



FNB INTERNATIONAL TRUSTEES LIMITED

TERMS AND CONDITIONS

CONTENTS

1. Introduction
2. Definitions and interpretation
3. Tax and Legal advice
4. Due Diligence procedures
5. Remuneration and Expenses
6. Client responsibilities
7. Communications
8. Data Protection
9. Recording of telephone calls and emails
10. Payments and Tax reporting
11. Intellectual property
12. Use of FNB's name
13. Assignment
14. Merger or sale
15. Investments
16. Custody of assets
17. Conflicts of interests
18. Agents, Delegates and Third Parties
19. Transfer and transmissions
20. Termination
21. Rights to survive termination
22. Failure to make payments or provide communications
23. Discretions
24. Acting as joint service provider
25. Exoneration
26. Indemnity
27. Force Majeure
28. Business management
29. Enforcement and validity
30. Complaints
31. Dispute Resolution
32. Notices
33. Applicable Law and place of jurisdiction

1. Introduction

- 1.1 These Terms and Conditions apply to the Services (as defined below) provided from time to time by the businesses operating as FNB International Trustees Limited ("FNBIT" which term shall where the context permits include the Associated Companies and the Employees) being FNB International Trustees Limited and the FirstRand Group.
- 1.2 Any variation of the Terms and Conditions will be effective and binding on the Client and, where applicable, the Managed Entity on the date upon which FNBIT formally determine that such variation shall take effect. Publication on FNBIT's website www.fnbit.com shall constitute due notice of the amended, supplemental or new Terms and Conditions to all parties.
- 1.3 These Terms and Conditions should be read and will take effect in conjunction with the Constitutions and any Service Agreement. In the event of any conflict between (i) the Terms and Conditions and (ii) the Constitutions or any Service Agreement, the terms of the Constitutions or Service Agreement shall prevail.

2. Definitions and Interpretation

- 2.1 In these Terms and Conditions the following expressions and terms shall have the following meanings:
 - 2.1.1 **"Associated Companies"** in respect of FNBIT means and includes any Company, wherever incorporated, having interest in FNBIT or in which FNBIT (or any company aforesaid) has any interest whether directly or indirectly, and which for the avoidance of doubt where the context so admits and where applicable includes
 - 2.1.2 **"Authorised Person"** means any person from whom FNBIT is authorised to receive communications pursuant to these Terms and Conditions in respect of the Managed Entity or the Services and shall, for the avoidance of doubt, include a director, trustee, council member, partner, general partner, officer or other authorised signatory of any Managed Entity;
 - 2.1.3 **"Client"** means the Person specified as the client in any Service Agreement and, in the absence of any such Service Agreement or specification, means the Person engaging the services or, where the context so admits, the person (i) benefitting from the Services or the Managed Entity or (ii) having directly or indirectly contributed assets to a Managed Entity, and shall in the case of:
 - 2.1.3.1 an individual, include his heirs, personal representatives and assigns;
 - 2.1.3.2 more than one Person, mean such Persons jointly and severally and shall include the survivor or survivors of them and the heirs or personal representatives of each of them; and
 - 2.1.3.3 a Company, include its successors and assigns;
 - 2.1.4 **"Client Information"** means all present and future information or documentation concerning a Managed Entity and/or concerning any Client or Person who has a legal interest in any managed Entity;
 - 2.1.5 **"Constitutions"** means the applicable constitutional documentation of the Company, trust or foundation in question, management or partnership agreement, power of attorney, or any other document under which FNBIT acts in relation to a Managed Entity;
 - 2.1.6 **"Communications"** means any communication, confirmation, instruction, notice, request or advice given by the Client or an Authorised Person to FNBIT;
 - 2.1.7 **"Company"** means a body corporate or any other legal person whether or not it is a body of persons;
 - 2.1.8 **"Due Diligence Reviews"** means the processes established by FNBIT from time to time to verify identity of Persons associated with a Managed Entity, their tax residence, source and provenance of wealth, source of funds and to assess the risk of a particular relationship as required by applicable regulation;
 - 2.1.9 **"Employees"** means and includes the directors, other officers and staff of FNBIT or the Associated Companies;
 - 2.1.10 **"Indemnified Persons"** means FNBIT, each of the Associated Companies, the officers and employees of all of them and their respective heirs, successors, assigns and personal representatives and each of them;
 - 2.1.11 **"Insolvency"** includes any bankruptcy, désastre, liquidations, administration or any similar process;
 - 2.1.12 **"Insolvent"** means having liabilities (existing future and contingent) in excess of assets or being unable to pay debts as they fall due;

- 2.1.13 **“Liabilities”** means all actual or contingent actions, losses, suits, proceedings, claims, costs, damages, demands, disbursements, fees, expenses (including legal costs) and liabilities whatsoever (or actions, investigations or other proceedings in respect thereof) which may arise or accrue or be taken, commenced, made or sought against any Indemnified Persons in connection with the Managed Entity or arising from the provision or withholding of the Services, other than in respect of any actual fraud, wilful misconduct or grossly negligent act or omission of any such Indemnified Person;
- 2.1.14 **“Managed Entity”** means any corporation, Company, trust, pension scheme, foundation, partnership, funds, association or other body whether incorporate or unincorporate in respect of which Services are provided;
- 2.1.15 **“Person”** includes a natural person or a body of persons, a Company, a limited liability partnership or body corporate or unincorporated of any description, or a foundation;
- 2.1.16 **“Services”** includes any acts done or to be done or performed for or on behalf of or in connection with (Whether before or after its establishment) any Managed Entity by FNBIT as set out in a Service Agreement with a Client;
- 2.1.17 **“Service Agreement”** means any written agreement entered into between FNBIT and the Client and/or Managed Entity relating to the Services;
- 2.1.18 **“United States”** means the United States of America;
- 2.1.19 **“US Indica”** means in relation to any Person that such person (i) holds a passport issued by the government of the United States or (ii) was born in the United States, or (iii) claims to have or ever had United States citizenship, or (iv) holds a ‘Green Card’ issued by the government of the United States, or (v) as a United States parent; and
- 2.1.20 **“Variation”** includes any amendment, revocation, replacement or rectification.
- 2.2 In these Terms and Conditions, unless the context requires otherwise:
- 2.2.1 words importing the masculine gender shall include the feminine and the neuter genders and vice versa;
- 2.2.2 words in the singular shall include the plural and vice versa;
- 2.2.3 any reference to a “Clause” or “Sub-Clause” shall be a reference to the corresponding Clause or Sub-Clause of these Terms and Conditions;
- 2.2.4 any headings to Clause within these Terms and Conditions are inserted only for ease of reference and shall not affect its construction;
- 2.2.5 references to these Terms and Conditions or any other document shall be construed as references to these Terms and Conditions or such other document as the same may be amended, supplemented or novated from time to time;
- 2.2.6 any reference to any statute, statutory provision or to any order, ordinance or regulation shall be construed as a reference to that statute, provision, order, ordinance or regulation as extended, modified, amended, replaced or re-enacted from time to time; and
- 2.2.7 references to “in writing” or “written” includes the reproduction of words and figures in any visible form including in electronic form.

3. Tax and Legal

- 3.1 No legal or tax advice will be given or deemed to be given by FNBIT in respect of any managed Entity or otherwise.
- 3.2 It is the responsibility of the Client, an Authorised Person and any other Person associated with a Managed Entity to take their own independent legal, tax financial and other such advice in relation to the Services and the managed Entity and to deal with the management of their legal and tax affairs including any applicable filings and payments and complying with any applicable laws and regulations.

4. Due Diligence Procedures

- 4.1 FNBIT applies strict policies in relation to anti-money laundering, anti-bribery and countering the financing of terrorism and, save as expressly agreed in writing by the parties, FNBIT will not supply any Services to the Client of the Managed Entity until such time as FNBIT's client acceptance and Due Diligence Reviews have been completed to FNBIT's satisfaction. If FNBIT has any doubts as to the source of provenance of funds or assets it may be required to notify the relevant authorities in the applicable jurisdiction in accordance with applicable law.

- 4.2 FNBIT reserves the right, with immediate effect and without liability, to terminate the relationship and any Service Agreement and cease to provide the Services if its client acceptance procedures or Due Diligence Reviews have not been performed or maintained to the satisfaction of FNBIT or if FNBIT has doubts about the veracity or adequacy of information data which it holds. The time at which such information and documentation is required and the form in which it shall be delivered to FNBIT shall be determined by FNBIT in its absolute discretion. FNBIT shall suffer no penalty or have any liability for any losses howsoever caused as a result of it ceasing to provide Services in accordance with this provision. Subject to applicable law assets under FNBIT's control will only be returned from there they came in the event of a cessation of Services in accordance with this provision.
- 4.3 The Client or Authorised Person (as appropriate) shall inform FNBIT immediately if at any time information previously notified to FNBIT, which shall include personal details or circumstances, have changed by sending written notice to that effect to FNBIT at its registered office. Absent any written notification from the Client or an Authorised Person (as appropriate) FNBIT is entitled to conclude that all information previously provided to them by the Client or an Authorised Person remains as previously advised.
- 4.4 FNBIT may in its absolute discretion decline to accept or retain any assets, including real estate, non-publicly traded shares, or other non-financial assets after undertaking a Due Diligence Review, as part of its client acceptance and/or on-going review process.
- 4.5 FNBIT may be required to transmit data covered by a Due Diligence Review to third party service providers as a necessary part of the provision of the Services.
- 4.6 FNBIT will use reasonable endeavours to carry out the Services in accordance with any timetable referred to in a Service Agreement. However, unless FNBIT and the Client specifically agree otherwise in writing, all dates given by FNBIT, including dates contained in any timetable or a Service Agreement, for the supply of any part of the Services by FNBIT are intended for planning and estimation purposes only and are not contractually binding.

5. Remuneration and Expenses

- 5.1 Unless the Constitutions and/or a relevant Service Agreement expressly states otherwise, FNBIT shall be entitled:
- 5.1.1 to remuneration, commissions, payment, benefits and profits where applicable, in accordance with its last published standard fee schedule in force from time to time or as otherwise agreed in writing between FNBIT and the Client;
- 5.1.2 to all of its out of pocket expenses (including the costs of any agent, attorney, adviser or investment manager engaged or instructed by FNBIT for an on behalf of a Managed Entity or pursuant to the provision of the Services, plus applicable taxes (including VAT where applicable);
- 5.1.3 to permit its Associated Companies or any other Person to whom it has delegated the whole or any aspect of the administration or management of a Managed Entity or the Services or appointed to assist in the same, to receive their usual remuneration, commissions, payment, benefits and profits,
- (the “**remuneration**”)
- 5.2 FNBIT reserves the right to revise its standard fee schedule from time to time.
- 5.3 FNBIT shall not be liable for any costs, deductions and expenses properly incurred and payable in the administration or otherwise in connection with any Services provided to a Managed Entity (including, but not limited to, legal costs, stamp and other taxes and duties, penalties and bank charges and any legal and other costs incurred in recovering any sums due to FNBIT) all of which will be payable by the Managed Entity or the Client. FNBIT shall have a lien or charge over the assets of any Managed Entity ranking prior to the interest of any Client for the payment of its remuneration or the reimbursement of any such costs, deductions and expenses.
- 5.4 If requested by FNBIT a Managed Entity shall maintain a minimum cash balance sufficient to meet future outgoings including fees, disbursements and reasonable contingencies. Overdraft interest, at the then prevailing interest rate for current account unauthorised overdrafts at FNBIT's principal bankers from time to time, will be charged on any shortfalls which arise as a result of insufficient funds being held by the Managed Entity to cover such outgoings.
- 5.5 Subject to the terms of the Constitutions, FNBIT may, as it thinks fit and without the Client's or Managed Entity's prior or simultaneous approval, pay from the assets of the Managed Entity any Remuneration, disbursements or other expenses due to be paid or any liabilities (including tax liabilities) in respect of the Managed Entity or from any assets held by FNBIT on behalf of the Client if they are liable for such payment notwithstanding that they may not be strictly enforceable against FNBIT. FNBIT shall be entitled to exoneration and indemnity out of the assets of the Managed Entity for any liability, loss, or expense and interest incurred in making such payments.

- 5.6 To the extent that any Remuneration, disbursements or other expenses whatsoever owing to FNBIT are not discharged within 30 days from the raising and delivery of an invoice, FNBIT shall be entitled to charge interest on such outstanding sums at the rates and on the terms specified on the relevant invoices. FNBIT shall be under no obligation to carry out any further work in relation to any Managed Entity on any matter, or provide further Services, until all overdue amounts have been paid in full and free of set-off or deduction. FNBIT shall at no stage be required to apply its own funds to settle any disbursements on behalf of, or liability of, any Managed Entity and reserves the right not to settle any disbursements or liability where funds are not available, in which event, FNBIT shall not incur any liability for any loss howsoever arising.
- 5.7 FNBIT shall have a lien over all documents and assets of a Client or Managed Entity in its possession or under its control and shall not be required to release them from its possession or control until its Remuneration has been irrevocably discharged in full.
- 5.8 FNBIT reserves the right to commission a revaluation of the assets comprised in any Managed Entity at any time or times at the discretion of FNBIT and at the expense of the Managed Entity, notwithstanding that one of the consequences or the only consequence of such revaluation may be to vary the level of remuneration chargeable by FNBIT where fees are calculated by reference to such values.
- 5.9 FNBIT may adopt such valuation basis (ignoring any liabilities or contingent liabilities) as FNBIT in its absolute discretion thinks fit. Where the market value of such assets can be readily ascertained it is FNBIT's general policy to use the market valuation for the purposes of calculating its Remuneration.

6. Client Responsibilities

- 6.1 The Client is responsible for determining that the scope of the Services is appropriate for the Client's needs.
- 6.2 The Client will ensure that it provides FNBIT with all the information that is necessary for the performance of the Services or requested by FNBIT to enable it to perform the Services. Except as expressly set out in any Service Agreement, FNBIT will not be required to audit, or otherwise test or verify, the information provided by the Client or an Authorised Person in the course of performing the Services.
- 6.3 FNBIT shall be entitled to rely on all information provided, and decisions and approvals given, by an Authorised Person in connection with the Services and to assume that all such information provided to FNBIT from an Authorised Person is true, complete and not misleading. FNBIT will not be responsible for the consequences of any information provided to FNBIT in the course of the Service not being complete, accurate or current, or not being provided in a timely manner.
- 6.4 Where the Client is using an Authorised Person or third parties to provide information or documentation to FNBIT, or other suppliers and advisers are being employed by the Client whose work may affect FNBIT's ability to discharge the Services, the Client will be responsible for the management of such persons and their performance, including the timeliness, accuracy and quality of their input and work.
- 6.5 The Client is responsible for immediately informing FNBIT of:
- 6.5.1 any actual or threatened litigation in any jurisdiction or any actual or threatened investigation by any judicial, regulatory or tax authority in relation to the Managed Entity or the Client and any progress in these, and to promptly provide such information as FNBIT may, in its discretion, require in this respect (including, without limitation, information as to the status of such litigation or investigation); and
- 6.5.2 any event which could be reasonably foreseen to have a material effect on the Managed Entity, its assets or activities or upon FNBIT's willingness or ability to continue providing the Services (including, without limitation, any act evidencing that the Client is insolvent or commencing its liquidation, winding up or dissolution) or upon the insolvency of the Managed Entity or upon the probability of FNBIT being paid for the Services and recovering its costs or being reimbursed for expenses in relation to them.
- 6.6 The Client warrants, undertakes and covenants that:
- 6.6.1 any asset introduced or caused to be introduced to the Managed Entity has been lawfully introduced and is not derived from or otherwise connected with any illegal activity and that it is the lawful property of the Person introducing the asset;
- 6.6.2 the Client was neither insolvent nor did he become insolvent when the Client transferred assets to the Managed Entity;
- 6.6.3 the Managed Entity will not be engaged or involved directly or indirectly in any unlawful activity or be used for any unlawful purpose;

TERMS AND CONDITIONS

- 6.6.4 the Managed Entity will not be held out by the Client as conducting any regulated activity in any jurisdiction unless it is actually authorised to conduct such regulated activity in that jurisdiction;
- 6.6.5 the Client will not transact in the name or on behalf of the Managed Entity unless specifically authorised to do so by FNBIT;
- 6.6.6 the Client has taken appropriate tax advice and other advice with regard to the establishment, conduct and use of the Managed Entity;
- 6.6.7 Communications given to FNBIT will be accurate, not misleading and will not contain any falsehood and, if acted upon, will not require or involve any unlawful act;
- 6.6.8 where FNBIT does not provide such Services, the Client shall, unless otherwise agreed with FNBIT, 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 and shall upon request provide evidence thereof to FNBIT;
- 6.6.9 the Client shall disclose or procure the disclosure to FNBIT, on request, of any and all information concerning the Managed Entity, its business and, where applicable, its beneficial ownership;
- 6.6.10 where applicable, no change of beneficial ownership of, or assignment, alienation, sale, pledge, of encumbrance over any part of any interest in the Managed Entity shall be undertaken without the proper written consent of FNBIT;
- 6.6.11 the Client shall keep FNBIT fully informed of all relevant changes of address, name or nationality;
- 6.6.12 where FNBIT holds any interest in either the Managed Entity or any securities, property or assets of the Client or the Managed Entity as nominee, the transfer of any such interest, securities, property or assets to the Client, the Managed Entity or any other Person will not breach the Constitutions of the Managed Entity or the entity to which any such securities relate or any applicable law, listing rules, takeover codes or regulation; and
- 6.6.13 the Client shall keep the Managed Entity in liquid funds at all times sufficient to honour its liabilities as and when they become due.
- 6.7 The Client may from time to time:
 - 6.7.1 authorise a Person to act for and on behalf of the Client and as such be "an Authorised Person" for the purposes of these Terms and Conditions and the Services. Such authorisation may be express or implicit; and
 - 6.7.2 declare that any Authorised Person is no longer an Authorised Person.
- 6.8 Absent written notification to the contrary from the Client, FNBIT, the Employees and the Associated Companies may assume that any Authorised Person remains authorised to act for and behalf of the Client.

7. Communications

- 7.1 Where the Client or Authorised Person is more than one Person, unless otherwise notified in writing:
 - 7.1.1 FNBIT will be entitled to rely on the specific Communications of any one of such Person(s) and each Person will be deemed to have appointed the other such Person to act as his agent to exercise full power and authority in connection with the Services on his behalf; and
 - 7.1.2 All obligations of the Client and any Authorised Person (if any) under these Terms and Conditions and otherwise in connection with the Services shall be joint and several.
- 7.2 The Client authorises FNBIT to act without further enquiry and without obligation on Communications from the client or any Person that FNBIT believes to be an Authorised Person on all matters concerning the Managed Entity and its affairs. Such Communications may be communicated orally, in writing, by fax or by electronic mail in accordance with the security procedures adopted by FNBIT from time to time. FNBIT may require that Communications given orally, by telephone, by fax or electronically are confirmed in writing prior to acting upon them.
- 7.3 FNBIT requires Communications to be given to it in the English language unless any Service Agreement provides otherwise.
- 7.4 FNBIT may refuse to act on any Communications (and will, if permitted by law, take reasonable steps to notify the Client accordingly) if:

TERMS AND CONDITIONS

- 7.4.1 FNBIT reasonably considers that to do so would cause it to break any applicable law, regulation, code or other duty; or
- 7.4.2 the Communications are not in writing or are not in English or FNBIT reasonably considers that they are not sufficiently clear or they are incomplete, ambiguous or contain errors; or
- 7.4.3 FNBIT reasonably considers that it is impractical, unwise, inexpedient or impossible to do so; or
- 7.4.4 any Communications are received too late for FNBIT to reasonably act upon them; or
- 7.4.5 FNBIT suspects fraud in the delivery, transmission or receipt of any Communications; or
- 7.4.6 FNBIT receives inconsistent or conflicting Communications from any one or more Clients or Authorised Persons; or
- 7.4.7 FNBIT reasonably considers that to do so would either damage its reputation or be in contravention of its internal policies; or
- 7.4.8 the Communications request the acquisition of investments which are unethical, expose FNBIT to liability, are costly to administer to which are not clearly explained to FNBIT and where FNBIT does not act on any Communication in reliance upon these Terms and Conditions it shall suffer no penalty or be liable for any losses howsoever arising as a result thereof including any loss of opportunity or loss of profit.
- 7.5 FNBIT shall not incur any liability for any losses arising by reason of a failure of a Communication to it or any communications from FNBIT howsoever transmitted or dispatched, or if transmitted by unauthorised persons whether or not resulting from an act or omission on FNBIT's part or from any losses arising as a result of a reasonable interpretation of ambiguous Communications.
- 7.6 FNBIT undertakes to use reasonable endeavours to respond to clear Communications without undue delay, and usually within 72 hours of receipt, but does not undertake to act on Communications immediately or on the same or next business day or to meet any specific deadline (unless otherwise agreed in writing) and shall not incur any liability for any loss arising by reason of the length of time taken to so act upon Communications. FNBIT is not and does not hold itself out to provide a dealing service in relation to any property or assets held by FNBIT in any capacity from time to time. Clients must notify FNBIT if any Communications have not been acknowledged within 72 hours.
- 7.7 FNBIT shall not be liable for losses occasioned by a failure to respond to Communications during circumstances of abnormal market volatility.
- 7.8 Unless the Client instructs FNBIT otherwise FNBIT may, where appropriate, communicate with the Client and with third parties via email or by other electronic means. There is no guarantee that electronic communications from or to FNBIT will be secure, virus free or successfully delivered. FNBIT accepts no responsibility for or liability for
 - 7.8.1 damage or loss caused by viruses; or
 - 7.8.2 Communications which are corrupted or altered after despatch; or
 - 7.8.3 problems or accidental error relating to this means of communication (or non-receipt thereof) especially in relation to lack of security for commercially or legally sensitive material including possible loss of legal privilege; or
 - 7.8.4 unreliability of delivery.
- 7.9 Documents sent to the client by email (whether or not containing confidential information) will not be encrypted unless the client requests FNBIT, in writing, to encrypt outgoing email and FNBIT are able to agree with the Client and implement mutually acceptable encryption standards and protocols.
- 7.10 The Client shall hold the Indemnified Persons harmless and shall indemnify Indemnified Persons against any and all loss, damage or Liabilities resulting to the Client or the Managed Entity arising directly or indirectly from an Indemnified Person accepting Communications given by telephone facsimile, email or any other means of communications with or without authentication.
- 7.11 Communications shall not be abusive, insulting or include demeaning language.

8. Data Protection

- 8.1 FNBIT confirms that it will comply with the provisions of the applicable data protection legislation when processing data about the Client. In order to carry out the Services and for related purposes such as updating and enhancing client records, analysis for management purposes and statutory returns, legal and regulatory compliance and crime prevention FNBIT may obtain, process, use and disclose personal data about the Client.
- 8.2 FNBIT will use information relating to the Client and other Persons related to the Managed Entity (i) to prevent and detect fraud, money laundering, bribery, corruption and other crime, (ii) to carry out regulatory checks and meet their obligations to any relevant regulatory authority, (iii) to develop and improve their services to the Client and the Managed Entity, and (iv) to protect the interests of FNBIT.
- 8.3 FNBIT may need to transfer personal data relating to a Person associated with a Managed Entity outside of the Channel Islands and the European Economic Area where (i) this is desirable to further the administration of the Managed Entity or (ii) to provide information to an Associated Company as part of the policies of the FirstRand Group.
- 8.4 The Client consents to their personal details being used in the manner set out in these Terms and Conditions.
- 8.5 FNBIT shall take all reasonable steps to keep the Client's information confidential. However, FNBIT reserves the right to disclose any and all information received by FNBIT in the following circumstances:
- 8.5.1 where in the jurisdiction of operation of FNBIT's entity is compelled by law or by order of a court, governmental or administrative tribunal, judicial authority or a regulatory authority to disclose confidential information; or
- 8.5.2 to facilitate the provision of the Services to the Client by FNBIT, or the financial and professional advisers of FNBIT; or
- 8.5.3 for the purposes of instructing and dealing with other advisers acting on the Client's behalf or in relation to the Managed Entity; or
- 8.5.4 to facilitate the fulfilment of, or compliance with, any legal or domestic regulatory order from the place of administration or requirements of FNBIT, in particular without limitation, any applicable anti-money laundering and anti-bribery regulations, any order from the domestic tax office under a Tax Information Exchange Agreement and best practice from time to time; or
- 8.5.5 to facilitate the preparation of accounts or the auditing of accounts in relation to a Managed Entity; or
- 8.5.6 to facilitate any tax filing or reporting requirements; or
- 8.5.7 to facilitate the obtaining and maintenance of insurance for FNBIT or the Managed Entity or to make any notification to FNBIT's insurers; or
- 8.5.8 if permitted or if required to do so by the rules of any self regulating body of which FNBIT is a member or by any regulatory authority to which FNBIT is subject; or
- 8.5.9 if FNBIT is obliged or considers it necessary or desirable to give evidence and information and produce such evidence and information to courts or authorities in any jurisdiction in connection with the affairs of the Client or the Managed Entity; or
- 8.5.10 if the Client is or becomes subject to the jurisdiction of any federal or state authority in the United States of America, in response to any query from the federal or any state government of the United States of America, or any of their agencies; or
- 8.5.11 if disclosure is to any third party as a result of any merger, restructuring, sale or acquisition of FNBIT or to anyone to whom FNBIT may transfer its rights and/or obligations provided that any recipient uses information for the same purposes as it was originally supplied to FNBIT and/or used by FNBIT; or
- 8.5.12 where disclosure is reasonably necessary or prudent to protect the interests of FNBIT or to defend a claim; or
- 8.5.13 where information is already in the public domain; or
- 8.5.14 where the Client instructs or consents to disclosure of information by FNBIT to a third party specifically or by implication. For this purpose, FNBIT will assume that the Client consents to the disclosure of information to an Authorised Person unless the Client expressly instructs otherwise.

- 8.6 FNBIT will provide the Client's auditors at any time with such information as the Client's auditors may reasonably request concerning any transactions or business of the Client or the Managed Entity with FNBIT unless a written Communication to the contrary is received by FNBIT from the Client or the Managed Entity, as the case may be.
- 8.7 FNBIT shall be entitled to charge reasonable costs for the provision of information and copy records to those who are entitled thereto.
- 8.8 FNBIT shall not be obliged to disclose to the Client or any Authorised Person any confidential or other information obtained by FNBIT at any time whilst acting in any capacity other than in the course of acting on behalf of the Client.
- 8.9 On completion of the Services, FNBIT and its Associated Companies may destroy any papers it has retained (including documents legally belonging to the Client) in accordance with the minimum statutory period of retention in the jurisdiction of operation, other than documents that it (on its sole discretion) considers to be of continuing significance.

9. Recoding of Telephone Calls and Emails

To ensure that FNBIT is able to carry out the Client's Communications accurately, to help FNBIT to improve its service and in the interests of security, FNBIT may monitor and/or record the Client's telephone calls with FNBIT and monitor or record email correspondence between FNBIT and the Clients and the Client consents to such monitoring and/or recording. FNBIT's recordings shall be and remain the sole property of FNBIT and FNBIT shall have the authority to deliver copies or transcripts of such recordings to any court, tribunal, arbitrator or regulatory authority of competent jurisdiction as it sees fit.

10. Payments and Tax Reporting

- 10.1 Pursuant to the tax regime that applies in Jersey including those relating to the European Savings Tax Directive certain payments of interest made to local residents or individuals residents in the European Union must be made subject to a deduction of tax. The tax deducted is accounted to the Comptroller of Income Tax in Jersey for onward transmission to the tax payer's country of tax residence. By concession such deduction is not required where, in appropriate cases, the recipient is a person who has entered into prior arrangements whereby full disclosure of the payment is made instead to the Comptroller of Income Tax.
- 10.2 Pursuant to the tax regime that applies in Guernsey relating to the European Savings Tax Directive certain payments of interest made to residents in the European Union are disclosed to the Director of Income Tax who provides such information to the tax authorities in the recipient's country of tax residence.
- 10.3 Where in relation to any Person associated with a Client of Managed Entity there are US Indicia FNBIT may be required to file reports to the taxation authorities of the United States and there may be a liability to United States taxation.
- 10.4 Where in relation to any Person the domestic law of the Person's domicile or residence or nationality imposes any direct obligation upon FNBIT to file reports to the taxation authorities of that Person's domicile, residence or nationality FNBIT are expressly authorised to make such filing.

11. Intellectual Property

- 11.1 All information, correspondence, records and data held by FNBIT on any computer system is solely the property of FNBIT and for its sole use and neither the Client nor an Authorised Person nor the Managed Entity nor anyone else acting for or on their behalf shall have any right of access thereto or control over that information, correspondence, records and data for its sole use and neither the Client nor any Authorised Persons nor the Managed Entity nor any officer or employee of the Client or Managed Entity shall have any right of access to or control over the information, correspondence, records or data save as permissible under applicable data protection laws.
- 11.2 All intellectual property rights in everything developed, designed or created by FNBIT remain the property of FNBIT.

12. Use of FNBIT's Name

The address, telephone, fax numbers, email and website address of FNBIT may not (without FNBIT's prior written consent) be used by the Client or Managed Entity in or on any notepaper or other documentation or in any advertising material.

13. Assignment

- 13.1 FNBIT may, upon giving reasonable notice to the Client of its intention to do so, assign or transfer the whole or any part of its rights and benefits under these Terms and Conditions and any Service Agreement to any Person in any jurisdiction. For the purposes of any such assignment or transfer, FNBIT may disclose information about the Client, the Managed Entity or any other connected Persons including the beneficiaries or objects, to any prospective assignee or transferee, providing that FNBIT shall use its reasonable endeavours to procure that such prospective assignee or transferee is placed under an obligation of non-disclosure equivalent to that observed by FNBIT under these Terms and Conditions and any Service Agreement.
- 13.2 The Client shall not assign or otherwise transfer all or any part of its rights, benefits and/or obligations under these Terms and Conditions or any Service Agreement without the prior written consent of FNBIT (which FNBIT shall not unreasonably withhold).

14. Merger or Sale

- 14.1 In the event that the whole or any part of the business of FNBIT is sold or transferred:
- 14.1.1 FNBIT shall not have any duty to account to the Client of any Managed Entity for any sum of money or other consideration received in respect of the sale or transfer; and
- 14.1.2 Subject to the provisions of the Constitutions, FNBIT shall be discharged from its obligations in respect of the Managed Entity which are part of the sale or transfer, provided that in relation to any trust of which FNBIT is trustee, FNBIT validly appoints a new trustee following the sale or transfer.

15. Investments, switches, redemptions/reinvestments

FNBIT will adopt the following standard process for all investments, switches, redemptions and/or reinvestments as appropriate:

- 15.1 When any request or instruction is received for an investment switch/redemption, it will be acted on as soon as reasonably possible. This will result in funds being held in cash.
- 15.2 Where funds are to be reinvested in a financial services business, FNBIT will take reasonable steps to complete documentation and comply with any due diligence, documentary and regulatory requirements required by the financial services business in as timely a fashion as possible.

For the reasons stated above, whilst FNBIT may have all of the documentation that they require under their obligations in Guernsey law, it may well be (and is often the case) that another financial services business may require additional information which is not readily to hand. This is outside of the control of FNBIT and accordingly, FNBIT gives due notice it will not be responsible or liable for any delays or perceived losses or otherwise of this process, in particular because of market movements.

- 15.3 In the event that clients, beneficiaries, beneficial owners or advisers do not wish funds to remain in cash pending completion of all the regulatory and documentary requirements, they must advise at the time of making the request that FNBIT completes the various application documentation with the financial services business and only makes the switch on confirmation from the new financial services business that all is in order and acceptable to receive funds.

16. Custody of Assets

- 16.1 FNBIT will deposit all monies, deeds and documents of the Managed Entity and any Service Agreement which it considers appropriate with any bank which FNBIT in its absolute discretion thinks appropriate. These monies, deeds and documents shall be under the exclusive control of FNBIT. Where appropriate all investments and property shall be registered in the name of FNBIT, its custodians or their nominees. FNBIT does not accept any responsibility for any deeds or documents held in safe custody that are damaged or lost as a result of theft, fire, water damage or force majeure, in the absence of actual fraud, wilful misconduct or gross negligence.
- 16.2 FNBIT accepts no responsibility for losses caused by the failure of any reputable bank or custodian.

17. Conflict of Interest

- 17.1 On acceptance of instructions or requests in relation to a particular matter, the Client will become a client of FNBIT (if not already a client) and remain so throughout the duration of the relationship with FNBIT. FNBIT provides a wide range of services for a large number of clients and may be in a position where it or an Associated Company are providing services to other clients which the Client might regard as giving rise to a conflict of interest. Where FNBIT becomes aware or is made aware of such circumstances, and where it believes the Client's interests can

be [properly safeguarded, it will implement procedures to preserve confidentiality in accordance with the disclosure of information provisions in these Terms and Conditions and to ensure the Services which the Client receives from FNBIT are independent and, where in the reasonable opinion of FNBIT it is considered appropriate, it will discuss and agree these with the Client.

- 17.2 Unless otherwise agreed with the Client in writing, FNBIT maintains the right to decide on the course to be adopted in the handling of any matter and the appropriate personnel to undertake the work.
- 17.3 Unless otherwise agreed with the Client in writing, FNBIT shall not be precluded from acting in any transaction or for any other Person with which the Client is associated or has any dealings.
- 17.4 The Client shall notify FNBIT promptly of any potential conflict affecting the Terms and Conditions and the Service Agreement of which it is, or becomes, aware.

18. Agents, Delegates and Third Parties

- 18.1 FNBIT may appoint any Person to be its agent, attorney, adviser, banker or manager to assist in the whole or any aspect of the administration or management of a Managed Entity and may delegate to such Person the whole or any aspect of its duties, functions and responsibilities in relation to the Managed Entity on such terms as it may choose.
- 18.2 FNBIT may act through any Employee or Associated Company.
- 18.3 If FNBIT instructs any manager, investments manager or adviser to act on the Client's or Managed Entity's behalf FNBIT will exercise due care in selecting the manager, investment manager or adviser. FNBIT will not be responsible for any act or omission on the part of such manager, investment manager or adviser, by itself, its servants, agents or by others engaged by that manager, investment manager or adviser to act on the Client's or Managed Entity's behalf.
- 18.4 Subject to the applicable Constitutions FNBIT reserves the right to terminate the appointment of any agent, attorney, adviser or manager without seeking any Person's prior consent.
- 18.5 No responsibility is accepted by FNBIT in respect of any act or omission of any third party placing reliance on the performance of the Services for the lien tot the Managed Entity by FNBIT or on the advice given by FNBIT to the Client or the Managed Entity.
- 18.6 No responsibility is accepted by FNBIT in respect of any form of Insolvency of any financial institution which is an authorised and licensed deposit taker nor shall FNBIT be liable for any losses, damages, liabilities, claims, costs and expenses howsoever arising from such Insolvency, including without limitation, the loss of any or all the monies held by such financial institution.
- 18.7 All information and advice of whatever nature given by FNBIT to the Client is for the Client's and/or Managed Entity's sole use and shall not be disclosed or made available to or relied upon by third parties without FNBIT's prior written consent.
- 18.8 No rights or obligations shall accrue to or be imposed upon any Person other than the Client, the Managed Entity and FNBIT save that where any rights are expressly conferred on FNBIT's agents or delegates, the Employees or the Associated Companies or an Indemnified Person hereunder they shall each have the benefit of such rights against the Client and the Managed Entity and for these purposes only FNBIT contracts with the Client as agent for FNBIT's agents and delegates, the Employees and the Associated Companies respectively.

19. Transfer and Transmissions

All transfers and transmissions of the Client's or Managed Entity's monies, property, assets, deeds of documents are made at the Client's or Managed Entity's risk and FNBIT shall not be liable for any loss, damage or delays howsoever caused or Liabilities which arise which are not directly caused by actual fraud, wilful misconduct or gross negligence on the part of FNBIT.

20. Termination

- 20.1 Upon or in contemplation of the termination of the Services, FNBIT shall be entitled to pay out of the assets of the Managed Entity and/or to make retentions and receive such indemnities as it may require for such costs, taxes and duties, fees and expenses, including, without prejudice to the generality of the foregoing, any amounts as it or they may think appropriate in respect of any Liabilities. Where any retention is made that exceeds the liabilities in respect of which the retention was made, such surplus, once ascertained, shall be repaid without undue delay to the Client of the Managed Entity, as appropriate.

TERMS AND CONDITIONS

- 20.2 To the extent permissible by law, all and any obligation to provide the Services shall cease and FNBIT may resign from any office held in conjunction with the provision of the Services:
- 20.2.1 notice of termination given by FNBIT to the Clients; or
- 20.2.2 immediately upon FNBIT giving the Client notice of termination in the event of:
- 20.2.2.1 the Client of the Managed Entity becoming insolvent or going into liquidation (other than a voluntary liquidation for the purpose of reconstruction or merger upon terms previously approved in writing by FNBIT) or administration or if some event having equivalent effect occurs; or
- 20.2.2.2 the Client committing a material breach of these Terms and Conditions, the Constitutions or any Service Agreement and, if such breach is capable of remedy, the Client not making good such breach within one month of service upon the Client of notice requiring the remedy of such breach; or
- 20.2.2.3 the Client failing to make available to FNBIT the information and documentation required under these terms and Conditions or as required from time to time by FNBIT to enable then to provide the Services either when required or in a form acceptable to FNBIT; or
- 20.2.2.4 the conviction of the Client for an offence involving dishonesty.
- 20.3 To the extent permissible by law, all and any obligation to provide the Services shall cease and FNBIT may resign from any office held by them in connection with the provision of Services without giving notice with without penalty or if FNBIT becomes aware that or considers that:
- 20.3.1 the Client is, or may become, subject in any part of the world to investigation by any judicial or regulatory authority or criminal proceedings are instituted or threatened against the Client or in relation to it; or
- 20.3.2 continuing to provide the Services would be assisting a criminal activity; or
- 20.3.3 continuing to provide the Services would constitute a breach of any applicable law or government sanction or regulation; or
- 20.3.4 the Client has provided FNBIT with false or misleading information at any time; or
- 20.3.5 it is inappropriate for a Person or Authorised Person authorised to give Communications to do so; or
- 20.3.6 the behaviour of the Client means it is inappropriate for FNBIT to continue to provide the Services; or
- 20.3.7 in continuing to provide Services FNBIT may suffer damage to its reputation; or
- 20.3.8 the Client has been in serious or persistent breach of these Terms and Conditions or any supplementary terms and conditions; or
- 20.3.9 the Client at any time fails to meet the applicable criteria including but not limited to where the Client is or becomes resident in a country or territory with legal or regulatory restrictions on FNBIT continuing to provide the Services.
- 20.4 If work which FNBIT has undertaken for the Client or Managed Entity does not proceed to a conclusion or if the Client withdraws its instructions, FNBIT will charge for all work done up to the point the matter becomes abortive together with all costs, disbursements and expenses incurred. In such circumstances FNBIT will also charge for work done and all costs, disbursements and expenses associated with the orderly termination or the transfer of such work to another professional adviser, if applicable.
- 20.5 FNBIT shall be entitled to its agreed Remuneration and for its agreed Remuneration and for its expenses to be met for work undertaken in transferring any Managed Entity and its assets and liabilities to any successor service provider.

21. Rights to Survive Termination

The obligations imposed by these Terms and Conditions shall not be affected by the termination of the Services where the context so admits.

22. Failure to Make Payments or Provide Communications

- 22.1 In the event that:

- 22.1.1 any third party demand is made against the Managed Entity for payment of any sum due, including, but not limited to, any taxes, duties, fees or other governmental or state impositions and such payment has not yet been made; or
- 22.1.2 FNBIT requires Communications from the Client and has been unable to obtain Communications which, in FNBIT's absolute discretion, it considers adequate and proper, then, provided FNBIT shall have given to the Client notice that the provisions of this Clause shall apply and unless within the period stated in such notice the Client has taken such action as shall therein be specified, FNBIT may proceed in any one or more of the ways described in the following Clause 21.2.
- 22.2 In the events described in Clause 21.1 above, FNBIT may:
 - 22.2.1 take no further action on a particular matter; or
 - 22.2.2 take no further action at all in relation to the Managed Entity; or
 - 22.2.3 utilise any assets of the Managed Entity in or towards the satisfaction of any such demand; or
 - 22.2.4 have the Managed Entity wound up, dissolved or otherwise terminated; or
 - 22.2.5 file an ineffective registered office notification; or
 - 22.2.6 transfer all or any shares in, or capital of or other interest or assets in, the Managed Entity (if any) into the name of the Client.
- 22.3 No liability shall attach to FNBIT in respect of or arising out of any action or inaction which is in accordance with the provisions of this Clause 21.

23. Discretions

Nothing in these Terms and Conditions shall limit the manner in which FNBIT will exercise discretionary powers vested in it by the Client or the Managed Entity or for the Client's or Managed Entity's benefit or otherwise in connection with the Service. FNBIT shall as regards its discretionary or other powers act by its properly appointed officers.

24. Acting as Joint Service Provider

FNBIT generally acts as sole service provider however, by prior written agreement, FNBIT may consent to act as a joint service provider in relation to a Managed Entity.

25. Exoneration

- 25.1 To the extent permissible by law, where FNBIT is acting in relation to a Managed Entity, it shall not be liable for any loss or damage directly or indirectly caused or suffered by any Client or any other Person including costs and expenses incurred as a result of the actions of FNBIT other than loss or damage suffered as a result of actual fraud, wilful misconduct or gross negligence of FNBIT.
- 25.2 To the fullest extent permitted by applicable law and despite any other provision of these Terms and Conditions, FNBIT shall not be liable for:
 - 25.2.1 or consequential losses;
 - 25.2.2 Loss of profits;
 - 25.2.3 Loss of revenue;
 - 25.2.4 Loss of savings (actual or anticipated);
 - 25.2.5 Loss of goodwill; arising out of or in connection with the provision of the Services (whether or not foreseeable and regardless of the type of action in which such a claim may be brought).
- 25.3 FNBIT shall be under no duty or obligation whatsoever to the Client or the Managed Entity or any other Person in circumstances where the fulfilment of that duty or obligation may (as determined by FNBIT in its own absolute discretion) involve FNBIT in the commission of a criminal offence to make FNBIT liable as constructive trustee to any third party as a result thereof.

26. Indemnity

- 26.1 Notwithstanding any additional indemnity or other security in the Constitutions the Client shall indemnify the Indemnified Persons to the greatest extent permitted by law from and against the Liabilities.
- 26.2 The Client acknowledges and agrees that in connection with the indemnification obligations entered into by the Client under these Terms and Conditions, FNBIT is acting for itself and for each of the other Indemnified Persons as trustee and owner of the claim on their behalf. The Client further agrees with FNBIT to indemnify the Indemnified Persons and each of them in respect of the Liabilities and to reimburse the Indemnified Persons for all costs and expenses (including legal and other professional fees).
- 26.3 The Client's undertaking and indemnity shall extend to FNBIT's agents and delegates in the same way as if FNBIT's agents and delegates were listed as persons to whom the undertaking and indemnity is given and FNBIT shall hold the benefit of the undertaking and indemnity on trust for the said agents and delegates and their heirs, successors, assigns and personal representatives.
- 26.4 FNBIT may, in appropriate cases, require a Managed Entity to purchase professional indemnity insurance or directors' and officers' insurance to cover the Liabilities of FNBIT.
- 26.5 On the cessation by FNBIT of the whole or any part of their duties, the Client undertakes that the indemnities referred to in these Terms and Conditions remain in force.

27. Force Majeure

FNBIT shall have no liability for any failure or delay in the performance of its obligations hereunder or the provision of the Services or for the loss of damage of whatever kind and wherever occurring resulting from factors over which it has no control including, but without limitation, acts of God, acts of civil or military authority or governmental acts, earthquakes, fires, storms, tempests, floods, terrorist acts, wars, civil or military disturbances, sabotage, epidemics, riots, accidents, labour disputes, strikes, industrial action, loss or malfunction of utilities, computers (hardware or software) or communication services, errors, omissions, distortions, interruptions and/or delays in transmission or delivery of post or communication in any medium or format howsoever caused or for loss or damage of whatever kind and wherever occurring outside of FNBIT's control.

28. Business Management

- 28.1 Where a business or interest therein constitutes the whole or any part of the assets of a Managed Entity, FNBIT shall not be bound or required to participate or interfere in its management or conduct save that to the extent that it is necessary for the sale, winding up or other disposition of the same and then only on the condition that it shall be fully indemnified against all costs, disbursements, expenses and losses therewith out of the assets of the Managed Entity and/or the Client.
- 28.2 FNBIT is authorised to take any steps which in its absolute discretion it thinks fit to protect or further the business, property or assets of the Managed Entity and to employ such advisers as it in its discretion considers appropriate and any expenses incurred shall be borne by the Managed Entity.

29. Enforcement and Validity

- 29.1 If FNBIT chooses, at its discretion, not to force any term which forms part of these Terms and Conditions, this will not prejudice FNBIT's rights to either enforce such term at a later date or to enforce the rest of these Terms and Conditions.
- 29.2 If any terms of these Terms and Conditions or any provision of the Constitutions is invalid, illegal or unenforceable in any respect, such term or provision (as the case may be) shall either:
- 29.2.1 be deleted; or
- 29.2.2 if such term or provision would be valid and enforceable if some part of it were deleted or modified, the term or provision in question shall apply with whatever deletion or modification is necessary to make it valid or enforceable, and, in either case, the validity, legality and enforceability of the remaining terms and provisions shall not in any way be affected or impaired.

30. Complaints

- 30.1 FNBIT strives to provide excellent service but in case the Client is not satisfied with the Services provided by FNBIT, FNBIT has established a complaints procedure, full details of which are available on request from FNBIT.
- 30.2 FNB International Trustees Limited is regulated in the provision of its Services by the Guernsey Financial Services Commission.

TERMS AND CONDITIONS

- 30.3 If the Client has a complaint against FNBIT that remains unresolved for longer than three months FNBIT is obliged to advise the Guernsey Financial Services Commission of the details of the complaint. FNBIT must then update that Commission periodically until the complaint is settled.
- 30.4 Complaints will be promptly acknowledged giving the complainant details of the contact point. FNBIT will strive to provide a substantive response within two working days. If unable to give a substantive response within two working days a holding letter will be sent, acknowledging receipt of the complaint, explaining that the matter is being looked into and giving a timeframe within which FNBIT will write again. This should not be more than ten working days after receipt of the complaint.
- 30.5 FNBIT will send a final response to the Client, indicating that the complaint is now deemed as resolved.
- 30.6 Should the Client remain dissatisfied they can refer the complaint to the Channel Islands Financial Ombudsman (CIFO).
- 30.7 CIFO can be contacted at:
Channel Islands Financial Ombudsman
PO Box 114
Jersey
Channel Islands
JE4 9QG
- Email: enquiries@ci-fo.org
Website: www.cifo.org
- Guernsey local phone: 01481 722218
International Phone: +44 1481 722218

31 Dispute Resolution

- 31.5 All disputes arising out of or in connection with these Terms and Conditions shall to the extent possible be settled amicably by negotiation between the parties within 30 days of the service of written notice by either party on the other of the existence of such a dispute and failing such amicable settlement, shall be finally settled by using mediation or another Alternate Dispute Resolution ("ADR") procedure acceptable to all parties before pursuing any other remedies available to them.
- 31.6 The place of arbitration shall be in Guernsey and the language of the arbitration shall be English.
- 31.7 If any party fails to agree to or participate in the ADR procedure or if in any event the dispute or difference is not resolved to the satisfaction of all parties within 90 days after it has arisen, the matter shall be settled in accordance with Clause 32.2 below.

32 Notices

- 32.5 Any notice required to be given by any Person to any other Person under these Terms and Conditions shall be in writing and shall (at the option of the Person giving the notice) be:
- 32.5.1 delivered by hand;
- 32.5.2 sent by fax;
- 32.5.3 sent by prepaid post (via airmail in the case of notice to a different jurisdiction); or
- 32.5.4 sent by email, to such address, fax number or email address as is from time to time notified to the other Person in compliance with the provisions of this Clause.
- 32.6 Any notice shall be deemed to have been served:
- 32.6.1 if delivered by hand, on delivery;
- 32.6.2 if delivered by courier, on delivery;
- 32.6.3 if sent by prepaid post, three days after posting;
- 32.6.4 if sent internationally by airmail, seven days after posting;

TERMS AND CONDITIONS

- 32.6.5 if sent by facsimile, when the sender's fax machine issues confirmation that the relevant pages have been transmitted to the recipient's fax machine, except where the recipient is a business and the fax is sent outside of the business hours of the recipient, the fax shall be deemed to have been given at the time the recipient's office next opens for business after the transmission sheet has been sent; and
- 32.6.6 if sent by email, at the time of receipt of the email, except where the recipient is a business and the email is sent outside of the business hours of the recipient, the email shall be deemed to have been given at the recipient's office next opens for business after the transmission sheet has been sent; and

33 Applicable Law and Place of Jurisdiction

- 33.5 These Terms and Conditions shall be governed by and construed in accordance with the laws of the Island of Guernsey.
- 33.6 The Client submits to the exclusive jurisdiction of the Courts of Guernsey in respect of any dispute arising hereunder.