

**Terms and Conditions for the Provision of Registered Agent and Registered Office Services - BVI Business Companies and BVI Private Trust Companies**

**1 INTERPRETATION**

1.1 These terms and conditions (these **Terms**) set out the entire agreement between Harneys Fiduciary and the Company for the provision of registered agent and registered office services as described in Schedule 1. In these Terms the following words shall have the following meanings:

**Articles** the memorandum and articles of association of the Company as in effect from time to time.

**AML BO** the natural person(s) who ultimately owns or controls the Company 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 per cent or more of the shares or voting rights in the Company.

**BOSS Beneficial Owner** has the same meaning as in the BOSS Legislation.

**BOSS Legislation** the Beneficial Ownership Secure Search System Act, 2017 together with all subsidiary legislation and guidance notes thereto.

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

**Company** includes Serviced Entity for the purposes of the Addendum (as defined below) and is the company which has requested, directly or indirectly, that Harneys Fiduciary provides it with registered agent and registered office services and which Harneys Fiduciary has agreed to do under these Terms.

**Companies Act** the BVI Business Companies Act, 2004.

**Data Protection Law** the applicable Law of any jurisdiction from time to time relating to the protection of Personal Data, including but not limited to (i) national laws implementing the Directive on Privacy and Electronic Communications (2002/58/EC); (ii) the General Data Protection Regulation 2016/679; (iii) the UK Data Protection Act 2018 as amended by the Data Protection, Privacy and Electronic Communications (Amendments)(EU Exit) Regulations 2019; (iv) the Data Protection Act (as Revised of the British Virgin Islands); (v) the Data Protection Act (As Revised of the Cayman Islands), and (vi) any other law, regulation or rule or binding instrument which relates to data protection, privacy or the processing of Personal Data, occurring under or in connection with this Agreement).

**Directors** the directors of the Company from time to time.

**Effective Date** the date of incorporation of the Company or the date on which Harneys Fiduciary began providing registered agent and registered office services to the Company, 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.

**FS Regulations** the Financial Services (Exemptions) Regulations, 2007.

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

**Harneys Fiduciary** means Harneys Corporate Services Limited and any of its subsidiaries from time to time whose principal office is at Craigmuir Chambers, PO Box 71, Road Town, Tortola, VG1110, British Virgin Islands.

**HFL** Harneys Fiduciary Limited whose principal office is at Craigmuir Chambers, PO Box 71, Road Town, Tortola, VG1110, British Virgin Islands.

**Harneys Group** Harneys Fiduciary Limited, Harneys Fiduciary, Harneys Fiduciary (Cayman) Limited, Harneys Corporate Services (Asia) Limited, Harneys Corporate Services (UK) Limited, Harneys Fiduciary (Miami) Inc, Harneys Marketing Services Limited, Harneys Services (Cyprus) Limited and Harneys Fiduciary Cyprus Limited and each of their subsidiaries or affiliates.

**Harneys Law Firms** the firms of Harney Westwood & Riegels LP, Harney Westwood & Riegels LLP, Harney Westwood & Riegels (Cayman), Harney Westwood & Riegels (Hong Kong), Harney Westwood & Riegels Singapore LLP, Aristodemou Loizides Yiolitis LLC (practising as Harneys), Aristodemou Loizides Yiolitis LLC Shanghai Representative Office (Cyprus), Harney Westwood & Riegels SARL and HWR Limited and any entities, whether partnerships, companies or otherwise, owned or controlled by, or under common control of any of the foregoing.

**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.

**Members** the members from time to time of the Company.

**Officers** the officers from time to time of the Company.

**PEP** a politically exposed person or 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 Company in connection with the provision of registered office services.

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

**Registrable Legal Entity** has the same meaning as in the BOSS Legislation.

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

**Trust Documents** the documents referred to in paragraph (j) of the sections entitled Documents and Information to be Supplied to Harneys Fiduciary; and

**Special Terms** any special terms and conditions agreed in writing between the Company 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 companies or class of companies. Any Special Terms shall form part of these Terms. In the event of any conflict between these Terms 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 of an Electronic Record;
- (d) any requirement as to delivery under these Terms includes delivery in the form of an Electronic Record;
- (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 Company and shall provide the registered office of the Company at its address in the British Virgin Islands and shall perform the services set out in Schedule 1. The Company's use of Harneys Fiduciary's services shall be deemed and constitutes the Company's acceptance of these Terms as amended from time to time, and consent to the processing of Personal Data as set out in these Terms, Addendum and Privacy Statement.

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

3.1 The Company shall promptly supply to Harneys Fiduciary originals or copies (as the case may be) of the following:

- (a) any offering material (howsoever called) issued to the public in connection with the shares or debt of the Company;
- (b) notices and minutes of Directors' and Members' meetings (including committee and class meetings) unless the Company has elected to keep such records at a place other than the office of its registered agent pursuant to the Companies Act;
- (c) written resolutions passed by the Directors or Members (including committee and class resolutions) unless the Company has elected to keep such records at a place other than the office of its registered agent pursuant to the Companies Act;
- (d) letters from each Director consenting to act as a Director;
- (e) letters of resignation from the Directors or Officers;
- (f) share transfer forms and cancelled share certificates unless the Company has elected to keep the register of members at a place other than at the office of its registered agent;
- (g) copies of all notices and other documents filed by or on behalf of the Company with any governmental or regulatory authority;
- (h) powers of attorney or other documents (howsoever called) conferring authority on one or more persons to act on behalf of the Company;
- (i) any documentation executed by the Company constituting a mortgage, charge or other security interest (howsoever called) over any of its property;

- (j) In the case of a private trust company, the trust deed or other document creating or evidencing a trust and any deed or document varying the terms of the trust for each trust of which the Company acts as trustee and for any other relevant trust (as defined in the FS Regulations); and
  - (k) In the case of a private trust company, written confirmation in a satisfactory form to Harneys Fiduciary that the Company is complying with its obligations as a private trust company pursuant to the FS Regulations.
- 3.2 Where Harneys Fiduciary maintains only a copy of the register of Members, the Company shall, within 15 days of any change in such register, notify Harneys Fiduciary in writing of the change. If the place at which the original register of Members is kept changes, the Company shall provide Harneys Fiduciary with the physical address of the new location of the register within 14 days of the change of location.
- 3.3 Where Harneys Fiduciary maintains only a copy of the register of Directors, the Company shall, within 15 days of any change in the register of Directors, notify Harneys Fiduciary in writing of the change. If the place at which the original register of Directors is kept changes, the Company shall provide Harneys Fiduciary with the physical address of the new location of the register within 14 days of the change of location.
- 3.4 The Company 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 Directors, Officers, Members or other authorised persons have actual notice or knowledge.

#### **4 COMPLIANCE OBLIGATIONS**

- 4.1 The Company shall promptly supply or procure the supply to Harneys Fiduciary of all such information, documents and instructions as 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 Company or Harneys Fiduciary including:
- (a) an explanation in writing of the nature of the Company'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 Members; (ii) the Directors and Officers; (iii) the AML BOs; (iv) any person (or persons) granted a general authority or a power of attorney to conduct the affairs of the Company; and (v) any other person (or persons) on whose instructions Harneys Fiduciary may act in relation to the Company;
  - (c) prescribed particulars of persons identified as BOSS Beneficial Owners and Registrable Legal Entities of the Company under section 9(2) of the BOSS Legislation; and
  - (d) such other information and documentation as Harneys Fiduciary may from time to time reasonably require in relation to the Company, its Directors, Members, Officers, AML BOs or activities including in relation to the steps taken under paragraph 4.2.
- 4.2 The Company 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 Company as equity and other funds passing through the Company do not represent the proceeds of, and that it does not engage in, any unlawful activity;
  - (b) the Company complies and will comply with all laws in any jurisdiction which apply to it;
  - (c) that the Company and its Directors, Officers, Members and AML BOs will not use the Company 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 Company and its Directors, Officers, Members and AML BOs (in each case with respect to the affairs of the Company 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 Company undertakes and warrants for the benefit of Harneys Fiduciary that it shall:
- (a) identify any person who is a BOSS Beneficial Owner or Registrable Legal Entity of the Company and notify Harneys Fiduciary within 15 days of those persons being so identified; and
  - (b) notify Harneys Fiduciary of any change in the prescribed particulars of the Company's BOSS Beneficial Owners; or
  - (c) Registrable Legal Owners within 15 days of becoming aware of such change and the date such changes took place.
- 4.4 The Company 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 AML BOs of the Company has changed or that the manner in which such persons hold their interest in or control of the Company has changed and provide details of any such changes to the satisfaction of Harneys Fiduciary;
  - (b) it knows or has reasonable cause to believe that any Member, Director, Officer or AML BO of the Company is or becomes a PEP; or

(c) it knows or has reasonable cause to believe that the Company or any Member, Director, Officer or AML BO of the Company is subject to or affected by applicable sanctions or other restrictions.

- 4.5 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 Company promptly of any decision to refuse to perform an obligation under these Terms made in accordance with this section unless prevented from doing so by applicable law.
- 4.6 Different clients of Harneys Fiduciary have different relationships with Harneys Law Firms. However, 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 Company obtained by Harneys Fiduciary to be made available to Harneys Law Firms if the Company 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 or on request from the Company unless the Company specifically notifies Harneys Fiduciary in writing that it shall not do so.

## **5 TAX**

- 5.1 The Company 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. Harneys Fiduciary recommends that the Company, its Directors, Officers, Members and AML BOs obtain their own independent advice as to the fiscal consequences of incorporating and maintaining the Company. Such advice should be updated on a regular basis especially if any circumstances change.

## **6 RECORD KEEPING OBLIGATIONS**

- 6.1 The Company shall keep records and underlying documentation of the Company in such form as: (a) are sufficient to show and explain the Company's transactions; and (b) will, at any time, enable the financial position of the Company 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 Company and the matters in respect of which the receipt and expenditure takes place; (ii) all sales and purchases of goods by the Company; and (iii) the assets and liabilities of the Company. The Company 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 Company.
- 6.2 The Company 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 Company terminates the business relationship to which the records and underlying documentation relate, and for these purposes "business relationship" means a continuing arrangement between the Company and one or more persons with whom the Company engages in business, whether on a one-off, regular or habitual basis.
- 6.3 The records of the Company required to be kept under the Companies 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 Company 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 Company'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 Company's records and underlying documentation change, the Company 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 Company shall promptly inform Harneys Fiduciary of any corporate action, changes to the Directors, Officers or AML BOs, changes to the 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 Company and Harneys Fiduciary in complying with their respective 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 Director, Officer, employee or liquidator of the Company; (ii) any agent identified in writing by a Director, Officer, employee or liquidator of the Company 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 Company (including any legal adviser, auditor, manager or administrator) described in paragraph 7.2.
- 7.2 Unless Harneys Fiduciary has written authenticated instructions from the Directors 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 Company 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 incorporates the Company, Harneys Fiduciary shall be entitled to receive an incorporation fee 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 incorporation of the Company occurred);
  - (b) 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 Company payable no later than 31 March in each year following the year in which incorporation of the Company occurred in accordance with the Fee Schedule in effect at the time when the relevant fee is invoiced;
  - (c) 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
  - (d) 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 Company all out of pocket expenses and disbursements (including, but not limited to, filing and registration fees paid to the Registrar, charges for messengers and couriers, printing, postage, photocopying, scanning, telephone charges, secretarial overtime (where attributable to the Company's special needs) and other similar costs and expenses), properly incurred or paid by Harneys Fiduciary on behalf of the Company or otherwise in the performance of its services under these Terms.
- 8.4 If Harneys Fiduciary is requested to perform any services not covered by these Terms it shall inform the Company and subject to Harneys Fiduciary agreeing to provide the services and unless otherwise agreed it shall charge the then applicable standard rate for such service. Harneys Fiduciary has strict anti-bribery and anti-corruption policies and procedures. Harneys Fiduciary will not on the Company's behalf make any payment which may, in its absolute discretion, constitute a breach of such policies and procedures by Harneys Fiduciary, the Company or any other person.
- 8.5 Harneys Fiduciary shall have no obligation to supply services if the Company is in default concerning the payment of any fees or disbursements to Harneys Fiduciary or any other affiliate or subsidiary of Harneys Fiduciary.
- 8.6 Unless otherwise instructed by the Company, any requests received by Harneys Fiduciary from the Company 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 Company 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.
- 8.7 Harneys Fiduciary shall not be responsible for any penalties for which the Company may be liable as a result of delayed or failed payment by or on behalf of the Company 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 Company will be submitted by email only and the Company 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 Company 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 charges.

## **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 Company to operate such software. However, electronic

communication is not totally secure and the Company 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 Company also agrees that in connection with electronic communication, Harneys Fiduciary shall not be liable 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 Company, or any attempt by any person to enforce a charge over shares of the Company (an **Appointment**), the Company agrees that Harneys Fiduciary may in its absolute discretion: (i) at the Company'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 Company 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 by giving:

- (a) not less than 90 days' (up to 31 December 2022) and not less than 60 days' (from 1 January 2023) written notice to the Company;
- (b) not less than 30 days' written notice to the Company if the Company committed a breach of its obligations under these Terms and failed to make good such breach within the 30 days of notice;
- (c) not less than 10 days' written notice to the Company if there has been a change of AML BO, BOSS Beneficial Owner or Director;
- (d) not less than 5 days' written notice to the Company if the Company is in material breach of any regulatory law applicable to it;
- (e) written notice at any time to the Company that the Company is struck off the register as a result of failure to pay its annual fee to the Registrar;
- (f) immediate written notice to the Company if in its sole discretion Harneys Fiduciary believes that:
  - (i) continuing to provide the services would or might assist in the furtherance of criminal or other unlawful activity;
  - (ii) continuing to provide the services would or might constitute a breach of any applicable Law or otherwise be unlawful;
  - (iii) continuing to provide the services does not fit within the risk strategy of Harneys Fiduciary;
  - (iv) the Company, the AML BO or BOSS Beneficial Owner are subject to any international financial sanctions, or are designated as a person with whom Harneys Fiduciary is prohibited from dealing;
  - (v) in continuing to provide the services, it may suffer reputational damage or be prejudicial to the interests of Harneys Fiduciary;
  - (vi) the Company, the AML BO or BOSS Beneficial Owner have given Harneys Fiduciary or a Harneys Law Firm false information; or
  - (vii) the conduct of the Company, the AML BO or BOSS Beneficial Owner of whatsoever nature makes it inappropriate in any way to continue to provide the services.

12.2 The Company may terminate the appointment of Harneys Fiduciary under these Terms by giving:

- (a) not less than 90 days' written notice to Harneys Fiduciary;
- (b) not less than 30 days' written notice to Harneys Fiduciary if Harneys Fiduciary committed a breach of its obligations under these Terms and failed to make good such breach within the 30 days of notice; or
- (c) immediate written notice to Harneys Fiduciary if Harneys Fiduciary ceases to be lawfully able to act as the registered agent of the Company.

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 previous breach of these Terms 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 Company of any outstanding fees, costs and expenses due to Harneys Fiduciary (including its standard fees relating to the transfer of registered agent and other disbursements) deliver to any succeeding service provider or as the Company may direct all documentation in its possession relating to the affairs of the Company and which are the property of the Company 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 of the Company in accordance with the then current record retention policy of Harneys Fiduciary.

12.5 The Company shall, on termination of the appointment of Harneys Fiduciary under these Terms, if still in existence, arrange the passing of a resolution to transfer the registered agent and registered office of the Company 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 Company. The Company 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 Company 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 Company may regard as a competitor or otherwise having interests adverse to the Company. Nothing contained in these Terms shall constitute a partnership between the Company and Harneys Fiduciary nor shall any employee, officer or director of Harneys Fiduciary be deemed to be an employee of the Company or entitled to any remuneration or other benefits from the Company.

### **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 suffered or incurred by the Company or any other person at any time from any cause 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 Company 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) 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 these are as a result of the fraud, wilful default or gross negligence of the relevant Indemnified Person and this indemnity shall expressly take effect for the benefit of any such Indemnified Person existing or future and shall remain in force despite 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 Company or otherwise, and shall continue after the termination of the appointment of Harneys Fiduciary by the Company.

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 section shall survive termination of these Terms.

### **15 DATA PROTECTION AND PROCESSING**

15.1 Please refer to the Privacy Statement for further information on how Harneys Fiduciary collects Personal Data, how it is used, what rights and choices You have in relation to the Personal Data held and processed and how You or data subjects whose Personal Data may be held by Harneys Fiduciary can contact us.

15.2 In providing Services and otherwise fulfilling its obligations under these Terms, Harneys Fiduciary may be required to process information which is Personal Data (including information which also constitutes "personal data" as defined in the Data Protection Act of the British Virgin Islands (**DPA**)). You acknowledge and agree that:

- (a) You have received, read and understand the contents of the Privacy Statement;
- (b) You have shared the Privacy Statement with all relevant individuals before their disclosure of Personal Data to Harneys Fiduciary;
- (c) to the extent Harneys Fiduciary acts as a "data controller" (as defined in the DPA) in respect of the Personal Data, Harneys Fiduciary may process the Personal Data in accordance with applicable Data Protection Law (including the DPA) and the Privacy Statement; and
- (d) to the extent Harneys Fiduciary acts as a "data processor" (as defined in the DPA) in respect of the Personal Data, the provisions of the [Data Processing Addendum](#) (**Addendum**) shall apply to any processing of Personal Data undertaken by Harneys Fiduciary.

### **16 CONFIDENTIALITY**

- 16.1 It is agreed between the Company 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 due 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 received the information under a duty of confidentiality (including disclosure to any Harneys Law Firms or other law firms where such law firm is also acting for the Company unless instructed otherwise);
  - (e) made available by a third party who is or 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 Firm to protect its own interests with respect to the Company 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 Firm or other law firm for legitimate business purposes connected with the provision of legal advice to or with respect to the Company and, without limitation to the generality of the foregoing, Harneys Fiduciary may disclose information relating to the Company without seeking the consent of the Company on request from a partner or employee of a Harneys Law Firm upon confirmation from such Harneys Law Firm that such Harneys Law Firm is currently instructed by or on behalf of the Company;
  - (c) does not prohibit the Company from disclosing a copy of these Terms to its Members or prospective Members; and
  - (d) shall survive termination of these Terms.

## **17 VARIATION**

- 17.1 The Company 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 changes to these Terms on its website ([www.harneysfid.com](http://www.harneysfid.com)) making clear the date on which the changes to these Terms come into effect. The current version of these Terms is available at any time on request. The Company's continued use of Harneys Fiduciary's services following any changes to these Terms shall be deemed and constitutes the Company's acceptance of those changes and the Company 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 section of these Terms or by e-mail to [bvi@harneys.com](mailto:bvi@harneys.com);
  - (b) in the case of the Company, to such correspondence address, fax number or email address as specified by the Company to Harneys Fiduciary in writing on or about the Effective Date;
  - (c) to any other correspondence address, fax number or email address or for the attention of any 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 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 Company will be in English. If we provide the Company 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 Company and Harneys Fiduciary for the provision to the Company of registered agent and registered office services and the services set out in Schedule 1. These Terms (including any Special 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 Company is the property of Harneys Fiduciary (as the case may be). Harneys Fiduciary accepts no responsibility for the use of these documents for cases or circumstances different from those in respect of which they were originally prepared.
- 19.5 Despite 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 company 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 Company but may be assigned by Harneys Fiduciary to an affiliated entity at any time without prior notice to the Company or to a third party service provider on 30 days' notice to the Company.
- 19.8 Any significant complaint about the services provided by Harneys Fiduciary should be directed to the complaints officer at [Complaints@harneys.com](mailto:Complaints@harneys.com). If a satisfactory response to any complaint is not received within 28 days the complaint may be submitted to the FSC.

## **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 Business Company

#### 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 Company. For the avoidance of doubt, the provision of the registered office to the Company under these Terms does not constitute or create any interest in land in the British Virgin Islands (or elsewhere).

#### 2 COMPANY FILE

2.1 Harneys Fiduciary will maintain a file for the Company (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 incorporation of the Company;
- (b) a copy of the Articles of the Company;
- (c) notices and minutes of meetings and/or resolutions of Members and of classes of Members of the Company unless the Company has elected to keep such records at a place other than the office of its registered agent pursuant to the Companies Act;
- (d) notices and minutes of meetings and/or resolutions of Directors and committees of Directors of the Company unless the Company has elected to keep such records at a place other than the office of its registered agent pursuant to the Companies Act;
- (e) if the Company has determined under the Companies Act to maintain the records referred to at paragraphs (c) and (d) 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 Company keeps its original register of Members or register of Directors other than at the office of its registered agent, a written record of the physical address of the place or places at which such registers are 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 Company's records and underlying documentation;
- (i) copies of all notices and other documents filed by the company with the Registrar in the previous 10 years;
- (j) an imprint of the Company'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 Company 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 COMPANY 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 members complying with the requirements of the Companies Act or if the Company has made provision for that register to be maintained elsewhere a copy of such register of members;
- (b) a register of directors complying with the requirements of the Companies Act or if the Company has made provision for that register to be maintained elsewhere, a copy of such register of directors; and
- (c) the register of relevant charges created by the Company (if any).

#### 4 FILING

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

- (a) change of Directors or any of their particulars;
- (b) change in the name of the Company;
- (c) amendment to the Articles; and
- (d) 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 Company for any consequences of any late filings and registrations unless information and instruction from the Company 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 Company's behalf the annual fee to maintain the Company payable to the Registrar.
- 5.2 It is a precondition of the agreement by Harneys Fiduciary to pay on behalf of the Company 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 Companies 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 Company 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 Company. Harneys Fiduciary shall have no liability to the Company (including, but not limited to, in relation to any penalty fees imposed) for any consequences to the Company of any failure to file (or any late filing of) annual filing fees within the time frame prescribed by law to maintain the Company in good standing under the laws of the British Virgin Islands or any other fees payable by the Company 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 Company 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 COMPANY SECRETARIAL SERVICES**

- 7.1 If Harneys Fiduciary has agreed in writing to procure another Harneys entity to serve as secretary or assistant secretary to the Company, such entity shall on request certify as an officer of the Company copies of corporate documents maintained on the minute book of the Company but shall not in such capacity undertake substantive activities on behalf of the Company (including, without limitation, the execution of documentation for and on behalf of the Company).

## **8 FORWARDING OF COMMUNICATIONS**

- 8.1 Harneys Fiduciary reserves the right to require the Company 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 Company all correspondence and other communications addressed to the Company and received by Harneys Fiduciary on its behalf and will forward such correspondence to the appropriate person or persons as notified by the Company 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 Company 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 Company.

## **9 FIDUCIARY AND OTHER SERVICES**

- 9.1 Directorship services, 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 Company.