



**Terms and Conditions for the Provision of Authorised Representative Services  
by Maples Authorised Representative Services (BVI) Limited  
(British Virgin Islands Business Company Licensed as a Licensee under the Act)**

**Interpretation**

These terms and conditions (these "**Terms**") set out the entire agreement between MARS and the Company for the provision of authorised representative services to the Company. In these Terms the following words shall have the following meanings:

**"Act"** means the Securities and Investment Business Act of the British Virgin Islands;

**"Approved Auditor"** means an auditor whose appointment the Commission has approved in writing prior to his appointment;

**"Business Day"** means 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;

**"Commencement Date"** means the date of incorporation of the Company or the date on which MARS began providing authorised representative services to the Company, if later;

**"Commission"** means the Financial Services Commission of the British Virgin Islands;

**"Company"** means the company which has requested, directly or indirectly, that MARS provides it with authorised representative services and which MARS has agreed to do under these Terms;

**"Electronic Record"** has the same meaning as in the Electronic Transactions Act;

**"Electronic Transactions Act"** means the Electronic Transactions Act of the British Virgin Islands;

**"Fee Schedule"** means the schedule of fees published by MARS and in effect from time to time for the provision of authorised representative 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;

**"Fees"** means the professional fees as set out in the Fee Schedule and charged by MARS and the disbursements and incidental costs incurred by MARS on behalf of the Company from time to time;

**"Financial Services Legislation"** shall have the meaning ascribed to it in the FSC Act;

**"FSC Act"** means the Financial Services Commission Act of the British Virgin Islands and its subsidiary legislation;

**"Maples"** means the firm of Maples and Calder and any entities, whether partnerships, companies or otherwise, owned or controlled by, or under common control with or affiliated with Maples and Calder as may be established from time to time, including, without limitation, MCS BVI, MARS and any subsidiary of MCS BVI;

**"MARS"** means Maples Authorised Representative Services (BVI) Limited of Kingston Chambers, PO Box 173, Road Town, Tortola, British Virgin Islands;

**"MCS BVI"** means Maples Corporate Services (BVI) Limited of Kingston Chambers, PO Box 173, Road Town, Tortola, British Virgin Islands;

**"Regulatory Code"** means the Regulatory Code of the British Virgin Islands; and

**"Services"** means the services listed in Schedule 1 to these Terms.

For the purpose of these Terms:

- (a) use of the singular includes the plural and vice versa;
- (b) references to provisions of any law or regulation shall be construed as references to those provisions as amended, modified, re-enacted or replaced from time to time;
- (c) "written", "in writing" and "maintain" include all modes of representing, reproducing or maintaining words in visible form, including in the form of an Electronic Record;
- (d) any requirements as to delivery under these Terms include delivery in the form of an Electronic Record;
- (e) any requirements as to execution or signature under these Terms can be satisfied in the form of an electronic signature as defined in the Electronic Transactions Act; and
- (f) section 8(2) of the Electronic Transactions Act shall not apply.



### **Appointment of MARS**

MARS is certified under the Act to act as an authorised representative.

In consideration of the payment of the fees as set out in the Fee Schedule from time to time, with effect the Commencement Date, MARS agrees to act as authorised representative of the Company and shall provide the Services on the terms and conditions as set out in Schedule 1 to these Terms, in each case in accordance with these Terms. The Company's use of MARS's services shall be deemed and constitutes the Company's acceptance of these Terms.

### **Documents, Records and Information to be Supplied by the Company**

The Company shall, within the prescribed time limits, and in the absence of a prescribed time limit, as soon as reasonably practicable after the occurrence of a specified event or after the request of MARS, promptly provide to MARS the documents, records and information relating to or written confirmation of the matters required to be given to the Commission by the Company under the Act, the FSC Act, the Regulatory Code, the relevant provisions of other Financial Services Legislation or by the Commission, including the matters set out below (and in the case of documents and records shall provide photocopies of the following signed or final and approved documents together with any attachments):

- (a) the proposed appointment of a director or senior officer in advance of such appointment (such appointment to be subject to the approval of the Commission);
- (b) the actual appointment, resignation or removal of a director or senior officer or such person otherwise ceasing to act in such capacity for any reason whatsoever, in each case within five (5) days of the occurrence of such event;
- (c) the proposed appointment of an auditor in advance of such appointment (such appointment to be subject to the approval of the Commission);
- (d) the actual appointment of an Approved Auditor within five (5) days of the occurrence of such appointment;
- (e) audited financial statements of the Company within six (6) months of the end of the financial year to which such audited financial statements relate; and
- (f) a mutual fund annual return in respect of the Company before 30 June in respect of the prior calendar year as prescribed under the FSC Act.

The Company shall provide such other documents, records and information in accordance with such timelines as MARS may from time to time reasonably require in order for the Company to comply with the Act, the FSC Act, the Mutual Funds Regulations, the Regulatory Code and all other Financial

Services Legislation and to enable MARS to comply with its obligations as Authorised Representative of the Company.

### **Services Improper or Unlawful**

MARS may refuse to perform any or all of its obligations under these Terms if it determines, in its sole and unfettered discretion, 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. MARS will inform the Company promptly of any decision to refuse to perform an obligation under these Terms made in accordance with this provision.

### **Services Non-Exclusive**

MARS shall be at liberty to provide services of a like nature to the Services to any other person or persons as it may think fit whether for its own account or that of any other person.

Neither MARS nor Maples nor any company, partnership or other person associated with MARS or Maples shall, in consequence of the appointment of MARS pursuant to these Terms or in consequence of any transaction entered into by the Company with MARS (or with Maples or with any such associate), be liable to account to the Company for any profits (whether disclosed or not) accruing to MARS (or to Maples or to any such associate) from, or by virtue of, any such transaction.

### **No Fiduciary Relationship**

MARS shall not in performing its functions as authorised representative be an officer or other fiduciary of the Company and does not owe the Company any special duty of care, other than that of agent, when performing its function as authorised representative and shall have no duty or obligation to undertake any action on behalf of the Company unless expressly requested by the Company.

### **No Obligation to Account**

Neither MARS nor Maples shall, in consequence of the appointment of MARS pursuant to these Terms or in consequence of any transaction entered into by the Company with MARS or Maples, be liable to account to the Company for any profits (whether disclosed or not) accruing to MARS or to Maples from, or by virtue of, any such appointment or transaction.

### **Remuneration**

MARS has appointed MCS BVI as its billing and collection agent and it is agreed that fees, expenses and disbursements payable by the Company to MARS shall be invoiced by, and promptly paid to, MCS BVI as agent for MARS.

MARS shall be entitled to receive a fee for the provision of the Services, payable in advance by 1 February each year in accordance with the Fee Schedule in effect at the time when the relevant fee is invoiced. MARS shall also be entitled to recover from the Company all expenses and disbursements



(including filing and registration fees paid to the Commission, courier, telephone, facsimile, printing, postage and photocopying) properly incurred or paid by MARS on behalf of the Company or otherwise in the performance of the Services.

MARS shall be entitled to recover from the Company all expenses and disbursements (including, but not limited to, filing and registration fees paid to the Commission, charges for messengers and couriers, faxes, word processing, 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 MARS on behalf of the Company or otherwise in the performance of its services under these Terms. Further details of the rates and manner in which MARS charges for these costs are available on request.

If MARS is requested to undertake any services not covered by these Terms it shall inform the Company that such services are not covered by these Terms and, if MARS agrees to provide such services, unless otherwise agreed in writing by MARS and the Company, it shall charge the then applicable rate for such service in accordance with the Fee Schedule in effect at the time when the relevant service is provided. Such services may be invoiced separately from the Services.

All Fees payable to MARS pursuant to these Terms shall be paid net of any taxes or surcharges.

Any requests for legal advice or legal services received by MARS from the Company and any issues arising from or in connection with the Services or the provision of documents, records and information by the Company to MARS in accordance with the Terms and which in the reasonable judgment of MARS require legal assistance shall be referred to Maples and Calder and the Company agrees to settle promptly the fees and disbursements of Maples and Calder, which shall be charged to the Company in accordance with the fee rates and terms and conditions for the provision of legal services then in effect.

MARS reserves the right not to pay any annual licence fees to the Commission while the Company has old or significant debts remaining outstanding or where the Company is not compliant with British Virgin Islands anti-money laundering laws and regulations (in each case as determined by MARS).

#### **Termination**

MARS shall be entitled, but shall not be required, to terminate its appointment under these Terms:

- (a) by giving not less than three (3) months' written notice to the Company;
- (b) by giving not less than thirty (30) days' written notice to the Company if the Company shall have committed any breach of its obligations under these Terms and shall have failed to make good such breach, within

thirty (30) days of receipt of notice served by MARS requiring it to do so;

- (c) with immediate effect and without the requirement to provide notice to the Company, upon the Company no longer being required as a matter of law to retain an authorised representative; or
- (d) with immediate effect in the event that the Company notifies MARS that confidential information must not be shared with MCS BVI and/or Maples and Calder.

The Company may terminate the appointment of MARS under these Terms:

- (a) by giving not less than three (3) months' written notice to MARS;
- (b) by giving not less than thirty (30) days' written notice to MARS in circumstances where the Company is no longer required as a matter of law to retain an authorised representative; or
- (c) by giving not less than thirty (30) days' written notice to MARS if MARS shall have committed any breach of its obligations under these Terms and shall have failed to make good such breach, within thirty (30) days of receipt of notice served by the Company requiring it to do so.

A termination of the appointment of MARS under the provisions above shall be without prejudice to any pre-existing liability of the parties to these Terms and, without prejudice to the generality of the foregoing, any indemnity provisions and provisions limiting the liabilities of either party shall survive such termination. MARS shall be entitled to receive all Fees and other monies accrued due up to the date of such termination, whether under these Terms or otherwise and whether invoiced or not.

MARS shall, on the termination of its appointment under these Terms and upon payment by or on behalf of the Company of any outstanding Fees due to MARS, MCS BVI or to Maples, deliver or procure to be delivered to the Company, or as the Company may reasonably direct, the documents and records of the Company which are in its possession or under its control.

The Company shall, insofar as it has the corporate capacity to do so and on the termination of the appointment of MARS as authorised representative under these Terms, if still in existence, procure the passage of a board resolution to transfer the authorised representative function of the Company to an alternative agent and location and MARS shall in any event and whether such resolution has been passed or not be entitled to serve notice on the Commission advising that it no longer acts as authorised representative of the Company.

#### **Legal Action**

MARS 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 MARS 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.

#### **Instructions and Reliance**

In performing its duties MARS shall be entitled to rely upon instructions given by, or purporting to be given by, a director or other officer, authorised signatory or other person authorised or appearing to be authorised by the Company or by any legal adviser, manager, promoter, advisor, administrator or other person performing a similar function and appointed by the Company.

#### **Responsibility, Limitation of Liability, Indemnity and Release**

MARS shall not be liable for any damages, losses, claims, proceedings, demands, liabilities, costs or expenses whatsoever suffered or incurred by the Company 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 MARS's actual fraud or wilful default or that of any of its directors, officers, employees or agents (as the case may be).

The Company shall indemnify (on a full indemnity basis) and hold harmless MARS and Maples (for themselves and on trust and as agents for the benefit of the other Indemnified Persons mentioned below), their successors and assigns and their respective directors, officers, employees, agents and partners past, present and future (collectively, the "**Indemnified Persons**") and each of them, as the case may be, against all damages, losses, claims, proceedings, demands, liabilities, costs, expenses, obligations, penalties, actions, judgments 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 actual fraud or wilful default of the relevant Indemnified Person and this indemnity shall expressly inure to the benefit of any such Indemnified Person existing or future. No person shall be found to have committed actual fraud or wilful default under these Terms unless or until a court of the British Virgin Islands has reached a final non-appealable determination to that effect.

MARS shall not be liable in tort, statutory duty, pre-contract or misrepresentation (other than fraudulent misrepresentation) or otherwise for (i) any consequential, indirect or special 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 MARS has been advised of the possibility of such loss or damage and howsoever incurred. For the avoidance of doubt

MARS shall not be so liable for any loss of goodwill or reputation.

Unless caused by their actual fraud, the maximum aggregate liability of any Indemnified Person(s) under these Terms is limited to US\$10 million.

This Responsibility, Limitation of Liability, Indemnity and Release provision shall survive termination of these Terms.

#### **Force Majeure**

MARS shall not be held liable for any delay or failure to fulfil its obligations under these Terms as a result of causes beyond its reasonable control. Such causes include, but are not limited to, fire, floods, hurricanes, pandemics, tropical storms, typhoons, acts of God, acts and regulations of any governmental or supranational authority, wars, riots, strikes, lock-outs and industrial disputes.

#### **Miscellaneous**

These Terms may not be assigned by either party without the written consent of the other save only that MARS may assign the benefit and/or burden of these Terms to a suitably licensed Maples entity as part of any group restructuring.

MARS shall not be obligated to account to the Company for any interest received by MARS with respect to any monies held by MARS for and on behalf of the Company.

Notwithstanding any other term in these Terms, MARS may, at its own expense, delegate all or any of the services on its part to be performed under these Terms to another Maples entity. If MARS does delegate all or any of the services to another Maples entity in accordance with this paragraph (a "**Delegate**"), MARS shall nonetheless remain solely responsible to the Company for the provision of the services and liable to the Company for any loss caused to the Company by the Delegate but only to the extent that MARS would have been liable for such loss under these Terms if such loss were caused by MARS itself and the Delegate shall have no liability of any sort whatsoever or howsoever arising under these Terms or as a consequence of the delegation of all or any services to it. The Company agrees that it may not bring any claim against any Delegate in relation to the provision of services under these Terms by MARS.

Notwithstanding any other provision of these Terms MARS shall, at all times, comply with all laws and regulations applicable to it including but not limited to its obligations as the holder of an authorised representative certification issued by the Commission.

#### **Data Protection and Records**

The Company acknowledges and agrees that MARS, subject always to the confidentiality obligations to the Company under the Confidentiality provision below, as part of Maples, by itself or through an affiliate or agent, may generate, collect, receive, transfer, disclose, process and store materials, data,



information and content relating to the Company and/or the business of the Company, or its principals, affiliates, shareholders, directors, officers, employees and agents ("**Data**") whether confidential or not, either in original format, on servers maintained by MARS, or by third party service providers on MARS's behalf, within or outside of the British Virgin Islands and/or in any other jurisdictions whether or not Maples has a presence in such jurisdictions, including jurisdictions which may not have equivalent data protection requirements to the British Virgin Islands. In this regard, the Company explicitly consents to the transfer of all Data into and out of any such jurisdictions. The Company further acknowledges and agrees that Maples may be obliged to retain such Data for a period of time after the termination of these Terms and may be requested, required or compelled to disclose such Data to third parties as set out in subparagraph (c) of the Confidentiality provision below.

#### **EU General Data Protection Regulation**

Where the Company is directly subject to Regulation (EU) 2016/679 of 27 April 2016 ("**GDPR**") due to Article 3(2)(a) of GDPR and MARS is required to process information which: (i) constitutes "personal data" as defined in Article 4(1) of GDPR; and (ii) is disclosed to or otherwise made available to MARS by or on behalf of the Company ("**Relevant Personal Data**") in providing the Services, the Company may request that MARS enter into a data processing addendum with the Company in the form available at <https://www.maples.com/privacy/> ("**DPA**") but only if and to the extent MARS acts as a "processor" (as defined in Article 4(8) of GDPR) in respect of the Relevant Personal Data.

Additionally, where the Company requires MARS to process Relevant Personal Data which the Company indirectly sources from an affiliate of the Company or a relevant third party domiciled in the EEA, the Company may request that MARS enter into EU standard contractual clauses ("**EU SCC**") with the Company:

- (a) in the form set out in Commission Decision 2004/914/EC; and/or
- (b) in the form set out in Commission Decision 2010/87/EU; and/or
- (c) in such other form as the European Commission may adopt from time to time pursuant to Article 46 of GDPR,

but only if and to the extent the Company is unable to rely on Article 45 or Article 49 of GDPR in making the Relevant Personal Data available to MARS.

MARS shall not unreasonably refuse the Company's request that MARS enters into a DPA and/or an EU SCC.

#### **Confidentiality**

It is agreed between the Company and MARS (together, the "**Parties**") 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 legitimate 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;
- (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.

For these purposes MARS shall be entitled to disclose information relating to the business, finances and other matters, including regulatory correspondence, to Maples and Calder and MCS BVI, unless instructed in writing in advance by the Company not to disclose such information.

The Parties shall ensure, and it is deemed to be understood and relied upon, that any confidential information provided to the other Party in relation to any principals, affiliates, shareholders, directors, officers, employees and agents ("**Subject Persons**") of the disclosing Party is and has been provided with the consent and acceptance of the relevant Subject Persons, which the disclosing Party will be responsible for obtaining.





This Confidentiality provision: (i) does not prohibit MCS BVI from disclosing information within Maples for legitimate business purposes (subject to any such recipients of confidential information keeping it confidential in accordance with these Terms); (ii) does not prohibit the Company from disclosing a copy of these Terms to its Members or prospective Members; and (iii) shall survive termination of these Terms.

#### **Anti-bribery**

MARS has policies and procedures in place relating to bribery and corruption. MARS will not on the Company's behalf or otherwise: (a) make any payment, offer or promise to pay money or anything of value to any public official for the purpose of influencing the act or decision of, or for securing an improper advantage from such public official; or (b) make any payment, offer or promise to pay money or anything of value to any other person or entity if such payment, offer or promise is made for the purpose of influencing or securing any improper advantage; or (c) undertake any activities which will result in a contravention of any anti-bribery legislation applicable to MARS.

#### **Notices**

Any notices to be given and any correspondence or communications to be served, 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 ten (10) days after the dispatch thereof) and shall be sent:

- (a) in the case of MARS, to its address specified against its name in the Interpretation provision above or by fax to fax number + 1 284 852 3097 (marked for the attention of the Directors, Maples Authorised Representative Services (BVI) Limited) or by e-mail to [MARS@maples.com](mailto:MARS@maples.com);
- (b) in the case of the Company, to such correspondence address, fax number or email address as specified by the Company to MARS in writing on or about the Commencement 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 MARS in its sole and absolute discretion considers appropriate.

#### **Severance**

If any provision of these Terms shall be found by any court or other tribunal of competent jurisdiction 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.

#### **Variation**

The Company acknowledges and agrees that MARS 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 MARS does so, MARS will post any such changes on both the Maples site ([www.maples.com](http://www.maples.com)) and the Maples e-Services site ([www.mapleservices.com](http://www.mapleservices.com)) bearing the date on which such Terms came into effect. The current version of these Terms is also available on request. The Company's continued use of MARS's services following any such change 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.

#### **Arbitration and Waiver of Legal Proceedings**

All claims, disputes and controversies arising out of or in connection with these Terms, may, at MARS's option, be subject to binding arbitration to be held in the British Virgin Islands before a retired judge or senior lawyer to be agreed upon between the parties or in the absence of such agreement to be appointed by the President of the British Virgin Islands Bar Association or the President of any successor self-regulatory association for British Virgin Islands attorneys (or, if such President is affiliated with Maples, the First Vice President). The arbitration will be conducted in English and in accordance with the London Court of International Arbitration Rules. The arbitrator's award shall be final and binding and may be entered in or enforced by any competent court. If court action (including any kind of claim, suit or proceeding) has been initiated by the Company against MARS at or prior to the time MARS elects to refer the issue to arbitration as provided for under these Terms, then it is agreed that such action shall be discontinued, unless any arbitrator appointed determines that MARS has waived the right to such a discontinuance by participating in the action without having raised, reserved or asserted its rights under this provision.

#### **Entire Agreement**

These Terms supersede all previous agreements between the Company and MARS for the provision of registered agent and registered office services and the services set out in Schedule 1 to these Terms to the Company. These Terms set out the



entire agreement and understanding between the parties relating to its subject matter.

**Proper Law and Jurisdiction**

These Terms and any dispute, claim, suit, action or proceeding of whatever nature arising out of or in any way related to them or their formation (including any non-contractual disputes or claims) are governed by, and shall be construed in accordance with, the laws of the British Virgin Islands.

Subject to the Arbitration and Waiver of Legal Proceedings provision set out above, each of the parties to these Terms irrevocably agrees that the courts of the British Virgin Islands shall have exclusive jurisdiction to hear and determine any claim, suit, action or proceeding, and to settle any disputes, which may arise out of or are in any way related to or in connection with these Terms, and, for such purposes, irrevocably submits to the exclusive jurisdiction of such courts.



## Schedule

### Authorised Representative Services to be provided by Maples Authorised Representative Services (BVI) Limited

#### **Intermediary**

MARS shall act as the main intermediary between the Company and the Commission.

#### **Agent for Service**

MARS shall act as agent for service in respect of correspondence with the Commission and shall, in such capacity, accept service of notices and other documents on the Company's behalf from the Commission.

#### **Repository Services**

MARS shall keep at its offices in the British Virgin Islands, such records as are required to be kept in the British Virgin Islands and provided to MARS by the Company (as such requirements may be prescribed under the Financial Services Legislation and the Regulatory Code).

#### **Submission of Documents**

MARS shall submit to the Commission on behalf of the Company such documents and information regarding the Company as may be (i) required under BVI law; (ii) lawfully requested by the Commission; or (iii) requested by the Company, each to the extent supplied and/or approved by the Company.

#### **Payment of Fees**

MARS shall pay to the Commission such fees as the Company and MARS agree to be paid to the Commission on the Company's behalf from time to time upon receipt of the same by MCS BVI as collection agent for MARS.