Boal & Co

Retirement Benefit Solutions | Pension Trustee Services, Pension Administration, Actuarial Services

Terms & Conditions

IMPORTANT NOTE

These Terms & Conditions and the Privacy Statement set out important information regarding our engagement as a service provider to you and in respect of the Scheme (as defined below). You should read these Terms & Conditions carefully and retain them for future reference. These Terms & Conditions together with the Employer Application Form and Fee Schedule, represent the terms of the contract between you and us (Boal & Co).

We recommend that you obtain independent pension transfer, legal, tax and financial advice prior to entering into this contract or becoming a member of the Scheme and thereafter to keep such advice up to date by periodic review. It is your responsibility to obtain independent advice on the suitability of the Scheme or any service offered by us. We do not provide pension transfer, tax, investment, legal or financial advice and we do not accept any responsibility or liability for any loss or damage suffered by you as a result of you becoming a member of the Scheme or using any of our services. You must comply with all legal and taxation obligations applicable to you under the laws of the jurisdiction in which you are resident/domiciled or any other relevant jurisdiction including, without limitation, the submission of periodic returns to any tax or governmental authority in relation to the Scheme (if applicable).

1. Definitions and interpretation

1.1. In these Terms & Conditions, the following words and expressions shall, unless the context otherwise requires, have the following meanings:

"Authorised Person" - means an agent of the Client, a person authorised by the Client to give instructions, recommendations or requests to us in relation to the Scheme or the Services, the Trustee or a person authorised by the Trustee to give instructions, recommendations or requests to us in relation to the Scheme or the Services or the Scheme Administrator;

"Boal & Co" - means Boal & Co (Gibraltar) Limited (a company incorporated in Gibraltar with company number 109157, its successors, assigns and transferees and references in these Terms & Conditions to "we", "us" and "our" shall be construed as references to Boal & Co or where the context requires or permits, to any Group Company;

"Base Rate" - means the Bank of England base rate from time to time;

"Client" - means the person who hereby instructs us to provide the Services in respect of the Scheme, or on whose behalf we provide the Services, and references in these Terms & Conditions to "you", "your" and "yours" shall be construed as references to the Client;

"Customer Due Diligence Information" - has the meaning given in clause 7.4;

"Employer" - means the company, or entity admitted to participate in the scheme.

"Employer Application Form" - The Employer Application Form issued by us, to you.

"Fees" - means the fees and charges set out in the Fee Schedule as the same may be varied from time to time;

"Fees Schedule" - means the "Fees Schedule" provided with the Employer/Member Application Form or otherwise issued to you and/or any Authorised Person on your behalf as the same may be varied from time to time;

"GFSC" - means the Gibraltar Financial Services Commission;

"Group Company" - Boal & Co, its subsidiaries, its parent and any subsidiaries of its parent and its associated companies including but not limited to Boal & Co (Gibraltar) Limited (company number 109157).

"Indemnified Person" - means Boal & Co, its Group Companies and each of their employees, agents, officers and servants from time to time (including former employees, agents, officers and servants) and their respective heirs, personal representatives and estates;

"Invoice" - includes an invoice, fee note or similar request for payment issued by us;

"Gibraltar Law" - includes all Gibraltar primary and secondary legislation, all regulations, rules, orders, guidance notes issued by the GFSC, the Income Tax Office or any other government authority or professional body, all anti-money laundering, counter financing of terrorism or anti bribery, data protection or beneficial ownership laws, regulations and guidance and any direction or other regulatory decision or licence condition made or imposed by the GFSC or any other Gibraltar regulator or government authority;

"Member Application Form" - means the member application form issued by us to you;

"Member" - means the person or persons admitted to membership of the Scheme as may be more particularly detailed in the Member Application Form or otherwise as determined by the Trustee and shall include the heirs, legatees, successors, estates, personal representatives and assignees of such persons;

"Person Associated" - in respect of a company, means a subsidiary, holding company or subsidiary of the same holding company of that company; in respect of a pension or trust, means a settlor, trustee, protector, enforcer, appointor, member, beneficiary or any relative of such persons; in respect of an individual, means any relative, business associate, company in which the individual or any relative has an interest whether as an officer or owner;

"Privacy Statement" - means the document issued by us to you providing information about the data we process and our reasons for doing so;

"Professional Fees" - means professional fees and disbursements including, without limitation, any legal, accounting or other fees incurred by Boal & Co, any Group Company, the Trustee, or the Scheme Administrator on behalf of the Scheme in any jurisdiction;

"Scheme Administrator" - means Boal & Co (Gibraltar) Limited or otherwise the administrator of the Scheme from time to time.

"Reportable Information" - means such information as we determine or Gibraltar Law requires in relation to applicable domestic or international reporting obligations and/or best practice including, for example but without limitation, information on you, the Scheme, (any subsidiary or associated companies or entities), the beneficiaries and others, regarding residence, domicile, transactions, source of funds, value of investments and assets, relationships or beneficial ownership;

"Rules" - means the rules of the Scheme as annexed to the Trust Deed, as amended from time to time;

"Scheme" - means the pension scheme in respect of which we provide the Services;

"Services" - means the services listed in the Fee Schedule or otherwise as issued to you and/or any Authorised Person as the same may be amended, varied, extended or reduced from time to time;

"Trust Deed" - means the trust deed constituting the Scheme;

"Trustee" - means Boal & Co (Gibraltar) Limited or otherwise the trustee or trustees of the Scheme from time to time.

1.2. A "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.3. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular. Where more than one person has an obligation or liability under the Agreement, their obligation or liability shall be joint and several.

1.4. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.5. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.6. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.

1.7. Headings shall not affect the construction of a clause in the Agreement.

2. Services

2.1. At your request, we agree to provide the Services to you (with the reasonable skill and care expected of a professional pension trust services provider), and in respect of the Scheme. You agree to provide us with the undertakings and indemnities set out in the Agreement in consideration for our agreeing to provide the Services.

2.2.The provision of the Services is governed by the terms of the Agreement, Gibraltar Law and our internal procedures including, without limitation, our anti-money laundering and countering terrorism financing procedures (as amended from time to time). If there is any conflict between the terms of the Agreement and the terms of the Trust Deed, the terms of the Trust Deed shall prevail.

2.3. The extent of the Services can be varied from time to time. Where you or any Authorised Person requests us to provide additional Services, we will (where practicable) provide an updated Fee Schedule to you and the Authorised Person. Where this is not practicable, each of you and the Authorised Person agrees that we may charge Fees for these additional Services based on the prevailing Fee Schedule or such Fees as we communicate to you from time to time.

2.4.We reserve the right to suspend or refuse to provide any Services where:-

2.4.1. you or any Person Associated with the Scheme have failed to provide any documentation or information requested by us; or

2.4.2. we have enquired into any transaction for purposes such as, but not limited to, the prevention of fraud or crime and have not received such information or explanation we believe to be necessary in the circumstances; or

2.4.3. we suspect that you or any Person Associated with the Scheme or the Scheme assets comprise or possess the proceeds of crime; or

2.4.4. any requirements of our internal procedures or compliance controls are not satisfied to our reasonable satisfaction; or

2.4.5. where it is, in our reasonable opinion, in our interests or the interests of the Scheme or any Person Associated with the Scheme to do so; or

2.4.6. you or any Authorised Person is in breach of the Agreement.

2.5. You agree that in connection with the provision of the Services we may instruct legal, tax, accounting and other advisers from time to time and it is agreed that such costs shall be covered by the invoicing or, where relevant, the indemnity arrangements set out in the Agreement.

3. Instructions and Communication

3.1. Where you, any Authorised Person, or any other person are lawfully permitted to give us instructions, provide consent or exercise powers in relation to the Scheme, we will act on those instructions, received consent and exercise of powers subject to our overriding regulatory, fiduciary and legal duties under Gibraltar Law and other applicable laws.

3.2. Where we act as Trustee of the Scheme, we are willing, in principle, to give consideration to your lawful requests regarding the activities of the Scheme; however, we shall not be bound by those requests. Under Gibraltar law, pension trustees must always act in good faith and in the best interests of the beneficiaries and of the Scheme as a whole and their discretion and independent judgment cannot be fettered.

3.3. We are hereby authorised, but are not obliged, to rely upon or to act in accordance with any instruction which may from time to time be or purport to be given orally, in writing, by telephone or electronic mail or other electronic means by you or any Authorised Person without enquiry on our part as to the authority or identity of the person giving or purporting to give such instruction.

3.4. Notwithstanding the above, we may, at any time, do or refrain from doing any act if we shall, in our absolute discretion, consider it proper to do so in connection with the provision of the Services or, where we act as Trustee of the Scheme, our duty to the beneficiaries of the Scheme, or in order to comply with the laws of any country having jurisdiction over the Scheme or otherwise. We shall not have any liability hereunder for acting, or refraining from acting, in accordance with this clause 3.4.

3.5. You agree that we may communicate with you and any Authorised Person by post, courier, delivery service, email (including unencrypted email), other electronic means, video conference or telephone (including Zoom, Microsoft Teams, VoIP, Skype or similar). We shall have no liability for any loss, damage or liability incurred by you or any Authorised Person or Scheme property by reason of the use of email or other digital or electronic systems (whether arising from viruses, data breach or otherwise) and you and any Authorised Person hereby release us from any such liability. You agree that our routine and standard methods of communication will be by email, telephone or post.

3.6. You hereby agree to indemnify us against all losses, claims, actions, proceedings, demands, damages, costs and expenses incurred or sustained by us, howsoever arising, in connection with, or in relation to, any such instructions or requests given by, or purported to be given by you or any Authorised Person.

3.7. We shall not be liable to you or any Authorised Person or any other person for any loss, damage or expense incurred directly or indirectly as a result of a delay by us in acting on your or, if relevant, any Authorised Person's instructions, requests or recommendations unless such delay was caused by our wilful default or fraud. For the avoidance of any doubt, a delay in acting on any instructions, requests or recommendations shall not amount to wilful default.

3.8. We shall not be liable to you or any Authorised Person or any other person for any loss, damage or expense incurred directly or indirectly as a result of us acting on your or, if relevant, any Authorised Person's instructions, requests or recommendations unless such loss was caused by our wilful default or fraud.

3.9. Any notice in writing required to be given under the Agreement may be given by post, courier or hand delivery to the last notified address (or in the case of a company, the registered office) of the party being served and shall be deemed duly served:-

3.9.1. if hand delivered, upon delivery;

3.9.2. if by courier, upon delivery provided proof of delivery is obtained;

3.9.3. if by post, within 2 business days after being posted; or

3.9.4. if by post outside Gibraltar, 14 business days after being posted.

3.10. Clause 3.9 does not apply to the service of any proceedings or other documents in any legal action.

4. Fees and Charges

4.1. We will charge Fees for the provision of Services and each of you and any Authorised Person agree that we are entitled to charge Fees.

4.2. You covenant and agree to be responsible for payment of (a) our Fees and all disbursements including but not limited to secretarial, clerical, photocopying, printing, document and data retention, courier or special mail delivery charges (Fees and disbursements are together referred to as "Fees & Disbursements") which we incur in relation to the Services and (b) any other sums which we are entitled to charge under the terms of the Agreement. You agree that you are liable for all such amounts as a principal debtor and that you have received consideration for, or in respect of, such amounts. You agree to be responsible for all such amounts whether or not you return the Member Application Form duly signed by, or on behalf of, you.

4.3. We will charge periodically for Fees & Disbursements and any other sums due under the Agreement as set out in the Fee Schedule. To the extent permitted by law, you hereby irrevocably authorise us to take payment of fees due from any bank account under our control or from monies or assets held in the Scheme fund on behalf of either the Scheme, the Trustee or you.

4.4. In the event that there is an insufficient credit cash balance in your personal Scheme bank account or from the assets held in your personal Scheme fund to cover any outstanding Fees & Disbursements due, we will make a demand for immediate payment to you. In the event that any demand for payment remains unpaid for 30 days or more after issue, we reserve the right to sell any investment or asset owned by you or the Trustee on behalf of the Scheme to cover any Fees whenever there is an insufficient credit cash balance in your personal Scheme bank account or other assets held in your personal Scheme fund to cover such Fees and you hereby irrevocably agree to appoint us as attorney in this regard.

4.5. We may increase or vary any of our Fees and charges from time to time and, where we do, we will notify you and/or any Authorised Person on your behalf of any such change by email, telephone or in writing (which includes notification within an invoice).

4.6. We reserve the right to exercise a lien over any documents, files or assets belonging to the Scheme and/or you and/or the Trustee which may be in our possession, in respect of any and all outstanding Fees.

4.7. We will charge for any work carried out even if the transaction or matter does not proceed to completion or as envisaged.

4.8. In the event that any Fees & Disbursements remain unpaid, we reserve the right to charge interest on all overdue amounts at a rate of 2% per annum above Base Rate from the date such Fees & Disbursements became due until paid.

4.9. We reserve the right to charge for our administrative costs in relation to explaining, justifying or providing details of, or pursuing or arranging payment of any outstanding invoice at our usual hourly rates as commensurate with the seniority of our staff member involved.

4.10. You agree to indemnify us in respect of all and any liabilities, costs or expenses (including but not limited to all legal fees) incurred by us in the course of or in connection with taking action to recover debts due under any outstanding invoice on a full indemnity basis.

5. Scheme Bank Accounts

5.1. Unless otherwise specifically agreed with you or the Trustee, where we hold funds on your behalf within the Scheme bank current account, these will not attract interest.

5.2. Where we agree to hold funds on behalf of the Scheme in a specific account in the name of the Scheme, any interest accruing on such account shall belong to the Scheme. Additional charges may be incurred in relation to the opening and operation of designated Scheme bank account arrangements for a specific Member which may be charged as Fees & Disbursements under clause 4.

5.3. We accept (and you agree that we have) no liability whatsoever for any loss, damage or liability incurred directly or indirectly by the Trustee or the Scheme Administrator on behalf of the Scheme and/or you, any Person Associated with the Scheme, or any other person as a result of the insolvency, liquidation, winding up, failure, collapse, default or similar event of a bank which operates any of our Scheme's accounts and which results directly or indirectly in such bank being unable, in whole or in part, to repay any credit balance in any of our Scheme's accounts (the "Bank's Failure to Repay"). You hereby agree to hold us and each Indemnified Person harmless in respect of the Bank's Failure to Repay.

6. Your Tax/Legal Compliance

6.1. Where applicable, you hereby warrant and confirm that you have obtained independent pension transfer, legal, tax and financial advice (including in relation to any reporting, filing or disclosure obligations which apply to you) prior to entering into the Agreement and with regard to the establishment, membership and administration of the Scheme. We recommend you keep such advice up to date by periodic review. You agree that it is your responsibility to obtain independent advice on the suitability of any structure which we administer on your behalf or any Service we provide to you or in respect of the Scheme.

6.2. We do not provide pension transfer, legal, tax, investment, or financial advice or carry on investment business and we do not accept any responsibility or liability for any loss or damage suffered by you or the Trustee, any Person Associated with the Scheme or Scheme property as a result of you engaging us to provide Services to you, on your behalf, in respect of the Scheme or to any other structure at your request.

6.3. You warrant and represent that you currently, and in the future will continue to, comply with all legal and taxation obligations applicable to you under the laws of the jurisdiction in which you are resident/domiciled or any other relevant jurisdiction including, without limitation, all reporting and filing obligations to any tax or governmental authority in relation to your creation of, interest in, ownership of or relationship with the Scheme or any structure we administer or provide services to at your request.

6.4. You acknowledge the need to take such investment advice as you may require from parties other than us. For the avoidance of any doubt, any investment transactions to which we are party will not involve the giving of investment advice and we do not owe to you, nor do we accept, any obligation or duty whatsoever to:-

6.4.1. other than Boal & Co's standard range of investment funds as amended from time to time, monitor the performance of any investment linked to your fund within the Scheme other than to ensure it is a suitable fund for pension scheme investment. Members retain full responsibility for ensuring the selection of investment options within their Member's fund perform are in accordance with their expectations and can instruct a switch to an alternative fund at any time;

6.4.2. provide any proactive or unsolicited investment or other advice to you;

6.4.3. manage any investment on your behalf whether within your fund within the Scheme or otherwise; or

6.4.4. advise you to sell, exchange, surrender or otherwise dispose of any investment held within your fund within the Scheme.

7. Information & Automatic Exchange of Information

7.1. You represent and warrant that the information contained in the Member Application Form and any information that you have provided to us is accurate and complete and is not misleading in any way. You hereby confirm that you are acting solely as principal and not as agent for any other person.

7.2. You must also inform us immediately in writing of any changes to your details as given either in the course of application for business, (including but not limited to information provided in the Member Application Form), or at any subsequent date. This obligation relates to information including, but not limited to, any change of name, address or contact details, and if you are a company, a partnership, a trust or an unincorporated association, any material change in your constitution or equivalent or any change in the composition, identity or addresses of parties connected to your entity such as your officers, beneficial owners, controllers and beneficiaries as applicable, and to provide us with documentary evidence of the change on request.

7.3. The obligation in clause 7.2 is particularly important in view of the requirement under automatic exchange of information agreements and the International Co-operation (Improvement of International Tax Compliance) Regulations 2016 which requires us to be aware of any change of circumstance which might impact on the information to be reported in relation to you and the Scheme.

7.4. Without prejudice to clause 7.2 above, you agree to provide us, as soon as reasonably practicable but no later than 30 days (or such timescale as stated in such notice) following a request, with all information and/or documentation which we may reasonably require from time to time for the purposes of providing the Services and of ensuring that we comply with Gibraltar Law or applicable law in any other relevant jurisdiction which requires us to establish, maintain or operate measures to prevent money laundering or the financing of terrorism and/or to determine beneficial ownership ("Customer Due Diligence Information").

7.5. You acknowledge and agree that until you have complied in full with any request to provide Customer Due Diligence Information, we shall be under no duty to perform or continue to perform any of the Services. Furthermore, we shall be under no obligation to carry out any act where to do so would in our opinion amount to a breach or possible breach of any applicable law including without limitation anti-money laundering legislation.

7.6. The extent and/or nature of the Customer Due Diligence Information we request shall take account of any relevant supervisory or regulatory rules or guidance which may apply from time to time.

7.7. You undertake to inform us of any matter that may affect our willingness and/or our ability to provide, or continue to provide the Services or any matter that is material to the administration or affairs of the Scheme.

7.8. Upon the coming into force under Gibraltar law of automatic tax or other information exchange agreements between the Gibraltar and other countries from time to time (whether based on bilateral agreements or multilateral global initiatives such as, without limitation, the Organisation for Economic Co-operation and Development's Common Reporting Standard), or any legislation in respect of beneficial ownership information or otherwise, we may be required to collect Reportable Information and to disclose Reportable Information to foreign tax or governmental authorities either directly or via the Gibraltar Government. Our obligation to obtain, disclose and exchange Reportable Information could extend beyond the Member(s) of the Scheme, (whether named on the face of the documents creating the Scheme or any person who has made contributions to the Scheme), to other relevant parties such as, but not limited to, the Members, beneficiaries, protector, enforcer, appointor or any person holding any power in relation to the Scheme, or whose consent is required, the directors and minority shareholders of any company in any way connected to or associated with the Scheme, persons who receive payments from the Scheme or any Person Associated with the Scheme. You hereby agree to hold us and each Indemnified Person harmless in respect of any collection or disclosure of Reportable Information.

7.9. We may be required under the International Co-operation (Improvement of International Tax Compliance) Regulations 2016 to serve you with a notice if we consider that there has been non-compliance with the provisions of that Act in relation to beneficial ownership information. Where such notice is received, you warrant that you will respond within 14 days (or such timescale as stated in such notice) of the date of the notice with representations. You agree that any such representations will be taken into consideration by us in determining any further action that may be required for our compliance with the International Co-operation (Improvement of International Tax Compliance) Regulations 2016.

8. Rights of Third Parties, Entire Agreement & Variation

8.1. No person other than a party to the Agreement, their successors and permitted transferees or assigns, shall have any right to enforce any of its terms under the Gibraltar Law unless we expressly agree in writing to such third party rights.

8.2. The Agreement constitutes the entire agreement between the parties in relation to the provision of Services to you and in respect of the Scheme.

8.3. We reserve the right to vary, amend or add to any of the terms or provisions of the Agreement, and will give at least 30 days' notice to you and any third party Trustee of any variation by email or in writing.

9. Anti Bribery Policy

9.1.The Crimes Act 2011 (the "Act") makes it an offence to give or receive a bribe. It is also an offence under the Act to bribe a foreign public official. The Act applies to all Gibraltar companies as well as to any subsidiary, joint venture, intermediary, introducer, agent etc of an Gibraltar company regardless of where they are in the world.

9.2. The implications of the Act for the Trustee, the Scheme Administrator, the Scheme, you and any Person Associated with you or the Scheme are that bribes must not be offered (even if they are not accepted), paid (be that in monetary terms or in any other form) or accepted (be that in monetary terms or in any other form). This applies regardless of the location in which the bribe is offered or received. To contravene the requirements of the Act is a criminal offence, the penalties for which include imprisonment and the payment of fines.

9.3. It should be noted that the Act extends to the prohibition of facilitation payments. These are often small payments made to expedite a process. Such a payment could be an offence under the Act.

9.4. If you become aware of any incidence of bribery directly or indirectly involving the Scheme, you must bring it to the attention of the Money Laundering Reporting Officer. If you require any further information in relation to our anti-bribery policy, please contact the Money Laundering Reporting Officer in writing at Boal & Co (Gibraltar) Limited, 1.2.08 Europort, Eurotowers, Gibraltar.

9.5. Our anti-bribery policy is available on request. We will not accept any liability whatsoever for any action or inaction on your part or on the part of any third party other than ourselves which constitutes an offence under the Act.

10. Termination

10.1. The Agreement may be terminated by you, the Trustee, or us on giving 6 months written notice (or such shorter notice as the other parties may agree to accept) to the other parties whereupon, but subject to clause 10.2, the Agreement and the obligations of the parties (save in respect of antecedent breaches) cease and terminate.

10.2. Subject to clause 10.7, where the Agreement has been terminated by you or, subsequent to either your membership and/or the creation of the Scheme, the Trustee, under clause 10.1 above, the obligations of the parties shall not terminate unless and until either the trusteeship and/or the funds of the Scheme held on your behalf and your rights as an Employer/ Member of the Scheme, as appropriate, have been duly transferred to a suitable alternative service provider.

10.3. We shall be entitled (but not obliged) to terminate the Agreement with immediate effect by notice in writing in the event that:-

10.3.1. you commit any material breach of your obligations under the Agreement or under any other agreement between the parties and have failed to remedy such breach within a reasonable time, if such breach is capable of being remedied; or

10.3.2. you or any third party Trustee goes into liquidation (except for the purpose of a bona fide solvent amalgamation or re-organisation) or is declared bankrupt or a bankruptcy petition is presented against you or any third party Trustee or a receiver or administrator is appointed in respect of you or any third party Trustee, or the Scheme is terminated or otherwise fails under the principles of trust law, or anything analogous to any of the foregoing occurs in relation to you or any third party Trustee, or the Scheme under the law of any jurisdiction; or

10.3.3.any legal proceedings are commenced against the Trustee or the Scheme assets (including any injunction or civil, criminal, tax, securities or other investigation or proceedings in any jurisdiction);

10.3.4. you or any third party Trustee fails to provide within a reasonable period of time all Customer Due Diligence Information reasonably requested by us;

10.3.5. any Fees & Disbursements due and owing to us remain unpaid 30 days after issue; or

10.3.6. any third party Trustee commits the corporate offence under the Crimes Act 2011 Section 566 of failure to prevent bribery.

10.4. Termination shall be without prejudice to any rights or liabilities of any party either arising prior to, or after, termination.

10.5. In the event of termination, any applicable charges levied by us will not be pro-rated or refunded.

10.6. Subject to clause 4.6, upon the effective termination of the Agreement, we shall deliver to the Trustee or to whom it may direct all books of account, correspondence and records relating to the affairs of the Scheme which are the property of the Trustee and which are in our possession. We shall be entitled to take copies if we so wish at the cost of your fund under the terms of the Scheme.

10.7. If you fail to appoint a suitable alternative service provider in respect of the Services we provide to the Scheme within 30 days after notice of termination is served under clause 10.1 or within 7 days of the termination taking effect if notice of termination is served under clauses 10.3.1-10.3.6, we shall be entitled immediately thereafter to resign from all positions and to cease providing the Services. In the alternative, in such circumstances, and subject to giving you 14 days' notice in writing, where we act as or provide the Trustee or Scheme Administrator of the Scheme, we shall be entitled to commence the termination of that part of the Scheme in which funds are held on your behalf or to apply to Court for directions at the cost of the assets of the Scheme held on your behalf.

10.8. In the event of termination of the Agreement, we shall be entitled to transfer any shares held by us or any Group Company (e.g. a nominee shareholder) into the name of the person listed as beneficial owner in the relevant declaration of trust unless you have given lawful instructions to the contrary and complied with any applicable anti-money laundering or regulatory requirements within 14 days of termination in respect of a termination under clause 10.1 or 7 days of termination in respect of a termination under clause 10.3.1 – 10.3.6.

10.9. In the event that, following termination of the Agreement, a suitable alternative service provider is not nominated by you and/or we are obliged by law to continue providing the Services, such provision of Services shall continue to be governed by the terms of the Agreement and you shall remain liable for the payment of Fees and disbursements in accordance with the Agreement.

10.10. For the purposes of this clause 10, a "suitable alternative service provider" shall mean an entity licensed by the GFSC or other relevant regulator to provide the relevant Services or any other entity we deem suitable or other relevant regulator to provide the relevant Services or any other person we deem suitable.

11. Indemnity & Limitation of Liability

11.1. We shall not be liable (whether under the express or implied terms of the Agreement, or in negligence, or at common law or in any other way) for any loss, damage or expense howsoever suffered by you, the Trustee, any Person Associated with the Scheme, Scheme property, any beneficiary or any other person in connection with,

or in relation to, the Services, or any act or omission of any Indemnified Person unless such loss, damage or expense arises from the fraud, wilful default or negligence of an Indemnified Person.

11.2. We shall not be liable for any loss, damage or expense howsoever suffered by you, the Trustee, any Person Associated with the Scheme, Scheme property, any beneficiary or any other person arising directly or indirectly from any act or default of any other person. For the avoidance of any doubt, but without limitation to the generality of the foregoing, we shall have no liability to you or any other person for any loss, damage or expense suffered by you, the Trustee, any Person Associated with the Scheme, Scheme property, any beneficiary or any other person which is caused directly or indirectly by the default, failure, collapse, insolvency, restructuring or any other act or omission of any bank, investment manager, agent, nominee, contract counterparty, issuer of any asset or investment held by the Trustee as trustee of the Scheme, financial advisor or other relevant party and whether the loss arises from a loss of funds, assets, title documents, change in legislation or otherwise.

11.3. We shall not be liable for any loss, damage or expense howsoever suffered by you, the Trustee, any Person Associated with the Scheme, Scheme property, any beneficiary or any other person as a result of any event outside our control (for example, but without limitation, an agent or third party failing to act on our or your instructions, interruption or delay in the performance of contractual obligations caused by strike, industrial action, systems failure or terrorism).

11.4. To the extent permitted by law, and in consideration for our providing the Services, you hereby undertake and agree to indemnify each Indemnified Person against all costs, expenses, Professional Fees, damages, claims, taxes, penalties, losses and liabilities incurred by any Indemnified Person as a result of an act or omission by you or your members, directly in relation to:-

11.4.1. the Services; or

11.4.2. your or any third party Trustee's non-compliance with the Agreement; or

11.4.3. any civil or criminal enquiry, investigation, prosecution, regulatory action or similar action in any jurisdiction (whether or not proceedings have been commenced) into (a) the Client, (b) any Person Associated with the Client, or (c) the Scheme, provided that such indemnity shall not cover any costs, expenses, damages, claims, losses or liabilities incurred as a result of our fraud, wilful default or negligence.

11.5. For the avoidance of any doubt, we shall be entitled to instruct professionals and incur Professional Fees whenever we believe it is in our interests or the Scheme's or any Person Associated with the Scheme's interests to do so.

11.6 Your total aggregate liability under or in connection with the Agreement, (whether in contract tort (including negligence), breach of statutory duty, under any indemnity or otherwise) shall not exceed £5,000,000 (five million pounds sterling).

12. Confidentiality, Records & Conflicts

12.1. We are committed to keeping your private information and the private information of any Person Associated with the Scheme confidential. We may disclose such information only in the following circumstances:-

12.1.1. where we are compelled to do so by Gibraltar Law or any other relevant or applicable law;

12.1.2. to comply with a Court Order;

12.1.3. where there is a duty to the public to disclose;

12.1.4. where our interests require disclosure;

12.1.5. where, the interests of the Trustee, the members or other beneficiaries of the Scheme, any Person Associated with the Scheme, or the Scheme as a whole require disclosure;

12.1.6. where the disclosure is made with your, or, as the case may be, the Trustee's or other Authorised Person's, express or implied consent;

12.1.7. for fraud prevention or crime prevention purposes;

12.1.8. to sub-contractors or persons acting as our agents for the purposes of the provision of the Services; or

12.1.9. to Group Companies.

12.2. You hereby consent to us disclosing any of your information or information regarding the Scheme, or any Person Associated with the Scheme, which we hold to a foreign governmental or prosecuting authority where , in our opinion, the interests of Boal & Co, any Group Company or the Trustee, the members or other beneficiaries of the Scheme, any Person Associated with the Scheme, or the Scheme as a whole require disclosure. Unless we are prohibited from doing so by law, if we intend to make such disclosure, we will give you at least 14 days advance notice in writing during which time you may object. We will consider your objection but shall not be bound by it. You hereby agree to hold us and each Indemnified Person harmless in respect of any disclosure of information by us in accordance with the Agreement. For the avoidance of any doubt, we shall not be liable to you or the Trustee, the beneficiaries of the Scheme, any Person Associated with the Scheme, or the Scheme as a whole or any other person for any loss, damage or expense incurred directly or indirectly as a result of such disclosure unless such loss, damage or expense was caused by our wilful default or fraud.

12.3. We will keep the records and documents (electronic and hard copy) relating to the Scheme for so long as we are required to do so under applicable Gibraltar Law and in accordance with our internal document retention policy (as the same may be amended from time to time). To the extent permitted by law, we reserve the right to charge for retrieval, copying, couriers and administration time if we are requested to provide access to, or copies of, our files or the Scheme's files.

12.4. Conflicts of interest may arise between you/the Trustee/any Person Associated with the Scheme and us or between you/the Trustee/any Person Associated with the Scheme and another of our clients or client companies. Should we become aware of the existence of such a material conflict, we will notify you of that fact. However, without prejudice to the foregoing, this engagement is not exclusive and we reserve the right to act for other clients, including your competitors.

13. Data Protection Notice

Our commitment to you in respect of data protection is set out in the Privacy Statement which can also be viewed at https://www.boalco.com/privacy/. If you have any queries in relation to the Privacy Statement please contact the Data Protection Officer, Boal & Co (Gibraltar) Limited, 1.2.08 Eurotowers, Europort, Gibraltar or email us at DPO@boalco.com.

14. Assignment and Transfer

14.1. The terms of the Agreement shall be binding upon and endure for the benefit of the successors of the parties but shall not be assignable in whole or in part by you without our prior written consent.

14.2. Subject to your prior written consent, we shall be entitled to assign and transfer both our rights and obligations hereunder (whether as a result of a corporate reorganisation, a sale of our business or for any other reason) to any other party upon 30 days' notice in writing to you or any third party Trustee. You hereby irrevocably consent to our absolute right to assign and transfer as set out herein.

15. Law & Jurisdiction

15.1. The Agreement is governed by, and shall be construed in accordance with, the laws of Gibraltar.

15.2. Each of the parties hereby agrees to submit to the exclusive jurisdiction of the Gibraltar Courts in relation to any dispute regarding the Agreement.

16. Acceptance of the terms of the Agreement

16.1. By signing the Member Application Form, and/or any subsequent receipt of notification of the terms of the Agreement, you hereby confirm that you have received, read and agree to be bound by these Terms & Conditions and the other terms of the Agreement.

16.2. In the event that you fail to sign the Member Application Form, and/or any subsequent receipt of notification of the terms of the Agreement, but continue to instruct us to provide any of the Services to the Scheme and/or do not terminate the Agreement pursuant to clause 10, you will be deemed to have accepted, and be bound by, these Terms & Conditions and the other terms of the Agreement.

Boal & Co

Retirement Benefit Solutions

Pension Trustee Services
Pension Administration
Actuarial Services

General (+350) 200 68022
Email gibmail@boalco.com
Post PO Box 1250, Gibraltar, GX11 1AA
Registered Office Suite 1.2.08, Eurotowers, Europort Road, Gibraltar

ISLE OF MAN | JERSEY | MALTA | GIBRALTAR

Our focus; your financial future.

boalco.com

For further information on the regulatory status of our businesses please visit boalco.com/regulatory