

**Dated:** 2019

- (1) The Construction Industry Federation**
  - (2) Construction Workers' Pension Scheme Trustees Designated Activity Company**
- 

**DEED OF AMENDMENT AND CONSOLIDATION  
OF THE CONSTRUCTION WORKERS' PENSION SCHEME**

---

**THIS DEED OF AMENDMENT AND CONSOLIDATION** is made the \_\_\_\_\_ day of \_\_\_\_\_  
2018

**BETWEEN**

1. **THE CONSTRUCTION INDUSTRY FEDERATION** a trade union registered under the Trade Union Acts, 1871 to 1990, whose principal office is situate at Construction House, Canal Road, Dublin 6 (the "**Federation**"); and
2. **CONSTRUCTION WORKERS' PENSION SCHEME TRUSTEES DESIGNATED ACTIVITY COMPANY** (Company Registration Number 418309) whose registered office is situate at Canal House, Canal Road, Dublin 6 (the "**Trustee**"),

**AND IS SUPPLEMENTAL TO:**

- (i) a Definitive Trust Deed (as amended, the "**Trust Deed**") dated 25 May 2006 made between the Federation of the one part and the Trustee of the second part with rules scheduled thereto (as amended, the "**Rules**") whereby the Federation established the Construction Workers' Pension Scheme (the "**Scheme**") for providing relevant benefits for certain employees of the Employers (as defined therein) in accordance with the regulations set out in the Trust Deed and the Rules;
- (ii) a Deed of Amendment dated 28 June 2007 made between the Federation of the one part and the Trustee of the second part whereby certain provisions of the Trust Deed and the Rules were amended;
- (iii) a Deed of Amendment dated 27 September 2007 made between the Federation of the one part and the Trustee of the second part whereby Clause 12.1 of the Trust Deed was amended;
- (iv) a Deed of Amendment dated 28 November 2008 made between the Federation of the one part and the Trustee of the second part whereby certain provisions of the Trust Deed and Rules were amended;
- (v) a Deed of Amendment dated 9 November 2010 made between the Federation of the one part and the Trustee of the second part whereby Clause 8.3 and Clause 11(d)(i) of the Trust Deed were amended;
- (vi) a Deed of Amendment dated 11 June 2013 made between the Federation of the one part and the Trustee of the second part whereby certain provisions of the Rules were amended;
- (vii) a Deed of Amendment dated 28 May 2015 made between the Federation of the one part and the Trustee of the second part whereby Rule 12.1 and Rule 12.2 of the Rules were amended;
- (viii) a Deed of Amendment dated 25 June 2015 made between the Federation of the one part and the Trustee of the second part whereby Rule 12.1(b) of the Trust Deed was amended;
- (ix) a Deed of Amendment dated 26 May 2016 made between the Federation of the one part and the Trustee of the second part whereby certain provisions of the Rules were amended;
- (x) a Deed of Amendment dated \_\_\_\_\_ 2017 made between the Federation of the one part and the Trustee of the second part whereby Rule 2 of the Rules was amended; and

- (xi) a Deed of Amendment dated \_\_\_\_\_ 2017 made between the Federation of the one part and the Trustee of the other part whereby Rules 3 and 13 of the Rules were amended.

**WHEREAS:**

- A. By Clause 19 of the Trust Deed, subject to certain restrictions none of which are breached by the terms of this Deed, the Trustee with the consent of the Federation may by supplemental deed, with effect from such date as is stated in the deed, including a preceding date, amend any of the provisions of the Trust Deed and the Rules or may adopt new provisions and / or new rules in place of the provisions of the Trust Deed and the Rules.
- B. The Trustee is the present trustee of the Scheme.
- C. The Trustee with the consent of the Federation has determined to amend the Trust Deed and Rules as set out in this Deed.

**NOW THIS DEED WITNESSES AND IT IS HEREBY AGREED AND DECLARED** as follows:

1. With effect on and from the date of establishment of the Scheme, Clause 9.3 shall be deleted and replaced with the following new Clause 9.3:

"9.3 The Trustee may, subject to the requirements of the Pensions Act, borrow for the purposes of the Scheme, whether on the security of investments or otherwise, and may undertake on behalf of the Scheme any liability in relation to any investment or application of the Fund including, for the avoidance of doubt, by the giving of any guarantees, indemnities or undertakings binding all or any part of the Fund."
2. With effect on and from the date of this Deed, the provisions of the Trust Deed (as amended by Clause 1 of this Deed) are hereby deleted and replaced by the provisions contained in the First Schedule hereto and the Rules are hereby deleted and replaced by the provisions contained in the Second Schedule hereto.
3. The provisions of this Deed are confirmed as the current provisions of the Scheme.
4. All expressions used in this Deed shall have the same meaning as defined in the Trust Deed and Rules.

**FIRST SCHEDULE**

**CONSOLIDATED COPY OF THE DEFINITIVE TRUST DEED OF THE CONSTRUCTION  
WORKERS' PENSION SCHEME**

1	DEFINITIONS AND INTERPRETATION .....	1
2	MAIN PURPOSE .....	1
3	REVENUE COMMISSIONERS' APPROVAL AND PENSIONS ACT .....	1
4	FUND .....	1
5	ACTUARY.....	1
6	AUDITOR.....	1
7	ADMINISTRATOR.....	2
8	THE EMPLOYERS .....	2
9	INVESTMENTS .....	2
10	APPOINTMENT OF TRUSTEE .....	4
11	TRUSTEE'S COVENANTS .....	5
12	TRUSTEE'S DUTIES.....	5
13	TRUSTEE'S POWERS, FUNCTIONS AND INDEMNITY .....	6
14	INFORMATION FROM AND CONSENTS AND DECISIONS OF EMPLOYERS .....	9
15	ARBITRATION AND FINAL DECISIONS.....	9
16	SUBSTITUTION OF FEDERATION .....	9
17	WINDING UP OF SCHEME .....	10
18	DISSOLUTION.....	10
19	AMENDMENTS.....	12
20	EMPLOYER'S CONSENT.....	12
21	EXERCISE OF AUTHORITY BY THE FEDERATION .....	12
22	PROPER LAW AND JURISDICTION.....	13

## **1 Definitions and Interpretation**

The definitions contained in Rule 1.1 shall apply to expressions used in this Deed and the provisions regulating the interpretation of the Rules contained in Rule 1.2 shall apply to the interpretation of this Deed.

## **2 Main Purpose**

2.1 The Federation has established the Scheme and constituted the Fund under irrevocable trusts to commence on and operate from 1 July 2006 and to be administered in accordance with the Pensions Act and with this Deed and the Rules scheduled hereto.

2.2 The Federation has appointed the Trustee to be the first and sole trustee of the Scheme.

2.3 The main purpose of the Scheme is to provide Members or their Dependants or legal personal representatives, with relevant benefits, as defined in Section 770 of the Taxes Act, in respect of service as an employee.

## **3 Revenue Commissioners' Approval, Pensions Act and Family Law Acts**

3.1 The Scheme is a retirement benefits scheme, as defined by Section 771 of the Taxes Act, capable of being approved by the Revenue Commissioners under Section 772 of the Taxes Act and of being treated by them as an exempt approved scheme under Section 774 of the Taxes Act. Notwithstanding anything in this Deed or the Rules, no benefit shall be provided under the Scheme which would exceed the maximum benefit permitted, or otherwise conflict with requirements imposed, by the Revenue Commissioners from time to time as a condition of approval under the Taxes Act. Any benefit otherwise provided shall be reduced or varied as may be necessary to ensure that the maximum is not exceeded and that there is no conflict with the requirements. The Trustee shall comply at all times with any undertaking given to the Revenue Commissioners in order to obtain or retain approval.

3.2 This Deed and the Rules are subject to the Pensions Act and the Family Law Acts and shall take effect subject to any modification necessary to comply with them. The duties of the Federation and the Employers, the Trustee, the Administrator, the Actuary and the Auditor shall be regulated by, and carried out in accordance with, the Pensions Act.

## **4 Fund**

The moneys and other assets from time to time held by or on account of the Trustee shall constitute the Fund of the Scheme.

## **5 Actuary**

The Trustee shall appoint the Actuary of the Scheme, who shall be a person qualified for appointment as the Actuary of the Scheme for the purposes of the Pensions Act.

## **6 Auditor**

The Trustee shall appoint the Auditor of the Scheme, who shall be a person qualified for appointment as the Auditor of the Scheme for the purposes of the Pensions Act.

## **7 Administrator**

The Trustee is resident for corporation tax purposes in the Republic of Ireland and shall be the Administrator unless or until the Trustee shall appoint some other person or persons to be the administrator of the Scheme and to discharge the duties set out in Chapter 1 of Part 30 of the Taxes Act.

## **8 The Employers**

8.1 An Eligible Employer may, with the agreement of the Trustee, become an Employer by entering into a Deed of Adherence with the Trustee in the form set out in the Appendix to the Rules or in such other form as the Trustee may from time to time require.

8.2 An Employer shall cease to be an Employer:

- (a) on ceasing to be the employer of any Eligible Employee; or
- (b) on notifying the Trustee of its intention to cease to participate as an Employer in the Scheme;

provided that such cessation shall not take effect until the Employer has notified the Trustee that it has ceased to be an Employer and has discharged any outstanding contribution obligations under Rule 4.

8.3 The Trustee may suspend an Employer's participation as an Employer in the Scheme for such period as it may determine, where the Employer has not complied with its obligations to make contributions to the Scheme in respect of one or more Members in its employment or employees in its employment who ought to have been included in the Scheme as Members. For the period of the suspension, no further contributions shall be payable under Rule 4.1 in respect of any Member in the employment of the Employer and no new Eligible Employees in the employment of the Employer shall be registered as Members.

The Employer may apply to be re-admitted as an Employer upon paying the Trustee all arrears of contributions up to the date of its suspension and the full amount of any Levies due in respect of such amounts. The requirement to pay Levies may be wholly or partially waived at the discretion of the Trustee. The Trustee may, where applicable, require the Employer to verify that they have complied with the terms of a Sectoral Employment Order during the period of suspension and, in the absence of such verification, the Trustee may report this to any appropriate body. Where an Employer who applies to be re-admitted under this Clause 8.3 has been suspended on a previous occasion, the Trustee may before allowing him to be re-admitted as an Employer impose such additional conditions as they determine on the Employer, and in doing so may have regard to the overall interests of the Scheme.

8.4 An Eligible Employer who has ceased to be an Employer under Clause 8.2 may again become an Employer and shall again become an Employer if obliged under a Sectoral Employment Order to participate in the Scheme and on again becoming an Employer shall again be bound by the Deed of Adherence with the Trustee to which Clause 8.1 refers. An Employer who is suspended under Clause 8.3 shall not be entitled to be re-admitted under this Clause 8.4.

## **9 Investments**

9.1 The Trustee may, subject to compliance with its investment obligations under Section 59(1)(a) of the Pensions Act, retain any amounts it thinks proper in bank accounts designated in its name and may invest or apply the whole or any part of the remainder of the Fund which is not required immediately for the purposes of

the Scheme in, or on the security of, any stocks, shares, debentures, debenture stock, units in collective investment undertakings or other investments or applications of any kind, wherever situate, whether income producing or not, whether involving liability or not and whether or not authorised by law for the investment of trust moneys, or on whatever credit (with or without security) as the Trustee in its absolute discretion thinks fit and more particularly:

- (a) by placing any amount on deposit or current account designated in its name with any local authority, bank, insurance company, building society or finance company at whatever rate of interest (if any) and on whatever terms the Trustee thinks fit,
- (b) by investing in transferable or non-transferable securities, including shares, warrants, debentures including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness issued by or on behalf of any body corporate or mutual body, government and public securities, including loan stock, bonds, and other instruments creating or acknowledging indebtedness issued by or on behalf of a government, local authority or public authority, bonds or other instruments creating or acknowledging indebtedness, certificates representing securities, or money market instruments,
- (c) by participating in any collective investment scheme or fund, including a unit trust, partnership, company or unit linked arrangement, a scheme of deposit administration or any form of managed fund administered by any financial institution including a credit institution or Life Office,
- (d) by investing in any deferred or immediate annuity contracts or policies or retirement, endowment or sinking fund contracts or policies effected with any Life Office on terms that all sums payable under the contracts or policies shall be held by the Trustee upon trust for the purposes of the Scheme,
- (e) by participating in any investment (whether income producing or not) or in the acquisition or acquisition and development of any interest in land or property, whether alone or jointly with any other party (notwithstanding that the interest of the Trustee may be a minority interest) and whether as partners or as trustees, to hold the same upon trust for sale or otherwise, or
- (f) by engaging in underwriting or sub-underwriting in connection with the offer for sale of any stocks, shares or other securities.

9.2 Subject to Clause 13.3, money shall be deposited and investments registered in the name of the Trustee or in the name of some company as nominee of the Trustee.

9.3 The Trustee may, subject to the requirements of the Pensions Act, borrow for the purposes of the Scheme, whether on the security of investments or otherwise, and may undertake on behalf of the Scheme any liability in relation to any investment or application of the Fund including, for the avoidance of doubt, by the giving of any guarantees, indemnities or undertakings binding all or any part of the Fund.

9.4 In investing the assets of the Scheme, the Trustee may establish such one of more sub-funds to be utilised by the Trustee from time to time for the purposes of the Scheme as the Trustee may, in consultation with the Actuary, determine, and may maintain such sub-funds for such period as the Trustee in consultation with the Actuary deems appropriate. Where provided for under this Deed and Rules, such sub-funds shall include the Annuity Fund, the Members' Reserve Fund, the Former Members' Reserve Fund and the Death in Service Fund. The Trustee shall adopt appropriate investment strategies for investing each sub-fund which it maintains.

- 9.5 The Trustee shall maintain a Members' Reserve Fund in respect of any Accounts maintained by it under Rule 6. The Trustee may create sub-funds within the Members' Reserve Fund which may be invested in different classes or types of assets. The Trustee may allocate the assets comprising an Account between one or more such sub-funds, and may vary the allocation between such sub-funds from time to time having regard to the age or the period to anticipated retirement of the Member or former Member on whose behalf of the Account is held.
- 9.6 The Trustee shall maintain an Annuity Fund in respect of any pension benefits paid or due for payment or contingently payable out of the Fund. The Trustee may maintain within the Annuity Fund such reserves as the Trustee in consultation with the Actuary deems to be appropriate in order to provide for such benefits and to pay for the cost of administering the Annuity Fund and the payment of pensions. In determining the amount of any pension benefits to be secured in respect of a Member or former Member under the Rules the Trustee shall be entitled to have regard to the overall funding position of the Annuity Fund from time to time with respect to the liabilities which it is intended to match or cover.

## **10 Appointment Of Trustee**

- 10.1 A body corporate may act as sole trustee or with one or more other trustees, but if each trustee is an individual then the number of trustees shall be at least three.
- 10.2 The office of a Trustee shall be vacated if:
- (a) the Trustee dies, if an individual;
  - (b) an order is made or an effective resolution is passed for the Trustee's winding up;
  - (c) the Trustee is removed from office under Section 59A(8) of the Pensions Act;
  - (d) the Trustee is removed from office under Clause 10.3; or
  - (e) the Trustee resigns.
- 10.3 Subject to Clause 13.6, the Federation may remove the Trustee or appoint a new or additional trustee or trustees at any time by deed. The Federation shall not remove the sole Trustee or allow the retirement of such Trustee without appointing a new trustee or trustees in its place.
- 10.4 A Trustee may resign by giving one month's notice in writing to the Federation.
- 10.5 When a Trustee resigns or is removed from office or otherwise than by reason of his or her death or dissolution vacates office he or she shall forthwith do all acts and things necessary to vest the Fund in the joint names of the continuing and/or new trustee or trustees.
- 10.6 Each director of the Trustee may be paid such fee (if any) at the expense of the Fund as may be agreed between the Trustee and the Federation and shall be entitled to be reimbursed for all expenses incurred by him in carrying out his duties as a director of the Trustee.
- 10.7 Any Trustee or director of the Trustee who is otherwise eligible for membership may be a Member or other beneficiary of the Scheme and may retain for his or her own absolute benefit all moneys and benefits accruing to him or her as a Member or beneficiary.
- 10.8 No Trustee shall be appointed and no director shall be appointed to the Trustee who fails to satisfy the requirements of Section 59A(1) of the Pensions Act.



## **11 Trustee's Covenants**

The Trustee covenants with the Employers and each of them:

- (a) to manage and administer the Scheme,
- (b) to hold all benefits payable under the Scheme in trust for the respective persons for whose benefit they are payable in accordance with this Deed and the Rules,
- (c) to comply with this Deed and the Rules, and
- (d) not to disclose to any person (including any Member, former Member or Pensioner) any matter of which the Trustee becomes aware by reason of its position as Trustee and which relates:
  - (i) to the business and affairs of the Employers or to the Scheme, except with the consent of the Employer concerned or as required under the Pensions Act or for the purpose of notifying a Member that his Employer may be or has been suspended from the Scheme in accordance with Clause 8, or
  - (ii) to any Member or other beneficiary, except to that Member or beneficiary or with his or her consent or as required under the Pensions Act.

## **12 Trustee's Duties**

12.1 Without prejudice to the duties of trustees generally and in addition to all other requirements of law the Trustee shall:

- (a) ensure, in so far as is reasonable, that the contributions payable are received and that they are invested in accordance with Clause 9 within 10 days of the latest date on which they should have been remitted or paid by the Employers or if received later than that date, as soon as practicable after receipt,
- (b) provide for the proper investment of the Fund in accordance with this Deed and any regulations made under Section 59(1)(b) of the Pensions Act,
- (c) prepare and maintain a written statement of investment policy principles and comply with any other obligations imposed on them by Section 59(1B) of the Pensions Act and any regulations made under Section 59(1C) of the Pensions Act,
- (d) pay out of the Fund the costs and expenses of managing and administering the Scheme, and the Trustee shall be entitled to determine out of which assets of the Fund such costs and expenses should be paid,
- (e) where appropriate, make arrangements for the payment of benefits payable under the Rules as they become due whether in the State or in any other Member State of the European Communities, net of any taxes and transaction charges that may be applicable,
- (f) undertake trustee training in accordance with Section 59AA of the Pensions Act,
- (g) ensure that proper membership and financial records are kept,
- (h) if the Scheme is wound up, apply its assets in discharge of its liabilities without undue delay in accordance with this Deed and the Rules,

- (i) ensure that at all times there is a registered administrator appointed in compliance with Section 59(1AA) of the Pensions Act,
- (j) keep minutes of its proceedings,
- (k) ensure that the Scheme is registered with the Pensions Authority under the Pensions Act and provide the Pensions Authority with any information required for registration, and
- (l) furnish information in accordance with the Pensions Act on this Deed and the Rules and on the administration and finances of the Scheme, the rights and obligations which arise or may arise under the Scheme and on such other matters as may be prescribed by the Pensions Act to:
  - (i) Members and prospective Members,
  - (ii) the spouses of Members and prospective Members,
  - (iii) persons within the application of the Scheme and qualifying or prospectively qualifying for benefits thereunder, and
  - (iv) any trade union representing the Members to which a negotiation licence has been issued under Part II of the Trade Union Act, 1941,

provided that where so provided under the Pensions Act the Trustee shall not be bound to furnish any of the information specified to any of the persons specified unless so requested by such persons.

- 12.2 The Trustee and its directors and secretary shall keep confidential all business and proceedings of the Trustee and shall not disclose any matters of which it or they become aware by reason of their position as Trustee or as directors or secretary of the Trustee, unless such disclosure is required by law or to comply with the provisions of this Deed and Rules or the Trustee's duties as trustee of the Scheme, or where the Trustee has resolved that such matter may be disclosed.

### **13 Trustee's Powers, Functions and Indemnity**

- 13.1 Any Trustee being a body corporate shall exercise its powers and execute its duties:

- (a) by resolutions of its directors for the time being, or
- (b) by the acts of its proper officers appointed for the purpose.

- 13.2 The Trustee may appoint solicitors, actuaries, accountants and other agents (including any of its officers or the officers of its subsidiary companies and including any officers of the Federation), and be reimbursed with any expense incurred in employing agents. The Trustee may engage one or more companies, firms or individuals to provide administration services in connection with the Scheme, on such terms as the Trustee may decide. Any such person or firm may be empowered by the Trustee to exercise or carry out all or any of the functions, powers, duties and discretions of the Trustee as the Trustee thinks expedient.

- 13.3 The Trustee may appoint and dismiss any one or more companies, firms or individuals as investment manager or investment managers of the Scheme or of the Fund or a part of the Fund. The terms of the appointment shall be agreed from time to time between the Trustee and the investment manager or investment managers. Any investment manager or investment managers may be empowered by the Trustee to exercise or carry out all or any of the powers of investment of the Trustee and such of the other functions, powers, duties and discretions of the Trustee as the Trustee thinks expedient.

- 13.4 The Trustee may appoint one or more firm or corporate bodies as custodial agents. The investments, monies and other assets of the Fund may be placed by the Trustee in the name or under the control of custodial agents to the extent and in the proportions which the Trustee determines.
- 13.5 The Trustee shall have and may exercise all powers, rights and privileges in connection with the Fund requisite or proper to enable it to carry out all or any transactions, acts, deeds or things arising under or in connection with this Deed and the Rules or required of it under the Pensions Act or arising in connection with any deferred or immediate annuities or policies of assurance effected by it with a Life Office. The consent or concurrence of either the Federation or the Employers or the Members or any of them shall not be necessary for any receipt, discharge, payment, or act in connection with this Deed or the Rules or any annuities or policies. Persons transacting business with the Trustee in relation to the Fund need not and may not enquire of the Trustee, the Federation, the Employers or the Members as to the application of funds in the hands of the Trustee, and all persons paying money to the Trustee shall be completely and sufficiently discharged by their receipt.
- 13.6 In the event of the appointment of Trustees, other than a Trustee acting as sole trustee of the Scheme, the business of the Trustees shall be regulated according to such regulations as the Trustees and the Federation shall incorporate into this Deed.
- 13.7 No decision made or resolution passed by the Trustee shall be invalidated on the grounds that the Trustee or any director of the Trustee had an interest in a personal or fiduciary capacity in the decision or resolution. A director of the Trustee who has a personal interest in such a decision or resolution shall declare his or her interest to the Trustee and shall refrain from voting on the matter, unless such interest arises from being a Member or other beneficiary of the Scheme.
- 13.8 The Trustee shall keep all accounts, entries, registers and records necessary for the proper working of the Fund and shall, if so required under the Pensions Act, cause the accounts to be audited by the Auditor in accordance with the requirements of the Pensions Act. The Auditor shall have access to all books, papers, vouchers, accounts and documents connected with the Fund and shall prepare a report on the audited accounts, and the Trustee shall furnish him or her with such other information as he or she may reasonably request for the purpose of performing his or her functions and duties.
- 13.9 The Trustee shall direct the Actuary to value the Fund and the liabilities of the Scheme as at such dates as it thinks fit (and at least as frequently as may be required under the Pensions Act) and to prepare a report on each valuation as soon as is reasonably practicable after its effective date. The Trustee shall furnish to the Actuary such information as he or she may reasonably require for the purpose of performing his or her functions and duties. The Trustee shall submit an actuarial funding certificate and a funding standard reserve certificate to the Pensions Authority at such intervals and in such form as may be required under the Pensions Act. In the event that the Trustee is required to submit a funding proposal to the Pensions Authority, the procedures set out in the Pensions Act shall apply.
- 13.10 The Trustee shall prepare or cause to be prepared not later than nine months after the end of each reporting year an annual report in respect of that reporting year containing the information required under the Pensions Act.
- 13.11 The Trustee shall make available to the persons and in the manner prescribed by the Pensions Act each set of audited accounts of the Scheme and the Auditor's report thereon (if any), the Actuary's report on each valuation prepared by him or her and each annual report of the Scheme.

- 13.12 In addition to all ordinary powers vested in them by this Deed and by law, the Trustee may:
- (a) delegate to any committee or person appointed by it, with powers to any committee (where it cannot reach consensus) to act by majority vote, any of its powers, duties, authorities and discretions as it thinks necessary or desirable for the convenient administration of the Scheme,
  - (b) arrange for proper remuneration for any agents, and
  - (c) make any arrangements generally for the administration of the Scheme as it thinks fit.
- 13.13 For the purpose of providing the benefits under the Rules, the Trustee may rely and act upon the advice of any actuary or upon quotations furnished to them by any Life Office. The Trustee shall not incur any liability or responsibility whatsoever if any advice or quotation sought by it is incorrect or in any way insufficient for its purposes.
- 13.14 The Trustee may appoint the Federation and/or any one or more of the Employers and/or any Life Office and/or any other person as it may from time to time decide as its agent or agents for the purposes of paying any benefit or benefits payable under the Rules. Receipt by any such agent shall be a sufficient discharge to the Trustee for the payment of the benefit or benefits.
- 13.15 Neither the Trustee nor any director of the Trustee shall be responsible, chargeable or liable in any manner whatsoever for, or in respect of, any loss or depreciation of or default upon any of the investments or bank or other deposits, annuities or policies in or upon which the Fund or any part of it may at any time be invested or deposited, or for any delay which may occur from whatever cause in the investment of any moneys belonging to the Fund, or for the safety of any securities or documents of title deposited by the Trustee for safe custody, or for the exercise of any discretionary power vested in the Trustee by this Deed or by the Rules, including any act or omission by any director or officer of the Trustee or any committee or agent appointed by the Trustee or by reason of any other matter or thing except:
- (a) wilful default on the part of the Trustee or the director of the Trustee who is sought to be made liable, or
  - (b) negligence, in the case of a Trustee which or a director of the Trustee who is engaged in the business of providing trustee services for a fee.
- 13.16 Except insofar as liable under Clause 13.15, and subject to the benefit of Clause 13.17, the Trustee and the directors of the Trustee shall have the benefit of all indemnities conferred upon trustees generally by Statute or otherwise and shall be indemnified at the expense of the Fund against any actions, claims and demands arising out of anything done or caused to be done by them in the exercise of the duties, powers and discretions vested in them by this Deed or the Rules. The Trustee may determine in its absolute discretion which assets of the Scheme shall be used to meet any action, claim, or demand made against the Trustee or the directors of the Trustee.
- 13.17 The Trustee may insure itself, the directors of the Trustee and the assets of the Fund against any actions, claims and demands arising out of anything done or caused to be done by them in the exercise of the duties, powers and discretions vested in them by this Deed or the Rules for such amount as the Trustee may determine. The cost of effecting and maintaining any such insurance shall be discharged out of the Fund.

13.18 The trustees of the Previous Scheme shall be indemnified at the expense of the Fund in respect of any remaining liabilities which they may have as trustees of the Previous Scheme save in respect of:

- (a) wilful default on the part of the trustee who is sought to be made liable; or
- (b) negligence, in the case of a corporate trustee which is engaged in the business of providing trustee services for a fee.

#### **14 Information from and Consents and Decisions of Employers**

14.1 The Employers shall furnish to the Trustee, the Actuary and the Auditor any information which they may reasonably require for the purpose of performing their functions and duties.

14.2 Evidence in writing signed by any person authorised by the Employers shall be sufficient evidence of any consent or decision of the Employers or any of them required to be given by this Deed or the Rules.

14.3 The power of the Employers or the Federation to give or make any consent, approval or determination under this Deed or the Rules is not a trust or fiduciary power, and the Employers or the Federation may act in their own absolute and unfettered discretion in giving or withholding any consent or approval or making any determination.

#### **15 Arbitration and Final Decisions**

15.1 In addition and without prejudice to all powers conferred upon trustees generally by statute or otherwise, the Trustee may:

- (a) settle, compromise or submit to internal dispute resolution or alternative dispute resolution procedures or to arbitration under the Arbitration Act 2010 any claims, matters or disputes, and
- (b) commence, carry on or defend proceedings relating in any way to the Scheme or to any rights of the Members and others under the Scheme.

15.2 Except where otherwise provided in this Deed or the Rules, the decision of the Trustee shall be conclusive and binding upon all parties in respect of any point of doubt which may arise in connection with the Scheme or the Fund. In any case not provided for by this Deed or the Rules, the Trustee (after consulting the Actuary in all cases where actuarial calculation or investigation is necessary) may offer or agree to any terms, and generally act in any way, which appears to it to be fair and just, having regard to the main purpose of the Scheme and its proper and efficient administration.

#### **16 Substitution of Federation**

The Federation may request to be released from its obligations under this Deed and may be so released if another body corporate or unincorporated shall by deed with the agreement of the Federation and the Trustee assume the functions of the Federation for the purposes of the Scheme.

## **17 Winding up of Scheme**

The Scheme shall be wound up on the day on which the first of the following events occurs:

- (a) On the passing of resolutions by the Federation and by the Trustee that as a result of amendments to one or more Sectoral Employment Orders the continuation of the Scheme is no longer practicable or desirable and that the Scheme accordingly be wound up.
- (b) On the winding up of the Federation unless another body corporate or unincorporate shall by deed with the consent of the Trustee assume the functions of the Federation for the purposes of the Scheme.
- (c) On the expiry of at least two months' notice by the Federation to the Trustee that the Scheme shall be wound up, provided that the consent of the Construction Industry National Joint Industrial Council or any successor or replacement body to the Council shall first have been obtained.

## **18 Dissolution**

18.1 If, within two months after the date on which the Scheme is wound up under Clause 17 (the "winding-up date") the Trustee considers, after consulting the Actuary, that the Scheme is, and is likely to remain, in a position to administer and to provide for the discharge of all benefits under the Scheme as they fall due, it may with the prior consent of the Federation (if the Federation has not been wound up), resolve to continue the Scheme as a closed fund, in which case:

- (a) no further Members shall be registered,
- (b) all Members shall be deemed to cease to be Members under Rule 3.2 on the winding-up date and shall not thereafter become Members again,
- (c) the Fund shall be held to provide benefits under the Rules as they fall due,
- (d) the Employers shall continue to be liable for contributions which have accrued due but are unpaid at the winding-up date,
- (e) the Employers and Members shall not be liable for any future contributions, and
- (f) from time to time thereafter the Trustee shall consider, in consultation with the Actuary, whether to continue to hold the Fund to provide benefits as they fall due or to dissolve the Fund under Clause 18.2.

18.2 If, after the winding-up date, the Trustee does not resolve in accordance with Clause 18.1 to continue the Scheme as a closed fund or if, having so resolved, the Trustee subsequently resolves to dissolve the Fund, the Fund shall be dissolved in accordance with this sub-Clause.

The Employers shall continue to be liable for contributions which have accrued due but are unpaid at the winding-up date. The Trustee shall take such steps as it considers appropriate to realise the Fund, including any such unpaid contributions, and shall apply the realised Fund and the other moneys in hand, so far as the amount available permits, in discharging or making a reserve to discharge:

- (i) the expenses, fees and costs associated with the winding up of the Scheme, and
- (ii) insofar as permitted under the Pensions Act, the other expenses, fees and costs of or incidental to the administration and management of the Scheme.

Subject to Section 48(1AB) of the Pensions Act not being applicable, the Trustee shall apply the balance of the Fund, so far as the amount available permits, to the following purposes and with the respective priorities indicated:

- (a) Firstly, in paying or securing the benefits referred to in Section 48(1AA)(a) of the Pensions Act, or in any corresponding legislation in force at the winding-up date, which shall be done by applying a Member's or former Member's Account to provide benefits for the Member or former Member in accordance with the Rules.
- (b) Secondly, it shall apply the Fund in paying or securing the benefits referred to in Section 48(1AA)(b) of the Pensions Act, or in any corresponding legislation in force at the winding-up date.
- (c) Thirdly, to the extent any such benefits exist under the Scheme, it shall apply the Fund in paying or securing the benefits referred to in Section 48(1AA)(c) of the Pensions Act, or in any corresponding legislation in force at the winding-up date.
- (d) Fourthly, it shall apply the Fund in paying or securing the benefits referred to in Section 48(1AA)(d) of the Pensions Act, or in any corresponding legislation in force at the winding-up date.
- (e) Fifthly, to the extent any such benefits exist under the Scheme, it shall apply the Fund in paying or securing the benefits referred to in Section 48(1AA)(e) of the Pensions Act, or in any corresponding legislation in force at the winding-up date.
- (f) Sixthly, it shall apply the Fund in paying or securing the benefits referred to in Section 48(1AA)(f) of the Pensions Act, or in any corresponding legislation in force at the winding-up date.

Any deductions from Members' and former Members' Accounts shall be made pro-rata across the Accounts.

In the event of the Scheme at any time being determined as aforesaid and at such time all of the Employers are insolvent for the purposes of the Protection of Employees (Employers' Insolvency) Act, 1984, the Trustee shall, notwithstanding the foregoing provisions of this sub-Clause, apply the Fund in accordance with the provisions of Section 48(1AB) of the Pensions Act.

18.3 The Trustee may pay or secure the benefits to be paid or secured under Clause 18.2 by one or more of the following methods:

- (a) by payment out of the Fund, provided that, if the benefits are payable in annuity form, the Trustee must be satisfied, after consulting the Actuary, that the Fund is, and is likely to remain, sufficient to pay or secure the benefits concerned, or
- (b) by the purchase in the names of persons entitled to benefit under this Clause of immediate or deferred non-assignable annuity contracts or other suitable policies, or
- (c) by transferring to persons entitled to benefit under this Clause of policies or contracts of assurance forming part of the Fund which match obligations to those persons entitled without first realising those policies or contracts, or
- (d) by transferring in substitution for those benefits a part of the Fund to the trustees and upon the trusts of any Approved Scheme in which persons entitled are being included, or

- (e) with the consent of any person entitled, by the purchase in his or her name from a Life Office in substitution for those benefits of a contract approved by the Revenue Commissioners for the purpose of receiving transfer payments from retirement benefits schemes or by the making of a payment in accordance with Section 48(3)(c) of the Pensions Act, or
- (f) at the option of a Member entitled to so elect under Section 772 of the Taxes Act, by the making of a payment to an approved retirement fund or to the Member, as the case may be.

So long as the Trustee continues to pay benefits out of the Fund, it shall from time to time, in consultation with the Actuary, review the amount held and the benefits remaining to be paid and, unless it remains satisfied as to the continued and likely future solvency of the Scheme, it shall pay or secure the remaining benefits by one of the methods described at (b) to (f) above.

- 18.4 If by reason of the application of Clause 3.1 or otherwise, any sum remains unapplied, it shall be paid to the Employers in such proportions as the Trustee on the advice of the Actuary determines to be equitable, provided that the Trustee shall first have regard, to the extent necessary, to Section 48(2) of the Pensions Act.

## **19 Amendments**

- 19.1 Subject to Clause 19.3, the Trustee with the consent of the Federation may by supplemental deed, with effect from such date as is stated in the deed, including a preceding date, amend any of the provisions of this Deed and the Rules or may adopt new provisions and/or new rules in place of the provisions of this Deed and the Rules.
- 19.2 Subject to Clause 19.3, the Trustee may amend any of the provisions of this Deed and the Rules by supplemental deed as it thinks fit in so far as may be necessary to comply with a direction given under Section 50 of the Pensions Act.
- 19.3 No amendment shall be made which:
  - (a) varies the main purpose of the Scheme, namely the provision of relevant benefits, as described in Section 770(1) of the Taxes Act,
  - (b) authorises the return of any part of the Fund to any of the Employers, except as provided in this Deed or in any circumstances as may from time to time be required or permitted by legislation.
- 19.4 The Federation undertakes that it shall not amend the Memorandum and Articles of Association of the Trustee without the prior approval of the directors of the Trustee, expressed by means of a resolution of the directors.

## **20 Employer's Consent**

Any consent or decision of an Employer being a body corporate or a partnership by or for the purposes of this Deed or the Rules shall be sufficiently evidenced by a copy of a resolution of the directors of the Employer or the partners certified to be a true copy by a director or the company secretary of the Employer or by one of the partners (as the case may be).

## **21 Exercise of authority by the Federation**

Any discretion or authority vested in the Federation by this Deed shall be exercised by resolution of the Executive Body of the Federation or of any committee of the Executive Body or officer or officers of the Federation to which or to whom the exercise of such authority has been delegated by the Executive Body.



## **22 Proper Law and Jurisdiction**

The trusts of the Scheme are established under the Law of Ireland, which shall be the proper law and will govern this Deed and the Rules and all transactions and proceedings in or concerning the Scheme. The jurisdiction of the Courts of Ireland shall be the jurisdiction appropriate to all actions, claims, disputes and proceedings arising under or in connection with the Scheme.

**SECOND SCHEDULE**

**RULES OF THE CONSTRUCTION WORKERS' PENSION SCHEME**

1.	DEFINITIONS AND INTERPRETATION .....	15
2.	ELIGIBILITY .....	20
3.	COMMENCEMENT AND CESSATION OF MEMBERSHIP .....	20
4.	CONTRIBUTIONS .....	21
5.	TRANSFER PAYMENTS .....	22
6.	ADMINISTRATION OF MEMBER'S ACCOUNT .....	24
7.	APPLICATION OF MEMBER'S ACCOUNT .....	24
8.	BENEFITS AT NORMAL PENSION DATE .....	26
9.	BENEFITS AFTER NORMAL PENSION DATE .....	26
10.	BENEFITS ON RETIREMENT BEFORE NORMAL PENSION DATE .....	27
11.	WITHDRAWAL .....	27
12.	DEATH OF A MEMBER .....	27
13.	TRANSFER OUT .....	29
14.	EXCESS PROCEEDS .....	30
15.	PAYMENT OF PENSIONS .....	30
16.	UNCLAIMED BENEFITS .....	30
17.	EVIDENCE AND INFORMATION .....	31
18.	NON-ASSIGNABILITY .....	31
19.	INCAPACITY OF A BENEFICIARY .....	31
20.	PAYMENT WITHOUT REPRESENTATION .....	32
21.	TAX OR DUTY PAYABLE TO THE REVENUE COMMISSIONERS .....	32
22.	PROVISIONS FOR FRAUD OR DISHONESTY .....	32
23.	NO CLAIM EXCEPT UNDER DEED OR RULES .....	32

## 1. Definitions and Interpretation

1.1. For the purpose of the Deed and of these Rules:

**"Account"** means an account held on behalf of a Member or former Member as described in Rule 6;

**"actuarial funding certificate"** has the meaning assigned to it in Section 42 of the Pensions Act;

**"the Actuary"** means the Actuary of the Scheme as described in Clause 5;

**"Administrator"** means the person having the management of the Scheme as is referred to in Section 770 of the Taxes Act;

**"Annuity Fund"** means the part of the Fund held by the Trustee to discharge pensions in payment, pensions which are due for payment and benefits contingently payable on death in retirement;

**"Approved Scheme"** means, in respect of any transfer to be made or received by the Trustee under Clause 18, Rule 5 or Rule 13, a retirement benefits arrangement (other than the Scheme) which is either:

- (a) approved or capable of approval by the Revenue Commissioners under Chapter 1 of Part 30 of the Taxes Act and treated or capable of being treated as an exempt approved scheme under Section 774 of the Taxes Act, or
- (b) approved for the purposes of the transfer by the Revenue Commissioners;

**"the Auditor"** means the Auditor of the Scheme as described in Clause 6;

**"Beneficiaries"** means in relation to a Member or former Member:

- (a) any persons entitled at the date of his or her death to an interest in his or her estate under any valid testamentary disposition or dispositions made by him or her or upon his or her intestacy,
- (b) any persons named by him or her in a written communication to the Trustee as persons whom he or she would wish to be considered as recipients of part or the whole of any benefits arising under the Scheme upon his or her death,
- (c) any persons:
  - (i) who, in the opinion of the Trustee, are or were wholly or partly financially dependent upon him or her, or
  - (ii) whose maintenance or support he or she had undertaken or contributed towards, or
  - (iii) who had undertaken or contributed towards his or her maintenance, and
- (d) his or her grandparents, his or her spouse's grandparents, all the descendants, however remote, of his or her grandparents and his or her spouse's grandparents, and the spouses of those descendants, and

for the purpose of this definition **"spouse"** includes a former spouse, a Civil Partner or a former Civil Partner, relationships acquired by legal adoption shall be as valid as blood relationships and a step-child shall be treated as a descendant of his or her step-parents and their ancestors;

**"Children"** of a Member means:

- (a) marital children of the Member (including any step-child, legally adopted child or child en ventre sa mere), and
- (b) non-marital children of the Member who are accepted by the Trustee as such

who are living at the date of death of the Member and are under the age of 18 years and "Child" means any one of such Children;

**"Civil Partner"** means a civil partner within the meaning of Section 3 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010;

**"the Construction Industry"** means business conducted by bodies corporate, partnerships or individuals which relates to building or civil engineering;

**"Death in Service contributions"** means the sum comprising of:

- (a) an amount of €1.11 of the total weekly contribution paid by the Employers in respect of each Member under Rule 4.1 or, where applicable, an amount of €1.11 paid by the Employers in addition to the daily contributions paid under Rule 4.1(iv); plus
- (b) an amount of €1.11 of the total weekly contribution deducted by the Employers under Rule 4.1(ii) from the salary or wages payable to each Member or, where applicable, an amount of €1.11 deducted by the Employers from the salary or wages payable to each Member in addition to the daily contributions deducted by the Employers from the salary or wages payable to each Member under Rule 4.1(iv).

**"Death in Service Fund"** means the Death in Service contributions received under Rule 4.1 as invested by the Trustee and held to provide for the payment of death in service benefits under Rule 12.1(b) and (c) which can also be applied, by the Trustee, following consultation with the Actuary, to support the overall solvency position of the Scheme or to smooth investment returns over time in the same way as the General Reserve;

**"the Deed"** or **"this Deed"** means the Definitive Trust Deed to which the Rules are scheduled as from time to time amended;

**"Dependant"** means in relation to a Member (which for this purpose includes a former Member) the spouse, Civil Partner or Child of the Member or any other person who is wholly or substantially dependent upon the Member for the ordinary necessities of life, or was so dependent immediately before the Member's death;

**"Designated Dependant"** means in any case where a Member (which for this purpose includes a former Member) is co-habiting with his or her spouse or Civil Partner, the Member's spouse or Civil Partner, and in any other case either (i) an adult Dependant with whom the Member is co-habiting and whom the Member designates as his or her Designated Dependant for the purposes of Rule 7, or (ii) the Member's spouse or Civil Partner whom the Member designates as his or her Designated Dependant for the purposes of Rule 7;

**"Eligible Employee"** means an employee who is resident for tax purposes in the Republic of Ireland and who is employed by an Eligible Employer;

**"Eligible Employer"** means any employer (being a body corporate, partnership or individual) carrying on business in the Republic of Ireland as a building or civil engineering firm or a related contracting or sub-contracting firm provided that the Trustee may at its absolute discretion declare an employer to be an Eligible Employer if that employer so requests and if there is no conflict with Clause 3.1 and the Trustee is of the opinion that the employer carries on a business connected with the Construction Industry;

**"Employers"** means all those Eligible Employers who have entered into Deeds of Adherence under Clause 8 and "the Employers" or "the Employer" in relation to any Member or former Member means the Employer by whom he or she is or was last employed;

**"€"** means Euro;

**"Family Law Acts"** means the Family Law Act, 1995, the Family Law (Divorce) Act, 1996 and the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010;

**"the Federation"** means the Construction Industry Federation;

**"Former Members' Reserve Fund"** means the assets transferred from the Previous Scheme which constitute a reserve on account of unascertained or potential liabilities under the Previous Scheme which can also be applied, by the Trustee, following consultation with the Actuary, to support the overall solvency position of the Scheme or to smooth investment returns over time in the same way as the General Reserve;

**"the Fund"** means the Fund of the Scheme as described in Clause 4 and Clause 9.4;

**"funding proposal"** has the meaning assigned to it in Section 49 of the Pensions Act;

**"funding standard reserve certificate"** has the meaning assigned to it in Section 42 of the Pensions Act;

**"General Reserve"** means the sub-fund established by the Trustee in accordance with Clause 9.4 using the assets transferred from the Previous Scheme which were not allocated to Members' Accounts or to the Annuity Fund at the time of transfer;

**"Ill-health"** means ill-health or incapacity of a Member such that the Trustee is satisfied, on the basis of independent medical examination, that the Member is no longer able to work in the Construction Industry or in any other employment he or she has been engaged in while a Member;

**"Levy"** means a payment required to be made by an Employer under Rule 4.9;

**"Life Office"** means a life office authorised to carry on life assurance business in the Republic of Ireland;

**"Member"** means an employee of the Employers who is eligible for membership and is included in the Scheme;

**"Member's Contributions"** means the sums deducted from the salary or wages of a Member under either proviso (ii) or proviso (iv) to Rule 4.1 and paid to the Trustee under Rule 4.7 together, in each case, with any amount which under Rule 5 forms part of the Member's Contributions made by him or her;

**"Members' Reserve Fund"** means the aggregate of the investments held in respect of the Members' and former Members' Accounts, including any smoothing reserve under Rule 6.3;

**"Normal Pension Date"** means the sixty-fifth anniversary of birth of a Member;

**"Pensioner"** means a person in receipt of a pension under any of Rules 5.6 or 8 to 11;

**"the Pensions Act"** means the Pensions Act, 1990;

**"the Pensions Authority"** means the body established under Section 9 of the Pensions Act;

**"Personal Retirement Savings Account"** means a Personal Retirement Savings Account as defined in Chapter 2A of Part 30 of the Taxes Act;

**"Preserved Account"** for any Member or former Member who has completed two years' Qualifying Service since 1 January 1991 and some or all of whose Account has not been applied in providing benefits, means the part of his or her Account which relates to:

- (a) contributions paid by or in respect of him or her to the Scheme, and
- (b) where any Transfer Payment has been received in respect of the Member, that Transfer Payment;

**"Previous Scheme"** means the Construction Federation Operatives' Pension Scheme, Revenue reference no SF/2536 ;

**"Renewal Date"** means the first Monday in January each year;

**"reporting year"** means a year beginning on the first day of the month of January;

**"Rules"** means these Rules together with any additions, alterations or modifications for the time being in force;

**"the Scheme"** means the Construction Workers' Pension Scheme established by this Deed;

**"Scheme Year"** means the period commencing on each Renewal Date and continuing until the day before the next following Renewal Date;

**"Sectoral Employment Orders"** means Statutory Instrument No. 455 of 2017 known as the Sectoral Employment Order (Construction Sector) 2017, Statutory Instrument No. 59 of 2018 known as the Sectoral Employment Order (Mechanical Engineering Building Services Contracting Sector) 2018, each as varied from time to time, and any equivalent orders adopted from time to time for the electrical engineering sector, or other construction related sectors and each "a Sectoral Employment Order";

**"SOLAS Leave"** means absence from service on apprenticeship training with SOLAS or any successor body to SOLAS in respect of an employee's apprenticeship with an Eligible Employer at the end of which the employee is expected to return to work with such employer;

**"Subsidiary Trusts"** means trusts established under Rule 12.4(b) for the benefit of any one or more Beneficiaries:

- (a) in whatever shares, and

- (b) vesting at whatever times, and
- (c) with and subject to whatever terms, conditions, limitations, provisions for forfeiture, powers, discretions and provisions for maintenance, education, advancement, accumulation of income during a minority or otherwise,

as the Trustee decides;

**"the Taxes Act"** means the Taxes Consolidation Act, 1997;

**"Transfer Payment"** means a transfer of assets received under Rule 5 in respect of any Member;

**"Trivial Pension"** means a pension which, when aggregated with all benefits payable to a person under the Scheme and any other retirement benefits scheme relating to the same employment, does not exceed in value a pension of €330 per annum, or such other amount as may be prescribed by the Revenue Commissioners from time to time and is consistent with exempt approval under the Taxes Act;

**"the Trustee"** means the trustee named in the Deed which expression shall include any successor to the Trustee or any other trustee or trustees for the time being of the Scheme;

**"Voluntary Contributions"** means the contributions (if any) made by a Member under Rule 4.2 and/or Rule 4.6;

**"Voluntary Contribution Proceeds"** means, at any time or on the happening of any event, the amount which the Trustee, on the advice of the Actuary, determines to be available for payment or application under these Rules in respect of any Member at that time or on the happening of that event, having regard to the amount of Voluntary Contributions paid by the Member and the realisable value of those contributions under Rule 6; and

**"Week"** means a period of seven days commencing on a Monday.

1.2. Throughout the Deed and these Rules, unless the context otherwise requires:

- (a) words importing the male sex shall be construed as including the female sex and vice versa, and the words "it" or "its", when referring to an Employer, shall be construed as including a single person or an association of persons,
- (b) words importing the singular shall be construed as including the plural and vice versa,
- (c) all references to an Act or Acts refer to Statutes of the Oireachtas, and include any statutory amendment or re-enactment of any such Statute for the time being in force and any regulations made thereunder,
- (d) reference to a Clause means a Clause of the Deed and reference to a Rule means a Rule in the Rules, and
- (e) headings are for convenience of reference only and are not to be construed as part of the Deed or the Rules.

## **Membership**

### **2. Eligibility**

Every person who is or becomes an Eligible Employee and who is employed by an Employer is immediately eligible to become a Member if he or she has attained age 18 but not age 65 (provided that at the request of an Employer the Trustee may at its absolute discretion waive such condition as to age) or shall immediately become so eligible as soon as he or she satisfies that condition or that condition has been waived.

### **3. Commencement and Cessation of Membership**

- 3.1. The Employer of an Eligible Employee who satisfies the condition of Rule 2 or in respect of whom that condition has been waived may, and shall if so required under a Sectoral Employment Order, register him or her as a Member.

Every Eligible Employee who is a member of the Previous Scheme on the day immediately prior to the commencement of this Scheme under Clause 2.1 shall be deemed registered as a Member of this Scheme upon commencement. The Trustee shall be entitled to seek contributions from the Member's employer under Rule 4 pending such employer's adherence as an Employer under Clause 8.

- 3.2. Every Member shall cease to be a Member on becoming a Pensioner or, if earlier, on the earliest to occur of the following events:

- (i) the end of any Scheme Year in respect of no Week of which a contribution has been paid in respect of him or her under Rule 4.1;
- (ii) the death of the Member;
- (iii) the Member being deemed by the Trustee to have ceased to be an Eligible Employee; or
- (iv) the Member becoming a member of another retirement benefits scheme, other than an Additional Voluntary Contribution only scheme or other scheme designed to be supplementary to the Scheme.

While he or she remains a Member of the Scheme a Member shall be treated as not having ceased employment for the purposes of these Rules provided that no Employer shall be obliged to pay contributions under Rule 4.1 on behalf of a Member who is not in its service and remunerated as such during a particular week.

- 3.3. A former Member who has ceased to be a Member under Rule 3.2 (otherwise than on becoming a Pensioner) shall again become a Member on being or becoming an Eligible Employee, having satisfied the condition of Rule 2 and having been registered under Rule 3.1. Any Account held on behalf of the former Member shall continue to be his or her Account on his or her being re-registered as a Member.

- 3.4. The Trustee has no liability to maintain an Account for or to pay benefits to an Eligible Employee who is not registered as a Member.

- 3.5. An Employer shall have 21 days from an Eligible Employee's date of joining service to register the employee as a Member of the Scheme, where required to do so under a Sectoral Employment Order.



## **Contributions and Transfers In**

### **4. Contributions**

4.1. Every Employer shall pay to the Trustee in respect of every Member in its employment a weekly contribution of €27.74 provided that:

- (i) if a Member is employed by an Employer for part only of a Week the weekly contribution shall be payable in full by the Employer save that if the Member is employed by more than one Employer during a Week the weekly contribution shall be payable in full by the first Employer and no such contribution shall be payable for that week in respect of the Member by a subsequent Employer;
- (ii) the Employer shall, in addition to its contribution, deduct from the salary or wages payable to the Member a weekly contribution of €18.87 and any sums so deducted shall be treated as Member's Contributions and paid to the Trustee;
- (iii) with effect from a Member's Normal Pension Date no further contribution shall be payable in respect of him or her under this Rule, unless the Member is continuing in employment and the Trustee, at the request of the Member and with the consent of the Employer, permits contributions to be continued. In all cases, contributions shall cease when the Member reaches the age of seventy;
- (iv) notwithstanding the foregoing provisions of this Rule 4.1, the Trustee may, so long as it is consistent with the requirements of any applicable Sectoral Employment Order, allow an Employer to pay in respect of any Member in its employment contributions (excluding Death in Service contributions) on a daily rather than a weekly basis and to deduct Member's contributions (excluding Death in Service Contributions) on a daily rather than a weekly basis. The daily contribution rate shall be €8.84, consisting of a €5.32 contribution from the Employer and a €3.52 contribution deducted from the salary or wages of the Member. Where a daily contribution rate is agreed, it shall apply in respect of each day the Member is in the Employer's employment, subject to a maximum of five days per Week. However, Death in Service contributions shall continue to be paid on a weekly basis and shall be payable in full even where a Member is employed by an Employer for part only of a Week, provided that where a Member is employed by more than one Employer during a Week the first Employer shall be required to pay the Death in Service contribution in respect of the Member and no further Death in Service contributions shall be payable for that Week in respect of the Member by a subsequent Employer.
- (v) The contribution rates set out in this Rule may be varied from time to time in accordance with the terms of any applicable Sectoral Employment Order.

An Employer may pay to the Trustee, in respect of any Member in his or her employment an additional contribution or contributions of such amount and at such times as they may with the consent of the Trustee determine.

4.2. Subject to Rule 4.3, 4.4 and 4.5 a Member may with the consent of the Trustee elect to pay regular Voluntary Contributions at at least such minimum rate (if any) as shall be determined by the Trustee, and may elect to increase such Voluntary Contributions, in order to provide an increase in his or her pension or other benefits. Such Voluntary Contributions shall be either deducted by the Employers from the salary or wages of the Member and paid by the Employers to the Trustee or paid directly by the Member to the Trustee.

4.3. If at any time it appears that the amount of a Member's Voluntary Contributions are such that the benefits which might be secured by the application of his or her

Account, as projected by the Trustee acting on the advice of the Actuary, are likely to exceed the maximum benefits permitted by the Revenue Commissioners or to otherwise prejudice approval of the Scheme, his or her Voluntary Contributions shall be limited to the amounts which the Trustee, on the advice of the Actuary, prescribes.

- 4.4. The Trustee may permit a reduction of Voluntary Contributions (but not so that the rate will amount to less than the minimum rate (if any) referred to in Rule 4.2) or a cessation of Voluntary Contributions at any time.
- 4.5. No Member shall in any reporting year pay Member's Contributions and Voluntary Contributions which (disregarding any special Voluntary Contributions paid under Rule 4.6 and any sum deemed under Rule 5 to form part of his or her Member's Contributions) in total exceed the maximum percentage of his or her remuneration for a person of his or her age allowed under Section 774(7) of the Taxes Act from time to time.
- 4.6. If the Revenue Commissioners so permit, a Member may with the consent of the Trustee make one or more special Voluntary Contributions to the Scheme.
- 4.7. No contribution payable by the Employers under Rule 4.1 or 4.2 shall be regarded as having been made for the purposes of the Rules until such contribution has been received by the Trustee and the Employers shall pay such contributions to the Trustee within 21 days following the end of the calendar month in which they fall due from the Employer or are deducted from the Member's salary or wages. To the extent that an Employer to whom a Sectoral Employment Order applies fails to pay to the Trustee any contributions which are payable by the Employer under Rule 4.1 including, on deduction from a Member's salary or wages, under Rule 4.1(ii) or Rule 4.1(iv), the Employer must arrange for the provision to or in respect of that Member or, where Rule 3.2(i) applies, former Member, of equivalent benefits to those set out in the relevant Sectoral Employment Order for the period of such failure. The Trustee shall have no liability to the Member or former Member in respect of any period for which it has not received contributions under this Rule. Any overdue contributions and Levies received by the Trustee shall be allocated to the relevant Member or former Member's Account.
- 4.8. The Employers shall give or cause to be given to the Member and to the Trustee a written statement no less frequently than once a month, specifying both the total amount deducted from the Member's salary or wages and remitted to the Trustee on his or her behalf and the total amount paid on behalf of or in respect of the Member to the Trustee in the preceding month, or in the period since the previous statement was given. Statements given to the Trustee shall contain such additional information as the Trustee may require.
- 4.9. Where any contribution under Rule 4.1 or Rule 4.2 has not been paid within the time limits specified in Rule 4.7, the Trustee may in its discretion, having consulted the Actuary, apply a levy on the Employer responsible for such unpaid contributions for each complete month for which they remain unpaid. The levy shall be of such rate or amount as the Trustee may determine in consultation with the Actuary, to compensate for the loss of investment return during the period in which the contributions remain unpaid and to take into account administrative costs incurred in pursuing the Employer to remit the contributions as well as in calculating the levy, and the Trustee shall notify the rate or amount of the levy and the manner of its calculation to the relevant Employer, who shall discharge that amount forthwith.

## **5. Transfer Payments**

- 5.1. If any Member is entitled to benefit:
  - (a) under another Approved Scheme, or

(b) under a contract with a Life Office approved by the Revenue Commissioners for the purpose of receiving transfer payments from Approved Schemes, or

(c) under a Personal Retirement Savings Account,

the Trustee may, and shall if required by the Pensions Act, accept any transfer of assets offered in respect of that Member from the other Approved Scheme, Life Office, or account (as the case may be).

- 5.2. The Trustee shall accept a transfer of assets from the Previous Scheme in respect of any beneficiary entitled to a deferred pension under the Previous Scheme, and shall establish an Account under the Scheme for any such beneficiary in respect of whom such a Transfer Payment is received. A beneficiary of the Previous Scheme in respect of whom such a Transfer Payment is received shall be treated as a Member for the purposes of Rule 5, excluding Rule 5.1, and for the purposes of Rule 6, Rule 7, Rule 11 and Rules 13 to 22 inclusive until Normal Pension Date or his or her prior death or prior extinguishing of his or her Account. Any part of the assets transferred from the Previous Scheme which constitutes the Former Members' Reserve Fund shall not be allocated to a Member's Account unless the allocation is in respect of additional liabilities under the Previous Scheme which have been ascertained to the satisfaction of the Trustee in respect of the Member concerned.
- 5.3. A Transfer Payment received in respect of any Member shall be treated as representing contributions to the Scheme paid by or on behalf of that Member.
- 5.4. On accepting any Transfer Payment, the Trustee shall endeavour to obtain all the information which it needs to enable it to administer the Transfer Payment and the benefits provided in respect of it in accordance with Clause 3.1 and 3.2.
- 5.5. If a Transfer Payment is offered to the Trustee in respect of any Member on condition that any part of the Transfer Payment representing the Member's own contributions shall not be returned to him or her, the Trustee may undertake not to return that part to him or her. Notwithstanding any other provision of these Rules, the Trustee shall observe that undertaking and no Member shall be entitled to any benefit which, if granted, would breach that undertaking.
- 5.6. The Trustee shall accept a transfer of assets from the Previous Scheme in respect of beneficiaries in receipt of pension benefits under the Previous Scheme, and beneficiaries contingently entitled to death in retirement benefits under the Previous Scheme, which assets shall form part of the Annuity Fund, and shall provide equivalent benefits for such beneficiaries under the Scheme, to the exclusion of any other benefits under the Scheme.
- 5.7. The General Reserve may from time to time, following consultation with the Actuary, be applied by the Trustee to support the overall solvency position of the Scheme and/or to smooth investment returns over time and where the assets of the General Reserve have been applied for such purposes they may, following consultation with the Actuary, be returned by the Trustee to the General Reserve from time to time.

## **6. Administration of Member's Account**

- 6.1. The Trustee shall maintain an Account in respect of each Member and shall allocate to the Account the contributions made by or in respect of the Member under Rule 4, after deduction of Death in Service contributions. The Trustee shall also allocate to the Account any Transfer Payments received in respect of the Member and shall deduct from the Account any costs or expenses to be deducted from the Account under Rule 6.4 and any amounts transferred out of the Account under Rule 13. Death in Service contributions shall be allocated to the Death in Service Fund.
- 6.2. Members' Accounts shall be invested in accordance with Clause 9.
- 6.3. On each Renewal Date or at such other more frequent intervals in a Scheme Year as the Trustee deems appropriate, the Trustee shall allocate gains to a Member's Account or deduct losses from a Member's Account by determining the rate of return applicable to that Account for the preceding Scheme Year or lesser interval. Such rate shall be determined for each Account by the Trustee in consultation with the Actuary, and shall be based on:
- (a) The investment performance of the sub-funds of the Members' Reserve Fund in which the Member's Account is invested.
  - (b) Any smoothing factor which the Trustee may wish to apply in order to smooth the volatility in the performance of the sub-funds of the Members' Reserve Fund.

The Trustee shall be entitled to reserve a portion of the assets in the Members' Reserve Fund as a smoothing reserve for the purposes of (b) above. Such reserve or any part of it shall not be allocated to a Member's Account or deducted from it until so determined by the Trustee on a Renewal Date or at such other more frequent intervals in a Scheme Year as the Trustee deems appropriate.

- 6.4. The Trustee may impose a fixed entry charge on contributions received under Rule 4.1 and an annual charge on Members' Accounts of such rate or amount as it may determine to be appropriate to provide for the costs and expenses of the Scheme which are not met out of the Annuity Fund.

The rate or amount of such charges and any changes to those rates or amounts shall be notified to Members, and such notification shall be in accordance with any applicable requirements of a Sectoral Employment Order. Amounts so charged shall not form part of the Members' Accounts, and shall be used for the purpose of discharging costs or expenses as they arise.

- 6.5. Where an Account is to be applied to provide benefits under these Rules or where a transfer is to be made out of a Member's Account under Rule 13, the realisable value of the Member's Account shall be determined in accordance with the provisions of this Rule, and may be adjusted by the Trustee to ensure that the Account bears its proportionate share of the expenses of the Scheme and to ensure compliance with Rule 14.

## **Benefits for Members**

### **7. Application of Member's Account**

- 7.1. Whenever all or part of a Member's Account is to be applied in providing benefits under Rules 8, 9, 10, or 11 the Trustee shall apply his or her Account in accordance with this Rule in securing one or more of the benefits set out in this Rule. The Member shall choose which benefits the Trustee shall secure for him or her, but subject to the limitations of this Rule and such further limitations as may be necessary to ensure compliance with Clause 3.1.

- 7.2. Where the Member's Account is being applied on or after 1 January 2019 or such earlier date as the Trustee may determine, the Member may elect to receive a lump sum payment out of his or her Account of up to the maximum lump sum which the Revenue Commissioners will permit the Scheme to provide from time to time. If the Member's Account is being applied on any date which is earlier than that, the Member may elect to receive a lump sum payment of up to one hundred per cent of his or her Voluntary Contribution Proceeds plus twenty-five per cent of the remainder of his or her Account, or such lesser maximum lump sum as the Revenue Commissioners will permit the Scheme to provide.
- 7.3. The Member may elect to apply any balance of his or her Account, after payment of any lump sum chosen under Rule 7.2, to provide a pension under any one of (a), (b), (c) or (d) below:
- (a) A pension which shall not increase, and which shall be paid as follows:
    - (i) The pension will be payable for a minimum of five years and for the remaining life of the Member thereafter, and
    - (ii) when payment of the pension ceases, a further pension of fifty per cent of the initial amount will be payable for the remaining life, if any, of the Member's Designated Dependant; or
  - (b) A pension which shall increase at a compound annual rate of three per cent each year, and which shall be paid as follows:
    - (i) The pension will be payable for a minimum of five years and for the remaining life of the Member thereafter, and
    - (ii) when payment of the pension ceases, a further pension of fifty per cent of the amount payable at the date it ceases will be payable for the remaining life, if any, of the Member's Designated Dependant, and
    - (iii) this further pension shall also increase at a compound annual rate of three per cent each year; or
  - (c) A pension which shall not increase, and which shall be payable for a minimum of five years and for the remaining life of the Member thereafter; or
  - (d) A pension which shall increase at a compound annual rate of three per cent each year, and which shall be payable for a minimum of five years and for the remaining life of the Member thereafter.
- 7.4. A Member who at the date of application under Rule 7.3 is married or in a civil partnership (within the meaning of the Civil Partnership and Certain Rights and Obligations of Co-Habitants Act, 2010) and is co-habiting with his or her spouse or Civil Partner shall be entitled to elect a pension under Rule 7.3(c) or (d) **PROVIDED THAT** the Member's spouse or Civil Partner consents in writing to such an election in such form as the Trustee shall determine in its discretion from time to time.
- 7.5. A pension payable under Rule 7.3(a)(i) or (b)(i) or 7.3(c) or (d) shall be paid to the Member and, if he or she dies before the pension has been paid for five complete years, to the Member's legal personal representatives or to any one or more of the Dependants of the Member in such shares as the Trustee in its discretion shall decide. A pension payable under Rule 7.3(a)(ii) or (b)(ii) shall be paid to the Member's Designated Dependant, as determined at the date of application of the Member's Account under Rule 7.3.

Any designation by a Member of a Designated Dependant shall be by written communication to the Trustee prior to the date of application of the Member's Account under Rule 7.3, and the Member shall furnish any additional information which the Trustee may require to satisfy themselves that the person so designated is a valid Designated Dependant under these Rules.

7.6. The Trustee may provide any benefit to be secured under Rule 7.2 by payment out of the Member's Account. The Trustee may provide any benefit to be secured under Rule 5.6 or Rule 7.3 by:

- (a) payment out of the Fund, or
- (b) by the purchase of annuity contracts or other suitable policies or contracts of assurance.

Any pension benefit secured under Rule 7.3 shall be of such amount as the Member's Account or relevant portion of the Account applied to provide the benefit will secure, which shall be determined by the Trustee on the advice of the Actuary, where the benefit is paid out of the Fund, and by the relevant Life Office, where an annuity or annuities are purchased.

The Member shall furnish to the Trustee such evidence and information as the Trustee or, where applicable, the Life Office may require to determine the amount of pension benefit which may be secured on his or her behalf, including evidence of age, health and any other relevant factors concerning the Member or his or her Designated Dependant. Failing evidence as aforesaid, the Trustee may modify the amount of benefit which may be secured to reflect such lack of evidence, after consulting the Actuary.

7.7. As an alternative to the application of the Member's Account in accordance with Rule 7.2 or 7.3, the Trustee may pay, at the option of a Member entitled to so elect under Section 772 of the Taxes Act, an amount determined in accordance with the provisions of Section 772 to an approved retirement fund or to the Member, as the case may be.

7.8. Where the Member has elected to receive the maximum lump sum permitted under Rule 7.2 and the balance of his or her Account then remaining is less than €20,000, the Member may, if the Revenue Commissioners so permit, elect to receive a further lump sum payment equal to the balance of his or her Account.

## **8. Benefits at Normal Pension Date**

If a Member leaves the service of the Employers at Normal Pension Date, the Trustee shall apply his or her Account in providing benefits upon the later of his or her Normal Pension Date and the date on or prior to the Member's seventieth anniversary of birth on which the Trustee receives notification that the Member has left service.

## **9. Benefits after Normal Pension Date**

9.1. If the Member remains in the service of the Employers after Normal Pension Date and leaves service at a later date, not later than his or her seventieth anniversary of birth, the Trustee shall apply his or her Account in providing benefits upon the later of his or her date of leaving service and the date on or prior to the Member's seventieth anniversary of birth on which the Trustee receives notification that the Member has left service.

9.2. A Member who continues in service after Normal Pension Date may at any time elect, instead of waiting until his or her later date of retirement, to have his or her Account applied in providing benefits at Normal Pension Date or at any date between Normal Pension Date and his or her later date of retirement.

**10. Benefits on Retirement before Normal Pension Date**

- 10.1. If a Member leaves the service of the Employers before Normal Pension Date:
- (a) after attaining age sixty, or
  - (b) after attaining age fifty and where no contribution has been made to the Scheme in respect of the Member for a period of 5 years or more, or
  - (c) on account of Ill-health,

he or she may elect to have his or her Account applied in providing benefits at his or her date of leaving service instead of at his or her Normal Pension Date provided that, in the case of (b), such an election may only be made on or after 1 January 2019 or such earlier date as the Trustee may determine. Otherwise, his or her Account shall be applied on the later of the dates specified in Rule 8.

- 10.2. If the Member's Ill-health is in the opinion of the Trustee so severe that the Member is incapable of any employment or occupation, whether in the Construction Industry or otherwise, the Trustee may, in its absolute discretion, enhance the benefits which may be secured for the Member under these Rules to such extent as it, in consultation with the Actuary, shall decide, provided that there is sufficient funding available under the Annuity Fund of the Scheme to do so.

**11. Withdrawal**

- 11.1. If a Member leaves the service of the Employers without being entitled to benefits under any of the preceding Rules, he or she shall be entitled to have his or her Account applied in providing benefits:
- (a) at his or her Normal Pension Date, or
  - (b) at the request of the Member, on another date not earlier than his or her sixtieth anniversary of birth, or
  - (c) at the request of the Member, where no contribution has been made to the Scheme in respect of the Member for a period of 5 years or more, on another date not earlier than his or her fiftieth anniversary of birth

provided that option (c) shall only be available on or after 1 January 2019 or such earlier date as the Trustee may determine.

- 11.2. A former Member in respect of whom any part of his or her Account has yet to be applied in providing benefits under Rule 11 shall be treated as a Member for the purposes of Rule 6, Rule 11 and Rules 13 to 22 inclusive, save for the purposes of any notifications under those Rules, until Normal Pension Date or his or her prior death or prior extinguishing of his or her Account.

**12. Death of a Member**

- 12.1. On the death of a Member either before Normal Pension Date or after Normal Pension Date, where such a Member remained in the paid service of the Employers after Normal Pension Date but had not yet reached the age of 66 and in respect of whom contributions had continued to be made in accordance with Rule 4.1(iii), and who at the date of death either
- (i) was an Eligible Employee and was in the paid service of an Employer who had paid all contributions due from that Employer in respect of the Member under Rule 4.1 up to the date of death or to the extent that the Trustee or the Administrator had agreed a payment schedule for the recovery of

arrears of contributions from the Employer, was fully in compliance with that schedule at the date of death, or

- (ii) was an Eligible Employee who, having left the paid service of an Employer within a period of 26 Weeks immediately prior to the date of death by reason of Ill-health or other incapacity (as to which the decision of the Trustee shall be final) or by reason of being on SOLAS Leave was unable to return to such service by reason of Ill-health, incapacity or SOLAS Leave within such period, whether he thereby ceased to be a Member or not, and
- (iii) in respect of whom, in both cases, not less than 26 weekly contributions had been paid in aggregate during the Member's period or periods of membership of the Scheme or the Previous Scheme

a lump sum shall be payable equal to the aggregate of:

- (a) the Member's Account, plus
- (b) a sum of €100,000, plus
- (c) a further sum in respect of each Child of the Member of €3,175.

**PROVIDED THAT** where a Member who does not fall within (ii) above leaves the paid service of an Employer and other than for leaving paid service the Member would satisfy the conditions at 12.1(i) and 12.1(iii) above, and where the Member dies within 4 Weeks of leaving paid service without having been re-employed prior to his or her death, a lump sum shall be payable equal to the aggregate of:

- (a) the Member's Account, plus
- (b) a sum of €50,000.

On the death of a Member to whom this Rule 12.1 otherwise applies but who does not satisfy the conditions at (i) and (iii) or at (ii) and (iii) above or the proviso to conditions (i) and (iii) above, a lump sum shall be payable equal to his or her Account.

- 12.2. On the death of a Member in the service of the Employers on or after Normal Pension Date to whom Rule 12.1 does not apply and whose Account has not yet been applied to provide benefits under Rule 9.2, a lump sum shall be payable equal to his or her Account.
- 12.3. On the death of a former Member whose Account has not yet been applied in providing benefits under Rule 11, a lump sum shall be payable equal to his or her Account.
- 12.4. The total of any lump sum arising under Rule 12 shall be paid to the Member or former Member's legal personal representatives or, except to the extent that it is payable under Rule 12.3 and relates to his or her Preserved Account, paid or applied in whole or in part:
  - (a) to or for the benefit of, or
  - (b) to any person or persons or body corporate, including the Trustee, appointed by them for the purpose to be held by such person or persons or body corporate upon Subsidiary Trusts for the benefit of,

any one or more of the Member or former Member's Beneficiaries living at his or her death and in such shares and in such manner as the Trustee shall in its absolute discretion decide.



The Trustee may defer payment or application in whole or in part for a period not exceeding two years from the date of the Member or former Member's death if in its opinion such deferment is necessary for the Trustee to determine who is to benefit. No payment shall be made to the legal personal representatives which would pass to the State as ultimate intestate successor.

Any lump sum payable under Rule 12 shall be reduced if necessary to comply with Clause 3.1, and an amount equal to the amount of the reduction shall be applied to purchase from a Life Office or to secure by payment out of the Fund a non-commutable and non-assignable annuity or annuities for such one or more of the Member or former Member's Dependents and in such shares as the Trustee in its absolute discretion shall determine. Where the annuity is paid out of the Fund, it shall be of such amount as the Trustee shall determine on the advice of the Actuary.

- 12.5. The Trustee may determine that some or all of the benefits payable under Rule 12.1(b) and (c) should be underwritten by a Life Office and, in order that the benefits may be underwritten upon terms which it considers reasonable, it may from time to time determine that, notwithstanding anything in Rule 12, the benefits should be payable only to the extent, and upon the terms and conditions, which it specifies.
- 12.6. The Trustee may, subject to compliance with the requirements of any applicable Sectoral Employment Order, decide that evidence of health and insurability and details of any climatic, occupational or other special hazards to which a Member may be subject should be furnished to the satisfaction of the Trustee in respect of each Member when he or she first joins the Scheme or on an occasion when he or she qualifies for an increase in benefit under Rule 12.1(b) and (c). Failing evidence as aforesaid or where the Member is subject to any special hazards no benefit shall be payable under Rule 12.1(b) and (c), or the amount of benefit payable shall be modified as the Trustee on the advice of the Actuary decides.
- 12.7. Where a Member changes Employer, and his or her new Employer does not register the Member as a Member of the Scheme in its employment within 21 days of the change, no benefits shall be payable under Rule 12.1 (b) or (c) until the Employer so registers the Member and the other conditions of Rule 12.1 are satisfied. An Employer shall not be entitled to register a Member after he has died.

### **13. Transfer Out**

- 13.1. Subject to Rule 13.2 and 13.3, a transfer of assets out of his or her Account may be made in respect of any Member or former Member to:
  - (a) the trustees or other persons having the necessary power of an Approved Scheme in which the Member or former Member concerned participates; or
  - (b) a Life Office either:
    - (i) for application under a contract, written in the name of the Member or former Member, which is approved by the Revenue Commissioners for the purposes of receiving transfer payments from retirement benefits schemes, or
    - (ii) to purchase an immediate or deferred annuity policy or other suitable assurance policy free of future premiums written in the name of the Member or former Member to secure some or all of the benefits payable to, or in respect of, him or her under these Rules; or
  - (c) the provider of a Personal Retirement Savings Account which the Member or former Member has established with that provider subject to the conditions prescribed at law for such a transfer; or

- (d) a scheme which is not a funded scheme, which provides or is capable of providing a long service benefit, the trustees of which are willing to accept payments so made, or where so prescribed by law and in accordance with any conditions prescribed, to another arrangement for the provision of retirement benefits established within or outside the State.
- 13.2. The Trustee shall make a transfer under Rule 13.1 if required by law to do so.
- 13.3. In any other case, the Trustee may make a transfer under Rule 13.1 either:
- (a) with the consent of any Member or former Member concerned, or
  - (b) without his or her consent, if
    - (i) the transfer is made to another scheme of the Employers, or
    - (ii) to the extent that the transfer relates to a Preserved Account, it may be made without consent in accordance with the Pensions Act.
- 13.4. A transfer under Rule 13.1 shall be of an amount equal to the realisable value of the Account of the Member or former Member concerned at the date of the transfer or at another date if so required under the Pensions Act, provided that the amount of such transfer payment may be limited or reduced in the circumstances prescribed in the Pensions Act.
- 13.5. The Trustee shall, in respect of each Member or former Member concerned, notify the person or persons to whom a transfer is made under Rule 13.1 of the information needed to administer the transfer and of any requirements imposed by the Revenue Commissioners under the Taxes Act.
- 13.6. Where a transfer is made for any Member or former Member under Rule 13.1, his or her Account shall be extinguished.

**14. Excess Proceeds**

Subject always to Clause 17, if by reason of Clause 3.1 or otherwise any part of a Member's Account remains after the full provision of benefits for that Member under these Rules, it shall be retained in the Fund and applied for the purposes of the Scheme.

**Benefit Provisions**

**15. Payment of Pensions**

Every pension shall be paid by equal monthly amounts, the first payment being made as soon as practicable after the pension has fallen due for payment and the Trustee has been provided by the Member with such information as may be necessary to enable it to commence payment.

**16. Unclaimed Benefits**

No Member for the time being entitled to a benefit under these Rules may claim that benefit if the Trustee receives notification of the Member's entitlement later than the Member's seventy first anniversary of birth, and the Trustee shall be under no duty to inquire as to whether a Member is entitled to a benefit under these Rules.

No other person entitled to the receipt of a benefit under these Rules may claim that benefit more than a year after it has fallen due for payment if the reason for the non-payment of the benefit is:

- (a) the failure of that person to claim it, or

- (b) the lack of knowledge by the Trustee:
  - (i) of the existence or whereabouts of that person, or
  - (ii) of any fact or facts entitling that person to the benefit.

Provided that the Trustee may pay an unclaimed benefit or any part of it if in its absolute discretion it thinks fit, and shall do so if so required under Clause 3.2.

**17. Evidence and Information**

A Member or any other person entitled to benefit under the Rules must produce any evidence and information which the Trustee may reasonably require for the purposes of the Scheme.

If any evidence or information is not supplied, proves to be inaccurate or shows that evidence or information previously supplied was inaccurate, the Trustee may, with the advice of the Actuary where actuarial calculations are required, alter the amount of or the terms applicable to, or withhold or cease payment of, any benefit payable under the Rules.

**18. Non-Assignability**

No benefit payable or to be paid under the Rules shall be surrendered (except as provided under the Rules) or assigned. Subject to Clause 3.2, if any beneficiary or prospective beneficiary:

- (a) attempts to alienate, charge or anticipate any benefit, or
- (b) does or permits any act or thing by which a benefit would, if it belonged to him or her absolutely, be or become wholly or in part payable to another person, whether by operation of law or otherwise,

that benefit shall cease to be payable or paid. In that event the Trustee may, in case of hardship, apply the benefit or any part of it for the support or maintenance of the beneficiary or the beneficiary's spouse, Civil Partner, children, remoter issue or dependants or any of them, but in no case shall any payment be made to an assignee or purported assignee.

**19. Incapacity of a Beneficiary**

19.1. Any pension or annuity payable in respect of any Child may be paid at the discretion of the Trustee either:

- (a) to any one or more persons
  - (i) having guardianship or custody, or
  - (ii) who is or are responsible for the maintenance,

of the Child as the income of the Child or (if the Trustee so determines) as the income of that person or those persons, or

- (b) directly to the Child.

19.2. If the Trustee is advised that a person who is entitled to receive a benefit under the Rules (the "Entitled Person") may lack capacity, as defined in the Assisted Decision-Making (Capacity) Act, 2015 the Trustee shall be directed in its future dealings with the Entitled Person by reference to and in accordance with the Assisted Decision-Making (Capacity) Act, 2015. In doing so, the Trustee is hereby granted any necessary authority to pay and/or apply any benefits for the

Entitled Person under the Rules to another person or persons to be held on behalf of or for the benefit of the Entitled Person. Any such payment or application shall be a complete discharge to the Trustee for the moneys so paid or applied.

**20. Payment without Representation**

In any case where representation has not been taken out to the estate of a deceased person, any sum or sums not exceeding in the aggregate €5,000 payable by the Trustee to the legal personal representatives of the deceased may at the absolute discretion of the Trustee be paid to the spouse or Civil Partner or any relative of the deceased and any payments so made shall be a complete discharge to the Trustee for the moneys so paid.

**21. Tax or Duty payable to the Revenue Commissioners**

Where any benefit payable under these Rules gives rise to a liability to pay any tax or duty to the Revenue Commissioners, the Trustee shall apply the benefit, or part of it, in payment of the tax or duty (including any interest due) and deduct the amount so paid from the benefit, unless provision has been made for the liability to their satisfaction.

**General Provisions**

**22. Provisions for Fraud or Dishonesty**

If the Trustee is notified by the Employers that any Member has been discharged from the service of the Employers on account of his fraud, dishonesty or wilful damage to the property of the Employers or that a Member has resigned in order to avoid such a discharge, the Trustee may subject to Clause 3.2 deduct from any benefits due to the Member the value as notified to it by the Employers of any moneys or goods misappropriated or damage suffered by the Employers. Any sum so deducted shall be paid over by the Trustee to the Employers whose receipt shall discharge the Trustee for it.

**23. No Claim except under Deed or Rules**

No person, whether a Member or not, shall have:

- (a) any claim, right or interest upon, to or in respect of the Fund or any contributions to, or interest on, the Fund, or
- (b) any claim upon or against the Trustee, the Federation or the Employers in relation to the Scheme

except under and in accordance with the provisions of the Scheme.

## THE APPENDIX

### Deed of Adherence to the Construction Workers' Pension Scheme

**THIS DEED OF ADHERENCE** is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

**BETWEEN CONSTRUCTION WORKERS' PENSION SCHEME TRUSTEES DESIGNATED ACTIVITY COMPANY** (being the Trustee) for the time being of the Construction Workers' Pension Scheme established by deed dated the 25 May 2006 (hereinafter called "**the Trustee**") of the One Part, **AND**

(hereinafter called "**the Adhering Employer**") of the Other Part.

#### WHEREAS:

1. This Deed is supplemental, inter alia, to the Definitive Trust Deed and Rules dated \_\_\_\_\_ the 25 May 2006 (hereinafter as from time to time amended in accordance with the terms thereof referred to as "**the Definitive Deed**"). Words and expressions and rules of construction used in the Definitive Deed are incorporated into this Deed by reference.
2. The Adhering Employer is desirous that certain of its employees shall be enabled to become Members of the Scheme and entitled to the benefits thereof and has agreed and undertaken with the Trustee to undertake such liability in respect of contributions to the Fund of the Scheme and such other obligations as are expressed in the Definitive Deed and the Trustee in consideration of such undertaking has agreed that such employees of the Adhering Employer as are eligible to become Members shall become Members.

**NOW THIS DEED WITNESSETH** and it is hereby agreed and declared as follows:

1. The Adhering Employer with the consent of the Trustee (hereby testified) is hereby admitted to participation in the Scheme as an Employer for the purpose of the Scheme with effect from the \_\_\_\_\_ 20\_\_\_\_\_ .
2. The Adhering Employer hereby undertakes and covenants with the Trustee (and every other Adhering Employer and each of them) to pay the contributions due to be paid by it under the Scheme and any levies which the Trustee is entitled to make, including for the avoidance of doubt those arising under Rule 4.9, to the Trustee in accordance with the Definitive Deed as and when due.
3. The Adhering Employer further undertakes and covenants with the Trustee (and every other Adhering Employer and each of them) to pay to the Trustee any and all contributions which it is or was required to pay under the Deed of Variation dated 16 May 1994 for the Construction Federation Operatives' Pension Scheme (as amended), and which it has not paid to the Trustee of that scheme.
4. The Adhering Employer and the Trustee hereby covenant with each other (and with every other Adhering Employer and each of them) to perform and observe the covenants and obligations contained in the Definitive Deed insofar as the same are or ought to be performed by them respectively but so that the Trustee may be entitled to the same indemnities hereunder as they would be entitled to under the terms of the Definitive Deed.
5. The Adhering Employer hereby acknowledges the Trustee's right to sue for recovery of any sums due to be paid by it under the Scheme which it has not discharged including the discharge of any levies imposed by the Trustee under Rule 4.9 of the Scheme.

**IN WITNESS WHEREOF** this Deed has been executed by the parties hereto on the above date

**PRESENT** when the Common Seal of  
**CONSTRUCTION WORKERS' PENSION  
SCHEME TRUSTEES DESIGNATED  
ACTIVITY COMPANY**  
was affixed hereto:-

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director / Secretary

This form of execution to be used by a Limited Company

**PRESENT** when the Common Seal of  
was affixed hereto:-

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director / Secretary

This form of execution to be used by a Sole Trader or in the case of a partnership by each of the partners.

**SIGNED AND DELIVERED** as a deed by the said  
in the presence of:-

**IN WITNESS** of which this Deed has been duly executed by the parties hereto on the date first above written.

**SIGNED** and **DELIVERED** as a deed by on behalf **THE CONSTRUCTION INDUSTRY FEDERATION**

in the presence of:

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Witness name

\_\_\_\_\_  
Witness address

**PRESENT** when the Common Seal of **CONSTRUCTION WORKERS' PENSION SCHEME TRUSTEES DESIGNATED ACTIVITY COMPANY** was affixed hereto:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Company Secretary