

Terms of Business (Administration Services) – Version [1.00]

1. Introduction and Definitions

1.1 NBK Trustees (Jersey) Limited (“**NBK**”) is a limited liability company registered in Jersey with registration number 54927 and is licensed to undertake trust and company business subject to the provisions of the Financial Services (Jersey) Law 1998 as amended.

1.2 In these Terms of Business unless provided to the contrary or as otherwise defined in the Relevant Letter:

“**Affiliates**” means, in respect of a Party, any Owner Verification Subject that controls or is controlled directly or indirectly by that Party or is controlled by such a person and includes the relevant heirs, successors, personal representatives and estates of a Party;

“**Agreement**” means in relation to the Principal, the Engagement Letter and each Entity Annexure thereto, and the Terms of Business (as defined in such Engagement Letter) and in relation to an Entity, the Entity Annexure addressed to that Entity together with the Terms of Business (as defined in such Entity Annexure);

“**Applicable Law**” means any law, legislation, rule, regulation, order, directive, regulatory requirement or regulatory guide or practice in force in Jersey (as the same may be amended or varied from time to time), related to the provision of the Services or the Entity Business;

“**Appointee**” means all and any persons nominated by NBK and/or any of its Affiliates to act as a director, council member, trustee or other executive officer, manager, signatory or shareholder of any Entity or otherwise in connection with the Services;

“**Business Day**” means a day (other than a Saturday, Sunday or a public holiday) on which banks are open for the transaction of business in Jersey and, where used in connection with a payment in euro, on which the Trans-European Automated Real Time Gross Settlement Express Transfer System (TARGET) (or any successor system) is open;

“**Claim**” means any claim or series of claims arising out of or in connection with the Agreement or the Services and including but not limited to claims in contract or tort, claims for negligence, non-fraudulent misrepresentation, breach of statutory duty, restitution or otherwise for any damages, costs (including legal costs) or other loss;

“**Confidential Information**” means information in relation to the business or operations of a Party or its Affiliates (the “**Disclosing Party**”) acquired by the other Party during the course of this Agreement which was not already in the public domain. For the avoidance of doubt, Confidential Information shall not include information obtained from a third party who owed the Disclosing Party no duty of confidence in respect of the information obtained;

"DP Law"	means the Data Protection (Jersey) Law 2005;
"Engagement Letter"	means the letter of engagement between NBK and the Principal and any schedules to such letter specifying the terms and conditions on which Services are to be provided by NBK Parties;
"Entity"	means the person or persons (which for the avoidance of doubt includes all bodies corporate and unincorporated) stipulated in the Entity Annexure addressed to such person or persons;
"Entity Annexure"	means the engagement letter between NBK and the Entity and any schedules to such letter specifying the terms and conditions on which Services are to be provided by NBK Parties to the Entity;
"Entity Business"	has the meaning given to it in the Relevant Letter;
"Establishment Fee"	has the meaning, if any, given to it in the Relevant Letter;
"Event of Default"	has the meaning given to it in Clause 10;
"Fees"	means for an Entity, the fees and charges set out in the Entity Annexure and for the Principal, where applicable, the fees and charges in the Engagement Letter and all Entity Annexures;
"Governing Body"	means the board of directors of a company, the trustee or trustees of a trust, the general partner or managing partner or board of partners of a limited partnership or limited liability partnership, the foundation council of a foundation or body performing a similar function in any relevant jurisdiction, or where the Entity is a natural person, that person;
"Governing Documents"	means the constitutional documents of the Entity (if any) including the memorandum and articles of association of any company, a trust instrument and any supplemental instruments of any trust, the charter and regulations of any foundations and any other documents equivalent or similar thereto;
"International Laws"	means any law, legislation, rule, regulation, order, directive, regulatory requirement or regulatory guide or practice other than Applicable Law in any jurisdiction which is or purports to be enforceable or applicable against a NBK Party, the Entity or its Affiliates or assets or any part of them. International Laws shall only be applicable to this Agreement to the extent that failure to comply with them may require NBK to withhold sums on payments to the Entity, its Affiliates, or its or their clients or may result in some other form of penalty being imposed which may affect NBK, its Affiliates or its or their clients;
"IPR"	means all patents, copyright and related rights, trade marks, trade names and domain names, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights and any other intellectual property rights, whether registered or unregistered and all similar rights which subsist or will subsist in any part of the world;
"Losses"	means any and all losses, damages, liabilities, professional fees (including but not limited to legal fees), court costs and expenses;
"NBK Party"	means any of NBK and any of its Affiliates and its or their respective

directors, officers or employees and “**NBK Parties**” shall be construed accordingly;

“ Online Services ”	means the various online services, if any, as set out in the Relevant Letter;
“ Owner Verification Subjects ”	includes, where a Party is a company, its shareholders or members, directors, officers, secretaries and/or members of its governing body (“ Company Owners ”), where a Party is a foundation, its council members, the founder, any guardian, secretary, beneficiaries or equivalent persons (“ Foundation Owners ”), where a Party is a partnership, limited partnership or limited liability partnership, the partners, general partners, limited partners or members of the partnership or any manager or equivalent position (“ Partnership Owners ”), where a Party is a trust, the trustees, settlor(s), beneficiaries and any protector, enforcer or guardian or person holding any position equivalent thereto (“ Trust Owners ”) and where a Party is an unincorporated association the members of that unincorporated association (“ Association Owners ”) and in each case the owners of the Company Owners, Foundation Owners, Partnership Owners, Trust Owners and/or Association Owners where applicable;
“ Party ”	means each of NBK and the Entity and where the context permits, includes the Principal;
“ Principal ”	means any person who pursuant to the terms of any Engagement Letter has engaged any NBK Party to provide any trust and company business services in respect of anyone or more Entities;
“ Relevant Letter ”	means for any Principal, the Engagement Letter and all Entity Annexures (as defined in the Engagement Letter) and for the Entity, the Entity Annexure addressed to that Entity;
“ Retail Price Index ”	means the annual index of retail prices of selected consumer goods and services compiled by the States of Jersey Statistics Unit (or successor body) as published from time to time;
“ Services ”	means in respect of the Principal and each Entity the services provided or to be provided by NBK as set out in the Relevant Letter to each of them respectively or collectively as the case may be;
“ Subsidiary ”	a company is a “subsidiary” of another company, its “ Holding Company ” if that other company (a) holds a majority of the voting rights in it, or (b) is a member of it and has the right to appoint or remove a majority of its board of directors, or (c) is a member of it and controls a majority of the voting rights (either alone or by agreement with others), or (d) if it is a subsidiary of a company that is itself a subsidiary of that other company; and
“ Verification Subjects ”	includes the Entity, the Owner Verification Subjects and relevant parties with whom the Entity contracts during the course of the provision of the Services.

- 1.3 References in these Terms of Business to a “**Clause**” shall mean a Clause of these Terms of Business. References to legislation, regulations, orders or rules shall mean such legislation, regulations, orders or rules, as amended from time to time or any re-enactment or replacement legislation, regulations, orders

or rules, from time to time. Clause headings are for convenience only and do not affect the interpretation of the Agreement.

- 1.4 Any phrase introduced by the terms “**including**”, “**include**”, “**in particular**” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.5 In the Agreement, except where the context otherwise requires, words denoting the singular include the plural and vice versa and words denoting a gender include every gender and references to persons include bodies corporate and unincorporated.
- 1.6 Terms not defined in these Terms of Business have the meaning set out in the Relevant Letter.

2. Appointment

- 2.1 NBK shall provide the Services to the Entity as set out in the Relevant Letter, subject to the terms of the Agreement.

3. Services

- 3.1 NBK shall use reasonable skill and care in the performance of its obligations under the Agreement. NBK shall maintain in force for the term of the Agreement all licences, permissions, authorisations, consents and permits needed by NBK to perform the Services in accordance with the terms of the Agreement.
- 3.2 NBK shall accept, and shall be entitled to act upon, instructions given to NBK from time to time in relation to the Services, as described in sub-clauses (a) to (c) below (“**Proper Instructions**”):
 - (a) Proper Instructions shall, for the purposes of this Agreement, mean written, e-mailed, facsimiled or any other electronic instructions in respect of the Services issued or purported to be issued by any person(s) authorised by the Entity.
 - (b) When acting pursuant to Proper Instructions, NBK shall not be under any duty to make any enquiry as to the genuineness or authenticity of such instructions so long as the instructions reasonably appear to be genuine and authentic and do not contain any manifest error on their face.
 - (c) Where NBK receives evidence of the authority of any person(s) to act on behalf of the Entity, it will consider such authority in full force and effect until receipt of written notice to the contrary from the Entity.
 - (d) In instances agreed in advance with NBK, NBK may also act pursuant to Proper Instructions given verbally including by telephone, provided that written confirmation of such instructions is sent to NBK as soon as practicable or is otherwise confirmed in such manner as may be agreed by NBK.
- 3.3 Where NBK provides the Entity with any online services, including website and web portal services:
 - (a) NBK reserves the right, at its absolute discretion, to update or upgrade the Online Services in line with changing technological or system developments or business requirements.
 - (b) The Entity is responsible for ensuring that it has taken the necessary steps, under all Applicable Laws, to ensure that it uses the Online Services in a manner that complies with all Applicable Laws including intellectual property and copyright laws.
 - (c) Use of the Online Services is at all times subject to NBK’s conditions of use which are displayed on each website forming part of the Online Services. In particular, NBK shall not have any liability for any non-availability or interruption in the operation of the Online Services or for any failure or delay of a communication beyond its reasonable control.
- 3.4 NBK may delegate any of its duties, obligations and responsibilities under the Agreement. NBK shall remain responsible for the performance of the Agreement by its Affiliates but shall not be liable for the acts or omissions of third party delegates. It is expressly agreed that the duties of NBK are purely administrative in character.

- 3.5 It is agreed and acknowledged that nothing in the Agreement is to be or can be construed as requiring NBK to do anything as regards the administration of the Entity or otherwise other than as specifically set out in the Relevant Letter. Nothing in the Agreement shall require NBK to provide any financial or other support to the Entity, including by way of advancing monies for fees or other disbursements due by the Entity whether to prevent the liquidation or insolvency of the Entity or otherwise. Where NBK at the request of the Entity or acting in good faith takes any step or carries out any action for or on behalf of the Entity which is not specifically set out in the Relevant Letter, the standard of care applicable to such step or action and the extent of NBK's liability shall be the same as those applicable to the provision of the Services.
- 3.6 NBK's performance of its duties, obligations and responsibilities under the Agreement is subject to the timely delivery to NBK of clear and comprehensive information from, and co-operation of, the Entity, the Principal and their respective Affiliates (if any), service providers and advisors and in the absence of such information and co-operation NBK and its officers and employees may take such actions as they may consider necessary to protect the business and reputation of NBK and its officers and employees and such steps may include, without limitation, (i) the engagement of professional advisors at the expense of the Entity; and/or (ii) the resignation of its employees as members of the Governing Body or the resignation of any Appointee from the nominated position where they undertake such positions.

4. Anti-money laundering, anti-terrorist financing, anti-bribery and corruption

- 4.1 Each Party shall comply with any obligations imposed on it from time to time by Applicable Law and NBK's policies having the purpose of preventing money laundering, terrorist financing, bribery and corruption ("**NBK's AML Policies and Procedures**"). In particular and without prejudice to the generality of this Clause:
- (a) the Principal and the Entity shall each co-operate promptly and fully with any steps taken by NBK to identify relevant Verification Subjects of the Entity. The Principal and the Entity undertake to notify NBK of any change of such data provided in the course of identifying the Verification Subjects as soon as practicable and in any event within five Business Days of such change taking place; and
 - (b) where a Party should in accordance with best practice or common guidance or is required by any Applicable Law or International Laws to maintain procedures to prevent bribery or corruption each such Party warrants to the other that it has in place adequate procedures to prevent bribery and corruption which are compulsory for all of its employees and associated persons. Each such Party shall provide the other Party with a copy of its anti-bribery and corruption policies and procedures on request.
- 4.2 NBK reserves the right to carry out due diligence on the Principal, the Entity, their Affiliates (if any) and relevant Verification Subjects during the term of the Agreement in accordance with Applicable Laws or any of NBK's AML Policies and Procedures. This may include undertaking searches of publicly available information. The Principal and the Entity shall promptly provide all relevant documentation and information reasonably requested by NBK under this clause and the provision of the Services shall be conditional on the Principal, the Entity, their Affiliates (if any) and its and their counterparties continuing to satisfy all due diligence requirements imposed by Applicable Law, International Laws and/or NBK's AML Policies and Procedures.

5. Covenants

- 5.1 The Entity and the Principal each covenant with NBK that during the term of the Agreement:
- (a) it shall provide NBK with all books, registers, documents, minutes of meetings of Governing Bodies, agreements, financial statements and files such as are required for the fulfilment of NBK's obligations, including but not limited to those under Clauses 4 and 6;

- (b) it shall provide NBK with all documents and certificates required by law or by the Jersey or other relevant authorities;
- (c) it shall immediately upon becoming aware thereof, inform NBK of any event, fact or matter which could be reasonably foreseen to have a material effect on the representations and warranties given to NBK in Clause 6.1 and/or upon NBK's willingness to continue to provide the Services;
- (d) it shall inform NBK forthwith of any amendment to the Entity's Governing Documents or any change in its Owner Verification Subjects;
- (e) where relevant, it shall inform NBK of any NBK employees that it regards as being 'insiders' for the purposes of any applicable insider dealing laws, codes or procedures;
- (f) in the case of the Principal, it shall notify NBK before alienating, assigning, selling, pledging or otherwise disposing of or encumbering any part of the Principal's interest in any Entity or the assets and/or funds which are or will otherwise be the subject of the Services; and
- (g) it shall observe strictly all legal, regulatory and administrative provisions prevailing in Jersey and elsewhere, as applicable, including but not limited to those relating to accounting, taxation, data protection, money laundering and bribery.

6. Representations, warranties and acknowledgements

6.1 The Entity and the Principal each represent and warrant to NBK that:

- (a) the making and performance of the Agreement will not contravene any Applicable Law, its Governing Documents (if applicable), nor any agreement, indenture or other instrument which is binding upon it;
- (b) it has taken independent tax advice regarding the tax consequences for the Entity and its Affiliates (if any) in establishing and/o funding the Entity (if applicable) or otherwise in relation to all relevant matters in connection with the purpose of the Services and will take further tax advice on a regular basis and on becoming aware of any relevant change in tax laws or practice and will provide copies of such tax advice to NBK on request;
- (c) where NBK has nominated a person or a NBK Party to hold shares as nominee shareholder for the Principal or an Entity, such person or NBK Party shall be permitted to transfer the shares to the Principal on termination of the Agreement and the Principal acknowledges and agrees that such transfer can be made notwithstanding that it may cause taxes to become due or owing or cause other economic loss to the Principal and for the purpose of facilitating any such transfer, the Entity and the Principal hereby irrevocably appoint NBK as their attorney (with full power of substitution) for NBK and in the name of and on behalf of the Entity and the Principal to sign, execute, seal, deliver, acknowledge, file, register and perfect any and all documents, instruments, agreements, transfers, certificates and consents whatsoever and to do any and all such acts and things whatever which the Entity and the Principal have capacity to do in relation to any such transfer and which NBK may deem necessary or advisable in order to give full effect to any such transfer;
- (d) to the best of its knowledge it is and has been in full compliance with its licensing, reporting and filing obligations with respect to all relevant regulatory authorities as applicable;
- (e) to the best of its knowledge it is and has been in full compliance with all applicable anti-money laundering, combating terrorist financing and anti-bribery legislation in any applicable jurisdiction and has not breached any sanctions which have been issued or implemented by any relevant authority;

- (f) the monies or other assets held by the Entity have been lawfully obtained and are not derived from, or otherwise connected with, any activity which would be illegal if committed in Jersey or any other relevant jurisdiction including the local jurisdiction of the Entity; and
- (g) it is not engaged in, or about to engage in, any law suit, or other legal or administrative proceedings, investigation by any judicial or regulatory authority, arbitration, winding up, dissolution or insolvency proceedings which would adversely affect, in any material respect, its financial condition or operations, and to the best of its knowledge information and belief, no such litigation, investigation, arbitration or proceedings is/are pending or threatened against it.

6.2 NBK represents and warrants that:

- (a) it is a company duly incorporated and validly existing under the laws of Jersey with power to enter into the Agreement and to exercise its rights and perform its obligations under the Agreement and all corporate or other action required to authorise the execution of the Agreement by it and the performance by it of its obligations under the Agreement has been duly taken;
- (b) it has not taken any corporate action nor have any other steps been taken or legal proceedings been started or (to the best of its knowledge, information and belief) threatened against it for its winding-up, dissolution or re-organisation or for the appointment of a liquidator, receiver, examiner, trustee or similar officer over it or over any or all of its assets or revenues; and
- (c) the obligations expressed to be assumed by it in the Agreement are legal and valid obligations binding on it in accordance with the terms of the Agreement subject, as to enforceability, to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights and to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law).

6.3 The Entity and the Principal each acknowledge they have not relied on any statements, opinions, forecasts or other representations made by or on behalf of NBK in deciding to establish and/or maintain a presence in Jersey, its local jurisdiction or to enter into any business or investment transaction.

6.4 The Entity and the Principal each acknowledge that no communications from NBK in relation to the Services shall be construed as legal advice, tax or investment advice, or the provision of regulated services other than those for which NBK has the appropriate licences, including but not limited to investment advice, statutory audit, real estate agency services or recruitment agency services.

6.5 Except as expressly stated in the Agreement, all warranties and conditions, whether express or implied, statutory or otherwise, are excluded to the maximum extent permitted by Applicable Law.

6.6 For the avoidance of doubt, to the extent permitted by law, no statutory terms (which shall include warranties, conditions or other contractual provisions), rights, duties or liabilities imposed under the Supply of Goods and Services (Jersey) Law 2009 shall apply in relation to the Services.

6.7 All obligations owed to NBK under the Agreement shall be joint and several, where there are one or more persons constituting an Entity or a Principal.

7. Fees

7.1 In consideration for the provision of the Services, the Entity shall pay the Fees to NBK (or in the case of the Principal, guarantee the payment of Fees to NBK) in accordance with the Relevant Letter.

7.2 Unless otherwise specified in a Relevant Letter, invoices for Fees:

- (a) in addition to certain annual recurring fixed fees, will reflect the time spent on the matter and factors such as complexity, monetary values, urgency, risks and the expertise and research required of NBK;

- (b) will typically be issued on a regular basis, but may be issued on an ad hoc basis in certain circumstances such as following a transaction which has involved a significant volume of work; and
 - (c) will be payable on receipt by the Entity.
- 7.3 NBK may on request of the Entity provide an estimate of the fees associated with either a particular assignment or more generally. Where this occurs, such estimate will not be binding. NBK will where possible notify the Entity if the estimate is reached before the assignment is complete and is likely to be materially exceeded.
- 7.4 Where NBK provides Bank Account Authorised Signatories in respect of an Entity, the Entity hereby gives an irrevocable authority to make payment from any relevant bank account on the following terms:
 - (a) the whole amount of any invoice outstanding for 30 days after notice of the invoice is given in accordance with this Agreement where no notice that the invoice is disputed has been given to NBK; and
 - (b) where notice that the invoice is disputed is given to NBK, authority to make payment of the portion (if any) of the invoice which represents statutory disbursements payable by the Entity or any fixed fee specified in the Relevant Letter.
- 7.5 The Fees shall be paid gross without deduction, set-off or counterclaim and are exclusive of any applicable value added tax (or any equivalent tax) which will be for the account of and paid by the Entity.
- 7.6 NBK is entitled to increase any fixed fees annually at the rate of the Retail Price Index prevailing at that time. Where fees are charged on a time basis, NBK may increase the hourly or daily rates on an annual basis.
- 7.7 In addition to Clause 7.6, NBK may increase the Fees at any time by an amount exceeding the Retail Price Index as a result of change in any Applicable Law or International Laws which affects the obligations of NBK or for any other reason. In such event, NBK shall give 20 Business Days written notice to the Entity and the Principal and the said revised Fees shall apply from the expiry of such notice, however in the event that either the Principal or the Entity objects to such increase within the 20 Business Day period, it will have the right to terminate the Agreement under Clause 11.1(d).
- 7.8 The Entity shall maintain and, where relevant, the Principal shall ensure that the Entity shall maintain a minimum cash balance sufficient to meet the following twelve months' outgoings including the Fees, disbursements and contingencies.
- 7.9 Unless otherwise agreed, where NBK is required to carry out other services additional to the Services (including supporting any regulatory, tax or governmental investigation), additional time will be charged separately at NBK's prevailing standard daily or hourly rate.
- 7.10 NBK shall be entitled to charge interest on any amounts owing from the Entity but which are unpaid for a period in excess of 30 days from the date of the invoice, at an annual rate equal to four per cent (4%) above the base interest rate established by NBK's main Jersey bank, from time to time, from the due date until the date of payment in full.
- 7.11 NBK may charge for all travel, accommodation, subsistence document handling, storage and retrieval (secretarial, photocopying, printing, fax, courier or special mail, etc) and other appropriate charges and expenses (including telephone and computer charges) incurred in connection with the Services and the Entity shall, where NBK at its discretion has assumed or paid for any such charges or expenses, reimburse or procure the reimbursement of NBK on demand and following delivery of appropriate receipts, if requested, for all such costs and expenses.
- 7.12 The Principal and the Entity agree that NBK may from time to time require legal or other professional advice in connection with the provision of the Services. NBK shall be solely responsible for obtaining any such advice but the reasonable cost of such advice will be chargeable to the Entity.

- 7.13 Any indemnities and/or guarantees in the Agreement are given by the Principal in every case as principal obligor and the Principal abandons any customary or other right that [he/she/it] may have or acquire under the laws of Jersey or any applicable foreign law in respect to:
- (a) the “*droit de division*” or any analogous right which requires any apportionment of liability with any co-guarantors;
 - (b) the “*droit de discussion*” or any analogous right which requires that the creditor must first exhaust its remedies against the principal obligor; and/or
 - (c) any other formalities required by any local custom or law whether existing or future in regard to the right or obligations of sureties.
- 7.14 The liability of the Principal under the Agreement shall not be reduced, discharged or otherwise adversely affected by any termination, amendment, variation, novation, replacement or supplement of or to any of the terms of the Agreement, including without limitation any variation to the obligations of the Entity (including any extension of the Entity’s obligations or any increase of fees payable by the Entity) under the Agreement.

8. Liability

- 8.1 NBK shall only be liable for Losses suffered by the Entity and/or the Principal resulting directly from fraud, wilful default or gross negligence on the part of NBK in the performance and/or exercise by NBK of its duties and responsibilities under this Agreement.
- 8.2 Subject to Clause 8.5, the maximum aggregate liability of all NBK Parties under the Agreement for all Claims will be limited to the lesser of £300,000 or an amount equal to 3 times the annual Fees. For the purpose of this clause 8.2, the limitation of liability shall be calculated in accordance with the fee payable in force and agreed at such time as an event happened to give rise to a Claim, and not at the date such event is discovered.
- 8.3 No NBK Party shall be liable for any Claim where such Losses are attributable to the actions of the Entity or its Affiliates. Without limitation, no NBK Party shall be liable for any action or omission taken in response to a specific request or instruction of the Entity, members of its Governing Body, the Principal or their respective Affiliates or in respect of refraining from executing any instruction where such execution would in its reasonable opinion result in a breach of any Applicable Law or International Laws.
- 8.4 Notwithstanding the provisions of Clause 8.1, no NBK Party shall have any liability in respect of any Claim for:
- (a) special, incidental, indirect or consequential loss or damages;
 - (b) direct or indirect loss of profits or opportunity;
 - (c) loss of goodwill, loss of reputation or customers; or
 - (d) any other pure economic loss.
- 8.5 Nothing in the Agreement shall exclude or limit any Party's liability for:
- (a) death or personal injury caused by that Party’s negligence;
 - (b) that Party's fraud; or
 - (c) any other liability which cannot be excluded by Applicable Law.
- 8.6 References in this Clause 8 to fraud shall mean a finding to such effect by the Courts of Jersey in relation to the conduct of the relevant Party.
- 8.7 Nothing in this Clause 8 shall relieve either Party of the obligation to mitigate (to the extent reasonable) any Losses arising in connection with or as a result of any claims against the other Party.
- 8.8 Nothing in this Clause 8 shall exclude or limit the right of NBK to recover, or the obligation of the Entity or the Principal to pay, any sums due and payable under this Agreement including, without limitation, any Fees.

8.9 Any legal proceedings arising from the Services may only be brought by a Party after notifying the other Party in writing of such intention within 2 years from the date on which they first became aware or ought reasonably to have become aware of the facts which give rise to the liability or alleged liability and in any event not later than 10 years after any act omission or circumstances alleged to constitute a breach of contract or 3 years after any alleged negligence or other act or omission.

9. Indemnity

9.1 Each of the Entity and the Principal shall indemnify and keep indemnified each NBK Party from and against all Losses incurred by the NBK Party resulting or arising from the Entity's breach of the Agreement and in addition any third party claims, actions, proceedings, investigations or litigation relating to or arising from or in connection with the Agreement or the Services, except to the extent such Losses are determined to have resulted solely from the fraud, wilful default or gross negligence of the NBK Party seeking indemnity under the Agreement.

9.2 NBK shall give the Entity and the Principal prompt notice of any such claim or lawsuit served upon it and shall co-operate with the Entity and its legal representatives in the investigation of any matter the subject of indemnification. NBK shall not unreasonably withhold its approval of the settlement of any claim, liability or action covered by this indemnification provision.

10. Events of Default

10.1 Each of the following shall be an Event of Default:

- (a) save in the case of a restructuring approved in writing by NBK, if an order is made or an effective resolution is passed for the winding up of the Entity or the Principal or if the Entity or the Principal (if not a natural person) for any other reason ceases to exist;
- (b) if an encumbrancer takes possession of or a receiver or examiner is appointed over the whole or a substantial part of the business or assets of the Entity, the Principal or NBK;
- (c) if NBK, the Entity or the Principal becomes insolvent or enters into an arrangement or composition with its creditors;
- (d) if any final order of distress, execution, sequestration or other process is levied or enforced upon or against the whole or a substantial part of the property of the Entity, the Principal or NBK and is not discharged within 7 days;
- (e) if NBK, the Entity or the Principal becomes bankrupt within the meaning of Article 8 of the Interpretation (Jersey) Law 1954;
- (f) if an application for a declaration that the property of NBK, the Entity or the Principal be declared *en désastre* is presented under the Bankruptcy (Désastre) (Jersey) Law 1990;
- (g) if anything analogous to any of the foregoing events occurs in any relevant jurisdiction;
- (h) if the Entity ceases to be an Affiliate of the Principal; or
- (i) the Principal breaches any terms of the Agreement and fails to remedy any such breach within 30 days of being notified of such breach by NBK.

11. Termination

11.1 This Agreement may be terminated:

- (a) by NBK or the Entity immediately on the giving of written notice to the other Party following the occurrence of an Event of Default in relation to the other Party;
- (b) by NBK on the giving of not less than 30 days written notice to the Entity if any covenant, representation or warranty is or becomes untrue or inaccurate in any material respect; or if the Entity, the Principal or their respective Affiliates, service providers or advisors fail to provide the

information and co-operation necessary to allow NBK perform its duties, obligations and responsibilities under this Agreement;

- (c) by NBK by notice in writing to the Entity if in NBK's opinion, the introduction of, or any change in the interpretation or application of, any Applicable Law, or compliance with any Applicable Law made after the date of this Agreement would make it unlawful for NBK to continue its relationship with the Entity. NBK shall consult with the Entity with a view to establishing an alternative basis acceptable to both Parties upon which this Agreement may be continued;
- (d) where the Principal is a natural person, by NBK on the giving of not less than 30 days written notice to the Entity and the Principal's personal representative or estate where the Principal dies or otherwise becomes incapacitated;
- (e) by one contracting party giving the other contracting party 90 days notice in writing should the contracting parties not reach an agreement regarding any increase of the Fees under Clause 7.7;
- (f) if NBK, the Principal or the Entity shall have materially breached the terms of this Agreement (including any payment default) and shall not have cured such breach within 30 days from the date on which the other Party has issued written notice to cure such breach;
- (g) by either contracting party giving the other contracting party 90 days notice in writing; or
- (h) in the circumstances, if any, set out in the Relevant Letter.

11.2 The rights and obligations of the Parties, which by intent or meaning have validity beyond such termination (including, but not limited to, rights with respect to confidentiality, ownership, retrocession, indemnification, liability limitations and termination) shall survive the termination of this Agreement.

11.3 Upon the termination of the Agreement, the Entity shall pay to NBK any amount outstanding in respect of Fees becoming due up to the date of such termination.

11.4 Where the Entity is not a natural person it shall, as soon as practicable after termination of the Agreement, procure that:

- (a) where the registered office/address of the Entity is that of the place of business of NBK, such registered office/address is changed and all required notifications and filings of such change (including, without limitation, to the Jersey Registrar of Companies) are made; and
- (b) all required notifications and filings (including to the Jersey Registrar of Companies) are made in respect of any office held by NBK or any Appointee in relation to the Entity.

11.5 NBK reserves the right to continue to hold any documents or other property of the Entity until such time as all outstanding sums owing to NBK by the Entity have been paid. On payment of all outstanding sums owing to NBK, NBK shall deliver all documents or other property of the Entity to such person as the Entity shall direct, at the expense and risk of the Entity. NBK, however, reserves the right to retain, at its own cost, and subject to the confidentiality provisions in this Agreement, copies of all documents that may be needed to satisfy Applicable Law, International Laws or to resolve disputes regarding the Services, where applicable.

12. Force Majeure

12.1 Neither Party will be liable to the other for a delay or failure to carry out any of its obligations under this Agreement to the extent to which this is caused by any event beyond the reasonable control of the relevant Party including, without limitation, strikes, labour disputes, natural disasters, war, riot, vandalism, terrorism, civil commotion, malicious damage, compliance with Applicable Law or any overriding emergency procedures, failures of software, hardware, utility or telecommunications supply, accident, breakdown of plant or machinery, fire, flood and storm ("**Force Majeure**"). Notwithstanding the foregoing, nothing in this Agreement shall excuse a delay or failure to comply with a payment obligation under this Agreement.

The Party whose performance has been delayed or prevented by Force Majeure shall promptly notify the other Party on becoming aware of the Force Majeure and both Parties shall take all reasonable steps to overcome and mitigate the effects of Force Majeure by the operation of contingency plans, back-up or disaster recovery or other relevant procedures as soon as reasonably practicable.

13. Payments

- 13.1 All payments to be made to NBK shall be paid to such account of NBK as NBK shall from time to time advise in writing.
- 13.2 If for the purposes of obtaining judgment in any Court it is necessary to convert a sum due in one currency (in this paragraph called "**the first currency**") into another currency (in this paragraph called "**the second currency**") the rate of exchange which shall be applied shall be that at which NBK in accordance with normal banking procedures could purchase the first currency with the second currency on the Business Day immediately preceding that on which final judgment is given. The obligation of the Entity in respect of any such sum due from it shall notwithstanding any judgment in the second currency be discharged only to the extent that on the Business Day following receipt by NBK of any sum adjudged to be due in the second currency NBK may in accordance with normal banking procedures purchase the first currency with the second currency and if the first currency so purchased falls short of the first currency sum originally due to NBK, the Entity agrees that it shall as a separate obligation and notwithstanding any such judgment indemnify NBK against such shortfall.
- 13.3 If any sum of money is required to be paid or any act or thing falls to be performed on a date (the "**Stipulated Date**") which is not a Business Day the same shall be paid or performed instead upon the first Business Day next following thereafter unless such day falls in the calendar month succeeding that in which the Stipulated Date falls, in which case such sum shall be paid or such act or thing shall be performed upon the last Business Day preceding the Stipulated Date.

14. Assignment

- 14.1 Neither Party shall be entitled to assign, transfer, charge or otherwise deal with rights or obligations under the Agreement without the prior consent in writing of the other Party, except that NBK may, by written notice assign the Agreement to any of its Affiliates or any successor (by sale or otherwise) to the whole or any part of NBK's business. After any such assignment:
- (a) records in relation to the Agreement may pass to any such Affiliate or successor to hold subject to applicable confidentiality obligations; and
 - (b) limitations of liability under the Agreement will apply to the total aggregate liability of both NBK and its Affiliates or successor.

15. Relationship of Parties

- 15.1 Nothing contained in the Agreement is intended to or shall constitute a partnership, association, joint venture or other such relationship between NBK and the Entity.
- 15.2 The Entity and the Principal shall ensure that the name and logo of NBK or any of its Affiliates shall not be reproduced by the Entity or its associated persons, without the prior written approval of NBK.

16. Amendment

- 16.1 NBK may vary these Terms of Business from time to time without the Principal or the Entity's consent. NBK may also review and vary any applicable Schedule of Charges or hourly rates without the Principal or the Entity's consent. The current applicable version of these Terms of Business and any applicable Schedule of Charges or hourly rates will be available for inspection on the website specified (if any) in the Relevant Letter ("**NBK's Website**") and at NBK's registered office during Business Hours and copies will be available on request. NBK will notify the Entity and the Principal in accordance with clause 17 of

any changes which NBK regards as material as soon as reasonably practicable and in any event not less than 30 days prior to their introduction. In such event the Principal and the Entity will be bound by the revised Terms of Business unless the Principal or the Entity informs NBK within that 30 day period that such changes are not acceptable to the Principal or the Entity in which case NBK may terminate the Agreement in accordance with clause 11.1(f). In all other cases the Principal and the Entity will be bound 30 days after NBK has given notification to the Principal and the Entity of the change, or has published the revised document on NBK's Website or made the revised document available for inspection at NBK's registered office (whichever is the earlier). Any such variation shall not affect any rights or obligations of either Party that have already accrued.

17. Notices

- 17.1 Any notice or demand to be given or made under the Agreement shall be in writing and shall be expressed to be a notice or demand and shall be deemed duly given or made:
- (a) upon being left before 4pm on a Business Day at:
 - (i) the address set out in the Relevant Letter of the Party to whom it is being given, or
 - (ii) such other address as such Party shall have previously communicated by notice to the other, or
 - (b) 4 Business Days after posting by prepaid registered post to:
 - (i) the address set out in the Relevant Letter of the Party to whom it is being posted, or
 - (ii) such other address as such Party shall have previously communicated by notice to the other, or
 - (c) if transmitted before 4pm on a Business Day by facsimile to the correct facsimile number of the Party to whom it is being transmitted, upon transmission; or
 - (d) if given by e-mail, when sent unless a non-delivery notice is received.

Otherwise notices served personally or by facsimile shall be deemed served on the next Business Day

18. Illegality and Severability

- 18.1 If at any time any provision of the Agreement becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity nor enforceability of the remaining provisions of the Agreement nor the legality, validity or enforceability of such provision under the laws of any other jurisdiction shall be in any way affected or impaired.

19. Entire Agreement

- 19.1 The Agreement embodies the entire contractual understanding between the Parties and supersedes all previous statements, representations and agreements between the Parties relating to the subject matter of this Agreement.
- 19.2 In the event of any inconsistency between these Terms of Business and the terms of the Relevant Letter, the terms of the Relevant Letter shall prevail to the extent of any such inconsistency.

20. Waivers and Indulgences

- 20.1 No delay or omission on the part of either Party in exercising any right, power or remedy under the Agreement shall impair such right, power or remedy or be construed as a waiver nor shall any single or partial exercise of any such right, power or remedy preclude any further exercise or the exercise of any other right, power or remedy. The rights, powers and remedies provided in the Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

21. Non recruitment

- 21.1 During the term of the Agreement and for a period of one year thereafter, each Party shall not, without the prior written consent of the other Party, intentionally solicit for employment any personnel of the other Party who has been directly associated with this Agreement. "Intentionally solicit" shall not include consideration of responses to advertising or job postings directed at the general public or of unsolicited resumes.
- 21.2 The Parties agree to inform their Affiliates and personnel of the terms of this Clause 21. Nothing in this Clause shall prevent the Entity from engaging any person seconded by NBK as a dedicated employee as part of the Services during the term of this Agreement.

22. Confidentiality and IPR

- 22.1 Neither the Entity nor the Principal shall disclose, and shall procure that their employees shall not disclose, save with the prior written consent of NBK or as required by Applicable Law or International Laws, any Confidential Information to any person not a Party to the Agreement other than on a confidential basis to relevant employees, servants, agents, professional advisers, auditors, banks or contractual counterparties or to any governmental or other regulatory authority as required by Applicable Law or International Laws.
- 22.2 NBK shall not disclose, and shall procure that its employees shall not disclose, any Confidential Information to a person not a Party to the Agreement other than:
- (a) with the prior written consent of the Entity or the Principal (as the case may be);
 - (b) to those persons to whom it is authorised to disclose or transfer Personal Data in accordance with or as contemplated by clause 23.2; or
 - (c) where reasonably necessary in order to provide the Services, to refute allegations of wrongdoing or where failure to do so would be materially prejudicial to NBK or its Affiliates
- and where practicable and permissible under Applicable Law and International Laws, NBK will do so on a confidential basis.
- 22.3 The provisions of this Clause 22 shall, without limit in point of time, continue to apply after the termination of the Agreement but shall cease to apply to information or knowledge which at any relevant time has entered into the public domain, otherwise than as a result of a breach by NBK or the Entity of any of their respective obligations under the Agreement.
- 22.4 Where information or data is transferred by e-mail in pursuance of any provision of the Agreement the transmitting Party shall not be required to cause or procure the encryption of such information or data or the integrity of the transmission (other than correctly addressing it) and any discovery by a third party of any part of the contents shall not be a breach of the above confidentiality provisions.
- 22.5 The Parties acknowledge that the IPR and all other rights in any material and/or products created, generated and/or produced by or on behalf of NBK in connection with the provision of the Services (including, without limitation, any reports and computer programs) ("**Deliverables**") shall belong to NBK.
- 22.6 NBK grants the Entity a non-exclusive non-transferable licence to use the Deliverables supplied by NBK to the Entity under this Agreement for the Entity's own internal business use for the term of the Agreement.

23. Data Protection and Document Retention

- 23.1 The Parties shall comply with their respective obligations under the DP Law in respect of all Personal Data Processed by them in the course of and in connection with the performance or exercise by them of their obligations or rights under the Agreement. The Parties acknowledge and agree that NBK is the Data Controller of Personal Data Processed in connection with this Agreement.

- 23.2 Principal and the Entity undertake to procure all necessary Data Subject consents, including from any of its employees in respect of the Processing of their employment file and records, for the disclosure to NBK of relevant Personal Data for the purposes of the Agreement. NBK is expressly authorised to Process and disclose Personal Data for the following purposes:
- (a) to perform the Agreement and/ or the Services;
 - (b) to provide relevant information to Affiliates (for group reporting or review purposes), relevant delegates and subcontractors, employees, servants, agents, professional advisers, insurers or auditors of NBK, the Principal or the Entity;
 - (c) to provide relevant information to banking, fund management, investment management and investment advisory groups, relevant market counterparties, paying agents, clearing or settlement systems, stock exchanges, credit reference agencies, brokers or other contractual counterparties of NBK or the Entity (together "**Third Parties**") for the purposes of enabling those Third Parties to perform obligations under contracts with the Entity;
 - (d) to a third party in connection with the transfer, disposal, merger or acquisition of business by NBK or any NBK Party;
 - (e) to comply with Applicable Laws and International Laws; and
 - (f) to inform the Principal or the Entity of features, services and products from NBK or its Affiliates which may be of interest. NBK will not send such information to anyone who the Entity identifies as not wishing to receive it or to anyone who at any time asks NBK to stop.
- 23.3 The Principal and the Entity authorise NBK to transfer the Personal Data to any Affiliate involved in carrying out functions related to the Services including such Affiliates which are outside of the EEA in countries which do not have similar protections in place regarding the information and its use. NBK shall ensure that any such Affiliates have put in place proper security measures to ensure the same level of protection of the Personal Data as is required within the EEA.
- 23.4 The Principal and the Entity acknowledge that NBK may authorise a third party, including a third party which is outside of the EEA in countries which do not have similar protections in place regarding the information and its use, to process and transfer any Personal Data, including any Sensitive Personal Data. NBK shall ensure that any such third party has put in place proper security measures to ensure the same level of protection of the Personal Data as is required within the EEA. The Principal and the Entity acknowledge that NBK is reliant on the Principal and the Entity for obtaining the consents as indicated in clause 23.2 above. Consequently, NBK will not be liable for any claim brought by a Data Subject arising from any action or omission by the Principal or the Entity, to the extent that such action or omission resulted directly from the Principal or the Entity's failure to obtain such consents. The Principal and the Entity agree to indemnify NBK against all costs, claims, damages or expenses incurred by NBK or for which NBK may become liable due to any failure by the Principal or the Entity or its employees or agents to comply with any of its obligations under this Clause 23.
- 23.5 The DP Law provides Data Subjects with certain rights of access to, and correction of Personal Data. A Data Subject may make a written request for a copy of certain personal records that NBK holds about the Data Subject.
- 23.6 To the extent permitted under Applicable Law, including after termination or assignment of the Agreement, the Entity authorises NBK or its agents to keep all agreements, documents, books and records relating to the Entity on its behalf and on behalf of the Entity with offsite agents and/or in purely digital form. Retrieval of such items may incur a charge which may be invoiced to the Entity.
- 23.7 Checklists, review forms and documents, internal memoranda and documents created or compiled to comply with regulatory, audit or internal compliance and other policies and procedures during the course of the provision of the Services belong to NBK.

23.8 In this Clause 23, “**Data Controller**”, “**Personal Data**”, “**Sensitive Personal Data**”, “**Process**” and “**Data Subject**” shall have the meanings given to such terms in the DP Law.

24. Recording of Phone Calls

24.1 To help NBK to improve its service and in the interests of security, NBK may monitor and/or record all telephone calls. Such recordings shall remain the sole property of NBK and NBK shall have the authority to deliver copies or transcripts of such recordings to any court, tribunal, arbitrator or regulatory authority of competent jurisdiction as it sees fit.

25. Conflicts of Interest

25.1 NBK reserves the right to provide services to other clients at its sole discretion. Where NBK considers there may be any conflict of interest in acting in more than one capacity, it has complete discretion to determine whether it may continue to act in all such capacities or whether it should cease to act in one or more such capacities.

25.2 The Entity acknowledges and agrees that notwithstanding that a conflict of interest may exist NBK and its associated entities shall be entitled to retain any benefit, whether direct or indirect and including any fees or commissions, obtained or accrued.

26. Banking Arrangements and Commissions

26.1 The Entity acknowledges that in certain circumstances funds received on behalf of the Entity may be held in a pooled bank account in the name of NBK or one of its Affiliates with monies held on behalf of other clients of NBK or its Affiliates.

26.2 NBK and its Affiliates have arrangements with certain banks pursuant to which NBK or its Affiliates may receive commissions or retrocessions from those banks on monies held with them by or on behalf of clients of NBK or its Affiliates.

26.3 NBK and its Affiliates have arrangements with certain banks in respect of foreign exchange currency transactions pursuant to which NBK or its Affiliates may receive commissions or retrocessions from those banks on the making of those foreign currency exchange transactions. The Entity acknowledges and agrees that in order to complete the transactions it may be necessary for funds to be transferred to another pooled bank account at the same or another bank in the name of NBK or one of its Affiliates.

26.4 Details of any applicable commission or retrocession rates will be available on request.

27. Governing Law and Jurisdiction

27.1 The Agreement and any Claim or dispute arising out of or in connection with it will in all respects be governed by and construed in accordance with the laws of Jersey and the Parties submit to the non-exclusive jurisdiction of the Courts of Jersey.