

| Terms of Business



Hornbuckle

1. Background

1.1 These terms of business (the "Terms") are between:

- 1.1.1 Embark Services Limited (ESL) (Registered No 02089815) whose registered office is at Tyman House, 42 Regent Road, Leicester LE1 6YJ ("ESL", "Hornbuckle", "we", "us" and "our"); and
- 1.1.2 the financial adviser referred to in the Application Form ("Financial Adviser, "you" and "your").

2. Definition and interpretation

- In these Terms, the following terms shall have the meaning given below:
- "Accredited Body" means the bodies listed in the Glossary in the FCA Rules;
- "Adviser Charge" means a charge, as defined in clauses 6.10 and 6.11 below, paid on behalf of a Member;
- "Adviser Charge Statement" means a statement setting out the Adviser Charge to be paid to you in accordance with these Terms;
- "Application Form" means an application for a new Plan submitted to ESL for the Member;
- "Applicable Laws" means any law, regulatory requirement or other industry requirement which applies to us and/or you. For these purposes, a requirement includes rules, guidance or statements of good practice issued by the FCA, any regulatory body or Accredited Body which we or you are expected to comply with;
- "Bribery and Corruption" means including but not limited to the Bribery Act 2010, previous UK laws (the common law offence of bribery, the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 as supplemented by the Prevention of Corruption Act 1916 and the Anti-Terrorism, Crime and Security Act 2001), the United Nations Convention against Corruption, the US Foreign Corrupt Practices Act of 1977 as amended, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related implementing legislation, any anti-bribery or anti-corruption related provisions in criminal and anti-competition laws and/or anti-bribery or anti-corruption laws in any other jurisdiction relevant to your activities under these Terms;
- "Business Day" means a day which is not a Saturday, Sunday or a public holiday in England;
- "Confidential Information" means information of a confidential nature (including Member Data, trade secrets and information of commercial value) known to the parties concerning ESL or the Financial Adviser and communicated by one party to the other;
- "Data Protection Legislation" means (a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, or regulation which relates to the protection of individuals with regards to the processing of personal data to which a Party is subject, including the Data Protection Act 1998 and the General Data Protection Regulation (EU) 2016/679;
- "Decency Limit" means the maximum amount of Adviser Charge that we can facilitate to the Financial Adviser as set by us from time to time (unless we agree otherwise in our absolute discretion);
- "FCA" means the Financial Conduct Authority or any successor or replacement body as shall from time carry out and perform the functions and responsibilities of the Financial Conduct Authority in respect of the prudential and/or conduct of business regulation or supervision of any party to these Terms;
- "FCA Rules" means the FCA's Handbook of Rules and Guidance as amended or replaced from time to time;

- "HMRC" means HM Revenue and Customs;
- "Intellectual Property Rights" means patents (including rights in, and/or to, inventions), trademarks, service marks, trade names and business names (in each case including rights in goodwill attached thereto), design rights, rights in and/or to internet domain names and website addresses, semi-conductor topography rights, copyright (including future copyright), database rights, rights in and to Confidential Information (including know how and trade secrets) and all other intellectual property rights in each case subsisting at any time in any part of the world (whether registered or unregistered) and (i) any pending applications or rights to apply for registrations of any of these rights that are capable of registration in any country or jurisdiction, and (ii) any similar or analogous rights to any of these rights, whether arising or granted under the laws of England and Wales or in any other jurisdiction;
- "Introduction" means the introduction of a Member to ESL by the Financial Adviser with a view to the Member engaging ESL to provide the Services;
- "Member" means a member introduced by you to us for a Plan on whose behalf you are acting;
- "Member Data" means information relating to a Member, their financial circumstances or investments held;
- "Plan" means the plan administered by ESL for the Member and into which the Member has invested monies;
- "Services" means the services of establishment and operation of the Plan provided by ESL. For the avoidance of doubt, "Services" does not include the provision of investment advice to the Member; and
- "VAT" means United Kingdom Value Added Tax as provided for in the Value Added Tax Act 1994.

- 2.1 References in these Terms to the singular include reference to the plural and vice versa.
- 2.2 References in these Terms to the masculine also include the feminine gender and the gender neutral.
- 2.3 References in these Terms to statutes, the FCA Handbook and any other rules, regulations, laws or guidance shall be to such statutes, FCA Handbook, rules, regulations, laws and guidance as modified, amended, restated or replaced from time to time.
- 2.4 Headings in these Terms are for convenience only and shall not affect the interpretation of this Agreement.
- 2.5 If there is a conflict between these Terms and the Applicable Laws, the Applicable Laws shall take precedence.

3. Our relationship

- 3.1 These Terms shall govern the relationship between ESL and the Financial Adviser and you hereby agree that these Terms set out the terms and conditions upon which we will accept Introductions from you. Accordingly, the submission of an Application Form by the Member in respect of any Introduction made by you shall be deemed to constitute your acceptance of these Terms.
- 3.2 You are not required to sign or acknowledge these Terms in order for them to become effecting and binding on you; by introducing Members to us you agree to our Terms.
- 3.3 These Terms do not constitute an exclusive agreement between us. Nothing in these Terms shall preclude either party from committing to similar agreements with other institutions or individuals.
- 3.4 Nothing shall be deemed to constitute the Financial Adviser as the employee, representative, partner or agent of ESL. Unless expressly agreed by ESL in writing, the Financial Adviser shall not have authority of ESL, and shall not hold itself out as having such authority, to act on ESL's behalf in any respect in relation to the Services or otherwise. In particular, the Financial Adviser shall not

have authority to make any statement or representation or give any guarantee relating to the Services to the Member or to receive any monies in relation to the Services on behalf of ESL.

3.5 ESL shall be entitled, at its absolute discretion, to refuse an Introduction, or any instruction to acquire a Plan on behalf of the Member, without any obligation to give any reason to the Financial Adviser for such refusal.

3.6 Any variations to these Terms will be communicated to you in advance by giving reasonable notice in writing and varied Terms will take precedence over these Terms and will apply to Introductions made under these Terms.

3.7 ESL will not directly solicit business from any Member. For the avoidance of doubt, the prohibition in this clause 3.7 shall cease:

3.7.1 upon the expiry of the term of the Financial Adviser's engagement by the Member as financial adviser either with respect of the Services or generally; or

3.7.2 when the Financial Adviser ceases to act as agent of the Member; or

3.7.3 when the Member informs ESL that the Financial Adviser is no longer acting as its financial adviser;

3.7.4 whichever is the earlier.

3.8 We accept no responsibility for monitoring any payments of Adviser Charge from an investment held in the Plan made where the Adviser Charge is paid to you by a third party.

4. The financial adviser's obligations

4.1 You shall act as the agent of the Member and shall at all times act towards the Member in good faith and shall comply fully with all Applicable Laws (including guidance issued by HMRC) codes of practice which shall apply to your business from time to time.

4.2 You shall obtain and maintain all authorisations, licences, permits, registrations and notifications that it requires for the purposes of its business, including but not limited to those required by the FCA.

4.3 You shall notify ESL immediately if any necessary authorisation, licence, permit, registration or notification is withdrawn, suspended, cancelled or varied or if any circumstances arise which may result in such withdrawal, suspension, cancellation or variation. On such notification ESL shall be entitled to withhold payment of Adviser Charges otherwise payable to you in accordance with clause 6 and not accept future Introductions from you.

4.4 You shall notify us immediately if the scope of your FCA permissions are changed or you are censured, fined or disciplined by the FCA or breach of FCA Rules that could reasonably be viewed as relevant to the operation of these Terms.

4.5 Where ESL requires you to make a statement or representation to the Member in relation to the Services on ESL's behalf, you shall ensure that any such statement or representation is made promptly to the Member in written form in a format which is complete, accurate and not misleading.

4.6 You shall pass on immediately any documentation we have given you for the Member without making any amendment to it and obtain the Member's signature where we need it. You shall also pass on immediately any documentation to us which the Member has given to you in relation to the Plan and keep copies on your file.

4.7 For the purposes of EC Directive 2002/65 concerning the distance marketing of consumer financial services, in the event that you have not had face-to-face contact with the Member by the time it makes the Introduction, you shall notify ESL in writing of this fact at the time at which it makes the Introduction.

4.8 You shall promptly provide ESL free of charge with any information as may be reasonably requested to assist us to perform our obligations under these Terms and enable ESL to provide the Plan to the Member.

4.9 In the event that you receive a complaint from the Member in respect of pension scheme management or administration regarding the Plan, you shall immediately notify ESL of the receipt

of such complaint and shall confirm such notification to ESL in writing (providing full information and all relevant documentary evidence) within 7 days of receiving the complaint.

- 4.10 You undertake to perform your obligations under these Terms to the standard of skill and care expected of competent professionals performing obligations of the type set out in these Terms.
- 4.11 You acknowledge that we may carry out credit checks on you and we reserve the right not to conduct any business with you or pay an Adviser Charge to you if we have any concerns about your credit status.

5. Our rights

- 5.1 We may disclose and/or use any information or data you give us for the purposes of exchanging information, crime prevention, conducting market research, preparing strategic or other marketing plans or gauging product sales or product performance. We may also exchange the information with associated companies, service providers, distributors of our products or agents (who may be located in other countries) with which we have a contractual relationship, or to any party in connection with the approved uses of such information set out above.
- 5.2 In doing so, we will always comply with Applicable Laws and where appropriate we will amend the information or data so as not to identify the Member.
- 5.3 We reserve the right to send communications and information directly to the Member and make direct contact with the Member where we consider it appropriate pursuant to Applicable Laws or otherwise, including, but not limited to, when the Member or you notifies us that you are no longer able to act for the Member or you are no longer able to act for the Member in its dealings with us or to advise on the Plan.
- 5.4 We will contact Members from time to time in relation to their Plan, deal with their queries and to provide information to them about their Plan. We will endeavour to refer Members of yours to you if they request advice. Nothing in these Terms prevents us from contacting Members for any purpose where we have acquired their details other than via you.

6. Adviser charges

- 6.1 ESL (acting at all times solely in accordance with the instructions of the Member) will facilitate the payment of Adviser Charges to you provided that:
- 6.1.1 the Member engages ESL to provide the Services;
- 6.1.2 ESL accepts the engagement;
- 6.1.3 the Member notifies ESL in the Application Form that the Financial Adviser is to be paid the specified Adviser Charges from the Plan; and
- 6.1.4 ESL holds the required sum of money in the Member's Plan that is not at that time required to meet other commitments of the Plan.
- 6.2 For the avoidance of doubt, no Adviser Charges shall be payable via ESL to the Financial Adviser if the Member has:
- 6.2.1 not provided ESL with the required sum of money to hold within their Plan; or
- 6.2.2 instructed ESL not to pay the Adviser Charges.
- 6.3 We reserve the right to contact the Member direct about the Adviser Charge and to confirm the Adviser Charge with the Member in such manner as we choose, including whether an on-going service is provided by you.
- 6.4 We reserve the right to determine the flexibility and types of Plans from which an Adviser Charge can be facilitated by us and the Decency Limits and to vary them at our discretion.
- 6.5 Any Adviser Charge we pay you will be subject to the Applicable Laws. We will not make any advance payment of Adviser Charges. We will not pay Adviser Charges over a materially different time period or on a materially different basis to that in which we collect the Adviser Charge from the Member.
- 6.6 We may increase the payment of Adviser Charge, subject to our receiving clear instructions from the Member to do so and validating such instructions in the manner set out in clause 6.4. We will

reduce the Adviser Charge on your instruction but not increase any Adviser Charge on your instruction alone.

- 6.7 We reserve the right to cease paying Adviser Charges to you in relation to the Plan:
- 6.7.1 when instructed to do so by the Member (which instruction will be accepted by us in writing or in such manner or medium as we may determine);
 - 6.7.2 if the Member has exercised their cancellation rights;
 - 6.7.3 if you are a sole trader, on your death;
 - 6.7.4 if the FCA instructs us to do so and we will inform you as soon as reasonably practicable and confirm the instruction with the Member;
 - 6.7.5 if these Terms are terminated in accordance with clause 13;
 - 6.7.6 if you cease to be the Financial Adviser of the Member;
 - 6.7.7 if there is a dispute between you and another financial adviser or a Member regarding the Adviser Charges;
 - 6.7.8 if the Introductions made to us are in breach of Applicable Laws or your FCA authorisation and permissions to undertake regulated activities;
 - 6.7.9 if a Customer advises us that you no longer act for that Customer; or
 - 6.7.10 if a Customer advises us to cease paying any Adviser Charge to you; or
 - 6.7.11 where we believe that the payment of Adviser Charges would be in breach of the Applicable Laws.
- 6.8 We will only facilitate an Adviser Charge up to the Decency Limit (unless we determine otherwise) and you will apply to the Member for any Adviser Charge that we do not facilitate to you.
- 6.9 ESL does not assume any responsibility for, or liability in respect of, any failure by the Member to pay, or to mandate the payment of, any Adviser Charge which the Member may have agreed with the Financial Adviser.
- 6.10 The Adviser Charges payable on behalf of the Member may consist of:
- 6.10.1 advisory fees, where investment advice has been given by the Financial Adviser in relation to the Plan; or
 - 6.10.2 facilitation fees, where investment advice has not been given and the service provided to the Member is solely on a non-advisory basis.
- 6.11 We will facilitate an Adviser Charge either as an initial fee or an on-going fee provided that in the latter case the fee is an advisory fee as described in clause 6.10.1 above and the Financial Adviser is still providing an ongoing service to the Member. We may contact the Member directly in order to confirm that you are providing an ongoing service to the Member.
- 6.12 The Member may mandate ESL to facilitate an Adviser Charge:
- 6.12.1 on the establishment of a Plan; and
 - 6.12.2 on the acquisition of an investment within a Plan, provided always that the aggregate of the initial fee payable on the establishment of that proportion of the Plan represented by that investment, and the Adviser Charge payable on the acquisition of that investment (during the initial asset allocation of the Plan or twelve months thereafter) does not exceed our Decency Limits.
- 6.13 In the case of an Adviser Charge which we facilitate as an initial fee, we will only facilitate the Adviser Charge as and when we receive new funds on a pro rata basis. If we do not receive all the funds and there is a shortfall in the total Adviser Charge due to you, it will be up to you to seek payment of your Adviser Charge from the Member direct in that event. At no time will we be responsible for the non-payment of or shortfall in any Adviser Charge due to you.
- 6.14 Ongoing fees are calculated on each successive anniversary of the establishment of a Plan with ESL and payable in arrears within 30 days following the calculation. Should such anniversary fall on a non-Business Day the charge will be calculated on the next following Business Day.
- 6.15 ESL will adhere to the Member's instructions regarding the payment of, cessation of, reduction in or increase in of any Adviser Charges, subject to our Decency Limits. Ongoing fees will not be paid in respect of any period subsequent to the Member's (a) appointment of a new investment adviser

(provided that such person is duly authorised within the meaning of The Financial Services and Markets Act 2000) in respect of the Plan or (b) termination of their relationship with the Financial Adviser.

- 6.16 We will send you an Adviser Charge Statement showing the Adviser Charge and any debt and interest due to us and any set-off made under clause 7.2. The Adviser Charge Statement may be provided in writing, on disk, on tape, in direct online communication or other method of communication as we may determine and will be provided at such frequency as may be agreed between you and us. The Adviser Charge Statement shall represent a complete record of the Adviser Charges due to you.
- 6.17 On termination of these Terms, we will reconcile the debits and credits occurring over a period of 3 months from termination. We will provide you with a final statement of account within 30 days thereafter. Any amount due to either party will be paid to the other within 30 days after delivery (or deemed delivery according to clause 18.11) of the final statement of account.

7. Refund of adviser charge and right of set-off

- 7.1 If the Plan or any part thereof are cancelled and ESL has to refund to the Member all or part of the monies that it has received from the Member, the Financial Adviser shall repay to ESL such proportion of the Adviser Charges as equals the proportion of the monies that ESL refunds to the Member.
- 7.2 If you have a debt owing to us, you will settle that debt immediately or we shall be entitled to set off any Adviser Charge due to you under these Terms against any debt howsoever arising that you owe to us.
- 7.3 If no Adviser Charge is owed by ESL or if any such sums owed are not sufficient for the purposes of set-off, the Financial Adviser shall pay the refund in full within 10 Business Days of receipt of a written notice from ESL demanding such payment. Interest on sums due under this clause will accrue interest at the rate of base rate plus 5%.
- 7.4 You agree that you will not seek to recover from a Member (by way of legal proceedings or through any other means) any or part of any Adviser Charge they requested us to pay to you but which has been used to set off any amount due or payable to us under clause 7.2.
- 7.5 Exercising our rights under this clause 7 shall without prejudice to any other rights or remedies available to us.

8. Indemnity and liability

- 8.1 You agree to indemnify us for any loss, cost, fines (including regulatory fines), damage, expense, liability, action, proceedings, claims or demands however arising that we may suffer arising from:
- 8.1.1 any omission or breach of these Terms by you or your failure to comply with the Applicable Laws or otherwise by your negligence, wilful, default, fraud or breach of duty on your part (including a failure to correctly assess the VAT status of any Adviser Charge); or
- 8.1.2 any omission or breach by your employees or agents to comply with these Terms or their failure to comply with Applicable Laws or otherwise by their negligence, wilful, default, fraud or breach of duty on your part (including a failure to correctly assess the VAT status of any Adviser Charge); or
- 8.1.3 a decision by the FCA, Financial Ombudsman Service (or its successor or replacement from time to time), any other regulatory body or court that we are liable to pay a claim to a Member arising as a result of any omission or breach of these Terms by you or your failure to comply with Applicable Laws or otherwise by your negligence wilful default, fraud or breach of duty in disclosing pre-contractual information from a Member in relation to his or her Application Form to us; or
- 8.1.4 any claim by a Member that you should not have received an Adviser Charge or you have been overpaid an Adviser Charge; or

- 8.1.5 providing advice to a Member who has agreed to or engaged you to provide a non-advised service to him; or
- 8.1.6 any liability we incur under tax legislation.
- 8.2 Except where expressly stated otherwise in this Agreement or as required by law:
 - 8.2.1 nothing in these Terms shall exclude or limit the liability of either party for fraudulent misrepresentation, deceit or dishonesty nor for death or personal injury resulting from its negligence or any other liability that cannot be excluded by applicable law;
 - 8.2.2 each party's maximum liability to the other under these Terms whether in contract (by way of indemnity or otherwise), tort, restitution or otherwise is limited to £250,000 except in relation to payment or repayment of Adviser Charges where the limit is the outstanding payment or repayment obligation; and
 - 8.2.3 each party excludes liability to the other for any indirect, special, incidental or consequential loss or damage, and also excludes liability for loss of data, profit, business, opportunity, revenue, goodwill and anticipated savings howsoever arising in respect of these Terms.

9. Data protection, data security and electronic mail

- 9.1 The expressions "data controller", "processing", "personal data", "data processor", "data subject" and "subject access request" shall bear their respective meanings given in Data Protection Legislation and any other grammatical forms of those expressions shall be interpreted accordingly.
- 9.2 You warrant to us that you have made the appropriate notifications and have complied with the notification provisions under the Data Protection Legislation in respect of your obligations under these Terms and that performance of your obligations under these Terms shall not breach or contravene such notification, nor cause us to breach our requirements under the Data Protection Legislation.

Your personal data

- 9.3 We will hold personal data about you or any person employed by you and relating to your dealings with us on our database for the purpose of administering the Member's Plan, paying you an Adviser Charge, maintaining our relationship and for regulatory issues. We will use this personal data to manage the ongoing relationship, to provide you with information and to administer your account with us. We may carry out credit and / or reference checks on you or any other director, partner or employee of you. By accepting a relationship with us, you and any other director, partner or employee of you agree to these checks taking place throughout the duration of the relationship where we, in our sole opinion, feel it is necessary to do so.
- 9.4 We will keep your personal data (and your employees' personal data) for a reasonable period. We may also share your personal data (and your employees' personal data) with our service providers, agents and with third parties such as auditors, underwriters, reinsurers, medical agencies, identity authentication agencies, other financial institutions and legal and regulatory bodies (in the UK and abroad).
- 9.5 We may contact you by mail, phone, fax, email or other electronic messaging with further offers, promotions and information about products and services which may be of interest to you. By giving us the relevant contact details for fax, phone and email you consent to contact by these methods. However, if at any time you object to marketing contact by any of these methods, please let us know.
- 9.6 We may monitor and record phone calls and keep them for the purposes of training and quality assurance and to ensure we have an accurate record of instructions.
- 9.7 To provide the services under these Terms, it may be necessary to transfer you or your employees' personal data to countries that provide a different level of data protection from the UK. In such

circumstances, we will ensure that the relevant country has an adequate level of protection as required by Data Protection Legislation.

- 9.8 You must keep secure all security information which you use to access information provided by us, both on your systems and a third party's. Security information may include, but is not limited to passwords, digital identifiers/certificates. You must inform us as soon as you become aware of anyone ceasing to be eligible to access any of our or a third party's system to which you have access.
- 9.9 Where you choose to deal with us online, you may be subject to additional terms and conditions relating to our online services which can be found on the applicable website.
- 9.10 Email communications are not necessarily secure, and may be intercepted or changed after they are sent. We do not accept any liability where such communications are changed or are not delivered.
- 9.11 You must ensure that you have adequate security measures in place (including but not limited to any measures we ask you to take) and that the appropriate measures are in place to prevent harmful viruses being sent to us electronically.

The member's personal data

- 9.12 The Data Protection Legislation places legal obligations on all organisations to process personal data in accordance with Data Protection Legislation. We remind you that these principles are likely to apply to your organisation and may affect how you process personal data.
- 9.13 You warrant to us that, where you collect the Member's personal data, which you subsequently transfer to us, that:
- 9.13.1 You have collected such data fairly and lawfully;
 - 9.13.2 the disclosure of such data to us is fair and lawful; and
 - 9.13.3 that our use of such personal data for the purposes of carrying out our obligations under this Agreement will not breach the Data Protection Legislation.
- 9.14 We both acknowledge that in some circumstances we are both data controllers of the personal data processed in respect of the Members under these Terms and to the extent that both parties are deemed to be joint data controllers, both parties shall comply with the Data Protection Legislation in respect of such personal data. If a party receives a subject access request in relation to personal data held by the other, the other party holding such personal data shall do all things as are reasonably necessary to assist the party in receipt of the subject access request to perform such compliance obligations.
- 9.15 If you are unsure what your obligations are or how the Data Protection Legislation applies to you or your organisation, you can seek further guidance from the Information Commissioner's website www.ico.gov.uk and / or seek professional legal advice. Please note we are not able to advise you on your obligations under the Data Protection Legislation.
- 9.16 To the extent that the either of us is acting as a data processor on behalf of the other, the party acting as data processor shall:
- 9.16.1 bring into effect and maintain appropriate technical and organisational measures to prevent unauthorised or unlawful processing of any personal data of the Member and accidental loss or destruction of, or damage to, any personal data of the Member, including but not limited to taking reasonable steps to ensure the reliability of employees having access to the Member's personal data. Without prejudice to the generality of the foregoing such measures shall ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage of the Member's personal data and the nature of the Member's personal data to be protected;
 - 9.16.2 only process the Member's personal data on behalf of the data controller in accordance with, and for the purposes set out in, these Terms and in accordance with instructions received from the data controller from time to time;

- 9.16.3 promptly notify the Member about any matter which may cause the data controller to become non-compliant with the Data Protection Legislation applicable to the processing and provide such information about remediation as the data controller shall reasonably require;
- 9.16.4 promptly notify the data controller about any accidental or unauthorised access which may affect the Member's personal data and provide such information about remediation as the data controller shall reasonably require;
- 9.16.5 not transfer the Member's personal data outside of the European Economic Area without the prior written consent of the data controller;
- 9.16.6 allow representatives of the data controller to audit the data processor's compliance with the requirements of this clause on reasonable notice and / or, at the option of the data controller, on request to provide the data controller with evidence of its compliance with such requirements; and
- 9.16.7 use all reasonable endeavours to assist the data controller to comply with any obligations imposed on the data controller by the Data Protection Legislation in relation to any of the Member's personal data including without limitation:
 - (a) providing the data controller with reasonable assistance in complying with any subject access request served on the data controller under the Data Protection Legislation;
 - (b) promptly informing the data controller about the receipt of any subject access request received by the data processor in relation to the Member's personal data processed pursuant these Terms; and
 - (c) not disclosing any of the Member's personal data in response to a subject access request without first consulting with and obtaining the consent of the data controller

10. Intellectual property rights

- 10.1 The "Hornbuckle" names and logos (the "Marks"), together with all associated goodwill and trade mark registrations in respect of them, belong to ESL. Nothing in these Terms shall operate to transfer the ownership of any Mark or Intellectual Property Right from us to you. In the event that ownership of any Mark or Intellectual Property Rights is so transferred, you shall do all things and execute all documents necessary from time to time in order to assign those intellectual property rights to us.
- 10.2 You may only use the Marks for the purposes of advising on, selling or administering and dealing with the Plan or other related services except where in individual cases we give permission in writing for use for other purposes.
- 10.3 The Marks may only be used on material and documents provided by us except where in individual cases permission is given in writing for their use on documents and/or materials produced by or for you.
- 10.4 If permission is given to use a Mark and this permission is later withdrawn, you will stop reproducing or using the Mark and return or destroy at our request all stocks of relevant material.
- 10.5 You will not do, or authorise any third party to do, any act that would or might invalidate or be inconsistent with any Intellectual Property Right that we hold in such Marks, or which would damage or dilute the value or reputation of the Marks (or any goodwill therein) or that of ESL.
- 10.6 On termination of these Terms, you may use the Marks solely for the purpose of concluding any Introductions to us but which has yet to be completed.
- 10.7 All Intellectual Property Rights in all materials, documentation and data (including personal data) we make available to you, or which you access from or via us electronically, whether for your use or the use of Members belong to ESL or licensors. You may not reproduce such materials in part or as a whole without our consent except where it is necessary to do so for regulatory or other legal

purpose and in such circumstances you will record the number and location of all copies of such materials and take steps to prevent unauthorised copying.

11. Money laundering

- 11.1 In providing regulated services to Members and introducing Business to us, you are responsible for compliance with Applicable Laws governing the prevention of money laundering and terrorist financing (including the FCA's rules and guidance, the Money Laundering Regulations 2007, the Proceeds of Crime Act 2002 and the Terrorism (United Nations Measures) Order 2009 or other applicable money laundering or terrorist financing legislation) and with the Joint Money Laundering Steering Group's Guidance Notes for the Financial Sector.
- 11.2 In accordance with such legislation and regulation, you will operate effective screening processes to guard against making economic resources available to sanctioned individuals or entities. In addition, you will obtain and accurately record appropriate evidence of the identity of all Members and any other third parties introduced to us by you. You will forward to us a confirmation of verification of identity for all relevant parties, in order to satisfy your own and our obligations under applicable legislation and regulation governing the prevention of money laundering and terrorist financing. In accepting a confirmation of verification of identity, we are, for the purposes of Regulation 17(1) of the Money Laundering Regulations 2007, placing reliance on you to undertake the Member due diligence.
- 11.3 Further, we reserve the right to carry out random checks on Member identity evidence and other Member information held by you. You should on request and as soon as practicable, forward to us relevant copies of any identification and verification data and other relevant documents on the identity of the Member and other third parties, which you obtained when undertaking Member due diligence.
- 11.4 It is our policy to comply with all the legal obligations imposed on us in connection with Bribery and Corruption. To the extent that any such applicable Bribery and Corruption obligations apply to you, your business or your officers or employees in any relevant jurisdiction, in providing regulated services to Member and introducing business to us, you represent that you, your business and your officers and employees are compliant and will remain compliant with such Bribery and Corruption obligations and that you will have in place adequate and effective procedures and regularly audit and monitor such procedures to prevent a breach of any such compliance and report promptly to us in writing any breaches of such compliance (including where there is a suspicion of a breach or an allegation of a breach) which are or may be relevant to our Terms.

12. VAT

- 12.1 For the purposes of these Terms, we will treat all payments of Adviser Charge facilitated by us to you as if they were VAT exempt. However, in the event that any service provided by you to the Member carries VAT, we will treat any payment of Adviser Charge facilitated by us to you as inclusive of any such VAT (and we will not, therefore, add any amount in respect of such VAT to the Adviser Charge).
- 12.2 You should ensure the Member is aware of the provisions of this clause 12 and keep your own records and evidence to support the VAT treatment of your services provided to the Member and we will not provide any such records or evidence to you. Assessment of the VAT status of any Adviser Charge is your responsibility and we will not in any circumstances be responsible for any error or mistake made in relation to such assessment.
- 12.3 We will treat all instructions from the Member to pay an Adviser Charge to you as including VAT where applicable at the rate prevailing at the time of the payment and taking into account any changes to the rate of VAT howsoever occurring. Therefore, you should arrange your services to ensure that no further instructions from the Member are required where the rate of VAT has changed and there is a change to the amount of Adviser Charge facilitated by us.

12.4 You will inform us at the time you make an Introduction with us if the Member is resident in the United States of America for tax purposes. This is so that we are able to fulfil obligations under the Foreign Account Tax Compliance Act to the extent that we accept any such obligations and if and where the said Act may apply to Business placed with us.

13. Duration and termination of the engagement

13.1 The contractual relationship with the Financial Adviser pursuant to these Terms shall continue in force until terminated in accordance with this clause 13.

13.2 Either party may terminate this engagement with the other on giving the other party not less than one month's notice in writing.

13.3 ESL shall be entitled, at its option, to give notice in writing to the Financial Adviser terminating this engagement with immediate effect if:

13.3.1 the Financial Adviser commits any material breach of any of the terms of this Agreement and (if such breach shall be capable of remedy) that breach is not remedied within 10 Business Days of notice being given by ESL requiring it to be remedied; or

13.3.2 the Financial Adviser makes a composition or voluntary arrangement with his creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a moratorium comes into force in respect of the Financial Adviser (within the meaning of the Insolvency Act 1986); or

13.3.3 the Financial Adviser is guilty of conduct which may affect ESL's business interests or which may bring ESL or the Financial Adviser into disrepute or is charged with, investigated with or convicted of fraud or of an offence of dishonesty under laws relating to financial services, or is involved in a breach of the FCA Rules or the rules of any jurisdiction in which it is authorised for marketing and distribution, or breaches of the confidentiality clause;

13.3.4 the revocation or suspension of the Financial Adviser's exempt status under the Financial Services and Markets Act 2000 or authorisation by the FCA as may be applicable; or

13.3.5 the Financial Adviser is subject to disciplinary proceedings brought by the FCA or an Accredited Body; or

13.3.6 the Financial Adviser resigns from the FCA; or

13.3.7 the Financial Adviser ceases to trade; or

13.3.8 any insolvency proceedings are taken against any of the Financial Adviser's directors or partners; or

13.3.9 if the Financial Adviser is a partnership, that partnership is or is to be dissolved; or

13.3.10 the charging or conviction of any partner, director, employee or agent of the Financial Adviser of any criminal offence (other than a minor traffic offence) which in our reasonable opinion has a material adverse effect on these Terms or our business or reputation.

14. Consequences of termination

14.1 The expiry or termination of these Terms for any reason shall not affect any rights and/or obligations of either party:

14.1.1 accrued before the date of termination or expiry; or

14.1.2 expressed or intended to continue in force after and despite expiry or termination.

14.2 On termination of these Terms for any reason the Financial Adviser shall at its own expense and within ten Business Days return to ESL any and all advertising, promotional material, books,

records, papers, documents, computer hardware or software and any other property belonging to us and in your possession, custody or control relating to the Plan then in the possession of the Financial Adviser, or otherwise dispose of the same as ESL may instruct.

14.3 Without waiting for a final statement of account, you will repay immediately all sums due and Unless otherwise specified in these Terms, all rights and obligations of the parties under these Terms shall terminate automatically save for:

14.3.1 such rights of action as shall have accrued prior to termination (including without limitation any and all actions for any breach of a provision in these Terms);

14.3.2 clauses 1, 2, 5, 7, 8, 9, 10, 14, 15 and 18.

15. Confidentiality

15.1 The parties agree that they shall at all times (both during the term of the engagement and after its termination) keep confidential, and shall not use (other than strictly for the purposes of this Agreement) and shall not, without the prior written consent of the other party, disclose to any third party any Confidential Information, unless (a) the information was public knowledge or already known to the parties at the time of disclosure or subsequently becomes public knowledge other than by breach of these Terms, or (b) compelled to do so by any court of competent jurisdiction, or regulatory or government authority.

15.2 To the extent necessary to implement the provisions of these Terms (but not further or otherwise), the parties may disclose the Confidential Information to any relevant governmental or other authority or regulatory body and to any employees of the parties, provided that before any such disclosure the parties shall make those persons aware of his obligations of confidentiality under these Terms and shall obtain a binding undertaking as to confidentiality from all such persons.

16. Telephone recording

The Financial Adviser agrees that telephone calls made to ESL may be recorded and monitored.

17. Web related services

Where Financial Adviser has applied for and ESL have agreed to provide the Financial Adviser with access to ESL's web enabled services, these services shall to subject to terms and conditions of the Web Access Addendum or other such Terms of Use as published by us.

18. General

18.1 During the duration of these Terms and for a period of two years thereafter, the Financial Adviser must not directly or indirectly contract or solicit employees, officers or directors of ESL. However, this clause shall not apply to situations where employees, officers or directors of ESL have responded to general recruitment campaigns by the Financial Adviser and without any direct or indirect inducement from the Financial Adviser.

18.2 These Terms constitute the entire agreement and understanding of the parties and supersedes any previous agreements between the parties relating to the subject matter of these Terms.

18.3 You may not sub-license, assign or transfer in any way any rights, liabilities and/or obligations under these Terms on a temporary or permanent basis to any third party without our prior written consent.

18.4 ESL reserves the right to assign any of our rights or delegate any of our obligations under these Terms to any part of any group of which we form part.

18.5 Each party acknowledges and agrees that it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether a party to this Agreement or not) other than as expressly set out in these Terms. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

- 18.6 No person other than the Financial Adviser or ESL may enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists or is available other than under such Act.
- 18.7 Information relating to the Financial Adviser will be held on computer by ESL and may be passed to third parties for the purposes of market research and analysis.
- 18.8 Each party shall execute all deeds or documents (including any power of attorney) and do all such other things that may be required from time to time for the purpose of giving effect to these Terms and the transactions contemplated hereby.
- 18.9 No failure to exercise or delay in exercising any right or remedy under these Terms shall constitute a waiver thereof and no single or partial exercise of any right or remedy under these Terms shall preclude or restrict any further exercise of such right or remedy. The rights and remedies contained in these Terms are cumulative and not exclusive of any rights and remedies provided by law.
- 18.10 If any term or provision of these Terms shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law that term or provision or part shall to that extent be deemed not to form part of these Terms and the enforceability of the remainder of these Terms shall not be affected thereby.
- 18.11 Any notice required to be given pursuant to these Terms shall be in writing and shall be given by delivering the notice by hand at, or by sending the same by prepaid first class post to the address of the relevant party set out in these Terms, or such other address as either party notifies to the other from time to time, or by sending it by fax to the fax number notified by each party to the other from time to time. Any notice given according to the above methods shall be deemed to have been given:
- (a) at the time of delivery if delivered by hand;
 - (b) when received if sent by post;
 - (c) at the time of transmission if sent by fax or e-mail on a Business Day prior to 4.00 pm; and
 - (d) on the next Business Day if sent by fax or e-mail otherwise than as above.
- 18.12 These Terms shall be governed by and construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

How to get in touch

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