



# Standard Terms of Business

Updated 30 August 2023

## Table of Contents

|     |  |    |
|-----|--|----|
| 1.  | Introduction .....   | 3  |
| 2.  | Definitions and Interpretation .....                               | 3  |
| 3.  | Our Legal Relationship .....                                       | 6  |
| 4.  | Appointment.....   | 8  |
| 5.  | Client Accounts.....   | 9  |
| 6.  | Client Money .....   | 11 |
| 7.  | Client Reporting .....   | 12 |
| 8.  | Delegation.....  | 13 |
| 9.  | Fees and Interest.....   | 13 |
| 10. | Client Representations and Warranties .....                        | 14 |
| 11. | Client Acknowledgements .....                                      | 15 |
| 12. | Proper Instructions.....   | 17 |
| 13. | Non-Exclusivity .....  | 18 |
| 14. | Conflicts of Interest.....   | 18 |
| 15. | Liability and Indemnities .....                                    | 18 |
| 16. | Legal Proceedings.....   | 20 |
| 17. | Communication.....   | 20 |
| 18. | Disclosures .....  | 21 |
| 19. | Complaints .....   | 21 |
| 20. | Confidentiality .....  | 21 |
| 21. | Privacy Notice.....  | 22 |
| 22. | Assignment.....  | 25 |
| 23. | Account Closure, Termination and Consequences of Termination ..... | 26 |
| 24. | Notices .....  | 27 |
| 25. | Customer Due Diligence.....  | 27 |
| 26. | Miscellaneous .....  | 28 |
| 27. | Governing Law.....   | 29 |
| 28. | Arbitration and Jurisdiction .....                                 | 29 |

## 1. Introduction

- 1.1 Thank you for choosing FundBank Ltd. (the “Company”). These Terms set out the terms and conditions applicable to your account and/or the terms on which we have agreed to provide Services to you.
- 1.2 The Company, is a company incorporated in the Cayman Islands and having its registered office at P.O. Box 2633, The White House, 20 Genesis Close, George Town, Grand Cayman KY1- 1102, Cayman Islands. We hold a class B banking licence and an unrestricted trust licence with, and are regulated by, the Cayman Islands Monetary Authority (“CIMA”) under the Banks and Trust Companies Act.
- 1.3 These Terms form part of your agreement with the Company. You should carefully read and consider these Terms before establishing an account or engaging us to provide you with any Services. By establishing and accessing any account with us and/or instructing us to provide you with any Services, you agree to be bound by these Terms, including any change to these Terms as published from time to time on our website in accordance with Clause 3.3.

## 2. Definitions and Interpretation

- 2.1 In these Terms:

“**Account Agreement**” means the declaration of trust and account agreement entered into between the Company and the Client which forms part of the Agreement;

“**Agreement**” means any agreement between you and the Company to provide any Services, any Account Agreement, these Terms, the Fee Schedule and includes any variation of them and all documents entered into as supplemental to them;

“**Affiliates**” means any direct or indirect subsidiary or parent of the Company and any direct or indirect subsidiary of any such parent from time to time, irrespective of the country of organisation, formation or current registration of any such subsidiary or parent, and in respect of each, any of their respective partners, officers, authorised signatories, employees, consultants and agents;

“**Applicable Credit Rating**” means Standard & Poor’s Short-Term Credit Rating of A-1 or higher;

“**Business Day**” means a day (other than a public holiday, a Saturday or a Sunday) on which banks in Cayman Islands are authorised to open for business;

“**Cayman Islands Anti-Money Laundering Rules**” includes the Proceeds of Crime Act (2020 Revision) (as amended from time to time) and any other law, order, regulation or guidance notes made thereunder or in relation thereto or any policies and guidelines adopted by the Company, in each case relating to the prevention and detection of money laundering, financing of terrorism, proliferation financing and sanctions;

“**Cash Account**” means an account in the name of the Company, maintained with a Licensed Bank, which holds or will hold Client Money;

“**Cash Equivalent Account**” means the portion of Client Money held on account (and, if applicable, allocated in respect of various Cash Equivalent Assets) in the name of the Company (or with the Company acting as a counterparty, as the case may be) which, after initially being transferred by the Client into a Cash Account, is directed by the Company (in its capacity as agent for the Client) by any means deemed appropriate by the Company into one or more Cash Equivalent Assets;

**“Cash Equivalent Asset”** means:

- (a) an asset which has a direct and guaranteed claim on sovereigns and central banks which meets the criteria of “Cash Equivalent Rating”;
- (b) a reverse repurchase agreement with a financial institution that satisfies the definition of “Applicable Credit Rating”, the collateral of which is comprised exclusively of instruments in (a);
- (c) to the extent that the Company provides the Client with 5 days prior notice of the same:
  - (i) any investment instrument with a Cash Equivalent Rating; and/or
  - (ii) any interest in an investment fund, the assets of which are comprised exclusively of investment instruments with a Cash Equivalent Rating;

**“Cash Equivalent Rating”** means:

- (a) a risk weighting of 0%; and
- (b) a Moody’s rating of Aaa to Aa3; or
- (c) an S&P/Fitch rating of AAA to AA-,

in accordance with the Rules, Conditions and Guidelines on Minimum Capital Requirements published by CIMA and as decided by the Company at its discretion from time to time;

**“Client”** means the person specified as the Client in the relevant Account Agreement and includes all persons and parties deriving title from or under such person;

**“Client Account”** means each Cash Account and each Cash Equivalent Account, separately and collectively;

**“Client Money”** means all money which the Company holds for, receives from, or owes to, a Client, which for the avoidance of any doubt, shall not include any interest or other income that may accrue on such money;

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

**“Credit Downgrade Event”** has the meaning ascribed thereto in clause 5.6(a) of these Terms;

**“Data Controller”** means a natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes, conditions and manner in which any Personal Data are to be processed;

**“Data Processor”** means a natural or legal person who processes Personal Data on behalf of the Data Controller, to include the performance of any operation or set of operations on Personal Data whether or not by automated means such as recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. It does not include an employee of the Data Controller.

**“Data Protection Legislation”** means all applicable data protection laws including the Cayman Islands Data Protection Act (2021 Revision) and, in respect of EU data subjects, the General Data Protection Regulation (Regulation (EU) 2016/679) including any amendments thereto and any applicable consequential legislation and guidance and codes of practice issued by any relevant data protection supervisory authorities, including the Cayman Islands Office of the Ombudsman;

and the terms 'Personal Data', 'data controller', 'data processor' and 'process' shall have the meanings given to them under Data Protection Legislation.

**"Deposit"** means Client Money placed by the Company in a Cash Account in the name of the Company (with the Company acting as bare trustee for the Client in the holding of the Client Money, and as agent for the Client in any subsequent dealing with such Client Money in a Cash Account);

**"Fee Schedule"** means the fee schedule detailing the Company's fees for the Service, as provided to the Client on the date of execution of the Account Agreement and may be amended or replaced entirely from time to time;

**"Fees"** means any fees payable directly to the Company by the Client under the Fee Schedule which for the avoidance of doubt, does not include any fees payable by the Company or the Client (whether through the Company or otherwise) to a third party service provider;

**"FX Service"** has the meaning ascribed thereto in clause 5.5(b) of these Terms;

**"Indemnified Persons"** has the meaning ascribed thereto in clause 15.2 of these Terms;

**"Licensed Bank"** means any bank or financial institution in any jurisdiction that is regulated or supervised by the local regulator to carry on deposit taking business in that jurisdiction;

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

**"Moody's"** means Moody's Investors Service, a credit rating agency;

**"Online Portal"** means the internet banking platform accessible at <https://ebanking.fundbank.com> through which the Client is able to, among other things, (i) access information about the balance of a Client Account, (ii) transact in relation to a Client Account, and (iii) receive notifications from the Company;

**"Parties"** means the parties to the Account Agreement;

**"Placement"** means Client Money placed in a Cash Equivalent Account in the name of the Company (with the Company acting as bare trustee for the Client in the holding of the Client Money, and as agent for the Client in the placement of Client Money in a Cash Equivalent Account);

**"Proper Instructions"** has the meaning ascribed thereto in clause 12 of these Terms;

**"S&P/Fitch"** means both of Standard & Poor's Financial Services LLC and Fitch Ratings Inc., each a credit rating agency;

**"Service or Services"** means one or more service offerings provided by the Company, which may include bank accounts, banking solutions for fund administration, cash management services, registered office services, custody solutions, escrow services, foreign exchange and hedging Solutions, outsourced trading desk, paying agents, trust management and trustee services, prime access and structured finance solutions.

**"Standard & Poor's Short Term Credit Rating"** has the meaning given to the term Short-Term Issue Credit Ratings on the website found at [www.standardandpoors.com](http://www.standardandpoors.com) from time to time;

**"Suitable Cash Account"** has the meaning ascribed thereto in clause 5.6(a) of these Terms;

**"These Terms"** means these terms and conditions;

“**Treasury Bill**” means a short-term government issued treasury instrument with a Standard & Poor’s Short Term Credit Rating of AA- or higher;

“**we**”, “**us**” and “**our**” refer to the Company;

“**Website**” means (i) <https://fundbank.com/>, or (ii) such other website on which the Company posts notices or publishes information about products, rates, fees, commissions, costs, charges or the subject matter of these Terms, as such websites may be replaced, substituted or amended from time to time; and

“**you**” and “**your**” refer to the Client.

- 2.2 Words importing the singular shall include the plural and the masculine gender shall include the feminine and the neuter and vice versa in each case, and references to a person shall include an individual, firm, company, corporation, unincorporated body of persons and any government entity and shall include any successors in title, permitted assignees and permitted transferees.
- 2.3 Unless otherwise stated, references in these Terms to “**clauses**” are to clauses of these Terms.
- 2.4 References in these Terms to these Terms and to any other document or agreement are to be construed as references to such document or agreement as amended, supplemented or replaced from time to time.
- 2.5 References in these Terms to any enactment or a provision of any enactment shall include that enactment or provision as amended, modified, re-enacted or replaced from time to time.
- 2.6 The headings in these Terms are inserted for convenience only and shall not affect the interpretation of these Terms.
- 2.7 The Parties acknowledge that the defined terms are highly technical and confirm that they have read, paid particular attention to and understand each defined term.

### **3. Our Legal Relationship**

- 3.1 These Terms shall supplement any Agreement(s) you have with us. If these Terms are inconsistent with the terms in any Agreement(s), then the Agreement(s) shall prevail provided that such Agreements are construed to the maximum extent possible to be consistent with these Terms.
- 3.2 Subject to Clause 3.1, these Terms otherwise supersede any other prior written or oral agreements between you and us and unless otherwise agreed in writing, these Terms contain our entire agreement with respect to the Services which we have agreed to provide.
- 3.3 You acknowledge and agree that we may, in our sole discretion, at any time, change these Terms and, if we do so, we will post any material changes on our Website, subject to providing a minimum of 30 days’ notice of such change to the Client. For the avoidance of doubt, a notification published on the Online Portal and/or the Website will be deemed to have satisfied the notice requirement under this clause 3.3, with such modifications to be deemed effective from the later of (i) 30 days after the date of such publication, or (ii) the date on which the modified Terms are stated to take effect.
- 3.4 The Service does not include the provision of any investment advice. Accordingly, any comment made by any officer or employee of the Company should not be treated as being advice or a recommendation given by us to be relied upon by you. The Company strongly recommends that you seek appropriate independent professional investment, financial and/or legal advice relevant to your particular circumstances before (i) entering into any Agreement, (ii) requesting any Service,

- (iii) requesting any other services from the Company, or (iv) instructing the Company to execute any transactions on your behalf.
- 3.5 The Client understands, acknowledges, accepts and agrees that the Client is entirely responsible for their investment decisions and for (i) recognising and considering any risks associated with such decisions which, for the avoidance of doubt, includes the express recognition that it is not relying and will not rely on the Company in this regard; and (ii) advising the Company of any matter which they wish the Company to take into account when executing transactions on their behalf.
- 3.6 When providing the Service, the Company may transfer your monies between different Licensed Banks, intermediaries or financial institutions from time to time, as we think appropriate. You understand, acknowledge, accept and agree that your monies may (i) in respect of a Cash Account, be placed entirely with just one Licensed Bank or with more than one Licensed Bank, and (ii) in respect of a Cash Equivalent Account, be allocated to a single Cash Equivalent Asset, or to more than one Cash Equivalent Asset. The Company holds your Client Money as bare trustee for you but acts as your disclosed agent when placing, receiving or depositing your monies and has no obligation to refund your monies in the event of a default or non-payment by the selected Licensed Bank(s), intermediary, financial institution or financial instrument counterparty, as the case may be. The Client assumes all credit risk on (i) the Licensed Banks with which Client Money is held, (ii) the intermediaries or financial institutions through which the Client Money passes in connection with a Placement and/or a Cash Equivalent Account or FX Service, (iii) any financial instrument counterparty to a Cash Equivalent Asset in which a Placement has been made, and (iv) the Cash Equivalent Assets to which Client Money under a Cash Equivalent Account is placed, and the Client shall not hold the Company or any of its Affiliates responsible for any Losses suffered or incurred by the Client arising out of (x) any default or insolvency of such Licensed Banks in relation to a Cash Account, or (y) default or insolvency in relation to a Cash Equivalent Account, including the default or insolvency of an intermediary, a financial institution, a financial instrument counterparty or any other party in connection with a Cash Equivalent Asset or FX Service. The Company notes that in some or all respects the applicable laws in the Cayman Islands and/or in the home jurisdiction of the Licensed Banks in relation to a Cash Account or the intermediaries, financial institutions and financial instrument counterparties connected to a Cash Equivalent Account or Cash Equivalent Asset, including any compensation or investor protection arrangements, may be different from those of your own jurisdiction;
- 3.7 The Company reserves the right to delegate the performance of any duties arising hereunder to any delegate in accordance with clause 8 of these Terms.
- 3.8 The Company does not provide tax advice and the Client understands, acknowledges, accepts and agrees that the Client has not received any such advice from the Company. The Company strongly recommends that if appropriate you should seek independent professional tax advice relevant to your particular circumstances before (i) entering into any Agreement, (ii) requesting any Service, (iii) requesting any other services from the Company, or (iv) instructing the Company to execute any transactions on your behalf. The Client understands, acknowledges, accepts and agrees that the Client is entirely responsible for the management of their affairs for tax purposes and for advising the Company of any matter which they wish the Company to take into account when executing transactions on their behalf.
- 3.9 You should also note that:

- (a) the Company holds a class B banking licence with, and is regulated by CIMA under the Banks and Trust Companies Act (2021 Revision) (as amended from time to time) (the "BTCA") and can only accept Client Money from persons who are not residents in the Cayman Islands or are licensees under the BTCA or Cayman Islands exempted or ordinary resident companies which are not carrying on business in the Cayman Islands ("Acceptable Clients"); and
- (b) the Company also holds an unrestricted trust license under the BTCA and can therefore provide trust business in the Cayman Islands.

#### **4. Appointment**

- 4.1 The Client's appointment of the Company to provide the Service shall only be effective once the Company has received all documents and information which it may, in its sole discretion, determine is necessary in order for the Company to determine whether to agree to the provision of the Service.
- 4.2 The Client understands, acknowledges, accepts and agrees that the Company will not be obliged to provide the Service until such time as all due diligence requirements have been completely satisfied to the full extent required by the Company. For the avoidance of doubt, the Company shall not be liable for any Losses suffered or incurred by the Client in connection with any delays in the provision of the Service. In particular, you should note that:
  - (a) the Company may, at any time, require personal and/or financial information or documentation from the Client regarding the source of monies which relate to any Service the Company is providing to the Client or the source of the Client's wealth, whether before agreeing to provide the Service or at any time after provision of the Service has commenced. In these circumstances, the Client agrees to provide all information or documentation as the Company may require or request to bring its enquiries to a satisfactory conclusion;
  - (b) information and documents to verify the identity and background of the Client (as well as all signatories and any other parties which the Company determines are relevant to the applicable Service or transaction) will need to be provided to the Company before the provision of any Service or other transaction will be arranged and the Client agrees to provide all information or documentation as the Company may require or request; and
  - (c) failure to provide information or documentation regarding the source of monies to be used in connection with any Service or other transaction or the Client's source of wealth may impact on the Company's ability to provide the Service or to arrange a transaction. The Client understands, acknowledges, accepts and agrees that failure to provide information and/or documentation in a form acceptable to the Company regarding (i) the source of monies to be used in connection with any Service or other transaction, (ii) the Client's source of wealth, or (iii) the verification, identity and/or background of the Client and any other parties which the Company considers to be relevant to the applicable Service or transaction, may result in the Company refusing or ceasing to provide the Service to the Client.
- 4.3 The Client agrees to provide the Company with all information and documentation as it may request or reasonably require, including evidence for the verification of individual entities and satisfactory explanations of transactions in order that the Company is able to comply with the requirements from time to time of the Cayman Islands Anti-Money Laundering Rules. The time at which such information and documentation is required and the form in which it shall be delivered to the Company shall be determined by the Company in its absolute discretion.



## 5. Client Accounts

- 5.1. This Clause 5 is only applicable to Services provided in respect of a Client Account.
- 5.2. Once the Company has confirmed its agreement to provide the Service, the Client shall transfer to the Company, or otherwise place under the Company's control, a sum of money which the Company will hold on bare trust for the Client.
- 5.3. It is understood, acknowledged, agreed and accepted that:
- (a) any Client Money, including any money which is added or transferred to a Client Account, is held on bare trust with a Licensed Bank;
  - (b) under this trust arrangement, you do not have a right to be repaid money by the Company. Rather, we hold the legal interest in those funds in the Client Account and you hold the beneficial interest. We may only apply the funds in your Client Account in accordance with these Terms or as otherwise directed by you;
  - (c) the Licensed Bank with which Client Money is deposited may from time to time pay interest on the funds held, however any such interest belongs to us and you will not receive interest on the funds in your Client Account;
  - (d) the funds held in any Client Account represent debt obligations of the Licensed Bank which provides the account. In the event that the Licensed Bank becomes insolvent or otherwise defaults on its payment obligations, you may lose some or all of the funds. We are not liable for any loss incurred by you as a result of that happening;
  - (e) in the event that the Company becomes insolvent or otherwise defaults on its payment obligations, you will retain your interest in any Client Money in your accounts and these funds would not become part of the Company's insolvency estate or otherwise be payable to our creditors;
  - (f) other than our obligation to hold your funds on bare trust for you and as expressly stated in these Terms and the Account Agreement, we do not owe you any fiduciary obligations in our capacity as bare trustee of your funds.
- 5.4. Each provision of the Trusts Act of the Cayman Islands (as revised) that:
- (a) may be excluded from applying to these Terms is excluded; and
  - (b) may be modified (but not excluded) is modified to the extent that it is inconsistent with these Terms.
- 5.5. In connection with the bare trust arrangement, the Company may provide the following services to and for the benefit of the Client as agent of the Client:
- (a) exercising discretion granted to the Company (which, for the avoidance of doubt, will be limited to choosing the Cash Account) in respect of a Deposit, with such discretion exercisable immediately after Client Money is placed on initial Deposit;
  - (b) foreign exchange and currency transfers. Arranging to transfer Client Money into other currencies based on specific instructions received from the Client (the "FX Service"); and
  - (c) Placement of the Client Money. The discretion granted to the Company will be limited to choosing the Cash Equivalent Account (and, consequently, the Cash Equivalent Asset(s)) in respect of such Placement.

- 5.6. In providing the above services, the Company agrees that:
- (a) Cash Accounts will only be opened with Licensed Banks that satisfy the Applicable Credit Rating. In the event that a Licensed Bank with whom a Cash Account is held suffers a credit rating downgrade below the Applicable Credit Rating (a “**Credit Downgrade Event**”), the Company shall (i) use reasonable endeavours to promptly transfer money held in such Cash Account to a Cash Account with another Licensed Bank that satisfies, or other Licensed Banks that satisfy the Applicable Credit Rating (a “**Suitable Cash Account**”), and (ii) to the extent that a Suitable Cash Account is not reasonably available to the Company within 6 months of the date of the Credit Downgrade Event, give notice to the Client setting out that another Suitable Cash Account has not yet been established;
  - (b) Cash Equivalent Assets, the subject of Cash Equivalent Accounts, will be subject to a Cash Equivalent Rating. In the event that a Cash Equivalent Asset to which Client Money has been allocated suffers a credit rating downgrade such that the rating of that Cash Equivalent Asset falls below the Cash Equivalent Rating, the Company shall use reasonable endeavours to promptly reallocate the Client Money to (i) another, or other, Cash Equivalent Asset(s), or (ii) a Suitable Cash Account until such time as another suitable Cash Equivalent Asset is selected for the allocation of that Client Money; and
  - (c) when providing the FX Service, the Company will take reasonable care to ensure that it obtains the best exchange rate available for you at that time, taking into consideration (i) the size and type of the transaction concerned, and (ii) the exchange rates quoted by the Licensed Banks with whom Cash Accounts have been opened or other intermediary or financial institution through which Client Money passes in connection with the FX Service. Given the aforementioned criteria, it is possible that on certain occasions, the exchange rate obtained may not be as favourable as the exchange rate that may be available from other Licensed Banks, intermediaries or financial institutions.
- 5.7. The Client understands, acknowledges, accepts and agrees that:
- (a) the Company’s obligations to perform the services set out at clause 5.5. are contractual in nature and are distinct and separate from the trust obligations imposed by the Account Agreement;
  - (b) the Company can place the Client Money on Deposit;
  - (c) the Company can undertake Placements in respect of and with the Client Money;
  - (d) the Company does not assume and is not subject to any fiduciary obligations as trustee in respect of the performance of the services described in paragraph 5.5 and, for the avoidance of doubt, the Company performs such services as an agent of the Client;
  - (e) a Client Account cannot and will not be permitted to have a negative balance;
  - (f) the FX Service is available in most circulating world currencies that are recognised legal tender in a territory whose currency is approved by the Company from time to time. The Client is responsible for verifying the correctness of all transaction advices, receipts or statements received from the Company in respect of the FX Service and is required to notify the Company within 48 hours of the receipt of each such document, of any alleged

inaccuracies or any transaction that has not been effected in accordance with the Client's instructions; and

- (g) any foreign exchange transactions entered into with the Client, on behalf of the Client or in respect of the Client under this Agreement:
- the Client will be and is responsible for and will reimburse the Company for any reasonable costs or any liabilities resulting from such foreign exchange transactions; and
  - the Company is entitled to charge a fee or margin in respect of any such foreign exchange transaction.

## 6. Client Money

- 6.1. Client Money will be held in one or a combination of Client Accounts in the name of the Company. The Client understands, acknowledges, accepts and agrees that Client Money held in a Client Account is subject to these Terms and (i) to the extent that the Client Account is a Cash Account, the terms and conditions of the Licensed Bank with whom the Cash Account is held, and (ii) to the extent that the Client Account is a Cash Equivalent Account, the terms and conditions of the intermediary (if any, and which may include a financial institution) through which Client Money passes or is held prior to being allocated to a Cash Equivalent Asset, and governing the underlying Cash Equivalent Asset.
- 6.2. The Company reserves the right to establish Cash Accounts with any Licensed Bank which satisfies the Applicable Credit Rating. Whilst the Company will exercise reasonable care in the selection of the licensed banks with whom Cash Accounts are maintained, the Company shall not be liable for any acts or omissions by, or the insolvency of, any such Licensed Bank. Accordingly, your credit risk in respect of monies held in Cash Accounts will be solely with the Licensed Bank(s) concerned.
- 6.3. The Company reserves the right to make Placements in Cash Equivalent Assets. Whilst the Company will exercise reasonable care in the selection of the (i) intermediary (if any, and which may include a financial institution) through which Client Money passes or is held prior to being allocated to a Cash Equivalent Asset, and (ii) Cash Equivalent Assets to which Client Money is allocated, the Company shall not be liable for any acts or omissions by, or the insolvency of, any such intermediary, financial institution or financial instrument counterparty, as the case may be. Accordingly, your credit risk in respect of Client Money placed in a Cash Equivalent Account will be solely with the intermediaries (if any), financial institutions (if any) and financial instrument counterparties concerned.
- 6.4. Client Money will be tracked on an individual basis and recorded in accounts on a daily basis. Client Money will not be co-mingled with the Company's own monies, except to the extent that (i) a portion of that Client Money (while on Deposit or in Placement) becomes payable as a fee or cost due to the Company under the Agreement or these Terms, or (ii) interest (which belongs to the Company) accrues on the Client Money while it is on Deposit or in Placement.
- 6.5. The Client Money shall be held on bare trust by the Company for the Client as beneficial owner, subject to the terms of the Agreement. As a result, the Company has no beneficial interest in the Client Money.

- 6.6. Client Money held or controlled by the Company in one or more Client Accounts will be co-mingled with monies held for our other clients using the Service. However, you will not have any entitlement or claim to any monies held in such Client Accounts other than the monies that are apportionable to you.
- 6.7. The Client shall not be entitled to, nor have any claim on, any interest or other income that may accrue on any Client Money held or controlled in any Client Account.
- 6.8. The Client understands, acknowledges, accepts and agrees that the Company does not accept physical cash, nor will it allow monies to be withdrawn in the form of physical cash.
- 6.9. Should the Client wish to withdraw monies, the Client will be required to provide Proper Instructions to the Company and the amount of its Client Money (i) held by or on behalf of the Company in the Cash Account(s), or (ii) allocated to a Placement will need to be sufficient to meet such withdrawal request.
- 6.10. The Company shall account to the Client for monies withdrawn by direct transfer to an account held in the Client's name. The Company, in its sole and absolute discretion, reserves the right to permit or decline to effect payment of monies withdrawn to the direct credit of any third party.
- 6.11. On receipt of Client Money, the Company must be satisfied as to the source of the Client Money. If the Company is not satisfied, for any reason, as to the source of Client Money (in which case it is understood that such reasons need not be disclosed to the Client by the Company), you understand, acknowledge, accept and agree that the Company may be bound by the Cayman Islands Anti-Money Laundering Rules or such other law to refuse or terminate the provision of the Service or to freeze the Client Money and report such actions and any information about the Client to regulatory authorities.
- 6.12. The Company will not be obliged to take or refrain from taking any action whatsoever in relation to the Client Money which could in the sole opinion of the Company result in a contravention of the Cayman Islands Anti-Money Laundering Rules or any law in force in the Cayman Islands or in any other place whatsoever. The Company reserves the right not to comply with any request which in the sole opinion of the Company could potentially result in any such contravention or which in the sole opinion of the Company could result in any damage to the reputation or good standing of the Company.
- 6.13. The Client hereby authorises the Company to deduct from the Client Money:
- (a) the Company's remuneration, fees and expenses payable by the Client;
  - (b) any costs or charges (i) levied by any Licensed Banks with which the Client Money is held, (ii) incurred or payable in respect of any Placement, or (iii) levied or incurred in connection with transactions effected on behalf of the Client including in relation to the FX Service; and
  - (c) any taxes or other statutory or governmental fees, charges, duties or costs that are due to be paid by the Client.

## 7. Client Reporting

- 7.1. The Company will issue account statements at the frequency and in a manner advised to the Client from time to time.
- 7.2. The Client is responsible for verifying the correctness of all statements in respect of Client Accounts received from the Company and is required to notify the Company within 60 days of the preparation date of each document, of any alleged omissions from, or additions wrongly made to,

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

- 7.3. The Company shall not be responsible for the Client's reliance on any information in any statement, or related information that is subsequently updated or corrected or for the accuracy or timeliness of information supplied by the Company.

## **8. Delegation**

- 8.1. The Company shall be entitled to delegate its powers and duties, in whole or in part, to any person or persons, upon such terms and conditions, as the Company shall think fit and may employ agents to perform any administration, dealing and ancillary services required to enable it to provide any of the Services, provided that the Company shall, upon the appointment of any such delegate, be satisfied and shall continue to be satisfied that such delegate is a fit and proper person and, in such circumstances, the Company shall not be liable for any act, omission or default by, nor the insolvency of, any such delegate.
- 8.2. By agreeing to these Terms, the Client gives its consent to the disclosure of information reasonably required by any delegate of the Company to perform the functions delegated to such delegate. For the avoidance of doubt, this disclosure will extend to information relating to the Client or any transactions of the Client in accordance with clause 20.2 of these Terms, notwithstanding that such information may be deemed confidential.

## **9. Fees and Interest**

- 9.1. In consideration for the Services, the Company shall receive the remuneration, fees and expenses in the amounts set out in or determined in accordance with the Fee Schedule, and in the manner and at the times provided for in the Fee Schedule. In the event that unanticipated issues, problems, or any other circumstances arise that require additional work by the Company (including, but not limited to, responding to any investigations or enquiries by any legal, governmental or regulatory authority), the Client will pay the Company's costs incurred in preparing for and responding to any such issues, problems or circumstances at the Company's standard hourly rates applicable at the time of responding, together with expenses, including but not limited to, legal expenses.
- 9.2. The Client (i) acknowledges and understands that the Fee Schedule is available on request, and (ii) hereby agrees that it has received (or has been given the opportunity to access) and read a copy of the Fee Schedule in force on the date hereof.
- 9.3. The Company may modify the Fee Schedule at any time, subject to providing a minimum of 30 days' notice of such change to the Client. For the avoidance of doubt, a notification published on the Website or sent by email will be deemed to have satisfied the notice requirement under this clause 9.3, which such modifications to be deemed effective from the later of (i) 30 days after the date of such publication, or (ii) the date on which the modified Fee Schedule is stated to take effect.
- 9.4. The Client shall not be entitled to any interest or other income that accrues on any Client Money (including, without limitation, any (i) interest that is paid by any licensed bank on amounts standing to the credit of a Cash Account, and (ii) any amounts accrued or earned in respect of any Placement in a Cash Equivalent Account) and it is hereby agreed that the Company need not

account to the Client for any such interest or other income and any and all interest or other income shall be retained exclusively by the Company.

- 9.5. For the avoidance of doubt, the Company is entitled to retain all interest credited or other income accrued on the Client Money and has the discretion to use any such interest credited or other income accrued in the manner of its choosing. The Company shall therefore have the right (but not the obligation) to make payments to the Client as it sees fit, at its sole discretion and in the manner and amount and for the period of its choosing. Any payment made by the Company to the Client shall have no relation or connection to any interest credited or other income accrued on Client Money by the Company, save that the amount being paid to the Client may (at the Company's sole discretion) have been calculated by reference to such credited interest or other income accrued. It is expressly understood by the Client that payment by the Company to any client shall not: (a) entitle the client receiving the payment to further or continued payment; (b) create any expectation of continued payment by the Company; or (c) entitle any other client to any payment by the Company whatsoever.
- 9.6. The Client understands, acknowledges, accepts, agrees and confirms that the Client is liable for all costs, fees and expenses incurred by the Company that arise as a result of the application of a negative interest rate to any Client Account from time to time, along with an administration fee.
- 9.7. The Client further agrees that the Company may at any time, without prejudice to any other rights it may have, and without prior notice or demand for payment, combine, consolidate or merge (in cases of multiple Client Accounts for one Client), or apply or set off all or any part of any money held in any Client Account towards payment of any amount owed by the Client to the Company. For the purposes of this clause 9.7 the Company may effect such charges or repayments at such time or such rates as it may think reasonable and may effect such transfers between such Client Accounts as it considers necessary.

## **10. Client Representations and Warranties**

- 10.1. The Client represents and warrants that on the date of its execution of the Account Agreement:
- (a) the Client has full capacity, power, and authority to engage the Company to provide the Service;
  - (b) the Client is an Acceptable Client as defined in clause 2.1;
  - (c) the Client Money is not and was not directly or indirectly derived from activities that may contravene applicable laws and regulations, including but not limited to anti-money laundering, counter terrorist financing, prevention of proliferation financing laws and sanctions laws and regulations, including "criminal property" or "terrorist property" as defined in the Cayman Islands Anti- Money Laundering Rules and is free from all security interests, liens, charges, mortgages, encumbrances and other third party interests whatsoever (the "Encumbrances"), and the Client undertakes that no Encumbrances will arise from any acts or omissions on the part of the Client other than as agreed between the Company and the Client from time to time;
  - (d) unless the Client has notified the Company in writing that the Client is acting on behalf of any third party or parties and has provided the Company with the name or names of the third party or parties concerned, the Client is not receiving the Service on behalf of any third party or parties and is the legal and beneficial owner of the Client Money;

- (e) the Client undertakes not to deal, except through the Company, with any of the Client Money and not to authorise anyone else to deal in the Client Money other than with the prior written agreement of the Company;
- (f) the Client warrants that any information which the Client has provided to the Company in relation to the Client's status, residence and domicile for taxation purposes is complete and correct in all respects, and the Client agrees to provide any further information as the Company may require to perform the Service and/or to enable it to comply with all laws, regulations and/or guidelines that are applicable to the Client or the Company from time to time;
- (g) the Client will notify the Company promptly if there is any material change in any information the Client has provided to the Company pursuant to the Agreement and/or the Service, and will provide such other relevant information as the Company may from time to time request. The Client understands, acknowledges, accepts and agrees that any failure to provide such information may adversely affect the quality and/or scope of the Service provided by the Company and the ability of the Company to provide the Service;
- (h) the Client has not given to the Company any instructions that will require or involve any unlawful act or contain any falsehood and all information given will be accurate and not misleading;
- (i) the Client will comply with all filing requirements in any applicable jurisdiction and pay all taxes and governmental duties payable by the Client in connection with Client Money and provision to it of the Service;
- (j) the Client shall disclose or procure the disclosure to the Company, on request, of any and all information about the Client or concerning Client Money;
- (k) the Client is not subject to any sanctions or in breach of any laws or regulations anywhere in the world;
- (l) the Client will not cause nor permit anything to be done which will or may impose any civil or criminal liability or penalty on the Company; and
- (m) the Client is not an ordinary resident company incorporated under the laws of the Cayman Islands, save in circumstances where the Client is receiving registered office services only.

10.2. The representations and warranties contained in clause 10.1 will be deemed to be repeated by the Client on each day the Agreement is in force.

## 11. Client Acknowledgements

11.1. The Client understands, acknowledges, accepts and agrees that:

- (a) whilst the Company will exercise reasonable care in the selection of Licensed Banks with whom Cash Accounts are maintained, the Company does not give any undertaking or guarantee in relation to the creditworthiness of any such licensed bank and the Company shall not be liable for any acts or omissions by, or the insolvency of, any such licensed bank. Accordingly the credit risk or other relevant risk in respect of monies held on Cash Accounts will be borne solely by the Client;
- (b) whilst the Company will exercise reasonable care in the selection of the intermediaries, financial institutions and financial instrument counterparties engaged in connection with the Cash Equivalent Account and the Cash Equivalent Assets, the Company does not give any

undertaking or guarantee in relation to the creditworthiness of any such intermediaries, financial institutions or financial instrument counterparties and the Company shall not be liable for any acts or omissions by, or the insolvency of, any such intermediaries, financial institutions or financial instrument counterparties. Accordingly the credit risk or other relevant risk in respect of monies allocated to a Placement will be borne solely by the Client;

- (c) whilst the Company will exercise reasonable care in the selection of the intermediaries, financial institutions and financial instrument counterparties engaged in connection with the FX Service, the Company does not give any undertaking or guarantee in relation to the creditworthiness of any such intermediaries, financial institutions or financial instrument counterparties and the Company shall not be liable for any acts or omissions by, or the insolvency of, any such intermediaries, financial institutions or financial instrument counterparties. Accordingly the credit risk or other relevant risk in respect of monies allocated to FX Services will be borne solely by the Client; and
- (d) when the Company executes a transaction on behalf of the Client with a third party institution, there is always a degree of risk that the third party institution may fail to act upon the instruction given or in the manner expected.

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

- (a) the Service is being used for illegal purposes;
- (b) there is a dispute over the beneficial ownership of part or all of the Client Money held;
- (c) any Client Money is not owned by the Client;
- (d) any Client Money may be connected to any individual or entity that is the subject of a regulatory or international sanction;
- (e) there is a dispute between the directors and/or officers of the Client; and/or
- (f) there is an insolvency, bankruptcy, winding up or dissolution of the Client,
- (g) then, until the matter is resolved to the Company's satisfaction, the Company may freeze the Client Money in whole or in part and refuse to provide the Service. In such circumstances, the Company may take professional advice and the Company shall not incur any liability for any Losses suffered or incurred by the Client or any other person.

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

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

11.5. The Client understands, acknowledges, accepts and agrees that because of the bare trust arrangement under which Client Money is held, any funds held in a Client Account are not construed as "monies held or owed by an account provider" for the purpose of the Dormant Accounts Act (as currently in force). The Client further understands, acknowledges, accepts and agrees that, where there is a period of dormancy with regard to a Client Account and the Company



has made reasonable efforts to contact the Client but the Client has not responded, then the Company may elect to terminate the bare trust arrangement such that the Client Money may be transferred to a separate trust specifically established for the purposes of maintaining monies settled from such dormant accounts.

- 11.6. In the event that there has been no activity in respect of the Client Money (other than charges and interest debited or credited by the Company) for a continuous period of at least seven (7) years (the "Dormant Account"), the Company shall take reasonable steps to notify the Client in writing of the Dormant Account including publishing a prescribed notice in the Gazette, daily newspaper and/or the Website (as applicable), before having the right to take steps to transfer the Client Money in the Dormant Account to the Cayman Islands government without further notice.

## 12. Proper Instructions

- 12.1. The Company may rely upon, and is authorised by the Client to deal with and act upon, instructions, documents and information ("**Proper Instructions**"):
  - (a) given or purportedly given by such persons as have been notified in writing from time to time by the Client to the Company as having authority to give instructions, documents and information on the Client's behalf in respect of the Agreement (and the Company may rely upon such notification as being complete and accurate until the Client provides the Company with written notice to the contrary); and
  - (b) given (i) through the Online Portal, (ii) via the SWIFT messaging platform or (ii) by letter, or email to [banking@fundbank.com](mailto:banking@fundbank.com) (on the proviso that the Company has approved this mode of instruction, in writing and in advance of such instruction, or in circumstances where the Online Portal and/or SWIFT messaging service is unavailable).
- 12.2. The Client understands, acknowledges and accepts that the persons authorised to give Proper Instructions on behalf of the Client are: (i) those persons authorised by the Client, as notified in writing to the Company using the dedicated form and dedicated email address provided to the Client; and/or (ii) those persons listed in the Account Agreement and authorised pursuant to signed resolutions of the board of directors of the Client (each "**Authorised Persons**"). The Client accepts responsibility for and agrees to notify the Company of any changes to the list of Authorised Persons from time to time, as required.
- 12.3. The Company is not under any duty to make any enquiry as to the genuineness or authenticity of any Proper Instructions.
- 12.4. The Company shall not be obliged to take or omit to take any action pursuant to Proper Instructions where in the opinion of the Company, such Proper Instructions are not sufficiently clear and/or precise or do not contain sufficient information to allow the Company to comply materially with such Proper Instructions.
- 12.5. The Company shall not incur any liability in respect of any action taken or not taken by the Company in good faith in reliance upon Proper Instructions.
- 12.6. The Client irrevocably indemnifies the Company (including, for the avoidance of doubt, each Indemnified Person) against Losses suffered or incurred by any of them resulting from any action taken or not taken by the Company in good faith in reliance upon Proper Instructions.
- 12.7. The Company shall deal with and act upon Proper Instructions in a reasonably timely manner and undertake to use reasonable endeavours to do so, but does not undertake to act on instructions

immediately or on the same or next Business Day or to meet any specific deadline (unless otherwise agreed in writing) and shall not incur any liability for any Losses arising by reason of the length of time taken to so act upon such instructions.

- 12.8. From time to time the Company may be restricted by applicable legal and regulatory requirements and/or internal requirements from accepting instructions from the Client. Should the Company be so restricted, the Company may refuse to accept instructions from the Client without giving any reasons for so doing and the Company shall not be liable for any Losses suffered or incurred thereby.

### **13. Non-Exclusivity**

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

### **14. Conflicts of Interest**

- 14.1. The Company may, without consulting with or notifying the Client, provide the Service notwithstanding that the Company has a relationship of any description with another person such as to place it in a position where its duty or interest in relation to that other person may conflict with its duty to the Client. At all times, the Company will ensure that it is operating within the parameters of its legal and regulatory obligations pursuant to Cayman Islands' law.

### **15. Liability and Indemnities**

- 15.1. To the extent permitted by applicable law and notwithstanding any other provision in the Agreement, the Company shall not be responsible for any Losses suffered or incurred by the Client arising out of any act or omission on the part of the Company in connection with the Services and this Agreement, including any Losses suffered or incurred by the Client arising out of:
- (a) any acts or omissions (whether negligent, fraudulent, in wilful default or otherwise) of any Licensed Bank holding Client Money or through which transactions have been effected;
  - (b) the default or insolvency of any Licensed Bank holding Client Money or any intermediary, financial institution or financial instrument counterparty engaged in connection with the FX Service; or
  - (c) any disclosure made by the Company pursuant to clause 18 of these Terms.
- 15.2. The Client irrevocably indemnifies the Company (which includes the partners, officers, directors, employees, consultants and agents of each, and together with the Company, each an "Indemnified Person") from and against any and all Losses which may be suffered or incurred by the Company from time to time (calculated on a full indemnity basis) in connection with the performance or non-performance of any of the Company's duties under the Agreement or in connection with the provision of the Service (including, without limitation, any Losses suffered or incurred as a result of a breach of the Agreement), save where Losses arise as a result of actual fraud or wilful default on the part of the Company (the "Indemnity"). This indemnity shall continue in force without limit in time, whether or not the Company is continuing to provide the Service and without prejudice to any

other indemnity given in the Company's favour. Without limiting the foregoing, the Indemnity shall include Losses arising in connection with:

- (a) any breach or negligent performance of the Agreement;
- (b) the enforcement of the Agreement;
- (c) an Indemnified Person accepting and acting upon Proper Instructions given or purported to be given by the Client;
- (d) any and all taxes and any and all related losses, claims, liabilities, penalties, interest and reasonable expenses (including the fees, charges and disbursements of any counsel for or professional adviser to the Company) incurred by or asserted against the Company by any governmental authority as a result of either:
  - (i) the failure by the Client to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, the self-certification as to tax status by the Client (and if a non-financial entity, by each controlling person of the Client) and the Client hereby authorises the Company to set off and apply any and all amounts at any time owing to the Client under the Agreement, or
  - (ii) the Client being a nonparticipating financial institution for the purpose of the intergovernmental agreement currently in force between the United States of America and the Cayman Islands regarding the Foreign Account Tax Compliance Act of the United States of America;
- (e) any claim made against any Indemnified Persons by a third party arising out of or in connection with the Agreement to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Agreement by the Client, its employees, agents or subcontractors; or
- (f) any mistakes or defects of the Client when using the Online Portal (including any failure to correctly establish or manage an appropriate security code) or compromised use of the Online Portal as a result of the Client's negligence.

15.3. The Indemnity shall apply whether or not the Company has been negligent or at fault.

15.4. The Client will advance attorneys' fees and other costs and expenses incurred by the Company in connection with the defence of any action, investigation or proceeding that arises out of the provision of Services under this Agreement. In the event that such an advance is made by a Client, the Company as the case may be, shall reimburse such advanced fees, costs and expenses in the event that a final judgment of actual fraud or wilful default is given against the Company.

15.5. An Indemnified Person shall not in any circumstances whatsoever be liable to the Client or any third party, whether in contract tort (including negligence), breach of statutory duty or otherwise, for any:

- (a) Losses arising from or in connection with such Indemnified Person acting upon Proper Instructions received and reasonably believed by the Indemnified Persons to be duly authorised and delivered;
- (b) Loss of profit, loss of goodwill, loss of business, loss of business opportunity, loss of anticipated saving, or any indirect or consequential damage or loss howsoever arising; or

(c) Losses arising from or in connection with any negligent, defective or accidental use of the Online Portal and/or SWIFT messaging platform (except to the extent that the Losses are as a direct result of fraud or wilful default on the part of the Company).

- 15.6. The Company's total liability to a Client under or in connection with the Services and this Agreement, whether arising in contract, tort (including negligence), breach of duty or otherwise whatsoever arising out of or in connection with the Agreement shall in all circumstances be limited to the sum of Fees paid by such Client to the Company pursuant to the Agreement in the preceding six (6) months.
- 15.7. The Company shall not incur any liability arising by reason of any failure of or delay caused by or lack of availability of the Online Portal, SWIFT messaging platform or the Company's websites, computer systems or communication systems.
- 15.8. The Company shall not be responsible for any act or failure to act by any licensed bank, intermediary or financial institution at which a Client Account is maintained unless such act or failure to act is caused by the Company's actual fraud or wilful default.
- 15.9. For the avoidance of doubt, references in this Agreement to actual fraud or wilful default shall mean a final non-appealable finding to such effect by a competent court in relation to the conduct of the relevant party.

## **16. Legal Proceedings**

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

## **17. Communication**

- 17.1. The Client hereby authorises the Company to write to (by email or prepaid post) or telephone the Client to discuss matters relating to the Service, or publish notices on the Website, at its discretion.
- 17.2. The Company may record telephone conversations and may monitor telephone calls both received by and made by employees of the Company. Any such recordings remain the property of the Company, and may be used by the Company in the event of a dispute. The Company shall have the authority to deliver copies or transcripts of such recordings to any court or regulatory authority of competent jurisdiction as the Company sees fit and the Client hereby waives any objection to the use of any such recordings or transcripts as evidence of any such telephone conversation.
- 17.3. The Client agrees that the Company may monitor all e-mails or other electronic communication and data to gather information for purposes of security, marketing, statistical analysis and systems development.
- 17.4. Where telephone calls are made by the Company and recorded for direct marketing purposes, the Company will advise the Client at the beginning of any such call. If the Client does not wish to continue with a direct marketing telephone call, the Client should respond accordingly and the Company will terminate the call.

- 17.5. The Company will only use the e-mail address provided by the Client for direct marketing purposes where the Client has provided the Company with consent to do so.
- 17.6. The Company may use, store, transfer, disclose or otherwise process the Client's personal data for the purposes set out in this clause 17 or as otherwise required by law or regulation applicable to the Company. Such personal data includes but is not limited to all the information relating to the Client provided to the Company in connection with the establishment of a banking relationship pursuant to these Terms, including for the avoidance of doubt the information provided in order to answer the Company's due diligence enquiries and to open one or more Client Account(s).
- 17.7. The Client's personal data will be processed by the Company in order to without limitation, manage the Client Account (including the provision of statements) and may also be used for assessment and analysis by the Company, to develop and improve the Company's services and to protect the Client's interests.
- 17.8. The Company reserves the right, and the Client authorises the Company, to transfer the Personal Data to other third party service providers as it may from time to time engage, or to any intermediary or regulated institution with regulatory or compliance obligations in relation to relationships between the Company and the Client, including but not limited to any nominee, custodian or bank used in the provision of the Service, or in connection with data storage (including but not limited to cloud storage or external data server services), anywhere in the world, including outside the Cayman Islands (the Client understands, acknowledges, accepts and agrees that where such transfer is made in relation to a jurisdiction that is not in the Cayman Islands, that jurisdiction may not have data protection laws in place that are of a similar standard to those in the Cayman Islands).
- 17.9. The Client expressly agrees that information passed to or accessible by any delegate or third party for the purposes of disaster recovery, data back up or compliance with laws or regulations shall not be construed as a breach of confidentiality or Data Protection Legislation.

## **18. Disclosures**

- 18.1. The Company shall not be obliged to disclose to the Client information:
- (a) the disclosure of which by the Company would or might be a breach of a duty of confidence to any other person;
  - (b) which comes to the notice of any of its agents or delegates but does not come to the actual notice of the individual(s) responsible for providing the Service to the Client; or
  - (c) the disclosure of which by the Company would or might render the Company liable to legal, regulatory or administrative sanctions.

## **19. Complaints**

- 19.1. Should you be dissatisfied with any aspects of the Service, you should write to the Company at [compliance@fundbank.com](mailto:compliance@fundbank.com) or your other usual point of contact. Your complaint will then be dealt with in accordance with the Company's complaints procedures, a copy of which is available on the Website.

## **20. Confidentiality**

- 20.1. Subject always to the provisions of these Terms, the Company shall not disclose to any person any details regarding the Client's transactions or any information relating to the Client (whether acquired before or after the Agreement was contemplated and whether from the Client or a third party) save:
- (a) where the Company is compelled, permitted or required to do so by law or by order of a court or governmental or administrative tribunal or regulatory authority;
  - (b) where disclosure of such records by the Company to a third party and/or its advisors is required in connection with any proposed sale, transfer or disposal of any or all the assets of, shares in, or business of the Company;
  - (c) where disclosure is made at the Client's request or with the Client's consent, or if otherwise permitted by these Terms;
  - (d) where disclosure is to a delegate directly involved in the performance of the Service and who needs to know the information and is aware of, and complies with, the confidentiality provisions of this clause 20);
  - (e) where failure to make such disclosure would in the opinion of the Company be prejudicial to the interests of the Company; or
  - (f) where disclosure is made in accordance with clause 8.2 or clause 20.2(d).
- 20.2. The Company may at any time process and/or disclose information about the Client, the Client Money and/or the Client's transactions for the following purposes:
- (a) to facilitate or otherwise assist in the provision of the Service (including the provision of information to (i) Licensed Banks with whom Cash Accounts are, or are to be, established, and (ii) intermediaries, financial institutions and other financial instrument counterparties in connection with a Cash Equivalent Account or a Cash Equivalent Asset or the FX Service), or to delegates appointed by the Company from time to time;
  - (b) to service any of the Client's other relationships with any delegate of the Company;
  - (c) to provide the Client with information regarding products and services that the Company believes may be of interest to the Client. If the Client does not wish to receive this information the Client must notify the Company in writing;
  - (d) to meet the Company's regulatory and/ or financial and/or other reporting obligations in the Cayman Islands or elsewhere; or
  - (e) for the purposes of fraud prevention.

## 21. Privacy Notice

- 21.1. The Company is committed to protecting your privacy. For more information about how we use your personal information, see our Privacy Notice (<https://www.fundbank.com/customer-privacy-policy/>). This Privacy Notice sets out how and why the Company collects and processes your personal information.
- 21.2. The Company complies with Data Protection Legislation when dealing with your Personal Data. For the purposes of the Data Protection Legislation, the Company will be the Data Controller.
- 21.3. The Company is not required to designate a Data Protection Officer (an appointed person who is given formal independent responsibility for data protection compliance within a business). If you

have any questions about the use of your Personal Data, your data protection rights or if you want to exercise those rights, please contact us at [compliance@fundbank.com](mailto:compliance@fundbank.com).

#### 21.4. Personal Data that we Process

- (a) The Company gathers and processes your Personal Data in order to open your Client Account and to administer the services under these Terms. The Company may engage third party service providers to process such Personal Data on our behalf and those third parties act as Data Processors.
- (b) The Company may also collect and process Personal Data relating to you in connection with its ongoing relationship with you, such as via correspondence and calls, and in connection with our administration of our relationship. Telephone calls with you may be recorded for the purposes of record keeping, security and training. The Company may also collect Personal Data in relation to you in connection with ensuring compliance with our legal obligations this may include your PPS number; passport number; utility bills, photographic identification and verification such as copies of your passport, passport number, drivers licence and address verification. For the purposes of carrying out due diligence pursuant to the Cayman Islands Anti-Money Laundering Rules, we may also collect information relating to your status as an ultimate beneficial owner of an entity, or as a politically exposed person.

#### 21.5. Purposes of Processing and Legal Basis

- (a) Personal Data that you provide will be processed for the following purposes:
  - Processing the opening of an account with the Company;
  - Establishing your identity, and providing, servicing and administering your account;
  - Complying with our legislative and regulatory obligations in connection with our dealings with you, including under applicable law regarding anti-money laundering, counter terrorist financing, prevention of proliferation financing, sanctions, taxation, the regulation of collective investment schemes, or the provision of financial services, crime-detection, prevention, investigation and prosecution, the prevention of fraud, bribery, anti- corruption, tax evasion, to prevent the provision of financial and other services to those who may be subject to economic or trade sanctions, in response to legal or court requests or requests from regulatory authorities or where it is in the public interest;
  - For direct marketing purposes (that is, providing information on products and services) or for quality control, business and statistical analysis, market research or for tracking fees and costs or for customer service, training and related purposes;
  - If applicable, processing the fact that you are a politically exposed person, to comply with applicable legal obligations;
  - To communicate with you by way of notice pursuant to applicable legislation;
  - Maintaining appropriate business records, including maintaining appropriate registers of accountholders;
  - Where required for global tax reporting purposes, including FATCA or CRS;

- To respond to or evaluate any queries or complaints in relation to your account;
- Internal and external audits and, where necessary, investigations;
- Establishing, exercising or defending legal claims.

(b) The legal grounds that we rely on to process your Personal Data are:

- that it is necessary to comply with our legal obligations;
- that it is necessary for the purposes of the Company's legitimate interests (processing necessary for the purposes of the legitimate interests pursued by a Data Controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of Personal Data) or the legitimate interests of a third party to whom your Personal Data is provided. The Company will not process your Personal Data for these purposes if our or the third party's legitimate interests should be overridden by your own interests or fundamental rights and freedoms.
- The legitimate interests pursued by us in this regard include:
  - Conducting our business in a responsible and commercially prudent manner and dealing with any disputes that may arise;
  - Preventing, investigating or detecting theft, fraud or other criminal activity;
  - Pursuing our corporate and social responsibility objectives.
- where you are an individual account holder, that this is necessary to take steps at your request prior to entering into our contract with you and for the performance of our contract with you;
- in certain limited circumstances, your consent.

21.6. Recipients of Data: Your Personal Data may be disclosed to various recipients in connection with the above purposes, including:

- Counterparties or correspondents from time to time, as third-party service providers appointed by the Company;
- The Money Laundering Reporting Officer or Deputy Money Laundering Reporting Officer;
- The Department for International Tax Cooperation and other foreign tax authorities as required by applicable law, including FATCA or CRS;
- CIMA, Financial Reporting Authority, auditors, or other competent regulatory authorities and bodies as requested or required by law;
- Other third parties who we engage to provide services to us, such as professional advisers, legal advisers, auditors and IT service providers;
- To screening and other reference agencies to carry out money laundering and identity checks and to comply with our legal obligations;



- Other members of the Company's corporate group or the corporate groups of the entities referred to above, as well as affiliates, agents and delegates.
- 21.7. Other Data Controllers: The Company may make a report to Financial Reporting Authority where it has a suspicion of money laundering or terrorist financing offence or a suspicious activity. Where a third party makes such a report for itself, not with respect to you, it may consider itself a Data Controller with respect to this activity.
- (a) Due to the international nature of our business, your Personal Data may be transferred outside the Cayman Islands and European Economic Area, including to a jurisdiction that does not offer an equivalent level of protection for Personal Data as is provided for under the Data Protection Legislation.
  - (b) If and to the extent that we do so, we will ensure that appropriate measures are in place to protect the privacy and integrity of such Personal Data and in particular will comply with our obligations under the Data Protection Legislation, which may include having appropriate contractual undertakings in legal agreements with service providers who process personal data on our behalf.
  - (c) Further details of the measures that we have taken in this regard and the territories to which your Personal Data may be transferred are available by contacting us as set out above.
- 21.8. Retention: We will retain your Personal Data for the duration of account being open and for such a period of time after the account is closed as is necessary to comply with our obligations under CIMA's Statement of Guidance, Nature, Accessibility and Retention of Records and any other applicable law.
- 21.9. Your Rights: You have the following rights, in certain circumstances and subject to applicable exemptions, in relation to your Personal Data:
- the right to access your Personal Data, together with information about our processing of that Personal Data;
  - the right to rectify any inaccuracies in your Personal Data;
  - the right to have any incomplete Personal Data completed;
  - the right to erase your Personal Data (in certain specific circumstances);
  - the right to request us to stop or restrict processing your Personal Data (in certain specific circumstances);
  - where the legal basis for processing is consent, the right to withdraw your consent at any time; to lodge a complaint with the Cayman Islands Data Protection Ombudsman or any other applicable supervisory authority.
- 21.10. Consent to Direct Marketing: From time to time the Company listed above may send you information about other products and services that they offer by letter, telephone, by email or by other reasonable means of communication. You have a right not to receive such information. You have a right to withdraw this consent at any time. However, your withdrawal of consent will not affect the lawfulness of processing based on consent before its withdrawal.

## 22. Assignment

- 22.1. The Client may not assign or transfer any of its rights or obligations under the Agreement without the prior written consent of the Company.
- 22.2. Subject to any applicable laws, regulations or rules, the Company may, with 30 days' notice, assign its rights and obligations under the Agreement to any third party.

### **23. Account Closure, Termination and Consequences of Termination**

- 23.1. If the Agreement is ended in accordance with this clause 23.1, the Client Accounts will be closed and all other ancillary agreements between the Client and the Company will also end.
- 23.2. The Client shall be obliged to settle all fees, commissions and other charges owed to the Company.
- 23.3. The Company has the right to deduct any outstanding interest and/or charges that have not yet been applied to the Client Accounts and shall be entitled to collect such amounts, before returning the outstanding balance(s) to the Client. If someone tries to make a payment into a Client Account after it has been closed, the Company will take reasonable steps to return the payment to them.
- 23.4. The Client acknowledges that termination of the Agreement and/or the closure of a Client Account must be approved and instructed in writing to the Company by an authorised signatory of the Company, as authorized by the Client's Articles of Association to operate the Client Accounts in such a manner at the date of closure, and in accordance with and subject to such terms and conditions as may be prescribed by the Company for such Client Account (as each may be amended, supplemented and/or substituted from time to time).
- 23.5. The Company may refuse to provide the Service or to accept monies or decide to withdraw the provision of the Service at any time, at the Company's sole and absolute discretion without giving any reason whatsoever. Should the provision of the Service be withdrawn, the Company shall incur no liability for any Losses that the Client may sustain.
- 23.6. The Agreement may be terminated by (i) the Company at any time immediately on written notice effective on receipt (or at such later time as specified in such notice), or (ii) the Client on 30 days' written notice effective on receipt (or at such later time as specified in such notice).
- 23.7. Upon termination of the Agreement for any reason, the Company shall return the Client Money to the Client, such that the Company no longer acts as bare trustee in respect of that Client Money.
- 23.8. The Agreement shall terminate automatically in the event that:
  - (a) a trustee in bankruptcy, receiver, administrative receiver, administrator or liquidator is appointed in respect of the Client or any of its property, or the Client or any of its property is subject to any other equivalent procedures in any jurisdiction;
  - (b) the Client is no longer an Acceptable Client;
  - (c) the Client is, or is deemed to be, unable to pay its debts as they fall due or is deemed to be insolvent under the laws of any jurisdiction to which the Client is subject;
  - (d) a distress has been levied upon or other execution has been effected against the whole or any part of the property of the Client;
  - (e) the Client takes up residence, or is or is deemed to be resident, in a country where the Company is not permitted or authorised to provide services to residents of that country; or
  - (f) any statute, regulation or other enactment in the Cayman Islands or any other applicable jurisdiction renders the provision of all or any part of the Services unlawful.

- 23.9. Termination of the Agreement shall be without prejudice to the completion of any transactions already in the process of being arranged. After the termination takes effect, the Company shall not accept any monies and will not arrange any further transactions on behalf of the Client.
- 23.10. The Client understands, acknowledges, accepts and agrees that in the event that the Agreement is terminated then the Client will be required to provide the Company with instructions as to where to transfer any Client Money that is held at that time. Should the Client fail to provide the Company with such instructions, then all Client Money will be held by the Company as bare trustee and the Company will be entitled to levy charges for so doing.
- 23.11. No penalty will be imposed on the Client on termination of the Agreement but the Company shall be entitled to charge the Client (i) any remuneration, fees or expenses which may be outstanding, (ii) for any expenses necessarily incurred by the Company in terminating the Agreement or directly attributable to the termination of the Agreement (including the Termination Fee as set out in the Fee Schedule), and (iii) for any Losses necessarily realised in settling or concluding outstanding transactions.
- 23.12. To the extent permitted by law, clauses 16 and 18 will continue in full force and effect (together with any other provisions necessary to make them operable) despite termination of the Agreement.

## **24. Notices**

- 24.1. Any notices given pursuant to these Terms shall be delivered to:
- (a) the Company, at its registered office; and
  - (b) the Client, at the last address shown in the records of the Company or, if deemed appropriate by the Company in its sole discretion, by publication on the Website, and may be sent by email or by prepaid post and shall be deemed to be received in the case of email or publication immediately and in the case of prepaid post 72 hours after posting.

## **25. Customer Due Diligence**

- 25.1. The Company is required to obtain and maintain sufficient client information to satisfy itself as to the identity, nationality, residency, source of funds and source of wealth of all new, existing and re-activated clients. The Company may therefore require at any time that the Client provide such information or documentation as is necessary to verify the identity of the Client prior to, or during, the Service being provided.
- 25.2. The Client agrees to provide the Company with a list of Authorised Persons that will be incorporated as an addendum to the Account Agreement. The Client agrees to take responsibility for and notify the Company in writing of any changes to the list of Authorised Persons using the dedicated form and email address provided, as required.
- 25.3. The Company reserves the right to take any appropriate action including refusing to provide the Service, freezing the Client Money or terminating the relevant Client Account if the Client delays or fails to provide any information or documentation required for verification or customer due diligence purposes within a reasonable period. The Client further agrees and acknowledges that in compliance with the Cayman Islands Anti-Money Laundering Rules, the Company may need to report such action or any information relating to the Client to regulatory authorities. The Company reserves the right to charge additional fees on a time spent basis if the Company is required to freeze, monitor or terminate an account in default of any of the above requirements.

- 25.4. The Client agrees to notify the Company should the Client:
- (a) no longer be an Acceptable Client; or
  - (b) change any of the Client's contact details (including without limitation relocating to a different country) or any information or documentation provided to verify the Client's identity and status.
- 25.5. The Client acknowledges that:
- (a) a notification under clause 24.1(a) will result in termination of the Agreement under clause 23 and the Company shall incur no liability to the Client for any Losses as a result; and
  - (b) a notification under clause 24.1(b) may result in the Company requiring additional or enhanced due diligence information and may prevent the Company from being able to continue to provide the Service to the Client.

## **26. Miscellaneous**

- 26.1. The Client understands, acknowledges, accepts, agrees and confirms that the Client has not in entering into the Agreement, relied on any representation or documents other than as contained in the Agreement.
- 26.2. If any provision or clause of these Terms is or becomes void or unenforceable in whole or in part it shall not affect the invalidity of the remaining provisions and clauses of these Terms.
- 26.3. The relationship between the Client and the Company in respect of the Service is as described in the Agreement, which supersedes all previous agreements between the Parties (if any) concerning that relationship. For the avoidance of doubt, in performing its obligations under this Agreement, the Company is acting solely for and on behalf of the Client and no contractual or service relationship shall be deemed to be established hereby between the Company and any other person.
- 26.4. The Company shall have no duties or responsibilities whatsoever, except such duties and responsibilities as are specified in the Agreement, and, subject to applicable law or regulation, no covenant or obligation shall be implied against the Company in connection with the Agreement.
- 26.5. These Terms may be amended from time to time by the Company giving notice to the Client and clause 24 shall apply to such notice.
- 26.6. These Terms shall be binding upon the Client and its permitted assigns (if any) and its successors in title.
- 26.7. The failure of the Company to exercise any right or remedy provided by these Terms or by law or any delay in the exercise thereof shall not constitute a waiver of such right or remedy or any other rights or remedies. No single or partial exercise of a right or remedy provided by these Terms or by law shall prevent any further exercise of such right or remedy or the exercise of another right or remedy.
- 26.8. The Company shall not be liable to the Client in respect of any delay in performing or inability to perform the Service or loss of or damage to any documents in the possession of the Company arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including without limitation, an act of God or public enemy, war, insurrections or riots, fire, flood, explosion, earthquake, hurricane, accident, epidemic or quarantine restrictions, acts of government or any other governmental agency, strikes, labour cessation, slow-down or interruption of work due to any other cause (whether of the kind mentioned in this sub-clause 26.8 or not) and the Company

shall not be liable or have any responsibility of any kind for any Losses suffered or incurred by the Client.

- 26.9. The Parties hereby agree that each delegate who is not a party to these Terms (a “Third Party”) has the express right to enforce the contractual terms comprising these Terms pursuant to the terms of The Contracts (Rights of Third Parties) Law, 2014. Notwithstanding any term of these Terms, the consent of or notice to any Third Party shall not be required for any termination, rescission or agreement to any variation, waiver, assignment, novation, release or settlement under these Terms at any time.
- 26.10. References in the Agreement to actual fraud or wilful default mean a finding to such effect by a competent court in relation to the conduct of the relevant party.

## **27. Governing Law**

- 27.1. These Terms shall be governed by and construed in accordance with the laws of the Cayman Islands.

## **28. Arbitration and Jurisdiction**

- 28.1. If you have a dispute in relation to any aspect of this Agreement or any of the Services, you should bring your concerns to us at the earliest opportunity so that any issue can be identified and we may have the opportunity of resolving the issue promptly and without adverse impact on our business relationship.
- 28.2. In the event of a dispute arising out of, in connection with or relating to the interpretation, performance or breach of our or your obligations or duties relating to this Agreement or the Services (“Dispute”), there may be a risk of public disclosure of personal information or otherwise confidential and commercially sensitive information if such a Dispute is litigated in court.
- 28.3. Subject to applicable law, you agree that, at the Company’s option, any Dispute (other than a Regulatory Complaint) may be settled by confidential binding arbitration to be held in the Cayman Islands before a retired judge of the Grand Court or the Court of Appeal of the Cayman Islands, or a King’s Counsel of England or Wales, or a King’s Counsel of the Cayman Islands, or a Fellow of the Chartered Institute of Arbitrators with legal qualifications (with sufficient experience in each case of the Cayman Islands legal system as may be appropriate to the subject matter of the Dispute) acting as a Sole Arbitrator whose identity is to be agreed between you and us, or, in the absence of agreement, to be appointed by the President of the Chartered Institute of Arbitrators. The arbitration will be conducted in the English language, subject to the provisions of the Cayman Islands’ Arbitration Act (2012) and in accordance with the CI Arb Arbitration Rules currently in force. The seat and place of arbitration, and the governing law of this arbitration agreement, shall be the Cayman Islands, unless the Parties agree otherwise in writing.
- 28.4. For the purposes of this clause, a Regulatory Complaint is a complaint to CIMA.
- 28.5. It is further agreed that, notwithstanding the foregoing, we may, at our absolute discretion, commence debt recovery claims and actions against you either in the courts of the Cayman Islands or in the Courts of your jurisdiction of residence for payment of any amounts or fees that you fail to pay within the agreed payment period following repeated requests.