

CAREY COMMERCIAL LIMITED

TERMS AND CONDITIONS

(September 2018 Edition)

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1. **INTRODUCTION**

1.1 These are the "**Terms and Conditions**" as defined in your Company Administration Agreement (as defined below) with the Administrator (as defined below).

1.2 As provided in your Company Administration Agreement, these Terms and Conditions together with your Company Administration Agreement constitute your agreement with the Administrator for the provision of the Services (as defined below).

2. **DEFINITIONS AND INTERPRETATION**

2.1 In these Terms and Conditions the following words and phrases shall, unless the context indicates otherwise, have the meanings set against them:

"Administered Entities" has the meaning specified in the Company Administration Agreement;

"Administered Entities' Agent" has the meaning specified in the Company Administration Agreement;

"Administrator" has the meaning specified in the Company Administration Agreement;

"Affiliate" means any entity that owns or controls, is owned or controlled by or is under common control or ownership with the Administrator, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise;

"Agreement" means the Company Administration Agreement and these Terms and Conditions each as amended from time to time in accordance with its terms;

"Applicable Law" has the meaning specified in the Company Administration Agreement;

"Approved Sub-Processor" means any third party, joint venture or Affiliate to which the Administrator has delegated or wishes to delegate the processing of Personal Data to the extent that they meet the conditions set out in clause 23;

"Associated Company" has the meaning specified in the Company Administration Agreement;

"Associated Entity" has the meaning specified in the Company Administration Agreement;

"Authorised Person" has the meaning specified in the Company Administration

	Agreement;
"Authorised Jurisdiction"	means: <ul style="list-style-type: none"> (a) the United Kingdom (b) any territory within the British Islands; (c) a Member State of the EU; and (d) any country, any sector within a country or any international organisation that the European Commission determines ensures an adequate level of protection within the meaning of Article 45(2) of the Regulation;
"Bailiwick of Guernsey"	has the meaning specified in the Company Administration Agreement;
"Business Day"	has the meaning specified in the Company Administration Agreement;
"Client Data"	means any data (including Personal Data) provided to Administrator or any Approved Sub-Processor by the Administered Entities in connection with the Company Administration Agreement;
"Company Administration Agreement"	means the agreement entered into between, <i>inter alia</i> , the Administered Entities' Agent and the Administrator for the provision of the Services as the same is amended from time to time in accordance with its terms;
"Company"	has the meaning specified in the Company Administration Agreement;
"Commission"	means the Guernsey Financial Services Commission;
"Data Protection Directive"	means the European Privacy and Electronic Communications Directive (Directive 2002/58/EC) as may be amended or supplemented from time to time;
"Data Subject Request"	means a request made by a data subject to exercise any rights of data subjects under the DPL;
"Directors"	has the meaning specified in the Company Administration Agreement;
"DPL"	means the Data Protection (Bailiwick of Guernsey) Law, 2017, together with the Data Protection Directive and the Regulation (each as amended or replaced from time to time), guidance, directions, determinations, codes of

		practice, circulars, orders, notices or demands issued by any Supervisory Authority and any applicable national, international, regional, municipal or other data privacy authority or other data protection laws or regulations in any other territory in which the Services are provided or received or which are otherwise applicable;
"Entities"		has the meaning specified in the Company Administration Agreement;
"Fees"		has the meaning specified in the Company Administration Agreement.
"Fiduciaries Law"		means the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000;
"Financial Infrastructure Providers"	Market	means third party providers of Financial Market Infrastructure Services such as providers of settlement and payment systems, clearing houses, securities depositories, and central counterparties (CCPs);
"Financial Infrastructure Services"	Market	means any services or facilities provided by Financial Market Infrastructure Providers to whom the Administrator is required to provide Personal Data in order to perform the services pursuant to the Company Administration Agreement;
"Guernsey"		has the meaning specified in the Company Administration Agreement;
"Materials"		has the meaning specified in clause 4.1.14 below;
"Memorandum and Articles"		has the meaning specified in the Company Administration Agreement;
"Money Laundering Regulations"		means the Criminal Justice (Proceeds of Crime) (Financial Services Business) (Bailiwick of Guernsey) Regulations, 2007 together with any guidance notes issued pursuant thereto;
"New Sub-Processor"		means any new Approved Sub-Processor;
"Notifying Party"		has the meaning specified in clause 17.1 below;
"Personal Data"		means any personal data (as defined in the DPL) processed by the Parties under the Company Administration Agreement which, for the avoidance of doubt, shall include (i) personal data of Shareholders or that of their directors, officers, employees and/or beneficial owners, provided in connection with such Shareholder's investment in an

Administered Entity and (ii) personal data of any Directors, employees, representatives, agents and sub-contractors of any Administered Entity or any Associated Companies;

"Personal Data Breach"	has the meaning specified in the DPL;
"Proper Instructions"	has the meaning specified in the Company Administration Agreement;
"Recipient Party"	has the meaning specified in clause 17.1 below;
"Regulation"	means, on and from 25 May 2018, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data, as may be amended or supplemented from time to time;
"Reportable Breach"	means any unauthorised or unlawful processing, disclosure of, or access to, Personal Data and/or any accidental or unlawful destruction of, loss of, alteration to or corruption to Personal Data;
"Restricted Transfer"	means (a) a transfer of Personal Data from the Administrator to any Approved Sub-Processor; or (b) an onward transfer of Personal Data from an Approved Sub-Processor or between two establishments of an Approved Sub-Processor, in each case where such transfer would be prohibited by the DPL (or by the terms of data transfer agreements put in place to address the data transfer restrictions of the DPL);
"Services"	has the meaning specified in the Company Administration Agreement;
"Shareholders"	has the meaning specified in the Company Administration Agreement;
"Shares"	means shares in the relevant Administered Entity in issue from time to time; and
"Supervisory Authority"	means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering data protection laws.
"Third Parties"	has the meaning specified in clause 13.5 below.

- 2.2.1 a statutory provision includes a reference to the statutory provision as modified or re- enacted or both from time to time whether before or after the date of these Terms and Conditions and any subordinate legislation made or other thing done under the statutory provision whether before or after the date of these Terms and Conditions;
 - 2.2.2 a document is a reference to that document as modified or replaced from time to time;
 - 2.2.3 a person includes a reference to an individual, corporation, body corporate, joint venture, association or partnership (whether or not having separate legal personality);
 - 2.2.4 a clause or schedule, unless the context otherwise requires, is a reference to a clause or schedule to these Terms and Conditions;
 - 2.2.5 the singular includes the plural and vice-versa (unless the context otherwise requires);
 - 2.2.6 a time of day is a reference to the time in Guernsey, unless a contrary indication appears;
 - 2.2.7 a person includes a reference to that person's successors and permitted assigns;
 - 2.2.8 a matter being finally determined (and cognate expressions thereof) refers to the situation where a matter has been considered by a court of competent jurisdiction and a conviction, judgment or refusal of relief has been given and that conviction, judgment or refusal of relief has become final;
 - 2.2.9 a conviction, judgment or refusal of relief becoming final (and cognate expressions thereof) means that it is not appealed against at the end of the period for bringing an appeal, or if appealed against, at the time when the appeal (or any further appeal) is disposed of;
 - 2.2.10 an appeal being disposed of means where it is determined and the period for bringing any further appeal has ended, or if it is abandoned or otherwise ceases to have effect; and
 - 2.2.11 "**include**", "**including**", "**in particular**" or "**particularly**", "**for example**" or similar expressions shall be deemed to be followed by the words "**(without limitation)**"; and
 - 2.2.12 "**data controller**", "**data processor**", "**processing**", and "**data subject**", shall bear the meaning ascribed under the DPL and the term "**process**" shall be construed accordingly.
- 23 The headings in these Terms and Conditions do not affect their interpretation.

3. **CONTROL BY THE ADMINISTERED ENTITIES**

- 3.1 In discharging its duties and obligations hereunder, the Administrator shall at all times be subject to the control of and review by the Directors and shall in all respects observe and comply with:
 - 3.1.1 Applicable Law;
 - 3.1.2 the Memorandum and Articles and all lawful amendments thereto;

- 3.1.3 all lawful Shareholder and Director resolutions of each Administered Entity; and
 - 3.1.4 all lawful instructions of the Directors given by Proper Instructions.
- 3.2 In discharging its duties and obligations hereunder, the Administrator shall, to the extent it considers it necessary or advisable, consult with the Directors and the Directors shall procure that there is provided to the Administrator all such materials and information as is reasonably required by the Administrator to discharge its duties and obligations hereunder.

4. **DUTIES OF THE ADMINISTERED ENTITIES**

4.1 Each Administered Entity shall:

- 4.1.1 provide the Administrator with copies of its Memorandum and Articles, any other relevant agreements such Administered Entity may from time to time enter into and such other documentation as may be requested by the Administrator, and whenever such Administered Entity intends to amend, supplement or replace such documents or agreements in a manner that may impact on the duties and obligations of the Administrator hereunder, such Administered Entity shall promptly notify the Administrator of the nature and effect of such proposed changes;
- 4.1.2 provide the Administrator with all relevant information in its possession and reasonable assistance to identify the ultimate beneficial owners of the Shares;
- 4.1.3 assist the Administrator to comply with the Money Laundering Regulations, including performing or procuring the performance of all relevant anti-money laundering procedures and "know your customer" due diligence and enquiries applicable to the Administered Entity and make such due diligence records available to the Administrator;
- 4.1.4 provide the Administrator with access to its due diligence records and anti-money laundering procedures and procure that any service provider to the Administered Entity will provide the Administrator with access to their due diligence records and anti-money laundering procedures and cooperate with the Administrator in ensuring compliance by the Administrator and the Administered Entity with the Money Laundering Regulations;

- 4.1.5 not require the Administrator to, or place the Administrator in a position where it may, breach any applicable law, rule or regulation;
- 4.1.6 provide the Administrator with such information and materials as the Administrator may be legally obliged to obtain or may reasonably require to provide the Services (including in respect of such Administered Entities' legal, commercial, regulatory and fiscal position);
- 4.1.7 immediately notify the Administrator in writing as soon as it becomes aware of any change to the identity of any of its Directors or Shareholders or ultimate beneficial owners or any other of its third party service providers or any change to any of the information previously supplied to the Administrator and each Administered Entity agrees that absent any such notification, the Administrator is entitled to conclude that all information previously provided to it by the Administered Entity remains as previously advised;
- 4.1.8 to the extent permitted by law, rule and regulation (including any court order), keep the Administrator informed of any actual or threatened litigation or actual or threatened investigation by any judicial, regulatory or tax authority of which it is aware against the Administered Entity or its Associated Companies or any of its or their assets or which may be relevant to the Administrator (or its reputation) or any beneficiary of the indemnity in clause 13 of these Terms and Conditions and to provide the Administrator with such information as it may reasonably require in relation thereto;
- 4.1.9 inform the Administrator of any event which could be reasonably foreseen to have a material effect on the Administered Entity, its assets, its activities or upon the Administrator's willingness or ability to continue to provide the Services;
- 4.1.10 obtain the Administrator's prior written consent before alienating, assigning, selling, pledging or otherwise disposing of or encumbering any part of its assets;
- 4.1.11 not introduce or permit to be introduced into its assets, any asset which is derived from or otherwise connected with illegal activity;
- 4.1.12 not engage in or be directly or indirectly involved in any unlawful activity or purpose;

- 4.1.13 not engage in any activity, practice or conduct which would constitute any tax evasion facilitation under any applicable law; and
- 4.1.14 not produce, publish or distribute any promotional or other materials ("**Materials**") which mention or refer to the Administrator or any Associated Company thereof (or their intellectual property, address, telephone numbers, fax numbers, email addresses or website addresses), or any of its or their respective staff, services or businesses, or make any representations in respect thereof without in each case first obtaining the Administrator's written approval (such approval not to be unreasonably withheld or delayed) of such mention or reference prior to the publication or distribution of the Materials. However, nothing in this clause shall prevent the Administered Entities from referring to the Administrator in any Materials relating to the Administered Entities where such reference is required by the Administered Entities in order to comply with its obligations under applicable law.

5. **ACKNOWLEDGEMENTS OF THE ADMINISTERED ENTITIES**

5.1 Each Administered Entity acknowledges that:

- 5.1.1 the Administrator is not aware of whether the assets that are held by the Administered Entity have been acquired in accordance with the Memorandum and Articles of the Administered Entity and applicable law and each Administered Entity agrees that the Administrator is entitled to assume that all assets have been acquired in accordance with the Memorandum and Articles of the Administered Entity and applicable law;
- 5.1.2 the Administrator is not obliged to monitor, enquire or ensure that each asset is acquired in accordance with the Memorandum and Articles of the Administered Entity and applicable law;
- 5.1.3 the Administrator is not obliged to make any enquiry or request any proof or evidence from the Administered Entity in respect of satisfaction by the Administered Entity of the obligations of the Administered Entity under (i) its Memorandum and Articles; (ii) any investment restrictions, parameters, policies or objectives in effect in relation to the Administered Entity or which apply to any employees of the Administered Entity as part of the internal compliance, operation or risk management controls or procedures of the Administered Entity; (iii) applicable law; or (iv) the terms of any licence issued to the Administered Entity or any agent of the Administered Entity by any regulatory body with respect to the Administered Entity;
- 5.1.4 the Directors have sole responsibility for all investment decisions, including the determination of whether any investment or corporate action event is eligible or appropriate for participation by the Administered Entity, and the Administrator has no responsibility for the investment management of any assets of the Administered Entity or for reviewing or monitoring the acts of the Administered Entity or any other person conducting investment activity in relation to the Administered Entity;

- 5.1.5 no taxation, investment, property, insurance, legal or other advice will be given, or be deemed to have been given, by the Administrator, its Associated Companies or their employees or agents to the Administered Entities and it remains the responsibility of the Directors to procure such independent professional advice on such matters as the Administered Entities shall require;
- 5.1.6 the Administrator and its Associated Companies and their employees may communicate with the Administered Entities and third parties using email and other forms of electronic communications and that there is no guarantee that such electronic communications will be secure, virus free or successfully delivered;
- 5.1.7 documents sent by the Administrator to the Administered Entities (whether or not containing confidential information) by out-going electronic communications will not be encrypted unless specifically requested by Proper Instructions and only then if the relevant Authorised Person and the Administrator are able to agree acceptable encryption standards and protocols;
- 5.1.8 the Administrator and its Associated Companies and their employees are not obliged to make any enquiry or request any proof or evidence from the Administered Entity in relation to an Authorised Person and the Administrator may rely and act on any Proper Instructions notwithstanding that instructions have been issued without the authority of the Administered Entity and the Administered Entity may not plead or maintain as against the Administrator that any instructions issued to the Administrator by an Authorised Person are not Proper Instructions if they are in accordance with the arrangements referred to in clause 1.1 of the Company Administration Agreement;
- 5.1.9 the Administrator is subject to all applicable laws and regulations and applies strict policies in relation to anti-money laundering, anti-bribery and countering the financing of terrorism and each Administered Entity agrees that, save as expressly agreed in writing between the Administrator and the Administered Entity, the Administrator will not supply any Services to the Administered Entity:
- (a) until such time as the Administrator has completed, to its satisfaction, its initial due diligence review process at the beginning of the contractual relationship and such process has produced results which are acceptable to the Administrator, acting in its absolute discretion; and
 - (b) should any of the Administrator's periodic due diligence reviews not be completed to the Administrator's satisfaction or produce results which are not acceptable to the Administrator, acting in its absolute discretion;
- 5.1.10 if the Administrator has any doubts as to the results produced by its initial or periodic due diligence reviews or any doubts as to the source or provenance of any funds or assets associated with an Administered Entity it may notify the relevant authorities in the applicable jurisdiction and in accordance with applicable law;

- 5.1.11 the Administrator may, in its absolute discretion, decline to accept or retain any assets, including real estate, non-publicly traded shares, or other non-financial assets after undertaking a due diligence review either as part of the Administrator's initial or periodic due diligence reviews; and
- 5.1.12 it has been advised by the Administrator to take independent legal advice prior to entering into, or adhering to, the Agreement and that it has taken such advice or has declined to do so but has carefully read and considered the terms of the Agreement.

6. REPRESENTATIONS AND WARRANTIES

- 6.1 Each of the Administrator and the Administered Entities represent and warrant to each other on a continuous basis that:
 - 6.1.1 it is duly organised and validly existing under the laws of its jurisdiction of incorporation;
 - 6.1.2 it has full capacity and authority and is duly empowered and authorised under applicable law to execute and perform its obligations pursuant to the Agreement and to give effect to the transactions contemplated thereby;
 - 6.1.3 the Agreement constitutes legal, valid and binding obligations on it enforceable in accordance with its terms except in so far as enforcement may be limited by bankruptcy, administration, *désastre*, *saisie*, insolvency, liquidation, dissolution, re-organisation and other laws of general application relating to, or affecting the rights of, creditors or general principles of equity;
 - 6.1.4 it has complied with and will continue to comply with all applicable laws, rules and regulations or court or governmental orders to which it is subject or by which it is bound, including any consents, licenses or permissions required by any regulatory authority or to which it is subject in connection with the execution and performance of its obligations under the Agreement;
 - 6.1.5 it is not engaged in any litigation or arbitration which is reasonably likely to materially affect the performance of its obligations under the Agreement; and
 - 6.1.6 it shall notify the other parties in writing if and when any of the above representations and warranties may no longer be made.
- 6.2 Each of the Administered Entities represents and warrants to the Administrator on a continuous basis that:
 - 6.2.1 it is responsible for determining that the scope of the Services is appropriate to its needs;
 - 6.2.2 it has not relied on or been induced to enter into the Agreement by any representations and warranties other than those expressly set out in clause 6.1 above and the Administrator shall not be liable for any representation not set out in the Agreement;

- 6.2.3 it has fully disclosed to the Administrator all material matters of relevance to the performance by the Administrator of its obligations under the Agreement;
- 6.2.4 the Agreement will not violate the terms of any other agreement in respect of which it is bound;
- 6.2.5 all information supplied by it to the Administrator is, to the best of its knowledge and belief, complete, accurate and not misleading; and
- 6.2.6 it shall notify the Administrator in writing if and when any of the above representations and warranties may no longer be made.

63 The Administrator represents and warrants to each Administered Entity on a continuous basis

that it is licensed by the Commission under the Fiduciaries Law and that it shall notify the Administered Entities' Agent in writing if and when this representation and warranty may no longer be made.

7. EXPENSES

7.1 The Administrator's obligations hereunder to procure that the Administered Entities make all payments required of them shall be subject to the availability of the relevant Administered Entity's funds to do so and in no circumstances shall the Administrator be required to make payments in connection with the Administered Entities out of its own funds.

7.2 Each Administered Entity shall be liable to pay or reimburse the Administrator the greater of:

7.2.1 3% per annum of the Fees; and

7.2.2 all reasonable disbursements or out-of-pocket expenses properly incurred by the Administrator and its Associated Companies (and their respective officers and employees) in connection with the provision of the Services, including (without limitation):

- (a) the cost of facsimile and telephone charges reasonably and properly incurred in connection with the provision of the Services;
- (b) the cost of printing, or having printed, all documentation reasonably and properly required in connection with the provision of the Services;
- (c) the cost of collating all documentation and information properly required in connection with the provision of the Services;
- (d) the cost of any electronic means or software or dedicated communication links provided to the Administered Entity or its other service providers for the purpose of creating and/or distributing all documentation or information reasonably and properly required in connection with the provision of the Services;
- (e) all postage and courier expenses reasonably and properly expended in connection with the provision of the Services;
- (f) the cost of all registers and books which the Administrator may reasonably and properly require in connection with the provision of the Services;
- (g) the cost of any stationery reasonably and properly purchased by the Administrator solely in connection with the provision of the Services; and
- (h) all travel costs reasonably and properly incurred by the Administrator solely in connection with the provision of the Services.

7.3 Each Administered Entity agrees, if requested by the Administrator, to maintain in the Administered Entity's bank account a minimum cash balance specified by the Administrator

sufficient to meet future outgoings of the Administered Entity including Fees, disbursements, other out of pocket expenses and reasonable contingencies.

- 7.4 If, as a result of any shortfall in an Administered Entities' own funds, the Administrator decides in its absolute discretion to make a payment out of its own funds in respect of an obligation owed by an Administered Entity, the Administrator shall be entitled to charge the Administered Entity overdraft interest on the amount of such payment, at the then prevailing interest rate for current account unauthorised overdrafts at the Administrator's principal bankers from time to time.

8. **INVOICING AND PAYMENT**

- 8.1 The Administrator shall, as appropriate, submit to each Administered Entity an invoice in respect of the Fee, disbursements and other out of pocket expenses payable in respect of the relevant period. Each Administered Entity shall be required to pay the Fee, disbursements and other out of pocket expenses within thirty Business Days of the date specified on such invoice. Time of payment is of the essence.

- 8.2 If the invoice referred to in clause 8.1 above is not paid within thirty Business Days of the date specified on such invoice the Administrator shall have the right, but not the obligation, to charge the Administered Entity interest upon the monies outstanding at a rate not exceeding five per cent per month over the Bank of England's sterling base rate compounded annually.

- 8.3 The Fees, disbursements and other out of pocket expenses payable under clause 8 shall be exclusive of any value added tax (or equivalent service, sales or turnover tax) payable, and the Administrator shall be entitled to charge each Administered Entity an amount equal to such value added tax (or equivalent service, sales or turnover tax) properly chargeable by the Administrator in respect of the supply of the Services, against delivery of an appropriate value added tax (or equivalent service, sales or turnover tax) invoice.

- 8.4 If any fees, disbursements, out-of-pocket expenses or value added tax (or equivalent service, sales or turnover tax) payable hereunder shall not be duly and punctually paid within thirty Business Days of the date specified on such invoice, the Administrator may, by giving notice to the Administered Entity, cease to provide the Services or to keep the relevant Administered Entity in good standing until such outstanding fees or value added tax (or equivalent service, sales or turnover tax) have been paid to the Administrator's satisfaction.

9. **LIEN**

In the event of non-payment of all or any part of any fees, disbursements or expenses due to the Administrator or which the Administrator is liable to pay on behalf of the Administered Entities or in respect of which the Administered Entities become liable to the Administrator in any other manner, the Administrator shall have a lien over, or the right not to release from its possession or control, all or any documents relating to the Administered Entities, until such time as all such fees, disbursements, expenses or liabilities due and payable are discharged.

10. **SERVICES OF THE ADMINISTRATOR NOT TO BE EXCLUSIVE**

The Services of the Administrator to the Administered Entities are not to be deemed exclusive and the Administrator shall be free to render similar services to others so long as its Services hereunder are not impaired thereby and to retain for its own use and benefit all fees or other moneys payable thereby.

11. **NO CONFLICT OR ACCOUNTING FOR PROFIT**

Nothing herein contained shall prevent the Administrator or any Associated Company or any of their respective officers and employees from dealing as principal or agent in the sale or purchase of assets to or from the Administered Entities or from acting as administrator or in any other capacity for any other person or from buying, holding and dealing in any assets for its own account or for the account of the Administered Entities notwithstanding that the same or similar assets may be held by or for the account of the Administered Entities and the Administrator shall not be deemed to be affected by notice of, or to be under any duty to disclose to the Administered Entities, information which has come into its or any of its Associated Companies' or any of their respective officers' and employees' possession as a result of such arrangements and shall not be liable to account to the Administered Entities or to the Shareholders or any other person for any profits or benefits made or derived by or in connection with any such transaction.

12. **PROPER INSTRUCTIONS**

12.1 Where the Administrator is required under the Agreement to act on instructions from the Administered Entities, or any Authorised Person, the Administrator shall do so upon receipt of Proper Instructions which may be standing Proper Instructions. Any Proper Instructions given to the Administrator shall, subject to clause 12.3, be acted upon by the Administrator and shall bind the Administered Entities.

12.2 In acting on any Proper Instructions, the Administrator is entitled to assume that (a) the Authorised Person providing such Proper Instruction has complied with any relevant obligations set out in the Memorandum and Articles; (b) such Proper Instruction is in accordance with applicable law; and (c) such Proper Instruction is true, complete and not misleading. The Administrator is under no obligation to audit, test or verify information provided by Proper Instructions or to review the propriety or legality of any Proper Instructions received by it.

12.3 The Administrator shall act on Proper Instructions unless it believes, acting reasonably and in good faith, that they are:

- 12.3.1 fraudulent, unlawful or constitute a suspicious transaction for the purposes of the Money Laundering Regulations;
- 12.3.2 incomplete, unclear, ambiguous or have been given in error;
- 12.3.3 impractical, inexpedient or impossible to execute;
- 12.3.4 received too late for the Administrator to reasonably act upon them;
- 12.3.5 inconsistent or in conflict with other Proper Instructions; or

12.3.6 potentially damaging to its reputation or in conflict with its internal policies.

- 12.4 The Administrator shall promptly inform the relevant Authorised Person where it is not willing to act on any Proper Instructions for any of the reasons provided in clause 12.3 provided that the Administrator shall be under no obligation to inform the relevant Authorised Person in such circumstances where to do so may, at the Administrator's sole discretion, constitute an offence of "tipping off" pursuant to the Money Laundering Regulations.
- 12.5 The Administered Entities acknowledge that the Authorised Persons are authorised to give Proper Instructions to the Administrator on behalf of the Administered Entities for the purposes of the Agreement and the Administrator is entitled to rely on the authenticity of the signatures and Proper Instructions given or purported to be given by the Authorised Persons and the Administrator is not liable for any claim, damage, expense, loss or liability arising from such reliance. Such persons will continue to be Authorised Persons until such time as the Administrator receives Proper Instructions from the Administered Entities that any such person is no longer an Authorised Person.
- 12.6 The Administrator shall deal with and act upon Proper Instructions in a reasonably timely manner and undertakes to use reasonable endeavours to do so, but does not undertake to act on Proper Instructions immediately or on the same or next Business Day or to meet any specific deadline (unless otherwise agreed in writing) and shall not incur any liability for any loss arising by reason of the length of time taken to so act upon Proper Instructions.
- 12.7 Unless otherwise provided in the Agreement, a Proper Instruction continues in full force and effect until specifically cancelled or superseded by a subsequent Proper Instruction.
- 12.8 Provided that the Administrator acts in accordance with this clause, it shall incur no liability in respect of acting or failing to act on instructions in accordance with this clause.

13. **RESPONSIBILITY AND LIABILITY OF THE ADMINISTRATOR**

- 13.1 Subject to clauses 13.2 to 13.4 (inclusive) below, the Administrator shall not be liable for any loss or damage suffered by the Administered Entities or any other person in connection with the subject matter of the Agreement, unless such loss or damage is finally determined to have arisen directly from the gross negligence, fraud or wilful default of the Administrator.
- 13.2 To the fullest extent permitted by applicable law and despite any other provision of the Agreement, the Administrator excludes all liability arising out of or in connection with the Agreement for:
- 13.2.1 indirect, incidental, special, or consequential loss or damages;
 - 13.2.2 loss of profits or opportunity;
 - 13.2.3 loss of revenue;
 - 13.2.4 loss of savings (actual or anticipated);
 - 13.2.5 loss of goodwill, loss of reputation or loss of customers; and
 - 13.2.6 any other pure economic loss,

(whether or not foreseeable and regardless of the type of action in which such a claim may be brought).

13.3 To the fullest extent permitted by applicable law the Administered Entities hereby jointly and severally indemnify the Administrator against, and agree to keep the Administrator indemnified against, and to hold the Administrator harmless from and keep the Administrator held harmless from:

13.3.1 all losses, liabilities, costs, damages, penalties, fines, disbursements, fees and expenses whatsoever; and

13.3.2 all investigations, demands, claims, actions, suits or other proceedings whatsoever brought or threatened, whether civil, criminal, regulatory or otherwise,

(including reasonable legal and professional fees and expenses arising therefrom or incidental thereto) which may arise, accrue or be taken, commenced, made or sought (directly or indirectly) against the Administrator in connection with the Agreement on an "as incurred" basis, except that the Administrator shall be required to repay such indemnification to the extent that the above are finally determined to have arisen directly from the gross negligence, fraud or wilful default of the Administrator.

13.4 Without prejudice to the generality of, and in addition to the indemnity set out in clause 13.3, the Administered Entities shall, to the fullest extent permitted by applicable law, jointly and severally indemnify and hold the Administrator harmless on an "as incurred" basis to meet expenditure reasonably incurred by the Administrator in connection with the Agreement:

13.4.1 in defending any investigation, demand, claim, action, suit or proceeding whatsoever brought or threatened, whether civil, criminal, regulatory or otherwise, including, without limitation, brought by, or at the request of, the Administered Entities or any Associated Company of any of them;

13.4.2 in defending itself in any investigation into the affairs of the Administered Entities or any Associated Company of any of them by any judicial, governmental, regulatory or other body or against any action proposed to be taken by any such authority; and

13.4.3 in connection with any application for relief under applicable law, and the Administrator shall only be required to repay any monies paid by the Administered Entities in respect of the indemnity under this clause 13.4 if it is finally determined that the Administrator is guilty of gross negligence, fraud or wilful default in respect thereof.

13.5 It is hereby agreed and declared that references to the Administrator in this clause 13 shall be deemed to include references to:

13.5.1 its Associated Companies;

13.5.2 any individual provided by the Administrator who is or was a director of any of the Administered Entities;

- 13.5.3 any corporate director provided by the Administrator who is or was a director of any of the Administered Entities;
- 13.5.4 any individual who is or was acting as a director, secretary or officer of any corporate director referred to in clause 13.5.3 above;
- 13.5.5 the directors, officers, associates, employees, shareholders, agents and servants of the Administrator from time to time and those of its Associated Companies from time to time; and
- 13.5.6 the heirs, successors, assigns and personal representatives of the Administrator and the persons referred to in clauses 13.5.1 to 13.5.5 (inclusive),

(being together the "**Third Parties**").

- 13.6 For the avoidance of doubt, notwithstanding any other provision of the Agreement, it is the express intention of the parties to the Agreement that the Third Parties should have the benefit of, and be able to enforce, the indemnity in clause 13 of these Terms and Conditions.
- 13.7 Should the ability of the Third Parties to have the benefit of, and be able to enforce, the indemnity in clause 13 of these Terms and Conditions be questioned, repudiated or challenged at any time, the Administered Entities, acting by the Administered Entities' Agent, shall enter into separate direct instruments of indemnity with each of the Third Parties in order to ensure that they have the benefit of, and are able to enforce, the indemnity in clause 13 of these Terms and Conditions.
- 13.8 The Administrator acting as agent of and as trustee for the Third Parties, shall hold the benefit of the indemnity in clause 13 of these Terms and Conditions for and on behalf of the Third Parties.
- 13.9 Each Administered Entity hereby acknowledges and agrees that the Administrator is not and does not hold itself out as an expert on taxation, investment, property, insurance, legal or other matters outside of the scope of the Agreement and is not and does not hold itself out as providing a dealing service and no warranty is given or liability accepted by the Administrator in respect of such matters.
- 13.10 The Administrator shall advise and shall send to the relevant Authorised Person as soon as practicable notice of all claims, demands, summonses, writs and related documents which it receives in respect of which it may be indemnified in the Agreement.
- 13.11 Invoicing in respect of, and payment of, indemnification shall be handled in accordance with clause 8 of these Terms and Conditions, save that references in that clause to "Fees, disbursements and other out of pocket expenses" shall be read as references to "indemnification".
- 13.12 Each Administered Entity hereby agrees and declares that any right which it has or may at any time have under the existing or future laws of the Bailiwick of Guernsey pursuant to the principle of:

13.12.1 "*droit de discussion*" (or otherwise to require that recourse be had to the assets of any other person before any action is taken hereunder against it) is hereby abandoned and waived; and

13.12.2 "*droit de division*" (or otherwise that such person's liability be divided or apportioned with another person) is hereby abandoned and waived.

13.13 The provisions of this clause 13 shall survive termination of the Agreement and shall abide for as long as claims may be brought against the Administrator and for the full duration of any such claims.

14. **INSURANCE**

The Administrator shall, at all times, ensure that it has such full and valid professional liability insurance and such other insurance as it, in its absolute discretion, deems necessary or reasonable in connection with the carrying on of the business of the Administrator.

15. **LEGAL ACTION BY THE ADMINISTRATOR**

The Administrator shall not be required to take any legal action for or on behalf of the Administered Entities, however the Administrator will provide reasonable assistance to the Administered Entities in relation to any dispute, claim or litigation (whether threatened or actual) brought by or against the Administered Entities. The Administered Entities jointly and severally agree to reimburse the Administrator on an "as incurred" time spent basis for all reasonable costs and expenses incurred by the Administrator in providing such assistance to the Administered Entities, such costs and expenses to be discussed in advance, recorded and submitted to each Administered Entity in accordance with clause 8.

16. **FAILURE TO MAKE PAYMENTS OR PROVIDE COMMUNICATIONS**

16.1 In the event that:

16.1.1 any demand is made against any Administered Entity for the payment of any sum due, including, but not limited to:

(a) any amount due to the Administrator or any of its Associated Companies or any employee or agent thereof or any beneficiary of the indemnity in clause 13 of these Terms and Conditions; or

(b) any taxes, duties, fees or other governmental or state impositions, and any such payment has not been made; or

16.1.2 the Administrator requires Proper Instructions and has been unable to obtain Proper Instructions that it considers adequate and proper; or

16.1.3 any Administered Entity is in breach of clause 4 of these Terms and Conditions

then, provided the Administrator has given notice to the relevant Authorised Person that the provisions of this clause shall apply and unless within the period stated in such notice the relevant Authorised Person has taken, or procured the taking of, such action as may therein be specified, the Administrator may proceed in any one or more of the ways described in clause 16.2.

- 16.2 In the events described in clause 16.1 above, the Administrator may:
- 16.2.1 take no further action on a particular matter;
 - 16.2.2 take no further action at all in relation to the relevant Administered Entity;
 - 16.2.3 have the relevant Administered Entity wound up; or
 - 16.2.4 file an ineffective registered office notification in respect of the Administered Entity.

17. **TERMINATION AND RESIGNATION**

- 17.1 Subject to clause 17.2, the Agreement shall continue in full force and effect until terminated by either the Administrator or the Administered Entities' Agent (the "**Notifying Party**") by a notice delivered in accordance with these Terms and Conditions to the other party (the "**Recipient Party**"), such termination to take effect not sooner than six months after the date of such delivery unless mutually agreed otherwise in writing by the Notifying Party and the Recipient Party.
- 17.2 The Agreement may be terminated forthwith by the Notifying Party giving a notice delivered in accordance with the Agreement to the Recipient Party:
- 17.2.1 in the event of the Recipient Party (or, in the case of the Administered Entities' Agent, any of the Administered Entities) committing any material breach or being in persistent breach of the provisions of the Agreement and such breach being, if capable of remedy, not remedied within 30 days after the service of notice requiring it to be remedied;
 - 17.2.2 in the event that:
 - (a) the continued performance of the Agreement for any reason ceases to be lawful;
 - (b) any of the Administered Entities is or may, in the Administrator's absolute discretion, become subject to investigation by any judicial or regulatory authority;
 - (c) criminal proceedings are instituted or threatened against any Administered Entity;
 - (d) continuing to provide the Services could, in the Administrator's absolute discretion, amount to assisting a criminal activity;
 - (e) continuing to provide the Services could, in the Administrator's absolute discretion, constitute a breach of applicable law or government sanction or relevant rules of professional conduct;
 - (f) any of the Administered entities has provided the Administrator with false or misleading information;
 - (g) the behaviour of any Administered Entity means that it is, in the Administrator's absolute discretion, inappropriate for the Administrator to continue to provide the Services;

- (h) the Administrator, in its absolute discretion, determines that it is unable to comply with its obligations pursuant to anti-money laundering, anti-bribery or countering the financing of terrorism legislation in respect of any Administered Entity or that the results of the Administrator's initial or periodic due diligence reviews produce results which are not acceptable to the Administrator, acting in its absolute discretion; or
 - (i) continuing to provide the Services could, in the Administrator's absolute discretion, cause the Administrator to suffer damage to its reputation;
- 17.2.3 in the event of the Recipient Party (or, in the case of the Administered Entities' Agent, any of the Administered Entities) being unable or admitting its inability to pay its debts as they fall due or being deemed to or declared to be unable to pay its debts under applicable law, suspending or threatening to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commencing negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- 17.2.4 in the event of the value of the assets of the Recipient Party (or in the case of the Administered Entities' Agent, any of the Administered Entities) being less than the value of its liabilities;
- 17.2.5 in the event of a moratorium being declared in respect of any indebtedness of any Recipient Party (or, in the case of the Administered Entities' Agent, any of the Administered Entities);
- 17.2.6 in the event of any corporate action, legal proceedings or other procedure or step being taken in relation to:
- (a) the suspension of payments, a moratorium of any indebtedness, liquidation, winding-up, dissolution, administration or reorganisation (except if such event occurs for the purposes of reconstruction or amalgamation upon terms previously approved in writing by the Notifying Party and the Recipient Party, such approval not to be unreasonably withheld or delayed) of the Recipient Party (or, in the case of the Administered Entities' Agent, any of the Administered Entities);
 - (b) a composition, compromise, assignment or arrangement with any creditor of any Recipient Party (or, in the case of the Administered Entities' Agent, any of the Administered Entities);
 - (c) the appointment of a provisional liquidator, liquidator, receiver, administrator, administrative receiver or other similar officer in respect of the Recipient Party (or, in the case of the Administered Entities' Agent, any of the Administered Entities) or any of its (or their) assets or a declaration that any such person's affairs are in a state of "désastre" or the granting of a preliminary vesting order; or
 - (d) enforcement of any security over any assets of the Recipient Party (or, in the case of the Administered Entities' Agent, any of the Administered Entities),

or any analogous or equivalent procedure or step is taken in any jurisdiction.

173 The Administered Entities' Agent may immediately terminate the Agreement in the event of the Administrator ceasing to hold the necessary licences, approvals, permits, consents or authorisations required to enable it to perform its duties under the Agreement.

174 On termination of the Agreement under the provisions of this clause 17, the Administrator shall:

17.4.1 at the joint and several expense of the Administered Entities, deliver or procure to be delivered to the Administered Entities, or as they shall direct, the registers, the seals of the Administered Entities, and all books of account, records, other registers, correspondence, documents and assets relating to the affairs of or belonging to the Administered Entities in the possession of or under the control of the Administrator; provided that the Administrator shall not be required to make any such delivery or payment until full payment shall have been made to the Administrator of all of its fees, compensation, costs and expenses due to it under the provisions of the Agreement;

17.4.2 at the joint and several expense of the Administered Entities, take all necessary steps to deliver to the Administered Entities (or as they shall direct including to any new administrator) any documents of title previously held by the Administrator at a secure, fire-proof location or held to the order of the Administrator on behalf of the Administered Entities, provided any such fees are reasonable and have been reasonably incurred; and

17.4.3 except where the Agreement is terminated as a result of the Administrator's breach pursuant to clause 17.2.1, be entitled to receive all reasonable costs and expenses incurred in giving effect to this clause 17.4.

175 Termination of the Agreement shall not affect the accrued rights or existing commitments of any party under the Agreement.

18. **FORCE MAJEURE**

None of the parties hereto shall incur any liability for any failure or delay in the performance of its obligations under the Agreement arising out of or caused directly or indirectly by circumstances beyond its reasonable control (including acts of god, earthquakes, fires, storms, tempests, floods, wars, civil or military disturbances, sabotage, enemy action, terrorism, epidemics, riots, interruptions, loss or malfunctions of utilities, computers (hardware or software) or communication services, accidents, labour disputes, acts of any civil or military authority or governmental action), provided however that such party shall use its best endeavours to resume performance as soon as reasonably possible.

19. **CONFIDENTIALITY AND REPUTATION**

- 19.1 The parties shall at all times respect and protect the confidentiality of information acquired in consequence of the Agreement except pursuant to any right or obligation to or by which any party may be entitled or bound to disclose information under compulsion of law or pursuant to the requirements of any competent regulatory or tax authority, provided that such disclosure shall, to the fullest extent permitted by law, be promptly notified to the other parties.
- 19.2 Nothing in this clause 19 shall prevent the disclosure of information:
- 19.2.1 with the prior written consent of the other party (the Administered Entities' Agent acting for and on behalf of the Administered Entities in this regard) it being understood for these purposes that the Administered Entities' consent to the Administrator and its Associated Companies disclosing information to Authorised Persons unless the Administered Entity's Agent specifically instructs the Administrator and its Associated Companies in writing not to do so;
 - 19.2.2 which is already in the public domain, other than as a result of a breach of this provision;
 - 19.2.3 by any of the parties to its employees, directors, Associated Companies, agents, delegates, auditors, insurers and legal or other professional advisers in the proper performance of their duties;
 - 19.2.4 to third parties who are subject to confidentiality obligations equivalent to those in the Agreement;
 - 19.2.5 to facilitate the preparation of accounts or the auditing of accounts in relation to an Administered Entity;
 - 19.2.6 to facilitate an Administered Entity's (or the legal or beneficial owners of an Administered Entity's) tax filing or reporting requirements;
 - 19.2.7 to facilitate the obtaining and maintaining of insurance for both the Administered Entities and/or for the Administrator, its Associated Companies and the employees and agents of both, and for the making of notifications under such insurance to the relevant insurer;
 - 19.2.8 if permitted or required pursuant to the rules of any self-regulatory body of which the Administrator or any of its Associated Companies is a member;
 - 19.2.9 if the Administrator or any of its Associated Companies considers it necessary or desirable to give evidence and information to any court or competent regulatory or tax authority in any jurisdiction;
 - 19.2.10 if any Administered Entity (or the legal or beneficial owners of an Administered Entity) becomes subject to the jurisdiction of any federal or state authority in the United States of America, in response to any query from such authority or any of their agencies; and

19.2.11 if disclosure is to any third party as a result of any merger, restructure, sale or acquisition of the Administrator or any of its Associated Companies or to anyone to whom the Administrator or any of its Associated Companies may assign its rights and/or obligations provided that such recipient uses such information for the same purposes as it was originally supplied to the Administrator and any of its Associated Companies and/or used by the Administrator and any of its Associated Companies.

193 None of the parties hereto shall do or commit any act, matter or thing which would or might prejudice or bring into disrepute in any manner the business or reputation of another party or parties or their Associated Companies or any of their employees, directors, agents or delegates.

20. MISCELLANEOUS PROVISIONS

20.1 No failure on the part of any party to exercise, and no delay on its part in exercising, any right or remedy under the Agreement will operate as a waiver thereof nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in the Agreement are cumulative and not exclusive of any rights or remedies provided by law.

20.2 If any provision of the Agreement shall be held to be illegal, void, invalid or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of the Agreement in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of the Agreement in any other jurisdiction shall not be affected. Notwithstanding the foregoing in the event of such deletion the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so deleted.

20.3 The parties agree that the Administrator on the one hand and the Administered Entities on the other hand may, on reasonable notice to the other parties, set-off any present, certain debts due to them against any present, certain debts payable by them, respectively, under the terms of the Agreement, (but, for the avoidance of doubt in both cases, excluding all amounts in the nature of unliquidated damages).

20.4 Nothing in the Agreement shall constitute or be deemed to constitute a partnership, fiduciary, joint venture or similar relationship between the parties and/or any other person nor, except as expressly provided, shall it constitute, or be deemed to constitute, either party the agent of the other party for any purpose.

21. DATA PROTECTION

21.1 In their capacity as data controller, the Administered Entities hereby authorise, approve and request the Administrator and any Approved Sub-Processor to access and process Personal Data on their behalf and to transfer Personal Data to any country or territory as reasonably necessary for the purposes of providing the Services. In connection therewith, the Administered Entities represent and warrant that they have full power and authority to provide such authorisation and shall ensure that there is no prohibition or restriction which would:

- 21.1.1 prevent or restrict the Administered Entities from disclosing the Personal Data to the Administrator;
- 21.1.2 subject to clause 21.2, prevent or restrict the Administrator from disclosing or transferring the Personal Data to its Affiliates and Approved Sub-Processors, and any of its, employees, agents, delegates, subcontractors, credit reference agencies, or competent authorities (including tax authorities) in order to provide the Services or services ancillary thereto or for resolution of disputes or investigations; or
- 21.1.3 prevent or restrict the Administrator, its Affiliates and Approved Sub-Processors and any of their employees from processing the Personal Data in its capacity as data processor on behalf of the Administered Entities as follows:
 - (a) to maintain the Administered Entities' records and to provide the Services;
 - (b) to monitor and record calls and electronic communications for quality, business analysis, training, investigation and fraud prevention purposes, for crime detection, prevention, investigation and prosecution, and to enforce or defend the Administrator's rights, itself or through third parties to whom it delegates such responsibilities or rights;
 - (c) to report tax related information on behalf of the Administered Entities to tax authorities in order to comply with a legal obligation;
 - (d) to retain anti-money laundering information for future services entered into by the Administered Entities and/or future investments by its investors including investment in to other collective investment schemes;
 - (e) to retain the Personal Data as long as required to perform the Services or as required by law; and
 - (f) to transfer Personal Data to competent bodies, courts or regulatory authorities in order to provide the Services, comply with law or comply with requests from such competent bodies, courts or regulatory bodies.

21.2 Where the Administrator or an Approved Sub-Processor processes the Personal Data as data processor on behalf of the Administered Entities, the Administrator shall and shall procure that the Approved Sub-Processor shall:

- 21.2.1 only process Personal Data in accordance with Proper Instructions unless processing is required by law to which the Administrator, its Affiliates or Approved Sub-Processors is subject;
- 21.2.2 only process the Personal Data as necessary to perform its obligations under the Agreement, as required by law applicable to it or for its legitimate interests (and such legitimate interests are not overridden by the interests, fundamental rights or freedoms of data subjects);

- 21.2.3 ensure that all staff of the Administrator who have access to Personal Data have committed themselves to appropriate obligations of confidentiality and ensure that all "authorised persons" within the meaning of section 35(3) of the DPL comply with Section 35(1)(a), (b) and (2) of the DPL;
 - 21.2.4 maintain all appropriate technical and organisational measures to ensure security of processing of the Personal Data;
 - 21.2.5 not transfer any Personal Data to a country other than an Authorised Jurisdiction, save as required to deliver the Services (subject to clauses 21.6) and otherwise with the express prior written consent of the relevant Administered Entity;
 - 21.2.6 subject to reasonable access arrangements and save for disclosure of information which is confidential, commercially sensitive or privileged, permit the Administered Entities' Agent or a third-party auditor acting under the Administered Entities' Agent's direction, to conduct, at the cost of the Administered Entities, data protection audits, assessments and inspections concerning the Administrator's data protection procedures relating to its compliance with clauses 21 to 25;
 - 21.2.7 notify the Company as soon as reasonably practicable and in writing if it or any of its Approved Sub-Processors become aware of, a Reportable Breach, and provide the Administered Entities with assistance in investigating, responding to, remediating and mitigating it; and
 - 21.2.8 on termination or expiry of the Agreement, for whatever reason, either destroy all Personal Data or transfer it to the relevant Administered Entity or a nominated third party as reasonably notified by the Administered Entities' Agent's save as required by Applicable Law.
- 21.3 If the Administered Entities passes Personal Data to the Administrator for the purposes set forth in clause 21.1.3 above, the Administered Entities will ensure they have provided adequate notice to such parties as required by the DPL including;
- 21.3.1 the details set out in clause 21.1.3 of these Terms and Conditions; and
 - 21.3.2 such information as required by the DPL relating to the processing by the Administrator of such Personal Data and to the transfer of such Personal Data to a country other than an Authorised Jurisdiction;
- either in the form of a standalone notice or as part of a broader data protection notice and referring to the Administrator specifically or as part of a group of processors.
- 21.4 Each Administered Entity will also ensure that it has obtained any necessary consents from any relevant data subject in respect of whom the Administrator may process special category Personal Data as part of the sanctions screening activities it conducts on behalf of such Administered Entity.

- 21.5 The Administrator shall provide reasonable assistance to the Administered Entities with any prior consultations with Supervisory Authorities or other competent data privacy authorities to the extent required under Article 35 or 36 of the Regulation or equivalent provisions of any other data protection law, in each case solely in relation to processing of Personal Data by, and taking into account the nature of the processing and information available to, the Administrator and its sub-processors.
- 21.6 Where the Administrator, acting as data processor on behalf of an Administered Entity, engages a vendor or an Approved Sub-Processor to provide sub-processing services in relation to the Personal Data which involves a transfer of the Personal Data to a country other than an Authorised Jurisdiction, it shall enter into the EU Commission approved standard contractual clauses (Controller to Processor) or rely on another available data transfer solution under the DPL.
- 21.7 The Administrator shall make available upon written request a copy of any standard contractual clauses or any other form of agreement which it has entered into with any vendor or Approved Sub-Processor relating to the transfer of Personal Data to a country other than an Authorised Jurisdiction in accordance with section 56 of the DPL. Where the Administrator transfers the Personal Data to a country other than an Authorised Jurisdiction in accordance with Section 56 of the DPL, it shall provide such information to the relevant Administered Entity as is necessary to allow that Administered Entity to comply with its notification obligations thereunder.
- 21.8 It is hereby acknowledged by the parties that where the Administrator processes Personal Data for the reporting of suspicious transactions pursuant to the Money Laundering Regulations, the Administrator acts as a data controller in respect of such Personal Data received from or on behalf of the Company. The Administrator as controller shall comply with the DPL in all respects.
- 21.9 In accordance with section 36(4) of the DPL and notwithstanding any provision of the Administration Agreement to the contrary, the Administrator shall remain fully liable for any breach of any of the duties of their Affiliates or Approved Sub-Processors under the DPL.
- 21.10 Notwithstanding any other provision of this Agreement, the parties agree that, where the Administrator determines the means or purpose of processing the Personal Data, it shall be acting as a data controller in relation to the Personal Data and not as a data processor.

- 21.11 Where the Administrator or a sub-processor appointed by it acts as data controller in relation to the Personal Data, it shall comply with all applicable data protection laws, including the DPL.
- 21.12 The Administered Entities have consented to Personal Data about the Administered Entities and Personal Data held by the Administered Entities being used in the manner set out in these Terms and Conditions.
- 21.13 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Administrator shall and shall procure that each Approved Sub-Processor shall implement and maintain appropriate technical and organisational measures in relation to the processing of Personal Data by the Administrator or Approved Sub-Processor to ensure a reasonable level of security appropriate to that risk including, as appropriate, the measures referred to in Article 32(1) of the Regulation.
- 21.14 In assessing the appropriate level of security, the Administrator shall take into account the risks that are presented by processing the relevant Personal Data, in particular from a Personal Data Breach.
- 21.15 The Administrator shall take reasonable steps to ensure the reliability of any employee, agent or contractor of the Administrator or any Approved Sub-Processor who may have access to the Personal Data, ensuring that all such individuals are subject to confidentiality undertakings or other contractual, professional or statutory obligations of confidentiality.
- 21.16 The Administered Entities acknowledge and agree that:
- 21.16.1 in order to perform their obligations under the Company Administration Agreement, the Administrator may need to provide Personal Data to one or more Financial Market Infrastructure Providers;
 - 21.16.2 Financial Market Infrastructure Providers typically offer their services subject to standard terms and conditions which the Administrator has limited or no ability to negotiate; and
 - 21.16.3 the Administrator may use the services of Financial Market Infrastructure Providers it deems necessary to perform the services under the Company Administration Agreement.
- 21.17 Any such Financial Market Infrastructure Providers shall not be treated as the Administrator's sub-processor for the purposes of the Regulation and the terms of these Terms and Conditions shall not apply to services provided by any such Financial Market Infrastructure Provider.
- 21.17.1 The Administrator agrees that, where it has the ability to choose between multiple Financial Market Infrastructure Providers or to negotiate terms with any Financial Market Infrastructure Provider, it shall exercise reasonable skill, care and diligence in doing so and shall, to the extent possible, seek representations or warranties from such Financial Market Infrastructure Provider that it complies with the Regulation when processing Personal Data.

22. **DATA INCIDENT AND BREACH NOTIFICATION**

22.1 The Administrator shall, on becoming aware of a Personal Data Breach:

22.1.1 notify the relevant Administered Entity without undue delay; and

22.1.2 following such notification, cooperate with the relevant Administered Entity and take such reasonable commercial steps as are directed by that Administered Entity to assist in the investigation, mitigation and remediation of such Personal Data Breach, including providing that Administered Entity with such information as it reasonably requires to allow it to meet any obligations to report or to inform Data Subjects of the Personal Data Breach under the DPL.

22.2 The Administered Entities agree that, in any communication with data subjects or Supervisory Authority relating to Personal Data, it shall:

22.2.1 act in good faith;

22.2.2 not misrepresent or call into disrepute the Administrator or its Approved Sub-Processors; and

22.2.3 to the extent permitted by the DPL and other Applicable Law, consult in advance with the Administrator in relation to such communication.

23. **APPROVED DATA SUB-PROCESSORS**

23.1 The Administrator shall only use Approved Sub-Processors to process Personal Data.

23.2 The Administrator shall procure that, on or prior to the date of the Agreement:

23.2.1 it will have conducted adequate due diligence to ensure that the Approved Sub-Processor is capable of providing the level of protection for Personal Data required by the Agreement; and

23.2.2 the arrangement between it and each of its Approved Sub-Processors is governed by a written contract including terms which offer at least the same level of protection for Personal Data as set out in the Agreement and which meet the requirements of Article 28(3) of the Regulation.

23.3 The Administrator shall give the Administered Entities prior notice of the appointment of any new Approved Sub-Processor (a "**New Sub-Processor**"), including details of the processing of Personal Data to be undertaken by such New Sub-Processor.

23.4 Each New Sub-Processor shall only become an Approved Sub-Processor on the completion of:

23.4.1 the Administrator providing notice to the Administered Entities as envisaged by clause 23.3 above; and

23.4.2 satisfaction of all of the conditions in clause 23.5 below in respect of that New Sub-Processor.

235 With respect to each New Sub-Processor, the Administrator shall:

23.5.1 carry out adequate due diligence to ensure that such New Sub-Processor is capable of providing the level of protection for Personal Data required by these Terms and Conditions and the Company Administration Agreement;

23.5.2 ensure that the arrangement between the Administrator and the New Sub-Processor is governed by a written contract including terms which offer at least the same level of protection for Personal Data as those set out in these Terms and Conditions and which meet the requirements of Article 28(3) of the Regulation; and

23.5.3 if that arrangement involves a Restricted Transfer, ensure that one of the safeguards set out in Article 46 of the Regulation has been implemented in respect of that Restricted Transfer.

24. **DATA SUBJECT ACCESS RIGHTS**

24.1 The Administrator shall:

24.1.1 promptly notify the Administered Entities if it or any Approved Sub-Processor receives a Data Subject Request under the DPL in respect of any Personal Data; and

24.1.2 not respond and procure that any relevant Approved Sub-Processor does not respond to that request except in accordance with Proper Instructions or as required by Applicable Law to which the Administrator or Approved Sub-Processor is subject, in which case the Administrator shall to the extent permitted by Applicable Law inform the relevant Administered Entity of that legal requirement prior to responding to the request.

25. **DELETION OR RETURN OF PERSONAL DATA**

25.1 Subject to clause 25.2 below, the Administrator shall promptly and to the extent technically possible on receipt of a written request from an Administered Entity, delete and procure the deletion of all copies of the Personal Data after processing by the Administrator of any such Personal Data which is no longer required for the purpose of the Administrator's performance of its relevant obligations under the Agreement.

25.2 Notwithstanding clause 25.1 above, the parties agree that the Administrator and Approved Sub-Processors may retain Personal Data to the extent required by and for such period as required by Applicable Laws, provided that they ensure:

25.2.1 the confidentiality of all such Personal Data; and

25.2.2 such Personal Data is only processed as necessary for the purpose(s) specified in the Applicable Law requiring its storage.

26. **COMPLAINTS**

26.1 The Administrator has an established complaints procedure, full details of which are available from the Managing Director of the Administrator.

- 26.2 Any complaints must be made in writing via the Administered Entities' Agent and where possible should be accompanied by a copy of all relevant documentation and correspondence.
- 26.3 Complaints should be addressed to the Compliance Manager
- 26.4 Written complaints will be acknowledged in writing within 5 business days of receipt
- 26.5 Written complaints will be investigated independently
- 26.6 A full written response will be provided within 10 business days.
- 26.7 If a written complaint made via the Administered Entities' Agent remains unresolved for longer than 3 months, the Administrator is obliged to advise the Commission of the details of the complaint and to update the Commission periodically thereafter.
- 26.8 For the avoidance of doubt, the Administered Entities' Agent may refer any complaint directly to the Commission and in the event that the Administered Entities' Agent remains dissatisfied, they may refer the complaint to the Channel Islands Financial Ombudsman.

27. **DOCUMENT RETENTION**

- 27.1 All information, correspondence, records and data held by the Administrator and its Associated Companies on any computer system is solely the property of the Administrator or its Associated Companies (as appropriate) and for its or their sole use and neither the Administered Entities nor anyone acting for or on their behalf shall, save as provided by applicable law, have any right of access thereto or control over that information, correspondence, records or data.
- 27.2 The Administrator and its Associated Companies have the right to retain ownership and keep copies of all such information, correspondence, records and data for its or their sole use and neither the Administered Entities nor anyone acting for or on their behalf shall, save as provided by applicable law, have any right of access thereto or control over that information, correspondence, records or data.
- 27.3 On completion of the Services, the Administrator and its Associated Companies may destroy papers it has retained (including documents legally belonging to the Administered Entities) that are more than 7 years old, other than documents which the Administrator or its Associated Company considers, in its absolute discretion, to be of continuing significance.

28. **TELEPHONE RECORDING**

The Administrator and its Associated Companies (and their respective directors, officers, associates, employees, shareholders, agents and servants from time to time), may in their absolute discretion from time to time, record some or all telephone conversations between them and any of the Administered Entities and any such recordings shall be and remain the Administrator's sole property and may in the Administrator's absolute discretion be submitted in evidence in any proceedings relating to the Agreement.

29. **VARIATION**

These Terms and Conditions may be amended and/or supplemented in whole or in part by the Administrator from time to time. Any such amended and/or supplemented Terms and Conditions shall take effect between the parties from the date on which the Administrator

publishes such on its website and notifies the Administered Entities' Agent of such publication.

30. **ASSIGNMENT AND DELEGATION**

30.1 The Administrator may, upon giving reasonable notice to the Administered Entities' Agent of its intention to do so, assign or transfer the whole or any part of its rights and benefits under the Agreement to any person in any jurisdiction. For the purposes of such assignment or transfer, the Administrator may disclose information about the Administered Entities or any other connected persons including their legal and beneficial shareholders, to any prospective assignee or transferee, provided that the Administrator shall use its reasonable endeavours to procure that such prospective assignee or transferee is placed under an obligation of non-disclosure equivalent to that observed by the Administrator under the Agreement.

30.2 The Administered Entities shall not assign or otherwise transfer all or any part of their rights, benefits and/or obligations under the Agreement without the prior written consent of the Administrator.

30.3 The Administrator may delegate any and all of its duties and obligations hereunder to one or more of its Associated Companies or agents from time to time provided that:

30.3.1 the Administrator shall be responsible for the costs of any such delegation, including the fees and expenses of the delegate;

30.3.2 the Administrator shall, where it is finally determined to have failed to exercise due care in the selection of the delegate, remain liable for the acts or omissions of any such delegate appointed by it as if such acts or omissions were its own; and

30.3.3 such delegation shall result in any of those duties and obligations being provided from within the Bailiwick of Guernsey (or such other place or places outside the Bailiwick of Guernsey as the Administrator may from time to time deem appropriate, provided that the Administrator shall notify the Administered Entities' Agent of the same).

30.4 The Administrator may, subject to applicable law and with the prior written consent of the Administered Entities' Agent, delegate any and all of its duties and obligations hereunder to any person other than one of its Associated Companies or agents from time to time provided that:

30.4.1 the Administrator shall be responsible for the costs of any such delegation, including the fees and expenses of the delegate; and

30.4.2 the Administrator shall, where it is finally determined to have failed to exercise due care in the selection of the delegate, remain liable for the acts or omissions of any such non-affiliated delegate appointed by it as if such acts or omissions were its own but only to the extent that the Administrator actually recovers losses or damages from such delegate.

305 The Administered Entities' Agent may, subject to applicable law and with the prior written consent of the Administrator, instruct the Administrator by way of Proper Instruction to delegate any and all of its duties and obligations hereunder to any third party provided that:

30.5.1 the Administrator shall not be responsible for the costs of any such delegation, including the fees and expenses of the delegate; and

30.5.2 the Administrator shall not be liable for the acts or omissions of any such delegate.

31. **LAW OF THE CONTRACT AND JURISDICTION**

The Agreement and all non-contractual obligations arising in any way whatsoever out of or in connection with the Agreement shall be governed by and construed in accordance with the laws of Guernsey and the parties hereto irrevocably agree to submit any actions, proceedings or claims arising out of, or in connection with, the Agreement to the exclusive jurisdiction of the courts of Guernsey.