

# **CUBS SUPERANNUATION FUND**

## **Trust Deed**

The Trust Company (Superannuation) Limited  
(Trustee)

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## **The CUBS Superannuation Trust**

### **Part 1A - The Cubs Superannuation Trust**

The CUBS Superannuation Trust is governed by this Part 1A of the trust deed for the CUBS Superannuation Fund.

### **Section 1 - Normal Operation of the Fund**

Section 1 of the Rules states how the Fund operates unless Relevant Law requires or allows otherwise. Section 2 of the Rules states how the Fund pays Benefits. Section 3 of the Rules states other matters affecting the Fund's operation.

#### **1 Joining the Fund**

##### **Admission of Members**

- 1.1 The Trustee may, on application by a person who is eligible under Relevant Law, admit the person as a Member. The application must be in writing or as otherwise permitted by Relevant Law and accompanied by such information and evidence as the Trustee or the Fund's Insurer reasonably requires. This may extend to requiring the person to submit to a medical examination and producing the report of the examination as required by the Trustee or Insurer.
- 1.2 Notwithstanding that an application is not made by a person, the Trustee may admit a person as a Member if Relevant Law allows including (without limitation) as a result of an application by a Contributor in the form and manner required by the Trustee.

##### **Members may be admitted conditionally**

- 1.3 The Trustee may, when admitting a Member, impose specified conditions including (without limitation) conditions limiting or restricting the timing or amount of Benefits for the Member, how Benefits are invested or how investment returns and Tax are allocated to Members or Benefits. If the Trustee imposes conditions:
- 1.3.1 it must give notice of the conditions to the Member when admitting the Member;
  - 1.3.2 the Trustee may, by notice to the Member, amend or revoke the conditions at any time;
  - 1.3.3 the Member, and each Beneficiary, is bound by the conditions, as amended.

##### **Members bound**

- 1.4 Each Member and each Beneficiary is bound by this Deed and these Rules and any conditions imposed by the Trustee as if he or she were an original party. A Member or Beneficiary must promptly provide the Trustee with any information that the Trustee reasonably needs for the purposes of the Fund including (but not limited to) in relation to the receipt of contributions from and the payment of Benefits to or in respect of the Member or Beneficiary.

##### **Contributor Obligations**

- 1.5 A Contributor must ensure that the Trustee promptly receives all the information or assistance the Trustee reasonably needs in relation to Contributions made by the Contributor or the Contributor's participation in the Fund. The Trustee may, so far as its obligations under these Rules or Relevant Law are concerned or for any other purpose:
- 1.5.1 impose specified conditions in relation to Contributions made by the Contributor or a Contributor's participation in the Fund;

- 1.5.2 require a Contributor to be bound by this Deed and these Rules and any conditions imposed by the Trustee as if the Contributor were an original party;
- 1.5.3 rely on the advice or opinion of the Contributor about the nature of the Contributions made by the Contributor without making further inquiries about the matter;
- 1.5.4 consult with a Contributor in relation to the benefit design, fee structure, investment strategies, investments or any other characteristics that shall apply to the Contributor's employees as Members of the Fund;
- 1.5.5 vary or terminate the Contributor's participation in the Fund for any reason at any time;
- 1.5.6 if a Contributor's participation in the Fund is varied or terminated by the Trustee or the Contributor, reclassify the membership of the Contributor's employees in the Fund or transfer the Contributor's employees to a different class of Members or sub-fund or do whatever else the Trustee considers appropriate.

**When a Member begins being a Member**

- 1.6 A person commences being a Member on the date that the Trustee accepts their application for membership or from such other date determined by the Trustee.
- 1.7 A Member may have an interest in the Fund notwithstanding any delay (for whatever reason) in the receipt, allocation or investment of initial contributions made by or on behalf of the Member.
- 1.8 For the avoidance of doubt, if the Trustee receives, or determines that it holds, an amount (**Residual Amount**) that relates to a Benefit that a person has previously received (other than the Residual Amount), and the Trustee determines that the Residual Amount is to be paid to the person, the Residual Amount will not result in the issue of a new interest in the Fund and will form part of the original interest associated with the Benefit previously paid to the person.
- 1.9 If Relevant Law requires or allows, an amount received by the Trustee may be dealt with by the Trustee without allocating the amount to an account in the Fund.

**When a Member stops being a Member**

- 1.10 A person stops being a Member on the earliest of the following:
  - 1.10.1 when no further Benefits remain to be paid for the Member;
  - 1.10.2 the death of the Member;
  - 1.10.3 such other date determined by the Trustee.

**2 Accounts**

**Amount of Benefits**

- 2.1 Unless these Rules or Relevant Law provides to the contrary, the amount of a Benefit payable for a Member at a particular time is the balance of the Member's Benefit Accounts.

**Accounts that must be set up**

- 2.2 The Trustee must set up and maintain accounts for each Member as the Trustee considers appropriate including showing, where applicable, the amount of each class of the Member's Benefits that have different payment restrictions under Relevant Law. The Trustee may denote such accounts in such a way as the Trustee determines to be appropriate, and may from time to time formulate rules for the operation and management of such accounts.

**Other accounts may be set up**

- 2.3 The Trustee may set up other accounts as it sees fit including (without limitation) one or more reserve accounts in respect of the Fund, a class of Members or sub-fund or any part of the Fund and for any purpose that the Trustee determines to be appropriate.

### **Amounts going into the account**

- 2.4 The Trustee may add the following amounts to a Member's Benefit Account balance and may determine, where a Member has more than one Benefit Account, to which of such Benefit Accounts such amount or part of each amount shall be added:
- 2.4.1 Contributions and transfers or rollovers into the Fund for the Member's benefit;
  - 2.4.2 Amounts received from a government authority for the Member's benefit;
  - 2.4.3 Investment earnings and reserve amounts allocated by the Trustee to the Member or the Member's Benefit Account;
  - 2.4.4 Insurance proceeds from insurance policies maintained in respect of the Member which the Trustee determines to add to the Member's Benefit Account;
  - 2.4.5 Amounts arising from payment splitting or contribution splitting arrangements;
  - 2.4.6 any other amount which is required by Relevant Law or the Trustee considers appropriate or equitable from time to time.

### **Amounts going out of the account**

- 2.5 The Trustee may deduct the following amounts from a Member's Benefit Account balance and may determine, where a Member has more than one Benefit Account, from which of such Benefit Accounts each amount or part of each amount shall be deducted:
- 2.5.1 Benefits cashed and transfers or rollovers out of the Fund as allowed by Relevant Law;
  - 2.5.2 Premiums for insurance for the Member's benefit which the Trustee determines to deduct from the Member's Benefit Account;
  - 2.5.3 Investment losses allocated by the Trustee to the Member or the Member's Benefit Account;
  - 2.5.4 Fees, costs or expenses relating to the Member or the Fund and allocated by the Trustee to the Member's Benefit Account;
  - 2.5.5 the amount of Tax determined by the Trustee to be attributable to the Member or the Member's Benefit Account;
  - 2.5.6 Amounts arising from payment splitting or contribution splitting arrangements;
  - 2.5.7 any other amount which is required or the Trustee considers appropriate or equitable from time to time.

### **Amounts going into and out of the Benefit Accounts**

- 2.6 The additions to or deductions from a Member's Benefit Account balance may differ depending on the class of Members or sub-fund to which the Member has been admitted or for any other purpose.

### **Minimum balances**

- 2.7 The Trustee may determine from time to time a minimum balance required to be held in a Benefit Account of a particular type.

## **3 Contributions and transfers to the Fund**

### **Member Contributions**

- 3.1 Each Member may make Contributions, as the Member determines, provided the Contributions are not prohibited by Relevant Law. The Member may determine when Contributions begin, how much the Member contributes, and when to suspend or stop Contributions.

### **Other Contributions**

- 3.2 Contributors may make Contributions in respect of Members or any other person provided the Contributions are not prohibited by Relevant Law.

### **What the Trustee can accept**

- 3.3 The Trustee may accept any Contribution, transfer or rollover or other amount into the Fund which it considers is appropriate and is not prohibited by Relevant Law.
- 3.4 Without limitation, the Trustee may accept Contributions in respect of a Member by a spouse or former spouse of a Member if allowed by Relevant Law.
- 3.5 The Trustee may accept Contributions, transfers or rollovers in the form of money or by way of the transfer of assets. If the Trustee accepts assets, the Trustee may require the Member or other contributor to provide evidence of title and such other matters (including a valuation of the assets by a valuer approved by the Trustee) as the Trustee considers appropriate. The Trustee may refuse to accept any Contribution, transfer or rollover by way of the transfer of assets and need not provide any reason for such refusal.
- 3.6 The Trustee must not accept Contributions, transfers, rollovers or other amounts in respect of a Member where:
  - 3.6.1 Relevant Law does not allow the acceptance of such Contributions, transfers, rollovers or other amounts; or
  - 3.6.2 The Trustee determines not to accept Contributions, transfers, rollovers or other amounts of a particular type or in particular circumstances.

### **Allocation of Contributions**

- 3.7 The Trustee must allocate Contributions to a Member at the times and otherwise in accordance with Relevant law.

### **Amounts transferred in may be preserved benefits**

- 3.8 The Trustee may, so far as its obligations under these Rules are concerned, rely on the advice or opinion of the transferor about the payment restrictions applicable under Relevant Law to the amounts transferred or rolled over into the Fund without making further inquiries about the matter.

### **Refund of Contributions**

- 3.9 The Trustee must refund a Contribution or amount to the person who paid it if it is required to be refunded by Relevant Law.
- 3.10 The Trustee may refund any Contribution or amount paid to the Trustee:
  - 3.10.1 made or accepted in error; or
  - 3.10.2 if the Contributor or payor so requests, with the Member's consent, and the refund is allowed by Relevant Law.
- 3.11 When refunding a Contribution, the Trustee may:
  - 3.11.1 deduct the amount of any investment loss;
  - 3.11.2 deduct the amount of any reasonable administration and transaction costs incurred by the Fund (excluding costs related to commissions and other similar benefits) that:
    - (a) are reasonably related to the Contribution or its return; and
    - (b) do not exceed the true cost of an arm's length transaction,
  - 3.11.3 deduct insurance charges incurred prior to the refund being made which cannot be recovered from a third party or which relate to the period prior to the refund being made; or
  - 3.11.4 make any other adjustment to the amount of the refund which the Trustee considers appropriate and is allowed by Relevant Law.
- 3.12 The refund must be made as soon as practicable (or within such other period required by Relevant Law) after the Trustee:
  - 3.12.1 becomes aware that a Contribution must be refunded; or
  - 3.12.2 becomes aware that a Contribution may be refunded and decides to refund the Contribution; or
  - 3.12.3 receives documentation or other information determined necessary by the Trustee,whichever occurs later.



- 3.13 The Trustee may assume that Contributions made by a Member or Contributor can be accepted by the Fund under Relevant Law if the Trustee has provided or made available information to the Member or Contributor explaining the requirements of Relevant Law.

**Tax may be taken out of Contributions**

- 3.14 Tax on a Contribution may be taken directly from the Contribution or a Member's Benefit Account, before or after the Contribution is paid into the Fund or the Contribution is allocated to a Member, as the Trustee considers appropriate.

**Contribution Splitting Arrangements**

- 3.15 The Trustee may accept an application by a Member to split Contributions made by or on behalf of that Member up to the maximum splittable amount under, and otherwise in accordance with, Relevant Law. The Trustee may establish a policy in relation to contribution splitting arrangements including (but not limited to) the imposition of conditions or restrictions on the acceptance of such applications that are additional to the requirements of Relevant Law.
- 3.16 Notwithstanding Rule 3.15, the Trustee can decide not to allow a Member, class of Members or Members in a particular sub-fund to split Contributions.
- 3.17 Notwithstanding Rule 3.15, the Trustee may make any other adjustments to the splittable amount that it considers necessary or appropriate having regard to its Tax obligations.

## **4 Investing the Fund**

**Trustee must have an investment strategy**

- 4.1 Subject to Relevant Law, the Trustee:
- 4.1.1 must formulate and give effect to an investment strategy and, in doing so, may give Members a choice of 2 or more investment strategies which they can choose;
  - 4.1.2 may give Members a choice of 2 or more investment portfolios to implement their chosen investment strategies;
  - 4.1.3 may give Members a choice of 2 more underlying investments, assets or financial products to implement their chosen investment strategies.
- 4.2 The Trustee is required to comply with an investment choice or instruction from a Member if it adheres to guidelines formulated by the Trustee from time to time.
- 4.3 The Trustee is not required to comply with an investment choice or instruction from a Member if it does not adhere to guidelines formulated by the Trustee from time to time.
- 4.4 If a Member's investment choice or instruction ceases to adhere to guidelines formulated by the Trustee from time to time, the Trustee may take whatever steps it considers necessary, including (without limitation) redeeming assets or investments in respect of the Member, to ensure adherence to the Trustee's guidelines.
- 4.5 The Trustee may apply such conditions as it thinks appropriate to the exercise of investment choice by a Member including (but not limited to) investing the Member's Benefit in a default investment strategy or cash as determined at the discretion of the Trustee.
- 4.6 The Trustee may (but is not obliged to unless required by Relevant Law) determine a default investment strategy for the Fund as it thinks appropriate. The default investment strategy may differ depending on the class of Members, sub-fund or Badged Arrangement (pursuant to Rule 18.1) to which a Member has been admitted or for any other purpose.
- 4.7 Subject to Relevant Law, the Trustee may switch a Member from one investment strategy to another investment strategy if it considers appropriate.
- 4.8 The investment strategies, portfolios or underlying investments, assets and financial products made available to Members may differ depending on the class

of Members, sub-fund or Badged Arrangement (pursuant to Rule 18.1) to which a Member has been admitted.

- 4.9 To the extent allowed under State law, duties and limitations under State laws about trustee investments do not apply to the Fund.

#### **Trustee's power to manage and invest the Fund**

- 4.10 The Trustee has the power to do whatever it considers appropriate to manage and invest the Fund.
- 4.11 The Trustee may if it thinks appropriate, determine that some or all assets of the Fund are to be invested in one or more registered managed investment schemes, pooled superannuation trusts or other pooled arrangements.
- 4.12 The Trustee may if it thinks appropriate, determine that some or all assets of the Fund are not to be invested in a pooled arrangement.
- 4.13 Without limitation, the Trustee may invest in derivatives or enter into any kind of option contract.
- 4.14 The Trustee may formulate criteria which define the portfolios, investments, assets or financial products that may be made available to Members to implement an investment strategy.
- 4.15 The Trustee may, from time to time, determine such other criteria as it considers necessary or appropriate in relation to the choice of an investment strategy, portfolio or underlying investments, assets or financial products by a Member.
- 4.16 Notwithstanding any criteria formulated by the Trustee from time to time, under this Rule, the Trustee may allow an investment strategy to be implemented by investments or assets that the Trustee considers appropriate.
- 4.17 The Trustee may invest in an investment of which the Trustee, Promoter or other service provider to the Fund, including any sub-contractor (or a related entity of the Trustee, Promoter or service provider) is the trustee, responsible entity, manager or promoter.
- 4.18 The Trustee may invest in an investment notwithstanding that the Trustee or any Director or Officer of the Trustee may have a direct or indirect interest in the investment or may benefit directly or indirectly from it, provided details of any interest are disclosed in accordance with Relevant Law.

#### **Restrictions on Trustee's powers**

- 4.19 The Trustee must not:
- 4.19.1 borrow money or maintain an existing borrowing of money except as allowed by SIS;
  - 4.19.2 lend money of the Fund, or give any other financial assistance using the resources of the Fund, to a Member or a relative of a Member except as allowed by Relevant Law;
  - 4.19.3 intentionally acquire assets from a Member or a relative of a Member except as allowed by Relevant Law;
  - 4.19.4 invest in in-house assets in excess of the limitations in Relevant Law;
  - 4.19.5 invest money of the Fund otherwise than on an arm's length commercial basis;
  - 4.19.6 charge the assets of the Fund, except as allowed by Relevant Law.

## **5 Allocating the costs and investment return**

### **Costs**

- 5.1 The Trustee must determine, for each Member's Benefits, what fees, costs and expenses are to be charged against the Benefits for any period. The Trustee may estimate fees, costs or expenses for a period if they are not actually known.
- 5.2 For the purposes of this Rule:
- 5.2.1 fees, costs and expenses may be charged against the assets of the Fund, investment earnings, Contributions or Benefits (including a

- Benefit Account maintained under Rule 2) as the Trustee considers appropriate;
- 5.2.2 fees, costs and expenses paid, payable or estimated to be payable (but not yet incurred) by the Trustee to third parties in connection with the marketing, distribution, issue, management and operation of the Fund constitute an amount owing to the Trustee that may be charged to Members in any manner that the Trustee considers appropriate.
- 5.3 Subject to Relevant Law, fees, costs and expenses may include amounts for remuneration, commission, brokerage or other benefits payable to a financial adviser in connection with the opening, holding or closing of an account in the Fund or for services provided by the financial adviser to or in respect of the Member.

#### **Investment return**

- 5.4 If Rules 5.6 to 5.11 (inclusive) do not apply, the Trustee may determine, at least once a year or other period determined by the Trustee, what investment return is to be allocated to each Member's Benefits having regard to:
  - 5.4.1 the investment performance of the underlying investments of the Fund applicable to the Member including (without limitation) actual or estimated realised and unrealised capital gains or losses;
  - 5.4.2 fees, costs and expenses charged against the assets of the Fund or investment earnings (or estimated fees, costs and expenses if they are not actually known);
  - 5.4.3 Tax; and
  - 5.4.4 any other matters that the Trustee considers relevant and are not inconsistent with Relevant Law.
- 5.5 The investment return may be positive or negative. The Trustee's determination of the investment return may differ for a particular Member, class of Members or a particular asset or group of assets or each investment strategy or portfolio formulated or made available for the purposes of these Rules.

#### **Unitisation**

- 5.6 The Trustee may, if it thinks necessary or desirable, divide the Fund or a part of the Fund into Units and allocate Units to Members' Benefit Accounts and all other accounts and reserves maintained for the purposes of the Fund.
- 5.7 The Trustee may create a unique class of Units referable to a particular Member or class of Members or to a particular asset or group of assets or to each investment strategy or portfolio formulated or made available for the purposes of these Rules.
- 5.8 The Trustee may adopt policies from time to time in relation to:
  - 5.8.1 the pricing of Units (including separate "buy" and "sell" prices and the timing and frequency of the pricing);
  - 5.8.2 switching between Unit Classes;
  - 5.8.3 the method and frequency of valuing the Fund (or part of the Fund relating to a Unit Class); and
  - 5.8.4 any other matter which the Trustee determines to be necessary or appropriate for administering the Fund (or any part of the Fund) as a unitised arrangement.
- 5.9 If the Trustee divides the Fund (or any part of the Fund) into Units, accounts and other amounts and reserves maintained for the purposes of the Fund (or any part of the Fund that has been unitised) will be recorded in Units of the relevant Unit Classes. Any amount credited or debited to an account or reserve will be converted into Units of the relevant Unit Classes immediately prior to being credited to the account or reserve, having regard to the relevant Unit Price.
- 5.10 Where these Rules refer to the balance, or the amount standing to the credit of an account or reserve maintained for the purposes of the Fund (or any part of the

Fund that has been unitised), it is taken to be a reference to the account or balance calculated by reference to the number of Units in the account or reserve and the relevant Unit Price.

- 5.11 The Trustee may do anything that the Trustee determines is reasonably required to maintain the Fund (or part of the Fund) as a unitised arrangement.

#### **Hybrid Plan**

- 5.12 Rules 5.4 to 5.11 (inclusive) (**Investment Return Rules**) may operate concurrently so that Rules 5.4 and 5.5 (inclusive) (**Unitisation Rules**) apply to a part of the Fund (including, without limitation, a sub-fund) and the Investment Return Rules apply to the remainder of the Fund. Alternatively, the Trustee may determine that the Investment Return Rules will operate to the exclusion of the Unitisation Rules, or vice versa, from a date determined by the Trustee.

#### **Reserves**

- 5.13 The Trustee may transfer amounts to reserves from earnings or from reserves to Member Benefit Accounts, as it sees fit. The Trustee must, if there are any reserves, formulate and give effect to a strategy for the prudential management of the reserves in accordance with Relevant Law. The Trustee may use reserves to meet fees, costs, expenses and Tax or for any other purpose not prohibited by Relevant Law.

#### **Costs and investment return for Member classes and sub-funds**

- 5.14 The Trustee may allocate costs and investment returns between particular members, classes of Members, sub-funds, particular assets or group of assets or each investment strategy or portfolio formulated or made available for the purposes of these Rules as the Trustee thinks appropriate. The costs and investment returns determined by the Trustee may differ depending on:
- 5.14.1 the class of Members or sub-fund to which a Member has been admitted;
  - 5.14.2 the nature of particular assets or group of assets or each investment strategy or portfolio formulated or made available for the purposes of these Rules; or
  - 5.14.3 for any other purpose.

## **6 Payment of benefits**

### **Form of Benefits**

- 6.1 The Trustee may determine, from time to time, the types of Benefits available from the Fund. The Trustee may pay a Member's Benefits as a lump sum, pension or other form allowed by the Relevant Law, as it considers appropriate.
- 6.2 The Benefits provided to Members may differ depending on the class of Members or sub-fund to which a Member has been admitted or for any other purpose.

### **When Benefits must be paid**

- 6.3 The Trustee must pay a Member's Benefit if Relevant Law requires it to be paid.

### **When Benefits may, in the Trustee's discretion, be paid**

- 6.4 If circumstances exist in which Relevant Law allows the payment of a Benefit but does not require that it be paid, the Trustee may, if requested by the Member, pay the Benefit.

### **Benefits to be paid to Member or Beneficiaries**

- 6.5 The Trustee must pay a Benefit payable for a Member to the Member or Beneficiary or as he or she directs in writing unless these Rules or Relevant Law allow otherwise.

### **Receipt for payment is enough**

- 6.6 The receipt by the person to whom the Benefit is paid is an effective discharge for the Trustee, and it need not concern itself how the Benefit is used.

## **Section 2 - Benefit options**

Subject to Relevant Law, Benefits may be paid in more than one lump sum, pension or other kind of benefit as determined by the Trustee.

### **7 Lump Sum Benefit**

#### **Lump sum**

7.1 The Trustee may, at the request of the Member or person entitled to a Benefit, pay the Benefit as a lump sum. The Member may elect to receive the whole or part of the Benefit this way.

#### **Lump sum by instalments**

7.2 The Member may elect for any lump sum to be paid in two or more instalments.

### **8 Pensions**

#### **Form of Pension or Annuity**

8.1 The Trustee may purchase an annuity in respect of a Member entitled to a Benefit with some or all of the amount in a Member's Benefit Accounts or may provide a Benefit by way of payment of any form of Pension that is approved by the Trustee and allowed by Relevant Law.

#### **Terms and Conditions of Pension**

8.2 If the Trustee pays a Pension it must comply with the relevant requirements of Relevant Law and this Deed is deemed to include each requirement of Relevant Law that the governing rules under which a Pension is provided must satisfy for the Pension to be a Pension for the purposes of Relevant Law.

8.3 The Trustee will have the power from time to time to prescribe terms and conditions on which any Pension will be provided under these Rules (which may include, without limitation, provision for the establishment of Pension accounts, and the fees to be paid in respect of a Pension), and to amend or revoke or replace the terms and conditions from time to time as the Trustee thinks fit.

#### **Payment of Pension**

8.4 A Pension shall be paid on the terms and conditions determined by the Trustee from time to time provided the Pension satisfies the standards of a Pension for the purposes of Relevant Law.

#### **Commutation**

8.5 A Member may commute the whole or a part of the Member's Pension at any time by notifying the Trustee in a manner approved by the Trustee, subject to the requirements of Relevant Law.

#### **Variation**

8.6 The Trustee may vary any terms and conditions of a Pension or impose additional terms and conditions to ensure that the relevant Pension does and will continue to comply with Relevant Law or in any other manner contemplated by Relevant Law, without necessarily commuting the Pension.

#### **Reversionary Beneficiary**

8.7 A Member may nominate one or more Dependants as a Reversionary Beneficiary to whom the pension must be transferred after the Member's death provided that the nomination is consistent with Relevant Law. The Trustee must not implement any nomination that is not consistent with Relevant Law, in which case, if the Member does not provide a nomination that is consistent with Relevant Law, the balance of the Pension as at the Member's death must be paid as a death benefit in accordance with these Rules or as otherwise permitted or required by Relevant Law.

#### **Commutation of Reversionary Beneficiary Pension**

8.8 Subject to the requirements of Relevant Law, a Reversionary Beneficiary may elect to:

- 8.8.1 commute a part or all of a Pension by notifying the Trustee in a manner approved by the Trustee; or
- 8.8.2 limit any right of commutation that the Reversionary Beneficiary might otherwise have to ensure that the Pension complies with Relevant Law, provided that the Trustee must commute a Reversionary Beneficiary's Pension if and to the extent that Relevant Law so requires.

#### **Sub-division of the Fund**

- 8.9 The Trustee may if it thinks appropriate create a sub-fund under Rule 17 for the purpose of providing lump sums or pensions to Members or a class of Members.

### **9 Insured Benefits**

#### **Benefits provided by insurance policies**

- 9.1 The Trustee may (but is not obliged to) effect an insurance policy or policies or extend the application of an insurance policy or policies to provide insured benefits to a particular Member or to a class of Members or to Members of a particular sub-fund subject to such terms and conditions as it thinks appropriate or necessary to satisfy the requirements of Relevant Law.
- 9.2 The Trustee may effect different insurance arrangements for different Members, classes of Members or sub-funds or for any other purpose.
- 9.3 If insurance cover is declined, reduced, limited or terminated by the Insurer in respect of a Member, the Trustee is not obliged to arrange alternative insurance cover.
- 9.4 The Trustee may accept an assignment of a policy of insurance on such terms and conditions as the Trustee determines from time to time.
- 9.5 The Trustee may refrain from effecting or extending the application of any policy in respect of a Member unless the Member submits to such medical examination or provides such information as the Insurer under the relevant policy requires.
- 9.6 Subject to Relevant Law, the Trustee may rectify a Member's insurance cover or insurance information if it is subsequently found to be incorrect for whatever reason and the Trustee shall not be liable to the Member for any such rectification.

#### **Insurance premiums**

- 9.7 The Trustee may pay the insurance premiums attributable to a Member under each insurance policy that applies to or in respect of a Member in any manner the Trustee in its sole discretion determines, including by deducting the insurance premium amount from Contributions or transfers or rollovers received in respect of the Member or by debiting the insurance premium amount from the Member's Benefit Account.

#### **Payment of proceeds of insurance policies**

- 9.8 The Trustee shall take all reasonable steps to recover amounts due under an insurance policy but shall not be obliged to do so. The Trustee may seek from a Member (or their representative) such indemnities as it may require against any costs, claims or expenses that it may incur to recover any amounts which may be due under an insurance policy.
- 9.9 An insured Benefit is not payable to a Member unless the Trustee has received the amount of the Benefit under the policy and Relevant Law allows payment of the insured Benefit to the Member, and in any case the Trustee may adjust the amount, time for and basis of payment of all or part of a Benefit in respect of which insurance has been effected in such manner as the Trustee considers appropriate to take account of the terms and conditions on which the proceeds of such insurance are payable by the relevant Insurer, and the amount of the actual proceeds from such insurance in respect of the relevant Benefit.

### **Operation of insurance policies**

- 9.10 The terms of any insurance policy that applies to or in respect of a Member shall bind the Member and any person who is or becomes entitled to a benefit in respect of the Member and the Trustee will only be required to effect or maintain an insurance policy in accordance with its terms.
- 9.11 The Trustee is solely entitled to enforce any rights, remedies or contract in connection with an insurance policy and no Member or person claiming through them may claim any right, title or interest in or to any insurance policy or contract or any moneys payable under it.

## **10 Deferred and other kinds of Benefits**

### **Other kinds of benefits**

- 10.1 The Trustee may provide any kind of Benefit not mentioned above which it considers appropriate and is allowed by Relevant Law.

### **Deferred payment**

- 10.2 Subject to Rule 10.7, the Trustee may keep a Member's or Beneficiary's Benefit or part of it in the Fund until:
- 10.2.1 the Member or Beneficiary asks in writing that the Benefit be paid; or
  - 10.2.2 the Member or Beneficiary dies; or
  - 10.2.3 Relevant Law otherwise requires the Benefit be paid; or
  - 10.2.4 the Benefit is transferred or rolled over out of the Fund; or
  - 10.2.5 the Trustee decides, for whatever reason, to pay the Benefit.

### **Illiquid Investments**

- 10.3 To the extent permitted by Relevant Law, the Trustee shall cause Fund assets that are invested wholly or partly in illiquid investments for a Member to be redeemed and payment made to the Member in a manner and at a time which, in the Trustee's opinion, is fair and reasonable having regard to the interests of all Members.
- 10.4 Where a Member's Benefits are wholly or partly invested in illiquid investments, the Trustee shall not be liable for any loss, cost, expense or other liability arising from a delay in the transfer, rollover or payment of a Member's Benefit associated with a delay in realising the illiquid investment.

### **Benefit Payment Requirements**

- 10.5 The Trustee may suspend consideration of a person's claim to or payment of a Benefit until all required information, evidence and proofs are provided to the satisfaction of the Trustee and, if the required information, evidence and proofs are not provided to the Trustee's satisfaction or Relevant Law so requires, the Trustee may withhold payment.
- 10.6 Where a Member or Beneficiary provides information required by the Trustee which affects or is likely to affect the Benefits payable to or in respect of a Member or Beneficiary and the information is false, misleading or deceptive or any information is deliberately withheld, the Trustee may to the extent permitted by Relevant Law alter or amend the Benefits to amounts that would have applied had full and accurate information been supplied.

### **Deferred Payment conditions**

- 10.7 If a Benefit may be (but is not) paid to a Member under Relevant Law, the Trustee may apply such conditions as it thinks appropriate to the retention of the Benefit in the Fund.

### **Legal disability of Member or Beneficiary**

- 10.8 If a Member or Beneficiary is under 18 or under any other legal disability, or the Trustee considers that a Member or Beneficiary is unable for any reason whatsoever to satisfactorily deal with a Benefit, the Trustee may pay or apply the whole or any part of such Benefit in one or more of the following ways:
- 10.8.1 to any Dependant of the Member or Beneficiary;

- 10.8.2 for or towards the education, advancement or otherwise for the benefit of the Member or Beneficiary or any Dependant of the Member or Beneficiary in such form and manner and subject to such terms and conditions as the Trustee thinks fit; and
- 10.8.3 without limiting the generality of Rule 10.8.2, to a person who appears to the Trustee to be a trustee for (including a trustee appointed by the Trustee under a separate trust established by the Trustee), or a parent or guardian of, or to have for the time being the care or custody of the Member, Beneficiary or Dependant or to have the financial expense of the care or custody of the Member, Beneficiary or Dependant.

### **Discharge of Trustee**

- 10.9 The receipt of a person to whom a Benefit is paid under Rule 10.8 will absolutely discharge the Trustee in respect of the Benefit paid to that person and the Trustee is not bound to see to the application of that Benefit.

## **11 Benefits may be paid by transfer of assets**

### **Transfer of assets**

- 11.1 Subject to Relevant Law, the Trustee may:
  - 11.1.1 transfer assets of the Fund; or
  - 11.1.2 assign the Fund's interest in an insurance policy in respect of the Member;
 to a person who is entitled to payment of a Benefit or to payment of an amount from the Fund instead of paying money. This applies during the operation of the Fund or on its winding up. It also applies on winding up of a sub-fund.

### **Valuation and other steps**

- 11.2 The Trustee may allocate assets, determine values and take any other step it considers appropriate for the purposes of this Rule.

## **12 Transfers and rollovers out of the Fund**

### **Transfer & Rollover**

- 12.1 If a Member:
  - 12.1.1 requests the Trustee to transfer or rollover some or all of the Member's Benefit out of the Fund or purchase an annuity in accordance with Relevant Law; and
  - 12.1.2 completes and properly executes all applications and notices required by the Trustee,
 the Trustee may pay the Benefit as requested.
- 12.2 The Trustee is empowered to make any transfer or rollover from the Fund required under Relevant Law. All transfers out of the Fund are subject to such conditions and must be made within the timeframes required under Relevant Law. The Trustee must provide to the person responsible for the transferred amount such information as Relevant Law requires.

### **Transfers without the Member's consent**

- 12.3 The Trustee must pay and otherwise deal with Unclaimed Benefits as required by Relevant Law.
- 12.4 The Trustee may transfer Benefits to an eligible rollover fund if the Trustee considers it appropriate.
- 12.5 The Trustee may transfer Benefits to a Successor Fund without the Member's consent.
- 12.6 The Trustee may transfer Benefits from one sub-fund (**Original Sub-fund**) to another sub-fund (**Receiving Sub-fund**) in the Fund without the Member's consent provided:



- 12.6.1 the transfer is to a Receiving Sub-fund which confers on the Member equivalent rights to the rights that the Member had under the Original Sub-fund in respect of the Benefits; or
- 12.6.2 the transfer can be made without the Member's consent under Relevant Law.
- 12.7 The Trustee may transfer Benefits out of the Fund without the Member's consent in other circumstances if not prohibited by Relevant Law and where the Trustee considers such transfer appropriate.

**Receipt for transfer or rollover is enough discharge**

- 12.8 If the Trustee transfers or rolls over all or part of a Benefit, the receipt of the trustee of the regulated superannuation fund, approved deposit fund, annuity provider or other permitted transferee to which the payment is made is an effective discharge to the Trustee of all liabilities in respect of the relevant Benefit or part of the Benefit.

**Section 3 - Other aspects of the Fund operation**

**13 Information to Fund**

**Information required by Trustee**

- 13.1 An applicant for membership, a Member, a Beneficiary, a claimant for a benefit, a Contributor and any other person paying or transferring amounts to the Fund in respect of a Member must give to the Trustee (or the Trustee's agent) all information, evidence and proofs reasonably requested by the Trustee in order to administer the Member's Benefits and the Fund in accordance with this Deed or to comply with Relevant Law. If any of the requested information, evidence or proofs is not provided or is later found to be inaccurate or incomplete, the Trustee may reject an application or claim, refuse to accept Contributions, and impose conditions on or adjust affected Benefits in the manner and to the extent the Trustee considers necessary or appropriate.
- 13.2 The Trustee may act upon any information given to it pursuant to this Deed and shall not be required to verify that information unless required by Relevant Law.
- 13.3 Subject to Relevant Law, Rule 13.1 applies notwithstanding any other provision of this Deed.

**14 Information to members and others**

**Registers**

- 14.1 The Trustee must make, and keep up to date, registers of the names and addresses of Members and Beneficiaries, to the extent this information is reasonably known to the Trustee or its service providers.
- 14.2 The Trustee may record the names and addresses of other Contributors where this information is reasonably known to the Trustee or its service providers and must do so if Relevant Law requires.

**Information required by Relevant Law**

- 14.3 The Trustee must provide or make available reports and information to Members, Beneficiaries and any other person as required by Relevant Law. The Trustee must maintain records, as required by Relevant Law, of reports given or made available to Members. Without limitation, the Trustee must provide:
  - 14.3.1 annual Fund reports and Member information;
  - 14.3.2 information of significant events;
  - 14.3.3 information on request of a Member or Beneficiary;
  - 14.3.4 information on a Member leaving the Fund;
  - 14.3.5 information to Beneficiaries on the death of a Member.

14.4 The Trustee must provide or make available reports and information to a Regulator at such time and in such manner as required by Relevant Law.

**Costs of providing information required by Relevant Law**

14.5 The Trustee may charge reasonable costs of providing information, if allowed by Relevant Law.

**How to give Notices to Member**

14.6 A notice is effectively given to a Member if:

- 14.6.1 addressed to the Member at the address of the Member last recorded in the Register and delivered to that address or sent by pre-paid mail to that address; or
- 14.6.2 addressed to the Member and sent by fax to the fax number last recorded for the Member in the Register; or
- 14.6.3 delivered electronically or in such other manner allowed under Relevant Law.

**Electronic Delivery**

14.7 Without limiting the means by which notices may be given or information may be disseminated, the Trustee may give notice or provide information by any form of data or image transmission or communication facility or medium, including without limitation facsimile, electronic mail and the internet, in which case the notice will be considered to have been received when transmitted, accessed or published (as the case may be) or if that is a Business Day, otherwise on the next Business Day.

**How to give notices to the Trustee**

14.8 A notice is effectively given to the Trustee if signed by or on behalf of the person giving it and:

- 14.8.1 addressed to the Trustee at the address set out in this Deed (or, if the Trustee notifies the Members of some other address—that other address) and delivered to that address or sent by pre-paid mail to that address; or
- 14.8.2 addressed to the Trustee and sent by fax to the current fax number notified by the Trustee to the Members; or
- 14.8.3 by such other means as is agreed by the Trustee from time to time.

**When Notices received**

14.9 A notice given under this Rule is treated as having been given and received:

- 14.9.1 if delivered to an address—on the day of delivery if that is a Business Day, otherwise on the next Business Day;
- 14.9.2 if sent by pre-paid mail—on the third Business Day after being posted; or
- 14.9.3 if sent by fax to a fax number and a correct and complete transmission report is received—on the day it is sent if that is a Business Day, otherwise on the next Business Day; or
- 14.9.4 if delivered electronically or in another manner allowed under Relevant Law—on the day of delivery if that is a Business Day, otherwise on the next Business Day.

**15 Death benefits procedures**

**Death Benefit to be distributed between Dependants**

15.1 The Member may override sub-rule 15.2 by giving a binding nomination under Rules 15.3 and 15.4.1, if the Trustee allows binding nominations.

15.2 The Trustee may pay a Benefit payable on the death of a Member to one or more of:

- 15.2.1 the Member's Dependants;
- 15.2.2 the Member's Legal Personal Representative;

- 15.2.3 if the Trustee after reasonable enquiries cannot find any Dependants or Legal Personal Representatives—any person to whom the Trustee may pay the Benefit under Relevant Law, in such proportions, and to the exclusion of one or other, as the Trustee determines.

#### **Nominated Dependants**

- 15.3 The Member may nominate the Member's Legal Personal Representative and/or one or more Dependants that the Member wishes to receive the Benefit on the Member's death, and may state the desired proportion to be received by each.
- 15.4 The Member may state in the nomination whether:
- 15.4.1 the nomination is to be binding – in which case the Trustee does not have the discretion under Rule 15.1 unless the nomination is ineffective or has expired;
- 15.4.2 the nomination is not to be binding – in which case Trustee may have regard to the nomination but is not bound by it.
- 15.5 A nomination will be taken to be non-binding unless the Member states otherwise.

#### **Binding Nominations**

- 15.6 The Trustee can decide to allow Members or a class of Members or any particular Member to make a binding nomination but is not obliged to do so.
- 15.7 If the Trustee allows binding nominations, the following applies:
- 15.7.1 A binding nomination must state an expiry date not later than 36 months after the date of signing. A Member may at any time revoke a nomination and replace it with another or not replace it.
- 15.7.2 If a binding nomination complies with the requirements of Relevant Law but the proportion of Benefit payable to each nominee is not clear or readily ascertainable, the Trustee may make whatever adjustment it considers necessary to the nominated proportions to give effect to the binding nomination.
- 15.7.3 The Trustee may establish additional rules applicable to binding nominations including (but not limited to) rules governing the form and content of binding nominations and the stipulation of special terms or conditions by a Member in relation to their nomination.
- 15.7.4 Where the Trustee holds a binding nomination from a Member that is valid and in effect at the date of a Member's death, the Trustee must pay the Benefit payable on the death of the Member in accordance with the binding nomination.

#### **Kinds of Benefits payable on Death**

- 15.8 Without limiting the options open to the Trustee and Member for the kinds of Benefit available in other events, Benefits on the death of the Member may be paid in more than one lump sum, Pension or other kind of benefit on such terms and conditions as the Trustee considers appropriate and as are permitted by Relevant Law.

#### **Reversionary Beneficiaries**

- 15.9 Notwithstanding any nomination made pursuant to this Rule, the Trustee must pay a Pension to a Reversionary Beneficiary nominated by the Member unless it is required to do otherwise under Relevant Law.

#### **Anti-detriment**

- 15.10 The Trustee may (but is not obliged to) establish a policy in relation to claiming the benefit of anti-detriment provisions in the taxation law which allow tax paid on superannuation contributions to be refunded to eligible beneficiaries in the event of a Member's death. The policy may include the requirement for Members to pay the costs of claiming the benefit of the anti-detriment provisions (including the costs of any investigation or other action determined to be necessary by the Trustee). If the Trustee has not established such a policy in relation to this Fund,

a Member or Beneficiary cannot claim the benefit of these anti-detriment provisions.

## **16 Protection of members benefits**

### **Rights of Members**

16.1 A Member does not have a right in relation to, or an interest in, any particular asset of the Fund other than as provided in these Rules. Subject to the Relevant Law, the Trustee has the power to do whatever it considers appropriate to recognise a Member's right in relation to, or an interest in, a particular asset of the Fund.

### **Benefits not to be assigned or charged**

16.2 The Trustee may only recognise the Member and Beneficiaries in paying a Benefit. A Member or person entitled to a Benefit may not assign, alienate or charge his or her Benefit.

### **Trustee's right to suspend Benefits or bring them to an end**

16.3 The Benefits provided under these Rules shall be subject to protective trusts under law. Subject to Relevant Law, the Trustee may declare the right of the Member or a Beneficiary to be paid a Benefit but for this Rule has been suspended or brought to an end if:

16.3.1 the person purports to assign, alienate or charge the Benefit; or

16.3.2 the person becomes subject to an order appointing a guardian or administrator of his or her property (for any period and with any limited powers) on the basis of mental or physical disability; or

16.3.3 circumstances occur where the Benefit would become vested in or payable to some other person, or the person would be deprived of the Benefit or of a right under these Rules.

### **Powers of Members**

16.4 If but for this Rule a power of the Member or Beneficiary might be exercised by another person due to some circumstance such power may, if the Trustee considers appropriate, be exercisable by the Trustee instead in which case the power shall revert to the Member or Beneficiary when the circumstance has stopped.

## **17 Sub-division of the Fund**

### **Power to create sub-funds**

17.1 The Trustee may divide the Fund into sub-funds and has power to do anything necessary to this end. Without limitation, the Trustee may allocate or apportion between sub-funds:

17.1.1 Contributions;

17.1.2 portfolios, assets or investments; and

17.1.3 Tax, fees, costs and investment returns.

### **When will sub-funds be created**

17.2 The Trustee may create sub-funds when:

17.2.1 offering different investment strategies;

17.2.2 providing different Benefits;

17.2.3 applying different taxation arrangements to different parts of the Fund;

17.2.4 establishing Badged Arrangements pursuant to Rule 18.1;

17.2.5 a Contributor requests, in respect of the Contributor's employees;

17.2.6 the Trustee otherwise considers it to be appropriate.

17.3 A class of Members is not a sub-fund unless the Trustee so determines.

17.4 The Trustee may determine that a Member's Benefit Account or Benefit Accounts is or are collectively a sub-fund.

### **Rules to govern a sub-fund**

- 17.5 The Trustee may determine that a sub-fund shall have its own rules (which may be set out in a schedule to this Deed) and without limiting in any way the rules that the Trustee may adopt in respect of any sub-fund, the rules may provide for a sub-fund to have:
- 17.5.1 a unique investment strategy or strategies;
  - 17.5.2 a unique benefit design;
  - 17.5.3 a unique fee structure;
  - 17.5.4 any other characteristics that the Trustee may in its absolute discretion determine to be appropriate.
- 17.6 To the extent of any inconsistency, a schedule shall apply to the Members of a sub-fund to which the schedule relates to the exclusion of any inconsistent provision in this Deed.

### **Segregation of assets**

- 17.7 The assets of each sub-fund may but need not be segregated, and may be pooled.
- 17.8 When creating a sub-fund, the Trustee may in its absolute discretion determine to segregate the assets of a sub-fund from the assets of another sub-fund so that the assets of a sub-fund will not be available, and may not be applied, to satisfy the liabilities of another sub-fund.
- 17.9 Whether or not a sub-fund is created, the Trustee may, where a particular asset or group of assets has been acquired for the benefit of a particular Member pursuant to an investment choice or direction given by that Member, segregate that asset or assets to the relevant Member's Benefit Account.
- 17.10 Notwithstanding any segregation of assets pursuant to these Rules, the Trustee may impose such terms and conditions in relation to the segregated assets as it considers appropriate or equitable, taking into account any determination, rules or policies made by the Trustee from time to time in relation to the allocation of investment returns, costs and Tax to Members or Member Benefit Accounts.

### **Effect of establishing a sub-fund**

- 17.11 A sub-fund is not a sub-plan for the purposes of Relevant Law unless specifically declared to be so by the Trustee. Any declaration of a sub-plan by the Trustee must identify the provisions of Relevant Law for which the declaration is made. A sub-plan will not be created for the purposes of Relevant Law unless the requirements of this Rule are met.
- 17.12 Unless the Trustee expressly determines otherwise, the establishment of a sub-fund does not constitute the establishment of a separate trust for the purposes of Relevant Law.

### **Splitting and merging sub-funds**

- 17.13 The Trustee may split a sub-fund into two or more sub-funds. The Trustee may merge two or more sub-funds to create a new sub-fund.

### **Powers may be exercised independently**

- 17.14 The powers contained in this Deed may (and where Rule 17.8 applies, must) be exercised independently by the Trustee in respect of each sub-fund.
- 17.15 The Trustee is under no obligation to treat Members of different sub-funds equally. Without limitation, the Trustee is under no obligation to make available to Members in different sub-funds:
- 17.15.1 the same investment strategies, portfolios or underlying investments, assets or financial products;
  - 17.15.2 the same benefit design;
  - 17.15.3 the same fee structure;
  - 17.15.4 the same terms and conditions.

## **Classes of Members**

- 17.16 The Trustee may create separate classes of Members within the Fund or a sub-fund including, without limitation, at the request of a Contributor in respect of the Contributor's employees and may determine the terms and conditions that will apply to each class. The Trustee is under no obligation to treat Members of different classes equally and may determine that a class of Members has different characteristics or features to other classes of Members.
- 17.17 Subject to Relevant Law, the Trustee may allocate Members to a class and transfer Members between classes.
- 17.18 The Trustee may treat Members participating in a Badged Arrangement pursuant to Rule 18.1 as a separate class of Members within the Fund.

## **18 Marketing and Promoting the Fund**

### **Promotion of the Fund**

- 18.1 Subject to Relevant Law, the Trustee may engage in any activity which the Trustee considers appropriate for the promotion of the Fund to:
- 18.1.1 limit a reduction in Members;
  - 18.1.2 increase the number of Members; or
  - 18.1.3 for any other purpose that the Trustee considers necessary or appropriate.
- 18.2 Without limiting Rule 18.1, the Trustee may enter into arrangements with third parties (**Sponsors**), including a Contributor, in respect of the promotion by the Sponsor of participation in the Fund (**Badged Arrangements**). For this purpose, the Badged Arrangement and any disclosure documents relating to the Badged Arrangement may, with the approval of the Trustee and in accordance with the Relevant law, carry the name of the Sponsor or a name chosen by the Sponsor.
- 18.3 A Badged Arrangement shall not constitute a sub-fund or class of members in the Fund unless declared to be so by the Trustee.
- 18.4 The Trustee is under no obligation to treat Members participating in the Fund in different Badged Arrangements equally and may determine that a Badged Arrangement has different characteristics or features to other Badged Arrangements.

## **19 Fund Account and Audit**

### **Trustee must keep records**

- 19.1 The Trustee must keep accounts and records relating to the Fund (and any sub-plan) as required by Relevant Law and so that accounts can be prepared and audited as required by Relevant Law.

### **Trustee must prepare accounts**

- 19.2 The Trustee must prepare accounts relating to the Fund (and any sub-plan) each year as required by Relevant Law. The financial year is the year ending 30 June, unless the Trustee determines a different period with approval of the taxation authorities.

### **Audit of the Fund**

- 19.3 The Trustee must appoint an approved auditor and arrange for the auditor to audit the accounts and provide a certificate in accordance with Relevant Law. The Trustee may engage the auditor on terms the Trustee considers appropriate.

### **Appointing an Actuary**

- 19.4 The Trustee may appoint an Actuary when it thinks appropriate or if required by Relevant Law. The Trustee may engage the Actuary on terms the Trustee considers appropriate.

## **20 Trustee provisions**

### **Purpose of the Fund**

20.1 The Trustee must maintain the Fund solely for purposes allowed under Relevant Law.

### **The Trust Fund**

20.2 The Trustee holds the Fund on the trusts set out in these Rules. The Fund consists of:

20.2.1 Contributions; and

20.2.2 amounts transferred or rolled over into the Fund for a Member; and

20.2.3 the proceeds of insurance policies held by or on behalf of the Trustee for the purposes of the Fund;

20.2.4 the earnings of the Fund;

20.2.5 any other amounts determined by the Trustee.

### **General Powers of Management**

20.3 The Trustee has the power to do whatever it considers necessary or appropriate for the administration, maintenance and preservation of the Fund and in the performance of its obligations under this Deed including (without limitation):

20.3.1 to settle, compromise or submit to arbitration or mediation any claims, complaints, legal proceedings or any other matters relating to the Fund;

20.3.2 to commence, carry on or defend legal proceedings relating to the Fund or Members.

### **Statutory over-ride**

20.4 Nothing in these Rules requires the Trustee or anyone else to do something that is a contravention of Relevant Law or prevents the Trustee or anyone else from doing anything that has to be done to comply with Relevant Law.

20.5 The Trustee has power to do anything required or allowed by Relevant Law.

20.6 Where there is a requirement under Relevant Law which must be included in these Rules, such a requirement is deemed to be included in these Rules (**Deemed Rules**) to the extent and for the period so required. Any provision in these Rules that is inconsistent with the Deemed Rules will be invalid, to the extent of the inconsistency.

20.7 A contravention of Relevant Law will not affect the validity of anything done (or not done) by the Trustee, unless Relevant Law provides otherwise.

20.8 A contravention of Relevant Law will not constitute a contravention of these Rules unless Relevant Law or the Rules provide otherwise.

### **Power to make policies**

20.9 The Trustee may make or adopt policies in relation to any matters that the Trustee considers appropriate for the convenient administration of the Fund or any part of the Fund. The Trustee shall not be liable for not doing something that the Trustee is allowed but not required to do under any policy of the Trustee or under Relevant Law.

### **Taxation**

20.10 The Trustee may take any action (whether prospective or retrospective) that the Trustee considers necessary or appropriate to calculate, pay, deduct or take account of any Tax, including without limitation:

20.10.1 adopting policies relating to the application or timing of Tax credits and Tax debits to Member Benefit Accounts;

20.10.2 adopting policies relating to the acceptance of Members and Contributions without any required or desirable tax-related information;

20.10.3 adopting policies relating to the claiming of Tax refunds;

20.10.4 reducing or otherwise adjusting Contributions to or Benefits or other amounts payable from the Fund, in which case the Member will be entitled to only the net amount;

20.10.5 providing information and making payments to the Regulator;

- 20.10.6 providing Members with a choice of taxation approaches in relation to their investments;
- 20.10.7 establishing reserves and making provisions in the accounts of the Fund; and
- 20.10.8 charging to recover the costs and expenses attributable to administering any Tax requirement.

Each Member is liable for all Tax incurred by the Trustee or the Fund in relation to an excess contribution in respect of that Member and must indemnify the Trustee in respect of such Tax.

**Trustee may have regard to policy statements affecting the Fund**

- 20.11 In acting in connection with the Fund, the Trustee may but need not have regard to:
  - 20.11.1 guidelines, rulings, information circulars and policy statements issued by the Regulator; and
  - 20.11.2 statements by Ministers of State about proposed changes to laws affecting the Trustee, Fund or its members including statements relating to superannuation or Tax.

**Qualifications to be Trustee**

- 20.12 The Trustee must be a company and hold any licences required for the Trustee to act as a trustee of the Fund under Relevant Law.

**Retirement of Trustee**

- 20.13 The Trustee:
  - 20.13.1 may retire as trustee of the Fund at any time;
  - 20.13.2 to the extent allowed by Relevant Law, may retire as trustee of the Fund if the Trustee receives 12 months written notice from the Promoter requesting the Trustee to retire; and
  - 20.13.3 must retire as trustee of the Fund if:
    - (a) it ceases to carry on business;
    - (b) it is placed in liquidation or official management, other than for the purpose of amalgamation, reconstruction or a purpose of a similar kind;
    - (c) a receiver or a receiver and manager, is appointed in relation to all of the property of the Trustee and is not removed or withdrawn within 30 days of the appointment;
    - (d) it is no longer empowered to act as trustee;
    - (e) any licence required for the Trustee to act as trustee is revoked or withheld;
    - (f) it is required to retire by Relevant Law or any other law.

**Other Retirement Arrangements**

- 20.14 The retirement of the Trustee will not be effective until a new trustee is appointed by deed by the Trustee.
- 20.15 Subject to the consent of the Trustee and any requirement in Relevant Law, the Promoter may nominate a new or replacement trustee if the Trustee retires or is required to retire in accordance with these Rules.
- 20.16 The retirement of the Trustee:
  - 20.16.1 will not take effect until the new Trustee has executed a deed of novation with respect to the Promoter Agreement and has provided the retiring Trustee with an indemnity which is acceptable to the retiring Trustee;
  - 20.16.2 does not affect the Trustee's rights or entitlements accrued up to the date of retirement including its rights to accrued fees or expenses, reimbursement of liabilities or its rights of indemnity.
- 20.17 The retiring Trustee must do all things necessary to vest the Fund assets in the new Trustee, including by giving the new Trustee all books, documents and



records relating to the Fund and transferring title to all property of the Fund to the new Trustee.

#### **Remuneration of Trustee**

20.18 The Trustee is entitled to remuneration payable from the Fund for acting as trustee of (one) 1% per cent (plus GST) of the Fund's assets per annum, subject to a minimum of \$25,000 (plus GST) per annum for each sub-fund, class of members or badged arrangement or such other minimum amount as the Trustee may determine from time to time. The Trustee may:

20.18.1 waive the remuneration to which it is entitled, either in whole or in part;

20.18.2 defer the remuneration payable to it until such time as the Trustee considers appropriate;

20.18.3 determine its remuneration separately for each Member, class of Members or sub-fund as the Trustee thinks appropriate.

#### **Trustee may determine how to conduct meetings**

20.19 The Trustee shall regulate the affairs of the Fund as it thinks appropriate.

Decisions of the Trustee shall be by simple majority of its Board, unless Relevant Law requires otherwise. The Trustee must keep minutes and records as required by Relevant Law, including records of changes of trustees.

#### **Appointment of Custodians and Investment Managers**

20.20 The Trustee may appoint any person allowed under Relevant Law to be Custodian or Investment Manager of the Fund or any part of the Fund. The form of appointment must comply with Relevant Law.

#### **Trustee may engage other service providers**

20.21 The Trustee may engage anyone including a related party of the Trustee or the Promoter, on terms the Trustee sees fit, to provide services of any kind to the Fund or part of the Fund. Such services include (without limitation) administration services, investment services, distribution or promotional services, investment services, legal services, actuarial services, website services and accounting services.

#### **Trustee can rely on advice**

20.22 The Trustee may act on the opinion, advice or information obtained from any service providers engaged by it.

#### **Trustee may enter arrangements with Member Advisers**

20.23 Subject to Relevant Law and any terms or conditions imposed by the Trustee, the Trustee may pay fees (including commissions, brokerage or other benefits) to a Member's adviser from Contributions, Benefits (including a Member's Benefit Account) of the Member or assets or earnings attributable to the Member, if agreed by the Member.

#### **Operational expenses**

20.24 The Trustee is entitled to reimbursement from the Fund's assets of all fees, costs and expenses incurred by the Trustee in the establishment, distribution, management, operation and termination of the Fund including (but not limited to) fees, costs and expenses associated with the appointment of any service providers and compliance with Relevant Law or requirements of a Regulator.

#### **Power to delegate**

20.25 The Trustee may delegate any of its powers, functions, authorities and discretions to any of its Directors, Officers and employees or to any related body corporate of the Trustee or to any other person as the Trustee determines and subject to any terms and conditions it thinks fit. The delegation must be evidenced in writing. Anything done by a delegate under a delegation is to be taken to have been done by the Trustee.

#### **Power to carry on other businesses**

20.26 Subject to Relevant Law, the Trustee may carry on any other business.

### **Trustee's discretion and directions**

20.27 Subject to the other provisions of these Rules, the Trustee has an absolute and uncontrolled discretion in acting in connection with the Fund. The Trustee may exercise or not exercise any of its trusts, powers or discretions at any time. Without affecting its discretion, the Trustee must comply with any direction in relation to the Fund given by a Member or other person, where allowed by Relevant Law.

### **Promoter's powers and discretions**

20.28 The rights, powers or discretions conferred on the Promoter by these Rules are as set out expressly in these Rules and any implied rights, powers or discretions are excluded.

### **Other requirements relating to directions**

20.29 In the case of a deceased Member, a direction may be given by the Beneficiary or Beneficiaries of the deceased Member's Benefit.

20.30 The Trustee may require a direction from Members relating to the strategy to be followed by the Trustee in relation to the investment of their Benefits or relating to the payment of Benefits.

### **Exclusion of liability**

20.31 None of the Trustee and its Directors and Officers are liable for loss or damage arising out of anything they do or fail to do while acting in that capacity including (without limitation) loss or damage arising from a decision or policy of the Trustee to refuse to allow Members, a particular Member or a class of Members to do what Relevant Law allows.

### **Indemnity**

20.32 The Trustee and its Directors and Officers are each indemnified out of the assets of the Fund for any liability incurred while acting in that capacity. This indemnity extends to liabilities arising from the Trustee, Directors and Officers acting on the opinion, advice or information obtained from a service provider or a breach by a service provider of an agreement with the Trustee. This indemnity continues after the retirement of the Trustee pursuant to this Deed.

### **What the exclusion of liability and the indemnity do not cover**

20.33 The Trustee and its Directors and Officers are not indemnified for, or released from, any of the following liabilities, which Relevant Law does not allow to be excluded:

20.33.1 a liability of the Trustee or Director or Officer if the person:

- (a) fails to act honestly in a matter concerning the Fund; or
- (b) intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund the degree of care and diligence that the person had to exercise;

20.33.2 liability for a fine, or a monetary penalty under a civil penalty order under SIS.

### **Trustee's claims against benefits**

20.34 The Trustee may if not prohibited by Relevant Law set off against Benefits payable for a Member any amounts due and payable by the Member to the Trustee as trustee of the Fund.

## **21 Amending the Deed**

### **General power to Amend**

21.1 The Trustee may amend these Rules in any way the Trustee considers appropriate. Any amendment must be by deed.

### **Effective date**

21.2 Any amendment may be made with an effective date specified as any time before or after the date of the amending deed. If no effective date is specified it shall be the date of the amending deed.

### **Amendments cannot detrimentally affect certain Benefits**

- 21.3 An amendment must not be made if it would:
  - 21.3.1 adversely affect the right or claim of a Member or Beneficiary to accrued Benefits, or the amount of those accrued Benefits unless the Member consents in writing or required by Relevant Law;
  - 21.3.2 increase the liability of a Member or other person to Contribute, unless the person consents in writing or required by Relevant Law; or
  - 21.3.3 be prohibited by Relevant Law.

## **22 Termination**

### **Trustee may terminate the Fund**

- 22.1 The Trustee may, at any time and for any reason, terminate the Fund from a specified day.
- 22.2 The Trustee must terminate the Fund if:
  - 22.2.1 to the extent allowed by Relevant Law and subject to any reasonable requirements of the Trustee, the Promoter gives the Trustee 12 months prior written notice that it wishes to terminate the Fund and no other person with the consent of the Promoter and Trustee assumes the obligations of the Promoter under this Deed;
  - 22.2.2 there is no-one entitled to be paid a Benefit; or
  - 22.2.3 required by Relevant Law or a Regulator.

### **What happens from the termination date**

- 22.3 After the specified termination date, the Trustee must not:
  - 22.3.1 accept new Members;
  - 22.3.2 accept Contributions or transfers or rollovers into the Fund (other than those due but not paid);
  - 22.3.3 pay a Benefit (except a Benefit that has commenced to be paid or is payable in the course of winding up the Fund).

### **How the Fund is to be distributed**

- 22.4 As soon as practicable after the termination date, the Trustee must satisfy the liabilities of the Fund and must distribute the remaining assets as follows, after which the Fund shall be dissolved:
  - 22.4.1 first, pay the expenses incurred by it as Trustee in winding up; and
  - 22.4.2 secondly, pay all Benefits to Members and Beneficiaries as allowed or required by Relevant Law;
  - 22.4.3 thirdly, augment the Benefits of current and former Members and Beneficiaries as the Trustee considers appropriate;
  - 22.4.4 fourthly, release any Member or Contributor from liability for unpaid contributions;
  - 22.4.5 last, pay an amount which the Trustee considers appropriate to the Members or their Beneficiaries and Contributors who the Trustee considers contributed to any remaining surplus, in shares determined by the Trustee.
- 22.5 For the purposes of Rule 22.4.1, the Trustee may make an allowance for future expenses and liabilities (contingent or otherwise) in such manner as it considers appropriate.
- 22.6 For the purposes of Rule 22.4.2, the Trustee may pay benefits without the consent of the Member or Beneficiary if it considers appropriate.

### **Preserved Benefits**

- 22.7 The Trustee must pay any amounts subject to preservation to such regulated superannuation fund, approved deposit fund or other permitted transferee nominated by each Member or Beneficiary. The Trustee may transfer Benefits to an eligible rollover fund if the Trustee considers it appropriate.

### **Trustee may terminate a sub-fund**

- 22.8 The Trustee may, at any time and for any reason, terminate a sub-fund from a specified day and must do so if there is no-one entitled to be paid a Benefit from a sub-fund or if required by Relevant Law.
- 22.9 Rules 22.3 to 22.7 (inclusive) shall govern the termination of a sub-fund as if any reference to the Fund was a reference to the sub-fund and any reference to the payment of Benefits in respect of Members and Beneficiaries includes the transfer of Benefits to another sub-fund or class of Members in the Fund in such manner as the Trustee considers appropriate.

## **23 Law and Jurisdiction**

### **Governing law**

- 23.1 This Deed is governed by the law in force in New South Wales.

### **Submission to jurisdiction**

- 23.2 The Trustee, each Member and Beneficiary and any Contributor submits to the non-exclusive jurisdiction of the courts in Victoria and any courts that may hear appeals from those courts in respect of any proceedings in connection with the Fund.

## **24 Interpretation**

### **Defined words and expressions**

- 24.1 In this Deed, unless the context otherwise requires:
- Beneficiary** means a Member or other person who is presently entitled to receive a Benefit from the Fund in accordance with this Deed;
- Benefit Account** means in respect of a Member the account (or each account, if more than one) maintained by the Trustee in respect of that Member including a Pension account;
- Benefit** means an amount paid or actually or contingently payable out of the Fund as a benefit;
- Business Day** means a day on which banks are open for general banking business in New South Wales or such other city as the Trustee may nominate from time to time;
- Contribution** means money or assets paid or transferred as a contribution to the Trustee for a Member, for a spouse of a Member or for any other person in respect of whom the Trustee is allowed to accept a contribution under Relevant Law;
- Contributor** means a person other than a Member (including if applicable a Member's employer from time to time) who contributes to the Fund in respect of a Member;
- Deed** or "**this Deed**" means the provisions in Part 1A of the trust deed applicable to the Fund, as amended from time to time;
- Dependant** has the same meaning as in section 10 of SIS;
- Director** and **Officer**, in relation to a body corporate, mean the same as in the Corporations Act 2001;
- Fund** means the CUBS Superannuation Trust which is a part of the CUBS Superannuation Fund.
- Insurer** means the insurance company (or any of them, if more than one) appointed by the Trustee to provide insurance cover in respect of eligible Members of the Fund.
- Member** means a person who has been admitted as, and is still, a Member;
- Pension** means any pension referred to in regulation 1.06 of the SIS Regulations or as otherwise allowed under Relevant Law;
- Promoter** means Top Quartile Management Pty Ltd, ABN 98 006 771 848;

**Promoter Agreement** means an agreement between the Trustee and the Promoter relating to the establishment and promotion of the Fund as amended from time to time;

**Regulator** means whichever of the following is appropriate in the circumstances:

- (a) the Australian Securities and Investments Commission established under the Australian Securities and Investments Commission Act 2001;
- (b) the Australian Prudential Regulation Authority established under the Australian Prudential Regulation Authority Act 1998; and
- (c) any other person or body exercising regulatory powers under Relevant Law from time to time;

**Relevant Law** means SIS, the Corporations Act 2001, the Corporations Regulations, the Income Tax Assessment Act 1997, the Income Tax Assessment Regulations, the Superannuation (Unclaimed Money and Lost Members) Act 1999, the Family Law Act 1975, the Anti-Money Laundering and Counter-Terrorism Financing Act 2006, the Bankruptcy Act 1966 and any other applicable Act, regulation or other lawful requirement (subject to any amendments, modifications or exemptions that may apply from time to time) with which the Trustee or the Fund must comply (whether to avoid breaching the relevant Act, regulation or other lawful requirement or to qualify for tax or other concessions which the Trustee determines to be desirable or for any other purpose);

**Reversionary Beneficiary** means a person nominated by a Member as a person to whom the Member's pension is to be transferred after the Member's death;

**Rules** means the rules included in this Deed;

**SIS** means the Superannuation Industry (Supervision) Act 1993 and the regulations and determinations made under that Act;

**Successor Fund** has the same meaning given to that term in SIS;

**Tax** means a tax or duty which is or might become payable in connection with the Fund or its Members, however imposed and by whatever name called, estimated or actual, and includes tax or duty imposed as additional tax or duty or penalty tax or duty;

**Trustee** means the party named in the Deed as Trustee or, if another person holds office as Trustee, that person, and includes a person acting as Trustee;

**Unclaimed Benefits** means those benefits defined as "unclaimed money" in, or otherwise payable to a government authority, under the Superannuation (Unclaimed Monies and Lost Members) Act 1999;

**Unit** means an undivided part or share of the Fund or a class of Members or sub-fund (as applicable);

**Unit Class** means a class of Units created by the Trustee pursuant to these Rules;

**Unit Price** means the applicable price of a Unit as determined by the Trustee pursuant to these Rules for the Fund, a class of Members or a sub-fund.

### **General interpretation**

24.2 In these Rules, unless the context otherwise requires:

24.2.1 words and expressions defined in SIS have the same meaning in these Rules;

24.2.2 the first letters of words and expressions defined in these Rules are indicated by capital letters but the absence of a capital letter shall not (of itself) mean that that word or expression is used with a meaning different from that given by its definition;

24.2.3 a reference to investment choices, instructions or directions "from a member" includes investment choices, instructions or directions from a member's nominated financial adviser;

24.2.4 a reference to particular legislation or a particular legislative provision:

- (a) is to the legislation or provision as in force for the time being;  
and
  - (b) includes a reference to the legislation or provision as re-enacted or re-made, and to legislation or a provision substituted for it; and
  - (c) includes a reference to subordinate legislation, and the provisions of subordinate legislation, made or issued under or for the purposes of the legislation or provision;
- 24.2.5 words importing the singular include the plural;
- 24.2.6 references to a person will be construed as references to an individual, firm, body corporate, association, government or governmental authority;
- 24.2.7 headings and notes are for convenience only and do not affect interpretation;
- 24.2.8 these Rules form part of the Deed.

## The Greater Rollover and Allocated Pension Fund

1. The Greater Rollover and Allocated Pension Fund is governed by Parts 1 to 21 of the trust deed for the CUBS Superannuation Fund.

### **PARTS 1 – 21 The Greater Rollover and Allocated Pension Fund**

#### **1.1 Definitions**

In the interpretation of this Deed and in any certificate or document issued hereunder, the words and phrases set out below shall, unless the context otherwise requires, have the meanings respectively ascribed to them, namely:

“**Accounts**” in relation to a Division means a statement of financial position, an operating statement and such other accounts and statements as are required to be prepared in respect of the Division for a particular period pursuant to the Operational Standards.

“**Act**” means the Superannuation Industry (Supervision) Act 1993.

“**Actuary**” means a person who may, for the time being, be appointed pursuant to Clause 15.1(b) to act in relation to the Divisions or any of them.

“**Administration Charge**” means the charge calculated pursuant to Clause 13.5.

“**Administrator**” means an administrator appointed by the Trustee pursuant to Clause 11.8.

“**Annuity**” has the meaning assigned to that expression in Section 10 of the Act.

“**Applicant**” means a person who makes application to become a Participant in accordance with Clause 3.1 or a Member in accordance with Clause 3.2.

“**Application**” means:

- (a) an application for participation made pursuant to Clause 3.1.1; and
- (b) an application for membership made pursuant to Clause 3.2.1.

“**Approved Auditor**” has the meaning assigned to that expression in Section 10 of the Act.

“**Approved Country**” means any of Australia, United States of America, United Kingdom, Japan, Hong Kong, Singapore, Malaysia, Taiwan, South Korea, Canada, New Zealand, Italy, France, Switzerland, Germany, Holland and Belgium and such other jurisdictions as the Trustee from time to time determines.

“**Approved Deposit Fund**” has the meaning assigned to that expression in Section 10 of the Act.

**“Approved Trustee”** has the meaning assigned that expression in Section 10 of the Act.

**“Approved Valuer”** means in respect of a Division any person who is independent of the Trustee, experienced in relation to the valuation of Assets of the kind required to be valued, licensed or registered as a valuer in those jurisdictions which require it and is appointed, for the time being, by the Trustee to act in relation to the Division under this Deed.

**“Assets of a Division”** means all the Cash and Investments, including Contributions received, held by the Trustee upon the trusts of a Division and without limiting the generality of the foregoing includes:

- (a) the first Contribution;
- (b) amounts owing to the Division by debtors (excluding any bad debts);
- (c) income accruing from Investments of the Division to the extent not included in the preceding paragraph of this definition;
- (d) the proceeds of sale of any Investments;
- (e) any pre-payment of expenditure; and
- (f) all additions or accretions (if any) to the Division which arise by way of dividend interest premium or distribution or which are otherwise received and for the time being retained.

**“Associated Employer”** means any corporation or partnership or person which or who may be nominated in writing by a Division I Participant to the Trustee as a party entitled to make contributions to Division I in respect of certain of its Employees.

**“Auditor”** means in respect of a Division, any person who is an Approved Auditor and is appointed, for the time being, by the Trustee to act in relation to the Division pursuant to the Clause 15.1(a).

**“Australian Accounting Standards”** means the standards published from time to time by the Australian Accounting Research Foundation on behalf of the Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants in Australia.

**“Authorised Dealer”** means a Corporation that is for the time being declared to be an authorised dealer in the short-term money market under Section 65(1)(a) of the Corporations Law.

**“Authorised Investments”** means all or any of the following:

- (a) Trustee Securities;
- (b) Public Securities;
- (c) Equities;
- (d) Commodities;



- (e) Derivatives;
- (f) Futures Contracts;
- (g) Debentures;
- (h) the acquisition of any security, deposit or loan guaranteed or supported by an irrevocable letter of credit expiring not less than 7 days after the relevant security, deposit or loan matures established or confirmed by a Financial Institution which has shareholders' funds on a consolidated basis (as at the date of its most recently publicised audited consolidated financial statements being not more than 2 years old) in excess of the equivalent (at that date) of twenty million dollars (\$20,000,000.00);
- (i) bills of exchange, promissory notes or other negotiable instruments whether purchased or discounted and which have been either drawn, issued, endorsed or accepted by a Financial Institution or any public statutory body constituted under a law of the Commonwealth of Australia, any State or Territory thereof or of any Approved Country;
- (j) the purchase, leasing or other acquisition of any Land and any improvements, fixtures and fittings erected or installed or to be erected or installed thereon or rights conferring options, rights of first refusal or otherwise relating to the acquisition of Land;
- (k) the purchase, leasing, hiring or other acquisition of any plant, equipment, furnishings and fittings and any other personal property and any share or estate or interest therein;
- (l) deposits with an Authorised Dealer;
- (m) deposits with or the acquisition of certificates of deposit or any other security issued by a Financial Institution;
- (n) Insurance Investments;
- (o) units or sub-units (or the equivalent rights or interests) in any Investment Fund;
- (p) any investment in a Pooled Superannuation Trust;
- (q) holding deposits for Authorised Investments which it is proposed to purchase on behalf of a Division;
- (r) Call Options and Put Options in respect of any Investment provided that the aggregate of all costs and expenses incurred in entering into such Call and Put Options together with:
  - (i) in the case of a Put Option, the excess (if any) of the Value of the Investment the subject of the Put Option over the exercise price receivable under the Put option; or

- (ii) in the case of a Call Option, the excess (if any) of the exercise price payable under the option over the value of the Authorised Investment the subject of the Call Option,

shall at no time exceed five per centum (5%) of the Value of the Assets of the Division in respect of which the Call Option or Put Option is being taken (or such other limitation from time to time as the Trustee shall from time to time determine) provided that:

- (iii) where the Trustee holds a Put Option and a Call Option over identical property and each is exercisable on or before the same date, the excess (if any) in respect of such options calculated in accordance with paragraphs (i) and (ii) above shall be disregarded to the extent that the unrealised loss under either option is matched by an off-setting gain under the other option;
  - (iv) any excess calculable in accordance with paragraphs (i) or (ii) above shall be disregarded for the purposes of the sub-Clause where the option in respect of which such excess is calculable is an option which need not be exercised by the Trustee (such non-exercise attracting no penalty or sanction whatsoever) and in respect of which no off-set has been calculated in accordance with paragraph (iii) above; and
  - (v) where the Authorised Investment the subject of the option is denominated by a currency other than Australian dollars, the value of such Authorised Investments shall be calculated by converting its value to Australian dollars by such conversion method as the Trustee may agree with the Auditor;
- (s) any investment of money on security (whether by way of a first registered mortgage taken severally or otherwise) of any Land for a term not exceeding five (5) years or such longer term not exceeding thirty (30) years where the interest rate is not fixed for a period in excess of five (5) years at any time and in an amount which when added to moneys owing on any charge ranking prior to or pari passu with the security to be taken by the Trustee does not exceed:
- (i) seven-tenths; or
  - (ii) if repayment of the whole of the principal and interest under any mortgage is insured under a mortgage guarantee insurance policy acceptable to the Trustee, nine-tenths,

of the value of the property as determined by an Approved Valuer.

**“Badged Division”** has the meaning assigned to that expression by Clause 2.11.1.

**“Benefit”** means the amount that a Participant or Member or Non-Member Spouse or Dependant of that Participant or Member or Non-Member Spouse is entitled to receive or request payment or part payment from a Division pursuant to the Rules of the Division that the relevant Participant or Member has joined. The term “Benefit” shall be deemed to include an amount payable in the form of a pension.

**“Benefit Specification”** means in relation to a Participant the details prescribed in relation to:

- (a) the basis of funding for and payment of any Benefit to be provided in respect of the Participant’s participation in a Division; and
- (b) the extent to which Members can make an Option Nomination in lieu of the Participant.

**“Building Society”** means any building society registered as a building society under the provisions of an Act of Parliament of a State or Territory of the Commonwealth of Australia.

**“Business Day”** means those days other than Saturday, Sunday, Financial Institution holidays and public holidays in the State of New South Wales.

**“Call Option”** means a call option contract whether or not regularly quoted and traded on a Securities Exchange under which a taker has the right in accordance with that contract or, where applicable, with such articles, rules, by-laws or regulations of a relevant Securities Exchange to purchase a fixed quantity of an Authorised Investment from a writer upon lodgment of an exercise notice in accordance with that contract or with such articles, rules, by-laws or regulations, being a contract which specifies a price and date (or last date) for delivery in the future.

**“Cash”** includes Financial Institution cheques and Building Society cheques and payment orders.

**“Cashing Restriction”** means in relation to a Benefit, a requirement under the Operation Standards that the Benefit may only be cashed on or after the satisfaction by the recipient of a Condition of Release.

**“Child”** in relation to a Member or former Member includes an adopted child, a step-child or ex-nuptial child of the Member or former Member; and a child of the person’s Spouse; and someone who is a child of the person within the meaning of the Family Law Act 1975.

**“Civil Penalty Order”** has the meaning assigned to that expression in Section 10 of the Act.

**“Clause”** means a Clause of this Deed.

**“Commissioner”** means the person appointed to act as the Insurance and Superannuation Commissioner under the Insurance and Superannuation Commissioner Act 1987.

**“Commodity”** means any tangible personal property, currency, interest rate, financial index or indices (including any share index) or such other tangible or intangible thing determined by the Trustee for the purposes of this definition.

**“Compulsory Cashing Date”** means in respect of a Participant or Member the date on which the Operational Standards require that the Participant’s or Member’s Benefit must be paid or commence to be paid to or in respect of the Participant or Member.

**“Condition of Release”** has the meaning assigned to that expression in the Regulations.

**“Constitutional Corporation”** has the meaning assigned to that expression in Section 10 of the Act.

**“Contribution”** or **“Contributions”** means any or all of any deposits, payments or contributions, including Eligible Termination Payments, made to a Division by, for, in respect of or on behalf of a Participant or Member.

**“Contribution Charge”** means the charge calculated pursuant to Clause 13.6.

**“Corporation”** means any statutory corporation, corporation sole or company formed or incorporated according to law.

**“Current Pension Liability”** has the meaning given to that expression by Part IX of the Tax Act.

**“Custodian”** means any custodian appointed by the Trustee pursuant to Clause 11.9.

**“Dealer”** has the meaning given to that expression by Section 9 of the Corporations Law.

**“Dealers Licence”** has the meaning given to that expression by Section 9 of the Corporations Law.

**“Debentures”** means debentures, debenture stock, bonds, notes and any other documents evidencing or acknowledging indebtedness (including bills of exchange, promissory notes and certificates of deposit), whether constituting a charge on property or not and rights or options to purchase any of them.

**“Deed”** or **“this Deed”** means the provisions in Parts 1 – 19 of the trust deed, as amended from time to time in accordance with this Deed, including the Schedules hereto.

**“Deferred Annuity”** has the meaning assigned to that expression in Regulation 5.01.

**“Dependant”** means:

- (a) the Spouse of a Participant or Member;
- (b) any Child of a Participant or Member;
- (c) any person with whom the Participant or Member had an Interdependency Relationship;
- (d) any other person who in the opinion of the Trustee is or was at the relevant time wholly or partially financially dependent upon the Participant or Member.

**“Derivative”** means any financial instrument or arrangement other than a Futures Contract, Put Option or Call Option that relates to an Authorised Investment or Commodity and includes (without limitation) any interest exchange or hedge, forward rate agreement, swap, cap, floor or collar.

**“Disclosure Document”** means any document issued by the Trustee offering participation or membership of a Division in accordance with the requirements of the Operational Standards.

**“Disqualified Person”** means a body corporate which is in respect of a Division a disqualified person for the purposes of Part 15 of the Act.

**“Distribution Date”** means as the case may require, the last Business Day of an Income Entitlement Period or a Financial Year.

**“Division”** means any Division constituted pursuant to Part 2.

**“Division I”** means the superannuation trust fund regulated pursuant to Part 2 of this Deed.

**“Division I Participant”** means:

- (a) an Employer or one or more Eligible Persons who has made application and been accepted to participate in Division I; or
- (b) a Non-Member Spouse who has been admitted as a Division I Participant in accordance with Clause 3.1.7 following the Operative Time of a Payment Split.

**“Drawdown”** means the amount payable in respect of a Participant or Member pursuant to a Drawdown Request.

**“Drawdown Request”** means the request by a person to drawdown a part of the person’s interest in the Assets of a Division.

**“Eligible Person”** means any person eligible under the Operational Standards to join and remain a member of a Regulated Superannuation Fund.

**“Eligible Rollover Fund”** has the meaning assigned to that expression Section 242 of the Act.

**“Eligible Termination Payment”** means a payment which constitutes the whole or part of an eligible termination payment within the meaning assigned to that expression by Section 27A(1) of the Tax Act.

**“Employee”** means a person who is:

- (a) in the employment of an Employer whether on a full time, part time or casual basis, and in the case of an Employer which is a Corporation shall include a director, manager or secretary of the Corporation; or
- (b) a person who is an Employee of the Employer for the purposes of the Superannuation Guarantee (Administration) Act 1992.

**“Employer”** has the meaning assigned to that expression in Section 10 of the Act.

**“Equities”** means shares (as defined in the Corporations Law) and convertible notes (as defined in Division 3A of Part III of the Tax Act) and options or rights to purchase any such shares (whether issued or not) or convertible notes.

**“Exempt Dealer”** has the meaning given to that expression in Section 9 of the Corporations Law.

**“Expenses of the Division”** means the costs referred to in paragraphs (i) to (jj) of Clause 5.1.

**“Expense Reserve Account”** means the account established in respect of each Division pursuant to Clause 5.1.

**“Extraordinary Resolution”** means a resolution passed at a meeting of Participants or meeting of Participants of a particular Division duly convened and held in accordance with the provisions of this Deed by a majority consisting of not less than three-fourths of the persons voting thereat upon a show of hands and if a poll is demanded then by a majority consisting of not less than three-fourths of the votes given on such poll.

**“Family Law Legislation”** means:

- (a) the Family Law Act 1975, and the Regulations made under that Act; and
- (b) any other legislation or requirement under the Operational Standards, that imposes legal requirements regarding the dealing with the interests of a beneficiary of a superannuation fund in connection with a marital relationship, including on the breakdown of such a relationship, and associated matters.

**“Family Law Requirement”** means any requirement whatsoever under Family Law Legislation relating to superannuation benefits of parties or former parties to a marriage and incidental matters, including, without limitation, requirements regarding Payment Splits and the imposition of any other condition or restriction on, or variation of, a Division I Participant’s interest in the Fund.

**“Financial Institution”** means a body corporate which carries on the general business of banking.

**“Financial Year”** means in respect of each Division each successive period of twelve (12) Months commencing on the First day of July and ending on the Thirtieth day of June except that the first Financial Year will be the period commencing on the commencement of the Division in accordance with Clause 2.2 and ending on the Thirtieth day of June next ensuing and the last Financial Year will be the broken period (if that be the case) ending on the date of termination of the Division and commencing on the First day of July preceding the date of termination.

**“First Contribution”** has the meaning assigned to that expression by Clause 2.3.

**“Fund”** means:

- (a) for the purposes of Part 6 a Division or Sub-Plan in respect of which the Trustee has determined pursuant to Clause 6.2 to settle a particular investment strategy or strategies; and
- (b) for the purposes of Part 10 a Division or Sub-Plan.

**“Futures Contract”** has the meaning assigned to that expression in Section 9 of the Corporations Law.

**“Futures Exchange”** means the exchange conducted by the Future Exchange Limited or any market or exchange elsewhere in an Approved Country for the trading of Futures Contracts and which is established and operated in accordance with the rules and regulations of the Approved Country.

**“Gainfully Employed”** has the meaning assigned to that expression in Regulation 1.03 to the Act.

**“Gainfully Employed Person”** means a person who is Gainfully Employed.

**“Government Co-contribution”** has the same meaning as in the Superannuation (Government Co-contribution for Low Income Earners) Act 2003.

**“Greater Building Society Approved Deposit Fund”** means the approved deposit fund established pursuant to the Greater Building Society ADF Trust Deed.

**“Greater Building Society ADF Trust Deed”** means the trust deed made by the Greater Building Society Ltd as manager and the Trustee as trustee on 18 June 1987 as amended by deeds of variation made on 23 August 1988, 23 January 1989, 5 May 1989, 26 June 1990 and 21 February 1992.

**“Group of Standard Employer-Sponsored Members”** means at least that number of Members as the Regulations provide constitute a group by reason of the fact that they have the same Employer or an Employer who is an Associated Employer of the Employer of other Members of the group.

**“Income Entitlement”** means the amount calculated in respect of a Participant pursuant to Clause 7.7.2.

**“Income Entitlement Period”** means a Financial Year or such other period of time commencing on the day following the last day of the preceding Income Entitlement Period as the Trustee determines.

**“Insurance Investment”** means any investment offered by a Life Insurance Company, whether the same involves a deposit, a loan, payment of premiums, acquisition of a right or interest in or arising out of insurance or life policies, or in a statutory fund or any similar investment.

**“Insured Benefit”** means the proceeds of any Benefit arranged in respect of a Participant or Member at the request of the Participant or Member by the Trustee pursuant to Clause 11.10.1(a).

**“Interdependency Relationship”** has the same meaning as in the Act.

**“Interest Entitlement”** means the amount to be calculated in respect of a Member pursuant to Rule 5.3.1(a) of Division I.

**“Interim Interest Entitlement”** means the amount calculated in respect of a Member pursuant to Rule 5.3.1(b) of Division I.

**“Investment”** means any Authorised Investment purchased or to be purchased by the Trustee on account of a Division.

**“Investment Charge”** means the charge calculated pursuant to Clause 13.4.

**“Investment Fund”** means any collective investment structure, unit trust or similar entity which is managed and controlled in any Approved Country.

**“Investment Manager”** means any investment manager appointed by the Trustee pursuant to Clause 11.7.

**“Investment Option”** means an investment strategy settled by the Trustee in respect of a Fund pursuant to Clause 6.3.

**“Investment Pool”** means the pool of Authorised Investments which the Trustee determines to invest the Assets of an Investment Option in pursuant to Clause 6.5.

**“Land”** includes, without limitation, tenements and hereditaments wheresoever situated and whether corporeal or incorporeal and every estate and interest therein, whether vested or contingent freehold or leasehold, whether at law or in equity, in severably or otherwise.

**“Legal Personal Representative”** means in respect of a Participant or Member the executor or administrator of the estate of the deceased Participant or Member, the trustee of the estate of a Participant or Member under a legal disability or a person who holds a general power of attorney granted by a Participant or Member.

**“Liabilities of a Division”** means:

- (a) any amounts borrowed for the purpose of the Division and remaining owing together with interest thereon;
- (b) unpaid administrative costs and expenses of the Division including the fees of the Trustee determined in respect of that Division pursuant to Clause 13.1;
- (c) accrued charges owing in respect of or in relation to any of the Investments of the Division;
- (d) deposits or margin calls required to be paid under any Futures Contract and any Put Option or Call Option;
- (e) any provisions for Tax which in the opinion of the Trustee should be taken into account ; and



- (f) such other liabilities or other expenditure which in the opinion of the Trustee should be taken into account and which have not otherwise been taken into account in determining the amount of the Liabilities of the Division in any of the preceding paragraphs of this definition.

**“Life Insurance Company”** has the meaning given to that expression in Section 10 of the Act.

**“Member”** means an Employee who has been nominated by a Division I Participant and made application and been accepted for membership of Division I.

**“Member’s Nominated Accounts”** means the accounts established on the direction of a Division I Participant in respect of a Member pursuant to Rule 5.1.1 of Division I.

**“Month”** means a calendar month except in the event of termination of a Division whereupon “Month” means the broken period ending on the date of termination of that Division and commencing on the first day of the Month in which the termination occurs.

**“Net Value of the Assets of a Division”** means the Value of the Assets of the Division less the Liabilities of the Division.

**“Nominated Dependant”** means a Dependant nominated in respect of a Participant or Member in a Nominated Dependant Notice.

**“Nominated Dependant Notice”** means the notice given by an Applicant, Participant or Member pursuant to Clause 3.5.

**“Nominated Reversionary Dependant”** means a Dependant nominated in respect of a Participant or Member in a Nominated Reversionary Dependant Notice.

**“Nominated Reversionary Dependant Notice”** means the notice given by an Applicant, Participant or Member pursuant to Clause 3.6.

**“Non-Member Spouse”** has, in relation to an interest in the Fund, the same meaning as in the Family Law Act 1975.

**“Operational Standards”** means the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation Industry Supervision Regulations*, the *Corporations Act 2001*, the *Corporations Regulations*, the *Income Tax Assessment Act 1997*, the *Income Tax Assessment Regulations*, the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, the *Family Law Act 1975*, the *Anti-Money Laundering and Counter Terrorism Financing Act 2006*, the *Bankruptcy Act 1966* and any other applicable Act, regulation or other lawful requirement (as amended from time to time) with which the Trustee or a Plan or a Fund must comply (whether to avoid breaching the relevant Act, regulation or other lawful requirement or to qualify for tax or other concessions which the Trustee determines to be desirable or for any other purpose).

**“Operative Time”** has the same meaning as in the Family Law Act 1975.

**“Option Nomination”** means the nomination made by an Applicant pursuant to Clause 6.9.2 or any variation thereof made pursuant to Clause 6.12.

**“Ordinary Resolution”** means a resolution passed at a meeting of Participants or meeting of Participants of a particular Division duly convened and held in accordance with the provisions of this Deed by, unless the Deed specifically provides for a poll, a majority of the persons voting thereat upon a show of hands and if a poll is demanded, then by a majority of votes given on such a poll.

**“Participant”** means any person who has made application to the Trustee pursuant to Clause 3.1.1 to be admitted to participation in a Division and been admitted to participate in that Division but does not include a Member.

**“Participants Account”** means the account established in respect of each Participant pursuant to Clause 5.2.

**“Participation Charge”** means the charge calculated pursuant to Clause 13.7.

**“Payment Split”** has the same meaning as in the Family Law Act 1975.

**“Payment Split Interest”** means the interest of a Non-Member Spouse arising from a Payment Split in favour of the Non-Member Spouse prior to:

- (a) any transfer of an amount representing that interest to another fund as Transferable Benefits;
- (b) any payment of an amount representing that interest to the Non-Member Spouse as a lump sum;
- (c) where the Non-Member Spouse was a Division I Participant prior to the Operative Time of the Payment Split, the amalgamation of that interest with the Non-Member Spouse’s existing participation interest in the Fund; or
- (d) where the Non-Member Spouse becomes a Division I Participant in accordance with Clause 3.1.7, the crediting of that interest to the Participants Account of the Non-Member Spouse.

**“Pension”** means a Benefit payable by instalments.

**“person”** includes a corporation, firm or body of persons.

**“Plan”** means and is the name given to the group of Divisions constituted pursuant to Part 2 of this Deed.

**“Policy Committee”** means a committee established in respect of a Group of Standard Employer-Sponsored Members of a Division or a Sub-Plan in accordance with Clause 10.1.

**“Pooled Superannuation Trust”** has the meaning assigned to that expression in Section 10 of the Act.

**“Prescribed Period”** means in respect of any matter or thing required to be done by this Deed the period in which that matter or thing is required to be done in the circumstances under the Operational Standards.

**“Proper Authority”** has the meaning given to that expression in Section 9 of the Corporations Law.

**“Public Securities”** means any stock, bonds, notes or other securities issued by, or any securities, deposits or loans secured or guaranteed by:

- (a) the Government of the Commonwealth;
- (b) the Government of any State or Territory of the Commonwealth;
- (c) any statutory body constituted by or under any act of the Parliament of the Commonwealth or any legislation of a State or Territory of the Commonwealth; or
- (d) any government of an Approved Country.

**“Put Option”** means a put option contract whether or not regularly quoted and traded on a Securities Exchange under which a taker has the right, in accordance with that contract or, where applicable, with the articles, rules, by-laws or regulations of a relevant Securities Exchange to require a writer to purchase a fixed quantity of an Authorised Investment from him upon lodgment of an exercise notice in accordance with that contract or with such articles, rules, by-laws or regulations, being a contract which specifies a price and date (or last date) for delivery in the future.

**“Register of Members”** means the Register of Members maintained by the Trustee pursuant to Clause 8.2.1.

**“Register of Participants”** means the Register of Participants maintained by the Trustee pursuant to Clause 8.1.1.

**“Registered Organisation”** has the meaning given to that expression in Section 10 of the Act.

**“Registers”** means the Register of Participants and the Register of Members.

**“Regulated Superannuation Fund”** has the meaning assigned to that expression in Section 19 of the Act.

**“Regulation”** or **“the Regulations”** means, unless the contrary intention appears, the regulations issued from time to time pursuant to the Act as amended from time to time.

**“Rules”** or **“Rule”** means the rules set out in Schedules to this Deed or any of them and any amendment thereof for the time being in force and without limiting the generality of the foregoing the Rules applicable to Division I are set out in the First Schedule.

**“Salary Continuance Benefit”** means the Benefit determined by the Trustee in respect of a Participant or Member on or after the Participant’s or Member’s

cessation of gainful employment on account of ill-health (whether physical or mental) taking into consideration the level of such Benefit specified in the relevant Benefit Specification provided that, unless the Trustee and the Participant otherwise agree, the Salary Continuance Benefit in respect of a Participant or Member shall be no greater than the Insured Benefit arranged in respect thereof and provided further that the Salary Continuance Benefit in respect of a Participant or Member ceases to be payable upon the earlier of:

- (a) the Participant's or Member's death;
- (b) a Total and Permanent Disablement Benefit otherwise becoming payable in respect of the Participant or Member;
- (c) the Participant's or Member's retirement; or
- (d) the Participant's or Member's recovery.

The question as to whether the Participant's or Member's circumstances constitute ill-health in respect of an Insured Benefit shall be decided by the insurance company underwriting the Insured Benefit.

**"Securities Exchange"** means:

- (a) a securities exchange specified in Regulation 3.6.03 of the Corporations Regulations;
- (b) The Amsterdam Stock Exchange, The Frankfurt Stock Exchange, The Hong Kong Stock Exchange, The Kuala Lumpur Stock Exchange, The Singapore Stock Exchange, The Tokyo Stock Exchange and The Zurich Stock Exchange; and
- (c) any other securities exchange, whether situated in Australia or not, determined by the Trustee.

**"Service"** means in respect of a Member service as an Employee of an Employer and includes service as a full time or part time salaried director of an Employer and such other categories of service as a Division I Participant may from time to time specify in writing to the Trustee in respect of a Member.

The following periods shall, at the Division I Participant's discretion with the approval in writing of the Trustee, be included in an Employee's Service:

- (a) any period during which the Employee is employed by any other person directly or indirectly allied or associate with an Employer;
- (b) any period of employment during which the Employee is employed (whether in military employment or otherwise) in connection with or in contemplation of hostilities or compulsory national service;
- (c) any period of absence from duty with an Employer which by operation of any statute is deemed to be employment with that Employer;
- (d) any period of absence from duty with an Employer not exceeding six (6) Months (or such longer period as the Trustee upon the advice of the

Employer may determine in any particular case) where such absences is due to illness or injury; and

- (e) the whole or any part of a period of absence from duty with an Employer which that Employer determines and confirms to the Trustee in writing shall be regarded as employment of the Employee by the Employer for the purposes hereof, and

**“Service”** means in respect of a Gainfully Employed Person such periods of gainful employment as may be permitted under the Operational Standards for the purpose of determining Benefits.

**“Service Fee”** means the fee calculated pursuant to Clause 13.1.2.

**“Significant Adverse Effect”** has the meaning assigned to that expression in respect of an event in Section 106(2) of the Act.

**“Sponsor”** has the meaning assigned to that expression by Clause 2.11.1.

**“Spouse”** has the meaning ascribed to that term in the Act.

**“Standard Employer – Sponsored Member”** has the meaning assigned to that expression in Section 16(5) of the Act.

**“Sub-Plan”** has the meaning assigned to that expression in Clause 3.7.1.

**“Superannuation Fund”** has the meaning given to that expression in Section 10 of the Act.

**“Tax”** means a governmental impost (including without limitation a tax, duty or levy) which is or might become payable in connection with the Plan or a Fund, income of the Plan or a Fund, payment or transfer of money or property to or from the Plan or a Fund, this Deed or anything done or which may be done under this Deed, including any tax, surcharge, duty or levy payable in respect of a Member that must or may be paid or collected by the Trustee or the Plan or a Fund.

**“Tax Act”** or **“the Tax Act”** means the Income Tax Assessment Act 1936.

**“Termination Charge”** means the charge calculated pursuant to Clause 13.8.

**“Termination Date”** means as the circumstances require:

- (a) the date on which a Participant has requested pursuant to a Termination Request that the Participant’s participation in a Division be terminated; or
- (b) the date on which the Trustee proposes pursuant to a Termination Notice that a Participant’s participation in a Division be terminated.

**“Termination Notice”** means the written notice given by the Trustee to a Participant pursuant to Clause 14.1.3 or Clause 14.1.4 notifying the Participant of the termination of the Participant’s participation in a Division.

**“Termination Request”** means the written request given by a Participant to the Trustee pursuant to Clause 14.1.1 requesting the termination of the Participant’s participation in a Division.

**“Total and Permanent Disablement”** means either:

- (a) suffering the permanent loss of use of two limbs or the sight of both eyes or the loss of use of one limb and the sight of one eye (where “limb” means the whole hand or the whole foot); or
- (b) having been absent from gainful employment through injury or illness for six (6) consecutive Months and having become incapacitated to such an extent as to render the Participant or Member unlikely ever to resume work or attend any gainful profession or occupation for which he is reasonably qualified by education, training or experience,

provided the Trustee is reasonably satisfied that such loss, injury or illness was not incurred or inflicted for the purpose of obtaining a Benefit from a Division, and **“Totally and Permanently Disabled”** shall have a corresponding meaning.

The question as to whether the Participant’s or Member’s circumstances constitute Total and Permanent Disablement where there is no Insured Benefit in respect of that Participant or Member, shall be determined by the Trustee provided that every question of Total and Permanent Disablement for determination where there is no Insured Benefit in respect of the Participant or Member shall only be determined by the Trustee after the receipt of a report by a qualified medical practitioner and such other information as the Trustee deems fit and the decision of the Trustee is conclusive and binding on all parties concerned.

The question as to whether the Participant’s or Member’s circumstances constitute Total and Permanent Disablement in respect of an Insured Benefit shall be decided by the insurance company underwriting the Insured Benefit.

**“Transferable Benefits”** has the same meaning as in the Superannuation Industry (Supervision) Regulations 1994.

**“Trustee”** means the Trustee or Trustees for the time being of the Divisions or any of them and includes, where applicable, any delegate or nominee of the Trustee appointed under the provisions of this Deed.

**“Trustee Securities”** means investments in which trustees are for the time being authorised by the law of any State or Territory of the Commonwealth to invest trust funds provided that the investment is authorised by the law of the State or Territory where the investment takes place.

**“Value”** means in respect of Assets or Investments their value as determined by the Trustee having regard to the nature and characteristics of the Assets or Investment as may apply at the date of determination and unless otherwise determined by the Trustee the basis of the determination shall generally include the methods of valuation set out below:

- (a) in respect of any Equities listed on a Securities Exchange which is a securities exchange specified in Regulation 3.6.03 of the Corporations Regulations, the value is the last sale price recorded in the official list thereof during the period of

one (1) Month ended on the last Business Day prior to the day upon which such value is to be ascertained or if no sale is so recorded or the Trustee otherwise thinks fit, the value determined by an Approved Valuer;

- (b) in respect of any Equities listed on a Securities Exchange which is not specified in Regulation 3.6.03 of the Corporation Regulations, the value is the value determined by the Trustee, after receipt of a valuation of an Approved Valuer, as a fair and reasonable valuation;
- (c) in respect of any loan securities not listed on a Securities Exchange for a term of one (1) year or less, the value is the face value together with interest accrued thereon but unpaid or if the Trustee otherwise thinks fit the value determined by an Approved Valuer;
- (d) in respect of Land and improvements thereon, the value is the cost price including acquisition costs thereof during the period of three (3) years from the date of such acquisition and thereafter the value is the value thereof as shown in a valuation by an Approved Valuer on "a continuing business basis" made not more than three (3) years previously and at such other times as the Trustee may require;
- (e) in respect of any investment of shares in, deposits with or loans to any Building Society, the value thereof is the face value together with dividends or interest accrued but unpaid thereon;
- (f) in respect of bills of exchange and promissory notes, the value thereof is their unlikely realisable value in the relevant bill or promissory note market on the date of valuation;
- (g) in respect of a Futures Contract, the value thereof is the net profit or loss (after allowing for deposits, margin calls, costs and other disbursements in respect of the acquisition or disposal of the Futures Contract as estimated by the Trustee) which would have been realised in respect of that Futures Contract by executing on the day of valuation a transaction at the official closing quotation of the Securities Exchange on which Futures Contracts of the specification of the Futures Contract are traded, being valued so as to eliminate the interests held under the Futures Contract from the investment of the relevant Division in accordance with the business rules of the relevant Securities Exchange, or if the Trustee otherwise thinks fit, the value determined by an Approved Valuer;
- (h) in respect of any unites in an Investment Fund which is an unlisted Investment Fund, the price at which the manager of that Investment Fund is for the time being required to repurchase that unit (or a unit of the same class in that trust) under the trust deed relating to that Investment Fund less any fee, cost, charge or expense properly deductible from the price payable on repurchase;
- (i) in any other case, the value is the value from time to time determined by an Approved Valuer at intervals of not more than three (3) years or as otherwise determined by the Trustee.

**“Value of the Assets of a Division”** means in respect of the Division the total Value on a particular day of the Assets of the Division.

## **1.2 Interpretation**

Unless the context indicates otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing gender include other genders;
- (c) headings in this Deed are for convenience only and do not affect the interpretation of this Deed;
- (d) references to statutes regulations ordinances or by-laws will be deemed to extend to all statues regulations ordinances or by-laws amending consolidating or replacing the same;
- (e) references to a person will be construed as references to an individual, firm, body corporate, association, government or governmental authority;
- (f) references to authorities and bodies, whether statutory or otherwise, will be deemed to include references to the delegates of those authorities and bodies whether appointed by the statute or otherwise.

## **1.3 Compliance with Operational Standards**

The Trustee may comply with any requirement of an Operational Standard notwithstanding that:

- (a) compliance with the requirement conflicts with an express provision of this Deed; and
- (b) the requirement is not required to be included in this Deed.

The Trustee is not taken to have committed any breach of trust by virtue of any act or thing done to comply with any requirement of the Operational Standards.

Where the Trustee must comply with a requirement of the Operational Standards within a Prescribed Period, the Trustee does not commit a breach of trust merely by failing to comply with the Operational Standard within the Prescribed Period.

## **1.4 Discretions**

Notwithstanding any other provision of this Deed any provision of this Deed which permits a discretion to be exercised by a person other than the Trustee shall be deemed to include a requirement to obtain the approval of the Trustee to the exercise of such discretion where such consent is required by the Operational Standards.



## **1.5 Severance**

### **1.5.1 Reading down of certain provisions**

If any provision of this Deed or the Rules is void or voidable or unenforceable or illegal, but would not be void or voidable or unenforceable or illegal as aforesaid if it were read-down and it is capable of being read-down, it shall be read-down accordingly.

### **1.5.2 Severance of certain provisions**

If, notwithstanding Clause 1.5.1, a provision of this Deed is void or voidable or unenforceable or illegal:

- (a) if the provision would not be void or voidable or unenforceable or illegal as aforesaid if a word or words (as the case may be) were omitted, that word or those words are hereby severed; and
- (b) in any other case, the whole provision is hereby severed,

and the remainder of this Deed have full force and effect.

## **1.6 Overriding Provisions**

The provisions in the Second Schedule (**Schedule**) form part of this Deed. Except to the extent that the Trustee determines otherwise (either generally or in any particular case), the provisions in the Schedule override any other provisions of this Deed to the extent of any inconsistency.

## **PART 2 – CONSTITUTION OF THE DIVISIONS**

### **2.1 The Plan**

The Plan is constituted by one (1) Division identified as follows:

Division I – Greater Superannuation & Retirement Trust

The specific rights of the Participants and Members of a Division as well as the specific powers and duties of the Trustee relating to the Division and the specific limitations or restrictions applicable to the Division shall be governed, in addition to the provisions set out elsewhere in this Deed, by the provisions relating to the Division set out in the Rules relating to the Division.

### **2.2 Commencement**

Each Division shall commence or be deemed to have commenced in accordance with Clause 2.3.

### **2.3 Constitution of a Division**

Except in the case of Division I which was constituted pursuant to the terms of the Greater Building Society ADF Trust Deed, upon the lodgment with or vesting in the Trustee of a Contribution in relation to a Division in accordance with the terms and conditions of this Deed and the Rules relating to that Division (“**the First Contribution**”) there will be constituted a trust fund to be held in the name of the Trustee on behalf of the Division for the duration of the Division and in accordance with the terms and conditions of this Deed.

## **2.4 Appointment of Trustee**

The Trustee acts as trustee of Division I and shall retain and hold the Assets of the Divisions and every part thereof upon trust for the benefit of Participants and Members in accordance with their respective interests from time to time.

## **2.5 Constitutions of Divisions**

### **2.5.1 Division to consist of Assets of the Division**

Each Division will consist of the Assets of the Division for the time being held by the Trustee upon the trusts hereof.

### **2.5.2 Transfer to Trustee of contributions, cash etc**

The Trustee will accept Contributions, Cash or Authorised Investments to be held upon the trusts hereof.

## **2.6 Name**

The name of the Plan will be “**The Greater Rollover and Allocated Pension Fund**” or such other name as determined from time to time by the Trustee.

## **2.7 Beneficial interest**

Each Participant and Member will be entitled as provided in this Deed to a beneficial interest in the Division to which the Participant or Member has been admitted but such interest will not:

- (a) entitle the Participant or Member other than as provided in this deed or permitted by law:
  - (i) to interfere with the rights or powers of the Trustee in its dealings with that Division or any part thereof;
  - (ii) to exercise any rights powers or privileges in respect of any Authorised Investments of that Division; or
  - (iii) to require the transfer to the Participant or Member of any of the Assets of that Division or any other Division;
- (b) confer other than as provided in this Deed any interest in any particular part or Asset of that Division.

## **2.8 Further Divisions**

Subject to the provisions of Clause 18.1, the Trustee may at any time and from time to time constitute a further Division or Divisions whereupon the Trustee shall execute a deed supplemental to this Deed which shall provide for:

- (a) a statement of the Rules of the Division;
- (b) a means of identification of each such Division;
- (c) a declaration that upon the payment to and acceptance by the Trustee of a Contribution to such Division in accordance with the terms and conditions of that Division, there shall be constituted a trust fund to be held under and in accordance with the terms and conditions of this Deed and the Rules.

## **2.9 Assets to be kept separate**

The Trustee must keep the Assets of one Division separate from another Division. The investment of the Assets of one Division in another Division is not a breach of this Clause.

## **2.10 Assets and Liabilities of Division**

The Assets of a Division are not available to meet any Liabilities of a Division other than the Division of which those Assets form a part.

The Liabilities of a Division are not to be aggregated with the Liabilities of any other Division or off-set against the Assets of any Division other than the Division of which those Liabilities form part.

## **2.11 Badged Divisions**

### **2.11.1 Offer of Participation in Badged Division**

The Trustee may enter into arrangements with third parties (“**Sponsors**”) for the offer by the Sponsor of participation in a Division (“**the Badged Division**”).

### **2.11.2 Disclosure Document may carry Sponsor’s Name**

The Disclosure Document in respect of a Badged Division may, with the approval of the Trustee, carry the name of the Sponsor or name chosen by the Sponsor and approved by the Trustee for the Badged Division other than the name given to the relevant Division by this Deed.

### **2.11.3 Application of Deed to Badged Division**

The provisions of this Deed apply to a Badged Division in the same manner as they apply to any other Division established under this Deed, unless the Rules relating to that Division expressly provide otherwise.

## **2.12 Participants and Members bound by Deed**

The terms and conditions of this Deed are binding on the Trustee and each Participant and Member and all persons claiming through them respectively as if each such Participant and Member had severally been a party to this Deed.

## **2.13 Information**

Every Participant and Member when requested by the Trustee shall promptly furnish any information the Trustee shall deem necessary for the purposes of any investigation or otherwise in connection with a Division and shall if and when required by the Trustee submit to any medical examinations by a registered medical practitioner nominated by the Trustee. Every Participant and Member shall without being requested by the Trustee so to do give prompt notification to the Trustee in writing if any circumstance occurs which may affect its membership or eligibility to contribute to a Division.

## **PART 3 – PARTICIPATION AND MEMBERSHIP**

### **3.1 Participation**

#### **3.1.1 Application for Participation**

Every applicant for participation in a Division must make application to the Trustee in the form prescribed by the Trustee from time to time.

#### **3.1.2 Lodgment of Application**

An Applicant must lodge or cause to be lodged with the Trustee either at its registered office or at such other place or places as the Trustee may from time to time determine, the completed and signed Application including the Benefit Specification (if any).

#### **3.1.3 Application Moneys to be held on trust**

- (a) All application moneys and other assets received by or deposited with the Trustee in respect of an Applicant (“**Application Moneys**”) must be held by the Trustee upon a bare trust for the Applicant paying or transferring the same until the Trustee determines to admit the Applicant to participation.
- (b) Where Application Moneys are received by the Trustee without a completed Application the Trustee will:
  - (i) as soon as practicable return the Application Moneys to the Applicant; or
  - (ii) attempt to obtain the Application from the Applicant.
- (c) Where Application Moneys are received by the Trustee without a completed Application and:
  - (i) the Application is later received within 30 days of receipt of the Application Moneys the Trustee covenants that it will apply the moneys and any interest accrued as additional Application Moneys as soon as practicable after being advised, but not later than the close of business on the next Business Day after being advised; and

- (ii) the Application is not later received within 30 days of receipt of the Application Moneys return the Application Moneys and any interest to the Applicant as soon as practicable.

#### **3.1.4 Trustee may reject Application for Participation**

The Trustee may in its absolute discretion reject or accept an Application without assigning any reason therefor provided always that the Trustee shall not accept an Application for participation in a Division unless the relevant pre-requisites to acceptance prescribed in the Rules of that Division have been satisfied. The Trustee shall be under an obligation to exercise its discretion in respect of the acceptance or otherwise of the Application within one (1) Month of receipt of such Application and any Application not accepted within such period shall be deemed to be rejected.

#### **3.1.5 Information to be given to Applicants**

The Trustee must not accept an Application for participation by an Eligible Person, unless the Trustee has given the Applicant such information, statements and reports as are required by the Operational Standards to be given to the Applicant.

#### **3.1.6 Notice of Acceptance of Participation**

Upon acceptance of an Application for participation in a Division, the Trustee must forthwith:

- (a) give the Applicant a participation number and enter the name of the Applicant as a Participant and the participation number upon the Register of Participants;
- (b) establish a Participants Account in respect of the Participant which Account shall be numbered with the Participant's participation number;
- (c) establish an Investment Register in respect of the Participant which Participant's Investment Register shall be numbered with the Participant's participation number; and
- (d) within the Prescribed Period notify the Participant in writing of the Participant's admission to the Division advising:
  - (i) the date of acceptance;
  - (ii) the Participant's participation number;
  - (iii) in the case of a Participant, such details of the operation, management and performance of the Division as the Operational Standards require in the circumstances; and
  - (iv) such other details as the Trustee considers appropriate.

#### **3.1.7 Non-Member Spouse's Participation Status**

Subject to the Family Law Requirements and Operational Standards, if the interest of a Division I Participant in the Fund becomes subject to a Payment Split the relevant Non-Member Spouse is entitled to become a Division I Participant of the Fund unless the Trustee decides otherwise.

For this purpose, the Trustee may in its absolute discretion:

- (a) decide that a Non-Member Spouse is not entitled to become a Division I Participant of the Fund;
- (b) decide that a Non-Member Spouse is entitled to become a Division I Participant of the Fund subject to certain conditions imposed by the Trustee for this purpose.

To avoid doubt the Trustee may make such decisions or impose such conditions either in particular cases or based on general rules that the Trustee may adopt for this purpose from time to time and vary such decisions or conditions if it thinks appropriate.

## **3.2 Membership**

### **3.2.1 Application for Membership**

Every Employee upon being nominated for membership by a Division I Participant shall make application to the Trustee (“**the Employee’s Application**”) in the form prescribed by the Trustee from time to time.

### **3.2.2 Lodgment of Application**

The Division I Participant must lodge or cause to be lodged with the Trustee either at its registered office or at such other place or places as the Trustee may from time to time determine, the completed and signed Employee’s Application.

### **3.2.3 Trustee may reject Application for Membership**

Upon receipt of an Employee’s Application, the Trustee may in its absolute discretion refuse or accept the Employee’s Application without assigning any reason therefor provided always that the Trustee shall not accept an Employee’s Application for membership of Division I unless the relevant pre-requisites to acceptance prescribed in the Rules of Division I have been satisfied. The Trustee shall be under an obligation to exercise its discretion in respect of the acceptance or otherwise of the Employee’s Application within one (1) Month of receipt of such Application and any Employee’s Application not accepted within such period shall be deemed to be refused.

### **3.2.4 Notice of Acceptance of Membership**

Upon acceptance of an Employee’s Application the Trustee must forthwith:

- (a) confirm to the relevant Division I Participant in writing that the Member has been admitted to Division I;
- (b) give to the Member in writing:

- (i) notice of the Member's admission to Division I detailing the date of acceptance;
- (ii) a summary of the Benefits to which the Member will be entitled from Division I, the method of determining those Benefits pursuant to this Deed and the Rules of Division I and the Benefit Specification of the relevant Division I Participant, and any conditions relating to those Benefits;
- (iii) such other statements, reports and notices as the Operational Standards require to be given to a member of a Standard Employer-Sponsored Superannuation Fund before or as soon as practicable after the member joins the fund; and
- (iv) such other details as the Trustee considers appropriate or are otherwise required by the Operational Standards,

except where the Trustee is satisfied that the Member has been advised of the matter in question prior to becoming a Member;

- (c) enter the name of the Employee as a Member upon the Register of Members.

### **3.3 Transfer Arrangements with Participants and Members**

#### **3.3.1 Arrangements for transfer**

The Trustee may make arrangements with:

- (a) any Participant;
- (b) any Member;
- (c) any previous employer of the Participant or Member;
- (d) the trustee or administrator of any Regulated Superannuation Fund or Approved Deposit Fund of which the Participant or Member was or is a member;
- (e) any Life Insurance Company or Registered Organisation which has issued a policy of insurance in respect of the Participant or Member or which is or was paying an annuity to the Participant or Member,

in relation to the transfer or rollover to a Division of any entitlement or benefit payable in respect of the Participant or Member or any other matter that the Trustee considers incidental to or consequent on the Participant's participation or Member's membership of a Division.

### **3.3.2 Consent to transfer in**

The Trustee must not give effect to an arrangement made with a person referred to in Clause 3.3.1 in relation to the transfer or rollover to a Division of an entitlement or benefit payable in respect of the Participant or Member, unless it is satisfied that the Participant or Member gave written consent to the transfer or rollover of the entitlement or benefit or that the Participant's or Member's written consent is not required under the Operational Standards.

### **3.3.3 Value of transfer**

Subject to any arrangement made pursuant to Clause 3.3.1, the Trustee must determine the value of any payment, assignment or transfer of assets for the benefit of the Participant or Member and record the value so determined to provide additional benefits for that Participant or Member on a basis agreed between the Participant or Member, the Employer and the Trustee.

The Trustee must credit such amount to the Participant's Participants Account and in the case of a Member to such other Member's Nominated Account as directed by the Division I Participant and any amount so credited and the proceeds on realisation of such policies shall be used to provide Benefits for that Participant or Member provided that any assignment or transfer of an amount subject to a Cashing Restriction shall remain subject to that Cashing Restriction.

### **3.4 Cooling off period**

This Deed is taken to include the provisions described in Sections 171(2) to 171(5) of the Act and the Trustee must comply with those provisions.

### **3.5 Nominated Dependant**

- (a) An Applicant may upon admission and from time to time thereafter in a manner approved by the Trustee notify the Trustee of:
  - (i) the names and addresses of any Dependants to whom the person wishes any Benefit payable upon the person's death to be paid;
  - (ii) the proportions and manner in which the person wishes those Benefits to be paid.
- (b) The nomination:
  - (i) may be varied or replaced from time to time in a manner approved by the Trustee;
  - (ii) is not binding upon the Trustee but the Trustee may consider the nomination when exercising its discretions under Rules 7.4.2, 7.5.2, 7.5.3, 8.3.2, 8.4.2 or 8.4.3 of Division I in respect of the person.



### **3.6 Nominated Reversionary Dependant**

- (a) An Applicant may upon admission and from time to time thereafter in a manner approved by the Trustee notify the Trustee of the name and address of any Dependant to whom the person wishes any Reversionary Pension payable upon the person's death to be paid.
- (b) The nomination:
  - (i) may be varied or replaced from time to time in a manner approved by the Trustee; and
  - (ii) is not binding upon the Trustee but the Trustee may consider the nomination when exercising its discretions under the Rules of Division I.

### **3.7 Sub-Plans**

#### **3.7.1 Trustee can make Sub-Plans**

The Trustee may in respect of any Division which is a Regulated Superannuation Fund determine to make a Sub-Plan for the Division ("**Sub-Plan**").

#### **3.7.2 Regard to Common Factors**

In determining whether to make a Sub-Plan, the Trustee must have regard to all relevant matters, including whether there is a common factor in a segment of the Division (for example, whether there is a group of Members of the Division who have the same Employer).

## **PART 4 – PAYMENTS AND BENEFITS**

### **4.1 Contributions**

- (a) Each Participant, Member or other person eligible to contribute to a Division under the Operational Standards shall contribute from time to time to a Division in the manner prescribed by the Rules of that Division.
- (b) The Trustee may accept Government Co-contributions into the Fund in respect of any Participant or Member.

### **4.2 Minimum Contributions**

The minimum First Contribution to be made by or in respect of a Participant and the minimum of each additional Contribution must be of an amount at least equal to the minimum amount nominated in the current Disclosure Document or such other amount as may be nominated from time to time.

### **4.3 Contributions to Trustee**

All Contributions paid to a Division must be either paid to the Trustee and held by the Trustee as part of that Division (or paid where the Operational Standards require the same to the Custodian and held by the Custodian as part of that

Division). Any Contribution may, subject to the Operational Standards, be paid by Cash or assignment or transfer of ownership of any benefits or assets (including insurance policies) which are Authorised Investment provided that Contributions paid other than by Cash must be accompanied by such evidence of title and other matters (including a valuation of the benefits or assets by an Approved Valuer) as the Trustee (or where relevant, the Custodian) may require together with duly executed and stamped transfers or conveyances where appropriate. Where any Contribution is paid by assignment or transfer of ownership of any benefits or assets the Participant or Member paying the same shall be responsible for all stamp duty, brokerage fees, commission and other costs, charges and expenses in respect of such assignment or transfer. The restrictions in Clause 6.8 shall apply to any such assignment or transfer.

#### **4.4 Benefits and Drawdowns payable**

##### **4.4.1 Benefits and Drawdowns payable in accordance with Rules**

Subject to the terms of this Deed, Benefits and Drawdowns of any kind payable under this Deed to any Participant or Member shall be determined and payable according to the Rules of the Division to which the Participant or Member has been admitted.

##### **4.4.2 Benefits and Drawdowns subject to Cashing Restriction**

Notwithstanding anything in this Deed any Benefit or Drawdown or part thereof which is subject to a Cashing Restriction can only be paid, unless the provisions of Clause 4.7 apply, on satisfaction of the relevant Condition of Release. Where a Benefit or Drawdown is subject to a Cashing Restriction but Clause 4.7 applies this restriction does not apply.

##### **4.4.3 Payment of Assets in lieu of Cash Benefits**

Where any Benefit or part thereof is payable in respect of a Participant or Member and:

- (a) the Trustee determines that it is necessary to realise any of the Investments of the Division to pay the same and for whatever reason the said Investments are not realised; or
- (b) the Participant has requested the Trustee to appropriate specific Investments out of the relevant Division and to transfer Investments to the Participant in satisfaction of the Participant's entitlement; or
- (c) the Participant has requested the Trustee to appropriate specific Investments out of Division I and to transfer such Investments to a Member admitted in respect of the Participant in satisfaction of the Member's entitlement,

then the Trustee may, having regard to the Participant's or Member's Option Nomination and subject to any restriction in the Operational Standards,

- (d) in the case of paragraphs (a) and (b), with the consent of the Participant; and

(e) in the case of paragraph (c), with the consent of the Member

transfer such Investments where appropriate to the Participant or Member or as directed by the Participant or Member to such other Regulated Superannuation Fund, Division, Approved Deposit Fund or Pooled Superannuation Trust or apply the same in the purchase of an Annuity provided always that an appropriation of specific Investments pursuant to this Clause can only be made where the Investments are of a similar nature and condition to the Investments made by the Trustee on behalf of the Participant or the Member.

#### **4.4.4 Sale of Investment to pay Drawdown**

In the event that the Investments of the Division to which a Participant or Member had been admitted comprise insufficient Cash which can be withdrawn to meet the Drawdown requested by the Participant or Member then the Trustee must having regard to the current Conditions of the Participant's or Member's Option Nomination and the provisions of Clause 6 realise some or all of the non-Cash Investments of the Division and pay the Drawdown to the Participant or Member.

Unless the Drawdown Request otherwise provides, the non-Cash Investments to be realised shall be realised as close as is practical pro rata to the proportions in which various classes of Investments are held on behalf of the Participant or Member.

#### **4.5 Payment by Trustee**

##### **4.5.1 Complete discharge**

The payment or assignment of any Benefit or Drawdown shall be a complete discharge to the Trustee for the amount of moneys paid or applied as against any person claiming an interest in the Benefit or Drawdown.

##### **4.5.2 Benefits and Drawdowns to be paid in accordance with Rules**

No Benefit or Drawdown shall be payable until the Trustee has ascertained that it may be paid in accordance with the applicable Rules.

##### **4.5.3 Proof of qualification for Benefits**

Any person appearing, purporting or claiming to be qualified or entitled to any Benefit or Drawdown must on request produce to the Trustee or its nominee such evidence, do such acts and execute such documents as and when the Trustee may reasonably require.

##### **4.5.4 Payment in good faith valid**

Payment or assignment of a Benefit or Drawdown in good faith to a person believed by the Trustee to be entitled to receive it shall be deemed to be payment or assignment to a person entitled to receive it and shall be a valid discharge to the Trustee of its obligations in respect of the payment or assignment of that Benefit or Drawdown.

#### **4.5.5 Determination of questions of fact**

The Trustee when determining questions of fact may act upon such proofs or presumptions as it may deem satisfactory whether strictly legal proofs or presumptions or not.

#### **4.6 Deduction of Tax From Benefits and Drawdowns Payable**

##### **4.6.1 Power to deduct Tax payable**

The Trustee may deduct or require to be deducted from any Benefit or Drawdown payable to or to be applied in respect of a Participant or Member any amount on account of income or other Tax payable for any reason which is referable to the Participant or Member.

##### **4.6.2 Payment of Tax deducted**

Amounts deducted under Clause 4.6.1 must be:

- (a) paid to the relevant authority or person entitled thereto; or
- (b) reimbursed to the Trustee for any corresponding amount paid from its own funds,

and to the extent not required for the purpose of sub-paragraphs (a) and (b) hereof, paid to the Participant or Member.

##### **4.6.3 Payment of net amount to Participant or Member**

The Participant or Member is entitled only to receive the net Benefit or Drawdown after the deduction of Tax payable.

##### **4.6.4 No prejudice to Trustee's other rights**

Nothing in this Clause 4.6 shall prejudice any other rights which the Trustee has to deduct income or other tax in respect of a Participant or Member.

#### **4.7 Unclaimed Benefits**

##### **4.7.1 Unclaimed Benefits to be dealt with in accordance with Operational Standards**

Where a Benefit is payable to or in respect of a Participant or Member and:

- (i) the Participant or Member has reached the eligibility of age for an age pension;
- (ii) the Participant or Member has not applied to the Trustee to have the Benefit paid to the Member; and
- (iii) the Trustee is unable to pay the Benefit to the Participant or Member because the Trustee is unable to find the Participant or Member after having made reasonable efforts to do so,

the Trustee must deal with the Participant or Member's Benefit in the manner prescribed in the Operational Standards.

#### **4.7.2 Transfer of Unclaimed Benefits to an Eligible Rollover Fund**

Subject to the Operational Standards, where a Benefit is payable to or in respect of a Member and:

- (i) a period of 90 days has elapsed since the Benefit became payable and the Benefit has not been paid, the Trustee may pay the Benefit to an Eligible Rollover Fund;
- (ii) a period of 90 days has elapsed since the benefit became payable and:
  - (A) the Benefit has not been paid; and
  - (B) the Trustee is satisfied that the Member did not receive at least 2 consecutive reports sent to Members to comply with the Operational Standards (the second report only being taken to have been sent if it was sent less than the Prescribed Period after the first of the reports was sent to the Member),

the Trustee must pay the Benefit to an Eligible Rollover Fund provided that where the Operational Standards do not permit the Eligible Rollover Fund to accept the same then the Trustee must deal with the Benefit as otherwise prescribed by the Operational Standards.

#### **4.7.3 Notice to Participants and Members**

The Trustee must provide to Participants or Members such details of its powers under this Clause 4.7 as the Operational Standards require.

### **PART 5 – ESTABLISHMENT OF ACCOUNTS**

#### **5.1 Expense Reserve Accounts**

The Trustee will keep an Expense Reserve Account in respect of each Division. Where any of the Assets of a Division ("**the Relevant Division**") are invested in a particular Division, the Trustee will record the following credits to the extent that they may apply to those Assets to the Expense Reserve Account established in respect of the Division and in all other cases record the following credits to the Expense Reserve Account established in respect of the Relevant Division ("**the Relevant Expense Reserve Account**"):

- (a) the Contribution Charges levied in respect of the Participants of the Relevant Division ("**the Relevant Participants**");
- (b) the Investment Charges levied in respect of the Relevant Participants;
- (c) the Administration Charges levied in respect of the Relevant Participants;
- (d) the Participation Charges levied in respect of the Relevant Participants;

- (e) the Termination Charges levied in respect of the Relevant Participants;
- (f) any commissions or other emoluments received by the Trustee on its own account and not on account of any other person in respect of the investments of the Assets of the Relevant Division or otherwise in respect of the Relevant Division generally;
- (g) the amount of any Tax or charge debited in respect of the Relevant Participants pursuant to Clause 5.2(r);
- (h) all interest dividends and other income earned from the investment of the amount standing to the credit of the Expense Reserve Account from time to time;

and will record as and when incurred as debits against the Relevant Expense Reserve Account the following costs, charges and expenses or such proportion of those costs, charges and expenses as the Trustee determines may be reasonably and properly incurred in or about the administration of the Relevant Division:

- (i) the costs of establishing the Plan including the costs of acquiring the text and formant of this Deed, the licence to use the same and of the preparation and stamping of this Deed;
- (j) the costs of preparing, printing and issuing offers to participate in the Plan including the costs of preparation, approval and registration of any Disclosure Document and including but without limiting the generality of the foregoing legal, valuation, listing, printing and graphic design fees payable in respect of any Disclosure Document and further to the costs of preparing printing and issuing brochures advertising the Plan;
- (k) the costs of maintaining and auditing the books of account, Accounts and the Registers in accordance with this Deed and the law generally;
- (l) the costs of establishing and maintaining the Register of Members, Register of Participants and Investment Register;
- (m) disbursements in connection with the acquisition, sale, collection, distribution of or other dealing with any Investment of the Relevant Division including legal fees, stamp duties, brokerage and commission, survey and valuation fees, registration fees and consultants fees;
- (n) the costs of acquiring establishing and developing computer hardware and software systems required for the administration of the Relevant Division;
- (o) fees and disbursements payable to any managing agents or collection agents not exceeding the prevailing commercial rates chargeable by managing agents or collection agents for services performed by them in relation to the Relevant Division;
- (p) the Auditor's reasonable fees and expenses in connection with the auditing of the Accounts of the Relevant Division, the preparation of taxation returns in relation to the Relevant Division and all other functions of the Auditor performed in respect of the Relevant Division pursuant to this Deed;

- (q) fees paid to Actuaries, Approved Valuer, solicitors, barristers, accountants, surveyors, contractors and other qualified persons as provided in this Deed including valuation fees paid in respect of investments proposed to be purchased whether purchased or not;
- (r) advertising expenses relating to the sale of Investments;
- (s) Financial Institution charges on accounts operated solely for the use of the Plan by the Trustee;
- (t) stamp duties, debit taxes, Financial Institutions duties and similar imposts;
- (u) any amounts paid in respect of taxes and charges assessed charged or imposed by or under any Federal or State law upon the taxable income of the Relevant Division (including capital gains realised or unrealised in respect of the Relevant Division);
- (v) costs of preparing, printing and issuing of the information required to be given pursuant to Clause 9.3.7, confirmations, accounts, other statements cheques and payment orders required to be circulated amongst the Participants and Members;
- (w) costs of postage of all cheques payment orders accounts notices and other documents posted to all or any Participants or other persons in accordance with the provisions of this Deed;
- (x) disbursements incurred in convening or holding any meetings of Participants and implementing any resolution passed at such meetings including an allowance to the Trustee for the reasonable costs of the time expended by its employees and agents in relation to the preparation for the holding of such meetings;
- (y) disbursements and costs incurred by or on behalf of the Trustee or in connection with the retirement of the Trustee under this Deed and the appointment of another in substitution thereof and anything ancillary or incidental to such retirement or appointment including disbursements incurred in convening or holding any meeting of Participants convened to remove or approve the appointment of a new trustee of the Relevant Division;
- (z) except where the court otherwise directs, disbursements and costs by or on behalf of the Trustee in or in connection with the initiation, carriage and settlement of any court proceedings (including any negotiations and demands relating thereto) against the Trustee arising howsoever from any breach or default by the other under this Deed;
- (aa) all costs and expenses incurred in modifying or altering the provisions of this Deed including any costs and expenses reasonably and properly incurred by the Trustee obtaining the approval and execution of any supplemental deed or obtaining any approvals which may be required by law or otherwise for the supplemental deed and any costs and expenses reasonably incurred by the Trustee in convening any separate meetings of Participants to obtain their approval for the amendments modifications or additions;

- (bb) all rates, taxes, charges, assessments and impositions whatsoever (whether parliamentary municipal or otherwise and whether assessed charged or imposed by or under Federal or State law or by Federal State or Local Authorities and whether on a capital or revenue value or any other basis and even though of a novel character) which may be or are assessed charged or imposed in respect of the Relevant Division or any part thereof;
- (cc) costs of the preparation and lodgment of returns pursuant to the Tax Act or the Act or any Statute or regulation forming part of the laws of the Commonwealth of Australia or any State or Territory thereof;
- (dd) any fees incurred in respect of obtaining any determinations or valuations required by an Actuary or Approved Valuer under this Deed;
- (ee) the Trustee's remuneration calculated in respect of the Relevant Division pursuant to Clause 13.1;
- (ff) any commission or brokerage paid other than in respect of an application or agreement to procure applications for participation in the Relevant Division;
- (gg) any fees and expenses payable to any Investment Manager appointed in respect of the Relevant Division;
- (hh) subject to Clause 11.8.4, any fees or expenses payable to any Administrator appointed in respect of the Relevant Division;
- (ii) any fees and expenses paid to any Custodian or sub-Custodian of the Relevant Division;
- (jj) any other disbursement reasonably and properly incurred by the Trustee for or on behalf of the Relevant Division or in the administration of the Relevant Division or in the observance or performance of any right, power, duty, obligation or covenant herein contained or in complying with the requirements of or under any law,

provided that the remuneration to be paid to the Administrator of a Division is not an "Expense of the Division" and must be paid by the Trustee out of its own moneys.

## 5.2 Participants Account

The Trustee will keep a Participants Account in respect of each Participant and shall record the following credits to that account:

- (a) any amounts received pursuant to Clause 3.3.1;
- (b) any Contributions paid by or in respect of the Participant;
- (b(a)) any Government Contributions received pursuant to Clause 4.1(b);
- (c) any reimbursement received from the Participant in respect of any expense paid by the Trustee in respect of the Division to which the Participant has been admitted ("**the Relevant Division**");



- (d) the distribution of any surplus in the Expense Reserve Account maintained in respect of the Relevant Division determined pursuant to Clause 5.3.1;
- (e) any Income Entitlement determined in respect of the Participant;
- (f) the proceeds of any Insured Benefit arranged in respect of the Participant and any Member admitted in respect of the Participant;
- (g) deleted;
- (h) any other moneys received by the Trustee in respect of the Participant,

and subject to the provisos in respect of payment of Benefits in the Rules will record the following debits against that account:

- (i) any Benefits paid or payable in respect of the Participant or any Member admitted in respect of the Participant;
- (j) any Drawdown Amounts paid or payable in respect of the Participant or any Member admitted in respect of the Participant;
- (k) any Regular Pension Payment paid or payable in respect of the Participant or any Member admitted in respect of the Participant;
- (l) any Contribution Charge levied in respect of the Participant and any Member admitted in respect of the Participant;
- (m) any Administration Charge levied in respect of the Participant;
- (n) any Investment Charge levied in respect of the Participant;
- (o) any Participation Charge levied in respect of the Participant;
- (p) any Termination Charge levied in respect of the Participant;
- (q) the cost of the Insured Benefit arranged in respect of the Participant or any Member admitted in respect of the Participant;
- (r) any disbursements in connection with the acquisition, sale, collection, distribution of or dealing with any Investment made on the Participant's behalf;
- (s) the amount of any Tax, whether assessed charged or imposed by or under any Federal or State law, which the Trustee determines may be or is assessed upon the taxable income of the Relevant Division and is attributable to the Participant including capital gains realised or unrealised from the investments made in respect of the Participant or otherwise from time to time;
- (t) deleted;
- (u) where the terms of the Participant's Benefit Specification or the Operational Standards require the production of an actuarial certificate, report or

valuation to be performed in respect of the participation of the Participant, the cost of any such actuarial certificate, report or valuation;

- (v) any levies paid under The Superannuation (Financial Assistance Funding) Levy Act which are in the opinion of the Trustee attributable to the Participant;
- (w) the costs of the kind described in Clause 10.7 and incurred in respect of any Policy Committee established in respect of the Participant;
- (x) any other payment made in respect of the Participant or any Member admitted in respect of the Participant pursuant to the provisions of this Deed.

### **5.3 Distribution of Expense Reserve Accounts**

#### **5.3.1 Determination of reserve available for distribution**

The Trustee shall on each Distribution Date determine the portion of the amount standing to the credit of the Expense Reserve Account maintained in respect of each Division (“**the Relevant Division**”) after the deduction of the Expenses of the Relevant Division available to be credited to the Participants Account maintained in respect of each Participant of the Relevant Division (“**the Relevant Account**”).

#### **5.3.2 Crediting to Participants Accounts**

The Trustee will determine the amount to be credited to the Relevant Account pursuant to Clause 5.3.1 having regard to:

- (a) the amount standing to the credit of the Relevant Account on the later of the date of entry of the Participant or the immediately preceding Distribution Date of the Relevant Account;
- (b) the credits and debits from time to time to the Relevant Account since the date referred to in paragraph (a) hereof;
- (c) the nature of the Investments made by the Trustee on behalf of the Participant;
- (d) the extent to which the Participant’s participation of the Relevant Division has specifically affected the liability of the Relevant Division to Tax;
- (e) such further details as determined by the Trustee.

### **5.4 Further Accounts**

In addition to the Participants’ Accounts to be maintained in respect of a Participant the Trustee may keep any further accounts prescribed in the Rules.

## **PART 6 – INVESTMENT**

### **6.1 Investment policy**

The Trustee must formulate an investment policy for the Plan which identifies:

- (a) the investment strategies which the Trustee will adopt for the Plan; and
- (b) amongst other things the extent to which Participants will be permitted to:
  - (i) make Option Nominations; and
  - (ii) elect to give their Employees who are admitted as Members the right in lieu of the Participant to make Option Nominations.

### **6.2 Identification of investment strategies required**

Having settled the investment policy of the Plan the Trustee must from time to time identify the Divisions and Sub-Plans in respect of which a particular investment strategy or strategies are required (each such Division or Sub-Plan being hereinafter in this Part 6 referred to as a “**Fund**”).

### **6.3 Settlement of investment strategies**

#### **6.3.1 Trustee’s Discretion**

The Trustee may determine to offer a choice of investment strategies to the Participants of a Fund or alternatively to select the investment strategies of the Fund.

#### **6.3.2 Offer of Choice**

In the event that the Trustee determines to offer a choice of investment strategies to the Participants of a Fund then the Trustee must settle a minimum of two investment strategies for each Fund. Each investment strategy must meet the minimum standards set out in Clause 6.8 and be distinct from the other in respect of its risk and return profile and identifiable from the other by such means as the Trustee otherwise determines. Each investment strategy will be known as an “**Investment Option**”.

#### **6.3.3 No Offer of Choice**

In the event that the Trustee determines not to offer a choice of investment strategies to the Participants of a Fund then:

- (a) the provisions of Clauses 6.4 to 6.8 and 6.12 to 6.13 shall apply in respect of the investment strategies selected by the Trustee as if they were Option Nominations;
- (b) Clause 6.13(b) shall be deemed to read:
  - “(b) notify the Participants of the purpose and effect of the alteration;” and

(c) Clause 6.13(c) shall be deemed to be deleted.

#### **6.4 Identification of asset allocation of each Investment Option**

The Trustee must settle the intended asset allocation of each Investment Option having regard to its particular risk and return profile.

#### **6.5 Identification of underlying Investments of each Investment Option**

The Trustee must settle the Authorised Investment or Authorised Investments to be made in respect of each Investment Option. In the event that the Trustee has settled a pool of Authorised Investments in respect of an Investment Option, each such pool of Authorised Investments settled in respect of an Investment Option will be known as an “**Investment Pool**”.

#### **6.6 Identification of manner in which Investment Pool will be valued**

The Trustee must at the time an Investment Pool is settled determine the manner in which the Trustee proposes to value the Investment Pool and its underlying Investments including the accounting of the income and capital gains and losses realised and unrealised in respect of the Investment Pool.

#### **6.7 Recording of Investment Options**

The Trustee must record in writing the settled Investment Options of each Fund. The information recorded must detail sufficient particulars in respect of each Investment Option so that a person reading the information would have all the information the person would reasonably need for the purpose of:

- (a) understanding the objectives and purpose of each Investment Option;
- (b) making an informed judgement about the effect of and any risk involved in each of the Investment Options;
- (c) making an informed comparison of the objectives, effect of and risk involved in each of the Investment Options; and

The information recorded must also set out:

- (a) the details of any Investment Pool settled in respect of the Investment Option;
- (b) understanding the manner in which the Trustee proposes to value each Investment Pool including the accounting of the income and capital gains and losses realised and unrealised in respect of the Investment Pool; and
- (c) the information required by the Operational Standards in the circumstances.

## **6.8 Absolute matters to have regard to in settling Investment Options**

In settling the Investment Options of each Fund the Trustee must ensure that the following standards are met:

- (a) The Trustee must only invest in Authorised Investments.
- (b) The Trustee must only invest in Land where a valuation made by an Approved Valuer not more than three (3) Months prior to the date of investment supports the price proposed to be paid.
- (c) The Trustee must not invest money of the Fund unless the Trustee and the other party to the relevant transaction are dealing with each other on an arm's length basis in respect of the transaction.
- (d) The Trustee must not lend Assets of the Fund to a Participant or Member or a relative of a Participant or Member or give any other financial assistance using the resources of the Fund to a Participant or Member or a relative of a Participant or Member.
- (e) The Trustee must not invest in any Authorised Investment where the nature, terms and conditions or identity of the vendor of the Investment would contravene the Operational Standards.
- (f) The Trustee must not borrow money or maintain an existing borrowing of money except as permitted by the Operational Standards.

## **6.9 Publication in Disclosure Document**

### **6.9.1 General content**

Each Disclosure Document issued in respect of a Fund must detail the information recorded to meet the requirements of Clause 6.7.

### **6.9.2 Participant choice**

Subject to Clause 6.3.3, each Disclosure Document issued to Applicants for participation must also:

- (a) give an Applicant a choice of two or more of the settled Investment Options from which an Investment Option or combination of Options may be chosen ("**Option Nomination**");
- (b) where an Investment Pool has been settled in respect of an Investment Option set out the details of the Investment Pool; and
- (c) clearly set out the range of directions that can be given and the circumstances in which directions given can be altered.

#### **6.10 Trustee to make Investments**

The Trustee must, subject to all proper enquiries and legal steps deemed by it necessary, implement and give effect to:

- (a) any investment strategies settled by it for the Fund; and
- (b) any Option Nomination given to it in respect of the Fund.

In giving effect to an Option Nomination the Trustee may have regard to any preference indicated by an Applicant or Participant or member with respect to the nature or identity of the Investments to be made in respect of the Option Nomination.

For the purposes of giving effect to any investment strategy settled by the Trustee or to any Option Nomination the Trustee shall have all the powers contained in Clause 11.5 including the power to purchase, sell, vary or replace any Investment.

#### **6.11 Deleted**

#### **6.12 Variation of Investment Options**

The Trustee must from time to time consider whether the terms of an Investment Option or Investment Pool are appropriate or require amendment. Where the Trustee determines that amendment is necessary, the Trustee must resettle the terms of the Investment Option. At this time and at any other time that the Trustee elects the Trustee may:

- (a) change the Investment Option's objective;
- (b) change the Investment Option's asset allocation;
- (c) where the Trustee has settled an Investment Pool in respect of the Investment Option change the Authorised Investments to be made in respect of the Investment Option.

#### **6.13 Publication of Variation of Investment Option**

Where any alteration to an Investment Option made by the Trustee pursuant to Clause 6.12 is materially significant the Trustee must:

- (a) amend the current Disclosure Document to reflect the amendment;
- (b) notify the Participants who have nominated investment in the Investment Option pursuant to their Option Nomination of the purpose and effect of the alteration; and

#### **6.14 Record of Investments**

- (c) give those Participants the option of amending their Option Nomination.

#### **6.14.1 Record of Investment Pool**

The Trustee must record in respect of each Investment Pool such details in respect of the Investments made and held in respect of the Investment Pool as will enable the Trustee to identify the Investments held in respect of the Investment Pool including:

- (a) a description of each Investment;
- (b) the date of acquisition of each Investment by the Trustee;
- (c) the cost of each Investment;
- (d) the date of maturity of each Investment (if any);
- (e) the redemption price of each Investment (if any);
- (f) such information as is necessary to enable any capital gains tax liability which may arise upon disposal of the Investments to be calculated.

#### **6.14.2 Record of Investments held on account of Participants**

The Trustee must record in respect of each Participant:

- (a) the Participant's Option Nomination; and
- (b) such details in respect of the Investments held in respect of the Participant as will enable the Trustee to identify the Investments held in respect of the Participant including:
  - (i) a description of each Investment;
  - (ii) the date of acquisition of each Investment by the Trustee;
  - (iii) the cost of each Investment;
  - (iv) the date of maturity of each Investment (if any);
  - (v) the redemption price of each Investment (if any);
  - (vi) such information as is necessary to enable any capital gains tax liability which may arise upon disposal of the Investment to be calculated.

#### **6.15 Special arrangements in respect of Division I Participants**

Where a Division I Participant has been admitted to Division I for the purpose of providing retirement and other ancillary benefits for its Employees or a group of Eligible Persons and the Division I Participant has elected in its Benefit Specification that its Employees who are admitted as Members or the Eligible Persons will be entitled to make Option Nominations:

- (a) the references to “Participant” in the following Clauses shall accordingly be deemed to be a reference to “Member”:
  - (i) Clause 6.13; and
  - (ii) Clause 6.14; and
- (b) the references to “Participant” in the definition of “Option Nomination” in Clause 1.1 shall accordingly be deemed to be a reference to “Member”;

with the intention that wherever these terms are used in this Deed they will be interpreted accordingly.

#### **6.16 Calls**

Calls on partly paid shares or units held on behalf of a Participant or Member must be paid out of the funds held on behalf of the Participant or Member and must be debited to the Participant’s Participants Account or Member’s Nominated Accounts as the case may be and as the Trustee determines is appropriate. The Trustee must so far as possible have regard to the need to meet such calls in giving an approval to a Participant’s or Member’s Option Nomination.

#### **6.17 To deal at Value**

The Trustee will in all acquisitions and sales, subject to this Part 6, deal with such Investments, in the case of acquisitions at no more than Value and in the case of sales, at not less than Value.

#### **6.18 Retention of Cash**

The Trustee may place or leave on deposit Cash for such time as the Trustee considers desirable and may retain Cash received by it pending a decision as to its investment.

### **PART 7 – VALUATION AND INVESTMENT INCOME**

#### **7.1 Trustee to value**

The Trustee must value or cause to be valued the Investments of each Investment Pool, such Investments to be valued on the last Business Day of each Financial Year and at such other times as in the opinion of the Trustee it is necessary or desirable to do so.

#### **7.2 Valuation to be in accordance with Deed**

The Investments of each Investment Pool must be valued in accordance with the procedure for valuation set out in the definition of “Value” in Clause 1.1 and generally in accordance with the manner settled for valuing the Investment Pool.



### **7.3 Change to valuation principles**

Where the Trustee is of the opinion that the application of the principles of valuation set out in Clause 7.2 are inappropriate and fail to properly reflect the realisable value of an Investment, that Investment is to be valued in accordance with another principle determined by the Trustee.

### **7.4 Postponement of valuation**

Without in any way limiting the foregoing, if the Trustee determines that due to circumstances prevailing in any market or effecting any Investment it is not practicable to value any Investment at any particular time or that any valuation obtained would not properly reflect the realisable value of the Investment, then the Trustee may postpone the valuation or revaluation of any Investment so effected for the purposes of Clause 7.1

### **7.5 Valuation of Investments denominated in foreign currency**

Where an Investment required to be taken into account is denominated in a foreign currency, the value of the same shall be calculated by converting its value into Australian dollars by such conversion method as the Trustee may agree upon with the Auditor.

### **7.6 Gross receipts payable to Trustee**

Unless otherwise expressly provided in this Deed, all moneys and property of every description payable to or receivable in respect of a Division shall be held by the Trustee.

### **7.7 Income Entitlement**

#### **7.7.1 Participant's Income Entitlement**

The Trustee must on each Distribution Date, determine the Income Entitlement of each Participant in respect of the relevant Income Entitlement Period.

#### **7.7.2 Determination of Income Entitlement**

The Income Entitlement of a Participant must be:

$$Y - E$$

Where:

"Y" = the total of all interest received or accrued from any source, all dividends and rent and all earnings and other gains received or receivable during the Income Entitlement Period in respect of the Authorised Investments made in respect of the Participant ("**the Participant's Investments**") and realised gains and losses and unrealised gains and losses on the Participant's Investments (calculated having regard to the valuations made pursuant to Clause 7.1); and

“E” = the amount of any of the Expenses of the Division to which the Participant has been admitted incurred during the Income Entitlement Period which in the opinion of the Trustee should be deducted and/or any other charges not credited to the Expense Reserve Account maintained in respect of the relevant Division including without limiting the generality of the foregoing:

- (a) all costs and expenses incurred in repairing and maintaining the Participant’s Investments;
- (b) if the Trustee so determines, depreciation of the Participant’s Investments at rates to be determined by the Trustee;
- (c) any amount considered necessary to provide for the amortisation of the cost of any Participant’s Investment which is leasehold property;
- (d) all costs, charges, expenses, duties outgoing and disbursements properly incurred in connection with the Participant’s Investments or the administration thereof for the particular distribution period and chargeable against income; and
- (e) such other contingencies as in the opinion of the Trustee are necessary to be brought to account in order that the income for the particular distribution period may fairly represent the results of the Participant’s Investments for that period.

Provided that where the money standing to the credit from time to time of a Participant’s Participant Account is invested in an Investment Pool, then the Income Entitlement of the Participant will be calculated by the Trustee in accordance with the valuation procedure settled in respect of the Investment Pool.

## **7.8 Income or capital**

If any question shall arise as to whether any money or property constitutes income or not or whether any expenditure is chargeable against income or not, such question shall be determined by the Auditor having regard to the terms of this Deed, to current accounting practice and any other matters the Auditor considers relevant and every such determination expressed in writing shall be final.

## **7.9 Crediting or debiting of Income Entitlement**

The Income Entitlement determined in respect of a Participant must as soon as practicable after its determination be credited to that Participant’s Participants Account.

## **PART 8 – REGISTERS**

### **8.1 Registers of Participants**

#### **8.1.1 Trustee to keep Register of Participants**

The Trustee will keep and maintain a Register of Participants.

#### **8.1.2 Details to be entered on Register of Participants**

The Trustee will enter in the Register of Participants:

- (a) The name, current residential address and business address (where applicable) and date of birth (where applicable) of each Participant as notified by the relevant Participant together with the Participant's participation number;
- (b) The Division to which the Participant has been admitted;
- (c) The date on which the name of every person was entered in the Register as a Participant;
- (d) The balance standing from time to time to the credit of the Participant's Participants Account;
- (e) The date on which any person ceased to be a Participant;
- (f) The date on which the Participant's beneficial interest in the Division was paid out;
- (g) The amount of any sums transferred pursuant to Clause 3.3.1;
- (h) Such further information as the Trustee thinks fit;

Provided that for such purposes as aforesaid the Trustee shall have power to correct any manifest error in the Register.

#### **8.1.3 Change of name or address to be notified**

Any change of name or address of any Participant shall be forthwith notified to the Trustee in writing or in a manner acceptable to the Trustee who must upon proof thereof to the satisfaction of the Trustee alter the Register of Participants accordingly.

#### **8.1.4 Audit at twelve monthly intervals**

The Trustee must cause the Register of Participants to be audited by the Auditor at intervals of not more than twelve (12) Months.

## **8.2 Trustee's Register of Members**

### **8.2.1 Trustee to keep Register of Members**

The Trustee will keep and maintain in respect of each Division I Participant whose Employees have been admitted to Division I a register of Members (“**the Register of Members**”).

### **8.2.2 Details to be entered on Register of Members**

The Trustee will enter in each Register of Members maintained by the Trustee:

- (a) the name, current residential address and date of birth of each Member;
- (b) The date on which the name of the Member was entered in the Register as a Member;
- (c) The balance standing from time to time to the credit of the Member's Nominated Accounts;
- (d) The date on which the Member's beneficial interest in Division I was paid out;
- (e) The date on which the Member ceased to be employed by the Division I Participant whether by way of retirement or death or otherwise;
- (f) Such further information as the Division I Participants thinks fit.

### **8.2.3 Change of name or address to be notified**

Any change of name or address of any Member and such other details as the Trustee may from time to time request shall be forthwith notified by the Division I Participant in respect of whom the Register of Members has been established by the Trustee to the Trustee who must upon proof thereof to the satisfaction of the Trustee alter the Register of Members accordingly.

### **8.2.4 Audit at twelve monthly intervals**

The Trustee must cause the Register of Members to be audited by the Auditor at intervals of not more than twelve (12) Months.

## **8.3 No notice of trust**

No notice of any trust express, implied or constructive shall be entered upon a Register except where by law required.

## **PART 9 – THE TRUSTEE**

### **9.1 Trustee must be a Constitutional Corporation**

Each Division must be administered by a sole Trustee which is:

- (a) a Constitutional Corporation; and

(b) an Approved Trustee in respect of the Division.

## **9.2 Trustee must not be a Disqualified Person**

The Trustee can not act if it is a Disqualified Person.

## **9.3 Covenants by Trustee**

The Trustee covenants with the intent that the benefit of such covenants shall enure to the Participants jointly and to each of them severally that:

### **9.3.1 To act honestly**

The Trustee will act honestly in all matters concerning a Division.

### **9.3.2 To exercise due care, skill and diligence**

The Trustee will exercise, in all matters affecting a Division, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with the property of another for whom the person felt morally bound to provide.

### **9.3.3 Functions and powers to be exercised in the best interests of Participants and Members**

The Trustee will perform its functions and exercise its duties and powers under this Deed in the best interests of all the Participants and Members and not in the interests of the Trustee if those interests are not the same as those of the Participants and Members generally.

### **9.3.4 To keep money and assets separate**

The Trustee will keep the money and assets of a Division separate from any money and assets, respectively that are held by the Trustee personally.

### **9.3.5 Not to prevent Trustee from performing functions and powers**

The Trustee will not enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers in respect of a Division.

### **9.3.6 To formulate prudential management strategy for any reserves**

The Trustee will, if there are any reserves of a Division, formulate and give effect to a strategy for the prudential management of any such reserve, consistent with a Division's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due.

### **9.3.7 To provide prescribed information**

The Trustee will give to each:

- (a) prospective Participant and Member;
- (b) new Participant and Member;

- (c) Participant and Member;
- (d) terminating Participant and Member; and
- (e) interested person,

within the Prescribed Period the information required by the Operational Standards to be given to that person.

#### **9.3.8 To provide requested information to Commissioner**

The Trustee will:

- (a) produce to the Commissioner when required by the Commissioner any books relating to a Division;
- (b) provide to the Commissioner such written information about matters relating to the affairs of a Division when the Commissioner requires that information.

#### **9.3.9 To notify Commissioner of a Significant Adverse Event**

The Trustee will on becoming aware of the occurrence of an event having a Significant Adverse Effect on the financial position of a Division give within the Prescribed Period written notice of the event to the Commissioner setting out particulars of the event.

#### **9.3.10 Not to admit Applicant unless Application received**

The Trustee will not admit an Applicant to participation of a Division except pursuant to an Application made to the Trustee by the Applicant.

#### **9.3.11 To ensure costs are reasonable and proper**

The Trustee will ensure that the costs, charges and expenses of a Division in respect of which a payment is made are reasonably and properly incurred.

#### **9.3.12 Commission or brokerage payable only to certain persons**

The Trustee will not pay commission or brokerage in relation to the acceptance of Applications in relation to a Division to a person unless the person:

- (a) is the holder of a Dealers Licence; or
- (b) is the holder of a Proper Authority; or
- (c) is an Exempt Dealer; or
- (d) is:
  - (i) the holder of an investment advisers licence granted under Part 7.3 of the Corporations Law or a corresponding law; or

- (ii) an accountant or a solicitor, an employee of an accountant or solicitor, a company providing accountancy or legal service or a director or employee of a company or a partner in, or an employee of, a firm of accountants or solicitors whose principal business is not the giving of advice about securities;

and the person has stated in writing that the total amount of the brokerage or commission will be rebated to the Applicant;

- (e) a registered insurance broker within the meaning of the Insurance (Agents & Brokers) Act 1984; or
- (f) a Life Insurance Company.

### **9.3.13 To keep separate accounts of commission or brokerage paid**

The Trustee will keep a separate account of any amounts that are applied directly or indirectly in payment of commission or brokerage to a person in consideration of that person's admission to a Division or procuring or agreeing to procure Applications, whether absolute or conditional, for admission to membership of a Division provided that:

- (a) such commission or brokerage shall only be paid in accordance with the terms of this Deed;
- (b) the amount of or rate at which the payment is made is as disclosed in the Disclosure Document in respect of which the Application is made; and
- (c) the person to whom payment is made receives a commission or brokerage only in respect of the Applications which that person has procured.

### **9.4 Removal of Trustee**

The Trustee will, subject to the Operational Standards, be removed from office:

- (a) if the Trustee is suspended or removed by the Commissioner because:
  - (i) the Trustee is a Disqualified Person;
  - (ii) it appears to the Commissioner that conduct that has been, is being, or is proposed to be, engaged in by the Trustee may result in the financial position of a Division or of any other superannuation entity becoming unsatisfactory; or
  - (iii) the Commissioner revokes the status of the Trustee as an Approved Trustee in respect of a Division;
- (b) if the Participants resolve by Extraordinary Resolution at a duly convened meeting of Participants that the Trustee should be removed;
- (c) if the Trustee resigns from office by notice in writing to the Participants of a Division.

## **9.5 Right of Appointment of New Trustee**

### **9.5.1 Removal or suspension by the Commissioner**

- (c) If the Commissioner suspends the Trustee, the Commissioner will appoint a Constitutional Corporation as acting Trustee during the period of suspension.
- (d) If the Commissioner removes the Trustee, the Trustee must by deed retire from office and appoint in its stead the Constitutional Corporation approved by an Ordinary Resolution of the Participants for the purpose and by the Commissioner to be an Approved Trustee for the purpose.

### **9.5.2 Removal by Participants**

If the Participants by Extraordinary Resolution resolve that the Trustee should be removed from office the Trustee must by deed retire from office and appoint in its stead the Constitutional Corporation approved by an Ordinary Resolution of the Participants for the purpose and by the Commissioner to be an Approved Trustee for the purpose.

### **9.5.3 Resignation**

If the Trustee resigns from office by notice in writing to the Participants the Trustee shall on the expiration of the notice period by deed retire from office and appoint on its stead a Constitutional Corporation nominated by it and approved by the Commissioner to be an Approved Trustee for the purpose.

## **9.6 Vesting Plan in New Trustee**

The Trustee must on its removal or retirement as trustee of a Division transfer or cause the Assets of the Division to be transferred to the new trustee as is appointed pursuant to Clause 9.5 and deliver to the new trustee all books, documents records and other property whatsoever relating to the Division. The costs and expenses incidental to this are an Expense of the Division.

## **9.7 Covenants by New Trustee**

Every new Trustee appointed pursuant to Clause 9.5 must execute forthwith upon its appointment a deed whereby the new Trustee undertakes to be bound by all the covenants and obligations on the part of the Trustee in this Deed from the date of such appointment and from that date the retiring Trustee will be absolved and released from all covenants and obligations under this Deed, save in respect to any antecedent breach hereof, and the Trustee will have and may exercise all the powers and the rights and will be subject to all the covenants and obligations of the Trustee hereunder in all respects as fully as though such new Trustee had been originally named as a party to this Deed.

## **9.8 Delay in appointment not fatal**

A delay in the appointment of a Trustee will not invalidate that appointment.



## **9.9 Validity of acts and determinations**

Any act or determination of a Trustee is valid notwithstanding any defect in the Trustee's appointment.

## **9.10 Change of name of Plan**

The Trustee, upon its retirement or removal as Trustee of a Division may require the new trustee to take any steps which are necessary to change the name of the relevant Division to a name which does not include the current name of the Trustee and is not substantially or deceptively similar to that name or any former name of the Trustee.

# **PART 10 – POLICY COMMITTEE**

## **10.1 Establishment of Policy Committees**

The Trustee must:

- (a) in the circumstances where the Operational Standards require the same, take all reasonable steps to ensure that at least one Policy Committee is established for each Group of Standard Employer-Sponsored Members of a Division or Sub-Plan (“**the Fund**”) as is required by the Operational Standards; or
- (b) in the circumstances where the Operational Standards do not require a Policy Committee to be established or continue to be maintained for a Group of Standard Employer-Sponsored Members of a Sub-Plan and the Members of the Sub-Plan are not permitted to make Option Nominations and give Investment Authorities, determine whether it is appropriate to establish a Policy Committee for each Sub-Plan and if the Trustee so determines it appropriate take all reasonable steps to ensure a Policy Committee or Committees are established.

## **10.2 Composition of Policy Committee**

The composition of each Policy Committee and the manner in which its members are appointed, retired and removed must be determined by the Trustee having regard to the particular circumstances and the Operational Standards generally.

## **10.3 Function of the Policy Committee**

### **10.3.1 Permitted functions**

The functions that each Policy Committee may undertake include the following:

- (a) providing an avenue:
  - (i) for each Group of Standard Employer-Sponsored Members of the Fund to enquire about the investment strategy and performance of the Fund;

- (ii) for the Trustee to obtain the views of each Group of Standard Employer-Sponsored Members of the Fund concerning that strategy and performance;
- (b) providing an avenue for each Group of Standard Employer-Sponsored Members of a Fund to enquire about the Fund's operational performance;
- (c) providing an avenue for the Trustee to obtain the views of each Group of Standard Employer-Sponsored Members of a Fund concerning the Fund's operational performance;
- (d) providing an avenue for the Trustee to obtain the views of each Group of Standard Employer-Sponsored Members of a Fund on their information needs;
- (e) assisting the Trustee in dealing with complaints or enquiries about the operation of management of a Fund in which there are Groups of Standard Employer-Sponsored Members.

### **10.3.2 Trustee's functions not limited**

Clause 10.3.1 is not to be taken as limiting by implications the functions and responsibilities of the Trustee.

### **10.4 Meetings and facilities**

The Trustee must:

- (a) ensure, so far as practicable, that a Policy Committee meets at least once in any financial year;
- (b) provide facilities that are reasonably necessary to enable a Policy Committee to meet and to function effectively.

### **10.5 Conduct of meetings**

A Policy Committee may establish such rules as it determines in relation to the holding and conduct of its meetings. A Policy Committee meeting may be held wholly or in part by means of a telephone conference connection.

### **10.6 Trustee to ensure a representative present**

The Trustee must arrange for a representative of the Trustee to attend each meeting of a Policy Committee where the Policy Committee requests the Trustee to do so.

### **10.7 Expenses of Policy Committee**

The Trustee may debit the Participants Account maintained in respect of the Participant in respect of whom the Policy Committee has been established:

- (a) the costs of providing facilities for the Policy Committee to meet;

- (b) the costs incurred by the Trustee in attending a meeting of the Policy Committee; and
- (c) the costs incurred by the Trustee in providing information to the Policy Committee.

#### **10.8 Dissolution of Policy Committee**

A Policy Committee may dissolve itself. If it does this the Trustee is taken to have complied with the Trustee's duties to establish a Policy Committee under this Part 10 and under the Operational Standards. Where however a Policy Committee dissolves itself and at least five Employer-Sponsored Members in respect of whom the Policy Committee functioned, requests the Trustee in writing to form a replacement Policy Committee, the Trustee must take all reasonable steps to do so. The earlier provisions of this Part 10 apply to any such replacement Policy Committee.

### **PART 11 – MANAGEMENT, POWERS AND RESPONSIBILITY**

#### **11.1 Trustee to manage each Division**

Subject to the provisions of this Deed, the Trustee must manage each Division for the benefit of the Participants and Members with full and complete powers of management.

#### **11.2 Trustee to use best endeavours to protect Investments**

The Trustee, itself or by its agent or delegate, must manage and supervise all the Authorised Investments made in respect of a Division. It shall use its best endeavours to ensure that all those Investments are kept secure, that all valid notices from and requirements of the relevant authorities in relation thereto are observed and complied with and that they are dealt with in the best interests of the Participants of that Division.

#### **11.3 Trustee to have powers of absolute owner**

Subject to the provisions of this Deed the Trustee has all the powers over and in respect of the property and Assets of each Division which it could exercise if it were the absolute and beneficial owner thereof.

#### **11.4 Trustee can rely on advice**

The Trustee may act upon the opinion, advice or information obtained from barristers and solicitors instructed by the Trustee. The Trustee may also act upon statements or information sought by it from bankers, accountants, actuaries, brokers, valuers or other persons believed by the Trustee in good faith and upon reasonable grounds to be expert in relation to the matters upon which they are consulted.

#### **11.5 Trustee powers**

Without in any way affecting the generality of Clause 11.3, the Trustee may take such action and do such things as it determines necessary to administer the Divisions and to comply with the Operational Standards including:

- (a) making an irrevocable election to become a Regulated Superannuation Fund where appropriate;
- (b) purchasing and selling for Cash or upon terms any Investment and investment of the proceeds of any sale of Investment;
- (c) leasing and accepting surrenders of leases (or agreeing so to do) with power to compromise with lessees and others;
- (d) executing and paying for repairs and improvements;
- (e) instituting, prosecuting, compromising and defending legal proceedings to secure compliance with the terms of this Deed and any Disclosure Document issued in respect of this Deed or to recover any loss suffered by Participants or Members in respect of their investment under this Deed;
- (f) maintaining reserves in respect of a Division;
- (g) attending and voting at meetings;
- (h) paying all outgoings reasonably and properly incurred in connection with a Division or this Deed;
- (i) subject to Clause 6, lending money whether with or without security or interest and on such terms as it determines;
- (j) developing, improving, subdividing, building, rebuilding, altering, extending, replacing, repairing, managing, operating, leasing and otherwise dealing with any Investment and purchasing such plant, equipment and fittings as are necessary having regard to the purposes for which an Investment is from time to time being used or intended to be used;
- (k) entering into performing and enforcing agreements;
- (l) drawing, endorsing, discounting, selling, purchasing and otherwise dealing with bills of exchange either alone or jointly and in particular commercial bills;
- (m) entering into agreements with joint or co-owners of assets an interest in which constitutes an Authorised Investment for the time being held on behalf of a Division for such purposes as the Trustee may consider conducive to the interests of a Division and the relevant Participants or Members;
- (n) setting aside out of the capital and income of each Division such moneys as shall be required to meet the obligations of the Trustee under this Deed;
- (o) paying Benefits;
- (p) borrowing:
  - (i) for any of the purposes;
  - (ii) to the extent; and

(iii) for the term

permitted under the Operational Standards, and giving security for any such borrowing or in any of the Assets of a Division;

- (q) opening Financial Institution accounts and operating on those accounts;
- (r) settling, compromising or submitting to arbitration any claims, matters or things relating to this Deed;
- (s) preparing or causing to be prepared or sending or causing to be sent such reports, statements, notices and other documents to such persons as may be required or permitted under this Deed or the Operational Standards, are generally doing all things necessary or expedient for the performance of the Trustee's covenants under this Deed;
- (t) electing to be bound by any legislation, including the Act;
- (u) retaining the services of professional or other advisers in relation to the management and administration of a Division and paying out of the fund all expenses of and incidental to the management and administration of the Plan including the payment of fees to the advisers;
- (v) paying any levies imposed under the Superannuation (Financial Assistance Funding) Levy Act 1993;
- (w) where a Division has a liability to pay a pension or annuity to any person, the Trustee may segregate such of the Assets of the Division as it determines from time to time as being held in respect of the aggregate liability of the Division for all such pensions and annuities;
- (x) doing anything necessary or convenient to comply with or give effect to the Superannuation (Government Co-contribution for Low Income Earners) Act 2003;
- (y) doing such other things as may appear to the Trustee to be incidental to any or all of the above powers.

The powers, authorities and discretions conferred on the Trustee by this Deed are in addition to any powers, authorities and discretions conferred by any statute upon the Trustee, and nothing in this Deed limits any such powers, authorities and discretions.

## **11.6 Delegation of Trustee powers**

### **11.6.1 Power to delegate**

The Trustee may delegate any functions, authorities, discretions or powers exercisable by the Trustee (including a power which the Trustee has a duty to exercise) to any person upon such terms and conditions as it determines. The Trustee may:

- (a) revoke any delegation;
- (b) exercise any delegated function, authority, discretion or power itself concurrently with or to the permanent or temporary exclusion of a delegate,

provided always that the Trustee must consent to the exercise of any discretion it has delegated pursuant to this Clause 11.6.

#### **11.6.2 Trustee liable for delegate**

The Trustee will remain liable for any act or omission of any such delegate as if such act or omission were the Trustee's own act or omission.

#### **11.6.3 Trustee responsible for delegate's fees and expenses**

The Trustee is responsible for payment of the fees and expenses of any delegate appointed under Clause 11.6.1.

### **11.7 Arrangements with Investment Managers**

#### **11.7.1 Appointment of Investment Manager**

The Trustee may appoint a body corporate as an investment manager of a Division. The body corporate may be appointed to act as the only investment manager of the Division or to act as one of a number of investment managers of the Division.

#### **11.7.2 Disqualified Person can not act as Investment Manager**

A body corporate can not be appointed as an Investment Manager to manage the underlying Investments of an Investment Option of a Division if the body corporate is a Disqualified Person.

#### **11.7.3 Appointment must be in writing**

An Investment Manager must be appointed in writing.

#### **11.7.4 Terms and conditions of appointment**

The terms and conditions of the appointment of an Investment Manager must:

- (a) identify the matters to which the Investment Manager will be required to attend;
- (b) contain adequate provision to enable the Trustee to require the Investment Manager from time to time:
  - (i) to provide appropriate information as to the making of, and return on, the investments under management; and
  - (ii) to provide such information as is necessary to enable the Trustee to assess the capability of the Investment Manager to manage the investments under management;

- (c) provide that the appointment is subject to the following terms and conditions:
  - (i) the only investments which can be made on behalf of the Division are those which are Authorised Investments;
  - (ii) any investment shall be subject to the restrictions, mutatis, mutandis, set out in Part 6;
  - (iii) the Investment Manager must assume such of those rights and obligations contained and imposed on the Trustee pursuant to Part 6 as are delegated to the Investment Manager by the Trustee;
  - (iv) no Investment can be made by the Investment Manager unless the Trustee or the Custodian is registered as the holder, or the Investment Manager holds as the nominee of the Trustee, of all Cash and assets deposited, lodged or placed with the Investment Manager and of any investments made from the proceeds of such Cash or assets;
  - (v) the Investment Manager's discretion is subject always to the terms and conditions of its appointment;
- (d) not purport to except the Investment Manager from liability for negligence, or to limit that liability;
- (e) confirm the fee which the Investment Manager is to receive in respect of the provision of its services;
- (f) confirm the term of the appointment.

#### **11.7.5 Investment Manager can manage Investments under management**

Subject always to the duties of the Trustee set out in Clause 10.5, nothing in this Deed prohibits the Trustee from accepting the advice of an Investment Manager to invest the Assets of the Division in Investments of which the Investment Manager is the Manager or the trustee.

#### **11.7.6 Investment Manager's fee**

The fees of any Investment Manager must be fixed by the Trustee and shall be payable out of the Assets of the Division in respect of which the Investment Manager has been appointed and debited against the Expense Reserve Account of that Division.

### **11.8 Arrangements with Administrators**

#### **11.8.1 Appointment of Administrator**

The Trustee may appoint an entity to administer a Division.

### **11.8.2 Appointment must be in writing**

The Administrator of a Division must be appointed in writing.

### **11.8.3 Terms and conditions of appointment**

The terms and conditions of the appointment of the Administrator must:

- (a) identify the matters to which the Administrator will be required to attend;
- (b) confirm the fee which the Administrator is to receive in respect of the provision of its services;
- (c) confirm the term of appointment.

### **11.8.4 Administrator's fee**

Where an Administrator is appointed to perform any of the roles or functions previously carried out by the Trustee pursuant to this Deed or to perform any of the roles or functions previously carried out by the Trustee as manager to the Division of which the Trustee is remunerated pursuant to Clause 13.1, then the Trustee is liable to pay the fee due to the Administrator pursuant to its appointment out of the remuneration received by the Trustee pursuant to Clause 13.1 and the fee is not an Expense of the Division in respect of which the Administrator has been appointed. Where that is not the case, the fees shall be payable out of the Assets of the Division in respect of which the Administrator has been appointed and debited against the Expense Reserve Account of that Division.

### **11.8.5 Provision of Information to Administrator**

An Employer of a Member must provide to the Administrator such information as is required by the Administrator for it to properly discharge its functions.

## **11.9 Arrangements with Custodian**

### **11.9.1 Appointment of Custodian**

The Trustee may appoint a body corporate as the Custodian of a Division to receive, hold and retain registration of the Investments of the Division in the name of the Trustee or, with the approval of the Trustee, in the name of the Custodian as nominee for the Trustee and which is a body corporate which:

- (a) is independent of the Trustee;
- (b) carries on in any jurisdiction in which it is to be appointed so to act as its principal business the business of banking or the provision of trustee services;
- (c) agrees irrevocably to submit to the non-exclusive jurisdiction of the courts of competent jurisdiction in the State of New South Wales in respect of all matters relating to its appointment; and



- (d) is eligible for appointment under the Operational Standards.

### **11.9.2 Appointment must be in writing**

The Custodian of the Trustee must be appointed in writing.

### **11.9.3 Function of Custodian**

A body corporate appointed as a Custodian may be appointed to perform the following actions in the name of the Trustee or at the direction of the Trustee in its own name or in a name nominated by the Custodian and approved by the Trustee as nominee for the Trustee:

- (a) purchase or sell in a country in which the Custodian is resident at the direction of the Trustee, Authorised Investments and execute all transfers and assurances necessary for such purpose;
- (b) receive and hold on behalf of the Trustee, any Authorised Investments and any document of title thereto in safe custody in the country of purchase;
- (c) procure registration of such Authorised Investments in registrable form;
- (d) procure safe custody of such Authorised Investments in bearer form by a recognised clearing system nominated by the Custodian;
- (e) receive hold and disburse moneys in the name of the Trustee at the direction of the Trustee; and
- (f) to perform all actions incidental to any of the foregoing powers.

### **11.9.4 Responsibility**

The Trustee may by the terms of any appointment of a Custodian insert such provisions for the protection and convenience of those dealing with any such Custodian as thinks fit provided that notwithstanding any such appointment the Trustee shall remain liable for any act or omission of any Custodian as if any such act or omission was an act or omission of the Trustee. The Trustee shall be responsible for the payment of the fees and expenses of such Custodian but shall be entitled to be reimbursed in respect of any such fees and expenses out of the Expense Reserve Account as an Expense of the Division.

## **11.10 Insurance**

### **11.10.1 Insurance policies**

The Trustee may:

- (a) effect any policy or policies of insurance it considers necessary or desirable to provide for all or any part of the Benefits payable from a Division, on such terms and conditions and for such periods as the Trustee determines “**the Insured Benefit**”);

- (b) accept an assignment of a policy of insurance on such terms as the Trustee determines;
- (c) discontinue or surrender a policy of insurance at any time.

and must insure and keep insured or cause to be insured and kept insured in the name of the Trustee on a replacement or reinstatement basis or for such amounts as may from time to time be determined by the Trustee with such insurance company (which may not be an insurance company related to the Trustee) (“**the Insurer**”) as may be determined by the Trustee, the Investments which are of a nature or kind capable of being insured against fire and such other risk (including loss of rents for not less than 1 year) as the Trustee may deem prudent.

#### **11.10.2 Group policies**

The Trustee may effect or acquire a policy of insurance which relates to more than one Participant or Member.

#### **11.10.3 Reduction for Benefits not paid by insurer**

- (a) Where the Insurer refuses to underwrite a Participant’s or Member’s Insured Benefit for the amount the Trustee requests or refuses to do so on terms acceptable to the Trustee as to premiums or otherwise, the Trustee may modify the level of Benefits payable in respect of that Member to reflect the extent to which the level of insurance requested is not available unless the Participant, the Member or the Member’s Employer agrees to pay any additional premiums required to insure the amount the Trustee requested.
- (b) Where the Insurer, having underwritten a Participant’s or Member’s Insured Benefit for the amount the Trustee requests, refuses to pay any part of the Insured Benefit on the Participant or Member becoming entitled to a Benefit under this Deed for which the insurance was taken out, the Trustee may reduce the amount of the Benefit payable to or in respect of the Participant or Member to reflect the amount the Insurer refuses to pay.

#### **11.10.4 Modification of death and Total and Permanent Disablement Benefits**

The Trustee may modify the Benefits payable from a Division in respect of a Participant or Member on the Participant’s or Member’s death or Total and Permanent Disablement if any part of the insurance covering that Participant or Member’s Insured Benefit is not effected at first class rates of premium, to the extent necessary to reflect the higher premium rate.

#### **11.10.5 Notification**

The Trustee must notify a Participant or Member and the Division I Participant in respect of whom the Member has been admitted of any adjustment, reduction or modification of the Participant’s or Member’s Insured Benefit under this Clause 11.10.

Should the Trustee act in respect of a Division which is a Regulated Superannuation Fund, the Trustee may, in respect of any Financial Year give notice to the trustee of a Pooled Superannuation Trust, or a Life Insurance Company or Registered Organisation of its intention to give a notice to the Commissioner of

Taxation under section 275(1) of the Tax Act stating that section 275 applies to the Trustee and stating the amount to be included in the assessable income of a Pooled Superannuation Trust, the Life Insurance Company or Registered Organisation in respect of the Financial Year concerned, and where the trustee of a other Pooled Superannuation Trust, the Life Insurance Company or the Registered Organisation as the case may be, gives its consent to the same, give a notice in writing to the Commissioner of Taxation to that effect.

## **PART 12 – TRUSTEE’S INDEMNITIES**

### **12.1 Effect of Indemnities**

The indemnities given to the Trustee in this Part 12:

- (a) are without prejudice to any indemnity allowed by law or elsewhere in this Deed given to the Trustee;
- (b) must be read and construed and take effect subject to the covenants in this Deed on the parts of the Trustee and in particular in Clause 9.3.2; and
- (c) must each be read and construed and take effect subject to the provisions of Clause 12.16.

### **12.2 Limitation of indemnities**

The indemnities given to the Trustee in this Part 12 only take effect subject to the limitations in Clause 12.17.

### **12.3 Trustee’s indemnity for legal fees**

The Trustee will be indemnified out of a Division from and against any expense and liability that may be incurred in prosecuting, defending or intervening in any action or suit in respect of the provisions of this Deed in respect of the Division.

### **12.4 No liability for performance of or failure to perform legally restrained acts**

The Trustee will not incur any liability to anyone in respect of doing or performing or failing to do or perform any act or thing which, by reason of any provision of any present or future law of the Commonwealth of Australia or any State or Territory thereof or any ordinance rule regulation or by-law made pursuant thereto or of any decree order or judgment of any court of competent jurisdiction the Trustee is required to do or perform or is hindered prevented or forbidden from doing or performing.

#### **12.5 No liability for reliance in good faith on information provided**

The Trustee will not incur any liability to anyone in consequence of the Trustee relying in good faith on information provided to the Trustee by any Participant or Member or any other person on behalf of a Participant or Member which proves to be incorrect.

#### **12.6 No liability for Taxes paid**

The Trustee is not liable to account to Participants or Members or their Dependants or the Legal Personal Representative of a Participant or Member for any payments made by the Trustee in good faith to any duly empowered fiscal authority for Taxes made upon or in respect of a Division or with respect to any transaction hereunder, notwithstanding that any such payment ought or need not have been made.

#### **12.7 Trustee's advisers**

The Trustee may act upon the opinion, advice of or information obtained from barristers or solicitors being persons independent of the Trustee and instructed by the Trustee and upon any statement of or information obtained from any bankers, accountants or other persons appointed by the Trustee being persons independent of the Trustee and believed by the Trustee in good faith to be expert in relation to the matters upon which they are consulted and the Trustee is not liable for anything done or suffered by it in good faith in reliance upon any such opinion advice statement or information.

#### **12.8 Trustee not responsible for adviser's mistake**

The Trustee is not responsible for any misconduct, mistake, oversight, error of judgment, forgetfulness or want of prudence on the part of any Auditor, Actuary, Approved Valuer, Investment Manager, Custodian, Administrator, attorney, banker, receiver, receiver and manager, barrister, solicitor, agent or other person acting hereunder as agent or adviser of the Trustee.

#### **12.9 Trustee may rely on documents etc**

The Trustee is not liable for any action taken or thing suffered by the Trustee in reliance upon any notice, resolution, direction, consent, certificate, receipt, affidavit, statement, holding out certificate for stock, plan or re-organisation, application or other paper or document reasonably believed by the Trustee to be genuine and to have been possessed produced passed signed or endorsed by the proper parties where liability but for this indemnity would attach by reason solely that such paper or document was not, in fact, genuine or so possessed produced passed signed or endorsed.

#### **12.10 Trustee's discretion subject to this Deed**

Except insofar as otherwise expressly provided in this Deed, the Trustee has as regards all the trusts powers authorities and discretions vested in it by this Deed an absolute and uncontrolled discretion as to the exercise thereof in relation to the manner mode and time for the exercise thereof.

#### **12.11 Trustee's liability limited to Assets held by it**

In no event will the Trustee be bound to make any payment to Participants or Members or their Dependants or the Legal Personal Representatives of Participants or Members except out of the Division to which those Participants or Members have been admitted or be liable to Participants or Members or their Legal Personal Representatives to any greater extent than the Assets of the Division in respect of the Participant or Member vested in or received by the Trustee in accordance with this Deed.

#### **12.12 Trustee indemnified for investments with liabilities**

Should the Trustee purchase or otherwise acquire any Authorised Investment in regard to which there is a liability, the Trustee has a right of indemnity out of a Division in respect of that liability.

#### **12.13 No liability for failure of Corporation**

In the event of the liquidation or dissolution of any Corporation whereupon, or if for any other reason, it becomes impossible or impractical to carry out the provisions of this Deed in respect of such Corporation or otherwise, the Trustee shall not be under any liability therefor or thereby incur any liability by reason of any error of law or any matter or thing done or suffered or omitted to be done by it in good faith hereunder.

#### **12.14 No liability for duties and charges**

The Trustee is not required to effect any transaction or deal with any part of the Investments on behalf of or for the benefit or at the request of any Participant or Member unless such Participant or Member shall first have paid in Cash or otherwise provided to the Trustee's satisfaction for all duties, Taxes, governmental charges, brokerage, transfer fees, registration fees and other charges (whether similar to the foregoing or not and including, without limitation, all financial institutions duties, debits taxes, land taxes and income and capital gains taxes) and whether in respect of the relative part of the Investments or otherwise (herein called collectively "duties and charges") which may have become or may be payable in respect of or prior to or upon the occasion of such transaction or dealing provided always that the Trustee shall be entitled if it so thinks fit to pay and discharge all or any of such duties and charges on behalf of the Participant or Member and to retain the amount so paid out of any moneys or property to which such Participant or Member may be or become entitled hereunder.

#### **12.15 Trustee's indemnity to be from Division**

In the event that the Trustee has incurred a liability as Trustee and the Trustee is entitled under the terms of this Deed or otherwise as allowed by law to be indemnified in respect of such liability out of a Division, the Trustee may claim such indemnity from the relevant Division but the Trustee is not entitled to be indemnified in respect of that liability by any Participant or Member unless by a separate agreement with that Participant or Member.

## **12.16 Trustee's duties, remedies etc not limited**

Nothing in this Deed limits the Trustee's duties stated in Clause 9 or restricts or prevents any determination as to whether there has been a breach of trust or affects the exclusive operation of the provisions of any statute prescribing the circumstances under which the Trustee may obtain relief from a breach of trust.

## **12.17 Indemnities limited**

Nothing in this Deed and in particular this Part 12 exempts the Trustee from liability for or indemnifies the Trustee against:

- (a) a breach of trust in respect of a Division where the Trustee:
  - (i) failed to act honestly in a matter concerning the Division; or
  - (ii) intentionally or recklessly failed to exercise in relation to a matter affecting the Division, the degree of care and diligence that the Trustee was required to exercise; or
- (b) a monetary penalty under a Civil Penalty Order.

References in this Part 12 to the Trustee include directors of the Trustee acting in that capacity.

## **PART 13 – REMUNERATION AND EXPENSES**

### **13.1 Remuneration of Trustee**

#### **13.1.1 Trustee's fee**

The Trustee may pay itself out of the Assets of each Division in respect of which it acts as Trustee and debit against the Expense Reserve Account maintained in respect of that Division by way of remuneration for its services a fee of an amount of up to five point ten percent (5.10%) per annum of the Net Value of the Assets of the Division, calculated on each Business Day in respect of that Business Day and any following day which is not a Business Day and payable on each Business Day or at such other times as determined by the Trustee provided that the Trustee may reduce the percentage referred to above where such:

- (a) reduced percentage is objectively ascertainable from the current Disclosure Document (if any) offering participation in the Division and such reduced percentage is applied to all Participants Accounts maintained in respect of the Participants of the Division during the currency of the Disclosure Document or for the specified period that may be provided in the Disclosure Document as to the application of such reduced percentage; or
- (b) the Trustee has agreed with a particular Participant in writing, having regard to the details of the Participant's participation, to such reduced percentage.

### **13.1.2 Service fee**

In addition to the fee referred to in clause 13.1.1, the Trustee shall be entitled to receive within fourteen (14) days of the last day of each month out of the income of each Division in respect of which it acts as Trustee and to debit against the Expense Reserve Account maintained in respect of that Division by way of further remuneration for its services a fee equal to the total amount of the Contribution Charges credited to the relevant Expense Reserve Account during the relevant month ("the Service Fee").

### **13.2 Commission and brokerage**

The Trustee must pay out that part of its remuneration which represents the Contribution Charges any commission or brokerage payable in respect of an application or agreement to procure applications for participation in a Division.

### **13.3 Reimbursement of Expenses**

In addition to the remuneration of the Trustee as aforesaid and the rights to indemnification or reimbursement conferred under any other provision of this Deed or by law, the Trustee shall be entitled to be reimbursed out of each Expense Reserve Account maintained in respect of a Division in respect of which the Trustee acts (or if this be insufficient out of any trust moneys in its hands held on account of the relevant Division) the Expenses of the relevant Division provided that in the event there is insufficient Cash available to the Trustee to discharge the Expenses of the relevant Division and payment is required to be made, the Trustee shall be entitled to sell or realise out of the relevant Division such Investments as it considers necessary to enable the Trustee to meet the said Expenses and make payment and to apply the proceeds of sale or realisation in meeting such Expenses and making payment as aforesaid.

### **13.4 Investment Charge**

The Trustee may from time to time levy a Participant admitted to a Division after 1 July 1994 with such fee as the Trustee and the Participant may agree in writing before the investment or further investment of moneys on behalf of the Participant and thereafter credit the amount of the fee to the Expense Reserve Account maintained in respect of the Division to which the Participant has been admitted provided that such fee shall not exceed five percent (5%) per annum of the value of the Investments being made in respect of the Participant.

### **13.5 Administration Charge**

The Trustee may debit from each Participant's Participants Account on the last Business Day of each Month and credit to the Expense Reserve Account maintained in respect of the Division to which the Participant has been admitted thereafter an amount of five point two five percent (5.25%) per annum of the balance standing to the credit of the Participants Account established in respect of that Participant provided that the Trustee may reduce the percentage referred to above where such:

- (a) reduced percentage is objectively ascertainable from the current Disclosure Document (if any) offering participation in the Division and such reduced percentage is applied to all Participants Accounts maintained in respect of

the Participants of the Division during the currency of the Disclosure Document or for the specific period that may be provided in the Disclosure Document as to the application of such reduced percentage; or

- (b) the Trustee has agreed with a particular Participant in writing, having regard to the details of the Participant's participation, to such reduced percentage.

### **13.6 Contribution Charge**

Upon the payment of any Contribution to a Division or upon a transfer to the Division of moneys in respect of a Participant or Member of that Division, the Trustee shall credit the Contributions or transfer received to the relevant Participants Account and the Trustee shall be entitled to deduct from that account and credit to the relevant Expense Reserve Account as a Contribution Charge an amount of up to five percent (5%) of the amount of each such Contribution or transfer provided always that the Trustee may reduce the percentage referred to above where:

- (a) such reduced percentage is objectively ascertainable from the current Disclosure Document (if any) offering participation in the Division and such reduced percentage is applied to all Participants Accounts maintained in respect of the Participants of the Division during the currency of the Disclosure Document or for the specified period that may be provided in the Disclosure Document as to the application of such reduced percentage; or
- (b) the Trustee has agreed with a particular Participant in writing, having regard to the details of the Participant's participation, to such reduced percentage.

### **13.7 Participation Charge**

The Trustee may, on the last Business Day of each Month, debit from:

- (a) each Participants Account maintained in respect of a Division I Participant admitted to Division I after 1 July 1994 of a Participation Charge of Five Dollars (\$5.00) for each of the Employees of the Division I Participant who have been admitted to membership of Division I; and
- (b) each Participants Account maintained in respect of a Participant admitted to a Division after 1 July 1994, other than a Division I Participant in respect of whose participation a charge has been imposed pursuant to paragraph (a) hereof, a Participation Charge of One Hundred Dollars (\$100.00);

and credit the Participation Charge to the relevant Expense Reserve Account provided that the Trustee may reduce the dollar amount referred to above or attach any other pre-condition to payment of the Participation Charge where:

- (i) such reduced dollar amount or pre-condition is objectively ascertainable from the current Disclosure Document offering participation in a Division and such reduced percentage is applied to all Participants Accounts maintained in respect of the Participants of the Division during the currency of the Disclosure Document or for the specific period that may be provided in the Prospectus as to the application of such reduced percentage; or



- (ii) the Trustee has agreed with a particular Participant in writing, having regard to the details of the Participant's participation, to such reduced percentage.

### **13.8 Termination Charge**

The Trustee may on the termination of a Participant's participation in a Division admitted to the Division after 1 July 1994 debit from any amount to be paid to the Participant and credit to the Relevant Expense Reserve Account a Termination Charge of up to five percent (5%) of the amount of the withdrawal provided that the Trustee may reduce the percentage referred to above or attach any other pre-condition to payment of the Termination Charge where:

- (a) such reduced percentage or pre-condition is objectively ascertainable from the current Disclosure Document offering participation in the Division and such reduced percentage is applied to all Participants Accounts maintained in respect of the Participants of the Division during the currency of the Disclosure Document or for the specific period that may be provided in the Prospectus as to the application of such reduced percentage; or
- (b) the Trustee has agreed with a particular Participant in writing, having regard to the details of the Participant's termination, to such reduced percentage.

### **13.9 Increase in fees and charges**

#### **13.9.1 Increase in certain circumstances without Participant consent**

The fees and charges referred to in this Part 13 may be increased without the consent of the Participants by an amount not exceeding any increase in the average all employees weekly total earnings as published from time to time by the Australian Bureau of Statistics which has been produced since the later of the date of commencement of the Divisions or the date of any previous increase made pursuant to this sub-Clause provided that:

- (a) one (1) Month's notice in writing shall be given by the Trustee to each Participant prior to the increase taking effect; and
- (b) any such increase will only take effect after the expiry or withdrawal of the current Disclosure Document on issue (unless the new charge is described in the said current Disclosure Document).

### **13.9.2 Participant consent to increase in fees and charges required in certain circumstances**

The fees and charges referred to in this Part 13 must not be altered or increased otherwise than as described in Clause 13.9.1 without the prior approval of Participants by Ordinary Resolution.

## **PART 14 - TERMINATION OF PARTICIPATION AND MEMBERSHIP**

### **14.1 Termination of Participation**

#### **14.1.1 Termination of Participation by Participant**

A Participant may in such form as the Trustee may from time to time prescribe request the Trustee to terminate the Participant's participation in the Division to which the Participant has been admitted on a date which shall be not less than thirty (30) days from the date of such request.

#### **14.1.2 Deemed Termination of Participation by Participant**

If at any time the balance standing to the credit of a Participant's Participants Account is less than the minimum Participant Account balance nominated in the current Disclosure Document or such other amount as may be nominated by the Trustee from time to time the Participant shall be deemed to have requested the Trustee to terminate its participation in the Division to which it has been admitted pursuant to Clause 14.1.1, which request by the Trustee, in its absolute discretion, may or may not act upon.

#### **14.1.3 Discretionary Termination of Participation by Trustee**

Subject always to Clause 14.1.4 the Trustee may, in its absolute discretion, by notice in writing to any Participant terminate the participation of the Participant in a Division, such termination to take effect not less than fifteen (15) days from the date of such notice.

### **14.2 Procedure on Termination**

Within fifteen (15) days of the Termination Date in respect of a Participant the Trustee shall in respect of:

#### **14.2.1 Division I Participants whose Employees have been admitted to Division I:**

- (a) advise the Division I Participant ("**the Retiring Participant**") of all arrears, if any, of Contributions due pursuant to the Rules of Division I up to the Termination Date, and the Retiring Participant shall forthwith pay any such arrears prior to the Termination Date;
- (b) determine any Benefits which have become payable on or before the Termination Date in respect of those Members whose membership was nominated by the Retiring Participant ("**the Relevant Members**") and such Benefits shall continue to be payable out of Division I;

- (c) on the advice of the Actuary in the case of a Retiring Participant with a Benefit Specification which includes Defined Benefits as defined in Rule 1.1 of Division I, certify to the Retiring Participant what proportion of the Assets of Division I, including arrears, if any, of Contributions still to be made pursuant to paragraph (a) hereof, is properly attributable, having regard to the Retiring Participant's Benefit Specification, to Members who were in the employ of the Retiring Participant at the Termination Date ("**the Members' Proportional Interest in the Assets of Division I**");
- (d) notify the Relevant Members of the termination of participation of the Retiring Participant;
- (e) make such arrangements as it thinks proper with the Retiring Participant or Relevant Members or the trustee of another Superannuation Fund, Division or Approved Deposit Fund or Life Insurance Company or Registered Organisation to ensure the amount of the Members' Proportional Interest in the Assets of Division I is maintained until such time as Benefits otherwise payable in lieu of the Members' Proportional Interest in the Assets of Division I would have been paid to the Member;
- (f) if after providing Benefits to the Members determined pursuant to paragraph (b) hereof and the Members' Proportional Interest in the Assets of Division I pursuant to paragraph (c) hereof a surplus remains in the Retiring Participant's Participants Account, the amount of such surplus shall be paid, subject to the Operational Standards permitting the same, to the Retiring Participant or distributed in such other manner as the Retiring Participant prescribes. Where the Operational Standards do not permit the payment of any surplus to the Retiring Participant as proposed the Trustee must take such action to distribute any such surplus as it determines is in the best interests of the Members in the circumstances and does not breach the Operational Standards.

#### **14.2.2 Division I Participants who are Eligible Persons:**

- (a) after taking into consideration any moneys owing by a Division I Participant to the Division to which the Participant has been admitted pursuant to the Rules of that Division to certify to the Participant what proportion of the Assets of that Division are properly attributable to the Participant (in each case the proportion of the Assets of the Division being called in respect of a Participant, the Participant's "**Proportional Interest**");
- (b) in the event that the Division I Participant is a group of Eligible Persons, certify to the Division I Participant what proportion of the Proportional Interest is properly attributable to each of the Eligible Persons in the group determining the same in accordance with the terms of the Division I Participant's Benefit Specification and where the Benefit Specification makes no provision for calculation of the same in accordance with each Eligible Person's equitable share in the Proportional Interest;
- (c) subject to the Rules of the Division to which the Participant has been admitted either on or after the Termination Date and to the direction of the Participant pay the amount certified to the Participant or the Eligible Persons or transfer such amount as is prescribed to any other Division, Regulated Superannuation Fund, Approved Deposit Fund or Pooled Superannuation

Trust or apply such amount towards the purchase of an Annuity as directed by the Participant and agreed by the Trustee.

### **14.3 Deleted**

## **14.4 Termination of Membership**

### **14.4.1 Cessation of Membership**

A Member shall cease to be a Member upon the Trustee having paid to or for the benefit of that Member in accordance with the Rules of Division I the Member's Benefit or upon the payment or transfer of the Member's Benefit to the trustee of such Division, Approved Deposit Fund, Regulated Superannuation Fund, Eligible Rollover Fund, Division or Life Insurance Company or Registered Organisation as directed by the Division I Participant pursuant to Clause 14.1.

### **14.4.2 Cessation of Contributions by Employer**

Notwithstanding the provisions of Clause 14.4.1, a Division I Participant who is an Employer may at any time notify the Trustee in writing that it will no longer make Contributions to Division I on account of a Member whereupon the Division I Participant and the Trustee shall make such arrangement as they deem necessary and the Trustee approves in respect of the continued membership of the Member in Division I. In making such determination the Trustee shall have regard to the covenants contained in Clauses 9.3.

## **14.5 Distribution**

Without limiting the generality of Clause 14.2, the following provisions shall apply:

- (a) on receipt by the Trustee of a Termination Request;
- (b) on the deemed receipt by the Trustee of a Termination Request pursuant to Clause 14.1.2 and the Trustee's election to act upon such deemed Termination Request;
- (c) on delivery by the Trustee of a Termination Notice;
- (d) where the Trustee is obliged pursuant to Clause 14.3 to terminate the participation of a Division II Participant:

### **14.5.1 Discharge required**

Each payment to a Participant pursuant to Clause 14.2 shall only be made against delivery to the Trustee of such form of receipt and discharge as may be required by the Trustee.

### **14.5.2 Payment of Assets in lieu of Cash**

Where:

- (a) for the purposes of paying the amount due to or in respect of a Participant pursuant to Clause 14.2 or making such arrangements as provided in Clause 14.2.1(e) the Trustee determines that it is necessary to realise any of the Assets of a Division and for whatever reason the said Assets are not realised; or
- (b) for the purposes of paying the amount due to a Member pursuant to Clause 14.4 the Trustee determines that it is necessary to realise any of the Assets of a Division and for whatever reason the said Assets are not realised; or
- (c) a Participant has requested the Trustee to appropriate specific assets out of the Assets of the relevant Division and to transfer such Assets to or in respect of such Participant in satisfaction of the Participant's entitlement to the Assets of the Division; or
- (d) a Participant has requested the Trustee to appropriate the specific assets out of the Assets of the relevant Division and the transfer such assets to such Member in satisfaction of the Member's entitlement to the Assets of the Division

the Trustee may:

- (e) in the case of paragraphs (a) and (c) hereof, with the consent of the Participant; and
- (f) in the case of paragraph (b) and (d) hereof, with the consent of the Member and the Division I Participant in respect of whom the Member has been admitted;

transfer such Assets, where appropriate, to the Participant or to the Member, as the case may be, or as directed by the Participant or Member to such other Regulated Superannuation Fund, Division, Approved Deposit Fund or Pooled Superannuation Trust or apply same in the purchase of an Annuity.

Upon any such determination, the Trustee shall transfer specific assets from the relevant Division in satisfaction of the Participant's or Member's entitlement. The value of the assets so transferred shall be calculated at market value and the costs of any brokerage stamp duty transfer fees and other charges incurred in transferring such assets shall be borne by the Participant or the Member, as the case may be. In making the appropriation and transfer of any such assets, the Trustee shall have power to adjust the same either by making or receiving Cash payments or otherwise and to settle any question arising in relation thereto in any manner which appears to it to be just.

#### **14.6 Cashing Restriction**

Where the termination of a Participant or member is to be effected pursuant to this Clause and there is an amount in question in respect of the Participant or Member which is subject to a Cashing Restriction then the amount can only be dealt with as prescribed by Clause 4.4.2.

### **PART 15 – APPOINTMENT OF AUDITOR, ACTUARY AND VALUERS**

### **15.1 Appointment**

The Trustee may from time to time:

- (a) appoint an Approved Auditor or Auditors of each Division to perform the functions of the Auditor required by this Deed and the Rules;
- (b) appoint an Actuary to perform the functions of the Actuary required by this Deed or the Rules. Every person appointed as Actuary must be a fellow or an accredited member of the Institute of Actuaries of Australia or otherwise qualified under the Operational Standards to perform the functions of an actuary;
- (c) appoint a person or firm who is experienced in relation to the valuation of assets or investments of the kind required to be valued and in the case of Land, such person must be a member of the Australian Institute of Valuers (or if such Institute has ceased to exist of some other institute or body serving substantially the same objects).

### **15.2 Remuneration**

The remuneration of any Auditor, Actuary or Approved Valuer must be fixed by the Trustee and shall be payable out of the Assets of the Division in respect of which the Auditor, Actuary or Approved Valuer has been appointed and debited against the Expense Reserve Account of that Division.

### **15.3 Retirement**

Each or any Auditor, Actuary or Approved Valuer appointed may retire upon the expiration of three (3) Month's notice to the Trustee or such shorter period as the Trustee may agree to.

### **15.4 Removal**

Any person appointed pursuant to this Clause may at any time be removed from office in respect of the Divisions or any of them:

- (a) by the Trustee; or
- (b) by an Extraordinary Resolution of the Participants of the Divisions or the relevant Division.

### **15.5 Replacement**

Any vacancy in the office of Auditor, Actuary or Approved Valuer must be filled by the Trustee appointing an Auditor, Actuary or Approved Valuer who has the qualifications described in Clause 15.1.

## **PART 16 – ACCOUNTS AND AUDIT**

### **16.1 Records to be kept**

The Trustee must keep or cause to be kept such accounting records as:

- (a) correctly record and explain the transactions and financial position of each Division and Sub-Plan;
- (b) enable the preparation from time to time of true and fair accounts of each Division and Sub-Plan as required by the Operational Standards;
- (c) enable the returns of each Division to be prepared in accordance with the Operational Standards; and
- (d) enable the accounts, statements and returns of each Division to be conveniently and properly audited in accordance with the Operational Standards.

## **16.2 Accounting records**

The accounting records must be:

- (a) kept at the registered office of the Trustee or at such other place as the Trustee may from time to time determine;
- (b) retained for at least the Prescribed Period after the end of the Financial Year to which the transactions relate;
- (c) kept in Australia; and
- (d) kept in writing in the English language or in a form in which they are readably accessible and readily convertible into writing in the English language.

## **16.3 Inspection of accounting records**

The accounting records of the Trustee are open to the inspection of the other of the Auditor at all reasonable times. The Auditor is entitled to require from the Trustee and to be given such information accounts and explanations as may be necessary for the performance of the duty of the Auditor.

## **16.4 Yearly Accounts**

### **16.4.1 Accounts to be prepared at Yearly intervals**

At the end of each Financial Year, the Trustee must, within the Prescribed Period:

- (a) prepare or cause to be prepared the Accounts relating to each Division; and
- (b) where the Trustee determines it appropriate or the Operational Standards require it prepare or cause to be prepared the Accounts relating to a Sub-Plan.

### **16.4.2 Accounts to be prepared in accordance with the law**

The Accounts of a Division or Sub-Plan must be prepared in accordance with the requirements of:

- (a) the Operational Standards; and
- (b) to the extent determined by the Trustee, the Australian Accounting Standards.

## **16.5 Auditor's Report on Accounts**

### **16.5.1 Preparation of accounting records**

At the time of preparation of the Accounts the accounting records prepared in accordance with this Part 16 must be audited by the Auditor.

### **16.5.2 Auditor to report on certain matters**

The Trustee must use its best endeavours to ensure that the Auditor executes any audit certificate relating to the Accounts in the form prescribed in the Operational Standards within the Prescribed Period.

## **16.6 Provision of information to Participants**

The Trustee will send or cause to be sent by post within the Prescribed Period to each Participant entered on the Register of Participants on the last Business Day of the Financial Year and at such other times as the Operational Standards may require a copy of;

- (a) the audited Accounts;
- (b) the Auditor's report; and
- (c) such other information in relation to the Accounts as the Operational Standards may require.

## **16.7 Provision of information to Members**

The Trustee will send or cause to be sent by post within the Prescribed Period to each Member entered on the Register of Members on the last Business Day of the Financial Year and at such other times as the Operational Standards may require a copy of:

- (a) the audited Accounts;
- (b) the Auditor's report;
- (c) the abridged financial information relating to the Sub-Plan of which the Member is a member; and
- (d) such other information in relation to the Accounts as the Operational Standards may require.

## **PART 17 – MEETINGS**

### **17.1 Trustee may convene meetings**



The Trustee may convene a meeting of Participants of the Divisions or a meeting of the Participants of any particular Division at any time.

## **17.2 Participants may requisition meeting**

The Trustee must:

- (a) on the requisition of not less than fifty (50) or one-tenth in number, whichever is the less of the Participants forthwith convene a meeting of the Participants;
- (b) on the requisition of not less than fifty (50) or one-tenth in number, whichever is the less of the Participants of a Division forthwith convene a meeting of the Participants of that Division.

The requisition must state the objects of the meeting and the terms of any resolution proposed to be submitted to the meeting. The requisition must be signed by the requisitionists and deposited at the registered office of the Trustee and may consist of several documents in like form each signed by one or more requisitionists. The Trustee must make available all information in its possession in connection with the same. If the Trustee does not within twenty-one (21) days from the date of requisition being so deposited duly proceed to convene a meeting of the Participants or the Participants of the particular Division, the requisitionists or a majority of them in number may themselves convene the meeting but any meeting so convened shall not be held after three (3) Months from the date of such deposit. Any meeting convened under this Clause by the requisitionists shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by the Trustee except that the requisitionists shall give the like notice to the Trustee. The omission to give such notice to or the non-receipt of such notice by the Trustee invalidates the meeting but the Trustee may waive such omission or non-receipt.

## **17.3 Notice of meeting**

### **17.3.1 Ten Business Days' notice required**

At least ten (10) Business Days' notice of a meeting specifying the place day and hour of the meeting shall be given to Participants.

### **17.3.2 Notice to contain certain matters**

The Trustee will ensure that any notice of meeting contains adequate notice of:

- (a) any matters to be considered at the meeting of which it is aware;
- (b) any resolutions to be put to the meeting of which it is aware; and
- (c) a summary of information relating to those matters and resolutions that is relevant to the decision of a Participant on how to vote at the meeting.

### **17.3.3 Accidental omission to give notice does not invalidate meeting**

The accidental omission to give such notice to or the non-receipt of such notice by any Participant shall not invalidate the meeting. The accidental omission to give

such notice to or the non-receipt of such notice by the Trustee invalidates the meeting but the Trustee may waive such omission or non-receipt.

#### **17.4 Right of audience**

The Auditor and the representatives of the Trustee are entitled to attend any meeting of Participants or of Participants of a particular Division with or without their respective solicitors and/or counsel and all such persons shall have the right of audience thereat.

#### **17.5 Chairman**

At a meeting convened by the Trustee some person nominated by it (whether a Participant or not) shall preside as chairman. If no such person is present or is present but unwilling to act within fifteen (15) minutes after the time appointed for holding the meeting the Participants present shall choose one of their number to preside as chairman.

#### **17.6 Quorum**

No business shall be transacted at any such meeting unless a quorum is present when the meeting proceeds to business. The quorum shall be fifty (50) or at least ten per centum (10%) of the number of Participants whichever is the lesser number or in the case of a meeting of Participants of a particular Division fifty (50) or at least ten per centum (10%) of the number of Participants of that particular Division whichever is the lesser number. If within fifteen (15) minutes from that time appointed for any meeting a quorum is not present the meeting shall:

- (a) if called for the purpose of passing an Ordinary Resolution stand adjourned to the same day in the next week at the same time and the same place;
- (b) if called for the purpose of passing an Extraordinary Resolution stand adjourned for such period as the chairman shall direct

provided notice of the proposed Ordinary or Extraordinary Resolution as the case may be and of the fact that those present in person or by proxy will constitute a quorum at an adjourned meeting and the place day and hour of such adjourned meeting have been given to the Participants by the Trustee.

At an adjourned meeting convened pursuant to paragraphs (a) and (b) hereof, the Participants present in person or by proxy shall form a quorum and shall have power to pass the resolutions to be proposed thereat.

#### **17.7 Method of voting**

##### **17.7.1 In the first instance to be by a show of hands**

Every question submitted to a meeting of a Participants or meeting of Participants of a particular Division shall be decided in the first instance by a show of hands provided that a poll shall be taken in any case where it is required by this Deed or by law that the question be decided by a majority which is measured by a percentage of the votes cast by those present or where a poll be properly demanded as provided in Clause 17.8.

### **17.7.2 One vote for each one dollar standing to credit of account**

On a show of hands every Participant who is present in person or by proxy shall have one vote and on a poll every Participant shall have one vote for each One Dollar (\$1.00) or part thereof standing to the credit of the Participant's Participants Account at the close of business forty-eight (48) hours prior to the meeting.

### **17.8 Poll**

At any meeting of Participants unless a poll is demanded by the chairman or at least ten (10) Participants holding or representing by proxy at least ten percent (10%) of the total voting rights of all Participants of the Plan or in the case of any meeting of Participants of a particular Division unless a poll is demanded by the Chairman or at least ten (10) Participants of that Division holding or representing by proxy at least ten percent (10%) of the total voting rights of Participants of that Division, a declaration by the chairman that a resolution has been carried or carried by any particular majority or lost or not carried by any particular majority shall be conclusive evidence of the fact. A poll may be demanded either before or immediately after any question is put to a show of hands.

### **17.9 Manner of poll**

If at any meeting a poll is demanded as provided in Clause 17.8 it shall be taken in such manner and either at once or after an adjournment as the chairman directs and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn. Any poll demanded at any meeting of Participants or at any meeting of Participants of a particular Division on the election of the chairman or any question of adjournment shall be taken at the meeting without adjournment. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.

### **17.10 Effect of resolution**

A resolution (whether Ordinary or Extraordinary) passed at a meeting of Participants or Participants of a particular Division duly convened and held in accordance with this Part 17 shall be binding upon all the Participants or the Participants of that particular Division whether present or not present at such meeting and each of the Participants and the Trustee are bound to give effect thereto accordingly.

### **17.11 Corporations**

A corporation being a Participant may vote by any representative authorised in writing to act as its representative for such purpose or by proxy who shall be entitled to speak demand a poll vote and in all other respects exercise the rights of a Participant and shall be reckoned as a Participant for all purposes.

**17.12 Objection to qualification of voter**

Subject to Clause 17.13 no objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting and his decision shall be final and conclusive.

**17.13 Proxies**

Votes may be given by proxy in accordance with the following conditions:

- (a) On a show of hands and on a poll votes may be given either personally or by proxy and a proxy shall have the same right of audience as a Participant.
- (b) The instrument appointing a proxy shall be in writing under the hand of the appointor or of the appointor’s attorney duly authorised in writing or if the appointor is a corporation either under its common seal or under the hand of an officer or attorney duly authorised.
- (c) Any person may act as a proxy whether or not the person is a Participant.
- (d) The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of that power or authority or a legible facsimile transmission copy of the instrument appointing a proxy where that instrument is signed under the hand of the Participant must be deposited at the registered office of the Trustee or at such other place as is specified for that purpose in the notice of meeting not less than 24 hours before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote. In default the instrument shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiration of twelve (12) Months from the date named in it as the date of its execution.
- (e) An instrument appointing a proxy may be in the following form or in any form which the Trustee shall approve:

The Greater Rollover and Allocated Pension Fund

“I, \_\_\_\_\_ of \_\_\_\_\_ being a registered Participant of Division ... of the Plan hereby appoint

\_\_\_\_\_ of \_\_\_\_\_ or, in his/her absence the chairman of the meeting to vote for me and on my behalf at the meeting of the Participants/Participants of Division ... of the Plan to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ and at any adjournment thereof.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

The Common Seal of

was hereunto affixed in accordance with its Articles of Association in the presence of:

I direct my proxy to vote for/against the proposed resolution. (In the absence of direction the proxy may vote as he/she thinks fit or abstain from voting.)”

- (f) A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed provided that no intimation in writing of such death insanity or revocation shall have been received by the Trustee before the commencement of the meeting or adjourned meeting at which the proxy is use.

#### **17.14 Adjournment of meeting**

The chairman may with the consent of any meeting of Participants adjourn the same from time to time and from place to place.

#### **17.15 Minutes**

Minutes of all resolutions passed and proceedings at every meeting of Participants shall be made and duly entered in a book to be provided for that purpose by the Trustee and any such minutes as aforesaid if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had or by the chairman of the next succeeding meeting (if any) of Participants shall be conclusive evidence of the matters therein stated and until the contrary is proved every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed thereat and proceedings to have been duly passed and had.

### **PART 18 – VARIATION OF DEED AND RULES**

#### **18.1 Power to amend**

Subject to any restrictions on amendment of trust deeds in the Operational Standards and in Clause 18.3, the Trustee may by deed supplemental to this Deed alter, modify, add to or delete any of the provisions of this Deed, including this Clause if such alteration, modification, addition or deletion:

- (a) is in the opinion of the Trustee or a barrister or solicitor instructed by the Trustee necessary or expedient to comply with the provisions of any statute, ordinance or with the requirement of any statutory authority; or
- (b) is in the opinion of the Trustee made to correct a manifest error or is of a formal, technical or administrative nature only (including without limitation any change of the name of the Plan); or
- (c) is in the opinion of the Trustee required by or in consequence of or consistent with any amendment to the Act of the Tax Act and is in the opinion of the Trustee not prejudicial to the interests of Participants or Members; or

- (d) is considered by the Trustee not to be or to be likely to become prejudicial to the interests of the Participants or Members; or
- (e) is to amend Part 13 provided that the Trustee is satisfied that owing to changed economic circumstances any increased proposed is reasonable and that any such increase only will take effect after thirty (30) days notice to Participants or after the expiry or withdrawal of the current Disclosure Document which is in issue at the time of execution of the relevant supplemental deed, (unless the amendment is described in the Disclosure Document), whichever time is later; or
- (f) is approved by an Extraordinary Resolution of Participants where in the opinion of the Trustee the rights of those Participants may be adversely effected.

## **18.2 Date of effect**

An amendment made pursuant to this Part 18 may take effect from a date before or after it is made.

## **18.3 Prohibition on amendment**

An amendment will be void if the effect of the amendment is to breach an Operational Standard.

## **18.4 Notification of amendment**

The Trustee must give to a Participant, within the Prescribed Period, the information required by the Operational Standards concerning the changes effected by the amendment. The failure to so notify a Participant does not invalidate the amendment in any way.

## **18.5 Amendment because of legislation**

The Trustee shall (without limiting the provisions of Clause 18.1) take all reasonable steps necessary to cause this Deed to be amended from time to time to satisfy the requirement of any statute, ordinance, rule, regulation or by-law or with the requirement of any statutory authority but if the Trustee is of the opinion that as a result of such requirements the Assets of a Division or any part thereof are to be invested or deposited otherwise than freely in accordance with the discretions given to the Trustee hereunder or if as a result of any such law it appears to the Trustee to be in the interests of the Participants of Members so to do, then the Trustee may resolve that the Division is to terminate and thereupon the Division shall terminate and be wound up.

# **PART 19 – TERMINATION OF THE DIVISIONS**

## **19.1 Termination**

### **19.1.1 Period of trusts**

The perpetuity period applicable to the trusts and dispositions contained in this Deed shall be the period of eighty (80) years commencing on 18 June 1987. The Divisions shall unless sooner determined under the provisions of this Deed terminate and be wound up on the expiration of that period.

#### **19.1.2 Division to terminate where certain legislation introduced**

If any legislation is enacted having the effect in the opinion of the Trustee of materially diminishing the amount of income of the Divisions (or the Relevant Division) available for distribution to the Participants and the Trustee determines that the Divisions (or the Relevant Division) shall be wound up on a date to be determined by them the Divisions (or the Relevant Division) shall terminate and be wound up.

#### **19.1.3 Division to terminate on continued vacancy of office of Trustee**

If the office of the Trustee of the Divisions (or the Relevant Division) becomes vacant and a new Trustee is not duly appointed within one (1) Month of the vacancy occurring the Divisions (or the Relevant Division) shall terminate and be wound up.

#### **19.1.4 Division to terminate where Trustee so determines**

If the Trustee determines that the Divisions (or the Relevant Division) are to be terminated, the Divisions (or the Relevant Division) shall terminate and be wound up.

#### **19.2 Procedure on termination of a Division**

Upon the termination of a Division the Trustee shall hold the Assets of the Division upon trust for the Participants and or Members as the case may be and the Division shall be wound up.

#### **19.3 Trustee to give notice of termination of Division**

In the event of the termination of the Divisions (or a Relevant Division), the Trustee shall give notice in writing to all Participants (or Participants of the Relevant Division (“**the Relevant Participants**”)) that the Divisions (or the Relevant Division) shall commence to be wound up on a specified date, hereinafter called “the Closure Date”.

#### **19.4 Settlement of accounts**

As from the Closure Date the Trustee shall:

- (a) immediately make a call for any arrears of Contributions in respect of each Division (or the Relevant Division) and not, except in the case of Contributions received in response to a call, accept further Contributions to any Divisions (or the Relevant Division); and
- (b) credit and/or debit, as the case may be, to each Participant’s Participants Account (or in the event of the termination of the Relevant Division, each Relevant Participant’s Participants Account) in a manner the Trustee as being in its opinion fair and equitable, the balance of the Expense Reserve Account maintained in respect of each Division after payment of all

expenses associated with the termination of the Divisions (or in the event of the termination of the Relevant Division, the balance of the Expense Reserve Account maintained in respect of the Relevant Division after payment of all expenses associated with the termination of the Relevant Division).

## **19.5 Realisation of Investments**

Upon the termination of the Divisions (or the termination of the Relevant Division (hereinafter referred to as a “**Division Termination**”)), the Trustee must, subject to the provisions of Clause 19.7, sell, call in and realise the Investments of the Divisions (or the Relevant Division). So far as reasonably practicable, the sale is to be completed within one hundred and eighty (180) days after the termination of the Divisions (or the Relevant Division).

## **19.6 Transfer to another trust**

The Trustee must transfer any Investment of the Divisions (or the Relevant Division) to the trustee of any other trust fund (or in the case of the transfer of any investment of the Relevant Division to another Division) (whether or not the Trustee is in any way associated with such other trust or Division) on receiving cash equivalent to the market value of such Investment at the date of transfer.

## **19.7 Ongoing liabilities**

The Trustee may retain for so long as it thinks fit such part of the Investments of the Divisions (or the Relevant Division) as in its opinion may be required to meet any outgoings or liabilities (actual or contingent) in respect of the Divisions (or of the Relevant Division) or any Investments thereof provided that any Investments or money so retained to the extent that they are ultimately found not to be so required shall remain subject to the conditions of this Deed for conversion and distribution contained in Clause 19.9.

## **19.8 Payment of Expenses**

The Trustee shall retain out of any moneys in its hands full provision for and to pay thereout all costs charges expenses liabilities (whether actual or contingent) claims and demands incurred made or apprehended by the Trustee in connection with the Divisions (or the Relevant Division) or arising out of the termination of the Divisions (or upon a Division Termination, the Relevant Division) including the fees of any agents solicitors bankers accountants or other persons whom the Trustee may employ in connection with the termination of the Divisions (or the Relevant Division) and is entitled out of the moneys so retained to be indemnified and saved harmless against any of those costs and charges expenses claims and demands provided that any moneys so retained to the extent that they are ultimately found not to be so required shall remain subject to the conditions of this Deed for distribution to Clause 19.9.

## **19.9 Distribution**

### **19.9.1 Distribution of proceeds upon realisation**



The Trustee shall upon completion of the realisation of the Investments of the Divisions (or of the Investments of the Relevant Division) distribute to Participants the net proceeds thereof together with all other Cash forming part of the Divisions (or the Relevant Division) in the respective proportions that the respective balances in each Participant's Participants Accounts (or, upon a Division Termination, each Relevant Division Participant's Participants Account) as at the date of termination of the Divisions bear to the total of all such amounts realised or held on behalf of the Divisions (or, upon a Division Termination, as at the date of termination of the Relevant Division bears to the total of all such amounts realised and held on behalf of the Relevant Division) by the crediting of such amount available to be distributed to each Participant pursuant to this Clause 19.9.1 to that Participant's Participants Account. The money so credited shall then be distributed or paid to the Participants and Members in the manner prescribed, mutatis mutandis, in Clause 14.2 as if the Participant's interest in a Division had been terminated.

### **19.9.2 Distribution of Investments in lieu of Cash**

In the event that any of the Investments of the Divisions (or any of the Investments of the Relevant Division) are for whatever reason not realised but retained by the Trustee in specie the Trustee may having regard to the proportion that the balance in the Participant's Participants Account at the date of termination bears to the total of all such amounts received and held on behalf of the Divisions and to the nature and conditions of the investments made by the Trustee on behalf of the Participant pursuant to that Participant's Investment Direction (or, upon a Division Termination, having regard to the proportion that the balance in the Relevant Division Participant's Participants Account at the date of termination of the Relevant Division bears to the total of all such amounts received and held on behalf of the Relevant Division) transfer such of the Investments of the Divisions to a Participant in satisfaction of the Participant's interest in the Investments of the Divisions (or, upon a Division Termination, to a Relevant Division Participant in satisfaction of the Relevant Division Participant's interest in the Investments of the Relevant Division).

### **19.9.3 Cashing Restriction**

Where the proceeds of the Investments of the Divisions or of a Relevant Division realised are subject to a Cashing Restriction the Trustee must:

- (a) notify each Participant or Member concerned in writing of the details of the Cashing Restriction;
- (b) request each Participant or Member concerned in writing to nominate to the Trustee within one (1) Month of receipt of the request the Regulated Superannuation Fund, Approved Deposit Fund or Deferred Annuity (or upon a Division Termination the Regulated Superannuation Fund, Approved Deposit Fund, Division or Deferred Annuity) to which the proceeds are to be transferred or applied ("**the Nomination**"),

Provided that the Trustee shall not, subject to the following provisions of this Clause 19.9.3, transfer the proceeds to a Regulated Superannuation Fund, Approved Deposit Fund or Division or apply the proceeds towards the purchase of a Deferred Annuity unless:

- (i) so directed by the Participant's or Member's Nomination; and
- (ii) unless the Regulated Superannuation Fund, Approved Deposit Fund or Division or a Deferred Annuity has the appropriate provisions to ensure that the amount subject to the Cashing Restriction is not dealt with other than as permitted by the Operational Standards.

The Trustee must use its best endeavours to obtain a Nomination upon which the Trustee can act in accordance with the terms of this Deed. Where no Nomination is delivered in respect of a Participant or Member, or the Trustee forms the opinion that the Participant or Member cannot be located the Trustee may at its discretion deal with the Participant's or Member's interest in the Division in such manner as is required by the Operational Standards.

#### **19.9.4 Interim distributions**

Notwithstanding the foregoing, the Trustee may from time to time and prior to completion of the realisation of Investments programme make such interim distributions to Members on account of their respective entitlements calculated in accordance with Clause 19.9.1 as the Trustee determines.

#### **19.10 Receipt for distribution**

Each of those distributions shall be made only against delivery to the Trustee of such form of receipt and discharge as may be required by the Trustee.

#### **19.11 Postponement**

The Trustee may postpone the sale calling in and conversion of any part of the Assets of the Divisions for such time as it thinks is desirable so to do in the interests of the Participants and will not be responsible for any loss attributable to such postponement.

### **PART 20 – RESOLUTION OF DISPUTES**

#### **20.1 Trustee's decision is binding**

Subject to Clause 20.2 if any doubt or dispute arises as to the interpretation of any provision of this Deed or as to the rights or obligations of a Participant or Member or any other person hereunder (except to the extent otherwise expressly provided in this Deed or by the Operational Standards) the decision of the Trustee shall be final and binding.

#### **20.2 Resolution of disputes**

The Trustee must (unless the Operational Standards do not require) ensure that there are arrangement in force:

- (a) under which:
  - (i) a Participant or Member or any other person with a beneficial interest in a Division which is a Regulated Superannuation Fund may inquire into, or complain about, the operation or management of the Division in relation to that Participant or Member or that other person;

- (ii) inquiries or complaints will be considered and properly dealt with within 90 days after they were made; or
- (b) which otherwise comply with the Operational Standards in relation to the conciliation, arbitration and review of enquiries made by Participants or Members.

## **PART 21 – MISCELLANEOUS**

### **21.1 Retention of documents**

The Trustee must:

- (a) keep, and retain so long as they are relevant and in any event for at least 10 years, copies of:
  - (i) all reports that were given in the same form (apart from differences relating to the names and addresses of the persons to whom the notices were given) to all Participants and Members;
  - (ii) all Applications; and
  - (iii) such other material as is required by the Operational Standards; and
- (b) make those copies available for inspection by a member of the staff of the Insurance and Superannuation Commission if requested to do so by a member of the staff.

### **21.2 Inspection of Deed**

A copy of this Deed must at all times during usual business hours be made available by the Trustee at its registered office for inspection by Participants and Members who are entitled to receive from the Trustee a copy of this Deed.

### **21.3 Proper law**

The rights liabilities and obligations inter se of the Trustee and the Participants and Members shall be governed by the law of the State of New South Wales and any proceedings to enforce such rights liabilities or obligations may be taken in the courts of that State.

### **21.4 Notices to Participants and Members**

#### **21.4.1. Forms of notice**

Any notice required to be given to Participants or Members under this Deed is deemed to have been duly given if it is in writing and:

- (a) delivered or sent by ordinary post, courier or airmail in a properly pre-paid or franked envelope addressed to the Participant or Member at the address appearing in the Register of Participants or Members; or
- (b) sent by facsimile transmission to the facsimile number of the Participant or Member notified to the Trustee by the Participant or Member.

#### **21.4.2 Deemed receipt of posted notices**

Any notice sent by post is deemed to have been served on the third day following the day when it was posted and in proving such service it is sufficient to prove that the letter containing the notice was properly addressed and posted by pre-paid or franked ordinary post or airmail, and a statement signed by the Trustee that it was so posted and when shall be conclusive of those facts.

#### **21.4.3 Deemed receipt of facsimile notice**

A document sent by way of facsimile transmission is deemed to be received on production of a transmission report by the machine from which the facsimile was sent, which indicates that the facsimile was sent in its entirety to the facsimile number of the Participant or Member notified to the Trustee, and if produced before 5:00pm on the day of receipt is deemed to have been received on that day but otherwise on the next day. A statement signed by the Trustee that a notice was sent by facsimile transmission and a transmission report was produced by the machine by which it was sent which indicated that the facsimile was sent in its entirety shall be conclusive evidence of those facts.

#### **21.4.4 Sending notices where address unknown**

Where the Operational Standards require that a report, statement or notice be sent to a Participant or Member and:

- (a) a copy of a report, statement or notice previously sent to the Participant or Member was posted with correct pre-paid or franked postage to the Participant or Member at the Participant's or Member's last known address and was returned undelivered to the Trustee; and
- (b) the Trustee has not been informed of another address of the place of residence or business of the Participant or Member,

the Trustee is deemed to have complied with the requirements to send a copy of the report, statement or notice to the Participant or Member.

### **21.5 Limitation of liability**

#### **21.5.1 Limit of liability to make further payment**

Subject to Clause 4.6.1, a Participant or Member will not by virtue of having been admitted to a Division or having paid Contributions to a Division have any liability to make any further payment, other than Contributions, to the Division or payments to the Trustee in respect thereof.

### **21.5.2 Limit on liability to indemnify**

Subject to Clause 4.6.1, no Participant or Member by reason alone of being a Participant or Member or by reason alone of the relationship created under this Deed with the Trustee will be under any obligation personally to indemnify the Trustee or any creditor of the Trustee in respect of any of the liabilities (actual, contingent or otherwise and whether due to any deficiency or not) of the Trustee in relation to, arising from or in connection with a Division. Any such liability is hereby expressly excluded. The only rights, if any, of indemnity of the Trustee and their respective creditors will be limited to having recourse to Assets of the Division.

## FIRST SCHEDULE

### RULES OF DIVISION I – GREATER SUPERANNUATION & RETIREMENT TRUST

#### 1. DEFINITIONS AND PURPOSE

##### 1.1 Definitions

For the purposes of this Division 1:

“**Accumulation Benefit**” means that the Benefit Specification details or that the Division I Participant has otherwise specified to the Trustee that any Benefit payable in respect of its participation is to be a value in or the total amount of the balance standing to the credit of:

- (a) in the case of a Member, the Member’s Nominated Accounts; and
- (b) in the case of a Division I Participant who is an Eligible Person the Participants Account or, as the case requires, the Nominated Accounts maintained in respect of the Eligible Person.

“**Compulsory Scheme**” means any scheme introduced by the government of the Commonwealth of Australia or of an Australian State or Territory or under any industrial award or agreement or other arrangement whereby a superannuation benefit or allowance (whether as a pension or lump sum or howsoever) becomes payable to or in respect of a person who is a Member in a circumstance or on an event which in the opinion of the Trustee bears a similarity to the circumstance or event upon which a Benefit is provided to be payable pursuant to any Division and to which scheme an Employer becomes obligated to contribute directly or indirectly.

“**Compulsory Scheme Benefit**” means an amount payable to or in respect of a Member pursuant to a Compulsory Scheme.

“**Defined Benefit**” means that the Benefit Specification details or that the Division I Participant has otherwise specified to the Trustee that any Benefit payable in respect of its participation is to be defined in terms of, or in terms that include, either or both of the following amounts:

- (a) the amount of the annual salary payable to the person in respect of whom the Benefit is payable:
  - (i) at the date of the person’s retirement from the workforce;
  - (ii) at a date prior to such retirement;averaged over a period of employment prior to such retirement;
- (b) a specified amount.

“**Forfeited Benefit**” has the meaning given to that expression by Rule 12.3.

“**Forgone Benefit**” has the meaning given to that expression by Rule 5.2.2(b).

**“Normal Retirement Date”** means the date on which a Member attains age 65 or such other date as the Division I Participant and the Member agree.

**“Regular Pension Payment”** has the meaning assigned to that expression in Rule 6.5.4 (c).

**“Regular Pension Payment Interval”** has the meaning assigned to that expression in Rule 6.5.4(d).

**“Regular Pension Request”** has the meaning assigned to that expression in Rule 6.5.4.

**“Reserve Account”** means any reserve account kept in accordance with Rule 5.2.

**“Salary Continuance Benefit”** means the amount arranged by the Trustee to be paid to a Participant or Member in the event of the Participant’s or Member’s ill-health.

**“Vested Benefit Entitlement”** means in respect of a person in respect of whom a Benefit is payable such amount as is vested in the person, at the date of calculation, having regard to the relevant Benefit Specification and being as a minimum that amount vested in the person pursuant to the Operational Standards.

## **1.2 Purpose of Division I**

Division I will be maintained solely for one or more of the core or ancillary purposes identified in the Act as the purposes for which a Regulated Superannuation Fund must be solely maintained.

## **1.3 Eligibility and Application for Participation**

Participation in Division I will be restricted to:

- (a) Employers wishing to provide retirement and/or other approved ancillary benefits for their Employees from a Regulated Superannuation Fund;
- (b) Eligible Persons wishing to obtain retirement and/or other approved ancillary benefits from a Regulated Superannuation Fund; and
- (c) Non-Member Spouses wishing to obtain retirement and/or other approved ancillary benefits from a Regulated Superannuation Fund following the Operative Time of a Payment Split.

## **2. RULES RELATING TO THE ADMISSION OF PARTICIPANTS WHO ARE EMPLOYERS WISHING TO PROVIDE BENEFITS FOR THEIR EMPLOYEES**

### **2.1 Form of Application**

Every Applicant who is an Employer and wishes to be admitted to Division I for the purpose of providing retirement and other approved ancillary benefits for its Employees must lodge an Application with the Trustee to become a Division I Participant. At the time of lodgement of an Application an Applicant:

- (a) must complete the Benefit Specification;
  - (b) unless:
    - (i) the Applicant has specified pursuant to Clause 6.15 that its Employees admitted as Members of the Division shall not be able to make Option Nominations; or
    - (ii) the Trustee pursuant to Clause 6.3.1 has not given the Applicant a choice of investment strategies to choose from,
- then the Applicant must complete an Option Nomination.

## **2.2 Preconditions to acceptance**

The Trustee must not accept an Application for admission by an Employer as a Division I Participant unless the Applicant has:

- (a) completed the Application;
- (b) completed a Benefit Specification;
- (c) agreed in writing to be bound by and comply with the Deed and these Rules;
- (d) where the Applicant is required to make an Option Nomination the Applicant has done so; and
- (e) received from the Trustee in writing and in a clear and effective manner, such information, statements and reports in relation to the operation, management and performance of Division I as the Operational Standards require in the circumstances to be given to the Applicant.

## **2.3 Date of acceptance**

An Applicant will become a Division I Participant upon the date of acceptance by the Trustee of the Applicant's Application or as otherwise specified by the Trustee in the notice delivered to the Applicant pursuant to Clause 3.1.6(d).

## **2.4 Eligibility and Application for Membership**

### **2.4.1 Eligibility**

Membership of Division I will be restricted to the Employees of a Division I Participant or any Associated Employer.

### **2.4.2 Nomination by Employer**

Where a person is eligible for admission to membership in the terms prescribed by the Division I Participant and agreed to by the Trustee or any person who is an Employee of an Associated Employer, the Division I Participant is entitled to nominate the person for membership of Division I.



### **2.4.3 Form of Application**

Upon nomination by a Division I Participant or at such other time as the Division I Participant and Employee agree, the Employee may make application to the Trustee to become a Member of Division I in such form as the Trustee may from time to time prescribe (“**the Employee’s Application**”).

### **2.4.4 Preconditions to acceptance**

The Trustee must not accept an Employee’s Application unless:

- (a) the Employee has been nominated for membership by its Division I Participant;
- (b) the Employee is eligible pursuant to the Operational Standards to be a member of a Regulated Superannuation Fund;
- (c) the Employee has completed the Employee’s Application to the satisfaction of the Trustee and agreed in writing to be bound by and comply with these Rules;
- (d) the relevant Division I Participant has advised the Trustee in writing, having regard to the Division I Participant’s Benefit Specification, the conditions to apply in determining the Employee’s Benefits; and
- (e) where the Member is entitled to make an Option Nomination the Member has done so.

### **2.4.5 Date of acceptance**

Any Employee who has made application pursuant to Rule 2.4.3 to become a Member shall become a Member upon the date of acceptance by the Trustee of the Employee’s Application or as otherwise specified by the Trustee in the notice delivered to the Member pursuant to Clause 3.2.4(b).

## **2.5 Admission of Members**

Should at the time of acceptance of the Member there be any matter which the Division I Participant has advised the Trustee as being pertinent to the membership of the Employee and which is at variance to the conditions specified in the Division I Participant’s Benefit Specification, the Trustee may make such arrangements about that matter as it thinks proper with the Division I Participant or the Employee or any previous Employer of the Employee or the trustee of any Regulated Superannuation Fund of which the Employee was a member provided that in the opinion of the Trustee the matter is incidental to or consequent upon the membership of such Employee in this Division I and the Trustee will confirm in writing with the Participant or Employee the arrangements so made.

### **3. RULES RELATING TO THE ADMISSION OF ELIGIBLE PERSONS WISHING TO OBTAIN BENEFITS FOR THEMSELVES**

#### **3.1 Form of Application**

Every Applicant who is an Eligible Person or group of Eligible Persons and wishes to be admitted to Division I for the purpose of obtaining retirement and other approved ancillary benefits for themselves must lodge an Application with the Trustee to become a Division I Participant. At the time of lodgment of an Application the Applicant:

- (a) must complete the Benefit Specification;
- (b) must, unless the Trustee pursuant to Clause 6.3.1 has not given the Applicant a choice of investment strategies to choose from then the Applicant must complete an Option Nomination;
- (c) must lodge any statement or notification required to accompany a Contribution which is an Eligible Termination Payment under the Operational Standards.

#### **3.2 Pre-conditions to acceptance**

The Trustee must not:

- (a) accept an application for admission by an Eligible Person as a Division I Participant unless the Applicant has:
  - (i) completed the Application;
  - (ii) completed a Benefit Specification;
  - (iii) in the case of an Applicant who wishes to receive its Benefit in pension form, completed the Regular Pension Request;
  - (iv) agreed in writing to be bound by and comply with the Deed and these Rules;
  - (v) where the Applicant is required to make an Option Nomination the Applicant has done so;
  - (vi) received from the Trustee in writing and in a clear and effective manner such information, statements and reports in relation to the operation, management and performance of Division I as the Operational Standards require in the circumstances to be given to a prospective participant; or
- (b) approve the terms of a Regular Pension Request unless its terms and conditions meet the requirements of the Operational Standards.

#### **3.3 Date of acceptance**

An Applicant will become a Division I Participant from the date of acceptance by the Trustee of the Applicant's Application or as otherwise specified by the Trustee in the notice delivered to the Applicant pursuant to Clause 3.1.6(d).

### **3.4 Application for Participation by a Non-Member Spouse**

The following provisions of this Rule 3.4 apply to the admission of a Division I Participant being a Non-Member Spouse following the Operative Time of a Payment Split:

- (a) the Trustee may require the relevant Non-Member Spouse to complete any form of application that it prescribes; and
- (b) the Trustee may require the relevant Non-Member Spouse to complete any other documentation or provide any other information that it reasonably requires having regard to any conditions that the Trustee may impose under Clause 3.1.7 or otherwise.

### **3.5 Acceptance of Participation – Non-Member Spouse**

A Non-Member Spouse becomes a Division I Participant following the Operative Time of a Payment Split:

- (a) on the date when the Trustee has approved his or her application in accordance with Rule 3.4; or
- (b) on any other date approved by the Trustee for this purpose.

## **4. CONTRIBUTIONS**

### **4.1 Employer Contributions**

#### **4.1.1 Required Contributions**

Each Division I Participant who is an Employer and any Associated Employer must make Contributions of such levels and upon such basis as will ensure the payment for or in respect of the relevant Members of the Benefits prescribed in the Division I Participant's Benefit Specification.

#### **4.1.2 Division I Participant Discretionary Contributions**

In addition the Contributions payable by it pursuant to Rule 4.1.4 a Division I Participant may at any time, with the consent of the Trustee, make additional Contributions to Division I for the purpose of providing additional Benefits for any particular Member or Members.

### **4.2 Member Contributions**

#### **4.2.1 Required Contributions**

Each Member must make Contributions of the amount specified in the relevant Division I Participant's Benefit Specification.

#### **4.2.2 Voluntary Contributions**

In addition to the Contributions payable by it pursuant to Rule 4.2.1, a Member may with the approval of the Division I Participant and the Trustee and subject to such terms and conditions as the agree make additional Contributions to Division I.

#### **4.2.3 Deduction of Contributions from remuneration**

Unless the Member and its Employer otherwise agree or the law does not allow, whereupon the Member must pay its Contribution to the Employer, the Member's Contributions will be deducted from time to time by the Employer from the Member's remuneration. The Employer must pay the Member's Contributions so deducted or paid to the Trustee in such manner and at such times as are specified in the Division I Participant's Benefit Specification or as is otherwise agreed from time to time between the Member and the Member's Employer and acceptable to the Trustee but in any event within the Prescribed Period.

#### **4.3 Participant Contributions**

Each Eligible Person or group of Eligible Persons who is not otherwise required to contribute pursuant to Rule 4.1 or 4.2 must make Contributions to Division I in such manner as the Participant determines and the Trustee accepts from time to time provided that where the Eligible Person has been admitted to Division I as part of a group of Eligible Persons Contributions must be of an amount which ensures the payment of the Benefits prescribed in respect of that group in the relevant Benefit Specification.

#### **4.4 Other Discretionary Contributions**

In the event that the Employer of any Member or Division I Participant is obliged to contribute to a Regulated Superannuation Fund in respect of a Member or Division I Participant or the Employer of any Member or Division I Participant wishes to make contributions on behalf of the Member or Division I Participant, the Employer may, with the consent of:

- (a) the Division I Participant in respect of whom the Member has been admitted to membership and the Trustee in the case of a Member; and
- (b) the Division I Participant and the Trustee in the case of a Division I Participant,

contribute to Division I on account of the Member or Participant.

#### **4.5 Contributor must be eligible to contribute**

It is a condition of acceptance of any Contributions that at the time of payment that:

- (a) the contributor is eligible pursuant to the Operational Standards to make the Contribution; and
- (b) the Division is not prohibited by the Operational Standards from accepting the Contribution.

Should it be brought to the notice of the Trustee that any Contribution paid does not satisfy the conditions of acceptance the Trustee may return the Contributions so

make to the contributor or come to some other arrangement with the Division I Participant so as to comply with the Operational Standards.

#### **4.6 Reduction or suspension of Contributions**

##### **4.6.1 Division I Participant may reduce or suspend Contributions**

A Division I Participant may reduce or suspend the Contributions payable by it or any Associate Employer to Division I for some or all of the Members or Eligible Persons admitted in respect of the Division I Participant.

##### **4.6.2 Reduction or suspension of Contributions**

- (a) Where the Division I Participant gives notice of a reduction or suspension of Contributions, the Trustee:
  - (i) must where the Benefits payable are Accumulation Benefits notify any of the Members or Eligible Persons to which the suspension or reduction of Contributions applies who make personal Contributions with the intention that those Members or Eligible Persons may reduce or suspend their personal Contributions; and
  - (ii) unless the reduction or suspension of Contributions has been recommended by the Actuary, must where the Benefits payable are Defined Benefits and the Division I Participant requests same notify any of the Members or Eligible Persons to which the suspension or reduction of Contributions applies who make personal Contributions with the intention that those Members or Eligible Persons may reduce or suspend their personal Contributions.
- (b) In the event that the Benefit Specification of the Division I Participant prescribes that all or part of the Benefits payable are to be calculated as Defined Benefits, then the Trustee must after considering the advice of the Actuary calculate the level of Benefits to which Members or Eligible Persons will be entitled on the basis of the reduced or suspended level of Contributions.
- (c) Any adjustment in the level of Benefits must apply only to Benefits accruing after the date of reduction or suspension of the Contributions and must not, unless the Member or Eligible Person or the Commissioner consents to the same, reduce the amount of the Member's or Eligible Person's Vested Benefit Entitlement to that date.

#### **5. SPECIAL PROVISIONS IN RELATION TO MEMBERS AND GROUPS OF ELIGIBLE PERSON**

##### **5.1 Nominated Accounts**

###### **5.1.1 Establishment of Nominated Accounts**

In the event that the Benefit Specification of a Division I Participant prescribes that all or part of the Benefits payable are to be calculated as Accumulation Benefits, the Trustee must, having regard to the terms and conditions of the Benefit Specification, keep in respect of any Members admitted in respect of the Division I Participant in

addition to the accounts described in Part 5 those Accounts nominated by the Division I Participant in the Benefit Specification or as otherwise determined as necessary by the Trustee.

### **5.1.2 Distribution of Contributions between Nominated Accounts**

The Division I Participant must advise the Trustee of the proportions, if any, in which any Contributions made by or in respect of a Member admitted in respect of the Division I Participant are to be credited to the Member's Nominated Accounts.

### **5.1.3 Member's Nominated Accounts**

The Trustee must record to a Member's Nominated Accounts such of the following credits as the Trustee determines is appropriate:

- (a) any of the Division I Participant's Contributions which the Division I Participant has directed to be so credited pursuant to Rule 5.1.2;
- (b) any of the Contributions made by the Member which the Division I Participant has directed to be so credited to the Account pursuant to Rule 5.1.2;
- (c) any of the Contributions made by the Member's Employer which the Division I Participant has directed to be so credited to the Account pursuant to Rule 5.1.2;
- (d) any Interest Entitlement or Interim Interest Entitlement determined pursuant to Rule 5.3;
- (e) any part of the Division I Participant's Reserve Account as determined by the Trustee and approved in writing by the Division I Participant pursuant to Rule 5.2;
- (f) any Insured Benefit that the Division I Participant has requested the Trustee to arrange;
- (g) any other amount that the Division I Participant directs in writing from time to time to be so credited;

and must record the following debits against that account:

- (h) any Vested Benefit Entitlement determined in respect of the Member;
- (i) any amounts which the Trustee, having regard to the Benefit Specification, determines should be debited to the Member's Nominated Accounts including any levies paid under the Superannuation (Financial Assistance Funding) Levy Act 1993 which are in the opinion of the Trustee attributable to the Member and any cost of the kind described in Clause 10.7 and incurred in respect of any Policy Committee established in respect of the Member; and
- (j) any amount transferred pursuant to Clause 14.2 or Clause 14.5.

## **5.2 Division I Reserve Account**

### **5.2.1 Maintenance of Reserve Account**

The Trustee may, subject to the terms of the Division I Participant's Benefit Specification and to the Operational Standards generally, keep a Reserve Account in respect of a Division I Participant for the purpose of stabilising rates of Interest Entitlement between Distribution Dates and to provide for such future contingencies as the Trustee considers appropriate.

### **5.2.2 Crediting of Reserve Account**

The Trustee will credit to a Division I Participant's Reserve Account:

- (a) the balance after deducting from the Income Entitlement calculated in respect of the Division I Participant the total amounts credited to each of the Member's Nominated Accounts maintained in respect of the Division I Participant as Interest Entitlement;
- (b) the amount of the balance, if any, remaining in the Member's Nominated Accounts maintained in respect of the Division I Participant (other than any amount subject to a Cashing Restriction) following the payment of any Vested Benefit Entitlement ("**the Forgone Benefit**"); and
- (c) any Forfeited Benefit credited to the Account pursuant to Rule 12.3.

### **5.2.3 Application of balance of Reserve Account**

The balance having regard to the Division I Participant's Benefit Specification or any other written direction from the Participant regarding the determination of Interest Entitlements in respect of that Participant, in a Division I Participant's Reserve Account must be applied by the Trustee but subject always to the following restrictions:

- (a) the balance in the Reserve Account may only be applied in a manner permitted by the Operational Standards and where the Operational Standards prescribe a time period within which any Forgone Benefit or Forfeited Benefit must be allocated or applied, the Forgone Benefit or Forfeited Benefit must be allocated or applied within the Prescribed Period;
- (b) no amount can be debited to the Reserve Account where a debiting of that amount would cause the Participant to fail to comply with any requirements of the Superannuation Guarantee (Administration) Act 1992.

## **5.3 Interest Entitlement**

### **5.3.1 Calculation of Interest and Interim Interest Entitlements**

The Trustee must:

- (a) on each Distribution Date determine the Interest Entitlement to be credited to the Member's Nominated Accounts maintained in respect of the Division I Participant ("**the Relevant Accounts**"); and
- (b) on:
  - (i) receipt of a Termination Request in respect of the Division I Participant;
  - (ii) receipt of a notification pursuant to Rule 7.2 or 8.2 that a Benefit is payable; and
  - (iii) the giving of a Termination Notice to the Division I Participant,
 determine the Interim Interest Entitlement to be credited to the Relevant Accounts.

### **5.3.2 Factors to be regarded in calculation of Interest and Interim Interest Entitlement**

In determining:

- (a) the amount of any Interest Entitlement, the Trustee must have regard to:
  - (i) the Income Entitlement most recently determined in respect of the Division I Participant;
  - (ii) the Investments made on the Division I Participant's behalf pursuant to the Participant's Option Nomination and to the extent that the Participant has advised the Trustee that certain Investments made on the Participant's behalf apply in respect of any one or more of the Relevant Accounts, those Investments;
  - (iii) where any Member admitted in respect of the Division I Participant has made an Option Nomination in lieu of the Division I Participant, the Investments made on the Member's behalf;
  - (iv) the Expenses debited against the Division I Participant's Participants Account since the immediately preceding Distribution Date to the extent that they have not been reimbursed by the Division I Participant; and
  - (v) such other factors as determined by the Trustee, having regard to the Benefit Specification, and which are not otherwise inconsistent with the Operational Standards.
- (b) the amount of any Interim Interest Entitlement, the Trustee and the Division I Participant must have regard to:
  - (i) the factors taken into account in determining the Interest Entitlement most recently determined;



- (ii) in respect of those Investments held or made on behalf of the Division I Participant or in respect of those Investments that the Division I Participant has advised the Trustee that apply in respect of any one or more of the Relevant Accounts, the likely returns in respect of those Authorised Investments since the immediately preceding Distribution Date;
- (iii) where any Member admitted in respect of the Division I Participant has made an Option Nomination in lieu of the Division I Participant, the Investments made on the Member's behalf;
- (iv) the Expenses debited against the Division I Participant's Participants Account since the immediately preceding Distribution Date to the extent that they have not been reimbursed by the Division I Participant; and
- (v) such other factors as agreed upon between the Trustee and the Division I Participant and not otherwise inconsistent with the Operational Standards.

provided always that in the event that the Division I Participant fails to respond to the Trustee's request that the Division I Participant participate in the calculation of any Interest Entitlement or Interim Interest Entitlement as required by the Operational Standards, the Trustee is entitled to forthwith determine such Interest Entitlement or Interim Interest Entitlement.

### **5.3.3 Crediting of Interest Entitlement**

Following determination of the Interest Entitlement or the Interim Interest Entitlement, the Trustee must credit an amount to each of the Relevant Accounts kept in respect of the Division I Participant on account of the Interest and Interim Interest Entitlements determined having regard to:

- (i) the amount standing to the credit of each of the Relevant Accounts at the immediately preceding Distribution Date or the date of the establishment of the Relevant Accounts, whichever is the later;
- (ii) the credits and debits made from time to time to each of the Relevant Accounts since the date referred to in sub-paragraph (i) hereof; and
- (iii) such further details as agreed upon between the Trustee and the Division I Participant.

### **5.4 Application of this Rule to groups of Eligible Persons**

Where a Division I Participant is a group of Eligible Persons:

- (a) the references to "Division I Participant" in this Rule 5 shall accordingly be deemed to be a reference to the group of Eligible Persons;
- (b) a reference to "Member" shall accordingly be deemed to be a reference to an "Eligible Person" and a reference to "Members" shall accordingly be deemed to be a reference to "Eligible Persons";

- (c) a reference to “Member’s Nominated Accounts” shall accordingly be deemed to be a reference to an “Eligible Person’s Nominated Accounts”.

## **6. TYPES OF BENEFIT PAYABLE**

### **6.1 Lump Sum or Pension**

The Benefit Specification of each Division I Participant must detail whether the Benefit a Member or an Eligible Person is to receive is in a lump sum or pension form or combination thereof.

### **6.2 Purchase of Annuity**

A Benefit to be paid in pension form may be paid as a Pension from the Division or purchased by the Trustee in the form of an Annuity in the name of the Trustee or the Member or Eligible Person.

### **6.3 Commutation of Pension Benefit**

A Member or Eligible Person entitled to or in receipt of a Pension Benefit may request, subject to any limits or conditions prescribed by the Operational Standards, the commutation of any amount of the capital value of the Pension to a lump sum payment. Following the commutation of any Pension Benefit the Trustee may and with the consent of the Division I Participant reduce the Regular Pension Payment paid or payable annually to the Member or Eligible Person.

### **6.4 Payment of lump sum Benefit in pension form**

A Member or Eligible Person entitled to a lump sum Benefit other than on the death of the Member or Eligible Person may request that any part or all of the lump sum Benefit be paid as a Pension. In these circumstances the Trustee with the agreement of the Member or Eligible Person, as the case may be, must determine:

- (a) the level, terms and conditions pertaining to the payment of the Pension;
- (b) whether the Pension will be paid as a Pension from the Division or purchased by the Trustee in the form of an Annuity in the name of Trustee or the Member or Eligible Person.

### **6.5 Pension Benefits**

#### **6.5.1 Pension payable to Member in accordance with Benefit Specification**

Where a Division I Participant has indicated in the Benefit Specification that a Benefit becoming payable in respect of a Member is to be paid in pension form then the pension shall be payable in the manner prescribed by the Benefit Specification.

### **6.5.2 Pension payable to Member as a Participant**

Where a Division I Participant has not indicated in the Benefit Specification that a Benefit becoming payable in respect of a Member is to be paid in pension form or that any Pension payable in respect of a Member is to be maintained out of the Member's Nominated Accounts then where the Member wishes to take a Benefit in pension form the Member will be deemed to have made a request for deferral of the Member's Benefit pursuant to Rule 7.3.1 and the provisions of Rule 7.3.2 shall apply.

### **6.5.3 Pension payable to Eligible Person in accordance with Benefit Specification**

Where a Division I Participant who is an Eligible Person or group of Eligible Persons has indicated in the Benefit Specification that a Benefit becoming payable in respect of the Eligible Person or any one of the Eligible Persons is to be paid in pension form then the Pension shall be payable in the manner prescribed by the Benefit Specification.

### **6.5.4 Regular Pension Request**

Where:

- (a) Rule 6.5.1 or Rule 6.5.3 applies and the Benefit Specification does not prescribe the same; or
- (b) Rule 6.5.2 or Rule 6.5.4 applies,

then the person to whom the pension is to be paid must:

- (c) nominate to the Trustee the dollar amount which the person wishes to draw down on a regular basis ("**the Regular Pension Payment**");
- (d) specify the intervals at which the Regular Pension Payment is to be paid ("**the Regular Pension Payment Interval**"),

such nomination and specification being defined in these Rules as the "**Regular Pension Request**".

## **7. BENEFITS FOR MEMBERS**

### **7.1 When Benefit payable**

A Benefit becomes payable in respect of a Member:

- (a) upon, subject to the Operational Standards, termination of the Member's Service with the Member's Employer at or after the Member's Normal Retirement Date other than by reason of the Member's death or Total and Permanent Disablement;
- (b) upon the Member's death;
- (c) upon the Member's Total and Permanent Disablement;
- (d) upon the Member's cessation of gainful employment due to ill-health;

- (e) upon, subject to the Operational Standards, termination of the Member's Service with the Member's Employer prior to the Member's Normal Retirement Date other than by reason of the Member's death or Total and Permanent Disablement;
- (f) where the Member has attained an age in such circumstances that the Operational Standards permit a Benefit to be paid or commence to be paid in respect of the Member and the Member has requested the same and the relevant Division I Participant and the Trustee consents to the same; or
- (g) where the Member has attained an age in such circumstances that the Operational Standards require that a Benefit be paid or commence to be paid in respect of the Member.

## **7.2 Notification of Benefits payable**

Upon receipt of a notification in writing, that a Benefit is payable in the case of a Member by the relevant Division I Participant the Trustee must determine the Benefit in accordance with the provisions of this Rule 7.

## **7.3 Deferral of Benefit payable**

### **7.3.1 Request for deferral**

Where a Benefit becomes payable in respect of a Member the Member may apply to the Trustee in writing to defer payment of the Benefit. The Trustee may agree to defer payment of the Benefit unless the Operational Standards require that the Benefit be paid.

### **7.3.2 Change of status**

Where payment of a Benefit in respect of a Member is deferred under Rule 7.3.1 and the Division I Participant in respect of whom the Member has been admitted to the Division does not consent to the same:

- (a) the Division I Participant shall be deemed to have delivered a notification to the Trustee pursuant to Clause 14.4.2; and
- (b) the Trustee must make such arrangements as it considers necessary in respect of the continued membership of the Member in Division I as a Participant or otherwise.

### **7.3.3 Contributions**

Where payment of a Benefit is deferred under Rule 7.3.1 the Trustee may:

- (a) accept Contributions for the Member where the Operational Standards permit the acceptance of the Contributions; or
- (b) notify the Member that no Contributions will be accepted by or on behalf of the Member.

#### 7.3.4 Compulsory payment

The Trustee must pay or commence to pay the Benefit in full where the Operational Standards require that the Benefit be paid to the Member or the Member dies.

#### 7.4 Amount of Benefit

##### 7.4.1 Events other than death and ill-health

Upon the occurrence of an event described in Rule 7.1 other than Rules 7.1(b) or (d) the amount of the Benefit payable in respect of the Member and the circumstances in which it must be paid shall be determined by the Trustee with, where the Operational Standards permit the same, the consent of the Division I Participant having regard to the Benefit Specification made in respect of the Member.

##### 7.4.2 Death

Upon the death of a Member the Trustee must with, where the Operational Standards permit the same, the consent of the Division I Participant having regard to:

- (i) the terms of the Benefit Specification made in respect of the Member;
- (ii) such other matters as the Trustee in its absolute discretion determines as relevant; and
- (iii) the Operational Standards generally,

determine whether the Benefit payable will be paid as a lump sum or a Pension or combination thereof.

Where the Trustee determines that the Benefit will be paid as a lump sum the Benefit will be an amount equal to the balance standing to the credit of the Member's Nominated Accounts or where no Member's Nominated Accounts are maintained in respect of the Member the amount determined by reference to the Benefit Specification made in respect of the Member.

Where the Trustee determines that the Benefit will be paid in whole or in part as a pension (such whole or part being defined in this Deed as "**the Reversionary Pension**") the Trustee must determine whether to pay the Reversionary Pension to the Member's Nominated Reversionary Dependant or other Dependant (the person selected by the Trustee being defined in this Deed as "**the Reversionary Dependant**") and with the consent of the Reversionary Dependant determine the value of and the terms and conditions pertaining to payment of the Reversionary Pension.

##### 7.4.3 Ill-health

Upon a Member suffering ill-health which causes the Member's cessation of gainful employment prior to the Member otherwise becoming entitled to a Benefit under these Rules, the Member shall be entitled to receive a Salary Continuance Benefit.

#### **7.4.4 Principles Applying to calculation of Benefit**

The following principles apply to the calculation of a Benefit:

- (a) The amount of the Benefit payable must not be less than the amount of the person's Vested Benefit Entitlement;
- (b) Where the Benefit or any part thereof is an Accumulation Benefit any Benefit payable shall not be greater in amount than the balance standing to the credit of the Member's Nominated Accounts.
- (c) Any Benefit payable in the event of the death or Total and Permanent Disablement of a Member shall include the amount of any Insured Benefit.
- (d) Where the Benefit or any part thereof is a Defined Benefit the amount of the Benefit must not cause a reduction of the Vested Benefit Entitlements of those other Employees of the Division I Participant who are Members as in the opinion of the Trustee and taking into account any certificate provided by the Actuary is inequitable.
- (e) Under no circumstances shall the Trustee be at liberty to call upon the Investments of the Division held in respect of any other member to make good any shortfall in Benefits payable in respect of the person.

#### **7.5 To whom Benefit payable**

##### **7.5.1 Trustee to pay Benefit**

Upon determination of the type of Benefit to be paid and the terms and conditions of the Benefit, the Trustee will pay an amount equal to the Member's Benefit in the manner set out in these Rules.

##### **7.5.2 Payment of Benefit to person entitled**

A Benefit will be applied in the following manner:

- (a) upon the occurrence of an event described in Rule 7.1 other than Rule 7.1(b) pay the Benefit to the Member;
- (b) upon the Member's death or where the retirement of the Member is taken to have occurred for the purposes of the Operational Standards but the Member has died before receiving the whole of the Benefit, and the Trustee has determined:
  - (i) that the death Benefit will be paid as a lump sum, pay the Benefit to the Nominated Dependants (if any) or Dependants of the deceased Member or to any one or more of them to the exclusion of the other or others of them and in such proportions as the Trustee in its absolute discretion shall decide the event that the Trustee is unable to determine any Dependants to whom any portion of the Benefit should be paid such portion will be paid to the person's Legal Personal Representative; or

- (ii) that the death Benefit will be paid as a Reversionary Pension, pay the Reversionary Pension to the Member's Reversionary Dependant.

### **7.5.3 Death of Reversionary Dependant to whom a Reversionary Pension is payable**

Upon the death of the Reversionary Dependant in respect of whom a Reversionary Pension is being paid, the Trustee shall, subject to the Member's Division I Participant's Benefit Specification, having regard to:

- (a) the balance standing to the credit of the deceased Member's Nominated Accounts and circumstances of the other surviving Dependents of the deceased Member (if any) or where the deceased Member was entitled to a Defined Benefit the amount determined by the Actuary as the residual capital value of the Benefit;
- (b) the terms of the Member's Nominated Dependant Notice; and
- (c) the Operational Standards generally,

determine whether to:

- (d) continue to pay the Reversionary Pension to another surviving Dependant of the deceased Member as the Trustee in its absolute discretion decides; or
- (e) pay the balance of the Reversionary Pension as a lump sum to the other surviving Dependents of the deceased Member or to any one or more of them to the exclusion of the other or others of them as the Trustee in its absolute discretion determines

provided that any such Dependant must have been a Dependant of the deceased Member at the date of the Dependant's death.

In the event that the Trustee is unable to determine any Dependents of the deceased Member to whom the balance standing to the credit of the deceased Member's Nominated Accounts or any portion thereof should be paid, such balance or portion thereof shall be paid to the Member's Legal Personal Representative.

### **7.6 Application of this Rule to groups of Eligible Persons**

Where a Division I Participant is a group of Eligible Persons:

- (a) the references to "Division I Participant" in this Rule 7 shall accordingly be deemed to be a reference to the group of Eligible Persons;
- (b) a reference to "Member" shall accordingly be deemed to be a reference to an Eligible Persons;

- (c) a reference to a “Member’s Nominated Accounts” shall accordingly be deemed to a reference to an “Eligible Person’s Nominated Accounts”.

## **8. BENEFITS FOR ELIGIBLE PERSONS**

### **8.1 Eligible Persons**

A Benefit becomes payable in respect of a Division I Participant who is an Eligible Person:

- (a) where, subject to the Operational Standards, the Eligible Person ceases to be an Eligible Person other than by reason of the Eligible Person’s death or Total and Permanent Disablement;
- (b) upon the Eligible Person’s death;
- (c) upon the Eligible Person’s Total and Permanent Disablement;
- (d) upon the Eligible Person’s cessation of gainful employment due to the Eligible Person’s ill-health;
- (e) where the Eligible Person has attained an age at which the Operational Standards permit a Benefit to be paid or commence to be paid in respect of the Eligible Person and the Eligible Person has requested the same and the Trustee has consented to the same; or
- (f) when otherwise prescribed by the Operational Standards.

### **8.2 Notification of Benefits payable**

Upon receipt of a notification in writing from the Participant that a Benefit is payable the Trustee must determine the Benefit in accordance with the provisions of this Rule 8.

### **8.3 Amount of Benefit**

#### **8.3.1 Events other than death and ill-health**

Upon the occurrence of an event described in Rule 8.1 other than Rules 8.1(b) or (d) the amount of the Benefit payable in respect of the Eligible Person and the circumstances in which it shall be paid must be determined by the Trustee who with the agreement of the Eligible Person and having regard to the Eligible Person’s Benefit Specification must determine the level and terms and conditions pertaining to the payment of such Benefit.

#### **8.3.2 Death**

Upon the death of an Eligible Person the Trustee must having regard to:

- (a) the terms of the Eligible Person’s Benefit Specification;
- (b) such other matters as the Trustee in its absolute discretion determines as relevant; and



(c) the Operational Standards generally,

determine whether the Benefit payable will be paid as a lump sum or a Pension or combination thereof.

Where the Trustee determines that the Benefit will be paid as a lump sum the Benefit will be an amount equal to the balance standing to the credit of the Eligible Person's Participants Account.

Where the Trustee determines that the Benefit will be paid in whole or in part as a Pension (such whole or part being defined in this Deed as "**the Reversionary Pension**") the Trustee must determine whether to pay the Reversionary Pension to the Eligible Person's Nominated Reversionary Dependant or other Dependant (the person selected by the Trustee being defined in this Deed as "**the Reversionary Dependant**") and with the consent of the Reversionary Dependant determine the value of and the terms and conditions pertaining to payment of the Reversionary Pension.

### **8.3.2A Death of a Non-Member Spouse**

Upon the death of a Non-Member Spouse the Trustee must, having regard to:

- (a) the Payment Split Interest;
- (b) such matters as the Trustee in its absolute discretion determines as relevant;
- (c) the Operational Standards generally; and
- (d) the Family Law Requirements,

determine whether the Benefit payable will be paid as a lump sum or a Pension or combination thereof. The value of the Death Benefit will be determined in accordance with the Family Law Requirements.

Where the Trustee determines that the Benefit will be paid as a lump sum the Benefit will be an amount equal to the value of the Payment Split Interest standing to the credit of the Non-Member Spouse.

Where the Trustee determines that the Benefit will be paid in whole or in part as a Pension (such whole or part being defined in this Deed as "**the Reversionary Pension**") the Trustee must determine the Dependant to whom the Reversionary Pension is to be paid (the person selected by the Trustee being defined in this Deed as "**the Reversionary Dependant**") and with the consent of the Reversionary Dependant determine the value of and the terms and conditions pertaining to payment of the Reversionary Pension.

### **8.3.3 Ill-health**

Upon an Eligible Person suffering ill-health which causes the Eligible Person's cessation of gainful employment prior to the Eligible Person otherwise becoming entitled to a Benefit under these Rules, the Eligible Person shall be entitled to receive a Salary Continuance Benefit.

### **8.3.4 Principles Applying to calculation of Benefit**

The following principles apply to the calculation of a Benefit:

- (a) any Benefit payable shall not be greater in amount than the balance standing to the credit of the Eligible Person's Participants Account from time to time.
- (b) Any Benefit payable in the event of the death or Total and Permanent Disablement of a Eligible Person shall include the amount of any Insured Benefit.
- (c) Under no circumstances shall the Trustee be at liberty to call upon the Investments of the Division held in respect of any other Eligible Person to make good any shortfall in Benefits payable in respect of the person.

## **8.4 To whom Benefit payable**

### **8.4.1 Trustee to pay Benefit**

Upon determination of the type of Benefit to be paid and the terms and conditions of the Benefit, the Trustee will pay an amount equal to the Eligible Person's Benefit in the manner set out in this Deed.

### **8.4.2 Payment of Benefit to person entitled**

A Benefit will be applied in the following manner:

- (a) upon the occurrence of an event described in Rule 8.1 other than Rule 8.1(b) pay the Benefit to the Eligible Person;
- (b) upon the Eligible Person's death or where the retirement of the Eligible Person is taken to have occurred for the purposes of the Operational Standards but the Eligible Person has died before receiving the whole of the Benefit, and the Trustee has determined:
  - (ii) that the death Benefit will be paid as a lump sum, pay the Benefit to the Nominated Dependants (if any) or Dependants of the deceased Eligible Person or to any one or more of them to the exclusion of the other or others of them and in such proportions as the Trustee in its absolute discretion shall decide or in the event that the Trustee is unable to determine any Dependants to whom any portion of the Benefit should be paid such portion will be paid to the person's Legal Personal Representative; or
  - (ii) that the death Benefit will be paid as a Reversionary Pension, pay the Reversionary Pension to the Eligible Person's Reversionary Dependant.

### **8.4.2A Payment of a Death Benefit to a Non-Member Spouse**

On the death of a Non-Member Spouse having a Payment Split Interest the Trustee must pay a Benefit in relation to that Payment Split Interest:

- (a) in accordance with Rule 8.4.2, as if references to the Eligible Person were to the Non-Member Spouse; or
- (b) as otherwise required by the Family Law Requirements.

#### **8.4.3 Death of Reversionary Dependant to whom a Reversionary Pension is payable**

Upon the death of the Reversionary Dependant in respect of whom a Reversionary Pension is being paid, the Trustee shall, subject to the Eligible Person's Benefit Specification, having regard to:

- (a) the balance standing to the credit of the deceased Eligible Person's Participants Account and circumstances of the other surviving Dependants of the deceased Eligible Person (if any);
- (b) the terms of the Eligible Person's Nominated Dependant Notice;
- (c) such matters as the Trustee determines as relevant; and
- (d) the Operational Standards generally,

determine whether to:

- (e) continue to pay the Reversionary Pension to another surviving Dependant of the deceased Eligible Person as the Trustee in its absolute discretion decides; or
- (f) pay the balance of the Reversionary Pension as a lump sum to the other surviving Dependants of the deceased Eligible Person or to any one or more of them to the exclusion of the other or others of them as the Trustee in its absolute discretion determines

provided that any such Dependant must have been a Dependant of the deceased Eligible Person at the date of the Dependant's death.

In the event that the Trustee is unable to determine any Dependants of the deceased Eligible Person to whom the balance standing to the credit of the deceased Eligible Person's Participants Account or any portion thereof should be paid, such balance or portion thereof shall be paid to the Eligible Person's Legal Personal Representative.

#### **8.5 Payment of Transferable Benefit**

Subject to Rule 13.2, if:

- (a) the interest of an Affected Division I Participant, as defined in Rule 13.1, in the Fund becomes subject to a Payment Split; and
- (b) the Non-Member Spouse requests the Trustee in writing to pay:

- (i) to a Regulated Superannuation Fund, Approved Deposit Fund, retirement savings account or Eligible Rollover Fund the Transferable Benefits of the Non-Member Spouse; or
- (ii) to the Non-Member Spouse, as a lump sum, an amount not exceeding the value of the Payment Split Interest; and
- (c) the payment complies with the Family Law Requirements and the Operational Standards;

the Trustee:

- (d) must comply with the request, if the Family Law Requirements require it to do so; and
- (e) may comply with the request, if the Family Law Requirements permit, but do not require, it to do so.

Subject to the Family Law Requirements, the Trustee may pay the Transferable Benefits of a Non-Member Spouse to an Eligible Rollover Fund in the absence of a request from the Non-Member Spouse.

## **9. DRAWDOWNS**

### **9.1 Drawdown request**

Where the Trustee has agreed to defer payment of a Benefit pursuant to these Rules or part of the balance standing to the credit of a Participant's Participants Account or Member's Nominated Accounts exist reason of a rollover to the Division or otherwise, the relevant:

- (a) Participant;
- (b) Member; or
- (c) Eligible Person,

may, subject at all times to the Operational Standards and in particular to the Cashing Restrictions, and in such form as the Trustee may from time to time prescribes request the Trustee to drawdown all or part of that person's interest in the Division (such request being defined in this Deed as "**the Drawdown Request**" and the amount of the Drawdown Request as "**the Drawdown**").

### **9.2 Discretion to refuse**

A Drawdown Request:

- (a) must be in an amount which is not less than the minimum Drawdown Amount nominated in the current Disclosure Document or such other amount as may be nominated by the Trustee from time to time; and
- (b) must not cause the balance standing to the credit of the Accounts maintained in respect of the person making the Drawdown Request to fall below the minimum Account balance nominated in the current Disclosure

Document or such other amount as may be nominated by the Trustee from time to time.

### **9.3 Pay Drawdown**

The Trustee shall, subject to the provisions of Clause 4.4.4:

- (a) unless the Trustee otherwise agrees, pay the Drawdown to the relevant person on a date not less than thirty (30) days from receipt of the Drawdown Request; and
- (b) debit the amount of the Drawdown Amount to the Accounts maintained in respect of the relevant person.

## **10. PAYMENT OF REGULAR PENSION PAYMENTS**

### **10.1 Payment of Pension Benefit**

The Trustee shall, subject to the provisions of Rule 10.3 pay any Regular Pension Payment within fourteen (14) days of the end of each Regular Pension Interval.

### **10.2 Regular sale of Assets to retain liquidity of Investments**

At the end of each Financial Year and at such other times as the Trustee determines is necessary the Trustee shall realise sufficient of the Investments of the Division so as to ensure that the Investments of the Division will comprise sufficient Cash from time to time to meet the amount of the Eligible Person's Regular Pension Payment.

### **10.3 Sale of Investments to pay Regular Pension Payment**

In the event that the Division's Investments comprise insufficient Cash which can be withdrawn to meet the amount of the Regular Pension Payment then the Trustee shall having regard to the current Conditions of the person's Option Nomination and the provisions of Clause 6 generally realise some or all of the Division's non-Cash Investments and pay the Regular Pension Payment to the person from the proceeds.

### **10.4 Variation of Regular Pension Payment**

A Member or Eligible Person may, subject to the Operational Standards and in particular to the Cashing Restrictions and to the Trustee's consent to the same, vary from time to time the Member's or Eligible Person's Regular Pension Payment or Regular Pension Interval by giving notice in writing of at least twenty-one (21) days to the Trustee in the form from time to time prescribed by the Trustee.

## **11. ACTUARIAL INVESTIGATION**

### **11.1 Requirement for actuarial investigation**

In the event that the Benefit Specification of a Division I Participant prescribes that all or part of the Benefits payable are to be calculated as Defined Benefits, the provisions of this Rule 11 will apply.

## **11.2 Appointment of Actuary**

The Trustee must instruct an Actuary to carry out an actuarial investigation of the financial condition of Division I as it relates to the Division I Participant at the times required by the Operational Standards and must instruct the Actuary to report on the matters prescribed in the Operational Standards including such of the following matters as the Trustee determines appropriate:

- (a) a statement of the Assets of the Division held on behalf of the Division I Participant;
- (b) a statement that whether or not in the Actuary's opinion the value of those Assets is adequate to meet the liabilities in respect of the relevant Vested Benefit Entitlements;
- (c) the Actuary's recommendation as to the amount of the Contributions to be made by the Division I Participant for the three (3) year period immediately following the period to which the report relates;
- (d) a statement that in the Actuary's view the recommended Contributions to be made by the Division I Participant together with the Assets of the Division held on behalf of the Division I Participant and any prescribed Member Contributions will provide adequately for expected liabilities of any Benefits provided in respect of the Division I Participant during the three (3) year period referred to in sub-Rule (c) hereof; and
- (e) such other matters as are required to meet the requirements imposed by the Operational Standards or as the Actuary may otherwise consider appropriate.

The Trustee shall provide a copy of the Actuary's report to the Division I Participant and upon their request to the relevant Members.

## **11.3 Action on unsatisfactory financial condition**

If:

- (a) an Employer fails at any time to make the level of Contributions recommended in the last Actuary's report; or
- (b) the Actuary having conducted an actuarial investigation reports that the Actuary is unable to provide a funding and solvency certificate as required under the Operational Standards, or the Actuary withdraws a funding and solvency certificate previously issued,

the Trustee must take whatever steps are prescribed under the Operational Standards and may consult the Actuary to determine the appropriate course of action as prescribed in the Operational Standards.

## **11.4 Surpluses and deficiencies**

Subject to the Operational Standards and its restrictions on payments to Employer, the Trustee may upon the advice of the Actuary and with the approval of the Division I Participant deal with any surplus or deficiency disclosed by the valuation

by increasing or decreasing the rates of contributions or increasing or subject to the Operational Standards decreasing the Benefits provided for in the Benefit Specification or in any manner including a reversion of all or a part of the surplus to one of more of the Division I Participant or its Associated Employers where:

- (a) the Actuary has certified in writing to the Trustee that the payment will not have the effect that that part of Division I which relates to the Division I Participant will become technically insolvent for the purposes of the Operational Standards; and
- (b) the procedures required for authorisation of a payment to the Division I Participant or Associated Employer under the Operational Standards are followed.

### **11.5 Compulsory scheme benefit**

The Division I Participant may instruct the Trustee to adjust any Benefit payable or which may become payable to or in respect of a Member to take into account a Compulsory Scheme Benefit to be paid or payable to the Member and the Trustee may with the agreement of the Trustee adjust the Contributions payable thereafter by the Division I Participant in respect of the Member to comply with any statutory requirements in respect of the Compulsory Scheme Benefit or amounts payable to the Member generally provided that Benefits accrued to the date of the introduction of the Compulsory Scheme in respect of the Member cannot be reduced without the written consent of the Member.

## **12 FORFEITURE OF BENEFIT**

### **12.1 Disentitling Event**

- (a) Any:
  - (i) Member who in the opinion of its Division I Participant based on reasonable grounds commits any fraud dishonesty defalcation or gross wilful or serious misconduct in relation to the Participant or its affairs; or
  - (ii) Member or Division I Participant who is an Eligible Person (“**Eligible Person**”) who assigns or charges or attempts to assign or charge the Member’s or Person’s interest in Division I; or
  - (iii) Member or Eligible Person who commits an act of bankruptcy or is adjudicated bankrupt or assigns its estate for the benefit of its creditors; or
  - (iv) Member or Eligible Person who is declared an insane or incapable person; or
  - (v) Member or Eligible Person who does or attempts to do or suffers any act or if any event happens whereby if a Benefit or any part thereof were payable to the Member or Eligible Person absolutely the Member or Eligible Person or as the case may be would be deprived of the right to receive it or any part of it or would be disposed of or dealt with otherwise than in accordance with this Deed; or

- (vi) Member or Eligible Person who is suffering from any physical or mental disability which in the opinion of the Trustee renders the Member or Eligible Person unable to manage its own affairs;

shall subject to the provisions of Rules 12.2 and 12.3 in any such event (hereinafter called “**a Disentitling Event**”) cease to be presumptively entitled to receive any payment from Division I.

- (b) Without prejudice to any rights an Employer may have under Rule 12.3, nothing in this Rule 12.1 shall be construed to cause or authorise the forfeiture of a Benefit which has become payable to or in respect of a Member or Division I Participant at the time an event referred to in Rule 12.1(a)(i) occurs.
- (c) To the extent that the forfeiture of any amount under Rule 12.1(a) is void under any legislation regulating bankruptcy, Rule 12.1(a) is severed from these Rules and has no effect and the amount is deemed not to have been forfeited.

## **12.2 Application of Forfeited Benefit**

On the occurrence of a Disentitling Event, the Trustee may:

- (a) in the case of a Disentitling Event in respect of a Member, subject to Rule 12.3 apply the amount recorded as standing to the credit of the Member’s Nominated Accounts, then remaining in its hands or under its control for the maintenance and support or otherwise for the benefit of the Member and/or such one or more of the Member’s Dependants as the Trustee may in its direction determine provided that whilst a Member remains in the Service of an Employer any such application by the Trustee shall be restricted to the maintenance and support of the Member and/or the Member’s Dependants to the extent necessary to relieve the Member’s or the Member’s Dependants’ genuine financial hardship or sickness accident or other misfortune causing hardship. The payment or application of moneys by the Trustee in pursuance of this sub-Rule shall be a complete discharge to the Trustee therefor.
- (b) in the case of a Disentitling Event in respect of an Eligible Person:
  - (i) who is a Division I Participant apply the amount standing to the credit of the Division I Participant’s Participants Account then remaining in its hands or under its control for the maintenance and support or otherwise for the benefit of the Division I Participant and/or such one or more of the Participant’s Dependants as the Trustee may in its discretion determine provided that whilst a Division I Participant remains gainfully employed any such application by the Trustee shall upon the agreement of the Commissioner be restricted to the maintenance and support of the Division I Participant and/or the Division I Participant’s Dependants to the extent necessary to relieve the Division I Participant’s or the Division I Participant’s Dependants’ genuine financial hardship or sickness accident or other misfortune causing hardship. The payment or application of moneys by the



Trustee in pursuance of this sub-Rule shall be a complete discharge to the Trustee therefor.

- (ii) who has with other Eligible Persons been admitted as a Division I Participant apply the amount standing to the credit of the Nominated Accounts then remaining in its hands or under its control for the maintenance and support or otherwise for the benefit of the Eligible Person and/or such one or more of the Eligible Person's Dependants as the Trustee may in its discretion determine provided that whilst a Eligible Person remains gainfully employed any such application by the Trustee shall upon the agreement of the Commissioner be restricted to the maintenance and support of the Eligible Person and/or the Eligible Person's Dependants to the extent necessary to relieve the Eligible Person's or the Eligible Person's Dependants' genuine financial hardship or sickness accident or other misfortune causing hardship. The payment or application of moneys by the Trustee in pursuance of this sub-Rule shall be a complete discharge to the Trustee therefor.

### **12.3 Reimbursement to Employer**

On the occurrence of a Disentitling Event mentioned in paragraph (a) of Rule 12.1 the Trustee may reimburse to a Division I Participant by payment to the Participant or to the Participant's Reserve Account out of the amount recorded as standing to the credit of the Member's Nominated Accounts pursuant to this Deed an amount not exceeding all costs and losses (including the costs of all proceedings both civil and criminal) incurred by the Division I Participant as a result of or incidental to or arising out of the Member's fraud dishonesty defalcation or gross or wilful or serious misconduct in relation to the Division I Participant or its affairs provided that in determining the amount of the Member's Benefit pursuant to Rule 7 available for the purpose of reimbursing the Division I Participant no part of the Member's Vested Benefit Entitlement shall be taken into account ("**the Forfeited Benefit**").

## **13. FAMILY LAW PAYMENT SPLITS**

### **13.1 Adjustment of Interests**

Notwithstanding any other provision of this Deed, the Trustee must vary the interest of a Division I Participant ("Affected Division I Participant") in the Fund to take account of a Payment Split and any other Family Law Requirement. Without limiting this Rule 13.1, to the extent relevant:

- (a) the value of the Division I Participant's interest in the Fund will be adjusted accordingly, and
- (b) the amount of any benefit payable from the Fund in respect of the Division I Participant (whether in the form of a lump sum or a pension) will be adjusted accordingly.

### **13.2 Treatment of any Fund Participation of Non-Member Spouse Prior to Payment Split**

Subject to Family Law Requirements, if a Non-Member Spouse was a Division I Participant immediately prior to the Operative Time for the Payment Split, nothing in Rule 8.5 is to be taken as:

- (a) affecting the participant status of the Non-Member Spouse; or
- (b) limiting the Trustee's powers under Rule 13.3(e).

### **13.3 Trustee Powers under Family Law Requirements**

The Trustee has power to do anything necessary or convenient to comply with or give effect to the Family Law Requirements including without limitation:

- (a) power to provide information about Division I Participants' entitlements and Payment Splits to relevant parties;
- (b) power to give effect to Payment Splits;
- (c) power to transfer Transferable Benefits;
- (d) power to charge fees;
- (e) power, where a Non-Member Spouse is already a Division I Participant immediately prior to the Operative Time of a Payment Split, to credit an amount not exceeding the value of the Payment Split Interest to the Non-Member Spouse's interest in the Fund;
- (f) power to account for any amount credited to a Non-Member Spouse's interest in one or more existing accounts maintained in respect of that person under Rule 13.3(e) in any manner it thinks appropriate including in one or more existing accounts maintained in respect of that person or by the establishment of separate accounts or sub-accounts; and
- (g) power to recognise interests and entitlements created under the Family Law Requirements.

## **SECOND SCHEDULE**

### **1. Information requirements**

An applicant for membership, a Member, a beneficiary, a claimant for a benefit, an Employer and any other person contributing paying or transferring amounts to the Plan or a Fund in respect of a Member must give to the Trustee (or the Trustee's agent) all information, evidence and proofs reasonably requested by the Trustee in order to administer the Member's benefits and the Plan or a Fund in accordance with this Deed or to comply with the Operational Standards. If any of the requested information, evidence or proofs is not provided or is later found to be inaccurate or incomplete, the Trustee may reject an application or claim, refuse to accept contributions, and impose conditions on or adjust affected benefits in the manner and to the extent the Trustee considers necessary or appropriate.

### **2. Acceptance of Contributions**

The Trustee must not accept contributions in respect of a Member where:

- (a) the Operational Standards do not permit acceptance of such contributions; or
- (b) the Trustee determines not to accept contributions of a particular type or in particular circumstances.

### **3. Refund of Contributions**

The Trustee must refund a contribution if required by the Operational Standards and may refund any contribution made in error. In refunding contributions the Trustee may deduct any negative investment earnings or movement in unit price and an amount for reasonable administration and transaction costs, including an appropriate proportion of any insurance premium paid in respect of the Member or not recoverable by the Trustee.

### **4. Allocation of Contributions**

The Trustee must allocate contributions to a Member at the times and otherwise in accordance with the Operational Standards.

### **5. Limits on Splittable Contributions**

Notwithstanding any other provision of this Deed, the Trustee must only permit a Member to transfer contributions to the Member's spouse not exceeding the maximum splittable amount under, and otherwise in accordance with, the Operational Standards. The Trustee may make any other adjustments to the splittable amount that it considers necessary or appropriate having regard to its Tax obligations.

### **6. Power to Make Rules and Policies**

The Trustee may make rules and adopt policies in relation to any matters that the Trustee considers appropriate for the convenient administration of the Plan or a Fund. The Trustee shall not be liable for not doing something that the Trustee is permitted but not required to do under any policy of the Trustee or under the Operational Standards.

## **7. Compliance Requirements for Transfers**

The Trustee is empowered to make any transfer from the Plan or a Fund required under the Operational Standards. All transfers out of the Plan or a Fund are subject to such conditions and must be made within the timeframes required under the Operational Standards. The Trustee must provide to the person responsible for the transferred amount such information as the Operational Standards require.

## **8. Illiquid Investments**

Where a Member's benefits are wholly or partly invested in an illiquid investment as a consequence of the Member exercising a choice regarding the investment of the Member's benefits, the Trustee shall not be liable for any loss, cost, expense or other liability arising from a delay in the transfer or payment of the benefit associated with a delay in realising the illiquid investment.

## **9. Benefit Payment Requirements**

The Trustee may suspend consideration of a person's claim to or payment of a benefit until all required information evidence and proofs are provided to the satisfaction of the Trustee and, if the required information evidence and proofs are not provided to the Trustee's satisfaction or the Operational Standards so require, the Trustee may withhold payment.

## **10. Tax**

The Trustee may take any action (whether prospective or retrospective) that the Trustee considers necessary or appropriate to calculate, pay, deduct or take account of any Tax, including without limitation:

- (a) adopting policies relating to the application or timing of Tax credits and Tax debits to Member accounts;
- (b) adopting policies relating to the acceptance of members and contributions without any required or desirable tax-related information;
- (c) adopting policies relating to the claiming of Tax refunds;
- (d) reducing or otherwise adjusting contributions to or benefits or other amounts payable from the Plan or a Fund, in which case the Member will be entitled to only the net amount;
- (e) providing information and making payments to the regulator;
- (f) establishing reserves and making provisions in the accounts of the Plan or a Fund; and
- (g) charging to recover the costs and expenses attributable to administering any Tax requirement.

Each Member is liable for all Tax incurred by the Trustee or the Plan or a Fund in relation to an excess contribution in respect of that Member and must indemnify the Trustee in respect of such Tax.

## **11. Membership**

For the avoidance of doubt, if the Trustee receives, or determines that it holds, an amount (**Residual Amount**) that relates to the benefits that a person has previously received (other than the Residual Amount), and the Trustee determines that the Residual Amount is to be paid to the person, the Residual Amount will not result in the issue of a new interest but forms part of the original interest associated with the benefits previously paid to the person.

## **12. Electronic Delivery**

Without limiting the means by which notices may be given or information may be disseminated, the Trustee may give notice or provide information by any form of data or image transmission or communication facility or medium, including without limitation facsimile, electronic mail and the internet, in which case the notice will be considered to have been received when transmitted, accessed or published (as the case may be).

## **13. Pensions**

### **(a) Form of Pension**

The Trustee may pay any form of pension that is approved by the Trustee and permitted by the Operational Standards.

### **(b) Payment of Pension**

Where a Member or beneficiary has elected to be paid a pension, the pension may be paid in such manner as is agreed between the Trustee and the Member or beneficiary, or in the absence of agreement as the Trustee determines provided the pension satisfies the standards of a pension referred to the Operational Standards.

### **(c) Deemed inclusion of Operational Standards**

This Deed is deemed to include each requirement of the Operational Standards that the governing rules under which a pension is provided must satisfy for the pension to be a relevant pension for the purposes of the Operational Standards.

### **(d) Commutation**

A Member may commute the whole or a part of the Member's pension at any time by notifying the Trustee in a manner approved by the Trustee, subject to the requirements of the Operational Standards.

### **(e) Variation**

The Trustee may vary any terms and conditions of a pension or impose additional terms and conditions to ensure that the relevant pension does and will continue to comply with Operational Standards or in any other manner

contemplated by the Operational Standards, without necessarily commuting the pension.

**(f) Reversionary Beneficiary**

A Member may nominate one or more Dependants as a reversionary beneficiary to whom the pension must be transferred after the Member's death provided that the nomination is consistent with the Operational Standards. The Trustee must reject any nomination that is not consistent with the Operational Standards, in which case, if the Member does not provide a nomination that is consistent with the Operational Standards, the balance of the pension as at the Member's death must be paid to the reversionary beneficiary as a lump sum or paid in accordance with this Deed at the Trustee's discretion.

**(g) Commutation of Reversionary Beneficiary Pension**

Subject to the requirements of the Operational Standards, a reversionary beneficiary may elect to:

- (i) commute a part or all of a pension by notifying the Trustee in a manner approved by the Trustee; or
- (ii) limit any right of commutation that the reversionary beneficiary might otherwise have to ensure that the pension complies with the Operational Standards,

provided that the Trustee must commute a reversionary beneficiary's pension if and to the extent that the Operational Standards so require.