



HERBERT  
SMITH  
FREEHILLS

Deed

# NGS Super Deed of Amendment

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NGS Super Pty Limited



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### Deed of Amendment

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Date ▶ 3 May 2024

Party **NGS Super Pty Limited**  
ACN 003 491 487 of Level 4, 14 Martin Place, Sydney NSW 2000  
**(Trustee)**

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Recitals

- 1 By a trust deed dated 10 June 1988 (**Trust Deed**), a superannuation fund now known as NGS Super (**Fund**) was established.
- 2 The Trustee is the current trustee of the Fund.
- 3 On 18 April 2019, the Trust Deed was consolidated, incorporating all amendments up to and including 18 April 2019. The Trust Deed has since been amended from time to time.
- 4 Under clause 1.11.2 of the Trust Deed (as amended), subject to the Relevant Law, (as defined in the Trust Deed), (and any consents required thereunder), the Trustee may, by deed or by oral or written resolution, amend, add to, delete or replace all or any of the provisions of the Trust Deed (including clause 1.11.2) as the Trustee sees fit, provided that:
  - (a) prior to the execution of any such deed amendment or the making of any such oral or written resolution, the Trustee shall be required to provide not less than 30 days written notice to each of the Principal Organisations (as defined in the Trust Deed) of the proposed amendment;
  - (b) the Trustee shall only be permitted to execute the deed amendment or make any oral or written resolution if there is no objection to the proposed amendment made by the Nominated Proportion of the Principal Organisations (as defined in the Trust Deed) and given to the Trustee in writing prior to the expiration of the 30 day notice period
  - (c) any such amendment, addition, deletion or replacement shall take effect on the date the deed or resolution is executed or made or such later date as it is specified therein for that purpose.
- 5 The Trustee wishes to amend the Trust Deed in the manner set out in this deed.
- 6 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 1.11.2 of the Trust Deed.

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This Deed of Amendment witnesses as follows:

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## Operative provisions

### 1 Amendment to the Trust Deed

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With effect on and from the date of this deed, the Trust Deed is amended by deleting clause 1.7.6 and inserting in its place the following:

#### **1.7.6 Actuarial valuations and certificates and treatment of surplus or mistaken contributions**

- (a) The Trustee must appoint an Actuary for any Plan or Sub-Plan which provides defined benefits. The Trustee must ensure that an actuarial valuation for each Plan or Sub-Plan is conducted when Relevant Law requires. The Trustee must obtain all actuarial certificates required by Relevant Law in relation to each such Plan or Sub-Plan.
- (b) If the valuation provided in accordance with clause 1.7.6(a) discloses that the value of the assets of the Plan or Sub-Plan (as determined by the Actuary) exceeds the liabilities of the Plan or Sub-Plan (as determined by the Actuary) all or part of the difference may be applied by the Trustee, in its absolute discretion:
  - (i) in meeting an Employer's obligations to contribute to the Plan or Sub-Plan; or
  - (ii) at the request of the Employer, by making a payment of that amount to an Employer provided that, prior to making that payment, the Trustee must comply with the requirements of the Relevant Law.

### 2 Saving provisions

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Notwithstanding any other provision in this Deed of Amendment to the contrary, if any amendment contained in this Deed of Amendment is not consistent with, or breaches the restrictions in, the amendment power contained in clause 1.11.2 of the Trust Deed, that amendment shall be of no effect and the provisions purported to be amended shall continue to be determined in accordance with the provisions of the Trust Deed as they existed prior to the date of the amendment.

### 3 No re-settlement of trust

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

### 4 Governing law and jurisdiction

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This deed is governed by the laws of the State of New South Wales.




# Signing page

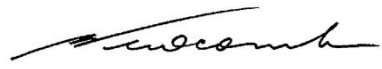
Executed as a deed

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**Trustee**

**Executed by NGS Super Pty Ltd**  
ACN 003 491 487 in accordance  
with section 127 of the  
*Corporations Act 2001 (Cth)*

sign here ▶   
\_\_\_\_\_  
Company Secretary/~~Director~~

sign here ▶   
\_\_\_\_\_  
Director

print name Brendan Tynan-Davey

print name Dr Geoff Newcombe

# Annexure – Consolidated Trust Deed



**NGS SUPER**

**TRUST DEED**

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**PART 1**  
**GENERAL PROVISIONS**

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**1. GENERAL PROVISIONS**

**1.1. Definitions and interpretation**

**1.1.1. Definitions**

Unless the context otherwise requires –

**Account-Based Pension** means payments made by the Trustee to a Beneficiary in accordance with Part 4 of this Deed.

**Accrued Default Amount** has the same meaning as given to that term in the SIS.

**Actuary** means a person who:

- (a) is a Fellow or Accredited Member of the Institute of Actuaries of Australia; or
- (b) employs a qualified actuary for the purpose of providing actuarial advice.

**Allocated Pension** means payments made by the Trustee to a Beneficiary in accordance with Part 4 of this Deed.

**Allot** has the same meaning given to that term in the Relevant Law.

**Amendment Date** means 1 July 2005. **Auditor** means the person appointed for the time being for the Trustee as Auditor to the Fund pursuant to clause 1.7 being a registered auditor within the meaning of the Relevant Law.

**Authorised Person** means a director or employee of the Trustee or other person authorised by the Trustee in writing.

**Beneficiary** means a Member and includes a person who has become entitled to a benefit as a result of the death of a Member.

**Binding Nomination** means a notice to the Trustee (or accepted by the Trustee) given by an applicant or Member, directing the Trustee to pay all or part of the benefit payable on their death to a person or persons nominated in the notice, and the notice complies with the following:

- (a) each person nominated is within a class of persons the Trustee has prescribed as eligible to be nominated in a Binding Nomination;
- (b) the notice is in a form prescribed by the Trustee for a Binding Nomination in accordance with Relevant Law;
- (c) the notice otherwise complies with form and content requirements prescribed by the Trustee for a Binding Nomination in accordance with Relevant Law; and

- (d) the notice was given or confirmed within the period before the Member's death prescribed by the Trustee for a Binding Nomination in accordance with Relevant Law.

**Child** has the same meaning as given to that term in the SIS.

**Choice Product** has the same meaning as given to that term in the SIS.

**Constitution** means the constitution of the Trustee as it may be amended from time to time.

**Death Benefit Instruction** means a notice to the Trustee (or accepted by the Trustee) given by an applicant or Member, directing the Trustee to pay all or part of the benefit payable on their death to a person or persons nominated in the notice, and the notice complies with the following:

- (a) each person nominated is within a class of persons the Trustee has prescribed as eligible to be nominated in a Death Benefit Instruction;
- (b) the notice is in the form prescribed by the Trustee for a Death Benefit Instruction;
- (c) the notice otherwise complies with form and content requirements prescribed by the Trustee for a Death Benefit Instruction.

**Deed** means this Trust Deed, including the Rules and any Participation Schedules.

**Dependant** means in relation to a person any one or more of –

- (d) the Spouse of that person;
- (e) any Child of that person;
- (f) any other natural person who, in the opinion of the Trustee, is at the relevant date (or, in the case of a deceased person, was at the time of death of the deceased) wholly or partially dependent on that person; or
- (g) any person with whom a person has an Interdependency Relationship.

**Eligible Rollover Fund** means a fund which satisfies the conditions of the Relevant Law for such funds.

**Eligible Spouse** means a person whom the Trustee approves for the time being for membership under a Plan or Sub-Plan, being a person who is, at the time contributions in respect of the person are made, the Spouse of a person who is a Member of the Fund.

**Eligible Spouse Member** means a person who is an Eligible Spouse and a Member of the Fund.

**Eligible Spouse Member's Account** has the meaning given to that term in Part 2 of this Deed.

**Eligible Spouse Member's Account Balance** has the meaning given to that term in Part 2 of this Deed.

**Employee** means:

- (a) a person who is employed by the Employer; and
- (b) any other person the Employer deems to be an Employee for the purposes of a Plan or Sub-Plan.

**Employer** means one of the following:

- (a) a Principal Organisation;
- (b) any person which has been admitted to participation in the Fund in accordance with clause 1.8;
- (c) any person who is entitled under the Relevant Law to contribute to the Fund for a person who is a Member and an employee of that person who prior to becoming an employee of that person was an Employee, including any person which replaces or succeeds such an Employer as provided in the Deed.

**Financial Year** means the year ending 30 June, or any part of such a year occurring at the commencement or termination of the Fund.

**Fund** means NGS Super declared and established by this Deed and, where relevant, includes and refers to all Plans and Sub-plans of the Fund.

**Fund Administrator** means the person from time to time appointed by the Trustee under clause 1.3.10.

**Fund Expenses** means the costs and expenses of and incidental to the establishment, operation, management, administration, investment and termination of the Fund, including Tax, insurance costs and any fees or charges imposed by, or paid or payable by the Fund (including but not limited to any asset based fee in addition to any investment management fee which the Trustee determines shall be applicable to the Fund assets) and without limiting the foregoing includes expenses in relation to any Prescribed Activity carried out by the Trustee and fees incurred in relation to compliance with Part VIII B of the Family Law Act 1975 in relation to any:

- (a) application for information in relation to a superannuation interest; or
- (b) payment split or payment flag; or
- (c) any other matter, relating to Part VIII B of the Family Law Act 1975 in such a manner as is permitted by this Act. This includes (but is not limited to) fees from a benefit which is payable or which may become payable in respect of the relevant Member or Non-Member Spouse at such times and in such manner as the Trustee determines.

**Gainful Work** means engagement in any employment, occupation, vocation, profession, trade or business for remuneration or other reward in money or moneys worth.

**Insurance Schedule** means a schedule to the Policy which sets forth the insurance particulars for any Participant.

**Insurer** means the insurer(s) selected by the Trustee either generally or in relation to a Plan or Sub-plan.

**Investment Portfolio** means an arrangement established by the Trustee under clause 1.4.5.

**Interdependency Relationship** has the meaning given to that term in Section 10A of the SIS.

**Member** means a person who has been admitted to membership of the Fund for so long as he or she participates in the Fund.

**Member's Account** has the respective meaning given to that term in Parts 2, 3 and 4 of this Deed.

**Member's Account Balance** has the respective meaning given to that term in Parts 2, 3 and 4 of this Deed.

**Membership Category, Membership Division and Membership Section** mean any segment of a Plan established by the Trustee under clause 1.3.5(l).

**Net Earnings** means the rate or rates of interest (which may be positive or negative and may be reflected as a variation in unit price) determined by the Trustee in accordance with this Deed.

**Nominated Proportion of the Principal Organisations** means the number of Principal Organisations able to cast more than one third of the number of votes of the shareholders of the Trustee at an annual general meeting of the Trustee pursuant to the Constitution.

**Non-Member Spouse** means a person who is:

- (a) the Spouse or former Spouse of a Member; and
- (b) a Non-Member Spouse within the meaning of that term under Part VIII B of the *Family Law Act 1975*.

**Non-Member Spouse Member** means a Non-Member Spouse who has been admitted to membership of the Fund for so long as he or she participates in the Fund.

**Participant** means a Beneficiary or Employer.

**Participation Schedule** means any schedule to this Deed in such form as the Trustee may determine which sets forth the particulars of participation for any Participant.

**Permanent Incapacity** has the same meaning as given to that term in the SIS.

**Plan** means each of the Employer-Sponsored Accumulation Benefit Arrangements, Plan for Personal with Accumulation Benefit Arrangements and Accumulation for Eligible Spouse Members and Accumulation Plan for Non-Member Spouse Members governed by Part 2 of the Deed, the Plan for Employer-Sponsored Defined Benefit Arrangements governed by Part 3 of the Deed and the Plan for Allocated Pension and Term Allocated Pension Arrangements governed by Part 4 of the Deed.

**Policy** means the policy or policies of term or temporary insurance (including the Insurance Schedule) effected by the Trustee, whether on a group or an individual basis, in respect of any benefit that might become payable from the Fund under a Plan or Sub-plan.

**Policy Proceeds** means the amount received by the Trustee under a Policy or Policies in respect of a Member.

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

**Preferred Nomination** means a notice to the Trustee (or accepted by the Trustee) given by an applicant or Member that nominates a person or persons to receive all or part of the benefit payable on their death, other than in the form of a Binding Nomination or Death Benefit Instruction. Where more than one person is nominated, the Preferred Nomination may specify the proportion for each person.

**Prescribed Activity** means any act directly or indirectly related to or incidental to marketing, promoting, advertising or educating members, potential members or other persons in regard to industry superannuation funds generally or the Fund specifically.

**Prescribed Date** means 1 July 2017 or such other date as may be prescribed in the relevant law for the purpose of the application of clause 2.5.

**Prescribed Proportion of the Principal Organisations** means the number of Principal Organisations able to cast not less than two-thirds of the votes of the shareholders of the Trustee at an annual general meeting of the Trustee pursuant to the Constitution.

**Principal Organisations** means:

- (a) The Association of Independent Schools of New South Wales, Province of Sydney and Archdiocese of Canberra and Goulburn (formerly known as Roman Catholic Province of Sydney), Independent Education Union of Australia (New South Wales and Australian Capital Territory), Independent Education Union of Australia (Victoria and Tasmania), the South Australian Commission for Catholic Schools, the Association of Independent Schools of South Australia, the Independent Education Union (South Australia) Branch, Community Management Solutions, Queensland Independent Education Union; and
- (b) any other person that at the time with the written consent of all the existing Principal Organisations at that time is admitted as the Principal Organisation; and
- (c) any further person, who, by reason of the reorganisation or amalgamation of the Principal Organisation, is the successor in whole or part to a Principal Organisation, but in any case does not include a person who by notice to the other Principal Organisation and the Trustee has ceased to be a Principal Organisation.

**Proper Law** means the law of New South Wales and the Commonwealth of Australia.

**Qualified Adviser** means an accountant, barrister, solicitor, Actuary, medical practitioner or other professional person; an Insurer, and any other person considered by the Trustee in good faith to be capable of giving advice in relation to any matter or question, whether by virtue of formal qualifications or experience in business or otherwise howsoever.

**Regulator** means the authority regulating the Relevant Law.

**Relevant Date** means 1 July 2013 or such other date as may be prescribed in the Relevant Law for the purposes of the application of Clause 2.5.

**Relevant Law** means SIS and any other law or rulings or guidelines applicable to the Fund governing superannuation including but not limited to Part VIII B of the *Family Law Act 1975*.

**Reserve Account** means any accounts established by the Trustee pursuant to Clause 1.7.4.

**SGC Act Contributions** means the minimum amount required to be paid by the Employer to the Fund to avoid any tax penalty being imposed on the Employer pursuant to the *Superannuation Guarantee (Administration) Act 1992* (Cth).

**SIS** means the *Superannuation Industry (Supervision) Act 1993* and the Superannuation Industry (Supervision) Regulations, as amended, re-enacted, replaced or superseded.

**Spouse** has the same meaning as given to that term in the *Superannuation Industry (Supervision) Act 1993*.

**Sub-plan** means a segment of a Plan established by the Trustee for a particular Participant or Participants.

**Successor Fund** has the same meaning as in the SIS.

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

**Temporary Disablement** in relation to a Member shall have the same meaning as is given to those words or what the Trustee may consider to be the corresponding word or words for the purposes of any Policy under which insurance is or may become payable in the event of the disablement of any Member or group of Members (or, where there is more than one Policy in force, the Policy specified by the Trustee for this purpose), and (unless otherwise decided by

the Trustee in any particular case) any determination by the relevant Insurer as to whether or not a member is so disabled in terms of such policy shall be final and binding on all interested persons for the purposes of this Deed and "Temporarily Totally Disabled" shall be a corresponding meaning;

**Term Allocated Pension** means payments made by the Trustee to a Beneficiary in accordance with Part 4 of this Deed.

**Total and Permanent Disablement** in relation to a Member shall have the same meaning as is given to those words or what the Trustee may consider to be the corresponding word or words for the purposes of any Policy under which insurance is or may become payable in the event of the disablement of any Member or group of Members (or, where there is more than one Policy in force, the Policy specified by the Trustee for this purpose), and (unless otherwise decided by the Trustee in any particular case) any determination by the relevant Insurer as to whether or not a Member is so disabled in terms of such policy shall be final and binding on all interested persons for the purposes of the Deed **PROVIDED THAT**, if at the relevant time there is no such policy in force or in any other circumstances decided by the Trustee, Total and Permanent Disablement shall mean disablement due to an illness or injury as a result of which:

- (a) the Member has been continuously absent from Gainful Work for a period of at least six months or such lesser period, if any, as the Trustee considers appropriate either generally or in any particular case; and
- (b) in the opinion of the Trustee after consideration of information and advice satisfactory to the Trustee, the Member is incapacitated to such an extent as to render the Member unlikely ever to engage in any Gainful Work for which the Member is, for the time being, reasonably qualified by education, training or experience and "Totally and Permanently Disabled" shall have a corresponding meaning.

**Valid Death Benefit Instruction** has the meaning given in clause 1.6.3A(e).

### **1.1.2. SIS Defined Terms**

Unless an expression which is used in this Deed is specifically defined in this Deed, if that expression is defined in SIS, it has the meaning given to it in SIS.

### **1.1.3. Interpretation**

#### ***Deed binding***

- (a) The provisions of this Deed (which includes any amendments under clause 1.11) 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.

#### ***Rules of interpretation***

- (b) To the extent of any inconsistency, the Participation Schedule overrides the clauses and Rules of this Deed.

#### ***Severance***

- (c) In order to avoid any provision of this Deed being made invalid by law, the provision must be read down, changed or severed to avoid the invalidity.



### ***Statutory Enactments***

- (d) References to any statutory enactment, regulation, rule, by-law or other law or a provision thereof (hereinafter collectively called a "law") shall include that law as amended or re-enacted from time to time and any law which replaces the same or has the same effect in whole or in part (whether or not passed or approved by the same legislative body or other authority and whether or not incorporating or adopting any law previously in force) and shall also include any determinations, rulings or guidelines made by any person under the authority of such a law.

### ***Amended Provisions***

- (e) All references to clauses, sub-clauses, paragraphs, Parts, appendices and other provisions of the Deed shall be read as references to clauses, sub-clauses, paragraphs, Parts, appendices and provisions as amended or replaced from time to time.

### ***Particular Words***

- (f) For the purposes of the Deed, unless the contrary intention appears or the context requires otherwise:
- (i) "person" and words importing a natural person include a body corporate and any other person recognised at law, a partnership and any other group or association of persons but the words "natural person" shall be given their normal meaning; and
  - (ii) "power" means a power, right, discretion or authority of whatsoever nature and howsoever arising (including the formation of an opinion) and, wherever a power is conferred on the Trustee, the Principal Organisations, an Employer or any other person, the relevant provision of the Deed shall be read as if the words "at any time and from time to time" were added thereto.

### ***Disputes***

- (g) If any dispute or doubt arises as to the interpretation of any of the provisions of the Deed or as to the rights or obligations of a Member or any other person hereunder, then (except to the extent otherwise expressly provided in the Deed) the decision of the Trustee shall be final and binding on all interested persons.

### ***Defined Terms***

- (h) Whilst for convenience a particular word or group of words defined in the Deed may commence with capital or lower case letters, failure to use capital or lower case letters in that word or group of words elsewhere in the Deed does not of itself mean that that word or group of words has a meaning different from the meaning assigned thereto in the relevant definition.

### ***Directors' Resolution***

- (i) Where an Employer, the Trustee, a Principal Organisation or other relevant person is or includes a body corporate, a resolution or directive by the directors (or the equivalent thereof) of that body, or by some of them acting as a board or a committee in accordance with its articles of

association or like governing document, shall be deemed to be an effective resolution or directive by that body for the purposes of the Deed **PROVIDED THAT** nothing herein shall limit such body's powers of delegation and the Trustee or a servant or delegate thereof may accept as a binding direction or authorisation of such body any direction or authorisation given or purported to be given on behalf thereof by a person who the Trustee or such servant or delegate shall reasonably believe is empowered to act for that body in the relevant circumstance.

### ***Form of Resolutions***

- (j) A written resolution made for the purposes of any provision of the Deed may take the form of one or more documents in like form or to like effect, each signed by one or more persons. In the case of an oral resolution made for the purposes of any provision of the Deed, a statutory declaration by a person (not necessarily being a party to such resolution) as to that person's presence at the time of the passage of such resolution and as to the contents of such resolution shall be acceptable as proof of the passage and contents of such resolution.

## **1.2. Paramount Provisions: Compliance with Relevant law**

### **1.2.1. Compliance**

It is an overriding condition under this Deed that:

- (a) the Trustee must comply with the requirements of the Relevant Law and is fully empowered (without being obliged) to comply with any provision or standard of the Relevant Law which is not a requirement;
- (b) the Trustee is deemed to comply with the Relevant Law if the Regulator is satisfied that compliance has occurred or determines that the Fund will be treated as if compliance has occurred;
- (c) a discretion or direction under this Deed must be consented to by the Trustee where the exercise of such discretion or direction would be void otherwise under the Relevant Law.
- (d) in the event that there is a conflict between the provision of the Relevant Law and the provision of the Deed the Relevant Law shall prevail at the extent of the conflict.

## **1.3. Trustee**

### **1.3.1. Term of Office**

- (a) The Trustee of the Fund must be constitutional corporation as that term is defined in the Relevant Law and the Trustee is empowered to make the irrevocable election necessary for the Applicable Requirements to apply to the Fund.
- (b) The company first named as the Trustee in the Deed shall be the first Trustee of the Fund and, subject to paragraph (c) hereof, a Trustee shall hold office until:
- (i) by notice in writing given to the Principal Organisations it retires from that office;

- (ii) a receiver, receiver and manager or liquidator is appointed in respect of it or the whole or any part of its property or a scheme of arrangement providing for its dissolution is approved by a court; or
  - (iii) it becomes disqualified from that office by operation of the law, whichever first occurs.
- (c) Upon a Trustee ceasing to be a Trustee, the Principal Organisations shall forthwith by a decision of the Prescribed Proportion of the Principal Organisations, appoint another company to be the sole trustee provided that the Trustee shall not cease to be a Trustee pursuant to paragraph (b)(i) above unless and until the Principal Organisations have by a decision of the Prescribed Proportion of the Principal Organisations (such decisions being in accordance with the Relevant Law) determined to appoint a replacement Trustee.
- (d) A retiring or former Trustee shall transfer all interests in the assets comprising the Fund to the remaining and or new Trustee.

### **1.3.2. Minutes**

The board of directors of the Trustee shall keep or cause to be kept proper minutes in a book provided for the purpose of all resolutions made and matters arising at any meeting of the board in relation to its role as Trustee of the Fund. The minutes if signed by the chairman of such meeting or by the chairman of a later meeting of the board of directors shall be receivable as prima facie evidence of the matters stated therein.

### **1.3.3. Absolute Discretions**

Subject to the Relevant Law except to the extent otherwise expressly provided in the Deed the Trustee has in the exercise or non-exercise or partial exercise of each and every power exercisable by the Trustee an absolute and uncontrolled discretion and shall not be bound to give to any person any reason for or explanation of its exercise non-exercise or partial exercise of any such power. The powers conferred on or exercisable by the Trustee under the Deed are additional to and not in substitution for the powers conferred on or exercisable by it at law.

### **1.3.4. General Powers**

Subject to the Relevant Law the Trustee shall have the complete management and control of all proceedings matters and things in connection with the Fund and without derogating from any other provision of the Deed may do all acts and things which it considers necessary desirable or expedient for the proper administration maintenance and preservation of the Fund or any part thereof and in the exercise and performance of its powers and obligations under the Deed.

### **1.3.5. Specific Powers**

Subject to the Relevant Law but without limiting the generality of clause 1.3.4 or any other provision of the Deed, the Trustee shall have the following powers, that is to say power:

- (a) to appoint remove or suspend administrators, clerks, secretaries agents and other servants and delegates; appoint them for permanent, temporary or special services as the Trustee thinks fit; determine their powers and duties and fix and pay from the Fund their salaries or emoluments, and require security from any such person in such instances and to such amount as the Trustee may think fit;
- (b) to institute, conduct, defend, compound, compromise, settle or abandon any legal proceedings by or against the Fund or otherwise concerning the affairs or any property

of the Fund and also to compound and allow time for payment or satisfaction of any debt due and of any claim or demand by or against the Fund;

- (c) to refer any claim or demand by or against the Fund to arbitration and observe and perform the award;
- (d) to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
- (e) to determine who shall be entitled to give and sign in respect of the Fund or any part thereof receipts, acceptances, endorsements, releases, contracts and other documents (and the receipt of the Trustee or a duly authorised delegate of the Trustee is a sufficient discharge to the person to whom it is given);
- (f) to open bank accounts and to retain on current or deposit account at any bank such moneys as the Trustee considers proper and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques in connection therewith;
- (g) to act on the advice or opinion of any Qualified Adviser (whether or not such advice or opinion was obtained by the Trustee) or of any Fund Administrator or other delegate of the Trustee in relation to any relevant matter or question (including a Prescribed Activity) without being liable to any person in respect of anything done or omitted to be done by the Trustee in good faith based on such advice or opinion;
- (h) to give such undertakings and enter into such contracts and incur all such obligations relating to the Fund or any part thereof as the Trustee thinks fit, including without limitation giving a guarantee or indemnity in respect of any obligation assumed or undertaken by the Trustee or a delegate thereof in connection with the Fund;
- (i) in relation to the crediting and debiting of amounts to the Members' Benefit Accounts or the Reserve Account, the determination of interest for the purpose of the calculation of a benefit or otherwise, to round off any amount as it sees fit and, where compounding of interest is relevant, to compound the same on such basis and at such intervals as it considers to be consistent with the general intent of the Deed; and
- (j) to engage in any Prescribed Activity which the Trustee determines will promote:
  - (a) the Fund specifically; and
  - (b) the concept of industry superannuation funds generally;

**PROVIDED THAT** the Trustee may engage in the activity described in paragraph (a) only but shall not engage in any activity described in paragraph (b) only, **FURTHER PROVIDED THAT** the Trustee may only exercise its powers under this sub-clause (j) in the event that the Trustee has determined:

- (aa) that the Prescribed Activity is in the best interests of the present and future members of the Fund;
- (bb) that the expense of the Prescribed Activity is reasonable having regard to the potential benefits to the present and future members of the Fund; and
- (cc) the expense is reasonable having regard to the total value of the assets of the Fund.

- (k) to comply with any order from any court pursuant to the *Family Law Act 1975* in relation to the benefits of a Member and the rights of a Non-Member Spouse and a Non-Member Spouse Member which powers shall include but not be limited to, recording the existence of any flagging agreement or splitting agreement court order made pursuant to the *Family Law Act 1975* in relation to a Member and a Non-Member Spouse and the giving effect to any request by a Non-Member Spouse for information in respect of the Members' benefits or payment of any benefit in respect of a Non-Member Spouse or creating an interest in the Fund for a Non-Member Spouse who becomes a Non-Member Spouse Member.
- (l) to establish as part of, or as a fund separate to, the Fund a Plan, or a segment of a Plan (including a Sub-plan), Membership Division, Membership Section or Membership Category on such terms and in such manner as it determines (including where its approval of terms contained in the application for participation) **PROVIDED THAT** liabilities of a Plan or a segment of a Plan can only be satisfied out of the assets of that Plan or segment unless the Trustee otherwise determines.
- (m) to conclusively calculate and determine the amount of benefits, the identity of persons entitled to such benefits and the manner in which such benefits are to be paid, including the payment of benefits by way of pension or annuity (subject to the terms and conditions established by the Trustee at any time and subject to any requirements of the Relevant Law), and to delay payment of benefits to so that assets of the Fund can reasonably be disposed of and to revoke or change any benefit determination.
- (n) to apply amounts which are not for any reason payable to a Beneficiary (including any amounts in the Reserve Account) in any way which the Trustee determines consistent with the Relevant Law including reduction of Employer contributions or paying Fund Expenses.

### **1.3.6. Rules and Procedures**

The Trustee may make rules and adopt procedures in relation to the activity of the Fund including but not limited to the following:

- (a) the calculation and rounding-off of contributions, benefits and interest;
- (b) the minimum amount that can be accepted or retained in the Fund;
- (c) the circumstances in which benefits will be payable where the Relevant Law permits;
- (d) the establishment and operation of policy committees;
- (e) the establishment and operation of arbitration and dispute resolution procedures;
- (f) the determination of periods of time;
- (g) the payment or reserving for or providing for Tax;
- (h) any other matters which the Trustee considers appropriate for the convenient administration of the Fund.

### **1.3.7. Delegation by Trustee**

The Trustee may subject to the Relevant Law delegate any power vested in the Trustee (including without limitation a power which it has a duty to exercise or perform and the power of delegation herein provided for) to any person in such manner and upon such terms and conditions as it thinks fit. The Trustee may exercise any such power alone or in conjunction with, and to the permanent or temporary exclusion of, any delegate of the Trustee.

### **1.3.8. *Action Notwithstanding Interest***

- (a) The Trustee may exercise or concur in the exercise of any power vested in it under the Deed or at law notwithstanding that a Trustee or any person being an officer or shareholder in a Trustee or any person with whom a Trustee or an officer or shareholder is directly or indirectly related or associated may have a direct and personal interest in the mode or result of exercising such power or may benefit directly or indirectly as a result thereof.
- (b) Any person may be an officer servant or delegate of the Trustee and may exercise any power vested in him in that position notwithstanding that he may have a direct and personal interest in the manner and the result of exercising such power or may benefit directly or indirectly as a result thereof.

### **1.3.9. *Protection and Indemnity of Trustee***

- (a) The Trustee and each Authorised Person shall not be liable for or in respect of and shall be indemnified out of the Fund against any claim, liability, cost, loss, damage or expense whatsoever incurred or arising in connection with any act, omission or mistake in connection with the Deed or the Fund generally, including without limitation any loss or damage incurred as a result of:
  - (i) the insufficiency of or deficiency in any manner or form of investment in which moneys of the Fund may be invested pursuant hereto;
  - (ii) the bankruptcy, insolvency or tortious act of any delegate of the Trustee or any person with whom any permitted investment may be deposited; or
  - (iii) the payment of a benefit to a person reasonably believed to be entitled thereto but who is in fact not so entitled;
- (b) To the extent that the Fund is insufficient to indemnify a Trustee as provided in paragraph (a) hereof, there shall be no liability on the Principal Organisations or Employers to pay any additional moneys to the Fund to meet such insufficiency.
- (c) Notwithstanding the provisions of clause 1.3.9(a) and 1.3.9(b) any provision of the Deed which indemnifies or purports to indemnify the Trustee or any officer or director of the Trustee or any other person authorised to act on behalf of the Trustee shall be limited to the extent required in order to be valid under the Relevant Law.
- (d) Notwithstanding the provisions of clause 1.3.9(a), 1.3.9(b) and 1.3.9(c) any liability incurred in respect of a Plan or segment of a Plan can only be satisfied out of the assets of that Plan or segment unless the Trustee otherwise determines.

### **1.3.10. Fund Administrator**

- (a) Without limiting the generality of the powers conferred on the Trustee under the Deed, the Trustee may appoint an administrator of the Fund who shall be such person as the Trustee shall decide. Any such appointment shall be on such terms as the Trustee shall think fit and the Trustee may remove any such Fund Administrator and appoint another in his stead.
- (b) The Trustee may vest in a Fund Administrator such duties and powers in relation to administration and management of the Fund as they think fit and may likewise alter or extend the duties and powers of a Fund Administrator. Subject to the foregoing and to any directions by the Trustee, a Fund Administrator may have the following duties and powers:
- (i) the collection of amounts contributed or to be contributed to the Fund and the transfer of moneys and assets to and from any investment manager or custodian appointed pursuant to clause 1.4.4;
  - (ii) the arrangement of the Policy or Policies and the payment of premiums and other outgoings in respect thereof;
  - (iii) the collection, recording and dissemination of membership, contribution and other information for the purposes of the Fund;
  - (iv) the establishment and maintenance of bank accounts and membership, contribution and other necessary records including the Members' Accounts, the Reserve Account and any other accounts established in the Fund; and
  - (v) the calculation of benefits as required by the Trustee and the payment of benefits in accordance with the Deed,

and, where more than one Fund Administrator is appointed, they shall each have the particular powers and duties determined by the Trustee.

### **1.3.11. Confidentiality**

Except to the extent reasonably necessary in the operation and administration of the Fund and the proper application of the Deed, the Trustee, the Secretary and each delegate of the Trustee shall treat as confidential all information regarding Members and Beneficiaries which becomes known thereto in connection with the operation and administration of the Fund.

### **1.3.12. Fund Expenses**

Subject to the Relevant Law all Fund Expenses shall be payable by the Trustee out of the assets of the Fund in accordance with the applicable provisions of this Deed.

### **1.3.13. Appointment**

- (a) Subject to the Relevant Law, the Trustee may appoint any person including a person associated with the Fund or Trustee to 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.

## **1.4. Investment Powers**

### **1.4.1. Authorised Investments**

Subject to clause 1.4.2, the Trustee may in its own right or under its control invest the whole or any part of the moneys or assets of the Fund which are not immediately required for the purposes of clause 1.5 or for any other purpose under the Deed in any manner or form which the Trustee thinks fit, including without limitation any manner or form in which the Trustee could invest if it was acting personally and not as a trustee and was the sole and absolute legal and beneficial owner of the moneys and assets of the Fund, with the intention that the Trustee shall have the sole and unfettered discretion as to what is a suitable authorised investment.

### **1.4.2. Overriding Restrictions**

Notwithstanding anything expressed or implied to the contrary in this clause 1.4 or any other provision of the Deed:

- (a) no moneys or assets of the Fund shall be invested in such manner and form as, in the opinion of the Trustee, will be in breach of the Relevant Law;
- (b) no asset of the Fund shall be charged or otherwise encumbered except as permitted by the Relevant Law; and
- (c) no loans shall be made to or moneys invested in Members or Employers from the Fund.

### **1.4.3. Particular Powers**

Subject to clause 1.4.2, the Trustee shall have the following particular powers, namely:

- (a) to investigate, negotiate for, promote, create, acquire, underwrite, sub-underwrite, dispose of, transfer, exchange, collect, realise, alter, convert, improve, exploit, insure, extend, reconstruct, develop, manage and otherwise deal with and turn to account any investment (wheresoever situated) and any interest whatsoever therein and any right whatsoever in respect thereof (whether or not producing income) in such manner, at such times, with or without security, and subject to such conditions generally as it may think fit;
- (b) to exercise and perform all powers appertaining or incidental to any manner or form of investment and to discharge from the Fund all costs of and incidental to the powers vested therein under this clause, including without limitation the costs of the investigation of and negotiation for a prospective investment which does not become part of the Fund;



- (c) to enter into or acquire any investment either alone or in conjunction with any other person (including a trustee or manager of another trust) and to mix money or property forming part of the Fund with any other money or property (including money or property held or administered by a trustee or manager of another trust) but so long as at all times such separate and distinct records are maintained as will enable ready identification of the moneys and property attributable to the Fund; and
- (d) to cause or allow any investment to be entered into, made and held in the name of the Trustee or of any other person acceptable to the Trustee, whether or not such other person acts for the Trustee or for any other person.

#### **1.4.4. *Appointment of Investment Custodians and Investment managers***

The Trustee shall have power to:

- (a) appoint suspend or remove one or more persons firms or companies as it may think fit to act either as investment custodian or investment manager or both for such period and subject to such conditions as the Trustee may from time to time determine;
- (b) delegate to and confer upon each such investment custodian or investment manager such powers discretions and authorities relating to the holding of legal title and custody of title deeds and documents of any nature whatsoever as the Trustee shall think fit,

**PROVIDED THAT** any appointment of or delegation to an investment custodian or investment manager by the Trustee shall be in accordance with the Relevant Law and shall be in writing and shall incorporate any provisions required in order to satisfy the requirements of the Relevant Law.

#### **1.4.5. *Special Investment Arrangements***

- (a) Subject to clause 1.4.2, and to such conditions as the Trustee may impose either generally or in any particular case:
  - (i) the Trustee may establish investment portfolio arrangements within the Fund on such basis and within such parameters as the Trustee may consider appropriate (with any distinct portfolio of investments or classes of investments established for this purpose being hereinafter called a “**Special Portfolio**” and a Member may direct the Trustee (in such form, at such intervals and subject to such notice period, as the Trustee from time to time determines) to invest all or any part of the Member’s Benefit Accounts in or more Special Portfolios; and
  - (ii) at the invitation of or with the approval of the Trustee, given either generally or in any particular case, a Member may elect to revoke or vary any previous direction made by the Member as aforesaid and may make further directions.
- (b) The following overriding restrictions are applicable to Special Portfolios:
  - (i) the aggregate amount which may be invested in respect of a Member in Special Portfolios shall not exceed the total credit balances of the Member’s Benefit Accounts; and

- (ii) without limiting clause 1.4.4, the Trustee shall not be liable or responsible for or in connection with any cost, loss, expense or detriment suffered by any person as a result of the exercise, partial exercise or non-exercise of any power exercisable by the Trustee under this clause 1.4, including without limitation any detriment suffered as a result of:
  - (1) the Trustee failing to act on any direction by a Member or any delay in doing so; or
  - (2) the disposal by the Trustee of any Special Portfolio or its failure to dispose of a Special Portfolio in whole or in part, whether or not directed to do so by the Member concerned.
- (c) where any part of a Member's Account is invested in a Special Portfolio, in determining now and to what extent the relative investment performance of the Special Portfolio is referred in the amount of interest which is allocated to a Member's Account, the Trustee shall have due regard to the extent which, in the opinion of the Trustee, the balance in that particular Member's Account is represented by or is attributable to, on the one hand, investments forming part of the Special Portfolio and on the other hand, investment (if any) not forming part of the Special Portfolio.

## **1.5. Insurance Arrangements**

### **1.5.1. Effecting Insurance**

The Trustee may (and shall to the extent, if any, specified in the Deed or the Relevant Law) enter into or otherwise acquire any type of Policy or Policies or like arrangement (including any reinsurance arrangement with any person or fund) or any right or interest in respect thereof and with or subject to any option, right, benefit, term, condition or provision. The Trustee may pay out of the Fund all premiums and other outgoings in respect of such policy or arrangement and vary, surrender, terminate, assign or otherwise howsoever deal with the same as they think fit.

### **1.5.2. Restrictions and Adjustments**

- (a) If a Policy is effected or sought to be effected by the Trustee with an Insurer in respect of any benefit which might become payable from the Fund in respect of a person or group of persons and:
  - (i) that Insurer refuses to provide or increase insurable cover in respect of a person on its standard terms; or
  - (ii) that Insurer for any reason whatsoever fails to provide, increase or maintain or reduces, terminates or withholds insurance cover or does not admit or refuses to consider or defers a claim in whole or in part, unless otherwise determined by the Trustee, the benefits in respect of which the Policy has been or would have otherwise been effected shall be reduced to the extent to which the Policy has not been effected on standard terms or has otherwise not been obtained, increased or maintained or has been reduced, terminated or withheld or such claim is deferred or not admitted, and the Trustee may adjust any affected benefit in such manner as the Trustee may consider appropriate in effecting such a reduction.

- (b) If any event provided for in clause 1.5.2 occurs in relation to a Policy sought or effected, the Trustee shall not be bound to seek alternative on Policy with the same or another Insurer or, if the Trustee may decide to seek an alternative Policy, the Trustee may limit that search to such Insurer or Insurers as the Trustee may see fit.
- (c) In any case, the Trustee may adjust the amount, time for and basis of payment of all or part of a benefit in respect of which the Policy has been effected in such manner as the Trustee may consider appropriate to take account of the terms and conditions upon which the proceeds of such Policy are payable by the relevant Insurer and the amount thereof.
- (d) Any adjusted benefits provided pursuant to this clause shall be in lieu of and in full satisfaction of the benefits which would or might have been or become payable but for the operation of this clause.

## **1.6. Contributions and Benefits**

### **1.6.1. Application**

- (a) An individual or an Employer:
  - (1) may apply for participation in the Fund in a form approved by the Trustee;
  - (2) may subject to the Relevant Law be admitted by the Trustee notwithstanding that no application is received or requested;
  - (3) becomes a Participant from the date the Trustee accepts the application or other date determined by the Trustee.
- (b) Each Beneficiary irrevocably appoints the Trustee his or her attorney to do anything required or permitted by this Deed.

### **1.6.2. Contributions and Other Receipts**

- (a) Contributions are as set out in a Plan or a Sub-plan or otherwise are as the Trustee determines but can only be made in accordance with the Relevant Law.
- (b) Contributions payable by one Employer may be paid by another Employer.
- (c) In addition to contributions, the Trustee may accept:
  - (1) money or other assets from another benefit arrangement in respect of a Member on such terms and conditions as the Trustee may determine;
  - (2) contributions other than in cash, including superannuation guarantee shortfall vouchers; and
  - (3) contributions from any party or authority authorised to make such contributions pursuant to the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* on such basis as the Trustee may determine from time to time including but not limited to a determination by the Trustee it does not wish to accept part or all of such contributions as determined in the absolute discretion of the Trustee subject always to the Relevant Law.

### 1.6.3. **Benefits**

- (a) Benefits
- (1) are as set out in a Plan or Sub-Plan or otherwise are as the Trustee determines;
  - (2) are not payable unless the Beneficiary makes application, and provides information in accordance with the requirements of the Trustee;
  - (3) shall include Net Earnings up to the date of payment if the Trustee determines or Relevant Law requires;
  - (4) of a Beneficiary who in the Trustee's opinion is not capable of receiving a benefit or managing his affairs, may be paid to any person for the benefit of the Beneficiary;
  - (5) payable on the death of a Member are payable:
    - (A) by the Trustee to a person or persons being the legal personal representative or a Dependant or Dependents of the Member, in accordance with clause 1.6.3A.
    - (B) if the Trustee is unable to comply with sub-clause (A), then any benefit payable from the Fund on or after the death of a Member and which under the Deed is not expressed to be payable to or for the benefit of some other specified person or persons, shall be paid or applied by the Trustee to or for the benefit of such one or more of:
      - (i) the Member's Dependents;
      - (ii) the Member's legal personal representative; and
      - (iii) if a surviving Dependant of the Member subsequently dies, the Dependents and legal personal representative of the deceased Dependant, to the exclusion of the other or others of them and in such form, manner, proportions and subject to such conditions as the Trustee may determine.
    - (C) despite any other provision of this clause if the Trustee after reasonable enquiry decides that the deceased Member left no Dependents and if after reasonable further enquiry the Trustee is unable to locate any legal personal representative of the Member or any person who is entitled to become such legal personal representative then the Trustee shall apply the benefit in accordance with the Relevant Law.
- (b) Where a Member ceases to be an Employee and a benefit becomes payable from the Fund, the Member's benefit -
- (1) shall be retained in or transferred to a Plan or Sub-Plan nominated by the Trustee until the Trustee receives instructions from the Member that the benefit should be paid to another benefit arrangement acceptable to the Trustee, whereupon the Trustee may transfer the benefit to that other benefit arrangement subject to the Relevant Law; and

- (2) while the benefit is in the Plan or Sub-Plan nominated by the Trustee, the Trustee shall be entitled to adjust the investments representing the Member's benefits in the manner the Trustee determines; and
  - (3) may be transferred by the Trustee to another benefit arrangement nominated by the Trustee without the instruction of the Member if this is permitted by the Relevant Law,
- (c) In the case of a Member who participates in the Plan for Personal Accumulation Benefit Arrangements, the Accumulation Plan for Eligible Spouse Members or the Accumulation Plan for Non-Member Spouse Members where a benefit becomes payable from the Fund, the Member's benefit –
- (1) shall be retained in the Plan until the Trustee receives instructions from the Member that the benefit should be paid to another benefit arrangement acceptable to the Trustee, whereupon the Trustee may transfer the benefit to that other benefit arrangement subject to the Relevant Law; and
  - (2) while the benefit is in the Plan, the Trustee shall be entitled to adjust the investments representing the Member's benefits in the manner the Trustee determines.

**1.6.3A. Binding Nominations and Death Benefit Instructions**

- (a) A Member or applicant may give the Trustee, or the Trustee may accept in respect of the Member or applicant:
- (1) a Preferred Nomination;
  - (2) a Binding Nomination; or
  - (3) a Death Benefit Instruction, where the Trustee determined that a Death Benefit Instruction may be given by that Member or applicant, or Members and applicants in that category.
- (b) A Binding Nomination in respect of a benefit is revoked if the Member:
- (1) gives the Trustee notice in writing, in a form prescribed or accepted by the Trustee, that the Binding Nomination is revoked;
  - (2) gives the Trustee another Binding Nomination, or a Death Benefit Instruction or Preferred Nomination, in respect of that benefit or entitlement; or
  - (3) where the benefit or entitlement has become payable or is being paid as a pension, nominates a reversionary pensioner.
- (c) A Death Benefit Instruction in respect of a benefit is revoked if the Member:
- (1) gives the Trustee notice in writing, in a form prescribed or accepted by the Trustee, that the Death Benefit Instruction is revoked;
  - (2) gives the Trustee another Death Benefit Instruction, or a Binding Nomination or Preferred Nomination, in respect of that benefit or entitlement; or
  - (3) where the benefit or entitlement has become payable or is being paid as a pension, nominates a reversionary pensioner.

- (d) On receipt of a notice in the form of a Death Benefit Instruction, the Trustee must:
  - (1) consider whether to consent to the Death Benefit Instruction; and
  - (2) notify the Member if the Trustee does not consent.
- (e) A Death Benefit Instruction becomes invalid if:
  - (1) the Member's spouse named in a Death Benefit Instruction ceases to be the Member's spouse or becomes permanently separated from the Member;
  - (2) the Member commences a relationship with a Spouse who is not named in the Death Benefit Instruction;
  - (3) any person nominated as a Dependant:
    - (A) dies;
    - (B) ceases to be a Dependant of the Member; or
    - (C) ceases to be in a class of persons the Trustee has prescribed as eligible to be nominated in a Death Benefit Instruction.
- (f) A Valid Death Benefit Instruction is a Death Benefit Instruction that at the time of the Member's death has not become invalid under clause 1.6.3A(e).
- (g) A Preferred Nomination is not binding on the Trustee, but the Trustee may consider the Preferred Nomination when exercising the Trustee's discretions under clause 1.6.3(a)(5)(B).
- (h) On the death of a Member:
  - (1) where there is a reversionary pensioner, the Trustee must pay the death benefit as a pension to the reversionary pensioner in accordance with clause 4.18 or clause 4.19 (as applicable);
  - (2) where there is a Binding Nomination, the Trustee must pay the death benefit to the person or persons nominated, and if more than one person is nominated in the proportions specified;
  - (3) where there is a Valid Death Benefit Instruction, the Trustee must pay the death benefit to the person or persons nominated, and if more than one person is nominated in the proportions specified.

#### **1.6.4. Non-Member Spouses**

- (a) If the Trustee receives a splitting agreement or Court order under Part VIII B of the Family Law Act 1975 which has been properly served, the Trustee may (at the written request of the Non-Member Spouse or otherwise if permitted by the Relevant Law):
  - (1) create an interest for the Non-Member Spouse in the Fund and admit them as a Non-Member Spouse Member in accordance with clause 2.4;
  - (2)
    - (A) pay to the Non-Member Spouse; or
    - (B) transfer to another benefit arrangement (including an eligible rollover fund) in respect of the Non-Member Spouse, any amount which becomes payable in respect of the Non-Member Spouse and the receipt of a Non-Member Spouse or the trustee of such

other arrangement shall be a sufficient discharge of the Trustee of its liability in respect of the Non-Member Spouse.

- (b) If the Trustee creates such an interest or makes such a payment or transfer in respect of a Non-Member Spouse, it must adjust, vary or reduce any benefit payable or which may become payable from the Fund in respect of the relevant Member on such basis (including by the establishment of a negative accumulation account) and at such times as the Trustee determines having regard to the advice of the Actuary, and to the extent permitted by Relevant law.
- (c) The Trustee may make rules dealing with:
  - (1) the valuation of the interest of a Non-Member Spouse;
  - (2) the timing of the calculation of the value of that interest;
  - (3) any other matters relating to the Non-Member Spouse's membership of the Fund, as it determines from time to time subject to the Relevant Law;
- (d) If the Trustee is required by the Relevant Law to defer a payment split, it must:
  - (1) record the existence of the notice of payment split so long as it has been properly served; and
  - (2) keep a record of the Non-Member Spouse's interest in the Fund on such basis (including a notional basis) and in such manner as the Trustee determines having regard to the to the advice of the Actuary subject to the Relevant Law.

### **1.6.5. Conditional Payments**

Each Participant agrees with the Trustee:

- (a) that if the Participant receives a payment, the recipient must repay to the Trustee on demand such amount as the Trustee determines should not have been paid to the recipient where:
  - (1) the Trustee determines insufficient Tax has been deducted from the benefit;
  - (2) the Trustee's decision to pay the benefit was overturned by a court or tribunal, and to release and indemnify the Trustee for any loss or damage arising to or claimed against the Trustee from the repayment to the Trustee or otherwise from the operation of this clause.
- (b) that the Trustee is completely discharged in respect of any payment under this Deed including to a person the Trustee believes in good faith is entitled to the benefit.

## **1.7. Accounts and Records**

### **1.7.1. Accounts and Records**

The Trustee must keep and retain records and financial accounts of the Fund as required by the Relevant Law. The Trustee otherwise has full power to keep records and accounts of the Fund. The records and accounts of the Fund shall be audited by an Auditor duly appointed by the

Trustee and the Auditor shall have access to such papers, accounts and documents connected with the Fund as the Trustee considers should be accessible to him or her and shall certify to the Trustee the result of such an audit in writing. The appointment of the Auditor shall be on such terms as the Trustee may think fit and in accordance with the Relevant Law and the Trustee may remove any Auditor and appoint another in substitution therefore.

### **1.7.2. Accounts**

Further to its Powers under clauses 1.3.4 and 1.3.5, the Trustee may maintain any accounts it determines, including accounts to record the benefits of the Members. It must credit and debit those accounts with any Fund Expenses or Net Earnings it determines are attributable to those accounts and may otherwise credit and debit those accounts with any other amount and in any other manner it considers appropriate.

### **1.7.3. Net Earnings**

(a) Subject to clause 1.7.3(b) Net Earnings must be:

- (1) attributed to Members;
- (2) allocated to any account; or
- (3) otherwise dealt with in accordance with this Deed, in the manner determined by the Trustee having regard to any Investment Portfolio nominated pursuant to clause 1.4.5 and any separate investments made pursuant to clause 1.4.1.

(b) The Trustee may, at such times as it considers appropriate, make an interim determination of Net Earnings and make interim allocations in accordance with this Deed.

(c) Without limiting clause 1.7.3(a), Net Earnings may be allocated by way of:

- (1) an interest or earning rate (positive or negative) or change in unit valuation; or
- (2) in the case of an interim allocation made under clause 1.7.3(b), an interim interest or earning rate (positive or negative) or unit valuation as determined by the Trustee, whether or not such a determination is made in advance.

(d) In determining Net Earnings, in addition to the matters referred to in clause 1.7.3(a), the Trustee may take into account the assets (including unrealized assets) and liabilities (including unrealised liabilities) and otherwise may adopt whatever assumptions, methodology and procedures it considers appropriate, including:

- (1) methodology and procedures concerning the method and basis of valuing particular property;
- (2) the intervals at which valuations must be carried out; and
- (3) the reserving or averaging of income.



#### 1.7.4. **Reserve Accounts**

(a) The Trustee may establish one or more Reserve Accounts in respect of an Employer who is a Participant in a Plan, Sub-Plan, Membership Division, Membership Category, or Membership Section (**the Employer Reserve Account**), into which may be credited, so far as they relate to that part of the Plan, Sub-Plan, Membership Division, Membership Category, or Membership Section, relating to that Employer:

- (i) any amount not required to meet current benefit liabilities for those Members or Beneficiaries who are or were Employees of that Employer;
- (ii) any difference between the net income of the Plan or Sub-Plan and the Net Earnings attributed to Members;
- (iii) any amount required or permitted to be credited to the Reserve Account under a Participation Schedule; and
- (iv) any other amounts the Trustee determines should be credited to the Reserve Account.

The Trustee may make debits from an Employer Reserve Account in the following order of priority:

- (1) if required by the Employer, for contributions payable or allocations made by the relevant Employer;
- (2) for Fund Expenses relating to the relevant Employer including any Tax that would have been payable had the Employer actually paid contributions;
- (3) for any other purposes agreed between the Trustee and the Employer; or
- (4) for any amount required or permitted to be debited to a Reserve Account under the Rules or a Participation Schedule.

(b) In addition to any Employer Reserve Account established pursuant to Clause 1.7.4(a), the Trustee may establish a Reserve Account which is not relevant to any particular Employer and shall be utilised by the Trustee for the benefit of all Members irrespective of the Plan in which any Member participates (**the Operating Reserve Account**), into which may be credited:

- (i) any amount which the Deed may require to be credited thereto and which the Trustee may consider it appropriate and equitable to credit thereto;
- (ii) any fees imposed by the Trustee including but not limited to any Asset Based Fees which are referred to in the definition of Fund Expenses;
- (iii) the amounts paid to the Fund by an Insurer in respect of any Policy resulting from a rebate of premiums or bonus but excluding any amount resulting from any claim which shall be credited to the Member's Account; and the Trustee may make debits from the Operating Reserve Account for:

- (a) any Fund expenses which the Trustee determines to debit from this account rather from Members' Accounts and from Employer Reserve Accounts; and
- (b) any other amount which the Deed may require to be debited thereto or the Trustee may consider it appropriate and equitable to debit thereto

**1.7.5. Trustee Remuneration**

- (a) Trustee has a right to be paid and retain for itself such reasonable remuneration as it determines.
- (b) The Trustee's remuneration under clause 1.7.5(a) may be deducted in the manner determined by the Trustee from the Fund.
- (c) The Trustee may charge a different fee or amount to any member or class of members based on such criteria as it determines is fair and reasonable.

**1.7.6. Actuarial valuations and certificates and treatment of surplus or mistaken contributions**

- (a) The Trustee must appoint an Actuary for any Plan or Sub-Plan which provides defined benefits. The Trustee must ensure that an actuarial valuation for each Plan or Sub-Plan is conducted when Relevant Law requires. The Trustee must obtain all actuarial certificates required by Relevant Law in relation to each such Plan or Sub-Plan.
- (b) If the valuation provided in accordance with clause 1.7.6(a) discloses that the value of the assets of the Plan or Sub-Plan (as determined by the Actuary) exceeds the liabilities of the Plan or Sub-Plan (as determined by the Actuary) all or part of the difference may be applied by the Trustee, in its absolute discretion:
  - (1) in meeting an Employer's obligations to contribute to the Plan or Sub-Plan; or
  - (2) at the request of the Employer, by making a payment of that amount to an Employer provided that, prior to making that payment, the Trustee must comply with the requirements of the Relevant Law.

**1.8. Participation in Fund**

**1.8.1. Participation**

- (a) The Trustee may:
  - (1) subject to the Relevant Law accept a payment by or in respect of a person who has not applied to become a Participant in the Fund, in which case the person shall be a Participant from the date of such acceptance of payment or such other date determined by the Trustee; or
  - (2) without limiting clause 1.8.1(a), determine that a person who has not applied for participation is a Participant on and from a date determined by the Trustee.
- (b) A Beneficiary has no right to claim any interest or exercise any right in any particular asset of the Fund.

- (c) Where a Policy is effected in respect of a Beneficiary or Beneficiaries, the benefits of the Beneficiary or Beneficiaries shall be determined in accordance with the terms and conditions of that Policy.

### **1.8.2. Cessation of Participation**

- (a) A Beneficiary ceases to be a Beneficiary when all the benefits of the Beneficiary are paid or otherwise satisfied or dealt with under this Deed.
- (b) An Employer automatically ceases to participate in a Plan or a Sub-Plan if:
  - (1) no Members are Employees of the Employer; or
  - (2) the Employer ceases to carry on business for any reason or become bankrupt unless:
    - (A) another person succeeds to the business of the Employer; and
    - (B) the Trustee admits that other person as a Participant instead of the Employer.
- (c) An Employer may elect to cease participation in a Plan or a Sub-Plan by giving 30 days advance written notice to the Trustee (or any shorter period agreed by the Trustee).
- (d) The Trustee may give notice to an Employer requiring it to cease participation from a date specified in the notice.
- (e) Where an Employer ceases to participate in a Plan or a Sub-Plan, the Trustee must set aside in respect of each Member employed by the Employer:
  - (1) where the Plan or a Sub-Plan provides defined benefits, the amounts determined by the Actuary to have accrued for the period up to the date of cessation of participation unless the Participation Schedule provides otherwise; or
  - (2) where the Plan or a Sub-Plan provides accumulation benefits, the Member's Account Balance; and
  - (3) any greater amount agreed between the Trustee and the Employer and transfer the amounts set aside to another benefit arrangement nominated by the Employer and approved by the Trustee, or in the absence of any nomination, determined by the Trustee.
- (f) Any amount remaining in the Plan or a Sub-Plan attributable to the Employer must be transferred to the Reserve Account, unless the Trustee and the Employer otherwise agree.

### **1.8.3. Special Arrangements**

A person may agree with the Trustee that the participation of the person is subject to, or is varied in accordance with, the conditions contained in the agreement, including the amount of contributions to be made or benefits to be paid in respect of the person. Such agreement is binding on all interested persons without the need to amend this Deed.

#### **1.8.4. Provision of Information**

- (a) Each Beneficiary must provide all information and evidence, sign all documents, undergo all medical examinations and tests, and generally satisfy all standards and requirements requested by the Trustee.
- (b) The Trustee may refuse to admit a person as a Member or place conditions on the person's membership if:
  - (1) the person does not comply with this clause 1.8.4 to the satisfaction of the Trustee; or
  - (2) information provided by the person is incorrect or contains an omission.
- (c) The Trustee must provide information to Participants as and when required by the Relevant Law.

#### **1.8.5. Employer powers and discretions**

In the exercise of its powers and discretions under this Deed the Employer has an absolute discretion:

- (1) to exercise that power or discretion;
- (2) not to exercise that power or discretion;
- (3) to partly exercise that power or discretion;
- (4) may exercise that power or discretion in its own interest;
- (5) is not under any fiduciary or other obligation in the exercise or nonexercise of that power or discretion; and
- (6) is not obliged to explain its conduct.

#### **1.8.6. Employer decision final**

The decision of the Employer is final and binding on all persons on any matter relating to employment including:

- (1) the date on which a person commenced or left employment;
- (2) whether or not an Employee is actively employed;
- (3) an Employee's Salary or wages; and
- (4) the terms and conditions of an Employee's employment generally.

### **1.9. Termination of Plans**

#### **1.9.1. Trustee's Discretion**

The Trustee may terminate a Plan or Sub-Plan after giving reasonable notice to the Participant or Participants, but if the Regulator so requires the Trustee must not terminate a Sub-Plan

governed under Part 3 of the Deed without first obtaining the advice of the Actuary and the approval of the Regulator.

### **1.9.2. Other Circumstances**

The Trustee must terminate a Plan or Sub-Plan if:

- (a) all Employers have ceased to be Participants in the relevant Sub-Plan under clause 1.8.2; or
- (b) all Employers have ceased to contribute to the relevant Plan or Sub-Plan (but an Employer is not considered to have ceased contributions when it is on a contribution holiday).

### **1.9.3. Termination Date**

The Termination Date is the date determined by the Trustee.

### **1.9.4. Arrears of Contributions**

Each Employer and each Member must immediately pay any arrears of contributions up to the Termination Date.

### **1.9.5. Application of Assets**

On termination, the Trustee must apply the assets of the relevant Plan or Sub-Plan in the following order of priority:

- (a) all costs, expenses and liabilities which have been incurred or are likely to be incurred in respect of the relevant Plan or Sub-Plan (including the termination of the relevant Plan or Sub-Plan);
- (b) benefits (including pensions) being provided from the relevant Plan or Sub-Plan which commenced payment or to which an entitlement arose before the Termination Date;
- (c) paying to or in respect of the Members governed by the relevant Plan or Sub-Plan:
  - (1) where the Plan or Sub-Plan provides accumulation benefits, the Members' Account Balances (less any amount mentioned in paragraph (b));
  - (2) where the Plan or Sub-Plan provides defined benefits, the amount which the Actuary determines has accrued in respect of the Members under the relevant Plan or Sub-Plan during the period up to the Termination Date (less any amount mentioned in paragraph (b)), but if the assets are not sufficient, the amount to be applied in respect of all Members under this rule must be proportionately reduced; and
- (d) subject to any Participation Schedule, the balance of the assets must be applied in increasing Members' entitlements and benefits in payment from the relevant Plan or

Sub-Plan on a proportionate basis.

### **1.9.6. Securing of Entitlements**

- (a) The Trustee may make any arrangements it considers appropriate in securing any entitlements of a Beneficiary on the termination of a Plan or Sub-Plan, including:
- (1) the purchase of an annuity; or
  - (2) the transfer of assets representing the entitlement to another benefit arrangement; or
  - (3) payment to the Beneficiary.
- (b) On completion of the arrangements under sub-rule (a):
- (1) no person (including any contingent beneficiary) has any right against the Trustee or an Employer in respect of any entitlement under the relevant Plan;
  - (2) the Trustee is discharged from the trusts of the relevant Plan or Sub-Plan.
- (c) No person (including any contingent beneficiary) has any right against the Trustee or an Employer in respect of any money or assets transferred to another benefit arrangement.

## **1.10. Proper Law**

### **1.10.1. Proper Law of Deed**

Without limiting clause 1.10.2, the Deed shall be governed construed and shall take effect in accordance with the laws of the State of New South Wales  
**PROVIDED THAT**, if the Trustee considers it advantageous for the Fund or is otherwise in the interests of the Members or Beneficiaries, the Trustee may with the consent of the Prescribed Proportion of the Principal Organisations declare that from a particular date the Deed shall be governed and construed and shall take effect in accordance with the laws of another State or Territory of Australia, and thenceforth the laws of the specified new jurisdiction shall apply in lieu of the laws of the formerly applicable jurisdiction.

### **1.10.2. Other Relevant Laws**

Notwithstanding clause 1.10.1, but subject to the Relevant Law, the Trustee may adjust the powers, entitlements and obligations of any Member or Beneficiary or any other person under the Deed to such extent and in such manner as the Trustee considers strictly necessary in order to comply with any law or governmental requirement of any jurisdiction and not just the jurisdiction the laws of which apply for the time being under clause 1.10.1.

## **1.11. Amendments**

### **1.11.1. Amendment to Obtain Taxation Concessions**

Subject to the Relevant Law and notwithstanding clause 1.11.2, the Trustee may by deed or by oral or written resolution amend add to delete or replace all or any of the provisions of the Deed (including this clause 1.11.1) as the Trustee sees fit where in the opinion of the Trustee (whose decision shall be final) the principal purpose of such amendment addition deletion or replacement is:

- (a) to secure or better secure exemption relief or concessions from or in respect of taxation or any other governmental impost for or in relation to the Fund, the income of the Fund, an Employer, a Member, a Beneficiary or potential Beneficiary, any benefit which is or may become payable from the Fund, or the payment of such a benefit; or
- (b) to enable or better enable the Fund or the Deed to comply with any present or future law custom or practice of or within the Commonwealth of Australia or any State or Territory thereof (or any other country state or territory which the Trustee considers relevant in relation to the affairs of the Fund, a Member or a Beneficiary) in relation to superannuation or like funds or benefits or employee benefits generally or otherwise,

**PROVIDED THAT** prior to the execution of any such deed amendment or the making of any such oral or written resolution, the Trustee shall be required to provide not less than 30 days written notice to each of the Principal Organisations of the proposed amendment and the Trustee shall only be permitted to execute the deed amendment or make any oral or written resolution if there is no objection to the proposed amendment made by the Nominated Proportion of the Principal Organisations given to the Trustee in writing prior to the expiration of the 30 day notice period referred to herein, and any such amendment addition deletion or replacement shall take effect on the date on which the deed, instrument or resolution is executed or made or such later date as is specified therein for that purpose.

### **1.11.2. Other Amendments**

- (a) Subject to the Relevant Law (and any consents required thereunder) and without limiting clause 1.11.1, the Trustee may, by deed or by oral or written resolution, amend, add to, delete or replace all or any of the provisions of the Deed (including this clause 1.11.2) as the Trustee sees fit, **PROVIDED THAT** prior to the execution of any such deed amendment or the making of any such oral or written resolution, the Trustee shall be required to provide not less than 30 days written notice to each of the Principal Organisations of the proposed amendment and the Trustee shall only be permitted to execute the deed amendment or make any oral or written resolution if there is no objection to the proposed amendment made by the Nominated Proportion of the Principal Organisations and given to the Trustee in writing prior to the expiration of the 30 day notice period referred to herein, and any such amendment, addition, deletion or replacement shall take effect on the date the Deed, instrument or resolution is executed or made or such later date as it is specified therein for that purpose.
- (b) Notwithstanding the provisions of clause 1.11.1 and clause 1.11.2 no amendments shall be made to the Deed which:

- (i) adversely affect a Member's right or claim to accrued benefits, or the amount of those accrued benefits, unless the amendments are consistent with the Relevant Law; or
- (ii) are not in accordance with the Relevant Law.

## **1.12. Portability of Benefits**

### **1.12.1. Transfers from Other Funds**

- (a) Subject to the Relevant Law, the Trustee may accept into the Fund from the trustee of, or other person responsible for another fund or benefit arrangement or any Eligible Spouse or Member who is a participant or former participant in another fund or benefit arrangement an agreed sum or agreed assets in respect of an Eligible Spouse or Member and any such Eligible Spouse, if not already a Member, shall be admitted as an Eligible Spouse Member and the Trustee shall allocate the agreed sum or the value of the agreed assets received into the Fund in respect of the Member to the Member's Benefit Accounts as the Trustee in accordance with the Relevant Law thinks fit.
- (b) The Trustee may, where the Trustee determines that it does not prejudice the existing Members to do so, arrange for the transfer in from another superannuation fund ("Other Fund") of some or all the Members of that Other Fund.
- (c) To effect any such transfer in the Trustee may, notwithstanding the terms of this Deed:
  - (i) enter into any agreement with the trustee of the Other Fund for the purpose of effecting the transfer;
  - (ii) take such courses of action as may be necessary to properly account for the accrued benefits of the transferees and any reserve in the Other Fund being transferred to the Fund.

### **1.12.2. Transfers to Other Funds**

- (a) Subject to the Relevant Law, the Trustee with the consent of the Member may pay or transfer to or towards another fund or benefit arrangement in which the Member participates or is eligible to participate all or part of the amounts standing to the credit of the Member's Accounts.
- (b) Notwithstanding clause 1.12.2(a) but subject to the Relevant Law the Trustee may without the consent or approval of a Member pay or transfer to or towards another fund or benefit arrangement which is a Successor Fund in which the Beneficiary or Member participates or is eligible to participate as the Trustee may in each case determine money or property representing the value of all or part of the amounts standing to the credit of the Member's Accounts.

### **1.12.3. Method and Effect of Transfers Out**

- (a) The Trustee may effect a payment or transfer under clause 1.12.1 or clause 1.12.2 by way of payment of money and/or transfer of assets. The receipt of the trustees of, or of any other person responsible for,



another fund or benefit arrangement (including in the case of an annuity effected in respect of a Member, the body providing that annuity) shall be a sufficient discharge to the Trustee and neither the Trustee nor any Employer shall be in any way responsible for the application or disposal by such other trustees or responsible person of money or assets so transferred. Unless the Trustee determines otherwise, upon the completion of such a payment or transfer in respect of a Member or Beneficiary, all of the rights and interests of that Member or Beneficiary under the Deed (and all of the rights and interests of any person otherwise entitled to claim in respect of the Member or Beneficiary or on the occurrence of any event or circumstance affecting the Member or Beneficiary) shall be entirely extinguished.

- (b) In relation to any permissible payment or transfer under clause 1.12.1 or clause 1.12.2, the Trustee shall impose such conditions as it considers necessary under the Relevant Law and such other conditions as it thinks fit.

#### **1.12.4. *Transfer to Eligible Rollover Fund***

- (a) Notwithstanding any other provision of this clause but subject always to the Relevant Law the Trustee:
  - (i) shall transfer all or part of the amount outstanding to the credit of the Member's Accounts to an Eligible Rollover Fund as required by the Relevant Law; and
  - (ii) may transfer all or part of the amount outstanding to the credit of a Member's Accounts to an Eligible Rollover Fund as permitted by the Relevant Law and shall not be required to obtain the consent of the Member to effect such transfers.

### **1.13. Superannuation Splitting Arrangements**

#### **1.13.1. *Arrangements for Members***

- (a) Notwithstanding Clause 1.12.2 and subject to the Relevant Law, the Trustee may at the request of a Member rollover or transfer to another fund or benefit arrangement of which the Member's Spouse is a member or Allot within the Fund where the Member's Spouse is also a Member, an amount of benefits for the Member's Spouse not exceeding the maximum amount permitted under the Relevant Law and in so doing shall be entitled to rely upon the information provided by the Member and/or the Member's Spouse to the Trustee in the form of any application and/or statement required pursuant to the Relevant Law; and
- (b) In the event that the Trustee agrees to comply with any request made by a Member pursuant to Clause 1.13.1(a) the Trustee must within the period described in the Relevant Law, Allot, rollover or transfer the amount of benefits for the Member's Spouse which are the subject of the application made by the Member referred to in Clause 1.13.1(a).

**1.13.2. Arrangements in relation to a Member's Spouse**

Notwithstanding Clause 1.12.1 and subject to the Relevant Law, if a Member is the Spouse of a member of another fund or benefit arrangement and the Spouse has requested the trustee of that other fund or benefit arrangement to transfer or rollover all or part of the Spouse's benefit in the other fund or benefit arrangement to the Fund for the benefit of the Member, the Trustee may agree with that trustee to transfer into the Fund such benefit and shall allocate same to the Member's Account on such basis as the Trustee shall agree with the Member.

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**PART 2**  
**ACCUMULATION PLANS**

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**2.1 Plan for Employer-Sponsored Accumulation Benefit Arrangements**

**2.1.1 Application of Part 2**

*Participation*

- (a) All Members who were Members immediately prior to the Amendment Date and all other Members who become Members on or after that date shall participate in the Employer-Sponsored Accumulation Plan established under this clause 2.1.1 unless and until such Members become participants in a Sub-plan established pursuant to a Participation Schedule or become Participants in another Plan established pursuant to Parts 2, 3 or 4.

*Terms of Participation*

- (b) The terms of Participation for participants in the Employer-Sponsored Accumulation Plan shall be in accordance with this clause 2.1.

*Limitation on variation of terms of participation*

- (c) An Employer participating in this Plan under clause 2.1, must not vary the terms and conditions of membership applicable to a Member of this Plan where the variation would increase the Member's obligation to contribute to this Plan, unless the Member consents to the variation in writing.

**2.1.2 Participants**

***Employers:***

- (a) An Employer who may contribute or otherwise pay amounts into a Plan may participate in this Plan as an Employer subject to the approval of, and any conditions imposed by, the Trustee.

***Members:***

- (b) A person who is eligible under the Relevant Law to be a Member may participate in this Plan as a Member subject to the approval of, and any conditions imposed by, the Trustee.

***Other persons:***

- (c) Any other person who may be admitted to participation under clause 1.8.

### 2.1.3 Account

- (a) There must be established in respect of each Member an account to be called the “**Member’s Account**” and the “**Member’s Account Balance**” is the credit balance in that Account at any particular time (after all the relevant credits and debits have been made in accordance with clause 2.1.3(b) and (c).
- (b) There shall be credited to the Member’s Account –
- (1) all Employer contributions or allocations and all Member contributions to the Plan;
  - (2) any amounts transferred in respect of the Member from another Plan;
  - (3) any amounts transferred to the Fund in respect of the Member from another benefit arrangement acceptable to the Trustee and which the Trustee determines to credit to the Account;
  - (4) any Policy Proceeds;
  - (5) Net Earnings (if positive); and
  - (6) any other amounts which this Deed may require to be credited to the Account or which the Trustee may determine to credit to the Account.
- (c) There shall be debited to the Member’s Account -
- (1) any amounts which the Trustee may determine to debit in respect of Fund Expenses (including any Tax that would have been payable had an Employer actually paid contributions);
  - (2) any amounts transferred in respect of the Member to a benefit arrangement acceptable to the Trustee and which the Trustee determines to debit to the Account;
  - (3) any amounts transferred to another Plan;
  - (4) any benefit attributable to the Account;
  - (5) Net Earnings (if negative); and
  - (6) any other amounts which this Deed may require to be debited to the Account or which the Trustee may determine to debit to the Account.
- (d) The Trustee may establish sub-accounts within a Member’s Account and maintain and operate any sub-account for any purpose and in any manner the Trustee considers appropriate. The total of the credit balances in all such sub-accounts shall form the Member’s Account Balance.

## **2.1.4 Contributions**

### ***Employer contributions***

- (a) An Employer may subject to the Relevant Law contribute, allocate or otherwise pay such amounts and in such manner approved by the Trustee.

### ***Member contributions***

- (b) A Member (or other person in respect of a Member) may subject to the Relevant Law contribute or otherwise pay such amounts and in such manner approved by the Trustee.

## **2.1.5 Benefits**

Unless otherwise provided in the Participation Schedule –

### ***Leaving employment***

- (a) A Member is entitled to the Member's Account Balance upon ceasing to be an Employee of the Employer at any time when no benefit is payable under clause 2.1.5(b) or (c).

### ***Total and Permanent Disablement***

- (b) A Member is entitled to the Member's Account Balance on Total and Permanent Disablement. The Trustee may pay that Account Balance in such instalments and on such other conditions as it determines.

### ***Death***

- (c) On the death of a Member, a death benefit equal to the Member's Account Balance is payable according to clause 1.6.3.

### ***Preservation***

- (d) A benefit of a Beneficiary:
  - (1) must be preserved in the Fund or transferred pursuant to clause 1.12.2.
  - (2) may, with the approval of the Trustee, be preserved in the Fund or transferred pursuant to clause 1.12.2.

### ***Temporary Disablement***

- (e) If the Trustee has taken out a Policy covering Temporary Disablement in respect of a Member, the Trustee must pay the Member the Policy Proceeds.

### ***Other circumstances***

- (f) A benefit of a Beneficiary may be paid in such other circumstances permitted by the Relevant Law.

### ***Method of payment***

- (g) A Member is entitled to exercise any of the following options in respect of the benefit that is payable under this Plan, to the extent that the benefit is not required to be preserved:
  - (1) to receive the amount in cash;
  - (2) to receive a pension; or
  - (3) to receive part under option (1) and the remainder under option (2).

### ***Deferral***

- (h) If a Member requests, the Trustee may defer payment of all or part of the Member's benefit under this Plan. Where payment of the Member's benefit under this Plan is deferred, the Trustee may (subject to the Relevant Law) continue to accept contributions for the Member. If a Member requests, the Trustee must (subject to the Relevant Law) pay all or any part of the Member's deferred benefit under this Plan.

## **2.1.6 Spouse Superannuation**

### **(a) Participants**

If permitted by the Trustee, an Eligible Spouse may participate in the Plan.

### **(b) Account**

- (1) There must be established in respect of each Eligible Spouse Member an account to be called the “**Eligible Spouse Member’s Account**” and the “**Eligible Spouse Member’s Account Balance**” is the credit balance in that Account at any particular time (after all the relevant credits and debits have been made in accordance with sub-paragraphs (2) and (3)).
- (2) There shall be credited to the Eligible Spouse Member’s Account –
  - (A) all contributions to the Plan made by or in respect of the Eligible Spouse Member;
  - (B) any amounts transferred in respect of the Eligible Spouse Member from another Plan;
  - (C) any amounts transferred to the Fund in respect of the Eligible Spouse Member from another benefit arrangement acceptable to the Trustee and which the Trustee determines to credit to the Account;

- (D) any Policy Proceeds;
- (E) Net Earnings (if positive); and
- (F) any other amounts which this Deed may require to be credited to the Account or which the Trustee may determine to credit to the Account.

(3) There shall be debited to the Eligible Spouse Member's Account -

- (A) any amounts which the Trustee may determine to debit in respect of Fund Expenses;
- (B) any amounts transferred in respect of the Eligible Spouse Member to a benefit arrangement acceptable to the Trustee and which the Trustee determines to debit to the Account;
- (C) any amounts transferred to another Plan;
- (D) any benefit attributable to the Account;
- (E) Net Earnings (if negative); and
- (F) any other amounts which this Deed may require to be debited to the Account or which the Trustee may determine to debit to the Account.

(c) **Contributions**

A Member may make contributions to the Plan in respect of an Eligible Spouse Member, subject to the requirements of the Relevant Law and, if the Trustee approves and, subject to any conditions which the Trustee determines, an Eligible Spouse Member may make contributions in accordance with the Relevant Law.

(d) **Benefits**

Unless otherwise provided in the Participation Schedule –

**Death**

- (1) On the death of an Eligible Spouse Member, a death benefit equal to the Eligible Spouse Member's Account Balance is payable according to clause 1.6.3.

**Other circumstances**

- (2) An Eligible Spouse Member shall be entitled to the Eligible Spouse Member's Account Balance in all other circumstances when a benefit is permitted under the Relevant Law to be paid to the Member.

**Preservation**

(3) A benefit of an Eligible Spouse Member –

- (A) must be preserved in the Fund or transferred pursuant to clause 1.12.2.;

- (B) may, with the approval of the Trustee, be preserved in the Fund or transferred pursuant to clause 1.12.2.

***Method of payment***

- (4) An Eligible Spouse Member is entitled to exercise any of the following options in respect of the benefit that is payable under this Plan, to the extent that the benefit is not required to be preserved:
  - (A) to receive the amount in cash;
  - (B) to receive a pension; or
  - (C) to receive part under option (A) and the remainder under option (B).

***Deferral***

- (5) If an Eligible Spouse Member requests, the Trustee may defer payment of all or part of the Eligible Spouse Member's benefit under this Plan. Where payment of the Eligible Spouse Member's benefit under this Plan is deferred, the Trustee may (subject to the Relevant Law) continue to accept contributions for the Eligible Spouse Member. If an Eligible Spouse Member requests, the Trustee must (subject to the Relevant Law) pay all or any part of the Eligible Spouse Member's deferred benefit under this Plan.

**2.2 Plan for Personal Accumulation Benefit Arrangements**

**2.2.1 Definitions**

“Normal Retirement Age” means the age selected by the Member and approved by the Trustee for payment of his or her benefit. If no age is selected, the age is taken to be 65.

**2.2.2 Participants**

**(a) Members**

A person who is eligible under the Relevant Law to be a Member may participate in this Plan as a Member subject to the approval of, and any conditions imposed by, the Trustee.

**(b) Other persons**

Any other person who may be admitted to participation under clause 1.8.1 or is transferred to the Plan pursuant to clause 1.12.1.

**2.2.3 Accounts**

- (a) There must be established in respect of each Member an account to be called the “**Member’s Account**” and the “**Member’s Account Balance**” is the credit balance in that Account at any particular time (after all the relevant credits and debits have been made in accordance with clauses 2.2.3(b) and (c)).

- (b) There shall be credited to the Member’s Account –



- (1) all contributions to the Plan made by or in respect of the Member;
  - (2) any amounts transferred in respect of the Member from another Plan;
  - (3) any amounts transferred to the Fund in respect of the Member from another benefit arrangement acceptable to the Trustee and which the Trustee determines to credit to the Account;
  - (4) any Policy Proceeds;
  - (5) Net Earnings (if positive); and
  - (6) any other amounts which this Deed may require to be credited to the Account or which the Trustee may determine to credit to the Account.
- (c) There shall be debited to the Member's Account -
- (1) any amounts which the Trustee may determine to debit in respect of Fund Expenses;
  - (2) any amounts transferred in respect of the Member to a benefit arrangement acceptable to the Trustee and which the Trustee determines to debit to the Account;
  - (3) any amounts transferred to another Plan;
  - (4) any benefit attributable to the Account;
  - (5) Net Earnings (if negative); and
  - (6) any other amounts which this Deed may require to be debited to the Account or which the Trustee may determine to debit to the Account.

#### **2.2.4 Contributions**

- (a) A Member (or other person in respect of a Member) may contribute or otherwise pay such amounts and in such manner approved by the Trustee.
- (b) The Member must identify contributions and other amounts when required by the Trustee.

#### **2.2.5 Benefits**

Unless otherwise provided in the Participation Schedule –

##### ***Normal Retirement***

- (a) A Member is entitled to the Member's Account Balance on or after the Normal Retirement Age.

##### ***Total and Permanent Disablement***

- (b) A Member is entitled to the Member's Account Balance on Total and Permanent Disablement. The Trustee may pay that Account Balance in such instalments and on such other conditions as it determines.

### ***Death***

- (c) On the death of a Member a death benefit equal to the Member's Account Balance is payable according to clause 1.6.3.

### ***Preservation***

- (d) A benefit of a Beneficiary:
  - (1) must be preserved in the Fund or transferred pursuant to clause 1.12.2;
  - (2) may, with the approval of the Trustee, be preserved in the Fund or transferred pursuant to clause 1.12.2.

### ***Temporary Disablement***

- (e) If the Trustee has taken out a Policy covering Temporary Disablement in respect of a Member, the Trustee must pay the Member the Policy Proceeds.

### ***Other circumstances***

- (f) A benefit of a Beneficiary may be paid in such other circumstances permitted by the Relevant Law, including the payment to or in respect of a Beneficiary who transferred to the Plan under clause 1.12.1.

### ***Method of payment***

- (g) A Member is entitled to exercise any of the following options in respect of the benefit that is payable under this Plan, to the extent that the benefit is not required to be preserved:
  - (1) to receive the amount in cash;
  - (2) to receive a pension; or
  - (3) to receive part under option (1) and the remainder under option (2).

### ***Deferral***

- (h) If a Member requests, the Trustee may defer payment of all or part of the Member's benefit under this Plan. Where payment of the Member's benefit under this Plan is deferred, the Trustee may (subject to the Relevant Law) continue to accept contributions for the Member. If a Member requests, the Trustee must (subject to the Relevant Law) pay all or any part of the Member's deferred benefit under this Plan.

## **2.3 Accumulation Plan for Eligible Spouse Members**

### **2.3.1 Participants**

If permitted by the Trustee, an Eligible Spouse may participate in the Fund.

### **2.3.2 Account**

- (a) There must be established in respect of each Eligible Spouse Member an account to be called the “**Eligible Spouse Member’s Account**” and the “**Eligible Spouse Member’s Account Balance**” is the credit balance in that Account at any particular time (after all the relevant credits and debits have been made in accordance with clauses 2.3.2(b) and (c).
- (b) There shall be credited to the Eligible Spouse Member’s Account –
- (1) all contributions to the Plan made by or in respect of the Eligible Spouse Member;
  - (2) any amounts transferred in respect of the Eligible Spouse Member from another Plan;
  - (3) any amounts transferred to the Fund in respect of the Eligible Spouse Member from another benefit arrangement acceptable to the Trustee and which the Trustee determines to credit to the Account;
  - (4) any Policy Proceeds;
  - (5) Net Earnings (if positive); and
  - (6) any other amounts which this Deed may require to be credited to the Account or which the Trustee may determine to credit to the Account.
- (c) There shall be debited to the Eligible Spouse Member’s Account -
- (1) any amounts which the Trustee may determine to debit in respect of Fund Expenses;
  - (2) any amounts transferred in respect of the Eligible Spouse Member to a benefit arrangement acceptable to the Trustee and which the Trustee determines to debit to the Account;
  - (3) any amounts transferred to another Plan;
  - (4) any benefit attributable to the Account;
  - (5) Net Earnings (if negative); and
  - (6) any other amounts which this Deed may require to be debited to the Account or which the Trustee may determine to debit to the Account.

### **2.3.3 Contributions**

A Member may make contributions to the Fund in respect of an Eligible Spouse Member, subject to the requirements of the Relevant Law and, if the Trustee approves and, subject to any conditions which the Trustee determines, an Eligible Spouse Member may make contributions in accordance with the Relevant Law.

### **2.3.4 Benefits**

Unless otherwise provided in the Participation Schedule –

#### ***Death***

- (a) On the death of an Eligible Spouse Member, a death benefit equal to the Eligible Spouse Member's Account Balance is payable according to clause 1.6.3.

#### ***Other circumstances***

- (b) An Eligible Spouse Member shall be entitled to the Eligible Spouse Member's Account Balance in all other circumstances when a benefit is permitted under the Relevant Law to be paid to the Member.

***Preservation:*** A benefit of an Eligible Spouse Member -

- (c)
  - (1) must be preserved in the Fund or transferred pursuant to clause 1.12.2;
  - (2) may, with the approval of the Trustee, be preserved in the Fund or transferred pursuant to clause 1.12.2.

#### ***Method of payment***

- (d) An Eligible Spouse Member is entitled to exercise any of the following options in respect of the benefit that is payable under this Plan, to the extent that the benefit is not required to be preserved:
  - (1) to receive the amount in cash;
  - (2) to receive a pension; or
  - (3) to receive part under option (1) and the remainder under option (2).

#### ***Deferral***

- (e) If an Eligible Spouse Member requests, the Trustee may defer payment of all or part of the Eligible Spouse Member's benefit under this Plan. Where payment of the Eligible Spouse Member's benefit under this Plan is deferred, the Trustee may (subject to the Relevant Law) continue to accept contributions for the Eligible Spouse Member. If an Eligible Spouse Member requests, the Trustee must (subject to the Relevant Law) pay all or any part of the Eligible Spouse Member's deferred benefit under this Plan.

## **2.4 Accumulation Plan for Non-Member Spouses**

### **2.4.1 Participants**

If permitted by the Trustee, a Non-Member Spouse may participate in the Fund.

### **2.4.2 Account**

- (a) There must be established in respect of each Non-Member Spouse Member an account to be called the “**Non-Member Spouse’s Account**” and the “**Non-Member Spouse’s Account Balance**” is the credit balance in that Account at any particular time (after all the relevant credits and debits have been made in accordance with clauses 2.4.2(a) and (c))
- (b) There shall be credited to the Non-Member Spouse’s Account:
- (1) any amounts transferred to the Fund in respect of the Non-Member Spouse Member from another benefit arrangement acceptable to the Trustee and which the Trustee determines to credit to the Account;
  - (2) any amounts transferred in respect of the Non-Member Spouse Member from another plan;
  - (3) any contributions by or in respect of the Non-Member Spouse;
  - (4) any Policy Proceeds;
  - (5) Net Earnings (if positive); and
  - (6) any other amounts which this Deed may require to be credited to the Account or which the Trustee may determine to credit to the Account.
- (c) There shall be debited to the Non-Member Spouse’s Account:
- (1) any amounts which the Trustee may determine to debit in respect of Fund Expenses;
  - (2) any amounts transferred in respect of the Non-Member Spouse Member to a benefit arrangement acceptable to the Trustee and which the Trustee determines to debit to the Account;
  - (3) any amounts transferred to another Plan in respect of the Non-Member Spouse Member;
  - (4) any benefit attributable to the Account in respect of the Non-Member Spouse Member;
  - (5) Net Earnings (if negative); and
  - (6) any other amounts which this Deed may require to be debited to the Account or which the Trustee may determine to debit to the Account.

### **2.4.3 Contributions**

If permitted by the Trustee, a Non-Member Spouse Member may contribute to the Fund, subject to the requirements of the Relevant Law.

#### **2.4.4 Benefits**

Unless otherwise provided in the Participation Schedule:

##### ***Death***

- (a) On the death of a Non-Member Spouse Member, a death benefit equal to the Non-Member Spouse's Account Balance is payable according to clause 1.6.3.

##### ***Other circumstance***

- (b) A Non-Member Spouse Member shall be entitled to the Non Member Spouse's Account Balance in all other circumstances when a benefit is permitted under the Relevant Law to be paid to the Member.

##### ***Preservation***

- (c) A benefit in respect of a Non-Member Spouse Member:
  - (1) must be preserved in the Fund or transferred pursuant to clause 1.12.2;
  - (2) may be transferred pursuant to clause 1.12.2.

##### ***Method of payment***

- (d) A Non-Member Spouse Member is entitled to exercise any of the following options in respect of the benefit that is payable under this Plan, to the extent that the benefit is not required to be preserved:
  - (1) to receive the amount in cash;
  - (2) to receive a pension; or
  - (3) to receive part under option (1) and the remainder under option (2).

##### ***Deferral***

- (e) If a Non-Member Spouse Member requests, the Trustee may defer payment of all or part of the Non-Member Spouse Member's benefit under this Plan. Where payment of the Non-Member Spouse Member's benefit under this Plan is deferred, the Trustee may (subject to the Relevant Law) continue to accept contributions for the Non-Member Spouse Member. If a Non-Member Spouse Member requests, the

Trustee must (subject to the Relevant Law) pay all or any part of the Non-Member Spouse Member's deferred benefit under this Plan.

## **2.5 MySuper Product**

### **2.5.1 Commencement**

This clause shall commence from the Relevant Date.

### **2.5.2 Characteristics**

- (1) Where a Member who has not elected in writing to the Trustee to have all SGC Act Contributions made by an Employer to the Fund on behalf of the Member who participates in the Fund pursuant to Part 2.1 or Part 2.2 of the Deed to a Choice Product then any such contributions (**Default Contributions**) shall be credited by the Trustee to the Member's Account pursuant to Clause 2.1.3 or Clause 2.2.3 as the case may be and shall be a class of beneficial interest in the Fund in a specific product in accordance with the Relevant Law (**MySuper Product**).
- (2) Notwithstanding any other provisions of this Deed but subject to the Relevant Law, the MySuper Product to which contributions are made pursuant to Clause 2.5.2(1) shall have the following characteristics:
  - (a) a single diversified investment strategy must be adopted by the Trustee in relation to the asset of the Fund that are attributed to the MySuper Product, and
  - (b) all Members who hold a beneficial interest in the MySuper Product shall be entitled to access the same options, benefits and facilities, and
  - (c) in respect of the crediting of Net Earnings (if positive) or the debiting of Net Earnings (if negative) to a Member's Account, the same process must be adopted for all Members subject to Clause 2.5.2(3), and
  - (d) in respect of attributing any Fund Expenses to the Member's Account the same process and timing of any deduction must be adopted for all Members **PROVIDED THAT** if an Employer elects to subsidise any fees payable by Members all Members who are employees of that Employer shall be entitled to the subsidy on an identical basis, and
  - (e) the Fund shall also accept contributions other than Default Contributions by or on behalf of a Member (including an Eligible Spouse Member or a Non-Member Spouse Member) other than where such contributions are proscribed in accordance with the Relevant Law and any such contributions shall be credited by the Trustee to the Member's Account on the same basis as for Default Contributions, and

- (f) A Member's beneficial interest in the MySuper Product (MySuper Interest) cannot be replaced with another type of beneficial interest in the Fund unless:
    - (i) the other type of interest is in another MySuper Product in the Fund, or
    - (ii) the Member who holds the interest consents in writing to the replacement, and
  - (g) A Member's MySuper Interest beneficial interest in the My Super Product (**the Existing Interest**) cannot be replaced with another type of beneficial interest in another fund or benefit arrangement (**the Replacement Interest**) unless:
    - (i) the Replacement Interest is in a MySuper Product and the replacement is either permitted or required under the Relevant Law, or
    - (ii) the Member who holds the Existing Interest consents in writing to the replacement, and
  - (h) A Member's MySuper Interest is only payable as a lump sum other than in accordance with the Relevant Law.
- (3) Notwithstanding Clause 2.5.1(2)(c) Net Earnings (if positive or negative) may be credited or debited to a Member's Account on a differential basis in the following circumstances:
- (a) exclusively on the basis of the age of the Member,
  - (b) on the basis of the age of the Member and other prescribed factors and/or in prescribed circumstances in accordance with the Relevant Law.

### **2.5.3 Fund Expenses**

Any Fund Expenses which are debited by the Trustee to the Member's Account in respect of the Member's MySuper Interest beneficial interest in the Fund of the Member in the MySuper Product shall only be so debited in accordance with the Relevant Law which applies to MySuper Products as to both the nature of the fees payable and the charging rules in respect of the payment of such Fund Expenses.

### **2.5.4 Insured Benefits**

Notwithstanding any other relevant provisions of this Deed (including clause 1.5) the Trustee shall effect a Policy or Policies as required under that Relevant Law to provide insured benefits to all members who hold a MySuper Interest beneficial interest in the MySuper Product in the event of their death or Permanent Incapacity including but not limited to arrangements which permit any such Member to elect not to be entitled to such insured benefits including circumstances where such election is made prior to the Relevant Date.

### **2.5.5 Accrued Default Amount**

The Trustee shall prior to the Prescribed Date transfer any Accrued Default Amount in respect of any Member to the MySuper Product other than where the Member to whom the Accrued Default Amount is attributable directs the Trustee in writing to



transfer such amount to another MySuper Product or an investment option within a Choice Product in the Fund and in circumstances where such a transfer occurs, the Trustee shall comply with the Relevant Law in relation to any notification to be provided to the Members for whom there is an Accrued Default Amount before a decision is taken to transfer the amount to a MySuper Product, an investment option within a Choice Product in the Fund or to another MySuper Product.

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**PART 3**  
**EMPLOYER-SPONSORED DEFINED BENEFIT PLANS**

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**3.1 Definitions**

For the purposes of this Part 3 and this Plan, the following definitions apply and other terms are defined in the Participation Schedule:

**“Accumulation Member”** means a Member who is classified by the Employer as a Member who will receive benefits in accordance with Clause 3.8.

**“Defined Benefits Member”** means a Member who is classified by the Employer as a Member who will receive benefits in accordance with clause 3.6 or clause 3.7.

**“Minimum SG Benefit”** of a member means the minimum benefit set out in any benefit certificate issued in respect of the relevant Sub-plan under the SG Legislation.

**“Normal Retirement Date”** means the date when the Member attains age 65 years or such other date as may be provided in the Participation Schedule.

**“SG Legislation”** means the Superannuation Guarantee (Administration) Act 1992 and the Superannuation Guarantee Charge Act 1992.

**“Special Employer Account”** means an account established under clause 3.3.

**3.2 Participation**

**(a) Employers:**

An Employer who may contribute or otherwise pay amounts into a Plan may participate in a Sub-Plan as an Employer subject to the approval of, and any conditions imposed by, the Trustee.

**(b) Members:**

An Employee of an Employer who is:

- (1) eligible under Relevant Law to be a Member; and
- (2) classified by the Employer as a Defined Benefits Member or an Accumulation Member or both,

may participate in a Sub-Plan as a Member subject to the approval of, and any conditions imposed by, the Trustee. In the case of a Defined Benefits Member the Employer must also designate whether the Member is to receive lump sum benefits under clause 4.6 or pension benefits under clause 3.7.

(c) **Classification of Members**

The Employer may re-classify a Member from time to time but any reclassification must not reduce the Member's accrued benefit.

**3.3 Special Employer Account**

(a) The Trustee may establish in respect of each Employer participating in a Sub-Plan an account to be called the Employer's Special Account and allocate to that account:

- (1) those Members who are Employees of that Employer and the Beneficiaries whose benefits the Trustee considers to be attributable to that account;
- (2) the amount or value of the assets and liabilities of the Plan which the Trustee after obtaining the advice of the Actuary, considers to be attributable to the benefits of Members and Beneficiaries allocated to that account on such basis as the Trustee considers appropriate;
- (3) contributions paid into the Fund which the Trustee considers to be attributable to the benefits of Members and Beneficiaries allocated to that account on such basis as the Trustee considers appropriate;
- (4) Net Earnings of the Fund which the Trustee considers to be attributable to the assets and liabilities allocated to that account; and
- (5) any other amounts which the Participation Schedule requires to be allocated to that account and may debit to that account;
- (6) contributions payable or allocations made by an Employer in respect of its Employees who are Members governed by the Sub-Plan;
- (7) Fund Expenses which the Trustee determines are appropriate to allocate to that account (including any Tax that would have been payable had an Employer actually paid contributions);
- (8) amounts paid or transferred out of the Plan in respect of a Member or Beneficiary allocated to the account;
- (9) amounts paid or transferred out of the Plan in respect of the Employer pursuant to clause 1.12.1;
- (10) amounts transferred to the Reserve Account by agreement of the Trustee and the Employer; and
- (11) any other amounts which the Participation Schedule requires to be debited to that account.

- (b) The Trustee may:
- (1) cause the Actuary to make actuarial investigations of each Special Employer Account and Sub-Plan at times determined by the Trustee and to report to the Trustee and the Employer as to the state and sufficiency of that account having regard to the liabilities attributable to that account and any other matter the Actuary considers relevant;
  - (2) determine the contributions payable by an Employer at any time in respect of Members allocated to that account solely by reference to the state and sufficiency of the Special Employer Account and Sub-Plan; and
  - (3) provide to the Employer a copy of the actuarial valuations and certificates relevant to the Employer's Sub-plan.
- (c) The Trustee may establish sub-accounts within a Special Employer Account and maintain and operate any sub-account for any purpose and in any manner the Trustee considers appropriate.

### **3.4 Accumulation Member Accounts**

The Trustee must establish in respect of each Accumulation Member an account to be called the "**Member's Account**" and the "**Member's Account Balance**" is the credit balance in that Account at any particular time (after all the relevant credits and debits have been made in accordance with clauses 3.4(a) and (b)).

- (a) There shall be credited to the Member's Account -
- (1) all Employer contributions or allocations and all Member contributions to the Sub-Plan;
  - (2) any amounts transferred in respect of the Member from another Plan;
  - (3) any amounts transferred to the Fund in respect of the Member from another benefit arrangement acceptable to the Trustee and which the Trustee determines to credit to the Account;
  - (4) any Policy Proceeds;
  - (5) Net Earnings (if positive); and
  - (6) any other amounts which this Deed may require to be credited to the Account or which the Trustee may determine to credit to the Account.
- (b) There shall be debited to the Member's Account –
- (1) any amounts which the Trustee may determine to debit in respect of Fund Expenses (including any Tax that would have been payable had an Employer actually paid contributions);
  - (2) any amounts transferred in respect of the Member to a benefit arrangement acceptable to the Trustee and which the Trustee determines to debit to the Account;

- (3) any amounts transferred to another Plan;
  - (4) any benefit attributable to the Account;
  - (5) Net Earnings (if negative); and
  - (6) any other amounts which this Deed may require to be debited to the Account or which the Trustee may determine to debit to the Account.
- (c) The Trustee may establish sub-accounts within a Member's Account and maintain and operate any sub-account for any purpose and in any manner the Trustee considers appropriate. The total of the credit balances in all such sub-accounts shall form the Member's Account Balance.

### **3.5 Contributions**

#### **(a) Employer contributions**

- (1) Subject to clause 3.5(d), the Employer must contribute:
  - (A) in respect of Defined Benefit Members at the rate determined by the Trustee on the advice of the Actuary; and
  - (B) in respect of Accumulation Members, as agreed between the Trustee and the Employer.
- (2) An Employer may make additional contributions in respect of some or all Members or make extra contributions to be used for the purposes of the relevant Sub-plan and may direct how any extra Employer contributions are to be applied.

#### **(b) Member contributions**

- (1) Any amount which Members are required to contribute is set out in the Participation Schedule.
- (2) A Member may make voluntary contributions to the Sub-Plan on such terms, conditions and restrictions as the Employer and the Trustee agree and impose.

#### **(c) Release of Member contributions**

- (1) The Employer may release a Member from making required contributions and attach conditions to that release.
- (2) The Trustee must adjust the benefits payable in respect of a Member –
  - (A) who is released from making required contributions unless the Employer and the Trustee agree to deem those contributions to have been made or the Employer pays any additional contributions which the Actuary advises are necessary as a result of the release to ensure the stability of the relevant Sub-plan; or

- (B) who does not pay required Member contributions as required or agreed.

(d) **Termination, reduction or suspension of Employer contributions**

- (1) An Employer may terminate, reduce or suspend its contributions in respect of some or all Members by giving notice to the Trustee.
- (2) The termination, reduction or suspension takes effect from the date of receipt of the notice or any later date specified in the notice, even if the Employer is then on a contribution holiday.
- (3) The Trustee must adjust benefits in respect of the Members concerned to take account of the termination, reduction or suspension of an Employer's contribution or any failure by an Employer to contribute as required or agreed, after obtaining the advice of the Actuary.
- (4) An Employer may revoke a notice given under this sub-rule. If a notice is revoked the Trustee may readjust benefits and contributions in respect of the Members concerned in a manner which the Trustee considers equitable.
- (5) The Members concerned must accept any adjusted benefits as their full entitlement. An adjustment cannot be challenged by any interested person.

**3.6 Defined Benefits – Lump sum**

This Rule applies to Defined Benefit Members who have been designated by the Employer to receive lump sum benefits under this clause 3.6, unless the circumstances of benefit entitlement are otherwise provided in the Participation Schedule.

(a) **Retirement benefits:**

- (1) If a Member ceases to be an Employee:
  - (A) on or after age 55 but before the Member's Normal Retirement Date; or
  - (B) on the Member's Normal Retirement Date; or
  - (C) if a Member requests payment of a benefit on the Member's Normal Retirement Date, the Member is entitled to a lump sum benefit calculated as provided in the Participation Schedule.
- (2) If a Member ceases to be an Employee after the Member's Normal Retirement Date the Member is entitled to a lump sum benefit calculated as provided in the Participation Schedule.

(b) **Death benefits:**

- (1) If a Member dies while an Employee on or before the Member's Normal Retirement Date a lump sum benefit is payable in respect of the Member calculated as provided in the Participation Schedule.
- (2) If a Member dies while an Employee after the Member's Normal Retirement Date a lump sum benefit is payable in respect of the Member calculated as provided in the Participation Schedule.

(c) **Total and Permanent Disablement benefits:**

If a Member ceases to be an Employee before the Member's Normal Retirement Date because of Total and Permanent Disablement the Member is entitled to a lump sum benefit calculated as provided in the Participation Schedule.

(d) **Temporary Disablement**

If a Member becomes temporarily disabled within the meaning of any Policy effected by the Trustee in respect of the Member with the consent of the Employer, the Trustee must pay the Member the Policy Proceeds.

(e) **Leaving Employment**

If a Member ceases to be an Employee in any other circumstances the Member is entitled to a lump sum benefit calculated as provided in the Participation Schedule.

(f) **Benefit for Voluntary Contributions**

If:

- (1) a Member has paid voluntary contributions to the Sub-Plan under clause 3.5(b)(2); or
- (2) an Employer has paid additional contributions to the Sub-Plan and directed them to be applied on behalf of the Member under clause 3.5(a)(2), an additional lump sum benefit is payable to or in respect of the Member when the Member ceases to be an Employee for any reason (including death).

The additional lump sum benefit is equal to the sum of:

- (3) the additional contributions referred to in clauses 3.6(f)(1) and (a)(2);
- (4) any allowance for Tax which the Employer may have required under Rule 3.5(a)(2); and
- (5) Net Earnings compounded to the date of payment.

### **3.7 Defined Benefits - Pension**

This Rule applies to Defined Benefit Members who have been designated by the Employer to receive pension benefits under this clause 3.7, unless otherwise provided in the Participation Schedule.

(a) **Retirement Benefits**

- (1) If a Member ceases to be an Employee on the Member's Normal Retirement Date, the Member is entitled to a pension payable on the conditions and calculated as provided in the Participation Schedule.
- (2) If a Member ceases to be an Employee after the Normal Retirement Date the Member is entitled to a pension payable on the conditions and calculated as provided in the Participation Schedule.
- (3) If a Member ceases to be an Employee on or after the age of 55 but before the Member's Normal Retirement Date the Member is entitled to a pension payable on the conditions and calculated as provided in the Participation Schedule.

(b) **Death of Pensioner**

If a Pensioner dies leaving a Spouse, the Pensioner's Spouse is entitled to a Pension calculated as provided in the Participation Schedule.

(c) **Death, Disablement and Leaving Employment**

The amount, form and method of calculating the benefits payable on the death or disablement of a Member or upon the Member otherwise ceasing to be an Employee are as set out in the Participation Schedule.

**3.8 Accumulation Benefits**

This Rule applies to Accumulation Members. Unless otherwise provided in the Participation Schedule –

**Leaving employment**

- (a) If a Member ceases to be an Employee when no benefit is payable under clause 3.8(b) or (c), the Member is entitled to the Member's Account Balance.

**Total and Permanent Disablement:**

- (b) If a Member ceases to be an Employee because of Total and Permanent Disablement the Member is entitled to the Member's Account Balance.

**Death**

- (c) On the death of a Member, a death benefit equal to the Member's Account Balance is payable.

**Temporary Disablement**

- (d) If a Member becomes temporarily disabled within the meaning of any Policy effected by the Trustee in respect of the Member with the consent of the Employer, the Trustee must pay the Member the Policy Proceeds.



### **Other circumstances**

- (e) The Trustee may pay the whole or part of the Member's Account Balance in such other circumstances permitted by Relevant Law. A benefit which must be preserved under Relevant Law may, with the approval of the Trustee, be retained in the Sub-Plan or transferred to another Plan or benefit arrangement pursuant to clause 1.12.2.

### **3.9 Spouse Superannuation**

#### **(a) Participants**

If permitted by the Trustee, an Eligible Spouse may participate in the Sub- Plan.

#### **(b) Account**

- (1) There must be established in respect of each Eligible Spouse Member an account to be called the "**Eligible Spouse Member's Account**" and the "**Eligible Spouse Member's Account Balance**" is the credit balance in that Account at any particular time (after all the relevant credits and debits have been made in accordance with sub-paragraphs (2) and (3)).
- (2) There shall be credited to the Eligible Spouse Member's Account –
- (A) all contributions to the Sub-Plan made by or in respect of the Eligible Spouse Member;
  - (B) any amounts transferred in respect of the Eligible Spouse Member from another Sub-Plan;
  - (C) any amounts transferred to the Fund in respect of the Eligible Spouse Member from another benefit arrangement acceptable to the Trustee and which the Trustee determines to credit to the Account;
  - (D) any Policy Proceeds;
  - (E) Net Earnings (if positive); and
  - (F) any other amounts which this Deed may require to be credited to the Account or which the Trustee may determine to credit to the Account.
- (3) There shall be debited to the Eligible Spouse Member's Account –
- (A) any amounts which the Trustee may determine to debit in respect of Fund Expenses;
  - (B) any amounts transferred in respect of the Eligible Spouse Member to a benefit arrangement acceptable to the Trustee and which the Trustee determines to debit to the Account;
  - (C) any amounts transferred to another Sub-Plan;
  - (D) any benefit attributable to the Account;
  - (E) Net Earnings (if negative); and

- (F) any other amounts which this Deed may require to be debited to the Account or which the Trustee may determine to debit to the Account.

(c) **Contributions**

A Member may make contributions to the Sub-Plan in respect of an Eligible Spouse Member, subject to the requirements of the Relevant Law and, if the Trustee approves and, subject to any conditions which the Trustee determines, an Eligible Spouse Member may make contributions in accordance with the Relevant Law.

(d) **Benefits**

Unless otherwise provided in the Participation Schedule –

- (1) **Death:** On the death of an Eligible Spouse Member, a death benefit equal to the Eligible Spouse Member's Account Balance is payable according to clause 1.6.3.
- (2) **Other circumstances:** An Eligible Spouse Member shall be entitled to the Eligible Spouse Member's Account Balance in all other circumstances when a benefit is permitted under the Relevant Law to be paid to the Member.
- (3) **Preservation:** A benefit of an Eligible Spouse Member –
  - (A) must be preserved in the Fund or transferred pursuant to clause 1.12.2;
  - (B) may, with the approval of the Trustee, be preserved in the Fund or transferred pursuant to clause 1.12.2.
- (4) **Method of payment:** If a benefit is payable under this Plan and the Eligible Spouse Member does not request to the contrary, the Trustee may transfer the Eligible Spouse Member to another Plan or the Sub-plan and pay the benefit under that plan including by way of payment of a pension under clause 1.3.6.

**3.10 Benefits – general provisions**

(a) **Alternative form of benefits:**

Instead of taking a benefit in its usual form a Beneficiary may elect that all or part of the benefit is replaced with another benefit in a different form, subject to such terms and conditions as the Trustee and the Employer may agree upon.

(b) **Augmentation of benefits:**

The Trustee must augment a Member's benefit entitlement as requested by the Employer, except to the extent that an Employer does not pay any additional contributions which the Actuary advises are necessary to ensure the stability of the relevant Sub-plan.

(c) **Part-time or casual employment:**

Any benefits based on a salary which apply to a Member who is not employed on a full-time or permanent basis shall be calculated using the salary of an equivalent full-time permanent employee, but reduced in the proportion the number of part-time hours the Member usually works bears to the number of hours the Employer considers an equivalent full-time employee would work, unless the Participation Schedule provides otherwise.

(d) **Leave of absence:**

A Member's period of absence from active employment must not be included for the purposes of calculating benefits or calculating contributions payable to the relevant Sub-plan by or in respect of the Member, unless the Member, the Employer and the Trustee agree otherwise.

(e) **Minimum SG Benefit:**

Despite anything to the contrary the amount of benefit payable from the Plan on termination of employment of any Member must not be less than the Member's Minimum SG Benefit.

(f) **Adjustments:**

(1) Insurance: If

- (A) insurance is not obtained in respect of a Member on the insurer's standard terms;
- (B) the level or scope of insurance obtained is restricted in respect of a Member; or
- (C) the insurer does not admit or pay all or part of a claim in respect of a Member, the Trustee must reduce any benefits payable on the death or disablement of the Member as the Trustee considers appropriate, unless the Trustee and the Employer otherwise agree.

**Tax**

- (2) If the Employer will not meet any additional associated cost as a result of changes in Tax or Tax arrangements, the Trustee must adjust the amount of and conditions relating to any benefits and contributions payable in respect of the relevant Sub-plan.

**Double Counting**

- (3) The Trustee must adjust any benefit payable from the Plan to take account of any amount which has already been included in the calculation, application or payment of another benefit from the Plan.

For the purposes of this provision, an amount is deemed to have been included in the calculation of a benefit if any factor involved in the calculation of the benefit (whether it be the whole or part of a period of time, the whole or part of a monetary amount, contributions in respect of a Member or any other factor the Trustee considers relevant) has already been taken into account.

The Members concerned must accept any adjusted benefits as their full entitlement. An adjustment cannot be challenged by any interested person.

### **3.11 Overriding Effect of Participation Schedule**

The provisions of this Part 3 are subject to any contrary intention expressed in the Participation Schedule. Any additional provisions contained in the Participation Schedule will take effect in respect of the relevant Sub-Plan as if they were expressly included in this Part 3.

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## PART 4

### ALLOCATED PENSION, TERM ALLOCATED PENSION AND ACCOUNT-BASED PENSION ARRANGEMENTS

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#### 4.1 Definitions

For the purposes of this Part 4 and this Plan, the following definitions apply and other terms are defined in the Trust Deed:

**Account-Based Pension** means payments made by the Trustee to a Beneficiary in accordance with Part 4 of this Deed.

**“Account-Based Pension Member”** means a Member who is in receipt of or is to receive an Account-Based Pension.

**“Allocated Pension”** means a pension which satisfies the Relevant Law and in particular Regulation 1.06(4) of the SIS Regulations **PROVIDED THAT** no such pension shall commence on or after the Prescribed Date.

**“Allocated Pension Member”** means a member who is in receipt of or is to receive an Allocated Pension (including a TRAP);

**“Prescribed Date”** means 20 September 2007.

**“Term Allocated Pension Member”** means a Member who is in receipt of or is to receive a Term Allocated Pension.

**“Term Allocated Pension”** means a pension which satisfies the Relevant Law and in particular Regulation 1.06(8) of the SIS Regulations.

**“TRAP”** means a transition to retirement income stream as that term is defined in Regulation 6.01(2) of the SIS Regulations.

#### 4.2 Participants

A person who is eligible under the Relevant Law to be a Member may participate in this Plan as a Member subject to the approval of, and any conditions imposed by, the Trustee.

#### 4.3 Account

- (a) There must be established in respect of each Member an account to be called the **“Member’s Account”** and the **“Member’s Account Balance”** is the credit balance in that Account at any particular time (after all the relevant credits and debits have been made in accordance with clauses 4.3(b) and (c)).

- (b) There shall be credited to the Member's Account -
  - (1) any amounts transferred in respect of the Member from another Plan;
  - (2) any amounts transferred to the Fund in respect of the Member from another benefit arrangement acceptable to the Trustee and which the Trustee determines to credit to the Account;
  - (3) any Policy Proceeds;
  - (4) Net Earnings (if positive); and
  - (5) any other amounts which this Deed may require to be credited to the Account or which the Trustee may determine to credit to the Account.
- (c) There shall be debited to the Member's Account -
  - (1) any amounts which the Trustee may determine to debit in respect of Fund Expenses;
  - (2) any amounts transferred in respect of the Member to a benefit arrangement acceptable to the Trustee and which the Trustee determines to debit to the Account;
  - (3) any amounts transferred to another Plan;
  - (4) any benefit attributable to the Account;
  - (5) Net Earnings (if negative); and
  - (6) any other amounts which this Deed may require to be debited to the Account or which the Trustee may determine to debit to the Account.
- (d) The Trustee may establish sub-accounts within a Member's Account and maintain and operate any sub-account for any purpose and in any manner the Trustee considers appropriate. The total of the credit balances in all such sub-accounts shall form the Member's Account Balance.

#### **4.4 Contributions**

The Trustee may accept contributions as it determines, in accordance with the Relevant Law in respect of an Account-Based Pension Member, an Allocated Pension Member or a Term Allocated Pension Member as the case may be.

#### **4.5 Pension**

Where the Trustee determines under clause 1.3.5 to pay a pension to a Member pursuant to the terms of this Part 4, the Trustee must pay the Member a pension:

- (a) commencing on the date agreed between the Trustee and the Member which must be not later than necessary to comply with the Relevant Law; and
- (b) in respect of an Account-Based Pension or an Allocated Pension terminating when the Member's Account Balance has been exhausted; and
- (c) in respect of a Term Allocated Pension terminating in accordance with specified term of the pension determined in accordance with the Relevant Law.

#### **4.6 Frequency of Payment**

The Trustee must pay the pension to a Member at the times agreed by the Member and the Trustee as at the time a benefit first becomes payable from the Plan.

#### **4.7 Change of Frequency**

A Member may change the frequency of the pension payments if:

- (a) the change is approved by the Trustee; and
- (b) the change is in a form approved by the Trustee.

#### **4.8 Default Frequency**

If at any time a Member has not made a selection as to the frequency of the pension payments, the Trustee may pay the pension annually or at such other frequency as the Trustee determines.

#### **4.9 Minimum Number of Payments**

For so long as the pension is payable, the Trustee must ensure that at least one payment is made during each Financial Year (subject to any exception set out in the Relevant Law).

#### **4.10 Amount of Pension Payments**

For each Financial Year (or part of a Financial Year), the pension payments to a Member must not be:

- (a) in respect of an Account-Based Pension less than the minimum limit set out in the Relevant Law having regard to the age of the Beneficiary.
- (b) in respect of an Allocated Pension:
  - (i) larger than the maximum limits; nor
  - (ii) smaller than the minimum limits set out in the Relevant Law for pension benefits of the kind provided by the Plan.
- (c) in respect of a Term Allocated Pension other than in accordance with the specific total annual amount determined for the Term Allocated Pension Member in accordance with the Relevant Law,

**PROVIDED THAT** a Member who is in receipt of an Allocated Pension Benefit pursuant to Clause 4.10(b) prior to the Prescribed Date may satisfy the requirements of an Account-Based Pension with effect from 1 July 2007 in accordance with the applicable provisions of the Relevant Law.

#### **4.11 Selection of Payment Level for Allocated Pension**

At the time or times permitted by the Trustee, the Member may select the level of pension payments for a Financial Year within the limits in clause 4.10(b). The selection must be in a manner approved by the Trustee.

#### **4.12 Default Pension Level for Allocated Pension**

If at any time during a Financial Year no selection has been made for that year under clause 4.10(b) and an Allocated Pension was being paid in the previous Financial Year, the Trustee must continue to pay a pension at the level prevailing at the end of the previous Financial Year. However, the Trustee may adjust the level up to the minimum or down to the maximum so as to comply with clause 4.10(b).

#### **4.13 First Default Level for Allocated Pension**

If, at the time a benefit first becomes payable from the Fund, the Member has not made a selection under clause 4.10(b), the Trustee must pay a pension at the minimum level required under clause 4.10(b).

#### **4.14 Commutation**

Subject to the Relevant Law and if permitted by the Trustee, a Member may commute the whole or a part of the Member's pension at any time by notifying the Trustee in a manner approved by the Trustee. On a Member fully commuting the Member's pension, the Trustee must pay a lump sum benefit to the Member equal to the Member's Account Balance. On a Member partially commuting the Member's pension, the Trustee must pay a lump sum benefit to the Member equal to the amount requested by the Member and approved by the Trustee up to the amount of the Member's Account Balance.

#### **4.15 Compulsory Commutation**

If the Relevant Law requires the Trustee to commute part of a Member's pension, the Trustee must comply with that requirement.

#### **4.16 Death Benefits**

Where the Trustee pays a pension under this Part 4 then unless Clause 4.18 or Clause 4.19 applies, on the Member's death the Trustee must pay a benefit equal to the Member's Account Balance according to Clause 1.6.3.

#### **4.17 Miscellaneous**

Where the Trustee pays a pension under this Part 4 then:

- (a) the capital value of the pension and the income from it must not be used as security for a borrowing unless the Relevant Law permits; and
- (b) the pension must not be transferred to another person unless permitted by the Relevant Law.

#### **4.18 Binding Nominations under Relevant Law**

A Member who is entitled to a pension under this Part 4 may give the Trustee (or the Trustee may accept) a binding direction in accordance with the Relevant Law nominating a reversionary pensioner in a form and at a time approved by the Trustee. The Member may revoke that nomination or nominate a new reversionary pensioner at any time by notice to the Trustee in accordance with the Relevant Law. On the death of a Member who has made a binding direction nominating a reversionary pensioner, the Trustee must continue to pay a pension to the Member's reversionary pensioner until the earlier of:

- (a) the Member's Account Balance is exhausted; or
- (b) the reversionary pensioner dies - in which case the Trustee must pay the balance of the Member's Account Balance:



- (i) to the reversionary pensioner's legal personal representative; or
- (ii) to Dependants of the deceased Member.

If the benefit cannot be paid in accordance with paragraphs (i) or (ii), the benefit will be paid to any other person the Trustee considers appropriate.

#### **4.19 Reversionary Pensioner**

- (a) Subject to the Relevant Law, the Trustee and a Member to whom a pension is being paid, may agree that on the Member's death, a pension may be paid to one or more reversionary pensioners who are Dependants. The Trustee will pay a pension to such of the reversionary pensioners as nominated by the Member and agreed to by the Trustee.
- (b) The amount and the terms and conditions of the pension paid to a reversionary pensioner under this clause 4.19 will be agreed on by the reversionary pensioner and the Trustee subject to the Relevant Law. In the absence of agreement, the amount and the terms and conditions of the allocated pension will be determined by the Trustee.
- (c) Notwithstanding clause 4.19(a), if the pension has to be paid on some other basis for the Fund to comply with the Relevant Law, it will be paid on that basis.
- (d) The pension payable under this clause 4.19 ceases to be payable:
  - (i) if the Member's Account Balance is exhausted; or
  - (ii) on the death of the reversionary pensioner - in which case the Trustee must pay the balance of the Member's Account Balance:
    - (A) to the reversionary pensioner's legal personal representative; or
    - (B) to Dependants of the deceased Member. If the benefit cannot be paid in accordance with paragraphs (A) or (B), the benefit will be paid to any other person the Trustee considers appropriate,

**PROVIDED THAT** in relation to a Term Allocated Pension both the payment of the balance of the Member's Account Balance and the amount of such payment shall be subject to the Relevant Law

#### **4.20 Special Rules for Pensioners**

Each provision of this Deed applies to a Member receiving a pension under this Part 4 ("the Pensioner") and to a reversionary pensioner from date of death of the Pensioner as if such Pensioner or reversionary pensioner was a Member except if, and to the extent that, the Trustee determines otherwise. The Trustee may, in its absolute discretion, determine that any provision will not apply to one or more Pensioners or Term Allocated Pension Members or reversionary pensioners for any period the Trustee determines.

#### **4.21 Compliance Provision**

Despite any other provision of this Part 4, a pension paid from the Fund must comply with the Relevant Law for pension benefits of the kind provided by the Fund pursuant to this Part 4.