

# **Momentum Malta Retirement Trust**

## Terms of Business

## 1. Introduction

This document sets out the Terms and Conditions for the services provided to you by Momentum Pensions Malta Limited ('Momentum') in relation to the administration of your Membership of the Momentum Malta Retirement Trust.

## 2. Definitions and Interpretations

**2.1** In these Terms and Conditions the following definitions shall apply:

**2.1.1** "the Agreement" means these Terms and Conditions and the Declarations within the Momentum Application Form together constitute the basis on which Momentum Pensions Malta Limited is to provide the Services in its role as Retirement Scheme Administrator.

**2.1.2** "the Member" means the person accepted by Momentum as a Member of the Scheme in terms of the Scheme and who has not ceased to be a Member in terms of the Scheme.

**2.1.3** "Momentum" means Momentum Pensions Malta Limited a company incorporated in Malta numbered C52627 whose registered address at Ground floor, Crown Marina, Ta' Xbiex Seafront, Ta' Xbiex XBX1027, Malta. For the purpose of clause 5 "Momentum" shall include The Momentum Group and its subsidiaries and associated companies and the directors, employees or other nominees or agents of such companies and subsidiaries and the successor and assigns of any of these companies.

**2.1.4** "the Services" means the services provided by Momentum as requested within the Momentum Application Form and detailed within the Momentum Malta Retirement Trust Scheme Particulars and associated literature.

**2.1.5** "the Scheme" means the Momentum Malta Retirement Trust administered as part of the Services.

**2.1.6** "Excluded Individual" means a person who is disqualified from acting as a director or company officer, a person who has been imprisoned or found guilty of any criminal offence (excluding motoring offences which carry a non-custodial sentence), persons who have been proven to have acted fraudulently or in a dishonest manner in civil proceedings, undischarged bankrupts, government officials and politicians not resident in Malta (or anyone who is a close associate or has a relationship therewith).

**2.1.7** the "Member's Individual Fund" means all funds held on behalf of the Member in their capacity as beneficial owner (including but not limited to the Member's Bank Account). For the avoidance of doubt this includes reference to 'investment' and/or 'assets' where the context is relevant in these Terms and Conditions.

**2.2** In these Terms and Conditions unless the context otherwise requires:

**2.2.1** words importing any gender include every gender.

**2.2.2** words importing the singular include the plural and vice versa.

**2.2.3** words importing persons include firms companies and corporations and vice versa.

**2.2.4** references to numbered clauses and schedules are references to the relevant clause in or schedule to these Terms and Conditions.

**2.2.5** where any obligation is undertaken by two or more persons jointly they are to be jointly and severally liable in respect of that obligation.

**2.2.6** the headings to the clauses, schedules and paragraphs of these Terms and Conditions shall not affect the interpretation.

**2.2.7** any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment.

## 3. Investment Advice

**3.1** Momentum does not provide investment advice; in its role as Retirement Scheme Administrator it will exercise judgement as to the merits or suitability of any transaction and ensuring it is in line with the Pension Rules issued by the MFSA. The Member hereby confirms that Momentum has not given any advice and has made no representations or warranty as to its ability to advise on investment matters. Momentum does not have a direct relationship with any investment business and any introduction, recommendation or advice given to the Member to contact any such business for investment business services is made on the basis that Momentum does not accept any responsibility whatsoever for any advice subsequently given to the Member relating to the Scheme or otherwise. The Member hereby confirms that Momentum is not responsible for any advice provided by such third parties.

**3.2** The Member is responsible for appointing a suitable Financial/Investment Adviser to provide advice to the Member in relation to the Scheme prior to taking any decision to transfer any existing retirement fund to the Scheme. Any requests for transfers into the scheme and subsequent, investment preferences provided will be considered by Momentum in its role as Retirement Scheme Administrator and acted upon in line with its duties as Retirement Scheme Administrator and in line with these Terms and Conditions.

**3.3** All investments made according to the Member or their Investment Adviser or Manager's preferences are made at the Member's own risk and Momentum shall not be responsible or liable for such investments. The Member shall not, under any circumstances, be entitled to any compensation from Momentum for any damages or losses in relation to such investments. For the avoidance of any doubt, references to "investments" or "assets" in these Terms and Conditions include any cash investments (for example, but without limitation, bank accounts, fixed deposits or money market funds).

**3.4** Momentum does not owe to the Member, nor does it accept, any obligation or duty whatsoever to:

- (a) monitor the performance of any investments made;
- (b) provide any proactive or unsolicited investment or other advice to the Member; or
- (c) advise the Member to sell, exchange, surrender or otherwise dispose of any investment or other asset which Momentum holds on behalf of the Member, and the Member hereby acknowledges the above.

Provided that in terms of the Retirement Pensions Act 2011 and any Pension Rules issued by the MFSA thereunder, Momentum shall arrange for the assets to be invested in a prudent manner and in the best interest of the Members. Momentum shall direct an Asset Manager appointed to manage the Scheme assets to ensure the proper management and administration in accordance with the Scheme.

**3.5** Momentum does not provide any guarantee or assurance as to the investment performance of any investment effected (by execution), held or administered by Momentum on behalf of the Member.

**3.6** In the event that Momentum recommends a particular product or service to the Member which is provided by an agent or institution tied to Momentum, Momentum will disclose this relationship to the Member, prior to any recommendation taking place. In case of a conflict of interest, Momentum shall ensure that investment activity is carried out in the sole interest of the Members.

## **4. Member's Requests and Disclosure**

**4.1** Momentum shall be entitled to consider and act upon the requests, whether given by word of mouth, letter, telephone, facsimile, e-mail or otherwise, of the Member or any one of the Members where there is more than one.

**4.2** Where there is more than one Member, any requests made to Momentum to cease considering the requests of a Member party, must be in writing and signed by all Member parties.

**4.3** Momentum shall not be obliged to perform any of the Services or act on any instructions which might, in the opinion of Momentum, contravene the laws of any jurisdiction or be contrary to the policies of Momentum in its role as Retirement Scheme Administrator or otherwise.

**4.4** Momentum shall not be liable for any failure or delay to carry out requests or for any errors in carrying out such requests other than in the case of fraud, wilful default or negligence on the part of Momentum or its officers.

**4.5** Momentum shall not be obliged to act upon any instructions, which appear to Momentum to be conflicting, ambiguous, unclear or of uncertain authenticity. Where Momentum is unable to obtain sufficient and satisfactory instructions it reserves the right (without prejudice to the generality of clause 10.2) to satisfy any liabilities of the Member and pay out of any monies held by Momentum on behalf of the Member and Momentum further reserves the right generally to act or not as in its discretion it may think fit.

**4.6** The Member agrees to provide to Momentum such information as Momentum shall request in relation to all monies forwarded to Momentum by or on behalf of the Member and in relation to all payments from Momentum to the Member or on the Member's behalf and Momentum shall be entitled at all times if its requests for such information are not complied with to return and/or to refuse to remit such monies.

**4.7** The Member shall at all times disclose any and all information available to him or them concerning the Scheme provided by Momentum for him or them.

**4.8** Momentum shall be entitled to open any correspondence addressed to the Member and received by Momentum.

## **5. Indemnity and Warranties**

**5.1** Subject to the Retirement Pensions Act 2011 and rules issued thereunder, the Member (jointly and severally if more than one) indemnifies and agrees to hold harmless and will keep indemnified and hold harmless Momentum from all actions, suits, claims, demands, proceedings, liabilities, costs and expenses whatsoever which may be taken or made against Momentum in respect of the Services provided. Momentum shall be responsible where such liability arises as a result of Momentum's fraud, wilful default or negligence.

**5.2** The indemnity contained in the above clause shall extend to all directors, officers, agents and staff from time to time of Momentum and its affiliated firms or companies and every person (including any corporate person) nominated by Momentum who may perform any of the Services and notwithstanding that there may be some defect in its or his or their appointment or qualification or authority.

**5.3** The Member confirms and warrants that:

**5.3.1** he has full legal capacity to enter into these Terms and Conditions.

**5.3.2** he is not an Excluded Individual.

**5.3.3** in the case of the Member being a company, that none of the directors, officers, shareholders or beneficial owner(s) includes an Excluded Individual.

**5.3.4** he will not act in a fiduciary capacity for any other person in relation to the Services without the prior written consent of Momentum.

**5.3.5** he has taken legal and tax advice with regard to the Services. Momentum does not advise on legal and tax implications which may affect the Member. The Member hereby confirms that Momentum has not given any advice and has made no representations or warranty as to its ability to advise on legal and taxation matters. Consequently, the Member recognises that it is his responsibility to obtain legal and tax advice and he therefore confirms that he will obtain the appropriate legal and tax advice from time to time and that he will, at all times, conduct his financial affairs in a lawful manner.

**5.3.6** he will promptly supply any required information and due diligence documentation as and when requested by Momentum

**5.4** Momentum shall not be liable to the Member in respect of anything done or omitted to be done by Momentum under this Agreement. Provided that this provision shall have no application to any liability for death or personal injury arising from our negligence or the negligence of any indemnified person or arising as a result of fraud or wilful default on our part or the part of any indemnified person.

## **6. Conduct of Business**

**6.1** The business of Momentum shall be conducted solely by its duly authorised officers or by such other persons as they shall appoint in writing. The Member is not authorised under any circumstances to conduct any business or negotiate any contracts in respect of Momentum without first receiving written authorisation from the said officers.

**6.2** Where Momentum ensures that all statutory obligations arising in connection with the Services are complied with the Member agrees to pay for such services.

**6.3** Momentum is required to comply with legal and regulatory duties regarding the provision of the Services. Where such duties conflict with the instructions received from, or duties owed to the Member, Momentum shall be entitled to comply with its legal and regulatory duties without liability to the Member.

## **7. Contracts with Other Members**

Momentum shall be entitled to act for other Members, including competitors of the Member and the Member waives any objection thereto on the grounds of conflict of interest or otherwise.

## **8. Member Bank Account**

**8.1** All monies relating to a Member's Individual Fund will be banked in the Scheme account(s) with one or more licensed banks or other financial institutions as Momentum, in its discretion shall determine (the "Bank"). Bank charges, at standard rates, will also apply. Member funds within the Bank Account will be segregated into a member account ("Member Bank Account") and form part of the Member's Individual Fund within the Scheme.

**8.2** Disbursement costs that are notified in advance and collected by Momentum for discharging third party creditors shall be held in the Member Bank Account until payment is due. Members do not receive interest on Member Bank Account monies.

**8.3** Momentum accepts no liability whatsoever in contract, tort, negligence or otherwise for any loss, damage, cost or expense incurred directly or indirectly by the Member as a result of the insolvency, liquidation, winding up, failure, collapse of, or similar event occurring in relation to the Bank who operate any of Momentum's Member Bank Accounts, which results directly or indirectly in the Bank being unable, in whole or in part, to repay any deposit balance in any of Momentum's Member Bank Accounts (the "Bank's Failure To Repay"). The Member hereby agrees to hold Momentum and each of its directors, officers, employees, agents or servants harmless in respect of the Bank's Failure To Repay. The Member accepts and acknowledges that there are alternative arrangements available to him in relation to the funds placed in Momentum's Member Bank Account; and that by placing funds in Momentum's Member Bank Account, the Member agrees to the terms of this exclusion of liability and irrevocably acknowledges the reasonableness of this exclusion.

**8.4** Momentum accepts no liability whatsoever in contract, tort, negligence or otherwise for any loss, damage, cost or expense a Member's Individual Fund may incur as a result of an error, omission or delay by the Bank in connection with the Member Bank Account.

## 9. Fees and Discharge

**9.1(a)** Momentum agrees to publish its most recent fee schedule on the Momentum website [here](#); as varied from time to time (the "Fee Schedule"). The Fee Schedule forms part of the scheme particulars document also published on the Momentum website. Momentum will provide at least 30 days prior written notice to a Member of any changes to the Fee schedule. Completion and submission of the application form by the applicant, which this Agreement forms part of, provides Momentum with the Member's authority to collect any fees detailed in the Fee Schedule automatically, once the applicant is accepted as a Member, in accordance with this clause 9.1. The Annual trust fee, as referred to in the Fee Schedule, is payable yearly, in advance, to Momentum. The first year's Annual trust fee and the initial Set up fee, as referred to in the Fee Schedule, will be collected from the Member's funds which are transferred to the Bank, if the transfer is in cash. If it is, all or in part, an in-specie transfer they will be collected from the investment provider or bank directly, if available, at the discretion of the Retirement Scheme Administrator. Subsequent Annual trust fees will be collected yearly, in advance, on or around the anniversary of the date the Member is accepted to the Scheme. Where VAT is or becomes payable on any of the Services, it will be added at the applicable VAT rate. Any supplementary fees, applicable for other services Momentum perform, as explained in detail at clause 9.2 below, are due on completion of each transaction or as otherwise determined by the Retirement Scheme Administrator.

**9.1(b)** The Set-up fee, as referred to in the Fee Schedule will cover the provision of Trustee and administration services, including completion of required documentation, to establish the Members Scheme and investment of funds with their chosen investment provider. The Annual Trust Fee covers the basic provision of a standard Trustee and administration service. This includes the following:

- Processing Member and their appointed adviser requests in relation to the standard administration of the Member's Scheme and investment;
- Record keeping, including Member personal details, transaction reconciliation and annual statements;
- Keeping contribution records; and
- Provision of banking facilities.

**9.1(c)** In the following scenarios Momentum will charge to the Member the Termination fee, as referred to in the Fee Schedule and also terminate the Services with the Member:

- i. the Member either withdraws all retirement benefits from the Scheme as income drawdown (or in some other manner withdraws all retirement benefits from the Scheme); or
- ii. the Member transfers out of the Scheme to another pension scheme provider; or
- iii. the Member's Individual Fund is the subject of a Court order or other Court judgement which requires it to be transferred out of the Scheme to another pension scheme provider or otherwise as determined by the Court and/or the Retirement Scheme Administrator.

In any of these scenarios' or as otherwise determined by Momentum at their discretion, Momentum will have the right to charge the Member the Termination fee. This right to charge the Termination fee will apply for a period of twenty years from the date the Member was accepted to the Scheme, thereafter the termination fee will not apply. Once the Service is deemed to terminate and the Termination fee is settled in accordance with this clause 9.1, the Scheme will be deemed closed and this Agreement terminated.

**9.2** Momentum agrees to notify the Member in respect of other services performed and their associated supplementary fee, unless already included in the Fee Schedule. Supplementary fees will be charged on a time-cost basis. The time-cost basis will be relevant to the expertise and seniority of the Scheme personnel involved. These will be notified to the Member and are collected either immediately or may be collected at a later date at the discretion of Momentum. Where, in the opinion of Momentum, the supplementary fees for the other services appear negligible, Momentum reserves the right to accumulate the fee and defer need for payment for the other services rendered until a subsequent period, as determined by Momentum. The Member agrees to pay for the other services and authorises Momentum to collect all supplementary fees in accordance with Momentum's Fee Schedule in effect from time to time and subject to this Agreement, or as otherwise notified to the Member.

Other services may include but are not limited to:

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

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

\*The complexity of the Investments will be determined by the Retirement Scheme Administrator, based on the investment specifications and time required in the analysis, in ensuring compliance with the investment restrictions dictated by the Pension Rules for Personal Pension Schemes and in line with the Scheme Investment Guidelines.

**9.3** All taxes, duties, expenses and charges of Momentum, its officers, employees or agents which are incurred under instructions or in the carrying out of the Services, shall be reimbursed, in full, by the Member. Momentum shall be entitled to discharge its fees, expenses, taxes, duties, expenses and charges out of the assets held within the Member's individual fund, as determined by Momentum at their discretion. Entitlement to payment of all taxes, duties, expenses, fees and charges is and shall be in priority to any other rights or claims on such assets, including any such right or claim of the Member. In the event of sufficient funds not being available to meet such costs, the Member (jointly and severally if more than one) undertakes to pay said costs promptly on demand.

**9.4** Any fees referred to in this clause 9 and other charges of Momentum shall be discharged in full within one month of the date the fee or other charge is incurred. If the Member fails to make payment due to Momentum under this agreement by the due date, then Momentum reserves the right to charge the Member interest on the overdue sum from the due date until payment of the overdue sum, (whether before or after judgment, if applicable). Interest under this clause will accrue at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when the base rate is below 0%.

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

- i. The Retained Balance will be held in the Member Bank Account referred to under clause 8 and will form part of the Member's Individual Fund. The Retained Balance will be used primarily for payment of fees (those detailed in our Fee Schedule), as and when they fall due or at a later point at our discretion, including overdue fees, where insufficient funds requested for payment of such fees has been received from your investment provider. In limited circumstances, at the Retirement Scheme Administrator's discretion, the Retained Balance may be used to cover payments other than fees.
- ii. When the Retained Balance: (1) is initially collected on or after the establishment of the Member's Individual Fund; or (2) needs to be subsequently replenished, where the Retained Balance subsequently falls to below a value of £1,000 (one thousand pounds sterling) or the currency equivalent as appropriate) or lower at the Trustee's discretion, it will be done in the following way(s), by:
  - a)** retaining existing cash balances within the Member's Bank Account or withdrawal from other cash account(s) held with your investment provider(s); or
  - b)** us instructing your investment provider to foreign exchange other cash balances and pay the amount requested to us to hold in your Retained Balance; or
  - c)** us instructing your investment provider to sell investment(s) held within the Member's Individual Fund and pay the amount requested to us to hold in your Retained Balance; or
  - d)** a combination of a) to c) above.

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

iii. It is your and your Financial/Investment Advisers responsibility to ensure that overdrafts on cash accounts held with your investment provider are cleared. In the event the investment provider necessitates the clearing of any overdraft cash position in your investment account to facilitate the payment of fees or otherwise; or the initial collection of or replenishment of the Retained Balance; or where generally deemed prudent to clear the overdraft position, the Retirement Scheme Administrator may, in addition, also instruct the additional sale of investments, chosen at our discretion, from investments held within the Member's Individual Fund to cover any overdrawn amount or other amount required to facilitate our requested withdrawal from your investment company.

iv. In the event of the termination of the Agreement for whatever reason, all of our outstanding fees shall remain payable and those paid by the Member in line with the Fees Schedule shall not be subject to any refund. If any Retained Balance amount remains following termination, it will remain as part of the Member's Individual Fund and available to deal with as we are instructed.

**9.6** In the event of the termination of this Agreement for whatever reason, all outstanding fees shall remain payable and fees paid by the Member in line with the Fees Schedule shall not be subject to any refund.

**9.7** In the event that Momentum proceeds to carry out any of the Services or other services on behalf of the Member, and the Member later decides to abort or discontinue their engagement with Momentum (for whatever reason, including without limitation, a change in law or tax planning) the Member shall remain liable for all fees and any other costs incurred in relation to the Services or other services performed.

## **10. Personal Advice**

Momentum shall be entitled to seek professional advice for the protection of assets or advancement of the Services and be reimbursed by the Member for the cost of such advice.

## 11. Amendment of Terms and Conditions

Momentum shall be entitled, on giving to the Member at least 30 days written notice, to amend, alter, vary, add to or substitute these Terms and Conditions.

## 12. Notice

**12.1** Any notice under these Terms and Conditions must be in writing and may be delivered personally or by letter or facsimile transmission or email dispatched as follows:

**12.1.1** If to Momentum, at its address specified below or by email to [malta@momentumpensions.com](mailto:malta@momentumpensions.com)

**12.1.2** If to the Member, at the address or email address specified in the Application Form completed by the Member or (in any case) to such other address and/or facsimile number and/or email address as may be notified in accordance with this paragraph by the relevant party to the other party for such purpose.

**12.2** Every notice shall be deemed to have been received by the Member (if sent by first class post) two working days after dispatch and (if delivered personally or by facsimile transmission or by email) at the time of delivery or dispatch. Any notice to be made or delivered to Momentum shall be effective only on actual receipt by Momentum.

## 13. Governing Law

Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof shall be governed by the laws of Malta. The Member agrees to accept and be bound by these Terms and Conditions. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with Part IV (Domestic Arbitration) of the Malta Arbitration Act, 1996 and the Arbitration Rules of the Malta Arbitration Centre as at present in force.

## 14. Anti-Money Laundering Obligations

**14.1** Momentum is required to act in accordance with the laws and regulations and requests of public and regulatory authorities in various jurisdictions which relate to the prevention of money laundering, terrorist financing and the provision of financial and other services to any persons or entities which may be subject to sanctions. We may, without any liability, take whatever action we consider appropriate to meet any obligations, either in Malta or elsewhere in the world, relating to the prevention of fraud, money laundering and terrorist activity and the provision of financial and other services to persons who may be subject to sanctions. We may also, without any liability, take whatever action we consider appropriate in case we know or suspect a breach of security or other suspicious circumstances in respect of or in connection with the operation of your Scheme. Any such action may include, but is not limited to, investigating the source of the transfer and payments of funds into and out of your Scheme. Exceptionally, this may delay the carrying out of your instructions and where possible, we will advise you of the reasons for and likely length of any delay.

**14.2** We shall not be responsible to you or any third party for any loss (whether direct, indirect, consequential or otherwise) or damage incurred as a result of us taking the actions set out in clause 14.1.

## 15. Entire Agreement

These Terms and Conditions supersede all previous Terms and Conditions and together with the Declarations within the Momentum Application Form comprise the entire agreement between the Member and Momentum in respect of the Services.

## 16. The Data Protection and Privacy Statement

Personal data refers to information that relates to you and allows Momentum to identify you, either directly or in combination with other information that we may hold. Momentum collects personal information about you at various points during your Membership to the Momentum Malta Retirement Trust, including when becoming a Member or using our website. Momentum collects various categories of information, including but not limited to; personal identifiers, contact, social relationships, financial data and documentary data. Personal data is predominantly collected through the Momentum application form and any subsequent interactions. We collect your personal data primarily to administer and run your pension Scheme, which may involve seeking, receiving and processing instructions from you and/or your appointed adviser(s) and/or Investment Manager as relevant, and to fulfil both our regulatory obligations and our obligations towards you. Momentum have in place appropriate security measures to prevent your personal data from being accidentally lost, used or accessed in an unauthorised way, altered or destroyed. We will ensure that when your personal data is shared, this is done in a secure manner and in line with the requirements set by the applicable Regulation.