

**DATED [●]**

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**DECLARATION OF TRUST IN RESPECT OF CERTAIN BANK ACCOUNTS**

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**BONDSMITH SAVINGS NOMINEES LTD**  
(as Trustee)

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**THIS DEED** is made [●] by Bondsmith Savings Nominees Ltd, a company incorporated in England and Wales under company number 13480386 whose registered office is at Bondsmith Savings Ltd 124-128 City Road, London, United Kingdom, EC1V 2NJ (the “**Company**”).

**RECITALS:**

- (A) The Company holds deposit accounts as bare trustee as part of the cash deposit management service operated by Bondsmith Savings Ltd (company number 13223331) in conjunction with [●] (and its subsidiaries) (“[●]”) through which, acting on behalf of its customers and in accordance with their instructions, Bondsmith Savings Ltd places customers’ monies into deposit accounts offered by third party deposit takers and held by the Company.
- (A) Pursuant to the terms which the Company has entered into (or will enter into) with such customers, it has agreed (or shall agree) to hold such customers’ monies, and any income arising on such monies, on trust for such customers at all times.
- (B) Certain amounts payable in relation to the deposit accounts offered by the third party deposit takers will be due and payable to Bondsmith Savings Ltd. The Company has agreed to hold such monies, and any income arising on such monies, on trust for Bondsmith Savings Ltd at all times
- (C) This Deed sets out the Company’s declarations of trust over certain accounts to which such monies may from time to time be credited.

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Deed:

“**Account**”: means any account with a deposit taker open at present or to be opened in the future, which contains the following in its title: [●].

“**Declaration of Trust**”: means, in respect of an Account, this Deed, as amended from time to time.

“**Incoming Trustee**”: has the meaning ascribed to it in clause 4.1.

“**Customer**”: means

- (a) a person with whom the Company has entered into an agreement to provide services comprising placing monies on behalf of that person into deposits in Accounts via a relationship with [●]. For the avoidance of doubt, a Customer may be any type of person (natural or otherwise); and
- (b) Bondsmith Savings Ltd.

“**Customer Amount**”: means, in relation to a Customer and an Account:

- (a) the funds deposited to the credit of such Account on behalf of such Customer and not yet withdrawn;
- (b) any income arising on such funds and any other assets derived from such funds which are held from time to time by the Company, except to the extent that such income or assets:
  - (i) has/have been transferred (a) to another Account; or (b) to another account which is not an Account but whose balance is held on trust absolutely for such Customer or for two or more Customers in proportion to their entitlements;

- (ii) has/have become due and payable to Bondsmith Savings Ltd and/or is the beneficial property of Bondsmith Savings Ltd under the Terms and Conditions;
  - (iii) is/are the legal and beneficial property of the Company under the Terms and Conditions; or
  - (iv) has/have become due and payable to the Company and has/have been transferred to the Company in accordance with the Terms and Conditions; and
- (c) in respect of Bondsmith Savings Ltd only, any income arising on the funds deposited to the credit of such Account on behalf of Customers and not yet withdrawn and any other assets derived on such funds which is due and payable to Bondsmith Savings Ltd under the Terms and Conditions.

**“Customer Proportion”**: means, in relation to a Customer and an Account, the proportion that such Customer’s Customer Amount for such Account bears to the aggregate of all Customer Amounts for such Account, expressed as a percentage from time to time.

**“Terms and Conditions”**: means, in relation to a Customer and an Account, the terms and conditions which the Company has agreed from time to time with such Customer in respect of the funds deposited on behalf of such Customer to the credit of such Account.

**“Trust”**: means, in respect of an Account, the trust declared by the Trustee in (and subject to the terms of) the Declaration of Trust and **“Trusts”** shall be construed accordingly.

**“Trustee”**: means, in respect of a Trust, collectively the Company and any other persons appointed from time to time as a trustee of such Trust in accordance with this Deed, but excluding any person who has retired from such Trust in accordance with clause 5, and **“trustee”** means (except where the context requires otherwise) any one of these persons other than a person who has retired from such Trust in accordance with clause 5.

1.2 All references in this Deed to a **“clause”**, **“sub-clause”** or **“Appendix”** (whether or not capitalised) refer, unless otherwise specified, to a clause or sub-clause of, or an appendix to, this Deed.

1.3 In this Deed, unless the context otherwise requires, any reference to:

1.3.1 any agreement, document or instrument means unless the contrary is indicated such agreement, document or instrument as modified, amended, varied, restated, novated, replaced or supplemented from time to time;

1.3.2 a person includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, joint venture or consortium), government, state, agency, organisation or any other entity (whether or not having separate legal personality and irrespective of the jurisdiction in or under the laws of which it is incorporated or exists), and references to any person shall include its successors in title, permitted assigns and permitted transferees;

1.3.3 a statute or statutory instrument or any of its provisions is to be construed as a reference to that statute or statutory instrument or such provision as the same may be amended or re-enacted from time to time; and

1.3.4 words importing the singular number include the plural and vice versa.

## **2. DECLARATIONS AND CONFIRMATIONS OF TRUST**

- 2.1 The Trustee hereby acknowledges, declares, agrees and gives notice that it shall hold all of its rights, title, interest and benefit, present and future, to all Customer Amounts in each Account, including such amounts which constitute Customer Amounts standing to the credit of such Account (as to both capital and income), upon trust absolutely for the Customers in the Customer Proportions for such Account and on the terms of this Deed.
- 2.2 For the avoidance of doubt, clause 2.1 shall, in respect of each individual Account, constitute a separate Trust, and each right and obligation of the Trustee shall be several in respect of each Trust.
- 2.3 It is hereby expressly agreed and declared by the Trustee that the interests and entitlements of the Customers in their capacities as beneficiaries of each Trust in and to the property thereby held on trust shall be vested and indefeasible, such that the relevant Customers are absolutely entitled to the assets comprised in the Trust as they are received and as income thereon arises.
- 2.4 The Trustee has power to make temporary advances to Customers from the amounts which are held upon trust for Customers and standing to the credit of an Account, provided that:
- 2.4.1 such advances shall be limited to the value of the Customer Proportion of any income on the funds deposited to the credit of such an Account on behalf of such Customer that:
- (a) qualifies as a Customer Amount, and
  - (b) has been earned but has not yet been paid;
- 2.4.2 the Customer Amounts and Customer Proportion of the Customer receiving the advance from the amounts being held on trust shall be proportionately reduced by the amount they receive; and
- 2.4.3 where advances are made using funds held on behalf of a Customer in an Account, the affected Customer's Customer Proportion of any income due on the remaining funds held in the Account which qualify as Customer Amounts shall be increased.
- 2.5 For the avoidance of doubt, the Company shall be permitted to transfer any sums between the Accounts, or from the Account to itself or to third parties, in each case:
- 2.5.1 to the extent permitted (whether expressly or otherwise) by the relevant Terms and Conditions or other rights against or in respect of the Customers;
- 2.5.2 in satisfaction of any claim which the Company has against a Customer and which has become due and payable; and/or
- 2.5.3 to the extent that such sums do not constitute Customer Amounts.

## **3. RESTRICTIONS**

- 3.1 Except insofar as is required or permitted pursuant to the Declaration of Trust or the applicable Terms and Conditions, the Trustee shall have no further or other powers of investment with respect to the property held on trust. For the avoidance of doubt, to the fullest extent permitted by law the provisions of the Trustee Act 2000 shall not apply.
- 3.2 The Trustee acknowledges and agrees that it will not encumber or dispose of any of its rights, title, interest and benefit, whether present or future, in any Customer Amount in any Account or the amounts standing to the credit of any Account which constitute Customer Amounts except as

(i) instructed by or on behalf of the Customers who are beneficially interested therein, or (ii) permitted by the applicable Terms and Conditions or the Declaration of Trust.

3.3 Without prejudice to any rights and powers conferred on the Trustee pursuant to the Terms and Conditions or the Declaration of Trust, the Trustee shall at no time be entitled to exercise any discretion in respect of any Trust or any other matter referred to in this Deed.

#### **4. APPOINTMENT OF TRUSTEES**

4.1 Subject to the terms of this clause 4, the Trustee may appoint any persons (each an “**Incoming Trustee**”) as trustee of any one or more Trusts of which it is itself a trustee. There is no requirement that any such person shall be or include a trust corporation.

4.2 The appointment of an Incoming Trustee as trustee of a Trust will become effective only when effected by a deed which:

4.2.1 has been executed by such Incoming Trustee;

4.2.2 obliges such Incoming Trustee to adhere to the terms and conditions of this Deed; and

4.2.3 has been executed by the existing trustee(s) of the relevant Trust.

4.3 On or following the execution of the deed of appointment referred to in clause 4.2, the Incoming Trustee will be appointed to the position of trustee on the date of appointment specified in that deed and the term Trustee will from that date of appointment (and until such Incoming Trustee’s retirement in accordance with clause 5, if applicable) include such Incoming Trustee. For the avoidance of doubt (and without prejudice to clause 5), such appointment shall not cause any existing trustee to retire.

4.4 Without prejudice to clause 4.2, whenever there shall be more than two trustees of a Trust the majority of such trustees shall be competent to execute and exercise all the duties, powers, trusts, authorities and discretions vested in the Trustee by the Declaration of Trust.

4.5 The statutory power of appointing new or additional trustees shall be modified in accordance with this Deed and in particular so that the statutory power of appointing additional trustees shall be exercisable notwithstanding that one or none of the trustees for the time being is a trust corporation.

#### **5. RETIREMENT OF TRUSTEE**

5.1 Any person being a trustee of a Trust may retire and be discharged from such Trust provided that:

5.1.1 in respect of any Trust (i) of which it is not sole trustee and (ii) the other trustees of which have not all given written notice of their retirement in accordance with the requirements of the Declaration of Trust, it may only so retire and be discharged having provided two weeks’ prior written notice thereof to the other trustee(s);

5.1.2 in respect of any Trust of which it is sole trustee or of which the other trustees have all given written notice of their retirement in accordance with the requirements of the Declaration of Trust, it may only so retire and be discharged with effect from such date as its appointment of one or more Incoming Trustees as trustee(s) of such Trust in accordance with the provisions of clause 4.2 becomes effective.

5.2 Any retiring trustee shall use its best endeavours to vest all of the property held on the relevant Trusts into the name of one or more other trustees of those Trusts.

## **6. NO IMPLIED DUTIES**

- 6.1 Without prejudice to the powers of the Trustee under section 36 of the Trustee Act 1925, the duties and obligations of the Trustee under each Trust shall be determined solely by the express provisions of this Deed.
- 6.2 No implied covenants or obligations shall be read into this Deed or any Supplemental Declaration of Trust against the Trustee and any power of the Trustee to do things described in this Deed shall not be construed as a duty.

## **7. EXONERATION**

- 7.1 Without prejudice to any applicable Terms and Conditions, this Deed shall not create or give rise to any right, claim, entitlement or cause of action such as would enable any Customer to take proceedings against any officer, employee or agent of the Trustee in respect of any claim it might have against the Trustee or in respect of any act or omission of any kind (including negligence or wilful misconduct) by that officer, employee or agent in relation to this Deed.
- 7.2 The Trustee shall not have any liability in respect of or arising from:
- 7.2.1 making the determinations or exercising any of the powers or performing any of the duties provided for in this Deed; or
- 7.2.2 any matter relating to such determinations, power or duties (including, without limitation, any payment made or not made to any person),
- other than as a direct consequence of the Trustee's own wilful default, misfeasance, breach of duty or negligence (or that of its related parties (if any), delegates or agents).
- 7.3 The Trustee may refrain from doing anything which might, in its opinion, constitute a breach of any applicable law or regulation or be otherwise actionable at the suit of any person, and may do anything which, in its reasonable opinion, is necessary or desirable to comply with any applicable law or regulation of any jurisdiction.

## **8. REMUNERATION AND EXPENSES**

- 8.1 To the extent provided in the applicable Terms and Conditions, the Trustee is entitled to:
- 8.1.1 reasonable remuneration for performing its functions as trustee of any Trust; and
- 8.1.2 reimbursement for expenses properly incurred by it in the course of, or in connection with, the performance of its functions as trustee of any Trust.
- 8.2 Such amounts referred to in clause 8.1 may be paid out of property which the Trustee holds from time to time subject to a Trust to the extent permitted by the applicable Terms and Conditions.

## **9. GENERAL**

- 9.1 Any amendment to the terms set out in this Deed must be agreed as a deed by or on behalf of the Company.
- 9.2 Nothing in this Deed is intended to confer on any person any right to enforce any term of this Deed which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.
- 9.3 This Deed, and any non-contractual obligations arising out of or in connection with it or its subject matter, shall be governed by and construed in accordance with English law.

9.4 The Company irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to hear and determine or otherwise settle all and any disputes that may arise out of or in connection with this Deed or its subject matter.

**IN WITNESS** whereof this Declaration of Trust has been executed as a deed and has been delivered and takes effect on the date first above mentioned.