

TERMS &
CONDITIONS
OF BUSINESS



CAPCO TRUST
INTEGRITY & INDEPENDENCE

Terms & Conditions of Business

The following Terms and Conditions will be deemed to have been agreed by the Client by its acceptance of any of the Services. A current copy of the Terms and Conditions and the Schedule of Charges may be inspected at the registered office of the Service Provider during normal business hours. The Service Provider may revise the Terms and Conditions and the Schedule of Charges from time to time without the prior consent of the Client. The Service Provider will notify the Customer by ordinary post of any changes which the Service Provider considers to be material as soon as is reasonably practicable after their introduction. The Client shall be bound by any revision of the Terms and Conditions and/or the Schedule of Charges as and when a copy of the revised document becomes available for inspection at the registered office of the Service Provider.

1. DEFINITIONS AND INTERPRETATION

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

“Agreement” means any agreement in writing entered into between the Service Provider and the Client and/or the Managed Entity relating to the Services;

“Appointees” means all persons provided by the Service Provider to act as a director or other officer, trustee, manager, signatory or shareholder of any Managed Entity;

“Business Day” means a day on which the Service Provider is ordinarily open to carry on trust company business;

“Capco Group” means one or any one of Capco Trust Holdings Limited, its subsidiary companies and the related entities of each of them;

“Client” means any person to whom the Service Provider provides the Services and, in the case of an individual, includes his heirs, personal representatives and assigns and, in the case of a body corporate, includes its successors and assigns;

“Data Controller” means a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;

“Data Processor” means in relation to personal data, any person who processes the data on behalf of a Data Controller, but does not include an employee of the Data Controller;

“Employees” means the directors, officers, consultants, employees and partners (as appropriate) of the Service Provider and the members of the Capco Group;

“Managed Entity” means any body corporate, partnership, trust, association or other person in respect of which Services are provided;

“Schedule of Charges” means the schedule of charges issued from time to time by the Service Provider for the Services;

“Service Provider” means the member or members of the Capco Group that provides the Services to the Client;

“Services” means all services carried out or performed for or on behalf of, or in connection with (whether before or after its establishment), any Managed Entity by the Service Provider or any Appointee or Employee (including, without limitation, the provision of trustees, directors and shareholders and the administration of such Managed Entity); and

“Terms and Conditions” means these terms and conditions as amended from time to time.

1.2 In these terms and conditions unless the context otherwise requires, 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.

1.3 References to “Clauses” herein are to clauses of the Terms and Conditions

2. REMUNERATION AND EXPENSES

2.1 The Service Provider shall be entitled to (a) remuneration in accordance with the Schedule of Charges; and (b) be reimbursed for all disbursements and expenses incurred by it in providing the Services.

2.2 The Service Provider may deduct any unpaid monies owing to it in connection with the Services from the assets of the Managed Entity without consent of the Client.

2.3 Where the Service Provider and any Managed Entity enter into an Agreement relating to the Services which does not expressly replace the Terms and Conditions in its entirety:

(a) in the event of any conflict between the terms of the Agreement and the Terms and Conditions, the terms of the Agreement shall prevail;

- (b) the Client hereby guarantees the due payment of all fees, remuneration, disbursements and expenses payable by the Managed Entity under the Agreement (and agrees that the Service Provider may claim under this guarantee without first seeking recourse against the Managed Entity or any other person);
 - (c) the Client shall ensure that the Managed Entity is kept in funds sufficient to allow it to meet in full all fees, remuneration, disbursements and expenses payable by the Managed Entity under the Agreement.
- 2.4 All monies payable to the Service Provider in connection with the Services shall be paid within 30 days of the issue of the relevant invoice and interest at the rate of 1% per month may, at the discretion of the Service Provider, be charged on all overdue amounts.

3. CLIENT'S UNDERTAKINGS

3.1 The Client hereby undertakes that:

- (a) all assets which are or will be introduced to the Managed Entity have been lawfully introduced and are not derived from or otherwise connected with any illegal activity;
 - (b) the Managed Entity will not be engaged or involved directly or indirectly with any unlawful activity or used for any unlawful purposes;
 - (c) the Managed Entity will not undertake any activities which will require a licence, consent or approval in any jurisdiction without first obtaining such licence, consent or approval or which will breach any conditions contained in any such licence, consent or approval;
 - (d) the Client shall procure that the Managed Entity complies with all filing requirements in any applicable jurisdiction and that all taxes and governmental dues payable by the Managed Entity are discharged;
 - (e) the Client shall provide such information as the Service Provider may, in its discretion, require in order to comply with all applicable laws and regulations (including 'know your customer' requirements) and to provide the Services;
 - (f) immediately upon becoming aware thereof, the Client shall notify the Service Provider of:
 - (i) any event which could be reasonably foreseen to have a material effect on the Managed Entity or its assets or activities (including, without limitation, any act evidencing the insolvency of the Client or commencing its liquidation, winding up or dissolution) or upon the Service Provider's willingness to continue to provide the Services;
 - (ii) any actual or threatened litigation in any jurisdiction or any actual or threatened investigation by any judicial or regulatory authority and any progress thereof, and it shall promptly provide such information as the Service Provider may, in its discretion, require in respect thereof;
 - (g) where the Services include the provision of Appointees, the Client shall not, without the prior consent of the Service Provider, take any action, enter into any agreement or contract, give any undertaking, make any representation or otherwise incur any liability on behalf of the Managed Entity;
 - (i) the Client shall notify the Service Provider before alienating, assigning, selling, pledging or otherwise disposing of or encumbering any part of the Client's interest in the Managed Entity.
- 3.2 The Client represents and undertakes that it has taken appropriate tax and other advice with regard to the establishment of the Managed Entity and its proposed activities and for ensuring that the Managed Entity complies with all applicable laws and regulations in all relevant jurisdictions. The Service Provider and the members of the Capco Group are not responsible for advising the Client on such matters.

4. INSTRUCTIONS

- 4.1 The Service Provider may act upon instructions (whether by letter, fax, email, telephone or otherwise) given by any person that it reasonably believes to be authorised to give such instructions on behalf of the Client and the Service Provider is not obliged to verify the identity of any person purporting to be so authorised.
- 4.2 Where the Service Provider does not believe that the person giving instructions is duly authorised or where the Service Provider is given instructions that it believes are unclear or contradictory, it may refuse to act upon such instructions until it receives evidence to its satisfaction as to the instructions or the person giving instructions and none of the Service Provider, any member of the Capco Group, the Appointees or the Employees shall incur any liability for such refusal to act.
- 4.3 None of the Service Provider, any member of the Capco Group, the Appointees or the Employees shall incur any liability (a) for its failure to comply with any instructions which are not in writing or which are incomplete, ambiguous or contain errors; or (b) for the non-receipt of any instruction, written or otherwise; or (c) for the lack of authority of any person purportedly giving instructions on behalf of the Client.

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5. SPECIFIC AUTHORITY

- 5.1 If:
- (a) any demand is made against the Managed Entity for payment of any sum due including, without limitation, any taxes, duties, fees or other governmental or state impositions and such payment has not yet been made; or
 - (b) the Service Provider has not been able to obtain instructions from the Client or any authorised person in circumstances where, in the Service Provider's opinion, instructions are required in order to take action that it considers necessary; or
 - (c) the Service Provider has received instructions from the Client or any authorised person which, in the Service Provider's opinion, are or may be illegal or contrary to the interests of the Client and/or the Managed Entity or which may lead to any of the Service Provider, any member of the Capco Group, the Appointees or the Employees incurring personal liability, then the Service Provider may, as it deems necessary, either take such action on behalf of the Managed Entity as it thinks fit (including, without limitation, seeking professional advice at the cost of the Managed Entity, appropriating the assets of the Managed Entity to satisfy any demands for payment, winding up the Managed Entity or transferring the assets of the Managed Entity to the Client) or take no action whatsoever.
- 5.2 The Service Provider will, as soon as reasonably practicable after taking any action under Clause 5.1, give notice to the Client of such action having been taken.
- 5.3 None of the Service Provider, any member of the Capco Group, the Appointees or the Employees shall incur any liability for any action or inaction of the Service Provider pursuant to this Clause.

6. LIEN

In the event of non-payment of all or any part of any fees, expenses or disbursements due to the Service Provider or which the Service Provider is liable to pay on behalf of the Managed Entity or in respect of which the Managed Entity becomes liable to the Service Provider in any other manner, then the Service Provider shall have a lien over, or the right not to release from the possession or control of the Service Provider, all or any documents or assets, including assets held on behalf of the Managed Entity or to the order of the Managed Entity or on behalf of or to the order of any company or other body in common ownership with the Managed Entity or otherwise connected or affiliated to the Managed Entity in any manner, until such time as all such fees, expenses, disbursements or liabilities due and payable are discharged. For the avoidance of doubt, this lien shall apply to all documents and assets held in relation to the matter in respect of which the fees, expenses, disbursements or liability have been incurred and in relation to any other matter whatsoever relating to the Managed Entity. Further, if the Service Provider should cease to act for or in relation to the Managed Entity, a final invoice will be submitted and the Service Provider reserves all rights to exercise the right of the lien aforesaid over all documents and assets held on behalf of the Managed Entity or in relation to the Managed Entity until such time as the final invoice is discharged in full.

7. CONFLICTS OF INTEREST

- 7.1 Members of the Capco Group provide a wide range of services to a large number of clients and it is possible that a conflict of interest may arise as a result. If any of the members of the Capco Group becomes aware or is notified of a possible conflict of interest, the Client shall be notified and, if possible, procedures will be put in place to ensure confidentiality and independence of advice.
- 7.2 The Service Provider and the members of Capco Group shall be entitled to retain any benefit, whether direct or indirect and including any fees or commissions, obtained (a) on any purchase or sale of investments; or (b) by reason of the Service Provider, any member of the Capco Group, the Appointees or the Employees acting (including, without limitation, as manager, administrator, trustee, director, officer, shareholder or adviser) for or in connection with any company, partnership, investment fund, scheme or other entity the shares, interests, notes or units of which are comprised in the assets of a Managed Entity; or (c) under any banking, investment advisory or other arrangement entered into on behalf of the Managed Entity; or (d) in respect of the provision of any other services to or in connection with the Managed Entity.

8. IDENTITY INFORMATION AND VERIFICATION

As part of the Capco Group take-on procedures, where the Services to be provided by the Service Provider constitute financial service business within the meaning of the relevant legislation, the Service Provider will be required by anti-money laundering regulations to obtain information and documentation to identify and verify the identity of the Client and certain persons connected to them unless an exemption is available. The Client agrees that if such information and documentation is not made available to the Service Provider when required by and in a form acceptable to the Service Provider, the Service Provider may without liability terminate the engagement with the Client with immediate effect. The time at which such information and documentation is required and the form in which it shall be delivered to the Service Provider shall be determined by the Service Provider in its absolute discretion.

9. DISCLOSURE

- 9.1 The Client acknowledges that, in certain circumstances, the Service Provider, members of the Capco Group, the Appointees or

the Employees may be obliged to give evidence and information to courts, authorities, financial institutions, financial service businesses (as defined in the Financial Services (Jersey) Law 1998 as amended or any equivalent statute in any other jurisdiction) or other legal bodies or individuals in connection with the affairs of the Managed Entity. Subject to Clause 11, disclosure of such information will not be made to third parties unless required by law or regulation (including, but not limited to regulatory requirements arising from the anti-money laundering regime) and/or where the failure to make such disclosure of information would, in the opinion of the Service Provider, be prejudicial to the Service Provider, the members of the Capco Group, the Appointees or the Employees.

- 9.2 The Service Provider, any member of the Capco Group, the Appointees and the Employees may disclose information relating to the Client and the Managed Entity:
- (a) to any other members of the Capco Group;
 - (b) to any other entity where such disclosure is necessary for the proper performance of the Services; and/or
 - (c) to any of its subcontractors and/or Data Processors (subject always to appropriate confidentiality undertakings being obtained from such subcontractors and/or Data Processors).
- 9.3 The provisions of this Clause shall remain in full force and effect notwithstanding termination of the Terms and Conditions.

10. INTELLECTUAL PROPERTY

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

11. DATA PROTECTION

The Capco Group, is bound by the requirements of applicable data protection legislation. The Capco Group shall ensure that any personal data gathered under the terms of the engagement will be processed in accordance with the requirements of current data protection legislation and only for the purposes of providing the Services (and any purpose ancillary thereto). Depending on the nature of the Services, the Capco Group (or any entity within the Capco Group) may act either as Data Controller or Data Processor (and the terms of the Agreement shall specify the Data Controller in each case).

12. SAFE CUSTODY

The Service Provider will keep all such deeds and documents which it considers appropriate, or where it is requested by the Managed Entity to do so, in its safe custody facilities. These facilities are carefully regulated and controlled and designed to limit the possibility of unauthorised access or damage by fire. The Service Provider does not accept items of value such as jewellery and bearer certificates into its safe custody facilities. The Service Provider accepts no responsibility for any deeds or documents held in safe custody that are damaged or lost as a result of theft, fire or water damage, in the absence of gross negligence.

13. CLIENT/MANAGED ENTITY MONEY

- 13.1 Money belonging to the Client or the Managed Entity will be maintained at all times separate from the funds of the Service Provider.
- 13.2 To the extent that tax has to be deducted from interest earned on funds held on behalf of the Managed Entity or paid out to the Managed Entity the Administrator will account to the tax authorities for tax deducted. The Managed Entity is responsible for seeking its own tax advice in this regard.
- 13.3 On receipt of any monies the Service Provider must be satisfied as to the source of these funds. If it has any doubts as to the source of funds the Service Provider may be bound by law to notify the relevant authorities.
- 13.4 The Managed Entity will not request the Service Provider to take or refrain from taking any action whatsoever in relation to funds or assets or documents of any nature which could in the sole opinion of the Service provider result in a contravention of any law or regulation in force from time to time in Jersey or in any other place whatsoever. The Service Provider reserves the right not to comply with any request which in its sole opinion could potentially result in any such contravention or which in its opinion could result in any damage to its reputation or good standing.

14. TRANSFER AND TRANSMISSIONS

All transfers and transmissions of monies, assets or documents are made at the risk of the Managed Entity and the Client and the Service Provider shall not be liable for any loss, damage or delays howsoever caused which is not directly caused by its gross negligence.

15. COMPLAINTS

Any complaints received in respect of the provision of the Services shall be dealt with in accordance with the Service Provider's current complaints procedure, as amended from time to time.

16. EXCULPATION AND INDEMNITY

- 16.1 None of the Service Provider, any member of the Capco Group, the Appointees or the Employees shall be held liable for any failure or delay in the performance of its obligations in connection with the Services arising out of or in connection with circumstances beyond its reasonable control (including, without limitation, acts of God, civil or military disturbances, outbreaks of war, acts of terrorism, natural disaster, act of government or any other authority, accidents, labour disputes or any power, telecommunications or computer failure).
- 16.2 The Client undertakes at all times to hold the Service Provider, the members of the Capco Group, the Appointees or the Employees harmless and to indemnify them to the greatest extent permitted by law against all actions, suits, proceedings, claims, demands, costs, expenses and liabilities whatsoever which may arise from the provision of the Services by the Service Provider, the members of the Capco Group, the Appointees or the Employees, other than liabilities arising from the fraud, wilful default or gross negligence of the Service Provider, the members of the Capco Group, the Appointees or the Employees.
- 16.3 The provisions of this Clause are without prejudice to any other limitation of liability or indemnity given in favour of the Service Provider, the members of the Capco Group, the Appointees or the Employees and shall remain in full force and effect notwithstanding termination of the Terms and Conditions.
- 16.4 Any rights which the Client or the Managed Entity may have hereunder pursuant to the "droit de discussion" or the "droit de division" are hereby excluded.

17. TERMINATION

- 17.1 The Terms and Conditions shall be terminated and all and any obligation to provide the Services shall cease immediately upon the Service Provider giving notice in writing to the Client that (a) the Client has breached any of the Terms and Conditions; or (b) any Agreement has terminated for any reason whatsoever; or (c) in the Service Provider's opinion, the Client cannot meet its payment obligations hereunder or under any Agreement; or (d) any member of the Capco Group has become aware that the Client and/or the Managed Entity is or may become subject in any part of the world to investigation by any judicial or regulatory authority or that criminal proceedings are instituted or threatened against the Client or the Managed Entity.
- 17.2 Where the Service Provider and the Client subsequently enter into an Agreement which expressly replaces the Terms and Conditions in their entirety, the Terms and Conditions shall be terminated without prejudice to any accrued right or obligation of the parties.
- 17.3 Upon termination pursuant to this Clause, each of the Service Provider, any member of the Capco Group, the Appointees and the Employees shall be entitled to make such retentions and receive such indemnities as it may require in respect of any actual or contingent liability, and may take such action as it deems necessary to limit, such liability.

18. JOINT AND SEVERAL LIABILITY

Where the Client is more than one person, (a) each such person hereby appoints the other such person(s) to act as his agent to exercise full power and authority in connection with the Services on his behalf; and (b) all obligations of the Client in connection with the Services shall be joint and several.

19. ASSIGNMENT

- 19.1 The Service Provider may assign or transfer the whole or any part of its rights and benefits under the Terms and Conditions. For the purpose of any such assignment or transfer, the Service Provider may disclose information about the Client and the Managed Entity to any prospective assignee or transferor, provided that the Service Provider shall use its reasonable endeavours to procure that such prospective assignee or transferor is placed under an obligation of non-disclosure equivalent to that in Clause 9.
- 19.2 The Client shall not assign or transfer all or any part of its rights, benefits and/or obligations under the Terms and Conditions.

20. SEVERABILITY

If at any time one or more of the provisions of the Terms and Conditions becomes invalid, illegal or unenforceable in any respect, that provision shall be severed from the remainder and the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected or impaired in any way.

21. TAX

Unless otherwise agreed in writing between the Client and the Service Provider, the Client shall be responsible for the payment

of its own costs and expenses (whether incurred directly by the Managed Entity or incurred by the Service Provider) including all taxes, corporate, registration and licence fees payable by the Managed Entity to any legal, governmental or regulatory authorities in any applicable jurisdiction.

22. RECORD KEEPING AND RECORDING OF TELEPHONE CALLS

The Service Provider may record telephone conversations and retain copies of them, and may retain any transcripts of the same and any written communication with the Client. These may be used for the purpose of giving you advice or for training purposes and to evidence compliance with regulatory requirements, in the event of a dispute or as evidence in court.

23. NOTICES

- 23.1 Any notice required to be given hereunder shall be in writing addressed to the party concerned at its address from time to time notified to the other for the purpose, failing which the registered office or the last known usual address of such party.
- 23.2 For this purpose, any notice (a) delivered personally shall be deemed to have been given at the time of such delivery; (b) sent by ordinary post shall be deemed to have been given 72 hours after posting; (c) sent by airmail shall be deemed to have been given seven days after posting; and (d) sent by fax shall be deemed to have been given at the time of despatch.

24. GOVERNING LAW AND JURISDICTION

These terms and conditions shall be governed by and construed in accordance with the laws of the Island of Jersey and the Client hereby agrees to submit to the non-exclusive jurisdiction of the Jersey courts in connection herewith.

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Regulated by the Jersey Financial Services Commission for the purpose of conducting Trust Company Business