

**(1) SMART PENSION LIMITED**

**(2) EC2 MASTER LIMITED**

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**DEFINITIVE DEED AND RULES  
relating to the  
SMART PENSION MASTER TRUST**

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## DEFINITIVE DEED

**Dated: 14 August 2019**

### **PARTIES:**

- (1) **SMART PENSION LIMITED** (company number 09026697) whose registered office address is at 40 Eastbourne Terrace, London, W2 6LG (the "**Founder**"); and
- (2) **EC2 MASTER LIMITED** (company number 9352674) whose registered office address is at 40 Eastbourne Terrace, London, W2 6LG (the "**Trustee**").

### **INTRODUCTION:**

- (A) The Founder established an occupational pension scheme (as defined in section 1 of the Pension Schemes Act 1993) with effect on and from 15 January 2015 (the "**Commencement Date**") and which is now known as the Smart Pension Master Trust (the "**Scheme**"). The Scheme is a money purchase scheme as defined in section 181 of the Pension Schemes Act 1993.
- (B) The Scheme is registered under Chapter 2 of Part 4 of the Finance Act 2004. It is also anticipated that the Scheme will shortly become authorised as a master trust for the purposes of the Pension Schemes Act 2017.
- (C) The Trustee is the trustee of the Scheme for the time being.
- (D) The Scheme is currently governed by a definitive deed dated 16 August 2017 (as amended) with rules attached to it (the "**Current Definitive Deed**").
- (E) The Founder now wishes, with the agreement of the Trustee, to exercise the power of amendment at Rule 5 of the Current Definitive Deed by adopting this Definitive Deed and Rules in place of the Current Definitive Deed.

### **IT IS AGREED AS FOLLOWS:**

#### **1. COMMENCEMENT**

This Definitive Deed and Rules take effect on and from the date of execution (the "**2019 Effective Date**") and replace the Current Definitive Deed and rules attached to it in full.

#### **2. CONSTITUTION OF THE SCHEME**

The Trustee holds all the assets of the Scheme and any income, cash or other assets received for the purposes of the Scheme on trust to be used in accordance with this Definitive Deed and Rules.

#### **3. MAIN PURPOSE**

The main purpose of the Scheme is to provide relevant benefits (as defined in section 393B of the Income Tax (Earnings and Pensions) Act 2003), but it also exists for the purpose of providing other benefits.

#### **4. APPLICABLE LAW**

The law of England and Wales applies to this Definitive Deed and Rules and to the Scheme and its administration.

## RULES

### 1. INTERPRETATION

1.1 In these Rules the following expressions shall, unless the context otherwise requires, have the following meanings:

**"Active Member"** means an Employed Active Member or Independent Active Member who in either case has been admitted to membership of the Scheme under Rule 10.1 and who has not ceased to be an Active Member under Rules 10.2 or 10.3.

**"Active Membership"** means the state of being an Active Member.

**"Application"** means the terms on which an Independent Active Member is admitted to membership of the Scheme, including without limitation such information as the Trustee requires to administer benefits in relation to the Independent Active Member.

**"Authorised Scheme"** means a scheme which is authorised under the Pension Schemes Act 2017 to operate as a master trust.

**"Dependant"** means in relation to a deceased Member:

- (a) a Member's spouse, civil partner or Qualifying Child; or
- (b) such other person (other than a Member's child) as, in the opinion of the Trustee, was at the date of the Member's death:
  - (i) financially dependent on the Member;
  - (ii) in a financial relationship of mutual dependence with the Member; or
  - (iii) dependent on the Member because of physical or mental impairment

provided that the spouse or civil partner was a spouse or civil partner of the deceased Member at the date of the Member's death. Where the Member entered into a marriage or civil partnership on the date he died the Trustee has discretion to decide whether the Member's spouse or civil partner is a Dependant.

**"Disclosure Requirements"** means the requirements about disclosing information contained in the Pensions Act 1995 and the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013

**"Drawdown Fund"** means any part of a Member's Individual Account that has been designated for the provision of Drawdown in accordance with these Rules. **"Drawdown"** includes "drawdown pension", "dependants' drawdown pension", "nominees' drawdown pension" and "successors' drawdown pension" as defined in the Finance Act 2004.

**"Electronic Communication"** has the meaning given in section 15(1) of the Communications Act 2000.

**"Employed Active Member"** means an Employee of an Employer who becomes an Active Member in accordance with Rule 10.1

<b>"Employee"</b>	means an employee (including a director) or other worker (as defined in section 88 of the Pensions Act 2008) of an Employer.
<b>"Employer"</b>	means any employer that participates in the Scheme in accordance with Rule 7 ( <i>Participation of Employers</i> ) and, where the context so requires, "Employer" means the Employer which, in relation to a Member, is currently employing him or her or, if none, the one which last employed him or her.
<b>"the Founder"</b>	means Smart Pension Limited or a person substituted for that company under Rule 7.5.
<b>"Former Spouse"</b>	means an individual to whom a Pension Credit has been allocated under the Scheme.
<b>"HMRC"</b>	means HM Revenue and Customs.
<b>"Incapacity"</b>	means such physical or mental impairment, established by medical evidence from a registered medical practitioner, as in the opinion of the Trustee prevents (and will continue to prevent) the Member from carrying on his or her occupation, provided that the Member has in fact ceased to carry on his or her occupation.
<b>"Independent Active Member"</b>	means an individual (including a Self Employed Member) who is not employed by an Employer, but who is admitted to Membership in accordance with Rule 10.1.2.
<b>Individual Account</b>	<p>in relation to a Member is the account representing his or her interest under the Scheme in relation to his or her contributions and the Employer's contributions (if any) made in respect of him or her and any other contributions paid or received by or in respect of him or her and the investment return on them less any expenses deducted in accordance with Rule 6 (<i>Expenses</i>).</p> <p>Assets may be transferred into the Member's Individual Account in accordance with Rule 22 (<i>Transfers to the Scheme</i>). An Individual Account will be adjusted in respect of any Pension Credit or Pension Debit.</p> <p>For the avoidance of doubt, a Member's Individual Account includes any Uncrystallised Fund and any Drawdown Fund in respect of that Member.</p> <p>A Member may have more than one Individual Account in the Scheme relating to different periods of Membership, but the Trustee may amalgamate a Member's different Individual Accounts upon request of the Member or the Trustee's own volition.</p>
<b>"Initial Fund"</b>	means the £100 paid by the Founder to the Trustee for the purposes of establishing the Scheme.
<b>"Insolvency Event"</b>	means the start of the winding up or dissolution of an entity or the appointment of a liquidator, receiver, administrative receiver, administrator or similar office in respect of an entity or any of its assets.
<b>"Investment Options"</b>	means the investment options, including a default arrangement, made available by the Trustee in accordance with Rule 13.3 ( <i>Investment of contributions: Investment Options</i> ).
<b>"Investment"</b>	means the Occupational Pension Schemes (Investment)

<b>"Regulations"</b>	Regulations 2005.
<b>"Member"</b>	means any person admitted to membership of the Scheme and who is presently or prospectively entitled to benefits from the Scheme in respect of his or her own membership. A Successor who has an Individual Account under the Scheme shall also be a Member where the context allows.
<b>"Nominee"</b>	has the meaning given in paragraph 27A of Schedule 28 of the Finance Act 2004, but excluding any individual of whose eligibility the Trustee is unaware having made reasonable enquiries. The designation of any funds for Drawdown for an individual shall count as nomination of that individual if he or she would not otherwise qualify for Drawdown.
<b>"Normal Minimum Pension Age"</b>	in respect of a Member means the age specified in section 279(1) of the Finance Act 2004 (or, if different, the Member's protected pension age as defined in paragraphs 22(8) and 23(8) of Schedule 36 to the Finance Act 2004).
<b>"Opt-Out Period"</b>	means an opt-out period defined for the purposes of section 8 of the Pensions Act 2008.
<b>"Participation Agreement"</b>	means the written agreement entered into following Rule 7 ( <i>Participation of Employers</i> ) admitting an Employer to participation in the Scheme. Unless the Founder and the Trustee otherwise agree in any particular case, a Participation Agreement is only valid if executed as a deed.
<b>"Pension Benefits"</b>	means any one or more of the following: <ul style="list-style-type: none"><li>(a) one or more lump sum payments in accordance with Rule 15 (Lump sums),</li><li>(b) income payments from a Drawdown Fund;</li><li>(c) a pension payable to the Member through the purchase of an annuity, which may also provide:<ul style="list-style-type: none"><li>(i) a pension or pensions payable to one or more of the Member's Survivors after the Member's death;</li><li>(ii) increases to the pension or to any Survivors pension under (i) above;</li></ul></li><li>(d) such other options as the Founder and the Trustee agree.</li></ul>
<b>"Pension Credit"</b>	means a credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999.
<b>"Pension Debit"</b>	means a debit under section 29(1)(a) of the Welfare Reform and Pensions Act 1999.
<b>"Pensionable Pay"</b>	means earnings as specified in the applicable Participation Agreement.
<b>"Pensionable Service"</b>	means Service with an Employer during which an Active Member contributes to the Scheme.
<b>"Qualifying Child"</b>	in relation to a deceased Member means any person who:



- (a) is the Member's natural or adopted child; and
  - (b) (i) has not reached age 23; or (ii) has reached age 23 and, in the opinion of the Trustee, was dependent at the date of the Member's death on the Member because of physical or mental impairment.
- "Quality Requirement"** means the quality requirement referred to in section 20 of the Pensions Act 2008 or the alternative requirement of section 28 of that act.
- "Registered Pension Scheme"** is a pension scheme for the time being registered as a registered pension scheme under Chapter 2 of Part 4 of the Finance Act 2004.
- "Reserve Account"** means the reserve account described in Rule 17 (*Reserve Account*).
- "Rules"** means these Rules together with any alteration, modification or addition made under Rule 5 (*Alteration of the Definitive Deed and Rules*).
- "Scheme Assets"** means the fund to which the trusts of the Scheme as set out in Clause 2 of this Definitive Deed and Rules apply, comprising money and other assets received by the Trustee in accordance with this Definitive Deed and Rules, and all income derived therefrom.
- "Self Employed Member"** means a Member who is admitted to membership of the Scheme in accordance with the terms of an Application.
- "Service"** means continuous employment in the United Kingdom with an Employer (including temporary absences falling under Rule 12 (*Temporary Absence*)).
- "Small"** is defined in Rule 14.7.
- "Successor"** has the meaning given in paragraph 27F of Schedule 28 of the Finance Act 2004 but excludes any individual of whose eligibility the Trustee is unaware having made reasonable enquiries. The designation of any funds for Drawdown for an individual shall count as nomination of that individual if he or she would not otherwise qualify for Drawdown.
- "Survivor"** in relation to a Member means a Dependant, Nominee or Successor of the Member.
- "Termination Members"** means, when an Employer's participation has ceased, those Members whose latest or only period of Pensionable Service relates to employment with that Employer.
- "Transfer Requirements"** means those requirements of the Pension Schemes Act 1993 and regulations made under that Act that are relevant to the transfer or buying out of benefits.
- "Triggering Event"** has the meaning given to it in the Pension Schemes Act 2017.
- "the Trustee"** means the trustee for the time being of the Scheme.
- "Trustee Liability"** means any costs, charges, damages, expenses, losses, penalties or taxes which the Trustee or any Trustee may incur in connection

with the Scheme.

**"Trustee Officer"** means any Trustee (if appointed as an individual) or any director, employee or other officer of the Trustee (if the Trustee is a company).

**"Unauthorised Payment"** has the meaning given in section 160(5) of the Finance Act 2004.

**"Uncrystallised Fund"** means any part of an Individual Account which is not a Drawdown Fund and has not been applied towards the provision of any other benefit in accordance with the Rules.

- 1.2 Where the context so admits, words relating to men also relate to women and vice versa and words importing the singular include the plural and vice versa.
- 1.3 References to any statutory provision include any pre-enactment, modification, re-enactment or extension of that provision for the time being in force and any statutory instruments, orders or regulations from time to time made under that provision.
- 1.4 References to any statutory instrument, order or regulation include the statutory provision under which it is made including any amendment for the time being in force.
- 1.5 Where any provision of the Rules is included on or after the 2019 Effective Date in order (whether expressly or by implication) to comply with, to summarise, to refer to or otherwise to reflect a provision of legislation (including in particular the provisions of the Pension Schemes Act 2017 concerning Authorised Schemes):
  - 1.5.1 nothing in that provision of the Rules is to be construed as imposing on any person any other or greater liability or obligation (including an obligation to provide benefits to any person entitled or prospectively entitled to a benefit under the Scheme) to any person than the minimum liability or obligation imposed on the person in question by the legislation in question (as modified from time to time); and
  - 1.5.2 where there is any modification to any such legislation, that provision of the Rules shall be automatically modified to reflect that modified legislation to the extent necessary to give effect to Rule 1.5.1 above.
- 1.6 The expression "person" includes any firm, organisation or body of persons (whether or not incorporated).
- 1.7 The expression "employee" and "director" shall include any person occupying the position of director, by whatever name called.
- 1.8 Same sex marriages are to be treated in the same way as opposite sex marriages. Words such as "marriage", "spouse", "widow", "widower" and "divorce" are to be interpreted accordingly.
- 1.9 The headings to the Rules and the references in square brackets to the headings of any Rules do not affect their interpretation.
- 1.10 Nothing in the Rules shall in any way restrict the right of an Employer to terminate the employment of a Member.

## **2. TRUSTEESHIP, LIABILITY ETC.**

### **2.1 Appointment, removal and retirement**

- 2.1.1 The Founder may jointly with the Trustee appoint any person or corporate body as a Trustee, as an additional Trustee or in place of a Trustee on such terms as they consider appropriate. The number of Trustees shall not be fewer than two except that a company may act as sole Trustee. The appointment of a new Trustee must be made by deed, executed by the Founder, any continuing Trustee and the new Trustee.
- 2.1.2 A Trustee may be resident or incorporated inside or outside the UK.
- 2.1.3 No person or body may be appointed as a Trustee if prohibited or disqualified under section 3 or 29 of the Pensions Act 1995.
- 2.1.4 The Founder must ensure that the Scheme at all times is exempted from the requirements of sections 241-243 of the Pensions Act 2004 and complies with the requirements for nonaffiliated trustees set out in regulations 27 and 28 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996.
- 2.1.5 The Founder may remove jointly with the Trustee a Trustee from office by giving the Trustee notice in writing, provided at least two Trustees or a corporate trustee remain in office after his removal. The removal must be made by deed executed by the Founder and any continuing Trustee.
- 2.1.6 A Trustee may retire from office by giving at least three months' notice in writing to the Founder and any continuing Trustee, provided at least two Trustees or a corporate trustee remain in office after his retirement. The retirement must be made by deed executed by the Founder, the retiring Trustee and any continuing Trustee.
- 2.1.7 A Trustee who retires or is removed from office must take all such steps as are necessary to give effect to his retirement or removal, including concerning the transfer to any continuing Trustee of any Scheme Assets (including the Initial Fund and the Reserve Account) that are under his control or registered in his name.
- 2.1.8 The Trustee shall notify the Pensions Regulator of the appointment, removal or resignation of any Trustee.

### **2.2 Trustee's remuneration**

The Trustee (and any director or officer of the Trustee) may be paid such remuneration (if any) as may be agreed from time to time by the Founder. An individual that is a professional trustee and is engaged in the business of providing trustee services to the Scheme for payment may also charge for its services on such terms as it may agree with the Founder. Any remuneration shall be treated as an expense under Rule 6 (*Expenses*).

### **2.3 Trustees' personal interests**

No decision, act or omission will be invalidated or questioned because a Trustee (or a director or officer of a Trustee) had a direct or personal interest in the result.

A Trustee may be a director, officer or member of any company to which the Trustee delegates any of its powers, duties or discretions, subject to compliance with the requirements for non-affiliated trustees in the Occupational Pension Schemes (Scheme Administration) Regulations 1996.

## 2.4 **Conduct of business**

If a company is the sole Trustee, it shall conduct its business in accordance with its memorandum and articles of association. Any decision of the company properly taken in accordance with its memorandum and articles of association constitutes a decision of the Trustee. Otherwise, the Trustees must adopt and comply with appropriate rules for conducting their business.

## 2.5 **Trustees' liability: limitations and exemptions**

2.5.1 The Trustee is not liable for any Trustee Liability arising from:

- (a) any fall in the market value of the Scheme Assets from time to time;
- (b) any failure by a Member to receive his benefits due under the Scheme if this failure is attributable to the method by which benefits are paid;
- (c) the payment of any benefits due under the Scheme to the wrong person;
- (d) any failure to recover overpayments of pension instalments made to a Member after the Member has stopped being entitled to receive a pension;
- (e) any failure to ensure the safety of any documents of title deposited by the Trustee with a custodian or otherwise;
- (f) any act or omission of a nominee, agent or other person to whom the Trustee has delegated any of its powers under Rule 4.3 or
- (g) any personal liability for a breach of trust that is exempted under Rule 2.5.2 or for which the Trustee is granted relief by the court under section 61 of the Trustee Act 1925.

The Trustee is not obliged to take any steps to recover any loss arising as a result of any of the acts or omissions referred to above.

2.5.2 Subject to Rule 2.5.3 below, a Trustee Officer is not personally liable for any Trustee Liability arising from breach of trust under the Scheme unless the breach is caused by:

- (a) his fraudulent or dishonest conduct; or
- (b) his wilful neglect or default.

2.5.3 The application of Rule 2.5.2 is limited as follows so that

- (a) Rule 2.5.2 only applies to personal liability for any Trustee Liability to the extent this is not rendered void under section 235 of the Companies Act 2006;
- (b) a Trustee Officer who commits a breach of trust in reliance on the advice or opinion of any professional adviser appointed by the Trustee or any information supplied to the Trustee by an Employer is not personally liable for any loss to the Scheme arising from the breach unless the breach is caused by his fraudulent or dishonest conduct or his wilful neglect or default;
- (c) a Trustee Officer who is in the business of providing trustee services for remuneration is also liable for any breach of trust caused by his negligence; and

- (d) Rule 2.5.2 does not apply in the case of any breach of an obligation on a Trustee Officer to take care or exercise skill in the performance of investment functions under section 33 of the Pensions Act 1995. But a Trustee Officer is not personally liable for any loss to the Scheme arising from the acts or defaults of an investment manager appointed under Rule 3.10, provided the Trustee has taken reasonable steps to satisfy itself that the investment manager:
- (i) has the appropriate knowledge and experience for managing investments of the type held by the Scheme;
  - (ii) is carrying out his work competently; and.
  - (iii) is otherwise complying with section 36 of the Pensions Act 1995.

2.5.4 The Trustee may protect itself and any Trustee director from any Trustee Liability by purchasing an insurance policy. The premiums due under any such insurance policy shall be paid by the Founder.

## 2.6 Indemnity

2.6.1 Subject to Rule 2.5.4 and Rule 2.6.2 and without prejudice to the right to indemnity by law given to trustees, the Founder shall indemnify each Trustee (and the directors, officers, employees and shareholders of any corporate Trustee or any other individual or company who contracts with the corporate trustee to carry out his work on behalf of the corporate trustee) in respect of any claims or costs arising from anything done or caused to be done or omitted to be done or omitted by a Trustee in connection with the Scheme, except an act or omission which he knew to be a breach of trust and which he knowingly and wilfully committed or omitted as the case may be.

2.6.2 To the extent that an indemnity under this Rule 2.6 would otherwise be void under section 232 of the Companies Act 2006, the indemnity shall apply only to the extent permitted by section 235(3) of that Act, so that it shall be a "qualifying pension scheme indemnity provision" as defined in section 235 of the Companies Act 2006.

2.6.3 If any claim is made against any Trustee as a result of which the Founder may become liable under this Rule, such Trustee shall:

- (a) not make any admission of liability, agreement, settlement or compromise or otherwise take any action without the prior written consent of the Founder, unless the Founder unreasonably delays consideration of the matter or unreasonably withholds its consent;
- (b) as soon as reasonably practicable after the Trustee becomes aware of any claim made or threatened in connection with a matter which could be the subject of a claim under this indemnity, notify the Founder in writing with any known material details of the actual or threatened claim;
- (c) permit the Founder to take such action on his behalf and at its own expense as the Founder may reasonably think appropriate to avoid, resist, appeal, compromise, defend, mitigate or otherwise deal with the claim or liability; and
- (d) give such reasonable assistance and co-operation (including the provision or procuring of all consents, documents and information within the Trustee's

power) as may reasonably be requested by the Founder in connection with that claim.

2.6.4 For the purposes of this Rule, "Trustee" includes any person who was formerly a Trustee and the director or officer of a corporate trustee.

## 2.7 **Administrator**

The Trustee shall be the scheme administrator for the purposes of section 270 of the Finance Act 2004.

The Trustee may appoint a person to act as scheme administrator in its place on such terms as it (following consultation with the Founder) determines to discharge the functions referred to above.

## 2.8 **Scheme secretary**

The Trustee may appoint a scheme secretary to assist the Trustee in the conduct of the Scheme's business.

The terms and conditions of employment of any person whom the Trustee wishes to appoint as secretary to the Scheme must be agreed by the Founder.

## 3. **INVESTMENT POWERS**

### 3.1 **General investment power**

3.1.1 The Trustee's power of investment under section 34(1) of the Pensions Act 1995 shall be unrestricted subject to compliance with the restrictions on employer-related investments under section 40 of the Pensions Act 1995. The Trustee may buy, hold and deal in assets, rights or instruments of any kind, whether or not income-producing.

3.1.2 The Trustee shall not invest the Initial Fund.

### 3.2 **Bank accounts**

The Trustee may operate a bank account for the Scheme. Any funds in the Trustee bank account from time to time are assets of the Scheme and held by the Trustee in accordance with Clause 2 of the Definitive Deed.

### 3.3 **Underwriting and insurance**

The Trustee may:

3.3.1 underwrite or sub-underwrite any investments or securities, whether on issue or sale, and whether jointly with other persons or not; and

3.3.2 buy insurance policies or annuity contracts from an insurance company and deal with those policies or contracts by way of surrender, exchange, mortgage or otherwise.

### 3.4 **Options, futures and derivatives**

The Trustee may:

3.4.1 sell, buy or create option contracts traded on any recognised traded option market or contracts traded on any recognised financial futures market; and

3.4.2 enter into any form of derivatives contracts (whether on or off exchange) as the Trustee thinks fit including (but not limited to) swap contracts.

The Trustee may enter into any arrangements necessary to give effect to these contracts including the deposit of assets as security.

### 3.5 **Land**

The Trustee may buy or secure any interest in land, and they may incur costs on any related development, redevelopment, improvement, maintenance or insurance.

### 3.6 **Borrowing and charging**

Subject to section 36A of the Pensions Act 1995, the Trustee may borrow any money for the purposes of the Scheme and may charge all or any part of the assets of the Scheme with the due repayment of, or payment of interest on, any monies so borrowed,

### 3.7 **Stock lending**

Subject to section 40 of the Pensions Act 1995, the Trustee may lend any stock, fund, share, security or other asset to any person.

### 3.8 **Pooled investments**

The Trustee may pool or otherwise jointly invest all or any of the assets of the Scheme with the assets of any other Registered Pension Scheme. In doing so, the Trustee may enter into any arrangements for the appointment of one or more investment managers and/or nominees of the pooled or jointly invested assets.

### 3.9 **Authority to draw cheques**

The Trustee may authorise any person to draw cheques on any bank account, or endorse any cheques, or give receipts and discharges. Any such receipt or discharge will be as valid as if it were given by the Trustee.

### 3.10 **Appointment of investment manager, nominees and custodian**

Subject to obtaining the consent of the Founder, and subject to sections 34 and 42 of the Pensions Act 1995, the Trustee may appoint one or more investment managers of all or any part of the Scheme assets. The Trustee may arrange for all or part of the assets of the Scheme to be held in the name of a nominee or custodian.

The Trustee may agree any terms of appointment, including terms as to remuneration, sub-delegation, resignation and removal, provided these are standard within the industry.

The Trustee must take all such steps as are reasonable to satisfy itself that an investment manager appointed under this Rule has the appropriate knowledge and experience for managing the investments of the Scheme and is carrying out his work competently and in accordance with section 36 of the Pensions Act 1995.

An investment manager appointed under this Rule and to whom the Trustee has delegated its investment powers must be authorised under the Financial Services and Markets Act 2000 and must manage the investment of the Scheme Assets in accordance with Rule 3 and section 36 of the Pensions Act 1995.

### 3.11 **Donations**

The Trustee may accept any donations for any of the purposes of the Scheme.

### 3.12 **Statement of investment principles**

The Trustees must prepare, maintain and from time to time review and revise a written statement of investment principles governing decisions for the purposes of the Scheme and any default arrangement in accordance with section 35 of the Pensions Act 1995 and Regulations 2 and 2A of the Investment Regulations.

In preparing, reviewing or revising the statement of investment principles, the Trustee must consult in accordance with the Investment Regulations.

As a condition of participation in the Scheme, each Employer must nominate the Founder as its representative for the purposes of regulation 2(2)(b) of the Investment Regulations unless the relevant Participation Agreement specifies otherwise.

### 3.13 **Indemnity etc**

The Trustee may give an indemnity to third parties out of the assets of the Scheme in connection with any powers and discretions conferred upon them by this Rule 3. The Trustee may also give any guarantee, warranty or undertaking as it considers necessary in entering into a transaction with another party.

## 4. **OTHER TRUSTEE POWERS**

### 4.1 **General administration arrangements**

The Trustee may make any arrangements for the general administration of the Scheme. In particular it may appoint or employ agents and staff to transact any business of the Scheme, including the payment of benefits. Any receipt given to those agents and staff will be a valid discharge to the Trustee.

A delegate, agent or employee appointed by the Trustee under this Rule 4 may receive such remuneration as the Trustee considers appropriate, payable as an expense of the Scheme under Rule 6.

### 4.2 **Power to indemnify**

In addition to the power granted under Rule 3.13 the Trustee may give an indemnity to third parties out of the assets of the Scheme in connection with the exercise of any of its powers, duties or discretions.

### 4.3 **Delegation**

The Trustee may delegate any of its powers, duties and discretions (including the formation of any opinion and the power to sub-delegate) to any person.

### 4.4 **Professional advice**

Subject to the requirements of section 47 of the Pensions Act 1995, the Trustee may obtain and rely upon the advice or opinion of any accountant, actuary, broker, lawyer, fund manager, medical practitioner, surveyor or other professional person and is not liable for any loss to the Scheme arising from such reliance.

### 4.5 **Accounts and auditor**

The Trustee may appoint and remove a person or firm as auditor. It must ensure that annual reports and accounts are prepared for the Scheme.



**4.6 Power to decide matters of doubt**

The Trustee may decide all matters of doubt arising under the Rules. So far as the law permits, its decision shall be final.

**4.7 Resolving disputes**

The Trustee must make arrangements for resolving disputes in accordance with section 50 of the Pensions Act 1995.

**4.8 Legal proceedings**

The Trustee may start any legal proceedings to resolve any matter relating to the Scheme, and may pursue, defend, settle or submit to arbitration any proceedings or other claims relating to the Scheme.

**4.9 Undertakings**

The Trustee may give undertakings to HMRC, the Pensions Regulator and any other person.

**4.10 Power to insure death benefits**

The Trustee may insure any lump sum death benefits payable under the Scheme. The premiums shall be payable in accordance with the relevant Employer's Participation Agreement.

**4.11 Notices**

Any notice of a matter that is required under this deed to be given to the Trustee must be given in such form and manner required by the Trustee, with such supporting evidence (if any) as the Trustee may stipulate.

**4.12 Provision of Information**

The Trustee may publish announcements or provide information about the Scheme in such written form as it considers appropriate. Information disclosed under the Disclosure Requirements may be given by means of Electronic Communication.

**4.13 Gifts**

The Trustee may accept gifts or compensation and apply them in such manner as it considers appropriate, consistent with the Scheme's status as a Registered Pension Scheme.

**5. ALTERATION OF THE DEFINITIVE DEED AND RULES**

5.1 The Founder may, with the agreement of the Trustee, amend, alter, rescind or add to any provision of this Definitive Deed and Rules, including this Rule.

5.2 The Founder and the Trustee undertake to make any amendments or additions to this Definitive Deed and Rules that are required by law.

5.3 The Founder and the Trustee must effect any amendment made under Rule 5.1 by deed.

5.4 The power in Rule 5.1 is subject to the restrictions and requirements of section 67 of the Pensions Act 1995.

5.5 The power in Rule 5.1 may be exercised at any time, including retrospectively and during the winding-up of the Scheme or a part of the Scheme. If the power is exercised retrospectively,

the Trustee may administer the Scheme until a deed has been executed making retrospective amendments to the Definitive Deed and Rules as if the amendments were already effective.

- 5.6 If an Insolvency Event occurs in relation to the Founder, the power shall be vested solely in the Trustee.
- 5.7 Where an amendment has a material effect on one or more of the Employers or Members the Trustee must give any Employer or Member affected by any amendment or addition to the Definitive Deed and Rules notice in writing within three months after the date on which a deed is executed under Rule 5.1. A failure to notify shall not affect the validity of the amendment
- 5.8 A Participation Agreement may be amended only by way of written agreement between the parties.

## 6. **EXPENSES**

- 6.1 Except as provided below, all of the Trustee's costs, charges and expenses incurred in respect of the administration and management of the Scheme shall be payable by the Founder. The Founder and Trustee may agree a process concerning how advisers are appointed and costs incurred.
- 6.2 Subject to Rule 17 (*Reserve Account*), the Founder may charge such fees as it shall determine necessary for the provision of the Scheme from time to time (and as notified to the Trustee), such fees being payable by the Employers and/or Members of the Scheme, provided that:
- 6.2.1 it notifies Employers and Members when they first become Members of the Scheme of the initial level of charges payable with such notification to be provided at least once annually thereafter; and
- 6.2.2 following the occurrence of a Triggering Event, the charges imposed on Members' Individual Accounts shall not increase unless this would be permitted by the Pension Schemes Act 2017.
- 6.3 All fees payable to the Founder from an Individual Account in respect of a Member shall be paid by the Trustee on such basis as shall be determined by the Founder by deduction from the relevant Individual Account.
- 6.4 An Employer shall pay such fees as the Founder and the Trustee determine from time to time to meet any costs, charges and expenses incurred in connection with the relevant Employer's participation under the Scheme.
- 6.5 In the event that an Employer and/or the Founder as appropriate refuses to pay the costs they are liable to pay as set out above within a period of one month from the date of invoice, any such costs shall be deducted by the Trustee from the Reserve Account and once monies in the Reserve Account have been exhausted, where lawfully permitted on a pro-rata basis from the Individual Accounts (relating to that Employer where the non-payment relates to an Employer, or relating to all Members where the non-payment relates to the Founder unless specifically related to one Employer's participation). This provision shall apply subject to the requirements of the Pension Schemes Act 2017 and the Occupational Pension Schemes (Charges and Governance) Regulations 2015.

## **7. PARTICIPATION OF EMPLOYERS**

### **7.1 Participation by Employers**

- 7.1.1 The Trustee and the Founder may from time to time agree the terms of a standard-form Participation Agreement, which must include provision that any Employer admitted to participate in the Scheme must comply with the provisions of this Definitive Deed and Rules and the relevant Participation Agreement so far as they relate to the Employer and to its Employees.
- 7.1.2 The Founder may at any time (but subject to Rule 7.1.3) admit any person as an Employer. Admittance shall be by execution of the Participation Agreement by the Founder and the new Employer. The consent of the Trustee is not required provided that the Participation Agreement for the Employer in question is in materially identical form to the standard form agreed under Rule 7.1.1.
- 7.1.3 No person shall be permitted as an Employer if such participation would prejudice the Scheme's status as
- (a) a Registered Pension Scheme;
  - (b) a qualifying automatic enrolment scheme for the purposes of the Pensions Act 2008; or
  - (c) an Authorised Scheme (including, in particular, the requirement that no new Employer may be permitted to participate after a Triggering Event).

### **7.2 Employer obligation**

If the Founder or the Trustee incurs any costs or liability as a result of:

- 7.2.1 an Employer failing to comply in good time with any of its obligations under the Scheme (including the timely payment of contributions); or
- 7.2.2 the cessation of an Employers participation in the Scheme;

the Employer must pay to the Founder or the Trustee on demand an amount equal to the costs or liability incurred.

### **7.3 Cessation of participation by Employers**

- 7.3.1 Subject to Rule 7.3.2, an Employer (other than the Founder) shall cease to participate in the Scheme when any of the following events take place or when any notice given in accordance with the following provisions takes effect:
- (a) if the Employer gives one month's written notice to the Trustee and Founder stating that it shall cease to participate in the Scheme;
  - (b) if the Founder and the Trustee give one month's written notice (or such other notice period as is specified in the applicable Participation Agreement) of the cessation of participation in the Scheme to the Employer;
  - (c) if the Trustee resolves to wind-up the Scheme in accordance with Rule 9;
  - (d) if an Insolvency Event occurs in relation to the Employer;
  - (e) if the Founder so determines where contributions to the Scheme remain unpaid by an Employer;

- (f) if the Trustee determines that there are no remaining Members or surviving beneficiaries in the Scheme in relation to that Employer; or
- (g) if there is a continuing failure on the part of the Employer to observe and perform its obligations under the Definitive Deed and Rules or the Deed of Participation within such period as the Trustee has required the Employer to do so including but not limited to any failure to meet the costs of the Scheme in accordance with Rule 6.

7.3.2 Where an event listed in Rule 7.3.1 has occurred, the Founder may permit the Employer to continue to participate in the Scheme for such period and on such terms as the Founder may decide. Any such period may not exceed 12 months from the date on which the event in Rule 7.3.1 takes place or upon which any notice given in accordance with the provisions of Rule 7.3.1 takes effect, unless the Trustee gives its prior written consent to a longer participation period.

7.3.3 On the date the participation of an Employer ends in accordance with Rule 7.3.1:

- (a) all Termination Members who were Active Members immediately prior to the date of cessation shall be treated as if they had opted out of Active Membership in accordance with Rule 10.2, unless Rule 7.3.4 applies;
- (b) subject to paragraph (c), the Individual Account of each Termination Member shall remain in the Scheme, unless and until the Member retires, transfers his or her Individual Account out of the Scheme or dies or the Scheme winds-up under Rule 9; and
- (c) all powers vested in the Employer by this Definitive Deed and Rules and the relevant Participation Agreement shall instead, from that date, be vested in the Trustee.

7.3.4 Upon an Employer's cessation of participation in the Scheme, instead of all the Active Members being treated as opting-out under Rule 10.2, the Founder may permit the Active Members to become Independent Active Members, in which case they may make contributions in accordance with Rule 11.1.2 for the duration of their Active Membership.

7.3.5 An Employer's participation in the Scheme will not cease solely as a result of the Employer ceasing to pay contributions.

#### **7.4 The Founder — Insolvency Event**

If an Insolvency Event occurs in relation to the Founder, its powers under the Rules shall be vested in the Trustee.

#### **7.5 The Founder — Substitution**

7.5.1 The Trustee may by deed agree that a person be substituted as Founder of the Scheme. The new Founder must agree to perform the obligations of the Founder under this Definitive Deed and Rules and give such other undertakings as the Trustee may consider necessary. The new Founder will have all powers and obligations of the Founder under the Scheme.

7.5.2 The consent of the existing Founder is required before the substitution takes effect unless an Insolvency Event has occurred in relation to the Founder.

7.5.3 If reasonably practicable, the Trustee or the Founder shall provide advance notice of any proposed substitution to the Employers and give them the opportunity to make representations before the substitution takes effect.

## 8. **PROVISION OF INFORMATION**

Each Employer and Independent Active Member must promptly provide the Trustee and the Founder with such information as they may require to administer the Scheme.

The Trustee and the Founder may rely upon that information without further enquiry and shall not be responsible for any loss if it proves incorrect.

## 9. **WINDING-UP**

### 9.1 **Winding-up triggers**

The winding-up of the Scheme shall be triggered:

9.1.1 if the Trustee with the Founder's consent at any time resolves that the Scheme is to be wound up; or

9.1.2 if there is an Insolvency Event in relation to the Founder and no other person has taken its place under Rule 7.5 (*The Founder – Substitution*) nor, in the opinion of the Trustee, is likely to do so.

The Trustee (with the consent of the Founder if termination is under Rule 9.1.1) may decide to defer the winding-up. The Trustee may, with the consent of the Founder (if termination is under Rule 9.1.1), end the period of deferral by giving six months' written notice to the Employers of its decision.

If an Insolvency Event occurs in relation to the Founder, the powers of the Founder shall be vested solely in the Trustee.

### 9.2 **Effects of winding-up**

On the winding-up of the Scheme:

9.2.1 the liability of Employers and Members to contribute shall terminate except in respect of any contributions due on or before the date of winding-up;

9.2.2 all Active Members shall be treated as if they had opted out of Active Membership;

9.2.3 no new Member may join the Scheme; and

9.2.4 unless the Trustee otherwise decides in any particular case, no lump sum benefit that would otherwise be paid in respect of a Member in Service at the date of death shall be paid in respect of any death occurring after the date of termination.

The Trustee shall further:

9.2.5 arrange for all persons specified in regulations made under section 13 of the Pension Schemes Act 1993 who are affected to be notified in writing within any time period specified within such regulations;

9.2.6 apply under Rule 14 the Member's Uncrystallised Fund which was due to be applied under that Rule before the winding-up started, but which the Trustee had not applied at the date of the winding-up of the Scheme;

- 9.2.7 apply under Rule 16 any sum held by them as a death benefit under that Rule; and
- 9.2.8 make appropriate arrangements to pay any benefit they are holding for a person unable to act.

### 9.3 **Application of Scheme assets**

After making provision for the actions required under Rule 9.2 the Trustee shall, before applying the Scheme Assets towards the provision of benefits under the remainder of this Rule 9.3 make provision out of the Reserve Account to meet the expenses of winding up the Scheme. The Trustee shall retain its power under Rule 6 (*Expenses*) to deduct expenses out of Members' Individual Accounts once the Trustee has exhausted the Reserve Account

The Trustee may take out insurance against any liability for which it may be liable or accountable in connection with the wind-up of the Scheme. The insurance premiums shall be included in the expenses of winding up the Scheme.

The Trustee shall then identify all Members whose Individual Accounts have not been applied under Rule 9.2.6 and calculate the value standing to those Individual Accounts. The Trustee shall then apply the Scheme assets as follows:

- 9.3.1 in assigning any annuity contracts or insurance policies held in its name to or for the benefit of the beneficiaries to whom they relate;
- 9.3.2 in applying each Member's Individual Account:
  - (a) to provide Pension Benefits; and/or
  - (b) to pay lump sums in accordance with Rule 15 (*Lump sums*); and/or
  - (c) where applicable, to pay any death benefits that are payable under Rule 16.1 (*Death benefits: Assets to be applied*), along with any proceeds of an insurance policy that are payable under that Rule; and
- 9.3.3 in applying any remaining assets in the Reserve Account in accordance with Rule 17.2 (*Reserve Account: Application of the Reserve Account*).

Each Member and the Trustee shall (within the period the Trustee notifies to the Member) agree how his or her Individual Account is to be applied. In the absence of agreement, the Trustee shall decide how his or her Individual Account is to be applied.

### 9.4 **Ways of securing benefits**

The Trustee may secure (in full or in part) any of the benefits under Rule 9.3 with an insurance policy or annuity contract. Alternatively, it may make a transfer in respect of any of those benefits (in full or in part) to another arrangement, subject to compliance with the Transfer Requirements. It may exchange any pension for a lump sum as long as payment of the lump sum does not constitute an Unauthorised Payment.

### 9.5 **Trustee's declaration and discharge**

Once all the liabilities of the Scheme have been secured or otherwise discharged and the Scheme has no remaining assets, the Trustee may declare the Scheme wound up. The Trustee shall then be irrevocably discharged from the trusts of the Scheme.

## 10. JOINING AND LEAVING

### 10.1 Eligibility and admission

- 10.1.1 An Employee is eligible to join or rejoin the Scheme as an Employed Active Member if he or she meets the eligibility criteria as set out in the applicable Participation Agreement. The Trustee shall follow the admission procedure agreed with the relevant Employer as set out in the applicable Participation Agreement.
- 10.1.2 The Trustee may also, subject to the consent of the Founder, agree to admit any individual as an Independent Active Member of the Scheme. The relevant individual must follow any applicable admission procedure (including, where appropriate, the Application) agreed by the Founder and the Trustee.
- 10.1.3 The Trustee may also, subject to the consent of the Founder, admit an individual as a Member provided that the individual is (i) a deferred member of another pension scheme; and (ii) in respect of whom a transfer payment is made from that other scheme to the Scheme under Rule 22.

### 10.2 Opting out and rejoining

- 10.2.1 An Active Member may opt out of Active Membership in accordance with the provisions of the applicable Participation Agreement or Application or, where there is no Participation Agreement or Application, in accordance with any requirements notified in writing to the Member by the Trustee.
- 10.2.2 An Employed Active Member will
- (a) be deemed to have opted-out of the Scheme when his or her Employer ceases to participate in the Scheme under Rule 7.3.3; and
  - (b) be deemed to have opted-out of the Scheme when he or she leaves Service,
- unless in either case the Founder agrees that the individual may continue as an Independent Active Member.
- 10.2.3 An Active Member who opts out of the Scheme may re-join, provided that he or she complies with any relevant provisions in the applicable Participation Agreement or Application or any requirements the Trustee notifies in writing to him or her.

### 10.3 European cross-border employees

If any Employed Active Member performs his or her duties wholly outside the United Kingdom for an employer resident in the EEA, his or her Active Membership shall end as soon as he or she falls outside the definition of "seconded worker" in the Occupational Pension Schemes (Cross-border Activities) Regulations 2005.

### 10.4 Cessation of contributions

Should an Employed Active Member's own contributions under Rule 11.1, and/or his or her Employer's contributions under Rule 11.2, cease to be payable for any period of time as a result of the Employed Active Member's earnings dropping in any month below the level where contributions are payable under the Quality Requirements, the Employed Active Member shall nonetheless remain an Active Member until or unless his or her Active Membership ceases in accordance with Rule 10.2

## **11. MEMBER AND EMPLOYER CONTRIBUTIONS**

### **11.1 Members' contributions**

11.1.1 An Employed Active Member must contribute to the Scheme at such rate (if any) as the Employer shall decide from time to time and notify to the Active Member in writing. Such rate shall not take effect until it has been confirmed to the Trustee in a written form acceptable to the Trustee (such confirmation to be provided in reasonable time in advance of any change) and is subject to any terms, conditions and restrictions as the Trustee may determine from time to time. Unless the Trustee agrees, Employed Active Member contributions payable under this Rule 11.1 shall satisfy the Quality Requirement (taking account of contributions payable under Rule 11.2).

11.1.2 An Independent Active Member must contribute to the Scheme at such rate as the Founder permits and is agreed with the Trustee.

11.1.3 An Active Member may make further contributions above any minimum level required.

### **11.2 Employers' contributions**

11.2.1 In relation to an Employed Active Member, each Employer must contribute to the Scheme at such rate as the Employer shall decide from time to time and notify to the Employed Active Member in writing. Such rate shall not take effect until it has been confirmed to the Trustee in a written form acceptable to the Trustee (such confirmation to be provided in reasonable time in advance of any change) and is subject to any terms, conditions and restrictions as the Trustee may determine from time to time.

11.2.2 Unless the Trustee agrees, Employer contributions payable under this Rule 11.2 shall be required, as a minimum, to satisfy the minimum contributions required of employers under the Quality Requirement.

### **11.3 Contributions payable during an Opt-Out Period**

The Trustee and Founder may agree that contributions shall be paid to the Scheme in respect of an Active Member and credited to that Member's Individual Account only after an Opt-Out Period has ended.

### **11.4 Salary Sacrifice**

Each Employer shall be solely responsible for the design and implementation of any salary sacrifice arrangement for its Employees. Each Employer must indemnify the Trustee and the Founder against any expense or claim arising under any such arrangement unless that expense or claim results from a failure by the Trustee to comply with this Deed and Rules or the relevant Participation Agreement.

### **11.5 Members Individual Account**

11.5.1 Any contributions paid or received by or on behalf of an Active Member shall be credited to that Member's Individual Account.

11.5.2 The rights attributable to a Member's Individual Account do not confer any beneficial interest in any specific assets of the Scheme. However, each Individual Account shall be separately identifiable and the funds contained therein shall not be capable of being used to provide benefits in respect of any other Individual Account.



## 11.6 **Separation**

Except as provided in Rule 6.5, assets attributable to Members' Individual Accounts shall not be used to meet any liabilities of the Scheme other than those arising in relation to the applicable Individual Account. This Rule shall override, to the extent necessary, any provision to the contrary in these Rules except Rule 6.5.

## 11.7 **Payment schedule**

The Trustee must prepare, maintain and from time to time revise a payment schedule showing the rates and due dates of Active Members' and Employers' contributions.

## 12. **TEMPORARY ABSENCE**

Provisions relating to temporary absence such as family leave, ill-health or secondment shall be set out in the relevant Participation Agreement or Application.

## 13. **INVESTMENT OF CONTRIBUTIONS**

### 13.1 **Trustee's investment duties**

The Trustee must invest any contributions paid under Rule 11 (*Member and Employer contributions*) and any transfer payment made to the Scheme under Rule 22 (*Transfers to the Scheme*) in accordance with Rule 3 (*Investment powers*), the remainder of this Rule 13 and the applicable Participation Agreement or Application.

### 13.2 **Default Arrangement**

The Trustee must ensure that a default arrangement (as defined in Regulation 3 of the Occupational Pension Schemes (Charges and Governance) Regulations 2015), is made available to comply with the requirements of Chapter 1 of Part 1 of the Pensions Act 2008.

### 13.3 **Investment Options**

The Trustee must, having taken account of appropriate advice from an investment adviser, make available a range of Investment Options.

Each Employer may impose limits on the Investment Options available to its Members as agreed in writing with the Trustee.

Employers may request that additional investment options be made available by the Trustee. The Trustee shall have absolute discretion to decide (subject to any restrictions the Founder may from time to time notify to the Trustee) whether or not to make the additional investment options available.

Subject to the other provisions of this Rule 13, the Trustee must invest a Member's Individual Account in accordance with any available Investment Option he or she selects. If a Member does not provide a direction to the Trustee for the purposes of investing his Member's Account the Trustee shall invest his Member's Account in the default arrangement referred to in this Rule 13.3. The Trustee may, without the consent of the Member, select and apply any new alternative default fund or strategy to new contributions and/or existing monies in a Member's Account.

The Trustee may at any time decide to withdraw, close, discontinue, transfer or substitute all or any part of any Investment Option or make available any new or alternative Investment Option. The Trustee may transfer assets from the relevant Investment Option to the alternative Investment Option without the relevant Member's consent. If the Trustee considers notification

necessary (taking into account the interests of the Employers and Members), the Trustee must notify the Employers and Members concerned of its decision.

#### 13.4 **Member selection and switches**

A Member may select and switch between Investment Options, subject to any restrictions agreed in writing between the Employer and Trustee and communicated to the Members.

So far as is permitted by law, the Trustee shall not be liable for acting in accordance with a Member's selection of, or switch between, any Investment Options.

The Trustee may impose charges in respect of any Member who, in the opinion of the Trustee, requests an excessive number of switches between Investment Options in relation to funds already held in the Member's Individual Account. The Trustee must first provide reasonable notice of the charge to the Member's Employer. This power to impose charges shall not apply in relation to requests to switch the investment of future contributions.

### 14. **PENSION BENEFITS**

14.1 Subject to Rule 14.7, the Trustee may, in accordance with a written request from a Member, apply all or part of his or her Uncrystallised Fund to provide one or more Pension Benefits, subject to any conditions set out in the relevant Participation Agreement or imposed by the Trustee from time to time. The Founder may impose additional restrictions by notifying the Trustee of them in writing. Any benefit which is payable to or in respect of a Member may be restricted as necessary to ensure that it is not an Unauthorised Payment.

14.2 The amount applied to provide the Pension Benefits shall be deducted from the Member's Uncrystallised Fund (or, in the case of Drawdown, Drawdown Fund), reducing accordingly the amount that can be used to provide other benefits in respect of him or her.

14.3 No Pension Benefit may be paid to a Member before his or her Normal Minimum Pension Age, unless he or she is suffering from Incapacity.

14.4 When a Member has reached age 75, the Trustee may:

14.4.1 apply all or part of his or her Uncrystallised Fund to provide one or more Pension Benefits without first receiving a written request from him or her;

14.4.2 disinvest the Uncrystallised Fund and hold it in cash until claimed by the Member;

14.4.3 make such decisions as it thinks fit in relation to any lifetime allowance charge that may be due in accordance with Rule 18.8.2; and/or

14.4.4 allow the Member to continue paying contributions to the Scheme as an Active Member for such period as they may determine – generally or in any particular case (and where they determine to allow continued payment of contributions for a specified period, at the expiry of that period they may exercise the powers under Rules 14.4.1 and 14.4.2).

14.5 The Trustee must buy an insurance contract or annuity policy to provide Pension Benefits other than Drawdown or lump sum payments.

14.6 If a Member is to receive Drawdown, the Trustee must first transfer the relevant part of his or her Uncrystallised Fund to a Drawdown Fund for the Member. This may be a Drawdown Fund provided by the Scheme or an equivalent arrangement provided outside the Scheme.

14.7 In the case of a Member whose Active Membership ceases and whose Individual Account at the point that his Active Membership ceases is Small the Trustee shall immediately (save

where the Member has not attained Normal Minimum Pension Age in which case upon the Member attaining that age) apply all of his Uncrystallised Fund to provide one or more lump sums under Rule 15.3, 15.5 or 15.6 except that this proviso shall not apply if assets are transferred into the Member's Individual Account in accordance with Rule 23 (*Transfers to the Scheme*). For the purposes of this proviso a Member's Individual Account is Small if its value is less than £100 or such other amount as may from time to time be agreed between the Trustee and the Founder.

## 15. LUMP SUMS

### 15.1 General

The Trustee may pay lump sums to a Member, subject to any conditions set out in the relevant Participation Agreement or imposed by the Trustee from time to time.

The lump sum shall be deducted from the Member's Individual Account or shall otherwise discharge the Trustee from liability for the benefit in substitution for which the lump sum is paid.

### 15.2 Pension commencement lump sum

The Trustee may pay a lump sum to a Member who is due to apply all or part of his or her Uncrystallised Fund to provide a Pension Benefit. The lump sum must be paid within the period beginning six months before, and ending one year after, the date on which the Member became entitled to the Pension Benefit. The amount of the lump sum must not exceed the permitted maximum defined in paragraph 2 of Schedule 29 to the Finance Act 2004.

### 15.3 Uncrystallised funds pension lump sum

The Trustee may pay a lump sum to a Member under paragraph 4A of Schedule 29 to the Finance Act 2004 from his or her Uncrystallised Fund if:

15.3.1 it is paid when all or part of the Member's lifetime allowance is available (in accordance with section 219 of the Finance Act 2004); and

15.3.2 he has reached Normal Minimum Pension Age or is suffering from Incapacity.

### 15.4 Serious ill-health lump sum

The Trustee may pay a lump sum to a Member if

15.4.1 the Trustee has obtained evidence from a registered medical practitioner that he or she is expected to live for less than one year;

15.4.2 the lump sum extinguishes his or her entitlement to benefits under an arrangement under the Scheme;

15.4.3 he has not become entitled to any pension or lump sum from that arrangement and

15.4.4 the lump sum is paid when all or part of his or her lifetime allowance is available in accordance with section 219 of the Finance Act 2004.

### 15.5 Winding-up lump sum

The Trustee may pay a winding-up lump sum (as defined in Schedule 29 to the Finance Act 2004) to a Member.

## 15.6 **Other lump sums**

The Trustee may pay such other lump sums to a Member as do not constitute Unauthorised Payments.

## 16. **DEATH BENEFITS**

### 16.1 **Assets to be applied**

On the death of a Member, the Trustee shall apply:

16.1.1 the Member's Individual Account; and

16.1.2 any proceeds the Trustee receives from an insurance policy in respect of his or her death (in accordance with the provisions of the applicable Participation Agreement)

to provide death benefits in respect of the Member. The Trustee shall not be liable for any claims by beneficiaries or potential beneficiaries of which it was not aware, having taken reasonable steps to identify such beneficiaries and potential beneficiaries in relation to the relevant Member.

### 16.2 **Benefits to be provided**

The Trustee shall apply the amount referred to in Rule 16.1 (*Death benefits: Assets to be applied*) to provide one or more of the following benefits in respect of the deceased Member in such portions and to such persons as the Trustee in its absolute discretion decides:

16.2.1 a lump sum or lump sums payable in accordance with Rule 18.3 (*Payment of benefits: Payments of lump sums on death*);

16.2.2 a pension or pensions to any one or more of his or her Survivors, provided that the Trustee must secure the pension under an annuity policy or insurance contract; and/or

16.2.3 retain the amount in the Scheme in accordance with Rule 16.3 (*Death benefits: Retention of Individual Account in the Scheme*).

If the Trustee does not exercise its power under this Rule 16.2 within three months after first becoming aware of the Member's death, it may add interest to any Member's Account due at the base rate applying to the Trustee's bank account (or such other rate as the Trustee may decide) provided this is consistent with the Scheme's status as a Registered Pension Scheme.

The Trustee may deduct from any Individual Account on a Member's death the amount of any funeral expenses incurred for the Member by any person and pay a sum equal to such expenses to that person provided that this would be consistent with the Scheme's status as a Registered Pension Scheme.

### 16.3 **Retention of Individual Account in the Scheme**

If a Member or a potential beneficiary has so requested in writing, the Trustee may in its absolute discretion retain a deceased Member's Individual Account (or part of it) in the Scheme as a Drawdown Fund for one or more of the Member's Survivors. The amount held for the benefit of a Survivor will be treated as that Survivor's Individual Account.

In exercising this discretion, the Trustee shall take into account any information that it has received about the background circumstances but it need not make additional enquiries. The Trustee will not be liable for failure to identify any information that might have affected its

decision. The Trustee need not reconsider any decision if it later receives new or additional information.

## 17. RESERVE ACCOUNT

### 17.1 Establishment

The Trustee may maintain a Reserve Account consisting of:

- 17.1.1 any sum received by the Trustee that is not allocated to an Individual Account; and
- 17.1.2 the balance (if any) of a Member's Individual Account which is not liable to be transferred or applied in respect of that Member.

### 17.2 Application of the Reserve Account

The Founder may require the Trustee to apply the assets of the Reserve Account in any of the following ways as it may in its absolute discretion determine:

- 17.2.1 to credit an additional sum to any Individual Account;
- 17.2.2 as a set off against an Employer's liability to pay contributions under Rule 11.2 (*Member and Employer contributions: Employers' contributions*) in respect of any Member (with a corresponding credit to his or her Individual Account);
- 17.2.3 as a set off against any Member's liability to pay contributions under Rule 11.1 (*Member and Employer contributions: Members' contributions*) (with a corresponding credit to his or her Individual Account); or
- 17.2.4 to pay any surplus to any Employer, subject to section 177 of the Finance Act 2004.
- 17.2.5 as a set off against the Founder's liability to pay remuneration to the Trustee under Rule 2.2 (*Trusteeship, liability etc: Trustee's remuneration*) or as a set off against any Expenses as defined in Rule 6 (*Expenses*).
- 17.2.6 as a set off against any expenses incurred in winding up the Scheme as described in Rule 9.3 (*Termination of the Scheme: Application of Scheme assets*).
- 17.2.7 to fund (in whole or part) any loss arising in respect of any refund of contributions in respect of a Member in circumstances where the amount held by the Trustees in respect of the Member is less than the contributions made by or in respect of the Member.
- 17.2.8 To make a payment to the Founder not covered by the above, provided that the making of such a payment would constitute an authorised payment under the Finance Act 2004.

However, in circumstances where an order has been made, or an effective resolution has been passed, for the Founder to be wound up the power to exercise this Rule 17.2 shall lie in the hands of the Trustee.

## 18. PAYMENT OF BENEFITS

### 18.1 Securing benefits outside the Scheme by the purchase of annuities

The Trustee may make such arrangements as it considers appropriate for the payment of benefits under the Scheme.

Instead of providing benefits under the Scheme in respect of an individual, the Trustee may, with the agreement of the Founder, buy an insurance policy or an annuity contract in the name of the individual concerned, or transfer a policy or contract into that individual's name.

The policy or contract may relate to all or part of the individual's benefits. It must comply with the Transfer Requirements. The Trustee may buy or transfer the policy or annuity without the individual's consent where the law allows this.

Once the Trustee has bought or transferred the policy or contract, it shall be discharged from all the liabilities to which the policy or contract relates.

## 18.2 **No Rule**

## 18.3 **Payment of lump sums on death**

The Trustee may pay any lump sum payable on a Member's or Survivor's death to such one or more persons in such portions as the Trustee thinks fit. The Trustee may pay all or part of the lump sum to the deceased's personal representatives or to trustees to hold upon trust. The Trustee must take account of (without being bound by) any wishes the deceased had communicated to them in writing. It may deduct any legal costs they incur from the lump sum paid.

Any balance of the lump sum remaining two years after the Member's or Survivor's death must be paid to his or her estate. However, if the Trustee is satisfied, after making all reasonable enquiries, that no grant of representation has been obtained or that the deceased's estate was insolvent or would devolve as bona vacantia, then that balance must be retained in the Scheme free from any claim in respect of the deceased.

The Trustee may pay any lump sum payable to the Member's or Survivor's estate to any person the Trustee reasonably considers to be entitled to that estate without production of probate or other proof of title.

## 18.4 **Incapable beneficiaries**

If the Trustee considers that any beneficiary is unable to act (because of his or her minority, mental or physical incapacity or otherwise) it may:

18.4.1 exercise on his or her behalf any option he or she has under the Rules provided that, after reasonable enquiry, it is satisfied that there is no other person legally empowered to make decisions on his or her behalf;

18.4.2 pay any amounts due to the beneficiary to someone else for that other person to apply those amounts for the beneficiary's benefit. That other person's receipt will be a full discharge to the Trustee, who may (but need not) oversee the application of the payment; or

18.4.3 postpone any payment until the beneficiary is again able to act or dies.

The Trustee may accept as conclusive evidence a qualified medical practitioner's certificate regarding a beneficiary's mental or physical capacity.

## 18.5 **Withholding benefits**

If the Trustee is unaware of, or is unable to confirm to its reasonable satisfaction, the existence or whereabouts of any beneficiary or of any fact giving a person the right to any benefit, the Trustee must withhold the payment Entitlement to any arrears withheld for more than six years shall cease but the Trustee may allow payment if it thinks fit. If the Trustee

subsequently decides to pay any benefit withheld under this Rule it may pay interest in respect of the period during which it was withheld, calculated at a rate it considers appropriate.

#### 18.6 **Presumption of death**

Where no formal evidence of the death of a beneficiary is produced the Trustee may presume his or her death. If evidence of his or her existence subsequently comes to the Trustee's notice, the Trustee may make consequential adjustments to the benefits concerned.

Where the Trustee is satisfied that a beneficiary has died but the date of death is uncertain, it may presume the date of death. If it is subsequently satisfied that the death occurred on some other date, it may make consequential adjustments to the benefits concerned.

#### 18.7 **Tax**

The Trustee or any person it has appointed as scheme administrator shall deduct from any sum payable under the Scheme any tax, charge or duty (including interest) for which the Trustee or the scheme administrator is or may be liable or accountable.

#### 18.8 **Provision of information**

Before starting to pay a benefit due under the Scheme to a beneficiary, the Trustee may write to the beneficiary at his last known address asking him to:

18.8.1 confirm his existence. If the Trustee receives no response from the beneficiary within such reasonable period as it may specify, it may assume he is no longer alive and is not required to take any further steps to trace the beneficiary;

18.8.2 confirm the amount of the lifetime allowance available to him. If the Trustee receives no response from the beneficiary within such reasonable period as it may specify, it may defer payment of the benefit until it receives satisfactory evidence of the amount of the lifetime allowance available to the beneficiary. If this evidence is not forthcoming, and the benefit is still not in payment on the day before the beneficiary attains age 75, the trustee may assume the lifetime allowance available to the beneficiary at the date the benefit became due was zero. The Trustee must pay to HMRC a lifetime allowance charge calculated on this basis and must put the beneficiary's benefits into payment after having reduced them to the extent necessary to reflect the lifetime allowance charge; and

18.8.3 provide such other information or evidence as it considers appropriate, including such written consent as is necessary to enable the Trustee to comply with the requirements about sensitive personal data contained in the Data Protection Act 1998.

The Trustee shall not be obliged to enquire or take into consideration any potential beneficiary other than one whose existence and claims to be considered are expressly brought to the Trustee's notice.

If the Trustee ascertains that it has relied on incorrect information in determining the amount of a benefit payable to a beneficiary under the Scheme (including information about the beneficiary's age, marital status or state of health and whether that information was supplied inadvertently or deliberately and including a failure to disclose material information or correct inaccurate records held by the Trustee), the Trustee may amend the benefit and instead pay the benefit calculated on the basis of the correct information. If a beneficiary has received an overpayment of benefits as a result, the Trustee may reduce future instalments of any pension due to the extent necessary to recover the overpayment.

19. **DEBTS OWED**

If a Member owes an Employer an amount as the result of a criminal, negligent or fraudulent act or omission by that Member, the Trustee may deduct that amount from the benefits presently or prospectively payable to that Member or his or her personal representatives (excluding any benefits relating to a transfer into the Scheme or payable to a nominated Dependant) and pay that amount to the Employer.

Payment of benefits under the Scheme may be postponed until it is clear whether or not the debt is enforceable.

20. **FORFEITURE OF BENEFITS**

Except as expressly permitted by the Rules, and subject to sections 91 and 92 of the Pensions Act 1995, a benefit or prospective benefit under the Scheme is forfeited and no longer payable if:

- 20.1 a person entitled to a benefit assigns or charges the benefit (or tries to do so); or
- 20.2 an event occurs by which all or part of the benefit or prospective benefit would become payable to someone other than the person originally entitled to it.

If a benefit or prospective benefit is forfeited, the Trustee may apply some or all of the benefit otherwise due to support and maintain the person originally entitled to it or any of his or her dependants, but the Trustee must make no payment in favour of an assignee or chargee (or purported assignee or chargee).

21. **PROVISIONS ABOUT DIVORCE**

Where the benefits of a Member are subject to a Pension Sharing Order those benefits shall be reduced by the debit applicable in accordance with section 29(1)(a) of the Welfare Reform and Pensions Act 1999.

Any Pension Credit or Pension Credit Benefit may be discharged in any manner consistent with the Welfare Reform and Pensions Act 1999, as decided by the Trustee, subject to the provisions of any applicable Participation Agreement. Any benefits consequently provided under the Scheme for the Former Spouse may be treated by the Trustee as separate from any other benefits under the Scheme for the same individual as an Employee or as a Survivor of an Employee. The Former Spouse shall be regarded as a Member for the purposes of this Definitive Deed and Rules to the extent considered appropriate by the Trustee.

If the Former Spouse of a Member dies before the Trustee has implemented the relevant Pension Sharing Order then the Former Spouse shall be treated as if he or she was entitled to Pension Credit Benefits under the Scheme at the time of his or her death. The Trustee shall then use the cash equivalent of the Former Spouse's benefits under the Pension Sharing Order (calculated in accordance with The Pension Sharing (Pension Credit Benefit) Regulations 2000) to provide such lump sum benefits in accordance with Rule 16 (*Death benefits*) as the Trustee decides.

If the Trustee makes a transfer payment in respect of benefits subject to a debit in accordance with a Pension Sharing Order, the Trustee must provide full details of that debit to the trustees or managers of the receiving scheme.

The Trustee must comply with any enforceable order attaching to a Member's benefit as a result of matrimonial proceedings. That order shall override the provisions of this Definitive Deed and Rules. On payment of any transfer from the Scheme in respect of the Member subject to that order, the Trustee shall notify the trustees or managers of the receiving scheme



and the Former Spouse in accordance with Regulation 4 of the Divorce etc (Pensions) Regulations 2000 or any equivalent regulations relating to civil partners.

**22. TRANSFERS TO THE SCHEME**

Subject to the requirement to maintain the Scheme's status as a Registered Pension Scheme, the Trustee may at the request of the Founder, an Employer or Member accept a transfer to the Scheme from another arrangement.

The relevant individual shall be entitled to such benefits from the Scheme as the Trustee considers appropriate. The Trustee must comply with the Transfer Requirements.

The Trustee may give the trustees or managers of the transferring arrangement an indemnity on such terms as it considers appropriate.

**23. TRANSFERS FROM THE SCHEME**

If an individual validly exercises his or her right to a cash equivalent under the Pension Schemes Act 1993, the Trustee must make a transfer payment to the arrangement he or she chooses if the trustees or managers of that arrangement agree to accept the payment.

The Trustee may also make a transfer payment to another arrangement in respect of an individual who does not have or is not exercising that right.

Transfers may relate to all or part of the individual's benefits. Transfers must comply with the Transfer Requirements. The Trustee may make a transfer payment without the individual's consent where the law allows this.

Once the Trustee has made a transfer payment, it shall be discharged from all the liabilities to which the transfer relates.

**24. FINANCE ACT 2004: UNAUTHORISED PAYMENTS**

No payment shall be made under the Scheme if it would be an Unauthorised Payment unless the Trustee and the Founder agree. If an amount that would otherwise be payable would be an Unauthorised Payment, the Trustee and the Founder may agree to provide an alternative benefit of equivalent value for the person concerned on such terms as they think fit.

**25. COUNTERPARTS**

This Definitive Deed and Rules may be executed in any number of counterparts and by each of the Parties as separate counterparts. Each of the counterparts when executed and delivered shall be deemed to be an original, but all the counterparts together shall constitute one and the same agreement.

Executed and delivered as a deed on the date at the start of this Definitive Deed and Rules

Executed as a Deed by **EC2 MASTER LIMITED**  
acting by:

Andy Cheseldine  
.....  
Director on behalf of Capital Cranfield Trustees Limited

Anna Eagles  
.....  
Director for the law Debenture Pension Trust Corporation  
p.l.c.

Executed as a Deed by **SMART PENSION LIMITED**  
acting by:

Claire Altman  
.....  
Director

Jamie Fiveash  
.....  
Director