



## **GENERAL TERMS AND CONDITIONS**

### **1. DEFINITIONS AND INTERPRETATION**

1.1 In these Terms (except where otherwise expressly provided):

**Agreement** means any agreement between the Company and/or any of its Group Member(s) and Intertrust;

**Applicable Law** means the law governing these Terms as defined in the Agreement;

**Board** means the competent corporate body of the Company that manages or oversees or supervises the general affairs of the Company;

**Business Day** means any day (other than Saturday or Sunday) on which banks are open for business in the jurisdiction of the Applicable Law;

**Company** means a company, trust, foundation, any other form of legal entity, partnership, or unincorporated business, set up, maintained and/or managed by Intertrust or to which Intertrust provides any Service at the request or instruction of the Company and/or its Group Members;

**Compliance Rules** means the legal and regulatory framework applicable under the Applicable Law, including but not limited to any act or regulation governing, directly or indirectly (e.g. through a regulatory body), the provision of Services by the relevant Intertrust entity, the Company, or any internal compliance procedure, policy or guideline as defined by Intertrust and any mandatory disclosure, automatic exchange of information, conflict of interest, anti-money laundering or (counter) terrorist financing act or similar regulation and as such legal and regulatory framework may vary from time to time;

**Director(s)** means the member(s) of any corporate body of the Company, other than the shareholder, but including the liquidator;

**Fee Schedule** means the schedule of fees agreed between Intertrust and the

Company setting out the fees that Intertrust may charge for the Services;

**Group Member(s)** means (i) any (ultimate) beneficial owner or parent company (and any subsidiary thereof), subsidiary, affiliate, group or successor company and (ii) any of their directors, Board members, officers, contractors, delegates, sub-delegates, agents shareholders or representatives;

**Intertrust** means the Intertrust entity contracting the Agreement with the Company, its Group Members and any Intertrust Appointee;

**Intertrust Appointee** means any director, officer, manager, employee of or other person who – at the direction, request or approval of Intertrust - performs the Services, as a director or other officer, trustee, manager, signatory of shareholder of the Company or otherwise in connection with the Services;

**Non-Intertrust Director** means a (managing) Director or former managing Director of the Company other than Intertrust;

**Service(s)** means any service rendered by Intertrust to the Company, pursuant to or in connection with any Agreement; and

**Terms** means these general terms and conditions.

1.2 (a) References to a person shall be construed so as to include any individual, firm, company, joint venture, association, partnership (whether or not having separate legal personality) or other entity and that person's successors in title and permitted assigns; (b) References to "in writing" shall be construed as written or represented by any means reproducible in writing, including any form of print, email, facsimile or photograph or represented by any other substitute or format for storage or transmission for writing or partly one and partly another; (c) References to any party to these Terms shall include references to such party's successors.

## **2. APPLICABILITY**

2.1 By entering into an Agreement with Intertrust or engaging or accepting the Services, the Company agrees or is deemed to have agreed with Intertrust that these Terms (together with and subject to any written confirmation of the Company's instructions or any other agreement in relation to the Services in any particular matter) will apply to the entire business relationship between the Company and Intertrust.

2.2 Notwithstanding the rights of the Company to terminate the relationship according to paragraph 7 of these Terms, Intertrust shall be entitled to amend these Terms. Any amendment to these Terms will only become effective three months after such amendment has been notified in writing to the Company or has been published on the website of Intertrust.

## **3. ROLE, DUTIES AND RESPONSIBILITIES OF INTERTRUST**

3.1 Intertrust will provide the Services for the benefit of the Company solely. The Company explicitly agrees and shall ensure that its Group Members shall explicitly agree that Intertrust may outsource (part of) the Services to its Group Members.

3.2 The Company also acknowledges that Intertrust's IT infrastructure may be partially outsourced and relying on cloud computing infrastructure and that Intertrust may use Group Members or third-party providers or contractors ("Contractors") for operations or services delivery. Details of the outsourcing agreed upon in this paragraph can be found in Intertrust's Outsourcee Overview (available here <https://www.intertrustgroup.com/legal/intertrust-outsourcee-overview/> or such other page of the Intertrust website from time to time), as updated from time to time.

3.3 Intertrust will inform the Company of any material changes to Intertrust's outsourcing arrangements with details on proposed changes or new outsourcing arrangements. The Company accepts and consents to, and shall cause its Group Members to accept and consent to, the outsourcing, the use of Contractors and the

information mechanism referred to in this paragraph.

3.4 Insofar as the Services shall include the appointment of Intertrust as director of the Company and the performance of management duties in that capacity, Intertrust shall:

(a) perform its duties and render Services in the best interest of the Company with due observance of the responsibilities under the Applicable Law;

(b) manage the affairs of such Company and fulfil the duties and observe any restrictions imposed upon it by virtue of the relevant Agreement and the articles of association of the Company; and

(c) duly observe and execute all lawful orders, directions, resolutions and general guidelines that the general meeting of shareholders or the Board of the Company may adopt or issue from time to time.

3.5 Intertrust shall be entitled to rely on the consent, approval and authorisation of the Company in respect of any act, deed, document, matter or thing if it shall have been notified of such consent, approval or authorisation whether in writing, verbally or by email, by any director or officer of the Company or any other person who has been duly authorised (or Intertrust has reasonable cause to believe has been duly authorised) by the Company or by any professional advisors to the Company and shall not be liable for acting upon any such consent, approval or authorisation.

Further, Intertrust shall not be liable as a result of (i) any failure on the Company's part to promptly give proper authorisations, instructions, approvals, information and documents as may be necessary to enable Intertrust to carry out its obligations hereunder or (ii) any failure on its part to act on instructions that it believes to be incomplete, unclear or contradictory.

3.6 Notwithstanding the foregoing, Intertrust shall not be obliged to do or not to do anything which it considers to be in conflict with the interest of the Company, the Compliance Rules or otherwise harm

Intertrust's lawful interests, including its reputation.

3.7 Nothing herein contained shall constitute a partnership between the parties hereto nor shall Intertrust be deemed to be an employee of the Company or be entitled to any remuneration or other benefits from the Company other than as set out herein.

#### **4. COMPLIANCE WITH LAWS AND REGULATIONS**

4.1 The Company accepts and shall ensure that it and its Group Members shall accept that Intertrust may take whatever steps Intertrust considers appropriate to comply with the Compliance Rules.

4.2 The Company accepts and shall ensure that it and its Group Members shall accept and commit to provide Intertrust from time to time with all documents and information with respect to the Company or any of its Group Members that Intertrust is or may be required to collect, maintain, update or use to satisfy all relevant obligations in connection with the Services provided under the Agreement or otherwise required by the Compliance Rules, as well as all documents and information allowing Intertrust to determine the volume and nature of the transactions entered into by the Company or in relation to the Services and to fulfil its obligations under the Agreement. Any reasonable costs or expenses incurred by Intertrust in connection with this paragraph 4.2 shall be for the account of the Company.

4.3 Intertrust shall be authorised to answer any question and provide any information or documentation available to it regarding the Company, its Group Members, a structure or a transaction (i) to any tax or other governmental authority if there is a statutory obligation to do so, (ii) to any regulatory or self-regulatory body authorised to control compliance with the Applicable Law, (iii) in accordance with the Compliance Rules or (iv) if Intertrust in its reasonable opinion believes that this is necessary or desirable for compliance with any applicable law or regulation or for defending the Company or Intertrust against any complaint or claim, whether on

a statutory law, contract law, tax law, or criminal law basis.

4.4 Each of Intertrust and the Company, the latter also on behalf of its Group Members, hereby represents, warrants and covenants, that it shall not at any time engage in (i) any act or practice that would, directly or indirectly, contravene any anti-corruption act or regulation or any similar law applicable in any jurisdiction in which it engages in any activity, that prohibits bribery, money laundering or payments to public officials or private individuals, including, without limitation, any policies of any governmental or quasi-governmental agency implementing or enforcing the foregoing nor (ii) in any other unlawful activity.

4.5 The Company further warrants and undertakes that, immediately upon becoming aware thereof, it shall notify Intertrust of (a) any event which could be reasonably foreseen to have a material effect on the Company or its assets or activities (including, without limitation, any act evidencing the insolvency of the Company or commencing any liquidation, winding up or dissolution) or upon Intertrust's willingness to continue to provide the Services; and (b) any actual or threatened litigation in any jurisdiction or any actual or threatened investigation by any judicial or regulatory authority and any progress thereof, and it shall promptly provide such information as Intertrust may, in its discretion, require in respect thereof.

#### **5. SERVICES INTERTRUST WILL NOT PROVIDE**

5.1 The Company agrees that Intertrust is not responsible for the rendering of investment, commercial, accounting, legal, data protection or any other advice whatsoever to the Company or any other person. The Services will not in any circumstance include providing, obtaining or reviewing on the Company's behalf any legal, tax, commercial, financial, auditing, brokerage, actuarial, banking, investment management, information technology, technical or insurance services.

5.2 Intertrust may engage the services of duly qualified advisers, such as auditors,

legal advisors, or tax experts, if, and to the extent to which, these are deemed appropriate or required by Intertrust in relation to the Services or the Compliance Rules and with the prior consent of the Company, such consent not to be unreasonably withheld. The applicable costs of such third party advisory services shall be for the account of the Company. In connection with its obligations hereunder, Intertrust may act and rely upon the opinion, advice or information so obtained from any duly qualified adviser whether reporting to the Company or Intertrust or not and, subject to these Terms, Intertrust shall not be responsible for any loss incurred because of it so acting on the basis of any advice received from any such qualified adviser, provided that the broker, lawyer, accountant, valuer, surveyor, auctioneer, or other expert was selected, engaged and retained with reasonable care. If the Company instructs advisers (either directly or through Intertrust) on any matter relating to or in connection with the Services, Intertrust will not be liable to the Company for the services, advice or information provided by, or responsible for the fees and expenses of those advisers.

## **6. COMPLAINTS ABOUT THE SERVICES**

Intertrust is committed to providing the Company with the highest quality of service. If the Company has any concern or complaints about any of the Services, Intertrust wishes to discuss and try to resolve them with the Company as soon as possible. The Complaints Procedure, as may be amended from time to time, is published on the website of Intertrust (<https://www.intertrustgroup.com/wp-content/uploads/2021/04/intertrust-nv-complaints-policy-and-procedure.pdf>).

## **7. DURATION AND TERMINATION OF SERVICES**

7.1 The Agreement is entered into and shall continue for an indefinite period, unless terminated in accordance with the relevant provisions.

7.2 The Agreement can be terminated by the Company or by Intertrust by giving one month prior written notice.

7.3 Insofar as Intertrust is appointed as director of the Company, the general meeting of shareholders of the Company or the Board (if allowed under local legislation) is entitled to dismiss Intertrust as director of the Company in accordance with the relevant provisions of the articles of association of the Company and the Applicable Law. In an event of a dismissal or resignation of Intertrust as director of the Company, the Company shall use its best efforts to ensure that Intertrust shall be granted full discharge for having acted as Director of the Company.

7.4 Intertrust can also suspend the Services or terminate the Agreement with immediate effect, both in respect of any specific Service or generally if an event arises that, were the Agreement to continue, might unreasonably burden or affect any of the parties, such as by causing reputational damage, not receiving clear and timely instructions from the Company, non-compliance with any applicable laws or regulations by the Company and/or its Group Members, unreasonably refusing to settle Intertrust's invoice or insolvency or a continued impairment of the moral, legal or financial integrity of the Company and/or its Group Members, to be determined at the sole discretion of Intertrust.

7.5 The Company can terminate the Agreement with immediate effect in case of Intertrust's serious misconduct that cannot be remedied, unless such remedy is explicitly excluded under the Applicable Law.

7.6 A resignation or termination of the Agreement by Intertrust and any of its subsequent reasonable actions can never give rise to a claim on the part of the Company or any of its Group Members to damages. To the extent applicable and appropriate, Intertrust shall be authorised to inform the relevant registry, as well as, but not limited to, the trade registry, the chamber of commerce, the central bank, the registry of companies, the companies house, the companies registry or any (tax) authorities of its resignation or termination of the Agreement and, if necessary, at Intertrust's discretion, the underlying motivation for such resignation or termination.

7.7 In the event that Intertrust provides a registered office or registered address to the Company, the Company herewith irrevocably authorises Intertrust to change the Company's domicile if such change of domicile is not duly effected prior to the termination of the Agreement and, for that reason, the Company hereby grants to Intertrust an irrevocable power of attorney to make the appropriate filings with the relevant registry as described in paragraph 7.6 above in connection with change of the address of the Company.

7.8 Subject to paragraph 11.1 below and after full settlement of all outstanding invoices, costs and/or fees, including the transfer fee (if any), by the Company and/or its Group Members, the corporate and administration documents relating to the Company and its affairs, which are held by Intertrust, shall be returned to the Company, or any other person so designated by the Company for this purpose. If the Company and/or its Group Members fail to settle any outstanding invoices, costs and/or fees, including the transfer fee if applicable, Intertrust shall, to the extent permitted by Applicable Law, have the right not to release from its possession or control the corporate and administration documents relating to the Company and its affairs.

7.9 Upon termination of the Agreement, the Company shall reimburse or pay Intertrust for any fees, charges and expenses accrued at the date of termination and not previously reimbursed or paid. Furthermore, the Company shall not wrongfully represent itself as continuing to retain the services of Intertrust.

7.10 The termination of these Terms shall be without prejudice to any of the rights that may have accrued to any party pursuant to these Terms prior to such termination. Paragraphs 1, 4.3, 7.6, 7.7, 7.8, 7.9, 8.6, 8.8, 10, 11, 12.6, 13, 14, 17, 18 19, 20 and 21 of these Terms shall survive the termination or rescission for any reason of any agreement concluded between Intertrust and the Company or of the engagement of Intertrust in relation to the Services.

## **8. REMUNERATION**

8.1 Intertrust shall be entitled to:

(a) fees in accordance with the then applicable Fee Schedule, as such may be amended by Intertrust from time to time, or as otherwise agreed in writing with the Company from time to time;

(b) be reimbursed for all disbursements and expenses incurred by it in providing the Services;

(c) reimbursement of sundry expenses recovery charge to cover general disbursements (such as offices sundries or a fixed fee for professional indemnity insurance subscribed by Intertrust); and

(d) fees which will be calculated on a time-spent basis and by reference to its standard hourly charging rates, which may change from time to time, for any additional Service not specifically agreed.

8.2 All fees, disbursements and expenses paid in advance are non-refundable.

8.3 Any sum payable under any Agreement concluded is exclusive of any applicable indirect or direct tax (which shall include any value added tax implementing the EU VAT Directive, if applicable, and any other form of value added, sales or services tax).

8.4 Unless otherwise agreed, Intertrust will invoice the Company on a monthly basis. Any fees or expenses omitted from the period stated on each invoice will be included in a subsequent invoice.

8.5 Every year, Intertrust shall have the right to adjust its fees and office sundries to reflect the inflation in the jurisdiction of the Applicable Law calculated in accordance with the most commonly used indexation mechanism in such jurisdiction.

8.6 The Company agrees that all invoices shall be deemed to be accepted unless such is disputed in writing within 15 days from the invoice date. Payment of any invoice shall be due within 30 days of the

date of each invoice. If payment is not made before the due date, the Company shall be in default without notice of default being required and a late payment penalty interest of 1% per month may be charged. Late payment interest will accrue as of the first day when payment becomes overdue.

8.7 In the event of continued default of payment by the Company, all costs of collection, both judicial and other third party costs, shall be for the account of the Company. Intertrust is entitled to outsource collection of its receivables to a third party or debt collection agency, whether or not located in the jurisdiction of the Applicable Law.

8.8 At the first request of Intertrust the Company shall be obliged to provide adequate collateral, in a form acceptable to Intertrust, for the payment obligations of the Company under the Agreement. Without prejudice to the provisions of these Terms, where Intertrust provides signatories to bank accounts of the Company, Intertrust may (but shall not be obliged to) withdraw funds from these accounts for payment of outstanding fees and other payment without prior notice.

## **9. DUTIES, REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

9.1 The Company shall ensure that it and its Group Members provide any information, documentation, or any other form of co-operation (including for the purposes of all tax matters), all in a reasonable timeframe, that Intertrust requires for the provision of its Services or the carrying out of its responsibilities as Director of the Company, including, but not limited, to:

(a) copies of all resolutions of the Company's general meeting of shareholders and, if applicable, its Board or committees of the Board;

(b) information regarding any change or anticipated change in the legal and/or beneficial ownership of the Company or in the composition of the Board of the Company;

(c) all information pertinent to the preparation of the annual accounts and the tax returns of the Company;

(d) all information concerning possible transactions to be entered into by the Company.

9.2 The Company represents and warrants to Intertrust that:

(a) any information or documentation provided by or on behalf of the Company to Intertrust from time to time shall be true, accurate, up-to-date and complete at the time provided and Intertrust shall be entitled to rely upon the material accuracy and completeness of all such information or documentation;

(b) each transaction that concerns the Company and to which Intertrust is a party or is involved with, complies with all laws (including the Applicable Law) in all relevant jurisdictions; and

(c) it will not undertake any activities which will require a licence, consent or approval in any jurisdiction without first obtaining such licence, consent or approval or which will breach any conditions contained in any such licence, consent or approval.

9.3 Where one or more Non-Intertrust Directors are Director of the Company, the Company represents, warrants (and shall ensure the same for its Group Members) that each Non-Intertrust Director is of good standing, reputable, duly qualified to act as Director of such (local) entity and will not engage in any transactions on behalf of the Company which are illegitimate in all relevant jurisdictions.

9.4 Insofar as Intertrust has not been or will not be entrusted with the bookkeeping of the Company, the Company (a) represents and warrants that the administrative organisation and the internal control procedures of the person responsible in respect of the bookkeeping meet the standards as required under the Applicable Law and are such that unusual transactions within the meaning of the Compliance Rules (which, for this paragraph 9.4, Compliance Rules do not relate to any

internal compliance procedure, policy or guideline as defined by Intertrust) in which the Company is involved will be flagged and notified to Intertrust and all the Directors of the Company immediately upon discovery of their occurrence and (b) undertakes that the books, records, accounts and other appropriate information in respect of the assets and liabilities of the Company shall be available to Intertrust at all times and financial statements of the Company shall be made available to Intertrust when such information becomes available from time to time but in any event at least on an annual basis.

9.5 The Company shall ensure that it and its Group Members shall notify Intertrust in case of any corporate action or changes to the Company, including without limitation, any transfer, sale, pledge or other disposal of the direct or indirect control over the Company (or its shareholders) at least five (5) Business Days in advance and shall promptly supply to Intertrust all such information and documents in connection therewith or as may be requested by Intertrust from time to time.

9.6 As long as Intertrust acts as Director of the Company, the Company shall be adequately funded so as to enable it to meet its financial obligations.

9.7 If resolutions and general guidelines regarding the Company are communicated through an attorney in fact or an authorised person, Intertrust will observe and execute the same upon receipt of written confirmation that such attorney or authorised person is authorised to communicate said resolutions and general guidelines to Intertrust. This confirmation may be deemed to remain in effect until Intertrust receives specific written notice to the contrary.

## **10. NOTICES, ELECTRONIC COMMUNICATION AND SOFTWARE APPLICATIONS**

10.1 Intertrust may conduct electronic communications and use software applications (including but not limited to electronic/digital signature applications) and the internet to provide the Services.

There is no guarantee that electronic communications between Intertrust and the Company will be secure, not-intercepted, virus free, timely or successfully delivered. Intertrust shall not incur any liability resulting from or in connection with use of e-mail, software applications and/or facsimile communication, and shall not be liable to the Company if, due to circumstances beyond Intertrust's reasonable control, such electronic communications or software applications are intercepted, delayed, lost, destroyed, corrupted, not received or received by persons other than the intended addressees.

10.2 Intertrust shall not incur any liability in connection with the issuance or implementation of instructions given by e-mail, software applications, facsimile or telephone communication, provided that Intertrust has: (i) acted in accordance with the contents of any such instruction; and (ii) has adhered to its obligations under the Agreement.

## **11. DOCUMENT RETENTION POLICY**

11.1 The Company agrees that Intertrust may keep the original and/or copy of any documents, papers or other materials and in particular any documentation required under Compliance Rules (in either physical or electronic form) in relation to any Service for archival purposes under applicable professional standards and in accordance with the Applicable Law.

11.2 After the statutory period of time under the Applicable Law obligating, as the case may be, Intertrust to keep the documents and files mentioned in paragraph 11.1 of these Terms has lapsed, Intertrust reserves the right to destroy any such documents and files.

## **12. TAX**

12.1 In this paragraph 12:

**Tax** or **Taxes** means any tax of whatever nature levied, withheld or assessed by any jurisdiction or subdivision thereof and includes penalties, fines and interest relating to any of the foregoing;

**Reputable Tax Counsel** means independent professional tax counsel (a tax advisor, accountant or lawyer) authorised to practice in a relevant jurisdiction or in-house tax counsel, reasonably acceptable to Intertrust; and

**Tax Advice** means written advice by Reputable Tax Counsel setting out the material tax consequences of a proposed set up of a group of companies or a company structure (each a **Structure**), a transaction or a set of transactions (**Transaction**), the overall or specific tax position of the Company and, confirming – without material qualifications – that the Structure or Transaction does not violate the tax laws and regulations of the jurisdictions in which the Structure or Transaction is set up or is carried out, or which jurisdictions are otherwise relevant for the tax consequences of the proposed Structure or Transaction;

12.2 It is the Company's responsibility to obtain Tax Advice confirming the intended tax effects and the absence of unintended tax effects before requesting or instructing Intertrust to set up any Structure, incorporate any company or carry out any Transaction. Intertrust is not required to verify compliance with applicable tax laws and regulations. Intertrust does not accept any responsibility for the tax aspects (in the broadest sense) of any Structure or Transaction in which the Company and/or its Group Members are involved and/or for executing any request or instruction delivered to Intertrust by the Company and/or its Group Members.

12.3 Upon first request by Intertrust (whether at the time of the conclusion of any Agreement, at the receipt of a request or instruction, or at any other time), the Company and/or its Group Members, as the case may be, is/are required to provide to Intertrust Tax Advice (or any updates in respect thereof). If Tax Advice is not provided in a form reasonably acceptable to Intertrust within a reasonable period of time, Intertrust is authorised to instruct a Reputable Tax Counsel for the provision of such Tax Advice on behalf of the Company and to charge the costs of said Tax Advice to the Company.

12.4 If Intertrust has reasonable doubts whether a request or instruction has the intended tax effects or believes that such a request or instruction may violate the tax laws of any relevant jurisdiction and it is not provided with a Tax Advice reasonably acceptable to it, Intertrust is explicitly permitted to postpone or not engage such a request or instruction and shall likewise not be held liable for any resulting damage, including consequential damage and loss of profit or opportunity (including but not limited to the loss of a tax saving), incurred as a result of postponing and/or not carrying out such request or instruction, even if at a later point in time the Company and/or its Group Members, as the case may be, have demonstrated that the request or instruction had the intended tax effects and did not violate the tax laws of a relevant jurisdiction.

12.5 The Company and/or its Group Members, as the case may be, shall bear all stamp duties, notarisation fees, other documentary transfer or transaction duties and any other transfer taxes arising as a result of the carrying out of any Transaction with the Company and/or its Group Members.

12.6 The Company hereby covenants to Intertrust to timely payment, but in no event later than 30 days from invoicing, to Intertrust an amount equivalent to any amount payable by Intertrust to any tax authority in respect of a failure to discharge any tax levied, assessed or otherwise due by or for the account of the Company and/or its Group Members, as the case may be.

### **13. INDEMNITY**

13.1 The Company shall fully indemnify Intertrust and hold Intertrust harmless, to the full extent permitted by law, from and against any threatened, past, pending or future claims, whether contractual or pursuant to wrongful act, dispute or controversy of any nature instigated by any person other than the Company arising, directly or indirectly, in connection with the performance by or on behalf of Intertrust of the rights and/or obligations under the Agreement or the rendering of any Service, except for any claims resulting from actual



fraud, gross negligence or wilful misconduct by Intertrust. The amount indemnified by the Company to Intertrust pursuant to this paragraph 13.1 shall include, but shall not be limited to, all claims, proceedings, demands, liabilities, damages, losses, taxes, fines, penalties, costs, expenses and legal fees, and any interest thereon, suffered, incurred, arising or expended that Intertrust may at any time directly or indirectly incur. In these Terms, references to actual fraud, gross negligence or wilful misconduct shall mean a finding to such effect by the final judgement of a competent court.

13.2 Any exculpation and indemnification in favor of Intertrust under these Terms shall be without prejudice to the exculpation and indemnification provisions of any other agreement between the Company and Intertrust or any other arrangement or insurance that may exist for the benefit of Intertrust.

13.3 No provision of these Terms shall require Intertrust to expend or risk personal funds or otherwise incur any expense or other financial liability in the performance of any of its duties and obligations, or in connection with these Terms or the Services under the Agreement, if the repayment of such funds or the provision of an indemnity against such risk, expense or other financial liability is not assured to Intertrust.

13.4 Without limitation to the provisions of paragraph 13.1 of these Terms, insofar as the Services shall include the procurement by Intertrust of one or more Directors or officers of the Company, the Company shall indemnify such Directors and officers and Intertrust and hold such Directors and officers and Intertrust harmless from and against any claims that result from or relate to:

(a) a Non-Intertrust Director not properly performing management duties or otherwise acting or omitting to act and as such giving rise to responsibility or liability of the Company and/or its directors; or

(b) untimely or improper bookkeeping, to the extent that Intertrust has not been

entrusted with the bookkeeping of the Company; or

(c) non-compliance with statutory obligations by someone other than Intertrust.

#### **14. LIABILITY OF INTERTRUST**

14.1 Intertrust shall not be liable for any error of judgement or damage, loss, claims, proceedings, demands, liabilities, costs or expenses whatsoever or howsoever suffered or incurred by the Company or any of its Group Members or any other person at any time as a result of, or directly or indirectly in connection with, the Agreement or the provision of Services by Intertrust under these Terms, unless caused by the actual fraud, gross negligence or wilful misconduct by Intertrust as determined by the final judgement of a competent court.

14.2 Neither the Company nor any of its Group Members shall in any event be entitled to claim for any punitive, special, indirect or consequential damages or loss of profit or for any loss of goodwill or possible business, whether actual or prospective, as a result of, or in connection with, the Agreement or Intertrust rendering the Services.

14.3 To the extent legally permitted under any applicable law or regulation, the total liability of Intertrust for any actions, claims, losses, liabilities, damages, costs, charges or expense suffered or incurred by the Company or any of its Group Members arising, directly or indirectly, in connection with the Agreement or any Services rendered shall be limited to the amount paid-out in the relevant case, if any, under Intertrust's professional indemnity insurance, plus the amount of the deductible (own risk) that is not for the account of the insurers under the policy condition. In the event and to the extent that no monies are paid out under Intertrust's professional indemnity insurance for whatever reason, Intertrust's liability shall be limited to an amount which will not exceed the aggregate amount of fees paid for such part of the Services that gave rise to the claim over a period of the last twelve months.

14.4 In circumstances where Intertrust would be prejudiced as a result of arrangements between the Company and its professional advisors limiting the professional advisors' liability to the Company or where the Company is otherwise unable to recover from its advisors the full amount of any loss they have caused the Company and Intertrust would also be liable to the Company, Intertrust's liability to the Company will not be increased beyond what it would have been in the absence of those arrangements or circumstances.

14.5 The Company shall only bring a claim and shall ensure that its Group Members shall only bring a claim against Intertrust excluding any Intertrust Appointee (whether or not that individual or entity was involved in providing the Services to which such claim relates). No Intertrust Appointee will be held liable for, or in connection with, the Services or any matter relating to it to the extent permitted by the Applicable Law.

14.6 In no event shall Intertrust or any Intertrust Appointee be liable for any loss, damage, cost or expenses arising in any way from, or in connection with, any dishonest, deliberate or reckless misstatement, concealment or other conduct on the part of any other person or legal entity.

14.7 All claims against Intertrust shall expire on the date falling three months from when the Company is aware or could reasonably have been aware of the existence of the facts giving rise to the right to bring the said claim to the extent permitted by the Applicable Law. To the extent legally permitted under any applicable law or regulation, Intertrust shall furthermore not be liable in respect of any claim unless a notice of the claim is given by the Company to Intertrust within twelve months following the act (or omission) that gave rise to the claim.

14.8 Intertrust shall forward to the Company as soon as possible all claims, letters, summonses, writs or documents (a "Claim") that it receives from third parties in relation to the Company and give reasonable information and assistance as

the Company may require in relation to a Claim, provided that Intertrust shall not be liable in respect of any delays by it in so forwarding a Claim. Save as specifically agreed as a Service, Intertrust shall not be authorised and shall have no obligation to acknowledge service of a Claim on behalf of the Company. Nothing in this paragraph shall prevent nor oblige Intertrust from commencing or defending an action in its own name at its own expense.

Intertrust shall not be required to take any legal action on behalf of the Company other than on such terms as Intertrust may in its absolute discretion determine and provided always that Intertrust is fully indemnified to its reasonable satisfaction for all costs and liabilities that may be incurred or suffered by Intertrust. If the Company acting by the Board or a duly authorised delegate requires Intertrust to take any action of whatsoever nature which, in the reasonable opinion of Intertrust, might make Intertrust liable for the payment of money or liable in any other way, Intertrust shall be, and be kept, indemnified and held harmless to any reasonable amount and form satisfactory to Intertrust as a prerequisite to taking action.

## **15. PROCEDURE FOR RESOLVING CLAIMS**

15.1 Any claim by either the Company or Intertrust under these Terms or in connection with an Agreement shall be notified in writing. The notice of claim shall give details of the claim.

15.2 In case of a claim between the Company and Intertrust, the parties shall first attempt to resolve the claim amicably. If any such claim is not resolved amicably within thirty days from the date on which valid notice of the claim was given (or any longer period as is agreed by the Company and Intertrust in writing), it shall be finally resolved in accordance with paragraph 21 of these Terms.

## **16. CONFIDENTIALITY**

Unless instructed by the Company to the contrary, Intertrust shall keep confidential all documents, materials and other information relating to the business, financial position or state of affairs of the Company and shall not disclose any of the

aforesaid, other than: (a) to the Company's or Intertrust's professional advisors who are subject to confidentiality obligations, (b) pursuant to paragraphs 4.3 or 18 of the Terms (c) as necessary for Intertrust to provide the Services (d) information consisting of information or data already in the public domain, or (e) to any of Intertrust's Group Members (including, without limitation, for "know your customer" requirements).

## **17. NON-SOLICITATION**

17.1 The Company undertakes, and shall ensure that its Group Members undertake, it or they shall not, at any time during the continuance of any of the Agreements, and for a period of 12 months after its termination, induce or attempt to persuade any employee of Intertrust to leave their employment by Intertrust or to offer to any employee of Intertrust employment, without the prior written consent of Intertrust. Nothing in this paragraph 17.1 shall prevent the Company or its Group Members from (a) utilising general bona fide employment advertisements provided that these do not directly target any employees of Intertrust, (b) employing any employee of Intertrust who respond to such advertisements or (c) employing any employee of Intertrust who spontaneously contacts the Company.

17.2 The Company agrees that in the event of any breach of paragraph 17.1, it shall pay a sum equal to twelve times the monthly salary of the employee as liquidated damages to Intertrust.

## **18. DATA PROTECTION**

18.1 For the purposes of performing the Services and to comply with statutory requirements, Intertrust may from time to time collect, compile, keep and process certain personal data ("Data"), to the extent permitted under the Applicable Law. Intertrust shall collect such Data in conformity with the Privacy Notice (<https://www.intertrustgroup.com/legal/data-protection-and-privacy> or such other page of the Intertrust website from time to time). Where and to the extent Intertrust processes Data of which the Company is controller, it shall process such Data in

accordance with the Data Processing Protocol (as available on <https://www.intertrustgroup.com/legal/data-protection-and-privacy> or such other page of the Intertrust website from time to time). The Company agrees to, and shall cause its Group Members to agree to, such data processing in accordance with the Data Processing Protocol. The Company explicitly agrees that the above-mentioned Data Processing Protocol is incorporated by reference and forms an integral part of the Agreement.

18.2 The Company hereby authorises Intertrust and agrees to procure that its Group Members authorise Intertrust, to use such Data for the following purposes:

- (a) the performance and provision of the Services;
- (b) conducting checks on the Company and its Group Members;
- (c) handling and following up on enquiries, suggestions, complaints and suspected suspicious transactions involving the Company or its Group Members;
- (d) conducting service surveys to better understand the characteristics and requirements of the Company or its Group Members;
- (e) assessing the suitability of the Company or its Group Members to utilise services offered or to be offered by Intertrust; and
- (f) enforcement in relation to the rights of Intertrust under the Agreement.

18.3 To the extent legally permitted under local applicable law or regulation Intertrust shall keep the Data confidential but it may transfer or disclose any Data to the following parties (whether within or outside of the jurisdiction of the Applicable Law) subject to a duty on the part of the recipient not to disclose any Data other than for the purposes for which the Data is provided to them:

- (a) any agent, contractor or third-party service provider of Intertrust who provides administrative, computer, payment, data processing, debt collecting or other service for them;
- (b) other members or related companies of Intertrust.

18.4 Pursuant to paragraphs 4 and 18.1 above, Intertrust explicitly undertakes not to disclose any information to other third parties and undertakes that it will comply with the applicable personal data protection laws and regulations.

## **19. ASSIGNMENT**

19.1 None of the rights and obligations of the Agreements to which these Terms are applicable shall be assignable by either party hereto without the prior written consent of the other party.

19.2 Notwithstanding paragraph 19.1, Intertrust shall have the right to assign (i) to any corporate entity of the Intertrust group all or part of the rights and/or obligations under these Agreements and (ii) any claims arising under these Agreements.

## **20. SEVERABILITY**

If any provision of these Terms or any of the Agreements is held to be invalid, unenforceable or to contravene an applicable law, then such provision shall (so far as it is invalid, unenforceable or contravenes an applicable law) be given no effect and shall be deemed not to be included in these Terms, but without invalidating any of the remaining provisions of these Terms. The parties shall then use all reasonable endeavours to replace the invalid, unenforceable or contravening provisions by a valid and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, unenforceable or contravening provision.

## **21. ENFORCEMENT, LAW AND JURISDICTION**

21.1 These Terms shall be governed by and construed in accordance with the Applicable Law and the parties irrevocably agree to submit to the exclusive jurisdiction of the courts of that location to hear and decide any lawsuit, action or proceedings, and to settle any dispute which may arise out of or in connection with these Terms.

21.2 Each of the parties to these Terms and any of the Agreements irrevocably waives any objection which it might now or

hereafter have to the courts referred to above being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of, or in connection with, these Terms and agrees not to claim that any such court is not a convenient or appropriate forum in each case whether on the grounds of venue or *forum non conveniens* or any similar grounds or otherwise.

21.3 Each of the parties to these Terms and any of the Agreements hereby consents generally in respect of any proceedings to the giving of any relief or the issue of any process in connection with such proceedings including the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such proceedings.

21.4 No failure on the part of either of the parties to exercise, and no delay on the part of either of them in exercising, any right or remedy under these Terms will operate as a waiver thereof nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. All rights and remedies are cumulative and not exclusive of any rights or remedies provided by law.

21.5 These Terms are solely for the benefit of Intertrust and the Company and only Intertrust and the Company shall have the right to enforce any of the provisions of these Terms.