

DATED

2023

**BUILDING & ENGINEERING SERVICES  
ASSOCIATION**

(1)

and

**WELPLAN LIMITED**

(2)

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**FOURTH DECLARATION OF TRUST AND RULES**  
in relation to the Welplan Death Benefit Scheme

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**DATE OF DEED**

**2023**

**PARTIES**

- (1) **BUILDING & ENGINEERING SERVICES ASSOCIATION** of Rotherwick House, 3 Thomas More St, St Katharine's & Wapping, London, E1W 1YZ, an unincorporated association of Employers in the United Kingdom (the "**Association**")
- (2) **WELPLAN LIMITED** (Company Number 02782737) whose registered office is at Old Mansion House, Eamont Bridge, Penrith, Cumbria, CA10 2BX (the "**Trustee**")

**INTRODUCTION**

- A This Trust Deed is supplemental to the following documents in relation to the Scheme:
- (a) a declaration of trust and rules dated 20 May 1975 (as subsequently amended);
  - (b) a second declaration of trust and rules dated 25 October 2005; and
  - (c) a third declaration of trust and rules dated 24 July 2014 which currently governs the Scheme (the "**2014 Trust Deed**").
- B The Association is the present Principal Employer of the Scheme and the Trustee is the present trustee of the Scheme.
- C Clause 8 of the 2014 Trust Deed gives the Trustee the power, with the approval of the Principal Employer, at any time and from time to time to alter, repeal or add to the trusts, powers and provisions of the 2014 Trust Deed. The power may be exercised by deed subject to the restrictions set out in clauses 8.1 and 8.2 of the 2014 Trust Deed, neither of which is infringed by the provisions of this Trust Deed.
- D The Trustee, with the approval of the Association, wishes to replace the provisions of the 2014 Trust Deed in their entirety with the provisions of this Trust Deed and the Rules, with effect on and from the Effective Date.

**THIS DEED WITNESSES THAT:**

**1 DEFINITIONS AND INTERPRETATION**

- 1.1 Words and expressions which begin with capital letters in this Trust Deed and the Rules shall be as defined in Schedule 1 (Definitions).
- 1.2 In this Trust Deed, where the context so requires, words in the masculine gender include the feminine and words in the singular include the plural, and vice versa.
- 1.3 The introduction to and headings used in this Trust Deed and the Rules have been inserted for ease of reference only, and will not affect its construction or interpretation.
- 1.4 The attached Schedules form part of this Trust Deed.

- 1.5 Any reference to a statute includes any regulations made under that statute, and any reference to any statute or statutory instrument includes:
- (a) any modification, re-enactment or consolidation of it for the time being in force, and
  - (b) where the legislation applies to part only of the United Kingdom, any corresponding provisions of any legislation applying to any other part of the United Kingdom.
- 1.6 The Scheme shall be operated in a manner consistent with all applicable overriding legislation affecting registered pension schemes which is relevant to the Scheme. If any of the provisions of the Trust Deed or the Rules are inconsistent with such legislation or would otherwise affect the Scheme's Registered Status then the relevant statutory requirements shall prevail and the Trust Deed and the Rules shall be construed accordingly.

## **2 REPLACEMENT OF THE 2014 TRUST DEED**

- 2.1 The Association and the Trustee confirm that the Scheme was established on and from 26 May 1975.
- 2.2 In exercise of its powers under clause 8 of the 2014 Trust Deed, and all other enabling powers, the Trustee replaces the 2014 Trust Deed in its entirety with the provisions of this Trust Deed and the Rules with effect on and from the Effective Date, provided that:
- (a) the Trustee's exercise of its powers shall not invalidate any action taken or the exercise of any discretion or power under the 2014 Trust Deed before the Effective Date; and
  - (b) any benefits which became payable under the Scheme in respect of any Member who died before the Effective Date but which, as at the Effective Date, have not yet been distributed, shall be payable in accordance with the provisions of the 2014 Trust Deed unless the Trustee in its absolute discretion decides otherwise.
- 2.3 By its execution of this Trust Deed, the Association confirms its consent to the exercise of the Trustee's power under clause 8 of the 2014 Trust Deed.

## **3 STRUCTURE**

- 3.1 The Fund shall be held by the Trustee upon irrevocable trust (subject to payment of all expenses properly incurred in connection with the Scheme) to apply the income and if so far as necessary the capital of the Fund in or towards providing benefits on death as described in section 150(1)(b) of the Finance Act 2004 (meaning of "pension scheme") in accordance with the Trust Deed and the Rules.
- 3.2 The whole of the Fund from time to time (including any actuarial or other surplus howsoever arising) shall be held on the trusts declared by Clause 3.1 and no Member or other person shall have any interest in the Fund save in accordance with the provisions of the Trust Deed or of the Rules.

#### **4 PARTICIPATING EMPLOYERS**

- 4.1 The Principal Employer and the Trustee may allow any Employer to participate in the Scheme as a Participating Employer.
- 4.2 An Employer wishing to participate in the Scheme shall comply with the Scheme and the provisions of the Trust Deed and the Rules so far as they relate to it and its Employees.
- 4.3 A Participating Employer (other than the Principal Employer) will cease to participate in the Scheme in any of the following circumstances:
- (a) on the expiry of three months' written notice (or such shorter period of notice as the Trustee may agree) from the Participating Employer to the Trustee terminating its liability to pay contributions to the Scheme;
  - (b) where the Participating Employer ceases to carry on its business (whether on account of insolvency or otherwise);
  - (c) on any date specified in any deed of adherence relating to the Participating Employer (or otherwise agreed in writing with the Principal Employer) as the date when the Participating Employer's participation shall cease; or
  - (d) if the Trustee otherwise considers it to be appropriate for any reason for the Participating Employer to cease to participate in the Scheme.
- 4.4 A Participating Employer shall be discharged from its obligations under the Trust Deed with effect from the date of the relevant event under Clause 4.3 (without prejudice to the Participating Employer's liability to pay any unpaid contributions as at the date its participation ceases).
- 4.5 A Member whose Employer ceases to be a Participating Employer shall be treated as having left Employment when the cessation takes effect, unless the Member begins Employment with a continuing Participating Employer.

#### **5 SUBSTITUTION OF PRINCIPAL EMPLOYER**

- 5.1 A substitution of the Principal Employer may be made if at any time the existing Principal Employer and the Trustee agree, having regard to the main purpose of the Scheme, that a company, firm or person (the "**New Principal Employer**") shall become the Principal Employer in substitution for the existing Principal Employer (the "**Old Principal Employer**").
- 5.2 A substitution may be made only by deed executed by the Trustee, the New Principal Employer and the Old Principal Employer (unless the Old Principal Employer is insolvent, in which case the deed may be executed by the Trustee and the New Principal Employer). In any such deed, the New Principal Employer shall covenant with the Trustee to undertake all the duties and responsibilities of the Principal Employer under the Scheme.

## **6 PARTICIPATING EMPLOYERS' CONTRIBUTIONS**

6.1 Subject to Clause 12 (Actuarial investigations), each of the Participating Employers shall in each year pay to the Trustee the following:

- (a) such amounts (if any) as the Trustee shall determine to be required, after taking such advice from the Actuary as the Trustee considers necessary, to provide benefits under the Scheme in respect of the Members employed by the relevant Participating Employer; and
- (b) such amount as the Trustee shall decide in respect of the Participating Employer's share of the costs of administering and managing the Scheme.

6.2 A Participating Employer may, provided the Scheme's Registered Status would not be prejudiced, at any time pay to the Fund any contribution in addition to those required to be paid by it and may designate a particular purpose for which such additional contribution is to be applied.

## **7 SCHEME EXPENSES**

7.1 Subject to Clause 7.2 below, any costs incurred by the Trustee in the administration and management of the Scheme (including the cost of investments, fees for professional services obtained by the Trustee, and winding-up costs) may be paid from the Fund.

7.2 The Trustee may not use any assets of the Fund to indemnify itself, or any Corporate Trustee Officer, in respect of any liability arising from a regulatory fine or civil penalty.

7.3 The Trustee may be remunerated out of the Fund on such basis as may be agreed from time to time with the Principal Employer.

## **8 POWER OF AMENDMENT**

8.1 The Trustee may with the approval of the Principal Employer at any time and from time to time alter, repeal or add to the trusts, powers and provisions of the Trust Deed and the terms and provisions of the Rules. The exercise of any such power shall be made by deed but so that no such alteration, repeal or addition to the Trust Deed or to the Rules shall:

- (a) have the effect of altering the main purpose of the Scheme which shall continue to be the provision of benefits as described in section 150(1) of the Finance Act 2004 (meaning of "pension scheme") for and in respect of Employees and their Beneficiaries;
- (b) authorise or permit or have the effect of authorising or permitting the payment to the Participating Employers of any part of the Fund except for the purposes of Clause 26 (winding-up).

## **9 APPOINTMENT AND REMOVAL OF TRUSTEES**

9.1 The Principal Employer may appoint new or additional Trustees, and the Principal Employer may also remove any Trustee from office, provided that the Scheme must at all times have at least one Trustee.

9.2 The power of appointment will be exercised by deed executed by the Principal Employer, the new Trustee(s) and the continuing Trustee(s). The power of removal will be exercised by the Principal Employer and any replacement or continuing Trustee(s).

9.3 A corporate body may act as sole Trustee whether or not it is a trust corporation.

## **10 INVESTMENT OF THE FUND**

10.1 The Trustee may invest the Fund as if it were the sole absolute and beneficial owner of the Fund and may realise, vary, transpose or retain any such investment as it from time to time determines. Investments may be made within or outside the United Kingdom whether or not they involve liability on the Fund, or produce income or are expressly authorised by law for the investment of trust monies.

10.2 Without prejudice to the Trustee's general power of investment in Clause 10.1 and subject to Clause 10.5, the Trustee may invest or apply all or part of the Fund:

- (a) in current or deposit accounts with any bank, insurance company, building society or finance company whether or not in sterling and any foreign currencies;
- (b) in any insurance policy or annuity contract from an insurance company as defined in section 275 of the Finance Act 2004 (and the Trustee may deal with or dispose of any such policy or contract, by sale, surrender, assignment or otherwise, in such manner as the Trustee thinks fit);
- (c) in units in any unit trusts or in any pooled or common investment fund;
- (d) in any stocks, shares, debentures, debenture stocks, bearer security or other investments;
- (e) in any interest in land;
- (f) by participating in any scheme of deposit administration or managed fund;
- (g) in any article or commodity which, in the Trustee's opinion, will provide a capital profit;
- (h) in the acquisition, sale, exchange or cancellation of financial futures, options of any kind (including traded options whether call or put) and contracts or rights of any nature relating to assets or property of any kind and whether or not receipt or delivery is to be at some future date; or
- (i) in any of the securities of any Employer (to the extent permitted by law).

10.3 The Trustee may exercise any of its powers set out in this Clause 10 in conjunction with either the exercise of its powers under any other trust of which the Trustee is the trustee and under which it has similar powers, or jointly with the trustees of any other trust having similar powers, as if the Fund (or relevant part of it) and the assets of such other trust constituted one trust fund. If, and so long as, the power conferred on the Trustee by this Clause 10.3 is exercised, the Trustee shall make arrangements for apportioning blended trust property and any associated investment returns, costs,



charges or expenses, or provision of security for any loan or otherwise, as it considers just and equitable.

- 10.4 The Trustee may engage in any lawful transaction and in particular may:
- (a) borrow or lend money or other property (with or without security) on such terms as the Trustee may in its absolute discretion think fit for the purpose of acquiring any investment or meeting any liability of the Scheme or for any other purpose in relation to the administration of the Scheme (including for the purposes of meeting any expenses which are to be met from the Fund);
  - (b) place assets in nominee names;
  - (c) deal in foreign currencies either at the official rate of exchange or at any other rate and either for present or forward settlement;
  - (d) enter into any contract or agreement binding the Fund which the Trustee considers to be appropriate in connection with the application or investment of any part of the Fund; and
  - (e) do all things incidental to any exercise of its powers under this Clause 10.
- 10.5 The Trustee will take such investment advice as it may consider necessary before exercising its powers of investment in this Clause 10.
- 10.6 The Trustee must not engage in any trading activity which might prejudice the Scheme's Registered Status.

## **11 TRUSTEE POWERS: GENERAL**

- 11.1 The administration and management of the Scheme shall be vested in the Trustee. The Trustee shall be the "administrator" of the Scheme for the purposes of the section 270 of the Finance Act 2004 and shall discharge or procure the discharge of all duties imposed by any relevant legislation or otherwise upon the administrator of the Scheme and may from time to time as such administrator at its discretion give such undertakings as may be appropriate for the purpose of obtaining or maintaining the Scheme's Registered Status. The Trustee may by resolution at any time determine that the administrator of the Scheme for the purposes of section 270 of the Finance Act 2004 shall be some person or persons or body other than the Trustee.
- 11.2 In addition to all powers vested in trustees by law and to the powers of investment set out in Clause 10, the Trustee may take any action or make any arrangements generally in connection with the administration or management of the Scheme which it thinks fit and in particular, but without limitation, may exercise any of the following powers:
- (a) the power, in relation to any land or buildings or any interest therein:
    - (i) to apply money in improving or developing the land or buildings or in erecting, enlarging, altering, improving, demolishing, maintaining or rebuilding any buildings on the land; and/or

- (ii) to sell, exchange, convey, lease, mortgage, charge, agree to let, license or otherwise deal with the land and buildings and generally conduct the management thereof;
- (b) the power to accept or renounce any donations, transfers, bequests or gifts for the general purposes of the Scheme or for any special purposes;
- (c) subject to the provisions of any applicable legislation, the power to borrow any monies and may also charge all (or any part) of the Fund with the due repayment of and payment of interest upon any monies so borrowed;
- (d) the power to give guarantees or indemnities and to bind the Fund in respect thereof, including by giving security;
- (e) the power to enter into underwriting or sub-underwriting contracts on such terms as it (in its absolute discretion) thinks fit;
- (f) the power to insure (up to any amount) any assets of the Fund against loss, damage or depreciation (from whatever cause);
- (g) the power to employ any person upon terms and conditions as the Trustee thinks fit;
- (h) the power to appoint and obtain the advice of any professional adviser or other professional service provider including an Actuary and any solicitor, accountant, Auditor or third-party benefit administrator upon such terms as the Trustee thinks fit;
- (i) the power to delegate, either generally or for any particular purpose, to any person any or all of the powers and discretions of the Trustee on any terms and conditions (including power to sub-delegate with or without prior approval). Any such delegation may be revoked at any time by the Trustee;
- (j) the power to appoint and dismiss an investment manager or managers in relation to the whole or any part of the Fund. The appointment shall be by written agreement between the Trustee and the investment manager in question and shall include terms governing his conduct, accountability and remuneration;
- (k) the power to appoint any person as custodian of any assets of the Scheme (including Scheme records, papers and documents) on any terms and conditions as the Trustee thinks fit (including power to appoint sub-custodians and nominees with or without prior approval);
- (l) the power to insure the Trustee (including any employee and any director, other officer or member of any committee appointed by the directors of a corporate trustee) against any liabilities incurred in the discharge of their duties under the Scheme and to insure the Fund against any losses arising from the administration of the Scheme;
- (m) the power in the interests of expediency or otherwise to act as agents for the payment of benefits out of the Fund and shall be entitled to be reimbursed out of the Fund for any payment so made; and

- (n) the power to appoint such agents as the Trustee thinks fit to transact any business of the Scheme (including the payment of benefits out of the Fund). Any such agent may include an employee or officer of the Trustee or of any of the Participating Employers.

## **12 ACTUARIAL INVESTIGATIONS**

- 12.1 The Trustee may appoint an Actuary to the Scheme (and may remove the Actuary at any time and appoint a replacement) and will obtain such advice as it considers appropriate to ensure that the Scheme's assets and agreed contributions are sufficient to provide benefits under the Scheme.
- 12.2 A Corporate Trustee Officer or any person who is connected with or an associate of the Trustee (within the meaning of sections 249 and 435 respectively of the Insolvency Act 1986) is ineligible to act as Actuary of the Scheme.
- 12.3 Where the Trustee has appointed an Actuary in relation to the Scheme, the Trustee shall arrange for the financial condition of the Scheme to be investigated by the Actuary at least once every three years. For this purpose, the Actuary shall be given access by the Participating Employers and the Trustee to all necessary accounts and documents and shall be supplied with all information he may require. The Actuary shall report to the Trustee in writing on the results of the investigations and produce an actuarial statement, valuation report and any additional supporting documentation or advice that may be considered necessary.
- 12.4 In addition to an actuarial valuation under Clause 12.3, the Trustee shall obtain an actuarial valuation report at any other time if it so decides or if so directed by the Principal Employer.
- 12.5 Where any actuarial valuation prepared under this Clause 12 discloses that the value of the Fund is less than the amount of the liabilities of the Scheme the Trustee shall take such action as it considers appropriate in respect of the deficit. This may include requiring the Participating Employers to pay additional contributions under Clause 6 (Participating Employers' contributions).
- 12.6 If any actuarial valuation under this Clause 12 discloses that the value of the Fund exceeds the value of the Scheme's liabilities, the Trustee may (but shall not be obliged to) reduce the excess by any method which does not prejudice the Scheme's Registered Status and which is permitted by the Trust Deed and the Rules but so that no part of the Fund shall be distributed to the Participating Employers except in accordance with Clause 26 (winding-up).

## **13 SCHEME ACCOUNTS AND AUDIT**

- 13.1 The Trustee shall appoint an Auditor to the Scheme, and may remove and replace the Auditor at any time.
- 13.2 The Trustee shall keep proper records in relation to the Scheme, including:
  - (a) copies of all Trustee minutes and any other records relating to decisions affecting benefits paid from the Scheme; and

- (b) proper accounting records in relation to the Fund which shall be sufficient to explain all transactions relating to the Scheme and to disclose the financial position of the Scheme.

13.3 The Trustee shall produce a report and accounts for the Scheme in respect of each year ending on 28 February (or such other year-end as the Trustee may decide), which shall be examined and reported on by the Auditor. The Trustee and the Participating Employers shall provide the Auditor with such information and documentation as the Auditor may require for these purposes.

#### **14 TRUSTEE LIABILITY AND INDEMNITY**

14.1 No Trustee shall be liable in relation to:

- (a) the consequence of any mistake or forgetfulness, whether of law or fact, and whether on the part of the Trustee or that of any of its agents, delegates or advisers; or

- (b) any breach of duty or breach of trust, whether by commission or omission,

unless it is proved to have been made, given, done or omitted in personal conscious bad faith of the Trustee (or, in relation to a Trustee engaged in the business of providing a professional trustee service for payment, to the extent that the liability relates to his own negligence).

14.2 No Corporate Trustee Officer shall be liable in relation to:

- (a) the consequence of any mistake or forgetfulness, whether of law or fact, and whether on the part of the Corporate Trustee Officer or that of any of any of the Trustee's agents, delegates or advisers; or

- (b) any breach of duty or breach of trust, whether by commission or omission,

unless it is proved to have been made, given, done or omitted in personal conscious bad faith of the Corporate Trustee Officer (or, in relation to a trustee engaged in the business of providing a professional trustee service for payment, to the extent that the liability relates to his own negligence), and provided that in either case, to the extent that it is prohibited by section 232 of the Companies Act 2006 (provisions protecting directors from liability), no Corporate Trustee Officer shall be exempted from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust by him in relation to the corporate trustee.

14.3 For the avoidance of doubt, each of Clauses 14.1 and 14.2 is to be regarded as a separate provision for the purposes of sections 232 to 235 of the Companies Act 2006, and if all or any part of those Clauses shall be found to be void or otherwise invalid or unenforceable, this shall not affect the legality, validity or enforceability of the remainder of the Clause, provision or other elements of the provision (as the case may be). In the event that all of Clauses 14.1 and 14.2 are found to be of no effect, the previous provisions of the Scheme regarding trustee liability as they applied immediately before the Effective Date shall be treated as still being in force and available to each Trustee, and to each Corporate Trustee Officer.

- 14.4 Each Trustee shall, except to the extent prohibited by Clause 7.2 (no indemnification for fines or civil penalties), be indemnified out of the Fund against all and any of the liabilities incurred in the execution, or professed execution, of the trusts of the Scheme and in the administration, management and winding-up of the Scheme except in respect of:
- (a) an act or omission which the Trustee knew to be a breach of trust and which he knowingly and wilfully committed or omitted as the case may be; or
  - (b) if the Trustee is engaged in the business of providing a professional trustee service for payment, his own negligence.
- 14.5 Each Corporate Trustee Officer shall, except to the extent prohibited by Clause 7.2 (no indemnification for fines or civil penalties), be indemnified out of the Fund against all and any of the liabilities incurred in the execution, or professed execution, of the trusts of the Scheme and in the administration, management and winding-up of the Scheme except in respect of:
- (a) an act or omission which the Corporate Trustee Officer knew to be a breach of trust and which he knowingly and wilfully committed or omitted as the case may be; or
  - (b) if the Corporate Trustee Officer is engaged in the business of providing a professional trustee service for payment, his own negligence.
- 14.6 For the avoidance of doubt, each of Clauses 14.4 and 14.5 is to be regarded as a separate provision for the purposes of sections 232 to 235 of the Companies Act 2006, and if all or any part of Clauses 14.4 or 14.5 shall be found to be void or otherwise invalid or unenforceable, this shall not affect the legality, validity or enforceability of the remainder of the Clause, provision or other elements of the provision (as the case may be).
- 14.7 The indemnities set out in Clauses 14.4 and 14.5 will not extend to any liability if that liability is covered by a policy of insurance.
- 14.8 The provisions of this Clause 14 apply to current and former Trustees and current and former Corporate Trustee Officers.

## **15 CONFLICTS OF INTEREST AND DUTY**

- 15.1 A Corporate Trustee Officer may exercise his powers and carry out his duties in relation to the Scheme even if he is also a Beneficiary.
- 15.2 No decision, opinion, or exercise of a power by the Trustee shall be invalidated or questioned on the grounds that any of the Corporate Trustee Officers, or any of the Trustees (where one or more of the Trustees are individuals) had any direct or personal interest in the outcome.
- 15.3 Any Corporate Trustee Officer or member of any committee appointed by the directors of the Trustee may act as a partner, director, officer or employee of any company, business or partnership in which part of the Fund is invested, and may retain for himself any remuneration which he may receive in that capacity, notwithstanding any actual or perceived conflict of interest of duty.

**16 TRUSTEE PROCEEDINGS**

- 16.1 Where the Scheme has a sole corporate Trustee, the Trustee shall hold meetings as often as it deems them, in its absolute discretion, to be appropriate, and shall exercise its duties, powers and discretions at such meetings in accordance with its corporate Articles of Association.
- 16.2 A written resolution of the Trustee shall be as effectual as if it had been passed at a meeting of the Trustee.

**17 TAX**

- 17.1 Without prejudice to any other rights of withholding of payments or of deduction or of recovery, the Trustee shall be entitled to deduct from any amount payable under the Scheme any tax, duty or other imposition for which the Trustee is liable. This power shall extend to any tax for which the Trustee may be liable jointly with any other person, including a Member or another person entitled to the payment. This rule applies to any charge to income tax, any interest due to HMRC and any penalties payable to HMRC.

**18 OVERPAYMENT OF BENEFITS**

- 18.1 If any amount paid to a Beneficiary or other person has exceeded that to which he is entitled (or where a payment has been made in the mistaken belief that the person was a Beneficiary), the Trustee may if it so determines at any time take such action as it considers reasonable to recover from the recipient the amount overpaid.

**19 FORFEITURE AND ASSIGNMENT**

- 19.1 Except where otherwise provided in the Trust Deed or the Rules no benefit payable or to be paid under the Scheme shall be capable of being assigned or applied for the benefit of anyone other than the persons entitled, or prospectively or contingently entitled to it, and:
- (a) every assignment of, or charge on, any such benefit and any agreement to assign or charge it shall be void; and
  - (b) on the bankruptcy of any such person the benefit shall not pass to any trustee or other person acting on behalf of the creditors of the persons entitled.
- 19.2 A benefit payable or to be paid under the Scheme shall cease to be paid or payable if it has become the subject of any attempted assignment by operation of law.
- 19.3 If through operation of this Clause 19 or otherwise under the Scheme a benefit ceases to be payable the Trustee may in its absolute discretion (in the case of hardship or otherwise) apply it or any part of it for the support and maintenance of the recipient of his Spouse, children, remoter issue or other Dependants or any of them provided that in no case shall any payment be made if it would result in a payment or other benefit to an assignee or purported assignee or creditor etc.

**20 MINOR OR INCAPABLE BENEFICIARIES**

20.1 If a Beneficiary is a minor or appears to the Trustee to be suffering from any mental or physical incapacity rendering him unable to manage his affairs or to give a proper receipt for any Lump Sum Death Benefit payable to him under Rule 5 (payment of Lump Sum Death Benefits), the Trustee shall have power to pay the whole or part of the lump sum to any one or more of the following for the benefit of the Beneficiary or any of his Dependants:

- (a) if the Beneficiary is a minor but is aged 16 or over, the Beneficiary;
- (b) any person nominated in writing by the Beneficiary before his incapacity;
- (c) any person appointed by the Court;
- (d) any of the Beneficiary's relatives or Dependants;
- (e) any other person selected by the Trustee; or
- (f) a trust established under Rule 5.2,

and the receipt of the person to whom the benefit is paid shall be a complete discharge for the amount paid and the Trustee shall not have any further responsibility in relation to the payment.

20.2 For the purposes of this Clause 20 a payment determined by the Trustee to be for the purposes of defraying the general living and household expenses of the Beneficiary and any Dependants shall be deemed to be for the benefit of the Beneficiary.

**21 PAYMENT WITHOUT PROBATE**

21.1 If a grant of representation has not been made in respect of the estate of a deceased person, any sum payable by the Trustee to the legal personal representatives of the deceased may nevertheless be paid by them to the Spouse or any of the Dependants of the deceased or any person entitled to any benefit from the deceased's estate. A receipt given by the person to whom payment is made is as effective as if it had been given by the legal representatives of the deceased.

**22 LIMITATION OF CLAIMS**

22.1 No person shall have any claim, right or interest under or in respect of the Scheme except in accordance with the Trust Deed and the Rules except to the extent the provisions of the Trust Deed and/or the Rules are overridden by statute.

22.2 Nothing in the Trust Deed or the Rules shall restrict the right of any Employer to dismiss an Employee.

22.3 Where a Member's Employment terminates, the resulting cessation of his Membership (if any) shall not be grounds for any damages or any increase in damages in any action brought against the Participating Employer or otherwise in respect of such termination.

**23 DETERMINATION OF MATTERS OF DOUBT**

- 23.1 A Member or Beneficiary shall produce any evidence and information required by the Trustee for the purposes of the Scheme. Where evidence or information has been requested from a Beneficiary, the Trustee may defer payment of any benefit from the Scheme to such Beneficiary until the Beneficiary has provided the required evidence or information. If the Trustee reasonably considers that any evidence or information produced by a Member or Beneficiary is incorrect, the Trustee may alter the benefits for and in respect of him under the Scheme to the extent the Trustee thinks appropriate (having consulted the Actuary if the Trustee considers necessary).
- 23.2 The Participating Employers shall determine whether their Employees are eligible for Membership of the Scheme, the amount or nature of any Employee's earnings, the calculation of any period of Employment or the reason why a Member ceases to be in Employment or otherwise eligible for continued Membership of the Scheme (including in respect of any period of temporary absence under Rule 2). The Trustee shall be entitled to rely on any information provided to it by a Participating Employer in respect of its Employees, and the Participating Employers shall provide the Trustee with such information as the Trustee may reasonably require in relation to the administration of benefits under the Scheme.
- 23.3 Subject to the powers expressed to be exercisable by any of the Participating Employers and to the provisions of Clause 24 (dispute resolution), the Trustee may conclusively determine all questions and matters of doubt arising in connection with the Scheme.

**24 DISPUTE RESOLUTION**

- 24.1 The Trustee may implement arrangements for the resolution of disagreements between the Trustee and Members or Beneficiaries of the Scheme (or persons claiming to be a Member or Beneficiary of the Scheme).
- 24.2 The Trustee shall have the power to compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the trusts of the Scheme. For this purpose the Trustee may do anything, execute any document or enter into any arrangement which seems to it to be expedient and shall not be responsible for any resultant loss if it has acted in good faith.

**25 TERMINATION**

- 25.1 The Scheme shall be wound up upon the happening of any of the following events:
- (a) if a majority of Participating Employers agree to that effect in writing and the Principal Employer concurs;
  - (b) if the Principal Employer decides that the objects for which the Scheme was established no longer exist or the administration thereof cannot conveniently be carried on;
  - (c) if the Trustee determines in writing (having consulted with both the Actuary and the Principal Employer) that the Participating Employers are unable to meet their obligations under the Scheme;



- (d) if the Principal Employer suffers an insolvency event (as described in section 121 of the Pensions Act 2004) and a New Principal Employer is not appointed in substitution for it under Clause 5 (substitution of Principal Employer) within 30 days of such insolvency event; or
- (e) at the expiration of the perpetuity period described in Clause 27 (perpetuity period).

25.2 In this Clause 25 and Clause 26 (winding-up) the "**Termination**" means the occurrence of one of the events listed in Clause 25.1, and the "**Date of Termination**" means the effective date of the Termination, which in the case of doubt shall be determined by the Trustee.

## **26 WINDING-UP**

26.1 No later than one month after the Date of Termination, the Trustee shall notify all Members of such winding-up and provide such other information as may be required by applicable legislation.

26.2 On the Scheme winding-up, the Trustee shall realise the Fund and shall apply the Fund in the order of priority set out below:

- (a) FIRST, in paying all costs, expenses and liabilities which have been incurred in the administration of the Scheme and remain unpaid;
- (b) SECOND, in paying all costs, expenses and liabilities incurred in connection with the winding-up of the Scheme;
- (c) THIRD, in paying any lump sums held by the Trustee for distribution following death of a Member prior to the Date of Termination; and
- (d) FOURTH, in paying any balance of the Fund to the Participating Employers immediately before the Date of Termination in such proportions as the Trustee acting on the advice of the Actuary shall deem to be appropriate.

## **27 PERPETUITY PERIOD**

27.1 If on the eightieth anniversary of 20 May 1975 (being the date the declaration of trust establishing the Scheme was adopted and the intervening period of 80 years being the perpetuity period applicable to the Scheme) the trusts established under the Scheme are still in existence and there is no legislation at that time allowing them to continue the trusts shall then cease and the Fund shall be applied in accordance with the provisions then governing the Scheme.

## **28 GOVERNING LAW AND JURISDICTION**

28.1 This Trust Deed and performance under it shall be governed by and construed in accordance with the laws of England and Wales. The parties agree to submit to the exclusive jurisdiction of the English courts.

**29 EXECUTION IN COUNTERPARTS**

29.1 This Trust Deed may be executed in hard copy or in any other lawful manner and in any number of counterparts (provided that where a party is a corporate entity and is signing in hard copy, all of the signatories on behalf of that corporate entity shall sign the same counterpart). The counterparts so executed, taken together, shall constitute one and the same original instrument and be binding on the parties.

**30 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

30.1 This Trust Deed is not intended to confer on any third party any right to enforce any provision of the Trust Deed or the Rules under the Contracts (Rights of Third Parties) Act 1999, and any such right is excluded. This does not affect any right or remedy of a third party which exists or is available as a matter of trust law apart from that Act.

**IN WITNESS** of which this document has been executed and, on the date set out above, delivered as a deed.

**EXECUTED** and delivered when dated ) .....  
as a deed by **BUILDING &** ) Director  
**ENGINEERING SERVICES** )  
**ASSOCIATION** acting by a director in )  
the presence of: )

Signature of Witness: .....

Name:

Occupation:

Address:

**EXECUTED** and delivered when dated ) .....  
as a deed by **WELPLAN LIMITED** acting ) Director  
by two directors or by one director and )  
the company secretary )  
)  
) .....  
Director / Secretary

## **SCHEDULE 1 Definitions**

### **"Active Employment"**

Any period during which a Member is:

- (a) available and able to discharge his Employment duties and/or carry out his work in accordance with the terms of his Employment contract; or
- (b) absent by reason of annual leave, bereavement leave, Family Leave, time off for trade union duties and activities in accordance with the ACAS Code of Practice, public duties for which time off is required under the 1996 Act, any temporary absence in respect of which the Member is entitled to continued Membership under Rule 2 (Temporary absence), or absence for or any other reason for which the Employee can produce evidence to the satisfaction of the Participating Employer that such absence was due to circumstances beyond the Employee's control.

### **"Actuary"**

An individual appointed under Clause 12.1 (Actuarial investigations) who is a Fellow of the Institute and Faculty of Actuaries.

### **"Approved Absence"**

A temporary absence from work (other than Family Leave) for any reason of which the Participating Employer approves.

### **"Association"**

The Building & Engineering Services Association, an association of Employers in the United Kingdom.

### **"Auditor"**

An individual or firm (other than a Member, a Corporate Trustee Officer, an Employer, or a director, officer or employee of any Employer) appointed under Clause 13.1 (Scheme accounts and audit) who has the qualifications set out in section 1212 of the Companies Act 2006.

### **"Authorised Payment"**

A payment which would be an authorised member payment in accordance with section 164 of the Finance Act 2004.

### **"Beneficiary"**

A person entitled or prospectively entitled to a benefit under the Scheme.

### **"Clause"**

A clause of this Trust Deed.

### **"Corporate Trustee Officer"**

A director, officer or other employee of a corporate Trustee.

### **"Dependant"**

In respect of any person, their Spouse or any other person who in the opinion of the Trustee is either:

- (a) wholly or partly financially dependent on the other person; or
- (b) should for a reason other than financial dependence be considered a Dependant of the person.

The Trustee's decision as to whether a person is a Dependant is final.

**"Effective Date"**

The date of the Trust Deed.

**"Employee"**

An individual who is an employee or a director of a Participating Employer.

**"Employer"**

A company, corporation or unincorporated body which:

- (a) has employees:
  - (i) whose employment is governed by the National Agreement; or
  - (ii) who are members or eligible to be members of the Union; or
  - (iii) who are accepted by the Trustee with the approval of the Principal Employer as being employed in or in connection with the Industry; and
- (b) is resident in the United Kingdom, the Channel Islands or the Isle of Man.

**"Employment"**

Service as an Employee with a Participating Employer. Employment shall be deemed to be continuous although performed partly with one Participating Employer and partly with another.

**"Expression of Wish"**

A document signed by a Member and submitted to the relevant Participating Employer before the Member's death expressing his wishes relating to the disposal of part or all of a Lump Sum Death Benefit.

**"Family Leave"**

Means either adoption leave, maternity leave, parental leave, paternity leave or shared parental leave pursuant to Part VIII of the 1996 Act, or any other period of leave during which a Member is absent from work for family reasons and which the Participating Employer and the Trustee with the approval of the Principal Employer determine shall be treated as Family Leave.

**"Fund"**

The assets from time to time held by the Trustee on the trusts of the Scheme.

**"HMRC"**

His Majesty's Revenue & Customs or such other authorised body as may replace it or assume any of its duties.

**"Industry"**

The Building and Engineering Services Industry and other industries which are recognised by the Trustee and the Principal Employer for the purposes of the Scheme.

**"Lump Sum Death Benefit"**

In respect of a Member, a lump sum equal (subject to Rule 6 (restrictions on benefits)) to:

- (a) the death benefit (if any) to which the Member is entitled under the terms of the National Agreement (or, where applicable, the relevant Other Recognised Agreement) in force as at the date the Member first became eligible to join the Scheme (or such later date as the Trustee and the Principal Employer may agree), and which is accepted by the Trustee and the Principal Employer as appropriate to the Member; or
- (b) such other amount as the Participating Employer may determine, with the agreement of the Principal Employer, and notify to the Trustee.

**"Member"**

An Employee who has been admitted to the Scheme and who has not ceased to meet the eligibility criteria under the Rules. The term "Membership" will be construed accordingly.

**"National Agreement"**

The national agreement as to working rules and conditions for foremen, craftsmen, apprentices, installers, adult trainees and mates employed in the Building and Engineering Services Industry made between the Association and the Union as amended from time to time.

**"Other Recognised Agreement"**

In relation to an Employee, any agreement applicable to persons employed in the Industry which is recognised for the purposes of the Scheme in relation to that Employee by the Principal Employer and the Trustee, or such other terms as the Participating Employer may agree with the Trustee in respect of the level of benefits payable in respect of the Employee.

**"Paid Family Leave"**

Any period of Family Leave in respect of which an Employee is entitled to, and receives, either statutory maternity, paternity or adoption pay, and/or contractual remuneration from a Participating Employer.

**"Participating Employer"**

The Principal Employer together with any Employers which participate in the Scheme from time to time in accordance with Clause 4 (Participating Employers) and whose participation has not ceased. In respect of any Member the Participating Employer is his current or last Employer.

**"Principal Employer"**

The Principal Employer of the Scheme from time to time. The Association is the current Principal Employer.

**"Registered Status"**

Registration of the Scheme as a registered pension scheme as defined in section 150(2) of the Finance Act 2004.

**"Rules"**

The Rules of the Scheme set out in Schedule 2, as amended from time to time.

**"Scheme"**

The Welplan Death Benefit Scheme.

**"Spouse"**

The wife, husband or registered civil partner of a person (and the widow, widower or surviving registered civil partner of a person who has died).

**"Trust Deed"**

This fourth declaration of trust and rules in relation to the Scheme.

**"Trustee"**

The trustee or trustees of the Scheme from time to time. The Trustee is the current sole trustee of the Scheme.

**"Unauthorised Payment"**

A payment to a Participating Employer or a Member which is not an Authorised Payment or an authorised employer payment as defined in section 175 of the Finance Act 2004.

**"Union"**

Unite the Union (or such other relevant trade union representing Employees from time to time in relation to the National Agreement or other matters relevant to the Scheme).

**"1996 Act"**

The Employment Rights Act 1996.

## **SCHEDULE 2**

### **The Rules**

#### **1 ELIGIBILITY, ADMISSION AND CESSATION OF MEMBERSHIP**

- 1.1 Each Employee who has been admitted to Membership of the Scheme as at the Effective Date shall continue to be a Member for so long as he satisfies the eligibility conditions.
- 1.2 A person who has not been admitted to Membership as at the Effective Date will become eligible for Membership on the latest of the following dates, unless the Trustee and the Participating Employer agree otherwise:
- (a) the date he becomes an Employee;
  - (b) the date he first begins Active Employment (if he is not in Active Employment when he first becomes an Employee); and
  - (c) the date he satisfies any other applicable conditions under the National Agreement or Other Recognised Agreement in respect of his eligibility to join the Scheme.
- 1.3 Membership may be subject to the Employee completing an application form, in such form as the Trustee may require, in which the Employee acknowledges that his entitlement to benefits from the Scheme shall be:
- (a) determined in accordance with the Trust Deed and the Rules as from time to time lawfully amended; and
  - (b) subject to his providing such evidence of health, age and family circumstances as shall be reasonably requested by the Trustee from time to time.
- 1.4 An Employee shall cease to be a Member if, before the date of his death:
- (a) he ceases to be in Active Employment, unless the provisions of Rule 2 (temporary absence) apply to him or the Participating Employer decides otherwise in a particular case; or
  - (b) his Employer notifies the Trustee that he ceases to be eligible to be a Member.
- 1.5 If an Employee has ceased to be a Member in accordance with Rule 1.4, no benefit will be payable under the Scheme in the event of his death.

#### **2 TEMPORARY ABSENCE**

- 2.1 During and in respect of any period of Paid Family Leave:
- (a) a Member will be treated as remaining in Membership;
  - (b) benefits shall be payable from the Scheme in the event of the death of the Member during the period of Paid Family Leave as though the Member had

not been on Family Leave and had continued to work normally during the period of Family Leave; and

- (c) the Participating Employer shall continue to make the appropriate contributions to the Fund in accordance with Clause 6 (Participating Employers' contributions).

2.2 If a Member is absent from work because of illness or injury or for any other reason which is an Approved Absence then the Member shall continue to be a Member during such period of absence, subject to the following:

- (a) the Member must remain resident in the United Kingdom, the Channel Islands or the Isle of Man;
- (b) the period for which the Member's Membership of the Scheme may continue during such a period of temporary absence may not exceed one year except:
  - (i) if the period of absence is to enable the Employee to take up work of national importance (in which case the period may be unlimited);
  - (ii) if the period of absence is to enable the Employee to undergo full-time education connected with his Employment or to be seconded to another Employer (when the period may be for up to three years); or
  - (iii) if the Principal Employer in any particular case agrees otherwise; and
- (c) the Employee shall cease to be a Member during a period of temporary absence if, during an Approved Absence other than on account of illness or injury, the Participating Employer does not consider (or no longer considers) that there is a definite expectation that the Employee will return to work.

2.3 If the Member has not returned to work at the end of a period of Family Leave or other period of temporary absence, the Member shall be treated as having left Employment and shall cease to be entitled to a lump sum benefit under the Scheme.

### **3 MEMBERS' CONTRIBUTIONS**

3.1 A Member shall not be required to contribute to the Scheme.

### **4 LUMP SUM DEATH BENEFIT**

4.1 A Lump Sum Death Benefit may be paid at the discretion of the Trustee in accordance with Rule 5 (payment of Lump Sum Death Benefits) upon the death of a Member who has fulfilled any applicable conditions (including as to any minimum period of service in the Industry) under the National Agreement or any Other Recognised Agreement applicable to the Member for the purposes of the Scheme.

4.2 The Participating Employer and the Trustee may agree to waive any of the conditions in Rule 4.1 in respect of any particular Member.



## **5 PAYMENT OF LUMP SUM DEATH BENEFITS**

- 5.1 Any Lump Sum Death Benefit payable under the Scheme in respect of a Member shall be held by the Trustee with power at its discretion to pay or apply the whole or any part of such amount to or for the benefit of all or any of the following, in such shares and proportions as the Trustee shall in its absolute discretion decide:
- (a) the Member's current or former Spouse;
  - (b) the Member's parents and step-parents;
  - (c) any child or remoter descendant of the Member's parents and the Spouse of any such person;
  - (d) any individual who in the Trustee's opinion was a Dependant of the Member at the date of the Member's death;
  - (e) the personal representatives of the Member; and
  - (f) any person, trust or charity who is identified by the Member in an Expression of Wish.
- 5.2 Without prejudice to the generality of the power in Rule 5.1, the Trustee may establish a trust, on such terms as it may consider appropriate, for the benefit of one or more of the persons to whom part or all of a Lump Sum Death Benefit may be paid and may pay to such trust any sum arising under this Rule 5. Any costs and expenses incurred in establishing the trust or in making the payment to it may be deducted from the Lump Sum Death Benefit if the Trustee so decides.
- 5.3 If or to the extent that the Trustee is unable exercise the powers in Rules 5.1 or 5.2 above within two years of the death of a Member, or such longer maximum period as the Trustee may decide shall apply in respect of the exercise of those powers, provided that such longer period would not prevent the payment from being paid as a defined benefits lump sum death benefit for the purposes of the Finance Act 2004 (and so that the Trustee is not bound to exercise those powers wholly or in part even where there is or are one or more surviving Dependents or relatives listed in Rule 5.1) the Trustee may retain such sum as part of the Fund.
- 5.4 When exercising its discretion in relation to a Lump Sum Death Benefit the Trustee may, but is not obliged to, have regard to an Expression of Wish signed by a Member, and may issue (or request that the Participating Employers issue) Expression of Wish forms to Members for this purpose.
- 5.5 Payment of Lump Sum Death Benefits is subject to Rule 6 (restrictions on benefits).

## **6 RESTRICTIONS ON BENEFITS**

- 6.1 The payment of any Lump Sum Death Benefit under the Scheme is subject to the following conditions:
- (a) any special conditions or restrictions either set out in the National Agreement or Other Recognised Agreement, or otherwise from time to time agreed

between the Trustee and the Participating Employer and communicated to the Member;

- (b) if the Lump Sum Death Benefit, or part of it, is insured:
  - (i) any restrictions or conditions under the relevant contract of insurance, unless and to the extent that the Trustee otherwise decides;
  - (ii) payment of the relevant amount from the insurance company to the Trustee; and
- (c) the payment not resulting in an Unauthorised Payment.

6.2 If all or part of a Lump Sum Death Benefit is insured and the amount that the Trustee receives from the insurance company is less than the relevant amount payable in accordance with the Rules, the Trustee may restrict the amount of Lump Sum Death Benefit that is payable under the Scheme (unless otherwise directed by the Principal Employer) to the actual amount received by the Trustee from the insurance company.

6.3 If the Lump Sum Death Benefit is not insured and either the assets in the Fund are insufficient to pay all or part of it in accordance with the Rules, or the Trustee considers that the contributions that have been paid by the Participating Employer in respect of the Member are not sufficient to reflect the amount of the benefit, the Trustee may either:

- (a) restrict the amount of the Lump Sum Death Benefit to such amount as the Trustee may decide; or
- (b) require the Participating Employer to pay such additional contributions in respect of the benefit as the Trustee may decide (acting on the advice of the Actuary) and notify to the Participating Employer.