access additional liquidity if necessary. Moreover, long entry queues may prevent the Issuer from earning Validator rewards while Interest is accruing under the Investments, harming the Issuer's financial condition.

All of the above factors may negatively affect the Issuer's business, results of operations and financial condition.

- **The Issuer's Validators may be subject to stake penalties, slashings and ejections, which may negatively affect the Issuer's business, results of operations and financial condition.**

Validators are penalized for going offline or behaving maliciously. Penalties are assessed in Ether and are deducted from the Validator's staking balance. If the staking balance falls below 16 Ether, the Validator is ejected from the network and no longer receives staking rewards. The penalty amount depends on several factors, including the severity of the infraction, the Validator's staking balance and the number of other Validators that are online at the time of the infraction.

If a Validator is offline and more than a supermajority (2/3) of the other Validators remain online, the offline Validator is assessed a penalty equal to the number of rewards the Validator would have earned had it been online. In other words, a Validator that has an uptime of less than 50 % can expect its staking balance to decrease over time.

If a Validator is offline and less than a supermajority of the other Validators remains online, which is considered to be an unlikely scenario, the offline Validator is penalized with the aim of bringing the ratio of online Validators to total Validators back to a supermajority. In such a scenario, the offline Validator stands to lose up to 50 % of its staked Ether over a period of 21 days.

If a Validator acts maliciously (e.g., by double voting), its staking balance is "slashed" by a minimum amount of 1 Ether. The slashing amount depends on the number of Validators

slashed at the same time. In addition, the Validator is prevented from further participating in the network and is forcibly ejected from the staking pool.

If, for whatever reason, the Issuer's Validators are taken offline or do not comply with the proof-of-stake consensus rules, those Validators may be subject to penalties or slashing. If a Validator's staking balance falls below 16 Ether, it would be ejected from the Ethereum network and would no longer receive staking rewards.

All of the above factors may negatively affect the Issuer's business, results of operations and financial condition.

- **Software bugs in Ethereum clients could result in stake penalties, slashings and ejections of the Issuer's Validators as well as the finalization of a faulty Beacon Chain. In such a case, the Issuer's business, results of operations and financial condition may be negatively affected.**

Validators access the Beacon Chain by using a software client. There are several clients that provide access such as Prysm, Lighthouse and Nimbus.

Software bugs in Ethereum clients could result in forks of the Ethereum blockchain or make the network vulnerable to malicious activity (e.g., double-spending attacks). For example, in August 2021, a software bug in a popular client for the Ethereum Mainnet caused a fork of the Ethereum blockchain. In the Beacon Chain, a client software bug could make Validators malfunction, causing the Validators to be subject to stake penalties, slashings or ejections. A software bug affecting a significant number of Validators could also cause a faulty Beacon Chain to be finalized.

In addition, the Issuer plans to make modifications to the Ethereum clients with the aim of increasing efficiency. Software bugs that are caused by the Issuer making modifications in such a manner could result stake penalties, slashings and ejections of the Issuer's Validators.

The Issuer currently uses Lighthouse to connect its Validators to the Beacon Chain. In the future, the Issuer plans to use multiple clients in order to mitigate the risk of failure of any

one client. If there are software bugs in the clients used by the Issuer, its business, results of operations and financial condition may be negatively affected.

- **Negative publicity due to customer complaints, litigation or other factors as well as a negative public perception of the Issuer or the crypto industry might harm the Issuer's business success.**

The Issuer relies on its reputation as well as the reputation of the crypto industry as a whole in order to be able to attract new and retain existing customers as well as to attract investors to invest in the Issuer. The crypto industry is frequently subject to negative publicity, particularly in connection with fraud, programming errors and hacking events. Such negative publicity as well as negative publicity about the Issuer itself, including the reliability of its services, might adversely affect the Issuer's reputation and confidence in its services. All these circumstances could have a material adverse effect on the Issuer's business, results of operations and financial condition.

- **The Issuer is subject to general contractual risks such as poor performance, insolvencies of contracting parties, breaches of contract or contractual disruptions.**

The Issuer is subject to general contractual risks: defective products and services, poor performance, insolvencies of contractors or other breaches of contract or disruptions of contractual obligations can lead to legal disputes, delays and significant additional costs. In individual cases, the Issuer may conduct renegotiations and decide whether a legal dispute would make sense, taking into account short-term and long-term financial consequences. All these circumstances could have a material adverse effect on the Issuer's business, results of operations and financial condition.

- **If the Issuer loses access to its private keys or otherwise loses control over its Validators, its business, results of operations and financial condition may be negatively affected.**

Every validator comes with two sets of public and private keys, the 'validator keys' and the 'withdrawal keys'. The validator keys are required to actively sign on-chain operations such as block proposals and attestations. The withdrawal keys are required to withdraw the validator Ether balance once this functionality is enabled on the Ethereum protocol. It is impossible to withdraw the validator Ether balance without the withdrawal keys. In addition, because anyone with knowledge of a private withdrawal key will have the ability to withdraw the respective validator Ether balance, it is critical that the private withdrawal keys for the Issuer's Validators are kept safe and known only to the Issuer.

The Issuer stores the private withdrawal keys in 'cold storage' (i.e., offline) using state-of-the-art custody and security techniques. Knowledge of the private withdrawal keys is entrusted to a small number of key individuals within the Issuer. However, no solution is perfect, and there is always a risk that the private keys are lost, destroyed or stolen.

All these circumstances could have a material adverse effect on the Issuer's business, results of operations and financial condition.

- **The Issuer depends on computing infrastructure operated by Amazon Web Services (AWS), Microsoft Azure and other third parties to operate Validators and to provide its services. Any disruption to the Issuer's computing infrastructure could adversely affect the Issuer's business, financial condition and results of operations.**

The Issuer relies on the technology, infrastructure, and software applications of AWS, Microsoft Azure and other third parties in order to operate Validators and to provide its services. If any of these third-party services experience errors, disruptions, security issues, or other performance deficiencies, or if these services or software fail or become unavailable due to extended outages, interruptions, defects, or otherwise, the Issuer's Validators might go offline and its business operations might be interrupted. In such a case, the Issuer expects that it could bring its Validators back online within one day. Nevertheless, the Issuer's business, results of operations and financial condition may be negatively affected.

Risks specific to the Issuer's industry

- **Austrian banks are hesitant to establish business relationships with clients in the crypto industry. The Issuer is dependent on good banking relations for its business. If the Issuer's bank account is terminated, its business could be substantially impeded.**

Austrian banks are hesitant to engage with clients that are active in crypto related businesses. To the knowledge of the Issuer, this is mostly due to applicable anti-money laundering regulation that requires banks to assess the risks for money laundering and terrorist financing for all their clients. As a general rule of thumb, if a company is handling large quantities of cash, this is regarded by banks as a factor increasing the risk for money laundering. Likewise, the handling of crypto currencies is also regarded as such a risk-increasing factor. Since the Issuer is in the business validating blocks and thereby generating new Ether coins, their origin can be verified rather easily which the Issuer considers as a factor that would decrease its risk profile.

Depending on the risk profile of a client, banks are required by law to actively monitor their client's financial conduct to a certain degree. Also, banks could face substantial penalties if they are found guilty of not having complied with anti-money laundering regulation. A large number of Austrian banks, in particular larger institutions, have therefore made a general policy decision not to maintain a business relationship with clients in the crypto industry. This is beginning to shift.

As of the date of this Prospectus, the Issuer maintains a good banking relationship with an Austrian bank. However, there are a number of factors that could incentivize or outright require its current bank to terminate the business relationship. Such factors could comprise both legal and economic aspects. For example, guidelines issued by a regulator on the national or European level imposing additional obligations could render the business relationship uneconomical; or a correspondent bank could request that the account be terminated as otherwise this correspondent bank would not wish to continue the business relationship with the Issuer's bank.

If the Issuer's main bank account is terminated, it would immediately try and find a replacement. The loss of the Issuer's bank account could, however, also result in its inability to timely fulfill payment obligations. A failure to a timely payment could have material negative ramifications, for example if suppliers the Issuer cooperates with decide to discontinue the business relationship.

All these circumstances could have a material adverse effect on the Issuer's business, results of operations and financial condition.

- **Operating in the Issuer's business successfully requires to keep pace with rapid technological changes that affect the crypto industry.**

The market in which the Issuer operates is characterized by rapid, and sometimes disruptive, technological developments, evolving industry standards, enhancements, changes in customer requirements and customer behavior and a limited ability to accurately forecast future developments. The future success of the Issuer depends in part on its ability to continue to develop technology solutions that keep pace with evolving industry standards and changing customer demands.

The process of developing and using new technology is not only uncertain, but also complex, and failing to accurately predict customers' changing needs and emerging technological trends could severely harm the Issuer's business. Since the Issuer is required to commit significant resources to software development before knowing whether these investments

are cost-efficient, the Issuer always takes the risk of devoting resources for developments that might be outdated in a short period of time.

If the industry does not evolve as the Issuer believes it will, or if the strategy for addressing this evolution is not successful, many of the Issuer's strategic initiatives and investments may be of no or limited value. Furthermore, the Issuer may not successfully execute a strategic plan because of errors in planning or timing, technical hurdles that the Issuer fails to overcome, or a lack of appropriate resources. This could result in competitors taking advantage and providing similar operations, in which case the loss of market share might be imminent.

All these circumstances could have a material adverse effect on the Issuer's business, results of operations and financial condition.

- **The regulation of the crypto industry in Austria, the European Union and worldwide is quickly developing. The Issuer may become obligated to obtain licenses, registrations or authorizations to carry out its business activities in Austria or elsewhere. Any such requirement could have a material adverse effect on the Issuer's business, results of operations and financial condition.**

As an Austrian limited liability company, the Issuer is subject to Austrian and European Union supervisory laws in connection with its business activities. The regulation of business activities involving crypto currencies in Austria and the European Union is rapidly evolving. An example of this is the proposed EU Markets in Crypto-asset Regulation (MiCAR), which seeks to regulate, *inter alia*, providers of so-called 'crypto-asset services' such as crypto custody and exchange services. The current draft imposes an authorization requirement as well as prudential and organizational requirements on such crypto-asset service providers. MiCAR is expected to enter into force around the end of 2022.

Another example is proposed EU Anti-Money Laundering Regulation, which would subject crypto-asset service providers to customer identification and due diligence obligations as well as internal organization and recordkeeping requirements. This Regulation is expected to enter into force around 2024.

Although the Issuer, based on its understanding of the draft proposals as of the date of this Prospectus, does not expect to be subject to any license, registration or authorization obligation in Austria, such proposals may change in the future, or new laws or regulations may

subject the Issuer to increased obligations or prohibit the Issuer from engaging in certain activities.

If the business activities of the Issuer trigger an obligation to obtain a registration, license or authorization, the Issuer intends to obtain such registration, license or authorization. However, it is possible that the Issuer will not be able to fulfil certain requirements in a timely manner or may not receive the necessary approval at all, which could render the Issuer's business model impossible and provide sufficient grounds to terminate the Investments for cause (*außerordentliche Kündigung*). Legal or regulatory changes might lead to complaints, claims, obligations or other legal burdens of the Issuer that might materially affect the Issuers' financial situation or ability to obtain the required authorization.

Risks specific to the Investments

- **The Investments bear a floating interest rate which exposes Investors to the risk of fluctuating interest rate levels which make it impossible to determine the yield of the Investment.**

Investments with a floating interest rate tend to be volatile. Investors therefore are exposed to the risk of fluctuating interest rate levels and uncertain interest income. Fluctuating interest rate levels make it impossible to determine the profitability of the Investments in advance. Neither the current nor the historical value of the relevant floating rate should be taken as an indication of the future development of such floating rate during the term of any Investment.

- **Investors are subject to inflation risk. As a result, the actual interest rate from the Investment may be reduced.**

Investors are subject to the risk that the value of capital invested by an Investor loses value when the purchasing power of the underlying currency falls due to inflation. Inflation means an increase in the general price level in relation to goods and services, meaning the value of the capital invested by the Investor in the Investments is reduced. Investments may only be terminated after a period of five years at the latest. If the inflation rate is higher than the interest from the Investments, the yield of the Investments might even be negative. At the same time, Investors are not able to terminate their contractual relationship to the Issuer, meaning the Investor may not mitigate losses due to inflation by selling or terminating the Investments.

- **Changes in base interest rates by the Federal Reserve and European Central Bank might impact the attractiveness of the Investments. Since Investors are not able to terminate their Investment for a period of up to five years, selling the Investments and allocating capital to other investment opportunities is not possible.**

Global markets are affected by changes in base interest rates, since these interest rates determine how much banks charge for loans. Hence, changes in base interest rates by the Federal Reserve and European Central Bank might negatively impact the attractiveness of the Investments. Investing in financial instruments such as securities or bonds might yield a better return on investment. Since Investors may not be able to terminate their Investment for a period of up to five years, selling the Investments is not possible.

- **Investors are subject to the exchange rate risk of Ether throughout the course of the Investment. A decrease in the price of Ether may negatively affect the expected financial return, particularly if such return is converted into another asset such as Euro. A total loss cannot be excluded.**

The Investments are denominated in Ether in all respects; investors subscribe to the Investments in Ether and receive Payouts and Repayment in Ether. Ether is a highly volatile asset whose price is subject to systemic risks of the crypto market (e.g., Terra/Luna/Celsius). Under the Terms, Investors are not able to terminate their Investment for a period of up to five years. Moreover, within the scope of the Investment there is no possibility to hedge the exchange rate risk of Ether. Accordingly, investors are subject to the exchange rate risk of Ether for an extended period of time. A financial loss is possible even if the Investments return a nominal gain in Ether.

The Ether price may be particularly volatile on or around the Merge, which is expected to take place in 2022 or 2023. There are several theories about how the Ether price may be affected by the Merge. The Ether price might fall if validators seek to withdraw and sell their staked Ether and rewards. A period of increased volatility is expected in any case.

All these circumstances may result in losses or negative effects on the Investment.

- **The Investments are not transferable and are therefore illiquid. There is currently no liquid market for the Investments, and an active and liquid market is not expected to develop in**

the future. Accordingly, investors are dependent on the Issuer to realize a return on their Investment.

The Investments may not be assigned or otherwise transferred, in whole or in part, to any third party. Investors may dispose of their Investments only by exercising their termination right. Investors waive this termination right until the earlier of (a) five years after the Investment Date, or (b) when the Ethereum protocol allows the withdrawal of staked Ether. In addition, termination of the Investments is subject to a notice period of twelve weeks with effect as at the end of every calendar month. Investors will therefore continue to bear the risks associated with the investments (e.g., exchange rate risk, illiquidity risk) between the time notice is given and the time the Investments are terminated. During this time, Investors also will not be able to allocate the invested Ether for achieving other returns, even if the Interest is lower than the return of an alternative investment. Investors are therefore dependent on the Issuer to realize a return on their Investment.

- **The maximum annual issuance of Ether rewards depends on the amount of Ether used for staking. The maximum annual return rate for validators is expected to decrease as more Ether is staked. This could negatively affect the floating interest component of the interest rate of the Investments.**

On the Ethereum Mainnet, the amount of Ether issued as a reward for adding the next block to the network is constant; the block reward as at the date of this Prospectus is 2 Ether. On the Beacon Chain, the block reward varies based on the amount of Ether used for staking. The more Ether staked, the lower the maximum annual return rate for Validators. For example, according to some estimates, if 10 million Ether were used for staking, the maximum annual return rate for validators would be about 5.72 %. In contrast, if 134 million Ether were used for staking, the maximum return rate would be 1.56 %. Accordingly, since the floating interest component is based on the overall return of all Validators, the value of the Investments could be negatively affected if more Validators join the network.

- **There may be high transaction costs associated with transferring Ether to effect a Subscription, Payout or Repayment. High transaction fees may affect the value of the Investments and may decrease their financial return, if any, particularly in the case of a small investment.**

Transferring or exchanging Ether may be subject to ancillary costs such as fees to exchanges as well as transaction fees (i.e., 'gas') on the Ethereum blockchain. Since the start of 2021, the average gas price on the Ethereum blockchain for a single transaction has been significantly higher than in past years. In the months preceding the date of this Prospectus, the

average transaction fee for a simple transfer on the Ethereum Mainnet is, as at the date of this Prospectus, approximately 0.002 ETH (approximately EUR 5 to EUR 10) per transaction.

All costs in this regard are borne by the investor, in particular when making a Subscription or receiving a Payout. These ancillary costs will affect the value of the Investments and may decrease their financial return, if any, particularly in the case of a small investment.

- **Regulatory scrutiny of the Investments may lead to increased costs for legal and other advice that could affect the profitability of the Issuer and could lead to a classification of the Investments that would require the Issuer to obtain a license or registration.**

The characteristics of the Investments, e.g., the use of ETH.STORE and denominating the Investments in Ether, make the Investments unique compared to the types of investments that are more commonly offered in the Austrian capital market such as non-transferable profit participation rights (*Genussrechte*) or debentures (*Schuldverschreibungen*). For this reason, the Investments may face increased regulatory scrutiny in Austria or other EU Member States. For example, in Austria the Austrian Financial Market Authority (FMA) might investigate whether the investments qualify as an alternative investment fund within the meaning of the Austrian Investment Fund Managers Act (*Alternative Investmentfonds Manager Gesetz*; AIFMG). The AIFMG is based on EU Directive 2011/61/EU (AIFMD) and provides for a license or registration requirement for managers of alternative investment funds (as defined therein). In the past years, the FMA has taken an expansive view of the scope of the AIFMG, particularly as applied to the crypto industry. For example, the FMA considers certain business models that provide for the participation in the mining of crypto assets to qualify as alternative investment funds, a legal view that has not been challenged in court.

The Issuer is confident that the Investments do not qualify as an alternative investment fund under the AIFMG due to the use of ETH.STORE as an independent and objective reference rate (among other reasons). Nevertheless, regulatory scrutiny of the Investments may lead to increased costs for legal and other advice that could affect the profitability of the Issuer. Moreover, a classification of the Investments as an alternative investment fund or other regulated product would require the Issuer to obtain a license or registration. For a description of the risks associated with the Issuer having to obtain a license or registration, see the risk factor on page 23 beginning "The regulation of the crypto industry in Austria, the European Union and worldwide is quickly developing".

- **Changes in base interest rates by the Federal Reserve and European Central Bank might impact the attractiveness of the Investments. Since Investors are not able to terminate their Investment for a period of up to five years, selling the Investments and allocating capital to other investment opportunities is not possible.**

Global markets are affected by changes in base interest rates, since these interest rates determine how much banks charge for loans. Hence, changes in base interest rates by the Federal Reserve and European Central Bank might negatively impact the attractiveness of the Investments, which are denominated in Ether. Investing in financial instruments such as securities or bonds might yield a better return on investment. Since Investors may not be able to terminate their Investment for a period of up to five years, selling the Investments is not possible.

- **The value of the Investments relates directly to the value of Ether, the value of which may be highly volatile and subject to fluctuations due to a number of factors.**

The value of the Investments relates directly to the value of Ether and fluctuations in the price of Ether could adversely affect the value of the Investments. The market price of Ether may be highly volatile, and may be influenced by a wide variety of factors, some of which could include:

- An increase in the global Ether supply;
- The adoption of Ether as a medium of exchange, store-of-value or other consumptive asset and the maintenance and development of the open-source software protocol of the Ethereum Network, and speculative expectations relating thereto;
- The needs of decentralized applications, smart contracts, their users, and users of the Ethereum Network generally for Ether to pay gas fees to execute transactions;
- Ether holders' (or potential holders') expectations with respect to interest rates, the rates of inflation of fiat currencies or Ether, and digital asset and fiat currency conversion and exchange rates;
- Monetary policies of governments, trade restrictions, currency devaluations and revaluations, regulatory measures or enforcement actions, or statements by policy-makers, if any, that restrict the use of Ether as a form of payment, the purchase of Ether on the Ether markets, or the building of decentralized applications or smart contracts on the Ethereum Network by citizens or residents of countries around the world;

- Global or regional political, economic or financial conditions, events and situations, such as the novel coronavirus outbreak;
- Consumer and investor preferences and perceptions of Ether specifically, digital assets generally, the Ethereum network relative to competing blockchain protocols, and Ether relative to competing digital assets;
- The liquidity of ETH markets;
- Fees associated with processing an Ether transaction and the speed at which Ether transactions are settled.

Risks specific to Ether, the Ethereum Network and blockchain technology

- **Subject to the condition, among others, that the Ethereum protocol allows the withdrawal of staking rewards, the Issuer will pay out Accrued Interest after receiving a Payout Request by the Investor. Such Payout Request must contain the Payout Address. If an Investor, for whatever reason, does not have access to the Payout Address, the Investor will not be able to access any Payout of Accrued Interest.**

The Issuer will only transfer Accrued Interest to the Payout Address specified by the Investor. The Issuer, however, cannot verify if the Investor actually has access to the specified Payout Address, whether a Payout Address is used by an exchange or a personal wallet, or whether the wallet software used supports the Ethereum blockchain. Investors cannot access Accrued Interest transferred to a Payout Address by the Issuer under the following circumstances, for example:

- a) If the Payment Address is on an unhosted wallet (e.g., MetaMask), Investors cannot access Payouts of Accrued Interest, administer or transfer it to another address on the Ethereum blockchain if they do not have the private key to the Payout Address.
- b) If Investors use a wallet software that does not support the Ethereum blockchain, they might receive Payouts of Accrued Interest, but would not be able to administer or transfer such Payouts to another address. In order to administer or transfer Accrued Interest under such circumstances, Investors need to first import the Payout Address into another wallet software that supports the Ethereum blockchain.

- Investors who choose to receive Payouts on an unhosted wallet require a wallet software for storing their private key that supports the ERC20 standard of the Ethereum blockchain. Investors are responsible for choosing their wallet provider and the technical security of their private key. Investors therefore bear the risk of cybercrime and any inadequate security measures. In the event of theft or unauthorized access to private keys, Investors bear the risk of a total loss of their Investment.

Investors are responsible for choosing their wallet provider independently and therefore bear the risk that the selected trading platform or wallet provider does not meet the current technical standards and security precautions against hacker attacks or other forms of cybercrime. For example, Investors therefore bear the risk that criminals steal private keys relating to Payout Addresses or try to access Payouts of Accrued Interest using attack techniques (malware, ransomware, etc.). Further, also the Ethereum blockchain itself may be a target of cybercrime. Hacker attacks or other forms of cybercrime are regularly associated with great difficulties to locate the perpetrators. Often, damage and losses in relation to cybercrime need to be borne by the Investors directly with low possibilities of recovery. Occurrence of cybercrime in relation to the Investment may lead to significant or a total loss of the Investment.

- The Investment is based on the Ethereum blockchain, which is constantly developed and updated. In December 2020, the transition of the Ethereum blockchain from the 'Proof of Work' consensus mechanism to the 'Proof of Stake' mechanism was initiated. Such a transition will continue for several years. Investors bear the risk of the technical design and the continued operation of the Ethereum blockchain. Such technical design risk may lead to Payouts of Accrued Interest being delayed or not executed, resulting in losses for Investors. An irretrievable failure of the Ethereum blockchain, regardless of its reasons, is equivalent to a total loss of the Investment.

The Investment is based on the Ethereum blockchain and hence technically dependent on its future development. Despite constant development and updating, the Issuer has no control over the Ethereum blockchain. It is unclear, whether the Ethereum blockchain will continue to be operated and updated by the relevant community in the future. Thus, the Issuer can neither guarantee nor ensure the (ongoing) functioning or the availability of the Ethereum blockchain. In the event that the Ethereum blockchain is no longer operated by the community or no longer functions for other reasons, Investors bear the risk of total loss of their Investment.

Blockchain technology and crypto assets in general are at an early stage. Consequently, there is a risk that the software used for the Investment is not designed for the mass market or adapted for these purposes. Investors therefore bear the risk that delays, failures or programming errors have a negative impact on their Investment.

In addition, the transition of the consensus mechanism from 'Proof of Work' to 'Proof of Stake' on the Ethereum blockchain began in December 2020. This modification of the Ethereum network should lead to more scalability and security of the technology and at the same time reduce energy consumption. The Issuer has no influence on this transition. Consequently, it cannot be guaranteed that the technology will function as smoothly as before after the transition. Furthermore, malfunctions, functional interruptions or a complete failure of the Ethereum blockchain due to its transition cannot be excluded. Investors bear such technical design risk, which may result in a total loss of their Investment.

- **Every transaction is publicly recorded on the Ethereum blockchain for an indefinite period. Investors cannot not manage their Investments anonymously, since the identity of an Investor in connection with the Investment and a Payout Address may be uncovered. Technologies which can connect wallet addresses on blockchains to specific individuals are developing rapidly. An Investment is therefore very likely not or no longer anonymous.**

In simplified terms, the Ethereum blockchain used can be described as a public and decentralized register that permanently records transaction data. 'Public' means that every single transaction recorded in the past can be viewed. The entire transaction history is stored in the register. 'Permanent' means that due to the cryptographic functions on which the blockchain technology is based, it is not possible to change the transaction history with today's technology as far as known. 'Decentralized' means that there is no central authority managing the register. Instead, a large number of nodes (participants) in a peer-to-peer network constantly synchronize the transaction data. These three factors together lead to every single transaction recorded on a blockchain remaining visible to the public, possibly for an indefinite period of time.

In its basic form, a transaction on the blockchain simply shows the source, the destination(s), and a particular value or amount transferred. Source and destination are referred to as addresses on the blockchain. Addresses are basically alphanumeric value combinations, generated according to certain mathematical rules. Contrary to popular belief, blockchain technology does not offer any real privacy. Addresses used do currently not allow for direct identification of the individual using the respective address. However, as soon as an

address has been assigned to a specific individual, every single transaction ever recorded with this address on the blockchain will be publicly traceable. New identification and assignment methods are currently developing rapidly, making it possible to assign specific addresses to specific individuals. As a result, an Investment will most likely no longer be anonymous.

Due to the very likely future assignment of wallet addresses to specific individuals, depending on the identity or background of the Investor (for example, if connections to politically exposed persons [PEPs], countries or persons who are the subject of political or economic sanctions or embargoes, etc.) an identification of the Investor may result in losses or negative effects on the Investment.

- **The demand for and use of Ether may not maintain their long-term value and may not be accepted as a means of exchange by consumers.**

There is no guarantee that Ether will maintain its long-term value in terms of purchasing power in the future or that consumers around the world will accept Ether as a means of exchange and store of value. In the event that the price of Ether decreases, the value of the Investments decreases accordingly. Since Ether and the Ethereum Network are relatively new products and technologies, they have yet to be widely accepted as a means of exchange / payment for goods and services by many large retail and commercial businesses. Hence, the use of Ether by consumers to pay such retail and commercial businesses remains limited. Banks and other established financial institutions may refuse to process funds for Ether transactions, process transfers to or from Ether trading platforms, Ether-related businesses or service providers, or maintain accounts for individuals or entities conducting transactions in Ether. Conversely, speculators and investors seeking to profit from holding Ether for short or long periods generate a significant portion of Ether demand. A decline in the demand for and use of Ether could negatively affect the value of the Investments.

- **There is a risk that competitors of Ether will gain importance in the market. This could potentially reduce the value of Ether.**

Competitors of Ether might gain importance in the market. To the extent that a competitor to Ether gains popularity and achieves a larger market share, the use and price of Ether could be negatively impacted, which could adversely affect the Investments. Similarly, Ether and the price of Ether might be adversely affected by competition from competitors in the credit card and payments industries hindering Ether to be adopted as a means of exchange. As a result, the value of Ether and the value of the Investments might decrease.

- **The Ethereum Network software and protocol are open source. Forks are performed whenever the community makes changes to the blockchain protocol, i.e. the set of rules of a blockchain. There is a risk that a fork could split the Ethereum community, which could have a negative impact on the value of Ether and thus on the Investments.**

Forks might negatively affect the value of Ether and the Investments. Forks or changes to the blockchain protocol need to be backed by a majority of miners or validators. If developers release changes and a substantial majority agrees to these changes, they will be implemented and the Ethereum Network will continue to run without interruption. However, if a change is supported by less than a substantial majority, and the change is incompatible with the software prior to the change, the result would be a so-called "hard fork" (i.e., a split) of the Ethereum Network (and blockchain). One blockchain would be managed by the pre-modification software and the other by the post-modification software. The effect is that both blockchain algorithms would run in parallel, but each would build an independent blockchain with independent native assets. The occurrence of a hard fork could negatively affect the value of Ether and the Investments.

- **The Ethereum Network has no central decision-making body or other forum where participants of the network enter into an agreement. This decentralized nature of the Ethereum Network may affect its ability to develop and respond to challenges.**

Distributed-ledger technology is characterized by its decentralized nature and structure based on a consensus mechanism. There are no central decision-making bodies, comparable to those which exist in the financial sector. Due to this lack of centralization there may be no clear direction for the Ethereum Network and hinder its ability to adapt and respond to challenges. There are examples where developers of the Ethereum Network have had different interests and ideas for the development of Ethereum than the miners and other groups of the Ethereum community. The decentralized nature makes it difficult for all members of the Ethereum community to agree on the governance and future of the Ethereum Network. These differences may negatively affect the value of Ether and as a result the value of the Investments.

- **The Ethereum Network is dependent on the Internet. Slow or limited access to the Internet makes it difficult to use Ether as well as the Investments.**

Ether miners and validators route transactions among themselves over the Internet, and when blocks are processed, they are also routed over the Internet. Users and developers

access Ethereum over the Internet. Therefore, the Ethereum Network depends on the continuous functioning of the Internet.

- **Someone could attempt to gain control of the Ethereum Network using a so-called 51 % attack. A 51 % attack is an attack that would allow the attacker to alter the blockchain at will, significantly undermining trust in the Ethereum Network, the value of Ether and the Investments.**

If an individual or group gains control of more than 50 % of the computing power (hash rate) or holds more than 50 % of staked Ether, they could use its majority share to double spend Ether, i.e., the entity would send Ether to a recipient that is confirmed in the existing blockchain while creating a shadow blockchain that sends the same Ether to another entity under its control. Then the entity will release its hidden blockchain and reverse previously confirmed transactions. Reverse transactions, and because of the way consensus works, this new blockchain becomes the "record of truth". This would significantly undermine trust in the Ethereum Network as a store of value and means of exchange. As a result the value of Ether and thus of the Investments would be affected negatively.

- **There is a risk of improper transactions when transferring virtual currencies. Transfers of Ether cannot be reversed.**

Ether transfers are irreversible. An improper transfer, in which Ether is inadvertently sent to the wrong recipient, whether accidentally or because of theft, can only be reversed by the recipient of the Ether agreeing to return the Ether to the original sender in a separate follow-up transaction. To the extent the Investor inadvertently or otherwise, transfers Ether in the wrong amounts or to the wrong recipients, the Investor may not be able to recover their Ether.

- **There is no central authority to monitor the ownership of Ether. Individuals and entities can – assuming sufficient wealth – purchase large amounts of Ether and in this way possibly influence the price of Ether, especially if large amounts of Ether are sold within a short period.**

There is no central entity that checks who or which entities own Ether or what amount of Ether they own. Thus, it is possible for individuals or entities to own enormous amounts of Ether. Currently, there are no legal regulations that would prevent or regulate the accumulation of digital assets such as Ether. These individuals may sell off large amounts of Ether at any time, which could negatively affect the value of Ether due to increased supply in the market. This, in turn, would also negatively influence the value of the Investments.

- **Virtual currencies such as Ether regularly face scaling issues, as the number of people using Ethereum has grown rapidly. The Ethereum Network can only process a certain number of transactions in a set time frame. Recently, there have been efforts to increase transaction volumes; however, these efforts may not be successful.**

Many networks face significant scaling issues, as only a certain number of transactions may be processed in a set period. Public blockchains such as the Ethereum blockchain generally have to make a tradeoff between security and scalability. Blockchains usually achieve security through decentralization, meaning no intermediary is solely responsible for securing and maintaining the network. A higher level of decentralization typically means that networks are less susceptible to manipulation or capture. In decentralized networks, each individual node is responsible for securing the system by processing each transaction and keeping a copy of the entire state of the network. From an efficiency perspective, this can come with tradeoffs and limit network speed. The Ethereum Network can process approximately 13 transactions per second as of 31 May 2022.³ In comparison, the Visa network is capable of handling more than 65,000 transactions per second.⁴ In order to increase the volume of transactions that can be processed, Ethereum began its transition to proof-of-stake.

- **The possibilities to convert Ether into fiat currencies are limited to certain exchanges on the market, since governments do not back up the value of Ether. Consequently, mistrust in the Ether economy can lead to a decline of the value of the Investment.**

Fiat currencies are accepted and controlled by governments in order to prevent fluctuation of legal currency, such as the US dollar. In contrast, there is no legal obligation of any government or authority to convert Ether into fiat currencies. Due to the decentralized character of the Ethereum Network, no government or central intermediary guarantees a certain value of Ether in fiat money. Therefore, events that reduce the confidence and trust in the Ethereum Network may have a significant adverse impact on the value of Ether and ultimately on the value of the Investments.

³ <https://etherscan.io/>

⁴ <https://www.visa.co.uk/dam/VCOM/download/corporate/media/visanet-technology/aboutvisafactsheet.pdf>

- **The lack of regulation can lead to market manipulation and other fraudulent trading practices such as the intentional dissemination of false or misleading information.**

Since the market for Ether is a relatively unregulated marketplace, malicious individuals or groups may engage in insider trading, market-manipulation or fraudulent trading practices. This may cause the value of Ether to decrease and reduce the functionality of the market for Ether. Consumers who are inexperienced in trading virtual currency or financial instruments may not be aware of these trading practices. Ultimately, Investors could lose their invested capital, as they may have little or no recourse after such incidents under the current legal regime for intermediaries such as exchanges for virtual currencies.

- **Lack of cybersecurity on the Ethereum Network could enable malicious actors to exploit existing flaws of the underlying code. These malicious actors could try to steal Ether belonging to others, undermining trust in the Ethereum Network, which could result in a significant negative impact on the value of Ether.**

Over the years, several Ether trading venues have been closed due to fraud or hackers. Ether is a digital asset and therefore exposed to malicious actors, which try to gain advantage of any flaws in either the code or the structure of the Ethereum network. Such flaws can allow them to steal Ether, personally identifying information or even gain control over the whole system. These events could result in significant negative effects on the value of Ether and the Investments.

- **Proof-of-stake could divide the Ethereum community, fail to be implemented or prove unsuccessful. Each of these incidents could significantly reduce the value of Ether and the Investments.**

There is no guarantee that the Ethereum community will embrace the transition to proof-of-stake, if it is implemented in the future, and the new protocol may never reach critical mass. Although proof-of-stake is supported by many of the Ethereum Network's core developers as it is expected to improve network efficiency, scalability and security, it likely will substantially affect the profitability of mining, and the current Ethereum mining community may resist the future adoption of the new proof-of-stake protocol. Such adoption may be slowed or stopped altogether, or result in a hard fork. Any or all of the upgrades expected to be part of the Merge may fail to work as intended or to deliver the expected functionality, may never occur or may be cancelled, postponed, delayed, or otherwise hindered by governance or technical challenges and other causes. Also, the new update may introduce bugs, exploitable flaws, software defects, vulnerabilities or cybersecurity issues into the

source code of the Ethereum Network. It is possible that the transition to proof-of-stake will never occur, that the transition will be only partially implemented, or that the two protocols—the Ethereum Mainnet and the Beacon Chain—will both endure and compete going forward. Lack of successful implementation or adoption of proof-of-stake may have a negative effect on the market value of Ether and the Investments.

- **Competition from central bank digital currencies (CBDCs) could adversely affect the value of Ether and other digital assets.**

Central banks have introduced digital forms of legal tender, similar to virtual currencies. CBDCs are issued and regulated by a state's monetary authority or central bank. The introduction and evolution of virtual currency and blockchain technology have created further interest in cashless societies and virtual currencies. Thus, governments and central banks worldwide are currently developing CBDCs, some have already launched them. Since CBDCs are backed by central banks and combine certain advantages of traditional currencies with those of virtual currencies by using Distributed-Ledger Technology, they could adversely affect the value of other virtual currencies such as Ether. In case the value of Ether decreases, the value of the Investments might also be negatively affected.

1. PERSONS RESPONSIBLE

1.1 Persons Responsible

The Issuer, bitfly staking gmbh, FN 569385g, Wiedner Gürtel 9, 1100 Vienna, Austria, assumes the sole responsibility for the information provided in this Prospectus.

1.2 Declaration of Completeness

The Issuer declares that, having taken all reasonable care to ensure that such is the case, the information contained in the Prospectus is, to the best of its knowledge, in accordance with the facts and contains no omission likely to affect its import.

2. THE INVESTMENTS

2.1 Investment Terms

2.1.1 General Terms

The Investments are subject to the Terms set out in Schedule 1. A Subscriber of the Investments is required to accept these Terms during Subscription. The Terms set out the legal relationship between Issuer and Subscriber.

The Issuer issues uncertificated and non-transferable interest-bearing Investments pursuant to § 1 (1) 3 of the Austrian Capital Market Act 2019.

- 'Uncertificated' means that the Issuer does not issue physical notes or digital tokens that represent the rights under the Investment. The Investments therefore do not possess a carrier medium to facilitate transfers to third parties.
- 'Non-transferable' means that the Investments may not be assigned or otherwise disposed of. The legal relationship between Issuer and Investor can therefore not be transferred to another party.

Because the Investments are uncertificated and non-transferable, the Investments are not 'transferable securities' as defined in Article 4 (1) (44) MiFID II.

The Investments and any payment obligations thereunder are denominated in Ether (ETH). Ether is a 'virtual currency' as defined in § 2 (22) of the Austrian Financial Markets Anti-Money Laundering Act and Article 3 (18) of the EU AML5 Directive. Virtual currency means a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically. Denominating the Investments in Ether means that both the Subscriber and the Issuer may satisfy their respective payment obligations only by using Ether. The Issuer explicitly does not accept any other form of payment in connection with the Investments. In particular, the Investments cannot be subscribed using any fiat currency such as Euro.

The Investments are divided into 10 000 000 Units with a Nominal Value of ETH 0.1 each. Multiplying the number of Units with their Nominal Value leads to the maximum amount of Ether (i.e., ETH 1 000 000) the Issuer intends to raise in this Public Offer. A Unit is not divisible. This means, first, that a Subscription of less than one Unit is not permissible, and, second, that any Subscription must be made in multiples of a single Unit. Fractions of Units cannot be subscribed. The Minimum Investment Amount is 1 Unit, or ETH 0.1.

The obligations assumed by the Issuer under the Investments are unsecured and unsubordinated and rank *pari passu* with all other obligations of the Issuer.

- 'Unsecured' means that the Issuer does not provide any security or encumbrances on its assets to the benefit of the Investors.
- 'Unsubordinated' means that its obligations are not subordinated to other unsecured financial obligations the Issuer has assumed or will assume in the future.

These two characteristics are sometimes also referred to as 'senior debt'. Put simply, it means that the Investments rank at all times at least equal in right of priority and payment with the claims of all of the Issuer's other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally such as certain tax obligations or obligations toward employees.

The two main rights associated with the Investments are (i) the right to interest payment, and (ii) the right to repayment.

2.1.2 Payment of Interest

The Investor, according to § 3 of the Terms, has a right to receive Interest. Interest is floating and linked to the ETH.STORE minus the Fee Rate. ETH.STORE is short for Ether Staking Offered Rate. The Fee Rate is a certain amount of basis points the Issuer deducts from the ETH.STORE depending on the aggregate Nominal Value of the Units subscribed by the Investor.

ETH.STORE

ETH.STORE is short for Ether Staking Offered Rate and is an objective reference rate that was created by bitfly GmbH, the Calculation Agent. In simple terms, ETH.STORE is a reference rate that represents the average financial return validators on the Ethereum Network have achieved in a 24-hour period. The ETH.STORE is independent of the Issuer's (or any other single validator's) performance.

ETH.STORE is defined under the Terms as the rate *per annum* determined by the Calculation Agent by dividing (i) the Total Staking Rewards by (ii) the Total Effective Balance.

The Calculation Agent calculates the ETH.STORE as follows:

- First, the Calculation Agent identifies which Epochs were processed on a given Reward Day. The first Epoch of a Reward Day is the first finalized Epoch that begins on or after 12:00:23 UTC. The last Epoch of a Reward Day is the finalized Epoch that is processed 224 Epochs

later, approximately 24 hours after the first Epoch of a Reward Day. Each Reward Day consists of 225 Epochs. No Epochs are skipped or disregarded in the calculation.

- Second, the Calculation Agent determines which Validators were active during an entire Reward Day (the "**Active Validators**"). Validators that are activated after the first Epoch of a Reward Day and Validators that are exited before the last Epoch of a Reward Day are not included in the calculation.
- Third, the Calculation Agent calculates the Total Staking Rewards by adding the (i) Consensus Rewards and (ii) Transaction Fees earned by Active Validators in a Reward Day.
- Fourth, the Calculation Agent determines the Total Effective Balance of Active Validators
- Fifth, the Calculation Agent divides the Total Staking Rewards by the Total Effective Balance and multiplies the result by 365.

The source code used to calculate the ETH.STORE is open source and available at <https://github.com/gobitfly/eth.store>.

The Calculation Agent calculates the ETH.STORE on a daily basis and publishes the result at <https://staking.ethermine.org/statistics>, which is publicly available.

The ETH.STORE is calculated on the basis of the Effective Balances of Active Validators rather than their current balances. In contrast to a Validator's current balance, which is the total amount of Ether held by the Validator, the Effective Balance is the Ether balance of a Validator that is used to determine the size of a reward or penalty on the Ethereum Network. The Effective Balance can never be higher than 32 ETH and is always a multiple of 1 ETH, rounded down. For example, if a Validator's current balance is 28.7 ETH, its Effective Balance would be 28 ETH. A Validator's Effective Balance might be less than 32 ETH if, for example, penalties have been assessed against the Validator.

Under the Terms, if an outlier event occurs that results in the ETH.STORE value on a given Reward Day to be more than three standard deviations above the mean of the last thirty (30) ETH.STORE values (e.g., when transaction fees are first sent to Validators after the Merge), the Issuer may use the last ETH.STORE value within three standard deviations of such mean as the ETH.STORE value for that Reward Day. Three standard deviations (also called three-sigma limits) refers to a statistical rule that, for a normal distribution, almost all (i.e., around 99.7 %) observed data should fall within three standard deviations of the distribution's mean. The upper limit of three standard deviations is calculated as follows:

- First, the mean of the last thirty (30) ETH.STORE values is calculated;

- Second, the variance⁵ of the last thirty (30) ETH.STORE values is calculated;
- Third, the standard deviation is calculated, which equals the square root of the variance;
- Fourth, the standard deviation is multiplied by three;
- Fifth, the result is added to the mean of the last thirty (30) ETH.STORE values to determine the upper limit of three standard deviations.

The Terms specify that the ETH.STORE value may be adjusted only if the upper limit of three standard deviations is exceeded; there is no adjustment to the ETH.STORE if the lower limit is exceeded (e.g., in a mass slashing event).

The following is an example calculation of the upper limit of three standard deviations:

In this example only 10 (fictitious) ETH.STORE values are used: 5.34, 4.98, 4.10, 5.38, 5.23, 4.93, 4.72, 5.10, 5.14, 6.45. The mean is 5.14, the variance is 0.32. Three standard deviations is 0.96 (0.32×3). The upper limit of three standard deviations is therefore 6.10 ($5.14 + 0.96$). The last ETH.STORE value in the data set, 6.45, is more than three standard deviations from the mean ($6.45 > 6.10$). In such a case, the Issuer could decide to use the last ETH.STORE value within three standard deviations of such mean as the ETH.STORE value for that Reward Day, which in this example would be 5.14.

As at the date of this Prospectus, the ETH.STORE is approx. 4.5 % *per annum*. The rate is dependent on a number of factors, in particular the number of Validators actively proposing and attesting blocks. This is the case because the likelihood to earn rewards for proposing and attesting blocks is linearly linked to the number of Validators in the network. For example, a tenfold increase of Validators reduces the probability of earning those rewards by the same factor of ten. This is offset, to a minor extent, by adjustments to the rewards. Nevertheless, the main factor determining the ETH.STORE is the number of Validators actively taking part in the staking process. The more Validators are staking, the less of a return a single Validator can expect.

Fee Rate

The Issuer deducts a specific rate (Fee Rate) from the ETH.STORE. This rate, expressed as percentage points (and not as basis points) in relation to the ETH.STORE is solely determined by the Issuer. It is based on the aggregate nominal value of the Units subscribed by the Investor. In other words,

⁵ Variance is a term used in statistics that refers to a statistical measurement of the spread between numbers in a data set. Variance can be calculated using the VAR.P function in Microsoft Excel, for example.

it depends on the Investment Amount. The larger the Investment Amount, the smaller the Fee Rate the Issuer deducts from the ETH.STORE.

Until the Merge, the Fee Rate will be 0 %. After the Merge, the Fee Rate will be as follows:

<u>Investment Amount</u>	<u>Fee Rate</u>
0.1 to 31.9 ETH	15 %
32 to 95.9 ETH	13 %
96 to 959.9 ETH	10 %
960+ ETH	8 %

The Fee Rate is subtracted from the ETH.STORE. If, for example, the ETH.STORE for a given Reward Day is 6 % *per annum* and the Investor has subscribed to 1 000 Units with an aggregate Nominal Value of 100 Ether, then the applicable Interest for that Reward Day would be 5.4 % *per annum* (600 basis points minus 10 %, i.e., 60 basis points, according to the current schedule).

The Fee Rate is applied to the Interest on all Units held by the Investor equally. This means that in case of, for example, 959 Units held by an Investor with an aggregate nominal value of 95.9 Ether, the Fee Rate subtracted from the ETH.STORE for all Units held is 13 percent. If the Investor holds only one Unit more, i.e., 960 Units with an aggregate nominal value of 96 Ether, then the Fee Rate is 10 percent with respect to all Units held.

The Issuer reserves the right to amend the Fee Rate from time to time with respect to future Investments. The Issuer may not, without the consent of the Investor, change the Fee Rate to the detriment of an Investor.

Calculation of Interest

The Issuer calculates Interest on a daily basis for all Units of the Investments held by the Investor. Interest calculation is based on the Reward Day. Reward Day is the period of elapsed time starting at 12:00:23 UTC and ending 24 hours later at 12:00:22 UTC. Interest for a Reward Day is calculated on the next Reward Day.

Only Units that were held by the Investor throughout the entire Reward Day are included in the calculation of Interest. This means that:

- Only Units of the Investment are counted where the Issuer has received the Nominal Value of that Unit and accepted the Investment as a Subscription in accordance with the Terms.
- For the determination of the Fee Rate, only those Units that the Investor has held throughout the entire Reward Day are counted. If the Investor subscribes to an additional number of Units on a certain Reward Day, those new Units will only count towards the determination of the Fee Rate on the next Reward Day. If the Investor terminates a Unit, then the

terminated Unit will count towards the Deduction Amount until the day before the Termination Date (which is the date the Issuer repays the aggregate Nominal Value of the terminated Units to the Investor).

- For the calculation of the Interest, only those Units that the Investor has held throughout the entire Reward Day are counted. If the Investor terminates a Unit, then the terminated Unit bears Interest until the day before the Termination Date (which is the date the Issuer repays the aggregate Nominal Value of the terminated Units to the Investor).

If, for example, on the 2nd of November the Investor holds 319 Units that accrue Interest and the ETH.STORE is 6 %, then the Interest rate for that Reward Day is 5.1 % *per annum* (600 basis points ETH.STORE minus 90 basis points Fee Rate [15 % from 600]) calculated on the basis of 31.9 Ether (i.e., the aggregate Nominal Value of 319 Units of the Investment [319 x 0.1]). This calculation would not change if, for example, the Investor bought an additional Unit on the 2nd of November. Only on the next Reward Day would this purchase be considered in the determination of the Fee Rate (then 13 percent).

Accrual of Interest

Interest does not compound. Instead, it accrues over time until a Payout is made upon request by the Investor. Accrued Interest is therefore not paid out unless requested by the Investor. The Investor may request a Payout at any point in time. Note, however, that the performance by the Issuer is subject to certain conditions (see immediately below).

Transaction fees associated with a Payout are borne by the Investor and arise when the Accrued Interest is transferred to the Payout Address. The purpose of requiring the Investor to make a Payout Request is to allow the Investor to choose when he or she deems the transaction fees to be acceptable. Transaction fees are the costs of making a transaction on the Ethereum blockchain, also referred to as gas-costs. Transaction fees are independent of the amount of Ether transferred, therefore the costs of a Payout of only a small amount of Ether may even exceed the amount being paid out.

Payout of Interest

Before a Payout of Accrued Interest occurs, the Investor must make a Payout Request. The Issuer provides an easy-to-use option on its Website for the Investor to make such a request and to facilitate the Payout process. In the Payout process, the Investor must provide a Payout Address on which to receive the Accrued Interest. The Investor may only provide a Payout Address he or she has access to. This fact must be confirmed by the Investor before a Payout can occur. The Issuer

may additionally require the Investor to provide evidence of having access to the Payout Address. For example, for an unhosted Payout Address, the Issuer may require the Investor to sign a message using the private key associated with the Payout Address.

Under the Terms, Payouts are conditioned on the Ethereum Network allowing the withdrawal of Consensus Rewards and Transaction Fees. This is currently not the case. Before withdrawals can occur, the Ethereum Mainnet must be merged with the Beacon Chain. This is also known as the Merge. The Merge will mark the end of proof-of-work for Ethereum and the full transition to proof-of-stake. Certain features, however, such as the ability to withdraw staked Ether will not be fully implemented during the Merge. A post-Merge cleanup upgrade is expected to address these features. Pursuant to the Terms, the Issuer is not obliged to make a Payout until the withdrawal of staking rewards is implemented, or after five (5) years after the investment was made, whichever occurs earlier.

Unless the Issuer is required by law, administrative ordinance or a court ruling to do otherwise—and subject to the conditions presented above—the Issuer will fulfill a Payout Request after the Investor placed the Payout Request without undue delay.

2.1.3 Repayment of the Investment Amount

The Issuer will repay to the Investor the Nominal Value of the Investment. Since the Investments do not have a set maturity date, Repayment is the consequence of terminating the Investment. Repayment therefore occurs only upon termination of the Investment. This means that either the Investor or the Issuer must terminate a Unit of the Investment before the Nominal Value is repaid to the Investor.

Ordinary Termination

Ordinary termination means that there is no need to provide a reason to terminate the Investments. Both the Issuer and the Investor have a right to ordinary termination. The Issuer may only terminate all Investments held by a single Investor at the same time but not individually. The Investor may terminate each Unit separately. This means, for example, that an Investor may decide to only terminate five (5) out of fifty (50) of his or her Units subscribed.

In case of ordinary termination, a Notice Period of twelve (12) weeks must be observed. This means that there is a period of twelve (12) weeks between the point in time the termination was declared and the Termination Date, i.e., the date the termination becomes effective. The Termination Date is the last day of the calendar month in which the end of the Notice Period falls. If, for example, the Investor declares termination of the Investments on the 10th of March 2023, then the end of the

12-week Notice Period falls on the 2nd of June 2023, which means that the Termination Date is the 30th of June 2023. If, for example, the Investor declares ordinary termination on the 7th of April 2023, then the Termination Date is still the 30th of June 2023 because the end of the Notice Period falls on the 30th of June 2023.

Both the Issuer and the Investor waive their right to ordinary termination (a) until the Ethereum Network allows the withdrawal of Consensus Rewards and Transaction Fees; or (b) for a period of five (5) years starting on the Investment Date, whichever occurs first. Waiving the right to ordinary termination means that for the stated period no ordinary termination of Investments can be declared, neither by the Issuer nor by the Investor. If, for example, the functions to withdraw Consensus Rewards and Transaction Fees are implemented and operational on the 10th of March 2023, then declaring ordinary termination is only permissible starting that day; if termination was declared on that day, the Termination Date would be the 30th of June 2023.

Note that the waiver period of five (5) years starts on the Investment Date. The Investment Date is the Reward Day the Issuer accepts the Subscription. For example, if an Investor subscribes to 20 Units on the 15th of June 2022 and another 10 Units on the 15th of January 2023, then the five-year period starts separately for each Subscription. This is only relevant in case the functions to withdraw Consensus Rewards and Transaction Fees are not implemented within the five-year period. If the functions are implemented earlier, then the end of the waiver period is the same for all purchased Units of the Investment. Otherwise, the individual calculation of the waiver period means that the 20 Units first purchased may be terminated (i.e., termination may be validly declared) starting on the 15th of June 2025 whereas the 10 Units purchased afterwards may only be terminated starting on the 15th of January 2026.

Extraordinary Termination

The right to extraordinary termination always applies. Extraordinary termination means that the terminating party must have valid cause, also called good cause (*wichtiger Grund*), for terminating the Investments. Extraordinary termination can be made without having to observe any notice period or termination dates. It is effective immediately. Note that since the Investments are subject to Austrian law, also Austrian law determines what constitutes good cause for the right to immediate termination. Good cause can only be assumed if the continuation of the mutual contractual obligations is unbearable for the terminating party. The Austrian Supreme Court refers to the termination for good cause as an 'extreme emergency valve'. For the right to extraordinarily termination to apply, the circumstances must have changed significantly since the conclusion of the contract and this change must not have been foreseeable when the contract was concluded; also, the

change in the circumstances must not be attributable to the party terminating the contract. This means, in particular, that a financial need of the Investor does not warrant an extraordinary termination for good cause, as this would be a circumstance attributable to the Investor. Also, it means that a delay in the implementation of the withdrawal functions in the Ethereum Network or stark price drops of Ethereum, to name some examples, do not warrant an extraordinary termination as those both are foreseeable events for Investor and Issuer.

Repayment

On the Termination Date, i.e., the last day of the calendar month in which the Notice Period ends, the Issuer pays to the Investor (a) the Nominal Amount of each Unit of terminated Investments; and (b) Accrued Interest on the terminated Investments not yet received by the Investor. Since the Issuer repays the Nominal Amount, the Investor receives back the initially invested amount of Ether. To this end, the Issuer pays the owed amount of Ether to the Payout Address provided by the Investor in the Payout process. Note that transaction fees (gas) for the settlement on the blockchain are to be borne by the Investor.

2.2 Registrar, Depository and Paying Agent

2.2.1 Paying Agent

A paying agent is a third party designated to make dividend, coupon, and principal payments to a security holder on behalf of an issuer. The Issuer does not use the services of a third-party paying agent. Rather, it manages all payments, i.e., in the course of Subscriptions to the Investments, Payouts of Accrued Interest, and Repayments of the Investments itself.

2.2.2 Filing Agent

A filing agent is a third party designated to handle requests for dividend, coupon, and principal payments to a security holder on behalf of an issuer. The Issuer does not make use of the services of a third-party filing agent. Rather, it manages all requests for Subscription or the Payout of Accrued Interest or the Repayment of the Investments itself.

2.2.3 Depository

A depository is a third party designated to hold certain assets such as securities. Since the Investment is not certificated on any carrier medium, there is no need for a depository. The contract between Issuer and Investor underlying the Investment is therefore not deposited with any third party.

2.3 Overview of other Investments of the Issuer

On 11 April 2022, the Issuer began a private sale of the Investments (marketed as 'Ethermine Staking beta'). The Investments were offered to fewer than 150 natural or legal persons per EEA signatory state pursuant to the exemption from the obligation to publish a prospectus under § 3 (1) (5) of the Austrian Capital Market Act. The terms of the Investments offered in the private sale are substantially similar to the Terms of the Investment offered in the Public Offer. As of the date of this Prospectus, the Issuer has raised approximately 145 ETH in the private sale.

2.4 Status of the Investment and Purpose of the Offer

2.4.1 Legal form of the Investment

The Investments constitute debt obligations of the Issuer. This means that an Investor has a claim pursuant to the laws of obligations (*schuldrechtlicher Anspruch*) against the Issuer for the payment of Interest and repayment of the Nominal Value of the Investment. The Investments do not represent equity rights of the Investor such as rights to dividend payments or rights to corporate decision making.

The obligations assumed by the Issuer under the Investments are unsecured and unsubordinated and rank *pari passu* with all other obligations of the Issuer.

- 'Unsecured' means that the Issuer does not provide any security or encumbrances on its assets to the benefit of the Investors.
- 'Unsubordinated' means that its obligations are not subordinated to other financial obligations the Issuer has assumed or will assume in the future.

This is sometimes also referred to as 'senior debt'. Put simply, it means that the Investments rank at all times at least equal in right of priority and payment with the claims of all of the Issuer's other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally such as certain tax obligations or obligations toward employees.

2.4.2 Total Amount

The total amount of Investments issued under this Prospectus is ETH 1 000 000 (one million Ether).

2.4.3 Denomination, Minimum and Maximum Amounts

The Investments and any payment obligations thereunder are denominated in Ether (ETH). Ether is a virtual currency in the sense of § 2 (22) of the Austrian Financial Markets Anti-Money Laundering Act and Article 3 (18) of the EU AML5 Directive. Virtual currency means a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily

attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically. Denoting the Investments in Ether means that both the Subscriber and the Issuer must perform their respective payment obligations only using this virtual currency. The Issuer does explicitly not accept any other form of payment on the Investments. In particular, the Investments cannot be subscribed using any fiat currency such as Euro.

The Investments are divided into 10 000 000 Units with a Nominal Value of ETH 0.1 each. Multiplying the number of Units with their Nominal Value leads to the maximum amount of Ether (i.e., ETH 1 000 000) the Issuer intends to raise in this Public Offer. A Unit is not further divisible. This means, first, that a Subscription to less than a Unit is not permissible, and, second, that any Subscription must be made in multiples of a single Unit. Fractions of Units cannot be subscribed. The Minimum Investment Amount is one (1) Unit or ETH 0.1.

2.4.4 Purpose of the Public Offer

The purpose of this Public Offer is to raise funds for the Issuer's business. For details on the Issuer's business, refer to Section 3.1.5 'Business Object' starting on page 65 of this Prospectus.

2.5 Type of Investment

Investments are typically classified as open-ended or closed-ended types. The Investments offered under this Prospectus are of closed-ended nature. This means that they cannot be sold to third parties; no market price can form. As a result, they are not traded (or even tradeable) on an exchange. The only way for the Investor to dispose of the Investment is to terminate in accordance with the Terms of the Investment.

2.6 Undertakings for Collective Investments

The Issuer has not organized any undertakings for collective investments (*Veranlagungsgemeinschaften*) nor does it intend to do so in the future. The Issuer is not aware of any undertakings for collective investment that may influence the Investments.

2.7 Exchanges where the Investments or other Securities of the Issuer are listed

The Investments are non-transferable; any assignment or transfer of the Investments is prohibited under the Terms. The Issuer objects to an assignment to others (see Section 2.15 below). Organized trade of the Investment but also mere OTC trade is therefore not possible. Consequently, there is no listing of the Investments on an exchange. Further, the Issuer has not issued any securities which are listed on an exchange.

2.8 Third Party Guarantor

A third-party guarantor is a natural or legal person guaranteeing the performance of the obligations assumed by the Issuer. No third party has declared to assume any liability with respect to the Investments nor is it intended that a third party will declare that in the future.

2.9 Underwriters

Underwriters are natural or legal persons who purchase the Investments from the Issuer before continuing to selling them to the Investors, thereby committing themselves to the placement of the Investment in the market. The Issuer does not use the services of underwriters.

2.10 Beneficiaries of the Offer

All capital raised from Investors by subscribing to the Investments is available to the Issuer only.

2.11 Taxation of the Investments

The following is a general discussion of Austrian tax consequences for the Investment offered from an investor's perspective. This summary is based on the laws currently in force and as applied on the date of this Prospectus in Austria which are subject to change, possibly with retroactive or retrospective effect. The development of tax law applicable to digital assets is very recent and without precedents, and therefore the actual qualification by the tax authorities, including within the Offer Period, may change from the situation described herein.

When you decide to purchase the Investments offered under this Prospectus using Ether, bitfly promises you the payment of interest in Ether and the repayment of the amount of Ether you have invested. It is variable and based on the Ether Staking Offered Rate (ETH.STORE) which is basically a measure of the return one can reasonably expect to generate if one's Ether are staked.

If you decide to purchase the Investments offered under this Prospectus as a substitute for operating your own Validator, please note that these are two fundamentally different approaches. While you retain full control over your Ether when staking them in a Validator, you hand over your Ether to bitfly when purchasing the Investments. Not your keys, not your coins. Bitfly will use its best efforts to ensure its business operations are successful in order to be able to keep all promises made in association with the Investments.

This discussion does not purport to be a comprehensive description of all tax considerations which may be relevant to a decision to purchase the Investment offered. In particular, this discussion does not consider any specific facts or circumstances that may apply to a particular investor.

PROSPECTIVE INVESTORS ARE ADVISED TO CONSULT THEIR OWN TAX ADVISERS AS TO THE TAX CONSEQUENCES OF THE PURCHASE, POSSESSION AND DISPOSITION OF THE INVESTMENT, INCLUDING THE EFFECT OF ANY STATE OR LOCAL TAXES, UNDER THE TAX LAWS APPLICABLE IN AUSTRIA AND EACH COUNTRY OF WHICH THEY ARE RESIDENTS.

THE ISSUER WARNS PROSPECTIVE INVESTORS THAT THE TAX LAWS OF THE INVESTOR'S MEMBER STATE AND OF THE ISSUER'S MEMBER STATE OF INCORPORATION MIGHT HAVE AN IMPACT ON THE INCOME RECEIVED FROM THE INVESTMENT.

2.11.1 Legal Disclaimer

Based on the above brief description of the Investment, we qualify the Investment as transfer of crypto coins (namely ETH) in terms of § 27 Austrian Income Tax Act from an investor to bitfly, for tax purposes.

Hereinafter a general description of certain tax considerations relating to the Investment revenue in Austria shall be provided. It does not purport to be a complete analysis of all tax considerations relating to the Investment. Potential Subscribers of the Investment should consult tax advisers as to the consequences, under the tax laws of the country in which they are resident for tax purposes and under the tax laws of Austria of acquiring, holding and disposing of the Investment and receiving payments. This description is based upon the laws in force and their interpretation on the date of this Prospectus and is subject to any change in law or interpretation that may take effect after such date.

This summary of Austrian tax issues is based on the assumption that the Investment is legally and actually publicly offered and does not qualify as equity or units in an Investment fund for Austrian tax purposes. The tax consequences may substantially differ if the Investment is not legally and actually publicly offered.

2.11.2 Classification of the Issuer according to Austrian law

The Issuer is a limited liability company (*Gesellschaft mit beschränkter Haftung*) with headquarter/seat and place of effective management in Austria. Shareholders liability is limited to their invested share capital.

2.11.3 Classification of the Investment according to Austrian law

General

According to § 27b para. 2 Austrian Income Tax Act, current income from cryptocurrencies includes, among other things, fees for the provision of cryptocurrencies.

Current income from cryptocurrencies includes remuneration for the transfer of cryptocurrencies ("lending"). In addition to legal tender, the concept of remuneration also includes cryptocurrencies and other services. A transfer requires a change of allocation, i.e. the cryptocurrency must be transferred from the taxpayer to another market participant. Such a transfer of cryptocurrencies to other market participants takes place, for example, when cryptocurrencies are borrowed on crypto exchanges or platforms for a consideration (which is usually obtained in the form of cryptocurrencies). Transactions in which the taxpayer transfers cryptocurrencies to a third party for a consideration and the third party uses the cryptocurrencies to generate current income are also to be covered by this provision.

Due to the fact that the Investment represents a transfer of cryptocurrencies, the essential prerequisite transition of power of disposal/change of ownership is given. Consequently, the income related to this Investment is capital assets within the meaning of § 27 para. 1 in conjunction with § 27 para. 4a Austrian Income Tax Act as well as § 27b para. 1 and para. 2 Austrian Income Tax Act.

Individuals resident in Austria and Investment is held as private assets

For Austrian residents who are subject to unlimited tax liability according to § 1 para. 1 Austrian Income Tax Act in conjunction with § 1 para. 2 Austrian Income Tax Act and § 26 para. 1 or § 26 para. 2 Austrian Federal Fiscal Code the following applies: subject to the Austrian Income Tax Act is the income (§ 2 para. 2 in conjunction with § 2 para. 3 Income Tax Act) within one respective calendar year (§ 2 para. 1 Austrian Income Tax Act). In this case § 2 para. 3 No. 5 in conjunction with § 27 of the Austrian Income Tax Act applies for privately held financial assets.

According to § 27b para. 2 Austrian Income Tax Act, current income from cryptocurrencies includes, among other things, fees for the provision of cryptocurrencies.

Income from the transfer of cryptocurrencies is taxable at the inflow at the wallet, whereby the special tax rate of 27.5% is applicable according to Section 27a para. 1 No. 2 Austrian Income Tax Act, provided that these are offered in fact and in law to an undefined group of persons at the time of their issue (public offer). In the case at hand the Investment is offered to an undefined group of persons and the income is subject to the 27.5% withholding tax.

Regarding the income from cryptocurrencies, § 93 para. 2 No. 3a Austrian Income Tax Act stipulates that it is domestic income if there is a domestic debtor or domestic service provider that credits the cryptocurrencies or other consideration. This is the case for the Investment at hand. Therefore, bitfly is obliged to withhold tax of 27.5%, which will be mandatory as of 2024. Until 31.12.2023, the individual is responsible to declare the income via his own tax return and take care of the right

taxation at the tax rate of 27.5%. However, there is no obligation regarding the special tax rate. The taxpayer may opt for standard taxation according to § 33 para. 1 Austrian Income Tax Act and thus include all domestic and foreign income from capital assets (including business income) in the assessment and tax it at the progressive income tax rate, up to 55%.

Income from capital assets exists only insofar as the activity does not go beyond pure asset management in terms of type and scope. Otherwise, the income is deemed to be income from trade or business.

The change of the Investor's tax residence from Austria to another tax jurisdiction or the transfer of the Investment to a non-resident without consideration or any other circumstances leading to the fact that Austria is losing its taxation right with respect to the Investment is in general deemed as a disposal of the Investment and causes a taxable event in Austria according to § 27 para. 6 No. 1b Austrian Income Tax Act, with the exception of a transfer within EU member states ("*Nichtfestsetzungskonzept*"; § 27 para 6 No. 1 a Austrian Income Tax Act).

Individuals resident in Austria and Investment is held as business assets

The special tax rate of 27.5% for cryptocurrencies also applies to business assets. However, this does not apply if the generation of income from cryptocurrencies represents a focus of the business activity. This is particularly the case for commercial cryptocurrency traders as well as commercial miners; these activities are taxed at the progressive income tax rate with up to 55%.

The change of the Investor's tax residence from Austria to another tax jurisdiction or the transfer of the Investment to a non-resident without consideration or any other circumstances leading to the fact that Austria is losing its taxation right with respect to the Investment is in general deemed as a disposal of the Investment and causes a taxable event in Austria. In the business area, an installment payment concept is envisaged: the taxpayer has the option of paying the tax liability for fixed assets evenly over a period of five years and for current assets over a period of two years according to § 6 No. 6 Austrian Income Tax Act.

Individuals not resident in Austria and Investment is held as private assets

Individuals subject to § 1 para. 1 Austrian Income Tax Act, who are not resident in Austria according to § 1 para. 2 Austrian Income Tax Act in conjunction with § 26 Federal Fiscal Code are subject to limited tax liability in Austria (§ 1 para. 3 Austrian Income Tax Act). They are only liable with their income derived in Austria. § 1 para. 3 Austrian Income Tax Act restricts their liability to the income defined in § 98 Austrian Income Tax Act.

§ 98 of the Austrian Income Tax Act lists income from capital assets that is subject to limited tax liability. Income from capital assets is regulated in Section 5, but there is no reference to income from the transfer of cryptocurrencies. Thus, the income from the Investment is not taxable in Austria.

Since the income from the transfer of cryptocurrency cannot be subsumed under § 98 Austrian Income Tax Act, foreign Investors are not taxed regarding the Investment in Austria. According to § 94 No. 13 Austrian Income Tax Act no tax needs to be withheld for persons with limited tax liability, provided that the income is not subject to limited tax liability pursuant to § 98 para. 1 No. 5 Austrian Income Tax Act.

Individuals not resident in Austria and Investment is held as business asset

The principles of subsuming assets subject to § 27 Austrian Income Tax Act under income category § 2 para. 3 No. 3 instead of § 2 para. 3 No. 5 Austrian Income Tax Act are not applicable to foreign individuals, because income derived from capital is assessed independently from the business. In this case, provided there is no permanent establishment of the foreign individuals' business in Austria, the aforementioned approaches for individuals not resident in Austria holding the Investment privately apply.

Corporations resident in Austria

Corporations with seat or place of effective management in Austria are subject to unlimited tax liability according to § 1 para. 1 in conjunction with § 1 para. 2 No. 1 Austrian Corporate Income Tax Act in conjunction with § 27 para. 1 or para. 2 Austrian Federal Fiscal Act.

Income payments from investments are generally subject to corporate income tax according to § 7 Austrian Corporate Income Tax Act. Corporate income tax shall be based on the income received by the entity subject to unlimited tax liability within the calendar year. Income is the total amount of income with reference to the provisions applicable in the Austrian Income Tax Act, according to § 7 para. 2 Austrian Corporate Income Tax Act.

In principle, income of corporations resident in Austria under private law is subject to corporate income tax. Income from the Investment is subject to corporate income tax according to § 7 para. 2 Austrian Corporate Income Tax Act. Corporate income tax is levied at a rate of 25 % according to § 22 para. 1 Austrian Corporate Income Tax Act. In the course of the Eco-Social Tax Reform 2022, it was decided to gradually reduce the corporate income tax rate to 24% in 2023 and to 23% as of 2024.

Regarding income from cryptocurrencies, § 93 para. 2 No. 3a Austrian Income Tax Act stipulates that it is domestic income if there is a domestic debtor or domestic service provider that credits the cryptocurrencies or other consideration. This is the case for the Investment at hand. Therefore, bitfly is obliged to deduct the tax, which will be mandatory as of 2024. The withholding tax amounts to 25% respectively the future reduced corporate income tax rate (see above), according to § 93 para. 1a Austrian Income Tax Act. Until 31.12.2023 the corporation is responsible to declare the income via its own tax return and take care of the right taxation.

Corporations not resident in Austria

Corporations with headquarter/seat or place of effective management not in Austria are subject to limited tax liability according to § 1 para. 3 No. 1a in conjunction with § 21 para. 1 Austrian Corporate Income Tax Act in conjunction with § 27 para. 1 or § 27 para. 2 Austrian Federal Fiscal Code.

Pursuant to § 21 para. 1 in connection with § 1 para. 3 of the Austrian Corporation Tax Act, income is only taxable according to § 98 Austrian Income Tax Act. Due to the fact that the transfer of cryptocurrencies is not mentioned in § 98 of the Austrian Income Tax Act, income related to the transfer of cryptocurrencies is not taxable in Austria.

§ 98 of the Austrian Income Tax Act lists income from capital assets that is subject to limited tax liability. Income from capital assets is regulated in § 98 para. 1 No. 5 Austrian Income Tax Act, but there is no reference to income from the transfer of cryptocurrencies according to § 27 para. 4 Austrian Income Tax Act. Hence, the income from the Investment is not taxable in Austria.

Since the income from the transfer of cryptocurrency cannot be subsumed under § 98 Austrian Income Tax Act, foreign Investors are not taxed regarding their Investment in Austria. According to § 94 line 13 Austrian Income Tax Act no tax needs to be withheld for persons with limited tax liability, provided that the income is not subject to limited tax liability pursuant to § 98 para. 1 No. 5 Austrian Income Tax Act.

Private Foundations resident in Austria

Foundations with headquarters and place of effective management in Austria are subject to unlimited tax liability in Austria according to § 1 para. 1 in conjunction with § 1 para. 2 No. 3 Austrian Corporate Income Tax Act in conjunction with § 27 para. 1 or § 27 para. 2 Austrian Federal Fiscal Code. However, there is a special tax regime for Private foundations established under Austrian law according to § 13 para. 1 No. 1a in conjunction with § 13 para. 3 Austrian Corporate Income Tax Act.

In case of private foundations which do not serve the promotion of charitable, benevolent or ecclesiastical purposes in accordance with § 34 to § 47 Federal Fiscal Code, income from investment triggers corporate income tax according to § 13 para. 3 No. 1d Austrian Corporate Income Tax Act

The income is subject to corporate income tax within the meaning of § 22 para. 1 Austrian Corporate Income Tax Act. Corporate income tax is levied at a rate of 25 % according to § 22 para. 1 Austrian Corporate Income Tax Act. In the course of the Eco-Social Tax Reform 2022, it was decided to gradually reduce the corporate income tax rate to 24% in 2023 and to 23% as of 2024.

Private Foundations not resident in Austria

Foundations with their headquarter/seat and place of effective management not in Austria are subject to limited tax liability in Austria according to § 1 para. 3 No. 1b in conjunction with § 21 para. 1 No. 1 Austrian Corporate Income Tax Act in conjunction with § 98 in conjunction with § 27 Austrian Income Tax Act. § 98 of the Austrian Income Tax Act lists income from capital assets that is subject to limited tax liability. Income from capital assets is regulated in § 98 para. 1 No. 5 Austrian Income Tax Act, but there is no reference to income from the transfer of cryptocurrencies. Hence the income from the Investment is not taxable in Austria.

Investment Funds

Investment funds are transparent under Austrian tax law. Income of a transparent fund is not taxed at the level of the fund, but at the level of the Investor. Thus, the taxation of the income of the Investment is dependent on how this income is taxable at the level of the Investors.

2.12 Subscription Period

The subscription period for the Public Offer is from 18 August 2022 until 17 August 2027. Investments can be subscribed on the Website of the Issuer. The issuance is limited to the total Nominal Amount of the Investments (i.e., ETH 1 000 000). The Issuer reserves the right to terminate the Public Offer at any time and to not accept any further offers for subscription.

In accordance with § 6 of the Austrian Capital Market Act 2019, the Issuer will publish a supplement to the Prospectus for every significant new circumstance, or every material mistake or inaccuracy relating to the information included in the Prospectus which might influence the assessment of the Investments and which occurs or is noticed between the time of the Prospectus being checked and the final closing of the Public Offer.

2.13 Subscription Process

During the Offer Period, interested investors can initiate the subscription process on the Issuer's website at <https://staking.ethermine.org>. Before a subscription can be made, interested investors must register on the website and complete a KYC check.

The minimum investment amount is one (1) Unit. A Subscription can be made only in full Units. To subscribe to the Investments, the investor must transfer the Investment Amount, i.e., the Nominal Value of the Investment multiplied by the number of Units subscribed, plus a processing fee to the address indicated by the Issuer within a certain time period. Ether transferred to the Issuer in excess of the Investment Amount and the processing fee or received by the Issuer after the allotted time period will not bear interest and will be held by the Issuer until (i) the Investor makes a future Subscription (in which case the excess amount will be credited toward the future Subscription), or (ii) the Investor requests a refund (in which case applicable transaction fees will be borne by the Investor).

After receiving the Investment Amount and the processing fee, the Issuer may accept the Subscription by notifying the Investor of such acceptance via email. Subscriptions will be effective only upon the Issuer's acceptance. The Issuer may reject any investment in whole or in part.

After a Subscription has been made, Interest will start to accrue on the Reward Day following the Waiting Period. The Waiting Period is determined by the Issuer and begins twelve (12) hours after the transfer of the Investment Amount has been confirmed by sixty-five (65) blocks. The 12-hour period preceding the start of the Waiting Period can be waived by the Subscriber by clicking a button on the Website. In such a case the Waiting Period will begin at the time of waiver. The Issuer publishes the Waiting Period at <https://staking.ethermine.org/statistics>. In the course of the subscription process, the Waiting Period is shown to the Investor on the Website before a Subscription is made.

2.14 Right of Withdrawal

Under § 8 of the Austrian Distance Financial Services Act (*Fern-Finanzdienstleistungsgesetz*; FernFinG), Investors who are consumers within the meaning of the Austrian Consumer Protection Act have the right to withdraw from the Investment within fourteen (14) days from the date the contract is concluded. The contract is concluded upon the Issuer's acceptance of the Subscription pursuant to § 3 (c) of the Terms; the withdrawal period therefore begins at that time.

To exercise the right of withdrawal, the Investor must inform the Issuer of the decision to withdraw from the Investment by an unequivocal statement (e.g., a letter sent by post or in a message sent

via the website <https://www.staking.ethermine.org>). To meet the withdrawal deadline, it is sufficient for the Investor to send the communication concerning the exercise of the right of withdrawal before the withdrawal period has expired.

If an Investor exercises the right of withdrawal, the Issuer will reimburse all payments received from the Investor within fourteen (14) days from the day on which the Issuer was informed about the decision to withdraw. The Issuer will carry out such reimbursement using the same means of payment used by the Investor for the initial transaction, unless the parties expressly agree otherwise. This means that the Issuer will carry out the reimbursement via the Ethereum blockchain.

2.15 Restrictions on Tradability

The Investments are non-transferable and therefore also non-tradeable. The Terms include a strict prohibition of assignment. Neither the Investment as a whole nor any part thereof, or claim thereunder, may be assigned or otherwise transferred to any third party.

2.16 Costs of the Offering

2.16.1 Distribution costs

The Issuer does not incur any costs associated with the distribution of the Investment besides ordinary operation expenses. No third party is involved in marketing or distribution, no budget is planned for advertisements or marketing communication.

2.16.2 Administration and Management Costs

From the Investor's perspective, there are no administration or management costs associated with registering on the Website or completing the KYC check prior to making a Subscription.

The Issuer charges a processing fee in connection with a Subscription. In the course of the subscription process on the Website, the processing fee is shown to the Investor before a Subscription is made

Investors bear the costs associated with transaction fees ('gas') for the settlement on the Ethereum Network. These costs are incurred when transferring the Investment Amount (and processing fee) in the course of a Subscription and in connection with any Payout or Repayment.

2.17 Valuation Principles

The Investment bears Interest. Interest is floating and linked to the ETH.STORE. For details, please refer to Section 2.1.2 'Payment of Interest' beginning on page 40 of this Prospectus. In simple terms, ETH.STORE is a reference rate that represents the average financial return validators on the

Ethereum Network have achieved in a 24-hour period. The ETH.STORE is independent of the Issuer's (or any other single validator's) performance.

ETH.STORE is defined under the Terms as the rate *per annum* determined by the Calculation Agent by dividing (i) the Total Staking Rewards by (ii) the Total Effective Balance.

The Calculation Agent calculates the ETH.STORE as follows:

- First, the Calculation Agent identifies which Epochs were processed on a given Reward Day. The first Epoch of a Reward Day is the first finalized Epoch that begins on or after 12:00:23 UTC. The last Epoch of a Reward Day is the finalized Epoch that is processed 224 Epochs later, approximately 24 hours after the first Epoch of a Reward Day. Each Reward Day consists of 225 Epochs. No Epochs are skipped or disregarded in the calculation.
- Second, the Calculation Agent determines which Validators were active during an entire Reward Day (the "**Active Validators**"). Validators that are activated after the first Epoch of a Reward Day and Validators that are exited before the last Epoch of a Reward Day are not included in the calculation.
- Third, the Calculation Agent calculates the Total Staking Rewards by adding the (i) Consensus Rewards and (ii) Transaction Fees earned by Active Validators in a Reward Day.
- Fourth, the Calculation Agent determines the Total Effective Balance of Active Validators.
- Fifth, the Calculation Agent divides the Total Staking Rewards by the Total Effective Balance and multiplies the result by 365.

The source code used to calculate the ETH.STORE is open source and available at <https://github.com/gobitfly/eth.store>.

The Calculation Agent calculates the ETH.STORE on a daily basis and publishes the result at <https://staking.ethermine.org/statistics>, which is publicly available.

The ETH.STORE is calculated on the basis of the Effective Balances of Active Validators rather than their current balances. In contrast to a Validator's current balance, which is the total amount of Ether held by the Validator, the Effective Balance is the Ether balance of a Validator that is used to determine the size of a reward or penalty on the Ethereum Network. The Effective Balance can never be higher than 32 ETH and is always a multiple of 1 ETH, rounded down. For example, if a Validator's current balance is 28.7 ETH, its Effective Balance would be 28 ETH. A Validator's Effective Balance might be less than 32 ETH if, for example, penalties have been assessed against the Validator.

Under the Terms, if an outlier event occurs that results in the ETH.STORE value on a given Reward Day to be more than three standard deviations above the mean of the last thirty (30) ETH.STORE values (e.g., when transaction fees are first sent to Validators after the Merge), the Issuer may use the last ETH.STORE value within three standard deviations of such mean as the ETH.STORE value for that Reward Day. Three standard deviations (also called three-sigma limits) refers to a statistical rule that, for a normal distribution, almost all (i.e., around 99.7 %) observed data should fall within three standard deviations of the distribution's mean. The upper limit of three standard deviations is calculated as follows:

- First, the mean of the last thirty (30) ETH.STORE values is calculated;
- Second, the variance⁶ of the last thirty (30) ETH.STORE values is calculated;
- Third, the standard deviation is calculated, which equals the square root of the variance;
- Fourth, the standard deviation is multiplied by three;
- Fifth, the result is added to the mean of the last thirty (30) ETH.STORE values to determine the upper limit of three standard deviations.

The Terms specify that the ETH.STORE value may be adjusted only if the upper limit of three standard deviations is exceeded; there is no adjustment to the ETH.STORE if the lower limit is exceeded (e.g., in a mass slashing event).

For an example calculation of the upper limit of three standard deviations, see Section 2.1.2.

As at the date of this Prospectus, the ETH.STORE is approx. 4,5 % *per annum*. The rate is dependent on a number of factors, in particular the number of Validators actively proposing and attesting blocks. This is the case because the likelihood to earn rewards for proposing and attesting blocks is linearly linked to the number of Validators in the network. For example, a tenfold increase of Validators reduces the probability of earning those rewards by the same factor of ten. This is offset, to a minor extent, by adjustments to the rewards. Nevertheless, the main factor determining the ETH.STORE is the number of Validators actively taking part in the staking process. The more Validators are staking, the less of a return a single Validator can expect.

2.18 Liens or Encumbrances

As of the date of this Prospectus, the Issuer does not have any liens or encumbrances over its assets.

⁶ Variance is a term used in statistics that refers to a statistical measurement of the spread between numbers in a data set. Variance can be calculated using the VAR.P function in Microsoft Excel, for example.

The purpose of this Public Offer is to raise funds for the Issuer's business. For details on the Issuer's business, refer to Section 3.1.5 'Business Object' starting on page 65 of this Prospectus. The Ether raised in this Public Offer are used for this purpose only, including staking on the Ethereum Network. The Issuer does not intend to use the Ether raised in this Public Offer to create liens or encumbrances. However, it should be emphasized that staking on the Ethereum Network requires the locking-up of Ether for an indefinite period of time.

2.19 Preparation of the Financial Statements

Austrian limited liability companies (LLCs) such as the Issuer are required to produce financial statements for the past financial years. The Austrian law distinguishes between small, medium-sized and large LLCs. Small LLCs do not exceed at least two of the following characteristics:

- EUR 5,000,000 in total assets;
- EUR 10,000,000 in revenue in the 12 months before the balance sheet date;
- 50 employees in an annual average.

Medium-sized LLCs exceed two of the aforementioned characteristics but not two of the following characteristics:

- EUR 20,000,000 in total assets;
- EUR 40,000,000 in revenue in the 12 months before the balance sheet date;
- 250 employees in an annual average.

Large LLCs exceed at least two of those characteristics.

Since the Issuer was only established in late 2021, it has started out as a small LLC; however, depending on the performance of the Issuer, it might grow into another category in the financial year of 2022. Depending on the classification as small, medium-sized, or large LLC, different rules on the preparation of financial statements apply.

- In case of small LLCs, only annual financial statements must be prepared which do not need to be audited.
- In case of medium-sized and large LLCs, financial statements and a management report must be prepared, both of which are subject to an audit by an auditor.

The annual financial statements are examined by the auditor in terms of whether the statutory provisions and supplementary provisions of the articles of association have been observed; accounting is to be included in this part of the audit. The management report is examined to ensure

that it is consistent with the annual financial statements and information provided corresponds to the actual situation of the company.

2.20 Distribution and use of the net profit or surplus for the year

The articles of the Issuer do not provide for a certain use of the net profits. In practice, the net profits will be paid out to the Issuer's parent company, bitfly gmbh.

2.21 Financial Statements

The latest financial statements of the Issuer as per 31 December 2021 are attached as Schedule 2. Since these financial statements concern the year of incorporation of the Issuer, they have not been audited.

Key financial figures for 2021 are:

(figures in EUR)	Business year 2021
Share capital	35,000.00
Total assets	33,254.77
Equity	26,138.07
Equity ratio	78.60 %
Operating result	-8,861.93
Earnings before tax	-8,861.93
Earnings after tax	-8,861.93
Balance sheet loss	-8,861.93

Source: unaudited financial statements 2021 (see Schedule 2).

2.22 Purchase Price of the Investment

The purchase price for a single Unit is ETH 0.1 which is equal to its Nominal Value.

2.23 Encumbrances to the benefit of Investors

The obligations assumed by the Issuer under the Investments are unsecured. 'Unsecured' means that the Issuer does not provide any security or encumbrances on its assets to the benefit of the Investors.

2.24 Prospects of the Investments

The Issuer does not provide any estimates about future prospects of the Investments. Information on the current and historic ETH.STORE values can be obtained at <https://staking.ethermine.org/statistics>.

2.25 Conditions and Calculation of the Offer Price after the initial issue

The Offer Price is not subject to calculation. The Offer Price is fixed at 100 % of the Nominal Value.

2.26 Pre-Emptive Rights

No party was granted pre-emptive rights.

2.27 Disposing of the Investment

The Investments cannot be sold to third parties. The only way for the Investor to dispose of the Investment is to terminate it. The Issuer repays to the Investor the Nominal Value of the Investment upon termination.

Ordinary Termination

Ordinary termination means that there is no need to provide a reason why the Investments are terminated. Both the Issuer and the Investor have a right to ordinary termination. The Issuer may only terminate all Investments held by a single Investor at the same time but not individually. As for the Investor, each Unit can be terminated separately. This means, for example, that an Investor may decide to only terminate five (5) out of 50 of his or her Units subscribed.

In case of ordinary termination, a Notice Period of twelve (12) weeks must be observed. This means that there is a period of twelve (12) weeks between the point in time the termination was declared and the Termination Date, i.e., the date the termination becomes effective. The Termination Date is the last day of the calendar month in which the end of the Notice Period falls. If, for example, the Investor declares termination of the Investments on the 10th of March 2023 then the end of the Notice Period of twelve (12) weeks falls on the 2nd of June 2023 which means that the Termination Date is the 30th of June 2023. If, for example, the Investor declares ordinary termination on the 7th of April 2023 then the Termination Date is still the 30th of June 2023 because the end of the Notice period falls on the 30th of June 2023.

Both the Issuer and the Investor waive their right to ordinary termination (a) for a period of five (5) years starting on the Investment Date; or (b) until the Ethereum Network allows the withdrawal of staked Ether, whichever event occurs first. Waiving the right to ordinary termination means that for the stated period no ordinary termination of Investments can be declared, neither by the Issuer

nor by the Investor. If, for example, the functions to withdraw staked Ether are implemented and operational on the 10th of March 2023, then declaring ordinary termination is only permissible starting that day; if termination was declared on that day, the Termination Date would be the 30th of June 2023.

Note that the waiver period of five years starts on the Investment Date. Investment Date is the date the Investment Amount, i.e., the Nominal Value of all subscribed Units, was received by the Issuer. If an Investor purchases 20 Units of the Investment on the 15th of June 2022 and another 10 Units on the 15th of January 2023 then the five-year period starts separately for both purchases. This is only relevant in case the functions to withdraw staked Ether are not implemented within the five-year period. If the functions are implemented earlier, then the end of the waiver period is the same for all purchased Units of the Investment. Otherwise, the individual calculation of the waiver period means that the 20 Units first purchased may be terminated (i.e., termination may be validly declared) starting on the 15th of June 2025 whereas the 10 Units purchased afterwards may only be terminated starting on the 15th of January 2026.

Extraordinary Termination

The right to extraordinary termination always applies. Extraordinary termination means that the terminating party must have valid cause, also called good cause (*wichtiger Grund*), for terminating the Investments. Extraordinary termination can be made without having to observe any notice period or termination dates. It is effective immediately. Note that since the Investments are subject to Austrian law, also Austrian law determines what constitutes good cause for the right to immediate termination. Good cause can only be assumed if the continuation of the mutual contractual obligations is unbearable for the terminating party. The Austrian Supreme Court refers to the termination for good cause as an 'extreme emergency valve'. For the right to extraordinarily termination to apply, the circumstances must have changed significantly since the conclusion of the contract and this change must not have been foreseeable when the contract was concluded; also, the change in the circumstances must not be attributable to the party terminating the contract. This means, in particular, that a financial need of the Investor does not warrant an extraordinary termination for good cause, as this would be a circumstance attributable to the Investor. Also, it means that a delay in the implementation of the withdrawal functions on the Ethereum Network or stark price drops of Ethereum, to name some examples, do not warrant an extraordinary termination as those both are foreseeable events for Investor and Issuer.

Repayment

On the Termination Date, i.e., the last day of the calendar month in which the Notice Period ends, the Issuer pays to the Investor (a) the Nominal Amount of each Unit of terminated Investments; and (b) Accrued Interest on the terminated Investments not yet received by the Investor. Since the Issuer repays the Nominal Amount, the Investor receives back the initially invested amount of Ether. To this end, the Issuer pays the owed amount of Ether to the Payout Address provided by the Investor in the Payout process. Note that transaction fees (gas) for the settlement on the blockchain are to be borne by the Investor.

2.28 Management Company Services and Charges

The Issuer does not use the services of a management company.

2.29 Management Company Notice Periods

The Issuer does not use the services of a management company.

2.30 Event of Insolvency

The Issuer is incorporated and has its registered office in Austria and can therefore be subject to Austrian insolvency legislation and procedures. Pursuant to § 69 (2) of the Austrian Insolvency Act, any debtor is obliged to submit an application to open insolvency proceedings if the legal requirements are met. The application must be submitted without undue delay, but no later than 60 days after the onset of insolvency or overindebtedness. The legal effects of the opening of insolvency proceedings begin on the day following the public announcement of the content of the insolvency edict. All of the debtor's property subject to execution is taken away from his free disposal. The decision to open proceedings interrupts pending proceedings *ex lege*. There is also a ban on execution, which means that all creditors have to participate in the insolvency proceedings to enforce their claims. Insolvency creditors must register their claims with the competent court within a certain registration period. According to § 2 (2) of the Austrian Insolvency Act, the insolvency proceedings include all of the assets subject to execution that belong to the debtor or that it acquires during the insolvency proceedings. The registered claims can be disputed by the insolvency administrator, debtor, but also by other insolvency creditors. Uncontested claims form a title for execution against the debtor after the end of the insolvency proceedings. Note that in insolvency proceedings, the debtor usually does not receive its whole claim but all creditors are treated equally and receive only a fraction of their claim.

In the event of insolvency proceedings on the assets of the Issuer, the claims arising pursuant to the uncertificated and non-transferable floating rate investments (*Veranlagungen*) will only be taken into account after Subscribers registered their claims with the competent court within the

registration period. The claims arising pursuant to the uncertificated and non-transferable floating rate investments (*Veranlagungen*) are insolvency claims and are not subordinated. As insolvency creditors, Subscribers can only offset against claims that could already be offset when insolvency proceedings were opened. They can no longer sue for their claims outside of the insolvency proceedings or initiate or continue enforcement proceedings in the insolvency. All Subscribers with uncontested claims will have an executory title against the Issuer after the end of the insolvency proceedings.

2.31 Securities Identification Number

The Investments are not transferable securities and do not have a securities identification number.

The identification number provided by the Oesterreichische Kontrollbank in the course of the notification of this Public Offer is MN0030402490.

3. THE ISSUER

3.1 Name and Registered Office, Business Object

3.1.1 Legal and Commercial Name of the Issuer

The legal name of the Issuer is bitfly staking gmbh.

The Issuer also operates under the commercial name 'bitfly staking'.

3.1.2 Place of Registration and Registration Number

The Issuer's place of registration is Vienna; registration number is FN 569385g (Commercial Court of Vienna).

3.1.3 Date of Incorporation

The Issuer was incorporated on 9 December 2021 and exists for an indefinite period of time.

3.1.4 Domicile, Legal Form, Contact

The Issuer is a limited liability company (*Gesellschaft mit beschränkter Haftung*) pursuant to Austrian law with registered office in Wiedner Gürtel 9, 1100 Vienna, Austria.

Investors can communicate with the Issuer in German or English via the Issuer's website at <https://staking.ethermine.org>

3.1.5 Business Object

The Issuer, bitfly staking gmbh, bundles the Group's operations in terms of its staking activities on the Ethereum Network.

The Issuer was established as of 24 November 2021. According to § 2 of the Issuer's declaration of formation (*Errichtungserklärung*), the business object of the Issuer is as follows (English translation, for the original German version, see Schedule 4):

"§ 2. Object of the Company

(1) The object of the Company is the provision of IT services.

(2) The Company is entitled to purchase, sell or otherwise acquire other similar companies, to lease such and to participate in such companies and to establish, acquire and own subsidiaries in Austria as well as abroad.

(3) The Company is entitled to take all actions, transactions and measures which are conducive to the achievement of the purpose of the Company, but not to conduct

(a) banking business within the meaning of the Austrian Banking Act, as well as

(b) all activities subject to the supervision of the Financial Markets Authority."

3.2 Legal and Economic Status

3.2.1 History and Development of the Issuer

The Issuer was established as of 24 November 2021.

On 4 April 2022, the Issuer launched its website <https://staking.ethermine.org>.

On 11 April 2022, the Issuer began a private sale of the Investments (marketed as 'Ethermine Staking beta'). The Investments were offered to fewer than 150 natural or legal persons per EEA signatory state pursuant to the exemption from the obligation to publish a prospectus under § 3 (1) (5) of the Austrian Capital Market Act. The terms of the Investments offered in the private sale are substantially similar to the Terms of the Investment offered in the Public Offer. As of the date of this Prospectus, the Issuer has raised approximately 145 ETH in the private sale.

3.2.2 Principal Activities

The Issuer generates revenue from three distinct business activities that it currently pursues or intends to pursue:

- First, the Issuer operates and maintains Validators in connection with a non-custodial staking service for third parties and also operates and maintains its own Validators with Ether generated from the Investments, which can be monetized by receiving staking rewards;
- Second, the Issuer offers an MEV relay service, which can be monetized by charging customers fees for that service;
- Third, the Issuer operates an MEV trading bot for its own account, which can give the Issuer opportunities to spot and execute favorable transactions, thereby generating income.

The Issuer aims to achieve synergies between its principal activities mainly by increasing the number of Validators it operates. The more Validators it operates, the more successful the Issuer expects its business operations to be within the scope of the other two business fields.

An overview of each of the Issuer's business activities is provided in Section 3.2.3 directly below.

3.2.3 Nature of the Issuer's Operation

Ethereum 2.0

The Issuer's business activities are closely related to the transition of the Ethereum Network from proof-of-work to proof-of-stake (generally referred to as 'Ethereum 2.0'). The following is a concise and simplified description of Ethereum 2.0, limited to aspects necessary to understand the Investments issued under this Prospectus.

Ethereum 2.0 is the upgrade to Ethereum that is designed to improve energy efficiency and network scalability by replacing Ethereum's current proof-of-work consensus mechanism with proof-of-stake. The upgrade is scheduled to take place in several phases. The first phase, "Phase 0", took place on 1 December 2020 with the release of the Beacon Chain. Until the Merge (described below), the Beacon Chain will run separately from the current Ethereum proof-of-work network, the Ethereum Mainnet.

Proof-of-Stake

The Beacon Chain introduces proof-of-stake to Ethereum. In proof-of-stake, nodes called Validators earn rewards by "proposing" new blocks to the network and "attesting" to the most current state of the network. In contrast to proof-of-work, where "miners" compete for the right to add the next block to the blockchain, in proof-of-stake the Beacon Chain pseudo-randomly selects Validators to propose and attest blocks. To activate a Validator, users must "stake" 32 Ether by transferring the Ether to a designated deposit address on the Ethereum Mainnet. Staking is similar to paying a security deposit. Users will not be able to withdraw their staked Ether until the withdrawal function is activated after the Merge.

Unlike the current Ethereum Mainnet, which progresses in blocks, the Beacon Chain progresses in Epochs. Each Epoch consists of 32 "slots". Each slot lasts 12 seconds, which means that each Epoch lasts approximately 6.4 minutes (32 slots x 12 seconds). 225 Epochs therefore lasts 24 hours.

At the beginning of each Epoch, the Beacon Chain pseudo-randomly selects 32 Validators to propose blocks and pseudo-randomly groups all Validators into "committees" to attest to the current state of the network. Pseudo-randomly means that the selection of the next Validators or committees is based on decisions the current Validators make. The Beacon Chain assigns one proposing Validator and up to 64 committees, each consisting of a minimum of 128 Validators, to each slot. A single Validator can propose a maximum of one block and one attestation per Epoch.

Proposing Validators create and propose new blocks to the network. Creating a block in proof-of-stake is similar to creating a block in proof-of-work. When a user wishes to make a transaction, the user broadcasts a transaction request to the network and indicates the amount the user is willing to pay in transaction fees for the transaction to be processed. A Validator, seeking to maximize the transaction fees it receives, bundles pending transactions and other pertinent information concerning the state of the network, e.g., the hash of the previous block, into a "block" of data. In contrast to proof-of-work, where miners compete for the right to propose a block by computing a large number of hashes, in proof-of-stake the right to propose a block in a particular slot belongs to the Validator that was assigned by the Beacon Chain to that slot. The Validator broadcasts the block to the network during the 12-second period of its assigned slot.

Attesting Validators vote on the current state of the network. For every attestation there are two votes: (i) a chain head vote indicating what the Validator believes is the current chain head, and (ii) a finality vote indicating (a) the "source" checkpoint (i.e., the block in the first slot of the last justified Epoch), and (b) the "target" checkpoint (i.e., the block in the first slot of the current Epoch).

If more than two-thirds (i.e., a supermajority) of the attesting Validators in an Epoch agree on the target checkpoint, that Epoch is deemed to be "justified". An Epoch that precedes at least two justified Epochs is deemed to be "final". A final Epoch is considered to be immutable.

Validators receive rewards in Ether for proposing and attesting in accordance with the proof-of-stake consensus rules. The reward amount varies based on several factors, most importantly the "base reward" which is inversely proportional to the total staking balance of all Validators. In other words, the more Validators participating on the network, the lower the base reward per Validator. Validators that propose a block generally receive one-eighth of the base reward; the attesting Validators generally receive a pro rata share of the remaining seven-eighths of the base reward, which is adjusted based on whether the Validator's votes were consistent with the supermajority and how quickly the attestation was included in a proposed block (i.e., the "inclusion delay").

Validators are penalized for going offline or behaving maliciously. Penalties are assessed in Ether and are deducted from the Validator's staking balance. If the staking balance falls below 16 Ether, the Validator is ejected from the network and no longer receives staking rewards. The penalty amount depends on several factors, including the severity of the infraction, the Validator's staking balance and the number of other Validators that are online at the time of the infraction.

If a Validator is offline and more than two-thirds of the other Validators remain online, the offline Validator is assessed a penalty equal to the amount of rewards the Validator would have earned

had it been online. Accordingly, a Validator that has an uptime of less than 50% can expect its staking balance to decrease over time.

If a Validator is offline and less than two-thirds of the other Validators remain online, which is considered to be an unlikely scenario, an "inactive leak penalty" is triggered. In such a case, the offline Validators are penalized with the aim of bringing the ratio of online Validators to total Validators above two-thirds. In such a scenario, offline Validators stand to lose up to 50 % of their staked Ether over a period of 21 days.

If a Validator acts maliciously (e.g., by double voting), its staking balance is "slashed" by a minimum amount of 1 Ether. The slashing amount depends on the number of Validators slashed at the same time. In addition, the Validator is prevented from further participating in the network and is forcibly ejected from the staking pool.

The Merge and Beyond

The Ethereum Mainnet is expected to merge with the Beacon Chain sometime in 2022 or 2023. During the Merge, the Ethereum Mainnet will transition from a proof-of-work consensus mechanism to proof-of-stake. The Ethereum Mainnet will become the first "shard chain" of the upgraded Ethereum Network. When this occurs, the Beacon Chain will direct Validators to validate the Ethereum Mainnet.

Sometime after the Merge, additional shard chains are expected to be added to the network in future upgrades. The Beacon Chain will be responsible for ensuring that the shard chains are synced. Additional features that are still under development, e.g., adding smart contract functionality to shard chains, may be introduced in further upgrades. After the Merge, Ether as such will remain the native virtual currency of the Ethereum Network.

Revenue Streams of the Issuer

Ethereum Staking

The Issuer engages in staking on the Ethereum Network by operating and maintaining a multitude of Validators. In addition to operating Validators with the proceeds of the Investments, the Issuer operates Validators in connection with its non-custodial staking service, which allows users to earn staking rewards without having to run a Validator themselves.

The Issuer generates revenue by collecting rewards for proposing and attesting on the Ethereum Network. These rewards will not be accessible to the Issuer until the withdrawal function has been enabled after the Merge.

The Issuer intends to continue and increase its Ethereum staking activities after the Merge. The Issuer expects to generate additional revenue from its staking activities after the Merge by engaging in MEV extraction and collecting transaction fees.

MEV Relay Service

After the Merge, the Issuer intends to provide an MEV relay service on the Ethereum Network similar to the service currently offered on the Ethereum Mainnet by the Issuer's Group.

MEV stands for "maximum extractable value" and can be defined as the maximum value that can be extracted from block production in excess of the standard block reward and gas fees by including, excluding, and changing the order of transactions in a block. MEV can be extracted by miners (on the Ethereum Mainnet) and Validators (on the Beacon Chain after the Merge) as well as by "searchers" that analyze blockchain data and scan the public memory pool for profitable MEV opportunities.

Miners and Validators are particularly well situated to extract MEV due to their ability to create and propose blocks to the network. Because miners and Validators are able to choose which transactions (including their own) are included in the blocks they propose and to determine the order of transactions within those blocks, they can arrange the blocks in a way that generates revenue for themselves beyond the standard block reward and transaction fees. For example, a miner or Validator could identify a profitable transaction pending in the public memory pool, create a copy of the transaction in its own name, and include the copied transaction into the next proposed block. The strategy would be profitable if the copied transaction was confirmed by the network before the original transaction. However, other users might also notice the profitable transaction and attempt the same transaction with a higher transaction fee, triggering a "priority gas auction" to capture the profit opportunity. Profitable MEV opportunities are most commonly associated with arbitrage transactions on decentralized exchanges or liquidations on decentralized finance applications.

MEV extraction is a relatively new phenomenon and some MEV practices are considered to be controversial. Critics argue that MEV extraction harms regular users, clogs the network with failed transactions, and destabilizes the network. Proponents argue that MEV extraction facilitates price discovery and makes Ethereum-based markets more efficient.

An MEV relay is a gateway that connects users directly to miners (on Ethereum Mainnet) or Validators (on the Beacon Chain) in order to allow users to bypass the public memory pool when executing a transaction. Transactions pending in the public memory pool are at risk of being copied or otherwise co-opted by miners, Validators or searchers engaging in MEV extraction. An MEV relay allows

users to send profitable transaction requests directly to miners or Validators without first having to reveal the transaction requests to the public memory pool. Miner and Validators that offer an MEV relay service typically promise not to co-opt transactions sent through the relay. Users pay competitive transaction fees to have their transactions included in blocks. The more Validators an MEV provider has, the more likely the service will be used.

The Issuer's Group currently offers an MEV relay service on the Ethereum Mainnet. Users can send transaction bundles to an endpoint specified by the Group. Transactions are processed in accordance with certain rules set out by the Group. For example, the relay will not process bundles that attempt to front-run public trades on decentralized exchanges. In addition, the Group promises to abide by certain "fair market principles" in connection with the information it receives in the MEV relay. After the Merge, the Issuer plans to provide a similar service on the Beacon Chain. The Issuer expects to generate revenue by collecting fees for processing transactions sent through the MEV relay.

MEV Trading Bot

After the Merge, the Issuer intends to engage in MEV extraction on the Ethereum Network for its own account via its proprietary trading bot. The Issuer intends to utilize its Validators to engage in MEV extraction on the Ethereum Network. The Issuer expects to have a competitive advantage in this field based on the current MEV extraction capabilities of the Issuer's Group (in connection with the Ethermine mining pool) as well as due to its expectation that it will operate a significant number of Validators. The Issuer expects that the more Validators it operates, the more profitable its MEV extraction activities will be due to its ability to propose MEV-extracting blocks more frequently than its competitors.

3.2.4 Principal Markets

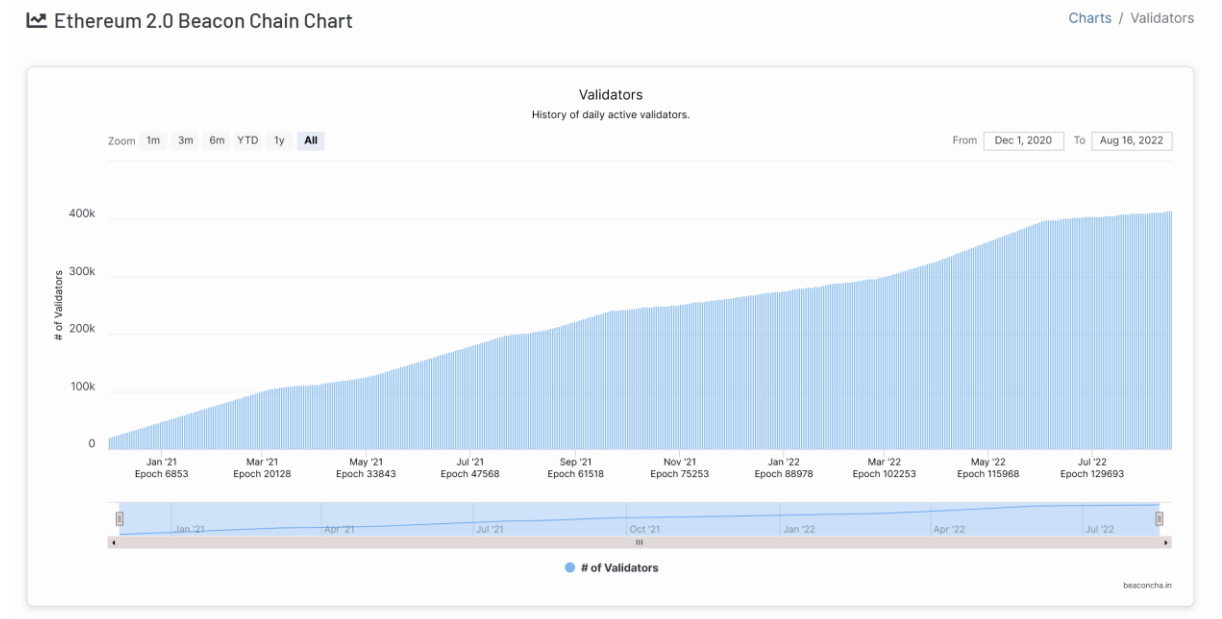
The Issuer competes principally in the Ethereum staking market and MEV market.

Ethereum Staking Market

The market for staking on the Ethereum Network is a global market. The Issuer therefore competes with other staking operators in that global market.

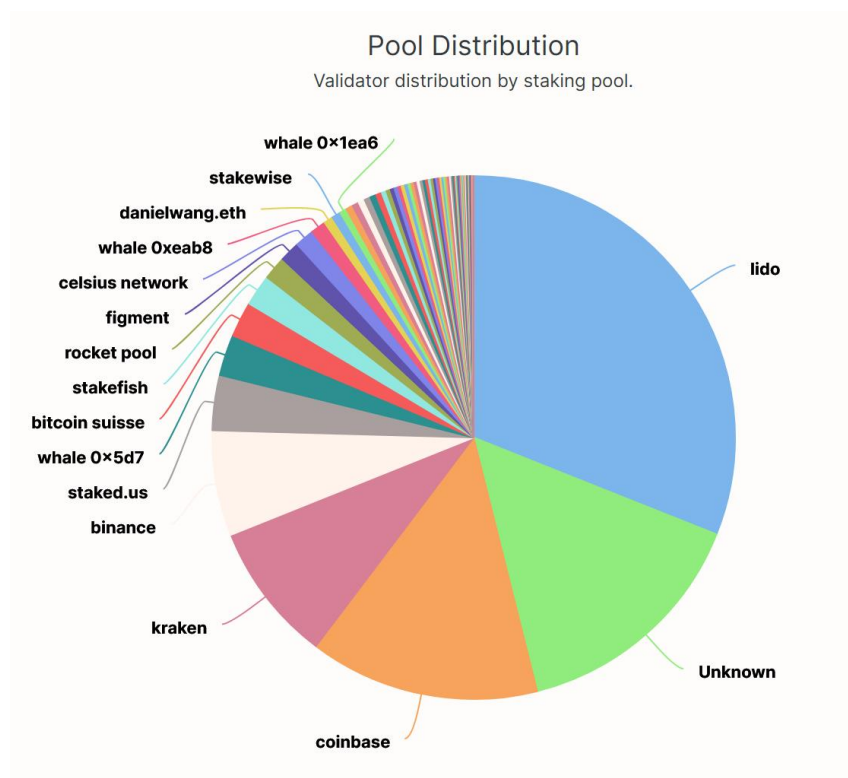
Due to the public nature of the Ethereum Network, the Ethereum staking market can be quantitatively measured. The size of the market can be measured by the total number of active Validators. The size of a participant's market share can be measured by the number of Validators operated by the participant relative to the total number of active Validators.

As of the date of this Prospectus, approximately 400,000 Validators are active on the Ethereum Network. The number of active Validators has consistently increased since the launch of the Beacon Chain on 1 December 2020:



Source: <https://beaconcha.in/charts/validators>

The approximate distribution of Validators among market participants as of the date of this Prospectus is as follows:



Source: <https://beaconcha.in/pools>

The above chart is based on the amount of Ether sent from public Ethereum addresses to the deposit address on the Ethereum Mainnet for the purpose of activating a Validator. Some of these public Ethereum addresses are associated with certain staking service providers such as Kraken, Lido and Binance. However, because not all addresses have been connected to staking service providers, the above chart should not be viewed as a complete breakdown of the market.

The Issuer's main competitors in the Ethereum staking markets are situated outside of Austria. Kraken and Coinbase, two of the largest crypto exchanges in the world, are domiciled in the United States. Binance was originally founded in China and operates globally. Lido is a decentralized protocol made available by DeFi Ltd., a Cayman Islands company.

According to the above chart, Lido operates approximately 129,000 Validators for a market share of approximately 31 %. The "Unknown" category accounts for approximately 62,500 Validators representing approximately 15 % of all active Validators. The Issuer, which was incorporated in December 2021, is a relatively new player in the Ethereum staking market and currently operates approximately 462 Validators for a market share of approximately 0.1 %.

Market participants that operate crypto exchanges benefit from having a large customer base for offering their Ethereum staking service. These exchanges also offer staking services for other proof-of-stake blockchains.

The Issuer aims to obtain a significant position in the Ethereum staking market through the issuance of the Investments. Assuming a full placement of the Public Offer, the Issuer would be able to operate 31,250 Validators, increasing its market share to approximately 7 %.

Ethereum MEV Market

MEV stands for "maximum extractable value" and can be defined as the maximum value that can be extracted from block production in excess of the standard block reward and gas fees by including, excluding, and changing the order of transactions in a block. According to one calculation, as of the date of this Prospectus approximately USD 673 million has been extracted in MEV transactions on the Ethereum Mainnet since 1 January 2020.⁷

The MEV market can be divided into two sub-markets: proprietary MEV extraction and MEV relay services. The Issuer competes in both of these sub-markets.

Actors involved in proprietary MEV extraction comprises miners, mining pool operators, validators and "searchers" who analyze blockchain data and scan the public memory pool for profitable MEV

⁷ <https://explore.flashbots.net/>.

opportunities. The Issuer's Group competes primarily against other large mining pool operators that distribute MEV rewards to miners.

The sub-market for MEV relay services comprises service providers who provide a gateway that connects users directly to miners (on Ethereum Mainnet) or Validators (on the Beacon Chain) in order to allow users to bypass the public memory pool when executing a transaction. In this sub-market, the Issuer's Group primarily competes against an open-source MEV relay provided by Flashbots, a research and development organization that focuses on MEV activity. The Issuer expects to gain a competitive advantage in this sub-market by offering low latency connections to its Validators, allowing MEV searchers to submit bundles faster compared to going through the Flashbots MEV relay.

3.2.5 Dependencies on Patents, Licenses, Contracts or Processes

The Issuer is not dependent on patents, licenses, contracts or processes.

3.3 Management Bodies

The main management body of the Issuer is the management board (*Geschäftsführung*), consisting of the managing directors (*Geschäftsführer*) of the Issuer. At the date of this Prospectus, the management board has one member who has sole power of representation, namely Ing. Peter Pratscher.

The Issuer has not established a supervisory board (*Aufsichtsrat*). The Issuer is a small limited liability company (*kleine Kapitalgesellschaft*), since the following criteria are not met or exceeded: (i) balance sheet total of EUR 5 million; (ii) revenues of EUR 10 million in the past 12 months before the account date and (iii) annual average of 50 employees (Sec 221 sub-para 1 Austrian Commercial Code).

The Issuer has instituted a voluntary advisory board (*Beirat*), although the Issuer is not obliged by mandatory law to institute a supervisory board (*Aufsichtsrat*) (Sec 29 Austrian Limited Liability Company Act). The voluntary advisory boards consist of five members who may be nominated for election to the board by a shareholder holding at least a 20 % interest in the Issuer.

3.3.1 Names, Business Addresses and Functions

The sole managing director of the Issuer, i.e., Ing. Peter Pratscher, additionally holds the following management functions in the following businesses:

- (a) sole shareholder and sole managing director with sole power of representation of bitfly holding gmbh with its seat in Vienna and the business address Wiedner Gürtel 9, 1100 Vienna, registered with the Commercial Court Vienna under FN 514211v since 12 June 2019.

- (b) sole managing director with sole power of representation of bitfly gmbh with its seat in Vienna and the business address Wiedner Gürtel 9, 1100 Vienna, registered with the Commercial Court Vienna under FN 472953w since 3 October 2017.
- (c) sole managing director with sole power of representation of bitfly immobilien gmbh with its seat in Vienna and the business address Wiedner Gürtel 9, 1100 Vienna, registered with the Commercial Court Vienna under FN 558486d since 8 June 2021.

3.3.2 Conflicts of Interest

The Issuer has no knowledge of potential conflicts of interest in relation to its management.

In general, Austrian limited liability companies, such as the Issuer, are represented by their managing directors. Managing directors are obliged to carry out the management of the company while safeguarding the interests of the company they represent. In doing so, they need to observe the diligence and care of a prudent entrepreneur. However, managing directors are bound by the instructions of the shareholders (for example in the form of shareholder resolutions, rules of procedures or otherwise) in terms of operational management of the company.

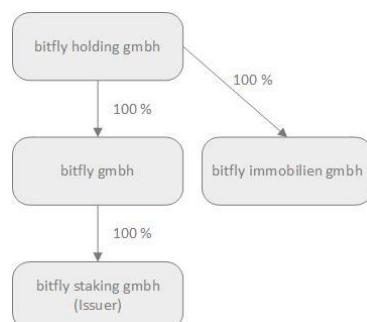
Managing directors are also obliged to obtain prior consent of the advisory board for certain business decisions, for example when concluding contracts of any kind with shareholders, members of the management or of the advisory board as well as with family members of such persons.

The sole managing director of the Issuer is at the same time (i) the sole shareholder and sole managing director of bitfly holding gmbh as well as (ii) the sole managing director of bitfly gmbh, the Issuer's sole shareholder. Consequently, the managing director of the Issuer controls the entire 'bitfly Group'. Ownership interests are independent of the interests of the Issuer as a company and are not always in line.

3.4 Shareholders

3.4.1 Group Structure

The Issuer is part of the 'bitfly Group' which can be depicted as follows:



Source: Status of the 'bitfly Group' as of the date of this Prospectus.

Bitfly holding gmbh is the sole shareholder of bitfly gmbh, which is the sole shareholder of the Issuer. Bitfly holding gmbh acts as a holding and management company in relation to the Issuer and bitfly gmbh.

Bitfly gmbh is a wholly-owned subsidiary of bitfly holding gmbh and the Issuer is a wholly-owned subsidiary of bitfly gmbh. The business activity of bitfly gmbh includes the business lines blockchain analytics and mining solutions. Further, bitfly gmbh is also active in providing consultancy services in the fields of Ethereum contract development, private mining pools, blockchain analytics and network analysis.

In general, a blockchain explorer is a piece of software that uses an application programming interface (API) and a blockchain node (network point) to draw various data from a blockchain and then uses a database to arrange the searched data and to present the data to the user in a searchable format. Within the business line blockchain analytics, bitfly gmbh offers different blockchain explorer services as follows: (i) the Ethereum blockchain explorer Etherchain; (ii) the Zcash blockchain explorer Zchain; (iii) the open source Ethereum Beacon Chain explorer Beaconcha.in; (iv) the open source Ethereum blockchain explorer Etherchain Light; and (v) the Ethereum network explorer Ethernodes.

Within the service line mining solutions, bitfly gmbh offers different options for mining crypto assets as follows: (i) Ethereum Solo Mining; (ii) Ethereum Mining Pool; (iii) Ethereum Classic Mining; and (iv) Zcash Mining Pool.

As described in Section 3.2 above, the Issuer's business is *inter alia* the operation of Validators on the Ethereum Network for the purposes of staking.

3.4.2 Notifiable Shareholdings

The Issuer does not hold any shareholdings in any companies in Austria or abroad.

3.4.3 Voting Rights

bitfly gmbh, as sole shareholder of the Issuer, holds 100% of the share capital and voting rights in the Issuer. The Issuer is organized as an Austrian limited liability company, hence there are no different voting right classes.

3.4.4 Ownership and Control

bitfly gmbh holds the entire share capital in the Issuer, which amounts to EUR 35,000 and is fully paid-in. As sole shareholder, bitfly gmbh holds 100% of the voting rights in the Issuer and has sole control. There are no other agreements in place, which may grant any party control over or similar rights in relation to the Issuer.

In the view of the Issuer's management, no measures to prevent abuse of control are required. Shareholder rights can be exercised in accordance with Austrian corporate law, in particular the Austrian Limited Liability Company Act. The Issuer's management holds the view, that Austrian corporate law offers sufficient protection against abuse of control.

3.4.5 Change of Control

The issuer is not aware of any agreements which may at a later point in time lead to a change of control in the Issuer.

3.5 Financial Statements

The latest financial statements of the Issuer as per 31 December 2021 are attached hereto as Schedule 2. Since these financial statements concern the year of incorporation of the Issuer, they have not been audited.

4. CUSTODIAN BANK

Not applicable. The Issuer does not use a custodian bank.

5. OTHER INFORMATION

5.1 Regular Information on the Development of the Investment

The Issuer will regularly provide information on the development of the Investment on the website of the Issuer at <https://staking.ethermine.org>. After logging in, Investors will have access to a dashboard which will display, *inter alia*, the Investment Amount, Accrued Interest, ETH.STORE and the Fee Rate. The information provided on the website of the Issuer is updated continuously and is for informational purposes only. The Issuer does not provide an uptime guarantee, and interruptions due to maintenance or errors cannot be excluded.

5.2 Other Information

As per the view of the Issuer, all relevant information to make an informed investment decision is covered by the respective parts of this Prospectus.

6. AUDIT REPORT OF THE PROSPECTUS CONTROLLOR

The audit report is attached behind this cover page.



Report of the prospectus controller

We have checked this capital market prospectus ("Prospectus") for accuracy and completeness pursuant to the conditions of Section 7 (1) Austrian Capital Market Act 2019 (KMG).

This investment (pursuant to KMG) is an investment in unsecured debt instruments issued by bitfly staking gmbh (the "Issuer"), whereby investors obtain a claim pursuant to the laws of obligations (schuldrechtlicher Anspruch) against the Issuer for the payment of Interest and repayment of the nominal value of the investment.

Explicit reference is made to the risks associated with the product (see Section 5.2. of this capital market prospectus "Other information" in connection with Chapter D. Risk Factors, with particular reference to subsections "Risk Factors specific to the investments" on pages 24ff and "Risks specific to Ether, the Ethereum Network and blockchain technology" on pages 29ff.

The risks listed in Chapter D. – whether materializing individually or in aggregation with other risks, and even if only partially materializing, may adversely effect the assets, financial position and operating performance of the Issuer and, with respect to investors, may restrict or even fully impair the Issuer's ability to make payments of principal and interest to investors with respect to the investment, and may lead to substantial losses up to the total loss of the invested capital together with any associated costs incurred.

Moore Interaudit GmbH Wirtschaftsprüfungsgesellschaft (FN 55663h/LG Salzburg), A-5020 Salzburg, Strubergasse 28, hereby declares as prospectus controller pursuant to Section 7 (1) item 3 of the Austrian Capital Market Act 2019 (KMG) that the Prospectus has been checked and found to be accurate and complete. The Prospectus contains all information enabling investors to reach an informed judgement on the Issuer, its assets, financial- and earnings-position, its future development perspective, and on the rights, obligations, opportunities and risks associated with the investment offered.

As prospectus controller

A handwritten signature in blue ink, appearing to read 'Florian Eder', written in a cursive style.

Mag. Florian Eder, CPA
Wirtschaftsprüfer / Austrian Certified Auditor

Moore Interaudit GmbH
Wirtschaftsprüfungsgesellschaft

Salzburg, 17.08.2022

7. SCHEDULES

The following Schedules are attached to this Prospectus:

Schedule 1 – Terms & Conditions of the Investments

Schedule 2 – 2021 Annual Financial Statement of the Issuer

Schedule 3 – Companies Register Extract

Schedule 4 – Articles of Association of the Issuer

Schedule 5 – Names and Addresses

Schedule 1 – Terms and Conditions of the Investments



bitfly staking gmbh

Up to ETH 1 000 000 Floating Rate Investments
pursuant to the Austrian Capital Market Act 2019

§ 1. General

- (1) *Issuer, Issuing.* Bitfly staking gmbh, FN 569385 g, Wiedner Gürtel 9, 1100 Vienna, Austria (the "**Issuer**"), pursuant to shareholder resolution dated 28 March 2022, issues investments (*Veranlagungen*) pursuant to § 1 (1) 3 of the Austrian Capital Market Act 2019 (the "**Investment(s)**") in a total nominal amount of up to ETH 1 000 000 (one million Ether).
- (2) *Denomination, Units.* The Investments and any payment obligations thereunder are denominated in Ether (ETH) and are divided into 10 000 000 units (each a "**Unit**") with a nominal value of ETH 0.1 each (the "**Nominal Value**").
- (3) *Price.* The price of a Unit is equal to its Nominal Value (the "**Issue Price**").
- (4) *No Transferability.* Neither the Investment as a whole nor any part thereof, or claim thereunder, may be assigned or otherwise transferred to any third party.
- (5) *Pari Passu.* The Issuer shall ensure that its obligations under the Investments rank at all times at least equal in right of priority and payment with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.
- (6) *Duration.* The Investments do not have a final maturity date and can be terminated by the Investor and the Issuer as provided for under § 6.
- (7) *Limitation.* Claims to Interest according to § 5 expire after three (3) years, claims to repayment according to § 6 expire after thirty (30) years from the respective due date.

§ 2. Definitions

The following terms shall have the respective meanings set forth or referenced below:

"**Accrued Interest**" has the meaning set forth in § 4 (5).

"**Active Validators**" means all Validators that attest and propose blocks on the Ethereum Network during an entire Reward Day.

"**Calculation Agent**" means bitfly gmbh, FN 472953 w, Wiedner Gürtel 9, 1100 Vienna, Austria.

"**Consensus Rewards**" means rewards received by validators for proposing and attesting in accordance with the consensus rules of the Ethereum Network.

"**Effective Balance**" means the Ether balance of a validator used to determine the size of a reward or penalty on the Ethereum Network.

"**Ethereum Network**" means the open-source, public, blockchain-based distributed computing platform featuring smart contract functionality that launched on 30 July 2015 and is recognized by the official Go Ethereum client.

"**ETH.STORE**" means the rate *per annum* determined by the Calculation Agent by dividing (i) the Total Staking Rewards by (ii) the Total Effective Balance; ETH.STORE is short for Ether Staking Offered Rate.

"**Fee Rate**" means the number of basis points the Issuer deducts from the ETH.STORE when calculating Interest; the applicable Fee Rate is based on the aggregate Nominal Value of the Units held by the Investor throughout an entire Reward Day. The Fee Rate is expressed in percent of the ETH.STORE. Until the Ethereum Network has been upgraded to proof-of-stake, the Fee Rate will be 0 %. After such upgrade, the Fee Rate will be as follows:

<u>Investment Amount</u>	<u>Fee Rate</u>
0.1 to 31.9 ETH	15 %
32 to 95.9 ETH	13 %
96 to 959.9 ETH	10 %
960+ ETH	8 %

"**Interest**" has the meaning set forth in § 4 (1).

"**Investment Address**" has the meaning set forth in § 3 (2) (b).

"**Investment Amount**" has the meaning set forth in § 3 (1).

"**Investment Date**" has the meaning set forth in § 3 (3).

"**Investment(s)**" has the meaning set forth in § 1 (1).

"**Investor**" has the meaning set forth in § 3 (3).

"**Issue Price**" has the meaning set forth in § 1 (3).

"**Issuer**" has the meaning set forth in § 1 (1).

"**Minimum Investment Amount**" has the meaning set forth in § 3 (1).

"**Nominal Value**" has the meaning set forth in § 1 (2).

"**Payout**" has the meaning set forth in § 5 (2).

"**Payout Address**" has the meaning set forth in § 5 (1).

"**Payout Date**" has the meaning set forth in § 5 (2).

"**Payout Request**" has the meaning set forth in § 5 (1).

"**Repayment**" has the meaning set forth in § 6 (3).

"**Reward Day**" means the period of elapsed time that begins at 12:00:23 UTC and ends 24 hours later at 12:00:22 UTC.

"**Subscriber**" has the meaning set forth in § 3 (1).

"**Subscription**" has the meaning set forth in § 3 (2).

"**Termination Date**" has the meaning set forth in § 6 (2).

"**Total Effective Balance**" means the sum of Effective Balances of Active Validators as at the start of a Reward Day.

"**Total Staking Rewards**" means the sum of (i) Consensus Rewards and (ii) Transaction Fees earned by Active Validators in a Reward Day.

"**Transaction Fees**" means fees received by validators for processing transactions on the Ethereum Network.

"**Unit**" has the meaning set forth in § 1 (2).

"**Waiting Period**" means the period of time determined by the Issuer and published at <https://staking.ethermine.org/statistics> that begins twelve (12) hours after the transfer of the Investment Amount has been confirmed by sixty-five (65) blocks.

§ 3. Investment Process

- (1) *Subscription.* A person interested in subscribing to the Investments is referred to as a "**Subscriber**". The minimum amount to subscribe is one (1) Unit (the "**Minimum Investment Amount**"). A subscription can be made only in full Units. The Nominal Value multiplied by the number of Units subscribed by a Subscriber is referred to as the "**Investment Amount**".
- (2) *Subscription Process.* To validly subscribe to the Investments ("**Subscription**"),
 - (a) the Subscriber shall provide the Issuer with a duly completed subscription form as well as any additional information requested by the Issuer to verify the Subscriber's identity and source of funds used to subscribe to the Investments;
 - (b) upon instruction by the Issuer, the Subscriber shall transfer the Investment Amount and the processing fee indicated by the Issuer to an Ethereum wallet address provided by the Issuer (the "**Investment Address**");
 - (c) after receiving the Investment Amount and the processing fee on the Investment Address, the Issuer may accept the Subscription by notifying the Subscriber of such acceptance via email. Subscriptions will be effective only upon the Issuer's acceptance of the Subscription. The Issuer reserves the right to reject any Subscription in whole or in part;
 - (d) any subsequent transfer of Ether from the same Ethereum address of the Subscriber to the Investment Address shall constitute a separate offer for Subscription that the Issuer may accept pursuant to subparagraph (c).
- (3) *Investment Date.* The Reward Day the Issuer accepts the Subscription is referred to as the "**Investment Date**". Beginning on the Investment Date the Subscriber is referred to as "**Investor**".

§ 4. Interest

- (1) *Interest.* Each Unit shall bear interest at a floating rate equal to the ETH.STORE minus the Fee Rate ("**Interest**").
- (2) *Interest Commencement Date.* The accrual of Interest shall commence on the Reward Day following the Waiting Period.

- (3) *Interest Calculation.* The Issuer will calculate Interest on a daily basis (act/act) on all Units held by the Investor throughout an entire Reward Day. The Issuer will calculate Interest for a given Reward Day on the next Reward Day.

Example: If the ETH.STORE on a Reward Day is 6 % per annum and the Investor holds 1 000 Units with an aggregate Nominal Value of 100 Ether on that Reward Day, then the applicable Interest for that Reward Day is 5.4 % per annum (600 basis points – 10 % = 540).

- (4) *Market Disruption.* If the ETH.STORE on a Reward Day is more than three standard deviations above the mean of the last thirty (30) ETH.STORE values, the Issuer may use the last ETH.STORE value within three standard deviations of such mean as the ETH.STORE value for that Reward Day.
- (5) *Accrued Interest.* Interest accrues over time and is not paid out unless requested by the Investor pursuant to § 5. Interest accrued but not paid out is referred to as "**Accrued Interest**". Accrued Interest is not interest-bearing, Interest does not compound.

§ 5. Payouts

- (1) *Payout Requests.* Subject to the conditions in paragraph (3) of this § 5, Accrued Interest is paid out upon request (each a "**Payout Request**"). The Payout Request must contain a specific address on the Ethereum blockchain on which the Investor wishes to receive the Accrued Interest (the "**Payout Address**"). The Issuer may require the Investor to provide evidence of having access to the Payout Address.
- (2) *Fulfillment.* Unless the Issuer is required by law, administrative ordinance or a court ruling to do otherwise, the Issuer shall fulfill a Payout Request without undue delay. Each payment of Accrued Interest to the Investor is referred to as a "**Payout**". Each day a Payout is made is referred to as a "**Payout Date**".
- (3) *Conditions.* Each Payout is subject to the following conditions: (a) the Investor has confirmed to the Issuer to have access to the Payout Address; (b) on the Payout Date, the Ethereum Network allows the withdrawal of Consensus Rewards and Transaction Fees.
- (4) *Effect.* A Payout to the Payout Address shall have liability discharging effect.

§ 6. Repayment, Termination

- (1) *Repayment.* Repayment (as defined below) occurs upon termination of the Investment.
- (2) *Ordinary Termination.* Subject to a notice period of twelve (12) weeks, the Investments can be terminated (a) by the Issuer only with respect to all Units held by an Investor, or (b) by an Investor in whole or in part only with respect to the Units held by that Investor, with effect as at the last full Reward Day in a calendar month (each a "**Termination Date**").
- (3) *Payment Obligations.* On the Termination Date, the Issuer shall pay to the Investor: (a) the Nominal Value of each terminated Unit; and (b) any Accrued Interest on the terminated Units (the "**Repayment**").
- (4) *Minimum Term.* Both parties waive their right to ordinary termination (a) until the Ethereum protocol allows the withdrawal of Consensus Rewards and Transaction Fees, or (b) for a period of five (5) years starting on the Investment Date, whichever occurs first.
- (5) *Extraordinary Termination.* The Issuer or an Investor may terminate the Investments for good cause (*außerordentliche Kündigung*) at any time and without having to observe any notice period.

§ 7. Costs, Taxes

- (1) *Costs.* All blockchain-based transaction fees in connection with (a) a Subscription pursuant to § 3, (b) a Payout pursuant to § 5, and (c) a Repayment pursuant to § 6 shall be borne by the Investor.
- (2) *Taxes.* All taxes, fees and other charges applied to the Investments or Interest on the Investments shall be borne and shall be payable by the Investor.
- (3) *Withholding Tax.* Insofar as the Issuer is legally obligated to deduct or withhold taxes, fees and other charges, only the remaining amount shall be paid to the Investor. This is the case, in particular, if the Issuer is or becomes obligated to withhold capital gains tax at the expense of the Investor and to transfer it to the competent tax authorities.

§ 8. Final Provisions

- (1) *Notices.* The Issuer shall publish all notices and publications concerning the Investments on its website under <https://staking.ethermine.org/investor-relations> and shall send such notices and publications to the Investor via email to the email address provided by the

Investor. All notices by the Investor to the Issuer concerning the Investments shall be given via electronic means as provided on the website of the Issuer under <https://staking.ethermine.org/>.

- (2) *Choice of Law.* These Investments shall be governed by Austrian law, excluding reference norms of the Austrian International Private Law Statute (*Bundesgesetz über das internationale Privatrecht*).
- (3) *Place.* Place of fulfillment is Vienna, Austria.
- (4) *Jurisdiction.* For all disputes arising out of or in connection with these Investments between the Issuer and the Investor who is not a consumer in the sense of the Austrian Consumer Protection Act, the court responsible for commercial matters in Vienna, Inner City, shall have exclusive jurisdiction. Claims against the Issuer must be brought before the competent courts in Vienna, Austria.
- (5) *Severability.* If any provision of these terms and conditions is or becomes invalid in whole or in part, the remaining provisions shall remain in full force and effect. Insofar as the Austrian Consumer Protection Act does not apply, the ineffective provision shall be replaced by an effective provision which, to the extent legally possible, takes account of the economic purposes of the invalid provision.

bitfly staking gmbh

Schedule 2 – Financial Statements of the Issuer as per 31 December 2021

The Financial Statements of the Issuer as per 31 December 2021 are attached behind this cover page.



JAHRESABSCHLUSS

31. Dezember 2021

bitfly staking gmbh

1030 Wien , Landstraße Gürtel 9/12

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Bericht über die

Erstellung des Jahresabschlusses
zum 31. Dezember 2021
der
bitfly staking gmbh.

Wir haben auftragsgemäß den Jahresabschluss der bitfly staking gmbh zum 31. Dezember 2021 – bestehend aus Bilanz, Gewinn- und Verlustrechnung sowie Anhang – auf Grundlage der Buchführung und des Inventars sowie der Vorgaben zu den anzuwendenden Bilanzierungs- und Bewertungsmethoden erstellt.

Grundlage für die Erstellung des Abschlusses waren die von uns durchgeführten Tätigkeiten (zB die gesamte Buchhaltung, Lohn- und Gehaltsbuchführung, Anlagenverzeichnis) und die uns darüber hinaus vorgelegten Belege, Bücher und Bestandsnachweise, die wir auftragsgemäß nicht auf Ordnungsmäßigkeit oder Plausibilität geprüft haben, sowie die uns erteilten Auskünfte. Die Buchführung sowie die Aufstellung des Inventars und des Jahresabschlusses nach UGB und den ergänzenden Bestimmungen des Gesellschaftsvertrags liegen in Ihrer Verantwortung.

Wir haben weder eine Abschlussprüfung noch eine prüferische Durchsicht des Abschlusses noch eine sonstige Prüfung oder vereinbarte Untersuchungshandlungen vorgenommen und geben demzufolge keine Zusicherung (Bestätigung) zum Abschluss.

Sie sind sowohl für die Richtigkeit als auch für die Vollständigkeit der uns zur Verfügung gestellten Unterlagen und Auskünfte verantwortlich, auch gegenüber den Nutzern des von uns erstellten Abschlusses. Wir verweisen in diesem Zusammenhang auf die auf unser Verlangen von Ihnen unterschriebene Vollständigkeitserklärung.

Der Erstellungsauftrag wurde unter Beachtung des Fachgutachtens KFS/RL 26 „Grundsätze für die Erstellung von Abschlüssen“ durchgeführt. Für den Erstellungsauftrag gelten die Allgemeinen Auftragsbedingungen (AAB) für Wirtschaftstreuhandberufe der Kammer der Steuerberater und Wirtschaftsprüfer (KSW) in der Fassung vom 18.4.2018.

Eine Weitergabe des von uns erstellten Abschlusses an Dritte darf nur unter Beigabe des Erstellungsberichts erfolgen.

Im Falle der Weitergabe des von uns erstellten Abschlusses an Dritte gelten die in Punkt 7 der AAB für Wirtschaftstreuhandberufe der KSW enthaltenen Ausführungen zur Haftung auch gegenüber Dritten.

Wien, März 2022

1. Rechtliche Grundlagen

Auftraggeber: bitfly staking gmbh

Firmenbuch: Handelsgericht Wien, FN 569385g

Unternehmensgegenstand: Erbringung von Beratungsleistungen auf dem Gebiet der Informationstechnologie

Sitz: Wien

Adresse: 1030 Wien, Landstraße Gürtel 9/12

Rechtsform: Gesellschaft mit beschränkter Haftung

Größenklasse: gemäß § 221 (4) UGB Anwendung der Bestimmungen für Kleinstkapitalgesellschaften

Gründung: 08.11.2021

Geschäftsjahr: 08.11.2021 bis 31. Dezember 2021

Übernommenes Stammkapital: EUR 35.000,00

Ing. Peter Pratscher, B.Sc.	Anteil in € 35.000,00	Anteil in % 100
-----------------------------	--------------------------	--------------------

Ing. Peter Pratscher, B.Sc.	von/seit 08.11.2021
-----------------------------	------------------------

Vertretung: Die Gesellschaft wird vom Geschäftsführer selbständig vertreten.

1. Steuerliche Grundlagen

Finanzamt:	Finanzamt Österreich Dienststelle Wien 3/6/7/11/15 Schwechat Gerasdorf
Steuernummer:	03 718/3142
Steuerliche Vertretung:	ARTUS Steuerberatung GmbH & CO KG 1010 Wien, Stubenring 24 WT803505
Unternehmensgruppe:	Es besteht eine Unternehmensgruppe gemäß § 9 KStG mit der bitfly holding gmbh als Gruppenträgerin.
Gewinnermittlung:	Bilanzierung gem. § 5 EStG
Einkunftsart:	Einkünfte aus Gewerbebetrieb

1. Kennzahlen gemäß Unternehmensreorganisationsgesetz (URG)

Ermittlung der Eigenmittelquote gemäß § 23 URG:

	2021 EUR
Eigenkapital laut Bilanz	26.138,07
Gesamtkapital (§224 Abs. 3 UGB)	33.254,77
- von den Vorräten absetzbare Anzahlungen	0,00
- Investitionszuschüsse	-0,00
= Gesamtkapital	33.254,77

Eigenmittelquote gemäß § 23 URG:

$$\frac{\text{Eigenkapital} \times 100}{\text{Gesamtkapital}} = 78,60 \%$$

Ermittlung der fiktiven Schuldentilgungsdauer gemäß § 24 URG:

	2021 EUR
Rückstellungen	1.500,00
+ Verbindlichkeiten	5.616,70
- sonstige Wertpapiere und Anteile	0,00
- von den Vorräten absetzbare Anzahlungen	0,00
- liquide Mittel	-30.754,77
= effektives Fremdkapital	-23.638,07
Ergebnis vor Steuern	-8.861,93
- Steuern vom Einkommen	0,00
+ Abschreibungen auf das Anlagevermögen und Verluste aus dem Abgang von Anlagevermögen	0,00
- Zuschreibungen zum Anlagevermögen und Gewinne aus dem Abgang von Anlagevermögen	0,00
- Auflösung Investitionszuschüsse	-0,00
+/- Veränderung langfristiger Rückstellungen	0,00
= Mittelüberschuss aus der Geschäftstätigkeit	-8.861,93

Fiktive Schuldentilgungsdauer gemäß § 24 URG:

$$\frac{(\text{effektives}) \text{ Fremdkapital}}{\text{Mittelüberschuss aus der Geschäftstätigkeit}} = \text{k. A. Jahre}$$

Nach § 22 des URG wird Reorganisationsbedarf vermutet, wenn die Eigenmittelquote weniger als 8 % und die fiktive Schuldentilgungsdauer mehr als 15 Jahre beträgt.

BILANZ zum 31.12.2021

BILANZ

AKTIVA		31.12.2021	31.12.2020	PASSIVA		31.12.2021	31.12.2020
		€	€			€	€
A. UMLAUFVERMÖGEN				A. EIGENKAPITAL			
I. Forderungen und sonstige Vermögensgegenstände				I. eingefordertes Stammkapital		35.000,00	0,00
1. Forderungen gegenüber Gesellschaftern		2.500,00	0,00	übernommenes Stammkapital		35.000,00	0,00
II. Guthaben bei Kreditinstituten		30.754,77	0,00	einbezahltes Stammkapital		35.000,00	0,00
		33.254,77	0,00	II. Bilanzverlust		-8.861,93	0,00
						26.138,07	0,00
				B. RÜCKSTELLUNGEN			
				1. sonstige Rückstellungen		1.500,00	0,00
				C. VERBINDLICHKEITEN			
				1. Verbindlichkeiten aus Lieferungen und Leistungen		3.116,70	0,00
				davon mit einer Restlaufzeit von bis zu einem Jahr		3.116,70	0,00
				2. sonstige Verbindlichkeiten		2.500,00	0,00
				davon aus Steuern		2.500,00	0,00
				davon mit einer Restlaufzeit von bis zu einem Jahr		2.500,00	0,00
						5.616,70	0,00
				davon mit einer Restlaufzeit von bis zu einem Jahr		5.616,70	0,00
SUMME AKTIVA		33.254,77	0,00	SUMME PASSIVA		33.254,77	0,00

Unterschrift der Geschäftsführung

GEWINN- UND VERLUSTRECHNUNG

GEWINN- UND VERLUSTRECHNUNG 01.01.2021 bis 31.12.2021

	2021 €	2020 €
1. sonstige betriebliche Aufwendungen	8.861,93	0,00
2. ZWISCHENSUMME AUS Z 1 BIS 1 (BETRIEBSERGEBNIS)	-8.861,93	0,00
3. ERGEBNIS VOR STEUERN	-8.861,93	0,00
4. ERGEBNIS NACH STEUERN	-8.861,93	0,00
5. JAHRESFEHLBETRAG	-8.861,93	0,00
6. BILANZVERLUST	-8.861,93	0,00

Unterschrift der Geschäftsführung

1. Erläuterungen zu Bilanz und Gewinn- und Verlustrechnung

Aktiva

A. Umlaufvermögen

I. Forderungen und sonstige Vermögensgegenstände

1. Forderungen gegenüber Gesellschaftern

Zusammensetzung:

	31.12.2021
	€
Verrechnungskonto bitly holding gmbh	<u>2.500,00</u>

II. Guthaben bei Kreditinstituten

Zusammensetzung:

	31.12.2021
	€
Schelhammer AT49 1919 0001 0000 0120	<u>30.754,77</u>

Passiva

A. Eigenkapital

Zusammensetzung:

eingefordertes Stammkapital

übernommenes Stammkapital

einbezahltes Stammkapital

Bilanzverlust

31.12.2021

€

35.000,00

35.000,00

35.000,00

-8.861,93

26.138,07

Entwicklung des Bilanzverlusts:

31.12.2021

€

Jahresverlust

-8.861,93

B. Rückstellungen

Zusammensetzung und Entwicklung:

Stand 01.01.2021

€

Zuweisung

€

Stand 31.12.2021

€

sonstige Rückstellungen

0,00

1.500,00

1.500,00

Zusammensetzung und Entwicklung der sonstigen Rückstellungen:

31.12.2021

€

sonstige Rückstellungen

1.500,00

C. Verbindlichkeiten

1. Verbindlichkeiten aus Lieferungen und Leistungen

Zusammensetzung:

31.12.2021

€

Verbindlichkeiten aus Lieferungen und Leistungen Inland

3.116,70

2. sonstige Verbindlichkeiten

Zusammensetzung:

31.12.2021
€

Verrechnung Finanzamt

2.500,00

davon aus Steuern

31.12.2021
€

Verrechnung Finanzamt

2.500,00

Gewinn- und Verlustrechnung

1. sonstige betriebliche Aufwendungen

Zusammensetzung:

Steuern, soweit sie nicht unter Steuern vom Einkommen fallen
Rechts- und Beratungsaufwand und Steuerberatung

2021
€
1.216,22
7.645,71
8.861,93

2. ZWISCHENSUMME AUS Z 1 BIS 1 (BETRIEBSERGEBNIS)

2021
€
-8.861,93

3. ERGEBNIS VOR STEUERN

2021
€
-8.861,93

4. ERGEBNIS NACH STEUERN

2021
€
-8.861,93

5. JAHRESFEHLBETRAG

2021
€
-8.861,93

6. BILANZVERLUST

2021
€
-8.861,93

Allgemeine Auftragsbedingungen für Wirtschaftstreuhandberufe (AAB 2018)

Empfohlen vom Vorstand der Kammer der Steuerberater und
Wirtschaftsprüfer zuletzt mit Beschluss vom 18.04.2018

Präambel und Allgemeines

(1) Auftrag im Sinne dieser Bedingungen meint jeden Vertrag über vom zur Ausübung eines Wirtschaftstreuhandberufes Berechtigten in Ausübung dieses Berufes zu erbringende Leistungen (sowohl faktische Tätigkeiten als auch die Besorgung oder Durchführung von Rechtsgeschäften oder Rechtshandlungen, jeweils im Rahmen der §§ 2 oder 3 Wirtschaftstreuhandberufsgesetz 2017 (WTBG 2017). Die Parteien des Auftrages werden in Folge zum einen „Auftragnehmer“, zum anderen „Auftraggeber“ genannt).

(2) Diese Allgemeinen Auftragsbedingungen für Wirtschaftstreuhandberufe gliedern sich in zwei Teile: Die Auftragsbedingungen des I. Teiles gelten für Aufträge, bei denen die Auftragserteilung zum Betrieb des Unternehmens des Auftraggebers (Unternehmer iSd KSchG) gehört. Für Verbrauchergeschäfte gemäß Konsumentenschutzgesetz (Bundesgesetz vom 8.3.1979/BGBl Nr.140 in der derzeit gültigen Fassung) gelten sie insoweit der II. Teil keine abweichenden Bestimmungen für diese enthält.

(3) Im Falle der Unwirksamkeit einer einzelnen Bestimmung ist diese durch eine wirksame, die dem angestrebten Ziel möglichst nahe kommt, zu ersetzen.

I. TEIL

1. Umfang und Ausführung des Auftrages

(1) Der Umfang des Auftrages ergibt sich in der Regel aus der schriftlichen Auftragsvereinbarung zwischen Auftraggeber und Auftragnehmer. Fehlt diesbezüglich eine detaillierte schriftliche Auftragsvereinbarung gilt im Zweifel (2)-(4):

(2) Bei Beauftragung mit Steuerberatungsleistungen umfasst die Beratungstätigkeit folgende Tätigkeiten:

a) Ausarbeitung der Jahressteuererklärungen für die Einkommen- oder Körperschaftsteuer sowie Umsatzsteuer und zwar auf Grund der vom Auftraggeber vorzulegenden oder (bei entsprechender Vereinbarung) vom Auftragnehmer erstellten Jahresabschlüsse und sonstiger, für die Besteuerung erforderlichen Aufstellungen und Nachweise. Wenn nicht ausdrücklich anders vereinbart, sind die für die Besteuerung erforderlichen Aufstellungen und Nachweise vom Auftraggeber beizubringen.

b) Prüfung der Bescheide zu den unter a) genannten Erklärungen.

c) Verhandlungen mit den Finanzbehörden im Zusammenhang mit den unter a) und b) genannten Erklärungen und Bescheiden.

d) Mitwirkung bei Betriebsprüfungen und Auswertung der Ergebnisse von Betriebsprüfungen hinsichtlich der unter a) genannten Steuern.

e) Mitwirkung im Rechtsmittelverfahren hinsichtlich der unter a) genannten Steuern.

Erhält der Auftragnehmer für die laufende Steuerberatung ein Pauschalhonorar, so sind mangels anderweitiger schriftlicher Vereinbarungen die unter d) und e) genannten Tätigkeiten gesondert zu honorieren.

(3) Soweit die Ausarbeitung von einer oder mehreren Jahressteuererklärung(en) zum übernommenen Auftrag zählt, gehört dazu nicht die Überprüfung etwaiger besonderer buchmäßiger Voraussetzungen sowie die Prüfung, ob alle in Betracht kommenden insbesondere umsatzsteuerrechtlichen Begünstigungen wahrgenommen worden sind, es sei denn, hierüber besteht eine nachweisliche Beauftragung.

(4) Die Verpflichtung zur Erbringung anderer Leistungen gemäß §§ 2 und 3 WTBG 2017 bedarf jedenfalls nachweislich einer gesonderten Beauftragung.

(5) Vorstehende Absätze (2) bis (4) gelten nicht bei Sachverständigentätigkeit.

(6) Es bestehen keinerlei Pflichten des Auftragnehmers zur Leistungserbringung, Warnung oder Aufklärung über den Umfang des Auftrages hinaus.

(7) Der Auftragnehmer ist berechtigt, sich zur Durchführung des Auftrages geeigneter Mitarbeiter und sonstiger Erfüllungsgehilfen (Subunternehmer) zu bedienen, als auch sich bei der Durchführung des Auftrages durch einen Berufsbefugten substituieren zu lassen. Mitarbeiter im Sinne dieser Bedingungen meint alle Personen, die den Auftragnehmer auf regelmäßiger oder dauerhafter Basis bei seiner betrieblichen Tätigkeit unterstützen, unabhängig von der Art der rechtsgeschäftlichen Grundlage.

(8) Der Auftragnehmer hat bei der Erbringung seiner Leistungen ausschließlich österreichisches Recht zu berücksichtigen; ausländisches Recht ist nur bei ausdrücklicher schriftlicher Vereinbarung zu berücksichtigen.

(9) Ändert sich die Rechtslage nach Abgabe der abschließenden schriftlichen als auch mündlichen beruflichen Äußerung, so ist der Auftragnehmer nicht verpflichtet, den Auftraggeber auf Änderungen oder sich daraus ergebende Folgen hinzuweisen. Dies gilt auch für in sich abgeschlossene Teile eines Auftrages.

(10) Der Auftraggeber ist verpflichtet dafür Sorge zu tragen, dass die von ihm zur Verfügung gestellten Daten vom Auftragnehmer im Rahmen der Leistungserbringung verarbeitet werden dürfen. Diesbezüglich hat der Auftraggeber insbesondere aber nicht ausschließlich die anwendbaren datenschutz- und arbeitsrechtlichen Bestimmungen zu beachten.

(11) Bringt der Auftragnehmer bei einer Behörde ein Anbringen elektronisch ein, so handelt er – mangels ausdrücklicher gegenteiliger Vereinbarung – lediglich als Bote und stellt dies keine ihm oder einem einreichend Bevollmächtigten zurechenbare Willens- oder Wissenserklärung dar.

(12) Der Auftraggeber verpflichtet sich, Personen, die während des Auftragsverhältnisses Mitarbeiter des Auftragnehmers sind oder waren, während und binnen eines Jahres nach Beendigung des Auftragsverhältnisses nicht in seinem Unternehmen oder in einem ihm nahestehenden Unternehmen zu beschäftigen, widrigenfalls er sich zur Bezahlung eines Jahresbezuges des übernommenen Mitarbeiters an den Auftragnehmer verpflichtet.

2. Aufklärungspflicht des Auftraggebers; Vollständigkeitserklärung

(1) Der Auftraggeber hat dafür zu sorgen, dass dem Auftragnehmer auch ohne dessen besondere Aufforderung alle für die Ausführung des Auftrages notwendigen Unterlagen zum vereinbarten Termin und in Ermangelung eines solchen rechtzeitig in geeigneter Form vorgelegt werden und ihm von allen Vorgängen und Umständen Kenntnis gegeben wird, die für die Ausführung des Auftrages von Bedeutung sein können. Dies gilt auch für die Unterlagen, Vorgänge und Umstände, die erst während der Tätigkeit des Auftragnehmers bekannt werden.

(2) Der Auftragnehmer ist berechtigt, die ihm erteilten Auskünfte und übergebenen Unterlagen des Auftraggebers, insbesondere Zahlenangaben, als richtig und vollständig anzusehen und dem Auftrag zu Grunde zu legen. Der Auftragnehmer ist ohne gesonderten schriftlichen Auftrag nicht verpflichtet, Unrichtigkeiten fest zu stellen. Insbesondere gilt dies auch für die Richtigkeit und Vollständigkeit von Rechnungen. Stellt er allerdings Unrichtigkeiten fest, so hat er dies dem Auftraggeber bekannt zu geben. Er hat im Finanzstrafverfahren die Rechte des Auftraggebers zu wahren.

(3) Der Auftraggeber hat dem Auftragnehmer die Vollständigkeit der vorgelegten Unterlagen sowie der gegebenen Auskünfte und Erklärungen im Falle von Prüfungen, Gutachten und Sachverständigentätigkeit schriftlich zu bestätigen.

(4) Wenn bei der Erstellung von Jahresabschlüssen und anderen Abschlüssen vom Auftraggeber erhebliche Risiken nicht bekannt gegeben worden sind, bestehen für den Auftragnehmer insoweit diese Risiken schlagend werden keinerlei Ersatzpflichten.

(5) Vom Auftragnehmer angegebene Termine und Zeitpläne für die Fertigstellung von Produkten des Auftragnehmers oder Teilen davon sind bestmögliche Schätzungen und, sofern nicht anders schriftlich vereinbart, nicht bindend. Selbiges gilt für etwaige Honorarschätzungen: diese werden nach bestem Wissen erstellt; sie sind jedoch stets unverbindlich.

(6) Der Auftraggeber hat dem Auftragnehmer jeweils aktuelle Kontaktdaten (insbesondere Zustelladresse) bekannt zu geben. Der Auftragnehmer darf sich bis zur Bekanntgabe neuer Kontaktdaten auf die Gültigkeit der zuletzt vom Auftraggeber bekannt gegebenen Kontaktdaten verlassen, insbesondere Zustellung an die zuletzt bekannt gegebene Adresse vornehmen lassen.

3. Sicherung der Unabhängigkeit

(1) Der Auftraggeber ist verpflichtet, alle Vorkehrungen zu treffen, um zu verhindern, dass die Unabhängigkeit der Mitarbeiter des Auftragnehmers gefährdet wird, und hat selbst jede Gefährdung dieser Unabhängigkeit zu unterlassen. Dies gilt insbesondere für Angebote auf Anstellung und für Angebote, Aufträge auf eigene Rechnung zu übernehmen.

(2) Der Auftraggeber nimmt zur Kenntnis, dass seine hierfür notwendigen personenbezogenen Daten sowie Art und Umfang inklusive Leistungszeitraum der zwischen Auftragnehmer und Auftraggeber vereinbarten Leistungen (sowohl Prüfungs- als auch Nicht- prüfungsleistungen) zum Zweck der Überprüfung des Vorliegens von Befangenheits- oder Ausschlussgründen und Interessenkollisionen in einem allfälligen Netzwerk, dem der Auftragnehmer angehört, verarbeitet und zu diesem Zweck an die übrigen Mitglieder dieses Netzwerkes auch ins Ausland übermittelt werden. Hierfür entbindet der Auftraggeber den Auftragnehmer nach dem Datenschutzgesetz und gemäß § 80 Abs 4 Z 2 WTBG 2017 ausdrücklich von dessen Verschwiegenheitspflicht. Der Auftraggeber kann die Entbindung von der Verschwiegenheitspflicht jederzeit widerrufen.

4. Berichterstattung und Kommunikation

(1) (Berichterstattung durch den Auftragnehmer) Bei Prüfungen und Gutachten ist, soweit nichts anderes vereinbart wurde, ein schriftlicher Bericht zu erstatten.

(2) (Kommunikation an den Auftraggeber) Alle auftragsbezogenen Auskünfte und Stellungnahmen, einschließlich Berichte, (allesamt Wissens- erklärungen) des Auftragnehmers, seiner Mitarbeiter, sonstiger Erfüllungs- gehilfen oder Substitute („berufliche Äußerungen“) sind nur dann verbind- lich, wenn sie schriftlich erfolgen. Berufliche Äußerungen in elektronischen Dateiformaten, welche per Fax oder E-Mail oder unter Verwendung ähnlicher Formen der elektronischen Kommunikation (speicher- und wiedergabefähig und nicht mündlich dh zB SMS aber nicht Telefon) erfolgen, übermittelt oder bestätigt werden, gelten als schriftlich; dies gilt ausschließlich für berufliche Äußerungen. Das Risiko der Erteilung der beruflichen Äußerungen durch dazu Nichtbefugte und das Risiko der Übersendung dieser trägt der Auftraggeber.

(3) (Kommunikation an den Auftraggeber) Der Auftraggeber stimmt hiermit zu, dass der Auftragnehmer elektronische Kommunikation mit dem Auftraggeber (zB via E-Mail) in unverschlüsselter Form vornimmt. Der Auf- traggeber erklärt, über die mit der Verwendung elektronischer Kom- munikation verbundenen Risiken (insbesondere Zugang, Geheimhaltung, Veränderung von Nachrichten im Zuge der Übermittlung) informiert zu sein. Der Auftragnehmer, seine Mitarbeiter, sonstigen Erfüllungsgehilfen oder Substitute haften nicht für Schäden, die durch die Verwendung elek- tronischer Kommunikationsmittel verursacht werden.

(4) (Kommunikation an den Auftragnehmer) Der Empfang und die Weiter- leitung von Informationen an den Auftragnehmer und seine Mitarbeiter sind bei Verwendung von Telefon – insbesondere in Verbindung mit au- tomatischen Anrufbeantwortersystemen, Fax, E-Mail und anderen Formen der elektronischen Kommunikation – nicht immer sichergestellt. Aufträge und wichtige Informationen gelten daher dem Auftragnehmer nur dann als zugegangen, wenn sie auch physisch (nicht fern-)mündlich oder elektronisch) zugegangen sind, es sei denn, es wird im Einzelfall der Empfang ausdrücklich bestätigt. Automatische Übermittlungs- und Lese- bestätigungen gelten nicht als solche ausdrücklichen Empfangs- bestätigungen. Dies gilt insbesondere für die Übermittlung von Bescheiden und anderen Informationen über Fristen. Kritische und wichtige Mit- teilungen müssen daher per Post oder Kurier an den Auftragnehmer gesandt werden. Die Übergabe von Schriftstücken an Mitarbeiter außerhalb der Kanzlei gilt nicht als Übergabe.

(5) (Allgemein) Schriftlich meint insoweit in Punkt 4 (2) nicht anderes bestimmt, Schriftlichkeit iSd § 886 ABGB (Unterschriftlichkeit). Eine fort- geschrittene elektronische Signatur (Art. 26 eIDASVO, (EU) Nr. 910/2014) erfüllt das Erfordernis der Schriftlichkeit iSd § 886 ABGB (Unter- schriftlichkeit), soweit dies innerhalb der Parteiendisposition liegt.

(6) (Werbliche Information) Der Auftragnehmer wird dem Auftraggeber wie- derkehrend allgemeine steuerrechtliche und allgemeine wirtschafts- rechtliche Informationen elektronisch (zB per E-Mail) übermitteln. Der Auf- traggeber nimmt zur Kenntnis, dass er das Recht hat, der Zusendung von Direktwerbung jederzeit zu widersprechen.

5. Schutz des geistigen Eigentums des Auftragnehmers

(1) Der Auftraggeber ist verpflichtet, dafür zu sorgen, dass die im Rahmen des Auftrages vom Auftragnehmer erstellten Berichte, Gutachten, Organi- sationspläne, Entwürfe, Zeichnungen, Berechnungen und dergleichen nur für Auftragszwecke (z.B. gemäß § 44 Abs 3 EStG 1988) verwendet werden. Im Übrigen bedarf die Weitergabe schriftlicher als auch mündlicher beruflicher Äußerungen des Auftragnehmers an einen Dritten zur

Nutzung der schriftlichen Zustimmung des Auftragnehmers.

(2) Die Verwendung schriftlicher als auch mündlicher beruflicher Äuße- rungen des Auftragnehmers zu Werbezwecken ist unzulässig; ein Verstoß berechtigt den Auftragnehmer zur fristlosen Kündigung aller noch nicht durchgeführten Aufträge des Auftraggebers.

(3) Dem Auftragnehmer verbleibt an seinen Leistungen das Urheberrecht. Die Einräumung von Werknutzungsbewilligungen bleibt der schriftlichen Zu- stimmung des Auftragnehmers vorbehalten.

6. Mängelbeseitigung

(1) Der Auftragnehmer ist berechtigt und verpflichtet, nachträglich hervor- kommende Unrichtigkeiten und Mängel in seiner schriftlichen als auch mündlichen beruflichen Äußerung zu beseitigen, und verpflichtet, den Auftraggeber hiervon unverzüglich zu verständigen. Er ist berechtigt, auch über die ursprüngliche berufliche Äußerung informierte Dritte von der Änderung zu verständigen.

(2) Der Auftraggeber hat Anspruch auf die kostenlose Beseitigung von Unrichtigkeiten, sofern diese durch den Auftragnehmer zu vertreten sind; dieser Anspruch erlischt sechs Monate nach erbrachter Leistung des Auftragnehmers bzw. – falls eine schriftliche berufliche Äußerung nicht abgegeben wird – sechs Monate nach Beendigung der beanstandeten Tätigkeit des Auftragnehmers.

(3) Der Auftraggeber hat bei Fehlschlägen der Nachbesserung etwaiger Mängel Anspruch auf Minderung. Soweit darüber hinaus Schadenersatz- ansprüche bestehen, gilt Punkt 7.

7. Haftung

(1) Sämtliche Haftungsregelungen gelten für alle Streitigkeiten im Zusammenhang mit dem Auftragsverhältnis, gleich aus welchem Rechtsgrund. Der Auftragnehmer haftet für Schäden im Zusammenhang mit dem Auftragsverhältnis (einschließlich dessen Beendigung) nur bei Vorsatz und grober Fahrlässigkeit. Die Anwendbarkeit des § 1298 Satz 2 ABGB wird ausgeschlossen.

(2) Im Falle grober Fahrlässigkeit beträgt die Ersatzpflicht des Auftrag- nehmers höchstens das zehnfache der Mindestversicherungssumme der Berufshaftpflichtversicherung gemäß § 11 Wirtschaftstreuhänderberufsgesetz 2017 (WTBG 2017) in der jeweils geltenden Fassung.

(3) Die Beschränkung der Haftung gemäß Punkt 7 (2) bezieht sich auf den einzelnen Schadensfall. Der einzelne Schadensfall umfasst sämtliche Fol- gen einer Pflichtverletzung ohne Rücksicht darauf, ob Schäden in einem oder in mehreren aufeinander folgenden Jahren entstanden sind. Dabei gilt mehrfaches auf gleicher oder gleichartiger Fehlerquelle beruhendes Tun oder Unterlassen als eine einheitliche Pflichtverletzung, wenn die betref- fenden Angelegenheiten miteinander in rechtlichem und wirtschaftlichem Zusammenhang stehen. Ein einheitlicher Schaden bleibt ein einzelner Schadensfall, auch wenn er auf mehreren Pflichtverletzungen beruht. Weiters ist, außer bei vorsätzlicher Schädigung, eine Haftung des Auftrag- nehmers für entgangenen Gewinn sowie Begleit-, Folge-, Neben oder ähnliche Schäden, ausgeschlossen.

(4) Jeder Schadenersatzanspruch kann nur innerhalb von sechs Monaten nachdem der oder die Anspruchsberechtigten von dem Schaden Kenntnis erlangt haben, spätestens aber innerhalb von drei Jahren ab Eintritt des (Primär)Schadens nach dem anspruchsbegründenden Ereignis gerichtlich geltend gemacht werden, sofern nicht in gesetzlichen Vorschriften zwingend andere Verjährungsfristen festgesetzt sind.

(5) Im Falle der (tatbestandsmäßigen) Anwendbarkeit des § 275 UGB gelten dessen Haftungsnormen auch dann, wenn an der Durchführung des Auftrages mehrere Personen beteiligt gewesen oder mehrere zum Ersatz verpflichtende Handlungen begangen worden sind und ohne Rücksicht darauf, ob andere Beteiligte vorsätzlich gehandelt haben.

(6) In Fällen, in denen ein förmlicher Bestätigungsvermerk erteilt wird, beginnt die Verjährungsfrist spätestens mit Erteilung des Bestätigungs- vermerkes zu laufen.

(7) Wird die Tätigkeit unter Einschaltung eines Dritten, z.B. eines Daten ver- arbeitenden Unternehmens, durchgeführt, so gelten mit Benachrichtigung des Auftraggebers darüber nach Gesetz oder Vertrag be- oder entstehende Gewährleistungs- und Schadenersatzansprüche gegen den Dritten als an den Auftraggeber abgetreten. Der Auftragnehmer haftet, un- beschadet Punkt 4. (3), diesfalls nur für Verschulden bei der Auswahl des Dritten.

(8) Eine Haftung des Auftragnehmers Dritten gegenüber ist in jedem Fall ausgeschlossen. Geraten Dritte mit der Arbeit des Auftragnehmers wegen des Auftraggebers in welcher Form auch immer in Kontakt hat der Auftraggeber diese über diesen Umstand ausdrücklich aufzuklären. Soweit

ein solcher Haftungsausschluss gesetzlich nicht zulässig ist oder eine Haftung gegenüber Dritten vom Auftragnehmer ausnahmsweise übernommen wurde, gelten subsidiär diese Haftungsbeschränkungen jedenfalls auch gegenüber Dritten. Dritte können jedenfalls keine Ansprüche stellen, die über einen allfälligen Anspruch des Auftraggebers hinausgehen. Die Haftungshöchstsumme gilt nur insgesamt einmal für alle Geschädigten, einschließlich der Ersatzansprüche des Auftraggebers selbst, auch wenn mehrere Personen (der Auftraggeber und ein Dritter oder auch mehrere Dritte) geschädigt worden sind; Geschädigte werden nach ihrem Zuorkommen befriedigt. Der Auftraggeber wird den Auftragnehmer und dessen Mitarbeiter von sämtlichen Ansprüchen Dritter im Zusammenhang mit der Weitergabe schriftlicher als auch mündlicher beruflicher Äußerungen des Auftragnehmers an diese Dritte schad- und klaglos halten.

(9) Punkt 7 gilt auch für allfällige Haftungsansprüche des Auftraggebers im Zusammenhang mit dem Auftragsverhältnis gegenüber Dritten (Erfüllungs- und Besorgungshelfen des Auftragnehmers) und den Substituten des Auftragnehmers.

8. Verschwiegenheitspflicht, Datenschutz

(1) Der Auftragnehmer ist gemäß § 80 WTBG 2017 verpflichtet, über alle Angelegenheiten, die ihm im Zusammenhang mit seiner Tätigkeit für den Auftraggeber bekannt werden, Stillschweigen zu bewahren, es sei denn, dass der Auftraggeber ihn von dieser Schweigepflicht entbindet oder gesetzliche Äußerungspflichten entgegen stehen.

(2) Soweit es zur Verfolgung von Ansprüchen des Auftragnehmers (insbesondere Ansprüche auf Honorar) oder zur Abwehr von Ansprüchen gegen den Auftraggeber (insbesondere Schadenersatzansprüche des Auftraggebers oder Dritter gegen den Auftragnehmer) notwendig ist, ist der Auftragnehmer von seiner beruflichen Verschwiegenheitspflicht entbunden.

(3) Der Auftragnehmer darf Berichte, Gutachten und sonstige schriftliche berufliche Äußerungen über die Ergebnisse seiner Tätigkeit Dritten nur mit Einwilligung des Auftraggebers aushändigen, es sei denn, dass eine gesetzliche Verpflichtung hierzu besteht.

(4) Der Auftragnehmer ist datenschutzrechtlich Verantwortlicher im Sinne der Datenschutz-Grundverordnung („DSGVO“) hinsichtlich aller im Rahmen des Auftrages verarbeiteter personenbezogenen Daten. Der Auftragnehmer ist daher befugt, ihm anvertraute personenbezogene Daten im Rahmen der Grenzen des Auftrages zu verarbeiten. Dem Auftragnehmer überlassene Materialien (Papier und Datenträger) werden grundsätzlich nach Beendigung der diesbezüglichen Leistungserbringung dem Auftraggeber oder an vom Auftraggeber namhaft gemachte Dritte übergeben oder wenn dies gesondert vereinbart ist vom Auftragnehmer verwahrt oder vernichtet. Der Auftragnehmer ist berechtigt Kopien davon aufzubewahren soweit er diese zur ordnungsgemäßen Dokumentation seiner Leistungen benötigt oder es rechtlich geboten oder berufsbüchlich ist.

(5) Sofern der Auftragnehmer den Auftraggeber dabei unterstützt, die den Auftraggeber als datenschutzrechtlich Verantwortlichen treffenden Pflichten gegenüber Betroffenen zu erfüllen, so ist der Auftragnehmer berechtigt, den entstandenen tatsächlichen Aufwand an den Auftraggeber zu verrechnen. Gleiches gilt, für den Aufwand der für Auskünfte im Zusammenhang mit dem Auftragsverhältnis anfällt, die nach Entbindung von der Verschwiegenheitspflicht durch den Auftraggeber gegenüber Dritten diesen Dritten erteilt werden.

9. Rücktritt und Kündigung („Beendigung“)

(1) Die Erklärung der Beendigung eines Auftrags hat schriftlich zu erfolgen (siehe auch Punkt. 4 (4) und (5)). Das Erlöschen einer bestehenden Vollmacht bewirkt keine Beendigung des Auftrags.

(2) Soweit nicht etwas anderes schriftlich vereinbart oder gesetzlich zwingend vorgeschrieben ist, können die Vertragspartner den Vertrag jederzeit mit sofortiger Wirkung beenden. Der Honoraranspruch bestimmt sich nach Punkt 11.

(3) Ein Dauerauftrag (befristeter oder unbefristeter Auftrag über, wenn auch nicht ausschließlich, die Erbringung wiederholter Einzelleistungen, auch mit Pauschalvergütung) kann allerdings, soweit nichts anderes schriftlich vereinbart ist, ohne Vorliegen eines wichtigen Grundes nur unter Einhaltung einer Frist von drei Monaten („Beendigungsfrist“) zum Ende eines Kalendermonats beendet werden.

(4) Nach Erklärung der Beendigung eines Dauerauftrags – sind, soweit im Folgenden nicht abweichend bestimmt, nur jene einzelnen Werke vom Auftragnehmer noch fertigzustellen (verbleibender Auftragsstand), deren vollständige Ausführung innerhalb der Beendigungsfrist (grundsätzlich) möglich ist, soweit diese innerhalb eines Monats nach Beginn des Laufs der Beendigungsfrist dem Auftraggeber schriftlich im Sinne des Punktes 4 (2) bekannt gegeben werden. Der verbleibende Auftragsstand ist innerhalb der Beendigungsfrist fertig zu stellen, sofern sämtliche erforderlichen

Unterlagen rechtzeitig zur Verfügung gestellt werden und soweit nicht ein wichtiger Grund vorliegt, der dies hindert.

(5) Wären bei einem Dauerauftrag mehr als 2 gleichartige, üblicherweise nur einmal jährlich zu erstellende Werke (z.B. Jahresabschlüsse, Steuererklärungen etc.) fertig zu stellen, so zählen die über 2 hinaus gehenden Werke nur bei ausdrücklichem Einverständnis des Auftraggebers zum verbleibenden Auftragsstand. Auf diesen Umstand ist der Auftraggeber in der Bekanntgabe gemäß Punkt 9 (4) gegebenenfalls ausdrücklich hinzuweisen.

10. Beendigung bei Annahmeverzug und unterlassener Mitwirkung des Auftraggebers und rechtlichen Ausführungshindernissen

(1) Kommt der Auftraggeber mit der Annahme der vom Auftragnehmer angebotenen Leistung in Verzug oder unterlässt der Auftraggeber eine ihm nach Punkt 2. oder sonst wie obliegende Mitwirkung, so ist der Auftragnehmer zur fristlosen Beendigung des Vertrages berechtigt. Gleiches gilt, wenn der Auftraggeber eine (auch teilweise) Durchführung des Auftrages verlangt, die, nach begründetem Dafürhalten des Auftragnehmers, nicht der Rechtslage oder berufsbüchlichen Grundsätzen entspricht. Seine Honoraransprüche bestimmen sich nach Punkt 11. Annahmeverzug sowie unterlassene Mitwirkung seitens des Auftraggebers begründen auch dann den Anspruch des Auftragnehmers auf Ersatz der ihm hierdurch entstandenen Mehraufwendungen sowie des verursachten Schadens, wenn der Auftragnehmer von seinem Kündigungsrecht keinen Gebrauch macht.

(2) Bei Verträgen über die Führung der Bücher, die Vornahme der Personalsachbearbeitung oder Abgabenverrechnung ist eine fristlose Beendigung durch den Auftragnehmer gemäß Punkt 10 (1) zulässig, wenn der Auftraggeber seiner Mitwirkungspflicht gemäß Punkt 2. (1) zweimal nachweislich nicht nachkommt.

11. Honoraranspruch

(1) Unterbleibt die Ausführung des Auftrages (z.B. wegen Rücktritt oder Kündigung), so gebührt dem Auftragnehmer gleichwohl das vereinbarte Entgelt (Honorar), wenn er zur Leistung bereit war und durch Umstände, deren Ursache auf Seiten des Auftraggebers liegen, ein bloßes Mitverschulden des Auftragnehmers bleibt diesbezüglich außer Ansatz, daran gehindert worden ist; der Auftragnehmer braucht sich in diesem Fall nicht anrechnen zu lassen, was er durch anderweitige Verwendung seiner und seiner Mitarbeiter Arbeitskraft erwirbt oder zu erwerben unterlässt.

(2) Bei Beendigung eines Dauerauftrags gebührt das vereinbarte Entgelt für den verbleibenden Auftragsstand, sofern er fertiggestellt wird oder dies aus Gründen, die dem Auftraggeber zuzurechnen sind, unterbleibt (auf Punkt 11. (1) wird verwiesen). Vereinbarte Pauschalhonorare sind gegebenenfalls zu aliquotieren.

(3) Unterbleibt eine zur Ausführung des Werkes erforderliche Mitwirkung des Auftraggebers, so ist der Auftragnehmer auch berechtigt, ihm zur Nachholung eine angemessene Frist zu setzen mit der Erklärung, dass nach fruchtlosem Verstreichen der Frist der Vertrag als aufgehoben gelte, im Übrigen gelten die Folgen des Punkt 11. (1).

(4) Bei Nichteinhaltung der Beendigungsfrist gemäß Punkt 9. (3) durch den Auftraggeber, sowie bei Vertragsauflösung gemäß Punkt 10. (2) durch den Auftragnehmer behält der Auftragnehmer den vollen Honoraranspruch für drei Monate.

12. Honorar

(1) Sofern nicht ausdrücklich Unentgeltlichkeit vereinbart ist, wird jedenfalls gemäß § 1004 und § 1152 ABGB eine angemessene Entlohnung geschuldet. Höhe und Art des Honoraranspruchs des Auftragnehmers ergeben sich aus der zwischen ihm und seinem Auftraggeber getroffenen Vereinbarung. Sofern nicht nachweislich eine andere Vereinbarung getroffen wurde sind Zahlungen des Auftraggebers immer auf die älteste Schuld anzurechnen.

(2) Die kleinste verrechenbare Leistungseinheit beträgt eine Viertelstunde.

(3) Auch die Wegzeit wird im notwendigen Umfang verrechnet.

(4) Das Aktenstudium in der eigenen Kanzlei, das nach Art und Umfang zur Vorbereitung des Auftragnehmers notwendig ist, kann gesondert verrechnet werden.

(5) Erweist sich durch nachträglich hervorgekommene besondere Umstände oder auf Grund besonderer Inanspruchnahme durch den Auftraggeber ein bereits vereinbartes Entgelt als unzureichend, so hat der Auftragnehmer den Auftraggeber darauf hinzuweisen und sind Nachverhandlungen zur Vereinbarung eines angemessenen Entgelts zu führen (auch bei unzureichenden Pauschalhonoraren).

(6) Der Auftragnehmer verrechnet die Nebenkosten und die Umsatzsteuer zusätzlich. Beispielhaft aber nicht abschließend im Folgenden (7) bis (9):

(7) Zu den verrechenbaren Nebenkosten zählen auch belegte oder pauschalierte Barauslagen, Reisespesen (bei Bahnfahrten 1. Klasse), Diäten, Kilometergeld, Kopierkosten und ähnliche Nebenkosten.

(8) Bei besonderen Haftpflichtversicherungserfordernissen zählen die betreffenden Versicherungsprämien (inkl. Versicherungssteuer) zu den Nebenkosten.

(9) Weiters sind als Nebenkosten auch Personal- und Sachaufwendungen für die Erstellung von Berichten, Gutachten uä. anzusehen.

(10) Für die Ausführung eines Auftrages, dessen gemeinschaftliche Erledigung mehreren Auftragnehmern übertragen worden ist, wird von jedem das seiner Tätigkeit entsprechende Entgelt verrechnet.

(11) Entgelte und Entgeltvorschüsse sind mangels anderer Vereinbarungen sofort nach deren schriftlicher Geltendmachung fällig. Für Entgeltzahlungen, die später als 14 Tage nach Fälligkeit geleistet werden, können Verzugszinsen verrechnet werden. Bei beiderseitigen Unternehmergeeschäften gelten Verzugszinsen in der in § 456 1. und 2. Satz UGB festgelegten Höhe.

(12) Die Verjährung richtet sich nach § 1486 ABGB und beginnt mit Ende der Leistung bzw. mit späterer, in angemessener Frist erfolgter Rechnungslegung zu laufen.

(13) Gegen Rechnungen kann innerhalb von 4 Wochen ab Rechnungsdatum schriftlich beim Auftragnehmer Einspruch erhoben werden. Andernfalls gilt die Rechnung als anerkannt. Die Aufnahme einer Rechnung in die Bücher gilt jedenfalls als Anerkenntnis.

(14) Auf die Anwendung des § 934 ABGB im Sinne des § 351 UGB, das ist die Anfechtung wegen Verkürzung über die Hälfte für Geschäfte unter Unternehmern, wird verzichtet.

(15) Falls bei Aufträgen betreffend die Führung der Bücher, die Vornahme der Personalsachbearbeitung oder Abgabeverrechnung ein Pauschalhonorar vereinbart ist, so sind mangels anderweitiger schriftlicher Vereinbarung die Vertretungstätigkeit im Zusammenhang mit abgaben und beitragsrechtlichen Prüfungen aller Art einschließlich der Abschluss von Vergleichen über Abgabebemessungs- oder Beitragsgrundlagen, Berichterstattung, Rechtsmittelerhebung uä. gesondert zu honorieren. Sofern nichts anderes schriftlich vereinbart ist, gilt das Honorar als jeweils für ein Auftragsjahr vereinbart.

(16) Die Bearbeitung besonderer Einzelfragen im Zusammenhang mit den im Punkt 12. (15) genannten Tätigkeiten, insbesondere Feststellungen über das prinzipielle Vorliegen einer Pflichtversicherung, erfolgt nur aufgrund eines besonderen Auftrages.

(17) Der Auftragnehmer kann entsprechende Vorschüsse verlangen und seine (fortgesetzte) Tätigkeit von der Zahlung dieser Vorschüsse abhängig machen. Bei Daueraufträgen darf die Erbringung weiterer Leistungen bis zur Bezahlung früherer Leistungen (sowie allfälliger Vorschüsse gemäß Satz 1) verweigert werden. Bei Erbringung von Teilleistungen und offener Teilhonorierung gilt dies sinngemäß.

(18) Eine Beanstandung der Arbeiten des Auftragnehmers berechtigt, außer bei offenkundigen wesentlichen Mängeln, nicht zur auch nur teilweisen Zurückhaltung der ihm nach Punkt 12. zustehenden Honorare, sonstigen Entgelte, Kostenersätze und Vorschüsse (Vergütungen).

(19) Eine Aufrechnung gegen Forderungen des Auftragnehmers auf Vergütungen nach Punkt 12. ist nur mit unbestrittenen oder rechtskräftig festgestellten Forderungen zulässig.

13. Sonstiges

(1) Im Zusammenhang mit Punkt 12. (17) wird auf das gesetzliche Zurückbehaltungsrecht (§ 471 ABGB, § 369 UGB) verwiesen; wird das Zurückbehaltungsrecht zu Unrecht ausgeübt, haftet der Auftragnehmer grundsätzlich gemäß Punkt 7. aber in Abweichung dazu nur bis zur Höhe seiner noch offenen Forderung.

(2) Der Auftraggeber hat keinen Anspruch auf Ausfolgung von im Zuge der Auftragsbefolgung vom Auftragnehmer erstellten Arbeitspapieren und ähnlichen Unterlagen. Im Falle der Auftragsbefolgung unter Einsatz elektronischer Buchhaltungssysteme ist der Auftragnehmer berechtigt, nach Übergabe sämtlicher vom Auftragnehmer auftragsbezogen damit erstellter Daten, für die den Auftraggeber eine Aufbewahrungspflicht trifft, i

in einem strukturierten, gängigen und maschinenlesbaren Format an den Auftraggeber bzw. an den nachfolgenden Wirtschaftstreuhänder, die Daten zu löschen. Für die Übergabe dieser Daten in einem strukturierten, gängigen und maschinenlesbaren Format hat der Auftragnehmer Anspruch auf ein angemessenes Honorar (Punkt 12 gilt sinngemäß). Ist eine Übergabe dieser Daten in einem strukturierten, gängigen und maschinenlesbaren Format aus besonderen Gründen unmöglich oder unzulässig, können diese ersatzweise im Vollausdruck übergeben werden. Eine Honorierung steht diesfalls dafür nicht zu.

(3) Der Auftragnehmer hat auf Verlangen und Kosten des Auftraggebers alle Unterlagen herauszugeben, die er aus Anlass seiner Tätigkeit von diesem erhalten hat. Dies gilt jedoch nicht für den Schriftwechsel zwischen dem Auftragnehmer und seinem Auftraggeber und für die Schriftstücke, die der Auftraggeber in Urschrift besitzt und für Schriftstücke, die einer Aufbewahrungspflicht nach den für den Auftragnehmer geltenden rechtlichen Bestimmungen zur Verhinderung von Geldwäsche unterliegen. Der Auftragnehmer kann von Unterlagen, die er an den Auftraggeber zurückgibt, Abschriften oder Fotokopien anfertigen. Sind diese Unterlagen bereits einmal an den Auftraggeber übermittelt worden so hat der Auftragnehmer Anspruch auf ein angemessenes Honorar (Punkt 12. gilt sinngemäß).

(4) Der Auftraggeber hat die dem Auftragnehmer übergebenen Unterlagen nach Abschluss der Arbeiten binnen 3 Monaten abzuholen. Bei Nichtabholung übergebener Unterlagen kann der Auftragnehmer nach zweimaliger nachweislicher Aufforderung an den Auftraggeber, übergebene Unterlagen abzuholen, diese auf dessen Kosten zurückstelle und/oder ein angemessenes Honorar in Rechnung stellen (Punkt 12. gilt sinngemäß). Die weitere Aufbewahrung kann auch auf Kosten des Auftraggebers durch Dritte erfolgen. Der Auftragnehmer haftet im Weiteren nicht für Folgen aus Beschädigung, Verlust oder Vernichtung der Unterlagen.

(5) Der Auftragnehmer ist berechtigt, fällige Honorarforderungen mit etwaigen Depotguthaben, Verrechnungsgeldern, Treuhandgeldern oder anderen in seiner Gewahrsame befindlichen liquiden Mitteln auch bei ausdrücklicher Inverwahrnehmung zu kompensieren, sofern der Auftraggeber mit einem Gegenanspruch des Auftragnehmers rechnen musste.

(6) Zur Sicherung einer bestehenden oder künftigen Honorarforderung ist der Auftragnehmer berechtigt, ein finanzamtliches Guthaben oder ein anderes Abgaben- oder Beitragsguthaben des Auftraggebers auf ein Anderkonto zu transferieren. Diesfalls ist der Auftraggeber vom erfolgten Transfer zu verständigen. Danach kann der sichergestellte Betrag entweder im Einvernehmen mit dem Auftraggeber oder bei Vollstreckbarkeit der Honorarforderung eingezogen werden.

14. Anzuwendendes Recht, Erfüllungsort, Gerichtsstand

(1) Für den Auftrag, seine Durchführung und die sich hieraus ergebenden Ansprüche gilt ausschließlich österreichisches Recht unter Ausschluss des nationalen Verweisungsrechts.

(2) Erfüllungsort ist der Ort der beruflichen Niederlassung des Auftragnehmers.

(3) Gerichtsstand ist – mangels abweichender schriftlicher Vereinbarung – das sachlich zuständige Gericht des Erfüllungsortes.

II. TEIL

15. Ergänzende Bestimmungen für Verbrauchergeschäfte

(1) Für Verträge zwischen Wirtschaftstreuhändern und Verbrauchern gelten die zwingenden Bestimmungen des Konsumentenschutzgesetzes.

(2) Der Auftragnehmer haftet nur für vorsätzliche und grob fahrlässig verschuldete Verletzung der übernommenen Verpflichtungen.

(3) Anstelle der im Punkt 7 Abs 2 normierten Begrenzung ist auch im Falle grober Fahrlässigkeit die Ersatzpflicht des Auftragnehmers nicht begrenzt.

(4) Punkt 6 Abs 2 (Frist für Mängelbeseitigungsanspruch) und Punkt 7 Abs 4 (Geltendmachung der Schadenersatzansprüche innerhalb einer bestimmten Frist) gilt nicht.

(5) Rücktrittsrecht gemäß § 3 KSchG:

Hat der Verbraucher seine Vertragserklärung nicht in den vom Auftragnehmer dauernd benützten Kanzleiräumen abgegeben, so kann er von seinem Vertragsantrag oder vom Vertrag zurücktreten. Dieser Rücktritt kann bis zum Zustandekommen des Vertrages oder danach binnen einer Woche erklärt werden; die Frist beginnt mit der Ausfolgung einer Urkunde, die zumindest den Namen und die Anschrift des Auftragnehmers sowie eine Belehrung über das Rücktrittsrecht enthält, an den Verbraucher, frühestens jedoch mit dem Zustandekommen des Vertrages zu laufen. Das Rücktrittsrecht steht dem Verbraucher nicht zu,

1. wenn er selbst die geschäftliche Verbindung mit dem Auftragnehmer oder dessen Beauftragten zwecks Schließung dieses Vertrages angebahnt hat,

2. wenn dem Zustandekommen des Vertrages keine Besprechungen zwischen den Beteiligten oder ihren Beauftragten vorangegangen sind oder

3. bei Verträgen, bei denen die beiderseitigen Leistungen sofort zu erbringen sind, wenn sie üblicherweise von Auftragnehmern außerhalb ihrer Kanzleiräume geschlossen werden und das vereinbarte Entgelt € 15 nicht übersteigt.

Der Rücktritt bedarf zu seiner Rechtswirksamkeit der Schriftform. Es genügt, wenn der Verbraucher ein Schriftstück, das seine Vertragserklärung oder die des Auftragnehmers enthält, dem Auftragnehmer mit einem Vermerk zurückstellt, der erkennen lässt, dass der Verbraucher das Zustandekommen oder die Aufrechterhaltung des Vertrages ablehnt. Es genügt, wenn die Erklärung innerhalb einer Woche abgesendet wird. Tritt der Verbraucher gemäß § 3 KSchG vom Vertrag zurück, so hat Zug um Zug

1. der Auftragnehmer alle empfangenen Leistungen samt gesetzlichen Zinsen vom Empfangstag an zurückzuerstatten und den vom Verbraucher auf die Sache gemachten notwendigen und nützlichen Aufwand zu ersetzen,

2. der Verbraucher dem Auftragnehmer den Wert der Leistungen zu vergüten, soweit sie ihm zum klaren und überwiegenden Vorteil gereichen. Gemäß § 4 Abs 3 KSchG bleiben Schadenersatzansprüche unberührt.

(6) Kostenvoranschläge gemäß § 5 KSchG:

Für die Erstellung eines Kostenvoranschlages im Sinn des § 1170a ABGB durch den Auftragnehmer hat der Verbraucher ein Entgelt nur dann zu zahlen, wenn er vorher auf diese Zahlungspflicht hingewiesen worden ist. Wird dem Vertrag ein Kostenvoranschlag des Auftragnehmers zugrunde gelegt, so gilt dessen Richtigkeit als gewährleistet, wenn nicht das Gegenteil ausdrücklich erklärt ist.

(7) Mängelbeseitigung: Punkt 6 wird ergänzt:

Ist der Auftragnehmer nach § 932 ABGB verpflichtet, seine Leistungen zu verbessern oder Fehlendes nachzutragen, so hat er diese Pflicht zu erfüllen, an dem Ort, an dem die Sache übergeben worden ist. Ist es für den Verbraucher tunlich, die Werke und Unterlagen vom Auftragnehmer gesendet zu erhalten, so kann dieser diese Übersendung auf seine Gefahr und Kosten vornehmen.

(8) Gerichtsstand: Anstelle Punkt 14. (3) gilt:

Hat der Verbraucher im Inland seinen Wohnsitz oder seinen gewöhnlichen Aufenthalt oder ist er im Inland beschäftigt, so kann für eine Klage gegen

ihn nach den §§ 88, 89, 93 Abs 2 und 104 Abs 1 JN nur die Zuständigkeit eines Gerichtes begründet werden, in dessen Sprengel der Wohnsitz, der gewöhnliche Aufenthalt oder der Ort der Beschäftigung liegt.

(9) Verträge über wiederkehrende Leistungen:

(a) Verträge, durch die sich der Auftragnehmer zu Werkleistungen und der Verbraucher zu wiederholten Geldzahlungen verpflichten und die für eine unbestimmte oder eine ein Jahr übersteigende Zeit geschlossen worden sind, kann der Verbraucher unter Einhaltung einer zweimonatigen Frist zum Ablauf des ersten Jahres, nachher zum Ablauf jeweils eines halben Jahres kündigen.

(b) Ist die Gesamtheit der Leistungen eine nach ihrer Art unteilbare Leistung, deren Umfang und Preis schon bei der Vertragsschließung bestimmt sind, so kann der erste Kündigungstermin bis zum Ablauf des zweiten Jahres hinausgeschoben werden. In solchen Verträgen kann die Kündigungsfrist auf höchstens sechs Monate verlängert werden.

(c) Erfordert die Erfüllung eines bestimmten, in lit. a) genannten Vertrages erhebliche Aufwendungen des Auftragnehmers und hat er dies dem Verbraucher spätestens bei der Vertragsschließung bekannt gegeben, so können den Umständen angemessene, von den in lit. a) und b) genannten abweichende Kündigungstermine und Kündigungsfristen vereinbart werden.

(d) Eine Kündigung des Verbrauchers, die nicht fristgerecht ausgesprochen worden ist, wird zum nächsten nach Ablauf der Kündigungsfrist liegenden Kündigungstermin wirksam.

Schedule 3 – Companies Register Extract

The Companies Register Extract is attached behind this cover page.


Stichtag 16.8.2022
Auszug mit aktuellen Daten
FN 569385 g

Grundlage dieses Auszuges ist das Hauptbuch ergänzt um Daten aus der Urkundensammlung.

Letzte Eintragung am 28.05.2022 mit der Eintragsnummer 3
zuständiges Gericht Handelsgericht Wien

FIRMA

1 bitfly staking gmbh

RECHTSFORM

1 Gesellschaft mit beschränkter Haftung

SITZ in

1 politischer Gemeinde Wien

GESCHÄFTSANSCHRIFT

3 Wiedner Gürtel 9
1100 Wien

GESCHÄFTSZWEIG

1 IT-Dienstleistungen

KAPITAL

1 EUR 35.000

STICHTAG für JAHRESABSCHLUSS

1 31. Dezember

1 Erklärung über die Errichtung der Gesellschaft 001
vom 08.11.2021

2 Generalversammlungsbeschluss vom 31.03.2022 002
Änderung der Erklärung über die Errichtung der Gesellschaft
durch Einführung eines neuen § 8. Neunummerierung der
bisherigen §§ 8 bis 10 als neue §§ 9 bis 11.

GESCHÄFTSFÜHRER/IN (handelsrechtlich)

1 A Ing. Peter Pratscher, geb. 27.08.1985
vertritt seit 24.11.2021 selbständig

GESELLSCHAFTER/IN
STAMMEINLAGE
HIERAUF GELEISTET

2	C bitfly gmbh		
2	EUR 35.000	
2		EUR 35.000
	Summen:	EUR 35.000	EUR 35.000

--- PERSONEN ---

1 A Ing. Peter Pratscher, geb. 27.08.1985
3 Wiedner Gürtel 9
1100 Wien
2 C bitfly gmbh
2 (FN 472953 w)

2 Landstraßer Gürtel 9/12
1030 Wien

----- VOLLZUGSÜBERSICHT -----

Handelsgericht Wien

1 eingetragen am 24.11.2021 Geschäftsfall 73 Fr 40544/21 t
Antrag auf Neueintragung einer Firma eingelangt am 22.11.2021
2 eingetragen am 08.04.2022 Geschäftsfall 73 Fr 12167/22 w
Antrag auf Änderung eingelangt am 06.04.2022
3 eingetragen am 28.05.2022 Geschäftsfall 73 Fr 18182/22 s
Antrag auf Änderung eingelangt am 24.05.2022

----- INFORMATION DER ÖSTERREICHISCHEN NATIONALBANK -----

zum 16.08.2022 gültige Identnummer: 27844382

erstellt über Verrechnungsstelle MANZ ***** HA021
Gerichtsgebühr: EUR 3.76 ***** 16.08.2022 16:37:05,590 95394512 ** ZEILEN: 44

Firmenbuch

Abgefragt am 16.8.2022, um 16:37:05 MEZ

Schedule 4 – Articles of Association

The Articles of Association are attached behind this cover page.

BRIX MAYER HOHENECK & PARTNER
ÖFFENTLICHE NOTARE

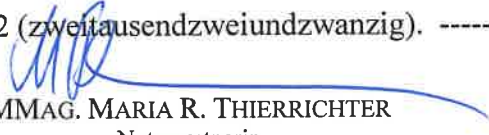


BEURKUNDUNG
der
ERRICHTUNGSERKLÄRUNG
der
bitfly staking gmbh
Wien, FN 569385 g
gem § 51 Abs 1 GmbHG

Ich bestätige, dass bei dem nachstehenden Wortlaut der Errichtungserklärung der **bitfly staking gmbh** mit dem Sitz in **Wien** die geänderten Bestimmungen derselben mit dem von mir zur Geschäftszahl: **8.317** des öffentlichen Notars Doktor Christian Mayer, mit dem Amtssitz in Wien – Innere Stadt, beurkundeten Beschluss über die Änderung der Errichtungserklärung und die unveränderten Bestimmungen mit dem zuletzt beim Firmenbuch eingereichten vollständigen Wortlaut der Errichtungserklärung übereinstimmen. -----

Wien, am 31. (einunddreißigsten) März 2022 (zweitausendzweiundzwanzig). -----




MMAG. MARIA R. THIERRICHTER
Notarpartnerin
als Substitutin des öffentlichen Notars
DR. CHRISTIAN MAYER
mit dem Amtssitz in Wien – Innere Stadt

ERRICHTUNGSERKLÄRUNG

bitfly staking gmbh

31. März 2022

§ 1. Firma | Sitz

- (1) Die Firma lautet

bitfly staking gmbh

("Gesellschaft").

- (2) Sitz der Gesellschaft ist Wien.

§ 2. Gegenstand des Unternehmens

- (1) Gegenstand des Unternehmens ist die Erbringung von IT-Dienstleistungen.
- (2) Die Gesellschaft ist berechtigt, weitere Unternehmen zu kaufen, zu verkaufen bzw. auf andere Art zu übernehmen, solche zu pachten und sich an derartigen Unternehmen zu beteiligen sowie Tochtergesellschaften zu errichten, zu erwerben und zu besitzen und zwar jeweils sowohl im Inland als auch im Ausland.
- (3) Die Gesellschaft ist zu allen Handlungen, Geschäften und Maßnahmen berechtigt, die zur Erreichung des Gesellschaftszweckes förderlich erscheinen, nicht aber zu
- (a) Bankgeschäften im Sinne des BWG, sowie
 - (b) sämtlichen Tätigkeiten, welcher der Aufsicht der Finanzmarktaufsicht unterliegen.

§ 3. Stammkapital

- (1) Das Stammkapital der Gesellschaft beträgt EUR 35.000 (Euro fünfunddreißigtausend).
- (2) Das Stammkapital wurde in bar zur Gänze von der Alleingesellschafterin bitfly gmbh mit Sitz in Wien und der Geschäftsanschrift Landstraßer Gürtel 9/12, 1030 Wien, eingetragen im Firmenbuch des Handelsgerichts Wien unter FN 472953 w übernommen.

§ 4. Dauer der Gesellschaft | Geschäftsjahr

- (1) Die Gesellschaft beginnt mit dem Tag ihrer Eintragung in das zuständige Firmenbuch und wird auf unbestimmte Dauer errichtet.
- (2) Das erste Geschäftsjahr beginnt mit der Eintragung der Gesellschaft in das Firmenbuch und endet am darauffolgenden 31.12. (einunddreißigsten Dezember). Die weiteren Geschäftsjahre entsprechen dem Kalenderjahr.

§ 5. Geschäftsführung | Vertretung

- (1) Die Gesellschaft hat einen oder mehrere Geschäftsführer. Ist nur ein Geschäftsführer bestellt, wird die Gesellschaft von diesem selbstständig vertreten. Sind mehrere Geschäftsführer bestellt, regelt die Generalversammlung deren Vertretungsbefugnis.
- (2) Die Geschäftsführer haben in ihrer Tätigkeit die Sorgfalt eines ordentlichen Unternehmers anzuwenden.

- (3) Die Geschäftsführer sind an die Beschlüsse der Generalversammlung gebunden und der Gesellschaft gegenüber verpflichtet, bei Ausübung ihrer Befugnisse alle Beschränkungen einzuhalten, die ihnen durch ihren Anstellungsvertrag, durch Gesellschafterbeschluss, durch diesen Gesellschaftsvertrag oder durch Gesetz auferlegt werden.
- (4) Die Gesellschaft wird derart gezeichnet, dass der Zeichnende dem Firmenwortlaut seine Unterschrift beisetzt; Prokuristen zeichnen mit einem der Prokura andeutenden Zusatz.

§ 6. Generalversammlung

- (1) Generalversammlungen finden am Sitz der Gesellschaft statt. Jährlich hat mindestens eine Generalversammlung stattzufinden. Neben den Geschäftsführern ist jeder Gesellschafter zur Einberufung der Generalversammlung berechtigt.
- (2) Zwischen der Einberufung der Generalversammlung und dem Tag der Sitzung müssen mindestens 7 (sieben) Tage liegen. Die Generalversammlung kann durch eingeschriebenen Brief oder auch auf elektronischem Weg per E-Mail mit Sendebestätigung einberufen werden.
- (3) Falls Personen über die Abhaltung einer Generalversammlung benachrichtigt werden müssen, die ihren Wohnsitz außerhalb Österreichs haben, ist am Tag der Postaufgabe der Einberufung diese zusätzlich mit Telefax zu versenden.
- (4) Eine Generalversammlung ist auch dann einzuberufen, wenn Gesellschafter, deren Stammeinlagen 10 % des Stammkapitals der Gesellschaft erreichen, die Einberufung einer Generalversammlung unter Angabe des Grunds dieser Generalversammlung und der Tagesordnung schriftlich verlangen. Falls eine Generalversammlung nicht binnen 30 Tagen nach Erhalt einer diesbezüglichen Mitteilung einberufen wird, kann diese von den betreffenden Gesellschaftern selbst einberufen werden.
- (5) Den Vorsitz in der Generalversammlung führt ein Geschäftsführer. Der Vorsitzende legt insbesondere die Reihenfolge der Behandlung der Gegenstände der Tagesordnung und die Art der Abstimmung in der Generalversammlung fest. Der Vorsitzende der Generalversammlung stellt weiters das Ergebnis einer Abstimmung fest und verkündet die gefassten Gesellschafterbeschlüsse. Der Vorsitzende erteilt und entzieht den Anwesenden das Wort in der Generalversammlung.
- (6) Ein Gesellschafter kann in einer Generalversammlung entweder durch einen anderen Gesellschafter der Gesellschaft oder durch eine Person vertreten sein, die der beruflichen Verschwiegenheit unterliegt (Rechtsanwalt, Wirtschaftsprüfer oder Notar). Die Vertretung eines Gesellschafters in der Generalversammlung ist nur auf Grund einer schriftlichen Vollmacht möglich, welche den Vertreter ausdrücklich zur Ausübung der Stimmrechte der von ihm vertretenen Person berechtigt.
- (7) Die Generalversammlung fasst ihre Beschlüsse mit einfacher Mehrheit der abgegebenen Stimmen, sofern nicht zwingende gesetzliche Bestimmungen oder dieser Gesellschaftsvertrag etwas anderes vorsehen. Je EUR 10 (Euro zehn) der übernommenen Stammeinlage gewährt eine Stimme. Bruchteile unter EUR 10 (Euro zehn) werden nicht berücksichtigt.
- (8) Gesellschafterbeschlüsse können auch schriftlich gefasst werden, sofern alle Gesellschafter dem zu fassenden Beschluss oder zumindest der Beschlussfassung im schriftlichen Weg zustimmen. In diesem Fall wird die gesetzlich vorgeschriebene oder auf Grund dieses Gesellschaftsvertrags erforderliche Mehrheit nicht nach der Anzahl der abgegebenen Stimmen, sondern auf Grund der Gesamtanzahl der allen Gesellschaftern zustehenden Stimmen ermittelt.

§ 7. Jahresabschluss I Ergebnisverteilung

- (1) Die Geschäftsführung hat nach Ablauf jedes Geschäftsjahres innerhalb einer Frist von 5 Monaten unter Beachtung der grundsätzlich ordnungsgemäßen Buchführung und der gesetzlichen Vorschriften den Jahresabschluss aufzustellen.
- (2) Die Generalversammlung beschließt über die Verwendung der in der Bilanz ausgewiesenen Bilanzgewinne. Sofern der Verteilungsschlüssel von der Verteilung der Stammeinlagen abweicht, ist ein einstimmiger Gesellschafterbeschluss über die Verteilung des Gewinns zu fassen.

§ 8. Beirat

- (1) Die Gesellschaft hat einen Beirat, der die Geschäftsführung zu beraten und zu überwachen hat. Der Beirat hat dabei die ihm durch diesen Gesellschaftsvertrag, Generalversammlungsbeschluss oder Geschäftsordnung für die Geschäftsführung zugewiesenen Aufgaben wahrzunehmen. Die Generalversammlung kann eine Geschäftsordnung für den Beirat erlassen.
- (2) Der Beirat besteht aus bis zu 5 (fünf) Mitgliedern. Jeder Gesellschafter, der mindestens eine Beteiligung an der Gesellschaft im Ausmaß von 20% (zwanzig Prozent) hält, hat für die Dauer seiner Gesellschafterstellung das Recht, ein Mitglied zur Wahl in den Beirat vorzuschlagen. Jeder Mitgesellschafter ist an den Wahlvorschlag des nominierungsberechtigten Gesellschafters gebunden. Die Bestellung von Beiratsmitgliedern erfolgt auf unbestimmte Dauer, sofern im Bestellungsbeschluss nicht eine bestimmte Dauer vorgesehen ist.
- (3) Die Beiratsmitglieder bestimmen aus ihrer Mitte einen Vorsitzenden und den Stellvertreter des Vorsitzenden.
- (4) Jedes Beiratsmitglied kann sein Amt unter Einhaltung einer zweiwöchigen Kündigungsfrist ohne Angabe von Gründen durch schriftliche Erklärung an die Geschäftsführung oder den Vorsitzenden des Beirates zurücklegen. Sollte der Vorsitzende des Beirates verhindert sein oder selbst sein Amt zurücklegen, ist die Erklärung gegenüber dem Stellvertreter oder der Geschäftsführung abzugeben.
- (5) Der Beirat tritt mindestens einmal in jedem Kalendervierteljahr zusammen.
- (6) Sitzungen des Beirates werden durch den Vorsitzenden oder im Falle seiner Verhinderung durch den Stellvertreter durch eingeschriebenen Brief, E-Mail oder durch Boten einberufen. Die Einladung hat an jedes Beiratsmitglied unter jener Anschrift oder E-Mail-Adresse zu erfolgen, die der Gesellschaft zuletzt bekannt gegeben worden ist. Zwischen dem Tag der Absendung der Einladung und dem Tag der Sitzung müssen mindestens 8 (acht) Tage liegen, wobei in der Einladung die Tagesordnungspunkte, möglichst unter Ausschluss der entsprechenden Unterlagen, übermittelt werden.
- (7) Abgesehen von den gesellschaftsvertraglich vorgesehenen Fällen ist der Beirat einzuberufen, wenn Mitglieder der Geschäftsführung oder Mitglieder des Beirates dies unter Angabe des Zweckes und der Gründe verlangen. Wird einem von mindestens 2 (zwei) Beiratsmitgliedern geäußertem Verlangen auf Einberufung nicht entsprochen, so können die Antragsteller unter Mitteilung des Sachverhalts selbst den Beirat unter Beachtung einer mindestens einwöchigen Einberufungsfrist einberufen.
- (8) Der Beirat ist beschlussfähig, wenn alle Mitglieder des Beirates ordnungsgemäß eingeladen worden sind und mindestens 3 (drei) Beiratsmitglieder persönlich anwesend sind. Beiratssitzungen werden vom Vorsitzenden geleitet, im Falle einer Verhinderung vom Stellvertreter. Die Art der Abstimmung bestimmt der Leiter der Sitzung.
- (9) Beschlüsse werden – soweit der Gesellschaftsvertrag oder die Geschäftsordnung für den Beirat nicht zwingend anderes bestimmen – mit einfacher Mehrheit der abgegebenen Stimmen gefasst. Im Falle der

Stimmengleichheit steht dem Vorsitzenden ein Dirimierungsrecht zu. Jedem stimmberechtigten Beiratsmitglied steht dabei 1 (eine) Stimme zu.

- (10) Über die Verhandlungen und Beschlüsse des Beirates ist eine Niederschrift anzufertigen, die vom Leiter der Sitzung und vom Schriftführer zu unterzeichnen ist, wobei insbesondere Tag, Ort und Teilnehmer der Sitzung sowie das Ergebnis der Abstimmung festzuhalten sind.
- (11) Beschlüsse können auch auf schriftlichem Weg (durch Brief oder E-Mail) ohne Sitzung gefasst werden, wenn der Vorsitzende oder im Falle seiner Verhinderung der Stellvertreter eine solche Beschlussfassung unter Angabe der Gründe anordnet und kein Mitglied des Beirates diesem Verfahren durch Erklärung an den Vorsitzenden oder im Falle seiner Verhinderung an den Stellvertreter innerhalb von 7 (sieben) Werktagen nach Erhalt des Umlaufbeschlusses ausdrücklich widerspricht.
- (12) Die Geschäftsführung hat an den Sitzungen des Beirates teilzunehmen, sofern nicht der Beirat für einzelne Sitzungen anders entscheidet.
- (13) Sachverständige oder Auskunftspersonen können über Wunsch des Beiratsvorsitzenden oder seines Stellvertreters zur Beratung über einzelne Gegenstände zugezogen werden.
- (14) Die Mitglieder des Beirates können ihre Aufgaben nicht durch andere ausüben lassen. Ein Beiratsmitglied kann aber ein anderes Beiratsmitglied schriftlich mit seiner Vertretung bei einer einzelnen Sitzung betrauen. Das vertretene Beiratsmitglied ist bei der Feststellung der Beschlussfähigkeit einer Sitzung nicht mitzuzählen; die vom vertretenen Beiratsmitglied durch seinen Vertreter abgegebene Stimme wird jedoch mitgezählt. Das Recht, den Vorsitz zu führen, kann nicht übertragen werden.
- (15) Zu den folgenden Geschäften hat die Geschäftsführung eine vorherige Abstimmung durch die Beiratsmitglieder einzuholen. Werden im Folgenden Wertgrenzen genannt, handelt es sich jeweils um Nettobeträge, sofern im Einzelfall nicht anderes angeordnet ist:
 - (a) Veräußerung, Verfügung oder Verpachtung des Unternehmens im Ganzen oder zu einem wesentlichen Teil; Errichtung, Veräußerung und Aufgabe von Betrieben, Teilbetrieben oder Betriebsstätten; Veräußerung wesentlicher Betriebsgrundlagen;
 - (b) Abschluss und Beendigung von Betriebspacht-, Betriebsführungs- und Unternehmensverträgen oder Verträgen, die eine wesentliche Einschränkung potentieller unternehmerischer Aktivitäten der Gesellschaft zur Folge haben können;
 - (c) Erwerb, Veräußerung, Belastung oder Übertragung von Beteiligungen sowie Erwerb, Veräußerung, Belastung, Übertragung, Ausgliederung, Einbringung, Stilllegung, Liquidation oder (Ver-)Pachtung von (Teil-)Unternehmen und (Teil-) Betrieben; insbesondere des Geschäftsbetriebes oder Teile des Geschäftsbetriebes sowie unternehmenspolitisch wesentliche Maßnahmen;
 - (d) Erhöhung oder Verminderung von Beteiligungen;
 - (e) Abschluss, Änderung oder Beendigung von stillen Gesellschaftsverträgen und Kooperationsverträgen sowie Abschluss, Änderung oder Beendigung von jeglichen Verträgen, die außerhalb des gewöhnlichen Geschäftsbetriebs der Gesellschaft liegen;
 - (f) Erwerb, Veräußerung und Belastung, Bestandsabgabe oder Bestandsaufnahme von Liegenschaften;
 - (g) Abschluss von Gesellschaftsverträgen, insbesondere Einräumung und Beendigung jedweder Beteiligung am Gewinn der Gesellschaft, insbesondere von stillen Beteiligungen, partiarischen Rechtsverhältnissen; an den Unternehmensgewinn gekoppelte variable Vergütungen von Mitarbeitern fallen unter diese Regelung;

- (h) Gründung und Aufgabe von Geschäftsbetrieben oder sonstigen geschäftlichen Niederlassungen jeder Art; insbesondere Errichtung und Schließung von Zweigniederlassungen im Inland und Ausland und Gründung von Tochtergesellschaften;
 - (i) Aufbau oder Einstellung von strategischen Geschäftsbereichen, Einstellung von Produktlinien;
 - (j) Ausübung von Gesellschafterrechten gleich welcher Art bei solchen Gesellschaften, an denen die Gesellschaft unmittelbar oder mittelbar, gleich in welcher Höhe, beteiligt ist (ausgenommen Bucheinsichts- und Kontrollrechte); weiter zur Ausübung des Weisungsrechtes gegenüber den vertretungsbefugten Organen von Beteiligungsgesellschaften in den Angelegenheiten nach lit. (a) bis (gg);
 - (k) wesentliche Änderungen des Geschäftsmodells und außerhalb des gewöhnlichen Geschäftsbetriebes liegende Verfügungen über gewerbliche Schutzrechte, einschließlich Erwerb, Vergabe und Veräußerung von Patenten, Source Lizenzen, urheberrechtlichen Nutzungsrechten sowie wesentliche Entscheidungen in Marken-, Muster-, und Warenzeichenangelegenheiten;
 - (l) Investitionen, Aufnahme von Anleihen, Darlehen und Krediten, oder sonstiger Finanzierungsmaßnahmen, die im Einzelnen den Betrag von EUR 50.000,00 (Euro fünfzigtausend) und/oder insgesamt im Geschäftsjahr EUR 50.000,00 (Euro fünfzigtausend) übersteigen;
 - (m) Gewährung von Darlehen oder Krediten oder sonstige Finanzierungsmaßnahmen soweit dies außerhalb eines gewöhnlichen Bankgeschäftsbetriebes stattfindet;
 - (n) Abgabe/Gewährung von Bürgschaften, Garantien, Patronatserklärungen oder Sicherheiten für Verbindlichkeiten Dritter soweit dies außerhalb eines gewöhnlichen Bankgeschäftsbetriebes stattfindet;
 - (o) Gewährung von Gewinn- oder Umsatzbeteiligungen und Pensionszusagen;
 - (p) Abschluss, Änderung und Beendigung von Verträgen jeder Art mit Gesellschaftern, Beiräten oder Mitgliedern der Geschäftsführung, mit Familienangehörigen dieser Personen oder mit Gesellschaften, an denen vorgenannte Personen beteiligt oder für die solche Personen als leitende Mitarbeiter tätig sind;
 - (q) betriebliche Versorgungsregelungen (Ruhegeld, etc.);
 - (r) Abschluss, wesentliche Änderung und Beendigung von Miet-, Pacht- und Leasingverträgen und sonstigen langfristigen Verträgen, bei denen die von der Gesellschaft zu erbringende Gegenleistung einen Betrag von EUR 20.000,00 in einem Geschäftsjahr übersteigt;
 - (s) Dauerschuldverhältnisse mit Laufzeit über 1 (ein) Jahr, sofern der Jahreswert EUR 20.000,00 (Euro zwanzigtausend) übersteigt;
 - (t) Festlegung allgemeiner Grundsätze der Geschäftspolitik;
 - (u) Abschluss von Verträgen und wesentliche Änderung von Verträgen, die über den Umfang des laufenden Geschäftsbetriebes hinausgehen und für die Gesellschaft von grundsätzlicher Bedeutung sind;
 - (v) alle übrigen Geschäfte und Maßnahmen, die über den gewöhnlichen Betrieb des Unternehmens der Gesellschaft hinausgehen.
- (16) Sofern ein Beschluss des Beirates über die in lit. (a) bis lit. (v) angeführten Geschäftsführungsmaßnahmen nicht zustande kommt oder abgelehnt wird, ist vor Durchführung einer

der in Punkt lit. (a) bis lit. (v) angeführten Geschäftsführungsmaßnahmen die Zustimmung der Generalversammlung einzuholen. Die Generalversammlung kann auch einen vom Beirat gefassten Beschluss abändern.

§ 9. Bekanntmachungen

Bekanntmachungen der Gesellschaft an die Gesellschafter erfolgen durch eingeschriebenen Brief, per Telefax oder per E-Mail mit Sendebestätigung an die der Gesellschaft zuletzt bekannt gegebenen Anschriften der Gesellschafter.

§ 10. Gründungskosten

Alle mit der Gründung und Registrierung der Gesellschaft verbundenen Kosten, Gebühren und Abgaben werden bis zu einem Höchstbetrag von EUR 4.000 (Euro eintausend) von der Gesellschaft getragen und sind mit der tatsächlichen Höhe in den ersten Jahresabschluss einzustellen.

§ 11. Schlussbestimmungen

- (1) Dieser Gesellschaftsvertrag unterliegt österreichischem Recht. Sofern dieser Gesellschaftsvertrag nichts anderes bestimmt, gilt für die Gesellschaft das jeweils geltende österreichische Gesetz über Gesellschaften mit beschränkter Haftung und die sonstigen einschlägigen gesetzlichen Vorschriften.
- (2) Sollte eine der Bestimmungen dieses Gesellschaftsvertrages nicht rechtswirksam sein oder ungültig werden, so wird dadurch die Gültigkeit der übrigen Bestimmungen nicht berührt. Die unwirksame Bestimmung ist durch eine solche zu ersetzen, die dem wirtschaftlichen Zweck der unwirksamen Bestimmungen am nächsten kommt und am ehesten den Fortbestand der Gesellschaft und des von ihr betriebenen Unternehmens fordert. Diese Grundsätze sind auch bei der Auslegung der Bestimmungen anzuwenden.
- (3) Ausfertigungen dieses Gesellschaftsvertrages können in beliebiger Anzahl an die Gesellschafter, Geschäftsführer und künftigen Liquidatoren wie auch an die Gesellschaft selbst, jeweils auf Kosten des Verlangenden, hinausgegeben werden.

Wien, am 31. März 2022

Schedule 5 – Names and Addresses

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