

Terms and Conditions for the Provision of Registered Agent and Registered Office Services - BVI Limited Partnerships

**1 INTERPRETATION**

1.1 These terms and conditions (these Terms) set out the entire agreement between Harneys Fiduciary and the Partnership for the provision of registered agent and registered office services and related corporate administration services to the Partnership. In these Terms the following words shall have the following meanings:

**Act** the Partnership Act, 1996

**Articles** the articles of partnership of the Partnership as in effect from time to time.

**Beneficial Owner** the natural person(s) who ultimately owns or controls a legal person or on whose behalf a transaction or activity is being conducted and includes, though not restricted to, a natural person who ultimately owns or controls, whether directly or indirectly, ten or more per cent of the shares or voting rights in the legal person.

**Business Day** any day which is not a Saturday, a Sunday or a public holiday in the British Virgin Islands on which banks are open for non-automated business.

**Data Protection Law** the applicable Law of any jurisdiction relating to the protection of Personal Data, including but not limited to the Regulation.

**Effective Date** the date of formation of the Partnership or the date on which Harneys Fiduciary began providing registered agent and registered office services to the Partnership, if later.

**Electronic Record** has the same meaning as in the Electronic Transactions Act.

**Electronic Transaction Act** the Electronic Transactions Act, 2001.

**Fee Schedule** the schedule of fees published by Harneys Fiduciary and in effect from time to time for the provision of registered agent and registered office facilities and related services which may be varied in accordance with the Variation provision of these Terms. The current Fee Schedule is available on request at any time.

**FSC** the Financial Services Commission of the British Virgin Islands.

**General Partner** a general partner (as defined in the Act) from time to time of the Partnership.

**Harneys Law Firms** the firms of Harney Westwood & Riegels, Harney Westwood & Riegels LLP, Harney Westwood & Riegels Singapore LLP, Harneys Gil and Aristodemou Loizides Yiolitis LLC (practising as Harneys) and Zuill & Co and any entities, whether partnerships, companies or otherwise, owned or controlled by, or under common control with any of the foregoing.

**Harneys Fiduciary** any one of Harneys Corporate Services Limited or Craigmuir Corporate Services Limited each of whose principal office is at Craigmuir Chambers, PO Box 71, Road Town, Tortola, VG1110, British Virgin Islands.

**Law** includes rules of common law and equity as well as any statute or statutory provision which revises, amends,

extends, consolidates or replaces it, or which has been amended, extended, consolidated or replaced by it, and any orders, rules, regulations, instruments or other subordinate legislation made under it, or made by applicable authority.

**Limited Partner** a limited partner (as defined in the Act) from time to time of the Partnership.

**Memorandum** the memorandum of partnership of the Partnership, as in effect from time to time.

**Partners** collectively each Limited Partner and General Partner. **Partner** any General Partner or Limited Partner.

**Partnership** the partnership which has requested directly or indirectly, that Harneys Fiduciary provide it with registered office services and which Harneys Fiduciary has agreed to do under these Terms.

**PEP** an individual who is or has been entrusted with prominent public functions and members of his immediate family, or persons who are known to be close associates of such individuals.

**Personal Data** personal information relating to an identified or identifiable living individual as defined in applicable Data Protection Law which is disclosed or made available to Harneys Fiduciary by or on behalf of the Partnership in connection with the provision of registered office services.

**Privacy Policy** the [Harneys Fiduciary Privacy Policy](http://www.harneysfid.com/privacy-policy) (as amended from time to time) and available at [www.harneysfid.com/privacy-policy](http://www.harneysfid.com/privacy-policy).

**Registrar** the Registrar of Corporate Affairs in the British Virgin Islands.

**Regulation** means the General Data Protection Regulation 2016/679.

**Special Terms** any special terms and conditions agreed in writing between the Partnership and Harneys Fiduciary (as approved by a duly authorised representative of Harneys Fiduciary) and which are expressed to be Special Terms applying to the provision of registered agent and registered office services and related corporate administration services to one or more Partnership. Any Special Terms shall form part of these Terms. In the event of any conflict between the terms and conditions set out in this document and the Special Terms, the Special Terms shall prevail.

1.2 For the purpose of these Terms:

- (a) use of the singular includes the plural and the masculine gender shall include the feminine and the neuter and vice versa;
- (b) the headings in these Terms are for convenience only and shall not be interpreted to limit or otherwise affect the provisions of these Terms;
- (c) **written, in writing** and **maintain** includes all modes of representing, reproducing or maintaining words in visible form, including in the form or an Electronic Record;

- (d) any requirement as to delivery under these Terms include delivery in the form of an Electronic Record; and
- (e) any requirement as to execution or signature under these Terms can be satisfied in the form of an electronic signature as that term is used in section 8(1) of the Electronic Transactions Act.

**2 APPOINTMENT OF HARNEYS FIDUCIARY**

2.1 With effect from the Effective Date, Harneys Fiduciary shall act as the registered agent of the Partnership and shall provide the registered office of the Partnership at its address in the British Virgin Islands and shall perform the services set out in Schedule 1. The Partnership's use of Harneys Fiduciary's services shall be deemed and constitutes the Partnership's acceptance of these Terms.

**3 DOCUMENTS AND INFORMATION TO BE SUPPLIED TO HARNEYS FIDUCIARY**

- 3.1 The Partnership shall promptly supply to Harneys Fiduciary originals or copies (as the case may be) of the following:
- (a) the Articles and any amendments, additions, supplements or alterations effected from time to time;
  - (b) where Harneys Fiduciary has agreed to maintain the register of Partners, any subscription documentation or equivalent executed by the Limited Partners in relation to their admission to the Partnership;
  - (c) any offering material (howsoever called) issued to the public in connection with partnership interests in the Partnership;
  - (d) notices and minutes of Partners' meetings, unless the Partnership has elected to keep such records at a place other than the office of its registered agent;
  - (e) written resolutions passed by the Partners including the General Partner, unless the Partnership has elected to keep such records at a place other than the office of its registered agent ;
  - (f) copies of all notices and other documents filed by or on behalf of the Partnership with any governmental or regulatory authority;
  - (g) any documentation relating to the withdrawal or addition of any Partner or to the assignment or transfer (whether absolute or by way of security) of any interest in the Partnership; and
  - (h) powers of attorney or other documents (howsoever called) entered into by a General Partner conferring authority on one or more persons to act on behalf of such General Partner in relation to the Partnership.
- 3.2 The Partnership warrants and represents that the statements contained in the Memorandum are true, accurate, complete and not misleading in all respects and shall promptly notify Harneys Fiduciary upon becoming aware that any such statement is or may become untrue, inaccurate, incomplete or misleading in any respect.
- 3.3 The Partnership shall promptly notify Harneys Fiduciary of any threatened, pending or actual litigation against it in any jurisdiction and any action, petition or other steps (whether

court-related or not) which is proposed or has been taken in respect of its winding-up, arrangement with creditors, insolvency, reorganisation or analogous procedure, in each case in respect of which its Partners or other authorised persons have actual notice.

**4 COMPLIANCE OBLIGATIONS**

- 4.1 The Partnership shall promptly supply or procure the supply to Harneys Fiduciary of all such information, documents and instructions as are requested by Harneys Fiduciary from time to time in order to fulfil its obligations under all applicable laws and regulations relating to the prevention of money laundering, terrorism financing, financial crime or breaches of international sanctions or other laws and regulations applicable to the Partnership or Harneys Fiduciary including:
- (a) an explanation in writing of the nature of the Partnership's activities, an indication of actual and expected turnover and the source of funds;
  - (b) evidence satisfactory to Harneys Fiduciary of the identity of (i) the General Partner; (ii) the Beneficial Owners of the General Partner (where the General Partner is a corporate entity); (iii) the directors of the General Partner (where the General Partner is a corporate entity) (iv) any person (or persons) granted a general authority or a power of attorney to conduct the affairs of the General Partner; and (v) any other person (or persons) on whose instructions Harneys Fiduciary may act in relation to the Partnership;
  - (c) evidence satisfactory to Harneys Fiduciary of the identity of the Limited Partners; and
  - (d) such other information and documentation as Harneys Fiduciary may from time to time reasonably require in relation to the Partnership, its Partners, Beneficial Owners or activities including in relation to the steps taken pursuant to the paragraph below.
- 4.2 The Partnership undertakes and warrants for the benefit of Harneys Fiduciary and the Harneys Law Firms:
- (a) it will take all reasonable steps to satisfy itself that all monies paid to the Partnership as equity and other funds passing through the Partnership do not represent the proceeds of crime, and that it does not engage in, any unlawful activity;
  - (b) the Partnership complies and will comply with all laws in any jurisdiction which apply to it;
  - (c) that the Partnership and its Partners and Beneficial Owners will not use the Partnership to handle, conceal or in any way utilise funds related to the proceeds of any criminal conduct including but not limited to tax fraud or evasion, money laundering, drug trafficking, terrorism or false accounting; and
  - (d) that the Partnership and its Partners and Beneficial Owners (in each case with respect to the affairs of the Partnership and any income or gains that it produces) will be compliant with all of their respective tax reporting obligations and will make all tax returns and provide all reporting required to be made in any jurisdiction.

4.3 The Partnership shall without delay notify Harneys Fiduciary in writing if:

- (a) it knows or has reasonable cause to believe that any of the information provided to Harneys Fiduciary about the Beneficial Owners of the Partners has changed or that the manner in which such Partners or Beneficial Owners hold their interest in or control of the Partnership has changed and provide details of any such changes to the satisfaction of Harneys Fiduciary;
- (a) it knows or has reasonable cause to believe that any Partner or Beneficial Owner of a Partner is or becomes a PEP; or
- (b) it knows or has reasonable cause to believe that the Partnership or any Partner or Beneficial Owner of a Partner is subject to or affected by applicable sanctions or other restrictions.

4.4 Harneys Fiduciary may refuse to perform any or all of its obligations under these Terms if it determines that to do so would constitute a criminal or regulatory offence in the British Virgin Islands or would otherwise contravene a law of the British Virgin Islands or any other laws or regulations which apply to Harneys Fiduciary or its directors, officers or employees. Harneys Fiduciary will inform the Partnership promptly of any decision to refuse to perform an obligation under these Terms made in accordance with this provision unless prevented from doing so by applicable law.

4.5 Different clients of Harneys Fiduciary have different relationships with Harneys Law Firms but in the normal course of events the majority of our clients expect due diligence collected for anti-money laundering purposes and other information about the Partnership obtained by Harneys Fiduciary to be made available to Harneys Law Firms if the Partnership has already or intends to instruct a Harneys Law Firm or wishes a Harneys Law Firm to act on its behalf. Client information and due diligence collected by Harneys Fiduciary will be shared with a Harneys Law Firm in those circumstances unless the Partnership specifically notifies Harneys Fiduciary in writing that it shall not do so.

## 5 TAX

5.1 The Partnership has sole responsibility for the management of its tax and legal affairs including making any applicable filings and payments, complying with any applicable laws and regulations and fulfilling all reporting and declaration obligations in any jurisdiction. Harneys Fiduciary does not provide legal or tax advice. We recommend that the Partnership and/or its Partners and Beneficial Owners obtain their own independent advice as to the fiscal consequences of forming and maintaining the Partnership. Such advice should be updated on a regular basis especially if any circumstances change.

## 6 RECORD KEEPING OBLIGATIONS

6.1 The Partnership shall keep records and underlying documentation of the Partnership in such form as: (a) are sufficient to show and explain the Partnership's transactions; and (b) will, at any time, enable the financial position of the Partnership to be determined with reasonable accuracy,

including accounts and records (such as invoices, contracts and similar documents) in relation to: (i) all sums of money received and expended by the Partnership and the matters in respect of which the receipt and expenditure takes place; (c) all sales and purchases of goods by the Partnership; and (d) the assets and liabilities of the Partnership. The Partnership shall provide Harneys Fiduciary without delay any such records and underlying documentation on request and acknowledges that the FSC and other competent authorities in the British Virgin Islands acting pursuant to the exercise of a power under an enactment may direct that Harneys Fiduciary request any such records or underlying documentation from the Partnership.

6.2 The Partnership shall retain its records and underlying documentation for a period of at least five years from the date: (a) of completion of the transaction to which the records and underlying documentation relate; or (b) the Partnership terminates the business relationship to which the records and underlying documentation relate, and for these purposes "business relationship" means a continuing arrangement between the Partnership and one or more persons with whom the Partnership engages in business, whether on a one-off, regular or habitual basis.

6.3 The records of the Partnership required to be kept under the Act shall be kept: (a) in written form; or (b) either wholly or partly as electronic records complying with the requirement of the Electronic Transactions Act. Where any such records or underlying documentation are kept at a place other than at the office of Harneys Fiduciary, the Partnership shall provide Harneys Fiduciary with a written record of the physical address of the place or places at which the records and underlying documentation are kept including the name of the person who maintains and controls the Partnership's records and underlying documentation. Where any of the places at which the records and underlying documentation are kept or the name of the person who maintains and controls the Partnership's records and underlying documentation change, the Partnership shall provide Harneys Fiduciary with the physical address of the new location of the records or the name of the new person within fourteen (14) days of the change.

6.4 The Partnership shall promptly inform Harneys Fiduciary of any corporate action, changes to the Partners, beneficial owners, or constitutional documents or agreements or the creation of any charge, mortgage or other security interests over its assets or property and shall promptly supply to Harneys Fiduciary all such information and documents in connection therewith as may be requested by Harneys Fiduciary from time to time in order to assist the Partnership and Harneys Fiduciary in complying with its obligations under the laws of the British Virgin Islands.

## 7 RELIANCE ON INSTRUCTIONS

7.1 In performing its duties, Harneys Fiduciary may rely upon any written or oral instructions given, or purported to be given, by (i) a General Partner, employee or liquidator of the Partnership; (ii) any agent identified in writing by a General Partner employee or liquidator of the Partnership as able to

give written or oral instruction (including, for the avoidance of doubt, one appointed under a security document); or (iii) an intermediary representing the Partnership (including any legal adviser, auditor, manager or administrator) described below.

- 7.2 Unless Harneys Fiduciary has written authenticated instructions from the General Partner(s) to the contrary, Harneys Fiduciary reserves the right to act on the instructions (oral or written) of such an intermediary representing or purporting to represent the Partnership for the purposes of taking any action required in connection with the provision of services under these Terms. In addition Harneys Fiduciary reserves the right to not take any action or disclose any information to any person without the confirmation of such an intermediary.

## **8 FEES AND DISBURSEMENTS**

8.1 Unless otherwise agreed in writing by a duly authorised representative of Harneys Fiduciary:

- (a) if Harneys Fiduciary forms the Partnership, Harneys Fiduciary shall be entitled to receive a formation fee
- (b) payable promptly when invoiced in accordance with the Fee Schedule in effect as at the Effective Date (such fee to include acting as registered agent and provision of the registered office for the calendar year in which formation of the Partnership occurred);
- (c) Harneys Fiduciary shall be entitled to receive an annual fee for acting as registered agent and for the provision of the registered office of the Partnership payable no later than 31 March in each year following the year in which formation of the Partnership occurred in accordance with the Fee Schedule in effect at the time when the relevant fee is invoiced;
- (d) Harneys Fiduciary shall be entitled to receive a fee for the provision of other services set out in Schedule 1 to these Terms and other fees as set out in the Fee Schedule payable promptly when invoiced in accordance with the Fee Schedule in effect at the time of provision of such services; and
- (e) Harneys Fiduciary shall be entitled to such penalty fees for late payment of amounts due as are set out on the Fee Schedule in effect from time to time.

8.2 Any variation of fees agreed by a duly authorised representative of Harneys Fiduciary shall in the absence of any express agreement to the contrary only apply for a period of 12 months from the Effective Date or the date of such agreement (whichever is the later).

8.3 Harneys Fiduciary shall be entitled to recover from the Partnership all out of pocket expenses and disbursements (including, but not limited to, filing and formation fees paid to the Registrar, charges for messengers and couriers, printing, postage, photocopying, scanning, telephone charges, secretarial overtime (where attributable to the Partnership's special needs) and other similar costs and expenses), properly incurred or paid by Harneys Fiduciary on behalf of the Partnership or otherwise in the performance of its services under these Terms. If Harneys Fiduciary is requested to perform any services not covered by these

Terms it shall inform the Partnership and subject to Harneys Fiduciary agreeing to provide the services and unless otherwise agreed it shall charge the then applicable Partnership standard rate for such service. Harneys Fiduciary has strict anti-bribery and anti-corruption policies and procedures. Harneys Fiduciary will not on the Partnership's behalf make any payment which may, in its absolute discretion, constitute a breach of such policies and procedures by Harneys Fiduciary, the Partnership or any other person.

8.4 Harneys Fiduciary shall have no obligation to supply services if the Partnership is in default concerning the payment of any fees or disbursements to Harneys Fiduciary, a Harneys Law Firm or any other affiliate of Harneys Fiduciary.

8.5 Any requests received by Harneys Fiduciary from the Partnership for legal advice or services and any legal issues arising or assistance required (in either case as determined by Harneys Fiduciary) from or in relation to documentation received at the registered office including, but not limited to, the updating of the statutory registers, may be referred to an appropriate Harneys Law Firm and the Partnership agrees to settle promptly the resulting fees and disbursements of the relevant Harneys Law Firm, which shall be charged in accordance with its fee rates and terms and conditions of business as then in effect.

8.6 Harneys Fiduciary shall not be responsible for any late payment penalties for which the Partnership may be liable as a result of delayed or failed payment by or on behalf of the Partnership howsoever caused including by way of electronic funds transfers received with insufficient details or non-receipt of transfer advices.

## **9 ACCOUNTS AND BILLING**

9.1 Invoices for fees and all other amounts due from the Partnership will be submitted by email only and the Partnership undertakes to provide at all times a current and valid email address for this purpose. Unless stated otherwise, payment is due within 14 days of the date on the invoice. Where any sums are not paid within 45 days of the invoice, interest shall become payable on the invoice from the date on the face of the invoice until the date of payment at an annual rate of 8.5%. For any sums not paid within 90 days of the date of the invoice Harneys Fiduciary reserves the right to rescind and forfeit any discounts or preferential fee arrangements which otherwise applied to the relevant invoice and re-invoice at the full amount which otherwise would be payable. In the event that it becomes necessary to engage collection agents, tracing agents, lawyers or other third parties to secure payment of any invoice which has been outstanding for more than 120 days, the Partnership will be responsible for the payment of all such charges on an indemnity basis which shall be added to the relevant invoice. Harneys Fiduciary has a lien over all documents held by it in respect of any unpaid fees and disbursements. All fees, expenses and disbursements payable to Harneys Fiduciary pursuant to these Terms shall be paid net of any taxes or surcharges.

**10 COMMUNICATION**

10.1 Harneys Fiduciary will use various forms of electronic communication in the course of performing its functions. With electronic communication there is a risk of non-receipt, delayed receipt, inadvertent misdirection or interception by third parties. Harneys Fiduciary uses virus scanning software to reduce the risk of viruses and similar damaging items being transmitted through emails or electronic storage devices. Harneys Fiduciary also expects the Partnership to operate such software. However, electronic communication is not totally secure and the Partnership agrees that Harneys Fiduciary shall not be held responsible or liable whatsoever for any damage or loss caused by viruses or for communications which are corrupted or altered after dispatch. The Partnership also agrees that in connection with electronic communication, Harneys Fiduciary shall not be liable whatsoever for any damage or loss caused as a result of non-receipt, delayed receipt, inadvertent misdirection or interception by third parties especially in relation to Personal Data, commercially sensitive or confidential material. Any email communications to or from Harneys Fiduciary may be monitored for operational or business reasons.

**11 THIRD PARTY ENFORCEMENT ACTION**

11.1 In the event of the appointment or purported appointment of any administrator, receiver, liquidator, administrative receiver, provisional liquidator or similar agent in relation to the Partnership, or any attempt by any person to enforce a charge over shares of the Partnership (an Appointment), the Partnership agrees that Harneys Fiduciary may in its absolute discretion: (i) at the Partnership's expense obtain and rely on advice from a reputable qualified lawyer in any relevant jurisdiction as to the powers of such person; (ii) comply with any requirements or requests of such person which it reasonably believes to be binding on it; and (iii) exercise its right to rely on instructions of an agent appointed under a security document. Harneys Fiduciary shall inform the Partnership of any Appointment as soon as reasonably practicable after it becomes aware of such Appointment.

**12 TERMINATION**

12.1 Harneys Fiduciary may terminate its appointment under these Terms:

- (a) by giving not less than 90 days' written notice to the Partnership;
- (b) by giving not less than 30 days' written notice to the Partnership if the Partnership shall have committed any breach of its obligations under these Terms and shall have failed to make good such breach within 30 days of receipt of notice from Harneys Fiduciary requiring it to do so;
- (c) by giving not less than 5 days' written notice to the Partnership if the Partnership is in material breach of any regulatory law applicable to it or is subject to any international financial sanction or is otherwise designated as a person with whom Harneys Fiduciary is prohibited from dealing; or

(d) by giving notice to the Partnership at any time that the Partnership is struck off the Register as a result of failure to pay its annual fee to the Registrar.

12.2 The Partnership may terminate the appointment of Harneys Fiduciary under these Terms:

- (a) by giving not less than 90 days' written notice to Harneys Fiduciary;
- (b) by giving not less than 30 days' written notice to Harneys Fiduciary if Harneys Fiduciary shall have committed any breach of its obligations under these Terms and shall have failed to make good such breach within 30 days of receipt of notice served by the Partnership requiring it to do so; or
- (c) immediately by notice if Harneys Fiduciary ceases to be lawfully able to act as the registered agent of the Partnership.

12.3 Termination of these Terms shall be without prejudice to outstanding payment obligations, the exclusion of liability and indemnification provisions set out in these Terms as well as any other provision of these Terms intended to survive the termination of these Terms and both party's rights with respect to any antecedent breach hereof by the other.

12.4 Harneys Fiduciary shall, on the termination of its appointment under these terms and upon payment by or on behalf of the Partnership of any outstanding fees, costs and expenses due to Harneys Fiduciary or Harneys Law Firm (including its standard fees relating to the transfer of registered agent) deliver any succeeding service provider or as the Partnership may direct all documentation in its possession relating to the affairs of the Partnership and which are the property of the Partnership provided that Harneys Fiduciary shall be entitled but not obligated to make and retain copies thereof in its closed files archives and archive all other correspondence files, Personal Data and other records to the Partnership in accordance with the then current record retention policy of Harneys Fiduciary.

12.5 The Partnership shall, on termination of the appointment of Harneys Fiduciary under these Terms, if still in existence, procure the passage of a resolution to transfer the registered agent and registered office of the Partnership to an alternative service provider and location respectively and Harneys Fiduciary shall be entitled (but not required) to serve notice on the Registrar that it is no longer acting as the registered agent or providing the registered office of the Partnership. The Partnership shall amend all letterheads and other material to cease mentioning the name of Harneys Fiduciary or its address from the date of termination of the appointment of Harneys Fiduciary under these Terms.

**13 NON EXCLUSIVITY**

13.1 The Partnership acknowledges and accepts that Harneys Fiduciary may provide corporate administration services to any other person it may think fit whether for its own account or that of any other person or entity including, without limitation, any person or entity the Partnership may regard as a competitor or otherwise having interests adverse to the Partnership. Nothing herein contained shall constitute a partnership between the parties hereto nor shall any employee, officer or director of Harneys Fiduciary

be deemed to be an employee of the Partnership or entitled to any remuneration or other benefits from the Partnership.

**14 LIMITATION OF LIABILITY AND INDEMNITY**

- 14.1 Harneys Fiduciary shall not be liable for any damages, losses, claims, proceedings, demands, liabilities, costs or expenses whatsoever suffered or incurred by the Partnership or any other person at any time from any cause whatsoever arising out of or in connection with these Terms or related to the performance or non-performance of the services provided under these Terms unless arising directly as a result of Harneys Fiduciary's fraud, wilful default or gross negligence or that of any of its directors, officers, employees or agents (as the case may be).
- 14.2 The Partnership shall indemnify (on a full indemnity basis) and hold harmless Harneys Fiduciary, their successors and assigns and their respective directors, officers, employees, agents and partners (collectively, the **Indemnified Persons**) and each of them, as the case may be, against all liabilities, obligations, losses, damages, penalties, actions, proceedings, claims, judgments, demands, costs, expenses or disbursements of any kind (including legal fees and expenses) whatsoever which they or any of them may incur or be subject to in consequence of these Terms or as a result of the performance of these Terms or as a result of the performance of the services under these Terms except and to the extent that the same are as a result of the fraud, wilful default or gross negligence of the relevant Indemnified Person and this indemnity shall expressly inure to the benefit of any such Indemnified Person existing or future and shall remain in force notwithstanding any termination of such person's relationship with Harneys Fiduciary.
- 14.3 Subject always to the express provisions of these Terms, the limitations of liability and indemnification provided by these Terms shall not be deemed to be exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, the constitution of the Partnership or otherwise, and shall continue after the termination of the appointment of Harneys Fiduciary by the Partnership.
- 14.4 Harneys Fiduciary shall not be liable in tort, statutory duty, pre-contract or misrepresentation (other than fraudulent misrepresentation) or otherwise for (i) any consequential, indirect, special, incidental, punitive or exemplary loss; or (ii) any economic losses (including loss of revenues, profits, contracts, business or anticipated savings), arising out of or in connection with these Terms in each case whether or not Harneys Fiduciary has been advised of the possibility of such loss or damage and howsoever incurred. For the avoidance of doubt Harneys Fiduciary shall not be so liable for any loss of goodwill or reputation. The maximum liability of Harneys Fiduciary under these Terms is limited (in the absence of fraud) to US\$10 million.
- 14.5 This Limitation of Liability and Indemnity provision shall survive termination of these Terms.

**15 DATA PROTECTION AND THE PROCESSING OF DATA**

- 15.1 Please refer to the provisions of the Privacy Policy for further information on how Harneys Fiduciary collects personal data, how it is used, what rights and choices the Partnership has in relation to the Personal Data held and processed and how the Partnership or the data subjects

whose Personal Data Harneys Fiduciary may hold can contact us. The Partnership acknowledges that it has received, read and understand the contents of the Privacy Policy.

- 15.2 Insofar as Personal Data is provided to Harneys Fiduciary in relation to the provision of registered office services, the Partnership warrants and shall ensure that for the duration of these Terms the disclosure of that Personal Data to Harneys Fiduciary is authorised under applicable Data Protection Law and that, without being required to take further steps (other than as contemplated by clauses 14.3 and 14.4), Harneys Fiduciary can collect, use and disclose that Personal Data in the manner provided for in Terms.
- 15.3 If the Partnership is directly subject to the Regulation due to Article 3 and Harneys Fiduciary is required to process Personal Data which is disclosed to or otherwise made available to Harneys Fiduciary by or on behalf of the Partnership for the purposes of Harneys Fiduciary providing registered office services, the Partnership may request that Harneys Fiduciary enter into a data processing addendum, but only if and to the extent that Harneys Fiduciary acts as a "processor" (as defined in Article 4(8) of the Regulation) in respect of the relevant Personal Data. The form of such addendum is available on request and Harneys Fiduciary shall not unreasonably refuse to enter into such an addendum.
- 15.4 Where the Partnership requires Harneys Fiduciary to process relevant Personal Data which the Partnership directly or indirectly source from a third party domiciled in the European Economic Area and the Partnership is not otherwise able to rely on Article 45 or Article 49 of the Regulation, the Partnership may request that Harneys Fiduciary enter into such EU standard data protection clauses as the European Commission may adopt from time to time pursuant to Article 46 of the Regulation (**EU Model Clauses**) in order to satisfy its obligation to provide appropriate safeguards for the transfer of Personal Data. Harneys Fiduciary shall not unreasonably refuse to enter into EU Model Clauses in such circumstances. Without limitation to the generality of the foregoing, Harneys Fiduciary may require amendment to the EU Model Clauses in order (i) to take into account laws and regulations which it is subject to in a non-EU jurisdiction; (ii) to provide reasonable compensation to Harneys Fiduciary for any additional obligations accepted under the EU Model Clauses (including contingent obligations).

**16 CONFIDENTIALITY**

- 16.1 It is agreed between the Partnership and Harneys Fiduciary that neither party shall, at any time, disclose to any other person and shall treat as confidential, any information relating to the business, finances or other matters of the other party, which such party has obtained as a result of its relationship with the other party under these Terms, save where the information is or was:
  - (a) already known to the recipient from a source other than the other party without any obligation of confidentiality;
  - (b) in the public domain or becomes public knowledge otherwise than as a result of the unauthorised or improper conduct of the disclosing party;

- (c) disclosed as required by any law or order of any court, tribunal or judicial equivalent, or pursuant to any direction, request or requirement (whether or not having the force of law) of any central bank, governmental, supervisory or other regulatory agency or taxation authority (provided that, if legally permissible, the recipient will promptly inform the other party of any such order, direction, request or requirement prior to disclosing any information);
- (d) disclosed for business purposes to affiliates, professional advisors, service providers or agents, engaged by one of the parties, who receive the same under a duty of confidentiality (including disclosure to any Harneys Law Firm where such law firm is also acting for the Partnership);
- (e) made available by a third party who is/was entitled to divulge such information and who is not under any obligation of confidentiality in respect of such information to the other party; or
- (f) disclosed with the consent of the other party (including any consents contained under these Terms).

16.2 The parties shall ensure that any confidential information provided to the other party is provided with any relevant consents required which the disclosing party will be responsible for obtaining.

16.3 This Confidentiality provision:

- (a) does not prohibit Harneys Fiduciary from disclosing information to one or more Harneys Law Firms to protect its own interests with respect to the Partnership provided always that each Harneys Law Firm shall also treat such information as confidential;
- (b) does not prohibit Harneys Fiduciary from disclosing information to one or more Harneys Law Firms for legitimate business purposes connected with the provision of legal advice to or with respect to the Partnership and, without limitation to the generality of the foregoing, Harneys Fiduciary may disclose information relating to the Partnership without seeking the consent of the Partnership on request from a partner or employee of a Harneys Law Firm upon confirmation from such Harneys Law Firm that such Harneys Law Firm has been instructed by or on behalf of the Partnership;
- (c) does not prohibit the Partnership from disclosing a copy of these Terms to its Partners or prospective Partners; and

(d) shall survive termination of these Terms.

**17 VARIATION**

17.1 The Partnership acknowledges and agrees that Harneys Fiduciary may, in its sole discretion, at any time and from time to time change, alter, adapt, add or remove portions of these Terms (including the Fee Schedule), and, if Harneys Fiduciary does so, Harneys Fiduciary will give notice by posting any such changes on its website

(www.harneysfid.com) making clear the date on which such

17.2 Terms come into effect. The current version of these Terms is available at any time on request. The Partnership's continued use of Harneys Fiduciary's services following any such change shall be deemed and constitutes the Partnership's acceptance of those changes and the Partnership acknowledges and agrees to be bound by the current version of these Terms at all times and that unless stated in the current version of these Terms all previous versions shall be superseded by the current version.

**18 NOTICES**

18.1 Any notices to be given and any correspondence or communications to be delivered or forwarded pursuant to these Terms shall be sufficiently served, delivered or forwarded if sent by email, prepaid airmail or by fax and shall be deemed to be given (in the case of email and fax at 10.00 a.m. on the next Business Day in the place of receipt following dispatch) or (in the case of the post 10 Business Days after the dispatch thereof) and shall be sent:

- (a) in the case of Harneys Fiduciary, to its address specified against its name in the Interpretation provision above or by e-mail to [bvi@harneys.com](mailto:bvi@harneys.com)
- (b) in the case of the Partnership, to such correspondence address, fax number or email address as specified by the Partnership to Harneys Fiduciary in writing on or about the Effective Date;
- (c) to such other correspondence address, fax number or email address or for the attention of such other person as may from time to time be notified by one party to the other party by notice given in accordance with the provisions of these Terms; and
- (d) in the absence of any address specified or notified pursuant to (b) and (c) above, to such other address as Harneys Fiduciary in its sole and absolute discretion considers appropriate.

**19 MISCELLANEOUS**

19.1 If any provision of these Terms shall be found by any court or arbitrator to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of these Terms which shall remain in full force and effect. If any provision of these Terms is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were modified, the provision in question shall apply with such modification(s) as may be necessary to make it valid. Nothing in these Terms shall exclude or restrict any liabilities which cannot lawfully be limited or excluded save to the extent permitted by applicable law.

19.2 These Terms are supplied in English and all communications between Harneys Fiduciary and the Partnership will be in English. If we provide you with a translation of these Terms or any communication, the English language version will be the only legally binding version and will prevail if there is any inconsistency.

19.3 These Terms supersede all previous agreements between the Partnership and Harneys Fiduciary for the provision to the Partnership of registered agent and registered office services and the services set out in Schedule 1. These

Terms (including any Additional Terms) set out the entire agreement and understanding between the parties relating to their subject matter.

- 19.4 The copyright in all original documents prepared by Harneys Fiduciary for or in respect of the Partnership is the property of Harneys Fiduciary or the relevant Harneys Law Firm (as the case may be). Harneys Fiduciary accepts no responsibility for the use of such documents for cases or circumstances different from those in respect of which they were originally prepared.
- 19.5 Notwithstanding any other provision of these Terms, Harneys Fiduciary shall, at all times, comply with all laws and regulations applicable to it, including but not limited to, its obligations as a Partnership regulated by the FSC.
- 19.6 The failure by either party to object to or take affirmative action with respect to any breach of these Terms by the other party shall not be construed as a waiver of such breach or of any future violation, breach or wrongful conduct.
- 19.7 These Terms shall not be assignable by the Partnership but may be assigned by Harneys Fiduciary to an affiliated entity at any time without prior notice to the Partnership or to a third party service provider on 30 days' notice to the Partnership.

## 20 APPLICABLE LAW AND JURISDICTION

- 20.1 These Terms shall be governed by and construed in accordance with the laws of the British Virgin Islands. The parties submit to the exclusive jurisdiction of the courts of the British Virgin Islands and no proceedings shall be brought in the courts of any other jurisdiction.

### SCHEDULE 1

#### Services to be provided by Harneys Fiduciary – BVI Limited Partnership

##### 1 REGISTERED OFFICE

- 1.1 The offices of Harneys Fiduciary at Craigmuir Chambers, PO Box 71, Road Town, Tortola, VG1110 British Virgin Islands for use as the registered office of the Partnership. For the avoidance of doubt, the provision of the registered office to the Partnership under these Terms does not constitute or create any interest in land in the British Virgin Islands (or elsewhere).

##### 2 PARTNERSHIP FILE

- 2.1 Harneys Fiduciary will maintain a file for the Partnership (in hard copy or all or part electronic form as Harneys Fiduciary shall determine) at its office in the British Virgin Islands containing the following:
- (a) the original (or a copy) certificate of limited partnership of the Partnership;
  - (b) a copy of the Memorandum and the Articles of the Partnership;
  - (c) notices and minutes of meetings and/or resolutions of Partners of the Partnership unless the Partnership has elected to keep such records at a place other than the office of its registered agent ;
  - (d) notices and minutes of meetings and/or resolutions of Partners unless the Partnership has elected to keep such records at a place other than the office of its registered agent;

- (e) if the Partnership has determined under the Act to maintain the records referred to at paragraphs (c) and above other than at the office of its registered agent, a written record of the place or places at which such records are maintained;
- (f) if the Partnership keeps its original register of Partners other than at the office of its registered agent, a written record of the physical address of the place or places at which such register is kept;
- (g) any other documents referred to in the section headed "Documents and information to be supplied to Harneys Fiduciary";
- (h) a written record of the physical address of the place or places at which the records and underlying documentation are kept including the name of the person who maintains and controls the Partnership's records and underlying documentation;
- (i) copies of all notices and other documents filed by the Partnership with the Registrar in the previous 10 years;
- (j) an imprint of the Partnership's seal; and
- (k) the registers maintained pursuant to section 3 of this Schedule.

- 2.2 The documents and records referred to in paragraphs (c), (d), (e), (f) and (g) shall be maintained by Harneys Fiduciary to the extent as received at the registered office from time to time.

- 2.3 Harneys Fiduciary shall maintain the content of the Partnership file for not less than 5 years after the termination of these Terms (or such longer period as may be required by applicable law).

## 3 PARTNERSHIP REGISTERS

- 3.1 Harneys Fiduciary shall maintain (in hard copy or all or part in electronic form as Harneys Fiduciary shall determine) at its office in the British Virgin Islands:

- (a) a register of limited partnership interests containing the name and address, amount and date of contribution or contributions of each Partner and the amount and date of payment representing a return of any part of the contribution of any Partner. Where it has not been agreed that Harneys Fiduciary will maintain the register of partnership interests Harneys Fiduciary shall keep such register of partnership interests as provided from time to time by the Partnership or the appointed registrar;
- (b) the register of relevant charges created by the Partnership (if any).

## 4 FILING

- 4.1 Upon receipt of relevant documents, resolutions, information, payment and instructions from the Partnership, Harneys Fiduciary shall ensure that any formalities of filing and formation with the Registrar arising as a result of the following are complied with:

- (a) Change of General Partner or any of their particulars;
- (b) Change in the name of the Partnership;
- (c) Amendment to the Memorandum;



- (d) Change of location of the registered office or registered agent of the Partnership;
- (e) Change in the general nature of the business of the Partnership;
- (f) change in the term for which the Partnership is entered into;
- (g) dissolution of the Partnership; and
- (h) the passing of any other resolution or the taking of any other action which is required to be filed or notified to the Registrar.

4.2 Harneys Fiduciary shall have no liability to the Partnership for any consequences of any late filings and registrations unless information and instruction from the Partnership have been received by Harneys Fiduciary at least 5 Business Days in advance of the relevant filing and registration deadline (or such other time period as an authorised representative of Harneys Fiduciary may agree in writing with respect to a particular filing or class of filings).

**5 PAYMENT OF FEES**

- 5.1 Subject to the paragraph below, Harneys Fiduciary may pay on the Partnership's behalf the annual fee to maintain the Partnership payable to the Registrar.
- 5.2 It is a precondition of the agreement by Harneys Fiduciary to pay on behalf of the Partnership the annual fee payable to the Registrar that it first be put in funds sufficient to cover any such payment and any outstanding amounts due to Harneys Fiduciary at least 10 Business Days in advance of any payment deadline imposed by the Act or the Registrar.
- 5.3 In addition to the funds having to be cleared and available to Harneys Fiduciary from the bank account notified to the Partnership at least 10 Business Days in advance of the applicable payment deadline, the funds must also have been transferred with allocation details in accordance with the instructions set out in the relevant invoice clearly and unambiguously referencing them to the Partnership. Harneys Fiduciary shall have no liability to the Partnership (including, but not limited to, in relation to any penalty fees imposed) for any consequences to the Partnership of any failure to file (or any late filing of) annual filing fees within the time frame prescribed by law to maintain the Partnership in good standing under the laws of the British Virgin Islands or any other fees payable by the Partnership to the Registrar if Harneys Fiduciary has not first been put in funds in accordance with the paragraph immediately above.

**6 LEGAL ACTION**

- 6.1 Harneys Fiduciary shall not be required to take any legal action on behalf of the Partnership other than as may be expressly agreed in writing. In no circumstances shall Harneys Fiduciary take any such action unless it and its directors, officers, authorised signatories, employees and affiliates are fully indemnified and remunerated to their reasonable satisfaction for costs and liabilities.

**7 FORWARDING OF COMMUNICATIONS**

- 7.1 Harneys Fiduciary reserves the right to require the Partnership to enter into a specific mail forwarding agreement if substantial amounts of mail are delivered to the registered office but in the absence of such an agreement, Harneys Fiduciary will use all reasonable

endeavours to forward to the Partnership all correspondence and other communications addressed to the Partnership and received by Harneys Fiduciary on its behalf and will forward such correspondence to the appropriate person or persons as notified by the Partnership and in the absence of any such notice such person which Harneys Fiduciary considers most appropriate. Harneys Fiduciary may in its absolute discretion (but is not obliged to) open and review all correspondence or communications addressed to the Partnership and take such action in relation to it as it considers reasonable. Correspondence and communication will be forwarded by Harneys Fiduciary by such method as it considers appropriate in the context of the relevant communication. Harneys Fiduciary shall not be liable for any obligations, losses, damages, liabilities, penalties, actions, proceedings, claims, judgments, demands, costs, expenses or disbursements of any kind (including fees and expenses) whatsoever suffered or incurred at any time as a result of late receipt or non-delivery of such correspondence or other communications which Harneys Fiduciary receives on behalf of the Partnership.

**8 FIDUCIARY AND OTHER SERVICES**

- 8.1 Directorship services, insurance management, fund administration, private trust company services, other trust services and liquidation services will only be provided on the terms of specific agreements and in each case will be provided only at the absolute discretion of Harneys Fiduciary notwithstanding that it already provides other services to the Partnership.