

TERMS AND CONDITIONS OF BUSINESS

1. PRELIMINARY

- 1.1 In this document “you” shall mean the person or persons, company, partnership, trust or other body whether or not having legal personality in respect of whom or whose affairs any trust services are provided.
- 1.2 The provisions of this document set out our terms of business (the **Terms**) which apply in all cases to the appointment of Birketts Trust Corporation Limited (also referred to as “BTC” or “we” or “us”) to any and all offices including Trustee, Attorney, Deputy or Personal Representative unless otherwise agreed in writing between us. The Terms constitute the contract between BTC and you (the **Contract**), and shall apply retrospectively where the provision of BTC’s services has commenced before this Contract is made.
- 1.3 The scope of our appointment to which these Terms apply include BTC acting in the following capacities:
- 1.3.1 as a trustee of trusts;
 - 1.3.2 as an executor or administrator of estates;
 - 1.3.3 as an attorney under a registered Lasting Power of Attorney;
 - 1.3.4 as a deputy appointed by the Court of Protection; and
 - 1.3.5 any other ancillary services reasonably necessary to carry out its duties in the above capacities.
- 1.4 Our services will include but are not limited to:
- 1.4.1 an annual review meeting;
 - 1.4.2 the review and execution of any documentation relating to you, including but not limited to trust deeds, resolutions and minutes of meetings of trustees;

- 1.4.3 the maintenance of appropriate records in relation to you;
 - 1.4.4 the appointment and liaison with professional advisers, including as appropriate, Birketts LLP;
 - 1.4.5 liaison with persons interested including your family members, settlors, beneficiaries, beneficial owners;
 - 1.4.6 the custody and where appropriate or necessary, insurance of your assets; and
 - 1.4.7 general administration or management reasonably necessary to carry out its duties, to the extent to which the same is not expressly dealt with above.
- 1.5 You should also note that, once appointed, BTC will have a number of responsibilities, obligations and fiduciary duties which may override or conflict with the obligations and duties set in this document.
- 1.6 Your continuing instructions will amount to your acceptance of the Terms, including acceptance of our electronic verification procedures, as referred to in paragraph 10.7 below.
- 1.7 The Contract is made with BTC which provides trust services in England and Wales. BTC is a private limited company registered in England and Wales under Company Number 14672488 and wholly owned by Birketts LLP.
- 1.8 Information concerning our professional indemnity insurance can be accessed on our website at birketts.co.uk/policy/professional-indemnity-insurance

2. WHAT YOU CAN EXPECT FROM US

- 2.1 BTC will only act upon valid appointment under a trust deed, will, power of attorney or court order.
- 2.2 BTC shall have full authority to act in accordance with the terms of the relevant instrument or order and applicable law.
- 2.3 Where two or more persons act as a fiduciary alongside us, we shall be entitled to assume that the Terms have been brought to their attention and approved by them
- 2.4 The functions of our office or appointment will be carried out by the directors of BTC. We try to ensure that the same person deals with you throughout, but if a change becomes necessary we will inform you promptly of who will be taking over responsibility for your file.

2.5 We may delegate the functions of our office or appointment to the fullest extent allowable under the law of England and Wales.

3. INSTRUCTIONS TO OTHER PROFESSIONALS AND LAWYERS

3.1 On appointment BTC may instruct Birketts LLP to carry out any and all legal work that is necessary to its appointment.

3.2 We may also engage such accountants, investment advisors, agents, experts and other professionals including legal advisors or Counsel as we consider necessary and appropriate to the proper discharge of our duties and we will deduct the cost of such services from funds of the estate, donor or trust. In some cases, such appointment may be essential to discharge our duties or comply with the law or court order.

3.3 We will usually appoint a third party investment manager to hold any investments. We will conduct an appropriate risk assessment and exercise all due skill, care and diligence in the selection, appointment, and periodic review of investment managers we appoint to manage your investments. However, we will not be responsible for any acts, omissions or default of any investment manager.

4. COMMUNICATION

4.1 Unless you tell us not to do so, email will be our default means of communication. We cannot guarantee absolutely the security of information communicated by email. We attempt to encrypt all email communication but when the receiving side cannot accept it, we revert to using non-encryption. We take all reasonable steps to safeguard emails and to ensure they remain secure.

4.2 We monitor emails to investigate or detect any unauthorised use of our email system, or for any purpose permitted by law.

4.3 We may record telephone conversations and electronic communications (such as by email or SMS) between us and third parties in connection with our appointment.

4.4 We may send invoices by means of email or other electronic communication network at any address provided to us for that purpose.

5. CONFIDENTIALITY

5.1 You agree to us sharing all of your privileged and confidential information with Birketts LLP.

5.2 We shall also be entitled to assume we have your authority to discuss relevant confidential information relating to our appointment with your other professional advisers, and to provide them with personal data and relevant documentation, including but not limited to transferring your information to:

- 5.2.1 any banking or other institutions which conduct business in connection with you, or to
 - 5.2.2 accountants, auditors, legal and other advisors, directors or agents who render any service in connection with the services to be provided to you.
 - 5.2.3 In instances where we are appointed to the office of Attorney or Deputy, this permission shall remain in effect notwithstanding your death, unless and until revoked in writing by your personal representative (executor or administrator). We will require these organisations to comply with our confidentiality procedures in respect of information of which they become aware.
- 5.3 We are expressly authorised by you to disclose any confidential information in relation to our appointment, and any advice or opinions given to us, or to any third party in connection with our appointment at any time we are ordered to do so by any Court, regulatory authority or governmental department which has jurisdiction over us and whenever we are compelled to do so by any applicable law including the “Foreign Account Tax Compliance Act” (“FATCA”), United States.
- 5.4 In some circumstances, and only where appropriate steps have been taken to secure confidentiality, we may disclose to third parties privileged and confidential information. Such circumstances may include, but are not limited to:-
- 5.4.1 The periodic review of our files, on a random basis, by our regulator or other relevant external organisations.
 - 5.4.2 The review of our business by our auditors or other advisers.
 - 5.4.3 The renewal of our professional indemnity insurance or in compliance with the provisions of our professional indemnity cover.
 - 5.4.4 Wherever possible, and subject to the terms of paragraphs 10.8 and 10.9, we will disclose to you all information relevant to your affairs. We will not disclose to you any confidential information held by us on behalf of any other existing or former client.
- 5.5 You agree that (subject always to the applicable rules and with appropriate safeguards in place to ensure that access to relevant confidential information we hold is restricted) we may be appointed in circumstances where we hold confidential information which is confidential to another client or party which may be material to you. Although you agree to our acting in such circumstances we will not in any circumstances disclose your confidential information to the other party.

6. **CONFLICTS**

- 6.1 We will not take appointments where there is any conflict of interest and we have procedures in place to identify any possible conflicts with the interests of another or our appointments. To assist us you should let us know immediately if at any time you become aware of an actual or potential conflict. Where a conflict arises we will seek to resolve this in the best interests of the clients involved to decide whether we should continue our appointment, for one only or for neither office.
- 6.2 We will comply with the law of England and Wales in relation to conflicts of interest and our fiduciary position. You should be aware that this may require us to refrain from certain decision making processes, to refuse to follow your explicit instructions where they conflict with those duties or the law, to seek the guidance and or approval of the court and/or to retire or resign from our appointment.
- 6.3 Where instructions are given on behalf of another fiduciary we shall be entitled to assume that, where applicable, the Terms have been brought to the attention of, and approved by that other fiduciary.
- 6.4 Where we are appointed alongside another fiduciary, if one or more such other fiduciary advises us that they are not willing to proceed in accordance with our Terms, or if a conflict of interest arises between fiduciary vis a vis their fiduciary and personal capacities, we may terminate our appointment.
- 6.5 Where a conflict arises between BTC and Birketts LLP, BTC will act independently and in accordance with its fiduciary duties.

7. **LIEN**

We shall have an equitable lien (a right of retention or sale) over your assets but any such lien will only extend to properly incurred charges and liabilities arising from the provision of services to you in respect of our appointment.

8. **APPOINTMENT, TERMINATION, RESIGNATION AND RETIREMENT**

- 8.1 Before any appointment, we will assess the roles, obligations and duties required in order to decide whether we are willing or able to accept such appointment. BTC will not be liable for refusing to accept any appointment.
- 8.2 BTC's appointment is determined on matters known at the time of appointment or made known to it. BTC takes on professional appointments but is not obligated to do so.
- 8.3 BTC may take on appointments that could require it to make management decisions, take on a directorship or run another company due to a substantial or controlling

shareholding held by the estate. If during its appointment, a matter is discovered resulting in the above, we will discuss with you immediately our appointment and the terms of an appropriate indemnity or, if necessary, our retirement.

- 8.4 BTC's appointment may be terminated in accordance with the terms of the relevant trust, will, power of attorney or court order.
- 8.5 Both you and BTC can terminate the Terms on at least 30 days' notice, provided that if for any reason fiduciary or other duties continue to be owed by BTC to you beyond the expiry of such notice period as a result of any failure or delay or inability to terminate or transfer the administration or any such other function of the relevant office held by BTC, the engagement of BTC shall be deemed to have continued on the Terms until no such duties are owed by BTC to you.
- 8.6 Once appointed BTC will not be willing to retire from its appointment in any circumstances in which it considers that to do so would amount to a potential breach of trust or it is dissatisfied as to the level and extent of the indemnity provided in respect of that retirement.
- 8.7 If the terms of our appointment allow us to be removed unilaterally, our appointment is subject to an undertaking by the person holding the said power that they will not exercise such power of removal without providing an indemnity to us at a level and extent agreed by us, such agreement not to be unreasonably withheld.
- 8.8 Upon termination, we will be entitled to our fees and expenses up to that point. These are calculated on either a time spent basis or as a proportion of any agreed fee or estimated fee for our service.

9. **FINANCIAL MATTERS**

- 9.1 Our Schedule of Charges contains details of our fees.
- 9.2 We will charge such fees as agreed or, if no fees are agreed, in accordance with our Schedule of Charges as amended from time to time. We reserve the right to ask you to make payments on account from time to time.
- 9.3 Disbursements and third party costs incurred in the execution of our role shall be payable in addition to BTC's fees.
- 9.4 We reserve the right to review and amend our fees periodically.
- 9.5 We have the right to render interim invoices either at intervals which may be agreed between us or, in the absence of such agreement, at intervals of our choosing. Such invoices will be final invoices for our fees for the period covered by each invoice unless

otherwise stipulated by us. We may invoice disbursements as part of such invoices or separately.

- 9.6 Unless otherwise agreed our invoices are payable on presentation.
- 9.7 For reference our fees will normally be paid (or partially paid) from any money or assets held by Birketts LLP on your behalf (in their client account) which is not held for any other designated purposes, or by our nominees or agents on your behalf.
- 9.8 We reserve the right to charge interest on any unpaid invoices, at the rate recoverable under a court judgment, from one month after the delivery of the invoice. You will be responsible for our time costs and expenses incurred in recovering the sums due from you.
- 9.9 If we agree that an invoice may be paid by a third party on your behalf and the third party does not pay the invoice within 30 days, you will be liable immediately to settle the invoice in full. You will be directly liable for VAT in all cases. All invoices, which we send to you, must be paid in pounds sterling, unless otherwise agreed by us in writing. If invoices are not paid in pounds sterling and we incur currency conversion charges or other bank charges, or we suffer exchange-rate losses, we reserve the right to charge additional sums to cover such items.
- 9.10 If you require a PO number to be used, it is your obligation to provide it in time for invoices to be issued, otherwise they will be issued without and payment will still be expected.
- 9.11 Our invoices must be paid without any deduction or withholding on account of any taxes or other charges. If you are required by law to make a deduction or withholding you must notify us in writing of the amount to be deducted or withheld and the legal justification for such deduction. If required by us you must pay such additional amount as may be necessary to ensure that we receive payment of the full amount of our invoice. If we subsequently receive any value for the amount withheld or deducted (for example, by way of a credit for tax treated as withheld or deducted) we will account for such value to you provided our overall net of tax position is not thereby affected.
- 9.12 We reserve the right to request personal guarantees in relation to our fees and disbursements from an appropriate person at any stage in the course of our appointment.
- 9.13 Where one or more persons or entities are appointed alongside BTC, each of those persons or entities shall be jointly and severally liable for the obligations imposed by the Contract.

- 9.14 Expenses incurred on your behalf (disbursements) include VAT if appropriate. Generally we will only pay a disbursement without you having put us in funds first if it does not exceed £150; we will then raise an invoice or ask you to remember the cost. In the case of larger disbursements we will usually ask you to put us in funds before we incur them. We may charge for mileage for the purposes of travelling to and/or from meetings, hearings, etc. that are necessary for our appointment. Mileage is charged at our standard rate of 45p per mile, which increases by 5p for each further BTC representative attending.
- 9.15 Routine copying of papers is included in our overall charging structure, however we reserve the right to charge for photocopying where appropriate which will be between 10p and £9.00 per copy depending upon size and colour. We also reserve the right to charge for the cost of scanning, reprographics, copying, printing, USB/memory sticks, data rooms and courier charges.
- 9.16 We will never tell you of changes to important business information, such as bank account details, by email. Please notify us immediately if you receive any email or other communication purporting to be from us stating that we have changed our bank details for payment.

10. **REGULATORY ISSUES**

- 10.1 We adhere to all applicable data protection legislation when processing personal data.
- 10.2 Personal data provided to us may be transferred to, and processed by Birketts LLP and/or other advisers or service providers that we have engaged to assist us in providing services to you as well as regulators and/or law enforcement agencies. Please refer to our Privacy Policy Birketts.co.uk/privacy-policy for further information on how we process personal data and for details of Birketts LLP's Data Protection Officer.
- 10.3 Where you provide us with any personal data it is your sole responsibility to ensure its accuracy and legality.
- 10.4 We will use your personal data primarily to provide fiduciary and administrative services to you, but also for related purposes such as internal administration, billing and record keeping.
- 10.5 In common with all professional practices and financial institutions we are required to hold verification of the identity and address of you, beneficiaries, settlors, beneficial owners and any other persons interested in or associated with, who may benefit from or have indirectly contributed assets to you and to identify the source of property held by you to comply with anti-money laundering legislation. You will be required to provide this information before we are able to proceed with our appointment.

- 10.6 We will ask you for the names, addresses and other necessary personal information of the settlor, trustees, beneficiaries and any protector or other additional person with control and will undertake screening and address verification of those individuals too. As electronic address verification relies on information contained on the edited electoral role, this is not always successful. In those circumstances, we may need to ask for documentary evidence, such as a utility bill. In providing this information to us you confirm that you have notified the individuals concerned that we will be undertaking these checks and may need to seek proof of address.
- 10.7 When verifying your identity, we may use an electronic credit reference agency (CRA) such as Equifax, to search sources of information relating to you. An electronic note is left on your credit record to say that a check has taken place but this is not a hard credit check and won't impact your credit score. If this process is unsuccessful, then we may need to ask for documentary evidence from you, such as a utility bill. CRAs may keep a record of the information and provide it (and the fact that a search was made) to its other customers for the purposes of verifying identity, to assess credit risk and to prevent fraud, money laundering and to find debtors. For further information on how CRAs process your personal data, please refer to the CRA Information Notice which can be accessed on our website Birketts.co.uk/app/uploads/2024/01/Credit-Reference-Agency-Information-Notice.pdf.
- 10.8 In certain circumstances we are required to report to the appropriate authorities (without informing you) any suspicions we have of money laundering or other illegal activities. These obligations override our duty of confidentiality to you.
- 10.9 There may be circumstances where we reasonably conclude that we are obliged to make a report or delay carrying out our fiduciary and/or administrative role, but where it later transpires that the report or delay was not required by law. By instructing us you accept that such reports and delays can be made. We do not accept responsibility or liability for any loss, damage or expense whether resulting directly or indirectly from the making of such report.
- 10.10 Any personal data we receive from you for the purpose of preventing money laundering or terrorist financing will be used only for that purpose either with your consent or as permitted by or under another enactment.
- 10.11 In order to comply with our obligations under sanctions legislation we may use an electronic search provider to screen your name against the sanctions lists. We may also electronically verify your address. We will undertake these checks before we undertake any work for you.

11. **INTELLECTUAL PROPERTY RIGHTS**

- 11.1 Unless you instruct us otherwise, you agree we may use, for internal training purposes, any counsel's or expert opinions obtained for the purpose of carrying out our appointment.
- 11.2 It is a term of our engagement by you that any letters, documents, information given by us to you, will only be used by you in connection with our appointment, and that you will not disclose such material to any third parties without our prior written consent.

12. **COMPLAINTS HANDLING**

- 12.1 We are committed to providing a high quality service. You have the right to object to our invoice. If you are unhappy about any aspect of the service you have received, or about the charges we have made, please contact our client care director, currently Lorna Spear, in writing by email or post to our Ipswich office. We have a written procedure in place detailing how we handle complaints which is available upon request, or can be found on our website.
- 12.2 If you are not satisfied with our handling of your complaint you can ask the Legal Ombudsman at: PO Box 6167 Slough SL1 0EH or enquires@legalombudsman.org.uk (or any other relevant regulator) to consider your complaint. Normally you will need to bring a complaint to the Legal Ombudsman within six months of receiving a final written response from us about your complaint. Information concerning the role of the Legal Ombudsman can be found at www.legalombudsman.org.uk.

13. **OUTSOURCING**

- 13.1 We may outsource certain business support functions including, but not limited to document production, IT, archiving and deeds storage and certain legal processes to third party organisations.
- 13.2 Where such services are outsourced, we will take all reasonable steps to ensure your information is kept confidential and only processed in accordance with our instructions.
- 13.3 By accepting these Terms you consent to such outsourcing arrangements including the transfer of any personal data to such organisations.

14. **ANTI-CORRUPTION AND BRIBERY**

- 14.1 It is our policy to conduct all our business in an honest and ethical manner. We take a zero-tolerance approach to bribery and corruption and are committed to acting professionally and with integrity in all our business dealing and relationships wherever we operate.

14.2 We, and any person acting on our behalf, shall not participate in any form of corrupt behaviours and shall comply with the Bribery Act 2010 and all other laws relevant to countering bribery and corruption in all countries in which we operate.

15. **CRIMINAL FINANCES ACT 2017**

15.1 We are committed to promoting compliance with the requirements of the Criminal Finances Act 2017. Our Statement of Compliance can be found on our website at Birketts.co.uk/compliance/statement-of-compliance-criminal-finances-act-2017/

15.2 We do not tolerate tax evasion, or the facilitation thereof in any circumstances, whether committed or facilitated by a client, our, or your personnel or associated persons/companies.

16. **EQUALITY AND DIVERSITY**

16.1 We are committed to promoting equality and diversity in all our dealings with clients, third parties and employees.

16.2 Please contact us if you would like a copy of our Equality and Diversity Policy.

17. **GOVERNING LAW AND DISPUTE RESOLUTION**

17.1 The Contract is governed by and construed in all respects in accordance with the laws of England and Wales.

17.2 Any disputes not resolved under paragraph 12.1 shall be determined by the courts of England and Wales. You and we irrevocably agree to submit to the exclusive jurisdiction of the courts of England and Wales over any claim or issue arising under or in connection with the Contract.

18. **NON WAIVER AND SEVERABILITY**

18.1 Failure or delay by us in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of our rights under the Contract.

18.2 Any waiver by us of any breach or of any default under any provision of the Contract by you shall not be deemed to be a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

18.3 If any provision of the Contract is held by any court or other competent authority to be void or unenforceable in whole or in part, the Contract shall continue to be valid as to the other provisions thereof and as to the remainder of the affected provision together with whatever modifications as shall be necessary to render the same enforceable.

19. **EXCLUSION AND LIMITATION OF LIABILITY**

- 19.1 Our liability to you is limited in the following ways:
- 19.2 We shall not be liable for any loss or damage or expense arising as a direct or indirect result of the provision of services being prevented, hindered, delayed or rendered uneconomic by reason of circumstances beyond our reasonable control.
- 19.3 Save as stated in paragraph 19.5 below, and subject to paragraphs 19.2, 19.4 and 19.5 below, and unless otherwise agreed in writing by a Director with specific reference to this paragraph 19, our total liability to you in respect of our engagement for any loss or damage, costs or expenses, howsoever caused, whether in contract (by way of indemnity or otherwise), tort (including negligence), misrepresentation, restitution or otherwise (in each case whether caused by negligence or not) and whether related to any act, omission, services provided to you or failure to act or delay in acting by us, will be limited to £3m (three million pounds sterling) in aggregate.
- 19.4 Where we are instructed by more than one fiduciary on a matter, the maximum amount of liabilities referred to in paragraph 19.3 above (or such other amount agreed by us in writing in substitution) shall be the maximum aggregate liability that we shall incur for all fiduciaries on such matter.
- 19.5 The extent to which any loss or damage will be recoverable by you from us will be limited so as to be in proportion to our contribution to the overall fault for such loss or damage, taking into account any contributory negligence by you, your other advisers and/or any other third party responsible to you and/or liable to you for any indirect or consequential loss or damage whatsoever. Any such liability shall not be increased by reason of any limitation of liability by your other advisers and/or third parties responsible to you, or by your inability to recover any loss or damage from them.
- 19.6 You agree not to bring any claim in respect of loss or damage suffered by you arising out of or in connection with our engagement (including but not limited to delay or non-performance of our engagement) against any of our Directors, employees or agents even where our Directors, employees or agents have been negligent. This restriction will not operate to exclude any liability that cannot be excluded at law or to exclude our liability for acts or omissions of any of our Directors, employees or agents. It is agreed that our Directors, employees and agents will have the right to enforce this paragraph pursuant to the Contracts (Rights of Third Parties) Act 1999. We reserve any right we may have to rescind or vary the Terms without having to seek the consent of our Directors, employees or agents.
- 19.7 We shall not be liable for any indirect loss or damage or any loss of profit, loss of income, loss of contract, or loss of anticipated savings arising in any circumstances,

whether in contract, tort, negligence, for breach of statutory duty or otherwise, and howsoever caused.

- 19.8 Nothing in the Terms shall affect any liability we may have to you in respect of any personal injury or death resulting from our negligence or any other situation where the law prohibits us from excluding or limiting our liability to you.
- 19.9 The provisions of this paragraph 19 shall continue to apply notwithstanding the termination of our appointment for any reason.
- 19.10 Every indemnity, exoneration or release in these Terms is in addition to and without prejudice to any indemnity, exoneration or release contained in a governing document including wills, trust deeds, power of attorney, deeds or any other document.

20. **TERMINATION**

- 20.1 BTC's appointment may be terminated in accordance with the terms of the relevant trust, will, power of attorney or court order.
- 20.2 Upon termination, we will be entitled to our fees and expenses up to that point. These are calculated on either a time spent basis or as a proportion of any agreed fee or estimated fee for our service.

21. **AMENDMENTS TO THE TERMS**

We typically review and update the Terms on an annual basis but reserve the right to make changes to these Terms from time to time.

22. **STATUTORY INFORMATION**

- 22.1 BTC is not authorised by the Financial Conduct Authority. However if while we are acting for you, you need to take advice on investments, we may have to refer you to someone who is authorised to provide the necessary advice. However, we may instruct Birketts LLP to provide certain limited investment advice closely linked to the legal advice on which Birketts LLP may be instructed. Birketts LLP is not authorised by the Financial Conduct Authority but is included on the register maintained by the Financial Conduct Authority so that it can carry on insurance distribution activities, which is broadly the advising on, selling and administration of insurance contracts.
- 22.2 Our VAT number is 511 7319 18
- 22.3 Our registered office is Providence House, 141-145 Princes Street, Ipswich, Suffolk IP1 1QJ.