



Cash Management Terms and Conditions

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Cash Management Terms and Conditions

1. Definitions and Interpretation

1.1. In these CM Terms and Conditions:

"Account Agreement" has the meaning given in the Agreement;

"Accounts" has the meaning given in the Agreement;

"Affiliate" means any direct or indirect subsidiary or parent of the Company and any direct or indirect subsidiary of any such parent from time to time, irrespective of the country of organisation, formation, or current registration of any such subsidiary or parent, and in respect of each, any of their respective partners, officers, directors, employees, consultants and agents;

"Agreement" means the cash management agreement entered into between the Company and the Client and includes any variation of it and all documents entered into as supplemental to it;

"Assets" has the meaning given in the Agreement;

"Authorised Person" means any officer, employee or agent of the Client duly authorised by the Client in writing from time to time in his capacity as such;

"Bank Account Agreement" has the meaning given in the Agreement;

"Business Day" means any day other than a Saturday, Sunday and public holidays, on which on which banks are open for business in the Cayman Islands;

"Cayman Islands Anti-Money Laundering Rules" includes the Proceeds of Crime Law (2014 Revision) (as amended from time to time) and any other law, order, regulation or guidance notes made thereunder or in relation thereto or any policies and guidelines adopted by the Company, in each case relating to the prevention and detection of money laundering and the financing of terrorism;;

"Client" means the person specified as the Client in the Agreement and includes all persons and parties deriving title from or under such person;

"Company" means FundBank Ltd., a company incorporated in the Cayman Islands and having its registered office at P.O. Box 2633, The White House, 20 Genesis Close, George Town, Grand Cayman KY1-1102, Cayman Islands;

"CM Agreement" means (i) the Agreement and (ii) these CM Terms and Conditions and includes any variation of them and all documents entered into as supplemental to them;

"CM Service" has the meaning given in clause 2.1;

"Correspondent Bank" means the bank or financial institution offering, maintaining or providing the Product Placement, and includes any intermediary connected to or used in connection with a transaction with such bank or financial institution pursuant to the Agreement or in respect of a Product Placement;

"Fee Schedule" means the schedule setting out the Fees (defined below) payable by the Client to the Company as appended in Schedule 1 to this Agreement;

"Fees" means the fees charged by Company for the provision of its services under the CM Agreement, which shall:

- (a) form part of the Price;
- (b) not be tied to the performance of the CM Service; and
- (c) be subject to change, at the sole discretion of the Company, from time to time;

"Force Majeure Event" means those events beyond the control of a Party and includes acts of God, hurricanes, earthquakes, fires, floods, wars, civil or military disturbances, sabotage, epidemics, riots, interruptions or loss or malfunctions of utilities, computer (hardware or software) or communications service, accidents, labour disputes, acts of civil or military authority or governmental actions;

"Indemnified Person" has the meaning given in clause 15.1;

"Losses" means any direct or indirect or consequential loss, charge expense, payment, interest, demand, claim, actions, proceeding, suit, penalty, damages, legal fees, liability, obligation, detriment, adverse judgement, order or other sanction of any kind;

"Notice Address" has the meaning given in the Agreement;

"Online Services" means any and all online, internet based services provided by Company and utilised by the Client;

"Online Terms" means the terms and conditions governing the Client's use of the Online Services as published and amended by the Company from time to time;

"Party" has the meaning given in the Agreement;

"Price" means, and collectively comprises:

- (a) the price paid for the CM Service which shall be (i) set out in the Fee Schedule, and (ii) agreed with the Client from time to time; and
- (b) the Fees;

"Product Placement" has the meaning given in the Agreement; "Proper Instructions" has the meaning given in clause 12.1; "Schedule" has the meaning given in the Agreement;

"Proper Instructions" has the meaning given in clause 12.1;

"Schedule" has the meaning given in the Agreement;

"Systems" means any and all of Company's and/ or any Affiliate's electronic systems including but not limited to the systems utilised for the purposes of providing the Online Services and communication systems;

"Terms and Conditions" means the Company's standard bank account terms and conditions, as amended from time to time; and

"Transactions" has the meaning given in clause 2.2(a).

- 1.2. Words importing the singular shall include the plural and the masculine gender shall include the feminine and the neuter and vice versa in each case, and references to a person shall include an individual, firm, company, corporation, unincorporated body of persons and any government entity and shall include any successors in title, permitted assignees and permitted transferees.
- 1.3. Unless otherwise stated, references in these CM Terms and Conditions to "clauses" are to clauses of these CM Terms and Conditions.
- 1.4. References in these CM Terms and Conditions to these CM Terms and Conditions and to any other document or agreement are to be construed as references to such document or agreement as amended, supplemented or replaced from time to time.
- 1.5. References in these CM Terms and Conditions to any enactment or a provision of any enactment shall include that enactment or provision as amended, modified, re-enacted or replaced from time to time.

- 1.6. The headings in these CM Terms and Conditions are inserted for convenience only and shall not affect the interpretation of these CM Terms and Conditions.
 - 1.7. References in the Agreement to actual fraud or wilful default mean a finding to such effect by a competent court in relation to the conduct of the relevant Party.
 - 1.8. The Client acknowledges, accepts and agrees that the defined terms are highly technical and confirms that the Client has carefully read, carefully reviewed, paid particular attention to and unequivocally understood each defined term in these CM Terms and Conditions.
 - 1.9. Without prejudice to the foregoing, the Client shall be deemed to have accepted and agreed to the provisions of these CM Terms and Conditions, the Agreement, the Account Agreement, the Terms and Conditions and the Online Terms respectively upon the use of any of any of the Company's services.
 - 1.10. If there is an inconsistency between any of the provisions of these CM Terms and Conditions, the Agreement, the Account Agreement, the Terms and Conditions and the Online Terms respectively:
 - (a) the provisions of the Account Agreement and the Terms and Conditions shall prevail in preference to the Agreement and these CM Terms and Conditions;
 - (b) the provisions of the Agreement, these CM Terms and Conditions, the Account Agreement and the Terms and Conditions shall prevail in preference to the Online Terms;
 - (c) the provisions of the Account Agreement shall prevail over the provisions of Terms and Conditions; and
 - (d) the provisions of these CM Terms and Conditions will prevail over the provisions of the Agreement.
- 2. Introduction**
- 2.1. These CM Terms and Conditions form part of the Client's agreement with the Company. The Client should carefully read and consider these CM Terms and Conditions. Execution by the Client of the Agreement confirms their acceptance of and agreement to these CM Terms and Conditions. It is recommended that the Client retains a copy of these CM Terms and Conditions for future reference. These CM Terms and Conditions relate solely to the Product Placement services offered in accordance with the terms of the CM Agreement (the "CM Service"). The Company may also provide other services and products, if so agreed between the Parties, which are not governed by these CM Terms and Conditions and which may require supplemental or separate documentation to be signed by the Client.
 - 2.2. The Client should also note that:
 - (a) the Company is regulated by the Cayman Islands Monetary Authority under the Banks and Trust Companies Law (2013 Revision) (as amended from time to time). However, the CM Service does not include the provision of any investment advice. Accordingly, any comment made by any officer or employee of the Company should not be treated as being advice or a recommendation given by the Company to be relied upon by the Client. The Company strongly recommends that the Client should seek appropriate independent professional investment, financial and/or legal advice relevant to the Client's particular circumstances before (i) entering into the Agreement, (ii) requesting the CM Service, (iii) requesting any other services from the Company, or (iv) instructing the Company to execute any transactions, placements and investments permitted, contemplated or executed under the Agreement, including Product Placements (together, the "Transactions") on the Client's behalf. The Client understands, acknowledges, accepts, agrees and confirms in all respects that the Client is entirely responsible for their investment decisions and for (i) recognising and considering any risks associated with such decisions which, for the avoidance of doubt, includes the express recognition that it is not relying and will not rely on the Company in this regard; and (ii) advising the Company of any matter which they wish the Company to take into account when executing Transactions on their behalf;
 - (b) when providing the CM Service, the Company may transfer the Assets between different licensed banks, intermediaries or financial institutions from time to time, as the Company thinks appropriate;
 - (c) in some or all respects the regulatory regime applying in the Cayman Islands and/or in the home jurisdiction of the intermediaries, financial institutions and financial instrument counterparties connected to a Product Placement, including any compensation or investor protection arrangements, may be different from those of the Client's own jurisdiction; and
 - (d) the Company reserves the right to delegate the performance of any duties arising hereunder to any Affiliate or Delegate.
- 3. Appointment**
- 3.1. The Client's appointment of the Company to provide the CM Service shall only be completed upon the Company's acceptance of the Client following its receipt of a duly executed and delivered Agreement from the Client and such other documentation and information as the Company may require.
 - 3.2. The Client understands, acknowledges, accepts and agrees that the Company will not be obliged to provide the CM Service until such time as all due diligence requirements have been completely satisfied to the full extent required by the Company. For the avoidance of doubt, neither the Company nor any Affiliate or Delegate shall be liable for any Losses suffered or incurred by the Client in connection with any delays in the provision of the CM Service. In particular the Client should note that:
 - (a) the Company may, at any time, require personal and/or financial information or documentation from the Client regarding the source of monies to be allocated to a Product Placement or the source of the Client's wealth, whether before agreeing to provide the CM Service or at any time after Product Placements have been made. In these circumstances, the Client agrees to provide all information or documentation as the Company may require or request to bring its enquiries to a satisfactory conclusion;
 - (b) information and documents to verify the identity and background of the Client and all signatories and other parties to any Product Placement or other Transaction will need to be provided to the Company before any Product Placement or other Transaction will be arranged and the Client agrees to provide all information or documentation as the Company may require or request; and
 - (c) failure to provide information or documentation regarding the source of monies to be used for a Product Placement or other Transaction or the Client's source of wealth may impact on the Company's ability to provide the CM Service or to arrange a Transaction. The Client understands, acknowledges, accepts and agrees that failure to provide information and/or documentation in a form acceptable to the Company regarding (i) the source of monies to be used for a Product Placement or other Transaction, (ii) the Client's source of wealth, or (iii) the verification, identity and/or background of the Client, all signatories and other parties to any Product Placement or other Transaction, may result in the Company refusing or ceasing to provide the CM Service to the Client.
 - 3.3. The Client agrees to provide the Company with all information and documentation as it may request or reasonably require, including evidence for the verification of individual entities and satisfactory explanations of Transactions in order that the Company is able to

comply with the requirements from time to time of the Cayman Islands Anti-Money Laundering Rules. The time at which such information and documentation is required and the form in which it shall be delivered to the Company shall be determined by the Company in its sole and absolute discretion.

4. Authority

- 4.1. The Company is explicitly authorised to act as agent for the Client in relation to the investment and reinvestment of the Assets, subject to the Client's right to direct the investment of the Assets by means of Proper Instructions.
- 4.2. The Company, as the Client's agent may, upon receipt of and in accordance with Proper Instructions:
 - (a) place orders for Product Placement with a Correspondent Bank; and
 - (b) execute any documentation (including executing documentation for and on behalf of the Client) as the Company may in its sole opinion deem necessary to facilitate any such placement.
- 4.3. The Client acknowledges, understands, accepts, agrees and confirms that the Company's ability and the ability of its Affiliates and Delegates to effect Transactions may be restricted by:
 - (a) any applicable regulatory requirements in the United States of America and/or elsewhere; and/or
 - (b) the Company's or the Client's internal policies designed to comply with such requirements.
- 4.4. In no event shall the Company be obligated, under the CM Agreement or otherwise, to effect any Transaction, or place an order for any Transaction for or on behalf of the Client, which the Company, in its sole opinion and at its sole discretion, believes would violate any applicable law, rule, or regulation, or any regulations of any governmental authority, any regulatory body or any self-regulatory body to which the Company or any of its Affiliates or Delegates is subject to (in the sole opinion and at the sole discretion of the Company, an Affiliate or a Delegate, as the case may be) at the time of the proposed Transaction.

5. Other Documentation

- 5.1. The Client acknowledges understands, accepts, agrees and confirms that:
 - (a) it has received, carefully reviewed, carefully considered and understood the details of the CM Service and Fees, as described and outlined in the Fee Schedule;
 - (b) it should seek, and that it has been advised to seek independent financial, investment and legal advice regarding the Agreement, these CM Terms and Conditions, and
 - (c) the Agreement should, where appropriate, be read in conjunction with the Account Agreement, the Terms and Conditions and the Online Terms.

6. Client Reporting

- 6.1. The Company will provide the Client with access to the Online Services pursuant to which the Client can view the following in respect of the Assets and any Product Placements:
 - (a) the cash balance; and
 - (b) a summary of all cash received as, or paid from, the Assets (including Fees, costs/ expenses and the cash balances as of the closing date of the report).
- 6.2. The Client acknowledges, understands, accepts, agrees and confirms that the information made available to the Client using the Online Services is provided on an aggregate basis and the Company shall not be required to render to the Client, if applicable, any individualised reporting regarding the assets of any client of the Client.
- 6.3. The Client is responsible for verifying the correctness of all statements in respect of Client Accounts received from the Company and is required to notify the Company within 60 days of the preparation date of each

document, of any alleged omissions from, or additions wrongly made to, or inaccurate entries reflected therein. The Client acknowledges and agrees to provide the Company with all information that is necessary for the Company to investigate any alleged error, discrepancy or irregularity.

- 6.4. The Company shall not be responsible for the Client's reliance on any information presented via Online Services, or related information, that is subsequently updated or corrected or for the accuracy or timeliness if of information supplied by the Company.

7. Delegation

- 7.1. The Company shall be entitled to delegate its powers and duties under the CM Agreement, in whole or in part, to any person or persons, upon such terms and conditions, as the Company shall think fit and may employ agents to perform any administration, dealing and ancillary services required to enable it to provide the CM Service under the Agreement, provided that the Company shall, upon the appointment of any such delegate, be satisfied that such delegate is a fit and proper person and, in such circumstances, the Company shall not be liable for any act, omission or default by, nor the insolvency of, any such delegate (each such person or agent, a "Delegate").
- 7.2. By agreeing to these CM Terms and Conditions, the Client gives its consent to the disclosure of information required (in the sole and absolute opinion of the Company) by any Delegate to perform the functions delegated to such Delegate. For the avoidance of doubt, this disclosure will extend to information relating to the Client or any Transactions of the Client in accordance with clause 20 of these CM Terms and Conditions, notwithstanding that such information may be deemed confidential.

8. Price and Fees

- 8.1. The Client understands, acknowledges, accepts, agrees and confirms that, as compensation for the services (including the CM Service) provided by the Company under the Agreement, (i) the Company shall be entitled to charge the Client the Fee, and (ii) the Client will be obligated to pay such Fee to the Company. For the avoidance of doubt, Price shall include the Fee. The Fee is set-out in the Cash Management Fee Schedule.
- 8.2. The Client understands, acknowledges, accepts, agrees and confirms that the Client must pay the Price, where the Price is deemed by the Company, in its sole opinion and at its sole discretion, to be due and payable.
- 8.3. The Client understands, acknowledges, accepts, agrees and confirms that the Client is liable for all costs, fees and expenses incurred by the Company that arise as a result of the application of any charges paid by the Company on behalf of the Client to the Correspondent Bank, along with any transaction fee.
- 8.4. The Company shall be entitled to deduct from the Accounts any and all amounts payable under the CM Agreement, including the Fees and/or the Price and or cost/expenses on a monthly basis.
- 8.5. The Client further agrees that the Company may at any time, without prejudice to any other rights it may have, and without prior notice or demand for payment, combine, consolidate or merge (in cases of multiple Accounts for one Client), or apply or set-off all or any part of any money held in any Account towards payment of any amount owed by the Client to the Company. For the purposes of this clause 8.5 the Company may effect such charges or repayments at such time or such rates as it may think reasonable and may effect such transfers between such Accounts as it considers necessary.
- 8.6. The Company may, from time to time and at its sole discretion, revise the Fees on the proviso that the Company provides the Client with thirty (30) days' written notice of any such change.

9. Representations and Warranties

- 9.1. The Client hereby acknowledges, understands, represents and warrants to the Company, and agrees with and confirms to the Company, as follows:
 - (a) the Client is the sole owner of all the Assets and:
 - (i) there are no restrictions on the transfer, placing or distribution (as such transfers, placements, distributions or such other Transactions are contemplated under the CM Agreement) of any of the Assets or any other transaction (including any Transaction) in connection with any Assets; and

(ii) no option, lien, charge, security or encumbrance exists over any of the Assets, except as expressly disclosed to the Company in writing;

(b) the Client has full authority and power to engage the Company under the terms and conditions of the Agreement (which, for the avoidance of all doubt, encompasses these CM Terms and Conditions), and such engagement does not violate the Client's constituent documents, any other material agreement, order or judgment of any court or governmental authority, or any law applicable to the Client;

(c) in respect of any Transactions, (i) the Client has the full authority and power to enter into and provide Proper Instructions in connection with any Transactions, and (ii) all Transactions have been duly authorised;

(d) the person that has executed the Agreement for and on behalf of the Client (i) has full authority and power to execute the Agreement on the Client's behalf, and (ii) is and has been authorised to execute the Agreement on the Client's behalf;

(e) the Client shall promptly notify the Company in writing of any event that could reasonably be anticipated to affect any Authorised Person's authority under the Agreement; and

(f) the Client will promptly notify the Company in writing of any occurrence that results, or threatens to result, in any representations or warranties made by or given by the Client pursuant to the Agreement becoming inaccurate, false, misleading, incorrect or incomplete.

9.2. The representations and warranties contained in clause 9.1 will be deemed to be repeated by the Client on each day the Agreement is in force.

10. Continuing Obligations

10.1. The Client understands, acknowledges, accepts, agrees and confirms that:

(a) the duties of the Client and the duties of Company under the Cayman Islands Anti- Money Laundering Rules are continuous;

(b) the Company reserves the right at any time and at its sole discretion to require the Client to provide additional information in respect of any Transaction proposed or occurring in connection with the Agreement, so as to satisfy the Company (in the sole opinion of the Company) of full compliance with the requirements of the Cayman Islands Anti-Money Laundering Rules;

(c) where, in the sole opinion of the Company, sufficient information is not obtained by the Company or where there is a reasonable suspicion that such monies are not derived from legitimate sources, the Company will be entitled to take any action whatsoever that it deems appropriate, including immediate termination of the Agreement or immediate termination of all or any arrangements between the Parties; and

(d) where a Client does not execute any Transactions for a period of at least seven 7 years, or as stipulated within Cayman Islands Anti-Money Laundering Rules, the Company shall make reasonable attempts to communicate with the Client, and thereafter shall have the right to take steps to close the Account without further notice.

11. Client Acknowledgements

11.1. By entering into the Agreement, the Client acknowledges, understands, accepts, agrees and confirms that:

(a) the Company is not, in any respect, providing investment management or investment advisory services under the Agreement;

(b) the Company is acting in the capacity of an agent only and the Client assumes all risk and liability flowing from and connected to any Product Placement;

(c) notwithstanding any provision in these CM Terms and Conditions to the contrary, the value of investments made in any Product Placement

(i) may fluctuate materially, both positively and negatively, and (ii) is not guaranteed in any respect;

(d) the Company has not made and is not making any warranties, representations or guarantees, express or implied, regarding any Product Placement, any Correspondent Bank, any financial institution or any services provided under the Agreement, including without limitation a warranty, representation or guarantee as to any specific level of performance of any Product Placement;

(e) whilst the Company will exercise reasonable care in the selection of the Correspondent Banks, intermediaries, financial institutions and financial instrument counterparties engaged in connection with any CM Service or any Transaction, the Company does not give any undertaking or guarantee in relation to the creditworthiness of any such Correspondent Banks, intermediaries, financial institutions or financial instrument counterparties and the Company shall not be liable for any acts or omissions by, or the insolvency of, any such Correspondent Banks, intermediaries, financial institutions or financial instrument counterparties. Accordingly the credit risk or other relevant risk in respect of monies allocated to a Product Placement will be borne solely by the Client;

(f) when the Company executes a Transaction on behalf of the Client with a third party institution, there is always a degree of risk that the third party institution may fail to act upon the instruction given or in the manner expected;

(g) investments or Product Placements made for and on behalf of the Client by the Company are subject to various market, currency, economic, political and business risks as well as the risk that the Client's investment decision(s) will not always be profitable;

(h) past performance results achieved in respect of any Product Placement are not indicative of the future performance of the CM Service;

(i) each Product Placement is:

(i) not guaranteed by the Company, any Affiliate, any Delegate or any other Indemnified Person;

(ii) not insured by any government agency; and

(iii) subject to investment risk, including possible loss of Assets and principal amounts invested;

(j) nothing in the Agreement shall be deemed to limit or restrict the Company's right, or the right of any of its Affiliates, to engage in any other business or to devote time and attention to the management or other aspects of any business, whether of a similar or dissimilar nature, or to render agency services or services of any kind to any other corporation, firm, association or individual;

(k) the Company provides services to numerous other clients and accounts;

(l) the Company may provide services, give advice and take action with respect to any of its other clients or for its own account which may differ from the timing or nature of action taken by the Company with respect to the Assets or a Product Placement;

(m) nothing in the Agreement or these CM Terms and Conditions shall impose upon the Company any obligation to purchase, to sell or to recommend for purchase or sale, or to refrain from any purchase, any sale or any recommendation for the purchase or sale any security which the Company, any Affiliate or any Delegate may purchase or sell for its or on their own account(s) or for the account of any other client; and

(n) the Company, in performing its obligations under the Agreement, is acting solely for and on behalf of the Client and no contractual or service relationship shall be deemed to be established hereby between the Company and any other person.

11.2. The Client understands, acknowledges, accepts and agrees that if the Company suspects or has been notified that:

- (a) the Service is being used for illegal purposes;
- (b) there is a dispute over the beneficial ownership of part or all of the Assets;
- (c) any Assets are not owned by the Client;
- (d) any Assets may be connected to any individual or entity that is the subject of a regulatory or international sanction;
- (e) there is a dispute between the directors and/or officers of the Client; and/or
- (f) there is an insolvency, bankruptcy, winding up or dissolution of the Client,

then, until the matter is resolved to the Company's satisfaction, the Company may refuse to provide the CM Service. In such circumstances, the Company may take professional advice and neither the Company, any of its Affiliates or any of its Delegates shall incur any liability for any Losses suffered or incurred by the Client or any other person.

11.3. The Client understands, acknowledges, accepts and agrees that the Company reserves the right to refuse to provide or continue to provide the CM Service for the Client on behalf of or for the benefit of any third party or parties at the Company's sole and absolute discretion. The Company may do this without giving the Client any reason.

11.4. The Client hereby acknowledges and agrees that the Client has taken independent tax advice in connection with the Client's obligations and liability (if any) to account to the revenue authorities in the Client's country of domicile or residence in relation to any Transactions that are effected in connection with the CM Service.

12. Proper Instructions

12.1. The Company and, where relevant, its Affiliates and its Delegates, may rely upon, and are authorised by the Client to deal with and act upon, instructions, documents and information:

- (a) given or purportedly given by a relevant Authorised Person (or, Authorised Persons, as the case may be) or such persons as have been notified in writing from time to time by the Client to the Company as having authority to give instructions, documents and information on the Client's behalf in respect of the Agreement (and the Company, its Affiliates and its Delegates may rely upon such notification as being complete and accurate until the Client provides the Company with written notice to the contrary); and

- (b) given (i) through the Online Services, or (ii) by email in accordance with clause 23,

(collectively, the **"Proper Instructions"**).

12.2. Neither the Company nor any of its Affiliates are under any duty to make any enquiry as to the genuineness or authenticity of any Proper Instructions.

12.3. Neither the Company nor any of its Affiliates shall be obliged to take or refrain from taking any action pursuant to Proper Instructions where in the opinion of the Company, such Proper Instructions are not sufficiently clear and/or precise or do not contain sufficient information to allow the Company to comply materially with such Proper Instructions.

12.4. Neither the Company nor any of its Affiliates shall incur any liability in respect of any action taken or not taken by the Company, any of its Affiliates or any of its Delegates in good faith in reliance upon Proper Instructions.

12.5. The Client irrevocably indemnifies each of the Company, its Affiliates, and its Delegates (including, for the avoidance of doubt, each Indemnified Person) against Losses suffered or incurred by any of them resulting from any action taken or not taken by the Company, any of its Affiliates or any of its Delegates in good faith in reliance upon Proper Instructions.

12.6. The Company will deal with and act upon Proper Instructions in a

reasonably timely manner and undertakes to use reasonable endeavours to do so, but the Company does not undertake to act on instructions immediately or on the same or next Business Day or to meet any specific deadline (unless otherwise agreed in writing) and shall not incur any liability for any Losses arising by reason of the duration of time taken to so act upon Proper Instructions.

12.7. From time to time the Company (in the sole opinion of the Company) may be restricted by applicable legal and regulatory requirements and/or internal requirements from accepting instructions (including Proper Instructions) from the Client. Should the Company (in the sole opinion of the Company) be so restricted, the Company may refuse to accept instructions (including Proper Instructions) from the Client without giving any reasons for so doing and the Company shall not be liable for any Losses suffered or incurred thereby.

12.8. All Proper Instructions, unless they expressly provide otherwise, shall continue to be effective until duly cancelled by subsequent modifications duly communicated to the Company by the Client in writing.

12.9. The Client shall promptly notify the Company in writing of any event that could reasonably be anticipated to affect the ability of any Authorised Person to act or continue to act as a person authorised to give Proper Instructions under the Agreement.

12.10. The Company reserves the right not to act pursuant to Proper Instructions where such instructions relate to (i) uncollected or unrecovered Assets, (ii) Assets which the Company has applied towards satisfaction of any of the Client's obligations to the Company, or (iii) where a court order or other legal process or rule prohibits or might prohibit compliance with such Proper Instructions.

13. Non-Exclusivity

13.1. The services of the Company hereunder (including the CM Services) are not exclusive to the Client and the Company shall be free to provide similar services to other persons. The Company shall not be deemed to have been given notice of, or to be under any duty to disclose to the Client, any fact or thing which may come to the notice of the Company, any of its Affiliates or any of its Delegates in the course of them providing similar services to other persons or in the course of their respective businesses in any other capacity or in any manner whatsoever.

14. Conflicts of Interest

14.1. The Company may, without consulting with or notifying the Client, provide the CM Service notwithstanding that the Company, any of its Affiliates or any of its Delegates has a relationship of any description with another person such as to place it in a position where its duty or interest in relation to that other person may conflict with its duty to the Client.

15. Indemnity

15.1. The Client irrevocably indemnifies the Company, each Affiliate and each Delegate (which includes the partners, officers, directors, employees, consultants and agents of each, and together with the Company, each Affiliate and each Delegate, each an "Indemnified Person") from and against any and all Losses which may be suffered or incurred by the Company, any Affiliate or any Delegate from time to time (calculated on a full indemnity basis) in connection with the performance or non-performance of any of the Company's, Affiliate's or Delegate's duties under the Agreement or in connection with the provision of the CM Service (including, without limitation, any Losses suffered or incurred as a result of a breach of the Agreement), save where Losses arise as a result of actual fraud or wilful default on the part of the Company, an Affiliate or a Delegate (the "Indemnity"). This Indemnity shall continue in force without limit in time, whether or not the Company is continuing to provide the CM Service and without prejudice to any other indemnity given in the Company's favour. Without limiting the foregoing, the Indemnity shall include Losses arising in connection with:

- (a) any breach of or negligent performance by the Client of the Client's obligations under the Agreement;
- (b) any breach or negligent performance of the Agreement;
- (c) the enforcement of the Agreement;
- (d) an Indemnified Person accepting and acting upon Proper Instructions given or purported to be given by the Client;

- (e) any and all taxes and any and all related losses (including Losses), claims, liabilities, penalties, interest and reasonable expenses (including the fees, charges and disbursements of any counsel for the Company) incurred by or asserted against the Company by any governmental authority;
- (f) any claim made against any Indemnified Person by a third party arising out of or in connection with the Agreement to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Agreement by the Client, its employees, agents or subcontractors;
- (g) any mistakes or defects of the Client when using the Systems or the Online Services (including any failure to correctly establish or manage an appropriate security code) or compromised use of the Systems or the Online Services as a result of the Client's negligence; and/or
- (h) any security failures on the part of the Client or the Client's own these CM Terms and Conditions and machinery, and without limiting the foregoing, including any unauthorised use of an email account of the Client or an Authorised Person which is used to send Proper Instructions.

15.2. The Indemnity shall be a continuing obligation of the Client and its successors and assigns, notwithstanding the termination of the Agreement and shall apply whether or not the Company has been negligent or was at fault. For the avoidance of doubt, the indemnity given by the Client under this clause 15 covers all services provided under or in connection with the Agreement, including the CM Service and the Online Services.

16. Liability of the Company

- 16.1. To the extent permitted by applicable law and notwithstanding any other provision in the Agreement, no Indemnified Persons shall be responsible for any Losses suffered or incurred by the Client arising out of any act or omission on the part of any Indemnified Persons in connection with the Agreement, including any Losses suffered or incurred by the Client arising out of:
- (a) any acts or omissions (whether negligent, fraudulent, in wilful default or otherwise) of any Correspondent Banks, intermediaries, financial institutions and financial instrument counterparties engaged in connection with any Transaction or any CM Service;
 - (b) the default or insolvency of any Correspondent Banks, intermediaries, financial institutions and financial instrument counterparties connected to any Transaction or CM Service; or
 - (c) any disclosure made by the Company pursuant to clause 20 of these CM Terms and Conditions.
- 16.2. The Indemnified Persons shall not in any circumstances whatsoever be liable to the Client or any third party, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any:
- (a) Losses arising from or in connection with the Indemnified Persons acting upon Proper Instructions deemed by the Indemnified Persons to be genuine;
 - (b) Losses arising from or in connection with the performance of any Product Placement;
 - (c) loss of profit, loss of goodwill, loss of business, loss of business opportunity, loss of anticipated saving, or any indirect or consequential damage or loss howsoever arising; or
 - (d) Losses arising from or in connection with any negligent, defective or accidental use of the Systems or the Online Services (except to the extent that such Losses are incurred as a direct result of actual fraud or wilful default on the part of the Company).
- 16.3. The Indemnified Persons' total liability (during any twelve (12) month period) arising under or in connection with the Agreement, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, in respect of all claims (connected or unconnected), shall in all respects be limited to the sum of Fees paid by the Client to the Company

pursuant to the Agreement in the six (6) months immediately preceding the events the subject of such claim or series of claims for indemnity.

16.4. The Company shall not be responsible or liable for any:

- (a) failure or delay in the performance of its obligations under the Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, Force Majeure Events; or
- (b) act or failure to act by any Correspondent Bank, bank or other financial institution at which or through which any Assets are held, maintained or offered unless such act or failure to act is caused by the Company's actual fraud or wilful default.

16.5. The Company shall have no duties or responsibilities whatsoever except such duties and responsibilities as are expressly specified in the Agreement, and, subject to applicable law or regulation, no covenant or obligation shall be implied against the Company in connection with the Agreement.

16.6. Neither the Company, any Affiliate, any Delegate, or any other Indemnified Person shall incur any liability arising by reason of any failure of or delay caused by or lack of availability of the Online Services or the Systems.

17. Legal Proceedings

17.1. The Company shall not be required to take any legal action on behalf of the Client or in respect of any Transaction effected on behalf of the Client unless fully indemnified to its satisfaction for all Losses that may be suffered or incurred by the Company. If the Client requires the Company in any capacity to take any action which in the opinion of the Company might make it, its Affiliates or its Delegates liable for the payment of money or liable in any other way the Company shall be kept indemnified in an amount and form satisfactory to it as a prerequisite to taking such action.

18. Communication

- 18.1. The Client hereby authorises the Company to telephone the Client to discuss matters relating to the CM Service.
- 18.2. The Company may record telephone conversations and may monitor telephone calls both received by and made by employees of the Company. Any such recordings remain the property of the Company, and may be used by the Company in the event of a dispute. The Company shall have the authority to deliver copies or transcripts of such recordings to any court or regulatory authority of competent jurisdiction as the Company sees fit and the Client hereby waives any objection to the use of any such recordings or transcripts as evidence of any such telephone conversation.
- 18.3. The Client agrees that the Company may monitor all emails or other electronic communication and data to gather information for purposes of security, marketing, statistical analysis and systems development.
- 18.4. Where telephone calls are made by the Company and recorded for direct marketing purposes, the Company will advise the Client at the beginning of any such call. If the Client does not wish to continue with a direct marketing telephone call, the Client should respond accordingly and the Company will terminate the call.
- 18.5. The Company will only use the e-mail address provided by the Client for direct marketing purposes where the Client has provided the Company with specific prior consent to do so.
- 18.6. The Company may use, store, transfer, disclose or otherwise process the Client's personal data for the purposes set out in this clause 18 or as otherwise required by law or regulation applicable to the Company. Such personal data includes but is not limited to all the information relating to the Client provided to the Company in connection with the establishment of a banking relationship pursuant to these Terms, including for the avoidance of doubt the information provided in order to answer the Company's due diligence enquiries and to open one or more Account(s).
- 18.7. The Client's personal data will be processed by the Company in order to without limitation manage the Account(s), (including the provision of statements) and may also be used for assessment and analysis by the Company, to develop and improve the Company's services and to protect the Client's interests.

18.8. The Company reserves the right, and the Client authorises the Company, to transfer the Client's personal data to its Affiliates, to other third party service providers as it may from time to time engage, or to any intermediary or regulated institution with regulatory or compliance obligations in relation to relationships between the Company and the Client, including but not limited to any nominee, custodian or Correspondent Bank used in the provision of the CM Service, anywhere in the world, including outside the Cayman Islands (the Client understands, acknowledges accepts and agrees that where such transfer is made in relation to a jurisdiction that is not the Cayman Islands, that jurisdiction may not have data protection laws in place that are of a similar standard to those in the Cayman Islands).

19. Disclosures

19.1. The Company shall not be obliged to disclose to the Client information:

- (a) the disclosure of which by the Company would or might be a breach of a duty of confidence to any other person;
- (b) which comes to the notice of any of its Affiliates or Delegates but does not come to the actual notice of the individual(s) responsible for providing the CM Service to the Client; or
- (c) the disclosure of which by the Company would or might render the Company liable to legal, regulatory or administrative sanctions.

20. Confidentiality

20.1. Subject always to the provisions of these CM Terms and Conditions, the Company shall not disclose to any person any details regarding the Transactions or any information relating to the Client (whether acquired before or after the Agreement was contemplated and whether from the Client or a third party) save:

- (a) to any Correspondent Bank (or any other intermediaries, financial institutions and financial instrument counterparties connected to any Transaction or any CM Service) by the Company as required, in the sole opinion of the Company, under the terms of the Company's arrangements with the relevant Correspondent Bank (or any other relevant intermediaries, financial institutions and financial instrument counterparties, as the case may be);
- (b) as may, in the sole opinion of the Company, be required by law or regulatory authority, including but not limited to any subpoena, administrative, regulatory or judicial demand or court order;
- (c) as otherwise set forth in the Agreement or these CM Terms and Conditions;
- (d) where the Company is compelled, permitted or required to do so by law or by order of a court or governmental or administrative tribunal or regulatory authority;
- (e) where disclosure of such records by the Company to a third party and/or its advisors is required in connection with any proposed sale, transfer or disposal of any or all the assets or business of the Company;
- (f) where disclosure is made at the Client's request or with the Client's consent, or if otherwise permitted by these CM Terms and Conditions;
- (g) where disclosure is to an Affiliate;
- (h) where failure to make such disclosure would in the sole and absolute opinion of the Company be prejudicial to the interests of the Company, any of its Affiliates or any of its Delegates; or
- (i) where disclosure is made in accordance with clause 7.2 or clause 20.2.

20.2. The Company may at any time process and/or disclose information about the Client, the Transactions or the CM Service for the following purposes:

- (a) to include the Client's name in a representative or sample client list prepared by the Company, provided that the Company shall not disclose the Client's contact information or any specific information about the Transactions;
- (b) to use the Company's experience with respect to the Assets or a Product Placement, or the performance of the Assets or a Product

Placement, in composite performance presentations, marketing materials, attribution analyses, statistical compilations, or other similar compilations or presentations, provided that such use does not disclose the Client's identity except to the extent permitted by the Client;

- (c) to facilitate or otherwise assist in the provision of the CM Service (including the provision of information to any Delegates, Correspondent Banks, intermediaries, financial institutions and financial instrument counterparties connected to any Transaction or CM Service;
- (d) to service any of the Client's other relationships with any Affiliate or Delegate;
- (e) to provide the Client with information regarding products and services that the Company believes may be of interest to the Client. If the Client does not wish to receive this information the Client must notify the Company in writing;
- (f) to meet the Company's and/or any Affiliates' or Delegates' regulatory and/or financial and/or other reporting obligations in the Cayman Islands or elsewhere; or
- (g) for the purposes of fraud prevention.

21. Assignment

21.1. The Client may not assign or transfer any of its rights or obligations under the Agreement without the prior written consent of the Company.

21.2. Subject to any applicable laws, regulations or rules, the Company may, with thirty (30) days' notice to the Client, assign its rights and obligations under the Agreement to an Affiliate, a Delegate or any third party.

22. Termination and Consequences of Termination

22.1. The Company may refuse to provide the CM Service or to accept monies or decide to withdraw the provision of the CM Service at any time, at the Company's sole and absolute discretion without giving any reason whatsoever. Should the provision of the CM Service be withdrawn, the Company shall incur no liability for any Losses that the Client may sustain.

22.2. The Agreement may be terminated by (i) the Company at any time immediately on written notice effective on receipt (or at such later time as specified in such notice), or (ii) the Client on thirty (30) days' written notice to the Company effective on receipt (or at such later time as specified in such notice).

22.3. The Client understands, acknowledges, accepts, agrees and confirms that the Company may be compelled to terminate the Agreement and the Account Agreement immediately where required by applicable laws, regulations, Company policies, or Correspondent Bank policies or if the Company's relationship with a Correspondent Bank is terminated or is in the sole opinion of the Company likely to be terminated.

22.4. Termination will not affect the liabilities or obligations of the Parties arising from Transactions initiated under the Agreement prior to such termination.

22.5. Upon any termination of the Agreement, the Company shall have no further obligations under the Agreement or these CM Terms and Conditions, provided that:

- (a) any liability under the Agreement of one Party to the other shall survive and remain in full force and effect, notwithstanding such termination, with respect to any claim or matter on which either of the Parties has given the other written notice prior to such termination (except that the Company may, after such date, render to the Client a statement of fees, costs and other charges due to the Company up to the date of termination), until such liability has been finally settled;
- (b) the Company retains the right to (but shall not be required or compelled to) complete any Transactions open or incomplete as of the termination date and to retain amounts in the Account sufficient to effect such completion; and
- (c) the Company shall be entitled to its fees and expenses including, for the avoidance of doubt, the Fees, pro-rated to the date of termination.

22.6. Upon termination, it shall be the Client's exclusive responsibility to issue instructions in writing regarding any Assets held in the Account.

22.7. The Agreement shall terminate automatically in the event that:

- (a) a trustee in bankruptcy, receiver, administrative receiver, administrator or liquidator is appointed in respect of the Client or any of its property, or the Client or any of its property is subject to any other equivalent procedures in any jurisdiction;
- (b) the Client is, or is deemed to be, unable to pay its debts as they fall due or is deemed to be insolvent under the laws of any jurisdiction to which the Client is subject;
- (c) a distress has been levied upon or other execution has been effected against the whole or any part of the property of the Client;
- (d) the Client takes up residence, or is or is deemed to be resident, in a country where the Company is not permitted or authorised to provide services to residents of that country; or
- (e) any statute, regulation or other enactment in the Cayman Islands or any other applicable jurisdiction renders the provision of all or any part of the CM Services unlawful.

22.8. Termination of the Agreement shall be without prejudice to the completion of any Transactions already in the process of being arranged. After the termination takes effect, the Company shall not accept any monies and will not arrange any further Transactions on behalf of the Client.

22.9. No penalty will be imposed on the Client on termination of the Agreement but the Company shall be entitled to charge the Client (i) any remuneration, Fees or expenses which may be outstanding, (ii) for any expenses necessarily incurred by the Company in terminating the Agreement or directly attributable to the termination of the Agreement, and (iii) for any Losses necessarily realised in settling or concluding outstanding Transactions.

22.10. To the extent permitted by law, clauses 3, 9, 10, 11, 15, 16 and 20 shall survive any termination of the Agreement and will continue in full force and effect (together with any other provisions necessary to make them operable) despite termination of the Agreement.

23. Notices

23.1. All notices in respect of the Agreement or pursuant to these CM Terms and Conditions must be (i) in writing, (ii) in the English language, and (iii) sent, by email only to the Notice Address in respect of the relevant Party.

23.2. Such notice shall be deemed to have been received at the time the email is sent by the sender.

24. Customer Due Diligence

24.1. The Company is required to obtain and maintain sufficient client information to satisfy itself as to the identity, nationality, residency, source of funds and source of wealth of all new, existing and re-activated clients. The Company may therefore require at any time that the Client completes specific compliance related information and/or formalities prior to the CM Service being provided. The Company reserves the right to charge additional fees on a time spent basis if the Company is required to monitor or terminate an account in default of any of the above requirements.

24.2. All requests for the CM Service will be subject to the Company's acceptance of such requests, which will be deemed to occur, following execution of a Cash Management Fee Schedule and upon the opening of the relevant Account(s) for the requested CM Service. The continued availability of any part of the CM Service provided by the Company shall be subject to the Company's consent, in its sole discretion, and to the Client's fulfilment of such conditions (including the execution of further agreements or documents) as the Company may require.

24.3. The Client agrees to notify the Company should the Client change any of the Client's contact details (including without limitation as a result of the Client re-locating to a different country). The Client acknowledges that such notification may result in the Company requiring additional or enhanced due diligence information and may prevent the Company from being able to continue to provide the CM Service to the Client.

25. Miscellaneous

25.1. The Client understands, acknowledges, accepts, agrees and confirms that the Client has not in entering into the Agreement, relied on any representation or documents other than as contained in the CM Agreement.

25.2. If any provision or clause of these CM Terms and Conditions is or becomes void or unenforceable in whole or in part it shall not affect the invalidity of the remaining provisions and clauses of these CM Terms and Conditions.

25.3. The relationship between the Client and the Company in respect of the CM Service is as described in the CM Agreement, which supersedes all previous agreements between the Parties (if any) concerning that relationship. For the avoidance of doubt, in performing its obligations under the Agreement, the Company is acting solely for and on behalf of the Client and no contractual or service relationship shall be deemed to be established hereby between the Company, any Affiliate or any Delegate and any other person.

25.4. The Company shall have no duties or responsibilities whatsoever, except such duties and responsibilities as are specified in the Agreement and, subject to applicable law or regulation, no covenant or obligation shall be imposed against the Company in connection with the Agreement.

25.5. These CM Terms and Conditions may be amended from time to time by the Company giving notice to the Client and clause 23 shall apply to such notice.

25.6. These CM Terms and Conditions shall be binding upon the Client and its permitted assigns (if any) and its successors in title.

25.7. The failure of the Company to exercise any right or remedy provided under these CM Terms and Conditions or under law or any delay in the exercise thereof shall not constitute a waiver of such right or remedy or any other rights or remedies. No single or partial exercise of a right or remedy provided by these CM Terms and Conditions or by law shall prevent any further exercise of such right or remedy or the exercise of another right or remedy.

25.8. Neither the Company nor any of its Affiliates or Delegates shall be liable to the Client in respect of any delay in performing or inability to perform the CM Service or loss of or damage to any documents in the possession of the Company arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including without limitation, a Force Majeure Event and the Company shall not be liable or have any responsibility of any kind for any Losses suffered or incurred by the Client.

25.9. The Parties hereby agree that each Affiliate or Delegate who is not a Party to these CM Terms and Conditions (a "Third Party") has the express right to enforce the contractual terms comprising these CM Terms and Conditions pursuant to the terms of The Contracts (Rights of Third Parties) Law, 2014. Notwithstanding any term of these CM Terms and Conditions, the consent of or notice to any Third Party shall not be required for any termination, rescission or agreement to any variation, waiver, assignment, novation, release or settlement under these CM Terms and Conditions at any time.

26. Governing Law and Jurisdiction

These CM Terms and Conditions shall be governed by and construed in accordance with the laws of the Cayman Islands and the Client hereby submits to the exclusive jurisdiction of the Courts of the Cayman Islands in all matters relating to the Agreement.