



**TERMS AND CONDITIONS**  
**BUTTERFIELD BANK**  
**(GUERNSEY) LIMITED**

These general terms and conditions govern the relationship between Butterfield Bank (Guernsey) Limited and the Client in the provision of services by the Bank to the Client.

This document and any agreements entered into between the Bank and the Client are to be read together and construed as a single document. You are recommended to take legal advice in respect of these general terms and conditions.

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In these Terms (unless the context otherwise requires) the following words and expressions will have the following meanings:

**Account** - the account or accounts for the holding of cash and other assets of the Client opened in accordance with and subject to these Terms and any Agreement

**Account Statement** - a statement of the activities on the Account periodically produced by the Bank in its usual format

**Agreement**- the Custody and Dealing Agreement, the Investment Management Agreement entered into by the Bank and the Client and the Online Terms, if applicable

**Applicable Laws**- any law, ordinance, subordinate legislation, decree, rule, regulation, code, decision, order or directive made or imposed by any governmental, regulatory, administrative, judicial, statutory, taxing, fiscal, financial or monetary authority or any supranational authority in any jurisdiction having power or authority in any such jurisdiction applicable to any relevant person

**Associate**- any company which is a holding company of the Bank, a subsidiary of the Bank or of its holding company

**Assigned Rights** means:

- (a) in respect of the Securities all the Client's right, title and interest therein and thereto and in and to (i) all dividends, interest and other income paid or payable on the Securities and (ii) all securities, rights, moneys or other property accruing or offered at any time by way of redemption, bonus, preference, option, consolidation, sub-division, conversion, exchange or otherwise to or in respect of the Securities or such other securities; and
- (b) in respect of each Relevant Agreement all the Client's right, title and interest therein and thereto

**Authorised Signatories** - the person or persons authorised by the Client to instruct and communicate with the Bank under these Terms and any Agreement being those persons:

- (a) listed in the Mandate and/or the Authorised Signatories List; and
- (b) designated as Users, if any

**Authorised Signatories List**- the list provided by the Client, or by a person or persons authorised by the Client, to the Bank in the Bank's agreed format as may be updated from time to time by the Client in accordance with these Terms

**Bank**- Butterfield Bank (Guernsey) Limited

**Bank Personnel** - the directors, officers and employees of the Bank from time to time

**Bank's Charges**- the Bank's standard scale of charges, fees, expenses, commissions and other costs chargeable to the Client, in force from time to time, a current copy of which is available online at [www.butterfieldgroup.com](http://www.butterfieldgroup.com) and from the Bank on request

**Best Execution**- has the meaning given in the relevant rules and pursuant to which the Bank has formulated its policy, a current copy of which is available online at [www.butterfieldgroup.com](http://www.butterfieldgroup.com) and from the Bank on request

**Business Day**- a day (not being a Saturday, Sunday or public holiday) on which banks are open for general business in Guernsey

**Call Account** – an account for the holding of cash from which the Client can take money when required, if the Client informs the Bank in advance in accordance with these Terms

**Certificate of Title**- at any time such certificates of title to shares, stock, debentures, bonds or other securities (if any) issued by or which are otherwise obligations of companies incorporated in Guernsey, or otherwise, as the case may be which shall have been deposited with the Bank (or with some person other than the Client on behalf of the Secured Party)

**Charged Account**- each of the Accounts and any account substituted as a Charged Account by written agreement between the parties

**Charged Balance**- the balance at any time on each Charged Account and includes all interest accrued

**Charged Property**- all intangible moveable property of which the title policy or certificate of title to securities (including uncertificated securities) is held by or to the order of the Bank for the Client

**Client**- the person or persons named as holder of the Account or to which the Bank provides custody and dealing services in accordance with the terms of the Custody and Dealing Agreement

**Client's Address** - the Client's address as set out in the Mandate or any other address or place of business of the Client last known to the Bank

**Closing Notice**- a notice given in accordance with paragraph 23 of these Terms

**Collateral** - the Assigned Rights, the Charged Balance, the Charged Property, the Derivative Asset and any other property at any time subject to the security interest hereby created or any part thereof

**Custody and Dealing Agreement** - the Bank's custody and dealing agreement under which the Bank provides such services to its clients if required

**Data Protection Law** – all applicable laws and regulations relating to the processing of personal data, on the protection of persons with regard to this processing of personal data, as amended, modified or supplemented from time to time, the GDPR, The Data Protection (Bailiwick of Guernsey) Law, 2017 and any other laws and regulations implementing, derogating from or made under them, in each case as amended or re-enacted and in force from time to time

**Derivative Asset** - any interest, dividend, security, right, policy of life assurance, money or other intangible moveable property at any time hereafter derived from or created or issued in substitution for the Charged Balance and/or the Charged Property

**Encumbrance**- any interest or equity of any person including an option or pre-emption right, security interest, charge, bond, mortgage, pledge, hypothecation, lien, title retention, assignment or other arrangement having a similar effect

**Execution-Only Transaction** – a transaction where the Bank acts on the instructions of a Client to acquire or dispose of an investment for the Client, but provides no advice to the Client and exercises no discretion in respect of the instruction other than in order to achieve best execution

**Fixed Deposit** – an arrangement with the Bank in which the Client deposits money in an Account for a fixed period

**Force Majeure**- any event or circumstances beyond the reasonable control of the Bank including any strike, lock-out, labour dispute, riot, civil commotion, war or national or international emergency, government action, act of God, natural force, fire, explosion, accident or epidemic or failure or interruption of electrical power

**GDPR** – the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC as may be amended or re-enacted and in force from time to time

**Guernsey**- the Bailiwick of Guernsey

**Indebtedness** - all present, future or contingent indebtedness and liabilities (including interest, costs, charges and expenses on a full indemnity basis) of the Client to the Bank, whether incurred solely, severally or jointly, in whatever style, name or form, as principal, guarantor or surety, and in any currency

**Investment Management Agreement**- the Bank's Discretionary Investment Management Agreement under which the Bank provides such services to its clients if required

**Mandate** - the mandate incorporating the relevant account opening forms completed by the Client as may be updated, amended or replaced from time to time by the Client

**Notices**-

- (a) in the case of notices from the Client to the Bank includes any instruction, notice and all other communications by or on behalf of the Client;
- (b) in the case of notices from the Bank to the Client means notices and communications given by the Bank to the Client or an Authorised Signatory if applicable; under these Terms and any Agreement

**Notice Account** – means an account that requires a period of notice for withdrawal

**Online Terms**- the terms upon which the Bank provides electronic banking services to the Client, a current copy of which is available at [www.butterfieldgroup.com](http://www.butterfieldgroup.com)

**Privacy Notice** – the Bank's privacy notice under which the Bank sets out how it collects, uses, discloses, transfers and stores Client personal data, a copy of which is available at [www.butterfieldgroup.com](http://www.butterfieldgroup.com) or by contacting LICGuernsey@butterfieldgroup.com

**Proper Instructions**- notices, instructions and communications given on the operation of the Account:

- (a) by any Authorised Signatory
  - (i) in accordance with the Mandate; or
  - (ii) verbally, by electronic mail, telephone or facsimile if not provided for in the Mandate, subject to the Bank's discretion under paragraph 26.5 to accept such form of communication in any particular instance and on a case by case basis
- (b) by any User in accordance with the Online Terms

**Relevant Agreements**- each investment management agreement and custody and dealing agreement to which the Client is party (if any), each such agreement substituted therefore pursuant to the terms hereof and each other agreement agreed by the parties to be a Relevant Agreement for the purpose hereof

**Scheme**- Guernsey Banking Deposit Compensation Scheme referred to in paragraph 28.5

**Securities** - at any time all shares, stock, debentures, bonds or other securities (if any) (i) which are held for the benefit of the obligor pursuant to a Relevant Agreement (or, where such Relevant Agreement has terminated for any reason whatsoever, which are held by the counterparty to such Relevant Agreement for the benefit of the Client) or, (ii) to which the Certificates of Title relate or, (iii) are referred to in, or held by reference to, any custody account maintained pursuant to a Relevant Agreement

**Securities Law**- the Security Interests (Guernsey) Law, 1993 as amended or substituted from time to time

**Service** - has the meaning set out in the Online Terms

**Terms** - this document which contains, and is also known as, the Bank's general terms and conditions

**User**- has the meaning set out in the Online Terms

## 1.2 Interpretation

- 1.2.1 Headings are inserted for convenience and will not affect the interpretation of these Terms and any Agreement.
- 1.2.2 Words denoting the singular number include the plural and vice versa and words in the masculine gender include the other genders.
- 1.2.3 holding company and subsidiary have the meanings given to such expressions in the Companies (Guernsey) Law, 2008.
- 1.2.4 The expression person includes references to any individual, firm, company, partnership, corporation or unincorporated entity.
- 1.2.5 Where the Client comprises more than one person, the Client will mean each of them jointly and severally to whom these Terms and any Agreement apply.
- 1.2.6 Where the Client is a trustee or trustees of a trust (Trust):
  - 1.2.6.1 if there is more than one trustee, the Client will mean each of them jointly and severally to whom these Terms and any Agreement apply and their liabilities under these Terms and the Agreement will accordingly be joint and several; and
  - 1.2.6.2 the terms of paragraph 5 shall additionally apply.
- 1.2.7 References to any consent to be given by the Bank will be to the Bank's prior written consent which may be given subject to any condition imposed by the Bank as it sees fit.
- 1.2.8 References to:
  - 1.2.8.1 the exercise of the Bank's discretion will be to its absolute and unfettered discretion,
  - 1.2.8.2 the Bank's opinion will be to its sole opinion, and the Bank will not be required to give any reasons for its decision or the basis of its opinion.
- 1.2.9 References to laws, statutes, statutory provisions, rules and regulations, include such laws, statutes, statutory provisions, rules and regulations, as respectively replaced, amended, extended or consolidated.
- 1.2.10 References to any document (including these Terms and any Agreement) include any such document as may be amended, supplemented, varied, substituted, novated or assigned from time to time.
- 1.2.11 References to the Bank and the Client include references to successors in title and permitted assigns of each of them.
- 1.2.12 References to these Terms or a paragraph are references to this document and a paragraph in it.
- 1.2.13 Any conversion of cash from one currency into another currency will be undertaken at the Bank's prevailing rate of exchange.

## 2. ACCOUNT OPENING AND MAINTENANCE

- 2.1 The Bank is not obliged to open or maintain any account for the Client unless it has received in a form and substance satisfactory to it, a completed Mandate and other appropriate account opening documentation completed by or on behalf of the Client and such other financial or other information as the Bank may require from time to time.
- 2.2 The Client will ensure that all necessary authorisations, consents and licences will be obtained prior to the Client signing or executing any Bank forms or documentation or entering into any transactions with the Bank.
- 2.3 Depending on the Service provided by the Bank, the Client agrees that it shall from time to time at the request of the Bank do all such things and execute and deliver all such transfers, notices and any other documents (including, without limitation the Custody and Dealing Agreement in the form set out in Schedule 1 of the Terms), as the Bank may consider necessary or desirable.
- 2.4 The Bank may refuse to open an account and/or accept a deposit without giving any reason.

- 2.5 If the credit balance and/or the value of any property of the Client on any Account falls below a minimum amount as set by the Bank from time to time, the Bank may, at its discretion, levy a maintenance fee at such rate to be determined at the Bank's discretion, and may debit such fee to the Account.
- 2.6 In respect of Accounts, Call Accounts, Fixed Deposits and Notice Accounts minimum and maximum deposits may apply.

### **3. ACCOUNT MANAGEMENT**

#### **3.1 Unauthorised Overdrafts**

- 3.1.1 If the Bank receives an instruction for the payment of any sum in excess of the credit balance on the Account the Bank may (but is not obliged to) decline to carry out such instruction.
- 3.1.2 If several instructions for several payments or other transactions are received by the Bank which, in aggregate, exceed the amount of the credit balance on the Account, the Bank may at its discretion select which transaction or transactions will be executed by the Bank without reference to the date of dispatch of the Client's instructions or when they were received by the Bank.
- 3.1.3 If a debit balance arises on the Account (however caused) without the Bank's consent, the Client will immediately pay to the Bank on demand:
- 3.1.3.1 interest on the overdrawn amount at the rate set out in the Bank's Charges for unauthorised overdrafts;
  - 3.1.3.2 an overdraft arrangement fee as set out in the Bank's Charges.

#### **3.2 Fixed Deposits**

- 3.2.1 In the absence of Proper Instructions to the contrary within the time limit specified in the fixed term deposit confirmation issued to the Client, the Bank is authorised to renew at maturity such fixed term deposit in the name of the Client for a similar term and at the prevailing market interest rate, or for such other terms as the Bank reasonably considers to be appropriate in the circumstances.
- 3.2.2 Any request by the Client to terminate a fixed term deposit contract before its maturity will be at the Bank's discretion.

#### **3.3 Receipt of Funds**

- 3.3.1 Funds received by the Bank in a currency for which there is no corresponding account for the Client may (unless the Client has given the Bank instructions to the contrary) be credited at the Bank's discretion in a currency in which the Client maintains its Account.
- 3.3.2 The Bank may at its discretion decline to accept any funds, in any currency, instructed to be credited to an Account, if the Bank considers such a course of action to be necessary or desirable to protect the interests of the Bank.

#### **3.4 Foreign Currency**

- 3.4.1 The Bank may, at any time, execute its obligations as regards foreign currencies by delivering cheques drawn on its correspondent bank or a financial institution in the country concerned.
- 3.4.2 Unless otherwise agreed by the Bank, if any cheque or other transfer is made by the Client in any currency other than the currency in which any credit balance of the Client is for the time being designated, the Bank will, at its discretion, at the risk of, and without notice to the Client, be entitled to convert any currency or currencies in which the Client's credit balance is then comprised into the currency in which the cheque or other transfer is denominated.

#### **3.5 Recourse**

If any entries (including in respect of bills of exchange, cheques and other similar papers) credited to the Account are subsequently dishonoured or the Bank is for any reason called upon to repay the paying bank or any other party to any transaction any amounts credited to the Account (Recourse Credit):

- 3.5.1 the Bank may debit the Account with the amount of the Recourse Credit; and
- 3.5.2 the Client will pay to the Bank on demand:
  - 3.5.2.1 the amount of any drawings which the Bank has permitted the Client to make against Recourse Credit; and/or
  - 3.5.2.2 the amount so repaid by the Bank if and to the extent that the Account falls into debit as a result of the Bank paying away funds representing the Recourse Credit or the amount so credited to the Client's account represented an amount which the Client was obliged to pay the Bank; and
  - 3.5.2.3 overdraft interest and other charges at the rate set out in the Bank's Charges for unauthorised overdrafts on any debit balances resulting from the Recourse Credit.

### 3.6 Instructions

The Bank may decline to act upon any instruction (including the payment of any cheques), delay acting on any instruction regardless whether it is a Proper Instruction and/or suspend the operation of the Account for such period as it considers appropriate at its discretion if:

3.6.1 in its opinion:

3.6.1.1 the instruction is unclear, or impracticable or impossible to implement and the Bank has made reasonable effort to seek the Client's confirmation or clarification, where appropriate; or

3.6.1.2 in acting on the instruction, the Bank or any Bank Personnel or agents may commit a breach of any Applicable Laws or be liable for any civil claim, action or proceedings; or

3.6.1.3 its failure to do so may result in a breach of the Bank's internal policies or procedures, or is likely to cause damage to the reputation of the Bank or its Associates; or

3.6.2 the Bank is aware or has grounds to believe that the Client is or may be in breach of Applicable Laws in relation to the opening or operation of the Account or that the Account is otherwise being operated unlawfully. If the Bank declines or delays in acting on an instruction or suspends the operation of the Account, it will, subject to Applicable Laws, promptly notify the Client of its decision. The Bank is not required to provide to the Client any explanation of its decision.

### 3.7 Notice of Withdrawal

In respect of Notice Accounts only, Proper Instructions in respect of any proposed withdrawals need to be given by the Client with the same notice periods applicable to Closing Notices in accordance with paragraph 23.4. For example, for a 32 day Notice Account, Proper Instructions need to be received by the Bank 32 days prior to the date of withdrawal which must be a business day. Continuous notice is not permitted. Should the Bank receive an instruction to close an Account, interest (if applicable) will be added to the notice amount on the date of closure. Should no payment instruction be received, the notice amount will automatically be credited to the Client's Call Account on the available date of the funds pending further instruction. The total amount of the money on notice for withdrawal at any time must not exceed the current balance of the Account.

### 3.8 Joint Accounts

3.8.1 If an Account is held in the name of more than one Client, each Client acknowledges that it holds and owns the Account jointly, with the right of survivorship, and that each is jointly and severally liable in respect of any obligations relating to the Account, the Bank's Terms or any Agreement.

3.8.2 Each Client agrees that in the event that the law which will apply to his estate on death is not Guernsey Law, the Client shall inform the Bank in writing if he is incapable of bequeathing assets by survivorship.

3.8.3 Each Client holding a joint Account acknowledges that any joint Client (or his duly appointed attorney) in respect of that Account is authorised to instruct the Bank to execute all transactions on the Account which are in accordance with that Client's powers of signature or instructions set out in the Mandate. Any notices, instructions, agreements, consents or information provided by one signatory is deemed to be given by all account holders in circumstances where one joint Client is authorised to act on behalf of all account holders.

3.8.4 All notices and correspondence regarding the Account will be sent to the address provided. Only one correspondence address may be registered to the Account irrespective of the number of account holders.

3.8.5 The Mandate for a joint Account can only be changed by written notice to the Bank signed by all names on that account.

3.8.6 In the event of the death of a Client who holds an account jointly:

3.8.6.1 the surviving Client(s) undertake(s) to inform the Bank promptly of the death of any Client;

3.8.6.2 the Account relationship shall continue with the surviving Client(s) to the exclusion of the estate of the deceased Client and the Bank may rely on instructions given in accordance with the Mandate;

3.8.6.3 if any Account is overdrawn or otherwise in debit, the surviving Client(s) acknowledge that they are liable for the debt and that the death of one of the Clients shall not have diminished the debt in any way.

3.8.7 Each Client undertakes to inform the Bank promptly if any Client of a joint Account becomes mentally incapacitated or is declared incompetent.

3.8.8 In the event of the Bank becoming aware of any breakdown in the relationship of joint account holders, all signatures shall be required to operate the Account.

#### **4. FOREIGN EXCHANGE TRANSACTIONS**

- 4.1 The Bank may act on instructions from the Client in respect of the following foreign exchange transactions in such currencies as the Bank may undertake transactions in, and subject to any minimum amount as the Bank may determine at its discretion:
- 4.1.1 spot foreign exchange transactions;
  - 4.1.2 forward foreign exchange transactions provided that:
    - 4.1.2.1 the Bank may require security and/or additional documentation to be provided prior to implementing the Client's instruction; and
    - 4.1.2.2 the Client has obtained prior credit approval from the Bank.
- 4.2 The Bank will undertake foreign exchange transactions on a Best Execution basis in accordance with its Best Execution policy.
- 4.3 The Client's instructions in respect of foreign exchange transactions will be dealt with by the Bank as soon as reasonably practicable.

#### **5. TRUSTS**

- 5.1 This paragraph will apply where the Client is a trustee of a trust (Trust) and the Account has been opened in the name of the Client in its capacity as trustee of the Trust.
- 5.2 Notwithstanding the Client is a trustee of a Trust, the Client will remain personally responsible for the repayment of any Indebtedness due from the Client or the Trust to the Bank and the Client will in all respects be treated as the sole legal and beneficial owner of the Account and fully entitled to enter into any Agreement.
- 5.3 Subject to the provisions relating to Proper Instructions, any instruction provided by the person purporting to be the trustee will be assumed, without verification or investigation by the Bank, to be in accordance with the trust instrument governing the Trust.
- 5.4 The Bank is not affected by the terms of the Trust regardless whether it has any notice of the trust instrument. Provided that any action or instruction is within the Mandate, the Bank is not obliged to verify that any action or instruction by the trustee or other person in relation to the Account and any other dealings with the Bank is within its powers as set out in the trust instrument or otherwise.
- 5.5 If the Bank becomes aware that one or more persons named as trustee and comprising the Client has ceased for any reason to be a trustee of the Trust, the Bank may at its discretion treat the remaining trustee or trustees as having full power to act on behalf of the Trust and to deal with the Account and any other asset of the Trust as if there had been no change of trustee, without requiring any amendment to the Mandate or Authorised Signatories List.

#### **6. DEALING IN SECURITIES OR INVESTMENTS**

- 6.1 The Bank may agree to purchase investment products on behalf of the Client by way of an Execution-Only Transaction where there is no further agreement in place. Where the Bank does so, before acting it will inform the Client in writing of: (i) any applicable fees and charges and the basis on which they are calculated; (ii) the Bank's best execution policy in force at the time; and (iii) certain information in connection with the Bank's categorisation of the Client made pursuant to The Licensee (Conduct of Business) Rules and Guidance 2021.
- 6.2 The Bank will not provide any advice on investments or any discretionary investment management services other than pursuant to a further agreement.
- 6.3 Each Execution-Only Transaction will be completed by the Bank on the basis that the Client accepts full responsibility for the consequence of the transaction and has considered whether it is suitable in the light of the Client's own financial situation, knowledge of investment market, tax situation and the risk that any such investment may lose its value.
- 6.4 The Client acknowledges that the Bank will deal at the best price available to the Bank at the time and that Clients' orders may be aggregated at the Bank's discretion. The Bank may also accept limit orders in certain types of security, which will be dealt with on a best endeavours basis. The Client further acknowledges that the price of certain securities may be difficult to obtain, for example when a security is illiquid or on a specialist market and that the Bank will apply best endeavours to obtain a price where possible.

- 6.5 The Client acknowledges that all instructions must be given in sufficient time to allow the Bank to complete the transaction in accordance with the practice of the relevant market or investment and to allow for any foreign currency transfers. Complete and comprehensive instructions should therefore be given a minimum of two hours before the close of the market or one Business Day before the deadline for trading concerned and, where the investment must be paid for in a currency other than sterling, in sufficient time to allow for the transfer in that currency or any necessary foreign exchange transactions.
- 6.6 The Client acknowledges that the amount that can be traded will be limited to the funds available on the Client's account or via facilities of the Client, held with the Bank.
- 6.7 After the Bank has effected a transaction for the Client, it will provide a statement, contract note, valuation or any other applicable document relating to the transaction to the Client.

## **7. SECURITY INTEREST AGREEMENT**

- 7.1 In accordance with paragraph 2.3 of these Terms, the Bank may request that the Client enters into a security interest agreement on the terms set out in this paragraph 7.

### **7.2 Security Interests**

- 7.2.1 The Client covenants with the Bank to discharge the Indebtedness and to perform all its other obligations to the Bank on demand and as a continuing security to the Bank for such discharge and performance:
- 7.2.1.1 grants control of the Charged Account to the Bank;
  - 7.2.1.2 assigns the Assigned Rights to the Bank and confirms that notice of assignment shall be deemed to have been given to the Bank in its capacity as custodian and confirmed by execution of the Mandate by or on behalf of the Client;
  - 7.2.1.3 undertakes immediately to deposit with the Bank all certificates, policies and title to any of the Collateral including without limitation the Certificates of Title now or at any time not held by the Bank as the Bank may require;
  - 7.2.1.4 agrees that all certificates, policies and title to any of the Collateral (including uncertificated securities) including without limitation the Certificates of Title in the possession of the Bank and held to the order of the Client now or at any time, shall be held by the Bank, or by any person on its behalf (notwithstanding the terms of any other agreement between the Bank and the Debtor in respect thereof);
  - 7.2.1.5 undertakes immediately to transfer to the Bank, title to any of the Collateral not held by the Bank as the Bank may require;
  - 7.2.1.6 agrees that title to all of the Collateral held by the Bank to the order of the Client at any time shall be held by the Bank in accordance with this paragraph 7;
  - 7.2.1.7 undertakes immediately to sign, seal, deliver and complete all transfers, renunciations, endorsements, notices, mandates, deeds or other documents and to do all other acts and things as the Bank may require to perfect control of or title to any of the Collateral or to enable the Bank to exercise any rights, powers and remedies attaching to the Collateral or to give effect to any application, sale or disposal;
  - 7.2.1.8 creates security interests as set out above pursuant to the Securities Law in favour of the Bank in all its right, title and interest in the Collateral, and the Client hereby agrees that the security interests created by this paragraph 7.2.1 may exist concurrently.
- 7.2.2 For the avoidance of doubt, if there is more than one Charged Account, a separate security interest shall be deemed to be created and no defect in respect of any one such Charged Account (and Charged Balance) shall affect the validity of any other security interest agreement in relation to any other Charged Account (and Charged Balance).
- 7.2.3 If and in so far as the terms of this paragraph 7 or any security interest agreement shall not be effective to create or perfect a security interest in any part of the Collateral, the Account Holder hereby assigns such part of the Collateral to the Bank and, if and in so far as such assignment shall not be effective to create or perfect a security interest in any part of the Collateral, the Client shall hold that part on trust for the Bank.
- 7.2.4 If at any time additional sums are credited to the Charged Account or any other certificate of title or policy (including uncertificated securities) is deposited with the Bank or title to any other intangible moveable property is transferred to the Bank, such sums and any such certificate of title or policy and any such title (including uncertificated securities) shall without further notice or agreement become subject to the provisions of this paragraph 7 and /or a security interest agreement, save that the provisions of paragraph 10 of the Terms shall take effect on the date on which any such additional sums are credited or any such certificate of title (including uncertificated securities) or policy is so deposited or any such title is so transferred.

- 7.2.5 Any Derivative Asset shall, without further notice or agreement, become subject to the provisions of this paragraph 7 and /or a security interest agreement and where the Derivative Asset consists of any money, the same shall be credited to the Charged Account (or to any such account as the Bank may select);
- 7.2.6 Any securities or policies of life assurance, the certificate of title or policy relating thereto shall be deposited with the Bank; and
- 7.2.7 Any intangible moveable property, title to which is not held by the Bank, title thereto shall be transferred immediately to the Bank as the Bank may require.

### 7.3 Control of Collateral

In accordance with the provisions of this paragraph 7:

- 7.3.1 the Bank shall have sole control of the Collateral;
- 7.3.2 any mandate or agreement between the Customer and the Bank, which but for this the provisions of this paragraph 7 and/or a security interest agreement would govern the control of the Collateral, shall be suspended;
- 7.3.3 notwithstanding the foregoing, the Bank at any time in its discretion shall be entitled (but not bound) to accept any request given in conformity with any suspended mandate from the Customer with regard to the Collateral (including withdrawal of monies and payment of interest) and, so that in acting upon any such request, the Bank shall be deemed not to have relinquished control of the Collateral or otherwise waived its rights under this paragraph 7 or a security interest agreement;
- 7.3.4 no liability whatsoever shall attach to the Bank in acting or refusing or neglecting to act on any request of the Customer relating to the Collateral;
- 7.3.5 if the Collateral shall be held on time deposit at expiry, the Collateral shall be re-deposited upon such terms as may be agreed with the Bank or, failing agreement upon such terms, as the Bank shall determine in its discretion; and
- 7.3.6 in the event of any inconsistencies, the provisions of this paragraph 7 shall override the terms of any other part of the Mandate or any further agreement between the Customer and the Bank and the terms on which any part of the Collateral may have been deposited or on which title thereto may have been transferred to the Bank.

### 7.4 Continuing Security

- 7.4.1 The security interest herein created shall:
  - 7.4.1.1 be a continuing security for the benefit of the Bank and notwithstanding the existence of a nil balance on the Charged Account at any time or any fluctuation in the level of the Indebtedness or the partial discharge or performance of the Indebtedness;
  - 7.4.1.2 not be discharged or affected by any failure of or defect in any agreement given by or on behalf of the Customer in respect of the Indebtedness, nor by any legal limitation on or lack of any borrowing powers of the Customer as account holder or lack of authority of any person appearing to be acting for the Customer or by any other fact or circumstance (whether or not known to the Customer or the Bank), as a result of which the Indebtedness may be rendered illegal void or unenforceable by the Bank; not be discharged or affected by the determination, variation, renewal or increase of any facility (including without limitation any negotiable instrument) or any other accommodation made available by the Bank to the Customer or to any other person or of any other security held by the Bank or by the granting by the Bank of any time or indulgence to the Customer or to any other person;
  - 7.4.1.3 remain binding on the Customer notwithstanding any amalgamation, reconstruction, reorganisation, merger, sale or transfer by or involving the Bank and, for this purpose, the provisions of this paragraph 7 and any security interest agreement and all rights conferred on the Bank hereunder may be assigned or transferred by the Bank accordingly; and
  - 7.4.1.4 be additional and without prejudice to any other security which the Bank may hold or have at any time, including any lien thereon to which the Bank is entitled under its Articles of Incorporation and any rights of set-off or counterclaim.

### 7.5 Security Margin

- 7.5.1 The Customer undertakes to maintain such margin of security in relation to the Indebtedness as may be required at any time by the Bank:
  - 7.5.1.1 by immediately depositing in the Charged Account additional sums, up to such amount as may be notified by the Bank in the currency in which the Charged Account is denominated (or in any such account as the Bank may select); and
  - 7.5.1.2 by immediately transferring to and depositing with the Bank title to and the certificates of title (including uncertificated securities) and policies for other intangible moveable property up to such value as may be required by the Bank.

7.5.2 The Customer agrees that the Bank shall have the power to terminate any facility where, in the Bank's opinion, the margin of security which has been provided has become inadequate and the provision of further security would not resolve the situation satisfactorily.

## 7.6 Calls and Voting Rights

7.6.1 Notwithstanding any provision of this paragraph 7, the Customer will pay all calls, premiums and other payments due on any of the Collateral and, if so requested by the Bank, shall within seven days of such request produce evidence satisfactory to the Bank of such payment, failing which the Bank may make such payments on behalf of the Customer and any sum so paid shall be reimbursed by the Customer on demand and, pending reimbursement, shall be secured on the Collateral and may be debited to any Account of the Customer as the Bank determines and shall bear interest at the rate of 8 per cent per annum over the Bank's base lending rate at any time.

7.6.2 The Customer shall exercise, or cause to be exercised, immediately such voting and other rights (if any) in or to the Collateral in such manner as the Bank may in its discretion direct.

7.6.3 The Bank may exercise, or cause to be exercised, such voting or other rights (if any) in or to the Collateral in such manner as the Bank in its discretion may determine in like manner as if it were entitled to the Collateral beneficially and, without taking account of the Customer's interest therein and without prejudice to the generality of the foregoing, may exercise, renounce or assign any conditional or preferential right to subscribe for any securities offered to the Bank in respect of any of the Collateral.

## 7.7 Events of Default

7.7.1 The following events shall constitute events of default for the purposes of this paragraph 7:

7.7.1.1 any failure by the Customer to pay, perform or discharge any part of the Indebtedness on the due date for payment performance or discharge;

7.7.1.2 any failure by the Customer to observe or perform any of its other obligations to the Bank;

7.7.1.3 any breach by the Customer of this paragraph 7:

7.7.1.4 any representation or warranty (whether contained in this paragraph 7 or otherwise) being or becoming at any time untrue, incorrect or misleading;

7.7.1.5 any breach by the Customer of the terms of any facility or other agreement with the Bank;

7.7.1.6 any judgement against the Customer remaining unsatisfied seven days after the date thereof;

7.7.1.7 any execution of judgement or service of judicial order or process against, over or concerning any of the Customer's assets;

7.7.1.8 any act or omission by the Customer indicative of insolvency in any jurisdiction;

7.7.1.9 any act or event described as an event of default in any facility or other agreement between the Bank and the Customer;

7.7.1.10 any act or event described as an event of default in any facility or other agreement between the Bank and any person for whose obligations to the Bank the Customer is guarantor or against whose default the Customer has undertaken to indemnify the Bank; and

7.7.1.11 if any Indebtedness or Collateral is provided in a currency other than the base currency of a Customer's Accounts and that currency depreciates significantly in the Bank's opinion from the value as at the date of the relevant facility letter.

7.7.2 Without prejudice to the provisions of paragraph 7.7.1 above, the Bank and the Customer may agree in writing further events of default for the purposes of this paragraph 7.

7.7.3 The Customer shall immediately notify the Bank of the occurrence of an Event of Default or of any circumstance likely to give rise to an Event of Default.

## 7.8 Remedies on Default

7.8.1 Upon the occurrence of an Event of Default, the Bank may serve notice on the Customer specifying the particular Event of Default and immediately thereafter the power of sale or application under the Securities Law shall be exercisable in respect of the Collateral without any requirement to obtain any order of the courts of Guernsey.

7.8.2 The power of sale or application under the Law may be exercised in such manner and for such consideration (whether payable or deliverable immediately or by instalments or otherwise deferred) as the Bank in its absolute discretion may determine.

7.8.3 For the purposes of this paragraph 7, references to the exercise of the power of sale or application shall include any method or process by which value is given, allowed or credited by the Bank for the Collateral against the Indebtedness.

- 7.8.4 The Bank shall be entitled to appropriate any part of the Collateral which is money and shall apply the same towards the Indebtedness as if they were proceeds of sale.
- 7.8.5 The Bank may collect, receive or compromise and give a good discharge for any money received in exercise of its power of sale and for any right money or property receivable in respect of the Collateral.
- 7.8.6 To the extent permitted by the laws of Guernsey, the Bank shall be under no liability to the Customer:
- 7.8.6.1 to preserve or enhance the Collateral or its value;
  - 7.8.6.2 for any loss arising out of the exercise or non-exercise of the power of sale or application or other realisation or appropriation of the Collateral pursuant to this paragraph 7;
  - 7.8.6.3 for any failure to apply and distribute the monies, representing the proceeds of sale or application of the Collateral in accordance with the Law, if the Bank applies and distributes such proceeds in good faith in accordance with the information expressly known to it, without further enquiry, at the time of such application and distribution.
- 7.8.7 The exercise by the Bank of any right or power of sale or application under this paragraph shall not constitute a waiver or release of, nor the exercise of, any other right or power of sale or application held by the Bank unless expressly stated.
- 7.8.8 Any Derivative Asset received by the Customer after the occurrence of an Event of Default shall be held by the Customer on trust for the Bank and shall be immediately transferred to the Bank on demand.

#### 7.9 **Certification**

A certificate by a person authorised in that behalf by the Bank of the amount of the Indebtedness or the Charged Balance, or of any balance on any of the Customer's Accounts at any time, shall be conclusive unless manifestly incorrect.

#### 7.10 **Opening of New Account**

- 7.10.1 If the Bank receives or is deemed to be affected by notice (actual or constructive) of any subsequent security or other interest affecting the Collateral or if the continuing nature of the provisions set out in this paragraph 7 is terminated for any reason, upon the commencement of any form of bankruptcy or insolvency proceeding affecting the Customer or if any provision of this paragraph 7 ceases to be binding on the Customer, the Bank may rule off the Customer's then subsisting Account or Accounts and open a new Account in the name of the Customer.
- 7.10.2 The new Account shall be treated as being opened at the time when the Bank received or was deemed to have received notice or at the time of termination (as the case may be) and (without prejudice to any right of the Bank to combine Accounts) as from that time all payments made to the Bank shall be credited or be treated as having been credited to the new Account and shall not operate to reduce the amount secured by the provisions of this paragraph 7.

#### 7.11 **Set-off and Currency Conversion**

- 7.11.1 In addition to its other rights under this paragraph 7 (or elsewhere in the Mandate) and to all customary or other rights of set-off and any similar express or implied rights, the Bank may at any time as a continuing right without notice or demand:
- 7.11.1.1 set-off against the Customer's Indebtedness any liabilities of the Bank to the Customer (whether present, future or contingent and including, without limitation, money in any Account); and
  - 7.11.1.2 combine and consolidate all or any Accounts.
- 7.11.2 Without affecting and in addition to the grants of security interest and other rights under this paragraph 7 and the Mandate, the Customer hereby agrees that the Bank shall have a lien over each Charged Account and each Charged Balance.
- 7.11.3 The Bank may at any time, as a continuing right without notice or demand, convert (spot or forward) from one currency to another any money in or any Indebtedness on an Account or any of the actual or prospective proceeds of a sale or application made or to be made, pursuant to this paragraph 7, at the Bank's prevailing exchange rate for the sale of such other currency against the existing currency. Any risk or loss arising from conversion of any amount from one currency to another or from any fluctuation in any exchange rates and all expenses in connection therewith shall be borne by the Customer.

## 7.12 Further Assurance and Power of Attorney

- 7.12.1 The Customer agrees that it shall from time to time at the request of the Bank do all such things and execute and deliver all such transfers, notices and other documents (including, without limitation, a replacement or supplemental security document) as the Bank may consider necessary or desirable for creating, completing, maintaining, enhancing or perfecting the security contemplated hereby, or for securing the rights of the Bank hereunder or, if an Event of Default has occurred and is continuing, enforcing its security or rights under this paragraph 7 or the Securities Law.
- 7.12.2 By way of security the Customer irrevocably and severally appoints each of the Bank and any person nominated in writing under the hand of any person authorised in that behalf by the Bank as the Customer's agent and attorney for the purpose of creating, completing, maintaining, perfecting and enforcing the security interest created and to do in the name and on behalf of the Customer all such acts and things and execute all such documents which the Customer as Account holder could do or execute in relation to the Collateral and in its name and on its behalf to execute, seal, deliver and perform any conveyance, mortgage, transfer, renunciation, disposition or other deed or document which may be requisite or expedient for any of the purposes set out herein.
- 7.12.3 The Customer hereby agrees to indemnify and keep indemnified the Bank and any person authorised by the Bank (including substitute attorneys) against all losses, liabilities, costs (including, without limitation, legal fees), claims, actions, demands and expenses which may be incurred by the Bank or any person authorised by the Bank (including substitute attorneys) or which may be made or brought against the Bank or any person authorised by the Bank (including substitute attorneys) as a result of or in connection with anything done by the Bank or any person authorised by the Bank (including substitute attorneys) under or pursuant to the power of attorney granted hereunder other than where any such losses, liabilities, costs (including, without limitation, legal fees), claims, actions, demands or expenses arise as a result of the fraud, wilful misconduct or gross negligence of the Bank or any person authorised by the Bank (including substitute attorneys).

## 7.13 Liability of the Bank

- 7.13.1 The bank shall not:
- 7.13.1.1 be obliged to ensure that any interest, dividend, security, right, policy of life assurance, money or other intangible moveable property hereafter being or capable of being derived from or created or issued in substitution for any of the Collateral is received whether punctually or at all or to ensure the taking up of any offer in connection therewith;
- 7.13.1.2 be obliged to forward to the Customer any circulars, notices or other information received in connection with the Collateral;
- 7.13.1.3 be liable to the Customer or any other person for any loss, damage or diminution in value of any part of the Collateral arising out of the exercise or non-exercise of any voting or other right relating thereto or arising out of any other act or omission, unless the same have been caused by the Bank's fraud or deliberate misconduct; or
- 7.13.1.4 be liable to the Customer in acting or refusing or neglecting to act on any request of the Customer or its agents relating to the Collateral, as long as the Bank is acting in accordance with its rights and powers under this paragraph 7.

## 8. PRECIOUS METAL ACCOUNTS

If a Client wishes to purchase precious metal on an execution only basis, the Bank shall handle the transaction in a metals account at a correspondent bank. The Client agrees to waive any such right to call for physical delivery.

## 9. ACCOUNT STATEMENTS

- 9.1 Account statements will be sent to the Client by the Bank on a quarterly basis or at such other intervals as may be agreed. If there is no account activity, statements will be sent annually on the anniversary of the last transaction occurring.
- 9.2 A Client who has online banking will not receive paper Account Statements unless specifically requested.
- 9.3 Any Account Statement sent to the Client will be deemed to be correct, conclusive and binding on the Client unless the Client notifies the Bank promptly that:
- 9.2.1 it disputes any entry on the Account Statement; or
- 9.2.2 the Bank has not carried out any Proper Instruction relevant to the Account Statement.
- 9.4 The Client will take reasonable care to minimise the risk of fraud or forgery on the Account and will carefully examine Account Statements for any unauthorised debit items. If the Client becomes aware of or suspects any fraudulent or other unauthorised activity on the Account the Client will notify the Bank immediately.

## **10. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS**

### **10.1 Representations and Warranties**

The Client represents and warrants that:

- 10.1.1 where the Client is a company or other corporate entity, it is duly incorporated and validly existing and in good standing under the laws of the jurisdiction of its incorporation or establishment;
- 10.1.2 the Terms and any Agreement are valid, binding and enforceable on the Client;
- 10.1.3 the Client has obtained all necessary and relevant authorisations, consents and licences required to perform its obligations under these Terms and any Agreement;
- 10.1.4 it is responsible for obtaining tax advice and for declaring and filing any applicable taxes to the relevant tax authorities;
- 10.1.5 the Terms and any Agreement are within the powers of the Client and their execution and performance by the Client of its obligations under such documents will not constitute a breach of or result in any default under any other agreement, instrument or obligation by which the Client is bound;
- 10.1.6 the Client is not in default under any other agreement in any respect which is material in the context of these Terms and any Agreement;
- 10.1.7 all monies and other property deposited in the Account are the Client's sole and absolute property free from Encumbrance; and these representations and warranties are deemed repeated at the time of the giving of any instructions or deemed instructions to the Bank under the Terms or any Agreement.

### **10.2 Undertakings**

The Client undertakes:

- 10.2.1 to supply to the Bank promptly upon request such information as the Bank may at its discretion consider to be necessary to enable it to properly discharge its obligations under the Terms and any Agreement in accordance with Applicable Laws, including information concerning the Client's identity, the ultimate beneficial ownership of any monies paid in or deposited with the Bank or any other assets held by the Bank on the Client's behalf and outgoing payments made from any Account;
- 10.2.2 that all Proper Instructions will be lawful and not be in breach of any Applicable Laws;
- 10.2.3 not to create or allow to be created any Encumbrance over the Account without the Bank's consent;
- 10.2.4 to notify the Bank immediately of any change in his circumstances, his tax residence or status or any other changes which may be material to the dealings between the Bank and the Client or the performance of the Bank of its obligations under these Terms or any Agreement;
- 10.2.5 to promptly provide such information and documentation to the Bank as the Bank may reasonably require relating to the Client including any information necessary for the Bank to fulfil its obligations under Applicable Laws or any regulatory requirements (including Client due diligence) or to enable the Bank to make any necessary withholdings or deductions by way of taxation or otherwise and will promptly notify the Bank if any such information ceases to be accurate or is otherwise superseded.

## **11. DISCLAIMER ON ADVICE**

11.1 Unless specifically provided in any Agreement, the Client acknowledges that the Bank does not provide or hold itself out as providing advice to the Client under these Terms:

- 11.1.1 on the suitability of the Bank's products, services or loan facilities for the Client's particular circumstances;
- 11.1.2 relating to the fiscal or tax affairs of the Client in Guernsey or elsewhere, nor does the Bank exercise any judgment on the Client's behalf in such matters, and accordingly neither the Bank nor any Bank Personnel will be liable for any loss arising as a direct or indirect result of the Client relying on or acting on any information.

11.2 The Client is responsible for obtaining his own independent advice in any transactions with the Bank including the giving of any security or guarantee to the Bank.

## **12. THE BANK'S CHARGES**

12.1 The Client will pay:

- 12.1.1 the Bank's fees, costs and charges at the rates set out in the Bank's Charges, a copy of which is available online at [www.butterfieldgroup.com](http://www.butterfieldgroup.com) and from the Bank on request;
- 12.1.2 the Bank's fees on a time spent basis in respect of any work undertaken by the Bank under these Terms:
  - 12.1.2.1 at the request of the Client; or
  - 12.1.2.2 in relation to or for the purpose of complying with any Applicable Laws; or

- 12.1.2.3 in dealing with a Client request or breach of any Agreement by the Client; and
- 12.1.3 all third party and agents' costs and charges in connection with these Terms and any Agreement.
- 12.2 For the avoidance of doubt interest rates applicable to Accounts depend on the type of Account, the amount invested and the term chosen. The Bank reserves the right to adjust rates for Accounts with no fixed rate, in the light of market conditions, and to amend its minimum balance requirement with no period of notification required. The Bank reserves the right to charge you a negative rate of interest on positive balances. The Bank's interest rates are available from the Bank upon request. Interest rates may be subject to change (with no period of notification required) due to fluctuations in the market and any quotation should be considered as indicative only.
- 12.3 Any amounts due to the Bank under these Terms and any Agreement:
  - 12.1.4 will be debited by the Bank to the Account from time to time; or
  - 12.1.5 will be paid by the Client on demand together with any applicable taxes, without any set-off, deduction or withholding. Where any deduction or withholding is required to be made on account of tax properly payable under any Applicable Laws, then the amount payable by the Client will be increased to ensure that the Bank receives an amount equal to that which it would have received had no deduction or withholding been made. The Client will provide the Bank evidence of the proper payment of such withholding tax.

### **13. LIABILITY AND INDEMNIFICATION**

#### **13.1 Liability**

- 13.1.1 Without prejudice to any Agreement, this paragraph 13 sets out the provisions under which the Bank's liability to the Client in all dealings with the Client under these Terms and any Agreement will be excluded or limited, to the extent permitted by Applicable Laws.
- 13.1.2 The Bank will not be liable to the Client or any other person whether in contract or in tort for any costs, expenses, losses, liabilities, damages, claims, actions, proceedings or demands which the Client may incur or suffer:
  - 13.1.2.1 as a result of any error, corruption, delay or failure in transmission of any instructions or communication between the Client and the Bank made by any means used by the Client or the Bank in accordance with these Terms notwithstanding that the instructions or communications are Proper Instructions; provided that the Bank has acted in good faith and in the absence of negligence, wilful default or fraud; or
  - 13.1.2.2 as a result of the processing of bills of exchange or other receivables by the Bank acting as agent without assuming any liability or responsibility; or
  - 13.1.2.3 as a result of any bill of exchange, cheque or other receivables being unclear or incomplete, or not being presented or challenged within the prescribed time due to delay in the Bank receiving it in a reasonable time before the clearance date; or
  - 13.1.2.4 as a result of a Force Majeure; or
  - 13.1.2.5 resulting from any instructions given or purportedly given by an Authorised Signatory verbally, in person, over the telephone or by electronic mail, or the Bank acting erroneously or failing to act in accordance with such instructions; or
  - 13.1.2.6 resulting from or pursuant to the use of facsimile whether sent to or by the Bank or an Associate on behalf of the Client, however so arising; or
  - 13.1.2.7 as a result of the Bank acting on Proper Instructions; or
  - 13.1.2.8 as a result of any wilful default, negligence or fraud on the part of any person other than the Bank or Bank Personnel; or
  - 13.1.2.9 as a result of any liability to taxation (howsoever and wheresoever arising) assessed or imposed directly or indirectly upon the Client, his assets or their management, control or custody under the Terms or any Agreement; or
  - 13.1.2.10 if, by reason of any Applicable Laws, the Bank is prevented from or impeded in or is delayed in carrying out its obligations to the Client; or
  - 13.1.2.11 as a result of or in connection with the Bank complying or purporting to comply with any Applicable Laws including but not limited to the suspension of the Account by the Bank.
- 13.1.3 Unless specifically set out in these Terms or any Agreement, the Bank is not liable for any economic or consequential loss, direct or indirect, loss of opportunity or loss of profits, whether foreseeable or not, suffered by the Client.

- 13.1.4 Without prejudice to paragraph 13.1.3, the Bank's liability to the Client in respect of any error or omission on its part will not exceed an amount equal to the loss of interest (if any) as a result of the Bank's error or omission in carrying out Proper Instructions. If the Bank takes any action to restore the Client to the position he would have been in if the error or omission had not occurred, the Bank is entitled to retain any profit or gain arising as a result of taking such action.
- 13.1.5 The limit on the Bank's liability in the preceding sub-paragraph does not apply if in any specific case the Bank was notified by the Client in advance of the risk of more extensive loss to the Client and the Bank has agreed in writing to accept such risk.
- 13.1.6 Any loss resulting from the legal incapacity of a Client or a third party will be borne by the Client or his/her estate (as the case may be) unless the Bank has received notice of such legal incapacity. The Bank may continue to act in accordance with any Mandate or other agreement with the Bank until it receives notice of the death or other legal incapacity of the Client and the Bank will incur no liability to the Client or to his/her estate for continuing to so act.
- 13.1.7 The Client is not entitled to receive any damages or other compensation from the Bank on the termination of the relationship between the Bank and the Client and/or any Agreement or other arrangement between the Bank and the Client or on the closing of the Account by the Bank by reason of Force Majeure.
- 13.1.8 No action may be brought or claim made by the Client against any Bank Personnel by virtue of anything done or omitted to be done pursuant to these Terms or any Agreement.
- 13.1.9 The Bank may rely on the advice given by legal advisors, accountants, consultants and such other persons as the Bank may engage in the course of performing its obligations. The Bank will not be liable for any costs, expenses, losses, liabilities, damages, claims, actions, proceedings or demands which the Client may incur or suffer as a result of the Bank acting on any such advice.

### 13.2 Indemnification

- 13.2.1 In the absence of negligence, wilful default or fraud on the part of the Bank the Client will indemnify and keep indemnified the Bank and Bank Personnel against all costs (including the costs of taking legal and other professional advice), expenses, losses, liabilities, damages, claims, actions, proceedings or demands incurred or suffered by the Bank or any Bank Personnel:
- 13.2.1.1 by virtue of or in connection with the Bank's appointment as the Client's bankers and the performance of its functions under these Terms and any Agreement;
  - 13.2.1.2 as a result of the Bank acting, failing to act or acting erroneously on Proper Instructions in good faith;
  - 13.2.1.3 in connection with any action taken by the Bank which it reasonably believes to be in compliance with Applicable Laws;
  - 13.2.1.4 resulting from or pursuant to the use of facsimile either sent to or by the Bank or an Associate on behalf of the Client; and
  - 13.2.1.5 in dealing with any conflicting claims relating to the Account or any other property of the Client and in safeguarding the Bank's interest.
- 13.2.2 Notwithstanding any other provision in these Terms and any Agreement the Bank will not be required to take any action on behalf of or at the request of the Client unless it is fully indemnified and/or secured to its satisfaction against all costs (including legal and other professional costs), expenses, losses, liabilities, damages, claims, actions, proceedings or demands arising directly or indirectly out of or in connection with any action. The Bank may decline to take any such action if in the opinion of the Bank such action may be detrimental to its interest.

### 13.3 Client's Responsibility

The Client is responsible for all the acts and omissions of its Authorised Signatories and Users. For the purposes of these Terms, the acts and omissions of any Authorised Signatory or User will be deemed to be the acts and omissions of the Client.

## 14. RIGHT OF SET-OFF AND LIEN

- 14.1 The Bank has the rights set out in this paragraph in addition to any rights under any Applicable Law or by virtue of any guarantee or security agreement or other agreement between the Bank and the Client.
- 14.2 The Bank may at any time, at the risk of and without notice to the Client, in respect of any Account, whether current or deposit account and in any currency:
- 14.1.1 combine and consolidate any and all of the Accounts; and
  - 14.1.2 set off any monies in any and all of the Accounts against all or part of any Indebtedness regardless whether any of the monies held may have been deposited for fixed periods which have not expired.

- 14.3 The Client agrees that if the Bank appropriates any deposit before its maturity date the amount applied will be net of the amount of early withdrawal penalty (if any, which will be payable by the Client) charged by the Bank in the ordinary course of its deposit business.
- 14.4 The Bank has a lien over any property of the Client held in any Account and any amounts which may now or in the future be owing by the Bank to the Client (whether or not jointly with other clients of the Bank) until the Indebtedness has been fully repaid or discharged. If any Indebtedness is not fully repaid or discharged when due, the Bank will be entitled to appropriate any amount held by the Bank and owing to the Client in or towards repayment and/or discharge of the Indebtedness in full or in part.
- 14.5 The Bank is entitled at its discretion at any time at the risk of and without notice to the Client to convert any currency into any other currency in which the Indebtedness or any credit balance may for the time being be designated.

## **15. POWER TO SELL OR CLOSE OUT**

- 15.1 If, at a time monies become due or will or may become due in the future, as a result of a commitment entered into by the Bank on behalf of the Client and the Bank is of the opinion that the Client has not performed or may not be able or willing in the future to perform all or any of its obligations to the Bank, then the Bank may at its discretion and without liability to the Client exercise the following powers:
  - 15.1.1 the power to sell or exchange such of the Client's investments or such of the Client's monies in foreign currencies under the Bank's control as the Bank may, at its discretion, select in order to realise funds sufficient to cover any outstanding amount; and/or
  - 15.1.2 the power to cancel, close out, terminate or reverse any transaction or enter into any transaction or do anything which has the effect of reducing or eliminating any outstanding amount or of reducing or eliminating liability under any contracts, positions or commitments undertaken by the Bank on behalf of the Client; and/or
  - 15.1.3 the power to terminate or unwind any transaction where, in the Bank's opinion, the margin of security which has been provided has become inadequate and the provision of further security would not resolve the situation satisfactorily.

## **16. CONFLICTING CLAIMS**

- 16.1 If the Bank receives notice or otherwise becomes aware that any funds in the Account may be subject to any conflicting or third party claims, the Bank may at its discretion take such steps as it deems necessary at the cost of the Client including the taking of legal advice or making an application to any court and pending resolution of any conflicting claim the Bank may:
  - 16.1.1 refuse to pay or deliver to the Client all or any part of the funds or property held in the Account;
  - 16.1.2 decline to enter into any communications with the Client regarding the claim;
  - 16.1.3 take such action as it considers, at its discretion, to be appropriate.

## **17. REGULATORY STATUS**

- 17.1 The Bank is licensed by the Guernsey Financial Services Commission under:
  - 17.1.1 The Banking Supervision (Bailiwick of Guernsey) Law, 2020, as amended from time to time; and
  - 17.1.2 The Protection of Investors (Bailiwick of Guernsey) Law, 2020, as amended from time to time, to act, amongst other things, as custodian and trustee of assets and to provide investment management services.

## **18. COUNTERING FINANCIAL CRIME AND TERRORIST FINANCING**

- 18.1 Information relating to the Client may be processed by the Bank for the purpose of complying with Applicable Laws on countering financial crime and terrorist financing. This includes a requirement on the part of the Bank to supply payer information (amongst other things) on a transfer of funds.
- 18.2 The Bank may take such action as it considers appropriate to meet its obligations relating to countering financial crime and terrorist financing and the provision of financial and other services to persons who may be subject to sanctions. This may include, but is not limited to, investigating and intercepting payments into and out of the Account and investigating the source of or intended recipient of funds. It may also include making enquiries to establish whether a person is subject to sanctions.

## **19. REFERENCE AGENCIES, VERIFICATION OF IDENTITY AND COUNTERING FINANCIAL CRIME**

- 19.1 The Client will provide promptly on the request of the Bank from time to time such information regarding his affairs for any purpose required by the Bank including dealing with any credit reference or similar enquiry relating to the Client.

- 19.2 The Client authorises the Bank to contact such persons as the Bank thinks fit, to verify the correctness and completeness of any information furnished by the Client and authorises such persons to release such information to the Bank. Credit searches and other information which are provided to the Bank about the Client may be used by the Bank or any Associate subject to Applicable Laws.
- 19.3 The Bank may ask the Client to provide physical forms of identification or it may telephone the Client to confirm the Client's identity.
- 19.4 To counter financial crime and terrorist financing and to assist in verifying the Client's identity the Bank may make searches of the records of any Associate and reference and other agencies. Any information disclosed to the Bank may be provided by the Bank to third parties subject to Applicable Laws.

## **20. DATA PROTECTION**

This paragraph applies to information held by the Bank relating to private individuals:

- 20.1 The Privacy Notice explains how the Bank stores Client personal data and sets out rights that Clients have to their information. The Bank has provided its Privacy Notice separately to the Client and the Bank will inform the Client when any changes are made to the Privacy Notice.
- 20.2 A copy of the Privacy Notice is also available at [www.butterfieldgroup.com](http://www.butterfieldgroup.com) or by contacting LICGuernsey@butterfieldgroup.com.

## **21. DISCLOSURES AND CLIENT CONFIDENTIALITY**

### **21.1 General**

- 21.1.1 The Bank and the Client acknowledge that the duty of confidentiality owed by the Bank to the Client in their dealings under these Terms and any Agreement will be subject to these Terms.
- 21.1.2 Subject to Applicable Laws, neither the Bank nor the Client will, and each will procure that its employees will not, at any time, disclose to any person not authorised by the other party, any information relating to the other party or to the affairs of the other party which that party acquired in the course of their dealings under the Terms or any Agreement and each party will use all reasonable endeavours to prevent such disclosure.
- 21.1.3 The Bank will not be deemed to be in breach of its duty of confidentiality and any other duty to the Client:
- 21.1.3.1 if the Bank makes any disclosure to any person or takes any action (including making any withholding) which it reasonably believes to be in compliance with its obligations under Applicable Laws; or
  - 21.1.3.2 if the possibility of disclosure to any person is in accordance with or contemplated by these Terms or any Agreement.

### **21.2 Tax and other disclosures**

- 21.2.1 The Client acknowledges that in addition to any other requirements relating to disclosures imposed by Applicable Laws, the Bank is required to make certain deductions, withholdings and/or disclosures concerning the Client to tax authorities in Guernsey and/or elsewhere.
- 21.2.2 The Client authorises the Bank and its Associates to make the necessary deductions, withholdings and disclosures in respect of the Client's financial and tax affairs under Applicable Laws and the Client acknowledges and agrees that such information may be made available to any governmental, regulatory, judicial, administrative, tax or other authority outside Guernsey.

#### **Sharing of information**

The Bank may share with its Associates and their respective advisers, any information held by the Bank (including data) relating to the Client for the purpose of undertaking or assisting in any due diligence on the Client and/or to enable the Bank or its Associates to comply with the Applicable Laws.

## **22. FORCE MAJEURE**

- 22.1 Performance of the Bank's services may be suspended during any operation of Force Majeure, which will be resumed as soon as reasonably practicable after the termination of the Force Majeure, subject to the following sub-paragraph.
- 22.2 If in the opinion of the Bank it is unlikely that the event of Force Majeure will come to an end within a reasonable period of time to enable normal resumption of the services to be performed by the Bank, the Bank may give a Closing Notice to the Client.

## **23. TERMINATION AND CLOSING OF ACCOUNT**

- 23.1 If the Bank or the Client wishes to terminate the banking relationship between them and close the Account, either may give a Closing Notice to the other.

- 23.2 The Bank is not required to give any reason for giving a Closing Notice.
- 23.3 If the Client gives a Closing Notice to the Bank, the Bank may (but is not obliged to) complete any transactions entered into by or on behalf of the Client before such notice was received.
- 23.4 A Closing Notice given by either the Bank or the Client must be given:
- 23.4.1 in respect of Notice Accounts, the number of days prior to the date of closure as stated by the product. For example where such account is a 32 day notice account, the Closing Notice must be served at least 32 days prior to the date of closure which must be a business day;
  - 23.4.2 in respect of a Closing Notice given by the Client in respect of a Call Account, on the date of closure which must be a business day, provided that all Indebtedness and other liabilities of the Client to the Bank have been discharged in full on the date of closure; and
  - 23.4.3 in all other cases, at least 30 days' prior to the date of closure which must be a business day. All liabilities of the Client to the Bank and Indebtedness will become due and payable immediately.
- 23.5 The Client will provide to the Bank account details of the Client to which any credit balances on any Account will be transferred by the Bank. The Bank is not obliged to make any transfers except in accordance with Applicable Laws.
- 23.6 The giving of a Closing Notice by either party takes effect as a notice to terminate the Agreement in accordance with its terms.
- 23.7 Termination of the banking relationship between the Bank and the Client, the closure of the Account or the termination of any Agreement will not affect accrued rights, existing commitments or any other provision intended to survive termination and closure.
- 23.8 Notwithstanding the termination of the banking relationship between the Bank and the Client, the Client undertakes to promptly provide any information and documentation as the Bank may reasonably require (including to ensure that the Bank fulfils its obligations under Applicable Laws or any regulatory requirements (including Client due diligence)) to enable the Bank to effect the termination of the banking relationship and/or to close the Account.
- 23.9 The following provisions will survive the termination of the relationship between the Bank and the Client and the closing of the Account: Paragraphs 12, 13, 17, 18, 20, 21, 28.6, 28.8, 29, 30 and 31.

## **24. CHANGES TO THESE TERMS**

- 24.1 The Bank may make changes to any of these Terms including the Bank's Charges on giving at least the same amount of notice specified in paragraph 23.4 (In the case of 23.4.1 where a Notice Accounts requires more than 30 days' notice, the Bank may make changes that do not impact the notice period or the interest rate to the detriment of the Client) above by circular or any other appropriate means (including by Butterfield Online, by post, email, a message on the Client's statement, or in another way that will be sent to the Client individually) to affected Clients.
- 24.2 If for any legal or regulatory reasons, the Bank is required to make any changes which have immediate effect, the Bank will place a notice on the Bank's website and send written notice to each Client.
- 24.3 Changes will be posted on the Bank's website [www.butterfieldgroup.com](http://www.butterfieldgroup.com) within a reasonable period and may be separately notified to the Client.
- 24.4 In respect of Notice Accounts, interest is calculated on a daily basis commencing on the day of receipt of cleared funds into the account. Interest will then accrue up to but excluding the day of withdrawal. Interest will be credited at the end of March, June, September and December and on closure or at the end of the notice period once reached. The interest rate calculation of Sterling accounts is calculated over 365 days and for US dollar and Euro accounts is calculated over 360 days.

## **25. SPECIAL CONDITIONS**

In addition to these Terms and to the Mandate, the Bank may in relation to certain transactions or certain types of business that it may undertake from time to time agree special conditions with the Client. Documentary credit business will be governed by the Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce Publication No. 500 or by subsequent Uniform Customs and Practice (Customs) fixed by subsequent Congresses of the International Chamber of Commerce unless otherwise indicated. If there is any conflict between any such special conditions and these Terms the provisions of the special conditions will prevail. If there is any conflict between the Customs and these Terms, these Terms will prevail. Any aspect of business between the Bank and the Client which is not governed by these Terms or any special condition or the Customs will be governed by customary banking practice in Guernsey.

## **26. INSTRUCTIONS, NOTICES AND COMMUNICATIONS FROM THE CLIENT**

- 26.1 This paragraph and paragraph 27 set out the requirements for the giving of Notices (including a Closing Notice) by the Client to the Bank.
- 26.2 The Client authorises the Bank to act in accordance with Proper Instructions and agrees to be bound by all such communications.
- 26.3 The Client acknowledges that the Bank will only act on Proper Instructions which can be carried out in accordance with the rules, procedures, practices and Applicable Law to which the Bank is subject.
- 26.4 The Bank may rely conclusively on the list of signatories and signatures appearing in the Mandate and the Authorised Signatories List until:
- 26.4.1 notified in writing to the contrary by the Client; or
  - 26.4.2 receipt of a revised Mandate or Authorised Signatories List from the Client.
- 26.5 The Bank may (but is not obliged to) in respect of any matter or generally:
- 26.5.1 rely upon, accept and act in accordance with any communication received from or which purports to be from an Authorised Signatory, by telephone, facsimile or electronic mail without further verification or from a User in accordance with the Online Terms; and/or
  - 26.5.2 require the Client or any Authorised Signatory to provide:
    - 26.5.2.1 further confirmation of any communication to the Bank and marked "Confirmation Only, do not duplicate"; and/or
    - 26.5.2.2 evidence of identity or authority of the Authorised Signatory or other person purporting to communicate with the Bank on behalf of the Client; in such form as the Bank considers appropriate and in any particular instance regardless of the nature of the instruction contained in such communication, if the communication with the Bank has been made by telephone, facsimile or electronic mail; and/or
  - 26.5.3 decline to act on communications made by telephone, facsimile or electronic mail if the Bank, acting in good faith, is not satisfied as to the source or authenticity of the communication; and
  - 26.5.4 decline to act on any instruction (including any Proper Instruction) which appears to the Bank to be incomplete or unclear in any respect.
- 26.6 Acceptance by the Bank of any form of communication from or on behalf of the Client or an Authorised Signatory in a particular instance which is outside the scope of the Mandate will not be deemed to be a variation of the Mandate, nor will it oblige the Bank to accept such form of communication in future from or on behalf of the Client or an Authorised Signatory regardless of the subject matter of the communication.
- 26.7 The Client agrees to perform, confirm, and ratify any transaction entered into, or commitment made by the Bank and any actions taken by the Bank in good faith as a result of the Bank acting on Proper Instructions.
- 26.8 The Client agrees and undertakes to indemnify the Bank against: (i) any and all loss, damage, claims, actions, proceedings, costs and expenses (including legal fees and expenses) which the Client may sustain, suffered or incurred (including without prejudice to the generality of the foregoing any sums you may be obliged to pay to a third party) as a result, or pursuant to the use of facsimile however so arising (notwithstanding any fault or negligence on the part of the Bank or any member of its staff); and (ii) any liability for loss, damage, interruption, delay or non-performance, direct or indirect, howsoever arising, in relation to a facsimile either sent to or by the Bank (or its nominee entity) on behalf of the Client.

## **27. SERVICE OF NOTICES**

- 27.1 Notices must be in writing and may be delivered personally, sent by post or facsimile, and will be deemed to be received notwithstanding Force Majeure:
- 27.1.1 by the Client:
    - 27.1.1.1 if delivered personally: on the day of delivery if it is a working day in the place which it is delivered, or otherwise at the start of the next Business Day;
    - 27.1.1.2 if sent by pre-paid post to the Client's Address in Guernsey: at midday on the following Business Day;
    - 27.1.1.3 if sent by pre-paid post to the Client's Address in the United Kingdom: at midday on the second Business Day after posting;
    - 27.1.1.4 if sent by pre-paid airmail to the Client's Address outside Guernsey and the United Kingdom: at midday on the fifth day after posting;

- 27.1.1.5 if sent by facsimile to the Client's number last known to the Bank: at the time of transmission during normal business hours in the place of receipt, on a working day in the place of receipt, or otherwise at the start of the next working day in the place of receipt; and
- 27.1.1.6 if sent by electronic mail to the Client to an address notified by the Client as an address at which he may be served (which is not returned as undeliverable): at the time of sending during normal business hours in the place of receipt, on a working day in the place of receipt or otherwise at the start of the next working day in the place of receipt.
- 27.1.2 by the Bank: only upon actual receipt by the Bank at its place of business at: Regency Court, Gategny Esplanade, St Peter Port, Guernsey, GY1 3AP Facsimile No: +44 (0)1481 714533.  
Marked for the attention of "the Managing Director" or any other Bank Personnel as may be advised by the Bank from time to time.
- 27.2 Any Notice from the Bank is effective despite the death, dissolution or liquidation of the Client.
- 27.3 The date on the duplicate of the Notice retained by the Bank is conclusive proof of date of posting.

## **28. GENERAL**

### **28.1 Retention of commissions and other payments**

The Bank may retain for its own benefit and without accounting to the Client all broking, trailing or other commissions or payments of a similar nature received or receivable on investment transactions, dealings, insurance or otherwise as a result of or incidental to the performance of its functions under these Terms and any Agreement.

### **28.2 Waiver of Rights**

- 28.2.1 No failure to exercise or single or partial exercise and no delay in exercising on the part of the Bank any right, power or privilege under these Terms or any Agreement will operate as a waiver of any of the Bank's rights.
- 28.2.2 The Client waives any rights which he may have pursuant to "droit de discussion" and "droit de division" and any other laws of Guernsey or elsewhere, to require that:
  - 28.2.2.1 any of his liabilities to the Bank be divided or apportioned with any other person or reduced in any manner; or
  - 28.2.2.2 the Bank seeks recourse against the assets of some other person before proceeding against the Client or his assets.

### **28.3 Remedies cumulative**

The rights, powers and remedies provided in these Terms and any Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

### **28.4 Severability**

If any of the provisions in these Terms or any Agreement is held to be invalid, illegal or unenforceable in any respect under any Applicable Law, the remaining provisions of these Terms or the Agreement will remain valid, legal and enforceable. There will be deemed substituted for any invalid, illegal or unenforceable provision such reasonable alternative provision which has as nearly as possible the same effect as between the Client and the Bank, insofar as such substitution is permitted by law.

### **28.5 Compensation Scheme**

- 28.5.1 As a licensed bank in Guernsey, the Bank is a participant in the Scheme established by The Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008 (Ordinance). The following is a brief summary of the Scheme, but is not intended as a substitute for the actual wording of the Ordinance, a copy of which is available on request.
- 28.5.2 The Scheme only applies to 'qualifying deposits', which broadly means deposits made by natural persons for their own benefit; with a few limited exceptions such as, for example, deposits made by trustees of retirement annuity trust schemes; the Scheme does not apply to companies, trusts or limited partnerships.
- 28.5.3 The Scheme will provide compensation in the event that a licensed bank is unable to repay its depositors. Under normal circumstances, payment will be made within 3 months of receipt of a valid claim form.
- 28.5.4 Compensation is limited to a maximum of £50,000 per individual claimant; in the case of a joint account each depositor would be entitled.
- 28.5.5 Total Scheme compensation in any five year period is limited to £100 million. If claims exceed this cap, compensation would be reduced pro rata. The cap also means that compensation in respect of any one bank cannot exceed £100 million.
- 28.5.6 The amount payable may be reduced if the Bank has any relevant security against the account. The Scheme is entitled to recover compensation from any funds subsequently paid out by the Bank.

28.5.7 Further information and a leaflet about the Scheme is available at:  
Post: PO Box 33, St Peter Port, Guernsey, GY1 4AT Website: [www.dcs.gg](http://www.dcs.gg) Telephone: +44 (0)1481 722756.

28.5.8 Updated information can be found on the Bank's website [www.butterfieldgroup.com](http://www.butterfieldgroup.com), which includes a link to the Scheme's website.

28.5.9 Deposits are not covered by the Financial Services Compensation Scheme under the Financial Services and Markets Act 2000, nor are deposits covered by any equivalent scheme outside of the Bailiwick of Guernsey.

#### 28.6 Document Retention

The Bank is required to retain all relevant documents in connection with the provisions of services by the Bank to the Client under these Terms and any Agreement for the period set out in the Bank's Privacy Notice.

#### 28.7 Telephone recording

Telephone calls may be recorded or monitored for the purposes of ensuring the authenticity or content of oral instructions, resolving complaints, training and service quality purposes. All recordings remain the sole property of the Bank and in the event of a dispute, the Bank reserves the right to use such recorded conversations as evidence. The period for which any recording is retained will be in accordance with any relevant legal and/or regulatory requirements and in the absence of same, as determined by the Bank at its sole discretion.

#### 28.8 Computer records

All information held on the Bank's computer systems is the property of the Bank.

#### 28.9 Dormant Accounts

Provided that the Bank has made every reasonable effort and attempt to contact the Client, the Bank may transfer to an unclaimed balances account any balances left on accounts where there has been no activity for a minimum period of three years.

#### 28.10 Authorised Signatories List

Changes to the Mandate and the Authorised Signatories List may be made by the Client from time to time subject to the Bank being provided with satisfactory evidence of the Client's authority to make the relevant changes, including in the case of a corporate Client a certified board resolution.

#### 28.11 Death

Upon the death of the Client (being an individual or individuals), until the Bank has received satisfactory evidence of death and the Guernsey grant or re-sealing of probate or letters of administration, the Bank may retain any amount in any Account or any monies owing by the Bank to the Client on any other account. Where the Client consists of two or more persons named as joint account holders, if the Bank receives notice that any one of the joint account holders has died, the Bank may treat the surviving joint account holder as having full power and authority to deal with the Account as if he were the sole account holder from the outset.

#### 28.12 Complaints

If the client has a complaint in respect of the Bank's service the client should, in the first instance, write to, phone or email their Relationship Manager or to write to the Compliance Department. Full details of the Bank's complaint handling procedure is available on the Bank's website or on request. The client may also have the right to complain directly to the Channel Islands Financial Ombudsman. If the client wishes to exercise this right the contact details are as follows:

##### **Channel Islands Financial Ombudsman (CIFO)**

**PO Box 114, Jersey, Channel Islands, JE4 9QG**

Email: [enquiries@ci-fo.org](mailto:enquiries@ci-fo.org)

Website: [www.ci-fo.org](http://www.ci-fo.org)

Guernsey local phone: **+44 (0)1481 722218**

International phone: **+44 (0)1534 748610**

The Channel Islands Financial Ombudsman (CIFO) is a joint operation of two statutory ombudsman roles, established in law by the Financial Services Ombudsman (Jersey) Law 2014 and the Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014. The primary role of CIFO is to resolve complaints about financial services provided in/from Jersey, Guernsey, Alderney and Sark. Individuals, microenterprises and, subject to consultation, small local charities will be able to bring complaints.

### 28.13 Bribery and Corruption

The Bank is committed to guard against all forms of bribery and corruption. This includes compliance with local and international corruption and anti-bribery laws. The Bank expects transparency and integrity in all of its business dealings. It is the responsibility of the Client to ensure that it acts in accordance with local and international corruption and anti-bribery laws and at all times. For so long as the Services are being provided, the Client confirms that it shall not engage in any activity, practice or conduct which could create any improper business advantage or even the appearance of questionable business conduct. Where any Client not under the Bank's control is a body corporate, the Client undertakes to have in place and maintain (throughout the period during which the Services are provided) appropriate policies and procedures, including (but not limited to) adequate procedures required to comply with the requirements of the UK Bribery Act 2010 (which can be enforced where applicable) and the Prevention of Corruption (Bailiwick of Guernsey) Law, 2003. The Client agrees to notify the Bank promptly in the event that the Client or any person engaged by the Client is investigated, prosecuted, charged or convicted of any offence under local or international corruption and anti-bribery laws.

### 28.14 Prevention of the Facilitation of Tax Evasion

The Bank is committed to guard against and prevent the facilitation of tax evasion which includes, amongst other things, complying with local and international legislation relating to the prevention of tax evasion. The Bank expects transparency and integrity in all business dealings. It is the responsibility of the Client to ensure that it acts in accordance with local and international prevention of tax evasion legislation at all times. Where a Client is a corporate body, the Client undertakes to have in place and maintain (throughout the period during which the Services are provided) appropriate measures, policies and procedures, including (but not limited to) adequate procedures required to comply with the requirements of the UK Criminal Finances Act 2017 and UK Government Guidance for the Corporate Offences of Failure to Present the Criminal Facilitation of Tax Evasion. The Client agrees to notify the Bank promptly in the event that the Client or any person engaged by the Client is investigated, prosecuted, charged or convicted of any offence under legislation relating to prevention of the facilitation of tax evasion.

## 29. MEDIATION

Any dispute, question, difference or claim which may arise concerning the construction, meaning or effect of these Terms and any Agreement or concerning the rights and liabilities of the Bank or the Client or any other matters arising out of or in connection with these Terms and any Agreement will in the first instance be referred to a mediator in Guernsey for resolution, such mediator to be appointed by agreement between the Bank and the Client. Failing agreement on the identity of the mediator either party may request that a mediator be nominated by the Chairman or Vice Chairman for the time being of the Association of Guernsey Banks.

## 30. ARBITRATION

If the parties fail to reach agreement through mediation, either party may elect that the matter be referred to arbitration to be conducted by a single arbitrator in Guernsey appointed by agreement between the Bank and the Client in accordance with the Arbitration (Guernsey) Law, 2016. Failing such agreement within 10 Business Days of the request by one party to the other that a matter be referred to arbitration in accordance with this paragraph, such reference will be to an arbitrator appointed by the Batonnier for the time being of the Guernsey Bar Council.

## 31. APPLICABLE LAW, VENUE AND SERVICE OF PROCESS

- 31.1 These Terms and the Agreement are governed by and are to be construed in accordance with Guernsey law.
- 31.2 Without prejudice to paragraphs 29 (Mediation) and 30 (Arbitration) the Client irrevocably submits to the jurisdiction of the Royal Court of Guernsey waiving any right to assert that Guernsey is not an appropriate or convenient forum for the adjudication of disputes arising in relation to these Terms and the Agreement, or that the Royal Court of Guernsey lacks jurisdiction in such matters.
- 31.3 The Bank is not precluded from bringing proceedings against the Client in any other jurisdiction in which the Client may have assets or a place of business or which the Bank considers to be appropriate in the circumstances.
- 31.4 Unless the Bank expressly gives its consent or agrees to submit to the jurisdiction of a court outside Guernsey, the Client may not bring proceedings against the Bank in any jurisdiction other than Guernsey.
- 31.5 Without prejudice to any other effective means of service, the parties agree that legal process issued in the Royal Court of Guernsey, or any other document to be sent or served in connection with any proceedings arising out of the Terms or any Agreement, may be served in person or by dispatch to the other party by registered or recorded mail sent to that party's last known address and will be deemed served upon delivery. Subject to any conditions which may be attached to the service of any legal process, such legal process will be deemed to have been delivered when it is left at the other party's address or in the case of service by dispatch within 24 hours after that date of dispatch.

## SCHEDULE 1

### Custody and Dealing Agreement

This document and the Terms set out the terms upon which the Bank provides custody and dealing services to the Client and should be read together. In this custody and dealing agreement (the Agreement), the following words and expressions will have the following meanings. All other words and phrases shall have the meaning given to them in the Terms. If there is any conflict between the Terms and this Agreement the terms of this Agreement shall prevail, unless otherwise specified.

The Terms are available to be read and printed online at [www.butterfieldgroup.com](http://www.butterfieldgroup.com).

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

**Categorisation**- the categorisation of the Client as a Retail Client, Professional Client or Eligible Counterparty in accordance with the Rules, as stated at the beginning of this Agreement or as may be changed from time to time by agreement of the Client and the Bank

**Close Out/Closing Out** - the forced liquidation of a position

**Custodian** - the person appointed by the Bank to be custodian of the Portfolio for the purposes of this Agreement, if any

**Derivatives** - financial instruments derived from underlying instruments or reference rates including, but not limited to, options, futures, interest rate and foreign exchange swaps, forward transactions and synthetic products

**Eligible Counterparty**- has the meaning given in the Rules

**Fees** - the fees and charges payable to the Bank as set out in the Terms

**Insolvency Event** - in respect of any person means (a) any action is commenced or application is made to any court for the bankruptcy, administration, receivership, liquidation or declaration of en désastre of such person; (b) any distress, execution or other legal process is levied or enforced against any of his property; (c) a resolution is passed for its winding up; (d) the commencement of saisie proceedings, the making of a preliminary vesting order against, or the appointment of a receiver, commissioner or trustee over, his property; (e) any negotiations or action is taken for the scheduling or adjustment of debts amongst any of his creditors; or (f) some event having equivalent effect or analogous proceedings or process occur(s) in any relevant jurisdiction

**In the Money**- an Option contract whose underlying stock has a current price that is above the strike price of a call Option or below the strike price of a put Option

**Margin**- an amount determined by the Bank to be required in order to act in accordance with Proper Instructions

**Nominee**- Rose Nominees Limited or any other Associate used by the Bank to provide nominee services to clients

**Option**- a contract that provides the right but not the obligation to buy or sell a specific amount of a specific security within a pre- determined period

**Party**- a party to this Agreement

**Portfolio** - the bonds, cash, instruments, investments, property, shares, stocks and other securities and property (not including land or any interest in land) deposited with the Bank under this Agreement

**Professional Client**- has the meaning given in the Rules

**Retail Client**- has the meaning given in the Rules

**Rules** - The Licensee (Conduct of Business) Rules and Guidance 2021

**Securities**- all securities forming part of the Portfolio from time to time

**Sub-Custodian** - the agent or person appointed by the Custodian with the consent of the Bank

**Terms**- the Bank's General Terms and Conditions

### 1.2 Interpretation

1.2.1 The principles of interpretation set out in paragraph 1.2 of the Terms (other than paragraph 1.2.12 of the Terms) apply also to this Agreement.

1.2.2 References to this Agreement and a paragraph shall be to this Agreement and a paragraph in this Agreement, unless the context requires otherwise.

## **2. THE CLIENT**

- 2.1 The Client acknowledges that:
- 2.1.1. he has been provided with, has read and understands the Bank's policy on Categorisation of clients, a current copy of which is available online at [www.butterfieldgroup.com](http://www.butterfieldgroup.com) and from the Bank on request;
  - 2.1.2 stands the Categorisation of his status as set out above and the implications of such Categorisation;
  - 2.1.3. he has been informed by the Bank of his right to request an alternative Categorisation and the legal implications on such re- categorisation on his protection as a client of the Bank;
  - 2.1.4. he has received from the Bank such information and in such detail as the Client considers to be adequate and appropriate in making his decision to appoint the Bank on the terms of this Agreement, including the Bank's professional experience in the provision of the services envisaged under this Agreement and its regulatory history.

## **3. APPOINTMENT**

- 3.1 The Client hereby appoints the Bank as Custodian of the Portfolio and the Bank agrees to deal with the Portfolio on his behalf.
- 3.2 In acting as Custodian of the Portfolio for the Client, the Bank acts solely as bare trustee for the Client and does not assume:
- 3.2.1. any obligations of trustee for any other purpose; or
  - 3.2.2. any relationship of agency, bailment or trust for any other person;
- and the Client agrees that the provisions of Sections 23, 26(1), 29, 34(1) and 39(1) of The Trusts (Guernsey) Law, 2007 do not apply to this Agreement.
- 3.3 The Bank may procure that Securities be registered in the name of the Nominee, on such terms and conditions as the Nominee may require. All Securities deposited with a Sub-Custodian will be held to the order of the Bank in a client-designated account.
- 3.4 The Bank will exercise the appropriate skill, care and diligence required by the Rules in assessing the suitability of any Sub-Custodian at the time of the selection of the Sub-Custodian and will repeat its enquiries at reasonable intervals during the currency of the relevant sub-custody agreement to satisfy itself as to the ongoing suitability of such Sub-Custodian. The Bank will monitor the performance of the Sub-Custodian in accordance with the Rules.
- 3.5 The Bank may in its discretion decline to enter into any transaction with third parties in respect of the Portfolio or any part of it unless the Bank is satisfied that the terms of any such transaction include provisions for limited recourse by the third party to the Portfolio.

## **4. POWERS AND DUTIES OF THE BANK**

- 4.1 The Bank will endeavour to act in accordance with Proper Instructions in the purchase, sale, disposal or acquisition of and other dealings with the Portfolio and in particular, will:
- 4.1.1. effect settlement of purchases, sales and deliveries of Securities;
  - 4.1.2. collect all monies received from the maturity, redemption, sale or other disposition of Securities, dividends, interest and other income on the Portfolio and hold them to the order of or for the account of the Client; and
  - 4.1.3. notify the Client as soon as is practically possible of all matured but uncollected principal and interest.
- 4.2 In performing its duties as custodian the Bank is authorised:
- 4.2.1. to receive all interest, dividends and other payments or distributions in respect of the Portfolio directly or through its agents or the Nominee;
  - 4.2.2. to surrender any part of the Portfolio against receipt of monies payable at maturity, on redemption or otherwise in accordance with Proper Instructions;
  - 4.2.3. where monies are payable in respect of Securities in more than one currency, to collect them in such currency as the Bank may in its discretion determine;
  - 4.2.4. to exchange any Securities in interim or temporary form for Securities in definitive form;
  - 4.2.5. to deal with any monies collected or received as proceeds of sale of the Securities by the Bank in accordance with Proper Instructions;
  - 4.2.6. to deposit in the name of the Bank all Securities with any Custodian or Sub-Custodian;
  - 4.2.7. to keep all or part of the Portfolio in cash or on deposit with a bank or broker or other financial institution, from time to time, including itself or any Associate;
  - 4.2.8. to decline to accept or deal in partly paid shares, shares in companies with unlimited liability or any other

investment which, in the opinion of the Bank, may prove onerous, unless the Bank is provided with such security and on such terms as it considers appropriate, in its discretion; and

4.2.9 to carry out such other acts, deeds or things as may be agreed from time to time.

4.3 Subject to the receipt of Proper Instructions, the Bank may:

4.3.1. borrow money on the security of the Portfolio at any time or from time to time and pay or apply the money so raised in any manner in which money forming part of this Agreement may be paid or applied; and

4.3.2. perform all acts of alienation, hypothecation and other acts of ownership to the same extent and with the same effect as the Bank might perform if it were the beneficial owner and the decisions and actions of the Bank in this regard whether actually made or taken in writing or implied from the acts of the Bank will be conclusive and binding on the Client.

4.4 The Client agrees that if any part of the Portfolio gives rise to a subsequent payment liability, the Bank may utilise monies in the Portfolio to cover such liability. If, in the opinion of the Bank, there is insufficient cash in the Portfolio to meet such liability, the Bank may sell all or any part of the Portfolio upon such terms and conditions as the Bank may see fit and appropriate, the proceeds of such sales to meet the liability.

4.5 The Bank may, after prior consultation with the Client, in so far as is practicable and legally appropriate and at the expense of the Client, engage, consult with and dismiss legal advisors, accountants, consultants and such other persons as the Bank may deem necessary or desirable in respect of any matter concerning the Portfolio.

4.6 When the Bank is acting jointly with another or others, all monies, securities, deeds and documents shall be in the custody of the Bank or of its agents or nominees but any other executor or trustee shall have all reasonable facilities for inspection or verification. The name of the Bank shall appear first on all registered Securities unless they are held in the name of its agents or nominees.

4.7 The Bank may exercise any of the powers in this paragraph separately or in combination with any other power. Any partial or single exercise by the Bank shall not be deemed to be a waiver of any of its rights to exercise any other power.

## **5. OPTIONS**

5.1 The Bank may deal in Options for the account of, on behalf of and at the risk of the Client.

5.2 The Bank:

5.2.1. will not be obliged to place any individual Option;

5.2.2. may sell Options in accordance with Proper Instructions subject to there being sufficient assets in the Portfolio; and

5.2.3. has authority to deliver or transfer Assets to a third party under contract with the Bank when exercising the Options.

5.3 The Client confirms and acknowledges that:

5.3.1. as the seller/writer of an Option, that he may incur unlimited losses, and as the buyer of an Option, the risk that he may lose the Option price;

5.3.2. if an Option is not exercised prior to expiry, or when the position is Closed Out, then the Option will automatically extinguish;

5.3.3. he is responsible for exercising or Closing Out any Options that are In the Money Options at maturity and he accepts all risk for the assignment of any Options and acknowledges that assignment is irrevocable;

5.3.4. in relation to call Options, if he does not immediately make available the assets required for assignment when requested to do so then the Bank reserves the right to obtain the necessary assets at the Client's expense; and

5.3.5. he understands the types, mechanisms and risks attached to transactions relating to Options.

5.4 The Client will:

5.4.1. pay on demand by the Bank any premiums required by the Bank in order for it to purchase put and call Options; and

5.4.2. as the writer of a put or call Option, make available to the Bank a Margin and any other Margins required further to subsequent recalculation. The Bank may (but is not obliged to) set off the Margin call against any part of the Portfolio and/or Close Out the position.

## **6. CORPORATE ACTIONS**

6.1 Subject to the following sub-paragraph, the Bank as Custodian is not required to undertake any action in relation to the holding of any Securities, in particular the exercise of any rights of voting, subscription, conversion, merger, consolidation, reorganisation, receivership, bankruptcy, insolvency, liquidation, compromise or arrangement or other proceedings in any jurisdiction, or any other rights as shareholder or otherwise in respect of the Securities (together the Actions and individually an Action).

- 6.2 The Bank may agree to carry out an Action on behalf of the Client if:
- 6.2.1. the Bank has, in its sole opinion, received all relevant information required by it in respect of the Action requested;
  - 6.2.2. Proper Instructions in relation to the Action have been received by the Bank not less than five Business Days prior to the date on which the Action is to be carried out, unless agreed otherwise between the Bank and the Client; and
  - 6.2.3. the Bank is indemnified to its satisfaction in respect of any costs, expenses and claims as the Bank may require in addition to any indemnity provided under this Agreement.
- 6.3 If, upon the request of the Client, the Bank or the Nominee executes a power of attorney, proxy or other authority in favour of the Client or any third party, neither the Bank nor the Nominee is under any obligation to monitor the use of, or is liable for the use or misuse of, such power of attorney, proxy or other authority.
- 6.4 Any request made to the Bank to carry out an Action must relate to a specific Action and be limited to a specific period of time.
- 6.5 The Bank may in its discretion and without liability to the Client decline to carry out an Action:
- 6.5.1. which it considers to be unclear or insufficiently precise; or
  - 6.5.2. which may involve the Bank in any potential liability towards any person.
- 6.6 Any power of attorney granted by the Bank pursuant to paragraph 6.3 shall not be subject to section 34(1) of The Trusts (Guernsey) Law, 2007.

## **7. STATEMENTS, VALUATIONS AND CONTRACT NOTES**

- 7.1 The Bank will keep proper accounts and records of all investments and transactions made under this Agreement. Such accounts and records will be available for inspection by the Client during normal working hours on reasonable notice.
- 7.2 The Bank will send to the Client:
- 7.2.1. in the case of Securities and Securities related cash balances held in the Portfolio, a statement of holding report every three months or at such other interval specified by the Client;
  - 7.2.2. in the case of Derivatives and Derivatives related cash balances held in the Portfolio, a valuation report every month or at such other interval specified by the Client; and
  - 7.2.3. contract notes in respect of all transactions in relation to the Portfolio in accordance with the Rules.
- 7.3 Any errors in or omissions from the statements of holding, valuation reports and contract notes must be notified to the Bank promptly upon receipt by the Client. In the absence of such notification the Client is deemed to have accepted such statements of holding, valuation reports and contract notes.
- 7.4 The Client may request, by notice in writing to the Bank, such notice to be renewed annually, that the statement of holding and/or valuation reports referred to in paragraph 7.2.1 and 7.2.2 be supplied at a lesser frequency and may waive the requirements in paragraph 7.2 in their entirety.

## **8. THE CLIENT'S OBLIGATIONS**

- 8.1 The Client undertakes that he will not permit the services provided by the Bank to be used for the evasion of any fiscal imposition of the Island of Guernsey or elsewhere or in breach of or contrary to any Applicable Laws.
- 8.2 The Client agrees that, on giving Proper Instructions to deal in Options in accordance with paragraph 5, the Client will provide to the Bank a Margin. The Client acknowledges that the Bank may use its discretion as to whether or not to act on Proper Instructions to purchase Options and other Derivatives and, in any event, cannot be required to act unless provided with any Margin which the Bank has requested.
- 8.3 The Client agrees that he will notify the Bank immediately of any change in his name, address, status or in any of the other information supplied by him to the Bank and shall respond promptly to any queries or requests for information from the Bank.
- 8.4 The Client confirms and acknowledges that:
- 8.4.1. in all matters relating to the entry into this Agreement and dealings in the Portfolio the Client has obtained independent legal, accounting, taxation, investment and other relevant professional advice and has not received any advice from the Bank at any time in relation to such matters;
  - 8.4.2. the Bank has given no assurance that the arrangements put in place in respect of the Portfolio or any investment policy adopted by the Client will attain the objectives and advantages intended by the Client;
  - 8.4.3. the Bank will be under no obligation to settle the purchase of additional investments for the Portfolio unless arrangements satisfactory to the Bank relating to the payment of the purchase price have previously been made and the Bank will not be liable to the Client in respect of any loss which may be suffered by the Client as a result of any delay in fulfilling any obligation to settle.

## **9. CONFLICTS OF INTEREST AND NON-EXCLUSIVITY**

- 9.1 The Bank, Bank Personnel, Associates and their respective agents:
- 9.1.1. may engage, simultaneously with their activities on behalf of the Client, in other businesses and may render services similar to those described in this Agreement for other clients or persons, and will not by reason of engaging in such other business or rendering such other services for others be deemed to be acting in conflict with the interests of the Client;
  - 9.1.2. may invest in the same investments as held in the Portfolio. However, any purchases or sales of such investments by any such investor will be made in such manner as to comply with Applicable Law; and
  - 9.1.3. may retain any remuneration or profit which it may receive by reason of any activities carried out in the preceding sub-clauses.
- 9.2 The Bank is not affected by notice of or to be under any duty to disclose to the Client, any fact or thing which may come to the attention of the Bank, Bank Personnel or any Associates in the course of the Bank or any Associates rendering similar services to others or in the course of its business in any other capacity or in any manner otherwise than in the course of carrying out its duties under this Agreement.

## **10. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS**

### **10.1 Representations and warranties**

In addition to the representations and warranties given by the Client in the Terms, the Client further represents and warrants to the Bank that:

- 10.1.1. the Client is the sole legal and beneficial owner of the Securities and other assets comprising the Portfolio free from all Encumbrances; and
- 10.1.2. all information provided to the Bank concerning the Client is true, complete and accurate.

### **10.2 Undertakings**

The Client undertakes that:

- 10.2.1. the Portfolio and any other property deposited from time to time in the Accounts will remain free from all Encumbrances;
- 10.2.2. he will promptly notify the Bank if any information provided to the Bank ceases to be accurate; and
- 10.2.3. he will promptly provide such information and documentation to the Bank as it may reasonably require relating to the Client including any information necessary for the Bank to fulfil its obligations under Applicable Law or regulatory requirements relating to customer due diligence or to enable the Bank to make any necessary withholdings or deductions by way of taxation or otherwise and will promptly notify the Bank if any such information ceases to be accurate or is otherwise superseded.

## **11. FEES AND EXPENSES**

- 11.1 In consideration of the services provided by the Bank under this Agreement, the Client will pay the Fees to the Bank, without set-off, withholding or deduction.
- 11.2 The Bank will charge all Fees to the Portfolio by debiting to the Account quarterly in arrears.
- 11.3 The Bank may decide on the incidence of fees between capital and income and as between Clients.
- 11.4 The Bank has a lien over the Portfolio to secure the payment of Fees and other amounts due to it. If the Client fails to pay any Fees or other amounts due to the Bank within 90 Business Days after the date of demand for payment is sent to the Client, the Bank is authorised, without notice to the Client or any other person, to sell such part of the Portfolio upon such terms and conditions as the Bank may see fit and to apply the proceeds of such disposal, after deduction of the expenses incurred in connection with the disposal, in settlement or part settlement of the amounts due to the Bank.
- 11.5 Percentage fees are calculated on the gross market value of the Portfolio. Where the market value of any asset comprised in the Portfolio is not readily ascertainable, the Bank may apply an estimate which it considers to be reasonable in the circumstances.
- 11.6 Any amount not paid on its due date for payment will bear interest at the rate of 2 per cent above the base lending rate from time to time of the Bank until full payment is received.
- 11.7 The Bank may vary the Fees from time to time. Changes to Fees will take effect upon notification to the Client.

## **12. LIABILITY AND INDEMNIFICATION**

### **12.1 Liability**

- 12.1.1. In the absence of negligence, wilful default or fraud on the part of the Bank, the Bank will not be liable for any loss or damage howsoever incurred which the Client or any other person may sustain or suffer as the result of or in the course of the discharge of the Bank's duties under this Agreement.
- 12.1.2. Without prejudice to the generality of the preceding sub-paragraph the Bank, Bank Personnel and Associates will not be liable:
  - 12.1.2.1. for the holding of any assets in any particular country, including but not limited to losses resulting from nationalisation, expropriation or other government actions, regulations of the banking or securities industry, currency controls or restrictions, derivatives or fluctuations of market conditions which prevent the orderly execution of securities transactions or affect the value of the assets in the Portfolio;
  - 12.1.2.2. for entering into any Options and for any losses whether arising from the such contracts, the exercise of any Options at maturity, or the assignment of Options, or otherwise;
  - 12.1.2.3. for any loss or damage whatsoever resulting from the failure of any person or firm to deliver any asset purchased by the Bank on behalf of the Client or to make payment for any assets delivered or sold by the Bank on behalf of the Client (Counterparty Failure).
- 12.1.3. If the Client suffers any loss as a result of Counterparty Failure, the Bank may, subject to being fully indemnified and/or secured to its satisfaction against all costs (including legal and other professional costs), expenses, losses, liabilities, damages, claims, actions, proceedings or demands arising directly or indirectly out of or in connection with any action or request, take reasonable steps to assist the Client in recovering that loss.

### **12.2 Indemnification**

- 12.2.1. In the absence of negligence, wilful default or fraud on the part of the Bank the Client will indemnify and keep indemnified the Bank and Bank Personnel against all costs (including the costs of taking legal and other professional advice), expenses, losses, liabilities, damages, claims, actions, proceedings or demands incurred or suffered by the Bank or any Bank Personnel:
  - 12.2.1.1. arising from or in connection with claims or demands made by any person purporting to be entitled to the Portfolio or any part of it; and
  - 12.2.1.2. in dealing with any conflicting claims and in safeguarding the Bank's interest.
- 12.2.2. If the Bank is requested by the Client to do anything which the Bank in its opinion considers to be detrimental to its own interests, the Bank may:
  - 12.2.2.1. decline to take such action requested by the Client; and/or
  - 12.2.2.2. at the expense of the Client, transfer all or part of the assets comprised in the Portfolio to the Client. If the Bank elects to transfer any part of the Portfolio, those assets which are transferred will from that point cease to form part of the Portfolio whether or not such transfers have been completed.
- 12.2.3. Paragraph 12.2.2 is without prejudice to the provisions of paragraph 13 enabling either Party to terminate this Agreement.

### **12.3 The terms**

The liability and indemnification provisions set out in this Agreement are in addition to the provisions set out in the Terms.

## **13. TERMINATION**

- 13.1 This Agreement may be terminated by either Party:
  - 13.1.1. by thirty days notice to the other Party;
  - 13.1.2. immediately by either Party:
    - 13.1.2.1. if the other Party commits any breach of its obligations under this Agreement and fails to make good such breach within thirty days of receipt of notice from the other Party requiring it so to do; or
    - 13.1.2.2. if an Insolvency Event occurs in relation to the other Party; or
    - 13.1.2.3. if it becomes unlawful under any Applicable Law for either Party to continue to perform any of its obligations under this Agreement; or
    - 13.1.2.4. if the whole of the Portfolio is transferred to the Client under paragraph 12.2.
- 13.2 Within seven days of receipt of a notice to terminate, the Client will instruct the Bank as to how the Portfolio will be dealt with and, subject to Applicable Law, the Bank will, at the cost of the Client, effect the transfer or disposal of the Portfolio in accordance with the Client's instructions.

- 13.3 Pending such transfer or disposal the Bank will hold the Portfolio on a care and maintenance basis from the date of termination. The Client will pay on demand all Fees, costs and expenses of the Bank until such time as all of the assets within the Portfolio have been transferred to the Client or any person nominated by the Client.
- 13.4 In the absence of instructions from the Client, or if the Client's instructions are, in the opinion of the Bank, unreasonable or impracticable, the Bank may in its discretion register the assets comprised in the Portfolio in the Client's own name or sell such assets and forward the funds to the Client if appropriate.
- 13.5 Termination of this Agreement will not affect accrued rights, existing commitments or any other provision intended to survive termination.
- 13.6 Without prejudice to the preceding sub-paragraph, the following provisions will survive termination of this Agreement:
- 13.6.1. paragraphs 11, 12, 13 and 15 of this Agreement; and
- 13.6.2. the relevant provisions of the Terms which are expressed to survive termination.

#### **14. POWER OF ATTORNEY**

The Client irrevocably appoints the Bank to be its attorney (with full power of substitution and delegation) in the Client's name and on the Client's behalf and as the Client's act and deed to sign or execute all agreements, deeds, instruments and documents or take, continue or defend any proceedings which the Bank considers to be necessary or desirable in the performance of its duties or the exercise of any of its powers under this Agreement. The Client ratifies and confirms any lawful exercise or purported exercise of this power of attorney. For the avoidance of doubt, section 34(1) of The Trusts (Guernsey) Law, 2007 shall not apply to any power of attorney granted by the Bank pursuant to a delegation by the Bank of the power of attorney granted to the Bank by the Client under this paragraph 14.

#### **15. GENERAL**

##### **15.1 Notices**

Notices under this Agreement will be served in accordance with the Terms.

##### **15.2 Entire Agreement**

This Agreement together with the Terms constitute the entire agreement between the Bank and the Client relating to the custody and dealing services provided, or to be provided by the Bank. Any prior agreement between the Bank and the Client for the provision of such services in respect of the Portfolio, to the extent still effective, will immediately terminate on the execution of this Agreement and neither Party will have any further obligations towards the other Party under such prior agreement.

##### **15.3 Changes to this Agreement**

Other than as specifically provided for in this Agreement, no variation of this Agreement will be effective unless made in writing and signed by the Bank and the Client.

##### **15.4 Severability**

Any provision of this Agreement which is or becomes prohibited or unenforceable for any reason in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and such prohibition or unenforceability will not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of the remaining provisions.

##### **15.5 Assignment**

Neither Party may assign its or his rights or transfer its or his obligations except with the prior written consent of the other Party, other than an assignment by the Bank to any Associate which may be made without the consent of the Client.

##### **15.6 Delegation**

The Bank may delegate or subcontract the performance of any of its duties to any Associate or to any other person if the Bank is satisfied, at the time of appointment, that such person is a fit and proper person.

##### **15.7 Counterparts**

This Agreement may be executed in any number of counterparts each of which when executed constitutes an original but all of which constitute one and the same instrument.

##### **15.8 Insurance**

The Client is responsible for arranging at its own expense, insurance on the Portfolio.

##### **15.9 Conflict**

If there is any conflict between this Agreement and the Terms, this Agreement will prevail.

##### **15.10 Binding Agreement**

This Agreement is binding upon the parties and their respective heirs, executors, administrators, successors and assigns.

## SCHEDULE 2

### **Butterfield Online and E-Services - terms and conditions of use**

This document and the Bank's general terms and conditions set out the terms upon which the Bank provides Butterfield Online services and E-Services to the Client and should be read together. The Bank's general terms and conditions form part of these terms.

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

**Account Data** - all data in respect of the Account and the Portfolio delivered to the Client through the Service, including, but not limited to, cash balances, securities holdings, prices, valuations, cash and securities transactions

**Application**- means the application submitted by the Client to the Bank requesting the Service:

- a) in the case of a Personal Client, a Butterfield Online Personal Application;
- b) in the case of a Corporate Client, a Butterfield Online Corporate Application;
- c) in the case of an Intermediary Client, the Butterfield Online Intermediary Application

**Bank's Website**- the website of Butterfield Bank (Guernsey) Limited which may be accessed at [www.butterfieldgroup.com](http://www.butterfieldgroup.com)

**Client** - has the meaning given in the Terms and includes, for the purpose of this document, a Personal Client, a Corporate Client and an Intermediary Client, as applicable

**Client User ID and Password**- the unique User ID and Password provided by the Bank to the Client following acceptance by the Bank of the Application to allow access to the Service

**Corporate Client**- a corporate entity, corporation, unincorporated entity, partnership (including limited partnership and limited liability partnership), foundation, trustee or other Client (not being a Personal Client), where such Client acts in its own name in the operation of its Account

**Intermediary Client**- a corporate entity, corporation, unincorporated entity, partnership (including limited partnership and limited liability partnership), foundation, trustee or other Client (not being a Personal Client), who acts on behalf of its Underlying Client

**Instructions** - online instructions given by the Client or the Client's authorised representative or agent, to the Bank through the Service

**Personal Client**- a Client who is a private individual

**Portfolio**- the bonds, cash, instruments, investments, property, shares, stocks and other securities and property (not including land or any interest in land) deposited with or managed by the Bank under the Custody and Dealing Agreement or Investment Management Agreement entered into by the Bank and the Client

**Service or Butterfield Online** - the provision and enabling of online access to Accounts and Portfolios or any other online banking service provided by the Bank to the Client in accordance with these terms

**Terms** - the Bank's general terms and conditions a current copy of which is available online at [www.butterfieldgroup.com](http://www.butterfieldgroup.com) and from the Bank on request

**Underlying Client**- a client of the Intermediary Client in respect of whose Account the Intermediary Client has control

**User**- any person authorised by the Client to operate the Service at the Client's own risk

**User Administrators**- the persons appointed by an Intermediary Client as set out in Butterfield Online Intermediary Application

### **1.2 Interpretation**

1.2.1 Unless otherwise defined in this document, words and phrases defined in the Terms when appearing in this document have the meanings given to them in the Terms. If there is any conflict between the Terms and this document in relation to the provision of the Service the terms of this document will prevail, unless otherwise specified.

1.2.2 The principles of interpretation set out in paragraph 1.2 of the Terms (other than paragraph 1.2.12 of the Terms) apply also to this document.

1.2.3 References to this document, a paragraph and a schedule shall be to this document, a paragraph in and a schedule to this document, unless the context requires otherwise.

## **2. PROVISION OF THE SERVICE**

- 2.1 This document sets out the terms and conditions for use of the Service. No waiver, alteration or modification shall be binding unless in writing and approved by the Bank. Neither the conduct of the Client nor usage shall act to modify or alter any provision of this document.
- 2.2 The Service may not be used by the Client to issue Instructions on any matter which is the subject of or which relates to the Custody and Dealing Agreement or Investment Management Agreement, other than in relation to cash in Accounts forming part of the Portfolio.
- 2.3 Current operating parameters, hours of service and deadlines are outlined on the relevant online page in the Service. The Client's continued use of the Service subsequent to the issue of any amendments shall constitute acceptance of the amendments.
- 2.4 Instructions received by the Bank's published deadlines on any Business Day will normally be processed that day during normal banking hours. Instructions received at any other time will be processed the next Business Day.

## **3. AUTHORISATION AND SECURITY**

### **3.1 User Administrators**

- 3.1.1 Every Intermediary Client must appoint two User Administrators.
- 3.1.2 The Bank will provide the User Administrators with a Client User ID and Password and, where applicable, the Bank may provide a keyfob to the Client which will provide an authentication number which will be refreshed periodically to enable access to certain Services.
- 3.1.3 Each User Administrator is authorised by the Client to:
  - 3.1.3.1 request the addition and/or removal of any Underlying Client and/or Account to/from the Service by providing the Bank with a completed Butterfield Online Intermediary Amendment form;
  - 3.1.3.2 provide and control access by Users to the Service; and
  - 3.1.3.3 assign authorisation levels to Users, if applicable.

### **3.2 Joint Account Holders**

- 3.2.1 Each joint account holder will be provided with a Client User ID and Password.
- 3.2.2 All account holders will sign the Butterfield Online Personal Application to confirm their joint agreement to use the Service on the terms and conditions set out in this document and the Terms.

### **3.3 Client's Responsibilities**

- 3.3.1 The Client understands and agrees that:
  - 3.3.1.1 it has sole responsibility for selection, authorisation and removal of Users;
  - 3.3.1.2 in the case of a Personal Client or a Corporate Client, it has sole responsibility for the selection, use, confidentiality and protection of the Client User ID and Password and for adding to, or removing from, the Service any Account or Portfolio;
  - 3.3.1.3 in the case of an Intermediary Client, the User Administrators have full authority on behalf of the Client to deal with the matters set out in paragraph 3.1.3;
  - 3.3.1.4 it is responsible for the acts and omissions of the User and User Administrators (if any) and will take all reasonable precaution to ensure that the Service is being used in a manner which is secure and in compliance with all Applicable Laws;
  - 3.3.1.5 the Bank does not accept any liability if it executes an Instruction given by a User Administrator or authorised agent whose authorisation has expired or been revoked and the Client has not informed the Bank accordingly, or the Client has not received written acknowledgement of such notification from the Bank.
- 3.3.2 The Client must:
  - 3.3.2.1 keep the Client User ID, Password, and, where applicable, the keyfob safe and secure;
  - 3.3.2.2 take all reasonable precautions to prevent the fraudulent use of the Client User ID and Password;
  - 3.3.2.3 not record the Client User ID and Password in any way which may result in it becoming known to another person who is not a User;
  - 3.3.2.4 not allow anyone other than the Client, the User Administrator or an authorised agent to operate any Service on the Client's behalf using the authorisation details;

- 3.3.2.5 Minimise any security risks associated with use of the internet such as viruses, bugs, unauthorised access and should ensure that it utilises suitable security measures, including anti-virus software; and
- 3.3.2.6 ensure that the User does not leave the terminal or other device from which the Service has been accessed at any time or permit any other person to use it until that User has logged off the Service at the end of any session.

#### 3.4 **User Identification**

- 3.4.1 All Users authorised to submit payments in relation to an Account must provide due diligence information to the Bank where applicable.
- 3.4.2 The Client undertakes to provide due diligence information to the Bank in respect of any User or User Administrator upon the request of the Bank.

#### 3.5 **Breaches**

- 3.5.1 If the Client or any User or User Administrator suspects that someone knows the Client User ID and Password or may be trying to access the Service without proper authority, the Client must notify the Bank immediately. Failure to do so will result in the Client being liable for any unauthorised transactions on the Account. The Bank is not liable to the Client for any loss that occurs as a result of a breach in the Client's security prior to receipt of notice of the breach by the Bank
- 3.5.2 The Bank may at its discretion deny access to the Service if it believes that there has been a breach of security in the use of the Service.

#### 3.6 **Security Measures**

The Bank may introduce from time to time any security measures as it considers appropriate at its discretion and may require the Client to provide such additional information or indemnity in relation to any action taken or not taken by the Bank in respect of the Service.

### 4. **INSTRUCTIONS**

- 4.1 By agreeing to the terms of the Service the Client confirms it authorises any User to give Instructions in respect of the Account.
- 4.2 To the extent permitted by the Service, Instructions override any special signing or authorisation requirement applicable for paper based transactions in respect of any Account, and all such requirements will not be applicable when using the Service.
- 4.3 The Bank may, but is not required to make any enquiry into, or to seek confirmation from the Client or any other person, of any transaction made or Instruction issued by a User or User Administrator through the Service.
- 4.4 If an Instruction conflicts or is inconsistent with any existing mandates, agreements, authorities and arrangements between the Client and the Bank, the Instruction overrides all such mandates, agreements, authorities and arrangements.
- 4.5 In order to protect the Client, the Bank is entitled, at any time, and without giving reasons, to refuse to provide information and to not accept any Instructions in respect of the Service and may request that the Client or its authorised representative provide a different form of authentication (such as by signature or in person).

### 5. **REPRESENTATIONS AND WARRANTIES**

In addition to the representations and warranties given by the Client in the Terms, the Client, if it is an Intermediary Client, further represents and warrants to the Bank that it is authorised to appoint the User Administrator and each User.

### 6. **LIABILITY AND INDEMNIFICATION**

#### 6.1 **Liability**

- 6.1.1 In the absence of negligence, wilful default or fraud on the part of the Bank, the Bank will not be liable for any loss or damage incurred or suffered by the Client or any other person as the result of or in the course of the provision of the Service.
- 6.1.2 The Bank will have no responsibility or liability for any act or omission of any third party or counterparties with whom transactions are entered into by or on behalf of the Client through the Service. In particular, the Bank will not be liable for any charges or penalties imposed or other action taken by a payee or merchant resulting from late or missed payment.

## 6.2 Indemnification

- 6.2.1 In the absence of negligence, wilful default or fraud on the part of the Bank the Client will indemnify and keep indemnified the Bank and Bank Personnel against all costs (including the costs of taking legal and other professional advice), expenses, losses, liabilities, damages, claims, actions, proceedings or demands incurred or suffered by the Bank or any Bank Personnel arising from or in connection with the provision by the Bank of the Service and in safeguarding the Bank's interest.
- 6.2.2 The Client will indemnify the Bank against any and all costs, expenses, losses and liability incurred by the Bank as a result of:
  - 6.2.2.1 any representation and warranty given by the Client proving to be incorrect;
  - 6.2.2.2 the acts or omissions of the Client, any User or User Administrator;
  - 6.2.2.3 the non-adherence of the Client, a User or User Administrator to security measures introduced by the Bank, from time to time.

## 6.3 The Terms

The liability and indemnification provisions set out in this document are in addition to the provisions set out in the Terms.

## 7. CHARGES, CHANGES, IMPROVEMENTS TO AND TERMINATION OF THE SERVICE

### 7.1 Charges

- 7.1.1 The Bank currently does not charge any set-up or monthly fees for the Service. The Bank may levy a fee for using the Service on giving the Client at least thirty (30) days' notice or such other notice period permitted by the Terms.
- 7.1.2 The Bank's Charges apply to transactions made using the Service.

### 7.2 Changes to the Service

The Bank may make changes to the Service including the rules of operation, accessibility, security procedures and provision, type and location of service resources, administration, features and functionality.

### 7.3 Suspension of the Service

- 7.3.1 The Bank may in its absolute discretion from time to time suspend the Service:
  - 7.3.1.1 if it believes that the Service may be used in breach of Applicable Laws or by persons who are not authorised by the Client, or in any circumstances where the Bank may suspend operation of the Account under the Terms;
  - 7.3.1.2 in whole or in part for the purpose of undertaking general maintenance or other work on the Service. Where practicable and legally appropriate, the Bank will provide prior notification of such suspension.
- 7.3.2 If the Service becomes unavailable for any period of time due to technical or other reasons, the Bank will endeavour to notify the Client of such unavailability via a broadcast message through the Service prior to login, or such other means which the Bank considers to be appropriate.
- 7.3.3 Unless the suspension has been on the grounds set out in paragraph 7.3.1.1, during any period of suspension or unavailability the Client and the Bank will deal with the Account as if the Service had not been in operation.

### 7.4 Termination of the Service

- 7.4.1 The Bank may by notice to the Client terminate the Service without giving any reasons for its decision.
- 7.4.2 The Client may request the termination of the Service at any time by notice to the Bank.
- 7.4.3 Termination of the Service will not affect accrued rights, existing commitments or other provisions intended to survive termination.

### 7.5 Changes to the terms of the Service

- 7.5.1 The Bank may at any time make changes to any of these terms.
- 7.5.2 Subject to paragraph 7.1.1, any such changes may take effect without prior notice to the Client or on a date to be specified.
- 7.5.3 Changes will be posted on the Bank's Website [www.butterfieldgroup.com](http://www.butterfieldgroup.com) within a reasonable period and may be separately notified to the Client.

## **8. EQUIPMENT AND SOFTWARE**

- 8.1 The Client is responsible for:
- 8.1.1 the installation, upgrade and maintenance of all hardware, software, and provision of telecommunications used by the Client, any User or User Administrator to access the Service;
  - 8.1.2 putting in place and maintaining adequate protection and back up of data and/or equipment and will take reasonable and appropriate precautions to scan for computer viruses or other destructive properties when using the Service; and
  - 8.1.3 its own expense in relation to the above.
- 8.2 The Bank provides the Service and any Account Data transmitted or accessed through it on an “as is” basis and does not make any express or implied warranties, representations, endorsements or conditions with respect to the Service or the Account Data, including any warranties as to merchantability, operation, noninfringement, usefulness, completeness, accuracy, currentness, reliability and fitness for a particular purpose. In particular the Bank does not represent or warrant that:
- 8.2.1 the Bank’s Website or Service will be operational or available at all times and meet the Client’s requirements or that access will be uninterrupted,
  - 8.2.2 there will be no delays, failures, errors or omissions or loss of transmitted information during the use of the Service;
  - 8.2.3 the provision of the Service will be free of viruses or other contaminating or destructive elements which could be transmitted to or cause damage to the property of the Client, any User or User Administrator.
- 8.3 The Bank does not authorise its employees or agents to install, maintain, or otherwise modify any equipment, hardware or software, or telecommunications services of the Client, any User or User Administrator. The Bank will under no circumstances be liable for the performance of such equipment, hardware or software, or telecommunications services.
- 8.4 None of the Client, any User or User Administrator owns any copyright and other intellectual property rights in the Service or any material or information on the Bank’s Website or the Service.

## **9. GENERAL**

### **9.1 Accuracy of information provided by the Bank**

- 9.2.1 The prices used in the Bank’s portfolio valuations and information given, have been obtained from what the Bank considers to be reliable sources and should be used for indicative purposes only. The Bank is not liable for any errors or discrepancies in pricing or other information. Prices may go down as well as up.
- 9.2.2 Any investment information provided by the Bank in relation to the Service is dependent on price information from third parties and pricing availability and so the information is not necessarily current. In addition, any transactions in respect of a Client’s investment or Account may take time to be processed and recorded in the Client’s accounts.
- 9.2.3 Where a Client has granted security to the Bank through which the Client can obtain information via the Service, any value attributed to such assets that are subject to security will be a gross value, ignoring the availability of the Bank to share in the proceeds of such assets.

### **9.2 Security policy**

A copy of the Bank’s security and privacy policy and data protection statement is available on the Bank’s Website.

### **9.3 Applicable Laws**

- 9.3.1 The information relating to the Service is not intended to constitute any offer to sell or invitation to buy any product or service by the Bank.
- 9.3.2 Access to information contained on the Bank’s Website and the Service may be restricted by laws and regulations applicable to the Client. Where such restrictions apply, the Client must not access, and must restrict any User or User Administrator from accessing, the Service. The Client is liable for the consequences of any unauthorised access by or on behalf of the Client.
- 9.3.3 If the Client accesses or authorises access to the Service from a country or jurisdiction outside of the Island of Guernsey, the Client will comply and will ensure compliance with the laws and regulations of that jurisdiction.

### **9.4 Records**

- 9.4.1 The Client will hold all information, documentation and specifications relating to the Service as confidential and proprietary information belonging to the Bank.
- 9.4.2 If the Bank is a party to any dispute, the electronic records retained by the Bank will (except in the case of fraud or manifest error) serve as the sole and accurate record of the events and will be admissible in a court of law as such with equal evidential value as a duly authorised paper document.



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