

Data Sharing Agreement

Background

- a) The Employer (the “**Employer**”) and Scottish Widows Limited (“**Scottish Widows**”) agree to share the Employee Data on terms set out in this Agreement to allow them to undertake their respective obligations in relation to the Scheme.
- b) This is a free-standing Data Sharing Agreement that does not incorporate commercial terms relating to the establishment and administration of the Scheme which have been agreed by the Employer and Scottish Widows under separate commercial arrangements.
- c) The Employer and Scottish Widows each acts independently as Data Controllers – each determines the purpose and means of Processing Employee Data independently from the other.
- d) As Data Controllers, the Employer and Scottish Widows are each responsible for ensuring that their uses of the Employee Data are in compliance with the Data Protection Laws.

Agreed terms

1. Interpretation

- 1.1 The following definitions and rules of interpretation apply in this Agreement:

“**Affiliate**” means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with Scottish Widows;

“**Agreed Purpose**” means the purpose of administering the Scheme;

“**Data Controller**” and “**Data Processor**” shall have the same meaning as “controller” and “processor” in the Data Protection Laws;

“**Data Protection Legislation**” means the Privacy and Electronic Communications Regulations 2003 (as amended by SI 2011 no. 6), the Data Protection Act 2018 and the EU GDPR as each is amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586) and incorporated into UK law under the UK European Union (Withdrawal) Act 2018. Each shall be referred to as “PECR”, the “Act” and the “UK GDPR” accordingly;

“**Data Subject**”, “**Personal Data**”, “**Personal Data Breach**”, “**Process/Processing**” and “**Special Categories of Personal Data**” shall have the same meaning as in the Data Protection Laws except that references to “**Personal Data**” include references to information relating to legal as well as natural persons to the extent that those data are regulated by the Data Protection Laws.

“**Employee**” means a member of the Scheme;

“**Employee Data**” means any data (including Personal Data) which is owned by or which is generated by, supplied to, or is otherwise retained by Scottish Widows or a sub-contractor of Scottish Widows pursuant to or in connection with its obligations relating to the Scheme. This includes (i) Personal Data relating to employees, Scheme members or contractors providing services to the Employer; and/or (ii) Scheme Records;

“**Employer**” means the sponsoring Employer of the Group Personal Pension Scheme;

“**EU GDPR**” means Regulation 2016/679 of 27th April 2016 the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

“**Restricted Country**” means a country, territory or jurisdiction that is outside the UK or the European Economic Area which is not the subject of an adequacy determination by the UK Secretary of State or the European Commission (as applicable);

“**Restricted Transfer**” means the transfer, storing or processing of Personal Data or storing Personal Data in a Restricted Country, either through:

- a) direct transfer or remotely (e.g. via outsourcing, as part of business continuity arrangements, cloud arrangements, offshore models etc.);
- b) remotely accessing, or allowing remote access to, the information systems of the Provider and the Platform Operator; and/or
- c) an onward transfer of Personal Data from a receiving party under (a) or (b) above, to a further Permitted Recipient, save where, in each case, such recipient is subject to the terms of the UK GDPR;

“Scheme” means the Group Personal Pension Scheme sponsored by the Employer;

“Scheme Records” means all correspondence, documents, information, statement and other records, held either in paper or electronic means in the possession or under the control of Scottish Widows relating solely to the Scheme or its beneficiaries but not any correspondence, documents, information, statement or other records which relate to commercial arrangements between the Employer and Scottish Widows;

“Supervisory Authority” means the UK Information Commissioner’s Office any similar regulatory authority responsible for the enforcement of Data Protection Legislation.

- 1.2 Clause and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and words in the plural shall include the singular.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.6 Any words following the terms including, include, in particular, for example or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.7 Unless the context otherwise requires the reference to one gender shall include a reference to the other genders.

2. Regulatory compliance

- 2.1 The Employer and Scottish Widows each confirm that they hold and shall maintain all registrations and notifications required in terms of the Data Protection Laws which are appropriate to its performance of its obligations arising under or in connection with the Scheme.
- 2.2 The Employer and Scottish Widows each confirm that they shall each comply with the Data Protection Laws.

- 2.3 The Employer and Scottish Widows acknowledge and agree that where either party Processes Personal Data pursuant to or in relation to this Agreement, that party shall be carrying out the Processing for its own purposes, and as such will be a Data Controller under the Data Protection Laws.

3. Independent Data Controllers

- 3.1 The Employer and Scottish Widows agree that they shall determine the purpose and means of Processing independently from the other.
- 3.2 The Employer shall be responsible for ensuring that it complies with any requirements of the Data Protection Laws to permit the Employer to send the Employee Data to Scottish Widows as contemplated by this Agreement. The Employer represents, warrants and undertakes to Scottish Widows that:
 - a) it has provided the Employee with a data privacy notice which complies with the Data Protection Laws including informing the Employee that it will be transferring Personal Data to Scottish Widows for the purposes of administering the Scheme;
 - b) it has obtained any necessary consent from the Employee to do all acts necessary on the Employee’s behalf to enable Scottish Widows to enrol them into the Scheme;
 - c) it has obtained sufficient authority from the Employee to deduct contributions from the Employee’s salary and pay these to Scottish Widows; and
 - d) in respect of the Employee, the declarations provided to Scottish Widows as part of the enrolment process are correct and complete.
- 3.3 The Employer shall ensure that the Employee Data contained in any upload is accurate and up to date as represented by the most recent relevant information provided by the Employee.

- 3.4 The Employer acknowledges that Scottish Widows may share any relevant data and information including Employee Data and Personal Data with its Affiliates and others for the following purposes:
- data matching and data validation;
 - to ensure the effective provision of the services it delivers for the Agreed Purpose and to allow effective business administration and governance;
 - direct marketing to Employees where permitted by law (including the Data Protection Laws); and
 - as otherwise permitted by Scottish Widows' data privacy notice and/or the Data Protection Laws.
- 3.5 The Employer and Scottish Widows agree that they each shall:
- notify the other without undue delay if they become aware of any complaint or request from any Employee, other Data Subject or Supervisory Authority relating to the Employer's transfer of Employee Data to Scottish Widows or the Employer's Processing of that Employee Data when held by Scottish Widows;
 - promptly and fully cooperate with and assist the other party in relation to any reasonable request for cooperation, assistance and/or information relating to its Processing of the Employee Data; and
 - not do anything which would cause the other party to breach any of its obligations under the Data Protection Laws.
- 3.6 The Employer and Scottish Widows acknowledge that they are each responsible for complying with their obligations under the Data Protection Laws.
- 3.7 The Employer and Scottish Widows shall co-operate with each other in complying with any reasonable request made by an Employee under the Data Protection Laws.
- 3.8 The Employer and Scottish Widows shall co-operate with each other in responding to any investigation or enquiry from any Supervisory Authority in respect of the Processing of the Employee Data.
- 3.9 In the event of any Personal Data Breach relating to the Employee Data, the party suffering the Personal Data Breach (the Employer or Scottish Widows) shall notify the other party as soon as reasonably practical of the occurrence of a Personal Data Breach and shall, on request, keep the other party updated on the progress of its investigation.
- 3.10 The Employer and Scottish Widows shall ensure that any Restricted Transfers of Personal Data by them or their Subcontractors are compliant with Data Protection Legislation, which shall include ensuring that:
- appropriate safeguards are in place pursuant to Article 46 of the UK GDPR;
 - that enforceable rights and effective legal remedies are available for Data Subjects in accordance with the Data Protection Legislation;
 - any such Restricted Transfers are limited to remotely accessing the Personal Data; and
 - under no circumstances shall the Personal Data be stored in a Restricted Country.

4. Liability

- 4.1 The total aggregate liability of either party in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise in respect of all claims arising out of or in connection with this Agreement shall in no circumstances exceed the amount set out in the following table for any claim or series of connected claims:

Number of Scheme Members	Liability Cap
>5,000	£10m
2,500 – 5,000	£7.5m
1,000 – 2,499	£5m
100 – 999	£1m
<100	£0.5m

- 4.2 Neither party shall in any circumstances have any liability for any losses or damages which may be suffered by the other party arising out of or in connection with this Agreement whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever which fall within any of the following categories:
- i) loss of revenues or profits;
 - ii) loss of anticipated savings;
 - iii) loss of business or business opportunity;
 - iv) depletion of goodwill and/or similar losses;
 - v) pure economic loss.
- 4.3 Save as expressly provided, the exclusions in 4.2 above shall apply to the fullest extent permissible at law, but neither party excludes its liability:
- i) for death or personal injury caused by its negligence;
 - ii) for fraud or fraudulent misrepresentation;
 - iii) for breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - iv) for any other liability which may not be excluded by applicable law.

5. Amendments

- 5.1 We may amend the terms of this Agreement at any time by giving you one month's written notice, which may be by notice on our website.
- 5.2 Where there are changes in the Data Protection Laws any relevant provisions in this Agreement will be deemed to be amended accordingly.

6. Duration and termination

- 6.1 The terms of this Agreement shall continue in effect until Scottish Widows cease to administer the Scheme.

7. Allocation of cost

- 7.1 Save as expressly provided, each of the Employer and Scottish Widows shall perform its obligations under this Agreement at its own cost.

8. Third party rights

- 8.1 No one other than the Employer and/or Scottish Widows shall have any right to enforce any of the terms of this Agreement.

9. Waiver

- 9.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

10. Severance

- 10.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 10.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Employer and Scottish Widows shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended result of the original provision.

11. Changes to the applicable law

- 11.1 In case the applicable data protection and ancillary laws change in a way that this Agreement is no longer adequate for the purpose of governing lawful data sharing exercises and obligations under the Data Protection Laws, the Employer and Scottish Widows agree that they will negotiate in good faith to review this Agreement in light of the new legislation.

12. No partnership or agency

- 12.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Employer and Scottish Widows, constitute 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.

- 12.2 The Employer and Scottish Widows each confirm it is acting on its own behalf and not for the benefit of any other person.

13. Entire arrangements

- 13.1 This Agreement constitutes the entire arrangements between the Employer and Scottish Widows arising out of or in connection with the sharing of Employee Data and/or compliance with Data Protection Laws save that where the Employer uses Scottish Widows' AssistMe services, this Agreement and Clause 6 of the AssistMe terms and conditions shall constitute the entire arrangements.
- 13.2 The Employer and Scottish Widows each acknowledge that it does not rely on, and shall have no remedies in respect of any agreement, representation, assurance or warranty (whether made innocently or negligently) relating to or in connection with the sharing of Employee Data and/or compliance with Data Protection Laws that is not set out in this Agreement.
- 13.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in this Agreement.

14. Further assurance

- 14.1 Each party shall, and shall use all 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 this Agreement.

15. Force majeure

- 15.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

16. Rights and remedies

- 16.1 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

17. Notice

- 17.1 Any notice given to a party under or in connection with this Agreement shall be in writing, addressed to the other party and shall be:
- i) delivered by hand or by pre-paid first-class post or other next working day delivery service or by pre-paid second-class post at its registered office (if a company) or its principal place of business (in any other case); or
 - ii) sent by fax to its main fax number.
- 17.2 Any notice shall be deemed to have been received:
- i) if delivered by hand, on signature of a delivery receipt;
 - ii) 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 at the time recorded by the delivery service;
 - iii) if sent by pre-paid second-class post, at 9.00 am on the third Business Day after posting;
- or
- iv) if sent by fax, at 9.00 am on the next Business Day after transmission.
- 17.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18. Governing law

- 18.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

19. Jurisdiction

- 19.1 Each party irrevocably agrees 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 this Agreement or its subject matter or formation.



Scottish Widows Limited. Registered in England and Wales No. 3196171. Registered office in the United Kingdom at 25 Gresham Street, London EC2V 7HN.
Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority.
Financial Services Register number 181655.