

Terms and Conditions for Business in Jersey

Unless otherwise expressly agreed in writing by the Service Provider in relation to Services provided by it, these Terms and Conditions shall apply in their entirety, whether or not there shall be in existence any written or other express acceptance by the Client, to all Services provided by the Service Provider in respect of any Managed Entity.

Each Client and each Managed Entity to which Services are being or have been provided shall be deemed to have accepted these Terms and Conditions in relation to all Services from and with effect from the earlier of the date upon which they are first brought to the attention of that Client or by the acceptance of any of the Services. Unless the context otherwise requires each provision of these Terms and Conditions shall remain in full force and effect notwithstanding the termination of the Services or any other provision of these Terms and Conditions ceasing to apply.

The Service Provider is regulated by the Commission in the conduct of fund services business under the Financial Services (Jersey) Law 1998 (as amended).

The Service Provider may amend, vary or re-issue these Terms and Conditions from time to time, including during the provision of Services, without the prior consent of the Client or any Managed Entity. Where these Terms and Conditions and any amendment, variation or re-issue thereof are published on the web-site at <http://channelislands.moorestephens.com/t-cs>, then such publication shall be deemed to have constituted sufficient notice to each Client and each Managed Entity of the amendment, variation or re-issue (as the case may be) of these Terms and Conditions and each Client and each Managed Entity shall be duly bound by the Terms and Conditions as from time to time published on such web-site.

The Terms and Conditions now in force supersede and replace all and any terms and conditions previously in force in relation to any of the Services.

These Terms and Conditions shall be governed by and construed in accordance with the laws of the Island of Jersey. The Client agrees to submit to the non-exclusive jurisdiction of the Jersey courts in connection with these Terms and Conditions.

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions, the following words and phrases shall, save where the context requires otherwise, have the following meanings:

"Agreement"	means any agreement in writing entered into between the Service Provider and the Client and/or any Managed Entity relating to the Services;
"Appointee"	means all persons provided by the Service Provider to act as a director or other officer, trustee, manager, signatory or shareholder of any Managed Entity;
"Client"	means any person or persons instructing the Service Provider or for whom Services are or are to be provided including the beneficial owners, officers and employees of any such person and, where relevant, any instigator, controller, beneficial owner or settlor of a Managed Entity and shall include, where relevant, any Managed Entity. In the case of more than one person "Client" shall mean such persons jointly and severally, including the survivor or survivors of them and, in the case of individuals, including the heirs, personal representatives, estates, and assigns of each of them and, in the case of a company or other body corporate, including its successors and assigns;
"Commission"	the Jersey Financial Services Commission;
"Employees"	means the employees, directors, officers and consultants (as appropriate) of the Service Provider;
"Engagement Letter"	means any letter and attachments (including these Terms and Conditions) sent to the Client which sets out the terms of the contract between the Service Provider and the Client and any Managed Entity;
"Fee Schedule"	means any schedule of fees and charges for the time being in force issued by the Service Provider in relation to any of the Services;
"Managed Entity"	means the Client and any subsidiary or associated company, partnership or trust;

"Moore Stephens"	means MS Fund Services (Jersey) Limited (or, where relevant, such other appropriately regulated Moore Stephens entity or entities as may act as a Jersey fund administrator from time to time), its legally and beneficially owned subsidiaries, branches, associated and related entities and affiliates wherever situated (in each case including companies and partnerships) and their respective successors in title;
"Service Provider"	means the Moore Stephens entity which provides Services, or on behalf of whom Services are provided, to the Client;
"Services"	means the fund administration or other services to be provided by, or on behalf of, the Service Provider as may be specified in any Agreement or Engagement Letter and any other services carried out or performed for or on behalf of, or in connection with (whether before or after its establishment), the management and/or administration of any Managed Entity by the Service Provider, or by any Appointee or Employee; and
"Terms and Conditions"	means these terms and conditions as amended from time to time.

1.2 In these Terms and Conditions unless the context otherwise requires, the singular includes the plural, the masculine includes the feminine and the neuter and vice versa, and "**including**" means "including, without limitation".

1.3 References to "Clauses" herein are to Clauses of these Terms and Conditions.

1.4 Clause headings are inserted for convenience only and shall not affect the construction of these Terms and Conditions.

2. **PROVISION OF SERVICES AND GENERAL AUTHORITY**

2.1 The Service Provider will provide, or arrange to provide, every Managed Entity and/or the Client with such fund administration services and related services as may be indicated in any Agreement or Engagement Letter or as otherwise agreed from time to time between the Client and the Service Provider.

- 2.2 The Services are subject to all applicable laws, regulations, rules, requirements, practices and guidelines in any relevant jurisdiction, including all applicable policy statements, guidance notes and codes of practice of the Commission.
- 2.3 The Service Provider is authorised by the Client to do anything which is reasonably necessary either to perform the Services or to comply with any applicable laws and/or regulations (including policies, guidance or codes of practice of the Commission or any other relevant regulatory authority) in any relevant jurisdiction. For the avoidance of doubt the Service Provider may seek advice or services from other advisers without the consent of the Client or any Managed Entity and charge the cost of obtaining such advice or services to the Client or any Managed Entity as a disbursement.
- 2.4 No Service Provider, other Moore Stephens entity, Appointee or Employee shall be deemed to have any information from the provision of any services other than the Services.

3. **TAX AND OTHER PROFESSIONAL ADVICE**

- 3.1 The Client represents and undertakes that it has taken at its own expense appropriate tax, legal, financial and accounting advice with regard to the establishment, use and management of every Managed Entity. The Service Provider does not provide tax, legal, financial or accounting advice as part of the Services or otherwise.
- 3.2 It remains the on-going responsibility of the Client to obtain any specialist advice and to supply copies of such advice to the Service Provider. This extends to all transactions undertaken by the Service Provider on behalf of the Client in respect of every Managed Entity. None of the Service Provider, the Appointees or the Employees shall incur any liability in connection with any specialist advice supplied to the Service Provider.
- 3.3 The Service Provider shall not be under any obligation in any circumstances (unless otherwise agreed with the Client in writing) to:
- 3.3.1 notify the Client of any change (whether a change in law, policy, facts or otherwise) which may affect any advice or opinion provided by or on behalf of the Client to the Service Provider; or
 - 3.3.2 advise the Client or undertake any investigation as to such changes which may affect the Client's affairs generally.

4. REMUNERATION AND EXPENSES

- 4.1 The Service Provider shall be entitled to remuneration (including any taxes chargeable in relation thereto) for the provision of the Services in accordance with any Agreement or Engagement Letter for the time being in force in relation to any Managed Entity and Clause 17 (*Termination of Services*) below, provided always that, should there be no such Agreement or Engagement Letter, such remuneration shall be in accordance with any Fee Schedule from time to time in force in relation to any or all of the Services and subject thereto such remuneration shall be at the usual rates for work done by the Service Provider and the Appointees and Employees.
- 4.2 Fees charged by the Service Provider may reflect not only time spent but also such factors as complexity, urgency, inherent risks, use of techniques, know-how and research together with the level of skills and expertise required of the personnel needed to perform and review the Services. Such fees may also include an amount in respect of time spent travelling for the purposes of or ancillary to the Services if such time cannot be used productively for other purposes.
- 4.3 The Service Provider shall be entitled to remuneration if such Service Provider, another Moore Stephens entity, an Appointee or an Employee is required or agrees to produce any working papers at, or stand as a witness in, any proceedings.
- 4.4 The Service Provider shall be entitled to be reimbursed for all disbursements and expenses reasonably incurred by it in providing the Services. Additionally, an office disbursement charge may be included in each invoice (at a rate of 4% of the value of the remuneration accounted for by the invoice) to cover such general disbursements which it is not practical to charge on a provision basis (including those relating to telephone calls, photocopying and printing).
- 4.5 The Service Provider may raise an invoice at any time.
- 4.6 All monies payable to the Service Provider in connection with the Services shall be paid immediately on presentation of the relevant invoice and interest at the rate of 5% per month (accrued daily and compounded quarterly) may, at the discretion of the Service Provider, be charged on all fees, taxes and disbursements which remain outstanding for more than thirty days from the invoice date.
- 4.7 The Service Provider may deduct any unpaid sum payable to it in connection with the Services from money it is holding on account for, or from the assets of,

the Client or Managed Entity without the consent of the Client.

4.8 Where an invoice has remained unpaid for more than sixty days the Service Provider may:

4.8.1 engage the services of any third parties it deems appropriate to assist it in the recovery of such invoice; or

4.8.2 notify any credit reference agency, industry regulator or other similar body that such invoice has not been paid,

and the Client and Managed Entity hereby agree to accept joint and several liability for all costs, fees and expenses the Service Provider incurs in connection therewith.

4.9 The Service Provider reserves the right to review the fees charged as specified in any Fee Schedule in force from time to time and may apply any such varied or increased fee levels to any Managed Entity with effect from the date upon which any revised Fee Schedule is deemed to come into force. The Service Provider will give notice to any Managed Entity and where appropriate the Client in respect of any such revisions to its Fee Schedules either before any such amendment shall come into effect or within a reasonable period after such amendment shall have come into effect but in such case before any invoice is rendered in respect of the revised fees.

4.10 In providing the Services, the Service Provider may where it is considered appropriate arrange for any Managed Entity to be listed as an International Services Entity ("ISE") for the purpose of the Goods and Services Tax (Jersey) Law 2007. The Service Provider may charge an administration fee in connection with any such listing as an ISE and may also charge as a disbursement any ISE fee paid or payable to a relevant tax authority in Jersey in connection with any such listing.

4.11 For the avoidance of doubt, the provisions of this Clause shall remain in full force and effect notwithstanding the termination of the Services or any other provision of these Terms and Conditions ceasing to apply.

5. **CLIENT'S OBLIGATIONS AND UNDERTAKINGS**

5.1 The Client shall ensure that every Managed Entity is kept in funds sufficient to allow it to meet in full all sums payable by each Managed Entity to the Service Provider (together with disbursements, including but not limited to fees charged by the Commission) and for each Managed Entity to otherwise meet its liabilities as and when they become due.

- 5.2 No agreement by the Service Provider to invoice or send an invoice to a third party, acceptance by the Service Provider that a third party has agreed to pay an invoice, or acceptance by the Service Provider that the Client is insured shall be construed as a waiver of the Client's primary responsibility to meet in full all sums payable to the Service Provider.
- 5.3 Where the Client is more than one person:
- 5.3.1 each such person hereby appoints the other such person(s) to act as his agent to exercise full power and authority in connection with the Services on his behalf; and
- 5.3.2 all obligations of the Client in connection with the Services shall be joint and several.
- 5.4 The Client hereby undertakes that:
- 5.4.1 all assets which are or will be introduced to any Managed Entity have been lawfully introduced and are not derived from or otherwise connected with any illegal activity;
- 5.4.2 no Managed Entity will be engaged or involved directly or indirectly with any unlawful activity or used for any unlawful purposes;
- 5.4.3 no Managed Entity will undertake any activities which will require a licence, consent or approval in any jurisdiction without first obtaining such licence, consent or approval or undertake any activities which will breach any conditions contained in any such licence, consent or approval;
- 5.4.4 the Client shall procure that every Managed Entity complies with all applicable laws and regulations, including all relevant policy statements, guidance notes and codes of practice published by the Commission or any other relevant regulatory authority and all filing and disclosure requirements (except to the extent that these are the responsibility of the Service Provider pursuant to the Agreement), in all relevant jurisdictions;
- 5.4.5 the Client has disclosed all material details about every Managed Entity which are relevant to the provision of the Services (including full details of all persons with a legal or beneficial interest in or control over every Managed Entity and full details of the matters listed in Clause 5.4.7);
- 5.4.6 the Client shall provide such information as the Service Provider may,

in its discretion, require in order to comply with all applicable laws and regulations (including any tax or other reporting obligations and 'know your customer' or other anti-money laundering, regulatory or disclosure requirements) or any request of the Commission or other relevant regulatory authority and to provide the Services;

5.4.7 immediately upon becoming aware of the following matters, the Client shall notify the Service Provider of:

- (a) any change in the legal or beneficial ownership or control of the Client or any Managed Entity;
- (b) any material change in the activities of the Client or any Managed Entity;
- (c) any event which could be reasonably foreseen to have a material effect on any Managed Entity, its assets or activities (including any act evidencing the insolvency of the Client or commencing its liquidation, winding up or dissolution) or upon the Service Provider's willingness to continue to provide the Services;
- (d) the Client and/or any Managed Entity ceasing to hold any regulatory approval, consent or licence, or becoming subject to regulatory sanction;
- (e) any actual or threatened proceedings or investigation of any kind in any jurisdiction which involve the Client or any Managed Entity and any progress thereof,

and it shall promptly provide such information as the Service Provider may, in its discretion, require in respect thereof;

5.4.8 where the Services include the provision of Appointees, the Client shall not, without the prior consent of the Service Provider, take any action, enter into any agreement or contract, give any undertaking, make any representation or otherwise incur any liability on behalf of any Managed Entity;

5.4.9 the Client shall notify the Service Provider in writing before alienating, assigning, selling, pledging or otherwise disposing of or encumbering any part of the Client's interest in any Managed Entity;

5.4.10 the Client shall not (without the Service Provider's written consent):

- (a) use the logo, name, address, electronic mail, web-site address, telephone/telex/facsimile numbers of any Moore Stephens entity or allow the same to appear on any notepaper or documentation belonging to or connected with any Managed Entity or in any advertising material; or
- (b) directly or indirectly solicit the employment of any Appointee or Employee of any Moore Stephens entity who is involved in providing the Services while the Services are being provided or for a period of twelve months following the termination of the Services; and

5.4.11 the Client shall keep the Service Provider informed as to the business affairs, financial position and prospects of every Managed Entity, and it shall advise the Service Provider forthwith of any actual or proposed modification, alteration or addition to the constitutional documents of any Managed Entity.

6. INSTRUCTIONS

- 6.1 The Client acknowledges that any directors, trustees or other office-holders provided by the Service Provider will exercise independent discretion on any relevant matter in accordance with applicable law, regulations and the constitutional documents of any relevant Managed Entity.
- 6.2 Subject to Clause 6.1, the Service Provider undertakes to use reasonable endeavours to deal with and act upon instructions (in accordance with Clause 6.3) in a reasonably timely manner although it is agreed that the Service Provider may refuse at any time to comply with any instructions which in the opinion of the Service Provider:
 - 6.2.1 may contravene the provisions of the Service Provider's or any relevant Managed Entity's constitutional documents, any applicable law, regulation, permit, licence, policy statement, guidance note or codes of practice, or be inconsistent with any duty owed by the Service Provider, any Managed Entity, the Appointees or the Employees; or
 - 6.2.2 could result in damage to the reputation of any Moore Stephens entity; or
 - 6.2.3 could give rise to a material conflict of interest.
- 6.3 Subject to Clause 6.2, the Service Provider may act upon instructions (whether by letter, fax, email, telephone or otherwise) given by any person that it

reasonably believes to be authorised to give such instructions on behalf of the Client. The Service Provider is not obliged to verify the identity of any person purporting to be so authorised.

- 6.4 Where the Service Provider does not believe that the person giving instructions is duly authorised or where the Service Provider is given instructions that it believes are unclear or contradictory, it may refuse to act upon such instructions until it receives evidence to its satisfaction as to the instructions or the person giving instructions.
- 6.5 None of the Service Provider, any other Moore Stephens entity, the Appointees or the Employees shall incur any liability:
- 6.5.1 for its failure to comply with any instructions which are not in writing or which are unclear, contradictory, incomplete, ambiguous or contain errors; or
 - 6.5.2 for the non-receipt of any instruction, written or otherwise; or
 - 6.5.3 for the lack of authority of any person purportedly giving instructions on behalf of the Client; or
 - 6.5.4 for its failure to comply with any instructions pursuant to Clause 6.2 or for its refusal to act pursuant to Clause 6.4.
- 6.6 To ensure that the Service Provider is able to carry out the Client's instructions accurately, to help the Service Provider to improve its service and in the interests of security, the Service Provider may monitor and/or record the Client's telephone calls with the Service Provider and the Client consents to such monitoring and/or recording. The Service Provider's recordings shall be and remain the Service Provider's sole property and the Service Provider 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.
- 7. CONFLICTS OF INTEREST**
- 7.1 Without prejudice to Clause 6.2.3, if any Appointee, Employee or Moore Stephens entity becomes aware or is notified of a material conflict of interest, the Client shall be notified and, if possible, procedures will be put in place to ensure confidentiality and independence of advice.
- 7.2 Notwithstanding Clause 7.1, in any case where the Service Provider considers there to be a material conflict of interest it shall have complete discretion to

determine whether any Appointee, Employee or Moore Stephens entity may continue to provide the Services or cease to act, including by immediate termination of the Services. In the event that the Services are terminated no Appointee, Employee or Moore Stephens entity shall be liable for any expenses or losses arising from such termination.

- 7.3 Without prejudice to Clause 7.4 the Service Provider shall be entitled to:
- 7.3.1 employ any appropriate Moore Stephens entity to perform any service for or on behalf of a Managed Entity on the same terms and conditions as are usual between such Moore Stephens entity and its customers; and
 - 7.3.2 invest money held by a Managed Entity in any company or unit or investment fund or scheme operated or managed by any Moore Stephens entity in the same circumstances and to the same extent as if that company or unit or investment fund or scheme were not so operated or managed by such Moore Stephens entity.
- 7.4 Any Appointee, Employee or Moore Stephens entity (or any of their agents or delegates) shall be entitled to retain any fees, commissions or other similar benefit obtained directly or indirectly in relation to:
- 7.4.1 any purchase or sale of investments; or
 - 7.4.2 the Service Provider, any other Moore Stephens entity, the Appointees or the Employees acting in any capacity for or in connection with any trust, company, partnership, investment fund, scheme or other entity the shares, interests, notes or units of which are comprised in the assets of a Managed Entity; or
 - 7.4.3 any banking, investment advisory or other arrangement entered into on behalf of any Managed Entity; or
 - 7.4.4 the provision of any other services to or in connection with any Managed Entity.
- 7.5 Unless otherwise agreed with the Client in writing, an Appointee, Employee or Moore Stephens entity (or any of their agents or delegates) may, in its absolute discretion and without prior reference to or consent from the Client or Managed Entity, act in any transaction for or provide any services to any other person, client, trust, company, firm or other entity with which the Client is associated or has any dealings.

7.6 No Appointee, Employee, Moore Stephens entity, or employee of a Moore Stephens entity (or any of their agents or delegates) shall be obliged to disclose to the Client or take into consideration any fact, matter, finding or other information:

7.6.1 if it would, or might, be in breach of any duty or confidence to any other person; or

7.6.2 which comes to the attention of an Appointee, an Employee, or Moore Stephens entity (or any of their agents or delegates), but which does not come to the actual attention of any individual dealing with (or for) the Client.

8. **CONFIDENTIALITY**

8.1 The Service Provider will treat all personal data and confidential information (whether recorded in a document or otherwise) that the Client provides to it as private and confidential and will only disclose such confidential information in the following circumstances:

8.1.1 where the information is already in the public domain;

8.1.2 the Service Provider, another Moore Stephens entity, an Appointee or an Employee is authorised or required to disclose by any applicable law or regulation or by any court of competent jurisdiction or any competent judicial, governmental, supervisory or regulatory authority or professional or other body (including credit reference and fraud prevention agencies);

8.1.3 where there is a duty to the public to disclose or it is in the public interest to do so to investigate or prevent fraud or other illegal activity;

8.1.4 where the disclosure is necessary to protect the interests of any Managed Entity or a Moore Stephens entity;

8.1.5 in order to defend a claim brought against any Managed Entity or any Appointee, Employee or Moore Stephens entity;

8.1.6 where the Service Provider, another Moore Stephens entity, an Appointee or an Employee has entered into an agreement with a third party service provider or appointed an agent in connection with the Services and it is necessary to disclose the confidential information to enable the third party service provider or agent to perform its obligations. In this case steps will be taken to ensure that the third party

service provider or agent is subject to appropriate confidentiality provisions;

- 8.1.7 where the Service Provider is required in the course of its business to disclose the information to third parties which are providing services to it (including insurers, auditors, and providers of telecommunications and computing facilities);
 - 8.1.8 if an individual or entity within the Client's or Managed Entity's organisation or group, or an adviser instructed by or on behalf of the Client or Managed Entity, has requested such information; or
 - 8.1.9 at the Client's or Managed Entity's request or with the Client's or Managed Entity's consent.
- 8.2 No Service Provider, other Moore Stephens entity, Appointee or Employee shall be under a duty to disclose to the Client or any Managed Entity any information which it has acquired or is deemed to have acquired about any matter affecting the Client or any Managed Entity in the course of acting for or providing services to another client or entity or in any way other than in connection with the provision of the Services.
- 8.3 The Service Provider may disclose information held about the Client and any Managed Entity to other companies which are, at the time of disclosure, group companies of (or otherwise related to) Moore Stephens.
- 8.4 For the avoidance of doubt, the provisions of this Clause shall remain in full force and effect notwithstanding the termination of the Services or any other provision of these Terms and Conditions ceasing to apply.

9. **INTELLECTUAL PROPERTY**

All correspondence files and records (other than statutory corporate records) and all information and data held by the Service Provider on any computer system is the sole property of the Service Provider for its sole use and neither the Client nor any Managed Entity shall have any right of access thereto or control thereover.

10. **DATA PROTECTION**

- 10.1 The Client agrees that the Service Provider may hold and process electronically, manually or otherwise any information (including personal data and sensitive personal data) ("**Information**") about the Client and any person engaged or employed by the Client (the Client being responsible for obtaining

such consents as shall be necessary from such persons):

- 10.1.1 for identity verification purposes;
 - 10.1.2 to perform appropriate anti-money laundering and financing of terrorism procedures and internal conflict of interest checks;
 - 10.1.3 to provide the Services (and for any purpose ancillary thereto);
 - 10.1.4 to enable Moore Stephens entities to carry out statistical, operational and other procedures and analysis (including credit control, debt management and financial risk assessment); and
 - 10.1.5 for marketing and business development purposes.
- 10.2 The Client agrees that the Service Provider may transfer Information held about the Client and/or any Managed Entity to other Moore Stephens entities, their approved agents and/or delegates for the purposes of such processing. The Information may also be disclosed on a confidential basis to a prospective assignee or transferee of the Service Provider in accordance with Clause 18.
- 10.3 Information may be transmitted to any country, including countries outside the European Economic Area, which may not offer the same level of protection of personal data as provided by the Data Protection (Jersey) Law 2005 (the "**DP Law**"). The Service Provider shall ensure that the recipient of such Information observes the same duties of confidentiality in relation to such Information as the Service Provider owes to the Client under these Terms and Conditions. Details of relevant organisations and countries to which Information may be transferred will be provided on request.
- 10.4 The DP Law provides individuals with the right to receive a copy of certain personal data (as defined by the DP Law) held by a data controller (as defined by the DP Law) in Jersey upon written request and payment of the appropriate fee. The Client has the right to require a Service Provider which is a data controller to correct any inaccuracies in the personal data it holds. Details of the data controllers within Moore Stephens are available on request.
- 10.5 The Service Provider cannot ensure or warrant the security of any Information.

11. **SAFE CUSTODY AND DOCUMENT RETENTION**

- 11.1 In the event that the Service Provider has agreed to provide safe custody services or where it otherwise holds original documentation relating or belonging to the Client and/or any Managed Entity as part of its provision of the

Services, the Service Provider will keep all documents which it considers appropriate, or where it is requested by any Managed Entity to do so, in its safe custody facilities. These facilities are carefully regulated and controlled and designed to limit the possibility of unauthorised access or damage by fire. In the absence of gross negligence, the Service Provider accepts no responsibility for any documents held in safe custody that are damaged or lost as a result of theft, fire or water damage.

11.2 The Service Provider may refuse to release originals or copies of any documents belonging to the Client or Managed Entity until all fees, disbursements or other liabilities due and payable are discharged.

11.3 Where the Service Provider retains originals or copies of any documents following the termination of the Services, the Service Provider reserves the right (but shall not be under an obligation):

11.3.1 to retain such documents for a period of ten years from the date of the termination of the Services and thereafter to destroy all such documents (whether originals, photocopies or electronic copies) at such times as the Service Provider in its sole discretion considers appropriate;

11.3.2 (without prejudice to Clause 11.3.1) to make electronic copies of such documents as the Service Provider has retained and to destroy hard copies of such documents.

11.4 After the tenth anniversary of the termination of the Services the Service Provider may destroy all documents (of whatever nature and in whatever form) owned by the Client or Managed Entity or relating to the provision of the Services and the Client and Managed Entity accept that thereafter they shall have no right to call upon the Service Provider to provide any documents.

11.5 Where, during the provision of the Services, the Service Provider, other Moore Stephens entity, Appointee or Employee has created any internal memoranda, emails, attendance notes or other form of document not intended by the author to be supplied to or seen by the Client and/or any Managed Entity then such documents shall not belong to the Client or any Managed Entity and no Service Provider, other Moore Stephens entity, Appointee or Employee shall be obliged to disclose the same to the Client or any Managed Entity.

12. **CLIENT AND MANAGED ENTITY MONEY**

12.1 Money belonging to the Client or any Managed Entity may be held in individual designated accounts or in a general account for short periods during which

such money may be pooled or comingled with other money which does not belong to any Moore Stephens entity. Subject thereto such money will be maintained separately from other funds held by the Service Provider. Neither the Service Provider nor any other Moore Stephens entity, Appointee or Employee shall be responsible for seeking or undertaking any due diligence on any entity which holds such money.

- 12.2 To the extent that tax has to be deducted from interest earned on funds held on behalf of any Managed Entity or paid out to any Managed Entity, the Service Provider will account to the tax authorities for tax deducted. Unless otherwise expressly stated in an Agreement or Engagement Letter, each Managed Entity is responsible for seeking its own tax advice in this regard.
- 12.3 On receipt of any monies the Service Provider must be satisfied as to the source of those funds. If it has any doubts as to the source of funds the Service Provider may refuse to receive or to return monies and/or be bound by law to notify the relevant authorities.
- 12.4 The Client or Managed Entity will not request the Service Provider to take or refrain from taking any action whatsoever in relation to funds or assets or documents of any nature which could in the sole opinion of the Service Provider result in a contravention of any law, regulation or policy in force from time to time in Jersey or in any other applicable jurisdiction. The Service Provider reserves the right not to comply with any request which in its sole opinion could potentially result in any such contravention or which in its opinion could result in any damage to its reputation or good standing.
- 12.5 Unless otherwise expressly stated in these Terms and Conditions or in an Agreement or Engagement Letter neither the Service Provider nor any other entity within Moore Stephens shall be responsible for complying with any reporting requirements outside of the Island of Jersey in relation to interest earned on monies held in any account of the Client or any Managed Entity.

13. **DELEGATION**

- 13.1 Without prejudice to Clause 7.3, in performing its duties hereunder the Service Provider may appoint at the expense of any relevant Managed Entity agents or other delegates to perform in whole or in part any of those duties. Such appointments shall, where relevant, be subject to the Policy Statement and Guidance Notes on: (1) Outsourcing; and (2) Delegation by Jersey Certified Funds and Fund Services Businesses published by the Commission.
- 13.2 To the extent permitted by applicable law, the Service Provider shall not be

liable for any loss arising from a delegation made pursuant to Clause 13.1, including the negligence, fraud or wilful default of any agent or delegate, provided such delegation or continuation of the delegation was made in good faith and without neglect.

14. **LIABILITY OF SERVICE PROVIDER**

14.1 Each Service Provider is a separate party to these Terms and Conditions and nothing herein shall be taken to indicate that all or some of the Service Provider, the other Moore Stephens entities, the Appointees and/or Employees together constitute a partnership.

14.2 Except in the case of fraudulent acts, the total collective liability of the Service Provider, the other Moore Stephens entities, the Appointees and the Employees (and their agents and delegates) in connection with the Services:

14.2.1 shall not exceed, in aggregate, £1,000,000; and

14.2.2 shall be limited to the proportion of loss, liability or damage suffered after taking into account any contributory act or omission (or any contributory negligence) on the part of the Client or any Managed Entity, any amount the Client or such Managed Entity has recovered from a third party and any amount the Client or such Managed Entity would have been entitled to so recover but for an exclusion of liability agreed between such third party and the Client or such Managed Entity.

14.3 None of the Service Provider, any other Moore Stephens entity, the Appointees or the Employees shall be held liable for:

14.3.1 any failure or delay in the performance of its obligations in connection with the Services arising out of or in connection with circumstances beyond its reasonable control (including acts of God, civil or military disturbances, outbreaks of war, acts of terrorism, natural disaster, acts of government or any other authority, accidents, labour disputes or any power, telecommunications or computer failure); or

14.3.2 any indirect or consequential economic loss or damage whatsoever; or

14.3.3 any form of insolvency (such as désastre, liquidation, administration or any similar process) suffered by an entity which is holding money belonging to the Client or any Managed Entity (and for the avoidance of doubt, such insolvency shall not affect the Service Provider's rights under these Terms and Conditions, including its rights to recover remuneration and expenses from the Client and/or any Managed

Entity).

- 14.4 The Client undertakes to indemnify the Service Provider for itself and for the other Moore Stephens entities, the Appointees and the Employees and their heirs, successors, assigns and personal representatives (together the "**Indemnified Persons**") as trustee of this covenant and undertaking for the benefit of the Indemnified Persons, to the greatest extent permitted by law against all actions, suits, proceedings, claims, demands, costs, expenses and liabilities whatsoever which may arise from the provision of or the failure to provide the Services by the Service Provider or the other Indemnified Persons (as the case may be), other than any such liabilities arising from the fraud, wilful default or gross negligence of the Service Provider or Indemnified Person who is sought to be made liable.
- 14.5 The Client's undertaking and indemnity in Clause 14.4 shall extend to the Indemnified Persons' agents and delegates *mutatis mutandis* as if the Indemnified Persons' agents and delegates were listed as persons to whom the undertaking and indemnity is given in Clause 14.4 and the Service Provider shall hold the benefit of the undertaking and indemnity on trust for such agents and delegates and their heirs, successors, assigns and personal representatives.
- 14.6 Any claims sought to be brought or made by the Client or Managed Entity in connection with the Services shall, where provision of the Services is continuing, be brought or made within three years of the date on which the work giving rise to the claim was performed, or if the Services have terminated, be brought or made within three years of the date of such termination. In either case the relevant date shall be the earliest date on which the cause of action in contract or tort (including gross negligence) or under statute or otherwise shall be deemed to have accrued in respect of the relevant claims and for these purposes a claim shall be deemed to have been made when proceedings are commenced before a court of competent jurisdiction or other dispute resolution body.
- 14.7 The provisions of this Clause are without prejudice to any other limitation of liability or indemnity under an Agreement, Engagement Letter, or the general law or given in favour of the Service Provider or the Indemnified Persons and for the avoidance of doubt the provisions of this Clause shall remain in full force and effect notwithstanding the termination of the Services or any other provision of these Terms and Conditions ceasing to apply.

15. IDENTITY INFORMATION AND VERIFICATION

- 15.1 The Service Provider is required to operate anti-money laundering and other checks and procedures in respect of all aspects of the provision of the Services, including confirming source of funds and taxpayer identification information relating to individuals and entities. The time at which any such information and documentation is required and the form in which it shall be delivered to the Service Provider shall be determined by the Service Provider in its absolute discretion. If the Service Provider is not provided with such information and documentation as is reasonably required to enable the Service Provider to meet such ongoing obligations, it shall be entitled to suspend or terminate the provision of the Services with immediate effect and without liability or responsibility for any direct or indirect loss caused.
- 15.2 By providing such information and documentation, every relevant Managed Entity and the Client will be taken to have consented to the onward disclosure of such information to such third parties as shall in the opinion of the Service Provider be required in connection with the Services or necessary for the proper performance of the obligations of the Service Provider under any applicable law or regulation.
- 15.3 Information and documentation provided to the Service Provider may be subject to disclosure and production pursuant to orders of any court of competent jurisdiction or any competent judicial, governmental or regulatory body.

16. SUPPLEMENTARY DOCUMENTS

- 16.1 Where the Service Provider and a Managed Entity enter into an Agreement relating to the Services which does not expressly replace the Terms and Conditions in their entirety:
- 16.1.1 in the event of any conflict between the terms of the Agreement and the Terms and Conditions, the terms of the Agreement shall prevail; and
- 16.1.2 the Client shall ensure that any Managed Entity is kept in funds sufficient to allow it to meet in full all fees, remuneration, disbursements and expenses payable by that Managed Entity under the Agreement.
- 16.2 Where the Service Provider and the Client enter into an Agreement which expressly replaces the Terms and Conditions in their entirety, the Terms and Conditions shall cease to apply save as expressly stated otherwise in these Terms and Conditions and also without prejudice to any accrued right or obligation of the parties.

17. TERMINATION OF SERVICES

17.1 The Service Provider may terminate the provision of the Services to a Managed Entity at any time in any of the following circumstances:

17.1.1 upon giving one month's written notice to any Managed Entity and, where appropriate, the Client;

17.1.2 immediately upon written notice given to any Managed Entity and, where appropriate, the Client if in the opinion of the Service Provider:

- (a) the Client and/or any Managed Entity is or is likely to become insolvent or liable to be declared en désastre or subject to a creditors' (insolvent) winding-up or any equivalent or similar procedure in any jurisdiction; or
- (b) the Client and/or any Managed Entity is in material breach of these Terms and Conditions or any Engagement Letter or Agreement; or
- (c) there has been any change in ownership of any Managed Entity such that there shall be a new Client in relation to such Managed Entity; or
- (d) the Client and/or any Managed Entity (or any of its officers or employees not provided by the Service Provider) has been charged with any criminal offence involving dishonesty or is or has been the subject of any criminal, judicial or regulatory investigation in any jurisdiction; or
- (e) (in accordance with Clause 15) there has been a failure on the part of any Managed Entity and/or the Client to supply such anti-money laundering, crime prevention, tax compliance or client due diligence material ("**CDD**") in relation to any Client or any Managed Entity as shall be required by the Service Provider, any other Moore Stephens entity or any applicable law or regulation or if any such information supplied in relation to CDD is deemed by the Service Provider to be deliberately false or misleading; or
- (f) any of the activities of any Managed Entity are no longer consistent with the activities contemplated in an Agreement or Engagement Letter; or
- (g) any fees, taxes and disbursements invoiced by the Service

Provider in relation to any Managed Entity have remained outstanding and unpaid in whole or in part for more than thirty days after the invoice date or the Service Provider believes the Client or Managed Entity either cannot or is unwilling to pay any sums due to the Service Provider.

- 17.2 The Client and any Managed Entity (where appropriate) may terminate the appointment of the Service Provider in respect of the Services on giving not less than ninety days' written notice to the Service Provider.
- 17.3 Upon termination of the Services for any reason, any Managed Entity and the Client shall immediately provide details of the new service provider which shall be required in order to maintain such Managed Entity in good standing under the laws of its jurisdiction and shall provide an address to which the Service Provider may transfer all books and records of such Managed Entity. In the event that the relevant information in relation to any new service provider is not provided to the Service Provider by the date on which the notice to terminate the Services takes effect, the Service Provider reserves the right (subject, where relevant, to the consent of the Commission being obtained) to withdraw Services without appointment of any replacement service provider and to arrange for the resignation of any directors, trustees or other officers of any Managed Entity without the appointment of successors (unless the laws and regulations prevent any such unilateral withdrawal). The Service Provider further reserves the right to transfer any shares or interests in any Managed Entity held by nominees into the name of the Client or other beneficial owner nominated by the Client in respect of such interest.
- 17.4 Upon termination of the provision of Services for whatever reason the Service Provider shall be entitled to:
- 17.4.1 charge, in accordance with the usual rates for work done by the Service Provider and its Appointees and/or Employees, for all time spent and disbursements incurred (whether before or after the termination takes effect) in connection with the transfer of administration of any Managed Entity;
- 17.4.2 make such retentions and receive such indemnities as it may require in respect of any actual or contingent liability and take such action as it deems necessary to limit such liability;
- 17.4.3 retain any documents or assets (including assets held on behalf of the Client or Managed Entity or to the order of the Client or Managed Entity or on behalf of or to the order of any company or other body in common

ownership with the Client or Managed Entity or otherwise connected or affiliated to the Client or Managed Entity in any manner) until such time as all fees, expenses, disbursements or liabilities due and payable are discharged;

17.4.4 retain any fees paid in advance relating to a period after the termination takes effect.

18. **ASSIGNMENT**

18.1 The Service Provider may assign or transfer the whole or any part of its rights and benefits under an Agreement or an Engagement Letter or these Terms and Conditions. For the purpose of any such assignment or transfer, the Service Provider may disclose information about the Client and any Managed Entity to any prospective assignee or transferee, provided that the Service Provider shall use its reasonable endeavours to procure that such prospective assignee or transferee is placed under an obligation of non-disclosure equivalent to that in Clause 8 (*Confidentiality*).

18.2 The Client shall not assign or transfer all or any part of its rights, benefits and/or obligations under an Agreement, an Engagement Letter, or these Terms and Conditions.

19. **INDEPENDENT CONTRACTOR**

The Service Provider shall for the purposes of (as the case may be) these Terms and Conditions, the Engagement Letter and/or the Agreement be deemed to be an independent contractor and, unless otherwise expressly authorised, shall have no authority to act on behalf of, or to represent, the Client in any way or otherwise be deemed to be an agent of the Client or to have the power to enter into any transaction on behalf of the Client or to bind the Client.

20. **SEVERABILITY**

If at any time a provision of these Terms and Conditions becomes invalid, illegal or unenforceable under the laws of any jurisdiction which affects the performance or enforceability of these Terms and Conditions, that provision shall, with respect to that jurisdiction only, be ineffective to the extent of such invalidity, illegality or unenforceability but the remaining provisions of these Terms and Conditions shall not be affected or impaired in any way.

21. **COMMUNICATION AND NOTICES**

21.1 Unless the Client or any Managed Entity notifies the Service Provider to the

contrary in writing, the Service Provider, all other Moore Stephens entities, the Appointees and Employees will assume that the Client and/or Managed Entity (as the case may be) consents to communication in person and by telephone, post, facsimile and unencrypted email.

- 21.2 The Service Provider, all other Moore Stephens entities, the Appointees and Employees will not be liable for any delay, misdirection, interception, corruption, loss or failure, or for any unauthorised redirection, copying or reading, of any communication sent by mail, facsimile, or email, or for the effect on any computer system of any email or email attachment or virus transmitted by or on behalf of the Service Provider, any other Moore Stephens entity, the Appointees or the Employees.
- 21.3 The Service Provider and other Moore Stephens entities may monitor all communications sent to or from them to check for compliance with their internal policies and to protect their businesses.
- 21.4 Any notice required to be given under these Terms and Conditions shall be in writing addressed to the party concerned at such address or on such facsimile number or at such e-mail address as such party shall from time to time notify to the other or others for the purpose, failing which at the registered office or the last known usual address of such party.
- 21.5 For this purpose, any notice:
- 21.5.1 delivered personally shall be deemed to have been given at the time of such delivery;
 - 21.5.2 sent by ordinary post shall be deemed to have been given 72 hours after posting;
 - 21.5.3 sent by facsimile or e-mail shall be deemed to have been given at the time of despatch provided that notices received by the Service Provider other than during normal business hours and on normal business days shall be deemed to have been given immediately upon the Service Provider reopening for business; or
 - 21.5.4 sent by commercial courier shall be deemed to have been given on the date and at the time of signature of the courier's delivery receipt.
- 21.6 The provisions of this Clause shall not apply to the service of any document which relates to legal proceedings before a court or tribunal.

22. COMPLAINTS

- 22.1 In case the Client is not satisfied with the Services provided by the Service Provider, the Service Provider has established a complaints procedure. In the first instance, the Client should write to the Service Provider's managing director (the Service Provider will provide its managing director's name and address upon request) detailing its complaint which will then be thoroughly investigated.
- 22.2 The Service Provider and the Client agree to attempt to resolve any complaints by discussion, negotiation and mediation before commencing legal proceedings.
- 22.3 If after taking this action the Client is still dissatisfied, a further complaint may be made to the Commission, PO Box 267, St Helier, Jersey (www.jerseyfsc.org).