

Dated

2019

**FLEXIBLE APPORTIONMENT
ARRANGEMENT AND AGREEMENT
TO PARTICIPATE
relating to the
BAPTIST PENSION SCHEME**

THE CHARITY TRUSTEES OF THE BAPTIST UNION OF GREAT BRITAIN (1)

[*THE CIO*] (2)

BAPTIST PENSION TRUST LIMITED (3)

[*THE DEPARTING EMPLOYER*] (4)

BETWEEN

- (1) **THE CHARITY TRUSTEES OF THE BAPTIST UNION OF GREAT BRITAIN** , an unincorporated association and a registered charity (charity number 1125912) whose principal address is at Baptist House, 129 Broadway, Didcot, Oxfordshire OX11 8RT (the "**Union**")¹
- (2) [**THE EMPLOYER**] an unincorporated association [and a registered charity (Charity number)] whose principal address is at (the "**Departing Employer**")
- (3) [**THE CIO**] whose [registered office] is at • (the "**New Employer**"); and
- (4) **BAPTIST PENSION TRUST LIMITED** (company number 03481942) whose registered office is at Baptist House, 129 Broadway, Didcot, Oxfordshire OX11 8RT (the "**Trustee**").

BACKGROUND

- 1 This deed is supplemental to:
 - 1.1 the memorandum of amendment with rules annexed dated 23 December 2011 (the "**Rules**") adopted by the Trustee with the agreement of the then council for the time being of the Union; and
 - 1.2 all deeds and documents supplemental thereto, by which the Baptist Pension Scheme (the "**Scheme**") is currently governed.
- 2 The Trustee is the present trustee of the Scheme.
- 3 By Rule 5.4 of the Rules, as amended by a resolution recorded in a memorandum of amendment dated 28 November 2012, the Trustee may with the consent of the trustees of the Union (the "**BUGB Trustees**") (or any such delegate as it may authorise) apportion all or any part of a present liability that has arisen under section 75 or section 75A of the Pensions Act 1995 ("**section 75 liabilities**") in consequence of an Employer having undergone or being deemed to have undergone an employment cessation event. Such apportionment may be among all or any of the Employers (including the Union and that Employer) in such proportions as the Trustee may agree with the BUGB Trustees (or any such delegate). The apportionment must satisfy the requirements for a flexible apportionment

¹ This will need to be changed once BUGB converts to a CIO

arrangement contained in the Occupational Pension Schemes (Employer Debt) Regulations 2005 (the "**Employer Debt Regulations**").

- 4 The Departing Employer will undergo an employment cessation event on ● when it ceases to employ active members of the Scheme at a time when other participating employers continued to do so. The Departing Employer will cease to employ active members of the Non-segregated Arrangement of the Scheme when the Departing Employer transfers all its assets and liabilities from a charitable unincorporated trust to a charitable incorporated organisation.
- 5 The relevant Parties to this Deed have agreed that they will enter into a flexible apportionment arrangement (as defined in Regulation 2 of the Employer Debt Regulations) in respect of the employment cessation event which will occur in relation to the Departing Employer under which the New Employer shall take responsibility for all of the liabilities of the Departing Employer in relation to the Non-segregated Arrangement of the Scheme as those liabilities stand immediately before this flexible apportionment arrangement takes effect.
- 6 It is intended that this Deed once executed by the Parties, will constitute:
 - (a) the legally enforceable agreement referred to in Regulation 6E(2)(b)(i) of the Employer Debt Regulations; and
 - (b) the consent in writing of the Trustee, the Departing Employer and the New Employer to the flexible apportionment arrangement, as required under Regulation 6E(2)(c) of the Employer Debt Regulations.

Operative Provisions

- 1 Terms used in this Deed shall have the same meanings as in the Rules, unless otherwise specified or altered. The terms set out below shall have the following meanings:
 - (a) "**Assessment Period**" has the meaning set out in Regulation 2 of the Employer Debt Regulations;
 - (b) "**Cessation Date**" means the date on which the Departing Employer ceased to employ any active members in the Non-segregated Arrangement of the Scheme;
 - (c) "**Employment Cessation Event**" has the meaning set out in Regulation 6ZA of the Employer Debt Regulations;
 - (d) "**Funding Test**" has the meaning set out in Regulation 2(4A) of the Employer Debt Regulations;

- (e) **"Liabilities in relation to the Scheme"** has the same meaning as in Regulation 6ZB of the Employer Debt Regulations as if reference to "scheme" in that regulation were reference to the Non-segregated Arrangement of the Scheme;
- (f) **"Parties"** means the New Employer, the Departing Employer, the Union and the Trustee;
- (g) **"Period of Grace"** has the meaning in Regulation 6A(3) of the Employer Debt Regulations;

2 The Trustee, the New Employer and the Union has agreed in accordance with Rule 4.2 of the Rules that the New Employer;

2.1 will participate in the Non-segregated Arrangement of the Scheme and become a DB Employer on and from [*insert date*]; and

2.2 will participate in the Non-segregated Arrangement of the Scheme and become an Employer in relation to the DC Plan of the Non-segregated Arrangement on and from [*insert date*].

3 The New Employer has executed this deed to show that it agrees to participation in the Scheme in accordance with Clauses 2.1. and 2.2 of this deed and to comply with the Rules.

4 With effect on and from [] in accordance with Rule 19.1 of the Rules, the Trustee, Union and New Employer has determined to admit an Employee or certain Employees as Members of the Scheme in accordance with the terms of the letter set out at Appendix 1.

5 The Trustee confirms that the Scheme is not winding up nor is it in an Assessment Period.

6 The Departing Employer confirms that it is not in a period of grace.

7 by their execution of this deed, the Trustees, the Departing Employer and the New Employer give their respective consents to the flexible apportionment arrangement taking place.

8 Pursuant to Rule 5.4 of the Rules, on satisfaction of the conditions in Regulation 6E(2)(a) to (g) (excluding (b)) of the Employer Debt Regulations (including that the New Employer qualifies as a replacement employer for the purposes of Regulation 6E of the Employer Debt Regulations), the Parties hereby agree that the New Employer takes over responsibility by way of a flexible apportionment arrangement for all of the Departing Employer's Liabilities in relation to the Scheme as those liabilities stand

immediately before this flexible apportionment arrangement takes effect pursuant to Regulation 6E(2)(b) of the Employer Debt Regulations. For the avoidance of doubt, the Parties hereby acknowledge that the Departing Employer shall have no further liability to the Scheme in respect of its liabilities as they stand immediately before this flexible apportionment arrangement takes effect, whether under the governing provisions of the Scheme, Part 3 of the Pensions Act 2004, section 75 or 75A of the Pensions Act 1995 and the Employer Debt Regulations or otherwise, and shall cease to be an Employer for all purposes of the Scheme.

- 9 In relation to this flexible apportionment arrangement, the Trustee confirms that:
- (a) the Funding Test is met; and
 - (b) an Assessment Period is unlikely to begin in relation to the Scheme within the period of 12 months beginning with the date on which the flexible apportionment arrangement entered into under this Deed takes effect.
- 10 If the terms of this deed is found by any court, tribunal, administrative or regulatory body or authority of competent jurisdiction to be unenforceable for any reason, the New Employer agrees to pay to the Trustee any debt that would have been due from the Departing Employer as at the Cessation Date, to the Scheme had it been certified in accordance with section 75 or 75A of the Pensions Act 1995 and the Employer Debt Regulations
- 11 The signatories to the Deed on behalf of the Union confirms that they have been authorised by a resolution passed by the BUGB Trustees pursuant to Section 333 Charities Act 2011 for the purposes of Rule 5.4 and that they consent, as delegates for the Union, to the BUGB Trustees entering into this flexible apportionment arrangement.
- 12 This Deed may consist of two or more documents in the same form. A document may be executed by one or more of the parties.
- 13 This Deed is binding in the Parties and shall continue for the benefit of and be enforceable by each of their respective successors and assigns.
- 14 This Deed is governed by the law of England and Wales and any dispute is subject to the exclusive jurisdiction of the courts and tribunals of England and Wales

This document has been executed as a **DEED** and is delivered on the date stated at the beginning of it.

Executed as a **DEED** by

.....and

..... *[signature of*
Trustee] Trustee

.....

..... *[signature of*
Trustee] Trustee

being two trustees authorised to execute this Deed on behalf of the trustees of **THE CHARITY TRUSTEES OF THE BAPTIST UNION OF GREAT BRITAIN** pursuant to a resolution under Section 333 of the Charities Act 2011

Witness to Trustee 1 signs

.....

Witness to Trustee 1 prints name

.....

Witness to Trustee 1 address

.....

Witness to Trustee 1 occupation

.....

Witness to Trustee 2 signs

.....

Witness to Trustee 2 prints name

.....

Witness to Trustee 2 address

.....

Witness to Trustee 2 occupation

.....

Executed as a **DEED** by **BAPTIST PENSION TRUST LIMITED** acting by, a director

.....
[SIGNATURE OF FIRST DIRECTOR]
Director

and, a director OR its secretary

.....
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]
[Director OR Secretary]

Executed as a **DEED** by

..... and
.....

.....
[signature of Trustee]
Trustee

being two trustees authorised to execute this Deed on behalf of all of the trustees of [**the Departing Employer**] pursuant to a resolution under Section 333 of the Charities Act 2011

..... [signature of Trustee]
Trustee

Witness to Trustee 1 signs

.....

Witness to Trustee 1 prints name

.....

Witness to Trustee 1 address

.....

Witness to Trustee 1 occupation

.....

Witness to Trustee 2 signs

.....

Witness to Trustee 2 prints name

.....

Witness to Trustee 2 address

.....

Witness to Trustee 2 occupation

.....

Executed as a **DEED** by **[New Employer]**
(charitable incorporated organisation) acting
by

.....
[signature of Trustee]

..... and

Trustee

.....being two of its charity
trustees

..... *[signature
of Trustee]* Trustee