

Dated 28 November 2006

THE LOFT SHOP LIMITED  
JAMES HAROLD STEDMAN  
PETER RICHARD STEDMAN  
MARJORY JEAN STEDMAN  
PREMIER PENSION TRUSTEES LIMITED

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DEED OF AMENDMENT  
relating to the  
THE LOFT SHOP LIMITED DIRECTORS  
PENSION SCHEME

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**Note: Before this document is executed in this form the parties to the deed and their legal advisers should satisfy themselves that its provisions reflect their instructions and satisfy their requirements.**

ADDLESHAW GODDARD

This Deed of Amendment is made on

28 November

2006

**Between**

- (1) **The Loft Shop Limited** (Company Number 00797762) whose registered office is at Eldon Way, Littlehampton, West Sussex, BN17 7HE ;
- (2) **James Harold Stedman and Peter Richard Stedman and Marjory Jean Stedman** all of Argeles, Salt Hill Road, Chichester, PO19 3PY ; and
- (3) **Premier Pension Trustees Limited** (Company Number 01895689) whose registered office is at 6 Crutched Friars, London EC3N 2PH;

**Whereas**

- (A) This deed is supplemental to the Scheme Documents.
- (B) Prior to 6<sup>th</sup> April 2006 the Scheme was a small self administered scheme within the meaning of the SSAS Regulations. The Scheme is governed by the Scheme Documents.
- (C) The Principal Employer is the current principal employer of the Scheme and the Trustees are the present trustees of the Scheme.
- (D) Under the Scheme's amendment power in the Trust Deed, the trustees of the Scheme may alter or replace the trusts, powers and provisions of the Scheme after obtaining the consent of the principal employer, subject to the provisos in that amendment power. Any such alteration must be made by deed or written resolution.
- (E) Under section 68 of the 1995 Act the Trustees may by resolution modify the Scheme with a view to achieving any of the purposes specified in that section 68.
- (F) In accordance with the Scheme's amendment power and (in relation to the Trustees only) section 68 of the 1995 Act, the Trustees with the consent of the Principal Employer wish to modify the Scheme as set out below in order to:
  - (a) achieve the same effect as all of the modifications in regulations 3 to 8 of the Modification Regulations but without limitation in time by reference to the Transitional Period or otherwise;
  - (b) then amend the Scheme so that the Modification Regulations no longer apply in relation to the Scheme in their entirety; and
  - (c) then modify the Scheme as set out below to:
    - (i) ensure that it complies with the requirements for "registered pension schemes" after A-day; and
    - (ii) delete from the provisions of the Scheme the modifications in regulations 4 to 7 of the Modification Regulations (but not regulations 3 and 8 of the Modification Regulations).

- (G) In accordance with clause 2 of the Definitive Deed, the Professional Trustee wishes to delegate the Day to Day Administration of the Scheme to JLT Benefit Solutions.

**It is agreed**

**1 Definitions**

- 1.1 In the recitals and clauses 1 to 9 of this deed the following expressions have the following meanings:

- (a) **1995 Act** means the Pensions Act 1995
- (b) **A-day** means 6 April 2006
- (c) **Administrator means** the scheme administrator within the meaning of section 270 of the Finance Act 2004
- (d) **Amendment Regulations** means the Occupational Pension Schemes (Modification of Schemes) Regulations 2006 / 759
- (e) **Day to Day Administration** means the day to day administration of the Scheme, including (but not limited to) dealing with HMRC requirements and benefit payments and dealing with members and third parties in relation to the Scheme and any other matters determined by the Professional Trustee to fall within the scope of day to day administration of the Scheme (but not the role of Scheme Administrator)
- (f) **Definitive Deed** means the Definitive Deed attached to this deed of amendment
- (g) **Effective Date** means the date this deed takes effect pursuant to clause 2 below
- (h) **JLT Benefit Solutions** means JLT Benefit Solutions Limited (No. 2240496) whose registered office is at 6 Crutched Friars, London EC3N 2PH
- (i) **Member Trustees** means the persons whose names and addresses are set out in clause 2 of the parties clause at the beginning of this deed
- (j) **Modification Regulations** means the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006 / 364
- (k) **person** means any individual, company, firm or organisation
- (l) **Principal Employer** means the person whose name and address are set out in clause 1 of the parties clause at the beginning of this deed
- (m) **Professional Trustee** means the person whose name and address are set out in clause 3 of the parties clause at the beginning of this deed
- (n) **Rules** means the rules attached to the Trust Deed that currently govern the Scheme

- (o) **Scheme** means the Loft Shop Limited Directors Pension Scheme
  - (p) **Scheme Documents** means the Trust Deed and Rules as amended from time to time
  - (q) **SSAS Regulations** means the Retirement Benefit Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991/1614
  - (r) **Transitional Period** has the same meaning as in regulation 1(2) of the Modification Regulations
  - (s) **Trust Deed** means the trust deed dated 14 December 1999 and its schedules (including its rules) that currently govern the Scheme
  - (t) **Trustees** means the Member Trustees and the Professional Trustee
- 2 The provisions in this deed take effect on the date on which this deed is executed, in the order in which they are set out below (save that any definitions of terms contained in the deed shall apply throughout the deed unless otherwise specified).
- 3 The Trustees in exercise of the power conferred on them by regulation 6 of the Amendment Regulations hereby resolve that the Scheme shall be modified with effect from A-day as set out in the following provisions of this clause 3:
- (a) the provisions of the Scheme shall be modified so as to incorporate all of the modifications in regulations 3 to 8 of the Modification Regulations directly into the Scheme's provisions but omitting any references (however framed) in those regulations limiting their effect by reference to the Transitional Period; and
  - (b) the provisions of the Scheme shall be amended so that the Modification Regulations no longer apply in relation to the Scheme with effect from the date on which the modifications effected by clause 3(a) above take effect.
- 4 To the extent that the modifications effected by clause 3 of this deed conflict with any other provision of the Scheme, the modifications effected by clause 3 shall prevail, save that nothing in this clause 3 shall prejudice any power (whether statutory, contained in the Scheme's provisions or otherwise) to modify the modifications effected by clause 3 in future (including by means of subsequent clauses of this deed).
- 5 In exercise of their powers under the Trust Deed, the Trustees (in their capacity as Trustees of the Scheme) with the consent of the Principal Employer hereby modify the Scheme so that the Scheme shall stand amended as set out below:
- (a) the provisions of the Scheme shall be amended so as to delete the modifications in regulations 4 to 7 of the Modification Regulations that were incorporated into the Scheme pursuant to clause 3(a) above (but not, for the avoidance of doubt, regulations 3 and 8 of the Modification Regulations);



- (b) subject to paragraphs (c) to (j) below, the Trust Deed and Rules are deleted in their entirety and replaced with the provisions set out in the attached Definitive Deed;
- (c) this deed shall not operate to render invalid any act done in relation to the Scheme prior to the Effective Date where such act was valid prior to the Effective Date;
- (d) this deed shall not operate to render any act or failure to act on the part of the Trustees prior to the Effective Date a breach of trust where such act or failure to act did not constitute a breach of trust immediately prior to the Effective Date;
- (e) except where expressly stated, nothing contained in this deed shall be interpreted as affecting any period of Scheme membership in respect of which a transfer payment or a refund of contributions was made before the Effective Date;
- (f) save to the extent (if any) expressly provided in the Definitive Deed the amendments effected by this deed shall not have the effect of requiring the Trustees to review or alter any decisions which they have made before the Effective Date regarding allocation of the Scheme assets;
- (g) any benefits which had immediately prior to the Effective Date fallen due for payment but not yet been paid shall be dealt with in accordance with the Scheme's governing provisions as in force immediately prior to the Effective Date;
- (h) where a member or other beneficiary of the Scheme died before the Effective Date but a benefit payable in respect of such death has not been paid prior to the Effective Date, such death benefit shall be dealt with in accordance with the Scheme's governing provisions as in force immediately prior to the Effective Date;
- (i) the indemnity from the employers in clauses 8 and 9 of the Trust Deed shall not be deleted and replaced with the rest of the Trust Deed but shall instead remain unaltered; and
- (j) nothing in this deed or the Definitive Deed shall be construed as deleting or restricting the powers conferred on the Trustees or the Administrator through the incorporation of regulations 3 and 8 of the Modification Regulations under clause 3(a) above.

6 If any aspect of the modification or amendment of the Scheme as aforesaid would constitute a voidable modification within the meaning of section 67(2) of the 1995 Act or be invalid for any other reason, then the amendments made by this deed shall be construed as being restricted so far as may be necessary so that no voidable modification is made / it is not invalid, but not further or otherwise and shall in all other respects operate as set out in this deed.

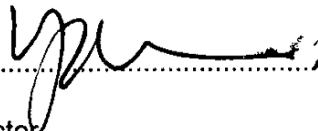
- 7 The Professional Trustee in exercise of the power conferred on it by clause 2 of the Definitive Deed hereby delegates the Day to Day Administration of the Scheme to JLT Benefit Solutions on such terms and conditions as it may agree with JLT Benefit Solutions from time to time.
- 8 The parties to this deed do not intend that any term of this deed should be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this deed, except any future trustee of the Scheme enforcing a term of this deed in his position as a trustee of the Scheme. This does not affect any rights apart from that Act.
- 9 This deed may be executed in any number of counterparts each of which when executed and delivered shall be an original one and all the counterparts together shall constitute one and the same deed.

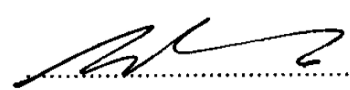
Executed as a deed by the parties or their duly authorised representatives but not delivered until the date of this deed.

Executed as a deed by

**The Loft Shop Limited**

acting by two directors or by a director and  
its secretary

)   
Director

)   
Director/Secretary

Executed as a deed by )

**James Harold Stedman** )

in the presence of )



Signature of witness

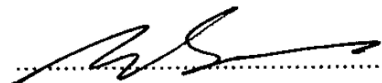
Name R. BIRCHENOUGH

Address 22 WINTERBOURNE  
HORSHAM  
WEST SUSSEX  
RH12 5JW

Executed as a deed by )

**Peter Richard Stedman** )

in the presence of )



Signature of witness

Name R. BIRCHENOUGH

Address 22 WINTERBOURNE  
HORSHAM  
WEST SUSSEX RH12 5JW

Executed as a deed by )

**Marjory Jean Stedman** )

in the presence of )

MT Stedman

[Signature]

Signature of witness

Name R BIRCHENOUGH

Address 22 WINTERBOURNE  
HORSHAM  
WEST SUSSEX  
RH12 5JW.

The common seal of )

**Premier Pension Trustees Limited** )

was affixed to this deed in the presence of )

[Signature]

Authorised Sealing Officer

[Signature]

Authorised Sealing Officer



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## **DEFINITIVE DEED – Trust Deed Provisions**

### **1 Definitions and interpretation**

#### **1.1** Words and expressions used in this Definitive Deed have the following meanings:

**1988 Act** means the Income and Corporation Taxes Act 1988

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

**1995 Act** means the Pensions Act 1995

**2004 Act** means the Pensions Act 2004

**3 Month Condition** has the same meaning as in section 101AA of the 1993 Act, as inserted by section 264 of the 2004 Act

**Actuary** means a fellow of the Institute of Actuaries or the Faculty of Actuaries, or a firm of such actuaries appointed pursuant to clause 3

**A-day** means 6 April 2006

**Administrator** means:

- (a) in respect of the period before A-day, any person appointed to meet the requirements of HMRC under the terms of section 612(1) of the 1988 Act; and
- (b) in respect of the period from and including A-day means the scheme administrator within the meaning of section 270 of the FA 2004 being the person who controls the management of the Scheme

**Alternatively Secured Pension Fund** in respect of an Arrangement has the same meaning as in paragraph 11 of schedule 28 of the FA 2004

**Announcement Letter** means the letter referred to in Rule 1.3

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

**Approval** means approval of the Scheme by HMRC as an exempt approved scheme under Chapter 1 of Part XIV of the 1988 Act

**Arrangement** means an arrangement within the meaning of section 152 of the FA 2004

**AVC Account** means the total value of the Member's AVCs together with any investment yield or bonuses earned on them but after the deduction of investment expenses;

**AVCs** means additional voluntary contributions

**Auditor** means a person or firm permitted to act as the auditor by the 1995 Act and appointed pursuant to clause 3

**Beneficiary** means a person entitled or prospectively entitled to a benefit under the Scheme

**Cash Equivalent** means the cash equivalent as defined in the 1993 Act of a Member's Account as determined in accordance with the 1993 Act and the 1995 Act

**Chairman** means the Trustee appointed from time to time to act as chairman pursuant to clause 5.6

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

**Child** in relation to any person means a child under age eighteen or (at the discretion of the Member Trustees) over that age and currently in receipt of full-time education or vocational training. This expression includes:

- a step-child;
- a legally adopted child;
- a child to whom the person in question stood in loco parentis immediately prior to his death;
- a child conceived but not yet born;
- a illegitimate child

**and Children** will have a corresponding meaning to Child

**Commencement Date** means the date upon which the Scheme was established

**company** means any body corporate or unincorporated associated but does not include a partnership

**Custodian** means a person or firm who has the custody of cash, securities and any other document of title to Scheme assets

**Day to Day Administrator** means the person with responsibility for the day to day administration of the Scheme, including (but not limited to) HMRC requirements and benefit payments and dealing with members and third parties in relation to the Scheme and any other matters determined by the Professional Trustee to fall within the scope of day to day administration of the Scheme (but not the role of Scheme Administrator)

**Death Benefit Beneficiary** means in respect of a Member or Beneficiary:

- (a) his Spouse, Children and other offspring not within the definition of Children
- (b) any person with an interest in his estate

together with

- (c) any other person who (in the opinion of the Member Trustees) was financially dependant on him at the date of his death or retirement as appropriate
- (d) any person body or organisation named on any expression of wish made by the deceased regarding the disposal of the benefit payable
- (e) any trust of which a Death Benefit Beneficiary (as defined above) is a beneficiary notwithstanding that there may be other beneficiaries under such trust

**Deferred Pensioner** means a former Member who is entitled to a deferred Pension under the Scheme but who has not yet become a Pensioner

**Definitive Deed** means this Definitive Deed (including the Rules) as amended from time to time

**Dependant** has the same meaning as in paragraph 15 of schedule 28 of the FA 2004 and shall include a person who was married to the Member when the Member first became entitled to a pension under the Scheme

**Dependants' Alternatively Secured Pension** has the same meaning as in paragraph 19 of schedule 28 of the FA 2004

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

**Dependants' Scheme Pension** has the same meaning as in paragraph 16 of schedule 28 of the FA 2004

**Dependants' Unsecured Pension** has the same meaning as in paragraph 18 of schedule 28 of the FA 2004

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

**Discretionary Trusts** means that in regard to any lump sum directed to be held thereon in respect of a deceased person:

- (a) all such lump sums due are to be distributed on such terms and in such proportions as the Trustees decide to or for the benefit of the deceased's Dependents. If the Trustees are unable to identify and locate any Dependents of the deceased they may at their discretion pay the lump sum in such proportions they decide to such other trust, person, body or organisation as they may consider appropriate;
- (b) all such sums due are to be held by the Trustees separately from the other assets of the Fund. Such sums are to be paid out within two years of the date of death of the relevant individual except where his estate passes as bona vacantia. If all or part of the lump sum remains unpaid at the end of two years

from the date of death of the relevant individual it will be paid to his estate. If the estate of the deceased individual passes bona vacantia the monies will be retained for the purposes of the Scheme;

- (c) the two year time period specified in (b) above may be extended by the Trustees to such longer time period as they determine in any case;
- (d) the Trustees may take account of any expression of wish form completed by the deceased regarding the disposal of the lump sum but they will not be obliged to do so;
- (e) the Trustees may establish a trust, on such terms as they may think appropriate, for the benefit of one or more of the persons to whom benefits may be paid under (a) above and may pay to it any such sum arising. Any costs and expenses incurred in establishing the trust or making payment to it may be deducted from the payment if the Trustees so decide;
- (f) if, after the provision of the benefits specified above, there remains an unexpended balance of the Member's Account, that balance will be held by the Trustees for the general purposes of the Scheme except where the balance (or any part of it) is attributable to AVCs in which case it will be refunded to the Member's personal representatives.

**Eligible Employee** means any permanent employee of any Employer who has been notified he is eligible by his Employer

**Employers** mean the Principal Employer together with any companies, firms or persons which participate from time to time in accordance with clause 11

**Employer Related Investment** has the meaning given in section 40 of the 1995 Act

**Enhanced Protection** has the meaning in part 2 of schedule 36 of the FA 2004

**FA 2004** means the Finance Act 2004

**Fund** means the monies, assets, property and investments which from time to time constitute the fund of the Scheme. This expression includes where appropriate any part of the Fund

**HMRC** means Her Majesty's Revenue and Customs

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

**including** means including without limitation (the expression "include" having a similar meaning)

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



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

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

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

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

**Member** means a person who has been admitted to the Scheme but who has not become a Deferred Pensioner or Pensioner or otherwise ceased to participate in it

**Member's Account** means, in relation to any Member, Deferred Pensioner or, if applicable, Pensioner (**Person**) that part of the Fund which is determined by the Member Trustees subject to the following provisions of this definition as relating to the relevant Person at that time including any lump sum death benefits. Nothing in this definition or the Definitive Deed shall confer on any Person any right to any specific assets of the Fund which may be allotted to him on a notional basis for the sole purpose of determining the value of his Member's Account from time to time.

The Member Trustees may, in determining the Member's Account in respect of a Person, have regard to the advice of the Actuary, but shall not be obliged to take the advice of the Actuary when determining any Member's Account.

The Member Trustees shall in exercising their powers to determine the Member's Account in respect of a Person exercise them in such manner that they are satisfied that their determination will not result in an Unauthorised Payment, or in an Unauthorised Payment being treated as having been made. Without prejudice to the generality of the foregoing, the Member 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 (Alteration of unallocated employer contributions); or
- (e) section 174 of the FA 2004 (Value Shifting)

**Member's Contributions** means compulsory contributions (if any) made by a Member to the Scheme

**Member Trustees** means the trustees of the Scheme from time to time other than the Professional Trustee

**Membership** means participation in the Scheme as a Member

**Normal Minimum Pension Age** means:

- (a) before 6 April 2010, 50, and
- (b) on and after that date, 55

save that if paragraph 21 of schedule 36 of the FA 2004 would operate to modify the meaning of the term "normal minimum pension age" for the purposes of Part 4 of the FA 2004 (except for section 218(6) and paragraph 19 of schedule 36) in relation to a Member (which for this purpose shall have the same meaning as in clause 2 of schedule 7) the meaning of Normal Minimum Pension Age for the purposes of the Scheme shall also be so modified in relation to that Member

**Normal Pension Date** means such date between the Member's or former Member's 60th and 75th birthdays as is specified in his Announcement Letter

**Pension** means a pension payable in respect of Membership of the Scheme. Unless the context otherwise requires, it includes a Scheme Pension, Lifetime Annuity, Unsecured Pension Fund and Alternatively Secured Pension Fund

**Pensionable Service** means service as a Member with any Employer before attaining Normal Pension Date together with any period added by the Member Trustees by reason of any transfer value made to the Scheme in respect of the Member

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

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

- (a) that the action will not prejudice the Scheme's Registration;
- (b) that the Trustees are satisfied that the action will not result in the Scheme making or being treated as making an Unauthorised Payment; and
- (c) that the action is consistent with compliance with the Pension Rules

**Pension Death Benefit** has the same meaning as in section 167 of the FA 2004

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

**Pensioner** means a former Member in respect of whom all or part of his Member's Account has been used to secure him benefits in accordance with the Definitive Deed

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

**Preservation Regulations** means the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 as amended and the provisions of Chapters I, II and IV of the 1993 Act relating to the rights of a former Member on termination of his Membership

**Principal Employer** means the principal employer of the Scheme or any company firm or person substituted for it pursuant to clause 12

**Professional Trustee** means Premier Pension Trustees Limited or any person substituted for it

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

**Receiving Scheme** means a Registered Pension Scheme or a Qualifying Recognised Overseas Pension Scheme to which a transfer is to be made pursuant to Rule 19 or Rule 20

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

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

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

**relevant benefit accrual** has the same meaning as in part 2 of schedule 36 of the FA 2004

**Relevant Benefits** has the same meaning given to the term in section 612 of the 1988 Act

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

**Rules** means the Rules attached to and forming part of the Definitive Deed as amended from time to time

**Scheme** means the Loft Shop Limited Directors Pension Scheme

**Scheme Documents** means the documents containing the governing provisions of the Scheme from time to time in force

**Scheme Pension** has the same meaning as in paragraph 2 of schedule 28 of the FA 2004

**Scheme Year** means a period of twelve months ending on the 31 day of December in any year, or such other date as the Member Trustees agree

**Secretary** means the person for the time being appointed to act as the secretary pursuant to clause 5.5

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

**Short Service Refund Lump Sum** means a short service refund lump sum within the meaning of paragraph 5 of schedule 29 of the FA 2004

**Short-term Annuity** has the same meaning as in paragraph 6 of schedule 28 of the FA 2004

**Spouse** means the wife or husband of a relevant individual. In the case of polygamous marriages the spouse will be such wife or husband as the Member Trustees may decide. Where the context requires wife or husband will mean widow or widower

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

**Transfer Lump Sum Death Benefit** has the same meaning as in paragraph 19 of schedule 29 of the FA 2004

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

**Trust Corporation** means a trust corporation defined in the Trustee Act 1925

**Trustees** means the Member Trustees and the Professional Trustee from time to time. The expression "Trustee" will be construed accordingly

**Unauthorised Payment** means an unauthorised payment within the meaning of section 160(5) of the FA 2004

**Unsecured Pension Fund** has the same meaning as in paragraph 8 of schedule 28 of the FA 2004

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

**Winding-up Lump Sum** means a winding-up lump sum within the meaning of paragraph 10 of schedule 29 of the FA 2004

**Winding-up Lump Sum Death Benefit** means a winding-up lump sum death benefit within the meaning of paragraph 21 of schedule 29 of the FA 2004

1.2 In this Definitive Deed except insofar as the context otherwise requires:

- (a) words in the masculine gender include the feminine and vice versa;

- (b) words in the singular include the plural and vice versa;
- (c) references to a "clause" mean a clause in the Definitive Deed except where expressly stated otherwise and reference to a "Rule" means a rule in the Definitive Deed; and
- (d) any reference to a statute, statutory instrument or other legislative provision includes any amendment or re-enactment of it for the time being in force and any regulations made under it. This includes sections of the 1988 Act which have been re-enacted or amended by the Income Tax (Earnings and Pensions ) Act 2003 or any Finance Act. Any reference to a particular section or part of a statute or statutory instrument will be read to include reference to any other relevant section or part of the statute or statutory instrument;

## **2 Scheme Administration and appointment of Administrator**

- 2.1 The Trustees shall be the Administrator and Day to Day Administrator of the Scheme in the period prior to A-day. With effect from the date of this Definitive Deed the Professional Trustee shall be the Administrator and Day to Day Administrator.
- 2.2 The Professional Trustee may at any time and from time to time in writing delegate all or any aspects of the role of Day To Day Administrator of the Scheme, including (to the extent permitted by law) all powers, duties and discretions of the Professional Trustee relevant to the role of Day to Day Administrator, to any person on such terms and conditions (including as to remuneration) as the Professional Trustee in its absolute discretion considers appropriate. The fees charged by the delegate shall be an expense of the Scheme for the purposes of clause 13. For the avoidance of doubt, the power to delegate under this clause 2.2 includes the power to appoint new or replacement delegates.
- 2.3 The Professional Trustee may at any time resign as Administrator and/or Day to Day Administrator, whether or not it is immediately replaced, by giving 30 days' written notice to this effect to the Principal Employer (if any) and the Member Trustees. The Principal Employer shall appoint a replacement Administrator and/or Day to Day Administrator (as applicable) as soon as practicable, however where there is no Principal Employer in relation to the Scheme or the Member Trustees consider that the Principal Employer is unwilling to make such an appointment, the Member Trustees shall appoint a replacement Administrator and/or Day to Day Administrator (as applicable).
- 2.4 The Principal Employer (or the Member Trustees if there is no Principal Employer) may at any time remove the current Administrator and/or Day to Day Administrator by giving 30 days' written notice to him to this effect. The Member Trustees (or, where applicable, such of them as have not resigned or been removed as Administrator and/or Day to Day Administrator) shall then act as the Administrator and/or Day to Day Administrator (as applicable) unless and until a new person is appointed by the Principal Employer (or the Member Trustees, where applicable) as a replacement Administrator and/or Day to Day Administrator (as applicable).

- 2.5 The appointment of the Administrator shall be on such terms and conditions (including as to remuneration) as may be agreed between the Principal Employer (or the Member Trustees if there is no Principal Employer) and the Administrator from time to time in writing. The fees charged by the Administrator shall be an expense of the Scheme for the purposes of clause 13.
- 2.6 Where by virtue of this clause 2 the Member Trustees (or, where applicable, such of them as have not resigned or been removed) are required to act as Administrator they shall take such action as may be necessary in order to become the Administrator, including (without prejudice to the generality of the foregoing) making the "required declaration" in accordance with section 270 of the FA 2004.
- 2.7 Where a person has resigned or been removed as Administrator in accordance with this clause 2 but continues to have a liability pursuant to section 271(4) of the FA 2004, he shall, subject to clause 2.4 be entitled to recover from the Scheme the amount for which he is liable by virtue of section 271(4) of the FA 2004 together with any fees, costs and expenses which he incurs in connection with the Scheme (including without prejudice to the generality of this clause 2.6 any actuarial, legal or other professional fees, costs and expenses) by reason of his continuing liability under section 271(4) of the FA 2004.

### **3 Appointment and Removal of Advisers**

- 3.1 The Member Trustees will (if so required by section 47 of the 1995 Act) appoint the following:
- (a) an Auditor;
  - (b) one or more Custodians;
  - (c) their legal advisers.
- 3.2 Any person or firm appointed under clause 3.1 will be appointed to carry out any functions prescribed for them by the 1995 Act. In addition the Member Trustees may instruct them to carry out such further work in connection with the Scheme as they think appropriate.
- 3.3 In addition to any appointments they are required to make under clause 3.1 the Member Trustees may appoint such persons or firms to assist them (including actuaries, auditors, administrators, solicitors, brokers, medical practitioners and investment managers) as they think appropriate.
- 3.4 Provided they comply with any relevant requirements of section 47 of the 1995 Act any appointment made pursuant to this clause will be on such terms (including remuneration) as the Member Trustees see fit.
- 3.5 The power to remove, replace and/or vary the terms of the appointment made under this clause will lie with the Member Trustees.

#### **4 Appointment and Removal of Trustees**

- 4.1 There are to be no fewer than two Trustees unless the provisions of the Trustee Act 1925 necessitates the appointment of an additional Trustee for the purpose of holding assets or if the Professional Trustee is willing to operate alone the provisions of the Scheme that apply to Member Trustees.
- 4.2 A corporate body may act as a Trustee whether or not it is a Trust Corporation or has been preceded in office by more than one Trustee.
- 4.3 Where a corporate body acts as a Trustee its powers, duties, authorities and discretions are to be exercisable either by its board of directors or by any one or more of its duly authorised officers.
- 4.4 The Principal Employer, with the consent of the Professional Trustee, may appoint or remove any Trustee. Such an appointment or removal will be done by deed executed by the Principal Employer and in the case of an appointment the Trustees including the new Trustee and in the case of a removal the remaining Trustees.
- 4.5 Section 39(1) of the Trustee Act 1925 will not apply in relation to the Professional Trustee.
- 4.6 The Professional Trustee may by deed appoint a new trustee to act as Professional Trustee in its place. Any costs so incurred shall be payable in accordance with clause 13. The Professional Trustee may by deed or written notice to the Principal Employer resign as a Trustee at any time, whether or not a replacement Professional Trustee or other Trustee is to be appointed in its place. The Professional Trustee will then immediately cease to hold office and will be discharged, even if this would result in the number of remaining Trustees being less than the minimum in clause 4.1.
- 4.7 A Member Trustee may retire at any time by giving written notice to the Principal Employer and the other Trustees. The Member Trustee will then immediately cease to hold office and will be discharged even if this would result in the number of remaining Trustees being less than the minimum stated in clause 4.1.
- 4.8 A departing Trustee will 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. 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 Trustees' Meetings**

- 5.1 If at any time there is only one Member Trustee that Member Trustee shall have power to operate the powers, duties and discretions of the Member Trustees under the Scheme in such manner as he sees fit even if the relevant clause or rule of this Definitive Deed would require the operation of that power, duty or discretion by two or more Member Trustees.

- 5.2 Reasonable notice is to be given to the Trustees of any forthcoming meeting. In this respect due regard is to be given to the urgency or otherwise of any business to be discussed.
- 5.3 Whenever practicable:
- (a) the notice should specify, unless the Trustees agree otherwise, or not required by the 1995 Act, the date, the time and place of the meeting and the matters to be discussed;
  - (b) the meetings should be held at a time and venue reasonably convenient to all the Trustees;
  - (c) unless the Trustees agree otherwise, or not required by the 1995 Act, the notice should be sent to the last known address of each Trustee no later than 10 days before the meeting.
- 5.4 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 records are to comply with any relevant requirements of section 49 of the 1995 Act as to their form and content.
- 5.5 The Member Trustees may appoint a Secretary who is to have primary responsibility for co-ordinating the matters referred to in clauses 5.2, 5.3 and 5.4. This is not however to prevent any Trustee from convening a meeting in accordance with the above procedures should he consider this appropriate.
- 5.6 The Member Trustees may also appoint from among their number a Chairman (who for the avoidance of doubt may also be the Secretary). If they are equally divided on the appointment of a Chairman, he will be chosen by lot. If for any reason the Chairman is unable to attend a validly convened meeting then the Member Trustees may appoint another of their number to act in his place at that meeting only.
- 5.7 Subject to clause 5.6 the Chairman and the Secretary will each hold office until the earlier of the date upon which:
- (a) he resigns such office;
  - (b) he resigns, is removed or otherwise ceases to act as a Member Trustee;
  - (c) the Trustees resolve otherwise.
- 5.8 The quorum for a meeting of the Member Trustees is to be all the Member Trustees.
- 5.9 All decisions at Trustees' meetings must be unanimous between the Member Trustees. Any decision connected with the termination or winding-up of the Scheme must be unanimous between the Member Trustees and the Professional Trustee.
- 5.10 Any resolution signed by each of the Member Trustees will be binding and effective as if it had been passed at a Member Trustees' meeting. The resolution may be passed by the signature of copies whether or not on the same date.



- 5.11 A Member Trustee (or an officer or employee of a corporate trustee) may retain for his own account any benefits relating to his membership of the Scheme. He may, if he wishes participate in the discussion and vote on any resolution which may affect any such benefits or in which he otherwise has a personal interest.

## **6 Trustees' Duties**

- 6.1 In addition to any duties which may exist at law the Trustees will:

- (a) operate the Scheme as a Registered Pension Scheme to provide;
  - (i) in respect of the period prior to A-day, Relevant Benefits; and
  - (ii) in respect of the period from and including A-day, benefits consistent with the Scheme's Regulation;
- (b) keep proper records and accounts for the Scheme and if so required by the 1995 Act or if the Member Trustees so decide submit these (together with a supporting balance sheet) to the Auditor following the end of each Scheme Year;
- (c) prepare the Scheme accounts which together with any Auditor's report is to be open for inspection by the Beneficiaries and any officer of the Principal Employer;
- (d) provide any advisers with such information as the Member Trustees are required to provide under the 1995 Act and take all reasonable steps to enable the Auditor to comply with any duties he may have under the 1995 Act.

## **7 Trustees' Powers**

- 7.1 Subject to section 34 of the 1995 Act (to the extent it applies) and any other specific provisions of the Scheme Documents the Member Trustees may by unanimous decision in writing delegate (and/or authorise the sub-delegation of) any of their duties, powers and discretions as they see fit, and on such terms and conditions as they see fit. They may at any time revoke any delegation (and/or sub-delegation).
- 7.2 Such delegation (and/or sub-delegation) may be made to:
- (a) a committee consisting of any one or more of the Member Trustees;
  - (b) such other person or corporate body (including any one or more of the Employers) as the Member Trustees determine;
  - (c) an investment manager in relation to the Member Trustees' powers of investment.
- 7.3 The Member Trustees may appoint any one or more agents to transact any business of the Scheme in which event the provisions of clause 3 will apply.

- 7.4 Agents may include any employees or officers of the Member Trustees and/or the Employers.
- 7.5 Subject to clauses 15 and 16 the Trustees may enter into any transaction involving the Fund with any Employer or the trustees of any trust. Such transaction will be valid irrespective of whether the directors of any such Employer or trustees of any such trust are one or more of the Member Trustees, provided that Registration is not prejudiced by this transaction.
- 7.6 Anyone dealing in good faith with the Trustees will be under no duty to enquire into the application of any money or asset paid or transferred by him to the Trustees.
- 7.7 The Trustees will have power to insure any or all of the assets of the Fund against such risks and for such amounts as they determine appropriate. Subject to section 256 of the 2004 Act they may also effect insurance against any personal liability relating to their office or any liability of the Scheme for such amounts as they determine appropriate.
- 7.8 The Trustees will hold any proceeds of insurance on trust with power to apply part or all, to repair, replace, or maintain the asset in or subject to section 256 of the 2004 Act to indemnify themselves or the Scheme against any claims. They may exercise this power as if they were the absolute owner of the Fund unrestricted by law whether statutory or otherwise.
- 7.9 Subject to section 256 of the 2004 Act, the cost of effecting insurance is to be paid in accordance with clause 13.
- 7.10 Subject to section 49(1) of the 1995 Act the Member 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 at all times, the Professional Trustee will be a signatory to any such account.
- 7.11 Subject to clause 7.13 and without prejudice to clause 7.14 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. 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).

7.12 To the extent that any terms and conditions of payment are agreed pursuant to any power or discretion under the Definitive Deed and such terms and conditions of payment involve payments being made from the Scheme or the Fund, the following 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.

7.13 Notwithstanding anything to the contrary in this Definitive Deed or any express prohibition on making any form of Unauthorised Payment, the Professional Trustee shall have an absolute overriding discretion to allow the Trustees to make any form of Unauthorised Payment at any time. However for the avoidance of doubt, under no circumstances shall this entitle any person to any form of Unauthorised Payment from the Scheme.

7.14 Any provision of the Scheme which would require the Trustees to make an Unauthorised Payment (with or without the consent of any other person) shall be construed as conferring a discretion upon the Trustees to make the payment (save that where the consent of another person would have been required to make the Unauthorised Payment, the Trustees cannot exercise the aforesaid discretion without the consent of that other person).

## **8 Protection of Trustees**

8.1 No Trustee will incur liability for:

- (a) the exercise or failure to exercise any power or discretion;
- (b) the performance of his duties as a Trustee or the Administrator of the Scheme;
- (c) the acts and omissions either of co-Trustees, agents, delegates or other advisers to the Scheme.

8.2 The Principal Employer will indemnify each and all of the Trustees against any costs, claims, demands, expenses, proceedings and liabilities arising from any matter referred to in clause 8.1.

- 8.3 Should the Principal Employer fail to indemnify them the Trustees will (unless it is prohibited under section 256 of the 2004 Act) be entitled to be indemnified from the Fund.
- 8.4 The Trustees will be entitled to rely upon any advice or recommendations given by the advisers to the Scheme and will incur no personal liability in doing so.
- 8.5 The Trustees will not be accountable for any payment they may under this deed:
- (a) to a minor direct, or to his parent or guardian or other person with whom he is living; or
  - (b) to any person who the Trustees believe to be a Spouse, even if it subsequently transpires the person is not a Spouse; or
  - (c) to any institution or individual who the Trustees believe to be responsible for the care of a Beneficiary.
- 8.6 The Trustees will not be obliged to bring, pursue or defend any legal proceedings in relation to the Scheme except if they so decide.
- 8.7 The provisions of this clause apply in addition to any further protection afforded to the Trustees by statute, common law or otherwise but are subject to the limitations set out in clause 9.
- 8.8 Subject to sections 33 and 34 of the 1995 Act and save in the case of fraud the liability of the Professional Trustee (whether as a Trustee or as the Administrator) shall not, to the extent permissible by law, exceed the available assets of the Scheme.

## **9 Limitation and Extension of Protection**

- 9.1 The provisions of clause 8:
- (a) will not protect a Trustee in relation to any breach of trust arising out of fraud or deliberate disregard of the interests of the Beneficiaries knowingly and intentionally committed by him;
  - (b) are subject to section 33 of the 1995 Act which may restrict or prevent the exclusion of personal liability on the part of the Trustee.
- 9.2 If the inclusion of any words in clause 8 and in this clause 9 would at law render ineffective the protection of any Trustee then the clause is to be read with such words omitted.
- 9.3 The provisions of clauses 8 and 9 will apply also to:
- (a) all officers and employees of a corporate Trustee;
  - (b) trustees of the Scheme who no longer hold office.

## **10 Trustees' Remuneration**

- 10.1 Any Trustee engaged in a profession or business will be entitled to be paid all proper expenses, charges and commissions for work carried out in connection with the Scheme by him or any firm/company to which he belongs or by which he is employed.
- 10.2 Any Trustee not engaged in a profession or business may be paid such expenses and remuneration as may be agreed by the Principal Employer.
- 10.3 The provisions of this clause apply similarly to any officer or employee of a corporate Trustee.
- 10.4 Without prejudice to the generality of clause 10.1, if the Professional 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 investment made by the Member Trustees.
- 10.5 All sums due pursuant to this clause are to be paid in accordance with the provisions of clause 13.

## **11 Participating Employers**

- 11.1 The Principal Employer with the consent of the Member Trustees, may allow a company, firm or person to become an Employer.
- 11.2 However, before consenting to an Employer participating in the Scheme the Member Trustees must first obtain the written advice of the Professional Trustee as to whether the proposed participation would prejudice the Scheme's Registration or be inconsistent with the requirements for occupational pension schemes. No company, firm or person is to be allowed to become or continue as an Employer if its participation would prejudice the Scheme's Registration or be inconsistent with the requirements for occupational pension schemes. In such circumstances the Employer will automatically cease to participate.
- 11.3 Any new Employer is to enter into a deed of adherence with the Principal Employer and the Trustees. This will contain a covenant on the Employer's part to observe and perform the relevant provisions of the Scheme (and is to be in such form as the Trustees may reasonably prescribe). Participation will take effect from the date of the deed of adherence unless stated otherwise.
- 11.4 The Employers are to supply to the Trustees and the Member Trustees' advisers such information as they are required to provide pursuant to the 1995 Act. In addition the Employers are to supply to the Trustees such further information as the Trustees may reasonably require for the administration of the Scheme.
- 11.5 In addition the Member Trustees will have the right on request:
  - (a) to have reasonable access to any records relevant to such administration which are in the custody or control of the Employers;

- (b) to take copies of those records free of charge.

## **12 Substitution of Principal Employer**

12.1 The provisions of this clause will apply in the following circumstances:

- (a) if an order or resolution is passed for the winding-up of the Principal Employer, for the purposes of reconstruction; or
- (b) if the Principal Employer amalgamates with another corporation; or
- (c) if the Principal Employer has ceased to contribute to the Scheme.

12.2 In such circumstances, and provided that the Principal Employer does not go into liquidation without a successor, the Trustees may in their discretion permit the continuation of the Scheme.

12.3 Such continuation may be made in connection with the reconstructed or amalgamated Principal Employer or any other company, firm or person carrying on business in succession to the Principal Employer. Such company, firm or person will then take over the role of the Principal Employer under the Scheme.

12.4 The new Principal Employer is to enter into a deed with the Trustees. This will contain a covenant on its part to observe and perform the relevant provisions of the Scheme Documents and is to be in such form as the Trustees may reasonably prescribe.

## **13 Costs and Expenses**

13.1 The costs and expenses of managing and administering the Scheme are to be paid by the Fund unless the Principal Employer determines they are to be met by the Employers.

13.2 In such circumstances each Employer is to pay such proportion of those costs and expenses as the Principal Employer and the Member Trustees may agree. In default of such agreement they are all to be borne by the Principal Employer.

13.3 To the extent any of the Employers and/or the Principal Employer defaults in paying the costs and expenses the Trustees may recoup the same from the Fund, on such basis as the Trustees decide.

13.4 For the avoidance of doubt the costs and expenses will include any incurred by the Trustees pursuant to clauses 2, 4, 6, 7, 10, 14 and 15 or otherwise in performance of their duties or the exercise of their powers and discretions.

## **14 Control of the Fund**

14.1 The Fund will be vested in the Trustees as joint tenants and held by them upon irrevocable trusts in accordance with the terms of the Scheme Documents.

- 14.2 All monies and assets received by the Trustees for the purposes of the Scheme will be paid or transferred into the Fund. They may be retained in the Fund or sold if and when the Trustees decide appropriate.
- 14.3 All benefits due under the provisions of the Scheme will be paid in accordance with Rule 9. The Trustees will have power to sell or realise any Fund assets for this purpose.
- 14.4 The Member Trustees (in consultation with the Actuary) may nominally allocate assets from the Fund for such purposes as they decide, provided this would not prejudice Registration or result in an Unauthorised Payment.

## **15 Investment of the Fund**

- 15.1 The Member Trustees will give prior notification to the Professional Trustee as soon as reasonably practicable of any proposed acquisition or disposal of any investment.
- 15.2 The Professional Trustee is to give the Member Trustees advice as to whether the proposed investment might prejudice Registration or result in an Unauthorised Payment as soon as reasonably practicable after receiving the request to do so. In providing this advice, the Professional Trustee is entitled to rely on the accuracy of the information provided by the Member Trustees. At the same time, the Professional Trustee is to advise the Member Trustees of any investments currently held by the Fund, retention of which might prejudice Registration or result in an Unauthorised Payment.
- 15.3 Before any investment is made each of the Members, Deferred Pensioners and Pensioners will agree in writing to the making of that investment unless the Member Trustees have delegated all or any of their powers of investment pursuant to clause 7.
- 15.4 If the Member Trustees have followed the above provisions of clauses 15.1, 15.2 and 15.3 they may exercise their powers of investment in any way they choose. In such event, the Professional Trustee will have no liability to any party for any loss arising out of the Scheme's de-Registration or the triggering of an Unauthorised Payment whether caused directly or indirectly by any investment not endorsed by the Professional Trustee.
- 15.5 No investment of the resources of the Scheme may be made in any Employer-Related Investment 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.
- 15.6 Subject to clauses 15.5 and 16 the Member 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.

15.7 Investments may be made within or outside the United Kingdom whether or not:

- (a) involving liability;
- (b) producing income;
- (c) authorised by law for the investment of trust monies;
- (d) of a wasting or reversionary nature

to the intent that the Member Trustees will have the same full and unrestricted powers of investment as if they were absolutely and beneficially entitled to the Fund.

15.8 Without prejudice to clauses 15.1 to 15.7 but subject to clause 15.12 and 16 the Member Trustees may invest the Fund in or upon the security of any:

- (a) annuity contract or assurance policy (whether with profits or not) issued by a United Kingdom office or branch of an Insurance Company;
- (b) scheme of deposit administration;
- (c) unit trust, managed fund or mutual 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) gilt's, government securities and other interest bearing investments whether at a fixed or variable rate;
- (d) traded options (as defined in section 144(8)(b) of the Taxation of Chargeable Gains Act 1992);
- (e) transactions and financial futures on the London International Financial Futures Exchange;
- (f) gold bullion or any other commodity;
- (g) interest in land or property (either in their own right or jointly with any other party);
- (h) contract, guarantee, option or other agreement in connection with any of the above.

15.9 As regards any real property held as an investment of the Scheme the Member Trustees may subject to clause 15.12 enter into any lease, licence, option, development or other contract in relation to it.



- 15.10 The Member Trustees may with the Professional Trustees consent join with the trustees of any other exempt approved scheme in any of the investment activities described in this clause. In such circumstances the Member Trustees may hold or be entitled to such share of the mixed investments as they agree with the trustees of the other scheme.
- 15.11 The Member Trustees will 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 will comply with section 35 of the 1995 Act.
- 15.12 No investment in Taxable Property may be made without the consent of the Professional Trustee.

## **16 Restrictions on investment**

- 16.1 The Member Trustees shall exercise their powers under clause 15 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 will exercise their powers in a manner which they are satisfied will not 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).
- 16.2 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 the loan will constitute an authorised employer loan within the meaning of section 179 of the FA 2004; and
  - (b) shall not agree to any variation in the terms of the loan (or any related change) unless they are satisfied that such variation will not result in an Unauthorised Payment.
- 16.3 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 constitute an authorised employer loan within the meaning of section 179 of the FA 2004).

## **17 Trustee's borrowing powers**

- 17.1 The Trustees may borrow money on the security of all or any part of the Fund or borrow or raise money on any terms they think fit, including to buy or acquire any property or assets or any interest in them from the Scheme. The property or assets may be charged as security for the borrowing as if the Trustees were absolutely beneficially entitled to them provided that:
- (a) at all times the liability of the Professional Trustee shall be limited to the assets of the Scheme but without prejudice to the joint and several liability of the other parties;
  - (b) the Trustees shall not borrow any amount unless the Professional Trustee is satisfied that the arrangement borrowing condition within the meaning of section 182 of FA 2004 is met in respect of that amount; and
  - (c) the Professional Trustee must be a party to all Scheme borrowings unless it has agreed otherwise in writing.

## **18 Actuarial valuations**

- 18.1 Actuarial investigations into the condition of the Scheme and of its Fund shall be made by the Actuary to the extent that the Trustees consider it necessary or expedient.
- 18.2 The Trustees and the Employers will make available to the Actuary all accounts, documents and information which he may reasonably require for this purpose.

## **19 Amendment**

The Trustees may alter or replace the trusts, powers and provisions of the Scheme, after obtaining the consent of the Principal Employer and complying with any statutory requirement to give Members or former Members notice of the alteration. The consent of the Principal Employer will not be required if the Trustees are making the alterations as a result of an Employer's failure to pay one or more contributions. Any alteration to the trusts, powers and provisions of the Scheme will be made by deed or written resolution and may be retrospective. However, an alteration may not be made if it will/would prejudice that part of a Member's or former Member's benefits which are in respect of Pensionable Service prior to the date of alteration.

## **20 Amalgamation and reconstruction**

- 20.1 This clause applies where an Employer (other than the Principal Employer):
- (a) is involved in an amalgamation, reconstruction or liquidation or
  - (b) sells or transfers its property, assets and undertaking or a significant part of them.

20.2 In such circumstances the Employer (with the Member Trustees' consent) may be replaced by the company, firm or person carrying on all or part of its business in succession.

20.3 Provided the procedural requirements contained in clause 11 are met in respect of the new Employer the Pensionable Service of Members employed by the old Employer will be treated as continuous where the law allows.

## **21 Partial wind-up**

21.1 This clause applies where an Employer (other than the Principal Employer):

- (a) ceases to carry on business;
- (b) goes into voluntary or compulsory liquidation;
- (c) has an administrator or administrative receiver appointed over any of its property assets or undertaking
- (d) sells or transfers its property, assets and undertaking or a significant part of them
- (e) ceases to be associated with the Principal Employer;
- (f) gives notice (other than contemporaneously with the Principal Employer) pursuant to Rule 6.4 severing its obligations to pay future contributions;
- (g) fails to pay any sum due to the Trustees within one month after receiving from them a formal written demand;

and (in the case of the events listed in clauses 21.1(a) to 21.1(e) inclusive) no appointment has been made pursuant to clause 20.

21.2 In such circumstances the Trustees, on the advice of the Actuary, must apply, at such time as they determine, the Member's Account to secure benefits relating to the Members employed by the Employer at the date the relevant event occurs unless the Members become employees of another Employer.

21.3 The relevant Members' Accounts may at the Trustees' discretion be dealt with in one or more of the following ways, namely:

- (a) preserving the benefits in the Scheme;
- (b) setting aside such part of the Fund as the Trustees may decide and applying it in a partial wind-up in accordance with clauses 23 and 24;
- (c) provided they comply fully with either Rules 19 or 20, effecting a transfer out in accordance with such Rules.

21.4 In the event an Employer (other than the Principal Employer) goes into liquidation (whether compulsory or voluntary) and no company takes over that Employer's

business in succession, the Trustees must wind up the relevant part of the Fund in accordance with clauses 21.3(b) and 23.

## **22 Full wind-up**

- 22.1 Subject to clause 25.1 the Trustees may resolve to wind-up the Scheme if any of the events listed in clause 21.1 has occurred in relation to the Principal Employer (save for clause 21.1(e)) and (in the case of the events listed in clauses 21.1(a) to 21.1(d) inclusive) no substitute has been appointed pursuant to clause 12.
- 22.2 In the event the Principal Employer goes into liquidation (whether voluntary or compulsory) and no company takes over the Principal Employer's business in succession, the Trustees must wind up the Fund in accordance with clause 23.
- 22.3 Any such resolution is to be recorded in writing. The wind-up will 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 22.1;
  - (b) at any time in the future.
- 22.4 In the absence of any such resolution the Scheme will continue as a closed arrangement, as if the Trustees had elected to continue the Scheme as a closed arrangement pursuant to clause 25.
- 22.5 The Scheme will be wound up in accordance with the Scheme Documents no later than eighty years after the Commencement Date unless it can be lawfully continued.

## **23 Dissolution**

- 23.1 If the Scheme is wound-up in part or full the Trustees will obtain an actuarial valuation as at the date of wind-up and will realise the appropriate part of the Fund at such time and upon such terms as they think fit.
- 23.2 Subject to prior payment of all costs, charges and expenses which cannot be recovered from the Employers and subject to the consent of the Professional Trustee and following the advice of the Actuary, the net proceeds of realisation are to be used to secure benefits in the following descending order of priority, namely:
- (a) benefits already in payment or in respect of which entitlement has arisen;
  - (b) benefits accrued by or in respect of Members and Deferred Pensioners to the extent they are not included above.
- 23.3 If any balance still remains after the priorities referred to in clause 23.2 have been met, the Trustees may use the same to augment the benefit of any of the Beneficiaries.
- 23.4 If any balance still remains after the priorities referred to in clause 23.2 have been met and the power contained in clause 23.3 has been exercised it is to be returned

subject to clause 23.8, and after payment of any tax liability, to the Principal Employer or (if it no longer exists) to the Employers. In the latter case the balance is to be divided between the Employers as the Trustees determine.

23.5 If the Fund is insufficient to secure in full the benefits set out in one of the categories listed in clause 23.2 then they will abate on such basis as the Member Trustees on the advice of the Actuary shall determine.

23.6 For the avoidance of doubt benefits:

- (a) are to be categorised under clause 23.2 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 a condition set out in clause 21.1 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;
- (c) are to be calculated and paid in accordance with the appropriate Rules of the Scheme.

23.7 Until all the assets of the Fund have been fully disposed of the trusts of the Scheme will remain in force.

23.8 This clause applies where if a payment was made to an Employer it would constitute an authorised surplus payment within the meaning of section 177 of the FA 2004. When this clause applies such part of the Fund as falls within the scope of this clause may be paid (subject to any tax) to an Employer provided that:

- (a) the requirements of the 1995 are met; and
- (b) the Trustees and all Members have unanimously agreed in writing to the making of such payment and any terms on which it is made.

No return of surplus can be made from the Scheme except to the extent that it is an authorised surplus payment within the meaning of section 177 of the FA 2004.

## **24 Securing benefits**

24.1 Except as provided for below benefits are to be secured by the purchase of an appropriate non-commutable, non-assignable annuity in respect of each Beneficiary in accordance with the Definitive Deed and any requirements of Registered Pension Schemes or HMRC.

24.2 Where the Trustees have prior to the Scheme being terminated 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 Scheme being terminated may be transferred into the name of the relevant Beneficiary.

- 24.3 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.
- 24.4 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, 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.
- 24.5 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.
- 24.6 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.
- 24.7 Where permissible under the FA 2004, such part of a former Member's Account as the Trustees determine may be applied to provide a Pension Commencement Lump Sum.
- 24.8 Where permissible under the FA 2004, the Trustees may pay a Refund of Excess Contributions Lump Sum to a former Member.
- 24.9 Where permissible under the FA 2004, the Trustees may pay a Lifetime Allowance Excess Lump Sum to a former Member.
- 24.10 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.
- 24.11 At the request of a Member or former Member the Trustees may effect a transfer out under Rule 19 upon such terms as they consider appropriate.
- 24.12 The Trustees may arrange for any Member or former Member to participate in a Receiving Scheme in accordance with Rule 20. The transfer may include all or any part of an unallocated surplus within the Scheme provided this would not result in the Scheme being treated as having made an Unauthorised Payment and would not be included with the requirements for Registered Pension Schemes.
- 24.13 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.

- 24.14 The Trustees may at their discretion secure benefits for different categories of members or Beneficiaries by different means. They may also secure benefits by different means for individuals who are in the same category.

## **25 Special powers**

- 25.1 If any of the circumstances referred to in clause 21.1 (save for clause 21.1(b) where no successor in business replaces the relevant Employer) occurs the Trustees may elect to continue the Scheme as a closed arrangement, provided that a Professional Trustee continues to act in relation to the Scheme.
- 25.2 If an election is made under clause 25.1 then any benefits accrued prior to that date will be calculated in such manner as the Trustees decide. The trusts of the Scheme will remain in force. In particular clause 19 will apply.
- 25.3 The election will continue in force until the Trustees determine otherwise. The Scheme is then to be wound-up in accordance with clauses 22 and 23.

## **26 Insolvency of principal employer**

- 26.1 If any of the events set out in clauses 21.1(b) (except for a members' voluntary liquidation) or 21.1(c) occur in relation to the Principal Employer then all powers of the Principal Employer in relation to the Scheme will vest solely in the Member Trustees unless and until a new Principal Employer is appointed under clause 12 at which time the powers will be re-instated to the Principal Employer (but without prejudice to their exercise whilst vested in the Member Trustees).

## **27 Notices**

- 27.1 Any notice required under the Scheme Documents may be served by delivering or sending it, in the case of:
- (a) any of the Employers, the Principal Employer or a corporate Trustee to its registered office;
  - (b) an individual Trustees to his normal place of work or last known private address;
  - (c) a Member or Beneficiary to his normal place of work or last known private address.
- 27.2 Notices may be sent by first-class post or delivered personally. The former will be deemed served two days after the date of posting and the latter upon delivery.

## **28 Determination of questions**

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

28.2 Such determination will be binding on all interested parties.

**29 Governing law**

29.1 The Scheme Documents will be governed in all respects by and construed in accordance with the laws of England and Wales.

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



## **DEFINITIVE DEED – The Rules**

### **1 Eligibility**

- 1.1 The Membership of any person who was an Eligible Employee on the Commencement Date and joined the Scheme following the invitation of an Employer is confirmed.
- 1.2 An Eligible Employee may be admitted to Membership if he is invited to become a Member by his Employer and the other Member Trustees.
- 1.3 If an invitation is made pursuant to Rule 1.2 the Eligible Employee will be notified by an Announcement Letter. This Announcement Letter will state:
  - (a) a summary of the benefits to be provided and
  - (b) the initial contributions required from him (if any).
- 1.4 The Eligible Employee will be granted membership if he notifies his Employer that he has received the Announcement Letter and he agrees:
  - (a) that his entitlement to benefits under the Scheme will be governed solely by the Scheme Documents, as amended from time to time; and
  - (b) that he will make contributions to the Scheme at the rate required by his Employer from time to time.
- 1.5 The Principal Employer may notify the Trustees that Membership will be closed to new entrants. Such notice given will take effect immediately or at such future date as may be specified in it.
- 1.6 A statement in writing signed by or on behalf of the Principal Employer to the effect that any person is or is not an Eligible Employee will be conclusive.
- 1.7 No person is to be admitted to, remain in or be excluded from Membership if this would prejudice Registration.

### **2 Admission to Membership**

- 2.1 Anyone eligible for Membership who wishes to join the Scheme must if so requested by the Member Trustees supply to them:
  - (a) a copy of his birth certificate or other satisfactory evidence of age;
  - (b) any such evidence of health required (including submission to an examination);
  - (c) a completed Member application form and/or any other information requested.

- 2.2 Having complied with Rule 2.1 to the satisfaction of the Member Trustees the relevant individual will become a Member with effect from such date as the Principal Employer and the Member Trustees determine.
- 2.3 If for any reason the information supplied pursuant to Rule 2.1 transpires to be incorrect or incomplete the Trustees may adjust the terms of his Membership in such manner as they consider appropriate. Such changes may be made retrospectively.

### **3 Cessation of Membership**

- 3.1 An individual's Membership will cease if he:
- (a) is no longer an Eligible Employee; or
  - (b) exercises any statutory right to terminate his Membership; or
  - (c) exercises a right under the remainder of this Rule.
- 3.2 Membership of the Scheme is voluntary. Accordingly, a Member may give two months' written notice to the Trustees to withdraw and his Membership will cease on expiry of that notice.
- 3.3 The relevant Employer will give written notice to the Trustees if any Member ceases to be an Eligible Employee.
- 3.4 Anyone who ceases to be a Member will only be re-admitted with the consent of the relevant Employer and the Trustees. If consent is given re-admission will be on such terms as the Trustees decide after taking the advice of the Actuary.
- 3.5 If a Member is temporarily absent from work the Principal Employer may direct the Trustees to treat that Member as though he will be remaining in Membership, subject to Registration not being prejudiced.
- 3.6 If the Member does not return to work after 10 consecutive years his Membership will terminate unless the Trustees and the Employer agree otherwise, subject to Registration not being prejudiced.
- 3.7 Rules 3.5 and 3.6 do not apply in the case of maternity leave. A Member who is absent for this reason will be provided with such benefits in respect of her absence as the law may require.

### **4 Members' Normal Contributions**

- 4.1 A Member will pay contributions to the Scheme of the amount (if any) determined by his Employer and notified to the Member in the Announcement Letter (or any variation of it).
- 4.2 Contributions will begin on the first pay date after admission to Membership and will cease when Membership comes to an end.

4.3 The Employer will deduct the Member's Contributions (together with any AVC's paid pursuant to Rule 5) from his pay and remit them as soon as reasonably possible to the Trustees in such manner and at such intervals as the Trustees may require (provided section 49 of the 1995 Act is complied with insofar as it applies).

4.4 In addition to any contributions made in Rule 4.1 above a Member may with the consent of the Trustees make:

- (a) contributions in the form of shares where this would constitute a "transfer by the individual of eligible shares in a company within the permitted period" within the meaning of section 195 of the FA 2004; and / or
- (c) contributions by way of a transfer to the Scheme of an asset or assets in specie.

The Trustees shall not accept a contribution by way of a transfer of assets in specie unless they are satisfied:

- (i) that the Scheme's Registration will not thereby be prejudiced; and
- (ii) that such contribution will not result in the Scheme making or being treated as having made an Unauthorised Payment,

but the decision whether to accept a contribution by way of a transfer of an asset or assets in specie shall otherwise be at the Trustees' absolute discretion. The Trustees may impose such conditions as appear to them to be necessary or expedient in connection with the acceptance of such a contribution.

## **5 Member AVCs**

5.1 Subject as noted below a Member may pay AVCs either on a regular or an ad hoc basis until his Membership ceases or (in the case of regular amounts) he elects to stop paying them.

5.2 Before commencing, ceasing or varying payment of AVCs the Member will give the Trustees such prior written notice (not exceeding 12 months) as they may from time to time require. This obligation will not apply where AVCs stop because Membership has ceased.

5.3 Subject as noted below a Member's AVC Account is to be used by the Trustees to increase the benefits payable in respect of his Membership in accordance with the benefit options under the Definitive Deed.

5.4 For the avoidance of doubt the Trustees will not be obliged to increase:

- (a) all or any specific benefit payable in respect of the Member;
- (b) all benefits by the same proportion.

5.5 The Member Trustees will hold the AVC Accounts (including AVCs collected but not yet paid in) separate from the other assets of the Fund upon trust to provide benefits

for the relevant individuals. Accordingly, on a total or partial wind-up the AVC Accounts are not to be used for the general purposes of the Scheme.

## **6 Employers' Contributions**

- 6.1 Each of the Employers will pay such contributions as the Principal Employer may from time to time agree with the Trustees, after consultation with the Actuary.
- 6.2 Any contributions due from the Employers are to be paid to the Trustees or as they may otherwise direct. Payment is to be made at such intervals as the Trustees with the consent of the Principal Employer may from time to time determine.
- 6.3 An Employer may at any time pay further contributions to the Trustees provided this does not prejudice Registration. Such contributions may be made either for the general purposes of the Scheme or for one or more of the specific purposes referred to in the Definitive Deed.
- 6.4 Each Employer has the power to sever its obligation to make future contributions by giving three months written notice to the Trustees. In such circumstances the provisions of clauses 21 and 22 (as appropriate) will apply.
- 6.5 Each Employer has the power to suspend or reduce its obligation to make further contributions by giving three months' written notice to the Trustees. The Trustees will however have the power to wind-up the Scheme in accordance with clause 22.1 if such notice is given.
- 6.6 If so required by section 87 of the 1995 Act, the Trustees will ensure that a payment schedule is put in place. The payment schedule will be prepared, maintained and reviewed as necessary to comply with section 87 of the 1995 Act.
- 6.7 The Trustees may allow an Employer to make a contribution to the Scheme pursuant to this Rule 6 by way of a transfer to the Scheme of an asset or assets in specie. The Trustees shall not accept a contribution by way of a transfer of assets in specie unless they are satisfied:

- (a) that the Scheme's Registration will not thereby be prejudiced; and
- (b) that such contribution will not result in the Scheme making or being treated as having made an Unauthorised Payment,

but the decision whether to accept a contribution by way of a transfer of an asset or assets in specie shall otherwise be at the Trustees' absolute discretion. The Trustees may impose such conditions as appear to them to be necessary or expedient in connection with the acceptance of such a contribution.

## **7 Designation for purposes of Unsecured Pension Fund**

A Member who is aged under 75 may with the agreement of the Trustees designate the whole or such part of his Member's Account as the Trustees agree is "available for the payment of unsecured pension" within the meaning of paragraph 8 of schedule 28 of the FA 2004.

## **8 Operation of Scheme so as to maintain right to lower Normal Minimum Pension Age**

If the Trustees have so agreed with the Member, the Definitive Deed shall be deemed modified in relation to that Member so as to provide that the Member shall only become entitled to a benefit under the Scheme if the retirement condition set out in paragraph 22(7) of schedule 36 of the FA 2004 is met. The Member may with the agreement of the Trustees subsequently elect not to be dealt with in accordance with this Rule 8. Any such agreement shall be irrevocable.

## **9 Provision of benefits**

9.1 At any time from a Member reaching Normal Minimum Pension Age, or from the Ill-health Condition being satisfied in relation to the Member if earlier, but before the Member reaches age 75, the Trustees may apply all or such part as they may determine of the Member's Unsecured Pension Fund for the purpose of providing Income Withdrawal or towards the purchase of a Short-term Annuity.

9.2 At any time after a Member has attained age 75, the Trustees may apply all or such part as they may determine of the Member's Alternatively Secured Pension Fund for the purpose of providing Income Withdrawal.

9.3 At any time from a Member attaining Normal Minimum Pension Age, or the Ill-health Condition being met in respect of the Member if earlier, the Trustees may apply all or such part as they may determine of a Member's Account towards the provision of a Scheme Pension or the purchase of a Lifetime Annuity.

9.4 Any pension or annuity provided pursuant to this Rule 9 may be provided on such terms (consistent with the other provisions of this Rule 9) as the Trustees in their absolute discretion determine provided that such terms are consistent with compliance with the Pension Conditions. Without prejudice to the generality of this Rule 9.4, such terms may include:

(a) provision for payment of a pension to continue to be made to any person after a Member's death provided that this is on terms consistent with pension rule 2 of the Pension Rules; and / or

(b) provision for a pension to increase or decrease once in payment (on terms consistent with compliance with the Pension Rules).

9.5 Without prejudice to the generality of Rule 9.4, any annuity or Scheme Pension may be provided on terms that a pension will be payable to one or more Dependants of the Member in the event of the Member's death subject to compliance with the Pension Conditions and the Pension Death Benefit Rules.

9.6 Where a Lifetime Annuity or Scheme Pension is provided for a Member, the Trustees may provide for this to be on terms that an Annuity Protection Lump Sum Death Benefit will be payable in the event of the Member's death before such date as the Trustees may determine provided that such date must be a date falling before the

Member's 75th birthday. Any such Annuity Protection Lump Sum Death Benefit shall be payable in accordance with Rule.

- 9.7 If the Member has reached Normal Minimum Pension Age (or the Ill-health Condition is met in respect of him) and the circumstances are such that the FA 2004 permits a Lifetime Allowance Excess Lump Sum to be paid, the Trustees may apply part of the Member's Account in paying such Lifetime Allowance Excess Lump Sum to the Member.
- 9.8 If the circumstances are such that the FA 2004 permits a Pension Commencement Lump Sum to be paid in connection with the Member becoming entitled to Income Withdrawal, a Lifetime Annuity or a Scheme Pension, the Trustees may upon receipt of a written request from a Member or Deferred Pensioner apply part of the Member's Account in paying a Pension Commencement Lump Sum to the Member. The amount of such lump sum and the timing of the payment shall be consistent with the Pension Conditions and with such lump sum satisfying the requirements for a Pension Commencement Lump Sum but shall otherwise be at the discretion of the Trustees.
- 9.9 If the Trustees have so agreed with the Member, the Definitive Deed shall be deemed modified in relation to that Member to the extent required to ensure compliance with the pension condition set out in paragraph 31 of schedule 36 of the FA 2004. The Member may with the agreement of the Trustees subsequently elect that the modification referred to in this rule shall not apply. Any such agreement shall be irrevocable.
- 9.10 In relation to the exercise of their powers under Rule 9 the Trustees shall act in accordance with any written instructions received from the Member, but subject to the following conditions:
- (a) the Trustees shall not be obliged to give effect to any instruction if in the Trustees' opinion to do so would cause them to breach the Pension Conditions;
  - (b) the Trustees shall not be required to act in accordance with the Member's instructions if in the Trustees' opinion it is not reasonably practicable to comply with such instructions or if the cost of so doing would, in the reasonable opinion of the Trustees, be wholly disproportionate to the value of the benefits concerned; and
  - (c) the Trustees shall be entitled to request from the Member such information and documentation as they may require to satisfy themselves that acting in accordance with the Member's instructions will not contravene the provisions of this Rule 9, and to delay acting in accordance with such instructions pending receipt of such documentation or information.

9.11

If:

- (a) the Administrator has received evidence from a registered medical practitioner that the Member is expected to live for less than one year; and
- (b) the other requirements for payment of a Serious Ill-health Lump Sum in respect of the Member are met

the Trustees may at their discretion apply such part of the Member's Account as relates to the relevant Arrangement in payment of a Serious Ill-health Lump Sum. Such payment shall extinguish the Member's entitlement to benefits under the Arrangement.

- 9.12 If a Member has reached the age of 60 but has not reached the age of 75 and the circumstances are such that a trivial commutation lump sum within the meaning of paragraph 7 of schedule 29 of FA 2004 may be paid, the Trustees may pay a trivial commutation lump sum to the Member, the payment of which shall extinguish the Member's entitlement to benefits under the Scheme.
- 9.13 The Trustees may apply part of the Member's Account for the purposes of paying a premium for a life assurance policy effected on the life of the Member. Any proceeds of such policy will be dealt with in accordance with Rule 10.12.

## **10 Death of a Member**

- 10.1 On the death of a Member, any death benefits payable pursuant to Rules 10.3 and 10.5 shall become payable.
- 10.2 If after applying the provisions of Rule 9 in relation to death benefits the Member's Account includes Relevant Uncrystallised Funds and the Member was under the age of 75 at the date of his death, the Trustees may apply all or part of such Relevant Uncrystallised Funds in the payment of a Relevant Uncrystallised Funds lump sum death benefit within the meaning of paragraph 15 of schedule 29 of the FA 2004. Any such lump sum shall be payable in accordance with Rule 10.12.
- 10.3 Where following the death of a Member:
- (a) after the application, where applicable, of Rules 10.3 and 10.12, the Member's Account comprises (in whole or in part) Relevant Uncrystallised Funds; and
  - (b) the Member leaves one or more Dependents

the Trustees shall, subject to Rule 10.4, apply such Relevant Uncrystallised Funds in the provision of such one or more Dependents' Scheme Pensions or Dependents' Annuities as the Trustees shall in their absolute discretion determine.

- 10.4 Where the Member leaves more than one Dependant the proportions in which a Member's Account is applied for the benefit of the respective Dependents pursuant to Rule 10.3 shall be determined by the Trustees at their absolute discretion. Where the Member leaves more than one Dependant and the Trustees are applying funds in accordance with Rule 10.3, the Trustees shall not be obliged to apply funds for the benefit of every Dependant. The Trustees shall act in accordance with the Pension

Conditions and the pension death benefit rules as set out in section 167 of the FA 2004 in the application of this Rule 10.4, but shall otherwise have absolute discretion as to the terms on which any Dependants' Scheme Pensions or Dependants' Annuities are provided pursuant to Rule 10.3.

- 10.5 Where the Member died before reaching age 75 and the other conditions set out in the FA 2004 for payment of a Trivial Commutation Lump Sum Death Benefit are met, the Trustees may at their discretion pay a Trivial Commutation Lump Sum Death Benefit to a Dependant of the relevant Member, the payment of which shall extinguish such Dependant's entitlement under the Scheme to Pension Death Benefit and Lump Sum Death Benefit in respect of the relevant Member.

- 10.6 Where:

- (a) a Member dies before having reached the age of 75; and
- (b) at the time of the Member's death he was entitled to Income Withdrawal under an Arrangement under the Scheme; and
- (c) the circumstances are such that the FA 2004 permits the payment of an Unsecured Pension Fund Lump Sum Death Benefit

the Trustees may at their discretion apply the whole or part of such amount as represents the Member's Unsecured Pension Fund in respect of the Arrangement immediately before payment is made as an Unsecured Pension Fund Lump Sum Death Benefit payable in accordance with Rule 10.12.

- 10.7 Where:

- (a) following the death of a Member and after the application of Rule 10.6 if applicable there exists an Unsecured Pension Fund in respect of a Member; and
- (b) the Member leaves one or more Dependants

the Trustees shall, subject to compliance with the Pension Rules and the Pension Death Benefit Rules apply funds equal to the relevant Unsecured Pension Fund in one or more of the ways specified in Rule 10.8.

- 10.8 The ways specified in this rule are:

- (a) provision of one or more Dependants' Scheme Pensions;
- (b) provision of one or more Dependants' Annuities;
- (c) designation as available for payment of Dependant's Unsecured Pension (if the Dependant has not yet reached the age of 75) or Dependant's Alternatively Secured Pension (if the Dependant is aged 75 or over).

- 10.9 Subject to compliance with the Pension Conditions and the Pension Death Benefit Rules, the Trustees:



- (a) may apply all or such part as they may determine of a Dependant's Unsecured Pension Fund for the purposes of providing a Dependents' Short-term Annuity or Dependents' Income Withdrawal; and
- (b) may apply all or such part as they may determine of a Dependant's Alternatively Secured Pension Fund for the purpose of providing Dependents' Income Withdrawal.

10.10 Where:

- (a) a Member dies having reached the age of 75 and leaves no Dependents;
- (b) the Member was entitled to Income Withdrawal in respect of an Arrangement under the Scheme at the date of his death; and
- (c) the Member had nominated a charity for the purpose of receiving a Charity Lump Sum Death Benefit

the Trustees may (but shall not be obliged to) pay all or such part of the Member's Alternatively Secured Pension Fund as they in their discretion determine to the charity nominated by the Member (provided that nothing in this Rule 10.10 shall oblige or entitle the Trustees to make any payment which is inconsistent with the provisions of the FA 2004 relating to Charity Lump Sum Death Benefits and no payment may be made under this Rule 10.10 without the consent of the Professional Trustee.

10.11 Where:

- (a) a Member dies having reached the age of 75 and leaves no Dependents; and
- (b) the Member was entitled to Income Withdrawal in respect of an Arrangement under the Scheme at the date of his death

the Trustees may (but shall not be obliged to) apply all or such part as they determine of the Member's Alternatively Secured Pension Fund in increasing the Member's Account of one or more other Members of the Scheme. In the event that the deceased Member nominated one or more Members for the purpose of this Rule 10.11, any Transfer Lump Sum Death Benefit may only be applied to the Member's Account of a Member nominated by the deceased Member. In the event that the deceased Member made no such nomination the Administrator may select which (if any) Members are to have their Members' Accounts increased pursuant to this Rule 10.11. Nothing in this Rule 10.11 shall oblige or entitle the Trustees to apply any funds in a manner which is inconsistent with the provisions of the FA 2004 relating to Transfer Lump Sum Death Benefits.

- 10.12 In respect of benefits expressed to be payable in accordance with this Rule ("**Death Benefit**") any Death Benefit shall be held separately from the rest of the Fund on the Discretionary Trusts.

## **11 Death of a Dependant**

### **11.1 If:**

- (a) a Dependant of a deceased Member dies without having attained the age of 75; and
- (b) that Dependant was at the date of the Dependant's death entitled to Income Withdrawal in respect of an Arrangement relating to a deceased Member

the Trustees shall, subject to compliance with the Lump Sum Death Benefit Rule, pay an amount representing the Dependant's Unsecured Pension Fund as an Unsecured Pension Fund Lump Sum Death Benefit. Such amount shall be dealt with in accordance with Rule 10.12.

### **11.2 If:**

- (a) a Dependant of a deceased Member dies aged 75 or over;
- (b) there are no other Dependents of the Member still living;
- (c) the Dependant was at the date of the Dependant's death entitled to Dependents' Income Withdrawal in respect of an Arrangement relating to the deceased Member; and
- (d) the Member or the Dependant had nominated a charity for the purposes of receiving a Charity Lump Sum Death Benefit

the Trustees may (but shall not be obliged to) pay all or such part of the Dependant's Alternatively Secured Pension Fund as they in their discretion determine to the charity nominated by the Member (or if no such nomination was made by the Member the charity nominated by the Dependant) provided that nothing in this Rule 11.2 shall oblige or entitle the Trustees to make any payment which is inconsistent with the provisions of the FA 2004 relating to Charity Lump Sum Death Benefits and no payment may be made under this Rule 11.2 without the consent of the Professional Trustee.

### **11.3 If:**

- (a) a Dependant of a deceased Member dies aged 75 or over;
- (b) there are no other Dependents of the Member still living; and
- (c) the Dependant was, at the date of the Dependant's death, entitled to Dependents' Income Withdrawal in respect of an Arrangement relating to the deceased Member

the Trustees may (but shall not be obliged to) apply all or such part as they determine of the Member's Alternatively Secured Pension Fund in increasing the Member's Account of one or more other Members of the Scheme. In the event that the deceased Member or Dependant nominated one or more Members for the

purposes of this Rule 11.3, any Transfer Lump Sum Death Benefit may only be applied to the Member's Account of a Member nominated by the deceased Member, or by the Dependant if the Dependant made such a nomination but the Member did not. In the event that neither the deceased Member nor the deceased Dependant made such a nomination, the Administrator may select which (if any) Members are to have their Members' Account increased pursuant to this Rule 11.3. Nothing in this Rule 11.3 shall oblige or entitle the Trustees to apply any funds in a manner which is inconsistent with the provisions of the FA 2004 relating to Transfer Lump Sum Death Benefits.

## **12 Withdrawal**

- 12.1 Subject to Rules 19 and 20 anyone ceasing to be a Member who does not receive an immediate benefit will instead have his Member's Account maintained in the Scheme.
- 12.2 The Member's Account will be used to provide benefits in accordance with these Rules.
- 12.3 The benefits of a Deferred Pensioner who has less than five years' Pensionable Service may be secured (at the Trustees' discretion) by a transaction to which section 81 of the 1993 Act applies. Once such benefits have been secured the rights relating to them under the Scheme will be extinguished. Accordingly the Deferred Pensioner and all others claiming under him will have no further interest in the Scheme in respect of such benefits.
- 12.4 Where an alternative to short service benefit (as defined in section 71 of the 1993 Act) is payable under the Scheme the Trustees must be reasonably satisfied it is of at least equal value.
- 12.5 Where a Member becomes a Deferred Pensioner at least one year before Normal Pension Date his Member's Account will be revalued as required by paragraph 5 of schedule 3 to the 1993 Act.
- 12.6 Where the 3 Month Condition is satisfied in relation to any Member the Trustees shall comply with the requirements of chapter 5 of the 1993 Act as inserted by section 264 of the 2004 Act. The Trustees shall also have the options available to them under that chapter 5.

## **13 Payment of benefits**

- 13.1 All pensions and annuities will be payable at such intervals and in such manner as the Trustees decide.
- 13.2 Benefits will be paid by such method as the Trustees may from time to time determine.
- 13.3 Where a pension or lump sum payment ("Payment") is payable to any Child the Trustees may at their discretion:
  - (a) pay any monies to the Child's guardian or other person with whom the Child resides and under whose care and control the Child appears to be. In this

event, the Trustees are not required to supervise the application of the monies and will not be responsible for any misapplication;

- (b) apply the pension, in whole or in part, towards the Child's education or otherwise for his benefit in any way they think fit;
- (c) after taking the advice of the Actuary, continue the Payment in respect of a Child who has attained majority but who is physically or mentally disabled to the extent that he is unable to support himself financially.

#### **14 Augmentation**

14.1 The Principal Employer (or any other Employer with the Principal Employer's consent) may after obtaining the advice of the Actuary request the Trustees to enhance the benefits which may become payable to or in respect of a Beneficiary in such manner as it may prescribe including the following:

- (a) increasing benefits;
- (b) accelerating the payment of benefits;
- (c) granting additional benefits;

provided that this would not prejudice Registration or result in an Unauthorised Payment.

14.2 The Principal Employer may request the Trustees to provide any new or increased benefits to or in respect of any person in, or formerly in the service of, any Employer.

14.3 The Trustees are to implement the request provided the relevant Employer pays such further contributions (if any) as the Actuary may recommend.

#### **15 Evidence of death**

15.1 The Trustees will obtain a copy of relevant death certificates.

15.2 When a sum is to be paid to a deceased's personal representatives the Trustees may first obtain a copy of the grant of representation. However, they will not be obliged to do so.

15.3 If no grant has been taken out the Trustees may at their discretion pay the relevant sums to the deceased's personal representatives, Spouse, next-of-kin or such other body, person or organisation as they may consider appropriate. Payment to the relevant body, person or organisation will be a valid discharge to the Trustees.

#### **16 Enhanced Protection**

16.1 Where a Member opts for Enhanced Protection in relation to the Scheme (and provides such proof of this as the Trustees may require), the Trustees shall have all powers necessary to treat his rights and benefits under the Scheme in a way which preserves that Enhanced Protection. For the avoidance of doubt this includes the

ability to direct that "relevant benefit accrual" shall cease from a specified date and such direction may, to the extent allowed by law, be retrospective.

- 16.2 If a Member who has opted for Enhanced Protection subsequently notifies the Trustees that he no longer wishes to have the benefit of Enhanced Protection (and provides such proof of this as the Trustees may require), the Trustees shall have all powers necessary to disapply the cessation of "relevant benefit accrual" from a specified date and such direction may, to the extent allowed by law, be retrospective

## **17 Determination of employment**

- 17.1 No provision of the Scheme will in any way restrict the right of any of the Employers to end the employment of a Member. No damages will be recoverable by such a former Member from the Scheme or the Trustees as a consequence of his employment coming to an end.

## **18 Failure to claim benefits**

- 18.1 No Beneficiary will be entitled to any benefit more than six years after it has fallen due if the reason for non-payment was:

- (a) his failure to claim it;
- (b) the Trustees' lack of knowledge of his existence or whereabouts or of any fact giving him the right to it.

- 18.2 Subject to Rule 18.3 any such sums are to be forfeited and used for the general purposes of the Scheme.

- 18.3 Notwithstanding the above the Trustees may (with the consent of the Principal Employer) elect to pay to or in respect of the Beneficiary part or all of the relevant benefit.

## **19 Individual Transfers Out**

- 19.1 A Member or former Member may request in writing a Cash Equivalent transfer value payment in lieu of his entitlements under the Scheme be made if such payment would constitute a Recognised Transfer.

- 19.2 If such a request is made the Trustees shall (subject to Rule 19.3 and such payment constituting a Recognised Transfer) pay to the receiving scheme the Cash Equivalent for the Member or former Member provided that:

- (a) the transfer is to be made in accordance with any requirements of the 1993 Act, the 1995 Act or the FA 2004 which apply to it;
- (b) the amount of the Cash Equivalent shall be determined by the Actuary;
- (c) the Trustees shall where necessary give a certificate to the trustees of the receiving scheme stating:

- (i) the amount included in the transfer payment that is referable to the Eligible Employee's contributions;
- (ii) the periods of employment which are or may become Linked Qualifying Service;

19.3 Provided this is consistent with the statutory provisions relating to Recognised Transfers a Member or former Member may request the Trustees use his Cash Equivalent to purchase for him an annuity policy or contract with an Insurance Company. The purchase price of the policy or contract shall be equal to the Cash Equivalent referred to in Rule 19.2.

19.4 Once a transfer has been effected or an annuity policy or contract has been purchased all rights under the Scheme relating to or derived from the Member or former Member will be extinguished. Accordingly, the Member or former Member and all others claiming under him will have no further interest in the Scheme.

## **20 Bulk Transfers Out**

20.1 At the request or with the consent of the Principal Employer the Trustees may arrange for any or all of the Beneficiaries (whether immediate, deferred or contingent) to participate in a Receiving Scheme.

20.2 Subject to Rule 20.5 such arrangements may be made without obtaining the consent of any of the persons concerned but only after complying with any relevant requirements of Registered Pension Schemes or Recognised Transfers.

20.3 Participation may be effected by transferring to the Receiving Scheme all or any part of the Scheme assets and monies upon terms agreed between the Trustees and the trustees or administrator of the Receiving Scheme.

20.4 For the avoidance of doubt the transfer may include all or any part of an unallocated surplus within the Scheme.

20.5 No such transfer is to be made if it would:

- (a) offend against the law of perpetuities;
- (b) prejudice Registration;
- (c) breach the provisions of the Preservation Regulations;
- (d) contravene the provisions of section 20 of the 1993 Act.

20.6 Once a transfer has been made all rights under the Scheme relating to or derived from the relevant Beneficiaries will be extinguished. Accordingly, they and all others claiming under them will have no further interest in the Scheme.

## **21 Transfers in**

- 21.1 If a Member previously participated in another Registered Pension Scheme or retirement benefit scheme and the Trustees (with the prior consent of the Principal Employer) may receive a transfer payment in respect of such participation provided this would constitute a Recognised Transfer.
- 21.2 Upon receipt of the transfer payment the Member's Account will be credited with such notional assets as the Trustees may determine (after prior consultation with the Principal Employer and the Actuary) provided this does not prejudice Registration or result in the Scheme being treated as if it had made an Unauthorised Payment.
- 21.3 The Trustees may if they consider appropriate obtain a certificate from the trustees of the transferring scheme showing the amount of the transfer which may be used to provide lump sum benefits.
- 21.4 The Trustees may impose such conditions in relation to the acceptance of any transfer as appears to them to be necessary or expedient for the purpose of ensuring compliance with relevant legislation.

## **22 Disclosure of Information**

- 22.1 The Trustees may ask any Beneficiary to supply such evidence of age, identity, status or other information as they may from time to time require.
- 22.2 If such information is not supplied or is incorrect the Trustees may, acting on the advice of the Actuary, make such adjustments to the benefit payable to the Beneficiary as they think fit. These adjustments may be made on a retrospective basis and the Trustees may reclaim any benefit which has been overpaid previously.

## **23 Bar on Assignment**

Except to the extent allowed by the 1993 Act or the 1995 Act and to the extent to which this can be done without the Scheme being treated as having made an Unauthorised Payment pursuant to sections 172 to 174 of the FA04 or otherwise no benefits payable under the Scheme are capable of being assigned or charged and nor can a lien or set off be exercised in respect of any such benefit.

## **24 Taxation**

- 24.1 The Trustees or the Administrator may recover from present or future benefits or entitlement under the Scheme in respect of a Member or former Member an amount reflecting any liability of the Administrator in respect of the lifetime allowance charge under section 215 of the FA 2004 in respect of that Member or former Member. This does not authorise the reduction of entitlement to a benefit which has not crystallised except that in relation to which the lifetime allowance charge arises. Without prejudice to the generality of the preceding part of this clause 24.1, the methods of recovery of the lifetime allowance charge include reduction of benefits or entitlement determined in accordance with normal actuarial practice.
- 24.2 Without prejudice to the generality of Rule 24.2 the Trustees and / or the Administrator may deduct from any payment under the Scheme or from any relevant

Member's Account or from any part of the Fund not allocated to a Member's Account any tax, duty or charge for which they may be liable (including any tax, duty or charge for which the Trustees and / or the Administrator may be liable in their / its capacity as Administrator). For the purposes of this Rule 24.2 a Member's Account is a relevant Member's Account if the tax, duty or charge arises in connection with a Member or former Member to whom the Member's Account relates or related. If the liability is uncertain or its extent unknown the Trustees may postpone payment until they are satisfied that the liability does not exist or has been adequately provided for.

24.3 Without prejudice to the generality of Rule 24.2, the Trustees may in exercising their powers under clause 24 make deductions in respect of the following:

- (a) a special lump sum death benefits charge pursuant to section 206 of the FA 2004;
- (b) an authorised surplus payments charge pursuant to section 207 of the FA 2004;
- (c) an unauthorised payments charge pursuant to section 208 of the FA 2004;
- (d) an unauthorised payments surcharge pursuant to section 209 of the FA 2004;
- (e) a lifetime allowance charge pursuant to section 214 of the FA 2004;
- (f) an annual allowance charge pursuant to section 227 of the FA 2004; and
- (g) inheritance tax.

## **25 Forfeiture**

25.1 This Rule applies where a Beneficiary:

- (a) owes a monetary debt to an Employer arising out of a fraudulent, negligent or criminal act or omission;
- (b) is a Trustee who owes a monetary debt to the Scheme arising out of a breach of trust by him; or
- (c) has caused a monetary loss to the Scheme as a result of a criminal, negligent or fraudulent act or omission.

25.2 Where the debt is due to an Employer:

- (a) the relevant Employer may deliver to the Trustees a certificate stating the loss suffered as a consequence of the fraudulent, negligent or criminal act or omission;
- (b) upon receipt of the certificate the Trustees are to consult with the Actuary and determine an appropriate reduction in the Member/Beneficiary's benefits to reflect the certified loss;



- (c) the Trustees are then to deliver a copy of the certificate to the Member/Beneficiary and notify him of the proposed reduction. They may in their discretion modify the reduction in light of any representations made by the Member/Beneficiary but their ultimate decision will be binding upon him.
- 25.3 Where the debt is due to an Employer without prejudice to any other remedy it may have, the Employer will be entitled to reimbursement of the loss from the Scheme (less any tax which may be chargeable).
- 25.4 Where the debt or loss is due to the Scheme:
  - (a) the Trustees may consult with the Actuary and may determine an appropriate reduction in benefits to reflect the debt or loss;
  - (b) the Trustees will then deliver a certificate to the Beneficiary notifying him of the debt or loss and the appropriate reduction in benefits to reflect the debt or loss. They may at their discretion modify the reduction in light of any representations made by the Beneficiary but their ultimate decision will be binding upon him.
- 25.5 Notwithstanding the above the Trustees may not make any reduction or reimbursement:
  - (a) unless the claim set out in the certificate delivered to the Beneficiary is either not disputed or the obligation has become enforceable by an order of a competent court;
  - (b) in respect of any benefits transferred into the Scheme under Rule 21 (except to the extent permitted by sections 91, 92 or 93 of the 1995 Act);
  - (c) which is more than the amount of the monetary debt or less or (if less) the value of the Beneficiary's entitlement or Member's Account under the Scheme;
  - (d) If it contravenes the preservation requirements of the 1993 Act.
- 25.6 In Rules 28.7 and 28.8 below:
  - (a) "pension" includes any benefit under the Scheme and any part of a pension and any payment by way of pension; and
  - (b) "dependant" and "member" have the same meanings as they have in section 92(3) of the 1995 Act.

## **26 Pension Sharing Definitions**

- 26.1 For the purposes of this Rule 26:

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

**Ex-Spouse** means an individual in respect of whom a Pension Sharing Order, agreement or equivalent provision has been made.

**Member** means someone in membership of the Scheme.

**Negative Deferred Pension** means the amount by which the Member's pension or deferred pension under the Scheme which arose/arises from Service with the Employer(s), is reduced at the Relevant Date by section 31 of the 1999 Act or under corresponding Northern Ireland legislation, following a Pension Sharing Order, agreement or equivalent provision. For this purpose, Service with the Employer(s) includes all periods of service with other employers which have been treated as if they were Service with the Employer(s) where a transfer payment has been made to the Scheme in respect of that other service.

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

**Pension Credit Rights** means rights to future benefits under a scheme which are attributable (directly or indirectly) to a Pension Credit.

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

**Pension Debit Member** means a Member whose benefits have been permanently reduced by a Pension Debit.

**Pension Sharing Order** means any order or provision as is mentioned in section 28(1) of the 1999 Act or Article 25(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999.

**Pension Sharing Rules** means the provisions of this Rule 26.

## **26.2 Assignment**

Rule 23 shall not prevent the assignment of part or all of the Member's retirement benefits or rights to benefits under the Scheme to his/her Ex-Spouse to the extent necessary to comply with a Pension Sharing Order, agreement or equivalent provision.

## **26.3 Disclosure to receiving schemes**

The Trustees must give full details of the Pension Debit and any related information to the extent required by legislation, to the receiving scheme/arrangement where the fund underlying the benefits for a Pension Debit Member is transferred to another Registered Pension Scheme.

## **26.4 Transfers in of Pension Debits**

Where the Trustees accept a transfer payment and are informed by the transferor of the details of a Pension Debit relating to the transfer payment, the Trustees must take account of the Pension Debit to the extent required by law in the calculation of benefits for that Member. If a transfer of the fund underlying the benefits for the Member is made to a Registered Pension Scheme the Trustees must give full details of the Pension Debit to the receiving scheme/arrangement.

#### **26.5 Death of an ex-spouse after a Pension Sharing Order is made but not implemented**

If the Ex-Spouse dies after a Pension Sharing Order, agreement or equivalent provision is made but before it is acted upon by the Trustees, the following benefits may be paid at the absolute discretion of the Trustees with the consent of the Principal Company:

- (a) a lump sum death benefit may be paid to any person in accordance with the discretionary trust provisions of Rule 10.12, to the extent that this can be done without the Scheme making an Unauthorised Payment;
- (b) the balance of the Cash Equivalent of the fund which would have provided the Pension Credit Rights for the Ex-Spouse may be used to provide a pension to a Dependant of the Ex-Spouse – subject to compliance with the Pension Death Benefit Rules;
- (c) such pensions must be payable in accordance with the Pension Death Benefit Rules. Such pensions may be commuted, however, to the extent permitted by the Lump Sum Death Benefit Rule.

#### **26.6 Provision for the Trustees to charge**

The Trustees may charge for:

- (a) providing any information to anyone that relates directly or indirectly to the Scheme and to divorce or nullity proceedings; and
- (b) implementing Pension Sharing Orders and earmarking orders; and
- (c) and in which either case:
  - (i) is allowed by the Pensions on Divorce etc (Charging) Regulations 2000; or
  - (ii) is not prohibited by law.

#### **26.7 Pension Credits – Mode of Discharge**

Subject to Pension Sharing Rule the Trustees may discharge their liability in respect of a Pension Credit in any manner authorised by the 1999 Act, and related regulations, and the manner in which they discharge their liability shall, subject to overriding statutory requirements, be at their absolute discretion. The Trustees shall have such ancillary powers as may be necessary to enable them to discharge their liability in respect of a Pension Credit in the manner provided for by either paragraph 1(2) or paragraph 1(3) of schedule 5 of the 1999 Act and may exercise such powers (including the power to select a qualifying arrangement pursuant to paragraph 1(3) of schedule 5 of the 1999 Act) without the consent of the person entitled to the Pension Credit to the extent permitted by legislation.

#### **26.8 Compliance with FA 2004**

In implementing the Pension Sharing Rules, the Trustees shall act in a manner which is consistent with maintaining the Scheme's Registration and which they are satisfied will not result in the Scheme being treated as having made an Unauthorised Payment.