

MES PENSION TRUSTEES LIMITED

MES FINANCIAL SERVICES LIMITED

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TRUST DEED AND RULES for  
MES Pension Scheme

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**This Trust Deed** is made on the 1<sup>st</sup> day of September 2022.

**Between**

- (1) **MES Pension Trustees Limited** a company whose registered office is at 15 St Helen's Place, London, United Kingdom, EC3A 6DE (Company No. 13928730) (**Trustee**); and
- (2) **MES Financial Services Limited** a company whose registered office is at 15 St Helen's Place, London, United Kingdom, EC3A 6DE (Company No.11063232) (**Operator**).

**Recitals**

- (A) The Operator wishes to establish the MES Pension Scheme as a Registered Pension Scheme and a self-invested Personal Pension Scheme on the terms as set out in this Trust Deed and in the Rules to provide Money Purchase Benefits.
- (B) The Operator is a person authorised under Part 4 of the Financial Services and Markets Act 2000 to establish and operate Personal Pension Schemes.
- (C) The Trustee is the Scheme's first appointed trustee and has agreed to act as such as a Bare Trustee.

**In this Trust Deed and in the Rules it is agreed:**

**1 Definitions and interpretation**

- 1.1 Words and expressions and principles of interpretation and construction used in this Trust Deed and in the Rules are set out in the Schedule to this Trust Deed.

**2 Establishment of the Scheme and appointment of Trustee**

- 2.1 The Scheme is hereby established under irrevocable trusts by the Operator on the Effective Date as a self-invested Personal Pension Scheme and its main purpose shall be the payment of benefits permitted by the Pension Rules, Lump Sum Rule, Pension Death Benefit Rules or Lump Sum Death Benefit Rule for and in respect of persons who are admitted to membership of the Scheme in accordance with the Trust Deed and Rules.
- 2.2 The Scheme shall be constituted by the Fund and is intended to be a Registered Pension Scheme.
- 2.3 The Trustee has agreed to be appointed as the first trustee of the Scheme and shall hold the Fund as Bare Trustee comprised in one or more Members' Funds which may in turn comprise one or more Arrangements:
  - (a) upon irrevocable trust for the purposes of the Scheme in accordance with the Trust Deed and Rules; and
  - (b) either in the name of the Trustee or under the Trustee's control and the Trustee may at the direction of the Operator hold or vest any part of the Fund (including any part of the Fund notionally comprised in each Member's Fund from time to time) in the name of a nominee or appoint custodians in relation to any part of the Fund as the Trustee at the direction of the Operator may determine from time to time and, in either case, may do so on such terms and conditions as the Trustee at the direction of the Operator agrees with the nominee or custodian.

- 2.4 The General Fund shall be held under the legal control of the Trustee acting at the direction of the Operator and the Trustee acting at the direction of the Operator may place all or part of the General Fund under the control of or in the name of such persons (to act as custodian or nominee or bare trustee or otherwise) on such terms and conditions as the Trustee acting at the direction of the Operator may agree.
- 2.5 A person's rights under the Scheme, his Member's Fund, any Arrangement, and any Benefit or payment deriving from the same shall be governed in accordance with the Trust Deed and Rules or (if relevant) any insurance, annuity or other contract bought with all or part of the Member's Fund.
- 2.6 No person shall have any claim, right or interest in respect of the Fund or the Scheme except in accordance with the terms of the Trust Deed and Rules.
- 2.7 The Scheme shall provide Money Purchase Benefits only and no benefit under the Scheme shall be a scheme pension within the meaning of paragraph 2 of Schedule 28 of the 2004 Act.
- 2.8 The trusts established by the Trust Deed and Rules shall continue in force for as long as may be permitted under the Perpetuities and Accumulations Act 2009 and to the extent that that Act does not apply to any such trusts then those trusts shall continue in force until the later of the eightieth anniversary of the Effective Date and (if any) any later date that the Scheme can lawfully be continued for without breaching the laws of perpetuities and (to the extent applicable) accumulations or any other law.
- 2.9 No person shall have any right to enforce or prevent the variation of any provision of the Trust Deed and Rules by virtue of the Contracts (Rights of Third Parties) Act 1999 except any future trustee of the Scheme enforcing a term of the Trust Deed or Rules in his position as a trustee of the Scheme.
- 2.10 For the avoidance of doubt the powers granted under this clause are without prejudice to Part IV of the Trustee Act 2000.

### **3 General powers of the Trustee and Operator**

- 3.1 Subject to the rest of this clause 3 and clause 4 the Operator shall be the Scheme Administrator.
- 3.2 Subject to clause 1 and to the extent permitted by law the Trustee acting at the direction of the Operator and the Operator are granted all the powers, rights, authorities and discretions each of them may require from time to time for the proper operation of the Scheme, including without limitation:
- (a) to take any action or make any arrangement relating to the Scheme including the power to do anything required by the 2004 Act in relation to Registered Pension Schemes;
  - (b) the performance of all duties and obligations imposed by law and anything required for the day to day administration, investment or management of the Scheme or which they otherwise consider expedient or necessary for the operation of the Scheme or for the benefit of any Beneficiary;
  - (c) the institution, defence, compromise and settlement of any matter, form of legal proceedings, claim or complaint whether brought by or against a Beneficiary or any other person;
  - (d) the acceptance for the purposes of the Scheme of any gifts, donations or bequests; and

- (e) to authorise the signing of any kind of document and enter into binding agreements and give undertakings, indemnities or guarantees

and the costs and expenses of doing so shall be an expense of the Scheme for the purposes of clause 13.

3.3 To the extent permitted by law the Operator may conclusively determine whether or not any person is a Beneficiary, the amount of any benefit payable in respect of the same, and / or all questions and matters of doubt arising in connection with the Scheme.

3.4 The Trustee acting at the direction of the Operator or the Operator may effect such insurance for such risks and for such amounts as the Operator considers prudent including:

- (a) indemnity insurance or directors' and officers' insurance to cover any Liability in relation to the Scheme; or
- (b) insurance to cover any Liability of the Trustee or Operator; or
- (c) insurance against any Liability caused by any act or omission of the Trustee or the Operator or any person appointed under clause 4.

The cost of premiums may, to the extent permitted by section 256 of the Pensions Act 2004, be borne by the relevant Members' Funds or the General Fund, as the Operator may decide.

3.5 The Trustee acting at the direction of the Operator or the Operator may:

- (a) delegate or authorise the sub-delegation of any of their respective duties, powers, rights, authorities and discretions, whether arising by virtue of the Trust Deed and Rules or by operation of law or otherwise, to any person (and for the avoidance of doubt this includes the delegation of some or all of any Scheme Administrator or HMRC authorised practitioner responsibilities); and/or
- (b) grant authority to execute deeds and any other documents and give receipts or discharges for any moneys or other property

to any one or more persons subject to such terms and conditions as the Operator in its absolute discretion thinks fit. Without prejudice to the generality of the foregoing such delegation and/or sub-delegation may be made to:

- (c) a professional adviser;
- (d) a Scheme Administrator or someone acting as HMRC authorised practitioner in relation to the Scheme;
- (e) an attorney or agent;
- (f) a Beneficiary; or
- (g) such other person as the Operator may decide.

3.6 The Trustee at the direction of the Operator or the Operator may from time to time appoint and remove (or arrange for the appointment and removal of):

- (a) any Investment Services Provider, nominee, custodian, sub-custodian or other person concerned with the management or custody of assets or investments;

- (b) any agent or delegate or sub-delegate in relation to any transaction or act of administration;
- (c) any actuary, solicitor, accountant, auditor or other professional adviser;
- (d) any clerical or executive officers or staff;

in each case in relation to the whole or any part of the Scheme or Fund or any Member's Fund, and / or to provide such advice and services and upon such terms and conditions as the Operator thinks fit.

3.7 The Trustee at the direction of the Operator or the Operator may from time to time employ or dismiss any person (including any employees or officers of the Trustee or Operator or employees or officers of any company in the same group of companies as the Trustee or Operator) on such terms and conditions as the Operator may decide for the purpose of operating or undertaking any business of the Scheme or for any other purpose consistent with the purpose of the Scheme. This may include the payment of Benefits and any such payment made in good faith by the employee shall operate as a good discharge to the Trustee and Operator.

3.8 [This clause is deliberately left blank]

3.9 To the extent that any terms and conditions agreed pursuant to the Trust Deed or Rules involve payments being made out of the Fund, no payment shall be made to or in respect of a member (as that term is used in section 164 of the 2004 Act) unless the Scheme Administrator is satisfied that the whole of such payment will be a scheme administration member payment within the meaning of section 171 of the 2004 Act or will otherwise be an authorised member payment pursuant to section 164 of the 2004 Act.

3.10 The costs and fees charged by any person appointed pursuant to this clause 3 shall be an expense of the Scheme for the purposes of clause 13.

3.11 The Trustee acting at the direction of the Operator or the Operator (as appropriate) may remove, replace or vary the terms and conditions of appointment of any person appointed pursuant to this clause 3.

#### **4 Appointment and removal of the Trustee and Operator**

4.1 Without prejudice to any statutory powers of appointing and removing trustees, the Operator may at any time by deed:

- (a) appoint another corporate trustee as the sole Trustee of the Scheme in place of any existing sole Trustee, or
- (b) appoint one or more new Trustees of the Scheme either in addition to or as replacements for any existing Trustees, or
- (c) appoint one or more new Trustees of one or more Members' Funds either as new Trustees of those Members' Funds or in addition to or as replacements for any existing Trustees of those Members' Funds

but provided that in all cases:

- (i) there is either a sole corporate Trustee or at least two Trustees of the Scheme; and /  
or

- (ii) in relation to a Member's Fund, there is either a sole corporate Trustee or at least two Trustees.

The terms and conditions of appointment of any new or replacement Trustee shall be on the same terms and conditions as are set out in the Trust Deed and Rules, mutatis mutandis, unless otherwise agreed between the new / replacement Trustee and any continuing parties to the Trust Deed and Rules.

- 4.2 Where there is more than one Trustee of the Scheme or a Member's Fund, the Operator may at any time by deed remove any Trustee irrespective of whether or not a new or replacement Trustee is also being appointed, save that there must always be at least a sole corporate Trustee or at least two Trustees remaining (of the Scheme or the Member's Fund, as appropriate) if the power of removal is to be used without any new or replacement Trustee being appointed pursuant to clause 4.1.
- 4.3 Without prejudice to clause 4.6, where a Trustee is replaced or removed pursuant to this clause 4 or otherwise ceases to be a trustee of the Scheme or a Member's Fund he shall, subject to doing all such things as are necessary (if any) to ensure the vesting of the Fund or the Member's Fund in the relevant continuing Trustees, be discharged from the relevant trusts of the Scheme.
- 4.4 The Operator may at any time by deed agree with another person who shall be a person resident in the United Kingdom (**Replacement Administrator**) that that person shall undertake the duties of the Scheme Administrator and shall be the Scheme's Operator. In that event, the existing Operator shall be discharged from all further obligations and liabilities as Operator and Scheme Administrator under the Trust Deed and Rules. The terms and conditions of appointment of the Replacement Administrator shall be on the same terms and conditions as are set out in the Trust Deed and Rules, mutatis mutandis, unless otherwise agreed between the Replacement Administrator and any continuing parties to the Trust Deed and Rules.
- 4.5 Where the Operator ceases to be the Scheme Administrator for any reason but subsequently incurs or suffers a Liability pursuant to section 271(4) of the 2004 Act it shall be entitled to be indemnified from the relevant Beneficiary and (if applicable) the relevant Member's Fund (on a jointly and severally liable basis) for the amount for which it is so liable together with any fees, costs and expenses which it reasonably incurs in connection with that Liability (including without prejudice to the generality of this clause any actuarial, legal or other professional fees, costs and expenses).
- 4.6 A Trustee who is retiring or being replaced or removed or who otherwise ceases to be a trustee of the Scheme or a Member's Fund shall promptly execute such documents and take such further action as may be necessary to vest the Fund or relevant Member's Fund in any continuing Trustee or new Trustee(s) as appropriate. Should it fail to do so any continuing and new Trustees may execute such documents and take such further action on its behalf as agent or attorney for this purpose. All Trustees from time to time irrevocably authorise and appoint any such continuing and new Trustees for this purpose.

## **5 Amendments to Trust Deed and Rules**

- 5.1 Subject to any express restrictions or procedures set out in the Trust Deed or Rules, the Operator may by deed amend, restate, supplement, add to or delete from all or any part of the Trust Deed or Rules with immediate, future or retrospective effect, and without prejudice to the generality of the foregoing may:
  - (a) do so during any period of wind-up of the Scheme or irrespective of the status of the Scheme;

- (b) do so for the purposes of amending, expanding or reducing the scope of investment powers and subject matter of assets and investments permitted under the Scheme; or
- (c) to the extent permitted by law release, give up or transfer to any person any power, authority or discretion

## **6 Administration**

6.1 Without prejudice to any terms agreed with any other person the Operator:

- (a) shall keep or arrange for the keeping of records of all transactions relating to each Member's Fund in accordance with overriding law;
- (b) may require any Beneficiary to produce any evidence or information which the Operator may from time to time require in relation to the Scheme and if the Beneficiary does not produce the requested evidence or information the Operator may withhold any Benefit or payment to which the evidence or information relates until it is produced to the Operator's satisfaction;
- (c) may decide that any person who is entitled to a payment or Benefit under the Scheme shall cease to have any claim to the payment or Benefit if at least six years have passed from the date the payment or Benefit became due and the address of the person is not known to the Operator provided that the Operator has first attempted to ascertain the address in accordance with any applicable legal requirements;
- (d) may, if he believes that a person entitled to a payment or Benefit is unable to act for any reason, arrange that the payment or Benefit, instead of being paid to that person, will be paid to another person or trust for the maintenance, support or benefit of that person and/or any of that person's Dependants. If any payment or Benefit is not so made it (and any proceeds) shall be held for the person concerned until that person is again able to act. If that person dies without becoming able to act, payment shall be made to that person's estate. Any payment made in accordance with this provision will discharge the Trustee and the Operator from any obligation to provide the payment or Benefit to which it relates; and
- (e) may register the Member's Fund with the appropriate authority for the purposes of the payment and recovery of any VAT incurred in relation to that Member's Fund and the registration will be in such form and in such manner as the Operator in its discretion deems appropriate.

6.2 Without prejudice to clauses 1 or 2 the Trustee acting at the direction of the Operator or the Operator may make or allow an Unauthorised Payment at any time in circumstances where the Operator considers that this would not prejudice the Registration of the Scheme. However for the avoidance of doubt under no circumstances shall this entitle any person to any form of Unauthorised Payment from the Scheme.

6.3 The Operator shall at all appropriate times have regard to:

- (a) section 172 of the 2004 Act (Assignment);
- (b) section 172A of the 2004 Act (Surrender);
- (c) section 1728 of the 2004 Act (increase in rights of connected person on death);

- (d) section 173 of the 2004 Act (use of scheme assets to provide benefits to members and related persons); and
- (e) section 174 of the 2004 Act (Value Shifting).

6.4 Additionally:

- (a) the Scheme is not a common investment fund;
- (b) Members' Funds shall be calculated using a consistent methodology or consistent set of principles that take into account clause 6.3 above and the requirements of the 2004 Act; and
- (c) where Members' Funds are invested in unitised funds and the Operator has the power or discretion to calculate the value of the relevant units, the Operator shall calculate those units using a consistent methodology or consistent set of principles across the Membership (albeit that different methodologies or principles may be employed within different funds to take account of the particular nature or type of fund concerned).

6.5 Any Benefit payable under the Scheme which would but for this clause pass to the crown as ownerless assets shall cease to be payable and shall instead form part of the General Fund.

6.6 The meetings, procedures and decisions of the Trustee and the Operator shall be regulated by their governing documents.

## **7 Reporting and notices**

7.1 Subject to overriding law and any applicable Terms and Conditions, the form of all Scheme related reporting, documentation, correspondence and communication (which can include Electronic Form) with or to any person shall be determined by the Operator. Without prejudice to the generality of the foregoing this shall include:

- (a) all Beneficiary communications;
- (b) all periodic valuations of assets, investments and Members' Funds; and
- (c) application forms and other forms relating to Scheme administration.

7.2 Any notice relating to the Scheme or a Member's Fund which is required to be given by the Trustee or the Operator shall be deemed to have been properly given to any person entitled to receive it if it is posted to the last address known to the Trustee (acting at the direction of the Operator) or the Operator, or from the time and date on which such notice was delivered personally or was issued in Electronic Form. Notices may be sent by post or delivered personally or by email. Notices by post will be deemed served two days after the date of posting and notices delivered personally or by email upon delivery.

7.3 Provided that any inadvertent failure on the part of the Trustee or the Operator to give notice to any one or more individuals entitled to receive it concerning the amendment, closure, termination or wind-up of the Scheme shall not invalidate the amendment, closure, termination or wind-up to which it relates.

7.4 Notices to the Operator or Trustee shall be given in writing and shall not be effective until actually received by the Operator or Trustee at its registered office. The Trustee acting at the direction of the Operator or the Operator may waive all or part of these requirements in relation to any notice to be given to it.



7.5 Where the Trust Deed or Rules give a Beneficiary any choice, the Operator may impose any requirements as to the period or form of the notice to be given by the Beneficiary, so long as these do not conflict with any requirements specified in the Trust Deed or Rules or with any overriding legal requirements.

7.6 The Operator and / or the Terms and Conditions may prescribe the acceptable forms and methods of instruction or election by an Instructor or Beneficiary or any other person in relation to the Scheme.

## **8 Exclusion of liability and indemnity**

8.1 Subject to the rest of this clause 8 and section 256 of the Pensions Act 2004 but without prejudice to any further protection afforded to the Trustee, Operator or Scheme Administrator by statute, common law or otherwise:

(a) the Trustee shall have the benefit of all indemnities conferred upon trustees generally by law **(Statutory Indemnities)**; and

(b) the Trustee and the Operator shall each also be entitled to be indemnified:

(i) out of the relevant Members' Funds against all Liabilities arising out of or relating to anything done, omitted to be done or concurred in, in relation to those Members' Funds and through acting in any capacity in relation to the Scheme **(Member Fund Indemnities)**; and

(ii) to the extent not recoverable under clause 8.1(a) or 8.1(b)(i) above, from the relevant Beneficiary personally against:

(A) all Liabilities arising out of or relating to anything done, omitted to be done or concurred in, in relation to any request to make a transfer from the relevant Member's Fund to a QROPS which is actioned by the Trustee (acting at the direction of the Operator) or the Operator; or

(B) all Liabilities arising out of or relating to anything done, omitted to be done or concurred in, in relation to any request to make a transfer into the Scheme or the relevant Member's Fund from a QROPS which is actioned by the Trustee (acting at the direction of the Operator) or the Operator;

((A) and (B) together being the **Personal Indemnities**)

((a) and (b) above together the **Indemnities**)

except where either the Trustee or the Operator has in relation to the relevant Liability acted in conscious bad faith or committed fraud.

8.2 Where the Trustee or the Operator wishes to rely on the Statutory Indemnities or the Member Fund Indemnities then:

(a) the Operator shall decide which Members' Funds or parts of any Members' Funds shall be used accordingly and how this shall impact the calculation or value of any Members' Funds save that any Liability incurred or suffered by the Operator or Trustee in relation to or attributable to any one or more Members' Funds shall be discharged solely out of the assets of that or those Members' Funds; and

- (b) in the course of making a decision pursuant to clause 8.2(a) above the Operator may allocate any part of the Fund or any Liability which in either case the Operator considers does not relate or cannot be attributed exclusively to any particular Member's Fund, between some or all the Members' Funds in a manner and in proportions which the Operator considers reasonable. Any such direction (and allocation pursuant to the direction) shall to the extent permitted by law be final and conclusive and may not be disputed; and
  - (c) the Trustee acting at the direction of the Operator may sell or liquidate any part of the Fund or any Member's Fund for the purpose of implementing those indemnities.
- 8.3 Where the terms of any insurance or policy of indemnity under which the Trustee and / or Operator may benefit provide that cover will only be provided to the extent that an indemnity is not available from another source, neither the Indemnities nor any other indemnity which benefits the Trustee and / or Operator (whether provided for expressly or impliedly in any provision of the Trust Deed or Rules or otherwise by law with respect to the Scheme) shall have effect in relation to any Liability to the extent that that Liability would otherwise be covered by the insurance or policy of indemnity.
- 8.4 In relation to the Trustee, its delegates, sub-delegates and agents:
  - (a) to the extent permitted by law the duty of care under section 1 of the Trustee Act 2000 is excluded and neither the Trustee nor the Operator shall have any duty of care in relation to the Fund or the Members' Funds or assets or investments or the investment policy of any Member's Fund;
  - (b) the general power of investment contained within section 3(1) of the Trustee Act 2000 shall be excluded unless the Trustee acting at the direction of the Operator at any time resolves otherwise;
  - (c) powers contained in Part III of the Trustee Act 2000 shall be excluded unless the Trustee acting at the direction of the Operator at any time resolves otherwise; and
  - (d) sections 22 and 23 of the Trustee Act 2000 shall not apply to the Scheme (either in relation to the exercise of any powers under the Trust Deed or Rules or under the Trustee Act 2000 or otherwise).
- 8.5 Section 11(1) of the Trusts of Land and Appointment of Trustees Act 1996 shall not apply to the Scheme.
- 8.6 Subject to the rest of this clause 8 but otherwise to the fullest extent permitted by law neither the Trustee nor the Operator shall incur any Liability for:
  - (a) the exercise of or failure to exercise any power, authority or discretion;
  - (b) acting as Operator, Scheme Administrator or Trustee of the Scheme (as appropriate);
  - (c) the acts and omissions of co-Trustees, advisers (including reliance or non-reliance on their advice), service providers, Beneficiaries, Investment Services Providers, Instructors, attorneys, agents, authorised representatives, delegates, sub-delegates, employees or any other person;
  - (d) any action taken or omitted to be taken concerning the value or calculation at any time of any Member's Fund;

- (e) any action or omission resulting in an Unauthorised Payment or a tax charge or penalty being made or treated as being made in relation to the Scheme or a Member;
- (f) any failure to comply with any requirement of the Trustee Act 2000;
- (g) anything done or omitted to be done at the request or with the consent or acquiescence of a Beneficiary;
- (h) any failure to consult with or act upon the wishes of any Beneficiary or any other person;
- (i) any investment decision or transaction or veto over any investment decision or transaction;
- U) any decisions, instructions, appointments or choices in relation to the Scheme made by any Beneficiary or any other person;
- (k) relying on any information or document provided by any Beneficiary or any other person; or
- (l) any other act or omission of maladministration, misrepresentation, wilful misconduct, breach of law, breach of contract (express or implied), negligence or breach of trust or duty (whether express or implied and whether fiduciary or otherwise) or otherwise.

8.7 Without prejudice to clause 8.6 neither the Trustee nor the Operator shall be liable in respect of or obliged to see to the application of any payment or Benefit which is otherwise made in accordance with the Trust Deed or Rules if:

- (a) it is made to an infant direct or to his parent or guardian or to the person with whom he resides;
- (b) it is made to any person who appears to the Operator after enquiry to be a Widow, Widower or Dependant to whom the payment might be made under the Trust Deed or Rules notwithstanding that such person is not such a Widow, Widower or Dependant (and in this section the terms Widow or Widower means a Widow or Widower but also includes a surviving Civil Partner); or
- (c) it is made to any entity or person which is or who appears to be responsible for the care of a Beneficiary if the Operator considers that the Beneficiary's health does not warrant the Operator making the payment to him directly.

8.8 Without prejudice to clause 8.6 neither the Trustee nor the Operator shall be liable in respect of any financial loss or Liability or any impact on any Benefit, payment or entitlement due to or in relation to a Beneficiary under the Scheme (**Loss**) where:

- (a) such Loss arises or is claimed to arise as a result of any delay met in the realisation of any part of a Member's Fund for the purposes of making a payment or providing a Benefit or purchasing an annuity in accordance with the Rules;
- (b) such Loss results from the directions given to the Investment Services Provider, the Trustee or the Operator by the Beneficiary or his Instructor or agent in respect of his Member's Fund; or
- (c) such Loss results from the performance of any underlying assets or investments notionally relating to a Member's Fund or from the insolvency or actions or omissions of any Investment Services Provider or other person involved in the operation,

administration, holding or management of any underlying assets or investments of a Member's Fund.

- 8.9 Clauses 8.1 to 8.8 (inclusive) shall apply to:
- (a) all current and previous officers, employees, delegates, sub-delegates and agents of the Trustee and / or the Operator; and
  - (b) any previous Trustees and Operators
- but not so as to provide any protection for a director from liability which would be void under Part 10, Chapter 7 of the Companies Act 2006.
- 8.10 The exclusions of liability contained in clauses 8.4 to 8.9 above shall not apply in relation to acts of bad faith, fraud or matters for which liability cannot at law be excluded or indemnified.
- 8.11 The Trustee and the Operator shall remain liable in accordance with the Trust Deed and Rules and this clause 8 for the acts and omissions of any delegates or sub-delegates that they appoint to carry out their own duties, powers, authorities or discretions under the Scheme.
- 8.12 If the inclusion of any words in this clause 8 would at law render ineffective any protection given to the Trustee or Operator (whether given by law or under this Trust Deed and whether relating to an exclusion of liability or the Indemnities or otherwise) then the relevant clause is to be construed otherwise to the minimum extent necessary so that the protection would not be rendered ineffective.
- 8.13 Without prejudice to the definition of "Member's Fund" in clause 1 or the rest of this clause 8 and subject in particular to clauses 8.1 and 8.2 a Member's Fund shall not be used:
- (a) to provide Benefits for any entity or person other than:
    - (i) the Member in relation to that Member's Fund; and
    - (ii) any other Beneficiary entitled to Benefits under the Rules on his death; or
  - (b) to discharge directly or indirectly the Liabilities of any other Member's Fund or the General Fund or any entity or person other than those persons set out in clause 8.13(a).
- 8.14 To the extent permitted by law, if any creditor of the Trustee, Operator or Scheme Administrator should bring a successful claim of any kind against any of them where such claim relates to the acts or omissions made in relation to one or more specific Members' Funds or any Beneficiaries to which those Members' Funds relate, then:
- (a) the Trustee's rights of indemnity under section 31 Trustee Act 2000 and at common law; and
  - (b) the Trustee's, Operator's and Scheme Administrator's rights of indemnity under the Trust Deed or Rules

shall be limited so that only the part of the Fund relating to the specific Members' Funds concerned shall be available to satisfy any such claims whether such claims are made by right of subrogation or direct claim against the Fund or the Trustee, Operator, Scheme Administrator or otherwise.

- 8.15 For the avoidance of doubt, the Personal Indemnities shall continue to apply for the benefit of the Trustee, Operator and Scheme Administrator after the date on which a Beneficiary is no longer a Beneficiary under the Scheme (**End Date**) in respect of Liabilities that arise after the End Date but which relate to acts, omissions, events and / or matters covered by the Personal Indemnities that take place prior to the End Date.

## **9 Withdrawal of Scheme Registration**

- 9.1 If HMRC withdraws the Registration of the Scheme through section 157 of the 2004 Act (including if the Scheme Administrator appeals against that) the Scheme Administrator will comply with any statutory notification requirements. If the Scheme Administrator does not appeal or if any appeal is dismissed the Trustee acting at the direction of the Operator will then wind-up the Scheme as described in clause 10.

## **10 Closure and Winding up**

- 10.1 Clause 10.2 shall apply upon:

- (a) the Operator so resolving; or
- (b) the termination of the trusts constituting the Scheme in accordance with clause 2.8 unless the Scheme can then lawfully be continued.

- 10.2 The Scheme shall be determined and the Fund shall be wound up in accordance with clauses 10.5 to 10.13 and no further contributions shall be payable in respect of Beneficiaries provided that the trusts of the Scheme shall remain in force and all powers, authorities and discretions under the Trust Deed and Rules shall remain exercisable until the Fund has been completely wound up.

### **Closing the Scheme**

- 10.3 The Operator may at any time prior to a winding up of the Scheme commencing:

- (a) stop admitting new Members to the Scheme, but continue to accept contributions from, and in respect of, existing Members; or
- (b) stop admitting new Members to the Scheme and stop accepting contributions from, and in respect of, existing Members

and the Scheme shall then in either case be closed.

- 10.4 If the Scheme is closed, the Trustee acting at the direction of the Operator and the Operator shall continue to operate the Scheme under the Trust Deed and Rules until the Scheme is wound up pursuant to clause 10.1 and 10.2.

### **Winding up the Scheme**

- 10.5 The Operator shall be permitted to apply (or direct the Trustee to apply) the General Fund at any time during the winding up in accordance with the Trust Deed and Rules.

- 10.6 The Operator may deduct from any part of the Fund at any time during the winding up of the Scheme (or direct the Trustee to do so):

- (a) all actual or anticipated expenses of the Scheme and Charges {see clause 13.1} incurred by either of them in relation to the winding up of the Scheme and the application of the Fund (including the remuneration of professional advisers);
- (b) any taxes, interest, penalties or other payments or deductions which may be or become due in relation to the Scheme

and the rest of the Fund shall be used by the Trustee acting at the direction of the Operator or the Operator to secure Benefits in accordance with clause 10.7 in the following descending order of priority, namely:

- (i) Benefits in respect of which entitlement has arisen (to the extent not already secured); and
- (ii) Benefits in respect of which entitlement has not yet arisen

having regard to the Benefits that would otherwise have been payable from the Scheme and (where relevant) to the notional value of Members' Funds. If any balance remains after the priorities referred to in this clause 10.6 have been met, the Trustee acting at the direction of the Operator may use the same to augment the General Fund.

10.7 Subject to the following provisions of this clause, Members' Funds shall be used to secure Benefits through any of the following:

- (a) the purchase of Lifetime Annuities or the purchase of such other insurance policies, annuities, contracts or investment products as may be permitted by law for the securing of Benefits on a winding-up of the Scheme, consistent with its status as a Registered Pension Scheme;
- (b) where permissible under the 2004 Act or applicable law, payment of:
  - (i) an Uncrystallised Funds Pension Lump Sum;
  - (ii) a Serious Ill-health Lump Sum. Such payment shall extinguish the Member's entitlement to Benefits under the relevant Arrangement where this is required in order for the lump sum to qualify as a Serious Ill-health Lump Sum, and in any other case shall extinguish the Member's rights under the relevant Arrangement to the extent required to qualify as a Serious Ill-health Lump Sum;
  - (iii) a Refund of Excess Contributions Lump Sum or a Lifetime Allowance Excess Lump Sum to a Member;
  - (iv) a Trivial Commutation Lump Sum Death Benefit to any person to whom such a lump sum may be paid under the 2004 Act;
  - (v) Lump Sum Death Benefits in accordance with the relevant provisions of the Trust Deed or Rules dealing with Lump Sum Death Benefits;
  - (vi) a lump sum permitted by the Lump Sum Rule;
  - (vii) such part of a Member's Fund as the Operator determines may be applied to provide a Pension Commencement Lump Sum;

- (c) where permissible, a lump sum which will be an authorised payment pursuant to section 164 of the 2004 Act by virtue of Part 2 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 {small lump sums};
- (d) where permissible, transfer payments in accordance with the Rules or payment of a transfer or bulk transfer where such transfer is made in accordance with applicable law and which in any case may be made without Beneficiary consent to the extent such is permitted by law;
- (e) a payment to a Member from his Member's Flexi-access Drawdown Fund. For the avoidance of doubt, the Operator may allow a Member to make a designation under Rule 5.5 {designation to flexi-access drawdown fund} after commencement of a winding-up; and
- (f) a payment to a Dependant from the relevant Dependents' Flexi-access Drawdown Fund, to a Nominee from the relevant Nominees' Flexi-access Drawdown Fund or to a Successor from the relevant Successors' Flexi-access Drawdown Fund. For the avoidance of doubt, funds may be designated under the Rules as available for the payment of Dependents' Drawdown Pension, Nominees' Drawdown Pension or Successors' Drawdown Pension after commencement of a winding-up.

10.8 If the assets of the Fund include annuity contracts or policies effected with any Insurer to provide Benefits, the Operator shall make or procure or direct the Trustee to make or procure:

- (a) an arrangement with the Insurer to assign them to, or transfer or secure them in trust for, the person entitled to benefit under them; or
- (b) an assignment of them to another appropriate pension scheme (acting via its provider, operator or trustee as appropriate)

and where prior to the Scheme's winding up annuities have been purchased in the name of the Trustee, any such annuities may be transferred by the Trustee acting at the direction of the Operator into the name of the relevant Beneficiary.

10.9 The Trustee acting at the direction of the Operator or the Operator may secure and/or pay Benefits through a combination of the ways permitted by this clause 10.

10.10 For the avoidance of doubt Benefits:

- (a) are to be categorised by reference to their status on the date the wind-up commences;
- (b) include any which may subsequently become payable on the death of the relevant Beneficiary; and
- (c) are to be calculated and paid in accordance with the Trust Deed and Rules.

10.11 To the extent permitted by law, the determination of the Trustee acting at the direction of the Operator or the Operator as regards the allocation and application of the Fund or any part of it shall be absolute and final and every Beneficiary shall, absent manifest errors, accept whatever may be paid or secured to/for or in respect of him from the Scheme in full discharge of all claims in respect of the Scheme or the Fund and shall have no further claim in respect of any rights to any Benefits from or relating to the Scheme or otherwise.

10.12 If the Fund is insufficient to secure in full the Benefits set out in clause 10.6 then they will abate on such basis as the Operator shall determine.

10.13 Without prejudice to clause 5, until the entire Fund has been fully disposed of and the Scheme fully wound up, all the provisions of the Scheme shall remain in full force and *effect*.

## **11 Benefiting from the Scheme**

11.1 To the extent permitted by law neither the decisions of the Trustee and / or the Operator nor the exercise of any of the powers, trusts, rights, authorities or discretions of the Trustee and / or Operator shall be invalidated or questioned on the ground that either the Trustee or the Operator (or any of their respective officers or employees or delegates or sub-delegates or agents) had a conflict of interest or duty in relation to any such decision or exercise of power, trust, authority or discretion and they shall all be entitled to retain beneficially any Benefit or other interest which any of them may have under or in relation to the Scheme.

11.2 Any Trustee or other fiduciary engaged in any profession or business in relation to the Scheme shall be entitled to be paid and retain all usual professional or proper fees, charges, costs, expenses and commissions for business done by him or his firm in connection with the Scheme including acts which a Trustee or fiduciary who is not in any profession or business could have done personally.

11.3 If a Shareholder becomes a company officer (or equivalent) of any company, business, partnership or entity in which the Shareholder holds shares or any other interest which, or any part of which, forms part of the Fund, the Shareholder may retain for itself any resulting fees, gains, profits, payments, income or remuneration notwithstanding that its retention of, or appointment to, that office or employment may be directly or indirectly due to the exercise or non-exercise of any votes of the Trustee or Operator.

11.4 To the extent permitted by law any employee or officer of the Trustee or Operator, any member of any committee appointed by the Trustee acting at the direction of the Operator or Operator, any person engaged to do any act in connection with the Scheme and any person to whom any of the powers, discretions, rights, authorities or duties of the Trustee or Operator have been delegated or sub-delegated (and where applicable the Trustee and Operator themselves) may:

- (a) exercise his powers, discretions, rights or authorities and discharge his duties even if he is also a Beneficiary or has a conflict of interest or duty and no such exercise or discharge shall be invalid for any such reason;
- (b) retain for himself any Benefit to which he is entitled by virtue of his Membership or being a Beneficiary or his personal interest or other duty;
- (c) deal with, or concur in dealing with, or enter into any transaction connected with the Fund or any asset in which he has an interest, as if he had no connection with the Scheme and is not liable to account for any profit or other benefit; and
- (d) act as a partner, director, officer or employee of any company, business, partnership or other entity in which he holds shares or any other interest which, or any part of which, forms part of the Fund and retain any fees, gains, profits, payments, income or remuneration received in that capacity even though the Fund (or his connection with it) may have assisted him in earning or receiving it.

11.5 Without prejudice to the rest of this clause 11, any person to whom any of the investment powers under the Trust Deed have been delegated or sub-delegated in accordance with the provisions of the Trust Deed may be authorised to retain any benefit received through acting as a delegate or sub-delegate (and such authorisation may also apply to any associate of the delegate or sub-delegate).



## **12 Governing law**

- 12.1 The trusts of the Scheme shall be governed by the laws of England and all documents, including without limitation each document constituting the Trust Deed and Rules, executed or promulgated in connection with the Scheme shall be construed in accordance with the laws of England, but any document executed by a Beneficiary in another country shall be valid for the purposes of the Scheme if the Operator considers that it has been executed in accordance with the requirements of the law of that country. All Beneficiaries, the Trustee and the Operator each hereby agree to submit to the exclusive jurisdiction of the courts of England.

## **13 Scheme expenses**

- 13.1 Without prejudice to clause 8.1 the Trustee acting at the direction of the Operator and / or the Operator shall be entitled to recover from each Member's Fund, without the agreement of any Beneficiary, any fees, charges, costs, deductions, premiums, commissions, levies, expenses and interest (**Charges**) imposed, incurred, charged or deductible by or payable to the Operator or the Trustee or any third party in relation to the administration, investment, management or operation of the Scheme or the execution of the trusts of the Scheme or any person's Membership to the extent this is permitted in accordance with the Trust Deed or Rules or the Terms and Conditions or any applicable Fee Schedule or applicable law including without limitation:

- (a) the annual fee chargeable by the Operator for administering the Member's Fund as set out in the applicable Terms and Conditions and / or applicable Fee Schedule;
- (b) any Charges (other than the annual fee) payable for specific kinds of administration activity relating to the Member's Fund as set out in the applicable Terms and Conditions and / or applicable Fee Schedule including without prejudice to the generality of the foregoing Charges payable on drawdown, death and divorce;
- (c) any Charges for the investment or application of the Member's Fund, including any Charges payable in accordance with the provisions of clause 15 or 16 including the administration or maintenance or switching or termination of an investment, and the Charges made by any Investment Services Provider in respect of the investment of the Member's Fund;
- (d) any Charges relating to any proceedings brought by the Trustee acting at the direction of the Operator or the Operator in order to comply with or procure compliance by any Beneficiary or other person with any obligation imposed by law in relation to the Scheme or imposed by the Trust Deed or Rules or the Terms and Conditions or any Fee Schedule;
- (e) any Charges relating to dealing with any proceedings brought by or on behalf of a Beneficiary or any other person against the Trustee, Operator or Scheme Administrator or relating to the Scheme;
- (f) any other imposition of any kind in respect of any payment to be made to or in respect of a Beneficiary;
- (g) any Charges payable in respect of a Beneficiary's financial adviser or Instructor as a result of advice given or services in respect of his Member's Fund (provided this would not result in an Unauthorised Payment and is made pursuant to written terms and conditions of appointment);

- (h) any interest levied by the Trustee acting at the direction of the Operator or the Operator in respect of late payment of any other Charges that are due in relation to the Scheme;
- (i) any tax charge, tax repayment or other liability to tax or interest whether or not it is additional to or part of any of the above items;

and the Trustee acting at the direction of the Operator or the Operator shall pay over to any person appointed by the Trustee (acting at the direction of the Operator) or the Operator (including delegates and sub-delegates) pursuant to clause 3 amounts so deducted for payment to them as appropriate. "Proceedings" in this clause 13.1 means any action, claim or complaint made to a court, Ombudsman, tribunal, regulator, panel, forum or authority of any kind that can make legally binding rulings.

- 13.2 All such Charges (even where not expressly stated to be an expense of the Scheme) shall be an expense of the Scheme and shall be deducted from the Member's Fund in respect of which they have in the opinion of the Operator arisen or been incurred or relate to. If the Operator considers that any Charges have been incurred in relation to the Scheme generally rather than in relation to any particular Beneficiary or Member's Fund, then the Operator may deduct them from the General Fund or may otherwise decide how they will be apportioned and / or paid for out of the Fund.

#### **14 Application of the General Fund**

- 14.1 The Trustee acting at the direction of the Operator or the Operator may at any time recover out of the General Fund any Charges or other amounts permitted to be deducted under the Trust Deed or Rules or Terms and Conditions or by law to the extent the same are not recoverable from the relevant Members' Funds and may set aside so much of the remaining General Fund as the Trustee acting at the direction of the Operator or the Operator considers may be required to meet any such amounts in the future.

- 14.2 The Trustee acting at the direction of the Operator or the Operator may at any time apply any part of the General Fund not applied or set aside in accordance with clause 14.1 to:

- (a) create or augment a Member's Fund or otherwise provide new or increased benefits, either immediate or prospective, for any person; or
- (b) make a payment to a charity,

or in any other way which in the opinion of the Operator is consistent with the status of the Scheme as a Registered Pension Scheme (including for the avoidance of doubt where the Trustee or Operator may benefit from such application).

#### **15 Operator discretion relating to investments**

- 15.1 In relation to any Member's Fund, it is a decision for the Member or other relevant Beneficiary (subject to the Trust Deed and Rules and his Terms and Conditions) as to how his Member's Fund shall be invested, what the investment strategy for his Member's Fund should be, what investment options under the Scheme should be chosen, and what Investment Services Provider (if any) to invest through. The Trustee acting at the direction of the Operator and the Operator shall therefore exercise their powers, authorities and discretions in clause 16 in accordance with (and only in accordance with) any directions given by the relevant Beneficiary or his Instructor except that they may refuse to comply where any such instruction is not given in accordance with the Terms and Conditions or where to do so would in the opinion of the Operator:

- (a) lead to a breach of the Trust Deed or Rules or a payment or investment not specifically permitted by the Trust Deed or Rules or the making of an Unauthorised Payment;
- (b) prejudice the status of the Scheme as a Registered Pension Scheme;
- (c) prevent or unduly delay payment of Benefits or any other payment required for the proper administration of the Scheme;
- (d) breach any restrictions on particular assets or investments or classes or descriptions of investment which the Operator may in its absolute discretion impose from time to time for this purpose (whether those restrictions are imposed in respect of the whole Scheme or any particular category or description of Beneficiaries);
- (e) mean that an instruction that relates to an investment regulated under FSMA has been given by someone where the Operator is not satisfied that they are duly authorised to give such an instruction under FSMA;
- (f) mean that the instruction, investment or transaction to which it relates:
  - (i) is not permitted under the Trust Deed or Rules or Terms and Conditions;
  - (ii) would or might result in a liability to an unauthorised payments charge or any other tax charge;
  - (iii) would or might constitute Taxable Property;
  - (iv) carries an unacceptable level of legal risk or potential legal liability to the Trustee and / or Operator;
  - (v) is regarded by the Operator as a Non-mainstream Pooled Investment; or
  - (vi) is regarded by the Operator as a Non-Standard Asset; or
  - (vii) would otherwise breach applicable law or regulation or regulatory requirements or expectations or guidance

or where for some reason beyond the control of the Trustee or Operator the directions cannot be carried out.

Where a Beneficiary is a minor the Operator may also limit the investment options available under the Scheme in respect of that Member's Fund as it thinks appropriate.

15.2 For the purposes of any directions to be given by a Beneficiary in accordance with clause 15.1:

- (a) the Beneficiary may appoint an adviser or agent (**Instructor**) to provide instructions for and on his behalf to any Investment Services Provider or the Trustee or Operator about joining the Scheme, making investments, deciding on an investment strategy and / or appointing an Investment Services Provider, subject to the restrictions and conditions set out in the rest of this clause 15 and clause 16. No such appointment shall take effect until the Beneficiary and the proposed Instructor have provided the Operator with such information, documents or confirmations as the Operator may require and the Operator has confirmed that such appointment has taken effect. The Operator may terminate such appointment at its discretion upon written notice to the Beneficiary and the Instructor;

- (b) the Beneficiary may appoint any person acceptable to the Operator to give such directions and shall provide to the Operator any information, document or assurance that it may request in connection with such appointment;
- (c) if and for so long as the Beneficiary is a minor, or in the opinion of the Operator is unable to or does not have capacity to act for any reason, the Operator may act instead on the directions of any one or more of his parents, guardians, spouse or other person legally appointed or authorised to act on his behalf and the Operator shall not be under any liability to enquire further into the wishes of the Beneficiary; and
- (d) each Beneficiary shall direct the Trustee and Operator as to:
  - (i) how he wishes to invest his Member's Fund from time to time; and
  - (ii) whether he wishes to invest through one or more Investment Services Providers appointed by the Trustee acting at the direction of the Operator or the Operator from time to time in relation to the Scheme, to the extent that this is permitted by the Operator or under the Terms and Conditions from time to time;

to the extent permitted under the Scheme, by the Operator or under the Terms and Conditions from time to time

and

- (I) each Member's Fund may be invested wholly or partly in one or more investments and, to the extent permitted by law, without regard to the standard investment criteria within the meaning of section 4 of the Trustee Act 2000; and
- (II) before any investment is made in respect of all or part of a Member's Fund the relevant Beneficiary or Instructor must provide his instructions in such form as the Operator and the Terms and Conditions may require in any case.

## **16 Scheme Investments**

16.1 Subject to clause 15 and the rest of this clause 16 the Trustee acting at the direction of the Operator shall have in relation to the Fund and each Member's Fund full powers of investment and application in relation to such classes or types of investments and assets as the Operator decides to permit under the Scheme from time to time. Unless the Operator decides otherwise this may include the following:

- (a) purchase or effect insurance policies, deferred or immediate annuity policies, life assurance policies, retirement, endowment or sinking fund contracts or other policies or contracts of insurance or assurance, howsoever described, or units or partial interests therein, whether such interests are unit linked or not, and adding to or redeeming from same, and adding to or redeeming from any of them, at any time each of which are effected with an Insurer;
- (b) invest in unit trust and mutual funds (whether authorised or unauthorised) or participate in any scheme for the management or administration by deposit or otherwise of funds or monies of Personal Pension Schemes and operated by any Insurer or any other appropriately recognised institution or purchase shares in any authorised open ended investment companies or investment trusts;

- (c) by participating in any scheme or investment of any description operated or administered by an Insurer;
- (d) make any arrangements with an Insurer for the provision of all or any benefits under the Scheme;
- (e) open and operate accounts with any local authority, bank, Insurer, building society, finance company or deposit taker upon such terms as it thinks fit including with any institution which is issuing, responsible for or connected with a person who is issuing, responsible for or connected with any investment listed in limbs (a) to (d) above and retain on current or deposit account such monies under the Members' Funds or the Fund as are not otherwise immediately required for investment and otherwise use such monies for the purposes of:
  - (i) the payment of Scheme expenses and Charges;
  - (ii) investment transactions; and
  - (iii) any other purposes which the Operator thinks fit in relation to the Scheme

and the Trustee acting at the direction of the Operator or the Operator may make such arrangements as it sees fit from time to time regarding the operation of any such account including any arrangements for the signing and endorsement of cheques and mandates;

and the Trustee acting at the direction of the Operator may:

- (i) vary or transpose any money or other investments or assets for or into any others of a nature authorised by this clause 16;
- (ii) exercise any rights, discretions, authorities or powers under or in respect of any such investment or asset (inclusive of the power of granting any indemnity in relation thereto) as though it was the absolute and beneficial owner of it; and
- (iii) sell, lend, lease, license, surrender, assign, convert, repair, alter, improve, maintain, develop, demolish, vary or transpose any investments or assets of the Fund;

in each case to the fullest extent consistent with the terms of the Trust Deed and Rules and to the extent that they do not in the opinion of the Operator constitute Taxable Property.

16.2 The Trustee acting at the direction of the Operator may exercise any of its powers, duties, authorities or discretions under this clause 16:

- (a) alone or jointly with the trustees of any other pension scheme or with any other person on such terms as they may agree;
- (b) whether or not producing interest or dividends or any other form of income;
- (c) whether or not involving a wasting or depreciating asset or any interest in an asset which is reversionary or limited in any other way;
- (d) whether or not involving any liability on the Trustee or Operator or the Fund; and

- (e) whether or not the Trustee or the Operator or any delegate, sub-delegate, agent, adviser or other person appointed under clause 3 or any person connected or associated with any of them, has a personal interest or interest or duty in another fiduciary capacity.
- 16.3 Any provision made under the power to insure in respect of any Benefit (whether immediate or contingent) may be made by effecting an individual annuity contract or policy in the name of the Beneficiary or of the Trustee (acting at the direction of the Operator) or by the Trustee (acting at the direction of the Operator) assigning any such contract or policy to the Beneficiary. Each contract or policy shall be subject to any terms and conditions necessary to comply with the 1993 Act or any other applicable law.
- 16.4 The Scheme shall not make a loan to a Member or to a person connected with a Member.
- 16.5 Section 993 of the Income Tax Act 2007 applies for the purposes of determining whether a person is connected with a Member for the purposes of this clause 16.
- 16.6 The Scheme shall not guarantee a loan made to or in respect of a Member or person connected with a Member.
- 16.7 If the Trustee or Operator retains money in a current or deposit account pursuant to clause 16 with a bank or similar financial institution, the bank or financial institution may:
- (a) apply such charges to the Scheme or any Member's Fund as are agreed (in either case) with the Trustee (acting at the direction of the Operator) and / or the Operator, including the same or different charges applied to any other customer of the bank or financial institution for banking services;
  - (b) and in this respect the Trustee (acting at the direction of the Operator) and the Operator may also retain any commission, payment, interest, charge or any resultant profit made out of such retention
- however in all cases the Trustee acting at the direction of the Operator or Operator (as appropriate) shall disclose any information relating to such commission, payment, interest, charge or profit as may be required from time to time in accordance with applicable law.
- 16.8 Where provided for in the Terms and Conditions, the Member may with the consent of the Operator select an "auto-disinvest strategy" under which assets or investments attributable to his Member's Fund shall be automatically liquidated by the Trustee (acting at the direction of the Operator) where the level of cash attributable to the Member's Fund falls below a pre- agreed level set out in the Terms and Conditions. The assets and investments that may be subject to the auto-disinvest strategy, and the approach to the selection of assets and investments for sale or liquidation, shall be as set out in the Terms and Conditions (if at all).
- 16.9 The Operator and / or the Terms and Conditions may prescribe from time to time the circumstances in which an auto-disinvest strategy shall be a compulsory requirement of Membership. Where those circumstances apply and any conditions required for implementation of the auto-disinvest strategy are triggered, the Trustee shall at the direction of the Operator implement the auto-disinvest strategy as directed by the Operator.
- 16.10 Without prejudice to clauses 11 or 16.7 the Trustee acting at the direction of the Operator and the Operator may each retain any other profit, payment, interest, charge or commission received directly or indirectly by either of them from any person:

- (a) in connection with the Scheme; or
- (b) as a consequence of acting as Trustee or Operator; or
- (c) for any acts undertaken or agreements made as Trustee or Operator respectively; or

which would in the absence of the authority conveyed by this clause create a conflict between the Operator's / Trustee's own interests and its fiduciary duties in all cases without the consent of any other person.

## **17 Taxation**

17.1 The Trustee acting at the direction of the Operator or the Operator or Scheme Administrator may recover from present or future Benefits or entitlements under the Scheme in respect of a Beneficiary or former Beneficiary (**Chargeable Person**) an amount reflecting any liability of the Scheme Administrator in respect of the lifetime allowance charge in respect of that Chargeable Person. This does not authorise the reduction of entitlement to a Benefit which has not crystallised except that in relation to which the lifetime allowance charge arises. Without prejudice to the generality of the preceding part of this clause, the methods of recovery of the lifetime allowance charge include reduction of Benefits or entitlements and which may be determined as the Scheme Administrator decides.

17.2 The Trustee acting at the direction of the Operator or the Operator or Scheme Administrator may deduct from any Benefit, any payment under the Scheme or from any relevant Member's Fund any tax, interest, penalty or charge for which it may be liable or which any of them has agreed to meet on behalf of a Chargeable Person. For the purposes of this clause a Member's Fund is a relevant Member's Fund if the tax, interest, penalty or charge arises in connection with a Beneficiary to whom the Member's Fund relates or is related to or the assets or investments notionally attributable to that Member's Fund. Where the Scheme Administrator is uncertain of the extent of any such liability, it may at its absolute discretion either deduct such amount as it may determine acting in good faith to be the relevant amount or postpone making the payment or Benefit until it can establish the amount of the tax liability with more certainty or until it is satisfied that the liability does not exist or has been adequately provided for.

17.3 The Trustee acting at the direction of the Operator or the Operator or Scheme Administrator may in exercising any of their respective powers under this clause or otherwise make deductions in respect of the following:

- (a) a special lump sum death benefits charge pursuant to section 206 of the 2004 Act; an
  - (b) unauthorised payments charge pursuant to section 208 of the 2004 Act;
  - (c) an unauthorised payments surcharge pursuant to section 209 of the 2004 Act; a
  - (d) lifetime allowance charge pursuant to section 214 of the 2004 Act;
  - (e) an annual allowance charge pursuant to section 227 of the 2004 Act; a
  - (f) scheme sanction charge pursuant to section 239 of the 2004 Act;
  - (h) inheritance tax;
  - (i) value added tax; and
- a serious ill-health lump sum charge pursuant to section 205A of the 2004 Act.


17.4 Without prejudice to the rest of this clause 17 the Trustee acting at the direction of the Operator or the Operator or Scheme Administrator may deduct from any Benefit or payment relating to a Chargeable Person an amount corresponding to any tax which it is liable to pay or account for to HMRC or any other tax authority, provided that:


- (a) if a lifetime allowance charge is payable, the Chargeable Person must make any election required by law; and
- (b) if a Chargeable Person incurs an annual allowance charge and the Scheme Administrator becomes jointly liable to pay the annual allowance charge (either following receipt of a notice under section 2378(3) of the 2004 Act or otherwise):
  - (i) the Scheme Administrator may exercise its powers under this clause in circumstances where it is jointly liable with any other person to pay a tax;
  - (ii) the Scheme Administrator may make a corresponding adjustment to the Chargeable Person's Benefits or Member's Fund to account for the costs of such annual allowance charge and in doing so may take such steps as the Scheme Administrator considers appropriate subject to any overriding law;
  - (iii) the Scheme Administrator may rely on any information provided by or on behalf of the Chargeable Person or HMRC; and
  - (iv) if the Chargeable Person becomes liable to pay any tax charge, interest or penalty in connection with an annual allowance charge for which the Scheme Administrator has become jointly liable (including an unauthorised payments charge), neither the Trustee nor the Operator nor the Scheme Administrator shall be liable to pay such charge, interest or penalty.

**In witness** of which this Trust Deed and the Rules are executed as a deed and delivered on the Effective Date

Executed as a deed and delivered when dated by


**MES PENSION TRUSTEES LIMITED** acting by:


Director Signature:   
Name: Cameron Law

Witness Signature:   
Name: Mohammed Tanjil Ahmed

Executed as a deed and delivered when dated by

**MES FINANCIAL SERVICES LIMITED** acting by:

Director Signature:   
Name: Cameron Law

Witness Signature:   
Name: Mohammed Tanjil Ahmed



## Rules

### 1 Eligibility

1.1 All Benefit rights and entitlements under the Scheme must be comprised in one or more Arrangements.

1.2 A person shall be admitted to Membership only if the Operator agrees. Subject to the rest of this Rule 1, any applicable statutory cancellation rights (unless waived) and overriding law, the Operator shall have absolute discretion to determine when a person has become a Member and when a person has ceased to be a Member, whether on death, retirement, a transfer out, a Member's Fund being exhausted for any reason or otherwise.

1.3 A person who wants to become a Member (or his parent or legal guardian where that person is a minor) shall take such steps and complete an application in such form and enter into such Terms and Conditions of Membership as may be required by the Operator from time to time. Any parent or legal guardian that does so on behalf of a minor shall do so as agent for that minor.

1.4 The Operator may require:

- (a) a Member who joined as a minor and who reaches age 18 (or 16 in Scotland); and
- (b) a Beneficiary other than a Member

to take such steps, complete such application in such form and / or enter into or ratify such Terms and Conditions of Membership as may be required by the Operator. If the minor or other Beneficiary fails to comply with any such requirements the Operator may modify the terms of Membership applicable to that person as the Operator in its absolute discretion thinks fit. However for the avoidance of doubt the Membership of a Beneficiary other than a Member is only permitted on the basis that the Beneficiary consents or is deemed to consent to be bound by the Terms and Conditions applicable to the Member from whom the Beneficiary's Membership derives (subject to the Operator's rights to vary those Terms and Conditions from time to time or to apply modified Terms and Conditions to reflect the Beneficiary's status or category of Membership or otherwise). References in the Rules to a Member includes a Beneficiary other than the Member who has been admitted to Membership pursuant to this Rule 1, whether following the death of the Member or otherwise, as the context requires.

1.5 The Operator may from time to time require different steps to be taken and / or set different Terms and Conditions of Membership (and application forms and Fee Schedules), including different Charges and different investment options, for different Beneficiaries or other persons as it in its absolute discretion thinks fit.

1.6 Upon completion of such documents and steps as required in accordance with this Rule and upon receipt of a contribution or transfer payment the Operator shall establish the Member's Fund for the individual under the Scheme.

1.7 Subject to the agreement of the Operator and the rest of this Rule 1 an Ex-Spouse may become a Member. The Operator shall have an absolute discretion to decide whether or not, in any particular case, it will allow an Ex-Spouse to become a Member, and may impose such Terms and Conditions as to Membership as it in its absolute discretion shall decide.

- 1.8 Without prejudice to Rule 1.2, in the event that the assets or investments of a Member's Fund are utilised in their entirety in accordance with the provisions of the Trust Deed or Rules or Terms and Conditions, in the event that a Member's Fund receives no assets by way of contributions or transfers in within a time period determined by the Operator, the Operator may determine that the Member's Fund and the relevant Membership have ceased to exist or were not established, as applicable.

## **2 Making Arrangements**

### **2.1 Single or Multiple Arrangement(s)**

Subject to the consent of the Operator a Member may make:

- (a) a single Arrangement in which case these Rules will apply to that Arrangement;
- (b) more than one Arrangement in which case these Rules will subject to the following provisions of this Rule 2 apply to each Arrangement separately.

Nothing in Rule 2.1(b) shall prevent the Trustee acting at the direction of the Operator or Operator from taking into account one or more other Arrangements in relation to a Member to the extent that they are required to do so by law. Without prejudice to the generality of the foregoing provision, the Trustee acting at the direction of the Operator and/or Operator as appropriate shall take into account other Arrangements in relation to the Member where this is considered helpful or expedient for the proper administration of the Scheme and/or for the proper tax treatment of the Scheme and/or benefits payable under it.

### **2.2 Operator's discretion to determine number of Arrangements**

The Operator shall have the maximum discretion permitted by law to determine the number and extent of the Arrangements which exist in respect of a Member. The Operator shall have the fullest powers and discretions permitted by law to split an Arrangement into two or more Arrangements and to amalgamate two or more Arrangements into a single Arrangement.

### **2.3 Separate benefits from separate Arrangements**

Different Arrangements (whether different at the time of being created or whether originating from a single Arrangement) may produce separate pensions, annuities, income withdrawals or lump sums payable under the Rules.

### **2.4 Trust Deed and Rules override terms of Arrangements**

Arrangements may not conflict with the Trust Deed or Rules unless specifically agreed in writing by the Operator.

## **3 Contributions**

### **Eligibility to make contributions**

- 3.1 A Member may make such contributions to the Scheme and at such frequencies as shall be permitted by the Operator. The Operator may from time to time set minimum and maximum levels for contributions in respect of any person. The Operator may vary the permitted frequency of contributions depending on the payment method selected by the Member and permitted by the Operator.

### **Permitted contributions**

- 3.2 The Scheme may accept such of the following as the Operator permits:
- (a) contributions by Members;
  - (b) contributions made on behalf of a Member and paid by another person (see Rule 3.3);
  - (c) contributions by a Member's employer(s).
- 3.3 If the Operator permits, payments may be made by a person other than the Member if the payments are being made on their behalf and the Member (or, if relevant, his parent or legal guardian) is aware of the payment and any other requirements of the applicable Terms and Conditions are complied with. These payments will be treated as a contribution made by the Member (see Rule 3.2).
- 3.4 When a Benefit under any Arrangement becomes payable no further contributions may be paid to that Arrangement unless the Arrangement has become more than one Arrangement under Rule 2.2 or unless the Operator decides otherwise.

### **Member contributions**

- 3.5 Subject to Rule 3.6 contributions may only be paid as the Operator permits in money form.

### **"In Specie" contributions**

- 3.6 In specie contributions to the Scheme are not permitted.

### **Use of contributions**

- 3.7
- (a) Contributions and their proceeds under the Scheme shall be used to provide Benefits in accordance with these Rules, except so far as they are subject to deductions authorised under the Trust Deed or Rules or overriding law.
  - (b) The Operator shall ensure that the contributions paid to the Scheme by or in respect of a Member and any transfer payment accepted by the Scheme in respect of a Member are applied to that Member's Arrangements in accordance with the applicable Terms and Conditions and application forms.
  - (c) The Scheme Administrator may make such arrangements for tax reclaims as it in its discretion thinks fit subject to compliance with applicable tax laws.

### **Using contributions to buy life insurance**

- 3.8 A Member may, if the Operator agrees, choose for all or part of the contributions in respect of him to be used as premiums on a life insurance contract which provides for a lump sum to be paid only if the Member dies before a specified age. Any such lump sum shall be paid in accordance with Rule 6.10.

## **4 Date Member's Benefit start**

### **Multiple Arrangements**

- 4.1 Where a Member has made more than one Arrangement, the provisions of this Rule 4 apply to each Arrangement separately. This means that Benefits may start at different times from each Arrangement.
- 4.2 Benefits may be provided on the basis that part only of the Member's Fund is to be applied for the provision of Benefits.
- 4.3 Subject to Rules 4.4 to 4.6, payment of a Benefit derived from the Member's Fund commences on such a

date as is chosen by the Member, but cannot be earlier in any case than his or her Normal Minimum Pension Age.

#### **Pension Credit Rights**

- 4.4 Pension Credit Rights must come into payment in accordance with Rule 4.3 in which case references in that Rule to the Member's Normal Minimum Pension Age shall be construed as references to the Ex-Spouse's Normal Minimum Pension Age.

#### **Incapacity below Normal Minimum Pension Age**

- 4.5 A Benefit may come into payment earlier than Normal Minimum Pension Age if in the opinion of the Scheme Administrator the Member satisfies the Ill-health Condition.

#### **Protected pension age**

- 4.6 Where the Member has a "protected pension age" by virtue of paragraph 23 of schedule 36 of the 2004 Act, payment of a Benefit derived from the Member's Fund may commence on such protected pension age.

### **5 Benefits for Member**

#### **Multiple Arrangements**

- 5.1 Where the Member has made more than one Arrangement under the Scheme in accordance with Rule 2.1 the rest of this Rule 5 applies to each Arrangement separately, unless otherwise stated or the Operator decides otherwise.

#### **Split Arrangements**

- 5.2 Where the Member's Fund is 'split' into two Arrangements in accordance with Rule 2.2 then the rest of this Rule 5 applies to each separate Arrangement, as in Rule 5.1.

#### **Member's choice of lump sum**

- 5.3 The Member may choose to receive a lump sum in accordance with and subject to the following provisions of this Rule 5.3.
- (a) If the circumstances are such that the 2004 Act permits a Pension Commencement Lump Sum to be paid in connection with a person becoming entitled to Income Withdrawal or a Lifetime Annuity the Trustee shall if so directed by the Member with the agreement of the Operator apply part of the Member's Fund in paying a Pension Commencement Lump Sum to the Member. The amount of the Member's Fund so applied and the timing of the payment shall be consistent with the Pension Conditions and with such lump sum satisfying the statutory requirements for a Pension

Commencement Lump Sum but shall otherwise be at the discretion of the Member with the agreement of the Operator. For the avoidance of doubt the Operator may refuse to pay a Pension Commencement Lump Sum where it considers that this may breach the "lump sum recycling" provisions of the 2004 Act or related HMRC guidance or (as a result) constitute an Unauthorised Payment.

- (b) If the Member has reached Normal Minimum Pension Age or the Ill-health Condition is met in respect of him and the circumstances are such that the 2004 Act permits an Uncrystallised Funds Pension Lump Sum to be paid, the Trustee shall if so directed by the Member with the agreement of the Operator apply all or part of the Member's Fund in paying such Uncrystallised Funds Pension Lump Sum to the Member.
- (c) If the Member has reached Normal Minimum Pension Age (or the Ill-health Condition is met in respect of him) and the circumstances are such that the 2004 Act permits a Lifetime Allowance Excess Lump Sum to be paid, the Trustee shall if so directed by the Member with the agreement of the Operator apply all or part of the Member's Fund in paying such Lifetime Allowance Excess Lump Sum to the Member.
- (d) If:
  - (i) the Scheme Administrator has received evidence from a registered medical practitioner that the Member is expected to live for less than one year; and
  - (ii) the other requirements for payment of a Serious Ill-health Lump Sum in respect of the Member are met,

the Trustee shall if so directed by the Member with the agreement of the Operator apply the Member's Fund in payment of a Serious Ill-health Lump Sum. Such payment shall extinguish the Member's entitlement to Benefits under the Arrangement.

- (e) If the circumstances are such that a Refund of Excess Contributions Lump Sum may be paid in respect of a Member, the Trustee shall if so directed by the Member with the agreement of the Operator pay such a lump sum to the Member.
- (f) If the circumstances are such that the payment will be of a type set out in Part 2 of the Registered Pension Schemes (Authorised Payments) Regulations 2009, the Trustee shall if so directed by the Member with the agreement of the Operator pay such a lump sum to the Member.
- (g) The Operator may at its absolute discretion permit any other lump sum Benefit to be paid from the Scheme for a Beneficiary provided that this would not constitute an Unauthorised Payment and any other overriding or applicable legal requirements are satisfied.

#### **Drawdown**

- 5.4 Any question as to whether any part of a Member's Fund comprises a Member's Drawdown Pension Fund or a Member's Flexi-access Drawdown Fund shall be determined in accordance with paragraphs 8 to 8D of schedule 28 of the 2004 Act.
- 5.5 A Member may with the agreement of the Operator and subject to the provisions of the 2004 Act designate the whole or such part of his Member's Fund as the Operator agrees as "available for the payment of drawdown pension" for the purposes of paragraph 8A(2)(a) of schedule 28 of the 2004 Act.

- 5.6 A Member may with the agreement of the Operator designate part of his Member's Fund as "available for the payment of drawdown pension" in the circumstances set out in sub-paragraph (aa) of sub-paragraph (1A) of paragraph 8 of schedule 28 of the 2004 Act {designation post-6 April 2015 under existing arrangement which includes pre-6 April 2015 capped drawdown funds}.
- 5.7 Where the circumstances set out in sub-paragraph (1) of paragraph BC of schedule 28 of the 2004 Act apply {member notification to convert drawdown fund to flexi-access drawdown fund}, the Operator shall have the maximum discretion permitted by law to decide whether to accept the Member's notification and to determine the time at which such notification takes effect.
- 5.8 Any question as to whether any part of a Member's Fund comprises a Dependents' Drawdown Pension Fund or a Dependants' Flexi-access Drawdown Fund shall be determined in accordance with paragraphs 22 to 220 of schedule 28 of the 2004 Act.
- 5.9 Where the circumstances set out in sub-paragraph (1) of paragraph 22C of schedule 28 of the 2004 Act apply {dependant notification to convert drawdown fund to flex-access drawdown fund}, the Operator shall have the maximum discretion permitted by law to decide whether to accept the Dependants' notification and to determine the time at which such notification takes effect.

**Provision of Pension**

- 5.10 At any time from a Member reaching Normal Minimum Pension Age, or from the Ill-health Condition being satisfied in relation to the Member if earlier, the Trustee shall if so directed by the Member with the agreement of the Operator apply all or such part as the Member with the agreement of the Operator may determine of the Member's Drawdown Pension Fund and/or the Member's Flexi-access Drawdown Fund for the purpose of providing Income Withdrawal or towards the purchase of a Short-term Annuity.
- 5.11 At any time from a Member attaining Normal Minimum Pension Age, or the Ill-health Condition being met in respect of the Member if earlier, the Trustee shall if so directed by the Member with the agreement of the Operator apply all or such part of a Member's Fund as the Member with the agreement of the Operator may determine towards the purchase of a Lifetime Annuity.
- 5.12 Any pension, income withdrawal or annuity provided pursuant to Rule 5.10 or 5.11 may be provided on such terms (consistent with the other provisions of this Rule 5) as the Member with the agreement of the Operator determines provided that such terms are consistent with compliance with the Pension Conditions. Without prejudice to the generality of this Rule 5.12, such terms may include:
- (a) provision for payment to continue to be made to any person after a Member's death; and/or
  - (b) provision for pension, income withdrawal or an annuity to increase or decrease once in payment
- provided this is on terms consistent with compliance with the Pension Rules.
- 5.13 Without prejudice to the generality of Rule 5.12, any annuity, income withdrawal or pension may be provided on terms that it will be payable to one or more survivors of the Member in the event of the Member's death subject to compliance with the Pension Conditions and the Pension Death Benefit Rules. Without prejudice to the generality of the foregoing, this includes the purchase of a Dependants' Annuity or Nominees' Annuity.

5.14 Where a Lifetime Annuity is provided for a Member, the Trustee shall if so directed by the Member with the agreement of the Operator provide for this to be on terms that an Annuity Protection Lump Sum Death Benefit will be payable in the event of the Member's death before such date as the Member with the agreement of the Operator may determine. Any such Annuity Protection Lump Sum Death Benefit shall be payable:

- (a) in accordance with any specific provision regarding payment of such sums under the contract(s) applying to the Arrangements in question; or
- (b) if (a) is not applicable in accordance with Rule 6.10.

**Operator's role in relation to benefit provision**

5.15 Subject to Rule 5.16, in relation to the exercise of its powers under Rules 5.3 { choice of lump sum}, 5.4 {designation as available for drawdown} and 5.10 to 5.14 {provision of pension} the Operator shall act in accordance with any written instructions received from the Member or on behalf of the Member (and as permitted under the Trust Deed or Rules and the Terms and Conditions) **(Instructions)** but subject to the following conditions:

- (a) the Operator shall not be obliged to act in accordance with any Instructions if in the Operator's opinion to do so would cause it to breach the Pension Conditions;
- (b) the Operator shall not be required to act in accordance with any Instructions if in the Operator's opinion it is not reasonably practicable to comply with them or if the cost of so doing would, in the opinion of the Operator, be disproportionate to the value of the Benefits concerned;
- (c) the Operator shall be entitled to request from such persons such information and documentation as it may reasonably require to satisfy itself that acting in accordance with the Instructions will not contravene the provisions of Rules 5.4 to 5.14, and to delay acting in accordance with such Instructions pending receipt of such documentation or information;
- (d) where giving effect to Instructions will require the realisation of assets or investments of the Fund, the Operator shall be entitled to delay the paying or securing of any Benefit pending the realisation of such assets or investments; and
- (e) if the Operator becomes aware that:
  - (i) the power to give Instructions under this Rule 5.15 has become exercisable by a creditor of the Member or the Member's trustee in bankruptcy (including a person acting on behalf of such creditor or trustee in bankruptcy); or
  - (ii) Instructions under this Rule 5.15 are being given at the behest of a Member's creditor or trustee in bankruptcy; or
  - (iii) the Member's Fund or the Member's rights or Benefits under the Scheme are the subject of a court order or legal proceedings,

the Operator shall have discretion as to whether to act in accordance with the Instructions or not (subject to overriding law).

5.16 Nothing in this Rule 5 or elsewhere in the Trust Deed or Rules is to be construed as conferring any right on any person to direct the Trustee or the Operator or the Scheme Administrator in the exercise of their powers, rights, authorities and discretions in circumstances where they

hold sums on discretionary trust.

**Right to choose Insurer: open market option**

- 5.17 The Member has the right to choose the Insurer from whom an annuity is to be purchased. Once the Member has chosen the Insurer he must inform the Operator in accordance with the requirements of the Operator.
- 5.18 The Trustee acting at the direction of the Operator or the Operator shall be entitled to deduct from the Member's Fund such amounts as are required by the Insurer to provide the annuity or keep the insurance or assurance in force and pay them to the Insurer provided that the provision of such policy of insurance or assurance is in accordance with the requirements of the Rules.

**6 Death of a Member**

- 6.1 On the death of a Member, any death benefits payable pursuant to Rules 5.10 to 5.15 shall become payable.
- 6.2 If after applying the provisions of Rules 5.10 to 5.15 in relation to death benefits the Member's Fund includes Relevant Uncrystallised Funds, the Trustee shall apply that part of the Member's Fund comprising Relevant Uncrystallised Funds in such one or more of the following ways as the Operator in its absolute discretion determines:
- (a) application of all or part of such Relevant Uncrystallised Funds in the payment of an uncrystallised funds lump sum death benefit within the meaning of paragraph 15 of schedule 29 of the 2004 Act. Any such lump sum shall be payable in accordance with Rule 6.10;
  - (b) if the circumstances are such that the 2004 Act permits the payment of a Charity Lump Sum Death Benefit, payment of all or part of such Relevant Uncrystallised Funds to the charity nominated by the Member for this purpose;
  - (c) if the circumstances so permit, application of all or part of such Relevant Uncrystallised Funds in the provision of one or more Dependants' Annuities or Nominees' Annuities;
  - (d) designation of all or part of such Relevant Uncrystallised Funds as available for the payment of Dependants' Drawdown Pension; and
  - (e) designation of all or part of such Relevant Uncrystallised Funds as available for the payment of Nominees' Drawdown Pension.
- 6.3 Where the Member dies and the other conditions set out in the 2004 Act for payment of a Trivial Commutation Lump Sum Death Benefit are met, the Trustee shall if the Operator in its discretion directs pay a Trivial Commutation Lump Sum Death Benefit to a Dependant of the relevant Member or to any other person to whom a Trivial Commutation Lump Sum Death Benefit may be paid.
- 6.4 Where a Member dies and at the time of the Member's death he was entitled to Income Withdrawal under an Arrangement under the Scheme, the Trustee shall apply that part of the Member's Fund comprising the Member's Drawdown Pension Fund and/or the Member's Flexi- access Drawdown Fund in such one or more of the following ways as the Operator in its absolute discretion (subject to the 2004 Act so permitting) determines:
- (a) where all or part of the Member's Fund immediately preceding his death comprised a Member's Drawdown Pension Fund, payment of a Drawdown Pension Fund Lump



- Sum Death Benefit. Any such lump sum shall be payable in accordance with Rule 6.10;
- (b) where all or part of the Member's Fund immediately preceding his death comprised a Member's Flexi-access Drawdown Fund, payment of a Flexi-Access Drawdown Fund Lump Sum Death Benefit. Any such lump sum shall be payable in accordance with Rule 6.10;
  - (c) application of the relevant funds in the purchase of one or more Dependants' Annuities or Nominees' Annuities;
  - (d) designation as available for the payment of Dependants' Drawdown Pension;
  - (e) designation as available for the payment of Nominees' Drawdown Pension; and
  - (f) payment of a Charity Lump Sum Death Benefit.
- 6.5 Subject to compliance with the Pension Death Benefit Rules, the Trustee shall if the Operator so determines apply all or part of a Dependants' Drawdown Pension Fund or Dependants' Flexi-access Drawdown Fund for the purposes of providing a Dependants' Annuity or Dependants' Short-term Annuity or Dependants' Income Withdrawal.
- 6.6 Subject to compliance with the Pension Death Benefit Rules, the Trustee shall if the Operator so determines apply all or part of a Nominee's Flexi-access Drawdown Fund for the purposes of providing a Nominees' Annuity, Nominees' Short-term Annuity or Nominees' Income Withdrawal.
- 6.7 A Member may nominate a nominee for the purposes of paragraph 27A of schedule 28 of the 2004 Act. The Scheme Administrator may make a nomination for the purposes of paragraph 27A of schedule 28 of the 2004 Act subject to the terms of that paragraph. The Scheme Administrator shall have the maximum discretion permitted by law to determine the form and content of a nomination for the purposes of paragraph 27A of schedule 28 of the 2004 Act (nominees).
- 6.8 A Dependant, Nominee or Successor of a Member may nominate a Successor. The Scheme Administrator may nominate a Successor subject to the terms of paragraph 27F of schedule 28 of the 2004 Act. The Scheme Administrator shall have the maximum discretion permitted by law to determine the form and content of such nomination.
- 6.9 [This rule is deliberately left blank]
- 6.10 In respect of benefits expressed to be payable in accordance with this Rule 6.10 (**Death Benefit**):
- (a) any Death Benefit shall be held by the Trustee acting at the direction of the Operator on discretionary trusts to be distributed on such terms and in such shares as the Trustee acting at the direction of the Operator decides to or for the benefit of any of the deceased's Death Benefit Beneficiaries except where Rule 6.12 applies. The Trustee shall if so directed by the Operator establish a trust or trusts, on such terms as the Trustee acting at the direction of the Operator considers appropriate, for the benefit of one or more Death Benefit Beneficiaries and shall pay to the trust(s) all or such part of the Death Benefit as the Operator directs. Any costs and expenses incurred in establishing the trust(s) or making payment to it/them shall be deducted from the Death Benefit if the Operator so directs;

- (b) such sums are (subject to the Scheme Administrator's power set out below to extend the two year period) to be paid out within the period of two years beginning with the earlier of the day on which the Scheme Administrator first knew of the deceased's death and the day on which the Scheme Administrator could first reasonably have been expected to have known of it. If all or part of the lump sum remains unpaid at the end of two years from the date of death of the deceased it will, subject to the Scheme Administrator's power referred to below to extend the period, be paid to his estate except where his estate would normally pass as ownerless assets to the crown. If a lump sum would be payable to the deceased's estate where such estate would normally pass as ownerless assets to the Crown the lump sum will instead be retained as part of the General Fund;
  - (c) the two year time period specified in paragraph (b) may be extended by the Scheme Administrator to such longer time period as it determines in any case. Such determination may be made retrospectively;
  - (d) the Operator may take account of any expression of wish form completed by the deceased regarding the disposal of any Death Benefit but it shall not be obliged to act in accordance with it;
  - (e) if the Operator is unable to identify and locate any Death Benefit Beneficiaries of the deceased the Operator may direct the Trustee to pay the Death Benefit in such proportions as the Operator decides to such other trust, person or organisation as the Operator may direct and the Trustee shall comply with any direction given by the Operator pursuant to this Rule 6.10;
  - (f) where any person challenges or complains about any decision relating to who should receive any Death Benefit, any legal or other professional costs or expenses incurred by the Trustee (acting at the direction of the Operator) or the Operator in dealing with the challenge or complaint shall be an expense of the Scheme, save that the Operator may at its discretion decide that they shall instead be deducted from the Death Benefit in question.
- 6.11 Any pension or annuity provided pursuant to this Rule 6 may be provided on such terms (consistent with the other provisions of this Rule 6) as the Operator in its absolute discretion determines provided that such terms are consistent with compliance with the Pension Conditions and the Pension Death Benefit Rules.
- 6.12 This Rule applies where prior to his death a Member made a binding nomination in relation to any lump sum death benefit that would otherwise be dealt with under Rule 6.10 but for this Rule 6.12. Where this Rule applies any lump sum death benefit payable under the Rules shall instead be paid by the Trustee in accordance with the terms of the Member's nomination and shall be treated as legally binding by the Trustee and the Operator.

## **7 Death of a Dependant, Nominee or Successor**

- 7.1 If a Dependant, Nominee or Successor of a deceased Member dies and such person was at the date of his death entitled to Dependants' Income Withdrawal, Nominees' Income Withdrawal or Successors' Income Withdrawal in respect of an Arrangement relating to a deceased Member, the Trustee shall apply the relevant Dependants' Drawdown Pension Fund, Dependants' Flexi-access Drawdown Fund, Nominees' Flexi-access Drawdown Fund or Successors' Flexi-access Drawdown Fund in such one or more of the following ways as the Operator shall in its absolute discretion (subject to the 2004 Act so permitting) determine:

- (a) payment of a Drawdown Pension Fund Lump Sum Death Benefit. Any such lump sum shall be payable in accordance with Rule 6.10;
- (b) payment of a Flexi-access Drawdown Fund Lump Sum Death Benefit. Any such lump sum shall be payable in accordance with Rule 6.10;
- (c) purchase of one or more Successors' Annuities;
- (d) designation as available for payment of Successors' Drawdown Pension; or
- (e) payment of a Charity Lump Sum Death Benefit.

7.2 Subject to compliance with the Pension Death Benefit Rules, the Trustee shall if the Operator so determines apply all or such part as the Operator determines of a Successors' Flexi-access Drawdown Fund for the purposes of providing a Successors' Annuity, Successors' Short-term Annuity or Successors' Income Withdrawal.

## **8 Transfer out of the Scheme**

### **Member's right to a cash equivalent**

8.1 A Member has a right to a cash equivalent to the extent provided under the provisions of Chapter 1 of Part 4ZA of the 1993 Act.

If a Member exercises his statutory right to a cash equivalent transfer value, all the Member's accrued rights in all Arrangements under the Scheme must be transferred.

### **Transfer payments**

8.2 Where in accordance with these Rules there exists a Dependents' Drawdown Pension Fund, Dependant's Flexi-access Drawdown Fund, Nominee's Flexi-access Drawdown Fund or Successor's Flexi-access Drawdown Fund which has not been applied for the purchase of an annuity, the Trustee shall if so directed by the Operator at the written request of the Dependant, Nominee or Successor allow such fund to be transferred in accordance with Rule 8.

The Trustee shall if so directed by the Operator at the written request of an Ex-Spouse allow a transfer under this Rule 8 in respect of Pension Credit Rights.

### **Receiving Scheme**

8.3 The Member's Fund may be transferred to:

- (a) another Registered Pension Scheme;
- (b) a Qualifying Recognised Overseas Pension Scheme; or
- (c) any other scheme or arrangement provided that the transfer to such scheme or arrangement will constitute a Recognised Transfer

and for the avoidance of doubt assets may at the discretion of the Operator be transferred in- specie.

### **Member withdrawing a request**

8.4 A transfer value request may be withdrawn by giving the Operator notice in writing to that effect

but only provided the Trustee (acting at the direction of the Operator) or Operator has not already entered into a binding agreement with a third party to make the transfer to the other scheme. A person who has withdrawn a request may make another.

#### **Discharge of rights**

- 8.5 Once a transfer has been effected under this Rule 8 all rights and Benefits under the Scheme relating to or in respect of the Beneficiary shall, subject to Rule 8.6, be extinguished. Accordingly he and all others claiming in respect of him shall have no further interest, Benefit, entitlement or claim in relation to the Scheme in respect of the transferred funds.
- 8.6 If a partial transfer value is paid in respect of a Beneficiary's benefits, Rule 8.5 shall only apply to such part of the interest, Benefit, entitlement or claim as the Operator may determine and shall apply as modified accordingly.

#### **9 Transfers in**

- 9.1 The Trustee acting at the direction of the Operator or the Operator may, if a Member so requests and the Operator agrees at its absolute discretion, accept a transfer payment representing the value of the Member's rights under another scheme and for the avoidance of doubt assets may at the discretion of the Operator be transferred in-specie. Acceptance of a transfer-in and the Benefits to be provided under the Scheme may be subject to any such additional or revised Terms and Conditions as may be required by the Trustee acting at the direction of the Operator or the Operator.
- 9.2 Neither the Trustee acting at the direction of the Operator nor the Operator shall accept a transfer payment representing the value of the Member's rights under another scheme that is a Non Recognised Transfer.
- 9.3 Upon receipt of the transfer payment the Member's Fund shall be credited with the transferred assets and / or such notional assets as the Operator may determine.
- 9.4 Any question as to whether any transferred in funds constitute Member-designated Funds or Dependant-designated Funds, shall be determined in accordance with paragraph 80 or 220 respectively of schedule 28 of the 2004 Act.
- 9.5 In connection with any such transfer the Trustee acting at the direction of the Operator and the Operator shall have power to provide such information to such persons as may be required by the 1993 Act or the 2004 Act or otherwise as it may in its absolute discretion determine to be necessary.
- 9.6 If the purpose of a transfer made to the Scheme under this Rule 9 is the provision or continuation of a pension permitted by the Pension Death Benefit Rules, these Rules shall apply to such pension as if the person in respect of whose death it is payable had been a Member or Beneficiary at the date of his death.
- 9.7 Where the Trustee acting at the direction of the Operator or the Operator accepts a transfer payment into the Scheme and is informed by the transferring scheme of a Pension Debit relating to the transfer payment then the Operator shall retain details of this Pension Debit. Where those transferred benefits need valuing for tax purposes then the Operator should where appropriate take account of the Pension Debit when providing details of the Member's Benefits held in the Scheme. If those Benefits are transferred from the Scheme then the Operator shall give full details of the Pension Debit to the receiving scheme's administrator.

9.8 The transfer shall be made by a direct payment between the administrator or trustee of the other scheme and the Trustee acting at the direction of the Operator or the Operator, or, in the case of a transfer from an annuity contract, between the Insurer or friendly society concerned where appropriate and the Trustee / Operator.

## **10 Pension sharing**

10.1 Where the Trustee is required to implement a Pension Sharing Order, it shall:

- (a) discharge its liability in respect of a Pension Credit in accordance with this Rule 10; and
- (b) reduce the Member's Fund by an amount equal to the Pension Debit in each

instance in accordance with the directions of the Operator.

10.2 The Trustee shall discharge its liability in respect of a Pension Credit in such manner as the Operator in its absolute discretion directs, provided that the Operator's directions must ensure that the Scheme complies with the 1999 Act and any other overriding statutory requirements. The Trustee (acting at the direction of the Operator) and the Operator shall have such ancillary powers as may be necessary to enable them to discharge their liability in respect of a Pension Credit in the manner provided for by either paragraph 1(2) or paragraph 1(3) of schedule 5 of the 1999 Act and may exercise such powers (including the power to select a qualifying arrangement pursuant to paragraph 1(3) of schedule 5 of the 1999 Act) without the consent of the person entitled to the Pension Credit to the extent permitted by legislation.

10.3 The Trustee acting at the direction of the Operator and/or the Operator may charge for:

- (a) providing any information to anyone that relates directly or indirectly to the Scheme and to divorce or nullity proceedings;
- (b) implementing Pension Sharing Orders and earmarking orders; and
- (c) any pension sharing activity prescribed under the regulations made in terms of section 41 of the 1999 Act

provided such charge is allowed by the Pensions on Divorce etc (Charging) Regulations 2000 or is not prohibited by law.

10.4 The Operator may determine how such charges should be recovered (including requiring the payment of those charges before implementing a Pension Sharing Order) but shall comply with any requirements for recovery contained in the Pensions on Divorce etc (Charging) Regulations 2000, and may, without limitation, at its absolute discretion or by directing the Trustee accordingly reduce either or both of:

- (a) the amount representing the credit; and
- (b) the Member's Fund subject to the corresponding Pension Debit,

by an amount or amounts representing in aggregate all or any part of the costs, charges or expenses incurred in connection with the credit (whether in the provision of any relevant information, the implementation of any relevant order or otherwise).

10.5 If the Ex-Spouse dies after a Pension Sharing Order is made but before it is implemented by the Trustee, a lump sum death benefit equal to the Pension Credit shall be payable in

accordance with the discretionary death benefit trusts set out in Rule 6.10 as if the references to 'the deceased' in that Rule were references to the 'Ex-Spouse'.

## **11 Assignment, surrender and forfeiture**

11.1 Subject to any overriding legal requirements, no Benefit may be assigned or surrendered by a Beneficiary in circumstances where this would result in the Scheme being treated as having made an Unauthorised Payment unless the Operator in its absolute discretion consents.

11.2 The Operator may in its absolute discretion determine that any Benefit shall, even if it would otherwise belong absolutely to a Beneficiary, be forfeited if:

- (a) the Beneficiary fails to claim it within six years of the date on which it becomes due; or
- (b) the Beneficiary attempts to assign or surrender it or it becomes the subject of a transaction or purported transaction which under these Rules or by operation of law is of no effect.

11.3 In a case to which Rule 11.2(a) applies, the part of a Member's Fund representing the amount forfeited shall become part of the General Fund.

11.4 In a case to which Rule 11.2(b) applies, any part of a Member's Fund representing the amount forfeited may be applied to provide such one or more other Benefits to or in respect of a Beneficiary as are permitted by these Rules and as the Operator in its absolute discretion may determine, and any remainder shall become part of the General Fund.

## **12 Payment of Benefits**

12.1 The methods, form and frequency of paying Benefits from the Scheme shall be at the Operator's discretion subject to any applicable Terms and Conditions.

12.2 If a Member's Fund includes an insurance policy effected with an Insurer to provide Benefits then those shall be payable only if and to the extent that the Operator recovers payment under the terms of the insurance policy.

12.3 Without prejudice to Rule 1, if in the opinion of the Operator a Beneficiary is a minor or is incapable of managing his own affairs by reason of physical or mental incapacity or through being imprisoned or detained in legal custody or for some other reason then the Trustee acting at the direction of the Operator and / or the Operator may:

- (a) pay or apply any Benefits due to anyone they consider is a proper person to receive the same on the Beneficiary's behalf whether for his maintenance or for the duration of any period of minority, incapacity, imprisonment, detention or other incapacity, including the trustees of any irrevocable trust or settlement established for his benefit;
- (b) constitute a trust for the benefit of the Beneficiary the terms of which are to be decided by the Operator; or
- (c) make any election or deem as given any notice required under the Trust Deed or Rules on behalf of the Beneficiary.

In such circumstances neither the Trustee nor the Operator shall be obliged to ensure how or for whose benefit the payment is applied. The payment itself will be a sufficient discharge to the Trustee and Operator for the relevant Benefits.

12.4 The Operator may at any time request any Beneficiary to supply such evidence of age, good health, marital status, rights and entitlements under other pension schemes and other evidence and information as it may reasonably require, and may to the extent permitted by law withhold payment of all or part of any Benefits or transfer payments until the evidence or information is received and accepted by the Operator as correct and sufficient.

12.5 Any Beneficiary shall promptly notify the Operator of any event or fact which may affect his entitlement or prospective entitlement under the Scheme.

### **13 Enhanced and Fixed Protection**

13.1 To the extent permitted by law where a person has been granted Protection in relation to the Scheme (and provides such evidence of this as the Trustees acting at the direction of the Operator or the Operator may require), the Trustee acting at the direction of the Operator and the Operator shall have all powers necessary to treat his rights and Benefits under the Scheme in a way which preserves that Protection. For the avoidance of doubt this includes the ability to direct that Relevant Benefit Accrual or Benefit Accrual shall cease from a specified date and such direction may, to the extent allowed by law, be retrospective. For the purposes of this Rule, Relevant Benefit Accrual has the meaning in paragraph 13 of schedule 36 of the 2004 Act and Benefit Accrual has the meaning in paragraph 14 of schedule 18 of the Finance Act 2011 in the case of Fixed Protection, the meaning in paragraph 1 of schedule 22 of the 2013 Act in the case of Fixed Protection 2014 and paragraph 3 of schedule 4 of the Finance Act 2016 in the case of Fixed Protection 2016.

13.2 If a person who has opted for Protection subsequently notifies the Operator (in such form as the Operator may require) that he no longer wishes to have the benefit of such Protection, the Trustee acting at the direction of the Operator, and the Operator shall have all powers necessary to disapply the cessation of Relevant Benefit Accrual or Benefit Accrual from a specified date and such direction may, to the extent permitted by law, be retrospective.

### **14 Pension Advice Allowance Payment**

14.1 If a Relevant Person so directs and the Operator agrees, the Trustee shall at the direction of the Operator pay a Pension Advice Allowance Payment in respect of the Relevant Person from the Member's Fund to a financial advisor.

14.2 Subject to the following conditions, the Operator shall give its agreement to a Pension Advice Allowance Payment if so requested by a Relevant Person:

- (a) the Operator shall be entitled to request from the Relevant Person and/or the financial advisor such information and documentation as it may reasonably require to satisfy itself that the proposed payment will be a Pension Advice Allowance Payment and to delay giving its agreement pending receipt of such information or documentation;
- (b) if the Operator is not satisfied that it is reasonably practicable to make the proposed payment, it shall not be obliged to give its agreement; and
- (c) where realisation of assets of the Fund will be required in order to make the proposed payment, the Operator's agreement may be given subject to the relevant assets being realised, or the Operator may delay giving its agreement until the relevant assets have been realised.

14.3 For the purposes of this Rule, **Relevant Person** means a Beneficiary, in relation to whom there exists a Member's Fund and in respect of whom a Pension Advice Allowance Payment may be paid.



## SCHEDULE

### Definitions and interpretation

**1993 Act** means the Pension Schemes Act 1993

**1999 Act** means the Welfare Reform and Pensions Act 1999

**2004 Act** means the Finance Act 2004

**2013 Act** means the Finance Act 2013

**Annuity Protection Lump Sum Death Benefit** has the same meaning as in paragraph 16 of schedule 29 of the 2004 Act

**Arrangement** means an arrangement made to provide Benefits under the Scheme in accordance with the Rules

**Bare Trustee** means the person who holds and controls the Scheme's assets but who does not act as the Operator or the Scheme Administrator, as the term is applied within the FCA Handbook of Rules and Guidance

**Beneficiary** means any person entitled or contingently or prospectively entitled to a Benefit under the Scheme including following the death of a Member and for the avoidance of doubt this includes Members, Dependants, Children, Death Benefit Beneficiaries, Nominees and Successors;

**Benefit** means an actual or prospective or contingent entitlement to any benefit under the Scheme (including any part of a pension and any payment by way of pension)

**Charity Lump Sum Death Benefit** has the same meaning as in paragraph 18 of schedule 29 of the 2004 Act

**Child** and **Children** means (in the context of the Death Benefit Beneficiary definition) in relation to any person a child under age eighteen or over that age and currently in receipt of full-time education or vocational training. This expression includes:

- (a) a step-child;
- (b) a legally adopted child;
- (c) a child to whom the person in question stood in loco parentis immediately prior to his death;
- (d) a fetus;
- (e) an illegitimate child;

**Civil Partner** in the context of determining whether one person is the Civil Partner of another shall be construed in accordance with the Civil Partnership Act 2004 and **Civil Partnership** shall have the corresponding meaning

**Claim** means any complaint, claim, action or proceedings (whether civil or criminal) brought by any person before any court, tribunal, determinations panel, regulatory decision making body, ombudsman or judicial authority

**Death Benefit Beneficiary** means in relation to a deceased Member or other Beneficiary:

- (a) his spouse, Civil Partner or dependant ("dependant" for the purposes of this definition meaning any person, who at the time of the Member's or Beneficiary's death was in the Scheme Administrator's opinion dependent or financially interdependent on him);
- (b) his Children and other offspring whether or not within the definition of Children, their descendants, the Partners of his Children and other offspring, and the Partners of the descendants of his Children and other offspring;
- (c) his brothers or sisters (whether of the whole or half blood) and their descendants;
- (d) his other ascendants or descendants or those of his Partner;
- (e) his personal representatives;
- (f) any person who in the opinion of the Scheme Administrator was wholly or partly financially dependent on the Member or Beneficiary at the date of such Member or Beneficiary's death;
- (g) any person who was a member of his household at the date of his death;
- (h) any person (including a trust or the trustees of a trust) named in any written expression of wish form made by the Member or Beneficiary; or
- (i) any person who is a beneficiary under the Member or Beneficiary's will and

for the purposes of this definition:

- (I) descendant includes adopted persons and those who have been treated as Children of the family;
- (II) the class of Death Benefit Beneficiary shall be closed at the individual's date of death except that it shall include fetuses who if they had then been born would have been within the class; and
- (III) 'person' in the context of paragraph (h) includes any individual or company or any other form of entity or organisation

**Dependant** has the same meaning as in paragraph 15 of schedule 28 of the 2004 Act however:

- (a) it shall include a person who was married to or a Civil Partner of the Member when the Member first became entitled to a pension under the Scheme;
- (b) it shall exclude any person of whose existence the Scheme Administrator is unaware having made reasonable enquiries in relation to the deceased's Member's or other Beneficiary's circumstances; and
- (c) for the avoidance of doubt, in the context of a Dependant's Annuity, a Charity Lump Sum Death Benefit or the definition of Nominee, the definition of Dependant shall apply on the same basis as it applies in relation to those terms under the 2004 Act

**Dependants' Annuity** has the same meaning as in paragraph 17 of schedule 28 of the 2004 Act

**Dependant-designated Funds** has the meaning in paragraph 22 of schedule 28 of the 2004 Act

**Dependants' Drawdown Pension** has the same meaning as in paragraph 18 of Schedule 28 of the 2004 Act

**Dependants' Drawdown Pension Fund** has the same meaning as in paragraph 22 of schedule 28 of the 2004 Act

**Dependants' Flexi-access Drawdown Fund** has the meaning given in paragraph 22A of schedule 28 of the 2004 Act

**Dependants' Income Withdrawal** has the same meaning as in paragraph 21 of schedule 28 of the 2004 Act

**Dependants' Short-term Annuity** has the same meaning as in paragraph 20 of schedule 28 of the 2004 Act

**Drawdown Pension** has the same meaning as in paragraph 4 of schedule 28 of the 2004 Act

**Drawdown Pension Fund Lump Sum Death Benefit** has the same meaning as in paragraph 17 of schedule 29 of the 2004 Act

**Effective Date** means the date first mentioned in this Trust Deed, being the date on which the Operator has established the Scheme

**Electronic Form** means any electronic form of communication, including (but not limited to) electronic mail, scanned documents and / or via the internet

**Enhanced Protection** has the meaning in Part 2 of schedule 36 of the 2004 Act

**Ex-Spouse** means an individual to whom Pension Credit Rights have been or are to be allocated following a Pension Sharing Order, agreement or equivalent provision

**FCA Handbook of Rules and Guidance** means the Financial Conduct Authority's Handbook of rules and guidance

**Fee Schedule** means such one or more lists of costs, fees, deductions and charges relating to the Scheme (or different sections of Membership of the Scheme) from time to time in force and published by the Trustee (acting at the direction of the Operator) or the Operator;

**Fixed Protection** means, in relation to an individual, the retention of a lifetime allowance in excess of the standard lifetime allowance pursuant to Part 2 of schedule 18 of the Finance Act 2011

**Fixed Protection 2014** means, in relation to an individual, the retention of a lifetime allowance in excess of the standard lifetime allowance pursuant to Part 1 of schedule 22 of the 2013 Act

**Fixed Protection 2016** means, in relation to an individual, the retention of a lifetime allowance in excess of the standard lifetime allowance pursuant to Part 1 of schedule 4 of the Finance Act 2016

**Flexi-access Drawdown Fund Lump Sum Death Benefit** has the same meaning as in paragraph 17A of schedule 29 of the 2004 Act

**FSMA** means the Financial Services and Markets Act 2000

**Fund** means all contributions, transfer payments, monies, assets, property, policies, sums and investments received by or held by or on behalf of the Trustee on the trusts of and for the purposes of the Scheme and whether or not comprised in a Member's Fund. It includes but is not limited to contributions from Employers and Members, assets accepted or acquired by the Trustee for the Scheme and any resulting investment gains, returns or interest, and the aggregate of all the Members' Funds. This expression includes where appropriate any part of the Fund.

**General Fund** means any part of the Fund which is not a Member's Fund

**HMRC** means HM Revenue and Customs

**Ill-health Condition** in the context of determining whether the Ill-health Condition is met has the same meaning as in paragraph 1 of schedule 28 of the 2004 Act

**Income Withdrawal** has the same meaning as in paragraph 7 of schedule 28 of the 2004 Act

**Insurer** has the meaning given to an insurance company under section 275 of the 2004 Act or alternatively such other insurance company as the Operator may select provided this is consistent with the requirements for Registered Pension Schemes

**Instructor** has the meaning given in clause 15.2

**Investment Services Provider** means any person who is:

- (a) authorised to hold, deal or manage investments under the FSMA;
- (b) in relation to any Member's Fund, may act in such capacity without contravening the prohibition imposed by section 19 of the FSMA;
- (c) allowed by the Operator to be an Investment Services Provider for the purposes of the Scheme and its Members and other Beneficiaries from time to time; and
- (d) party to an investment management agreement or insurance policy or other terms and conditions of appointment entered into with the Trustee (at the direction of the Operator) or the Operator on such terms and conditions of appointment including as to remuneration and liability as may be acceptable to the Operator

provided that any such person shall cease to be eligible to be an Investment Services Provider if at any time they are unable to satisfy all four (4) criteria in limbs (a) to (d) (inclusive) above

**Liabilities** and **Liability** means to the widest extent permitted by law all claims, costs, charges, commissions, losses, damages, awards, payments, expenses, disbursements, interest, tax, penalties, fines, orders, notices, directions, legal fees, adviser fees, court fees, third party costs, taxation of costs, costs of any application to any court by a Trustee or former Trustee in connection with any Claim and other financial liabilities of any kind whatsoever and howsoever arising and whether or not foreseeable;

**Lifetime Allowance Excess Lump Sum** means a lifetime allowance excess lump sum within the meaning of paragraph 11 of schedule 29 of the 2004 Act

**Lifetime Annuity** has the same meaning as in paragraph 3 of schedule 28 of the 2004 Act

**Lump Sum Death Benefit** and **Lump Sum Death Benefit Rule** have the same meaning as in section 168 of the 2004 Act

**Lump Sum Rule** means the lump sum rule set out in section 166 of the 2004 Act

**Married** includes being in a Civil Partnership

**Member** means an individual who has one or more Arrangements under the Scheme for the provision of benefits. It also includes an individual who:

- (a) at the time the Arrangement was made was under the age of 16 (or, in England and Wales and Northern Ireland, under the age of 18 if not in employment) and whose legal guardian made the Arrangement on the individual's behalf under the Scheme, or
- (b) has had one or more Arrangements made on his or her behalf following the winding-up of another scheme

and who has not ceased to be a Member. "**Membership**" has a corresponding meaning and where the context requires it includes a Pension Credit Member

**Member-designated Funds** has the meaning in paragraph 8 of schedule 28 of the 2004 Act

**Member's Drawdown Pension Fund** has the meaning in paragraph 8 of schedule 28 of the 2004 Act

**Member's Flexi-access Drawdown Fund** has the meaning in paragraph 5A of schedule 28 of the 2004 Act

**Member's Fund** means in relation to any Member or other Beneficiary that part of the Fund which is determined by the Operator (subject to the following provisions of this definition) as relating to the relevant Member or Beneficiary at that time, having regard to such of the following as the Operator determines to be applicable depending on the nature of the Beneficiary or Member:

- (a) any contributions paid by or in respect of the relevant Member whether by his employer or any other person;
- (b) any amount received from HMRC representing payment of tax relief in respect of contributions paid by the relevant Member;
- (c) any transfer payment received by the Trustee under the Rules in respect of the relevant Member;
- (d) any Pension Credit Rights accepted by the Scheme in respect of the relevant Member;
- (f) any income or capital gains or losses (whether or not realised) arising from the investment of such amounts;
- (g) the Arrangements that relate to the Member; and
- (h) any other matters that the Operator considers appropriate.

Without prejudice to the generality of the foregoing and (h) above it excludes:

- (i) any deductions made from or in respect of the Member Fund pursuant to the Trust Deed or Rules or law or any agreement between the Member and the Operator;
- (ii) any Pension Debits arising as a result of a Pension Sharing Order; and
- (iii) any other actual or prospective or contingent Liabilities that

the Operator decides are attributable to the Member's Fund.

Nothing in this definition shall confer on any person any right to any specific assets of the Fund which may be allotted to him on a notional basis for the sole purpose of determining the value of his Member's Fund from time to time. The Operator may, in determining the value of a Member's Fund, have regard to the advice of an actuary, but nothing in this definition shall oblige the Operator to do so.

Where the context so requires, Member's Fund includes that part of the Fund which is determined by the Operator on the basis set out above as relating to a Beneficiary in respect of whom there exists an Arrangement which includes a Dependants' Drawdown Pension Fund, the Dependants' Flexi-access Drawdown Fund, Nominees' Flexi-access Drawdown Fund or Successors' Flexi-access Drawdown Fund

**Money Purchase Benefits** has the same meaning as in section 181 of the 1993 Act

**Nominee** has the meaning in paragraph 27A of schedule 28 of the 2004 Act

**Nominees' Annuity** has the meaning in paragraph 27AA of schedule 28 of the 2004 Act

**Nominees' Drawdown Pension** has the meaning in paragraph 27B of schedule 28 of the 2004 Act

**Nominees' Flexi-access Drawdown Fund** has the meaning in paragraph 27E of schedule 28 of the 2004 Act

**Nominees' Income Withdrawal** has the meaning in paragraph 270 of schedule 28 of the 2004 Act

**Nominees' Short-term Annuity** has the meaning in paragraph 27C of schedule 28 of the 2004 Act

**Normal Minimum Pension Age** has the meaning in section 279 of the 2004 Act, save that if paragraph 21 of schedule 36 of the 2004 Act would operate to modify the meaning of the term "normal minimum pension age" for the purposes of Part 4 of the 2004 Act (except for section 218(6) and paragraph 19 of schedule 36) in relation to a Member the meaning of Normal Minimum Pension Age for the purposes of the Scheme shall also be so modified in relation to that Member

**Non-mainstream Pooled Investments** has the same meaning as in the FCA Handbook of Rules and Guidance.

**Non-Standard Asset** means any list of non-standard assets published from time to time by the Operator (and for the avoidance of doubt it may be published in the Terms and Conditions)

**Non Recognised Transfer** means a transfer that is not a Recognised Transfer.

**Operator** means the operator of the Scheme within the meaning of the FCA Handbook of Rules and Guidance and the first Operator is MES Financial Services Limited.

**Partner** means spouse, Civil Partner, or cohabitee where (in relation to cohabitee only) there is in the opinion of the Scheme Administrator a relationship of financial dependence or interdependence

**Pension Advice Allowance Payment** means a payment of a type described in Part 6 of The Registered Pension Schemes (Authorised Payments) Regulations 2009

**Pension Commencement Lump Sum** means a pension commencement lump sum within the meaning of paragraph 1 of schedule 29 of the 2004 Act

**Pension Conditions** in the context of any matter being required to comply with the Pension Conditions means:

- (a) that the action will not prejudice the Scheme's Registration; and
- (b) that the action is consistent with compliance with the Pension Rules and the Lump Sum Rule

**Pension Credit** means a credit under section 29(1)(b) of the 1999 Act or under corresponding Northern Ireland legislation

**Pension Credit Member** means a person whose rights under the Scheme are attributable to a Pension Credit

**Pension Credit Rights** means rights to benefits arising from a credit as defined in section 101P of the 1993 Act or under corresponding Northern Ireland legislation

**Pension Death Benefit Rules** means the pension death benefit rules set out in section 167 of the 2004 Act

**Pension Debit** means a debit under section 29(1)(a) of the 1999 Act or under corresponding Northern Ireland legislation

**Pension Rules** means the pension rules set out in section 165 of the 2004 Act

**Pension Sharing Order** means any order or provision mentioned in section 28(1) of the 1999 Act or under corresponding Northern Ireland legislation or Part 4 of Schedule 5 to the Civil Partnership Act 2004 or Part 3 of Schedule 15 to the Civil Partnership Act 2004

**Personal Pension Scheme** has the meaning given in section 1 of the 1993 Act

**Protection** means Enhanced Protection, Fixed Protection, Fixed Protection 2014 and Fixed Protection 2016 or such one or more of them as the context requires

**QROPS or Qualifying Recognised Overseas Pension Scheme** has the same meaning as in section 169 of the 2004 Act

**Recognised Transfer** has the same meaning as in section 169 of the 2004 Act

**Refund of Excess Contributions Lump Sum** means a refund of excess contributions lump sum within the meaning of paragraph 6 of schedule 29 of the 2004 Act

**Registration** means the status of being a registered pension scheme in accordance with section 150(2) of 2004 Act and **Registered Pension Scheme** has a corresponding meaning

**Relevant Uncrystallised Funds** has the same meaning as in paragraph 15 of schedule 29 of the 2004 Act

**Rules** means the rules of the Scheme as amended from time to time

**Scheme** means the MES Pension Scheme established by this Trust Deed

**Scheme Administrator** means the administrator of the Scheme for the purposes of section 270 of the 2004 Act (which as of the Effective Date is the Operator) or any successor appointed under clause 4 for the purposes of section 270 of the 2004 Act from time to time

**Serious Ill-health Lump Sum** means a serious ill-health lump sum within the meaning of paragraph 4 of schedule 29 of the 2004 Act

**Shareholder** means the Trustee or Operator or any of their respective officers or employees **Short**

**Term Annuity** has the same meaning as in paragraph 6 of schedule 28 of the 2004 Act **Successor** has the meaning in paragraph 27F of schedule 28 of the 2004 Act

**Successors' Annuity** has the meaning in paragraph 27FA of schedule 28 of the 2004 Act

**Successors' Drawdown Pension** has the meaning in paragraph 27G of schedule 28 of the 2004 Act

**Successor's Flexi-access Drawdown Fund** has the meaning in paragraph 27K of schedule 28 of the 2004 Act

**Successors' Income Withdrawal** has the meaning in paragraph 27J of schedule 28 of the 2004 Act

**Successors' Short Term Annuity** has the meaning in paragraph 27G of schedule 28 of the 2004 Act

**Taxable Property** means taxable property held by investment regulated pension schemes within the meaning of the 2004 Act

**Terms and Conditions** means the terms and conditions applicable to Membership from time to time in force

**Trivial Commutation Lump Sum** has the meaning given in paragraph 7 of schedule 29 of the 2004 Act

**Trivial Commutation Lump Sum Death Benefit** has the same meaning as in paragraph 20 of schedule 29 of the 2004 Act

**Trust Deed** means these trust provisions governing the Scheme as amended from time to time

**Trustee** means the Trustee as defined in the parties clause before the recitals to this Trust Deed and includes any new or replacement trustees of the Scheme or any Member's Fund appointed pursuant to clause 4 from time to time



**Unauthorised Payment** has the same meaning as in section 160(2) of the 2004 Act

**Uncrystallised Funds Pension Lump Sum** has the meaning in paragraph 4A of schedule 29 of the 2004 Act

**Widow or Widower** means a widow or widower but also includes a surviving Civil Partner In the Trust

Deed and Rules:

- (a) references in the Trust Deed and Rules to a "Member" include a Dependant, a Nominee, a Successor, a legal guardian on behalf of a Member, a Beneficiary, an Ex-Spouse or a former Member as the context requires (taking into account pensions tax rules, the rest of the Trust Deed and Rules and the Terms and Conditions) and references to "Member's Fund" and "Arrangement" shall be construed accordingly;
- (b) where any provision of the Scheme would conflict with the requirements for Registered Pension Schemes the provision shall be read as modified to the minimum extent necessary so that it no longer conflicts with the relevant requirements;
- (c) no person shall have any right or entitlement under the Scheme to any payment or benefit that would constitute an Unauthorised Payment (save to the extent that such right or entitlement arises by operation of overriding law) and any provision of the Scheme which would otherwise require the Trustee or the Operator to make an Unauthorised Payment (with or without the consent of any other person) shall instead be construed as conferring a discretion upon the Operator to make or direct the payment (save that where the consent of another person would have been required to make the Unauthorised Payment, the Operator cannot exercise the aforesaid discretion without the consent of that other person);
- (d) any reference to a decision or discretion of the Trustee which under the 2004 Act has to be made by the Scheme Administrator shall be deemed to have been delegated by the Trustee (acting at the direction of the Operator) to the Scheme Administrator;
- (e) irrespective of whether referenced expressly in any clause or Rule, all references to any powers, duties or discretions allocated to, to be exercised by or otherwise vested in the Trustee pursuant to any provision of the Scheme shall to the fullest extent permitted by law only be exercised at the direction of the Operator;
- (f) any powers, discretions, rights and authorities granted by the Trust Deed and Rules shall be in addition to those granted by law and to the fullest extent permitted by law (but subject to the express provisions of the Trust Deed and Rules) they shall be absolute and unfettered and neither the Trustee nor the Operator shall be bound to give any person any reason or justification for their exercise;
- (g) to the fullest extent permitted by law the Trustee and / or the Operator may by agreement fetter or constrain any discretion, power or duty under or relating to the Scheme;
- (h) references to a clause or a Rule are to a clause contained in the Trust Deed or a rule contained in the Rules, respectively;
- (i) any reference to this Trust Deed or the Rules (as applicable) or to any other document referred to in the Trust Deed or Rules shall include any permitted variation, amendment or supplement to such document;
- U) any reference to any statute shall include references to the same as it may have been, or may from time to time be amended, come into force, consolidated or re-enacted and to any

regulation or subordinate legislation made under it (or under such an amendment, consolidation or re-enactment) subject to the provisions of the Trust Deed and Rules which relate to change of law;

- (k) references to the plural shall include the singular and vice versa, and reference to one gender includes reference to all genders. Any reference to a person shall be to a legal person of whatever kind whether incorporated or unincorporated and to its successors, permitted assigns and transferees;
- (l) words shall not be given a restrictive interpretation by reason of their being preceded or followed by words indicating a particular class of the acts, matters or things;
- (m) month and any variation of it means a calendar month and monthly shall be construed accordingly and each calendar month shall be counted as 1/12th of a year;
- (n) week shall mean any period of 7 consecutive days;
- (o) any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words; and
- (p) in the event of any conflict between the Trust Deed or the Rules on the one hand, and any other conflicting document on the other, the Trust Deed or Rules shall prevail and be overriding to the extent permitted by law.