

## **TERMS AND CONDITIONS FOR AN INTRODUCER**

### **BACKGROUND**

1. The Introducer is an independent financial adviser regulated by the Financial Services Authority (“FSA”).
2. Hornbuckle wishes to engage the Introducer to introduce clients to Hornbuckle for the Services (as defined below).
3. The Introducer agrees to introduce clients to Hornbuckle in accordance with the Terms.
4. Hornbuckle agrees with the Introducer that the client will become the client of Hornbuckle for the Services (as defined below).
5. The Client remains the client of the Introducer for the purpose of advice on investments.

### **AGREED TERMS**

#### **1. Definition and Interpretation**

- 1.1 In these Terms, unless the context requires otherwise:

“**Client**” means a client introduced to Hornbuckle by the Introducer;

“**Confidential Information**” means information of a confidential nature (including trade secrets and information of commercial value) known to the parties concerning Hornbuckle or the Introducer and/or the Services and communicated to the parties respectively;

“**Fund**” means the fund established by Hornbuckle for the Client and into which the Client has invested monies;

“**Introduction**” means the introduction of a Client to Hornbuckle by the Introducer with a view to the Client engaging Hornbuckle to provide the Services;

“**Services**” means the services of arrangement of investments, establishment of pension schemes and administration of pension funds provided by Hornbuckle. For the avoidance of doubt, Services does not include the provision of investment advice to the Client.

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

- 1.3 References in these Terms to the masculine also include the feminine gender and the gender neutral.
- 1.4 References in these Terms to statutes, the FSA Rules and any other rules, regulations or laws shall be to such statutes, FSA Rules, rules, regulations and laws as modified, amended, restated or replaced from time to time.
- 1.5 Headings in these Terms are for convenience only and shall not affect the interpretation of this Agreement.

#### **2. ENGAGEMENT OF THE INTRODUCER**

- 2.1 With effect from the date these terms are received by the Introducer, Hornbuckle appoints the Introducer to make Introductions in accordance with these Terms and the Introducer accepts this appointment on those terms to the exclusion of any other terms and conditions (including any terms and conditions which the Introducer purports to apply as its terms and condition or under any other document). The Introducers’ terms and conditions shall not apply to its agreement with Hornbuckle.
- 2.2 The agreement between Hornbuckle and the Introducer does not constitute an exclusive agreement with the Introducer. Nothing in these Terms shall preclude either Party from committing to similar agreements with other institutions or individuals.
- 2.3 Nothing shall be deemed to constitute the Introducer as the employee, representative, partner or agent of Hornbuckle. Unless expressly agreed by Hornbuckle in writing, the Introducer shall not have authority of Hornbuckle, and shall not hold itself out as having such authority, to act on Hornbuckle’s behalf in any respect in relation to the Services or otherwise. In particular, the Introducer shall not have

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

- 2.4 Hornbuckle shall be entitled, at its absolute discretion, to refuse an Introduction for any reason and shall not be obliged to notify the Introducer of the reasons for such refusal.
- 2.5 No variation of these Terms shall be effective unless agreed by the Parties in writing, save that Hornbuckle shall be entitled at its discretion, to accept an Introduction on terms other than these Terms.
- 2.6 Hornbuckle will not directly solicit or transact business on behalf of any Client other than in relation to the Fund for which the Client was introduced. For the avoidance of doubt, the prohibition in this clause 2.6 shall cease:
  - 2.6.1 upon the expiry of the term the Introducers engagement; or
  - 2.6.2 when the Introducer ceases to act as agent of the Client; or
  - 2.6.3 when the Client ceases to be a client of the Introducer,whichever is the earlier

### **3. THE INTRODUCER'S OBLIGATIONS**

- 3.1 The Introducer acts as the agent of the Client and shall at all times act towards the Client in good faith and in accordance with the FSA Rules.
- 3.2 The Introducer shall obtain and maintain all authorisations, licences, permits, registrations and notifications that it requires for the purposes of its business, including but not limited to those required by the FSA.
- 3.3 The Introducer shall comply fully with all laws, rules (including the FSA Rules), regulations, directions and codes of guidance and codes of practice which shall apply to its business from time to time.
- 3.4 The Introducer shall conduct itself and its business at all times in accordance with the FSA Rules.
- 3.5 The Introducer shall notify Hornbuckle immediately if any necessary authorisation, licence, permit, registration or notification detailed in clause 3.1 is withdrawn, suspended, cancelled or varied or if any circumstances arise which may result in such withdrawal, suspension, cancellation or variation. On such notification Hornbuckle shall be entitled to withhold payment of adviser fees payable to the Introducer in accordance with clause 4.
- 3.6 Hornbuckle requires the Introducer to make a statement or representation to the Client in relation to the Services on Hornbuckle's behalf, the Introducer shall ensure that any such statement or representation made to the Client is complete, accurate and not misleading.
- 3.7 For the purposes of EC Directive 2002/65 concerning the distance marketing of consumer financial services, in the event that the Introducer has not had face-to-face contact with the Client by the time it makes the Introduction, the Introducer warrants and undertakes that it shall notify Hornbuckle in writing of this fact at the time at which it makes the Introduction.
- 3.8 Subject to clause 3.9 below, the Introducer shall promptly provide Hornbuckle with all such personal details relating and such financial information as shall enable Hornbuckle to provide the Services to the Client
- 3.9 The Introducer warrants that it has, in relation to the Client's personal data (as defined in the Data Protection Act 1998) fully complied at all material times and currently fully complies, with all relevant requirements of any applicable data protection laws, including, without limitation, the following provisions of the Data Protection Act 1998:
  - (a) the data protection principles in Schedule 1 to that Act;
  - (b) the requirements relating to the notification by data controllers of the processing of personal data;
  - (c) where applicable, obtaining the Client's express consent to the Introducer and Hornbuckle holding and processing sensitive personal data relating to the Client; and
  - (d) any and all subject access requests from the Client.
- 3.10 The Introducer and Hornbuckle shall each employ security measures with respect to all communications with one another in respect of the Client, in order to comply with the seventh data protection principle in Schedule 1 to the Data Protection Act 1998.

- 3.11 The Introducer warrants that the Client has consented to the use of his personal data for the purpose of enabling Hornbuckle to contact him with regard to the Services and that this consent shall allow the use of his personal data by Hornbuckle for this purpose without contravening any data protection laws.
- 3.12 The Introducer shall be responsible for implementing in respect of the Client the personal identification procedures required in connection with the purchase of the Services for the purposes of compliance with the current Money Laundering Regulations and relevant legislation on prevention of the use of the financial system for the purposes of money laundering, the FSA Rules and the JMLSG Guidance Notes for the Financial Sector. The Introducer shall promptly upon receipt of appropriate identification documents verifying the Client's identity forward these documents to Hornbuckle together with the Introducer's appropriate identification verification certificate. The Introducer shall provide Hornbuckle with such other identification evidence and such assistance in relation to the verification of the Client's identity as Hornbuckle may require from time to time.
- 3.13 In relation to matters/complaints which may result in a dispute, the Party to whom the complaint is made shall:
- 3.13.1 in respect of pension scheme management and administration complaints, refer the matter to Hornbuckle directly in writing within 7 days of receipt of notification and Hornbuckle shall be responsible for handling the matter.
- 3.13.2 in respect of product advice and sales complaints the Introducer shall advise Hornbuckle of the complaint within 7 days of receipt but the Introducer shall be responsible for handling the matter.
- 3.13.3 in respect of complaints containing elements of both 3.13.1 and 3.13.2 the person with responsibility for complaints on behalf of each party shall within 7 days of notification of the complaint agree which party shall accept responsibility for investigating and dealing with the complaint and its resolution.
- 3.13.4 each party shall provide all reasonable assistance to the other in respect of complaints being handled by the other.
- 3.14 The Introducer warrants that it will use reasonable endeavours to meet its obligations under these Terms and that it will perform its obligations under these Terms with reasonable care and skill. However, and except where expressly stated otherwise in this Agreement, or as required by law:
- 3.14.1 the Introducer shall use reasonable endeavours to meet any dates and/or times for performance of its obligations under these Terms and any such date or time is given in good faith as a reasonable estimate.
- 3.14.2 nothing in these Terms shall exclude or limit the liability of either party for fraudulent misrepresentation, deceit or dishonesty nor for death or personal injury resulting from its negligence or any other liability that cannot be excluded by applicable law.
- 3.14.3 the Introducers maximum liability to Hornbuckle under these Terms whether in contract (by way of indemnity or otherwise), tort, restitution or otherwise is limited to £250,000 except in relation to payment or repayment of adviser fees where the limit is the outstanding payment or repayment obligation.
- 3.14.4 the Introducer excludes liability to Hornbuckle for any indirect, special, incidental or consequential loss or damage, and also excludes liability for loss of data, profit, business, opportunity, revenue, goodwill and anticipated savings howsoever arising in respect of these Terms.

#### **4. ADVISER FEES**

- 4.1 The Introducer shall be entitled to adviser fees on an Introduction only if:
- 4.1.1 the Client engages Hornbuckle to provide the Services to him;
- 4.1.2 Hornbuckle accepts the engagement;
- 4.1.3 the Client notifies Hornbuckle in his application for the Services that the Introducer is to be paid adviser fees from the Fund; and
- 4.1.4 Hornbuckle has received the required amount of money for the Fund from the Client to invest in the Fund.
- 4.2 For the avoidance of doubt, no adviser fees shall be payable to the Introducer if the Client does not provide Hornbuckle with the required amount of money to invest in the Fund.

- 4.3 The amount of adviser fees payable to the Introducer shall be the amount that has been agreed between the Client and the Introducer and which has been confirmed in writing by the Client to Hornbuckle in his application for the Services. The adviser fees shall be paid by way of a deduction of the relevant amount from the Fund.
- 4.4 All adviser fee payments made to the Introducer shall be deemed to be exclusive of VAT.
- 4.5 Any error in the amount of adviser fees paid by Hornbuckle to the Introducer may be rectified only if the Introducer gives Hornbuckle written notice of the alleged error within twenty working days of the Introducer receiving payment of the adviser fees. Upon receiving such notice, Hornbuckle shall use all reasonable endeavours to rectify any error that it agrees has been made.
- 4.6 If the Services or any part thereof are cancelled and Hornbuckle has to refund to the Client all or part of the monies that it has received from the Client, the Introducer shall repay to Hornbuckle a proportion of the adviser fees equal to the proportion of the monies that Hornbuckle refunds to the Client. Hornbuckle shall be entitled to set off this amount against any other sums that it owes to the Introducer, pursuant to these Terms. If no such sums are owed by Hornbuckle or if any such sums owed are not sufficient for the purposes of set-off, the Introducer shall pay the refund in full within 10 working days of receipt of a written notice from Hornbuckle demanding such payment.

## **5. DURATION AND TERMINATION OF THE ENGAGEMENT**

- 5.1 The engagement of the Introducer pursuant to these Terms shall continue in force until terminated in accordance with this clause 5.
- 5.2 Either Party may terminate this engagement with the other on giving the other Party not less than one month's notice in writing.
- 5.3 Hornbuckle shall be entitled, at its option, to give notice in writing to the Introducer terminating this engagement with immediate effect if:
  - 5.3.1 the Introducer commits any serious breach of any of the terms of this Agreement and that breach (if capable of remedy) is not remedied within ten working days of notice being given by Hornbuckle requiring it to be remedied; or
  - 5.3.2 the Introducer makes a composition or voluntary arrangement with his creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a moratorium comes into force in respect of the Introducer (within the meaning of the Insolvency Act 1986); or
  - 5.3.3 the Introducer is guilty of conduct which may affect Hornbuckle's business interests or which may bring Hornbuckle or the Introducer into disrepute or is charged with, investigated with or convicted of fraud or of an offence of dishonesty under laws relating to financial services; or
- 5.4 Either party shall be entitled at its option to give notice terminating the engagement with immediate effect if:
  - 5.4.1 either party ceases to carry on business for whatever reason; or
  - 5.4.2 either party purports to assign his rights or obligations under these Terms; or
  - 5.4.3 either party ceases to provide the Services.

## **6. CONSEQUENCES OF TERMINATION**

- 6.1 Termination of the engagement, however caused, shall be without prejudice to any rights or liabilities accrued at the date of termination.
- 6.2 On termination of the engagement for any reason the Introducer shall at its own expense and within ten working days return to Hornbuckle any and all advertising or promotional material relating to the Services then in the possession of the Introducer, or otherwise dispose of the same as Hornbuckle may instruct.
- 6.3 Within ten working days of termination, the Parties shall settle in full all outstanding payments owed to one another.
- 6.4 For the avoidance of doubt, the provisions of clause 4 shall, notwithstanding termination, continue in force in relation to all Introductions made by the Introducer to Hornbuckle before the date of termination.
- 6.5 Termination shall not affect the operation of clause 7, which shall remain in full force and effect.

6.6 Subject as herein provided and to any rights or obligations accrued prior to termination, neither Party shall have any further obligation to the other under these Terms.

## **7. CONFIDENTIALITY**

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

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

## **8. GENERAL**

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

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

8.3 A person other than the Introducer or Hornbuckle may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists or is available other than under such Act.

8.4 Information relating to the Introducer will be held on computer by Hornbuckle and may be passed to third parties for the purposes of market research and analysis.

8.5 Each Party shall execute all deeds or documents (including any power of attorney) and do all such other things that may be required from time to time for the purpose of giving effect to these Terms and the transactions contemplated hereby.

8.6 No failure to exercise or delay in exercising any right or remedy under these Terms shall constitute a waiver thereof and no single or partial exercise of any right or remedy under these Terms shall preclude or restrict any further exercise of such right or remedy. The rights and remedies contained in these Terms are cumulative and not exclusive of any rights and remedies provided by law.

8.7 If any term or provision of these Terms shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law that term or provision or part shall to that extent be deemed not to form part of these Terms and the enforceability of the remainder of these Terms shall not be affected thereby.

8.9 Any notice required to be given pursuant to these Terms shall be in writing and shall be given by delivering the notice by hand at, or by sending the same by prepaid first class post to the address of the relevant Party set out in this Agreement, or such other address as either Party notifies to the other from time to time, or by sending it by fax to the fax number notified by each Party to the other from time to time. Any notice given according to the above methods shall be deemed to have been given:

- (a) at the time of delivery if delivered by hand;
- (b) when received if sent by post;
- (c) at the time of transmission if sent by fax on a working day prior to 4.00 pm; and
- (d) on the next working day if sent by fax otherwise than as above.

8.10 These Terms shall be governed by and construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts.