

Please read this document carefully so you fully understand the implications of any financial decisions, and keep it safe for future reference. It may also help to refer to our online **glossary** for explanations of technical or unfamiliar terms.

# EMBARK PENSIONS FREEDOM SIPP

## TERMS AND CONDITIONS



embark pensions

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# EMBARK PENSIONS FREEDOM SIPP TERMS AND CONDITIONS

## 1. Definitions

In these Terms and Conditions unless the context otherwise requires:

**1.1** "Act" means Part 4 of the Finance Act 2004 and the schedules relating to that Part.

**1.2** "Account" is an Embark Pensions Freedom Self Invested Personal Pension

**1.3** "Adopting Deed" means the deed by which the Rules were adopted.

**1.4** "Benefit" means an actual or prospective entitlement to any benefit under the Scheme (including any part of a pension and any payment by way of pension) and "Beneficiary" has a corresponding meaning.

**1.5** "Dependant" in relation to a Member has the meaning it has in the Act and includes a person who was married to the Member when the Member first became entitled to a pension under the Scheme but excludes, in relation to an Individual Fund, any person of whose existence the Scheme Trustee is unaware having made reasonable enquiries.

**1.6** "Enhanced Protection" means, in relation to a Beneficiary, the application of paragraph 12 of Schedule 36 in this case.

**1.7** "FCA" is the Financial Conduct Authority or its successor

**1.8** "Fund" means all contributions, gifts and transfer payments received by the Scheme and any other monies, investments, policies, property or other sums or assets for the time being held for the purposes of the Scheme.

**1.9** "HMRC" means The Commissioners or officers of Revenue and Customs or both of them, as the context may require.

**1.10** "Individual Fund" in relation to a Member or Dependant means that part of the Fund which the Scheme Trustee determines is attributable to him having regard to:

(i) (in the case of a Member only) any contributions made by him and by any other person in respect of him;

(ii) (in the case of a Dependant only) any part of the Individual Fund of a Member designated as available for the provision of income withdrawal in accordance with the Rules following the death of that Member;

(iii) any transfers made to the Scheme in respect of him;

(iv) any allocation or reallocation of any part of the Fund in accordance with the Rules;

(v) any pension credit or pension debit applicable to him;

(vi) any income, gains, losses (whether realised or not), fees, costs and expenses and any other actual or prospective liabilities of the Scheme Administrator or of the Scheme Trustee (other than liabilities to pay Benefits) borne by or attributable to the relevant part of the Fund. If, immediately before the Rules took effect, more than one arrangement (within the meaning of the Act or section 630(1) of ICTA as appropriate) existed under the Scheme in relation to an individual, then a separate Individual Fund shall be determined for each such arrangement.

**1.11** "Member" means:

(i) a person admitted as a Member in accordance with Rule 14; or

(ii) a person who was a member within the meaning of the rules governing the Scheme immediately before these Rules took effect or (for the purposes of the definition of Dependant only) immediately before his death and "Membership" has a corresponding meaning.

**1.12** "Partner" in relation to an individual means any person who is (or was immediately before the individual's death) his spouse or civil partner (within the meaning of section 1 of the Civil Partnership Act 2004).

**1.13** "Provider" means Embark Services Limited or any successor in relation to the provision of benefits, as described in section 272(4) of the Act, appointed in accordance with Rule 9.

**1.14** "Regulator" means the Pensions Regulator established by the Pensions Act 2004.

**1.15** "Relative" in relation to an individual means:

(i) any ancestor or descendant (however remote) of the individual or of his Partner;

(ii) any stepchild, brother or sister of the individual (whether of the whole or of the half-blood) and any descendant of any such stepchild, brother or sister;

(iii) any Partner of the individual or of any person within (i) or (ii) above;

(iv) any stepbrother or stepsister of the individual and for these purposes:

(v) 'descendant' includes adopted persons and those who have been treated as children of the family;

(vi) the class of Relatives shall be closed at the individual's date of death except that it shall include persons then *en ventre sa mere* who if they had then been born would have been Relatives.

**1.16** "Rules" means the Scheme Rules and any amendments or modifications to them.

**1.17** "Scheme" means the Avalon Freedom Pension Scheme to which these rules apply.

**1.18** "Scheme Administrator" is Embark Services Limited who is responsible for the discharge of the functions conferred or imposed on the scheme administrator of the Scheme by and under the Act.

**1.19** "Scheme Trustee" is Avalon SIPP Trustees Ltd.

**1.20** "Transaction" may be any change to the Account, or a change recording new or different circumstances of the SIPP holder.

**1.21** "Uncrystallised Fund" means any part of an Individual Fund which is not Unsecured Fund (and has not been applied towards the provision of any other benefit in accordance with the Rules).

**1.22** "Crystallise/Crystallisation" means using part or all of your SIPP to provide retirement or death benefits. It also occurs when you transfer your SIPP to a Qualifying Recognised Overseas Pension Scheme.

**1.23** Reference to "You" or "the investor" shall mean the beneficial owner of the account

**1.24** Reference to "we" "us" "our" or "Embark Pensions" is Embark Services Limited.

**1.25** "Flexible Drawdown" means Income Drawdown with no maximum income limit.

**1.26** "Income Drawdown" means providing an income from your SIPP other than by purchase of an annuity. The annual income payable is subject to a maximum limit unless the member qualifies for Flexible Drawdown.

**1.27** "Transfer" means the transfer of benefits from another pension scheme to your SIPP.

## 2. Operation and investment

**2.1** You must provide us with any information we may require to enable us to carry on our duties. In particular you need to tell us of any change of address.

**2.2** We do not provide advice about our products or allowable investments. You must seek suitable independent financial advice.

**2.3** There may be circumstances which require us to review these Terms and Conditions and the charges being made. In this event we will write to you advising you of any amendments to these Terms and Conditions at least one month prior to the change taking effect.

**2.4** Any instructions received from you or your representatives must be in a form acceptable to us and must bear your authority for the instructions to be valid.

**2.5** Value added tax will be levied on all appropriate expenses and charges at the prevailing rate.

**2.6** You authorise us to provide HMRC with all relevant information about your Freedom SIPP and its investments.

**2.7** We reserve the right to sell investments if there is insufficient cash to meet the amount of any ongoing costs or charges.

**2.8** Whilst we will always make every effort to meet the service standards detailed in the Terms and Conditions, Embark Pensions cannot be held responsible for third party delays (such as the processing of sale and purchase transactions for the units/shares by fund management companies) that fall outside of our control.

**2.9** As a Retail Client you will benefit from the greatest level of protection available under the regulatory system.

**2.10** Subject to certain qualifying criteria you have the right to amend your categorisation but this will affect the level of statutory protection afforded by Embark Pensions. If you do elect to change category, Embark Pensions has the right to decline to provide the service on that basis.

## 3. Starting your Freedom SIPP

**3.1** Your Freedom SIPP will be set up when we receive a correctly completed application or when all of our requirements have been met if this is later. We reserve the right to refuse your application.

**3.2** We will send you an acknowledgement letter within 2 working days of receipt of your Freedom SIPP application.

**3.3** If you have been given advice by a financial adviser prior to submitting your application, you will be given the option of:

3.3.1 receiving cancellation rights for each tranche of new money received into the Account. In this event, any new funds received will not be invested for a minimum period of 30 days following receipt.

3.3.2 waiving your rights to cancellation in which case you will not receive a 'Right to Change Your Mind' and investment of contributions received will occur within 5 working days of receipt.

**3.4** If you decide to cancel your Account, we will return your contributions to you once they have cleared.

In the event of transfer amounts received from existing pension providers, Embark Pensions will initially attempt to return the transfer funds to those providers. If the ceding company is unwilling to accept the return of funds from Embark Pensions, Embark Pensions will retain the funds until such time as a replacement provider has been notified to Embark Pensions by the client or his representatives.

**3.5** Any gain in the value of your assets up to the point at which you cancel will not be returned to you if you cancel an Account during the 30-day cancellation period. Any gain will be retained by us and paid to a registered Charity of our choice.

## 4. Cash

**4.1** Account money will be held by us as trustee in a pooled account with one or more banks. In the event of a bank's failure, your claim will be for a share of the cash held in all pooled accounts at the bank.

**4.2** If your bank account has a credit balance it will earn interest, paid free of tax based on the amount of money in your bank account and the rate of interest determined by us. The rates of interest we pay to your bank account will be published on our website and may be different to the rate of interest the bank pays to us (which will usually be based on the aggregate of all cash held from plans of other members). We are entitled to receive and retain any such difference.

**4.3** For full details of the current interest rates received by each bank; the interest paid to your bank account; and the interest retained by us, please visit **www.embarkpensions.co.uk/banking-information.**

**4.4** Accounts may only be overdrawn in accordance with these terms. If an Account becomes overdrawn Embark Pensions will charge interest at a rate of 6% over the prevailing Bank of England base rate until the overdraft is cleared.

**4.5** If you tell us that you wish to invest in term deposits or money market accounts with a bank or building society, we will at our discretion, endeavour to establish such an account or accounts. We will not enter into a term deposit unless the bank or building society will agree that we may withdraw the deposit during the term.

## 5. Contributions and transfers in

**5.1** If you are eligible, you and/or your employer may make contributions at any time.

**5.2** These may be single contributions or regular contributions. Subject to the Terms and Conditions, and any conditions from time to time imposed by us (whether that is a minimum amount for any contribution or otherwise), you may decide the amount and timing of any contribution.

**5.3** Subject to our agreement on each occasion and any HMRC requirements, a contribution may be paid by a transfer to us of assets. The terms of any such transfer, including the payment of costs, will be as agreed between you and us.

**5.4** Under current law, your own personal contributions will normally be treated as being paid net of basic rate tax, which we will reclaim from HMRC if and to the extent you are entitled to tax relief on that contribution. You are responsible for informing us if you are not entitled to tax relief on the whole or part of a contribution. Any sum reclaimed will not be available for investment until it is received from HMRC which will normally take between 6 and 10 weeks from the date of your contribution. You are responsible for obtaining any higher rate tax relief to which you are entitled.

**5.5** It is your responsibility to monitor your contribution limits. If you become subject to a reduced Annual Allowance (known as the Money Purchase Annual Allowance Rules) as a result of flexibly accessing your pension benefits after 6th April 2015, then you are obliged to inform us of this immediately and provide the date this occurred.

**5.6** If you have made contributions in excess of the amount on which you are entitled to tax relief, we may agree to repayment of the excess contributions to you, provided that sufficient funds are available in your Freedom SIPP and any amounts due to be repaid to HMRC have been repaid. If you have taken benefits or transferred out you agree to indemnify and keep us indemnified in respect of any tax due to HMRC as a result of the above.

**5.7** The pension input period is the period in which contributions made to all your registered pension schemes are tested against the Annual Allowance. The pension input period for your SIPP will be from 6 April to 5 April each year unless you inform us otherwise.

**5.8** Other pension benefits from a registered pension scheme may also be transferred into our SIPP, subject to our consent, applicable legislation and HMRC rules. The terms of any such transfer, including the payment of costs, will be as agreed between you and us.

**5.9** All contributions and transfer values we receive will be applied to your individually designated Account.

**5.10** If you transfer Capped drawdown benefits to us they will be converted to a Flexi-Access Drawdown arrangement upon receipt. This will only trigger the Money Purchase Annual Allowance rules (if you are not already subject to them) the day after you first receive an income payment from this arrangement

## 6. Discretionary Investment Manager

**6.1** If you ask us to, we may appoint a discretionary investment manager to:

a) open an investment dealing account to enable you to give instructions to acquire and dispose of investments for your Freedom SIPP on an execution-only basis;

b) advise you on how your Freedom SIPP (or any part of your SIPP) should be invested or to make investment decisions themselves on a discretionary basis in relation to your SIPP (or any part of your SIPP).

**6.2** You may ask us to appoint different investment managers for different parts of your SIPP. If you do not ask us to appoint any investment manager, you may be restricted in the types of investment you can instruct us to acquire. We reserve the right not to appoint any person chosen if they do not meet our requirements.

**6.3** Any appointment of an investment manager for your Freedom SIPP (or any part of your SIPP) will be on such terms as we may agree with that investment manager. We may require you to enter into the agreement with the investment manager. The investment manager will be responsible for:

a) setting up the requisite designated client account for us for your Freedom SIPP;

b) the registration and safe custody of investments in relation to which the investment manager is appointed;

c) accounting to us regularly for all transactions and interest in relation to the relevant investments in a form acceptable to us; and

d) unless you request otherwise, monitoring the performance of your Freedom SIPP (or the relevant part of your SIPP).

**6.4** Where a person is appointed as an investment manager, the duties and rights of the investment manager are carried out or exercised by the investment manager as our delegate and on our behalf. Subject to the agreement between us and the investment manager, we may terminate those delegations and delegate the investment management of your Freedom SIPP (or relevant part of your SIPP) or other duties as applicable to another person. If we do this, we will tell you in writing.

**6.5** If you do not appoint an investment manager that offers a nominee service for the safe custody of the investments, then when making investments (including transferring investments into your SIPP), we will appoint a direct execution-only dealing and nominee service as the investment manager. This could be any number of third party providers which we have assessed as being most suitable to you and includes the Embark platform Third Party Investment Account. The fees and charges applicable to these service providers are available on request

**6.6** We are not liable for any loss caused by the investment manager, his nominee, banker or custodian or anyone else providing related services.

**6.7** We will not act as investment manager for your Freedom SIPP or give investment advice.

## 7. Investments

**7.1** You may give instructions to us (or any relevant investment manager appointed at your request in accordance with these terms) to acquire investments for your SIPP.

This is subject to:

7.1.1 the minimum amount, if any, of any qualifying investment requested;

7.1.2 Your Freedom SIPP account contains the minimum cash balance as specified by us;

7.1.3 the appointment of an investment manager where required;

7.1.4 the completion by you of additional documentation if requested by us, for example, if you wish to purchase a property;

7.1.5 the legislation applicable to registered pension schemes;

7.1.6 all other relevant statutory provisions;

**7.2** We or any investment manager will be entitled not to acquire an investment in accordance with your instructions if:

7.2.1 we have not received from you original signed written instructions; or

7.2.2 insufficient cleared funds are available in relation to your Freedom SIPP; or

7.2.3 the amount to be invested would be less than any minimum investment size determined by us from time to time; or

7.2.4 in our reasonable opinion, the carrying out of the instruction is impossible, unlawful or impracticable; or

7.2.5 we have given you notice to transfer your Freedom SIPP to another pension scheme in accordance with these terms and in our reasonable opinion it is not practicable to complete the acquisition of the investment before the date on which your Freedom SIPP must be transferred or the investment is illiquid; or

7.2.6 in our reasonable opinion, the acquisition of such an investment may impose tax or other costs on us or expose us to liabilities which in each case we may not be able to meet from your SIPP; or

7.2.7 in our opinion, acquiring any investments may require us to offer to purchase further shares pursuant to the City Code on Takeovers and Mergers or any other code or legislation, or any further assets.

**7.3** We will tell you if we do not acquire an investment in accordance with this clause.

**7.4** If you instruct us to, we (or any relevant investment manager) will sell or encash some or all of the investments of your Freedom SIPP and apply the proceeds of sale or encashment, less any appropriate charge (and the expenses of sale), in the acquisition of further investments in accordance with your instructions. Any such reinvestment is subject to these terms. Pending reinvestment, any cash proceeds received by us will be credited to your Freedom SIPP account.

**7.5** We or any investment manager will be entitled not to dispose of an investment in accordance with your instructions if:

7.5.1 we have not received from you original signed written instructions; or

7.5.2 in our reasonable opinion, the disposal of the investment is impossible, unlawful, impracticable or contrary to the terms of any agreement to which we are a party.

**7.6** We will tell you if we do not dispose of an investment in accordance with this clause.

**7.7** We (or any relevant investment manager) will use all reasonable endeavours to execute any instructions we receive in accordance with these terms and conditions from you promptly. This is not always possible, so provided neither we nor the investment manager acts unreasonably, then neither we nor the investment manager will be liable for any loss or profit forgone between the time an investment instruction was received and when it was executed.

## 8. Custody of investments

**8.1** You choose what to invest in subject to these terms as amended from time to time, provided that the investments are in accordance with the legislation governing the investments of registered pension schemes or any other relevant statutory provision. The permitted investments broadly comprise:

8.1.1 stocks and shares quoted on the UK Stock Exchange including securities traded on the Alternative Investment Market (AIM) but not the Off Exchange (OFEX)

8.1.2 stocks and shares traded on an overseas stock exchange being one recognised by the Inland Revenue

8.1.3 unit trusts and investment trusts (including Open Ended Investment Companies [OEIC])

8.1.4 deposit accounts, and

8.1.5 commercial property and farmland

**8.2** All investments are held by us in our nominee name, Avalon SIPP Trustees Limited. The Trustee is the legal owner of all cash and assets within the Scheme. The Trust is arranged for the benefit of the Member as specified by the Rules. All allocations of investments to your Freedom SIPP are notional only and neither you nor any other person who may be entitled to benefit under your Freedom SIPP will acquire any legal or beneficial interests in those investments.

**8.3** We or any investment manager will be entitled to dispose of any investment without consultation with you if, in our reasonable opinion:

8.3.1 continued retention of such investment would be unlawful or would impose tax or other costs on us or expose us to liabilities which in each case we may not be able to meet from your Freedom SIPP; or

8.3.2 we need to dispose of that investment to meet any fees or charges payable from your Freedom SIPP which we may otherwise not be able to meet from your SIPP; or

8.3.3 that investment is no longer an allowable investment as listed in 8.1 above; or

8.3.4 disposal of the investment is required by the terms of any agreement to which we are a party.

**8.4** We will tell you if we dispose of an investment in accordance with this clause.

**8.5** We will make arrangements for the custody of any investments that are not held by an investment manager.

**8.6** The relevant monies will be held in your Freedom SIPP account and will attract interest at the prevailing interest rate of the bank in which your cash is held if:

- You have not asked us to appoint an investment manager or;
- You have given us no instructions as to the investment or application of the whole or part of any monies held in your SIPP or;
- If any instructions cannot be implemented or;
- If instructions are still pending.

**8.7** We will not exercise voting rights in respect of any investment unless you ask us to, however we are not under any obligation to vote in accordance with your wishes. We will not appoint a proxy in respect of any investments in your SIPP.

**8.8** We will not be responsible for any loss (including loss of profit) in relation to, or diminution in value of, any investment:

8.8.1 acquired by us (or any investment manager) at your request unless such loss or diminution results from our fraud, wilful misconduct, negligence or breach of regulatory duty, or the fraud, wilful misconduct, negligence or breach of regulatory duty of any of our employees or agents; or

8.8.2 not acquired by us or not disposed of by us in accordance with our rights under these terms; or

8.8.3 disposed of by us in accordance with these terms unless such loss or diminution results from our fraud, wilful misconduct, negligence or breach of regulatory duty, or the fraud, wilful misconduct, negligence or breach of regulatory duty of any of our employees or agents; or

8.8.4 which results from any action or omission of any nature whatsoever by any investment manager or by any nominee, banker, custodian or other person providing services to any investment manager.

**8.9** Notwithstanding our entitlement not to acquire or dispose of an investment as requested by you or to dispose of an investment without consultation, neither we nor any investment manager will be under any duty to consider, or advise on, the general or specific merits or suitability of any actual or proposed investment or disposal.

**8.10** We reserve the right to amend the types of investments and the minimum amount of any investment at any time. Where possible, however, we will only do this after giving you three months' notice.

**8.11** Before 1 April 2024 we allowed you to invest in certain non-standard investments provided they met our due diligence requirements. Holdings in these investments continue to be permitted provided we received your investment instruction before 1 April 2024. Additionally if an existing standard investment becomes non-standard (for example if it is delisted or becomes suspended) then this can continue to be held in your plan. Otherwise no further investments into non-standard investments (other than certain cash deposits with fixed terms longer than 30 days) are permitted after 1 April 2024, including top ups and roll overs for existing holdings.

## 9. Switching of Investments

**9.1** Fund switch requests must be made in a form that is acceptable to Embark Pensions, confirming you have read and understood the appropriate Key Investor Information Document(s) for the new investments requested. Embark Pensions will sell or encash some or all of the investments notionally allocated to an Account holders fund and apply the proceeds of sale or encashment, less the appropriate charge (if applicable) and the expenses of sale, in the acquisition of further investments in accordance with the Account holders instructions. However, any such variation is subject to any restrictions on the minimum amount of reinvestment as Embark Pensions may specify from time to time.

**9.2** The company reserves the right, in circumstances which in its absolute discretion it considers exceptional, to defer such a sale or encashment:

9.2.1 up to 12 months in any case where the transaction involves the cancellation of units in a fund which holds assets in the form of real property, either directly or indirectly, or whose price is related to the value of real property;

9.2.2 until the relevant investment is sold, in any case where such investment consists of commercial property or an interest in commercial property; and

9.2.3 for up to one month in other cases

**9.3** Embark Pensions reserves the right to charge the account holder for fund switches of this nature where the number of transactions (where one transaction is a sale and another is a purchase) exceeds twenty in any 12 month period. This charge will be reviewed by Embark Pensions from time to time.

## 10. Investments in property

**10.1** If you wish us to purchase property (including land or any permitted interest in land) for your Freedom SIPP, we may appoint solicitors and/or surveyors chosen by you also to act for us if we are satisfied that there is no conflict of interest and that it is otherwise appropriate. Their fees, including applicable VAT, together with Stamp Duty Land Tax and disbursements will be payable from your SIPP.

**10.2** We reserve the right, if we consider it appropriate, to appoint a surveyor or equivalent person (a property manager) to manage any property acquired by us for your Freedom SIPP as landlord. The property manager's fees, including applicable VAT, will be payable from your Freedom SIPP.

**10.3** We will make arrangements for the custody of title deeds if these are not held by the solicitors or any lender acting on any purchase of property for your Freedom SIPP. We will also make arrangements for insuring property held in your SIPP. The insurance premiums payable for such insurance will be payable from your Freedom SIPP.

**10.4** You agree to indemnify us and to keep us indemnified against all claims, losses and liabilities of any nature (including environmental claims, losses and liabilities) arising out of property held in your Freedom SIPP. Without prejudice to the generality of this condition, if in our reasonable opinion our continued holding of any property in your Freedom SIPP may expose us to any such claims, losses or liabilities which we may not be able to meet from your SIPP, we may at any time, if we so choose, require you to buy that property from us at fair market value or £1, whichever is the greater. You must do all things and execute all documents that we may reasonably require to give effect to our rights under this term.

## 11. Borrowing

**11.1** Where the amount available in your Freedom SIPP account is insufficient to purchase a property or other investment it may be possible to raise a secured loan to assist with the property or investment purchase. The borrowing must be arranged in our name and on terms satisfactory to us but we will not take responsibility for arranging a lender.

**11.2** Your Freedom SIPP account may be overdrawn only with our and the bank's prior agreement. We and the bank may agree to an overdraft, for example, to meet any charges, costs or liabilities that we are entitled to charge to your Freedom SIPP or to pay unsecured income or alternatively secured benefits to you pending our receipt of sale proceeds for, or income from, an investment. Borrowing will not generally be permitted to pay benefits due under these terms and conditions.

**11.3** Any overdrawn Account will incur interest payable to Embark Pensions for the duration that the account is overdrawn. See 4.4.

**11.4** If we agree to an overdraft, we or the bank may require it to be repaid or reduced by written notice at any time. All interest charged by Embark Pensions in respect of any overdrawn balance will be a liability of your SIPP. If your Freedom SIPP Account becomes overdrawn without our or the bank's prior agreement, for example because a cheque paid into your SIPP account does not clear, we may charge a higher rate of interest.

**11.5** Any borrowing must be in accordance with legislation, within limits imposed by applicable law and as agreed by us.

## 12. Fees, charges and expenses

**12.1** The fees and charges payable to us (and/or the Account holders financial representatives), and the timing of these fees in respect of your Freedom SIPP and the circumstances in which they may be increased are set out in the schedule of fees and charges as amended from time to time.

**12.2** We will also be entitled to charge the following costs to your SIPP:

12.2.1 all expenses incurred by us (including claims, losses and liabilities) in acquiring, holding, disposing of or valuing any investment or other asset of your SIPP;

12.2.2 all fees, charges, disbursements and other costs charged by any investment manager, nominee, banker, custodian, anyone else providing related services or agent (including any financial adviser) appointed in relation to your Freedom SIPP or any part of your SIPP;

12.2.3 all taxes, duties or levies to which we become liable as a result of acquiring, holding or disposing of any investment or other asset allocated to your SIPP; and

12.2.4 an amount equal to any tax for which we become (or reasonably expect to become) liable in respect of your Freedom SIPP if your Freedom SIPP does not constitute or ceases to constitute pension business as defined in Section 431B of the Income and Corporation Taxes Act 1988 (ICTA).

**12.3** We may reimburse ourselves in respect of the liability, charges or costs by way of making a charge to your Freedom SIPP as we may reasonably determine which we have incurred as a result of one of the following events occurring:

12.3.1 we become liable to pay any levies in relation to the Financial Services Compensation Scheme; or

12.3.2 we become liable to pay any tax or levies imposed on your Freedom SIPP or on any contribution paid by you; or

12.3.3 we become liable to make any other payment to the UK Government or any governmental agency or self regulatory organisation of which we are (or become) a member, to the extent directly or indirectly attributable to your Freedom SIPP.

**12.4** The terms outlined in 12.3 will not apply in cases where the relevant event is attributable, directly or indirectly, to any fraud, negligence, wilful default or regulatory breach on our part.

**12.5** All charges, costs and liabilities which we are entitled to charge to your Freedom SIPP will be paid by us from your Freedom SIPP account. Any annual fees will be automatically deducted from your fund. You are responsible for ensuring that at all times there are adequate funds available for the payment of the Scheme fees on the due date. By accepting these Terms you agree to have sufficient funds in your SIPP bank account to cover your annual fees.

**12.6** We will deduct any applicable fees from your SIPP bank account, however we may also provide the ability for you to send payments for fees directly to us. Where you elect to pay your fees directly to us before the date on which they become due, you must do so at least ten business days prior to the due date, otherwise this amount and that which we may deduct from your SIPP bank account will be considered due and payable to us. In the event that a fee has been deducted from your SIPP bank account and you later also make a payment to us directly, both amounts will be considered fully due and payable to us at the point of receipt. We will however in either case pay any amounts to you, as applicable, within ten business days of identification.

In the event that a change in your circumstances results in a reduction to the applicable fee amount we will use all reasonable endeavours to ensure our records are updated accordingly. However, in the event that we are not explicitly notified of this change in circumstance (either by you, your Financial Adviser or another appropriate party), then the original amount will be considered fully due and payable to us at the point of receipt. We will however pay any amounts to you, as applicable, within ten business days of us being notified of your change in circumstance.

**12.7** If at any time the credit balance on your Freedom SIPP account is not enough to cover all such charges, costs and liabilities in full, we may require you to pay an additional contribution and/or to dispose of investments so that all amounts due can be paid. If you do not comply with these requirements, we may:

12.7.1 overdraw your Freedom SIPP account (in which case 11.3 will apply) and/or dispose of investments at our discretion and without liability in order to pay the amounts due; or

12.7.2 require you to pay us the amounts due

**12.8** If for any reason the value of your investments is insufficient to meet any such fees, charges, expenses, tax or scheme sanction charges payable or tax refunds due, you agree to pay to us on demand the amount of any such shortfall.

**12.9** We will continue to be entitled to our charges and to recover all costs and liabilities as referred to in the above terms until all the assets of your SIPP, including the balance on your Freedom SIPP account, have been transferred out of your Freedom SIPP in accordance with these terms.

## 13. Transfers out and payment of benefits

**13.1** You can require us by written notice to transfer the assets of your SIPP to another provider at any time, subject to applicable legislation and HMRC rules. This will be done as soon as reasonably practicable and will incur Embark Pensions' prevailing transfer out charge (which may be reviewed from time to time).

**13.2** Your SIPP will also be liable for the following costs, charges and liabilities associated with the transfer out:

13.2.1 our and other parties' investment transaction and property fees on the sale or transfer of assets; and

13.2.2 investment manager or nominee charges on the transfer of ownership of assets (where assets themselves are transferred 'in specie'); and

13.2.3 our and other parties' property fees for any transfer of ownership of property (for in specie transfers).

**13.3** If we agree, we may transfer assets out of your SIPP:

13.3.1 to you in payment of benefits under your SIPP; or

13.3.2 to another pension scheme that is a registered scheme within the meaning of Section 153 of the Finance Act 2004 or which under that section is treated as a registered scheme; or

13.3.3 to the person entitled after your death; or

13.3.4 in accordance with any Court order.

**13.4** We will obtain a true market value of your SIPP in the following circumstances:

a) you commence capped or flexible drawdown

b) you elect to exercise your open market option and purchase a lifetime annuity

c) you die before age 75

d) you reach age 75

e) you ask us to make a transfer to a Qualifying Recognised Overseas Pension Scheme; or

f) we need to, or you request us to carry out an income limit review under capped drawdown.

This will require Embark Pensions to fully reconcile your SIPP and obtain current values for the investments including property held. For property and for certain unquoted investments, this means that a suitable qualified valuer will need to be appointed to provide a current valuation.

**13.5** We will not pay benefits, purchase a lifetime annuity or make a transfer in accordance with these terms and the trust deed and rules unless:

a) we have a signed instruction from you or the appropriate person to make the relevant payment or transfer

b) we have received all required documentation and information from you, or the appropriate person, that we in our reasonable opinion believe is necessary

c) we have received all charges due to us; and

d) all costs chargeable to your SIPP and all liabilities of your SIPP (including all costs arising in relation to any benefit payment, transfer for the purchase of a lifetime annuity purchase or transfer out) have been satisfied.

**13.6** If you wish to draw benefits or transfer out in cash or to purchase a lifetime annuity, there must be sufficient cash in your SIPP. If investments have to be sold to raise the required cash this may take time. Most asset classes can be sold quickly but property and some investment funds are illiquid and may take some considerable time to realise.

**13.7** Where the trustee is unable to realise the value or transfer all or any of the investments of your SIPP, or is unable to do so on what we consider to be reasonable terms, we may in our absolute discretion defer the payment of benefits or transfer out requested under these terms until the trustee is able to realise the relevant investments and has received the cleared funds.

**13.8** Where the trustee has been unable to realise an investment, we may, if we so choose:

a) direct the trustee to transfer that investment to you in part of or full satisfaction of any payment of benefits under your SIPP; or

b) require you to buy the asset from the trustee at fair market value or £1, whichever is the greater.

**13.9** After satisfaction of all liabilities of your SIPP and transfer of all assets out of your SIPP or payment of all benefits under your SIPP, we will close your SIPP and you will cease to be a member of the scheme.

## 14. Pension Benefits

**14.1** You may normally choose to crystallise some or all of your SIPP at any time on or after the Minimum Pension Age. An Application to take benefits must be made using the relevant Embark Pensions form and be submitted with supporting evidence of age.

**14.2** If you choose to take pension benefits from your Account then you should seek financial advice. If you do not wish to do this then we will accept authorised instructions from you directly but may require further attestations or declarations to ensure that you have understood the potential risks.

**14.3** You may be able to crystallise your SIPP before the Minimum Pension Age if:

i) we are satisfied that you are and will continue to be incapable of carrying on your current occupation due to physical or mental impairment. You will have to provide evidence that we require; or

ii) you had transitional rights at April 2006 to a protected pension age under Schedule 36 of the Finance Act 2004 and you satisfy the conditions.

**14.4** You can normally take a quarter (25%) of the value as a tax-free lump sum. In some circumstances, a higher amount may be available. The total of all tax-free lump sums you can take from your pension plans will normally be capped at the Lump Sum Allowance, currently £268,275. If you have a protected tax-free lump sum or previously applied to HM Revenue & Customs for certain protections, you may be entitled to a higher amount.

Any benefits taken in excess of this allowance will be taxable as income at your marginal rate.

**14.5** The remainder of the amount crystallised after the payment of any pension commencement lump sum will be allocated to provide a pension income for you in the form of:

i) Flexi-Access Drawdown , and taxed at your marginal rate

ii) a Lifetime Annuity bought from an insurance company of your choosing; or

iii) a combination of the above; or

iv) a small funds lump sum. Alternatively you may choose to access your pension benefits as an Uncrystallised Funds Pension Lump Sum (UFPLS).

**14.6** If you choose to take Flexi-Access Drawdown then:

i) You can request regular or ad hoc payments of income directly from your pension. There is no maximum or minimum limit on how much you can withdraw each year. However, you are obliged to maintain a minimum amount in your Account, which will be reviewed by Embark Pensions on an annual basis, if you wish for it to remain open

ii) If you request a regular income, we will pay your drawdown pension monthly net of all relevant taxes. We will make the payments by direct credit to your personal bank account. We will stop payments when you die.

iii) You can ask us to increase, reduce, stop or restart payments or make one off payments from time to time. If you wish to change the level of your payment you must ask us at least 10 business days before the payment date.

iv) You must ensure that sufficient cleared funds are held in your SIPP account 10 business days before the payment date or we will not make the payment.

v) The day after we first make a payment of income to you from your Flexi-access Drawdown fund you will become subject to a reduced annual allowance, known as the Money Purchase Annual Allowance Rules (MPAAR) for the remainder of your lifetime. We will notify you this has occurred and the effective date. It is your responsibility to inform any other pension schemes of which you are a member and to ensure that your contributions to all pension schemes (including your Freedom SIPP) remain within the permitted maximums.

vi) You can choose to buy a lifetime annuity at any time with part of, or, the entire drawdown pension fund. You can also transfer your Flexi-access drawdown fund to another provider.

**14.7** If you choose to buy a lifetime annuity you must select the features you require from the relevant annuity provider. Embark Pensions does not offer annuities. To facilitate your request we will transfer your pension fund in cash to your chosen annuity provider and cease to have responsibility for those benefits.

**14.8** If you wish to draw benefits or transfer out in cash, there must be sufficient cash in your Account. Most asset classes can be sold quickly but some investment funds are illiquid and may take some considerable time to realise.

**14.9** If you choose to take an Uncrystallised Funds Pension Lump Sum (UFPLS) then:

i) You can take a single lump sum directly from your Uncrystallised Fund. 25% of the lump sum will be tax free provided you have sufficient Lump Sum Allowance remining, with the remainder subject to Pay as You Earn tax at your marginal rate.

ii) There is no maximum or minimum limit on the amount of the lump sum, however, you are obliged to maintain a minimum amount in your Account, which will be reviewed by Embark Pensions on an annual basis, if you wish for it to remain open.

iii) There is no limit on the number of UFPLS' that you can withdraw from your Freedom SIPP.

iv) We will pay your UFPLS net of all relevant taxes by direct credit to your personal bank account.

v) You must ensure that sufficient funds are held in your SIPP account 10 business days before the payment date or we will not make the payment.

vi) The day after we first make an UFPLS payment to you, you will become subject to a reduced annual allowance, known as the Money Purchase Annual Allowance Rules (MPAAR) for the remainder of your lifetime. We will notify you when this has occurred and the effective date. It is your responsibility to inform any other pension schemes of which you are a member and to ensure that your contributions to all pension schemes, including your Freedom SIPP, remain within the permitted maximums.

**14.11** A tax charge may arise as a result of taking a pension commencement lump sum if you have recycled the lump sum in whole or in part. Recycling will arise if:

i) the amount of contributions from all sources paid to all registered pension schemes in respect of you is greater than 30% more than might have been expected based on previous contributions; and

ii) the pension commencement lump sum plus any similar lump sums from any registered pension scheme taken in the previous 12 months exceeds £7,500; and

iii) the cumulative amount of the additional contributions exceeds 30% of the pension commencement lump sum; and

iv) the recycling was pre-planned.

*This is not a full definition. Full details are in schedule 29 of the Finance Act 2004. Please contact a suitable adviser, if you require more details.*

**14.12** Should a tax charge arise you agree that such tax shall either be paid from your Account or paid by you personally as the case may be.

**14.13** Should you satisfy the conditions required for payment of a Serious Ill Health Lump Sum as defined in Paragraph 4 of Schedule 29 of the Finance Act 2004, then you may request payment of the lump sum permitted in these circumstances. If sufficient cash is not available in your Account then you may instruct us to disinvest your SIPP assets in full in order to facilitate the payment

**14.14** If we receive notification of your death we will request confirmation by way of sight of the original death certificate. Upon confirmation of your death we will sell or otherwise realise your SIPP assets and hold your fund as cash whilst the Trustees decide whom the beneficiaries of your pension should be.

**14.15** In the event of your death the trustees retain their absolute discretion to pay any individual or individuals in the proportions that they see fit following deduction of all fees, taxes and charges due at the time of payment. Any nomination made by you will be considered but is not binding and may not be followed.

**14.16** Upon your death benefits may be paid as

i) A Lump sum as defined in the Finance Act 2004; or

ii) Flexi-access Dependant's Drawdown; or

iii) Transfer out; or

iv) Any combination of the above.

**14.17** After satisfaction of all liabilities of your SIPP and payment of all benefits under your Account, we will close your Account and you will cease to be a member of the Scheme.

**14.18** If an individual dies whilst in receipt of benefits bequeathed to them as a result of your death, then those benefits will be distributed to a successor nominated by them or chosen by the scheme trustees based on the individuals personal circumstances.

## 15. Data protection

**15.1** We are the "data controller" (as defined in the General Data Protection Regulation) in respect of the information supplied on the Application Form that you have completed. You consent to us using that information in order to administer your Membership of the Scheme and you acknowledge that the information will be held on our computer records and may be used for underwriting or claims handling purposes.

**15.2** You authorise disclosure in confidence of data to:

a) the Trustees and The Royal Bank of Scotland or Metro Bank (as the case may be);

b) any associate and any agent appointed to assist us in administering your Membership and any person providing professional services to us;

c) any Professional Adviser nominated by you in accordance with Section 8;

d) regulatory bodies; and

e) insurance companies (directly or via a central register).

**15.3** We will adhere to and comply with the provisions of the General Data Protection Regulation and the Data Protection Principles, and any subsequent amendments thereto. Please refer to our full Privacy Policy for more information which is included with this document.

**15.4** At account opening or as may otherwise be determined, enquiries will be made at a third party organisation to verify your identity. This will involve checking the details you have supplied across a number of databases including the electoral roll. A record of this search will be held by us and may also be shared with other businesses who are involved in the management of your SIPP.

**15.5** You are entitled to see all personal data relating to you, which is held on any database controlled by us. We may apply a charge to any substantive or repetitive request for personal data.

**15.6** By taking out your Freedom SIPP you freely consent to the processing and disclosure of personal information in accordance with these Terms and Conditions.

## 16. Annual reporting and valuations

**16.1** Your Freedom SIPP is denominated, accounted for and its performance is measured in Sterling.

**16.2** Following the anniversary of the commencement of your Freedom SIPP we will provide to you each year, without charge, with a statement of the current value of your SIPP. We reserve the right to amend the reporting date by written notice to you. Where appropriate, the investments allocated to your Freedom SIPP will be valued at the close of business on the last business day before the 6th of the month in which your anniversary month falls. You may request us to provide such statements more frequently or on a different date, but we reserve the right to make an additional charge for providing the statements in those circumstances.

**16.3** The value of your Freedom SIPP is based on the total value of the assets of your Freedom SIPP at the reporting date less the value of its liabilities. We may, from time to time, adopt such valuation rules as we in our opinion consider appropriate.

**16.4** Where we are required by legislation or other regulations to value your Freedom SIPP at market value we will arrange for your SIPPs' investments to be so valued. This will include, but is not limited to, the appointment of an appropriately qualified valuer in respect of unquoted investments and interests in property.

16.4.1 Where we need to appoint such a valuer we will notify you in advance for confirmation of the valuer you wish us to use and agreement to the valuers' fees. Where we are required to value your fund and you have not replied within 60 days we reserve the right to appoint valuers of our choice to carry out the valuation. The valuers' fees and any other costs associated with the valuation will be payable from your SIPP.

## 17. Termination

**17.1** These Terms and Conditions of business, as amended, will continue to apply until your membership of the Scheme is terminated. All charges or fees due up to the date of termination must be paid. Termination shall be without prejudice to the completion of transactions already initiated by, or with, Embark Services Limited on behalf of your SIPP.

**17.2** If we terminate, or suspend your Account we reserve the right to encash all investments and hold the proceeds in cash pending receipt of instructions from you to transfer your SIPP to another registered pension scheme.

## 18. Complaints

**18.1** If you are not satisfied with any element of the services provided by us, you should write to us at the address below, and it will be dealt with according to our complaints procedure, a copy of which is available on request.

**Embark Pensions Complaints Team**
Provincial House
37 New Walk
Leicester
LE1 6TU

Tel: **0116 366 8681**
Email: **complaints@embarkpensions.co.uk**

**www.embarkpensions.co.uk**

If you are not satisfied with the outcome, you can write to:

**Financial Ombudsman Service**
South Quay Plaza
183 Marsh Wall
London
E14 9SR

Tel: **0800 138 7777**
Email: **enquiries@pensionombudsman.org.uk**

**https://moneyandpensionsservice.org.uk/**

You may also refer to MoneyHelper on **moneyhelper.org.uk**.

## 19. Financial Services Compensation Scheme (FSCS)

In the event of us being unable to pay you any money we owe, you may be eligible for compensation under the FSCS. Most types of investment business are covered for up to 100% up to the maximum compensation limit. Full details of the FSCS are available on request from our compliance officer or at **www.fscs.org.uk**.

# PRIVACY POLICY

The Embark Pensions Privacy Notice applies to customers and prospective customers of Embark Pensions (a trading style of EBS Pensions Limited, a wholly owned subsidiary of Embark Group Limited). This details how we will collect and process the personal data that we hold about you and your rights under the Data Protection Act in respect of the data held.

EBS Pensions Limited will be the Data Controller as defined under UK Data Protection legislation and regulations.

## The lawful basis and purpose for the processing of your data

We will only process your personal data where we have a legal basis for doing so. This includes:

- Where you have provided positive consent to us;
- Where processing is necessary for the performance of a contract between you and us or to take steps to enter into a contract;
- Where processing is necessary for compliance with a legal or regulatory obligation; or
- Where we have a legitimate interest upon which the data may be processed. Any decision to process data on the basis of legitimate interest will be made on a case by case basis and in line with the guidance set out in UK Data Protection legislation.

## The information that we collect

We will collect personal data from you at the outset of your relationship with us, from your application as well as from other third parties such as your financial adviser and any providers that are transferring money or assets to us on your instruction. We will also collect personal data from you and other third parties you instruct on your behalf throughout the course of your relationship with us. This personal data will include:

- Contact information such as name and address, telephone numbers and email addresses
- Information from your contact with us, voice recordings from telephone calls, letters and emails.
- Socio-demographic information; age, employment status, profession, earnings, gender, other sources of wealth
- Family circumstances information; marital status, beneficiary information
- Transactional information; account transactions, access to our online client portals
- Legal information such as national identifiers and copies of documents relating to your identity, nationality and citizenship - such as birth certificates, passports, proof of address documents, marriage certificates etc.
- Special category data if necessary, such as information relating to your health, such as medical conditions and disabilities.

## Sharing your personal data

We may disclose your personal data to other companies within the Embark Group of companies and third parties which provide services in connection with the administration of your account.

We may also share your personal data for legitimate business reasons or as may be required by applicable law and regulations with your Financial Adviser, third parties appointed by your Financial Adviser, third party investment managers, and product providers with whom you or your Financial Adviser instructs us to invest.

We may disclose your personal data to a credit reference agency in order to verify your details both during the application process and the ongoing administration of your account. This data will be used to prevent fraud and money laundering and to check your identity. Any checks performed may be recorded on your credit history.

We will disclose your personal data to any governmental, legal or regulatory body if required to do so by applicable law and regulation.

We may need to disclose sensitive personal data about you to third parties, such as information relating to your health where required to do so to give effect to an instruction from you or your Financial Adviser in respect of your account.

We may need to transfer your personal data to another country, in which case we will ensure that your personal data is afforded the same level of protection as is required under UK Data Protection legislation and regulations prior to sending your personal data.

We will otherwise keep your personal data confidential and never use it for any other purpose or pass your details to any third parties without your consent.

## Retention of your personal data

We will retain your personal data for no longer than is necessary to provide the services under the Terms and Conditions applicable to the account and to meet any legal or regulatory obligations that may apply.

## Your Data Protection Rights

You have a number of rights under the Data Protection laws, including:

1. the right to request a copy of the personal data we hold on you. When you request this data, this is known as making a Subject Access Request (SAR). In most cases, this will be free of charge, however in some limited circumstances, for example, repeated requests for further copies, we may apply an administration fee;
2. the right to have personal data we hold about you transferred securely to another service provider in electronic form;
3. the right to have any inaccurate personal data corrected;
4. the right to have any out of date personal data deleted once there's no business need or legal requirement for us to hold it;
5. the right to object or restrict some processing, in limited circumstances and only when we don't have legitimate grounds for processing your personal data;
6. the right to object to your personal data being used to send you marketing material. We will only send you marketing material where you've given us your consent to do so. You can remove your consent at any time.

## Important Information

If you have any questions regarding how we use the data that we collect please contact:

**The Group Data Protection Officer**
The Embark Group
33 Old Broad Street
London
EC2N 1HZ

If you are not satisfied with any aspect of how we have managed your data you have the right to complain to the Information Commissioners Office. For further details of your rights under the UK's data protection legislation and regulation please contact the Information Commissioner's Office at **https://ico.org.uk/for-the-public/**.

By signing our product application form, you consent to the use of your Personal Information for the purposes and on the terms set out above. You have the right to withdraw consent at any time.

0344 544 0566

customerservices@embarkpensions.co.uk

Provincial House, 37 New Walk, Leicester, LE1 6TU

embarkpensions.co.uk

EBS Pensions Limited act as operator for the Option SIPP, Full SIPP, Liberty SIPP, EBS SIPP and EBS SAPPP. Embark Services Limited act as operator for the Hornbuckle Mitchell SIPP, Hornbuckle Mitchell Private Pension, Hornbuckle Mitchell FIPP, The Private Pension and the Freedom SIPP.

Embark Pensions is a trading name of EBS Pensions Limited and Embark Services Limited. EBS Pensions Limited is a company incorporated in England and Wales (company number 00998606) with its registered office at 33 Old Broad Street, London, EC2N 1HZ. EBS Pensions Limited is authorised and regulated by the Financial Conduct Authority (Financial Services Register number 134908). Embark Services Limited is a company incorporated in England and Wales (company number 02089815) with its registered office at 33 Old Broad Street, London, EC2N 1HZ. Embark Services Limited is authorised and regulated by the Financial Conduct Authority (Financial Services Register number 120820).

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