

Terms and Conditions

(1 April 2025)

Agreement Structure

The agreement is comprised of the following documents (collectively referred to as the **Agreement** unless expressly stated otherwise). If a conflict arises between any of the following documents, the following order of precedence shall apply:

- Order Form;
- Service Descriptions; and
- Terms and Conditions.

The Service Descriptions have been produced on an 'if applicable' basis. The Order Form sets out the Services to be provided under this Agreement and the part(s) of the Service Descriptions which shall be incorporated into the Agreement.

1 DEFINITIONS AND INTERPRETATION

1.1 In these clauses, unless the context otherwise requires, the following words shall have the following meanings:

"Agreement" the Order Form, these Terms and Conditions and the Service Descriptions;

"Annual Rate" the latest available, as at the date of use, "RPI All Items: Percentage change over 12 months" measure published by the Office for National Statistics or, failing such publication, such other index as replaces the "RPI All Items: Percentage change over 12 months" or most closely resembles it;

"Audit Agents" means:

- (a) the Customer's internal and external auditors;
- (b) the Customer's statutory or regulatory auditors; or
- (c) any party formally appointed by the Customer to carry out audit or similar review functions who shall not be a competitor of BFS;

"Benifex" or **"BFS"** Benifex Financial Solutions Limited;

"BFS Laws" means:

- (a) any law, statute, regulation or subordinate legislation in force from time to time; the common law and laws of equity from time to time; any binding court order, judgment or decree; any industry code, policy or standard; in each case, which is applicable in the United Kingdom and to which BFS is subject and which relates to the delivery of the Services or the operation of BFS's business in the United Kingdom; and
- (b) any applicable direction, policy, rule or order that is binding on BFS and that is made or given by any regulatory body having jurisdiction over BFS or any of BFS's assets, resources or business in the United Kingdom;

"BFS Personnel" all employees, staff, other workers, agents and consultants of BFS;

"Benefit Design" the rules and eligibility to be applied to, and the information to be available within, each Benefit within OneHub, as set out in the document which is agreed in writing between the parties (as amended from time to time);

"Benefit Providers" providers of the Benefits (who enter into contracts directly with the Customer);

"Benefits" the Tailored Benefits and Marketplace Benefits selected by a Customer;

"Business Day" a day (other than a Saturday, Sunday or bank or public holiday) in England;

"Business Hours" 8.30am to 5.30pm (local UK time) on a Business Day;

"Commission" commission paid by Benefit Providers to BFS;

"Complaint" a complaint or request relating to either party's obligations under Data Protection Laws relevant to this Agreement, including any compensation claim from a Data Subject or any notice, investigation or other action from a Supervisory Authority;

"Confidential Information" information in any form or medium whether disclosed orally or in writing before or after the date of this Agreement (together with any reproductions of such information) relating to the business affairs, personnel, finances, systems, processes, methods of operation, plans, products, developments, trade secrets, know how, customers or suppliers of a party or any member of its Group; and the terms of this Agreement;

"Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures" as set out in the Data Protection Laws;

"Customer Laws" means:

- (a) any law, statute, regulation or subordinate legislation in force from time to time; the common law and laws of equity from time to time; any binding court order, judgment or decree; any industry code, policy or standard; in each case, which is applicable in any jurisdiction and to which the Customer is subject and which relates to the receipt of the Services or the operation of the Customer's business; and
- (b) any applicable direction, policy, rule or order that is binding on the Customer and that is made or given by any regulatory body having jurisdiction over the Customer or any of the Customer's assets, resources or business in any jurisdiction;

"Customer Privacy Notice" the privacy notice accessible at <https://benifex.com/benifex-customer-privacy-policy>;

“Customer Requirements” the requirements which are set out within the document titled “Customer Requirements” or any other documents which are produced by Benifex for the Customer’s review and sign-off , relating to Tailored Benefits, each as amended from time to time in accordance with this Agreement;

“Data Protection Laws” means:

- (a) all applicable data protection and privacy legislation in force from time to time in the UK, including:
 - (i) the retained EU law version of the General Data Protection Regulation (EU 2016/679 (UK GDPR));
 - (ii) the Data Protection Act 2018 (and regulations made thereunder); and
 - (iii) the Privacy and Electronic Communications Regulations 2003(SI 2003/2426) as amended; and
- (b) in member states of the European Union the General Data Protection Regulation ((EU) 2016/679) (EU GDPR) and the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and all relevant member state laws or regulations giving effect to or corresponding with any of them; and
- (c) any judicial or administrative interpretation of any of the above, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant Supervisory Authority;

“Design Documents” those documents setting out design for the Benefits set out within OneHub; such documents are drafted by Benifex for the Customer to review and sign-off and may be amended from time to time;

“Employees” the employees of the Customer and members of the Customer’s Group from time to time;

“Employee Funded Benefit” a Benefit with one policy with one Benefit Provider available to all eligible Employees. Employee will pay for Benefit either from gross pay (by salary sacrifice) or from net pay;

“Expenses” means:

- (a) reasonable and necessary travel and subsistence; and
- (b) all third party costs, fulfilment costs and any other expenses agreed between the parties from time to time.

“Fees” the aggregate of the fees (if any) for the Tailored Benefits, Group Personal Pension and the Pension Governance Support set out in the Order Form (as amended from time to time in accordance with this Agreement);

“FCA” Financial Conduct Authority;

“Force Majeure Event” any event or circumstances or cause outside the reasonable control of a party (which does not arise from its fault or negligence) including Act of God, riot, civil disturbance, act of terrorism, fire, explosion, flood, or unusually severe weather. A Force Majeure Event does not include (a) strikes or other industrial action by employees of the affected party or any of its sub-contractors; or (b) any failure by a sub-contractor unless such failure also results from a Force Majeure Event;

“Good Industry Practice” the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as can reasonably be expected from a skilled and experienced provider of services similar to the Services;

“Group” in relation to a company, that company’s subsidiaries and holding companies and subsidiaries of such holding companies;

“Information Security Standards” the description of BFS’s information security standards found here: <https://www.Benifex.com/Benifex-information-security-schedule/> (as amended from time to time);

“Losses” losses, damages, liabilities (including any liability to taxation), claims, costs and expenses including fines, penalties, and reasonable legal and other professional fees and expenses;

“Marketplace Benefit” an Employee Funded Benefit available to all Employees, with no eligibility restrictions.

“Member” a member of any of the Pension Schemes (where applicable);

“Notice Period” the notice period identified in the Order Form;

“OneHub” where purchased separately by Customer, the online system provided by Benifex Limited which gives the Customer and the Employees access to modules and services made available by Benifex Limited;

“Order Form” the Order Form which sets out the Services;

“Pension Governance Support” the services described in the applicable section of the Service Description;

“Pension Scheme Provider” the business(es) with whom the Customer has contracted to manage Pension Scheme(s) for its Employees;

“Pension Scheme” the defined contribution pension scheme(s) offered by the Customer to its Employees;

“Process” has the meaning given to that term in the Data Protection Laws and “processed” and “processing” shall be construed accordingly;

“Quarter” each successive period of three months starting on the Initial Period Start Date and Quarterly shall be construed accordingly;

“Services” the services identified in the Order Form as included in this Agreement;

“Service Descriptions” the service descriptions set out at <https://benifex.com/marketplace-and-tailored-benefits-service-description> and <https://benifex.com/gateway-service-description-001>; and

“Supervisory Authority” any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws.

1.2 In this Agreement (except where the context otherwise requires):

- 1.2.1 any reference to a clause, sub-clause, appendix or party is to a clause, sub-clause appendix, or party to this Agreement;
- 1.2.2 save where otherwise specified, reference to a clause is to a clause in the same Appendix;
- 1.2.3 headings are included for convenience only and do not affect the interpretation of this Agreement;
- 1.2.4 the Appendices form part of this Agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Appendices;

- 1.2.5 use of the singular includes the plural and vice versa;
- 1.2.6 any reference to a person includes natural persons, firms, partnerships, companies, corporations, associations, organisations;
- 1.2.7 any reference to a person includes that person's legal personal representatives, successors and assignees;
- 1.2.8 **subsidiary** and **holding company** have the meanings given to them by section 1159 Companies Act 2006;
- 1.2.9 all references to a statute shall be construed as including references to:
 - (a) any statutory modification, consolidation or re-enactment (whether before or after the date of this Agreement) for the time being in force;
 - (b) all statutory instruments or orders made pursuant to that statute;
 - (c) any statutory provisions of which it is a consolidation, re-enactment or modification;
- 1.2.10 any phrase introduced by the terms "including", "include", "in particular" or any similar expression is illustrative only and does not limit the sense of the words preceding those terms.

2 UPDATES TO THESE TERMS AND CONDITIONS

- 2.1 BFS reserves the right to make updates to the Terms and Conditions from time to time. BFS will notify the Customer by revising the date at the top of the Terms and Conditions and, in some cases, BFS may provide the Customer with additional notice. Any such changes will not apply to any dispute between the Customer and BFS arising prior to the date on which BFS posted the revised Terms and Conditions incorporating such changes, or when the Terms and Conditions otherwise become effective. The Customer should look at the Terms regularly.
- 2.2 If the Customer has any concerns regarding the updates made to the Terms, the Customer can write to BFS (Legalteam@Benifex.co.uk), within 30 days of the date that the updated Terms and Conditions were uploaded to the website, with a request that such updated Terms and Conditions shall not apply to the Customer's Order Form. If BFS does not receive any communication from the Customer within the 30-day period, the Customer's continued use of the Services and Software after such update shall be deemed to constitute acceptance of the updated Terms and Conditions.
- 2.3 The Unfair Contract Terms Act 1977 prevents BFS from making unreasonable updates to these Terms and Conditions and as such any updates BFS does make to these Terms shall not materially diminish the Customer's existing rights and remedies available under the Terms and Conditions.

3 FCA TERMS (REGULATED SERVICES ONLY)

- 3.1 BFS shall comply with all requirements relating to its FCA authorisation.
- 3.2 The Customer shall co-operate with BFS (including by promptly providing information and evidence) where requested in connection with the requirements of the FCA concerning identification and verification of customers.
- 3.3 Without limiting its other rights or remedies, BFS shall be entitled to terminate this Agreement with immediate effect if:
 - 3.3.1 BFS has its FCA authorisation or any other licence, registration, approval, authority or membership of any regulatory authority necessary for it to perform any of its obligations under this Agreement suspended, withdrawn, revoked or cancelled; or
 - 3.3.2 the FCA or other regulatory authority requires the parties to terminate this Agreement.

4 BFS'S OBLIGATIONS

- 4.1 BFS shall supply the Services to the Customer for the term of the Agreement.
- 4.2 BFS shall:
 - 4.2.1 comply with all BFS Laws;
 - 4.2.2 comply with its obligations under this Agreement;
 - 4.2.3 carry out all BFS responsibilities set out in this Agreement in accordance with Good Industry Practice;
 - 4.2.4 ensure that each of the BFS Personnel engaged in the delivery of the Services are appropriately qualified (if relevant) and experienced and adequately trained; and
 - 4.2.5 comply with the Information Security Standards.
- 4.3 BFS warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

5 CUSTOMER'S OBLIGATIONS

- 5.1 The Customer shall:
 - 5.1.1 comply with all Customer Laws;
 - 5.1.2 comply with its obligations under this Agreement;
 - 5.1.3 provide BFS (in a timely manner) with such documents, information and materials as BFS may reasonably require from time to time in order to supply the Services, and the Customer shall ensure they are accurate and complete in all material respects. The Customer shall promptly provide BFS with updated documents, information and materials whenever changes occur;
 - 5.1.4 provide BFS with the relevant permissions to approach the Customer's benefit providers to obtain the relevant information;
 - 5.1.5 be responsible for entering into, and the operation and management of, the contracts between the Customer and each Benefit Provider.
- 5.2 The Customer warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.
- 5.3 Without limiting the effect of clauses 5.1 and 5.2 the Customer shall be responsible for:
 - 5.3.1 compliance with:
 - (a) all applicable laws, enactments, orders, regulations and other instruments;
 - (b) all applicable guidance or changes made by Her Majesty's Revenue and Customs; and
 - (c) all applicable guidance issued by any regulatory authority relating to, or affecting, any of the Benefits or the Employees;
 - 5.3.2 the application of the Benefits to Employees and the eligibility of the Employees for the Benefits.

6 EMPLOYEE E-MAIL ADDRESSES

- 6.1 If BFS uses an e-mail address provided by the Customer or any member of the Customer's Group or any Employee in connection with the provision of the Services (without prejudice to BFS's compliance with clause 4.2.5, clause 12 and clause 13), BFS shall not be liable

to the Customer for any Losses (including, for the avoidance of doubt, loss arising from loss of data or breach of confidentiality) arising from the provision to BFS of an incorrect e-mail address.

7 FEES AND PAYMENT

- 7.1 In consideration for provision of the Services, the Customer shall pay to BFS the Fees.
- 7.2 If the form of payment includes Commission:
- 7.2.1 the Customer agrees that BFS may be paid Commission by the relevant Benefit Providers;
- 7.2.2 upon the Customer's reasonable request, which shall not be more frequently than once per year, BFS will share details of the Commission it receives;
- 7.2.3 BFS shall be entitled to retain all Commission in respect of the full policy period, even if the Agreement ends for any reason or if the policy is cancelled or if the Customer appoints another intermediary in place of BFS during the period of the policy;
- 7.2.4 BFS shall continue to receive Commission until BFS ceases to be the appointed intermediary; and
- 7.2.5 BFS shall not be obliged to give or offer, any rebate or discount to the Customer based on any Commission received or to be received.
- 7.3 If the form of payment includes Fees:
- 7.3.1 the Customer shall pay the Fees whether or not the Customer proceeds with any recommendation provided by BFS or the Customer enters into a contract for any Benefit;
- 7.3.2 BFS shall be under no obligation to refund all or part of the Fees in any circumstances;
- 7.3.3 BFS shall, with effect from each anniversary of the Agreement Start Date (the **Review Date**) increase the Fees for the forthcoming year by up to the Annual Rate.
- 7.4 If the form of payment is the Fee offset by Commission:
- 7.4.1 BFS shall provide to the Customer a statement of the Fees for each year at (or as soon as practicable after) the Agreement Start Date and, on each anniversary, thereafter;
- 7.4.2 if the amount of the Commission received by BFS in any year is less than the Fee for that year, BFS shall issue an invoice to the Customer in respect of the shortfall between the Fee and the Commission received and the Customer shall pay the shortfall to BFS in accordance with the payment terms in the Agreement;
- 7.4.3 if the amount of the Commission received by BFS in any year exceeds the Fee for that year, BFS shall retain the excess.
- 7.5 BFS will invoice the Customer Quarterly for all Expenses incurred in the previous Quarter.
- 7.6 The Customer shall pay all valid and undisputed Fees in full and in cleared funds within the Payment Period, to a bank account nominated in writing from time to time by BFS.
- 7.7 If the Customer has a bona fide dispute in respect of the whole or any part of any invoice then the Customer shall notify BFS of the nature of such dispute in writing within fourteen (14) days of the invoice date giving all relevant details. If the Customer notifies BFS in writing that it disputes the whole or any part of sums payable under any invoice in accordance with this clause 7.7, the Customer shall be entitled to withhold payment of the amount in dispute, but shall pay the undisputed part in accordance with this Agreement. On settlement of any dispute the Customer shall make the appropriate payment within 10 Business Days of the settlement of such dispute.
- 7.8 Without limiting any other right or remedy of BFS, and subject to the Customer giving notice of any disputed amount pursuant to clause 7.7, if the Customer fails to make any payment due to BFS under the Agreement by the due date for payment (**Due Date**), BFS shall have the right to charge interest on the overdue amount at the rate of 2 per cent per annum above the then current HSBC base rate accruing on a daily basis, from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment. (In the event that the Customer gives notice of a disputed amount pursuant to clause 7.7 the Due Date for the disputed amount shall be 10 days from the settlement of such dispute.)
- 7.9 Save where the Customer has given notice of any disputed amount pursuant to clause 7.7, if BFS has not received payment within 30 days after the Due Date, and without prejudice to any other rights and remedies of BFS, BFS shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain(s) unpaid.
- 7.10 All amounts payable by the Customer under this Agreement are exclusive of Value Added Tax which the Customer shall pay at the same time as the sums to which it relates.
- 7.11 Save where the Customer has given notice of any disputed amount pursuant to clause 7.7 the Customer shall pay all amounts due under this Agreement in full without any deduction, withholding, set-off or counterclaim against BFS.

8 TERM AND TERMINATION

- 8.1 This Agreement shall start on the Agreement Start Date and shall continue until terminated in accordance with this clause 8.
- 8.2 Either party may terminate this Agreement by giving, at any time after the end of the Initial Period, written notice to the other of not less than the Notice Period.
- 8.3 Without limiting its other rights or remedies, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- 8.3.1 the other party commits a material breach of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of full particulars of the breach and being required to remedy it;
- 8.3.2 an order is made, or a resolution passed for the winding up of the other party or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party;
- 8.3.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the other party or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party or notice of intention to appoint an administrator is given;
- 8.3.4 a person becomes entitled to appoint a receiver over any of the assets of the other party or a receiver is appointed over any of the assets of the other party;
- 8.3.5 the other party ceases to trade;
- 8.3.6 the other party suspends or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 Insolvency Act 1986; or
- 8.3.7 the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt;
- 8.4 For the purposes of clause 8.3.1, **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this Agreement over the term of this Agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

9 CONSEQUENCES OF TERMINATION

9.1 On termination of the Agreement for any reason:

- 9.1.1 the Customer shall immediately pay to BFS all of BFS's outstanding undisputed unpaid invoices and interest (including any invoice rendered pursuant to clause 9.1.2);
- 9.1.2 BFS shall be entitled to submit an invoice in respect of any part of the Fee as yet not invoiced for the period from the date of the last invoice to the actual date of termination of the Agreement;
- 9.1.3 the Commission in relation to each Benefit shall continue to be paid to BFS by the Benefit Providers until BFS ceases to be the nominated intermediary for that Benefit;
- 9.1.4 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry; and
- 9.1.5 those clauses which expressly or by implication have effect after termination shall come into or continue in full force and effect.

10 TAX, LEGAL AND OTHER ADVICE

10.1 BFS may from time to time provide support and guidance to the Customer in relation to taxation, legal and financial services matters in connection with the Services ("**Guidance**").

10.2 The Customer acknowledges and agrees that:

- 10.2.1 BFS's expertise lies in the provision of financial services guidance pursuant to the FCA Permissions set out in the Order Form;
 - 10.2.2 BFS's staff, employees and consultants are not qualified to provide any professional tax or legal advice or guidance or any financial services advice or guidance (other than pursuant to the FCA Permissions set out in the Order Form);
 - 10.2.3 any Guidance provided shall not constitute professional tax or legal advice or guidance or financial services advice or guidance (other than pursuant to the FCA Permissions set out in the Order Form); and
 - 10.2.4 the Customer should take advice from an appropriately qualified tax and/or legal and/or financial services adviser to satisfy itself that any Guidance is appropriate with regard to the Customer's circumstances and requirements.
- 10.3 The Customer acknowledges that as between BFS and the Customer, the Customer is responsible for:
- 10.3.1 assessing and deciding whether Tailored Benefits are appropriate for Customer Requirements;
 - 10.3.2 assessing and deciding whether Marketplace Benefits are appropriate for Customer's requirements;
 - 10.3.3 carrying out due diligence in respect of the Benefit Providers;
 - 10.3.4 the accuracy of all information provided to Employees about the Benefits;
 - 10.3.5 the accuracy of all information provided to Benefit Providers and for keeping such information up to date; and
 - 10.3.6 ensuring that the benefits, goods and services provided (and to be provided) by the Benefit Providers are appropriate for the Customer and the Employees.

10.4 BFS shall not be liable for any Losses sustained or incurred by the Customer that arise directly or indirectly from:

- 10.4.1 any reliance by the Customer on Guidance provided by BFS; or
- 10.4.2 the implementation by the Customer of any measures outlined in Guidance; or
- 10.4.3 any inaccuracy or omission in any Guidance based on inaccurate and/or incomplete information provided by the Customer (other than Guidance pursuant to the FCA Permissions set out in the Order Form).

10.5 This clause 10 shall survive termination of this Agreement.

11 LIABILITY

11.1 Nothing in this Agreement shall limit or exclude either party's liability for:

- 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 11.1.2 fraud or fraudulent misrepresentation; or
- 11.1.3 any other liability which cannot be excluded or limited by applicable law.

11.2 Subject to clause 11.1 neither party shall in any circumstances whatever be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise, for:

- 11.2.1 loss of profit, loss of business, loss of enjoyment, depletion of goodwill, loss of reputation and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, in each case whether direct, indirect or consequential; or
- 11.2.2 any indirect or consequential loss, arising under or in connection with this Agreement.

11.3 Subject to clauses 11.1 and 11.2 each party's aggregate liability in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall in no circumstances exceed £250,000 (excluding Expenses).

11.4 BFS shall take out and maintain:

- 11.4.1 employer's liability insurance in accordance with the Employer's Liability (Compulsory Insurance) Act 1969;
- 11.4.2 professional indemnity insurance; and
- 11.4.3 public liability insurance,

with an insurer of good repute on such terms and in such amounts as is reasonable, in connection with its provision of the Services and BFS shall, at the request of the Customer, provide to the Customer evidence of such insurance once in each year.

11.5 Except as set out in this Agreement, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.

11.6 BFS shall not be responsible for any Losses suffered by the Customer or any of the Employees or their dependants arising from any arrangements between the Customer and the Benefit Providers.

11.7 This clause 11 shall survive termination of the Agreement.

12 CONFIDENTIALITY

12.1 Each party shall take such precautions as it takes with its own confidential information to ensure that all Confidential Information of the other party is treated as confidential and not disclosed or used other than for the purposes of this Agreement, or as required by law.

- 12.2 The forgoing provision shall not prevent the disclosure or use by either party of any Confidential Information which was in the lawful possession of the receiving party prior to disclosure under this Agreement or which is or hereafter becomes, through no fault of that party, public knowledge or lawfully acquired or independently developed without the obligation of confidentiality.
- 12.3 Each party shall be permitted to disclose Confidential Information of the other party to the extent that it is required to do so by law or by any public, governmental, supervisory or regulatory authority or by any legally binding order of any court or tribunal.
- 12.4 This clause 12 shall survive termination of the Agreement.

13 DATA PROTECTION (MARKETPLACE BENEFITS)

- 13.1 The parties acknowledge and agree that no personal data will be shared between the parties in relation to the Marketplace Benefits Services.

14 DATA PROTECTION (TAILORED BENEFITS)

- 14.1 Each party warrants to the other party that they will comply with the Data Protection Laws.
- 14.2 To provide the Services, BFS will access the Customer's Employee's personal data via OneHub. If this personal data is not available, the Customer shall provide the relevant personal data to BFS. This personal data may include types of personal data set out in Appendix 1 their name, contact details, and special categories of personal data (e.g. health information).
- 14.3 The purpose for which BFS use personal data may include arranging insurance cover, handling claims. BFS also uses personal data on a de-identified and/or aggregate basis for benchmarking, modelling and other analytics offerings. More information about our use of personal data is set out in the Customer Privacy Notice available at <https://benifex.com/benifex-customer-privacy-policy> (the **Customer Privacy Notice**).
- 14.4 The Customer or the data subjects whose personal data the Customer has provided to BFS can also request a copy of the Customer Privacy Notice by emailing Legalteam@Benifex.co.uk. BFS recommends that the Customer review the Customer Privacy Notice regularly.
- 14.5 Providing the Services may involve the disclosure of personal data to third parties such as insurers, Benefit Providers, sub-contractors, BFS Group and to certain regulatory bodies who may require the Customer's personal data themselves for the purposes described in Customer Privacy Notice.
- 14.6 Depending on the circumstances, the use of personal data described in the Customer Privacy Notice may involve a transfer of data to countries outside of the UK and the European Economic Area that have less robust data protection laws. Any such transfer will be done with appropriate safeguards in place.
- 14.7 Use of personal data based on consent: in some circumstances, BFS may need to collect and use special categories of personal data. Where the Customer's Employee's consent to this processing is necessary for us to provide the relevant Services, this consent may be withdrawn at any time, but if it is, BFS may be unable to continue to provide our Services and this may mean that we are unable to process an enquiry or claim and it may impact insurers' ability to provide insurance. BFS will explain the consequences of withdrawing consent at the relevant time.
- 14.8 If the Customer is providing us with personal data about your Employees, the Customer agrees to notify them of our use of their personal data and, where necessary, obtain their consent to our use of certain special categories of personal data. The Customer agrees that our provision of the Services is conditional on the Customer providing such notices and obtaining such consents. Where the consent of an Employee is required, the Employee may withdraw any such consent at any time but if consent is withdrawn then BFS may be unable to continue to provide services to them (and possibly the Customer), and this may mean that BFS is unable to process enquiries and it may impact insurers' ability to provide insurance. We will explain the consequences of withdrawing consent at the relevant time.
- 14.8.1 BFS will maintain appropriate data security procedures designed to protect against loss or compromise of personal data.
- 14.9 This clause 14 shall survive termination of the Agreement.

15 AUDIT RIGHTS

- 15.1 The Customer, acting by itself or through its Audit Agents, shall have the right during the term of this Agreement to carry out audits in accordance with this clause 15 for the following purposes:
- 15.1.1 to identify or investigate actual or reasonably suspected fraud, and in these circumstances the Customer shall have no obligation to inform BFS of the purpose or objective of its investigations; and
- 15.1.2 in accordance with the written requirements of any regulatory authority which regulates the Customer's business.
- 15.2 Except where an audit is imposed on the Customer by a regulatory authority in accordance with clause 15.1.2 or where the Customer has reasonable grounds for believing that BFS has committed fraud, the Customer may not conduct an audit of BFS more than once in any year.
- 15.3 The Customer shall (and shall procure that each of its Audit Agents shall) during each audit comply with all security, sites, systems and facilities operating procedures of BFS and ensure that the conduct of each audit does not unreasonably disrupt BFS's business, inhibit access to OneHub or delay or interfere with the provision of services to the Customer or to BFS's customers.
- 15.4 Subject to clause 15.5, BFS shall provide the Customer and the Audit Agents with all reasonable cooperation and assistance in relation to each audit, including:
- 15.4.1 all information reasonably requested by the Customer within the permitted scope of the audit;
- 15.4.2 reasonable access to any premises and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
- 15.4.3 access to BFS Personnel involved in the delivery of the Services.
- 15.5 The Customer shall provide at least 20 Business Days' written notice of its intention to conduct an audit save where the audit is to be conducted pursuant to clause 15.1.1.
- 15.6 The Customer shall ensure that each audit takes no longer than two (2) Business Days unless the audit is required pursuant to clause 15.1.2 when such audit shall take no longer than four (4) Business Days.
- 15.7 The Customer shall (and shall ensure its Audit Agents shall):
- 15.7.1 carry out the audit without access to any information or data unrelated to this Agreement or to the Customer (including data or information relating to other customers of BFS); and
- 15.7.2 comply with its obligations of confidentiality under this Agreement.
- 15.8 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause unless the audit identifies a material breach of this Agreement by BFS in which case BFS shall reimburse the Customer for all the Customer's reasonable costs incurred in connection with the audit.

15.9 If as a result of an audit pursuant to clause 15.1.2, the Customer reasonably believes that BFS has failed to perform any of those obligations under this Agreement to which those clauses apply, the provisions of clause 16 shall apply.

16 REMEDIATION PLAN PROCESS

- 16.1 Where the provisions of clause 15.9 apply, the Customer may not terminate this Agreement without first complying with this clause 16.
- 16.2 The Customer shall give written notice to BFS with full particulars of BFS's failure to perform its obligations which the Customer believes has occurred and the actions which it believes BFS needs to take with respect to the alleged failure (**Remediation Notice**).
- 16.3 If BFS does not accept that it has failed to perform its obligations, the parties shall escalate any issues arising in accordance with clause 23.
- 16.4 If BFS accepts that it has failed to perform its obligations, BFS shall submit a draft plan for the resolution of the failure (**Remediation Plan**) within 20 Business Days of receipt of the Remediation Notice.
- 16.5 The Customer shall either approve the draft Remediation Plan within 20 Business Days of its receipt pursuant to clause 16.4, or it shall inform BFS why it cannot accept the draft Remediation Plan in which event the parties shall escalate any issues arising in accordance with clause 23. If no such notice is given, BFS's draft Remediation Plan shall be deemed to be agreed.
- 16.6 If a Remediation Plan is agreed between the parties, but BFS fails to implement or complete the Remediation Plan by the required Remediation Plan completion date, the Customer may:
- 16.6.1 escalate any issues arising out of the failure to implement the Remediation Plan under clause 23; or
 - 16.6.2 give BFS a further opportunity to resume full implementation of the Remediation Plan; or
 - 16.6.3 (if the Remediation Plan was in respect of a material breach of this Agreement) terminate this Agreement by serving a written notice of termination.

17 COMPLIANCE

- 17.1 Each party shall, at all times, comply with the Bribery Act 2010.
- 17.2 In performing its obligations under this Agreement BFS shall comply with all anti-slavery and human trafficking laws from time to time in force which apply to it, (including but not limited to those parts of the Modern Slavery Act 2015 which apply to it).
- 17.3 BFS represents and warrants that at the date of this Agreement neither BFS nor any of its officers or employees has been convicted of any offence involving slavery and human trafficking; or has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 17.4 BFS shall notify the Customer as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement.

18 SUBCONTRACTING

- 18.1 BFS shall be entitled to use third parties (i) to outsource functions related to the general operation of BFS's business and services, (ii) for incidental engagements by BFS of individual experts or consultants as independent contracts, provided that BFS shall remain responsible for performance of the Agreement and for all acts and omissions of its subcontractors as if such acts and omissions were its own.

19 FORCE MAJEURE

- 19.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from a Force Majeure Event (save that no Force Majeure Event affecting the Customer shall excuse failure or delay in making any payment due under this Agreement). Subject to clause 19.2, in such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.
- 19.2 On the cessation of any Force Majeure Event, BFS may, without limiting its other rights or remedies, adjust any previously agreed timetable or delivery schedule as reasonably necessary.
- 19.3 If the event a Force Majeure Event causes a party to be unable to perform all of its obligations under this Agreement for a continuous period of 30 days, the party not affected may terminate this Agreement by not less than 28 days written notice to the affected party.

20 GENERAL

- 20.1 The Agreement constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of BFS which is not set out in the Agreement.
- 20.2 The terms of this Agreement operate to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 20.3 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. A waiver of a breach of any of the terms of, or of a default under, this Agreement shall not affect the other terms of this Agreement and will not prevent a party from subsequently requiring compliance with the waived obligation. The rights and remedies provided by this Agreement are cumulative and (subject as otherwise provided in this Agreement) are not exclusive of any rights or remedies provided by law.
- 20.4 Nothing in this Agreement constitutes a partnership between the parties nor constitutes any party the agent of the other party.
- 20.5 The Customer shall not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of BFS, which shall not be unreasonably withheld or delayed. BFS shall be entitled to assign or transfer absolutely or by way of security (and in whole or in part), its rights or obligations hereunder. Notwithstanding any such assignment, BFS will remain liable for all its obligations hereunder.
- 20.6 Neither party shall make any public, press or other announcements with regard to the subject matter of this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld.
- 20.7 Each party to this Agreement shall, at the request and cost of the other, do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as are necessary to give effect to the terms of this Agreement.
- 20.8 No variation of this Agreement shall be valid unless made in writing and signed by an authorised representative on behalf of each of the parties.
- 20.9 For the purposes of the Contracts (Rights of Third Parties) Act 1999 the parties do not intend any person other than a party to this Agreement to be able to enforce any term of this Agreement.
- 20.10 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

20.11 The Customer shall be entitled to enforce any provision of this Agreement for and on behalf of the members of the Customer's Group (who shall not bring any action, claim or proceeding against BFS in their own names) and any Losses suffered by a member of the Customer's Group shall be deemed to be suffered by the Customer.

21 NOTICES

21.1 Any notice given under or pursuant to this Agreement shall be in writing and delivered by hand or posted to the relevant party at its registered address or such other address notified in writing for this purpose to the other party. A notice is deemed served upon its deposit at the appropriate address and, in the case of notices sent by post, 48 hours after being sent by first class post. The Customer acknowledges that BFS may serve notices to the Customer email address notified from time to time and such notice is deemed served on confirmation of dispatch without error message.

22 COUNTERPARTS & ELECTRONIC SIGNATURE

22.1 The Order Form may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one agreement.

22.2 Transmission of an executed counterpart of the Order Form (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart. Without prejudice to the validity of the Agreement thus made, each party shall provide the other with the original of such counterpart as soon as reasonably possible thereafter.

22.3 Signature using an industry-standard electronic signature management system (such as DocuSign) shall be permitted by the parties and shall take effect as delivery of an executed counterpart of the Order Form.

23 DISPUTE RESOLUTION

23.1 In the event of any dispute or difference arising in connection with this Agreement (including any question regarding its existence, validity or termination or the legal relationships established by this Agreement), the Chief Executive or Finance Director (or equivalent officer) of each party will, within 14 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute or difference. If the dispute or difference is not resolved at that meeting, or if such meeting does not take place, either party may refer the dispute to the courts in accordance with clause 24.

24 GOVERNING LAW AND JURISDICTION

24.1 Notwithstanding the provisions of clause 23, either party may commence or take proceedings or seek remedies before the courts or any other competent authority for interim, interlocutory or injunctive remedies in relation to this Agreement.

24.2 English law governs this Agreement. Each party hereby irrevocably submits to the exclusive jurisdiction of the courts of England in respect of any claim or matter arising out of or in connection with this Agreement.

Appendix

Personal Data

The following sets out the personal data which BFS will require receipt of to perform the Services applicable to Tailored Benefits only.

No Personal Data is required by BFS to perform the Services in relation to Marketplace Benefits.

Types of Personal Data

Can include (dependent on the Services procured and the Customer's requirements):

- Employee ID;
- Employer;
- Title;
- Name;
- Contact details (Address, Email address (work and home));
- Postcode;
- Date of Birth;
- Gender;
- Marital Status;
- Dependants (Name, Date of Birth and Gender);
- NI Number;
- Position;
- Grade;
- Salary;
- Location; and
- Department.

Categories of data subjects:

- Employees; and
- Former Employees of the Customer and their dependants where applicable to the Benefits selected by the Customer.