

## **TERMS AND CONDITIONS OF SERVICE**

**Last Updated: March 18, 2025**

**1. DEFINITIONS.** The definitions for some of the defined terms used in these Terms and Conditions are set forth below. The definitions for other defined terms are set forth elsewhere in these Terms and Conditions, in the Statement of Work, or in the Description of Services.

**1.1** “Abandonment” means Client’s failure to respond (or to respond in a manner that would be reasonably deemed to be demonstrative of Client attempting to materially resolve or remedy whatever item is outstanding) to Repool after at least three (3) or more attempts by Repool to contact Client over a sixty (60) day period or more, by way of any written communication means (e.g., an email address) previously utilized by Client to communicate with Repool, with respect to Repool inquiries relating to: (i) information needed for purposes of rendering the Repool Services, such as trade files or valuation data; (ii) handling inquiries from Client’s investors; (iii) requests for information relating to compliance, know-your-customer, anti-money laundering, anti-fraud, and/or any similar such matter; or (iv) the ongoing operations of the fund entity relating to this Agreement. Upon such occurrence, and provided that at least fourteen (14) days have elapsed since the third communication attempt by Repool, Repool may, at its sole discretion, deem Client to be in abandonment of this Agreement.

**1.2** “Administrative and Tax Fees” means any administrative and tax fees payable in connection with the formation, operation, and dissolution of the Entities, including, without limitation, franchise taxes and dissolution fees. Such Administrative and Tax Fees may be further described in the Statement of Work.

**1.3** “Affiliate” means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.

**1.4** “Agreement” means these Terms and Conditions and the Statement of Work, collectively.

**1.5** “Applicable Laws” means any law, statute, regulation, order, code, rule, or ordinance issued, adopted, or otherwise put into effect by or under the authority of any governmental authority and applicable to a Party or its assets, properties, or businesses.

**1.6** “Bank” or “Banks” means the demand deposit account or accounts, if any, of the fund entity or entities relating to this Agreement.

**1.7** “Blue Sky Filings and Fees” means any filings or registrations in connection with the offering of securities in any given state of the United States and their corresponding fees, as applicable, including, without limitation, registration filing fees, electronic processing fees, payment convenience fees, and any other securities offering related fees imposed by such state.

**1.8** “Client Materials” means any materials, information, content, software, trading strategies, or data that you provide to us under this Agreement.

**1.9** “Confidential Information” means: (i) with respect to Repool, the Repool Materials, any and all source code relating thereto, and any other non-public information or material regarding our legal or business affairs, financing, customers, properties, pricing, or data; (ii) with respect to you, your Client Materials, and any other non-public information or material regarding your legal or business affairs, financing, customers, properties, or data; and (iii) with respect to each Party, the terms and conditions of this Agreement. Notwithstanding any of the foregoing, Confidential Information does not include information which: (a) is or becomes public knowledge without any action by, or involvement of, the Party to which the Confidential Information is disclosed (the “Receiving Party”); (b) is documented as being known to the Receiving Party prior to its disclosure by the other Party (the “Disclosing Party”); (c) is

independently developed by the Receiving Party without reference or access to the Confidential Information of the Disclosing Party and is so documented; or (d) is obtained by the Receiving Party without restrictions on use or disclosure from a third party.

**1.10** “Description of Services” means the most recent version of Repool’s description of the various Services available to be ordered by Client.

**1.11** “Entities” shall have the meaning set forth in the Statement of Work; provided, however, if there is only one (1) Entity identified in the Statement of Work, all references to “Entities” in these Terms and Conditions shall be read to mean “Entity” in the singular.

**1.12** “Intellectual Property Rights” means any and all intellectual property rights throughout the world, including, without limitation, any and all patents, patent applications, copyrights, copyright applications, moral rights, trademarks, trade secret rights, rights to know-how, inventions and algorithms, and any and all similar or equivalent rights.

**1.13** “Investment Adviser Filings and Fees” means the typical filings, registrations, or renewals and their corresponding fees in connection with Form ADV or the Investment Advisor Registration Depository, including, without limitation, filings and associated fees for purposes of registered investment adviser or exempt reporting adviser reporting.

**1.14** “Nonpublic Personal Information” shall have the meaning set forth in the Gramm-Leach-Bliley Act of 1999 (“GLBA”) or any successor federal statute to GLBA, and the rules and regulations promulgated thereunder.

**1.15** “Personal Information” means any information that identifies, or is capable of identifying, an individual, including, without limitation (i) an individual’s name, social security number, date of birth, or driver’s license or other government-issued identification number; (ii) an individual’s contact information, such as an address or telephone number; (iii) demographic information such as an individual’s gender, race, and age; (iv) financial information, including Nonpublic Personal Information; and (v) information about an individual whose disclosure is protected or otherwise regulated by any privacy law.

**1.16** “Repool Materials” means any materials, information, content, software, or data that we provide to you under this Agreement.

**1.17** “Services” means all work to be performed by Repool or its Subcontractors under this Agreement, as described more fully in the Statement of Work.

**1.18** “Significant Draw Down Event” means when the net asset value (“NAV”) of Client’s pooled investment vehicle relating to this Agreement, excluding the impact of any withdrawals, declines: (i) by greater than forty percent (40%) over the course of seven (7) or fewer calendar days; or (ii) by greater than seventy percent (70%) over any time period; and in each case based on the NAV as of trading day close (i.e., 4:00 pm Eastern Standard Time on any day that markets are open) as adjusted for any withdrawals or redemptions and in excess of any declines, if any, in the percentage return of the S&P 500 over the same period of time; and if, as a result of such decline, the NAV is below \$5,000,000.

**1.19** “Termination-Qualifying Incident” means any occurrence in which Repool’s board of directors determines in its reasonable discretion that Client and/or its affiliates, at any point during the Term, knowingly provided Repool with falsified data, statements, documents, instructions, and/or any other information relating to (i) any of Client’s personnel, investors, and/or affiliates; (ii) the existence of and/or valuation of investment assets; and/or (iii) the categorization, amount, and permissibility of expenses.

## **2. SERVICES.**

### **2.1 Nature of the Services; No Legal Advice.**

(a) Repool does not offer legal, brokerage, or accounting services, nor do we provide substitute services for those provided by legal counsel, broker-dealers, or certified public

accountants. Similarly, Repool does not offer investment advice or commodity trading advice, nor do we provide substitute services for those provided by investment advisers or commodity trading advisors. If Repool provides forms or other documents to Client, the provision of such documents should not be deemed to constitute any form of legal advice. Although Repool's work may involve analysis of accounting and financial records, this engagement is not an audit of Client in accordance with generally-accepted auditing standards, nor is it a review of the internal controls of Client in accordance with any authoritative accounting literature or other accounting standards.

(b) You acknowledge and understand that you: (i) should seek your own professional advisers, including legal counsel, for legal, brokerage, or accounting services and that Repool's Services are not a substitute for such third-party professionals; (ii) are solely responsible to ensure that you have obtained all applicable licenses, permits, registrations, memberships, and approvals that are required in order to execute this Agreement and to serve in your designated capacities with respect to this Agreement (including any applicable investment adviser registration or exempt reporting adviser exemption thereto), and not Repool's responsibility; and (iii) should not rely upon Repool in determining whether you have obtained all applicable licenses, permits, registrations, memberships, and approvals that are required in order to execute this Agreement and to serve in your designated capacities with respect to this Agreement (including any applicable investment adviser registration or exempt reporting adviser exemption thereto).

(c) The Services hereunder in no event include Repool acting as an expert witness on Client's behalf or otherwise providing litigation support services. In the event that Repool is requested, pursuant to subpoena, interrogatory, request for documents, deposition, civil investigative demand, or order issued pursuant to a valid legal process, to provide testimony or produce documents relating to the Services hereunder (including documents containing Confidential Information) in judicial or administrative proceedings to which Repool is not a party or to which Repool is named as a co-defendant with Client, Repool shall, unless expressly prohibited by Applicable Law, promptly notify Client in writing of the request. Repool shall be reimbursed by Client at Repool's then-standard billing rates for Repool's professional time and reasonable expenses, including reasonable attorneys' fees, incurred in responding to such request; provided, however, that Repool shall not be paid or reimbursed by Client if Client is not a party to, or otherwise directly implicated in, such judicial or administrative proceedings. In any instance in which Confidential Information of Client is requested to be disclosed pursuant to subpoena, order, or other request in connection with a judicial or administrative proceeding or inquiry, Client shall be permitted all reasonable opportunities under the circumstances to protect its privileges and interests at its own cost and expense, and Repool shall take all steps reasonably necessary or appropriate under the circumstances to permit Client to assert all applicable rights and privileges with regard to the requested materials in the appropriate forums, and shall cooperate with Client in a commercially reasonable manner in any proceeding relating to the disclosure sought. In the event that such protective order or other remedy is not sought or obtained or if Client waives compliance with the provisions hereof, Repool shall furnish only that portion of the requested materials that we are advised by counsel is legally required to be disclosed, and shall use reasonable efforts to insure that confidential treatment shall be afforded such disclosed portion of the requested materials.

**2.2 Statement of Work.** The Services will be described in the statement of work ("Statement of Work") agreed upon by the Parties. The Statement of Work will be in writing, mutually executed by the Parties, will reference these Terms and Conditions, and will specify: (i) a description of the Services, including any applicable specifications ("Specifications"), service levels, and milestones; (ii) any material assumptions affecting the Statement of Work; (iii) your responsibilities; (iv) the fees that apply to such Statement of Work (the "Fees"); and (v) any special terms that apply.

**2.3 Terms Specific to Banking and Treasury Services.** If Client orders Banking and Treasury Services, the following additional terms and conditions shall apply: (i) Repool may, by way of the limited power of attorney provided for in Section 2.4 to, in certain circumstances deemed necessary at Repool's sole discretion, transact or engage in other banking related activity on behalf of Client; (ii) unless

otherwise set forth in the Statement of Work and notwithstanding anything to the contrary contained herein or in the, Repool bears the discretion to approve or reject any expenses of the Entities; (iii) Repool must approve and process all deposits into, or withdrawals from, the Account, and Repool shall process any such requests from Client in a timely manner; (iv) Client understands, acknowledges, and agrees that Repool's providing of Banking and Treasury Services may be limited or hindered by the Client and/or the Bank's ability or inability to provide appropriate access and control to Repool to perform the Banking and Treasury Services and that Repool may be unable to perform those such Services correctly or in full without such access; and (v) Client understands, acknowledges, and agrees that if Client bypasses Repool and/or otherwise directly conducts an action relating to Banking and Treasury Services that Repool would otherwise normally fulfill or serve as a control for, that the consequences of and responsibilities relating to any such action fall solely to the Client (e.g. if Client approves a transaction, deposit, withdrawal without Repool's approval and/or otherwise elects to waive a typical control function or approval that Repool would ordinarily conduct). In connection with any approvals required under this Section, Repool shall not unreasonably withhold, condition, or delay any such approval.

**2.4 Power of Attorney.** Client hereby designates, makes, constitutes, and appoints Repool as its true and lawful agent and attorney-in-fact. Client authorizes Repool to perform, on Client's behalf, any tasks and obligations in connection with (i) opening brokerage, banking, or custody accounts; and (ii) fund formation, administrative, compliance, and/or regulatory matters; in each case related to Client or Client's fund(s) and fund related entities. Such tasks and obligations include, but are not limited to, the formation of domestic or non-U.S. entities; the execution and filing of any documents in connection with third-party service providers; and the execution and filing of any documents on our behalf in connection with state, federal, or non-U.S. regulators, including, but not limited to, the Securities and Exchange Commission, the Financial Industry Regulatory Authority, the Commodity Futures Trading Commission, the National Futures Association, or the Cayman Islands Monetary Authority. This power of attorney shall continue in full force and effect until the earlier of termination of the Agreement or the date on which Client notifies Repool that is revoking this power of attorney.

**2.5 Change Management.** You may, at any time, by written notice to us, request changes to the Statement of Work. Within a commercially reasonable period of time, we will provide you with an estimate of the impact, if any, of such requested change on the payment terms, completion schedule, and any other applicable provision of the Statement of Work. If the Parties agree to such changes, a written description of the agreed change (a "Change Authorization") will be mutually executed by the Parties and will constitute an amendment to the Statement of Work. In the event there is a conflict between the Change Authorization and the Statement of Work, the terms of the Change Authorization will prevail.

**2.6 Subcontractors.** We may use third-party experts, consultants, or other third parties (collectively, "Subcontractors") to perform certain Services. Unless you execute a direct agreement with such third party for the performance of any Service, we shall remain primarily responsible and liable to Client for any and all performance under this Agreement, including the obligation to properly supervise, coordinate, and perform all Services required hereunder, and no subcontract we execute with our Subcontractors shall bind or purport to bind Client without your prior, written approval, including in the Statement of Work or via email. Unless you execute a direct agreement with such third party for the performance of any Service, we shall be primarily responsible and liable to Client for any breach hereof resulting directly or indirectly from any act or omission of a Subcontractor or any of its personnel in the performance of the Services and for paying all Subcontractors directly. Unless you execute a direct agreement with such third party for the performance of any Service, any act or omission of a Subcontractor or any of its personnel that would constitute a breach of this Agreement if it were our act or omission will constitute a breach by Repool of this Agreement.

**2.7 On-Site Delivery.** In the event that Services are to be provided on-site at your work location: (i) our personnel will observe and follow your work rules, security policies, and standards as the same are communicated to us in advance and in writing; and (ii) you will provide adequate facilities,

including without limitation, office space, security credentials, Internet access, and meeting rooms in a timely manner and as agreed between the Parties and/or as set forth in the Statement of Work.

**2.8 Cooperation.** Repool's performance of the Services hereunder is dependent on Client's timely and accurate responses to Repool's inquiries, Client's ability to make data, records, and other Client Materials available for review by Repool within a reasonable time period following Repool's request, and/or the quality, accuracy, and completeness of the Client Materials, data, and records provided to Repool. The failure of Client to respond and provide reasonably requested data, records, and other Client Materials in a timely manner and/or to provide usable data may result in Repool (or an applicable Subcontractor) being unable to comment on certain aspects of Client's compliance program, a delay in Repool's production of any written or verbal deliverables, and/or Repool being unable to adequately perform all or some of the Services hereunder or otherwise complete the engagement. If Repool is unable to perform all or some of the Services hereunder or complete the engagement due to Client's failure to make and communicate decisions, to timely provide reasonably requested data, records, and other Client Materials, and/or to provide usable data, Repool shall notify Client of same in writing, and Client shall nonetheless remain obligated to compensate Repool pursuant to the terms set forth herein.

**2.9 Information and Inquiry Rights.** Repool provides Services relating to clients that are subject to complex Applicable Laws. As part of Repool's risk management programs, Repool may, at its reasonable discretion, request that Client furnish (and Client shall promptly furnish) Repool with information, communications, or other collateral or copies thereof, relating to Client's own disclosures or marketing materials that Client supplies to its own clients, investors, or agents, so long as the furnishment to Repool of such information would not cause Client to violate any Applicable Laws.

### **3. FEES AND PAYMENT.**

**3.1 Fees and Taxes.** The Fees are due and payable as set forth in the Statement of Work. Fees and other charges described in the Statement of Work do not include federal, provincial, or local sales, PST, GST, HST, VAT, foreign withholding, use, property, excise, service, or similar transaction taxes ("Taxes") now or hereafter levied, all of which will be for your account. Any applicable direct pay permits or valid tax-exempt certificates must be provided to us prior to the execution of the Statement of Work. If we are required to pay Taxes on your behalf, we will invoice you for such Taxes, and you will pay us for such Taxes in accordance with the Statement of Work. For the avoidance of doubt, we will only be responsible for any taxes related to our income, property, franchise, or employees.

**3.2 Expenses.** You will reimburse us for any reasonable, documented, out-of-pocket expenses ("Expenses") actually incurred by us in connection with the performance of the Services that you have approved in advance, that are set forth in the Statement of Work, or which meet approval criteria established by the Parties.

**3.3 Late Payments.** In the event that any invoiced amount is not received by us by the due date as set forth in the Statement of Work, then without limiting our rights and remedies, we may: (i) charge interest on the outstanding balance (not to exceed the maximum rate permitted by law); (ii) condition future Services on payment terms shorter than those specified in the Statement of Work; (iii) suspend the Services pursuant to Section 4.4; and/or (iv) terminate this Agreement in accordance with and pursuant to Section 4.3.

**3.4 Non-Refundable.** Unless otherwise expressly provided for in this Agreement, all Fees and Expenses paid under this Agreement are non-refundable.

### **4. TERM, TERMINATION, AND SUSPENSION.**

**4.1 Term.** The Initial Term (as defined in the Statement of Work) of this Agreement is set forth in the Statement of Work.



**4.2 Renewal.** Following the Initial Term or any Renewal Term, this Agreement shall automatically renew for successive one (1) year periods (each, a “Renewal Term”, and collectively with the Initial Term, the “Term”) unless this Agreement is terminated pursuant to Section 4.3 or if either Party provides to the other Party written notice of non-renewal at least thirty (30) days prior to the end of the Initial Term or any Renewal Term.

**4.3 Termination.**

(a) Repool, at its sole and absolute discretion, may terminate this Agreement without cause on at least ninety (90) days’ written notice to Client.

(b) Either Party may terminate this Agreement: (i) upon fourteen (14) days’ notice to the other Party if the other Party breaches a material term of this Agreement, and the breach remains uncured at the expiration of such fourteen (14) day period; (ii) immediately, if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, liquidation, or assignment for the benefit of creditors; or (iii) as otherwise set forth in the Statement of Work, if at all.

(c) Repool may terminate this Agreement immediately upon written notice to Client if: (i) Repool’s board of directors determines in its reasonable discretion that the continued performance by Repool of its obligations under this Agreement is not consistent with safe and sound or reasonably prudent business practices; (ii) Repool’s board of directors determines in its reasonable discretion that the continued performance by Repool of its obligations under this Agreement will expose it to reputational harm or compliance risk due to actual or imminent violations of Applicable Law; or (iii) any of Client’s representations and warranties set forth in Section 8.3 were untrue as of the Effective Date or Client breaches the last sentence in Section 8.3.

(d) Repool may terminate this Agreement immediately upon written notice in the event of Abandonment or a Termination-Qualifying Incident.

(e) Repool may terminate this Agreement upon thirty (30) days’ written notice to Client in the event of a Significant Draw-Down Event.

(f) We may also terminate this Agreement upon written notice to you under the limited circumstances set forth in Section 10.3 below.

(g) If you voluntarily elect to dissolve or wind-down the Entities (excluding for the reasons set forth in Section 4.3(b)(ii)), you may terminate this Agreement on written notice to Repool, and such termination will become effective upon the completion of such dissolution or wind-down (the “Dissolution Date”), of which Repool may, at its reasonable discretion, request proof; *provided, however*, that if you have purchased the Repool Fund Structuring Services (or any Service which includes the Repool Fund Structuring Services), the termination will instead become effective one (1) day before the one (1) year anniversary of the Effective Date. For clarity, any Fees relating to this Agreement shall continue to be due and payable to Repool until the Dissolution Date (e.g. if Client is engaged in an Agreement with quarterly fee installments for a contract beginning January 1 of some year, and the Dissolution Date occurs the following year between January 1 and March 31, Client would owe Repool the fees for the full quarterly installment relating to the period of the corresponding January 1 to March 31 period regardless of which specific date in such period the Dissolution Date occurred on) and any Fees previously paid to Repool, including any pre-paid Fee installments, if any, shall not be refundable. Repool is not responsible for the dissolution or wind-down efforts of any Client; however, during the pendency of a dissolution or wind-down, upon your request, Repool may, in its sole discretion and in exchange for a fee mutually agreed by the Parties, provide you services to assist in such dissolution or wind-down efforts.

**4.4 Suspension; Limited Transition Period.**

(a) We may suspend the Services upon ten (10) days’ notice to you if any undisputed invoiced amount due to us is over fourteen (14) days past due. We will not suspend the Services while you

are disputing the invoiced amount reasonably and in good faith and are cooperating diligently to resolve the dispute. You will promptly reimburse us for any reasonable expenses of collection, including costs, disbursements, and reasonable outside legal fees we incur, to the extent necessitated by your refusal to pay amounts that you are not disputing in good faith.

(b) In the event that this Agreement is terminated, after the effective date of termination, Repool may, at its sole discretion, continue to provide you certain limited Services for a limited period of time without cost to you (the “Limited Transition Period”) in relation to assisting with a migration off of the Repool Services. The duration of the Limited Transition Period, if any, shall be determined by Repool at its sole discretion, and during such Limited Transition Period, Repool may, at its sole discretion, suspend some of or all of the Services purchased by you in this Agreement and provide to you only those Services that it deems reasonably necessary. As an example, during the Limited Transition Period, Repool could elect to suspend the processing of any new or additional subscriptions while allowing the processing of any redemption or withdrawal requests. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, ANY SERVICES PROVIDED BY REPOOL DURING THE LIMITED TRANSITION PERIOD ARE ON AN “AS-IS” BASIS, WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED, AND REPOOL WILL HAVE NO LIABILITY TO CLIENT OF ANY TYPE WITH RESPECT TO SUCH SERVICES, UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW, IN WHICH CASE REPOOL’S LIABILITY TO CLIENT WITH RESPECT TO SUCH SERVICES WILL NOT EXCEED \$5,000.00 IN THE AGGREGATE FOR ALL DAMAGES (INCLUDING CLAIMS) SUSTAINED BY CLIENT FROM ITS USE OF SUCH SERVICES.

**4.5 Termination of Third-Party Services.** If any third party is providing a Service hereunder pursuant to an agreement with Client and such agreement expires or is terminated for any reason, Repool reserves the right, on written notice to Client, to terminate such Service from the Statement of Work.

**4.6 Effect of Termination.** Upon termination of this Agreement in accordance with its terms: (i) we will stop performing the Services; (ii) you will promptly pay all unpaid Fees, Expenses, and Taxes due through the effective date of termination; provided, however, that if we terminate pursuant to Section 4.3(b)(i), Section 4.3(b)(ii), or Section 4.3(c)(iii), you shall pay all Fees, Expenses, and Taxes due through the next anniversary of the Effective Date; and (iii) upon written request and subject to Section 6, each Party will either return to the Disclosing Party or, at such Disclosing Party’s instruction, destroy, and provide such Disclosing Party with written certification of the destruction of, all documents, computer files, and other materials containing any of such Disclosing Party’s Confidential Information that are in the Receiving Party’s possession or control; provided, however, that the Receiving Party does not have to return or destroy any of the Disclosing Party’s Confidential Information to the extent the Receiving Party is required to keep a copy for compliance purposes, although the Receiving Party’s obligations of confidentiality shall continue to survive.

**4.7 Survival.** The following provisions will survive termination of this Agreement: Section 1 (“Definitions”), Section 3 (“Fees and Payment”) until you have paid all Fees, Expenses, and applicable Taxes, Section 4.6 (“Effect of Termination”), Section 5 (“Confidentiality”), Section 6 (“Client Materials”), Section 7 (“Repool Materials”), Section 8.4 (“Our Disclaimer”), Section 9 (“Limitation of Liability”), Section 10 (“Indemnification”), Section 11 (“General Provisions”), and this Section 4.7 (“Survival”).

## **5. CONFIDENTIALITY.**

**5.1 Confidentiality.** At all times the Receiving Party will protect and preserve the Confidential Information of the Disclosing Party as confidential, using no less care than that with which it protects and preserves its own highly confidential and proprietary information (but in no event less than a reasonable degree of care), and will not use the Confidential Information for any purpose except to perform its obligations and exercise its rights under this Agreement. The Receiving Party may disclose, distribute, or disseminate the Disclosing Party’s Confidential Information to any of its officers, directors, members, managers, partners, employees, contractors, or agents (its “Representatives”), provided that the Receiving

Party reasonably believes that its Representatives have a need to know and such Representatives are bound by confidentiality obligations at least as restrictive as those contained herein. The Receiving Party will at all times remain responsible for any violations of this Agreement by any of its Representatives. Subject to Section 2.1(c) and the remainder of this Section 5.1, the Receiving Party will not disclose, distribute, or disseminate the Confidential Information to any third party, other than its Representatives, without the prior written consent of the Disclosing Party. If Client becomes or may become legally compelled to disclose any of Repool's Confidential Information (whether by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or other process or otherwise), to the extent not prohibited by Applicable Law, Client will provide Repool prompt prior written notice of such requirement so that Repool may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Section. If such protective order or other remedy is not obtained or Repool waives compliance with the provisions of this Section, Client may furnish only that portion of Repool's Confidential Information that you are advised by your counsel is legally required to be disclosed, and will use commercially reasonable efforts to insure that confidential treatment will be afforded such disclosed portion of the Confidential Information.

**5.2 Personal Information.** In addition, with respect to any Personal Information in the custody, control, or possession of Repool, we shall comply with the requirements set forth in the Protection of Personal Information rider attached hereto as Schedule A.

**5.3 Insider Information.** We acknowledge that some information relating to Client may be material insider information within the meaning of certain state, federal, or country security laws, and that such information must be treated as Confidential Information and may not be used for any purpose outside the scope of any engagement.

**5.4 Feedback.** During the Term, you may elect to provide us with feedback, comments, and suggestions with respect to the Repool Materials and/or the Services ("Feedback"). You agree that Repool will be free to use, reproduce, disclose, and otherwise exploit any and all such Feedback without compensation or attribution to you.

**6. CLIENT MATERIALS.** All Client Materials are and shall remain the property of Client or your licensors, which shall retain all Intellectual Property Rights therein. Subject to the terms and conditions of this Agreement, you hereby grant us during the Term a non-exclusive, worldwide, fully paid-up, royalty-free right and license, with the right to grant sublicenses through multiple tiers to Subcontractors providing services to or for us, to reproduce, execute, use, store, archive, modify, and perform the Client Materials. We and our Subcontractors will use the Client Materials only to provide the Services. After the Term, we may retain an archival copy of the Client Materials, unless you provide us written notice to delete it. You will have sole responsibility for the accuracy, quality, and legality of the Client Materials.

## **7. REPOOL MATERIALS.**

**7.1 Ownership.** All Repool Materials are and shall remain the property of Repool or our licensors, which shall retain all Intellectual Property Rights therein. Subject to the terms and conditions of this Agreement, we hereby grant you a non-exclusive, worldwide, fully paid-up, royalty-free right and license to reproduce, execute, use, store, archive, modify, and perform the Repool Materials solely to operate the Entities. After the Term, you: (i) may continue to reproduce and use any Repool Materials provided by us during the Term solely as necessary to continue to operate the Entities; (ii) may retain an archival copy of the Repool Materials to comply with Applicable Law or the rules of any exchange; and (iii) must cease all use of any Repool Materials not required to continue to operate the Entities. For the avoidance of doubt, both during and after the Term, you may not (and shall not authorize or knowingly permit any third party to): (a) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code, algorithms, file formats, or interface protocols of any software included in the Repool Materials; (b) copy, modify, adapt, distribute, or otherwise use the Repool Materials other than in



accordance with this Agreement; (c) resell or sublicense the Repool Materials to any third party; or (d) use the Repool Materials for any fund other than the Entities.

**7.2 Knowledge Capital.** Repool will be free to use the knowledge, skills, and experience and any ideas, concepts, know-how, and techniques that are developed by Repool in the course of providing the Services. Nothing in this Section shall diminish Repool's obligations regarding Client's Confidential Information or grant Repool the right or license to utilize Client's proprietary materials.

**7.3 Aggregated Data.** We may aggregate data generated during the performance of the Services for the purpose of research, creating benchmarks, white papers, and analytical trend data (in anonymous, but otherwise in whatever form) both for our internal use and in the course of provision of products and services to our other clients and other third parties ("Anonymous Aggregated Data"). The Anonymous Aggregated Data will be incorporated into databases and utilized to produce aggregated statistics and analyses for various reports, products, and services, including custom analyses. We may use such data and other information provided by Client to build databases and intellectual capital for the benefit of our clients and other third parties by improving the quality of our products and services. We will not disclose the data in a manner that allows you or your investors to be identified, either directly or indirectly.

## **8. REPRESENTATIONS AND WARRANTIES; DISCLAIMER.**

**8.1 Mutual Representations and Warranties.** Each Party represents and warrants to the other Party that: (i) it is duly organized, validly existing, and in good standing under its jurisdiction of organization and has the right to enter into this Agreement; provided that this representation is effective for Client only after the Formation Date; (ii) the execution, delivery, and performance of this Agreement, and the consummation of the transactions contemplated hereby, are within the corporate powers of such Party and have been duly authorized by all necessary corporate action on the part of such Party, and constitute a valid and binding agreement of such Party; and (iii) it has the full power, authority, and right to perform its obligations and grant the rights it grants hereunder.

**8.2 Our Additional Representations and Warranties.** In addition to the representations and warranties set forth in Section 8.1, we represent and warrant to you that: (i) we shall perform the Services in a professional and workman-like manner in accordance with all Applicable Laws; and (ii) our execution and delivery of this Agreement and our performance of our obligations hereunder are not in violation or breach of, and will not conflict with or constitute a default under, any material contract, agreement, or commitment binding upon us.

**8.3 Your Additional Representations and Warranties.** In addition to the representations and warranties set forth in Section 8.1 and any additional ones set forth in the Statement of Work, you represent and warrant to Repool and our Affiliates that: (i) entry into this Agreement will not breach or cause to be breached any undertaking, agreement, contract, statute, rule, or regulation to which you are a party or by which you are bound that would materially limit or affect the performance of your duties under this Agreement; (ii) you have the appropriate registration, exemption, or excluded investment adviser status, if applicable and as required, relating to your circumstances and the Investment Advisers Act of 1940, as amended ("Advisers Act"); (iii) you have the appropriate registration, exemption, or excluded investment adviser status, if applicable and as required, relating to your circumstances and the laws of any state or territory in which you do business; (iv) your personnel have the appropriate licensure, if any, relating to your circumstances and the laws of any state or territory in which you do business; (v) you have the appropriate exempt or registered commodity pool operator and/or commodity trading advisor status(es), if applicable and as required, under the Commodity Exchange Act (the "CEA"); (vi) you have obtained all applicable licenses, permits, registrations, memberships, and approvals that are required in order to execute this Agreement and to serve in your designated capacities with respect to this Agreement and will continue to keep current those licenses, permits, registrations, memberships, and approvals until this Agreement is terminated; (vii) you and your Representatives are in material compliance with all requirements of all Applicable Laws, including, without limitation, all applicable federal securities and commodities laws,

regulations, and rules, including the regulations and rules of the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Financial Industry Regulatory Authority, and the National Futures Association; (viii) you and your Representatives are not a party to any, and have no actual knowledge of, any pending or threatened legal, administrative, arbitral, investigatory, or other proceedings, claims, or governmental or regulatory investigations of any nature against you, your Representatives, or your or their properties or assets and have no actual knowledge of any injunction, order, judgment, decree, or regulatory restriction imposed specifically upon you, your Representatives, or any of your or their properties or assets; and (ix) you and your Representatives have not been convicted of any crime of fraud, dishonesty, breach of trust, or money laundering. If any of your representations, warranties, or covenants made in this Agreement ceases to be true and correct, you will promptly, but in any event within five (5) calendar days of becoming aware of any breaches, inform Repool of any such occurrence and the circumstances related to such occurrence.

**8.4 Our Disclaimer.** WE PROVIDE ADVICE AND PROFESSIONAL RECOMMENDATIONS TO ASSIST YOU TO RENDER INFORMED DECISIONS. OUR SERVICES ARE NOT MEANT TO BE A SUBSTITUTE FOR LEGAL ADVICE OR YOUR EXERCISE OF YOUR OWN BUSINESS JUDGMENT. ANY SUCH JUDGMENTS OR DECISIONS ARE MADE AT YOUR SOLE ELECTION. WHEN OUR SERVICES INCLUDE ESTIMATES OR PREDICTIONS OF FUTURE EVENTS OR BEHAVIORS, WE MAKE NO GUARANTEES AS TO THE OCCURRENCE OF SUCH FUTURE EVENTS OR BEHAVIORS. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8.1 AND SECTION 8.2, THE SERVICES, THE REPOOL MATERIALS, AND ANY OTHER MATERIALS PROVIDED HEREUNDER BY REPOOL OR OUR SUBCONTRACTORS ARE PROVIDED “AS IS” AND “AS AVAILABLE,” AND WE MAKE NO WARRANTIES WITH RESPECT TO THE SAME OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT AND HEREBY DISCLAIM ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, ERROR-FREE OR UNINTERRUPTED OPERATION, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. TO THE EXTENT THAT WE MAY NOT AS A MATTER OF APPLICABLE LAW DISCLAIM ANY IMPLIED WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

**9. LIMITATION OF LIABILITY.** IN NO EVENT WILL WE BE LIABLE TO YOU OR ANY OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, LOST REVENUES OR PROFITS) ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER WE WERE ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF. IN ADDITION, OUR AGGREGATE LIABILITY FOR DIRECT DAMAGES UNDER THIS AGREEMENT WILL NOT EXCEED THE FEES PAID BY YOU UNDER THE STATEMENT OF WORK DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENTS GIVING RISE TO THE CLAIM; PROVIDED, HOWEVER, IF ANY DIRECT DAMAGES TO YOU ARISE FROM OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OUR AGGREGATE LIABILITY SHALL NOT EXCEED ONE HUNDRED THOUSAND DOLLARS (\$100,000). NO ACTION, REGARDLESS OF FORM, ARISING FROM OR PERTAINING TO THIS AGREEMENT MAY BE BROUGHT BY A PARTY MORE THAN ONE (1) YEAR AFTER SUCH ACTION HAS ACCRUED.

**10. INDEMNIFICATION.**

**10.1 Indemnification by Repool.** Subject to Section 10.2, we will defend, indemnify, and hold harmless you and your Representatives from any and all liabilities, costs, damages, losses, and expenses, including reasonable attorneys’ fees (collectively, “Losses”) incurred such indemnified parties in connection with any third-party action, claim, or proceeding (each a “Third-Party Claim”) arising from: (i)

our gross negligence, willful misconduct, or breach of Section 5; and/or (ii) an allegation that your use of the Repool Materials in accordance with this Agreement infringes or misappropriates any third-party Intellectual Property Rights; provided, however, that the foregoing obligations will be subject to your: (a) promptly notifying us of the Third-Party Claim; (b) providing us, at our expense, with reasonable cooperation in the defense of the Third-Party Claim; and (c) providing us with sole control over the defense and negotiations for a settlement or compromise of the Third-Party Claim.

**10.2 Exceptions to Our Indemnification Obligations.** We are not obligated to indemnify, defend, or hold you, your Representatives, or any third party harmless hereunder to the extent: (i) the Third-Party Claim arises from or is based upon your or your Representatives' use of: (a) the Repool Materials not in accordance with this Agreement; or (b) any modifications, alterations, or implementations of the Repool Materials made by you or at your request (other than by us); or (ii) the Third-Party Claim arises from use of the Repool Materials in combination with unauthorized modules, apparatus, hardware, software, or services not supplied or specified in writing by us.

**10.3 Infringement Claims.** In the event that we reasonably determine that the Repool Materials are likely to be the subject of a Third-Party Claim, we will have the right (but not the obligation), at our own expense and option, to: (i) procure for you the right to continue to use the Repool Materials as provided in this Agreement; (ii) replace the infringing components of the Repool Materials with other components with the equivalent functionality; or (iii) suitably modify the Repool Materials so that they are non-infringing and functionally equivalent. If none of the foregoing options is available to us on commercially reasonable terms, we may terminate this Agreement without further liability to you, in which case you will cease all use of the applicable Repool Materials, and we will refund to you an amount that we reasonably and in good faith determine addresses your inability to use the applicable Repool Materials. This Section 10.3, together with the indemnity provided under Section 10.1, states your sole and exclusive remedy, and our sole and exclusive liability, regarding any Third-Party Claim.

**10.4 Indemnification by You.** You will defend, indemnify, and hold harmless us and our Subcontractors and our and their respective Representatives from any and all Losses incurred by such indemnified parties in connection with any Third-Party Claim arising from: (i) your acts, omissions, negligence, gross negligence, willful misconduct, or breach of the Agreement; (ii) an allegation that our use of the Client Materials in accordance with this Agreement infringes or misappropriates any third-party Intellectual Property Rights; and/or (iii) the operation of the Entities; provided, however, that the foregoing obligations will be subject to our: (a) promptly notifying you of the Third-Party Claim; (b) providing you, at your expense, with reasonable cooperation in the defense of the Third-Party Claim; and (c) providing you with sole control over the defense and negotiations for a settlement or compromise of the Third-Party Claim.

## **11. GENERAL PROVISIONS.**

**11.1 Non-Solicitation/Non-Hire.** During the Term and for a period of twelve (12) months thereafter, you agree not to solicit (other than a general solicitation to the public) the employment of, engage as an independent contractor, or hire, any employee of Repool while such person is an employee of Repool and until such person has not been an employee of Repool for six (6) months. This Section shall also apply to any Subcontractor engaged by Repool who is performing or who has performed Services hereunder. Notwithstanding anything to the contrary hereunder, unless otherwise set forth in the Statement of Work or agreed in writing by Repool, if Client hires or engages any Repool employee or Subcontractor in violation of this Section, Client shall, within thirty (30) days of such hiring or engagement, pay to Repool a sum equivalent to twenty-five percent (25%) of such person's annualized salary (if such person is hired by Client as an employee) or compensation (if such person is engaged by Client as a consultant).

**11.2 Specific Performance and Injunctive Relief.** Each Party acknowledges that in the event of a breach of Section 5.1 or Section 11.1 by it or its Representatives, substantial injury could result to the other Party and money damages will not be a sufficient remedy for such breach. Therefore, in the event

that a Party or its Representatives engage in, or threaten to engage in any act which violates Section 5.1 or Section 11.1, the other Party will be entitled, in addition to all other remedies which may be available to it under law, to seek injunctive relief (including, without limitation, temporary restraining orders or preliminary or permanent injunctions) and specific enforcement of the terms of Section 5.1 or Section 11.1, as applicable. The Party requesting such relief will not be required to post a bond or other security in connection therewith.

**11.3 Assignment.** Neither Party may assign or otherwise transfer any of its rights or obligations under this Agreement without the prior, written consent of the other Party; provided, however, that a Party may, upon written notice to the other Party and without the consent of the other Party, assign or otherwise transfer this Agreement: (i) to any of its Affiliates; or (ii) in connection with a change of control transaction (whether by merger, consolidation, sale of equity interests, sale of all or substantially all assets, or otherwise), provided that in all cases, the assignee agrees in writing to be bound by the terms and conditions of this Agreement then in effect. Any assignment or other transfer in violation of this Section will be null and void. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns.

**11.4 Waiver.** Subject to the last sentence in Section 9, no failure or delay by either Party in exercising any right or remedy under this Agreement will operate, or be deemed to operate, as a waiver of any such right or remedy.

**11.5 Dispute Escalation.** Prior to the initiation of any action or proceedings under this Agreement to resolve disputes between the Parties, the Parties shall make commercially reasonable efforts to resolve any such disputes by means of internal escalation and negotiation between senior representatives of the Parties with decision-making authority. Either Party may initiate negotiation proceedings by writing a notification letter to the other Party setting forth the particulars of the dispute, the terms of the Agreement involved, and the suggested resolution of the dispute.

**11.6 Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of New York, without regard for choice of law provisions thereof.

**11.7 Exclusive Forum.** The Parties hereby consent and agree to the exclusive jurisdiction of the state and federal courts located in the State of New York, Borough of Manhattan for all suits, actions, or proceedings directly or indirectly arising out of or relating to this Agreement, and waive any and all objections to such courts, including but not limited to, objections based on improper venue or inconvenient forum, and each Party hereby irrevocably submits to the exclusive jurisdiction of such courts in any suits, actions, or proceedings arising out of or relating to this Agreement.

**11.8 Notices.** All notices required under this Agreement (other than routine operational communications) must be in writing and will be delivered either personally or by e-mail, national overnight courier or the U.S. Postal Service to each Party's notices contact and address listed in the Statement of Work. Notices will be effective upon: (i) actual delivery to the other Party, if delivered in person or by e-mail, or national overnight courier; or (ii) five (5) business days after being mailed via the U.S. Postal Service, postage prepaid.

**11.9 Independent Contractors.** As between themselves, the Parties are independent contractors. Neither Party will be deemed to be an employee, agent, partner, joint venturer, or legal representative of the other Party for any purpose, and neither Party will have any right, power, or authority to obligate the other Party.

**11.10 Severability.** If any provision of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, that provision will be amended to achieve as nearly as possible the same economic effect as the original provision, and the remainder of this Agreement will remain in full force and effect. Any provision of this Agreement, which is unenforceable in any jurisdiction, will be ineffective

only as to that jurisdiction, and only to the extent of such unenforceability, without invalidating the remaining provisions hereof and thereof.

**11.11 Force Majeure.** Except for your obligations to pay Fees, Expenses, and Taxes hereunder, neither Party will be deemed to be in breach of this Agreement for any failure or delay in performance to the extent caused by reasons beyond its reasonable control, including, but not limited to, the acts or omissions of the other Party, acts of God, acts of any governmental body, war, insurrection, sabotage, armed conflict, terrorism, embargo, fire, flood, strike or other labor disturbance, unavailability of or interruption or delay in telecommunications or third-party services, or virus attacks or hackers.

**11.12 Third-Party Beneficiaries.** Except as set forth in Section 10.1 and Section 10.4, there are no other third-party beneficiaries under this Agreement.

**11.13 Publicity.** During the Term, we may refer to you as our customer. In connection therewith, we may use the Entities' names and corporate logos. Any goodwill arising from the use of such name and logos will inure solely to your benefit. All other publicity regarding this Agreement will be mutually coordinated and approved by the Parties.

**11.14 Modifications.** Any modification to this Agreement must be in a writing signed by an authorized representative of each Party or in a writing acknowledged and accepted by an authorized representative of each Party (*e.g.*, an e-mail or a click-through modification); provided, however, that (i) account managers, support technicians, software engineers, and client and customer success personnel are not authorized to modify this Agreement on behalf of Repool; and (ii) Repool may modify these Terms and Conditions at any time on written notice to you (including via email), and any such modification shall go into effect thirty (30) days after such notice.

**11.15 Complete Understanding.** This Agreement constitutes the final and complete agreement between the Parties regarding the subject matter hereof, and supersedes any prior or contemporaneous communications, representations, or agreements between the Parties, whether oral or written, including, without limitation, any confidentiality or non-disclosure agreements. To the extent of any conflict or inconsistency between these Terms and Conditions and any term contained in the Statement of Work or the Description of Services, such conflict or inconsistency shall be resolved in the following descending order of priority: (i) the Statement of Work; (ii) these Terms and Conditions; and (iii) the Description of Services. No term included in any confirmation, acceptance, purchase order, or any other similar document from you will change this Agreement or have any force or effect.

*(Schedule A follows)*



## **SCHEDULE A - PROTECTION OF PERSONAL INFORMATION**

**1. Gramm-Leach-Bliley.** Repool shall perform the Services in a manner that is compliant with GLBA. Accordingly, notwithstanding anything to the contrary contained in this Agreement and in addition to (and not in substitution for) Repool's other obligations, Repool shall:

**1.1.** not use any Nonpublic Personal Information, except to the extent necessary to carry out its obligations under this Agreement and for no other purpose;

**1.2.** not disclose Nonpublic Personal Information to any third party, including, without limitation, any Subcontractors, without an agreement in writing from such third party to use or disclose such Nonpublic Personal Information only to the extent necessary to carry out Repool's obligations under this Agreement and for no other purposes, unless compelled by law enforcement; and

**1.3.** maintain, and shall require all Subcontractors to maintain, administrative, technical, and procedural safeguards designed to: (i) ensure the security and confidentiality of Nonpublic Personal Information; (ii) protect against any anticipated threats or hazards to the security or integrity of Nonpublic Personal Information; and (iii) protect against unauthorized access to or use of Nonpublic Personal Information. Repool will provide Client with information regarding such security measures upon the reasonable request of Client.

**2. Security Breaches.** In the event Repool or its agents discover or are notified of a breach or potential breach of security relating to Client Personal Information, Repool shall promptly, but in no event later than forty-eight (48) business hours: (i) notify Client of such breach or potential breach; (ii) investigate and reasonably cooperate with Client to remediate the effects of the breach or potential breach; and (iii) provide Client with such information as Client may reasonably request regarding such breach or potential breach, unless prohibited by Applicable Law or law enforcement. If Client, in its sole discretion, determines that any security breach requires Repool or Client to notify any party of such security breach, Repool will reasonably cooperate with Client in providing such notifications. If the breach or potential breach is the result of Repool's breach of this Agreement, including the terms of this Schedule A, all efforts in this Section shall be at Repool's expense.