



# Coutts Invest Service

TERMS AND CONDITIONS

## 1. Introduction

- 1.1. These Coutts Invest Terms and Conditions (the 'Terms and Conditions'), together with our Online Terms and Conditions (the 'Online Terms and Conditions') and our 'Coutts Invest Fee Tariff', as amended from time to time, (together, the 'Agreement') set out the basis upon which we, Coutts & Co, agree to effect purchase and/or sale transactions placed through our Website for you and act as your custodian in relation to the Investments (the 'Service').
- 1.2. By placing a trade or otherwise using the Service, you confirm and accept the terms in this Agreement and acknowledge that it creates legal, valid and binding obligations on you that are enforceable by us. We may refuse to provide the Service to you where it is reasonable to do so.
- 1.3. These Terms and Conditions are set out as follows:
  - 1.3.1. Section 1 contains general terms applicable to all Accounts; and
  - 1.3.2. Section 2 contains terms applicable to Coutts Invest ISAs only.
- 1.4. Capitalised words and expressions used in these Terms and Conditions have the meanings set out in Schedule 1 or, if not otherwise defined, the meanings given to them in the FS Rules. In these Terms and Conditions, unless the context otherwise requires, wording importing the singular shall include the plural and vice versa. All references in these Terms and Conditions to clauses shall be to clauses in these Terms and Conditions only.
- 1.5. The Appendix contains the terms and conditions of Embark Services Limited, applicable to the Coutts Invest Pension only, and do not form part of this Agreement.
- 1.6. In the event of any conflict between Section 1 and any of Section 2, the Appendix or the Coutts Invest Fee Tariff, then Section 2, the Appendix or the Coutts Invest Fee Tariff, as appropriate, shall prevail.

## Section 1 – General Terms for all Accounts

### 2. Your use of the Service

- 2.1. To use the Service you must:
  - a. Reside in the UK and have a permanent UK residential address;
  - b. Be at least 18 years of age; and
  - c. Have a bank account with Coutts & Co that allows you to access our online banking services, which must be held in your sole or joint name, to facilitate the making of payments in relation to the Service (your 'Current Account'). Your Current Account will be subject to separate fees and charges (as detailed in the applicable account terms and conditions).
- 2.2. By using the Service, you agree to provide any information that we reasonably request in order to comply with our duties and to notify us promptly if there is any material change to any of that information. You understand that a failure to provide such information requested or the provision of incorrect information may mean that we are not able to correctly provide the Services to you under this Agreement.
- 2.3. We will treat you as a Retail Client for the purposes of the FS Rules. This affords you the highest degree of protection under the UK regulatory system.
- 2.4. You will need access to the internet to use the Service and you will be responsible for any telephone costs and/or

charges made by any internet service provider. We make no guarantees as to the speed, resolution or access to the Service via the internet.

### 3. Instructions from you

- 3.1. You authorise us to act on any instruction given, or apparently given, to us by you through or by use of the Service ('Client Instructions'). All Client Instructions are irrevocable and unconditional and can only be cancelled or amended if we have not acted on the instruction.
- 3.2. We will deal with and effect all accepted Client Instructions in good faith and with due diligence. However, in doing so, we shall not be liable in respect of any negligence, wilful default or fraud by you.
- 3.3. We reserve the right not to act on any particular Client Instruction, and/or to make further reasonable enquiries before acting on a Client Instruction, where we consider it to be reasonably necessary to do so, including but not limited to where:
  - 3.3.1. A Client Instruction cannot be verified to our satisfaction; or
  - 3.3.2. Acting on the Client Instruction would result in a breach of one of the limits set out or referred to in these Terms and Conditions.
- 3.4. Where possible, we will notify you of any refusal to act or delay in acting on a Client Instruction.
- 3.5. We may (but are not obliged to) telephone you on a number we hold in our records to confirm or clarify a Client Instruction prior to acting on it if it is reasonable to do so, for example for reasons of security. In order to maintain the robustness of this security measure, we will only call you on numbers we already hold in our records.

### 4. Dealing Service

- 4.1. Client Instructions will be placed on an execution only basis. Due to the nature of the Service and the Funds we are not required to obtain information from you in order to assess whether the Service or Funds are appropriate or suitable for you either initially or on an ongoing basis. Consequently you will not benefit from the FS Rules on assessing appropriateness or suitability.
- 4.2. Information on the Investments in which we will effect transactions on your behalf and the risks involved in dealing in such Investments are set out on our Website. We reserve the right to restrict or expand the range of Investments available via the Service from time to time.
- 4.3. We will notify you if you hold any Investments that we are no longer able to provide access to (for example due to the closure of a Fund) and ask whether you wish to reinvest in an alternative Investment or (whether the Investments are held in a Coutts Invest General Investment Account or Coutts Invest ISA) have the affected Investments sold and the proceeds paid to you. If you do not provide your instructions within the time specified in the notice we reserve the right to sell your Investments and pay the proceeds into your Linked Cash Account.

### Information relating to the Funds or required by the manager of the Funds

- 4.4. We may request that you read a Key Investor Information Document before we accept a Client Instruction to purchase certain Investments. We may also send you a copy of any document or notification which the manager of the Fund or depository of a Fund is required to provide under the FS Rules.

4.5. In certain circumstances, we may be required by the FS Rules or by the rules of a relevant regulator of the Funds, to respond to requests from the manager of any Fund for information relating to the beneficial owners of interests in the Fund for the purposes of its liquidity management. You accept that the manager of the Fund may be able to identify you as the beneficial owner of those units as a result and agree that we may make this information available as required from time to time.

#### 5. How your transactions will be executed

- 5.1. A copy of our Order Execution Policy is available on the Website. You will be given notice of any material changes to that policy. In respect of the Service, when you buy and sell Investments, we will act as your agent in dealing with the manager of the Fund (which may be us or another member of the Group), which will be the execution venue for the purposes of the FS Rules. By using the Service you confirm your consent to the Order Execution Policy.
- 5.2. Transactions are normally placed by the end of the Business Day on which we receive a Client Instruction (unless received after 2.00 pm, in which case the transaction will be placed the following Business Day) and in any event within a maximum of three Business Days from receipt of the Client Instruction. Transactions will settle as set out in the Funds information on the Website. The execution of Client Instructions received by us other than on a Business Day or outside our normal hours of business on a Business Day may be deferred until after 9.00 am on that or, as applicable, the next Business Day.
- 5.3. You may not be able to place a purchase Client Instruction if you do not have a sufficient available balance in your Linked Cash Account to settle your purchase at the time you place the trade. For the avoidance of doubt, any sale proceeds due to be received into your Linked Cash Account prior to settlement of your purchase transaction will be taken into account when calculating the available balance in that account.
- 5.4. A confirmation will be sent to your Secure Mailbox whenever a transaction is undertaken. A valuation and statement of transactions and fees will also be sent to your Secure Mailbox in February, May, August and November. We shall also, on your request, supply you with information about the status of your transaction.
- 5.5. We may combine any transaction or series of transactions for you with transactions for other clients so as to deal collectively for several clients; if we choose to deal collectively, there may be a delay in implementing your instructions. We believe that generally combining orders in this way will not work to your overall disadvantage, but on occasion amalgamation could be to your disadvantage.

#### Limits on investment

- 5.6. We reserve the right to set a maximum and/or minimum limit:
- On the net value of Investments plus cash in your Account on any given day (an 'Account Limit'); and/or
  - On the value and/or volume of the transactions you can place, including a limit on the unsettled balance in respect of all orders on your Account during a given period.
- We shall inform you in writing of any applicable limit and where any such limit has been breached. We reserve the right, if we have good reason, to review and amend any such limit at any time by giving you written notice.
- 5.7. The minimum Account Limit is £1.
- 5.8. You agree that:
- 5.8.1. we will only deal on your behalf to the extent your use of the Service would not result in a limit(s) being breached;

- 5.8.2. we may issue a breach notice in the event of you breaching a limit referred to in clause 5.6 and will request that you discuss the matter with us and remedy the breach;
- 5.8.3. if you do not remedy the breach within ten Business Days of your receipt of the breach notice or where we have good reason to do so sooner, we may suspend the Service and we may, at our discretion, sell any or all of your Investments and pay the proceeds into your Current Account (only for Investments held in a Coutts Invest General Investment Account or Coutts Invest ISA) or Linked Cash Account to rectify the breach; and/or
- 5.8.4. if any limit is breached and you do not remedy it within 90 Business Days of the date of the breach notice we may terminate the Agreement in accordance with clause 14.1.

#### Funding your Account

- 5.9. The minimum initial contribution is £500 (which, for Coutts Invest Pension, can be made up of any combination of a new contribution and a permitted transfer from an existing pension scheme). Thereafter, you can fund your Account by either monthly or one-off contributions (and, for Coutts Invest Pension, permitted transfers from existing pension schemes). The minimum one-off contribution is £50. The minimum monthly contribution, which requires to be paid from your Current Account, is £50. If that standing order fails for any reason we will notify you as soon as possible that the payment has failed.

**Note: The minimum contribution amounts are at Account and Fund level eg if you make a £500 initial contribution it can only be made into one Account which must be invested into one Fund. Additionally, under a Coutts Invest Pension you can only hold Investments in one Fund at any time.**

#### Settlement

- 5.10. We will closely monitor our ability to deliver on the settlement date. If any counterparty should fail to deliver any necessary documents or to complete or otherwise settle any transaction, we may take all reasonable steps on your behalf to rectify such failure or obtain compensation in lieu thereof, but neither we nor any Nominee will have any liability for such failure.
- 5.11. We will not assume liability for settlement of any transaction relating to any Investments unless and until, in the case of a purchase, immediately available cleared funds are available in your Linked Cash Account or, in the case of a sale, we or any Nominee are in possession of the particular Investments to which that sale relates (or, if applicable, the proceeds of such sale have been paid to your Linked Cash Account).
- 5.12. Neither we nor any Nominee shall be required to account for proceeds of sale or other disposal of any Investments unless and until we or any Nominee have received cleared funds in respect of that sale or disposal. If we or the Nominee account for the proceeds of sale or disposal prior to receipt of funds (whether or not you know that we or the Nominee have not received cleared funds) then you shall compensate us or the Nominee in full in accordance with clause 8.4 against all Losses.
- 5.13. In the event that due to our error a transaction is incorrectly executed for your Account we will correct the position on your Account as soon as possible and compensate you for any loss resulting from the error.

## 6. How we will hold your Investments and Cash

- 6.1. By entering into this Agreement, you agree that:
  - a. Investments that we hold on your behalf will, unless alternative arrangements are agreed, be registered in the name of one or more of our Nominees, or in the name of or to the order of a custodian appointed by us, which may or may not be a member of the Group (where they are not a member of the Group, 'Third Party Custodians'), and which may be based either in the UK or overseas or, in limited circumstances, in our own name.
  - b. Investments will be registered so as to be separately identifiable from our own investments or those of any company or custodian associated with us, and shall only be released on our instructions to settle transactions authorised under or in accordance with this Agreement or otherwise in accordance with your instructions.
  - c. Investments may be held under specific and/or general pooling arrangements (including by Third Party Custodians in an omnibus account), which may mean that your Investments may not be identifiable from those of other clients by separate certificates or other physical documents of title or equivalent electronic records. We, or any Nominee, will maintain records to enable the identification of the interest of each of our clients in the Investments held in a collective account. It is possible that any shortfall arising on the default of a Nominee or custodian may be shared pro-rata amongst all clients affected.
  - d. Where we delegate the custody of your Investments to a third party, if that third party is a member of our Group, subject to clause 8.1, we accept liability for the acts and omissions of that Group member in relation to the holding of your Investments as if they were our own. You agree that we shall not be liable for any loss arising as a result of the acts or omissions of any Third Party Custodian, except to the extent that (a) they arise as a result of our failure to exercise due skill, care and diligence in the selection and retention of the custodian; and (b) would have been reasonably foreseeable by you and us at the time we entered into this Agreement as being a consequence of that.
- 6.2. Cash that we hold on your behalf in respect of the Service will be held in your Linked Cash Account. Your Linked Cash Account will be operated by us, but maintained in your name. Cash held in your Linked Cash Account will not earn interest.
- 6.3. Money deposited with us in your Linked Cash Account will be held by us as banker and not as trustee. As a result, the money will not be held in accordance with the FS Client Money Rules (which are the rules of the FS Regulators that relate to the holding of money for clients in connection with certain investment business). This means that if we should fail (for example if we go into administration), then the distribution provisions within the FS Client Money Rules will not apply to the money we hold for you under this Agreement, and you will not be entitled to share in any distribution made under those rules. However, the applicable protection under the Financial Services Compensation Scheme (as detailed in clause 16 of this Agreement) will still apply.
- 6.4. Where we have identified a shortfall in the assets we hold on behalf of our clients, we will segregate some of our own money to cover the shortfall until such time as the shortfall has been rectified. Whilst that money is segregated, we will hold it as client money under the FS Client Money Rules on behalf of all affected clients. This money will be held in a non-interest bearing account and interest will not accrue or be payable on any balances. Such money would be held in accordance with the FS Client Money Rules. If Couetts should fail, the FS Client Money Rules will apply to the distribution of any such money.
- 6.5. We may arrange for Investments to be held or for transactions to be settled by a custodian to our order on such terms as we reasonably consider appropriate.

- 6.6. Where Investments are held by a custodian outside the UK, you should note that there may be different legal and regulatory requirements and different practices relating to the segregation of investments may apply as compared with those that would exist were your Investments held by a custodian in the UK and your rights in relation to the Investments may differ accordingly. Likewise, where your Investments are held by a custodian outside the EEA as compared with your rights were they held by a custodian in the EEA.
- 6.7. Where possible and practicable under local law or the rules applicable to the relevant custodian, Investments will be held by custodians in accounts which are designated as belonging to clients. Where it is not possible or practicable under local law or the rules applicable to the relevant custodian or it is not market practice to hold Investments in an account that is designated as belonging to clients, your assets may not be distinguishable from the assets of the custodian and, as a consequence, may be subject to a claim by creditors in the event of the custodian's insolvency.
- 6.8. Any custodian that is appointed to hold your Investments may also have additional rights to retain, sell or realise such Investments to recover debts where those debts relate to one or more of our clients or the provision of services by that custodian to one or more of our clients. Alternatively, in respect of custodians based in non-EEA jurisdictions only, custodians may also have such rights where such rights are required by applicable law or, where the applicable law requires the use of a central securities depository, securities settlement system or central counterparty; the rules of that depository, settlement system or central counterparty require such a right; and, those rules are subject to the oversight of a regulator performing that function under the applicable law.

## 7. Fees and charges and our right of set-off

- 7.1. Our fees for, and any charges associated with, the Service will be as set out in the Couetts Invest Fee Tariff in force from time to time. Where payable, value added tax ('VAT') will additionally be charged at the prevailing rate.
- 7.2. As set out in the Couetts Invest Fee Tariff, our fees and charges will be taken either from your Current Account or directly from your Investments. Our Platform Fee will be taken quarterly in arrears and will be prorated if you start using the Service or terminate this Agreement part way through a quarter. Please note, if your Current Account is not kept appropriately funded to meet any fees and charges that are due to be taken from it, it may become overdrawn, which may mean you incur fees in accordance with the terms and conditions governing your Current Account. For more information, please contact your Banker.
- 7.3. If any money becomes due from you to us in the course of the Service and you have insufficient funds in your Current Account, or your Linked Cash Account, or insufficient Investments to cover the amount of money due by you we shall be entitled, at our sole discretion and without further authority from you, to recover such money by:
  - 7.3.1. Debiting any account which you maintain with us; and/or
  - 7.3.2. Appropriating an equivalent amount from the proceeds of any sale transactions which we may effect on your behalf; and/or
  - 7.3.3. Selling any Investments which we have purchased or hold on your behalf and using the proceeds of such sale in or towards settlement of amounts outstanding to us.
- 7.4. Where we pay monies to you or to your order in reliance on funds believed to have been received for your account, we shall be entitled to recover an equivalent amount from you if such funds are not actually or unconditionally received by us.

**Note: No Investments or cash held in your Couetts Invest Pension may be sold or used in order to pay any money due by you to us in relation to your Couetts Invest General Investment Account or Couetts Invest ISA.**

## **8. Liability**

- 8.1. We accept liability for losses, costs, damages, expenses or liabilities suffered by you to the extent that (a) they arise as a result of our negligence, wilful default or fraud (or that of a member of our Group in the circumstances set out in clause 6.1.d), and (b) they would have been reasonably foreseeable by you and us at the time we entered into this Agreement as being a consequence of that. We do not accept liability for any other losses, costs, damages, expenses or liabilities suffered by you in connection with the Service. In no event will we be liable for any consequential or indirect loss, or loss of profits or opportunity suffered by you or any third party arising in connection with this Agreement. Nothing in this Agreement excludes any liability whatsoever which we have, or any Nominee has to you under applicable law.
- 8.2. If we cannot provide the Service due to circumstances beyond our reasonable control (for example, because of natural disasters, war or terrorism, disease, market disruption or closure (other than during weekends and customary holidays), the action or intervention of any government authority, a failure of another person's computer systems or telecommunications links (or our own, to the extent it is not the result of our failure to use reasonable skill and care in maintaining them) or industrial disputes or postal delays or failures), we shall not be liable for any losses, costs, damages, expenses or liabilities suffered by you as a result of such circumstances or as a result of a delay or failure in the provision of the Service caused by such circumstances.
- 8.3. Subject to clauses 8.1 and 6.1.d, we do not accept any liability for:
- The acts, omissions, defaults or insolvency of any custodian, agent or delegate;
  - Any error, lack of authenticity, lack of authorisation, insufficiency in any Client Instruction or other communication or message received from you; or
  - Any other matter relating to the performance of duties or obligations or the exercise of rights under this Agreement by us and/or any Nominee.
- 8.4. Except to the extent caused by our or the Nominee's negligence, wilful default or fraud, you agree to compensate us and the Nominee in full against all liability, damage, charges, loss, costs, claims, actions, proceedings, legal fees and other expenses ('Losses') that either of us incur or sustain, directly or indirectly, in connection with:
- Any Client Instruction, whether or not we have acted on it and whether or not it is authentic;
  - Any other matter relating to the Service provided under this Agreement by us or any Nominee; or
  - Your failure to perform or a breach of any of your obligations under this Agreement.

## **9. Availability of the Service**

- 9.1. While we will make reasonable efforts to provide the Service, we do not guarantee its availability. You acknowledge that, due to the nature of the internet and electronic communication, there is a risk that your use of the Service may not be free from error or interruption. We shall not be liable to you:
- For any failure to provide the Service, in part or full, due to any cause that is beyond our reasonable control or due to any suspension of the Service resulting from maintenance and upgrades to our systems or the systems of any party used to provide the Service;
  - In the event of any error or interruption in communications;
  - For any losses or delays in the transmission of Client Instructions to the Service caused by any internet service provider; or
  - For any breaches of security of the Service beyond our reasonable control.

- 9.2. We will use all reasonable endeavours to provide information relating to the Funds on a 'real-time basis'. There may be some occasions where this is not possible, for example in the event of system failures. We shall not be held responsible for the accuracy and/or completeness of the information on the Funds which are provided to you on an 'as is' and 'as available' basis at your sole risk and without representations or warranties of any kind.

## **10. Security**

- 10.1. You must adhere to the security conditions set out in the Online Terms and Conditions (as amended from time to time) whenever you use the Service. We will comply with our obligations under those Online Terms and Conditions in respect of the security of your Account.

## **11. Notices and Communication**

- 11.1. We may send notices and communications in relation to the Service, including any notices required to be in writing, electronically to your Secure Mailbox. We recommend that you log on at regular intervals and at least every three months in order to access your Account statements and/or other documents and any notifications or information in relation to the Service. We may also contact you by telephone or post.
- 11.2. A notice or communication sent to your Secure Mailbox will be effective at the time it is received in your Secure Mailbox if received before 6.00pm on a Business Day, or otherwise on the next Business Day (as applicable).
- 11.3. You can contact us at Coutts & Co, 440 Strand, London WC2R 0QS. Main telephone: +44 (0)20 7753 1000 or, where applicable, at your local branch office, details of which your Banker will provide to you.

## **12. Variation of the Agreement**

- 12.1. We may amend any part of this Agreement by giving you at least 30 days' notice. We will only make changes for good reason including but not limited to:
- Making the terms of this Agreement clearer or more favourable to you;
  - Reflecting legitimate increases or reductions in the cost of providing the relevant services to you;
  - Changing the Service and/or use of the Service from time to time;
  - Providing for the introduction of new systems, changes in technology or the addition or removal of products;
  - Rectifying any mistakes that may be discovered in due course;
  - Reflecting a change of applicable law or regulation.
- 12.2. If we amend this Agreement and you are not happy with the changes, you are able to terminate this Agreement at any time in accordance with clause 14.1.
- 12.3. Any amendment which is made to reflect a change of applicable law or regulation or which is in your favour may take effect immediately or otherwise as we may specify.

## **13. Suspension of the Service**

- 13.1. We may suspend, withdraw or restrict the use of the Service or any part of the Service where:
- We reasonably suspect unauthorised or fraudulent use of the Service; or
  - We reasonably suspect that continuing to provide the Service or fulfil a Client Instruction may be illegal or in breach of any regulatory requirement or code of practice, whether enforceable or voluntary, to which we subscribe, or in breach of any obligation owed by us to a third party; or
  - As a result of a change in the way you operate an Account or in your financial circumstances, we reasonably believe that you may have difficulty in meeting your commitments; or

- d. We consider it appropriate for your protection. Unless we are unable to contact you or there is a legal reason or other circumstances beyond our control preventing us from doing so, we will notify you before taking this action and provide our reasons for doing so. If we are unable to contact you beforehand, where possible we will notify you and give our reasons as soon as possible afterwards.
- 13.2. In the event of your death we will suspend access to the Service. Your personal representative(s) must provide all documents and information we reasonably request from them before we will act on their instructions (as Client Instructions) in relation to your Account. This Agreement shall be binding on your personal representatives in relation to the Service.
- 13.3. Your use of the Service will be restricted if your Current Account is closed, until such time as you nominate an alternative Current Account.
- 13.4. You will not be able to access the Service unless you hold a Current Account.
- 14. Termination of the Agreement and Suspension/Limitation of your use of the Service**
- 14.1. You may terminate this Agreement at any time by giving us written notice. We may terminate this Agreement by giving you 30 days' written notice.
- 14.2. We may terminate the Agreement with immediate effect, or suspend or limit your use of the Service if:
- You breach this Agreement and, if capable of being remedied, the breach is not remedied within 30 Business Days' of your receiving notice of the breach;
  - You become of unsound mind or your capacity, as far as it is relevant to the Agreement or to the use of the Service is otherwise impaired; or
  - Insolvency proceedings (or any equivalent proceedings) are commenced, in relation to you in any jurisdiction;
- 14.3. Termination shall be without penalty to you, but shall be subject to completion of any outstanding transactions which we may cancel, at our discretion, if we are able to do so.
- 14.4. To the extent that we still hold any of your Investments or any cash after the effective date of termination:
- 14.4.1. Unless we have agreed with you otherwise in writing, or we have good reason not to do so, the Investments shall be sold and, if possible, the cash transferred to your Current Account or, in the case of cash held within a Coutts Invest Pension, transferred to another registered pension scheme or qualifying recognised overseas pension scheme. The amount transferred may be less than the amount invested if there has been a downward movement in the value of your Investments from the date of investment. The amount transferred will also be subject to payment by you of any charges, expenses and outstanding fees due to us, and to you compensating us in full for any Losses (including, but not limited to, those arising from the settlement of outstanding obligations and any expenses incurred as a result of termination); and
- 14.4.2. The terms of this Agreement that are relevant to the custody of your assets, including the terms relating to fees payable to us, shall continue until such Investments or cash are transferred to you or otherwise pursuant to clause 14.4.1.
- 15. Cancellation**
- 15.1. You have no right to cancel your Coutts Invest General Investment Account or your Coutts Invest ISA after we accept your application, but you may terminate the Agreement in terms of clause 14.1 at any time.
- 15.2. After setting up your Coutts Invest Pension, you have the right to cancel your Coutts Invest Pension within 30 days. In addition, after making a pension transfer into your Coutts Invest Pension you may cancel that transfer within 30 days from the date the transfer is completed. If you exercise your right to cancel a pension transfer, if possible, the transfer will be repaid to the transferring scheme, although the transferring scheme may refuse to accept the payment. In that case you will have to transfer the money to an alternative registered pension scheme or qualifying recognised overseas pension scheme.
- 15.3. You can exercise your right to cancel, on the terms described in clause 15.2, by contacting Coutts & Co quoting your name and pension account reference. You must state whether you wish to cancel a specific pension transfer or, if you are within 30 days of setting up your Coutts Invest Pension, your entire Account. Your written cancellation notification must be sent to the following address: Coutts Invest, 5th Floor Trinity Quay II, Avon Street, Bristol BS2 0PT.
- 15.4. If your Investment has fallen in value before you exercise your cancellation right, you may get back less than you invested.
- 16. Complaints and Compensation**
- 16.1. If you have any complaint regarding the Service provided by us under this Agreement, please bring it in the first instance to the attention of your Banker. If it is not possible to resolve matters to your satisfaction, we will arrange for your complaint to be investigated by an officer of Coutts & Co who is not directly connected with the subject of the complaint.
- 16.2. If you are not satisfied with our final response, or if we do not provide you with our final response within eight weeks of receiving your complaint, you have the right to refer the matter to the Financial Ombudsman Service, Exchange Tower, London E14 9SR ([www.fos.org.uk](http://www.fos.org.uk)). You may also be entitled to use the European Commission's online dispute resolution platform to facilitate the online resolution of your dispute. The platform can be found at <http://ec.europa.eu/odr>. Further details of our complaints handling policy and process are available on request.
- 16.3. Coutts & Co is covered by the Financial Services Compensation Scheme (FSCS). The FSCS can pay compensation to depositors and/or investors if a bank is unable to meet its financial obligations. Investment business undertaken with Coutts & Co in the UK may be covered by the FSCS, the cover depending on the nature of the claim being made. Eligible claims for most types of investment business are covered up to a maximum limit of £50,000 per person. FSCS cover is not available for loss of money resulting from performance of the Fund. In respect of deposits, most individuals, businesses and corporations can claim back up to £85,000. Where we are required by regulation to do so, an FSCS Information Sheet, including a list of exclusions from the FSCS, will be provided on an annual basis. For further information about the compensation provided by the FSCS, refer to the FSCS website at [www.fscs.org.uk](http://www.fscs.org.uk).
- 17. Conflicts of Interest**
- 17.1. A summary of our Conflicts of Interest Policy, including the types of conflicts that may arise, is provided separately. Further details of our Conflicts of Interest Policy can be provided to you on request. You will be notified of any material changes to the policy separately on our Website.
- 17.2. We may effect transactions in which we or an associate may have directly or indirectly a material interest which may involve a conflict with the duty we owe to you. We may also arrange transactions where we owe a duty to another client which may involve a conflict with the duty we owe to you. However, we will ensure that such transactions are effected on terms that are not materially

less favourable to you than if the conflict or potential conflict had not existed and that any such conflict is resolved fairly.

- 17.3. We will not be liable to account to you for any profit, commission or remuneration made or received from or by reason of any transaction in which we have a material interest.

#### **18. General**

- 18.1. This Agreement replaces all prior agreements with you under which we have agreed to provide online execution only dealing services combined with custody of the relevant assets.
- 18.2. You confirm that you are acting and will act for your own account and not on behalf of any other person. We shall enter into transactions with you on the basis that we shall not incur any obligations or liabilities to any person other than you.
- 18.3. You confirm that you are not a United States Person (as defined by Regulation S under the United States Securities Act 1933) and undertake to advise us should you become or intend to become a United States Person.
- 18.4. Unless the parties otherwise agree:
- This Agreement (and any dealings with you prior to being bound by this Agreement) shall be governed by English law, and shall be subject to the non-exclusive jurisdiction of the English courts; and
  - All communications and documentation will be in English (although a number of our Bankers are able to speak other languages if this is of interest to you).
- 18.5. A person who is not a party to this Agreement shall have no right to enforce any of its terms.
- 18.6. This Agreement is personal to you and you are not able to assign or transfer your rights and obligations under this Agreement. We may assign and transfer all or any part of our rights and obligations under this Agreement to any person that we may determine is appropriately authorised and capable of performing the services under this Agreement to at least a similar standard (who may or may not be an associate of ours).
- 18.7. We may delegate all or any part of our duties or obligations under this Agreement to any person (who may or may not be an associate of ours) subject to our being satisfied that the person involved is competent to carry out the duties and obligations.
- 18.8. We will record all telephone conversations and electronic communications we have with you that result, or may result, in investment transactions under the Agreement. A copy of these recordings will be available on request for a period of five years and, where requested by the Financial Conduct Authority, for a period of up to seven years. We reserve the right to record telephone conversations with you in order to resolve problems which may arise through misunderstanding or human error and to maintain or improve our service. Strict controls and security will be maintained over access to recorded tapes at all times.
- 18.9. You are responsible for ensuring that any legal or regulatory provisions relating to your personal circumstances are complied with. In particular:
- The nature of your employment may require that you obtain your employer's prior permission to enter into an agreement with us or execute transactions. This could include, for example where you are employed by a regulated firm or are a Person Discharging Managerial Responsibilities (as defined under the Market Abuse Regulation). In addition, you will comply with any regulatory disclosures imposed on you and we will not undertake them on your behalf.
  - You undertake that in entering into any agreement or giving instructions that you will be in compliance with

any laws or regulations relating to market abuse or misuse of confidential or price sensitive information.

- If you are in any doubt as to the scope of such laws or regulations you should consult your employer or legal adviser as appropriate.

- 18.10. Coutts & Co is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority. The address of the Financial Conduct Authority is 12 Endeavour Square, London E20 1JN. The address of the Prudential Regulation Authority is 20 Moorgate, London EC2R 6DA. The main business of Coutts & Co is banking and private wealth management. Coutts & Co Financial Services Firm reference Number 122287.

#### **19. Your information**

- 19.1. We collect and process various categories of personal and financial information throughout your relationship with us, to allow us to provide our products and services and to run our business. This includes basic personal information such as your name and contact details, and information about your financial circumstances, your accounts and transactions. This section sets out how we may share your information with other Group companies and third parties.
- 19.2. For more information about how we use your personal information, the types of information we collect and process and the purposes for which we process personal information, please read our full Privacy Notice (our 'Privacy Notice') provided on our website [coutts.com/privacynotice](https://coutts.com/privacynotice).
- 19.3. We may update our Privacy Notice from time to time, by communicating such changes to you and/or publishing the updated Privacy Notice on our website [coutts.com/privacynotice](https://coutts.com/privacynotice). We would encourage you to visit our website regularly to stay informed of the purposes for which we process your information and your rights to control how we process it.
- 19.4. In respect of any personal information relating to a third party that you provide to us, you must:
- notify the third party that you are providing their personal information to us and obtain their permission;
  - provide the third party with a copy of our Privacy Notice and these Terms and Conditions;
  - promptly notify the third party of any changes to our Privacy Notice that we notify you of; and
  - ensure that, to the best of your knowledge, the personal information is accurate and up to date, and promptly notify us if you become aware that it is incorrect.
- 19.5. Your information may be shared with and used by other Group companies. We will only share your information where it is necessary for us to carry out our lawful business activities, or where it is necessary to comply with laws and regulations that apply to us.
- 19.6. We will not share your information with anyone outside the Group except:
- where we have your permission;
  - where required for your product or service;
  - where we are required by law and with law enforcement agencies, judicial bodies, government entities, tax authorities or regulatory bodies around the world;
  - with other banks and third parties where required by law to help recover funds that have entered your Account as a result of a misdirected payment by such a third party;
  - with third parties providing services to us, such as market analysis and benchmarking, correspondent banking, and agents and subcontractors acting on our behalf, such as the companies which print our account statements;

- f. with other banks to help trace funds where you are a victim of suspected financial crime and you have agreed for us to do so, or where we suspect funds have entered your Account as a result of a financial crime;
  - g. with debt collection agencies;
  - h. with credit reference and fraud prevention agencies;
  - i. with third party guarantors or other companies that provide you with benefits or services (such as insurance cover) associated with your product or service;
  - j. where required for a proposed sale, reorganisation, transfer, financial arrangement, asset disposal or other transaction relating to our business and/or assets held by our business;
  - k. in anonymised form as part of statistics or other aggregated data shared with third parties; or
  - l. where permitted by law, it is necessary for our legitimate interests or those of a third party, and it is not inconsistent with the purposes listed above.
- 19.7. If you ask us to, we may at our sole discretion share information with any third party that provides you with account information or payment services. If you ask a third party provider to provide you with account information or payment services, you are allowing that third party to access information relating to your Account. We are not responsible for any such third party's use of your Account information, which will be governed by their agreement with you and any privacy statement they provide to you.
- 19.8. In the event that any additional authorised users are added to your Account, we may share information about the use of the account by any authorised user with all other authorised users.
- 19.9. We will not share your information with third parties for their own marketing purposes without your permission.
- 19.10. We may transfer your information to organisations in other countries (including to other Group companies) on the basis that anyone to whom we pass it protects it in the same way we would and in accordance with applicable laws. We will only transfer your information if we are legally obligated to do so, or where the other country has laws that adequately protect your information, or where we have imposed contractual obligations on the recipients that require them to protect your information to the same standard as we are legally required to.

## **Section 2 – Additional Terms For Coutts Invest ISAs**

These terms apply to your Coutts Invest ISA (which is a Stocks and Shares ISA as defined under the ISA Regulations) in addition to the terms in Section 1.

### **20. Opening a Coutts Invest ISA**

- 20.1. In order to open a Coutts Invest ISA you must:
- a. Have completed any applicable application form and/or declarations that we may require to fulfil our regulatory obligations;
  - b. (Except where you are opening a Coutts Invest ISA by way of a transfer in of an existing ISA), transfer to your Linked Cash Account a minimum initial Subscription of £500 or such other amount as we agree in writing from time to time; and
  - c. Not have subscribed to another stocks and shares ISA in the same tax year (unless you have transferred that ISA to us), or exceeded the overall subscription limit currently published by HM Revenue & Customs.
- 20.2. The declarations referred to in clause 20.1.a. include a declaration you must provide under the ISA Regulations that will confirm certain details provided in your application. We will provide you with a copy of the declaration following receipt of your application. You

should inform us within 30 days of us sending you your declaration of any inaccuracies contained in it.

- 20.3. If you have a Coutts Invest ISA and cease to be resident in the UK for tax purposes, you will not be able to make any further Subscriptions into it. We will apply any future monthly contributions that you agreed to pay into your Coutts Invest ISA before ceasing to be UK resident, to your Coutts Invest General Investment Account. No one-off contributions or increases to your monthly contributions will be allowed to your Coutts Invest General Investment Account while you remain non UK resident.

### **21. How you can fund and deal in your Coutts Invest ISA**

- 21.1. Unless otherwise notified to you, we will accept only cash Subscriptions transferred from your Current Account.
- 21.2. A Linked Cash Account will be opened within your Coutts Invest ISA and will hold all cash received into your Coutts Invest ISA, including any Subscriptions.
- 21.3. Only money from your Linked Cash Account may be used to acquire Investments for your Coutts Invest ISA (ie you can only purchase Investments in your Coutts Invest ISA with the available balance in your Linked Cash Account). Once your Linked Cash Account has been funded, Investments can be bought and sold by placing Client Instructions through the Service.

### **Restrictions on Subscriptions**

- 21.4. Subscriptions to your Coutts Invest ISA must not exceed the annual subscription limit as defined in the ISA Regulations, which may change from year to year. If you withdraw money from your Coutts Invest ISA you cannot reinvest it if your total Subscriptions would exceed the annual subscription limit. This means that amounts withdrawn from your Coutts Invest ISA cannot be reinvested without the reinvested amount being counted towards your annual subscription limit (ie the Coutts Invest ISA is not a Flexible ISA within the meaning published by HM Revenue and Customs).
- 21.5. In the event that you make a Subscription which would, if applied to your Coutts Invest ISA, mean that your annual subscription limit is exceeded, we will apply the excess balance of that Subscription to your Coutts Invest General Investment Account.

### **22. How we will run your Coutts Invest ISA**

- 22.1. We are approved by HM Revenue and Customs as an ISA Manager and will run your Coutts Invest ISA in accordance with the ISA Regulations.
- 22.2. You must remain the beneficial owner of any Investments in your Coutts Invest ISA at all times. Your Investments must not be lent to third parties and must not be used as security for loans.
- 22.3. Share certificates or other documents evidencing title to Investments in your Coutts Invest ISA will be held by us or as we may direct.
- 22.4. On receipt by your Banker of your written request, and subject to our published charges and a reasonable period of notice, we will endeavour to arrange for you to:
- 22.4.1. Receive a copy of the annual report and accounts of Funds in your Coutts Invest ISA;
  - 22.4.2. Attend meetings of Funds in your Coutts Invest ISA;
  - 22.4.3. Vote on resolutions and receive other information issued to unitholders/shareholders in respect of every Fund in your Coutts Invest ISA.
- 22.5. Other than as set out in this clause, cash held in your Linked Cash Account will be held by us as banker as set out in more detail in clause 6.3.



- 22.6. We will tell you if your Coutts Invest ISA has, or will, become void because we, or you, have failed to comply with the ISA Regulations. If you fail to comply with the ISA Regulations, we may make a charge to you for voiding the ISA in accordance with our published charges. In such a case, we will sell the Investments held in your Coutts Invest ISA and pay the proceeds into your Current Account. Where we are required to remove cash from your Linked Cash Account, we will transfer the relevant amount to your Current Account. You may not be able to place Client Instructions and/or make payments to or from your Linked Cash Account until this process is complete. Any action taken whether by us or you, will be subject to such deductions (if any) as we may require to meet tax or other liabilities.
- 22.7. In the event of your death, no further Subscriptions into your Coutts Invest ISA will be accepted. In the event of your death on or before 5 April 2018 the tax-efficient status of your Coutts Invest ISA will cease on the date of your death. In the event of your death on or after 6 April 2018 the tax-efficient status of your Coutts Invest ISA will cease on the earliest of the completion of the administration of your estate, the day falling on the third anniversary of your death or the day on which your Coutts Invest ISA is closed and no assets are held in your Coutts Invest ISA.

### **23. Transferring other ISAs to us**

- 23.1. You can transfer your entire ISA, or part thereof, and the associated rights and duties to us, subject to the restrictions detailed below. You can only transfer cash into the Coutts Invest ISA (so any assets held in the existing ISA would need to be sold prior to the transfer).
- 23.2. To partially transfer ISAs to us, you will need to specify whether the transfer is for the current tax year or a previous tax year. You will also need to state exactly what cash is being transferred. We will liaise with the other ISA manager and advise you if the transfer can be carried out.
- 23.3. The current year's ISA Subscriptions, any Investments bought with those Subscriptions and any income arising on those Investments must be transferred in full and, if only previous years' are to be transferred, the full subscription value of the current year's Subscription must remain with the old ISA manager.
- 23.4. If your previous ISA manager has held your ISA components as separate ISAs for each subscription year, we will merge them into one stocks and shares ISA. If we merge your ISAs in this way, we will be unable to de-merge them at a later date.
- 23.5. We will endeavour to complete the transfer process as quickly as possible; however, we cannot be held responsible for delays on the part of other ISA managers.
- 23.6. Please note that your existing ISA manager may levy an exit charge on transfer and/or transaction fees may be payable on the sale of any investments held in your previous ISA.

### **24. Transferring your ISA to another ISA Manager**

- 24.1. You can transfer your entire Coutts Invest ISA to another ISA manager, subject to our published charges. Please note, you will not be able to transfer any Investments (ie if you wish to transfer all or a part of your Coutts Invest ISA you will need to sell any Investments and transfer the proceeds).
- 24.2. We will liaise with the other ISA manager after you have notified us of your wish to transfer, and advise you if the transfer can be carried out. The transfer process will begin after receipt of completed documentation and payment of any applicable charges.

- 24.3. We will try to complete the transfer process as quickly as possible, and certainly within 30 days of the receipt of completed documentation and payment of applicable charges. You may also stipulate a time within which the transfer should be completed. However, we cannot be held responsible for delays on the part of other ISA managers.

### **25. Withdrawals from your Coutts Invest ISA**

- 25.1. You may withdraw cash from the Linked Cash Account in your Coutts Invest ISA at any time by placing an instruction through or by use of the Service, provided:
- 25.1.1. You have paid any outstanding fees or charges first; and
- 25.1.2. The funds are cleared, which will normally be three Business Days after the sale of the relevant Investments.
- 25.2. All withdrawal proceeds will be remitted directly to your Current Account.

### **26. Closing your Coutts Invest ISA**

- 26.1. If you wish to close your Coutts Invest ISA, you can do so in accordance with clause 14.1 of Section 1. Any Investments in your Coutts Invest ISA will automatically be sold and your Linked Cash Account will automatically be closed upon closure of your Coutts Invest ISA, with all cash transferred to your Current Account.

## **Schedule 1**

### **Definitions**

**'Account'** means any of Coutts Invest General Investment Account, Coutts Invest ISA or Coutts Invest Pension (each comprising of a Linked Cash Account and an Investment Account) held by us in the client's name pursuant to this Agreement;

**'Account Limit'** has the meaning given to it in clause 5.6.a;

**'Agreement'** has the meaning given to it in clause 1.1;

**'Appendix'** means the appendix to these Terms and Conditions;

**'Banker'** means your wealth manager, relationship manager or private banker, whichever is relevant;

**'Business Day'** means any day other than Saturdays and Sundays on which banks in the City of London are open for the full range of banking business;

**'Client Instructions'** has the meaning given to it in clause 3.1;

**'Conflicts of Interest Policy'** means our conflicts of interest policy, as amended from time to time;

**'Coutts Invest General Investment Account'** means an account for investing in Funds outside of an ISA or a pension, opened with us in accordance with this Agreement;

**'Coutts Invest ISA'** means an account which is a stocks and shares account as defined under the ISA Regulations opened with us in accordance with this Agreement;

**'Coutts Invest Pension'** means an account for investing in Funds, as described in the Appendix;

**'Current Account'** means your nominated Coutts current account;

**'EEA'** means European Economic Area;

**'FS Client Money Rules'** means the FS Rules that relate to the holding of money for clients in connection with certain investment business;

**'FS Regulators'** means the UK Prudential Regulation Authority and the Financial Conduct Authority and any successor bodies that may take over their functions from time to time;

**'FS Rules'** means the Handbook of Rules and Guidance of the Prudential Regulation Authority and the Financial Conduct Authority as amended from time to time;

**'Fund'** or **'Funds'** means the range of collective investment schemes that are available pursuant to this Agreement from time to time;

**'Group'** means The Royal Bank of Scotland Group of companies;

**'Investment'** or **'Investments'** means a unit or units in a Fund;

**'Investment Account'** means the account within a Coutts Invest General Investment Account, Coutts Invest ISA or Coutts Invest Pension used to hold Funds;

**'ISA'** means an Individual Savings Account in accordance with the ISA Regulations;

**'ISA Regulations'** means the Individual Savings Account Regulations 1998 as amended or replaced from time to time;

**'Linked Cash Account'** means the account within a Coutts Invest General Investment Account, Coutts Invest ISA or Coutts Invest Pension used to hold cash;

**'Losses'** has the meaning given to it in clause 8.4;

**'Nominees'** means nominee companies within The Royal Bank of Scotland Group of companies which are wholly owned non-trading subsidiaries;

**'Online Terms and Conditions'** has the meaning given to it in clause 1.1;

**'Order Execution Policy'** means our order execution policy, as amended from time to time;

**'Platform Fee'** shall be as described in the Coutts Invest Fee Tariff;

**'Service'** has the meaning given to it in clause 1.1;

**'Secure Mailbox'** means the online banking mailbox available pursuant to this Agreement;

**'Subscription(s)'** means any payment made by you into your Coutts Invest ISA during a tax year that counts towards the annual subscription limits under the ISA Regulations and where applicable, includes an Additional Permitted Subscription as defined in the ISA Regulations;

**'Terms and Conditions'** has the meaning given to it in clause 1.1;

**'Third Party Custodian'** has the meaning given to it in clause 6.1;

**'UK'** means the United Kingdom;

**'We', 'us', and 'our'** means Coutts & Co;

**'Website'** means the website for the Service; and

**'You'** and **'your'** means the person(s) (i) who is or are our client; and (ii) with whom we have a contractual agreement to provide online banking or investment services, pursuant to this Agreement.

# Appendix: Coutts Invest Pension Terms and Conditions

## 1. Introduction

These *terms and conditions* set out how Embark Services Limited (ESL) operates the *plan* and explain your rights and benefits under it. The following form the legally binding agreement between you and ESL:

- online application submitted by you for the Coutts Invest Pension;
- these *terms and conditions* and any documentation you receive from ESL confirming the *scheme* has been set up; and
- any subsequent documents ESL sends to you concerning changes to the above.

In addition the following documents provide important information: The Key Features Document; your Key Features Illustrations; and the annual renewal packs that ESL sends to you.

Please read these documents carefully and keep them together in a safe place for future reference.

ESL can change the *terms and conditions* in the circumstances described in section 19.

In addition, ESL has a legally binding agreement with Coutts & Co details of which are described below.

### IMPORTANT

ESL and *ETL* limit their liability for specific aspects of the Coutts Invest Pension. ESL has an agreement with Coutts & Co in relation to fees. Coutts & Co will be responsible for all ESL fees whilst the agreement is in place between ESL and Coutts & Co. If the agreement ceases, you are responsible for paying specific fees, costs and losses incurred by ESL, to the extent not accounted for in accordance with the terms of the agreement with Coutts & Co, the details of which are set out in sections 15 and 22.

Neither ESL nor *ETL* provides any investment management or advisory services under these *terms and conditions*. You are responsible for selecting the investments within the Coutts Invest Pension. Neither ESL nor *ETL* are responsible for selecting investments, monitoring investments or investment performance.

Your *plan* is based on the declarations you make to ESL and the information you disclosed to ESL in your online application. If you have any questions, please contact Coutts & Co on 020 7957 2424.

## 2. Understanding these terms and conditions

Expressions shown in italics are explained in section 23. Except in section 8.3 where the context implies otherwise, 'you'/your' refer to the individual named as *member* in the *scheme member schedule*.

Reference to any enactment includes reference to any statutory modification or re-enactment or any regulation made under it.

All references in this appendix to sections shall be to sections of this appendix only.

## 3. Coutts Invest Pension

The *scheme* is established under trust and is governed by the *scheme rules* which are contained within the trust deed that establishes the trust. ESL is responsible for operating and administering the *scheme* in accordance with the *scheme rules*. ESL imposes conditions and restrictions on how the *plan* operates under the *scheme*, which are set out in these *terms and conditions*. If there is any inconsistency between the *terms and conditions* and the *scheme rules*, the *scheme rules* prevail.

These *terms and conditions* apply to each *arrangement* under the *scheme* and, for the purposes of the *scheme rules*, to each *individual fund*.

You can access a copy of the *scheme rules* on the Coutts & Co website or ask Coutts & Co for a copy of the *trust deed* and *scheme rules*. It might be necessary to change the provisions of the *scheme rules* to reflect and/or comply with any changes to law or regulation affecting the *scheme*. ESL will provide notice to you of any significant changes. Unless ESL decides otherwise, notice of changes under this section 3 will be published via Coutts & Co.

## 4. Independent trustee

*ETL* is the independent trustee of your *plan*. The cash and investments in your *plan* are held by *ETL*. *ETL* may delegate custody of your cash and assets to an appointed sub custodian. For investment matters, ESL directs *ETL* to act only according to your investment instructions (or investment instructions from persons ESL has agreed can provide instructions on your behalf). For all other matters, *ETL* acts according to ESL's directions only.

## 5. Membership

Anyone can apply to become a *member* providing they are over 18 and under the age of 85 at the time of application although ESL cannot accept any new contributions after you reach age 75. ESL reserves the right to decline any application at ESL's discretion. If ESL accepts an application, the individual becomes a *member*.

ESL will treat you as a 'retail client' for the purposes of the rules of the Financial Conduct Authority. This gives you the highest standard of regulatory protection.

## 6. Communication and instructions

### 6.1 ESL's communications to you

ESL's formal communications to you will be provided in writing, via Coutts & Co (normally) or direct to you. If ESL sends a communication via Coutts & Co, you are treated as having received it when Coutts & Co receives it (or is deemed to have received it).

If ESL sends a communication direct to you, ESL will select a method of communication that complies with the requirements of any applicable law.

Where practicable ESL will communicate with you using electronic mail ('email'), using your last known email address according to its records. Any communication sent by email will be deemed to have been received once your email provider has accepted delivery.

If communicating with you by post, ESL will write to you at your last known address for correspondence according to ESL's records. Any communication sent by post will be deemed to have been received within three *business days*.

Oral statements by ESL or *ETL* cannot be relied upon unless confirmed by ESL in writing.

### 6.2 Your instructions

Instructions about your *plan*, whether they relate to contributions, transfer payments, benefits, or your investment instructions, must be:

- given in a format acceptable to ESL or (if ESL agrees) Coutts & Co;
- submitted to ESL via Coutts & Co;
- identifiable by including your *plan's* full name and reference number; and
- actually received before they are effective, at the following address: Coutts Invest, 5th Floor Trinity Quay II, Avon Street, Bristol BS2 0PT.

ESL can agree with you or give you notice that instructions should be submitted to Coutts & Co instead of to ESL. For example ESL can agree with you that your investment instructions should be submitted direct to Coutts & Co.

'Instructions' include notices, decisions, application forms (whether completed on paper or online), benefit options and nominations and investment decisions or directions.

You authorise ESL and *ETL*:

- to rely on, and treat as fully authorised and binding on you, any instruction which purports to have been given by you, without further enquiry by ESL; and
- to accept such an instruction as genuine, without the need for further investigation as to the authority or identity of the person giving it, or purporting to give it, provided the instruction has been received in good faith and without negligence.

## 7. Contributions

### 7.1 Who can pay contributions?

As a *member* you can contribute to your *plan*. Contributions can be regular monthly or single contributions. ESL will receive contributions from you only. Contributions cannot continue to be made after you reach age 75.

The minimum contribution is £50 whether by lump sum contribution or monthly contributions.

The minimum initial sum to be invested to set up your Coutts Invest Pension is £500 which can be made up of either a lump sum or transfers in or a combination of these.

ESL can change the minimum limit or add a maximum limit by changing these *terms and conditions* under section 19.

There is a limit on contributions for which you can get tax relief each tax year – see section 7.3.

### 7.2 How to pay

Monthly and lump sum contributions must be paid to ESL by way of direct payment from your current account with Coutts & Co.

ESL will act as the collecting agent whereby all contributions will be paid to *ETL* and those contributions together with any basic rate tax relief on *member* contributions, where applicable, will be passed to Coutts & Co or its appointed sub-custodian.

You can stop and start your contributions at any time without penalty, although charges continue to apply whether or not you are contributing.

### 7.3 Tax relief

Legislation limits the amount of tax relief you are entitled to on your contributions. Subject to certain criteria set by *HMRC* that may reduce the amount you can contribute that is subject to tax relief, you can claim tax relief on your personal contributions made during any tax year (6 April – 5 April) up to the higher of:

- £3,600 (including the allowance for basic rate tax relief); and
- 100% of your relevant UK earnings. ('Relevant UK earnings' shall be as defined in the *Finance Act*).

ESL will claim the basic rate tax relief from *HMRC* on the contributions made by you or on your behalf, unless you instruct ESL otherwise. You must normally be a UK resident for tax purposes in order for the tax relief to be claimed. The basic rate tax relief will be applied at the date of receipt of contribution unless the service of pre-funding no longer operates. ESL can terminate or suspend the pre-funding service at any time. If ESL chooses to terminate or suspend the pre-funding service, basic rate tax relief will be applied to all eligible contributions at the point the tax relief is received from *HMRC*, which is normally within four-eight weeks from the date a contribution is paid. Tax relief is normally received on the 21st of the month.

You can claim higher rate, additional rate and Scottish intermediate rate tax relief through your Self Assessment

tax return. Higher rate and Scottish intermediate rate taxpayers may alternatively be able to claim the extra tax relief via their tax code.

Any contributions over the tax relief limit can, with ESL's agreement, still be paid into your *plan*, but you will not receive any tax relief on them.

### 7.4 Annual allowance

If your total contributions exceed the annual allowance set by *HMRC*, there might be a tax charge on you. The annual allowance is the maximum amount of pension saving you can have each tax year that benefits from tax relief. It will be lower once you have triggered the money purchase annual allowance (see section 7.5), and in any tax year for which you are subject to a tapered annual allowance. It applies to all pension savings that you make plus any pension savings made for you by someone else – for example, your employer – in any pension scheme. The tax charge is called the annual allowance charge, which *HMRC* would levy against you directly via your tax code or, in certain circumstances, against ESL and which ESL would recover from your *individual fund*. You are responsible for notifying your local Inspector of Taxes if your total contributions exceed the annual allowance.

It is possible to carry forward 'unused annual allowance' from the previous three tax years to achieve tax relief on contributions over the annual allowance, provided that you were a member of a registered pension scheme during those years, and you are not subject to the money purchase annual allowance (see section 7.5). You should seek advice from a financial adviser if you are planning to make contributions over the annual allowance.

There will be no test against the annual allowance in the tax year that you die, or if your pension entitlement is paid as a serious ill health lump sum.

The law governing tax relief for pensions might change.

### 7.5 Money purchase annual allowance

Once you have accessed any income from any of your pension savings using a flexi-access drawdown pension or by taking an uncrystallised funds pension lump sum you are subject to the money purchase annual allowance from that tax year onwards.

If you are subject to the money purchase annual allowance, you will be liable to an annual allowance charge on the amount of your total contributions to money purchase pension schemes that exceed the money purchase annual allowance in any tax year. If you also accrue benefits in other schemes providing defined benefits you will be liable to an annual allowance charge if the benefit accrual in any tax year exceeds the annual allowance (described in section 7.4) reduced by the lesser of the total contributions made to money purchase pension schemes and the money purchase annual allowance.

### 7.6 Refund of excess/erroneous contributions

If you have paid pension contributions over the tax relief limit, you can ask ESL to refund the excess. If you have paid pension contributions in error (eg where your bank has paid from your bank account a contribution greater than the amount authorised by you), you can ask ESL to refund the contribution paid in error. Provided the refund would not be an *unauthorised payment*, ESL will refund the lower of the excess/erroneous contribution and the value of the part of your *individual fund* attributable to that excess/erroneous contribution. In addition, *HMRC* will require ESL to repay the full amount of the basic rate tax relief that ESL had claimed on the excess/erroneous contribution.

If contributions are paid which result in the annual allowance or money purchase annual allowance being exceeded, you cannot avoid the annual allowance charge simply by obtaining a refund of contributions from ESL.

## 8. Transfer payments into the scheme

### 8.1 Right to transfer in

Unless ESL decides otherwise, a *member* can transfer benefits from another *registered pension scheme* to the Coutts Invest Pension. It also includes *contracted-out benefits*, in which case the value of *contracted-out benefits* becomes part of your *individual fund* when transferred to the *plan*. The *contracted-out benefits* will lose their status as *contracted-out benefits* and will be treated in the same way as the rest of your *individual fund*.

You cannot transfer funds to the *plan* that are already being used to provide a scheme pension.

You cannot transfer funds from a pension that you, or someone else, have already taken pension benefits from.

You cannot transfer benefits from any public sector pension.

You cannot transfer benefits from a defined benefit pension scheme.

### 8.2 Making the transfer

Transfers in can only be made by cash payment (by cheque or direct credit).

### 8.3 Common transfer declaration

When making a transfer in of benefits you agree to the following declarations, made to the administrator or provider of the transferring scheme (the 'current provider'), and to ESL and *ETL* (together referred to in the declarations as 'the receiving provider'), as the context requires:

I authorise and instruct you, the current provider, to transfer funds from the plan(s) as listed in the appropriate section of my application directly to my Coutts Invest Pension. Where you have asked me to give you any original policy document(s) in return for the transfer of funds and I am unable to do so, I accept that I will be responsible for any losses and/or expenses which are the result, and which a reasonable person would consider to be the probable result, of any untrue, misleading or inaccurate information deliberately or carelessly given by me, or on my behalf, either in this form or with respect to benefits from the plan.

I authorise you to release all necessary information to the receiving provider to enable the transfer of funds to the receiving provider.

If an employer is paying contributions to any of the plans as listed in the appropriate section of my application, I authorise you to release to that employer any relevant information in connection with the transfer of funds from the relevant plan(s).

Until this transfer is accepted and complete, the receiving provider's responsibility is limited to the return of the total payment(s) to the current provider(s).

Where the payment(s) made to the receiving provider represent all of the funds under the plan(s), then payment made as requested will mean that I shall no longer be entitled to receive pension or other benefits from the plan(s).

I promise to accept responsibility in respect of any claims, losses and expenses that the receiving provider and the current provider(s) may incur as a result of any incorrect information provided by me in this transfer authority or of any failure on my part to comply with any aspect of this transfer.

## 9. Transfer payments out of the scheme

If you wish to transfer your *individual fund* to another *registered pension scheme* or a qualifying recognised overseas pension scheme allowed by *HMRC* you must instruct ESL to transfer all of your *individual fund*. ESL will only agree to transfer out a portion of your *individual fund* where it is required to do so by a court issued pension sharing order. You need to check that the proposed scheme is willing to accept the transfer. Please note, you will not be able to transfer any investments held in your *individual fund* (ie if you wish to transfer your *individual fund* you will need to sell any investments and transfer the proceeds).

## 10. Banking arrangements

- 10.1** ESL will operate pooled clearing bank accounts for your *plan*. The bank accounts selected by ESL are opened as trust accounts in the name of *ETL* as the independent trustee, and are used to accept contributions from you, and pass monies to and from your *investment account* held with Coutts & Co.
- 10.2** For audit purposes all contributions, transfers and benefit payments received and paid through *ETL* will be recorded in the 'general ledger' for ESL's operating system as having been credited to or debited from your *designated account*.
- 10.3** ESL gives instructions to *ETL* in relation to the operation of the *designated account* and *ETL* is the only authorised signatory.
- 10.4** ESL does not hold client money. Money which is held by *ETL* falls outside the scope of protection provided by the Client Money Rules as set out in the Financial Conduct Authority's Client Assets Sourcebook.
- 10.5** The central clearing client account(s) in the name of *ETL* are non-interest bearing accounts.
- 10.6** If there is not enough cleared money to make any payment due under the Coutts & Co client terms or these *terms and conditions* ESL will instruct *ETL* to make a disinvestment from the *investment account* held with Coutts & Co.
- 10.7** Neither ESL nor *ETL* is responsible for determining which investments should be sold under these *terms and conditions* in order to provide sufficient cleared money.
- 10.8** In some circumstances, it is necessary to sell an investment at whatever price is available at the time. This can result in selling investments when the relevant market is depressed. Selling any investment is governed by the terms and conditions of that investment.

## 11. Permitted investments

The range of investments available to you to hold in the Coutts Invest Pension shall be communicated to you by Coutts & Co and may change from time to time. Any changes will be communicated to you by Coutts & Co.

## 12. Investment instructions

### 12.1 Making investments

You are responsible for selecting and giving either ESL or Coutts & Co instructions about investments for your *plan*. You can do this yourself, using your own judgment or using advice from one or more financial advisers. Any investment instruction must be communicated in accordance with section 6.2 via the Coutts Invest online platform.

Neither ESL nor *ETL* is responsible for selecting investments, monitoring investments or investment performance.

### 12.2 ESL's right to refuse

ESL can refuse to implement an investment instruction. The decision to refuse to implement an investment instruction will not be exercised unreasonably and will normally be taken in order to:

- ensure all investments are and remain investments permitted by ESL;
- protect the *scheme* from *unauthorised payment* tax charges;
- ensure no investment is held in the *scheme* that might, in ESL's opinion, limit or restrict in any way ESL's ability to administer the *scheme*.

Subject to the decision being reasonable, ESL's decision to refuse to implement an investment instruction is exercisable in ESL's absolute discretion as ESL thinks fit. Such decision shall be final and no appeal will be allowed.

Any investment instruction will only be carried out if there is enough cleared money available to complete the transaction.

### 13. Stock custody

Permitted investments will be registered in the name of nominee companies used by Coutts & Co.

The fees and charges of any *nominee* or custodian relating to stock registration or custody and settlement shall be charged to your *individual fund* in accordance with the Coutts Invest Fee Tariff.

ETL will not exercise voting rights. You can ask Coutts & Co about the approach they will take to voting rights.

### 14. Statements

Coutts & Co will send you quarterly transaction statements in respect of the *designated account*. ESL will provide an annual statement detailing total contributions made into your *designated account* for that year.

You must agree with Coutts & Co how often investment updates are issued, including transaction details and a portfolio valuation during the period.

ESL will arrange to send you a yearly statement covering investments relating to your *plan*. This will give details of all investments relating to your *plan* although (due to issues of timing and costs in obtaining valuations) this might not be a current valuation. If you require a current valuation, this will be available online via Coutts & Co.

### 15. ESL's fees and costs

ESL charges fees and incurs costs for administering your *plan*. The fees and costs that apply are met by Coutts & Co. In the event the agreement between ESL and Coutts & Co ends and, as a consequence of the said agreement ending, ESL continues to provide you with the services set out in this agreement, then to the extent the fees and costs of such services are not met by Coutts & Co, you agree to pay any reasonable fees charged and costs incurred by ESL directly to ESL on terms disclosed to you prior to such fees and costs becoming payable.

### 16. Member's benefits

#### 16.1 Intended retirement age

When you apply for the *plan* you choose an intended retirement age, which must be on or after your 55th birthday. This is the age you intend to take retirement benefits, although you do not need to actually retire to take benefits. You can change your intended retirement age by updating your details on the Coutts Invest platform. If you wish to make your intended retirement age earlier, you should first check the terms and conditions of any investment product within your *plan*. Some investment products apply penalties for cashing in earlier than expected.

If you are in ill health or serious ill health, as referred to in the *Finance Act*, it might be possible to start taking benefits earlier than your 55th birthday. 'Ill health' is where evidence has been provided to the scheme administrator from a registered medical practitioner that you are and will continue to be incapable (due to either physical or mental impairment) of carrying on your current occupation and you have in fact ceased to carry on your occupation. 'Serious ill health' is where evidence has been provided to the scheme administrator from a registered medical practitioner that your life expectancy is less than a year.

If you believe you may be entitled to take your benefits early for any reason please contact Coutts & Co for further guidance.

Within a reasonable period (consistent with good practice) before your intended retirement age, ESL will provide you with information about your benefit options and the tax implications of taking benefits. ESL will also issue you with a reminder that you can choose to take guidance on your options under the Government's 'Pension Wise' scheme.

### 16.2 Benefit options

Except in the case of payment to you of a serious ill health lump sum, you will be required to transfer your *individual fund* to another *registered pension scheme* or qualifying recognised overseas pension scheme in terms of section 9 before you can start to take your benefits. Please note, you will not be able to transfer any investments held in your *individual fund* (ie if you wish to transfer your *individual fund* you will need to sell any investments and transfer the proceeds).

### 16.3 Lifetime allowance

The value of your *individual fund* being used to provide benefits must be tested against an allowance called the lifetime allowance, set by *HMRC*. If the lifetime allowance is exceeded, there will be a tax charge. ESL will deduct any tax charge due from your *individual fund* and pass this to *HMRC*. For further details of the circumstances in which this tax charge will arise, please contact Coutts & Co. Also, your lump sum rights may be restricted if your benefits exceed the lifetime allowance.

### 16.4 Payment of serious ill health lump sum

ESL will pay any serious ill health lump sum by direct credit (BACS) into your chosen bank or building society account.

### 17. Benefits following member's death

On the death of a *member*, the *member's individual fund* is used to pay a lump sum death benefit, which is described below. Upon being notified of the death, ESL will write to the *member's* personal representatives or potential *beneficiaries* (as applicable).

#### 17.1 Scheme administrator discretion

If ESL is satisfied that at the time of the *member's* death the *member's* benefits are subject to a 'valid trust', ESL will apply any *uncrystallised* fund on death as a lump sum to the trustees of that trust. A valid trust is one under which no beneficial interest in a benefit can be payable to the *member*, the *member's* estate or the *member's* legal personal representatives.

In all other cases, on the *member's* death ESL will use the *member's individual fund* in the following way as ESL in ESL's absolute discretion determines to pay a lump sum death benefit in accordance with section 17.2 to one or more recipients as ESL decides in accordance with the *scheme rules* and applicable law and in such proportions as ESL decides.

The *member* can complete an Expression of Wish Form to inform ESL of the *member's* wishes for who should receive death benefits for when ESL is exercising its discretion. ESL will take the *member's* wishes into account but ESL is not bound by them.

#### 17.2 Lump sum death benefits

Any lump sum to be paid under this section in the event of a *member's* death before age 75 may be paid without any tax being deducted unless the lump sum is not paid within two years of the date ESL first received notification of the *member's* death or, if earlier, the date ESL could have first reasonably been expected to have known of the *member's* death. The value of any *uncrystallised* fund must be tested on the *member's* death against an allowance called the lifetime allowance which is set by *HMRC*. If the lump sum exceeds the *member's* individual lifetime allowance available on the *member's* death the recipient will be subject to a lifetime allowance charge.

In the event of a *member's* death from age 75, or non-payment of death benefits within two years as described above, then the lump sum death benefit will usually be subject to income tax. The tax treatment of benefits depends on the individual circumstances of each recipient and may be subject to change in future. ESL will make reasonable enquiries to establish

how much tax ESL is obliged to pay to *HMRC*. ESL will deduct any tax which ESL believes may be payable before making any payment. If ESL is not provided with the satisfactory written evidence ESL needs to establish the correct amount of tax liability, ESL shall be entitled to assume that the highest rate of tax under the applicable legislation must be paid.

## 18. Complaints and compensation

### 18.1 Complaints

Should you wish to register a complaint in relation to the operation of the *plan*, although it is usually best to make your complaint in writing so you have a record of what you say, ESL will accept your complaint by phone or in writing (including by email). ESL has the right to telephone you, or someone else nominated by you, to discuss any administrative aspects without having been expressly invited by you to do so.

If you are not satisfied with any aspect of the service that you have received from ESL, ESL has a formal complaints procedure, a copy of which is available on request.

If you are not happy with ESL's response to your complaint, you might have the right to refer it to the Pensions Advisory Service ('TPAS'), The Pensions Ombudsman ('POS') or the Financial Ombudsman Service ('FOS').

TPAS is an independent non-profit organisation providing information and guidance on pensions to help pension scheme members who have a problem, complaint or dispute with their pension scheme.

FOS and POS are both independent statutory bodies that investigate and adjudicate on disputes between pension schemes and members, but only after you have complained to ESL and tried to resolve the dispute using its complaints procedure. ESL will tell you about any ombudsman referral rights you have.

TPAS contact details:

The Pensions Advisory Service  
11 Belgrave Road  
London SW1V 1RB  
Tel: 0800 011 3797

POS contact details:

The Pensions Ombudsman  
10 South Colonnade  
Canary Wharf  
London E14 4PU  
Tel: 0800 917 4487

FOS contact details:

Financial Ombudsman Service  
Exchange Tower  
London E14 9SR  
Tel: 0800 023 4567

### 18.2 Compensation

The Financial Services Compensation Scheme (FSCS) is a scheme that provides limited compensation for customers who might otherwise lose out if a company regulated in the UK by the Financial Conduct Authority is unable to pay claims against it.

Investments in your *plan* might be covered by the FSCS. If compensation is available in respect of an investment in your *plan*, ESL will make the claim on your behalf.

FSCS contact details:

Financial Services Compensation Scheme  
10th Floor Beaufort House  
15 St Botolph Street  
London EC3A 7QU  
Tel: 0800 678 1100  
www.fscs.org.uk

Please ask ESL if you have any questions about the FSCS or the protection it provides.

## 19. Changing these terms and conditions

### 19.1 Changes under specified circumstances

ESL can change these *terms and conditions* for any of the following reasons:

- to respond proportionately to changes in general law or decisions of the Financial Ombudsman Service or The Pensions Ombudsman or the Financial Services Compensation Scheme or of a court;
- to meet regulatory requirements;
- to reflect new industry guidance and codes of practice which raise standards of consumer protection;
- to reflect a change in its corporate structure that does not have a significant unfavourable effect on your rights under the *scheme* but which does require ESL to make certain changes to the *terms and conditions*;
- to respond proportionately to changes in the Bank of England base rate, other specified market rates or indices or tax rates;
- to proportionately reflect other legitimate cost increases or reductions associated with providing the *scheme*;
- to provide for the introduction of new or improved systems, methods of operation, services or facilities associated with providing the *scheme*;
- to correct any mistake in the *terms and conditions*, provided the correction does not have a significant unfavourable effect on rights that you have as a result of the mistake;
- to reflect the appointment by ESL of alternative third parties to provide services under the *scheme* or to respond proportionately to changes in the terms or charges of any third parties appointed under the *scheme*; or
- to include a minimum value of assets that you must hold and/or attain in your *individual fund* and to require you to transfer your *individual fund* to another *registered pension scheme* or qualifying recognised overseas pension scheme allowed by *HMRC* rules should that minimum value not be held and/or attained.

ESL will give you notice of any change under this section 19.1 in advance where practicable, or at the earliest opportunity after the change where advance notice is not practicable. ESL aims to review these *terms and conditions* regularly.

### 19.2 Other changes

Furthermore, ESL can change the *terms and conditions* if ESL has any other valid reasons for doing so.

ESL will give you at least 30 days' notice of any change under this section 19.2.

### 19.3 Notification of changes

Unless ESL decides otherwise, notice of any change to these *terms and conditions* will be provided via Courts & Co.

## 20. Termination

These *terms and conditions* continue until your *individual fund* has been extinguished through the payment of a transfer value to another *registered pension scheme*/qualifying recognised overseas pension *scheme* or the provision of pension or death benefits outside the *scheme* or until the *scheme* is wound up in accordance with the *scheme rules*.

On wind-up, ESL will apply the assets of your *individual fund* as set out in the *scheme rules*.

Wind-up will be without prejudice to the completion of transactions already initiated. *ETL* is authorised to continue to operate the *designated account* to ESL's order and direction for the purposes of receiving money, paying benefits and paying any expenses or charges due to ESL, *ETL* or other parties.

Should no contributions and/or transfers in be made to your Coutts Invest Pension within three months of initial set-up, ESL reserves the right to terminate your Coutts Invest Pension on giving you written notice, after which you will cease to be a *member*. In addition, should you cancel a transfer in where, at the time, no single or monthly contributions have been paid and no other transfer in applications to the Coutts Invest Pension have been made by you, ESL reserves the right to terminate your Coutts Invest Pension on giving you written notice, after which you will cease to be a *member*.

## **21. Other terms**

### **21.1 Proof of ownership**

ESL has the right to delay calculation of any amount due under the *plan* until ESL has received satisfactory proof of ownership. Similarly, the exercise of rights conferred by the *plan* and payment of any benefit is subject to satisfactory proof of ownership.

### **21.2 Change of address or other personal circumstances**

You need to tell Coutts & Co as soon as possible if you move to another address or if there are any other relevant changes to your personal circumstances as detailed in your online application. If you are in doubt as to whether a change is relevant, please contact Coutts & Co.

### **21.3 Assignments**

Your *plan* may be subject to a Pension Sharing Order under the Welfare Reform and Pensions Act 1999 but otherwise may not be assigned, mortgaged or charged in any way by you.

### **21.4 Entire Agreement**

These *terms and conditions* (and the documents described in section 1 as forming ESL's legally binding agreement with you) constitute the entire agreement between you and ESL and supersede all previous versions.

### **21.5 Governing law and jurisdiction**

These *terms and conditions* will be governed by and construed in accordance with the laws of England. The English courts are to have non-exclusive jurisdiction to settle any disputes or claims that may arise out of or in connection with these *terms and conditions*. ESL, *ETL* and you agree to submit to the non-exclusive jurisdiction of the English courts.

### **21.6 Rights of third parties**

ESL, *ETL* and you can enforce the *terms and conditions*. Nothing in the *terms and conditions* expressly or impliedly confers any right on any third party to enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999. For the purpose of this section, a third party is any party not already mentioned in this paragraph.

### **21.7 Severability**

These *terms and conditions* will only apply provided they are not held by a relevant court or decided by the Financial Conduct Authority to be unfair contract terms or reasonably considered by ESL to be unfair contract terms. If a term is held, viewed or considered to be unfair it will, as far as possible, still apply but without any part of it which could cause it to be held, viewed or considered unfair.

### **21.8 Data protection and confidentiality**

ESL is the data controller of any information ESL holds about you. ESL will comply with all relevant data protection legislation.

Your information includes any details which ESL holds about you and includes information received from third parties. ESL will use your information for the purpose of establishing, processing and administering the *scheme*. You

accept that even if your application to join the *scheme* does not proceed, your information can be stored for regulatory, statutory or audit purposes.

ESL will not use the information you have provided to it in accordance with these *terms and conditions* for marketing unless it was already in its possession or you have expressly consented to us to do so and such marketing is allowed for or agreed in advance with Coutts & Co.

ESL will not disclose your information to anyone outside the *Embark Group of companies* unless:

- it is to any person ESL reasonably believes to have been appointed by you as your financial adviser, investment manager or professional adviser; or
- ESL has your permission; or
- ESL is required or permitted to do so by law; or
- ESL is transferring your information to ESL's third party providers, credit reference agencies and fraud prevention agencies; or
- ESL has transferred its rights and obligations under the *terms and conditions*.

ESL can transfer your information to other countries but this will only be done if the receiving country has an appropriate level of data protection. Your information may be accessed by law enforcement agencies and other authorities in that country to prevent and detect crime.

You can request a copy of the information ESL holds about you by writing to the Data Protection Officer, Embark Services Limited, at the following address:

Data Protection Officer  
Embark Services Limited  
Tyman House  
42 Regent Road  
Leicester  
LE1 6YI

## **22. Responsibility and Liability**

### **22.1 Your rights**

Your rights in relation to your *plan* are limited to those detailed in these *terms and conditions*. You waive any other rights that you otherwise have to make any and all legal claims at any time against any previous, current or future officers, employees, agents and subcontractors of ESL, or of any company within the *Embark Group of companies*.

### **22.2 Your responsibilities**

You are responsible for:

- selecting and giving ESL instructions about investments for your *plan*.
- communicating with ESL in a way that complies with the *rules* and these *terms and conditions*.
- any benefit nominations and all other matters which are within your control or in respect of which you provide, or are entitled to provide.

Except where otherwise stated in these *terms and conditions*, you are also responsible to ESL for all reasonable costs, claims, expenses, tax charges, demands and losses whatsoever that ESL suffers or incurs in performing its duties under the *terms and conditions* or carrying out its lawful duties and responsibilities in relation to you, except as a direct result of its negligence, wilful default or fraud.

### **22.3 Scope of ESL's responsibilities**

ESL is responsible for operating and administering the *plan* in accordance with these *terms and conditions* and your instructions given under the *terms and conditions*. ESL and *ETL* are not responsible for selecting investments, monitoring investments or investment performance.



Other than as a direct result of ESL's negligence, wilful default or fraud, neither ESL nor ETL accept any liability or obligation for any or all losses, costs, actions, proceedings, claims and demands arising directly or indirectly that are incurred by, or brought or made against ESL or ETL:

- if ESL or ETL acted in good faith in accordance with any instruction (relating to benefit nominations and investment directions) that reasonably appears to have been given by you;
- as a result of having acted in good faith on the instruction of a legally authorised party acting on your behalf, including if ESL has received medical advice (commissioned by and addressed to ESL) that you are unable to act due to serious ill health, physical or mental incapacity;
- as a result of any error by you, or your representatives or agents;
- as a result of any instruction or investment direction sent by you, or your representatives or agents, or any third parties who may hold or manage or advise on investments, not being received by ESL;
- for any failure or delay in implementing any instruction or investment direction which is caused by circumstances beyond ESL's reasonable control, including but not limited to acts of God, fires, strikes, terrorism, power failures, intervention by exchanges or regulators, court orders, failure or error of any equipment, telecommunications, intermediary, exchange, counterparty product provider or bank; and
- for default or any losses whatsoever caused by any third parties, nominees, other custodians, banks or authorised institutions which hold any assets including, but not limited to, insurance company unit linked funds, stocks and shares, unit trusts, Open-Ended Investment Companies (OEICs) and investment trust companies and cash for the purpose of your *plan*.

### 23. Glossary

The following words and expressions, which appear in italics, have the meanings as set out below:

*arrangement* has the meaning given by the *Finance Act* and refers to each arrangement a *member* has made with ESL for the provision of benefits under the *scheme* and for the purposes of which ESL holds sums and assets relating to the *member*.

*beneficiary* means any of an individual's *dependants* or *nominee* in receipt of benefits from the *scheme*.

*business day* means any day other than Saturdays and Sundays on which banks in the City of London are open for the full range of banking activities.

*contracted-out benefits* means benefits earned under another *registered pension scheme* from contracting out of the State schemes (State Earnings Related Pension Scheme and/or the State Second Pension).

*dependant* means, in relation to a *member*, a person falling within one of the following categories at the date of their death:

- the *member's* wife, husband or civil partner;
- any child of the *member* who has not reached the age of 23 and any child of the *member* who has reached the age of 23 and in ESL's opinion is dependent on the *member* because of physical or mental impairment; or
- any other individual who in ESL's opinion is financially dependent on the *member*, or who is in a mutually dependent financial relationship with the *member* or is dependent on the *member* because of physical or mental impairment.

*designated account* means the record of all cash and investments held in your *individual fund*.

*Embark Group of companies* means Embark Services Limited, any of its direct or indirect subsidiaries, any direct or indirect holding company of Embark Services Limited, and any subsidiary of any such direct or indirect holding company. 'Subsidiary' and 'holding company' have the meanings given to them in Section 1159 of the Companies Act 2006.

*ETL* means Embark Trustees Limited or any successor independent trustee appointed by ESL.

*Finance Act* means the *Finance Act* 2004 as amended from time to time.

*HMRC* means Her Majesty's Revenue & Customs.

*individual fund* means the investments (including cash) of the *scheme* attributable to you under each *arrangement* having regard to:

- contributions, and
- transfer in payments paid by or in respect of you,

less any benefits and transfer-out payments paid to or in respect of you and any fees, charges and costs payable in accordance with the Courtts Invest Fee Tariff, adjusted to account for any growth or loss in the value of investments.

*investment account* means the account within your Courtts Invest Pension used to hold investments.

*member* means an individual whom ESL has accepted for membership of the *scheme* under section 5 and who has not subsequently left the *scheme*.

*nominee* has the meaning given in Schedule 28 of the *Finance Act*, being an individual nominated by the *member* or ESL to receive death benefits from an *arrangement* following the death of a *member*, but who is not a *dependant* of the *member*.

*plan* means the *arrangement* or collection of *arrangements* the *member* has made with ESL under the *scheme*.

*registered pension scheme* means a pension scheme registered under Part 4 of the *Finance Act*.

*scheme* means The Invest Pension Scheme (known as The Courtts Invest Pension Scheme).

*scheme member schedule* means the schedule ESL provides or makes available to you from time to time, which sets out the specific details of how these *terms and conditions* apply to your *plan*, as amended from time to time.

*terms and conditions* means the terms and conditions set out in this appendix, as amended from time to time.

*trust deed and rules* means the trust deed and rules that establish the *scheme*, as amended from time to time and trust *deed* and *rules* shall separately have equivalent meanings.

*unauthorised payment* means an unauthorised payment (as defined in Section 160(5) of the *Finance Act*), which attracts tax charges.

*uncrystallised fund* means any part of your *individual fund* that has not been used to provide any benefits under the *scheme*.





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