



## TERMS & CONDITIONS

### 1. DEFINITIONS & INTERPRETATION

1.1 **"Agreement"** means the contract between Mercatoria (as hereinafter defined) and the Client (as hereinafter defined) of which these Terms & Conditions (as hereinafter defined) together with the Letter (hereinafter defined) shall form an integral part.

1.2 **"Client(s)"** means in the case of a trust or a foundation the Settlor of the trust or the trustee(s) of the trust or founder(s) of the foundation or member(s) of the foundation council and in the case of a company or other legal Entity the person(s) for whose benefit the client company or Entity is established or the beneficial owner or owners of the client company or Entity or the company or the Entity itself (as hereinafter referred) which expression shall in the case of individuals include their heirs, personal representatives and assigns and shall in the case of more than one person mean such persons jointly and severally and shall include the survivor or survivors of them and their respective heirs, personal representatives and assigns.

1.3 **"Entity"** means a company, trust, partnership or other legal entity or structure established and / or administered by Mercatoria at the request of the Client.

1.4 **"The Mercatoria Group"** means the multi-jurisdictional marketing insignia of an international group of companies offering company and trust formation and related services. Member companies are independent of one another and have no authority, with regard to any other group member, to represent, bind or act directly or indirectly as a statutory, managing or general agent, representative or attorney for any purpose whatsoever, nor to be based in any jurisdiction outside that in which they are incorporated.

1.5 **"Mercatoria"** means Mercatoria (St. Lucia) Ltd., Mercatoria Trustees Limited and any member of, or any associated company within, The Mercatoria Group whether as subsidiary, holding company, joint venture company or franchisee of The Mercatoria Group or any of its subsidiaries or in any other capacity whatsoever and shall where the context admits include any employee servant agent director or representative of same which provides Services (as hereinafter defined) pursuant to this Agreement.

1.6 **"Mercatoria Officers"** means any person, firm or company nominated by Mercatoria who may from time to time be appointed as director, alternate director, secretary, assistant secretary, manager, partner, accountant, VAT or tax agent, trustee, protector, Bank account signatory, other officer, administrator, registered agent, provider of a registered office or address for legal service or registered shareholder of the Entity and the employees thereof and any company under their direct or indirect control or any director or employee thereof (which expression shall include any of them).

1.7 **"Mercatoria (St. Lucia) Ltd."** means a wholly owned subsidiary of the Mercatoria Group licensed to provide international financial services as a Registered Agent in Saint Lucia.

1.8 **"Mercatoria Trustees Limited"** means a wholly owned subsidiary of the Mercatoria Group licensed to provide international financial services as a Registered Trustee in Saint Lucia.

1.9 **"Clients' Appointees"** means any person who is not a Mercatoria Officer and who may from time to time be nominated or appointed to act as Managing Agent (hereinafter defined), director, alternate director, secretary, assistant secretary, manager, partner, trustee, protector, beneficiary, bank account signatory, other officer, grantee of a power of attorney, administrator, registered agent, provider of a registered office or address for legal service or registered shareholder of the Entity (which expression shall include any of them).



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1.10 **"Managing Agent"** means a person who may in writing be authorised by the Clients to issue requests or instructions to Mercatoria or to accept service of any notice from time to time issued by Mercatoria relating to the Entity.

1.11 **"Letter"** means the engagement letter that more particularly describes the Services Mercatoria is to provide to the Client and which together with these Terms & Conditions constitute the Agreement.

1.12 **"Registered Agent"** means an individual, partnership or company licensed to provide international financial services as a registered agent under the Registered Agent and Trustee Licensing Act of Saint Lucia 1999. For the purposes of these Terms and Conditions, the Mercatoria (St. Lucia) Ltd. is licensed as a registered agent in Saint Lucia to provide international financial services.

1.13 **"Registered Trustee"** means an individual, partnership or company licensed to provide international financial services as a registered trustee under the Registered Agent and Trustee Licensing Act of Saint Lucia 1999. For the purposes of these Terms and Conditions, Mercatoria Trustees Limited is licensed as a registered trustee in Saint Lucia to provide international financial services.

1.14 **"Services"** means the provision by Mercatoria of management, administration and / or other services (including the operation or control of an Entity's bank account) requested by the Clients or the Clients' Appointees or such other services provided by Mercatoria to maintain the Entity in good standing in its country of establishment or incorporation and / or those services more particularly described in the Letter.

1.15 **"Terms and Conditions"** means these Terms and Conditions or such other new Terms and Conditions as may from time to time be published on The Mercatoria Group's website ([www.mercatoria.com](http://www.mercatoria.com)) and shall be deemed to include such other conditions which Mercatoria may from time to time advise to the Clients or the Clients Appointees or publish on its website. These Terms and Conditions apply to all of Mercatoria's Clients and Clients' Appointees.

## 2. REQUESTS & INSTRUCTIONS

2.1 The Clients on behalf of themselves and the Clients' Appointees and the Entity agree to provide all requests or instructions to Mercatoria in writing by letter or facsimile and Mercatoria shall only consider such requests or instructions when signed by all the Clients or the Managing Agent or, with the prior written consent of Mercatoria, when they are made by encrypted email sent by the Managing Agent.

2.2 The Clients acknowledge that Mercatoria is bound by regulatory and other obligations under laws and regulations of the jurisdiction in which the Services are provided, the jurisdiction of incorporation or establishment of the Entity and the jurisdictions where the Entity undertakes business and agree that any action undertaken by Mercatoria or the Mercatoria Officers in order to comply with those laws or regulations shall not constitute a breach by Mercatoria or the Mercatoria Officers of their obligations hereunder.

2.3 Mercatoria shall not be required to take any action which it considers to be unlawful or improper or which it believes may be detrimental to it, the Mercatoria Officers, or the Entity.

2.4 Where permitted under these Terms and Conditions or if instructions are requested by Mercatoria from the Clients or the Clients Appointees and no instructions have been received by Mercatoria within 30 days of such a request being made, or where the urgency of the matter requires action within a shorter period, Mercatoria may immediately and with no liability to the



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Clients, the Clients' Appointees or the Entity take no further action in relation to a particular matter or take such other action as it shall in its absolute discretion consider appropriate or as it may be advised.

2.5 The Clients irrevocably agree that, if the Entity is a limited liability company and the Mercatoria Officers are members or officers of that company, or the Entity is a Partnership and the Mercatoria Officers are members of that partnership, or the Entity is a trust and the Mercatoria Officers are trustees or protectors of that trust, Mercatoria may, without being obliged to give notice to the Clients or the Clients Appointees, take such steps as they shall in their absolute discretion consider appropriate which shall without prejudice to the generality of the foregoing include having the Entity struck off, dissolved or liquidated; or resigning all or any of the Mercatoria Officers; or transferring all or any of the shares, capital or assets or liabilities of the Entity into the name of the Clients; or appointing the Clients as a director, officer, manager, trustee or protector of the Entity; or take such other action as it shall in its absolute discretion consider appropriate or as it may be advised.

### **3. FEES PAYMENT**

3.1 When the Entity is not a trust or a foundation, the legal ownership of the Entity shall not pass to the Clients until payment in full of all fees, including government duties and taxes, has been received by Mercatoria. No refunds are given after an order has been processed and no refunds will be made where Mercatoria ceases to provide the Services.

3.2 Mercatoria will not provide Services until Mercatoria has received, in full, all fees and disbursements payable in relation to the Entity or the provision of Services. Fee notes or invoices will be rendered to the Clients periodically and Clients agree to pay and discharge forthwith any such fee note or invoice on demand.

3.3 The Clients hereby irrevocably authorise Mercatoria to withdraw from any sums held on any account managed by Mercatoria or otherwise held by Mercatoria / on behalf of the Clients and / or the Entity any monies required to discharge any fees or expenses, including any governmental fees, duties, taxes or penalties, payable to or by Mercatoria or the Entity.

3.4 Fees are stated in Mercatoria's Fee Schedule, published from time to time, or as may be notified to or agreed with the Clients or attached as a schedule to the Letter as at the date of the Letter. Any changes or increases to agreed fees are to be notified to the Clients with not less than 45 days notice pursuant to Paragraph 11 of these Terms & Conditions.

3.5 Where any fees for Services remain unpaid for more than 90 days, Mercatoria may at its discretion immediately terminate the Services, and / or obtain payment from any assets of the Entity and / or the Clients. In such circumstances, Mercatoria reserves the right to treat these Terms and Conditions as terminated without further obligation, save as to any continuing covenant, obligation or undertaking given by the Clients or the Clients' Appointees to Mercatoria and to act pursuant to the provision of Paragraph 2.4 of these Terms and Conditions.

3.6 Unless otherwise agreed in writing with the Clients, Mercatoria will not pay any interest on any monies held by Mercatoria on behalf of the Entity and / or the Clients and / or the Clients' Appointees.

3.7 Mercatoria and its associated companies, their officers, agents and employees shall be entitled to retain any third-party commission or fee which is paid or may become payable to it notwithstanding that such commission or fee is payable as a direct or indirect result of Mercatoria providing the Services or otherwise in relation to the Entity.



3.8 Should Mercatoria cease to provide Services or should the Clients advise Mercatoria that they no longer require the Entity, the Clients must pay Mercatoria any fees or costs which may be incurred by Mercatoria in relation to the striking off, dissolution, liquidation or transfer of the Entity (including Mercatoria's minimum transfer or termination fee).

3.9 In the event that the Clients shall request Mercatoria to transfer the management or administration of the Entity to another Registered Agent, Registered Trustee or Corporate or Trust Service Provider, Mercatoria shall not be obliged to transfer the Entity until all outstanding fees (including government fees, duties, taxes and other third party disbursements together with Mercatoria's transfer or termination fees) have been paid in full.

3.10 Where the Clients make part payment to Mercatoria of any fee note or invoice rendered by Mercatoria, Mercatoria reserves the right to apply any monies received in firstly discharging its professional fees and only thereafter in payment of any government fees, duties or taxes or other payments to third parties.

#### **4. CLIENTS' OBLIGATIONS**

4.1 The Clients must give Mercatoria at least 90 days' advance written notice of the intention to discontinue the Services.

4.2 The Clients must obtain Mercatoria's written consent before seeking to change the beneficial ownership of the Entity or seeking to appoint new Clients' Appointees. Any such applications must be accompanied by written details of such proposed changes or appointments as Mercatoria may require which shall, without prejudice to the generality of the foregoing, include an appropriately certified copy of the passport, proof of residential address and a detailed personal history of such persons and Mercatoria reserves the right to request further information and documentation concerning such proposed changes and to decline to accept such applications.

4.3 The Clients shall and shall procure that the Clients' Appointees shall:

4.3.1 immediately inform Mercatoria of any matters which might affect the Entity and / or influence Mercatoria's willingness or ability to provide, or continue to provide, the Services.

4.3.2 immediately inform Mercatoria of the nature of the activities and business of the Entity and seek Mercatoria's prior written consent before making any material changes to those activities.

4.3.3 obtain Mercatoria's prior written consent before placing any advertisement or making any public announcement relating to the Entity or any activities undertaken by it.

4.3.4 at all times pay Mercatoria any sum due to Mercatoria including any fees, disbursements and expenses incurred by Mercatoria in connection with the Entity and / or in providing the Services (including fees charged by Mercatoria in relation to the provision of the Services).

#### **5. CLIENTS' OBLIGATIONS WHEN MERCATORIA PROVIDES MERCATORIA OFFICERS**

5.1 When Mercatoria provides Mercatoria Officers, the Clients must, at all times, keep the Entity in funds sufficient to discharge its liabilities as and when they become due and at the request of Mercatoria or the Mercatoria Officers pay to the Entity or Mercatoria on its behalf, such sums as



may be required to enable the Entity to discharge, in full, any liabilities (including Mercatoria's fees).

5.2 When Mercatoria provides Mercatoria Officers, the Clients shall and shall procure that the Clients' Appointees shall:

5.2.1 immediately inform Mercatoria of any matters that might affect the Entity or any matter which is material to the management, business or affairs of the Entity.

5.2.2 at the written request of Mercatoria, immediately provide information to enable Mercatoria to prepare annual or other statutory returns, financial or other statements in relation to the Entity.

5.2.3 immediately provide to Mercatoria without delay all contractual, financial or other information concerning any asset, transaction, trading activity or business of the Entity.

5.2.4 not without Mercatoria's prior consent seek to alienate, assign, sell, pledge or otherwise dispose of, charge or encumber any asset of the Entity, including any shares issued by the Entity. Mercatoria reserves the right to request further information concerning such proposals and to decline to accept such applications.

5.2.5 immediately advise Mercatoria in writing of all legal proceedings, claims, demands made or threatened against the Entity or the Mercatoria Officers.

5.2.6 where the Clients or the Clients' Appointees are grantees of a power of attorney issued by the Entity they must:

5.2.6.1 act with the utmost good faith to the Entity, Mercatoria and Mercatoria Officers.

5.2.6.2 keep and maintain and on demand deliver to Mercatoria accurate financial and business records.

5.2.6.3 immediately disclose to Mercatoria, in writing, information relating to the operation of business of the Entity which might create a conflict of interest between them and / or with Mercatoria or Mercatoria Officers.

5.2.6.4 immediately inform Mercatoria, in writing, each time a power of attorney is exercised and provide written details of any acts undertaken.

5.3 When Mercatoria provides Mercatoria Officers, Mercatoria shall be entitled to take any steps that it may in its absolute discretion think fit to protect the interests and / or assets of the Entity and at the cost of the Clients or the Entity including the obtaining of professional advice as Mercatoria may consider necessary.

## **6. WARRANTIES**

6.1 The Clients undertake and warrant and covenant with Mercatoria that:

6.1.1 they have full legal capacity to enter into an agreement with Mercatoria in accordance with these Terms & Conditions and to acquire the Entity and to receive the Services.

6.1.2 when the Entity is not a trust or a foundation, they are the ultimate beneficial owners of the Entity.

6.1.3 they are not and will not act in a fiduciary capacity for any other person, firm or company in relation to the Entity.

6.2 The Clients undertake and warrant with Mercatoria that they:

6.2.1 will comply with Mercatoria's Terms & Conditions.



6.2.2 procure that those appointed as Clients' Appointees understand the legal duties and obligations created by these Terms & Conditions and shall, if so required by Mercatoria, procure that such persons enter into direct written agreements with Mercatoria agreeing to comply with these Terms & Conditions.

6.2.3 have taken appropriate tax and legal advice with regard to the establishment, acquisition and operation of the Entity.

6.2.4 agree that Mercatoria may (but shall not in any event be obliged to) rely on communications received from the Clients or the Clients Appointees in determining what steps Mercatoria is required to take in administering the Entity and providing Services.

6.2.5 will pay, in full, any personal or corporate taxes that may become due as a result of the establishment and operations of the Entity.

## **7. INDEMNITY**

The Clients jointly and severally (for themselves and on behalf of the Clients' Appointees) covenant with Mercatoria and with the Entity and, where appropriate, shall procure that the Entity covenants with Mercatoria that they will at all times indemnify and keep Mercatoria indemnified:

7.1 against all actions, suits, proceedings, claims, demands, costs, expenses and liabilities (including legal fees), which may arise or be incurred, commenced or threatened against Mercatoria in connection with or arising from the acquisition or business activity of the Entity or the provision of Services;

7.2 in respect of anything done or omitted to be done by Mercatoria, provided that this provision shall have no application to any liability for death or personal injury arising from the negligence of Mercatoria or to any liability arising as a result of fraud on the part of Mercatoria;

7.3 in respect of any failure by Mercatoria to comply, wholly or partially, with any instruction or request made by the Clients or the Clients Appointees or any errors or incomplete instructions or requests received by Mercatoria;

7.4 in respect of any loss or damage arising from the use of facsimile or email, including the use of unencrypted email, failed or incomplete transmission, distortion and loss or privacy arising from viruses or otherwise;

7.5 in respect of any penalties, fines, fees or other liabilities incurred by the Clients and / or the Clients Appointees and / or the Entity in relation to the Entity and / or the Services.

## **8. NO LIABILITY FOR LOSS**

Mercatoria expressly disclaims any liability to the Clients, the Clients' Appointees, the Entity and any third parties associated with them for any damage or loss to any of them from the establishment or acquisition of the Entity and / or the provision of the Services by or to the Clients, the Clients' Appointees, the Entity or any other person.

## **9. TERMINATION OF SERVICES**

9.1 Mercatoria shall be entitled by written notice to cease to provide the Services, if:

9.1.1 The Clients or the Clients' Appointees in the reasonable opinion of Mercatoria fail to observe to the fullest extent these Terms & Conditions;



9.1.2 It comes to the attention of Mercatoria that the Entity is being used for activities which were not referred to in the application delivered by the Clients to Mercatoria or as subsequently advised and accepted in writing by Mercatoria;

9.1.3 In the event of the death of Clients, including in the case of joint persons, the death of any one person, and the Clients fail or have failed to make adequate provision for the disposition of the affairs and the ownership of the Entity;

9.1.4 In the event that any legal proceedings are commenced against the Entity, the Clients or the Clients' Appointees (including any injunction or investigative proceedings).

9.2 In any of the circumstances described in Paragraph 9.1 above, Mercatoria reserves the right to take action pursuant to Paragraphs 2.4 and 2.5 above and to treat these Terms & Conditions as terminated without further liability on the part of Mercatoria.

9.3 Mercatoria may at its discretion cease to provide the Services upon giving to the Clients or the Managing Agent 45 days written notice of its intention so to do.

9.4 Mercatoria may by written notice to the Clients, the Clients' Appointees or the Managing Agent immediately cease to provide the Services where the Clients or the Clients Appointees shall breach the provisions of Paragraph 3 of these Terms & Conditions.

9.5 The Clients and the Clients' Appointees for themselves as agent for and on behalf of the Entity acknowledge, following the cessation of Services, that Mercatoria may have continuing regulatory / fiduciary duties under any applicable law. Accordingly, without prejudice to Mercatoria's rights, Mercatoria may (but is not obliged to) continue to provide Services in order to discharge such duties and Mercatoria shall be entitled to charge fees at its applicable rate for the provision thereof.

## **10. INTERPRETATION**

In providing the Entity and / or the Services, Mercatoria does not, nor is it to be interpreted as though it does in any manner sanction, advocate or approve, directly or indirectly, the commission of any act or any omission by the Clients, or the Clients' Appointees or the Entity, or any person, firm or corporation in any jurisdiction or the use of the Entity or the Services for any purpose.

## **11. NOTICE**

11.1 Any notice given pursuant to these Terms & Conditions shall be in writing and shall be sufficiently given to any party if sent -

- (a) in a letter by courier to the address last notified by the addressee or to the correct address of the addressee,
- (b) by facsimile transmission to the number last notified by the addressee or to the correct number of the addressee, or
- (c) by electronic mail to the electronic address last notified by the addressee or to the correct electronic address of the addressee.

11.2 Any such notice shall be deemed duly served -

- (a) in the case of a notice sent by courier, at the time of the first attempted delivery;
- (b) in the case of a notice sent by facsimile transmission or electronic mail -



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- (i) if sent during normal business hours in the country of the addressee, at the time of transmission;
- (ii) otherwise, on the next business day.

## **12. MISCELLANEOUS**

12.1 These Terms & Conditions supersede all prior Terms & Conditions and agreements whether oral or written.

12.2 No exercise or failure to exercise or delay in exercising any right or remedy by Mercatoria pursuant to these Terms & Conditions shall constitute a waiver by Mercatoria of that or any other right or remedy.

12.3 Nothing in these Terms & Conditions shall create or be deemed to create the following relationships between Mercatoria and the Clients or the Clients' Appointees or the Managing Agent:

- (a) partnership,
- (b) employment, or
- (c) joint venture.

12.4 Words importing the singular shall include the plural and vice versa and the masculine gender shall include the feminine and neuter genders.

12.5 The headings are inserted for convenience and shall not affect the construction of this document.

12.6 Save where otherwise provided herein the liability of the Owner and the Company hereunder shall be joint and several.

## **13. GOVERNING LAW**

Unless otherwise agreed in writing between the Clients and Mercatoria, these Terms & Conditions shall be governed by and construed in accordance with the laws of Saint Lucia and the Clients, the Clients' Appointees and the Managing Agent hereby submit to the exclusive jurisdiction of Saint Lucia.