



## THE INTERNATIONAL FAMILY OFFICE

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### STONEHAGE FLEMING DEALING & TREASURY SERVICES (JERSEY) LIMITED

#### TERMS AND CONDITIONS

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MARCH 2018

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## 1. DEFINITIONS AND CONSTRUCTION

1.1 This document, together with the signed Application Form and the Fees and Charges Schedule are to be construed as one document constituting the terms and conditions on and subject to which we have agreed to provide the investment service that you have selected with regard to the Portfolio (the "**Agreement**").

1.2 The following words and phrases shall have the following meanings when used in this Agreement:-

1.2.1 "**Advisory Investment Services**" means the advisory investment services provided by us to you as set out in clause 8 below;

1.2.2 "**Agreement**" means the Agreement as defined in Clause 1.1 above as amended from time to time;

1.2.3 "**Application Form**" means the relevant Stonehage Fleming Dealing and Treasury Services (Jersey) Limited Application Form that forms part of the Agreement indicating the services that you require from us;

1.2.4 "**Bank**" means an institution which may lawfully carry on deposit taking business in the jurisdictions in which it operates and includes any subsidiary or branch so authorised by its relevant supervising authority;

1.2.5 "**Business Day**" means any weekday on which the banks in the Channel Islands are open for business during normal business hours;

1.2.6 "**Client**" means the person specified as the Client in the Application Form and includes all persons deriving title from or under such person;

1.2.7 "**Company**" means Stonehage Fleming Dealing and Treasury Services (Jersey) Limited, a company incorporated in Jersey (registered company number 110680) and having its registered office at No.2 The Forum, Grenville Street, St Helier, Jersey, JE1 4HH, Channel Islands;

1.2.8 "**Custodian**" means:

(a) any Bank which may be used by us from time to time;

(b) SDS Nominees; and

(c) any other company (having no business other than to act as nominee) which may be appointed by us as nominee for the holding of investments or other property solely in accordance with our instructions or those of the Bank;

1.2.9 "Connected Company" means in relation to the Company, a corporate body in respect of which any of the following applies:

(a) the same person is the controller of each corporate body; or

(b) if a group of two or more persons are controllers of each company and the group consists of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by that member's close relative or by a person with whom that member is in partnership or by a company of whom the member is an officer



- or a controller; or
- (c) both companies are members of the same corporate group

- 1.2.10 "**Dealing Services**" means the dealing services provided by us to you as set out in clause 5 below;
- 1.2.11 "**Dealing with Advice**" means the dealing and advisory services provided by us to you as set out in clause 9 below;
- 1.2.12 "**Deposited Investments**" means commercial paper, money market investments, notes and certificates of deposit;
- 1.2.13 "**Discretionary Investment Management Services**" means the discretionary investment management services provided by us to you as set out in clause 7 below;
- 1.2.14 "**Investment Objective(s)**" means the Client's investment objectives with regard to the Portfolio as specified in Section D of the Application Form;
- 1.2.15 "**Instructions**" means any instructions given by you in accordance with the Agreement;
- 1.2.16 "**Jersey Anti-Money Laundering Rules**" means all Jersey enactments and published regulatory requirements in relation to anti-money laundering or countering the financing of terrorism as passed or amended from time to time;
- 1.2.17 "**Portfolio**" means the portfolio of investments (including cash) entrusted to our management under the terms of this Agreement;
- 1.2.18 "**Registrable Investments**" means any investments, the terms of which require the title holder to register either with the issuer of the investment or a third party;
- 1.2.19 "Regulatory Requirement(s)" means:
  - (a) any obligation that we or, where relevant, another person, has to comply with under any law or regulation (including any tax legislation or rules made by an applicable regulatory body), or as the result of a decision by a court, ombudsman or similar body; or
  - (b) any obligation under any industry guidance or codes of practice which we or, where relevant, another person, follows; or
  - (c) any other legal or regulatory requirement governing the provision of financial services in the jurisdiction in which we provide services to you under the Agreement;
- 1.2.20 "**SDS Nominees**" means SDS Nominees Limited a company incorporated in Jersey (registered company number 111709) and having its registered office at No.2 The Forum, Grenville Street, St Helier, Jersey, JE1 4HH, Channel Islands (which is a wholly owned subsidiary of the Company) or such other nominee (being part of Stonehage Fleming ) as the Company may determine from time to time;
- 1.2.21 "**Stonehage Fleming**" means and includes any company, which is directly, or indirectly a holding company, sister company, or subsidiary of the Company and any company, which is directly, or indirectly a subsidiary of any such holding company or sister company and



in this definition reference to “holding company” and “subsidiary” shall have the meaning given in the Companies (Jersey) Law 1991, and “sister company” shall mean any subsidiary of a holding company of the Company;

1.2.22 **“Treasury Management Services”** means the treasury management services provided by us to you as set out in clause 6 below;

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

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

1.3 Headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

## 2. REGULATION

2.1 Stonehage Fleming Dealing and Treasury Services (Jersey) Limited is regulated for the conduct of investment business by the Jersey Financial Services Commission, pursuant to the Financial Services (Jersey) Law 1998, as amended. Stonehage Fleming Treasury is the registered business name of Stonehage Fleming Dealing and Treasury Services (Jersey) Limited.

## 3. EFFECTIVE DATE OF COMMENCEMENT

3.1 This Agreement will take effect from the date on which we receive your signed Application Form, subject to us being satisfied that we have completed all of the necessary client take on procedures required of us in accordance with the Regulatory Requirements including, but not limited to, our requirements under the Jersey Anti-Money Laundering Rules.

## 4. SCOPE OF SERVICES

4.1 We will provide you one or more of the following services (Dealing Services are mandatory) listed below in accordance with the information contained in your Application Form:

4.1.1 Dealing Services;

4.1.2 Treasury Management Services;

4.1.3 Discretionary Investment Management Services;

4.1.4 Advisory Investment Management Services; and/or

4.1.5 Dealing with Advice.

## 5. DEALING SERVICES:

5.1 We will buy and sell investments (including currency), as agent, on your behalf.

5.2 In respect of each transaction we will deal with you solely on an execution only basis.

5.3 We will not advise on the merits of any transaction or the taxation or other consequences thereof. On the date that you enter into each transaction you will be deemed to have agreed and acknowledged that in relation to that transaction:



- 5.3.1 we have not and will not provide to you with any investment advice nor any legal, regulatory, tax, business, financial or accounting advice;
- 5.3.2 we will not give you a warranty as to the suitability of the transaction; and
- 5.3.3 No communication (written or oral) received from us will be deemed to be an assurance or guarantee as to the expected result of that transaction.

## 6. TREASURY MANAGEMENT SERVICES

- 6.1 We will manage your money, as agent, (by placing it on deposit with a Bank) in accordance with the guidelines and restrictions outlined in the Application Form.
- 6.2 The discretion granted to the Company will be limited to:
  - 6.2.1 deciding which Bank to place the money with (subject to any restrictions outlined in the Application Form); and
  - 6.2.2 determining the period or basis upon which money will be placed (including renewing fixed term deposits or switching money from call or specified notice periods to new fixed term deposits, or vice versa) from time to time until the mandate outlined in the Application Form is either modified or cancelled.
- 6.3 You may request information from us in connection with the management of your money, from time to time. We do not provide investment advice as part of our Treasury Management Services and any request for information in respect of these services cannot be relied upon by you as such.

## 7. DISCRETIONARY INVESTMENT MANAGEMENT SERVICES

- 7.1 Where, in the Application Form, you have indicated a requirement for the Discretionary Investment Management Service, we will manage your Portfolio on a discretionary basis in accordance with the Investment Objective as may from time to time be varied by you on written notice to us.
- 7.2 We shall exercise complete discretion over the Portfolio to purchase, sell, retain exchange, convert or otherwise deal in investments without prior reference to you.
- 7.3 We shall exercise or determine not to exercise rights in respect thereof, make deposits, subscribe to issues and offers for sale of, and accept placing's, underwritings and sub-underwritings of, any investments, effect transactions on any markets, take all day to day decisions and otherwise act as we judge appropriate in relation to the management of the Portfolio. This power shall, without limitation, include the power to negotiate and execute contracts, deed, novations, participations, transfers and similar documents.
- 7.4 Save as specified in the Application Form there are no restrictions on:
  - 7.4.1 the type(s) of investment(s) or asset(s) which may be acquired for the Portfolio;
  - 7.4.2 the amount of any one or type of investment or asset which may be acquired for the Portfolio;
  - 7.4.3 the proportion of the Portfolio which any one or type of investment or asset may constitute; or
  - 7.4.4 The markets or exchanges on or through which transactions may be effected or executed.



7.5 If any asset allocation is specified in the Application Form, there shall be deemed not to be a breach of this Agreement as a result of any subsequent variation in the value or price of any investment(s) or other asset(s) comprised in the Portfolio including (but not limited to) changes in the value of assets in the Portfolio brought about through movements in the market price of such assets. We shall ensure that the asset allocations agreed with you are again complied with as soon as reasonably possible.

7.6 When managing the Portfolio, we will consider any investment as suitable for you.

## 8. ADVISORY INVESTMENT SERVICES

8.1 Where, in the Application Form, you have indicated a requirement for Advisory Investment Services, we will provide you with ongoing investment advice in relation to the management of your Portfolio and shall be responsible, on a continuing basis, for advising you on the composition of your Portfolio. In providing you with such investment advice, we shall be under an overriding obligation to ensure that any advice given pursuant to this Agreement is at all times consistent with the Investment Objective as from time to time varied by you on written notice to us.

8.2 Following the provision of advice by us as part of our Advisory Investment Services and provided we have obtained your specific consent, we will be entitled to execute and effect settlement of any kind of transaction on your behalf.

## 9. DEALING WITH ADVICE

9.1 Where, in the Application Form, you have indicated a requirement for Dealing with Advice, we may at any time and at our absolute discretion provide you with investment advice, recommendations or information in relation to an investment.

9.2 Following the provision of any such investment advice, recommendation or information, and subject to us having first obtained your prior specific consent, we shall be entitled to arrange transactions and effect settlement of any type of transaction as agent on your behalf.

9.3 We will not advise or make any recommendation, which would in our opinion be inconsistent with the Investment Objective, as may from time to time be varied by you on written notice to us.

9.4 By entering into this Agreement, you confirm that you have understood that the Dealing with Advice service is not an investment management service and that there is no obligation whatsoever on us to provide ongoing advice on the suitability of any individual investment that may be from time to time effected in your account with us or otherwise owned by you.

9.5 For the avoidance of doubt, the provision of any investment advice, recommendation, information or custody facility given by us as part of our Dealing with Advice services will not, subject to any contrary provision in any law, order or regulations confer any obligation on us to advise you on an ongoing basis, on any investment or portfolio of investments effected in your account with us or otherwise owned by you.

## 10. CLIENT'S ASSETS

10.1 Unless specified otherwise in the Agreement:

10.1.1 All cash which the Company holds for, receives from (excluding in payment of our fees), or owes to, the Client ("**Client Money**") will be held in either:

(a) a designated account ("**Designated Account**") in the name of SDS Nominees in





respect of a specific client maintained with a Bank; or

- (b) a segregated account (“Segregated Account”) in the name of SDS Nominees in respect of a group of clients maintained with a Bank; or
- (c) a settlement account (“Settlement Account”) in the name of SDS Nominees in respect of a specific client:
- (d) (The Designated Account, Segregated Account and Settlement Account together the “Client Money Accounts”).

10.1.2 You acknowledge that:

- (a) any Client Money held on Client Money Accounts is subject to the terms of this Agreement and also the terms and conditions of the Bank with whom the account is held;
- (b) Article 10(1)(a) of the Financial Services (Investment Business (Client Assets)) (Jersey) Order 2001 (the “Order”) does not apply to any Designated Account or Settlement Account; and
- (c) You have been advised that Part 4 of the Order does not apply to any Designated Account or Settlement Account.

10.1.3 In acknowledging that any Client Money held on Client Money Accounts will be held in accordance with the terms and conditions of the Bank with whom the account is held (10.1.2(a) above), you agree to us providing the Bank with such information it may require, from time to time, in order for it to comply with its own Regulatory Requirements.

10.1.4 We reserve the right to establish Client Money Accounts with any Bank whom we deem to be of suitable standing and credit worthiness at our sole discretion.

10.1.5 Whilst the Company will exercise reasonable care in the selection of any Bank with whom Client Money Accounts are maintained, we shall not be liable for any acts or omissions by, or the insolvency of, any such Bank. Accordingly your credit risk in respect of monies held on Client Money Accounts will be solely with the Bank concerned.

10.1.6 Client Money will be maintained at all times separately from our own monies.

10.1.7 Where any Client Money is held by us in one or more Segregated Accounts, it will be commingled with monies held for our other clients.

10.1.8 You will not have any entitlement or claim to any monies held in such Segregated Accounts other than your monies, and the interest earned on your monies alone, whilst it is deposited in one or more of the specific Segregated Accounts.

10.1.9 The services do not provide for interest earned in all of the Client Money Accounts or any of them to be shared between each person whose monies are deposited in those accounts.

10.1.10 Income arising from investments held on your behalf will be held in the bank accounts referred to above or as you may otherwise direct subject to accounting for any applicable taxes.



10.1.11 If you default in paying any money when it is due to us, interest will be payable by you on overdue amounts in sterling at one and a half per cent above Barclays Bank Plc's base lending rate ruling from time to time and in other currencies at five per cent above the Barclays Bank Plc's costs of funds in the foreign currency.

10.1.12 Money which we are holding for you at the Banks will accrue interest in accordance with prevailing rates from time to time and such interest shall be credited monthly to your Portfolio.

## 11. CUSTODY OF INVESTMENTS

11.1 In providing custody services, we may delegate to a Connected Company.

11.2 You authorise us, where we reasonably consider it appropriate, to employ agents and sub-custodians to perform any aspects of the custody service and authorise them to do the same on such terms as we think fit. We will follow any applicable Regulatory Requirements.

11.3 Unless specified otherwise in the Agreement:

11.3.1 Registrable Investments held on your behalf will be registered in the name of a Custodian their agents or nominees;

11.3.2 any bearer investments will be held by the Custodian or by one or more third parties (including clearance systems and overseas agents) directly or indirectly for its or their account, as the case may be;

11.3.3 save as set out in clause 11.3.4 below, we do not accept responsibility for the obligations of the Custodian or any of the Custodian's agents;

11.3.4 as regards investments which the Custodian is holding on your behalf or which are held to the Custodian's order for your account, we will ensure, so far as we are able, that we have adequate measures in place to enable us to retain responsibility for:

- (a) dealing with any rights and meeting call payments;
- (b) exercising any conversion, subscription or redemption rights;
- (c) dealing with any takeover or other offers; and
- (d) exercising or dealing with any other rights;

11.3.5 subject to what is set out below, we are not responsible for contacting you in respect of voting rights or for exercising voting rights in respect of your investments unless specifically directed by you in writing;

11.3.6 we shall use our reasonable endeavours to contact you in respect of all voting rights attaching to your investments in unit trust schemes and other collective investment funds or schemes of which we or a Connected Company is the manager and shall not exercise such voting rights save on your specific instructions;

11.3.7 your silence will be taken as deemed consent for us to take all or any necessary action having regard to any Investment Objective or any other specific instructions provided to us, from time to time, in respect of the Portfolio whether included in the Application Form or otherwise; and



- 11.3.8 We will not be responsible or liable for any losses, liabilities or other consequences of our actions (absent negligence, wilful default or fraud).
- 11.4 To enable us to meet our obligations, in particular (but not limited to) those set out above at paragraph 11.3.4. You authorise us to arrange for the necessary payment, when due, of any payment obligations arising from your investments from liquid assets held in your Portfolio.
- 11.5 Where we delegate to anyone outside Stonehage Fleming, we will use reasonable skill and care in selecting, using and monitoring the delegate but are not liable for their acts or omissions, insolvency or dissolution.
- 11.6 Your assets may be pooled with those of other clients of ours or our sub-custodian's in one account, subject to Regulatory Requirements. In this case:
- 11.6.1 we will maintain records of your interests in the assets which have been pooled;
  - 11.6.2 your right to specific assets may not be identifiable; and
  - 11.6.3 If there is a default by us or our sub-custodian resulting in a shortfall, you might not receive your full entitlement. You might have to share in the shortfall in proportion to the value of the assets which we or the sub-custodian hold for you with other clients. This explanation does not limit your rights against us in any way.
- 11.7 You cannot use assets held with us as security for any borrowing without our prior written consent.

## 12. INSTRUCTION AND BASIS OF DEALING

- 12.1 *Placing of instructions:* You may give us instructions or orders in writing (including fax), by email or other electronic means or orally, including by telephone, unless we tell you those instructions can only be given in a particular way. If you give us instructions by telephone, conversations may be recorded. If any instructions are received by us by telephone, computer or other medium we may ask you to confirm such instructions in writing. We shall be authorised to follow instructions notwithstanding your failure to confirm them in writing. Electronic communications may not be secure, reliable or timely. You acknowledge that any instructions sent by you through electronic means may be intercepted, copied, adapted or imitated by third parties.
- 12.2 *Placing instruction by fax:* You authorise us to act (without further enquiry) on any instructions or order given or appearing to be given by you and received by us by fax. We have no responsibility for fax transmissions that are inaccurate or not received by us, and we may implement an instruction or order on the terms actually received by us.
- 12.3 *Authority:* We shall be entitled to act for you upon instructions given or purported to be given by you or any person authorised on your behalf without further enquiries as to the genuineness, authority, or identity of the person giving or purporting to give such instructions.
- 12.4 *Cancellation/withdrawal of instructions or orders:* If you request us to cancel your instructions, we shall only be able to do so if we have not already acted on those instructions. Instructions may only be withdrawn or amended by you with our consent.
- 12.5 *Right not to accept instructions or orders:* We may, but shall not be obliged to, accept instructions to enter into a transaction. If we decline to enter into a proposed transaction, we shall not be obliged to give a reason but we shall promptly notify you accordingly. It is your obligation to ensure that we hold sufficient liquid collateral in your Portfolio at all times before you provide us with instructions to enter into a transaction.

12.6 *Order execution policy:* When we transmit orders on your behalf, we take all reasonable steps to obtain the best possible result for you with regard to the execution of your orders. This does not mean achieving the best price for every client order, but rather the best possible result that we can reasonably be expected to achieve with the resources available to us. We transmit orders through our approved Brokers / Custodians. We regularly monitor the effectiveness of order execution arrangements of Brokers / Custodians with whom we deal for the purpose of examining whether they enable us to provide the best possible price with regard to the execution orders. In effecting transactions for the Portfolio, subject to any instructions to the contrary from you, we will at all times comply with the order execution policy and in particular will act in your best interests (the "**Order Execution Policy**").

12.7 *Best Execution:* When providing any of the services contemplated by this Agreement, the Company will take reasonable care to ensure that it obtains the best interest rate or price available for you at that time, taking into consideration:

12.7.1 the size and type of the transaction concerned; and

12.7.2 The interest rates or prices quoted by the Banks and brokers whom we consider to be of suitable standing and credit worthiness.

We accept no liability where the interest rate or price obtained is not as favourable as that which may have been available from other entities in circumstance where, as a result of the aforementioned criteria (in particular any applicable internal limits placed upon us) we are bound to accept less favourable rates and/or prices.

12.8 *Execution of instructions and transmission of orders:* We shall use our reasonable endeavours to transmit any order promptly, but in accepting your instructions we do not represent or warrant that it will be possible to arrange execution in accordance with your instructions. When you give us a specific instruction, this will take precedence over our Order Execution Policy. We will notify you of any changes to our Order Execution Policy. We will consider the continued placement of orders by you to constitute your continued consent to our Order Execution Policy as in effect from time to time.

12.9 *Crossing of trades:* We may arrange for a transaction to be executed in whole or in part, by selling an investment to you from another client or vice versa. We shall not give you prior notice if we arrange for a transaction to be executed in this manner.

12.10 *Aggregation of orders:* We may combine your order with orders of other clients. By combining your orders with those of other clients we must reasonably believe that this is in the best interests of our clients overall. However, aggregation may result in you obtaining a less favourable price in relation to a particular order for which we are not liable.

12.11 *Confirmations:* Save where you have elected not to receive confirmations in the Application Form, we shall send you a confirmation promptly for any transaction that we have executed on your behalf. It is your responsibility to inform us of any change to your email address and other contact details. Confirmations shall, in the absence of manifest error, be conclusive and binding on you unless (a) we receive from you in writing within one Business Day of dispatching the confirmation to you or (b) we notify you of an error in the confirmation. If we have notified you of any such error we shall issue a revised confirmation and the revised confirmation shall be conclusive and binding on you, unless we receive your objection in writing within one Business Day of dispatching the revised confirmation to you.

12.12 *Intermediate brokers and other agents:* We may, at our absolute discretion, arrange for any transaction to be effected with or through the agency of an intermediate broker. While we agree to



exercise due care and skill in selecting and intermediate broker, neither we nor our directors, officers, employees or agents will be liable to you for any act or omission of an intermediate broker or agent absent gross negligence or fraud. No responsibility will be accepted for an intermediate broker or agent selected by you.

12.13 *Transaction outside a regulated market:* You consent to us effecting trades, on your behalf, outside of a regulated multilateral trading platform.

12.14 *Trade reporting and limit orders:* An intermediate broker or other agent through whom we arrange trades may be obliged to make information about certain transactions public. By entering into this Agreement, you agree and acknowledge that any and all such proprietary rights in such transaction information are owned by us and you waive any duty of confidentiality attaching to the information which we permit to be reasonably disclosed.

### 13. BORROWINGS

13.1 Unless otherwise specified in the Agreement we may:

13.1.1 Without prior reference to you enter into a transaction on your behalf which we believe may result in us having to arrange to borrow money for you. Borrowings on your behalf will only be made to pay for purchases of investments (including taking up rights); and

13.1.2 Borrow money for you on the security of documents of title or documents which evidence title to your investments. We shall at our discretion be entitled to sign on your behalf any documents which we consider appropriate to facilitate such borrowings.

### 14. FEES AND CHARGES

14.1 The management fees for Discretionary Investment Management Services and Advisory Investment Service portfolios are set out in the Application Form. Other fees and charges are calculated on the basis and at the rates shown in the Fees and Charges Schedule, a copy of which has been provided to you and forms part of this Agreement. We reserve the right to change these fees and charges from time to time and will notify you of any such changes in writing. Your payment obligations shall survive termination of this Agreement, with the final bill being pro-rated to the date on which we, in our sole discretion, determine this Agreement to be terminated.

14.2 Where valuations for certain underlying investments have not been finalised or received in time, reasonable estimates may be used for billing purposes. Where there are material variations to final valuations, appropriate adjustments will be made to the next period's invoice.

14.3 Any sums due to us or to any other person in respect of commissions, fees, taxes, expenses or otherwise pursuant to this Agreement such sums may be withdrawn from the Portfolio.

14.4 You hereby give authority to the Custodian to make payment of all invoices and other requests for payment in respect thereof which we present to the Custodian.

14.5 We may pay (or receive from third parties), fees in relation to referrals of business. We may receive payment from or share charges with a third party. Further information about such payments or shared charges is available on request



## 15. STATEMENTS

15.1 We shall send statements at the frequency specified to you and to any third parties named in the Application Form. The statements shall include details of the contents and value of the Portfolio.

## 16. POTENTIAL CONFLICTS OF INTEREST AND DISCLOSURES

16.1 We may, without prior reference to you, recommend and/or effect transactions in investments or provide services in circumstances where we or a Connected Company has, directly or indirectly, a material interest or a relationship of any description with another party which may involve a potential conflict with the our duty to you. In such circumstances we will act in such a manner to ensure that your interests are placed before our own. We or any Connected Company shall not be liable to account to you for any profit, commission, remuneration made or received from or by reason of such transactions or any connected transactions and our fees shall not, unless otherwise provided, be abated thereby.

16.2 Potential conflicting interests or duties may arise in circumstances including, but not limited to, where:-

16.2.1 we or a Connected Company undertake investment business for other clients;

16.2.2 one or more of our directors or employees is a director of, holds or deals in securities of or is otherwise interested in any company whose securities are held or dealt in on your behalf;

16.2.3 the transaction is in securities issued by one of our clients;

16.2.4 the transaction is in securities in respect of which one of our clients has given instructions to buy or sell;

16.2.5 we may, in exceptional circumstances, deal in investments as principal with you and we may, acting as principal, sell to or purchase from or to you;

16.2.6 we may have regard, in exercising management discretion, to the relative performance of other Portfolios under our management;

16.2.7 the transaction is in securities in respect of which we or one of our employees or clients, is contemporaneously trading or has traded on its own account or has either long or short position; and/or

16.2.8 We may acquire or dispose of shares or units for the Portfolio in collective investment schemes of which a Connected Company is a fund manager, investment manager or investment adviser.

16.3 We maintain a conflicts of interest policy. This policy sets out the types of actual or potential conflicts of interest which affect us and provides details of how these are managed. We shall ensure that all potential conflicts of interest involving us or any clients are resolved in accordance with the policy. In the event that it is not possible to resolve any particular conflict, we will contact you for specific instructions.



## 17. TRANSACTION TYPES

17.1 Unless otherwise specified in this Agreement we may recommend, and/or effect transactions in:

17.1.1 investments the prices of which may be the subject of stabilisation;

17.1.2 Transactions in options, futures and/or contracts for differences, including contingent liability transactions, both on and off market and/or exchange. If so, we may settle or close out such transactions without reference to you (but shall promptly notify you of any such settling or closing out) and may debit the Portfolio with any sums required to pay or supplement any deposit or margin in support of any such transaction and deposit such security as may be required as collateral;

17.1.3 collective investment schemes;

17.1.4 investments for which no liquid market exists; and

17.1.5 Investments in securities which are not publicly traded. Such investments are not subject to the disclosure and other investor protection requirements which would be available if their securities were publicly traded.

## 18. NATURE AND RISKS OF INVESTMENT

18.1 This section provides a general description of the nature and risks of the investments that may be held in the Portfolio.

18.2 **Currency transactions:** the Portfolio may contain investments that are denominated in currencies other than the reference currency of the Portfolio. Where an investment is made denominated in a currency other than the reference currency of the Portfolio, a movement in the exchange rate of these currencies may have a separate effect, which may be unfavourable as well as favourable, on the gain or loss realised on that particular investment.

18.3 **Equalisation:** we may, from time to time, effect on your behalf transactions in certain financial instruments which may carry performance, equalisation, compulsory redemption or other fees which may, from time to time, affect the aggregate account through which your investment has been made. In such circumstances, your assets will not be segregated and consequently, your investment will bear the risk, pro rata, with the other clients' investments made through the aggregate account.

18.4 **Stabilisation:** we may from time to time effect on your behalf transactions in securities the price of which may have been influenced by bids made or transactions effected for the purpose of stabilising the price of those securities. You should read the explanation below carefully. Its purpose is to enable you to judge whether you wish investments to be invested at all in such securities and, if you do whether you wish to authorise us generally to effect transactions in such securities on your behalf without further reference to you or whether you wish to be consulted before any particular transaction is effected on your behalf. Stabilisation is a process whereby the market price of a security is pegged or fixed during the period in which a new issue of securities is sold to investors. Stabilisation may take place in the securities of the new issue or in other securities related to the new issue in such a way that the price of the other securities may affect the price of the new issue or vice versa. The reason stabilisation is permitted is that when a new issue is brought to market the sudden glut will sometimes force the price lower for a period of time before buyers are found for the securities on offer. As long as he obeys a strict set of rules, the "stabilising manager", normally the issuing house chiefly responsible for bringing a new issue to market, is entitled to buy securities in the market that he has previously sold to investors or allotted to institutions who were included in the new issue but





who have decided not to continue participating. The effect of this may be to keep the price at a higher level than would otherwise be the case during the period of stabilisation. The statutory stabilisation rules limit the period during which a stabilising manager may stabilise a new issue, fix the price at which he may stabilise (in the case of shares and warrants but not bonds), and require him to disclose that he may be (but not that he is) stabilising. The fact that a new issue or a related security is being stabilised does not in itself mean that investors are not interested in the issue, but neither should the existence of transactions in an issue where stabilisation may take place be relied upon as an indication that investors are interested in the new issue or interested in purchasing at the price at which transactions are taking place

**18.5 Illiquid transactions:** we may undertake on your behalf transactions in illiquid securities which are not traded either on a recognised investment exchange or via a publicly-traded OTC (Over the Counter) market.

**18.6 Derivatives and Synthetics:** while derivative instruments can be utilised for the management of investment risk, some investments are unsuitable for many investors. Different instruments involve different levels of exposure to risk, and in deciding whether to trade in such instruments you should be aware of the following points:

**18.6.1 Futures:** Transactions in futures involve the obligation to make, or to take, delivery of the underlying asset of the contract at a future date, or in some cases to settle the current position with cash. They carry a high degree of risk. The "gearing" or "leverage" often obtainable in futures trading means that a small deposit or down payment can lead to large losses as well as gains. It also means that a relatively small market movement can lead to a proportionately much larger movement in the value of the investment, and this can work against its value as well as in its favour. Futures transactions have a contingent liability, and the Client should be aware of the implications of this, in particular the margining requirements, which are set out below

**18.6.2 Options:** There are many different types of options with different characteristics subject to different conditions. Buying options involves less risk than selling options because, if the price of the underlying asset moves against the buyer, the buyer can simply allow the option to lapse. The maximum loss is limited to the premium, plus any commission or other transaction charges. However, if the buyer buys a call option on a futures contract and later exercises the option, the buyer will acquire the future. This will expose the buyer to the risks described under "futures" and "contingent liability transactions" The risk involved in writing, or selling, an option is considerably greater than buying options. The writer may be liable for margin to maintain his position and a loss may be sustained well in excess of any premium received. By writing an option, the writer accepts a legal obligation to purchase or sell the underlying asset if the option is exercised against him, however far the market price has moved away from the exercise price. If the writer already owns the underlying asset which he has contracted to sell (known as "covered call options") the risk is reduced. If the writer does not own the underlying asset (known as "uncovered call options") the risk can be unlimited. Only experienced persons should contemplate writing uncovered options, and then only after securing full details of the applicable conditions and potential risk exposure. A particular type of option called a "traditional option" is written by certain London Stock Exchange firms under special exchange rules. These may involve greater risk than other options. Two-way prices are not usually quoted and there is no exchange market on which to close out an open position or to effect an equal and opposite transaction to reverse an open position. It may be difficult to assess its value or for the seller of such an option to manage his exposure to risk. Certain options markets operate on a margined basis, under which a



buyer does not pay the full premium on his option at the time he purchases it. In this situation, the buyer may subsequently be called upon to pay margin on the option up to the level of the full premium. If the buyer fails to do so as required, his position may be closed or liquidated in the same way as a futures position.

**18.6.3 Contracts for difference:** Futures and options contracts can also be referred to as contracts for differences. These can be options and futures on the FT-SE 100 index or any other index, as well as currency and interest rate swaps. However, unlike other futures and options, these contracts can only be settled in cash. Investing in a contract for differences carries the same risks as investing in a future or an option. Transactions in contracts for differences may also have a contingent liability and the Client should be aware of the implications of this which are set out below.

**18.6.4 Off-exchange transactions:** While some off-exchange markets are highly liquid, transactions in off-exchange or "non-transferable" derivatives may involve greater risk than investing in on-exchange derivatives because there is no exchange market on which to close out an open position. It may be impossible to liquidate an existing off-exchange position, to assess the value of the position arising from an off-exchange transaction or to assess the exposure to risk. Bid and offer prices need not be quoted, and, even where they are, they will be established by dealers in these instruments and consequently it may be difficult to establish what are fair prices.

**18.6.5 Foreign markets:** Foreign markets will involve different risks to the risks arising in UK markets. In some cases the risks will be greater. On request, the Client's broker must provide an explanation of the relevant risks and protections (if any) which will operate in any relevant foreign markets, including the extent to which he will accept liability for any default of a foreign broker through whom he deals. The potential for profit or loss from transactions on foreign markets or in foreign currency denominated contracts will be affected by fluctuations in currency exchange rates

**18.6.6 Contingent liability transactions:** Contingent liability transactions which are margined require the buyer to make a series of payments against the purchase price, instead of paying the whole purchase price immediately. If the Client trades in futures, contracts for differences or sells options he may sustain a total loss of the margin he deposits with his broker to establish or maintain a position. In the event that the market moves against the Client, he may be called upon to pay substantial additional margin at short notice to maintain the position. If he fails to do so within the time required, his position may be liquidated at a loss and he will be liable for any resulting deficit. Even if a transaction is not margined, it may still carry an obligation to make further payments in certain circumstances over and above any amount paid when the buyer entered into the contract. The Client's broker shall carry out margined or other contingent liability transactions with or for the Client if they are traded on or under the rules of a recognised or designated investment exchange. Contingent liability transactions which are not traded on or under the rules of a recognised or designated investment exchange may expose the Client to substantially greater risks.

**18.7 Collateral:** if the Client deposits collateral as security with the Client's broker, whether that collateral is in the form of cash held in a blocked account or other liquid form, the way in which it will be treated will vary according to the type of transaction and where it is traded. There could be significant differences in the treatment of the collateral depending on whether the Client's broker is trading on a recognised or designated investment exchange, with the rules of that exchange (and associated clearing house) applying, or trading off-exchange. Deposited collateral may lose its identity as the



Client's property once dealings on the Client's behalf are undertaken. Even if the transaction should ultimately prove profitable, the Client may not get back the same assets which he deposited as collateral and may have to accept payment in cash. The Client should ascertain from his broker how the collateral will be dealt with.

- 18.8 **Commission:** before you begin to trade, you should obtain details of all commissions and other charges for which you will be liable. If any charges are not expressed in money terms (but, for example, as a percentage of contract value), you should obtain a clear written explanation, including appropriate examples, to establish what such charges are likely to mean in specific money terms.
- 18.9 **Suspension of trading:** under certain trading conditions, it may be difficult or impossible to liquidate a position. This may occur, for example, at time of rapid price movement if the price rises or falls in one trading session to such an extent that, under the rules of the relevant exchange, trading is suspended or restricted. Placing a stop-loss order will not necessarily limit your losses to the intended amounts, because market conditions may make it impossible to execute such an order at the stipulated price.
- 18.10 **Clearing house protection:** on many exchanges, the performance of a transaction by us or a third party with whom we are dealing on your behalf is "guaranteed" by the exchange or its clearing house. However, this guarantee is unlikely in most circumstances to cover you, and may not protect you if we or another party defaults on its obligations to you. On request, we will explain any protection provided to you under the clearing guarantee applicable to any on-exchange derivatives in which we have arranged transaction. There is no clearing house for off-exchange instruments which are not traded under the rules of a recognised or designated investment exchange.
- 18.11 **Insolvency:** the insolvency or default of the Client's broker, or that of any other brokers involved with the transaction, may lead to positions being liquidated or closed out without the Client's consent. In certain circumstances, the Client may not get back the actual assets which he lodged as collateral and he may have to accept any available payment in cash. On request, the Client's broker must provide an explanation of the extent to which he will accept liability for any insolvency of, or default by, other brokers involved with the transaction
- 18.12 **Warrants:** warrants often involve a high degree of gearing so that a relatively small movement in the price of the security to which the warrant relates may result in a disproportionately large movement, unfavourable as well as favourable, in the price of the warrant

## 19. LIABILITY AND INDEMNITY

- 19.1 We accept no responsibility for loss to your Portfolio or to you more generally, save where such loss is caused by our negligence, wilful default or fraud on the part of one or more of our employees.
- 19.2 Without prejudice to the generality of paragraph 19.1 above:
- (a) where we are required to move or otherwise deal with your Portfolio (including Client Money) to ensure our compliance with the Regulatory Requirements and/or any relevant communication from the States of Jersey Police; and
  - (b) where we are required to refrain from transacting or in any way dealing with your Portfolio (including Client Money) to ensure our compliance with the Regulatory Requirements and/or any relevant communication from the States of Jersey Police,

We shall not be liable to account to you for any loss, howsoever occurred, as result of us so acting or



our inaction, as the case may be.

- 19.3 We give no warranty as to the performance or profitability of the Portfolio or any part of it or that the Investment Objective will be met. We do not offer any guarantee that investments and/or other assets acquired for the Portfolio will not depreciate in value or that they will not be affected by adverse tax consequences.
- 19.4 You are responsible for seeking independent professional tax advice in connection with this Agreement. We accept no responsibility whatsoever for any tax liability, howsoever arising, in connection with the services we provide to you under and in accordance with the terms of this Agreement.
- 19.5 We shall not be liable for any default of any counterparty, Bank, Custodian, sub-custodian or other entity which holds money, investments or other documents of title on your behalf or with or through whom transactions are conducted for the Portfolio.
- 19.6 We shall not be liable for any error of judgement or any loss suffered by you in connection with the services provided to you under this Agreement, absent gross negligence or fraud on the part of our employees or agents.
- 19.7 You undertake to keep us and our directors, employees, agents and delegates fully and effectively indemnified against all costs, charges, liabilities and expenses (including, but not limited to, all and any costs arising out of any criminal, fiscal or regulatory investigation in any jurisdiction affecting your relationship with us pursuant to this Agreement or otherwise) howsoever incurred pursuant to or in connection with this Agreement save in the event such costs are incurred by reason of our negligence, wilful default or fraud.

## 20. CLIENT REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

20.1 You represent and warrant that:

- (a) you have legal capacity to enter into this Agreement;
- (b) the Portfolio is free from all liens, charges or other encumbrances; and
- (c) No liens, charges or other encumbrances shall arise in relation to the Portfolio from your acts or omissions.

20.2 All information which you have provided to us in relation to your status for taxation purposes, is complete and accurate and you agree to provide, upon request, any further information properly required by any competent authority. You undertake to notify us immediately in writing if there is any material change in any such information provided.

20.3 You undertake not to deal, except through us, with any of the investments and other assets comprised in the Portfolio or to authorise anyone else so to deal.

20.4 You shall promptly give (or procure to be given) to us such information as we may require to enable us to comply with all applicable disclosure obligations or requirements from time to time under and in accordance with the Regulatory Requirements and the laws, rules or regulations of any other relevant jurisdiction, exchange, market or regulatory authority which apply in respect of us, you and/or the investments comprised in the Portfolio.



## 21. DELEGATION, USE OF AGENTS AND TRANSFER OF DATA

- 21.1 Except where the delegate is a Connected Company, we may not, without your prior consent, delegate any of our functions under this Agreement to any third party.
- 21.2 Subject to the above, we may employ agents to perform any administrative dealing and ancillary services required to enable us to perform our services under this Agreement. We will act in good faith and with due diligence in our choice and use of agents.

## 22. DATA PROTECTION

- 22.1 You agree that we may keep information regarding you and any transaction or fiduciary deposit effected on your behalf on our centralised database. We will only retain the information gathered for as long as necessary for us to provide the services to you in accordance with the Agreement and for the period necessary under the Regulatory Requirements.
- 22.2 You agree that we may from time to time use Stonehage Fleming's centralised systems and/or systems resources and/or specialist information technology partners in other countries such as Switzerland, whether or not those countries have equivalent data protection legislation to Jersey and which may be outside the European Economic Area. This may result in certain of your data being transmitted through or stored or processed in another jurisdiction and it also being subject to the laws of that country. In this event, we shall use our reasonable endeavours to ensure that your data is protected to the standards which apply to us in Jersey.
- 22.3 In accordance with the Data Protection (Jersey) Law 2005 (the "**Data Protection Law**") you are entitled to a copy of the information we hold about you. We will provide you with a copy of any such information, if requested to do so, in accordance with the Data Protection Law. We are entitled to charge a fee to meet our costs in providing you with details of the information we hold about you.
- 22.4 In the event that you believe any of the centrally held information is incorrect or inaccurate, you must promptly notify us, so that the information can be updated or corrected.
- 22.5 We will only disclose your information to third parties with your consent, as provided for in this Agreement, and/or in accordance with the exemption provisions set out in Part 4 of the Data Protection Law, which includes, among other exemptions, for purposes of national or public security, crime and taxation, regulatory or statutory requirements, or for the sake of research, history or statistics.

## 23. ASSIGNMENT

- 23.1 The Agreement is personal to you and shall not be capable of assignment by you without our consent.
- 23.2 We may assign our rights and obligations under this Agreement to a Connected Company without your consent. We shall notify you of any such assignment within a reasonable period of time.
- 23.3 Where we seek to assign our rights and obligations under this Agreement to a third party, reasonable efforts should be made to obtain your consent to the transfer.
- 23.4 In the event that we write to you for consent and no response is received within the period of time set out therein, we shall be entitled to deem your consent to the assignment.



## 24. US RESIDENTS

- 24.1 If you become a resident of the United States ("US") we reserve the right to terminate this Agreement and return all funds to you without notice to you. We may, at our discretion, sell or realise any such investments in the Portfolio.
- 24.2 You agree to provide us, where requested, with appropriate client documentation in line with US regulations which will allow us to trade in US investments.

## 25. EU MEMBER RESIDENT STATE INVESTORS

- 25.1 If you are an individual residing in a European Union member state we, where required, will deduct tax from the savings income ("interest payments") earned by the investments in the Portfolio and subject to the EU Directive on the Taxation of Savings Income. Alternatively, if you have requested, or request, us not to deduct such tax, you authorise us to report information on all interest payments handled by us to the Jersey tax authority in accordance with applicable law and regulation, such information to include the identity and residence of the beneficial owner of such interest payments and his/her account number (or identification of the 'debt claim' giving rise to the interest payment). In making such request you confirm that you are the beneficial owner of such interest payments, or that you have the authority of any other person who is a beneficial owner to authorise us so to report such information in respect of that other person. The Jersey tax authority will then inform the tax authority in your EU country of residence.
- 25.2 If, however, you are able to provide us with documentary evidence, to our satisfaction, that you are not subject to the requirements of the said EU Savings Directive we will not deduct tax from interest payments or report such information to the tax authorities in Jersey or your country of residence. In this Clause 25 'we' and 'us' include any Stonehage Fleming entity.

## 26. NOTICES INSTRUCTIONS AND OTHER COMMUNICATIONS

- 26.1 We may rely and act on any notification, instruction or other communication which purports to have been given (and which is reasonably believed to have been given) by or on behalf of any person notified by you from time to time as being authorised by it to instruct us in respect of the Portfolio by whatever means transmitted and whether or not in writing and, unless we have received written notice to the contrary, whether or not the authority of any such person has been terminated.
- 26.2 Communications shall be deemed to have been received:
- 26.2.1 if delivered by hand, on the day of delivery;
  - 26.2.2 if sent by first class post (domestic addressees), two calendar days after posting exclusive of the day of posting and, if sent by airmail (international addressees) seven calendar days after posting exclusive of the day of posting; and
  - 26.2.3 if sent by email, at the time of the transmission or, if transmission is not during the addressee's normal business hours, at 9.30 a.m. on the next business day, to the email address set out in the Application Form.
- 26.3 In proving service:
- 26.3.1 by delivery by hand, it shall be necessary only to produce confirmation of the delivery signed by or on behalf of the addressee or the delivery service;



26.3.2 by post, it shall be necessary only to prove that the communication was contained in an envelope which was duly addressed and posted in accordance with this Clause;

26.3.3 by email, it shall be necessary only to show a confirmatory print out is obtained of the correct despatch of email (provided that, in the case of email, such communication does not result in a delivery failure or out of office message) together with evidence that the communication or a confirmatory letter was also sent by first class post or air mail (as appropriate) on the same day but failure of the addressee to receive such confirmation shall not invalidate the relevant communication deemed given by email.

## 27. COMPLAINTS AND COMPENSATION

27.1 All formal complaints should in the first instance be made in writing to our compliance officer at the address stated in the Application Form. If your complaint is not resolved to your satisfaction by Stonehage Fleming, you may take your unresolved complaint directly to the Jersey Financial Services Commission. Information can be obtained directly from their website: [www.jerseyfsc.org](http://www.jerseyfsc.org)

## 28. AMENDMENTS

28.1 We may amend the terms of this Agreement from time to time. Where any such amendment does not affect your rights under this Agreement or is as a result of a change in the Regulatory Requirements to which Stonehage Fleming is subject, you shall be notified in writing of the amendment(s) within 10 business days of the amendments taking effect.

28.2 Where any such amendment made to this Agreement affects your rights hereunder, save where the amendment is as a result of a change in the Regulatory Requirements to which Stonehage Fleming is subject, we will provide you with reasonable notice prior to the amendment(s) taking effect.

28.3 Should you wish to make any amendment(s) to this Agreement, you are required to submit them to us in writing for our consideration unless they relate only to your personal information in which instance we will accept notification from you.

## 29. TERMINATION

29.1 You may terminate this Agreement at any time on one months' written notice to us.

29.2 We may terminate this Agreement on one month's written notice to you or by immediate notice if so required by any competent regulatory authority.

29.3 Notwithstanding the provisions of Clauses 29.1 and 29.2 above, this Agreement may be terminated by either party immediately upon written notice to the other:

29.3.1 in the event the other party becomes insolvent (meaning unable to pay its debts as they fall due), becomes bankrupt or enters into a compromise agreement with its creditors, or upon the happening of a like event in accordance with the law of any other applicable jurisdiction (except a voluntary liquidation for the purposes of a reconstruction, amalgamation or merger); or

29.3.2 If the other party commits a material breach of the provisions of this Agreement and (if capable of remedy) has failed to remedy the same within 14 days after the receipt of notice from the other party requiring it to be remedied.



29.4 The obligations of the parties under the Agreement regarding the payment of fees and confidentiality shall survive termination of this Agreement.

29.5 Failure to pay our fees within 14 days of receipt of our invoice(s) issued to you in accordance with Clause 14 of this Agreement and/or our Fees and Charging Schedule (as may be amended from time to time) shall constitute a material breach of this Agreement.

### 30. CONSEQUENCES OF TERMINATION

30.1 Termination of this Agreement pursuant to Clause 29 above shall be:

30.1.1 without prejudice to the completion of any transaction or transactions already initiated and any transaction or all transactions outstanding at the time of termination will be settled and delivery made and we will account to you for such transactions;

30.1.2 without prejudice to and shall not affect any accrued rights, existing commitments or any contractual provision intended to survive termination;

30.1.3 without penalty or other additional payment save that you shall be obligated to pay:

- i. as of the date of termination, our fees accrued and due to us *pro-rated* up to the date of termination (and the fees due in respect of the period from the date of notice of termination up to the effective date of termination shall be calculated on the net value of the Portfolio as at the date such notice of termination is served);
- ii. following termination, that portion of our fees as is attributable to any investments and other assets of yours which were held in the Portfolio on the effective date of termination of the Agreement and which you continue to hold following such termination, such obligation to survive termination of this Agreement for such period as you continue to hold any such investments and/or other assets;
- iii. as of the date of termination, any expenses incurred by us under this Agreement up to the effective date of termination and payable by you;
- iv. as of the date of termination, any additional expenses incurred by us in terminating this Agreement; and
- v. any costs and losses necessarily realised in settling or concluding outstanding obligations; and

30.1.4 Without prejudice to the appointment of the Custodian whose appointment shall continue unless and until terminated by you.

30.2 We may cancel, close out, terminate or reverse any transaction or enter into any other transaction or do anything which has the effect of reducing or eliminating any outstanding amount or of reducing or eliminating any liability under any contracts, positions or commitments undertaken on your behalf.





## 31. CONFIDENTIALITY

31.1 We are not obliged to disclose to you or in making any decision or taking any action in connection with the management of the Portfolio to take into consideration information where:

- (a) the disclosure of it to you would be a breach of duty or confidence to any other person; or
- (b) Which comes to the notice of any of our employees, directors or agents, but does not come to the actual notice of the individual arranging transactions for or managing the Portfolio or making the decision or giving the advice in question.

31.2 Subject to Clause **31.3** below, the parties to this Agreement will at all times keep confidential all information acquired in consequence of the services under this Agreement, except for information which they are bound to disclose under compulsion of law or by request of regulatory agencies or to their professional advisers or which is otherwise already in the public domain (except as a result of a breach of this clause).

31.3 Notwithstanding anything in this Clause 31, we may disclose information relating to you (or if you are a Trust or Company, your beneficial owners) to our legal advisors and/or our insurers, where the need arises and:

- (a) to delegates and other agents; and
- (b) To any market counterparty or any broker (in accordance with market practice or any Regulatory Requirements): in relation to account opening and transactions undertaken for you and, where relevant, to the Custodian, in all cases to assist or enable the proper performance of services under the Agreement.

31.4 This Clause shall survive termination of the Agreement for a period of two years from the effective date of termination hereof.

## 32. FURTHER ASSISTANCE

32.1 You shall execute all deeds or documents (including any power of attorney) and do all such other things that may be required from time to time for the purpose of giving effect to the terms of this Agreement and the transactions contemplated hereby.

## 33. ENTIRE AGREEMENT AND RELATIONSHIP

33.1 You agree that this Agreement constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Agreement.

33.2 You acknowledge and agree that in entering into this Agreement, and the documents referred to in it, you do not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. Nothing in this Clause shall, however, operate to limit or exclude any liability for fraud.





- 33.3 None of the services to be provided under this Agreement nor any other matter shall give rise to any fiduciary or equitable obligations which would prevent or hinder us in transactions with or for you, from acting as principal or agent, dealing with other clients and generally effecting transactions as provided for in this Agreement.
- 33.4 Nothing in this Agreement (or any of the arrangements contemplated hereby) shall be deemed to create a partnership between the parties or constitute our being an employee or agent of yours except as provided herein, it being fully understood that in the course of carrying out our obligations under this Agreement, we will be acting as an independent contractor and will assume full responsibility for any expenses which may be incurred by it unless you specifically agrees otherwise.

#### 34. MISCELLANEOUS

- 34.1 No failure to exercise or delay in exercising any right or remedy under this Agreement shall constitute a waiver thereof and no single or partial exercise of any right or remedy under this Agreement shall preclude or restrict any further exercise of such right or remedy. The rights and remedies contained in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.
- 34.2 If any term or provision in this Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law that term or provision or part shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected thereby.
- 34.3 To the extent permitted by law, you agree that no statutory terms (which shall include warranties, conditions or other contractual provisions) or rights, duties or liabilities imposed under the Supply of Goods and Services (Jersey) Law 2009 shall apply in relation to this Agreement.

#### 35. FORCE MAJEURE

- 35.1 We shall not be liable for any failure or delay in performing any of our obligations under or pursuant to this Agreement and any such failure or delay in performing our obligations will not constitute a breach of this Agreement if such failure or delay is due to any cause whatsoever outside our reasonable control and we shall be entitled to a reasonable extension of the time for performing such obligations as a result of such cause.
- 35.2 Events outside our reasonable control shall include without limitation: acts of God, any change to the law, order or regulation of a government, supranational or regulatory body, currency restrictions, devaluations and fluctuations, any act of terrorism, market conditions affecting the execution or settlement of transactions or the value of assets, failure or breakdown of communications not reasonably within our control and the failure of any relevant exchange or clearing house and shall include any event or circumstance that we are unable, using reasonable skill and care, to avoid.

#### 36. GOVERNING LAW

- 36.1 This Agreement and any non-contractual obligations arising out of or in connection with this agreement shall be governed by and construed in accordance with the laws of Jersey and the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of Jersey for the purpose of hearing and determining any dispute arising out of or in connection with this agreement (including any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this agreement or its existence, validity or formation).

