



# Deed of Amendment

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Oasis Fund Management Limited (**Trustee**)  
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# Deed of Amendment

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# Details

Date 7 December 2020

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## Parties

Name	<b>Oasis Fund Management Limited</b>
ABN	38 106 045 050
Short form name	<b>Trustee</b>
Notice details	Level 6, 161 Collins Street, Melbourne VIC 3000

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## Background

- A By trust deed dated 24 March 2000 (**Trust Deed**), a regulated superannuation fund now known as the Oasis Superannuation Master Trust (**Fund**) was established.
- B The Trust Deed has been amended from time to time.
- C The Trustee is the trustee of the Fund.
- D Under 4.1 of the Trust Deed, the Trustee may amend the Trust Deed subject to certain restrictions.
- E The Trustee wishes to amend the Trust Deed in the manner set out in this deed.
- F The Trustee is of the opinion that the amendments contained in this deed are consistent with, and do not breach the restrictions in, the amendment power contained in clause 4.1.

# General terms

## 1. Amendments

With effect from the date of this deed, the Trust Deed is amended as set out in the annexure to this deed.

## 2. No resettlement of trust

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

## 3. Governing law

This deed is governed by the law in force in Victoria.


**EXECUTED** as a deed.

# Signing page

**Executed by Oasis Fund Management Limited**  
in accordance with Section 127 of the  
*Corporations Act 2001*

DocuSigned by:  
  
DC43EE0285D945D...  
Signature of director

Victoria Weekes  
Name of director (print)

DocuSigned by:  
  
2035A69A4BB1452...  
Signature of ~~director~~ company secretary  
(Please delete as applicable)

Thi Kieu Hanh Tran  
Name of ~~director~~ company secretary (print)

# Annexure

## 1. Clause 1.1, definition of "Non-Lapsing Direction"

At the end of limb (a), omit ";" and substitute: ", even if it nominates an additional person who:

- (i) has died; or
- (ii) is neither a Dependant nor a Legal Personal Representative of the Member; or
- (iii) has given the Trustee written notice that the person does not wish to receive the portion of the portion of the Death Benefit specified for them;"

## 2. Clause 4.1(a)

Omit "clause 4.1(a)" and substitute: "clause 4.1(b)".

## 3. Clause 5.2(a)(ii)

Omit " where another person eligible under Superannuation Law to act as trustee immediately assumes the office of trustee".

## 4. Clause 5.2(a)(iii)

Omit " and another person eligible under Superannuation Law to act as trustee immediately assumes the office of trustee; and" and substitute: "; or".

## 5. Clause 11.9A(j)

Omit "the amount nominated in the Non-Lapsing Direction will be paid in accordance with paragraph 11.9A(e)(ii)." and substitute:

- "(iv) the amount nominated in the Non-Lapsing Direction as being payable to that person must be paid by the Trustee in accordance with paragraph 11.9A(e)(ii); and
- (v) to the extent that the Non-Lapsing Direction is a Valid Non-Lapsing Direction, the Trustee must pay the remaining portion of the Death Benefit in accordance with paragraph 11.9A(e)(i)."

# Oasis Superannuation Master Trust

Supplemental deed

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Oasis Fund Management Limited (**Trustee**)

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# Details

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Date 30 June 2014

## Parties

Name	<b>Oasis Fund Management Limited</b>
ACN	106 045 050
Short form name	<b>Trustee</b>
Notice details	Level 23, 242 Pitt Street SYDNEY NSW 2000

## Background

- A By trust deed dated 24 March 2000 (**Trust Deed**), a superannuation fund known as the Oasis Superannuation Master Trust (**Fund**) was established.
- B The Trust Deed has been amended from time to time.
- C The Trustee is the trustee of the Fund.
- D Clause 4.1 of the Trust Deed allows the Trustee from time to time, either by way of deed or by oral resolution, to amend all or any of the provision of the Trust Deed, provided no amendment:
  - (i) permits a person other than a Constitutional Corporation to be Trustee unless at the same time the Deed is amended to provide that the Fund shall have as its sole or primary purpose the provision of old age pensions; and
  - (ii) alters adversely a Member's right to claim to accrued benefits or the amount of those accrued benefits except where the alteration is permitted by, or necessary for compliance with, Superannuation Law.
- E Regulation 13.16 of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) provides that a beneficiary's right or claim to accrued benefits, and the amount of those accrued benefits, must not be altered adversely to the beneficiary by the amendment of the governing rules or by any other act carried out or consented to, by the Trustee.
- F The Trustee has resolved to amend the Trust Deed in the manner set out in this Supplemental Deed.
- G The Trustee is of the opinion that the amendments contained in this Supplemental Deed are consistent with, and do not breach the restrictions in, the amendment power contained in clause 4.1.



# Agreed terms

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## 1. Amendments

The Trust Deed is amended by replacing, deleting or amending the provisions marked-up in the Annexure.

## 2. Provisions not affected

Otherwise as set out in paragraph 1 above, the provisions of the trust deed are not otherwise affected.

## 3. Effective time

The amendments in clause 1 take effect from date of execution of this deed.

## 4. No re-settlement of trust

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

## 5. Saving provision

Notwithstanding any other provision in this deed to the contrary, if any amendment to a provision of the Trust Deed has the effect of breaching the restrictions to the amendment power contained in clause 4.1, then without affecting the remainder of the amendments set out in the Annexure:

- (a) that amendment must be read down, changed, construed or severed to avoid the breach; and
- (b) to the extent that such breach cannot be avoided, that amendment will be of no effect and the Trust Deed shall continue to be determined in accordance with the relevant provision as it existed prior to the date of this deed.

## 6. Governing Law

This Deed is governed by the laws of New South Wales.


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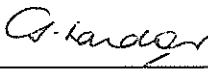
# Signing page

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**EXECUTED** as a deed

**Executed by Oasis Fund Management  
Limited ACN 106 045 050**

  
\_\_\_\_\_  
Signature of director  
**CRAIG BRACKENRIG**  
Managing Director  
Global Pensions & Investments  
\_\_\_\_\_  
Name of director (print)

←  ←  
\_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)  
**GYTHREE LAIDON**  
\_\_\_\_\_  
Name of director/company secretary (print)

[This page 4 of the Supplemental Deed amending the trust deed of the Oasis Superannuation Master Trust]

# Annexure

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## 1. Defined terms & interpretation

### 1.1 Defined terms

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

**Account** means any account maintained under this Deed.

**Administration Fee** means the Administration Fee payable in accordance with clause 10.6(b).

**Adviser** means a person to whom the Trustee may pay commission, brokerage or a fee for the provision of service in respect of a Participant or Prospective Participant of the Fund under the Superannuation Law.

**Advisers Fee** means the Advisers Fee payable in accordance with clause 10.6(b).

**Auditor** means the person appointed under clause 10.6(b).

**Authorised Person** means:

- (a) a person who is or has been a director or officer or employee of the Trustee;
- (b) any agent, adviser or other person appointed by the Trustee pursuant to clause 5.5(a); or
- (c) any other person authorised by the Trustee in writing.

**Beneficiary** means a Member, a Dependant of the Member and any other person who is entitled to be paid a benefit from the Fund.

**Benefit Arrangement** means a superannuation fund, an approved deposit fund, an RSA, an annuity, a UK pension scheme and any other benefit arrangement which can pay money to the Fund, or which the Fund can pay money to, without breaching Superannuation Law, and includes a Division, Plan, Sub-plan or Membership Category.

**Buy Price** means the Unit Price that is to be applied to the application or buying of Units as determined by the Trustee under clause 6.5.

**Contribution Fee** means the contribution fee payable in accordance with clause 10.6(a).

**Deed** means this Trust Deed and any Rules and any arrangement, agreement, approval, rules or procedures effected pursuant to, or as specifically provided for by, and provisions of this Trust Deed and Rules.

**Death Benefit** means a benefit payable on the death of a Member or other beneficiary.

**Death Benefit Nomination** means a statutory binding nomination made under Regulation 6.17A of the *Superannuation Industry (Supervision) Regulations 1994* or any successor provision.

**Dependant** has the meaning given to it by Superannuation Law.

**Division** means a division referred to in Part 8.

**Employee** means the employee of an Employer and includes an employee as defined in SIS, at the relevant time.

**Employer** means the employer of a person, and includes an employer as defined in SIS, at the relevant time.

**Employer Sponsored Member** means a Member whose Employer (or an associate of an Employer) is a Participating Employer at the relevant time.

**Family Law** means the *Family Law Act 1975* (Cth).

**Fees and Charges** means the Contribution Fee, Administration Fee, Advisers Fee and other fees and charges referred to in clause 10.6(b) and 10.6(c).

**Fund** means the superannuation fund continued by this Deed including all assets of the fund held by the Trustee pursuant to this Deed.

**Fund Expenses** means any costs and expenses (whether actual or incidental) of and incidental to the establishment, promotion, operation, management, administration, investment, termination and winding up of the Fund or a Division, Plan, Sub-plan or Membership Category (including Tax and insurance costs) which the Trustee determines should be Fund Expenses.

**Insured Benefit** 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.

**Insurer** means an insurance company with which the Trustee holds a policy of insurance for the payment of an Insured Benefit.

**Investment Option** means an investment strategy in accordance with which a Member may direct the investment of his or her Member Accounts under clause 6.2(a).

**Investment Option Portfolio** means a portfolio of assets and liabilities of the Fund established and maintained under clause 6.3.

**Liability** means all and any claims, demands, proceedings and actions brought and any loss, liability, costs and expenses (including legal costs and expenses).

**Legal Personal Representative** has the meaning given to that term in the Superannuation Laws, however, for the purposes of Clause 11.9A:

- (a) subject to paragraph (b) below, a deceased Member or other beneficiary does not have a Legal Personal Representative unless:
  - (i) a grant of probate has been made;
  - (ii) letters of administration have been issued; or
  - (iii) such equivalent authority as the Trustee determines for jurisdictions outside Australia, has been conferred on a person, in respect of the Member or beneficiary's estate within 6 months, or such other period that the Trustee determines is appropriate, of his or her death; and
- (b) if the Trustee is reasonably satisfied that the value of the estate of a deceased Member or other beneficiary is less than the amount which the Trustee from time to time specifies as the 'Probate Limit', then the Trustee may treat a person who does not meet the criteria in paragraph (a) above but who the Trustee is reasonably satisfied will, in practice, be informally performing the role of executor or administrator of the deceased person's estate for all purposes as if they were that person's Legal Personal Representative.

**Member** means a person admitted as a member of the Fund under clause 7.1 or under a previous provision of this Deed, for so long as he or she participates in, or is entitled to receive a benefit from, the Fund and includes a deceased person in respect of whom a death benefit is payable in accordance with clause 11.9 or clause 11.9A.

**Membership Category** means a membership category referred to in Part 8.

**Member Investment Choice** means a direction made by a Member pursuant to clause 6.2(a)(ii).

**Non Employer Sponsored Member** means a Member who is not an Employer Sponsored Member at the relevant time.

**Non-Lapsing Direction** means the most recent instruction given to the Trustee by the Member which the Trustee is able to understand and which:

- (a) nominates one or more of the Member's Dependants or Legal Personal Representative as the beneficiaries of the Death Benefit;
- (b) if required by the Trustee, nominates only those of the Member's Dependants or Legal Personal Representative who fall within the class of persons who the Trustee determines (from time to time) can be nominated by Members generally, by Members of a relevant Section, Division, plan, sub-plan, Category or category class or by the Member;
- (c) specifies the amount or proportion of the Death Benefit, including by reference to a taxation component of the benefit that each nominee is to receive;
- (d) if invited by the Trustee, specifies the mode of payment of the Death Benefit to each nominee;
- (e) appears to be signed and dated by the Member;
- (f) contains any other information required or permitted by the Trustee;
- (g) is in a form approved by the Trustee;
- (h) has not been revoked by the Member under clause 11.9A(d);
- (i) if required by the Trustee, specifies the Section (and Category if applicable) to which it applies; and
- (j) is not a Death Benefit Statutory Binding-Nomination, or a Death Benefit Statutory Binding-Nomination which is invalid under clause 11.9(d).

**Participant** means a Beneficiary or a Participating Employer.

**Participating Employer** means an Employer admitted as a Participating Employer under clause 7.1 or under a previous provision of this Deed, for so long as the Employer participates in the Fund.

**Plan** means a plan referred to in Part 8.

**Power** means a power, right, duty, discretion, remedy or authority of any nature whatsoever.

**Preserved Benefit** means any benefit, or part of a benefit, which is required by Superannuation Law to be preserved for the Member in the Fund or in another Benefit Arrangement until it may be paid under Superannuation Law.

~~**Residual Death Benefit** means the whole, or any part, of a Death Benefit which the Trustee cannot pay in accordance with a Member's Non-Lapsing Direction under clause 11.9A(e).~~

**Rules** means the rules establishing and governing one or more Divisions, Plans, Sub-plans or Membership Categories referred to in clause 8.1(b).

**Schedule** means a schedule attached to this Deed (as amended from time to time).

**Sell Price** means the Unit Price that is to be applied to the redemption or selling of Units as determined by the Trustee under clause 6.5.

**SIS** means the *Superannuation Industry (Supervision) Act 1993* (Cth).

**Special Rules** means rules establishing and governing one or more Divisions, Plans, Sub-plans or Membership Categories referred to in clause 8.2.

**Spouse** means, in relation to a Member:

- (a) a husband, wife, widower or widow of the Member; and
- (b) another person who, although not legally married to the Member, in the opinion of the Trustee lives or lived with the Member as at the relevant date on a bona fide domestic basis as the husband or wife of the Member.

**Sub-plan** means a sub-plan referred to in Part 8.

**Superannuation Law** means:

- (a) SIS;
- (b) the *Superannuation (Resolution of Complaints) Act 1993* (Cth);
- (c) the Tax Act;
- (d) the Family Law;
- (e) the *Corporations Act 2001* (Cth);
- (f) the *Bankruptcy Act 1966* (Cth);
- (g) the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth); and
- (h) any other law, guidelines, rulings and policy statements issued by any government authority (including in particular a Regulator) or statement by a Minister of the Crown as to future legislation or regulations which:
  - (i) the Trustee is legally obliged to comply with; or
  - (ii) which must be satisfied by the Fund in order to qualify for the maximum income tax concessions available to superannuation funds.

**Tax** includes any Commonwealth or State tax, impost, surcharge, levy, charge or duty and any interest, fine, charge or other amount imposed thereon.

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth), as applicable.

**Temporary Disablement** means, if the Trustee has effected a policy of insurance insuring the temporary disablement of a Member, the definition of temporary disablement in the policy document evidencing the contract of insurance.

**Total and Permanent Disablement**, in relation to a benefit, or any part of a benefit, payable on Total and Permanent Disablement that is:

- (a) 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
- (b) not an Insured Benefit – has the meaning of the term **permanent incapacity** in the Superannuation Law.

**Trust Deed** means the trust deed dated 24 March 2000 (as amended from time to time) and anything deemed to be included in the trust deed under Superannuation Law, and any arrangement, agreement, approval, rules or procedures effected pursuant to, or as specifically provided for by, any provision of the trust deed.

**Trustee** means the person appointed as trustee of the Fund from time to time.

**UK Transfer Condition** means 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 Division 5.

**Unit** means a part or share of an Investment Option Portfolio determined in accordance with clause 6.5.

**Unit Price** means the applicable price of a Unit as determined by the Trustee under clause 6.5.

**Valid Non-Lapsing Direction** means a Non-Lapsing Direction received by the Trustee prior to the Member's death in circumstances where:

- (a) it is valid under clause 11.9A(f);
- (b) the Trustee has conditionally consented to it under clause 11.9A(g); and
- (c) the Trustee has not revoked that consent under clause 11.9A(h).

## 1.2 Interpretation

- (a) **Rules of interpretation:** For the purposes of this Deed, unless the contrary intention appears or the context requires otherwise:
  - (i) the expression: **condition of release; constitutional corporation; financial services; flag lifting agreement; legal personal representative; minimum benefits; Non-Member Spouse; old-age pension; payment flag; payment split; permanent incapacity; preserved benefits; public offer superannuation fund; regulated superannuation fund; Regulator; restricted non preserved benefits; RSA; splittable contribution; successor fund; superannuation agreement; unrestricted non preserved benefits** and any other words or expression used in this Deed which is defined in Superannuation Law, has the same meaning in this Deed as it does in the Superannuation Law;
  - (ii) other parts of speech and grammatical forms of a defined word or expression have corresponding meanings;
  - (iii) any gender includes the other gender;
  - (iv) the singular includes the plural and vice versa;
  - (v) a reference to anything (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
  - (vi) the word person includes a body corporate, partnership, joint venture and any other group or association of persons and the person's executors, administrators, successors, substitutes and permitted assigns but the expression natural person shall be given its normal meaning;
  - (vii) the word may, if used to confer a Power, indicates that the Power may be exercised or not, at discretion;

- (viii) the word shall, if used to impose a duty, indicates that the duty must be performed;
  - (ix) the word **Trustee** includes a reference to any authorised servants or delegates of the Trustee;
  - (x) 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;
  - (xi) 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; and
  - (xii) the word amend includes to alter, vary, modify, change, add to, delete, remove or replace.
- (b) **Headings:** headings and any table of contents are for convenience only and do not affect the interpretation of this Deed.
  - (c) **Amended provisions:** a reference to a document (including this Deed) includes a change or supplement to, or replacement or novation of that document.
  - (d) **Statutory enactments:** a reference to a statute or other law includes any regulations, modification declarations, enforceable determinations, class orders, rulings and any other instruments under it and any consolidations, amendments, re enactments or replacements of any of them.
  - (e) **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:
    - (i) 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
    - (ii) 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.
  - (f) **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. The Trustee's decision as to the interpretation and effect of this Deed shall be final.

## 2. Constitution of fund

### 2.1 Establishment of fund

- (a) The Fund is established on the date amounts are first received by the Trustee in respect of it.
- (b) The Fund shall be known as the Oasis Superannuation Master Trust.
- (c) The Fund is an indefinitely continuing regulated superannuation fund for the purposes of providing superannuation benefits and may only be terminated in accordance with the express provisions in this Deed.



## **2.2 Badging of fund**

- (a) The Trustee may enter into arrangements with a person (**Sponsor**) for the offer by the Sponsor to other persons of participation in the Fund (**Badged Fund**).
- (b) The disclosure documents in respect of the Badged Fund may, with the approval of the Trustee, carry the name of the Sponsor or the name chosen by the Sponsor and approved by the Trustee for the Badged Fund.
- (c) The provisions of this Deed apply to the Badged Fund.

## **3. Paramount provisions: Compliance with Superannuation Law**

### **3.1 Paramount provisions**

The provisions of Part 3 override any other provisions of this Deed.

### **3.2 Compliance**

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

### **3.3 Power to comply with Superannuation Law**

- (a) The Trustee may:
  - (i) do anything whatsoever that the Trustee is required to do or anything else that the Trustee considers necessary, expedient or desirable to comply with any requirement of Superannuation Law (including, expending such monies of the Fund);
  - (ii) refrain from doing anything (including, delaying or refusing any request or transaction in connection with a Member's interest in the Fund) that would result in a breach of, or the Trustee breaching, a requirement of Superannuation Law.
- (b) The Trustee is entitled to rely on any statutory presumptions available to it under Superannuation Law.
- (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.

### **3.4 Deemed compliance**

- (a) The Trustee may rely on, and is not liable for acting on, any opinion, advice or information obtained from the Regulator in connection with the Fund.
- (b) The Trustee is deemed to comply with Superannuation Law and this Deed if the Regulator:
  - (i) is satisfied that the Trustee has complied with Superannuation Law;
  - (ii) determines that the Fund will be treated as if it had complied with Superannuation Law; or
  - (iii) has advised the Trustee that it will not take action against the Trustee or the Fund in respect of a failure to comply with Superannuation Law.

### **3.5 Conflict with Superannuation Law**

- (a) To the extent that any provision, or part of a provision, of this Deed conflicts with Superannuation Law or is invalid for any other reason whatsoever:

- (i) that provision, or part, must be read down, changed, construed or severed to avoid such conflict or invalidity; and
  - (ii) to the extent that such conflict or invalidity cannot be avoided, the requirement 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 Superannuation Law because it:
- (i) subjects the Trustee to direction by another person; or
  - (ii) permits a person to exercise a discretion without the consent of the Trustee, the Trustee's consent is required for the giving of the direction or the exercise of the discretion.

### **3.6 Power to comply with Family Law**

- (a) The Trustee may in accordance with the Superannuation Law:
- (i) 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;
  - (ii) withhold the payment or the transfer of a Member's benefit;
  - (iii) 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 a 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 a Non-Member Spouse, his or her entitlement under a payment split;
    - (D) commuting a pension or annuity payable from the Fund; and
    - (E) apportioning minimum benefits; preserved benefits; restricted non preserved benefits and unrestricted non preserved benefits, any outstanding Fees and Charges and any other amounts, as between the Member's interest in the Fund and the Non-Member Spouse's entitlements under the payment split; and
  - (iv) preserve a Non-Member Spouse's entitlements;
  - (v) charge a Member or a former Member and deduct from benefits or entitlements in, or payable from, the Fund, fees 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 VIII B of the Family Law.
- (b) The Trustee must treat the Non-Member Spouse as a Member where required by Superannuation Law.

## 4. Amendments to trust deed and rules

### 4.1 Amendments

- (a) Subject to clause 4.1(a), the Trustee may by deed or in writing or by oral resolution amend all or any of the provisions of this Deed for the time being. Any amendment may be expressed to have retrospective effect on and from a date prior to the date of the amendment.
- (b) No amendment may:
  - (i) permit a person other than a Constitutional Corporation to be Trustee unless at the same time the Deed is amended to provide that the Fund shall have as its sole or primary purpose the provision of old age pensions; or
  - (ii) alter adversely a Member's right or claim to accrued benefits or the amount of those accrued benefits except where the alteration is permitted by, or is necessary for compliance with, Superannuation Law.

## 5. Trustee

### 5.1 Appointment of Trustee and directors

- (a) The Trustee must be a constitutional corporation 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 and directors

- (a) The office of the Trustee shall become vacant if:
  - (i) subject to Superannuation Law, the shareholders of the Trustee by notice in writing, remove the Trustee from the office of trustee;
  - (ii) the Trustee, by notice in writing to its shareholders, retires from the office of Trustee where another person eligible under Superannuation Law to act as trustee immediately assumes the office of trustee;
  - (iii) where the Trustee has been appointed for a term, the term has expired and another person eligible under Superannuation Law to act as trustee immediately assumes the office of trustee; and
  - (iv) the Trustee is disqualified from acting, or is required to cease acting, as the trustee of the Fund by operation of law.
- (b) Where the office of a trustee becomes vacant, the shareholders of the vacating trustee shall appoint another person eligible under Superannuation Law to act as trustee of the Fund in place of the vacating trustee.
- (c) Upon ceasing to hold the office of trustee, the vacating trustee must, at the expense of the Fund, do everything necessary to:
  - (i) transfer all of the assets of the Fund; and

- (ii) deliver all records, title documents, accounts, registers and other documents relating to the Fund,

to the new or replacement trustee or its nominee.

### 5.3 Trustee director vacancies and procedure

A vacancy on the board of directors of the Trustee must be filled within any time required by the Superannuation Law.

### 5.4 Trustee to keep records of changes in the Trustee and in the directors

The Trustee must keep:

- (a) a record of changes in the Trustee and in the directors of the Trustee; and
- (b) the written consents of Trustees and directors of the Trustee,

for such period as is required by Superannuation Law.

### 5.5 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. The Trustee has the Power to do anything it considers appropriate to properly administer and maintain the Fund, including the Power to:

- (a) **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.
- (b) **Appointments:** appoint advisers, agents, custodians, secretaries, administrators or investment managers, delegates, employees, contractors and any other persons (irrespective of whether the person has a direct or indirect interest in the Fund) to perform any duties and exercise any Powers that the Trustee is empowered to carry out under this Deed (including Powers to receive and expend monies of the Fund, to advise Participants and prospective Participants in relation to the Fund, receive applications to participate in the Fund, to perform financial services on behalf of the Trustee, to deal with insurance policies and to keep accounts) on such terms (including terms as to remuneration) as the Trustee determines;
- (c) **Bank accounts:** open, deposit into and regulate the operation of bank accounts;
- (d) **Benefits:** without limiting clause 5.5(k), 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:
  - (i) the Trustee is satisfied of the identity of the person entitled to the benefit; and
  - (ii) assets of the Fund can reasonably be disposed of;
- (e) **Borrowing:** borrow, if permitted by Superannuation Law;
- (f) **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.

- (g) **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 Part 3, in its absolute and uncontrolled discretion;
- (h) **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);
- (i) **Insurance:**
  - (i) at the expense of the Fund, effect (or accept the assignment of) a policy of insurance in respect of any risk or Liability whatsoever of the Fund (including claims against the Trustee or a director of the Trustee), on such terms and conditions and for such periods as the Trustee, in its absolute discretion, determines;
  - (ii) pay from the assets of the Fund premiums for such insurance; and
  - (iii) 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;
- (j) **Legal proceedings:** commence, conduct, discontinue, prosecute, defend, settle, compromise, refer to arbitration or abandon any dispute, claim, demand, suits 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;
- (k) **Orders:** act on a direction or order of a Court or the Regulator or the Superannuation Complaints Tribunal established under the Superannuation Law;
- (l) **Promotion and marketing:** either or in conjunction with trustees of other superannuation funds, advertise, market and otherwise promote the Fund or promote superannuation funds more generally to Participants and prospective Participants (including, expending monies of the Fund to do so);
- (m) **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;
- (n) **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;
- (o) **Rules and procedures:** make rules and adopt procedures in relation to the Fund, including:
  - (i) the calculation and rounding-off of contributions, benefits and interest;

- (ii) the calculation of interest or earning rates (including the establishment of a reserving strategy for the purpose of stabilising interest or earning rates) in respect of classes or groups of Members;
  - (iii) the determination of the minimum amounts that can be accepted or retained in, or paid from, the Fund;
  - (iv) which persons can sign documents in connection with the Fund;
  - (v) the establishment and operation of policy committees;
  - (vi) the establishment and operation of arbitration and dispute resolution procedures;
  - (vii) the determination of periods of time; and
  - (viii) any other matters which the Trustee considers appropriate for the convenient administration of the Fund;
- (p) **Tax:** do anything it considers appropriate in respect of any Tax, including:
- (i) reducing or adjusting any benefit or amount for any actual or contingent Liability for Tax before paying the benefit or amount;
  - (ii) establishing reserves or making provisions for any future or contingent Liability for Tax; or
  - (iii) 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; and
- (q) **Trustee's incidental Power:** do anything necessary or incidental to the exercise of any Power by the Trustee.

## 5.6 Liability of Trustee

- (a) To the extent permitted by law and subject to clause 5.6(b), the Trustee and each director of the Trustee is exempted from, and is indemnified out of the assets of the Fund against, any Liability (including for breach of trust) 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 5.5(b) or any other agent or delegate of the Trustee).
- (b) Rule 5.6(a) does not apply to the Trustee or a director of the Trustee where:
- (i) the Trustee or the director has failed to act honestly in a matter concerning the Fund;
  - (ii) the Trustee or the director 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
  - (iii) the law otherwise prevents it.
- (c) The Trustee:
- (i) may rely on, and is not liable for acting on, any opinion, advice or information obtained from the Regulator or a Participant in connection with the Fund; and
  - (ii) is indemnified by a Participant in relation to reliance on any such opinion, advice or information obtained from the Participant.

## 5.7 Trustee's remuneration

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.

## 5.8 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.
- (c) No director of the Trustee shall by virtue of the office be disqualified from being or becoming a Member or from exercising any rights or deriving any benefit as a Member. A director of the Trustee who is, or is about to become, a Member may be counted in a quorum and vote at any meeting of the directors of the Trustee and participate in the exercise of the functions of the Trustee notwithstanding that his or her interested in the matter.

## 5.9 Payment to others

- (a) Where a person performs work for the Fund (including any work performed as a director of the Trustee), the Trustee may:
  - (i) if the work is done in the person's personal capacity - pay the person; or
  - (ii) if the work is done in the person's capacity as a partner or employee of a firm or organisation - pay the firm or organisation,from the Fund the reasonable fees of that person or firm or organisation (as the case may be) for the work so performed.
- (b) The Trustee may pay commission or brokerage in such circumstances as the Trustee considers appropriate subject to the requirements of Superannuation Law.

## 6. Investments of fund

### 6.1 Authorised investments

- (a) The Trustee may make any investment or deal with or deploy the assets of the Fund in any manner whatsoever which the Trustee considers suitable as if it was the sole and absolute legal and beneficial owner of those assets, including:
  - (i) **loans:** make a loan if permitted by Superannuation Law;
  - (ii) **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;
  - (iii) **securities lending arrangements:** subject to Superannuation Law, entering into any securities lending arrangement or facility for lending securities of the Fund;
  - (iv) **policies:** one or more policies of insurance;
  - (v) **lease, mortgage, etc:** lease, mortgage, charge, license or otherwise deal in any way with any property of the Fund;
  - (vi) **mix property:** mix property of the Fund with any other property, other than where prohibited by Superannuation Law, provided the Trustee must at all times maintain separate records to enable identification of the property of the Fund; and
  - (vii) **no income:** in any property which does not produce income or which is

speculative.

- (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 shall:
  - (i) formulate one or more investment objectives and strategies (including an investment in a specified asset) (each called an **Investment Option**); and
  - (ii) where permitted by Superannuation Law, allow a Member of a Division, Plan, Sub-Plan or Membership Category or class or group of Members to direct the Trustee, or vary such a direction, to invest one or more of a Member's Accounts in accordance with an Investment Option or Investment Options and, if there is more than one Investment Option, the proportion of the Member's Account that is to be invested in accordance with each Investment Option (such direction called a **Member Investment Choice**).
- (b) In respect of a Member Investment Choice, the Trustee may:
  - (i) prior to carrying out the Member Investment Choice, seek evidence of the Member's consent to the Member Investment Choice;
  - (ii) impose terms, conditions or restrictions on the manner in which a Member Investment Choice may be made, including in relation to:
    - (A) the minimum amount that may be invested in an Investment Option;
    - (B) the time or times, and the frequency in relation to which a Member Investment Choice may be made; and
    - (C) the fees that can be charged in relation to a Member Investment Choice (including a fee for switching between Investment Options);
  - (iii) at any time vary any term, condition or restriction without the approval of the Member, subject to Superannuation Law;
  - (iv) if a Member who is allowed a Member Investment Choice fails to exercise his or her 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.
- (c) Subject to clause 6.2(b), the Trustee shall be bound to act in accordance with a Member Investment Choice.
- (d) An investment by the Trustee pursuant to a Member Investment Choice is made for the sole benefit, 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.
- (e) Notwithstanding clause 6.2(d), a Beneficiary has no right to claim any interest, and cannot exercise any right, in any particular asset of the Fund.
- (f) Neither the Trustee nor a Participating Employer is 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 shall:
- (i) establish and maintain one or more notional portfolios of assets and liabilities in relation to each Investment Option;
  - (ii) notionally allocate the assets and liabilities of the Fund to each Investment Option Portfolio; and
  - (iii) combine, consolidate, subdivide, 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 Superannuation Law.

- (b) The Trustee may, in anticipation that Units in an Investment Option Portfolio will need to be redeemed in accordance with clause 6.5(c)(ii), realise or apply any investments of that Investment Option Portfolio at any time that it deems expedient.
- (c) The Trustee must determine the value of each Investment Option Portfolio from time to time (and at least annually) having regard to:
- (i) investment returns (including income and realised and unrealised capital gains and losses) on the assets of the Investment Option Portfolio net of losses and expenses;
  - (ii) the value of the assets and liabilities (including unrealised liabilities) of the Investment Option Portfolio;
  - (iii) any averaging of investment returns or any reserving of returns, losses or expenses;
  - (iv) any actual or contingent losses and expenses (including any Fund Expenses and Tax) which are not debited to a Beneficiary's Account;
  - (v) any provisions that in the opinion of the Trustee should be made; and
  - (vi) 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:
- (i) methodology and procedures concerning the method and basis of valuing particular property or the net income of an Investment Option Portfolio;
  - (ii) the intervals at which valuations must be carried out; and
  - (iii) the reserving or averaging of investment returns, losses or expenses of an Investment Option Portfolio.

### **6.4 Segregation of assets**

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

## 6.5 Unitisation

- (a) The Trustee shall, subject to this Deed, divide each Investment Option Portfolio into Units of equal value.
- (b) The Trustee may adopt rules from time to time in relation to:
  - (i) the method, timing and the frequency, of valuing or pricing Units in each Investment Option Portfolio;
  - (ii) whether parts of Unit may be issued in a particular Investment Option Portfolio and, if so, the number of decimal places to which part Units may be issued;
  - (iii) 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;
  - (iv) switching between the Units in one Investment Option Portfolio and another;
  - (v) the calculation of any differential between the Buy Price and the Sell Price (if any) , **(Buy/Sell differential)**;
  - (vi) any other matter which the Trustee determines to be necessary or appropriate for administering the Fund as a unitised fund.
- (c) Subject to clause 6.5(d), the Trustee shall:
  - (i) credit any amounts in respect of a Beneficiary by allocating an appropriate number of Units to that Beneficiary's Account in the Fund in the relevant Investment Option Portfolio or Investment Option Portfolios in which the amount is to invested, at the relevant Buy Price of those Units at that time; and
  - (ii) debit any amounts (including for Fund Expenses and Tax) in respect of a Beneficiary by redeeming an appropriate number of Units from that Beneficiary'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.
- (d) 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.
- (e) Where this Deed refer 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.
- (f) Notwithstanding clause 6.5(c), 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 Insurance

- (a) The Trustee may, in its absolute discretion:
  - (i) effect and 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;

- (ii) 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;
  - (iii) agree from time to time with the Insurer that the policy or contract be varied or modified; and
  - (iv) accept the assignment of a policy of insurance on such terms as the Trustee, in its absolute discretion, determines.
- (b) Notwithstanding clause 6.6(a), the Trustee has no duty to effect, increase or to maintain any insurance cover.
- (c) 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**):
  - (i) the amount of the Insured Benefit payable under a policy of insurance; or
  - (ii) 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 total and permanent disablement.
- (d) The Trustee may, in its absolute discretion:
  - (i) decline to give effect to a Member's election under clause 6.6(c));
  - (ii) prior to carrying out a Member's election, seek evidence of the Member's consent to the election;
  - (iii) impose, and vary (without the approval of the Member), any terms, conditions or restrictions in relation to an elections, 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
  - (iv) 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.
- (e) The Trustee may, in its absolute discretion, hold for a particular Member or a class or group of Members, a policy of insurance insuring the temporary disablement of the Member or a Member in that class or group.
- (f) The amount of an Insured Benefit, and the circumstances in which an Insured Benefit is payable, in respect of a Member from the Fund is subject to:
  - (i) the Trustee being able to insure for the desired amount and for the events giving rise to payment of that amount;
  - (ii) the terms of the insurance policy or policies under which the Insured Benefit is insured; and
  - (iii) the Member providing the Trustee with any information about the Member, and submitting to any medical examination, required by the Trustee or the Insurer from time to time.

- (g) No payment shall be required to be made in respect of a Member in satisfaction of any insurance cover that is greater than the amount received by the Trustee under the policy in respect of that Member after deduction of all administration charges and expenses and taxes attributable to that amount.
- (h) Without limitation to clause 11.7, if for any reason:
  - (i) the Trustee is unable to insure for the desired amount or for the events giving rise to payment of that amount on standard terms;
  - (ii) 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;
  - (iii) information supplied to the Trustee or the Insurer is incorrect or incomplete, or the Member does not submit to a medical examination required by the Trustee or the Insurer; or
  - (iv) the Insurer fails or refuses to pay, or reduces, delays or defers payment of, any part of the Insured Benefit,

the Trustee may reduce the benefit payable in respect of the Member from the Fund under this Deed accordingly.

- (i) The Trustee may pay the premiums and costs of any insurance policy or policies maintained in respect of a Member from such of the Accounts maintained in respect of the Member as the Trustee determines.
- (j) If the balance of the Accounts maintained in respect of a Member are insufficient to meet the premiums and costs of any insurance policy or policies attributable to that Member, then:
  - (i) the Trustee is not bound to pay such premiums and costs from the Fund in respect of the Member; and
  - (ii) the Trustee is not liable to the Member for the Insurer reducing, deferring or not paying the Insured Benefit or for failure to renew the relevant policy.

## 7. Participation in Fund

### 7.1 Participation

- (a) A person who is permitted under Superannuation Law to contribute to, or have benefits transferred to, the Fund may apply in a form approved by the Trustee for:
  - (i) membership of the Fund, in the case of an individual; or
  - (ii) participation in the Fund as a Participating Employer, in the case of an Employer.
- (b) Each prospective Participant must:
  - (i) submit any documents (including any application form) in the form approved by the Trustee;
  - (ii) provide the Trustee with any information and evidence (including, in the case of a Member, completing and signing and statements as to health and undergoing medical examinations and tests); and
  - (iii) satisfy any standards and requirements required by the Trustee.

- (c) Subject to Superannuation Law and clause 7.1(b), the Trustee may, in its absolute discretion:
  - (i) admit a person as a Participant from the date the Trustee accepts the application or such other date determined by the Trustee;
  - (ii) reject or delay consideration of an application;
  - (iii) admit a person as a Participant from the date the Trustee accepts the application or such other date determined by the Trustee subject to such terms and conditions in relation to the person's Membership and, in the case of an Employer, the Employer's participation or the membership of the Employees of the Employer; or
  - (iv) in respect of a person who has not applied for participation in the Fund in accordance with clause 7.1(a):
    - (A) accept a payment (including a transfer under clause 12.1) or credit an amount to an Account in the Fund (including an amount referred to in clauses 3.6(a)(iii) and 9.6(a)) by, or in respect of, the person in which case the person is taken to be a Participant from the date of such acceptance of payment or such other date determined by the Trustee; and
    - (B) admit an Employee who is nominated for Membership by his or her Participating Employer and who is eligible to become a Member of the Fund under Superannuation Law and this Deed as a Member of the Fund 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 Participant on and from a date determined by the Trustee.
- (d) The Trustee must deal with a person's application money:
  - (i) pending the processing and acceptance of that application; and
  - (ii) where the application is refused,
 

in accordance with Superannuation Law.
- (e) Each Participant agrees to be bound by this Deed.
- (f) Except as otherwise provided in this Deed, a Participant is not entitled to in any way interfere with the exercise by the Trustee of its Powers in relation to the Fund or otherwise.
- (g) Each Participant irrevocably appoints the Trustee as his or her attorney to execute any instruments (including deeds) and do all such things as the Trustee considers necessary or desirable in administering the Fund.

## **7.2 Cessation of Beneficiary's participation in the Fund**

- (a) A Beneficiary ceases to be a Beneficiary under this Deed when:
  - (i) all of the benefits of the Beneficiary (including any Insured Benefits to which the Beneficiary is entitled) are paid to or in respect of the Beneficiary or are rolled over or transferred to another Benefit Arrangement or otherwise exhausted or dealt with in satisfaction of all of the Beneficiary's entitlements to benefits under this Deed; and

- (ii) all other of the Beneficiary's entitlements to benefits (including insurance cover under any policy of insurance with the Insurer) are terminated.
- (b) For the avoidance of doubt, a person does not continue to be a Beneficiary nor does a person again become a Beneficiary of the Fund as a result of a dispute between that person and the Trustee as to that person's entitlement to a benefit from the Fund whether or not the dispute is resolved in the person's favour. Nothing in this clause shall limit a former Member's entitlement to dispute any decision of the Trustee or remove any obligation of the Trustee to deal with such a dispute.
- (c) The Trustee must redeem a person's interest in the Fund where it is required to do so under Superannuation Law.

### **7.3 Cessation of Participating Employer's participation in the Fund**

- (a) A Participating Employer shall cease to participate in the Fund:
  - (i) upon the Participating Employer giving the Trustee not less than 90 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;
  - (ii) upon the Participating 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 Participating 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 Participating Employer in the Fund) – with effect from the date determined by the Trustee;
  - (iii) upon the Trustee, in its absolute discretion, giving the Participating Employer at any time notice in writing that the Participating Employer is to cease participation in the Fund – with effect from the date determined by the Trustee; or
  - (iv) upon the Participating Employer ceasing to have any Employees who are Members – with effect from the date the last Employee ceased to be a Member of the Fund.
- (b) Subject to the provisions of any Schedule (or a provision of any applicable Special Rules), upon termination of a Participating Employer's participation in the Fund:
  - (i) the Participating Employer and its Employees who are Members must immediately pay any arrears of contributions up to the effective cessation date determined under clause 7.3(a), but must make no further contributions;
  - (ii) no further persons who are employed only by that Employer shall be admitted as Members;
  - (iii) no further contributions shall be made by that Employer except contributions that were due on or before the effective cessation date;
  - (iv) the Trustee must continue to pay out of the Fund benefits which have become payable on or before the effective cessation date determined under clause 7.3(a); and
  - (v) the Trustee must transfer the amount representing the total balance of the Accounts of each Employee of the Employer to the Personal Division (Division 2).

## 7.4 Special arrangement

The Trustee may agree with a person (including a Member, Participating 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 conditions contained in the agreement, including:

- (a) the amount of contributions to be made for, or by, the Potential Participant;
- (b) the benefits to be paid in respect of the Potential Participant;
- (c) the preservation requirements that are to apply to benefits;
- (d) the Membership Category to which an Employee of the Participating Employer will belong;
- (e) if the Potential Participant will not be allowed to exercise Member Investment Choice, the manner in which his or her Account is to be invested;
- (f) if the Potential Participant will be allowed to exercise Member Investment Choice, the Investment Options available; and
- (g) 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.

## 7.5 Provision of information

- (a) The Trustee must provide information to Participants as required by Superannuation Law or, in relation to Members of Division 5, the UK Transfer Conditions.
- (b) The Trustee is not bound (except as required by law) to disclose to any person:
  - (i) any document disclosing any deliberations of the Trustee; or
  - (ii) any document relating to the exercise or proposed exercise of any Power conferred on the Trustee by this Deed.
- (c) The Trustee can provide information to an Employer Sponsored Member by providing that information to the Member's Employer.

# 8. Divisions, Plans, Sub-Plans And Membership Categories

## 8.1 Divisions, Plans, Sub-plans and Membership Categories

- (a) The Fund shall consist of:
  - (i) one or more divisions (each a **Division**); and
  - (ii) within a Division, one or more plans (each a **Plan**); and
  - (iii) within a Plan, one or more sub-plans (each a **Sub-plan**); and
  - (iv) within a Division, Plan, Sub-plan, one or more membership categories (each a **Membership Category**).
- (b) The rules governing a Division and any Plan, Sub-plan and/or Membership Category shall be set out in a Schedule to this Deed. The Trustee may establish, terminate or replace a Division, Plan, Sub-plan or Membership Category on such terms and conditions as it determines.

- (c) For the avoidance of doubt, a Member may belong to more than one Division, Plan, Sub-plan or Membership Category at one time.

## **8.2 Establishment of Special Plans, Sub-plans and/or Membership Categories**

Without limiting the generality of clause 7.4 or 8.1(b), the Trustee may:

- (a) admit an Employer as a Participating Employer to participate in one or more Plans, Sub-plan and/or Membership Categories within Division 1 established and governed pursuant to rules set out in writing agreed upon by the Trustee and the Employer; or
- (b) establish a Plan, Sub-plan and/or Membership Category within Division 1 or Division 2 governed pursuant to rules set out in writing agreed upon by the Trustee and an Adviser or any other person,

(such rules to be known as **Special Rules**), whereupon.

- (c) the Special Rules are deemed to be included as a Schedule to Division 1 or Division 2 (as the case may require) of this Deed for the purposes of this Deed;
- (d) the benefits of a Member to which Special Rules apply (**Special Rule Member**) shall become payable, and must be calculated in accordance with, those Special Rules;
- (e) unless agreed otherwise, any benefits of a Special Rule Member which are provided for by this Deed but which are not referred to in the applicable Special Rules, continue to become payable and be calculated in accordance with this Deed;
- (f) in the case of Special Rules referred to in clause 8.2(a) - the Trustee may apply any benefits to which a Special Rule Member does not become entitled by virtue of the operation of this clause 8.2 against any contributions otherwise payable by the Participating Employer in respect of any Member of the Fund, and any amount so applied is taken to be a contribution by the Participating Employer; and
- (g) the Trustee may at any time alter any Special Rules to comply with Superannuation Law.

## **8.3 Operation of Divisions, Plans, Sub-plans and Membership Categories**

- (a) Unless the Trustee otherwise determines, any Liability which, in the Trustee's opinion relates to one Division, Plan, Sub-plan or Membership Category must not, be satisfied from the assets, or the benefits, relating to Participants in any other Division, Plan, Sub-plan or Membership Category and any such Division, Plan, Sub-plan or Membership Category shall be taken to be a sub-fund, as defined in the Superannuation Law.
- (b) The provisions of this Deed which are not included in a Schedule relating to a Division, Plan, Sub-plan or Membership Category will govern that Division, Plan, Sub-plan or Membership Category to the extent they are applicable.
- (c) If there is a conflict between a provision in a Schedule (or a provision of any Special Rules) governing a Division, Plan, Sub-plan or Membership Category and any other provision of this Deed, the former prevails over the latter in relation to that Division, Plan, Sub-plan or Membership Category, unless the Schedule expressly provides to the contrary or the Trustee and the Appointor agree otherwise.

## **8.4 Division, Plan, Sub-plan or Membership Category not a separate superannuation fund**

For avoidance of doubt, nothing in this Part 8 shall be taken as creating a separate superannuation fund for the purposes of Superannuation Law.



## **8.5 Change of a Beneficiary's Division, Plan, Sub-plan or Membership Category**

- (a) The Trustee may:
- (i) upon the written request of a Member; or
  - (ii) without the consent of the Member provided that it is permitted by the Superannuation Law,
- transfer the benefit entitlements of a Beneficiary in a Division, Plan, Sub-plan or Membership Category to another Division, Plan, Sub-plan or Membership Category to which the Beneficiary is eligible to be admitted.
- (b) Subject to Superannuation Law, upon a change of a Beneficiary's Division, Plan, Sub-plan or Membership Category, the Trustee may:
- (i) 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, Plan, Sub-plan or Membership Category and the Beneficiary's new Division, Plan, Sub-plan or Membership Category; and
  - (ii) determine the terms of the Beneficiary's entitlements to be either:
    - (A) wholly in accordance with the Rules of the Beneficiary's new Division, Plan, Sub-plan or Membership Category; or
    - (B) partly in accordance with the Rules of the Schedule relating to the Beneficiary's former Division, Plan, Sub-plan or Membership Category and the Rules of the Beneficiary's new Division, Plan, Sub-plan or Membership Category.

## **9. Contributions**

### **9.1 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 relating to a Division, Plan, Sub-plan or Membership Category;
- (b) are as set out in any applicable Special Rules; or
- (c) otherwise are as determined by the Trustee in its absolute discretion.

### **9.2 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 Superannuation Law;
- (b) acceptance of the contribution is contrary to the requirements of Superannuation Law; or
- (c) the Trustee is directed not to accept the contribution by the Regulator.

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

### **9.3 Reasons for refusal of contributions**

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

#### 9.4 Return of improperly accepted contributions

- (a) If the Trustee becomes aware that it has accepted contributions in relation to a Member:
- (i) which cannot be, or should not have been, accepted into the Fund; or
  - (ii) 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 Units.
- (b) If the Superannuation Law permits, the Trustee may adjust the repaid, returned or refunded contributions for:
- (i) insurance effected in relation to the Member;
  - (ii) any change in the Unit Price of the Investment Option or Investment Options in which the contributions were invested or any other (positive or negative) investment returns; and
  - (iii) Fund Expenses,
- in respect of the period during which the contributions referred to in clause 9.4(a) were held in the Fund.

#### 9.5 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 the amount to the Trustee and in turn a payment by the Trustee to the Insurer, custodian, administrator or investment manager, as the case may be. Where required by 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 Employer to the Trustee and the Member is deemed to have directed the Employer to make such deductions.

#### 9.6 Spouse contribution splits

- (a) Subject to the requirements of the Superannuation Law, a Member may apply to the Trustee to:
- (i) allot an amount of benefits, for the benefit of the Member's, that is equal to an amount of the splittable contributions made by, for, or on behalf of the Member; and
  - (ii) 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 9.6.

- (b) The Trustee may accept an application made under clause 9.6(a) only if the application satisfies the requirements of the Superannuation Law.
- (c) The Trustee may from time to time:
  - (i) 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 his or her Spouse in relation to the splitting of the contributions under this clause 9.6;
  - (ii) vary or revoke such Contribution Splitting Rules; and
  - (iii) charge fees in respect of a Contribution Split under this clause 9.6.

## 10. Accounts and records

### 10.1 Accounts and records

The Trustee must:

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

### 10.2 Valuation and audit of the Fund

- (a) The Trustee must value the Fund from time to time on such dates (but in any event at least annually) and in such manner as the Trustee determines.
- (b) The Trustee must appoint an auditor to audit the records and financial accounts and to provide reports as required by Superannuation Law.

### 10.3 Accounts

The Trustee may maintain any Accounts it determines, including Accounts to:

- (a) record the benefits of the Members;
- (b) provide for any Fund Expenses;
- (c) 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
- (d) record any provisions or reserves maintained by the Fund.

### 10.4 Crediting and debiting Accounts

- (a) The Trustee must credit the Accounts maintained by it with:
  - (i) where the Account is maintained in respect of a Beneficiary, any contributions, insurance proceeds, amounts rolled or transferred to the Fund or other amounts received by, or in respect of, the Beneficiary;
  - (ii) any portion of the Fund's assets which the Trustee determines;
  - (iii) any positive investment returns which the Trustee determines from time to time is attributable to the Account;
  - (iv) any amounts which the Trustee determines from time to time to transfer to the Account from one or more reserve or provision Accounts or any other Accounts maintained by the Trustee for the purposes of the Fund; and

- (v) any other amounts which the Trustee determines from time to time to allocate to the Accounts.
- (b) The Trustee must debit the Accounts for:
- (i) any proportion of the insurance premiums and costs in respect of any insurance policy or policies maintained in respect of Members which the Trustee determines;
  - (ii) any Fund Expenses which the Trustee determines from time to time;
  - (iii) where the Account is maintained in respect of a Beneficiary, any Fees and Charges payable by, or in respect of, the Beneficiary;
  - (iv) any negative investment returns which the Trustee determines from time to time is attributable to the Account;
  - (v) any actual or contingent Liability for Tax which the Trustee determines is attributable to a Member and which the Trustee determines to offset against the Account;
  - (vi) 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;
  - (vii) where the Account is maintained in respect of a Beneficiary, any benefit payments made to the Beneficiary; and
  - (viii) any other amounts which the Trustee determines from time to time to debit the Accounts.

## **10.5 Reserves and provisions**

- (a) The Trustee may establish such reserves and provisions as it considers necessary or desirable to provide for the payment of any potential or actual Fund Expenses or Tax of the Fund, or of any Beneficiary or person claiming through them.
- (b) The Trustee may deduct from any contribution or other amount paid to the Fund, any Benefit or other payment made from the Fund or the interest and entitlement of any Beneficiary or any person claiming through them such amount as it considers equitable to establish and maintain such provisions and reserves.
- (c) The Trustee may pay any Fund Expense or Tax as and when it becomes payable out of the reserves and provisions and, if necessary, out of the other assets of the Fund and for the purposes of such payment realise the assets of the Fund.
- (d) The Trustee is not required to make any retrospective adjustments if any Fund Expense or Tax becomes payable in respect of a different period or periods other than that for which the provisions and reserves were established or if the Tax provisions and reserves prove excessive or unnecessary and in such cases the Trustee is entitled to apply the amount of the unnecessary or excessive provisions and reserves as it may decide including:
  - (i) allocating such amount to any existing reserve or provision or future reserve or provision for the Tax or Fund Expenses in respect of which it was established or to any existing or future reserve or provision for any other Fund Expense or Tax; and
  - (ii) crediting any Account established in the records of the Fund or the interest or entitlement of any Beneficiary or person claiming through them.

- (e) The Trustee may deal with any Tax deductions credits and rebates attributable to the Fund as and when they arise on such basis as the Trustee decides including offsetting them against any Tax reserves and provisions notwithstanding the period or periods to which such Tax deductions credits and rebates are attributable or the date they arise or are received.

## **10.6 Fees and charges**

### **(a) Contribution Fee:**

- (i) The following provision applies in respect of a Member of the Fund admitted prior to 20 February 2006:
  - (A) At the time that a contribution is made by or on behalf of a Member of the Fund, the Trustee must deduct from the contribution a Contribution Fee of up to 6% (as determined by the Trustee) of the contribution.
  - (B) The Trustee may allow a Member to pay the Contribution Fee over a time period agreed to by the Trustee by instalments deducted from the Member's Account at such frequency agreed to by the Trustee.
  - (C) The Trustee must recover the Contribution Fee that remains to be paid under clause 10.6(a)(i)(B) if:
    - (I) the ability of the Trustee to recover the Contribution Fee will be adversely affected by the payment, transfer or rollover of all or any part of the Member's benefit to any person (including payment of Fund Expenses); or
    - (II) for any other reason whatsoever, the Trustee believes that the balance of the Member's Account will be insufficient to meet the remaining Contribution Fee.
- (ii) The following provision applies in respect of a Member of the Fund admitted on or after 20 February 2006:
  - (A) The Trustee may impose such Contribution Fee in relation to a Member, as the Trustee, in its absolute discretion, determines.
  - (B) Subject to the requirements of the Superannuation Law, the Trustee may, in its absolute discretion, increase, waive, suspend or reduce the Contribution Fee in relation to a Member.

### **(b) Administration Fee, Advisers Fee and other fees and charges:**

- (i) The Trustee may, in addition to the Contribution Fee, impose such Administration Fee, Adviser Fee and/or any other fee and charge (including fees and charges referred to in clauses 3.6(a)(v), 6.2(b)(ii)(C), 10.6(c) and 11.2) as the Trustee, in its absolute discretion, determines.
- (ii) Subject to the requirements of the Superannuation Law, the Trustee may, in its absolute discretion, increase, waive, suspend or reduce any Administration Fee, Adviser Fee or other fee or charge in relation to a Member.

### **(c) Application of Fees and Charges:**

- (i) Fees and Charges may be paid by a Participating Employer from its own resources.

- (ii) In addition to the Fees and Charges, the Trustee may recover as a Fund Expense any Tax payable in relation to the Fees and Charges and include that amount as part of the Fees and Charges.
- (iii) Without limiting the Trustee's discretion, Fees and Charges may vary in respect of different:
  - (A) Divisions, Plans, Sub-plan or Membership Categories; and
  - (B) Investment Option Portfolios; and/or
  - (C) classes or groups of Members.

## **10.7 Fund Expenses**

The Trustee in its discretion may deduct Fund Expenses from Member Accounts in such proportions and in such a manner as is fair and reasonable between Members and may redeem the Units of Members to do so.

## **11. Benefits**

### **11.1 When benefit may become payable in respect of a Member**

A Beneficiary's entitlement to a benefit from the Fund is determined in accordance with this Deed and:

- (a) the Rules;
- (b) any applicable Special Rules; or
- (c) as otherwise determined by the Trustee in its absolute discretion.

### **11.2 Claiming a benefit**

The Trustee is not required to pay a benefit, and may refuse or delay payment of a benefit, until the person claiming a benefit, or any person claiming a benefit on behalf of another person (each a **Claimant**):

- (a) makes proper application to the Trustee in the form required by the Trustee;
- (b) produces evidence to the satisfaction of the Trustee of his or her entitlement to the benefit;
- (c) provides all information required by the Trustee to verify the identity of the Claimant;
- (d) gives instructions in relation to the method of payment of the benefit which are acceptable to the Trustee; and
- (e) executes documents and does anything else reasonably required by the Trustee.

### **11.3 Method of payment of benefit**

Subject to Superannuation Law, the Trustee may pay all or part of a benefit by:

- (a) paying the amount by cheque and by sending or delivering that cheque in any manner contemplated for the sending of notices under clause 14.1; or
- (b) electronic funds transfer or telegraphic transfer; or
- (c) by any other means determined by the Trustee.

### **11.4 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.

### **11.5 Unallocated amounts**

Any amount held in the Fund which is not allocated to any Beneficiary or to any Account or which may not or cannot be paid or which is not payable by the Trustee to any Beneficiary may be dealt with as the Trustee determines for any purpose determined by the Trustee which is permissible under Superannuation Law, including reduction of contributions of a Participant or to meet Fund Expenses.

### **11.6 Charging benefits**

The Trustee is not obliged to, and if prohibited by Superannuation Law must not, recognise a charge or assignment of a benefit.

### **11.7 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 9.4;
- (c) any actual or contingent Tax or Fund Expenses;
- (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 Superannuation Law.

### **11.8 Discharge and release**

The Trustee is completely discharged in respect of any payment in accordance with this Deed including a payment to a person the Trustee believes in good faith is entitled to the benefit.

### **11.9 Payment of death benefits**

Subject to the rules of a Plan:

- (a) **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 benefits to such of the persons referred to in clause 11.9(e), and in such proportions, as is specified in the notice. ~~(Death Benefit Nomination).~~
- (b) **Change of Death Benefit Nomination:** A Member may:
  - (i) revoke a Death Benefit Nomination at any time; and
  - (ii) where the Trustee so permits, may give a new or replacement Death Benefit Nomination at any time.

- (c) **Trustee bound by valid Death Benefit Nomination:** If the Trustee has permitted a Death Benefit Nomination pursuant to clause 11.9(a), the subject to clause 11.9(g) the Trustee must pay the Member's death benefit in accordance with a valid Death Benefit Nomination provided the Death Benefit Nomination is not invalid and the Trustee is permitted to do so under the Superannuation Law.
- (d) **Invalid Death Benefit Nomination:** A Death Benefit Nomination is invalid if:
- (i) any of the persons nominated in the Death Benefit Nomination is not a Dependant of the Member or, before the death of the Member, has died or has ceased to be a Dependant;
  - (ii) the proportions specified in the Death Benefit Nomination do not amount to 100% of that part of the Member's death benefit that is the subject of the Death Benefit Nomination;
  - (iii) the Death Benefit Nomination is incomplete or is otherwise not completed in accordance with the requirements of the Trustee; or
  - (iv) the Death Benefit Nomination ceases to have effect under, or does not satisfy the requirements of, the Superannuation Law.
- (e) **No valid Death Benefit Nomination:** Subject to the rules of the relevant Plan, if a death benefit in respect of a Member is not paid in accordance with clause 11.9(c) for any reason whatsoever, the Trustee must pay the death benefits to one or more of the following:
- (i) the Member's ~~L~~egal ~~P~~ersonal ~~R~~epresentative, where the estate is not insolvent;
  - (ii) one or more of the Member's Dependents
- in such proportions as the Trustee, in its absolute discretion, determines.
- (f) **Death Benefits where no Dependents and no Legal Personal Representative:** Subject to clause 11.13 and the rules of the relevant Plan, if after reasonable enquiries the Trustee cannot establish that there are any Dependents or a legal personal representative in respect of a Member, where permitted by the Superannuation Law, the Trustee may pay a Member's death benefits to any other natural person or persons in such proportions as determined by the Trustee.
- (g) **Payment only required after claim staking:** The Trustee shall have no obligation to pay a death benefit in respect of a Member until:
- (i) the time to lodge a complaint to the Superannuation Complaints Tribunal by the persons notified by the Trustee under the Superannuation Law has elapsed; or
  - (ii) if the Trustee or the Member is subject to a court order preventing the payment of the death benefit in accordance with this clause 11.9 – the order is lifted; or
  - (iii) if the distribution of the death benefit is the subject of proceedings before a Court or a complaint to the Regulator or the Superannuation Complaints Tribunal – 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 Superannuation Complaints Tribunal.
- (h) **Anti-detriment payment:** The Trustee may augment the amount of any benefit payable on the death of a Member under this Deed by the amount (if any) of a deduction allowable to the Fund under section 295-485 of the *Income Tax Assessment Act 1997* (Cth).



## 11.9A Non Lapsing Direction

Subject to the rules of a Plan:

- (a) **Non-Lapsing Direction** - To the extent permitted by the Superannuation Law, the Trustee may permit a Member to give the Trustee a Non-Lapsing Direction at any time.
- (b) A Non-Lapsing Direction (for the avoidance of doubt, does not include a valid Death Benefit Statutory-Binding Nomination or a Death Benefit Statutory-Binding Nomination which is invalid or has ceased to have effect ~~lapsed~~ under clause 11.9(d)) may be accepted by the Trustee if the Trustee considers the nomination substantially complies with the definition of a Non-Lapsing Direction.
- (c) A Member may replace a Non-Lapsing Direction at any time. The Member does so by giving the Trustee a new Non-Lapsing Direction.
- (d) A Member, by subsequently giving a written notice to the Trustee which is signed and dated by the Member:
  - (i) may revoke a Non-Lapsing Direction, if the notice is in a form acceptable to the Trustee; or
  - (ii) is taken to have revoked a Non-Lapsing Direction if the notice is, or purports to be, a subsequent Non-Lapsing Direction or a Death Benefit Nomination.
- (e) On the death of:
  - (i) a Member with a Non-Lapsing Direction which is a Valid Non-Lapsing Direction, the Trustee must, subject to paragraph 11.9A(j) of this clause, pay the Death Benefit Non-Lapsing Direction in accordance with the instruction in the Non-Lapsing Direction; or
  - (ii) for any other Member, or a beneficiary who is not a Member and who is not covered by paragraph (i) above, the Trustee must pay the Death Benefit to one or more of the following:
    - (A) the Member's Legal Personal Representative, where the estate is not insolvent;
    - (B) one or more of the Member's Dependents; or
    - (C) any other person as permitted by Superannuation Law,
  - (ii) in such portions as the Trustee, in its absolute discretion, determines any other Member, or a beneficiary who is not a Member, the Trustee must pay the Death Benefit under paragraph 11.9A(k) of this clause as a Residual Death Benefit.
- (f) A Non-Lapsing Direction is a Valid Non-Lapsing Direction if, at the time the Trustee considers the Non-Lapsing Direction under paragraph 11.9A(g) of this clause:
  - (i) it appears, on its face, to comply with all of the requirements of the definition of a Non-Lapsing Direction; and
  - (ii) to the Trustee's actual knowledge, the Member has not, since giving the Non-Lapsing Direction, married, entered into a de facto or like relationship with a person of either gender or separated on a permanent basis from their Spouse or partner.

- (g) As soon as practicable after receiving notice of the death of a Member with a Non-Lapsing Direction, the Trustee must consider whether to consent to the Non-Lapsing Direction. The Trustee must give its conditional consent if:
- (i) the Non-Lapsing Direction is valid under paragraph 11.9A(f) of this clause; and
  - (ii) the Trustee does not have actual knowledge that when the Member gave the Non-Lapsing Direction, the Member did not understand the effect of making it under the provisions of the trust deed having effect when the Member gave it.
- (h) The Trustee's conditional consent to a Non-Lapsing Direction under paragraph 11.9A(g) of this clause becomes absolute on payment, or commencement of payment, of the Death Benefit unless the consent has been previously revoked. The Trustee may only revoke its conditional consent to a Non-Lapsing Direction if, prior to payment of any or all of the Death Benefit, the Trustee receives actual notice of any matter which, had the matter existed and been known to the Trustee at the time of considering the Non-Lapsing Direction under paragraph 11.9A(g) of this clause, would have caused the Trustee to refuse its conditional consent to the Non-Lapsing Direction. If the Trustee revokes its conditional consent, the revocation applies only to that portion of the Death Benefit which has not been paid. The at-portion of the Death Benefit is not payable under paragraph 11.9A(e)(i) of this clause and forms part of the Residual Death Benefit must be paid under paragraph 11.9A(e)(ii).
- (i) The Trustee:
- (i) must, for the purpose of paragraphs 11.9A(g) and 11.9A(h) of this clause, assume that a Member did understand the effect of making a Non-Lapsing Direction under the provisions of this Deed having effect when the Member gave it, unless it has actual knowledge to the contrary;
  - (ii) has no duty to seek out evidence with respect to the Member's understanding when an instruction was made or given, or in respect of any other matter relating to this Clause 11.9A; and
  - (iii) may rely on any evidence it considers appropriate.
- (j) If the Trustee is or becomes aware prior to its consent becoming absolute under paragraph 11.9A(h) of this clause that a person nominated in a Non-Lapsing Direction:
- (i) has died; or
  - (ii) is neither a Dependant nor a Legal Personal Representative of the Member; or
  - (iii) has given the Trustee written notice that the person does not wish to receive the portion of the Death Benefit specified for them,
- the amount nominated in the Non-Lapsing Direction will be paid in accordance with as being payable to that person is not payable under paragraph paragraph 11.9A(e)(ii)11.9A(e)(i) of this clause and will form part of the Residual Death Benefit.
- ~~(k) The Trustee must pay a Residual Death Benefit to:~~
- ~~(i) the Legal Personal Representative, if the estate is solvent, of the following person **(Applicable Person)**:~~
    - ~~(A) the Member, except where paragraph (B) applies; or~~

- ~~(B) — a beneficiary who is not a Member but who was receiving pension benefits as a result of the earlier death of a Member, where the Residual Death Benefit has become payable due to the death of that beneficiary;~~
- ~~(ii) — if there is no Legal Personal Representative or the estate of the Applicable Person is not solvent, to the Spouse of the Applicable Person (divided equally between them if more than one);~~
- ~~(iii) — if there is no Spouse and no Legal Personal Representative of the Applicable Person:
 
  - ~~(A) — to one or more of the Applicable Person's Dependants; or~~
  - ~~(B) — if none, such other persons as permitted under the Superannuation Laws, in such proportions determined by the Trustee~~~~

### 11.10 Payments under Superannuation Law

- (a) The Trustee:
  - (i) may (but is not obliged to) pay a benefit where the payment of that benefit is permitted by Superannuation Law; and
  - (ii) must pay a benefit where the payment of that benefit is required by Superannuation Law.
- (b) Subject to the Superannuation Law, where 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:
  - (i) the amount (if any) requested by the Member or Commissioner of Taxation;
  - (ii) the amount specified for release in the release authority; or
  - (iii) 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:
  - (i) with the written consent of the Beneficiary (if that is required by Superannuation Law) pay that part of the benefit to a Benefit Arrangement that deals with it as Superannuation Law requires; or
  - (ii) retain it in the Fund until it is paid in accordance with clause 11.10(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 Superannuation Law.

### 11.11 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:
  - (i) must repay to the Trustee on demand such amount as the Trustee determines should have been deducted from the benefit;
  - (ii) releases the Trustee from any Liability that the recipient may suffer as a result of the Trustee making the insufficient deduction; and
  - (iii) indemnifies the Trustee in respect of any Liability that the Trustee may suffer as a result of the Trustee making the insufficient deduction,

as a result of the Trustee relying on information given to it by the relevant recipient except where there is an obvious error or where it would otherwise be unreasonable for the Trustee to rely on that information.

### **11.12 Tax re-adjustments**

Where:

- (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.

### **11.13 Unclaimed money**

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

### **11.14 Payment of benefits on trust**

- (a) Where permitted by Superannuation Law:
    - (i) on the request of a Beneficiary; or
    - (ii) if, in the opinion of the Trustee, a Beneficiary is a minor, infirmed or for any reason whatsoever is not capable of receiving a benefit or incapable of managing his or her own affairs or satisfactorily dealing with the benefit,
- the Trustee may in its absolute discretion:
- (iii) defer payment of all or part of the benefit until such time as such 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; or
  - (iv) pay all or part of the benefit to any parent guardian or legal personal representative of the Beneficiary or to any person has custody and control for the time being of the Beneficiary, for the Beneficiary's maintenance, education, advancement or benefit;
  - (v) pay all or part of the benefit to the Public Trustee or to another person who agrees to act as trustee to be held on trust for the benefit of the Beneficiary with power for

that trustee to make payment in accordance with clause 11.14(a)(iv). 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 by the trustee of the trust constitutes a complete and effectual discharge to the Trustee in relation to the amounts paid.
- (c) The Trustee is not bound to see to the application of the benefit paid.

## **12. Transfers and rollovers**

### **12.1 Transfers and rollovers into the Fund**

- (a) The Trustee may arrange for the transfer or rollover into the Fund of cash or property with:
  - (i) the person responsible for a Benefit Arrangement; or
  - (ii) a person who is or was a participant in a Benefit Arrangement,on conditions agreed between the Trustee and the other person.
- (b) Where the Benefit Arrangement is a UK pension scheme, the benefit transferred may be transferred to any Division of this Fund, subject to UK Transfer Conditions.

### **12.2 Transfers and rollovers from the Fund**

- (a) The Trustee may:
  - (i) 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; and
  - (ii) where permitted by the Superannuation Law, transfer or rollover the benefit entitlements of a Beneficiary to another Benefit Arrangement to which the Beneficiary is eligible to be admitted without the consent of the Beneficiary; and
  - (iii) must, if required by Superannuation Law, transfer or rollover benefits of Beneficiaries to another Benefit Arrangement or to the Regulator in the circumstances required by Superannuation Law.
- (b) Any transfer of the benefits of a Member of Division 5 to another Plan or Benefit Arrangement is subject to any UK Transfer Conditions.

### **12.3 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). Where 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.

### **12.4 Transfers/rollovers under the Superannuation Law**

- (a) The Trustee may, and if required by the Superannuation Law must, transfer or rollover benefits of a Beneficiary to another Benefit Arrangement or to the Regulator in the circumstances contemplated by the Superannuation Law.

- (b) Subject to the Superannuation Law, the Trustee may refuse or delay the transfer or rollover of benefits of a Beneficiary to another Benefit Arrangement until:
  - (i) where the Beneficiary requests the Trustee to transfer or rollover his or her benefits - the Beneficiary makes proper application to the Trustee in the form required by the Trustee;
  - (ii) where the Beneficiary's consent to the transfer or rollover is required - the Beneficiary provides his or her consent in the form required by the Trustee and Superannuation Law;
  - (iii) the Beneficiary provides all information required by the Trustee to verify the identity of the Beneficiary; and
  - (iv) 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.

## **12.5 Discharge of Trustee's liability upon transfer or rollover from the Fund**

Upon the transfer or rollover of an amount pursuant to this clause 12:

- (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 Plan in relation to the amount transferred is satisfied; and
- (c) the Trustee is not responsible for the application of the amount paid.

## **13. Termination of Fund**

### **13.1 Termination of Fund, Division, Plan, Sub-plan, or Membership Category**

- (a) If:
  - (i) there ceases to be any Beneficiaries in the Fund or a Division, Plan, Sub-plan, or Membership Category; or
  - (ii) the Trustee, in its absolute discretion, resolves to terminate the Fund or a Division, Plan, Sub-plan, or Membership Category,

then the Fund, Division, Plan, Sub-plan, or Membership Category (as the case may be) shall terminate with effect from a date determined by the Trustee.

- (b) The Fund or a Division, Plan, Sub-plan, or Membership 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, Plan, Sub-plan, or Membership Category terminates under this clause 13.1 is known as the Termination Date.

### **13.2 Application of Fund, Division Plan, Sub-plan, or Membership Category**

- (a) With effect from the Termination Date:
  - (i) any contributions in arrears at the Termination Date owing to the Fund or the Division, Plan, Sub-plan, or Membership Category (as the case may be) must be paid;
  - (ii) the Trustee must not accept any other contributions to the Fund or the Division, Plan, Sub-plan, or Membership Category (as the case may be);

- (iii) subject to the provisions of any Schedule (or a provision of any applicable Special Rules), the Trustee must apply the assets attributable to the Fund or the Division, Plan, Sub-plan, or Membership Category (as the case may be) in the following order of priority:
  - (A) 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, Plan, Sub-plan, or Membership Category;
  - (B) to provide in respect of each Beneficiary any benefit which became payable on or before the Termination Date under this Deed; and
  - (C) transfer to another Benefit Arrangement a benefit equal in value to the balance of the Beneficiary's Account at that time in accordance with clause 12.2.
- (b) If, after applying the assets of the Fund or the Division, Plan, Sub-plan, or Membership Category in accordance with clause 13.2(a)(iii) there remains surplus assets, then subject to the provisions of any Schedule (or a provision of any applicable Special Rules), the Trustee may (in its absolute discretion) apply all or part of such surplus to increase the benefit payable under clause 13.2(a)(iii)(B) to, or transferred under clause 13.2(a)(iii)(C) in respect of, of any Beneficiary or former Beneficiary.

## 14. General

### 14.1 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:
  - (i) at his or her place of employment;
  - (ii) at such other address last notified to the Trustee by the Beneficiary; or
  - (iii) 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:
  - (iv) 2 business days after the notice is sent by mail; and
  - (v) the day the notice is received at the above address;
- (c) must be given to the Trustee at its registered office and is effective only when received by the Trustee at that office.

### 14.2 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.

### 14.3 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.

#### **14.4 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.

#### **14.5 Confidentiality**

The Trustee must treat as confidential any information relating to Beneficiaries or Employers which it acquires as Trustee and only use the information for the purposes of the Fund or as required by law.

#### **14.6 Employer not a fiduciary**

An Employer is not under any fiduciary or other obligation to any person in exercising any Power given to it under this Deed may exercise that Power in its own interests.

### **15. Governing law**

This Deed shall be governed and construed in accordance with the laws of New South Wales.



# Schedule 1 - Division 1

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## 1. Employer Sponsored Members Division

### 1.1 Name of Division

This Division is known as Division 1 or the 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 rules 1.3(b) and 1.3(c).

**Member's Benefit** in relation to a Member means, subject to clauses 7.4 and 8.2, the sum of:

- (a) the balance of all Accounts maintained for the Member under this Division; and
- (b) subject to clause 6.6, the Insured Benefit (if any) in respect of the Member.

**Participating Employer** means an Employer admitted by the Trustee to participate in this Division under rule 1.3(a).

### 1.3 Participants

- (a) **Participating Employers:** An Employer may be admitted to participate in this Division as a Participating Employer under clause 7.1 subject to the approval of, and any terms and conditions imposed by, the Trustee.
- (b) **Members:** An Employee of an Employer that has been admitted to participate in this Division under rule 1.3(a) may participate in this Division subject to the approval of, and the conditions imposed by, the Trustee.
- (c) **Other persons:** Any other person may be admitted to participate in this Division under clause 7.1 subject to the approval of, and the conditions imposed by, the Trustee.

### 1.4 Contributions

- (a) **Participating Employer:** Subject to any applicable Special Rules, a Participating Employer, or any other person who is permitted by 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) **Member contributions:** Subject to any applicable Special Rules, a Member may contribute to this Division such amounts as is permitted by the Trustee.
- (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:** The Trustee may accept:
  - (i) contributions in respect of a Member from any other person where permitted by Superannuation Law (including without limitation eligible spouse contributions);
  - (ii) an allotment of splittable contributions made for the benefit of a Member under clause 9.6(a)(i); and

- (iii) a rollover or transfer of an amount, equal to the splittable contribution made in respect of the Member, for the benefit of a Spouse of the Member from another Plan or Benefit Arrangement, in accordance with clause 9.6(a)(ii).
- (e) **Identification of contributions:** The Participating Employer and/or the Member must identify contributions and other amounts when required by the Trustee.
- (f) **Rollovers:** Subject to Superannuation Law, the Trustee may accept the rollover or transfer from another Benefit Arrangement in respect of the Member.

## 1.5 Benefits

Subject to clauses 7.4 and 8.2, a Member is entitled to the following benefits under this Division:

- (a) **Termination of employment:** 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.
- (b) **Total and Permanent Disablement:** Subject to clause 6.6, 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 clause 6.6, on the death of a Member, a death benefit equal to the Member's Benefit is payable in accordance with clause 11.9 or clause 11.9A, whichever is applicable.
- (d) **Attaining preservation age:** A Member is entitled to the Member's Benefit upon attaining his or her preservation age. To the extent that a benefit payable under this rule 1.5(d) is not an unrestricted non preserved benefit, it may be:
  - (i) if the pension will commence to be paid before 20 September 2007, paid in the form of a Transition to Retirement Allocated Pension payable in accordance with rule 1.7; or
  - (ii) if the pension will commence to be paid on or after 20 September 2007, a Transition to Retirement Income Stream payable in accordance with rule 1.7; or
  - (iii) if the pension will commence to be paid before 20 September 2007, paid in the form of a Non-Commutable Term Allocated Pension payable in accordance with rule 1.8.
- (e) **Temporary Disablement:** Subject to clause 6.6, 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.
- (f) **Severe financial hardship:** Where a Member is taken to be in severe financial hardship for the purposes of 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 Superannuation Law, not exceeding the amount of the Member's Benefit.
- (g) **Compassionate grounds:** Where 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.

- (h) **Other circumstances:** Notwithstanding any other provision of this rule 1.5, a benefit of a Beneficiary may be paid, in the discretion of the Trustee, where the Beneficiary has satisfied a condition of release which permits payment of the benefit to the Beneficiary or in such other circumstances permitted by Superannuation Law.
- (i) **Transfer of Service:** Notwithstanding any provision of this Deed, if a Member leaves the employment of a Participating Employer and:
  - (i) the Member remains in the employment of an Employer admitted to participate in this or any other Plan; or
  - (ii) immediately commences employment with an Employer admitted to participate in this or any other Plan,no benefit is payable to the Member unless the Trustee otherwise determines.

## **1.6 Mode of payment of benefits**

A benefit payable under rule 1.5 may be:

- (a) transferred or rolled over to a Benefit Arrangement under clauses 12.2(a);
- (b) paid in the form of:
  - (i) if the pension will commence to be paid before 20 September 2007 - an Allocated Pension or a Transition to Retirement Allocated Pension; or
  - (ii) if the pension will commence to be paid on or after 20 September 2007 – an Account Based Pension or a Transition to Retirement Income Stream,payable in accordance with rule 1.7;
- (c) if the pension will commence to be paid on or before 20 September 2007 - paid in the form of a Term Allocated Pension or a Non-Commutable Term Allocated Pension payable in accordance with rule 1.8; or
- (d) if the benefit is not a Preserved Benefit, paid to the Beneficiary in one or more lump sums.

## **1.7 Allocated Pension, TRAP, Account Based Pension and TRIS**

The Trustee may, on the request of a Member and where permitted by Superannuation Law, transfer all or part of the lump sum payable to the Member to Division 3 to:

- (a) if the pension will commence to be paid before 20 September 2007 – purchase an Allocated Pension Account or a Transition to Retirement Allocated Pension; or
- (b) if the pension will commence to be paid on or after 20 September 2007 – purchase 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 transferred to Division 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 Division 3.

## **1.8 Term Allocated Pension and Non-Commutable Term Allocated Pension**

The Trustee may, on the request of a Member and where permitted by Superannuation Law, transfer all or part of the lump sum payable to the Member to Division 4 to purchase a Term Allocated Pension or a Non-Commutable Term Allocated Pension for the Member to commence to be paid before 20 September 2007.

To the extent that the lump sum payable to the Member is transferred to Division 4, the Member shall cease to be entitled to a benefit under this Schedule and become entitled to a Term Allocated Pension or a Non-Commutable Term Allocated Pension payable in accordance with the rules set out in Division 4.

# Schedule 2 - Division 2

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## 2. Personal Division

### 2.1 Name of Division

This Division is known as Division 2 or the Personal Division.

### 2.2 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 rule 2.3.

**Member's Benefit** in relation to a Member means, subject to clause 7.4, the sum of:

- (a) the balance of all Accounts maintained for the Member under this Division; and
- (b) subject to clause 6.6, the Insured Benefit (if any) in respect of the Member.

### 2.3 Participants

Any person may be admitted to participate in this Division under clause 7.1 subject to the approval of, and any terms and conditions imposed by, the Trustee.

### 2.4 Contributions

- (a) **Member contributions:** A Member may contribute to this Division such amounts as is permitted by the Trustee.
- (b) **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.
- (c) **Employer contributions:** A Member's Employer or any other person who is permitted by Relevant Law to contribute for the benefit of the Member, may contribute to the Plan such amounts in respect of the Member as the contributor determines, in such manner, as is approved by the Trustee.
- (d) **Other contributions, rollovers and transfers:** The Trustee may accept:
  - (i) contributions in respect of a Member from any other person where permitted by Superannuation Law (including without limitation eligible spouse contributions);
  - (ii) an allotment of splittable contributions made for the benefit of a Member under clause 9.6(a)(i); and
  - (iii) a rollover or transfer of an amount, equal to the splittable contribution made in respect of the Member, for the benefit of a Spouse of the Member from another Benefit Arrangement, in accordance with clause 9.6(a)(ii).
- (e) **Identification of contributions:** The Employer and/or the Member must identify contributions and other amounts when required by the Trustee.
- (f) **Rollovers:** Subject to Superannuation Law, the Trustee may accept the rollover or transfer from another Benefit Arrangement in respect of the Member.

## 2.5 Benefits

Subject to clause 7.4, 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 Member is entitled to the Member's Benefit upon satisfying a condition of release, other than as a result of death or Total and Permanent Disablement.
- (b) **Total and Permanent Disablement:** Subject to clause 6.6, 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 clause 6.6, on the death of a Member, a death benefit equal to the Member's Benefit is payable in accordance with clause 11.9 or clause 11.9A, whichever is applicable.
- (d) **Attaining Preservation Age:** A Member is entitled to the Member's Benefit upon attaining his or her preservation age. To the extent that a benefit payable under this rule 2.5(d) is not an unrestricted non preserved benefit, it must be:
  - (i) if the pension will commence to be paid before 20 September 2007, paid in the form of a Transition to Retirement Allocated Pension payable in accordance with rule 2.7; or
  - (ii) if the pension will commence to be paid on or after 20 September 2007, a Transition to Retirement Income Stream payable in accordance with rule 2.7; or
  - (iii) if the pension will commence to be paid before 20 September 2007, paid in the form of a Non-Commutable Term Allocated Pension payable in accordance with rule 2.8.
- (e) **Temporary Disablement:** Subject to clause 6.6, 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.
- (f) **Severe financial hardship:** Where a Member is taken to be in severe financial hardship for the purposes of 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 Superannuation Law, not exceeding the amount of the Member's Benefit.
- (g) **Compassionate grounds:** Where 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.
- (h) **Other circumstances:** Notwithstanding any other provision of this rule 2.5, a benefit of a Beneficiary may be paid, in the discretion of the Trustee, where the Beneficiary has satisfied a condition of release which permits payment of the benefit to the Beneficiary or in such other circumstances permitted by Superannuation Law.

## 2.6 Mode of payment of benefits

A benefit payable under rule 2.5 may be:

- (a) transferred or rolled over to a Benefit Arrangement under clauses 12.2(a);
- (b) paid in the form of:
  - (i) if the pension will commence to be paid before 20 September 2007 - an Allocated Pension or a Transition to Retirement Allocated Pension; or

- (ii) if the pension will commence to be paid on or after 20 September 2007 – an Account Based Pension or a Transition to Retirement Income Stream,  
payable in accordance with rule 2.7;
- (c) if the pension will commence to be paid before 20 September 2007 - paid in the form of a Term Allocated Pension or a Non-Commutable Term Allocated Pension payable in accordance with rule 2.8; or
- (d) if the benefit is not a Preserved Benefit, paid to the Beneficiary in one or more lump sums.

## **2.7 Allocated Pension, TRAP, Account Based Pension and TRIS**

The Trustee may, on the request of a Member and where permitted by Superannuation Law, transfer all or part of the lump sum payable to Division 3 to:

- (a) if the pension will commence to be paid before 20 September 2007 – purchase an Allocated Pension Account or a Transition to Retirement Allocated Pension; or
- (b) if the pension will commence to be paid on or after 20 September 2007 – purchase 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 transferred to Division 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 Division 3.

## **2.8 Term Allocated Pension and Non-Commutable Term Allocated Pension**

The Trustee may, on the request of a Member and where permitted by Superannuation Law, transfer all or part of the lump sum payable to the Member to Division 4 to purchase a Term Allocated Pension or Non-Commutable Term Allocated Pension for the Member to commence to be paid before 20 September 2007.

To the extent that the lump sum payable to the Member is transferred to Division 4, the Member shall cease to be entitled to a Term Allocated Pension or a Non-Commutable Term Allocated Pension payable in accordance with the rules set out in Division 4.

# Schedule 3 – Division 3

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## 3. Allocated Pension, TRAP, Account Based Pension and TRIS Division

### 3.1 Name of Division

This Division is known as Division 3 or the Allocated Pension, TRAP, Account Based Pension and TRIS Division.

### 3.2 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 under this Division which complies with the standards set out in subregulations 1.06(1) and 1.06(9A)(a) of the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

**Allocated Pension** means a pension payable under this Division which complies with the standards set out in the subregulations 1.06(1) and 1.06(4) of the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

**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 3.13.

**Member** means a person eligible for a benefit under this Division under rule 3.3.

**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 3.13(a).

**non-commutable allocated pension** has the meaning given to it in SIS.

**Pension** means an Allocated Pension, a TRAP, an Account Based Pension or a TRIS.

**Pensioner** means a Member to whom an Allocated Pension, TRAP, Account Based Pension or TRIS is being paid under this Division.

**Pension Account** means an Account maintained in respect of a Member under 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 to whom a Pension is payable upon the death of a Member in accordance with rule 3.13(c)(i).

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

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

### 3.3 Participants

Any person to whom the Trustee may pay a Pension without breaching the Superannuation Law may be admitted to participate in this Division as a Member under clause 7.1 subject to the approval of, and the conditions imposed by, the Trustee.



### **3.4 Acceptance of contributions, rollovers and transfers**

- (a) Subject to the Superannuation Law, the Trustee may accept:
  - (i) the rollover or transfer of benefits from another Benefit Arrangement in respect of a Member;
  - (ii) contributions in respect of the Member from any person where permitted by Superannuation Law (including without limitation eligible spouse contributions in respect of the Member);
  - (iii) an allotment of splittable contributions made for the benefit of a member under clause 9.6(a)(i); and
  - (iv) 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 in accordance with clause 9.6(a)(ii).
- (b) The Trustee may establish rules governing the acceptance of amounts under rule 3.4(a) 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.

### **3.5 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:
  - (i) the Trustee shall credit:
    - (A) any contributions made to the Fund under rule 3.4(a) in respect of the Member;
    - (B) such amounts as are rolled over or transferred to the Fund pursuant to clause 12.1;
    - (C) such amounts as the Trustee determines to transfer from other Accounts in the Fund;
    - (D) any other amounts which the Trustee determines from time to time to credit to the Pension Account; and
  - (ii) the Trustee shall debit:
    - (A) Pension payments made in respect of a Pensioner or Reversionary Beneficiary under this Schedule;
    - (B) any Fund Expenses which the Trustee determines from time to time;
    - (C) 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;
    - (D) such amounts as are rolled over or transferred to another Benefit Arrangement pursuant to clause 12.2; and
    - (E) any other amounts which the Trustee determines from time to time to debit the Pension Account.

- (b) Where the Trustee accepts contributions or the rollover or transfer of benefits to the 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.

### **3.6 Pension payments**

- (a) Subject to Superannuation Law and rule 3.7, a Pensioner is entitled to an Allocated Pension, a TRAP, an Account Based Pension or a TRIS, 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:
  - (i) if the pension will commence to be paid before 20 September 2007 – a TRAP; or
  - (ii) if the pension will commence to be paid on or after 20 September 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 6.4, or by purchasing a Pension in the name of the Member from another Benefit Arrangement.

### **3.7 Changes from one Pension to another Pension**

Subject to the Superannuation Law, the Trustee may:

- (a) on the request of a Pensioner or Beneficiary; or
- (b) in its absolute discretion,

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

### **3.8 Pension to comply with Superannuation Law**

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

### **3.9 Pension Commencement Date**

- (a) **Nomination of Pension Commencement Date:** 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 Superannuation Law:** The Pension Commencement Date must not be later than the date necessary to comply with 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 Superannuation Law as it relates to that Pension:
  - (i) 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

- (ii) if the Trustee is unable to identify a Pension Commencement Date that complies with the Superannuation Law, the Trustee may (in accordance with rule 3.7) 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
- (iii) transfer the Member and the Member's Pension Account to another Division.

### 3.10 Frequency of Pension payments

- (a) **Frequency of Pension payments:** Subject to 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 Allocated Pension payments:** Subject to Superannuation Law:
  - (i) the Trustee may alter the frequency with which Pension payments are to be made:
    - (A) at any time the Trustee considers appropriate; or
    - (B) at any time agreed upon between the Pensioner and the Trustee; and
  - (ii) subject to rule 3.11(b), the Trustee may, on the request of the Pensioner, make ad hoc lump sum payments from the Member's Pension Account.
- (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, 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, the Trustee must ensure that at least one Pension payment is made to the Member during each financial year after the Pension Commencement Date.

### 3.11 Selecting the value of Pension payments

- (a) **Nomination of value of Pension payments:** The Trustee may allow a Member to nominate the value of Pension payments to be paid under a Pension during a financial year.
- (b) **Limits on value of Pension payments:** 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:
  - (i) less than the minimum limits; nor
  - (ii) in the case of an Allocated Pension, a TRAP or a TRIS – greater than the maximum limits,

set out in 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 the 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, in this case of an Allocated Pension, a TRAP or a TRIS, the maximum limits) required under rule 3.11(b) for the relevant financial year and it must do so at the following times:

- (i) within a reasonable time and in any event within such time as prescribed by Superannuation Law of the person becoming a Member of this Division; and
  - (ii) 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 3.11(b) within such period as determined by the Trustee, the Trustee must either:
- (i) make the Pension payments for the current financial year calculated according to any previous agreement between the Trustee and Member; or
  - (ii) in the absence of any such agreement make the Pension payments at the minimum limit required to be paid under rule 3.11(b).
- (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.

### 3.12 Commutation

- (a) **Pensioner commutation:** Subject to rule 3.12(d) and the Superannuation Law, the Trustee may, on the request of a Pensioner, commute to a lump sum, the whole or any part of his or her Pension where permitted by the Superannuation Law.
- (b) **Benefit payment on commutation:** Subject to rule 3.12(d), on the commutation of the whole of a Pension, subject to Superannuation Law, the Trustee must pay a lump sum benefit to the Pensioner equal to the balance of his or her Pension Account as at the date of commutation.
- (c) **Payment on partial commutation:** Subject to rule 3.12(d), on the commutation of part a Pension, subject to Superannuation Law, the Trustee must pay a lump sum benefit to the Pensioner from his or her Pension Account equal to the amount requested up to the balance of the Pension Account as at the date of commutation.
- (d) **Commutation of TRAP or TRIS:** The Trustee may only commute a TRAP or TRIS (or any part of it) if:
- (i) the purpose of the commutation is:
    - (A) to cash an unrestricted non-preserved benefit; or
    - (B) to pay a superannuation contributions surcharge; or
    - (C) to give effect to an entitlement of a Non-Member Spouse under a payment split;
  - (ii) after the commutation, the amount commuted would be an unrestricted non-preserved benefit; or
  - (iii) in any other circumstances permitted by the Superannuation Law as it relates to that Pension.
- (e) **Trustee's commutation:** 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 Superannuation Law.

### 3.13 Death of Pensioner

- (a) **Non-binding nomination of Reversionary Beneficiary:** Unless a Reversionary Beneficiary is nominated pursuant to rule 3.13(b), the Trustee may allow a Pensioner to nominate, in a form approved by the Trustee, a Dependant to whom the Pensioner wishes all or part of his or her Death Benefit to be paid in the form of a Pension.
- (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, a Reversionary Pensioner as the Trustee in its absolute discretion determines.
- (c) **Payment of a Pensioner's Death Benefit:** Upon the death of a Pensioner, the Trustee shall distribute the Pensioner's Death Benefit as follows:
- (i) in respect of any part of the Death Benefit that is to be paid as a Pension:
- (A) if the Pensioner has validly nominated a Reversionary Beneficiary in accordance with rule 3.13(a) the Trustee shall pay that part of the Pensioner's Death Benefit to which the nomination relates to the Reversionary Beneficiary in accordance with rule 3.13(f) notwithstanding any Death Benefit Nomination to the contrary in relation to that part of the Death Benefit, ;
- (B) if the Pensioner has not validly nominated a Reversionary Beneficiary in accordance with rule 3.13(a), subject to the Superannuation Law, the Trustee shall pay that part of the Pensioner's Death Benefit in the form of a Pension in accordance with:
- (I) clause 11.9(c); ~~and~~
- (II) clauses 11.9(e); or
- (III) clause ~~and~~ 11.9(f); or
- (IV) clause 11.9A,
- whichever is applicable.
- (ii) in respect of any part of the Pensioner's Death Benefit that is to be paid as a lump sum benefit - the Trustee shall pay that part of the Pensioner's Death Benefit in accordance with clause 11.9- or clause 11.9A, whichever is applicable.
- (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 11.9(a), ~~or clause 11.9(e)~~ or a person (other than a Dependant) under clause 11.9(f) or, where it is applicable, under clause 11.9A, 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 11.9(a) or clause 11.9(e) or, where it is applicable, under clause 11.9A, 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:
- (i) if the Pension will commence before 20 September 2007, an Allocated Pension; or
- (ii) if the Pension will commence on or after 20 September 2007, 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:
- (i) the Pension Account reaching zero; or
  - (ii) the death of the Reversionary Beneficiary or
  - (iii) 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 reads as Reversionary Beneficiary:** If the Trustee pays a Pension to a Reversionary Beneficiary under rule 3.13(c)(i), 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.

### **3.14 Cessation of Pension**

- (a) The Pension will cease to be payable on the earlier of the following:
- (i) the balance of the Pensioner's Pension Account is exhausted or decreases to a value determined by the Trustee;
  - (ii) the term of the Pension agreed to by the Trustee and the Pensioner's in rule 3.6(b) has expired;
  - (iii) on the date determined by the Trustee in accordance with Superannuation Law.
- (b) Any balance of the Pensioner's Pension Account at the date determined under rule 3.14(a) shall be paid to the Pensioner as soon as practicable thereafter.

### **3.15 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 (including another Division) in accordance with clause 12.2.

### **3.16 Cessation of membership**

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

### **3.17 Limit on reversion and commutation**

Where 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.

### **3.18 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 Superannuation Law.

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

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

# Schedule 4 – Division 4

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## 4. Term Allocated Pension Division

### 4.1 Name of Division

This Division is known as Division 4 or the Term Allocated Pension Division.

### 4.2 Definitions:

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

**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 4.12.

**Life Expectancy** means the life expectancy of a person, as determined in accordance with the Australian Government Life Tables.

**Member** means a person admitted by the Trustee to participate in this Division under rule 4.3.

**Non-Commutable Term Allocated Pension** means a Term Allocated Pension which complies with the requirements of a "non-commutable pension" in *Superannuation Industry (Supervision) Regulations 1994* (Cth).

**Pension** means a Term Allocated Pension or a Non-Commutable Term Allocated Pension.

**Pension Account** means an Account maintained in respect of a Member under this Plan.

**Pension Commencement Date** means the date on which the Pension commences to be paid to the Member under rule 4.7.

**Pension Standards** means:

- (a) the standards set out in subregulations 1.06(1) and 1.06(8) of the *Superannuation Industry (Supervision) Regulations 1994* (Cth); and
- (b) any additional or replacement standards that a Term Allocated Pension or this Deed must meet in order for the Term Allocated Pension to qualify as a 'pension' for the purposes of SIS or for the Fund to qualify for maximum concessional tax treatment.

**Reversionary Beneficiary** means a person to whom a Pension is payable upon the Pensioner's death under rule 4.12.

**Term Allocated Pension** means a pension which complies with the Pension Standards.

### 4.3 Participants

Prior to 20 September 2007, any person to whom the Trustee may pay a Pension without breaching Superannuation Law may be admitted to participate in this Division as a Member under clause 7.1, subject to the approval of, and conditions imposed by, the Trustee.

### 4.4 Acceptance of contributions, rollovers and transfers

- (a) Subject to Superannuation Law, the Trustee may accept:
  - (i) the rollover or transfer of benefits from another Benefit Arrangement in respect of a Member;
  - (ii) contributions in respect of the Member from any person where permitted by Superannuation Law (including without limitation eligible spouse contributions in respect of the Member);

- (iii) an allotment of splittable contributions made for the benefit of a Member under clause 9.6(a)(i); and
  - (iv) a rollover or transfer of an amount, equal to the splittable contribution, made in respect of the Member, for the benefit of a Spouse, from another Plan or Benefit Arrangement in accordance with clause 9.6(a)(ii).
- (b) The Trustee may establish rules governing the acceptance of amounts under rule 4.4(a) 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.

#### **4.5 Providing the Pension**

- (a) Subject to Superannuation Law, a Member is entitled to a Pension in accordance with the provisions of this Schedule.
- (b) The Trustee must pay a Non-Commutable Term Allocated Pension in respect of that part (if any) of a Pension Account that is not an unrestricted non-preserved benefit.
- (c) The Trustee may, in its absolute discretion, pay the Pension from segregated current pension assets of the Fund, as provided in clause 6.4, or by purchasing a Pension in the name of the Member from another Benefit Arrangement.

#### **4.6 Pension Account**

Upon the admission of a Member to participate in this Division, the Trustee shall establish and maintain in respect of the Member a Pension Account to which:

- (a) the Trustee shall credit:
  - (i) any contributions made to the Fund under rule 4.4(a) in respect of the Member;
  - (ii) such amounts as are rolled over or transferred to the Fund pursuant to clause 12.1;
  - (iii) such amounts as the Trustee determines to transfer from other Accounts in the Fund; and
  - (iv) any other amounts which the Trustee determines from time to time to credit to the Pension Account; and
- (b) the Trustee shall debit:
  - (i) Pension payments made in respect of the Member or Beneficiary under this Schedule;
  - (ii) any Fund Expenses which the Trustee determines from time to time;
  - (iii) 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; and
  - (iv) any other amounts which the Trustee determines from time to time to debit the Pension Account.

#### **4.7 Pension Commencement Date**

- (a) **Pension Commencement Date to be agreed:** A Pension shall commence to be paid to a Member on a date prior to 20 September 2007 agreed between the Member and Trustee or, in the absence of any such agreement, on a date prior to 20 September 2007 determined by the Trustee.



- (b) **Pension Commencement Date must comply with Superannuation Law:** The Pension Commencement Date must not be later than the date necessary to comply with Superannuation Law provided it is prior to 20 September 2007.

#### 4.8 Term of Pension

Unless the Superannuation Law requires otherwise, a Pension shall continue for a period equal not less than the minimum period permitted under the Superannuation Law or greater than the maximum period permitted under the Superannuation Law, as may be agreed by the Trustee and the Member.

#### 4.9 Frequency of Pension payments

- (a) **Frequency of Pension Payments:** The Trustee must make Pension payments to the Member with such frequency and at such intervals and times as are agreed between the Trustee and the Member.
- (b) **Default frequency of Pension payments:** The Trustee shall determine the frequency of the Pension payments if, at any time, the frequency of the Pension payments has not been agreed upon by the Trustee and the Member.
- (c) **Trustee may alter the frequency of Pension payments:** The Trustee may alter the frequency with which Pension payments are to be made:
  - (i) at any time the Trustee considers appropriate; or
  - (ii) at any time agreed upon between the Member and the Trustee,

provided that at least one Pension payment must be paid to the Member or to a Reversionary Beneficiary (if any) each financial year after the Pension Commencement Date except as otherwise permitted by the Pension Standards.

#### 4.10 Value of Pension payments

The total amount of the Pension payments to be made in respect of a Member in a year (excluding payments made by way of commutation pursuant to rule 4.11, but including payments made under a payment split in accordance with clause 3.6) is determined in accordance with the Pension Standards.

#### 4.11 Commutation

- (a) **Generally:** Subject to rule 4.11(b), a Pension may only be commuted to a lump sum benefit in the circumstances set out in the Pension Standards.
- (b) **Commutation of Non-Commutable Term Allocated Pension:** The Trustee may only commute a Non-Commutable Term Allocated Pension (or any part of it) if:
  - (i) the purpose of the commutation is to cash an unrestricted non-preserved benefit;
  - (ii) after the commutation, the amount commuted would be an unrestricted non-preserved benefit.

#### 4.12 Death of Pensioner

- (a) **Non-binding nomination of Beneficiary:** Unless a Reversionary Beneficiary is nominated pursuant to rule 4.12(b), the Trustee may allow a Pensioner to nominate, in a form approved by the Trustee, how the Pensioner would prefer his or her Death Benefit to be distributed among the Pensioner's Dependants and/or legal personal representatives upon his or her death. 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.

- (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 Pensioner's Death Benefit:** Upon the death of a Pensioner, the Trustee shall distribute the Pensioner's Death Benefit in accordance with:
  - (i) clause 11.9(a);
  - (ii) clauses 11.9(e) or 11.9(f), having regard to any nomination made by the Pensioner under rule 4.12(a); and
  - (iii) rule 4.12(f); or
  - (iii) where it is applicable, under clause 11.9A.;
- (d) **Payment to legal personal representative or other non-Dependant:** If the Trustee determines to pay all or any part of a Pensioner's Death Benefit to the Pensioner's legal personal representative under clause 11.9(a), clause ~~or~~ 11.9(e) or a person (other than a Dependant) under clause 11.9(f) or, where it is applicable, clause 11.9A, the Trustee must, subject to rule 4.12(a), commute that amount and pay it 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 11.9(a) or clause 11.9(e) or, where it is applicable, clause 11.9A, the Trustee may, in its absolute discretion:
  - (i) commute the Pension and pay it to the person as a lump sum benefit, subject to rule 4.12(a); or
  - (ii) on the request of the person, revert payment of the Pension to the person as though he or she were the Member (whereupon the person will be called the **Reversionary Beneficiary** in this Schedule).
- (f) **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:
  - (i) the expiry of the term of the Pension; or
  - (ii) the death of the Reversionary Beneficiary.
- (g) **Reference to Member or Pensioner reads as Reversionary Beneficiary:** If the Trustee pays a Pension to a Reversionary Beneficiary under rule 4.12(f), 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.

#### 4.13 Cessation of Pension

A Pension will cease to be payable on the earlier of the following:

- (a) the date the Pension is commuted to a lump sum benefit under rules 4.11 or 4.12;
- (b) the date the term of the Pension determined under rule 4.8 has expired;
- (c) the balance of the Pensioner's Pension Account is exhausted; or
- (d) the date determined by the Trustee in accordance with the Superannuation Law.

#### 4.14 Cessation of membership

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

#### **4.15 No residual capital value**

A Pension does not have a residual capital value.

#### **4.16 No transfer**

A Member's Pension Account may not be assigned or transferred to any other person (other than to a Reversionary Beneficiary on the death of the Member or of another Reversionary Beneficiary), other than in circumstances specified by the Term Allocated Pension Standards.

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

The value of a Member's Pension Account, or the income from a Pension, must not be used as security for a borrowing, unless permitted by the Superannuation Law.

#### **4.18 Superannuation Law**

Notwithstanding any other provision of this Schedule:

- (a) a Pension must be paid in such form that complies with the Pension Standards, and which will not cause the Fund to be in breach of, Superannuation Law; and
- (b) any provision which is necessary or otherwise required to be included in the terms of this Schedule or in the Rules in order for a Pension to comply with the Pension Standards and qualify as a "pension" for the purposes of SIS or for the Fund to qualify for maximum concessional tax treatment, is deemed to be included for such time as that requirement continues.

# Schedule 5 – Division 5

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## 5. UK Transfer Division

### 5.1 Name of Division

This Division is known as Division 5 or the UK Transfer Division.

### 5.2 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 rule 5.3.

**Member's Benefit** in relation to a Member means, subject to clause 7.4, the balance of all Accounts maintained for the Member under this Division.

### 5.3 Participants

Any 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 7.4, subject to the approval of, and any terms and conditions imposed by, the Trustee.

### 5.4 Benefits

Subject to clause 7.4, 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.

### 5.5 Mode of payment of benefits

A benefit payable under rule 5.4 must be:

- (a) transferred or rolled over to another Plan or a Benefit Arrangement under clauses 12.2(a);
- (b) paid in the form of:
  - (i) if the pension will commence to be paid before 20 September 2007 - an Allocated Pension or a Transition to Retirement Allocated Pension; or
  - (ii) if the pension will commence to be paid on or after 20 September 2007 – an Account Based Pension or a Transition to Retirement Income Stream,payable in accordance with rule 5.6;
- (c) if the pension will commence to be paid before 20 September 2007 - paid in the form of a Term Allocated Pension or a Non-Commutable Term Allocated Pension payable in accordance with rule 5.7; or
- (d) if the benefit is not a Preserved Benefit, paid to the Beneficiary in one or more lump sums.

## **5.6 Allocated Pension, TRAP, Account Based Pension and TRIS**

The Trustee may, on the request of a Member and where permitted by Superannuation Law, transfer all or part of the lump sum payable to Division 3 to:

- (a) if the pension will commence to be paid before 20 September 2007 – purchase an Allocated Pension Account or a Transition to Retirement Allocated Pension; or
- (b) if the pension will commence to be paid on or after 20 September 2007 – purchase 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 transferred to Division 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 Division 3.

## **5.7 Term Allocated Pension and Non-Commutable Term Allocated Pension**

The Trustee may, on the request of a Member and where permitted by Superannuation Law, transfer all or part of the lump sum payable to the Member to Division 4 to purchase a Term Allocated Pension or Non-Commutable Term Allocated Pension for the Member to commence to be paid before 20 September 2007.

To the extent that the lump sum payable to the Member is transferred to Division 4, the Member shall cease to be entitled to a Term Allocated Pension or Non-Commutable Term Allocated Pension payable in accordance with the rules set out in Division 4.

