



AMAGIS CAPITAL Terms of Business
(the “ToB”)

1. Scope

This terms of business cover the provision of services by the relevant company forming part of the Amagis Capital group of companies (“We”/”Us”/”Our”, and, jointly, the “**Amagis Group**”) to you (the “**Client**”, “**You**”) in terms and the relevant engagement letter and/or agreement into which You may enter into from time to time with Us (the “**Letter**” or the “**Agreement**”, as applicable). These terms shall remain into force until varied or replaced with such other terms agreed with you in writing PROVIDED THAT such consent will not be necessary with respect to non-material changes and we shall be entitled to carry out such amendment unilaterally.

2. Our services

2.1 Amagis Capital is a group of company providing a different array of advisory, consulting and structuring solutions to third parties across multiple jurisdictions, being a well-known player within the funds industry and benefitting from a team composed of experienced professionals with different background and a reliable network of services providers and partners.

2.2 Where the services to be provided to You by Amagis consist of a regulated service, such services shall be provided by the relevant licensed entity forming part of the Amagis Group of Companies and you shall be informed accordingly. A list of the licences held by Us can be found at www.amagiscapital.com

3. Appointment of Amagis

3.1 By entering into the relevant Agreement and/or Letter, the Client hereby appoints Us to provide the services set out in the aforesaid Agreement and/or Letter (the “**Services**”), with effect from the date and in accordance with the provisions set out therein and subject to these ToB.

3.2 Without prejudice to the provisions set forth under clause 5.1, in agreeing to provide the Services, We rely and will rely on the representations and warranties made by the You and listed under clause 5.2 below.

3.3 You will, at your own expense, supply, to Us of all such information and assistance as We may reasonably require to enable it to perform the Services and duties hereunder and represent and warrant that all information You deliver to Us pursuant to these ToB, the Agreement and/or the relevant Letter will be true, accurate and not misleading and that We shall be entitled to assume all information to be true and accurate and rely on the same for the purpose to provide the Services.

3.4 The provision of the services by Amagis to you in terms of the relevant Letter and/or Agreement is subject to the successful outcome of a due diligence process carried out by Amagis with respect to you, any linked party (including close family members) and, in the event of corporate entities,



- UBOs, directors, senior managers and such individuals/entities which Amagis may from time to time identify.
- 3.5 In this respect, you shall provide all the necessary documentation and/or information required and/or desirable in order to carry out the aforesaid checks. In the event that the aforesaid information are not disclosed and/or shall the outcome of the due diligence be considered not positive (upon the discretionary judgment of Amagis), we reserve the right not to provide you with the services requested and terminate the Agreement and/or Letter, as the case may be, and/or suspend any negotiation on the terms of our potential engagement. The above is without prejudice to any obligations falling upon Amagis in terms of the relevant AML/CTF framework.
 - 3.6 As a general way of communication, We prefer to receive instruction in writing, provided that in the event of oral instructions, we shall be entitled to request a written confirmation on our understanding.
 - 3.7 Where the assistance during a licensing process forms part of the Services and while Amagis will act in good faith in order to facilitate such licensing, both Parties acknowledge and agree that there is no guarantee that any licence will be granted by the relevant regulatory authority.
 - 3.8 Typically, but without any limitation whatsoever, when we provide our services with respect to regulatory matters, deadlines may apply. Once informed about the aforesaid deadlines, you shall be the only responsible for the timely provision of the information required to comply with the aforesaid deadlines. Moreover, where, as result of the late provision of information we incur in any cost on your behalf, such costs will be passed to You.
 - 3.9 You agree that the services to be provided by Amagis in terms of an Agreement and/or Letter are limited to the Services identified from time to time in the relevant Agreement and/or Letter and, unless otherwise stated, shall not cover in any way whatsoever any further activity, service, nor actions otherwise connected, directly or indirectly, to the business You carry out.
 - 3.10 In consideration of the provision of the Services, You agree to pay Us such remuneration as is set out in the relevant Agreement and/or Letter entered with Us. The appointment of an Amagis team member for a regulated role shall be assessed on a case by case basis and, unless otherwise stated in the relevant Agreement and/or Letter, shall not be ordinarily included among the costs due for the Services.
 - 3.11 The remuneration set out in the relevant Agreement and/or Letter is net of VAT and net of all the administrative and regulatory costs which may be sustained by Amagis in performing the Services, including but not limited to, any fees due to the Registry of Companies and/or to the relevant regulatory authority, (including any application and/or registration fee to be paid to the aforesaid entities) and which shall be borne exclusively by You.
 - 3.12 Unless otherwise stated agreed in the Letter and/or in the Agreement, pending invoices shall be settled in full within 15 days. Following the lapse of the aforesaid period, we shall be entitled to charge any applicable legal interest on part or all of the outstanding amount.
 - 3.13 We shall be entitled to suspend the provision of our services to you, without any consequence on our side, where part or all of our invoices are not met within the agreed deadline PROVIDED THAT our rights set out at law shall remain unaffected.



4. Confidentiality and Non-Disclosure Obligations

- 4.1. Without prejudice to any other agreements entered into between the Parties and regulating the subject matter, during the course of the relevant Agreement and/or Letter and following its termination, a Party shall not disclose any information or document given by the other Party relating to any aspect of the other Party or its business (“**Confidential Information**”) without the prior, express and written consent of such other Party.
- 4.2. Notwithstanding clause 4.1, the following shall not be deemed to be Confidential Information:
 - 4.2.1 Any information which is in the recipient’s possession prior to being furnished to the recipient by the disclosing party under the terms of the Letter and/or any agreement in place between the Parties;
 - 4.2.2 Any information which is, at the date of its disclosure, in the public domain or which, following the execution of the Agreement and/or Letter, lawfully enters or becomes available in the public domain other than through unauthorised disclosure by the recipient;
 - 4.2.3 Any information which is rightfully obtained by the recipient from a third party, without breach of any obligation arising out on the recipient in terms of these ToB, Letter and/or Agreement;
 - 4.2.4 Any information which is or could be independently developed by the Recipient without use of or reference to the Confidential Information.
- 4.3 The restrictions set out in clause 4.2 above shall not apply to any Confidential Information which is required to be disclosed by the recipient party to third parties by or under any applicable law, regulation or court order.
- 4.4 Notwithstanding clause 4.1 and without prejudice to the provisions of clause 4.3, each Party undertakes to fully cooperate with UK and/or Malta regulatory, judicial or other competent authorities (the “**Authorities**”) where required by applicable laws or regulations to disclose Confidential Information, including providing the Authorities with any original or other copy of any relevant documents or other data or information, for use within any such jurisdiction or for onward transmission to any relevant foreign regulatory, judicial or other competent authorities in accordance with English and/or Maltese laws and regulations, international mutual assistance procedures between the UK and/or Malta and any relevant foreign jurisdictions or any other foreign law, regulation or rule which may extend to any matter under these ToB as may be permitted by the applicable law.

5. Duration and Termination

- 5.1 These ToB shall remain in force until varied or replaced with alternative terms agreed with You in writing.
- 5.2 Unless otherwise stated in the relevant Agreement and/or Letter, the Agreement and/or Letter entered into between You and Us will take effect from the date stated therein (“**Effective Date**”) and will last until the relevant date set out in the Agreement and/or Letter and during the aforesaid term, will continue until the occurrence of the earliest of any of the following events:



- 5.2.1 if any Party shall go into liquidation, be dissolved or be declared bankrupt or insolvent; or
- 5.2.2 if any Party commits a material breach of its obligations under these ToB and/or the Agreement and/or Letter and shall fail to make good such breach (where capable of remedy) within thirty days of receipt of written notice from the innocent party requesting it so to do; or
- 5.2.3 if either Party provides the other, with such a prior written notice, within the terms set out in the relevant Agreement and/or Letter, for radically serious business reasons, a unilateral termination notice;
- 5.2.3 if any of the activities to be provided as part of the Services result to be a regulated activity and/or requires the obtainment of any authorisation, license, permit and/or public consent which is not currently held by any company forming part of the Amagis Capital Group.

PROVIDED THAT Amagis shall be entitled to terminated at any time the Agreement and/or Letter, by providing you with a written notice, should the representations and warranties made under clause 5.2 herein result to be or become untrue, incomplete and/or inaccurate.

- 5.3 Upon the termination of the relevant Letter and/or Agreement by the Client in terms of clauses 5.2.3 hereto, Amagis shall be entitled to retain any amount already paid by the Client based on the amount of work already carried out by Amagis in terms of the relevant Agreement and/or Letter and these ToB PROVIDED THAT the Client shall remain liable to pay any amount due but not paid to Amagis for the performance of the work already carried out in terms of the relevant Agreement and/or Letter.
- 5.4 Any provision of the relevant Agreement and/or Letter and of these ToB that expressly or by implication is intended to come into or continue in force after termination or expiry of the Agreement and/or Letter with the Client shall remain in full force and effect.

6. Representations and Warranties

- 6.1 The Client represents, warrants and covenants to the other that, where applicable:
 - 6.1.1 it is an exempted company, a limited liability company, a limited partnership or a limited liability partnership as is relevant, duly organised and validly existing and is qualified to do business under the laws of the jurisdictions in which the nature or conduct of its business requires such qualification and the failure to so qualify would materially adversely affect its ability to perform under the relevant Agreement and/or Letter. If the Client is a natural person, the Client can validly enter into the relevant Agreement and/or Letter and has the legal and judicial capacity to contract with third parties;
 - 6.1.2 it has full power and authority under the laws of the jurisdiction of its incorporation to conduct its business and to perform its obligations under the relevant Agreement and/or Letter and these ToB;



- 6.1.3 the Agreement and/or the Letter (and the entry into it) has been duly and validly authorised, executed and delivered by it and constitutes a valid and binding enforceable agreement;
- 6.1.4 the execution and delivery of the relevant Agreement and/or Letter, the incurrence of the obligations set forth herein and the performance of its duties hereunder does not and will not violate, or constitute a breach of, or default under any agreement or instrument by which it is bound or any order, rule, law or regulation of any court, governmental body or administrative agency or panel or self-regulating organization having jurisdiction over it;
- 6.1.5 there is not pending or, to the best of its knowledge, threatened, any action, suit or proceeding before or by any court or other governmental body to which it is a party, or to which any of its assets is subject, which might reasonably be expected to result in any material adverse change in its condition, financial or otherwise, and neither it nor any of its principals has received notice of any investigation, inquiry or dispute by any governmental body, administrative agency, self-regulating organization or exchange regarding any of its activities; and
- 6.1.6 it will fully indemnify and hold harmless the other Party for any loss or claims resulting from any of the foregoing representations being in any material respect untrue or incomplete.

7. Liability and Indemnity

- 7.1 In the absence of any fraud, gross negligence, wilful default or bad faith on its part or on the part of any Amagis Group company or its or their respective directors, officers or employees, neither Amagis nor any of its Amagis Group company or its or their respective directors, officers or employees shall be liable for any damage, loss, liability, cost or expense of any kind whatsoever which may be incurred by or arise from or in connection with the performance of the Services or which may result from reliance on the information provided by You and/or by third parties instructed by You or contained in any report of documentation provided by You and/or by third parties instructed by the you for the purposes of the Services and these ToB, Letter and/or Agreement, as the case may be.
- 7.2 You agree to hold harmless and indemnify Amagis and its Amagis Group company and its or their respective directors, officers or employees, from and against any and all liabilities, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against Amagis or any of its Amagis Group company or its or their respective directors, officers or employees in the performance of its or their obligations or duties hereunder other than those resulting from fraud, gross negligence, willful default or bad faith on its or their part.
- 7.3 Without prejudice to the above, You agree that Our liability shall be always limited, unless otherwise prescribed in terms of the applicable law, to the amount paid and received by us as remuneration for the provision of our services, net of the costs sustained in providing our Services.

8. Amendments



No provision of the Agreement and/or Letter may be changed, waived or discharged or discontinued except by an instrument in writing signed by the Parties and in accordance with the applicable law set out thereof.

9. Miscellaneous

- 9.1 The Parties strictly commit to co-operate with each other in all respects in order to give effect to these ToB, the relevant Agreement and/or the Letter according to its intent and purpose, with full and reliable business approach.
- 9.2 In the implementation of these ToB, the relevant Agreement and/or the Letter, the Parties unlimitedly commit to observe the utmost good faith and they warrant in their dealings with each other that they shall neither knowingly do anything nor refrain from doing anything which might prejudice or detract from the rights, assets or interest of any other(s) of them.
- 9.3 The Parties shall for all purposes herein be an independent contractor and shall unless otherwise expressly provided herein or otherwise authorized have no authority to act for or represent the other party in any way or otherwise be deemed an agent of the other Party.
- 9.4 Nothing in relevant the relevant Agreement, the Letter and/or these ToB shall constitute a partnership, employment agreement or joint venture arrangement in any shape or form between the Parties and/or their respective employees.

Nothing in this ToB shall prevent the Us from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession or occupation, and/or to provide our services to any third party (including firms which may operate a business in competition with your business) during the term of our engagement. Where applicable, any conflict of interest shall be dealt with in accordance with the conflict of interest policy in place for the relevant company forming part of the Amagis Group.

- 9.5 Each of the Parties shall in performing its obligations in terms of the relevant Agreement, the Letter and/or these ToB comply with all applicable laws, rules and regulations.
- 9.6 Any waiver by either Party of any breach of any provision of the relevant Agreement, the Letter and/or these ToB shall not constitute a waiver of any subsequent breach or affect in any way the effectiveness of the aforesaid agreements.
- 9.7 The failure by either Party to enforce at any time or for any period any one or more of the provisions of this Agreement the Letter and/or these ToB shall not be a waiver of the right at any time thereafter to enforce all or any of them.
- 9.8 If any provision of the relevant Agreement, the Letter and/or these ToB is or becomes invalid or contravenes any applicable law, the remaining provisions shall remain in full force and effect.
- 9.9 The Parties may from time to time, conclude, replace and/or modify the relevant Agreement, the Letter and/or the Schedules to the relevant Agreement and/or Letter, it being hereby agreed and understood however that amendments to any such documents and/or respective Schedules shall only be made with the written agreement of both Parties. Upon the execution of any such



amended Agreement and/or Letter and/or Schedule(s) by the Parties, the same shall be deemed to be incorporated into these ToB and be binding in all respects. In the event of any inconsistency between the terms and conditions contained in any Agreement, Letter and/or Schedule, the terms and conditions contained in the Agreement, Letter and/or Schedule completed last in time shall prevail.

- 9.10 In the event of any inconsistency between the terms and conditions contained in a specific Agreement, Letter and these ToB, the content of the Agreement and/or Letter shall prevail to the extent such Agreement and/or Letter is entered into following the date of these ToB.

10. Counterparts

Each Agreement and/or Letter may be executed in one or more counterparts all of which taken together shall be deemed to constitute one and the same instrument.

11. Data Protection

- 11.1 Personal data shall be processed in accordance with our Privacy Notice, copy of which is available on our website www.amagiscapital.com free of charge.
- 11.2 If you are a company or other corporate entity and/or you supply to us personal data of third parties such as your employees, affiliates, service providers or any other individuals, you shall be solely responsible for making sure that the provision of such personal data to us fully complies with applicable laws and the relevant person in regard to whom the data relates has been provided with the necessary information at law regarding our processing of his personal data. Any information notices, consents or other applicable requirements that may be required to be fulfilled for the provision of such third-party personal data to us shall be borne solely by you. You hereby fully indemnify us and shall render us completely harmless against all costs, damages or liability of whatsoever nature resulting from any claims or litigation (instituted or threatened) against us as a result of you provision of personal data to us.

12. Governing and Applicable Law

- 12.1 These ToB and, unless otherwise states therein, the Agreement and/or the Letter shall be governed by and construed in accordance with the laws of Malta and shall be subject to the exclusive jurisdiction of the court of Malta.
- 12.2 The Parties shall employ best endeavours to settle amicably any disputes between them in connection with or arising out of the existence, validity, construction, performance and termination of these ToB, the Agreement and/or the Letter (or any terms thereof), failing which the matter shall be finally settled by, unless otherwise stated in the relevant Letter, the competent court in Malta.

13. Notices and Communications

- 13.1 All notices and other communications provided for hereunder shall be in writing and sent by registered mail or transmitted by electronic mail respectively as follows, or at such other



addresses or electronic mail addresses as shall have been designated by the recipient Party in a written notice to the other Parties hereto.

It is important that you inform us promptly of any change in relation to:

13.1.1 any primary contact;

13.1.2 your name, address, telephone/fax numbers and e-mail address; and

13.1.3 any change to any of the information provided above.

We do not accept responsibility for any loss of rights as a consequence of your failure to inform us of such changes.

13.2 All such notices and communications shall be effective (i) on receipt of successful delivery if sent by registered mail, or (ii) on confirmation of successful transmission if by electronic mail.

13.3 Unless otherwise indicated, we shall assume that any person within your organisation may instruct us on your behalf (unless it is evident to us that they do not have the appropriate authority).

13.4 Unless otherwise informed in a durable medium, when identifying our client and without prejudice to the content of our AML policy, we shall be entitled to consider you, as entity and/or individual entering into any agreement with us, to be our client of records.

13.5 In terms of these terms of reference, we may be liable solely and exclusively with our client of records.

13.6 We may agree from time to time, subject to our AML policy, to invoice our services and to accept funds to/from accounts of another entity, provided that the ultimate responsibility for ensuring the compliance with the terms of these ToB, the Agreement and/or the Letter (including for the payment of our fees) shall remain at times with the client of records.

13.7 Complaints may be filed in accordance with the Company's Complaints Handling Policy, copy of which is available on the Group's website and shall be made available free of charge upon demand.

14. Anti-Money Laundering

14.1 In terms of the applicable law, we are required to obtain extensive data and information on our clients and/or potential clients, including, but not limited to, their identity, the scope of their business activities, the purpose of entering into a business relationship with you, the source and/or the nature of funds which we may receive from you and, in particular, the Ultimate Beneficial Owner behind the entity and/or natural person dealing with us.

14.2 We shall be entitled to terminate our business relationship with you if any information required for the purpose of clause 13.1 above is not provided within 7 business days PROVIDED THAT any fees due in terms of the relevant Agreement and/or Letter entered into with you shall be paid to us within the applicable terms.



14.3 In terms of the applicable law, We are required to comply with the applicable reporting provisions where we are of the impression that your fund and/or the activities you are carrying out is the subject of money laundering. Notwithstanding our duties to serve Clients' interests at our best, our AML reporting obligations and duties to report to the competent authority shall prevail.

14.5 This legal duty overrides any duty of confidentiality in terms of these ToB, the Agreement and/or the Letter and therefore We shall not be subject to any liability whatsoever for losses and/or damages arising out of any disclosure to the competent authorities.

15 Assignment

15.1 Unless otherwise restrained in terms of the applicable law, we shall be entitled to transfer or assign our agreement with You to any company and/or individual, established and/or which may be established under the Amagis Group of companies.

15.2 Unless otherwise agreed in writing between Us, neither of us may transfer nor assign this agreement to any third party.

16 Data retention / IP

16.1 Record-keeping and ownership of files

All the professional works carried out for you shall be filed in accordance with our record keeping policy and shall remain our property and subject to our own copyright at all times, during and after the term of the relevant agreement with you. Provided that all our outstanding invoices have been paid in full, we will be happy to transfer (at your own costs) your files, unless in breach of our GDPR policies, to third parties indicated by you.

16.2 Copyright – Licence to use

Whilst we will retain copyright on the work prepared for you, you will have our licence to use the work carried out for you by us for the sole purposes for which it was created PROVIDED THAT we shall always be identified as the only authors of the aforesaid work. This shall be without prejudice to our rights at law to object to any misuse of it.

16.3 Destruction of files

16.3.1 Following the termination of our engagement with you and in line with our GDPR policies, we delete third parties files after 10 years after a file is closed PROVIDED THAT where required by the relevant authority such term may be extended for the purpose to comply with the applicable law.

16.3.2 We have in place a record keeping policy in terms of which we keep a soft and hard copy of each files (excluding e-mails) related to a particular client and/or transaction. Soft copies of the files are uploaded on a cloud-based server whilst hard copies are kept at our premises. Without prejudice to the provisions of clause 16.1, We will be happy to provide you with the documentation we hold with respect to you free of charge.

Malta, 27 September 2019