

ADVISERS TERMS OF BUSINESS

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DEFINITIONS

Throughout these Terms **Embark, us, our** or **we** refers to Embark Investment Services Limited, trading as Embark Platform with Embark Trustees Limited as trustee of the Embark Personal Pension and Embark Investment Services Nominees Limited which holds legal title to investments in the Embark Personal Pension, Embark ISA, Embark JISA, Embark GIA, and the Embark 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 Embark 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 Embark 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 Embark.

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 Embark 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 (in respect of the TPIA), 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 affirms the Client's acceptance of the Client Terms and Conditions and which further describes the Terms upon which the Client may access their Online Account and use the Embark 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 Embark 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 (including Client Data, trade secrets and information of commercial value) known to the Parties concerning us or the Financial Adviser Firm or an Authorised User and/or the Services and communicated by one Product to the other.

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 Embark 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 Adviser Charges.

Embark Group Companies means all group companies owned by our parent company Embark Group Limited registration number 03568067.

Embark Platform means the online investment platform service owned and operated by Embark Investment Services Limited and which can be accessed on the Embark Platform Website embarkplatform.co.uk.

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

Embark Platform Website means our website at embarkplatform.co.uk and through which access to the Embark Platform can be obtained.

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 a Financial Adviser in accordance with these Terms relating to the services provided by the Platform to Platform Users.

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

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

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 Embark Platform.

Online Account means the Client's online account in a Product that a Financial Adviser Firm or 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 Platform on the terms described in the 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.

PRA means the Prudential Regulation Authority.

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

Services means the services provided by the Financial Adviser Firm, its Associates, the DIM or ourselves as the case may be.

Super User means the senior employee of the Financial Adviser Firm named on the Adviser Firm Application Form who has the responsibility to register Financial Advisers and Authorised Users on the Embark 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.

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 Embark has entered into an enforceable agreement for the provision of on-line authentication and/or other services.

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.

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.

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CONTRACTUAL TERMS

Please read these Terms carefully. They set out the contractual terms upon which we make our 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 (together, the Adviser Terms of Business) 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 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 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 Embark Platform and set up and manage a Client's Online Account.

The Embark Platform, Online Services and any tools available, are provided to the Financial Adviser Firm, Financial Advisers and Authorised Users by Embark, 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 Embark 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 Embark 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 reasonable request from Embark, 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 subject 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 and has the appropriate FCA authorisations and permissions to the extent necessary to allow that person to conduct his or her activities on the Embark Platform for a Client, including where applicable to advise on the Products, and to provide us with Instructions and/or 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 Adviser 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 Firm agrees that Embark 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.

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FINANCIAL ADVISERS AND AUTHORISED USERS

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 written consent of the Client to the payment by the Client of all Adviser Charges to the Financial Adviser Firm and Embark Platform charges to us on the Terms in the Client Terms and Conditions from the Clients Online Accounts. In addition, and if applicable, the consent to allow us to pay the Discretionary Investment Managers or third parties in respect of relevant costs charges or expenses. The Financial Adviser Firm agrees to immediately notify us if the Client changes his or her mind in respect of any of the charges described in this paragraph.

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.

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.

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.

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USE OF THE EMBARK PLATFORM

Once we have accepted the Adviser Firm Application Form, we will provide the Financial Adviser Firm with official confirmation documentation. This will include a Financial Adviser Firm user name and temporary password together with, user names and temporary passwords to enable the Super User to register Financial Advisers and Authorised Users on the Embark Platform.

Access to the Embark Platform and its Services will ordinarily be available 24 hours a day, seven days a week, although Embark shall from time to time need to withdraw the platform from operation for the purposes of maintenance and upgrading. Embark shall endeavour to give both Financial Adviser Firms and Authorised Users prior 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 Embark 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 Embark Platform, including the ability to provide us with Instructions and Trade Instructions.

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 user name 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 Embark Platform is gained by any other individual or Third Party;
- computer terminals are not left unattended whilst logged on to the Embark Platform;
- any information printed off from the Embark Platform is destroyed or securely stored;
- access details are changed immediately if the Authorised User believes this information has become known to another person.

Embark 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 Embark 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 user name 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.

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INTRODUCING CLIENTS TO THE PLATFORM

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 Embark Platform and for maintaining the quality and integrity of the aforesaid for use in accessing the Embark Platform.

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

Prior to introducing a Client to us, the Financial Adviser Firm agrees it is responsible for implementing the personal identification procedures in respect of the Client required in connection with the provision of the Services to the extent required for the Financial Adviser Firm to comply with Joint Money Laundering Steering Group's Guidance (JMLSG).

We agree that upon being introduced to a Client by the Financial Adviser, we will comply with our Anti-Money Laundering (AML) obligations including performing an appropriate electronic identity check on each Client and appropriate Client bank account checks in compliance with the JMLSG Guidance.

The Financial Adviser Firm agrees it shall ensure all information (including original or suitably certified copy documents) we require is provided to us to enable us to comply with our own legal and regulatory obligations including but not limited to prevention of money laundering, KYC requirements, and anti-terrorist financing laws.

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 Embark documentation – namely the:

- Client Terms and Conditions;
- The relevant Account Key Features Documents;
- Personal Pension Illustration document (if applicable); and
- The Embark Guide to Investment Risks.

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

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SUBMITTING INSTRUCTIONS AND TRADE INSTRUCTIONS

The 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 embarkplatform.co.uk.

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

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 Embark 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 Embark.

If a Client becomes ordinarily resident outside of the United Kingdom the Financial Adviser agrees to advise Embark 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 Embark.

The Financial Adviser acknowledges and agrees that it will comply with any Target Market Requests it receives either directly or indirectly through us from the manufacturers of the Investment held in the Client's Online Account.

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.

Embark 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 Embark provides to the Client in relation to any Product or Investments acquired by the Client.

Embark 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. Embark 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 Embark 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 Embark 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 Embark 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 Embark promptly and at the latest within three working days. If Embark is not notified of the inaccuracy within three working days, we will deem the Instruction or Trade Instruction as having been accepted.

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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.

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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 genuineness 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.

The Adviser Charges payable on behalf of the Client may, as the Client specifies, also consist of an initial charge and ad hoc charges.

Ongoing Adviser Charges are accrued daily and can be facilitated on a monthly, quarterly, annually or on request basis (the Relevant Date) and payable in arrears on the 25th of the month, providing Available Cash is available, with the first payment being made on the 25th of the month after the first complete month has past following the day of the Client's account is opened. Should the 25th of the month fall on a non-Business Day the charge will be calculated on the next following Business Day.

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.

We shall facilitate the payment of Adviser Charges to the Financial Adviser Firm either as:

- a) a specified sterling amount, or
- b) a percentage of the value of the Client's Investments in their Online Accounts, depending on what the Financial Adviser has agreed with the Client.

Where there is insufficient Available Cash to fund an Adviser Charge, we may disinvest from Mutual Funds held in the Client's Online Account or from within the Client Model Portfolio in line with the Disinvestment Strategy selected by the Financial Adviser. If no Mutual Funds are available for disinvestment, the payment of the Adviser Charge will fail.

However, when in receipt of subsequent contributions from the Client or prior to paying the proceeds of the sale of any further Assets within the Client's Online Account, we will deduct the amount equal to the Adviser Charges owing by the Client from the subsequent contribution or the proceeds of sale, and pay this amount to 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 twenty (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 twenty (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 attract interest at a rate concurrent with the Bank of England base rate from time to time plus 3%.

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 Embark Third Party Investment Account opened in the name of any pension 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 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.

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

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ACCESS TO RECORDS AND OTHER INFORMATION

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

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CORPORATE ACTIONS

As we are an execution only wrap 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 Advisers 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.

PROXY VOTING

We will not forward you or your Client or any copies of annual reports and accounts, scheme particulars or meeting and voting information related to any of the Assets 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 Assets we hold for your Clients.

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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 Embark 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.

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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 Embark on the following basis:

- Embark 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 Embark Platform Website(s).
- the Financial Adviser Firm must link only to pages that Embark may permit from time to time.
- the Financial Adviser Firm must not frame, post, modify or alter the appearance of the Embark Platform Website without our permission.
- the Financial Adviser Firm must not state or imply that Embark 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.

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CONFIDENTIALITY

The Parties agree that they shall at all times keep confidential, and shall not (other than strictly for the purposes of this Agreement) 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.

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DATA PROTECTION POLICY

The Parties acknowledge that Data Protection Legislation - applies to all 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 Embark 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 Embark 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:

Embark Platform
PO Box 24065
1 Tanfield
Edinburgh
EH3 1EY

By email: service@embarkplatform.co.uk
By telephone: 0330 0242345

Alternatively, please read our privacy policy which is published on our Embark 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 regard to the Services and that this consent shall allow the use of his or her personal data in accordance with this Section 14. Embark will not accept liability for any claims or losses arising from inaccurate data provided by 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 Embark 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.

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 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.

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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.

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

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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 Embark GIA is a reportable account), certain personal and financial information relating to the Client's Embark 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.

GENERAL TERMS

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 Embark Platform or the 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 five (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 Embark 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.

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.