

# TURICUM PRIVATE BANK

## General Terms and Conditions

These Terms and Conditions govern the relationship between Turicum Private Bank Limited (the "Bank" including its successors and assigns) and its Client (which term includes all persons, including a company, partnership, trustee or other legal entities in whose name the Bank opens an Account), subject to any Special Agreement(s) made in writing between the Bank and the Client and any special regulations, which the Bank may issue at any time. These Terms and Conditions also set out the basis on which the Bank will provide the Client with investment services. Each provision of these Terms and Conditions of the Bank shall be deemed to apply in their entirety to the relationship between the Bank and the Client except to the extent that any are inconsistent with the terms of a such Special Agreement made in writing between the Bank and its Client.

The Bank recommends that the Client read these Terms and Conditions very carefully. If the Client is unsure about the meaning or effect of any of these Terms and Conditions, the Client should seek advice from an appropriate professional. The Client should keep these Terms and Conditions in a safe place for future reference.

The Client should contact their Relationship Manager if the Client has any questions about these Terms and Conditions, which are effective as from 1<sup>st</sup> April 2019.

### General Terms

#### 1. Definitions

In these terms: -

"Account" means all accounts opened by the Bank in the name of the Client, including Custodian Accounts and accounts where the assets are managed but held with another custodian.

"Alternative Investment" means investment in a Non-Traditional Investment Product with potential economic value.

"Account Application and Agreement" means the Bank's Account opening forms and agreement to be completed and signed by the Client

"Complex Product" means a product that is not a Non-Complex Product and generally means bonds or securitised debt that embed a derivative.

"Credit Institution(s)" shall be construed in accordance with the provisions of the Financial Services (Banking) Act 1992.

"Custodian Account" means an account opened by the Bank in the name of the Client on the terms of paragraphs 23 and 24 below.

"Deposit" means all sums from time to time standing to the credit of the Client either individually or jointly with any other person on any Account with the Bank.

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"Investment Firm" means any legal person whose regular occupation or business is the provision of one or more investment services to third parties or the performance of one or more investment activities on a professional basis.

"Joint Account" means an account opened in the name of more than one individual.

"Local" means a member of a futures exchange who trades for his or her own account.

"Non-Complex Product" means generally shares admitted to trading on a regulated market or in an equivalent third country market, money market instruments, bonds or other forms of securitised debt (excluding those bonds or securitised debt that embed a derivative), UCITS and other Non-Complex financial instruments.

"Non-Traditional Investment Product" means as a general rule (in the case of funds often referred to simply as "Hedge Funds"), products that are typically issued in the form of shares, units, partnership interests or the like. They may make unlimited use, for speculative purposes, of derivative instruments such as options, futures, foreign exchange transactions and swaps. They may go short, make charges on assets, leverage the assets or pledge the assets as security. They invest both in established and emerging markets, in securities (both listed and unlisted) or commodities, and in private equity. The domicile for such Non-Traditional Investment Products ("NTIPs") is usually, but not exclusively, an offshore location such as the Bahamas, the British Virgin or the Cayman Islands.

"Options Contract" means an exchange traded or Over the Counter option on an equity, bond, interest rate, equity index, currency index, foreign exchange, futures contract, any precious metal or other commodity or option itself, and includes warrants.

"Over The Counter" means not listed or available on an officially recognised stock exchange but traded in direct negotiation between buyers and sellers.

"Packaged Products" means a life assurance policy, or a unit or share in a Collective Investment Scheme.

"Professional Client" means a Client who possesses the experience, knowledge and expertise to make their own investment decisions and properly assess the risks that it produces. In order to be categorised as a Professional Client, the Client must comply with one the following criteria:

The following are regarded as 'per se' professionals in all investment services and activities and financial instruments for the purposes of the Financial Services (Markets in Financial Instruments) Act 2006.

- (1) Entities, which are required to be authorised or regulated to operate in the financial markets. The list below should be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a European Union Member State ("Member State") under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by a non-Member State:

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- a) Credit institutions;
  - b) Investment firms;
  - c) Other authorised or regulated financial institutions;
  - d) Insurance companies;
  - e) Collective investment schemes and management companies of such schemes;
  - f) Pension funds and management companies of such funds;
  - g) Commodity and commodity derivatives dealers;
  - h) Locals;
  - i) Other institutional investors.
- (2) Large undertakings meeting two of the following size requirements on a company basis:
- balance sheet total: EURO 20,000,000
  - net turnover: EURO 40,000,000
  - own funds: EURO 2,000,000
- (3) National and regional governments, public bodies that manage public debt, the Gibraltar Savings Bank, Central Banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations.
- (4) Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

The entities mentioned above are considered to be professionals. Clients are allowed to request non-professional treatment and the Bank may agree to provide a higher level of protection. Professional Clients can request a variation of the terms of the agreement between it and the Bank in order to secure a higher degree of protection. It is the responsibility of the Client, considered to be a Professional Client, to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved. This higher level of protection will be provided when a Client who is considered to be a professional enters into a written agreement with the Bank to the effect that it shall not be treated as a professional for the purposes of the applicable conduct of the business regime. Such agreement will specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.

The following are regarded as 'elective' professionals in all investment services and activities and financial instruments for the purposes of the Financial Services (Markets in

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Financial Instruments) Act 2006. To qualify as an 'elective' professional Clients must provide assurance that as a minimum two of the following Criteria are met:

- the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;
- the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500000;
- the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

"Retail Client" means a Client who is not a Professional Client.

"Securities" or "Financial Instruments" means:

- (1) Transferable securities;
- (2) Money-market instruments;
- (3) Units in collective investment undertakings;
- (4) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash;
- (5) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);
- (6) Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market and/or a multilateral trading facility ("MTF");
- (7) Options, futures, swaps, and any other derivative contract relating to commodities, that can be physically settled (not otherwise mentioned in 6) and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls;
- (8) Derivative instruments for the transfer of credit risk;
- (9) Financial contracts for differences;
- (10) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or

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inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event) as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls.

“Special Agreement” all or any separate agreements formally made between the Bank and the Client relating to other services provided by the Bank from time to time.

“Structured Investment Product” means any investment that packages two or more products into one offering and derives its value based on the return or partial return of one or all products or any variation thereof.

In these Terms and Conditions, the singular includes plural and the plural includes the singular, and the use of any gender includes all genders.

## **2. The service provided by the Bank to the Client**

### 2.1 Investment Service

The Account Application and Agreement includes a client investment profile (“the Client Investment Profile”) which details the investment service that the Bank provides to the Client under these Terms and Conditions. Unless otherwise agreed, the Bank provides an advisory service to existing Clients as follows:

- a) all advice is provided by the Bank on an independent basis;
- b) the advice is based on a broad analysis of different types of financial instruments;
- c) the range of financial instruments analysed is not limited to financial instruments issued or provided by entities having close links with the Bank or any other close legal or economic relationship (such as a contractual relationship) which may pose a risk of impairing the independent basis of the advice provided;
- d) the Bank will provide advisory Clients with a periodic assessment of the suitability of the financial instruments recommended;
- e) the Bank will provide appropriate guidance on and warnings of the risks associated with investments in financial instruments and investment strategies; and
- f) whether the financial instrument is intended for retail or professional clients.

#### 2.1.1 The Discretionary Service

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Where the Client specifies "Discretionary Portfolio Management" as set out in the Client Investment Profile:

- a) the Client appoints the Bank to manage the portfolio on a discretionary basis;
- b) the Client authorises the Bank to enter into transactions and arrangements without prior reference to the Client on the Client's behalf and for the Client's Account, subject to any investment objective or restriction made by the Client in the Client Investment Profile;
- c) the Client understands and agrees that the Bank may aggregate the portfolio both with the portfolios of other Clients and with the Bank's monies for investment in order to make a common investment decision for a number of portfolios managed by the Bank;
- d) the Bank may also give advice to the Client on the investment of the portfolio, such advice may be given either verbally or in writing; and
- e) the Bank may at its sole discretion and without providing reasons decline to accept any particular instructions or to advise the Client on a particular investment.

Where the Bank provides a Discretionary Service to the Client the Bank will only do this having ascertained that the products are suitable for the Client's needs. This assessment will take into account the Client's knowledge and experience of the type of products, as well as the Client's investment objectives and level of risk suitable to the Client's portfolio.

## 2.1.2 The Advisory Service

Where the Client specifies "Advisory" in the Client Investment Profile:

- a) The Client appoints the Bank to give the Client investment advice;
- b) The Client authorises the Bank to enter into transactions and arrangements on the Client's behalf and for the Client's Account;
- c) Advice may be given either verbally or in writing;
- d) The Bank may in the Bank's discretion and without giving reasons decline to accept any particular instructions or to advise the Client on a particular investment; and
- e) Where the Client is a Retail Client and the Bank offers advice on Packaged Products, the advice is offered based on a selection of Packaged Products from the whole of the market. Where the Bank offers such advice on a life assurance policy, a "Suitability Letter" will be supplied separately to enable the Client to make an informed decision. That Suitability Letter shall: -

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- i) explain why the Bank has concluded that the transaction is suitable for the Client, specifically having regard to his personal and financial circumstances;
  - ii) contain a summary of the main consequences and the possible disadvantages of the transaction; and
  - iii) identify the Relationship Manager who is authorised by the Bank to advise on the life assurance product that may have been recommended.
- f) A “suitability letter” will also be issued upon execution of a transaction when the Bank provides investment advice. This letter shall include:
- i) The advice given; and
  - ii) How the transaction is suitable for the Client and how it meets the Client's objectives and personal circumstances, such as investment time horizon, knowledge and experience, attitude to risk and capacity for loss.
- g) The Client authorises the Bank to provide the Client with details of structured products as and when the Bank determines. Where relevant, the Bank will provide the Client with ‘Key Investor Information Documents’ or other information sheet on the investment product.

Where the Bank provides personalised advice to the Client about the purchase of any financial instrument, the Bank will only do this having ascertained that the product is suitable for the Client's needs. This assessment will take into account the Client's knowledge and experience of the type of product, as well as the Client's investment objectives and level of risk suitable to the Client's portfolio.

## 2.1.3 Execution-only Services

- a) Where the Client specifies “Execution-only” in the Client Investment Profile:
- i) If the Client instructs the Bank to enter into an Execution-only transaction in relation to Non-Complex Products then:
    1. the Bank shall not have any duty to advise the Client in respect of either the Execution-only transaction or any subsequent sale or potential sale of any asset acquired under that Execution-only transaction; and
    2. the Bank will not make an assessment of the suitability or appropriateness of that Execution-only transaction in the context of the Client's investment objectives.

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- ii) Where the Client actions an Execution-only transaction in a Complex Product, the Bank shall owe the Client (unless the Client is a Professional Client) a duty to assess the appropriateness of the Execution-only transaction by reference to the Client's experience, knowledge and understanding of the risks involved. If the Bank considers (on the basis of the information that the Bank holds about the Client) that the Execution-only transaction is not appropriate for the Client, the Bank shall warn the Client about this. If notwithstanding the warning that the Bank has given the Client, the Client asks the Bank to proceed with the Execution-only transaction and the Bank executes the transaction for the Client, the Client shall be solely responsible for that decision and the Bank shall have no liability whatsoever to the Client in respect of it. The provision of this paragraph shall be without prejudice to the Bank's general rights to refuse to execute the Client's orders or instructions.
  - iii) The Client agrees to supply the Bank with all information that the Bank requests to enable the Bank to assess the appropriateness of Execution-only transactions in the manner contemplated in paragraph (ii) above.
  - iv) The Bank may at the Bank's discretion and without giving reasons decline to accept any Execution-only transactions.
- b) Where the Client has selected Execution-only with a Third-Party Investment Manager the Bank will assess appropriateness of the transaction on the knowledge and experience of the Third Party Investment Manager:

The Bank may also action Execution-only transactions for the Client in cases where the Client has selected a Third-Party Investment Manager.

- i) If the Third-Party Investment Manager instructs the Bank to enter into an Execution-only transaction in relation to Non-Complex Products then:
  - i. the Bank shall not have any duty to advise the Client in respect of either that Execution-only transaction or any subsequent sale or potential sale of any asset acquired under the Execution-only transaction; and
  - ii. the Bank will not make an assessment of the suitability or appropriateness of that Execution-only transaction in the context of the Client's investment objectives.
- ii) If the Third-Party Investment Manager instructs the Bank to enter into an Execution-only transaction in relation to Complex Products then the Bank shall owe the Client (unless the Client is a

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Professional Client) a duty to assess the appropriateness of the Execution-only transaction by reference to the Third-Party Managers experience, knowledge and understanding of the risks involved. If the Bank considers (on the basis of the information that the Bank holds about the Third-Party Investment Manager) that the Execution-only transaction is not appropriate, the Bank shall either warn the Third-Party Investment Manager or request the Third-Party Investment Manager to warn the Client about this. If notwithstanding the warning that the Bank has given the Client or the Third-Party Investment Manager, the Third-Party Investment Manager asks the Bank to proceed with the Execution-only transaction and the Bank executes the transaction for the Client, the Client and its Third-Party Investment Manager shall be solely responsible for that decision and the Bank shall have no liability whatsoever to either in respect of it. The provisions of this paragraph shall be without prejudice to our general rights to refuse to execute the Client's orders or instructions.

- iii. The Client agrees (or instructs the Third-Party Investment Manager) to supply the Bank with all information that the Bank requests to enable the Bank to assess the appropriateness of Execution-only transactions in the manner contemplated in paragraph (ii) above.
- iv. The Bank may at the Bank's sole discretion and without providing any reasons, may decline to accept any Execution-only transactions.

## 2.1.4 Packaged Products

The Bank offers advice on Packaged Products based on a selection from the whole of the market and is not required by any arrangement to recommend investment products.

## 2.1.5 When effecting a transaction on the Client's behalf, the Bank may act as principal or as the Client's agent or otherwise arrange the transaction on the Client's behalf.

## 2.1.6 The Client gives the Bank, as the Client's agent, full and unrestricted authority, on such occasions as the Bank thinks fit, to place the Client's order for execution and/or settlement with or through such other person (who may be connected with the Bank) as the Bank shall at its sole discretion select, subject to whatever terms the Bank, as the Client's agent, may agree with that person or as may be implied, and by which the Client will be bound. In particular, orders will be placed on the basis that that person will be responsible for executing the transaction and that the Bank will not be responsible for the execution of the order (provided that the Bank has complied with any applicable best execution obligations in the Bank's selection of that person) or for any default of that person in connection with the execution. Such other person may not be regulated by the Gibraltar Financial Services Commission in which case the regulatory regime applying, including any compensation arrangements, may in some or all respects be different from that of Gibraltar.

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- 2.1.7 All investment advice given by the Bank to the Client and all transactions effected at the Bank's discretion will be subject to the investment restrictions and objectives set out in the Client Investment Profile.
- 2.1.8 The Bank may agree from time to time to undertake stock lending activities with or for the Client.
- 2.1.9 The Bank shall require the Client to enter into a Special Agreement before providing any additional service to the Client including undertaking any stock lending activity or stock borrowing activity with or for the Client.
- 2.1.10 The Client understands and agrees that the Bank does not and shall not at any time provide any tax, accounting or legal advice to the Client and at no time should any information provided by the Bank be construed as such by the Client. In providing services to the Client, the Bank shall not be required to take into account taxation matters and the Client should therefore seek such tax advice or other advice as the Client considers appropriate from the Client's own tax or professional adviser(s) and take such advice into account in framing the Client's investment objectives and restrictions and limits on investments in the Client Profile.
- 2.1.11 The Bank will observe all investment limits or restrictions provided in the Client Investment Profile. Except as expressly provided in these Terms and Conditions or the Client Investment Profile as agreed with the Client from time to time.
- 2.2 Order Execution Policy  
The summary of the Bank's order execution policy below outlines the manner in which the Bank will execute transactions so as to obtain the best possible result for the Client, the factors which will influence the manner of execution and details of the execution venues.
- 2.2.1 Application  
The Bank will take all reasonable steps to provide best execution when executing the Client's orders in Financial Instruments ("Order") except where the Order relates to the primary issuance of securities where best execution may not be possible. In the case of a reasonable specific Client instruction, the Bank will execute the Order in accordance with the instruction given. In the absence of any express Client instruction, the Bank will carry out the Order in accordance with our best execution policy outlined below. This policy is designed to obtain the best possible result for the Client keeping in mind the characteristics of the said Client: the Bank will therefore seek to ensure that the result will be aimed to be consistent overall rather than specific to each Order.
- 2.2.2 Execution Factors
- 2.2.2.1 The manner in which an Order is executed can be affected by various factors. In determining how each of the Client's Orders will be executed the Bank will take into account the following:

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- a) price;
- b) cost;
- c) speed;
- d) likelihood of execution or settlement;
- e) size of the Order;
- f) nature of the Order; and
- g) any other consideration relevant to the efficient execution of the Order.

2.2.2.2 Each of these factors will not necessarily be given equal weighting in the Bank's evaluation of how to obtain the best possible result for the Client and the Bank will determine the relative importance of each of these factors by reference to:

- v) the Client's characteristics as a Client;
- vi) the characteristics and nature of the Order, including whether any specific instructions are given;
- vii) the characteristics of the Financial Instruments that are the subject of the Order;
- viii) the characteristics of the execution venues to which that Order can be directed; and
- ix) current market conditions.

2.2.2.3 For most Orders, price and cost are likely to be the most important factors. However, the Bank may, at the Bank's absolute discretion, decide that other factors listed above are more important and act accordingly.

2.2.2.4 It is important to note that whilst the Bank will take all reasonable steps to satisfy that the Bank has processes in place to deliver the best execution for the Client; the Bank cannot guarantee that it will be able to provide the best execution for each and every Order.

## 2.2.3 Specific Instructions

Where the Client accompanies the Client's Order with specific instructions as to the manner of execution or a particular aspect of such Order, and the Bank complies with those specific instructions, the Bank will be deemed to have provided the Client with the best execution even if such instructions prevent the Bank from taking the steps which are designed to obtain the best possible results for execution of that Order.

## 2.2.4 Execution Venues

2.2.4.1 In the absence of any specific instruction, the Bank will direct the Client's Orders to the venue the Bank considers will provide the best possible result. This may be any one of:

- a) regulated markets;
- b) liquidity providers or market makers;
- c) third party brokers;
- d) multilateral trading facilities (systems operated by an investment firm that bring together multiple third party buying and selling interests in financial instruments); and
- e) systematic internalisers ("SIs") (these are investment firms that on an organised and frequent and systematic basis deal on their own account by executing Client's Orders outside a regulated market or a multilateral trading facility). The Bank does not act as an SI.

2.2.4.2 In meeting the Bank's obligation to obtain the best possible result when executing the Client's Orders the Bank places significant reliance on types of venues, listed below, to provide the Bank with the best possible result on a consistent basis. The Bank is not required to use these venues on every occasion and consequently the Bank may use other venues approved by the Bank from time to time. Details of these other venues are available on request. The following institutions will generally be used in conformity with the best execution policy as execution venues for: equities, fixed income, listed derivative contracts and foreign exchange.

- a) Third Party Brokers
- b) Correspondent Accounts
- c) Institutions who have custody of our assets

Concerning Collective Investment Schemes (CIS), generally the CIS itself is the only venue in which to transact a particular CIS. An individual CIS will state in its prospectus the manner in which subscription and/or redemptions can be purchased/made. This information should include how frequently liquidity will be provided, the time frames for the calculation of the net asset value and receiving orders. The Client's Orders will be directly executed with the CIS.

2.2.4.3 The Bank will not carry out a Client Order or a transaction for its own account in aggregation with another Client Order unless the aggregation of an Order or transaction does not work to the overall disadvantage of any client.

2.2.4.4 The Bank entrusts the execution of Client Orders to selected third parties who undertake to select the best execution venue for the Client Order. These third parties are verified and monitored to ensure they offer MiFID standards of best execution.

## 2.3 Order Handling Policy

In case of a Retail Client the Bank will send a notice confirming execution of the Order as soon as possible with specific regard to the overall structure and availability. Retained Mail Clients will not receive Order confirmations until they collect their mail. Where the Bank executes Orders in tranches, the Bank will supply the Client with the average price achieved. Where the average price is provided the Bank shall supply the Retail Client with information about the price of each tranche upon request. The total costs associated with the execution of the period may not include spreads and mark-ups on certain products. A detailed breakdown will be provided upon request. The Bank will supply the Client, on request, with information about the status of the Order. The Bank shall be under no obligation to confirm the instructions before they are executed or the accuracy or completeness of any information provided by the Client before it is acted upon or otherwise relied upon. However, except where the Bank is providing a Discretionary Service the Bank will provide the Client with information about the status of any instruction upon request. When the Bank is providing a Discretionary Service the Bank is under no obligation to provide the Client with daily transaction advices.

## 2.4 Operating the Client's Accounts

2.4.1 The Client authorises the Bank, until the Client gives the Bank notice otherwise:

- a) at any time during the term of these Terms and Conditions to open one or more accounts (each, an "Account") in the Client's name;
- b) to pay and to debit to the relevant Account all cheques, bills of exchange, promissory notes or other orders or instructions authorising payment drawn, accepted or made by the Client in connection with any such Account notwithstanding that any such debiting may cause the relevant Account to be overdrawn or any overdraft to be increased but without prejudice to the Bank's right at any time in the Bank's absolute discretion to refuse to allow any overdraft or increase of any overdraft;
- c) without in any way limiting the foregoing:
  - i) to carry out instructions countermanding payment of cheques, bills of exchange, promissory notes or instructions authorising payment when such instructions are given by the Client; and

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- ii) to deliver up on the Client's instructions any investments, deeds, proxies, folders and parcels and their contents and property of any description held in the Client's name;
  - d) to place to the credit of such Account as specified by the Client or (in the absence of any such specification, any Account) all amounts, including dividends, interest and capital sums arising from investments received or collected by the Bank for the Client's credit;
  - e) to take such other actions on the Client's behalf and at the Client's expense and exercise such powers as the Bank considers are necessary or desirable for, or incidental to, any actions the Bank are instructed to take or which are authorised under these Terms and Conditions or otherwise by the Client; and
  - f) to employ agents or contractors in connection with any services described in these Terms and Conditions as the Bank sees fit.
- 2.4.2 The Bank will account to the Client for any transaction actioned on the Client's behalf by crediting or debiting payments and deliveries to the Client's Accounts with the Bank or any third party holding money or providing custody services to the Client. Subject to the Client discharging all of the Client's liabilities and otherwise as mentioned herein, the Bank will upon the Client's instruction deliver investments to the Client or to the Client's reasonable order and/or, as the case may be, make a wire transfer of the cash balances on the Client's Account, in each case, at the Client's risk.
- 2.4.3 In relation to any specific transaction or dealing, the Bank's obligation to make any payment arising from such transaction or dealing shall only be to make payment in the currency that the Bank has previously agreed with the Client.
- 2.4.4 The Bank is not obliged to settle transactions or account to the Client unless and until the Bank (or the Bank's settlement agents) have received all necessary documents or money.
- 2.4.5 The Bank's obligations to deliver investments to the Client or to the Client's order or account to the Client for the proceeds of the disposal of Investments are conditional on the prior receipt by the Bank of appropriate documents or money from the other party to the transaction.
- 2.4.6 The Bank may purchase or borrow investments to cover any liability of the Client's to deliver instruments pursuant to transactions with or through the Bank and the Client will reimburse the Bank for any losses and expenses the Bank suffers in this way.
- 2.4.7 The Bank shall be entitled at any time to close any of the Client's Accounts and to demand immediate payment of all sums due or owing

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to the Bank whether present or future, actual or contingent and ascertained or unascertained.

- 2.4.8 The Bank shall be entitled to deduct from the monies held in the Client's Accounts or from any interest payable to the Client or otherwise to debit to the Client's Accounts any tax, which the Bank is required to deduct or withhold. The Bank will from time to time notify the Client if such Tax is deducted or withheld.

### **3. Beneficial Ownership**

The Client undertakes to the Bank that: -

- a) the Client is the ultimate beneficial owner of all assets to be held in the Account; and
- b) neither the Client nor the ultimate beneficial owner of the assets to be held in the Account are US persons for purposes of US tax legislation ("US Person") which term includes US Citizens, residents of the US or those persons liable to US taxation for any reason whatsoever (including, but not limited to, US permanent residents, expatriates or former US permanent residents who have not complied with the relevant notification and filing requirements as provided by applicable law), unless otherwise notified to the Bank immediately in writing.

### **4. Instructions**

Instructions to the Bank may be given in writing, verbally, by telephone, email, facsimile (fax) or by any other mode of communication acceptable to the Bank subject to paragraph 42 hereof and may be addressed to the Bank at Turicum House, 315 Main Street, Gibraltar or to such other address as the Bank may provide to the Client. The Bank may execute instructions without requiring the prior receipt of a written confirmation and without requiring any proof of identity and may treat such instruction as fully authorised by and binding upon the Client, regardless of the amount involved and despite any error, misunderstanding or ambiguity in the terms of such instructions. If the Client does not communicate any instructions which may become necessary to the Bank in good time, the Bank may, but shall not be obliged to, take any necessary action at its own discretion in what it considers to be in the Client's best interests. The Bank is not responsible for any loss, which may result or derive from any error, misunderstanding, ambiguity or the absence of any authorised instructions, and the Client relieves the Bank from any and all liability arising therefrom. Notwithstanding the Bank's right to refuse to execute instructions at any time and for any reason, the Client accepts that it may be necessary for the Bank to contact the Client to confirm the validity of any instructions (which may lead to delays in execution).

The Bank may record any telephone conversation with the Client. The Client unambiguously consents that the Bank may at any time record and or log communications between the Client and the Bank, as permitted by law and regulation, for the purpose of using such recordings as evidence of instructions given or terms agreed upon for legal or regulatory purposes. Any recording will be the Bank's sole

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property, and the period for which any recording is retained will be determined by the Bank at the Bank's absolute discretion.

There may be occasions where the Bank is unable to act upon an instruction and in such circumstances the Bank shall endeavour to notify the Client promptly but in no event shall the Bank be liable for any loss, expense or damage incurred by reason of such omission to act.

Notwithstanding any signing mandate provided to the bank by the Client, such as for example sole, jointy or multiple party signatories, the Bank is duly authorised by the Client to trade securities or perform foreign exchange transactions by taking instructions, including telephone instructions, from one authorised signatory.

## **5. Consolidation**

The Bank may at any time and without notice to the Client combine and consolidate all or any Accounts held in the name of the Client or to which the Client is beneficially entitled and/or set-off any money, whether on current account or deposit account and whether in Pounds Sterling or in any other currency, which the Bank may at any time hold in any one or more Accounts against any liability owed to the Bank by the Client, whether in Pounds Sterling or in any other currency and whether such liability is or may be joint or several or primary or contingent.

## **6. Closure**

The Bank may at any time close any Account by giving Thirty days written notice of the intended date of closure. Accounts containing no assets or liabilities may be closed at the Bank's discretion but may also be reactivated at the Bank's discretion.

## **7. Joint and Partnership Accounts**

If the account is a Joint or Partnership Account: -

- a) the Bank may act on the signing authority provided to it, which may include the execution of a "Discretionary Portfolio Management Agreement" and/or similar discretionary agreement with the Bank, and/or "Third Party Investment Manager Agreement", and/or "Mandate Authorising Third Party to draw on Account-etc", and/or "Legal Charge Agreement" or such other document required in connection with the provision of credit facilities;
- b) notwithstanding any agreement among the signatories of a Joint Account, the Bank shall in the event of the death of one or more of those signatories regard the surviving signatory or signatories as fully entitled to operate the Account solely or jointly as the case may be;
- c) any liability whatsoever incurred by Joint Account holders to the Bank shall be joint and several; and

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- d) the liability of a partnership to the Bank shall be the joint and several liabilities of the partners in the partnership and such liability shall not be terminated, prejudiced or affected by the death of any one or more of such partners.

## **8. Company and Trust Accounts**

If the Client is a Company or a Trustee: -

- a) the Client shall provide a "Mandate" and "Resolution" to the Bank in the form required by the Bank and any other documentation required by the Bank;
- b) the Bank may act on the signing instructions contained in the relevant "Mandate" as amended from time to time; and
- c) the Client warrants and represents to the Bank that it has the capacity and power to enter into and to perform its obligations under these Terms and Conditions and that no provision of these Terms and Conditions, not the Client's performance of them, will cause the Client to be in breach of its Articles of Association or equivalent constitutional documents, any relevant regulatory or governmental consents or the laws of any relevant jurisdiction.

If the Client is a Trustee: -

- d) the Client warrants and represents to the Bank that the Client is duly authorised by the relevant trust deed and applicable law to open and operate an Account in the capacity of Trustee in accordance with these Terms and Conditions;
- e) the Client further warrants and represents that the client is duly authorised by the relevant trust deed and applicable law to execute or carry out any such transactions on or relating to the Account as listed non-exhaustively below;
  - i) any sale, purchase, exchange, reinvestment or disposal of the trust assets without restriction save that the Bank may at its discretion accept the trust assets into the Account;
  - ii) give standing investment instructions to the Bank or to authorise any third party to deal with the Bank regarding the type and extent of the investments;
  - iii) execution of a discretionary portfolio management agreement with the Bank or with any third party determining the type and extent of the investment;
  - iv) charging or encumbering of trust assets including any in connection with transactions in financial instruments;
  - v) execution of powers of attorney in favour of third parties;
  - vi) entering into credit agreements;
  - vii) cash withdrawals of securities;

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- viii) transfers of any amount from the Account to another account held in the name of the Trustee(s) in the Client's personal capacity or to an account held in the name of a third party;
  - ix) payment of cheques drawn on the Account and payable in favour of the Trustees(s) in the Client's personal capacity or to an account held in the name of a third party;
  - x) transfer(s) of trust assets without receipt of consideration and including transfer(s) of trust assets following the closing of the account relationship or any such similar transaction; and
- g) the Client will forthwith immediately notify the Bank in writing in the event of any changes to any settlor, trustee, beneficiary or protector and will, if required, provide full details of such changes to the Bank including providing all or any documentary evidence detailing such changes, as may be requested by the Bank from time to time.

## **9. Incapacity**

Unless notice of incapacity has been given in writing to the Bank by a legally appointed representative of the Client, the Bank shall have no liability for loss resulting from the Client's incapacity to act.

## **10. Statements**

Statements (including movements) and portfolio valuations shall be provided by the Bank periodically at the frequency and under the conditions requested by the Client. Joint Account statements will be sent to the first named signatory unless any other signatory so instructs in writing. Statements shall be accepted as true and accurate by the Bank unless the Bank receives written notice from the Client within 30 days following despatch. The Bank's own books and records (whether kept on paper, micro-film, by electronic or magnetic recording, or in any other mechanically reproducible form or otherwise) shall be deemed to constitute sufficient evidence of any obligations of the Client to the Bank and of any facts and events relied upon by the Bank.

## **11. Reversal of Entries**

The Bank may debit any Account for the amount of any draft, cheque or similar instrument previously credited in the event they are not paid, honoured or due to any error in addition to any costs incurred by the Bank as a result of non-payment or non-satisfaction. Cheques may be returned owing to the subsequent discovery of a forgery of prior endorsements, other irregularity or fraud at any time in the future.

## **12. Bank's Liability**

If the Client suffers any loss or incurs any expense due to the non-execution or late execution of instructions by the Bank, including instructions where the Bank or an associate has a material interest or conflict of interest in services or transactions with or

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for the Client, the Bank's liability shall be limited to an amount equal to the loss of interest caused by the non-execution or late execution of those instructions. The Bank, its employees, agents and/or officers shall not be liable for any loss or damage of any kind suffered by the Client, under or in connection with the services provided by the Bank (other than directly due to the Bank's, its employees, agents and/or officers negligence, wilful default or fraud), including those resulting from factors over which the Bank has no control including, but not limited to, errors, omissions, strikes, industrial action, failure of power supplies or equipment, interruption and/or failures or delays in transmission or delivery, provided in all cases that the Bank and its employees and officers have acted in good faith.

## **13. Indemnity**

The Client and the Client's agents, officers, representatives, executors and successors shall jointly and severally indemnify the Bank and each of its affiliates and their respective employees, agents, delegates and representatives and shall hold it and them harmless from and against any costs, losses, liabilities or expenses whatsoever which the Bank or they may sustain or incur or become responsible for in any manner directly or indirectly in connection with or as a result of any service performed or action permitted under these Terms and Conditions or any omissions on its or their part and including any cost, loss, liability or expense incurred as a result of factors over which the Bank has no control, including those resulting from acting on instructions received by telephone, facsimile (fax) or by any other mode of communication acceptable to the Bank provided that the Bank and its employees and officers have acted in good faith.

## **14. Nominees and Agents**

The Bank will hold or cause to be held Securities and Investments in NTIPs as nominee on trust for the Client absolutely and for the account and at the entire risk of the Client and the Client expressly authorises the Bank to deposit Securities and Investments in NTIPs with third parties selected by the Bank for the account of and at the sole risk of the Client. Securities and Investments in NTIPs may at any time at the Bank's option be held or registered in the name of the Bank's nominee or agent or third party and the Bank's only duty in this regard shall be to exercise reasonable care in the selection of such nominee or agent or third party. Securities and Investments in NTIPs may physically be located outside Gibraltar. The Bank shall not be liable for any act or omission or be accountable for the solvency of any nominee or agent or third party selected by it. Agents of the Bank may receive information in relation to Clients of the Bank in order to effect payment instructions. The Bank shall not be liable for loss or damage of any kind suffered by the Client arising from the use of this information.

## **15. Retention of Mail**

It is the Policy of the Bank not to retain any mail for Clients.

## **16. Interest, Fees and Charges**

Interest, commissions, fees and other charges (including charges for administrative costs and any charges incurred in closing an account) are payable by the Client to the Bank without any deduction or set-off and may be debited by the Bank to any account. The

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Bank may vary its applicable interest rates, commissions, fees and other charges from time to time.

## **17. Assignment**

The Client may not assign or otherwise transfer any of the Client's rights, interests or obligations in or relating to any Account without the prior written notice of the Bank.

## **18. The Bank's Discretion**

The Bank may at any time alter or amend these Terms and Conditions by written notice to the Client or on such other durable medium, as the Bank considers appropriate. Any right or power which may be exercised or any determination which may be made hereunder by the Bank may be exercised or made in the Bank's absolute and unfettered discretion and the Bank shall not be under any obligation to give reasons thereof.

## **19. Waiver**

Failure by the Bank to enforce or exercise, at any time, any of these Terms and Conditions or any other right or remedy does not constitute, and shall not be construed as, a waiver of such term, right or remedy and shall in no way affect the Bank's right to subsequently enforce or exercise these Terms and Conditions.

## **20. Notices by the Bank**

All notices, statements and other communications from the Bank to the Client shall be in writing and shall be delivered by hand, facsimile, electronic mail or post (subject to paragraph 15 above) and shall be deemed to have been duly received at the time such notice, statement or other communication is delivered by hand, transmitted by facsimile, stored in the Client's electronic mailbox or on the fifth day following posting by ordinary mail to the Client at the Client's address as held in the Bank's records or to such address as otherwise notified in writing by the Client to the Bank. The Client will indemnify the Bank against any liabilities, losses, damages, reasonable costs and expenses directly or indirectly incurred as a result of the delivery of all notices, statements and other communications. The Bank accepts no liability to the Client for any failure or delay in the delivery of notices, statements and other communications entrusted to a courier, submitted by post or entrusted for delivery pursuant to other means where such failure or delay was caused by circumstances beyond the Bank's control.

## **21. Declarations of Ownership**

The Bank or its nominee or agent may execute (as custodian and for and on behalf of the Client) any necessary declarations or certificates of ownership, beneficial or otherwise, as may be required under any applicable laws.

## **22. Disputes and Jurisdiction**

22.1 A dispute or claim arising between the Client and the Bank shall be governed by and construed in accordance with the law of Gibraltar.

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22.2 The Client and the Bank irrevocably agree that the seat of any dispute resolution procedure will exclusively be in Gibraltar.

## **Custodian Accounts**

### **23. Deposit of Securities**

The Client may request the Bank to open a Custodian Account to hold Securities deposited by the Client with and accepted by the Bank for retention in such account. The Client at the time of the deposit and during the period such a Custodian Account remains open shall continuously warrant ownership and control of all Securities, authority to deposit all Securities received by the Bank and to give instructions in relation to the Securities and that for the purposes of the Security Interest in favour of the Bank (see paragraph 32 below) all Securities are and will remain free from any legal or beneficial encumbrances. The Client shall be responsible for and shall immediately indemnify the Bank against any losses, liabilities, claims and demands arising from the use of the Custodian Account and the assets contained therein in addition to any expenses, taxes or other charges which the Bank shall or may incur in connection with any such deposited Securities.

### **24. Custodian Service**

The Bank will provide a service which comprises: -

- a) safe custody of the Securities;
- b) collection of interest, dividends when due and principal monies on maturity or sale of the Securities;
- c) payment of monies so collected to such account as may be designated by the Client;
- d) furnishing periodic statements of current holdings including Securities (for the avoidance of doubt the Bank does not provide a valuation service);
- e) notification to the Client of redemptions, rights issues, bonus issues and matters relating to corporate actions. If the Client does not respond to the notification within an appropriate time (which shall be determined by the Bank on consideration of the relevant facts in the Bank's knowledge at the relevant time) and the Bank has the option of selecting either cash or stock distributions the Bank as a policy will select cash distributions, unless the Client has expressly instructed the Bank otherwise, even if such a Client instruction is contrary to the default action to be adopted by the Bank as referred to in the corporate action. Unless advised otherwise in writing the Bank will take no action in relation to odd-lot share purchase offers.

### **25. Investment risks and warnings**

All investments entail an element of risk. The price and value of Securities and any income that may accrue may fluctuate and may rise or fall, and may also be affected

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by currency fluctuations. Any reference to past performance is not necessarily a guide to future performance. All opinions expressed by or on behalf of the Bank are subject to amendment or revocation. The degree of risk attached to individual investments may change in circumstances where it is not possible within a reasonable or sufficient time or even at all to realise the particular investment. Alternative investments, derivative or structured products and NTIPs are complex instruments, typically involve a high degree of risk and are intended for sale only to investors who are capable of understanding and assuming all the risks involved. Investments in emerging markets are speculative and considerably more volatile than investments in established markets. Risks include but are not necessarily limited to: political risks, economic risks, credit risks, currency risks and market risks. An investment in Complex Products or NTIPs should be made only after careful study of the product documentation or the most recent prospectus and other fund information, and basic legal information contained therein. Prospectuses and other fund information may be obtained from the fund management companies and/or from their agents. It is possible even with a relatively small adverse market movement for a derivative instrument (such as an options contract) to incur an unquantifiable loss, particularly if the deposit or margin paid is low in comparison to the overall value of a contract. From time to time the Bank may provide information for the benefit of the Client regarding an investment, which may be illiquid or not readily realisable. This means the market is or could become illiquid, the investment difficult to resell, and its proper price difficult to assess. The Client confirms to the Bank that the Client understands that there may be a decrease in the value of the investment as a result. Further information on special risks in Securities trading, including NTIPs, Options and Structured Investment Products can be provided on demand.

Further details on the associated risks in relation to investment strategies and asset classes are available from the Bank upon request.

## **26. Notices concerning Securities**

The Bank will endeavour to forward to existing Clients within a reasonable time all notices and other communications received in respect of the Securities purchased by the Bank on behalf of the Client. The Bank will not be in any way obliged to forward notices and other communications received in respect of Securities once the Bank has closed the Client's Account(s).

Except in the case of wilful default, neither the Bank nor any nominee, employee or agent shall have any liability for any failure to forward such notices or communication correctly or promptly or in sufficient time for instructions to be given by the Client with regard to any matters referred to in such notices or communications.

In the absence of contrary instructions from the Client, the Bank may exercise any rights or satisfy any liabilities arising from or in respect of the Securities as the Bank at its sole discretion thinks fit, and may debit the Client with the associated costs arising from the taking of such an action. The Bank will not exercise any voting rights in respect of the Securities where the Client enters into a 'Discretionary Portfolio Management Application and Agreement' with the Bank.

The Bank shall not be liable for any loss arising or derived from the exercise of such rights or the satisfaction of such liabilities or the failure by the Bank to take any such action.

## 27. Bank's Interest

Details of how the Bank manages or avoids actual or potential conflicts of interest are set out in our Conflicts Policy as follows:

### 27.1 Conflict of Interest Policy (the Policy)

#### 27.1.1 Introduction

The Policy makes up one part of the Bank's ongoing commitment to adhere to the highest standards of ethical conduct in relation to the Bank's treatment of the Bank's Clients and conflict management. This document aims to summarise the key aspects of that Policy.

#### 27.1.2 The Policy

The Bank's Policy is to manage, and where necessary prohibit, any action or transaction that may pose a Conflict between the Bank's, or the Bank's employees' interests and those of the Bank's Clients.

#### 27.1.3 Rationale

Like every global financial services provider that engages in a wide range of businesses and activities, the Bank faces potential Conflicts on a regular basis. The Bank strives to manage them in a manner consistent with the highest standards of integrity and fair dealing. In order to ensure that these standards are met the Bank continually and proactively seeks to identify and manage Conflicts to avoid both the appearance of, as well as actual, impropriety.

#### 27.1.4 Identification of Conflicts

27.1.4.1 Conflicts are unavoidable in an integrated global financial services operation. The Bank undertakes a number of activities and provides a number of services where there is a risk that the interests of one or more Clients could be compromised. These include:

- a) trading on behalf of Clients;
- b) advising in mergers and acquisitions;
- c) managing portfolios of investments;
- d) providing investment advice;
- e) underwriting and/or placing of securities

27.1.4.2 While it is not practical to define precisely or create an exhaustive list of all relevant Conflicts that may arise in the Bank's business, there are several identifiable categories of Conflicts:

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- a) **Client-Bank Conflicts**  
Potential Conflicts may exist between Client interests and the interests of a particular business unit or the Turicum Group generally. These types of Conflicts include situations where the Bank may be unfairly advantaged at the expense of a Client. For example, executing a transaction for the Client where the Bank has knowledge of other actual potential transactions in the relevant security.
- b) **Client-Client conflicts**  
Potential Conflicts may also exist between different Clients or different types of Clients. In these situations, one Client may receive preferential treatment, which could negatively impact another Client. For example, where an aggregation of orders favours one Client over another.
- c) **Employee-Client Conflicts**  
Potential Conflicts may also exist between the interests of an employee and the interests of Clients. In these situations, employees' interests may not be aligned with the best interests of the Clients. For example, where a staff member front-runs a Client's instruction.
- d) **Conflicts within Turicum Private Bank**  
Potential conflicts may also arise within the Bank. Examples of these include, but are not limited to, a division of the Bank favouring its interest over another division which as a result would be inconsistent with the interests of the Bank or where an employee's interest in the outcome of a particular issue differs from the Bank's interest.
- e) **Conflicts between Turicum Private Bank and third parties**  
Potential conflicts may also arise between the Bank and third parties. Examples of these include, but are not limited to, persons who are directly or indirectly linked to the firm by control (e.g. shareholders / controllers influencing decisions against the interest of the Bank).

## 27.1.5 Conflicts Management

27.1.5.1 The Bank employs a number of techniques to manage and mitigate conflicts of interest including:

- a) using physical and electronic information barriers to stop and control the flow of information between certain parts of the Bank's business;
- b) monitoring to ensure proper functioning of the information barriers;

- c) a reputational risk review process for the escalation of Conflicts that fall outside of established Conflicts-resolution procedures;
- d) provision of internal guidance and training to relevant employees to raise their awareness of Conflicts and how to deal with Conflicts when they arise; and
- e) Organisational structure that ensures proper segregation of duties and oversight of the respective functions.

27.1.5.2 In addition, there are various other policies and processes in place that address Conflicts.

#### 27.1.6 Use of Disclosure

Where the Bank has used all reasonable efforts to manage a Conflict but those efforts are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a Client will be prevented, the Bank will consider whether disclosure is appropriate or whether, bearing in mind the risks involved, the Bank should refrain from acting for one or more of the Bank's Clients.

27.2 While the Bank believes that the measures contained in the Bank's Conflicts Policy should ensure, with reasonable confidence, that risks of damage to the Client's interests will be prevented the Bank feels that it is prudent to alert the Client to the situation in which a conflict of interest might arise. For example, when the Bank recommends a transaction to the Client or enters into a transaction for the Client, the Bank or one of the Bank's associates, could be:

- a) acting as agent or arranging a transaction for an associate or another Client or investor and also acting as agent for the Client in the same transaction;
- b) buying and selling units in a Collective Investment Scheme where the Bank, or an associate is the trustee, operator (or an adviser of the trustee or operator) of the scheme;
- c) buying Securities where an associate is involved in a new issue, offer for sale, rights issue, takeover offer, other offer or similar transaction concerning the Security;
- d) executing a transaction for or with the Client in circumstances where the Bank has knowledge of other actual or potential transactions in the relevant Security;
- e) holding a position in, or trading, dealing or market making in, Securities purchased or sold by the Client;

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- f) sponsoring, underwriting, sub-underwriting, placing, purchasing, arranging, acting as stabilising manager for, or otherwise participating in, the issue of Securities purchased or sold by the Client;
  - g) acting as adviser or Banker to, or having any other business relationship with, or interest in, the issuer (or any of its associates or advisers) or any Securities purchased or sold by the Client or advising or acting as Banker to any person in connection with a merger, acquisition or take-over by or for any such issuer (or associate);
  - h) being the issuer of any Securities, purchased or sold by the Client (or being adviser or Banker to, or having any other business relationship with) the trustee, custodian, operator or manager of, or investment adviser, to any form of Collective Investment Scheme in which interests are purchased or sold by the Client; or
  - i) acting as Banker to the Client and/or extending credit to the Client.
- 27.3 If the Client objects to the Bank acting, on the basis set out in this clause, notwithstanding that the Bank has a material interest or conflict of interest it should notify the Bank's chief Risk Officer in writing. Unless such notification has been received from the Client, the Bank will assume that the Client does not object to the Bank so acting.
- 27.4 Any instructions received to buy or sell Securities (other than equities) may be fulfilled (in whole or in part) by the sale to or the purchase from the Client of the relevant Securities by an associate of the Bank. This will generally not be disclosed to the Client in advance.
- 27.5 **Other Remuneration**  
It is the Policy of the Bank not to receive or pay any fee or commission or provide any nonmonetary benefit to a party other than the client concerned (or a person acting on the client's behalf). The Bank may, however, on occasions make or receive minor non-monetary benefits to other legal entities or third parties.

The relationship between the Bank and the Client is as described in these Terms and Conditions. Neither the relationship, nor the services the Bank provides, nor any other matter, will be deemed to give rise to any fiduciary or equitable duties on the Bank's part, or that of any associate, which would prevent or hinder it from market-making or otherwise acting in dual capacity (either as principal or agent) in respect of Securities sold or purchased or to be sold or purchased by the Client, in doing business with associates, connected Clients and other investors whether for the Client's account or for the account of associates, connected Clients and/or other investors or in any other way from acting as provided in these Terms and Conditions.

## **28. Research**

- 28.1 When the Bank disseminates research to the Client, the Bank shall do so in accordance with the requirements of the Bank's Conflict of Interests Policy as

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disclosed in paragraph 27.1 above. Where the Bank is in possession of, or otherwise aware of, investment research that the Bank might disseminate to the Bank's Clients but the Bank has not yet disseminated that research, the fact that the research has not yet been disseminated will not prevent the Bank or any associate from acting as a market maker or from executing orders that the Bank or the associate has received from Clients in relation to the investments that are the subject matter of the research.

- 28.2 The Bank or the Bank's associates may from time to time provide research reports and recommendations to the Client (but are under no obligation to do so). Where the Bank does so, the Bank need not (subject to the Bank's obligations under the Gibraltar legislation) ensure that any advice or information the Bank gives is given to the Client either before or at the same time as it is made available to the Bank's associates or to the Bank or their employees, officers or directors. Further, it is possible that the Client may not receive such advice or information at the same time as the Bank's other Clients.
- 28.3 Subject to the Bank's obligations under Gibraltar legislation [], the Bank will be under no obligation to take account of any reports and recommendations issued to the Clients when the Bank advises or deals with or for the Client. Further, the Bank need not ensure that the Bank's advice or dealings for the Client takes account of any research which has been carried out for the Bank's or the Bank's associates' market makers or otherwise with a view to assisting the Bank or the Bank's associates own activities.
- 28.4 The Client agrees not to pass on any research publication to another person without the Bank's prior written approval. Where the Bank does consent, such passing on must be in accordance with any restrictions set out in the document concerning the class of person to whom the document may be passed on.

## **29. Central Clearing**

Securities deposited by the Client may at the Bank's sole discretion be deposited with correspondent Banks or in a central clearing facility in the name of the Bank (subject to paragraph 14) and such deposit will be subject to the laws of the jurisdiction of the correspondent Bank or central clearing facility, but for the account of the Client and at the Client's sole risk. Securities so deposited may be commingled with securities belonging to other parties and the Client acknowledges that identification by distinctive numbers of securities owned by the Client may not be possible or feasible.

## **30. Bank's Responsibility**

The Bank will exercise the same care with respect to the custody of Securities deposited by the Client as it would exercise in respect of its own-property of a similar nature (save that the Bank need not maintain any insurance for the Client's benefit). The Bank exercises due skill, care and diligence in the selection, appointment and periodic review of any Sub-Custodian but, apart from this obligation, the Bank shall not be liable for any acts or omissions of that Sub-Custodian except where such Sub-Custodian is a nominee company owned by the Bank (in which case we shall be liable for its negligence, wilful default and fraud). Notwithstanding the above, the Bank will be responsible only for the

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performance of such duties as are set out in these Terms and Conditions or as may otherwise be agreed between the Client and the Bank in writing. All collections of funds or other property paid or distributed in respect of Securities will be made at the Client's own risk.

## **31. Return of Securities**

Upon closure of a Custodian Account, the Bank will forthwith deliver all deposited Securities to the Client upon the Client satisfying all amounts due and payable to the Bank, the Client acknowledging the Bank's lien over such Securities until payment is made in full. The Bank shall not be bound to return Securities bearing serial numbers identical to those deposited so long as the Securities returned to the Client are of the same class, denomination, nominal amount and rank pari passu with those recorded as held by the Bank in the Client's name.

## **Security Interest (in case of liabilities by the Client to the Bank)**

### **32. Charge**

The Client agrees that in the event of and for so long as any monies or liabilities are outstanding to the Bank, the Client charges to the Bank by way of first fixed charge: -

- a) the Deposit in any currency and whether in addition to or by way of renewal of or replacement for any sums previously deposited with the Bank by the Client or otherwise together, in each case, with any interest from time to time in respect thereof to the intent that such charge shall operate as a release in the Bank's favour of the Bank's debt to the Client represented by the Deposit; and
- b) all Securities and all benefits, rights, and entitlements arising thereof as a continuing security for the payment and discharge to the Bank on demand of all monies and the satisfaction of all liabilities, present or future, actual or contingent (including liabilities as surety or guarantee) for which the Client may be or become liable to the Bank on any account or in any manner whatsoever and whether alone or jointly with any other person or persons and whether as principal or surety, together with all interest, commissions, fees, charges, costs and expenses incurred by the Bank in relation to the Client or the property hereby charged and which the Bank may incur in enforcing its charge or in obtaining payment from the Client or in attempting so to do.

### **33. Security**

So as to provide greater security over the Deposit and Securities, the Client agrees that, if and for so long as any monies or liabilities are outstanding to the Bank: -

- a) any mandate which, but for the charge in favour of the Bank, would govern the operation of the Deposit or any Custodian Account shall be suspended;
- b) notwithstanding the foregoing, the Bank may at any time at its sole discretion be entitled (but not bound) to accept any request from the Client given in conformity with any suspended mandate with regard to the Deposit or any

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Securities (including withdrawal of monies and payment of interest) but in acting upon any request, the Bank shall be deemed not to have released its charge or otherwise waived its rights;

- c) no liability whatsoever shall attach to the Bank by reason of the Bank acting or refusing or neglecting to act on any request from the Client;
- d) if the Deposit shall be held at any time on an interest-bearing account, it shall at expiry be re-deposited upon such terms as may be agreed between the Bank and the Client or, failing such an agreement, upon such terms as the Bank shall determine at its sole discretion; and
- e) the Client will, upon the Bank's request, execute and sign all such transfers, powers of attorney or other documents as the Bank may require to affect the registration of the Securities in the name of the Bank or its nominee or a purchaser or a transferee.

## **34. Margin**

The Client shall maintain such margin of security in relation to the aggregate of the monies and liabilities as referred to in paragraph 33 above as the Bank shall from time to time require by the deposit with the Bank on demand of additional sums (which shall form part of the Deposit) or additional collateral approved by the Bank, which shall be charged absolutely to and held by the Bank subject to these Terms and Conditions.

## **35. Bank's Certificate**

For all purposes, including any legal proceedings, a certificate by any of the Bank's officers as to the existence and sums of monies and liabilities for the time being due or incurred by the Client and/or stating the existence of a default by the Client of any monies and/or liabilities owing to the Bank shall be conclusive evidence thereof.

## **36. Default**

If the Client fails to pay or settle on the due date or on demand any of the monies or liabilities referred to in paragraph 33 above, or any event of default as specified in any facility agreement between the Bank and the Client is triggered, the Client acknowledges that the Bank may at any time thereafter and without prejudice to any other right or remedy available to it: -

- a) apply the whole or parts of any Deposit in or towards payment of any such monies or liabilities as aforesaid as the Bank may think fit;
- b) for such purposes convert at the Client's expense the whole or any part or parts of any Deposit into any other currency; and
- c) sell the Securities or any part of them in such manner and at such price or prices, without being responsible for loss, as the Bank may deem expedient subject to applicable law and (subject to paragraph 38 below) apply the net proceeds thereof in or towards payment of any such monies or liabilities as aforesaid as the

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Bank may think fit. Upon any sale of the Securities or any of them which the Bank may make or purport to make the Client will indemnify the Bank against any claim which may be made against the Bank by a purchaser by reason of any defect in the Client's title to such Securities.

## **37. Avoidance of Payments**

Subject to applicable law, no assurance, security or payment which may be avoided or adjusted under any legislation relating to bankruptcy or insolvency and no release, settlement or discharge given or made by the Bank on the faith of any such assurance, security or payment shall prejudice or affect the right of the Bank to recover from the Client or to enforce the security created hereby.

## **38. Suspense Account**

The Bank may, at any time, place and keep, for such time as it may at its sole discretion think prudent, any monies received, recovered, or realised by virtue of the security hereby given or under any other guarantee or security to the credit of either the Client or such other person or transaction (if any) on suspense account as the Bank shall think fit, without any immediate obligation on the Bank's part to apply the same or any part thereof in or towards the discharge of the monies as aforesaid, or to treat the Client's liability as reduced.

## **39. Calls**

The Client shall duly and promptly pay all calls which may from time to time be made in respect of unpaid monies arising or deriving from any of the Securities and will duly and promptly pay any other monies which may lawfully be required to be paid arising or deriving in respect of any of the Securities.

## **40. Exclusion**

None noted.

## **41. Data Protection**

- a) The EUs 'General Data Protection Regulations' (the 'GDPR') imposes requirements on persons who process 'personal data' as defined in the GDPR. The Bank's obligation is to comply with the terms of the GDPR and the Bank shall be responsible for any loss or damage suffered by the Client as a result of the Bank's failure to comply with the GDPR. If the GDPR also applies to the Client, the Client agrees to comply with it and shall be responsible for any loss or damage suffered by the Bank as a result of the Client's failure to comply with it.
- b) The Bank shall process personal data given to it or held by it in relation to the Client only for the purposes of implementing these Terms and Conditions and/or the Account Application and Agreement and/or for any purpose in connection with any services provided or offered to the Client by the Bank.

- c) The Client understands that the data protection legislation in Switzerland (which is outside the European Economic Area ('EEA')) may not give the same protection as the data protection legislation inside the EEA. Where Client personal data is transferred outside of the EEA, Bank takes all reasonable steps to ensure that the recipient of such information keeps it safe and secure. d) If relevant, the Client represents and warrants to the Bank that the Client has all necessary and relevant unambiguous consents and permissions of all relevant data subjects whose personal data is provided to the Bank by the Client to carry out the processing of personal data that these Terms and Conditions contemplate, including any transfers of personal data within the EEA and outside the EEA.
- e) If the Client is a 'data controller' within the meaning of the GDPR and the Bank processes personal data on the Client's behalf, the Bank agrees to act only on the Client's instructions and to comply with obligations equivalent to the obligations imposed on a data controller by the GDPR.
- f) Particular circumstances exist whereby the Bank is exempted to disclose certain information in conformity with the GDPR and in correlation with the relevant sections of the Proceeds of Crime Act 2015.
- g) Further information on how your personal data is collected, your rights under GDPR, how long it is retained for, the grounds for processing, the purposes for processing and the persons to whom your personal data may be transferred can be found in the Bank's Privacy Statement. Which is available on our website at: [www.turicum.com](http://www.turicum.com)

#### **42. Hours of Business**

The Bank shall not be liable for any acts it is requested to take resulting from instructions and/or messages from the Client outside of the Bank's business hours. Information regarding applicable cut-off times for payments and other transactions, and the Bank's business hours are available upon request.

#### **43. Cancellation**

The Client has a right to cancel certain services and products booked or arranged through the Bank. The right must be exercised within 14 days from the effective date by giving notice in writing to the Bank. The right to cancel does not extend to transactions carried out under these Terms and Conditions that occur during the cancellation period, where the price depends on fluctuation in the financial market place outside the Bank's control.

#### **44. Deposit Guarantee Scheme**

The Client may have the right to claim under the Gibraltar Deposit Guarantee Scheme ('DGS') for losses resulting from the Bank being unable to meet its obligations. Further information in respect of the DGS can be obtained from the DGS Board by visiting the DGS website: <http://www.gdgb.gi/> or by contacting the DGS at (350) 200 40283.

#### **45. Investor Compensation Scheme**

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The Client may have the right to claim under the Gibraltar Investor Compensation Scheme ('GICS') for losses resulting from the Bank not being unable to meet its obligations. Further information in respect of the GICS can be obtained from the GICS Board by visiting the GICS website: <http://www.gics.gi/> or by contacting the GICS at (350) 200 40283.

## **46. Complaints**

Complaints will be handled in accordance with the Bank's internal complaint handling procedures, a copy of which is available on written request. If there is a complaint about the Bank it should be first raised with the Relationship Manager who will provide, if appropriate, a copy of the procedure as well as the Bank's initial response. The Client may write to the Chief Executive Officer or the Chief Risk Officer.

## **47. Information about the Bank**

The registered office of the Bank is: Turicum House, 315 Main Street, Gibraltar. The Bank can be contacted by telephone at (350) 200 44144 or by fax at (350) 200 44145. The Bank is authorised and regulated by the FSC.

Information about the Bank's authorisation and licence can be checked by visiting the FSC's website: [www.fsc.gi](http://www.fsc.gi), or by contacting the FSC by telephone at (350) 20040283. The FSC's address is: PO Box 940, Suite 3, Ground Floor, Atlantic Suites, Europort Avenue, Gibraltar.

## **48. Client Classification**

Unless otherwise agreed the Client will be treated as a Retail Client which will afford the Client the highest level of regulatory protection. If the Client is acting as agent for someone else, the Bank will treat the Client alone as the Bank's Client for the purpose of Gibraltar law and the FSC regulations and the Client will be liable, in addition to that other person, in respect of any transactions the Bank enters into with or for the Client.

The Client must contact his Relationship Manager if he wishes to discuss the possibility of being classified as a Professional Client and receiving a lower level of information and regulatory protection. If the Bank agrees with the Client that the Client is to be treated as a Professional Client on the basis of the Client's experience and understanding of the investments or markets in which the Client wishes to deal, the Client will be required to sign and return to the Bank a separate 'Professional Client Reclassification Notice'. When a Professional Client gives an execution-only order to the Bank, it will be assumed that the Client has the appropriate knowledge and experience. When the Bank provides a Professional Client with investment advice the Bank will assume that such existing Clients as of November 1, 2007 will continue to have the appropriate knowledge and experience. A Professional Client will not have the right to claim under the GICS for losses resulting from the Bank being unable to meet the Bank's obligations.

If the Bank categorises the Client as a Professional Client, the Client may request that the Bank re-categorises the Client as a Retail Client, however, please note that the Bank is

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not obliged to agree to the Clients' request, which will be assessed, on its merits at the Bank's sole discretion.

The Client must contact their Relationship Manager if the Client is in any doubt about their classification.

## **49. Language**

These Terms and Conditions are available only in English and all communications in connection with the services the Bank provides shall be in English unless the Bank notifies the Client otherwise. From time to time marketing material may be available in French, German or Spanish. In case of conflict between the language versions the English version will be considered to be correct. The Client must communicate with the Bank in English.

## **Summary of Services**

### **50. Account Balances**

A minimum balance of EUR 500,000 (or currency equivalent) is required for the following services and charges to apply:

### **51. Interest**

51.1 If the Client asks the Bank, the Bank will advise the Client about the interest rates applied to:

- a) any credit Balance. Credit interest, if applicable, on current account balances is paid quarterly in arrears, subject to market conditions; and
- b) any debit balance on any account.

51.2 If the Client defaults in paying any amount when due, interest will be payable by the Client to the Bank on demand. Interest will accrue on such sum due until the Client settles it (before as well as after judgement) and will be calculated at the debit default rate set by the Bank under clause 51.3 (Default Debit Rate). If the Default Debit Rate cannot be ascertained for any reason or is insufficient to compensate the Bank for the Bank's loss or expense, as determined solely by the Bank, such interest will be calculated at the rate per annum determined by the Bank to be equal to the loss of interest suffered by the Bank.

51.3 The Default Debit Rate is the rate that the Bank would pay for the funds in the relevant currency and for the relevant term in the London inter-bank market as determined by the Bank at the Bank's absolute discretion, plus where the relevant default relates to an advance, overdraft or guarantee, five percent (5%) per annum.

51.4 The Bank is entitled to vary interest rates (including the Default Debit Rate) at any time, either with immediate effect or with effect from a specified date by giving the Client notice in writing.

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## 52. Remittances

52.1 For outgoing electronic payments, the account name, number and IBAN number of the remitting account holder, and the account name, number and IBAN number of the receiving account holder must be included in the payment instruction.

52.2 A payment instruction will be deemed to have been received by the Bank if communicated by the Client in accordance with Section 4 of these Terms or if received by the Bank from a payment service provider acting on behalf of the Client. The Bank will treat a payment instruction received from a payment service provider as if it was made by the Client.

52.3 The Bank reserves the right to refuse to act on any payment instruction, whether incoming or outgoing, if the Bank has reasonable concerns relating to the authenticity of the instructions, particularly in relation to fraud or unauthorised use.

52.4 Payment instructions communicated to the Bank on a day which is not a business day will be deemed to have been received by the Bank on the following business day.

52.5 The Bank will only process payment instructions during the Banks normal hours of business.

52.6 The Bank does not offer Faster Payment Services. The Bank however ensures that domestic Sterling payments (Gibraltar payments), other than future dated payments, reach the beneficiaries bank on the business day after the payment instruction is received by the Bank. To this end the payment instruction must reach the Bank before the required cut-off time, should it not, then the payment will be processed on the following business day.

52.7 The Bank applies cut-off times for payment instructions as set out below. Payment instruction received after the relevant cut off times will be deemed to have been received on the following business day. These payment instruction cut-off times relate to payments submitted to the Bank by fax, email or letter. All times stated below are Gibraltar time.

<u>Service</u>	<u>Cut-off time</u>
Domestic sterling transfer	15:00
Cross currency	As for international payments
International payments	
USD	Value next working day
AED	Value next working day
ILS	11:00
CAD	12:00
CHF	12:30
EUR	13:00
GBP	15:00

For any other currencies, please contact your relationship manager.

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52.8 The Bank is under no obligation to make payments which would result in an un-approved debit position on the Client's account.

52.9 Payments received for a Client in the currency of the Client's account will be credited by the end of the business day. If the payment is received in a currency other than the currency of the Client's account then the incoming payment will be converted accordingly. If this is the case, the Bank will use its best endeavours to convert the incoming payment as soon as reasonably possible.

52.10 If a Client makes a payment instruction to a person with a bank account in the EEA and the payment is in EUR, the payment will reach the recipient Bank no later than the next business day from the receipt of payment instruction, provided cut-off times are met. An extra business day may be added when the payment instruction is initiated by way of a paper instruction. Payments in other EEA currencies within the EEA will reach the recipient Bank no later than 4 business days from receipt of the payment instruction, provided cut-off times are met. For other payments, please consult your Relationship Manager for processing times.

52.11 Details of Fees for the execution of payment instructions, including currency conversion (if any) are available from the Bank's Tariff of fees.

52.12 Where a Client has instructed the Bank to make a payment, the Bank will process these instructions upon receipt on a business day. Payment instructions once processed by the Bank are usually not capable of being cancelled.

52.13 The Client may set up a Standing Order or Direct Debit with the Bank which states:

- (a) Payment will happen on a specific date;
- (b) On the last day of a certain period; or

If the Client wishes to cancel a Standing Order or Direct Debit payment instruction, written confirmation of this cancellation must be received by the Bank one business day prior to payment date.

52.14 The Client agrees to use all reasonable steps to keep payment instruction and account details, including security information, secret and secure at all times. Such details must not be provided to anyone else not authorised to operate the Client account. If the Client suspects or knows that any such information has been compromised they must inform the Bank immediately.

52.15 The Client accepts and understands that the Bank may disclose information, including confidential information and personal data, to any third-party payment service provider used for the purposes of processing a payment instruction.

52.16 Clients must read Bank statements carefully on receipt or when they are available online and inform the Bank immediately if there are any transactions that are not recognised or if a payment instruction has been executed incorrectly. Upon notification, the Bank will make immediate efforts to trace the transaction and notify the Client of the outcome.

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(a) The Client is not liable for any losses incurred as a result of:

- (i) any incorrectly executed transaction where the Bank is unable to prove the correct amount of the transfer was made or where the Bank failed to make available any information concerning the transaction which the Bank is required by law to disclose;
- (ii) any unauthorised transaction where the Bank is unable to prove that the payment transaction was authenticated, accurately recorded and not affected by a technical breakdown or some other deficiency;
- (iii) any unauthorised transaction that occurs on the Client account following notification by the Client that account information, including security details, have been compromised;
- (iv) any unauthorised transaction arising from the use of stolen or misappropriated security information in which case the Client is liable to a maximum of EUR 50 unless the theft or misappropriation was not detected by the Client prior to the payment;

(b) The Bank is not liable for any losses incurred as a result of:

- (i) Any unauthorised or incorrectly executed payment instruction where the Client has failed to notify the Bank without undue delay;
- (ii) Any unauthorised transaction where the Client has acted fraudulently;
- (iii) Any unauthorised transaction where the Client has acted with intent or has been negligent in failing to comply with the requirement to keep account information, including security details secret and secure; and
- (iv) Any unauthorised transaction arising from the use of stolen account details or security information where the Client has failed to inform the Bank.

Where the Client is liable, as set out above, the Client is liable for any resulting overdraft charges incurred, if any, due to the unauthorised or incorrectly executed payment instruction. The Bank will make reasonable efforts to recover the funds involved and may charge the Client for an amount reasonably corresponding to the Banks costs in connection with the recovery of funds.

52.17 For the purposes of payment services, the competent authority in Gibraltar is the Gibraltar Financial Services Commission, PO Box 940, Suite 3, Ground Floor, Atlantic Suites, Europort Avenue, Gibraltar. Complaints with respect to payment services may also be directed to the Gibraltar Financial Services Commission.

52.18 Transactions of any kind relating to the services provided by the Bank may be delayed for an undetermined, but not unreasonable, amount of time in order for adequate checks be taken to ensure the integrity of the transaction. Such checks include, but are not limited to due diligence, fraud, identity or requests from third parties such as correspondent banks. The Bank will not be liable for any consequences of transactions being delayed due to such checks taking place.

## **53. Reporting**

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The Bank may be required by legislation, regulation, order or otherwise to report to tax authorities (of any jurisdiction) on an ongoing basis certain information about the Client (including any relevant Controlling Parties) which shall include but not be limited to, his Account details and balances, any income or interest paid, any investment products held with the Bank, his asset value and other information that the Bank may hold pertaining to the Client (including any relevant Controlling Parties), including any tax identification numbers, social security numbers or similar. The Bank may require further information regarding the Client's and any relevant Controlling Parties tax status and identity which the Client shall forthwith provide. The Bank shall not be held liable to the fullest extent permitted by the applicable law for any losses suffered by the Client and any relevant controlling Party as a result of the Bank's compliance with any legislation, regulation, order or otherwise in respect of any reporting of the Client's and any relevant Controlling Parties information held by the Bank to any tax authorities.

The Bank is also required to report securities transactions under the 'Markets in Financial Instruments Regulations' ('MiFIR') to the Gibraltar Financial Services Commission for further transmission to the Clients National securities Regulator and other relevant EU authorities. The information to be reported includes transaction and client details.

## **54. Severability**

If any provision of this Agreement is or becomes unenforceable or invalid for any reason then such provision shall be excluded from the Agreement and the remaining provisions shall remain valid and enforceable.

## **Additional Services**

Section 56 to 59 are only applicable to Clients that have opted to have these services.

## **56. Online Banking**

56.1 By selecting this service, Turicum Private Bank Limited agrees to provide the Client with the required login credentials that will enable electronic view only access to the relevant account.

56.2 It is the responsibility of the Client to ensure that the security details provided are kept safe at all times and are disclosed only to those individuals who are authorised to have online access to the account specified in the application.

56.3 Turicum Private Bank Limited accepts no liability for any losses incurred due to negligence or improper behaviour on the part of the Client or authorised users that may have occurred as a result of utilising the online banking service.

56.4 By selecting this service, the Client acknowledges that access to this electronic service is offered on an intermittent basis. Furthermore, the Bank reserves the right to suspend this service at any given time, in particular when there are reasonable grounds to suspect unauthorised or fraudulent use of the service is taking place.

56.5 Please notify your relationship manager should you wish to cancel online access for the relevant account.

## **57. Investment Advisory Agreement**

57.1 The Client hereby appoints and authorises Turicum Private Bank Limited ("the Advisor") to Advise the Client and provide investment advisory services with respect to the purchase, sale, subscription and to otherwise invest and deal in securities, currencies, financial instruments and rights of all kinds including options contracts and investments in non-traditional funds, at such times and on such terms as the Advisor with the Client's instructions deems expedient.

57.2 The Client acknowledges that the choice of the Advisor is made upon their own choice, responsibility and involvement. Therefore, neither the Advisor nor any of its officers or employees shall be liable for any diminution in value of the Portfolio, or for any loss, damage, expense or liability that may be incurred or sustained by the Client as a result of any instruction given on their behalf from the Advisor to the Custodian.

57.3 The Client hereby indemnifies and holds harmless the Advisor and its own officers and employees against all liabilities, losses, damages, costs or expenses of any kind which may be incurred by any of them and all actions proceedings which may be brought by or against them in any manner directly or indirectly in connection with the present agreement. Providing the Advisor acts in good faith and that there is no evidence of negligence, bad faith, wilful default or fraud in the performance of its duties.

57.4 The appointment of the Advisor shall remain in force until such time as the Advisor receives written instructions from the Client to the contrary and shall remain in force notwithstanding the death of the Client. The Client hereby agrees that upon their death, the legal and authorised representative of the Client shall ratify and confirm all instructions given to the Advisor.

57.5 The Advisor hereby accepts and agrees appointment by the Client.

57.6 The Advisor undertakes to carry out its duties under the agreement in strict compliance with the law applicable to any of the arrangements contained in the present agreement.

57.7 For the avoidance of doubt the Client hereby agrees that unless the Client specifically instructs the Advisor in writing that the latter shall not initiate oral communication with the former, the Advisor may initiate such oral communication where in the opinion of the Advisor it is appropriate to do so for the purpose of this agreement.

57.8 The Advisor is expressly prohibited from transferring or disposing of the Portfolio or in any part thereof to an account of its own or of any third party and the Advisor is not entitled to have the property of any part thereof assigned, delivered, pledged, charged or in any other way used as security against the liabilities of the Advisor or of any third party.

57.9 The Advisor shall act in all respects within the specific investment instructions provided by the Client whether specifically or by reference to some other document. In the execution of its duties under the agreement, the Advisor shall act exclusively upon

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and in accordance with the written (or where appropriate and authorised) telephonic instructions of the authorised signatories of the Client as specified on the Signature Card or the duly appointed and authorised representative(s) or attorney of the Client. In the event of the authorised signatories of the Client or the representative(s) or attorney of the Client not being able for any reason whatsoever to give instructions as may be required, the Advisor is expressly authorised to act in appropriate circumstances to preserve the value of the Portfolio, as it is most reasonable to do so, in accordance with the "Client Investment Profile", as an agent of necessity and following what in the sole opinion of the Advisor would have been the instructions of the Client.

57.10 The Advisor shall not be under any liability whatsoever on account of anything done or suffered by the Advisor in accordance with or in pursuance of any request or instruction of the Client and including any act taken by the Advisor as an agent of necessity or in any way arising from or connected with the agreement. Whenever pursuant to the agreement any communication is to be given by the Client to the Advisor, the Advisor may accept as sufficient evidence thereof a document signed or purported to be signed by or on behalf of the authorised signatories of the Client as specified on the "Signature Card" or of the representative(s) or attorney of the Client, whose signature the Advisor is for the time being authorised by the Client to accept, or a message by telex or facsimile machine or other electronic system transmitted or purported to be transmitted by the relevant person(s) or in the case of telephonic communication by such relevant person(s).

57.11 In the event of the Advisor incurring any liability or suffering any action, proceeding, claim or demand against it by any reason of the performance of any of its duties under the terms of the present agreement, the Advisor shall have recourse against the Client for all costs, to satisfy any liability, claim or demand that is made against the Advisor, and extending to any expenses in resisting or disputing such liability, action, proceeding, claim or demand, the Client shall indemnify the Advisor up to the full amount of such liability and/or payment and/or expenses.

57.12 The Advisor shall not be liable to the Client for any loss sustained by the Client by reason of any act or omission of any third party appointed by the Advisor under the agreement.

57.13 The Advisor shall not be required to take any legal action on behalf of the Client unless fully indemnified to the Advisor's reasonable satisfaction for all costs and liabilities likely to be incurred or suffered by the Advisor, and if the Client requires, the Advisor to take any action which in the opinion of the Advisor might make the Advisor liable for the payment of monies or liable in any other way, the Advisor shall be kept indemnified up to any reasonable amount and form satisfactory to the Advisor as a prerequisite to taking any such action.

57.14 As remuneration for the services provided by the Advisor under the agreement, the Advisor is entitled to commissions, charges and fees as specified in the "Fee Agreement" document. The commissions and fees are charged quarterly in advance.

57.15 Any variation to the provisions of the agreement shall be recorded in writing and signed by the authorised officer of the Client and the Advisor and shall be appended to this document. And, except in so far as a variation is so recorded and appended, the

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Advisor shall not be required or entitled to act in accordance with any purported variation.

57.16 The present agreement shall not affect the relationship between the Client insofar as the Advisor's objective regarding this agreement is an advisory one, and therefore solely acts on behalf and regarding the instructions given by the Client or one of its authorised representatives.

## **58. Discretionary Portfolio Management Agreement**

58.1 The Client) hereby appoints and entrusts to the Bank the management of the Property which is and/or will be deposited in the Account.

58.2 The Bank may, or as otherwise agreed between the Client and the Bank, deposit the Property with any Swiss or Liechtenstein bank or branch or subsidiary thereof and/or such other financial institutions providing custodianship services as the Bank may determine from time to time.

58.3 Subject to any Specific Investment Guidelines communicated to the Bank by the Client and accepted by the Bank and recorded, either specifically or by reference to some other document, in the 'Account Application and Agreement' from time to time as to the manner of the management of the Property, the Bank shall have full authority and complete discretion, without any limitation, to determine the investment and re-investment of the Property from time to time. The discretion hereby granted shall, without prejudice to its generality, include all investment of the Property on foreign money markets, the sale and purchase of securities of any type, foreign exchange transactions, dealing in precious and other metals and coins and other commodities and, in connection therewith, in options and futures contracts, conversion or exchange of securities, the carrying out of arbitrage or subscriptions, exercising of options or their sale at best, investment in the form of time deposits directly or on a fiduciary basis (always, though in the Bank's name, at the Client Company's risk) as well as any other investment that the Bank deems advantageous and appropriate in the management of the Property.

58.4 In order to give effect to the various arrangements contained in the Agreement the Bank is empowered and instructed to sign or execute on behalf of the Client all and any documents relating to the Property, custodianship arrangements and otherwise as may be necessary.

58.5 The Bank undertakes to carry out its duties under the Agreement in strict compliance with the law applicable to any of the arrangements contained in the Agreement and in accordance with best banking practice. For the avoidance of doubt, the Client hereby agrees that unless the Client shall have specifically instructed the Bank in writing that the Bank shall not initiate oral communication with the Client the Bank may initiate such oral communication where in the opinion of the Bank it is appropriate to do so for the purpose of the Agreement.

58.6 Subject to Clause 58.7 below, the Bank is expressly prohibited from transferring or disposing of the Property or any part thereof to an account of its own or of a third party

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or parties and the Bank is not entitled to have the Property or any part thereof assigned, delivered, pledged, charged or in any other way used as security against the liabilities of the Bank or of any third party.

58.7 Notwithstanding the provisions of Clause 58.66 above, the Bank is authorized -

(a) To pledge the Property (or any part thereof) against liabilities of the Client;

(b) To pledge the Property (or any part thereof) in favour of the custodian institution holding the Property in order to secure facilities for investment purposes within the usual borrowing margins;

(c) To draw from the Property in the Account in accordance with the indemnities due to the Bank and provided for in the Agreement.

58.8 In the event that the Bank does not have complete discretion to manage the Property as provided in Clause 58.3 the Bank shall act in all respects within the Specific Investment Guidelines provided by the Client from time to time and recorded in 'Account Application and Agreement', whether specifically or by reference to some other document, from time to time. Where in the Specific Investment Guidelines there is provision for instructions to be given from time to time, then in the execution of its duties under the Agreement, the Bank shall act exclusively upon and in accordance with the written (or where appropriate and authorised) telephonic instructions of the authorised signatories of the Client as specified on the Signature Card or the duly appointed and authorised representative or attorney of the Client. In the event of the authorised signatories of the Client Company or the representative or attorney of the Client Company not being able for any reason whatsoever to give instructions as may be required, the Bank is expressly authorized to act in appropriate circumstances to preserve the value of the Property as an agent of necessity and following what in the sole opinion of the Bank would have been the instructions of the Client Company.

58.9 The Bank shall not be under any liability whatsoever on account of anything done or suffered by the Bank in accordance with or in pursuance of any request or instruction of the Client and including any act taken by the Bank as an agent of necessity or in any way arising from or connected with the Agreement. Whenever pursuant to the Agreement any communication is to be given by the Client to the Bank. The Bank may accept as sufficient evidence thereof a document signed or purporting to be signed by or on behalf of the duly authorised signatories of the Client as specified on the Signature Card or of the representative or attorney of the Client whose signature the Bank is for the time being authorised by the Client to accept or a message by telex or facsimile machine or other electronic system transmitted or purporting to have been transmitted by the relevant person or persons or in the case of telephonic communication by such relevant person or persons.

58.10 In the event of the Bank incurring any liability or suffering any action, proceeding, claim or demand against it by reason of the performance of any of its duties under the terms of the Agreement the Bank shall be entitled to have recourse to the Property to satisfy any liability, claim or demand that is made against the Bank or to discharging the cost of any indemnity to which the Bank is entitled under the Agreement and, should the Property prove insufficient to meet such liability or payment and all expenses incidental

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thereto or expenses incurred in resisting or disputing (whether successfully or not) such liability, action, proceeding, claim or demand, the Client shall indemnify the Bank to the extent of any such insufficiency up to the full amount of such liability and/or payment and/or expenses as aforesaid.

58.11 The Bank shall not be liable to the Client for any loss sustained by the Client by reason of any act or omission of any third party appointed by the Bank under the Agreement on the Client's instructions.

58.12 Without prejudice to any other provisions of the Agreement, the Client hereby undertakes to hold harmless and indemnify the Bank against all loss, damage, actions, proceedings and claims that may be brought against or suffered or incurred by the Bank by reason of the Bank's performance of the Bank's duties under the terms of the Agreement including all legal professional and other expenses incurred and in particular (but without limitation) this protection and indemnity shall extend to any such items aforesaid as shall arise as a result of loss, delay, non-delivery or error in transmission of any communication of whatever nature or as a result of acting upon any forged document, signature or verbal communication.

58.13 The Bank shall not be required to take any legal action on behalf of the Client unless fully indemnified to the Bank's reasonable satisfaction for all costs and liabilities likely to be incurred or suffered by the Bank and if the Client requires the Bank to take any action which in the opinion of the Bank might make the Bank liable for the payment of monies or liable in any other way the Bank shall be kept indemnified in any reasonable amount and form satisfactory to the Bank as a prerequisite to taking any such action.

58.14 Subject to the provisions of the Agreement and in particular but without prejudice to the generality of the foregoing, to Clauses 58.7, 58.10, 58.15 and 58.16, the Bank undertakes to transfer or assign at any time upon demand in writing from authorised officers of the Client the ownership of the Property and the benefit and obligations of the Agreement to a third party named by the Client.

58.15 All costs, duties and taxes of any kind arising from the Agreement and all and any other liabilities so arising whether directly or indirectly shall be debited to the Account without the need for any further specific authorisation. In so far as such costs, duties, taxes and liabilities are not paid from the Account the Client undertakes to make payment to the Bank of and to indemnify the Bank in respect of these amounts upon demand.

58.16 As remuneration for the services provided by the Bank under the Agreement the Bank is entitled to commissions, charges and fees as specified in "THE BANK'S TARIFF OF FEES". The commissions and fees are based on the average value of the Property calculated over the six months ending on the day prior to the day on which the commissions and fees are due and payable, this day shall be the 1st day of January and the 1st day of July in each year in respect of the six months commencing on that day and next following. The Bank is hereby authorised to draw all commission, charges and fees, as well as any other expenses incurred by the Bank, at the Bank's discretion from the Account, or from any other account of the Client with the Bank.

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58.17 Except in the event of the occurrences provided for in Clause 58.14 above, the Agreement shall remain in force unless terminated at any time by either party upon not less than six month's written notice effective from the next June 30th or December 31st after the giving of such notice.

58.18 The General Terms and Conditions of the Bank, the Safe Custody Regulations of the Bank, the Payment and Delivery Instructions by Facsimile, Telephone or other Electronic Transmitting System and the General Deed of Pledge as the same may be amended from time to time shall apply in respect of such matters as are not otherwise provided for in the Agreement and the authorised officer of the Client signatory to the Agreement confirms that the Client has received and he has read such General Terms and Conditions and Safe Custody Regulations.

58.19 Any variation to the provisions of the Agreement including the Investment Guidelines contained in the 'Account Application and Agreement' shall be recorded in writing and signed by the Client or an authorised officer of the Client.

## **59. Appointment of Third Party Investment Manager**

59.1 The Client hereby appoints and authorises the party mentioned in the 'Account Application and Agreement' (hereinafter the manager) to act on the Clients behalf as investment manager with power to purchase, sell, subscribe for and otherwise to invest and deal in securities, currencies, financial instruments and rights of all kinds including options and investments in non-Traditional Funds, at such times and on such terms as the manager may deem expedient, and the Client hereby authorises and directs the bank as custodian of the assets for the time being held for the account of the account of the Client (hereinafter the portfolio) to accept and act on instructions given by the authorised signatories of the manager, in respect of the portfolio (but without any right to draw funds out of the Client account(s) with the bank).

59.2 The Client hereby expressly authorises and requests: a) the bank to pay all fees of the manager out of monies held for the account of the Client, on first presentation of the managers invoices to the bank and b) the bank to provide the manager with a copy of all correspondence regarding the portfolio and to respond to enquiries from the manager thereon.

59.3 The Client acknowledges and accepts that the Client has selected the manager on the Clients own responsibility and without involvement or recommendation by the bank and accordingly neither the bank nor any of its officers or employees shall be liable for any diminution in value of the portfolio or any failure to secure a particular level of income or capital gain for the portfolio and for any other loss, damage, expense or liability that may be incurred or sustained by the Client as a result of any instruction given by the manager to the bank.

59.4 The Client hereby indemnifies and holds harmless the bank and its officers and employees against all liabilities, losses, damages, costs or expenses of any kind which may be incurred by any of them and all actions and proceedings which may be brought by or against them in any manner directly or indirectly in connection with the Clients appointment of the manager provided that the bank acts in good faith.

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59.5 The appointments of the manager shall remain in force until such time as the bank receives written instructions from the Client to the contrary and shall continue in force notwithstanding the death of the Client. The Client hereby covenants with the bank that after the Client's death the personal representatives of the Client shall ratify and confirm all instructions given by the manager. The manager agrees and accepts appointment by the Client and agrees to be bound by the Bank's General Terms and conditions and to provide to the bank such documentation to further assure this appointment as the bank may require from time to time.

## **60. Effective Date**

These Terms and Conditions are effective from 1<sup>st</sup> April 2019.