



Terms and Conditions of Business

1. Definitions

1.1 In these Terms and Conditions, the following expressions shall have the following meanings:

1.1.1 *EPS*

means Expert Pension Solutions Ltd, incorporated and registered in the United Kingdom under Company Number 11306204, whose registered office address is: Office 8, Arun Business Centre, Ferry Road, Littlehampton, England, BN17 5DS. VAT registration number 296 7182 54.

1.1.2 *Client:*

means the professional advisers jointly instructing EPS in order to receive the Services and whose customer is the Individual Client or the Individual Client where it is instructing EPS directly for the Services as identified in the Case Acceptance.

1.1.3 *Contract:*

These Terms and Conditions together and any quotation or statement of works of EPS and the respective order for the Services and Report made by the Client and accepted by EPS by issuing a case acceptance form or some other similar form of confirmation of acceptance.

1.1.4 *Individual Client:*

means the individuals who have an interest in the specific asset or group of assets being valued under the Services and is the object of the Report.

1.1.4 *Services:*

means the provision by EPS of an actuarially based report concerning the valuation of a specific asset or group of assets in which an Individual Client of the Client has or may have an interest.

1.1.4 *Report:*

means the final report prepared by EPS under the Services.

1.1.5 *Report Fee:*

means the fee charged by EPS for the Client's contribution in whole or in part in preparing and drafting the Report, as confirmed by EPS in writing unless otherwise ordered by a Court of England and Wales.

1.1.6 *Principal:*

means either (i) those instructing EPS acting on their own account, or (ii) those instructing EPS being authorised to make such commitments on behalf of the firm or business that they represent.

1.2 In this document, the masculine shall include the feminine and the singular shall include the plural and vice versa.

1.3 (a) reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made from time to time under that statute or statutory provision.

(b) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(c) A reference to writing or written includes email.

2. Acceptance of these Terms and Conditions

By signing and submitting this form or making any other request for the Services, the Client is deemed to have read, understood and accepted these Terms and Conditions.

3. Commencement

These Terms and Conditions shall be effective from the date on which the Client instructs EPS to provide the Services, by any written means. These Terms and Conditions shall apply to any written or verbal instructions that the Client gives to EPS in connection with the Services.

4. Instructions and Information

4.1 EPS accepts instructions only on the basis that the Client is a Principal and not acting as agent. The Client may be instructing in conjunction with another client of EPS who also instructs EPS to provide the Services and prepare the Report.

4.2 The Services are provided only on the basis that the Client gives EPS all proper, necessary and timely instructions, authority and information (including all duly executed documents required) to enable EPS to undertake, lawfully and effectively, the Services instructed and that those instructing EPS indemnify EPS accordingly. Where EPS is also acting on behalf of another client in performing the Services and Report, the Client shall use its best endeavours to communicate and work effectively with that client.

4.3 EPS shall rely upon information provided by or on behalf of the Client, pension schemes and pension providers and on information from recognised published sources. EPS assumes no liability for the accuracy or completeness of such information where it is provided by third-parties (including the Client or another client of EPS whom is involved in the performance of the Services or preparation of the Report) and shall have no obligation to verify the accuracy or completeness of such information. EPS will contact the Client if any data appears inconsistent with other data supplied.

4.4 By agreeing to these Terms and Conditions the Client confirms, as an individual or member of a professional firm, that they have the authority to instruct EPS concerning this matter.

5. Non-exclusivity

It is understood that the Services are provided on a non-exclusive basis.

6. No reliance by Third Parties

The Services are provided solely for the use of the Client and apart from the Individual Client who is receiving professional advice from the Client shall not be used or relied upon by any other third party, except where the Report may be required for court proceedings and may be disclosed and used as evidence in those related proceedings.

7. Alterations

No change to these Terms and Conditions shall be effective unless made in writing and signed by a Director of EPS.

8. Service delivery and timeframes

Although EPS does not generally provide the Services under a time schedule, nevertheless if the Client requests an indication of time that may be involved, EPS will use all reasonable endeavours to make the Services available in accordance with an estimated time schedule, but it is understood that statements provided by EPS to the Client concerning the total work time are given only as an estimate, in good faith for planning or other purposes only, so will not be contractually binding and accordingly EPS accepts no responsibility or liability, financial or otherwise, in the event of being unable to comply with the said estimated time schedule. For the avoidance of doubt any time for the performance of the Services shall not be of the essence.

9. Liability

9.1 EPS shall perform the Services using reasonable skill and care in accordance with initial instructions received from the Client and any instructions from a related client of which the Client is reasonably aware.

9.2 EPS has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £1,000,000.00 per claim. The limits and exclusions in this clause reflect the insurance cover EPS has been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess loss.

9.3 Nothing in these Terms and Conditions shall limit EPS's liability for death or personal injury caused by negligence; fraud or fraudulent misrepresentation; and breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

9.4 Subject to clause 9.3, in no circumstances shall EPS be liable to the Client or to any third party or parties in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof for: (i) any increased costs or expenses; (ii) any loss of use, profit, business, contracts, revenues, delay, or anticipated savings; or (iii) any special, indirect or consequential loss or damage of any nature whatsoever arising directly or indirectly out of the provision by EPS of the Services, preparing the Report or non-performance or delayed performance by EPS of the Services or preparing the Report and EPS gives no warranty in respect thereof. (By way of illustration, but not as an exhaustive list, examples of consequential or indirect loss would be loss of future business, loss of reputation or goodwill, loss of anticipated savings and damages, costs or expenses payable by the Client or any other third parties).

9.5 The following types of loss and specific losses are not excluded: (i) Sums paid by the Client to EPS pursuant, in respect of the Services not provided in accordance with these Terms and Conditions; (ii) Wasted expenditure; (iii) Additional costs of procuring and implementing replacements for, or alternatives to, Services not provided in accordance with these Terms and Conditions. These include but are not limited to consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials.

9.6 Subject to clause 9.3 and 9.4, EPS's entire liability (for any one claim for direct loss or for all claims for direct loss arising from any one act or default, whether arising from EPS's negligence or otherwise) in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with the Service shall be limited to the maximum amount of £1,000,000.00 per claim.

9.7 Unless the Client notifies EPS that it intends to make a claim in respect of an event within the notice period, EPS shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred and shall expire within 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

10. EPS's Fees

10.1 Where a Client instructs EPS in writing to undertake the Services (or any other service) the Client is responsible for the Report Fee whether or not the case proceeds to its conclusion.

10.2 Upon completion of the Report, EPS shall raise and deliver an invoice for payment. Payment shall be due within 14 days of the relevant invoice

10.3 EPS may at its discretion accept payments for invoices raised under clause 10.2 by third parties where instructed to do so by the Client but acceptance of payment by EPS from third-parties shall in no way create any

Terms and Conditions of Business

third party rights and these Terms and Conditions shall not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

10.4 Where the Client fails to make any payment due to EPS under the Contract by the due date for payment, then, without limiting the rights and remedies of EPS under these Terms and Conditions:

(a) the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and

(b) EPS may suspend all Services (including any other Services being performed for the Client under a different Contract with EPS) until payment has been made in full.

10.5 All amounts due from the Client to EPS shall be paid by in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10.6 Any revisions to the Services will be charged at the current hourly rate and expenses at cost, subject to the Client's prior written approval.

10.7 Where work is terminated before completion, the matter will be regulated by clause 13 hereof, below.

11. Taxes

Fees and expenses are exclusive of any Value Added Tax and/or other tax and the Client will be liable for all such taxes to the extent required by law.

12. Force Majeure

Neither party shall be liable to the other or to any third party for any failure or delay in the performance of its obligations where such delay or failure is caused by circumstances beyond its control which would include (but not be limited to) act of God, war, riot, sabotage, explosion, abnormal weather conditions, fire, flood, strikes, lockouts, or other industrial action or dispute, government actions or regulations, default of third parties, or illness..

13. Cancellations/Termination

13.1 If a Report request is cancelled, a reduced fee being either: (a) a *pro rata* fee relating to Services already performed at the time of cancellation, or (b) 50% of the full fee due, whichever is the greater.

13.2 In addition to what is stated above in clause 13.1 hereof, the Client shall pay in full any third party costs incurred.

13.3 There shall be no offset against any other Services that EPS may provide for the same Client or professional firm.

13.4 Either party may terminate the Contract where the other party:

a) materially breaches this Contract and fails to remedy the breach (where capable of remedy) within 7 days of notification;

b) takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

c) suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; and

d) has a financial position that, in the opinion of the terminating party, means it is incapable of adequately fulfilling its obligations under the Contract and the terminating party's position has been placed in jeopardy.

On termination of the Contract for reasons under clause 13.4:

(a) the Client shall immediately pay EPS all of the outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, EPS may submit an invoice, which shall be payable immediately on receipt;

(b) any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect; and

(c) termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

14. Alterations

14.1 Subject to clause 10.6, the Client may request an alteration or modification to the Report request at any time. EPS shall use its reasonable endeavours to comply with any request under this clause 14.1

15. Communications via e-mail and the Internet

15.1 Where the Client chooses to communicate with EPS via the Internet and wishes such communications to utilise digital IDs and related encryption features the Client must give EPS clear written notification of such requirements. In the absence of such a notification, EPS shall be entitled to communicate via the Internet without encrypting emails or attachments. The Client understands that the application and use of digital IDs and encryption is subject to him obtaining and installing an appropriate digital ID on the computer used to communicate with EPS. The Client accepts that any failure to co-operate with EPS in the exchange of digital IDs and signatures will prevent from EPS communicating with the Client using digital IDs and encryption.

16. Confidentiality & Privacy

16.1 EPS will keep confidential matters it handles for the Client except where it is necessary for the performance of the Services, authorise EPS to disclose information, where EPS is required to make a disclosure under applicable regulations or legislation, by a order of a court, or where the information is already within the public domain.

16.2 EPS may use personal information provided by any Client that is a business or its employees in connection with this Agreement, but such use would be in accordance with the terms of EPS's Privacy Policy the current version of which can be found on EPS's Site.

16.3 EPS will give the Client a minimum of 30 days' notice of any change to its Privacy Policy.

16.4 EPS's Privacy Policy is hereby incorporated into and forms part of this Agreement.

17. Data Protection

17.1 Both parties will comply with all applicable requirements of any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy (**Data Protection Legislation**).

17.2 Controller, data controller, processor, data processor, data subject, personal data, processing and appropriate technical and organisational measures shall have the meaning as set out in the Data Protection Legislation in force at the time.

17.3 **Permitted Recipients**, shall mean for the purposes of this Contract (Agreed Purposes) the parties to this agreement, the employees of each party and any third parties engaged to perform obligations in connection with this Contract including EPS consultants.

17.4 **Shared Personal Data**, shall mean the personal data to be shared between the parties under the Contract. Shared Personal Data shall be confined to the following categories of information relevant to the data subject: names, dates of birth, dates of cohabitation, marriage and separation, National Insurance number, medical details, addresses, employers details, pension policy details..

17.5 Applicable Laws means (for so long as and to the extent that they apply to EPS) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the Data Protection Legislation and any other law that applies in the UK.

17.6 This clause 17 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

17.7 **Shared Personal Data**. This clause sets out the framework for the sharing of personal data between the parties as data controllers. Each party acknowledges that one party (the Data Discloser) will regularly disclose to the other party (the Data Recipient) Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

17.8 Effect of non-compliance with Data Protection Legislation. Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.

17.9 **Particular obligations relating to data sharing**. Each party shall:

(a) ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;

(b) give full information to any data subject whose personal data may be processed under this agreement of the nature such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;

(c) process the Shared Personal Data only for the Agreed Purposes;

(d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;

(e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement;

(f) ensure that it has in place appropriate technical and organisational measures, which can be reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

(g) not transfer any personal data received from the Data Discloser outside the EEA; and

(h) complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller).

17.10 Mutual assistance: Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

(a) consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;

(b) promptly inform the other party about the receipt of any data subject access request;

(c) provide the other party with reasonable assistance in complying with any data subject access request;



Terms and Conditions of Business

(d) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;

(e) assist the other party, at the cost of the other party, 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;

(f) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;

(g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the personal data;

(h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;

(i) maintain complete and accurate records and information to demonstrate its compliance with this clause 17; and

(j) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

(k) Indemnity. Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it

18. Copyright in documents and processes

18.1 EPS and its licensors shall retain ownership of all rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world, any works or materials produced by EPS under the Services or contained in the Report (IPR).

18.2 EPS grants the Client, a fully paid-up, worldwide, non-exclusive, royalty-free, licence to copy the IPR and use information contained in the IPR solely for the purposes of receiving the Services and using the Report for its intended purpose.

18.3 The Client may not copy any part IPR for any purposes other than are reasonably necessary to receive the Services and make use of the Report for its intended purpose. The Client may not copy or pass any IPR to individuals or firms who may provide services similar to those offered by EPS or its associates.

18.4 If, contrary to what is stated above in clause 18.3 hereof, the Client makes a third party aware of any aspect of the IPR, or uses any aspect of the IPR in the performance of work for a third party, whether or not in accordance with the said purpose, the Client will be solely liable to such third party for any error or defect in the work and or the consequences thereof and will indemnify EPS against all loss, actions, claims, costs, demands, expenses and liabilities whatsoever (if any) which EPS may incur either at common law or by statute in respect of any loss, damage, personal injury or death suffered by a third party by reason of any error or defect in the work, or by reason of the consequences of any such error or defect.

19. Destruction of Documents

EPS will retain files relating to a Client's matters for six years after completion of the Services or Report, whichever is later. After that period, EPS shall be entitled to destroy files without further reference to the Client unless the Client requests otherwise, in writing, in advance.

20. Resolving Problems

In the event of any difficulties with EPS's Services, the Client should notify EPS immediately the Client becomes aware of the difficulty.

Initially, the Client should speak to a director of EPS who will try to resolve the matter.

EPS will ensure that the Client's complaint is investigated promptly and thoroughly and will inform the Client of the results of the investigation and of any appropriate action taken.

General

21. No Agency

Neither party shall be deemed an agent of the other.

Nothing shall construe EPS nor the Client as an agent of any third party.

22. Entire Agreement

The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

23. Conflict

Where there is a conflict between these Terms and Conditions and any quotations, materials or other documents of either party, whether forming part of the Contract or otherwise, the provisions of these Terms and Conditions shall prevail.

Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

24. Variation:

No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

25. Severance:

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

26. Notices:

(a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

(i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(ii) sent by email to the address specified in the most recent correspondence of the receiving party.

(b) Any notice shall be deemed to have been received:

(i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

(ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and

(iii) if sent email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

(c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

27. Law:

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

ADR: If any dispute between the parties arises out of or in connection with the Services, it may be referred by either party to and finally settled by UK mediation in accordance with the Centre for Dispute Resolution Model Mediation Procedure. The costs for such mediation shall be borne equally between the parties.

Any dispute not so resolved by such UK mediation shall be settled under the courts of England and Wales which shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation..

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