

Vistra Malta

Terms of Business

These Terms of Business now in force supersede and replace all and any terms of business in relation to any of the Services previously in force.

1. Definitions

1.1. In these Terms of Business the following words and phrases shall, save where the context otherwise requires, have the following meanings:

'Affiliates' means any legal person in common ownership with, or otherwise connected or affiliated in any manner with Vistra;

'Agreement' means any agreement entered into by Vistra with the Client in relation to the provision of Services, including the letter of engagement and business proposal;

'Applicable Data Protection Laws' means the Data Protection Act, Chapter 440 of the Laws of Malta and Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the 'General Data Protection Regulation'), applicable as of 25 May 2018, and any other relevant data protection legislation which may be applicable, and as amended from time to time;

'Auditor' means an individual and / or firm eligible to practice as an auditor in the Republic of Malta pursuant to the provisions of the Accountancy Profession Act, CAP. 281 of the Laws of Malta, duly appointed by the Client or by the shareholders, trustees, administrators, partners or ultimate beneficial owners of an Entity;

'Bank' means any bank, financial institution, lending institution or investment institution duly authorised to operate as such by a competent authority, with whom an Entity will have a commercial relationship;

'CDD Documentation' means client due diligence documentation and information, including but not limited to documents identifying and verifying the identity of the Client and / or the Principal;;

'Client' means any natural or legal person who has a business relationship with Vistra (or on whose behalf Vistra has been engaged), in relation to the provision of Services or at whose request Vistra shall have agreed to provide Services;

'Data Processor Services' means services in respect of which Vistra qualifies as a processor under the General Data Protection Regulation (EU) 2016/679, *inter alia*: corporate secretarial services, payroll services, property

management services, financial administrative services and immigration services;

'Data Subjects' means directors, officers, employees, representatives, agents, ultimate beneficial owners or contacts of the Client and / or Entity and / or the Principal, its affiliates and to the extent applicable, of its customers;

'EEA' means the European Economic Area;

'Employee' and / or **'Employees'** mean any director, officer, agent, representative, consultant or employee (as appropriate) of Vistra;

'Entity' means any individual, trust, foundation, body corporate, partnership or other association or body of persons (and whether having legal personality or not) to or in respect of which Services are (or are to be) provided;

'Fee Schedule' means any schedule of fees and charges for the time being in force and issued by Vistra in relation to any of the Services;

'Fiduciary' means Vistra (Malta) Limited, a company registered in Malta with company number C 28629 whose registered office is at 114, The Strand, Gzira GZR 1027, Malta, as duly authorised and licensed by the MFSA to provide Fiduciary Services;

'Fiduciary Services' means the holding of assets, including but not limited to shares and other securities, in a fiduciary capacity by the Fiduciary for and on behalf of an undisclosed beneficial owner;

'MFSA' means the Malta Financial Services Authority;

'Principal' means the ultimate beneficial owner, controlling person, beneficiary, partner or individuals ultimately owning and / or controlling an Entity, or the natural person on whose behalf Vistra provides the Services;

'Register of Beneficial Owners Regulations' means, collectively, (i) Legal Notice 373 of 2017 – Trusts and Trustees Act (Register of Beneficial Owners) Regulations, (ii) Legal Notice 374 of 2017 – Companies Act (Register of Beneficial Owners) Regulations, (iii) Legal Notice 375 of 2017 – Civil Code (Second Schedule) (Register of Beneficial Owners - Foundations) Regulations and (iv) Legal Notice 376 of 2017 - Civil

Code (Second Schedule) (Register of Beneficial Owners - Associations);

'**Services**' means all services carried out or performed for or on behalf of or in connection with any Entity (whether before or after its establishment) by Vistra as specified in any Agreement from time to time in force or as otherwise provided to such Entity and shall also include Fiduciary Services;

'**Termination**' in connection with an Entity means termination of the provision of the Services to, on behalf of or in connection with, such Entity, pursuant to the terms hereof;

'**Terms of Business**' means these terms and conditions from time to time in force subject to amendment as herein provided;

'**Vistra**' and / or '**Vistra Malta**' means and includes each or any one or more of (i) Vistra (Malta) Limited, a company registered in Malta with company number C 28629 whose registered office is at 114, The Strand, Gzira GZR 1027, Malta, (ii) Stravi Management Limited, a company registered in Malta with company number C 52997 whose registered office is at 114, The Strand, Gzira GZR 1027, Malta, (iii) Stravi Accountancy Services Limited, a company registered in Malta with company number C 56940 whose registered office is at 114, The Strand, Gzira GZR 1027, Malta, together with each of their respective Affiliates;

'**Vistra Documents**' means all (or any) internal memoranda, emails, attendance notes or any other form of document relating to the provision of Services not intended by Vistra to be supplied (or shown) to the Entity and / or the Client or any other officer, employee or service provider of the Entity not supplied by Vistra;

'**Vistra Privacy Notice**' means the notice which can be consulted here <https://www.vistra.com/notices>;

'**Vistra Website**' means www.vistra.com.

- 1.2. For the avoidance of doubt, an Entity which has entered into an Agreement is also a Client, and any reference in these Terms of Business to an Entity and to a Client shall be construed accordingly.
- 1.3. In these Terms of Business unless the context otherwise so requires, words in the singular shall include the plural and the masculine gender shall include the feminine and the neuter and vice-versa in each case.
- 1.4. Any terms not defined in these Terms of Business but defined in any Agreement shall, unless the context

otherwise requires, bear the same meaning in these Terms of Business.

2. Terms of Business

- 2.1. In the event of any conflict between these Terms of Business and the provisions of a written Agreement (including, without limitation, as may relate to the payment of Vistra's fees), the provision of the Agreement shall, as between the parties to the same, prevail.
- 2.2. These Terms of Business shall be binding on the Client and each Entity.
- 2.3. These Terms of Business shall not be enforceable against Vistra by any person other than the Client.
- 2.4. These Terms of Business shall replace *in toto* any other terms of business which were previously applicable to a business relationship between Vistra and a Client. Any reference in any Agreement to a particular clause or clauses of the terms of business shall be construed as referring to the appropriate clause of the Terms of Business, irrespective of the clause number being cited in the Agreement.

3. Performance of the Services

- 3.1. Vistra shall provide or procure the provision of the Services in order to meet the statutory and regulatory requirements applicable to an Entity and where notified and agreed to by Vistra, the business objectives of the Entity.
- 3.2. Vistra shall arrange for the Entity's affairs to be looked after on a day-to-day basis by suitably qualified employees who will undertake work in connection with the Services and be the point of contact for the Client and other persons dealing with the Entity.
- 3.3. A director of Vistra shall have ultimate responsibility for the Services provided in respect of each Entity.
- 3.4. Vistra shall arrange for the provision of the Services to the Entity as indicated in any Agreement entered into by Vistra with the Entity and the Client. In so doing, Vistra may nominate any Employees and / or Affiliates as they think fit to hold office or be employed in the administration of each Entity's affairs.
- 3.5. Neither Vistra nor any Employee shall:
 - (a) do anything or be required to do anything which, in their sole opinion, may conflict with the laws or regulations of Malta or any other jurisdiction or the terms of any permits, consents, licences or applicable codes of practice issued by any

competent authority in Malta or with the Entity's constitutional documents or expose any of them to any risk of civil or criminal liability or prosecution in any part of the world;

(b) be regarded as having provided any advice on matters relating to taxation in any jurisdiction in relation to an Entity;

(c) provide investment advice of any nature. Any comments or views expressed by Vistra in connection with investments should not be construed as investment advice and are given without responsibility;

(d) be responsible for complying with any reporting requirements outside Malta in relation to interest earned on monies held in any account of the Entity or of any Client.

3.6. For the avoidance of doubt, any discussions Vistra may enter into with a Client are for general information purposes only and cannot be relied upon by any person as legal and / or tax advice.

3.7. Acceptance of the Services by the Client will be deemed to occur ten days after the service is provided, unless the Client notifies Vistra in writing that it is not acceptable and stated why it is not acceptable. In the event that such notification is made, Vistra will, subject to professional responsibilities, use reasonable endeavours to modify it to the Client's satisfaction within a reasonable period of time.

3.8. The Client may only rely on the final written deliverables of the Services by Vistra. The Client may not rely on oral advice or draft deliverables of the Services. If the Client wants to rely on any statement made by Vistra, a written deliverable must be produced for the Client.

4. Instructions

4.1. Vistra may act on original, written, fax, email or oral guidance or instructions from the Client or duly appointed agent of the Client.

4.2. Vistra may refuse to act on any guidance or instructions (howsoever the same may be received) including (without limitation) where Vistra would have any doubts as to the authenticity of such guidance or instructions or in Vistra's reasonable opinion, the same is (or may be) in violation of Clause 3 and Vistra shall not be held liable (in any way whatsoever) for the consequences (including, but not limited to, financial expenses or losses arising from any lost opportunities for a Client or an Entity in relation to a particular transaction or transactions) of any such refusal.

4.3. Vistra may refuse to act on any guidance howsoever received but shall inform the Client and / or the Entity without delay as to the reason(s) behind such refusal and shall not be held liable for the consequences of any such refusal.

4.4. Where telephone guidance or instructions are received, this shall be entirely at the Client's own risk who must accept the risk of errors or mistakes howsoever caused as a result of telephone guidance or instructions being misunderstood in any way.

4.5. Where fax or email guidance or instructions are received on behalf of the Client, this shall be entirely at the Client's own risk. Where such guidance or instructions are received, purporting to come from the Client or his duly appointed agent, Vistra shall be entitled to accept such guidance or instructions as authentic and to act on them accordingly. Vistra shall not be held liable in any way whatsoever as a consequence of acting on any such guidance or instructions.

4.6. Vistra may rely on any instructions or requests made, notices given or information supplied (whether orally or in writing) by any person whom Vistra knows (or reasonably believes) to be authorised by the Client in respect of that Entity to communicate with them for such purposes.

4.7. The Client and each Entity acknowledge that:

(a) Vistra may, at its sole discretion, determine to carry out a manual telephone call back procedure for the purposes of verifying written guidance or instructions;

(b) Vistra's electronic communications are not encrypted as a matter of daily business practice, are transmitted via a public network and are, therefore, not secure and that the same may be intercepted, lost, destroyed or delayed;

(c) emails are not necessarily error-free and that they:

(i) may suffer from incorrect or incomplete transmission such that they may arrive incomplete;

(ii) may be subject to possible data corruption (whether accidental or deliberate) and that the formatting of text and the text itself may be affected

(iii) may contain, transmit or be vulnerable to viruses and other malware; and

(iv) whilst Vistra will take reasonable precautions to guard against security breaches, viruses and

malware, Vistra shall not be liable in respect of the risks associated with electronic communications and the use of the internet (save to the extent that a court or other competent tribunal makes a final determination that there had been actual fraud on the part of Vistra).

5. Client Due Diligence and Anti-Money Laundering

5.1. Vistra is required by anti-money laundering regulations to obtain CDD Documentation (both as part of its client take-on procedures and, thereafter, on an ongoing / periodic basis), in order to identify and verify the identity, source of wealth and tax information of the Client and of any individual ultimate beneficial owners / beneficiaries of an Entity and certain persons connected to them unless an exemption is available.

5.2. Vistra is at liberty, in its absolute discretion, to determine the time at which (and the form in which) CDD Documentation is required to be delivered to it.

5.3. The Client and each Entity agrees that if such information and documentation is not made available to Vistra when required by and in a form acceptable to Vistra, Vistra may without liability terminate the engagement with the Client and / or the Entity with immediate effect pursuant to Clause 18(3)b. The time at which such information and documentation is required and the form in which it shall be delivered to Vistra shall be determined by Vistra in its absolute discretion.

5.4. The Client and each Entity undertakes and warrants that:

(a) it has taken independent legal and tax advice with respect to:

- (i) these Terms of Business;
- (ii) any Agreement to which it is a party;
- (iii) the provision of the Services; and
- (iv) the establishment, conduct and use of the (and, in the case of the Client, *each*) Entity;

(b) all documentation and any other information they supply (or arrange to be supplied) to Vistra in connection with the provision of the Services (including, without limitation, in connection with the formation of any Entity) was, and at all material times remains, accurate and complete in all respects;

(c) the source of any funding, other monies or assets provided, to be provided or procured to be so provided:

- (i) by the Client to Vistra;
- (ii) by an Entity;

(whether in relation to the Services or for any other purpose), is lawful and not derived from, or in any way otherwise connected with, any illegal activity;

(d) the Entity will not (directly or indirectly), in any jurisdiction:

- (i) be engaged, involved or used in connection with any unlawful activity or purpose;
- (ii) undertake any activity which will:
 - (A) require a licence, consent or approval without first obtaining the same; or
 - (B) which will breach any condition contained in (or otherwise applicable to) any such licence, consent or approval;

(e) all taxes required to be paid by it (and, in the case of the Client, by any relevant Entity) as a result of the provision of the Services will be duly paid and by the requisite time for such payment(s);

(f) the Services which Vistra is to provide comply (and will comply) with all laws affecting or binding upon:

- (i) Vistra;
- (ii) the Client; and
- (iii) each Entity to which the Services relate;

(g) without prejudice to any other provision hereof, it will (and, in the case of the Client, each relevant Entity also will):

- (i) in all respects, make all such disclosures and report all such matters (in full) as it is legally obliged to do (including, without limitation, in respect of applicable taxation) and, in each case, to the appropriate authority;
- (ii) provide all such documentation and other information as Vistra may, in its discretion, require in order to:

(A) provide the Services; and

- (B) facilitate compliance with applicable law and regulation (including, without limitation, in connection with CDD / 'know your customer' requirements) in all relevant jurisdictions; and
- (iii) keep Vistra in sufficient funds so as to enable Vistra to procure that:
 - (A) all taxes and governmental dues payable by (or in respect of) an Entity are duly discharged and by the requisite time for such payment(s); and
 - (B) each Entity otherwise complies with all filing requirements in each applicable jurisdiction;
- (h) all statements and documents which Vistra (or its Employees) are requested to sign in connection with the provision of the Services are, and at all material times will remain, accurate, complete and lawful in all respects;
- (i) the affairs of an Entity shall be conducted only by:
 - (i) its officers; and / or
 - (ii) such other persons as its officers shall, on such terms and conditions as they considered fit, have authorised in writing;

and in no circumstances shall the Client take, or cause to be taken, any action with regard to an Entity (including the entering into, or purported entering into, of contracts on its behalf), without the prior written consent of the aforementioned persons;
- (j) without the prior written consent of Vistra, there will be no sale, transfer, other disposal, assignment, pledging or encumbering of any legal or beneficial interest (or part of such an interest) in any Entity;
- (k) immediately upon becoming aware thereof, it shall notify Vistra of:
 - (i) any event which it is reasonably foreseeable could have a material effect:
 - (A) on an Entity, the Entity's Assets or its activities; or
 - (B) upon Vistra's willingness to continue to provide the Services;

(including, without limitation, any act commencing or evidencing the Client's or an Entity's Insolvency); and

- (ii) any:
 - (A) litigation, actual or threatened; or
 - (B) investigation by a criminal, judicial or regulatory authority, in any jurisdiction;

in respect of the Client or an Entity and any progress thereof; and

- (l) it shall promptly provide Vistra will all such information as Vistra may, in its discretion, request and require in respect of any matters referred to in this Clause.

5.5. Vistra shall be entitled to share any CDD Documentation with any duly appointed Auditor and / or with any Bank for the purposes of establishing a new business relationship and for ongoing monitoring purposes. Vistra shall also be entitled to share any other documentation and information related to the Client and / or Entity which shall be requested by the Auditor and / or the Bank.

6. Fees, Billing and Payment Terms

6.1. Vistra shall be entitled to:

- (a) remuneration in respect of the Services in accordance with any Agreement for the time being in force in relation to any Entity, provided always that, should there be no such Agreement, such remuneration shall be in accordance with any Fee Schedule from time to time in force in relation to any or all of the Services;
- (b) timely reimbursement for all disbursements and expenses properly incurred by Vistra or any Employee in the provision of the Services.

6.2. Fees charged for the Services provided to each Entity may comprise either, or a combination of:

- (a) a pre-agreed fixed fee; or
- (b) variable fees

for time-spent and additional Services provided in connection with the management and administration of the Entity.

6.3. The variable fees for time-spent in connection with the provision of the Services by Vistra to the Client and / or the Entity will be charged depending on the level of skill and responsibility of the Employee involved, at the following rates (excluding VAT):

- Directors at Euro 250 per hour
 - Senior managers at Euro 180 per hour
 - Managers at Euro 150 per hour
 - Assistant Managers at Euro 125 per hour
 - Officers / accountants at Euro 90 – Euro 110 per hour
 - Administrative staff at Euro 75 per hour
- 6.4. The need for time to be spent, or for additional Services to be provided in respect of an Entity during a given period, shall be at the sole determination of Vistra (and for the avoidance of doubt, the prior approval of the Entity concerned or of the Client before such time is spent or such Services are provided, shall not be required).
- 6.5. Invoices by Vistra shall normally be rendered annually in advance in relation to standard or fixed fees for Services and bi-monthly in arrears in relation to additional fees for time spent and / or additional Services provided to each Entity during the preceding two months.
- 6.6. Any disputes in respect of fees falling outside of any Agreement, annual responsibility (or other) fees, taxes, disbursements and expenses must be made in writing within thirty (30) days of the invoice date.
- 6.7. All monies payable to Vistra in connection with the Services shall be due on presentation of the relevant invoice. Interest at a rate of 3% above the Central Bank of Malta base rate per year may be charged on all overdue amounts. An administrative penalty of Euro five hundred (EUR 500) (excluding VAT) may be levied on any invoice outstanding for a period of three (3) months.
- 6.8. Where Vistra considers it necessary or appropriate as part of the provision of the Services to seek advice or services from any other third party advisers, whether in Malta or elsewhere, then Vistra reserves the right to obtain such services or advice from third parties without the prior consent of the Client in relation to any Entity and shall be entitled to charge as a disbursement on their next fee invoice the fees, taxes and disbursements of any such third party adviser.
- 6.9. Without any prejudice to any legal remedies available, Vistra is entitled to terminate the Agreement forthwith if the Client and / or Entity has insufficient funds or assets to honour its liabilities as and when they become due.
- 6.10. Irrespective of the extent of an Entity's Assets, each Client, in accepting these Terms of Business, shall be deemed to guarantee the due payment of all fees, taxes, disbursements and expenses payable in respect of that Entity (under any Agreement or otherwise) and each Client expressly waives any right which such Client may have to require that Vistra shall first seek recourse

against the Entity's Assets before pursuing the Client under the guarantee contained in this Clause.

- 6.11. By accepting these Terms of Business, the Client acknowledges that it shall be the Client's responsibility to ensure compliance at all times with the provisions of this Clause.

7. Fiduciary Services

- 7.1. The Fiduciary shall act only upon written instructions received from the undisclosed beneficial owner of the asset held by the Fiduciary.
- 7.2. The Fiduciary is bound to carry out its fiduciary obligations with utmost good faith and to act honestly in all cases.
- 7.3. In the performance of its fiduciary obligations, the Fiduciary is also bound:
- (a) to exercise the diligence of a *bonus pater familias*;
 - (b) to avoid any conflict of interest;
 - (c) not to receive undisclosed or unauthorised profit from its position as fiduciary;
 - (d) to keep any assets held in a fiduciary capacity segregated from its personal property and that of other undisclosed beneficial owners towards whom the Fiduciary may have similar obligations;
 - (e) to maintain suitable records in writing of the interest of each undisclosed beneficial owner to whom such fiduciary obligations are owed;
 - (f) to render account in relation to the assets held in a fiduciary capacity; and
 - (g) to return on demand the assets held in a fiduciary capacity to the undisclosed beneficial owner or as instructed by him or as otherwise required by applicable law.
- 7.4. The Fiduciary declares that:
- (a) it will hold the assets held in a fiduciary capacity upon trust for account and risk of the undisclosed beneficial owner;
 - (b) all revenues, including but not limited to, capital gains, dividends and interest accrued or to accrue upon trust for the undisclosed beneficial owner or its successors in title, and agrees to transfer, pay and deal with such revenues in such manner as the undisclosed beneficial owner shall direct;

- (c) it will act in the best interest of the undisclosed beneficial owner; and
- (d) it will carry out its duties accurately and expeditiously, except where this would result in a breach of law or agreement by the Fiduciary and / or where compliance by the Fiduciary could not be reasonably required.
- 7.5. Should the Fiduciary and / or Vistra lose contact with the Client and / or the undisclosed beneficial owner of shares in a limited liability company and consequentially Vistra will terminate its business relationship, then the Fiduciary shall be authorised to, at its own cost, transfer such shares in the name of the undisclosed beneficial owner and register such transfer of shares with the competent authorities if required. This authorisation shall be irrevocable. The Fiduciary is also being irrevocably authorised by the undisclosed beneficial owner to sign any shareholders' resolution or other document which may be required to, *inter alia*, transfer the shares or to appoint the Client and / or the undisclosed beneficial owner as director and / or officer of the said limited liability company and / or to amend the statute and change the status of the said limited liability company.
- 7.6. The Fiduciary may furnish to any person dealing with Vistra or any lawful authority, a certificate containing the following information without being in breach of any confidentiality obligations:
- (a) that the authority exists, the date the relevant instrument was executed and that the authority has not been revoked; and
- (b) a declaration that Vistra is authorised to carry out the transactions being entered into; and
- (c) the nationality of the undisclosed beneficial owner.
- 8. Client Undertakings**
- 8.1. The Client undertakes and warrants that:
- (a) he is not ordinarily resident and domiciled in Malta;
- (b) all assets which are or will be introduced to the Entity have been lawfully introduced and are not derived from or otherwise connected with any illegal activity;
- (c) the Entity will not be engaged or involved directly or indirectly with any unlawful activity or used for any unlawful purposes;
- (d) the information supplied to Vistra in connection with the formation of any Entity was and remains accurate and complete in all respects;
- (e) the Services requested of Vistra comply with all laws affecting or binding upon Vistra and the Client, and that all statements and documents which Vistra or any Employee is requested to sign are true and accurate and lawful in all respects;
- (f) the Entity will not undertake any activities which will require a licence, consent or approval in any jurisdiction without first obtaining such licence, consent or approval or which will breach any conditions contained in any such licence, consent or approval;
- (g) the Client shall keep Vistra in sufficient funds so as to enable Vistra to procure that the Entity complies with all filing requirements in any applicable jurisdiction and that all taxes and governmental dues payable by the Entity are discharged;
- (h) the Client shall provide such information as Vistra may, in its discretion, require in order to comply with all applicable laws and regulations (including 'know your customer' requirements) and to provide the Services;
- (i) all taxes required to be paid as a result of the provision of the Services will be duly paid and that the Client and / or Entity shall make such disclosure and report such matters in full as the Client is legally obliged so to do in all respects;
- (j) there shall be no transfer, pledging or assignment of the ownership of any Entity to which the Services relate without Vistra's prior written consent;
- (k) the affairs of any Entity shall be conducted only by the duly appointed officers of such Entity or such other persons as they shall have authorised in writing on such terms and conditions as the Entity's officers shall deem fit and in no circumstances shall the Client take or cause to be taken any action with regard to the Entity (including entering into or purporting to enter into contracts on its behalf) without the written consent of the said officers;
- (l) he shall notify Vistra before alienating, assigning, selling, pledging or otherwise disposing of or encumbering any part of his interest in the Entity;
- (m) the source of any funding or fees or any other asset provided from the Client to Vistra for the Services or for any other purpose is lawful;
- (n) he has taken independent legal and tax advice with respect to these Terms of Business, the provision of the Services and the establishment, conduct and use of any Entity;

(o) immediately upon becoming aware thereof, he shall notify Vistra of:

- (i) any event which could be reasonably foreseen to have a material effect on the Entity or its assets or activities (including, without limitation, any act evidencing the insolvency of the Client or commencing its liquidation, winding up or dissolution) or upon Vistra's willingness to continue to provide the Services;
- (ii) any actual or threatened litigation in any jurisdiction or any actual or threatened investigation by any judicial or regulatory authority in respect of the Client or any Entity administered on behalf of the Client and any progress thereof, and it shall promptly provide such information as Vistra may, in its discretion, require in respect thereof.

9. Indemnity

- 9.1. The provisions of this Clause are without prejudice to any other limitation of liability or indemnity given in favour of Vistra and / or the Employees in any Agreement.
- 9.2. The provisions of this Clause shall:
- (a) remain in full force and effect notwithstanding:
 - (i) any Termination;
 - (ii) termination of the engagement with the Client; or
 - (iii) revocation or amendment of the Terms of Business;
 - (b) continue as to any person who has ceased to be an Employee; and
 - (c) shall inure to the benefit of heirs, executors and administrators of Employees.
- 9.3. Neither Vistra nor any Employee shall be liable to any Entity or Client for any loss or damage of whatsoever nature suffered by such Entity or Client out of or in connection with the Services, other than liabilities arising solely from the fraud, wilful misconduct or gross negligence of or on the part of Vistra, or any Employee.
- 9.4. The Client and each Entity undertake at all times to hold Vistra and the Employees harmless and to indemnify them to the greatest extent permitted by law in respect of each Entity to which Vistra provides Services, against all actions, suits, proceedings including costs of investigation and proceedings, demands, costs, claims, damages, penalties, taxes, expenses and liabilities

whatsoever which may arise from any actions, proceedings, accounts, claims or demands brought or made against Vistra and / or the Employees, other than liabilities arising from the fraud, wilful default or gross negligence of Vistra or the Employee.

- 9.5. In order to keep Vistra and each Employee indemnified against liability, the Client hereby authorises Vistra to make withdrawals from the funds of the Entity as may be necessary to keep adequate reserve and make payment of such reserve for the settlement of any tax or other dues that may be due by the Entity.
- 9.6. The Client and the Entity hereby warrant and undertake that neither they nor any other company affiliated to them, nor any other third parties, whether individuals or otherwise having a direct or indirect interest in the Entity, shall hold Vistra or any Employee liable on the basis of, or in connection with this Agreement, the performance of any services by Vistra or any other basis whatsoever.
- 9.7. Provided that any such liability arising from a fraudulent or grossly negligent act, or wilful misconduct on the part of Vistra shall remain at the charge of Vistra, as long as such acts or misconduct have been established by a final judgement of a competent court of Malta.
- 9.8. Neither Vistra nor any Employee shall be held liable for any failure or delay in the performance of its obligations in connection with circumstances beyond its reasonable control (including, without limitation, acts of God, civil or military disturbances, outbreaks of war, acts of terrorism, natural disaster, act of government or any other authority, accidents, labour disputes or any power, telecommunications or computer failure).
- 9.9. Vistra shall, in the event of any seriously disruptive event occurring at the offices of Vistra, in Malta or elsewhere, endeavour to restore the provision of Services as soon as practicable.
- 9.10. Nothing in this Clause shall limit or exclude any liability which cannot lawfully be limited or excluded.
- ## 10. Conflicts of Interest
- 10.1. Vistra reserves the right to provide Services to other entities and clients in its absolute discretion, without prior reference to or approval of any other Client or Entity.
- 10.2. In connection with any material conflicts of interest, Vistra shall adhere to its conflicts of interest policies adopted and in force from time to time.
- 10.3. The Client and the Entity acknowledge that:

- (a) in the normal course of discharge of Vistra's duties to a Client or an Entity, it may not be practical in all circumstances to avoid conflicts of interest arising;
 - (b) Vistra will, so far as it is commercially practicable, seek to manage any material conflicts of interest which are identified in a way which Vistra regards as fair to the affected parties; and
 - (c) in the event of a Termination pursuant to Clause 18.3(b)(vii) hereof (*relating to material conflicts of interest*), Vistra shall not be liable for the consequences (including, but not limited to, financial expenses or losses arising from any lost opportunities for a Client or an Entity in relation to a particular transaction or transactions) arising from such Termination.
- (g) failure to make such disclosure would, in its the opinion, be prejudicial to the best interests of the Entity.

11. Confidentiality

- 11.1. Vistra shall keep confidential all information concerning the Entity which is not publicly available unless:
 - (a) it is required or considers it necessary to disclose information concerning the Entity by virtue of (i) the anti-money laundering laws or regulations of Malta or by any other laws of Malta or by order of the Malta courts or any other courts of competent jurisdiction; (ii) an instruction or direction from (a) a governmental department or (b) a regulatory authority; in Malta or another relevant jurisdiction, which has power to compel such disclosure.
 - (b) it is authorised to disclose any information by the Entity or the Client in respect of that Entity;
 - (c) it considers that such disclosure is necessary or appropriate in furtherance of the best interests of the Entity, after consultation with the Client; necessary or appropriate in furtherance of the provision of Services or (otherwise) conducive to the more effective, efficient or economical provision of the Services.
 - (d) the information concerned is already in the public domain other than by reason of any disclosure on the part of Vistra;
 - (e) where it is working with other advisers to the Entity, it may disclose such information to other advisers in furtherance of the provision of Services as is in its sole view appropriate (unless the Client has given express instructions not to do so);
 - (f) it considers that such disclosure is necessary in order to defend any claim brought against it by any person, whether the Entity, the Client or otherwise;
- 11.2. Vistra shall not be required or shall not be under any duty to disclose to the Entity and / or to any Client in respect of that Entity any information which:
 - (a) it may have or be deemed to have about any matter affecting the Entity which it may have acquired in the course of acting for or providing Services to any other Entity or Client or in any way other than in connection with the provision of the Services; or
 - (b) Vistra is prohibited from disclosing to the Client or an Entity by virtue of law or regulation in Malta or another relevant jurisdiction (including, for example, as a result of mandatory provisions designed to prevent 'tipping off' in an anti-money laundering context)
- 11.3. Vistra may disclose information relating to the Client and the Entity to any company within the Vistra Group of companies or to its professional indemnity insurer from time to time.
- 11.4. When opening bank accounts, the names and addresses of persons other than the Client may be required by banking and investment institutions. Where such a requirement exists, Vistra may disclose at its absolute discretion such details as are required.
- 11.5. Without prejudice to the provisions of Clause 5.5, where Vistra is required to disclose and produce documents in relation to the Entity and / or the Client to third parties in order to obtain services from such third parties, then the Entity and Client duly authorise Vistra to make such disclosure to third parties for the provision of such services. The Entity and the Client in relation thereto hereby expressly and irrevocably consent to all such onward transmission to third parties of client due diligence information as shall, in the opinion of Vistra, be required in order to enable Vistra to provide the Services.
- 11.6. Without prejudice to any other provision to the contrary emanating from these Terms of Business, Vistra shall ensure that each and every Entity is fully compliant with, *inter alia*, the provisions of the Register of Beneficial Owners Regulations. Vistra shall provide to the competent authorities in Malta with any and all information on the ultimate beneficial owners of an Entity as stipulated in the Register of Beneficial Owners Regulations.
- 11.7. The provisions of this Clause shall remain in full force and effect notwithstanding termination of these Terms of Business.

- 11.8. In order to enable Vistra to carry out its obligations, the Entity and the Client shall disclose to Vistra all information that Vistra may request concerning the business activities and financial situation of the Entity.
- 11.9. In the execution of its duties, Vistra shall have access to the registered office of the Entity and / or to the place from where the Client is carrying out his business and Vistra shall also have unrestricted access to all bank statements, contracts, invoices, correspondence and other documents relating to the Entity's business.
- 11.10. The Client confirms that the rights and duties of Vistra have been duly explained to him by Vistra, in particular the obligation to bring to the attention of the MFSA or any other lawful authority, as the case may be, any change in circumstances which would render inapplicable the exemptions granted or the payment of any tax or duty otherwise payable.
- 11.11. The Client also confirms that subject to the laws of Malta and other guidelines issued by regulatory authorities, all files maintained by Vistra may be examined during compliance visits made by key and authorised officials of the competent authorities concerned.

12. Complaints, Queries or Comments

- 12.1. If any matters need to be discussed arising from the Services provided by Vistra, these should be addressed to the relationship manager responsible for the Entity. Any complaints regarding any matter, if not satisfactorily resolved by the relationship manager, should be addressed in writing to the director responsible for the business relationship with the Entity.

13. Joint and Several Liability

- 13.1. Where the Client is more than one person:
- (a) each such person hereby appoints the other such person(s) to act as his agent to exercise full power and authority in connection with the Services on his behalf and to accept all obligations of the Client in connection with the provision of Services to the Entity; and
 - (b) each such person hereby guarantees and warrants compliance of those obligations; and
 - (c) all obligations of the Client in connection with the Services shall be joint and several.

14. Severability

- 14.1. If at any time one or more of the provisions of these Terms of Business becomes invalid, illegal or

unenforceable in any respect, that provision shall be severed from the remainder and the validity, legality and enforceability of the remaining provisions of these Terms of Business shall not be affected or impaired in any way.

15. Data Protection

- 15.1. For the purposes of this Clause, the terms "personal data", "Data", "to process/processing", "processor", "controller" and "(sensitive) personal data" shall have the meaning as provided for by the Applicable Data Protection Laws.
- 15.2. Each of the Entity, the Client and the Principal represents and warrants that in the performance of the Agreement it will comply with Applicable Data Protection Laws.
- 15.3. Each of the Entity, the Client and the Principal acknowledges and agrees that Vistra is entitled to process the Data in accordance with, and for the purposes described in Vistra Privacy Notice. Each of the Entity, the Client and the Principal confirms that it has read and understood Vistra Privacy Notice.
- 15.4. Each of the Entity, the Client and the Principal represents and warrants that all Data provided to Vistra is obtained, processed and provided in accordance with Applicable Data Protection Laws. In particular, each of the Entity, the Client and the Principal represent and warrant that it has obtained valid consent of the Data Subjects where required by Applicable Data Protection Laws.
- 15.5. Each of the Entity, the Client and the Principal further represents and warrants that it has provided the Data Subjects with all necessary information about the processing of their Data in the context of the Services, as required by Applicable Data Protection Laws, and that a copy of Vistra Privacy Notice is provided to the Data Subjects prior to the moment that the Data Subject provides the Data to Vistra directly or to the Company and/or the Principal for subsequent disclosure to Vistra.
- 15.6. Each of the Entity, the Client and the Principal acknowledges and agrees that, where Vistra qualifies as a data processor when providing its services, Clause 16 of these Terms of Business applies (Clause 16 serves as a data processing agreement).
- 15.7. The indemnification set out in Clause 9 and any other remedies given under the Agreement shall apply in the event of breaches under this Clause 15.

16. Vistra As Processor

- 16.1. Vistra shall, in the performance of the Data Processor Services, act as a processor on behalf of and under the lawful and reasonable documented instructions of the

Entity, acting as a controller. Vistra hereby accepts and undertakes to, in the performance of the Data Processor Services:

- (a) process Data for the purposes, subject matter and duration set forth in the Agreement;
- (b) take all adequate technical and organisational security measures required pursuant to article 32 of the General Data Protection Regulation;
- (c) in so far as Vistra would gain knowledge of any accidental or unlawful loss, modification, disclosure or access or of any other form of unauthorized processing, or of any disruptions endangering the security of personal data, it shall, inform the Entity hereof in writing without undue delay;
- (d) ensure that members of its personnel process such data in accordance with the instructions given by Vistra, and that they are bound by a duty of confidentiality or are under an appropriate statutory obligation of confidentiality;
- (e) not engage another processor or sub-processor without prior specific or general written authorization of the Entity (unless allowed under the Agreement), and inform the Entity of any intended changes concerning the addition or replacement of such other processors or sub-processors, giving the Entity the possibility to object hereto; in any case, the same data protection obligations as set out in these Terms of Business shall be imposed on that other (sub-) processor by way of a contract and Vistra will remain fully liable to the Entity for the performance of the other (sub-) processor's obligations;
- (f) ensure that personal data is only transferred to countries outside the EEA insofar as this is necessary for the performance of the Agreement, or if expressly authorised by the Entity or if required to do so by law (in such case, Vistra will inform the Entity of such legal requirement before the processing, unless that legal requirement prohibits such disclosure on important grounds of public interest);
- (g) refer to the Entity any request it may receive from data subjects for access or changes to or deletion of the personal data provided by the Entity and, or for the exercise of any other data subject rights, and provide assistance to the Entity in as far as may

reasonably be expected of Vistra, in order for the Entity to respond to requests from data subjects relating to the exercise of their legal rights;

- (h) assist the Entity in ensuring compliance with its legal obligations under Applicable Data Protection Laws relating to data security and data breach notifications, data protection impact assessments, and prior consultation in as far as may reasonably be expected of Vistra;
- (i) at the choice of the Entity, delete or return all relevant personal data to the Entity after the end of the Data Processor Services, and delete existing copies unless a legal obligation requires Vistra to store the personal data for a longer period, and;
- (j) make available to the Entity all information that is reasonably necessary to demonstrate compliance with the obligations laid down in this Clause 16, and allow the Entity and auditors mandated by the Entity, at reasonable intervals and with a maximum of once a year, access to any relevant premises to audit/inspect Vistra's data security policies and procedures. The Entity will give a three weeks' notice prior to such audit/inspection.

16.2. Each of the Entity, the Client and the Principal represents and warrants that it will not give instructions to Vistra that, in any way, would be in violation of Applicable Data Protection Laws or Data subject rights.

16.3. All reasonable costs and expenses incurred by Vistra in the performance of its obligations under paragraphs (g), (h) and (j) of Clause 16.1 shall be paid for by the Entity and / or the Client and / or the Principal.

17. Safe Custody

17.1. Vistra will keep all such deeds and documents which it considers appropriate, or where it is requested by the Entity to do so, in its safe custody facilities.

17.2. Vistra accepts no responsibility for any deeds or documents held in safe custody that are damaged or lost as a result of theft, fire or water damage, in the absence of gross negligence.

18. Termination

18.1. Termination in connection with one Entity shall not, in and of itself, result in:

- (a) a Termination in connection with any other Entity; or

- (b) termination of the engagement with the Client.
- 18.2. Termination in connection with an Entity shall be effected at the expiration of the notice period, if any, provided for in this Clause.
- 18.3. Vistra may terminate the provision of the Services to one Entity at any time in any of the following circumstances:
- (a) upon giving thirty (30) days notice to the Entity (and where appropriate, the Client);
- (b) immediately, upon notice being given to the Entity (and where appropriate the Client):
- (i) if the Entity and / or the Client has breached any of these Terms of Business or the terms of an applicable Agreement; or
- (ii) if, in the opinion of Vistra, the Entity and / or the Client cannot meet its payment obligations hereunder or under any Agreement; or
- (iii) if the Entity or the Client has commenced insolvency proceedings, or if in the opinion of Vistra, there is a reasonable possibility that insolvency proceedings will be commenced in respect of the Entity or Client;
- (iv) there has been any change in ultimate ownership of the Entity such that there shall be a new Client in relation to the Entity; or
- (v) the Entity or any Client, or an officer or employee not provided by Vistra, has been charged with any criminal offence or is or has been the subject of any criminal, judicial or regulatory investigation in any jurisdiction; or
- (vi) there has been a failure on the part of the Entity and / or the Client to supply CDD material in relation to any Client or the Entity as shall be reasonably required by Vistra or if any such information supplied in relation to CDD is deemed by Vistra to be deliberately false, incomplete or misleading; or
- (vii) Vistra considers it necessary or appropriate to terminate the Services because a conflict of interest has arisen in relation to the Entity and / or the Client in relation thereto; or
- (viii) any fees and disbursements invoiced by Vistra, any third party fees and disbursements or any taxes or other moneys due to any competent authority in relation to any Entity have remained outstanding and unpaid in whole or in part for more than sixty (60) days after the due date;
- (ix) if, in the opinion of Vistra, the business relationship between Vistra on the one hand and the Entity and / or the Client on the other should be terminated.
- 18.4. The Entity and / or the Client may terminate the appointment of Vistra in respect of the Services on giving thirty (30) days notice in writing addressed to Vistra.
- 18.5. In the event of a termination of Services referred to in Clause 18.3 and Clause 18.4, Vistra shall not be obliged to file any statutory or legal documents or, if appropriate, pay any government fees and taxes in respect of the Entity and in such circumstances the Client and / or the Entity will have no claims against Vistra.
- 18.6. The Client and each Entity acknowledge that:
- (a) Vistra shall be entitled to retain any fees paid in advance by the Client and / or the Entity for the provision of Services beyond the date of termination; and
- (b) in the event of a termination of Services referred to in Clause 18.4, Vistra shall be entitled to charge a one-time termination fee of Euro five hundred (EUR 500) (excluding VAT).
- 18.7. Upon termination of the Services for any reason, the Entity and the Client (where applicable) shall immediately provide Vistra with the details of the new service provider which shall be required in order to maintain the Entity in good standing under the laws of its jurisdiction and shall provide an address to which Vistra may transfer all books and records of the Entity.
- 18.8. Vistra reserves the right to withdraw Services without appointment of any replacement service provider and to arrange for the resignation of any directors, trustees or other officers of any Entity without the appointment of successors (unless the laws and regulations prevent any such unilateral withdrawal) and Vistra further reserves the right to transfer any shares or interests in any Entity held by the Fiduciary into the name of the undisclosed beneficial owner in respect of such interest.
- 18.9. Vistra shall be entitled to retain all original CDD documentation. Vistra shall also be entitled to retain a copy of all books and records of the Entity for a period of at least five (5) years from the date of termination of the business relationship.
- 18.10. Vistra shall be entitled to retain all books and records of the Entity until all fees and expenses up to the date of

termination have been paid in full, together with any termination fees as may be applicable. Vistra shall also be entitled to charge fees at its usual rates for any work done in the transfer of the administration of the Entity.

19. Books and Records

- 19.1. Where, during the provision of the Services, Vistra has created any internal memoranda, emails, attendance notes or any other form of document relating to the provision of Services not intended by Vistra to be supplied to or seen by the Entity and / or the Client or any other officer or employee of the Entity not supplied by Vistra (referred to as '**internal documents**'), then such internal documents shall not belong to the Entity and / or the Client and Vistra shall not be obliged to hand over originals or make copies available of any such documents to the Entity and / or the Client unless ordered to do so by court, having jurisdiction in relation to Vistra.
- 19.2. Where any former Client and / or any Entity to which Vistra has previously provided Services, requests the production of documents after the termination of Services, Vistra reserves the right to charge for time spent in retrieving and supplying any such documents and to charge all copying costs as disbursements.
- 19.3. Where Vistra is requested or required to keep any documents on behalf of any Entity, they shall do so in such storage facility as they consider appropriate and, while such storage facilities may be designed to limit the possibility of unauthorised access or damage by fire, Vistra shall not accept any responsibility for any loss or damage to any such items (whether or not they be documents or objects or items of intrinsic value of any nature) which Vistra may be requested to store in such storage facility.
- 19.4. In the event of non-payment of all (or any part of) any fees or other dues, Vistra shall have a lien over (or the right not to release from its possession or control) the relevant Entity's assets, documents and information until such time as all such fees or other dues have been discharged.
- 19.5. For the avoidance of doubt, the right of lien referred to in Clause 19.4 shall apply to all of an Entity's assets, documents and information held in relation to
- (a) the matter in respect of which the relevant fees, taxes, expenses or disbursements have been incurred; and
 - (b) any other matter relating in any way to the Entity.

- 19.6. In the event of Termination in connection with an Entity, a final invoice will be submitted and Vistra reserves all rights to exercise the right of lien (referred to in Clause 19.4) over the relevant Entity's assets, documents and information until such time as the final invoice is also discharged in full.
- 19.7. Subject to payment in full of all sums due to Vistra and any applicable charges, Vistra shall, in all cases where a successor service provider has been appointed to (or in respect of) an Entity, liaise with that service provider to supply originals or copies of an Entity's documents.
- 19.8. Vistra reserves the right to retain copies of an Entity's documents following Termination in connection with it for a period of ten years from the date of such Termination.
- 19.9. After the tenth anniversary of a Termination, any continued retention (whether in electronic or hard form) of: (a) an Entity's documents; and (b) any of Vistra's Documents relating to the relevant Entity; shall be on the understanding that Vistra has the right to destroy all such documents (whether originals or electronic or photo copies) at such time(s) as Vistra in its sole discretion, considers appropriate. Accordingly the Client and each Entity accept that they shall have no right to call upon Vistra for the provision of any documentation after the tenth anniversary of a Termination.

20. Variation and Review

- 20.1. Vistra reserves the right to vary these Terms of Business or Fee Schedule from time to time including during the course of the provision of the Services to any Entity. Where these Terms of Business or Fee Schedule are varied in the course of the provision of these Services, Vistra shall use its reasonable efforts to draw all such variations to the attention of each Entity and each Client as soon as practicable before the coming into force of any such variation and re-issue.

21. Assignment

- 21.1. Vistra may assign or transfer the whole or any part of its rights and benefits under these Terms of Business.
- 21.2. For the purpose of any such assignment or transfer, Vistra may disclose information about the Client and the Entity to any prospective assignee or transferee, provided that Vistra shall use its reasonable endeavours to procure that such prospective assignee or transferee is placed under an obligation of non-disclosure.
- 21.3. The Client shall not assign or transfer all or any part of its rights or benefits under the Terms of Business.

22. Notices

- 22.1. Without prejudice to any terms specified in any Agreement for the giving of notice between Vistra and any Entity and any Client, any notice required to be given under these Terms of Business shall be in writing addressed to the party concerned at its address from time to time, notified to the other for the purpose, failing which to the registered office or last known business address of such party.

23. Governing Law

- 23.1. These Terms of Business and any documents, agreements and forms which are deemed to form part of these Terms of Business (unless there is a separate proper law clause set out in any such document, agreement or form) shall be governed by and construed in accordance with the laws of the Republic of Malta and each Entity and each Client hereby submits to the non-exclusive jurisdiction of the Malta courts of law in all matters arising out of or in connection with these Terms of Business, subject to Vistra's right to institute proceedings in any other court of competent jurisdiction.