

Terms of Business

Barnett Waddingham LLP

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Contents

Section A – General Terms and Conditions	3
Section B – Data Protection.....	14
Section C – TUPE	19
Section D – Online Services	20
Section E – Trustee Services	26
Section F – Pension Administration Services.....	28
Section G – Insurance & Longevity Consulting Services	30
Section H – Pensions Dashboards Services	31
Section I - Definitions & Interpretation	34

Section A – General Terms and Conditions

A1. Applicable Terms

- 1.1. The Engagement Terms shall come into force when the Client accepts the Engagement Terms in writing or electronically or, if earlier, the date (on or after the date of the Engagement Letter) on which BW first provides (or continues to provide) the Services.
- 1.2. The Engagement Terms shall then continue in force unless and until terminated in accordance with paragraph A15.
- 1.3. Any Services provided by BW to the Client (and/or, as applicable, for the benefit of the relevant Service Recipient(s)) are provided subject to and under the Engagement Terms.
- 1.4. Sections D – G of these Terms of Business shall apply if BW is providing the Services to which each such Section relates.
- 1.5. If there is any conflict or inconsistency between any of the provisions of the Engagement Terms then, unless expressly stated otherwise in the relevant Section, the descending order of precedence for the terms governing the provision of the Services shall be as follows: (a) the Engagement Letter; (b) Sections A, B, C and H of these Terms of Business; (c) the relevant Section applicable to the particular Services; and then (d) the Service Schedule.
- 1.6. These Terms of Business may be updated from time to time by BW posting a notice of the update on the BW Website or by notifying the Client in writing by any other reasonable means. Such updates shall take effect ten (10) days after details of them are so posted or, if earlier, of the Client otherwise being notified of the update. Updates to the Terms of Business shall prevail over the version(s) previously provided.
- 1.7. Nothing in these Terms of Business shall prevent BW from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Engagement Terms.

A2. The Client and Service Recipient(s)

- 2.1. Subject to paragraph 27.6 of this Section, the relevant Service Recipient(s) may receive the benefit of the Services (or part of them), provided that:
 - 2.1.1. the Client shall procure that each such Service Recipient complies with the Engagement Terms; and
 - 2.1.2. in no event or circumstances shall the Service Recipient(s) have any right of action against BW or BW's Affiliates under or in connection with the Engagement Terms and/or the provision or receipt of the Services.
- 2.2. Any obligation of the Client contained in the Engagement Terms includes an obligation to procure compliance with, or performance of, that obligation by its and (as applicable) any relevant Service Recipient's Personnel.
- 2.3. The Client shall be liable for any act or omission of any Service Recipient and of its and any Service Recipient's Personnel as if such act or omission were an act or omission of the Client itself.

A3. The Services

- 3.1. BW warrants that it shall:
 - 3.1.1. in performing the Services act in accordance with the standards, practices, methods and procedures of, and exercise that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from, a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;
 - 3.1.2. subject to paragraph 3.8 of this Section, use reasonable endeavours to meet any relevant Service Levels and/or any Milestone(s) and otherwise perform the Services in a timely manner;
 - 3.1.3. comply with all Applicable Laws in its capacity as a service provider; and
 - 3.1.4. have in place and maintain all necessary licences, permissions, authorisations, consents and permits that BW needs, in its capacity as a service provider, to perform the Services.
- 3.2. The Services shall be provided during Business Hours. However, BW shall use reasonable endeavours to make the relevant BW Personnel available outside Business Hours when reasonably required by the Client and as agreed in writing between the Parties from time to time. The Client acknowledges and agrees that the provision of Services outside of Business Hours may be subject to additional Fees.
- 3.3. The Client acknowledges and agrees that:
 - 3.3.1. the Fees have been estimated based on the Applicable Laws, the Client's requirements, the nature and operations of the Client and the information available or provided to BW as at the relevant Service Start Date. Where there is a change in Applicable Laws or the Client's requirements, the nature or operations of the Client and/or such information is or becomes inaccurate or incomplete, to the extent that any additional time, cost or expense may be incurred in the provision of the affected Services, the Parties shall use reasonable endeavours to negotiate and agree any relevant changes in the Fees, scope, extent and/or timing of the affected Services;
 - 3.3.2. the Services are based on the Applicable Laws in force at the time the Services are provided and there is no obligation on BW to notify the Client of any change in law which renders the Services provided no longer correct or appropriate, or to update the provision of the Services to reflect any changes in the law that come into force after such provision;
 - 3.3.3. no reliance shall be placed on any draft or interim Service Materials;
 - 3.3.4. BW shall not undertake any verification, assessment, cleanse or other check (whatsoever) of the accuracy or completeness of any Client Materials unless expressly stated (or referred to) in the Service Schedule;
 - 3.3.5. BW and the relevant BW Personnel shall report to, and may take instructions from, any current trustee, director or officer of the Client, the Client Personnel named in the Engagement Letter, any Client Personnel to whom such individuals refer BW, and any other Client Personnel as notified to BW by the Client in writing from time to time. These instructions may be made by any agreed communication method. However, where, in the opinion of BW, matters of principle or matters of particular importance are involved then such instructions must be confirmed in writing by the Client as soon as practicable.

Acknowledgement of receipt of instructions shall not be given by BW unless requested, or the circumstances of the matter appear to BW to require this;

- 3.3.6. BW neither assumes nor owes any duty or responsibility to any third party other than to the Client and (as applicable, and subject to the Engagement Terms) the relevant Service Recipient(s) in relation to the Services and any liability to any such third party is expressly disclaimed to the fullest extent permitted by law;
- 3.3.7. BW does not provide, and shall not be responsible for, any legal, accountancy or taxation advice, notwithstanding that BW may, from time to time in the provision of the Services, comment or otherwise give an opinion on any information, documentation, data, advice and/or guidance provided to BW by or on behalf of the Client. The Client shall not rely on any such comment or opinion to make (or refrain from making) any decision or take (or refrain from taking) any action;
- 3.3.8. BW shall not be liable for any Losses arising from or in connection with any fraudulent instructions where BW or the relevant BW Personnel reasonably believes in good faith that the instructions received are from the Client or any person referred to in paragraph 3.3.5 of this Section;
- 3.3.9. if BW provides any statement or assurance as to its provision of the Services and/or the Service Materials, that statement or assurance shall not be, and shall not be deemed to be, a warranty that the provision of the Services and/or the Service Materials are without error, omission or inaccuracy; and
- 3.3.10. unless otherwise agreed in writing, BW shall not be required to retain hard copies of any Client Materials in its possession for longer than a period of 2 months following receipt, at which point the hard copy Client Materials may be returned or destroyed and shall then not be accessible other than in the electronic format.
- 3.4. Notwithstanding paragraph 3.3.4 of this Section, if BW encounters any obvious error, inaccuracy or deficiency in the relevant Client Materials, BW shall notify the Client as soon as reasonably practicable after becoming aware of the same.
- 3.5. Any timescale in respect of any Service Level and/or Milestone shall be deemed to commence on the later of the date on which BW has received: (a) the relevant full and final Client Materials; and (b) any other relevant dependency, authority, decision, instruction or documentation required.
- 3.6. As applicable:
 - 3.6.1. if BW's performance in any relevant Service Level Period is materially below the relevant Service Levels, BW shall as soon as is reasonably practicable hold discussions in good faith with the Client in order to understand the reasons for the shortfall from the relevant Service Levels and where necessary provide the Client with an Improvement Plan for the Client's approval, such approval not to be unreasonably withheld or delayed;
 - 3.6.2. where an Improvement Plan has been approved by the Client, BW shall use reasonable endeavours to undertake the relevant improvements as soon as reasonably practicable; and
 - 3.6.3. if the service levels actually achieved continue to remain below the Service Levels for two consecutive Service Level Periods, then the Parties may discuss implementing an incentive and/or service credits regime on terms that are reasonable in the circumstances.
- 3.7. BW shall be under no obligation to provide or continue providing the Services (or any part of them) until the relevant Client Materials or support referred to in paragraph 5.2 of this Section is received by BW.
- 3.8. If BW's performance of the Services is hindered, prevented or delayed by any act or omission of the Client, any Service Recipient, their respective Personnel, any Authorised User and/or any other third party not under the reasonable control of BW, then BW shall be entitled to an extension of time to perform such Services (including achieving any Milestone(s) and/or Service Levels) equal to the delay caused by the relevant hindrance, prevention or delay.
- 3.9. Notwithstanding any other provisions of the Engagement Terms, BW shall not be obliged to provide any Services which might be unlawful or require regulatory or other approval, consent or authority which is required to be and has not been granted to or obtained by the Client. If BW becomes aware that any such approval, consent or authority is required to perform the Services (or part of them) then BW shall notify the Client as soon as reasonably practicable.
- 3.10. Except as expressly set out in the Engagement Terms, BW disclaims and excludes all representations, warranties, conditions and other terms of any kind, whether express or implied, to the fullest extent permitted by law, in relation to any aspect of the Services (and, as applicable, any Third-Party Services).

A4. Project Planning

- 4.1. Where expressly agreed between the Parties and documented in the Service Schedule, as applicable to the particular Services:
 - 4.1.1. BW shall prepare and deliver to the Client, for the Client's approval (such approval not to be unreasonably withheld), drafts of a Project Initiation Document (PID) and a Project Plan in respect of the implementation and delivery of the particular Services as soon as reasonably practicable;
 - 4.1.2. the Client and BW shall each use reasonable endeavours to agree the PID and the Project Plan;
 - 4.1.3. the final agreed versions of the PID and the Project Plan shall be acknowledged in writing by or on behalf of each Party;
 - 4.1.4. each party shall use reasonable endeavours to perform the steps and tasks that are its responsibility as referred to in the Project Plan;
 - 4.1.5. any changes to the PID or Project Plan (including, in each case, any changes to Milestone(s) and/or Service Level(s)) shall be agreed in writing between the Parties; and
 - 4.1.6. if the Client and BW are unable to agree the PID and/or the Project Plan within 3 months of the relevant Service Start Date, either Party may terminate the provision of the particular Services by written notice to the other Party.

A5. Client's Responsibilities

- 5.1. The Client warrants that:
 - 5.1.1. it has full capacity and authority to enter into the Engagement Terms;
 - 5.1.2. the Engagement Terms are executed by a person duly authorised by the Client creating legal, valid and binding obligations;
 - 5.1.3. in respect of the receipt of the Services, the performance of its obligations contained in the Engagement Terms and the provision of the Client Materials to BW, it shall comply with all Applicable Laws; and

- 5.1.4. it has, and the relevant Client Personnel have, full capacity, power and authority to give instructions in respect of, and to delegate the performance of, the tasks and activities comprising the Services to BW and/or the relevant BW Personnel and that all instructions and delegations given by or on behalf of the Client to BW and/or the relevant BW Personnel, in respect of BW's provision of the Services, shall be in accordance with such powers and authorities.
- 5.2. The Client shall:
- 5.2.1. arrange for any non-English correspondence and other materials reasonably required by BW in connection with the provision of the Services to be accurately translated into English;
 - 5.2.2. not warrant or imply to any third party(ies) that the services of BW extend beyond the Services provided by BW under and subject to the Engagement Terms;
 - 5.2.3. co-operate with BW in all matters relating to the provision and receipt of the Services to the extent reasonably necessary to enable BW to provide the Services;
 - 5.2.4. provide to BW all information, documentation, materials and data in the possession or under the reasonable control of, or reasonably available to, the Client (wherever possible via automated information technology links as agreed between the Parties from time to time) as may be reasonably required by BW to enable BW to provide the Services in accordance with any relevant timescales or as otherwise reasonably required;
 - 5.2.5. ensure that the Client Materials are complete, accurate and up-to-date as at the date that they are provided to or received by BW, unless, without prejudice to paragraph 3.3.4 of this Section, otherwise disclosed in writing to BW by the Client;
 - 5.2.6. provide to BW such evidence of identity as required and requested by BW to enable BW to discharge any obligations it may have in relation to compliance with sanctions and the prevention and detection of financial crime;
 - 5.2.7. promptly notify BW in writing of any change in the identity of the persons referred to in paragraph 3.3.5;
 - 5.2.8. notify BW in writing as soon as reasonably practicable on becoming aware of any errors, inaccuracies, omissions, variations, additions, revisions or other changes to the Client Materials;
 - 5.2.9. not bring, nor support any proceedings of any kind whatsoever in any jurisdiction against BW Personnel individually or collectively;
 - 5.2.10. promptly give notice in writing to BW if it becomes aware of any claim, dispute or demand arising out of or in connection with the Services and, in the case of any matter falling within this paragraph 5.2.10, the Client shall take account of such reasonable representations made by BW in respect of any such claim, dispute or demand. Nothing in the Engagement Terms shall restrict or limit the Client's general obligation at law to mitigate any loss it may suffer or incur as a result of an event that may give rise to any such claim, dispute or demand; and
 - 5.2.11. ratify and confirm any and all acts and omissions of BW, BW's Affiliates and/or their respective Personnel pursuant to and in accordance with any instruction or any delegation given to BW, BW's Affiliates or their respective Personnel by or on behalf of the Client, any Service Recipient or the persons referred to in paragraph 3.3.5 of this Section, save to the extent that such acts or omissions are in breach of BW's obligations contained in the Engagement Terms.

A6. Fees & Billing

- 6.1. In consideration of the provision of the Services (and, as applicable, the facilitation of the particular Third-Party Services), the Client shall pay the Fees and any Expenses.
- 6.2. BW may increase the Fees in accordance with any annual increases referred to in the Service Schedule.
- 6.3. BW may invoice the Client for the Fees and any Expenses at the end of each month for Services performed during that month. The Client shall, subject to paragraph 6.4 of this Section, pay each invoice submitted to it within thirty (30) days of the date of the invoice.
- 6.4. If the Client (acting reasonably and in good faith) disputes any invoice or part of any invoice, it shall:
 - 6.4.1. notify BW in writing within ten (10) days of the date of the invoice, specifying the reasons for disputing the invoice;
 - 6.4.2. provide all evidence as may be reasonably necessary to verify the disputed invoice; and
 - 6.4.3. pay to BW all amounts not disputed by the Client on the due date,
 and the Parties shall use reasonable endeavours to attempt to resolve the dispute promptly.
- 6.5. Without prejudice to the Client's obligations contained in this paragraph A6 and any of BW's other rights and remedies, BW may, from time to time, agree to accept payment of the Fees and/or Expenses from a third party for and on behalf of the Client. In such circumstance, the Client shall procure that such third party complies with the Client's obligations in this paragraph A6. Where a third party fails to pay any invoice for whatever reason in accordance with this paragraph A6, BW reserves the right to invoice the Client directly for such sums.
- 6.6. Without prejudice to any of BW's other rights and remedies, if the Client or any third party referred to in paragraph A6.5 fails to pay BW any undisputed sum due under the Engagement Terms on the due date:
 - 6.6.1. the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this paragraph 6.6.1 shall accrue each day at 4% a year above the Bank of England base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and/or
 - 6.6.2. BW may suspend all or part of the Services until payment has been made in full provided that BW has given the Client at least fourteen (14) days' written notice of its intention to suspend the Services. During any such period of suspension any applicable Milestones and/or Service Levels shall not apply and on resumption of the Services shall be subject to an extension of time equal to the period of suspension.
- 6.7. All sums payable by a Party under the Engagement Terms shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 6.8. All sums payable to BW under the Engagement Terms are exclusive of VAT. The Client shall pay VAT (at the prevailing rate) in addition to the applicable Fees and/or Expenses, on receipt of a valid VAT invoice.

A7. Third-Party Services and Third-Party Applications

- 7.1. BW shall use reasonable endeavours to facilitate the particular Third-Party Services in connection with, or addition to, the provision of the Services. Third-Party Services are provided by the relevant Third-Party Service Provider(s) and are not part of the Services provided

by BW. Additional terms may apply to the Client's use of the Third-Party Services, as set out in the Third Party Service Provider's terms and conditions, and/or notified by the Third-Party Service Provider, or (as applicable) BW, to the Client from time to time.

- 7.2. The Client shall pay to BW the Fees (if any) in respect of BW's facilitation of the particular Third-Party Services, as set out in the Service Schedule or as otherwise agreed between the Parties in writing from time to time.
- 7.3. The Client acknowledges and agrees that BW may be required, and the Client hereby instructs BW, to communicate with and/or provide information and data (including but not limited to Personal Data) to the relevant Third-Party Service Provider(s) in connection with and for the purpose of the facilitation of the particular Third-Party Services. BW shall not be liable to the Client in respect of BW's communication with or provision of information and data (including Personal Data) to Third-Party Service Provider(s) to the extent that such communication or provision of information and data (including Personal Data) is in accordance with the Client's instructions whether given pursuant to this paragraph 7.3 or otherwise.
- 7.4. BW makes no representation, warranty or assurance in respect of the access to and/or use of any Third-Party Services, the availability and content of any Third-Party Services or any services offered via any Third-Party Services and BW shall, subject to paragraph 14.1 of this Section, have no liability in connection with any Third-Party Services.
- 7.5. Where the Client instructs BW to access, use and/or upload any data or documents to a Third-Party Application, the Client acknowledges and agrees that:
 - 7.5.1. BW has no control over, has no responsibility for and makes no representation, warranty or assurance in respect of, the operation, availability, functionality, security or integrity of the Third-Party Application;
 - 7.5.2. BW is not able to provide support or training in respect of the Third-Party Application;
 - 7.5.3. subject to paragraph 14.1 of this Section, BW shall have no liability for any Losses suffered by the Client or any third party as a result of or in connection with: (a) any defect or fault in; and/or (b) any outage, unavailability and/or compromise of, the Third-Party Application; and
 - 7.5.4. if the Third-Party Application is not available or fails to function properly, BW shall not be in breach of the Engagement Terms or otherwise liable for any failure or delay in the performance of its obligations. The time for performance of such obligations shall be extended accordingly.

A8. Managed Services

- 8.1. In the event of any inconsistency or conflict between the provisions of the Managed Services Terms and any other provision in the Engagement Terms, the Managed Services Terms shall prevail
- 8.2. Except as expressly set out in the applicable Managed Services Terms, BW makes no representation, warranty or assurance in respect of the access to and/or use of any Managed Services, the availability and content of any Managed Services, or any services offered via any Managed Services.
- 8.3. Subject to paragraph 14.1 of this Section, BW's total aggregate liability for or in connection with Managed Services, whether in contract (including any indemnity), tort (including negligence), for breach of statutory duty or otherwise, shall not exceed a sum equal to the Fees paid or payable for the applicable Managed Services in the preceding twelve (12) month period.

A9. Information Security

- 9.1. BW:
 - 9.1.1. warrants that, in respect of its systems and networks, it shall implement the Information Security Standards in all material respects and shall ensure that the level of adequacy and protection of such standards does not fall below the standards in place as at the relevant Service Start Date; and
 - 9.1.2. shall put in place, maintain and periodically test a business continuity and disaster recovery plan for the Services to minimise the effect of any unplanned interruption or event that would significantly impact on BW's ability to perform the Services, in whole or in part, in accordance with the Engagement Terms.
- 9.2. Save to the extent resulting from or caused by any breach of the warranty referred to in paragraph 9.1 of this Section, and without prejudice to BW's obligations contained in Section B of these Terms of Business, BW (to the fullest extent permitted by law) disclaims and excludes any liability whatsoever arising from or in connection with any damage or other adverse effect caused howsoever to the information and communications technology system(s) of the Client, its Authorised Users and/or any other third party.

A10. Intellectual Property

- 10.1. Except as expressly provided in the Engagement Terms, each Party or (as applicable) their respective Affiliates shall retain all rights and interest in and to its or their Background IPR, and nothing in the Engagement Terms shall transfer, assign, license or otherwise grant any Party or their respective Affiliates any right or interest in the other Party's or their respective Affiliates' Background IPR.
- 10.2. The Client or, as applicable, its Affiliates and any third party licensor(s) shall retain ownership of all IPR in the Client Materials.
- 10.3. Subject to paragraph A11 and Section B of these Terms of Business, the Client grants (or shall procure the grant of) an irrevocable, fully paid-up, non-exclusive, royalty-free, worldwide, sub-licensable licence for BW, BW's Affiliates and their respective Personnel to use, copy and modify the Client Materials for the purpose of providing the Services (or, as applicable, facilitating the relevant Third-Party Services), complying with the Engagement Terms and establishing, exercising and defending its legal rights.
- 10.4. BW or, as applicable, its Affiliates or any third party licensor(s) shall retain ownership of all IPR in the BW IPR. Neither the Client, the Service Recipient(s), the Authorised Users nor any third party shall acquire any right, title or interest in or to any of the BW IPR save to the extent referred to in this paragraph A10 of this Section and Section D of these Terms of Business.
- 10.5. Subject to the Client's compliance with the Engagement Terms, BW grants or shall procure the grant to the Client and (as applicable) the relevant Service Recipient(s), an irrevocable, non-exclusive, non-transferable royalty-free, licence to use (in perpetuity) the Service Materials (and any BW or BW Affiliates' Background IPR forming part of the Service Materials) for its or their internal use only and in any event solely for the purpose for which it was provided.
- 10.6. The Client shall not sub-license, assign or otherwise transfer the rights granted in paragraph 10.5.
- 10.7. The Client shall not be entitled to use the Service Materials (or any BW or BW Affiliates' Background IPR forming part of the Service Materials):
 - 10.7.1. to create or supply any service(s) to any third party;

- 10.7.2. in any way which circumvents any licence granted pursuant to the Engagement Terms or reduces the amount of, or replaces the requirement to pay, any Fees; or
- 10.7.3. for any purposes other than those explicitly permitted in the Engagement Terms, without BW's prior written consent.
- 10.8. Subject to paragraph 10.9 of this Section, the Client shall not disclose, reproduce, publish or make available (in whole or part, in any format or media) any Service Materials to any third party without the prior written consent of BW (such consent not to be unreasonably withheld where the relevant third party has, prior to any disclosure, signed (in favour of BW) a non-reliance letter (in such form as BW shall reasonably require) in respect of the Service Materials to be disclosed).
- 10.9. BW hereby consents to the Client disclosing the Service Materials on a non-reliance basis to the Permitted 3rd Parties and/or to any relevant regulatory or supervisory authority provided always that:
 - 10.9.1. the Service Materials are disclosed in their entirety;
 - 10.9.2. the Service Materials are not modified or otherwise altered (whether in whole or part); and
 - 10.9.3. any and all notices (including copyright or other proprietary notices), disclaimers and limitations and/or exclusions of liability are not removed or altered whatsoever.
- 10.10. The Client acknowledges and agrees and shall procure that (save for any applicable Service Recipient(s)) no third party(ies), including any Permitted 3rd Party, is entitled to rely on any Service Materials or any Online Content and that no duty of care nor any liability is or shall be accepted by BW to any third party(ies), for any Losses arising out of or in connection with the Service Materials or any Online Content, whether arising in or for breach of contract, tort (including negligence), misrepresentation, misstatement, breach of statutory duty or otherwise in respect of or arising out of the preparation, disclosure, use and/or reliance on the Service Materials or any Online Content.
- 10.11. The Client shall not give any warranty, guarantee, assurance or otherwise imply to any third party(ies), including any Permitted 3rd Party, that any Service Materials or any Online Content may be used and/or relied on by any third party(ies), without the prior written consent of BW.
- 10.12. The Client shall promptly notify BW of any violations regarding the use of BW IPR that it becomes aware of and shall provide BW with reasonable assistance in preventing the same.
- 10.13. Subject to paragraph A11 of this Section and Section B of these Terms of Business, for the purposes of delivering services to the Client or BW's other clients, BW, BW's Affiliates and their respective Personnel shall be entitled to use, develop and share with each other knowledge, experience and skills of general application gained through performing the Services.
- 10.14. If reasonably required to provide the Services, the Client shall grant to BW, BW's Affiliates and their respective Personnel a royalty-free licence to use any trade marks, trade names, logos or other branding of the Client in the manner approved by the Client for the purposes only of providing the Services (or relevant part of them) and/or facilitating the relevant Third-Party Services.
- 10.15. BW:
 - 10.15.1. warrants that the receipt and use of the Service Materials and the Online Content by the Client or (as applicable) the relevant Service Recipient(s) in accordance with the Engagement Terms shall not infringe the rights, including any IPR, of any third party;
 - 10.15.2. shall, subject to paragraph A14, indemnify the Client against all Losses suffered or incurred by the Client arising out of or in connection with any claim brought against the Client or (as applicable) the relevant Service Recipient(s) for actual or alleged infringement of a third party's IPR arising out of, or in connection with BW's breach of paragraph 10.15.1; and
 - 10.15.3. shall not be in breach of the warranty at paragraph 10.15.1, and the Client shall have no claim under the indemnity at paragraph 10.15.2, to the extent the infringement or alleged infringement arises from:
 - (a) the use, or incorporation of, the Client Materials in: (i) any Service Materials or any Online Content; and/or (ii) the provision of the Services;
 - (b) any modification of the Service Materials or any Online Content other than by or on behalf of BW or on BW's instruction; or
 - (c) compliance with the Client's specifications or instructions.
- 10.16. The Client:
 - 10.16.1. warrants that the receipt and use of the Client Materials in accordance with the Engagement Terms shall not infringe the rights, including any IPR, of any third party; and
 - 10.16.2. shall, subject to paragraph A14 of this Section, indemnify BW against all Losses suffered or incurred by the BW Indemnified Parties arising out of or in connection with any claim brought against the BW Indemnified Parties for actual or alleged infringement of a third party's IPR arising out of, or in connection with the Client's breach of paragraph 10.16.1 of this Section.
- 10.17. If either Party (the **Indemnifying Party**) is required to indemnify the other Party (the **Indemnified Party**) under this paragraph A10, the Indemnified Party shall:
 - 10.17.1. promptly notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the relevant indemnity (an **IPR Claim**);
 - 10.17.2. allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings relating to the IPR Claim, provided that the Indemnifying Party considers and defends any IPR Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute;
 - 10.17.3. provide the Indemnifying Party with such reasonable assistance regarding the IPR Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's reasonable costs so incurred; and
 - 10.17.4. not, without prior consent of the Indemnifying Party (such consent not to be unreasonably withheld or delayed), make any admission of liability, communication or payment to the third party making the IPR Claim or agree any settlement or compromise of the relevant IPR Claim.

A11. Confidentiality

- 11.1. In this paragraph A11 of this Section, reference to the Confidential Information of a Party includes the Confidential Information of their respective Affiliates.
- 11.2. Each Party undertakes that it shall not:

- 11.2.1. disclose to any person any Confidential Information of the other Party, except as permitted by paragraph 11.3 of this Section; or
- 11.2.2. use any such Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Engagement Terms.
- 11.3. Each Party may disclose any Confidential Information of the other Party:
 - 11.3.1. to its and/or its Affiliates' Personnel or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with the Engagement Terms. Each Party shall ensure that its and its Affiliates' Personnel or advisers to whom it discloses the other Party's Confidential Information comply with this paragraph A11 of this Section;
 - 11.3.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority, provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this paragraph 11.3.2 of this Section, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure;
 - 11.3.3. to the extent permitted and referred to in paragraph 21.2 of this Section; or
 - 11.3.4. with the written consent of the other Party.
- 11.4. On the expiry or earlier termination of the Engagement Terms, each Party shall, except to the extent either Party may retain such Confidential Information under paragraph 16.1.3 of this Section:
 - 11.4.1. return (or procure the return) to the other Party, all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information;
 - 11.4.2. to the extent technically and reasonably practicable, return, erase or otherwise put beyond use all the other Party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and reasonably practicable); and
 - 11.4.3. certify in writing to the other Party that it has complied with the requirements of this paragraph 11.4 of this Section provided that either Party may retain any such documents, materials and electronic records containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction or the rules of any listing authority or stock exchange, to which it is subject. The provisions of this paragraph A11 of this Section shall continue to apply to any documents and materials retained by either Party pursuant to this paragraph 11.4 of this Section.

A12. Audit

- 12.1. The Client shall be entitled to audit BW's provision of the Services and its compliance with its obligations under the Engagement Terms in accordance with this paragraph A12 of this Section. Each audit shall be conducted at the Client's cost except if such audit reveals any material breach of BW's obligations under the Engagement Terms, where BW shall meet the Client's reasonable costs properly incurred in respect of the undertaking of such audit.
- 12.2. Subject to paragraphs 12.3 and 12.4 of this Section, on at least twenty eight (28) days' prior written notice (save where any fraud, breach of law or security breaches are suspected, in which case as much notice as is reasonably practicable shall be given), BW shall, during Business Hours, provide the Client or its external auditor(s) access to BW's premises, the relevant BW Personnel and/or copies of any relevant records and information (to the extent permitted by law and subject to BW duties of confidentiality) relating to the Services as the Client shall reasonably require.
- 12.3. The Client shall (and shall procure that its auditor(s) shall) in respect of any audit:
 - 12.3.1. comply with BW's reasonable confidentiality, security and other on-site requirements; and
 - 12.3.2. ensure that the conduct of each audit does not unreasonably disrupt BW or delay the provision of any services by BW and that, where possible, individual audits are coordinated with each other to minimise any disruption.
- 12.4. The Client shall be permitted to exercise its rights under paragraph 12.1 of this Section no more than once in any twelve (12) month period, save for where it reasonably believes that BW is in material breach of its obligations contained in the Engagement Terms.
- 12.5. If reasonably required by the Client, BW and the Client shall meet to review and discuss each audit and any proposed changes to the provision of Services arising as a result.

A13. Insurance

- 13.1. Without prejudice to paragraph 13.3 of this Section, BW shall maintain in force insurance policies including professional indemnity insurance, with reputable insurance companies, against the risks that would normally be insured against by a prudent business person in connection with the risks associated with the provision of the Services in the context of the relevant circumstance and the Engagement Terms, provided that cover in respect of any professional indemnity insurance shall be in a sum at least equal to the Liability Cap.
- 13.2. BW shall produce to the Client promptly, following receipt of a written request, a summary of insurance policies referred to in paragraph 13.1 of this Section together with confirmation of payment of the then current premiums.
- 13.3. Any insurance referred to in this paragraph A13 of this Section may be provided by multiple insurers and obtained via BW's broker (from time to time).

A14. Limitation of Liability

- 14.1. Nothing in the Engagement Terms excludes or limits:
 - 14.1.1. either Party's liability arising from its wilful misconduct;
 - 14.1.2. the Client's payment obligations under the Engagement Terms; or
 - 14.1.3. any liability which cannot legally be excluded or limited, including: (a) liability for death or personal injury caused by negligence; or (b) liability for fraud or fraudulent misrepresentation.
- 14.2. Subject to paragraph 14.1 of this Section, neither Party shall be liable to the other Party for any consequential, indirect or special losses arising under or in connection with the Engagement Terms (whether in contract (including any indemnity), tort (including negligence), under statute or otherwise).

- 14.3. Subject to paragraph 14.1 of this Section, BW's and BW's Affiliates' total liability under or in connection with the Engagement Terms, whether in contract (including any indemnity), tort (including negligence), for breach of statutory duty or otherwise, in any consecutive twelve (12)-month period, shall not exceed the Liability Cap.
- 14.4. Subject to paragraph 14.1 of this Section, BW shall not be liable under or in connection with the Engagement Terms, whether in contract (including any indemnity), tort (including negligence), for breach of statutory duty or otherwise, for:
- 14.4.1. any error, inaccuracy or deficiency in the Client Materials; or
 - 14.4.2. any Service Materials or Online Content not being acted upon by the Client (or any applicable Service Recipient(s)) or acted upon otherwise than in accordance with any advice or guidance issued by BW in the course of the provision of the Services;
 - 14.4.3. any party other than the Client (or any applicable Service Recipient(s)) relying on the Services;
 - 14.4.4. any error, inaccuracy or deficiency in any data, information or materials sourced from a third party where it was reasonable for BW acting in accordance with its obligations contained in the Engagement Terms to have used and relied on such data, information or materials notwithstanding that such third party disclaims or otherwise requires BW to acknowledge that BW (as between that third party and BW) may not rely on such data and/or information;
 - 14.4.5. any act, error or omission of the Client, any Service Recipient, any Authorised User (including any withholding or misrepresentation of any facts and circumstances that may be relevant in connection with the proper performance of the Services) or any other third party;
 - 14.4.6. any acts, errors or omissions which originated prior to BW's engagement by the Client;
 - 14.4.7. any activity by BW where BW has a legal obligation to act, including whistleblowing reports to regulators and other authorities; or
 - 14.4.8. any Losses arising out of BW, BW's Affiliates and/or their respective Personnel adhering to or undertaking any instruction, or exercising any delegation, given to BW, BW's Affiliates or their respective Personnel by or on behalf of the Client, any Service Recipient or the persons referred to in paragraph 3.3.5 of this Section, save to the extent caused directly by BW's breach of the Engagement Terms.
- 14.5. The Parties agree that the exclusions and limitations in these Terms of Business are reasonable in all the circumstances.
- 14.6. The Client agrees that any Losses incurred by any BW Affiliate to the extent arising from:
- 14.6.1. a breach of the Engagement Terms by the Client, any Service Recipient or any Authorised Users; or
 - 14.6.2. any act, omission or the negligence or other failure or breach of duty of the Client, any Service Recipient or any Authorised User (collectively **BW Loss**),
- shall be deemed to have been incurred by BW and shall be recoverable by BW from the Client to the same extent as if they were Losses incurred by BW under or in connection with the Engagement Terms. In no event shall a BW Affiliate have any right of action for BW Loss against the Client under or in connection with the Engagement Terms.
- 14.7. BW agrees that any Losses incurred by any Service Recipient to the extent arising from:
- 14.7.1. a breach of the Engagement Terms by BW, BW's Affiliates and/or their respective Personnel;
 - 14.7.2. any act, omission or the negligence or other failure or breach of duty of BW, BW's Affiliates and/or their respective Personnel (collectively **Client Loss**),
- shall be deemed to have been incurred by the Client and shall be recoverable by the Client from BW to the same extent as if they were Losses incurred by the Client under or in connection with the Engagement Terms. In no event shall a Service Recipient or any Authorised User have any right of action for Client Loss against BW, BW's Affiliates and/or their respective Personnel under or in connection with the Engagement Terms.
- 14.8. For the purposes of the Engagement Terms, each Party agrees that BW Loss and Client Loss (as the case may be) shall not be deemed to be consequential, indirect or special merely as a consequence of it having been incurred by:
- 14.8.1. in the case of BW Loss, any BW Affiliate, but only to the extent that BW Loss would not have been deemed to be consequential, indirect or special if it had been incurred by BW; and
 - 14.8.2. in the case of the Client Loss, any Service Recipient, but only to the extent that Client Loss would not have been deemed to be consequential, indirect or special if it had been incurred by the Client.
- 14.9. Notwithstanding the foregoing, each Party shall use reasonable endeavours to mitigate its loss under the Engagement Terms, including any loss under any indemnities set out in the Engagement Terms.

A15. Termination

- 15.1. Either Party may terminate the Engagement Terms and/or the provision of the Services (or part thereof) for convenience at any time on giving the other Party at least three (3) months' written notice.
- 15.2. Without affecting any other right or remedy available to it, BW may terminate provision of the Services (or part thereof) on as much written notice to the Client as is reasonably practicable if any contract between BW and a third party involved in providing the Services or any significant component or feature of the Services expires, is suspended or is terminated.
- 15.3. BW may terminate its facilitation of any Third-Party Services (or part thereof) on as much written notice to the Client as is reasonably practicable.
- 15.4. Where paragraph 15.2 of this Section applies and any Fees have been paid in advance for the affected Services not provided by BW as at the relevant termination date, BW shall provide the Client with a pro rata refund for any Fees paid for Services not provided.
- 15.5. Termination of (as applicable) the Services and/or Third-Party Services (or part thereof) independent of the termination of the Engagement Terms shall not affect the Engagement Terms which shall otherwise continue in force.
- 15.6. BW may (unless expressly agreed otherwise by BW in the Conflicts Management Plan (if any)) by notice in writing terminate the Engagement Terms and/or the provision of particular Services with immediate effect where, in the reasonable opinion of BW, there is or is likely to be an unmanageable conflict of interests between the professional obligations and duties of BW and/or BW Personnel owed to the Client and any professional obligations and duties it or they may owe to a third party.
- 15.7. Without affecting any other right or remedy available to it, either Party may by notice in writing terminate the Engagement Terms and/or the provision of the Services (or part thereof) with immediate effect by giving written notice to the other Party if the other Party:

- 15.7.1. commits a material breach of the Engagement Terms and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
 - 15.7.2. repeatedly breaches any of the Engagement Terms in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the Engagement Terms; or
 - 15.7.3. passes a resolution for its winding-up or a court of competent jurisdiction makes an order for the other Party's winding-up or dissolution; or an administration order is made or an administrator is appointed under the out-of-court procedure under the Enterprise Act 2002, or a moratorium is declared in respect of any indebtedness of the other Party or a receiver or administrative receiver is appointed, or an encumbrancer takes possession of or sells any of the other Party's assets; or the other Party is unable to pay its debts (within the meaning of that term under section 123, Insolvency Act 1986).
- 15.8. Subject to paragraph 6.4 of this Section, without affecting any other right or remedy available to it, BW may terminate the Engagement Terms with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Engagement Terms on the due date for payment and remains in default not less than sixty (60) days after being notified in writing to make such payment.

A16. Consequence of Termination or Expiry

- 16.1. On termination or expiry of the Engagement Terms and/or the provision of particular Services for any reason:
 - 16.1.1. subject to paragraph 16.5 of this Section, all relevant rights granted by BW shall cease, with the exception of those rights referred to in paragraph 10.5 of this Section;
 - 16.1.2. the Client shall immediately pay BW any sums due to BW under the Engagement Terms, including for Services performed by BW up to the date of termination or expiry in accordance with paragraph A3 of this Section; and
 - 16.1.3. each Party shall return and make no further use of any data, materials, content, property, Confidential Information and other items (and all copies of them) belonging to the other Party in respect of the affected Services except:
 - (a) to the extent permitted by paragraph 11.4 of this Section;
 - (b) if the Party is required for legal, regulatory, audit or compliance reasons to retain any such data, materials or items; or
 - (c) if the Party reasonably requires to retain such data, materials or items in connection with the Engagement Terms.
- 16.2. If the Engagement Terms and/or the provision of the Services (or part thereof) expire or are terminated, save where (in the case of termination by BW) paragraphs 15.7 or 15.8 of this Section apply, without prejudice to any other rights and obligations in the Engagement Terms and subject to the Parties agreeing the necessary changes to the Service Schedule, BW shall co-operate with the Client and/or the Replacement Provider to the extent reasonably required to facilitate the migration of the Services (or the relevant part of them) from BW to the Client and/or the relevant Replacement Provider.
- 16.3. Where expressly agreed between the Parties and documented in the Service Schedule, BW shall:
 - 16.3.1. prepare and deliver to the Client, for the Client's approval (such approval not to be unreasonably withheld), an exit management plan in respect of the migration of the Services (or the relevant part of them) referred to in paragraph 16.2 of this Section;
 - 16.3.2. not less than annually (and in any event if there is a material change to the relevant Services (or the relevant part of them) update the relevant exit management plan as reasonably required in consultation with the Client,
 provided that the Client acknowledges and agrees that BW shall not be required to provide the services and/or any assistance referred to in the relevant exit management plan unless and until the Parties have agreed the necessary changes to the Service Schedule (including any additional Fees).
- 16.4. Expiry or termination of the Engagement Terms and/or the provision of particular Services (or part thereof) shall be without prejudice to the accrued rights and remedies of the Parties.
- 16.5. The Parties agree that paragraphs A5.2.10, A5.2.11 A6, A7, A10, A11, A12, A14, A16, A22, A25 to A27 and Section B of these Engagement Terms shall survive termination or expiry of the Engagement Terms, howsoever caused, together with any other provision of the Engagement Terms which expressly or by implication is intended to survive termination or expiry.

A17. Anti-Bribery

- 17.1. Each Party has a zero tolerance policy to bribery. Further details of each Party's anti-bribery policy shall be made available to the other upon request.
- 17.2. The Parties agree that a breach of this paragraph A17 shall be considered a material breach of the Engagement Terms.
- 17.3. Each Party shall comply with all laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010 (**Anti-Bribery Laws**) and shall use reasonable endeavours to comply with requests for information from the other Party to enable the other Party to ensure compliance with the Anti-Bribery Laws.
- 17.4. In connection with the Engagement Terms, the Parties warrant that they have not given nor promised to give, and shall not make, offer, agree to make nor authorise any payment or transfer of value, directly or indirectly to any private individual or company, whether or not acting in the capacity of a public official or agent, wherever they are located in order to gain any:
 - 17.4.1. commercial, contractual or regulatory advantage in any way which is unethical; or
 - 17.4.2. personal advantage, pecuniary or otherwise, for the individual or anyone connected with the individual.

A18. Modern Slavery

- 18.1. In performing its obligations under the Engagement Terms, each Party shall:
 - 18.1.1. comply with all laws, statutes, regulations, and codes relating to anti-slavery and human trafficking including the Modern Slavery Act 2015; and
 - 18.1.2. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the United Kingdom.

A19. BW Personnel

- 19.1. The Client acknowledges and agrees that the Services or any part of the Services may be provided by any BW Personnel.
- 19.2. BW shall:
 - 19.2.1. ensure that all BW Personnel have suitable skills and experience to enable them to perform the tasks assigned to them, and that such BW Personnel are in sufficient number to enable BW to fulfil its obligations under the Engagement Terms;

- 19.2.2. use any Key Personnel in the provision of the Services (or relevant part of them) unless:
 - (a) otherwise agreed by the Client (such agreement not to be unreasonably withheld or delayed); or
 - (b) the relevant Key Personnel is: (i) no longer a member of BW Personnel; (ii) on long-term leave including parental leave; or (iii) promoted or has their job role changed so it is (in the reasonable opinion of BW or their relevant Affiliate) no longer practicable for them to continue their role;
- 19.2.3. promptly inform the Client of any prolonged period of absence (or the anticipated absence) of any of the Key Personnel (excluding any annual leave), and if so reasonably required by the Client, provide a suitably qualified replacement for such individual as soon as reasonably practicable; and
- 19.2.4. promptly inform the Client of any proposed change in Key Personnel as early as reasonably practicable giving the Client an opportunity to reasonably object to any new Key Personnel prior to the Key Personnel being appointed.
- 19.3. The Client may make a written request to BW for the replacement or substitution of any of the Key Personnel and as soon as reasonably practicable (but in any event within twenty (20) Business Days) following receipt of such request, BW shall engage with the Client to discuss that request.

A20. Regulated Services

- 20.1. To the extent that the Services (or part of them) comprise "regulated activities" as defined in the Financial Services and Markets Act 2000:
 - 20.1.1. the Service Schedule shall document the client categorisation (e.g., "Retail Client or "Professional Client") BW has given to the Client; and
 - 20.1.2. the relevant Regulatory Disclosures shall apply.

A21. Conflicts

- 21.1. BW shall immediately notify the Client (or the Client Contact on behalf of the Client) on becoming aware of the existence of any actual or potential conflict of interests.
- 21.2. Where BW is providing Services to a Client who is a participating or sponsoring employer of an occupational pension scheme and the trustee (or trustees) of such occupational pension scheme are subject to the relevant Conflicts Management Plan, the Client acknowledges and agrees that:
 - 21.2.1. such Conflicts Management Plan may provide for the waiver of any duty of confidentiality by BW which would otherwise be owed to the Client, to the extent necessary to safeguard the interests of the trustee (or trustees) of such occupational pension scheme; and
 - 21.2.2. such waiver of confidentiality by BW, in accordance with the relevant Conflicts Management Plan shall not be a breach by BW of Section A11 of these Terms of Business.

A22. Non-solicitation

- 22.1. Neither Party shall, directly or indirectly, solicit the employment of, employ or attempt to employ any Personnel of the other Party or its Affiliates involved in the performance or (as the case may be) receipt of the Services during the continuance of the Engagement Terms and for a period of twelve (12) months following the later of: (a) the completion of the Services (or part of them); (b) the expiry or termination of the Engagement Terms. This prohibition shall not prevent either Party at any time from running recruitment advertising campaigns nor from offering employment to any Personnel of the other Party or its Affiliates who may respond to such campaigns.

A23. Force Majeure

- 23.1. Provided it has complied with paragraph 23.2 of this Section, if a Party is prevented, hindered or delayed in or from performing any of its obligations under the Engagement Terms by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of the Engagement Terms or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 23.2. The Affected Party shall:
 - 23.2.1. as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Engagement Terms; and
 - 23.2.2. use reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 23.3. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than thirty (30) days, either Party may terminate the affected Services by giving thirty (30) days' written notice to the other Party.
- 23.4. This paragraph A23 of this Section shall not apply to the Client's payment obligation under paragraph A6 of this Section.

A24. Assignment and Subcontracting

- 24.1. Subject to paragraphs 24.2 and 24.3 of this Section, neither Party may assign, transfer, subcontract, encumber or deal in any other manner any right or obligation under the Engagement Terms, in whole or in part, without the other Party's prior written consent (or deemed consent in respect of the appointment of any Sub-Processor pursuant to the provisions of Section B of these Engagement Terms), such consent not to be unreasonably withheld or delayed, provided always that:
 - 24.1.1. BW shall be deemed to be acting reasonably where any dealing proposed by the Client may give rise to a conflict of interest for BW; and
 - 24.1.2. BW may assign or delegate its rights or obligations under the Engagement Terms, in whole or in part to any of its Affiliates.
- 24.2. BW may appoint sub-contractors (including information technology and telecommunication services, postal services, maintenance and user support services, data services and hardware and software services) without the Client's prior written consent provided that BW complies with its obligations contained in Section B of these Engagement Terms in relation to any such sub-contractor.
- 24.3. BW may delegate or subcontract the performance of any of its obligations and exercise any of its rights granted under the Engagement Terms through any of its Affiliates and any BW Personnel.
- 24.4. Each Party shall execute such documentation as the other Party may reasonably require to give effect to any subcontracting or assignment pursuant to and in accordance with this paragraph A24 of this Section.

- 24.5. Subject to the provisions of the Engagement Terms, BW shall remain directly responsible to the Client for the acts or omissions and performance of all obligations performed by any of its delegates or subcontractors to the same extent as if such obligations were performed by BW.
- 24.6. The Client acknowledges and agrees that any Third-Party Service Provider is not nor shall be deemed to be a delegate, sub-contractor or Sub-Processor of BW or any BW Affiliate.

A25. Dispute resolution

- 25.1. If a dispute arises out of or in connection with the Engagement Terms (including non-contractual disputes or claims) or the performance, validity or enforceability of it (**Dispute**) then the Parties shall follow the procedure set out in this paragraph A25:
- 25.1.1. either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Client Contact and the BW Partner shall attempt in good faith to resolve the Dispute;
- 25.1.2. if the Client Contact and the BW Partner are unable to resolve the Dispute within sixty (60) days of service of the Dispute Notice, the Parties shall attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing (**ADR notice**) to the other Party, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation shall start not later than sixty (60) days after the date of the ADR notice.
- 25.2. Until the Parties have completed the steps referred to in paragraph 25.1 of this Section, and have failed to resolve the Dispute, neither Party shall commence formal legal proceedings except that either Party may at any time institute formal dispute resolution proceedings (including litigation) to avoid the expiry of any applicable limitation periods to preserve a superior position with respect to other creditors or to seek a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage.

A26. Notices

- 26.1. Any notice or other communication given to a Party under or in connection with the Engagement Terms shall be in writing and shall be:
- 26.1.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 26.1.2. sent by email to the address specified by that Party for that purpose from time to time.
- 26.2. Any notice shall be deemed to have been received:
- 26.2.1. if delivered by hand, at the time the notice is left at the proper address;
- 26.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- 26.2.3. if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- 26.3. This paragraph A26 of this Section does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

A27. General

- 27.1. **Rights and remedies:** The rights and remedies provided under the Engagement Terms are in addition to, and not exclusive of, any rights or remedies provided by law.
- 27.2. **Waiver:**
- 27.2.1. Failure or delay by a Party to exercise or enforce any rights or remedy available to it under the Engagement Terms or by law shall not amount to a waiver of that or any other rights or remedy available to it, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Engagement Terms or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 27.2.2. A waiver of any right or remedy under the Engagement Terms or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 27.3. **Severability:**
- 27.3.1. If any provision or part-provision of the Engagement Terms is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Engagement Terms.
- 27.3.2. If any provision or part-provision of the Engagement Terms is deemed deleted under paragraph 27.3.1 of this Section, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 27.4. **Further Assurances:** At its own expense, each Party shall, and shall use reasonable endeavours to procure that any necessary third party shall, execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to the Engagement Terms.
- 27.5. **Entire Agreement:**
- 27.5.1. The Engagement Terms constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 27.5.2. Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Engagement Terms. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Engagement Terms.
- 27.5.3. Nothing in the Engagement Terms purports to limit or exclude any liability for fraud.
- 27.6. **Third-Party Rights:** Other than the Parties, no person shall have the right to enforce any provision of the Engagement Terms as a third party beneficiary, including pursuant to the Contracts (Rights of Third Parties) Act 1999. BW and the Client shall be entitled to vary, terminate or rescind the Engagement Terms without reference to, or the consent of, any of their respective Affiliates or any other person.
- 27.7. **No Partnership or Agency:**

- 27.7.1. Nothing in the Engagement Terms is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, make any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.
- 27.7.2. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- 27.8. **Governing Law:** The Engagement Terms and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Engagement Terms or their subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. The Client and BW each irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Engagement Terms or their subject matter or formation.

Section B – Data Protection

Where BW processes any Personal Data in connection with the provision of the Services, the applicable additional terms contained in this Section B shall apply.

B1. General

- 1.1. Both Parties shall comply with all applicable requirements of Data Protection Law. This paragraph 1.1 and the other provisions of this Section are in addition to, and do not relieve, remove or replace, a Party's own direct obligations or rights under Data Protection Law.

B2. Data processing provisions

2.1. Scheme Actuary & Client as Independent Controllers

- 2.1.1. The Scheme Actuary and the Client shall be independent Controllers.
2.1.2. To the extent that BW processes any Personal Data in connection with or ancillary to any Scheme Actuary Duties, the Client shall be the Controller and BW shall be the Processor and the provisions of paragraph 2.3 of this Section shall apply.

2.2. Joint Controllers

- 2.2.1. Where the Services (or part of them) comprise the provision of actuarial services (excluding any Services referred to in paragraph 2.1.2 of this Section), the Parties shall be considered "joint controllers" for the purposes of Data Protection Law and in such circumstance the provisions of paragraph 2.2 of this Section shall apply but only to the extent that Client Data is used for or in connection with the specific actuarial services.
2.2.2. The Parties acknowledge and agree that their respective roles and responsibilities for compliance with Data Protection Law, in particular as regards the exercising of the rights of the relevant Data Subjects and the duty to provide information to Data Subjects is set out in the table below:

Principle	Responsibility	Comment
Client Data is processed lawfully, fairly and in a transparent manner in relation to the Data Subject.	The Client and (only to the extent referred to in the relevant Comment section) BW.	A privacy notice covering the processing as "joint controllers" shall be issued to each Data Subject. The responsibility for providing this remains with the Client. Without prejudice to the Client's obligation to provide the privacy notice, as soon as reasonably practicable following receipt of a written request BW shall provide the Client with such information (as required by Data Protection Law) for inclusion in the privacy notice about BW's activities relating to the relevant Services provided and shall notify the Client as soon as reasonably practicable if this information changes. The privacy notice shall provide details of any parties that are or may be deemed to be acting as "joint controllers" with the Client, set out the activities of those parties which may involve Client Data and the respective responsibilities of the joint controllers. It is the Client's responsibility to include this information in the privacy notice.

Principle	Responsibility	Comment
Client Data is only collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes.	The Client and BW.	Neither Party shall process Client Data in a way which is incompatible with Data Protection Law or the provisions of the Engagement Terms.
Client Data is adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed.	The Client and BW.	BW, as joint controller, shall only request Client Data which is relevant to the processing activity required in connection with the Services (or the relevant part of them). The Client has and shall retain responsibility for Client Data it provides to BW and therefore the Client shall not send Personal Data to BW that has not been requested for the provision of the Services (or the relevant part of them) or which is unnecessary for the provision of such Services.
Client Data is accurate and, where necessary, kept up to date.	The Client and (only to the extent referred to in the relevant Comment section) BW.	Without prejudice to the obligations on each party to ensure that Client Data is accurate and where necessary, kept up to date, the Client shall notify BW of any updates or changes to Client Data that become known to it as soon as reasonably practicable and always in a timely manner.
Client Data is not kept for longer than is necessary for the purposes for which it is processed.	The Client and BW.	Unless on termination or expiry of the Services where the Client has requested the return or deletion of the relevant Client Data pursuant to the provisions of the Engagement Terms, BW shall retain the relevant Client Data for the Term or relevant Service Term and for a period of 7 years thereafter (retention period).
Client Data is processed in line with Data Subject rights under Data Protection Law.	The Client and (only to the extent referred to in the relevant Comment section) BW.	Without prejudice to the parties' respective obligations contained in paragraph 2.2.3 of this Section in relation to this principle and unless otherwise agreed, the Client shall undertake and discharge all of the obligations of the Controller in relation to this principle. Client shall notify BW with reasonable details within five (5) Business Days of any Data Subject Request that Client receives from a Data Subject relating to the exercise of any Data Subject right(s) under applicable Data Protection Law in connection with the joint Controller relationship. Client shall advise BW, where necessary, of any step(s) it should reasonably take in response to a Data Subject Request.
Notification of Personal Data Breach.	The Client and (only to the extent referred to in the relevant Comment section) BW.	Without prejudice to the parties' respective obligations contained in paragraph 2.2.3 of this Section in relation to this principle, the Client shall otherwise undertake and discharge all of the obligations of the Controller in relation to this principle. For the avoidance of doubt, the Client shall have responsibility for notification of a Personal Data Breach to the relevant Supervisory Authorities and communication of a Personal Data Breach to the Data Subject(s) affected. Client shall notify BW without undue delay, on becoming aware of any

Principle	Responsibility	Comment
		Personal Data Breach. Notification for the purpose of this requirement includes verbally, face-to-face or via telephone. All such notifications shall be followed up in writing where they were initially notified verbally, and writing shall include email communication.
Client Data is processed in a manner that ensures appropriate security in accordance with Data Protection Law.	The Client and (only to the extent referred to in the relevant Comment section) BW.	Without prejudice to the parties' respective obligations contained in paragraph 2.2.3 of this Section in relation to this principle, the Client shall otherwise undertake and discharge all of the obligations of the Controller in relation to this principle.
Client Data is not transferred to a country or to an international organisation in breach of Data Protection Law.	The Client and (only to the extent referred to in the relevant Comment section) BW.	Without prejudice to the parties' respective obligations contained in paragraph 2.2.3 of this Section in relation to this principle, the Client shall otherwise undertake and discharge all of the obligations of the Controller in relation to this principle.

- 2.2.3. Each Party shall (and shall ensure that its Affiliates and its and their respective Personnel shall) co-operate with the other Party and provide such information and assistance as the other Party (and, as applicable, the Scheme Actuary) may reasonably require to enable the Party:
- (a) to comply with its obligations under Data Protection Law in respect of Client Data;
 - (b) to deal with and respond to any Data Subject request in relation to Data Subject rights, dispute, complaint or claim concerning the Processing of Client Data by the Parties as joint Controllers ("**Enquiry**").
- 2.2.4. If an Enquiry is brought by a Data Subject or a Supervisory Authority against either or both of the Parties, the Client and BW shall inform each other about such Enquiry without undue delay and shall cooperate with a view to managing and resolving the Enquiry in a timely fashion, acting reasonably.
- 2.2.5. Subject to either Party's obligation in this Section to notify or inform the other, neither Party shall take any action in relation to any Enquiry, Data Subject Request or Personal Data Breach in connection with their joint Processing of Client Data without prior written notice to the other Party and providing the other Party with a reasonable opportunity to contribute to the response to mitigate the impact of the action on the other Party.
- 2.2.6. BW shall have no liability to the Client under or in connection with this Section in circumstances where a Data Subject makes a claim or complaint, or a Supervisory Authority takes any action, in relation to BW's breach of Data Protection Law as a result the Client's breach of paragraph 2.2.2 or 2.2.3 of this Section. Nothing in this paragraph 2.2.6 of this Section shall operate so as to exclude any liability for fraud, or for death or personal injury caused by negligence.

2.3. **Processor and Controller**

2.3.1. **General**

Save in relation to any Services or part of any Services in respect of which paragraph 2.2 of this Section applies, in respect of all other Services provided by BW pursuant to the Engagement Terms, the Client or, as applicable, the relevant Service Recipient shall be the Controller and BW shall be the Processor and this paragraph 2.3 shall apply.

2.3.2. **Data processing details**

- (a) The **subject-matter** of the processing relevant to the Services (or the relevant part of them) is the provision of such Services (or the relevant part of them) by BW, as more particularly described in the relevant data map(s) referred to in the Service Schedule.
- (b) The **duration** of the processing relevant to the Services (or the relevant part of them) is the period in which BW provides the Services and (where applicable) any retention period during which BW is obliged to or has agreed to retain personal data period for the purpose of providing the Services, complying with these Engagement Terms, and/or complying with Applicable Laws.
- (c) The **nature and purpose** of the processing relevant to the Services (or the relevant part of them) is the collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction required for the purpose of providing the Services, complying with these Engagement Terms, and/or complying with Applicable Laws.
- (d) The **types of Client Data and categories of Data Subject** relevant to the Services (or the relevant part of them) shall be as set out in the relevant data map(s) referred to in the Service Schedule.

2.3.3. **Client Obligations**

- (a) The Client shall maintain such registration(s) and ensure that all Client Data is disclosed to BW in compliance with Data Protection Law and that: (a) where processing is based on the consent of a Data Subject(s) all necessary consents

have been obtained; and (b) all requisite notices have been provided by or on behalf of the Client to the Data Subject(s), in each case to enable BW to process the Client Data in accordance with Data Protection Law and the provisions of the Engagement Terms.

- (b) The Client shall ensure all instructions given by it to BW in respect of the Client Data (including the terms of the Engagement Terms) shall at all times be in accordance with Data Protection Laws. Nothing in the Engagement Terms relieves the Client of any responsibilities or liabilities under any Data Protection Laws.

2.3.4. **BW Processing obligations**

BW shall:

- (a) retain and process the Client Data in accordance with Data Protection Law and the Engagement Terms;
- (b) ensure that all BW Personnel who have access to and/or process the Client Data are obliged to keep it confidential;
- (c) only process Client Data for the purposes of providing the Services pursuant to the Engagement Terms and only in accordance with the Client's documented written instructions, unless otherwise required to do so by Applicable Laws, in which case BW shall inform the Client of that legal requirement before processing, unless such Applicable Laws prohibit BW from doing so;
- (d) save as referred to in paragraph (c) above, not process Client Data for any other purpose unless authorised by the Client by letter, email or other means capable of visual display and retention; and
- (e) immediately inform the client, if it believes an instruction from the Client to process Client Data does not comply with Data Protection Law and BW shall not act upon that instruction.

2.3.5. **Sub-Processors & third parties**

- (a) Subject to paragraph 2.3.5(b) and BW complying with its obligations contained in this Section, the Client authorises BW and its Affiliates to:
 - i. appoint and use any Sub-Processors named in the list of sub-processors referred to at <https://www.barnett-waddingham.co.uk/engagement-terms/> or such other online location as may be notified to the Client from time to time (**Current Sub-Processors**); and
 - ii. appoint any other Sub-Processor and/or make any additions, replacements or changes to the Current Sub-Processors provided that BW updates the list of Current Sub-Processors at least fourteen (14) days prior to the date of any changes concerning the addition or replacement of other Sub-Processors taking effect, thereby giving the Client the opportunity to object to such changes.
- (b) In respect of the appointment of any Sub-Processors or any additions, replacements or changes referred to in an update referred to in paragraph 2.3.5(a):
 - i. if the Client does not provide a written notice objecting to the relevant update within fourteen (14) days of such update, the Client shall be deemed to have consented to the changes and any subsequent appointment;
 - ii. if the Client reasonably objects to the appointment of any Sub-Processors or any changes referred to in the relevant update on data protection grounds, the Parties shall use reasonable endeavours to agree a course or action that addresses the Client's reasonable objections. Without affecting any other right or remedy available to either Party, either Party may terminate those affected Services (or part of them) with immediate effect by giving written notice to the other Party if the Parties cannot agree on such a course of action within thirty (30) days from BW's receipt of the Client's objection.
- (c) In relation to any Sub-Processor appointed by BW in connection with the Services, BW shall comply with its obligations under Data Protection Law in respect of such appointment (including to enter a contractual agreement with that Sub-Processor that offers an equivalent level of protection for the Personal Data as set out in this Agreement) and, for the avoidance of doubt, where a Sub-Processor fails to fulfil its data protection obligations, BW shall remain fully liable to the Client for the performance of that Sub-Processor's obligations.
- (d) BW may communicate with or provide Client Data to third party controllers as necessary for the performance of the Services and compliance with Applicable Laws (including banks, insurers, professional advisers, statutory bodies and/or private companies providing tracing services) or, on the instruction of the Client (as Controller), to Third-Party Service Provider(s), Third-Party Applications and other third parties appointed by the Client. Any such third party to whom the communication is made, or Client Data is provided shall not be deemed a Sub-Processor for the purpose of this Section or Data Protection Law.

2.3.6. **Cross-Border Transfer**

- (a) Unless specifically authorised by the Client in advance and in writing, or otherwise to ensure BW (either for itself or in respect of any processing undertaken on behalf of the Client) complies with its obligations under Applicable Laws, BW shall not (and shall ensure that its agreements with its Sub-Processors require that Sub-Processors do not) transfer, or allow the onward transfer of any Client Data to any country outside of the United Kingdom and/or the European Economic Area or to an international organisation unless the following conditions are fulfilled:
 - i. the Client, BW or the Sub-Processor has provided appropriate safeguards in relation to the transfer;
 - ii. the Data Subject(s) has enforceable rights and effective legal remedies; and
 - iii. BW complies with its obligations under Data Protection Law by providing an adequate level of protection to any Client Data that is transferred.
- (b) Where required, BW or the Client and the relevant third party shall enter into an appropriate agreement in compliance with Data Protection Law.

2.3.7. Return or destruction of Client Data

- (a) The Client may, on termination or expiry of the provision of the Services (or the relevant part of them), request the return or deletion of all copies and records of the relevant Client Data and BW shall not retain any copies or records of such Client Data except as necessary for business continuity, to establish, exercise or defend its legal rights, Data Protection Law compliance, and BW's systems purposes, and except to the extent it is not reasonably practicable to extract and/or delete such copies and records from any computer or electronic data storage system, mobile telecommunications device or similar device. BW shall continue to comply with its security obligations set out in paragraphs 2.3.8(a) to 2.3.8(c) in respect of any Client Data retained. Where BW retains any Client Data as a Processor, it shall continue to be bound by the data processing obligations set out in this Section.
- (b) BW may retain archival copies of Client Data as may be required to comply with its own legal and regulatory requirements (including but not limited to Applicable Laws).

2.3.8. Data Security

- (a) BW warrants that it has and shall maintain appropriate measures in place to ensure the security of Client Data including but not limited to encryption, pseudonymisation, resilience of processing systems and backing up Client Data in order to be able to reinstate the relevant system.
- (b) Notwithstanding any obligations in the Engagement Terms in respect of establishing standards for systems, applications, databases, and other technological tools, BW warrants that it has adopted and implemented, and it shall maintain, appropriate technical and organisational measures to protect Client Data against unauthorised, unlawful, and/or unintended processing, access, disclosure, exposure, alteration, loss, and destruction (**security measures**). For the avoidance of doubt such systems, applications, databases and other technological tools shall (if applicable) be accessible to any Scheme Actuary who is a member of BW's Personnel subject to appropriate access controls.
- (c) BW shall regularly evaluate the appropriateness of its security measures in light of technological developments, the cost of implementation, the nature, scope, context and purposes of the processing of the Client Data, the risk to data subjects and the risks to which Client Data is exposed.
- (d) BW shall provide reasonable assistance to the Client to enable the Client to comply with its obligations under Data Protection Law in relation to the security of processing in relation to the Client Data.

2.3.9. Personal Data Breach

- (a) As required under Data Protection Law, BW shall notify the Client, without undue delay, on becoming aware of any Personal Data Breach. Notification for the purpose of this requirement includes verbally, face-to-face or via telephone. All such notifications shall be followed up in writing where they were initially notified verbally, and writing shall include email communication.
- (b) BW shall provide reasonable assistance to the Client to enable the Client to comply with its obligations under Data Protection Law in relation to notification of such a Personal Data Breach to the Supervisory Authorities and communication of a Personal Data Breach to the Data Subject affected.

2.3.10. Data Subject Rights

- (a) BW warrants that it has and shall maintain processes and procedures to assist the Client in responding to Data Subject Requests.
- (b) BW shall notify the Client within five (5) Business Days of any Data Subject Request that BW receives from a Data Subject relating to the exercise of any Data Subject right(s) under applicable Data Protection Law in relation to their Personal Data.
- (c) BW shall provide such information and co-operation and other assistance as the Client reasonably requires in relation to a Data Subject Request to enable the Client to meet its data obligations under Data Protection Law.

2.3.11. Response to Inquiries and Audits and Inspections

- (a) BW shall respond without undue delay to all reasonable inquiries from the Client regarding the processing of Client Data pursuant to the Engagement Terms including assisting the Client in ensuring compliance with its obligations in relation to data protection impact assessments and prior consultation with the Supervisory Authority taking into account the nature of the processing and the information available to BW and to assist the Client in its response to inquiries from any Supervisory Authority regarding the processing of Client Data pursuant to the Engagement Terms.
- (b) BW shall notify the Client without undue delay of any request from a governmental authority or judicial body to disclose Client Data that BW processes on the Client's behalf unless such notice is prohibited by law.
- (c) Subject to paragraph A12 of Section A of the Terms of Business, BW shall allow the Client (or another auditor mandated by the Client) access to BW's records, premises, documents and systems relevant to the provision of the Services and shall contribute to audits and inspections and provide the Client with information reasonably required to evidence BW's compliance with its obligations contained in paragraph 2.3 of this Section.

Section C – TUPE

Part 1

Where the employment of any person transfers or is alleged to transfer, on or after any relevant Service Start Date, to BW or any of its Affiliates or sub-contractors under TUPE, the additional terms contained in this Section C (Part 1) shall apply, unless otherwise agreed between the Parties in writing.

- C1.** The Client shall indemnify BW in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by BW, its Affiliates and/or its sub-contractors (including all legal expenses and other professional fees (together with any VAT thereon)) in relation to or in connection with:
- 1.1. any claim or demand by any person arising from any act (for the avoidance of doubt, including the termination by the Client and/or the Previous Provider of the employment of any person), fault or omission of the Client and/or the Previous Provider on or before the relevant Service Start Date; and
 - 1.2. anything done or omitted to be done in respect of any person which is deemed to have been done or omitted (as the case may be) by BW, any of its Affiliates and/or any of its sub-contractors by virtue of TUPE, or for which liability is incurred by BW, any of its Affiliates and/or any of its sub-contractors by virtue of TUPE;
- provided that such costs, claims, expenses and liabilities are not payable to the extent they arise as a result of any act or omission of BW, any of its Affiliates or any of its sub-contractors.
- C2.** If BW, any of its Affiliates and/or any of its sub-contractors shall serve a notice terminating the employment of any person, in respect of whom this Section C1 applies, within six (6) months after the date of such transfer or alleged transfer, the Client shall indemnify BW (for itself and for its Affiliates and sub-contractors) in respect of:
- 2.1. any notice pay or pay in lieu of notice, pay in lieu of accrued but untaken holiday, and statutory or contractual redundancy payment payable in respect of such person, and any compensation or damages which BW (or its Affiliates or sub-contractors) is obliged to pay to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages; and,
 - 2.2. provided that BW, its Affiliates or its sub-contractors (as applicable) terminate the employment of such person(s) within twenty-eight (28) days of the date of their transfer or alleged transfer or (if later) within twenty-eight (28) days of learning of the transfer or alleged transfer of such person(s), the costs incurred by BW, its Affiliates and/or its sub-contractors in employing such person(s) up to the date of such termination of employment,
- provided that BW shall not agree any settlement of a claim for such compensation or damages without the consent of the Client, such consent not to be unreasonably withheld or delayed.

Part 2

Where the employment of any person transfers or is alleged to transfer, on or after any relevant Subsequent Transfer Date, to the Client and/or a Replacement Provider under TUPE, the additional terms contained in this Section C (Part 2) shall apply.

- C3.** BW shall indemnify the Client (both for itself and the relevant Replacement Provider) against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Client and/or a Replacement Provider including all legal expenses and other professional fees (together with any VAT thereon) in relation to or in connection with:
- 3.1. any claim or demand by any BW Employee arising from any act (including the termination by BW, any of its Affiliates and/or any of its sub-contractors of the employment of any BW Employee), fault or omission of BW, any of its Affiliates and/or any of its sub-contractors after the relevant Service Start Date and on or before the Subsequent Transfer Date; and
 - 3.2. anything done or omitted to be done in respect of any of the BW Employees which is deemed to have been done or omitted (as the case may be) by the Client and/or a Replacement Provider by virtue of TUPE, or for which liability is incurred by the Client and/or a Replacement Provider by virtue of TUPE,
- provided that such costs, claims, expenses and liabilities are not payable to the extent they arise as a result of any act or omission of the Client and/or a Replacement Provider.
- C4.** If TUPE applies, or is alleged to apply, to transfer the employment of any person other than a BW Employee to the Client or any Replacement Provider and if the Client or such Replacement Provider shall serve a notice terminating the employment of such person within six (6) months after the date of such transfer, or alleged transfer, BW shall indemnify the Client (for itself and a Replacement Provider) in respect of:
- 4.1. any notice pay or pay in lieu of notice, pay in lieu of accrued but untaken holiday, and statutory or contractual redundancy payment payable in respect of such person, and any compensation or damages which the Client or such Replacement Provider is obliged to pay to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages; and,
 - 4.2. provided that the Client or the Replacement Provider (as applicable) terminates the employment of such person within twenty-eight (28) days of the date of their transfer or alleged transfer or (if later) within twenty-eight (28) days of learning of the transfer or alleged transfer of such person, the costs incurred by the Client and/or any Replacement Provider in employing such person up to the date of such termination of employment,
- provided that the Client shall not and shall procure that the Replacement Provider shall not agree any settlement of a claim for such compensation or damages without the consent of BW, such consent not to be unreasonably withheld or delayed.

Section D – Online Services

Where BW is providing any Online Services, the following additional terms apply (including those in the Appendix to this Section). In the event of any inconsistency or conflict between the provisions of this Section D and any other terms set out in the Engagement Terms, the provisions of this Section D shall prevail.

D1. Online Services

- 1.1. Subject to the remainder of this Section, BW shall ensure that the Online Services are provided:
 - 1.1.1. substantially in accordance with the service description, and with the functionality, referred to in the Appendix to this Section D; and
 - 1.1.2. with reasonable skill and care.
- 1.2. Paragraph 1.1 of this Section shall not apply to the extent of any non-conformance which is caused by use of the Online Services contrary to the instructions of BW or anyone acting on behalf of BW, or modification or alteration of the Online Services by any party other than BW or anyone acting on behalf of BW. If the Online Services do not conform with paragraph 1.1 of this Section, the Client shall promptly notify BW, and BW shall use reasonable endeavours to correct any such non-conformance or provide the Client with an alternative means of accomplishing the desired performance.
- 1.3. The Client acknowledges and agrees that:
 - 1.3.1. the Online Content is provided for information only and should not be used to make (or refrain from making) any decision or to take (or refrain from taking) any action;
 - 1.3.2. the Online Services will not be available during or as result of:
 - (a) planned maintenance carried out during such reasonable maintenance windows as set by BW from time to time provided that BW shall use reasonable endeavours to perform such planned maintenance outside of Business Hours; and
 - (b) unscheduled maintenance performed outside the planned maintenance windows referred to above provided that BW has used reasonable endeavours to give the Client as much advance notice as possible of such unscheduled maintenance. However, the Client acknowledges and agrees that it may receive no advance notification for downtime caused by circumstances beyond the reasonable control of BW and/or in respect of any emergency maintenance. BW shall use reasonable endeavours to keep any such unscheduled maintenance to a minimum and to restore the Online Services as soon as reasonably practicable.
- 1.4. BW shall be entitled to charge and invoice the Client (as additional Fees) at its then current rates for time spent:
 - 1.4.1. providing support services in respect of the relevant Online Services outside Business Hours; and/or
 - 1.4.2. on data restoration and/or re-establishment, except where this is due to an act, omission or failure of BW.
- 1.5. Subject to paragraph 14.1 of Section A of these Terms of Business and without prejudice to paragraph 1.1 of this Section, to the maximum extent permitted by law, BW:
 - 1.5.1. does not warrant that the use of or access to the Online Services shall be uninterrupted or error-free; or that the Online Services shall meet any specific requirements or needs of the Client;
 - 1.5.2. does not accept responsibility for any liability that arises in connection with unauthorised use of the Online Services;
 - 1.5.3. does not provide and shall not be deemed to be providing any actuarial, consultancy, legal, financial, accountancy, taxation or other advice in or through the provision of the Online Services;
 - 1.5.4. does not warrant that the Online Services are compatible with any particular software or equipment;
 - 1.5.5. does not accept any responsibility for any third party website (or its content) linked to any part of the Online Services or any loss or damage that may arise from the use of such websites or content. These links are provided for information only; and
 - 1.5.6. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges and agrees that the Online Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

D2. Client Obligations in respect of the Online Services

- 2.1. The Client shall:
 - 2.1.1. in respect of its systems, networks and the provision of the Client Materials, obtain and maintain all licences, consents, and permissions necessary for the Authorised Users to access and use the Online Services and/or any Third-Party Services;
 - 2.1.2. ensure that the Authorised Users comply with any relevant User Terms and shall be responsible for any Authorised User's breach of the User Terms;
 - 2.1.3. use its reasonable endeavours to prevent (and shall promptly notify BW on becoming aware of) any breach of the security of the Online Services, howsoever caused, including unauthorised access to, or use of, the Online Services by the Client, any Service Recipients, or any Authorised User;
 - 2.1.4. be solely responsible for: (a) procuring, maintaining and securing its network connections, operating environment and telecommunications links (including internet connection) from its systems to BW's systems (and/or any third party systems); and (b) all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections, operating environment or telecommunications links (including internet connection) or caused by the internet; and
 - 2.1.5. be and remain responsible for the effective and efficient management, co-ordination and performance of all third party interfaces and agreements (save for those in respect of BW's or its Affiliate's sub-contractors) which are required to enable BW to provide the Online Services.
- 2.2. The Client shall not and shall ensure that each Authorised User shall not:

- 2.2.1. except as may be allowed by law which is incapable of exclusion by agreement between the Parties: (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or the Online Services in any form or media or by any means; or (b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software and/or the Online Services; or
- 2.2.2. access all or any part of the Software and/or the Online Services in order to build a product or service which competes with the Online Services; or
- 2.2.3. use the Software and/or the Online Services to provide services to third parties; or
- 2.2.4. subject to paragraph 24.1 of Section A of these Terms of Business, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software and/or the Online Services available to any third party except the Authorised Users; or
- 2.2.5. access, store, distribute or transmit any Viruses, or any material during the course of use of the Online Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence; is discriminatory based on race, gender, age, colour, religious belief, sexual orientation, disability; is in breach of any privacy rights, contractual duty or any obligation of confidence; or in a manner that is otherwise illegal or causes damage or injury to any person or property; or
- 2.2.6. attempt to obtain, or assist third parties in obtaining, access to the Software and/or the Online Services, other than as provided under this Section D.
- 2.3. BW reserves the right, at its election and without liability or prejudice to its other rights and remedies:
 - 2.3.1. to suspend any Authorised User's and/or the Client's access to the relevant Online Services if the Client or any Authorised User breaches this Section D, or any Applicable Laws or BW has reasonable grounds to suspect such a breach; and/or
 - 2.3.2. to delete any material that breaches the provisions of paragraph 2.2.5 of this Section.
- 2.4. BW shall:
 - 2.4.1. act reasonably in exercising its rights under paragraph 2.3 of this Section;
 - 2.4.2. notify the Client promptly of any such suspension; and
 - 2.4.3. promptly restore access where the cause of the breach has been addressed to BW's reasonable satisfaction.

D3. Licence to use Online Services, and Authorised Users

- 3.1. Subject to the Client complying with the Engagement Terms, BW grants to the Client (and its Authorised Users) a limited, non-exclusive, non-transferable, revocable licence to access and use the Online Services and the Online Content during the relevant Service Term for the Permitted Purpose only.
- 3.2. The Client shall not sub-license, assign or otherwise transfer the rights granted in paragraph 3.1 of this Section.
- 3.3. The Client shall ensure that each Authorised User shall keep its user credentials (and associated password) confidential. The Client shall be responsible for any liability that arises in connection with any unauthorised use of any Authorised User's credentials.
- 3.4. The Client agrees that it shall only allow Authorised Users to access and use the Online Services and the Online Content in accordance with any relevant User Terms
- 3.5. The Client shall promptly notify BW where any Authorised User ceases to be eligible for access to or use of the Online Services.

D4. Acceptance & Acceptance Testing

- 4.1. Save where paragraph 4.2 of this Section applies, the Client shall be deemed to have accepted the particular Online Services when they are first made available to the Authorised Users.
- 4.2. Where the relevant Project Plan (if any) expressly refers to any specific acceptance criteria (**Acceptance Criteria**) and/or any tests to be carried out by the Client, in partnership with BW, to assess whether the particular Online Services meet such Acceptance Criteria (**Acceptance Tests**):
 - 4.2.1. BW shall notify the Client in writing when the particular Online Services are ready for the Acceptance Tests to be carried out and the Client shall, in partnership with BW, carry out the Acceptance Tests in accordance with the Project Plan;
 - 4.2.2. BW shall provide such assistance to the Client in respect of the Acceptance Tests as the Client may reasonably request;
 - 4.2.3. if the Client:
 - (a) fails to undertake the Acceptance Tests within fifteen (15) days of being notified by BW that the particular Online Services are ready for the Acceptance Tests to be carried out; or
 - (b) undertakes the Acceptance Tests and fails to notify BW of the results of the Acceptance Tests within two (2) Business Days of performing them,
 the particular Online Services shall be deemed to have been accepted by the Client;
 - 4.2.4. if the particular Online Services fail to meet the Acceptance Criteria, the Client shall notify BW in writing setting out the reason for the failure and the Client may elect to:
 - (a) require BW to use reasonable endeavours to remedy the relevant defects and to repeat the Acceptance Tests within a reasonable time, as agreed (and (as applicable) extended) between the Parties in writing; or
 - (b) accept the particular Online Services, subject to an amendment to the relevant Acceptance Tests, as agreed between the Parties in writing, whereupon the particular Online Services shall be deemed to have been accepted by the Client;
 - 4.2.5. where paragraph 4.2.4(a) of this Section applies, and BW is unable to remedy all defects in the particular Online Services so that they meet the Acceptance Criteria within the relevant timescale, then:
 - (a) the Client shall (without prejudice to any other right or remedy) be entitled forthwith to:
 - i. accept the particular Online Services, subject to an amendment to the relevant Acceptance Tests, as agreed between the Parties in writing, whereupon the particular Online Services shall be deemed to have been accepted by the Client; or
 - ii. reject the particular Online Services and terminate the provision of the particular Online Services;

- (b) save where the Client has rejected the particular Online Services in accordance with paragraph 4.2.5(a)(ii) of this Section, the Client shall be deemed to have accepted the particular Online Services on the earlier of:
 - i. the Client providing written confirmation of acceptance of the particular Online Services;
 - ii. the particular Online Services passing (or being deemed to have passed) the Acceptance Tests in accordance with this paragraph 4.2.3 of this Section; and
 - iii. the particular Online Services being made available to Authorised Users.

D5. User Data

- 5.1. The Client grants to BW, BW's Affiliates and their respective Personnel a non-exclusive, revocable, licence to use, copy and modify the User Data to the extent reasonably necessary for BW to provide the Online Services and/or to facilitate any Third-Party Services.
- 5.2. The Client acknowledges that BW has no control over any content placed on, inputted or uploaded to the BW Services and/or any Third-Party Services by the Authorised Users.
- 5.3. The Client warrants, represents and undertakes that the User Data does not infringe any Applicable Laws or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing or blasphemous (**Inappropriate Content**)).
- 5.4. The Client shall indemnify BW from and against all Losses suffered or incurred by BW Indemnified Parties as a result of or in connection with any claim or demand by a third party arising from or in connection with any User Data that contains Inappropriate Content.

Appendix to Section D

Online Service	Service description and the functionality	Authorised Users	Permitted Purpose
"4me"	BW's digital employee benefits platform. The functionality will be set out in the specification contained in the relevant Service Schedule.	The employees of the Client in respect of whom the Client has paid the applicable Fees.	To view, update, select, and change their choice of employee benefits. Such use is for the Authorised User's domestic and personal use only.
"4me Analysis"	BW's online interactive monitoring and analytical tool in respect of 4me and the Authorised Users of 4me.	Such of the Client's Personnel as agreed in writing between the Parties from time to time.	To view, monitor and analyse the information, engagement and choices made by the Authorised Users of 4me. Such use is for or in connection with the Client's internal business purposes only.
"BW CORE®"	BW's online integrated pension scheme risk and governance tool that brings together a scheme's calendar, ORA, risk register and ESOG in one place.	Such of the Client's Personnel as agreed in writing between the Parties from time to time.	To view and, where applicable, update the information made available on BW CORE® and produce reports based on that information. Such use is for or in connection with the Client's internal business purposes only.
"BWell"	BW's online interactive employee wellbeing survey and analytical tool. Authorised Users can view, analyse and report on survey information received from the employees of the Client who choose to participate in the BWell employee wellbeing survey.	Such of the Client's Personnel as agreed in writing between the Parties from time to time.	To view the information and data made available on BWell. Such use is for or in connection with the Client's internal business purposes only.
"DC Governance Tool"	BW's online interactive defined contribution pension scheme annual governance review tool combining information and data from the relevant employer and pension provider to provide an interactive governance report. The DC Governance Tool provides a digital interactive experience for users relating to: - Scheme profile - Membership profiles - Retirement outcomes - Investment performance - Administration SLAs - Gender Pension Gaps - Contribution structures	Such of the Client's Personnel as agreed in writing between the Parties from time to time.	To view the information and data made available on the DC Governance Tool. Such use is for or in connection with the Client's internal business purposes only.
"GEM"	BW's online analytical tool covering benefit and DC pensions governance, engagement and monitoring. Authorised Users can analyse the workforce and membership data in a variety of ways based upon impact factors such as age, affluence, location, membership status, savings, choices previously made as well as predicting possible future outcomes across member groups, modelling scenarios to make comparisons and viewing benchmarking data (against industry sector averages). They can also create and save their own dashboards.	Such of the Client's Personnel as agreed in writing between the Parties from time to time.	To view the information and data made available on GEM. Such use is for or in connection with the Client's internal business purposes only.
"Illuminate"	BW's online interactive monitoring and modelling tool providing analysis and illustrations of the financial position of a defined benefit pension scheme.	Such of the Client's Personnel and any other persons as agreed in writing between the Parties from time to time.	To view the information and data made available on Illuminate. Such use is for or in connection with the Client's internal business purposes only.

"Illuminate ME"	BW's online LGPS employer valuation results tool. The functionality will be set out in the specification contained in the relevant Service Schedule.	Such of the Client's Personnel as agreed in writing between the Parties from time to time.	To view the information and data made available on Illuminate ME. Such use is for or in connection with the Client's internal business purposes only.
"Insight"	BW's online dashboard in respect of defined benefit pension schemes providing access to, for example: - a summary of the data held on BW's systems relevant to the Services being provided (with the ability to apply certain filters to such data); - data relating to BW's performance against the relevant Service Levels and other key indicators, such as online access trends in respect of Authorised Users of Pension self- service.	Such of the Client's Personnel as agreed in writing between the Parties from time to time.	To view the information and data made available on Insight. Such use is for or in connection with the Client's internal business purposes only.
"LGPS Data Checker"	BW's online portal for carrying out valuation data checks at whole LGPS Fund and individual employer level, with the functionality to upload certain data and obtain a report on the valuation checks carried out. LGPS Data Checker can be used to: - prepare membership data at whole fund level ahead of submission for triennial valuation, and as a health check in other years; - provide a regular report, in real time, on data quality on an employer-by-employer basis; and - prepare membership data at individual employer level before submission for individual employer work.	Such of the Client's Personnel as agreed in writing between the Parties from time to time.	To view the information and data made available on LGPS Data Checker. Such use is for or in connection with the Client's internal business purposes only.
"LGPS Monitor"	BW's online tracking tool in respect of LGPS positions (tracking employer's assets and liabilities in the hands of administering authorities and employers).	Such of the Client's Personnel as agreed in writing between the Parties from time to time.	To view the information and data made available on LGPS Monitor. Such use is for or in connection with the Client's internal business purposes only.
"Pension Self-Service"	BW's online pension self-service portal allowing Authorised Users to, for example: - access their pension information including documentation such as benefit statements and payslips; - update personal information (contact details, bank account details etc.); - upload documents to us online; - verify their identity; - view fund values; - run retirement illustrations and transfer quotes, where available; and - update their expression of wish information online.	The Beneficiaries of the relevant Scheme in respect of which BW is providing pension administration services.	To view the information and data made available on Pension self-service. Such use is for the Authorised User's domestic and personal use only.
"Pay Gap Dashboard"	BW's interactive online dashboard that conducts pay gap reporting calculations and provides additional analysis and segmentation functionality.	Such of Client's Personnel as agreed in writing between the Parties from time to time.	To view the information made available via the Pay Gap Dashboard for or in connection with the Client's internal business purposes and/or their reporting requirements under the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 or the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017.

“Penstream records search”	BW's online portal for Clients' HR and/or payroll contacts allowing the Authorised Users to search for and access the records of Authorised Users of Pension self-service. Authorised Users will not be able to update contact or expression of wish details. Authorised Users can run the illustrative benefit routines.	Such of Client's Personnel and any other persons as agreed in writing between the Parties from time to time.	To access and view the records of Authorised Users who have access to Pension self-service (and to run benefit illustrations available to the Authorised Users of Pension self-service). Such use is for or in connection with the Client's internal business purposes only.
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"Scheme Documents and Governance"	BW's online portal for hosting the Scheme Documentation and other documentation (including booklets, announcements and scheme audit papers).	Such of Client's Personnel and any other persons as agreed in writing between the Parties from time to time.	To access and view such of the Scheme Documentation and other documentation (including booklets, announcements and scheme audit papers) that, from time to time, BW makes available via Scheme Documents and Governance. Such use is for or in connection with the Client's internal business purposes only and/or the proper administration of the relevant Scheme.
"Secure File Exchange (SFX)" and "BWebstream Exchange"	BW's file exchange which enables BW to send and receive documents over a secure portal without the need for password-protected email attachments.	Such of Client's Personnel and any other persons as agreed in writing between the Parties from time to time.	To send and receive documents in connection with the Services provided by BW.

Section E – Trustee Services

Where BW is providing Services to a Client who is the trustee (or trustees) of an occupational pension scheme, the following additional terms apply.

E1. The Scheme

- 1.1. Without prejudice to BW's obligations in respect of the provision of the Services:
 - 1.1.1. BW shall have no liability to the Client in respect of the Scheme Documentation and/or the Client's operation of the Scheme; and
 - 1.1.2. the Client shall:
 - (a) be solely responsible for maintaining and ensuring that the Scheme Documentation, and its operation of the Scheme, complies with all Applicable Laws;
 - (b) be ultimately responsible for the discharge of its obligations as Scheme Administrator of the Scheme;
 - (c) promptly notify BW in writing of any proposed or actual changes to the Scheme Documentation or any summary of it;
 - (d) be responsible for the submission of information requested by any regulatory bodies; and
 - (e) undertake and be responsible for all negotiations with HM Revenue & Customs, except as otherwise agreed between the Parties in writing.
- 1.2. Notwithstanding paragraph 3.3.10 of Section A of these Terms of Business, BW shall not knowingly destroy any original copy Scheme Documentation without the agreement of the Client (such agreement not to be unreasonably withheld or delayed).
- 1.3. BW acknowledges that the Scheme Documentation is, and will remain, the property of the Client.

E2. Scheme Actuary

- 2.1. BW and the Client acknowledge and agree that the appointment of a Scheme Actuary is a personal appointment between the Client and the Scheme Actuary, and that BW is not appointed as nor acting in the capacity of a Scheme Actuary.
- 2.2. Where the Scheme Actuary is from time to time a member of BW Personnel:
 - 2.2.1. the Scheme Actuary shall have the benefit of the Engagement Terms (including the Liability Cap) and the Engagement Terms shall apply to the undertaking and/or discharge of the Scheme Actuary Duties by the Scheme Actuary;
 - 2.2.2. the Client acknowledges and agrees that BW shall have access to, and may use in the course of providing the Services, all information and documentation made available to or in the possession of the Scheme Actuary (and vice versa);
 - 2.2.3. in the event of the Scheme Actuary's absence, BW shall use reasonable endeavours to provide BW Personnel to deal with any queries that the Client may have in respect of the Scheme Actuary Duties, provided that such BW Personnel shall not be deemed to be acting in the capacity of a Scheme Actuary;
 - 2.2.4. BW confirms that the Scheme Actuary is appropriately qualified for the purposes of Regulation 4(1)(b) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 and is not disqualified under section 27(1) of the Pensions Act 1995 from acting as the Scheme Actuary; and
 - 2.2.5. the Client shall:
 - (a) provide to the Scheme Actuary all information that is required by the Scheme Actuary to perform their Scheme Actuary Duties, including all documentation, information and notification of events referred to in the relevant Scheme Actuary appointment documentation; and
 - (b) comply with its obligations and undertakings referred to in any relevant Scheme Actuary appointment documentation; and
 - (c) fully co-operate with BW in all matters relating to the performance of the Services and hereby authorises full communication and exchange of information between the Scheme Actuary, BW and any other advisors to the Client on matters relevant to the Scheme.
- 2.3. In the event that the Scheme Actuary ceases to be a member of BW Personnel or (whilst still a member of BW Personnel) is otherwise unable to continue to act in their capacity as Scheme Actuary, the relevant Scheme Actuary's appointment shall cease immediately. In these circumstances, BW shall provide the Client with details of a member of BW Personnel proposed as a replacement Scheme Actuary. It shall be at the Client's discretion whether or not to appoint such replacement as Scheme Actuary.
- 2.4. The Client agrees that the Scheme Actuary may liaise with other advisers of the Client in relation to matters which might be relevant to any of their respective responsibilities in relation to the Scheme.
- 2.5. Where the Scheme Actuary is not a member of BW Personnel, the Client shall (on BW's reasonable request) set out in writing the division of responsibilities between the Scheme Actuary and BW and provide a copy to BW.

E3. Professional Advisor

- 3.1. The Service Schedule shall document where the Client appoints BW to act as a Professional Advisor and:
 - 3.1.1. such appointment takes effect on the date referred to in the Service Schedule;
 - 3.1.2. the person(s) BW shall report to, and may take instructions from, are those person(s) referred to in paragraph 3.3.5 of Section A of the Terms of Business;
 - 3.1.3. the Client shall, in accordance with all Applicable Laws and statutory duties, provide to BW all information (including the Scheme's books, accounts and records) that is required by BW to perform its duties as a Professional Advisor; and
 - 3.1.4. by agreeing the Service Schedule BW acknowledges such appointment.

E4. Conflicts

- 4.1. Where there is the potential for a conflict of interest (as between the Client and another client of BW or (as applicable) as between the Client, the Scheme Actuary and any other third party) to arise, BW and the Client shall use reasonable endeavours to agree and maintain a Conflicts Management Plan. Where (as applicable) the Scheme Actuary and/or any third party is required to be a party to the relevant Conflicts Management Plan, BW and the Client shall use reasonable endeavours to procure that (as applicable) the Scheme Actuary and/or such third party agrees, and assists with the maintenance of, the relevant Conflicts Management Plan.
- 4.2. The Parties shall comply with their respective obligations contained in any Conflicts Management Plan.

- 4.3. Any limitations on the Services set out in the Conflicts Management Plan shall apply.
- 4.4. The Client shall notify BW of any conflict management plan that has been agreed between a Professional Advisor (other than BW), the Client and any third party.

E5. Service Materials

- 5.1. The rights referred to in paragraph 10.5 of Section A of these Terms of Business shall, subject to the terms of that paragraph, extend to allow the Client to use the Service Materials for the proper administration of the Scheme.

E6. Limitation of Liability

- 6.1. Where there is any ambiguity in, or the potential for any different interpretation or application of, the Scheme Documentation and either (i) BW has sought instructions from the Client; or (ii) the Client provides instructions to BW, as to how BW should interpret and apply the Scheme Documentation in the provision of the relevant Services, subject to paragraph 14.1 of Section A of these Terms of Business and provided that BW has otherwise complied with its obligations contained in paragraph 3.1 of Section A of these Terms of Business, the Client shall not be entitled to recover any Losses or otherwise obtain restitution from BW to the extent that any such Losses arise out of or are in connection with: (i) the Client failing to provide any such instructions to BW; or (ii) BW adhering to or undertaking any such instruction.

E7. Pension Protection Fund (PPF) Services

- 7.1. Where this Section E applies and in so far as the particular Services relate to or are in connection with the relevant Scheme being (or having been) subject to an assessment by or on behalf of the Board of the PPF, as to whether the Board of the PPF must assume responsibility for the Scheme (an **Assessment**):
 - 7.1.1. the Client hereby consents (on an ongoing basis) to BW communicating with and/or providing information and data (including but not limited to Personal Data) to the PPF in connection with Assessment and/or BW's provision of the Services;
 - 7.1.2. the Client acknowledges that it is responsible for paying the relevant Fees;
 - 7.1.3. without prejudice to the Client's obligations to pay the relevant Fees, if and to the extent that any fee cap or fixed fee (agreed between the Parties from time to time) is expected to be exceeded, the Client acknowledges and agrees that BW shall be required to obtain the approval of the Board of the PPF in respect of any required increase;
 - 7.1.4. BW shall (and the Client hereby authorises BW to) inform the Board of the PPF of the existence of any complaint or dispute in relation to the Services and/or the performance of either Party's obligations contained in the Engagement Terms;
 - 7.1.5. the Client hereby authorises BW to receive information from and liaise with the Client's current and past professional advisors and the Client shall provide BW with a separate letter of authority to that effect (in such form as BW shall reasonably require) on request; and
 - 7.1.6. if and to the extent that BW is providing pension scheme administration services, paragraphs F1 and F4 of Section F of these Terms of Business shall not apply.

Section F – Pension Administration Services

Where BW is providing pension administration services in respect of: a) an occupational pension scheme; and/or b) a bulk annuity policy (or policies), the following additional terms apply.

F1. Implementation Costs

- 1.1. The Client acknowledges and agrees that the costs and expenses actually incurred by BW in respect of preparation for, facilitation of and implementation of the Services (**BW Implementation Costs**) may exceed the Fees payable in respect of such services.
- 1.2. BW shall take reasonable steps to mitigate the relevant BW Implementation Costs.
- 1.3. If the Engagement Terms and/or the provision of the Services are terminated prior to the 5th anniversary of the relevant Service Start Date (save where such termination is due to BW being in material breach of its obligations contained in the Engagement Terms in respect of the provision of the Services), BW shall invoice the Client and the Client shall pay (in accordance with the Terms of Business) a sum in respect of the BW Implementation Costs reasonably incurred up to date of termination of the Services, to the extent that the BW Implementation Costs exceed the Fees referred to in paragraph 1.1 of this Section on the following basis:

Service Terminate Date:	Amount of BW Implementation Costs recoverable and payable:
Before the 1st anniversary of the relevant Service State Date	100%
On or after the 1st anniversary of the relevant Service State Date but before the 2nd anniversary of the relevant Service State Date	80%
On or after the 2nd anniversary of the relevant Service State Date but before the 3rd anniversary of the relevant Service State Date	60%
On or after the 3rd anniversary of the relevant Service State Date but before the 4th anniversary of the relevant Service State Date	40%
On or after the 4th anniversary of the relevant Service State Date but before the 5th anniversary of the relevant Service State Date	20%
On or after the 5th anniversary of the relevant Service State Date	0%

- 1.4. The BW Implementation Costs recoverable represent the genuine loss to BW, and the Client acknowledges and agrees that payment of the same by the Client does not impose a detriment on the Client that is disproportionate to the legitimate interests of BW.

F2. Contact with Beneficiaries, and Complaints

- 2.1. BW Personnel are permitted to contact Beneficiaries in order to facilitate the provision of the Services and to the extent required or permitted by Applicable Laws.
- 2.2. If BW becomes aware of a complaint (including any complaint by a Beneficiary), it shall give details of the complaint to the Client as soon as reasonably practicable following receipt of the complaint.

F3. Administration Records

- 3.1. BW acknowledges that any electronic administration records in the possession or under the control of BW from time to time which relate to the Scheme or (as applicable) the relevant bulk annuity policy (or policies) whether now existing or to come into existence, and whether created by BW or any third party are, and will become and remain, the property of the Client.

Where BW is providing pension administration services in respect of an occupational pension scheme, the following additional terms apply.

F4. Activity Levels & Excess Activity Charges

- 4.1. In this Section:
 - 4.1.1. **"Activity"** means:
 - (a) in respect of each individual active or deferred Beneficiary: (i) new entrants to active status (excluding auto-enrolment joiners); or (ii) deaths, leavers, refunds and retirement quotations from active status (excluding auto-enrolment opt-outs); or (iii) deaths, retirement quotations and transfer quotations out from deferred status; or (iv) transfers-in; or (v) settlements save for where the relevant quotation has been prepared and issued by BW, but excludes leavers, retirements or transfer outs resulting from any bulk exercises;
 - (b) in respect of each individual pensioner status Beneficiary, deaths or trivial commutation payments;
 - 4.1.2. **"Activity Period"** means each accounting year of the Scheme (each a **"Scheme Year"**) and in the case of the first Activity Period, the period starting on the date on which BW commences provision of the Services and ending on the expiry of the then current Scheme Year;
 - 4.1.3. **"Excess Activity"** means any Activity once the Excess Activity Levels have been reached or exceeded;
 - 4.1.4. **"Excess Activity Charge"** shall have the meaning given to it in the Service Schedule, or such other charges as may be agreed between the Parties in writing from time to time; and
 - 4.1.5. **"Excess Activity Levels"** means, in each Activity Period, and to be measured independently of each other:
 - (a) in respect of active or deferred Beneficiaries, Activity relating to 10% or more of the total active and deferred Beneficiaries; and
 - (b) in respect of pensioner status Beneficiaries, Activity relating to 5% or more of the total pensioner status Beneficiaries.
- 4.2. BW shall measure the levels of Activity in respect of all Beneficiaries in each Activity Period and shall promptly notify the Client once the Excess Activity Levels in each Activity Period have been reached or exceeded.
- 4.3. If the Excess Activity Levels are reached or exceeded, the Client shall pay an Excess Activity Charge in respect of each item of Excess Activity on a per Beneficiary basis.

- 4.4. As soon as reasonably practicable following the expiry of each Activity Period, or, where there is significant Excess Activity, at such intervals during the relevant Activity Period as determined by BW, BW shall produce an invoice in respect of the relevant Excess Activity together with such information as the Client shall reasonably require to evidence the relevant Excess Activity.

F5. Whistleblowing

- 5.1. If BW becomes aware of any matter affecting the Scheme, which could be expected to lead to a report being made to TPR under section 70 of the Pensions Act 2004, BW shall inform the Client promptly of that matter and, where it would be reasonable to do so, before making any such report. However, if BW reasonably believes that a criminal offence may have been committed in relation to the Scheme, BW may make a report to TPR without notifying the Client about it first. BW shall (to the extent not prohibited by Applicable Law) provide the Client with details of any report it makes to TPR, if not before, as soon as possible after such report is lodged.

F6. Payment Processing

- 6.1. BW is an authorised BACS Bureau (B80062) and will make this service available for the benefit of the Client in connection with the provision of Services. BW will provide the Primary Security Contacts who are registered on the BACS payment services system and who are the first point of contact for enquiries from BACS Payment Scheme Limited. The setting up of Primary Security Contacts is subject to approval from the sponsoring bank. A Primary Security Contact can set up additional contacts, determine the privileges of those additional contacts, can be given the privilege to maintain service user reference data, can access Bacs input and messaging reports, view information about payment submissions (live and test), and view and maintain service user and contact information.
- 6.2. Should the BACS Bureau operation be disrupted for any reason then BW will provide as full a service as reasonably possible. Should the BACS Bureau be disrupted to such an extent that there is likely to be an adverse effect to the Services BW will advise the Client accordingly.
- 6.3. Where BW provides the Services via its BACS Bureau it is responsible for the checking of BACS files, the checking and updating of item transaction limits, the timely collection and verification of the BACS input files, and the extraction of BACS input files or individual items where necessary. BW will manage BACS messaging reports provided they are delivered to BW. This includes the input, BACS exception ARUCS (Automated Return of Unapplied Credits Service), AWACS (Advice of Wrong Account for Automated Credits Service), ARUDD (Automated Return of Unpaid Direct Debits), AUDDIS (Automated Direct Debit Instruction Service), ADDACS (Automated Direct Debit and Amendment and Cancellation Service), DDICA (Direct Debit Indemnity Claim Advice) and withdrawal reports.
- 6.4. Unless otherwise instructed BW will open and operate a segregated account for the Scheme within its pooled client account arrangement (**Pooled Account**). Although the Pooled Account is not subject to the Financial Conduct Authority (FCA) client money rules, it is operated as a segregated client money account and is subject to an express trust recognising that funds in the account are held for the benefit of BW's clients."

F7. Member announcements

- 7.1. BW shall use commercially reasonable endeavours to ensure that any communication to a Member that relates to a discretion to be exercised or a decision to be made by the Client or is otherwise relevant to the Client's operation of the Scheme, is notified to the Client as soon as reasonably possible in accordance with any agreed procedures unless such discretion has been delegated to BW in writing.
- 7.2. BW shall not issue or make any announcement or other communication (whether written or oral) to a Member promising or effecting or notifying that Member of, any changes in benefits or entitlements from those specified in the Scheme Documentation, or any changes in expectations under the Scheme, except in every case such as may be authorised by the Client from time to time.

F8. Quality and accuracy of services

- 8.1. If BW becomes aware of any material inaccuracy or error arising in relation to the Services (a Service Issue), it will report this to the Client without delay.
- 8.2. If so requested by the Client (and without prejudice to any other rights or remedies that may be available), BW shall provide a written explanation to the Client as soon as reasonable practicable (and in any event within 30 days) explaining in reasonable detail;
- 8.2.1 how the Service Issue occurred; and
 - 8.2.2 what steps BW is or has taken to attempt to address the Service Issue and the technical and organisational measures BW will put in place to reduce the risk of any similar error occurring in the future.
- 8.3. The Client may require BW to provide regular progress updates on the measures referred to in paragraph 8.2.

Section G – Insurance & Longevity Consulting Services

Where BW is providing insurance & longevity consulting services that are classified as a material outsourcing arrangement in accordance with relevant regulation, the following additional terms apply.

- G1.** BW will inform the Client as soon as reasonably practicable of becoming aware of any development which may have a material impact on BW's ability to carry out the Services effectively and in compliance with Applicable Laws.
- G2.** BW shall provide the Services from the United Kingdom and shall (subject to paragraph 2.3.6 of Section B of these Terms of Business) process the Client's data in the United Kingdom or in a member country of the European Economic Area. BW Personnel resident in the United Kingdom but accessing BW computer systems from overseas on a temporary basis shall be treated as providing the Services from the United Kingdom. If BW wishes to use alternative locations it shall give the Client prior written notice.
- G3.** If required to do so, BW will cooperate with any relevant supervisory or regulatory body of the Client with regards to the Services, including providing such bodies or their appointed representatives with access to relevant data, personnel and business premises if required. Unless directed otherwise by the supervisory or regulatory body, should any such body approach BW directly with regards to the Services, BW will (unless prohibited from doing so) inform the Client at its earliest opportunity and provide the Client with copies of all correspondence. In such circumstances, and where practicable, BW will give the Client an opportunity to review drafts of its intended communications. BW will consider any comments the Client has on its intended communications, but BW will not necessarily amend its communications as a result of them.

Section H – Pensions Dashboards Services

Where BW is providing Pensions Dashboard Services to a client who is the trustee (or trustees) of an occupational pension scheme, the following additional terms apply:

H1. Background

- 1.1 The Client is (or will be) required to connect to the Pensions Dashboards Ecosystem in respect of the Scheme and then review and supply certain information to the Pensions Dashboard service provided by MaPS and/or a Qualifying Pensions Dashboard Service, in accordance with the Pensions Dashboards Legislative Requirements.
- 1.2 BW shall provide the Pensions Dashboards Services to the Client to enable the Client to comply with the requirements of the Pensions Dashboards Legislative Requirements as amended or replaced from time to time, in respect of the Scheme.

H2. Pensions Dashboards Services

- 2.1 Subject to the remainder of this Schedule, BW confirms, as at the Pensions Dashboards Services Start Date, that the Pensions Dashboards Services shall enable the Client to comply with the requirements of the Pensions Dashboards Legislative Requirements, in respect of the Scheme. BW further agrees that it will ensure that the ISP complies with the requirements relating to Find and View Data requests, as set out in Pensions Dashboards Regulations and any Standards published and approved under Regulation 5 of the Pensions Dashboards Regulations, each as amended or replaced..
- 2.2 BW shall review the Pensions Dashboards Services at least once a year and on becoming aware, or when BW should reasonably be aware taking into account its status as a professional provider of administration services, of any changes or reasonably anticipated forthcoming changes to the Pensions Dashboards Legislative Requirements, so as to ensure the Pensions Dashboards Services comply with, and enable the Client to comply with, the Pensions Dashboards Legislative Requirements as amended or replaced from time to time..
- 2.3 If any changes to the Pensions Dashboards Services are: (a) identified by BW as being required or otherwise desirable in accordance with paragraph 2.2 of this Schedule; or (b) requested by the Client for any reason, BW shall in the case of (a), promptly bring such changes to the Client's attention and use all reasonable endeavours to agree such changes with the Client in advance of such changes being required in order to ensure compliance with the Pensions Dashboards Legislative Requirements as amended from time to time (such changes to be agreed in writing, including any additional Fees associated with the changes). BW confirms that, providing the Client agrees to such changes, the Pensions Dashboards Services provided from time to time shall comply with, and enable the Client to comply with, the requirements of the Pensions Dashboards Legislative Requirements, as amended or replaced.
- 2.4 BW shall not be held in breach of the Agreement should it be unable to provide the Pensions Dashboards Services either at all, or to the standard required by the Pensions Dashboards Legislative Requirements, as a direct result of the Client, or a third party other than (i) BW, (ii) its Affiliates and their Representatives, or (iii) any subcontractors appointed by BW in accordance with the Agreement, acting on the Client's behalf, failing to meet any of the obligations placed upon the Client in the Agreement. If BW is unable to comply with the Pensions Dashboards Legislative Requirements in accordance with this Schedule as a result of the Client or such a third party failing to meet such obligations, BW shall notify the Client as soon as reasonably practicable.
- 2.5 BW shall be entitled to rely on the accuracy of the Pensions Dashboards Information and any other information or instructions provided by the Client, or a third party other than (i) BW, (ii) its Affiliates and their Representatives, or (iii) any subcontractors appointed by BW in accordance with the Agreement, acting on the Client's behalf, in connection with the Pensions Dashboards Services and BW shall not be responsible for any errors and/or omissions in the Pensions Dashboards Services arising from such reliance..
- 2.6 Subject to paragraph 14.1 of Section A of these Terms of Business and without prejudice to paragraph 2.1 of this Section, to the maximum extent permitted by law, BW:
 - (a) gives no warranty (subject to paragraph 2.7 of this Schedule) that the provision of the Pensions Dashboards Services will be uninterrupted or error-free;
 - (b) does not accept responsibility for any liability that arises in connection with any unauthorised use of any online services in connection with the Pensions Dashboards Services;
 - (c) does not accept responsibility for any liability that arises in connection with any error made by a user of the Pensions Dashboards service provided by MaPS and/or a Qualifying Pensions Dashboard Service, or any fraudulent activity by a user or any other person in respect of those services; and
 - (d) does not accept any responsibility for any third-party website or platform (or its content) connected with any part of the Pensions Dashboards Services or any loss or damage that may arise from the use of such websites, platforms or content.
- 2.7 Notwithstanding paragraph 2.6 of this Schedule, BW shall use every endeavour to keep interruption of or disruption to the availability and/or functionality of the Pensions Dashboards Services to a minimum, and to ensure that the Scheme remains connected to the Pensions Dashboards Ecosystem at all times. BW will notify the Client and MaPS without delay (and within the timeframes set out in the PDP's code of connection) of any: (i) connection state changes, such as downtime (whether scheduled or unscheduled) or maintenance, (ii) systemic issues, such as cyber-attacks, which could affect the security of the Dashboards Ecosystem, and (iii) changes in the connection arrangements of the Scheme, where these are due to issues with BW or the ISP.

H3. Client obligations

- 3.1 In addition to any other Client obligations contained in these Terms of Business, with effect from the Pensions Dashboards Services Start Date, the Client undertakes on a continuing basis to:
- (a) promptly provide the Pensions Dashboards Information to BW as and when requested by BW;
 - (b) instruct BW promptly in respect of the Matching Rules and the approach to resolving Possible Matches to be used in respect of the Scheme;
 - (c) instruct BW promptly if it wishes to change any of the Matching Rules and/or the approach to resolving Possible Matches to be used in respect of the Scheme;
 - (d) provide reasonable cooperation to BW, and use reasonable endeavours to procure that any third party acting on the Client's behalf cooperates with BW, in relation to any reasonable requests made by BW to enable it to provide the Pensions Dashboards Services more efficiently and cost effectively;
 - (e) provide reasonable cooperation to BW in respect of any requests received by BW or the Client from the Pensions Regulator or any other regulatory body in relation to the Pensions Dashboards Services; and
 - (f) comply with all applicable laws in relation to the Pensions Dashboards Services.

H4. Data protection

- 4.1 BW and the Client agree that paragraphs 2.1 and 2.2 of Section B2 of these Terms of Business do not apply to the Client Data being processed as part of the Pensions Dashboards Services.
- 4.2 BW and the Client agree that, in respect of the Pensions Dashboards Services, the Client is the Controller and BW is the Processor and, as a result, the entirety of paragraph 2.3 of Section B2 of these Terms of Business shall apply to the Pensions Dashboards Services.
- 4.3 The following additional terms shall apply to the Pensions Dashboards Services:
- (a) the categories of Personal Data that may be processed for the purpose of testing the Pensions Dashboards Services ahead of the Effective Date (referred to as the Pensions Dashboards Testing Data), shall include but not be limited to the categories of data set out at the end of this paragraph 4.3;
 - (b) the categories of Personal Data that may be processed for the purpose of providing the Pensions Dashboards Services on and after the Effective Date (forming part of the Pensions Dashboards Information), shall include but not be limited to the categories of data set out at the end of this paragraph 4.3;
 - (c) the purposes of the processing for each of the categories of data set out at the end of paragraph 4.3 is to ensure compliance with the Pensions Dashboards Legislative Requirements;
 - (d) the categories of data subject include all individuals who submit a request from the Pensions Dashboards Ecosystem; and
 - (e) the nature of the processing includes connection to the Pensions Dashboards Ecosystem, dealing with Find/View Data requests and managing possible matches.

Identity details: First name, last name, National Insurance number, employment start and end dates, current postal address and postcode, previous postal address and postcode, date of birth, personal email address and mobile number.

Benefit information: Scheme name, administrator details, benefit type, accrued pension value and Estimated Retirement Income.

Such other Find Data and View Data as may be required to enable the Client to comply with the Pensions Dashboards Legislative Requirements in respect of the Scheme.

H5. Security

- 5.1 BW warrants that the Pensions Dashboards IT Systems shall meet good industry standards at all times and shall comply with ISO27001 (or such equivalent replacement standards and accreditations from time to time) and the level of adequacy and protection of such standards shall not fall below the standards provided as at the Pensions Dashboards Services Start Date.

H6. Record keeping

- 6.1 BW shall keep a record of, and upon request from the Client, provide written confirmation of:
- (a) the steps carried out in order to comply with the legal requirements relating to connecting the Scheme to MaPS;
 - (b) the Matching Rules used in respect of the Scheme; and
 - (c) the Operational Information arising from the provision of the Pensions Dashboards Services,
- in respect of the period BW has been providing the Pensions Dashboards Services to the Client, or if shorter, for a minimum of six years from the end of the scheme year to which such records relate or such longer period as the law may from time to time require. This is in order to

enable the Client to comply with applicable legal requirements and to satisfy any legal or regulatory requirement to audit such information in respect of the Scheme.

H7. Interpretation

7.1 In this Section:

- (a) **"Administrative data"** means basic information and contact details for the Scheme returned to the member when they have accessed the Pensions Dashboards Ecosystem and their Find data matches, or partially matches, them to the Scheme.
- (b) **"Effective Date"** means the date on which the Scheme is (or was) first connected to the Pensions Dashboards service provided by MaPS and/or a Qualifying Pensions Dashboard Service.
- (c) **"Find data"** means the specific personal information used to locate a member's pension in the Scheme when the member accesses the Pensions Dashboards Ecosystem.
- (d) **"Integrated Service Provider (ISP)"** is a third-party service that helps pension providers and schemes connect their data to the Pensions Dashboards Ecosystem.
- (e) **"MaPS"** means the Money and Pensions Service sponsored by the Department for Work and Pensions.
- (f) **"Matching Rules"** means "the matching criteria" as defined in the Pensions Dashboards Regulations.
- (g) **"Operational Information"** has the meaning given to it in the Pensions Dashboards Regulations.
- (h) **"Pensions Dashboards Ecosystem"** has the meaning given to the term "dashboards ecosystem" in the Pensions Dashboards Regulations.
- (i) **"Pensions Dashboards Information"** means the data, documents, instructions and other information reasonably required by BW to provide the Pensions Dashboards Services, as specified in the relevant Service Schedule, or as otherwise notified by BW to the Client in writing from time to time.
- (j) **"Pensions Dashboards IT Systems"** means the software application(s) and/or platform(s) used by BW and/or its sub-contractors to provide the Pensions Dashboards Services.
- (k) **"Pensions Dashboards Legislative Requirements"** collectively means Part 4 of the Pension Schemes Act 2021, the Pensions Dashboards Regulations 2022, and any Standards published and approved under Regulation 5 of the Pensions Dashboards Regulations.
- (l) **"Pensions Dashboards Regulations"** means the Pensions Dashboards Regulations 2022 (SI 2022/1220).
- (m) **"Pensions Dashboards Services"** means the Services to be provided by BW to enable the Client to comply with the applicable requirements of the Pensions Dashboards Legislative Requirements in respect of the Scheme, as specified in the relevant Service Schedule.
- (n) **"Pensions Dashboards Services Start Date"** means the date on which the Pensions Dashboard Services (or part of them) are first provided by BW to the Client.
- (o) **"Pensions Dashboards Testing Data"** means the Personal Data provided by the Client to BW to test and prepare for providing the Pensions Dashboards Services as further described in paragraph 4.3(a) of these Terms of Business.
- (p) **"Possible Matches"** has the meaning given to the term "possible match" in the Pensions Dashboards Regulations.
- (q) **"Qualifying Pensions Dashboard Service"** has the meaning given to it in the Pensions Dashboards Regulations.
- (r) **"Value data"** means information about a member's Scheme benefits required in accordance with the Pensions Dashboards Regulations to be displayed on a Pensions Dashboard where it can be viewed by the member where there is a positive match.
- (s) **"View Data"** is the collective term for Administrative and Value data.

Section I – Definitions & Interpretation

The following definitions and rules of interpretation apply in these Terms of Business:

Affiliates: means, in relation to a Party, that Party's subsidiaries and holding companies and any subsidiary of any such holding company and any limited liability partnership of which that Party is a member, as the same may vary from time to time;

Applicable Laws: means all applicable laws, statutes, regulations, regulatory requirements and/or policies, binding guidelines or industry codes which apply to the provision or (as applicable in the case of the Client) the receipt of the Services;

Authorised User: shall have the meaning given to it (as applicable to the particular Online Service) in the Appendix to Section D of these Terms of Business;

Background IPR: means all IPR owned by, licensed to or developed by a Party or (as applicable) its Affiliates, in either case independently of the Engagement Terms including any modifications, enhancements and derivatives of such IPR;

Beneficiary: means a member, beneficiary or potential beneficiary of the relevant Scheme or (as applicable) the relevant insurance policy, in each case, from time to time, with Beneficiaries interpreted accordingly;

Business Day: means a day (other than a Saturday, Sunday or public holiday) when banks in London, England are open for business;

Business Hours: means the hours of 9.00 a.m. to 5.00 p.m. on each Business Day;

BW: shall have the meaning given to it in the Engagement Letter;

BW Employees: means those persons to be identified and agreed by the Parties prior to the Subsequent Transfer Date who it is agreed are employed or otherwise engaged by BW (and/or any of its Affiliates and/or any of its sub-contractors) immediately before the relevant Subsequent Transfer Date in an organised grouping which has as its principal purpose the provision of the relevant Services;

BW Indemnified Parties: means BW, BW's Affiliates and BW's and its Affiliates' respective Personnel;

BW IPR: means the Service Materials, the Software, the Online Services and the Online Content, in each case, excluding the Client Materials;

BW Partner: means the partner or director of BW designated (from time to time) to oversee the overall provision of the Services;

BW Personnel: means the Personnel of BW or (as applicable) its Affiliates;

BW Website: means such BW website(s) upon which BW hosts the latest version of these Terms of Business, the Regulatory Disclosures and the Data Maps, as notified to the Client from time to time;

Client: means the client referred to in the Engagement Letter;

Client Contact: means the person notified by the Client to BW from time to time who has oversight of the receipt of the Services;

Client Data: means Personal Data received from or on behalf of the Client, the relevant Service Recipient(s) and/or any Authorised User in connection with the performance of BW's obligations under the Engagement Terms;

Client Materials: means all information, documentation (including any governing and/or constitutional documents and rules (e.g., any Scheme Documentation), materials, data (including User Data) and Client Background IPR in any form, whether owned by the Client or a third party, provided to BW by or on behalf of the Client;

Confidential Information: means any information, however conveyed or presented, that relates to the business, affairs, operations, customers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing party, together with all information derived by the receiving party from any such information and any other information clearly designated as being confidential (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential, but excluding any information that (a) was in the possession of the receiving party making the disclosure, without obligation of confidentiality, prior to its disclosure; (b) was obtained from a third party without obligation of confidentiality; (c) was already in the public domain at the time of disclosure otherwise than through a breach of the Engagement Terms; or (d) was independently developed without access to the other party's Confidential Information;

Conflicts Management Plan: means the conflicts management plan agreed (from time to time) between BW, the Client and any other third party;

Controller: has the meaning given to that term in Data Protection Law;

Data Map(s): means the data maps referred to in Section B of these Terms of Business, which are available on the relevant BW Website(s);

Data Protection Law: means as applicable to the Services and binding on the Client and/or BW: (a) the Data Protection Act 2018; (b) the GDPR; (c) any laws which implement any such laws; and (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;

Data Subject: has the meaning given to that term in Data Protection Law;

Data Subject Request: means a request made by a Data Subject to exercise any rights of that Data Subject under Data Protection Law;

Engagement Letter: means the latest letter of engagement issued by BW to the Client;

Engagement Terms: means the Engagement Letter which incorporates the Service Schedule and these Terms of Business;

Expenses: means any reasonable expenses incurred by BW relating to or in connection with the provision of the Services (or, as applicable, in the facilitation of the relevant Third-Party Services) as agreed between the Parties from time to time;

Fees: means the fees payable in respect of the provision of the Services and/or (as applicable) the facilitation of any Third-Party Services as set out in the Service Schedule or as otherwise agreed in writing between the Parties from time to time;

Force Majeure Event: means any circumstance not within a Party's reasonable control including (a) an act of God, flood, drought, earthquake or other natural disaster; (b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination or sonic boom; (e) any laws, statutes, regulations, and codes or any action taken by a government or public authority; (f) collapse of buildings, fire, power cut, explosion or accident; (g) any labour or trade dispute, strikes, industrial action or lockout (other than in each case by Personnel or Affiliates of the Affected Party); and (h) interruption or failure of an utility, telecommunication or internet service;

GDPR: means the General Data Protection Regulation, Regulation (EU) 2016/679 as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or of a part of the United Kingdom from time to time);

Improvement Plan: means a plan to improve BW's performance as judged against the relevant Service Levels for the subsequent Service Level Period;

Information Security Standards: means BW's information security standards which shall meet or exceed the appropriate industry standards which could reasonably and ordinarily be expected to be maintained by a provider of services the same or substantially similar to the Services, as made available by BW to the Client from time to time;

Intellectual Property Rights (IPR): means patents, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or shall subsist now or in the future in any part of the world;

Key Personnel: means (if any) those BW Personnel referred to as key personnel in the Service Schedule;

Liability Cap: shall have the meaning given to it in the Engagement Letter;

Losses: means all liabilities, costs, expenses, damages and losses and all reasonable professional costs and expenses;

Managed Services: means any third party software-as-a-service Services which BW sub-licenses to the Client, as referred to in the relevant Service Schedule;

Managed Services Terms: means any additional or varied terms and conditions which apply to the Client's access to and use of the Managed Services, as set out or referenced in the relevant Service Schedule, click-through terms included within the Managed Services, and/or as otherwise notified by BW to the Client from time to time, which form part of these Engagement Terms with respect to the relevant Managed Services only;

Milestone(s): means the agreed performance date or date(s) (if any) by which the Services (or the relevant part of them) are to be completed, as documented in the Service Schedule or the relevant Project Plan;

Online Content: means any output of the Online Services whatsoever, in whatever form, produced by or on behalf of BW;

Online Services: means the online and/or software-as-a-service offerings provided by or on behalf of BW from time to time under the Engagement Terms as documented in the Service Schedule and as more particularly described in the Appendix to Section D of these Terms of Business;

Parties: means BW and the Client (each a '**Party**');;

Permitted Purpose: means the purpose(s) for which the Client and the Authorised Users are licensed to use the relevant Online Services and the Online Content, as set out in the Appendix to Section D of these Terms of Business;

Permitted 3rd Party: means such third party recipient (as agreed in writing between the Parties from time to time) to whom the Client is permitted to disclose the Service Materials, subject to the provisions of the Engagement Terms;

Personal Data: has the meaning given to that term in Data Protection Law;

Personal Data Breach: means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Client Data;

Personnel: means directors, officers, members, employees, consultants, agents and/or contractors;

Previous Provider: means the provider of all or part of the Services (or the relevant part of them) or services which were fundamentally the same as all or part of such Services to the Client at or immediately before the relevant Service Start Date;

Processing: has the meaning given to that term in Data Protection Law (and related terms such as **process**, **processes** and **processed** have corresponding meanings);

Processor: has the meaning given to that term in Data Protection Law;

Professional Advisor: means a "professional adviser" as defined in section 47(4) of the Pensions Act 1995;

Project Initiation Document (PID): means (as applicable) the high-level document outlining the proposed delivery of the particular Services, the key stakeholders and any risks that might have a material detrimental impact on the achievement of any Milestone(s), to be agreed between the Parties in writing (both acting reasonably);

Project Plan: means the detailed project delivery plan relating to the delivery of the particular Services, to be agreed between the Parties in writing (both acting reasonably);

Regulatory Disclosures: means the regulatory disclosures, categorisation and acknowledgements (as updated from time to time) available on the relevant BW Website(s).

Replacement Provider: means any replacement service provider which on or after the cessation or termination of the Services (or the relevant part of them) carries out services fundamentally the same as such Services (or the relevant part of them);

Scheme: shall have the meaning given to it in the Engagement Letter;

Scheme Actuary: means the actuary for the Scheme appointed by the trustee(s) of the Scheme, from time to time, to undertake the functions of such actuary, as required under the Scheme Documentation and Applicable Laws;

Scheme Actuary Duties: means the statutory duties and obligations of the Scheme Actuary from time to time;

Scheme Administrator: means the scheme administrator (as defined in Section 270 of the Finance Act 2004);

Scheme Documentation: means any of the governing and/or constitutional documents (including any trust deeds and rules) relating to the Scheme from time to time and all amendments thereto;

Section: mean a section of these Terms of Business and **Sections** shall be construed accordingly;

Service Level(s): means the service levels (if any) referred to in the Service Schedule;

Service Level Period: unless otherwise agreed in writing between the Parties, means any consecutive three-month period during the course of the provision of the relevant Services;

Service Materials: means any output of the Services whatsoever, whether oral or tangible in whatever form, produced by BW or on behalf of BW including advice, working papers, materials, reports, documents and publications, but excluding the Online Content;

Service Recipient(s): means such of the Client's Affiliates to whom, from time to time, BW (pursuant to the provisions of the Engagement Terms) agrees may have the benefit of the Services (or part of them);

Service Schedule: means the schedule to the Engagement Letter (as may be amended or updated in writing between the Parties from time to time) which sets out the Services and the applicable Fees;

Service Start Date: means the date on which the particular Services (or part of them) are first provided by BW;

Service Term: means the period during which the Services (or part of them) are provided which shall commence on the relevant Service Start Date;

Services: means the services to be provided by BW under the Engagement Terms as agreed in writing between the Parties from time to time and (whether simultaneously or subsequently) detailed or referred to in the Service Schedule. The Services includes any Online Services and Managed Services, but excludes any Third-Party Services and Third-Party Applications;

Software: means any software application(s) contained in or forming part of the Online Services;

Sub-Processor: means a Processor engaged by BW (or its Affiliates) for carrying out processing activities in respect of Client Data on behalf of the Client;

Subsequent Transfer Date: means the date on which all or part of the relevant Services cease to be provided by BW for any reason and where all or part of such Services continue to be provided by the Client and/or a Replacement Provider;

Supervisory Authority: means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Law;

Terms of Business: means these terms of business and (as applicable) any Regulatory Disclosures and/or any Data Maps which are incorporated by reference into these terms of business, but excludes any PID and/or Project Plan;

Third-Party Applications: means any online platforms, applications and/or tools provided by a third party;

Third-Party Service Provider: means a third party which provides Third-Party Services;

Third-Party Services: means any third party services which BW facilitates for the Client (including online services and software-as-a-service services, but excluding Managed Services) as referred to in the relevant Service Schedule;

TPR: means the Pensions Regulator and any successor regulatory body or authority;

TUPE: means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or replaced from time to time);

User Data: means the data, including any Personal Data, inputted into, or obtained during the provision/facilitation of, the Online Services (and/or any Third-Party Services) by (as applicable) the Client, Barnett Waddingham (on the Client's behalf) or an Authorised User;

User Terms: means the terms and conditions which apply to individual users of the particular Online Services, Managed Services, or any Third-Party Services, including any end user licence agreements, user terms and acceptable use policies as made available to the Client and/or Authorised Users from time to time. BW may amend its User Terms in its sole and absolute discretion from time to time;

VAT: means United Kingdom value added tax, any other tax imposed in substitution for it and any equivalent or similar tax imposed outside the United Kingdom, at the rate from time to time imposed; and

Virus(es): means any thing or device (including any software, code, file or programme) which may: (a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; (b) prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or (c) adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Interpretation

- a) Section, Appendix and paragraph headings shall not affect the interpretation of the Engagement Terms.
- b) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- c) A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- d) Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- e) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- f) The Engagement Terms shall be binding on, and inure to the benefit of, the Parties and their respective personal representatives, successors and permitted assigns, and references to any Party shall include that Party's personal representatives, successors and permitted assigns.
- g) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- h) A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- i) A reference to writing or written includes email.
- j) A reference to the Engagement Terms or to any other agreement or document referred to in the Engagement Terms is a reference to the Engagement Terms or such other agreement or document, in each case as validly varied from time to time.
- k) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- l) A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006. For the purposes of determining whether a limited liability partnership is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be construed so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.