Brunel Pension Partnership

Invitation to Tender

Middle and Back Office Services for Private Markets

Appendix D

Legal Provisions

July 2018

Provisions for inclusion in the Administration Services Contract

- **Mandatory Terms** are terms which a Potential Provider must accept will be transposed as worded into the final Administration Services contract. Where there are sections in square brackets within a Mandatory Term, this means that the rest of the term is mandatory, but that the square bracketed wording may be finalised and agreed with the successful SP following the Standstill Period in accordance with [Section 4.5, ITT and Appendix C, Terms of Participation] of the ITT.

- **Required Principles** are principles which a Potential Provider must accept will be included in the final Administration Services contract, but the final wording to cover these principles will be finalised and agreed with the successful Provider following the Standstill Period in accordance with [Section 4.5, ITT and Appendix B, Terms of Participation of the ITT.

	Mandatory Terms	Required Principles
1	1.1, 1.3, 1.7, 1.8, 1.9, definitions of "Applicable Laws and Regulations", "Good Industry Practice", "Losses", "Records, "Service Levels", "Services", "Services Schedule", "Termination Date", "Third Parties Act", 1.11	1.2, 1.4, 1.5, 1.6
2	2.2, 2.6, 2.7	2.1, 2.3, 2.4, 2.5
3	3.1, 3.2, 3.3, 3.4	
4	4.1	
5	5.1, 5.2, 5.3, 5.4, 5.6	5.5, 5.7
6	6.1, 6.2, 6.6 definitions listed	6.3, 6.4, 6.5
7	7.6, 7.7	7.1, 7.2, 7.3, 7.4, 7.5
8	8.1, 8.2	
9	9.2, 9.3, 9.4, 9.5	9.1, 9.6, 9.7
10	10.1, 10.3, 10.4, 10.6	10.2, 10.5
11	11.2, 11.6	11.1, 11.3, 11.4, 11.5
12		12.1, 12.2, 12.3, 12.4
13	13.1	
14	14.1	
15	15.1, 15.3, 15.4	15.2

Forging better futures

16	16.1, 16.2		
17	17.1, 17.2, 17.3, 17.4, 17.5, 17.6, 17.7, 17.8, 17.9		
18	18.1, 18.2, 18.3		
19		19	
20		20	
21	21.1, 21.2		
22		22	
23		23	
24	24.1, 24.2, 24.3		
25	25.1, 25.2		
26		26	
27		27	

1. Liability, indemnity and standard of care

1.1 In performing its duties under this Agreement, the Administrator shall act in accordance with the standard of care, skill and diligence that would reasonably be expected of a prudent professional administrator engaged from time to time in similar activities under the same or similar circumstances as the Administrator, Good Industry Practice and the Service Levels. Without prejudice to the generality of the foregoing, in providing the Services the Administrator shall comply with all Applicable Laws and Regulations on reasonable instructions of the Client from time to time (including as to compliance with the policies and procedures of the Client and/or the Client Funds). [Mandatory Term]

1.2 The Administrator shall, in relation to the Services, ensure that any technology or processes it employs are up to date, in line with Good Industry Practice and, without prejudice to clause [8], regularly improved to ensure sustainability, efficiency and future-proofing of the underlying operations. [Required Principle]

1.3 The Administrator shall not be entitled to delegate the provision of any of the Services without the prior written consent of the Client. If the Administrator does delegate any of its duties, the Administrator shall exercise reasonable care, skill and diligence in the selection, appointment, use and monitoring of each such delegate, and for all purposes of this Agreement shall be liable for the acts and omissions of such delegate as if they were its own. [Mandatory Term]

1.4 The Administrator shall be liable to the Client and each of the administering authorities to which the Client provides Services (the "**Client Funds**") for the performance of the Services in accordance with this Agreement. The Administrator agrees to indemnify and hold the Client and each Client Fund harmless on demand, in respect of any Losses incurred by the Client or any Client Fund arising as a direct result of the negligence, wilful default, breach of contract, breach of applicable law or fraud of the Administrator or any of its appointed delegates arising as a result of, or in connection with, the performance of the Services. [Required Principle]

1.5 The Administrator shall be entitled to rely on the accuracy of any data, information and Instructions supplied by or on behalf of the Client in the absence of manifest error in which case it shall consult with the Client prior to relying on such data, information and Instructions. For the purposes of this clause a manifest error is one which would be easily identified or by a third party administrator with the same degree of skill and experience as the Administrator acting in accordance with good industry practice. [Required Principle]

1.6 The Administrator shall have no liability to the Client or any Client Fund for any indirect, special, punitive or consequential Losses. The Administrator is responsible in accordance with the standards set out in clause [1.4] for direct losses including any direct loss of profit. [Required Principle]

1.7 Nothing in this Agreement shall exclude or restrict any duty or liability which the Administrator may have to the Client under the FCA Rules. [Mandatory Term]

1.8 The total annual liability of the Administrator under or in connection with this Agreement shall be limited to an amount equal to the greater of three times the previous year's fees (ignoring any specific fee adjustments or rebates that may be agreed from time to time) or, subject to the finalised contract value, £1.35m provided that this limit shall not apply in respect of any breaches of Data Protection Legislation, any IPR infringement or any breach of of clause 11 (Confidentiality and Data Protection) . Nothing in this clause shall limit any

liability which the Administrator may have under any separate contract for the provision of custody services to any of the Client Funds. [Mandatory Term]

1.9   Nothing in this clause [1] shall seek to limit or otherwise exclude any party's liability for:

(a)   death or personal injury or fraud; or

(b)   the wilful misuse or intentional unlawful processing of Data. [Mandatory Term]

1.10   In this Agreement, the following words and expressions shall have the following meaning, unless the context otherwise requires:

"Applicable Laws and Regulations" means all laws, regulations, orders, rules, guidance, directions and principles (to the extent such guidance, directions or principles have legal effect) from any relevant government or regulatory or statutory body from time to time applicable to a party and relevant to this Agreement. [Mandatory Term]

"Good Industry Practice" means accepted best practice in the professional administration industry. [Mandatory Term]

"Losses" means any liabilities, losses, claims, damages, costs, penalties, fines, obligations or expenses of any kind whatsoever including, but not limited to the following:

(a)   reasonable expenses incurred by a party in order to assess the cause of damage, the liability, and the means of repair;

(b)   reasonable additional administrative/operational costs and expenses incurred;

(c)   reasonable expenses incurred by the party in order to prevent or reduce losses;

(d)   losses arising from the loss or corruption of data including the reasonable cost and expense of recovery and/or rectification/reconstruction of that data;

(e)   in case of a delay in the transition or migration of the Services to the Administrator at the outset, the reasonable costs to the Client of maintaining existing systems, contracts and related facilities during this delay;

(f)   all fines imposed by regulatory or supervisory bodies which would not otherwise have been incurred;

(g)   losses and/or claims of the Client, the Client Funds, any intermediaries, distributors, policyholders and other suppliers for which the Client is liable under contract or at common law. [Losses]

"Records" means any matter or electronic records, correspondence, documents, information, statements in the possession or under the control of the Administrator and relating to the Client and the Services the subject of this Agreement. [Mandatory Term]

"**Service Levels**" means the service levels in relation to the Services as set out in the Services Schedule. [Mandatory Term]

"Services" means all Services detailed in the Services Schedule, including any additions or substitutions as may be requested by the Client in accordance with the Change Management Procedure. [Mandatory Term]

"**Services Schedule**" means the schedule to the Agreement describing the Services and applicable service levels. [Mandatory Term]

"Termination Date" means the date on which the Agreement is terminated in accordance with clause 1.11. [Mandatory Term]

"Third Parties Act" means the Contracts (Rights of Third Parties) Act 1999. [Mandatory Term]

1.11 References to any legislation shall refer to such legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time. [Mandatory Term]

2. Term and Termination

2.1 This Agreement shall have an initial term of 3 years. After the initial term, the Client shall be entitled to extend the term of the Agreement for a further period of two years and subsequently [on a rolling basis, annually], by written notice to the Administrator.. [Required Principle]

2.2 This Agreement may be terminated by:

(a) the Client at any time, including during the initial term, upon six months' written notice from the Client to the Administrator; or

(b) the Administrator upon twelve months' written notice from the Administrator to the Client, such notice to expire not earlier than the date of expiry of the initial term or, if the term of the Agreement is extended in accordance with clause 2.1, the date of the expiry of the initial term as so extended. [Mandatory Term]

2.3 [Termination on notice by the Client under clause [2.2] during the Initial Term may require a payment by the Client to the Administrator] [Required Principle]

2.4 The Client may terminate this Agreement with immediate effect by giving notice to the Administrator should any of the following occur:

(a) the Administrator has committed a material breach or is in persistent breach of the terms of this Agreement and has not remedied the specified breach (if capable of remedy) within 30 days of notice served on it by the Client specifying the breach which must be remedied. Without limitation, a breach shall be considered not capable of remedy if time is of the essence in the performance of the obligation or if the Administrator does not submit a [Rectification Plan] in a timely manner and in accordance with the requirements of this Agreement;

(b) any act or omission of the Administrator in breach of its obligations under this Agreement or any law or regulation results in:

(i) any regulator notifying the Client that it may consider withdrawing any authorisation or licence granted to the Client and, provided the Administrator is given notice of the same by the Client as soon as reasonably practicable, the Administrator has not rectified that act or omission within a reasonable time or within the time stipulated in any notice from the regulator (as applicable);

(ii) any regulatory licence or authorisation required by the Administrator in connection with its providing the Services being withdrawn, qualified or suspended; or

(iii) the Administrator being subject to public censure by the FCA in respect of the conduct of its business;

(c) the passing by the Administrator of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up of the Administrator or the dissolution of the Administrator; the making of an administration order in

relation to the Administrator or the appointment of a receiver or administrative receiver over, or the taking possession or sale by an encumbrancer of, any of the Administrator's assets; or the Administrator making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally;

(d) the Administrator is unable to pay its debts (within the meaning of that term under Section 123 Insolvency Act 1986);

(e) the Administrator being incapable of providing any part of the Services under this Agreement for a period of more than 30 days;

(f) there is a change of control of the Administrator or a disposal of its administration business resulting in control of the Administrator vesting in:

(i) a person whose financial position is likely (in the reasonable opinion of the Client) to result in the continued provision of the Services being materially adversely affected; or

(ii) an association with a person with whom is likely (in the reasonable opinion of the Client) to result in material damage to the reputation of the Client;

(and, for the purposes of this clause 'control' has the meaning given to it under Section 416 or Section 840, Income and Corporation Taxes Act 1988, so that there shall be a change of control whenever there would be a change of control as defined in either such section)

(g) payments due to the Client under this Agreement in respect of Losses exceed the agreed annual cap on the Administrator's liability under clause [1.8];

(h) the Administrator sub-contracts any of its obligations contrary to the terms of this Agreement and fails to remedy such breach within 30 days of written notice from the Client requiring it to do so; or

(i) in the event that a Custody Services Agreement with a Client Fund is terminated by the Administrator on written notice.

[Additional "cause" termination triggers will be included based on the agreed list of Critical Service Failures (to be defined upon finalisation of Service Level Agreement), failure to satisfy certain requirements of the Implementation Plan, Service Credits and the Rectification Plan procedures.]

[Required Principle]

2.5 The Administrator may terminate this Agreement with immediate effect by giving notice to the Client should any of the following occur:

(a) the Client has committed a material breach or is in persistent breach of the terms of this Agreement and has not remedied the specified breach (if capable of remedy) within 30 days of notice served on it by the Administrator specifying the breach which must be remedied;

(b) any regulatory licence or authorisation required by the Client in connection with its receipt of the Services is withdrawn, qualified or suspended;

(c) any undisputed invoice remains unpaid by the Client for a period of 120 days or more;

(d) payments due to the Administrator under the contract in respect of Losses exceed the agreed annual cap on the Client's liability under clause [1.8].

[Required Principle]

2.6 On termination of this Agreement, the Administrator shall complete as soon as reasonably practicable any action already initiated by the Administrator as part of the Services prior to termination. Termination of this Agreement shall be without prejudice to any claims or rights which either of the parties hereto may have by reason of any breach of the other party's obligations and the continued existence and validity of the rights and obligations of the party under clauses [●] and any provisions of this Agreement necessary for the interpretation or enforcement of this Agreement. [Mandatory Term]

2.7 On the Termination Date, the Administrator shall:

(a) repay to the Client any amount which it may have been paid in advance in respect of Services not provided or procured by the Administrator as at the Termination Date;

(b) provide full and unrestricted access, during normal working hours, to the Client and/or any replacement administrator for up to 12 months after the Termination Date to:

(i) such information relating to the Services as remains in the possession or control of the Administrator; and

(ii) such employees as are still employed by the Administrator,

provided that the Client and/or any replacement administrator shall pay the reasonable costs of the Administrator actually incurred in responding to requests for access unless the Agreement has been terminated by the Client pursuant to clause [2.3]; and

(c) hand over to the Client or its nominated replacement administrator as soon as practicable all or such part of the Records as the Client may require in the form held by the Administrator and in good order.

[Mandatory Term]

3. Exit Planning

3.1 Subject to the continued payment by the Client of any relevant Charges, the Administrator shall continue to provide the Services under this Agreement following any notice of termination until such date by which all steps as may be necessary to facilitate an orderly handover of the Services to the Client or another nominated administrator have been taken. [Mandatory Term]

3.2 The Administrator will co-operate and work together with the Client to produce and agree, within six months of the signing of this Agreement, an exit plan for the orderly transition of the Services from the Administrator to the Client or any replacement administrator in the event of any termination or expiry of this Agreement for any reason including any reasonable proposed costs and charges for the services to be provided by the Administrator as part of the exit plan (the "Exit Services"). Such exit plan will be refreshed at regular intervals. [Mandatory Term]

3.3 The Administrator shall carry out the Exit Services on a timely basis and in accordance with accepted best industry practice and shall ensure that any underlying data relevant to the

Services is transferred accurately and efficient to the Client or its nominated replacement administrator. In particular, the Administrator shall work in good faith with the Client or its nominated replacement administrator to ensure the security and accuracy of all data being transferred is maintained at all times. The objectives of the exit plan will be to:

(a) enable an orderly transition of the Services from the Administrator to the Client or to a replacement administrator in the event of termination; and

(b) minimise any material disruption to the business of the Client during and as a result of that transition.

[Mandatory Term]

3.4 For a period of seven years after termination of this Agreement, the Administrator will retain, and give the Client access to, the Client's customer records. [Mandatory Term]

4. **Administrator representations and warranties**

4.1 The Administrator represents and warrants that:

(a) it is duly incorporated and validly existing under the laws of [ ];

(b) it has and will continue to have full capacity and authority to enter into and perform its obligations pursuant to this Agreement and that this Agreement constitutes legal, valid and binding obligations of the Administrator enforceable in accordance with its terms;

(c) it holds, and will at all times during the term of this Agreement hold, all licences, permits, consents and authorisations as are necessary lawfully to perform its obligations under this Agreement;

(d) so far as it is aware having made all due enquiries, it is not a party to any contracts or other arrangements, where the performance or non-performance of its obligations could reasonably be expected to hinder or prevent the performance of its obligations under this Agreement;

(e) so far as it is aware it is not involved in any litigation, arbitration, expert reference or other quasi-judicial or non-judicial dispute resolution procedure ("**proceedings**") or argument, dispute or claim which may give rise to such proceedings in respect of which, if it were to be the subject of an adverse order, settlement or compromise it would be prevented or hindered from performing its obligations under this Agreement;

(f) so far as it is aware it is not the subject of any investigation, finding or decision of any competent agent or regulatory body which may have a material adverse effect on its business or ability to perform its obligations under this Agreement.

[Mandatory Term]

5. **Change**

5.1 Either party may propose changes to the scope or execution of the Services to be provided under this Agreement in accordance with the Change Management Procedure, but no proposed material changes shall come into effect until a relevant Change Order has been signed by both parties. For the purposes of this clause [5], a material change shall be deemed to include any changes relating to any IT systems, used by or for the Administrator in connection with the Services, changes in reporting requirements, ad hoc project

requests involving expenditure in excess of [●] and any material amendments to the Services. [Mandatory Term]

5.2 A **"Change Order"** shall be a document setting out the proposed changes and the effect those changes will have on:

(a) the Services;

(b) the fees;

(c) the timetable for the Services; and

(d) any terms of this Agreement.

[Mandatory Term]

5.3 If the Client wishes to make a change to the Services:

(a) it shall notify the Administrator, providing as much detail as is reasonably necessary to enable the Administrator to prepare the draft Change Order; and

(b) the Administrator shall, within [5 business days] of receiving the Client's request at clause [5.3(a)] above, provide a draft Change Order to the Client.

[Mandatory Term]

5.4 If the Administrator wishes to make a change to the Services (including any material change to any IT system by it in connection with the Services), it shall provide a draft Change Order to the Client. [Mandatory Term]

5.5 If either party submits a draft Change Order in order to comply with any legal or regulatory requirements or any changes required by any UK or overseas applicable law or regulation or convention or requirement of any regulatory body, market, exchange, securities system, depositary or other similar component of market infrastructure as applicable to that party, the other party shall not unreasonably delay its consent to the agreement of such Change Order. The Administrator shall be solely liable for implementing and funding any change to the Services pursuant to an agreed Change Order contemplated by this clause [5.5]. Any other change to the Services shall be funded in accordance with the Change Management Procedure. [Required Principle]

5.6 If the parties:

(a) agree to a Change Order, they shall sign it and that Change Order shall amend this Agreement; or

(b) are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause [20].

[Mandatory Term]

5.7 For the purposes of this clause 5, **"Change Management Procedure"** means [will be agreed and attached to the final contract]. [Required Principle]

6. **Benchmarking**

6.1 Either party may, by written notice, require a Benchmark Review of any or all of the Contract Price, the Services and the Service Levels in accordance with the provisions of the Benchmarking Schedule. [Mandatory Term]

6.2   The first Benchmark Review may be requested to occur at any time following the second anniversary of the date of this Agreement, and there shall be a Benchmark Review immediately prior to any possible renewal or extension of this Agreement. A party may not request a subsequent Benchmark Review until a period of 12 months has expired from the date of the last Benchmarking Report. [Mandatory Term]

6.3   Subject to clause [6.4], if any Benchmark Review determines that any or all of the Contract Price, Services and Service Levels do not represent Good Value (as defined in the Benchmarking Schedule), the Client may require the Administrator to reduce the Contract Price and/or implement improvements to the Services or Service Levels in accordance with the relevant Benchmarking Report, and such action shall be taken with regard to Contract Price and Service Levels as soon as possible (and in any event within 3 months[1]) of receipt of the Benchmarking Report. For the avoidance of doubt, the Contract Price cannot be increased as a result of a Benchmark Review and the standard of the Services or Service Levels cannot be reduced as a result of a Benchmark Review. [Required Principle]

6.4   If the Administrator reasonably believes the Benchmarker has not complied with the provisions of the Benchmarking Schedule in any material respects, or that the Benchmarker has made a manifest error in determining the results of the Benchmark Review, the Administrator may dispute the Benchmarking Report and the matter shall be dealt with in accordance with the dispute resolution procedure as set out in clause [20]. [Required Principle]

6.5   Any amendment to the Contract Price, Services or Service Levels in accordance with any Benchmarking Report shall be documented by the parties using the change control process as set out in clause [5] without cost to the Client. [Required Principle]

6.6   For the purposes of this clause 6:

"**Benchmark Review**" means any benchmarking of any or all of the Contract Price, the Services and the Service Levels which may be requested by the Client or the Administrator pursuant to this clause [6] and which shall be conducted by the Benchmarker pursuant to the Benchmarking Schedule.

"**Benchmarker**" means an independent third party appointed by the Client to undertake a Benchmark Review following discussions with the Administrator.

"**Benchmarking Report**" means the report produced by the Benchmarker following a Benchmark Review, in accordance with the Benchmarking Schedule.

"**Benchmarking Schedule**" [will be agreed and attached to the final contract].

"**Contract Price**" means the price exclusive of VAT as set out in the Pricing Schedule for which the Administrator has agreed to supply the Services.

"**Service Levels**" means the service levels in relation to the Services as set out in the Services Schedule.

[Mandatory Term]

7. Service Credits

7.1   [The contract will include a detailed schedule detailing Service Levels and KPIs and a mechanism for reporting on these on a regular basis.] [Required Principle; Service Levels and KPIs to be incorporated into contract based on ITT responses]

7.2   [Service credits will apply to a restricted set of key Services (expected to be between 5 and 10 services) and Service Levels to be agreed between the parties. The number and set of key Services and Service Levels may be adjusted from time to time by the Client up to an agreed level and frequency by agreement of the parties.] [Required Principle. List of key service and level of service credits to be agreed.]

7.3   The following behaviours will be incentivised by service credits:

(a)   meeting key Service Levels as set out in the Service Levels and KPIs Schedule;

(b)   failing to meet key Service Levels to the least extent possible (i.e. the longer the duration of the failure, the higher the service credit);

(c)   rectifying a failure to meet key Service Levels as quickly as possible (i.e. continued or repeat failures resulting in increased service credits).

[Required Principle; to be reflected in agreed Service Levels and KPIs schedule.]

7.4   No service credit will accrue where the Service Level is not met as a direct result of failure by the Client to perform any dependency specified in the Services Schedule or any other event for which the Administrator is not liable or is excused under this Agreement. [Required Principle]

7.5   The value of the total monthly service credits which can accrue will be capped at 15% of monthly service fees. [Required Principle]

7.6   Service Levels and key performance indicators (as set out in the Service Levels and KPIs Schedule) will be reviewed periodically (and at least once per year) and may be adjusted by agreement of the parties through the change control process (set out at clause [5] above) to reflect Good Industry Practice and the Client's business requirements. [Mandatory Term]

7.7   For the avoidance of doubt, service credits are in addition to and do not exclude the Client's right to claim damages for any loss arising from service failures. [Mandatory Term]

8. Continuous Improvement

8.1   The Administrator will maintain a programme of continuous improvement that keeps the Administrator's Services in accordance with Good Industry Practice and comparable to leading local fund administrators and peer providers of third-party administration services of the type provided pursuant to this Agreement. [Mandatory Term]

8.2   The Administrator will inform the Client before implementing any material changes to its core platform/operating systems. All such improvements will be agreed and implemented through the change control process as set out at clause [5] above. [Mandatory Term]

9. Transition Payments

9.1   The parties will agree an implementation plan to have one [contractual Interim Milestone] and one [contractual overall Final Milestone]. [Required Principle, exact milestones and full implementation plan to be agreed.]

9.2   Transition payments will be agreed and attached to [Interim and Final Milestones] and will only be payable if any delay is solely attributable to or otherwise for the risk and account of the Client. [Mandatory Term]

9.3   If an [Interim Milestone] is missed a fixed amount is payable to the Client. [Mandatory Term]

9.4   If the [Final Milestone] is missed, then a fixed amount is payable as well as an amount per day until completion of the [Final Milestone]. [Mandatory Term]

9.5   If the Administrator misses the [Final Milestone] by more than 90 days, the Client has the right to terminate this Agreement without penalty and (without prejudice to any other right or remedy of the Client) the Administrator will pay the Client's re-tendering and termination costs. [Mandatory Term]

9.6   The parties will create and agree clear and objective criteria for whether [Milestones] are hit or missed. [Required Principle]

9.7   [Milestones] may be adjusted by agreement of the parties and any adjustments will be agreed and implemented through the change control process as set out at clause [5] above. [Required Principle]

10.   **Employees**

10.1   The Administrator will ensure that throughout the term of this Agreement appropriately qualified staff in adequate numbers are engaged in the provision of the Services. [Mandatory Term]

10.2   The Client may request the replacement of any Administrator Employee where it has reasonable grounds for so doing and the Administrator shall promptly replace any such individual with an alternative satisfactory to the Client (such approval not to be unreasonably withheld or delayed) and such replacement shall be an Administrator Employee for the purposes of this Agreement. [Required Principle]

10.3   The Administrator shall be solely responsible for all outgoings in respect of the Administrator Employees including (without limitation) the payment and deduction of all applicable National Insurance and tax contributions, wages, bonuses, commissions and all arrangements relating to holiday pay, pension, sickness and other benefits. [Mandatory Term]

10.4   The Administrator shall fully indemnify and hold harmless the Client and any New Administrator against all Losses which the Client and/or New Administrator may suffer or incur arising from or in respect of:

        (a)   any tax or charge imposed on the Client and/or any New Administrator including any penalty, fine or interest and all reasonable resulting costs and expenses incurred in relation to any Administrator Employee; and

        (b)   any claim by or on behalf of any Administrator Employee (or other person employed or engaged by the Administrator [(or its subcontractors)] relating to any fact or matter concerning his or her employment with or dismissal by the Administrator [(or its subcontractors)]. [Mandatory Term]

10.5   The Administrator shall fully indemnify and hold the Client and any New Administrator harmless against all Losses incurred or suffered by the Client and/or any New Administrator arising from TUPE being held or alleged to apply on any Service Transfer Date. [Required Principle]

10.6   In this clause 10:

"Administrator Employee" means any person who is or was employed or engaged by the Administrator [(and/or by any of its subcontractors)] and who is or was concerned with all or any of the Services or any part of them.

"New Administrator" means any person (which may include the Client) who, from a Service Transfer Date, provides any or all Services which immediately prior to a Service Transfer Date were provided pursuant to this Agreement.

"Service Transfer Date" means the date on which the Services (or any part of the Services) for whatever reason transfer from the Administrator to a New Administrator.

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006. [Mandatory Term]

11.   **Confidentiality and Data Protection**

[Required Principle]

11.1   [Administrator must include a market standard confidentiality/announcements clause which is subject to the provisions of clause 11.1.] [Required Principle]

11.2   The Administrator acknowledges that, for the purposes of the Data Protection Legislation, the Client is the data controller and the Administrator is the data processor. The Administrator shall only process Personal Data for the purposes of performing the Services and in compliance with the Data Protection Legislation. [Mandatory Term]

11.3   [Administrator must include a schedule to the Agreement setting out the scope, nature and purpose of processing of Personal Data by the Administrator, the duration of the processing, the types of Personal Data and the categories of data subject.] [Required Principle]

11.4   Without prejudice to the generality of clause 11.2, the Administrator shall, in relation to any Personal Data processed in connection with the performance by the Administrator of its obligations under this Agreement:

(a)   process that Personal Data only on the written instructions of the Client unless the Administrator is required by Applicable Laws and Regulations to process Personal Data. Where the Administrator is relying on Applicable Laws and Regulations as the basis for processing Personal Data, the Administrator shall promptly notify the Client of this before performing the processing required by the Applicable Laws and Regulations unless the Applicable Laws and Regulations prohibit the Administrator from doing so;

(b)   notify the Client immediately if it considers that any of the Client's instructions infringe the Data Protection Legislation;

(c)   ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may

include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(d)   ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

(e)   not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

(i)   the Client or the Administrator has provided appropriate safeguards in relation to the transfer;

(ii)   the data subject has enforceable rights and effective legal remedies;

(iii)   the Administrator complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(iv)   the Administrator complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

(f)   assist the Client, at the Client's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(g)   notify the Client without undue delay on becoming aware of a Personal Data Breach;

(h)   at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement, unless required by Applicable Law to store the Personal Data; and

(i)   maintain complete and accurate records and information to demonstrate its compliance with this clause. [Required Principle]

11.5   The appointment of a third-party processor of Personal Data shall require the Client's prior written consent. If the Client does consent in writing to the appointment of a third-party processor of Personal Data under this Agreement, the Administrator will enter into a written agreement with the third-party processor incorporating terms which are substantially similar to those set out in this clause 11. The Administrator shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 11.5. [Required Principle]

11.6   For the purposes of this clause 11:

"**Data Protection Legislation**" means (a) Regulation (EU) 2016/679 OF THE European Parliament and the Council on the protection of natural persons with regard to the processing of personal data ("**GDPR**") (b) the Data Protection Act 2018;

"**Personal Data**" means any information relating to an identified or identifiable living individual that is processed by the Administrator in the course of performance of the Services;

"**Personal Data Breach**" any actual or suspected breach of security relating to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Personal Data. [Mandatory Term]

12. Freedom of Information requirements

12.1 The Administrator acknowledges that the Client is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 ("**FOI Legislation**"), and that the Client is responsible for determining in its absolute discretion whether any information that is the subject of a request for information under either regime is exempt from disclosure or required to be disclosed. The Administrator shall assist and co-operate with the Client to enable the Client to comply with these information disclosure requirements in accordance with this clause [12] but only where the information requested pertains specifically to the Client and not to the Administrator's clients generally. [Required Principle]

12.2 The Administrator shall and shall procure that its sub-contractors, connected persons carrying out any of its functions delegated under this Agreement and agents used by it to perform the Services under this Agreement shall provide prompt and reasonable assistance and co-operation (at the Client's expense) to the Client to enable the Client to comply with its obligations under the FOI Legislation and shall use all reasonable endeavours to provide any relevant supporting documentation or information to the Client as soon as reasonably possible within 5 Business Days of such request. [Required Principle]

12.3 If the Client receives an information request under the FOI Legislation which concerns information relating to this Agreement, the Client shall inform the Administrator of the request as soon as possible after receipt, and shall consider in good faith any view expressed by the Administrator regarding the disclosure of such information. [Required Principle]

12.4 The Administrator agrees that, except when legally obliged to do so, it shall not respond directly to a request for information made under the FOI Legislation unless expressly authorised to do so in writing by the Client. [Required Principle]

13. Amendment

13.1 This Agreement may only be amended by written instrument signed by the parties' respective authorised representatives. [Mandatory Term]

14. Assignment

14.1 The rights and obligations of the parties under this Agreement shall not be assigned, charged or otherwise dealt with by either party without the prior written consent of the other (such consent not to be unreasonably withheld, delayed or conditioned), save that the Administrator may assign the benefit of this Agreement without the consent of the Client to any affiliate. [Mandatory Term]

15. Access to Premises

15.1 At the Client's reasonable written request and (with the exception of any regulatory audit) subject to a reasonable period of prior notice, the Administrator shall permit the Client, any Client Fund or its or their respective external auditors:

(a) to have access (during business hours) to its personnel and premises and any other site at which data the subject of the Services is stored to examine documentation which it maintains as Administrator pursuant to this Agreement;

(b)   to examine and review any processes and systems used in the performance of this Agreement (including, where desirable by setting up and processing transactions):

(c)   to undertake verification of the compliance by the Administrator with any of the provisions of this Agreement; and

(d)   to undertake verification of the accuracy of the Charges invoiced to the Client,

provided that the Administrator may at its reasonable discretion restrict access to documentation, systems or processes to the extent that it will or may prejudice the Administrator's security arrangements or its duty of confidentiality to other clients. [Mandatory Term]

15.2   The Client shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Administrator or delay the provision of the Services by the Administrator and that, where possible, individual audits are co-ordinated with each other to minimise any disruption. [Required Principle]

15.3   Subject to the Administrator's obligations of confidentiality, the Administrator shall provide the Client, any Client Fund (and its auditors and other advisers) with all reasonable co-operation, access and assistance in relation to each audit. [Mandatory Term]

15.4   The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this clause [15], unless the audit identifies a material breach by the Administrator, in which case the Administrator shall reimburse the Client, Client Fund or their external auditors for all its reasonable costs incurred in the course of the audit. [Mandatory Term]

16.   Disaster recovery

16.1   The Administrator confirms that it has, and will at all times during the continuance of this Agreement maintain, test (at least on an annual basis) and (where necessary) update, an adequate business continuity plan (a current copy of which is attached at Schedule [●]), and that it will use reasonable endeavours to provide the Services in accordance with such plan in the event of a [Disaster]. [Mandatory Term]

16.2   The Administrator shall keep the business continuity plan up to date and shall test it at least once every 12 months and notify the Client of the outcome of the tests. If a test fails to satisfy the disaster and back-up functions set out in the business continuity plan, the Administrator shall promptly provide to the Client a report setting out its planned remedial action, shall promptly carry out such remedial action and shall carry out a further test after completion of the remedial action. If that further test demonstrates that the issue has not been resolved, the Administrator shall take such further remedial action as is necessary to ensure that the disaster and back-up functions set out in the business continuity plan are met or that the business continuity plan is updated to correct any inadequacies identified by the Client or the Administrator. [Mandatory Term]

17.   Data

17.1   The Administrator acknowledges that, as between the Parties, any Data (whether now existing or to come into existence and whether created by the Administrator or anyone else) is, and will become and remain the property of the Client, free from any encumbrances. The Administrator shall not delete or remove any proprietary notices contained within or relating to the Data. Except in order to comply with the Administrator's

obligations under this Agreement, the Administrator must not use or permit or suffer to be used, for any purpose, any information acquired in the course of providing the Services.

17.2   The Administrator shall not store, copy, disclose, or use the Data except as necessary for the performance by the Administrator of its obligations under this Agreement or as otherwise expressly authorised in writing by the Client.

17.3   To the extent that Data is held or processed by the Administrator, the Administrator shall supply that Data to the Client as requested by the Client in the format specified by the Client from time to time on reasonable notice.

17.4   The Administrator shall take responsibility for preserving the integrity of Data and preventing the corruption or loss of Data.

17.5   The Administrator shall perform secure back-ups of all Data and shall ensure that up-to-date backups are stored off-site in accordance with its business continuity plan. The Administrator shall ensure that such back-ups are available to the Client at all times upon request.

17.6   The Administrator shall ensure that any system on which the Administrator holds any Data, including back-up data, is a secure system that complies with Applicable Laws and Regulations.

17.7   If the Data is corrupted, damaged, destroyed, lost or sufficiently degraded or if an unauthorised alteration is made as a result of an act or omission of the Administrator or a breach of this Agreement so that any element of it is unusable, without prejudice to the Client's other rights at law, the Client may:

(a)   require the Administrator (at the Administrator's expense) to restore or procure the restoration of Data and the Administrator shall do so as soon as practicable but not later than 2 months after corruption, loss or degradation; and/or

(b)   itself restore or procure the restoration of Data, and shall be repaid by the Administrator any reasonable expenses incurred in doing so.

17.8   If at any time the Administrator suspects or has reason to believe that Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Administrator shall notify the Client immediately and inform the Client of the remedial action the Administrator proposes to take.

17.9   The Administrator shall be responsible for and bear all costs incurred in the implementation, maintenance and development of the Administrator's systems, including:

(a)   transferring Data onto the Administrator's systems;

(b)   the costs of contracts entered into by the Administrator in connection with the Administrator's systems;

(c)   all maintenance, licence fees and support costs of the Administrator's systems; and

(d)   the development of the Administrator's systems in accordance with this clause [17]

but shall not be responsible for any costs incurred by the Client in relation to the Client's systems or processes or the transfer of Data to the Administrator from the Client's systems.

[Mandatory Term]

18. Intellectual Property Rights

18.1 The Administrator shall at times during and after the Term, indemnify the Client in full and on demand and hold the Client harmless against any loss, damage, liability, costs and expenses (including without limitation any loss of profit, loss of revenue, economic loss, loss of goodwill or like loss) that may be incurred by the Client in respect of any claim of infringement or allegation of infringement of any Intellectual Property Rights used to provide the Services or created during the provision of the Services (an "**IPR Claim**").

18.2 If an IPR Claim is made, or the Administrator anticipates that an IPR Claim might be made, the Administrator shall, at its own expense and sole option, either:

    (a) procure for the Client the right to continue using the part of the material which is subject to the IPR Claim; or

    (b) replace or modify, or procure the replacement or modification of, such material, provided that:

        (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

        (ii) the replaced or modified item does not have an adverse effect on any other services received by the Client;

        (iii) there is no additional cost to the Client; and

        (iv) the terms of the Agreement apply to the replaced or modified materials.

18.3 If the Administrator elects to modify or replace an item pursuant to clause [18.2(b)] or to procure a licence in accordance with clause [18.2(a)], but this has not avoided or resolved the IPR Claim, then the Client may terminate this Agreement by written notice with immediate effect.

[Mandatory Term]

19. Governance

[Market standard contract governance clause providing for management information provisions; regular meetings; designated party representatives to give and receive instructions and, if relevant, dealing with the appointment and removal of key personnel. [Required Principle]

20. Dispute Resolution

[Agreed dispute resolution procedure]. [Required Principle]

21. Insurance [Mandatory Term]

21.1 The Administrator shall maintain in force at least the following insurance policies with reputable insurance companies to cover its relevant potential liabilities in connection with this agreement:

    (a) a public liability insurance policy with a sum insured of not less than [£5 million] per claim;

    (b) a professional indemnity insurance policy with a sum insured of not less than [£10 million] in aggregate per annum; and

    (c) employer's liability insurance with a sum insured of not less than [£5 million] for claims arising from a single event or series of related events in a single calendar year.

21.2 On the written request of the Client, the Administrator shall provide the Client with a copy of each insurance policy. On the renewal of each policy, the Administrator shall promptly send to the Client a copy of the receipt of the premium paid by the Administrator.

22. Compliance

[Administrator must include a market standard clause obliging Administrator compliance with relevant policies such as anti-bribery, anti-money laundering, complaints handling etc.] [Required Principle]

23. Administrator's capacity

Other than for the purposes of properly discharging the Administrator's obligations under this Agreement or unless specifically authorised by the Client, the Administrator is not, and must not hold itself out to be, the agent of the Client for any purpose whatsoever. [Required Principle]

24. Third Parties Act

24.1 Subject to clauses 24.2 and 24.3, the parties do not intend that any term of this Agreement shall be enforceable under the Third Parties Act by any person. [Mandatory Term]

24.2 The Client Funds shall be entitled to enforce any provision of this Agreement that is intended to benefit them directly, including without limitation the provisions of clause 1.4. [Mandatory Term]

24.3 A New Administrator shall have the right to enforce the obligations owed to and any indemnities in favour of a New Administrator under clause 10. [Mandatory Term]

25. Governing law and jurisdiction

25.1 The Agreement (including any non-contractual obligations arising out of or in connection with it) will be governed by and construed in accordance with English law. [Mandatory Term]

25.2 Each party agrees that the courts of England and Wales shall have exclusive jurisdiction to determine any dispute arising out of or in connection with this Agreement (including in relation to any non-contractual obligations). [Mandatory Term]

26. FCA compliance

[Provisions to be included to comply with the FCA's requirements regarding material outsourcings.] [Required Principle]

27. Fees

The Administrator will invoice the Client monthly in arrears and the Client will have 30 days (from the date of an invoice) in which to settle an invoice. In the event that the Client queries an invoice, this 30 day period shall no longer apply. [This Agreement shall specify a pre-agreed format for invoices and an ability for the Client to obtain any information reasonably determined necessary in order to check invoices and confirm that invoices comply with the rate card] [Required Principle]