

The Momentum Gibraltar Pension Plan

Terms and Conditions

Terms and Conditions

These Terms and Conditions (the '**Terms**') apply between **(1)** Momentum Pensions (Gibraltar) Limited incorporated and registered in Gibraltar with company number 109892 whose registered office is at 19A Town Range, PO Box 872, Gibraltar ('**We/we**', '**Us/us**', '**Our/our**') and **(2)** you ('**You/you**', '**Your/your**').

What the Terms cover

These are the terms and conditions on which we provide a service to you.

Why you should read them

Please read these Terms carefully. These Terms tell you who we are, how we will provide a service to you, how you and we may change or end the contract, what to do if there is a problem and other important information.

1. Definitions

Administrator:	Us.
Agreement:	the Relevant Documents and the Terms (seen together) as further described in Clause 2.
Application:	our application form for the Scheme (including any updates and amends to the form) which you must complete, with the assistance of your Professional Adviser, and sign if you wish to become a Member.
Appointed Adviser(s):	your Professional Adviser and/or Investment Adviser.
Business Day	a day in which the banks are open for business, except for weekends and public/bank holidays in Gibraltar.
Business Hours:	the hours of 9am to 5pm Monday to Friday excluding public/bank holidays in Gibraltar.
Data Protection Legislation:	all legislation in Gibraltar relating to personal data including but not limited to the Data Protection Act 2004, as amended from time to time, and any other relevant and applicable European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data.
DFM:	discretionary fund manager as selected by you to manage your scheme investments on a discretionary basis. A DFM can also be known/referred to as an Investment Manager .
Execution Only:	provision by Us of a trading service that is restricted to only the execution of trades, without You (the Member) receiving any advice about the merits or risks of the investments or their suitability.
Execution Only Member:	a Member during the period when an Appointed Adviser and/or DFM is no longer in place and until a new Appointed Adviser is appointed or a Member who is operating on an execution only basis.
Fees:	Our fees and charges as set out in the Fee Schedule, as amended from time to time. (This includes but is not limited to Set Up Fees, Annual Trust Fees, Supplementary Fees, etc.)
Fee Schedule:	the fee schedule for the provision of services within the Scheme available on our Website, as amended from time to time.
GFSC:	means the Gibraltar Financial Services Commission or any successor regulatory body whose role is to regulate the financial services industry in Gibraltar.
Group Company/ies:	any company which is a member of the same group of companies as us.
HMRC:	His Majesty's Revenue and Customs.
Investment Guidelines:	the document known as the Investment Guidelines – QROPS applicable to the Scheme as amended from time to time and available on the Website.
Investment Adviser:	The investment adviser appointed by you to provide investment advice in relation to your Member's Fund.

Investment Provider:	an investment company/platform chosen by you in agreement with your Appointed Adviser (if any) and approved by Us into which the assets in your Member Fund are invested. Investment Providers can include but are not limited to an investment platform company, life insurance company or discretionary fund manager. An Investment Provider can also be known/referred to as an Investment Company .
Member:	a person admitted to membership of the Scheme who has subsequently not left the Scheme. In the case of the Member's death, membership will continue until all death benefits are administered and distributed in full.
Member Bank Account	a member account where monies belonging to the Member within the Scheme client account will be segregated into a member bank account.
Member's Fund:	means the Member's individual fund within the Scheme (can also be known as Member's Individual Fund). This includes all funds held on behalf of the Member in the Scheme in their capacity as beneficial owner, including the Member Bank Account and investments and/or assets held with their chosen Investment Provider (this can also be known as the "Member Portfolio", "Investment Portfolio", "Portfolio" or "Member Investments");
Member Portal:	a specific portal designed for you to access information about your membership of the Scheme, including the Member Bank Account and the Member's Portfolio subject to the information provided to us by the Investment Provider.
Professional Adviser:	a financial adviser with whom we have terms of business in place with and who is appointed by you, to provide financial advice including advice regarding the establishment of your Member Fund and your pension benefits under the Scheme and ongoing financial advice thereafter in relation to your Scheme. Your appointed adviser may change over time at your discretion. Please note the term Professional Adviser and financial adviser can be used interchangeably.
QROPS:	a Qualifying Recognised Overseas Pension Scheme.
Retail Client:	means a Member or prospective member who (a) is an individual; and (b) is not a professional client.
Scheme:	means the Momentum Gibraltar Pension Plan.
Scheme Rules:	the rules of the Scheme contained within the Trust Deed and Rules for the Scheme, as amended from time to time.
Scheme Particulars:	The Momentum Gibraltar Pension Plan scheme particulars document, as amended from time to time and available on our Website.
Third Party Service Provider:	any person or body corporate appointed at our sole discretion which provides services to us or any of our Group Companies in connection with the administration of the Scheme and/your Member Fund.
Trust Deed and Rules:	the declaration of trust known as Momentum Gibraltar Pensions Plan dated 7th October 2013 including any subsequent Deed of Amendments, Deed of Substitutions and/or Deed of Releases.
Trustee:	Us.
Website:	https://www.momentumpensions.com/
we, us or our:	a reference in the lower case of 'we', 'us' or 'our' has the same meaning as the defined term 'We', 'Us' and 'Our'.
you or your:	a reference in the lower case of 'you' or 'your' has the same meaning as the defined term 'You' and 'Your.'

2. The Agreement

- 2.1 The Terms should be read as an existing Member or as a potential new member when completing our Application and should also be read in conjunction with the Trust Deed and Rules of the Scheme, the Scheme Particulars, the Investment Guidelines and the Fee Schedule (each a “**Relevant Document**” and altogether the “**Relevant Documents**”). A copy of the Trust Deed and Rules is available upon request to us. All other Relevant Documents are available on the Website. At any point when you are notified the Agreement has been varied and/or updated you should again reread the document(s) in full and familiarise with any amendments and/or variation.
- 2.2 The Agreement sets out the basis on which we shall provide our services to you, when applying for membership of the Scheme.
- 2.3 Should any conflict arise between the Relevant Documents which make up the Agreement, the following order of precedence shall prevail:
- i. Trust Deed and Rules;
 - ii. The Terms;
 - iii. The Application;
 - iv. The Investment Guidelines;
 - v. The Fee Schedule; and
 - vi. The Scheme Particulars;

3. Information about us and contact details

3.1 How to contact us for general matters

For general queries only, you can contact the office on +350 2007 6630 during Business Hours or by writing to us by email at: gibraltar@momentumpensions.com or by post at Momentum Pensions (Gibraltar) Limited, 19A Town Range, PO Box 872, Gibraltar or where indicated otherwise in our correspondence documents please use the following address for post: c/o Momentum Pensions Malta Limited, Ground Floor, Crown Marina, Ta' Xbiex Seafront, Ta' Xbiex, XBX 1027, Malta or by any other method as communicated by us from time to time. Please note this method of correspondence as set out in this clause 3.1 is not to be utilised for investment instructions or the retirement option process. For these services you must utilise the email addresses specifically provided to you in this regard.

3.2 How we may contact you

If we need to contact you, we will do so by writing to you at the email address or postal address from our records, telephone, video conferencing services or through our Member Portal. Our records will use the details you have provided to us on your Application, unless you have updated any details we hold from time to time, in which case we will use the updated details.

3.3 Emails

When we use the words 'writing' or 'written' in these terms, this includes by email.

4. Membership

This clause covers becoming a Member, as well as for existing Members:

- 4.1 The Application must be completed, signed by you or you and your Appointed Adviser(s) (where applicable), and submitted to us if you wish to apply to become a Member of the Scheme.
- 4.2 In order to become a Member you must agree to be bound by all terms of the Agreement. In particular, you must agree that you or you and your Appointed Adviser(s) will act in accordance with the Investment Guidelines and that you will not require nor attempt to require the withdrawal of benefits from your Member Fund except as permitted by the Scheme Rules, legislation, regulation and tax requirements of Gibraltar.
- 4.3 You will become a Member when we notify you that your Application has been accepted. We may decline, at our discretion, any Application. An example of a declined Application includes but is not limited to, where we have been unable to successfully verify your identity.

- 4.4 On becoming a Member we will classify you as a Retail Client for the purpose of GFSC, unless you specifically request in writing to us to be treated as a professional client or we classify you as a professional client in line with the requirements of the GFSC as mentioned under Clause 5.
- 4.5 You must not accept any inducement to make the Application. This means you should not be given any cashback or other incentive from a third party to submit the Application to become a Member.
- 4.6 By signing and submitting your Application you are providing us with authority to instruct your investment, subject to us receiving from you or from you and your Appointed Adviser's (if applicable) instructions and authorisation, through your chosen Investment Provider.
- 4.7 As a Member, you must inform us immediately if:
- 4.7.1 your contract with your Appointed Adviser(s) and/or the Appointed Adviser's firm or DFM is terminated for any reason;
 - 4.7.2 you decide to change your Appointed Adviser(s) and/or /DFM for any reason and provide the contact details of the proposed new adviser(s) to be appointed as soon as possible;
 - 4.7.3 any of your personal details change, this includes but is not limited to your, name, residential address, email address or telephone number and/ or your bank details change;
 - 4.7.4 your tax residency changes; or
 - 4.7.5 your email address, held on record with us, has been compromised in anyway.

5. Professional Client

If you request to invest in non-retail investments, this is known as a 'Professional Client' within the scope of Regulations 18 and 19 of the Financial Services (Personal Pensions) Regulations 2020 ("**Regulations**"). In order to do so you will first be required, by us, to complete and sign additional paper work known as our Professional Member Questionnaire and Declaration and then in accordance with our internal procedures, we shall determine if we are fully satisfied that you are capable of making your own investment decisions and that you fully understand the risks involved in respect of the relevant financial instrument or the relevant type of financial instruments and that you meet the relevant criterion and conditions as stated in the Regulations.

6. Services we provide to you

- 6.1 Your Member Fund is established under trust and operates in accordance with the Trust Deed and Rules as set up under the Scheme and the Terms. The role of the Trustee and the role of the Administrator, in providing a service to you, are as further detailed in the Scheme Particulars and Trust Deed and Rules.
- 6.2 We will act upon and execute instructions, or those of your Appointed Advisor or DFM, but we will offer no advisory or discretionary service (otherwise known as service provided by us on an "instruction-led" basis), other than ensuring the instructions received are in line with our Investment Guidelines applicable at the point of receiving the instruction and regulatory requirements in place when the instruction is received by us.
- 6.3 The Administrator will not accept any liability for the performance or choice of investments selected by you or on the advice of your Appointed Adviser(s) or at the discretion of your DFM. Please make sure you are fully informed about the type of investment that you choose, or your Appointed Adviser(s) assists you in choosing or your DFM chooses on your behalf and that you fully understand the eligibility, suitability and any associated risks and the fees and charges associated with that type of investment before authorising your investment instruction(s). Any investment instruction provided to us will be accepted by us on this understanding.
- 6.4 The Administrator may sell an asset or assets within your Member Fund chosen at our discretion if:
- 6.4.1 the continued holding of the investment jeopardises the registered status of the Scheme or QROPS status of the Scheme;

- 6.4.2 the Trustees, using their sole discretion, deem it is necessary or prudent for whatever reason to sell an asset or assets within your Member Fund; and/or
- 6.4.3 it is in accordance with the Trust Deed and Rules of the Scheme.
- 6.5 We reserve the right, at our discretion, to sell an asset or assets within your Member Fund to meet any costs, such as Fees, taxes, charges, expenses and any other professional fee or disbursement.
- 6.6 Supplementary services may be provided by us to you and will attract a supplementary charge, please refer to Clause 12 and the Fee Schedule for more information on this.
- 6.7 Some parts of our service will be provided by a Third Party Service Provider or Group Company for example our investment dealing service.
- 6.8 The Scheme only accepts the transfer of existing pension scheme assets into the Member's Fund. The Scheme does not accept any contributions into the Member's Fund, whether this is from the Member personally, or from the Member's employer or a contribution from any other third party for or on behalf of the Member, in cash or assets.
- 6.9 Momentum's services to you do not include tax advice, including but not limited to determining the; tax residency, citizenship, domicile or any other form of connection to a jurisdiction for tax purposes. The Member is responsible for seeking tax advice from a qualified tax adviser or the relevant tax authority in the jurisdiction you reside, work in or remit money to, and for accurately and factually declaring your; tax residency, citizenship, domicile circumstances or, if a United States ('U.S.') Person or connected to the U.S, their circumstances in any way for tax purposes. Momentum's services to you are not intended to determine whether you have a tax liability, tax reporting or filing requirement or any other reporting requirements in any jurisdiction outside Gibraltar. Momentum files tax returns with the Gibraltar Tax office as required as the Administrator and also provides details of payments to HMRC as required as the Scheme Administrator of a QROPS. Momentum does not otherwise provide any tax compliance or tax return preparation services and will not advise, prepare, or file any tax forms with any tax authorities on the Member's behalf unless specifically requested in writing by the Member and agreed, in writing, by Momentum to do so, setting out clearly the terms and conditions of Momentum's appointment in this regard.
- 6.10 In relation to the U.S; if you as the Member are a 'U.S.' person or connected to the U.S. in any way in relation to tax purposes then you are responsible for seeking U.S. tax advice on the required annual and/or periodic tax-reporting obligations for your pension fund and retirements benefits or any other U.S. reporting or filing obligations which may apply in relation to the Scheme. Momentum strongly recommends seeking U.S. tax advice and assistance regarding your U.S. tax reporting and compliance obligations with the Internal Revenue Service ("IRS") and any other relevant U.S. tax authorities prior to transferring any pension benefits to the Scheme and during your period of membership of the Scheme.
- 6.11 Momentum's services are not intended to determine whether a Member has filing requirements in the U.S. Momentum does not provide any U.S. tax compliance or tax return preparation services to you and will not advise, prepare, or file any tax forms with any tax authorities on your behalf unless specifically requested in writing by the Member and agreed, in writing, by Momentum to do so. Upon written request of you, the Member, Momentum will expand the scope of its services with you, in writing, including but not limited to:
- (i) providing limited U.S. tax preparation services to prepare the Form 3520-A (Annual Information Return of Foreign Trust With a U.S. Owner), the Foreign Grantor Trust Owner Statement, the Statement of Foreign Trust Income Attributable to U.S. Owner, and/or the Foreign Grantor Trust Beneficiary Statement, as applicable, via a designated U.S. tax service provider; and
 - (ii) providing an additional fee from Members to reimburse for the cost of any U.S. tax preparation, and any associated analysis, tasks, etc. which shall be determined by Momentum based on the forms required, the costs of the U.S. tax service provider, the costs in procuring such services, and any out-of-pocket costs and expenses associated with this matter.

7. Division of Responsibility

- 7.1 Unless you are an Execution Only Member, we provide our service to you on an instruction-led basis. This means that **we do not provide you with any financial, investment, legal or taxation advice** in relation to your Member Fund. It is

the responsibility of you and your Appointed Adviser/DFM to choose your Investment Provider and/or the underlying investments which you retain, purchase, or sell within your Member Fund.

- 7.2 It is your responsibility to ensure that Appointed Advisers are suitably licensed and regulated to provide you with the required financial and investment advice in relation to your Member Fund. Your relationship with your Appointed Adviser is a separate agreement between you and your Appointed Adviser which is for the provision of advice, we are not party to that agreement and consequently are not responsible for any advice given to you by your Appointed Adviser in relation to your chosen Investment Provider and any underlying investments, advice in relation to your financial situation, your tax position or decisions on transfers to your Member Fund or requesting benefits from your Member Fund. If you require any form of advice, you are responsible for engaging a suitable adviser. **We cannot give you any legal, financial, investment or taxation advice.**
- 7.3 The Member is responsible, in circumstances where they wish to transfer:
- (i) into the Scheme, for appointing a suitable Appointed Adviser to provide advice to you, the Member in relation to the Scheme prior to taking any decision to transfer any existing retirement fund to the Scheme. Any requests for transfers into the Scheme and subsequent, investment preferences provided will be considered by Momentum in its role as Administrator and acted upon in line with its duties as Administrator and in line with these Terms, the Trust Deed and Rules and any regulatory requirements.
 - (ii) out of the Scheme, for ensuring you, as the Member, receive appropriate investment and financial advice around this decision to transfer out and the financial implications of doing so. You shall ensure that you have been provided with a written copy of your suitability report detailing the advice provided by the provider of the report in relation to the decision to transfer out. Momentum has a right (if they wish to exercise it) to be provided with a copy of this suitability report from you, the Member, upon request, before the transfer out proceeds. This is to confirm and record that a suitability report has been provided to the Member in accordance with exercising Momentum's duty of care to you, the Member and to carry out any additional due diligence that may be required by Momentum in the exercise of their duties to you. Momentum is under no obligation to review the content of the suitability report, or the advice provided and shall not be liable to you in any way for the content of and advice provided within the suitability report.
- 7.4 We submit your investment instructions when they are provided to us by your Investment Provider but are not responsible for:
- 7.4.1 evaluating your decisions or the suitability of the chosen investments as we cannot give you advice and are not aware of your circumstances. We only assess the chosen investment taking account of your existing portfolio is within the Investment Guidelines in place at the time of the assessment and your risk profile, as notified to us and on record at the time of assessment. This assessment will be based on current information made available by the respective fund/investment manager to the Trustee at the time of receiving the investment instruction and based on a reasonable assessment by the Trustees of the overall risk of the Member's current total portfolio incorporating this instruction. This is the nature of an instruction-led /Execution Only scheme; and
 - 7.4.2 any client classification rules in relation to the investment either as specified by your Investment Provider or in your jurisdiction at the time of advice or investment or the jurisdiction of the investment. The responsibility for client classification rules is between you and your Appointed Adviser, or if you are an Execution Only Member, with you only. For instructions placed on or after 31st March 2017, we will only assess that the investment can be invested by a Retail Client, unless you elect to be classified as a professional client as detailed at clause 5 of this agreement.
- 7.5 Except in circumstances where you have appointed a DFM (where they make the investment choice on your behalf) or are an Execution Only Member, it is your responsibility to direct your underlying investments having first sought advice from your Appointed Adviser. In circumstances where you have elected of your own accord and/or do not have an Appointed Adviser in place and operate as an Execution Only Member then you will be solely responsible for deciding on your underlying investments, without taking prior advice.
- 7.6 Any Appointed Adviser you choose is required to have a contractual agreement in place with us. This is so that they are able to follow the processes and procedures we require to administer the Scheme in accordance with regulations that bind us, including but not limited to legislation and regulatory requirements in Gibraltar, Gibraltar Income Tax Office regulations and requirements and the Scheme Rules. This contract between your Appointed Adviser and us is not in any way connected to your agreement with your Appointed Adviser for the supply of investment, tax and/ or financial advice, nor your responsibilities to ensure your Appointed Adviser is suitably regulated on an ongoing basis.

- 7.7 You understand it is the responsibility of your Appointed Adviser to disclose to you all fees payable by you in relation to your Member Fund in advance and on an ongoing basis, they are also responsible for disclosing to you any adviser remuneration earned by your Appointed Adviser in respect of their services to you.
- 7.8 As our service is provided to you on an instruction led basis it is expected that you retain an Appointed Adviser during your membership. However, for any period where you are an Execution Only Member, any action stated in the Terms to be carried out by your Appointed Adviser shall be capable of being actioned by you as an Execution Only Member and any references to Appointed Adviser shall be interpreted accordingly. We strongly recommend if you require ongoing advice in relation to your Member Fund that you appoint a regulated Appointed Adviser. Furthermore, during the period you are an Execution Only Member we are able to accept instructions directly from you on an execution only basis, subject to you signing and returning our Execution Only Service Member Declaration form, which we will provide to you.
- 7.9 While your Investment Provider is chosen in agreement with your Investment Adviser/DFM, we reserve the right to and have authority to remove your Investment Provider, any time, at our discretion.
- 7.10 You, your Appointed Adviser and/or DFM are responsible to ensure your portfolio remains aligned to your attitude to risk, ongoing financial objectives and your personal circumstance and as such regular reviews are carried out to meet this responsibility. We do not accept any liability for failure of your Appointed Adviser and/or DFM to hold regular ongoing investment review meeting with you. We may however, at anytime during your membership of the Scheme, request that you provide to us any such evidence that such regular investment review meeting occurred between you and your Appointed Investment Advise and/or DFM. Where you are an Execution Only Member you will be solely responsible for this.
- 7.11 In circumstances where the original source of your pension funds are from a United Kingdom (UK) registered scheme, whether transferred directly or indirectly to us, we will act in accordance with all applicable UK regulatory requirements applicable to a QROPS as are in force from time to time.

8. Advice

- 8.1 **No financial, tax, investment or legal advice whatsoever will be given by us (in either our capacity as Administrator or as the Trustee) as to the suitability of any investment and nothing published on the Website or provided to you, either verbally or in writing, should be constructed as financial, tax, investment or legal advice.**
- 8.2 We are not responsible for any advice provided to you by your Appointed Adviser and/or DFM, or for decisions taken by you on investments, investment performance or the financial standing of any Investment Provider. In accordance with clause 7.4 you are responsible for ensuring that your Appointed Adviser and/or DFM is suitably regulated to provide the advice you receive. This advice should be taken prior to you deciding to transfer any existing retirement fund to the Scheme and on an ongoing basis during your membership of the Scheme.
- 8.3 In our role as Administrator, we will ensure that the Scheme assets are in line with our Investment Guidelines in place at the point of receiving an investment instruction from your or your Appointed Adviser. In entering into this agreement with us you confirm that we have not given any advice and have made no representation or warranty as to our ability to advise on investment matters.

9. Investments

- 9.1 Except where you are using a DFM or are an Execution Only Member, you will choose investments in conjunction with your Investment Adviser. **All investments made according to you or your Investment Adviser(s) preferences, are made at your own risk and we shall not be responsible or liable for such investments.** You shall not, under any circumstances, be entitled to any compensation from us for any damages or losses in relation to such investments. For the avoidance of any doubt, references to "investments" or "assets" in these terms include any cash investments (for example, but without limitation, bank accounts, fixed deposits or money market funds). Where you are using a DFM, the DFM will be responsible for instructions in respect of your investments in accordance with your attitude to risk, your investment objectives and subject to our Investment Guidelines. You accept that in appointing a DFM your confirmation to us in relation to the investment instruction to place the trade will not be required as you have appointed the DFM on a discretionary basis. It is your responsibility to ensure that you have in place an agreement with a DFM which ensure that these responsibilities are agreed with your DFM and/or Appointed Adviser.

9.2 We will not give you any financial or investment advice in respect of the investments in your Member Fund as we are not authorised to do so. **We do not owe to you, nor do we accept, any obligation or duty whatsoever to:**

- (a) monitor the performance of any investments made. You, or if not an Execution Only Member, you **and** your Appointed Adviser are responsible for monitoring and reviewing your investments on an ongoing basis and at least annually;
- (b) provide any proactive or unsolicited investment or other advice to you;
- (c) advise you to sell, exchange, surrender or otherwise dispose of any investment or other asset which we hold on behalf of you (with the exception of where we have the right to sell or otherwise dispose of an investment or other asset, as stated elsewhere and in accordance with the provisions of the Agreement), and you hereby acknowledge the above;
- (d) confirm the investment instruction was placed correctly and in a timely manner by your Investment Provider. Once we have forwarded your investment Instructions to your Investment Provider this is our obligation fulfilled and it then becomes you and your Appointed Advisers responsibility to liaise with your Investment Provider regarding their placing of the investment instructions.

9.3 We do not provide any guarantee or assurance as to the investment performance of any investment effected (by execution), held or administered by us on your behalf. Where an investment is placed in administration or liquidation, we will notify you and take all reasonable steps as Trustee to seek to recover investment value from the administrator/ liquidator.

9.4 Your investments must adhere to the Investment Guidelines. It is yours and the responsibility of your appointed Investment Adviser/DFM to ensure that your investments adhere to the Investment Guidelines. We reserve the right to change the conditions of the Investment Guidelines from time to time, with the changes effective for all trades from the date of variation. However, we reserve the right to require the sale of an investment which ceases to adhere to the requirements of the Investment Guidelines, this decision will be at our discretion, and we will not be liable to you in any way regarding this sale.

9.5 In limited circumstances, and at our discretion, we may also refuse to purchase, or cash or dispose of any investments for the following reasons:

- a) Not in accordance with Investment Guidelines
- b) Instructions which are not confirmed by you or the Investment Adviser in writing (where no DFM is in place)
- c) Tax charges
- d) Unlawful, impractical, contrary to court order or legislation
- e) Insufficient funds available to place the instruction
- f) Exposed your Member Fund to current or future potential liabilities it cannot pay or are willing to accept

9.6 The value of your Member Fund can go down as well as up, depending on the investments chosen by you or by you in connection with your appointed Investment Adviser and/or DFM.

9.7 Investment may sometimes be delayed by circumstances outside of our control, for example processing timelines and protocols applied by Investment Providers, banking system failures or interruptions. We cannot be responsible in any way whatsoever for a delay outside of our control (or the direct or indirect consequences, losses and/or damages of any delay).

10. Member's requests and disclosure

10.1 We shall be entitled to consider and act upon the requests made by you, whether given orally in person, over the telephone or video conferencing facility, our Member Portal, in writing by letter, telephone, e-mail or otherwise.

10.2 We shall not be obliged to perform any of the Services or act on any instructions which might, in our opinion, contravene the laws of any jurisdiction in which we are carrying our services or be contrary to our policies and procedures in accordance with our role as Administrator, Trustee or otherwise.

- 10.3 We shall not be liable for any failure or delay to carry out requests or for any errors in carrying out such requests other than in the case of fraud, wilful default or negligence on our part or that of our officers.
- 10.4 We shall not be obliged to act upon any instructions, which appear to us to be conflicting, ambiguous, unclear or of uncertain authenticity. Where we are unable to obtain sufficient and satisfactory instructions, we reserve the right to satisfy any liabilities of yours and pay out of any monies held by us on behalf of you. We further reserve the right generally to act or not act as in our discretion as we may think fit.
- 10.5 You agree to provide us with such information as we shall request in relation to all monies forwarded to us by or on behalf of you and in relation to all payments from us to you or on your behalf. We shall be entitled at all times, if our requests for such information are not complied with, to return and/or to refuse to remit such monies.
- 10.6 You shall, at all times, ensure full disclosure of any and all information available to you concerning the Scheme and/or relevant to the services.
- 10.7 We shall be entitled to open any correspondence received by us which is addressed to you.

11. Accounts

- 11.1 All cash money relating to your Member Fund will firstly be held in the Scheme's client account with a credit institution of our choosing and will be sent to your chosen Investment Provider as and when instructed by your or your Appointed Adviser or DFM.
- 11.2 Where the credit institution provides us with an interest-bearing account, interest received from that credit institution quarterly in arrears, will be distributed by calculating your percentage share based on the cash balances held in your Member Bank Account over the interest earning period. The interest rates will be determined by the credit institution and will vary from time to time. The interest payment date to you will vary but will usually be within one month from the date of receipt of the interest at quarter end date, as determined by us. The interest paid to your Member Bank Account will be net of any fees, charges or commissions applied by the credit institution, where relevant, and Momentum as detailed in our Fee Schedule. You can check any interest paid to you by logging into the Member Portal account you have with us and generating a bank statement. If you leave the Scheme before the quarterly interest is paid to your Member Fund, then interest for that period will not be payable to you unless the amount of interest exceeds the sum of five hundred pounds sterling or currency equivalent. We reserve the right to recoup any costs and interest associated with administering the Scheme including the bank account.
- 11.3 All cash received and held by the Trustee will always be held within a pooled account, this is a general account in the name of the Trustee in which the cash of one or more customers is held but which is designated in the relevant credit institution's records as being held on trust for those customers. This is for your protection, so that the credit institution cannot exercise a right of lien or set-off against any indebtedness we or the Trustee may owe to the credit institution.

12. Fees and Discharge

Definitions used in this clause that are not defined at clause 1 of the Terms will be defined in accordance with the Fee Schedule.

- 12.1 Fees will be payable by you to us on the basis set out in this clause and the Fee Schedule. The Fees applicable to you will depend upon your category of membership (e.g., Lite or Plus) at the time of joining the Scheme and the total transfer value you transferred in to the Scheme.
- 12.2 You agree to the payment of Fees, in full, as and when they fall due to us.
- 12.3 We will provide at least 30 days prior written notice to you of any changes to the Fee Schedule.
- 12.4 Completion and submission of the Application by you, which forms part of the Agreement, provides us with your authority to collect any fees detailed in the Fee Schedule automatically, once you are accepted as a Member.
- 12.5 The Annual Trust Fee, as referred to in the Fee Schedule, is payable yearly, in advance, to us. The first year's Annual

Trust Fee and the initial Set Up Fee, as referred to in the Fee Schedule, will be collected from the Member's funds which are transferred to us, if the transfer is in cash. If it is, all or in part, an in-specie transfer they will be collected from the Investment Provider or bank directly, if available, at the discretion of the Administrator. Subsequent Annual Trust Fees will be collected yearly, in advance, on or around the anniversary of the date you were accepted as a Member. Collection of the Annual Trust Fee will vary around this anniversary depending on the availability of the funds and the processing times of the Investment Providers, which are both outside of our control. Any supplementary fees, applicable for additional services we perform, as explained in detail at Clauses 12.7 and 12.8 below, are due on completion of each transaction or as otherwise determined by the Administrator.

12.6 We will charge to you the Termination Fee (as referred to in the Fee Schedule) and terminate our services to you, in the following circumstance:

- i. you either withdraw all retirement benefits from the Scheme as income drawdown or in some other manner withdraw all retirement benefits from the Scheme; or
- ii. you transfer out of the Scheme in full or partial to another pension scheme provider; or
- iii. your Member Fund is the subject of a court order or other court judgement which requires it to be transferred out of the Scheme to another pension scheme provider or otherwise as determined by the court and/or the Administrator.

Our right to charge the Termination Fee will apply for a period of twenty years from the date you were accepted as a Member, thereafter the Termination Fee will not apply. Once our service is deemed to terminate and the Termination Fee is settled in accordance with this clause 12.6, your Member Fund will be deemed closed, and this agreement terminated.

12.7 We agree to notify you in respect of additional services performed and their associated supplementary fee, unless already included in the Fee Schedule. Supplementary fees will be charged on a time-cost basis. The time-cost basis will be relevant to the expertise and seniority of the Scheme personnel involved. These will be notified to you and are collected either immediately or may be collected at a later date, at our discretion. Where, in our opinion, the supplementary fees for the additional services appear negligible, we reserve the right to accumulate the fee and defer the need for payment for the additional services rendered until a subsequent period, as determined by us. You agree to pay for the additional services and authorise us to collect all supplementary fees in accordance with the Fee Schedule in effect from time to time and subject to this agreement, or as otherwise notified to you.

12.8 Additional services, for example, may include but are not limited to:

- a) Setting up and payment of benefits or transfers of benefits from the Scheme to other pension schemes;
- b) Enhanced due diligence checks or complying with ad-hoc Regulatory requests
- c) Her Majesty's Revenue and Customs ad hoc reporting
- d) Technical support including costs associated with obtaining technical support from third parties
- e) Provision of information to third parties (e.g. divorce proceedings)
- f) Analysis of more complex* investments

Supplementary Fees may also be incurred for any other expenses, including legal and compliance expenses, disbursements, taxes and any other costs in connection with the Scheme.

* *The complexity of the Investments will be determined by the Administrator, based on the investment specifications and time required in the analysis, in ensuring compliance with relevant rules and regulations and in line with the Investment Guidelines.*

12.9 All taxes, duties, expenses and charges we, our officers, employees or agents incurred under instructions or in the carrying out of the services, shall be reimbursed, in full, by you. We shall be entitled to discharge our Fees, expenses, taxes, duties, and charges out of the assets held within your Member Fund, as determined by us at our discretion. Entitlement to payment of all taxes, duties, expenses, fees and charges is and shall be in priority to any other rights or claims on such assets, including any such right or claim of yours. In the event of sufficient funds not being available to meet such costs, you (jointly and severally if more than one) undertake to pay said costs promptly, on demand.

12.10 Any fees, taxes, duties, expenses and charges referred to in this clause 12 and other charges of ours shall be discharged in full within one month of the date the fee or other charge is incurred. If you fail to make payment due to us under this agreement by the due date, we reserve the right to charge you interest on the overdue sum from the due date until payment of the overdue sum, (whether before or after judgment, if applicable). Interest under

this clause will accrue at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when the base rate is below 0%.

12.11 On establishment of your Member Fund, or at any time thereafter, we shall have the right to disinvest and retain within the Member account, at our discretion, a cash amount no greater than £3,000 (three thousand pounds sterling) (the "Retained Balance") or where the investment account is a non-sterling denominated currency, the currency equivalent, at an appropriate foreign exchange rate, as determined by the Administrator. The mechanisms of the Retained Balance are as follows:

- i. The Retained Balance will be held in the client account with a bank or credit institution and will form part of your Member Fund. The Retained Balance will be used primarily for payment of Fees as and when they fall due (or at a later point at our discretion) including overdue fees, where insufficient funds requested for payment of such Fees has been received from your Investment Provider. In limited circumstances, and at the Administrator's discretion, the Retained Balance may be used to cover payments other than Fees.
- ii. When the Retained Balance: (1) is initially collected on or after the establishment of your Member Fund; or (2) falls below a specified threshold of no less than £1,000 (one thousand pounds sterling) or currency equivalent as appropriate; then the balance will be replenished to the Retained Balance amount (or lower at the Trustee's discretion) and it will be done in the following way(s), by:
 - a) retaining existing cash balances within your Member Fund or withdrawal from other cash account(s) held with your Investment Provider(s); or
 - b) us instructing your Investment Provider to foreign exchange other cash balances and pay the amount requested to us to hold in your Retained Balance; or
 - c) us instructing your Investment Provider to sell investment(s) held within your Member Fund and pay the amount requested to us to hold in your Retained Balance; or
 - d) a combination of a) to c) above.

The method and investment(s) chosen shall be determined by the Administrator at our discretion. The collection and replenishment of the Retained Balance can be carried out by us at any time.

- iii. You are responsible to us for any payments necessary to cover any overdrawn or negative position within your investment account and/or policy. It is your and your Appointed Adviser(s) or DFM responsibility to ensure that overdrafts on cash accounts held with your Investment Provider are cleared. In the event the Investment Provider necessitates the clearing of any overdraft cash position in your investment account to facilitate the payment of fees or otherwise; or the initial collection of or replenishment of the Retained Balance; or where generally deemed prudent to clear the overdraft position, the Administrator may, in addition, also instruct the additional sale of investments, chosen at our discretion, from investments held within your Member Fund to cover any overdrawn amount or other amount required to facilitate our requested withdrawal from your Investment Provider.
- iv. In the event of the termination of the Agreement for whatever reason (including but not limited to you deciding to abort or discontinue our service) all outstanding Fees and any other costs incurred by us on your behalf shall remain payable by you in accordance with the Fee Schedule and these Terms and shall not be subject to any refund. If any Retained Balance amount remains following termination, it will remain as part of your Member Fund and available to deal with as we are instructed.

13. What our Fees cover

Definitions used in this clause that are not defined at clause 1 of the Terms will be defined in accordance with the Fee Schedule.

13.1 Annual Trust Fee covers the basic provision of a standard administration service. This includes the following:

- i. Record keeping, including your personal details, transaction reconciliation and annual statements.
- ii. Processing Member and their Appointed Adviser requests in relation to the standard administration of your Member Fund and investment.
- iii. Dealing with contribution and transfer requests and, where applicable, issuing annual pension benefit statement.
- iv. Provision of banking facilities.

- 13.2 Set Up Fees, where applicable cover, the cost of any services and duties necessary to establish the Member's Scheme including but not limited to the investment of funds with your chosen Investment Provider.
- 13.3 Fees for transactions, such as the review of trades submitted on dealing instructions, taking benefits and transferring out of the Scheme, as detailed in the Fee Schedule, are to cover the administration costs and expenses associated with these services.
- 13.4 Supplementary Fees are to cover any additional services we undertake as further described at Clause 6 and Clause 12 of the Terms.

14. Liability, Indemnities & responsibility for loss or damage suffered

- 14.1 We are responsible to you for foreseeable loss or damage caused by us. If we fail to comply with these terms, we are responsible for loss or damage you suffer that is a foreseeable result. Any liability of ours will be limited to the extent of your instructions and the services provided by us to you.
- 14.2 **Our total sum of liability to you under this agreement shall not exceed £15,000 (fifteen thousand pounds sterling).**
- 14.3 Neither you or us shall exclude or limit any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of any statutory rights you may have as a consumer.
- 14.4 Except as provided in clauses 14.1 – 14.3, we shall not be liable in any event for:
- (a) any indirect, unforeseeable, special or consequential loss or damage. This is loss or damage other than foreseeable loss or damage;
 - (b) loss that is not the natural result, in the usual course of matters, of the event that gave rise to the potential claim and that was not likely to arise as a result of special circumstances we knew about, or should have known about, when the event took place;
 - (c) any loss of profits or anticipated savings, including investments gains and losses;
 - (d) loss of the ability to invest and reinvest;
 - (e) any loss of income or revenue; and
 - (f) any wasted expenditure.
- 14.5 Neither party shall be liable to the other party under this agreement for losses attributable to the other party's own fault or deliberate default;
- 14.6 Other than as a direct result of neglect, wilful default or fraud by us, we shall not accept any liability or obligation in relation to Gibraltar tax charges, any overseas transfers charge and/or any other tax charges or levy.
- 14.7 You will be personally responsible for any costs, claims, expenses, tax charges, overdrafts, demands and losses that we, the Trustee, our employees, agents, Group Companies and Third Party Service Providers ("Relevant Parties") may suffer or incur as a result of supplying you with the services for your Member Fund, except where such arises from the negligence, fraud or wilful default of a Relevant Party. Your responsibility under this clause 14.7 will continue to apply after termination of the Agreement with us for whatever reason, including but not limited to transfer of your Member Fund to another provider.
- 14.8 Notwithstanding clause 14.1 – 14.7, we are not responsible or liable (and will not provide any compensation) for any loss, liability, cost, expense, fees or missed profit that you or your Member Fund suffer:

In this clause 14.8 any reference to 'instruction' shall include investment instruction and general instruction.

- (a) where you or your Appointed Adviser (or other third party) has sent an instruction or other request to us which is not received by us or has not been sent to us in accordance with the Terms of this Agreement;
- (b) where we have relied and/or acted on any instruction or other request within a reasonable time of receiving that instruction;

- (c) where you or your Appointed Adviser is responsible for giving an instruction or other request, or carrying out your instruction or other request and fails, wholly or in part, to carry out the instruction or other request within a reasonable period of time or provides an unclear and/ or inaccurate instruction or other request which is not clarified within a reasonable period of time;
- (d) as a result of us fairly exercising our discretion to refuse to carry out your instructions or other request in accordance with this Agreement;
- (e) arising from or in connection with you, your Appointed Adviser's or another third party's actions or omissions relating to the choice, purchase, retention or sale of any investments;
- (f) where your Appointed Adviser or other third party has caused the loss or damage;
- (g) arising out of or in connection with the performance of investments of any nature;
- (h) arising from the actions or omissions, delays or defaults of a third party including any bank, third party nominee, custodian or other institution which deal with your investments; and
- (i) where our delay or failure to provide the services set out in this Agreement is caused by events, circumstances or causes beyond our reasonable control as more specifically describe at clause 16 of these terms;

14.9 You are liable in respect of any claims, losses, damages and expenses that we may incur as a result of any incorrect information provided by you to us or of any failure on your part to comply with your obligations and responsibilities in accordance with the Agreement.

14.10 You are personally liable and responsible to pay all costs, charges, taxes, fees and expenses due to us or payable by Us on your behalf or in relation to any investments held on your behalf and also any tax charges and shall indemnify us for any loss which we suffer as a result of you failing to do so. You are personally liable for tax charges in respect of your Scheme levied by the Gibraltar Income Tax Office, by HMRC and any other tax authority.

14.11 You, the Member, shall indemnify Momentum, as the Retirement Scheme Administrator and Trustee, against any claim for any loss, liability, cost or expense by any party with respect to the advice and/or assistance received by you from your independent tax accountant, tax/legal advisor, or any other tax return preparer with respect to your membership in the Scheme. Furthermore, you, the Member, will not hold Momentum liable in anyway if;

- (i) the advice and/or assistance received by you from the third party is incorrect and/or incomplete; or
- (ii) you fail to take any tax advice from an independent tax accountant, tax/legal advisor, or any other tax return preparer.

15. Data Protection and Privacy Policy

15.1 Personal data refers to information that relates to you and allows us to identify you, either directly or in combination with other information that we may hold. We collect personal information about you at various points during your membership to the Scheme, including when becoming a Member or using the Website. We collect various categories of information, including but not limited to, personal identifiers, contact, social relationships, financial data and documentary data.

15.2 Personal data is predominantly collected through the Application and any subsequent interactions. We collect your personal data primarily to administer and run your pension scheme, which may involve seeking, receiving and processing instructions from you and/or your Appointed Adviser and to fulfil both our regulatory obligations and our obligations towards you. We have in place appropriate security measures to prevent your personal data from being accidentally lost, used or accessed in an unauthorised way, altered or destroyed. We will ensure that when your personal data is shared, this is done in a secure manner and in line with the requirements set by the applicable Data Protection Legislation.

15.3 For further information regarding your rights and the way we collect and process your personal data you may view our privacy statement which can be accessed from the Website or [via this link](#).

15.4 We may record the content of incoming and outgoing calls for quality assurance, training and regulatory purposes. We reserve the right to disclose the contents of any recording to a relevant regulatory body, such as the GFSC, or for use, as required, in any legal, regulatory or ombudsman proceedings.

16. Circumstances Beyond our Control

We will not be responsible if we fail, interrupt or delay performing duties under the Agreement because of a breakdown, failure or malfunction of any telecommunications or computer systems (internally or externally), equipment or software, or any other event that is not reasonably within our control. This includes the breakdown or failure of any clearing system used in connection with the services provided under the Agreement, the insolvency or default of any participant in such a clearing system or the failure by any settlement bank to make, receive or debit any payment or the insolvency or default of a bank or the malicious actions of any third party. This also includes failures, interruptions or delays due to industrial disputes, postal delays, unauthorised access, theft, earthquakes, national emergency, pandemics, epidemics and other interferences, including but not limited to severe or abnormal weather conditions.

17. Termination

- 17.1 The Agreement, as amended from time to time, will continue to apply until your membership of the Scheme has ended or in accordance with Clause 17.2. You will remain responsible for the payment of all Fees and other relevant payments and charges as they fall due, up to and including the date of termination to the extent that they are not deducted from your Member Fund.
- 17.2 We have the right to terminate the Agreement, our service, your Member Fund and your membership to the Scheme in accordance with the Scheme Rules, HMRC requirements and the Gibraltar Income Tax Office at any time by giving you not less than 30 days' notice (except in an emergency where we may not be able to give you such notice). We are entitled to do so at our discretion, but we shall not exercise this right unreasonably. If we do terminate, we have the right to transfer your Member Fund to another Pension Scheme which is a UK Registered Scheme or a QROPS by transferring your assets in specie and/or in cash or by electing to take your Member Fund as retirement benefits if you are aged 55 or older, less any charges and fees payable..
- 17.3 Termination shall be without prejudice to the completion of transactions already initiated by or on behalf of your Member Fund. Termination shall not affect any rights which we or you have accrued or any outstanding obligations.

18. How to provide notice to the other party

- 18.1 Any notice given to a party under or in connection with these Terms shall be in writing and shall be:
- (a) if to us; delivered by hand or by pre-paid first-class post or other next working day delivery service at our registered office or our principal place of business; or if sent by email to the address specified at Clause 3 of the Terms;
 - (b) if to you: delivered by hand or by pre-paid first-class post or other next working day delivery service to the postal address we hold on record or sent by email to the email address specified in the Application or any other postal or email address that you subsequently provide to us in writing.
- 18.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting or at the time recorded by the delivery service; and
 - (c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- 18.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

19. Complaints

- 19.1 If you wish to make a complaint about the services, please address your complaint to the Group Head of Compliance and send it either by post or via email through the contact details as set out at Clause 3.1 above. Further information about the complaint's procedure is set out in the complaints policy on the Website or by [following this link](#).
- 19.2 If you remain dissatisfied with our response to your complaint, you have the right to refer your complaint to GFSC.

20. Variation and Changes

- 20.1 We have the right to vary or change the Terms upon providing you at least 30 days prior written notice of such. Any variation or change will take effect from the date we specify on the notice.
- 20.2 We will normally only vary or change the Terms for a valid reason or reasons. Examples of a valid reason include but are not limited to:
- a) changes in the regulatory regime;
 - b) changes in pensions or other relevant legislation;
 - c) correcting evident errors;
 - d) to reflect changes in our business, like ownership or how it operates;
 - e) changes or updates to our banking arrangements and provisions;
 - f) changes in our services which may impact the operation of your Member Fund;
 - g) changes in how we administer your Member Fund;
 - h) to make our Terms easier to read and understand; and/or
 - i) any other reason which we consider to be a valid reason for change.
- 20.3 Incidental amendments, such as the correction of typographical errors, clarity or drafting and formatting errors will be effected immediately and will be available on the website.

21. General

- 21.1 We and you agree that we shall only use each other's confidential information for the purposes of the Agreement between us. We and you will only disclose the other party's confidential information where expressly authorised by the other party to do so or if required to do so by law, by the courts, to a relevant authority or to a regulatory body.
- 21.2 Nobody else has any rights under the Agreement or the Terms. The Agreement, including the Terms, are between you and us. No other person shall have any rights to enforce any of its terms.
- 21.3 If a court finds part of the Agreement or the Terms illegal, the rest will continue in force. Each of the paragraphs of the Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 21.4 Even if we delay in enforcing the Agreement, we can still enforce them later. If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaking this contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date. For example, if you miss a payment and we do not chase you, but we continue to provide the service, we can still require you to make the payment at a later date.
- 21.5 We may transfer this agreement or these terms to someone else. We may transfer our rights and obligations under these terms to another organisation. We will always tell you in writing if this happens and we will ensure that the transfer will not affect your rights under the Agreement.
- 21.6 The Terms are provided in English and any notices, communications and other documents (including the Relevant Documents) for the Scheme and your Member Fund will always be in English.
- 21.7 Professional advice: We shall be entitled to seek professional advice for the protection of assets or advancement of the services in respect of the Scheme as a whole, part of the Scheme and also in respect of your Member Fund and shall be reimbursed by you for your percentage share in the cost of such advice.

22. Anti-Money Laundering Obligations

- 22.1 We are required to act in accordance with the laws and regulations and requests of public and regulatory authorities in various jurisdictions which relate to the prevention of money laundering, terrorist financing and the provision of financial and other services to any persons or entities which may be subject to sanctions. We may, without any liability, take whatever action we consider appropriate to meet any obligations, either in Gibraltar or elsewhere in the world, relating to the prevention of fraud, money laundering and terrorist activity and the provision of financial and

other services to persons who may be subject to sanctions. We may also, without any liability, take whatever action we consider appropriate in case we know or suspect a breach of security or other suspicious circumstances in respect of or in connection with the operation of your Member Fund. Any such action may include, but is not limited to, investigating the source of the transfer and payments of funds into and out of your Member Fund. Exceptionally, this may delay the carrying out of your instructions and where possible, we will advise you of the reasons for and likely length of any delay.

22.2 We shall not be responsible to you or any third party for any loss (whether direct, indirect, consequential or otherwise) or damage incurred as a result of us taking the actions set out in clause 22.1.

23. Law and Jurisdiction

23.1 This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation are governed by and construed in accordance with the laws of Gibraltar.

23.2 Each party irrevocably agrees that the courts of Gibraltar shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.