

# ADVISER

## TERMS OF BUSINESS

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The Scottish Widows Platform

For Professional Advisers only

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## 1

## DEFINITIONS

Throughout these Terms **EISL, us, our** or **we** refers to Embark Investment Services Limited (EISL), trading as Scottish Widows Platform with:

- Embark Trustees Limited as trustee of the Scottish Widows Personal Pension,
- EISL as Operator and administrator of the Scottish Widows Personal Pension,
- EISL authorised by HMRC as the ISA Manager, and,
- Embark Investment Services Nominees Limited which holds legal title to investments in the Scottish Widows Personal Pension, Scottish Widows ISA, Scottish Widows JISA, Scottish Widows GIA, and the Scottish Widows Third Party Investment Account (TPIA);

In these Terms, unless the context requires otherwise:

**Act** means the Financial Services and Markets Act 2000 (as amended from time to time).

**Adviser Charges** means the charges agreed between the Client and the Financial Adviser for the payment of Services from the Financial Adviser Firm and its Associates which is facilitated by us.

**Adviser Firm Application Form** means the application form (either in paper or digital format as specified by us from time to time) completed by the Financial Adviser Firm and which is submitted to EISL for acceptance and registration and who then send to the Financial Adviser Firm the Terms and additional forms to allow the Financial Adviser Firm to provide details of its Authorised Users.

**Adviser Terms of Business** means these Terms, together with the Adviser Firm Application Form and the Adviser Terms of Use.

**Adviser Terms of Use** means the rules that apply to the use by the Financial Adviser Firm and Authorised Users of our Scottish Widows Platform and Services.

**Applicable Laws** means all applicable UK laws, rules and regulations that apply to the Financial Adviser Firm, the Financial Adviser, Authorised User and EISL.

**Assets** means a legal and beneficial interest in a company, trust or partnership, an investment policy, deposit account, investment contract, authorised unit trust, open ended investment company or investment fund.

**Appointed Representative** has the meaning as set out in section 39(2) of the Financial Services and Markets Act 2000.

**Associates** means a company within the group of companies of which the Financial Adviser Firm is part.

**Authorised User** means an appropriately authorised employee, director and/or officer of the Financial Adviser Firm or agent of the Financial Adviser Firm, or Party engaged by contract with the Financial Adviser Firm who is registered on the Scottish Widows Platform by the Super User. For the avoidance of doubt the Super User is also treated as an Authorised User for the purposes of these Terms.

**Available Cash** means all Client cash that is not Committed Cash.

**Bribery and Corruption** means legislation and rules relating to bribery and corruption, including but not limited to the Bribery Act 2010.

**Business Day(s)** means Monday to Friday except bank holidays in England.

**Cash** means the Client's money as held in any Client Online Account comprising Available Cash and Committed Cash.

**Client** means an individual or entity, introduced to us when a Financial Adviser submits the Client Application Form and who has an Online Account in a Product.

**Client Application Form** means the application form completed by an Authorised User as agent for the Client to apply to open a Product and an Online Account for the Client.

**Client Data** means information relating to any Client, their financial circumstances or investments held.

**Client Declaration** means the declaration made by an Authorised User as agent for and on behalf of the Client in order to open a Product online confirming the Client's acceptance of the Client Terms and Conditions.

**Client Terms and Conditions** means the document describing the Terms and conditions binding on both us and the Client and which incorporates the Client Terms of Use for the provision to the Client by us of the Products and Online Services.

**Client Terms of Use** means the document which describes the Terms upon which the Client may access their Online Account and use the Scottish Widows Platform.

**Committed Cash** means any cash that a) has been ring fenced to complete a Trade Instruction that has not reached the contractual settlement date, or b) is to be used to pay for a Voluntary Corporate Action or c) cash designated to pay a pending Scottish Widows Platform Charge or an Adviser Charge or a Discretionary Investment Manager charge. Such cash cannot be used to invest in Assets, pay additional Adviser Charges or fund withdrawals.

**Confidential Information** means information of a confidential nature communicated by one Party to another. Including, but not limited to,

Client Data, trade secrets and information of commercial value about us, the Financial Adviser Firm or an Authorised User and/or their Services.

**Data Protection Legislation** means the Data Protection Act 2018 as amended, the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679), and any code of practice or guidance published by the UK Information Commissioner's Office.

**Discretionary Investment Manager** means a firm or individual who is authorised by the FCA to provide discretionary investment management services to Clients and who has signed the Discretionary Investment Manager Terms of Business with EISL allowing the Discretionary Investment Manager to access the Platform to manage Model Portfolios on a discretionary basis, in line with a stated objective.

**Discretionary Investment Manager Terms of Business** means the document describing the terms and conditions for the provision of Model Portfolio services to the Client.

**Disinvestment Strategy** means the selection and sale strategy chosen by the Financial Adviser to disinvest from Mutual Funds within an Online Account in the event there is insufficient Available Cash to pay Charges.

**Embark Group Companies** means all group companies owned by our parent company Embark Group Limited registration number 03578067.

**FCA** means the Financial Conduct Authority or any successor conduct regulator in the UK.

**FCA Handbook** means the FCA's Handbook of rules and guidance, as may be in force from time to time.

**Financial Adviser** means a financial adviser appropriately FCA authorised to provide financial advice to Clients or a financial adviser subject to an FCA or PRA compliant senior management regime and who has been named as an Authorised User by a Financial Adviser Firm and approved by us.

**Financial Adviser Firm** means financial adviser firm or network that is authorised and regulated by the FCA, or an Appointed Representative of such a firm or network; or a PRA approved bank or division of such a bank, with an FCA or PRA compliant senior management regime in place which has been accepted by us.

**Introduction** means the introduction of a Client to us by a Financial Adviser when the Financial Adviser submits a Client Application Form with a view to us providing the Client with a Product and an Online Account and Introduced will be interpreted accordingly.

**Instruction** means any instruction excluding a Trade Instruction received by us from an Scottish Widows Platform User in accordance with these Terms relating to the services provided by the Scottish Widows Platform to Scottish Widows Platform Users.

**Investment** means any Assets held in a Client's Account.

**In Writing** means any form of communication outside of the Scottish Widows Platform in the form of a letter, or email and includes any legible reproduction of words delivered in permanent and tangible form.

**Model Portfolio** means a collection of Investments held in a Product which are prescribed by a financial model produced by a Discretionary Investment Manager, Financial Adviser or Financial Adviser Firm as part of their services to a Client, or by us.

**Mutual Fund** means any regulated collective investment scheme authorised by the FCA or other equivalent regulatory body and which is available to invest into on the Scottish Widows Platform.

**Online Account** means the Client's online Products that an Authorised User may access to view all Investments held by the Client and from which the Financial Adviser as agent for the client, may provide us with Instructions and Trade Instructions.

**Online Services** means the services we provide to Financial Adviser Firms, Financial Advisers and Authorised Users through the Scottish Widows Platform on the terms described in these Adviser Terms of Business.

**Party** means a party to these Terms, being us and the Financial Adviser Firm and/or the Authorised User as the case may be.

**Permitted Customisation** means the altering of the Scottish Widows Platform, at the request of the Financial Adviser Firm, via the branding option.

**PRA** means the Prudential Regulation Authority.

**Product** means the Scottish Widows Personal Pension, Scottish Widows ISA, Scottish Widows JISA, Scottish Widows GIA, and/or the Scottish Widows Third Party Investment Account (TPIA) together with any further products we may add to the Scottish Widows Platform from time to time.

**Product Services** means making the Products available to Clients by us in the form of Online Accounts together with provision of any ancillary services.

**Regulator** means any court, governmental body or regulatory or supervisory authority having authority over all or any part of the Services or any Party, including as applicable the FCA, The Pensions Regulator, the Information Commissioner and HM Revenue and Customs and any successor or replacement bodies in existence from time to time.

**Scottish Widows Platform** means the online investment platform service owned and operated by EISL and which can be accessed on the Scottish Widows Platform Website.

**Scottish Widows Platform Users** means Financial Adviser Firms, Authorised Users, Discretionary Investment Managers, Clients; and Trustees.

**Scottish Widows Platform Website** means our website at [scottishwidows.co.uk/platform](http://scottishwidows.co.uk/platform) and through which access to the Scottish Widows Platform can be obtained.

**Services** means the services provided by the Financial Adviser Firm, its Associates, the Discretionary Investment Manager or ourselves as the case may be.

**Super User** means the employee of the Financial Adviser Firm named on the Adviser Firm Application Form (or any subsequent Super Users set up by the Super User named on the Adviser Firm Application Form) who has the responsibility to register Authorised Users on the Scottish Widows Platform.

**Target Market Requests** means a request from the manufacturer of an Investment seeking details or confirmation that the Client meets the target market specifications for that Investment in accordance with the requirements set out in the PROD Rules within the FCA Handbook.

**Terms** means these terms of business governing our dealings with Financial Adviser Firms and Financial Advisers and Authorised Users for the provision of the Services to Clients.

**Tools** means applications made available through third party service providers or by EISL, available on or through the Scottish Widows Platform, from time to time, for Financial Adviser and Authorised User use

**TPIA** means the Third Party Investment Account available to a Client in accordance with the Client Terms and Conditions.

**Trade Instruction** means an instruction received by us from a Financial Adviser, Authorised User or a Discretionary Investment Manager to buy or sell Investments in an Online Account or Model Portfolio.

**Trusted Third Party** means any third party with whom EISL has entered into an enforceable agreement for the provision of on-line authentication and/or other services.

**'UK'** means the United Kingdom of England, Northern Ireland, Scotland and Wales and does not include the Isle of Man or the Channel Islands.

**Voluntary Corporate Action** means a corporate action event relating to an Investment held in an Online Account where we have given notice or provided details of the corporate action to the Financial Adviser.

# 2

## CONTRACTUAL TERMS

References in these Terms to the singular include reference to the plural and vice versa.

References in these Terms to the masculine also include the feminine gender and the gender neutral.

References in these Terms to any statutes, rules, regulations, laws, instruments or guidance include reference to any modifications, amendments, restatements or replacements from time to time.

Headings in these Terms are for convenience only and shall not affect the interpretation of these Terms.

Please read these Terms carefully. They set out the contractual terms upon which we make Scottish Widows Platform, the Online Services, and Product Services available to Financial Adviser Firms, Financial Advisers and Authorised Users.

These Terms together with the Adviser Firm Application Form, and the Adviser Terms of Use form a legally binding agreement for business between the Financial Adviser Firm and us.

We are authorised and regulated by the FCA to provide the Services.

The Financial Adviser Firm acknowledges we are an execution only service, and not authorised to make recommendations or give advice to anyone about the merits or relative suitability of any transactions or Products, nor do we provide any such recommendations or advice relating to underlying Investments.

The Financial Adviser Firm acknowledges that EISL is the manufacturer (and to the extent it falls under the FCA definition, a distributor) of the Products and shall be solely responsible for designing, providing and administering the Products to be made available to Clients on the Scottish Widows Platform.

The Financial Adviser Firm agrees it:

- is appropriately regulated and authorised by the FCA;
- has a place of business in the UK where business is regularly conducted;
- has an appropriate adviser agreement in place with each Client introduced by its Financial Adviser to the Scottish Widows Platform and;
- is responsible and liable for the actions of each of its Financial Advisers and Authorised Users under these Terms.

The Adviser Terms of Use document sets out the terms upon which the Financial Adviser Firm, its Super User, its Financial Advisers and its Authorised Users, may use the Scottish Widows Platform and set up and manage a Client's Online Account.

The Scottish Widows Platform, Online Services and any tools available, are provided to the Financial Adviser Firm, Financial Advisers and Authorised Users by EISL, on the condition that they will be used in accordance with the Adviser Terms of Business.

The Financial Adviser Firm warrants that it, its Financial Advisers and its Authorised Users will perform all obligations under the Adviser Terms of Business with all reasonable professional care, skill and diligence.

The Financial Adviser Firm agrees and warrants on a continuing basis and on each and every occasion that all information contained in the Adviser Firm Application Form together with any other information we may require as part of or pursuant to the Adviser Terms of Business is true and correct in all material respects. The Financial Adviser Firm agrees to ensure EISL is immediately informed as soon as it or an Authorised User becomes aware that such information is no longer true and correct and will promptly provide EISL with details of any changes to this information.

The Financial Adviser Firm agrees and warrants that it will at all times maintain the necessary authorisations, licences, and registrations that are required for the purposes of conducting its business under these Terms and in accordance with FCA requirements and will manage and monitor the necessary authorisations required, held by all its Financial Advisers and Authorised Users.

The Financial Adviser Firm agrees to notify us immediately if any authorisations, licences, or registrations required to be held by it or its Financial Advisers or Authorised Users are withdrawn, suspended, cancelled or varied or if any circumstances arise which may result in such withdrawal, suspension, cancellation or variation.

On such notification (and without prejudice to our other rights under the Terms) we shall be entitled to withhold payment of Adviser Charges otherwise payable to the Financial Adviser Firm in accordance with these Terms.

The Financial Adviser Firm will, upon request from EISL, provide copies of records and accounts connected with business placed through the Services for example a signed agreement with the Client as to Adviser Charges.

The Financial Adviser Firm warrants that it and all its Authorised Users have the authority and the continuing authority to provide Instructions and Trade Instructions in respect of a Client.

The Financial Adviser Firm agrees that each person registered as an Authorised User, including those Authorised Users who are Financial Advisers, by the Super User has a contractual relationship with the Financial Adviser Firm. They also have the appropriate FCA authorisations and permissions to the extent necessary to allow them to conduct activities on the Scottish Widows Platform for a Client including, where applicable, to advise on the Products and to provide us with Instructions and Trade Instructions.

The Financial Adviser Firm acknowledges it is liable to us for any costs we incur as a result of the actions of its Super User, its Financial Advisers or its Authorised Users in breach of these Terms. Accordingly, the Financial Adviser Firm undertakes to ensure that it will monitor the dealings of its Financial Advisers and Authorised Users, including the currency of their FCA authorisations and permissions and in the event an issue arises which could breach these Terms to notify us as soon as possible of such an event.

The Financial Adviser will at all times have sufficient insurance cover in place to satisfy the Financial Adviser's obligations under these Terms, and those of the Regulator.

The Financial Adviser Firm agrees that EISL may send it, by any suitable media, marketing information on our Products and Services.

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 the Adviser Terms of Business and the transactions contemplated hereby.

These Terms will come into force from the date on which the Adviser Firm Application Form is accepted by EISL. EISL will notify the Financial Adviser Firm when this has happened.

# 3

## FINANCIAL ADVISERS AND AUTHORISED USERS

If there is a conflict between the Scottish Widows Client Terms and Conditions and these Terms, these Terms will prevail for matters specifically governing the use of the Scottish Widows Platform by the Financial Adviser Firm and Authorised Users.

These Terms of Business will be construed and interpreted in accordance with English law and the Parties submit any dispute (whether contractual or non-contractual) which may arise out of, or in connection with these Terms of Business, to the exclusive jurisdiction of the English courts.

The Financial Adviser Firm acknowledges that when acting for a Client, its Financial Advisers act as the agent of the Client and shall, at all times, act in good faith to the Client and shall comply with all Applicable Laws.

The Financial Adviser Firm confirms it has the consent of the Client, In Writing, to instruct

- the payment by the Client of all Adviser Charges to the Financial Adviser Firm, and
- Scottish Widows Platform charges to us on the Terms in the Client Terms and Conditions, and
- where applicable, Discretionary Investment Managers or third parties' costs, charges or expenses

from the Clients Online Accounts.

The Financial Adviser Firm agrees to send us a notification and an Instruction immediately if the Client changes his or her mind in respect of Adviser Charges or Discretionary Investment Manager charges.

EISL reserves the right to make relevant searches, screening and checks (including credit checks) itself, or through selected third parties, on the Financial Adviser Firm and its owners, directors, employees, co-partners, agents, principals and appointed representatives and the Financial Adviser Firm will provide all necessary consents and information to allow the checks to be performed at any time whilst the Terms apply.

The Financial Adviser Firm agrees that the Financial Adviser represents and warrants to us, such representation and warranty to be deemed to be repeated on each occasion on which the Financial Adviser provides us with an Instruction or Trade Instruction, that:

- the Financial Adviser is authorised under section 31 of the Act to the extent required, or has the necessary internal authorisation from the Financial Adviser Firm the Financial Adviser represents that is compliant with the FCA Rules; and

- the Financial Adviser represents that such FCA authorisation includes as a minimum FCA authorisation for the arranging of deals in Investments, and for advising on Investments, or that the Financial Adviser is subject to equivalent internal permissions from the Financial Adviser Firm the Financial Adviser represents, which is compliant with FCA Rules.
- The Adviser will immediately send us an Instruction when the Adviser is no longer authorised to act on the Client's behalf. The Adviser acknowledges that the Adviser's access to the Client's Online Accounts will be withdrawn immediately on receipt of the Instruction and, all Adviser Charges will stop.

To enable us to comply with relevant UK and/or international regulations, the Financial Adviser Firm agrees as soon as reasonably practicable:

- to inform us of any changes to a Client's tax residence, residential address or citizenship status;
- inform us when a Client dies and provide us with any documentation we may request; and
- to comply with any reasonable request for information about a Client made by us which is required by us to comply with Applicable Law.
- to ensure that a Client's email address is accurate so that they receive notifications of important information from us to enable us to comply with relevant laws and regulations
- to provide us with management information which evidences adherence to the relevant rules in the FCA Handbook.

The Financial Adviser Firm acknowledges that we have the right to refuse any Instruction or Trade Instruction where a Client's personal records are not complete, including where a Client's National Insurance Number is missing meaning we are not able to comply with our Transaction Reporting obligations to the FCA.

The Financial Adviser Firm also acknowledges Scottish Widows Platform Users must have an email account to be eligible to use the Scottish Widows Platform. It is the Users responsibility to ensure that the email address supplied is correct and settings are enabled to receive emails from us.

## 4

## USE OF THE SCOTTISH WIDOWS PLATFORM

Once we have accepted the Adviser Firm Application Form, we will provide the Financial Adviser Firm with official confirmation documentation. This will include usernames to enable the Super User(s) to register on the Scottish Widows Platform and register Financial Advisers and Authorised Users on the Scottish Widows Platform.

Access to the Scottish Widows Platform and its Services will ordinarily be available 24 hours a day, seven days a week, although EISL shall from time to time need to withdraw the platform from operation for the purposes of maintenance and upgrading. EISL shall endeavour to give both Financial Adviser Firms and Authorised Users warning of any such withdrawal, but this may not always be practicable.

The Financial Adviser Firm acknowledges and agrees that access by Authorised Users to the Scottish Widows Platform and the Online Services is controlled by the Financial Adviser Firm and its Super User will be responsible for issuing each Authorised User with their username and temporary password.

The Financial Adviser Firm is solely responsible for setting the extent of access for each Authorised User to Client's Online Accounts registered with the Financial Adviser Firms on the Scottish Widows Platform, including the ability to provide us with Instructions and Trade Instructions.

The Authorised Users are responsible for ensuring that their email address is kept up to date on the Scottish Widows Platform.

Changing, updating or removing Authorised Users will be the sole responsibility of the Financial Adviser Firm. Accordingly, the Financial Adviser Firm is responsible for ensuring that it and each of its Authorised Users take reasonable steps to keep their username and passwords safe and secure so that:

- this information is kept secure from any other individual or third party;
- this information is not written down or included in any electronic file available on the same computer from which access to the Scottish Widows Platform is gained;
- computers are not left unattended whilst logged on to the Scottish Widows Platform;
- any information printed off from the Scottish Widows Platform is destroyed or securely stored;
- access details are changed immediately if the Authorised User believes this information has become known to another person.

If the Financial Adviser or Financial Adviser Firm chooses to create Model Portfolios, the Adviser is responsible for keeping them up to date as required.

It is the Financial Advisers' responsibility to check for and act on alert messages that are sent from the Scottish Widows Platform.

EISL will not be held responsible for errors, failures, delays or transposition of information relating to Instructions or Trade Instructions sent by Authorised Users using a username and correct password.

Accordingly, unless we have been advised by the Financial Adviser Firm or Authorised User that the security of a username or password has been compromised prior to its use, every time a username and the correct password is used to access the Scottish Widows Platform and/or to download details about a Financial Adviser Firm, an Authorised User, a Client or an Online Account, it will be deemed for all purposes that the individual associated with that username and password was the Party registered by the Super User. Should this not be the case, the Financial Adviser Firm agrees it shall be liable for any legal or regulatory or other consequences resulting from the misuse of any such information received or transaction conducted and shall indemnify us and keep us indemnified accordingly.

As such, the Financial Adviser Firm agrees we cannot be held liable for any act or omission on our part resulting from the misuse of a username or password.

The Financial Adviser Firm agrees that it is responsible for all hardware and software used by Authorised Users to access the Scottish Widows Platform and for maintaining the quality and integrity of the aforesaid for use in accessing the Scottish Widows Platform.

If we provide any downloadable software, the Financial Adviser Firm agrees that its Authorised Users use the software at their own risk and EISL will not be liable for any claims or losses whether directly or indirectly arising from use of the Scottish Widows Platform that is not within EISL's reasonable control.

The Financial Adviser must not modify nor amend the valuation information, apart from changes required to enhance the format. EISL and its licensors retain the Intellectual Property Rights in the valuation information. Links from the Scottish Widows Platform to other websites to access Tools or other third party services are designed to allow the Financial Adviser or Authorised User to access more information. The Financial Adviser or Authorised user may be required to accept separate terms and conditions on other websites when accessing Tools or other third party services. Neither EISL, nor any Embark Group company, give any endorsement of, or accepts any liability for, the operation, accuracy or content of linked websites or terms and conditions on the linked websites; provides no warranties or guarantees as to the accuracy, timeliness, performance, completeness or suitability of the information and materials found or offered in the linked websites or third party services including terms and conditions on the linked websites or third party services for any particular purpose.



# 5

## INTRODUCING CLIENTS TO THE PLATFORM

It is the Financial Adviser's sole responsibility to ensure that the Client is eligible and suitable for a Scottish Widows Online Account and the Assets held (or proposed to be held). In the case of a TPIA it is the Financial Adviser's responsibility to ensure that all Instructions and Trade Instructions sent to us comply with any limits, regulatory, legislative or tax requirements relevant or set by the third party product provider.

Prior to introducing a Client to us, the Financial Adviser Firm will ensure that evidence of the identity of all third parties introduced by them will have been obtained and recorded under procedures maintained by them in accordance with the provisions of the European Council Directives, the UK Money Laundering Regulations and the Prevention of Money Laundering Guidance Notes for the UK Financial Sector (and all Directives, Regulations and Guidance Notes issued in substitution, amendment or addition to these) and any of our requirements from time to time notified to them.

The Financial Adviser Firm will identify the third parties and will, without detracting from their obligations referred to above, forward to us with the documents for the transaction such as duly completed documentation relating to verification of the third party's identity as we shall require from time to time.

Where we ask, in the interests of investigating or preventing financial crime, to provide information in respect of any third party for whom they have acted, they will use reasonable endeavours to do so.

We reserve the right to carry out further checks in order to verify client identity.

In addition, it is the Financial Adviser's responsibility to ensure that the Client is UK resident and identify any additional countries in which the client may be resident for tax purposes.

The Financial Adviser Firm agrees it shall ensure no Online Account is opened on behalf of a Client until the Client has been provided with the appropriate EISL documentation – namely the:

- Client Terms and Conditions;
- The relevant Account Key Features Documents;
- Charges Guide
- Charges Information Document
- Personal Pension Illustration Document (if applicable); and
- The Scottish Widows Guide to Investment Risks.

Where requested by the Client, the Financial Adviser Firm agrees to ensure that all such documentation be promptly supplied to the Client. We undertake to supply such appropriate documentation to the Financial Adviser or Authorised User upon request as soon as it is practicable.

# 6

## SUBMITTING INSTRUCTIONS AND TRADE INSTRUCTIONS

The Scottish Widows Platform processes and places Trade Instructions in line with our Order Execution Policy a summary of which is set out in the Client Terms and Conditions with the full document being available on our website [scottishwidows.co.uk/platform](https://scottishwidows.co.uk/platform).

The Financial Adviser Firm agrees to ensure that all Trade Instructions are sent in sufficient time, and within any deadlines set by EISL.

Trade Instructions sent by the Financial Adviser must be placed from 'Available Cash' within the relevant Client Online Account. The Trade Instruction will not proceed unless there is sufficient Available Cash in the Client Online Account.

The Financial Adviser shall not submit a Trade Instruction if the Financial Adviser is aware or becomes aware that the Trade Instruction is prohibited by any Applicable Laws. Where the Financial Adviser has already submitted a Trade Instruction, the Financial Adviser must notify EISL immediately of the prohibition.

Each time the Financial Adviser sends us an Instruction or a Trade Instruction or purports to send us an Instruction or Trade Instruction for a Client, the Financial Adviser represents and warrants that the Financial Adviser has the authority as agent for the Client to make the said Instruction or Trade Instruction. The Financial Adviser Firm will indemnify us and keep us indemnified in respect of all losses and/or claims we may suffer or receive in respect of fraud, negligence or other misuse of a Client's Online Account, otherwise howsoever arising in respect of or as a result (directly or indirectly) of the Financial Adviser not having such authority;

The Financial Adviser Firm acknowledges that the Financial Adviser represents and undertakes that on each occasion that we receive an Instruction in respect of a Client, such representation and undertaking is deemed to be repeated on each occasion. The Financial Adviser has:

- supplied the Client with all the appropriate disclosure and product documentation relating to the Investment including but not limited to, a key facts/features illustration, key investor information documentation (KIID), prospectus and/or information memorandum relating to the relevant Investment, and complied with all relevant restrictions and requirements stipulated in those documents in the course of advising a Client;
- provided the Client with the appropriate Investment advice in respect of the Investment; and
- in respect of a Trade Instruction, made an assessment as to the Client's eligibility and suitability to invest into the Investment for which the Financial Adviser provides a Trade Instruction and has verified this information.

Further, the Financial Adviser undertakes to provide us with evidence of such eligibility and suitability upon request.

The Financial Adviser undertakes not to promote or sell, electronically or otherwise, the Services, to any Client who is not ordinarily resident in the United Kingdom, without the prior written consent of EISL.

If a Client becomes ordinarily resident outside of the United Kingdom the Financial Adviser agrees to advise EISL of such facts as soon as becoming aware and agrees that no new Investments may be added to a Product without the prior approval of EISL.

The Financial Adviser will ensure that:

- it has procedures and measures in place to ensure that it complies with all Regulatory Requirements in relation to product governance.
- it complies with the requirements of any Asset's prospectus or any other offering documents (if applicable), in particular the distribution restrictions placed on any Asset;
- where the Adviser is promoting Non-retail Assets, it is capable of promoting Non-retail Assets, and has carried out relevant suitability checks before recommending non-retail Assets;
- where the Adviser is recommending Complex Assets, it has carried out the relevant suitability assessment or appropriateness test before submitting any Trade or instruction;
- it determines its own target market for each Asset, such target market to be within any target market identified by the Asset manager;
- it identifies any negative target market, and takes all reasonable steps to ensure that no Asset is sold or distributed to the Client or Interested Party in the negative target market, and
- it notifies the Asset manager as soon as reasonably practicable if the Adviser becomes aware that an Asset has been marketed and/or sold to a Client or Interested Party outside of the identified target market; and
- it will provide information on request to the Asset manager on sales made to Clients or Interested Parties.

We shall be entitled, at our absolute discretion, to refuse an Introduction, or any Trade Instruction to acquire an Investment on behalf of the Client, without any obligation to give any reason to the Financial Adviser or Financial Adviser Firm for such refusal.

The Financial Adviser agrees to only provide an Instruction to link Online Accounts for charging purposes in line with EISL's guidelines, which are detailed in the Scottish Widows Terms and conditions. EISL reserves the right to ask for evidence of the relationship. If a link is requested that is not permitted, the link will not be authorised. If a link is authorised that is subsequently found to be not permitted EISL reserves the right to remove it immediately

EISL undertakes to respect the relationship between the Financial Adviser and the Client at all times unless that relationship in any way prejudices the standard of service that EISL provides to the Client in relation to any Product or Investments acquired by the Client.

EISL reserves the right to contact Clients directly, or to respond to a direct enquiry from a Client as required from time to time in respect of the administration of their Products, Product Services, or Investments. EISL undertakes that it will not actively contact the Client through a sales or marketing campaign, without the Financial Adviser's prior consent.

The Financial Adviser Firm agrees to ensure that where we require the Financial Adviser to make a statement or representation to the Client in relation to the Services on our behalf, any such statement or representation is promptly made to the Client in written form (including digital or electronic form) in a format which is complete, accurate and not misleading.

The Financial Adviser Firm agrees to accept responsibility and liability for the completeness and accuracy of any communication sent to us electronically via the Scottish Widows Platform by its Authorised User. The Financial Adviser Firm acknowledges that we will not be liable for any consequence or any inaccurate or incomplete communication including Trade Instructions received by us.

In the event of any communication being corrupted, the Financial Adviser Firm acknowledges that it shall be the responsibility of the Financial Adviser and Authorised User to re-transmit the communication as soon as possible to us along with confirmation that it is a corrected communication.

The Financial Adviser Firm acknowledges and agrees EISL shall not be liable for any errors or inaccuracies, that are beyond our reasonable control, when receiving or processing a Trade Instruction.

The Financial Adviser Firm agrees that if the Financial Adviser or Authorised User does not receive an acknowledgment of an Instruction or Trade Instruction from us, the Financial Adviser or Authorised User must contact EISL immediately. The Financial Adviser Firm further agrees that if the Financial Adviser or Authorised User does receive an acknowledgment, but the acknowledgment does not accurately reflect the Instruction or Trade Instruction given by the Financial Adviser or Authorised User, then the Financial Adviser or Authorised User should notify EISL promptly and at the latest within three working days. If EISL is not notified of the inaccuracy within three working days, we will deem the Instruction or Trade Instruction as having been accepted.

## Defined Benefit Transfers

The Financial Adviser Firm acknowledges that EISL shall not accept any defined benefit transfer with a value over £30,000 unless we are satisfied that the following conditions have been met:

- the Financial Adviser is appropriately qualified;
- the Financial Adviser holds the required permissions from the Regulator;
- the Financial Adviser has adequate professional indemnity insurance cover in place; and
- the Financial Adviser has assessed the Client's suitability and has concluded that the proposed defined benefit transfer is suitable for the Client.

Upon EISL's request, the Financial Adviser shall provide evidence to us in order for us to satisfy itself that these conditions have been met. This shall include a Client suitability report.

EISL reserves the right to carry out any additional vetting to satisfy itself that the conditions have been met.

EISL has the right to refuse any defined benefit transfer which is not in accordance with the Embark Group's Defined Benefit Transfer Policy.

## 7

## DISCRETIONARY INVESTMENT MANAGERS

Unless otherwise agreed with us, where the Financial Adviser instructs the purchase of a Model Portfolio on behalf of a Client managed by a Discretionary Investment Manager, the Financial Adviser Firm must first obtain the consent of the Discretionary Investment Manager. A Discretionary Investment Manager will have the right to accept or reject any request for access to their Model Portfolios.

Where a Financial Adviser recommends that a Client should invest in a Model Portfolio managed by a Discretionary Investment Manager the Financial Adviser Firm acknowledges it is the Financial Adviser's responsibility to ensure that the Model Portfolio is suitable for the Client and confirms that the Financial Adviser has assessed the Model Portfolio to be suitable to the Client.

The Financial Adviser Firm agrees to ensure that all relevant information provided by the Discretionary Investment Manager about the Model Portfolio including any key information documents has been passed on to the Client.

If the agreement between a Financial Adviser and a Discretionary Investment Manager ends, the Financial Adviser Firm acknowledges the Client can no longer remain invested in the Model Portfolio managed by the Discretionary Investment Manager, however the Client will remain invested in the Investments that make up the Model Portfolio at the time the Model Portfolio is removed.

The Financial Adviser Firm acknowledges and agrees that where the Financial Adviser no longer acts on behalf of the Client for any reason, and the Client is invested in a Model Portfolio managed by a Discretionary Investment Manager, the Client will remain invested in the Investments that make up the Model Portfolio but will no longer participate in the ongoing re-balancing of these Investments by the Discretionary Investment Manager.

The Clients will remain invested in the Investments in the Model Portfolio until:

- a new Financial Adviser Firm is appointed by the Client and the Client accepts a recommendation from the Financial Adviser to select other Investments or allocate money to a discretionary manager; or
- the Client sells down their Investments into Cash.

If the value of the Model Portfolio has dropped by 10% over a relevant three month period, we will send the Client an electronic notification.

## 8

## ADVISER CHARGES

We agree to facilitate the payment of Adviser Charges to the Financial Adviser Firm and its Associates on receipt of the appropriate Instruction provided to us in accordance with the Terms agreed between the Financial Adviser Firm and the Client. In reliance on the representations given to us by the Financial Adviser Firm, we treat such an Instruction for the payment of Adviser Charges as having been fully authorised by the Client without any further enquiry as to the accuracy of the Instruction or the consent of the Client or the authority of the Financial Adviser providing us with the Instruction unless we have reason to believe otherwise.

We will not be liable for any losses, costs, actions, proceedings, claims or demands which may be incurred by any Client or the Financial Adviser Firm, its Associates or Financial Adviser arising directly or indirectly from our having acted in good faith pursuant to the Instructions received from the Financial Adviser Firm or Authorised User in relation to Adviser Charges, except to the extent directly caused by our negligence.

For the avoidance of doubt, we will not accept instructions from the Financial Adviser in relation to payments for and on behalf of a Client and no payments deducted from a Client's Online Accounts will be made to the Financial Adviser Firm unless and until our anti money laundering processes in respect of that Client have been completed.

Adviser Charges will be paid to the Financial Adviser Firm's bank account at a frequency agreed between the Parties. Until such time as this payment is made, it will remain held within an EISL client money account and subject to the FCA's Client Money Rules.

At EISL's discretion, Adviser Charges can be paid either weekly or monthly. For weekly frequencies the Adviser must select a payment day on any day between and including Monday and Friday. For monthly frequencies the Adviser must select a payment date on any day between and including the 1st and 28th. Payment will be made by electronic transfer and will reach the Adviser's bank account within 5 Business Days of the selected payment day or payment date as applicable. Where the payment day or payment date falls on a day other than a Business Day, we will make the payment on the next Business Day.

Adviser Charges paid to the Financial Adviser will be detailed in a statement available on the platform or available electronically.

The Financial Adviser can select initial adviser charges, regular initial adviser charges, ongoing adviser charges or one-off adviser charges each of which is described below. The Financial Adviser can set default and maximum remuneration parameters on the Scottish Widows Platform if required.

Initial adviser charge as a single amount can be facilitated from an Account. Initial adviser charge can be specified as either an amount or a percentage and will be deducted from the Online Account, to which the Adviser Charge applies. Initial adviser charge is deducted on the day the receipt and is matched to a Payment Expectation in an Account. Initial adviser charges cannot be facilitated from Re-registrations.

Regular initial adviser charge can be facilitated when a regular payment is added to an Online Account. Note that regular initial adviser charge can only be facilitated when setting up a regular payment and cannot be set-up at any other time. Deductions from a Client's Account can be either monthly, quarterly, half yearly or yearly. The first deduction will not start until the first regular payment after it has been set-up has been received. The maximum number of deductions permitted by EISL is 48 if deducted monthly, 16 if deducted quarterly, 8 if deducted half yearly and 4 if deducted yearly.

Where an ongoing service is being provided to a Client, ongoing adviser charge can be facilitated. Ongoing adviser charge can vary by Online Account and can be requested as an amount or as a percentage of the value of Assets held within the Online Account to which the Adviser Charges applies. Ongoing adviser charges accrue daily and deductions from a Client's Account can be either monthly, quarterly, half yearly or yearly. The frequency must be the same for all a Client's Online Accounts.

If a Client holds a Stocks and Shares ISA and an active General Investment Account, the Client can choose to have initial adviser charge, regular initial adviser charge, ongoing adviser charge and any Discretionary Investment Manager charges related to all ISAs held in the Client's Online Account deducted from Available Cash in a General Investment Account. Where this option is chosen the ongoing charge for the Stocks and Shares ISA will also be deducted from the Investment Account.

EISL will deduct regular initial adviser charges and ongoing adviser charges from the Client's Account on the same day and frequency each time.

One-off adviser charges can be requested from an Online Account as an amount. One-off adviser charge can only be set-up if there is Available Cash.

It is the Financial Adviser's responsibility to ensure there is sufficient cash in the relevant Online Account to make a deduction in respect of Adviser Charges. If there is insufficient cash to make a deduction for Adviser Charges in full on the agreed deduction date, the deduction will not be made and a debt will be held against the Online Account. The debt will invoke the Disinvestment Strategy and the Adviser Charges will be deducted once there is Available Cash. If the Disinvestment Strategy fails the debt will remain on the Online Account and will be offset by future contributions or asset disposals. Where Adviser Charges are being made from a General Investment Account in respect of an ISA the deduction will be made once there is Available Cash in the relevant General Investment Account.

Where Adviser Charges are requested based on a payment into the Retirement Account that qualifies for Pensions Relief At Source (PRAS), Adviser Charges requested as a percentage will be based on the amount including PRAS. Any Adviser Charges requested as a percentage relating to a payment that does not qualify for PRAS will be paid on the actual amount received.

In the event the Client's Financial Adviser Firm changes, the Financial Adviser Firm will be paid up until the day before the day the Client confirms the Financial Adviser Firm no longer acts for the Client.

We will adhere to both the Financial Adviser Firm or Authorised Users Instructions and the Client's Instructions regarding the payment of, cessation of, reduction in or increase in any Adviser Charges.

Ongoing Adviser Charges will not be paid to the Financial Adviser Firm in respect of any period after the Client's:

- a) appointment of a new Financial Adviser Firm; or
- b) the termination of Client's relationship with the Financial Adviser Firm.

Any underpayment in the amount of Adviser Charges facilitated via us to the Financial Adviser Firm may be rectified only if the Financial Adviser Firm give us written notice of the alleged error within 20 Business Days of the Financial Adviser Firm receiving such payments.

Upon receiving such notice, we shall use all reasonable endeavours to rectify any error that we agree has been made as soon as possible.

The Financial Adviser Firm agrees that any overpayment in the amount of Adviser Charges facilitated by us to the Financial Adviser Firm shall be reimbursed to us by the Financial Adviser Firm within 20 Business Days after identification by the Financial Adviser Firm or on the sending of notification of the overpayment by us.

Should repayment not occur within this period, we reserve the right to withhold and make deductions from any other payment or payments due to the Financial Adviser Firm until this debt created by the overpayment is fully repaid.

Please note that any money which remains outstanding under this clause beyond the expiration of the stated prepayment period will, at our discretion, attract interest at a rate concurrent with the Bank of England base rate from time to time plus 3%. Debt not repaid by the Adviser will be reported to the Regulator in accordance with the Regulator rules using the Elixir2000 database or as amended by the Regulator from time to time. EISL reserves the right to pass relevant information about this debt to other financial institutions and selected third parties.

The Financial Adviser Firm and relevant Financial Adviser acknowledges and agrees it is a matter between the Financial Adviser Firm and the Client as to what payments the Financial Adviser Firm remains entitled to should the Client change to a new Financial Adviser Firm at any time.

We reserve the right to prevent the facilitation of Adviser Charges that we consider to be disproportionate to the services provided to the Client by the Financial Adviser.

The Financial Adviser Firm acknowledges and agrees that Adviser Charges cannot be deducted from an Scottish Widows Third Party Investment Account opened in the name of any third party provider. As a consequence, the Financial Adviser Firm will not instruct us to facilitate the payment of Adviser Charges from this Account type.

## Power to Cease Making Payments

We may at our absolute discretion refuse to pay or cease paying Adviser Charges set out above to the Financial Adviser Firm or its Associates in respect of any transaction.

Circumstances in which we exercise such discretion may include but are not limited to:

- where the Financial Adviser Firm or relevant Financial Adviser ceases to be authorised by the FCA or such authorisation is suspended;
- in respect of a Client's Online Account, where the Financial Adviser Firm, its Associates or relevant Financial Adviser has ceased to act for the Client;
- the Financial Adviser Firm, its Associates goes into liquidation or receivership, is placed into administration, enters into a voluntary arrangement with creditors or becomes subject to an arrangement or winding up order;
- where there is an outstanding debt owed by the Financial Adviser Firm to us;
- either the Financial Adviser Firm or Authorised User commits any material breach of these Terms and such breach is not remedied by within 10 working days of being notified by us of such a breach; or
- where no valid bank details are held on platform.
- in response to a specific instruction from the Client;
- if in our reasonable opinion, the Financial Adviser is unable to provide ongoing advice or servicing in connection with the Client's Online Account;
- the Financial Adviser threatening to cease or ceasing to carry on business;
- on the death of the last remaining Client on an Online Account;
- if an Online Account has a negative balance, if an Online Account no longer holds any Assets, or if the Online Account balance is insufficient to cover the deduction; or
- if an Online Account is closed, including where the Online Account is closed by EISL due to an event beyond EISL's reasonable control.
- where the facilitation or deduction of the Adviser Charge breaches Regulatory Requirements; or
- where EISL is required to do so by Regulatory Requirements, or the Regulator, or by any governmental or regulatory authority.

## Continuing Authority to Act

Without prejudice to the other provisions of these Terms:

We will amend our records to reflect a new appointment of a Financial Adviser Firm and Financial Adviser for the Client who already has an Online Account with us following receipt of any Online Client Declaration.

If the Client has more than one Online Account, we shall be entitled to assume that their request to change Financial Adviser Firm relates to all their Online Accounts unless they advise otherwise.

# 9

## ACCESS TO RECORDS AND OTHER INFORMATION

In addition to the information generally available on the Scottish Widows Platform Website, Client specific information is available on the Scottish Widows Platform.

Such information includes written confirmations of all Investment purchases and sales, valuations, and cash deposits (other than those done automatically on a regular basis) all of which will be available in the Client's document library.

# 10

## CORPORATE ACTIONS

As we are an execution only service, the Financial Adviser Firm acknowledges it is the Financial Adviser's responsibility to monitor any corporate actions or notifications issued in relation to the Investments the Financial Adviser's Client have bought or transferred into their Online Accounts. Consequently, as is provided in our Client Terms and Conditions, unless the corporate action is a Voluntary Corporate Action, we will not notify the Financial Adviser of such events in advance. In the event that accounts, reports or other documents are required to make a selection against a voluntary corporate action, the Financial Adviser will source this information.

Where an Instruction or Trade Instruction relates to participation in a Voluntary Corporate Action that requires funding, the Financial Adviser Firm acknowledges that the Financial Adviser will ensure that there is Available Cash in the relevant Online Account by the date specified by us. If a Voluntary Corporate Action occurs in a Model Portfolio, it will be the responsibility of the Discretionary Investment Manager to ensure sufficient Available Cash is present should it be required. If there is insufficient Available Cash in the relevant Online Accounts on the date specified, the instruction to buy will still be placed and the Disinvestment Strategy will be invoked.

### Proxy Voting

We will not forward you or your Client any copies of annual reports and accounts, scheme particulars or meeting and voting information related to any of the Exchange Traded Assets (shares or bonds in a company, government bonds, investment trusts and exchange traded funds which are bought and sold on a UK secondary market) in your Client's accounts. In addition, we will not exercise any voting rights or permit any voting rights to be exercised, in respect of Exchange Traded Assets we hold for your Clients.

# 11

## RESEARCH AND INFORMATION

We may from time to time make available to Financial Adviser Firms, and Financial Advisers information, research or software we have produced to assist with using the Scottish Widows Platform.

Neither we nor any Third Party involved in the development, implementation or provision of any software make warranties or representations to the Financial Adviser Firm or its Authorised Users as to the accuracy or suitability of such software for the Financial Adviser Firm or Authorised User needs.

The provision of such information, research or software does not constitute advice by us or by any such Third Party to the Financial Adviser Firm or its Authorised Users or to Clients and each Financial Adviser shall ensure that this is understood by their Clients to be the case.

In accessing or utilising any such software the Financial Adviser Firm warrants and represents to us and to any such Third Party, such warranty and representation to be deemed to be repeated on each occasion on which the Authorised User accesses or utilises the software, that the Authorised User has all the necessary consents and authorisations in place to allow all information which is submitted, or otherwise entered into the software package to be seen, stored and held by ourselves and any such Third Party.

# 12

## INTELLECTUAL PROPERTY

The Services are protected by intellectual property rights including copyright, design right, trade mark and database rights protection. The use of or access to the Service does not in any way confer ownership of those intellectual property rights on the Financial Adviser Firm, its Authorised Users, or Clients.

No Party will use any of the other Party's intellectual property without the express written consent of the relevant Party.

We may permit the Financial Adviser Firm to link its own websites to websites owned or maintained by EISL on the following basis:

- EISL may withdraw or amend the permission at any time, in which case the Financial Adviser Firm must remove or suitably amend its links to the Scottish Widows Platform Website(s).
- the Financial Adviser Firm must link only to pages that EISL may permit from time to time.
- the Financial Adviser Firm must not frame, post, modify or alter the appearance of the Scottish Widows Platform Website without our permission, with the exception of the Permitted Customisation.
- the Financial Adviser Firm must not state or imply that EISL endorses, sponsors or otherwise approves of the Financial Adviser Firm, its services or its website.
- the Financial Adviser Firm undertakes to keep its website up to date and accurate in all material respects and must not include any material on its website that is illegal, obscene, defamatory or otherwise inappropriate.

The Financial Adviser Firm is allowed to request Permitted Customisation of the Scottish Widows Platform to display the Financial Adviser's logo and colour theme.

# 13

## CONFIDENTIALITY

The Parties agree that they shall at all times keep confidential, and shall not (other than strictly for the purposes of these Terms) disclose to any third party any Confidential Information without the written consent of the other Party, 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.

To the extent necessary to implement the provisions of the Adviser Terms of Business (but no further or otherwise), the Parties may disclose the Confidential Information to any relevant Regulator.

# 14

## DATA PROTECTION POLICY

The Parties acknowledge that Data Protection Legislation – applies to all Scottish Widows Platform Users and therefore the Parties must ensure they have the authority to act on behalf of Clients whose data they will access through the platform.

The Parties acknowledge that EISL holds a current and appropriate authority under Data Protection Legislation to maintain, store, and process personal data in accordance with its Privacy Notice.

As such we will retain and process information obtained by or given to us by the Financial Adviser Firm, its Authorised Users including Financial Advisers in respect of Clients, and their dealings with us. We will only use this information to set up and administer Client Accounts and for legitimate business reasons (including but not limited to, the provision of information to a Group Company, Discretionary Investment Managers, contracted third parties, in the event that they reasonably request such information from us. We may also be required to share information with other companies, or organisations, governmental bodies, or regulatory bodies (including those outside the EEA) if required to do so by Data Protection Legislation or Applicable Law so they can process it. The processing of any information by us pursuant to this Section 14 shall be conducted in compliance with Data Protection Legislation and our Privacy Notice a copy of which can be obtained from the Scottish Widows Platform Website.

The Parties agree further that information relating to the Financial Adviser Firm or any Authorised User will be held by us on our systems and may be passed to third parties for the purposes of market research and analysis.

For more details about how we use information and rights to access and on how to request copies of it, please contact the Data Protection Officer at:

**Scottish Widows Platform**

PO Box 24065  
1 Tanfield  
Edinburgh  
EH3 1EY

By email: [service@scottishwidowsplatform.co.uk](mailto:service@scottishwidowsplatform.co.uk)

By telephone: **0330 024 2345**

Alternatively, please read our privacy policy which is published on our Scottish Widows Platform Website.

The Financial Adviser Firm warrants that the Client has consented to the use of his or her personal data for the purpose of enabling us to contact the Client with regards to the Services and that this consent shall allow the use of his or her personal data in accordance with this Section 14. The Financial Adviser will ensure that fair processing notices have been given to the client. EISL will not accept liability for any claims or losses arising from inaccurate data provided by the Client or the Financial Adviser on behalf of the Client.

If, due to an error on our part or on the part of the Authorised User, data becomes accessible to a third party Client of Financial Adviser Firm, that is not entitled to it, the Authorised User must notify EISL immediately. We operate a telephone recording system and calls may be recorded. To ensure the accuracy of the information received the call may be monitored or the recording may be used for training purposes. The Parties hereby consent to the recording of calls.



# 15

## LIABILITY AND INDEMNITY

### Limitation of liability

We shall exercise due care and diligence in our dealings with the Financial Adviser Firm and its Authorised Users but, subject to our obligations under the FCA regulatory regimes, and as otherwise provided in these Terms, the Financial Adviser Firm agrees we will not be liable for any losses, costs, actions, proceedings, claims or demands which may be incurred by any Client or the Financial Adviser Firm or its Authorised Users arising directly or indirectly from our having acted in good faith pursuant to the Instructions and Trade Instructions received from an Authorised User, except to the extent directly caused by our negligence misrepresentation or wilful default.

Subject to these provisions, we will not be liable for:

- any indirect, special or consequential loss or damage (whatsoever or howsoever caused), or any loss of profits, business opportunity, business, goodwill or reputational damage; or
- any direct loss or damage (whatsoever or howsoever caused) except to the extent caused directly by our negligence, wilful default or fraud (save as expressly set out in the Terms of Use).

Without prejudice to the generality of the provisions of this Clause 15, we are not liable to the Financial Adviser Firm or its Authorised Users or its Clients for:

- any loss, damage or costs resulting from the platform being unavailable during the core operational hours for unplanned interruptions except or to the extent arising from our negligence, fraudulent or wilful acts or omissions; or
- any viruses, corrupt downloads, or any other computer issues and will not be liable for any resulting loss or damage suffered by the Financial Adviser Firm or its Authorised Users or Clients.

EISL will have no liability for any failure of the Scottish Widows Platform, whether such failure is caused by events within or out with the control of EISL or for any transaction made in reliance on information provided to the Financial Adviser Firm or Authorised Users through the Scottish Widows Platform.

### Indemnity

The Financial Adviser Firm agrees to indemnify us and the Embark Group Companies and to keep us and the Embark Group Companies fully and effectively indemnified on demand in respect of any losses, claims, liabilities, costs, damages or expenses (including legal costs and expenses) incurred or suffered by or brought against us or against any Embark Group Company (except to the extent

caused directly by our negligence, wilful default or fraud) as a result of either the Financial Adviser Firm or its employees, agents and contractors or Authorised Users negligence, wilful default, fraud, breach of any of the provisions of these Terms or any Instruction or Trade Instruction or failure to comply with Applicable Laws.

Whilst it is understood by the Parties that our normal terms of operation are such that liability arising under the indemnities are unlikely to eventuate, nonetheless the Financial Adviser Firm shall remain subject to the terms of this indemnity where monies instructed to be received from a Client by us are not so received by the fault of the Client or its bankers.

# 16

## GENERAL TERMS

### International tax compliance

The Financial Adviser Firm understands and agrees that where a Client has declared to us to being tax resident in any non-UK country, or where based on information have provided to us by the Financial Adviser Firm or Financial Adviser, or where based on publicly available information, we have assessed a Client to be tax resident in any non-UK country, that for each calendar year that Client holds a reportable Online Account with us (currently just the Scottish Widows GIA is a reportable account), certain personal and financial information relating to the Client's Scottish Widows GIA will be reported by us to HMRC the following year in accordance with the International Tax Compliance Regulations 2015, and may be transferred by HMRC to the government of another territory, in accordance with the relevant agreement in place between the UK and the authorities of that other territory.

### Bribery

The Financial Adviser Firm agrees and procures the agreement of its Authorised Users to comply at all times with all the legal obligations imposed in connection with Bribery and Corruption. In particular:

- a) to remain compliant, with such Bribery and Corruption obligations;
- b) to have in place adequate and effective procedures to ensure compliance with such Bribery and Corruption obligations, and to regularly audit and monitor such procedures to prevent a breach or failure to meet such obligations; and
- c) to 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 Services or these Terms.

### Notices

Any notice from us will be valid if sent to the Financial Adviser Firm at the address as shown in our records and will be considered to have been received by the Financial Adviser Firm as set out below. Notices sent by a Financial Adviser Firm to us will only be valid when received by us.

Notices and other formal written communications required by or described in these Terms must be served on us or sent to us at our registered office and addressed to The Directors.

Any notice or other communication delivered by hand shall be deemed to have been received at the time of delivery.

Sent by post shall be deemed to have been received on the second Business Day after the date of posting and transmitted by fax or email shall be deemed to have been received on the day of transmission, or the next following Business Day where this is not a Business Day and where the transmission is showing as complete.

### Complaints Handling

In the event that a complaint from a Client is received by a Financial Adviser Firm or Financial Adviser in connection with the Products, an Online Account, the Scottish Widows Platform or the Online Services, then the Financial Adviser Firm shall immediately notify us of its receipt of such complaint and shall confirm by notice to us In Writing full information on the complaint and all relevant documentary evidence as soon as possible (and in any case within 5 Business Days) following receipt by the Financial Adviser Firm or Financial Adviser of the complaint.

We will be responsible for handling the matter with effect from receipt of such written notification however the Financial Adviser Firm agrees to provide such reasonable support, assistance and documentation as we require in relation to such complaint until such time as the complaint has been resolved by us.

### Variation of these Terms

We reserve the right to change the Adviser Terms of Business including these Terms at any time whether to account for any legal or regulatory changes or for any commercial or other purpose. If a change is made in these circumstances the amended Adviser Terms of Business will be made available on the Scottish Widows Platform Website.

Should these changes affect the Financial Adviser Firm or its Financial Advisers materially, we will send a notification at least 30 days prior to such changes becoming effective unless legislative or regulatory rules require changes to be made in a shorter timeframe.

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 these Terms 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.

### Assignment

EISL may assign, novate, delegate any of their powers, sub-contract or otherwise transfer in whole or part of its rights or obligations under these Terms to another firm ('the Assignee'). We will not ask for your consent to do this, except where required by regulation, but will only do so if we receive undertakings that your rights under these Terms will not be prejudiced in any way.

EISL may delegate any of their powers, duties, rights and obligations under these Terms to a third party.

The Financial Adviser Firm may not assign, novate or sub-contract any of its rights or obligations under these Terms to any other party without the prior written consent of EISL. If EISL provides its consent to the Financial Adviser Firm sub-contracting, the Financial Adviser Firm will remain responsible for the acts and/or omissions of the sub-contracting party as if they were the acts and/or omissions of the Financial Adviser Firm.

## Remedies and Waivers

If the Financial Adviser Firm or its Authorised Users (including its Financial Advisers) or us breach any of these Terms, the appropriate remedy can be enforced at any time in the future.

No breach by any Party will be waived or discharged except with the express written consent of the other.

If any Party fails to use, or delays in using, any right under these Terms, it will not affect any other rights under these Terms or the use of the same rights in the future

## Unenforceability

If any section of these Terms, is held by a court or other competent authority to be invalid, illegal, or unenforceable, that section, (or any relevant part of it) shall be treated as deleted to the extent required and the validity and enforceability of the other sections of the Terms (or remaining part of a section) shall not be affected.

If any section is found to be invalid, illegal or unenforceable, the Parties will consult to agree an alternative section which achieves a similar result.

If any term or provision of these Adviser Terms of Business 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 Adviser Terms of Business and the enforceability of the remainder of these Adviser Terms of Business shall not be affected thereby.

## Third Party Rights

These Terms apply exclusively to the Financial Adviser Firm and us and the Authorised User and us as applicable, and no Third Party may rely on, or enforce, any of the terms contained herein. A person who is not a party to these Terms shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms contained herein.

## Termination

EISL may terminate these Terms at any time, without reason, on written notice to the Financial Adviser Firm.

The Terms will terminate immediately on the occurrence of any of the following events:

- if a Party commits a material breach of any of these Terms (the Breaching Party) which is not capable of remedy, or if such breach is capable of remedy, the Breaching Party fails to remedy the breach within thirty Business Days of receipt of a notice stating the breach and requiring the breach to be remedied;
- the revocation or suspension of any Party's authorisation by the Regulator or any successor of the Regulator, or any permit or approval by any governmental or relevant body;
- the bankruptcy, liquidation, administration, winding-up or dissolution of any Party (other than voluntarily for the purpose of amalgamation or reconstruction), or a Party being unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986); or if a Party becomes insolvent; or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed in respect of all or any part of the

business or assets of a Party; or a Party enters into or proposes any composition or arrangement with its creditors generally; or a Party ceases to carry on business;

- the charging or conviction of any owner, director, employee, co-partner, agent or principal of the Financial Adviser Firm of any criminal offence (other than a minor traffic offence) which in the reasonable opinion of EISL has a material adverse effect on the Terms or the reputation of any Embark Group company;
- the Financial Adviser Firm or Authorised User engaging in any act of wilful misconduct, act or omission which EISL considers to be prejudicial to the interests of any Embark Group company or any Embark Group company into disrepute or is otherwise detrimental to the reputation of, and goodwill any Embark Group company;
- the Financial Adviser Firm or Authorised User engaging in any act of wilful misconduct, act or omission which EISL considers to be prejudicial to the interests of a Client;
- if the Financial Adviser Firm or Authorised User makes any statements, representations, promises, or commitments of any kind beyond those it is able to give in accordance with its permissions with the Regulator;
- if the Financial Adviser Firm or Authorised User expressly or impliedly holds itself out or permits itself to be held out as having authority beyond the authority and permissions it has with the Regulator; or
- if the Financial Adviser Firm or Authorised User carries out an act or omission which is such as to materially damage any Embark Group company's reputation or image.

## Effects of Termination

All rights and obligations of the Parties under these Terms will terminate automatically except for:

- such rights of action as will have accrued prior to termination (including without limitation any and all actions for any breach of any of the Terms); and
- compliance with regulatory requirements.

Any outstanding Trade Instructions will be properly completed and fulfilled by the Financial Adviser Firm if expressly permitted by EISL, or by EISL if access to the Scottish Widows Platform has been removed.

If the relationship between the Financial Adviser Firm and EISL is terminated for any of the reasons above, or if there is a breach of the Terms, EISL will using its sole discretion, determine:

- whether an Adviser Charges including ongoing adviser remuneration that has accrued to the date that EISL processes the termination will be deducted from the Client's Online Account. Where we agree to make the deduction, we will make the deduction as soon as practicable and not wait until the next agreed deduction date; and
- whether any initial adviser remuneration or one-off adviser remuneration will be deducted from the Client's Online Account.

Any EISL material downloaded from the Scottish Widows Platform, including, but not limited to books, documents, Online Account literature, computer software belonging to the Embark Group and in the possession, custody or control of the Financial Adviser Firm

will be returned to EISL immediately upon request, or destroyed by the Financial Adviser Firm and if destroyed, confirmed in writing to EISL that such material has been destroyed and the Financial Adviser Firm's permission to hold and use the same will end.

The Financial Adviser Firm and any Authorised User will immediately stop using the Scottish Widows Platform and not access the Clients' Online Accounts.

EISL will revoke the Adviser or an Authorised User's access rights to the Scottish Widows Platform and the Financial Adviser Firm or Authorised User's access rights to the Scottish Widows Platform will immediately end.



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