

- 5.6 A retiring Trustee shall execute such documents and take such further action as may reasonably be required by the Principal Employer and the other Trustees to implement his retirement or removal and to vest the Fund in the continuing Trustees with effect from the date he ceases to be a Trustee. Should he fail to do so the remaining Trustees may execute such documents and act on his behalf as his attorney. Each of the Trustees irrevocably authorises and appoints their co-Trustees as such for this purpose.
- 5.7 Where a Trustee retires or is removed from acting as a Trustee, he shall be discharged from the trusts of the Scheme.
- 5.8 On the Independent Trustee or Administrator resigning or being removed from office, the Member Trustees shall take all reasonable steps to procure that the Independent Trustee or Administrator as appropriate ceases to be the registered owner or holder of any part of the Fund as soon as reasonably practicable.

6 Appointment and removal of Advisers

- 6.1 The Trustees shall appoint Advisers in accordance with section 47 of the 1995 Act to carry out any functions prescribed by that section 47. The Trustees may also instruct Advisers from time to time to carry out such further work in connection with the Scheme as they think appropriate.
- 6.2 Subject to section 47 of the 1995 Act and clause 6.4 any appointment made pursuant to this clause 6 shall be on such terms and conditions (including as to remuneration) as the Trustees think appropriate. The fees charged by Advisers shall be an expense of the Scheme for the purposes of clause 15.
- 6.3 The power to remove, replace or vary the terms of appointment of any Adviser shall be vested in the Trustees.
- 6.4 To the extent that any terms and conditions agreed pursuant to clause 6.2 involve payments being made by the Fund, the following provisions shall apply:
- (a) no payment shall be made to or in respect of a member (as that term is used in section 164 of the FA 2004) unless the Trustees are satisfied that the whole of such payment will be a scheme administration member payment within the meaning of section 171 of the FA 2004 or will otherwise be an authorised member payment pursuant to section 164 of the FA 2004; and
 - (b) no payment shall be made to or in respect of a sponsoring employer (as that term is used in section 175 of the FA 2004) unless the Trustees are satisfied that the whole of such payment will be a scheme administration employer payment within the meaning of section 180 of the FA 2004 or will otherwise be an authorised employer payment within the meaning of section 175 of the FA 2004.

7 General powers of the Trustees

- 7.1 Without prejudice to the rest of the Definitive Deed and subject to clause 7.2 the Trustees shall have the following general powers (not being inconsistent with the Definitive Deed or maintaining Scheme Registration or contrary to law):
- (a) all such powers and discretions as they may from time to time require for the running of the Scheme;
 - (b) to take any action or make any arrangement relating to the Scheme;
 - (c) to authorise any one or more Trustees to sign any document on their behalf;
 - (d) to enter into agreements and give undertakings, indemnities or guarantees which are binding on them which they decide are necessary and proper for the purposes of the Scheme; and
 - (e) to compromise or settle any matter, claim or proceedings.

7.2 Nothing in clause 7.1 shall authorise the Trustees to make an Unauthorised Payment or take any action which will result in an Unauthorised Payment being treated as having been made.

8 Trustee meetings

8.1 Subject to section 32 of the 1995 Act, the Trustees shall determine the frequency of their meetings. Reasonable notice shall be given to the Trustees of any forthcoming meeting having due regard to the urgency of any business to be discussed.

8.2 Unless the Trustees agree otherwise:

- (a) notice should be given of the date, the time and place of the meeting and an agenda or summary of the matters to be discussed;
- (b) the meetings should be held at a time and venue reasonably convenient to all the Trustees; and
- (c) if the notice is given in writing it should be sent to the last known address of each Trustee no later than 10 days before the meeting; and if the notice is given by telephone it should be given in accordance with clause 8.1 and direct to the Trustees concerned and not any other person.

8.3 The quorum for a meeting of the Trustees shall be the Independent Trustee and all of the Member Trustees. Any decisions taken at an inquorate meeting shall not be valid decisions of the Trustees. A meeting of the Trustees may be held by video or telephone conference (or a combination of the two) and any Trustee participating in a meeting via telephone or video conference link shall be deemed to be present at the meeting for the purposes of ascertaining whether the meeting is quorate.

8.4 Decisions at Trustee meetings must be unanimous. If the Trustees cannot reach a unanimous decision on any matter (excluding decisions relating to the termination or winding up of the Scheme) the matter shall be referred to an expert unanimously appointed by the Trustees whose determination shall be binding on the Trustees. The costs of any such expert shall be an expense of the Scheme for the purposes of clause 15.

8.5 Any written resolution signed by all the Trustees shall be binding and effective as if it had been passed at a quorate Trustees meeting. The resolution may be made by a number of identical copies, whether or not of the same date, each signed by one or more Trustees provided that each Trustee has signed a copy.

8.6 Subject to this clause 8:

- (a) the meetings, procedures and decisions of a corporate Trustee shall also be regulated by its governing documents; and
- (b) the Trustees may make such rules or adopt such procedures for the conduct of their business as they decide.

8.7 As soon as reasonably possible after a meeting, minutes of the matters discussed and decisions made are to be circulated to all the Trustees. The Trustees shall keep minutes and other records in accordance with section 49 of the 1995 Act.

9 Delegation

9.1 Subject to section 34 of the 1995 Act, clause 1.12, clause 9.3 and clause 9.5 the Trustees may delegate and / or authorise the sub-delegation of all or any of their powers, duties, trusts or discretions (including this power to delegate) to any person, on such terms and conditions and for such periods and at such remuneration (if any) as they shall decide. Any such delegation and / or sub-delegation may be revoked by the Trustees at any time.

9.2 Such delegation and / or sub-delegation may be made to:

- (a) a committee of one or more Trustees (subject to clause 1.12);

- (b) an Adviser;
 - (c) such other person (including an Employer) as the Trustees shall decide.
- 9.3 Any decision, power or discretion relating to the termination or winding up of the Scheme may only be exercised unanimously by all the Trustees.
- 9.4 Any remuneration for a Trustee or delegate under clause 9.1 above shall be an expense of the Scheme in accordance with clause 15.
- 9.5 To the extent that any terms and conditions agreed pursuant to clause 9.1 involve payments being made by the Fund, the following provisions shall apply:
- (a) no payment shall be made to or in respect of a member (as that term is used in section 164 of the FA 2004) unless the Trustees are satisfied that the whole of such payment will be a scheme administration member payment within the meaning of section 171 of the FA 2004 or will otherwise be an authorised member payment pursuant to section 164 of the FA 2004; and
 - (b) no payment shall be made to or in respect of a sponsoring employer (as that term is used in section 175 of the FA 2004) unless the Trustees are satisfied that the whole of such payment will be a scheme administration employer payment within the meaning of section 180 of the FA 2004 or will otherwise be an authorised employer payment within the meaning of section 175 of the FA 2004.
- 10 Employment of agents, staff and nominees**
- 10.1 Subject to the following provisions of this clause 10 the Trustees may employ or appoint such agents, employees, nominees or other persons on such terms and conditions including as to remuneration and for such periods as they decide, to transact any business of the Scheme or administer the Scheme or for any other purpose consistent with the purposes of the Scheme. This may include the payment of pensions and other benefits and any such payment made in good faith by the agent shall operate as a discharge to the Trustees.
- 10.2 Agents may include any employees or officers of the Independent Trustee, Administrator or an Employer.
- 10.3 Any agent, employee or nominee (apart from a Trustee) may, if he is acting in good faith, comply with the directions of the Trustees without being obliged to ascertain that those directions comply with the Definitive Deed.
- 10.4 Any remuneration payable under clause 10.1 above shall be an expense of the Scheme in accordance with clause 15.
- 10.5 Any employment or appointment pursuant to clause 10.1 above shall be made subject to a written agreement between the Trustees and the relevant person setting out the terms and conditions of the employment or appointment unless the Trustees agree otherwise.
- 10.6 To the extent that any terms and conditions agreed pursuant to clause 10.1 involve payments being made by the Fund, the following provisions shall apply:
- (a) no payment shall be made to or in respect of a member (as that term is used in section 164 of the FA 2004) unless the Trustees are satisfied that the whole of such payment will be a scheme administration member payment within the meaning of section 171 of the FA 2004 or will otherwise be an authorised member payment pursuant to section 164 of the FA 2004; and
 - (b) no payment shall be made to or in respect of a sponsoring employer (as that term is used in section 175 of the FA 2004) unless the Trustees are satisfied that the whole of such payment will be a scheme administration employer payment within the meaning of section 180 of the FA 2004 or will otherwise be an authorised employer payment within the meaning of section 175 of the FA 2004.

11 Trustee remuneration

- 11.1 Any Trustee engaged in a profession or business (including any officer or employee of a corporate trustee) shall be entitled to be paid all properly incurred expenses, charges, remuneration and commissions for work carried out in connection with the Scheme by him or any firm or company including work which a Trustee not being in any profession or business could have done personally.
- 11.2 Without prejudice to the generality of clause 11.1, if the Independent Trustee, or any professional adviser with which it is connected, is consulted by the Member Trustees with regard to investment advice, the party providing such advice may charge a reasonable fee for such advice and may retain any reasonable commissions received as a result of any resulting investment made by the Trustees.
- 11.3 Any Trustee not engaged in a profession or business may be paid such expenses and remuneration as may be agreed unanimously by the Trustees.
- 11.4 All sums due pursuant to this clause shall be expenses of the Scheme for the purpose of clause 15, to be paid in priority to all other claims on the Fund.
- 11.5 To the extent that any payments pursuant to clause 11 are to be made by the Fund, the following provisions shall apply:
- (a) no payment shall be made to or in respect of a member (as that term is used in section 164 of the FA 2004) unless the Trustees are satisfied that the whole of such payment will be a scheme administration member payment within the meaning of section 171 of the FA 2004 or will otherwise be an authorised member payment pursuant to section 164 of the FA 2004; and
 - (b) no payment shall be made to or in respect of a sponsoring employer (as that term is used in section 175 of the FA 2004) unless the Trustees are satisfied that the whole of such payment will be a scheme administration employer payment within the meaning of section 180 of the FA 2004 or will otherwise be an authorised employer payment within the meaning of section 175 of the FA 2004.

12 Trustees benefiting from the Scheme

- 12.1 The decision of, or the exercise of a power or discretion by, the Trustees shall not be invalidated or questioned on the ground that any of the Trustees or directors of a corporate Trustee had an interest in the result of the decision or the exercise of the power or discretion.
- 12.2 Subject to the consent of the Principal Employer and of the Trustees and to clause 12.5, a Trustee who is or becomes a partner, director, officer or employee of any company, business or partnership in which the Trustees hold shares or any other interest or which, or any part of which, forms part of the Fund, may retain for himself any resulting fees or remuneration notwithstanding that his retention of, or appointment to, that office or employment may be directly or indirectly due to the exercise or non-exercise of any votes by the Trustees.
- 12.3 Subject to clause 12.5 any Trustee, employee, director or other officer of the Trustees, any member of any committee appointed by the directors of the Trustees, any employee of an Employer who is engaged in administering or managing the Scheme on behalf of the Trustees, any person engaged to do any act in connection with the Scheme and any person to whom any of the powers, discretions or duties of the Trustees have been delegated may:
- (a) exercise his powers and discretions and discharge his duties even if he is also a Member or Beneficiary and no such exercise or discharge shall be invalid on the ground that he has a direct or other personal interest (of any nature) in the subject matter;
 - (b) retain for himself any benefit to which he is entitled by virtue of his Membership or being a Beneficiary;

- (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;
 - (d) act as a partner, director, officer or employee of any company, business or partnership in which the Trustees hold shares or any other interest or which, or any part of which, forms part of the Fund and retain any remuneration received in that capacity even though the Fund (or his connection with it) may have assisted him in earning it.
- 12.4 Subject to section 34 of the 1995 Act and to clause 12.5 and without prejudice to the rest of this clause 12, any person to whom any of the Trustees' investment powers under the Definitive Deed have been delegated may be authorised to retain any benefit received through acting as a delegate (and such authorisation may also apply to any associate of the delegate).
- 12.5 Nothing in this clause 12 shall authorise any action which would result in the Scheme making an Unauthorised Payment or being treated as making an Unauthorised Payment, whether by virtue of section 174 of the FA 2005 (value shifting) or otherwise.
- 13 Exclusion of liability**
- 13.1 To the extent permitted by law and subject to clause 14 and sections 33 and 34 of the 1995 Act no Trustee shall incur any liability for:
- (a) the exercise or failure to exercise any power or discretion;
 - (b) acting as a Trustee of the Scheme;
 - (c) the acts and omissions either of co-Trustees, agents, employees, delegates or Advisers or any other person; or
 - (d) any other act or omission.
- 13.2 Subject to clause 14 the Employers (on a joint and several basis) shall indemnify each and all of the Trustees against any costs, claims, demands, expenses, proceedings and liabilities which they may incur through acting as a Trustee of the Scheme except in cases of fraud by any Trustee (where the Trustee who committed fraud and any Trustee who knowingly ignored the fraud shall not be so indemnified). Subject to section 31 of the 1995 Act, should the Employers fail to indemnify them (whether in full or in part) the Trustees shall be entitled to be indemnified from the Fund.
- 13.3 For the avoidance of doubt (but without prejudice to the generality of the foregoing) the indemnities in clause 13.2 shall apply in relation to any action taken (or omitted to be taken) by any Trustee concerning:
- (a) the value at any time of a person's Accumulated Credit;
 - (b) the nominal allocation of Fund assets pursuant to clause 16.3;
 - (c) any payment to an Employer pursuant to clause 34; and
 - (d) the provisions of clause 5.8.
- Should the Independent Trustee fail to be fully indemnified to any extent in accordance with this clause, the Member Trustees shall instead indemnify the Independent Trustee in the same terms as apply under this clause.
- 13.4 The Trustees shall be entitled to rely upon any advice or recommendations given by any Adviser and will incur no personal liability in doing so.
- 13.5 The Trustees shall not be accountable for any payment they may make:

- (a) to a minor direct, or to his parent or guardian or other person with whom he is living;
 - (b) to any person who the Trustees believe to be a Spouse, even if it subsequently transpires the person is not a Spouse; and
 - (c) to any institution or individual who the Trustees believe to be responsible for the care of a Beneficiary.
- 13.6 The Trustees shall not be obliged to bring, pursue or defend any legal proceedings in relation to the Scheme except if they so decide. However where any legal proceedings are brought, pursued or defended the costs and expenses of doing so shall be an expense of the Scheme for the purposes of clause 15.
- 13.7 Without prejudice to the rest of this clause 13, the Independent Trustee shall have no liability to any person for any loss or liability arising out of withdrawal of Approval or Registration from the Scheme, whether caused directly or indirectly by any investment transaction or any action not endorsed by the Independent Trustee.
- 13.8 The provisions of this clause apply without prejudice to any further protection afforded to the Trustees by statute, common law or otherwise but are subject to the limitations set out in clause 14.
- 14 Limitation and extent of protection**
- 14.1 The provisions of clause 13 shall not protect a Trustee in relation to any breach of trust arising out of fraud.
- 14.2 If the inclusion of any words in clause 13 and/or this clause 14 would at law render ineffective any protection given to any Trustee (whether given by law or under this Definitive Deed) then the clause is to be construed otherwise to the minimum extent necessary so that the protection would not be rendered ineffective.
- 14.3 The provisions of clause 13 and this clause 14 shall also apply to:
- (a) all officers and employees of a corporate Trustee;
 - (b) former trustees of the Scheme; and
 - (c) the Administrator of the Scheme (for which purpose the final paragraph of clause 13.3 shall apply to the Administrator as it applies to the Independent Trustee).
- 14.4 No indemnity under clause 13 shall apply in respect of any loss or liability that is covered by any insurance or policy of indemnity. Where the terms of any such insurance or policy of indemnity provide that cover will only be provided to the extent that an indemnity is not available from another source, no indemnity under clause 13 shall have effect in relation to any liability which would otherwise be fully covered by the insurance or policy of indemnity.
- 15 Scheme expenses**
- 15.1 The costs and expenses of running the Scheme shall be paid from the Fund unless the Principal Employer decides they shall be paid by the Employers (in such proportions as the Principal Employer shall decide).
- 15.2 Where any of the Employers defaults in paying any costs or expenses of running the Scheme, such costs and expenses shall (where possible) be paid from the Fund on such basis as the Trustees shall decide.
- 15.3 For the avoidance of doubt but without prejudice to the generality of the foregoing the costs and expenses shall include any incurred by the Trustees pursuant to the Definitive Deed or otherwise in performance of their duties or the exercise of their powers or discretions.

16 Control of the Fund

- 16.1** The Fund shall be vested in the Trustees as joint tenants and held by them upon irrevocable trusts in accordance with the terms of the Definitive Deed.
- 16.2** All monies, assets, investments and property received by the Trustees for the purposes of the Scheme shall form part of the Fund. They may be retained in the Fund or sold if and when the Trustees decide, including for the purpose of arranging benefits or making transfers in respect of benefits.
- 16.3** Subject to clause 16.7, the Trustees may from time to time nominally allocate assets from the Fund for such purposes as they decide and may change any such allocation from time to time, provided Registration is not thereby prejudiced.
- 16.4** The Trustees may hold assets of the Fund either in the name of the Trustees or any of them or jointly with some other person or in the name of a nominee or Custodian or sub-custodian. However the Independent Trustee must always be the registered co-owner of any assets unless it expressly agrees otherwise.
- 16.5** Any Custodian so appointed may appoint sub-custodians and nominees without prior approval by the Trustees provided that the extent of the Custodian's liability for the acts and omissions of any such sub-custodians and nominees is disclosed in writing to the Trustees before the appointment of the Custodian.
- 16.6** At any time when the Trustees are a sole corporate trustee and not a Trust Corporation, the Trustee may appoint another person to hold any real property in the Fund jointly with it.
- 16.7** The Trustees shall exercise their powers under clause 16.3 in a manner which they are satisfied will not result in the Scheme making or being treated as having made an Unauthorised Payment. Without prejudice to the generality of the foregoing, the Trustees shall exercise their powers in a manner which they are satisfied will not give rise to an Unauthorised Payment or to an Unauthorised Payment being treated as having been made, pursuant to:
- (a) section 172 of the FA 2004 (Assignment);
 - (b) section 172A of the FA 2004 (Surrender);
 - (c) section 172B of the FA 2004 (increase in rights of connected person on death);
 - (d) section 172C of the FA 2004 (Allocation of unallocated employer contributions);
 - (e) section 174 of the FA 2004 (Value shifting); or
 - (f) section 181 of the FA 2004 (Value shifting).

17 Investment

- 17.1** Investments may be made within or outside the United Kingdom whether or not:
- (a) involving a liability on the Fund;
 - (b) producing income;
 - (c) authorised by law for the investment of trust monies; or
 - (d) of a wasting or reversionary nature.

Subject to clause 18 the Trustees shall have the same full and unrestricted powers of investment as if they were absolutely and beneficially entitled to the Fund.

17.2 Without prejudice to clause 17.1 but subject to clause 18 the Trustees may invest the Fund in or upon the security of any:

- (a) contract or policy of any kind issued by a United Kingdom office or branch of an Insurer;
- (b) scheme of deposit administration;
- (c) unit trust, investment trust, managed fund, mutual fund or common investment fund;
- (d) deposit with a local authority, bank, building society, finance company or other financial institution;
- (e) stocks, shares, debentures and debenture stocks (whether by purchase, subscription, underwriting, sub-underwriting or otherwise);
- (f) gilts, government securities and other interest bearing investments whether at a fixed or variable rate;
- (g) traded options (as defined in section 144(8)(b) of the Taxation of Chargeable Gains Act 1992);
- (h) transactions and financial futures on the London International Financial Futures Exchange;
- (i) gold bullion or any other commodity;
- (j) interest in land or property (either in their own right or jointly with any other party);
- (k) currency, contract, guarantee, option, derivative or other agreement in connection with any of the above; and
- (l) personal chattels.

17.3 No investment of the Fund may be made unless:

- (a) each Member, Deferred Pensioner and Pensioner agrees in writing to the making of that investment;
- (b) Registration shall not be prejudiced; and
- (c) the 1995 Act shall not be contravened.

Subject to this and to clause 18 the Trustees may make investments in any of the Employers. For this purpose, investment includes any dealings in shares, securities, assets or land or the entering into of any loan, guarantee, indemnity or agreement.

17.4 Before any investment is made each of the [Members, Deferred Pensioners and Pensioners] shall agree in writing to the making of that investment unless the Trustees have delegated all or any of their powers of investment pursuant to clause 9.

17.5 The Trustees shall if so required by section 35 of the 1995 Act prepare and maintain a statement of principles governing the investment of the Fund. The statement shall comply with section 35 of the 1995 Act.

17.6 As regards any real property held as an investment of the Scheme the Trustees may enter into any lease, licence, option, development or other contract in relation to it.

17.7 Subject to clause 17.3 and clause 18 and any other requirements of the Revenue the Trustees may enter into any transaction involving the Fund with any Employer or the trustees of any other trust. Such transaction shall be valid irrespective of whether the directors of any such Employer or trustees of any such trust are one or more of the Trustees, provided that

Registration is not prejudiced by this transaction. Where the Trustees enter into any transaction with the trustees of another trust the Trustees may hold or be entitled to such share of the mixed investments as they agree with the trustees of the other trust.

- 17.8 The Trustees may appropriate any insurance policy or contract in the Fund to pay benefits from the Scheme in accordance with the Definitive Deed except for a policy representing Members' or former Members' AVCs.
- 17.9 The Trustees may purchase annuity contracts or policies in their own names or the name of any Beneficiary. The Trustees may assign to any Beneficiary any annuity contract or policy for the purpose of paying benefits in accordance with the Definitive Deed, whereupon the Beneficiary shall cease to have any further rights under the Scheme in respect of the benefits to which the annuity contract or policy relates.
- 17.10 Subject to section 49(1) of the 1995 Act, the Trustees may open any one or more accounts with a bank, building society, finance company or other financial institution. They may make such arrangements as they see fit from time to time regarding the operation of any such account. These arrangements must provide that the Independent Trustee shall be a mandatory signatory to any such account at all times (unless the account only gives rise to a liability or the Independent Trustee has confirmed in writing that it does not require the Trustees to apply this requirement in a particular case).
- 17.11 The Trustees may subject to clause 18 lease any asset held as an investment of the Scheme.

18 Restrictions on investment

- 18.1 The Trustees shall exercise their powers under clause 17 in a manner which they are satisfied is not likely to result in the Scheme making or being treated as having made an Unauthorised Payment. Without prejudice to the generality of the foregoing, the Trustees will exercise their powers in a manner which they are satisfied is not likely to result in the Scheme making or being treated as having made an Unauthorised Payment pursuant to:
 - (a) section 171 of the FA 2004 (scheme administration member payments);
 - (b) section 173 of the FA 2004 (use of scheme assets to provide benefits to members and related persons);
 - (c) sections 174 and 181 of the FA 2004 (value shifting); or
 - (d) section 180 of the FA 2004 (scheme administration employer payments).
- 18.2 Save in respect of loans to which section 179 of the FA 2004 does not apply by reason of paragraph 38 of Schedule 36 of the FA 2004 (transitional provisions), in relation to any loan made to or in respect of a sponsoring employer (within the meaning of section 179 of the FA 2004) the Trustees:
 - (a) shall not make the loan unless they are satisfied that at the time when it is made the loan will constitute an authorised employer loan within the meaning of section 179 of the FA 2004 and that it is likely to remain so throughout the period for which any part of the loan is outstanding; and
 - (b) shall not agree to any variation in the terms of the loan (or any related charge) unless they are satisfied that such variation is not likely to result in an Unauthorised Payment
- 18.3 In relation to any loan to which paragraph 38(1) of Schedule 36 of the FA 2004 applies (pre-commencement loans to sponsoring employers) the Trustees shall not agree to an alteration in the repayment terms (within the meaning of paragraph 38 of Schedule 36 of the FA 2004) unless they are satisfied that any loan which is treated as being made by virtue of paragraph 38(3) of Schedule 36 of the FA 2004 will at the time when it is treated as being made constitute an authorised employer loan within the meaning of section 179 of the FA 2004 and that it is likely to remain so throughout the period for which any part of the loan is outstanding.

19 Trustees' borrowing powers

- 19.1 Subject to the following provisions of this clause 19, the Trustees may borrow money on the security of all or any part of the Fund or borrow or raise money on any terms and conditions they decide.
- 19.2 The Trustees may exercise the power to borrow in clause 19.1 in order to buy or acquire any property, assets or any interest for the Scheme or for any other purpose provided such purpose is not inconsistent with the Scheme's Registration. The property, assets or interest may be charged as security for the borrowing as if the Trustees were absolutely beneficially entitled to them provided that at all times the liability of the Independent Trustee shall be limited to the assets of the Scheme.
- 19.3 The Trustees shall not borrow any amount unless they are satisfied that the arrangement borrowing condition within the meaning of section 182 of the FA 2004 is met in respect of that amount.
- 19.4 The Independent Trustee must be a party to all Scheme borrowings unless it has agreed otherwise in writing.
- 19.5 The Trustees shall exercise their powers under this clause 19 in a manner which they are satisfied will not result in the Scheme making or being treated as having made an Unauthorised Payment.

20 Power to insure

- 20.1 The Trustees may:
- (a) insure any or all of the Fund against such risks and on such terms and conditions as they decide (and may apply the proceeds of any such insurance to repair, replace or maintain the relevant part of the Fund);
 - (b) insure any benefit payable from the Scheme on such terms and conditions as they decide;
 - (c) subject to section 31 of the 1995 Act effect insurance against any personal liability relating to their office or any liability of the Scheme for such amounts and on such terms and conditions as they decide.
- 20.2 The cost of effecting any such insurance shall be an expense of the Scheme for the purposes of clause 15.

21 Actuarial valuations and accounts

- 21.1 The Trustees shall instruct the Actuary to prepare a valuation of the Scheme's assets and liabilities and provide a report to the Principal Employer and Trustees to the extent that this is necessary or expedient to ensure compliance with legislation. A copy of the valuation must be provided to the Revenue if required by legislation.
- 21.2 The Trustees and the Employers shall make available to the Actuary all accounts, documents and information which he may reasonably require for this purpose.
- 21.3 Subject to the 1995 Act the Trustees shall keep such books, records and accounts as they consider are necessary for the proper running of the Scheme (including compliance with their obligations under the FA 2004).

22 Amendment

- 22.1 The Trustees may by deed with the consent of the Principal Employer alter, add to, delete or replace all or any of the trusts, powers and provisions of the Scheme with effect from the date specified in that deed (whether that date is retrospective, immediate or prospective).

22.2 Any amendments relating to the winding up of the Scheme may only be made with the consent of the Independent Trustee.

22.3 No amendment may be made which would prejudice Registration or which would be contrary to section 67 of the 1995 Act.

23 Augmentation

23.1 The Principal Employer (or any Associated Employer with the Principal Employer's consent) may after consultation with the Actuary request the Trustees from time to time to:

(a) augment, vary or accelerate the payment of any pension or other benefit derived from or payable or prospectively payable to any person from the Scheme; or

(b) grant new or additional benefits to or in respect of any person

subject to:

(a) this not resulting in the Scheme making an Unauthorised Payment or being treated as having made an Unauthorised Payment; and

(b) Registration not thereby being prejudiced.

23.2 The Trustees shall implement the request provided the relevant Employer pays such additional contributions (if any) as the Trustees may require, after consultation with the Actuary, and provided that they are satisfied that Registration will not thereby be prejudiced and that implementation of the request will not result in the Scheme making or being treated as having made an Unauthorised Payment.

24 Employers participating in the Scheme

24.1 The Principal Employer with the consent of the Trustees may allow an Associated Employer to participate in the Scheme provided this would not prejudice Registration. No person shall continue as an Employer if this would prejudice Registration. In such circumstances the Employer shall automatically cease to participate in the Scheme and cease being an Employer pursuant to clause 25.

24.2 Any new Employer must enter into a deed of participation with the Principal Employer and the Trustees containing a covenant on the Associated Employer's part to observe and perform the relevant provisions of the Definitive Deed (and which shall be in such form as the Trustees may reasonably prescribe). Participation shall take effect from the date stated in the deed of participation, whereupon the Associated Employer shall be deemed to:

(a) be bound by the terms of the Definitive Deed; and

(b) have nominated the Principal Employer to act on its behalf for the purposes of sections 16-22, 35(5), 58 and 87 of the 1995 Act and any other matter which, under the 1995 Act, the Principal Employer may be so nominated.

24.3 The Employers shall supply to the Trustees and their Advisers such information as they are required to provide pursuant to the 1995 Act. In addition:

(a) the Employers shall supply to the Trustees such further information as the Trustees may reasonably require for the running of the Scheme; and

(b) the Trustees shall have the right on request:

(i) to have reasonable access to any records relevant to such administration which are in the custody or control of the Employers; and

(ii) to take copies of those records free of charge.

25 Replacement of Principal Employer

25.1 The circumstances referred to in this clause 25.1 are:

- (a) if an order or resolution is passed for the liquidation (whether voluntary or compulsory) or winding-up of the Principal Employer;
- (b) where an administrator or administrative receiver (or official receiver) is appointed over the undertaking or any of the assets of the Principal Employer;
- (c) if the undertaking of the Principal Employer is acquired by another person or the Principal Employer becomes a subsidiary of another company;
- (d) if the Principal Employer has ceased to contribute to the Scheme; or
- (e) if the Principal Employer ceases to participate in the Scheme for any reason.

25.2 If the circumstances referred to in clauses 25.1(a), 25.1(b), 25.1(c), 25.1(d) or 25.1(e) arise and a person (the "New Principal Employer"):

- (a) succeeds to all or most of the business of the Principal Employer;
- (b) executes a deed of substitution with the Trustees and the Principal Employer (in such form as the Trustees may reasonably prescribe) under which the New Principal Employer agrees to assume and undertake all the obligations, powers and discretions of the Principal Employer under the Scheme; and
- (c) the Revenue does not object to the substitution of the New Principal Employer in place of the current Principal Employer

then with effect from such date as is stated in the deed of substitution:

- (a) the current Principal Employer shall be discharged and released from all obligations as Principal Employer under the Definitive Deed and shall cease to be the Scheme's Principal Employer; and
- (b) the New Principal Employer shall become the new Principal Employer of the Scheme and the Definitive Deed shall take effect so that all references to the Principal Employer mean the New Principal Employer.

25.3 If the Trustees have resolved pursuant to clause 27.2 to vest the powers and discretions of the Employers solely in the Trustees the current Principal Employer shall not be required to be a party to the deed referred to in clause 25.2(b).

26 Cessation of participation of an Employer

26.1 Subject to clause 26.2 and without prejudice to clause 27, an Employer shall cease to participate in the Scheme upon the happening of any of the following:

- (a) the Principal Employer giving notice to the Trustees terminating the participation of the Employer in the Scheme;
- (b) the effective date of a notice given by the Employer to the Trustees by which the Employer terminates its liability to contribute to the Scheme;
- (c) the Trustees deciding that cessation of participation is necessary for the Scheme to retain Registration;
- (d) where the Employer fails to pay any sum which it owes to the Trustees within one month after receiving from the Trustees a written demand for payment of the same and the Trustees resolve that its participation shall cease; or

(e) where:

- (i) the Employer has ceased to carry on business or all of its employees have transferred to another person or undertaking;
- (ii) the Employer goes into voluntary or compulsory liquidation; or
- (iii) the Employer has an administrator, administrative receiver or the official receiver appointed over its undertaking or any of its assets.

26.2 Where clause 26.1 applies the Trustees shall determine the date at which all the Members employed by that Employer at the relevant date shall cease to be Members and become Deferred Pensioners. The relevant Accumulated Credits shall then be dealt with in one or more of the following ways at the Trustees' discretion, namely:

- (a) preserving them in the Scheme in accordance with the Preservation Requirements until benefits become payable in accordance with the Rules;
- (b) setting apart such part of the Fund as the Trustees may decide and applying it in a partial wind-up in accordance with clauses 29 and 30; or
- (c) effecting a transfer out in relation to one or more former Members in accordance with Rules 15 or 16.

26.3 A Employer shall remain liable for any contributions due but unpaid as at the Cessation Date but thereafter shall have no further liability to pay Employer's contributions to the Scheme (save where required by law).

26.4 The Principal Employer may permit a person who has bought or received the assets and/or undertaking (or a significant part of them/it) of an Employer to participate in the Scheme on such terms and for such period as it may decide provided that Registration is not thereby prejudiced. Where required by the Revenue the Employer/person must comply with clause 24.2.

27 Winding up triggers/change of control provisions

27.1 On the happening of any of the following:

- (a) the Principal Employer going into voluntary or compulsory liquidation or, in the case of a Principal Employer which is a partnership, the partnership being dissolved;
- (b) the Principal Employer has an administrator, administrative receiver or the official receiver appointed over its undertaking or any of its assets;
- (c) the Principal Employer, being a sole trader, having a trustee in bankruptcy appointed to it;
- (d) the Principal Employer ceases to carry on business or all of his employees have transferred to another person or undertaking;
- (e) the Principal Employer ceases to participate in the Scheme for any reason; or
- (f) the effective date of a written notice from the Principal Employer to the Trustees terminating the Principal Employer's liability to contribute to the Scheme

then the Trustees may resolve to wind up the Scheme for the purposes of clause 29 or, subject to the provisions of clause 27.4, run the Scheme as a closed scheme failing which the Scheme shall continue as an ongoing Scheme.

27.2 Where:

- (a) any of clauses 27.1(a) – 27.1(f) apply and no new or replacement Principal Employer is appointed in accordance with clause 25.2;
- (b) the undertaking of the Principal Employer is acquired by another person or the Principal Employer becomes a subsidiary of another person; or
- (c) the Members, the Member Trustees and the Independent Trustee unanimously agree in writing to the exercise of the Trustees' powers contained in this clause 27.2

then the Trustees may if they think appropriate resolve that all the powers and discretions of the Employers (including the Principal Employer) in relation to the Scheme (including, without prejudice to the generality of this clause, the power to appoint and remove trustees pursuant to clause 5) shall vest solely in the Trustees to the extent possible by law unless and until a new Principal Employer is appointed in accordance with clause 25.2 at which time the powers and discretions shall vest again in the new Principal Employer (but not so as to invalidate their exercise whilst vested in the Trustees). This is without prejudice to the Trustees' powers under clause 27.1. Where powers vest in the Trustees pursuant to this clause 27.2 the Trustees shall not be entitled to exercise their powers in a manner which imposes additional liabilities on the Principal Employer or on any of the Employers without its or their written consent where this would not have been possible if the powers had not vested in the Trustees pursuant to this clause 27.2.

27.3 Any resolution to wind up the Scheme must be recorded in writing and shall take effect from the date specified in the resolution which may be:

- (a) prior to the passing of the resolution but after the occurrence of the relevant event specified in clause 27.2; or
- (b) at any time in the future.

27.4 If clause 27.1(a) applies, and no new or replacement Principal Employer is to be appointed in accordance with clause 25.2, the Scheme may only be run as a closed scheme provided the Revenue does not object and, if applicable, subject to such amendments or conditions as the Revenue may require.

28 Scheme run as a closed scheme

28.1 Where the Trustees resolve to run the Scheme as a closed scheme under clause 27.1:

- (a) no new Members shall be admitted to the Scheme;
- (b) no further contributions shall be payable under Rule 3; and
- (c) no further contributions shall be payable under Rule 5 and whilst the Principal Employer and any Associated Employers shall remain liable for any contributions due but unpaid as at the date of the relevant event for the purposes of clause 27.1, it/they shall have no further liability to contribute to the Scheme (save where required by overriding law)

however the Scheme shall continue and the rest of the provisions of the Definitive Deed shall remain in full force and effect.

28.2 At any time whilst the Scheme is being run as a closed scheme:

- (a) the Trustees shall have the same options for dealing with Accumulated Credits as apply under clause 26.2; and
- (b) the Trustees may resolve to wind up the Scheme in accordance with clause 29.

29 Winding up of Scheme

29.1 If the Scheme is wound-up in part or in full the Trustees may seek the Actuary's advice as at such date they think appropriate and shall realise the Fund (or the appropriate part of the

Fund in the case of a partial winding up) at such time and upon such terms as they think fit. No further benefits shall accrue in respect of the relevant Members once the wind-up has commenced and (where not already provided for in the Definitive Deed) those Members shall become Deferred Pensioners as at the date the winding up commences.

- 29.2 In the case of a full Scheme wind up the Trustees shall notify each Deferred Pensioner and any other person in receipt of benefit from the Scheme of the wind up (which shall be in a form which complies with any relevant Disclosure Requirements which may apply). In the case of a partial wind up the Trustees shall comply with any disclosure obligations in the Preservation Requirements which may apply in relation to each Deferred Pensioner who has become a Deferred Pensioner as a result thereof.
- 29.3 Subject to prior payment of all costs, charges and expenses which cannot be recovered from the Employers, any taxes which may be or become due, and subject to the consent of the Independent Trustee, the net proceeds of realisation of the Fund (or the appropriate part thereof) shall be used to secure benefits in accordance with clause 30 in the following descending order of priority, namely:
- (a) benefits already in payment or in respect of which entitlement has arisen; and
 - (b) benefits for and in respect of Deferred Pensioners.
- 29.4 If any balance remains after the priorities referred to in clause 29.3 have been met, the Trustees may use the same to augment the benefits of any of the Beneficiaries subject to Registration not thereby being prejudiced.
- 29.5 Subject to clause 29.6, if any balance still remains after the priorities referred to in clause 29.3 have been met and the power contained in clause 29.4 has been considered it is to be returned subject to the prior agreement of the Revenue, and after payment of any tax liability, to the Principal Employer or (if it no longer exists) to one or more of the Associated Employers which have participated in the Scheme. In the latter case the balance is to be divided between the Associated Employers as the Trustees determine. Payment may only be made to an Associated Employer under this clause if it participated in the Scheme when clause 27.1 started to apply to the Scheme.
- 29.6 Any payment pursuant to clause 29.5 may only be made to the extent that it is an authorised surplus payment within the meaning of section 177 of the FA 2004. To the extent that the provisions of clause 29.5 would otherwise conflict with the requirements for an authorised surplus payment pursuant to section 177 of the FA 2004, clause 29.5 shall be construed as modified to the extent necessary to ensure compliance with section 177 of the FA 2004.
- 29.7 If the Fund is insufficient to secure in full the benefits set out in one of the categories listed in clause 29.3 then they will abate on such basis as the Trustees shall determine.
- 29.8 For the avoidance of doubt benefits:
- (a) are to be categorised under clause 29.3 by reference to their status on the date the wind-up commences (which for the avoidance of doubt is in the case of partial wind-up, when a condition set out in clause 26.1 is satisfied or, in the case of full wind-up, the date specified in the Trustees' resolution);
 - (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 appropriate Rules of the Scheme.
- 29.9 Until the entire Fund has been fully disposed of and the Scheme fully wound up, all the provisions of the Scheme shall remain in force including, but without prejudice to the generality of the foregoing, the power of amendment in clause 22.
- 29.10 The Trustees shall wind up the Scheme on the expiry of eighty years from the date the Scheme was established or such longer period as is permitted by law.

29.11 For the avoidance of doubt AVC Accounts shall be dealt with in accordance with Rule 4.

30 Securing benefits on a winding up/partial winding up

30.1 This clause 30 shall apply on a winding-up or partial winding-up.

30.2 Except where expressly provided otherwise, Accumulated Credits shall be used to secure Pensions through the purchase of appropriate non-commutable, non-assignable annuities with an Insurer in accordance with the Rules and any requirements of the Revenue. Where the Trustees have before the Cessation Date already purchased an annuity in the name of the Trustees, that annuity may be transferred into the name of the relevant Beneficiary. Any such Pension shall be paid as a Scheme Pension or a Lifetime Annuity, save that a Short-term Annuity purchased in the name of the Trustees prior to the Cessation Date may be transferred into the name of the relevant Beneficiary.

30.3 Where permissible under the FA 2004, a Serious Ill-health Lump Sum may be paid, in which case no Pension will be payable in respect of the arrangement to which the Serious Ill-health Lump Sum relates.

30.4 Where permissible under the FA 2004, the Trustees may pay a trivial commutation lump sum, within the meaning of paragraph 7 of Schedule 29 of the FA 2004, or a trivial commutation lump sum death benefit within the meaning of paragraph 20 of Schedule 29 of the FA 2004, in which case payment of such lump sum will extinguish the entitlement to benefits under the Scheme of the former Member or former Member's dependant in respect of whom it is paid.

30.5 Where permissible under the FA 2004, the Trustees may pay a Winding-up Lump Sum or a Winding-up Lump Sum Death Benefit in which case payment of such lump sum will, in the case of a Winding-up Lump Sum extinguish the former Member's entitlement to benefits under the Scheme, and in the case of a Winding-up Lump Sum Death Benefit, extinguish the dependant's entitlement under the Scheme to pension death benefit and lump sum death benefit in respect of the former Member.

30.6 Where permissible under the FA 2004, the Trustees may pay a Short Service Refund Lump Sum, in which case payment of such lump sum will extinguish the former Member's entitlement to benefits under the Scheme.

30.7 Where permissible under the FA 2004, such part of a former Member's Accumulated Credit as the Trustees determine may be applied to provide a Pension Commencement Lump Sum.

30.8 Where permissible under the FA 2004, the Trustees may pay a Refund of Excess Contributions Lump Sum to a former Member.

30.9 Where permissible under the FA 2004, the Trustees may pay a Lifetime Allowance Excess Lump Sum to a former Member.

30.10 To the extent permissible under the FA 2004 and those provisions of the Definitive Deed dealing with lump sum death benefits, the Trustees may pay lump sum death benefits.

30.11 At the request of a Member or former Member the Trustees may effect a transfer out under Rules 15 or 16 upon such terms as they consider appropriate.

30.12 The Trustees may arrange for any Member or former Member to participate in a Receiving Scheme in accordance with Rule 16. For the avoidance of doubt the transfer may include all or any part of an unallocated surplus within the Scheme.

30.13 Benefits and Pensions may be secured by the purchase of such policies or other contracts or investments as may be permitted by law provided that Registration is not thereby prejudiced and provided that the Trustees are satisfied that the Scheme will not thereby be treated as having made an Unauthorised Payment.

Such policies, contracts or other investments may include options as follows:

- (a) for pension to commence at any age at which pension could have been taken in accordance with this Definitive Deed and Rules;
- (b) for exchange of pension for cash, including, where applicable a Serious Ill-health Lump Sum in accordance with this Definitive Deed and Rules;

provided that such benefits shall be purchased only to the extent that they are consistent with Registration and the Trustees are satisfied that they will not result in an Unauthorised Payment being made or treated as having been made and that such policies, contracts or other investments shall be endorsed to show that the benefits thereunder are not capable of assignment.

30.14 The Trustees may at their discretion secure benefits and Pensions for the various categories referred to in clauses 29.2 and 29.3 by different means. They may also secure benefits and Pensions by different means for individuals who are in the same category provided that Registration is not thereby prejudiced.

30.15 The determination of the Trustees as regards the allocation and application of the Fund or any part of it (including any Accumulated Credit) shall be absolute and final and every Beneficiary shall accept whatever may be paid or allotted to or in respect of him from the Scheme as aforesaid in full discharge of all claims in respect of the Fund or the Scheme and shall have no further claim in respect of any rights to benefit under or from the Scheme or otherwise.

31 Notices

31.1 Any notice required under the Definitive Deed may be served by delivering or sending it, in the case of:

- (a) any company (including a corporate Trustee) to its registered office;
- (b) any Employer which is not a company, to its head office or principal place of business; and
- (c) an individual, to his normal place of work or last known private address.

31.2 Notices may be sent by first-class post or delivered personally or by email. Notices by post shall be deemed served two days after the date of posting and notices delivered personally or by email upon delivery.

32 Determination of Questions

32.1 Except as provided for expressly in the Definitive Deed the Trustees shall have full power to determine conclusively any questions or matters of doubt concerning the Scheme or the construction of the Definitive Deed. For the avoidance of doubt any question concerning termination or winding-up of the Scheme shall be determined by the Independent Trustee and the Member Trustees.

32.2 Such determination shall be binding on all interested parties.

33 Governing Law

33.1 The Definitive Deed and the Scheme shall be governed in all respects by and construed in accordance with the laws of England and Wales.

33.2 The parties agree to submit to the jurisdiction of the courts of England and Wales.

34 Authorised surplus payments

34.1 This clause 34 applies where if a payment were made to an Employer it would constitute an authorised surplus payment within the meaning of section 177 of the FA 2004.