

## *Terms and Conditions*

### **1. Application**

Upon the acceptance of the Letter of Engagement by the Client, the Letter of Engagement shall constitute an agreement by and between the Client and Credence (as such term is defined in clause 2.4 hereof) (hereinafter each referred to as the “Party” and collectively referred to as the “Parties”) for the provision of the Services, and the relationship between the Parties in terms of the Letter of Engagement shall, subject to the provisions contained therein, be regulated by the terms and conditions set out herein (hereinafter referred to as the “T&Cs”) which shall be binding on the Parties and shall form an integral part of the Letter of Engagement.

The acceptance of the Letter of Engagement shall constitute an acceptance of all of the T&Cs contained herein and such T&Cs shall apply in respect of all the Services to be provided by Credence.

In the case of any inconsistency between the provisions of the Letter of Engagement and the T&Cs, the provisions of the Letter of Engagement shall prevail.

### **2. Definitions**

A. The following terms shall have the meanings assigned to them hereunder:

- 2.1. “Confidential Information” means any information in any form whatsoever relating to the Client or to the Structure, to the officers, employees, professional and business activities or to the affairs or operations of the Client or of the Structure, and that relating to Credence, its officers or employees, or to its business or to the affairs or operations of Credence, as well as any information relating to the Letter of Engagement and the Services to be provided.
- 2.2. “Corporate Questionnaire” means the document entitled “Corporate Questionnaire for the incorporation and registration of a limited liability company in Malta under the Companies Act [Chapter 386 laws of Malta]” which, where required, has been completed and signed by the Client and on the basis of which the Letter of Engagement has been entered into.
- 2.3. “Client” means the person or persons that have engaged Credence for the provision of the Services as indicated in the Letter of Engagement, and shall also include the ultimate beneficial owner(s) (as defined in section 4 of Part 1 of the Implementing Procedures issued by the Financial Intelligence Analysis Unit in terms of the provisions of the Prevention of Money Laundering and Funding of Terrorism Regulations, Subsidiary Legislation 373.01 of the laws of Malta) of such person(s), or of any Structure (as hereinafter defined), and any Structure or successor of such Structure.
- 2.4. “Credence” means any one or more of the following entities forming part of the Credence group, with which the Client entered into the Letter of Engagement for the provision of the Services by such an entity or entities: (i) **Credence Corporate and Advisory Services Limited**, a limited liability company incorporated and existing under the laws of Malta with company registration number C40192 and having its registered office situated at 40, Villa

Fairholme, Sir Augustus Bartolo Street, Ta' Xbiex XBX 1095, Malta; (ii) **Credence Fiduciary Limited**, a limited liability company incorporated and existing under the laws of Malta with company registration number C43504 and having its registered office situated at 40, Villa Fairholme, Sir Augustus Bartolo Street, Ta' Xbiex XBX 1095, Malta; (iii) **Credence Consulting Limited**, a limited liability company incorporated and existing under the laws of Malta with company registration number C89182 and having its registered office situated at 40, Villa Fairholme, Sir Augustus Bartolo Street, Ta' Xbiex XBX 1095, Malta.

- 2.5. "Expenses" means the reasonable out-of-pocket expenses (including without prejudice to the generality of the foregoing those relating to travel and accommodation abroad and communications) incurred by Credence in relation to the provision of the Services, as invoiced by Credence on a monthly basis or at such other intervals (being not less than one (1) month each) as may be determined by Credence.

Such Expenses shall be quoted in Euro, or in any other currency upon agreement between the Parties in the Letter of Engagement, and shall be settled in the quoted currency.

- 2.6. "Fees" means the consideration payable by the Client to Credence by way of compensation for the provision of Services as set out in the Letter of Engagement.

Fees for additional services as may be requested by the Client and as Credence may agree to provide following the execution of the Letter of Engagement shall be charged at the rates listed in the Schedule of Fees or as otherwise agreed in writing between the Client and Credence.

Such Fees shall be quoted in Euro, or in any other currency upon agreement between the Parties in the Letter of Engagement, and shall be settled in the currency quoted.

- 2.7. "Letter of Engagement" means the letter of engagement entered into between the Client and Credence for the provision of the Services and to which these T&Cs form an integral part.

- 2.8. "Payments" means any amount due by the Client to Credence in respect of Expenses or Fees or the sum of Expenses and Fees duly invoiced by Credence and due and payable by the Client to Credence in accordance with the Letter of Engagement.

- 2.9. "PEP" (Politically Exposed Person) means a natural person who is or has been entrusted with prominent public functions and for a period of twelve (12) months thereafter, including:

- (i) Heads of State, Heads of Government, Ministers and Deputy and Assistant Ministers and Parliamentary Secretaries;
  - (ii) Members of Parliament;
  - (iii) Members of the Courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
  - (iv) Members of courts of auditors, Audit Committees or of the boards of central banks;
  - (v) Ambassadors, charges d'affaires and other high-ranking officers in the armed forces:
- Provided that the above include positions held at Community or international level;

- (vi) Members of the administrative, management or boards of State-owned corporations; and the immediate family members or persons known to be close associates of such persons.

2.10. “Services” means the services to be provided by Credence to the Client in relation to the Client’s professional and, or business activities as set out in the Letter of Engagement entered into by such Parties, and any additional services as the Client may request and Credence may agree to provide in writing following the execution of the Letter of Engagement.

2.11. “Schedule of Fees” means the Credence schedule of fees in relation to the Services, as applicable and as communicated by Credence to the Client from time to time.

2.12. “Structure” means any company or other legal entity which, by virtue of the Services, is to be incorporated or set up by Credence or in respect of which Credence is to provide corporate, fiduciary, trustee, qualified person and/or administrative services as directed by and for and on behalf of the Client.

B. In these T&Cs, unless the contrary intention appears:

- (i) words denoting the singular include the plural and vice versa;
- (ii) words denoting the masculine gender include the female and the neutral genders and the neutral gender shall include the masculine and female genders;
- (iii) references to any document (including, without limitation, to this Service Agreement and to the Appendices, if any, to this Agreement) are references to that document as amended, supplemented, novated or replaced from time to time;
- (iv) references to “law” include any instrument having the force of law and any unwritten rule of law, and the expressions “lawful” and “lawfully” shall be construed accordingly;
- (v) references to statutes or provisions of statutes are references to those statutes or to those provisions as from time to time amended, replaced or re-enacted;
- (vi) references to the parties include their respective successors (particular or universal) in title, transferees and assignees, where applicable; and

### **3. Warranties**

3.1 In signing the Letter of Engagement, Credence warrants in favour of the Client that it is:

- (i) capable of contracting in its own name;
- (ii) not entering into the Letter of Engagement in the name of any other person or entity;
- (iii) under no legal disability to enter into the Letter of Engagement;
- (iv) entering into the Letter of Engagement freely and with full knowledge and understanding of the consequences of doing so and that its consent is not in any way vitiated by error, fraud or otherwise.

- 3.2 Credence further warrants that it has the necessary experience, expertise, equipment, licenses, warrants, personnel and qualifications, and is willing and qualified and able, to provide the Services.
- 3.3 In signing the Letter of Engagement, the Client warrants in favour of Credence that it is:
- (i) capable of contracting in its own name;
  - (ii) entering into the Letter of Engagement as principal and not in the name or on behalf of any other person or entity;
  - (iii) under no legal disability to enter into the Letter of Engagement;
  - (iv) entering into the Letter of Engagement with freely and with full knowledge and understanding of the consequences of doing so and that its consent is not in any way vitiated by error, fraud or otherwise;
  - (v) entering into the Letter of Engagement with full knowledge and understanding of the duties and obligations incumbent upon Credence and its directors, particularly of the obligation to bring to the attention of the Maltese authorities any change in circumstances which would render inapplicable the exemptions granted with regard to any tax or duty otherwise payable;
  - (vi) entering into the Letter of Engagement with full knowledge that Credence may provide services of a similar nature to the Services to other clients or companies with identical or similar objects and activities to those of the Client or of the Structure and which may or may not be in direct or in indirect competition with the Client or the Structure.
- 3.4 The Client represents and warrants to and for the benefit of Credence at the date of signing of the Letter of Engagement and for the duration set out therein, that:
- (i) it is not a PEP;
  - (ii) it has the power to enter into the Letter of Engagement and to perform its obligations thereunder and in terms of these T&Cs, and has taken all necessary corporate or other actions required to authorize the execution, delivery and performance of the Letter of Engagement and these T&Cs;
  - (iii) neither the Client nor, where applicable, the Structure have ever been convicted of any criminal offence, been the subject of any investigation by any governmental, professional or other regulatory or statutory body or been adjudged bankrupt;
  - (iv) it has never been an officer or member of any entity which has been convicted of a criminal offence, been subject to any investigation as aforesaid or been adjudged bankrupt or been compulsorily wound up, or which has made any compromise or arrangement with its creditors;
  - (v) according to its records and best knowledge, and other than as previously disclosed to Credence, there are no actions, suits or proceedings at law (including arbitration proceedings) or before any governmental authority that are pending or threatened against or affecting the Client or where applicable, the Structure, or any of the entities or the property of the Client or the Structure, that may affect the Client's or the Structure's solvency or ability to pay debts, and according to its records and best

knowledge the Client or the Structure is not in default with respect to any order, writ, injunction, claim or demand of any court or any governmental authority;

- (vi) all material facts and circumstances relating in any manner to the Client and, or where applicable, to the Structure and to the business, activities, assets and affairs of such Client and, or Structure have been brought to the attention of Credence in writing;
- (vii) the execution, delivery and acceptance of the Letter of Engagement and all documents and instruments referred to therein as well as in these T&Cs by the Client are within its power and ability and within any agreement binding on it and do not constitute a breach of any of the provisions of default thereunder;
- (viii) the Letter of Engagement together with these T&Cs constitute legal, valid and binding obligations of the Client, enforceable against it in accordance with the terms hereof, subject to the laws of insolvency, liquidation or other laws affecting general creditors' rights;
- (ix) no approval or consent from any governmental and quasi-governmental authorities is necessary under applicable law for the execution and delivery of the Letter of Engagement, these T&Cs and any document and instrument delivered or to be delivered pursuant thereto;
- (x) where applicable, any assets of the Structure or to be acquired by or introduced to the Structure, can be lawfully transferred and are not in any way connected with illegal or unlawful activities;
- (xi) where applicable, it has declared to Credence the origin and nature of all funds flowing into the Structure;
- (xii) it has obtained any necessary legal advice in its country of residence in relation to the execution of the Letter of Engagement or in relation to any of its business activities or where applicable, those of the Structure; and
- (xiii) it accepts full responsibility for disclosure in accordance with the law of its country of residence of any information to the revenue authorities of such country.

#### **4. Client Acceptance**

- 4.1 Credence's acceptance of the engagement set out in the Letter of Engagement and the entering into force of the Letter of Engagement together with these T&Cs is subject to the due fulfillment of Credence's client acceptance procedures (for the purposes of, *inter alia*, due diligence, no conflict, know-your-client and prevention of money laundering and funding of terrorism) to the satisfaction of the same.
- 4.2 Credence reserves the right, without incurring any liability, to terminate the Letter of Engagement and the engagement made thereunder *ipso iure* at any time, even after the commencement of the provision of Services by Credence in terms of the Letter of Engagement, should it discover that any document or information provided by the Client upon Credence's request in relation to such procedures is found to be counterfeited, false, forged, inaccurate, incorrect, untruthful or not to the satisfaction of Credence, should the Client unreasonably refuse to produce such document or information upon such request, or should it appear, in the reasonable opinion of Credence, that the latter is under a statutory obligation in

terms of the provisions of the Prevention of Money Laundering Act [Chapter 373 Laws of Malta]<sup>1</sup>, the Prevention of Money Laundering and Funding of Terrorism Regulations [Legal Notice 372 of 2017, as amended by Legal Notice 430 of 2018]<sup>2</sup>, or other related act of law to discontinue its relationship with the Client.

## **5. Credence's Obligations**

### **5.1 Services to be provided by Credence**

5.1.1 Credence undertakes and binds itself in favour of the Client to provide and fulfill the Services diligently:

Provided that subject to the provisions of sub-clause 7.1 hereof, Credence shall not be liable for delay in the performance of the Services.

### **5.2 Reliance on instructions and information**

5.2.1 In undertaking the Services, Credence is entitled to:

- (a) rely on instructions and, or information, whether written or not, furnished by the Client or by the persons whose details are provided in the Letter of Engagement, or as may be provided by the Client to Credence from time to time, in the same manner as instructions and information furnished to Credence by the Client, and to act on the basis thereof; and, or
- (b) ignore any such instructions and, or information furnished by the Client or by any other persons as set out in sub-clause 5.2.1(a) above, which in the reasonable opinion of Credence appears to be inaccurate, incorrect, misleading, unlawful or unreliable or which if relied and, or acted upon by Credence may result in loss or damage or in an illegal or unlawful act:

Provided that Credence shall not be responsible for any loss or damage arising from its failure or refusal to comply, wholly or partially, with any instruction given by the Client or by the persons whose details are provided in the Letter of Engagement, or as may be provided by the Client to Credence from time to time; and, or

- (c) ignore any such instructions and, or information furnished by any person or entity other than the Client or other than by the persons whose details are provided in the Letter of Engagement or whose details may be provided by the Client to Credence from time to time.

### **5.3 Mandate**

5.3.1 To the extent that the Services constitute a special mandate from the Client to Credence, the provisions of Title XVIII in Part II of Book Second of the Civil Code [Chapter 16 of the Laws of Malta](hereinafter referred to as the "Civil Code")<sup>3</sup>, except for article 1873, 1874, 1878, 1886(a) and 1887 thereof, shall apply to the Letter of Engagement and these T&Cs.

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<sup>1</sup> <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8842&l=1>

<sup>2</sup> <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10454&l=1>

<sup>3</sup> <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8580&l=1>

5.3.2 The Client hereby exempts Credence from the obligation to maintain records in writing of his interest and from the obligation to render an account in terms of article 1875 of the Civil Code<sup>4</sup>.

## **5.4 Fiduciary duties**

5.4.1 To the extent that the Services give rise to or create any fiduciary obligations between the Client and Credence, the provisions of articles 1124A, 1124B, 1871A and 2095E of the Civil Code<sup>5</sup> and the provisions of the Trusts and Trustees Act [Chapter 331 of the Laws of Malta](hereinafter referred to as the “Trusts and Trustees Act”)<sup>6</sup> shall apply to the Letter of Engagement and these T&Cs.

5.4.2 The Client hereby exempts Credence from the obligation to maintain records in writing of his interest and from the obligation to render an account in terms of article 1124A(4)(f) and (g) of the Civil Code<sup>7</sup>.

## **5.5 Deposit**

To the extent that the Services give rise to or create a deposit of any movable property by the Client with Credence, the provisions of Title XIX in Part II of Book Second of the Civil Code<sup>8</sup> relating to voluntary deposit, except for article 1900, 1902, 1903 and 1907 thereof, shall apply to the Letter of Engagement and these T&Cs.

## **5.6 Operational costs**

Credence shall incur and be responsible for defraying all operations costs, other than the Expenses in relation to the provision of the Services.

## **5.7 Confidentiality**

5.7.1 Subject to the provisions of the Letter of Engagement and these T&Cs, to the provisions of article 6, 6A, 6B, 7, 8, 9 and 10 of the Professional Secrecy Act [Chapter 377 of the Laws of Malta]<sup>9</sup>, to the provisions of article 47 of the Trusts and Trustees Act<sup>10</sup>, and subject to any other provision of the law or request, order, command, decree or judgement of any lawful authority or competent court, Credence undertakes and binds itself in favour of the Client that accepts not at any time during or after the term as may be set out in the Letter of Engagement to divulge or allow to be divulged to any person not being an officer or employee of Credence any Confidential Information without the written consent of the Client.

5.7.2 This provision and the obligations arising hereunder shall survive the expiration of the Letter of Engagement for a period of time being not less than five (5) years from the said expiration.

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<sup>4</sup> See note 3.

<sup>5</sup> See note 3.

<sup>6</sup> <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8805&l=1>

<sup>7</sup> See note 3.

<sup>8</sup> See note 3.

<sup>9</sup> <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8844&l=1>

<sup>10</sup> See note 6.

## **5.8 Data protection**

5.8.1 Credence shall only process personal data (as defined in the General Data Protection Regulation of the European Union) relating to the Client, its employees, contractors and other individuals, as may be required, or otherwise in relation to the provision of the Services in accordance with the provisions of the Data Protection Act [Chapter 586 of the Laws of Malta]<sup>11</sup> and the General Data Protection Regulation of the European Union.

## **5.9 Delegation**

Credence undertakes and binds itself in favour of the Client not to delegate to any person not being an officer or employee of Credence any duties or obligations arising under the Letter of Engagement and these T&Cs, otherwise than as may be expressly permitted by its terms or as may otherwise be agreed in writing by the Client: provided that a delegation of any such obligations may be made between Credence entities at any time without restriction and without notifying the Client.

## **5.10 Client's status, repute and intellectual property**

Credence undertakes and binds itself in favour of the Client not to do anything or permit anything which is within their power to prevent to be done which may damage or endanger the Client's status and repute, the intellectual property of the Client or the Client's title to it or assist or allow others under their control or instruction to do so.

## **5.11 Client Complaints**

Any complaints or grievances by the Client concerning the Services provided by Credence shall be communicated in writing by sending an email to [complaints@credence.com.mt](mailto:complaints@credence.com.mt). Such complaints shall be processed in accordance with the Credence Complaints Policy, a copy of which may be provided on request, and which requires the resolution of any complaints within 30 days. In the event that the Client remains unsatisfied with the resolution provided by Credence, the client may escalate the matter to the Malta Financial Services Authority.

## **6. The Client's Obligations**

### **6.1 Payment**

#### **6.1.1 Payments**

The Client undertakes and binds itself to make the Payments punctually whenever they fall due in accordance with, and in the manner set out by, the provisions of the Letter of Engagement.

#### **6.1.2 Late payments**

The provisions of Sub-title 1A in Title I of Part I of the Commercial Code [Chapter 13 of the Laws of Malta]<sup>12</sup> shall apply whenever the Client fails to make any of the Payments punctually.

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<sup>11</sup> <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12839&l=1>

<sup>12</sup> <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8578&l=1>



## 6.1.3 Appropriation

### 6.1.3.1 Payments made by the Client shall be applied as follows:

- (i) first, to the discharge of any interest accrued in favour of Credence in respect of amounts due to it under the Letter of Engagement;
- (ii) second, to the discharge of any Expenses due;
- (iii) third, to the reduction or discharge of outstanding Payment due in the inverse order of maturity; and
- (iv) thereafter to any other amounts due by the Client to Credence under the Letter of Engagement or these T&Cs.

6.1.3.2 The provisions of articles 1168, 1170, 1171 and 1172 of the Civil Code<sup>13</sup> shall not apply to the Letter of Engagement or these T&Cs.

## 6.1.4 Security

The Parties agree that by way of security for the proper fulfillment of the Client's obligation to make any of the Payments punctually, Credence shall be entitled to a pledge and possessory lien or privilege over any movable property entrusted to it by the Client and held by them at the time that any of the Payments fall due.

## 6.1.5 Enforcement

Any claim for Payments that are due or not paid punctually by the Client shall be deemed to be a certain, liquid and due debt and may be enforced by Credence by any means or procedure competent to it at law.

## 6.2 Provision of information and instructions

6.2.1 The Client undertakes and binds itself to punctually provide (whether upon Credence's request or otherwise) information, whether written or not, that may be required in relation to the provision of the Services by Credence.

6.2.2 The Client furthermore undertakes to communicate information to Credence in writing at the request of the latter.

6.2.3 The Client undertakes and binds itself to punctually provide (whether upon Credence's request or otherwise) instructions, whether written or not, that may be required in relation to the provision of the Services by Credence.

6.2.4 The Client furthermore undertakes to communicate instructions to Credence in writing at the request of the latter.

Provided that Credence shall not be held responsible for any loss or damage arising from errors, delays or failure in transmission or from any ambiguity or inaccuracy of such instructions or information.

Provided further that, without prejudice to the rights of Credence pursuant to the provisions of clause 7.3, where the Client fails to provide information and, or instructions in relation

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<sup>13</sup> See note 3.

to a particular matter and continues in such default for a continuous and uninterrupted period of thirty (30) days after Credence's notification thereof, Credence may, at its sole discretion, choose to take no further action in relation to that matter, or take such action as it may deem appropriate.

- 6.2.5 The Client moreover undertakes and binds itself to inform Credence in writing of any material change in its circumstances or, where applicable, in the circumstances of the Structure including but not limited to those described in paragraphs (i) to (xiii) of clause 3.4 hereof or the details of the persons on the basis of whose instructions Credence is to act.

## **6.3 Confidentiality**

6.3.1 The Client undertakes and binds itself in favour of Credence that accepts:

- (i) not at any during or after the term as set out in the Letter of Engagement to divulge or allow to be divulged to any person or entity any Confidential Information;
- (ii) to ensure that no officer, employee, agent of, or other person or entity connected with the Client divulges any Confidential Information.

6.3.2 This provision and the obligations arising hereunder shall survive the expiration of the Letter of Engagement for a period of time being not less than five (5) years from the said expiration.

## **6.4 Client's Indemnity and Liability**

6.4.1 The Client shall indemnify and save harmless Credence, its officers and employees against and from claims, actions or proceedings arising from the performance of the Services or by any act or omission of Credence, its officers and employees in the performance of the Services, and against and from the costs, fees, taxes, dues, liabilities, penalties, fines and expenses incurred in respect of any such claim, action or proceedings, except where such claims, actions, proceedings, costs, fees, taxes, dues, liabilities, penalties, fines and, or expenses are the direct result of a fraudulent or grossly negligent act or omission on the part of Credence.

6.4.2 This provision shall survive the expiration of the Letter of Engagement.

## **7. Termination for Breach**

7.1 The Letter of Engagement and consequently, these T&Cs together with the Client's obligations under the Letter of Engagement and these T&Cs, shall, at the Client's sole and absolute discretion, be dissolved *ipso iure* and without the need for any formality to be observed by the Client in the event that:

- (i) subject to the provisions of clause 4, 6 and 9 hereof, Credence fails to provide or fulfil the Services and continue in such default for a continuous and uninterrupted period of thirty (30) days after the Client's notification thereof in writing; or
- (ii) subject to the provisions of clauses 4, 6 and 9, Credence otherwise fails to perform any of its obligations hereunder or under the Letter of Engagement and continues in such default for a continuous and uninterrupted period of thirty (30) days after the Client's notification thereof in writing.

- 7.2 The Parties hereby expressly agree to exclude the application to the Letter of Engagement of articles 1127, 1128, 1129, 1569(2), 1570, 1627, 1640, 1886(a) and 1887 of the Civil Code<sup>14</sup> and to mutually waive any rights they may have under the said provisions.
- 7.3 The Letter of Engagement, and consequently these T&Cs together with Credence's obligations under the Letter of Engagement and these T&Cs, shall, at the sole and absolute discretion of Credence, be dissolved *ipso iure* and without the need for any formality to be observed by Credence in the event that the Client fails to make the Payments or to provide information and, or instructions and continues in such default for a continuous and uninterrupted period of thirty (30) days after Credence's notification thereof.
- 7.4 In the event that the Client fails to make the Payments or to provide information and, or instructions and continues in such default for a continuous and uninterrupted period of thirty (30) days after Credence's notification thereof, as described in the foregoing sub-clause, Credence may, where applicable, in its sole and absolute discretion, take steps towards the resignation from any post or position held or occupied by it or by any of its officers or employees in relation to the Client, and, or, where applicable, in the Structure, and, or towards the transfer of any shares in the Structure held by Credence, in terms of the Services, for and on behalf of the Client to the Client in his own name and on his own behalf. For this purpose, the Client hereby grants a special Power of Attorney to Credence to transfer any shares in any related entity including any Structure, where applicable, held by Credence, in terms of the Services, for and on behalf of the Client to the Client in his own name and on his own behalf and to notify the Maltese Registrar of Companies of such transfer, in the event that the Client fails to make the Payments or to provide information and, or instructions and continues in such default for a continuous and uninterrupted period of thirty (30) days after Credence's notification thereof.

## **8. Termination Consequences**

In the event that the Letter of Engagement is terminated by either Party in terms of clause 7, without prejudice to any claim or other right for damages or otherwise that either Party may have against the other Party, the Client shall immediately pay to Credence all arrears of the Payments *pro rata* as at the date of termination of the Letter of Engagement. This provision shall survive the expiration of the Letter of Engagement.

## **9. Force Majeure**

- 9.1 If either Party hereto is prevented from fulfilling its obligations under the Letter of Engagement or these T&Cs by reason of any supervening event beyond its reasonable control (hereinafter referred to as "Force Majeure Event") it shall immediately give notice of this to the other Party and shall do everything in its power to resume full performance.
- 9.2 For the purposes of this provision a Force Majeure Event means an act of God including but not limited to fire, flood, earthquake, storm or other natural disaster; an act of any sovereign including but not limited to war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, nationalization, requisition, destruction or damage to property by or under the order of any government or public or local authority or imposition of government sanction, embargo or similar action; any law, judgment, order, decree,

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<sup>14</sup> See note 3.

embargo, blockade, labour dispute including but not limited to strike, lockout or boycott; any interruption or failure of utility services including but not limited to electric power, gas, water or telephone service; failure of the transportation of any personnel, equipment, machinery, supply or material required by Credence or of any of its contractors or sub-contractors (where permitted) or of any of its officers, employees or agents.

9.3 Subject to the provisions of sub-clause 9.1 neither Party shall be deemed to be in breach of its obligations under the Letter of Engagement or these T&Cs if it is prevented from fulfilling its obligations by reason of a Force Majeure Event.

9.4 If and when the period during which a Party is unable to perform its obligations under the Letter of Engagement or these T&Cs by reason of a Force Majeure Event exceeds three (3) months then the Letter of Engagement and consequently these T&Cs shall automatically terminate unless the Parties previously agree otherwise in writing.

## **10. Power of Attorney**

In signing the Letter of Engagement, the Client is thereby engaging Credence that accepts to undertake the provision and fulfillment of the Services for the term (as set out in the Letter of Engagement) in return for the Payments. The mandate arising by virtue of the Letter of Engagement shall be irrevocable for the duration of the engagement (except as provided in sub-clause 9 hereof and subject to that set out in the Letter of Engagement) and shall at all times during the said period be conclusive and binding upon the Client and no person or entity having dealings with Credence under the Letter of Engagement and these T&Cs shall be under any obligation to make any enquiries as to whether or not the Letter of Engagement has been revoked and all acts thereunder shall be valid and binding on the Client until express notice of its revocation be received by such person or entity.

## **11. Severance**

If any provision of the Letter of Engagement or these T&Cs is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable it may be severed therefrom and the Letter of Engagement and these T&Cs shall otherwise remain in full force and effect and binding on either Party thereto.

## **12. Whole Agreement and Amendment**

Each Party hereto acknowledges that the Letter of Engagement and these T&Cs contain the whole agreement between the Parties and that, saving any information contained in the Corporate Questionnaire and other information or documentation provided by the Client pursuant to Credence's client acceptance procedures as referred to in clause 4 hereof, it has not relied upon any oral or written representation made to it by the other or by the other's officers or employees or agents and has made its own independent investigations into all matters relevant to it.

Whereas the Letter of Engagement may be amended only by written mutual agreement of the Parties thereto, these T&Cs may be amended by Credence from time to time provided that Credence advises the Client of such amendments in writing.

## **13. Rights Cumulative**

All rights granted to either of the Parties in terms of the Letter of Engagement and these T&Cs shall be cumulative and no exercise by either Party of any right under the Letter of Engagement or these T&Cs shall restrict or prejudice the exercise of any other right granted thereunder or otherwise available to it.

## **14. Waiver**

The failure by either Party to enforce at any time or for any period any one (1) or more of the terms or conditions of the Letter of Engagement or these T&Cs shall not be a waiver of them, or of the right at any time subsequently to enforce all terms and conditions of the Letter of Engagement or these T&Cs.

## **15. Headings**

Headings contained in these T&Cs are for reference purposes only and should not be incorporated into these T&Cs and shall not be deemed to be any indication of the meaning of the clauses to which they relate.

## **16. Survival of Terms**

No term shall survive the expiry or termination of the Letter of Engagement unless expressly provided herein or in the Letter of Engagement.

## **17. Governing Law**

The Letter of Engagement and these T&Cs (including all matters relating to the formalities, construction, application and enforcement) is governed by Maltese law.

## **18. Dispute Settlement**

18.1 Subject to the provisions of sub-clause 6.1.5, any dispute arising between the Parties in relation to the Letter of Engagement and these T&Cs shall be referred by either Party to arbitration in accordance with the provisions of the Arbitration Act [Chapter 387 of the Laws of Malta]<sup>15</sup> or of any other statutory enactment that may from time to time substitute, replace, amend or otherwise modify it.

18.2 Arbitration shall be conducted by a single arbitrator appointed by the Parties and, in the absence of agreement between the Parties to the dispute within a period of thirty (30) days from the reference to arbitration made by either Party in accordance with sub-clause 18.1, such arbitrator may be appointed by the Chairman of the Board of Governors of the Malta Arbitration Centre upon an application to such effect by either Party.

18.3 The language of arbitration shall be the English language.

18.4 This provision shall survive the expiration of the Letter of Engagement.

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<sup>15</sup> <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8854&l=1>