



# Performance Monitoring Service Provided to Private Clients of RBC Investment Solutions (CI) Limited Terms and Conditions

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## 1. Definitions

- 1.1 In these terms and conditions where the context so admits the expressions hereinafter specified shall have the meanings and bear the interpretations thereby assigned to them respectively:-
- (a) **“Agreement”** means the IFA Service Agreement, these Terms, the Confidential Information Form and includes any variation of them and all documents entered into as supplemental to them;
  - (b) **“associate”** means any holding company or subsidiary of the Company or any company which is a subsidiary of any such holding company or any other member of RBC;
  - (c) **“Authorised Person”** means any third party, other than the Client, whom the Client nominates within the Authorised Person Appointment Form (provided to RBCISCIL) to be empowered to dialogue with or receive information from the Company regarding the Client’s Holdings that are monitored by the Company;
  - (d) **“Authorised Person Appointment Form”** means the form (if any) completed by the Client pursuant to Clause 6.2;
  - (e) **“business day”** means a day on which banks are open for business in Jersey;
  - (f) **“Certification Process”** has the meaning ascribed in clause 3.6
  - (g) **“Client”** means the person specified as the Client in the IFA Service Agreement between RBCISCIL and the Client, subject to the Client having ticked the appropriate box in section 4 of that Agreement to indicate that they wish to receive the Service;
  - (h) **“Client’s Holdings”** means the portfolio of investments (including cash where applicable) and/or investments in funds held by the Client and monitored by the Company for the Client;
  - (i) **“Client Objectives”** means from time to time the objectives of the Client as set out in the most recently completed Confidential Information Form or as otherwise provided to RBCISCIL by the Client, as amended or varied from time to time by written communication from the Client;
  - (j) **“Company”** means RBC Investment Services Limited, a company registered in Jersey and having its registered office at La Motte Chambers, St Helier, Jersey JE1 4PB, Channel Islands, registered company number 83759;
  - (k) **“Confidential Information Form”** means from time to time the confidential information form most recently provided to RBCISCIL by the Client which sets out the Client Objectives and general instructions as amended or varied from time to time by written communication from the Client;
  - (l) **“IFA Service Agreement”** means the agreement made between RBCISCIL and the Client pursuant to which, inter alia, the Client (having ticked the appropriate box in section 4 of that Agreement) agrees to be bound by these Terms;
  - (m) **“Fee Schedule”** means the Company’s Scale of Fees and Charges document issued from time to time by the Company reflecting details of the Company’s latest fees and charges for the Service, and provided to Clients;
  - (n) **“investment manager”** means a firm that either provides investment management services or accepts investments into a fund or other collective investment vehicle that they administer or manage.
  - (o) **“List”** means the list maintained by RBCISCIL and revised from time to time reflecting details of the third party investment managers with whom RBCISCIL has agreed standard fees for the provision of discretionary investment management services to Clients of RBC;
  - (p) **“RBC”** means and includes any company which is directly or indirectly a holding company or subsidiary of the Company and any company which is directly or indirectly a subsidiary of any such holding company and in this definition reference to “company” “holding company” or “subsidiary” shall be interpreted as a reference to a body corporate wherever incorporated;
  - (q) **“RBCISCIL”** means RBC Investment Solutions (CI) Limited, (a company registered in Guernsey) the parent of the Company, with whom the Client has a direct relationship pursuant to the IFA Service Agreement;
  - (r) **“Report”** means the performance analysis report produced by the Company and provided to the client pursuant to Clause 3.1. The Fee Schedule contains details of the reports that are available
  - (s) **“Service”** means the Performance Monitoring Service briefly described in Clause 3 of these Terms;
  - (t) **“these Terms”** means these terms and conditions;
  - (u) **“we”, “us” and “our”** refer to the Company;
  - (v) **“you” and “your”** refer to the Client.
- 1.2. Words importing the singular shall include the plural and the masculine gender shall include the feminine and the neuter and vice versa in each case.
- 1.3. Words importing persons shall include bodies of persons whether corporate or unincorporated.
- 1.4. Unless otherwise stated, references to “Clauses” herein are to Clauses of these Terms.

## 2. Introduction

- 2.1 You should read and consider these Terms before you tick the box in section 4 of the IFA Service Agreement and complete that Agreement. The ticking of the said box and signature by you of the IFA Service Agreement confirms your acceptance of and agreement to these Terms insofar as they apply to you. It is recommended that you retain a copy of these Terms for future reference.
- 2.2 These Terms relate solely to the Service which the Company provides for clients of RBCISCIL.
- 2.3 You should note that:
- (i) The Company does not provide investment advice, dealing facilities or any form of discretionary investment management services as part of the Service.
  - (ii) The Service does not constitute a regulated activity under either the Financial Services (Jersey) Law 1998 or the United Kingdom Financial Services and Markets Act 2000, hence RBC Investment Services Limited is not authorised under either law.
  - (iii) In some or all respects the regulatory regimes applying in Jersey, including any compensation or investor protection arrangements, may be different from those of your own jurisdiction.
  - (iv) The Company does not provide advice on the tax implications of investment services or transactions and is not responsible for any tax obligations which the Client may incur in connection with maintaining or operating the Client's Holdings.
  - (v) The Company reserves the right to delegate the performance of any duties to any RBC company.

## 3. Performance Monitoring Service

- 3.1 The Company agrees to provide the Service to the Client under these Terms. In providing the Service the Company shall:
- a) compare on a quarterly basis (or whatever other basis is agreed with the Client) the investment performance of the Client's Holdings to an appropriate benchmark based on the Client Objectives; and
  - b) produce a Report (as at the last business day in March, June, September and December respectively each year, unless alternative arrangements have been agreed upon) and explanatory notes on the relative performance of the Client's Holdings versus the benchmark for the period under review. The Report will be dispatched as soon as practically possible after it has been prepared by the Company. The Client acknowledges however that as the Company relies on the receipt of information from the relevant investment manager appointed by the Client in order to undertake the analysis and produce the Report, then in the event of information not being received in a timely manner by the Company, this will delay the preparation and dispatch of the Report.
- 3.2 The Client acknowledges that the Client will be required to direct the relevant investment manager to provide the Company with copies of all documentation relating to the Client's Holdings (which are either managed by them or held with them), including a statement of the latest Client Objectives as amended from time to time and a portfolio valuation which shall be provided to the Company on a quarterly basis or whatever other basis is agreed with the client.
- 3.3 In the event of an investment manager failing to provide the Company with the required information regarding the Client's Holdings on a timely basis, the Company shall not be obliged to provide, or liable for failing to provide, the Report.
- 3.4 The Report shall be sent to the Client either by regular mail, facsimile or other means of electronic transmission as directed by the Client.

- 3.5 The Client agrees to check the information in the Report, in particular the valuation, as soon as it is received and to notify the Company of any discrepancies within 30 days.
- 3.6 The Company will from time to time, but at least annually, undertake a certification process for the Client which will involve the Company contacting each of the relevant investment managers (except where an investment manager is an associate of the Company) for the purpose of seeking a certification from them that they are adhering to the terms of the latest discretionary mandate (and related investment guidelines) that the Client has agreed with the investment manager (the "Certification Process"). A copy of the certification obtained from the investment manager will be provided to the Client upon request. If a Client does not wish the Company to carry out the Certification Process, then they should advise the Company accordingly in writing. In the absence of such an instruction from the Client then the Company will undertake the Certification Process and will charge the relevant fee as set out in the Fee Schedule.

## 4. Client money and assets

The Company does not hold or handle client monies or assets as part of the Service. This means that the Company is unable to accept a cheque or other payment made out to the Company unless it represents funds in settlement of charges or disbursements (for which the Company has sent the Client an invoice).

## 5. Fees and charges

- 5.1 Any fee or charge for providing the Service will be made on a basis, frequency and method agreed in writing with the Client before the Company carries out any chargeable work.
- 5.2 We shall be entitled to charge fees and other charges in connection with the provision of the Service. Fees will be charged in accordance with the tariff outlined in the Company's Fee Schedule, a copy of which is available on request.
- 5.3 The Company may modify its Fee Schedule at any time, subject to providing a minimum of 30 days notice of such change to the Client.
- 5.4 The Company and any associate thereof shall be entitled to retain any commission which would or may become payable to it notwithstanding that such commission is payable as a direct or indirect result of any dealing with property which is or may become part of the Client's Holdings and any associate of the Company being a banker, broker, investment adviser or engaged in any other profession, business or trade may without accounting for any resultant profit act in such capacity and perform any service in relation to any property forming part of the Client's Holdings and on the same terms as with a customer.
- 5.5 In addition to any commissions and fees charged for the Service, the Company is also entitled to reclaim its reasonable expenses and costs (including time costs) in connection with any additional services which may be provided or matters relating thereto.

## 6. Authority to act

- 6.1 The Client warrants that the Client has full and unrestricted power to engage the Company to provide the Service.
- 6.2 If the Client wishes to empower a third party to dialogue with or receive information from the Company regarding the Client's Holdings that are monitored by the Company, then the Client will be required to complete an Authorised Person Appointment Form and to submit the same to RBCISCIL for consideration.
- 6.3 Once the required due diligence checks in respect of the proposed Authorised Person have been completed by RBCISCIL, then the Company will liaise as directed with the Authorised Person appointed by the Client. The Authorised Person will be responsible for forwarding any documents or

information that the Authorised Person receives from time to time from either the Company or the Client onto the Client or the Company as appropriate. The Company will not accept any responsibility or liability for any delay or other act or omission of an Authorised Person in relation to the Service.

6.4 The Client shall indemnify and hold harmless the Company against all and any liabilities, costs, claims and demands incurred by or made against the Company, and all of its associates in connection with any and all such actions taken by the Company in respect of the Client's Holdings.

## 7. Acting for other clients

The Company has the right to also provide the Service to other clients in addition to the Client without prior reference to the Client.

## 8. Material interests

8.1 Whilst providing the Service we shall treat the interests of our clients as paramount and will disregard other interests the Company or an associate of the Company may have to the fullest extent permitted by law or regulations affecting those interests.

8.2 Subject to Clause 8.1 but without prejudice to the generality of Clauses 5.4 and 8.3 hereof, the Company may, without consulting the Client, provide services under these Terms notwithstanding that the Company or an associate of the Company (or an employee or officer of them) has directly or indirectly a material interest of any description in any transaction concerned or recommended, or has a relationship of any description with another person such as to place it in a position where its duty or interest in relation to that other person may conflict with its duty to the Client.

8.3 Nothing in the Agreement shall prevent:

- (a) the Company or any associate thereof from being employed or appointed in any capacity by the Company or any associate thereof in connection with the Agreement or any service provided thereunder;
  - (b) arrangement of an investment in any securities or obligations of the Company or any associate thereof or in any company, mutual fund, unit trust, partnership or other investment vehicle of any nature of which the Company or any associate thereof is an instigator, promoter, sponsor, trustee, adviser, director, manager, administrator, banker, custodian or partner;
- and neither the Company nor any associates shall be liable to account to the Client for any profits, benefits, mark-ups or mark-downs, commissions or other remuneration received, made or derived in connection with the Service.

## 9. Relationship

The relationship between the Client and the Company is as described in these Terms. Without prejudice to the generality of Clauses 5.4, 8.2 and 8.3 hereof, neither that relationship nor the services to be provided by the Company nor any other matter shall give rise to any fiduciary or equitable obligations which would prevent or hinder the Company, or an associate of the Company, in transactions with or for the Client, acting as both market maker and broker, principal or agent, dealing with an associate of the Company and other clients and/or generally effecting transactions as provided above.

## 10. Exclusions and limitations on liability

To the extent permitted by law:

- 10.1 The Company shall not be responsible for any losses or loss of profit suffered by the Client as a result of any acts or omissions (whether negligent, fraudulent, in willful default or otherwise) by any investment manager or fund manager that has been directly appointed by the Client.
- 10.2 In the event of any failure, interruption or delay in the performance of the Company's obligations resulting from acts, events or circumstances not reasonably within the

Company's control, (including but not limited to any action or inaction by any Authorised Person, industrial disputes, acts or regulations of any government or any supranational bodies or authorities, or breakdown, failure or malfunction of any telecommunications or computer services or system(s)) the Company shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by the Client.

## 11. Disclosures

11.1 The Company shall not be obliged to disclose to the Client information:-

- (a) the disclosure of which by the Company would or might be a breach of a duty or confidence to any other person; or
- (b) which comes to the notice of any employee, officer, or agent or associate of the Company but does not come to the actual notice of the individual making the decision or taking the action in question.

11.2 The Company shall not be obliged to take into consideration any such information in making a decision or taking an action in connection with the monitoring of the Client's Holdings.

## 12. Complaints

Should you be dissatisfied with any aspects of the services provided to you, you should write to the Company addressing your complaint to your usual point of contact. Your complaint will then be dealt with in accordance with the Company's complaints procedures. A copy of the leaflet that explains the Company's complaints procedures will be made available upon request.

## 13. Information/Confidentiality

13.1 The Client agrees that the Company may keep information regarding the Client and the Client's Holdings on a centralised database. The Company will only retain the information gathered for as long as necessary for the Company to provide the Service and for the period required by relevant laws in Jersey.

13.2 The Company will provide the Client with a copy of any centrally held information, if requested to do so by the Client, in accordance with the Data Protection (Jersey) Law, 2005, as amended or replaced from time to time.

13.3 In the event that the Client believes that any of the centrally held information is incorrect or inaccurate, the Client must notify the Company, so that the information can be updated or corrected.

13.4 The Client agrees that in the event that the Client communicates with the Company using e-mail or other electronic means, then the Company may monitor all e-mails or other electronic traffic to gather information for purposes of security, marketing, statistical analysis and systems development.

13.5 The Client agrees that the Company may from time to time use RBC's centralised systems and/or systems resources and/or specialist information technology employees in other countries such as Canada and the United Kingdom, whether or not those countries have equivalent data protection legislation to Jersey and which may be outside the European Economic Area. This may result in certain client data being transmitted through or stored or processed in another jurisdiction and also being subject to the laws of that country. In this event, the Company shall use its reasonable endeavours to ensure that client data is protected to the standards which the Company applies.

13.6 The Company records the contents of telephone conversations and may monitor telephone calls both received by and made by employees of the Company. Any such recordings remain the property of the Company, and may be used by the Company in the event of a dispute.

- 13.7 Where telephone calls are made by the Company and recorded for direct marketing purposes, the Company will advise the Client at the beginning of any such call. If the Client does not wish to continue with a direct marketing telephone call, the Client should respond accordingly and the Company will terminate the call.
- 13.8 The Company will only use any e-mail address provided by the Client for direct marketing purposes where the Client has provided the Company with specific prior consent to do so.
- 13.9 The Company shall not disclose to any person any information regarding the Client's Holdings or information relating to the Client (whether acquired before or after any of the Client's Holdings were acquired and whether from the Client or a third party) save:
- i) where the Company is compelled or permitted or required to do so by law or by order of a court or governmental or administrative tribunal; or
  - ii) where disclosure is made at the Client's request or with the Client's consent, or if otherwise permitted by these Terms or where failure to make such disclosure would in the opinion of the Company be prejudicial to the Company, its nominees, advisers or agents; or
  - iii) where disclosure is made in accordance with Clause 13.10.
- 13.10 The Company may at any time process and/or disclose details and information about the Client or the Client's Holdings for the following purposes:
- i) to facilitate or otherwise assist in the provision of any services that the Client has applied for, including the provision of information to third party service providers or agents used by the Company from time to time;
  - ii) to service any of the Client's other relationships with RBC;
  - iii) to provide the Client with information regarding products and services that the Company believes may be of interest to the Client. If the Client does not wish to receive this information the Client must notify the Company in writing;
  - iv) to meet the Company's or RBC's regulatory and/or financial and or other reporting obligations in Jersey or elsewhere;
  - v) for the purposes of fraud prevention.
- 14. Assignment**
- The Client may not assign or transfer any of its rights or obligations under the Agreement without the prior written consent of the Company. Subject to any applicable laws, regulations or rules, the Company may at any time assign its rights and obligations under this Agreement to another member of RBC or a company or firm authorised to carry on investment business in the jurisdiction in which it operates.
- 15. Termination**
- 15.1 The Service may be terminated by either party at any time immediately on written notice effective on receipt (or such later time as specified in the said notice).
- 15.2 The Service shall terminate automatically in the event that:-
- (a) the Client has a bankruptcy petition presented against him (if an individual) or suffers a receiver, administrative receiver, administrator or liquidator to be appointed over it or any of its assets (if a body corporate) or other equivalent procedures in any jurisdiction; or
  - (b) the Client is unable to pay its lawful debts as they fall due; or
  - (c) a distress has been levied upon or other execution has been effected against the whole or any part of the property of the Client; or
  - (d) the Client takes up residence in a country where the Company is not permitted or authorised to provide the Service to residents of that country.
- 15.3 To the extent permitted by law, Clauses 6.4, 10 and 13 will continue in full force and effect (together with any other provisions necessary to make them operable) despite termination of this Agreement.
- 16. General**
- 16.1 Any notices under these Terms shall be delivered to:
- (i) the Company at its registered office; and
  - (ii) the Client at the last address shown in the records of the Company; and may be sent by telefax or by prepaid post and shall be deemed to be received in the case of telefax immediately and in the case of prepaid post 72 hours after posting.
- 16.2 The Client hereby authorises the Company to telephone the Client to discuss matters relating to the services being provided.
- 16.3 The Company may refuse to provide the Service or decide to withdraw the provision of the Service at any time at the Company's absolute discretion without giving any reason, and the Company will not enter into correspondence in these circumstances. Should the provision of the Service be withdrawn, the Company shall incur no liability for any direct or indirect loss or loss of profit that the Client may sustain.
- 16.4 These Terms shall be binding upon the Client and its permitted assigns and (where the Client is a company) its successors in title and (where the Client is an individual) such individual's heirs and personal representatives. Where the Client comprises more than one person, then liability under or in connection with these Terms shall be joint and several and on the death of one of them the Company shall be entitled to treat the survivor as the only Client.
- 16.5 The Company shall be entitled where the Client comprises more than one person, to act on any instruction, notice, claim, demand, acknowledgement or request signed in accordance with the signing authority specified in the Agreement. The Company need not enquire as to that person's authority and the person shall be able to give the Company an effective and final discharge in respect of its obligations hereunder.
- 16.6 Where the Client comprises more than one person:
- (a) should the Company receive instructions that conflict or appear to conflict with instructions given by another authorised party the Company may refuse to act on either or both instructions until the conflict is resolved.
  - (b) the Company reserves the right to request that instructions from the Client be signed by all authorised parties regardless of any previous mandate that has been given to RBCISCIL by the Client.
- 16.7 In the event that the Company accepts and acts upon telefax or telephone instructions purporting to emanate from the Client and signed or given in accordance with the authority specified in the Agreement, then the Company shall be exonerated from any liability for simple or honest mistake arising from misunderstanding or misinterpretation thereof, errors in transmission or abuse by third parties.
- 16.8 With regard to telefax or telephone instructions subsequently confirmed in writing, should there be a conflict between the Company's interpretation of the telefax or telephone instructions and the written instructions later received, the Company shall be entitled to rely on the telefax or telephone instructions it first believed that it had received, without any liability for mistake or error.
- 16.9 These Terms may be amended by the Company giving notice in writing to the Client and Clause 16.1 shall apply to such notice.
- 16.10 These Terms shall be governed by and construed in accordance with the laws of the Island of Jersey and the Client hereby submits to the non - exclusive jurisdiction of the Courts of Jersey.

16.11 The relationship between the Client and the Company is as described in the Agreement and these Terms, which supersedes all previous agreements between us (if any) concerning the relationship. The Client acknowledges and confirms that the Client has not in requesting the Service relied on any representation or documents other than these Terms.

Effective: 30 September 2010

**RBC Investment Services Limited**

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