

DATA PROCESSING AGREEMENT

PARTIES

The **Trustee(s)** acting as the Scheme Administrator of the Scheme (the “**Trustee(s)**”)

AND

Scottish Widows Limited incorporated and registered in England and Wales with company number 03196171 whose registered office is at 25 Gresham Street, London, EC2V 7HN (“**Scottish Widows**”).

BACKGROUND

- a) The **Trustee(s)** will share Scheme Data with **Scottish Widows** on the terms set out in this Agreement.
- b) **Scottish Widows** agrees to use the Scheme Data on the terms set out in this Agreement.
- c) This Agreement is effective from the Commencement Date and covers all matters arising out of or in connection with the transfer, sharing and processing of Scheme Data.

AGREED TERMS

1 Interpretation

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

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

“**Commencement Date**” means the earlier of date of the Employer’s signature on, or the submission of, the Group Money Purchase (‘GMP’) Application Form;

“**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;

“**Employer**” means the Scheme’s Sponsoring, Principal and/or Participating Employer(s) as documented on the GMP Application Form;

“**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 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

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 scheme referenced in Section A of the GMP Application Form;

“**Scheme Data**” means any and all data (including Personal Data) which is owned by or which is generated by, supplied to, or is otherwise retained by or accessed by **Scottish Widows** or a sub-contractor of **Scottish Widows** pursuant to or in connection with policies associated with the Scheme which are held with **Scottish Widows**. This includes (i) Personal Data relating to **Trustee(s)**, scheme members and beneficiaries; and (ii) Scheme(s) Records;

“**Scheme Records**” means all correspondence, documents, information, statements and other records, held either in paper or electronic means in the possession or under the control of **Scottish Widows** relating solely to the policies associated with the Scheme, its members and/or beneficiaries.

“**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 Each Party confirms that it holds, and during the term of this Agreement shall maintain, all registrations and notifications required in terms of the Data Protection Laws which are appropriate to the performance of its obligations arising from or in connection with the Agreed Purpose.
- 2.2 Each Party confirms that, in the performance of this Agreement, it shall comply with the Data Protection Laws.
- 2.3 The Parties acknowledge that they shall each be Processing Personal Data for or in connection with the Agreed Purpose and that the factual arrangement between them shall dictate the role of each Party as to Data Controller or Data Processor. Notwithstanding the foregoing, the Parties agree and acknowledge that where either Party Process Personal Data pursuant to or in relation to this Agreement, that Party may be carrying out the Processing for its own purposes, and as such may be a Data Controller under the Data Protection Laws.

3 Data Processor activities

- 3.1 In so far as Scottish Widows Processes any Personal Data on behalf of the Trustee(s) for the Agreed Purpose as the Trustee(s)' Data Processor, Scottish Widows shall:
 - a) not Process, transfer, modify, amend or alter the Scheme Data or disclose or permit the disclosure of the Scheme Data to any third party (excluding a sub-processor appointed in accordance with the terms of this Agreement) other than in accordance with the Trustee(s)' written instructions unless Processing is required by Data Protection Laws to which Scottish Widows is subject, in which case Scottish Widows shall, to the extent permitted by such law, inform the Trustee(s) of that legal requirement before Processing that Personal Data;
 - b) keep a record of any Processing of Personal Data it carries out on behalf of the Trustee(s) and such Personal Data shall be stored in such a manner that they are identifiable from other data held by the Scottish Widows for purposes not relating to the Agreed Purpose;

- c) not store, copy, use, alter, delete, or otherwise interfere with Scheme Data for any purpose other than as required to perform Scottish Widows' obligations arising from or in connection with the Agreed Purpose and Scheme Data shall not be Processed as a means to enhance or enrich any Personal Data held by Scottish Widows for any purpose other than its activities as a Data Processor; and
- d) take all reasonable steps to ensure the reliability of its employees who have access to Scheme Data and shall in particular ensure that all employees have been appropriately vetted; and that all employees and/or directors (i) are informed of the confidential nature of Scheme Data; (ii) have undertaken and will undertake regular training in the laws relating to handling Personal Data, Data privacy and information security at least annually, with evidence of completion; and (iii) are aware both of Scottish Widows' duties and their personal duties and obligations under the Data Protection Laws and this Agreement. Scottish Widows shall ensure in each case that access is strictly limited to those individuals who need to access the relevant Personal Data in the context of that individual's duties to Scottish Widows.

- 3.2 The Trustee(s) authorise Scottish Widows to continue to use those sub-processors engaged by Scottish Widows on the Commencement Date and to engage other processors and sub-processors in respect of the Processing of the Scheme Data. Pursuant to this general authorisation, where Scottish Widows intends to make any additions to its sub-processors, it shall give the Trustee(s) thirty (30) days' notice of any such intended changes, thereby giving the Trustee(s) the opportunity to object to such changes.

- 3.3 Where Scottish Widows subcontracts its obligations under the terms of paragraph 3.2, it shall do so only by way of a written agreement with the subcontractor which imposes substantially similar obligations on the subcontractor in respect of the Scheme Data as are imposed on Scottish Widows under this Agreement including:
 - a) upon a reasonable request provide the Trustee(s) with full details of the Processing to be undertaken by the relevant sub-processor;
 - b) include terms in the contract between Scottish Widows and each sub-processor necessary to comply with Article 28 of GDPR; and
 - c) insofar as that contract involves a Restricted Transfer of Personal Data, only transfer such Personal Data in accordance with clause 3.14 below;

Scottish Widows shall remain fully liable to the Trustee(s) for any failure by each sub-processor to fulfil its obligations in relation to the Processing of any Personal Data.

- 3.4 Scottish Widows shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk and shall take all measures required by Data Protection Laws and ensure the protection of the Data Subjects. In assessing the appropriate level of security, Scottish Widows shall consider:
- whether pseudonymisation or encryption of the Personal Data is appropriate;
 - the ability to ensure the on-going confidentiality, integrity, availability and resilience of systems and services processing Personal Data;
 - the need to be able to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;
 - the need for a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing; and
 - the level of damage and/or distress that a Data Subject might suffer resulting from any accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted stored or otherwise processed.
- 3.5 If the Trustee(s) consider the technical and organisational measures implemented are insufficient or the Trustee(s) require alternative or additional measures these will be put in place by mutual agreement and subject to the Trustee(s) agreeing to pay any additional costs.
- 3.6 Scottish Widows shall promptly notify the Trustee(s) if it receives a request from a Data Subject to exercise rights under any Data Protection Laws including but not limited to a request from an individual to whom Scheme Data relates for access to such Scheme Data or to amend, transfer or delete or suppress such Scheme Data.
- 3.7 Scottish Widows shall, at the Trustee(s)' cost, co-operate as reasonably requested by the Trustee(s) to enable the Trustee(s) to comply with the exercise of such rights by a Data Subject and/or to comply with any assessment, enquiry, notice or investigation under any Data Protection Laws in respect of the Scheme Data.
- 3.8 If Scottish Widows receives any complaint, notice or communication which relates directly to the Processing of Scheme Data or to a Party's compliance with the Data Protection Laws relating to the Scheme Data, or becomes aware of any unauthorised, unlawful or dishonest conduct or activities, or any breach of the terms of this Agreement relating to Scheme Data it shall (and shall procure that any sub-contractor shall) without undue delay notify the Trustee(s) and it shall provide the Trustee(s) with full co-operation and assistance in relation to any such complaint, notice or communication.
- 3.9 If at the time of making the original notification described in clause 3.8, Scottish Widows does not have available to it all of the information requested by the Trustee(s), Scottish Widows shall include in the original notification such information as it has available to it at that time, and then shall provide the further information as it becomes available.
- 3.10 Scottish Widows shall co-operate with the Trustee(s) and take such reasonable commercial steps as are directed by the Trustee(s) to assist in the investigation, mitigation and remediation of any Personal Data Breach.
- 3.11 In the event of a Personal Data Breach, Scottish Widows shall not inform any third party, including but not limited to any regulator (including the Supervisory Authority), without first obtaining the Trustee(s)' prior written consent, unless:
- notification is required by Data Protection Laws to which Scottish Widows is subject, in which case Scottish Widows shall to the extent permitted by such law inform the Trustee(s) of that legal requirement, provide a copy of the proposed notification and consider any comments made by the Trustee(s) before notifying the Personal Data Breach; or
 - the Personal Data Breach involves Personal Data relating to other third parties, in which case Scottish Widows shall be able to inform such third party (including the Supervisory Authority) provided that Scottish Widows shall not disclose to such third party that the Trustee(s) is in any way impacted by the Personal Data Breach.
- 3.12 Scottish Widows shall at a mutually agreeable time and at the Trustee(s)' cost, allow its data processing facilities, procedures and documentation to be submitted for scrutiny by the Trustee(s)' auditors or Supervisory Authority, subject to reasonably appropriate confidentiality and security assurances, in order to ascertain compliance with the Data Protection Laws Scottish Widows shall provide full co-operation to the Trustee(s) in respect of any such audit and shall upon the reasonable written request of the Trustee(s), provide the Trustee(s) with evidence of compliance with its obligations under this Agreement.
- 3.13 Scottish Widows shall provide reasonable assistance to the Trustee(s) with any data protection impact assessments which are required under Data Protection Laws and with any prior consultations to any Supervisory Authority of the Trustee(s) which are required under Data Protection Laws, in each case solely in relation to Processing of the Personal Data by Scottish Widows on behalf of the Trustee(s) and taking into account the nature of the Processing and information available to Scottish Widows and subject to the Trustee(s) meeting Scottish Widows' reasonable costs.

3.14 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: (i) appropriate safeguards are in place pursuant to Article 46 of the UK GDPR; (ii) that enforceable rights and effective legal remedies are available for Data Subjects in accordance with the Data Protection Legislation; (iii) any such Restricted Transfers are limited to remotely accessing the Personal Data; and (iv) under no circumstances shall the Personal Data be stored in a Restricted Country.

3.15 Upon the termination or expiry of its obligations arising from or in connection with the Agreed Purpose and as soon as reasonably possible thereafter, at the Trustee(s)' discretion either return, or securely dispose from its systems, the Personal Data and any copies of it or of the information it contains.

3.16 The subject matter and duration of the Processing, the nature and purpose of the Processing, the type of Personal Data and categories of Data Subject as required by the Data Protection Laws relating to this Agreement shall be as operated by the Parties at the Commencement Date or as agreed from time to time.

4 Trustee(s)' obligations

4.1 The Trustee(s) shall ensure that:

- a) all instructions they give to Scottish Widows in relation to the Processing of the Scheme Data are in compliance with the Data Protection Laws;
- b) they have provided adequate fair processing notices to all Data Subjects and have obtained all necessary consents from all Data Subjects or have other lawful grounds for Processing to enable Scottish Widows to Process the Scheme Data for the purposes of providing services for or in connection with the Agreed Purpose and performing its obligations and exercising its rights as set out in this Agreement;
- c) they shall provide Scottish Widows with only Scheme Data that is adequate, relevant and limited to what is necessary for the lawful purposes for which they are Processed;
- d) all Scheme Data provided to Scottish Widows is accurate and where necessary, kept up to date; and
- e) they have granted to Scottish Widows the right to Process the Scheme Data for the purposes of:
 - i) performing services for or in connection with the Agreed Purpose;
 - ii) performing Scottish Widows' obligations under this Agreement; and/or
 - iii) exercising Scottish Widows' rights under this Agreement.

4.2 Scottish Widows shall have no liability to the Trustee(s) (whether in contract, tort, misrepresentation, restitution, under statute or otherwise in each case howsoever caused including, without limitation, if caused by negligence) for any claim arising out of or in connection with any act and/or omission by Scottish Widows to the extent that such act and/or omission results from:

- a) any breach of the Data Protection Laws by the Trustee(s); and/or
- b) any failure by the Trustee(s) to comply with their obligations under this Agreement; and/or
- c) Scottish Widows complying with any written instructions from the Trustee(s).

4.3 The Trustee(s) shall indemnify Scottish Widows against all costs, expenses, claims, loss or damage incurred or suffered by Scottish Widows, or for which Scottish Widows may become liable (whether direct, indirect, or consequential and including any economic loss or other loss of profits, business or goodwill) arising out of the matters described in sub-clauses 4.2 (a) to (c) above.

5 Shared personal data

5.1 The types of Personal Data shared between the Parties during the term of this Agreement shall include (but not exclusively) the following:

- a) Name
- b) Address
- c) Employment data including employer and salary
- d) Date of birth

5.2 The types of Special Categories of Personal Data shared between the Parties may include (but not exclusively) the following:

- a) physical or mental health or condition; and
- b) the commission or alleged commission of any offence.

6 Liability

- 6.1 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 Clause 6 of 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 Members	Liability Cap
>5,000	£10m
2,500 – 5,000	£7.5m
1,000 – 2,499	£5m
100 – 999	£1m
<100	£0.5m

- 6.2 Neither Party shall in any circumstances have any liability for any losses or damages which may be suffered by the other Party 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:
- loss of revenues or profits;
 - loss of anticipated savings;
 - loss of business or business opportunity;
 - depletion of goodwill and/or similar losses;
 - pure economic loss.
- 6.3 Save as expressly provided, the exclusions in Paragraph 6.2 shall apply to the fullest extent permissible at law, but neither Party excludes its liability:
- for death or personal injury caused by its negligence;
 - for fraud or fraudulent misrepresentation;
 - 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
 - for any other liability which may not be excluded by applicable law.

7 Termination

- 7.1 This Agreement shall continue until Scottish Widows ceases to hold any policies associated with the Scheme.

8 Allocation of cost

- 8.1 Save as expressly provided, each Party shall perform its obligations under this Agreement at its own cost.

9 Third Party rights

- 9.1 No one other than a Party to this Agreement shall have any right to enforce any of its terms.

10 Variation

- 10.1 No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

11 Amendments

- 11.1 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.
- 11.2 Where there are changes in the Data Protection Laws any relevant provisions in this Agreement will be deemed to be amended accordingly.

12 Waiver

- 12.1 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.

13 Severance

- 13.1 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.
- 13.2 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 Parties 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.

14 Changes to the applicable law

- 14.1 In case the applicable data protection and ancillary laws change in a way that the Agreement is no longer adequate for the purpose of governing lawful data sharing exercises, the Parties agree that they will negotiate in good faith to review the Agreement in light of the new legislation.

15 No partnership or agency

- 15.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, 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.
- 15.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

16 Entire Agreement

- 16.1 This Agreement constitutes the entire agreement between the Parties arising from or in connection with the sharing of Scheme Data for the Agreed Purpose and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 16.2 Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 16.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in this Agreement.

17 Further assurance

- 17.1 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.

18 Force majeure

- 18.1 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.

19 Rights and remedies

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

20 Notice

- 20.1 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:
- a) 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
 - b) sent by fax to its main fax number.
- 20.2 Any notice shall be deemed to have been received:
- a) if delivered by hand, on signature of a delivery receipt;
 - b) 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;
 - c) if sent by pre-paid second-class post, at 9.00am on the third Business Day after posting; or
 - d) if sent by fax, at 9.00 am on the next Business Day after transmission.
- 20.3 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.

21 Governing law

- 21.1 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.

22 Jurisdiction

- 22.1 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.