

## Escrow Services Standard Terms and Conditions

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These are the Standard Terms which are applicable to all escrow service agreements which refer to the “Standard Terms” set out at [www.smppartners.com](http://www.smppartners.com) (the “Site”) from 1<sup>st</sup> June 2018 until such time as they may be amended.

**Agreed terms:**

**1. Definitions and Interpretation**

1.1. The following definitions apply in this agreement:

Addendum	The Addendum signed by the Parties and which (together with these standard terms) forms the Agreement.
Affected Party	The Contracting Party not being the Requesting Party
the Agent	<b>SMP Escrow Services Limited</b> a company incorporated under the laws of the Isle of Man under number 016030V whose registered office is at Clinch's House Lord Street Douglas Isle of Man (and, where the context admits, the term the "Agent" includes the said company's successors and permitted assigns)
the Agreement	The agreement constituted by a formation addendum ("the Addendum") and incorporating these standard terms as amended, novated and assigned from time to time
Approved Payment Terms	The terms for the payment of the Principal Sum to the Agent's control which have been approved by the Agent prior to the Payment Date
Arrangement	The arrangement between the Contracting Parties as more specifically described in the Addendum
Authorised Instruction	An instruction, consent, notice or communication given to the Agent by or on behalf of a Contracting Party in the manner described in the Addendum
Bank	An institution holding an Escrow Account (and as more specifically defined in the Schedule to these Standard Terms)
Business Day	a day other than a Saturday, Sunday or public holiday in the Isle of Man when banks in the Isle of Man are open for business
Contracting Parties	The parties to this Agreement, other than the Agent
Court Direction	An order of the High Court of Justice of the Isle of Man directing the Agent to make a payment from the Escrow Fund
Default Account	The account from which the Principal Sum was received

Dispute Notice	A notice indicating that an Affected Party does not believe that a Requesting Party is entitled to make a Request under the terms of the Arrangement
Effective Date	The date agreed in writing as the Effective Date by the parties
Escrow Fund	The Principal Sum plus all earnings thereon, less amounts paid out of the Escrow Fund under the terms of this agreement
Escrow Account	An account maintained by the Agent for the purposes of providing escrow services (such account being subject to the terms described in the Schedule to these Standard Terms)
Fee	The fee payable to the Agent in consideration of its services under this Agreement, as set out in the Addendum
Joint Instruction	An Authorised Instruction given by both Contracting Parties
Long Stop Date	12 months after the Effective Date of this Agreement or such other date as the parties may agree in writing
Payment Date	The Effective Date
Principal Sum	The amount agreed in writing as the Principal Sum by the parties
Request	An Authorised Instruction requesting the payment of monies from the Escrow Fund
Requesting Party	The Contracting Party issuing a Request
Reserve	The aggregate of all sums held within the Escrow Fund and which are subject to a Request and Dispute Notice and in respect of which no Joint Instruction or Court Direction has been issued
Response Period	The period starting on the day a notice of Request is delivered to the Agent and ending 7 Business Days thereafter or as otherwise agreed by the parties in writing

1.2. In this Agreement:

- 1.2.1. clause, schedule and paragraph headings shall not affect the interpretation of this Agreement;
- 1.2.2. all references to the Agent shall refer to the Agent solely in its capacity as escrow agent, and not in any other capacity whatsoever, whether as individual,

- agent, fiduciary, trustee or otherwise;
- 1.2.3. a reference to a person shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees;
  - 1.2.4. unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
  - 1.2.5. unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
  - 1.2.6. a reference to a party is to a party to this agreement and shall include that party's successors, permitted assigns and permitted transferees;
  - 1.2.7. a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
  - 1.2.8. a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
  - 1.2.9. any reference to any Isle of Man legal concept, term, action, remedy, method of judicial proceeding, legal document, legal status, court or official shall, in respect of any jurisdiction other than the Isle of Man, be deemed to refer to what most nearly approximates to it in that jurisdiction;
  - 1.2.10. any reference to any Isle of Man statute, bye-law, regulation, rule, delegated legislation or order shall, in relation to any assets owned, liabilities incurred, company incorporated or business carried on in any jurisdiction other than the Isle of Man, be deemed to include what most nearly approximates to it in that jurisdiction;
  - 1.2.11. a reference to a time of day is to London time;
  - 1.2.12. a reference to writing or written includes email;
  - 1.2.13. an obligation on a party not to do something includes an obligation not to allow that thing to be done;
  - 1.2.14. a reference to the Arrangement is a reference to the Arrangement as agreed between Contracting Parties and incorporates all amendments and supplemental agreements, (in each case, other than in breach of the provisions of this Agreement) from time to time;
  - 1.2.15. any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
  - 1.2.16. a reference to an amendment includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
  - 1.2.17. a reference to an authorisation includes any approval, authorisation, consent,

exemption, filing, licence, notarisation, registration and resolution;

- 1.2.18. a reference to determines or determined means, unless the contrary is indicated, a determination made at the discretion of the person making it; and
- 1.2.19. a reference to a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

## **2. Appointment of Escrow Agent**

- 2.1. The Contracting Parties hereby appoint and designate the Agent as escrow agent for the purposes set forth herein, and the Agent hereby accepts such appointment and agrees to accept, hold and disburse the Escrow Fund in accordance with the terms hereof. The Agent shall have no obligation to assure or participate in the enforcement or performance of the Arrangement, whether or not the Agent shall have knowledge or notice of the terms thereof, or any acts or omissions relating thereto.

## **3. Acceptance of Principal Sum**

- 3.1. The Agent shall accept the Principal Sum into an Escrow Account, provided that the same shall be paid on the Payment Date and in accordance with Approved Payment Terms. The Agent shall not otherwise be obliged to accept any funds into an Escrow Account.
- 3.2. The Agent shall have no obligations under the terms of this Agreement in the event that the Principal Sum shall not be paid into an Escrow Account on the Payment Date or shall be paid in any manner other than Approved Payment Terms.
- 3.3. Where the Agent accepts the Principal Sum it shall hold and disburse the same in accordance with the terms of this Agreement.

## **4. Holding of the Principal Sum**

- 4.1. The Agent shall hold the Escrow Fund within the Escrow Account unless and until it is required or permitted to transfer, pay or disburse monies therefrom in accordance with the terms of this Agreement.

## **5. Payments from the Escrow Fund on Joint Instruction**

- 5.1. At any time prior to the Long Stop Date, if the Agent receives a Joint Instruction to do so, the Agent shall pay the Escrow Fund (or any part thereof) to a Contracting Party in such manner as the Joint Instruction may require.

## **6. Payments from the Escrow Fund on Court Direction**

- 6.1. Where the Agent is subject to a Court Direction, it may comply with the terms of such Court Direction and shall not be liable for any matter resulting from such compliance.

## **7. Requests for Payment from the Escrow Fund**

- 7.1. The Contracting Parties each hereby jointly and severally covenant with the Agent that they will not issue any notice of Request (other than a Request made by way of a Joint Instruction) or any Dispute Notice unless permitted to do so under the terms of the Arrangement. The Agent shall be under no obligation to enquire as to or verify a Requesting Party's compliance with this clause.
- 7.2. If a Requesting Party wishes to make a Request, it shall do so by notice in writing delivered to the Agent and the Requesting Party shall deliver a copy of every notice of Request to the Affected Party prior to or on the same day as delivering the same to the Agent. The Agent shall be entitled to presume that such a delivery to the Affected Party has taken place and shall be under no obligation to enquire as to or verify the Requesting Party's Compliance with this clause.
- 7.3. The Agent shall not be entitled to act upon any notice of Request unless it includes:
  - 7.3.1. The date of the proposed payment (being a date not before the expiry of the Response Period);
  - 7.3.2. The amount of the proposed payment (being an amount not more than the balance of the Escrow Fund);
  - 7.3.3. The destination account to which the proposed payment is to be sent.
- 7.4. If the Affected Party does not believe that the Requesting Agent is entitled to make a Request under the terms of the Arrangement, then the Affected Party shall issue a Dispute Notice in writing and deliver the same to the Agent within the Response Period.
- 7.5. Unless the Affected Party has delivered a Dispute Notice to the Agent within the relevant Response Period, the Agent shall, on the next Business Day following the expiry of the relevant Response Period pay the Escrow Fund (or the relevant part thereof) in accordance with the terms of the Request.
- 7.6. Where the Agent has received a Dispute Notice within the Response Period the Agent shall hold the Escrow Fund (or that portion of the Escrow Fund to which the Request refers) as a part of the Reserve and not pay the same out in the absence of a Joint Instruction or a Court Direction.

## **8. Payment from the Escrow Fund following the Long Stop Date**

- 8.1. Within 2 Business Days of the Long Stop Date, the Agent shall pay all remaining funds in the Escrow Fund then held by the Agent less the aggregate amount of the Reserve (if any) to the Depositing Party.

## **9. No Obligation to Pay Third Parties**

- 9.1. Nothing in this agreement shall require the Agent to make any payment to any third party or to any account other than one held in the name of a Contracting Party.

## **10. Delay in Payment due to Outstanding Due Diligence**

- 10.1. The Agent may withhold or delay making any payment from the Escrow Fund where the Agent has reasonably requested documents or information for the purpose of satisfying any legal or regulatory obligation applicable to the performance of this agreement, of meeting any internal procedural requirement of the Agent or the Bank and where the requested party has not supplied the same. The Agent shall not be liable for any default or delay authorised under this clause.

## **11. Limitation of Liability of the Agent**

- 11.1. The Agent only accepts those obligations as are expressly provided for in this Agreement, and no obligations shall be implied or inferred.
- 11.2. The Agent's obligations under this Agreement are administrative in nature and the Agent accepts no fiduciary obligation to any Contracting Party.
- 11.3. To the fullest extent it is permissible in law to limit such liability, the Agent shall not be liable in tort (including negligence) for any loss or damage relating to the performance of this Agreement, and the Agent shall be liable only for breach of contract, wilful misconduct or fraud.
- 11.4. Where the Agent consults with or obtains advice from suitably qualified legal counsel in respect of any matter touching upon or concerning this Agreement or the performance of it, the Agent shall not be liable for any action taken in good faith in accordance with such advice.
- 11.5. The Agent shall not be liable for any loss arising out of the liquidation, insolvency, composition, administration, reorganisation or any analogous procedure of or relating to a Bank and shall not be under any obligation to enquire as to, check or monitor the financial standing or otherwise of a Bank and shall not be responsible for the credit rating of a Bank.
- 11.6. The Agent shall not be liable for any mistake of fact, or error of judgment.
- 11.7. The Agent shall have no liability for any loss or damage which is consequential, special, indirect, speculative or punitive or penal in nature (including, but not limited to, any loss of business, opportunity, profit or goodwill) even if advised of the possibility of such loss or damage.
- 11.8. At no time shall the Agent's aggregate total liability in respect of any matter touching upon or concerning this Agreement exceed the Principal Sum.
- 11.9. The Agent shall not (in the absence of fraud or wilful misconduct) have any liability with respect to:
  - 11.9.1. any action taken or omitted to be taken which the Agent in good faith reasonably believed to be in accordance with the terms of this Agreement; or
  - 11.9.2. any action taken or omitted to be taken in reliance (including reliance not only as to a document's due execution and the validity and effectiveness of its provisions, but also as to the truth and accuracy of any information contained

therein) upon any document, including any written notice of Request, Dispute Notice or Joint Instruction provided for in this Agreement, that the Agent in good faith reasonably believed to be a genuine Authorised Instruction.

11.10. The Agent shall not be liable for:

- 11.10.1. Any reduction or diminution in value of the Escrow Fund resulting from any change in exchange rates or any other matter outside of the control of the Agent;
- 11.10.2. Any lost profit, interest or opportunity resulting from the Escrow Agent holding the Escrow Fund under the terms of the Escrow Account and not considering any other placement of the Escrow Fund;
- 11.10.3. Any delay in the performance of this Agreement resulting from a failure of a Bank to act promptly upon an instruction properly given by the Agent;
- 11.10.4. Any default on the part of a Bank, including that Bank entering into insolvency.

11.11. The Agent shall not be required to undertake any action or take any steps which would or might be contrary to any law of any jurisdiction or any directive or regulation of any agency or any state or which would or might otherwise render it liable to any person or require it to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers if it shall believe that repayment of such funds or adequate indemnity against such risk or liability is not assured to it and may do anything which is necessary to comply with any such law, directive or regulation, and shall not be liable for any steps taken in such compliance.

11.12. Nothing in this Agreement shall limit the liability of the Escrow Agent for fraud or for causing death or personal injury by way of negligence.

## **12. Force Majeure**

12.1. No party shall be liable to any other for any default under this agreement arising from circumstances beyond the control of the party in default provided that:

- 12.1.1. any party seeking to rely on this clause shall give written notice to the other parties containing full particulars of the act or matter which it claims has put the due performance of its obligations under this agreement beyond its control; and
- 12.1.2. this clause shall cease to apply when such act or matter has ceased to have effect on the performance of this agreement.

12.2. Notwithstanding clause 12.1, each party agrees that it shall use reasonable endeavours to ensure continuity in its performance of this Agreement in the event of circumstances beyond its control.

## **13. Right to request a Court Direction**

13.1. Notwithstanding any provision herein the Agent shall have the right, but not the obligation, to make an application by way of interpleader to the High Court of Justice of the Isle of Man and obtain a Court Direction as to how the Agent should conduct

the handling of the Escrow Fund, in the event:

- 13.1.1. of any disagreement or controversy arising under this Agreement;
  - 13.1.2. conflicting Requests or notices being made upon the Agent arising out of or relating to this Agreement;
  - 13.1.3. the Agent in good faith being in doubt as to what action it should take in order to comply with the terms of this Agreement, or
  - 13.1.4. the Agent receiving a Dispute Notice.
- 13.2. Should any legal proceedings be instituted arising out of or related to this Agreement or the Arrangement, whether such proceedings are initiated by the Agent or others, the Agent shall have the right, but not the obligation, to decline to make any payment from the Escrow Account in the absence of a Joint Instruction or Court Direction.
- 13.3. The Contracting Parties jointly and severally agree to indemnify the Agent in respect of any and all costs reasonably incurred in undertaking any action authorised under this clause 13 (including, but not limited to, legal fees) and the Agent is authorised to deduct the same from the Escrow Fund provided only that the Agent shall give not less than 3 Business Days prior written notice to the Contracting Parties before making such deduction.

#### **14. Fees**

- 14.1. The Agent shall be paid the Fee in respect of its services hereunder.
- 14.2. The Fee is payable on the date and in the manner described in the Addendum and the Contracting Parties each jointly and severally guarantee the performance of the same to the Agent notwithstanding any term within the Arrangement or the provisions of the Addendum which provides that one or other Contracting Party may be responsible for the Fee.
- 14.3. In the event that the Fee shall not be paid within 3 Business Days of the date of payment falling due then the Agent shall have the right, but not the obligation:
  - 14.3.1. to suspend the performance of its obligations under this Agreement until such time as the Fee shall be paid, and/or
  - 14.3.2. to deduct the same from the Escrow Fund provided only that the Agent shall give not less than 3 Business Days prior written notice to the Contracting Parties.
- 14.4. Where the Agent is removed under the terms of this Agreement, the Agent shall not be required to reimburse any part of the Fee.
- 14.5. Where the Agent retires under the terms of this Agreement, the Agent shall at the time of such retirement pay into the Escrow Fund a partial reimbursement of any Fee paid in advance of the provision of services on a pro-rata basis.

#### **15. Indemnity**

- 15.1. The Contracting Parties jointly and severally agree to indemnify the Agent in respect of any and all expenses, costs, damages or other liabilities directly or indirectly

incurred as a result of its proper performance of this Agreement (excepting any liability caused by the fraud or wilful default of the Agent) and the Agent is authorised to deduct the same from the Escrow Fund provided only that the Agent shall give not less than 3 Business Days prior written notice to the Contracting Parties before making such deduction.

- 15.2. Proper expenses which are subject to the indemnity in clause 15.1 include (without limitation) any costs incurred by the Agent in good faith taking the advice of a suitably qualified advisor, or in taking on legal counsel to represent the Agent in any court proceedings, or other contentious proceedings in respect of any matter touching upon or concerning this Agreement or the performance of it.

## **16. Representations and warranties**

- 16.1. Each of the parties represents and warrant to the other parties that on the date of this Agreement it:
- 16.1.1. Is a duly incorporated limited liability company validly existing under the laws of its jurisdiction of incorporation;
  - 16.1.2. has the power to own its assets and carry on its business as it is being conducted; and
  - 16.1.3. has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of, this Agreement and the transactions contemplated by it;
  - 16.1.4. will not, by entering into, delivering or performing this Agreement, contravene any term of:
    - 16.1.5. its constitutional documents;
    - 16.1.6. any agreement or instrument binding on it or its assets (nor it constitute a default or termination event (however described) under any such agreement or instrument); or
    - 16.1.7. any law or regulation or judicial or official order, applicable to it.
  - 16.1.8. has obtained all required authorisations to enable it to enter into, exercise its rights under and comply with its obligations in this Agreement and to make this Agreement admissible in evidence in its jurisdiction of incorporation and that all such authorisations are in full force and effect;
  - 16.1.9. has duly executed this Agreement and all the obligations on it stated in this Agreement are legal, valid, binding and enforceable in accordance with its terms;
  - 16.1.10. is not required to file, record or enrol this Agreement with any court or other authority or pay any stamp, registration or similar taxes relating to this Agreement or the transactions contemplated by this Agreement; and
  - 16.1.11. is not party to any litigation, arbitration or administrative proceedings taking place, pending or, to the party's knowledge, threatened against it, any of its directors or any of its assets, which might reasonably be expected to have a

material adverse effect on its ability to perform its obligations under this Agreement.

## **17. Resignation or Removal of the Agent**

- 17.1. Subject to the terms hereof, the Escrow Agent may resign without requiring the consent of the Contracting Parties, by giving thirty (30) Business Days' prior written notice to the Contracting Parties of the Agent's intent to resign.
- 17.2. The Agent may be removed and replaced following the giving of thirty (30) Business Days' prior written notice to the Agent by all of the Contracting Parties acting jointly.
- 17.3. Any such successor escrow agent shall be appointed (which appointment shall be made without delay) by a written instrument, mutually satisfactory to, and executed by, the parties and such successor escrow agent. For the avoidance of doubt the terms of such instrument shall include terms to permit the successor escrow agent to deduct funds from the Escrow Fund and use the same to indemnify the Agent in respect of any matter that the Agent would have been entitled to be indemnified had it remained the escrow agent.
- 17.4. If the parties have failed to appoint a successor escrow agent prior to the expiration of thirty (30) Business Days following receipt of the notice of resignation or removal, the Agent may, but shall not be obliged to, make application to the High Court of Justice of the Isle of Man for a Court Direction.
- 17.5. The Agent shall execute such documents as are necessary to vest the Escrow Fund in any successor escrow agent as soon as reasonably practicable after their appointment. The Agent shall be entitled to raise reasonable fees and recover all expenses incurred in undertaking such actions.
- 17.6. A resignation or removal shall only be effective upon the appointment of a successor escrow agent and the transfer of the Escrow Fund thereto, and upon being effective the Agent shall be released from all obligations under this Agreement.
- 17.7. The Contracting Parties jointly and severally agree to pay any fees raised and to indemnify the Agent in respect of and all costs, expenses or liabilities reasonably incurred in undertaking any action authorised under this clause 16 and the Agent is authorised to deduct the same from the Escrow Fund provided only that the Agent shall give not less than 3 Business Days prior written notice to the Contracting Parties before making such deduction.
- 17.8. Notwithstanding its retirement or removal the Agent shall remain entitled to the benefit of all provisions for their indemnification and the release or limitation of liability under the terms of this Agreement as were applicable during the time when the Agent stood as escrow agent, and the Contracting Parties agree that they shall remain jointly and severally liable to indemnify the Agent under such terms.

## **18. Severance**

18.1. If any provision (or part of any provision) of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this agreement.

## **19. Assignment and transfer**

19.1. Save as provided for within clause 16 no party may assign or transfer any of its rights or obligations under this Agreement without the written consent of all other parties (such consent not to be unreasonably withheld or delayed).

## **20. Amendment**

20.1. Subject to clause 20.2 this Agreement may only be amended by all the parties agreeing to amend in writing

20.2. Notwithstanding clause 20.1 the Agent may amend these standard terms (but not any addendum) by posting amended terms to [www.smppartners.com](http://www.smppartners.com) and the Contracting Parties each agree to be bound by such amendments upon their publication to such page and they shall not require any other notice as to such amendments.

## **21. Notice of Liquidation etc.**

21.1. In the event of any party being wound up, dissolved or entering into liquidation, or having a receiver appointed over its assets (or any of them) or any resolution being passed or application being made to the High Court of Justice of the Isle of Man seeking the same or any analogous matter in any jurisdiction, such party shall notify the other parties forthwith.

## **22. Counterparts**

22.1. This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute one agreement. The exchange of .pdf format electronic scanned copies of signed counterparts shall be due and sufficient exchange of counterparts to bind the parties.

## **23. Third party rights**

23.1. Save for the rights specified in clause 22.3 a person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 2001 to enforce or enjoy the benefit of any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from under that Act.

23.2. The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

23.3. The Contracting Parties jointly and severally agree to indemnify each of the Agent's employees and officers, and their respective personal representatives and successors against any loss or damage suffered by them personally as a result of their involvement in the proper performance of this Agreement by the Agent. Such indemnified persons are entitled to enforce this clause directly against the Contracting Parties notwithstanding that they are not parties to this Agreement. The Agent is authorised to deduct monies from the Escrow Fund and apply the same to such indemnities provided only that the Escrow Agent shall give not less than 3 Business Days' prior written notice to the Contracting Parties.

## 24. Notices

24.1. Any notice or other communication given to a party under or in connection with this Agreement shall be:

24.1.1. in writing;

24.1.2. delivered by hand, by pre-paid first-class post or other delivery service, or by email; and

24.1.3. sent to:

24.1.3.1. in the case of a Contracting Party, the contact details set out in the Addendum; or

24.1.3.2. in the case of the Agent:

by hand or postal delivery:

FAO Benjamin Lees

SMP Escrow Services Limited

Clinch's House

Lord Street

Douglas

Isle of Man

IM99 1RZ

or by email to [ben.lees@smppartners.com](mailto:ben.lees@smppartners.com)

24.1.4. or to any other address as is notified in writing by one party to the other parties from time to time.

24.2. Subject to clause 23.3 any notice or other communication that a party gives to another party under, or in connection with, this agreement shall be deemed to have been received:

24.2.1. if delivered by hand, at the time it is left at the relevant address (or if that is not a Business Day, on the next Business Day);

24.2.2. if posted by pre-paid first-class post or other delivery service, on the second Business Day after posting; and

24.2.3. if sent by e-mail, on the next Business Day after sending provided that an automated response to an electronic communication indicating that the intended

recipient is out of the office is to be treated as proof that the notice or document was not received and that the delivery was not effective.

- 24.3. A notice of Request, a Dispute Notice or a Joint Instruction shall not be subject to any deemed receipt and shall not be considered delivered to the Agent unless and until they are actually received. Each Contracting Party shall be responsible for verifying receipt of any such notice or instruction that they send.

## **25. Compliance**

- 25.1. Nothing in this Agreement shall require the Agent to act in any way unlawfully or in breach of any regulatory or legal obligation.
- 25.2. The Contracting Parties warrant that the due diligence information given to the Agent prior to the execution of this Agreement is accurate and that there has been no material change in circumstances since such information was provided.

## **26. Interest**

- 26.1. In the event that any sum is due and payable to the Agent under the terms of this Agreement, interest shall accrue on such sum between the date of such payment falling due and the date of actual payment. Such interest shall be at the rate of 4% above the base lending rate of Barclays Bank plc. from time to time and shall accrue daily but be calculated and compounded at rests on the 1st day of each month.

## **27. Confidentiality and Privacy**

- 27.1. The SMP Partners Group (“the Group”) has adopted procedures across the entire group of companies to comply with the terms of the General Data Protection Regulation of the European Union (“GDPR”), and certain companies within the Group (including the Agent) are also subject to domestic legislation which applies GDPR equivalent terms in their own jurisdiction. References in this clause to terms defined in the GDPR have the same meaning as in the GDPR, subject to any local variations resulting from any such domestic legislation as may be applicable.
- 27.2. Each Company within the SMP Partners Group (each an “SMP Company”) recognises all the rights of data subjects under GDPR and will comply with any attempt by a data subject to enforce such rights. Further each SMP Company will cooperate with the Contracting Parties in the event that they receive an access request or otherwise needs to assist a data subject in the exercise of those rights.
- 27.3. SMP respects the right to privacy of such data subjects and will not transfer personal data it receives from the Contracting Parties to any third party other than in the manner described in this clause. SMP will keep all information (including information which is not personal data) (described in this clause as “Confidential Information”) which it receives in the course of providing the services in this Agreement (and including all due diligence information received by the Agent prior to the execution of

this Agreement) confidential and will only use, disclose or otherwise process (in the remainder of this clause all uses, disclosures and processing are collectively described as “Use”) Confidential Information in the manner described in this clause.

27.4. Each Contracting Party warrants to the Agent that:

- 27.4.1. all data subjects whose personal data is provided or to be provided to the Agent in the course of the performance of this Agreement will or have been made aware of the ways in which the Agent will process their personal data by being made aware of the SMP Group Privacy Policy, a copy of which is available at [www.smppartners.com](http://www.smppartners.com) where it will be updated from time to time.
  - 27.4.2. all data subjects who need to give their consent to the Agent processing their data in order to comply with the requirements of GDPR have given or will give that consent prior to the Agent receiving their personal data. The Client agrees to supply copies of such consents to the Agent upon request.
  - 27.4.3. all personal data and other information supplied by them at any time during the term of this agreement will be accurate at the time of supply and that the Contracting Party will update SMP if they become aware of any change.
- 27.5. The Agent will hold all Confidential Information in a secure manner and use reasonable technical and operational measures to prevent unauthorised access or inadvertent disclosure, however no system is infallible and the Agent will not be liable for any loss or damage suffered as a result of unauthorised access to its systems (third party ‘hacking’).
- 27.6. The Agent warrants that all of the employees and officers of each of the companies within the SMP Partners Group who are or may be given access to the Confidential Information are made aware of the confidential nature of this Confidential Information, given appropriate training (including training related to GDPR) and are made subject to strict confidentiality covenants within their terms of employment.
- 27.7. The Agent shall Use the Confidential Information only for the following purposes:
- 27.7.1. Performing this Agreement;
  - 27.7.2. Fulfilling any fiduciary or similar obligations relevant to the performance of this Agreement;
  - 27.7.3. Engaging with third parties to support the performance of this Agreement (including the Bank);
  - 27.7.4. Seeking professional advice in respect of the subject matter of this Agreement;
  - 27.7.5. Monitoring the service provision of the Agent, any other involved SMP Partners Group company and any related third parties;
  - 27.7.6. Identifying areas for product development;
  - 27.7.7. Monitoring the entire client base for statistical purposes;
  - 27.7.8. Risk management, crime prevention and detection;
  - 27.7.9. Compliance with legal and regulatory obligations in any relevant jurisdiction;

- 27.7.10. Making reports to Isle of Man Treasury and other tax authorities where required under applicable legislation;
- 27.7.11. Providing communications about the services provided by SMP and legal or other developments related to the subject matter of this Agreement;
- 27.8. The Agent shall hold Confidential Information for the minimum period of time necessary to comply with any relevant statutory or regulatory obligations, or is necessary or desirable to retain it for the efficient performance of this Agreement or the management of any related issue. Confidential Information will thereafter be securely destroyed or pseudonimised and put beyond use without further notice to any Contracting Party or any other person.
- 27.9. The SMP Partners Group is committed to maximising efficiency and client service and Confidential Information may be transferred by the Agent to other companies within the SMP Partners Group or to trusted sub-contractors and other third parties who provide services which support the Agent in their performance of this Agreement. Given the international nature of the Agent's business some of these third parties may not be established within the EU and may not be subject to legislation which is equivalent to GDPR. The Agent will only permit the transfer of Confidential Information to such third parties where contractual terms apply similar obligations to such third party as are applicable to the Agent.
- 27.10. If any further information is required about how the SMP Partners Group stores or processes personal data or otherwise deals with Confidential Information please view the privacy policy on our website (which will be updated from time to time) [www.smppartners.com](http://www.smppartners.com) or contact the data control officer at [dataprotection@smppartners.com](mailto:dataprotection@smppartners.com).

## **28. Governing law and jurisdiction**

- 28.1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the Isle of Man.
- 28.2. Each party irrevocably agrees that, subject as provided below, the courts of the Isle of Man shall have exclusive jurisdiction over any dispute or claim that arises out of, or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).
- 28.3. Without prejudice to any other mode of service allowed under any relevant law, the Contracting Parties each:
- 28.3.1. Irrevocably appoints SMP Trustees Limited as its agent for service of process in relation to any proceedings before the Isle of Man courts in connection with this deed;
- 28.3.2. agrees that failure by a process agent to notify a Contracting Party of the process will not invalidate the proceedings concerned; and

28.3.3. if any person appointed as an agent for service of process is unable or unwilling for any reason to act as agent for service of process, the Contracting Party must immediately (and in any event within 14 days of such event taking place) appoint another agent within the Isle of Man on terms acceptable to the other parties.

## SCHEDULE

### Escrow Account

The Agent does not hold the assets comprising the Escrow Fund itself, but rather places those funds into a segregated account or accounts (each an Escrow Account) held in the name of the Agent with a financial institution ("the Primary Institution") or otherwise under the direct or indirect control of the Agent. The Escrow Account holds the assets comprising the Escrow Fund segregated from the other assets of the Agent.

An Escrow Account may contain pooled assets relating to several escrow arrangements undertaken by the Agent on behalf of its clients at any one time. The Contracting Parties acquire no rights to the funds in the Escrow Account other than their rights to the Escrow Fund under this Agreement.

The Primary Institution may utilise the services of third party custodians or banks ("Secondary Institutions") in order to provide the Escrow Account. The Primary Institution may place the Escrow Fund into a pooled account with a Secondary Institution.

Where the Escrow Fund is placed into a pooled account it is not held as a sum of money in the names of the Contracted Parties and the Escrow Fund is not an identifiable portion of the monies held within the Escrow Account.

The Primary Institution, Secondary Institutions, or the Agent may utilise nominee companies, intermediate brokers, settlement agents or other counterparties ("an Intermediary") in the holding of the Escrow Account.

Each Primary Institution, Secondary Institution and Intermediary at any time holding or involved in the holding of the Escrow Funds is referred to in this Agreement as a "Bank" (the use of which term does not imply that each such institution will be licensed to conduct deposit taking business).

In the event the default of a Bank causing a loss within a pooled account, each of the escrow funds held within the Escrow Account at the time of default will be deemed to be debited, and will lose, an amount equal to a proportion of that total loss, calculated on a pro-rata basis. Any compensation received in respect of such default will similarly be applied proportionately, on a pro rata basis, to all the escrow funds held within the Escrow Account at the time of default.

The Agent is not liable for any default on the part of any Bank.

The Agent is not obliged to pay interest on monies held within the Escrow Account at any

time, and any interest received by the Agent to the Escrow Account shall be the property of the Agent solely and shall not be considered an addition to the Escrow Fund.

Where negative interest is charged to the Escrow Account by any Bank, such negative interest will be deducted from each of the escrow funds held within such Escrow Account proportionately, calculated on a pro-rata basis.

Each Bank may have specific terms applicable to the holding of accounts or the conducting of relevant transactions and the Escrow Account is at all times subject to such terms. The Contracting Parties recognise that this Agreement only places obligations on the Agent subject to and limited by those terms. The Agent will supply details of such terms to any Contracting Party upon request. The availability of depositors' compensation schemes or other schemes to compensate for a Bank's default are subject to the laws of the jurisdictions of each Bank and the Agent does not warrant as to the availability of any particular scheme in the particular case of the Contracting Parties.