



The Xafinity Self Invested Personal Pension (SIPP) and **SimplySIPP**

Terms and Conditions



If you require this document in another format for ease of reading, please let us know.

Important Note

These **Terms and Conditions** govern the relationship between **Xafinity** and **You** as a **Member** of The Xafinity SIPP, incorporating **SimplySIPP**. They are **legally binding** and, together with the following documents, govern the provision of **Your SIPP**:

- (a) Key Features
- (b) Application Form
- (c) **Charge Card**

These **Terms and Conditions** use a number of defined words and phrases which are shown in bold (**like this**) and these are explained in section 18. **If you opt for the **SimplySIPP**, this is a version of the Xafinity SIPP and there will be a number of differences. These will be clearly shown in the various documents where relevant in this coloured text.**

1. Background

These **Terms and Conditions** apply to the **Services** provided to **You** by Xafinity Pension Trustees Limited (the **Trustee**) and Xafinity SIPP Services Limited (the **Administrator**). They set out the relationship between **You**, the **Trustee** and the **Administrator**, and the **Fees** to be paid for administering **Your SIPP**.

The **Trustee** acts as the **Bare Trustee** of the **Scheme**.

The **Administrator**, who is authorised by the **Financial Services Authority** to operate The Xafinity SIPP (the **Scheme**), provides **Services** as the **Administrator** of the **Scheme** to **You** and the **Trustee** as set out in these **Terms and Conditions**.

These **Terms and Conditions** apply from the date **You** sign the application form to become a **Member** of the **Scheme** (or later, if the **Terms and Conditions** are subsequently varied by either the **Trustee** or the **Administrator**).

2. About These Terms & Conditions

In these **Terms and Conditions**, any singular phrase includes the plural and vice versa. There are references to **Statutes and Regulations** which may change over time, in that they may be altered or extended. Where this is the case, the reference is to the amended version and we will let **You** know about any changes that have an impact on these **Terms and Conditions** and provide **You** with at least thirty (30) days' notice of those changes.

If there is a conflict between these **Terms and Conditions** and the **Trust Deed**, these **Terms and Conditions** shall take precedence.

These **Terms and Conditions** replace any existing agreement with **You** except the **Trust Deed** which remains in full force and effect. The **Trust Deed** forms part of these **Terms and Conditions**.

3. Your Duties

By applying to become a **Member** of The Xafinity SIPP **You** agree to comply with these **Terms and Conditions**. **You** also confirm agreement to the following:

- (a) No **Unauthorised Payments** will be made, nor will any investments be made that may lead to **Unauthorised Payments**;
- (b) **Your Fund** will operate a bank account based in the United Kingdom. All **Contributions**, investments and **Benefits** will be processed through this account.
- (c) **You** will be assumed to have a pension age of 75 or if later ten years from the **Commencement Date**, unless you selected a different pension date on the application form to become a **Member**;
- (d) Any and all **Contributions** paid to the **Scheme** shall be allocated to **Members** who will have separately identifiable **Funds** within the **Scheme**;
- (e) Regular payments to and/or from the **Scheme** will, where possible, be made by way of direct debits;
- (f) The **Administrator** will have the power to report to the **Regulator** any matters relating to the **Scheme**;
- (g) The **Scheme** will operate, and any **Benefits** provided will be, on a **Money Purchase** basis;
- (h) The **Scheme** may provide any **Benefits** to or in respect of any **Member**, which would not be **Unauthorised Payments**;
- (i) **Annuities** purchased to provide **Benefits** for an individual will be purchased in the name of the individual beneficiary, who will choose the annuity provider;
- (j) **Benefits** may not be provided using Scheme Pensions. 'Scheme Pensions' are defined in paragraph 2 of Schedule 28 to **the Act**;
- (k) In the event of the death of a person after their 75th birthday, the **Administrator** will not choose who receives the **Benefit**. In such cases, where that person has not provided an expression of wishes to the **Administrator** prior to their 75th birthday, the **Benefit** will be paid to their estate;

- (l) Before becoming a **Member**, **You** must sign an **Undertaking** to the **Administrator** agreeing that the **Contributions You** pay in any **Tax** year shall not exceed the maximum permitted by **the Act**;
- (m) All instructions from **You** to the **Trustee** and/or the **Administrator** must be in writing;
- (n) **You** will tell the **Administrator** immediately in writing if **You**:
- Stop being a United Kingdom resident;
 - Stop having, or have reduction in, **UK Relevant Earnings**;
 - Change **Your** job or employment status, eg by becoming self-employed, employed, unemployed etc;
 - Become a **Controlling Director** in any company;
- (o) **You** take sole responsibility for the appropriateness of investments, particularly of any high-risk investments, and where applicable, the management of those investments. The **Administrator** only arranges investments at **Your** instruction. However, the **Administrator** may refuse to allow proposed investments and, if necessary, shall have the right to require the **Trustee** to sell any investments held within the **Scheme** or any **Member's Fund**. **You** will provide the **Administrator** with all information in order for it to make an informed decision as to whether to refuse any investment proposal or exercise its power of sale. The decision to refuse an investment proposal or to exercise its power of sale will only be taken in order to protect the **Scheme** from **HMRC** charges for **Unauthorised Payments**. In this case, the decision to refuse an investment proposal, or to sell investments, is exercisable solely by the **Administrator** without **Liability** and such decision shall be final and no appeal will be allowed. In such a situation the **Administrator** will advise the **Member** in writing of its reasons for its actions;
- (p) In relation to (o) above **You** agree and confirm that **You** will not:
- Invest as a member of a Limited Liability Partnership (as defined by the Limited Liability Partnership Act 2000);
 - Buy or sell **Fund** assets at auction;
 - Invest in **Wasting Assets** as determined by **HMRC** from time to time;
 - Invest in any manner that may be regarded or interpreted in any way as Trading. "Trading" means carrying on transactions of a particular type with such regularity as to constitute, in the opinion of the **Administrator**, the carrying on of a trade or business;
 - Enter into any transaction with **Connected Persons** except on a commercial basis and at **Arm's Length**. All such transactions must be supported by relevant independent valuations and advice;
 - Buy or sell any shares or any other interest in any company in which **You** are a **Controlling Director** without the **Administrator's** prior written approval;
- (q) No payment or transfer or use of **Scheme** assets to or for the **Benefit** of a **Member** or any **Connected Persons**, other than a corporate body and other than by way of a **Benefit**, will be permitted;
- (r) Any and all rent and/or interest generated by investments of the **Scheme** will be payable to the **Scheme** wherever possible by direct debit or direct credit transfer;
- (s) Unless otherwise agreed in writing with the **Administrator**, the **Scheme** may only invest in the following:
- Bank accounts based in the United Kingdom (one of which must form the main bank account for the **Fund** and will be with the Bank of Scotland using the **Client Banking Service**, or such other bank as chosen by the **Administrator**);
 - Commercial property situated in the United Kingdom provided that there is no residential element;
 - Insured policies;
 - Unit Trusts or Open Ended Investment Contracts ('OEICs');
 - Borrowing from any lender as agreed with the **Administrator**;
 - Listed Stocks and shares;
 - Contracts for Difference;
 - Traded Endowment policies;
 - Hedge Funds;
 - Venture Capital Trusts;
 - Unlisted Shares (subject to any required special investigations and related **Fees**); and
 - Futures and Options;
- For the SimplySIPP, in addition to the main scheme bank account, only one investment can be held at a time and this must be one of the following types:
- Bank and Building Society accounts,
 - Insured policies,
 - Managed funds (including investment trusts, unit trusts and OEICs),
 - Quoted stocks and shares.
- (t) Unless otherwise agreed, **You** confirm that the **Trustee** and/or the **Administrator** will be the sole signatory to any and all bank accounts operated by the **Scheme** or **Your Fund**. For the avoidance of doubt, bank accounts operated by the **Scheme** or **Your Fund** by either the **Trustee** and/or the **Administrator** under your authority will include but not be limited to the following:
- Operation, management and administration of bank accounts, including making deposits, withdrawals and instructing the bank;
 - Operating **Pooled Designated Client Accounts** generally where required and specifically for the purposes of:

- i. Payment of gross pension amounts from a **Scheme** bank account to a **Pooled designated Client Account** to meet net pension payments and **Tax** payments; and
- ii. Reclamation of any **Tax** payment from **HMRC**, due in respect of **Member Contributions** paid to the **Scheme**, to be paid to a **Pooled Designated Client Account** from which it will be credited to **Your Fund**;
- c. Opening **Scheme** and/or **Fund** bank accounts as required for the day to day operation of the **Scheme** and to transfer on request any balance from an existing **Scheme** bank account to such new account;
- d. Executing such documents as are necessary in relation to any investments of the **Scheme** including opening sole signatory bank accounts;
- e. Verifying **Your** identity. This may include carrying out electronic searches using a credit reference agency. This information is required to satisfy the **Administrator's** obligations under the **Money Laundering Regulations** and may be shared with other companies in order to prevent fraud. The information will be retained by the **Administrator** for auditing purposes;
- f. **You** may not make any investment decisions that would endanger the registration of the **Scheme** in accordance with **the Act**.

4. The Administrator's Duties & Services

When **You** sign an application form and pay **Fees** to the **Administrator**, the **Administrator** will perform the **Services** in accordance with **Good Industry Practice** and fulfil its obligations in accordance with these **Terms and Conditions**. The **Administrator** will provide the **Services** set out in these **Terms and Conditions** and any **Services** which they are obliged to provide with respect to the **Scheme** as set out in the **Trust Deed**.

In particular, the **Administrator** will perform the following **Services**:

4.1 Establishing the Scheme

The **Administrator** will provide the following **Services** in relation to the **Scheme** and its registration by **HMRC**:

- (a) The supply to **You**, on request, of copies of the **Trust Deed** (and any amendments, where appropriate);
- (b) Negotiation and maintenance of the **Scheme** as a registered **Scheme** under Part 4 of **the Act**;
- (c) Preparation of documentation relating to **Your** individual arrangements under the **Scheme**; and
- (d) Provision of documentation to allow the making of claims for **Tax** relief.

4.2 Receipt of Contributions/Payment of Benefits

The **Administrator** will arrange for the banking of **Contributions**, and payment of **Benefits**, under the **Scheme**, including:

- (a) The opening and maintenance of a bank account, with a bank and a branch selected by the **Administrator**; and the reconciliation of all transactions;
- (b) The recovery of any **Tax** relief deducted at source under the **PRAS Regulations** and of income **Tax** deducted from investment receipts;
- (c) Arranging payments due under the **Scheme**; and
- (d) The maintenance of appropriate accounting records of the receipts, **Benefits** paid and investments of the **Scheme**, subject to the **Trust Deed**.

4.3 Administration

The **Administrator** will arrange, where it is appropriate and necessary to do so according to your chosen plan version, for:

- (a) The provision of online information to **Members** and their advisers via the **Administrator's** website;
- (b) The provision of a third party online dealing service to allow online investment in certain types of assets. The **Administrator** reserves the right to change the provider of the on-line investment dealing service on notice in writing to **You**. If **You** do not accept the **Terms and Conditions** of supply of any replacement supplier of on-line dealing **Services** chosen by the **Administrator** then all assets will be transferred to the **Trustee** who will hold them in accordance with the **Trust Deed** subject to payment of any applicable **Fees** as set out in the **Charge Card**;
- (c) The availability of dedicated personnel to administer **Your** arrangement;
- (d) Payment of remuneration from **Your Fund** as agreed in writing between **You** and **Your Financial Adviser**;
- (e) Maintaining a record of **Contributions** paid;
- (f) Liaison with the **Trustee**, **You** and **Your Financial Advisers** concerning variations in **Contribution** levels and the limits on **Contributions** under the **Trust Deed**;
- (g) Providing general comment on the nature of investments in relation to whether they are acceptable for the purposes of the **Scheme** Rules;
- (h) Implementing all investment proposals by **You** except where prohibited by law and/or the **Trust Deed** and/or these **Terms and Conditions**;
- (i) Making any necessary arrangements to allow the purchase/sale of **Scheme** investments, and the payment/receipt of **Scheme** money;
- (j) Co-ordinating payments of mortgage interest and capital including correspondence as necessary with mortgagees;

- (k) Receipt of property income, and payment of outgoings, upon request; and liaison as necessary with property managing agents;
- (l) Receipt and safe keeping of all original documentation relating to the **Scheme** and its investments which is made available by the **Trustee** and/or **You** to the **Administrator**;
- (m) Ensuring appropriate arrangements are made for the maintenance of property insurance in accordance with information provided by **You**;
- (n) Providing such information as **You** may require from time to time regarding **Your Benefits** under the **Scheme**;
- (o) Handling general correspondence;
- (p) Registering **Your** arrangement for **VAT** purposes and making returns to **HMRC** where applicable;
- (q) At the time of a claim arising under the **Scheme**, calculating **Benefit** entitlements; and claiming the sums due from assurers or investment managers as appropriate (but not including the valuation of investments, the provision of legal advice or actuarial reports);
- (r) Settlement of the **Benefits** due under the **Scheme** by the payment of cash and/or the purchase of appropriate **Annuities**, the deduction of income **Tax** as appropriate and the accounting for this to **HMRC**;
- (s) The **Administrator** will not produce **Scheme** accounts.

4.4 Formal Roles of the Administrator

The **Administrator** will adopt the formal role of “**Scheme Administrator**” and will be responsible for complying with the provisions of the **Act** as set out for the role of “**Scheme Administrator**”.

A **SIPP** is defined as a designated investment (personal pension scheme) in accordance with the Financial Services and Markets Act (FSMA) 2000 (as amended). The **Administrator** is deemed to be carrying on the regulated activity of 'establishing, operating or winding up a personal pension scheme'. The **Administrator** is also the person operating the **Scheme** for the purposes of article 52(b) of The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (as amended). This means that the **SIPP** is a product regulated by the **Financial Services Authority** and the **Administrator** is authorised and regulated by the **Financial Services Authority** for its activities.

4.5 Other Services

The **Administrator** may perform **Services**, or take action, beyond what is set out above or in the **Trust Deed** if either:

- (a) The **Administrator** has been asked to provide additional **Services** by **You**; or
- (b) It considers that there is a legal or moral duty to do so.

- (c) Any **Services** provided under this clause may be subject to additional **Fees**. If so, any **Fees** will be agreed with you before the **Services** are provided.

4.6 Communications by the Administrator

The **Administrator** will provide its formal communications in writing. Spoken statements by, or on behalf of, the **Administrator** or the **Trustee** cannot be relied upon by **You** unless confirmed by the **Administrator** in writing.

Any communication provided by the **Administrator** in writing is provided only for **Your** use. It is not intended to be relied upon by third parties. Any third parties who receive any written communication from the **Administrator** does so at their own risk.

The **Administrator** will rely on any instructions in respect of **Your** affairs (including in respect of the payment of any remuneration to a **Financial Adviser**) given to the **Administrator** by any **Financial Adviser** nominated by **You**. This will apply until **You** provide the **Administrator** with notice in writing that any **Financial Adviser** ceases to be authorised to act on **Your** behalf.

5. The Trustee's Duties & Services

The **Trustee** acts as a **Bare Trustee** and any other powers and/or discretions which the **Trustee** keeps to fulfil its role as **Bare Trustee** will only be exercised in accordance with the instructions of the **Administrator**. The **Trustee** will only act in accordance with the instructions of the **Administrator** in relation to the **Scheme**.

If any activity the **Trustee** performs under the **Trust Deed** and Rules or these **Terms and Conditions** would or could result in the **Trustee** no longer qualifying as a **Bare Trustee**, the activity will be carried out by the **Administrator** to the exclusion of the **Trustee**.

Any communication provided by the **Trustee** in writing is provided only for **Your** use. It is not intended to be relied upon by third parties. Any third parties who receive any written communication from the **Trustee** does so at their own risk.

6. Advice

Neither the **Administrator** nor the **Trustee** is responsible for giving, and shall not to be treated as having given, any legal, financial, **Tax** or other advice in connection with **You** becoming a **Member** of the **Scheme**, entering into these **Terms and Conditions** or in connection with the management or administration by the **Administrator** of the **Scheme**. The **Administrator's** role is limited to the provision of administrative, rather than advisory **Services**.

7. Use of Third Parties

You may use the **Services** of **Third Party Suppliers** in connection with the **Scheme** and **Your Fund**. However, **You** shall not use any **Third Party Supplier** (except for any **Third Party Supplier** which the **Administrator** makes available to **You**) without the prior authorisation of the **Administrator**.

Whilst the **Administrator** will try to examine any nominated **Third Party Supplier**, it does not accept any responsibility for the acts or omissions of any **Third Party Suppliers**. **You** should make any **Third Party Supplier** aware of these **Terms and Conditions** and provide them with a copy.

8. Fees, Charges & Payments

You agree to pay to the **Administrator** the **Fees** as set out in the **Charge Card** from the date **You** sign the application form to become a **Member** of the **Scheme**. The **Charge Card** sets out the basis for the payment of **Fees** and how **Fees** will be applied. The **Charge Card** forms part of these **Terms and Conditions**.

8.1 Application of Fees

- (a) All **Fees** are shown excluding **VAT**. **VAT** is payable on all **Fees**.
- (b) Where **VAT** (or any other relevant tax or charge) is due on any **Fees** or charges payable in relation to membership of the **SIPP**, **You** will be liable for the **VAT** and it will be deducted from your **SIPP** fund;
- (c) The **Administrator** may charge a fee as detailed in the **Charge Card** plus associated costs for any meetings. Before any meeting is attended the **Administrator** will tell you the **Fee** payable;
- (d) **You** can elect to pay remuneration to **Your Financial Adviser** from **Your SIPP**. Any remuneration **You** agree with **Your Financial Adviser** is in addition to the **Fees** **You** pay to the **Administrator**;
- (e) Where the **Charge Card** does not specifically detail **Fees** for any additional work carried out by the **Administrator** or **Trustee**, **Fees** will be charged on a time cost basis at the rates at the date such work is provided. These rates and the total amount payable will be agreed with **You** before commencing work;
- (f) Where the calculation of **Fees** is based on the value of assets, the last available valuation will be used. Where on-line valuation data is available this will be used. Where on-line valuation data is not available, a new valuation will not be requested to calculate **Fees**. The **Administrator** is not responsible for any incorrect valuations provided by third parties or **Third Party Suppliers**;
- (g) The **Administrator** will determine whether an investment is classed as a 'Standard Investment' for the purposes of the **Fees** payable;

- (h) The **Administrator** will determine whether an investment is available under the **SimplySIPP**;
- (i) Any **Fees** and expenses incurred in administration of **Your SIPP**, and any **Fees** due to the **Administrator** shall be payable from, and form a **First Charge** against, **Your SIPP Fund**. Deductions will be made from **Your** identifiable share of the **Fund** or proportionately from the **Fund** according to the nature of the event generating the charge or **Fees** due;
- (j) **You** are responsible, in addition to the **Fees** payable to the **Administrator** as set out in the **Charge Card**, for paying such other remuneration as is due to the any investment provider or fund manager;
- (k) No **Fee** is due for providing the latest available value of **Your SIPP**. However additional **Fees** may be charged where up-to-date valuations of assets are required for which the **Administrator** does not have an automated process for obtaining the value. Any additional **Fees** will be notified to **You** before they are incurred;
- (l) If it is necessary to establish a subsequent sub-arrangement for the administration of **Your SIPP**, no additional **Fees** will be levied. However, all **Fees** and **Financial Adviser** remuneration (if applicable) will be payable from the earliest established, and still active, sub-arrangement. Subsequent sub-arrangements will only be required in specific circumstances and the **Administrator** will notify **You** at the earliest opportunity if this is necessary for the administration of **Your SIPP**.

8.2 Increases to Fees

Fees, and any minimum or maximum limits applying to fees, are subject to annual increases each 1 September in line with increases in National Average Earnings (or any replacement or, if no replacement, an equivalent index). Fees under £200 will be rounded to the higher pound with other fees being rounded to the higher multiple of £5. The **Administrator** may change this basis but will only do so by giving **You** at least thirty (30) days' written notice.

In reviewing or amending the charges the **Administrator** shall have regard only to:

- (a) any change to the rate of National Average Earnings (or any replacement or, if no replacement, an equivalent index) since the date of the last review of the charge;
- (b) any changes in the level of administration expenses incurred by the **Administrator** or the **Trustee**. Administration expenses includes any fees or costs charged by any **Regulator** or **Third Party Supplier** ;
- (c) changes following the expiry or termination of the **Administrator's** contract with any on-line investment dealing provider (or other similar provider); and
- (d) the circumstances as set out in Section 17.4.

The **Administrator** will give **You** at least thirty (30) days' written notice of any changes under 8.2(b) or 8.2(c).

If variations to the **Fees** are made which are not covered by this section (8.2) **You** will have the right to close **Your SIPP** and the **Fee** for leaving the **SIPP** will not be charged.

8.3 Third Party Supplier Fees

You must pay all fees, charges and expenses due to any **Third Party Suppliers** under the terms of any arrangement that **You** enter into with such **Third Party Supplier**. The **Administrator** will not be responsible for processing the payment of any fees or expenses to **Third Party Suppliers** unless it agrees to do so in writing.

You agree that the **Administrator** will have no obligation or **Liability** to pay any remuneration whatsoever to any **Financial Adviser** or any employee or agent of any firm of **Financial Advisers** arising from or in connection with these **Terms and Conditions** or **You** becoming a **Member** of the **Scheme**. The obligation and liability to pay **Financial Adviser** remuneration is **Yours**. The **Administrator's** only obligation in this respect is to process the payment of remuneration to **Your Financial Adviser** in accordance with **Your** instructions. The **Administrator** will cease to pay any remuneration to any **Financial Adviser** who ceases to be appropriately authorised by the **Financial Services Authority**.

The **Administrator** will also be entitled to recover any additional charge from the **Fund**, over and above the **Fees**. Any additional charge will take into account the work undertaken on **Your** behalf and the **Administrator** will notify **You** of the additional charges payable before they are incurred.

Third Party Supplier Fees include but are not limited to:

- (a) Solicitors' fees;
- (b) Surveyors' fees;
- (c) Environmental surveyor's fees;
- (d) Remuneration paid to your **Financial Adviser**; and
- (e) Insurance brokers' fees and insurance premiums.

When **You** use services that the **Administrator** has negotiated with **Third Party Suppliers** we will let **You** know about the **Fees** payable before they are incurred.

8.4 Paying Fees, Other Charges and Expenses

- (a) **Fees** are payable from the **Commencement Date** of **Your SIPP**;
- (b) All **Fees** and charges are payable monthly in arrears on the 1st of the month for regular fees (including all initial fees), or on completion of the relevant activity for one off charges, unless specified otherwise;
- (c) All **Fees** will be paid by deduction from **Your SIPP** bank account. If there are insufficient funds in that account, the **Administrator** has the power to realise **Your SIPP's** assets. Any costs associated with exercising this right will also be payable by the **SIPP**. **You** will be given at least thirty (30) days' notice of the **Administrator** exercising this right;

- (d) Any **Tax** charges arising in respect of a **Benefit** payment will, where **Funds** are available, be deducted from the **Benefit** before the settlement of that **Benefit**;
- (e) Any **Tax** charges generated by the **Scheme**, for which the **Administrator** (whether as **Administrator** or not) or the **Trustee** is responsible will be payable from **Your Fund**. In all cases, any **Tax** charges will form a **First Charge** against **Your Fund**;
- (f) Deduction of sums due will be made from **Your Fund** or proportionately from the **Scheme** according to the nature of the event generating the **Tax** charge, expenses or **Fees**;
- (g) Any **Tax** charges generated by the **Scheme** will, so far as permitted by the **Act**, be **Your** responsibility or the responsibility of any other beneficiary. In the event that **You** or any beneficiary fails to pay of any **Tax** charge, then it will be met by the **Administrator** or **Trustee** as applicable by deduction from **Your Fund** or proportionately from the **Scheme** according to the nature of the event generating the **Tax** charge;
- (h) The **Administrator** will sell any **Member's Fund** or **Scheme** assets, without liability, in order to meet any **Fees**, expenses or **Tax** charges generated by the **Scheme**. This will be subject to the **Administrator** providing evidence of the **Fees**, expenses or **Tax** charges incurred and **You** will receive at least thirty (30) days' notice of the sale of any assets;
- (i) **You** agree to pay the **Administrator** for all:
 - (a) professional **Fees** (including **VAT**) to include, but not limited to, legal and actuarial fees; and
 - (b) associated expenses (including **VAT**);
 to the extent they are incurred in connection with the management or administration of the **Scheme**.

9. Regulatory Compliance

You, as **Member**, the **Trustee** and the **Administrator** will comply with all applicable **Statutes and Regulations** and **Money Laundering Regulations** in performing their respective obligations under these **Terms and Conditions**.

10. Data Protection

Providing **Services** for The Xafinity **SIPP** involves the processing of **Personal Data** and/or **Sensitive Personal Data**. For the purposes of the **Data Protection Legislation**, the **Administrator** is the Data Controller and the **Trustee** is the Data Processor. **You** are the Data Subject.

As Data Subject, **You** accept that all **Personal Data** or **Sensitive Personal Data** will be processed by the **Administrator** and the **Trustee** for the purposes of establishing, processing and administering **Your SIPP** and for any other purposes to which **You** have consented when completing the application form for the **Scheme**. **You** further accept that even if the application to join the

Scheme does not proceed, such data may be stored for regulatory, statutory or audit purposes.

You further accept and consent to the **Trustee** and/or the **Administrator** from time to time obtaining from or transferring to Trustees, Administrators, insurers of any pension **Schemes** of which **You** are a Member or applicable **Third Party Suppliers**, any data relating to **You** that it considers is necessary to transfer or receive in order to provide the **Services** or the services of any **Third Party Supplier**.

The **Trustee** and **Administrator** will, at all times, comply with their respective obligations under the **Data Protection Legislation**, in relation to all **Personal Data** and/or **Sensitive Personal Data** that is processed in the course of performing obligations under these **Terms and Conditions**. Neither the **Trustee** nor the **Administrator** will do, or allow, anything that may result in a breach of the **Data Protection Legislation** by another party.

Instructions given by the **Administrator** to the **Trustee** in respect of the **Personal Data** and/or **Sensitive Personal Data** must at all times be in accordance with the **Statutes and Regulations** of the United Kingdom.

The **Trustee** undertakes to process **Personal Data** and/or **Sensitive Personal Data** in accordance with the **Data Protection Legislation** and in particular with the provisions of the Seventh Principle of the Data Protection Act 1998.

The **Administrator** will process the **Personal Data** and/or **Sensitive Personal Data** strictly in accordance with **Your** specific written instructions except where such instructions are contrary to the **Administrator's** or the **Trustee's** rights or obligations under these **Terms and Conditions**, the **Trust Deed** or any applicable **Statutes and Regulations**.

The **Administrator** will not use **Personal Data** and/or **Sensitive Personal Data** for any purposes that may be inconsistent with those notified to **You** on or before the collection of **Personal Data** and/or **Sensitive Personal Data**.

The **Administrator** and the **Trustee** confirm that each have appropriate operational and technological processes and procedures in place to safeguard against any unauthorised access, loss, destruction, theft, use or disclosure of the **Personal Data** and/or **Sensitive Personal Data**.

The **Administrator** may share the **Personal Data** with other companies, entities, **Third Party Suppliers** or organisations in order to perform the **Services**. However, where it is necessary to share **Sensitive Personal Data** with third parties, **Your** specific consent will be sought prior to any sharing of that data with third parties.

In the event that the **Administrator** retains any **Personal Data** and/or **Sensitive Personal Data** after **Your** membership of the **Scheme** has ceased, the **Administrator** and the **Trustee** shall continue to be bound by the provisions of these **Terms and Conditions** relating to the processing of **Personal Data** and/or **Sensitive Personal Data** until all such data has been returned to **You**, or transferred to a replacement supplier, or destroyed, as directed by **You**.

You will retain ultimate ownership of any original personal documentation and data **You** pass to the **Administrator** and/or the **Trustee**. However, the **Administrator** will have ultimate ownership of any files created by it in relation to **Your** arrangements within the **Scheme**. The **Administrator** will retain ownership of any working papers, calculations, computer programmes, meeting notes etc. created in the course of providing the **Services**.

11. Conflict of Interest

In the event of a conflict of interest arising, the **Administrator** or, where applicable, the **Trustee**, will inform **You** immediately and in the first instance seek to resolve the conflict to the satisfaction of all the parties concerned.

In some circumstances it may not be possible to resolve the conflict and the **Administrator** reserves the right to request that you close **Your SIPP** in accordance with section 14.

12. Confidentiality

Neither the **Trustee** nor the **Administrator** will disclose any **Confidential Information** to a third party without prior written consent, except for the following:

- (a) disclosures made at **Your** specific request;
- (b) disclosure to **Your** professional advisers and your **Financial Advisers**, if necessary;
- (c) disclosure to a **Regulator** or **HMRC** or any government or other authority or as party to legal proceedings; or
- (d) as set out in these **Terms and Conditions**.

13. Liability

The **Administrator** and the **Trustee** will only be able to perform their role based upon the data and information that is provided to them by **You** or **Your** adviser(s) as appropriate. Neither the **Trustee** nor the **Administrator** accept any liability whatsoever for any loss, liability, default or delay occurring as a result of a lack of or inaccurate data or information being provided or any delays on the part of **You** or **Your** adviser(s) in providing the required data or information.

The **Trustee** and the **Administrator** do not exclude or limit their duty or liability:

- (a) for **Losses** relating to death or personal injury caused by their negligence, or that of their employees or agents;
- (b) for **Fees** or charges owed for **Services** supplied in accordance with these **Terms and Conditions**;
- (c) for fraud, fraudulent misrepresentation or fraudulent concealment;
- (d) to the extent prohibited by the FSA rules; or

- (e) for any other loss or liability that cannot be excluded or limited by law.

These **Terms and Conditions** exclude any **Conditions** or **Warranties** that may be implied by statute or common law.

In respect of any claim made by **You**, the **Administrator** and the **Trustee** will only pay **Losses** which are incurred as a direct consequence of the event which led to the claim (“**the Event**”). Neither the **Administrator** nor the **Trustee** will pay for any **Losses** that are not directly associated with the Event such as:

- (i) loss of profits or anticipated profits;
- (ii) loss of savings or anticipated savings;
- (iii) loss of revenue or business;
- (iv) loss of contracts or expected contracts;
- (v) damage to reputation or goodwill; or
- (vi) any damages, costs or expenses payable by **You** to any third party.

Neither the **Trustee** nor the **Administrator** shall be in breach of the terms of these **Terms and Conditions** for any delay in performing or failure to perform their obligations if that delay or failure was due to any cause or circumstance beyond the **Trustee’s** and/or the **Administrator’s** control.

Except where a liability occurs directly as a result of the **Administrator’s** and/or **Trustee’s** dishonesty, fraud or negligence, **You** will be responsible to pay the **Administrator** and/or the **Trustee** in respect of any **Losses** incurred by them as a result of:

- (1) any breach by **You** of **Your** obligations in these **Terms and Conditions**;
- (2) any claim made or threatened by a third party which results from any such breach or from **Your** actions or omissions or by any third party acting on **Your** behalf. For the avoidance of doubt, this includes any **Financial Adviser** acting on your behalf;
- (3) any report given in good faith to **HMRC**, any **Regulator** or other relevant authority; or
- (4) the acts or omissions of any **Third Party Supplier**.

You may pay the **Losses** in (1) to (4) above from the assets of the **Scheme**, and from the assets of each relevant **Member’s Fund**, and by each relevant **Member** personally as appropriate and as the **Administrator** and/or **Trustee** confirms.

The total liability of both the **Administrator** and the **Trustee** together, however that liability arises, including as a result of the **Administrator’s** and/or the **Trustee’s** negligence, is limited to £50,000. This limitation does not apply to the circumstances set out in sections 13(a) to (e) above.

The exclusions and limitations above shall apply in addition to any other sections of these **Terms and Conditions** that exclude or limit the **Trustee’s** and/or the **Administrator’s** liability contained within the **Trust Deed**.

You may not use any of the provisions in this section to avoid payment by **You** of any **Fees**, unless the Fees arise as a result of any of the circumstances set out in (a) to (e) of this Section.

14. Closing your SIPP

You may close your **SIPP** at any time by writing to the **Administrator**. The **Fees** payable by **You** on closure are shown in the **Charge Card** and **Fees** for administering **Your SIPP** will continue to be payable until it is closed. **You** may only close **Your SIPP** if you claim benefits or if there is a transfer of **Your Fund** to another Registered Scheme (as defined by the **Act**) in accordance with the **Trust Deed**.

The **Administrator** may close **Your SIPP** if there are no **Funds** held in the SIPP for a period of at least thirty (30) days.

The **Administrator** may also cease to provide **Services** to **You** if **You** fail to comply with these Terms and Conditions. In this case, the **Administrator** will give you thirty (30) days’ notice and will then only carry out activities necessary to close **Your SIPP**, including arranging payment of the **Funds** to another **Scheme**. Any such work will be carried out in accordance with the **Fees** set out in the **Charge Card** and all other **Fees** will continue to be payable until the **SIPP** is closed.

15. Changing SIPP versions

When **You** apply for a **SIPP**, you have the choice of the **Xafinity SIPP** or the **SimplySIPP**. **Your** choices for switching between these are as follows:

- (a) If **You** have a **SimplySIPP**, **You** may elect to switch to the full **Xafinity SIPP**. There will be no charge for this and you will immediately move to the **Xafinity SIPP** charging basis;
- (b) If **You** have a **Xafinity SIPP**, **You** may switch to a **SimplySIPP** on payment of the standard **Xafinity SIPP** closure **Fees** and you will then immediately move to the standard **SimplySIPP** charging basis;

16. Closure of the Scheme

The **Administrator** and/or the **Trustee** may give **You** at least thirty (30) days’ notice, in writing, of a decision to:

- (a) stop admitting new **Members** to the **Scheme**, but to continue to accept **Contributions** in respect of existing **Members**; or
- (b) stop admitting new **Members** to the **Scheme** and to stop accepting **Contributions** in respect of existing **Members**.

A decision taken under (a) or (b) of this Section may be taken under the following circumstances:

- (1) As a result of the **Administrator** ceasing to be authorised by the **Financial Services Authority** where its authorisation is required to administer the **Scheme**;
- (2) As a result of the **Scheme** ceasing to be registered by **HMRC**;

- (3) the business of the **Administrator** and/or the **Trustee** is sold;
- (4) the **Administrator** and/or the **Trustee** determines that it is necessary for the protection of the **Members**; or
- (5) the business of the **Administrator** and/or **Trustee** is placed into administration or wound up.

If the **Scheme** is closed, the **Administrator** will continue to operate the **Scheme** under the **Trust Deed**, unless the **Administrator** is winding-up the **Scheme**. The **Administrator** will notify **You** of **Your** rights and options in accordance with the **Trust Deed**. Where **You** do not provide the **Administrator** with a written election to transfer **Your Fund** to another Registered Scheme within the period as determined by the **Administrator**, the **Administrator** will transfer **Your Fund** to another Registered Scheme of the **Administrator's** choice. Your consent will not be required to such a transfer.

On closure, the **Trustee** and the **Administrator** may keep data relating to **You** as required by **Statutes and Regulations** or for auditing or compliance purposes.

If the **Scheme** is winding-up due to circumstances beyond the control of the **Administrator**, the **Administrator** may make a charge for transferring any **Member's Funds** or concluding any other paperwork that may be necessary to enable the **Trustee** or any replacement administration service provider to provide Services equivalent to the **Services** or otherwise operate the **Scheme**. These charges will be notified to you before they are incurred.

17. General Terms

17.1 Third Party Rights

These **Terms and Conditions** are not enforceable by any person who is not a party to these **Terms and Conditions**. This is as set out in the Contracts (Rights of Third Parties) Act 1999.

17.2 Law

These **Terms and Conditions** are governed and interpreted in accordance with English Law and **You** agree that only the English Courts can hear and determine any legal action taken under these **Terms and Conditions**.

17.3 Waiver

Nothing in these **Terms and Conditions** can be waived and no breach excused unless consent to do so is given in writing and signed by the party who has waived the term or provision.

17.4 Variations to these Terms and Conditions

The **Administrator** and the **Trustee** can amend these **Terms and Conditions** by giving **You** at least thirty (30) days' notice in writing. Variations to these Terms and

Conditions will only be made for reasons including but not limited to:

- (a) where a change in the law or **Regulations** applying to these **Terms and Conditions** occurs;
- (b) where there is a change in the **Trustee** or **Administrator**;
- (c) where there is a change in the existing **Services** provided or new **Services** are provided;
- (d) making the **Terms and Conditions** clearer and more favourable to **You**;
- (e) reflecting legitimate increases or reductions in the cost of providing the **Services** to **You**;
- (f) where new systems, technology or products are introduced;
- (g) rectifying any mistakes that may be discovered in due course; or
- (h) any amendment which is made to reflect a change of applicable **Statutes and Regulations**. Such changes may also take effect immediately, subject to such amendment being notified to **You** as soon as possible after the change is made.

This section does not restrict the right of the **Administrator** or the **Trustee** to change the **Fees** in accordance with section 8.

If variations to these **Terms and Conditions** are made which are not covered by sections 17.4(a) to 17.4(h) above, **You** will have the right to close **Your SIPP** and the fee for exiting the **SIPP** will not be charged.

17.5 Assignment

You may not assign the whole or any part of **Your** agreement with the **Trustee** and the **Administrator** without the prior written consent of the **Trustee** or the **Administrator**. 'Agreement' in this section means these **Terms and Conditions** and the application form **You** signed.

17.6 Severability

If any provision of these **Terms and Conditions** is held to be illegal, invalid or unenforceable in whole or in part, the rest of these **Terms and Conditions** shall continue to be valid.

18. Definitions

"**the Act**" means the Finance Act 2004;

"**Administrator**" means the "Scheme Administrator" as defined by section 270 of **the Act**. The Administrator is Xafinity SIPP Services Ltd (registered number: SCO69096) whose registered office is at Scotia House, Castle Business Park, Stirling, Stirlingshire, FK9 4TZ or any successor in this role;

Annuities see **Annuity**;

“Annuity” means using your **Fund** to buy regular payments from an insurance company. An annuity is usually paid for the rest of your life. Payments can be a fixed amount or can increase by a fixed amount or in line with inflation. They may also be guaranteed to be paid for a minimum period, such as five years;

“Arm’s Length” means any transaction where **You** have no direct involvement in, or influence on, the outcome;

“Bare Trustee” means the **Trustee** of the **Scheme** whose only role is to hold the **Scheme’s** assets and who has no other power, duty, discretion or ability to act in relation to the **Scheme** and who does not act as the **Administrator** or the administrator for the purposes of article 52(b) of The Financial Services Act 2000 (Regulated Activities) Order 2001 as amended;

“Benefit(s)” means any payment which may be made by the **Administrator** under the **Scheme** to or in respect of any **Member** and which is not an **Unauthorised Payment**;

“Charge Card” means the document entitled ‘Our Fees and Charges’;

“Client Banking Agreement” means the agreement between Bank of Scotland plc and the **Administrator** dated 27 June 2005 as amended, supplemented or replaced from time to time;

“Client Banking Service” means the account administration facility that exists from time to time between the Bank of Scotland and the **Administrator** and is governed by the **Client Banking Agreement**;

“Commencement Date” means the date **You** sign an application form to become a **Member** of the **Scheme**;

“Condition” means a term of a contract which is of such vital importance that it goes to the root of the transaction; essentially it is a major term of the contract. Breach of a condition gives **You** a right to terminate the contract (treat the contract as discharged) and claim damages for any loss;

“Connected Person(s)” means persons who are connected with a **Member** within the meaning of section 839 of the Income and Corporation Taxes Act 1988;

“Confidential Information” means all information whether conveyed orally, in writing, in machine readable form or otherwise which relates to a party’s business, products, developments, trade secrets, know-how, personnel, customers (including all **Personal Data**) and suppliers (whether or not designated as “Confidential Information” by the disclosing party) together with all information derived from the above and all information designated as confidential or which ought reasonably to be considered confidential but does not include information which:

(a) is or becomes public knowledge other than by breach of section 12;

(b) is received from a third party who lawfully acquired or developed it and who is under no obligation of confidence in relation to its disclosure; or

(c) is independently developed without the use of the other party’s Confidential Information;

“Contribution(s)” means any payments made to the **Scheme** by or on the **Member’s** behalf;

“Controlling Director” means a director to whom paragraph (b) of section 417(5) of the Income and Corporation Taxes Act 1988 applies;

“Data Protection Legislation” means the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Data Protection Directive (Directive 95/46/EC) and all other applicable laws, codes and Regulations whatsoever relating to the processing of **Personal Data** and privacy anywhere in the world, as amended from time to time;

“Data Subjects” shall have the meaning prescribed by **Data Protection Legislation**;

“Fees” means the **Fees** payable to the **Administrator** for providing the **Services** as described in section 8;

“Financial Adviser” means any individual authorised by the **Financial Services Authority** or any other professional body authorised to give financial advice who acts on **Your** behalf;

“Financial Services Authority” means the FSA and any of its predecessors or successors;

“First Charge” means this has priority for payment over all other amounts that may be due for payment;

“Fund” means all monies, funds, investments, policies and property constituting the **Member’s** assets within the **Scheme** including the **Contributions** paid to the **Trustee** in accordance with the **Trust Deed** including all income, accretions, options and rights relating to such investments or otherwise held by the **Trustee** upon trust for **You**;

“Good Industry Practice” means the exercise of the level of reasonable skill and care that would be expected from a suitably skilled, trained and experienced person in the financial services industry;

“HMRC” means Her Majesty’s Revenue & Customs or such other entity as from time to time may perform the role of pension scheme registration;

“Legally Binding” means the **Law says you must obey**;

“Liability” means a legal or financial responsibility for any actions taken;

“Losses” means any loss, damage, obligation, demand, claim, proceedings, expense or liability whatsoever;

“Member” means **You** as a Member of The Xafinity SIPP;

“Money Purchase” means that the benefits are based on the money paid to the scheme plus any investment growth that the money might create;

“Personal Data” shall have the meaning prescribed by **Data Protection Legislation**;

“Pooled Designated Client Accounts” means an account which holds money belonging to a number of different **Members**. Such accounts are separate from the business accounts of the **Trustee** and the **Administrator**;

“PRAS Regulations” means the Registered Pension Schemes (Relief at Source) Regulations 2005 as amended from time to time;

“Money Laundering Regulations” means the Money Laundering Regulations 2007 and Joint Money Laundering Steering Group Guidance Notes as amended from time to time;

“Regulator” means any person having regulatory or supervisory authority over any part of the **Services** or the **Administrator’s** business including but not limited to the Pensions Regulator, Pensions Ombudsman, Financial Services Authority, the Financial Services Compensation Scheme and Financial Ombudsman Service or their successor;

“Sensitive Personal Data” shall have the meaning prescribed by **Data Protection Legislation**;

“Scheme” means “The Xafinity SIPP” and “The SimplySIPP”;

“Services” means all the Services to be provided by the **Administrator** and/pr the **Trustee** as specified in these **Terms and Conditions** and the **Trust Deed** including in particular those Services set out in section 4;

“SimplySIPP” means a version of the Xafinity SIPP offering restricted investment choice and different charges;

“SIPP” means Self Invested Personal Pension plan;

“Statutes and Regulations” mean Laws which have passed by a legislative body including Parliament;

“Tax” means any **Tax**, charge, imposition, duty, levy, excise duty, national insurance Contribution, surcharge, rate or penalty whatsoever (without limitation) which may be imposed by Her Majesty’s Treasury, by **HMRC** or by any other body;

“Terms and Conditions” means these **Terms and Conditions** together with the **Trust Deed** as may be amended, modified or supplemented from time to time in accordance with those provisions;

“Third Party Supplier(s)” means any Third Party Supplier which contracts directly with **You** to supply **Services** related to the investment of assets held within **Your Fund** including Investment Funds Direct Limited and any discretionary fund manager appointed by **You** together with any successors or replacements to such suppliers;

“Trust Deed” means the declaration of trust dated 19 October 2007 and rules under which the **Scheme** known as “The Xafinity SIPP” (**“Scheme”**) was established and constituted for the benefit of **Members** of the **Scheme** as amended and as prevailing as at the date of these **Terms and Conditions** between the **Trustee** and **Administrator**. A copy of the current **Trust Deed** and its associated Rules are available from the **Administrator** on request;

“Trustee” means Xafinity Pension Trustees Limited (registered number: 01450089) whose registered office is at 27 Kings Road, Reading RG1 3AR and any successor in that role;

“UK Relevant Earnings” means an earnings limit used to set the maximum contribution that you can make and get tax relief for. They are broadly the same as your taxed earnings, but they do not include dividends or bank interest.

“Unauthorised Payment” shall have the meaning prescribed by Part 4 of the Act;

“Undertaking” means a formal promise;

“VAT” means value added tax charged under or pursuant to the Value Added Tax Act 1994 as amended from time to time;

Warranty means an assurance or promise in a contract, the breach of which may give rise to a claim for damages. It is essentially a minor term of a contract;

“Wasting Assets” means assets whose value will decline as time passes;

“You(r)” means you as the Member of the Xafinity **SIPP**.

Contacting Xafinity

SIPP Trustee: Xafinity Pension Trustees Ltd
SIPP Administrator: Xafinity SIPP Services Ltd

SIPP Department
Xafinity SIPP Services Ltd
Scotia House
Castle Business Park
Stirling
FK9 4TZ

www.xafinity.com

Tel: 01786 434213

Email: SIPPTeam@xafinity.com

Xafinity SIPP Services Ltd is authorised and regulated by the Financial Services Authority. Our FSA Registration Number is 461791. You can check this on the FSA's website at www.fsa.gov.uk/register. Xafinity Pension Trustees Ltd (1450089) is registered in England at 27 Kings Road, Reading RG1 3AR. Xafinity SIPP Services Ltd is registered in Scotland (No 69096) and its registered office is at Scotia House, Castle Business Park, Stirling FK9 4TZ.

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