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Deed

# IOOF Portfolio Service Superannuation Fund Deed of Amendment

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I.O.O.F. Investment Management Limited



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## Details

### Deed of Amendment

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Date ► 18 September 2024

Party **I.O.O.F. Investment Management Limited**  
 ABN 53 006 695 021 of Level 1, 800 Bourke Street, Docklands,  
 Victoria 3008  
**(Trustee)**

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Recitals

- 1 IOOF Portfolio Service Superannuation Fund (**Fund**) was established by a trust deed dated 20 June 1994 (**Trust Deed**), which has been amended from time to time.
- 2 The Trustee is the current trustee of the Fund.
- 3 Clause 3 of the Trust Deed provides that the provisions of the Trust Deed including clause 3 may be added to, amended, altered, modified, rescinded or varied (the **Variation**) from time to time by the Trustee either prospectively or retrospectively on the following basis:
  - (a) The Variation shall be by deed executed by the Trustee and a copy of such deed shall be forwarded to the Regulator (as defined in the Trust Deed) and each Participating Employer (as defined in the Trust Deed) if required by the Act (as defined in the Trust Deed).
  - (b) On any Variation being effected, the Trustee shall if so required by the Act advise the Members (as defined in the Trust Deed) and Beneficiaries (as defined in the Trust Deed) in writing of the nature and purpose of the Variation and the effect on their entitlements or rights in accordance with and in the manner and time required under the Act.
  - (c) No Variation shall have the effect of:
    - (i) reducing or adversely affecting the rights or claims of a Member to accrued entitlements under the Fund which have arisen prior to the Variation being effected; or
    - (ii) reducing the amount of an entitlement other than an entitlement referred to in paragraph (a) that is or may become payable in relation to a period before the date of the Variation,
 unless:
    - (iii) the reduction is required to enable the Fund to comply with the Act; or
    - (iv) the Member so affected consents in writing to the reduction; or



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- (v) the Regulator consents in writing to the reduction, provided that each variation shall comply with the Act.
- (d) No Variation to the Trust Deed shall:
  - (i) have the effect of providing that the sole or primary purpose of the Fund is other than the provision of old-age pensions within the meaning of the Act, unless the Trustee of the Fund is a constitutional corporation or the Act otherwise permits; or
  - (ii) permit a person or body other than a constitutional corporation to be appointed as Trustee, unless this document provides that the sole or primary purpose of the Fund is the provision of old-age pensions within the meaning of the Act or the Act otherwise permits.
- 4 The Trustee wishes to amend the Trust Deed in the manner set out in this Deed of Amendment.
- 5 The Trustee is of the opinion that the amendments contained in this Deed of Amendment are consistent with, and do not breach the restrictions in, the amendment power contained in clause 3 of the Trust Deed.

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This Deed of Amendment witnesses as follows:

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## Operative provisions

### 1 Amendment to the Trust Deed

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With effect on and from the date of this Deed of Amendment, the Trust Deed is deleted and replaced with the document set out under the Annexure to this Deed of Amendment.

### 2 Saving provisions

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Notwithstanding any other provision in this Deed of Amendment to the contrary, if any amendment contained in this Deed of Amendment is not consistent with, or breaches the restrictions in, the amendment power contained in clause 3 of the Trust Deed, that amendment shall be of no effect and the provisions purported to be amended shall continue to be determined in accordance with the provisions of the Trust Deed as they existed prior to the date of the amendment.

### 3 No re-settlement of trust

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This Deed of Amendment shall be construed only as operating to amend the Trust Deed and not as establishing a new or different trust or superannuation fund.

### 4 Governing law and jurisdiction

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- (a) This Deed of Amendment is governed by the law applicable in Victoria.
- (b) The Trustee irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria.



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# Signing page

Executed as a deed

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## Trustee

Signed sealed and delivered by  
**I.O.O.F. Investment  
Management Limited ABN 53  
006 695 021** in its capacity as  
trustee of IOOF Portfolio Service  
Superannuation Fund in  
accordance with section 127 of the  
*Corporations Act 2001* (Cth)

DocuSigned by:  
*Chris Tay*  
D467DADE8C2B42D  
sign here ▶ \_\_\_\_\_  
Company Secretary/**Director**  
Chris Tay  
print name \_\_\_\_\_

Signed by:  
*RL#*  
DFB2E2B7EE39413  
sign here ▶ \_\_\_\_\_  
Director  
Lindsay Smartt  
print name \_\_\_\_\_



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## Annexure

### IOOF Portfolio Service Superannuation Fund – Trust Deed



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Deed

# IOOF Portfolio Service Superannuation Fund

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I.O.O.F. Investment Management Limited (Trustee)





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### **Appendix 2** **Protected Members Category**



# 1 Definitions and interpretation

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## 1.1 Definitions

Except in so far as the context or subject matter otherwise indicates or requires:

Term	Meaning
<b>Account</b>	any account maintained under this Deed.
<b>Administration Reserve Account</b>	any account maintained under this Deed.
<b>Associated Employer</b>	a corporation, partnership or person admitted as an Associated Employer under clause 10.5 or under a previous provision of this Deed, for so long as the corporation, partnership or person participates in the Fund.
<b>Auditor</b>	the person appointed under clause 9.2.
<b>Authorised Person</b>	<ol style="list-style-type: none"> <li>1 a person who is or has been a director or officer or employee of the Trustee;</li> <li>2 any agent, adviser or other person appointed by the Trustee pursuant to clause 5.6(c); or</li> <li>3 any other person authorised by the Trustee in writing.</li> </ol>
<b>Beneficiary</b>	a Member, a Dependant of the Member and any other person who is entitled to be paid a benefit from the Fund.
<b>Benefit Arrangement</b>	a superannuation fund, an approved deposit fund, an eligible rollover fund, an RSA, an annuity, a UK pension scheme or any other benefit arrangement which can pay money to the Fund, or which the Fund can pay money to, without breaching the Superannuation Law.
<b>Binding Death Benefit Nomination</b>	a Lapsing Binding Death Benefit Nomination or a Non-Lapsing Binding Death Benefit Nomination.



<b>Term</b>	<b>Meaning</b>
<b>Business Day</b>	means a week day on which banks are open for business in Melbourne, Victoria.
<b>Buy Price</b>	the Unit Price that is to be applied to the application or buying of units as determined by the Trustee under clause 6.5.
<b>Cash</b>	includes bank and building society cheques and payment orders.
<b>Cash Account</b>	either or both of: <ol style="list-style-type: none"> <li>1 a cash management trust selected by the Trustee and of which the Trustee may be trustee; and</li> <li>2 an interest bearing account at a bank or ADI in respect of which:                             <ol style="list-style-type: none"> <li>(i) the Trustee is a signatory; and</li> <li>(ii) interest is calculated and credited in respect of each Member's individual interest in any moneys on deposit in such account.</li> </ol> </li> </ol>
<b>Category</b>	has the meaning set out in clause 4.3.
<b>Choice Product</b>	a class of beneficial interest in the Fund that is not: <ol style="list-style-type: none"> <li>1 a MySuper Product; or</li> <li>2 a class of interest whose only Members are Defined Benefit Members.</li> </ol>
<b>Deed</b>	the trust deed dated 20 June 1994 and rules (as amended from time to time), anything deemed to be included in the trust deed and rules (as amended) under the Superannuation Law, and any arrangement, agreement, approval, Rules or procedures effected pursuant to, or as specifically provided for by, any provision any of them.
<b>Defined Benefit Member</b>	a Member whose entitlements from the Fund are subject to the provisions of Schedule 4 of this Deed.
<b>Dependant</b>	has the meaning given to it by the Superannuation Law.
<b>Direct Share Facility</b>	the facility offered by the Trustee in accordance with clause 6.8.



<b>Term</b>	<b>Meaning</b>
<b>Disclosure Document</b>	any document issued by the Trustee offering participation or Membership in a Division, Product Line, Plan or Category.
<b>Dispute Resolution Authority</b>	<ol style="list-style-type: none"> <li>1 the Australian Financial Complaints Authority, established under the <i>Treasury Laws Amendment (Putting Consumers First – Establishment of the Australian Financial Complaints Authority) Act 2018 (Cth)</i>; or</li> <li>2 any other external dispute resolution scheme that has jurisdiction to deal with superannuation-related grievances.</li> </ol>
<b>Disqualified Person</b>	has the meaning given to it by the SIS Act.
<b>Division</b>	has the meaning set out in clause 4.3.
<b>Employee</b>	the employee of an Employer and includes an employee as defined in the SIS Act, at the relevant time.
<b>Employer</b>	the employer of a person, and includes an employer as defined in the SIS Act, at the relevant time.
<b>Employer Sponsored Member</b>	a Member whose Employer is a Standard Employer Sponsor or an Associated Employer, at the relevant time.
<b>Family Law</b>	the <i>Family Law Act 1975 (Cth)</i> .
<b>Fund</b>	the fund continued by this Deed.
<b>Fund Expenses</b>	has the meaning set out in Appendix 1.
<b>Insured Benefit</b>	in respect of a Member means the amount (if any) payable to the Fund by an Insurer on the happening of an event insured under a policy of insurance with the Insurer.
<b>Insurer</b>	an insurance company with which the Trustee holds a policy of insurance for the payment of an Insured Benefit.



Term	Meaning
<b>Investment Option</b>	an investment objective or strategy in accordance with which a Member is allowed to direct the investment of their Member's Account or Cash Account (as the case may be) under clause 6.2(b).
<b>Investment Performance Rate</b>	the (positive or negative) rate or rates determined by the Trustee in accordance with clause 6.4.
<b>Lapsing Binding Death Benefit Nomination</b>	notice given by a Member to the Trustee, and for which the Trustee has provided consent, under clause 13.10(b).
<b>Large Employer</b>	has the meaning given to it in the SIS Act.
<b>Liability</b>	all and any claim, demands, proceedings and actions brought and any loss, liability, cost and expenses (including legal costs and expenses).
<b>Member</b>	<p>a person:</p> <ol style="list-style-type: none"> <li>1 admitted as a member of the Fund under clause 10.1 or under a previous provision of this Deed (and includes a deceased person in respect of whom a death benefit is payable in accordance with clause 13.10 until the person ceases to be a Member under clause 10.2);</li> <li>2 for whom an interest is created under clause 2.6(a)(3)(B);</li> <li>3 for whom the Trustee has agreed to pay a Pension as a Reversionary Beneficiary.</li> </ol>
<b>Member's Account</b>	in respect of a Member, means an Account maintained by the Trustee in respect of the Member in accordance with clause 9.3(a).
<b>Member Investment Choice</b>	a direction made by a Member pursuant to clause 6.2(b)(2).
<b>MySuper Product</b>	a class of beneficial interest which satisfies the requirements of clauses 11.2 or 11.3 (as applicable).
<b>MySuper Start Date</b>	the date from which the Trustee must treat any contribution (or part of a contribution) to the Fund as a contribution to be paid into a MySuper Product of the Fund under the Superannuation Law or such earlier date as determined by the Trustee.





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<b>Term</b>	<b>Meaning</b>
<b>Non-Binding Death Benefit Nomination</b>	notice given by a Member to the Trustee, and for which the Trustee has provided consent, under clause 13.10(a).
<b>Non Employer Sponsored Member</b>	a Member who is not an Employer Sponsored Member at the relevant time.
<b>Non-Lapsing Binding Death Benefit Nomination</b>	notice given by a Member to the Trustee, and for which the Trustee has provided consent, under clause 13.10(c).
<b>Operational Risk Reserve</b>	the reserve established pursuant to clause 9.5.
<b>Participant</b>	a Beneficiary or a Participating Employer.
<b>Participating Employer</b>	a Standard Employer Sponsor or an Associated Employer.
<b>Pension</b>	has the meaning given to it in Schedule 3.
<b>Plan</b>	has the meaning set out in clause 4.3.
<b>Power</b>	a power, right, duty, discretion, remedy or authority of any nature whatsoever.
<b>Preserved Benefit</b>	any benefit, or part of a benefit, which is required by the Superannuation Law to be preserved for the Member in the Fund or in another Benefit Arrangement until it may be paid under the Superannuation Law.
<b>Product Line</b>	has the meaning set out in clause 4.3.
<b>Proper Law</b>	the law of the State of Victoria.
<b>Regulator</b>	the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, the Commissioner of Taxation, AUSTRAC or any other government authority responsible for administering the laws or any other rules governing



<b>Term</b>	<b>Meaning</b>
	superannuation funds or the availability of income tax concessions to superannuation funds.
<b>Reversionary Beneficiary</b>	has the meaning given to it in Schedule 3.
<b>Rules</b>	the rules governing a Division, Product Line, Plan or Category as referred to in clause 4.3.
<b>Schedule</b>	a schedule attached to this Deed (as amended from time to time).
<b>Sell Price</b>	the Unit Price that is to be applied to the redemption or selling of Units as determined by the Trustee under clause 6.5.
<b>SIS Act</b>	the <i>Superannuation Industry (Supervision) Act 1993</i> (Cth).
<b>SIS Regulations</b>	the <i>Superannuation Industry (Supervision) Regulations 1994</i> (Cth)
<b>Spouse</b>	has the meaning given to it by the Superannuation Law.
<b>Standard Employer Sponsor</b>	an Employer admitted as a Standard Employer Sponsor under clause 10.4 or under a previous provision of this Deed, for so long as the Employer participates in the Fund.
<b>Subsidising Employer</b>	an Employer referred to in clause 11.2(e).
<b>Successor Fund Transfer</b>	a transfer of the benefit entitlements of a Member from another superannuation fund made without the Member's consent to the transfer as permitted by regulation 6.29(1)(c) of the SIS Regulations.
<b>Superannuation Law</b>	<ol style="list-style-type: none"> <li>1 the SIS Act;</li> <li>2 the Tax Act;</li> <li>3 the Family Law;</li> <li>4 the <i>Corporations Act 2001</i> (Cth);</li> <li>5 the <i>Bankruptcy Act 1966</i> (Cth);</li> </ol>



Term	Meaning
	<p>6 the <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i> (Cth);</p> <p>7 any replacement or additional Commonwealth or State law; and</p> <p>8 any other present, future or proposed legal requirements with which the Trustee:</p> <ul style="list-style-type: none"> <li>(i) is legally obliged to comply; or</li> <li>(ii) must comply to obtain the maximum Tax concessions available to the Fund.</li> </ul>
<b>Tax</b>	includes any Commonwealth or State tax, impost, surcharge, levy, charge or duty and any interest, fine, charge or other amount imposed thereon.
<b>Tax Act</b>	the <i>Income Tax Assessment Act 1936</i> (Cth) and the <i>Income Tax Assessment Act 1997</i> (Cth), as applicable.
<b>Temporary Disablement</b>	<p>in relation to a benefit, or any part of a benefit, payable on Temporary Disablement that is:</p> <ul style="list-style-type: none"> <li>1 an Insured Benefit – has the meaning of the term Temporary Disablement (or such other corresponding term) in the policy document evidencing the contract of insurance; or</li> <li>2 not an Insured Benefit – has the meaning of the term temporary incapacity in the Superannuation Law.</li> </ul>
<b>Total and Permanent Disablement</b>	<p>in relation to a benefit, or any part of a benefit, payable on Total and Permanent Disablement that is:</p> <ul style="list-style-type: none"> <li>1 an Insured Benefit – has the meaning of the term Total and Permanent Disablement (or such other corresponding term) in the policy document evidencing the contract of insurance; or</li> <li>2 not an Insured Benefit – has the meaning of the term permanent incapacity in the Superannuation Law.</li> </ul>
<b>Trustee</b>	the person appointed as trustee of the Fund from time to time.
<b>UK Transfer Condition</b>	any condition imposed by a UK pension scheme or UK authority, prior to transfer to the Fund, on the transfer or payment of benefits of a Member of the UK Pensions Division as set out in Schedule 5.
<b>Unit</b>	a part or share of the Investment Option Portfolio determined in accordance with clause 6.5.



Term	Meaning
<b>Unit Price</b>	the applicable price of a Unit as determined by the Trustee under clause 6.5.

## 1.2 Interpretation

For the purposes of this Deed, unless the contrary intention appears or the context requires otherwise:

- (a) **Defined terms:** the expressions: ADI, approved deposit fund, condition of release, constitutional corporation, eligible rollover fund, financial services, flag lifting agreement, non-member spouse, public offer superannuation fund, Regulator, payment split, superannuation agreement, payment flag, minimum benefits, preserved benefits, restricted non preserved benefit, unrestricted non preserved benefits and any other words or expressions used in this Deed which is defined in the Superannuation Law have the same meaning in this Deed as in the Superannuation Law.
- (b) **Amended provisions:** a reference to a document (including this Deed) includes a change or supplement to, or replacement or novation of that document.
- (c) **Deed binding:** the provisions of this Deed as well as all approvals and acts under this Deed are binding on all Participants and form the sole agreement between the Trustee and the Participant in relation to the matters dealt with by this Deed.
- (d) **Rules of interpretation:** the rules of interpretation set out in sections 6, 7, 8 and 9 of the *Interpretation Act 1987* (NSW) apply to this Deed (except that any reference to that Act in those sections is to be taken as a reference to this Deed) and without limitation:
  - (1) a reference to a person includes a body corporate, partnership, joint venture or association; and
  - (2) a reference to the singular includes the plural and vice versa.
- (e) **Statutory enactments:** a reference to any statute or other law includes any regulations, rules, prudential standards, modification orders, declarations, enforceable determinations, class orders, rulings and any other instruments issued under it and any consolidations, amendments, re-enactments or replacements of any of them.
- (f) **Headings:** headings and table of contents are for convenience only and do not affect the interpretation of this Deed.
- (g) **Inclusions:** the use of the word **including** in a provision as an introduction to a list of things does not limit that provision to that list or to things of a similar nature.
- (h) **Positive and negative investment performance rate:** a reference to investment performance or any rate of investment performance (howsoever described) includes a reference to positive or negative investment performance or rate of investment performance.
- (i) **Australian Currency:** All Benefits shall be expressed and paid in Australian currency unless otherwise specifically agreed between the Beneficiary and the Trustee.
- (j) **Exercise of Powers:** Subject to any provision of this Deed to the contrary, whenever a Power is conferred on the Trustee, an Employer, a delegate of the Trustee or any other person under this Deed:



- (1) the relevant provision of this Deed shall be read as if the words **at any time or from time to time** were added to that provision; and
- (2) the Trustee, the Employer, the delegate of the Trustee or the other person has an absolute and uncontrolled discretion and may, from time to time:
  - (A) exercise and enforce all or any such Powers; or
  - (B) refrain from exercising or otherwise not exercise all or any such Powers.

## 2 Paramount provisions: compliance with the Superannuation Law

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### 2.1 Paramount provisions

The provisions of this clause 2 override any other provisions of this Deed.

### 2.2 Compliance

The Trustee must comply with the requirements of the Superannuation Law and is fully empowered (without being obliged) to comply with any provision or standard of the Superannuation Law which is not a requirement.

### 2.3 Power to comply with the Superannuation Law

- (a) The Trustee may:
  - (1) do anything that the Trustee is required to do or that the Trustee considers necessary, expedient or desirable to comply with any requirement of the Superannuation Law (including expending monies of the Fund); and
  - (2) refrain from doing anything (including, without limitation, delaying or refusing any request or transaction in connection with a Beneficiary's interest in the Fund) that would result in a breach of, or the Trustee breaching, a requirement of the Superannuation Law.
- (b) The Trustee may rely on anything (including any statutory presumptions available to it) in the Superannuation Law, to the extent that the Trustee is entitled to do so in its capacity as trustee of the Fund.
- (c) The Trustee is entitled to be indemnified out of the assets of the Fund for any Liabilities that the Trustee properly incurs pursuant to this clause.

### 2.4 Deemed compliance

The Trustee is deemed to comply with the Superannuation Law and this Deed if the Regulator:

- (a) is satisfied that the Trustee has complied with the Superannuation Law;
- (b) determines that the Fund will be treated as if it had complied with the Superannuation Law; or
- (c) has advised the Trustee that it will not take action against the Trustee or the Fund in respect of a failure to comply with the Superannuation Law.



## 2.5 Conflict with the Superannuation Law

- (a) To the extent that any provision, or part of a provision, of this Deed conflicts with the Superannuation Law or is invalid for any other reason whatsoever:
- (1) that provision, or part, must be read down, changed, construed or severed to avoid such conflict or invalidity; and
  - (2) to the extent that such conflict or invalidity cannot be avoided, the provision or part of the Superannuation Law shall prevail to the extent of the conflict or invalidity only and the provision, or part, will be of no effect and will not affect the remainder of this Deed.
- (b) If a provision of this Deed would otherwise be void under the Superannuation Law because it:
- (1) subjects the Trustee to direction by another person; or
  - (2) permits a person to exercise a discretion without the consent of the Trustee, other than in the circumstances permitted by the Superannuation Law, the Trustee's consent is required for the giving of the direction or the exercise of the discretion.
- (c) In the event of any doubt arising as to the effect of the Superannuation Law on a provision of this Deed, or if there is an inconsistency between the Superannuation Law and a provision of this Deed, the decision of the Trustee shall be final.

## 2.6 Power to comply with the Family Law

- (a) The Trustee may in accordance with the Superannuation Law:
- (1) provide a Non-Member Spouse or any other person with information (including information in relation to a Member's interest in the Fund) in the Trustee's possession;
  - (2) withhold the payment, the transfer or the rollover of a Member's benefit;
  - (3) give effect to a payment split, superannuation agreement, payment flag, flag lifting agreement or any other agreement or court order made pursuant to Part VIII B of the Family Law, in relation to a Member's interest in the Fund including:
    - (A) reducing the entitlement of the Member, or any other person to whom the Member's interest would have been paid, by the amount of the Non-Member Spouse's entitlement under the payment split;
    - (B) creating a new interest in the Fund for the Non-Member Spouse;
    - (C) rolling over or transferring to another Benefit Arrangement or paying to the Non-Member Spouse, the Non-Member Spouse's entitlement under the payment;
    - (D) commuting a pension or annuity payable from the Fund; and
    - (E) apportioning the minimum benefits, preserved benefits, restricted non preserved benefits and unrestricted non preserved benefits as between the Member's interest in the Fund and the Non-Member Spouse's entitlements under the payment split; and
  - (4) preserve a Non-Member Spouse's entitlements; and
  - (5) subject to the Rules set out in Appendix 1, charge a Member or a former Member and deduct from benefits or entitlements in, or payable from the



Fund, fees and costs in respect of any matter or thing done under this clause, an application for information about a Member's interest in the Fund or any other thing done pursuant to Part VIIIB of the Family Law.

- (b) The Trustee must treat the Non-Member Spouse as a Member as required by the Superannuation Law.

## 3 Variation of Deed

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### 3.1 Variation

The provisions of this Deed including this clause may be added to, amended, altered, modified, rescinded or varied (the **Variation**) in writing from time to time by the Trustee either prospectively or retrospectively without the consent of Members if the Variation is:

- (a) made to satisfy the requirements of the Superannuation Law;
- (b) made to enable the Fund and the provisions of this Deed to be more conveniently, advantageously, efficiently, profitably or economically administered or managed;
- (c) of a formal, minor or technical nature;
- (d) made to correct a manifest error; or
- (e) in the opinion of the Trustee, in the best financial interests of the Beneficiaries of the Fund.

### 3.2 Limitation on Variation

No Variation shall have the effect of:

- (a) reducing or adversely affecting the rights or claims of a Member to accrued entitlements under the Fund which have arisen prior to the Variation being effected; or
- (b) reducing the amount of an entitlement other than an entitlement referred to in clause 3.2(a) that is or may become payable in relation to a period before the date of the Variation,

unless:

- (c) the reduction is required to enable the Fund to comply with the Superannuation Law; or
- (d) the Member so affected consents in writing to the reduction; or
- (e) the Regulator consents in writing to the reduction,

provided that each Variation shall comply with the Superannuation Law.

### 3.3 Further limitation on Variation

No Variation to this Deed shall:

- (a) have the effect of providing that the sole or primary purpose of the Fund is other than the provision of old-age pensions within the meaning of the Superannuation Law, unless the Trustee of the Fund is a constitutional corporation or the Superannuation Law otherwise permits; or



- (b) permit a person or body other than a constitutional corporation to be appointed as Trustee, unless this Deed provides that the sole or primary purpose of the Fund is the provision of old-age pensions within the meaning of the Superannuation Law or the Superannuation Law otherwise permits.

## 4 The Fund

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### 4.1 Establishment of the Fund

The Fund known as the IOOF Portfolio Service Superannuation Fund was established by a deed dated 20 June 1994 as varied from time to time.

### 4.2 Assets of the Fund

The assets of the Fund shall vest in the Trustee upon trust or apply the same in the manner set forth in this Deed.

### 4.3 Divisions, Product Lines, Plans and Categories

- (a) The Fund shall consist of:
- (1) one or more divisions (each a **Division**); and
  - (2) within a Division, one or more product lines (each a **Product Line**); and
  - (3) within a Division or Product Line, one or more plans (each a **Plan**); and
  - (4) within a Division, Product Line, Plan, one or more categories (each a **Category**).
- (b) Without limiting the generality of clause 10.7, the Trustee may establish a Division, Product Line, Plan or Category governed pursuant to rules set out in writing (**Rules**):
- (1) as determined by the Trustee; or
  - (2) agreed upon by the Trustee and another person provided that the Trustee may at any time alter any such Rules to comply with Superannuation Law.
- (c) The Rules governing a Division, Product Line, Plan or Category may be set out in a Schedule or Appendix to this Deed or in any other document determined by the Trustee.
- (d) The Trustee may establish, terminate or replace a Division, Product Line, Plan or Category on such terms and conditions as it determines.
- (e) For the avoidance of doubt, a Member may belong to more than one Division, Product Line, Plan or Category at one time.

### 4.4 Operation of Divisions, Product Line, Plans and Categories

- (a) The Trustee may allocate any particular assets or Liabilities to a Division, Product Line, Plan or Category which in the Trustee's opinion are attributable to that Division, Product Line, Plan or Category. Any assets or Liabilities attributable to one Division, Product Line, Plan or Category must not be allocated to any other Division, Product Line, Plan or Category.





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- (b) The provisions of this Deed which are not included in a Schedule or Appendix relating to a Division, Product Line, Plan or Category will govern the Division, Product Line, Plan or Category to the extent they are applicable.
- (c) If there is a conflict between a Rule governing a Division, Product Line, Plan or Category and any other provision of this Deed which is not included in the Schedule or Appendix relating to that Division, Product Line, Plan or Category, the former prevails over the latter, unless the Schedule or Appendix expressly provides to the contrary or the Trustee determines otherwise.
- (d) For avoidance of doubt, nothing in this clause 4 shall be taken as creating a separate trust or fund for the purposes of the Superannuation Law.

#### 4.5 Badged Products

- (a) The Trustee may enter into an arrangement with a third party (**Sponsor**) for the Sponsor to offer participation in a Division, Product Line, Plan or Category (**Badged Product**).
- (b) The Disclosure Document in respect of a Badged Product 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 Product other than the name given to the relevant Division, Product Line, Plan or Category by this Deed.
- (c) The provisions of this Deed apply to a Badged Product in the same manner as they apply to any other Division, Product Line, Plan or Category established under this Deed, unless the Rules governing that Division, Product Line, Plan or Category expressly provide otherwise.

#### 4.6 Change of a Beneficiary's Division, Product Line, Plan or Category

- (a) The Trustee may:
  - (1) upon the written request of a Beneficiary; or
  - (2) subject to clause 11.1(d), without the consent of the Beneficiary provided that it is permitted by the Superannuation Law,
 transfer the benefit entitlements of the Beneficiary in a Division, Product Line, Plan or Category to another Division, Product Line, Plan or Category to which the Beneficiary is eligible to be admitted (an **Internal Transfer**).
- (b) Subject to Superannuation Law, upon an Internal Transfer, the Trustee may:
  - (1) after seeking appropriate actuarial or other advice, adjust the benefits and rights of the Beneficiary, and impose such special conditions, as the Trustee sees fit to take into account the differences between the Beneficiary's former Division, Product Line, Plan or Category and the Beneficiary's new Division, Product Line, Plan or Category; and
  - (2) determine the terms of the Beneficiary's entitlements to be either:
    - (A) wholly in accordance with the Rules governing the Beneficiary's new Division, Product Line, Plan or Category; or
    - (B) partly in accordance with the Rules governing the Beneficiary's former Division, Product Line, Plan or Category and the Rules governing the Beneficiary's new Division, Product Line, Plan or Category.



## 5 Trustee

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### 5.1 Appointment of Trustee and directors

- (a) The Trustee must be a Constitutional Corporation, unless the Trustee determines that the sole or primary purpose of the Fund is the provision of old-age pensions. The Trustee must be eligible under the Superannuation Law to be appointed as the trustee of the Fund.
- (b) The board of directors of the Trustee shall be comprised of such persons as will at all times ensure that the Trustee and the Fund complies with Superannuation Law.
- (c) A person may only be appointed as Trustee, or as a director of the Trustee, if that person consents in writing to the appointment.

### 5.2 Retirement of Trustee

The office of the Trustee shall become vacant if:

- (a) the Trustee becomes a Disqualified Person or is otherwise removed or suspended from office, by operation of law;
- (b) the Trustee ceases to be eligible under Superannuation Law to act as the Trustee;
- (c) the Trustee is removed by the Members in accordance with Superannuation Law;
- (d) the Trustee is removed by a Court; or
- (e) the Trustee, by notice in writing to the shareholders of the Trustee, retires from the office of Trustee.

### 5.3 Appointment of replacement Trustee

If the office of the Trustee becomes vacant, the shareholders of the Trustee vacating the office shall appoint a new Trustee in accordance with the provisions of this Deed and the Superannuation Law.

### 5.4 Vesting of assets in replacement Trustee

Upon the retirement of the Trustee, the retiring Trustee must do, sign and execute all such things, papers, writings, documents, deeds and instruments as maybe necessary to give proper effect to its retirement from office and to the transfer or assignment to or otherwise the vesting of the assets comprised in the Fund in the new Trustee.

### 5.5 Antecedent breach by Trustee

Nothing contained in this Deed shall relieve a Constitutional Corporation which ceases to be Trustee from liability for any antecedent breach of trust for which it would otherwise be liable.

### 5.6 The Trustee's Powers

Subject to this Deed, the Trustee has complete management and control of the Fund as if it were a natural person owning the Fund and is completely unrestricted in the exercise of its Powers. It may do anything it considers appropriate to properly administer and maintain the Fund, exercise any Power and perform its duties, including the following:



- (a) **Advance monies:** to pay and advance out of the Fund all costs, expenses and outgoings (including Taxation) of and incidental to the management and administration of the Fund and to pay and advance out of the Fund the professional fees (if any) in respect of the provision of its services as Trustee of the Fund.
- (b) **Advice:** seek, and act upon, the advice or opinion of any accountant, auditor, banker, lawyer, valuer or other expert or professional person, firm or body corporate. The Trustee shall not be liable for any Liability resulting from any decision that it makes to act or not act in accordance with such advice or opinion.
- (c) **Appointments:** appoint advisers, agents, custodians, secretaries, administrators or investment managers, delegates, employees, contractors and any other persons to perform any duties and exercise any Powers that the Trustee is empowered to carry out under this Deed, including Powers to:
- (1) receive and expend monies of the Fund;
  - (2) advise Participants and prospective Participants in relation to the Fund;
  - (3) receive applications to participate in the Fund;
  - (4) perform financial services on behalf of the Trustee;
  - (5) deal with insurance policies; and
  - (6) keep accounts,
- on such terms (including terms as to remuneration) as the Trustee determines.
- (d) **Bank accounts:** open, deposit into and regulate the operation of bank accounts.
- (e) **Benefits:** without limiting clause 5.6(p), conclusively calculate and determine the amount of benefits, the identity of persons entitled to such benefits and the manner in which the benefits are to be paid (including the payment of benefits by way of pension or annuity), and may delay payment of benefits until:
- (1) the Trustee is satisfied of the identity of the person entitled to the benefit;  
and
  - (2) the assets of the Fund can reasonably be disposed of.
- (f) **Borrowing:** borrow, if permitted by the Superannuation Law.
- (g) **Delegation:** to delegate (by power of attorney or otherwise) to any person or company any of the Powers vested in the Trustee on such terms and conditions as the Trustee determines. The Trustee may revoke such delegation and may exercise its Powers concurrently, permanently or temporarily to the exclusions of the exercise of the Powers by the delegate. A Member may be a delegate of the Trustee and may exercise any power vested in the Member in that position without prejudice to the Member's rights as a Member of the Fund. The Trustee will not be responsible for any loss or Liability incurred as a result of such delegation.
- (h) **Determinations:** determine questions of fact, disputes and issues concerning the Fund conclusively and act on such proofs or presumptions as it may consider satisfactory whether or not the same be strict legal proofs or presumptions and any determination or discretion made by the Trustee can be made, subject to clause 2, in its absolute and uncontrolled discretion.
- (i) **Directors insurance:** to insure and keep insured as it sees fit any liability of the Trustee or any directors or officers of the Trustee or the liability of the Fund to indemnify or reimburse the Trustee or its directors or officers pursuant to clause 5.9.



- (j) **Fund Expenses:** to be indemnified for, to be reimbursed for, and to determine the allocation and attribution of, Fund Expenses in accordance with the Rules set out in Appendix 1.
- (k) **Fund Insurance:** may:
  - (1) at the expense of the Fund, effect (or accept the assignment of) a policy of insurance in respect of any risk, contingency or Liability whatsoever of the Fund, on such terms and conditions and for such periods as the Trustee, in its absolute discretion, determines;
  - (2) pay from the assets of the Fund premiums for such insurance; and
  - (3) deal with that policy in any manner which the Trustee considers suitable as if it were the sole and absolute legal and beneficial owner of that policy including agreeing with the insurer that the policy or contract to be varied or modified from time to time.
- (l) **Indemnities and undertakings:** give a guarantee, indemnity or undertaking and assume such liabilities (each an **obligation**) in connection with the Fund as it determines in its absolute discretion (including the obligations of the trustee of another Benefit Arrangement from which the Trustee has accepted Members into the Fund).
- (m) **Legal proceedings:** commence, conduct, discontinue, prosecute, defend, settle, compromise, refer to arbitration or abandon any claim, demand, suit or proceedings by or against the Fund or the Trustee or otherwise concerning the Fund or this Deed and compound or allow time for payment or satisfaction of a debt due to the Fund or the Trustee or of a claim or demand by or against the Fund or the Trustee or pay or charge interest in respect of any amount involved in any such proceedings.
- (n) **Marketing and promotion:** to market and promote the Fund to Participants and prospective Participants (including, expending monies to do so).
- (o) **Old-age pensions:** determine that the sole or primary purpose of the Fund is the provision of the old-age pensions.
- (p) **Orders:** to act on a direction or order of a Court or the Regulator or a Dispute Resolution Authority.
- (q) **Provisions:** set aside any amounts from the Fund as a provision against any Fund Expense or other outgoing contemplated by or which may be made under this Deed and amounts against which the Trustee reasonably believes it is indemnified.
- (r) **Receipts, releases and discharges:** give receipts, releases and other discharges for monies payable to the Fund or the Trustee and claims and demands of, or against, the Fund or the Trustee.
- (s) **Regulatory compliance:** as the Trustee may consider necessary or expedient for the advancement, administration, maintenance or preservation of the Fund:
  - (1) to enter into any agreement or provide any notice or make any election or undertake any other action whether revocable or irrevocable which would or may have the effect of committing the Trustee to conduct the Fund in accordance with Superannuation Law; and
  - (2) to seek modifications of or exemptions from the application of the Superannuation Law to the Fund provided that the Trustee shall be relieved from complying with any provision of the Superannuation Law in respect of which an exemption or a modification has been granted.
- (t) **Rules and procedures:** make rules and adopt procedures in relation to the Fund, including:



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- (1) the calculation and rounding-off of contributions, benefits and any rate of investment performance;
  - (2) the amount or proportion of a Member's benefits which must be invested in a Cash Account;
  - (3) circumstances in which amounts must, or may, be debited or credited to a Cash Account, including, but not limited to:
    - (A) contributions to and payments from the Fund;
    - (B) funding and proceeds of investments; and
    - (C) payment of Fund Expenses, fees and costs;
  - (4) the calculation of an Investment Performance Rate;
  - (5) the establishment of a reserving strategy for the purpose of stabilising Investment Performance Rates in respect of a Division, Product Line, Plan, or Category or class or group of Members;
  - (6) the determination of the minimum amounts that can be accepted or retained in the Fund;
  - (7) which persons can sign documents in connection with the Fund;
  - (8) the establishment and operation of policy committees;
  - (9) the establishment and operation of arbitration and dispute resolution procedures;
  - (10) the determination of periods of time;
  - (11) unitisation of the Fund; and
  - (12) any other matters which the Trustee considers appropriate for the convenient administration of the Fund.
- (u) **Tax:** do anything it considers appropriate in respect of any Tax, including:
- (1) reducing or adjusting any benefit or amount for any actual or contingent Liability for Tax before paying the benefit or amount;
  - (2) establishing reserves or making provisions for any future or contingent Liability for Tax; or
  - (3) transferring, or making any other arrangements whereby another party pays or provides for, all or part of the Tax Liability of the Fund,
- in such manner as it considers appropriate.
- (v) **Trustee's incidental Power:** do anything necessary or incidental to the exercise of any Power by the Trustee.

## 5.7 Trustee remuneration

The Trustee is entitled to be remunerated for its services to the Fund, such amounts, and at such intervals, in accordance with the Rules set out in Appendix 1.

## 5.8 Trustee fees

The Trustee may set one or more fees to be deducted from a Member's Account, a Cash Account or an Investment Option Portfolio in accordance with the Rules set out in Appendix 1.



## 5.9 Liability of Trustee

- (a) To the fullest extent permitted by law and subject to clause 5.9(b), the Trustee and each director of the Trustee is exempted and may be indemnified out of the assets of the Fund against all Liability incurred while acting as Trustee or a director of the Trustee (including in respect of the acts or omissions of any person referred to in clause 5.6(b) or any other agent or delegate of the Trustee).
- (b) Clause 5.9(a) does not indemnify the Trustee or a director of the Trustee against:
  - (1) a Liability that arises because the Trustee or the director:
    - (A) has failed to act honestly in relation to a matter concerning the Fund; or
    - (B) has intentionally or recklessly failed to exercise, in relation to a matter affecting the Fund, the degree of care and diligence the Trustee or the director is or was required to exercise; or
  - (2) a Liability for a criminal, civil or administrative penalty incurred by the Trustee of the Fund in relation to a contravention of a law of the Commonwealth (including the SIS Act); or
  - (3) the payment of any amount payable under an infringement notice (however described) given under a law of the Commonwealth (including the SIS Act); or
  - (4) liability for the costs of undertaking a course of education in compliance with an education direction (within the means of the SIS Act).

## 5.10 Reliance on opinions, advice or information

The Trustee and each Authorised Person:

- (a) may rely on, and are not liable for acting on, any opinion, advice or information obtained from the Regulator or a Participant in connection with the Fund; and
- (b) are indemnified by a Participant in relation to reliance on any such opinion, advice or information obtained from the Participant.

## 5.11 Action notwithstanding interest

- (a) Any person associated with the Fund may act as delegate, agent or adviser of the Trustee.
- (b) There are no restrictions on who may participate in the Fund, do business with the Fund or who may be involved with or interested in any person who participates in or does business with the Fund.

# 6 Investments of Fund

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## 6.1 Authorised investments

- (a) The Trustee may make any investment or deal with or deploy the assets of the Fund in such investments permitted by law, and in such manner, as the Trustee considers suitable as if it was the sole and absolute legal and beneficial owner of those assets, including:



- (1) **debentures and other securities:** debentures, stocks, shares or bonds issued, or proposed to be issued, by a government (whether a domestic or foreign government), or in a company or other body;
- (2) **real property:** real property or leasehold property of any description and to subdivide and build on land and to maintain, improve, extend and demolish buildings in whole or part;
- (3) **trusts:** units, sub-units or interests in a unit trust, managed investment scheme or other collective investment;
- (4) **loans:** make a loan (including with or without security) if permitted by the Superannuation Law;
- (5) **futures, hedging and synthetics:** participate in, in any capacity, any synthetic investment, including a futures contract, hedge contract, swap contract or option contract, whether or not related to any other property forming part of the Fund;
- (6) **securities lending arrangements:** subject to the Superannuation Law, entering into any securities lending arrangement or facility (whether in Australia or overseas) for lending securities of the Fund;
- (7) **policies:** investing in one or more policies of insurance;
- (8) **lease, mortgage, etc:** lease, mortgage, charge, license or otherwise deal in any way with any property of the Fund;
- (9) **mix property:** mix property of the Fund with any other property, other than as prohibited by the Superannuation Law, provided the Trustee must at all times maintain separate records to enable identification of the property of the Fund;
- (10) **no income:** investing in any property which does not produce income or which is speculative;
- (11) **annuities:** purchasing an annuity from an Insurer in order to provide all or a part of the Pension payable in respect of a Member and any such annuity shall be in the name of the Trustee or, if the Trustee shall so determine, in the name of the former Member;
- (12) **property:** any reversionary or deferred property or rights of any description wheresoever situated or enforceable and whether by way of original creation or assignment or otherwise;
- (13) **chattels:** purchase chattels of any description including ships and aircraft and any shares or interest in such chattels;
- (14) **superannuation:** investing all or part of the Fund in one or more superannuation policies or pooled superannuation trusts;
- (15) **notes and bills:** draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments and enter into bill facility or promissory note agreements;
- (16) **bank deposits:** make deposits with any bank or other regulated financial institution in any part of the world for any period whatsoever; and
- (17) make any other investment that the Trustee may from time to time consider appropriate.



- (b) If the Fund is invested wholly in a policy with an Insurer, the Insurer's records and accounts of the interests of Beneficiaries in respect of the policy may record and represent the interests of those Beneficiaries in the Fund.

## 6.2 Member Investment Choice

- (a) The Trustee may, where permitted by the Superannuation Law, hold specific investments for separate Divisions, Product Lines, Plans, or Categories or classes or groups of Members or an individual Member.
- (b) Where permitted by the Superannuation Law, the Trustee may (but is not obliged to):
- (1) establish one or more investment objectives and strategies (including an investment in a specified asset) (each called an **Investment Option**); and
  - (2) allow a Member of a Division, Product Line, Plan, or Category or class or group of Members or an individual Member to direct the Trustee, or vary such a direction, to invest one or more of the Member's Accounts or Cash Account (as the case may be) in accordance with an Investment Option or Investment Options and, if there is more than one Investment Option, the proportion of the Member's Accounts or Cash Account (as the case may be) that are to be invested in accordance with each Investment Option and to withdraw or switch from an Investment Option (such direction called a **Member Investment Choice**).
- (c) Subject to clauses 6.2(d) and 6.2(e), the Trustee shall be bound to act in accordance with a Member Investment Choice.
- (d) Where permitted by Superannuation Law, subject to clause 11, the Trustee may from time to time without the approval of Members:
- (1) close, terminate or suspend an Investment Option;
  - (2) impose terms, conditions and restrictions in relation to the closure, termination or suspension of an Investment Option; and
  - (3) if an Investment Option is terminated, transfer the amount of a Member's Account invested in the terminated Investment Option to one or more other Investment Options or the Member's Cash Account, as determined by the Trustee.
- (e) In respect of a Member Investment Choice, the Trustee may in its absolute discretion:
- (1) delay, stagger or place limits or restrictions on a withdrawal or switch from an Investment Option for any reason;
  - (2) reject a Member Investment Choice to withdraw or switch from an Investment Option if the trustee cannot dispose of some or all of the assets underlying that Investment Option;
  - (3) pay a withdrawal, transfer or switch from an Investment Option by instalments;
  - (4) prior to carrying out the Member Investment Choice, seek evidence of the Member's consent to the direction;
  - (5) impose rules, terms, conditions or restrictions (**Member Investment Choice Rules**) on the manner in which a Member Investment Choice may be made, including in relation to:





- (A) the maximum and minimum amount that may be invested (initially or at any time) in an Investment Option by a Member or a class or group of Members;
- (B) the maximum and minimum amount that may be withdrawn from an Investment Option by a Member or a class or group of Members;
- (C) the time or times, and the frequency in relation to which a Member Investment Choice may be made;
- (D) the date on which a Member Investment Choice will take effect; and
- (E) the fees that can be charged in relation to such a Member Investment Choice (including a fee for switching between Investment Options);
- (6) at any time vary any Member Investment Choice Rule without the approval of the Member, subject to the Superannuation Law;
- (7) if a Member who is allowed a Member Investment Choice fails to exercise their Member Investment Choice within the time or manner specified by the Trustee, determine the default Investment Option or Investment Options into which the Member's Accounts are to be invested and, if there is more than one Investment Option, the proportion of the Member's Accounts that are to be invested in each Investment Option; and
- (8) vary the default Investment Option or Investment Options into which a Member's Account is to be invested upon the Member's death notwithstanding any Member Investment Choice that has been made.
- (f) If a Member Investment Choice is not made in accordance with the Member Investment Choice Rules, the whole of the balance of the Member's Account will be allocated to:
  - (1) in relation to amounts received before the MySuper Start Date, the default Investment Option determined by the Trustee; and
  - (2) in relation to amounts received on or after the MySuper Start Date, an interest in the MySuper Class.
- (g) An investment by the Trustee to give effect to a Member Investment Choice is made for the sole benefit of and at the sole risk of the Member or the Members of the class or group such that any income or gains or losses or expenses incurred in respect of an Investment Option must be attributed to that Member or the Members of the class or group, except to the extent:
  - (1) permitted by the Superannuation Law; or
  - (2) necessary to comply with the Superannuation Law.
- (h) Notwithstanding clause 6.2(g), a Beneficiary has no right or any interest in, and cannot exercise any right in, any particular asset of the Fund.
- (i) The Trustee is not liable for the acquisition, delay in acquiring, retention, failure to dispose of, the performance of, or for any Liability attributable to, an Investment Option.

### 6.3 Investment Option Portfolios

- (a) The Trustee may from time to time:



- (1) establish and maintain one or more notional portfolios of assets and liabilities in relation to each Investment Option;
- (2) determine and notionally allocate the assets and Liabilities of the Fund (including any actual or contingent losses and expenses (including any Fund Expenses and Tax) which are not debited to a Member's Account or Cash Account (as applicable)) to each Investment Option Portfolio; and
- (3) combine, split, close, rename and restructure the Investment Option Portfolios in such manner as the Trustee determines.

For avoidance of doubt, nothing in this clause shall be taken as creating a separate trust or fund for the purpose of the Superannuation Law.

- (b) The Trustee may realise or apply any investments of an Investment Option Portfolio at any time that it deems expedient:
  - (1) in order to meet Fund Expenses allocated to that Investment Option Portfolio; or
  - (2) in anticipation that Units in an Investment Option Portfolio will need to be redeemed in accordance with clause 6.5(c)(1)(B).
- (c) The Trustee must determine the value of each Investment Option Portfolio from time to time (and at least annually) having regard to:
  - (1) investment performance (including income and realised and unrealised capital gains) and losses on the assets of the Investment Option Portfolio net of losses and expenses;
  - (2) the value of the assets and liabilities (including unrealised liabilities) of the Investment Option Portfolio;
  - (3) any averaging of investment performance or any reserving of returns, losses or expenses;
  - (4) any provision that in the opinion of the Trustee should be made; and
  - (5) other relevant matters that the Trustee in its absolute discretion determine is appropriate.
- (d) In the exercise of its Powers under clause 6.3(c), the Trustee may adopt whatever assumptions, methodology and procedures the Trustee, in its absolute discretion, considers appropriate, including:
  - (1) methodology and procedures concerning the method and basis of valuing particular property or the net income of an Investment Option Portfolio;
  - (2) the intervals at which valuations must be carried out; and
  - (3) the reserving of returns, losses or expenses or the averaging of the investment performance of an Investment Option Portfolio.

#### **6.4 Investment Performance Rate, Interim Investment Performance Rates and Adjustments**

- (a) Subject to clauses 6.2(g) and 6.5, the Trustee must declare one or more Investment Performance Rates (positive or negative) from time to time (and at least annually) in respect of each Investment Option Portfolio, or if there is no Investment Option Portfolio, the Fund.
- (b) The Trustee may, at such times and in such manner as the Trustee considers appropriate, declare:



- (1) one or more interim Investment Performance Rates (positive or negative) from time to time to be applied either prospectively or retrospectively in any period for which the Trustee has not declared an Investment Performance Rate; or
  - (2) an adjustment to any declared Investment Performance Rate to be applied retrospectively in relation to any period for which it has declared an Investment Performance Rate if permitted by the Superannuation Law.
- (c) In the exercise of its Powers under this clause 6.4, the Trustee
- (1) must have regard to the rate of investment return earned on, and the value of the assets of, the Investment Option Portfolio or the Fund (as the case may be) (including income and realised and unrealised capital gains and losses) and liabilities (including unrealised liabilities and any actual or contingent Fund Expenses which are not debited to Members' Accounts) and other relevant matters, as are appropriate in the opinion of the Trustee; and
  - (2) may otherwise adopt whatever assumptions, methodology and procedures the Trustee, in its absolute discretion, considers appropriate, including:
    - (A) methodology and procedures concerning the method and basis of valuing particular property;
    - (B) the intervals at which valuations must be carried out; and
    - (C) the reserving or averaging of investment performance.

## 6.5 Unitisation

- (a) The Trustee may divide each Investment Option Portfolio into Units.
- (b) The Trustee may adopt rules from time to time in relation to:
  - (1) whether parts of Units may be issued in a particular Investment Option Portfolio and, if so, the number of decimal places to which part Units may be issued;
  - (2) the means by which actual or anticipated transaction costs in relation to the acquisition or disposal of the underlying assets in an Investment Option Portfolio are recovered;
  - (3) switching between the Units of one Investment Option Portfolio and another;
  - (4) the method, timing and frequency of valuing and determining the Buy Price and Sell Price of Units in each Investment Option Portfolio;
  - (5) the calculation of any differential between the Buy Price and the Sell Price (if any) (**Buy/Sell differential**); and
  - (6) any other matter which the Trustee determines to be necessary or appropriate for administering the Fund as a unitised fund.
- (c) If and to the extent that the Trustee administers the Fund's investments on a unitised basis the following shall apply:
  - (1) Subject to clause 6.5(c)(2), the Trustee may:
    - (A) credit any amount in respect of a Beneficiary by allocating an appropriate number of Units to that Member's Account in the Fund in the relevant Investment Option Portfolio or Investment Option



- Portfolios in which the amount is to be invested, at the relevant Buy Price of those Units at that time; and
- (B) debit any amounts (including Fund Expenses and Tax) in respect of a Beneficiary by redeeming an appropriate number of Units from that Member's Account in the Fund in the relevant Investment Option Portfolio or Investment Option Portfolios in which the amount is invested, at the relevant Sell Price of those Units at that time.
- (2) Where the Superannuation Law requires it, or the Trustee does not believe that the Buy Price or the Sell Price is fair and reasonable, or can be calculated, the Trustee may apply such alternative Buy Price or Sell Price as the Trustee determines.
- (3) Where this Deed refers to the balance, or the amount standing to the credit, of an Account, it will (where appropriate) be taken as a reference to the amount or balance calculated by reference to the number of Units of each Investment Option Portfolio in which the Account is invested and the relevant Sell Price of each of those Units at that time.
- (4) Notwithstanding clause 6.4, the investment performance attributable to a Member's Account shall be determined by reference to the number of Units of each Investment Option Portfolio in which the Member's Account is invested and any rise or fall in the Unit Price of those Units.
- (5) Notwithstanding clause 6.5(c)(4), a Beneficiary has no right to claim any interest or exercise any right in any particular part, investment or asset of an Investment Option Portfolio but only such interest in the relevant Investment Option Portfolio as a whole as is conferred on a Unit in accordance with this Deed.

## 6.6 Netting-off purchases and sales

- (a) If the Trustee is to realise a particular investment held for a Member (**selling Member**) and is to acquire the same type of investment for another Member (**buying Member**) (or vice versa):
- (1) the Trustee may set-off any potential realisation against any potential acquisition of the investment without actually realising and acquiring the investment; and
  - (2) if it does so, the Trustee must make the necessary adjustments to the Member's Account of each Member concerned.
- (b) When adjusting a Member's Account pursuant to 6.6(a), the Trustee will apply the following values:
- (1) in relation to the selling Member, the proceeds which the Trustee considers that it would have received if it had actually realised the investment; and
  - (2) in relation to the buying Member, the cost which the Trustee considers that it would have incurred if it had actually acquired the investment.

Any profit or saving in connection with an investment set-off under this clause 6.6 will be dealt with and attributed to the relevant Members at the Trustee's discretion.



## 6.7 Fast track switching

- (a) If a Member has requested that the Trustee realise an existing investment and acquire an alternative investment by applying the proceeds, the Trustee may agree to acquire the alternative investment prior to the realisation of the existing investment subject to such terms, conditions and restrictions as the Trustee may determine.
- (b) When acquiring an alternative investment pursuant to 6.7(a), the Trustee may have recourse to:
  - (1) the Cash Account of the relevant Member; and
  - (2) to the extent that the Cash Account of the Member is insufficient, Cash of the relevant Division, Product Line, Plan or Category.
- (c) If the Trustee has recourse to the Cash of the relevant Division, Product Line, Plan or Category pursuant to clause 6.7(b)(2), the Trustee will debit a corresponding amount to the Cash Account of the relevant Member.
- (d) A Member must pay interest at a rate specified by the Trustee and calculated in respect of the amount debited pursuant to clause 6.7(c). Such interest will be deemed to be income of the relevant Division, Product Line, Plan or Category and dealt with accordingly.
- (e) Upon the realisation of investments of the relevant Member, the Trustee will apply the proceeds in the following priority:
  - (1) to repay any Cash of the Division, Product Line, Plan or Category which was applied pursuant to clause 6.7(b)(2);
  - (2) to pay any interest pursuant to clause 6.7(d); and
  - (3) to credit the balance to the Member's Cash Account.
- (f) If the proceeds of the realisation are insufficient for the payments referred to in clauses 6.7(e)(1) and 6.7(e)(2) above, the shortfall will be deducted from the Member's Account.

## 6.8 Direct Share Facility

- (a) The Trustee may establish and maintain a listed security investment facility called a 'Direct Share Facility' or such other name as the Trustee determines from time to time. A Member may choose to invest under the Direct Share Facility by requesting the Trustee to acquire and hold for the Member's benefit assets notified by the Trustee as being able to be acquired by the Trustee for the benefit of a Member. The Trustee shall hold any such asset chosen by a Member under the Direct Share Facility for the benefit of the Member.
- (b) A facility offered by the Trustee in accordance with clause 6.8(a) shall be one or more separate Investment Option Portfolios, as determined by the Trustee for the purpose of this Deed.

## 6.9 Calls on shares

- (a) Calls on partly paid shares held on behalf of a Member must be:
  - (1) paid out of funds held on behalf of that Member; and
  - (2) debited to the Member's Account.



- (b) The Trustee must as far as possible consider the need to meet calls when approving a Member Investment Choice.

## 7 Segregation of Assets

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The Trustee may segregate (physically or notionally) particular assets of the Fund from other assets including assets used to fund the payment of pensions.

## 8 Insurance

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### 8.1 Power to effect insurance

The Trustee may in its absolute discretion:

- (a) effect or maintain one or more policies issued by an Insurer or Insurers at the expense of the Fund on such terms and conditions and for such periods as the Trustee thinks fit;
- (b) deal with those policies in any manner which the Trustee considers suitable as if it were the sole and absolute legal and beneficial owner of those policies;
- (c) agree from time to time with the Insurer that the policy or contract to be varied or modified;
- (d) accept the assignment of a policy of insurance on such terms as the Trustee, in its absolute discretion, determines; and
- (e) hold for a particular Member or a class or group of Member, a policy of insurance insuring the death or disablement of the Member or a Member in that class or group.

### 8.2 No obligation to effect insurance

Notwithstanding clause 8.1, the Trustee has no duty to effect, increase or maintain any insurance cover.

### 8.3 Insurance choice

- (a) The Trustee may, subject to the Insurer's acceptance, allow a Member or the Members in a class or group of Members to elect and subsequently change (each called an **election**):
  - (1) the amount of the Insured Benefit payable under a policy of insurance; or
  - (2) the number of units representing an Insured Benefit that are to be held by the Trustee,
 in respect of a Member in the event of the Member's death or disablement.
- (b) The Trustee may, in its absolute discretion:
  - (1) decline to give effect to a Member's election under clause 8.3(a);
  - (2) prior to carrying out a Member's election, seek evidence of the Member's consent to the election;



- (3) impose and vary (without the approval of the Member) any terms, conditions or restrictions on the manner in which an election may be made, including:
  - (A) the times and the frequency in relation to which an election may be made; and
  - (B) the fees that can be charged in relation to the making of an election; and
- (4) determine the amount of the Insured Benefit, or the number of units that are to be held by the Trustee, if a Member who is allowed to make an election fails to do so within the time or manner specified by the Trustee.

#### 8.4 Restrictions on insurance

- (a) The amount of an Insured Benefit and the payment of an Insured Benefit to a Member from the Fund is subject to:
  - (1) the Trustee being able to insure for the desired amount and for the events giving rise to payment of that amount on standard terms; and
  - (2) the Member providing the Trustee with all relevant information required by the Insurer and, if required, submitting to any medical examination required by the Trustee or the Insurer from time to time.
- (b) If a Member's date of birth is incorrectly stated or if other information supplied to the Trustee or the Insurer is incorrect or incomplete, the Trustee may adjust the Insured Benefit payable to a Member from the Fund on such basis as the Trustee considers equitable.
- (c) Without limitation to clause 13.8, if, for any reason:
  - (1) the Trustee is unable to insure any benefit payable under this Deed for the desired amount or for the events giving rise to payment of that amount on standard terms;
  - (2) the Trustee fails to insure any benefit payable under this Deed, or, the Insurer (with which the Trustee seeks to insure all or any of the benefits payable under this Deed) declines to accept the proposal for insurance or will only accept the proposal on terms and conditions which the Trustee regards as unacceptable; or
  - (3) the Insurer (with which all or any part of the benefits payable under this Deed are insured) fails or refuses to pay, or reduces, delays or defers payment of, any part of the Insured Benefit,

the amount of any Insured Benefit payable from the Fund may be reduced accordingly.
- (d) The Trustee may pay the premiums and costs of any insurance policy or policies maintained in respect of a Member from such of the Member's Accounts as the Trustee determines.
- (e) If the balance of a Member's Accounts are insufficient to meet the premiums and costs of any insurance policy or policies attributable to that Member, then:
  - (1) the Trustee is not bound to pay such premiums and costs from the Fund in respect of the Member; and
  - (2) the Trustee is not liable to the Member for the Insurer failing, reducing, delaying deferring or not paying the Insured Benefit or failing to renew the relevant policy or any resulting reduction of the Member's benefit.



## 9 Accounts and records

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### 9.1 Accounts and records

The Trustee must:

- (a) keep records and financial accounts of the Fund; and
- (b) prepare such financial statements,  
as required by the Superannuation Law.

### 9.2 Auditor

The Trustee must appoint an auditor to audit the records and financial accounts and to provide reports as required by the Superannuation Law.

### 9.3 Accounts

- (a) The Trustee must keep an Account for each Member (**Member's Account**).
- (b) The Trustee may maintain any other Accounts it determines, including Accounts to:
  - (1) provide for any Fund Expenses;
  - (2) record, and offset against a Member's benefits or Accounts, any actual or contingent Liability for Tax which the Trustee determines is attributable to the Member; and
  - (3) record any reserves maintained by the Fund.

### 9.4 Administration Reserve Account

- (a) Without limiting the generality of clause 9.3, the Trustee may establish Administration Reserve Accounts.
- (b) The Trustee may credit an Administration Reserve Account with:
  - (1) amounts which the Trustee determines from time to time to set aside from the contributions to, or the earnings of, the Fund;
  - (2) any positive amounts at the Investment Performance Rate or Investment Performance Rates, and any other positive amounts, attributable to the investment of the Administration Reserve Account;
  - (3) amounts which the Trustee determines from time to time to set aside from fees deducted from a Member's Account;
  - (4) provisions for Tax; and
  - (5) any amounts which the Trustee determines from time to time to transfer from one or more reserve or provision accounts or any other accounts established and maintained by the Trustee for the purposes of the Fund; and
  - (6) any other amounts which the Trustee determines from time to time to transfer to the Administration Reserve Account from other Accounts in the Fund.
- (c) The Trustee may debit an Administration Reserve Account for:
  - (1) paying any Tax, Fund Expenses or contingencies of the Fund;





- (2) any amounts which the Trustee determines from time to time to transfer to a Members' Account;
- (3) any amounts which the Trustee determines from time to time to transfer to one or more reserve or provision accounts or any other accounts established and maintained by the Trustee for the purposes of the Fund; and
- (4) any negative amounts at the Investment Performance Rate or Investment Performance Rates, and any other negative amounts, attributable to the investment of the Administration Reserve Account; and
- (5) paying compensation for any Liability incurred by the Trustee, subject to any restrictions imposed by the Superannuation Law.
- (6) any other amounts which the Trustee determines from time to time to debit the Administration Reserve Account.

## 9.5 Operational Risk Reserve

- (a) Without limiting the generality of clause 9.3, the Trustee may establish an Operational Risk Reserve where required or permitted by Superannuation Law.
- (b) The Operational Risk Reserve must:
  - (1) be separately identifiable from Member Accounts and reserves held in the Fund for other purposes; and
  - (2) provide an unrestricted commitment of funds to address losses arising from operational risks in a timely manner.
- (c) The Trustee may allocate and debit such amounts to the Operational Risk Reserve as the Trustee determines subject to the Superannuation Law.

## 9.6 Crediting and debiting Accounts

- (a) The Trustee may credit an Account with:
  - (1) in the case of a Member's Account:
    - (A) contributions by an Employer or Participating Employer in respect of the Member;
    - (B) contributions by or on behalf of the Member;
    - (C) any amounts in relation to Family Law;
    - (D) any amounts transferred to the Fund in accordance with clause 14.1;
    - (E) the value of any asset, including units or shares, held for the benefit the Member; and
    - (F) the amount of any Insured Benefit paid to the Member under an insurance policy maintained in respect of the Member;
  - (2) any portion of the Fund's assets which the Trustee determines;
  - (3) any positive amounts at the Investment Performance Rate or Investment Performance Rates, and any other positive amounts, attributable to the investment of the Account; and
  - (4) any other amounts which the Trustee determines from time to time to allocate to the Accounts.



- (b) The Trustee may debit an Account for:
- (1) in the case of a Member's Account:
    - (A) payment of a benefit to a Beneficiary;
    - (B) any proportion of the premiums and costs in respect of any insurance policy or policies maintained in respect of the Member which the Trustee determines;
    - (C) any amounts in relation to Family Law;
    - (D) any amounts transferred out of the Fund in accordance with clause 14.2;
    - (E) the cost of any financial advice attributable to the Member; and
    - (F) any actual or contingent Liability for Tax which the Trustee determines is attributable to the Member and which the Trustee determines to offset against the Member's Account;
  - (2) any proportion of the premiums and costs in respect of any insurance policy or policies maintained in respect of the Fund which the Trustee determines;
  - (3) any Fund Expenses which the Trustee determines from time to time;
  - (4) any amounts which the Trustee determines from time to time to transfer to the Administration Reserve Account to provide and pay for any Tax or Fund Expenses and any other contingencies of the Fund;
  - (5) any amounts which the Trustee determines from time to time to transfer to one or more reserve or provision Accounts to provide for the payment of any actual or contingent Fund Expenses or Tax or any other Accounts maintained by the Trustee for the purposes of the Fund;
  - (6) any negative amounts at the Investment Performance Rate or Investment Performance Rates, and any other negative amounts, attributable to the investment of the Account; and
  - (7) any other amounts which the Trustee determines from time to time to debit the Accounts.
- (c) On the winding up of the Fund, any amounts recorded in Accounts maintained for the purposes set out in clauses 9.3(a), 9.3(b)(1) and 9.3(b)(2) must be credited to each Member's Account in proportion to the amounts standing to the credit of those Members' Accounts at the time, or on such other basis as the Trustee considers equitable.

## 10 Membership and participation in Fund

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### 10.1 Commencing membership

- (a) A person who is permitted under the Superannuation Law to contribute to, or have benefits transferred to, the Fund may apply in a form approved by the Trustee for membership of the Fund.
- (b) Each prospective Member must:
  - (1) submit any documents (including any application form) in the form approved by the Trustee;



- (2) provide the Trustee with any information and evidence (including, in the case of Member, completing and signing any statements as to health and undergoing medical examinations and tests); and
  - (3) satisfy any standards and requirements required by the Trustee.
- (c) Subject to the Superannuation Law and clause 10.1(b), the Trustee may, in its absolute discretion:
- (1) admit a person as a Member from the date determined by the Trustee or, if the Trustee makes no such determination, on the date on which the completed application is received or deemed to have been received by the Trustee, on such terms and conditions in relation to the person's membership; or
  - (2) reject or delay consideration of an application; and
  - (3) in respect of a person who has not applied for participation in the Fund in accordance with clause 10.1(a):
    - (A) accept a payment (including a transfer under clause 14.1) or credit an amount to an Account in the Fund (including an amount referred to in clauses 2.6(a)(3) and 12.6(a)) by, or in respect of, the person in which case the person is taken to be a Member from the date of such acceptance of payment or such other date determined by the Trustee;
    - (B) admit an Employee who is:
      - (I) nominated for membership by their Participating Employer in accordance with clauses 10.4(d) or 10.5(e) ; and
      - (II) eligible to become a Member of the Fund under the Superannuation Law and this Deed,
 

as a Member from the date requested by the Participating Employer, or such other date determined by the Trustee; and
    - (C) otherwise – determine that the person is a Member on and from a date determined by the Trustee.
- (d) The Trustee must deal with a person's application money:
- (1) pending the processing and acceptance of that application; and
  - (2) if the application is refused,
- in accordance with the Superannuation Law.

## 10.2 Ceasing to be a Member

A person ceases to be a Member and a Beneficiary:

- (a) on their death;
- (b) on the date they no longer have in the Fund either:
  - (1) a positive Member's Account balance; or
  - (2) any insurance cover under a policy effected or maintained by the Trustee in accordance with clause 8.1,

unless:



- (3) a benefit is then payable to the person, in which case they cease to be a Member and a Beneficiary on the date that all of that benefit has been paid to (or for the benefit of) the person; or
  - (4) the Trustee decides that the person should continue to be a Member and a Beneficiary; or
- (c) if the Trustee determines that they have ceased to be a Member and Beneficiary.

### 10.3 Ceasing to be a Beneficiary

A person who is a Beneficiary but not a Member, ceases to be a Beneficiary:

- (a) on the date that all of the person's benefit is:
  - (1) paid to (or for the benefit of) the person; or
  - (2) otherwise satisfied or dealt with in accordance with the Superannuation Law and this Deed,
 unless the Trustee decides that the person should continue to be a Beneficiary; or
- (b) if the Trustee determines that they have ceased to be a Beneficiary.

### 10.4 Standard Employer Sponsors

- (a) A person who is permitted under the Superannuation Law to contribute to the Fund may apply in a form approved by the Trustee for participation in the Fund as a Standard Employer Sponsor.
- (b) Each prospective Standard Employer Sponsor must:
  - (1) submit any documents (including any application form) in the form approved by the Trustee;
  - (2) provide the Trustee with any information and evidence (including, in the case of Member, completing and signing any statements as to health and undergoing medical examinations and tests); and
  - (3) satisfy any standards and requirements required by the Trustee.
- (c) Subject to the Superannuation Law and clause 10.4(b), the Trustee may, in its absolute discretion:
  - (1) admit a person as a Standard Employer Sponsor from the date determined by the Trustee or, if the Trustee makes no such determination, on the date on which the completed application is received or deemed to have been received by the Trustee, on such terms and conditions as determined by the Trustee;
  - (2) reject or delay consideration of an application; or
  - (3) in respect of an Employer who has not applied for participation in the Fund in accordance with clause 10.4(a), accept a payment by, or in respect of, the Employer in which case the person is taken to be a Standard Employer Sponsor from the date of such acceptance of payment or such other date determined by the Trustee.
- (d) A Standard Employer Sponsor may nominate an Employee to become a Member provided that the Employee is eligible under the Superannuation Law and this Deed.
- (e) A Standard Employer Sponsor shall cease to participate in the Fund:



- (1) upon the Standard Employer Sponsor giving the Trustee not less than 30 days (or such lesser period as agreed by the Trustee) notice in writing of its intention to cease participation in the Fund – with effect from the date specified in the notice or such earlier date as the Trustee may agree to;
  - (2) upon the Standard Employer Sponsor becoming bankrupt or being placed in liquidation or ceasing to carry on business for any reason whatsoever (unless an order is made or an effective resolution is passed for the winding up of the Standard Employer Sponsor for the purpose of reconstruction or amalgamation and such reconstructed or amalgamated organisation then formed has the necessary power and agrees with the Trustee to take the place of the Standard Employer Sponsor in the Fund) – with effect from the date determined by the Trustee; or
  - (3) upon the Trustee, in its absolute discretion, giving the Standard Employer Sponsor at any time notice in writing that the Standard Employer Sponsor is to cease participation in the Fund – with effect from the date determined by the Trustee.
- (f) The Trustee must deal with a person's application money:
- (1) pending the processing and acceptance of that application; and
  - (2) if the application is refused,
- in accordance with the Superannuation Law.

## 10.5 Associated Employer

- (a) The Trustee may, on the request of a Standard Employer Sponsor in a form approved by the Trustee, admit a person for participation in the Fund as an Associated Employer who is entitled to make contributions in respect of certain of its Employees to the Division, Product Line, Plan or Category of which the Standard Employer Sponsor has been admitted as a Standard Employer Sponsor, or as otherwise determined by the Trustee.
- (b) Each prospective Associated Employer must:
  - (1) submit any documents (including any application form) in the form approved by the Trustee;
  - (2) provide the Trustee with any information and evidence (including, in the case of Member, completing and signing any statements as to health and undergoing medical examinations and tests); and
  - (3) satisfy any standards and requirements required by the Trustee.
- (c) Subject to the Superannuation Law and clause 10.5(b), the Trustee may, in its absolute discretion:
  - (1) admit a person as an Associated Employer from the date determined by the Trustee or, if the Trustee makes no such determination, on the date on which the completed application is received or deemed to have been received by the Trustee, on such terms and conditions as determined by the Trustee;
  - (2) reject or delay consideration of an application; or
  - (3) in respect of an Employer who has not be nominated for participation in the Fund in accordance with clause 10.5(a) accept a payment by, or in respect of, the Employer in which case the Employer is taken to be an Associated



Employer from the date of such acceptance of payment or such other date determined by the Trustee.

- (d) An Employer can only become an Associated Employer if it has consented to being an Associated Employer of a Standard Employer Sponsor.
- (e) An Associated Employer may nominate an Employee to become a Member provided that the Employee is eligible under the Superannuation Law and this Deed.
- (f) An Associated Employer shall cease to participate in the Fund:
  - (1) upon the nominating Standard Employer Sponsor or the Associated Employer giving the Trustee not less than 30 days (or such lesser period as agreed by the Trustee) notice in writing of its intention to cease participation in the Fund – with effect from the date specified in the notice or such earlier date as the Trustee may agree to;
  - (2) upon the Associated Employer becoming bankrupt or being placed in liquidation or ceasing to carry on business for any reason whatsoever (unless an order is made or an effective resolution is passed for the winding up of the Associated Employer for the purpose of reconstruction or amalgamation and such reconstructed or amalgamated organisation then formed has the necessary power and agrees with the Trustee to take the place of the Associated Employer in the Fund) – with effect from the date determined by the Trustee; or
  - (3) upon the Trustee, in its absolute discretion, giving the Associated Employer at any time notice in writing that the Associated Employer is to cease participation in the Fund – with effect from the date determined by the Trustee.
- (g) The Trustee must deal with a person's application money:
  - (1) pending the processing and acceptance of that application; and
  - (2) if the application is refused,
 in accordance with the Superannuation Law.

## 10.6 Other rules of participation

- (a) Each Participant irrevocably appoints the Trustee their attorney to execute any instruments (including deeds) and do anything permitted by this Deed.
- (b) Each Participant, and any person claiming through the Participant, is bound by this Deed as if each had severally been a party to this Deed.

## 10.7 Special arrangements

- (a) The Trustee may agree with a person (including an Employer or the trustee of another Benefit Arrangement) that the participation of the person or another person (each a **Potential Participant**) in the Fund is subject to, or is varied in accordance with, the terms and conditions contained in the agreement, including:
  - (1) the amount of contributions to be made for, or by, the Potential Participant;
  - (2) the benefits to be paid in respect of the Potential Participant;
  - (3) the preservation requirements that are to apply to benefits;
  - (4) the Membership Category to which an Employee of the Participating Employer will belong;



- (5) if the Potential Participant will not be allowed to exercise Member Investment Choice, the manner in which their Account is to be invested;
- (6) if the Potential Participant will be allowed to exercise Member Investment Choice, the Investment Options available; and
- (7) the rights in respect of such benefits that the Potential Participant has in the Fund.

The provisions of such an agreement are binding on all interested persons without the need to amend this Deed. To the extent that a provision of such an agreement conflicts with any other provision of this Deed, the provision of the agreement prevails.

- (b) If the Trustee enters into an agreement referred to in clause 10.7(a) then, provided the benefit payable to the Member is not less than the minimum benefit that is required to be paid to the Member under the Superannuation Law:
  - (1) the benefits of the Employees of that Employer which are referred to in the agreement become payable, and must be calculated, in accordance with the provisions of the agreement;
  - (2) unless the agreement provides otherwise, any benefits of the Employees of the Employer which are provided for by this Deed but which are not referred to in the agreement, continue to become payable and be calculated in accordance with this Deed; and
  - (3) the Trustee may apply any benefits to which an Employee of an Employer does not become entitled by virtue of the operation of this clause 10.7 against any contributions otherwise payable by the Employer in respect of any Member of the Fund, and any amount so applied is taken to be a contribution by the Employer.
- (c) The Trustee may at any time unilaterally alter the provisions of an agreement to comply with the Superannuation Law.

## 10.8 Provision of information

- (a) Each Participant must provide all information and evidence, sign all documents, undergo all medical examinations and tests (in the case of a Beneficiary), and generally satisfy all standards and requirements requested by the Trustee.
- (b) The Trustee may refuse to admit a person as a Member or place conditions on the person's membership if:
  - (1) the person does not comply with clause 10.8(a) to the satisfaction of the Trustee; or
  - (2) information provided by the person is incorrect or contains an omission.
- (c) If a Participant furnishes 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 supplied is incorrect or misleading or any relevant information is deliberately withheld the Trustee may in its absolute discretion alter or amend the Benefits to amounts that would have applied had full and accurate information been supplied.
- (d) Except as required by law, the Trustee is not bound to disclose to any person:
  - (1) any document disclosing any deliberations of the Trustee; or
  - (2) any document relating to the exercise or proposed exercise of any Power conferred on the Trustee by this Deed.



- (e) The Trustee can provide information to an Employer Sponsored Member by providing that information to the Member's Participating Employer.

## 10.9 Brokerage and Commission

The Trustee may pay brokerage or commission in such circumstances as the Trustee considers appropriate, subject to any restrictions imposed by the Superannuation Law.

## 11 MySuper Products and Choice Products

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### 11.1 Classes of membership interests

- (a) With effect from the MySuper Start Date, the Fund is divided into the following classes of beneficial interest as determined by the Trustee:
- (1) one or more MySuper Products;
  - (2) one or more Choice Products; and
  - (3) a class of interest whose only members are Defined Benefit Members.
- (b) A Member may hold more than one class of beneficial interest in the Fund at a time.
- (c) Subject to the Superannuation Law, the Trustee must allocate a Member's benefits in the Fund to one or more classes of beneficial interest.
- (d) Notwithstanding any other provision of this Deed, the Trustee must not transfer a Member's benefits in the Fund from a MySuper Product to:
- (1) another MySuper Product in the Fund;
  - (2) a Choice Product in the Fund; or
  - (3) another Benefit Arrangement,
- except:
- (4) with the consent of the Member, which must be given within such period (if any) specified in the Superannuation Law before the transfer occurs; or
  - (5) as otherwise permitted or required by the Superannuation Law.
- (e) Subject to the Superannuation Law and such Rules as are determined by the Trustee from time to time, a Member may elect to:
- (1) transfer all or part of their benefits from a MySuper Product to a Choice Product; and
  - (2) transfer all or part of their benefits from a Choice Product to a MySuper Product.

### 11.2 Standard MySuper Product

Notwithstanding any other provision of this Deed, with effect from the MySuper Start Date, a MySuper Product in the Fund has the following characteristics:

- (a) the assets attributed to the MySuper Product must be invested in accordance with a single diversified investment strategy. For the avoidance of doubt, this requirement may be satisfied by the MySuper Product being invested in an Investment Option which has a single diversified investment strategy;





- (b) each Member who holds an interest in the MySuper Product must be entitled to access the same options, benefits and facilities in respect of that interest except to the extent that a benefit is provided by taking out risk insurance;
- (c) the Trustee must not attribute amounts to Members in relation to their interest in the MySuper Product in a way that streams gains or losses that relate to any assets attributed to the MySuper Product to only some of those Members, except to the extent:
  - (1) provided for under clause 11.2(d);
  - (2) permitted under a lifecycle exception within the meaning of the Superannuation Law;
  - (3) permitted by the Superannuation Law; or
  - (4) necessary to comply with the Superannuation Law.
- (d) the Trustee must adopt the same process in attributing amounts to Members in relation to their interest in a MySuper Product, except to the extent that a different process is necessary to allow for fee subsidisation by employers in accordance with clause 11.2(e) or to otherwise comply with the Superannuation Law;
- (e) the Trustee may permit an Employer (**Subsidising Employer**) to subsidise the fees payable by Members in relation to the MySuper Product provided that subsidisation does not favour one Member holding a MySuper Product employed by the Subsidising Employer over another such Member who is employed by that Subsidising Employer;
- (f) the only limitations that may be imposed on the source or kind of contributions made by or on behalf of a Member who holds an interest in the MySuper Product are those permitted under Superannuation Law;
- (g) the insurance policies arranged by the Trustee in relation to the MySuper Product must comply with the Superannuation Law; and
- (h) a pension cannot be paid from the MySuper Product, unless permitted by the Superannuation Law;
- (i) the only fees that can be charged by the Trustee in relation to the MySuper Product are as set out in the Superannuation Law;
- (j) the Trustee must not pay any conflicted remuneration (within the meaning of the Superannuation Law) in relation to the MySuper Product; and
- (k) the Trustee must ensure that any arrangement for the payment of a performance fee to an investment manager for the investment of one or more of the MySuper Product assets complies with the SIS Act.

### 11.3 Large Employer MySuper Product

- (a) If the Trustee is authorised to offer and determines to offer a class of beneficial interest in the Fund (including within a Division, Product Line, Plan, or Category of the Fund) as a MySuper Product that relates to a Large Employer, clause 11.2, as modified, varied or added to by this clause 11.3, shall apply to the extent that a Member's interest in the Fund is an interest in the MySuper Product that relates to the Large Employer, notwithstanding anything expressed or implied to the contrary in this Deed.
- (b) **Identification of Large Employers:** The Trustee must identify the Large Employer in respect of whom a class of beneficial interest in the Fund that is a MySuper Product is intended to relate.



- (c) **Eligibility for membership:** The Trustee must only offer a MySuper Product that relates to a Large Employer to:
- (1) an employee or former employee of the Large Employer;
  - (2) an employee or a former employee of an associate of the Large Employer; or
  - (3) a relative or dependant of an employee or a former employee mentioned in clauses 11.3(c)(1) or 11.3(c)(2) above.
- (d) **Participation requirements:** The Trustee must ensure that, if it offers a class of beneficial interest in the Fund that is a MySuper Product that relates to a Large Employer:
- (1) if the Large Employer or an associate of the Large Employer contributes to the Fund or would, apart from a temporary cessation of contributions, contribute to the Fund for an employee of the Large Employer, any employee of the Large Employer may hold an interest of that class of beneficial interest in the Fund; and
  - (2) if the Large Employer or an associate of the Large Employer contributes to the Fund or would, apart from a temporary cessation of contributions, contribute to the Fund for an employee of an associate of the Large Employer, any employee of that associate may hold an interest of that class of beneficial interest in the Fund.

#### 11.4 Member Investment Choice within a MySuper Product and a Choice Product

Despite clause 6.2, the Trustee may not allow a Member to exercise Member Investment Choice in respect of any part of their benefit within a MySuper Product. However, the Trustee may allow a Member to exercise Member Investment Choice in respect of any part of their benefit within a Choice Product.

## 12 Contributions

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### 12.1 Amount, manner and timing

Details of contributions and other amounts which may be accepted, or must be paid, into the Fund:

- (a) are as set out in the Rules governing the Division, Product Line, Plan, or Category; or
- (b) otherwise are as determined by the Trustee in its absolute discretion.

### 12.2 Refusal to accept contributions

The Trustee must refuse to accept contributions to the Fund if:

- (a) the person making the contribution is not permitted to do so by the Superannuation Law;
- (b) acceptance of the contribution is contrary to the requirements of the Superannuation Law; or
- (c) the Trustee is directed not to accept the contribution by the Regulator.



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Nothing in this clause limits the Trustee's discretion to refuse to accept any contribution made on behalf of a Member.

### **12.3 Reasons for refusal of contributions**

The Trustee may refuse to accept contributions without having to assign any reason for its refusal.

### **12.4 Return of improperly accepted or mistaken contributions**

- (a) If the Trustee becomes aware that it has accepted contributions in relation to a Member:
- (1) which cannot be, or should not have been, accepted into the Fund; or
  - (2) as a result of a mistake,
- the Trustee may if permitted by the Superannuation Law, and must if required by the Superannuation Law, repay, return or refund, the contributions to the contributor and, for this purpose, redeem a Member's Units.
- (b) If the Superannuation Law permits, the Trustee may adjust the repaid, returned or refunded contributions for:
- (1) insurance effected in relation to the Member;
  - (2) any (positive or negative) amounts at the Investment Performance Rate; and
  - (3) Fund Expenses,
- for the period the contributions referred to in clause 12.4(a) were held in the Fund.
- (c) If the cooling-off provisions under the Superannuation Law apply to a Participant and that Participant exercises their cooling-off rights in accordance with the Superannuation Law, the Trustee may adjust any repaid, returned or refunded contributions in accordance with the Superannuation Law.

### **12.5 Payment to, and by, Insurer, custodian, administrator or investment manager**

- (a) Any payment of an amount directly to an Insurer, custodian, administrator or investment manager is deemed to be a payment of contributions to the Trustee and, in turn, a payment by the Trustee to the Insurer, custodian, administrator or investment manager, as the case may be. If required by the Superannuation Law, the Trustee shall allocate such amounts to the Member or Members in respect of whom the amounts were paid.
- (b) Any payment of benefits payable from the Fund by an Insurer, custodian, administrator or investment manager directly to a Beneficiary is deemed to be a payment of benefits by the Insurer, custodian, administrator or investment manager, as the case may be, to the Trustee and, in turn, a payment by the Trustee to the Beneficiary from the Fund.
- (c) Any payment of contributions payable by an Employer Sponsored Member may be deducted from the Member's remuneration and paid by the Participating Employer to the Trustee and the Member is deemed to have directed the Participating Employer to make such deductions.



## 12.6 Spouse contribution splits

- (a) Subject to the requirements of the Superannuation Law, the Trustee may, on application of a Member:
- (1) allot an amount of benefits, for the benefit of the Member's Spouse, that is equal to an amount of the splittable contributions made by, for, or on behalf of the Member; or
  - (2) rollover or transfer to another Benefit Arrangement an amount of benefits, for the benefit of the Member's Spouse, that is equal to an amount of the splittable contributions made by, for, or on behalf of the Member,
- (such allotment, rollover or transfer to be known as a **Contribution Split**) whereupon the Trustee shall adjust the Member's interest in the Fund in such manner as the Trustee considers appropriate to reflect the Contribution Split under this clause 12.6.
- (b) The Trustee may accept an application made under clause 12.6(a) only if the application satisfies the requirements of the Superannuation Law.
- (c) The Trustee may from time to time:
- (1) specify the terms and conditions (**Contribution Splitting Rules**) which, in addition to the requirements of the Superannuation Law, must be complied with by the Member and their Spouse in relation to the splitting of the contributions under this clause 12.6;
  - (2) vary or revoke such Contribution Splitting Rules; and
  - (3) charge fees in respect of a Contribution Split under this clause 12.6.

## 13 Benefits

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### 13.1 When a benefit may become payable

Subject to the Superannuation Law and this Deed:

- (a) the entitlement of Members and Beneficiaries to payment of benefits is determined in accordance with the Rules for payment of benefits in respect of the Member's applicable Division, Product Line, Plan, or Category; and
- (b) if a policy is effected in respect of a Beneficiary or Beneficiaries, the Insured Benefit payable from the Fund to the Beneficiary or Beneficiaries must be determined in accordance with the terms and conditions of that policy and cannot exceed the Insured Benefit paid to the Trustee by the Insurer in respect of the Member.

### 13.2 Claiming a benefit

The Trustee is not required to pay a benefit, and may refuse or delay payment of a benefit, until:

- (a) the Trustee is permitted to pay the benefit in accordance with Superannuation Law; and
- (b) the Beneficiary claiming the benefit, or any person claiming a benefit on behalf of a Beneficiary (each a **Claimant**):
  - (1) makes proper application to the Trustee in the form required by the Trustee;



- (2) provides all information required by the Trustee to verify the identity of the Beneficiary and the Claimant;
- (3) provides information to the Trustee as requested by it to substantiate such claim and benefit;
- (4) gives instructions in relation to the method of payment of the benefit which are acceptable to the Trustee; and
- (5) executes documents and does anything else reasonably required by the Trustee.

### 13.3 Method of payment of a benefit

- (a) Subject to the Superannuation Law, the Trustee may pay all or part of a benefit by:
  - (1) the transfer of an asset or assets;
  - (2) paying the amount by cheque and by sending that cheque or delivering that cheque in any manner contemplated for the sending of notices under clause 16.1;
  - (3) electronic funds transfer or telegraphic transfer; or
  - (4) any other means determined by the Trustee.
- (b) If the Rules of a Division, Product Line, Plan, or Category allow a Member to invest in a particular investment (**Invested Member**):
  - (1) the Trustee must not realise any investment held in respect of the Invested Member to make a payment or transfer of any benefits in respect of any other Member; and
  - (2) in the event of the payment or transfer of a benefit in respect of the Investment Member:
    - (A) when making a request for payment of the benefit, the Invested Member may specify that particular investments in respect of that Invested Member are to be realised by the Trustee to pay part or all of a benefit;
    - (B) if the investments specified under clause 13.3(b)(1) are not realised within the periods specified below, the Trustee may appropriate specific investments in respect of the Invested Member and transfer them to, or in respect of, the Invested Member:
      - (I) in the case of Units in unlisted property trusts, within 400 days of the Invested Member's request;
      - (II) within any period specified in the relevant Disclosure Document for the purposes of this clause 13.3(b); and
      - (III) in any other case, within 180 days of the Invested Member's request;
    - (C) if an Invested Member does not specify which investments are to be realised, payments will be made:
      - (I) from the Cash component of the Invested Member's Cash Account; and
      - (II) if that Cash component is insufficient, by realising non-Cash investments of the Division, Product Line, Plan, or Category pro rata (or as close as practicable to pro rata)



to the proportions in which the various non-Cash investments of the Division, Product Line, Plan, or Category are held on behalf of the Invested Member; and

- (D) subject to Superannuation Law, the Trustee may delay payments or transfers if there is a circumstance outside its control that impacts on its ability to realise particular investments in respect of an Invested Member (or to realise those investments at a fair price) for so long as the circumstance continues.

### 13.4 Fast track redemption

- (a) If a Member has requested payment pursuant to clause 13.3(b), the Trustee may agree to make the payment:
- (1) within a period of time which is shorter than the periods referred to in clause 13.3(b); or
  - (2) prior to the realisation of the Member's investments in accordance with clause 13.3(b),
- subject to such terms, conditions and restrictions as the Trustee may determine.
- (b) When making a payment pursuant to an arrangement under clause 13.4(a), the Trustee may have recourse to:
- (1) the Cash Account of the relevant Member; and
  - (2) to the extent that the Cash Account of the Member is insufficient, Cash of the relevant Division, Product Line, Plan, or Category of that Member.
- (c) If the Trustee has recourse to the Cash of the relevant Division, Product Line, Plan, or Category pursuant to clause 13.4(b)(2), the Trustee will debit a corresponding amount to the Cash Account of the relevant Member.
- (d) A Member must pay interest at a rate specified by the Trustee and calculated in respect of the amount debited pursuant to clause 13.4(c). Such interest will be deemed to be income of the relevant Division, Product Line, Plan, or Category and dealt with accordingly.
- (e) Upon the realisation of investments of the relevant Member, the Trustee will apply the proceeds in the following priority:
- (1) to repay any Cash of the Division, Product Line, Plan, or Category which was applied pursuant to clause 13.4(b)(2);
  - (2) to pay any interest pursuant to clause 13.4(d); and
  - (3) to credit the balance to the Member's Cash Account.
- (f) If the proceeds of the realisation are insufficient for the payments referred to in clauses 13.4(e)(1) and 13.4(e)(2) above, the shortfall will be deducted from the Member's Account.

### 13.5 Revocation of, and conditions on, benefit payments

- (a) Any Trustee decision as to the payment of benefits shall be revocable until actual payment of the benefit is made.
- (b) The Trustee may make any benefit payment conditional and repayable should the Trustee's decision to make that payment be varied, substituted or otherwise overturned by a court or tribunal.



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- (c) If a Beneficiary is eligible to be paid an amount or is able to direct where this amount should be transferred to, and the Beneficiary directs the Trustee to pay or transfer all or part of a benefit to a third party then:
- (1) that amount shall be deemed to have been received by the Beneficiary as if the benefit had been paid to the Beneficiary; and
  - (2) the payment or transfer by the Trustee will constitute a full discharge of its liability to the Beneficiary.

### 13.6 Unallocated amounts

Any amount held in the Fund which:

- (a) is not allocated to any Beneficiary or to any Account; or
- (b) may not or cannot be paid, is not payable by the Trustee to any Beneficiary, or is not required to be paid in accordance with clause 13.14,

may be dealt with for any purpose determined by the Trustee which is permissible under the Superannuation Law, including reduction of contributions of a Participant, to meet Fund Expenses or to be applied to the general purposes of the Fund.

### 13.7 Charging benefits

- (a) The Trustee must not recognise any assignment, claim or charge in respect of the interest of a Member or a Beneficiary in the Fund unless that assignment, claim or charge is permitted expressly or by necessary implication by the Superannuation Law.
- (b) The Trustee must not recognise an interest of any other person for whom the Member or Beneficiary may act as trustee in respect of the Member or Beneficiary's interest in the Fund.

### 13.8 Adjustment of benefits

The Trustee may adjust benefits and rights of a Beneficiary to take account of:

- (a) any contributions which have not been paid;
- (b) contributions which have been repaid, returned or refunded under clause 12.4;
- (c) any actual or contingent Tax or Fund Expense;
- (d) any incorrect, inaccurate or misleading information supplied, or lack of information supplied, in respect of a Beneficiary;
- (e) the extent to which an Insurer fails to provide insurance, fails to pay or reduces the payment of any Insured Benefit, defers the payment of any Insured Benefit, or imposes terms and conditions on which the Insured Benefit is payable, to the Trustee; or
- (f) any amount the Trustee is liable to pay to another person (including a Regulator, the Commonwealth or a State or Territory) in respect of a beneficiary pursuant to the Superannuation Law.

### 13.9 Discharge and release

- (a) Subject to the Superannuation Law, the Trustee is completely discharged in respect of any payment in accordance with this Deed if:



- (1) it is paid to a person the Trustee believed in good faith is entitled to the benefit; or
- (2) the Trustee has relied on any signature, notice, instrument or other document that the Trustee believed in good faith to be genuine.

### 13.10 Payment of death benefits

Subject to the Rules governing a Division, Product Line, Plan, or Category:

- (a) **Non-binding Death Benefit Nominations:** To the extent permitted by the Superannuation Law, a Member may, in a manner acceptable to the Trustee:
  - (1) nominate a Dependant or the Member's legal personal representative to receive all or any part of the Member's death benefit payable; and
  - (2) specify the proportions and manner in which the death benefit will be paid.

A nomination made under this clause 13.10(a) is not binding on the Trustee. However, the Trustee may consider the nomination when exercising a discretion granted to it under this clause 13.10.
- (b) **Lapsing Binding Death Benefit Nominations:** To the extent permitted by the Superannuation Law, the Trustee may permit a Member to direct the Trustee (by a written notice in a form approved by the Trustee) to pay all or any part of the Member's death benefit to such of the persons referred to in clause 13.10(i), and in such proportions, as is specified in the notice.
- (c) **Non-Lapsing Binding Death Benefit Nominations:** To the extent permitted by the Superannuation Law, the Trustee may permit a Member to give the Trustee after 1 December 2017 a notice which is intended by the Member to be a Non-Lapsing Binding Death Benefit Nomination. Any such notice:
  - (1) must be in a form and manner approved by the Trustee, as determined by the Trustee from time to time;
  - (2) must clearly indicate that the Member does not intend for the nomination to expire after any fixed period of time;
  - (3) must nominate one or more of the Member's Dependents or legal personal representative to receive the Member's benefit on the Member's death; and
  - (4) may be revoked by the Member at any time in a form and manner approved by the Trustee.

If a Member gives a notice to the Trustee under this clause 13.10(c) and the Trustee is satisfied that the notice is an exercise of the discretion by the Member, the Trustee may consent to the exercise of that discretion (which includes the giving of the notice) on any grounds that the Trustee considers appropriate.

- (d) **Effect of Non-Lapsing Binding Death Benefit Nomination:** A Non-Lapsing Binding Death Benefit Nomination remains current until:
  - (1) it is revoked by a Member; or
  - (2) the Member gives the Trustee a subsequent Non-Lapsing Binding Death Benefit Nomination,

in accordance with clause 13.10(e). To avoid doubt, a Member's Non-Lapsing Binding Death Benefit Nomination revokes any previous Binding Death Benefit Nomination made by the Member.





- (e) **Change of Binding Death Benefit Nomination or Non-binding Death Benefit Nomination:** A Member may:
- (1) revoke a Binding Death Benefit Nomination or Non-binding Death Benefit Nomination at any time; and
  - (2) if the Trustee so permits, give a new or replacement Binding Death Benefit Nomination or Non-binding Death Benefit Nomination at any time.
- (f) **Trustee bound by valid Binding Death Benefit Nomination:** If the Trustee has permitted a Binding Death Benefit Nomination pursuant to clause 13.10(b) or 13.10(c), the Trustee must pay the Member's death benefit in accordance with a valid Binding Death Benefit Nomination and the Trustee is permitted to do so under the Superannuation Law.
- (g) **Invalid Binding Death Benefit Nomination:** A Binding Death Benefit Nomination is invalid if:
- (1) subject to clause 13.10(h), each of the persons nominated in the Binding Death Benefit Nomination is not a Dependant or a legal representative of the Member or, before the death of the Member, has died or has ceased to be a Dependant;
  - (2) the proportions specified in the Binding Death Benefit Nomination do not amount to 100% of that part of the Member's death benefit that is the subject of the Binding Death Benefit Nomination;
  - (3) the Binding Death Benefit Nomination is incomplete or is otherwise not completed in accordance with the requirements of the Trustee; or
  - (4) the Binding Death Benefit Nomination ceases to have effect under, or does not satisfy the requirements of, the Superannuation Law.
- (h) **Valid Binding Death Benefit Nomination:** if the Binding Death Benefit Nomination otherwise complies with any requirements of the Superannuation Law and any requirements of the Trustee, but the Trustee cannot pay a part of the death benefit (insofar as the Binding Death Benefit Nomination relates to the death benefit) in accordance with the Binding Death Benefit Nomination for any reason (for example, because one or more the persons nominated in the Binding Death Benefit Nomination is, in the Trustee's opinion, not a Dependant or a legal representative of the Member), then:
- (1) the Binding Death Benefit Nomination shall continue to apply to the part of the death benefit that can be paid in accordance with the Binding Death Benefit Nomination; and
  - (2) the Trustee must pay:
    - (A) that proportion of the death benefit (insofar as the Binding Death Benefit Nomination relates to the death benefit) that can be paid, in accordance with the Binding Death Benefit Nomination; and
    - (B) the remainder of the death benefit (insofar as the Binding Death Benefit Nomination relates to the death benefit) under clause 13.10(i) as if the Trustee had not received a valid Binding Death Benefit Nomination.
- (i) **No valid Binding Death Benefit Nomination:** To the extent that a death benefit is not payable in accordance with a valid Binding Death Benefit Nomination, subject to clause 13.10(k), the Trustee must pay the death benefit to one or more of the following:



- (1) one or more of the persons nominated in any Non-binding Death Benefit Nomination by the Member in accordance with clause 13.10(a);
  - (2) the Member's legal personal representative; or
  - (3) one or more of the Member's Dependants,
- in such proportions as the Trustee, in its absolute discretion, determines.
- (j) **Death benefits if there are no Dependants and no legal personal representative:** Subject to clause 13.14 and the Rules governing the Division, Product Line, Plan, or Category, if after reasonable enquiries the Trustee cannot establish that there are any Dependants or a legal personal representative in respect of a Member, where permitted by the Superannuation Law, subject to clause 13.10(k), the Trustee may pay a Member's death benefit to any other natural person or persons in such proportions as determined by the Trustee.
- (k) **Payment only required after claim staking:** The Trustee shall have no obligation to pay a death benefit in respect of a Member until:
- (1) the time to lodge a complaint to a Dispute Resolution Authority by the persons notified by the Trustee under the Superannuation Law has elapsed; or
  - (2) if the Trustee or the Member is subject to a court order preventing the payment of the death benefit in accordance with this clause 13.10 – the order is lifted; or
  - (3) if the distribution of the death benefit is the subject of proceedings before a Court or a complaint to the Regulator or a Dispute Resolution Authority – the proceedings or the complaint are finalised and the Trustee is satisfied that there is no further avenue for appeal from the decision of the Court, Regulator or the Dispute Resolution Authority.
- (l) **Grandfathering:** If:
- (1) the benefits of a Member are transferred to the Fund from another superannuation fund (**Transferring Fund**) pursuant to a Successor Fund Transfer; and
  - (2) the Member has given the trustee of the Transferring Fund a binding death benefit nomination or a non-binding death benefit nomination (**Previous Nomination**) which, in the Trustee's opinion, would have complied with the Superannuation Law had the Previous Nomination been given to the Trustee,

the Trustee must treat any Previous Nomination, as identified and advised by a transferring trustee to the Trustee, as a Binding Death Benefit Nomination or a Non-binding Death Benefit Nomination (as applicable) for the purposes of this clause 13.10.

### 13.11 Payments under the Superannuation Law

- (a) The Trustee:
- (1) may (but is not obliged to) pay a benefit where the payment of that benefit is permitted by the Superannuation Law; and
  - (2) must pay a benefit where the payment of that benefit is required by the Superannuation Law.



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- (b) Subject to the Superannuation Law, if the Trustee receives an authority to release part or all of a Member's benefit, which has been issued by the Commissioner of Taxation in accordance with the Superannuation Law (**release authority**), the Trustee must pay a lump sum benefit in respect of the Member equal to the lesser of:
- (1) the amount (if any) requested by the Member or Commissioner of Taxation;
  - (2) the amount specified for release in the release authority; or
  - (3) the sum of the values of every superannuation interest (other than a defined benefit interest) held by the Trustee in the Fund.
- (c) If under the Superannuation Law a benefit, or any part of a benefit, is a Preserved Benefit, the Trustee must:
- (1) with the written consent of the Beneficiary (if that is required by the Superannuation Law) pay that part of the benefit to a Benefit Arrangement that deals with it as the Superannuation Law requires; or
  - (2) retain it in the Fund until it is paid in accordance with clause 13.11(a).
- (d) A Member must inform the Trustee as soon as practicable after the Member ceases to be eligible to have contributions made in respect of the Member to the Fund, or retain benefits in the Fund, under the Superannuation Law.

### 13.12 Recoupment of Tax and overpaid amount

Each recipient of a benefit under this Deed agrees with the Trustee, as a condition of receiving the benefit, that:

- (a) the recipient must repay to the Trustee on demand the amount determined by the Trustee to be an overpayment of a benefit; and
- (b) if the Trustee determines, after paying the benefit, that an insufficient deduction was made from the benefit to pay Tax, the recipient:
  - (1) must repay to the Trustee on demand such amount as the Trustee determines should have been deducted from the benefit;
  - (2) releases the Trustee from any claim for loss or damage that the recipient may suffer as a result of the Trustee making the insufficient deduction; and
  - (3) indemnifies the Trustee in respect of any loss or damage that the Trustee may suffer as a result of the Trustee making the insufficient deduction.

### 13.13 Tax re-adjustments

If:

- (a) the Trustee has adjusted the benefits of, or any Accounts maintained for, a Member or former Member for Tax which the Trustee has determined is attributable to the Member or former Member on the basis of information that the Trustee has (or does not have) in respect of the Member or former Member; and
- (b) the Member or former Member later provides the Trustee with additional or replacement information which alters the amount of Tax that is attributable to the Member or former Member,

the Trustee may charge, or deduct from the benefits or Accounts of the Member or former Member, a fee or charge to apply to the relevant Tax authority for a Tax rebate or offset or to recalculate the Tax attributable to the Member or former Member.



### 13.14 Unclaimed money

The Trustee must deal with unclaimed money in accordance with the Superannuation Law.

### 13.15 Payment of benefits on trust

- (a) Where permitted by the Superannuation Law:
- (1) on the request of a Beneficiary; or
  - (2) if, in the opinion of the Trustee, a Beneficiary is a minor, infirmed, under a legal disability or for any reason whatsoever is not capable of receiving a benefit or incapable of managing their own affairs or satisfactorily dealing with the benefit,
- the Trustee may in its absolute discretion:
- (3) defer payment of all or part of the benefit until such time as the Beneficiary is in the opinion of the Trustee able to give a good receipt thereof and in the meantime invest such moneys in any investment authorised under this Deed;
  - (4) pay all or part of the benefit to any parent guardian or legal personal representative of the Beneficiary or to any person who has custody or control for the time being of the Beneficiary on trust for the Beneficiary's maintenance, education, advancement or benefit; or
  - (5) pay all or part of the benefit to the Public Trustee or to another person who agrees to act as trustee to hold on trust for the benefit of the Beneficiary with power for that trustee to make payment in accordance with clause 13.15(a)(4). The Trustee may, if it chooses, establish the trust or otherwise determine the terms of the trust (whether or not it acts as the trustee of the trust) on which the benefit is to be held for the Beneficiary under this clause.
- (b) The receipt of the benefit in respect of the Beneficiary by the person to whom the Benefit is paid a complete and effectual discharge to the Trustee in relation to the amounts paid.
- (c) The Trustee is not bound or concerned to see to the application of the benefit paid.

## 14 Transfers and rollovers

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### 14.1 Transfers and rollovers into the Fund

- (a) The Trustee may arrange for the transfer or rollover into the Fund of cash or property with:
- (1) the person responsible for a Benefit Arrangement; or
  - (2) a person who is or was a participant in a Benefit Arrangement,
- on conditions agreed between the Trustee and the other person (with or, where permitted by the Superannuation Law, without, the Member or prospective Member's consent).
- (b) The following shall apply in the event that the benefits of a Member are transferred to the Fund from another superannuation fund (**Transferring Fund**) pursuant to a Successor Fund Transfer:



- (1) If the Member has given the trustee of the Transferring Fund a direction, nomination, consent or document (**Previous Direction**) which, in the Trustee's opinion, would have complied with the Superannuation Law had the Previous Direction been given to the Trustee, the Trustee must treat any Previous Direction, as identified and advised by a transferring trustee to the Trustee, as a direction, nomination, consent or document provided by the Member to Trustee for the purpose of the Fund.
- (2) To the extent that the benefits of the Member so transferred include a Pension, the Pension payable from the Fund shall be taken to have commenced on the date the Pension first become payable in the Transferring Fund.

## 14.2 Transfers and rollovers from the Fund

- (a) The Trustee may with the consent, or on the request, of a Beneficiary, transfer or rollover all or part of the benefit entitlements of the Beneficiary to another Benefit Arrangement.
- (b) The Trustee may if the Superannuation Law permits and subject to clause 11.1(d), without the consent of the Beneficiary, deal with all or part of the benefit entitlements of a Beneficiary by transferring them or rolling them over to another Benefit Arrangement.
- (c) The Trustee must, if required by the Superannuation Law, transfer or rollover benefits of a Beneficiary to another Benefit Arrangement or to the Regulator in the circumstances required by the Superannuation Law.
- (d) Subject to the Superannuation Law, the Trustee may refuse or delay the transfer or rollover of benefits of a Beneficiary until:
  - (1) if the Beneficiary requests the Trustee to transfer or rollover their benefits - the Beneficiary makes proper application to the Trustee in the form required by the Trustee;
  - (2) if the Beneficiary's consent to the transfer or rollover is required - the Beneficiary provides their consent in the form required by the Trustee and Superannuation Law;
  - (3) the Beneficiary provides all information required by the Trustee to verify the identity of the Beneficiary; and
  - (4) the Beneficiary provides all information required by the Trustee to verify the identity of the Benefit Arrangement to which the benefit is to be transferred or rolled over.

## 14.3 Providing indemnities and undertakings

The Trustee may provide such indemnities and undertakings and accept such liabilities (each an **Obligation**) in relation to the transfer or rollover of cash and property to and from the Fund as it determines in its absolute discretion (including providing an indemnity and undertaking to, and accepting the Liability of, the trustee of another Benefit Arrangement from which the benefit entitlements of a Beneficiary are transferred or rolled over). If the Trustee has assumed an Obligation, the Trustee may debit the Accounts of the Members to which the cash and property relates and such other Accounts and on such basis as the Trustee, in its absolute discretion, determines in respect of the Obligation.



#### 14.4 Preserved Benefits

A Preserved Benefit may only be transferred to another Benefit Arrangement on the following conditions:

- (a) that the Preserved Benefit and any accretions to it will continue to be treated as a Preserved Benefit in the other Benefit Arrangement; and
- (b) that the Preserved Benefit will not be transferred from the other Benefit Arrangement except on these terms and conditions.

#### 14.5 Discharge of Trustee's Liability

Upon the transfer or rollover of an amount pursuant to this clause 14:

- (a) the Trustee is completely discharged from any Liability to the Beneficiary or any person claiming through the Beneficiary in respect of the amount transferred or rolled over;
- (b) the Beneficiary's entitlement to any benefit in a Fund in relation to the amount transferred is satisfied; and
- (c) the Trustee is not responsible for the application of the amount paid.

### 15 Termination of the Fund, Division, Product Line, Plan or Category

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#### 15.1 Termination of the Fund, Division Product Line, Plan or Category

- (a) If:
  - (1) there ceases to be any Beneficiaries in the Fund or a Division, Product Line, Plan, or Category;
  - (2) the Trustee, in its absolute discretion, resolves to terminate the Fund or a Division, Product Line, Plan, or Category; or
  - (3) required by the Regulator,
 then the Fund, Division, Product Line, Plan, or Category (as the case may be) shall terminate with effect from a date determined by the Trustee.
- (b) The Fund or a Division, Product Line, Plan, or Category must terminate with effect from the date there is no Trustee or as required by Superannuation Law.
- (c) The date that the Fund or a Division, Product Line, Plan, or Category terminates under this clause 15.1 is known as the Termination Date.

#### 15.2 Application of Fund, Division Product Line, Plan, or Category

With effect from the Termination Date:

- (a) any contributions in arrears at the Termination Date owing to the Fund or the Division, Product Line, Plan, or Category (as the case may be) must be paid;
- (b) the Trustee must not accept any other contributions to the Fund or the Division, Product Line, Plan, or Category (as the case may be);



- (c) subject to the Rules governing a Division, Product Line, Plan or Category, the Trustee must apply the assets attributable to the Fund or the Division, Product Line, Plan, or Category (as the case may be) in the following order of priority:
- (1) to provide for all actual and contingent Fund Expenses (including the costs of administering and winding up) and Tax liabilities of the Fund or the Division, Product Line, Plan, or Category;
  - (2) to provide in respect of each Beneficiary any benefit which became payable on or before the Termination Date under this Deed;
  - (3) transfer to another Benefit Arrangement a benefit equal in value to the balance of the Member's Account at that time in accordance with clause 14; and
  - (4) subsequent to realising investments of the Fund or the Division, Product Line, Plan, or Category, the Trustee, distribute the assets of the Fund or the Division, Product Line, Plan, or Category by crediting the Member's Account in the proportion of the assets of the Fund or the Division, Product Line, Plan, or Category which are attributable to that Member as at the date of termination.

## 16 General

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### 16.1 Notices

All communications in connection with the Fund:

- (a) must be either in writing or if given orally must conform to instructions given by the Trustee;
- (b) may be given to a Beneficiary:
  - (1) at their place of employment;
  - (2) at such other address last notified to the Trustee by the Beneficiary; or
  - (3) at the option of the Trustee, to the Beneficiary's Participating Employer or to that Participating Employer's last known address on behalf of the Beneficiary,
 and is deemed to be received by the Beneficiary on the earlier of:
  - (4) 3 Business Days after the notice is sent by mail; and
  - (5) the day the notice is received at the above address; and
- (c) must be given to the Trustee at its registered office and is effective only when received by the Trustee at that office.

### 16.2 Not affecting other Rights

Nothing in this Deed in any way restricts the rights of an Employer to terminate the employment of a Member or to promote or demote an Employee and being a Member must not be taken as a guarantee of continuation of employment.



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### **16.3 Work Related Claims**

The benefits payable to a Member must not be used as a ground for increasing damages in any action brought by the Member against an Employer in respect of the termination of the Member's employment.

### **16.4 Common Law Rights of Members**

- (a) Nothing in this Deed in any way affects the right of a Member, a Member's legal personal representative or any other person to claim damages or compensation at common law or under any legislation governing compensation in the event of the Member being injured or dying from any accident arising out of, or in the course of, the Member's employment.
- (b) Any amount payable under this Deed (other than an Insured Benefit in respect of a Member) must not be reduced by reason of any payment that may be made in respect of such damages or compensation.

### **16.5 Meetings**

The Trustee may, and shall if so required by the Superannuation Law, put in place arrangements to facilitate the holding of meetings of Members of the Fund from time to time, provided that such arrangements must comply with the requirements of the Superannuation Law.

## **17 Governing law**

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This Deed shall be governed and construed in accordance with the Proper Law.





## Schedule 1

### Rules for the Employer Sponsored Members Division

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#### 1.1 Name of Division:

Employer Sponsored Members Division.

#### 1.2 Definitions:

Except in so far as the context or subject matter otherwise indicates or requires, in this Schedule:

**Member** means a person admitted by the Trustee to participate in this Division under clause 10.1, subject to any terms imposed by the Trustee.

**Member's Benefit** in relation to a Member means, subject to clause 10.7, the sum of:

- (a) the balance of all Accounts maintained for the Member under this Division; and
- (b) subject to clause 8.4, the Insured Benefit (if any) in respect of the Member.

**Participating Employer** means a Standard Employer Sponsor or an Associated Employer admitted by the Trustee to participate in this Division under clause 10.4 or 10.5 (as the case may be).

#### 1.3 Contributions

- (a) **Participating Employer and other contributions generally:** A Participating Employer, or any other person who is permitted by the Superannuation Law to contribute for the benefit of the Member, may contribute to this Division such amounts as the Participating Employer or the other person determines, in such manner as is approved by the Trustee.
- (b) **Participating Employer contributions as agreed:** A Participating Employer, must contribute for the benefit of the Member to this Division such amounts as are agreed between the Trustee and the Participating Employer.
- (c) **Member contributions:** A Member may contribute to this Division:
  - (1) such amounts as are agreed between the Participating Employer and the Member; or
  - (2) in the absence of any agreement between the Participating Employer and the Member, such amounts as are agreed between the Trustee and the Member.
- (d) **Member contributions paid by Participating Employer:** A Participating Employer may pay, on behalf of a Member, contributions that are payable by the Member. Any contributions so paid by the Participating Employer, and identified as such, are deemed to be contributions made by the Member.
- (e) **Other contributions, rollovers and transfers:** The Trustee may accept in this Division for the benefit of a Member:



- (1) contributions in respect of the Member from any other person where permitted by the Superannuation Law (including without limitation eligible spouse contributions);
  - (2) an allotment of splittable contributions under clause 12.6(a)(1); and
  - (3) a rollover or transfer of an amount, equal to the splittable contribution made by or on behalf of the Member's Spouse, from another Division or Benefit Arrangement.
- (f) **Identification of contributions:** The Participating Employer or the Member must identify contributions and other amounts when required by the Trustee.
- (g) **Rollovers:** Subject to the Superannuation Law, the Trustee may accept in this Division the rollover or transfer from another Division or Benefit Arrangement in respect of the Member.

## 1.4 Benefits

Subject to clause 10.7, a Member is entitled to the following benefits under this Division:

- (a) **Termination of employment of Employer Sponsored Member:** An Employer Sponsored Member is entitled to the Member's Benefit on ceasing employment with the Participating Employer, other than as a result of death or Total and Permanent Disablement. A benefit payable under this Rule 1.4(a) may be:
- (1) transferred or rolled over to another Division or Benefit Arrangement under clause 14.2;
  - (2) paid in the form of an Account Based Pension or a Transition to Retirement Income Stream payable in accordance with Rule 1.4(e) of this Schedule 1; or
  - (3) if the benefit is not a Preserved Benefit, paid to the Beneficiary as one or more lump sums.
- (b) **Total and Permanent Disablement:** A Member is entitled to the Member's Benefit upon the Member's Total and Permanent Disablement. The Trustee may pay the Member's Benefit in such instalments and on such other conditions as it determines.
- (c) **Death:** Subject to the Rules set out in Appendix 2, upon the death of a Member, a death benefit equal to the Member's Benefit is payable in accordance with clause 13.10.
- (d) **Attaining preservation age:** A Member is entitled to the Member's Benefit upon attaining their preservation age. To the extent that a benefit payable under this Rule 1.4(d) is not an unrestricted non preserved benefit, it may be paid in the form of a Transition to Retirement Income Stream payable in accordance with Rule 1.4(e) of this Schedule 1.
- (e) **Account Based Pension and TRIS:** The Trustee may, on the request of a Member and where permitted by the Superannuation Law, admit the Member to participate in Schedule 3 and apply all or part of the lump sum payable to the Member to Schedule 3 towards providing an Account Based Pension or a Transition to Retirement Income Stream payable in accordance with Schedule 3.

To the extent that the lump sum payable to the Member is applied towards providing an Account Based Pension or a Transition to Retirement Income Stream under Schedule 3, the Member shall cease to be entitled to a benefit under this Schedule and become entitled to a pension payable in accordance with the Rules set out in Schedule 3.



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- (f) **Temporary Disablement:** Subject to clause 8.4, if the Trustee has taken out a policy covering temporary disablement in respect of a Member and the Member suffers Temporary Disablement, the Trustee must pay the Member the Insured Benefit.
- (g) **Severe financial hardship:** If a Member is taken to be in severe financial hardship for the purposes of the Superannuation Law and the Member requests payment of their Member benefit, the Trustee must pay to that Member an amount determined by the Trustee in accordance with the Superannuation Law, not exceeding the amount of the Member's Benefit.
- (h) **Compassionate grounds:** If the Regulator has made a written determination that a Member has satisfied a condition of release on compassionate grounds, the Trustee must pay to that Member a single lump sum amount determined in writing by the Regulator, not exceeding the amount of the Member's Benefit.
- (i) **Other circumstances:** Notwithstanding any other provision of this Rule 1.4 of Schedule 1, if the Beneficiary has satisfied a condition of release which permits payment of the benefit to the Beneficiary or in such other circumstances permitted by the Superannuation Law, in the discretion of the Trustee, a benefit of a Beneficiary may be paid in the form permitted by the Superannuation Law.
- (j) **Transfer of Service:** Notwithstanding Rule 1.4(a) of Schedule 1, if a Member ceases employment with a Participating Employer and:
  - (1) the Member remains in the employment of an Employer admitted to participate in this or any other Division; or
  - (2) immediately commences employment with an Employer admitted to participate in this or any other Division,
 no benefit is payable to the Member unless the Trustee otherwise determines.



## Schedule 2

### Rules for the Personal Division

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#### 1.1 Name of Division:

Personal Division

#### 1.2 Definitions

Except in so far as the context or subject matter otherwise indicates or requires, in this Schedule:

**Member** means a person admitted by the Trustee to participate in this Division under clause 10.1, subject to any terms imposed by the Trustee.

**Member's Benefit** in relation to a Member, means the sum of:

- (a) the balance of all Accounts maintained for the Member under this Division; and
- (b) subject to clause 8.4, the Insured Benefit (if any) in respect of the Member.

#### 1.3 Contributions

- (a) **Employer contributions and other contributions:** The Member's Employer or any other person who is permitted by the Superannuation Law to contribute for the benefit of the Member, may contribute to this Division such amounts in respect of the Member as the contributor determines, in such manner, as is approved by the Trustee.
- (b) **Member contributions:** A Member may contribute to this Division such amounts as are agreed between the Trustee and the Member.
- (c) **Member contributions paid by Employer:** An Employer may pay, on behalf of a Member, contributions that are payable by the Member. Any contributions so paid by the Employer, and identified as such, are deemed to be contributions made by the Member.
- (d) **Other contributions, rollovers and transfers:** The Trustee may accept in this Division for the benefit of a Member:
  - (1) contributions in respect of the Member from any other person where permitted by the Superannuation Law (including without limitation eligible spouse contributions);
  - (2) an allotment of splittable contributions under clause 12.6(a)(1); and
  - (3) a rollover or transfer of an amount, equal to the splittable contribution made by or on behalf of the Member's Spouse, from another Division or Benefit Arrangement.
- (e) **Identification of contributions:** The Employer or the Member must identify contributions and other amounts when required by the Trustee.
- (f) **Rollovers:** Subject to the Superannuation Law, the Trustee may accept in this Division the rollover or transfer from another Division or Benefit Arrangement in respect of the Member.



## 1.4 Benefits

Subject to clause 10.7, a Member is entitled to the following benefits under this Division:

- (a) **When benefit may become payable in respect of Non Employer Sponsored Member:** A Non Employer Sponsored Member is entitled to the Member's Benefit upon satisfying a condition of release, other than as a result of death, Total and Permanent Disablement or attaining preservation age. A benefit payable under this Rule 1.4(a) may be:
- (1) transferred or rolled over to a Benefit Arrangement under clause 14.2;
  - (2) paid in the form of an Account Based Pension or a Transition to Retirement Income Stream payable in accordance with Rule 1.4(e) of this Schedule 2;
  - (3) if the benefit is not a Preserved Benefit, paid to the Beneficiary as one or more lump sums.
- (b) **Total and Permanent Disablement:** A Member is entitled to the Member's Benefit on Total and Permanent Disablement. The Trustee may pay the Member's Benefit in such instalments and on such other conditions as it determines.
- (c) **Death:** Subject to the Rules set out in Appendix 2, upon the death of a Member before retirement, a death benefit equal to the Member's Benefit is payable according to clause 13.10.
- (d) **Attaining Preservation Age:** A Member is entitled to the Member's Benefit upon attaining their preservation age. To the extent that a benefit payable under this Rule 1.4(d) is not an unrestricted non preserved benefit, it may be paid in the form of a Transition to Retirement Income Stream payable in accordance with Rule 1.4(e) of this Schedule 2.
- (e) **Account Based Pension and TRIS:** The Trustee may, on the request of a Member and where permitted by the Superannuation Law, admit the Member to participate in Schedule 3 and apply all or part of the lump sum payable to the Member to Schedule 3 towards providing an Account Based Pension or a Transition to Retirement Income Stream, payable in accordance with Schedule 3.
- To the extent that the lump sum payable to the Member is applied towards providing an Account Based Pension or a Transition to Retirement Income Stream under Schedule 3, the Member shall cease to be entitled to a benefit under this Schedule and become entitled a pension payable in accordance with the Rules set out in Schedule 3.
- (f) **Temporary Disablement:** Subject to clause 8.4, if the Trustee has effected a policy covering Temporary Disablement in respect of a Member and the Member suffers temporary disablement, the Trustee must pay the Member the proceeds of that policy which relate to the Member.
- (g) **Severe financial hardship:** If a Member is taken to be in severe financial hardship for the purposes of the Superannuation Law, the Trustee must pay to that Member an amount determined by the Trustee in accordance with the Superannuation Law, not exceeding the amount of the Member's Benefit.
- (h) **Compassionate grounds:** If the Regulator has made a written determination that a Member has satisfied a condition of release on compassionate grounds, the Trustee must pay to that Member a single lump sum amount determined in writing by the Regulator, not exceeding the amount of the Member's Benefit.



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- (i) **Other circumstances:** Notwithstanding any other provision of this Rule 1.4 of Schedule 2, if the Beneficiary has satisfied a condition of release which permits payment of the benefit to the Beneficiary or in such other circumstances permitted by the Superannuation Law, in the discretion of the Trustee, a benefit of a Beneficiary may be paid in a form permitted by the Superannuation Law.



## Schedule 3

### Rules for the Account Based Pension, TRIS, Allocated Pension, TRAP, Term Allocated Pension and Non-commutable Term Allocated Pension Division

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#### 1.1 Name of Division:

Account Based Pension, TRIS, Allocated Pension, TRAP, Term Allocated Pension and Non-commutable Term Allocated Pension Division.

#### 1.2 Definitions:

Except in so far as the context or subject matter otherwise indicates or requires, in this Schedule:

**Account Based Pension** means a pension payable from this Division under this Schedule which complies with the standards set out in subregulations 1.06(1) and 1.06(9A)(a) of the SIS Regulations.

**Allocated Pension** means a pension payable from this Division under this Schedule which complies with the standards set out in subregulation 1.06(4) of the SIS Regulations.

**Death Benefit** means the balance of the Member's Pension Account at the date the Member's Pension Account is distributed in accordance with Rule 1.12 of this Schedule 3.

**Member** means a person:

- (a) to whom the Trustee may pay a Pension without breaching the Superannuation Law; and
- (b) who is admitted by the Trustee to participate in this Division under clause 10.1, subject to any terms imposed by the Trustee.

**Nominated Beneficiary** means a person who the Member has nominated in writing in any form determined by the Trustee, to receive the Member's Death Benefit under Rule 0 of this Schedule 3.

**Non-commutable Term Allocation Pension** has same meaning as "non-commutable pension" in the SIS Regulations insofar as that term applies to a pension provided under rules relating to subregulation 1.06(8).

**Pension** means each of the following types of pensions:

- (c) an Account Based Pension;
- (d) a TRIS;
- (e) an Allocated Pension;
- (f) a TRAP
- (g) a Term Allocation Pension;
- (h) a Non-commutable Term Allocation Pension; and
- (i) any other form of pension approved by the Trustee and permitted by the Superannuation Law, other than a Defined Benefit under Schedule 4.



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**Pensioner** means a Member to whom a Pension is being paid from this Division.

**Pension Account** means an Account maintained in respect of a Member from this Division.

**Pension Commencement Date** in relation to a Member means the date a Pension commences to be paid in respect of the Member under this Division.

**Reversionary Beneficiary** means a person nominated and accepted as a Reversionary Beneficiary in accordance with Rule 1.12(b) of this Schedule 3.

**Term Allocated Pension** means a pension payable from this Division under this Schedule which at the time the Trustee accepted the application for the pension, the Trustee intended the pension meet the standards of regulations 1.06(8) and 1.07C of the SIS Regulations.

**Transition to Retirement Allocated Pension** or **TRAP** means a pension payable under this Division which meets the definition of 'non-commutable allocated pension' under the Superannuation Law.

**Transition to Retirement Income Stream** or **TRIS** means a pension payable from this Division under this Schedule which meets the definition of a 'transition to retirement income stream' in the Superannuation Law.

### 1.3 Acceptance of contributions, rollovers and transfers

- (a) Subject to the Superannuation Law, the Trustee may accept into this Division for the benefit of a Member:
- (1) the rollover or transfer of benefits from another Benefit Arrangement in respect of a Member;
  - (2) contributions in respect of the Member from any person (including without limitation eligible spouse contributions in respect of the Member);
  - (3) an allotment of splittable contributions under clause 12.6(a)(1); and
  - (4) a rollover or transfer of an amount, equal to the splittable contribution made by or on behalf of the Member's Spouse, from another Benefit Arrangement.
- (b) The Trustee may establish rules governing the acceptance of amounts under Rule 1.3(a) of this Schedule 3 including, but not limited to, the minimum amount that may be accepted.
- (c) The capital supporting a Pension cannot be added to by way of contribution or rollover after the Pension Commencement Date for the Pension.

### 1.4 Pension Account

- (a) Upon the admission of a Member to participate in this Division, the Trustee shall establish and maintain in respect of the Member, one or more Pension Accounts to which:
- (1) the Trustee shall credit:
    - (A) any contributions made to this Division under Rule 1.3(a) of this Schedule 3 in respect of the Member;
    - (B) such amounts as are rolled over or transferred to the Fund pursuant to clause 14.1;
    - (C) such amounts as the Trustee determines to transfer from other Accounts in the Fund;





- (D) any positive amounts at the Investment Performance Rate or Investment Performance Rates, and any other positive amounts, attributable to the investment of the Pension Account; and
  - (E) any other amounts which the Trustee determines from time to time to credit to the Pension Account; and
- (2) the Trustee shall debit:
- (A) Pension payments made in respect of a Pensioner or Reversionary Beneficiary under this Schedule 3;
  - (B) any Fund Expenses which the Trustee determines from time to time;
  - (C) any amounts which the Trustee determines to transfer to the Administration Reserve Account in respect of providing and paying for any Tax or Fund Expenses and any other contingencies of the Fund;
  - (D) any amounts which the Trustee determines to transfer to one or more reserve or provision Accounts or any other Accounts maintained by the Trustee for the purposes of the Fund;
  - (E) any negative amounts at the Investment Performance Rate or Investment Performance Rates, and any other negative amounts, attributable to the investment of the Pension Account;
  - (F) such amounts as are rolled over or transferred to another Benefit Arrangement under clause 14.2; and
  - (G) any other amounts which the Trustee determines from time to time to debit the Pension Account.
- (b) If the Trustee accepts contributions or the rollover or transfer to this Division in respect of a Pensioner after the Pension Commencement Date, the Trustee must credit such amount to a new Pension Account from which a new and separate Pension shall be paid in accordance with the provisions of this Division.

## 1.5 Pension payments

- (a) Subject to the Superannuation Law and Rule 1.6 of this Schedule 3, a Pensioner is entitled to a Pension, as agreed with the Trustee, in accordance with the provisions of this Schedule.
- (b) Each Pension shall be paid from the Pension Commencement Date and continue to be paid for such period (if any) as is agreed between the Member and the Trustee unless the balance of the Member's Pension Account is exhausted before that time.
- (c) In respect of that part (if any) of a Pension Account that is not an unrestricted non-preserved benefit, the Trustee must pay either:
  - (1) if the pension will commence to be paid before 1 July 2007 – a TRAP; or
  - (2) if the pension will commence to be paid on or after 1 July 2007 – a TRIS.
- (d) The Trustee may, in its absolute discretion, pay the Pension from segregated current pension assets of the Fund, as provided in clause 7, or by purchasing a Pension in the name of the Member from another Benefit Arrangement.
- (e) In relation to a Term Allocated Pension or a Non-commutable Term Allocated Pension, the requirement in Rule 1.5(b) of this Schedule 3 to continue paying a Pension unless the balance of the Member's Pension Account is exhausted before



that time, only applies if it does not affect the status of the pension as a Term Allocated Pension or a Non-commutable Term Allocated Pension.

## 1.6 Changes from one Pension to another Pension

The Trustee may:

- (a) on the request of a Pensioner or Beneficiary; or
- (b) if it considers that the alteration is reasonably necessary to ensure that the Pension complies with standards of Superannuation Law; or
- (c) if it considers that the alteration is reasonably necessary or desirable in order to obtain a benefit or advantage in relation to the Fund, the Pensioner or Beneficiary under Superannuation Law or any other legislation),,

alter the terms of a Pension payable to, or in respect of, the Member or Beneficiary from one form of Pension to another form of Pension, from a date determined by the Trustee.

## 1.7 Pension to comply with the Superannuation Law

Notwithstanding any other provision of this Schedule, every Pension paid from this Division must comply with the Superannuation Law, as it relates to that Pension.

## 1.8 Pension Commencement Date

The following Rules apply subject to clause 14.1(b):

- (a) **Nomination of Pension Commencement Date:** Subject to Rule 1.9(e) of this Schedule 3, the Trustee may allow a Member to nominate the Pension Commencement Date for each Pension payable in respect of the Member.
- (b) **Pension Commencement Date must comply with the Superannuation Law:** The Pension Commencement Date must not be later than the date necessary to comply with the Superannuation Law, and in the case of an Allocated Pension and a TRAP, must be before 20 September 2007.
- (c) **Member fails to nominate Pension Commencement Date:** If the Trustee allows a Member to nominate the Pension Commencement Date for a Pension payable in respect of the Member and the Member does not nominate a Pension Commencement Date that complies with the Superannuation Law as it relates to that Pension:
  - (1) the Trustee may commence to pay the Pension with effect from a Pension Commencement Date that complies with the Superannuation Law as it relates to that Pension; or
  - (2) if the Trustee is unable to identify a Pension Commencement Date that complies with the Superannuation Law, the Trustee may:
    - (A) (in accordance with Rule 1.6 of this Schedule 3) commence to pay a different Pension (**new Pension**) with effect from a Pension Commencement Date that complies with the Superannuation Law as it relates to the new Pension; or
    - (B) transfer the Member and the Member's Pension Account to another Division.

## 1.9 Frequency of Pension payments

The following Rules apply subject to clause 14.1(b):



- (a) **Frequency of Pension payments:** Subject to the Superannuation Law, the Trustee must make Pension payments to the relevant Pensioner with such frequency and at such intervals and times as are agreed between the Trustee and the Pensioner.
- (b) **Trustee may alter the frequency of Pension payments:** The Trustee may alter the frequency with which Pension payments are to be made:
  - (1) if it considers that alteration is reasonably necessary to ensure that the Pension complies with standards of Superannuation Law; or
  - (2) if it considers that the alteration is reasonably necessary or desirable in order to obtain a benefit or advantage in relation to the Fund, the Pensioner or Beneficiary under Superannuation Law or any other legislation); or
  - (3) at any time agreed upon between the Pensioner and the Trustee.
- (c) **Default frequency of Pension payments:** If at any time the frequency of the Pension payments has not been agreed upon by the Trustee and the Member, subject to Rule 1.9(e) of this Schedule 3, the Trustee must ensure that at least one Pension payment is made during each financial year after the Pension Commencement Date.
- (d) **Minimum frequency of Pension payments:** Notwithstanding any agreement with the Member to the contrary and subject to Rule 1.9(e) of this Schedule 3, the Trustee must ensure that at least one Pension payment is made to the Member during each financial year after the Pension Commencement Date.
- (e) **Commencement Date on or after 1 June:** In the case of a Term Allocated Pension, an Account Based Pension, a TRIS or a Non-Commutable Term Allocated Pension:
  - (1) if the Commencement Date of the pension is on or after 1 June in a financial year, no pension is required to be paid in relation to the pension for that financial year; and
  - (2) subject to Rule 1.9(e)(1) of this Schedule 3, the pension must be paid at least annually.

## 1.10 Selecting the value of Pension payments

The following Rules apply subject to clause 14.1(b):

- (a) **Nomination of value of Pension payments:** At any time during a financial year a Member may select the level of pension payments for that financial year within the limits of this Rule. The selection must be in a manner approved by the Trustee.
- (b) **Limits on value of Pension payments:** Subject to Rule 1.10(f) of this Schedule 3, the sum of the Pension Payments made under a Pension to a Member in each financial year or part of a financial year must not be:
  - (1) less than the minimum limits; nor
  - (2) greater than the maximum limits,
 set out in the Superannuation Law (as it relates to that Pension), provided such payments do not exceed the value determined by the Trustee. In the event that such payments fall outside such limits, the Trustee may, without notice, make such adjustment to value of all or some of the Pension payments as the Trustee considers necessary to ensure that their sum does fall within the limits required under this Rule.
- (c) **Notification of limits on the value of Pension payments:** The Trustee must notify the Pensioner of the minimum limits and the maximum limits required under Rule 1.10(b) of this Schedule 3 for the relevant financial year and it must do so at the following times:



- (1) within a reasonable time and in any event within such time as prescribed by the Superannuation Law of the person becoming a Member of this Division; and
  - (2) as at 1 July of every year, within a reasonable time of that date, until the Pension ceases to be paid.
- (d) **Member fails to nominate the value Pension payments:** If the Trustee allows a Member to nominate the value of Pension payments and the Member does not nominate a value within the limits required under Rule 1.10(b) of this Schedule 3 within such period as determined by the Trustee, the Trustee must either:
- (1) make the Pension payments for the current financial year calculated according to any previous agreement between the Trustee and Member; or
  - (2) in the absence of any such agreement make the Pension payments at the minimum limit required to be paid under Rule 1.10(b) of this Schedule 3.
- (e) **Trustee powers of adjustment:** The Trustee may at any time and without prior notice to the Pensioner adjust the value of Pension payments to such Pensioner to a level that complies with the Superannuation Law.
- (f) **Term Allocated Pensions and Non-Commutable Term Allocated Pensions:** The total amount of payments of a Term Allocated Pension or a Non-Commutable Term Allocated Pension to be made in a financial year during the pension's term (excluding payments by way of commutation but including payments made under a payment split) must be calculated in accordance with the Superannuation Law.

## 1.11 Commutation

- (a) **Pensioner commutation:** Subject to Rule 1.11(d) of this Schedule 3 and the Superannuation Law, a Member may commute the whole or part of a Member's Pension at any time by notifying the Trustee, in a manner approved by the Trustee.
- (b) **Benefit payment on commutation:** Subject to Rule 1.11(d) of this Schedule 3, on the commutation of the whole of a Pension, subject to the Superannuation Law, the Trustee must pay a lump sum benefit to the Pensioner equal to the balance of their Pension Account as at the date of commutation.
- (c) **Payment on partial commutation:** Subject to Rule 1.11(d) of this Schedule 3, on the commutation of part of a Pension, subject to the Superannuation Law, the Trustee must pay a lump sum benefit to the Pensioner from their Pension Account equal to the amount requested up to the balance of the Pension Account as at the date of commutation.
- (d) **Commutation of TRIS, TRAP or Non-Commutable Term Allocated Pension:** The Trustee may only commute a TRIS, TRAP or a Non-Commutable Term Allocated Pension (or any part of it) if:
  - (1) the purpose of the commutation is:
    - (A) to cash an unrestricted non-preserved benefit;
    - (B) to pay a superannuation contributions surcharge;
    - (C) to give effect to an entitlement of a Non-Member Spouse under a payment split;
  - (2) after the commutation, the amount commuted would be an unrestricted non-preserved benefit; or
  - (3) in any other circumstances permitted by the Superannuation Law as it relates to that Pension.



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- (e) **Trustee's commutation:** If the Trustee must commute all or any part of a Pension that is being paid to a Pensioner or a Reversionary Beneficiary where required by the Superannuation Law.

## 1.12 Death of Pensioner

Subject to the Rules set out in Appendix 2, the following Rules apply to the payment of a Pensioner's Death Benefit.

- (a) **Non-binding nomination of Beneficiary:** Unless a Reversionary Beneficiary is nominated pursuant to Rule 1.12(b) of this Schedule 3, the Trustee may allow a Pensioner to nominate a Dependant or the Pensioner's legal personal representative to receive all or any part of the Pensioner's death benefit payable in accordance with clause 13.10(a). A nomination made under this Rule is given for information only and shall not limit the Trustee's discretion on the distribution of the Pensioner's Death Benefit in accordance with clause 13.10.
- (b) **Rules for nomination of Reversionary Beneficiary:** The Trustee may approve such form, adopt such procedures and impose such terms, conditions and restrictions in connection with the nomination of, and payment of the Pensioner's Death Benefit to, the Nominated Beneficiary as the Trustee in its absolute discretion determines.
- (c) **Payment of a Pensioner's Death Benefit:** Upon the death of a Pensioner who is entitled to receive a Pension, the Trustee shall distribute the Pensioner's Death Benefit in accordance with:
- (1) clause 13.10;
  - (2) clauses 13.11 or 13.12, having regard to any nomination made by the Pensioner under Rule 0 of this Schedule 3; and
  - (3) Rule 1.12(f) of this Schedule 3.
- (d) **Payment to legal personal representative or other non-Dependant:** If the Trustee determines to pay all or any part of the Pensioner's Death Benefit to the Pensioner's legal personal representative under clause 13.10 or 13.11 or a person (other than a Dependant) under clause 13.12, the Trustee must pay that amount as a lump sum benefit.
- (e) **Payment to Dependant:** If the Trustee determines to pay all or any part of the Pensioner's Death Benefit to a Dependant pursuant to clause 13.10 or 13.11, the Trustee shall pay that amount as a lump sum benefit unless the Trustee, on the request of that person and subject to the Superannuation Law, agrees to pay the amount in the form of an Account Based Pension.
- (f) **Payment to Reversionary Beneficiary:** Upon the death of a Pensioner who has nominated a Reversionary Beneficiary for the Pension, the Trustee must, subject to the Superannuation Law, continue to pay the Pension to the Reversionary Beneficiary until the earlier of:
- (1) the Pension Account reaching zero; or
  - (2) the death of the Reversionary Beneficiary or
  - (3) the payment is no longer permitted by the Superannuation Law in the form of a Pension, in which case, the balance (if any) of the Pension Account must be paid to the Reversionary Beneficiary as a lump sum.
- (g) **Reference to Member or Pensioner reads as Reversionary Beneficiary:** If the Trustee pays a Pension to a Reversionary Beneficiary under Rule 1.12(f) of this Schedule 3, subject to such conditions and restrictions as the Trustee determines,



references to the Member or Pensioner in this Schedule must be read as a reference to the Reversionary Beneficiary.

### **1.13 Cessation of Pension**

- (a) The Pension will cease to be payable on the earlier of the following:
- (1) the balance of the Pensioner's Pension Account is exhausted or decreases to a value determined by the Trustee;
  - (2) the term of the Pension agreed to by the Trustee and the Pensioner in Rule 1.5(b) of this Schedule 3 has expired; or
  - (3) on the date determined by the Trustee in accordance with the Superannuation Law.
- (b) Any balance of the Pensioner's Pension Account at the date determined under Rule 1.13(a) of this Schedule 3 shall be paid to the Pensioner as soon as practicable thereafter.

### **1.14 Transfer of Pension Account**

The Trustee may, at the request of a Pensioner, transfer the balance of the Pensioner's Pension Account to another Benefit Arrangement in accordance with clause 14.2.

### **1.15 Cessation of membership**

A person shall cease to be a Member when the Pensioner ceases to be entitled to any benefits from this Division.

### **1.16 Limit on reversion and commutation**

If a Pension reverts or is commuted, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion or commutation.

### **1.17 No Transfer**

A Pension may not be assigned or transferred to another person (other than to a Reversionary Beneficiary on the death of the Pensioner or of another Reversionary Beneficiary), unless such transfer is permitted by the Superannuation Law.

### **1.18 Pension not to be used as security**

A Member may not use the capital value of a Pension, or the income from a Pension, as security for a borrowing, unless permitted by the Superannuation Law.



## Schedule 4

### Rules for the Defined Benefit Division

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#### 1.1 Name of Division:

Defined Benefit Division.

#### 1.2 Definitions:

Except in so far as the context or subject matter otherwise indicates or requires, in this Schedule:

**Member** means a person admitted by the Trustee to participate in this Division under clause 10.1, subject to any terms imposed by the Trustee.

**Member's Benefit** in relation to a Member means, subject to clause 10.7, such amounts as may be set out in the Rules for a Product Line established in this Division.

**Participating Employer** means a Standard Employer Sponsor or an Associated Employer admitted by the Trustee to participate in this Division under clause 10.4 or 10.5 (as the case may be).

**Product Line** means a Product Line established within this Division in accordance with Rule 1.3(a) of this Schedule 4.

**Product Line Rules** means the rules governing a Product Line established within this Division in accordance with Rule 1.3(b) of this Schedule 4.

#### 1.3 Product Lines

- (a) **Establishment of Product Line:** The Trustee may establish a Product Line within this Division for the purpose of providing superannuation benefits for Employees of an Employer and such other persons in accordance with Product Line Rules.
- (b) **Product Line Rules:** The Trustee shall determine the rules governing a Product Line. Such Product Line Rules may be set out in an Appendix to this Schedule or in any other document determined by the Trustee.
- (c) **Variation of Product Line Rules:** Subject to compliance with the Superannuation Law and any additional requirements set out in the Product Line Rules relating to variation, the Trustee may vary the Product Line Rules from time to time.

#### 1.4 Contributions

- (a) **Participating Employer must contribute as required by the Plan Rules:** Each Participating Employer must contribute such amounts, within such time frames, as required by the Plan Rules.
- (b) **Member contributions:** A Member:
  - (1) may contribute to a Product Line such amount as permitted by the Product Line Rules; and
  - (2) must contribute to a Product Line such amount as required by the Product Line Rules.



- (c) **Member contributions paid by Participating Employer:** A Participating Employer may pay, on behalf of a Member, contributions that are payable by the Member. Any contributions so paid by the Participating Employer, and identified as such, are deemed to be contributions made by the Member.
- (d) **Other contributions, rollovers and transfers:** Subject to the Product Line Rules, the Trustee may accept in this Division for the benefit of a Member:
  - (1) contributions in respect of the Member from any other person where permitted by the Superannuation Law (including without limitation eligible spouse contributions);
  - (2) an allotment of splittable contributions under clause 12.6(a)(1); and
  - (3) a rollover or transfer of an amount, equal to the splittable contribution made by or on behalf of the Member's Spouse, from another Division or Benefit Arrangement.
- (e) **Identification of contributions:** The Participating Employer or the Member must identify contributions and other amounts when required by the Trustee.
- (f) **Rollovers:** Subject to the Superannuation Law, the Trustee may accept in this Division the rollover or transfer from another Division or Benefit Arrangement in respect of the Member.

## 1.5 Benefits

- (a) **Benefits determined under Product Line Rules:** Subject to the Rules set out in Appendix 2, all benefits entitlements must be in accordance with any applicable Product Line Rules. A benefit payable under this Division may be:
  - (1) transferred or rolled over to another Division or Benefit Arrangement under clause 14.2;
  - (2) paid in the form of an Account Based Pension or a Transition to Retirement Income Stream payable in accordance with Rule 1.5(b) of this Schedule 4; or
  - (3) if the benefit is not a Preserved Benefit, paid to the Beneficiary as one or more lump sums.
- (b) **Account Based Pension and TRIS:** Subject to the Product Line Rules, the Trustee may, on the request of a Member and where permitted by the Superannuation Law, admit the Member to participate in Schedule 3 and apply all or part of the lump sum payable to the Member to Schedule 3 towards providing an Account Based Pension or a Transition to Retirement Income Stream, payable in accordance with Schedule 3.  
 To the extent that the lump sum payable to the Member is applied towards providing an Account Based Pension or a Transition to Retirement Income Stream under to Schedule 3, the Member shall cease to be entitled to a benefit under this Schedule and become entitled to a pension payable in accordance with the Rules set out in Schedule 3 .





## Schedule 5

### Rules for the UK Transfer Division

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#### 1.1 Name of Division

UK Transfer Division.

#### 1.2 Definitions

Except in so far as the context or subject matter otherwise indicates or requires, in this Schedule:

**Member** means a person in respect of whom:

- (a) the Trustee has accepted a transfer from a UK Pension Scheme; and
- (b) the Trustee has agreed to admit to participate in this Division under clause 10.7, subject to the approval of, and any terms and conditions imposed by, the Trustee.

**Member's Benefit** in relation to a Member means, subject to clause 10.7, the balance of all Accounts maintained for the Member under this Division.

#### 1.3 Benefits

Subject to clause 10.7, a Member's Benefit under this Division is payable in respect of a Member in accordance with this Deed upon the later of:

- (a) the Member satisfying a condition of release which permits payment of the Member's Benefit; and
- (b) satisfaction of the UK Transfer Conditions.

#### 1.4 Mode of payment of benefits

Subject to the Rules set out in Appendix 2, a benefit payable under Rule 1.3 of this Schedule 5 must be:

- (a) transferred or rolled over to another Product Line or a Benefit Arrangement under clause 14.2(a);
- (b) paid in the form of an Account Based Pension or a Transition to Retirement Income Stream, payable in accordance with Rule 1.5 of this Schedule 5;
- (c) if the benefit is not a Preserved Benefit, paid to the Beneficiary in one or more lump sums.

#### 1.5 Account Based Pension and TRIS

- (a) The Trustee may, on the request of a Member and where permitted by Superannuation Law, admit the Member to participate in Schedule 3 and apply all or part of the lump sum payable to Schedule 3 towards providing an Account Based Pension or a Transition to Retirement Income Stream, payable in accordance with Schedule 3;



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- (b) To the extent that the lump sum payable to the Member is applied towards providing an Account Based Pension or a Transition to Retirement Income Stream under Schedule 3, the Member shall cease to be entitled to a benefit under this Schedule and become entitled to a pension or non-commutable allocated pension payable in accordance with the Rules set out in Schedule 3.



## Appendix 1

### Fees and costs

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#### 1.1 Definitions

Except in so far as the context or subject matter otherwise indicates or requires, in this Appendix 1:

**Transferring DPM Members** means a person who became a Member of the Fund pursuant to a Successor Fund Transfer of members of DPM Retirement Service to the Fund.

**Transferring HML Members** means a person who became a member of the MLC Superannuation Fund pursuant to a Successor Fund Transfer of members of HML Superannuation Fund to the MLC Superannuation Fund, as identified and advised by NULIS Nominees (Australia) Limited to the Trustee.

**Transferring MKC Members** means a person who became a member of the MLC Superannuation Fund pursuant to a Successor Fund Transfer of members of MasterKey Custom Superannuation to the MLC Superannuation Fund, as identified and advised by NULIS Nominees (Australia) Limited to the Trustee.

**Transferring MLC Wrap Members** means a person who became a member of a new sub-plan in the MLC Superannuation Fund on or after 1 November 2010, other than a Transferring HML Member or a Transferring MKC Member, as identified and advised by NULIS Nominees (Australia) Limited to the Trustee.

**Transferring Navigator Members** means a person who became a Member of the Fund pursuant to a Successor Fund Transfer of members of MLC Navigator sub-plan (or any white label equivalent of that sub-plan) in the MLC Superannuation Fund to the Fund, other than a Transferring MLC Wrap Member, Transferring HML Member or a Transferring MKC Member.

**Transferring PremiumChoice Members** means a person who became a Member of the Fund pursuant to a Successor Fund Transfer of members of PremiumChoice Retirement Service to the Fund.

#### 1.2 Fees and costs - General

Except as set out in Rules 1.3 and 1.4 of this Appendix 1, the following fees and costs provisions apply to Members:

- (a) The Trustee from time to time is to determine the Fund Expenses in respect of the Fund, Division, Product Line or Category and each Investment Option.
- (b) The Trustee in its discretion may deduct all Fund Expenses from each Member's Account and Investment Option in such proportions and in such a manner as is fair and reasonable and may procure a redemption or disposal of underlying investments held for the benefit of Members or, if applicable, a redemption or disposal of Units.
- (c) The Trustee is entitled to be remunerated for its services to the Fund, such amounts, and at such intervals, as may be determined by the Trustee.



- (d) The Trustee may in its absolute discretion set one or more fees to be deducted from a Member's Account or an Investment Option and without limiting the Trustee's discretion:
- (1) the fees may vary in respect of different Divisions, Product Lines, Plans, or Categories;
  - (2) the fees may vary in respect of different Investment Options; and
  - (3) the fees may vary between different Members or Categories.
- (e) The Trustee may in its absolute discretion, subject to the Superannuation Law, retain any amount representing a rebate, reimbursement, expense or cost saving on a transaction, an amount that is not a Member's benefit or other similar amount paid to the Fund by a financial services provider or the provider of a financial product.
- (f) Without limiting the power of the Trustee as set out in Rules 1.2(a), 1.2(b), 1.2(c) and 1.2(e) of this Appendix 1, the Trustee shall be entitled to charge the Fund, Division, Product Line or Category with the following fees, recover the following costs and disbursements and to retain any of the following amounts:
- (1) **Contribution charge** – The Trustee shall be entitled to deduct such contribution charges against a Member's Account as the Trustee shall determine from time to time.
  - (2) **Member charge** – The Trustee shall be entitled to charge against a Member's Account a monthly membership charge as it shall determine from time to time.
  - (3) **Benefit payment charge** – The Trustee may charge a benefit payment charge against a Member's Account upon the payment of a Member's benefit at such a rate as determined from time to time.
  - (4) **Investment switching charge** – The Trustee may charge an investment switching charge to a Member's Account upon the second and each subsequent direction by the Member to the Trustee in a financial year to change Investment Options made available through the Fund. The Trustee shall determine the rate of the investment switching charge from time to time. The Trustee may in its absolute discretion determine to charge an investment switching charge on a different basis, including imposing a charge for each and every Member directed investment switch.
  - (5) **Administration charge** – The Trustee shall be entitled to charge a Member's Account a monthly administration fee. The Trustee shall determine the rate of the administration charge from time to time.
  - (6) **Asset transfer charge** – The Trustee shall be entitled to charge an asset transfer charge in respect of any amounts transferred by a Member or on behalf of a Member into a Member's Account from a Benefit Arrangement. The Trustee shall determine the rate of the asset transfer charge from time to time.
  - (7) **Rebate of premiums** – The Trustee shall be entitled to be paid any amounts representing a rebate or reimbursement of any premiums from effecting a contract of insurance.
  - (8) **Buy/sell spread** – The Trustee shall be entitled to retain the buy/sell spread in relation to the purchase and disposal of assets held through the Fund on behalf of Members, if the Trustee is able to nett off transactions between Members, including the purchase and redemption or disposal units or Units (if any).



- (9) **Insurance administration fee** – The Trustee shall be entitled to charge against a Member's Account an insurance administration fee. The Trustee shall determine the rate of the insurance administration charge from time to time.
- (10) **Rebate of investment manager fees** – The Trustee shall be entitled to be paid any amounts representing a rebate or reimbursement of any fees from investment managers engaged by the Trustee or the investment managers of assets of the Fund.
- (11) **Direct Share Facility Transaction Fee** – The Trustee shall be entitled to charge against a Member's Account a transaction fee in respect of transactions effect on behalf of a Member in respect of the Direct Share Facility. The Trustee shall determine the rate of the transaction charge from time to time.
- (12) **Adviser Service Fee** – The Trustee shall be entitled to charge against a Member's Account one or more adviser service fees as determined by the Trustee from time to time and if agreed to by the Member.
- (13) The setting and deduction of fees is subject to Superannuation Law as it applies to the protected members and lost members and in order to comply with the provisions of the Superannuation Law applying to protection members and lost members for the avoidance of doubt the Trustee has a complete discretion as to the setting of fees which vary between Members.
- (g) The Trustee may, in accordance with clause 2.6(a)(5), recover from a person, including a Beneficiary and a Non-Member Spouse, such fees and costs in relation to any Family Law dealings, unless prohibited by law.
- (h) The following definitions apply to this Rule 1.2 of Appendix 1:
- Fund Expenses** means all amounts or costs to be taken into account in operating the Fund including without limitation:
- (1) taxation of contributions, the Fund, Division, Product Line, Plan, or Category or its income;
  - (2) administration costs, charges or expenses;
  - (3) costs and expenses of investing the Fund, Division, Product Line, Plan, or Category;
  - (4) custody expenses;
  - (5) insurance premiums;
  - (6) any transfer fee payable to any person in relation to the transfer of benefits to the Fund, Division, Product Line, Plan, or Category; and
  - (7) any other costs, expenses or Liability the Trustee determines should be a Fund Expense.

### 1.3 Fees and costs – Transferring DPM Members, Transferring PremiumChoice Members and Transferring Navigator Members

Notwithstanding Rule 1.2 of this Appendix 1, the following fees and costs provisions apply in respect of Transferring DPM Members, Transferring Premium Choice Members and Transferring Navigator Members:



- (a) **Monthly Fee:** The Trustee may receive remuneration of up to the percentage of the net assets attributable to each Category set out in the following table, calculated and payable on the last Business Day of each month or at such other time determined by the Trustee:

Category	Percentage of the net assets attributable to each Category
Transferring DPM Members	1%
Transferring PremiumChoice Members	2%
Transferring Navigator Members	2%

Such remuneration must be paid out of the assets attributable to the relevant Category and debited from the Member's Account in such manner as the Trustee considers equitable.

The Trustee may, at its discretion but subject to any Disclosure Document, postpone or spread the payment of its remuneration across several months.

- (b) **Service fee:**
- (1) The Trustee is entitled to receive a service fee equal to the sum of the Participation Charges and Additional Charges in respect of the relevant Category.
  - (2) The service fee is to be paid out of the assets of the relevant Category and debited to a Member's Account on a basis of apportionment determined by the Trustee.
  - (3) The service fee will be payable to the Trustee on the last Business Day of each month or at such other times determined by the Trustee.
  - (4) The Trustee must pay all commissions or brokerage referable to an application or an agreement to procure applications for participation in a Category or commencement of a pension out of the service fee.

- (c) **Reimbursement of Fund Expenses:**

- (1) The Trustee is entitled to be reimbursed out of each Member's Account in respect of any Fund Expenses incurred in relation to the relevant Category, the Member or the administration of the Fund generally, provided that, in relation to a Transferring Navigator Member:
  - (A) any Fund Expense payable to any person to perform any of the duties or obligations which are required to and should be performed or observed by the Trustee must be paid as applicable out of the Trustee's remuneration (and must not be debited to or paid out of the Member's Account of a Member, or the assets of a Division held in respect of, or assets referable to, a Member, who became a Member of the MLC Superannuation Fund on or before 1 December 2010, as identified and advised by NULIS Nominees (Australia) Limited to the Trustee; and
  - (B) the total of all Fund Expenses debited from the assets attributable to Transferring Navigator Members must not exceed 0.5% per annum of the average balance of the

assets of the Transferring Navigator Members as at the end of each monthly period (excluding any amounts debited in respect of any fees payable to advisers in respect of financial planning advice provided to a Member which relates solely to that Member's Membership).

- (2) For the avoidance of doubt, the Trustee is entitled to be reimbursed out of a Member's Account in respect of any fees that, subject to the Superannuation Law, are payable to an adviser in respect of financial planning advice provided to the Member which relates solely to the Member's Membership, for which the Trustee is entitled to be indemnified.
- (3) If the Fund Expenses relate to more than one Member, or to more than one Category, the Trustee must apportion the Fund Expenses between Members in the same proportions that each Member's assets bear to the total of all Member assets to which the Fund Expenses relate. Alternatively, the Trustee may determine that some other basis of apportionment will apply. The Trustee may determine the basis on which Fund Expenses are to be apportioned between Members if the Fund Expenses do not relate to any Categories or any Members in particular.
- (4) This Rule 1.3(c) of Appendix 1 applies in addition to any right of the Trustee to receive remuneration, fees, reimbursement or indemnification.
- (d) **Rebates:** The Trustee may receive (without liability to account):
- (1) commissions, rebates or profit share from an insurer under any group policy or other insurance arrangement entered into by the Trustee pursuant to this Deed; and
  - (2) in relation to Transferring DPM Members, fee rebates from managers of investments offered under an Investment Option.
- (e) **Charges** The Trustee may levy the following:
- (1) Administration Charge;
  - (2) Participation Charge; and
  - (3) Additional Charges,
- by debiting the charge to the relevant Member's Account. The Administration and Participation Charges will be due on the last Business Day of the month.
- (f) **Increase in fees and charges:**
- (1) The fees and charges specified in this Rule 1.3 of Appendix 1 must not be increased unless the amount of the increase does not exceed the increase in the average all employees weekly total earnings most recently published by the Australian Bureau of Statistics.
  - (2) If the fees and charges specified in this Rule 1.3 of Appendix 1 are increased:
    - (A) the Trustee must give one month's notice in writing to each Member concerning the increase; and
    - (B) the increase will only take effect after the expiry or withdrawal of the current Disclosure Document (unless the new charge is described in the current Disclosure Document).



- (g) **Family Law fees and costs:** Subject to Superannuation Law, the Trustee may at its discretion levy a charge to cover the costs and expenses incurred in connection with the application and administration of clause 2.6 and may debit the charge to the relevant Member's Account on any basis determined by the Trustee.
- (h) **Switching fees:** The Trustee may impose a charge on a Member who switches between Investment Options (if any) in addition to any fee or charge referred to in this Rule 1.3 of the Appendix. Details of any such charge must be set out in the relevant Disclosure Document.
- (i) The following definitions apply to this Rule 1.3 of Appendix 1:
- Additional Charges** means any fees for particular services rendered by the Trustee to the Member as contemplated by the relevant Disclosure Document.
- Administration Charge** means a monthly charge levied against a Member and calculated at 3.125% per annum of the average balance of the Member's Account or a lesser amount that is:
- (1) prescribed by the relevant Disclosure Document; or
  - (2) agreed between the Trustee and the Member.
- Fund Expenses** include any costs, expenses, charges and liabilities whatsoever which are incurred by the Trustee in connection with:
- (1) the execution or attempted execution or arising from the non-execution of the trusts, authorities, powers and discretions conferred upon the Trustee by this Deed or the Rules; or
  - (2) the management, administration, operation or promotion of the Fund or any of the Divisions, Product Lines, Plans or Categories.
- Participation Charge** means a charge debited on the last Business Day of each month from each Member's Account equal to the lesser of:
- (1) \$10.00;
  - (2) the amount prescribed by the relevant Disclosure Document (if any); or
  - (3) the amount agreed between the Trustee and the Member.

#### 1.4 Fees and costs – Transferring HML Members, Transferring MKC Members and Transferring MLC Wrap Members

Notwithstanding Rule 1.2 of this Appendix 1, the following fees and costs provisions apply to Transferring HML Members, Transferring MKC Members and Transferring MLC Wrap Members:

- (a) **Trustee Remuneration:** Subject to Superannuation Law and this Rule 1.4 of Appendix 1, the Trustee may in its absolute discretion, from time to time charge and receive such remuneration in relation to Transferring HML Members, Transferring MKC Members or Transferring MLC Wrap Members, or any Member's Account in those Categories, as the Trustee:
- (1) considers reasonable; and
  - (2) discloses to affected Members in accordance with applicable legislative disclosure requirements.





- (b) **Types and timing of remuneration:** Without limiting the generality of Rule 1.4(a) of this Appendix 1, the Trustee may under Rule 1.4(a) of this Appendix 1 charge and receive remuneration:
- (1) calculated on contributions;
  - (2) for management or administration, calculated on sub-plan or Member's Account balances or on some other basis; or
  - (3) for particular transactions, including withdrawals or benefit payments, or acting on Member Investment Choice.
- (c) **Source of payment:** Amounts due to the Trustee pursuant to Rule 1.4(a) of this Appendix 1 must be paid out of the assets attributable to the relevant Category and debited to the Members' Accounts of that Category in such manner as the Trustee considers equitable.
- (d) **Reimbursement of Fund Expenses:**
- (1) The Trustee is entitled to be reimbursed out of each Member's Account in respect of any Fund Expenses incurred in relation to the relevant Category, the Member or the administration of the Fund generally.
  - (2) For the avoidance of doubt, the Trustee is entitled to be reimbursed out of a Member's Account in respect of any fees that, subject to the Superannuation Law, are payable to an adviser in respect of financial planning advice provided to the Member which relates solely to the Member's Membership.
  - (3) If the Fund Expenses relate to more than one Member, or to more than one Category, the Trustee must apportion the Fund Expenses between Members in the same proportions that each Member's assets bear to the total of all Member assets to which the Fund Expenses relate. Alternatively, the Trustee may determine that some other basis of apportionment will apply. The Trustee may determine the basis on which Fund Expenses are to be apportioned between Members if the Fund Expenses do not relate to any Categories or any Members in particular.
  - (4) This Rule 1.4 of Appendix 1 applies in addition to any right of the Trustee to receive remuneration, fees, reimbursement or indemnification.
- (e) **Rebates:** The Trustee may receive (without liability to account) commissions, rebates or profit share from an insurer under any group policy or other insurance arrangement entered into by the Trustee pursuant to this Deed.
- (f) **Family Law fees and costs:** Subject to Superannuation Law, the Trustee may at its discretion levy a charge to cover the costs and expenses incurred in connection with the application and administration of clause 2.6 and may debit the charge to the relevant Member's Account on any basis determined by the Trustee.
- (g) **Switching fees:** The Trustee may impose a charge on a Member who switches between Investment Options (if any) in addition to any fee or charge referred to in this Rule 1.4 of this Appendix 1. Details of any such charge must be set out in the relevant Disclosure Document.
- (h) **Maximum fees for Transferring MKC Members:**
- (1) Notwithstanding any other provision this Deed or Rule 1.4 of this Appendix 1, in respect of a Transferring MKC Member who was a



member of MasterKey Custom Superannuation on 30 June 2001, the Trustee is entitled to remuneration no greater than:

**Table 1 - Maximum Trustee remuneration in respect of a pre-1 July 2001 Transferring MKC Member Table 1**

Fee	How fee is calculated	Maximum amount the Trustee may charge	
Service		Nil	
Administration fee	Greater of: <ul style="list-style-type: none"> <li>• minimum amount in Disclosure Document; and</li> <li>• sum of:                             <ul style="list-style-type: none"> <li>– base amount in Disclosure Document; and</li> <li>– relevant % of the Member's Account in Disclosure Document</li> </ul> </li> </ul>	Minimum amount	Member's Account - \$1,580 per annum  Employer Sponsored Member \$16 per Member per month
		Base amount	\$316 per annum
		Percentage	0.3% per month
Administration fee – expense reserve account	% of expense reserve account	0.3% per month	
Transaction fee	Greater of: <ul style="list-style-type: none"> <li>• minimum amount in Disclosure Document; and</li> <li>• sum of:                             <ul style="list-style-type: none"> <li>– base amount in Disclosure Document; and</li> <li>– relevant % in Disclosure Document for Investment Option</li> </ul> </li> </ul>	Minimum amount	\$790
		Base amount	\$32
		Percentage	1% of the greater of: <ul style="list-style-type: none"> <li>• the value of the investment determined in accordance with clause 6.3; and</li> <li>• the price at which the investment was acquired.</li> </ul>



Benefit payment fee for both individual Member and Employer Sponsored Member		\$158
Employer Sponsored Member charge		\$16 per month
Trustee charge	% of sum of member account balance and expense reserve account (if any) per month	0.15% subject to the Trustee being entitled to a minimum account of \$5000 per annum

(2) The Trustee may adjust the maximum dollar amount of any fee set out in Table 1 above annually to reflect any increase in the Consumer Price Index or any other appropriate measure of inflation. For the avoidance of doubt, the amounts set out in Table 1 above are the amounts indexed to 30 June 2010.

(i) **Maximum fees for Transferring HML Members:**

(1) Notwithstanding any other provision this Deed or this Rule 1.4 of Appendix 1, in respect of a Transferring HML Member, the Trustee is entitled to a fee no greater than:

**Table 2 - Maximum Trustee remuneration in respect of a Transferring HML Member**

Fee	How fee is calculated	Maximum amount the Trustee may charge
Annual Service fee		<ul style="list-style-type: none"> <li>\$715 +</li> <li>2.5% of Member's Account balance +</li> <li>amount of percentage agreed with Member,</li> </ul> subject to a minimum service fee of such amount as the Trustee determines from time to time
Transaction fee		\$143



Custodian fee	1/12 x 1/10 x 1% of assets attributable to Transferring HML Members payable to the Trustee only if there is no custodian
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- (2) The Trustee may adjust the maximum dollar amount of any fee set out in Table 2 above annually to reflect any increase in the Consumer Price Index or any other appropriate measure of inflation. For the avoidance of doubt, the amounts set out in Table 2 above are the amounts indexed to 30 June 2010.
- (3) For the avoidance of doubt, the maximum fees set out in Tables 1 and 2 above are the maximum fees to which the Trustee is entitled. These maximum fee amounts in respect of the Trustee do not limit the amount for which the Trustee may be reimbursed for Fund Expenses under Rule 1.4(e) of this Appendix 1.
- (j) The following definitions apply to this Rule 1.4 of Appendix 1:
- Fund Expenses** include any costs, expenses, charges and liabilities whatsoever which are incurred by the Trustee in connection with:
- (1) the execution or attempted execution or arising from the non-execution of the trusts, authorities, powers and discretions conferred upon the Trustee by this Deed or the Rules; or
  - (2) the management, administration, operation or promotion of the Fund or any of the Divisions, Product Lines, Plans or Categories.



## Appendix 2

### Protected Members Category

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#### 1.1 Definitions

Except in so far as the context or subject matter otherwise indicates or requires, in this Appendix 2:

**Member** means a person who is admitted by the Trustee to participate in a Division of the Fund under clause 10.1.

**Protected Members** means a Member who is, or becomes, subject to an order for the guardianship, administration or management of their estate under State, Territory or Commonwealth legislation.

#### 1.2 Death of a Protected Member

Notwithstanding any other clause of this Deed, or Rule of a Division, the following Rules apply to the payment of a death benefit to a Protected Member:

- (a) **Binding Death Benefit Nomination made prior to becoming a Protected Member:** Subject to Rule 1.2(a) of this Appendix 2, if a Member makes a valid Binding Death Benefit Nomination prior to becoming a Protected Member and that valid Binding Death Benefit Nomination remains in place at the time of the Protected Member's death, then Trustee must pay the death benefit in accordance with a valid Binding Death Benefit Nomination.
- (b) **Payment of a death benefit in other cases:** If:
  - (1) there is no valid Binding Death Benefit Nomination on the death of a Protected Member in the circumstances set out in Rule 1.2(a) of this Appendix 2, the Trustee must pay the death benefit to the Protected Member's legal personal representative; or
  - (2) there is a valid Binding Death Benefit Nomination on the death of a Protected Member in the circumstances set out in Rule 1.2(a) of this Appendix 2, but the Trustee cannot pay a part of the death benefit (insofar as the Binding Death Benefit Nomination relates to the death benefit) in accordance with the Binding Death Benefit Nomination for any reason (for example, because one or more the persons nominated in the Binding Death Benefit Nomination is, in the Trustee's opinion, not a Dependant or a legal representative of the Member), then:
    - (A) the Binding Death Benefit Nomination shall continue to apply to the part of the death benefit that can be paid in accordance with the Binding Death Benefit Nomination; and
    - (B) the Trustee must pay:
      - (i) that proportion of the death benefit (insofar as the Binding Death Benefit Nomination relates to the death benefit) that can be paid, in accordance with the Binding Death Benefit Nomination; and



- (II) the remainder of the death benefit (insofar as the Binding Death Benefit Nomination relates to the death benefit) to the Protected Member's legal personal representative, as if the Trustee had not received a valid Binding Death Benefit Nomination.
- (c) **Payment subject to legal process or orders:** Notwithstanding Rules 1.2(a) and 1.2(b) of this Appendix 2, the Trustee shall have no obligation to pay a death benefit in respect of a Protected Member until:
  - (1) if the Trustee or the Protected Member is subject to a court order preventing the payment of the death benefit in accordance with this Rule 1.2 of this Appendix 2 – the order is lifted; or
  - (2) if the distribution of the death benefit is the subject of proceedings before a Court or a complaint to the Regulator or a Dispute Resolution Authority – the proceedings or the complaint are finalised and the Trustee is satisfied that there is no further avenue for appeal from the decision of the Court, Regulator or the Dispute Resolution Authority.