

# Hornbuckle Mitchell Private Pension

## Terms and conditions

These terms and conditions are effective from 1 December 2017

Hornbuckle

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## 1. Introduction

These terms and conditions set out how we operate the plan and explain your rights and benefits under it. We have a legally binding agreement with you, which is formed by:

- your signed application form(s);
- these terms and conditions, which include the fee schedule, the permitted investments schedule and the scheme member schedule; and
- any subsequent documents we send to you confirming changes to the above documents.

In addition to the documents that form the legally binding agreement, the following documents provide important information: the Key Features Document; your personalised illustrations; and the annual renewal packs that we send to you.

Please read these documents carefully and keep them together in a safe place for future reference.

We can change the terms and conditions, the fee schedule and the permitted investments schedule in the circumstances described in section 28.

### IMPORTANT

We and the independent trustee limit our liability for specific aspects of the plan. You are responsible for paying specific fees, costs and losses. Details are set out in sections 19 and 31.

We do not provide any investment management or advisory services under these terms and conditions. You are responsible for selecting investments for your plan. We and the independent trustee are not responsible for selecting investments, monitoring investments or investment performance.

Your plan is based on the declarations you made to us and the information you disclosed to us on the application form. If you have any questions, please contact us on 0844 728 9090 or contact your Financial Adviser.

## 2. Understanding this document

We have explained some expressions within this document in section 32. "We"/"us"/"our" refers to Embark Services Limited, trading as Hornbuckle acting as administrator and operator of the scheme. "You"/"your" refers to:

- the individual named as member in the scheme member schedule or
- (for a beneficiary who is taking drawdown pension) the applicant named in the beneficiary's benefit payment request form.

Reference to any enactment includes reference to any statutory modification or re-enactment or any regulation made under it.

## 3. The Hornbuckle Mitchell Private Pension

The scheme is established under trust and is governed by the rules. We are responsible for operating and administering the scheme. We impose conditions and restrictions on how the plan operates under the scheme, which are set out in these terms and conditions. If there is any inconsistency between the terms and conditions and the rules, the rules prevail. If there is any inconsistency between (i) the terms and conditions and (ii) the fee schedule, the permitted investments schedule and the scheme member schedule, then the terms and conditions prevail.

These terms and conditions apply to each arrangement under the scheme and, for the purposes of the rules, to each "Individual Fund".

You can access a copy of the rules on our website or ask us for a copy. It might be necessary to change the provisions of the rules to meet with any changes to law or regulation affecting the scheme. We will provide notice to you of any significant changes. Unless we decide otherwise, notice of changes under this section 3 will be published on our website only.

### 4. Independent trustee

The assets in your plan are held by the independent trustee. The independent trustee may delegate custody of your cash and assets to an appointed sub-custodian. For investment matters, we direct the independent trustee to act only according to your investment instructions (or investment instructions from persons we have agreed can provide instructions on your behalf). Sections 12 and 13 set out limits on investment choice. For all other matters, the independent trustee acts according to our direction only.

### 5. Membership

Anyone can apply to become a member. However, all applications must be submitted through a Financial Adviser and we reserve the right to decline any application at our discretion. If we accept an application, the individual becomes a member.

A parent or legal guardian can apply for membership on behalf of his/her child under the age of 18. Until the child reaches age 18, we will act on the instructions of the parent or legal guardian in relation to the child's plan. Once the child reaches age 18, he or she will have full authority to give instructions in relation to his/ her plan, provided that he/she accepts these terms and conditions.

We will treat you as a "retail client" for the purposes of the rules of the Financial

Conduct Authority. This gives you the highest standard of regulatory protection.

## 6. Financial Adviser

You must appoint a Financial Adviser when you apply for the plan. At our discretion, we can require that you appoint a Financial Adviser at the point you start taking drawdown pension. The Financial Adviser must be an individual or firm that is (i) appropriately authorised to transact investment business within the UK by the Financial Conduct Authority and (ii) permitted by us to operate pension accounts by virtue of having agreed to our terms of business and that permission has not been subsequently revoked by us.

The Financial Adviser can provide you with financial advice about the suitability of using the plan and with administration and implementation services related to the investment of and decisions about your plan. We will treat your Financial Adviser as continuing to be appointed unless and until we receive written notice from you or the Financial Adviser that the appointment is to end. At this point, you should appoint a replacement Financial Adviser.

## 7. Communication and instructions

### 7.1 Our communications to you

Our formal communications to you will be provided in writing, either via your Financial Adviser (normally) or direct to you. If we send a communication via your Financial Adviser, you are treated as having received it when the Financial Adviser receives it (or is deemed to have received it).

If we send a communication direct to you, we will select a method of communication that complies with the requirements of any applicable law.

Where practicable we will communicate with you using electronic mail ("email"), using your last known email address according to our records. Any communication sent by email will be deemed to have been received once your email provider has accepted delivery.

If communicating with you by post, we will write to you at your last known address for correspondence according to our records. Any communication sent by post will be deemed to have been received within three working days.

Oral statements by us or the independent trustee cannot be relied upon unless confirmed by us in writing.

### 7.2 Your instructions

Instructions about your plan, whether they relate to contributions, transfer payments, benefits, payment of adviser charges or your investment instructions, must be:

- given in writing and signed by you or (if we agree) your Financial Adviser;

- submitted to us via your Financial Adviser or (if we have received written notice direct from you or the Financial Adviser that the Financial Adviser's appointment is to end and you have not yet appointed a replacement Financial Adviser) direct to us;
- identifiable by including your plan's full name and reference number; and
- actually received before they are effective, at the following address: Embark Services Limited, Tyman House, 42 Regent Road, Leicester LE1 6YJ.

We can agree with you or give you notice that instructions:

- should be submitted to a relevant third party instead of to us. For example we can agree with you that your investment instructions should be submitted direct to a discretionary fund manager (DFM) or to the provider of a share dealing facility or investment product, in accordance with the separate terms and conditions governing those services or investment products;
- about urgent buying or selling of investments can be given by facsimile or email, in which event you must submit the original to us as soon as possible; and
- about ongoing decisions relating to direct investment in commercial property, other than the decision to buy or sell it, be given in the manner set out in the relevant application form.

"Instructions" include notices, decisions, application forms, benefit options and nominations and investment decisions or directions. You authorise us and the independent trustee:

- to rely on, and treat as fully authorised and binding on you, any decision or instruction which purports to have been given by you without further enquiry by us; and
- to accept such a decision or instruction as genuine, without the need for further investigation as to the authority or identity of the person giving it, or purporting to give it, provided the instructions have been received in good faith and without negligence.

## 8. Contributions

### 8.1 Who can pay contributions

As a member you can contribute to your plan. Contributions can be regular or single contributions. We will receive contributions from you, or from someone else on your behalf (e.g. from a spouse, partner, parent, grandparent etc.) or from your employer. Contributions can continue after you take retirement benefits in the form of a lifetime annuity or drawdown pension. Contributions can continue after you reach age 75 (but any contributions

made after you reach age 75 will not qualify for tax relief).

Currently we do not impose any minimum or maximum limits on the amount you can contribute or transfer in (see section 9) to the plan (but there is a limit on contributions for which you can get tax relief each year – see the section below headed "tax relief"). We can introduce minimum or maximum limits or both by changing these terms and conditions under section 28.

### 8.2 How to pay

Regular contributions must be paid by direct debit or, with our consent, by standing order.

Single contributions can be paid:

- by direct credit (i.e. using an electronic payment system such as BACS or CHAPS);
- with our consent, by cheque, payable to "The HM SIPP - [your initials], [your surname]"; or
- with our consent, by standing order.

We will act as the collecting agent for all contributions and will pass money, including basic rate tax relief on member contributions, where applicable to the designated account.

You can stop and start your contributions at any time without penalty, although charges continue to apply whether or not you are contributing.

### 8.3 Tax relief

Legislation limits the amount of tax relief on your contributions or contributions paid by others for you. You can claim tax relief on personal contributions up to the higher of:

- £3,600 p.a. (including the allowance for basic rate tax relief); and
- 100% of your relevant UK earnings in the same period. ("Relevant UK earnings" means earnings or income subject to UK income tax, as defined in the Finance Act).

We will claim the basic rate tax relief from HMRC on the contributions made by you or on your behalf. You must normally be a UK resident for tax purposes in order for the tax relief to be claimed. The basic rate tax relief will only be applied to your plan once HMRC pays the tax relief to us. You can claim higher rate tax relief through your Self Assessment tax return. Tax relief on personal contributions paid on behalf of an individual is attributable to that individual as opposed to the person who actually pays the contribution. An employer should claim tax relief as a business expense on any employer contributions.

Any contributions over the tax relief limit can, with our agreement, still be paid into

your plan, but you will not receive any tax relief on them.

If you are or have been a Scottish resident, the tax relief you receive might be different.

### 8.4 Annual allowance

If your total contributions exceed the annual allowance (currently £40,000 in a tax year), there might be a tax charge on you. The annual allowance is the maximum amount of pension saving you can have each year that benefits from tax relief. It will be lower once you have triggered the money purchase annual allowance (see section 8.5), and in any year for which your earnings plus employer contributions exceed the adjusted income (currently £150,000 in a tax year) and a tapered annual allowance is triggered. This applies to all pension savings that you make plus any pension savings made for you by someone else – for example, your employer – in any pension scheme. The tax charge is called the annual allowance charge, which HMRC would levy against you directly via your tax code or, in certain circumstances, against us and which we would recover from your individual fund. You are responsible for notifying the local Inspector of Taxes if the annual allowance is exceeded.

It is possible to carry forward "unused annual allowance" from the previous three tax years to achieve tax relief on contributions over the annual allowance, provided that you were a member of a registered pension scheme during those years, and you are not subject to the money purchase rules (see section 8.5). You should discuss this with your Financial Adviser if you are planning to make contributions over the annual allowance.

There will be no test against the annual allowance in the year that you die, or if your pension entitlement is paid as a serious ill health lump sum.

The law governing tax relief for pensions might change.

### 8.5 Money purchase annual allowance

Once you have accessed any income from any of your pension savings using flexi-access drawdown pension (see section 23.2) or by taking an uncrystallised funds pension lump sum you are subject to the money purchase annual allowance from that tax year onwards.

If you are subject to the money purchase annual allowance (currently £4,000 in a tax year), you will be liable to an annual allowance charge on the amount of your total contributions to money purchase pension schemes that exceed the money purchase annual allowance in any tax year, and on the amount of your benefit accrual in other schemes providing defined benefits for that tax year (if any) that exceeds the annual allowance described in section 8.40 less the total contributions, up to a maximum equal to the money purchase annual allowance, made to

money purchases schemes.

### 8.6 Refund of excess contributions

If you have paid pension contributions over the tax relief limit, you can ask us to refund the excess. Provided the refund would not be an unauthorised payment, we will refund the lower of the excess contribution and the value of the part of your individual fund attributable to that excess contribution. In addition, HMRC will require us to repay the full amount of the basic rate tax relief that we had claimed on the excess contribution.

If contributions are paid which result in the annual allowance or money purchase annual allowance being exceeded, you cannot avoid the annual allowance charge simply by obtaining a refund of contributions from us.

## 9. Transfer payments into the scheme

### 9.1 Right to transfer in

Unless we decide otherwise, a member can transfer benefits from another registered pension scheme to the plan. This includes benefits already in drawdown pension. It also includes contracted-out benefits, in which case the value of contracted-out benefits becomes part of your individual fund when transferred to the plan. The contracted out benefits will lose their status as contracted-out benefits and will be treated in the same way as the rest of your individual fund.

You cannot transfer funds to the plan that are already being used to provide a scheme pension.

You cannot transfer benefits from any public sector pension scheme into the plan.

Where you wish to transfer benefits from a defined benefit pension valued at more than £30,000 into the scheme, then unless you confirm you have been advised to do so by a suitably qualified financial adviser, we cannot agree to proceed with the transfer.

### 9.2 Beneficiaries in drawdown

Any individual who has become entitled to drawdown pension on the death of a member under another registered pension scheme can apply to transfer the entitlement into the scheme for the purpose of continuation of drawdown pension. The application must be in writing on our prescribed form, which includes the individual's agreement to these terms and conditions. We reserve the right to decline such an application at our discretion. If we accept the application, the individual is treated as a beneficiary.

### 9.3 Making the transfer

Transfers in can be made by cash payment (by cheque or direct credit) or transferring assets or a combination of both. A transfer of assets is subject to the following

conditions:

- our right to refuse specific investments as set out in section 13.2;
- our having been able to obtain a current open market valuation of the assets (the cost of which, if any, will be met from your individual fund in accordance with section 19, irrespective of whether or not the transfer is actually completed); and
- full legal ownership of the assets being transferred to the independent trustee.

Other fees and costs might be incurred during the process of reregistering the relevant assets.

### 9.4 Common transfer declaration

When making a transfer in of benefits or a transfer in of benefits that have already been designated for the payment of a drawdown pension you agree to the following declarations, made to the administrator or provider of the transferring scheme (the "current provider"), and to us and the independent trustee (together referred to in the declarations as "Hornbuckle"), as the context requires:

I authorise and instruct you to transfer funds from the plan(s) as listed in the appropriate section of my application directly to Hornbuckle. Where you have asked me to give you any original policy document(s) in return for the transfer of funds and I am unable to do so, I accept that I will be responsible for any losses and/or expenses that Hornbuckle or the current provider incurs which are the result, and which a reasonable person would consider to be the probable result, of any untrue, misleading or inaccurate information deliberately or carelessly given by me, or on my behalf, either in this form or with respect to benefits from the plan.

I authorise you to release all necessary information to Hornbuckle to enable the transfer of funds to Hornbuckle.

If an employer is paying contributions to any of the plans as listed in the appropriate section of my application, I authorise you release to that employer any relevant information in connection with the transfer of funds from the relevant plan(s).

Until this application is accepted and complete, Hornbuckle responsibility is limited to the return of the total payment(s) to the current provider(s).

Where the payment(s) is made to Hornbuckle of all of the funds under the plan(s) listed in the appropriate section of my application, I acknowledge I shall no longer be entitled to receive pension or other benefits from the plan(s) listed.

Where the payment(s) is made to Hornbuckle represent part of the funds under the plan(s) listed in the appropriate section of my application, I acknowledge I shall no longer be entitled to receive pension or other benefits from that part of

the plan(s) represented by the payment(s). Where I have taken benefits from any pension arrangement, with the current or any other pension provider, in a way which means I am subject to the Money Purchase Annual Allowance (MPAA), I confirm I supplied the date the MPAA first applied to me in the appropriate section of my application.

I authorise you to obtain from and release to the financial adviser named in this application any additional information that may be required to enable the transfer of funds.

Where I am transferring a capped drawdown arrangement(s) to a flexi-access drawdown arrangement(s), I will be subject to the Money Purchase Annual Allowance (MPAA) from the date of my first flexi-access payment, or

Where I am already subject to the MPAA, I have supplied the date the MPAA first applied to me in the appropriate section of my application.

## 10. Transfer payments out of the scheme

You can transfer all or part of your individual fund to another registered pension scheme or overseas pension scheme allowed by HMRC rules. You need to check that the proposed scheme is willing to accept the transfer. If you are transferring part only of your individual fund, you must tell us which assets are to be sold or cashed in before we can arrange the transfer.

### 10.1 Costs of transfer

Costs might be incurred for selling assets and making the transfer out (for example, by the DFM or product provider). It might be possible to make a transfer payment to another pension scheme "in specie" (i.e. the assets are not sold but, instead, are re-registered in the name of the trustee of the new pension scheme). With an in-specie transfer, costs might be incurred during the re-registration process.

With both cash and in-specie transfers, costs might also be incurred if we require a current open market valuation of the assets.

The costs (irrespective of whether or not the transfer out proceeds) will be met in accordance with section 19, prior to any transfer taking place. Payment of a transfer value might be delayed if there is a delay in receiving the relevant invoice.

## 11. Banking arrangements, cash deposits and interest

### 11.1 Banking arrangements and fixed term deposits

All money in your plan that is not invested must be held in bank accounts of our choosing. The bank accounts that we choose:

- (a) will be interest bearing;
- (b) will be opened as trust accounts; and
- (c) may pool money from plans of other members, beneficiaries and registered pension schemes.

At our discretion, we may open and close such bank accounts, and the bank accounts may include:

- (a) instant access accounts,
- (b) accounts which require us to give the bank advance notice of any withdrawals; and
- (c) fixed term deposits.

Money in your plan may not be immediately available in the event of a default by the banks concerned. As the bank accounts may be pooled accounts, in the event that a default by any bank concerned causes any unreconciled shortfall in the money held in the pooled accounts, your plan will share proportionately in that shortfall. Compensation may be available in the event of default as described in section 27.2. We will publish details of the banks with which the money of our members is held on our website.

Any bank account may be operated exclusively by the independent trustee, acting on our instructions.

Currently, no charges are made in relation to the normal operation of the bank accounts but we shall be entitled to require you to pay any such charges if they are levied by the bank. We will notify you if this occurs.

Non-standard transactions can attract charges (for example, receipt of money in foreign currencies or electronic transfer). Any bank charges attributable to your plan will be met in accordance with section 19.

We will maintain a record of the money attributable to contributions and transfer in payments made to all of your arrangements under the plan known as the designated account.

### 11.2 Interest

If your designated account has a credit balance it will earn interest, paid free of tax based on the amount of money in your designated account and the rate of interest determined by us.

The rates of interest we pay to members will be published on our website and may be different to the rate of interest the bank pays to the independent trustee (which will usually be based on the aggregate of all cash held from plans of other members, beneficiaries and registered pension schemes). We are entitled to receive and retain any such difference between the rate the bank pays the independent trustee and the rate earned in accordance with this section 11.2.

We are not regulated to hold client money. Money held in the bank account will fall outside the scope of protection provided by the client money rules as set out in the Financial Conduct Authority's client asset sourcebook.

### 11.3 Minimum balance in designated account

Unless we inform you otherwise in writing, you must maintain a cleared balance of at least £1,250 in the designated account. This is to cover payments due from your plan, for example:

- (a) benefit payments;
- (b) ongoing capital and interest repayments in connection with any borrowing;
- (c) our fees and charges; and
- (d) adviser charges.

If the cleared balance falls below this minimum amount, we can cover the shortfall by arranging for the sale of investments held within your plan under the procedure described in section 21.

You are responsible for any liability (including any tax charge) incurred due to insufficient cleared funds being available in the designated account.

### 11.4 Deposit accounts and DFMs

You can ask us to open other bank deposit accounts, set up in the name of the independent trustee, to invest money in your individual fund. These must be operated as deposit accounts rather than current accounts and no payments into or out of your individual fund, other than interest received, can be made without our consent. Any deposits into or transfers out from an alternative deposit account must be made via the designated account.

If a DFM is appointed, cash might be held by the DFM or its nominees, subject to section 12. Cash held in this way might attract interest. Details of the appropriate prevailing interest rates can be obtained on request from the DFM.

### 11.5 No overdrafts

Overdrafts are not permitted on any bank account used for the *plan*.

## 12. Permitted investments

The range of investments that we permit in your plan is set out in the permitted investments schedule. Any investments selected for your plan must be an investment listed in the permitted investments schedule. We can change the permitted investments schedule in accordance with section 28, but we will not notify you every time we change the permitted investments schedule and therefore it is your responsibility, along with your Financial Adviser, to check that any proposed investment is listed within

the permitted investments schedule when making decisions about investments.

If any investment held within your plan ceases to be an investment listed within the permitted investments schedule we can require the independent trustee to sell that investment without giving you any notice.

We will only permit investments in contracts for difference or similar instruments if the potential liability for losses associated with the investment is limited to the capital amount of that investment.

In addition, we only permit investment transactions (whether directly or indirectly) with:

- you or a person connected with you (e.g. a family member or a business partner); or
- a company or firm in which you or a member of your family has an interest

if the transactions are made on an arm's length basis i.e. on commercial, open market terms.

## 13. Investment management

### 13.1 Making investments

You are responsible for selecting and giving us instructions about investments for your *plan*. You can do this yourself, using your own judgment or using advice from one or more *Financial Advisers*, or you can arrange (subject to section 13.4) for one or more *DFMs* to select and give instructions about investments for you. Any investment instruction must be communicated in accordance with section 7.2, using the form that we make available on our website for this purpose.

We and the *independent trustee* are not responsible for selecting investments, monitoring investments or investment performance.

### 13.2 Our right to refuse

We can refuse a proposed investment instruction. The decision to refuse an investment proposal will not be exercised unreasonably and will normally be taken in order to:

- ensure all investments are and remain investments listed in the permitted investments schedule;
- protect the scheme from unauthorised payment tax charges;
- ensure no investment is held in the scheme that might, in our opinion, limit or restrict in any way our ability to administer the scheme.

Subject to the decision being reasonable, our decision to refuse an investment proposal is exercisable in our absolute discretion as we think fit, we may for example refuse an investment instruction

or investment proposal where your personal records are not complete including not having provided us with your National Insurance Number. Such decision shall be final and no appeal will be allowed.

Any investment instruction will only be carried out if there is enough cleared money available to complete the transaction in addition to the minimum balance requirement for the designated account described in section 11.3.

### 13.3 Execution Only

You can select an execution only dealing facility, for trading in stocks and share / securities, which will be governed by separate terms and conditions. It will be necessary for you to complete the relevant documentation provided by the facility provider and to agree to those terms and conditions.

### 13.4 Discretionary fund management

Instead of directing investments yourself, you can appoint, with our agreement, one or more DFMs to manage all or part of your individual fund, on a discretionary basis. Such appointments must be notified to us. If you wish for a DFM to be appointed, it will be necessary for you to complete the relevant documentation provided by the appointed DFM. The investment strategy will be set out in the documentation which will also detail the terms and conditions under which the DFM will execute transactions in relation to the assets of your individual fund managed by that DFM. These terms will be formally entered into by the independent trustee and us with the DFM. Please note that the DFM might have rights to compensation from or to take security over some or all of the assets of your individual fund held by them in certain circumstances.

We will release cleared money to the appointed DFM only once the DFM has opened an account for the scheme relating to your plan.

The costs arising from the DFM's commissions, fees and disbursements relating to your individual fund will be borne by the investments under the control of the DFM relating to your individual fund.

Any DFM appointed will be able to provide full details of their charges.

### 14. Stock custody

Permitted investments can be registered in the name of nominee companies used by any DFM appointed in accordance with section 13 or, subject to our agreement, such other third party provider appointed by you.

The costs arising from fees and charges of any nominee or custodian relating to stock registration or custody and settlement shall be charged to your individual fund in accordance with section 19.

The independent trustee will not exercise voting rights. You can ask any appointed DFM or nominee or third party provider about the approach they will take to voting rights.

## 15. Commercial property

Neither we nor the independent trustee give advice in respect of property investment in relation to your plan. You are responsible for any choice of property investment in your plan and for any loss or liability arising from that investment.

All commercial property in your plan will be held and any associated borrowing will be made in the name of the independent trustee.

When purchasing or selling any commercial property, we will instruct or appoint only approved third parties. This will include surveyors, environmental specialists, solicitors, insurance consultants, property administrators and property managers. The fees arising from the appointed third parties, together with all associated costs and expenses arising from the on-going administration and compliance with relevant legislation in respect of commercial property including litigation, will be charged to your individual fund and met in accordance with section 19.

We can instruct the independent trustee to sell a commercial property at any time if a particular risk or liability (statutory or otherwise) occurs that affects the commercial property or the land surrounding it. For example, if legislation changes so that the property is no longer treated by HMRC rules as commercial property or the property is subject to revised environmental requirements.

Subject to section 21, the acquisition and disposal of commercial property will require your instructions as set out in section 7.

### 15.1 Insurance

You are responsible for arranging suitable insurance for any property investment in your plan. We provide a block insurance policy which, provided you meet the insurer's requirements, is available for you to insure a commercial property investment. In the event that you do not arrange suitable insurance for any property investment, or for any period during which the property investment is held in your plan it ceases to be suitably insured, any cost of insuring the property under our block insurance policy will be charged to your individual fund and met in accordance with section 19.

Without prejudice to the above, in the event we arrange insurance under our block insurance policy or otherwise, we will charge an administration fee, which will be charged to your individual fund and met in accordance with section 18.

## 15.2 Property valuations

You are responsible for arranging a valuation acceptable to us of any property investment in your plan on the occurrence of any of the following events:

(a) when we test your benefits against the lifetime allowance under section 22.4;

(b) when we review the maximum pension income payable to you under capped drawdown (see section 23.3); or

(c) the later of (i) every fifth anniversary of the date the property investment becomes held in your plan and (ii) the fifth anniversary of the last occurrence of one of the events described in (a) or (b).

If you do not arrange for a valuation in accordance with this section 15.2 we may arrange a valuation on your behalf, and the cost of providing the valuation will be charged to your individual fund and met in accordance with section 19.

We charge an administration fee for arranging a valuation of the property investment in an event of your default on the obligation in this section 15.2, which will be charged to your individual fund and met in accordance with section 18.

## 16. Borrowing

You can arrange for your individual fund to borrow money for investment purposes, if the requirements described below are met.

### 16.1 Borrowing limits

Legislation limits the amount your arrangement can borrow. Currently the limit is 50% of the "net market value" of your arrangement (immediately before the borrowing takes place). "Net market value" has the meaning given by Section 278 of the Finance Act. The value of any asset being purchased using the borrowing must therefore not be taken into account in calculating the borrowing limit unless, exceptionally, the asset was already held in your individual fund before the borrowing takes place (e.g. a re-mortgage). We will take into account any existing borrowing when calculating the limits.

In addition to the maximum amount described above, any borrowing might be further restricted in accordance with the terms and conditions offered by the lender. For example, a lender might not be willing to lend the maximum otherwise permitted in respect of individuals under the age of 18 years or if there are benefits in payment.

### 16.2 Arrangements for borrowing

All borrowing must be arranged in the name of the independent trustee.

Neither we nor the independent trustee take responsibility for finding a willing third party lender, but we might be able to

facilitate a third party lender that could be used.

When we confirm that the borrowing is acceptable, we will instruct the independent trustee to sign the lender's loan documentation on behalf of your individual fund.

We will comply with the terms and conditions offered by the lender.

### 16.3 Repayments

All borrowing must be repaid in accordance with the terms and conditions of the lender's loan documentation (for example on completion of the sale of a commercial property).

Certain lenders might require your individual fund to maintain a suitable cleared balance in the designated account to cover ongoing capital and interest repayments. This will vary from lender to lender.

You are responsible for ensuring that there is enough cleared money available in good time to make the ongoing capital and interest repayments. If there is not enough cleared money in the designated account to meet the repayments, we can cover the shortfall by arranging for the sale of investments held within your individual fund under the procedure described in section 21.

### 17. Statements

You will get regular statements in respect of the designated account on the basis of the instruction you gave in your application form. We will also include a transaction statement in respect of the designated account as part of the annual renewal pack that we send to you.

You must agree with the DFM (if one is appointed) how often investment updates are issued, including transaction details and a portfolio valuation during the period.

We will arrange to send you a yearly statement covering investments relating to your plan. This will give details of all investments relating to your plan although (due to issues of timing and costs in obtaining valuations) this might not be a current valuation. If you ask us for a current valuation, the cost (if any) of obtaining this will be charged in accordance with section 19. If you require an additional summary of investments at any time, we can apply an additional charge for each and every statement (although currently we do not apply additional charges for this). Any additional charge will be met in accordance with section 19. Please refer to the fee schedule for more details.

### 18. Our charges

We charge fees and expenses for administering your plan. The fees and expenses that apply are set out in the fee schedule and depend on the investments you select, the benefits you take and any

administrative or other requests you make. Additional services outside the normal administration activities shown in the fee schedule will be charged on a "time/cost" basis using an hourly rate. We will notify you at the time if this applies to any request you make and will provide the hourly rate and an estimate of the cost.

We will normally increase our charges on 1 January each year in line with any rise in the Government's Average Weekly Earnings (AWE) measure during the previous calendar year as described in the fee schedule.

We can make other increase or changes to the fees and expenses by changing these terms and conditions under section 28. Copies of our current fee schedule are available from us on request at any time.

All charges quoted are exclusive of any VAT, stamp duty and other applicable taxes and/or duties, which, if payable, are in addition.

### 19. Payment of charges and other sums due

Our annual administration fee will be automatically deducted directly from your individual fund annually on or soon after the anniversary of you taking out the plan or, if you are a beneficiary, your starting to take drawdown pension. Other fees and charges will be automatically deducted directly from your individual fund when they become payable as set out in the fee schedule.

All charges and other sums due from your individual fund must be paid out of funds held in the designated account. You are responsible for ensuring that there is enough cleared money available in good time to pay charges or any other sums due under these terms and conditions. If there is not enough cleared money in the designated account to meet charges or other amounts as they fall due, we can cover the shortfall by arranging for the sale of investments held within your individual fund under the procedure described in section 21.

Important: If any shortfall remains after the sale of all investments held within your individual fund, you will be personally responsible for paying the outstanding charges or other sums due to us.

### 20. Payment of adviser charges

#### 20.1 Adviser charge

The charges that you agree to pay your Financial Adviser are a matter between you and your Financial Adviser. However, you can instruct us to facilitate the payment of adviser charges. If so instructed, we will deduct the amount of the adviser charge from your individual fund and pay it to your Financial Adviser. We make the payment at your direction and on your behalf.

This is not a payment for any services provided by your Financial Adviser to

us. We do not charge for the facilitation service.

We set limits on the payments that we are prepared to facilitate for you. We will inform you if your instruction exceeds the limit.

#### 20.2 Timing of deduction

Any adviser charges relating to contributions or transfer in payments are deducted from your individual fund upon receipt of the relevant contribution or transfer in payment.

Any adviser charges relating to investment of or decisions about your individual fund are deducted from your individual fund after the investment or decision has been arranged. For example, an adviser charge for pension advice when a member designates funds available for drawdown pension are deducted after the member has designated funds for drawdown pension.

#### 20.3 Instructions

We will act only in accordance with your instruction in respect of the payment of adviser charges, except where we expressly indicate otherwise in these terms and conditions. We will stop or reduce the payment of adviser charges, if instructed by you.

We will confirm with you any instructions about facilitating payment of adviser charges.

We will act on the instructions of your Financial Adviser only if your Financial Adviser is asking us to reduce or stop paying any adviser charge. We will not extend or increase adviser charges without your instruction.

#### 20.4 Payment

Adviser charges will be paid to the order of your Financial Adviser and once due, payment will be credited to your Financial Adviser on dates agreed between us and your Financial Adviser.

If after reasonable efforts on our part, we have been unable to make payments of any adviser charge to your Financial Adviser, we will stop deducting adviser charges and notify you of our action. Adviser charges deducted but unpaid to your Financial Adviser will be re-credited back to your individual fund.

The payment of an adviser charge is in addition to our charges.

If we receive an adviser charge refund from your Financial Adviser, we will not be able to return it to you in cash. We will, however, credit the adviser charge to your individual fund.

We accept no responsibility for monitoring any payment of adviser charges from an investment held in your individual fund made where the adviser charge is paid to your Financial Adviser by a third party.



## 20.5 Cancellation

When you take out your plan, you will have a 30 day period during which you can change your mind by cancelling your plan. If you decide to cancel your plan during the cancellation period, we will not reclaim any adviser charges already paid to your Financial Adviser.

You might have to pay your Financial Adviser for their advice and services, if not covered by the adviser charges already paid. You should check the terms of your agreement or arrangement with your Financial Adviser.

If you have transferred in benefits from another pension scheme and your Financial Adviser returns the adviser charge to us, we will refund the adviser charge to the previous scheme subject to that scheme accepting the transfer.

## 20.6 Our right to stop paying an adviser charge

We can stop or reduce the payment of all or part of an adviser charge if:

- we no longer have a business relationship with your Financial Adviser;
- we reasonably believe that the payment of the adviser charge would be in breach of any relevant laws or regulations;
- we reasonably believe that your Financial Adviser was not appropriately authorised by the Financial Conduct Authority or exempt from authorisation under the Financial Services and Markets Act 2000 or any replacement regulator at the time of providing you with advice or services in relation to your plan;
- your Financial Adviser ceases to trade;
- we believe your Financial Adviser is insolvent;
- we terminate our services to facilitate adviser charges;
- the payment exceeds the maximum amount of adviser charge that we are prepared to facilitate, as set by us from time to time; or
- we can no longer facilitate an adviser charge due to changes in the plan.

We will endeavour to notify you as soon as possible of the action we have taken.

Adviser charges that have already been deducted but not yet paid will be re-credited to your individual fund.

If there is not enough money in the designated account to pay an adviser charge in full, we can make a partial payment to the extent possible.

You might remain liable to pay any shortfall of adviser charge to your Financial Adviser and you should check the terms of your agreement or arrangement with your Financial Adviser.

## 20.7 Information about the charges

We will provide you with written confirmation when we set up the arrangements to pay the adviser charges you have instructed us to pay to your Financial Adviser or if the adviser charges are varied or stopped.

We can ask you to check the information that we provide to you and bring it to our attention if you believe there are any errors or omissions.

## 20.8 Outstanding responsibility

If an adviser charge is stopped, reduced, unpaid or is re-credited to your individual fund, you might remain liable to reimburse your Financial Adviser. You should check the terms of your agreement or arrangement with your Financial Adviser.

## 20.9 Value Added Tax (VAT)

We expect that most adviser charges relating to your individual fund will not be subject to VAT. We will treat all instructions from you to pay adviser charges as including any VAT applicable at the rate prevailing at the time of the payment of the adviser charge and taking into account any changes to the rate of VAT howsoever occurring. We will not update any existing ongoing adviser charges to account for new VAT rates.

## 21. Insufficient cleared funds

### 21.1 Request for contributions or disinvestment instructions

If there is not enough cleared money in the designated account to meet our minimum balance requirement or to meet benefit or other payments due from your individual fund, we will ask you for either or both of

- additional contributions;
- instructions to sell assets from your individual fund.

The instructions must specify the assets we should sell and the order in which we should sell them and must be signed by you.

### 21.2 Default disinvestment strategy

We will arrange for assets to be sold to the extent necessary to provide enough cleared money, if within one month we do not receive enough additional contributions or instructions to sell.

We will sell assets in the following order:

- any cash held on deposit with another bank or licensed deposit taker;

- any assets held through a DFM (last appointed DFM contacted first);
- stocks and shares, on a last-in, first-out basis;
- investment trusts/unit trusts/OEICs on a last-in, first out basis;
- trustee investment policies/bonds on a last-in, first out basis;
- any other asset (excluding commercial property) not included above on a last-in, first-out basis; then
- commercial property on a last-in, first-out basis.

You agree and accept that in these circumstances you authorise us to sell assets in the order set out above.

We apply a charge for coordinating the sale of assets under the priority order above and will deduct this charge from your individual fund in accordance with section 19. This is in addition to other parties' charges incurred in valuing and selling the assets. Our charge will be on a "time/cost" basis (i.e. hourly rates for the service).

We will write to you as soon as practicable to confirm the intention to sell assets and the order in which we will do this. We will also write to confirm details after the assets have been sold and the amount of any charge made.

In some circumstances, it can be necessary to sell an asset at whatever price is available at the time. This can result in selling assets when the relevant market is depressed.

Cashing-in any investment will be governed by the terms and conditions of that investment. Such terms and conditions might include a right for the investment provider to delay the cashing-in.

### 21.3 Unable to act

For the purpose of this section 21 only, we will accept the instruction of any legally authorised party acting on your behalf if we receive medical advice (commissioned by and addressed to us) that you are unable to act due to serious ill health, physical or mental incapacity. The cost of obtaining the medical advice will be met from your individual fund.

## 22. Member's benefits

### 22.1 Intended retirement age

When you applied for the plan you chose a retirement age, which must be on or after your 55th birthday. This is the age you intend to take retirement benefits, although you do not need to actually retire to take benefits. You can change your chosen retirement age by telling us in writing. If you wish to make your retirement date earlier, you should first check the terms and conditions of any investment product within your plan. Some investment products apply penalties for cashing in

earlier than expected.

If you are in ill health or serious ill health, as defined in the Finance Act, it might be possible to start taking benefits earlier than your 55th birthday. "Ill health" is where evidence has been provided by a registered medical practitioner that you are and will continue to be medically incapable (either physically or mentally) as a result of injury, sickness, disease or disability of continuing your current occupation and, as a result of the ill-health, you cease to carry on the occupation. "Serious ill health" is where evidence has been provided by a registered medical practitioner that your life expectancy is less than a year.

If you believe you may be entitled to take your benefits early for any reason please contact us for further guidance.

Within a reasonable period (consistent with good practice) before your chosen retirement date, we will provide you with information about your benefit options and the tax implications of taking benefits. We will also issue you with a reminder that you can choose to take guidance on your options under the Government's "Pension Wise" scheme. If required by the rules of the Financial Conduct Authority, we will ask questions to determine if you have received advice or guidance. Depending on your reply, at each stage we shall proceed to identify risk factors and provide risk warnings. You must then give us at least one month's notice in writing of your selected option(s) before the date you wish to take benefits.

## 22.2 Cleared funds to pay benefits

You are responsible for ensuring that there is enough cleared money in the designated account available in good time to pay any benefits you have chosen to take. If there is not enough cleared money in the designated account to pay the benefits, we might have to sell assets within your plan under the procedure described in section 21.

Depending on how you have chosen to invest your plan there may be an unavoidable delay in selling the assets, which could delay the benefit payment. If we think this may occur in respect of your plan we shall let you know within a reasonable period before your chosen retirement date or, where this is not possible or where you nominate to take benefits at a different time, as soon as reasonably practicable after we have received your nomination.

## 22.3 Benefit options

You can take benefits from your plan in either or both of the ways described in (b) and (c), each with or without (a), or in the way described in (d) on its own:

(a) take a tax-free lump sum (also known as pension commencement lump sum), when you apply your individual fund to provide a lifetime annuity or drawdown pension).

Normally, the maximum tax-free lump sum will be 25% of the value of the part of your individual fund being used to provide these benefits. If you have higher tax-free lump sum rights in respect of benefits earned before 6 April 2006, it might be possible to take more than 25% as a tax-free lump sum;

(b) buy a lifetime annuity with the balance of all or part of your individual fund (after any tax free lump sum). Certain documentation must be completed before a lifetime annuity can be purchased. You must agree the relevant amount to be paid to the insurance company for the lifetime annuity and that you will have no further interest in the individual fund in respect of the amount used to buy the lifetime annuity. You can purchase a lifetime annuity using all or part of the value of the individual fund;

(c) take drawdown pension with the balance of all or part of your individual fund (after any tax free lump sum)- see section 23.

(d) provided you have enough lifetime allowance remaining, take a lump sum without applying your individual fund to provide a lifetime annuity or drawdown pension, called an uncrystallised funds pension lump sum (UFPLS). 25% of the lump sum is tax-free and the rest is subject to income tax.

## 22.4 Lifetime allowance

The value of your individual fund being used to provide benefits must be tested against an allowance called the lifetime allowance, set by HMRC. If the lifetime allowance is exceeded, there will be a tax charge. We will deduct the tax charge due from the retirement benefits being taken and pass this to HMRC. For further details of the circumstances in which this tax charge will arise, please contact us. Also, your lump sum rights may be restricted if your benefits exceed the lifetime allowance.

## 22.5 Payment

We will pay any lump sum and any drawdown pension payments by direct credit (BACS) into your chosen bank or building society account.

## 23. Drawdown pension

### 23.1 General

Drawdown pension means drawing an income from your plan. You can do this if you are:

- a member aged over 55;
- a member in health;
- a member with a protected retirement age; or
- a beneficiary entitled to a pension under the plan

and we have accepted your application for drawdown pension.

You do this by designating all or part of your individual fund as being available for providing drawdown pension. The designation must be made on the form that we provide for this purpose.

Acting reasonably, we can at our absolute discretion refuse your application for drawdown pension. We will tell you as soon as practicable if this is the case. The acceptance of your application for drawdown pension is on such terms and subject to such requirements as we may decide at our absolute discretion from time to time. Without prejudice to the generality of the foregoing, we may require you to take advice from a Financial Adviser before accepting your application.

### 23.2 Flexi-access drawdown pension

With flexi-access drawdown pension you can take out as much of your individual fund as you want after having taken your tax-free lump sum. You can increase, reduce and/or ask us for an extra one-off flexi-access drawdown pension payment. You can choose for flexi-access drawdown pension to be paid on a monthly, quarterly, half-yearly or yearly basis.

We will require you to complete, and return to us, certain paperwork (which we will supply) before you can start, stop or vary flexi-access drawdown pension, and we will treat each such request as an application for drawdown pension for the purposes of section 23.1.

The contract between you and us includes a right to impose a minimum on the amount that you can designate for providing flexi-access drawdown pension. For the time being we have decided to waive this right, however if we reinstate a minimum we will give you details by notice as described in section 28.

### 23.3 Capped drawdown pension

With capped drawdown pension, there is a maximum limit on the income that can be taken, set by HMRC rules. We will calculate and provide you with details of your maximum. You can choose to take any level of income up to the maximum, and you can choose not to take any income at all after having taken your tax-free lump sum. Subject to the maximum limit, you can increase, reduce and/or ask us for an extra one-off capped drawdown pension payment. You can choose for capped drawdown pension to be paid on a monthly, quarterly, half-yearly or yearly basis.

We will require you to complete, and return to us, certain paperwork (which we will supply) before you can designate more of your individual fund to provide a capped drawdown pension, or to start, stop or vary capped drawdown pension payments, and we will treat each such request as an application for drawdown pension for the purposes of section 23.1.

The contract between you and us includes a right to impose a minimum on the amount that you can designate for providing capped drawdown pension. For the time being we have decided to waive this right, however if we reinstate a minimum we will give you details by notice as described in section 28.

HMRC also require that the maximum limit on capped drawdown pension is reviewed at least every 3 years (even if you are not taking any income after your tax-free cash payment) until the end of the review year when you reach age 75, then every year from your 75th birthday. If necessary, the amount of income must be reduced to ensure the maximum limit is not exceeded. The reviews can be carried out on any pre-arranged future date within a 60 day period before the review date. You can elect for any such review date by giving us 5 days' notice. Making this calculation early will not affect the timing of any subsequent review. Before you reach age 75 you can also request an earlier review on any anniversary date and we can agree to this. Please speak to your Financial Adviser before requesting this, as a review can result in a reduction in the maximum amount of income you can draw.

You can only designate part of your individual fund for providing capped drawdown pension if it applies to an arrangement under which part of your individual fund was designated for capped drawdown pension on 5 April 2015.

You can re-designate your individual fund to provide a flexi-access drawdown pension instead of a capped drawdown pension at any time by giving us an instruction that you wish to do so.

## 24. Benefits following member's death

On the death of a member, the member's remaining individual fund is used to pay a number of different benefits, which are described below. Upon being notified of the death, we will write to the member's personal representatives or potential beneficiaries (as applicable) with details of the ways in which benefits can be provided from the members' individual fund.

### 24.1 Scheme administrator discretion

If we are satisfied that at the time of the member's death the member's benefits are subject to a "valid trust", we will apply any uncrystallised fund not exceeding the member's individual lifetime allowance available on death as a lump sum to the trustees of that trust. A valid trust is one under which no beneficial interest in a benefit can be payable to the member, the member's estate or the member's legal personal representatives.

In all other cases, on the member's death we will use the member's remaining individual fund in either or both of the following ways as we in our absolute discretion determine:

- to provide pension income in accordance with section 24.2 for any one or more beneficiaries and, if more than one, in such proportions as we decide; and
- to pay a lump sum death benefit in accordance with section 24.3 to one or more recipients as we decide (from the range of possible "lump sum beneficiaries", as defined in the rules) and in such proportions as we decide.

The member can complete an Expression of Wish form to inform us of the member's wishes for who should receive death benefits and the form of those benefits (lump sum or pension) for when we are exercising our discretion. We will take the member's wishes into account but we are not bound by them.

### 24.2 Beneficiaries' pensions

Any beneficiary who becomes entitled to a pension under this section 24 must take the pension in either or both of the following ways:

- buy a lifetime annuity in the beneficiary's name, using part or all of his or her individual funds; or
- apply to take income as drawdown pension (see section 23), using part or all of his or her individual funds. Any application for drawdown pension must be made in writing using our prescribed application form, which includes the beneficiary's agreement to these terms and conditions. We recommend that the beneficiary appoints and takes advice from a Financial Adviser and we may require him or her to do so before we accept the application. We can decline an application if the beneficiary is not habitually resident (i.e. does not normally live) in the UK and this would in, our opinion, likely lead to an unauthorised payment or would limit or restrict in any way our ability to administer the scheme. We will write to the beneficiary confirming if the application is successful.

If a beneficiary fails to decide which option should be used for pension income within three months of being asked to do so (or such longer period as we, at our discretion, decide), we can buy a lifetime annuity for that person, from a pension provider of our choice.

The tax treatment of a dependant's, nominee's or successor's drawdown pension is set out in the Finance Act. Normally, benefits payable in the event of the member's death before age 75 are paid without deduction of tax, provided the designation of benefits for the payment of a dependant's, nominee's or successor's drawdown pension is made within two years of the member's death.

### 24.3 Lump sum death benefits

Any lump sum to be paid under this section in the event of a member's or beneficiary's death before age 75 may be paid without any tax being deducted unless the lump sum is not paid within two years of the date we first received notification of the member's or beneficiary's death or, if earlier, the date we could have first reasonably been expected to have known of the member's death. The value of any uncrystallised fund must be tested on the member's death against an allowance called the lifetime allowance which is set by HMRC (see section 22.4). If the lump sum exceeds the member's individual lifetime allowance available on the member's death the recipient will be subject to a lifetime allowance charge.

The tax treatment of benefits depends on the individual circumstances of each member and may be subject to change in future. We will make reasonable enquiries with you to establish how much tax we are obliged to pay to HMRC. We will deduct any tax which we believe may be payable before making any payment. If you do not provide us with the satisfactory written evidence we need to establish the correct amount of tax liability, we shall be entitled to assume that the highest rate of tax under the applicable legislation must be paid.

## 25. Benefits following beneficiary's death

If a beneficiary dies while taking income through drawdown pension we will use the beneficiary's remaining individual fund in either or both of the following ways as we in our absolute discretion shall determine:

- to provide pension income in accordance with section 24.2 for any one or more successors and, if more than one, in such proportions as we decide; and
- to pay a lump sum death benefit in accordance with section 24.3 to one or more recipients as we decide (from the range of possible "lump sum beneficiaries", as defined in the rules) and in such proportions as we decide.

The beneficiary can complete an Expression of Wish form to inform us of his or her wishes for who should receive death benefits. We will take the beneficiary's wishes into account but we are not bound by them. Any tax charge(s) will be deducted before payment.

## 26. Taxation of income payments

If you are receiving income payments from the scheme, the income you receive will, if applicable, be taxed under the Pay As You Earn System. If we have taken reasonable steps to identify your correct tax code, or we are otherwise acting in accordance with any guidance for scheme administrators issued by HMRC from time to time (including in certain circumstances where the application of an Emergency Code is recommended) we will not be liable for

any loss whatsoever that you incur as a result of the use of an incorrect tax code.

If you are receiving income payments from the scheme, we will provide you with a P60 at the end of each tax year showing the gross income paid, tax code used and details of any tax deducted.

## 27. Complaints and compensation

### 27.1 Complaints

Should you wish to register a complaint in relation to the operation of the plan, although it is usually best to make your complaint in writing so you have a record of what you say, we will accept your complaint by phone or in writing (including by email). We have the right to telephone you, or someone else nominated by you, to discuss any administrative aspects without having been expressly invited by you to do so.

If you are not satisfied with any aspect of the service that you have received from us, we have a formal complaints procedure, a copy of which is available on request.

If you are not happy with our response to your complaint, you might have the right to refer it to The Pensions Advisory Service ("TPAS"), The Pensions Ombudsman ("TPO") or the Financial Ombudsman Service ("FOS").

TPAS are an independent non-profit organisation providing information and guidance on pensions to help pension scheme members who have a problem, complaint or dispute with their pension scheme.

FOS and POS are both independent statutory bodies that investigate and adjudicate on disputes between pension schemes and members, but only after you have complained to us and tried to resolve the dispute using our complaints procedure. We will tell you about any ombudsman referral rights you have.

TPAS contact details:  
The Pensions Advisory Service  
11 Belgrave Road  
London  
SW1V 1RB  
Tel: 0300 123 1047

TPO contact details:  
The Pensions Ombudsman  
11 Belgrave Road  
London  
SW1V 1RB  
Tel: 020 7630 2200

FOS contact details:  
Financial Ombudsman Service  
Exchange Tower  
London  
E14 9SR  
Tel: 0300 123 9123

### 27.2 Compensation

The Financial Services Compensation Scheme (FSCS) is a scheme that provides limited compensation for customers who

might otherwise lose out if a company regulated in the UK by the Financial Conduct Authority is unable to pay claims against it.

Investments in your plan might be covered by the FSCS. If compensation is available in respect of an investment in your plan, we will make the claim on your behalf.

FSCS contact details:  
Financial Services Compensation Scheme  
15 St Botolph Street  
London  
EC3A 7QU  
Tel: 0800 678 1100  
www.fscs.org.uk

Please ask us if you have any questions about the FSCS or the protection it provides.

## 28. Changing these terms and conditions

### 28.1 Changes under specified circumstances

We can change these terms and conditions (including the fee schedule and permitted investments schedule) for any of the following reasons:

- to respond proportionately to changes in general law or decisions of the Financial Ombudsman Service or The Pensions Ombudsman or the Financial Services Compensation Scheme or of a court;
- to meet regulatory requirements;
- to reflect new industry guidance and codes of practice which raise standards of consumer protection;
- to reflect a change in our corporate structure that does not have a significant unfavourable effect on your rights under the scheme but which does require us to make certain changes to the terms and conditions;
- to respond proportionately to changes in the Bank of England base rate, other specified market rates or indices or tax rates;
- to proportionately reflect other legitimate cost increases or reductions associated with providing the scheme;
- to provide for the introduction of new or improved systems, methods of operation, services or facilities associated with providing the scheme;
- to correct any mistake in the terms and conditions, provided the correction does not have a significant unfavourable effect on rights that you have as a result of the mistake; or

- to reflect the appointment by us of alternative third parties to provide services under the scheme or to respond proportionately to changes in the terms or charges of any third parties appointed under the scheme.

We give you notice of any change under this section 28.1 in advance where practicable, or at the earliest opportunity after the change where advance notice is not practicable. We aim to review these terms and conditions regularly.

### 28.2 Other changes

Further, we can change the terms and conditions including the fee schedule and permitted investments schedule if we have any other valid reasons for doing so. We will not charge for transferring out your individual funds if:

- a change under this section 28.2 has any unfavourable effect on your rights under the scheme; and
- we receive your written request to transfer within 30 days' of notice of the change.

Although, in these circumstances, we will not charge for the transfer, any outstanding charges will still be payable and any fees and charges for cashing in or selling assets, or for making an in specie transfer of any asset (see section 10.1) will still be charged. We give you at least 30 days' notice of any change under this section 28.2.

### 28.3 Notification of changes

Unless we decide otherwise, notice of any change to these terms and conditions will be published on our website only.

## 29. Termination

These terms and conditions (including the fee schedule and permitted investments schedule) shall continue until your individual fund has been extinguished through the payment of a transfer value to another registered pension scheme, overseas pension scheme, QROPS or the provision of pension or death benefits outside the scheme or until the scheme is wound up in accordance with the rules.

On wind up, we will apply the assets of your individual fund as set out in the rules. No fees or charges already paid shall be refunded and those due shall remain so and will include any charges associated with undertaking any transaction necessary to wind up the scheme. A copy of the rules is available on request. The obligations of payment of charges and other sums due in sections 18 and 19 and the provisions in section 31 shall continue in full.

Wind-up will be without prejudice to the completion of transactions already initiated. The independent trustee is authorised to continue to operate the designated account to our order and direction for the purposes of receiving money, paying benefits and paying

any expenses or charges due to us, the independent trustee or other parties.

### 30. Other terms

#### 30.1 Proof of ownership

We have the right to delay calculation of any amount due under the plan until we have received satisfactory proof of ownership. Similarly, the exercise of rights conferred by the plan and payment of any benefit is subject to satisfactory proof of ownership.

#### 30.2 Change of address or other personal circumstances

You need to tell us as soon as possible if you move to another address or if there are any other relevant changes to your personal circumstances. If you are in doubt as to whether a change is relevant, please contact us.

#### 30.3 Assignments

Your plan may be subject to a Pension Sharing Order under the Welfare Reform and Pensions Act 1999 but otherwise may not be assigned, mortgaged or charged in any way by you.

#### 30.4 Entire Agreement

These terms and conditions (and the documents described in section 1 as forming our legally binding agreement with you) constitute the entire agreement between you and us and supersede all previous versions.

#### 30.5 Governing law

These terms and conditions will be governed by and construed in accordance with the laws of England. The English courts are to have exclusive jurisdiction to settle any disputes or claims that may arise out of or in connection with these terms and conditions. We, the independent trustee and you agree to submit to the exclusive jurisdiction of the English courts.

#### 30.6 Rights of third parties

We, the independent trustee and you can enforce the terms and conditions. Nothing in the terms and conditions expressly or impliedly confers any right on any third party to enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999. For the purpose of this section, a third party is any party not already mentioned in this paragraph.

#### 30.7 Severability

These terms and conditions will only apply provided they are not held by a relevant court or decided by the Financial Conduct Authority to be unfair contract terms or reasonably considered by us to be unfair contract terms. If a term is held, viewed or considered to be unfair it will, as far as possible, still apply but without any part of it which could cause it to be held, viewed or considered unfair.

### 30.8 Data protection and confidentiality

We are the data controller of any information we hold about you. We will comply with all relevant data protection legislation.

Your information includes any details which we hold about you and includes information received from third parties. We will use your information for the purpose of establishing, processing and administering the scheme. You accept that even if the application to join the scheme does not proceed, your information can be stored for regulatory, statutory or audit purposes.

We may use your information to contact you for marketing purposes in relation to products or services of the Embark Group of companies. We will never use your information to contact you in relation to any other products or services, or disclose your information to anyone outside the Embark Group of companies to use for marketing purposes. You can ask us to stop using your information for marketing purposes at any point.

We will not disclose your information to anyone outside the Embark Group of companies unless:

- it is to any person we reasonably believe to have been appointed by you as your Financial Adviser, investment manager or professional adviser; or
- we have your permission; or
- we are required or permitted to do so by law; or
- we are transferring your information to our third party providers, credit reference agencies and fraud prevention agencies; or
- we have transferred our rights and obligations under the terms and conditions.

We can transfer your information to other countries but this will only be done if the receiving country has an appropriate level of data protection. Your information may be accessed by law enforcement agencies and other authorities in that country to prevent and detect crime.

You can request a copy of the information we hold about you by writing to The Data Protection Officer, Embark Services Limited, at the address given in section 7.2. We reserve the right to charge a small fee in accordance with the guidelines of the Information Commissioner's Office.

### 31. Responsibility and liability

#### 31.1 Your rights

Your rights in relation to your plan are limited to those detailed in these terms and conditions. You waive any other rights

that you otherwise have had to make any and all legal claims at any time against any previous, current or future officers, employees, agents and sub-contractors of ours, or of any company within the Embark Group of companies.

#### 31.2 Your responsibilities

You are responsible for

- selecting and appointing your Financial Adviser.
- selecting and giving us instructions about investments for your plan either personally or via your Financial Adviser.
- communicating with us in a way that complies with the rules and these terms and conditions.
- any benefit options, benefit nominations and all other matters which are within your control or in respect of which you provide, or are entitled to provide, instruction to us either personally or via your Financial Adviser.

You are also responsible to us for all reasonable costs, claims, expenses, tax charges, demands and losses whatsoever that we suffer or incur in performing our duties under the terms and conditions or carrying out our lawful duties and responsibilities in relation to you, except as a direct result of our negligence, wilful default or fraud.

#### 31.3 Scope of our responsibilities

We are responsible for operating and administering the plan in accordance with these terms and conditions and your instructions given under the terms and conditions. We and the independent trustee are not responsible for selecting investments, monitoring investments or investment performance.

Other than as a direct result of our negligence, wilful default or fraud, neither we nor the independent trustee accept any liability or obligation for any or all losses, costs, actions, proceedings, claims and demands arising directly or indirectly that are incurred by, or brought or made against us or the independent trustee:

- if we or the independent trustee acted in good faith in accordance with any instruction (relating to benefit options, benefit nominations and investment directions) that reasonably appears to have been given by you or by your Financial Adviser;
- as a result of having acted in good faith on the instruction of a legally authorised party acting on your behalf, including if we have received medical advice (commissioned by and

addressed to us) that you are unable to act due to serious ill-health, physical or mental incapacity (in accordance with section 21.3;

- as a result of any error by you or by your Financial Adviser, or your representatives or agents;
- as a result of any instruction or investment direction sent by you, or your representatives or agents, or any third parties who may hold or manage or advice on investments, not being received by us;
- for any failure or delay in implementing any instruction or investment direction which is caused by circumstances beyond our reasonable control, including but not limited to acts of God, fires, strikes, terrorism, power failures, intervention by exchanges or regulators, court orders, failure or error of any equipment, telecommunications, intermediary, exchange, counterparty product provider or bank; and
- for default or any losses whatsoever caused by any third parties, nominees, other custodians, banks or authorised institutions which hold any assets including, but not limited to, insurance company unit linked funds, stocks and shares, unit trusts, Open-Ended Investment Companies (OEICs) and investment trust companies and cash for the purpose of your plan.

## 32. Glossary

The following words and expressions, which appear in italics, have the meanings as set out below:

**adviser charge** means the charge agreed between you and your Financial Adviser for providing you with either or both of

- advice about your individual fund
- administration and implementation services related to investment of and decisions about your individual fund

the payment of which you have instructed us in accordance with these terms and conditions to facilitate from your individual fund.

**arrangement** has the meaning given by the Finance Act and refers to each arrangement a member has made with us for the provision of benefits under the scheme and for the purposes of which we hold sums and assets relating to the member.

**beneficiary** means any of an individual's dependants, nominees or successors in receipt of benefits from the scheme.

**beneficiary pension** means taking an income directly from your individual fund.

The part of your individual fund designated as available for paying drawdown pension remains invested so its value can go up and down. Please see section 23 for further details.

**commercial property** means any land or building that is zoned, designed or intended for use by businesses such as offices, retail, leisure and industrial developments but not "residential property" for the purposes of the taxable property provisions as defined in paragraphs 7-10 of Schedule 29A of the Finance Act.

**contracted-out benefits** means benefits earned under another registered pension scheme from contracting out of the State schemes (State Earnings Related Pension Scheme and/or the State Second Pension).

**dependant** means, in relation to a member, a person falling within any of the following categories at the date of their death:

- the member's wife, husband or civil partner;
- in the context of dependant's drawdown only, any child of the member who reached their 23rd birthday after 15th September 2016;
- in all other contexts, any child of the member who has not reached the age of 23 and any child of the member who has reached the age of 23 and in our opinion is dependent on the member because of physical or mental impairment; or
- any other individual who in our opinion is financially dependent on the member, or who is in a mutually dependent financial relationship with the member or is dependent on the member because of physical or mental impairment.

**designated account** means the record of any cash held within the scheme's bank account(s) attributable to contributions and transfer in payments made to your individual fund that is described in section 11.

**discretionary fund manager ("DFM")** means an investment manager who has been given complete discretion to manage and invest all or part of your individual fund (see section 13).

**drawdown pension** means taking an income directly from your individual fund. The part of your individual fund designated as available for paying drawdown pension remains invested so its value can go up and down. Please see section 23 for further details.

**Embark Group of companies** means Embark Services Limited, any of its direct or indirect subsidiaries, any direct or indirect holding company of Embark Services Limited, and any subsidiary of any

such direct or indirect holding company. "Subsidiary" and "holding company" have the meanings given to them in Section 1159 of the Companies Act 2006.

**fee schedule** means the schedule we provide or make available to you from time to time, which sets out the charges applicable to your individual fund, as amended from time to time.

**Finance Act** means the Finance Act 2004 as amended from time to time.

**Financial Adviser** means the firm named as "Financial Adviser" in your application form or any replacement you have appointed and notified us of in accordance with these terms and conditions.

**HMRC** means Her Majesty's Revenue & Customs.

**independent trustee** means Hornbuckle Mitchell Trustees Limited or any successor appointed by us.

**individual fund** means the investments (including cash) of the scheme attributable to you under each arrangement having regard to

- (for a member only) contributions or (for a beneficiary only) any amounts allocated to provide you with drawdown pension following the death of a member and
- transfer in payments paid by or in respect of you

less any benefits and transfer-out payments paid to or in respect of you and any charges and fees that we deduct and any borrowing, adjusted to account for any growth or loss in the investments.

**insurance** means a property owner's insurance policy in the name of the independent trustee with Property Owner's Liability cover of at least £5,000,000 and subject to such other requirements as we may inform you of from time to time.

**lifetime annuity** means an annuity contract purchased from an insurance company, which provides an income for life.

**member** means an individual whom we have accepted for membership of the scheme under section 5 and who has not subsequently left the scheme.

**nominee** has the meaning given in Schedule 28 of the Finance Act, being an individual nominated by the member or us to receive death benefits from an arrangement following the death of a member, but who is not a dependant of the member.

**permitted investments schedule** means the schedule that we provide or make available to you from time to time that sets out the investments you are permitted to hold within your individual fund.

**plan** means

- (for a member) the arrangement or collection of arrangements the member has made with us under the scheme
- (for a beneficiary) the arrangement or collection of arrangements a beneficiary makes with us for the provision of drawdown pension benefits

and that is identified by the unique reference number shown in the scheme member schedule.

**registered pension scheme** means a pension scheme registered under Part 4 of the Finance Act.

**rules** means the trust deed and rules that establish the scheme, as amended from time to time.

**scheme** means the Hornbuckle Mitchell Private Pension.

**scheme member schedule** means the schedule we provide or make available to you from time to time, which sets out the specific details of how these terms and conditions apply to your plan, as amended from time to time.

**successor** has the meaning given in Schedule 28 of the Finance Act, being an individual nominated by a dependant, nominee or successor of a member, or by us, to receive death benefits from an arrangement following the death of a dependant, nominee or successor.

**terms and conditions** means the terms and conditions set out in this document, as amended from time to time.

**unauthorised payment** means an unauthorised payment (as defined in Section 160(5) of the Finance Act), which attracts tax charges.

**uncrystallised fund** means, in relation to a member only, any part of your individual fund that has not been designated as available for paying drawdown pension or used to provide any other benefit.

# Get in touch with us

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\* Calls to this number are charged at the national rate.

Hornbuckle is a trading name of Embark Services Limited, which is authorised and regulated by the Financial Conduct Authority.

# Hornbuckle

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