

Terms of Business for Intermediaries

THIS AGREEMENT is made the _____ day of _____ 20....

BETWEEN

1. **Balkerne Asset Management**; whose registered office is at 1 Balkerne Hill, Colchester, Essex, CO3 3FG and
 2. [_____] whose registered office is at
[_____] and whose FSA Registration
Number is [_____] (the “introducer”).
- each a “party” and together the “parties”.

BACKGROUND

1. The introducer is an Independent Financial Adviser authorised and regulated by the Financial Services Authority (the “FSA”).
2. **Balkerne Asset Management** wishes to engage the Introducer to introduce clients to **Balkerne Asset Management** for the Services as defined below.
3. The introducer agrees to introduce clients to **Balkerne Asset Management** in accordance with the terms of this Agreement.

AGREED TERMS

1. Definition and Interpretation

- 1.1 In this Agreement, unless the context requires otherwise:

“Client” means a client introduced to **Balkerne Asset Management** by the Introducer;

“Commencement Date” means the date on which this Agreement comes into force, which shall be the date that **Balkerne Asset Management** inscribes on the Agreement when it has received the signed Agreement or a signed counterpart thereof from the Introducer;

“Confidential Information” means information of a confidential nature (including trade secrets and information of commercial value) known to **Balkerne Asset Management** and concerning **Balkerne Asset Management** and the Services and communicated to the Introducer by **Balkerne Asset Management**;

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

“Services” means the services of the establishment of discretionary portfolios and management & administration of discretionary portfolios provided by **Balkerne Asset Management**.

- 1.2 References in this Agreement to the singular includes reference to the plural and vice versa.
- 1.3 References in this Agreement to the masculine also include the feminine gender and the gender neutral.

- 1.4 References in this Agreement 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 this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

2. Engagement of the Introducer

- 2.1 With effect from the Commencement Date, **Balkerne Asset Management** appoints the introducer to make Introductions in accordance with the terms of this Agreement and the Introducer accepts this appointment on those terms.
- 2.2 This Agreement does not constitute an exclusive agreement with the introducer. Nothing in this Agreement shall preclude either party from committing to similar agreements with other institutions or individuals.
- 2.3 Nothing in this Agreement shall be deemed to constitute the Introducer as the employee, representative, partner or agent of **Balkerne Asset Management**. Unless expressly agreed by **Balkerne Asset Management** in writing, the Introducer shall not have authority of **Balkerne Asset Management**, and shall not hold itself out as having such authority, to act on **Balkerne Asset Management'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 **Balkerne Asset Management**.
- 2.4 **Balkerne Asset Management** 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 the terms of this Agreement shall be effective unless agreed by the Parties in writing, save that **Balkerne Asset Management** shall be entitled at its discretion, to accept an Introduction on terms other than the terms of this Agreement.

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 **Balkerne Asset Management** immediately if it becomes subject to an action or investigation by the FSA or other regulatory body and/or 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 **Balkerne Asset Management** shall be entitled to withhold payment of commission payable to the Introducer in accordance with clause 4 pending the outcome of any action or investigation by the FSA or other regulatory body.
- 3.6 If **Balkerne Asset Management** authorises the Introducer to make a statement or representation to the Client in relation to the Services on **Balkerne Asset Management's** behalf, the Introducer shall ensure that any such statement or representation made to the Client is complete, accurate and not misleading.

- 3.7 Subject to clause 3.8 below, the Introducer shall promptly provide **Balkerne Asset Management** with all such personal details relating to the Client as **Balkerne Asset Management** shall reasonably require to enable it to contact the Client.
- 3.8 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.
- 3.9 The Introducer and **Balkerne Asset Management** 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.
- 3.10 The Introducer warrants that the Client has consented to the use of his personal data for the purpose of enabling **Balkerne Asset Management** to contact him with regard to the Services and that this consent shall allow the use of his personal data by **Balkerne Asset Management** for this purpose without contravening any data protection laws.
- 3.11 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 Money Laundering Regulations 2001, the money Laundering Regulations 2003, EC Directive 1191/308 (as amended) 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 **Balkerne Asset Management** together with the introducer's appropriate identification verification certificate. The Introducer shall provide **Balkerne Asset Management** with such other identification evidence and such assistance in relation to the verification of the Client's identity as **Balkerne Asset Management** may require from time to time.
- 3.12 **Balkerne Asset Management** will not disclose personal or sensitive data to third parties unless they are required to do so by law; the data subject has given their consent to such disclosure, or where **Balkerne Asset Management** have appointed a third party to provide an administrative service on their behalf. In this latter situation, **Balkerne Asset Management** will ensure that all appropriate safeguards are put in place to protect the confidentiality of the relevant personal and/or sensitive data.
- 3.13 **Balkerne Asset Management** may carry out a credit check on the Introducer, the partners or the principal of the Introducer. **Balkerne Asset Management** undertakes to advise the Introducer, the partners or the principal of the Introducer before any check is carried out and to give the opportunity to object. If the Introducer, the partners or the principal of the Introducer objects, **Balkerne Asset Management** reserve the right to refuse or amend terms and/or apply conditions relating to any commission payments.
- 3.14 The Introducer shall immediately notify **Balkerne Asset Management** in writing if it becomes aware of any matter which may result in a dispute between **Balkerne Asset Management** and/or the introducer and the Client. At **Balkerne Asset Management's** request, the Introducer shall co-operate fully with **Balkerne Asset Management** in the investigation and resolution of any complaint by **Balkerne Asset Management** from the Client.

4. Commission

- 4.1 The Introducer shall be entitled to commission on an introduction only if:
- 4.1.1 the Client engages **Balkerne Asset Management** to provide the Services to him
 - 4.1.2 **Balkerne Asset Management** accepts the engagement
 - 4.1.3 the Client notifies **Balkerne Asset Management** in his application for the Services that the introducer is to be paid commission; and
 - 4.1.4 **Balkerne Asset Management** has received monies for investment
- 4.2 For the avoidance of doubt, no commission shall be payable to the Introducer if the Client does not provide **Balkerne Asset Management** with monies to invest.
- 4.3 The amount of commission 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 **Balkerne Asset Management** in his application for the Services. The commission shall be paid by way of a deduction of the relevant amount from the monies to be invested.

- 4.4 Any error in the amount of commission paid by **Balkerne Asset Management** to the Introducer may be rectified only if the Introducer gives **Balkerne Asset Management** written notice of the alleged error within ten working days of the Introducer receiving payment of the commission. Upon receiving such notice, **Balkerne Asset Management** shall use all reasonable endeavours to rectify any error that it agrees has been made.
- 4.5 If the Services or any part thereof are cancelled and **Balkerne Asset Management** has to refund to the Client all or part of the monies that it has received from the Client, the Introducer shall repay to **Balkerne Asset Management** a proportion of the commission equal to the proportion of the monies that **Balkerne Asset Management** refunds to the Client. **Balkerne Asset Management** shall be entitled to set off this amount against any other sums that it owes to the Introducer, whether under this Agreement or otherwise. If no such sums are owed by **Balkerne Asset Management** or if any such sums owed are not sufficient for the purposes of set-off, the Introducer shall pay the refund in full within ten working days of receipt of a written notice from **Balkerne Asset Management** demanding such payment.

5. Duration and termination of the agreement

- 5.1 This Agreement shall commence on the Commencement Date and shall continue in force until terminated in accordance with this clause 5.
- 5.2 Either Party may terminate this Agreement on giving the other Party not less than one month's notice in writing.
- 5.3 **Balkerne Asset Management** shall be entitled, at its discretion, to give notice in writing to the Introducer terminating this Agreement 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 five working days of notice being given by **Balkerne Asset Management** 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 **Balkerne Asset Management's** business interests or which may bring **Balkerne Asset Management** or the Introducer into disrepute or is charged with, investigated with or convicted of fraud or an offence under laws relating to financial services; or
- 5.3.4 the Introducer ceases, or threatens to cease, to carry on business for whatever reason; or
- 5.3.5 the Introducer purports to assign his rights or obligations under this Agreement; or
- 5.3.6 **Balkerne Asset Management** ceases to provide the Services

6. Consequences of termination

- 6.1 Termination of this Agreement, however caused, shall be without prejudice to any rights or liabilities accrued at the date of termination.
- 6.2 On termination of this Agreement for any reason the Introducer shall at its own expense and within ten working days return to **Balkerne Asset Management** 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 **Balkerne Asset Management** 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 **Balkerne Asset Management** 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 this Agreement.

7. Confidentiality

- 7.1 The Introducer agrees that he shall at all times (both during the term of this Agreement 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 **Balkerne Asset Management**, disclose to any third party any Confidential Information, unless the information was public knowledge or already known to the Introducer at the time of the disclosure or subsequently becomes public knowledge other than by breach of this Agreement.
- 7.2 To the extent necessary to implement the provisions of this Agreement (but not further or otherwise), the Introducer may disclose the Confidential Information to any relevant governmental or other authority or regulatory body and to any employees of the Introducer, provided that before any such disclosure the Introducer shall make those persons aware of his obligations of confidentiality under this Agreement and shall obtain a binding undertaking as to confidentiality from all such persons.

8. General

- 8.1 This Agreement is personal to the Introducer and shall not be capable of assignment by the Introducer or of being transferred by it.
- 8.2 This Agreement constitutes the entire agreement and understanding of the Parties and supersedes any previous agreements between the Parties relating to the subject matter of this Agreement.
- 8.3 Each Party acknowledges and agrees that in entering into this Agreement 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 this Agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.
- 8.4 A person who is not a party to this Agreement 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.
- 8.5 Information relating to the Introducer will be held on Computer by **Balkerne Asset Management** and may be passed to third parties for the purposes of market research and analysis unless specifically requested not to do so in writing by the Introducer.
- 8.6 Each Party shall execute all deeds or documents (including any Power or Attorney) and do all such other things that may be required from time to time for the purpose of giving effect to the terms of this Agreement and the transactions contemplated hereby.
- 8.7 No failure to exercise or delay in exercising any right or remedy under this Agreement shall constitute a waiver thereof and no single or partial exercise of any right or remedy under this Agreement shall preclude or restrict any further exercise of such right or remedy. The rights and remedies contained in this Agreement are cumulative and exclusive of any rights and remedies provided by law.
- 8.8 If any term or provision in this Agreement 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 the extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected thereby.

- 8.9 This Agreement may be executed in any number of counterparts and by the parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original agreement but all the counterparts together shall constitute one and the same instrument.
- 8.10 Any notice required to be given pursuant to this Agreement 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 email to the email address as 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. when received if sent by email.
- 8.11 This Agreement shall be governed by and construed in accordance with English Law and the parties irrevocably submit to the exclusive jurisdiction of the English Courts.

Signed by:

a duly authorised representative of **Balkerne Asset Management**)

Position in Company)

Signed by:

a duly authorised representative of)

Position in Company)